IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hectagon Design & Construction Group Ltd. v. Radman,* 2025 BCSC 1886

Date: 20250925
Docket: S257529
Registry: New Westminster

Between:

Hectagon Design & Construction Group Ltd.

Plaintiff

And

**Anthony Eddie Radman,
Teresa Maria Radman, also known as Tereza Maria Radman, and
Anita Radman**

Defendants

Before: The Honourable Justice Layton

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	K. Gill
Counsel for the Defendants:	M.R. Milne
Place and Date of Hearing:	Port Coquitlam, B.C. September 11, 2025
Place and Date of Judgment:	Port Coquitlam, B.C. September 25, 2025

Table of Contents

Introduction

[1] In late 2022, the applicants Anthony Radman, Tereza Radman and Anita Radman ("Radmans") retained the respondent Hectagon Design & Construction Group Ltd. ("Hectagon"), to conduct house renovations and landscaping at their property in Vancouver, British Columbia.

[2] The project encountered delays, and a dispute arose between the parties, which culminated in the Radmans terminating the contract in late February 2025.

[3] On March 4, 2025, Hectagon filed a claim of lien on the Radmans' property for $352,802, which Hectagon contended the Radmans owed under Invoices 279 and 280.

[4] On April 9, 2025, Hectagon filed a notice of civil claim against the Radmans, seeking, among other things, payment of the amount in the lien claim.

[5] On May 1, 2025, the Radmans filed a response to civil claim, denying all allegations in the notice of civil claim. The Radmans also filed a counterclaim seeking damages for breach of contract, unjust enrichment, and negligence, including damages arising from alleged construction deficiencies, delay, payment for work not performed, and misrepresentations by Hectagon.

[6] On May 27, 2025, Hectagon filed a response to counterclaim, denying all allegations in the counterclaim.

[7] On June 26, 2025, the claim of lien was cancelled from the title to the Radmans' property, after the Radmans deposited security in the amount of claim, namely, $352,802.

[8] On August 11, 2025, the Radmans filed an application under s. 25(2)(b) of the *Builders Lien Act*, S.B.C. c. 45 [*BLA*], in which they seek to extinguish Hectagon's claim of lien as an abuse of process. Alternatively, under s. 24 of the *BLA* they seek to reduce the amount of security to be posted with respect to the lien claim.

[9] Hectagon says the Radmans have failed to meet their onus under either provision of the *BLA*, and that the application should be dismissed, apart from a reduction in the security of $31,681, which Hectagon concedes is required because Invoices 279 and 280 contain two items for which no amount is outstanding.

[10] The trial for this matter is currently set for 15 days starting on January 11, 2027. However, no lists of documents have yet been exchanged and no examinations for discovery have been conducted.

[11] These reasons are divided into three parts. First, I will review some background facts, for the most part touching on uncontentious matters, although I will identify some points of dispute between the parties. Second, I will set out the legal principles governing an application under the *BLA* to cancel a claim of lien or to reduce the amount of security for it. Third, I will apply those legal principles to the evidence before me. Only at this final stage will I review in detail the evidence relating to the points upon which the parties disagree.

Background

[12] Following a flood, the Radmans decided to undertake extensive repairs and renovations to their house, which contained four residential units.

[13] On November 21, 2022, the Radmans and Hectagon entered into a written contract for the project, pursuant to which Hectagon agreed to provide construction management services and to carry out reconstruction, repair, and renovation of the house, as defined in the scope of the contract.

[14] The contract was for a fixed price of $810,022.50, covering all services and materials for the work described. The work was to be completed by May 5, 2023.

[15] The agreed upon scope of the work was included in the contract in a schedule. The contract provided that any changes to the scope of the work or to the

contract price required the prior agreement of the parties, and that no extras or additional costs were permitted without the Radmans' prior written approval.

[16] The contract price was to be paid to Hectagon in four installments on Hectagon achieving the following milestones:

Payment	Percentage	Milestone
1	35%	Contract execution
2	25%	85% of rough-ins for plumbing and 90% electrical completed for units A&B, 75% of drain tile completed, low voltage for thermostat completed, 90% electrical rough-ins for exterior, 95% completion of unit ground flattened, compact, and surface prepared for concrete pour
3	25%	Drain tile almost complete, low voltage complete, drywall and mudding completed, plumbing and electrical for Units C&D 90% complete, other mechanical rough-ins 90% complete, work commenced on front porch and back deck, landscaping is well underway.
4	15%	On substantial completion.

[17] The contract price was subject to a statutory 10% holdback.

[18] Hectagon invoices under the contract were to be paid within three business days from the Radmans' receipt and acceptance of a "correct and complete invoice" as agreed by Hectagon and the Radmans. All invoices were to be emailed to Anita and Anthony Radman.

[19] The holdback amounts were to become payable no earlier than 55 days following the date of the substantial performance of the work, and only after all required work – including any deficiencies – had been completed in accordance with the contract.

[20] At the time of the contract the property consisted of four units. The two units in the basement were unpermitted.

[21] The contract was not the first one entered into between the parties. Although the evidence is not very precise, the contract refers to some work being done under different contracts. Anthony Radman's affidavit evidence indicates that an invoice for cutting and removing concrete from the foundation, referenced in the affidavit of Hectagon's principal, Pedram Hakimishokati, related to one of these other contracts.

[22] As required under the contract, on the date it was signed the Radmans made the first milestone payment of 35% of the contract price to Hectagon, which less holdback was $255,157.09.

