

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1110486 B.C. Limited v. Cancon
Construction Ltd.,*
2026 BCSC 1532

Date: 20260812
Docket: S250905
Registry: Vancouver

Between:

1110486 B.C. Limited

Petitioner

And

Cancon Construction Ltd.

Respondent

Before: The Honourable Justice J. Hughes

Reasons for Judgment

Counsel for the Petitioner:

S. Coblin
(March 11-12, 2026)
S. Lal
(July 30, 2026)

Counsel for the Respondent:

M. Dew

Place and Dates of Hearing:

Vancouver, B.C.
March 11-12 and July 30, 2026

Place and Date of Judgment:

Vancouver, B.C.
August 12, 2026

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Overview

[1] The petitioner, 1110486 B.C. Limited, applies under s. 25 of the *Builders Lien Act*, S.B.C. 1997, c. 45 [Act], for cancellation of two liens filed by the respondent, Cancon Construction Ltd. (“Cancon”).

[2] The petitioner is the owner of a property located at 9500 Garden City Road in Richmond, British Columbia (the “Property”). It contracted with a related entity, KPI Construction (Reverie) Ltd. (“KPI”), as general contractor for the construction of “Reverie Kingdom”, a 13-unit residential townhome development (the “Project”) on the Property.

[3] Cancon provided on-site and off-site civil work services for the Project, both as a subcontractor to KPI and pursuant to a contract with the petitioner directly. On June 14, 2024, Cancon filed two claims of lien against title to the Property: Claim of Lien No. CB1379799 (“the General Lien”) and Claim of Lien No. CB1379808 (the “Civil Lien” and collectively the “Liens”).

[4] In this petition, the petitioner seeks declarations that the Liens are defective and/or improper as they were filed late relative to the filing periods provided by ss. 20(1) and (2) of the *Act*. The petitioner also seeks declarations that Cancon’s claim of lien against any holdback it retained from KPI under the general contract is extinguished, and that the lien security be released to it. Cancon opposes the relief sought on the basis that the Liens were properly filed in accordance with the *Act*.

[5] This is the second petition filed in relation to the Liens. On August 2, 2024, KPI filed a petition under proceeding S-245247 (the “KPI Petition”) seeking largely the same relief as the petitioner seeks in this petition. The same individuals who filed affidavits in support of this petition, also did so in support of the KPI Petition, namely: Zhen (Anthony) Cao, a representative of the petitioner, and Matthew Cheng, a representative of the payment certifier, Matthew Cheng Architect Inc. (“MCAI”). Cancon filed its response to the KPI Petition on August 29, 2024. No steps appear to have been taken in the KPI Petition since October 2024.

[6] There is also a related builder's lien action brought by Cancon against the petitioner, KPI, Mr. Cao, Kan Tian, and Randy Zhao under Vancouver no. S-248380, seeking a declaration that it is entitled to a lien and judgment for \$530,254.47, among other relief (the "Lien Action").

[7] This petition was filed on February 5, 2025, and amended on June 2, 2025. In the course of the hearing of this petition, I ordered that the affidavits filed in the KPI Petition may be used as evidence in this proceeding. An order had also previously been made relieving the parties from the implied undertaking to permit documents produced by KPI in the Lien Action to be used in this proceeding.

Facts

[8] By way of a CCDC 2 – 2020 Stipulated Price Contract dated August 10, 2022, the petitioner contracted with KPI as general contractor for construction of the Project (the "KPI Contract"). The original contract price was \$4,978,228.50 and subsequently increased to \$4,990,309.44, plus GST by way of change order.

[9] Mr. Cao is a project manager employed by Kingdom Property Investment Ltd., a company affiliated with both the petitioner and KPI. From 2022 to 2024, Mr. Cao performed project management services for the petitioner in relation to the Project. It is unclear in the evidence what role, if any, Mr. Cao held with KPI.

[10] Matthew Cheng Architect Inc. ("MCAI") was the payment certifier for the purpose of the Act in respect of amounts due to KPI under the KPI Contract. Matthew Cheng is an architect and the principal of MCAI.

[11] In May 2023, KPI entered into a subcontract with Cancon for the on-site and off-site civil work components of the Project for \$1,000,000 plus GST (the "Cancon Subcontract").

[12] Separately, in June 2024, the petitioner contracted directly with Cancon for the construction of storm and sanitary sewer connections—with the City of

Richmond's sewer mains—for a contract price of \$65,000 plus GST (the "Sewer Services Contract").

Certificate of Completion and Notice of Certification of Completion of the KPI Contract

[13] On January 31, 2024, KPI submitted Progress Claim No. 18 in relation to the KPI Contract identifying \$60,288.85 as the value of work then remaining relative to the contract price of \$4,990,309.44. The same day, Mr. Cao emailed Mr. Cheng advising that KPI had reached substantial completion per his calculations and requesting that Mr. Cheng "release the certificate of completion accordingly".

[14] In response, Mr. Cheng outlined the procedure for substantial completion. He also advised Mr. Cao that assuming a substantial completion date of February 5, 2024, the "Lien period will start on Feb 05 for 45 days so that people could put lien on the property if required".

[15] After receiving Mr. Cao's email, Mr. Cheng visited the Project to review the reasonableness of the percentage completion claimed in Progress Claim No. 18. In doing so, he testified that he reviewed each line item under the KPI Contract to estimate the remaining value left to be completed and "toured the Project, taking pictures of the different areas still under construction to identify the value left to be completed".

[16] Mr. Cheng does not, however, say when he visited the site and does not describe the remaining work in any detail. Mr. Cheng's affidavit also fails to exhibit any of the photographs he said he took showing the status of the work at that time. This omission is particularly notable given that in his first affidavit in the KPI Petition, Mr. Cheng gave essentially the same evidence about the process he undertook prior to issuing the Certificate, but made no mention of having toured the Project or taking photographs of the areas still under construction—that evidence was new in response to this petition. In the circumstances, I find that Mr. Cheng's failure to exhibit the photographs he says he took or provide any detail about the remaining

work as of February 6, 2024, is a significant omission that undermines the weight that can be given to his evidence.

