

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Rock Ranger Inc. v. Rad Dad Transport Ltd.*,
2026 BCSC 1123

Date: 20260617
Docket: S2513012
Registry: Victoria

Between:

Rock Ranger Inc.

Petitioner

And

Rad Dad Transport Ltd. and Canada West Court Bailiffs Ltd.

Respondents

Before: The Honourable Madam Justice Church

Reasons for Judgment

In Chambers

Counsel for the Petitioner:

L.M. Hellrung
(Appearing by MS Teams video)

Counsel for the Respondents:

R.A. Petrick

Place and Date of Trial/Hearing:

Victoria, B.C.
February 25, 2026

Place and Date of Judgment:

Victoria, B.C.
June 17, 2026

INTRODUCTION

[1] This petition involves the interpretation of provisions of the *Commercial Liens Act* (S.B.C. 2022, c. 9) (the "CLA"), the application of those provisions in the context of transportation of goods and the enforcement of a lien where the lienholder no longer has possession of the goods.

[2] The CLA came into force on June 30, 2025. The CLA was described in a government press release as "creating one clear set of lien rules for anyone who repairs, stores or transports goods": *1446649 B.C. Ltd. v. 1443120 B.C. Ltd.*, 2025 BCSC 1707 at para. 16.

[3] As stated in the builders' lien context by Justice Fitzpatrick in *Century Group GP Co. Ltd. v KRS Excavating Ltd.*, 2022 BCSC 357:

[34] A lien is an extraordinary right granted only by statute: *M.H. Rent-a-Rod Ltd. v. Cooper*, 2016 BCSC 927 at paras. 27-31. Entitlement to file a lien is strictly construed and it is available only if certain pre-conditions are satisfied [...]

[4] The petitioner, Rock Ranger Inc. ("Rock Ranger"), engaged the respondent, Rad Dad Transport Ltd. ("Rad Dad"), in August 2025 to transport various pieces of equipment that collectively make up a gravel crushing spread. Rad Dad transported and delivered the crushing spread as agreed, but Rock Ranger found itself unable to pay Rad Dad's invoices in accordance with its payment terms. Rad Dad's bailiff, Canada West Court Bailiffs Ltd. (the "Bailiff" or "Canada West"), seized various goods on December 17, 2025, in reliance on two liens filed in the Personal Property Registry ("PPR") and without removal from the Rock Ranger worksite in Hartley Bay, B.C., where the equipment was located.

[5] The issues raised in this petition proceeding relate to the application of the CLA to the contractual relationship between the parties and specifically:

- a) Whether Rad Dad had valid liens over the equipment of Rock Ranger;
- b) If so, whether the liens were enforceable;

- c) Whether the purported seizure was valid; and
- d) Whether Rad Dad exercised its rights under the *CLA* in good faith and in a commercially reasonable manner.

BACKGROUND

[6] Most of the factual background to this proceeding is not in dispute.

[7] Rad Dad is a company incorporated in British Columbia and operates a transportation business based in Fort St. John, B.C.

[8] Rock Ranger is a company incorporated in the Yukon and extra provincially registered in British Columbia. Rock Ranger operates an aggregate gravel crushing business.

The April Agreement

[9] Between April 1 - 11, 2025, Rad Dad provided hauling services to Rock Ranger pursuant to a verbal agreement (the “April Oral Agreement”). Rad Dad invoiced Rock Ranger a total of \$171,247.31 for those services, and Rock Ranger did not pay the entirety of Rad Dad’s invoice when it became due.

The August Agreements

[10] In early August 2025, the principal of Rock Ranger, Damon Werrun, contacted the principal of Rad Dad, Colter Burch, regarding hauling several pieces of crushing equipment from Hinton, Alberta, to Prince Rupert, B.C. Rock Ranger had secured a contract to produce and stockpile aggregate for the Gitga’at First Nation projects at Hartley Bay, B.C., a remote First Nations Community located on the North Coast and only accessible by air or water. Rock Ranger needed to transport its equipment by ferry from Prince Rupert to Hartley Bay in order to complete its contract obligations by the end of February 2026.

[11] Rad Dad agreed to provide the hauling services requested, provided that Rock Ranger entered into a written agreement with respect to such services and a

substantial payment was made with respect to the outstanding invoices from the April Oral Agreement.

[12] Mr. Burch drafted a one-page written agreement, which the parties both signed on August 8, 2025 (the “August Written Agreement”). The August Written Agreement described the scope of the work as:

The Hauler agrees to transport one (1) crushing spread from Hinton, Alberta to the following location(s): Directed By Customer.”

[13] Paragraph 6 of the August Written Agreement provided that “This document represents the entire agreement between the parties. Any amendments must be made in writing and signed by both parties. It is not disputed that there were no written amendment agreements signed by the parties.

