

## THE TALE OF STRICT COMPLIANCE AND MINOR TECHNICALITIES IN A LIEN CLAIM

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Lien legislation<sup>1</sup> protects those parties that have contributed to an improvement and may not otherwise have recourse against the land owner due to a lack of contract or other legal entitlement. However, the protections afforded by the legislation must be obtained through exercising strict compliance with the law. As a recent Ontario case demonstrates, even seemingly minor technicalities can operate to bar a claimant from recovery.

In late 2021, the Ontario Supreme Court issued a decision in the case of *9727868 Canada Inc. (Plug & Play Solutions) v. Deltro Electric Ltd* that exemplifies such a situation.<sup>2</sup> The decision serves as a cautionary tale for all parties to be mindful of routine corporate filing requirements as failure to comply may set off a chain of legal consequences.

Plug and Play and Deltro Electric entered a contract for Plug and Play to supply Deltro Electric with solar panels. Plug and Play claimed Deltro Electric failed to pay for about half of the equipment costs and so Plug and Play proceeded to file a builders lien against Deltro Electric's place of work.

before the lien was filed Plug and Play had been dissolved under the *Canada Business Corporations Act* for failing to pay its annual registration fee. Upon discovering this fact, Deltro asked the court to issue an order: (i) declaring the lien had expired, (ii) discharging the lien and lien claim, and (iii) returning the security posted by Deltro.

The issue before the court was whether the court should exercise its discretion and allow the lien claim to continue.

Deltro argued that Plug and Play was dissolved at the time it filed the lien and, therefore, was ineligible to commence a lien claim at that time and that it was now out of time based on the legislated litigation period to file a new claim.

Plug and Play argued that the court ought to exercise its discretion to continue the lien because Ontario's *Construction Act* is designed to protect small businesses and the dissolution of the corporation was "*a minor technical and inadvertent slip attributed to a missed fee payment.*" Upon being made aware of Plug and Play's dissolution, its general manager

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immediately contacted the Canada Revenue Agency to pay the outstanding fee and filed the necessary document to revive the company. Such revival documents state that upon revival the corporation continues as if it had never been dissolved. Finally, Plug and Play argued that its general manager is legally blind and did not have an assistant at the time to assist him in managing the affairs of the corporation.

Unfortunately for Plug and Play the court was neither convinced by the legal arguments nor sympathetic to its circumstances. The court held that it was bound by an earlier decision, *Glencoe Insulation Co. Limited v. 3170497*, which also dealt with a lien filed by a dissolved corporation.<sup>4</sup> In *Glencoe*, the court held that the corporation "*could not be retroactively revived to validate its claim.*" Therefore, the court in the current case could not use its discretion to permit Plug and Play's lien claim to continue.

Ontario decisions are not binding in British Columbia, but they are often persuasive to BC judges. As of writing, there were no BC decisions bearing similar factual circumstances (i.e. where a corporation was dissolved when it filed a lien). Notwithstanding, there is other case law in BC that confirms that strict compliance is necessary for a valid lien claim to be formed. The general distinction lies in whether a substantive error or omission on a lien form exists or the defect is of an inconsequential nature that does not substantively effect the form or is not calculated to mislead.

For example:

- A claimant failed to meet the timelines in the Act<sup>5</sup>

- A claimant brought its claim in the wrong proceeding<sup>6</sup>
- A claimant mistakenly named a party who was not the owner<sup>7</sup>
- A claimant filed under its trade name rather than its corporate name<sup>8</sup>
- A claimant filed under its dba name, but it was not an incorporated company<sup>9</sup>
- A lien claimant's address was incorrect<sup>10</sup>

On the other hand, BC courts have held that some errors are immaterial, such as typographical errors:

- A claimant failed to enter its name and address a second time as required by form 5<sup>11</sup>
- A claimant used the wrong first name, but correct last name, to identify the owner<sup>12</sup>
- A claimant entered the owner's name in the area for the claimant<sup>13</sup>
- A claimant described the property, but the legal description contained errors<sup>14</sup>
- The court suggested inadvertently entering the due date in the area for the sum and vice versa would be immaterial<sup>15</sup>

September 2022

Sheldon Falk

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## Footnotes:

1. In British Columbia, the *Builders Lien Act*, SBC 1997, Chapter 45.
2. 2021 ONSC 8182.
3. Section 212(1)(iii).
4. 2003 CarswellOnt 6310.
5. *Park v. K.S. Mechanical Ltd.*, 2012 BCSC 1751
6. *New West Custom Homes (Kelowna) Inc. v. Parkbridge Lifestyle Communities Inc.*, 2020 BCSC 1613 aff'd 2022 BCCA 299
7. *Nita Lake Lodge Corp. v. Compact Systems (2004) Ltd.*, 2006 BCSC 885
8. *581582 B.C. Ltd. v. Habib*, 2013 BCSC 378
9. *Framing Aces Inc. v. 0733961 B.C. Ltd. dba Omni Pacific*, 2009 BCSC 389
10. *Yongfeng Holdings Inc. v Zheng*, 2019 BCSC 1534
11. *A.W. Kennedy Construction Inc. v. Wan*, 2021 BCCA 175
12. *Bridgewater Tile Ltd. v Copa Development Corporation*, 2022 BCSC 310
13. *Toska Woodworking Inc. v Balazadeh-Nayeri*, 2020 BCSC 1378
14. *Toska Woodworking Inc. v Balazadeh-Nayeri*, 2020 BCSC 1378
15. *581582 B.C. Ltd. v. Habib*, 2013 BCSC 378



**SHELDON FALK**

**604.358.6648**

**SHELDON@CIVICLEGAL.CA**

Sheldon Falk is an article law student at Civic Legal LLP and a graduate of the Juris Doctor program at UBC's Peter A. Allard School of Law. During his time at law school, he conducted legal research for judges of the BC Provincial Court as a judicial extern. He also worked at Pacific Legal Education & Outreach Society developing legal resources for BC's non-profit sector. He was awarded the Rt. Hon. Beverley McLachlin Legal Access Award for his efforts to enhance public legal education.

Prior to law school, Sheldon earned a Bachelor of Business Administration degree with an emphasis on management at North Island College, where he received the President's Award for graduating at the top of his class. He was deeply involved in student government, sitting on the students' union board, provincial executive, and numerous college committees. In part due to these efforts, he was awarded the Lt. Governor's Medal Award for Inclusion, Democracy, and Reconciliation.

Sheldon hopes to use his experiences and passion for democracy to provide world-class legal services to the public.

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710 - 900 West Hastings Street, Vancouver, BC V6C 1E5  
604.639.3639 | [www.civiclegal.ca](http://www.civiclegal.ca) |  @CivicLegal