

# KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 69

Date: 2026 03 30  
File No.: KBG-RG-00729-2023  
Judicial Centre: Regina

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BETWEEN:

AVANA DEVELOPMENTS INC. and  
AVANA FOUNDATION INC.

APPLICANTS

- and -

TNA CONSTRUCTION LTD.

RESPONDENT

**Counsel:**

Éric Bergeron  
Jason Clayards

for the applicants  
for the respondent

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DECISION  
March 30, 2026

WILDEMAN J.

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## I. Overview

[1] On March 16, 2023, the applicants, Avana Developments Inc. and Avana Foundation Inc. [Avana], paid funds into Court to vacate a lien registered by the respondent, TNA Construction Ltd. [TNA Construction], against property owned by Avana located at 3000 Trombley Street, Regina, Saskatchewan [Property].

[2] TNA Construction has not yet commenced a claim based on the vacated lien. Avana says the statutory limitation period for TNA Construction to commence a

claim based on its previous lien has expired. As a result, they seek an order pursuant to ss. 56(9) of *The Builders' Lien Act*, SS 1984-85-86, c B-7.1 [*Act*] directing that the remaining funds held by the Court be paid to Avana in their entirety.

[3] For the reasons outlined in more detail below, I find the limitation period for TNA Construction to commence a claim against Avana based on its previous lien has expired. As such, the remaining funds Avana previously paid into Court shall be paid back to them.

## **II. Analysis**

[4] I begin with a brief summary of the facts and legislative framework applicable to the funds Avana paid into Court. I will then analyze whether the limitation period applicable to TNA Construction's lien claim has expired.

### **Background and Statutory Framework**

[5] Avana and TNA Construction entered into a contract for wood framing services related to the construction of the Property. Avana says that on or about February 14, 2023, TNA Construction unilaterally ceased work on the project. Subsequently, on March 13, 2023, TNA Construction registered a builder's lien against the Property.

[6] Pursuant to ss. 56(1) of the *Act*, Avana applied to the Court for an order vacating the registered claim of lien against the Property and paid \$310,522.48 into Court. By Order dated March 20, 2023, TNA Construction's lien was vacated and removed from the title of the Property.

[7] Pursuant to ss. 56(6) of the *Act*, the vacated lien ceased to attach to the Property and instead became a charge on the funds paid into Court.

[8] On July 13, 2023, Avana applied pursuant to ss. 56(4) of the *Act* to

distribute a portion of the funds previously paid into Court to subcontractors who had provided services on the project. By Order dated August 8, 2023, the Court authorized payments totaling \$134,483.38 to be paid from the funds paid into Court, reducing the amount held to \$176,039.10. This amount remains held by the Court.

[9] To enforce a lien claim, an action must be commenced in accordance with the procedures set out in Part VIII of the *Act*: ss. 56(7) of the *Act*. Such an action must be commenced by statement of claim, and unless otherwise provided, *The Kings Bench Rules* apply to the proceeding: s. 86 of the *Act*. As previously mentioned, TNA Construction has not commenced an action to enforce its lien claim.

### **The Limitation Period to Commence a Claim**

[10] The issue now is whether TNA Construction is statute-barred from commencing such an action because the limitation period has expired.

[11] The *Act* does not identify a limitation period applicable to actions to enforce lien claims. Accordingly, this Court has consistently applied *The Limitations Act*, SS 2004, c L-16.1 to determine the limitation period applicable to lien claims: see, for example, *Syed v 612565 Saskatchewan Ltd.*, 2009 SKQB 141; *P.J.D. Holdings (1989) Ltd. v Kasa Construction Ltd.*, 2016 SKQB 103; and *Nayeem Uddin v Tubello Stoneworks Ltd.*, 2018 SKQB 301 [*Uddin*]. TNA Construction agrees *The Limitations Act* applies to determine the limitation period for commencing a lien claim.

[12] Section 5 of *The Limitations Act* requires proceedings to be commenced two years from the day on which the claim is discovered. To be discoverable, the claimant must know certain material facts on which to base a legal action, which are identified in s. 6 as follows:

6(1) Unless otherwise provided in this Act and subject to subsection (2), a claim is discovered on the day on which the claimant first knew or in the circumstances ought to have

known:

- (a) that the injury, loss or damage had occurred;
- (b) that the injury, loss or damage appeared to have been caused by or contributed to by an act or omission that is the subject of the claim;
- (c) that the act or omission that is the subject of the claim appeared to be that of the person against whom the claim is made; and
- (d) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it.

