

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *KEL Design & Procurement Corp. v.
Springbok Electric Limited,*
2026 BCSC 950

Date: 20260526
Docket: S04589
Registry: Abbotsford

Between:

KEL Design & Procurement Corp.

Plaintiff

And:

**Springbok Electric Limited, Pro-Can Construction Group Corp., and Shato
Holdings (PCTC1969) Ltd.**

Defendants

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Plaintiff:

J. Roberts

Counsel for the Defendants Pro-Can
Construction Group Corp. and Shato
Holdings (PCTC1969) Ltd.:

C. Moore

No other appearances

Place and Date of Hearing:

Chilliwack, B.C.
November 27, 2025

Place and Date of Judgment:

Abbotsford, B.C.
May 26, 2026

Introduction

[1] The plaintiff, KEL Design & Procurement Corp. (“KEL”), applied for judgment against the defendant, Springbok Electric Limited (“Springbok”), in a notice of application filed November 6, 2025. At the commencement of the hearing on November 27, 2025, counsel for the plaintiff advised he had just learned that Springbok had been dissolved effective May 23, 2025. As a result, he sought an adjournment of the relief sought against Springbok at paragraphs 2, 3 and 5, and liberty to reset in Vancouver. These requests were granted.

[2] The remaining issue was whether the plaintiff was entitled to a lien pursuant to the *Builders Lien Act*, S.B.C. 1997, c. 45 [BLA] in the amount of \$169,861.37 against: 1) the lien posted by Echelon Insurance pursuant to an order of this Court pronounced June 27, 2023, Vancouver Registry No. 234539; 2) the holdback retained by Pro-Can Construction Group Corp. (“Pro-Can”) from Springbok (the “Pro-Can Holdback”); and 3) the holdback retained by Shato Holdings (PCTC1969) Ltd. (“Shato”) from Pro-Can (the “Shato Holdback”) as required by s. 4 of the BLA.

[3] Pro-Can consents to the declaration sought, with the exception that the plaintiff’s enforcement of its lien, in whatever sum is deemed appropriate by the Court, is limited to its pro-rata share of the minimum statutory amount withheld pursuant to the Pro-Can Holdback under s. 34 of the BLA.

Overview of Facts

[4] The facts are not disputed as between the plaintiff, Pro-Can, and Shato.

[5] KEL carries on business as a lighting and electrical supplier to the construction industry.

[6] Shato is the registered owner of lands located at the civic address of 8210 Ross Street, Vancouver, B.C. (the “Shato Property”).

[7] Nicolaou Properties Ltd. (“Nicolaou”) is the registered owner of lands located at 2619 East Hastings Street, Vancouver, B.C. (the “Nicolaou Property”).

[8] Sonepar Canada Inc. (“Sonepar”) was another company that advanced a lien claim.

Nicolaou Improvement

[9] On or about March 1, 2021, KEL entered into contracts with Springbok to supply certain lighting and electrical materials to the Nicolaou Property (the “Nicolaou Agreement”). Pro-Can was the general contractor on an improvement then under construction on the Nicolaou Property (the “Nicolaou Improvement”).

[10] Pursuant to the Nicolaou Agreement, KEL supplied and delivered lighting and electrical materials to the Nicolaou Improvement between July 2021 and January 2023, and invoiced Springbok accordingly.

[11] In breach of the Nicolaou Agreement, Springbok failed to pay KEL, and the amount due and owing for materials supplied to the Nicolaou Improvement as of February 23, 2023, was \$15,284.61 (the “Nicolaou Debt”).

[12] On June 14, 2023, KEL filed a claim of lien pursuant to the *BLA* under registration number CB687524, alleging the Nicolaou Debt remained unpaid (the “Nicolaou CBL”).

[13] On June 27, 2023, Pro-Can applied to Court as a petitioner in Vancouver Registry No. S234538 and received an order cancelling the Nicolaou CBL upon posting a cash security in the amount of \$15,284.61 with its solicitors, Jenkins Marzban Logan LLP (the “Nicolaou Security”).

[14] On July 23, 2024, KEL received the Nicolaou Security.

Shato Improvement

[15] On or about January 31, 2022, KEL entered into an agreement with Springbok to supply certain lighting and electrical materials to the Shato Property (the “Shato Agreement”). Pro-Can was the general contractor on an improvement that was then under construction on the Shato Property (the “Shato Improvement”).

