IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Coho Communications Ltd. v. 1222424 B.C. Ltd. (Island View Place Care),* 2026 BCSC 86

Date: 20260120
Docket: 200587
Registry: Victoria

Between:

Coho Communications Ltd.

Plaintiff

And

1222424 B.C. Ltd., carrying on business under the firm name and style of Island View Place Care and the said Island View Place Care

Defendants

And

Comet Consultants Ltd. (Inc. No. BC0327864), Brigitte Krapohl and Island View Place Care Inc. (Inc. No. BC0612635)

Third Parties

Before: The Honourable Mr. Justice Baird

Reasons for Judgment

Counsel for the Plaintiff:	R. Butler
Counsel for the Defendants:	P. Morgan
Place and Date of Hearing:	Victoria, B.C. October 21, 2025
Place and Date of Judgment:	Victoria, B.C. January 20, 2026

INTRODUCTION

[1] This is a summary trial application brought by the plaintiff, Coho Communications Ltd., pursuant to Rule 9-7 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 seeking the following orders against the defendant, 1222424 B.C. Ltd.:

1) Judgment in the amount of $44,828.70, representing the value of materials and labour furnished to the defendant;

2) Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;

3) Costs of this action; and

4) Such further and other relief as this Honourable Court deems just.

EVIDENCE

[2] The plaintiff is in the business of installing and servicing electronic communication systems. Its principal and sole director is Mr. Lennie McIlwrick. In early 2019, Mr. McIlwrick was contacted by Ms. Brigitte Krapohl, who at the time was the directing mind of a company called Comet Consultants Ltd., and the *de facto* owner and operator of Island View Place Care Inc., a multi-unit residential care facility (“the facility”) for seniors located at 7013 East Saanich Road in Saanichton, BC (“the property”). Ms. Krapohl asked Mr. McIlwrick to inspect the facility’s nurse calling system. Mr. McIlwrick determined that the existing system was obsolete and needed to be replaced.

[3] Ms. Krapohl’s companies were in significant financial distress at the time. Since February 2018, the property, along with a number of parcels of land adjacent to it, had been the subject of foreclosure proceedings related to a mortgage debt of over $3 million. In addition, there were security agreements in favour of the lender attaching all presently owned and after-acquired personal property of Ms. Krapohl and her companies arising from, or used in connection with, the encumbered land. Despite these troubles, Ms. Krapohl entered a verbal contract with Mr. McIlwrick for

the purchase and installation of a Tek-Tone 160 nurse-call system for the facility ("the system") at an agreed price of $42,694 plus GST. I was told that it is a licencing requirement of running a seniors care facility that such a system should be in place and operational.

[4] At Ms. Krapohl's request, Mr. McIlwrick, who was obviously aware that Ms. Krapohl and her companies were strapped for cash, arranged lease financing for the system with a company called Derotto Holdings Ltd. It was understood that the lease agreement would be finalised and registered after the work was done. Mr. McIlwrick began installing the system on July 29, 2019. His timesheet submitted in evidence suggests that the job was almost done by September 3, 2019, but he submitted no invoice for payment. This, I gather, was because completion of the work was delayed, mostly due to defects in the system's central processing units. Coordination with the manufacturer and assistance from a third-party contractor was required to remedy the defects.

[5] On September 17, 2019, apparently unbeknownst to Mr. McIlwrick, Ms. Krapohl, on behalf of her companies, agreed to sell the facility, the property on which it was located, and all its assets and appurtenances, plus the adjoining parcels of land, to the defendant. There were two sales contracts related to this transaction, one for the various parcels of real property ("the property contract") for $4.3 million, and a second for the "assets, appliances, materials, equipment, chattels and personal property" ("the assets contract") located on or used in connection with them for $50,000. The closing date for both contracts was September 30, 2019 ("the closing date").

[6] The property contract was freighted with the usual obligations on the vendor to disclose any and all documentation financially relevant to the purchase, an array of vendor's representations and warranties, including that there were no undisclosed liabilities associated with the properties, and a provision requiring the vendor to indemnify the purchaser from any such liabilities, including unpaid financial obligations. The assets contract included an appended Schedule "A" which specified

that it covered the cost of acquiring, amongst other things, all computers and software, electronics, safety equipment, and alarms within the facility.