[17] Mr. Cheng's evidence is that he was satisfied "of the reasonableness of the claimed progress" and that "the remaining value of construction fell below the \$64,903.09" cost to complete formula under the *Act* for determining substantial completion of a stipulated price contract. Mr. Cheng therefore issued a Certificate of Completion of the KPI Contract dated February 6, 2024, (the "Certificate") and prepared a corresponding Notice of Certification of Completion (the "Notice"). Mr. Cheng emailed the Notice to Mr. Cao that same day and instructed him to "print it in color [sic] and post it at a Noticeable location. Please also take a picture."

[18] Mr. Cheng testified that it was his "standard practice" and what he understood to be "general architectural practice in British Columbia" to rely on the general contractor or developer to post a notice of certification of completion on a project site. Mr. Cheng was not tendered as an expert witness and thus I give no weight to his evidence about general architectural practice. I do, however, note that to the extent his personal practice is to rely on the contractor or developer to post notices of certification of completion, this practice appears to be contrary to s. 7(4)(c) of the *Act*, which requires the payment certifier—not the developer or contractor—to post the notice of certification of completion in a prominent place on the improvement. However, nothing turns on this for present purposes as Cancon does not rely on Mr. Cheng's failure to post the Notice as a basis for invalidating it.

[19] Mr. Cao posted a copy of the Notice at the Project by taping it on one of the two French doors on a mechanical closet inside the Project's site office. It is unclear precisely when he did this; his evidence is that he did it "on or about February 9, 2024". Mr. Cao also testified that the photograph of the posted Notice exhibited to his affidavit was taken on February 26, 2024. There is no explanation for why these things were done on different dates. Mr. Cheng says that Mr. Cao showed him where he had posted the Notice "on [his] next visit" to the Project after issuance of

the Certificate and Notice. Neither Mr. Cao nor Mr. Cheng say when Mr. Cheng's visit occurred.

[20] The site office was located in the garage of Unit #9, which unit was located at the far north end of the development and was the last unit sitting parallel to Glenallan Gate Road. The garage was large enough to fit two vehicles and had two access doors: a typical double-wide garage door for vehicle access, and a second conventional door for pedestrian access. When viewed from the garage door, the mechanical room was located at the back left side of the garage.

[21] The doors of the mechanical closet faced towards the righthand side of the garage space, perpendicular to the garage door. The pedestrian door was located on the same side of the garage as the mechanical room, also towards the back of the garage (e.g., closer to the unit than the driveway). The mechanical closet doors faced away from the pedestrian door. The doors to the mechanical closet would not have been visible from the pedestrian door. Depending on the position of the mechanical closet doors—e.g., whether one or both of them were open or shut—one or both of them may have been visible from the garage door.

[22] In his Affidavit #1 in this action made February 24, 2025, Mr. Cao said that he posted the Notice on the mechanical room door inside the site office because:

I considered that to be the best and most prominent location for posting [the Notice], because the townhouses making up the Project had no single front entrance as would have been the case in an apartment project, the location was sheltered from rain and wind, and the site office was open to and frequented by representatives of subtrades working on the Project. The mechanical room door was openly visible with no obstructions, and [the Notice] was posted at normal height.

[23] Mr. Cao repeated this evidence in his Affidavit #3 made September 4, 2025, wherein he also added the following:

I chose the mechanical room door at the site office as the prominent location for posting of [the Notice], because the site office was an accessible common meeting place protected from bad weather and other potential causes of removal of the Notice had it been placed in other locations such as outdoors. The Petitioner had control over the site conditions of the site office, including

where [the Notice] was posted. The mechanical room door was openly visible with no obstructions, and [the Notice] was posted at normal height.

[24] Mr. Cheng's evidence in his Affidavit #1 echoes Mr. Cao's on this point:

I agreed with Mr. Cao that [the door of the mechanical room] was a reasonable and prominent location for the posting of the [Notice], because the townhouses making up the Project had no single front entrance as would have been the case in an apartment project, the location was sheltered from rain and wind, and the site office was open to and frequented by representatives of subtrades working on the Project.

[Emphasis added.]

[25] The underlined portion of Mr. Cheng's evidence is verbatim the same as Mr. Cao's. It is also unclear how, in his role as architect and payment certifier, Mr. Cheng was in a position to provide firsthand—non-hearsay—evidence about the site office being “open to and frequented by” tradespeople. While these issues with Mr. Cheng's evidence may arise from petitioner's counsel having drafted both individuals' affidavits, it nonetheless raises concerns about his independence *vis-à-vis* the petitioner and KPI.

Subsequent posting of additional copies of the Notice

[26] Additional copies of the Notice were also posted in other exterior locations at the Project. The timing and circumstances surrounding the posting of the exterior copies of the Notice are questionable, as evidenced by the following sequence of events.

[27] On June 18, 2024, shortly after the Liens were filed, Cancon's counsel emailed the petitioner's counsel and requested, *inter alia*, “evidence of the posting of the [N]otice in a prominent place on the improvement.” The petitioner's counsel responded on June 21, 2024, forwarding a copy of the Notice together with four photographs, writing as follows:

As requested, I now attach the following:

...

2. Copy of the [Notice], which I am instructed was posted on site in multiple locations.

3. Photographs evidencing the posting of the Notice.

What I have sent you amply evidences that [the General Lien] was filed late, relative to a lien filing period that commenced on February 6 and expired on March 22, 2024.

[28] The first photograph depicted a copy of the Notice posted on the mechanical closet door inside the site office. This is the photograph that Mr. Cao says was taken on February 26, 2024, and which the petitioner relies on to trigger the lien filing period under s. 20(1) of the *Act*. The other three photographs depicted copies of the Notice posted in two exterior locations: (a) two photographs showing the Notice posted on a red noticeboard located alongside the electrical meters near the Garden City Way entrance to the Project; and (b) one photo showing the Notice posted on the exterior door of the Project's main exterior electrical room (the "Exterior Photos").