[16] Pursuant to the Shato Agreement, KEL supplied and delivered certain lighting and electrical materials to the Shato Improvement between July 2022 and March 2023, and invoiced Springbok accordingly.

[17] In breach of the Shato Agreement, Springbok failed to pay, and the amount due and owing to KEL from Springbok for materials supplied to the Shato Improvement was \$169,861.37 (the “Shato Debt”).

[18] On June 14, 2023, KEL filed a claim of lien pursuant to the *BLA* under registration number CB687525, alleging the Shato Debt remained unpaid (the “Shato CBL”).

[19] On June 27, 2023, Pro-Can applied to Court as a petitioner in Vancouver Registry No. S234539 and received an order cancelling the Shato CBL upon posting a lien bond with the Court (the “Shato Security”). Pursuant to this order, the Shato Security stands as security for any claim by KEL for its lien.

The Lien Claims

[20] There were three builders’ liens filed against the Shato Property: the Shato CBL; a lien by Sonepar Canada Inc. (the “Sonepar CBL”); and a lien by Springbok (the “Springbok CBL”). Sonepar has now settled the Sonepar CBL with Pro-Can and Shato.

[21] On June 15, 2023, Springbok filed the Springbok CBL with a claim of \$192,414.43 and commenced an action in the Supreme Court, Vancouver Registry, No. 237689 (the “Springbok Action”).

[22] On June 12, 2023, Pro-Can applied to Court as a petitioner in Vancouver Registry S234235 and received an order cancelling the Springbok CBL upon posting a lien bond (the “Springbok Security”). The order was amended on August 23, 2023, whereby the Springbok Security was reduced to \$80,872.96.

[23] On October 3, 2023, KEL communicated to Shato asserting a “Shimco Lien” against the Shato Holdback required to be withheld from Pro-Can by Shato and

made a demand for information pursuant to s. 41(1) of the *BLA*. On October 13, 2023, Shato responded that the Shato Holdback totalled \$1,622,534.05.

[24] On October 28, 2024, the architect and payment certifier for the Shato Improvement issued a certificate of substantial completion, and on December 12, 2024, they confirmed that the Shato Holdback amounted to \$2,788,403.42.

[25] On December 19, 2024, Pro-Can and Shato confirmed that the Pro-Can Holdback retained from Springbok totalled \$78,300.42. On that same date, Springbok admitted it did not dispute the amount of the Shato Debt asserted by KEL and agreed the Shato Debt should be paid back from the Shato Holdback.

Legal Framework

[26] The *BLA* affords a remedy to those furnishing work, services, or material by providing an interest *in rem* in the land and improvement until they are paid. Section 2 provides a lien for contractors, subcontractors and workers, as defined in s. 9(1), “for the price of the work and material, to the extent that the price remains unpaid”, on the owner’s interest in the land, the improvement, and the material placed on the land.

[27] A lien is created by s. 2 of the *BLA*:

- (1) Subject to this Act, a contractor, subcontractor or worker who, in relation to an improvement,
 - (a) performs or provides work,
 - (b) supplies material, or
 - (c) does any combination of those things referred to in paragraphs (a) and (b)has a lien for the price of the work and material, to the extent that the price remains unpaid, on all of the following:
 - (d) the interest of the owner in the improvement;
 - (e) the improvement itself;
 - (f) the land in, on or under which the improvement is located;
 - (g) the material delivered to or placed on the land.
- (2) Subsection (1) does not create a lien in favour of a person who performs or provides work or supplies material to an architect, engineer or material supplier.

[28] In *Shimco Metal Erectors Ltd., v. Design Steel Construction Ltd.*, 2002 BCSC 238, aff'd 2003 BCCA 193, the Court concluded that a separate lien exists with respect to the holdbacks retained by owners and contractors, known as a "Shimco" lien. The Shimco lien does not have to be registered against title and survives the extinguishment of the lien against the land and improvement.

[29] Section 4 of the *BLA* creates a mandatory obligation to retain a 10 percent holdback on the "person primarily liable on each contract, and the person primarily liable on each subcontract, under which a lien may arise under the Act".

[30] Section 34(1) of the *BLA* limits the liability of an owner to subcontractors (subject to the exceptions set out in subsection 2) to a maximum aggregate amount by all lien holders who can claim under the same contractor or subcontractors that is equal to the greater of:

- a) the amount owing to the contractor or subcontractor by the person who engaged the contractor or subcontractor, and
- b) the amount of the required holdback in relation to the contract between the contractor or subcontractor and the person who engaged the contractor or subcontractor.

