



## Builders Lien Upheld for Work Done on a “Highway”

*Highways are exempt from liens. But as long as some of the work was done on private property, you may be able to burden that property with a lien for all of the work*

In May 2001, Pedre Contractors Ltd. entered into a contract with 360 Fibre Limited to supply and install approximately 3 kilometres of underground conduit for the purposes of carrying a fibre-optic cable network to property owned by the defendant, 2725312 Canada Inc. The vast majority of the work performed by Pedre took place off the owner’s property underneath municipal streets and rights of way. This included installing a number of manholes to city streets in order to provide access to the conduit.

Pedre completed its work and provided a conduit extending onto the owner’s property and linking it with major telecommunications exchanges in other parts of Vancouver. Shortly after Pedre completed its work, 360 Networks, including its affiliate 360 Fibre obtained protection under the Company’s Creditors Arrangement Act. Pedre filed a claim of builders lien against the owners’ property in the amount of \$867,000.00 representing the unpaid price of all of its work including the work done under city streets.

Section 1 of the British Columbia *Builders Lien Act* defines an improvement as follows:

**Improvement:** Includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under land, and attached to it or intended to become part of it, and also includes any clearing, excavating, digging, drilling, tunneling, filling, grading or ditching of, in, or under land

So, it was clear enough that the type of work performed by Pedre could certainly constitute part of an “improvement”.

Section 2 of the *Builders Lien Act* provides that a contractor, subcontractor or worker who performs or provides work or supplies material in relation to an improvement may claim a lien for the price of their work against the land in, on or under which the improvement is located. At issue in Pedre was whether the work performed, the vast majority of which was done outside of the owners’ property, was part of a single improvement in relation to that property such that it should be charged with payment of all of the unpaid contract price owing to Pedre.

In a decision rendered on August 23, 2004 (***Pedre Contractors Ltd. v 2725312 Canada Inc. and 360 Fibre Limited***, 2004 BCSC 1112) Mr. Justice Drost of the British Columbia Supreme Court ruled in favor of Pedre. On the facts before him Mr. Justice Drost was satisfied that the purpose of the conduit was to provide an extremely valuable direct and essential benefit to the owner of the land by creating a very fast and secure link between the property and the information highway. His Lordship distinguished those decisions where work done offsite could be said to stand alone such that it was not a necessary and integral part of the improvement on the owners' land. In the result, he found:

(75) "While a claimant is not entitled to a lien against one person's property for the value of an indirect benefit to that property resulting from work done on another person's property, in this case the evidence shows that all of the work performed and the material supplied by Pedre, both on and offsite, was, in the words of Thorson J.A. "directed to or done to advance, the work project that was being carried out on the very work site which was sought to be charged with the lien ..."

(77) I find that all the work performed and the material supplied by Pedre, including that performed and supplied outside the boundaries of the property, was of direct benefit to the property and an integral and necessary part of the actual physical construction of the improvement."

The owner appealed Mr. Justice Drost's decision but the matter was settled before the appeal could be heard. So, Pedre remains good law for the proposition that where a portion of a single unseverable improvement for the benefit of an owner's land lies in any proportion within the land, the land may be charged with the full unpaid price of the improvement.

*We would be pleased to answer contractors' enquiries about the Pedre case. Contact Bob Jenkins QC or Don Thompson in Vancouver at 604 681.6564 or by e-mail to [bjenkins@jml.ca](mailto:bjenkins@jml.ca).*