

# Court of King's Bench of Alberta

**Citation: Rojda Stucco Ltd v McNeill, 2024 ABKB 102**

**Date:** 20240304

**Dockets:** 2203 04478, 2103 16224

**Registry:** Edmonton

Between:

Docket: 2203 04478

**Rojda Stucco Ltd.**

Plaintiff/Applicant

- and -

**Scott McNeill and Taylor McNeill**

Defendants/Respondents

-and-

Between:

Docket: 2103 16224

**Scott McNeill and Taylor McNeill**

Plaintiffs

-and-

**Infiniti Master Builder Inc.**

Defendant

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**Memorandum of Decision  
of the  
Honourable Justice M.E. Burns**

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[1] The Applicant, Rojda Stucco Ltd, (“Rojda”) seeks to increase an amount held in trust at Bryan & Company LLP from \$54,893.20 to \$164,395.75. Rojda relies on s 48 of the *Builders’ Lien Act* (as it was before August 29, 2022) (“*Act*”) and *Rules 1.3 and 7.3 of the Alberta Rules of Court*.

[2] This litigation arises from the building of a home at 5009 Woolsey Place in Edmonton. In May 2021, Infiniti Master Builder (“Infiniti”) owned the property and were building a home for the McNeills. Infiniti retained Rojda to do work on the property. From May 2021 to September 2021, the work was undertaken. An invoice was provided to Infiniti in the amount of \$74,025. It was not paid.

[3] Rojda asserts that the agreement with Infiniti was that the McNeills would pay the Rojda invoice within 30 days. The McNeills assert that they have paid for all improvements to the property through payments to Infiniti. Infiniti has declared bankruptcy.

[4] I am not being asked to decide if the McNeills are liable to pay for the work completed by Rojda, to Rojda directly, or whether Rojda must seek payment through Infiniti. I am asked to determine what amount should be held in trust until that question is determined. Rojda filed a builder’s lien on the property January 5, 2022.

[5] On February 9, 2022, the McNeills obtained an order from Justice Harris that directed if \$54,893.20 was placed in trust by them, the title of the property would be transferred to the McNeills clear of the lien filed by Rojda and liens from four other subtrades. The Harris Order specifically provided that (i) any of the parties having an interest in the lands could apply to increase the amounts held in trust, (ii) the provision of s 48(2) of the *Act* applied to the funds held in trust and (iii) the order was without prejudice to any arguments or remedies available to any affected parties.

[6] Section 48(1) of the *Act* provides for the payment of security in lieu of a lien. It provides:

48(1) The court may, on application, order that the registration of a lien be removed from the title to the land concerned

(a) where security is given or payment is made into court for

(i) the amount of the claim,

(ii) the maximum amount for which the lien may properly attach under section 18(3) or (4) or 23(3) or (4), or

(iii) such lesser amount as the court determines,

and any costs that the court may fix,

[7] Thus, security posted can be (i) the amount of the claim (which Rojda seeks), the maximum amount for which the lien may attach (which the McNeills argue for) or a lesser amount.

[8] Rojda seeks to have its entire claim, plus 15%, paid into trust. Rojda also seeks to have the two remaining lien claimants’ full claims (plus 15%) also covered by the amount held in trust, which is how the \$164,395.75 is calculated.

[9] It has been recognized that builders’ lien legislation is intended to provide an expeditious and cost-effective method for suppliers of services to enforce their rights not only against those they have contracted with, but also the owners of the property that benefited from those services (*Maple Reindeers v Eagle Sheet Metal Inc*, 2006 ABKB 150 at para 28). It has also been recognized that liens protect the claims of those who supplied the services only so long as the

owner is not prejudiced (*Maple Reindeers* at para 26). This balance is mandated through the legislated scheme, and it is the application of the *Act* that must govern.

[10] The McNeills argue that their obligation to pay into a lien fund is limited by the terms of the *Act*. In particular, s 25 limits the liability of an owner:

25 An owner is not liable under this Act for more than

- (a) the total of the major lien fund and the minor lien fund, or
- (b) the major lien fund, where a minor lien fund does not arise under section 23.

[11] In this case, there is no minor lien fund as a certificate of substantial performance was not issued under the McNeill's contract with Infiniti. Thus, the maximum an owner would be liable for is the amount of the major lien fund.

[12] With respect to cases where there are multiple lien claims, s 18(4) of the *Act* provides:

18(4) Except as provided in section 13(1), when, in respect of liens to which this section applies, there is more than one lien claim arising from work done or materials furnished for and at the request of the contractor or the same subcontractor, they do not attach so as to make the major lien fund liable in their cumulative total for a sum greater than the total of

- (a) 10% of the value of the work actually done or materials actually furnished by the contractor or subcontractor, as the case may be, and
- (b) any additional sum due and owing but unpaid to that contractor or subcontractor for work done or materials furnished.

[13] In other words, the maximum the major lien fund can be, where there are multiple lien claims, is the total of the value of the work that was done by the contractor and its sub trades and any additional sum due and owing but unpaid. For the purpose of this analysis, Infiniti is the contractor and Rojda is one of its subcontractors.

[14] In his Affidavit of January 13, 2022, Scott McNeill deposes that the McNeills paid a total of \$1,136,874.94 to Infiniti. This included a payment of \$57,750.00 as a down payment and an additional payment of \$327,250.00 for the lot, for a total of \$385,000.00 for the land. The remaining payments of \$751,874.94 were made for work done and materials provided in building the house. The Affidavit of Norman Lux dated December 21, 2021, deposes that the value of the work done by Infiniti was \$548,932.00.

[15] An argument might be made that 10% of the payments *made* should be held in trust as reflecting the maximum liability of the owners for a total of \$75,187.49. Generally, payments made are a good approximation of the value of the work done to date however, in this case, there is better evidence of the value of the work. The actual value of the work is \$548,932.00. The McNeills are liable to a maximum of "10% of the value of the work actually done or materials actually furnished by the contractor or subcontractor" – in this case \$54,893.20.

[16] Given this is the maximum that the McNeills can be liable for there is nothing in the *Act*, or otherwise put before me, that would essentially allow a pre-judgment remedy against the

McNeills by requiring them to post greater than the maximum allowed under the *Act*. Therefore, the application is dismissed.

Heard on the 22<sup>nd</sup> day of January, 2024.

**Dated** at the City of Edmonton, Alberta this 4<sup>th</sup> day of March, 2024.

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**M.E. Burns**  
**J.C.K.B.A.**

**Appearances:**

Arman Chak  
ForensicLaw  
for Rojda Stucco Ltd.

Kevin Chapotelle  
Bryan & Company LLP  
for Scott McNeill and Taylor McNeill