

*Service accepted March 13/15  
Served by Guy Badcock  
SCTD MAR 6 15 AM 11:02  
accepted by TSN.*

2015 01G 1377

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

<b>BETWEEN:</b>	CONSTRUCTIONS PROCO INC.	<b>PLAINTIFF</b>
<b>AND:</b>	ASTALDI CANADA INC.	<b>FIRST DEFENDANT</b>
<b>AND:</b>	MUSKRAT FALLS CORPORATION	<b>SECOND DEFENDANT</b>
<b>AND:</b>	NALCOR ENERGY	<b>THIRD DEFENDANT</b>

STATEMENT OF CLAIM

1. The Plaintiff, Constructions Proco Inc. ("Constructions Proco"), is a body corporate duly incorporated in Quebec under the laws of Canada and extra-provincially registered under the laws of Newfoundland and Labrador and having its registered office in Newfoundland and Labrador, care of its Solicitors, at Suite 900, Atlantic Place, 215 Water Street P.O. Box 1538, St. John's, Newfoundland and Labrador.
2. The First Defendant, Astaldi Canada Inc. ("Astaldi"), is a body corporate duly incorporated under the laws of Canada and extra-provincially registered under the laws of Newfoundland and Labrador and having its registered office in Newfoundland and Labrador at 69 Elizabeth Avenue, St. John's, Newfoundland and Labrador.
3. The Second Defendant, Muskrat Falls Corporation ("MFC"), is a body corporate, duly incorporated under the laws of Newfoundland and Labrador and having its registered office in Newfoundland and Labrador at 500 Columbus Drive, P.O. Box 15000, Station A, St. John's, Newfoundland and Labrador.

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4. The Third Defendant, Nalcor Energy (“Nalcor”), is a body corporate constituted pursuant to the *Energy Corporation Act*, SNL 2007 c.E-11.01, and having its registered office at 500 Columbus Drive, P.O. Box 12400, St. John’s, Newfoundland and Labrador.
5. At all material times hereto, MFC and/or Nalcor was/were the owners of lands and properties known as and used for the Muskrat Falls Project hydroelectric generating station and concrete dam construction site, located in the immediate vicinity of Muskrat Falls on the Lower Churchill River, west of Happy Valley-Goose Bay, in the Province of Newfoundland and Labrador upon which Constructions Proco supplied work, services, labour and materials (the “Muskrat Falls Site Lands”).
6. At all material times hereto, Constructions Proco was a subcontractor to Astaldi.
7. Nalcor is the proponent of an undertaking known as the Muskrat Falls Project which is being developed to exploit the hydroelectric potential of Muskrat Falls, located on the Churchill River in Labrador, Province of Newfoundland and Labrador.
8. By contract dated November 29, 2013, Nalcor, as Owner, entered into an agreement with Astaldi, as Contractor, for the construction of a project identified as: Lower Churchill Project – Muskrat Falls I.C.S. Temporary Building at the Muskrat Falls Site Lands (the “Prime Contract”).
9. By a letter of intent dated December 20, 2013, Astaldi, as Contractor, required Constructions Proco to begin preliminary work, including but not limited to , the purchase of materials and preparation of drawings and plans for the aforementioned I.C.S. Temporary Building at the Muskrat Falls Site Lands, up to the amount of \$2,000,000.00 (CAD) (the “Letter of Intent”).

10. On or about February 28, 2014, Astaldi confirmed the Letter of Intent to Constructions Proco, and increased the amount agreed to for the execution of the aforementioned preliminary work to \$7,000,000.00 (CAD).
11. By a stipulated price subcontract dated January 6, 2014, but signed on May 13, 2014 by Constructions Proco and on or about May 26, 2014 by Astaldi, Astaldi, as Contractor, and Constructions Proco, as subcontractor, confirmed their agreement for the performance and supply of certain labour, products, tools, construction machinery and equipment necessary for the construction of the aforementioned I.C.S. Temporary Building at the Muskrat Falls Site Lands (the "Subcontract").
12. The work to be performed under the Subcontract was the provision of certain labour, equipment and materials concerning the supply, fabrication, preparation, erection and installation of structural steel, insulation and cladding for the aforementioned I.C.S. Temporary Building (the "Subcontract Work").
13. The Subcontract price was \$17,880,222.00 (CAD), plus Value Added Taxes (HST) of 13% totalling \$2,324,428.86 (CAD), for a total Subcontract price of \$20,204,650.86 (CAD), subject to any adjustments as provided in the Subcontract Documents as defined in the Subcontract (the "Subcontract Price").
14. Terms of Payment of the Subcontract Price were set out in Article 6 of the Subcontract. The Subcontract included provision for progress billing as the Subcontract Work was performed.
15. Constructions Proco commenced the Subcontract Work on or about December 20, 2013 and continued performance of the Subcontract Work throughout 2014 and until on or about January 10, 2015.
16. The original schedule for completion of various components of the I.C.S. Temporary Building, as set out in the Letter of Intent, was from March 1, 2014 to September 30, 2014. At Astaldi's request, this original schedule for completion was subsequently revised to May 19, 2014 to December 22, 2014 and this