[29] The only reasonable inference to be taken from this email and the attached photos is that petitioner's counsel had been advised by his client and was communicating to Cancon that copies of the Notice had been posted at multiple locations in February 2024. This is the only inference that makes sense given:

- a) the filing of the Liens even days earlier;
- b) the fact that the photos were being provided in response to Cancon's counsel's request for evidence that the Notice had been posted "in a prominent place on the improvement", which is the precise language used in s. 7(4)(c) of the *Act*; and
- c) petitioner's counsel's assertion that the attached photos evidenced the lien filing period commencing on February 6, 2024.

[30] Yoshihide Kay Nakui, Cancon's construction foreman, attended at the Project on multiple occasions in February, March, April, and May 2024—including on February 9, 12, 13, 14, 15 and 16, 2024—and did not see copies of the Notice posted anywhere on the Project, either on the mechanical closet door inside the site office, or at any of the locations shown in the Exterior Photos.

[31] I also accept Mr. Nakui's evidence—which is amply supported by photographs taken at the Project on various dates in February, March, and May 2024—that the Exterior Photos could not have been and were not taken in February 2024. Consequently, I find that the Notice was not posted in the locations shown in the Exterior Photos in February 2024.

[32] This is consistent with the KPI and the petitioner's conduct subsequent to June 2024, which evidences an effort to distance themselves from the Exterior Photos and the representations made in counsel's June 21, 2024 email. The KPI Petition did not mention the Notice having been posted as shown in the Exterior Photos; KPI only relied on the Notice having been posted inside the site office. The issue of the Notice being posted as shown in the Exterior Photos was first raised by Cancon in its response to the KPI Petition.

[33] Likewise, in this petition, the petitioner does not rely on the Notice being posted as shown in the Exterior Photos. It relies solely on the Notice having been posted inside the site office. Mr. Cao's Affidavit #1 addressed the Exterior Photos in a summary way, testifying that the additional copies were posted "as a professional courtesy to the construction subcontractors and not for any other purpose." He does not say anything about who posted the exterior copies of the Notice as shown in those photos, or when those copies were posted.

[34] I do not accept this explanation. Posting notices as a "professional courtesy" months later is nonsensical in that if the Notice was properly posted on February 6, 2024, then the lien filing period would have expired on March 22, 2024, long before the Exterior Photos could possibly have been taken. It is difficult to comprehend how it would be a professional courtesy to provide notice in May 2024 for a lien filing period that had expired back in March 2024.

[35] Mr. Cao's Affidavit #3 supplements his evidence about the exterior copies of the Notice by adding that they were not posted "for the purpose of harming the Petitioner's legal rights". This statement is confusing at face value and would only

make sense if those copies were not in fact posted in February 2024—as suggested in the June 21, 2024, email—but rather at some later date.

[36] I find that the only reasonable inference arising from the evidence is that the additional copies of the Notice were not posted, and the Exterior Notice Photos not taken, until some point after May 8, 2024, at the earliest. Considering the preponderance of the evidence, I find that the Exterior Photos were likely taken after Cancon filed the Liens and requested evidence of posting of the Notice.

Completion of the Project and Lien filings

[37] In early March 2024, KPI submitted Progress Claim No. 19 dated March 4, 2024, which stated that there was approximately \$18,488.85 of work then remaining. Following receipt of this progress claim, Mr. Cheng visited the Project to review the reasonableness of the percentage completion claimed. His evidence is that he again toured the Project and took pictures of the different areas still under construction to identify the value of work left to be completed. Again, no such photographs are in evidence before me.

[38] On March 8, 2024, Cancon issued invoices for:

- a) \$712,466.89 on account of final progress claims for the on-site and off-site civil works and the 10% builder's lien holdback under the Cancon Subcontract; and
- b) \$6,825.00 on account of the statutory builder's lien holdback retained by the petitioner under the Cancon Sewer Services Contract.

[39] Since early January 2024, Cancon had been experiencing issues obtaining timely payment of its invoices. On March 8, 2024, Nick Bersenev, operations manager for Cancon, emailed "final" invoices to Mr. Cao for Cancon's work, writing as follows:

Didn't get all owed payments today unfortunately, I see my January invoices are now having excuses made that bank cutoff was reached, not a problem

caused by Cancon – problem created by KPI not reviewing them with Core in time. Everything was sent in time for proper review.

We are on the tail end of the job, so I am sending in two final invoices that will take the job to completion – both addressed as Feb but you’ll say the cut off with the bank was already reached so nothing will happen with them till end of the month anyway – so by end of month everything will be done so invoices are claiming everything done projected to end of the month.

[40] The petitioner submits that Mr. Bersenev’s comment that they were “on the tail end of the job” shows that Cancon was aware that the Project was approaching completion and thus should have been aware of that the lien filing period was likely running. I disagree. In my view, Mr. Bersenev was clearly referring to Cancon’s work—not the KPI Contract or the Project as a whole—when he said in his email to Mr. Cao that they were on the “tail end of the job”. This is consistent with the status of Cancon’s work at the time, and the status of the Project as a whole, as evidenced by the fact that the units were not conveyed to purchasers until May 2024.

[41] Due to the payment issues that Cancon was experiencing, it filed a claim of lien for \$712,466.89 on March 12, 2024. The parties subsequently met and Mr. Bersenev understood that a “handshake” deal settling the amount to be paid to Cancon had been reached. Accordingly, on March 26, 2024, Cancon released its that claim of lien.

[42] Also in March 2024, the petitioner released the KPI Contract builder’s lien holdback to KPI with \$493,002.06 being released on March 28, 2024, being the principle amount held back; and \$24,650.10 being released on May 30, 2024, on account of the GST payable in respect of the amounts held back. Another progress payment under the KPI Contract in the amount of \$19,599.86 was made by the petitioner to KPI on May 2, 2024.

[43] Purchaser walkthroughs of the residential units took place in mid-March 2024.

[44] The Project was energized by BC Hydro in late April or early May 2024.