[23] On April 13, 2023, following a walk-through site inspection, the Radmans made the second milestone payment of 25% of the contract price to Hectagon, which less holdback was $182,255.06.

[24] On May 2, 2023, the City of Vancouver issued a "stop work order" for the project, which put it on hold until a building permit could be obtained.

[25] On December 19, 2023, the Radmans obtained a building permit from the City of Vancouver, the stop work order was removed, and Hectagon was permitted to continue with the work under the contract.

[26] The parties disagree as to where the blame should lie for the stop work order. Hectagon says it repeatedly warned the Radmans that a permit was required. The Radmans say that Hectagon bears some responsibility, and that in any event the contract required Hectagon to complete the work in accordance with the building code.

[27] The parties also dispute what role Hectagon played in obtaining the building permit, and more critically whether the Radmans agreed to pay Hectagon for acting as a consultant in this regard.

[28] On January 5, 2024, a City of Vancouver inspector conducted a pre-construction inspection. Mr. Hakimishokati and Anita and Anthony Radman walked through the project with the inspector.

[29] On January 10, 2024, the Radmans met with Mr. Hakimishokati to discuss the outcome of the inspection, as well as the project schedule and completion of the work. The Radmans say that Mr. Hakimishokati agreed to have the drywall installed by early February 2024, to have the drywall mudding completed and dried by the end of March 2024, and to complete the work by early May 2024. Hectagon disagrees, stating that timing estimates were discussed but not guaranteed.

[30] On February 6, 2024, the Radmans and Mr. Hakimishokati had a meeting at which they agreed that, as an addendum to the contract, the Radmans would pay an additional “cost escalation” amount of $69,000, over and above the contract price. However, they disagree about the nature of this addendum, which I will call the cost escalation addendum, and in particular when the $69,000 became payable.

[31] The Radmans say the cost escalation addendum was to account for all potential costs and damages associated with the delays resulting from the stop work period between May and December 2023. They say this amount was calculated based on the value of the outstanding portion of the work remaining under the contract, and was to be allocated proportionately across the remaining payments.

[32] Hectagon contends that the cost escalation addendum was an agreement that the Radmans would pay greater amounts than were provided for in the contract to reflect escalating costs of construction due to inflationary pressures and increases in the scope of the work. It thus was intended to reflect current costs and changes, and the $69,000 was payable immediately, as soon as Hectagon provided an invoice.

[33] The parties agree that the Radmans sometimes asked for Hectagon to provide extras not within the scope of work in the contract, and that extras were required to execute the building permit and to comply with requirements arising from

City of Vancouver inspections. They also agree that these extras required the Radmans to pay amounts beyond the fixed price in the contract. I do not understand the Radmans to take issue with Mr. Hakimishokati's evidence that their requests for extras were often made orally or in the form of brief written notes, and that they did not consistently require written approvals before directing additional work.

[34] As an example of invoicing for extras, Hectagon submitted evidence of what appears to be its draft invoice from October 2023, which contained about 35 extras. Each line item contains a description of the extra and a cost to be paid for it by the Radmans. Invoice 279, which I will discuss in detail later in these reasons, also relates to extras.

[35] Similarly, the Radmans referenced an "invoice for deposit" from April 2024 that covered extras. Again, the particular nature of the work is described and the associated cost provided. The descriptions provided in this invoice for deposit make clear that at least a significant component of these extras related to changes required as a result of the new plan provided to obtain the building permit. For example, in the basement the drop ceiling had to be adjusted, the door sizes needed to be changed, and the electrical work needed to be removed and redone.

[36] On April 5, 2024, the Radmans paid a portion of the third milestone payment of 25% of the contract price to Hectagon, on the understanding that Hectagon had partially completed aspects of the work required for that payment. This partial payment was $127,578.55.

[37] Also on April 5, 2024, Hectagon issued an invoice referable to the cost escalation addendum, in the amount of $69,000. As the Radmans believed this amount was to be allocated proportionately across the remaining payments, that same day they paid $30,187 towards the invoice, which was proportional to the first part of the third milestone payment, leaving a balance of $42,263.

[38] However, Hectagon takes the position that this invoice reflected additional costs it had incurred due to inflation and increased scope of work, and that the total

amount invoiced was therefore due and payable at that time. An email sent by the Radmans to Hectagon in October 2024 reflects the parties' disagreement on this point.

[39] Between December 19 and 24, 2024, the Radmans paid the second part of the third milestone payment to Hectagon, which less holdback was $54,676.50. Later that month, the Radmans paid the proportion of the total cost escalation addendum they contend was referable to this payment: $6,834.95.

[40] Leaving aside payments for extras and the cost escalation addendum, by the end of 2024, the outstanding balance under the contract – representing the fourth milestone payment for 15% of the total amount – was $121,503.30. The remainder of the cost escalation addendum amount was also outstanding, leaving aside the issue of whether it was already due, as Hectagon argues, or rather as the Radmans contend would only become due at the same time as the fourth milestone payment.

[41] Hectagon says that the Radmans' decision to pay the second and third instalments is evidence that they agreed the contractual work referable to those payments had been performed. The Radmans disagree, stating that in some instances they relied on Hectagon's assurances that certain work had been performed, and in other instances paid, despite having concerns that not all the work had been completed, because they wanted to keep the project going.

[42] The parties also disagree as to whether the invoices were paid in a timely manner. Hectagon says the Radmans were often late with their payments, which put a significant financial burden on its business. The Radmans say any delay in making payments was the result of confusing, duplicative or erroneous invoices, which would require them to make inquiries of Hectagon before making payment. I do not see this issue as being central to the Radmans' *BLA* application, the focus of which relates to nonpayment of Invoices 279 and 280.

