

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Dicebox Ventures Ltd. v. Brandt Tractor Ltd.*,
2025 BCSC 1265

Date: 20250708
Docket: S243798
Registry: Vancouver

Between:

Dicebox Ventures Ltd.

Petitioner

And

Brandt Tractor Ltd.

Respondent

- and -

Docket: S244594
Registry: Vancouver

Between:

Brandt Tractor Ltd.

Petitioner

And

Arundel Capital Corporation

Respondent

Before: The Honourable Justice G.C. Weatherill

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.
June 19, 2025

Place and Date of Judgment:

Vancouver, B.C.
July 8, 2025

Table of Content

INTRODUCTION 4

BACKGROUND..... 4

ANALYSIS..... 8

 Was Brandt entitled to a Repairers Lien over the Loader upon providing the repair services at the Logging Site? 8

 Was Brandt entitled to a Repairers Lien when the Loader was delivered to it as “collateral” for the repair debt? 9

 Does Brandt’s Repairers Lien encompass the earlier sale of the Parts that were ultimately used to perform the repairs? 10

 Equitable Lien..... 11

 Pledge 11

CONCLUSION..... 12

Introduction

[1] This proceeding involves two related petitions arising from the repair of a 2012 John Deere 2954D Log Loader (the “Loader”), a piece of heavy equipment used in logging work. After the Loader broke down and was repaired, the invoices were not paid, and a dispute arose regarding ownership.

[2] The substantive issues to be resolved in these proceedings are:

- a) whether a mechanic who repairs a chattel at a location remote from its place of business is entitled to a repairer’s lien over the equipment;
- b) if not, whether a repairer’s lien can be established if the chattel is subsequently delivered to the repairer as “collateral” for the repair debt; and
- c) to the extent that the repairer is entitled to a lien, can it include an earlier sale of the materials that were ultimately used to perform the repairs.

[3] Other issues that were raised but not pressed during the hearing are whether the circumstances were such that an equitable lien or pledge over the Loader was created.

Background

[4] The petitioner in Vancouver Registry Action S243798, Dicebox Ventures Ltd. (“Dicebox”), is a forestry services and logging contractor. At all material times, Dicebox and 0861551 BC Ltd. (“551”) were the owners of the Loader.

[5] At all material times, the respondent in Vancouver Registry Action S244594, Arundel Capital Corporation (“Arundel”), had a registered security interest in the Loader pursuant to the terms of a lease agreement among Arundel, Dicebox, and 551, dated July 24, 2019, and subsequently amended on February 5, 2022, the terms of which provided in relevant part:

The Equipment is and shall at all times be and remain the sole personal and moveable property of [Arundel]... [Dicebox and 551] shall not allow the equipment to become subject to any claim, privilege, lien, charge, encumbrance, levy, security interest, mortgage, pledge, hypothecation, seizure, trust, attachment, judicial process, ownership interest, license, sublease or other right in favor of any person [...]

[Emphasis added.]

[6] Brandt Tractor Ltd. (“Brandt”), the respondent in Vancouver Registry Action S243798 and petitioner in Vancouver Registry Action S244594 is an equipment dealer involved in, *inter alia*, the sale, repair, and servicing of heavy equipment used in the forestry and construction industries.

[7] In 2022 and early 2023, Dicebox was engaged as subcontractor to a company named Star Lake Contracting Ltd. (“Star Lake”) in respect of a remote logging project (the “Project”) near Lake Cowichan, BC (the “Logging Site”). The Loader was one of the pieces of equipment being used on the project.

[8] Mr. Kenneth Fraser (“Fraser”) is the sole director and shareholder of each of Star Lake and 551.

[9] During the course of the Project, the Loader broke down and required repairs. Dicebox picked up the necessary parts (the “Parts”) from Brandt at Brandt’s Nanaimo, BC facility. Brandt issued an invoice for the Parts in the amount of \$20,371.34 to Star Lake at the request and authorization of both Dicebox and Star Lake (the “First Invoice”). The First Invoice was dated December 7, 2022. It stated that nonpayment was subject to interest at 1.5% per month (18% per annum) and that “titles to all items remain with Brandt Tractor Ltd. until purchase price, interest and other charges are fully paid”.

