

NOVA SCOTIA COURT OF APPEAL
Cite as: Sea Star Developments Ltd. v. Harris Steel Ltd., 1997 NSCA 78
Bateman, Jones and Flinn, J.J.A.

BETWEEN:

SEA STAR DEVELOPMENTS LIMITED,)	
a body corporate,)	
SEA SPA NOVA SCOTIA LIMITED PARTNERSHIP, a registered partnership,)	David P.S. Farrar for the Appellants
S.O.M. HOLDINGS INCORPORATED, 1881371 NOVA SCOTIA LIMITED, 1881355 NOVA SCOTIA LIMITED, 1881368 NOVA SCOTIA LIMITED, 1881342 NOVA SCOTIA LIMITED, all bodies corporate, BRIGITTA HENNIG, WOLFGANG SPEIGELHAUER, and MCINNES COOPER & ROBERTSON, in its capacity as trustee)	Michael S. Ryan, Q.C. for the Respondents
)	Appeal Heard: April 16, 1997
Appellants)	Judgment Delivered: April 16, 1997
- and -)	
)	
HARRIS STEEL LIMITED, a body corporate, carrying on business under the name and style of Harris Rebar, SPERRY & PARTNERS LIMITED, MARID INDUSTRIES LIMITED, CONNORS DIVING SERVICES LIMITED,)	
PPG CANADA INC., BLACK & McDONALD LIMITED, PMC ROOFING LIMITED, ATLANTIC DRYWALL & PAINTING LIMITED, MARKLAND ASSOCIATES LIMITED, ZENON ENVIRONMENTAL SYSTEMS INC., GARDNER ELECTRIC LIMITED, STEEN CONTRACTORS LIMITED, VAUGHAN ENGINEERING ASSOCIATES LIMITED, DOVER CORPORATION (CANADA) LIMITED, E & G MANAGEMENT INC., R. GIFFIN CONSTRUCTION LIMITED, FRASER-BRACE, DIVISION OF PIGOTT CONTRACTORS INC., all bodies corporate)	
Respondents)	

THE COURT: Appeal dismissed per oral reasons for judgment of Flinn, J.A.: Jones and Bateman, J.J.A. concurring.

FLINN, J.A.:

In 1988, one of the solicitors employed by the appellants, took title, in trust, to approximately 230 acres of ocean front property at Coleman's Cove, on the Aspotogan Peninsula in Lunenburg County. The purpose of this land acquisition was for the development and construction of a Sea Spa by Brigitta Hennig, and her brother Wolfgang Speigelhauer, two of the appellants, both from Germany.

The land was eventually subdivided and on April 28th, 1990, the appellants' solicitor conveyed, inter alia, lots 1, 2, 3, 4 and 5 to a numbered company, 1881371 Nova Scotia Limited, one of the appellants. Ms. Hennig and Mr. Speigelhauer are the officers and directors of this company.

Through a series of conveyances between 1990 and 1992, title to the five lots were conveyed as follows:

- Lots 1 and 2 were conveyed to Sea Star Developments Limited;
- Lot 3 was conveyed to Ms. Hennig and Mr. Speigelhauer as tenants in common;
- Lot 4 was conveyed to a further numbered company, namely, 1881368 Nova Scotia Limited; and
- Lot 5 was conveyed to still a further numbered company, namely, 1881342 Nova Scotia Limited.

With respect to the corporate grantees in these conveyances, all of whom are appellants, Ms. Hennig and Mr. Speigelhauer are their officers and directors. In the case of one of these corporate grantees (Sea Star Developments Limited), two of the appellants solicitors are also listed as officers.

Work on this Sea Spa project commenced in 1989. Construction stopped at the end of 1993. The project was out of money and new investors could not be found.

The respondents are architects, contractors and construction managers who worked on the project. They have outstanding lien claims against the project totalling approximately \$7.4M.

The partially completed Spa building was constructed on Lot 2. The respondent lienholders claimed, at trial, that they were entitled to a lien on all of the property; namely, Lots 1 to 5 inclusive. The appellants position at trial was that the respondents' liens attached only to Lot 2, on which the main Spa building was constructed.

Lots 1 and 2 had been the subject of a mortgage which has since been foreclosed; and those lots have now been sold.

The issue in this appeal is restricted to the question of whether the respondents' liens attach to Lots 3, 4 and 5.

The relevant provisions of the **Mechanics Lien Act**, S.N.S. c. 277 (the **Act**) are as follows.

"8 (1) The lien shall attach upon the estate or interest of the owner in the property mentioned in Section 6."
(emphasis added)

The word "owner" is defined in s. 2(d) of the **Act** as follows:

"2. In this Act,

.....