[43] In January and February 2025, the parties communicated regarding aspects of the project, as indicated in documents forming part of the evidence. While those

communications remained civil, neither party appears to have been happy with how things were going.

[44] On February 28, 2025, the Radmans sent Hectagon an email terminating the contract, alleging numerous breaches including significant delays in performing the work, misrepresentations as to the progress of the work, and deficient execution of the work, some of which was said to be noncompliant with the contract or applicable building codes.

[45] On March 4, 2025, Hectagon filed its claim of lien against the property in the amount of $352,802, based on the amounts said to be owing under Invoices 279 and 280.

Legal Principles

[46] The objective of the *BLA* is to prevent landowners from obtaining the benefit of improvements and work done on their land without paying for them by giving security to lien claimants. The statute balances this policy against the rights of owners by providing a mechanism to discharge a claim of lien upon the payment of sufficient security (s. 24), or to cancel a lien claim in certain circumstances (s. 25). See *Centura Building Systems (2013) Ltd. v. 601 Main Partnership,* 2018 BCCA 172 at para. 10; *Darwin Construction (BC) Ltd. v. PC Urban Glenaire Holdings Ltd.*, 2023 BCCA 436 [*Darwin Construction*] at paras. 108-109.

[47] Under s. 2 of the *BLA*, a lien can be filed for the “price of work and material, to the extent that the price remains unpaid”, and “work” is defined in the *BLA* to mean “work, labour or services”. Section 2 does not permit a claim of lien for the price of work not yet performed or materials not yet supplied. A party can have a claim for lost profits resulting in the repudiation of a building contract without having a lien claim, in which case that party’s remedy sounds in damages arising from the common law of contract: *Tylon Steep Homes Ltd. v. Landon*, 2010 BCSC 192 at para. 53.

[48] A landowner may apply under s. 25 of the *BLA* to cancel a lien, or alternatively under s. 24 to reduce the security posted.

[49] The only part of s. 25 relied on by the Radmans is s. 25(2)(b). It provides that, "[a]n owner … may at any time apply to the court and the court may cancel a claim of lien if satisfied that … the claim of lien is vexatious, frivolous or an abuse of process".

[50] In considering an application brought under s. 25(2)(b), the court must determine whether the lien claimant has raised arguable claims, in the sense of raising a question fit to be tried, or if instead the claims are vexatious, frivolous or an abuse of process: *Darwin Construction* at para. 63.

[51] The threshold for maintaining a lien claim in the face of a s. 25(2)(b) challenge is thus low, and the court is not to decide the case on the merits. The application is not to be treated like a summary trial application, recognizing that in some cases lien claimants may not yet have access to evidence in the hands of the other party that might help them prove their claims. See *Darwin Construction* at para. 64.

[52] On the other hand, while the "arguable claim" language is similar to that used in analysing whether a pleading should be struck for failure to plead a cause of action, it is not exactly the same test. On a challenge to pleadings for failure to plead an arguable claim, no evidence is admissible. By contrast, when a lien is filed and challenged, evidence is admissible. The correct approach is to decide the question based on a review of the parties' affidavit evidence. See *Darwin Construction* at paras. 65-66.

[53] If the court concludes that there is an arguable claim in support of the lien claim such that it is not vexatious, frivolous or an abuse of process, but not to the extent of the quantum of the claim, the court may employ s. 24 to reduce the lien security: *Darwin Construction* at para. 67.

[54] Section 24 of the *BLA* reads as follows:

> 24 (1) A person against whose land a claim of lien has been filed, and a contractor, subcontractor or any other person liable on a contract or subcontract in connection with an improvement on the land, may apply to a court to have the claim of lien cancelled on giving sufficient security for the payment of the claim.
>
> (2) The court hearing the application under subsection (1) may, after considering all relevant circumstances, order the cancellation of the claim of lien on the giving of security satisfactory to the court.
>
> (3) The value of the security required under an order under subsection (2) may be less than the amount of the claim of lien.
>
> (4) The registrar or gold commissioner in whose office a claim of lien is filed must, on receiving an order or certified copy of the order made under subsection (2), file it and cancel the claim of lien as to the property affected by the order.
>
> (5) The giving of security for the payment of a claim of lien under subsection (1) does not make the owner liable for a greater sum than provided for in section 34.

[55] Under s. 24, a court must determine what claims should be considered when fixing security, and then decide what amount of security is appropriate. The analytical framework is described in *Q West Van Homes Inc. v. Fran-Car Aluminum Inc*., 2008 BCCA 366 [*Q West*] at para. 56:

- the judge must look at the claims of the parties to determine whether it is plain and obvious they will not succeed; a *prima facie* case will suffice;
- any claims that are not sustainable will not be considered in fixing the appropriate quantum of security;
- looking at the evidence as a whole, the judge has discretion in fixing the amount that is appropriate;
- that discretion must be exercised judicially based on the relevant evidence before the court and taking into account the objectives of the legislation: to protect those who supply work and materials to a construction project so long as the owner is not prejudiced;
- the amount of security may be less than the amount claimed under the lien.

[56] Accordingly, there are two stages to an application under s. 24. At the first stage, the question is whether the lien claimant has established an arguable case, or if instead it is plain and obvious that the lien claim will not succeed. The court must examine the evidence to determine whether it discloses a chance the claimant might

succeed. The applicant has the burden of proof. But where the applicant that met the burden of showing an arguable claim that the lien is excessive or unwarranted, the lien claimant takes a significant risk in filing no evidence in response. See *Darwin Construction* at para. 69; *Q West* at para. 56.

