

Bob Ward, Q.C. and Laura Gill Successfully Reverse Trial Decision at the B.C. Court of Appeal in Complex Contractual Case

In *Allnorth Construction Limited v. Tercon Construction Ltd.*, 2010 BCSC 1884, Allnorth had entered into a contract with Tercon Construction to perform work at a mine. When the mine went bankrupt, Allnorth learned for the first time that its contract had been assigned to a related company, Tercon Mining P.V. Ltd. Believing that it would get paid by Tercon Mining P.V. Ltd., Allnorth filed a proof of claim in the bankruptcy process and accepted partial payments towards the debt. When no further money was payable, Allnorth sought to enforce its contract with Tercon Construction to recover payment.

The issue was whether a creditor is unable to recover from a debtor if the creditor filed a proof of claim and accepted payments in connection with a bankruptcy proposal made by a party related to the debtor, which related company had, unbeknownst to the creditor, assumed the obligations of the debtor under its contract with the creditor. A judge of the B.C. Supreme Court held that the creditor lost its rights against the debtor in those circumstances, and found that Allnorth could not recover payment under its contract with Tercon Construction.

The law in connection with this issue involved the interpretation and application of principles of equitable estoppel and the doctrine of election.

Mr. Ward and Ms. Gill argued that Tercon Construction could not rely on the equitable defences of estoppel and election, as it could not establish the required elements of either defence.

The Court of Appeal accepted Mr. Ward and Ms. Gill's argument, holding that there was nothing in the circumstances of the case that prevented Allnorth from recovering judgment against Tercon Construction for the amount owed to it by Tercon Construction under the contract. Full reasons of the Court of Appeal's decision can be found here: <http://www.courts.gov.bc.ca/jdb-txt/SC/10/18/2010BCSC1884.htm>.

Tercon Construction applied for leave to appeal the decision to the Supreme Court of Canada. After reviewing materials filed by both parties, the court dismissed the application for leave to appeal, with costs.