

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bennington Financial Corp. v. Victoria
International Marina Ltd.*,
2026 BCSC 423

Date: 20260312
Docket: S260069
Registry: Vancouver

Between:

Bennington Financial Corp.

Petitioner

And:

Victoria International Marina Ltd.

Respondent

Before: The Honourable Justice LeBlanc

Reasons for Judgment

Counsel for Petitioner:

A. Spence

Counsel for Respondent:

D. Wheaton

Place and Date of Hearing:

Vancouver, B.C.
March 3, 2026

Place and Date of Judgment:

Vancouver, B.C.
March 12, 2026

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Introduction

[1] The respondent has claimed a lien over a vessel named the “Georgia Dawn” (the “Vessel”). On January 8, 2026, the petitioner filed this petition and paid the sum of \$44,264.65 (the “Funds”) into court. Upon payment into court, the Vessel was released to the petitioner.

[2] The respondent now applies for a declaration that it has a charge over the Funds and further for an order that \$36,192.63 of the Funds be released to it. Lastly, the respondent seeks costs of the application and petition. The respondent relies on the *Commercial Liens Act*, S.B.C. 2022, c. 9 [CLA], and its predecessor the *Warehouse Lien Act*, R.S.B.C. 1996, c. 480 [WLA].

[3] The petitioner opposes the application on the basis that it says the respondent has not demonstrated it has a valid and subsisting lien. Further, it argues that if a valid lien exists, the sums claimed by the respondent are not authorized under the CLA.

Background

[4] The respondent operates a marina located at 1 Cooperage Place, Victoria, British Columbia (the “Marina”) and engages in the business of providing moorage and shore power to marine vessels.

[5] 1300197 B.C. Ltd. (“1300197”) is a British Columbia company and the registered owner of the Vessel. The sole director of 1300197, Mr. Ilkkala, was found deceased on the Vessel on February 16, 2025.

[6] Prior to the death of Mr. Ilkkala, 1300197 entered into a moorage agreement with the respondent for the respondent to provide moorage and shore power. The respondent says that it entered into a moorage agreement with 1300197 for the period of February 1, 2023, to March 31, 2024, and from April 1, 2024, to March 31, 2025. The respondent has been unable to find a copy of the moorage agreements but says that 1300197 agreed to pay it a monthly moorage fee and costs of the previous month’s shore power in exchange for moorage and shore power. The

respondent has provided a receipt for payment evidencing 1300197's last payment made to it on February 2, 2025.

[7] The evidence concerning the agreement between the respondent and 1300197 is contained in the affidavit of Steve Sinclair, director of operations for the respondent:

- 4 VIM's business operations involve, among other things, providing moorage and shore power to marine vessels.
5. On or about February 1, 2023, a vessel called the "Georgia Dawn" was deposited with the Marina for storage by Nils Ilkkala (Mr. Ilkkala).
- ...
8. The term of the First Moorage Agreement was from February 1, 2023, until March 31, 2024. Then, on April 1, 2024, a second moorage agreement was entered into from April 1, 2024 until March 31, 2025 (the "Second Moorage Agreement"). I have searched VIM's records for a copy of the First and Second Moorage Agreements but have been unable to locate them.
9. The First and Second Moorage Agreements provided that 197 would pay VIM a monthly moorage fee and the costs of the previous month's shore power in exchange for moorage and shore power.

[8] Following the death of Mr. Ilkkala, and for the period of March 1, 2025 to December 31, 2025, the Vessel remained moored at the Marina and received shore power, although payments for moorage and shore power ceased.

[9] In June 2025, a bailiff attended the Marina on behalf of the petitioner to inquire about the Vessel. The petitioner alleged a security interest in the Vessel.

[10] On July 29, 2025, the respondent wrote to the respondent advising that the respondent was asserting a commercial lien over the Vessel pursuant to the *CLA* and the *WLA*. The respondent took the position that its lien arose under s. 2 of the *WLA* and continued under s. 66 of the *CLA*. The respondent also took the position that it had a security interest in the Vessel pursuant to the *Personal Property Security Act*, R.S.B.C. 1996, c. 359. The respondent provided notice that it would dispose of the Vessel via public auction in accordance with the *CLA* if the petitioner was not agreeable to redeeming the respondent's lien.