[57] The first stage of the s. 24 application is very similar to the test under s. 25(2)(b) for cancelling a lien, except that under s. 25(2)(b) the application is to cancel the entire lien, whereas under s. 24 the application may simply be to challenge some components of it: *Darwin Construction* at para. 70.

[58] If the lien claimant survives the first stage of the test under s. 24 by raising an arguable claim, then the second stage of the test requires looking at the evidence as a whole to determine whether the security should be reduced: *Darwin Construction* at para. 72.

[59] The scope of the inquiry under s. 24 in reducing a lien claim is approached with caution to avoid injustice to lien claimants. The court should be especially cautious in considering a counterclaim for delay and should approach such claims conservatively. This is to avoid the risk of the lien claimant being left empty-handed after a successful trial on the merits of the lien claims. Nevertheless, there will be cases where the lien claim is “readily seen” as inflated and the court will be justified in ordering a lesser amount of security. See *Darwin Construction* at para. 73-74.

[60] The proper quantum of lien security is determined by a review of the evidence, appreciating that the claim does not have to be proven on the merits. This avoids setting too high a standard for lien claimants, while at the same time, avoiding the opportunity for abuse of parties who are subjected to exaggerated lien claims. *Darwin Construction* at para. 76.

[61] When the party subjected to the lien claim has filed an application to cancel the lien, the lien claimant must be prepared to support an arguable case as to both the right to the lien and its amount. The threshold to establish an arguable claim is not high and is less than what would be required to support a conclusion in the lien

claimant's favour at trial, but more than thin air is required. *Darwin Construction* at para. 109.

Analysis

[62] In applying the relevant legal principles to the application evidence, I will describe the items in Invoices 279 and 280 for which Hectagon says payment is owing, and will assess whether the Radmans have established that there is no arguable case for the items claimed or their amounts, as well as considering whether to exercise my discretion to reduce the amount of sufficient security.

[63] Hectagon filed its lien claim based on the Radmans' failure to pay the outstanding amounts in Invoices 279 and 280, which it says were delivered to the Radmans on February 21, 2024. Invoice 279 is for $72,733.50, of which Hectagon says that $45,281.25 was previously paid, leaving a balance of $27,452.25. Invoice 280 is for $325,349.96, none of which has been paid.

[64] Invoice 279 relates to five items (GST included), all referable to extras:

(a) $15,093.75 outstanding, after previous payment of $45,281.25, for supply and installation of siding;

(b) $6,090 for installing new soffit;

(c) $2,761.50 for installing a sleeve for a gas pipe;

(d) $777 for backfill at the west side of the house; and

(e) $2,730 for relocation of a toilet.

[65] Hectagon says that the siding work was complete, but the Radmans contend it was defective, and that they never accepted the work. The Radmans have introduced into evidence photographs in support of their position, which show two screws sticking out of the siding and what appears to be cracked flashing. However, in their written and oral submissions the Radmans did not include this item on the list

of claims they say do not survive the first stage of the test in s. 24. I will therefore come back to this item later in my reasons, when discussing the second stage of the s. 24 analysis.

[66] The Radmans contend that the $2,761.50 for installing the gas sleeve was already paid for as part of the third milestone payment, and submitted evidence supporting this contention. Hectagon did not respond to this evidence, and at the hearing of the application conceded that, as this amount has already been paid, the security for the lien should be reduced by $2,761.50.

[67] With respect to the remaining three items in Invoice 279, the Radmans agree that the work was performed but claim a set off against the amounts owing based on overpayment for unperformed work, delay in completion of the contract, and additional costs incurred to complete the project due to Hectagon's breach of contract. I will address this aspect of their submission at the second stage of the s. 24 framework.

[68] Turning to Invoice 280, it relates to eight items (GST included). By way of general overview, this invoice was for $325,349.96, and the major items included are:

(a) $94,500 for the management fee referable to the time frame exceeding the period covered by the contract;

(b) $26,250 for consultation provided by Hectagon regarding the process of obtaining a building permit after the stop work order;

(c) $35,428.05 for the remainder of the $69,000 referable to the cost escalation addendum;

(d) $63,000 for work performed under the contract but not yet paid for at termination; and

(e) $97,771.91 for "hold back of each payment".

[69] Before addressing each item in turn, I will consider the Radmans' argument that Invoice 280 was not provided to them until after termination of the contract and was in fact backdated, which they say negatively impacts the reliability of Hectagon's claim that these amounts are properly owing. The evidence referable to the Radmans' contention also bears on my analysis of whether there is an arguable case respecting some of the claims made in Invoice 280 or their overall quantum.

[70] The Radmans assertion that invoice 280 was backdated is based on three points. First, they note that under the contract all invoices are to be emailed to Anthony and Anita Radman. In his initial affidavit, Mr. Radman states that he did not receive Invoice 280 until it was requested by his lawyer after the start of litigation. Mr. Hakimishokati does not address this contention head-on in his responding affidavit, but merely states that Hectagon "delivered" invoices 279 and 280 to the Radmans on February 21, 2025.

[71] Second, the Radmans argue that correspondence exchanged between the parties establishes that Invoice 280 was not delivered on February 21, 2025, as asserted by Mr. Hakimishokati, or at any time prior to termination of the contact, because nothing in the correspondence suggests that the parties viewed the amounts in Invoice 280 as outstanding on February 21 or in the days following.

