

NOVA SCOTIA COURT OF APPEAL

Citation: *Clyde Bergemann Canada Ltd. v. Lorneville Mechanical Contractors Ltd.*, 2018 NSCA 14

Date: 20180216

Docket: CA 464102

Registry: Halifax

Between:

Clyde Bergemann Canada Ltd.

Appellant

v.

Lorneville Mechanical Contractors Ltd. and
Northern Pulp Nova Scotia Corporation

Respondents

Judge: The Honourable Justice David P.S. Farrar

Appeal Heard: November 21, 2017, in Halifax, Nova Scotia

Subject: **Stay Motion. *Judicature Act*, R.S.N.S. 1989, c. 240, s. 41; *Commercial Arbitration Act*, S.N.S. 1999, c. 5, s. 9.**

Summary: The respondent, Lorneville Mechanical Contractors Ltd., commenced a mechanics' lien action for unpaid invoices for work which it had performed at Northern Pulp Nova Scotia Corporation's mill site as a subcontractor to Clyde Bergemann Canada Ltd.

Lorneville subsequently gave a Notice of Arbitration to Bergemann pursuant to an arbitration clause in its contract with Bergemann. Lorneville then applied to stay the lien action pending the outcome of the arbitration proceeding. It also moved to have an arbitrator appointed.

Bergemann, in turn, moved to consolidate the lien action with an action which Northern Pulp commenced against Bergemann and in which Bergemann counterclaimed.

The judge allowed the stay motion. She dismissed the motions

to appoint an arbitrator and for consolidation.

Issues:

- 1 Should leave to appeal be granted?
- 2 If leave to appeal is granted, the four issues to be addressed are as follows:
 - (a) Did the judge err in identifying the correct legal test for a stay of proceedings under section 41(e) of the *Judicature Act*?
 - (b) Did the judge err in concluding that Lorneville would suffer irreparable harm if the lien action was not stayed?
 - (c) Did the judge err in finding that the balance of convenience favoured a stay of the lien action?
 - (d) Did the judge err in dismissing Bergemann's consolidation motion?

Result:

The motions judge properly exercised her discretion in finding that in light of the arbitration proceeding, this was a fit and just case to order a stay.

Leave to appeal granted, appeal dismissed with costs to the respondents of \$1,000 each.

As a result of the appeal being dismissed, the consolidation motion appeal became moot.

<p><i>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 13 pages.</i></p>
--