[7] In particular, the asset contract stipulated that:

> (a) all of the assets are now in the possession of the Seller as described in the attached Schedule A;
>
> (b) the Seller is now rightfully and absolutely entitled to the Assets hereby sold and assigned, and to all and every part of them;
>
> (c) the Seller now has good right to sell and assign the Assets unto the Buyer in the manner aforesaid and according to the true intent and meaning of this Bill of Sale;
>
> (d) the Assets are free and clear of all charges and encumbrances of every nature and kind whatsoever, except as provided in the Offer to Purchase;
>
> (e) the Seller will indemnify and save the Buyer harmless from any and all charges and encumbrances; …

[8] After the closing date, Mr. McIlwrick, still claiming to be unaware that the property and facility had been sold, returned to the facility to remedy the defects in the system's central processing units that he had identified weeks before the sale. He installed the replacement units on October 23 and 30, 2019 and says that, while he was at it, he spoke to Marlen Gjoka, a director of the defendant. He did not say what was discussed, but it cannot have been anything specific, because it was only later that he learned in passing from an unnamed nurse at the facility that "Mr. Gjoka was Island View's new owner".

[9] Mr. McIlwrick alleges that, after his discussion with Mr. Gjoka, a person called Debra Tilley, then an accounting clerk with the defendant's parent company, contacted him "to request my invoice for the system". This, he says, was by means of a voicemail message from Ms. Tilley on October 25, 2019, a transcription of which was produced in evidence as follows:

> It's Deb Tilley. I'm calling from Island View Place Care. I know you were there the other day having a look at the wiring and so on. I didn't get a chance to speak with you. I believe you were talking to Marlen [Gjoka].
>
> I just wondered if you had had a chance to make up some kind of quote for us. There's no, you know, super rush but, you know, in the next week or so if

> you wouldn't mind doing that, that would be great. I'm assuming that's why you were there, but if I am wrong, correct me.

[10] Ms. Tilley left her return phone number, but if Mr. McIlwrick returned her call to clarify the situation, he did not say so. Instead, on October 31, 2019, he invoiced the defendant, not just for the work done to get the system working properly, but for the entire contract price of $44,828.70 plus $403.20 for additional materials and labour. The defendant refused to pay, taking the position that it was not responsible for the plaintiff's account and that, by the terms of the property and assets contracts, Ms. Krapohl and her companies alone were liable to pay it. There is no evidence in the record before me to show that an invoice was ever issued to Ms. Krapohl or her companies.

[11] There is an anonymous email or text message appended to Mr. McIlwrick's affidavit filed on this proceeding. The message is dated October 5, 2019, but appears to have been forwarded to Mr. McIlwrick only on December 5, 2019. He did not explain who wrote this message or who passed it along to him, but it is addressed to Darryl Otteson, the principal of the leasing company that had agreed to finance the acquisition and installation of the system, and it reads as follows:

> Hello Darryl
>
> Island View Place got sold. Please contact manager Brigitte Krapohl / 250-882-5200 for new owner contact info since the old bank acct won't be active no more soon [*sic*]. Brigitte will continue as manager.

[12] Whether or not this forwarded message was a catalyst for it, on the same date it was received, December 5, 2019, the plaintiff filed a claim of lien against title to the property in the Victoria Land Title Office for the outstanding amount that it claimed to be owing and payable for work and materials supplied in the installation of the system (hereafter "the improvement"). The defendant does not dispute that the lien was filed in time or allege that there was any procedural defect in its registration. On February 7, 2020, the plaintiff filed its notice of civil claim herein. On October 21, 2020, the lien was cancelled in return for the defendant depositing $50,000 in trust pending a resolution of the matter.