[72] This correspondence begins with a meeting between the parties on February 21, 2025 to discuss the status of the project. On February 23, Mr. Hakimishokati's associate emailed the Radmans meeting notes the associate had drafted. Those notes set out a back and forth at the meeting regarding the reasons for delay and additional costs, and Mr. Hakimishokati's position that the extended time required to complete the contract, plus the additional work required as a result of the stop work order and building permit, required payment of further amounts including a management fee of $90,000 and release of all holdback amounts.

[73] Neither the email nor the meeting notes state that the Radmans had, prior to or during the meeting, agreed to pay a management fee, on top of the management fee built into the fixed contract price. Nor do these documents state that the

Radmans had agreed to release the holdback amounts for milestone payments made to that date.

[74] In their responding email, the Radmans rejected the accuracy of the meeting minutes, stating that the minutes failed to adequately or accurately reflect the points they made, and referencing Mr. Hakimishokati's attempt to renegotiate the fixed-price contract with an addition of a $90,000 management fee. The Radmans expressly rejected paying this fee or a $55,000 escalation cost, but indicated that they were reviewing whether to agree to a release of the holdback amounts.

[75] I pause here to note that Mr. Hakimishokati's affidavit never states that the Radmans agreed to an additional management fee, on top of what was provided for in the contract. Rather, he says the Radmans, "were aware that additional management compensation would be required, as this was raised repeatedly in meetings and correspondence".

[76] This comment is to be contrasted with what Mr. Hakimishokati states in his affidavit about the consultation fee referable to the building permit process, namely, that the Radmans agreed to pay it. Somewhat similarly, in another paragraph in his affidavit Mr. Hakimishokati mentions both escalation costs and management fees, stating that the escalation costs were "agreed upon", but not making this assertion for the management fees.

[77] Indeed, an email to the Radmans from Mr. Hakimishokati dated January 21, 2025, focused on dissatisfaction arising from cost increases due to inflation and project scope changes, states that there must be a fair and timely solution of financial matters and asks the Radmans to confirm a time to meet to "finalize the agreement" before January 23, 2025. The implication is that as at this date the Radmans had not agreed to additional management fee payments.

[78] Another email sent to the Radmans by Mr. Hakimishokati, on February 13, 2025, further supports the conclusion that the parties had not by that point agreed to management fee adjustments/increases, and that Mr. Hakimishokati was asking the

Radmans to agreed to pay this and other additional amounts to account for "unforeseen structural challenges and the permitting delays imposed by the City of Vancouver". The Radmans' response to this email, provided on February 18, indicates that they were not prepared to make further payments for management fees, but were prepared to offer a $15,000 bonus if Hectagon was able to issue an occupancy certificate for the entire building on or before March 15, 2025.

[79] A further email chain, starting on March 1 and ending March 3, 2025, contains the following statements by the parties:

a. Mr. Hakimishokati provides formal final notice regarding, "the outstanding payment for the siding and additional completed work … as per our agreement", despite the absence of an inspection of the siding, and states that if payment is not received by March 3, a lien will be registered on the property.

b. The Radmans reply that they believe Mr. Hakimishokati is referring to Invoice 279, that he appears to be rejecting their request to inspect the siding, and that they are not prepared to pay Invoice 279 until they have thoroughly reviewed all invoices, payments and related receipts.

c. Mr. Hakimishokati writes back to say that he has simply requested fair payment for the necessary extra work, and that the siding installation had been completed. He adds that Invoice 279 covered not only the siding work, but also "other completed work with payments due", and that the Radmans' refusal to pay Invoice 279 despite clear contractual and verbal agreements was unacceptable. Mr. Hakimishokati states that failure to provide payment immediately will result in Hectagon taking steps to recover the outstanding amount including filing a lien and pursuing legal action.

d. The Radmans reply by repeating that they intend to review of all accounts, and attached photos of the siding showing two screws that had penetrated the building envelope and damage to flashing installed under the siding.

e. In the final email, on March 3, Mr. Hakimishokati states that the Radmans have unreasonably failed to review the siding prior to his final notice. He says that payment for completed work is already due, delay in making payment is unacceptable, and he is going to register a lien on the property.

[80] The third point relied on by the Radmans in arguing that Invoice 280 was not provided until after the termination of the contract relates to its date. Invoice 280 is dated February 22, 2025, but in his affidavit Mr. Hakimishokati says it was delivered on February 21, an impossibility absent some further explanation. Counsel for Hectagon did not address this inconsistency in his submissions. For example, he did not suggest that Invoice 280 might have been mistakenly dated or that Mr. Hakimishokati might have gotten the date wrong in his affidavit.

[81] Based on the evidence filed on this application, it appears that Invoice 280 was not provided to the Radmans by Hectagon before the lien claim was filed, including (but not only) because neither it nor the items in it are discussed in the March 1 to 3, 2025 emails. I will come back to this point later in my reasons.

[82] I will now consider the Radmans' position regarding the items charged in Invoice 280, starting with the management fee of $94,500, additional to the management fee already incorporated in the contract price, which Hectagon says is due for contract management provided after the time frame indicated in the contract.

[83] As noted, in his affidavit Mr. Hakimishokati only goes so far as to say that the Radmans, "were aware that additional management compensation would be required". He also states that the amount was calculated based on the 10-12% fee charged under the contract. But Mr. Hakimishokati never says that the Radmans agreed to pay this fee, and the documents filed on the application strongly support the conclusion that they always refused to do so. Plus, in the emails exchanged immediately after the contract was terminated, Mr. Hakimishokati never suggests to the Radmans that this additional management fee is owing.