[14] Rad Dad performed the hauling services for Rock Ranger between August 9 - 14, 2025 and hauled the following eight pieces of equipment from Hinton, Alberta, to Prince Rupert, B.C.:

2019 Volvo Wheel Loader;
2021 Metso Cone Crusher;
1986 Fruehauf Van;
2021 Caterpillar Genset (mounted inside the 1986 Fruehauf);;
2008 Elrus Screen Plant;
1998 Armadillo Jaw Crusher Plant;
1994 Tool Crib, Van Trailer, including tools; and
1996 Wabash Fuel trailer.
(collectively the “Hartley Bay Equipment”)

[15] On August 13, 2025, Rock Ranger paid Rad Dad \$70,000 by way of a bank wire transfer on account of the April Oral Agreement.

[16] In addition to hauling the Hartley Bay equipment, Rad Dad also verbally agreed to transport two other pieces of equipment from Hinton, Alberta, to other

locations in B.C (the “August Oral Agreement”). These were a Volvo Wheel Loader, to be transported to Meziadin Junction and a 1999 Doepker Lead Flatbed Tridem trailer, to be transported to Fort St. John, B.C. Rad Dad transported these pieces of equipment to those locations in August 2025.

The Winch Tractor

[17] On August 1, 2025, Rad Dad picked up a Kenworth Winch Tractor belonging to Rock Ranger (the “Winch Tractor”) from Inland Kenworth in Fort St. John, B.C. The Winch Tractor had been in the possession of Inland Kenworth for repairs. However, after learning that the repair work was covered by its insurance, Rock Ranger and Rad Dad agreed that Rad Dad would undertake the repairs to the Winch Tractor at its shop in Fort St. John. Rad Dad agreed to provide a quote for repairs to Rock Ranger to be submitted to the insurance company for approval.

[18] All of the pieces of equipment of Rock Ranger transported by Rad Dad pursuant to the August Written Agreement, the August Oral Agreement, and the April Oral Agreement were delivered into the possession of Rock Ranger by the end of August 2025.

[19] On September 20, 2025, Rad Dad transported a 1999 Doepker Lead Flatbed Trailer from Fort St. John to Upper Halfway, B.C. After delivery of this piece of equipment, Rad Dad no longer had possession of any equipment belonging to Rock Ranger, with the exception of the Winch Tractor. The Winch Tractor remained in Rad Dad's possession as of the date of the petition hearing.

Post-Delivery Payment Discussions

[20] Colter Burch and Daman Werrun communicated by text messages and telephone between September 10 and December 1, 2025, regarding payment of the balance of the April 2025 Hauling Services and the invoice with respect to the August Written Agreement.

[21] Mr. Werrun explained that Rock Ranger was still awaiting payment from a company called Martsushev Logging Ltd. (“Martsushev”) of a large outstanding invoice, which was continuing to cause financial challenges such that payment in full to Rad Dad could not be made.

[22] On October 6, 2025, Rock Ranger paid Rad Dad \$10,000 by way of a bank wire transfer on account of the outstanding invoices.

[23] In November 2025, Mr. Burch and Mr. Werrun had further discussions regarding payment of Rad Dad’s outstanding invoices, and Mr. Burch proposed that Rock Ranger sign a security agreement for those invoices. Mr. Werrun received a draft security agreement and also a loan agreement that had not been previously discussed between him and Mr. Burch. They were unable to reach an agreement regarding the loan agreement, and on November 28, 2025, Rad Dad filed a Notice of Civil Claim (the “NOCC”) claiming sum of \$195,070.76 in debt against Rock Ranger. Rad Dad alleged that Rock Ranger failed to pay the amounts owing under the April Oral Agreement and the August Written Agreement.

[24] Rock Ranger was not served with the NOCC in accordance with the *Supreme Court Civil Rules* (“SCCRs”), but Rad Dad did send a copy of the NOCC by email to Lorena Funnell, one of the principals of Rock Ranger, on December 12, 2025.

The Seizure

[25] On December 14, 2025, Mr. Burch and Mr. Werrun communicated by telephone, at which time Mr. Werrun advised that Rock Ranger had still not yet been paid by Martsushev. Mr. Burch proposed a payment plan to retire the outstanding debt. Mr. Werrun and Mr. Burch did not reach an agreement about the payment plan, but Mr. Werrun indicated his intention to make another partial payment from anticipated receivables.

[26] During the discussion, Mr. Burch proposed moving the Rock Ranger equipment back to his yard in Fort St. John as security, a proposal that was rejected by Mr. Werrun as the equipment was needed to generate revenue to pay the

outstanding invoices and would result in significant additional costs in moving the equipment again. During the conversation, Mr. Burch advised that he was aware that his lawyer had filed a claim against Rock Ranger and said that he was talking to a bailiff. Mr. Burch told Mr. Werrun: “I could really hurt your business.”

