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CONSTRUCTION, BUILDERS' AND MECHANICS' LIENS IN CANADA **8th Edition**

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This publication offers an exhaustive analysis of the construction, builders' and mechanics' lien legislation from all Canadian jurisdictions; legislative concordances, guidance on construction lien practice; a comprehensive set of construction law forms and precedents; and summaries and analysis of every significant case in the construction lien area decided in trial and appeal courts throughout Canada.

This release features updates to the case law and commentary in Chapters 3 (The Lien Claimant), 6 (Enforcement of Liens), 7 (Loss, Discharge or Vacating of Lien), 9 (Construction Trusts), 11 (Practice Before Trial), 12 (Practice After Trial), and 13 (Prompt Payment and Adjudication).

Highlights

Procedural Summaries I. Builders' Lien Proceedings in Manitoba - § 12:20. Against the Plaintiff and Other Claimants After Trial— A representative's personal liability for costs under section 86(1)(b)(i) can be triggered by conduct that is "reckless" and "willfully blind." ?Recklessness and willful blindness have been defined as having a level of knowledge that is the moral

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equivalent of actual knowledge. Such conduct is well beyond mere negligence or a laziness underlying a failure to inquire. It involves knowledge of an actual risk that is at the level of a “clear probability” and then a failure to act to avoid the risk or make inquiries. ? In *2708320 Ontario Ltd. cob Viceroy Homes v. Jia Development Inc.*, 2024 CarswellOnt 3671, the court determined that where a lawyer’s knowledge has reached that of a “clear probability” of the claim’s baselessness, the lawyer’s duty to the court, the property owner and others who may be adversely affected should supersede the lawyer’s duty to the client, and the lawyer should investigate or refuse to participate.

§ 13:32. Compliance with Determination— A party to an adjudication may file a certified copy of the determination of an adjudicator with the court and, on filing, the determination is enforceable as if it were an order of the court. No later than 10 days after filing of the determination with the court, that filing party must notify the other party of the filing. In *MGW Homes Design Inc. v. Pasqualino*, 2024 CarswellOnt 8261, it has been held in Ontario that failure to comply does not automatically void the writ, nor does it preclude a party from ever enforcing an adjudicator’s determination. The Divisional Court held that the court should consider the extent of the non-compliance, any explanation for the non-compliance, any prejudice to the payor arising from the failure to give notice, and any other relevant circumstances, and then should place these matters in the overall context of the dispute and the breach by the payor of its statutory obligation to make prompt payment in accordance with the Act. If it appears to the court that the non-compliance was an oversight, in circumstances where it ought to have been clear that enforcement steps would be taken, and where there is no evidence of prejudice arising from the non-compliance, the court might well conclude that a simple declaration of non-compliance might be a sufficient remedy. Where there is evidence of actual prejudice, where there is no reasonable explanation for the failure to give notice, or where there are other circumstances that commend a more significant sanction, the court could consider voiding pre-notice enforcement steps, suspending interest for the period of non-compliance, an order for costs, or other sanctions that are proportional to the harm resulting from the failure to comply with the notice requirement.