[11] On October 31, 2025, the respondent obtained a survey report for the Vessel which estimated the fair market value of the Vessel as \$151,500. The cost of the survey report was \$1,497.30, which the respondent has paid.

[12] On November 6, 2025, the respondent demanded payment from 1300197 for the sum of \$26,850.55. The respondent did not receive a response to this demand.

[13] On December 3, 2025, the respondent issued a notice of disposition in accordance with the *CLA*. The respondent gave notice that the sum of \$44,246.65 was required to satisfy its lien over the Vessel. The respondent also provided notice that a public auction would be held on January 9, 2026, and bids will be accepted for 14 days. The petitioner submits that the notice of disposition was deficient on the basis that there is no evidence before me that 1300197 was properly served. This issue was not raised in the application response, and the respondent has had no notice that evidence of service would be required. Counsel for the respondent submitted that all service requirements have been attended to but that the evidence was not in the materials, as it was not an issue previously identified. The respondent has satisfied me that the petitioner was properly served with the notice of disposition which I find is sufficient for the purpose of resolving the issues between the parties. I find that it is too late for the petitioner to raise issues of service on non-parties at this time.

[14] As stated above, the petitioner redeemed the Vessel on January 8, 2026, by paying the Funds into court.

[15] The respondent has submitted invoices evidencing that \$325.38 in shore power was provided for the benefit of the Vessel. The respondent submits that shore power was necessary for the operation of the Vessel's emergency systems, including a bilge pump and alarm, which it says are required for marine safety.

[16] The respondent says that the sum of \$27,229.65 is owed to it for moorage fees, consisting of the following sums:

March 1, 2025 – March 31, 2025	\$ 2,224.95
April 1, 2025 – September 30, 2025	\$17,816.40
October 1, 2025 – December 31, 2025	\$ 7,188.30

[17] Lastly, the respondent claims legal fees in the sum of \$7,140.30 it says were incurred enforcing the lien and arranging for the sale of the Vessel.

[18] The petitioner disputes the validity of the respondent's asserted lien. Furthermore, if this court finds that a valid lien exists, the petitioner disputes the value of the lien amount claimed by the respondent.

Statutory Regime

[19] The respondent relies on s. 44 of the *CLA* for the declarations that it is seeking:

Court may resolve dispute

- 44(1) A person claiming to be the owner of goods subject to a lien, a person claiming to be a lien holder or another person claiming an interest in goods subject to a lien may make an application to the court, by way of a petition proceeding, to have a dispute resolved if the dispute concerns any of the following:
 - (a) the validity of the lien;
 - (b) the amount secured by the lien;
 - (c) the right of the lien holder to take or retain possession of the goods.
- (2) In a petition proceeding to resolve a dispute in respect of subsection (1)(a), (b) or (c), the court may make, in addition to the orders available to the court in this Division, any other order the court considers appropriate in the circumstances.
- (3) If the court determines that the lien is not valid, the court may order the lien holder to pay to a petitioner or an applicant, as applicable, any pecuniary loss incurred by the petitioner or the applicant as a result of making a payment into court under this Division.

[20] Pursuant to s.45(3) of the *CLA*, the petitioner paid the Funds into court, and the respondent released the Vessel to the petitioner. Upon doing so, the respondent's lien over the Vessel was discharged and replaced by a charge on the payment, and in this case on the Funds.

[21] Pursuant to s. 45(5) of the *CLA*, a lien holder may make an application to the court for an order for payment out of court of the payment secured by the charge.

[22] Pursuant to s. 45(10) of the *CLA*, the court may make an order for any form of payment out of court under s. 45, including for security.

Issues

[23] The parties agree that the following issues are to be decided on this application:

- a) Does the respondent have a valid and enforceable lien over the Vessel?
- b) If the respondent has a valid and enforceable lien over the Vessel, are the amounts claimed by the respondent recoverable under the *CLA*?

Issue #1 – Does the respondent have a valid and enforceable lien over the Vessel?

[24] The respondent claims a lien pursuant to s. 2 of the *WLA*.