[10] In late January 2023, Star Lake requested that Brandt attend the Logging Site to perform the necessary repairs to the Loader and instructed Brandt to invoice Star Lake for the repair work. Brandt performed the repair work at the Logging Site, which work included installation of the Parts (the “Repairs”). The Brandt repairman left the Logging Site and issued an invoice dated February 23, 2023 to Star Lake as instructed (the “Second Invoice”). The Second Invoice was for \$31,759.93. It too stated that nonpayment was subject to interest at 1.5% per month and “[...] until paid in full an express mechanics lien is acknowledged on above machine to secure the amount for repairs thereto”.

[11] Star Lake did not pay either of the Invoices despite demands by Brandt that it do so.

[12] Fraser subsequently delivered the Loader to Brandt's Nanaimo facility. He did so without Dicebox's knowledge or consent. The evidence of Brandt's Vice President of Operations is that:

Mr. Fraser advised Brandt that he was having issues obtaining payment for the Invoices from Dicebox and that Brandt should retain possession of the [Loader] until the dispute was resolved.

[13] The evidence of Brandt's Service Manager is that:

[...] I had a phone call with Mr. Fraser where he informed me of the following:

- (a) That he did not dispute the Invoices;
- (b) That there was a dispute between himself and [Dicebox] about Dicebox's responsibility to make payment towards the Invoices;
- (c) That he wanted Brandt to take possession of the Loader;
- (d) That he viewed the Loader as "collateral" given the debt owing to Brandt; and
- (e) That at no point was Brandt to give up possession of the Loader until payment of the Invoices had been made.

[14] On April 26, 2023, and again on May 10, 2023, Brandt caused a Repairers Lien to be registered in the Personal Property Registry against the Loader, each in the amount \$30,247.55 (registration nos. 497164P and 529772P, respectively). Six months later, on December 21, 2023, it caused another Repairers Lien (registration no. 984526P) to be filed in the same amount. None of the three Repairers Lien registrations included any amount for the First Invoice.

[15] On June 29, 2023, pursuant to the provisions of s. 5(2) of the *Repairers Lien Act*, R.S.B.C. 1996, c. 404 [Act], Dicebox formally demanded immediate return of the Loader and discharge of the liens. Brandt responded by letter dated July 10, 2023, demanding payment in full by Dicebox of the Invoices within ten days, failing which the Loader would be sold.

[16] On April 17, 2024, Brandt published a notice (the “Notice”) in an online publication called the “Nanaimo News Bulletin”, advising that it intended to exercise its right to sell the Loader to recover the debt. The Notice read:

**BRANDT TRACTOR NANAIMO – Repairers Lien
LEGAL NOTICE**

Please be advised that Brandt Tractor Ltd. is exercising its rights under the *Repairers Lien Act* and will be placing a 2012 2954D John Deere Loader, serial number FF2954D290076 for sale to recover the debt owing to Brandt Tractor Ltd. by Star Lake Contracting Ltd. and/or Dicebox Ventures Ltd. in the amount of \$52,131.27 plus interest. The Loader will be placed for sale at Nanaimo/s Brandt Tractor Ltd. on April 26, 2024.

[17] On April 26, 2024, Brandt purported to sell the Loader to an entity called “Log Specific Contracting” for the sum of \$75,000 plus \$3,750 Goods and Services Tax, for a total of \$78,750. The sale was by way of a financing agreement. The “Sales Agreement” approved by Brandt on April 30, 2024, provides, in relevant part:

2012 John Deere 2954D Log Loader w/power clam, 5.85% for 36 months as is where is.

[...]

Balance due \$78,750

All goods remain the property of Brandt Tractor Ltd. until fully paid for.

[18] Brandt claims to have incurred costs totalling \$12,294.13 in respect of the sale, comprised of:

a) Used equipment financing:	\$3,196.00
b) Wash, batteries, welding:	\$3,000.00
c) Commission on unit:	<u>\$6,098.13</u>
Total	\$12,294.13

[19] During the course of the hearing, counsel for Brandt advised the Court that the sale of the Loader to Log Specific Contracting had been “reversed”, and that the Loader will remain in the possession of Brandt pending the outcome of this litigation.

Analysis

Was Brandt entitled to a Repairers Lien over the Loader upon providing the repair services at the Logging Site?

[20] Section 2(1) of the *Act* provides as follows:

Lien on chattels

2 (1) A mechanic or other person who, by bestowing money, skill or materials on any chattel, in altering and improving its properties, or increasing its value, becomes entitled to a lien on the chattel for the amount or value of the money, skill or materials bestowed, has while the lien exists, power to sell the chattel, if the amount to which he or she is entitled remains unpaid for 90 days after it ought to have been paid.

