

SUPREME COURT OF YUKON

Citation: 365334 *Alberta Limited v. Pishon Gold Resources Inc.*,
2018 YKSC 39

Date: 20180809
S.C. No. 17-A0102
Registry: Whitehorse

BETWEEN

365334 ALBERTA LIMITED operating as A1 CATS

PETITIONER

AND

**PISHON GOLD RESOURCES INC. and
ALMIN LIAO**

RESPONDENTS

Before Mr. Justice P. Kane

Appearances:
Mark Wallace
Aimin Liao

Counsel for the petitioner
Self-representing the respondents

REASONS FOR JUDGMENT

INTRODUCTION

[1] 365334 Alberta Limited, carrying on business as A1 Cats (“A1 Cats”) in this proceeding commenced by petition seeks:

- a. to enforce a Claim of Miners Lien pursuant to the *Miners Lien Act*, R.S.Y. 2002, c. 151 (the “Act”) against 43 Placer Claims of Pishon Gold Resources Inc. (“Pishon Gold”) in the Whitehorse Mining District (the “Placer Claims”) for \$50,509, plus interest at 24% per annum;
- b. an order that the Placer Claims be sold to satisfy its liens at any time after 3 months from the date of judgment herein; and

- c. joint and several judgment against the respondents for the liability claimed, including 24% per annum interest thereon from September 15, 2017.

[2] The respondents Pishon Gold and Mr. Liao oppose enforcement of the Miners Liens and sale of its Placer Claims. They allege the Tractor rented from A1 Cats, due to its prior improper maintenance and lack of repair, was not in operable condition at the commencement, during and at the end of the Rental Term resulting in their loss of use of that equipment and loss of production at their mining site during 18 of the 30-day Rental Term for which they claim damages.

[3] The respondents, by counterclaim, seek damages against A1 Cats:

- a. in the amount of \$22,052 for the cost of repairs to the Tractor by the respondents during the Rental Term;
- b. \$35,218 for wages and subsistence for the loss of 6 days of gold mining production during the Rental Term when the Tractor was inoperable and was being repaired by the respondents; and
- c. \$55,000 for the loss to the respondents due to its inability to conduct its gold mine operation because the Tractor required maintenance and repair which made it inoperable for 18 of the 30-day Rental Term.

Initial Determinations

[4] The parties in argument agreed the counterclaim should proceed and be determined in this hearing in conjunction with argument and determination of the Petition. This Court proceeded on that basis.

[5] The respondents at the mid-afternoon start of their responding argument in this scheduled one-day hearing requested leave to call two witnesses to testify as part of their case, in addition to their six affidavits.

[6] The Court denied the respondents leave to call the two witnesses to provide evidence to supplement the evidence in their six affidavits.

[7] One of the respondents' proposed witnesses was William McKay who identifies himself in his affidavit as Mine Manager of Pishon Gold Mine. The body of Mr. McKay's January 29, 2018 affidavit contains no information beyond citing his position as Mine Manager and simply attaches two exhibits, namely:

- a. his description, chronology, repair cost report as to the dates, nature of Tractor malfunction requiring repair, duration of the associated non-performance and a list of the cost of labor and parts repair cost to the Tractor during the Rental Term (the "McKay Report"); and
- b. copies of three parts invoices and two freight invoices to transport such replacement parts to the site of the inoperable Tractor (the "Respondents' Invoices").

[8] The respondents further sought leave to file and rely upon the affidavit of Mr. McKay (the "McKay Affidavit") which had not been previously filed despite the March 13, 2018 Case Management Order requiring the respondents to serve and file all affidavits they intended to rely upon by March 30, 2018.

[9] The McKay Report signed by Mr. McKay was filed as Exhibit A to Mr. Liao's filed February 13, 2018 Affidavit #4. The Respondents' Invoices are attached to that affidavit

of Mr. Liao as Exhibit B, which affidavit was served within time on the plaintiff, thus in substance addressing the failure to file the McKay Affidavit.

[10] As stated in their outline, the respondents at the April 9, 2018 Case Conference requested and were denied leave to call witnesses as part of this hearing of the Petition and counterclaim (the “Refusal Order”). The respondents’ renewal of the request to call witnesses today is a prohibited collateral attack of the Refusal Order which was not appealed or challenged for two months. Permission to call witnesses was also denied as Mr. McKay’s evidence was not required as to the contents and statements in his 10-page McKay Report given the following decision.