[27] On December 16, 2025, Mr. Werrun learned that Mr. Burch had contacted NRC Storm Contracting Ltd. (“NRC”), the company which had contracted with Rock Ranger to produce and stockpile aggregate for the Gitga’at First Nation in Hartley Bay and had threatened to garnish wages from Rock Ranger. Mr. Werrun further learned that Mr. Burch had also contacted the Gitga’at First Nation’s consultant, who is the project manager for Rock Ranger’s project, in order to gain access to the Rock Ranger worksite in Hartley Bay.

[28] On December 16, 2025, counsel for Rad Dad provided counsel for Rock Ranger with a copy of a lien filed on November 25, 2025, at 7:31 am in which Rad Dad asserted a security interest over five trailers and a wheel loader, all of which are described with make, year and serial numbers (the “First Lien”). Counsel for Rock Ranger advised counsel for Rad Dad that the First Lien was unenforceable as the description of the goods in the August Agreement was insufficient.

[29] On December 17, 2025, between 11:30 am and 1:00 pm, Mr. Burch and the Bailiff attended the Rock Ranger worksite in Hartley Bay and purported to seize various pieces of equipment without removal pursuant to the provisions of the *CLA*.

[30] At 3:48 pm on December 17, 2025, the Bailiff filed a further lien on behalf of Rad Dad, claiming a security interest in two further trailers, a crusher cone and another Volvo Wheel loader owned by Rock Ranger and located at the worksite in Hartley Bay (the “Second Lien”). The Second Lien was filed after the seizure of the equipment described in the Second Lien had already taken place. Despite ongoing communication between counsel, counsel for Rad Dad did not provide a copy of the Second Lien to counsel for Rock Ranger until December 20, 2025, when it was delivered together with a Notice of Seizure and Intention to Sell.

[31] Rock Ranger asserts that the approximate value of the equipment seized by Rad Dad is \$2,456,214.00.

Tender of Amount Owing

[32] On December 18, 2025, counsel for Rock Ranger wrote to counsel for Rad Dad and proposed to tender the sum of \$116,834.51 in exchange for the release of the seized goods and discharge of the First Lien. At this time, counsel for Rock Ranger was unaware of the registration of the Second Lien. Counsel for Rock Ranger gave notice of his position that the lien was defective and unenforceable and that he would be proceeding to court in Victoria on the first day available.

[33] Ultimately, Rad Dad did not agree to this proposal and counsel for Rad Dad instead delivered a Notice of Disposition pursuant to s. 38 of the *CLA*. Counsel for Rad Dad also refused to extend the time for filing of a Response to Civil Claim (“RCC”) beyond January 5, 2026 and advised that he was unavailable to deal with the court application on December 30, 2025 and would not be available until January 5, 2026.

[34] On December 23, 2025, counsel for Rock Ranger issued a demand to discharge the Second Lien pursuant to s. 17(3) of the *CLA*.

Petition Proceeding

[35] On December 30, 2025, counsel for Rock Ranger filed this petition and paid \$116,834.51 into court. Rock Ranger was granted short leave for the application to discharge the lien on January 6, 2026, and an order was granted for service by email on both Rad Dad and the Bailiff.

[36] On January 5, 2026, following a request by counsel for Rock Ranger, the Bailiff sent the Direction of Seizure, described as a "Warrant", (the “Warrant”) and the bailiff’s Notice of Seizure and Disposition, which the Bailiff confirmed by email was the final version of the Warrant and the Notice of Seizure.

[37] The following goods were seized during the seizure despite not being listed on the First Lien or in the Warrant:

- a) Volvo L260H / 2019 (VCEL260HC00001170) (\$300,000 estimated value);
- b) Metso 300 HP Cone/ 2021 (RU341) (\$1,100,000 estimated value);
- c) Caterpillar 500 kW Genset / 2021 (CAT00C15CT3301443 (\$146,895 estimated value; mounted inside Fruehauf power van listed in First Lien and in Warrant); and
- d) Wabash Fuel Trailer / 1996 (1JJF45263TL35732) (\$20,000 estimated value).

(collectively the "Unlisted Seized Goods")

[38] The Wabash 2019 trailer (serial number 30101) was listed in the First Lien but was not transported in August 2025 by Rad Dad. The second Volvo Wheel Loader L250 (serial number VCEL250GA00003148) was also listed on the First Lien. It was transported by Rad Dad but not to Hartley Bay. Neither of these items were seized, presumably because they were not present at the Rock Ranger worksite in Hartley Bay.

[39] On January 6, 2026, this court ordered that the liens be discharged, the goods released, a hearing schedule be set for this petition, and a charge be made on the \$116,834.51 paid into court by Rock Ranger.

The Petition Hearing

[40] The petition hearing came before me in chambers on February 25, 2026.

[41] The petitioner, Rock Ranger, claims that Rad Dad registered unenforceable liens due to various defects, including the fact that the "description of goods" required under the *CLA* was legally insufficient to support the liens. Further, Rock

Ranger submits that Rad Dad seized goods that were not covered by the First Lien and attempted to remedy this defect after the fact by filing the Second Lien.

