

BLACKMAIL LIENS



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A lien claimant that filed a bogus lien claim was hammered with an order for special costs in the decision of *Concord Industrial Services Ltd. v. 371773 B.C. Ltd.*

In August and October 2000, the lien claimant performed work on machinery and equipment that was attached to land in Surrey. That equipment and machinery was removed from the land sometime in December 2000; however, the lien claimant filed a lien claim in February, 2001.

The lien form indicated that the date the monies were due was in January 2001 despite the fact the last invoice was issued in October, 2000. The Court found that the January, 2001 date was used “to give an appearance of being timely when it manifestly was not”.

The time limit to file a lien under the *Builders Lien Act* is 45 day from the time that a certificate of completion was issued or when the work on the project was substantially performed. In this case the lien was filed at least 5 months out of time.

Bogus lien claims are common and many owners, developers and contractors are forced to pay them because there was not much of a penalty to deter this type of behaviour and because the bogus lien claim ties up funds and prevents the owner from doing anything with its property.

In this case, the Court considered the conduct of the lien claimant to be “scandalous, outrageous and reprehensible”. The lien claimant’s “failure to come to terms with the manifest deficiency in its claim at an early stage in the proceedings represents the sort of reckless indifference to the legitimate interests of the defendant as is envisioned by the authorities which cite reprehensible conduct as a basis for awarding special costs”. The order for special costs is designed to reimburse 100% of the owner legal costs in defending the claim.

This a warning to potential lien claimants to stop the practice of filing blackmail liens.

To learn more about Adnan Habib, his areas of practice and view other Articles written by lawyers at our firm, visit us online at www.bakernewby.com.