

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *GAMA Construction Company v. Williams*,
2026 BCSC 1129

Date: 20260618
Docket: S147179
Registry: Kelowna

Between:

GAMA Construction Company Inc.

Petitioner

And

Tyron Williams

Respondent

Before: The Honourable Justice Hardwick

Reasons for Judgment

Counsel for the Petitioner:

A.J. Spraggs

The Respondent, appearing in person:

T. Williams
C. Bertacco

Place and Date of Trial/Hearing:

Kelowna, B.C.
June 1, 2026

Place and Date of Judgment:

Kelowna, B.C.
June 18, 2026

Introduction

[1] I provided contemporaneous oral reasons for judgment from the bench on June 1, 2026 granting the primary relief sought by the petitioner, GAMA Construction Inc., when this matter came on before me for hearing on the ordinary (but busy) Monday morning judge's chambers list in Kelowna.

[2] I did so because there was *bona fide* urgency and because it offered me the opportunity to explain to the self-represented respondent, and his spouse who accompanied him and capably assisted in making submissions on his behalf, my orders and the rationale for those orders in, as best as possible, plain language.

[3] I further agreed to issue these brief subsequent written reasons for judgment at the request of counsel for the petitioner given the dearth of jurisprudence considering the legal impact of the filing of a "notice of interest" against title to real property in this province under the *Builders Lien Act*, S.B.C. 1994, c. 45 (the "*BLA*")

The Amended Petition

[4] In the amended petition filed on May 14, 2026 (the "Amended Petition"), the petitioner sought the following relief:

1. The claim of builders lien filed by the respondent on March 23, 2026, in the Kamloops Land Title Office under registration number WX5013077 in the amount of \$16,855.00 (the "Claim of Lien") against the lands and premise situated in the City of Kelowna, in the Province of British Columbia, known and described as:
PID: 023-875-518
Legal Description: [omitted]
(the "**Lands**")

be cancelled from title to the Lands pursuant to either s. 25 and s. 22 of the...[**BLA**];
2. Any certificates of pending litigation filed in relation to the Claim of Lien against the Lands also be cancelled, and there be no further claims by the Respondent against the Lands in relation to said Claim of Lien.
3. The Registrar of the Land Titles at the Kamloops Land Title Office shall cause the said Claim of Lient and any certificates of pending

litigation filed in relation thereto to be wholly cancelled as against the Lands upon production of a certified copy of this Order. ...

...

5. In the alternative:

- a. The Claim of Lien be cancelled from title to the Lands under s. 24 of the *BLA* upon the Petitioner depositing in trust with Pil Law Corporation funds in the amount of \$16,855.00...as security for the Claim of Lien.

Factual Summary

[5] The petitioner is a general contractor.

[6] The petitioner was engaged by Skechers USA Canada Inc. to complete certain tenant improvements on a new retail store located at 1835 Dilworth Drive, Kelowna, British Columbia (the “Project”), the property defined above as the “Lands”.

[7] Victor Projects Ltd. (“Victor Projects”) is the registered owner in fee simple of the Lands. Victor Projects is a large commercial land owner and developer in the Okanagan Valley region.

[8] Skechers USA Canada Inc. entered into a retail lease with Victor Projects Ltd. The retail lease dated October 21, 2025 is in evidence before me.

[9] Skechers USA Canada Inc. does not have registered leasehold interest on title to the Lands.

[10] The respondent is a sole proprietor who does business as Okanagan Pro Painters.

[11] The petitioner engaged the respondent as a subcontractor to provide painting and painting-related services on the Project. The contract dated November 20, 2025 is in evidence before me.

[12] The respondent provided painting services to the Project. However, a dispute arose between the petitioner and the respondent and the respondent asserts that the petitioner owes him \$16,855.00. This is a significant sum to the respondent who is a small business owner/operator.

[13] As a result, on March 23, 2026, the respondent filed the Claim of Lien in the Kamloops Land Title Office as against title to the Lands. The amount claimed in the Claim of Lien is \$16,855.00.

[14] The Claim of Lien was the first occasion the respondent has ever had need to file a lien under the *BLA*. With the assistance of his spouse, he made inquiries as to the process but ultimately filed the lien himself without the benefit of legal advice.

[15] The Claim of Lien contains a few minor errors but nothing, I find, in the circumstances turns on those errors.

[16] The difficulty for the respondent is that on November 19, 2018, well prior to the Claim of Lien being filed, Victor Projects filed a notice of interest on title to the Lands under registration number CA7195587 which states:

1. Victor Projects Ltd. (inc. No. BC0593426), #102-266 Lawrence Avenue, Kelowna, British Columbia, V1Y 6L3, is an owner as defined in the **Builders' Lien Act** of the land described in the Form E Schedule attached hereto.
2. The nature of the owner's interest is:
Fee Simple
3. The owner's interest in the land is not bound by a lien claimed under the **Builders' Lien Act** in respect of an improvement on the land unless that improvement is undertaken at the express request of the owner.

(the "Notice of Interest").

[17] The respondent was aware of the Notice of Interest as he pulled a copy of the title search of the Lands before registering the Claim of Lien but did not appreciate its legal significance. The respondent was also confused by the fact that there was another claim of lien on title to the Lands, but this charge was from many years prior and had quite obviously not been discharged due to an administrative error.

[18] That administrative error had been addressed by the time of the hearing before me, because Victor Projects was in the final stages of financing a 71-unit residential rental building in Kelowna, BC and the removal of any claims of lien is a contractual requirement prior to this financing being released. The respondent's

Claim of Lien was the sole remaining impediment to that financing required by Victor Projects, hence the urgency that I referenced at the outset of these reasons for judgment.