[42] Rock Ranger claims that the seizure by Rad Dad was disproportional to the amount allegedly owed by Rock Ranger and also resulted in significant pecuniary loss and reputational harm. Rock Ranger submits that Rad Dad's conduct was not commercially reasonable, and the conduct of Mr. Burch indicated that Rad Dad was not exercising its rights under the *CLA* in good faith.

[43] Rock Ranger seeks the following:

- a) Declarations that the First Lien and Second Lien did not comply with the *CLA* and were invalid;
- b) Declarations that the December 17, 2025, seizure was illegal and did not comply with the *CLA*;
- c) An order pursuant to s. 44(2) of the *CLA*, that the petitioner's Kenworth Winch tractor be forthwith returned to it by Rad Dad;
- d) An order pursuant to s. 44(3) of the *CLA*, that Rad Dad pay Rock Ranger \$8,000 on account of Rock Ranger's pecuniary loss in making payment into court to discharge the First Lien and Second Lien;
- e) An order pursuant to s. 45 of the *CLA* releasing any charge on the \$116,834.51 in court, and an order directing that those funds be paid out to Rock Ranger's counsel forthwith;
- f) An order pursuant to s. 47 of the *CLA* enjoining the petition respondents from further claiming or attempting to claim a lien over the seized goods; and
- g) An order for special costs of this proceeding - Rad Dad's disregard and misuse of the *CLA* is deserving of the Court's rebuke.

[44] Rad Dad argues that the liens were valid and attached at the commencement of the hauling services provided by Rad Dad. Rad Dad further relies on the August Written Agreement as a written authorization pursuant to the provisions of s. 7 of the *CLA* and submits that the description of the goods in the August Written Agreement is sufficient for the purposes of enforcement under the *CLA* because both parties knew what equipment was included in the description "crushing spread," and Rad Dad relied on other information provided to it, including photographs and emails, to identify the equipment that made up the crushing spread.

[45] Rad Dad opposes the orders sought by Rock Ranger and seeks to have the \$116,834.51 that was previously paid into court by Rock Ranger paid out to it in accordance with its charge as per the order granted on January 6, 2026.

[46] No one appeared on behalf of the respondent, Canda West, and it is my understanding that Rock Ranger is not seeking any orders against Canada West in this petition hearing.

Application of the *CLA*

[47] The *CLA* prescribes that the person requesting the services must be the owner of the goods, have an interest in them, be in possession of the goods or legally be entitled to possess them (s. 4). The "lien attaches to the goods on commencement of the services" (s. 5).

[48] A lien can be perfected by possession of the goods (s. 11(1)). A lien holder no longer has possession of the goods "if the goods are in the apparent possession or control of the person who requested the services in relation to the goods" or "the owner of the goods or another person with an interest in the goods" (s. 11(2)).

[49] The *CLA* does provide a mechanism for maintaining a perfected lien after the lien holder is no longer in possession of the goods. Section 14(1) contemplates the situation where the lien holder gives up possession of the goods after perfection. It requires a lien holder to register a financing statement within fifteen (15) days of giving up possession of the goods. Failure to register a financing statement within

fifteen days of giving up possession will mean that perfection is not continuous and may affect priority of the lien holder with regard to other interests.

[50] There is no question that Rad Dad gave up possession of the equipment to Rock Ranger in August 2025 and did not file a financing statement within fifteen days after giving up possession.

[51] Rock Ranger argues that any attempted perfection by filing of a financing statement by Rad Dad was invalid, as the written authorization did not contain a description of the goods that was adequate to support registration of a financing statement at any time.

[52] Section 7 of the *CLA* states:

- 7(1) Subject to subsection (4), a lien is enforceable only if
 - a) the goods are in the possession of the lien holder, or
 - b) the person who requested the services in relation to the goods, the owner of the goods or another person with an interest in the goods has given the lien holder at any time and in accordance with subsection (2)
 - (i) a written authorization for the services, or
 - (ii) a written acknowledgement of the person's obligation to pay for the services.
- (2) An authorization or acknowledgement under subsection (1) (b) must
 - a) be signed by the person who requested the services in relation to the goods, by the owner of the goods or by the other person with an interest in the goods, and
 - b) include a description of the goods.

[53] "Authorization" is defined in section 1 as "an authorization under section 7(1)(b)(i)".

[54] There is no dispute between the parties that the only document that could meet the definition of "authorization" as set out in the *CLA* is the August Written Agreement, the one-page document drafted by Mr. Burch. It is the only written document signed by Mr. Werrun on behalf of Rock Ranger and contains the only reference to the "goods" transported in August 2025, which are the words "one (1)

crushing spread". The August Written Agreement contains an entire agreement clause, and any amendments require signature. It is not disputed that there are no written amendments to the August Written Agreement.

[55] Mr. Werrun's evidence, which is undisputed, is that a crushing spread is modular in nature and can include anywhere from three to twenty pieces of equipment. The configuration depends on various factors, including the type of aggregate products required, production volume targets, site logistics and power availability.

