

NOVA SCOTIA COURT OF APPEAL

Citation: *APM Construction Services Inc. v. Caribou Island Electric Ltd.*,
2013 NSCA 62

Date: 20130510
Docket: CA 406600
Registry: Halifax

Between:

APM Construction Services Inc. and
Travelers Guarantee Company of Canada

Appellants and
Respondents by Cross-Appeal

v.

Caribou Island Electric Limited and
Canada Revenue Agency

Respondents

and

3104607 Nova Scotia Limited, carrying on business as Advanced
Cabling Systems, and Her Majesty the Queen in Right of the
Province of Nova Scotia as represented by the Minister of Transportation and
Infrastructure Renewal

Respondents and
Appellants by Cross-Appeal

Judge: The Honourable Justice David P.S. Farrar

Appeal Heard: January 29, 2013

Subject: **Construction Law. Interpretation of Income Tax Act,**
R.S.C. 1985, c. 1 (5th Supp.). Builders' Lien Act, R.S.N.S. 1989,
c. 277. Interpretation of Labour and Material Payment

Bond.

Summary:

APM Construction Services Inc. was the successful bidder on a provincial project and as a result was required to obtain a Labour and Material Payment Bond. Travelers Guarantee Co. of Canada issued the Bond. APM sub-contracted to Caribou Island Electric Ltd. who in turn sub-contracted to Advanced Cabling Systems. Caribou failed to pay ACS pursuant to the terms of their contract. ACS filed a builders' lien against APM and Caribou and made a claim under the Bond. Canadian Revenue Agency was also owed money by Caribou Island Electric Ltd. It demanded APM pay the amount owing to Caribou to it. APM made an interpleader application to pay the monies into court. The application judge found that it was not necessary to make an interpleader order, he found that the CRA was entitled to be paid out of the funds held by APM and that ACS was entitled to be paid pursuant to the Bond. He did not relieve APM of its obligations under the **Builders' Lien Act**.

APM appealed arguing that it was entitled to be relieved of its obligations under the **Builders' Lien Act** and that the application judge erred in his interpretation of the Bond arguing that by payment of the amount owing to Caribou Island Electric to the CRA, APM had fulfilled the conditions of the Bond.

The Province and Advanced Cabling Systems cross-appealed seeking costs of the application.

Issues:

1. Was APM entitled to be relieved of its obligations under the **Builders' Lien Act** on payment of the funds to CRA?
2. Had APM fulfilled the conditions of the Bond, thereby making it void, on payment of the amounts to the Canada Revenue Agency?
3. Did the Chambers judge err in failing to award costs to the Province and Advanced Cabling Systems?

Held:

Appeal allowed in part. APM was entitled to be relieved of any obligations it had under the **Builders' Lien Act**.

Otherwise the appeal was dismissed. The cross-appeal was also dismissed. The trial judge erred in failing to relieve APM of its obligations under the **Builders' Lien Act**. He did not err in his conclusion that ACS was entitled to be paid pursuant to the terms of the Bond. The application judge did not err in declining to award costs to ACS and the Province.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 23 pages.