

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bridge Lake Electric Ltd. v. Kellermeier Contracting Ltd.*,
2026 BCSC 995

Date: 20260514
Docket: S60298
Registry: Kamloops

Between:

Bridge Lake Electric Ltd.

Plaintiff

And

**Kellermeier Contracting Ltd., Lisa Dawn Whitehead and
Albert William Whitehead**

Defendants

Before: The Honourable Justice Jones

Oral Reasons for Judgment

(In Chambers)

Counsel for the Plaintiff:

C. Stewart
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Counsel for the Whitehead Defendants:

H. Jones

Place and Date of Hearing:

Kamloops, B.C.
February 25, 2026

Place and Date of Judgment:

Kamloops, B.C.
May 14, 2026

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Introduction

[1] These are my oral reasons on the application of the two defendants, Lisa Whitehead and Albert Whitehead (the “Whiteheads”), for orders cancelling the builders lien and certificate of pending litigation registered by the plaintiff against title to the Whiteheads’ property near Kamloops, British Columbia.

[2] These reasons have been edited for clarity, errors and citations, but the substance has not been changed.

Background

[3] The Whiteheads are the registered owners of a rural residential property located northwest of Kamloops legally described as PID 017-836-590, Block B of District Lot 4524 Lillooet District (the “Property”).

[4] On July 10, 2019, the Whiteheads contracted with the defendant, Kellermeier Contracting Ltd. (“Kellermeier”), for the construction of a single-family home on the Property, which was at that time a vacant lot (the “Head Contract”).

[5] The plaintiff, Bridge Lake Electric Ltd., was a subcontractor to Kellermeier, whereby the plaintiff agreed in or about August 2019 to provide electrical contracting services on the Property for the construction of the home.

[6] On March 2, 2021, the plaintiff filed a builders lien in the Kamloops Land Title Office against title to the Property under registration number CA9913096, alleging that the plaintiff was owed \$48,460.25 on December 4, 2020 (the “Lien”).

[7] On September 2, 2021, the plaintiff filed a certificate of pending litigation in the Kamloops Land Title Office against title to the Property under registration number CA9333151 (the “CPL”).

Parties' Positions

Whiteheads' Position

[8] The Whiteheads request that the Lien be cancelled. They submit that the plaintiff did not file the Lien against the Property within the 45-day period after the Head Contract had been substantially completed, as required by s. 20 of the *Builders Lien Act*, S.B.C. 1997, c. 45 [BLA].

[9] The Whiteheads' evidence is that the final price for the construction of the house on the Property pursuant to the terms of the Head Contract was \$2,907,169.03. They calculate the cost of the work to be done under the Head Contract for substantial completion based on the formula in s. 20(2)(a) of the BLA, (the "3-2-1 Formula") is \$44,071.69. The plaintiff agrees with that calculation.

[10] The Whiteheads submit that substantial completion of the Head Contract occurred by November 27, 2020, based on the work to be completed on that date.

[11] Thomas Kellermeier, the principal and owner of Kellermeier, refers in his affidavit to a completion site inspection report by the Cariboo Regional District dated November 27, 2020 (the "First Site Inspection Report"). His evidence is that the work to be completed on that date was well below the \$44,071.69 figure.

[12] The Whiteheads submit that the CPL should also be cancelled pursuant to s. 252 of the *Land Title Act*, R.S.B.C. 1996, c. 250 [LTA], as the Whiteheads allege that the plaintiff took no steps in the action for one year.

Plaintiff's Position

[13] The plaintiff submits that the Lien was filed on March 2, 2021, within 45 days of what the plaintiff submits is the substantial completion date—February 17, 2021.

[14] The plaintiff relies on the second completion site inspection report dated February 17, 2021 (the "Second Site Inspection Report") which includes two notes, "Previous Issues Resolved" and "Final Inspection - Close File", and Kellermeier's final invoice dated March 1, 2021, in the amount of \$54,806.42 (the "Final Invoice").

[15] The plaintiff submits that since the contractor's Final Invoice is dated March 1, 2021, substantial completion of the work was more likely to have occurred on the date of the Second Site Inspection Report, February 17, 2021, rather than the earlier First Site Inspection Report on November 27, 2020.