[56] Counsel for Rad Dad argues that it was unnecessary for the August Written Agreement to contain a more detailed description of the equipment to be transported by Rad Dad because all the parties knew what was being transported. Counsel referred to the evidence of Mr. Burch that he received various emails from Rock Ranger that included site photographs showing an aerial view of the equipment to be transported, GPS coordinates for where the equipment was located, and commercial permits. Counsel acknowledged that none of these documents were signed by a representative of Rock Ranger but relied on a lower court decision in support of his submission that the requirement of a "signed authorization" should be read more broadly to include unsigned emails to reflect modern forms of electronic communication. He further submitted that there was no uncertainty between the parties as to what equipment was to be transported by Rad Dad.

[57] I accept the latter submission of counsel for Rad Dad that both parties understood which equipment was to be picked up in Hinton, Alberta and transported to Prince Rupert, B.C. I also accept, on the evidence before me, that Rad Dad performed the services requested by Rock Ranger and transported that equipment to Prince Rupert. The evidence of both Mr. Werrun and Mr. Burch confirms those facts.

[58] I reject entirely, however, the submission of Rad Dad that the description of the goods as "one (1) crushing spread" in the August Written Agreement was an adequate description of the goods. It is arguable that the description of the goods

was so inadequate that it was legally insufficient to support the creation of the lien. Even if that were not the case, the description of goods in the authorization is entirely inadequate to permit enforcement of any lien that may have existed.

[59] There are numerous factual examples in this case that underscore why the description was entirely inadequate and thus rendered any lien that may have existed unenforceable.

[60] It appears that Mr. Burch came to the Hartley Bay worksite to assist in the seizure by identifying the goods that he transported. Even with his presence on site, the lien registration and subsequent purported seizure were haphazard and confusing, resulting in over-seizure of goods not listed in the First Lien. It is difficult to see how that could have occurred if the goods had been adequately described in the August Written Agreement.

[61] Rad Dad then attempted to correct this error by filing the Second Lien. The lack of a proper description continued to hamper enforcement efforts, with the Second Lien including descriptions of two pieces of equipment that were not transported by Rad Dad to Prince Rupert pursuant to the August Written Agreement. Thus, despite counsel's assertion that each of Rad Dad and Rock Ranger knew what the reference to "one (1) crushing spread" meant in terms of the transportation services, it appears that there was still considerable confusion as to which equipment should be subject to a lien.

[62] Mr. Burch prepared the August Written Agreement, on which he relies as the written authorization to provide services. The agreement he drafted contains an entire agreement clause. His own evidence is that prior to his transportation of the various pieces of Rock Ranger's equipment from Hinton to Prince Rupert, he received various emails and commercial transport permits which contain descriptions and serial numbers for the various pieces of equipment that made up the "one (1) crushing spread" in this case. There was nothing preventing him from preparing an amendment to the August Written Agreement to add descriptions of the goods that would at least set out how many pieces of equipment there were, a

description of what they were and serial numbers, if known. All of the goods were readily identifiable by make, model and serial number and such description would be necessary to enable filing of a financing statement in the PPR. I agree with the submission of counsel for Rock Ranger that Rad Dad simply failed to identify any goods with the requisite precision to create a lien existing under the *CLA*.

[63] Even if a lien existed, the inadequacy of the description of the goods in the written authorization was, in my view, fatal to any enforcement. The confusion that resulted from the vague description of “the goods” is further illustrated by the Direction of Seizure authorizing the bailiff to seize the goods under the *CLA*.

[64] Sections 32 and 33 of the *CLA* require that the bailiff must be provided a Direction of Seizure by the lien holder and s. 32(4) provides that “[a] direction of seizure referred in subsection (3) must include a description of the goods to be seized and any other prescribed information or records”.

[65] Where a lien holder is no longer in possession of the goods, the written authorization essentially provides an acknowledgment of the services provided in relation to specific goods. Logic dictates that when the goods are no longer in the possession of the lien holder, the description of the goods in the written authorization must adequately and clearly describe the goods so that the bailiff can properly be instructed with respect to enforcement, and there is no dispute as to which specific goods the services provided related. I cannot accept the submission of counsel for Rad Dad that the generic description in the August Written Agreement was adequate because both parties “knew” what was transported.

[66] In my view, such a position is untenable and irreconcilable with the provisions of the *CLA*. For example, s. 8 permits transfer of the lien to a person to whom the debt is assigned. This transferability provision contemplates that an assignee of the debt might become the lien holder. In the context of this case, that would mean that someone other than Rad Dad could become the lien holder and in the absence of an adequate description of the goods, would have no way of knowing which specific goods were subject to the lien.