[45] However, conveyancing of the residential units to purchasers did not occur until late May 2024. Mr. Cao testified that this was because of:

- a) delay in completing BC Hydro's utility work under a contract between BC Hydro and the petitioner to May 2024;
- b) delay in the City of Richmond issuing occupancy permits, for which completion of the BC Hydro work was a prerequisite; and
- c) time required to complete conveyancing formalities after the occupancy permit was eventually issued.

[46] There is no evidence of when occupancy permits were issued by the City.

[47] The Liens were filed on June 14, 2024. They were subsequently discharged from the Property with the total amount of the Liens being held in trust by Oval Village Law to stand as security.

Statutory Framework

[48] The petitioner seeks cancellation of the Liens under s. 25 of the *Act* on the basis that they were filed out of time. Section 25 provides for the summary disposition of liens where the lien is defective or has lapsed for any of the reasons set out in ss. 25(1) or (2)(a): *Frontier Kemper Constructors, Inc. v. Rio Tinto Alcan Inc.*, 2022 BCSC 868 [*Frontier*] at para. 27, citing *West Fraser Mills Ltd. v. BKB Construction Inc.*, 2012 BCCA 89 at paras. 3 and 19.

[49] The petitioner relies on s. 25(1)(a) of the *Act*, which provides in material part that a lien may be cancelled if the Court is satisfied that it was extinguished under s. 22 because it was not filed within the required time under the *Act*. Pursuant to s. 86 of the *Strata Property Act*, S.B.C. 1998 c. 43, the *Act* applies to land in a strata plan.

[50] The time limit for filing a claim of lien is prescribed by s. 20 of the *Act*, which contemplates multiple potential triggers depending on the circumstances:

Time for filing claim of lien

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.

[51] The petitioner's primary position is that the lien filing period was triggered by issuance of the Certificate and posting of the Notice such that s. 20(1) applies. Alternatively, if the Certificate was not properly issued and thus s. 20(1) does not apply, then it says that s. 20(2) is the operative provision and the lien filing period was triggered by either *de facto* completion of the KPI Contract as a head contract under s. 20(2)(a), or completion of the improvement under s. 20(2)(b).

[52] Cancon says that the Notice was not posted in a "prominent" location on the improvement and as such, s. 20(1) does not apply. It also says that the KPI Contract was not a head contract and thus the time for filing the Liens was triggered when the Project was completed, pursuant to s. 20(2)(b) of the *Act*.

Issues

[53] To determine whether the Liens were filed out of time and thus ought to be cancelled under s. 25(1)(a) of the *Act*, I must consider the following issues:

- a) whether the Notice was validly issued to trigger the lien filing period under s. 20(1)(a), which turns on whether the Notice was posted in a "prominent" location as required by s. 7(4)(c) of the *Act*;
- b) if the Notice was not validly issued, whether the KPI Contract was a head contract so as to trigger the lien filing period under s. 20(2)(a) of the *Act*, which turns on:
 - i. what constitutes the "improvement"; and

- ii. whether the KPI Contract was for all or substantially all of the work respecting the improvement; and
- c) if the KPI Contract was not a head contract, when the improvement, or a substantial part thereof, was ready for use or being used for its intended purpose to trigger the lien filing period under s. 20(2)(b) of the *Act*.

[54] Both Liens were filed on June 14, 2024. Therefore, in order for the Liens to be extinguished under s. 22 of the *Act*, the 45-day post-completion lien filing period must have commenced on or before April 30, 2024. Put differently, if the triggering date for the lien filing period under s. 20 is earlier than April 30, 2024, then the Liens were filed out of time.

[55] With respect to the General Lien, the petitioner's primary position is that the lien filing period for the General Lien was triggered by issuance of the Certification and posting of the Notice on February 6, 2024, and thus expired on March 22, 2024. Alternatively, it says that *de facto* completion of the KPI Contract was achieved on March 4, 2024, and thus the lien filing period under s. 20(2)(a) expired on April 18, 2024. In the further alternative, the petitioner says that the improvement was substantially completed as of mid-March 2024, such that the lien filing period under s. 20(2)(b) expired at the end of May 2024.

[56] With respect to the Civil Lien, no certification of completion was issued in respect of the Sewer Services Contract. The petitioner thus relies on s. 20(2) and asserts that the work under the Sewer Services Contract was completed no later than March 8, 2024. Thus, the petitioners say that the 45-day lien filing period expired on May 2, 2024, and the Civil Lien was thus also filed late.

Analysis

[57] The remedies provided under the *Act* are purely statutory. Lien claimants must therefore strictly comply with the timelines provided therein. The Court does not have the discretion to extend the time for filing a claim of lien or to relieve a lien claimant of the consequences of failing to do so: *Marbella Pacific Construction Ltd.*

v. Fast Trac Bobcat & Excavating Services & Coast Aggregates Ltd., 2002 BCSC 803 at para. 32; *W Redevelopment Group, Inc. v. Allan Window Technologies Inc.*, 2010 BCSC 1601 [*W Redevelopment*] at para. 51.

[58] The petitioner bears the burden of proving, on a balance of probabilities, that the Liens were extinguished under s. 22 because they were filed outside of the 45-day timeframe under s. 20(1) or (2) of the *Act*: *W Redevelopment* at paras. 77–78.

[59] The issues on this application require interpretation of various provisions of the *Act*. The principles of statutory interpretation are well-established and apply to the *Act*: *Frontier* at para. 39. As the Court of Appeal held in *Iberdrola Energy Projects Canada Corporation v. Factory Sales & Engineering Inc., d.b.a. FSE Energy*, 2018 BCCA 272 at paras. 28–34, the modern rule of statutory interpretation applies, namely that:

... 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.

[60] This is consistent with s. 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, which provides that: “Every enactment must be construed as being remedial, and must be given such fair, large, and liberal construction and interpretation as best ensures the attainment of its objects”.

[61] As set out in *Frontier* at paras. 42-45, the purposes of the *Act* include:

- a) Ensuring that contractors and workers are paid for materials provided and services rendered;
- b) Providing security for contractors, subcontractors, workers, and materials suppliers who contribute to improvements to land; and
- c) bringing commercial certainty to construction projects.

