

SUPREME COURT OF NOVA SCOTIA

Citation: Certified Design Consulting Inc. v. Alex Lane Properties Inc.
2015 NSSC 367

Date: 20151223
Docket: Hfx. No. 443076
Registry: Halifax

Between:

Certified Design Consulting Inc., a body corporate

Plaintiff

v.

Alex Lane Properties Inc., a body corporate

Defendant

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Judge: The Honourable Justice Robert Wright
Heard: December 2, 2015 in Halifax, Nova Scotia
Written Decision: December 23, 2015

Subject: Whether full and final settlement agreement made and enforceable – whether implied term should be drawn – scope of release.

Summary: On October 23, 2014 the defendant property owner entered into a construction contract with the plaintiff as general contractor. About six months into the project, disputes arose over alleged deficiencies which lead to a work stoppage on May 26, 2015. At that point, the plaintiff filed a lien under the *Builders' Lien Act* followed by commencement of an action on September 6th. During the following months, the parties pursued settlement negotiations, sometimes through legal counsel and sometimes directly between themselves. On September 14th there was an

exchange of e-mails directly between the parties containing an offer and acceptance of the terms of settlement. After the lawyers were re-engaged to prepare the settlement documentation, ALP renounced the settlement, asserting that it was subject to review and approval of legal counsel as a condition precedent and further refusing to execute the release submitted to it for execution.

Subsequently, the plaintiff brought a motion under CPR 10.04 for an order declaring that a full and final settlement had been made that was enforceable against the defendant and confirming the terms thereof. The defendant filed a cross-motion to vacate the registration of the lien for failure to record the certificate of lis pendens within the prescribed time lines.

Issues:

1. Did the parties reach a binding and enforceable settlement agreement of all matters in dispute through their exchange of e-mails on September 14, 2014? If so, are there any terms which need to be implied to give effect to that agreement?
2. If no settlement agreement was reached, should the builders' lien be vacated pursuant to s.29(5) of the *Builders' Lien Act*?

Result:

On an objective assessment of the evidence as required, the court concluded that the parties intended to create a legally binding agreement and that they had agreed on all the essential terms of the settlement agreement. The court further concluded that although a settlement implies a promise to furnish a release that reflects the agreement reached by the parties, there was no implied term in the present case that the release should be so broad as to prevent the defendant owner from making any claims against a third party who might claim contribution or indemnity from the releasee.

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