[16] As a result, the plaintiff submits that the cost to complete or correct the work would have needed to be not more than \$44,071.69 after January 16, 2021, that date being 45 days before the registration of the plaintiff's Lien filed March 2, 2021.

[17] The plaintiff also submits that references to landscaping in the Kellermeier invoices are evidence that landscaping was within the scope of the Head Contract, and submits the invoices suggest that work was not yet completed or invoiced when Kellermeier's Final Invoice was issued.

Issue

[18] The builders lien issue is whether the plaintiff filed the Lien within 45 days of substantial completion of the work to be done under the Head Contract.

[19] The certificate of pending litigation issue is whether the CPL should be cancelled pursuant to s. 252 of the *LTA*, for the alleged failure of the plaintiff to take any step in the action for one year.

Legal Framework

Builders Lien Act

[20] Section 1(1) of the *BLA* includes the following definitions:

"certificate of completion" means a certificate under section 7 stating that work under a contract or subcontract has been completed and includes an order made under section 7 (5);

"completed," if used with reference to a contract or subcontract in respect of an improvement, means substantially completed or performed, not necessarily totally completed or performed;

"contractor" means a person engaged by an owner to do one or more of the following in relation to an improvement:

- (a) perform or provide work;
- (b) supply material;

but does not include a worker.

[Emphasis added.]

[21] Section 1(2) of the *BLA* provides the following formula for determining when a project is substantially completed:

(2) For the purposes of this Act, a head contract, contract or subcontract is substantially performed if the work to be done under that contract is capable of completion or correction at a cost of not more than

- (a) 3% of the first \$500 000 of the contract price,
 - (b) 2% of the next \$500 000 of the contract price, and
 - (c) 1% of the balance of the contract price.
- (the “3-2-1 Formula”)

[22] Where a certificate of completion has not been issued, s. 20(2) of the *BLA* provides for a builders lien to be filed no later than 45 days after the date the head contract has been completed, abandoned, or terminated as follows:

20 (1) If a certificate of completion has been issued with respect to a contract or subcontract, the claims of lien of

- (a) the contractor or subcontractor, and
 - (b) any persons engaged by or under the contractor or subcontractor
- may be filed no later than 45 days after the date on which the certificate of completion was issued.

(2) A claim of lien that is not governed by subsection (1) may be filed no later than 45 days after

- (a) the head contract has been completed, abandoned or terminated, if the owner engaged a head contractor, or
- (b) the improvement has been completed or abandoned, if paragraph (a) does not apply.

(3) Subsection (1) does not operate to extend or renew the time for filing of a claim of lien if

- (a) that time would otherwise be determined with reference to the time an earlier certificate of completion was issued, or
- (b) time had started to run under subsection (2).

(4) On the filing of a claim of lien under this Act, the registrar or gold commissioner has no duty to inquire as to whether or not the lien claimant has complied with the time limit for filing the claim of lien.

[Emphasis added.]

[23] Section 22 of the *BLA* provides that a lien in respect of which a claim of lien is not filed in the manner and within the time provided in the *BLA* is extinguished.

[24] Section 25(1) of the *BLA* provides that an owner, contractor, subcontractor, lien claimant or agent of any of them may at any time apply to the court, and the court may cancel a claim of lien if satisfied that a lien is extinguished under s. 22 or 33.

Land Title Act

[25] Section 252 of the *LTA* provides that an application may be made to cancel the registration of a certificate of pending litigation, as follows:

252 (1) If a certificate of pending litigation has been registered and no step has been taken in the proceeding for one year, any person who is the registered owner of or claims to be entitled to an estate or interest in land against which the certificate has been registered may apply for an order that the registration of the certificate be cancelled.

(2) An application under subsection (1) must be made to the court in which the proceeding was commenced and must be brought

(a) as an application in that proceeding, if the applicant is a party to the proceeding, or

(b) by petition, if the applicant is not a party.

(3) The registrar must, on application and on production of a certified copy of the order of the court directing cancellation under subsection (1), cancel the registration of the certificate of pending litigation.

[Emphasis added].

Analysis

1. Builders Lien

[26] The Whiteheads' evidence is the Head Contract for the construction of the home was originally priced at \$1,620,780, with the final price \$2,907,169.03.