[62] Fairness to all stakeholders in the construction industry is also a relevant consideration: *Frontier* at para. 43, citing *Bank of Montreal v. Peri Formwork Systems Inc.*, 2012 BCCA 4 at para. 62. As such, when interpreting the *Act*, the Court must consider how the *Act* balances the interests of various players in the construction industry, recognizing that security by way of a lien is given at the expense of the landowner: *JVD Installations Inc. v. Skookum Creek Power Partnership*, 2022 BCCA 81, leave to SCC ref'd, 40172 (9 February 2023) at para. 40. In this respect, the *Act* attempts to balance competing interests by providing a mechanism to discharge a lien upon the payment of sufficient security (s. 24), or to cancel a claim of lien where the claim is, *inter alia*, defective (s. 25): *Centura Building Systems (2013) Ltd. v. 601 Main Partnership*, 2018 BCCA 172 at para. 19.

[63] I have interpreted the provisions of the *Act* in issue on this application in accordance with these principles.

Section 20(1) – Was the Notice posted in a “prominent” location?

[64] Under s. 20(1) of the *Act*, the lien filing period may be triggered by a certificate of completion being issued in relation to a contract.

[65] It is undisputed that the Certificate was issued on February 6, 2024, and that it was in the correct form under the *Act*. It is also undisputed that the Notice was posted on the door of the mechanical closet in the site office. The issue is whether that was a “prominent” location as required under s. 7(4) of the *Act*, so as to trigger the lien filing period under s. 20(1) of the *Act*.

[66] Section 7(3) of the *Act* provides that within 10 days of a request by the contractor, the payment certifier—here Mr. Cheng for MCAI—must determine whether the contract has been completed and if so, must issue a certificate of completion. Section 7(4) then provides that after a certificate of completion is issued, a notice of certification of completion must be posted in a prominent place on the improvement:

(4) If a certificate of completion is issued, the payment certifier must, within 7 days,

- (a) deliver a copy of the certificate to the owner, the head contractor, if any, and the person at whose request the certificate was issued,
- (b) deliver a notice of certification of completion to all persons who submitted a request under subsection (2) in relation to the contract or subcontract, and
- (c) post, in a prominent place on the improvement, a notice of certification of completion.

[Emphasis added]

[67] While the prescribed form of a certificate of completion is permissive, the requirement to post a notice of certification of completion in a prominent place on the improvement within seven days of issuance is mandatory: *W Redevelopment* at para. 65, citing *Alterra Property Group Ltd. v. Doka Canada Ltd.*, 2008 BCSC 1880 at para. 13. The mandatory nature of this requirement is consistent with the purpose of the notice of certification of completion, which is “to give notice to potential lien claimants that the time for filing the liens may be abridged and their lien rights potentially lost”: *Alterra* at para. 14.

[68] In *W Redevelopment*, the Court held that there was no effective notification to a lien claimant where the certificates of completion and notice of certification of completion did not comply with the *Act*:

[69] Here there was no effective notification to the respondent because the certificates of completion signed by Mr. Leung did not comply with the *BLA*. Further, there was no notice of certification of completion where the petitioner failed to either issue notices in the prescribed form or to post certificates which clearly identified the contracts or subcontracts to which they related and contained a clear warning that the time to file a claim of lien might be abridged.

[69] The Court in *W Redevelopment* went on to conclude that the certificates of completion were invalid: para. 70. In so concluding, the Court, at para. 68, cited Justice Allan’s obiter commentary in *Alterra* wherein she opined that the process of issuance of a certificate of completion is not complete absent communication to potential lien claimants by posting it on the improvement:

[15] Counsel disagree as to whether the word “issued” in ss. 8 and 20 simply refer [sic] to completing the Certificate of Completion or requires that it be posted under s. 7(4). As I have found that there was no effective Certificate of Completion issued, it is not necessary to decide this point. However, in *obiter dicta* I would note that in my opinion the process of issuance is not complete unless there is some communication of the document. Presumably that is why s. 7(4) imposes a mandatory requirement to post a Notice of Certification of Completion on the improvement. It is consistent with the scheme of the act that subcontractors must be notified of such certificates.

[emphasis added]

[70] I agree with and adopt Allan J.’s commentary in *Alterra*. In my view, it would defeat the purposes of the *Act*—particularly the notice-giving function of notices of certification of completion and the overarching goal of bringing certainty to the construction industry—if the process of issuing a notice of certification of completion could be considered complete for the purpose of triggering the lien filing period under s. 20(1) without it being posted in a prominent place on the improvement as required by s. 7(4) of the *Act*. This finding is also consistent with *Clough Pacific Joint Venture and PPM Civil Contractors, ULC v. AECOM Canada Limited*, 2025 BCSC 164, which suggests that the 45-day period for filing claims of lien may not be triggered if s. 7(4)(c) is not complied with: paras. 51–52. Accordingly, the petitioner cannot rely on the lien filing period having been triggered under s. 20(1) by posting the Notice on the mechanical closet door in the site office if that was not a “prominent” location on the improvement.

[71] The term “prominent” is not defined in the *Act*, and the parties were unable to identify any case law in which it has been interpreted in this context. Where a term is not defined in the *Act*, the courts have referred to definitions found in the *Concise Oxford English Dictionary*: see e.g., *Paladin Security Systems Ltd. v. JBLK Enterprises Inc.*, 2010 BCCA 532 at para. 12; *Wah Fai Plumbing & Heating Inc. v. Ma*, 2011 BCCA 26 at para. 67. The *Concise Oxford English Dictionary*, 12th ed, defines “prominent” as meaning “particularly noticeable”.

[72] In his Affidavit #1, Mr. Cao testified that the site office was open on working days from 8:00 a.m. to 5:00 p.m. “with its front entry door usually open”. Given that the garage door is the only one mentioned in that affidavit and is located at the front

of both the garage and the unit, I understand Mr. Cao to be referring to the garage door as the “front entry door”. Mr. Cao repeated this evidence in his Affidavit #3.