[11] The respondents’ request to file and rely upon the McKay Affidavit was granted, despite the Case Conference Orders requiring the filing of affidavits by February 23 and March 30, 2018, because:

- a. the plaintiff had received and had notice of the only contents of the McKay Affidavit being the McKay Report and the Respondents’ Invoices since February 13, 2018 as indicated in the Liao Affidavit #4;
- b. the plaintiff, with justification, sought an order striking the McKay Report from the Liao Affidavit #4 and a point form summary of the Tractor repair issues during the Rental Term, which largely repeats the conclusions in the McKay Report, attached as Exhibit A to the Liao Affidavit #2 as hearsay evidence from an unidentified source regarding the point form summary which Mr. Liao had failed to attest were, to the best of his knowledge, accurate;
- c. the respondents, unfortunately, were self-represented; and

d. the Court's responsibility remains to determine the issues on the merits.

[12] A1 Cats' request to strike Exhibit A to Mr. Liao's Affidavits # 2 and #4, as unidentified hearsay evidence and pursuant to the Rule 49(12) of the *Rules of Court* of the Supreme Court of Yukon's requirement that the deponent of an affidavit be limited to information admissible at trial unless the affidavit contains statements as to the deponent's information and belief including the source thereof are technically correct but are subject to the permission of the Court under Rules 42(53)(a) or 50(9)(e). Those two sub-rules are broad enough for this Court to allow introduction of that evidence.

[13] The petitioner in addition opposed introduction of this relevant evidence in opposing the respondents' request for leave to call two witnesses including Mr. McKay and thereby limit the hearing to affidavit evidence, while at the same time consenting to a combined hearing including the respondents counterclaim.

[14] The requested order to strike these two documentary exhibits from Mr. Liao's affidavits became academic given the Court's permission to file and rely upon the McKay Affidavit which attaches his McKay Report as an exhibit and contains similar information. The order requested to strike these two exhibits accordingly was denied.

[15] The petitioner was three days beyond the Case Conference Order requirement to serve and file the second affidavit of Mr. Edenoste by April 6, 2018. Mr. Edenoste's Affidavit #2 was served and filed on April 9, 2018. The petitioner sought leave as to that late filing and to be able to rely upon that affidavit. Such leave was granted despite the respondents' objection because:

a. an unsigned copy of this Affidavit #2 was sent to the respondents on Friday, April 6, 2018, as Mr. Edenoste was then out of the country and

unavailable to sign until Monday April 9, 2018, on which date he signed, served and filed his affidavit; and

- b. given the above time extension relief granted to the respondents.

[16] Argument proceeded on the basis of the above rulings.

BACKGROUND

[17] Mr. Liao is the President of Pishon Gold which is the owner of numerous mining licences used in its operation of a gold mine in the Yukon in 2017.

[18] A1 Cats rented heavy equipment in 2017 to industries including the mining industry.

[19] The parties signed A1 Cats seven paragraph rental agreement on August 9, 2017 (the "Rental Contract") in which A1 Cats rented an older Caterpillar D 10 tractor (the "Tractor") to the respondents for 30 days or 200 operating hours, at a cost of \$33,000 per month, plus \$165 per hour for any additional time.

[20] The parties later agreed that the rental charges would be payable at the end of the Rental Term.

[21] The 30-day Rental Term was from 8 a.m. on August 10 until 8 a.m. on September 9, 2017 (the "Rental Term").

[22] The respondents took possession of the Tractor on August 10, 2017, drove it to their property that day and had possession of it from August 10 until September 10, 2017, which was two days beyond the 30-day Rental Term in the Rental Contract.

[23] A1 Cats took possession of the Tractor on September 10, 2017, on the respondents' licensed land and drove it to its property 6 km away.

[24] A1 Cats sent two invoices to the respondents which combined total \$50,509.

A1 Cats Invoice #1

[25] A1 Cats' first invoice is dated August 10, 2017, in the amount of \$34,650 consisting of \$33,000 for 30 days rental of the Tractor between August 10 and September 8, 2017, plus GST.

[26] Subject to their counterclaim, the respondents acknowledge rent liability in the amount of \$22,000 on the basis of the 12 days the Tractor was operational and not inoperable due to necessary repairs during the 30-day Rental Term.

