

VI. LIENS AGAINST SPECIAL CATEGORIES OF LAND [§3.23]

A. LIENS ON UNREGISTERED LAND AND INTERESTS [§3.24]

The absence of a certificate of title in the land title office or a mineral title recorded through the mineral title online registry precludes the filing of a claim of lien under the *BLA* (*Laurentian Pacific Insurance Co. v. British Columbia*, 1991 CanLII 2185 (BC SC), applying dicta from *Defazio Bulldozing & Backhoe Ltd. v. W.A. Stephenson Construction (Western) Ltd.*, 1986 CanLII 1081 (BC CA)). In *Laurentian*, the lien claimant appealed the registrar’s refusal to file a claim of lien against the unpatented bed of the Straits of Georgia on which a pipeline had been built. The court reluctantly upheld the registrar’s refusal, finding itself bound by *Defazio*. The court expressed the hope that the Court of Appeal would clarify an apparent inconsistency in that decision: highways seldom have certificates in the land title system, but they are specifically protected from liens (see s. 1.1 of the *BLA*)—thus the Legislature must have thought it possible to lien land that was not within the land title system. However, no appeal of *Laurentian* was brought. The court rejected similar arguments and followed *Laurentianin* in *Re Pine Valley Mining Corp.*, 2007 BCSC 812. This case is discussed further in “Priorities between Lien Holder and Secured or Unsecured Creditors” in chapter 9.

In Alberta, a separate registry is kept for liens against land for which no title exists (*Western Industrial Contractors Ltd. v. Sarcee Developments Ltd.*, 1979 ALTASCAD 100). No such registry is kept in British Columbia.

In *Percon Construction Management Ltd. v. British Columbia (Registrar, New Westminster Land Title Office)*, 1986 CanLII 871 (BC SC), the court held that the registrar properly refused to register a claim of lien that referred only to an unregistered leasehold interest in registered federal Crown land. The court relied on s. 195 of the *Land Title Act*, R.S.B.C. 1996, c. 250:

No instrument purporting to create a charge by way of a submortgage or other subcharge of any kind shall be registered unless the charge on which the submortgage or subcharge depends has first been registered.

The land or interest in land identified in a claim of builders lien must be registered in the land title office or the claim of builders lien will be rejected.

B. LIENS ON IMPROVEMENTS INVOLVING MULTIPLE LANDS [§3.25]

I. MULTIPLE PARCELS, SECTION 16 [§3.26]

When an improvement spans several properties, claimants are entitled to liens on each of those properties for the full amount of their claims. This is so even where the claimant supplied no work or materials for some properties involved in the improvement (*Marogna Brothers Enterprises Ltd. v. Highliner Inn Ltd.* (1985), 66 B.C.L.R. 349 (Co. Ct.)). In *Marogna*, a single owner employed a single contractor to construct an improvement involving multiple properties.

However, in *Joe's Bulldozing Ltd. v. Hanley Management Ltd.*, 1994 CanLII 2647 (BC CA), the project spanned four lots owned by different owners who all contracted with the same contractor. It is not clear from the reasons whether there were four separate contracts, but all of the participants kept separate accounts of work done on each lot. As against each lot, the claimant subcontractor was held to be entitled only to the price of work done on that lot. The court relied on the lack of any “composite project or common ownership” in upholding this result.

Section 16 provides a mechanism for apportioning single overall liens into smaller individual liens:

General lien

16 (1) If an owner enters into a single contract for improvements on more than one parcel of land, a lien claimant providing work or material under that contract, or under a subcontract under that contract, may choose to have the lien follow the form of the contract and be a lien against each parcel for the price of all work and material provided to all of the parcels of land.

(2) If a lien is claimed under subsection (1) against several parcels of land, on application to the court by any person with an interest in or charge on the land, the court may apportion the lien among the parcels for the purpose of determining the lien claimant's rights as against persons having rights in particular parcels.

Section 16(1) was applied in *548635 B.C. Ltd. v. Island Kitchen Centre Ltd.*, 2000 BCSC 739. In that case, one contract spanned numerous houses in a subdivision. Claims of lien were filed more than 45 days after occupancy permits were issued. The issue was whether the claims of lien were timely. Whole kitchens, as well as other aspects of the houses, remained to be installed long after the occupancy permits were issued. The claims were held to be timely, because several houses, at least, were not “complete” 45 days before the claims were filed.

2. OFF-SITE WORKS [§3.27]

The topic of liens for work done off-site, as distinct from liens on multiple parcels, is discussed at “Consultant Performs or Provides “Work”” in chapter 2 in relation to the question of whether “work” has been performed “on an improvement”. *Pedre Contractors Ltd. v. 2725312 Canada Inc.*, 2004 BCSC 1112 upheld a lien filed against a property, in part, for work done on other lands. A lien on a telecommunications facility included amounts related to installing conduits under city streets. Without the off-site conduits, the project would not be functional. It was held that all of the work, both on and off-site, was “an integral and necessary part of the actual physical construction of the improvement”.

In *Action Holdings Ltd. v. Trend Homes Ltd.*, 2011 BCSC 381, a claimant sought to extend this logic to roadworks for a subdivision. This claim was dismissed based on a finding that these works were not integral and necessary to the improvements. See also “Highways and Forest Roads and Improvements” in this chapter regarding “highways”.

In *JVD Installations Inc. v. Skookum Creek Power Partnership*, 2022 BCCA 81, the court noted that it had not endorsed the proposition that a lien can be claimed for work performed offsite. Without answering that issue, the court held that even if the proposition were sound, it did not follow that a lien may be filed against the offsite property for work performed onsite.

C. LIENS ON STRATA PROPERTY [§3.28]

The lien filing and lien holdback periods under the *BLA* and the *Strata Property Act*, S.B.C. 1998, c. 43 correspond.

Part 5, Division 5 (ss. 86 to 90) of the *Strata Property Act* deals with builders liens.