[67] Counsel for Rock Ranger has referred me to caselaw from Saskatchewan, a province that has a *Commercial Liens Act* that contains very similar provisions to the *CLA*. The Court of King's Bench in *Lewko Electric (2002) Ltd. v. Mike's Hydraulic Sales & Service Ltd.*, 2006 SKQB 404, held that a lien may exist under s. 3 (the equivalent of s. 4 in B.C.), but "that in itself does not create the right to enforce the lien": at para. 7. The Court confirmed that a lien may be valid but unenforceable and that failure to comply with s. 6 (the equivalent of s. 7 in B.C.) will result in "no entitlement to proceed to enforcement" and a determination that "the seizure and sale were unlawful": at para. 8.

[68] In my view, that case is applicable to the facts in this case. Even if a lien existed in this case, which is not clear, the failure of Rad Dad to comply with s. 7 of the *CLA* rendered any lien it held unenforceable. I find that Rad Dad had no entitlement to proceed to enforcement, and therefore, the purported seizure by Rad Dad was unlawful.

[69] There is also evidence before me that Rad Dad has failed to comply with s. 50 of the *CLA*. Section 50 provides that "[a]ll rights, duties or obligations arising under an authorization, an acknowledgement, this *Act* or any other law applicable to liens must be exercised or discharged in good faith and in a commercially reasonable manner".

[70] Counsel for Rock Ranger notes that on November 28, 2025, an action was filed by Rad Dad in the Fort St. John registry to recover the amounts with respect to the April Oral Agreement and also the amounts outstanding from the August Written Agreement (the "Debt Action").

[71] To date, the Debt Action has not been served on Rock Ranger in accordance with the *SCCRs* but counsel for Rad Dad purported to serve the Notice of Civil Claim in the Debt Action by email sent to the other principal of Rock Ranger, Lorena Funnell, on December 12, 2025.

[72] In a phone call of December 14, 2025, Mr. Burch told Mr. Werrun that he was not only speaking with a bailiff, but that he could “really hurt” Mr. Werrun’s business. Counsel for Rock Ranger submitted that this evidence supports its position that Rad Dad is attempting to enforce a debt claim through the *CLA*, rather than exercising any legitimate lien rights and thus was not acting in good faith.

[73] Counsel also referred to the evidence of Mr. Burch in his affidavit evidence in which he appears to confirm this:

22. Rad Dad took steps to seize Rock Ranger's crushing spread as Rock Ranger did not pay the haul as per the agreed upon 90 days after invoice, and did not respond to my numerous demands for payment.

[74] There is further evidence that confirms that Rad Dad is not, in fact attempting to enforce legitimate lien rights. The amount of debt listed in the Warrant and the Notice of Seizure is \$208,091.05, which is the amount of Rad Dad’s debt claim for the April Oral Agreement and the August Written Agreement. There is, however, no written acknowledgement for the April Oral Agreement and thus no right to enforce a lien after the goods were no longer in the possession of Rad Dad.

[75] There is uncontroverted evidence before me that more than \$1,566,895 in goods were seized that were neither listed in the First Lien nor in the Warrant, and that the Second Lien was only registered some three hours after the seizure had been completed. In the absence of any other plausible explanation, I can only conclude that this was an attempt to rectify the over seizure. The seizure of goods not listed in the First Lien or the Warrant was without authority and therefore illegal.

[76] On the evidence before me, I agree with the submission of counsel for Rock Ranger that it is clear that Rad Dad has not exercised or discharged its duties or obligations in good faith, or in a commercially reasonable manner and has therefore failed to comply with s. 50 of the *CLA*.

[77] In summary, I find that the description of the goods in the written authorization was so inadequate that it was legally insufficient to support the creation of a lien, and thus the First Lien was invalid. I further find that the Second Lien was an attempt to correct an over seizure of the goods of Rock Ranger and was without authority and unlawful. I therefore find that the First Lien and the Second Lien were invalid.

[78] Even if I had not found the liens to be invalid, I find that the failure of Rad Dad to comply with s. 7 of the *CLA* is such that any lien it held is rendered unenforceable. I find that Rad Dad had no entitlement to proceed to enforcement, and therefore, the purported seizure by Rad Dad was unlawful. I further find that the purported seizure was not exercised in good faith and in a commercially reasonable manner, contrary to s. 50 of the *CLA*.

REMEDIES AND ORDERS

[79] Having found the liens to be invalid and/or unenforceable, Rock Ranger is entitled to the order sought pursuant to s. 45 of the *CLA* releasing any charge on the \$116,834.51 paid into court. I will further order that those funds be paid out to Rock Ranger's counsel forthwith.

[80] I will further order pursuant to s. 47 of the *CLA* that Rad Dad be enjoined from further claiming or attempting to claim a lien over the seized goods.

[81] Section 44(3) of the *CLA* provides that if the court determines that the lien is not valid, the court may order the lien holder to pay to a petitioner any pecuniary loss incurred by the petitioner as a result of making a payment into court under Division 4.

[82] As I have already noted, Rock Ranger paid the sum of \$116,834.51 into court on December 30, 2025, pursuant to s. 45 of the *CLA*. The petitioner has provided evidence from Mr. Werrun that Rock Ranger negotiated an advance from a third-party in order to make that payment into court and paid an \$8,000 fee in order to receive those monies. Having found that the liens are invalid, Rock Ranger is entitled to an order for judgment for that pecuniary loss in the amount of \$8,000.