[73] However, the evidence Mr. Cao gave about when the garage door was open in his Affidavit #2 was different. In that affidavit, he stated that the garage door was only open “from time to time, in order to access extension cords, and to move things in and out of the Site Office.” Given the importance of this point in terms of whether the door of the mechanical closet inside the site office constituted a prominent place to post the Notice, Mr. Cao’s contradictory evidence undermines the weight that I can give to his evidence on this point and gives rise to concerns about the credibility of his evidence more generally.

[74] This is especially the case when Mr. Cao’s evidence is considered in light of Mr. Bersenev and Mr. Nakui’s. Both of whom testified that despite visiting the Project during the time frame in which the Notice was posted in the site office, they did not see it. I accept their evidence on this point. There is also no evidence that any other contractor who worked on the Project saw the Notice posted in the site office.

[75] Mr. Bersenev’s evidence, which I accept, is that he has frequently seen notices of certification of completion posted in conspicuous places on other projects he has worked on and that they are typically posted on outdoor notice boards and at muster stations—in clear plastic sleeves to protect them from the weather—or on the inside of lobby windows facing outwards. I find that these examples illustrate the types of “prominent” locations for posting notices of certification of completion on an improvement contemplated in the *Act*.

[76] Prominent locations are, by definition, ones that are particularly noticeable. I am not persuaded that the mechanical closet door inside the site office was a sufficiently prominent location. I accept Mr. Bersenev’s and Mr. Nakui’s evidence they were on site when the Notice was posted and never saw it. I also note the absence of any evidence that any other contractor or tradesperson saw the Notice.

[77] In so concluding, I reject Mr. Cao's evidence that the site office was readily accessible to contractors and that they came and went from it frequently or regularly. I also note Mr. Cao's conflicting evidence about the garage door being open either "usually" or "from time to time" and find the former option to be nonsensical because if the garage door was "usually" open, then all of equipment in the site office would be exposed to the elements during the winter—something that Mr. Cao said he wanted to avoid when he decided to post the Notice inside the office—particularly as the relevant time frame was in the winter. I also have overarching concerns about Mr. Cao's credibility arising from internal and external inconsistencies in his evidence and the issues surrounding the late posting of the additional "courtesy copies" of the Notice.

[78] I prefer Mr. Nakui's evidence on this point and find that after the garage was constructed and the garage door for vehicles was installed, the garage door was typically closed—likely to insulate the site office from the weather—and thus, access to the site office in the garage would have been through the pedestrian door. I also accept Mr. Nakui's evidence that the garage was a relatively small and relatively private area used by KPI, not a gathering place used by subcontractors and tradespeople more generally. When Mr. Nakui needed to speak with KPI employees, he typically used the pedestrian door and conversed with them while standing in the doorway. From that vantage point, the mechanical closet door would not have been visible.

[79] The petitioner only relies on having posted the Notice on the door of the mechanical closet in the site office to trigger the lien filing period under s. 20(1). It does not rely on the exterior copies of the Notice that were posted as shown in the Exterior Photos and thus says that I can effectively ignore the evidence pertaining to those copies and not make any credibility determinations. I disagree. Credibility is a factor the Court cannot ignore in considering the evidence before it. Credibility determinations can be made based on affidavit evidence, even where credibility is a "critical factor" upon which the judgment rests (though that is not the case here): see

e.g. *Amacon Alaska Development Partnership v. ARC Digital Canada Corp.*, 2023 BCCA 34 at paras. 40-43.

[80] Cancon submits that the fact that copies of the Notice were posted in outdoor locations at some point after February 2024 is an admission that posting on the mechanical closet door inside the site office was not sufficiently prominent to comply with s. 7(4)(c) of the *Act*. While I would not go so far as to find that this constitutes an admission, for the reasons set out above, I agree that the fact of the exterior copies having been posted and the petitioner's subsequent attempts to resile from the Exterior Photos, provides further circumstantial evidence that the initial posting of the Notice inside the site office was not sufficiently "prominent" to comply with the *Act*.

[81] I therefore conclude that the mechanical closet door inside the site office was not a particularly noticeable location and thus not a sufficiently "prominent" location on the improvement at which to post the Notice as required under s. 7(4)(c) of the *Act*. By consequence, the lien filing period under s. 20(1) of the *Act* was not triggered by the posting of the Notice on the mechanical closet door in the site office.

Section 20(2)(a) – Was the KPI Contract a head contract?

[82] Where there is head contractor and the head contract has been completed, the 45-day lien filing period runs from the completion date of the head contract under s. 20(2)(a) of the *Act*. The petitioner says that the KPI Contract was for substantially all of the work in respect of the improvement and thus was a head contract for the purpose of s. 20(2)(a). In the petitioner's submission, the KPI Contract was *de facto* complete before April 30, 2024, and therefore the Liens were filed out of time.

[83] Cancon says that the KPI Contract was not a head contract because it was not for substantially all of the work, and as such, s. 20(2)(a) has no application. Alternatively, Cancon says that even if the KPI Contract was a head contract, then *de facto* completion of the KPI Contract was not achieved under the 3-2-1 formula before April 30, 2024, and therefore the Liens were filed in time.

(a) Was the KPI Contract a head contract?

[84] In s. 1(1) of the *Act*, “head contractor” is exhaustively defined to mean “a contractor who is engaged to do substantially all of the work respecting an improvement, whether or not others are engaged as subcontractors, material suppliers or workers” (emphasis added).