(2) A claimant is presumed to have known of the matters mentioned in clauses (1)(a) to (d) on the day on which the act or omission on which the claim is based took place, unless the contrary is proved.

[13] Pursuant to s. 18 of *The Limitations Act*, if a limitation period is raised against a claimant, the burden of proof lies with the claimant to show that the limitation period has not expired.

[14] Here, Avana argues the limitation period for TNA Construction's lien claim began to run no later than the date TNA Construction registered its lien claim, namely March 13, 2023. As such, two years have passed since the limitation period commenced, and the claim is statute-barred.

[15] TNA Construction admits it discovered its loss, that its loss was caused by Avana's non-payment, and that non-payment would properly be the subject of a claim. However, TNA Construction says that while the discoverability criteria in ss. 6(1)(a)–(c) of *The Limitations Act* have been met, ss. 6(1)(d) has not yet been fulfilled.

[16] In particular, TNA Construction says that the commencement of a limitation period may be delayed where there is a possibility the matter could be

resolved without litigation. Here, TNA Construction says the contract between Avana and TNA Construction requires the parties to attempt to negotiate resolution, then attempt mediation, and only if that fails, proceed to binding arbitration. TNA Construction says it attempted to engage the dispute resolution process under the agreement no less than three times, and Avana refused to participate. TNA Construction says it is contractually prohibited from commencing an action until the dispute resolution steps in the contract are complete, including arbitration. As a result, it says the limitation period has not yet expired – in fact, it has not yet started to run.

[17] Pursuant to ss. 6(1)(d) of *The Limitations Act*, the limitation period does not commence until the claimant knows, or in the circumstances ought to have known, that a proceeding would be a legally appropriate means to seek to remedy the injury, loss or damage. It is notable that when it applies, ss. 6(1)(d) may serve to delay or postpone the start date of the two-year limitation period beyond the date when the claimant knows it has incurred a loss because of the defendant’s actions: *407 ETR Concession Company Limited v Day*, 2016 ONCA 709 at para 33.

[18] One of the purposes underlying ss. 6(1)(d) is to encourage parties to discuss and negotiate claims rather than to rush into litigation: *Saskatchewan (Highways and Infrastructure) v Venture Construction Inc.*, 2020 SKCA 39 at para 64 [*Venture Construction*]. Accordingly, if the claimant is pursuing an alternative dispute resolution process that offers an adequate remedy, and that process has not yet concluded, this can be an appropriate reason for a plaintiff to delay in commencing a civil claim: *Venture Construction* at paras 67-68.

[19] The determination of when an action is “appropriate” is factual and dependent on the circumstances of the case: *Venture Construction* at para 69. Relevant considerations include: (i) the nature of the claim; (ii) the circumstances of the party with the claim; and (iii) the interest to be fostered by deterring needless litigation:

*Venture Construction* at para 70.

[20] The date on which an alternative process has run its course or is exhausted must be reasonably certain or ascertainable by a court: *Venture Construction* at para 71 citing *Presidential MSH Corp. v Marr, Foster & Co. LLP*, 2017 ONCA 325 at paras 46-48. This ensures an acceptable element of certainty remains in the law of limitations and avoids entangling the courts in the task of having to assess when negotiations between the parties have broken down: *Markel Insurance Co. of Canada v ING Insurance Co. of Canada*, 2012 ONCA 218 at para 34.

[21] The pertinent question here is when the reasonable person, with the abilities and in the circumstances of TNA Construction, knew or ought to have known that a proceeding was the appropriate means to seek to remedy its claim.

[22] TNA Construction relies upon the Affidavit of Kevin Schauenberg sworn October 15, 2025. Mr. Schauenberg says that after not receiving payment from Avana on March 9, 2023, he registered a builder's lien against the Property. On April 23, 2023, he indicates he emailed Avana to begin the settlement process and followed up by email on August 14, 2023. With no response, he sent a letter dated January 30, 2024 by registered mail to engage in settlement discussions. He indicates despite his repeated efforts, Avana has not engaged in dispute resolution regarding the matters at issue between them.

