

1967  
\*Oct. 27  
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C. BECKETT & CO. (EDM.) LTD..	}	APPELLANTS;
UNDERWOOD TRANSIT MIXED		
(1961) LTD., DOMINION BRONZE		
LTD., FREEZE MAXWELL CO.		
LTD., HOLM'S MASONRY (NORTH- ERN) LTD., and WESTERN ELEC- TRICAL CONSTRUCTORS LTD. ...		

AND

J. H. ASHDOWN HARDWARE CO.	}	RESPONDENT.
LTD. ....		

ON APPEAL FROM THE SUPREME COURT OF ALBERTA,  
APPELLATE DIVISION

*Mechanics' liens—Waiver of lien rights by subcontractors—Effect—The  
Mechanics' Lien Act, 1960 (Alta.), c. 64.*

The registered owners of certain lands employed a construction company as general contractor to erect a building on their property. The construction company fell into financial difficulties and was unable to complete the building and the appellants, who were unpaid subcontractors on the project, filed mechanics' liens against the property. A form of waiver of lien had been signed by each of the appellants and contained, *inter alia*, the words "waive and renounce any lien or right of lien which we have or may have upon the...land and...building...and do waive and renounce any and all right to register or to hold a claim of lien against the said land, building or chattels." This waiver was given by the appellants at the request of the owners of the property in order that a first mortgage might be arranged and for the benefit of any subsequent purchaser and also for the benefit of any subsequent mortgagee.

Applications having been filed to have declared invalid the appellants' liens, an order was made directing the determination of two questions: (1) Did the execution of a waiver of lien rights by any party preclude it from filing a valid lien? (2) A lien having in fact been filed by such party, could those lienholders not being parties to the said waiver of lien rights, take advantage of the provisions contained therein to exclude those parties who executed such waiver from sharing in funds paid into Court by the owners of the lands in question in satisfaction of all liens?

In the judgment of the Chambers Judge both of these questions were answered in the negative. On appeal from this judgment to the Appellate Division of the Supreme Court of Alberta it was held that

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\*PRESENT: Cartwright C.J. and Martland, Judson, Ritchie and Pigeon JJ.

the appeal should be allowed and that the questions should be answered in the affirmative. An appeal from the judgment of the Appellate Division was brought to this Court.

*Held:* The appeal should be dismissed.

APPEAL from a judgment of the Supreme Court of Alberta, Appellate Division<sup>1</sup>, allowing an appeal from a judgment of Greschuk J. Appeal dismissed.

1967  
C. BECKETT  
& Co.  
(EDM.) LTD.  
*et al.*  
*v.*  
J. H. ASH-  
DOWN  
HARDWARE  
Co. LTD.

*J. C. Cavanagh, Q.C.*, and *R. J. Biamonte*, for the appellants.

*D. Spitz* and *G. A. Lucas*, for the respondent.

At the conclusion of the argument of counsel for the appellants, the following judgment was delivered:

CARTWRIGHT C.J. (*Orally for the Court*):—We find ourselves in complete agreement with the reasons of Mr. Justice Allen who gave the unanimous judgment of the Appellate Division. It follows that the appeal is dismissed.

We find ourselves unable to act upon the arrangement as to costs made between the parties and our order is that the appeal be dismissed with costs.

*Appeal dismissed with costs.*

*Solicitors for the appellants:* Cavanagh, Henning, Buchanan, Kerr & Witten, Edmonton.

*Solicitors for the respondent:* Macdonald, Spitz & Laval-lée, Edmonton.

<sup>1</sup> (1967), 59 W.W.R. 204 (*sub nom. Customs Glass Ltd. v. Waverlee Holdings Ltd. et al.*)