A1 Cats Invoice #2

[27] A1 Cats' second and final invoice is dated September 15, 2017, in the amount of \$15,859, with the following charges:

- a. \$2,200 for two additional rental days, September 9 and 10, 2017, at the rate of \$1,100 per day;
- b. \$2,230 for labor and fuel in attending at the respondents' licensed property and driving the Tractor to the plaintiff's property, including charges to add fuel during that 6 km trip and 100 L of fuel to fill the fuel tank at the plaintiff's property;
- c. \$400 for a new ripper tip part for the Tractor;
- d. \$243 for pivot shaft damaged parts, including a ring, exhaust shield and pivot shaft oil tank;
- e. \$9,295 for damaged idler parts allegedly caused by the Tractor being operated after oil leaked out;
- f. \$540 for the cost during the Rental Term of a new battery charged to A1 Cats which was retained by the respondents;

- g. \$221 for 2 new retainers; and
- h. \$729 GST.

[28] The two invoices from A1 Cats state that 2% interest per month [24% per annum] will be charged on all accounts over 30 days. A1 Cats claims interest at that rate from September 9, 2017, on its 1st invoice and from October 15, 2017, on a 2nd invoice.

[29] The Rental Contract contains no provision as to when rental charges are payable or the rate of interest liability for overdue accounts.

[30] A1 Cats registered its liens, commenced this proceeding and served the requisite notice within the time requirements of the *Act*.

Okanagan Contractor Services Ltd.

[31] Pishon Gold allegedly carried out its mining operations together with Okanagan Contractor Services Ltd. (“Okanagan”). Mr. Liao in argument stated that Okanagan was the operator of the Tractor during the Rental Term and A1 Cats accordingly should seek recovery of unpaid rent and compensation for any damage to the Tractor from Okanagan.

[32] There is no affidavit evidence as to what Okanagan did or did not do in relation to the Tractor.

[33] Okanagan:

- a. is not a party to the Rental Contract;
- b. is not a party to this proceeding; and
- c. if it operated the Tractor during the Rental Term as alleged, it appears that it did so at the request of or with the consent of the respondents who signed the Rental Contract and committed to its terms.

[34] Okanagan is irrelevant as to the claims herein.

Repair Costs Claimed

[35] The Tractor recorded it had been operated a total of 21,910 hours at the commencement of the Rental Term. It, according to the plaintiff, was then approximately 30 years old.

[36] The evidence indicates substantial repairs were carried out to the Tractor in 2013 and that it had operated some 1,200 hours since that 2013 overall.

[37] A1 Cats was the last prior operator of the Tractor in July 2017, one month prior to its rental to the respondents.

[38] A1 Cats states that the Tractor was “operational” in July 2017. It does not allege that the Tractor had no broken or used parts that required repair in anticipation of its future operation nor that it conducted any inspection or maintenance of the Tractor between its use in July 2017 and the commencement of the Rental Term to the respondents on August 10, 2017.

[39] Mr. Edenoste’s limited statement that the Tractor was “operational” upon its last prior use in July 2017 supports the maintenance and repair issues immediately identified on August 10, 2017, by the respondents and leads the Court to conclude that A1 Cats conducted no inspection, maintenance or necessary repairs of the Tractor prior to the commencement of the Rental Term to the respondents.

[40] The Court generally finds the respondents’ documentary evidence, including the report of Mr. McKay as a representative distinct from the respondents, credible as to the state of maintenance and repair of the Tractor delivered to the respondents at the commencement of the Rental Term.

[41] Supporting this conclusion as to the petitioner's lack of inspection, maintenance and repair prior to the commencement of the Rental Term is the evidence of the two inspections conducted by the respondents at the commencement of the Rental Term on August 10, 2017. The results of those two inspections indicate the following Tractor deficiencies at the start of the Rental Term:

- a. one of its batteries was dead and required a boost;
- b. its fuel tank was not full, as required under the Rental Contract;
- c. its engine oil reservoir was down and required the addition of oil;
- d. its wiper blades were missing;
- e. the ripper tooth was worn out, which A1 Cats replaced after the Rental Term and charged to the respondents, and required greasing;
- f. the right side of the Tractor blade had a missing Pin and Keep;
- g. the muffler of the Tractor was cracked;
- h. the Tractor's exhaust pipes were badly rusted and leaked exhaust which caused the radiator "to get smutted up"; and
- i. the date and operational hours indicated on the oil filters indicated the Tractor needed an oil change.