[85] Section 1(1) of the *Act* defines “improvement” as follows:

“**improvement**” includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under land;

[86] Cancon relies on *NR Excavating & Services Ltd. v. Mand*, 2013 BCSC 723 [NR Excavating] at para. 62 and asserts that the “improvement” is the Reverie Project as a whole. In *NR Excavating*, a contractor was hired to complete excavation and site services work on a number of properties for a development consisting of 27 residences on 27 separate legal lots being constructed in groups of two to four adjoining homes. The Court held that the “improvement” for the purposes of s. 20(2)(b) of the *Act* consisted of the construction of the dwellings on the properties, not merely the contractor’s services, and by consequence, the 45-day time limit did not begin to run until the dwellings were complete:

[62] In the circumstances of this case, it is insensible to view the relevant “improvement” as consisting of only the work performed by JMT. JMT’s work and services formed an integral part of the construction of the dwellings in the development project. There would be no purpose in JMT’s work without constructing the dwellings. JMT’s contract was not for construction of a discrete functional improvement.

[63] A rational, common sense interpretation of the meaning of “improvement” in the circumstances of this case is that it refers either to the entire 27 residence project, or, as a minimum, to the individual clusters. On either interpretation, there was no head contract in this case, as the owners contracted with JMT and other contractors directly to perform various aspect of the work on the improvement.

[87] In so concluding, the Court rejected the owner’s submission that the work of each contractor contracting with the owner should be considered a distinct

“improvement”, noting that if this were the case, then the distinction in s. 20(2) between cases where there is a head contract and cases where there is not would be unnecessary: *NR Excavating* at para. 64. The Court also noted that interpreting “improvement” as referring to the entire functional structure was consistent with other relevant provisions of the *Act*: *NR Excavating* at para. 65.

[88] The petitioner relies on *Century Group GP Co. Ltd. v. KRS Excavating Ltd.* (22 June 2021), Vancouver S206619 (B.C.S.C.) [*Century Group*] to assert that there can be head contracts for different aspects of a project and thus in this case, the “improvement” does not mean the entire Project. In *Century Group*, the contractor provided excavating and fill services for a long-term, multi-phase development. It filed a lien well over 45 days after the contract was terminated, arguing that the improvement was not complete and so the time for filing the lien had not started running. In those circumstances, Crerar J. held that interpreting the improvement as a solitary long-term project was “not consistent or logical under the statutory scheme”: para. 14.

[89] The present circumstances are substantively different. Unlike in *Century Group*, the Project was not constructed in multiple phases over a lengthy period of time; nor was it a complex multi-tower, multi-purpose project in which different components were treated, as was the case in *W Redevelopment*.

[90] Interpreting “improvement” contextually, in its grammatical and ordinary sense, harmoniously with the scheme and object of the statute and the intention of the Legislature, I find that the “improvement” in the present case is the entirety of the Reverie Project, namely construction of the 13-unit townhouse development.

[91] It is undisputed that the petitioner contracted directly—separate from the KPI Contract—for some of the work respecting the Project. The pertinent question for present purposes is whether the amount of work contracted separately from the KPI Contract was of sufficient significance such that KPI was not engaged to do substantially all of the work respecting the Project and thus, the KPI Contract was not a head contract.

[92] The full extent to which work in respect of the Project was done outside the KPI Contract is unclear on the record. The petitioner bears the onus of proof and is the party asserting that the KPI Contract was a head contract. It is also the party best positioned to provide evidence identifying, particularizing, and quantifying the work performed outside the KPI Contract to show that KPI was engaged to perform substantially all of the work in relation to the Project, but did not do so.

[93] Given my concerns with Mr. Cao's evidence as outlined above, I am not prepared to accept his bare assertions that the KPI Contract was for "substantially all" of the work in respect of the Project. I also find it significant in this respect that despite Cancon taking the position in its response to the KPI Petition that the KPI Contract was not a head contract, the petitioner has not squarely addressed that point in the evidence it filed in support of this petition only six months later.

[94] It was not until March 2026—after Cancon pointed to documentation suggesting that a material amount of additional work had been done for the petitioner directly—that Mr. Cao addressed this in his Affidavit #4. Mr. Cao acknowledged that some work was contracted directly with the petitioner and provided an explanation for why this was the case. However, the reason why work was contracted for directly by the owner is immaterial: s. 20(2)(a) of the *Act* looks at whether or not the contractor was engaged to do all or "substantially all" of the work in relation to the improvement, not why this may or may not have been the case. It is also notable that Mr. Cao does not say that there was no other work (apart from that identified by Cancon) done under contract directly with the petitioner or provide the value of work done outside the KPI Contract.

[95] Bearing in mind that the petitioner and KPI are related parties, it is notable that the petitioner's approach to this petition is consistent with the approach KPI took in the KPI Petition. After the KPI Petition was filed, Cancon's counsel requested production of documents to enable them to assess the value of the work done on the project after April 30, 2024, including detailed invoicing from other subcontractors to KPI, records of work self-performed by KPI, and photographs of the work taking

place inside the units. KPI refused, indicating that it was content to rely on its filed affidavits, which consisted of Mr. Cao and Mr. Cheng's evidence that was in large part substantively the same as their evidence in this proceeding. Counsel took the position that:

As is appropriate and sufficient for the Petition proceeding, KPI is not prepared to enter into the wide production of documents requested in your August 7, 2024 email, but is generally content to rely on the filed Affidavit evidence.

[96] The petitioner bears the burden of establishing that the KPI Contract was a head contract, but its evidence is insufficient to persuade me that the KPI Contract was for substantially all of the work in relation to the Project. The petitioner presumably has possession or control of the information and documentation necessary to prove the full extent of work done outside the KPI Contract. It has not done so.

[97] While it is not Cancon's burden to prove that the KPI Contract was not a head contract, the evidence before me supports such a finding. In response to Cancon identifying significant work remaining after the Certificate was issued, Mr. Chen testified that he excluded a wide variety of services work—i.e., water, storm, sanitary tie-in, traffic signals, and other municipal or utility infrastructure connections—when applying the 3-2-1 formula to the KPI Contract. This suggests that there was a significant amount of work being done outside the KPI Contract such that it was not for substantially all of the work respecting the improvement.