[83] Rock Ranger seeks an order pursuant to s. 44(2) of the *CLA* that the Winch Tractor belonging to Rock Ranger be returned to it forthwith by Rad Dad. Section 44(2) of the *CLA* grants the court broad powers to make “any other order the court considers appropriate in the circumstances. Rock Ranger submits that in the present circumstances, such an order is necessary to unwind the relationship between the parties and is reasonable in light of Rad Dad's conduct and the unwarranted costs it has caused Rock Ranger.

[84] In its Response to Petition, Rad Dad claims that it has provided only minor body repair and cleaning to the Winch Tractor, whose services have not yet been invoiced but are expected to be in the range of \$6,000.00. Rad Dad further indicates that it is willing to deliver the Winch Tractor to Rock Ranger upon a written acknowledgement to pay for the services.

[85] I tend to agree with counsel for Rock Ranger that it is necessary to unwind the relationship between the parties. I will therefore order that the Winch Tractor belonging to Rock Ranger be returned to it by Rad Dad forthwith. Rock Ranger will arrange for the Winch Tractor to be retrieved from Rad Dad at a mutually convenient date and time, not more than 21 days from the date of the order and Rad Dad will release the Winch Tractor to Rock Ranger or its authorized representative. Rock Ranger will be responsible for any and all costs associated with retrieval of the Winch Tractor from Rad Dad.

[86] Rad Dad will forthwith provide an invoice to Rock Ranger for any and all services provided in relation to the Winch Tractor. If there is no dispute between the parties over the amount of the invoice for the services provided by Rad Dad in respect of the Winch Tractor, Rad Dad may set off the amount owed by Rock Ranger on that invoice against any amounts owed by Rad Dad in this petition proceeding.

COSTS

[87] Rock Ranger has been entirely successful in this petition proceeding. It seeks an order for costs and specifically seeks an order that Rad Dad pay special costs of this petition proceeding.

[88] Special costs are warranted for "reprehensible conduct" on the part of one of the parties, which encompasses not only "scandalous or outrageous" conduct, but also "milder" forms of misconduct that are "deserving of rebuke.

[89] Counsel for Rock Ranger points to the following circumstances that he submits support an order of special costs against Rad Dad:

- a) Rad Dad was careless in registering the First Lien, having a clearly deficient "description of the goods" in the authorization.
- b) Rad Dad was either careless or had an improper motive in claiming outstanding amounts totalling \$208,091.05 while now asserting that only \$116,834.51 is secured by any lien. Rad Dad sought to use the *CLA* to enforce Rad Dad's debt claim rather than exercise any legitimate lien rights under the *CLA*.
- c) Prior to the seizure, Rad Dad's counsel objected to the insufficiency of the "description of the goods", and a warning of special costs was made, which was reiterated by Rock Ranger subsequently.
- d) Rad Dad enforced the First Lien, knowing of certain deficiencies. Rad Dad was never able to validly file a lien, given the inadequate "description of the goods" in the August Written Agreement, rendering the First Lien unenforceable.
- e) Rad Dad seized the Unlisted Seized Goods, having no right to do so based on its own Warrant and the First Lien. In doing so, Rad Dad purported to seize over \$1,566,895 in goods without authority and then

sought to register the Second Lien, in an attempt to justify the seizure as lawful *ex post facto*.

- f) Rad Dad delivered a Notice of Disposition on December 20, 2025, despite knowing that the "description of goods" was being challenged by Rock Ranger as inadequate and that Rock Ranger intended to bring a court petition to address the validity of the liens.
- g) In December 2025, Mr. Burch engaged in other extrajudicial conduct, namely contacting other parties with which Rock Ranger does business, to create greater pressure on Rock Ranger to exert payment of his Debt Claim. Mr. Burch acknowledged in his affidavit material that he did so in order to gain leverage over Mr. Werrun and Rock Ranger.
- h) Rad Dad seized over \$2,456,214 in estimated value of goods to secure a debt of \$116,834.51, and Rock Ranger's requests for a partial discharge on December 23 and 24, 2025, were not answered.
- i) As of December 18, 2025, Rad Dad was put on notice of the significant business losses its actions were causing Rock Ranger and which are particularized in Mr. Werrun's December 29, 2025, affidavit, including notice that the seized goods represented substantially all of Rock Ranger's equipment and its seizure resulted in its worksite being shut down.
- j) Rad Dad's response materials on January 12, 2026, had multiple admissibility issues, including the inclusion of without prejudice correspondence. Despite those issues being flagged by counsel for Rock Ranger on the same date, Rad Dad did not correct any of those issues and instead sought to serve eight (8) new reply affidavits, which still contained inadmissible without prejudice communications between counsel.