[31] Section 4(9) of the *BLA*, provides:

Subject to section 34, a holdback required to be retained under this section is subject to a lien under this Act, and each holdback is charged with payment of all persons engaged, in connection with the improvement, by or under the person from whom the holdback is retained.

[32] In *Kingdom Langley Project Limited Partnership v. WQC Mechanical Ltd.*, 2025 BCCA 169 [*Kingdom Langley*], the Court of Appeal quoted with approval an excerpt from the British Columbia Law Institute (BCLI) 2020 report, with reference to ss. 4 and 34 of the *BLA*:

[24] The BCLI 2020 Report also explained the purposes of the holdback:

The holdback requirement serves a dual purpose. One purpose is to prevent undue hardship on an owner who has paid a contractor in good faith, because the maximum amount an owner would have to pay to discharge the liens of those claiming under the contractor is limited to the greater of the amount the owner owes to the contractor

and the amount of the required holdback. The same principle applies further down the contractual chain as well.

A second purpose of the holdback under the Act in its present form is to create a fund from which unpaid claims of lienholders may be satisfied. The holdback is charged with payment of all persons engaged in connection with the improvement by or under the person from whom the holdback is retained. To the extent that the claims of those persons are not fully paid through their liens on the land or the hold-back, they may pursue the person who engaged them for the balance by means of ordinary actions in debt or on the basis of the statutory trust ...

[Emphasis in original.]

[33] The approach to be applied in interpreting the *BLA* is the modern approach to statutory interpretation: *Frontier Kemper Constructors, Inc. v. Rio Tinto Alcan Inc.*, 2022 BCSC 868, at para. 39. The modern approach is set out in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, citing Elmer A. Driedger, *Construction of Statutes*, 2d ed., (Toronto: Butterworths, 1983) at 87:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Position of the Parties

[34] This dispute centres on whether KEL, in seeking repayment of the Shato Debt, is entitled to recover any unpaid balance from the Shato Holdback after recourse to other available funds. Both sides submit that the other's proposed interpretation of the *BLA*, particularly respecting a subcontractor's entitlement to enforce liens against holdbacks retained by those not immediately above them in the contractual chain, would lead to commercial absurdity.

Position of the Plaintiff

[35] KEL argues that the *BLA* creates a multiple holdback system and that each level of holdback funds is available to the subcontractors, material suppliers, and workers down the line. It argues that under this multiple holdback system, subcontractors and others may claim liens against holdbacks withheld at each level above them in the contractual chain, up to and including the owner's holdback.

[36] In oral submissions, KEL's counsel explained that the Shato Holdback is not Pro-Can's money, but a pool of funds representing 10 percent of the amount owed to Pro-Can that is intended to be available to lien claimants. KEL argues that if suppliers at lower levels of the contractual chain such as KEL are unable to access holdback funds higher up for repayment, they would not be willing to participate in the business of supplying to construction projects.

[37] KEL relies upon cases including *Kingdom Langley and Hi-Tide Shoring & Foundations (2012) Ltd. v. Chandos Construction Ltd.*, 2024 BCSC 903 [*Hi-Tide*]. In *Hi-Tide*, Justice Blok dismissed an application for a declaration of lien against a lien bond as being premature, and noted as follows in *obiter*:

[40] In brief, I am satisfied that s. 4(9) of the *BLA* provides for a lien claimant to seek recourse from any holdback retained up the construction chain. Its wording provides that “each holdback is charged with payment of all persons engaged, in connection with the improvement, by or under the person from whom the holdback is retained” (emphasis added). This, of course, is why all lien claims ought to be joined for trial, as the available funds are proportionately shared (after accounting for any duplication) amongst those who have proven their liens.

[41] I do not agree that s. 34 assists Chandos in its argument on this point because, as the Court in *GVSD* noted in the extract above, s. 34 does not limit the maximum recovery by lien claimants generally, but instead “sets out the maximum amount for recovery by lien claimants claiming recovery from the same contractor” (emphasis added).