[84] Based on the evidence filed – much of which I have reviewed in addressing the Radmans' contention that Invoice 280 was backdated – it is plain and obvious that Hectagon's claim for an additional management fee is bound to fail. It may be that Hectagon can martial evidence at trial to support an arguable case or even a finding that the Radmans agreed to pay an additional management fee, but the evidence on this application does not meet the arguable case threshold. This part of Hectagon's lien claim thus cannot be considered in determining the amount of security the Radmans should be required to post under s. 24 of the *BLA*.

[85] The next item from Invoice 280 that I will consider is the $26,250 charged for consultation provided by Hectagon regarding obtaining a building permit in the second half of 2023, following the stop work order. Invoice 280 describes this work as covering, "all meetings with owners and others face-to-face, Zoom meeting, telephone conference with city, engineers and architect, jobsite visits, emails". In his affidavit, Mr. Hakimishokati says the Radmans agreed to pay this amount but Hectagon delayed invoicing it until Invoice 280 due to the Radmans' financial constraints.

[86] Mr. Hakimishokati's affidavit attaches about 20 texts exchanged between the parties spanning from May to December 2023, which indicate that he spoke to the City of Vancouver inspector and that the Radmans sent him emails regarding the building permit, including an email attaching computer-aided software drawings. The texts also indicate that Mr. Hakimishokati was involved in completing the building permit application, spoke to others hired by the Radmans to assist, and attended at building inspections.

[87] I agree with the Radmans that the documents filed on this application provide no support for Hectagon's claim that the Radmans agreed to pay this amount for consultation fees regarding the building permit. The communications between the parties between January and early March 2025 arguably support the opposite conclusion. However, given Mr. Hakimishokati's assertion that the Radmans orally agreed to pay for consultation services, and the text messages suggesting that

Hectagon may have provided more than minimal assistance in obtaining the building permit, in my view the Radmans have not established that this component of the Hectagon's lien claim falls short of an arguable case.

[88] I turn now to the claim in Invoice 280 for $35,428.05, constituting the remainder of the $69,000 referable to the cost escalation addendum. In his affidavit, Mr. Hakimishokati says that pursuant to the parties' agreement in February 2024 this entire amount was due as a lump sum under the April 5, 2024 invoice and not, as the Radmans contend, only due in proportion to the completion of work under the rest of the contract. As noted, the Radmans take the position that pursuant to the oral agreement, this remaining amount would only become payable if the project reached the point of substantial completion/performance so as to trigger the fourth milestone payment.

[89] Given the conflicting affidavit evidence, and having reviewed the minimal amount of documentation relating to the cost escalation addendum, I find that Hectagon has an arguable claim for the remainder of the cost escalation addendum amount. In fact, the Radmans did not appear to argue otherwise in their written submissions on the application.

[90] Another item in Invoice 280 is $63,000 for the outstanding balance of finished work up to February 21, 2025 based on the contract.

[91] In his affidavit, Mr. Hakimishokati explains that this figure reflects the subtraction of amounts for minor items not finished due to termination of the contract. He also states that the contract was substantially performed/completed by the time Invoice 280 was delivered.

[92] The Radmans contend that there is no arguable case that they owe $63,000 for the outstanding balance of finished work up to February 21, 2025 based on the contract, for several reasons. First, this is a lump sum amount with no detail provided in either the invoice or Mr. Hakimishokati's affidavit as to how the number was determined, other than his reference to amounts for minor items having been

subtracted. For example, this lump sum amount does not reflect the amount due under the fourth milestone payment, which would be $121,503.30 less holdback. Second, Hectagon has provided no evidence to demonstrate that any work was completed referable to the fourth milestone payment, which required substantial completion. Third, the Radmans state that, not only was there no substantial completion, but they paid for work under the second and third milestone payments only to later discover that it was never performed, and they incurred more than $300,000 in costs to complete the work under the contract, including correcting deficiencies.

[93] In order to determine whether the Radmans have met their onus of establishing no arguable case for payment of this $63,000, it is necessary to address the evidence regarding whether or not the work under the contract was substantially completed/performed.

[94] In Mr. Hakimishokati's affidavit, he mentions several times that the Radmans' mortgage broker advised in February 2025 that the project was approximately 94% complete. However, no appraisal report is attached to his affidavit, and in submissions counsel for Hectagon stated, and later confirmed, that he was not relying on the mortgage broker's out-of-court statement for the truth of its contents.

[95] In suggesting that the contract had been substantially completed, Hectagon also relies on: (a) an appraisal report dated March 31, 2023, which states that the project was 48% complete; (b) a text from the Radmans in September 2024, stating that an appraiser had determined the project was 70% complete; and (c) completion of drywall installation by October 2024 as required to trigger the third milestone payment. This evidence supports an arguable case that a considerable amount of work had been completed on the project by the time the contract was terminated. But it does not support an arguable case that the threshold for substantial completion/performance had been met so as to trigger the final milestone payment.

[96] Hectagon further relies on an October 2024 email in which the Radmans stated that they have tenants moving in on December 1. Once again, this evidence

does not materially support the conclusion that the work was substantially complete when the contract was terminated. Indeed, the email mentions numerous areas in which the Radmans are concerned about delay and work to be done: e.g., landscaping had not yet begun, the back deck needed to be redone at the correct height, and the kitchen interior was not ready for cabinet installation. And elsewhere in Mr. Hakimishokati's affidavit, he accepts that tenants did not move in until August 2025.