[27] The first terms of the Head Contract state the following:

The undersigned proposes to furnish all materials and perform all labour necessary to complete all the work described below:

Construction of a New single family home as per building plans by Streamline Enterprises Drafting and Design, and our cost estimate from June 19, 2019, attached to this contract agreement, and as per quote by sub contractors.

(the "Project")

[28] The Head Contract includes a list of progress payments to be made based on completion of the following items: footings; foundation, drainage, and rough backfill; framing - ready for roofing; roofing and windows installed - ready to lock up; rough in heating, plumbing and wiring; drywall; exterior siding, soffit and trim; stone veneer; interior trim; painting; cabinetry; flooring; electrical; plumbing fixtures; completion of project – ready for occupancy.

[29] There is no reference in the Head Contract to "landscaping".

[30] The building plans refer to the construction of the house, without any apparent reference to landscaping. The only building plan showing anything other than the structure of the house is a site plan showing the lot and location of structures on the lot.

[31] For extra and additional work not included in the initial cost estimate, the Head Contract provides that payment had to be paid in full when work had been completed.

[32] The Whiteheads and the plaintiff agree on the figure calculated by application of the 3-2-1 Formula for substantial completion of the Head Contract based on the final price of \$2,907,169.03 as follows:

(a) 3% of the first \$500,000 of the contract price =	\$15,000
(b) 2% of the next \$500,000 of the contract price =	\$10,000
(c) 1% of the balance of the contract price (\$1,907,190.03)=	\$19,071.90
TOTAL:	<u>\$44,071.70</u>

[33] The plaintiff's submissions cite *K.A. Ray Limited v. UPA Group Canada Limited Partnership*, 2007 BCSC 1881 (leave to appeal refused: 2007 BCCA 607), regarding application of the 3-2-1 Formula and the definition of "complete" in the BLA, as follows:

3. There was no certificate of completion issued in this case with regard to the contract between the petitioner and UPA, so the issue in this case is when the head contract was completed. "Completed" is defined in the *Act* as "substantially completed or performed, not necessarily totally completed or performed" and "substantially performed" if the work to be done under that contract is capable of completion or correction at a cost of not more than three percent of the first \$500,000 of the contract price; two percent of the next \$500,000 of the contract price; and one percent of the balance of the contract price (the 3, 2, 1 formula).

[34] Here, similar to the *K.A. Ray Ltd.* case, there was no certificate of completion issued for the Project. Consequently, pursuant to s. 20(2)(a) of the *BLA*, the issue is when the Head Contract was substantially completed, at which time the 45-day period for filing a builders lien begins; and, whether the Lien was filed within the 45-day period following that date.

[35] The plaintiff submits that the costs to complete or correct the work would have needed to be no more than \$44,071.69 after January 16, 2021, being 45 days before the registration of the Lien on March 2, 2021.

[36] The Whiteheads submit that if November 27, 2020, is taken to be the date of substantial completion, the Lien was required to be filed by January 11, 2021, but it was not filed until March 2, 2021, 95 days after the November 27, 2020 date of substantial completion, approximately 50 days after the expiry of the 45-day period specified in s. 20 of the *BLA*.

[37] The Whiteheads submit that although it is not known exactly when substantial completion occurred, substantial completion of the Head Contract occurred at the latest by November 27, 2020, the date of the First Site Inspection Report from the Cariboo Regional District, which was indicated to be a "completion/final plumbing" inspection, with three items remaining to be completed, as stated on the First Site Inspection Report as follows:

- 1) Deck guards and stairs including handrails (lakeside);
- 2) CD schedule - structural engineer; and
- 3) Teza ventilation calculation sheet. Confirm [illegible] for make up A R/tempered air for kitchen exhaust hood.

[38] The affidavit of Thomas Kellermeier, the principal and owner of Kellermeier, explains that no physical work was required for items #2 and #3, above.

[39] All that was required for #2 was for the structural engineer to file their schedule with the District.

[40] For #3, a filing to the District was required to confirm the air flow of the kitchen exhaust hood.

[41] For #1, regarding the deck guards and stairs including handrails, Mr. Kellermeier's affidavit explains that the invoice for the entire installation of the deck guards and handrails was included in a \$13,202.20 charge for that installation, which is noted on the Final Invoice, plus mirrors and a shower door.