[38] Legal commentators have endorsed this interpretation. In a July 2020 report, the British Columbia Law Institute said:

The *Shimco* court said that while all subcontractors have a lien against land, only those engaged by or under a particular contractor have a lien against the holdback retained from that contractor. Under the multiple holdback system, however, the effect of *Shimco* is that subcontractors and others may claim liens against holdbacks withheld at each level above them in the contractual chain up to the owner's holdback at the top of the chain.

[Footnotes omitted.]

See “BCLI Report No. 89: Report on the Builders Lien Act” (July 2020) at 102, online (pdf): <www.bcli.org/wp-content/uploads/2020/07/Report-Builders-Lien-Act-final.pdf>.

[39] Further, the *British Columbia Builders Liens Practice Manual* (Vancouver: CLEBC, 1999) (loose-leaf updated 2023), states at 7.16:

Since the *BLA* provides for multiple tiers of 10% holdbacks, and since s. 4(9) provides that *each* of them is charged with the payment of “all persons engaged ... by or under the person from whom the holdback is retained”, a claimant at the bottom of the contract chain is entitled to claim the same lien against multiple holdbacks. ...

[Emphasis in original.]

Position of Pro-Can and Shato

[40] Pro-Can and Shato say that KEL errs in its interpretation of their statutory liability, as the only amount KEL is entitled to claim is its pro-rata share of the Pro-Can Holdback of \$78,300.41 retained from progress payments to Springbok. They submit that while KEL does maintain a claim of lien or charge against both the Pro-Can and Shato Holdbacks, its ability to enforce against and seek repayment from the latter is limited pursuant to s. 34 of the *BLA*. Specifically, Pro-Can and Shato argue that s. 34, read in the present context, expressly limits the maximum aggregate amount recoverable by Springbok’s subcontractors to the equal or greater of the amount owing to Springbok by Pro-Can and the amount required to be withheld as the Pro-Can Holdback.

[41] Pro-Can and Shato say that KEL cannot be put in a better position than Springbok by gaining access to Pro-Can’s earned money when Pro-Can complied with all of its obligations under the *BLA* and otherwise, including maintenance of the Pro-Can Holdback pursuant to its subcontract with Springbok.

[42] Pro-Can and Shato also say that KEL’s reliance on *Hi-Tide* is misplaced. In their submission, *Hi-Tide* merely confirms that a charge exists against each of the holdbacks maintained, but does not support that the party seeking to enforce its lien is somehow entitled to full payment without consideration of other lien claimants and the maximum aggregate amount pursuant to the *BLA*.

Analysis

[43] This application requires the Court to interpret ss. 4(9) and 34 of the *BLA* to determine whether KEL's ability to enforce its liens in respect of the Shato Debt extends to the Shato Holdback.

[44] As above, the modern approach requires that the words of these provisions and the *BLA* as a whole be read in their entire context and grammatical and ordinary sense, harmoniously with the scheme and object of the *BLA* and the intention of the legislature.

[45] The text of s. 4(9) is clear that any holdback subject to a lien under the *BLA* "is charged with payment of all persons engaged, in connection with the improvement, by *or under* the person from whom the holdback is retained" [emphasis added]. In this case, it is not disputed that KEL maintains a claim of lien against the Shato Holdback.

[46] However, the respondents say that as a result of s. 34, any lien claimed pursuant to s. 4(9) by a party engaged "under" and not directly by the person from whom the holdback is retained, is effectively unenforceable in circumstances where a lower-tier holdback exists. Specifically, they submit that s. 34 "expressly limits the maximum aggregate amount recoverable by subtrades to Springbok". I do not agree with this submission.

[47] It is an accepted principle of statutory interpretation that every word in a statute is presumed to make sense and have a specific role to play in advancing the legislative purpose: *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, at para. 38. As Blok J. found in *Hi-Tide*, "s. 34 does not limit the maximum recovery by lien claimants generally, but instead 'sets out the maximum amount for recovery by lien claimants claiming recovery *from the same contractor*'" [emphasis in original]: at para. 41, citing *Greater Vancouver Sewerage and Drainage District v. A-Millenia Construction Ltd. et al.*, 2006 BCSC 1629, at para. 24. The issue on this application is not that KEL, with or without other lien claimants, seeks to recover more than its share of the Pro-Can or Shato

Holdbacks contrary to s. 34. Rather, the submission of Pro-Can and Shato is that KEL has no right to enforce its liens against the Shato Holdback generally.