[21] Section 2(1) does not create a lien right. It simply creates a right on the part of a mechanic or other person who has a lien at common law to sell the chattel that is the subject matter of the common law lien if the debt is not paid; such a right did not exist at common law: *J. Gary Hughes Inc v. McGowan Motors Limited (Receiver of)*, [1999] 1 P.E.I.R. 75 at paras. 17–20, 1999 CanLII 4611 (S.C.A.D.).

[22] As was stated in the British Columbia Law Institute, *Report on the Uniform Liens Act*, Report No. 23 (Vancouver: British Columbia Law Institute, 2003) at 1–2:

[...] The common law created the right to a possessory lien for an artisan who improved goods by bestowing labour, skill or expense upon or in respect of the goods. The lien gave the claimant a passive right to retain possession of the goods if the owner who authorized the work did not pay for the services that had been provided. This common law lien was terminated if physical possession of the goods was lost or surrendered other than by fraud, theft, or under a bailment or agency agreement. This was a “particular lien” meaning that the lien claimant had the right to keep possession of the goods until payment was made with regard to the charges relating to those particular goods.

[23] It is conceded in this case that Brandt was effectively in possession of the Loader at the time of the Repairs and, therefore, had the right to a common law lien over the Loader. However, each of Dicebox and Arundel submit that Brandt’s lien ceased to exist once Brandt left the Logging Site after completing the Repairs and returned possession of the Loader back to Dicebox and 551.

[24] I agree. Here, the continuity of Brandt’s possession of the Loader was broken when it left the Logging Site. The problem that Brandt was faced with was identified in *Connolly v. Advantagewon Inc.*, 2015 ONCA 709 at para. 31, where the Ontario Court of Appeal quoted the following observation from Arthur Close, “Ontario Ministry of the Attorney-General: Discussion Paper on Repair and Storage Liens” (1985) 10 Can Bus LJ 359 at 364:

The second observation that might be made about s. 7(1) is that in order to claim a non-possessory lien, the lien claimant must once have had a possessory lien. This is a serious limitation on the scope of Part II. There are many situations in which work will be carried out on the premises of the owner. An example is where a piece of heavy equipment breaks down at a remote work site and it is wholly impractical to relocate it to the repairer’s premises. It is doubtful whether the person who performs repairs at a place which is under the effective control of the owner of the property being repaired can ever be said to have possession of the property sufficient to support a lien. Yet to deny him a non-possessory lien creates a wholly artificial distinction between work which is lienable and work which is not, depending on the essentially irrelevant issue of where the repairs are made.

[Emphasis added.]

[25] It is precisely for this reason that Repairers Lien legislation across Canada created the right of a repairer to maintain a lien over repaired chattels in circumstances where possession of the chattel is surrendered provided the debtor signs an acknowledgement of the debt before possession is surrendered: see, for e.g., *Act* s. 3(1). Brandt could have obtained such an acknowledgement before leaving the Logging Site but failed to do so.

[26] I find that Brandt’s common law repairer’s lien ceased to exist after Brandt left the Logging Site.

Was Brandt entitled to a Repairers Lien when the Loader was delivered to it as “collateral” for the repair debt?

[27] Brandt argues that it obtained possession of the Loader, and was granted a possessory lien, when Mr. Fraser had the Loader delivered to Brandt’s facility in Nanaimo. Brandt takes the position that the *Act* does not expressly address situations where a mechanic obtains possession of a repaired chattel from the

owners shortly after the performance of the repairs, and that any ambiguity in the *Act* should be resolved in favour of the mechanic.

[28] I do not agree. Surrender of possession is the surrender of the lien, and the lien cannot be subsequently revived: *Middleton and Middleton v. City Automatic Transmission Ltd.*, 13 Sask. R. 270 at paras. 17–19, 1981 CanLII 2423 (Q.B.). In *Rainbow Air Services Ltd. v. Mountaineer Services Ltd.*, 1991 CarswellBC 691, 1991 CanLII 2327 (S.C.), this court noted the following proposition of law, citing *Evans v. Martin*, [1950] 1. W.W.R. 1 at 9, 1949 CanLII 462 (B.C.C.A.):

[...] if a garageman gives up possession of a motor car, with his repair bill unpaid, then, if it comes again into his possession a second time, he cannot (unless authorized by statute, [...]) assert a lien upon it for the previous repairs [...]

See also *Dowding v. Jemthl Holdings Inc.* (12 June 1987), Vancouver CA006444 (B.C.S.C.) at 3.

