



## Case Comment: *Northern Thunderbird Air Ltd. v. Royal Oak Mines*, [2002] B.C.J. No. 154 (C.A.)

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Only a party who provides labour or materials *in direct relation to, or in relation to an integral part of an improvement* will be entitled to claim a builders' lien for the costs of such labour or materials under the British Columbia *Builders Lien Act*.

The Defendant, Royal Oak Mines Inc. ("Royal Oak"), sought to develop a mine in a remote region of northern British Columbia. In order to facilitate construction, Royal Oak built an airstrip and engaged the Plaintiff, Northern Thunderbird Air Ltd. ("Thunderbird"), to transport construction personnel and their baggage to and from the work site. Thunderbird claimed a builders' lien for more than \$145,000 for transportation services.

In the Supreme Court of British Columbia, the parties applied for a decision on the following point of law "can an air carrier who provides transportation of construction personnel and their baggage to a construction site claim a lien under the *Builders Lien Act*?" The Supreme Court answered the question in the negative, and Thunderbird appealed.

Section 2(1) of the *Builders Lien Act* provides that a contractor, subcontractor or worker who performs or provides work or supplies material in



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relation to a construction project may claim a lien for the price of the work or materials to the extent that they remain unpaid.

In determining that Thunderbird was not entitled to a claim of lien, the Court of Appeal considered the language of the current *Builders Lien Act* against the history of builders' lien legislation and concluded that section 2, particularly the meaning of the words "in relation to" required limitation in order to prevent a project owner from being open to a potentially unlimited number of lien claims. The Court held:

It seems to me that in order to achieve the purpose of preventing owners from getting the benefit of buildings erected and work done at the expense of those who provided the materials and did the work, and of protecting the suppliers and workers by giving them a security interest in the owner's land, the words "in relation to" must be limited in some way. This may be done by either requiring a direct relationship between the service and the improvement as in this case, or by requiring that the work or service be an "integral and necessary part of the actual physical construction." Otherwise, anyone who provided a service which indirectly benefited the improvement would be entitled to a lien at the expense of those who made direct contributions, as well as at the expense of other creditors with no security, statutory or otherwise.

The Court of Appeal concluded that the words "in relation to" must be read to mean *in direct relation to* or *in relation to an integral part of the improvement*. The Court of Appeal upheld the decision of the Supreme Court that a party engaged to transport construction workers and their baggage to a site of construction is not entitled to claim a builders' lien.