[98] Finally, while the record does not permit a conclusive determination of the full scope or precise dollar value of work contracted directly with the petitioner, I am satisfied on a balance of probabilities that at a minimum, work in excess of \$400,000 was likely contracted for outside the KPI Contract. I accept Cancon's evidence that work contracted directly with the petitioner outside the KPI Contract included:

- a) Cancon's work under the Sewer Services Contract at a price of \$65,000 net of GST;

- b) BC Hydro's work for the installation of all underground electrical materials up to the service connection, the price for which is unclear, but included at a minimum \$129,394 net of GST for the "extension portion" of this work, with the total value of BC Hydro's work likely amounting to over \$200,000;
- c) water service connection work, traffic signal work, and water main work by the City of Richmond for approximately \$102,000; and
- d) sanitary sewer work by Superior City Services Ltd. at a price of \$34,500.

[99] When considered in the context of the KPI Contract price of \$4,990,309.44, this represents approximately 8% of the value of that contract. I find that this is a substantial amount of work and supports a finding that the KPI Contract was not for substantially all of the work respecting the improvement.

[100] I therefore conclude that the petitioner has thus not met its onus of establishing on a balance of probabilities that the KPI Contract was for all or substantially all of the work in relation to the improvement and thus has not established that it was a head contract for the purpose of s. 20(2)(a) of the *Act*.

(b) When was the KPI Contract substantially complete?

[101] Given my conclusion that the KPI Contract was not a head contract, it is unnecessary to determine when substantial completion occurred under the 3-2-1 formula prescribed by s. 1(2) of the *Act*.

[102] Moreover, absent fraud or collusion between the payment certifier and the owner, a certificate of substantial performance cannot be set aside, including for reliance on incorrect or incomplete information supplied by a contractor: *Ram Construction Inc. v. JBLK Enterprises Inc.*, 2010 BCSC 1333 at para. 36.

[103] If it were necessary to determine whether there was fraud or collusion between the petitioner and MCAI, I would not be able to do so on the record presently before me on account of significant gaps and conflicts in the parties' evidence on material points. In my view, to find the facts necessary to determine

whether there was collusion between Mr. Cao (on behalf of the petitioner or KPI) and Mr. Chen (on behalf of MCAI), document production and cross-examination of Messrs. Cao and Cheng on their affidavits, at a minimum, would be required.

[104] Thus, absent a conclusion that the KPI Contract was not a head contract, I would have invited further submissions from the parties in respect of hybrid procedures and potential referral of this issue to the trial list.

Section 20(2)(b) – When was the “improvement” completed?

[105] By consequence of my determination that s. 20(1) does not apply and that the KPI Contract was not a head contract, the lien filing period will be triggered by s. 20(2)(b) of the *Act*. The question under s. 20(2)(b) of the *Act* is whether the “improvement” has been “completed”, not whether the contractor’s contract was completed: *Carmel Pacific Enterprises Inc. v. Spirit Equestrian Centre Ltd.*, 2005 BCCA 266 at para. 17, as cited in *1182604 B.C. Ltd. v. Orak Contracting Ltd.*, 2020 BCSC 2229 at para. 33; see also *NR Excavating* at para. 66; *Indy Electrical Ltd. v. Warn*, 2013 BCSC 2188 at para. 19.

[106] Section 1(3) of the *Act* provides that an improvement is completed if “the improvement or a substantial part of it is ready for use or is being used for the purpose intended”.

[107] As set out at paras. 64–68 above, I have found that the “improvement” is the entirety of the Project. KPI retained Cancon to provide civil on-site and off-site services under the Cancon Subcontract and the petitioner retained Cancon to provide sewer connections under the Sewer Services Contract for the Project. The work done by Cancon under its two contracts clearly related to and benefitted the Project as a whole.

[108] The Project consists of residential townhouses. I find that these townhouses were ready for use for their intended purposes when they were ready to be conveyed to purchasers. In so concluding, I reject the petitioner’s submission that the Project was ready for use when the purchaser walkthroughs were done in mid-

March 2024. The evidence demonstrates that the Project remained an active construction site after mid-March 2024 and that the residential units were not fit for use as such at that time. Most notably:

- a) The project was not energized by BC Hydro until at least six weeks later in late April or early May 2024;
- b) Significant exterior work remained ongoing, including Cancon's on-site and off-site civil services work that was necessary to providing access to and egress from the residential units; and
- c) Occupancy permits were not issued until some point in May 2024, at the earliest.

[109] Mr. Cao's own email correspondence to purchasers on March 2, 2024, confirms that the Project remained an active construction site as of mid-March 2024. Children under 16 years old were not permitted to attend the walkthroughs and attendees were required to wear safety equipment and sign a safety waiver:

... Please note we do not allow people (under 16 years old) to join the walk through and thanks for your understanding.

Please note Kingdom will provide a safety hard hat and safety vest and it is the buyer's responsibility to wear long trousers and safety boots. (no slippers and running shoes)

Please note Kingdom will need all people to sign a safety waiver sheet before entering the site.

[110] The first units in the Project were transferred to buyers starting on May 23, 2024. Cancon submits that, consequently, the lien filing period was triggered on that date and expired 45 days later on July 7, 2024, in which case the Liens were filed in time. I agree. In the absence of any evidence from the petitioner as to when occupancy certificates were granted, I find that the lien claim filing period under s. 20(2)(b) of the *Act* was triggered when the units were conveyed to purchasers starting on May 23, 2024, and expired on July 7, 2024. The General Lien was thus filed in time under s. 20(2)(b) of the *Act*.

[111] With respect to the Civil Lien, no certificate of completion was issued for that work. Thus, the lien filing period for the Civil Lien was triggered by completion of the improvement under s. 20(2)(b) of the *Act*. The Project was completed on May 23, 2024 and expired on July 7, 2024, and thus the Civil Lien was also filed in time under s. 20(2)(b) of the *Act*.

Conclusion

[112] In the result, the Liens were filed within the time prescribed by s. 20(2)(b) of the *Act*. Consequently, neither of the Liens were extinguished under s. 22, and the petitioner is thus not entitled to cancellation of either Lien under s. 25(1)(a) of the *Act*.

[113] The petition is dismissed, with costs to Cancon.

“Hughes J.”