[97] Hectagon also points to a text sent to him by the Radmans on January 3, 2025, the subject heading of which is "on the road to completion this month!!!". However, contrary the assertion in Mr. Hakimishokati's affidavit, the contents of the text do not suggest that the project is substantially complete, only that Hectagon was targeting completion prior to Mr. Hakimishokati's surgery, which the Radmans believed was scheduled for the end of the month.

[98] Indeed, an unrelated email from Mr. Hakimishokati dated January 21, 2025, addressing dissatisfaction with the Radmans' handling of the project in various respects, says nothing to indicate that the project is at or nearing substantial completion. Also relevant is Mr. Hakimishokati's email to the Radmans dated February 13, 2025. As noted, in this email he states that due to unforeseen structural challenges and permitting delays, "we are now in the 26th month and the project is still ongoing". He asks for release of the 10% holdback on the amounts paid under the contract to date, and a management fee increase. But nowhere in this email does Mr. Hakimishokati suggest that the project is substantially complete or nearing that point.

[99] Hectagon also relies on Mr. Hakimishokati's statement in his affidavit that Hectagon's own records and photographs document the "substantial progress" achieved. Notably, however, his affidavit does not state that the company's records and photographs document *substantial completion/performance*. Perhaps more importantly, none of the records or photographs that Mr. Hakimishokati references are attached to his affidavit.

[100] By contrast, the Radmans *have* put photographic evidence before the court. These photographs constitute powerful evidence that the work on the project was not substantially complete. For example, there are exposed wires both inside and on the exterior of the house, missing pot lights, missing doors, damaged door frames, incomplete millwork, a shower without a tiled floor or drain, temporary front stairs, an unfinished front porch, and exterior stone stairs where each stair is a different height. And the backyard has been reduced to a field of churned up mud covered with construction materials and/or debris, and no back fence. Photos of the inside of the house depict substantial construction materials and/or debris on the floors.

[101] On the issue of whether the project was substantially complete, the Radmans have also provided detailed evidence regarding: (a) specific work that they paid Hectagon for, in amounts exceeding $200,000, but that Hectagon never actually performed under the contract; and (b) the substantial expenses they incurred, not only to complete that unperformed but already-paid-for work, but also to remedy deficiencies and finish the work that would have been captured under the fourth milestone payment.

[102] I will not review each area of non-performance or deficiency contained in the Radmans' affidavits. Rather, I will make four observations with respect to the evidence on this point, including the evidence proffered by Hectagon.

[103] First, and by way of illustration, the photos filed in evidence by the Radmans make it plain and obvious that the landscaping portion of the contract was nowhere close to complete at the date of termination. The description of the landscaping work undertaken by the Radmans following termination of the contract, as well as the invoices paid for that work, overwhelmingly support the conclusion that very substantial expenditures were required to complete the landscaping portion of the contract. This evidence, as well as a quote obtained by the Radmans for completion of the landscaping work, makes it difficult if not impossible to accept that any significant portion of the landscaping paid for by the Radmans as part of the third milestone payment was put towards the performance of this part of the contract.

[104] To be clear, this is just one example of allegedly paid-for-but-unperformed work raised in the Radmans' affidavit evidence.

[105] Second, in its evidence Hectagon has not responded with any specificity to the Radmans' detailed allegations of unperformed but paid for work. In his response to the "unperformed" allegations, Mr. Hakimishokati merely states that by February 2025 the project was approximately 94% complete as indicated by the Radmans' mortgage broker, and that, "[i]tems alleged as outstanding were either already performed, scheduled to be completed once other owner-directed changes were finalized, or could not be completed due to the [Radmans'] non-payment and premature termination of the Contract".

[106] However, as already noted, at the hearing of this application Hectagon's counsel stated that his client was not relying on the mortgage broker's out-of-court statement for its truth, and the photographic and other evidence filed by the Radmans belies any suggestion that the contract as a whole was substantially completed so as to trigger the fourth milestone payment.

[107] Plus, in responding to the Radmans' allegations of unperformed work, Mr. Hakimishokati does not distinguish between work that had in fact been performed, as opposed to work being held in abeyance pending directions from the Radmans or rendered impossible to perform because the contract was terminated. This distinction is relevant because only work that has been performed can be the subject of a lien claim.

[108] Third, with respect to the deficiencies alleged by the Radmans, Mr. Hakimishokati states that they either predated Hectagon's involvement, related to illegal suites constructed years earlier by the applicants, or related to scope changes required after the City of Vancouver's intervention. As such, Hectagon argues that these deficiencies were solely the Radmans' responsibility.

[109] Once again, this is a generic answer that fails to engage with the specifics provided in the Radmans' affidavit evidence. That evidence is sufficiently detailed to

allow a contractor like Mr. Hakimishokati to review the allegations and provide a focused response to each of them, or at least to explain why it is not possible to do so. Furthermore, a review of the contract and other documents supports the Radmans' affidavit evidence that there were previous contracts between Hectagon and the Radmans, and that this contract involved renovating units that had been stripped down to the studs.

[110] Fourth, in his affidavit Mr. Hakimishokati states that, "[f]ollowing termination, the [Radmans] engaged other contractors" who "entered the site and carried out further work, making changes to the Project after Hectagon's departure". He says that, "[a]ny subsequent alterations or alleged deficiencies must therefore be viewed in that context". Although Mr. Hakimishokati's meaning is not entirely clear to me, he appears to be saying that the other contractors may have carried out work beyond what was included in the scope of the contract, and perhaps also that these other contractors may have been responsible for some deficiencies.