[48] There has also been no authority identified in support of the proposition that a lien claimed by a subcontractor against a holdback at another level of the contractual chain cannot be enforced. Such an interpretation is not only inconsistent with the plain meaning of s. 4(9) of the *BLA*, but as well with the policy goals of the multiple holdback scheme chosen by the legislature, as explained by the BCLI in *Questions and Answers on the Builders Lien Act* (Vancouver, British Columbia: British Columbia Law Institute, 1997) at 7.1:

...an important reason for adopting the multiple holdback scheme in the 1997 Builders Lien Act is to encourage the flow of money down the pyramid from top to bottom. Properly implemented, the scheme discourages contractors from retaining unnecessarily large holdbacks from their subcontractors. This can only be done by limiting the liability, under the Act, of contractors and subcontractors who retain the required holdback.

Limited liability for one group of persons, however, necessarily requires that there be limited recovery under the Act by other groups of persons. A rigorous statement of the limited recovery principle is set out in section 34.

[49] Section 34 prescribes limits for recovery by claimants under the *BLA* by capping the maximum aggregate amount recoverable by lien holders claiming under the same contractor or subcontractor. It does not address nor purport to govern the enforcement of separate, independent lien rights arising under s. 4(9) against holdbacks retained at other levels. The limited recovery principle is satisfied by capping the liability of a particular payor vis-à-vis a defined class of claimants: those claiming against that payor.

[50] This interpretation is consistent with the decision in *Conwest Contracting Ltd. v. Crown and Mountain Creations Ltd.*, 2021 BCSC 2116, where the Court applied s. 34 to determine a maximum lien amount in respect of a particular subcontract, being the greater of the amount owing to the subcontractor and the amount required to be held back in relation to that subcontract: at paras. 271-272. While the Court did not consider the issue of recovery across multiple levels of holdbacks in respect of a single debt, the case authorities quoted at para. 269 confirm that “payment to lien

claimants is restricted to the amount fixed by the Act for *a payor's liability*" [emphasis added].

[51] Moreover, I do not agree that it is commercially absurd for Pro-Can to bear the risk of downstream trades seeking repayment from holdbacks as a result of contracts in which it was not involved. As the Court accepted at para. 24 of *Kingdom Langley*, the multiple holdback system serves dual purposes of preventing undue hardship for payors down the contractual chain by limiting liability at each level, and giving meaningful security to all persons engaged in connection with the improvement, by *or under* the person from whom the holdback is retained.

[52] The structure of the construction pyramid prescribed by the *BLA* is one wherein credit flows upward and money flows downward, as noted in *Kingdom Langley*:

[59] It is important in considering these provisions to understand the typical flow of funds within a large construction project. As noted in the BCLI 2020 Report at 12:

An owner typically receives funds from a lender. Advances by the lender to the owner may be approximately timed to coincide with the times at which a contract calls for progress payments. The owner pays the contractor, who in turn pays sub-contractors, who then pay their sub-subcontractors, and so on. Material suppliers and workers may be paid by persons at any level in the pyramid.

Another way of looking at the money flow is that those lower in the contractual chain to whom money is owed extend credit to those higher in the contractual chain until they are paid.

[Footnotes omitted.]

[53] Accordingly, the holdbacks that arise pursuant to s. 4(9) are intended to protect the interests of lower-tier participants, such as KEL, by permitting them to look higher up the contractual chain for recovery, subject to the limits imposed by s. 34 at each level. An interpretation that confines KEL to a single lower-tier holdback would undermine that purpose and deprive the statutory charge of its intended effect.

Conclusion

[54] KEL is granted a declaration that it is entitled to a lien in the amount of \$169,861.37, concurrently:

- a) against the lien bond posted by Echelon Insurance pursuant to an order of this Court pronounced June 27, 2023, Vancouver Registry No. 234539;
- b) against the Pro-Can Holdback in accordance with s. 4(9) of the *BLA*, pro-rata, and subject to the limits imposed by s. 34 respecting the maximum liability of Pro-Can to all lien claimants; and
- c) against the Shato Holdback, for any shortfall amount after recourse to other available sources, in accordance with s. 4(9) of the *BLA*, pro-rata, and subject to the limits imposed by s. 34 respecting the maximum liability of Shato to all lien claimants;

with KEL's total recovery from all sources not exceeding the principal amount of \$169,861.37.

[55] KEL is also entitled to interest in accordance with the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

“Forth J.”