[23] Mr. Schauenberg attaches to his affidavit as Exhibit "A" the contract between TNA Construction and Avana. Clause 44 of the agreement between Avana and TNA Construction addresses the manner in which disputes are to be resolved between the parties as follows:

44. **Dispute Resolution:** In the event of a disagreement between the parties as to the performance of the Work or the interpretation, application or administration of the Agreement, the Trade shall perform the Work as directed by Avana and no

resort to arbitration shall be made until the Work is complete. All differences between the parties not resolved by the decision of Avana and all disputes and claims of either party arising out of the Work and its performance shall be settled in accordance with this section. The parties shall make all reasonable efforts to resolve all disputes and claims by negotiation between the parties and the parties agree to provide, without prejudice, open and timely disclosure of relevant facts, information, and documents to facilitate such negotiations. Either party shall be entitled by notice to the other to call for the appointment of a mediator, in which case the parties shall within 10 business days thereafter jointly nominate a mediator. If the parties do not agree on the appointment of a mediator, then either party may request the Chair of the Canadian Arbitration Association to appoint a mediator, who when so appointed shall be deemed acceptable to the parties and to have been appointed by them. The parties shall submit in writing their dispute to the mediator and afford to the mediator access to all records, documents and information the mediator may request. The parties shall meet with the mediator at such reasonable times as may be required and shall through the intervention of the mediator negotiate in good faith to resolve their dispute. All proceedings involving a mediator are agreed to be without prejudice, and the cost of the mediator shall be shared equally between the parties. If the dispute has not been resolved within 21 days after the appointment of the mediator, either party may, by notice to the other, withdraw from the mediation process. All disputes, claims and differences not settled as herein provided, arising out of or in connection with this Agreement shall be referred to and finally resolved by arbitration in accordance with *The Arbitration Act, 1992* (Saskatchewan). Nothing in this section shall be construed in any way to limit Avana from asserting any statutory right to a lien under applicable lien legislation and the assertion of such right or obligation by initiating judicial proceedings is not to be construed as a waiver of any right that Avana may have to proceed under this section upon the merits of the claim upon which such lien is based.

[24] In response, Avana argues clause 44 of the contract was never triggered, as TNA Construction never completed the work under the contract. In any event, Avana says that its rights pursuant to the *Act* are not extinguished by clause 44.

[25] In determining whether clause 44 applies to the dispute at issue in this

matter, I have very little evidence on the nature of the underlying dispute between TNA Construction and Avana. On its face, clause 44 appears to have broad application, as it requires “All differences between the parties not resolved by the decision of Avana and all disputes and claims of either party arising out of the Work and its performance shall be settled in accordance with this section.” However, TNA Construction has not established the dispute arises from the “Work” as defined in the agreement. Furthermore, I have very little evidence on Avana’s assertion that TNA Construction did not complete its work on the project. While clause 44 of the agreement contemplates that TNA Construction will complete its work on the project before disputes between the parties are addressed through the dispute resolution process, I have no context on the dispute (and very little argument from the parties) to properly determine the applicability of the dispute resolution process in clause 44 to TNA Construction’s lien claim.

[26]           However, even if I assume clause 44 applies to the dispute which underlies TNA Construction’s lien claim, I am not satisfied it serves to delay the commencement of the limitation period as TNA Construction suggests.

[27]           Here, while the parties contractually agreed on how disputes would be resolved between them, in determining the applicable limitation period, I must consider the broader context. In particular, TNA Construction took steps to register its lien in March 2023. Thereafter, Avana took a number of steps to address the lien and monies subsequently paid into Court. As a result, since March 2023, the Court has held significant funds paid into Court by Avana, with TNA Construction’s vacated lien a first charge on those funds.