[42] Mr. Kellermeier's evidence is that approximately 60% of that Final Invoice was for the deck guards and hand railings, with his estimate that approximately 20% of the work remained to be completed on the deck guards and hand railing at the time of the First Site Inspection Report on November 27, 2020.

[43] Mr. Kellermeier's estimate of the value of the work noted to be required to be completed "on the house" on the First Site Inspection Report on November 27, 2020, was \$6,810.10, consisting of installing the railing and replacing a damaged glass panel.

[44] Mr. Kellermeier also refers to the Whiteheads having received occupancy approval to move into the property on November 27, 2020, which the Whiteheads submit is evidence of substantial completion.

[45] Regarding the issuance of an occupancy permit being some evidence of substantial completion, the Whiteheads cite two cases: *Jamie Janda Contracting Inc. v. Hilworth*, 2022 BCSC 971, at para. 4, and *W Redevelopment Group, Inc. v. Allan Window Technologies Inc.*, 2010 BCSC 1601, at para 743.

[46] The plaintiff cites *C.J. Smith Contracting Ltd. v. Kazem-Pour*, 2014 BCSC 689 at para. 116 where the Court states that "[t]he fact that the defendants thought the

work at Mathers was sufficiently complete to allow them to move into their home at the end of February does not determine whether the contract was substantially completed for purposes of the *Builders Lien Act*.”

[47] Here, while not determinative, the fact that occupancy approval was issued for the project on November 27, 2020, is some evidence of substantial completion; however, the evidence of the occupancy approval, and Mr. Kellermeier's evidence regarding the limited amount of work to be completed as of November 27, 2020, significantly less than the \$44,071.90 calculated by the 3-2-1 Formula, is strong support for the Whiteheads' position that substantial completion of the Head Contract had occurred by November 27, 2020.

[48] The plaintiff refers to four of the Kellermeier invoices for the work done at the Property. The last three of the invoices are described in reverse chronological order, as follows.

[49] The latest of the three invoices is dated March 1, 2021, described by Mr. Kellermeier as the “Final Invoice” for \$54,086.42. That Final Invoice refers to the “completion of project” and includes a list of various items, including the \$13,303.20 figure for which Mr. Kellermeier's evidence is there was \$6,810.10 of the work on that invoice remaining to be done at the time of the First Site Inspection Report on November 27, 2020, with the remaining items on the Final Invoice for work done on the house prior to the First Site Inspection Report on November 27, 2020, or for landscaping.

[50] The plaintiff submits that the reference on the Final Invoice to “Rest landscaping - to be determined with John Martens” indicates that landscaping was within the scope of the Head Contract, and the lack of a corresponding unit price and amount for that work suggests that the work was not yet completed or invoiced when the alleged Final Invoice was issued.

[51] Although there is no direct evidence that landscaping was not part of the Head Contract, the Head Contract describes the work under that contract to be construction of a new single-family home as per building plans.

[52] The Head Contract makes no reference to landscaping.

[53] Mr. Kellermeier's affidavit regarding the remaining items on the Final Invoice refers to work done "on the house" prior to the First Inspection Report of November 27, 2020, or for landscaping, apparently distinguishing between work on the house and landscaping.

[54] There is also no direct evidence about the plaintiff's reference to the Final Invoice item "Rest landscaping - to be determined with John Martens"; however, that invoice includes another item, "Rest Electrical - no final invoice received yet from Bridge Lake Electric". The plaintiff's Notice of Civil Claim refers to its last invoice dated December 4, 2020, and there is no evidence that there was any electrical work remaining to be done after the date of the First Site Inspection Report dated November 27, 2020.

[55] As a result, the reference to "rest landscaping" and "rest electrical" appear to refer to a potential further invoice, rather than an indication that there was further work to be done.

[56] Finally, the only apparently potential references to landscaping on the Final Invoice dated March 3, 2021, are "delivery of landscape rock" for \$500.00, and "bobcat skid-steer rental for January" for \$1,500.00, for a total of \$2,000.00. Although the landscaping work is not referenced in the Head Contract, even if these items are considered to be work done after November 27, 2020, that amount would add only \$2,000.00 to Mr. Kellermeier's evidence of the amount of work remaining on that date, \$6,810.10, still far less than the \$44,071.90 calculated from the 3-2-1 Formula for work remaining after substantial completion.