revised schedule for completion was incorporated into the Subcontract as Appendix G. Both the original schedule for completion and the revised schedule for completion had been specifically planned by Astaldi so as to avoid construction during winter conditions. Each of the aforementioned schedules for completion allowed Constructions Proco seven (7) months to complete the Subcontract Work without any critical work having to be performed during winter conditions.

17. Pursuant to the terms of the Subcontract Astaldi was required to prepare the work site by providing appropriate crane pads, concrete foundations operational cranes and qualified crane operators before significant elements of the Subcontract work could be started and/or completed by Constructions Proco.
18. Due to delays and progress issues in work on the I.C.S. Temporary Building for which Astaldi was responsible under the Subcontract, including the aforementioned work site preparation, Astaldi made revisions and modifications to the schedule for completion of the Subcontract Work several times. On June 2, 2014 Constructions Proco expressed concern that revisions and modifications to the schedule and scope for the Subcontract Work could result in completion of the Subcontract Work being impacted by winter conditions and increased costs.
19. On July 9, 2014, Astaldi and Constructions Proco held a meeting in which both verbally agreed that the site work portion of the Subcontract Work would be paid on a cost-plus basis rather than upon a stipulated price basis. By written confirmation dated September 16, 2014, Astaldi confirmed that the general terms of payment were revised to a cost-plus basis.
20. Additional specifics with respect to the terms of payment, including the retroactive application of the cost-plus basis to the site work portion of the Subcontract Work, were agreed as between Constructions Proco and Astaldi in a meeting held on November 6, 2014.

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21. Astaldi prepared and presented a Change Order dated November 9, 2014 to Constructions Proco for signing , which stated that the terms of payment for the Subcontract Work were changed from a stipulated price basis to a cost plus 7% basis (the "Change Order"). Following negotiations and agreement between Astaldi and Constructions Proco with respect to the total number of hours of work and performance milestones for units 3 and 4 of the I.C.S. Temporary Building, Constructions Proco signed the Change Order on December 10, 2014.
  
22. Throughout performance of the Subcontract Work by Constructions Proco, Astaldi made substantial revisions to the terms of the Subcontract including increasing the scope of work and extending the work schedule. Astaldi also failed to perform its own obligations under the Subcontract, including but not limited to initial work site preparations, the timely supply of completed concrete work, crane pads, access roads, electricity, fuel, operational cranes, qualified crane operators, rescue teams, suitable lunch rooms, trailers and dry houses.
  
23. In correspondence from Astaldi to Constructions Proco dated December 13, 2014, Astaldi advised Constructions Proco that Astaldi was terminating the Subcontract as of December 20, 2014.
  
24. In correspondence from Constructions Proco to Astaldi dated December 18, 2014 Constructions Proco disputed Astaldi's decision to terminate the subcontract and stated that any delays associated with the Subcontract Work were caused by Astaldi or approved by Astaldi through its own revisions and modifications of scheduling and scope of Subcontract Work.
  
25. Constructions Proco states that it continued to perform the Subcontract Work, including the provision of labour and equipment involved with the winding up of its Subcontract operations at the Muskrat Falls Site Lands up to and including January 10, 2015 (the "Demobilization Date").