[25] Section 2 of the *WLA* provides as follows:

Warehouse lien

- 2 (1) Subject to section 3, every warehouser has a lien on goods deposited with the warehouser for storage, whether deposited by the owner of the goods or by the owner's authority, or by any person entrusted with the possession of the goods by the owner or by the owner's authority.
- (2) The lien is for the amount of the warehouser's charges for all of the following:
 - (a) all lawful charges for storage and preservation of the goods;
 - (b) all lawful claims for money advanced, interest, insurance, transportation, labour, weighing, cooperating and other expenses in relation to the goods;
 - (c) all reasonable charges for any notice required to be given under this Act, and for notice and advertisement of sale, and for sale of the goods if default is made in satisfying the warehouse lien.

[26] The *CLA* came into force on June 30, 2025, and replaced the *WLA*.

[27] The petitioner raises two issues with the respondent's asserted lien:

- a) that the respondent failed to formally assert its warehouse lien prior to June 30, 2025, and therefore failed to perfect its rights to a lien under the *WLA*; and
- b) that the Vessel was not deposited for "storage" with the respondent and therefore the respondent is not a "warehouser" pursuant to the *WLA*.

Did the respondent perfect its rights to a lien under the WLA prior to June 30, 2025?

[28] The petitioner submits that s. 66 of the *CLA* only preserves an existing lien and that the respondent must prove that such lien existed immediately prior to June 30, 2025, and that all statutory requirements under the *WLA* were met.

[29] The petitioner further submits that the respondent has failed to produce evidence that, prior to June 20, 2025, it:

- a) formally asserted a warehouse lien;
- b) issued any statutory notice under the *WLA*;
- c) commenced enforcement steps; or
- d) otherwise complied with statutory requirements necessary to establish and maintain a valid warehouse lien.

[30] The respondent submits that its lien arose under the *WLA* and continued under the *CLA* and directs my attention to the transition provisions of the *CLA*:

Transition – statutory lien – *Warehouse Lien Act*

66 (1) Despite section 69, a lien held by a warehouser under section 2 [*warehouse lien*] of the *Warehouse Lien Act* that existed on the day immediately before the date this section comes into force

- (a) continues as a lien under this Act, and
- (b) for certainty, is not required to meet the conditions set out in section 4 of this Act.

- (2) For certainty, a lien holder who holds a lien that is continued under subsection (1) may not exercise any remedies under the *Warehouse Lien Act*.

[31] The respondent further submits that the Vessel was deposited with the respondent for storage by its owner and accordingly there were no steps required of it to perfect its right to a lien pursuant to the *WLA* prior to its repeal and replacement with the *CLA*.

[32] The *WLA* provides that notice of a lien is required when goods are deposited by a person entrusted by the owner or by the owner's authority. The notice must be given to the owner of the goods and a person who has a security interest in the goods if a financing statement is registered at the date of the deposit of the goods: s. 3(1) of the *WLA*. No such requirement exists if the goods are deposited by the owner of the goods.

[33] The evidence before me supports a finding that Mr. Ilkkala was the sole director of 1300197 when the Vessel was deposited by him at the Marina. I find on a balance of probabilities that Mr. Ilkkala would have deposited the Vessel at the Marina in his capacity as a director of 1300197, and accordingly, the Vessel was deposited by the owner and the notice provisions of s. 3 of the *WLA* do not apply.

[34] If I am wrong in my conclusion regarding the role Mr. Ilkkala played when depositing the Vessel, s. 3(3) of *WLA* provides that the lien becomes void two months from the date on which the warehouse has knowledge of a person upon which notice ought to have been given. The respondent became aware of the petitioner's security interest in June 2025, and would have had until August 2025 to provide the requisite notice to the petitioner. Although the *WLA* was repealed within this two-month period, the respondent provided notice to the petitioner on July 29, 2025 of its lien interest and the petitioner does not dispute this. I find that the respondent took the steps required of it to perfect its lien pursuant to the *WLA*. With respect to the transition to the *CLA*, the *CLA* does not have a corresponding notice requirement and does not require a truncated s. 3(3) *WLA* notice to have been issued on the coming into force of the *CLA*. Under the *CLA*, the respondent need

only to be in possession of the Vessel to perfect its lien: *CLA*, s. 11(1). On June 30, 2025, when the *CLA* came into force, the respondent was in possession of the Vessel and had perfected its lien interest in accordance with its provisions.