[13] The plaintiff claims that before and after the closing date, the defendant was aware of the improvement and that it had not been paid for. The plaintiff takes the position that the defendant is an "owner" within the meaning of s. 1 of the *Builders Lien Act*, S.B.C. 1997, c. 45 ("the *BLA*") because it had prior knowledge of the unpaid improvement before acquiring the property. Under s. 3 of the *BLA*, the plaintiff argues, even in the absence of contractual relations between the parties, the improvement is deemed to have been done at the defendant's request, the plaintiff is entitled to its lien, and the defendant is legally bound to pay for the improvement.

[14] In the alternative, the plaintiff claims to be entitled to damages in the contract amount because the defendant has been unjustly enriched by the improvement. The argument goes along the usual lines that the plaintiff has sustained a financial detriment, and the defendant has enjoyed a corresponding benefit, without any legal justification. The defendant responds that the legal justification is found in the assets contract, by which it says it purchased the improvement free and clear from Ms. Krapohl and her companies on warranties that there were no outstanding liabilities, and that as a *bona fide* purchaser for value, without prior knowledge of the plaintiff's claim for the value of the improvement, it has not been unjustly enriched and has no equitable obligation to the plaintiff.

[15] The only question to be resolved here is whether the defendant had prior knowledge or notice of the improvement before the closing date. It is not disputed that the plaintiff – mostly Mr. McIlwrick himself – did the work and was not paid for it. I would note, however, that Mr. McIlwrick's affidavit standing alone does not provide any material facts in support of his claim that the defendant had prior knowledge of the improvement. He referred only to the one-off conversation with Mr. Gjoka at the facility in mid-October 2019 in which, by his own account, neither the improvement nor the amount payable was discussed or confirmed. He did not even know that the property had been sold or that Mr. Gjoka was involved in the new ownership. He gave no evidence of circumstances surrounding this conversation that could give rise to the inference that constructive notice was given.

[16] In my evaluation of the evidence, moreover, Ms. Tilley's phone message was not, as Mr. McIlwrick claims, "to request my invoice for the system", but was only a request for a quote for repairs immediately necessary to make the system operable. She assumed that Mr. McIlwrick had attended the facility "to look at the wiring and so on" and wanted to know how much his services would cost the defendant to render the system functional. She did not ask for an invoice for the entire cost of acquiring and installing the system, and in my view Mr. McIlwrick's evidence suggesting otherwise is unsustainable.

[17] On the other hand, Ms. Krapohl's affidavit evidence supports the plaintiff's case. She says that at some unspecified time during the negotiation and completion of the contracts transferring her companies' assets to the defendant, she informed the defendant about the plaintiff's work and services. She insists that Mr. Gjoka committed to pay the plaintiff in full "together with other suppliers and service providers". Her evidence consists primarily of this bald assertion, for which she provided no context. There is no evidence of where or precisely when this conversation is supposed to have occurred, or what led up to it, or to explain why Mr. Gjoka should have informally agreed to cover significant liabilities not covered by the assets contract.

[18] Not surprisingly, Mr. Gjoka denies having made any such commitment. His affidavit in response to the plaintiff's evidence sets out the following at paras. 4-11:

> 4. The closing documents executed by the Third Parties [Ms. Krapohl and her companies] in the closing of the Transaction [related to the property, the facility, and their related assets] included, amongst other documents, a certain Bill of Sale [the assets contract] dated September 30, 2019 wherein the Third Parties covenanted to the [defendant] 1222424 B.C. Ltd. that the assets sold thereunder were "*free and clear of all charges and encumbrances of every nature and kind whatsoever*" and further, that the Third Parties would "*indemnify and save the Buyer harmless from any and all charges and encumbrances*".
>
> 5. Despite the evidence of the Third Party, Brigitte Krapohl, set out in her Affidavit #1 made on May 27, 2025 filed in connection with this proceeding, I was not informed, and it is my honest belief that no representative of 1222424 B.C. Ltd. was informed, that the nurse-call system installed within the improvements on the Lands (the "System")

was incomplete as at the closing date of the Transaction, being September 30, 2019.

6. Further to the preceding paragraph, I never informed the Third Party, Brigitte Krapohl, that 1222424 B.C. Ltd. would satisfy the obligations to the Plaintiff in connection with the installation of the System and was unaware that said obligations existed.