[42] To promote the respondents' rental of the Tractor, A1 Cats misrepresented the Tractor's operational fitness and state of repair at the commencement of the Rental Term by sending a list of the overhaul repairs carried out to the Tractor four years earlier, without disclosing that 2013 date or fact.

Terms of Rental Contract

[43] The Rental Contract between A1 Cats, Pishon Gold and Mr. Liao provides that:

- a. rent for the Tractor will be charged from its delivery until it is returned to A1 Cats, regardless of circumstances;
- b. the Tractor during the Rental Term is to be serviced and operated according to Caterpillar's specifications and recommendations;
- c. the renter is responsible for any damages caused to the Tractor during the Rental Term;
- d. A1 Cats will be responsible for parts only, not labour for repairs, needed on the Tractor while being rented. A1 Cats has no field mechanic;
- e. A1 Cats will not be responsible for payment of parts that were damaged due to operator abuse or neglect which will be charged back to the renter on final invoice. All repairs must be requested in writing and approved by Mr. Edenoste of A1 Cats;
- f. any damages caused to the Tractor by not being greased will be repaired and charged on final invoice by A1 Cats;
- g. the Tractor's fuel tank will be full at the commencement of the Rental Term and must be full at the end of the Rental Term; and
- h. any servicing or fuelling done by A1 Cats at the end of the Rental Term will be charged to the renter on final invoice.

[44] The Rental Contract is silent as to the state of repair and operability of the Tractor at the commencement of the Rental Term. A1 Cats could have but failed to include a disclaimer as to the state of repair and operability of the Tractor in the Rental Contract which it drafted and used in this case. The principle of *contra preferendum* operates against A1 Cats as to the interpretation of this contract.

[45] It is commercially reasonable for a court to imply a term that the Tractor will be repaired and operationally fit to perform its designed functions at the commencement of the Rental Term. The Court implies that term to this Rental Contract and concludes for the reasons stated that the petitioner breached that term in failing to ensure such state of repair and maintenance at the commencement of the Rental Term.

[46] The evidence from the McKay Report is that the Tractor could not be used in the mining operation during the first 5 days of the Rental Term until the front blade's Pin and Keep had been obtained from Whitehorse, installed and the petitioner's mechanic on day 5 attended and changed the engine oil. Those elements requiring repair and maintenance existed at the commencement of the Rental Term.

[47] The Tractor on the evidence was subsequently inoperable for 5 and 4 days to order, deliver, retrieve and install its leaking muffler, rusted, decomposing and leaking exhaust pipes and missing heat shields. The base of the muffler at the commencement of the Rental Term was rusted and leaked exhaust. The accompanying heat "smutted" the radiator requiring it to be constantly flushed which resulted in downtime.

[48] These deteriorated elements existed at the commencement of the Rental Term. There is no evidence to support A1 Cats' speculation that these elements, unlike the areas surrounding them, were damaged by impact caused in the negligent operation of the Tractor for which the respondents were liable pursuant to the terms of the Rental Contract.

[49] The heat escaping from the rusted muffler and its adjoining pipes together with the missing shields risked damaging adjacent elements that occurred in the melting of the oil tank for the pivot shaft.

[50] The McKay Report indicates there were two further inoperable periods of one half day and two days related to the replacement of two broken hydraulic hoses. There is no evidence that these hoses were broken at the start of the Rental Term.

Rent Reduction During Inoperable Periods

[51] The respondents claim reduction of rent for the above inoperable periods needed to repair the Tractor, particularly as to those deteriorated elements existing at the commencement of the Rental Term which A1 Cats, as a conscientious operator, must have been aware of.

[52] A1 Cats opposes any reduction in rent in reliance upon the terms of its Rental Contract. As indicated, that contract states that rent for the Tractor will be charged from its delivery until it is returned to A1 Cats, regardless of circumstances.

[53] “Regardless of circumstances” is broad enough contractual language to include known and apparent deteriorated elements at the commencement of the Rental Term.

[54] A1 Cats and the respondents through their inspection at the start of the Rental Term, knew or ought to have known that the deteriorated conditions of the elements noted would or could result in inoperable periods during the Rental Term.

Notwithstanding their knowledge as to these deteriorated elements, the respondents elected to proceed with the rental rather than returning the equipment unless the petitioner amended this term of the contract.

[55] The respondents for these reasons are not entitled to an abatement of rent during the 30-day Rental Term.