[35] For these reasons, I find that the respondent perfected its interest of lien over the Vessel in accordance with the *WLA* and the *CLA*.

Was the Vessel deposited for storage?

[36] The petitioner submits that the respondent has failed to demonstrate that it is a “warehouser” as contemplated by the *WLA* as it was not “storing” the Vessel.

[37] Section 1 of the *WLA* defines “warehouser” as a person lawfully engaged in the business of ***storing goods*** as a bailee for hire [emphasis added].

[38] I was directed to only one authority by counsel for the petitioner. The petitioner relies on para. 15 of *Thornton v. Desbiens*, 2024 BCSC 540:

[15] I agree with the appellants that the trial judge erred in concluding that the respondents were entitled to possess the truck until the appellants paid the asserted warehouse lien charges. A lien arises under s. 2(1) of the *Warehouse Lien Act* once the warehouser establishes that the goods were deposited for storage (a) by their owner or with their owner’s authority, or (b) by any person entrusted with possession of the goods by their owner or their owner’s authority.

[39] Neither party directed my attention to *False Creek Harbour Authority v. Shodan (The)*, F.C.J. No. 362 which provides that a vessel, or any chattel, may be seized for debt if the contract between the parties provides for this. In the *False Creek* case, the contract provided for the *Warehouse Lien Act* to apply if berthage went unpaid. In this case, while I do not have a copy of the moorage contract, Mr. Sinclair has asserted that the Vessel was deposited with the Marina for storage by Mr. Ilkkala.

[40] The petitioner submits that without documentary evidence, the respondent cannot establish it was “storing” the goods as required by the *WLA*.

[41] The only evidence I have before me concerning the contractual relationship between the respondent and 1300197 is the evidence of Mr. Sinclair asserting the Vessel was brought to the Marina for “storage”. This evidence is unchallenged and the petitioner has not sought to cross-examine Mr. Sinclair on this evidence.

[42] Relying on the unchallenged evidence of Mr. Sinclair, I conclude that the Vessel was deposited with the respondent for storage and the respondent was a “warehouser”. I find that the respondent held a valid warehouse lien on June 29, 2025, the day before the *CLA* came into force.

Conclusion on Issue #1

[43] For the reasons outlined above, I find that the respondent held a valid warehouse lien pursuant to the *WLA* on June 29, 2025, and pursuant to the *CLA*, that lien continued as a lien under the *CLA*.

Issue #2 – are the amounts claimed by the respondent recoverable under the *CLA*?

[44] The respondent claims the following amounts:

- a) \$27,229.65 representing moorage fees (March to December 2025);
- b) \$325.38 representing shore power expenses (February to December 2025);
- c) \$1,497.30 for the cost of the marine survey (appraisal); and
- d) \$7,134.40 for legal fees.

[45] The petitioner submits that the respondent has not explained the necessity of the survey or how it falls within the statutory categories of lienable expenses. The petitioner further submits that legal fees are not expressly enumerated within s. 43 of the *CLA* and are not presumed to be included within “reasonable expenses”.

[46] The petitioner also takes issue with the amount being claimed for moorage. The petitioner argues that the respondent has failed to establish what amount was agreed to be paid for the moorage services.

[47] Section 6(2) of the *CLA* provides that if no amount is agreed on for the provision of the services, a lien secures the market value of the services provided. The respondent has provided evidence that the moorage charges sought for the Vessel are within market rates based on what it charges other vessels moored at the Marina. The shore power charges are rates charged by the utility company and have been passed on without increase. I find that the respondent has established that the moorage and shore power charges are market value and recoverable by the respondent.

[48] The petitioner exercised its rights pursuant to s. 46 of the *CLA* to make payment into court instead of directly to the respondent. In doing so, the petitioner argues that s. 46(1) limits what the respondent can claim to only those expenses related to “the services provided by the lien holder”. The petitioner argues that the respondent is not entitled to any other costs.

[49] The position taken by the petitioner fails to consider the applicability of s. 43 of the *CLA* which relates to the right to redeem the goods. Section 43(3) provides as follows:

- 43 (3) To redeem the goods under subsection (1), the person must tender to the lien holder
- (a) the amount secured by the lien on the goods, and
 - (b) an amount equal to the reasonable expenses incurred by the lien holder in seizing, holding, repairing, processing or otherwise preparing the goods for disposition.