7. I was never provided with a quotation from the Plaintiff in connection with the installation of the System prior to the completion of the Transaction on September 30, 2019 and it is my honest belief that no representative of 1222424 B.C. Ltd. was provided with such a quotation prior to the closing of the Transaction.

8. It is my honest belief and understanding that if 1222424 B.C. Ltd. was advised that any assets included in the Transaction were not paid for and that 1222424 B.C. Ltd. would be responsible for the same in addition to the purchase price therein, that 1222424 B.C. Ltd. would have negotiated a lower purchase price or alternatively, not completed the Transaction.

9. Shortly after 1222424 B.C. Ltd. took possession of the Lands, it became apparent that the System was not functioning properly and it is my honest understanding and belief that an employee of 1222424 B.C. Ltd. contacted the Plaintiff to attend the Lands to make the System properly function.

10. After the Plaintiff completed their [*sic*] work on the System in or around the end of October or early November of 2019, an employee of 1222424 B.C. Ltd., had correspondence with the Plaintiff regarding their work on the System and invoicing in connection therewith and much to my surprise, the Plaintiff invoiced 1222424 B.C. Ltd. for the entirety of the installation of the System in addition to the corrective work they performed in October of 2019.

11. 1222424 B.C. Ltd. refused to make payment of the Plaintiffs invoice in connection with the installation of the System as they never agreed to pay the same and were unaware until receiving the invoices of the Plaintiff that there were amounts owing in connection therewith which were the responsibility of the Third Parties [Ms. Krapohl and her companies] pursuant to the Transaction.

[19] Another director of the defendant, Michael Forbes, swore an affidavit in the same terms.

SUITABILITY FOR SUMMARY TRIAL

[20] Rule 9-7(2) provides that a party may apply to the court for judgment, either on an issue or generally in an action to which a response to civil claim has been

filed. Pursuant to Rule 9-7(15), the court may grant judgment in favour of a party unless:

> (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
>
> (ii) the court is of the opinion that it would be unjust to decide the issues on the application

[21] In *Zary v. Canada Mortgage and Housing Corporation*, 2015 BCSC 1145 at para. 31, the proper approach to the question of suitability was summarized as follows:

> [31] The critical question facing the court when hearing a summary trial application is whether the court can find the facts necessary to decide the disputed issues. Even where the court can find the necessary facts, it must still consider whether it would be just to decide the matter summarily, by reference to factors such as the amount involved, the complexity of the matter, its urgency, any prejudice that might arise by reason of delay, and the cost of taking the matter forward to a conventional trial: *see Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 1989 CanLII 229 (BC CA), 36 B.C.L.R. (2d) 202 (C.A.) and *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30-31.

[22] In *Ferguson v. Doak Shirreff LLP*, 2025 BCSC 2157 at para. 80, this Court restated the principles applicable to summary trials as follows:

> a) the purpose of a summary trial is to expedite the early resolution of cases in which disputed questions of fact can be decided on the basis of affidavits, unless it would be unjust to do so;
>
> b) a non-exhaustive list of factors that can be considered in deciding whether it would be unjust to grant judgment further to a summary trial include:
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> (i) the amount involved;
>
> (ii) the complexity of the matter;
>
> (iii) its urgency;
>
> (iv) any prejudice likely to arise by reason of delay;
>
> (v) the cost of taking the case forward to a conventional trial in relation to the amount involved;
>
> (vi) the course of the proceedings;
>
> (vii) the risk of wasted time and effort;

(viii) whether credibility is a crucial factor (although the fact that there may be a dispute on credibility does not mean that the matter cannot be dealt with by way of summary trial); and

c) as summary trials are trials, the parties must treat them as such by putting their best foot forward.

[23] The plaintiff submits that this matter is suitable for a summary trial for the following reasons:

a) The matter is not complex. The existence of an oral contract for the work and the valuation of the work is not disputed. The sole issue in dispute is whether the defendant is liable for the amount owing to the plaintiff for the improvement.

b) There are no material inconsistencies in the evidence. The surrounding evidence and affidavits proffered provide sufficient evidence to determine the defendant's liability for the work.

c) The cost of a conventional trial is disproportionate to the amount claimed by the plaintiff. The legal costs would likely exceed the amount in issue.

d) The parties should be afforded a timely and efficient resolution. The factual background dates to May 2019, and the action is not currently set for trial.