[29] In this province, no statutory authority exists for the proposition that the return of a repaired chattel to the mechanic shortly after the repair entitles the mechanic to a revived possessory lien. Brandt surrendered possession of the Loader when it left the Logging Site after the repair work. The delivery of the Loader to Brandt by Fraser did not entitle Brandt to a lien over it.

Does Brandt’s Repairers Lien encompass the earlier sale of the Parts that were ultimately used to perform the repairs?

[30] Given my finding that Brandt does not have a Repairers Lien over the Loader, it is not necessary to determine whether, had it been entitled to a lien, it would have encompassed the First Invoice. However, because the issue was fully argued, I will provide the parties with the benefit of what my ruling would otherwise have been.

[31] In my view, the transaction by which Dicebox obtained the Parts was a sale, the terms of which were set out in the First Invoice. It was transaction that was separate and distinct from the Repairs. If Brandt wished to ensure that the Repairers Lien to which it was entitled at the time it performed the Repairs and still had

possession of the Loader, included the value of the Parts, it ought to have cancelled the First Invoice and included the Parts in the Second Invoice.

[32] It is telling that Brandt did not include any part of the First Invoice in its lien registrations.

Equitable Lien

[33] An equitable lien may be declared where the relationship between the parties is such that one party is entitled to charge the property of another so as to fulfil the objects of a relationship, generally arising in circumstances where the imposition of a lien would achieve equity between the parties: *Biehl v. Strang*, 2011 BCSC 1373 at paras. 395–398, citing *574095 Alberta Ltd. v. Brendanco Investments Inc.*, 2002 ABQB 277 at para. 67. While a common law lien is founded on possession, except as modified by statute, an equitable lien exists irrespective of possession: *Biehl* at para. 395, citing *Transwest Helicopters v. Int. Aviation Services*, 2002 BCSC 1244 at para. 11.

[34] Counsel for Brandt submitted, without much force, that the circumstances were such that Brandt was entitled to an equitable lien over the Loader. No relevant authority for such a proposition was advanced and I am unaware of any.

[35] There is no basis on the facts before me that would support the finding of an equitable lien.

Pledge

[36] A pledge is a contract by which money is advanced on the security of goods or chattels which are delivered into the possession of the lender. It contains an implied undertaking on the part of the pledgor that the property pledged is his own, or that he has the authority of the owner to pledge it: Walter Ashburner, *Ashburner's Concise Treatise on Mortgages, Pledges and Liens*, 2nd ed (London, UK: Butterworth, 1911), ch IV at 75–79.

[37] There was nothing in the communications between Fraser and Brandt to suggest that the Loader was being pledged to Brandt by Dicebox or 551 or by anyone else. There is no evidence that Fraser was acting with the authority of Dicebox and/or 551, ostensible or otherwise.

[38] Regardless, Fraser could not have pledged an interest in the Loader that he did not have. The Loader was owned by Dicebox and 551. Fraser had no interest in it. Moreover, each of Dicebox and 551 was prohibited from pledging the Loader under the terms of their financing agreement with Arundel.

[39] I have no difficulty finding that the Loader was not pledged to Brandt.

Conclusion

[40] The following orders and declarations are made in favour of Dicebox as petitioner in proceeding S243798:

- a) An order that the Repairers Liens filed by Brandt under financing statements with base registrations nos. 497164P registered on April 26, 2023, 529772P registered on May 11, 2023, and 984526P registered on December 21, 2023, in the British Columbia Personal Property Registry against a 2012 John Deer 2954D Log Loader with motor vehicle VIN FF2954D290076 be cancelled and discharged;
- b) An order that the Registrar of the British Columbia Personal Property Registry is directed to cancel and discharge set out above upon receipt of a certified copy of this Order;
- c) An order that Brandt is compelled to forthwith facilitate the return of the Loader to Dicebox and 551;
- d) A declaration pursuant to s. 5 of the *Act* that Brandt:
 - i. Was not entitled to register the aforementioned Liens; and
 - ii. Without reasonable excuse, failed to comply with the provisions of s. 5(2) of the *Act*;
- e) There will be a referral to the Registrar of this court for an assessment of damages incurred by Dicebox as a result of Brandt's wrongful conduct; and
- f) Dicebox is entitled to its costs of the petition at Scale B.

[41] The petition of Brandt under Vancouver Registry Action S244594 is dismissed, with costs at Scale B awarded to Arundel.

“G.C. Weatherill J.”