[56] A1 Cats is not entitled to the additional rent charged after the Rental Term, namely for September 9 and 10, 2017. Prior to the end of the Rental Term, the

respondents noted that a pin had started to come out of the right idler. The respondents thereupon ceased operating the Tractor, notified A1 Cats of this condition, however, A1 Cats failed to respond and failed to provide the defective piece as was its responsibility in the Rental Contract.

[57] All parties knew that continued operation of the Tractor with this condition risked causing damage. It appears the Tractor was so damaged and the damage occurred when A1 Cats attended two days after the end of the Rental Term, drove the Tractor to its site and is now seeking \$9,295 from the respondents for its repair cost of the idler.

Repair Costs Claimed

[58] The petitioner and the respondents each claim damages for their labour, parts and associated costs to repair the Tractor.

[59] The relevant contractual provisions regarding damage to and the repair of the Tractor again state that:

- a. The Tractor during the Rental Term is to be serviced and operated by the respondents according to Caterpillar's specifications and recommendations;
- b. the respondents are responsible for any damages caused to the Tractor during the Rental Term;
- c. A1 Cats will be responsible for parts only, not labour for repairs, needed on the Tractor while being rented. A1 Cats has no field mechanic; and
- d. A1 Cats will not be responsible for payment of parts that were damaged due to operator abuse or neglect which will be charged back to the renter on final invoice.

[60] This contractual language:

- a. makes the respondents responsible for any damage they caused to the Tractor, including any damage caused by not being greased; and
- b. A1 Cats is only responsible for the cost of parts needed during the Rental Term, unless the damage was caused by the abuse or neglect of the operator.

[61] The above contractual language is deficient, which is A1 Cats' responsibility.

[62] Parts and mechanisms of heavy equipment deteriorate over time due to normal wear and tear, weather conditions etc.

[63] The contractual language is deficient as to:

- a. whether A1 Cats' liability for the cost of parts is limited to normal servicing requirements necessitated by normal operation and fair wear and tear;
- b. whether the respondents' obligation to service the Tractor in accordance with Caterpillar's specifications includes responsibility for the cost of parts;
- c. whether the renter's responsibility for "any damages caused to the equipment" is the same as or different from the Tractor being damaged "due to operator abuse or neglect"; and
- d. which of the parties is responsible for the cost of labour and parts needed to repair the Tractor at the commencement of the Rental Term.

[64] The Tractor on the evidence had not been maintained by A1 Cats in accordance with Caterpillar's specifications at the commencement of the Rental Term contrary to that obligation which this Court implies as a term in this contract.

Respondents' Claimed Cost of Repairs

[65] Imposition of liability on the respondents for the cost to upgrade and repair the Tractor to the level of Caterpillar's specifications at the commencement of the Rental Term would require specific language which this contract does not contain.

[66] The absence of that contractual obligation and the imposition of an implied term that the Tractor would be in good and operable state at the commencement of the Rental Term as determined, entitles the respondents to recover their following costs of repair at the commencement of the Rental Term:

- a. \$645 to top up the fuel, engine oil and labour costs to boost the battery at the commencement of the Rental Term;
- b. \$2,420 related to the blade Pin and Keep;
- c. \$8,455 to replace the deteriorated and leaking muffler;
- d. \$5,322 to replace the leaking exhaust pipes, gaskets and missing heat shields.

[67] The respondents' cost of inspection at the commencement of the rental was their responsibility given their contractual commitment to operate the equipment in accordance with Caterpillar's specifications during the Rental Term, which required their knowledge of the equipment through this inspection.

[68] The respondents' claims of \$692 and \$3,520 for labour and material costs resulting from breaks in hydraulic hoses on two occasions on the evidence relates to fair wear and tear during the Rental Term for which they are responsible, other than the cost of parts which are not claimed. The Court, as an aside, notes that \$750 travel costs

in the 2nd of these two claims to and from Whitehorse to pick up the muffler is a duplication of that charge.

[69] In total therefore, the respondents are entitled to the above credits totaling \$16,842 against the unpaid rental cost of the Tractor during the Rental Term.

A1 Cats Repair Costs

[70] As indicated, A1 Cats' claim of \$2,200 for two additional days of rental fee is denied due to the then inoperable state of the Tractor until repair of the idler in order to prevent further damage, its knowledge thereof and its failure to provide the necessary parts to permit operation of the Tractor.

[71] A1 Cats is entitled to the labour and fuel costs claimed to retake possession of the Tractor and fill its fuel tanks as provided for in the Contract, totaling \$2,030.

