



Case Comment - *Silex Restorations Ltd. v. The Owners, Leasehold Strata Plan VR2096, 2002 BCSC 1748* (Supreme Court of British Columbia, December 23, 2002) Davies J.

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S. submitted a tender for a building envelope repair project for a “leaky condo”. It was the lowest bid, but S. provided a 60-day bid bond rather than a 90-day bid bond as required by the tender. Without considering the term of the bid bond, the strata corporation told S. that they would award it the contract. There was some negotiation over contract terms. The project did not go ahead as planned, however: the strata corporation fired its consultant and decided to wholly revise the remediation plans. The strata invited S. to tender on the revised project, but instead S. sued on the basis that the strata was in breach the Contract A in original tender.

S. argued that by agreeing to award it the contract, the strata had waived its non-compliance with the terms of tender.

S. was unsuccessful. There was no waiver of the non-compliance, because the strata was not aware of the non-compliance at the relevant time. No formal Notice of Award was delivered, and the requirement for a formal Notice precluded an informal expression of the award being binding. Furthermore the ongoing negotiations after the strata’s communication of its intention to give the contract to S. was inconsistent with there being an unconditional waiver and award.

The Court also determined that case authority for the proposition that the lowest tender had to be accepted did not, in any event, apply. The invitation to



tender contained a privilege clause, reserving to the strata the right to reject any and all tenders, and this permitted the cancellation of the tender. The Court affirmed that an owner retains the discretion not to award the work at all if it determines that the specifications in the tender documents do not meet its requirements.