

SUPREME COURT OF NOVA SCOTIA

Citation: Concrete Shoring Technologies Inc. v. SCFS Inc.,
2009 NSSC 97

Date: 20090318

Docket: Hfx. No. 295620

Registry: Halifax

IN THE MATTER OF

The Builder's Lien Act,
being Chapter 277, S.N.S 2004, as amended

- and -

Concrete Shoring Technologies Inc.

Applicant

- and -

SCFS Inc. and 3048700 Nova Scotia Limited

Respondents

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Judge: The Honourable Justice Walter R.E. Goodfellow

Heard: March 18, 2009 in Halifax, Nova Scotia

Written Decision: March 25, 2009

Subject: Summary judgment / severance of counterclaim.

Summary: June 2004 Concrete entered into a contract with SCFS for concrete framing to be provided at 342 Main Avenue. The parties had a business relationship since 2003 and followed a practice that payments from defendant for companies similarly owned by one Spears and his spouse would have payments credited to the longest outstanding invoice. Invoices outstanding \$184,109.88. Concrete registered a lien on the property owned by the numbered company which was vacated when the numbered company paid into Court the statutory hold-back of \$123,866.02. Concrete applied for summary judgment and severance of the counterclaim.

- Issues:**
- 1.) Is Concrete entitled to summary judgment?
 - 2.) Should there be an order for severance of the counterclaim?

Result: Summary judgment applications have been recently canvassed in **Broussard v. Hawley**, 2009 NSSC 1 (CanLII). Clearly, prerequisites of summary judgment have been established by Concrete, summary judgement on claim allowed.

The granting of summary judgment on a claim effectively severs the counterclaim and, in any event, the counterclaim dealt entirely with equipment which was not part of the rental contract in the claim. The counterclaim raises issues such as conversion because SCFS, in error, delivered additional equipment back to concrete who SCFS states is hold their equipment as ransom for payment. In any event, prerequisites of severance established. Concrete to have judgment for \$184,109.88 plus agreed costs and disbursements of \$1,000.00 with order for payment out of Court. The priority claim of the Revenue Agency is to be paid first and balance credited to the outstanding \$185,109.88.

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