[50] I find that on a proper and wholistic reading of the *CLA*, a party seeking to redeem goods, either by payment direct to the lien holder or by way of payment into court, is entitled to both the amount secured by the lien on the goods and the reasonable expenses incurred in seizing, holding, repairing, processing or otherwise preparing the goods for disposition.

[51] The issue before me is whether the marine survey and legal expenses represent reasonable expenses incurred in seizing, holding, repairing, processing or otherwise preparing the goods for disposition.

[52] Mr. Sinclair provides the following evidence concerning obtaining the marine survey:

18. On October, 2025, in preparation for disposing of the Georgia Dawn by public auction, VIM retained Vancouver Island Marine Surveyors to survey the Georgia Dawn and report on its condition and value. Vancouver Island Marine Surveyors completed their report and invoiced for their services on October 31, 2025. The cost of the survey was \$1,497.30 ...

[53] The petitioner submits that the marine survey was not necessary to prepare the Vessel for sale.

[54] The respondent submits that the survey was necessary to determine the condition of the Vessel to assist with its sale. The respondent further submits that the petitioner obtained its own marine survey which supports its position that the cost was reasonable.

[55] I find that it was reasonable for the respondent to obtain the marine survey so that it could provide prospective buyers with information on the condition of the Vessel during the auction. This expense was reasonably incurred in preparing the Vessel for disposition.

[56] The respondent has provided a redacted copy of a legal invoice in support of its claim for legal fees. Counsel for the respondent was prepared to provide an unredacted copy at the hearing, however, counsel for the petitioner opposed me receiving it and I ordered that the hearing would proceed based on the redacted version of the invoice. While I have no difficulty in finding that legal fees are a customary and reasonable expense arising from seizing and preparing the goods for disposition, I have no ability based on the redacted invoice to determine whether the legal fees incurred relate exclusively to seizing and preparation of the Vessel for disposition, or for other matters the respondent may have sought advice on.

[57] The respondent has also been substantially successful in this proceeding and would be entitled to its costs. However, the respondent ought not be put in a position where it can seek double recovery of its legal expenses.

[58] There is authority under the *CLA* and the *Supreme Court Civil Rules* for me to determine a reasonable amount representing legal costs.

[59] Section 44(1) of the *CLA* provides that the court has jurisdiction to determine the amount secured by the lien, which includes those statutorily prescribed reasonable expenses: s. 43(3)(b) of the *CLA*.

[60] On the matter of litigation costs, a court can fix lump sum costs where it is just that matters be brought to an end and to avoid putting the parties to the expense of an assessment before the registrar: *Salminen v. Garvie*, 2012 BCSC 1777 at para. 21. The fixing of lump sum costs, however, is to be made in accordance with the tariff and is not to be used to broaden judicial discretion: *Salminen* at para. 22.

[61] Accordingly, having regard to the amounts the respondent would be entitled to pursuant to the *Supreme Court Civil Rules* as lump sum costs and such reasonable additional legal costs it is entitled to receive associated with seizing and preparing the Vessel for disposition, I find that the respondent is entitled to legal fees in the lump sum amount of \$5,000.

Conclusion on Issue #2

[62] Pursuant to s. 43(3) of the *CLA*, I find the following expenses of the respondent to be reasonable:

- a) \$27,229.65 for moorage fees for March to December 2025;
- b) \$325.38 for shore power for February to December 2025;
- c) \$1,497.30 for the marine survey; and
- d) \$5,000.00 for legal fees and disbursements.

Conclusion

[63] In summary, I make the following declarations and orders:

- a) Pursuant to s. 45 of the *CLA*, the respondent has a charge over the Funds in the sum of \$34,052.33; and
- b) The sum of \$34,052.33 paid into court shall be paid out to the respondent.

[64] The petitioner seeks an order providing for any surplus portion of the Funds to be paid to it. In accordance with s. 46(7) of the *CLA*, I direct that the surplus portion remaining after paying the respondent pursuant to the order above, shall be paid to the petitioner.

“LeBlanc, J.”