(d) 'owner' extends to any person, body corporate or politic, including a municipal corporation and a railway company, having any estate or interest in the land upon or in respect of which the work or service is done, or materials are placed or furnished, at whose request and

(i) upon whose credit,

(ii) on whose behalf,

(iii) with whose privity and consent, or

(iv) for whose direct benefit,

work, or service is performed or materials are placed or furnished, and all persons claiming under him or them whose rights are acquired after the work or service in respect of which the lien is claimed is commenced or the materials furnished have been commenced to be furnished;" (emphasis added)

The relevant part of s. 6 of the **Act** provides as follows:

"6.any person who performs any work or service ... in respect of constructing ... any ... building ... for any owner, contractor or subcontractor shall by virtue thereof have a lien for the price of such work ... upon the ... building ... and the land occupied thereby or enjoyed therewith ... or in respect of which such work or service is performed ..." (emphasis added)

This matter came on for trial before Justice Carver of the Supreme Court of Nova Scotia. None of the appellants gave evidence.

In his decision, Justice Carver made the following findings:

"I find that Lots 1, 3, 4 and 5 are lands enjoyed with Lot No. 2 on which the spa building is constructed."

"Dr. Hennig and Mr. Spiegelhauer have controlled and directed the planning and development of the entire property at least since 1989 treating all of the lots as a single unit after subdivision of the property. Even though there was a division on paper, Mr. Swanson was advised by the owners to treat the properties as seamless."

"These lots were to be operated together and for a common purpose. The building on Lot No. 2 was calculated to facilitate that common purpose and intended to benefit the whole. The building was the nerve center, but Lot No. 2 was dependent upon Lots 1 and 3 for access, upon 3 for future planned development and 4 and 5 for other planned buildings and pathways."

"The total property was to be operated as a fully integrated resort."

In our opinion, there was ample evidence to support those findings by Justice Carver, and, as a result, this Court will not interfere with those findings.

Based on those findings, the corporate appellants, in whose respective names Lots 4 and 5 are registered, and Ms. Hennig and Mr. Spiegelhauer in whose names Lot 3 is registered, are "owners" within the meaning of s. 2(d) of the **Act**. As Justice Carver found, Ms. Hennig and Mr. Spiegelhauer, as the owners of Lot 3, and as the officers and directors of the corporate appellants who owned Lots 4 and 5 controlled and directed the planning and development of the entire property; and that the building on Lot 2 was intended to benefit the whole. Clearly then Ms. Hennig and Mr. Spiegelhauer, in addition to acting on their own behalf with respect to Lot 3, were acting as the agents for the registered owners of Lots 4 and 5. The work, which is the subject of these lien claims, was therefore done "at the request of" and for the "direct benefit" of the registered owners of Lots 3, 4 and 5 within the meaning of s. 2(d) of the **Act**.

Therefore, since the registered owners of Lots 3, 4 and 5 are "owners" within the meaning s. 2(d) of the **Act**; and since Lots 3, 4 and 5 are lands "enjoyed with" Lot 2 (and the building erected thereon) within the meaning of s. 6 of the **Act**, Justice Carver was correct in his determination that the respondents' liens attach to Lots 3, 4 and 5.

The appeal is dismissed.

The respondent Black and MacDonald Limited, having the carriage of this proceeding on behalf of itself and all of the other respondent lien claimants, shall have its costs of this appeal which we hereby fix at \$1500.00 plus disbursements.

Flinn, J.A.

Concurred in:

Jones, J.A.

Bateman, J.A.

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 LIMITED, 1881355 NOVA SCOTIA LIMITED,
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 1881368 NOVA SCOTIA LIMITED, 1881342
)
 NOVA SCOTIA LIMITED, all bodies corporate,
)
 BRIGITTA HENNIG, WOLFGANG
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 SPEIGELHAUER, and MCINNES COOPER &
)
 ROBERTSON, in its capacity as trustee
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Appellants

- and -

HARRIS STEEL LIMITED, a body
 corporate, carrying on business under the
 name and style of Harris Rebar, SPERRY &
 PARTNERS LIMITED, MARID INDUSTRIES
 LIMITED, CONNORS DIVING SERVICES LIMITED,
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 DRYWALL & PAINTING LIMITED, MARKLAND
 ASSOCIATES LIMITED, ZENON ENVIRON-
 MENTAL SYSTEMS INC., GARDNER ELECTRIC
 LIMITED, STEEN CONTRACTORS LIMITED,
 VAUGHAN ENGINEERING ASSOCIATES
 LIMITED, DOVER CORPORATION(CANADA)
 LIMITED, E & G MANAGEMENT INC., R.
 GIFFIN CONSTRUCTION LIMITED, FRASER-
 BRACE, DIVISION OF PIGOTT CONTRACTORS
 INC., all bodies corporate

Respondents

REASONS FOR
JUDGMENT BY:

FLINN, J.A.
(Orally)