[57] A second invoice dated December 31, 2020, refers only to "progress on construction" for \$110,471.00, consistent with the reference in the Head Contract to progress payments payable based on completion of construction benchmarks, without reference to any specific work or progress benchmark for that invoice.

[58] A third invoice dated November 18, 2020, for \$159,075.96 is the closest in time to the November 27, 2020, site inspection, at which time Mr. Kellermeier's evidence is only \$6,810.10 of work was remaining to be done.

[59] This third invoice includes a reference to "Scotty remaining landscaping work - final bill" and "Levik - rest gravel for landscaping - final bill" and "landscaping work." Although these references to landscaping are not explained in Mr. Kellermeier's affidavit, the reference to "final bill" is some evidence that some or all landscaping had been completed by that time.

[60] The inclusion of landscaping costs in Kellermeier's invoices is some evidence that landscaping was included in the Head Contract, but there is no specific reference to landscaping in the Head Contract, and the invoice dated November 18, 2020, before the date the Whiteheads submit is substantial completion, suggests the landscaping work had been completed by reference to "remaining landscaping work - final bill in the amount of \$27,714.00."

[61] As a result, there is no evidence to demonstrate that what Mr. Kellermeier states in his affidavit regarding the work in the amount of \$6,810.10 still to be completed as of November 27, 2020 is not true, or is not an accurate estimate of the work remaining under the Head Contract at that time.

[62] Regarding the plaintiff's reference to the invoices as evidence of work still to be completed after November 27, 2020, the Whiteheads cite *Garside v. Stirling*, 2013 BCSC 1457, at para. 224, where the Court disagreed with the defendant's use of a list of invoices as the best indication of substantial completion, the Court deciding that an alternate approach more accurately reflected completion of the work yet to be done. The evidence in support of that more accurate approach was a letter from the defendant's witness, a contractor, regarding deficiencies in the value of work not yet done.

[63] Here, similar to *Garside*, I find that the Whiteheads have met their onus of proof with Mr. Kellermeier's evidence, and the occupancy approval, that substantial

completion of the Head Contract occurred by November 27, 2020, the 45-day time period under s. 20 of the BLA expiring 45 days later on January 11, 2021.

[64] The Whiteheads cite *Dingwall v. Pellerin*, 2019 BCSC 2283 at para. 33 for the principle that a lien claimant must strictly comply with the time limit established by the BLA for filing a lien, the rationale stated at para. 36 as being that the BLA provides an extraordinary remedy in allowing a claimant to encumber a property before proving a valid claim, as a result the requirements are strict, the Court also noting that the extinguishment of the lien does not prevent the plaintiff from pursuing remedies in this Court for its claim.

[65] Consequently, here, the plaintiff's filing of the Lien on March 2, 2021, was not within the 45-day time period, and the Lien is extinguished by operation of s. 22 of the BLA.

2. Certificate of Pending Litigation

[66] The Whiteheads apply for cancellation of the CPL pursuant to section 252 of the LTA, which provides that if a certificate of pending litigation has been registered and no step has been taken in the proceeding for one year, any person who is the registered owner of or claims to be entitled to an estate or interest in land against which the certificate has been registered may apply for an order that the registration of the certificate be cancelled.

[67] The plaintiff filed its Notice of Civil Claim on June 25, 2021, and the CPL on September 2, 2021.

[68] The plaintiff filed a Notice of Intention to Proceed on November 4, 2024, having taken no steps in the action for over a year before that filing.

[69] The preconditions to an application under s. 252 of the LTA to cancel a certificate of pending litigation, and the considerations for the Court in considering the application, were summarized in *Lebarr v. Pearl*, 2020 BCSC 1638, as follows:

[9] The preconditions to an application under section 252(1) – that a CPL has been registered and no steps have been taken in the proceeding for one year – are satisfied in this case.

