

CASE LAW UPDATE

Nicholas Caughey, WeirFoulds LLP *

Sunview Doors Limited v. Pappas

2010 ONCA 198, Released 16 March 2010

Construction Law – Statutory Trust – Breach of Statutory Trust – No Specific Intent or Knowledge of Improvements Required

The Plaintiff, Sunview Doors Ltd. (“Sunview”), manufactures supplied custom-made patio doors for contractors. Between September 2005 and October 2006, Sunview supplied doors to a subcontractor, Academy Doors and Windows Ltd. (“Academy”), which had carried on business as a manufacturer, supplier and installer of windows, doors and curtain walls in renovated and retrofitted low and high-rise buildings. The doors were supplied by Sunview on \$100,000 unsecured credit. Before Sunview received any payment, Academy went bankrupt. Sunview brought an action for breach of contract against Academy on the basis of the unpaid accounts. Additionally, Sunview sought a claim for breach of trust against two directors of Academy as well as Academy’s office manager. This second claim was brought pursuant to the combined operation of s. 8, the statutory trust provision, and s. 13, the pierced corporate veil provision, of the *Construction Lien Act* (“Act”).

The Superior Court had allowed the claim against Academy for breach of contract, but did not allow the claim for breach of trust to succeed. The trial judge held that Sunview was not entitled to benefit under a statutory trust. Turning on the prior decision of a panel of the Court of Appeal sitting as the Divisional Court in *Central Supply Co. 1972 Ltd. v. Modern Tile Supply Co.* (2001), 55 O.R. (3d) 782, the trial judge held that Sunview could not establish as a prerequisite that at the time it sold or supplied its doors to Academy, it had *intended* that they be used for *known* and *identified* improvements (emphasis added). In other words, Sunview was not able to identify the particular projects that the doors were used for, but that they had been requested by Academy for existing projects based on the specifications provided.

In this case, a unanimous five-member panel of the Court of Appeal upheld the Divisional Court’s decision on the basis of distinguishing *Central Supply*. The decision effectively creates a lower threshold for a supplier in the construction industry to claim under the statutory trust.

Specifically, the Court stated that it is not necessary for a supplier to demonstrate an intention to supply materials to a known and specific improvement, but instead “[p]rovided that the supplier

is able to link the material to the improvement for which the subcontractor was owed money or has been paid, the supplier will be entitled to the benefit of the s. 8 statutory trust in the Act.”

The decision is intended to expand the statutory trust provision to accord with its previous application prior to *Central Supply*. The statutory trust under the *Act* is meant to give a supplier a separate statutory form of security for a full payout of monies received by the contractor or subcontractor beyond the limited holdback amounts available in a lien action.

While the Court recognized that *Central Supply* attempts to address a legitimate concern about an overly broad remedy, the Court provides that the threshold of demonstrating “a link” is sufficient to limit the use of the trust remedy to persons working in the construction and building repair industries alone.

In this case, Sunview established the requirements for the creation of a statutory trust: (a) Academy was a subcontractor; (b) based on the particular facts of this case, sufficient efforts had been made by Sunview to demonstrate that it had supplied materials to projects on which Academy was a contractor; (c) Academy had received monies on account of its contract price for those projects; and (d), that money was owed to Sunview from Academy. Resultantly, Sunview was a proper beneficiary under the s. 8(1) trust provision of the *Act*.

*Nicholas Caughey is an Associate at WeirFoulds LLP (www.weirfoulds.com)