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"Obvious Benefit" on its Own Not Enough to Support a Lien Claim

Construction which has obvious benefit for an adjacent property owner does not meet the test for a valid lien, i.e. that it relate to physical improvement of the actual property which it purports to attach

A development agreement required a developer named Eagle Ridge to "dedicate a road" through its property for the benefit of a competitor, Bear Mountain, which owned nearby property with no other convenient access. Eagle Ridge complied by filing land title documents which donated a slice of its property to the municipality for use as a road allowance. To permit its own property to be developed, Bear Mountain then expended $1.2 million to construct a road on the road allowance. It did so after entering a "latecomer agreement" with the municipality which obliged those who later obtained a benefit from the road to pay a fee, part of which would be given over to Bear Mountain.

Eagle Ridge obviously stood to gain from Bear Mountain's construction, since its own property was now made accessible and suitable for development. Upon completion of the road, Bear Mountain filed a lien claim against Eagle Ridge's property, arguing that the road was an integral part of the actual physical construction of any development of Eagle Ridge's property, and a necessary prerequisite for approval of any subdivision plans of that property. Eagle Ridge applied to have the lien discharged under section 25 of the Act, on the basis that "did not relate" to its land. They argued additionally that the lien filing should be considered a vexatious act, and an abuse of process.

The court in ***LGB9 et al. v. Metrocan et al***. 2003 BCSC 1786 agreed that the lien was invalidly filed, and granted the lien discharge. It stated that Bear Mountain's arguments ignored the essential requirement for a lien, that it relate to physical improvement of the actual property which it purports to attach.

The court held in the alternative that, even if the lien was validly filed, the security for Bear Mountain represented by the latecomer agreement was sufficient security under section 24 of the Act, and the lien could be cancelled under that provision. No consideration was given to the abuse of process submissions of Eagle Ridge, and only the usual costs were granted in its favour.

We would be pleased to answer contractors' enquiries about the LGB9 case. Contact Bob Jenkins QC, or Don Thompson in Vancouver at 604 681.6564 or by e-mail to bjenkins@jml.ca.

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