

COURT OF APPEAL FOR ONTARIO

CITATION: 9806881 Canada Corp. v. Swan, 2024 ONCA 187

DATE: 20240313

DOCKET: COA-23-CV-0807 & M54681

van Rensburg, Roberts and Favreau JJ.A.

BETWEEN

9806881 Canada Corp.

Applicant (Respondent)

and

Glen Swan, Toronto Aircraft Inc. and Toronto Aircraft Maintenance Inc.

Respondents (Appellants)

James M. Wortzman and Jared C. Wortzman, for the appellants

Patricia Virc and Robert Karrass, for the respondent

Heard: in writing

On appeal from the order of Justice Jill C. Cameron of the Superior Court of Justice, dated July 19, 2023, with reasons at 2023 ONSC 4200.

ENDORSEMENT

[1] The respondent seeks directions concerning this court’s January 18, 2024 decision. By its counsel’s letter dated January 29, 2024, the respondent submitted that “[t]here is a potential error or ambiguity in this Court’s decision in that it could be interpreted as setting aside parts of the decision of the application judge that were not appealed from, or which were abandoned in oral submissions.” The appellants disagree with the respondent’s position and maintain that the court’s

decision grants the relief sought in the notice of appeal, factum, and in oral submissions.

[2] We see no error or ambiguity in our decision that ordered the setting aside of the application judge's order because of the errors that we identified in our reasons for decision. These errors affected the application judge's determination of the appellants' lien rights as well as the validity of the PPSA registration. The *status quo* should be maintained until the issue of the possessory lien is determined. Moreover, while the focus of the appellants' oral appeal submissions was on the possessory lien arising from the unpaid repairs to the aircraft, we did not understand from their oral submissions that the appellants abandoned any of the relief sought in their notice of appeal and factum, which includes payment of the outstanding storage/rental costs associated with the repairs to the respondent's aircraft.

[3] As we also ordered, until further order of the court, the appellants have a possessory lien over the respondent's aircraft. We did not specify whether the lien arose because of the repairs done on the aircraft and/or because of the storage/rental costs associated with those repairs. The two categories of outstanding amounts are intertwined and are remitted to the Superior Court for determination. We did not interfere with, nor were we asked to, vary the application judge's direction in para. 61 of her reasons that "[t]he parties are free to litigate the outstanding issues with respect to the invoices created after the litigation

commenced and what work was promised and remains to be done.” The issues that we remitted for trial include the authorization of and liability for the unpaid amounts on the appellants’ invoices, which include the repair charges and storage/rental costs associated with the repairs in respect of which the appellants claim a lien.

[4] We trust that these further reasons will assist counsel in agreeing on the form and content of this court’s January 18, 2024 order. If they cannot agree, counsel may submit their respective draft orders within seven days of the release of this endorsement for approval by this court.

“K. van Rensburg J.A.”
“L.B. Roberts J.A.”
“L. Favreau J.A.”