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26. Constructions Proco states that it performed substantial and high quality work pursuant to the Subcontract which added value and improvement to the Muskrat Falls Site Lands. Construction Proco issued progress billings to Astaldi from April 2, 2014 to January 13, 2015 for performance of the Subcontract Work. Constructions Proco states that it has only received partial payment for the Subcontract Work performed with the balance due and owing pursuant to the Subcontract and the Change Order.
27. As of February 23, 2015, there remains owing to Constructions Proco from Astaldi in respect of the Subcontract Work the sum of \$11,725,468.76 (CAD) (inclusive of HST) for performance of the Subcontract Work up to the Demobilization Date which is due and payable from Astaldi.
28. In addition, the Subcontract allows for Interest on the following basis:
- “Should either party fail to make payments as they become due under the terms of this Subcontract or in any award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:*
- (1) 2% per annum above the prime rate for the first 60 days.*
- (2) 4% per annum above the prime rate after the first 60 days.*
- Such interest shall be compounded on a monthly basis.”*
29. Constructions Proco states that as of February 23, 2015 it is owed a total of \$132,960.95 (CAD) in contractual interest for unpaid amounts or overdue payments pursuant to the terms of the Subcontract. Interest continues to accrue on all unpaid accounts on the aforementioned basis pursuant to the terms of the Subcontract.
30. Constructions Proco therefore claims as against Astaldi as of February 23, 2015, a total of \$11,858,429.71(CAD), together with interest continuing to accrue, all pursuant to the Subcontract for performance of the Subcontract Work on the Muskrat Falls Site Lands to the Demobilization Date.

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Despite the submission of progress billings and repeated demands, Astaldi has failed to make payment of this amount to Constructions Proco and therefore Astaldi has breached the Subcontract.

31. By a Claim for Lien dated January 7, 2015 and registered at the Registry of Mechanics Liens on January 16, 2015 bearing registration No. 17596, Constructions Proco claimed a lien pursuant to the *Mechanics Lien Act*, R.S.N.L. 1990, c. M-3 (the "Act") on the Muskrat Falls Site Lands for the amount of \$11,900,000.00 (CAD) and such other amounts to be determined in the future with respect to the work, services, labour and materials supplied to the Defendants by Constructions Proco.
32. In the alternative, Constructions Proco claims that it is entitled to be paid by the Defendants the amount of \$11,858,429.71 (CAD) plus interest as set out herein for the performance of the Subcontract Work on the Muskrat Falls Site Lands on an unjust enrichment and/or *quantum meruit* basis or pursuant to section 38 of the Act.
33. Constructions Proco also states that Astaldi's termination of the Subcontract on December 20, 2014 was unlawful and without legal justification and also amounts to a breach of the Subcontract by Astaldi.
34. Constructions Proco also states that the unlawful and unjustified termination of the Subcontract by Astaldi has resulted in significant losses and damages to Constructions Proco including, but not limited to, loss of profits under the Subcontract, loss of opportunity to complete the Subcontract, loss of opportunity to compete for other contracts, costs of early demobilization, costs associated with delays caused by Astaldi, losses following the Demobilization Date and damage to Construction Proco's professional reputation, for all of which Constructions Proco is entitled to a personal judgment against Astaldi for general damages and/or special damages.
35. Constructions Proco therefore claims as against the Defendants:
  - (a) Declaration of entitlement to the aforementioned lien and payment of the balance owing for performance of the Subcontract Work in the amount of \$11,725,468.76 (CAD);

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- (b) Should Security be posted with this Honourable Court in substitution for the aforementioned lien, a declaration of entitlement to a first charge on such Security and to be paid from the Security the amount of \$11,725,468.76 (CAD) together with contractual interest as calculated herein;
- (c) An order for the sale of the Muskrat Falls Site Lands in the case of default in payment to Constructions Proco of the balance owing for performance of the Subcontract Work;
- (d) Personal judgment against the First Defendant for General Damages to be assessed;
- (e) Personal judgment against the First Defendant for Special Damages to be assessed;
- (f) Contractual Interest pursuant to the terms of the Subcontract as set out above, which shall continue to accrue to the date of Judgment, or, in the alternative, prejudgment interest pursuant to the *Judgment Interest Act*, RSNL, c. J-2;
- (g) That for the purposes aforesaid, and for all other purposes pursuant to the Act that proper directions be given, inquiries made and accounts taken;
- (h) Costs pursuant to Rule 55 of the *Rules of the Supreme Court*, 1986 and the costs of discoveries; and
- (i) Such further and other relief as this Honourable Court deems just.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador this 6<sup>th</sup> day of March, 2015.

BENSON BUFFETT PLC INC.

Per: 

Geoffrey K. Penney

Solicitors for the Plaintiff  
*whose address for service is*  
Suite 900, Atlantic Place  
215 Water Street  
P.O. Box 1538  
St. John's, NL  
A1C 5N8

TO: Astaldi Canada Inc.  
69 Elizabeth Avenue  
St. John's, NL  
A1A 1W8



TO: Muskrat Falls Corporation  
PO Box 15000, Station A  
500 Columbus Drive  
St. John's, NL  
A1B 0M4

TO: Nalcor Energy  
PO Box 12400  
500 Columbus Drive  
St. John's, NL  
A1B 0M4

ISSUED AT the City of St. John's, in the Province of Newfoundland and Labrador, this 6<sup>th</sup> day of March, 2015.