[90] Counsel for Rad Dad takes the position that the respondent did not engage in reprehensible conduct but rather took steps required under the *CLA* to show that it was “serious about moving ahead” with its lien claims. Counsel argues that Rock Ranger should not be awarded special costs because it still owes approximately \$208,099.32 in relation to the April Oral Agreement, the August Written Agreement, together with interest and costs. Counsel submits that if costs are ordered against Rad Dad, it should not be required to pay such costs order until after the Debt Claim is concluded.

[91] Rule 14-1(9) of the *SCCRs* provides that costs must be awarded to the successful party unless the court orders otherwise. Rock Ranger has been entirely successful in this petition proceeding, and I see no reason to depart from the rule that costs follow the event.

[92] Nor am I prepared to delay either assessment or payment of costs until after the conclusion of the Debt Claim. This is a separate proceeding that is now concluded, and it is therefore appropriate to address the issue of costs at this time.

[93] In the case of *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914, the court noted at para. 8 that:

Special costs are awarded where a litigant engaged in reprehensible conduct. The purpose of an award of special costs is to chastise a litigant. Special costs are punitive in nature and encompass an element of deterrence. A wide meaning is given to the word “reprehensible”. The term represents a general and all encompassing expression of the applicable standard for an award of special costs. “Reprehensible” conduct includes conduct that is scandalous, outrageous, or constitutes misbehaviour, as well as milder forms of misconduct that in a court’s view deserves reproof or rebuke. In determining whether the conduct of a party is reprehensible, courts may consider whether the conduct complained of is a type from which it should seek to dissociate itself: *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 1994 CanLII 2570 (BC CA), 119 D.L.R. (4th) 740 at 745 - 747 (C.A.); *Stiles v. B.C. (W.C.B.)* (1989), 1989 CanLII 235 (BC CA), 38 B.C.L.R. (2d) 307 at 311 (C.A.); *Leung v. Leung* (1993), 77 B.C.L.R. (2d) 314 at para. 5 (S.C.); *International Hi-Tech Industries Inc. v. FANUC Robotics Canada Ltd.*, 2007 BCSC 1724 at para. 6; and *Fullerton v. Matsqui (District)* (1992), 74 B.C.L.R. (2d) 311 at para. 23 (C.A.).

[94] Justice Gropper, in the case of *Westsea Construction Ltd v. 0759553 BC Ltd.*, 2013 BCSC 1352, provided the following helpful summary of the principles for awarding special costs:

[73] I have undertaken a thorough review of the cases involving special costs. Having examined the authorities provided by both sides, it is apparent to me that the courts have been somewhat inconsistent in their determination of what amounts to reprehensible conduct and that those authorities must be reconciled. Based upon my review of the authorities, I have derived the following principles for awarding special costs:

- a) the court must exercise restraint in awarding special costs;
- b) the party seeking special costs must demonstrate exceptional circumstances to justify a special costs order;
- c) simply because the legal concept of “reprehensibility” captures different kinds of misconduct does not mean that all forms of misconduct are encompassed by this term;
- d) reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court’s process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant;
- e) special costs can be ordered against parties and non-parties alike; and
- f) the successful litigant is entitled to costs in accordance with the general rule that costs follow the event. Special costs are not awarded to a successful party as a “bonus” or further compensation for that success.

[74] I will also comment upon the procedure of special costs applications.

[75] The object of the *Rules* is to secure the just, speedy and inexpensive determination of every proceeding on its merits: R. 1-3(1). This includes, so far as practicable, that the proceeding be conducted in a manner that is proportionate to the amount involved, the importance of the issues in dispute and the complexity of the proceeding. Costs are not the central focus of litigation. The disposition of costs should be conducted in a manner that recognizes their secondary importance. As such, the court’s examination of whether to award special costs ought not to require, as an example, a detailed examination of the correspondence record between the parties to determine whether they conducted themselves properly.

[95] While some of the circumstances referred to by counsel for Rock Ranger are somewhat concerning, I am not persuaded that the behaviour in this litigation necessarily rises to the level of reprehensible conduct that warrants an award of special costs.

[96] Even if some of Rad Dad's positions lacked merit, that alone will not justify an award of special costs. The deficiencies in the affidavit material filed by Rad Dad, including hearsay, unattributed hearsay and attaching without prejudice communications with counsel appear to have been the result of inexperienced counsel attempting to put a complete record of communications before the court but failing to understand the restrictions in the use of without prejudice communications in litigation. While that conduct was inappropriate and close to the line, I am not prepared to find that it is reprehensible conduct for the purposes of costs. In my view the circumstances relied on by Rock Ranger do not reach the threshold of exceptional circumstances sufficient to justify a special costs order.

[97] I therefore order that the petitioner is entitled to its ordinary costs of this petition proceeding at Scale B, to be assessed. This order is subject to counsel filing within 30 days a request to appear before me to make further submissions with respect to any offers to settle and/or uplift costs.

"The Honourable Madam Justice Church"