[28]           Thereafter, TNA Construction appears to have taken some steps to initiate discussions with Avana with respect to its claim. However, in my view, TNA Construction has not provided a sufficient evidentiary basis to establish the limitation

period did not commence while the parties pursued an alternative dispute resolution process. In particular:

- (a) While Mr. Schauenberg indicates he reached out to Avana three times to begin the settlement process, he does not provide details of his communications, including what part of the dispute resolution process he attempted to initiate. Nor does he include copies of his correspondence;
- (b) Clause 44 provides either party has the right to provide notice to the other party for the appointment of a mediator, in which case the parties shall, within 10 business days, nominate a mediator. I have no evidence TNA Construction provided notice of its intention to commence the mediation process. Nor do I have evidence that TNA Construction requested the Chair of the Canadian Arbitration Association to appoint a mediator if Avana was unresponsive or the parties could not otherwise agree on the mediator; and
- (c) Clause 44 indicates that upon the appointment of a mediator, if the dispute is not resolved within 21 days, either party may withdraw from the mediation process and commence an arbitration proceeding. However, I have no evidence that TNA Construction commenced an arbitration proceeding in relation to its lien claim.

[29] In my view, in order for the dispute resolution process contemplated in clause 44 of the agreement to delay the start of a limitation period, it was incumbent on TNA Construction to provide evidence that it took reasonable steps to engage in and advance through the process. The only evidence I have that TNA Construction attempted to engage in the dispute resolution process is Mr. Schauenberg's indication

he reached out to Avana on three occasions with no response, with the last attempt being in January 2024.

[30] Here, to the extent clause 44 applies to TNA Construction's lien claim, TNA Construction was entitled to take unilateral steps to commence the dispute resolution process. However, I am not satisfied on the basis of TNA Construction's evidence they engaged the process as contemplated in the contract. Pursuant to ss. 6(2) of *The Limitations Act*, a claimant is presumed to have known of the matters mentioned in ss. 6(1)(a)-(d) on the day on which the act or omission on which the claim is based took place, unless the contrary is proved. TNA Construction has not provided sufficient evidence to rebut this presumption. Accordingly, based on the evidence before me, I find the limitation period began to run when TNA Construction registered its lien against the Property on March 13, 2023.

[31] TNA Construction also argues that if it had commenced an action to enforce its lien claim, Avana could have stayed the action in light of the alternative dispute resolution process agreed to by the parties. Thus, TNA Construction says the fact that no action was commenced is not determinative as arbitration is required in any event. For the reasons outlined above, in my view, where the parties have contractually agreed upon an alternative dispute resolution process rather than litigation, it is incumbent on the claimant to provide an evidentiary basis to show it took reasonable steps to employ that dispute resolution process. TNA Construction has not satisfied me that it has done so. Furthermore, TNA Construction registered a lien against the Property, and monies are held in Court with TNA Construction having a first charge against those funds. In the face of these circumstances, I cannot conclude that the limitation period for TNA Construction to commence a proceeding in relation to its lien has not yet begun to run.

[32] As such, I am satisfied that TNA Construction knew, or ought to have

known, the material facts in ss. 6(1)(a)-(d) of *The Limitations Act* when it registered its lien on March 13, 2023. Two years have since passed, and the statutory limitation period for TNA Construction to commence a claim to enforce its lien has expired. Accordingly, the claim which underlies TNA Construction's lien is extinguished: *Uddin* at para 9.

[33] Avana relies on ss. 56(9) of the *Act* as the Court's authority to return the funds held by the Court to Avana. Pursuant to ss. 56(9), where a lien claimant whose registered claim of lien has been vacated is not able to prove his claim, the Court, may on notice to any persons affected, order that the money be paid out or security be delivered to the person found by the court to be entitled to the money or security.

[34] TNA Construction takes issue with whether the monies can be paid to Avana pursuant to ss. 56(9) of the *Act*, arguing that the section only applies once the merits of a claim have been adjudicated. Here, I find that TNA Construction is unable to prove its claim given that it is plain and obvious it has been extinguished by the expiration of the limitation period. As such, the monies may also be returned under ss. 56(4) of the *Act*: see, for example, *Uddin* at para 10; *Grey Owl Engineering Ltd. v Propak Systems Ltd.*, 2015 SKCA 108.

### **III. Conclusion**

[35] For the reasons outlined above, I find TNA Construction's underlying lien claim is statute-barred. Absent any evidence of competing claims, Avana is entitled to the monies held in Court. As such, I grant Avana's application.

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J.  
J.R. WILDEMAN