[24] The defendant says that the matter is not suitable for summary trial because:

a) there are disputed facts and issues between the parties that require *viva voce* testimony from the witnesses or alternatively, the ability to cross examine the witnesses on their evidence being tendered by way of filed affidavits;

b) it would be unjust to deprive the defendant of its right to cross examine the witnesses of the plaintiff and the third parties on their evidence being tendered by way of filed affidavits; and

c) the evidentiary record does not include the necessary facts to decide the disputed issues.

DISCUSSION

[25] As I have said, the only issue here is whether the defendant had knowledge or notice, prior to the closing date, of the plaintiff's pre-existing claim to be compensated for the improvement. The plaintiff must be taken to have known that it was obliged to put its best foot forward, and to martial and adduce all available evidence substantiating its claim. As I have said, Mr. McIlwrick's evidence, on its own, does not establish that the defendant had such prior knowledge or notice. It seems that he relies entirely on the evidence of Ms. Krapohl to make his case.

[26] Through its witnesses, Mr. Gjoka and Mr. Forbes, the defendant denies having represented to Ms. Krapohl that it would pay for her obligations to the plaintiff and says that it is under no legal or equitable duty to do so, having paid in full the negotiated amount for the acquisition of all the items of property listed in Schedule "A" of the assets contract, including the improvement. The defendant denies that it had any prior knowledge or notice that Ms. Krapohl or her companies had unpaid accounts with the plaintiff.

[27] The defendant claims that it retained the plaintiff, not to complete the improvement, but only to repair or render operable an already-installed system that the defendant had purchased for value, and it relies on the various representations and warranties in the relevant property and assets contracts that the transferred land and appurtenances were free of all charges and encumbrances, all guaranteed by the vendors' commitment to indemnify the defendant for any such liabilities that might later be found to exist.

[28] As I was saying, s. 1 of the *BLA* provides that an "owner" of property includes anyone at whose request, and with whose knowledge and consent, work is done, or material is supplied. Section 2 mandates that a contractor who provides work or supplies materials in relation to an improvement has a lien for the price of the work

and material. Under s. 3, an improvement done with the prior knowledge, but not at the request, of an owner is deemed to have been done at the request of the owner.

[29] This Court confirmed in *418486 B.C. Ltd. v. Newport City Club Ltd.*, 2000 BCSC 523 at para. 62 that contractual privity between the purchaser of property and a lien claimant is not required. However, a *bona fide* purchaser for value without notice of an improvement is not an "owner" within the meaning of the *BLA*. In this connection I would refer to *Baker & Ellicott v. Williams*, (1916) 23 B.C.R. 124 (C.A.) related to an analogous provision (s. 10) in the old *Mechanics Lien Act*, R.S.B.C. 1911, c. 154, and the following passage from the *British Columbia Builders Liens Practice Manual*, (Vancouver: Continuing Legal Education Society, 2025) at c. 3.12: "The authors are unaware of any case in which a purchaser who was unaware of the improvement was held to be an 'owner' whose interest was subject to the claim of lien."

[30] The issue of prior knowledge is likewise central to the plaintiff's alternative claim based on unjust enrichment. It is a full answer and defence to such a claim if the defendant was a *bona fide* purchaser for value without notice of the plaintiff's pre-existing equitable interest arising from the unpaid improvement. The *bona fide* purchaser has been called "equity's darling": see, for example, Mitchell McInnes, *The Canadian Law of Unjust Enrichment and Restitution*, (Toronto: LexisNexis, 2014). As far as I am aware the following excerpt from *Pilcher v. Rawlins* (1872), L.R. 7 Ch. App. 259 at 268 remains good law in Canada:

> ... according to my view of the established law of this Court, such a purchaser's plea of purchase for valuable consideration without notice is an absolute, unqualified, unanswerable defence, and an unanswerable plea to the jurisdiction of this Court. Such a purchaser, when he has once put in his plea, may be interrogated and tested to any extent as to the valuable consideration which he has given in order to show the bona fides or mala fides of his purchase, and also the presence of the absence of notice; but when once he has gone through that ordeal, and has satisfied the terms of the plea of purchase for valuable consideration without notice then, according to my judgment, this Court has no jurisdiction whatever to do anything more than to let him depart in possession of that legal estate, that legal right, that legal advantage which he has obtained, whatever it may be. In such a case a purchaser is entitled to hold that which, without breach of duty, he has had conveyed to him.