[111] In any event, Mr. Hakimishokati's response does not go very far in countering the Radmans' evidence. Once again, that evidence describes with specificity the nature of the work done, complete with invoices detailing the work and the amounts paid. In these circumstances, it is difficult to understand Mr. Hakimishokati's failure to comment on any of the alleged work other than in the vague manner that he does.

[112] Ultimately, in my view Hectagon does not have an arguable case for saying that the contract was substantially complete/preformed at termination so as to trigger the Radmans' obligation to make the final milestone payment. And while Hectagon may be able to marshal evidence establishing an arguable case that at the time of termination some work was performed but not paid for in relation to the contract, it has not done so on this application. Rather, it has merely made the bald assertion that $63,000 is owed for such work, without describing its nature.

[113] For these reasons, I have concluded that Hectagon does not have an arguable case that the Radmans owe the $63,000 ascribed by Invoice 280 for the outstanding balance of finished work as at the date of termination. Although not

necessary to this conclusion, it is supported by the high likelihood – based on the evidence filed on this application – that Hectagon did not provide the Radmans with Invoice 280 prior to the date of termination, which in turn supports the inference that Hectagon has inflated the amounts claimed in that invoice.

[114] Turning to the final item in Invoice 280, the holdback amount "for each payment", at the hearing of the application Hectagon agreed that the quantum charged for holdback was too high because it included holdback on amounts not yet paid. Hectagon therefore agreed that, at best, the amount owing for holdback was $68,851.91.

[115] The Radmans' position is that none of this holdback amount should be reflected in the security required for the claim of lien because they were forced to incur costs substantially in excess of $68,851.91 to carry out unperformed work, rectify deficiencies and otherwise complete the work under the contract. By the Radman's calculation, the amounts they have expended exceed $500,000. Of course, those amounts expended include the roughly $121,000 that the Radmans would have had to, but did not, pay Hectagon had the contract been completed.

[116] While I could perhaps consider this submission by the Radmans, at least in part, under the first stage of the s. 24 analysis, I prefer to do so at the second stage of that analysis, in deciding whether to exercise my discretion to fix the appropriate level of security at an amount below what is sufficient to cover the claims for which I have concluded Hectagon has an arguable case. In making this second-stage determination, I will also consider the Radmans' alternative submissions regarding the unpaid portion of the 2024 cost escalation addendum ($35,428.05) and the permit consultation fees ($26,250). The Radmans also include the items in Invoice 279 ($24,690.75, after removing the amount charged for the gas sleeve) and the minor items in Invoice 280 ($8,400) as part of their submissions on this point. These amounts, plus the $68,851.91 in holdback, add up to slightly under $164,000.

[117] Hectagon has failed to provide anything more than a generic answer to the Radmans' detailed evidence suggesting that considerable work already paid for was

unperformed, that some work paid for exhibited deficiencies, and that the Radmans were required to spend over $300,000 to finish the contract.

[118] Having taken into account the purposes of the *BLA*, I have concluded that the items in Invoices 279 and 280 with respect to which Hectagon has an arguable case for recovery should therefore be discounted by one-third. I recognize that Hectagon has failed to provide anything more than a generic answer to the Radmans' evidence that already-paid-for work was unperformed and other work exhibited deficiencies. But Hectagon should be protected against the possibility that in completing the project the Radmans included extras not provided for as part of the contract, or that the cost of remedying deficiencies was not as significant as the Radmans' evidence suggests. A one-third discount strikes the appropriate balance in this regard.

[119] As a final point, I have considered the Radmans' argument that, even though some of the claims in Invoices 279 and 280 might be supported by an arguable case, Hectagon's conduct in inflating the amount claimed in the lien filed constitutes an abuse of process, within the meaning of s. 25(2)(b), so as to justify cancelling the entire lien. I have also considered the Radmans' argument that, even if I do not cancel the lien under s. 25(2)(b), for similar reasons in exercising my discretion under s. 24 I should the reduce the amount of security required to one dollar.

[120] However, I am not prepared to accept either of these arguments, for the following two reasons.

[121] First, my concern that Hectagon has inflated the amounts claimed under the lien does not rise to a level sufficient to establish an abuse of process under s. 25(2)(b): *Atlas Painting & Restorations Ltd. v. 501 Robson Residential Partnership*, 2016 BCSC 2472 at para. 12.

[122] Second, reducing the security required to the nominal amount of one dollar effectively amounts to declaring the lien invalid and thus mirrors the relief available under s. 25(2)(b): *Westurban Developments Ltd. v. Forged Construction Ltd.*, 2018

BCSC 2354 at para. 9. Since I am not prepared to cancel the lien based on abuse of process under s. 25(2)(b), I should not in effect do the same thing under s. 24.

Conclusion

[123] The amount of security provided by the Radmans with respect to the lien claim should be calculated without reference to the following amounts:

(a) $94,500 in Invoice 280 for an additional management fee;

(b) $63,000 in Invoice 280, attributed to work finished but not paid for as at February 21, 2025;

(c) $28,920 of the $97,771.91 claimed in Invoice 280 for holdback; and

(d) $2,761.50 in Invoice 279 for installing the gas sleeve.

[124] Subject to any mathematical errors I may have made, the amount of security required to cover Hectagon's claim of lien should thus be reduced by $189,181.50, from $352,802.21 to $163,620.71.

[125] However, I also have determined, in exercising my discretion at the second-stage of the analysis under s. 24 of the *BLA*, that this amount of $163,620.71 should be further reduced by one-third in arriving at the appropriate security. The appropriate security is therefore $109,080.47.

"D. Layton J."