

Publisher's Note

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David A. Coulson, B.Com., LL.B.

Dirk Laudan, B.A., LL.B.

GUIDE TO BUILDERS' LIENS IN BRITISH COLUMBIA

This publication features a comprehensive analysis of builders' liens law and practice in British Columbia. It is compact, practical and designed for everyday use.

This release features updates to the Summaries of Procedure for Builders' Lien Proceedings for British Columbia. This release also features updates to the Summary of Procedure for Builders' Trust Proceedings in British Columbia.

Highlights

Procedural Summary — Builder's Lien Proceedings in British Columbia — Claim of Lien — Case Law: Lien Claimant - The *Builders Lien Act* specifies strict time limits with respect to filing claims of lien. Section 22 of the *Builders Lien Act* provides that a lien in respect of which a claim of lien is not filed in the manner and within the time provided in this Act is extinguished. The defendants submitted that there was no certificate of completion issued by the plaintiff but there was ample evidence that the plaintiff's contract was either completed, abandoned or terminated or the improvement was completed by April 2016, except for deficiencies. The defendants submitted that even if the plaintiff's crew remained on site and working until the end of April 2016, the last day for filing a builders' lien under s. 20 of the *Builders Lien Act* would have been 45 days later, on June 15, 2016. The plaintiff's builders' lien was not filed at the

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Land Title Office until July 11, 2016. The “deficiencies” included problems with the operation of the boiler system and the dishwasher installed in the house. The plaintiff arranged for its sub trade to do further work on site between June 12-14, 2016 and that work was the subject of an Invoice. Although the plaintiff’s own employees did no further work on the house after April 2016, the plaintiff was still engaging sub-trades to do work on the defendants’ home as late as June 14, 2016. In the view of Justice Church, this was evidence that the plaintiff did perform work after April 2016. The work done by its sub-trade from June 12 to 14, 2016 appeared to have been the last work undertaken by the plaintiff or any of its sub-trades. The plaintiff’s contract was not completed, abandoned or terminated until June 14, 2016 and thus the 45 days under section 20 of the *Builders Lien Act* did not begin to run until June 14, 2016. Accordingly, the lien claim that was filed on July 11, 2016 was filed in time: *HG Bliss Projects Inc. v. Taylor*, 2018 CarswellBC 2455, 2018 BCSC 1581, 298 A.C.W.S. (3d) 15 (B.C.S.C.).

Procedural Summary — Builder’s Lien Proceedings in British Columbia — Cancellation of Claim of Lien By Giving Security — Case Law: Section 24 - An improper lien claim should not be used as leverage in any dispute. Issues arose between Atlas and Icon on the site of the Project. On November 10, 2015, Atlas received written notice from 501 alleging notice of default under the Contract. On December 2, 2015, Atlas received a second written notice from 501 alleging notice of default under the Contract and advising that 501 had retained an alternate painting contractor for some of Atlas’s work. On December 23, 2015, Atlas received written notice from 501 stating that the Contract had been terminated. Atlas then filed a lien against title, also on December 23, 2015 claiming that \$1,215,000 was due and owing. Atlas and 501 agreed on a without prejudice basis to secure the discharge of the Lien by the posting of \$638,000 as security into court by way of a consent order made under s. 24 of the *Builders Lien Act*. 501 brought an application under ss. 24 and 25 of the *Builders Lien Act* to cancel or reduce the sum of the Security. The Court ordered that the Security be reduced by \$452,000 to \$100,000. The filing of such a large lien claim was an abuse of process. An improperly claimed lien may be the foundation for an award of punitive damages, and, or, an unfavourable costs award. Complicating matters was the fact that the defendants also advanced some positions in litigation that were purely for leverage. For example, the defendants terminated Atlas’s Contract for cause which was not proven, and at the same time threatened to hold Atlas liable in damages. While this was not quite the same as filing a lien and affecting a party’s property interests, these excessive claims nevertheless would have created instability and uncertainty for Atlas’s business. There was no effort to actually prove the consequential damages claim at trial. Both sides exaggerated their claims against each other. The decision to decrease the amount of the lien and to deprive the plaintiff of costs for a full year of the litigation, was sufficient punishment for the improper amount claimed on the lien. No further punitive damages were necessary to condemn Atlas’s conduct in improperly filing the lien *Atlas Painting & Restorations Ltd. v. 501 Robson Residential Partnership*, 2018 CarswellBC 878, 2018 BCSC 600, 291 A.C.W.S. (3d) 71 (B.C.S.C.).