

1975

C.T. No. 02009, 02014,
01951, 02024,
02057

IN THE COUNTY COURT FOR DISTRICT NUMBER FOUR

IN THE MATTER OF: The Mechanics' Lien Act.

BETWEEN: LEISURE CEDAR HOMES CONSTRUCTION, INC.
a body corporate

Plaintiff

- and -

DUSAN HRANISAUJEWICZ and HENRY JANULEWICZ

Defendants

Bruce H. Wildsmith, Esq. of counsel with Leisure Cedar Homes
Construction Inc.

Ronald C. Giffin, Esq. of counsel with the claimants, Elmer Crowell
and Merrill McLeary.

Douglas A. Caldwell, Esq. of counsel with Halliday Craftsmen, a
Division of Sumner Holdings Ltd.

James F. Richards, Esq. of counsel with Darrell Erwin Pash,
Robert George Pash and Pash Brothers
Construction Ltd.

Kenneth J. A. Brookes, Esq. of counsel with Flemming Albert Hingley.

D E C I S I O N

1976, January 29; McLellan, Co. Crt. J.: On the hearing held
in this consolidated action for mechanics' liens on December 18th
last, all questions were resolved with the exception of the claim
by lienholders who had no contractual right to interest to be
awarded interest on their claims. I asked counsel whose clients

had an interest in this question to submit a memorandum on the question by December 31st. I received such a memorandum from Mr. Richards with his letter of December 19th. Unfortunately, I was unable to obtain as promptly as I wished a copy of a decision of Mr. Justice Dubinsky which dealt with the problem, and this decision has been delayed as a consequence.

In Sydney Rotary Drilling Services Ltd. v. Quebec Assurance Company (unreported, S.N. No.275, dated May 20, 1975) Mr. Justice Dubinsky traced the various statutes dealing with the power of the Supreme Court of Nova Scotia or a jury to award interest on a claim. As the matter is so fully dealt with in that decision, it is unnecessary for me to repeat what is set forth. His Lordship reached the conclusion that,

"a good case can be made out that the Supreme Court has the power to award interest to the same extent as it had in England under Lord Tenderden's Act in 1833"

In what follows immediately I shall assume that a county court has the same powers in this respect as are exercised by the Supreme Court (although I am by no means satisfied that that is a valid assumption).

Lord Tenderden's Act (Civil Procedure Act (1833) (U.K.) 3 & 4 Will. 4, c. 42) in s. 28 provided that a jury might allow interest to a creditor at a specified rate,

" from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment;"

In my view, all mechanics' liens are "payable otherwise" within the meaning of those words in the Act quoted, if for no other reason than that liability to pay any claim is dependent upon the supply of materials or the performance of some work, both of which are uncertain as to time. It follows that before any interest can be paid under this Act upon any claim in respect of which a lien may be claimed, there must first have been a written demand giving the debtor notice of the intention to claim interest. In this case the short answer to the question is that there is no evidence that any such notice in writing was given by any creditor, and no interest can be allowed.


A note on the explicit assumption made in the preceding paragraph - the county court is a statutory court and its powers and jurisdiction must be found within the four corners of the act creating it. S. 38 provides in part,

"....every county court in any action or proceedings in such court shall have power to grant.....such relief, redress or remedyas might and ought to be granted or given in the like case in the Supreme Court."

At first blush, this would seem to give to a county court the same powers in the matter before it as are enjoyed by the Supreme Court, but the powers are limited by the words, "in the like case in the Supreme Court." The Supreme Court has no power to try a mechanics lien action - such an action may be tried only in a county court (Mechanics' Lien Act, c. 178, R.C.N.S. 1967 s. 33). And so, a literal reading of the County Court Act (c. 64, R.S.N.S. 1967) raises a serious doubt as to whether a county court judge

has the power to allow interest on a mechanics'lien claim.

Truro, N.S.


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JUDGE OF THE COUNTY COURT FOR
DISTRICT NUMBER FOUR.