

SUPREME COURT OF NOVA SCOTIA

Citation: *Northwest Arm Construction Ltd. v. Presidential Ventilation Systems Ltd.*, 2014 NSSC 188

Date: 20140508

Docket: Hfx No. 426511

Registry: Halifax

Between:

Northwest Arm Construction Limited

Applicant

v.

Presidential Ventilation Systems Ltd.

Respondent

Judge: The Honourable Justice M. Heather Robertson

Heard: May 8, 2014, in Halifax, Nova Scotia

Written Release: June 4, 2014 (**Orally: May 8, 2014**)

Counsel: Christopher W. Madill, for the applicant
Nicholaus Fitch, for the respondent

Robertson, J: (Orally)

[1] It is my view that it would be a rare circumstance in which non-substantial compliance of s. 19 and s. 20 of the *Builders' Lien Act*, (R.S.N.S. 1989, c. 277) should be condoned by the courts. Section 19 is clear that there should be substantial compliance in the filing of the lien claim and the filing of the affidavit of verification.

Section 21(1) of the *Act* reads:

21 (1) Substantial compliance only with Sections 19 and 20 shall be required, and no lien shall be invalidated by reason of the failure to comply with any of the requisites of such Sections, unless, in the opinion of the court or judge who has the power to try the action under this Act, the owner, contractor, subcontractor, mortgagee or other person, as the case may be, is prejudiced thereby, and then only to the extent to which he is thereby prejudiced.

[2] Prejudice is not an issue raised before me. There is another subsequent lien. We do not have sheltering provisions, but the implication of the second lien is of impact certainly to the respondent because they could lose their place in the pecking order.

[3] This is not a case of a flagrant abuse of adhering to the requirements under the legislation. We know an error was made by a slip of a finger on the computer key board. The claim for lien was prepared with the affidavit of verification at the

same time. They would have been filed together, but for the fact the pdf document did not include both the claim for lien and the affidavit of verification. Mr. Fitch did not realize this until he later received notice. He received notice of the non-compliance of the filing of the affidavit of verification after the 60-day period had expired.

[4] This is a circumstance where the court should use its powers under s. 21(1) the curative provision and allow the lien claim to stand. I do so. Accordingly, the application is dismissed

Robertson, J.