Sgd D Power  
Court Clerk

2015 01 G 1377  
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

**BETWEEN:** CONSTRUCTIONS PROCO **PLAINTIFF**

**AND:** ASTALDI CANADA INC. **FIRST DEFENDANT**

**AND:** MUSKRAT FALLS CORPORATION **SECOND DEFENDANT**

**AND:** NALCOR ENERGY **THIRD DEFENDANT**

**NOTICE TO DEFENDANTS**

You are hereby notified that the Plaintiff may enter Judgment in accordance with the Statement of Claim or such order as, according to the practice of the Court, the Plaintiff is entitled to, without any further notice to you unless within ten (10) days after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador at St. John's a Defence and unless within the same time a copy of your Defence is served upon the Plaintiff or the Plaintiff's solicitor at the Plaintiff's solicitor's stated address for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the Statement of Claim and the sum of \$100.00 for costs to the Plaintiff of the Plaintiff's solicitor within ten (10) days from the service of this notice upon you, then this proceeding will be stayed.

TO: Astaldi Canada Inc.  
69 Elizabeth Avenue  
St. John's NL  
A1A 1W8

TO: Muskrat Falls Corporation  
PO Box 15000, Station A  
500 Columbus Drive  
St. John's, NL  
A1B 0M4

TO: Nalcor Energy

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PO Box 12400  
500 Columbus Drive  
St. John's, NL  
A1B 0M4

201501G 1377

MECHANICS LIEN

No. 17596

Registered 6 day of March

20 15 at 1:15 O'clock P.m

Fee Paid \$ 24.00 Receipt No. 8000B2BN

Jan 7 2015  
Registry of Deeds

IN THE MATTER OF the Mechanics' Lien Act,  
R.S.N. 1990, c. M-3, as amended

AND IN THE MATTER OF a Claim for Lien No. 17596 by CONSTRUCTIONS PROCO INC., a body corporate, duly incorporated in the Province of Quebec under the laws of Canada and extra-provincially registered under the laws of the Province of Newfoundland and Labrador, against ASTALDI CANADA INC, a body corporate duly incorporated under the laws of Canada and extra-provincially registered under the laws of the Province of Newfoundland and Labrador, and MUSKRAT FALLS CORPORATION, a body corporate duly incorporated under the laws of the Province of Newfoundland and Labrador, and NALCOR ENERGY, a body corporate constituted pursuant to the Energy Corporation Act, SNL 2007 c. E-11.01, in relation to all the lands and properties known as: Muskrat Falls Project hydroelectric generating station and concrete dam construction site, located in the immediate vicinity of Muskrat Falls on the Lower Churchill River, west of Happy Valley Goose Bay, in the Province of Newfoundland and Labrador.



**CERTIFICATE OF ACTION**

This is to certify that proceedings have been taken by a Statement of Claim in the Supreme Court of Newfoundland and Labrador, Judicial Centre of St. John's, on March 6, 2015 to realize the Claim for Lien No. 17596 of Constructions Proco Inc. against Astaldi Canada Inc., Muskrat Falls Corporation and Nalcor Energy, and that the Statement of Claim has been issued out of this Honourable Court on the 6<sup>th</sup> day of March, 2015 and entitled:

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IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

<b>BETWEEN:</b>	CONSTRUCTIONS PROCO INC.	<b>PLAINTIFF</b>
<b>AND:</b>	ASTALDI CANADA INC.	<b>FIRST DEFENDANT</b>
<b>AND:</b>	MUSKRAT FALLS CORPORATION	<b>SECOND DEFENDANT</b>
<b>AND:</b>	NALCOR ENERGY	<b>THIRD DEFENDANT</b>

DATED at St. John's, in the Province of Newfoundland and Labrador, this <sup>6<sup>th</sup></sup> day of March, 2015.

BENSON BUFFETT PLC INC.

Per: 

Geoffrey K. Penney

Solicitors for the Plaintiff

*whose address for service is*

Suite 900, Atlantic Place

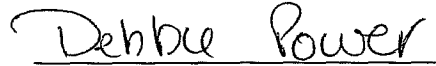
215 Water Street

P.O. Box 1538

St. John's, NL

A1C 5N8

**ISSUED AT** the City of St. John's, in the Province of Newfoundland and Labrador, this <sup>6<sup>th</sup></sup> day of March, 2015.



Court Clerk