[10] Where the preconditions are satisfied, an order to cancel a CPL under section 252 is discretionary. Prejudice to the owner of the land is presumed and the party opposing cancellation of the CPL bears the onus of showing that the prejudice is not serious or is outweighed by other factors that would make it unjust to cancel the CPL; *Wiest v. Middelkamp*, 2005 BCSC 1626 at para. 12; *Lawn Genius Manufacturing (Canada) Inc. (Drainmaster) v. 0856810 B.C. Ltd.*, 2016 BCSC 1915 [Lawn Genius] at para. 12. The purpose of section 252, which is to keep property from being tied up in dormant litigation, must be kept in mind; *Lawn Genius* at para. 13. Relevant considerations include any explanation offered by the respondent for the delay in prosecuting the action, the presence or absence of actual prejudice, as opposed to the prejudice that is presumed, and the claimant's prospects for success in making out a claim for an interest in land; *Wiest* at para. 13.

[70] Here, the preconditions of registration of the CPL and no steps taken in the proceeding for one year are satisfied. The decision to cancel a CPL is discretionary.

[71] Here, given the presence of the CPL on title to the Property, prejudice to the Whiteheads, as owners of the Property, is presumed.

[72] The plaintiff has not demonstrated that the prejudice to the Whiteheads by the CPL encumbering the Property is not serious, nor that the prejudice is outweighed by other factors that would make it unjust to cancel the CPL.

[73] The parties' limited submissions on any further considerations are the plaintiff's submission that the delay in prosecuting the action is that the Whiteheads have not produced the scope of documents the plaintiff asserts are material to the issues. The parties' affidavits refer to correspondence back and forth between counsel, with the plaintiff's counsel seeking further production of documents from the Whiteheads, and the Whiteheads' counsel requesting the plaintiff withdraw the Lien for having been filed out of time, and, in the absence of the plaintiff doing so, the Whiteheads' counsel seeking to schedule the application to cancel the Lien and the CPL.

[74] Parties are expected to comply with the *Supreme Court Civil Rules*, including production of documents, but the plaintiff's view that the Whiteheads had not

produced all relevant documents did not prevent the plaintiff from proceeding with substantive steps in the action, or for the Whiteheads to proceed with their application to cancel the Lien and CPL, nor does that submission provide sufficient reason for the Court to not cancel the CPL.

[75] There is no evidence of actual prejudice to the parties beyond the presumed prejudice to the Whiteheads at the presence of the CPL, and to the plaintiff of the cancellation of the CPL.

[76] Finally, regarding the plaintiff's prospects for success in making out a claim for an interest in land, there were limited submissions on this point; however, the Whiteheads submitted that without a lien, the plaintiff has no claim for a CPL. That submission was made without reference to authority; however, in this case, I note that the plaintiff's Notice of Civil Claim reference to relief sought regarding the CPL is simply "certificate of pending litigation registered against the lands."

[77] That relief sought is included in the Notice of Civil Claim in the section regarding the plaintiff's claim for a builders lien. Although there may be other potential grounds for the plaintiff claiming an interest in land pursuant to the work done, I agree with the Whiteheads that the plaintiff's pleading is for a CPL based on the Lien. Without the Lien, there is no prospect for success for making out a claim for an interest in land based on the plaintiff's pleadings.

[78] For these reasons, I order that the CPL be cancelled.

Conclusion

[79] The Whiteheads are entitled to the relief they seek in their notice of application for cancellation of the Lien and the CPL, as follows:

- 1) An order pursuant to s. 25(1)(a) of the *Builders Lien Act*, S.B.C. 1997, c. 45 that the claim of lien filed in the Land Title Office in the City of Kamloops, British Columbia, under registration number CA8813096 (the "Lien") against title to the land legally described as

PID 017-836-590, Block B of District Lot 4524, Lillooet District (the Property), is cancelled;

- 2) An order pursuant to s. 252 of the *Land Title Act*, R.S.B.C. 1996, c. 250, that the Certificate of Pending Litigation registered in the Land Title Office in the City of Kamloops, British Columbia, under registration number CA9333151 against title to the Property is cancelled;
- 3) An Order that the plaintiff's claim of lien pursuant to the *Builders Lien Act* and claim for a Certificate of Pending Litigation pursuant to the *Land Title Act* in the plaintiff's Notice of Civil Claim are struck out.

[SUBMISSIONS WITH RESPECT TO COSTS]

[80] The Whiteheads have been substantially successful on their application to cancel the Lien and CPL. The costs of this application are payable by the plaintiff to the defendant Whiteheads in any event of the cause.

“Jones. J.”