[31] As the Supreme Court of Canada put it in *i Trade Finance Inc. v. Bank of Montréal*, [2011] 2 S.C.R. 360 at para. 60:

> The full name of the equitable defence is 'bona fide purchase of a legal interest for value without notice of a pre-existing equitable interest.' The effect of the defence is to allow the defendant to hold its legal proprietary rights unencumbered by the pre-existing equitable proprietary rights. In other terms, where the defence operates, the pre-existing equitable proprietary rights are stripped away and lost in the transaction by which the defendant acquires its legal proprietary rights.

[32] A plaintiff in pursuit of a claim of lien against a purchaser who did not request an improvement bears the onus of establishing prior knowledge, and therefore the purchaser's deemed status as "owner" under the *BLA*. Meanwhile. as a matter of common law, *Pilcher* confirms that where a plaintiff has an equitable interest in property – where, as in this case, the plaintiff has contributed valuable materials and work in providing an improvement that has not been paid for, and stands to be cheated of just compensation for work commissioned by a property vendor that redounds to the benefit of its purchaser – then the onus rests with the purchaser to show that the property was acquired for good value without notice, actual or constructive, of the plaintiff's pre-existing interest in it.

DISPOSITION

[33] The amount of money involved in this dispute is at the very lower end of this Court's monetary jurisdiction. I agree with the plaintiff that the cost of a conventional trial would be out of proportion to the value of the claim. I would also stress that the matters at issue date back more than six years and no trial date has been set. I agree that a summary resolution is preferable for these reasons, but far more important is whether the case can be justly determined on the evidence presented.

[34] The plaintiff insists that it can be, and I repeat that it has had several years to martial and present its best and strongest case. The defendant suggests that there is a conflict of evidence on the issue of notice that necessitates a conventional trial, but I disagree. On the totality of the evidence presented, including the documentary evidence, I find that I am able here and now to make the necessary findings of fact

for the just, proportionate and expeditious determination of the matter on the balance of probabilities: see, generally, *Inspiration Management Ltd.* at para. 55.

[35] Mr. McIlwrick's evidence does nothing to advance the plaintiff's case on the subject of notice. Also, contrary to his representations, Ms. Tilley did not ask him to provide his invoice for the whole improvement, and she said nothing to suggest that the defendant had agreed to pay it. The plaintiff must therefore rely on Ms. Krapohl's bare assertion that she gave notice, but I find this evidence to be unpersuasive. It not only lacks specifics and context, but also runs contrary to the express terms, warranties and indemnities in the property and assets contracts that she agreed to on behalf of her companies in selling the property and assets to the defendant for substantial amounts of money.

[36] As I said during the hearing, no one is happy when an honest plaintiff goes unpaid, but it is always a question of who is rightfully accountable. In the present case, on all of the evidence presented, I do not accept that Mr. Gjoka would have volunteered on behalf of the defendant to pay significant liabilities outside of the sale contracts, and I accept his denial that he did so because, especially in light of the clear and unambiguous provisions of the assets contract, it makes logical sense and accords with common experience. Ms. Kraphohl's version seems unlikely by comparison, and of course it must be measured against the possibility that she made it up to shift responsibility to the defendant to pay for work that she alone requested. I accept, in other words, that Mr. Gjoka's evidence is probably true.

CONCLUSION

[37] For these reasons the application for a summary trial is granted, but the plaintiff's claim is dismissed. The funds held in trust pending this decision must be returned to the defendant. The defendant will have its costs on Scale B.

"Baird J."