[72] A1 Cats operators failed to ensure before departing that there was sufficient fuel to drive the equipment 6 km. The \$200 charge for a pickup with the fuel tank accordingly is denied.

[73] The pivot shaft melted oil tank damage was caused by the muffler/exhaust pipe leakage due to the deteriorated rusted state of those elements at the commencement of the Rental Term. A1 Cats knew or ought to have known of this deteriorated condition, should have repaired the same prior to commencement of this rental and failed to do so. The petitioner's associated claim in the amount of \$243 is denied.

[74] Mr. McKay's evidence, which I accept, is that the pin in the right idler of the Tractor had started to release but was still there when the respondents stopped using the equipment two days prior to the expiration of the Rental Term. A1 Cats having been

advised as to this idler issue then drove the Tractor on September 10, 2017, some six hours back to its property.

[75] A1 Cats has not proven the loss of the pin or resulting damages to the idler was not occasioned during this 6-hour trip to their property on September 10.

[76] A1 Cats has not proven its claim for damage to the idler due to the equipment being used after oil leaked out or whether such damage occurred before, during the Rental Term or during its six-hour operation returning the equipment to its property on September 10. A1 Cats has failed to prove this claim on a balance of probabilities. Its claim in the amount of \$9,295 is accordingly denied.

[77] The evidence indicates that the ripper tip was damaged at the commencement of the Rental Term, during which A1 Cats failed to repair. It also was contractually obligated to pay for the cost of parts not damaged by abusive operation by the respondents. A1 Cats has failed to prove this head of damage and accordingly its claim in the amount of \$400 for this tip is dismissed.

[78] A1 Cats' claim for the respondents' failure to return the battery purchased at its cost at the commencement of the Rental Term in the amount of \$540 is granted.

[79] A1 Cats has not established the basis of liability against the respondents as to the invoices from Finning, nos. 944797966 and 944796354, which combined total \$220. The Court notes that those invoices are mid-August 2017, during the Rental Term as to which A1 Cats had a contractual obligation to pay the cost of parts for repairs other than those caused by the abusive operation of the equipment by the respondents. This \$220-claim has not been proven and is therefore denied.

Counter Claim for Lost Wages, Subsistence and Production

[80] The respondents failed to provide evidence of or prove their combined damage claim of \$90,218 for lost wages, subsistence and production time during periods when the Tractor was inoperable, despite filing six affidavits.

[81] The respondents had been denied leave to call witnesses prior to argument and failed to include this evidence in the late affidavit of Mr. McKay.

[82] The respondents failed to prove these counterclaims which are therefore dismissed.

Conclusion

[83] The respondents are accordingly liable to A1 Cats as follows:

- a. \$34,650 including GST, being the unpaid rental cost for 30 days;
- b. \$2,570 for the cost of repairs as above determined, plus \$128 for GST, for a total of \$2,698; and
- c. less the \$16,842 above counterclaim awarded to the respondents by counterclaim.

[84] In the result, the Court:

- a. declares that A1 Cats holds and is entitled to enforce a Claim of Miners Lien pursuant to the *Act* against the 43 Placer Claims in the Whitehorse Mining District as listed in paragraph A of the Amended Petition dated October 18, 2017;
- b. declares that the amount of and payable on the said Claim of Lien is in the sum of \$20,506, plus prejudgment interest from September 15, 2017 and

post judgment interest pursuant to ss. 35 and 36 of the Yukon *Judicature Act*, R.S.Y. 2002, c. 128;

- c. orders that the Placer Claims be sold to satisfy the above liens of A1 Cats if not paid with interest, at any time after the expiration of 90 days after the date of this judgment; and
- d. grants A1 Cats judgment against the respondents, jointly and severally, in the amount of \$20,506, being the amount determined owing upon the above Claims of Lien, plus prejudgment interests from September 15, 2017 and post judgment interest thereon pursuant to ss. 35 and 36 of the Yukon *Judicature Act*.

[85] Any claims of A1 Cats in the petition and claims of the respondents in their Counterclaim other than the relief determined and awarded above are dismissed.

Costs

[86] Any party seeking costs or replying to a claim for costs shall do so in writing to be served and filed within the following time periods:

- a. claims for costs – within 30 days from the date of the decision; and
- b. reply to claim for costs – within 20 days from the date of being served with a written claim for costs.

KANE J.