Legal Analysis

[19] In s. 1 of the *BLA* a “notice of interest” is defined as follows:

...a notice in the prescribed form warning other persons that the owner’s interest in the land described in the notice is not bound by a lien claimed under this Act in respect of an improvement on the land unless that improvement is undertaken at the express request of the owner;

[20] Section 1 of the *BLA* further defines an “owner” as including:

...a person who has, at the time a claim of lien is filed under this Act, an estate or interest, whether legal or equitable, in the land on which the improvement is located, at whose request and

- (a) on whose credit,
- (b) on whose behalf,
- (c) with whose knowledge or consent, or
- (d) for whose direct benefit

work is done or material is supplied, and includes all personal claiming under the owner, but does not include a mortgagee unless the mortgagee is in possession of the land.

[21] The other material sections of the *BLA* are ss. 2, 3, 22 and 25:

- a) Pursuant to s. 2, a contractor (or subcontractor or worker) has a lien on the interest of the “owner” in the improvement, the improvement itself, the land and the material supplied;
- b) Section 3 provides that “[a]n improvement done with the prior knowledge, but not at the request, of an owner is deemed to have been done at the request of the owner.” But, that does not apply, “to an improvement made after the owner has filed a notice of interest in the land title office” (emphasis added);

- c) Section 22 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; and
- d) Section 25 provides that a contractor may apply to the court to cancel a claim of lien if a lien is extinguished under s. 22 of the *BLA* or, alternatively, if the claim of lien is vexatious, frivolous or an abuse of process.

[22] Applying the foregoing provisions of the *BLA*, for the purposes of the subject improvement to the Lands, the “owner” is Skechers USA Canada Inc., and not Victor Projects. Victor Projects is not deemed to have requested the work under s. 3 of the *BLA* by virtue of its filing of the Notice of Interest.

[23] Thus, the respondent’s Claim of Lien could only attach to Skechers’ interest in the Land. Since Skechers’ leasehold interest has not been registered, no lien can be filed: see *Percon Const. Mgmt. Ltd. v. B.C. Reg., New Westminster Land Title Office*, 1986 CanLII 871 (BCSC) at paras. 9-10.

[24] The Claim of Lien was thus, I find, not filed in the manner contemplated by the *BLA* and is extinguished.

[25] As noted above, in considering the relief sought in the Amended Petition, counsel brought to my attention the dearth of jurisprudence regarding the consideration of the impact of the filing a claim of lien in the face of a Notice of Interest.

[26] Specifically, there appears to be only one reported case where an application was made to cancel a claim of lien under s. 25 of the *BLA* due to the lien being filed after a notice of interest. That is the decision of Master Muir (now Associate Justice Muir), *Libero Canada Corporation v. Kwee*, 2013 BCSC 1297 [*Libero*].

[27] In *Libero*, Associate Judge Muir declined to cancel the claim of lien on the basis that the lien claimant argued that there was an express request by the landlord for the work: see paras. 15-19. That is not what is asserted here.

[28] Further, and very importantly, the application in *Libero* was interlocutory in nature and Associate Judge Muir could not adjudicate upon the submission on its merits. Even still, the above argument received appropriate judicial skepticism in determining whether it even passed the threshold of being “arguable”. As Associate Judge Muir stated at para. 26:

[26] While the plaintiff’s position seems a bit farfetched, my views as to the merits of the claim are irrelevant as long as I conclude that there is at least an arguable claim. It is conceivable that a court could conclude that by requiring the tenant to “carry out all work necessary to complete the Premises” as it has in s. C3 of the additional provisions to the lease, the landlord expressly requested the Improvements as submitted by the plaintiff.

[29] The Amended Petition is thus distinguishable from *Libero* because the relief being sought includes final orders which, as a justice of this Court, I can grant after an appropriate consideration of the evidentiary record before me.

Costs

[30] Despite my conclusion that I was statutorily required to grant the primary relief sought by the petitioner in cancelling the Claim of Lien, I exercised the judicial discretion afforded to me under R. 14-7 of the *Supreme Court Civil Rules* to otherwise order that the parties shall bear their own costs of the Amended Petition.

[31] I exercised my discretion in this manner as there was nothing in the evidence to support a conclusion that the Claim of Lien was vexatious or was filed for an improper purpose. The Claim of Lien was improperly filed because the respondent failed to understand the legal significance of the Notice of Interest. It presents a cautionary lesson for the respondent (and others in similar circumstances) going forward to conduct the necessary due diligence of obtaining a title search before taking on future projects of this nature so as to ensure that the contract between the contracting parties provides the appropriate protection if there is a Notice of Interest filed against the subject property.

[32] Further, by virtue of the cancellation of the Claim of Lien, the respondent is now in a position, as I explained in court to him and his spouse, to file a breach of

contract claim in the Provincial Court of British Columbia against the respondent as the amount in issue is well within the jurisdiction of that court. An award of costs against the respondent in this Court would unfairly upset the balance of fairness of having the parties litigate this dispute in the appropriate court.

Summary of Orders

[33] In summary, I made the following orders:

- a) The Claim of Lien filed by the respondent on March 23, 2026, in the Kamloops Land Title Office under registration number WX5013077 in the amount of \$16,855.00 (the “Claim of Lien”) against the Lands is cancelled pursuant to s. 22 of the *BLA*;
- b) The Registrar of the Land Titles at the Kamloops Land Title Office shall cause the said Claim of Lien and any certificates of pending litigation filed in relation thereto to be wholly cancelled as against the Lands upon production of a certified copy of this Order;
- c) The parties shall bear their own costs of the Amended Petition; and
- d) All other relief sought by the petitioner in the Amended Petition is dismissed.

“Hardwick J.”