

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1866noentry.com Systems Ltd. v. Surrey*  
(City),  
2026 BCSC 685

Date: 20260416  
Docket: S258641  
Registry: Vancouver

Between:

**1866noentry.com Systems Ltd. formerly known as Intercon Security Ltd.**

Plaintiff

And

**City of Surrey and Graham Construction and Engineering Limited Partnership  
by its General Partner Graham Construction and Engineering Inc.**

Defendants

And

**Graham Construction and Engineering Limited Partnership by its General  
Partner Graham Construction and Engineering Inc.**

Plaintiff by way of Counterclaim

And

**1866noentry.com Systems Ltd. formerly known as Intercon Security Ltd.**

Defendant by way of Counterclaim

Before: The Honourable Justice Branch

## Reasons for Judgment

Representative for the Plaintiff/Defendant by  
Counterclaim, appearing in person:

S. Dhaliwal

Counsel for the Defendant/Plaintiff by  
Counterclaim, Graham Construction and  
Engineering Limited Partnership by its  
General Partner Graham Construction and  
Engineering Inc.:

C.L. Paterson  
H.S. Meiteen

No further appearances

Place and Date of Hearing:

Vancouver, B.C.  
February 3, 2026

Place and Date of Judgment:

Vancouver, B.C.  
April 16, 2026

**Table of Contents**

**I. INTRODUCTION ..... 4**

**II. BACKGROUND ..... 4**

    A. The Contracted Work ..... 4

    B. The Lien ..... 4

    C. The Small Claims Action ..... 5

    D. The BCSC Action ..... 5

**III. ANALYSIS ..... 7**

**IV. CONCLUSION ..... 11**

**I. INTRODUCTION**

[1] This is an application by the defendant, Graham Construction and Engineering Limited Partnership by its General Partner Graham Construction and Engineering Inc. (“Graham”) to dismiss the plaintiff’s claim on the basis that it is an abuse of process. For the reasons below, I agree that most of the claims should be dismissed, but that the claim for a *Shimco* lien should simply be stayed.

**II. BACKGROUND**

**A. The Contracted Work**

[2] The plaintiff, 1866noentry.com Systems Ltd., formerly known as Intercon Security Ltd. (“Intercon”), alleges that it was not fully paid for the security services and equipment it performed under a contract with Graham. The work was performed at the Cloverdale Sports and Ice Centre (the “Lands”) owned by the defendant, City of Surrey (the “City”).

**B. The Lien**

[3] On April 3, 2024, Intercon filed a lien claim under the *Builders Lien Act*, S.B.C. 1997, c. 45 [*BLA*], in the New Westminster Land Title Office under number BB5007034 (the “Lien”). Intercon claimed \$139,646.00 was due and owing to Intercon by Graham and the City.

[4] The Lien was cancelled under s. 24 of the *BLA* pursuant to a November 15, 2024 consent order (the “Consent Order”). The Consent Order provided for the Lien to be cancelled upon a lien bond (the “Lien Bond”) in the amount of the Lien being deposited in trust.

[5] Pursuant to section 33(1) and (5) of the *BLA*, if Intercon wished to avoid having its Lien (or its replacement Lien Bond) being extinguished, it was required to commence an action in the Supreme Court of British Columbia within one year of its Lien filing (i.e. by April 4, 2025).

### C. The Small Claims Action

[6] On March 31, 2025, Intercon commenced a Small Claims proceeding under file number 2577684 (the “Small Claims Action”) in the Provincial Court of British Columbia (the “Small Claims Court”) by filing a notice of claim (the “Notice of Claim”) prepared and executed by its legal counsel at the time.

[7] On the Notice of Claim, Intercon selected the box confirming that “the claimant is abandoning the amount of their claim that is over \$35,000, not including interest and expenses”.

### D. The BCSC Action

[8] No BCSC action was commenced by Intercon prior to April 4, 2025, the aforementioned one-year deadline prescribed by s. 33 of the *BLA*. Between April and November 2025, Graham sought Intercon’s consent to the return of the Lien Bond, given that Intercon had missed the one-year deadline. Despite numerous requests, Intercon refused to consent.

[9] On November 17, 2025, Intercon commenced the present action in this Court by filing a notice of civil claim (the “BCSC Action”). Intercon was, by this point, represented by new counsel. The BCSC Action raised the same contract breach advanced in the Small Claims Action. Intercon claimed in the BCSC Action that the amounts owing totalled \$65,257.25, well in excess of the capped amount claimed in the Small Claims Action. Intercon also advanced an unjust enrichment/*quantum meruit* claim.

[10] On November 20, 2025, Graham learned that Intercon had terminated its retainer with its counsel. Intercon has been self-represented since that time.

[11] On November 21, 2025, Intercon told Graham that its demand for release of the Lien Bond was “premature and legally incorrect” and insisted that the Lien Bond “must remain in place until the Shimco lien claim is fully resolved or adjudicated”. (As discussed further below, a *Shimco* lien is a lien against the 10% statutory holdback that owners, contractors, and subcontractors must retain under the *BLA*. Such liens

exist separately and independently from any other lien registered against the land. The City of Surrey retains \$75,045.84 as a *Shimco* lien-eligible holdback (the “Holdback”).

[12] On December 8, 2025, Intercon purported to amend its claim in the Small Claims Action by appending “Amended Particulars of Claim” to the Notice of Claim (the “Amended Particulars”). The Amended Particulars purported to clarify the scope of claims advanced in the Small Claims Action and the BCSC Action. The Amended Particulars stated that:

- a) The Small Claims Action was “strictly limited to a personal debt claim for unpaid invoices totaling \$35,000”.
- b) The BCSC Action advanced a claim for “additional damages” including:
  - i. contractual interest at 2% per month or interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
  - ii. administrative and internal processing costs;
  - iii. reasonable collection costs;
  - iv. financing and working capital costs;
  - v. equipment storage and carrying costs;
  - vi. inspection and compliance-related expenses;
  - vii. operational disruption and labour rescheduling costs; and
  - viii. reasonable pre-litigation expenses.
- c) The BCSC Action “concerns”:
  - i. builders lien enforcement;
  - ii. claims against lien security;

- iii. claims against the City of Surrey; and
- iv. higher-value contractual and equitable damages beyond the Small Claims Court's jurisdiction.

### III. ANALYSIS

[13] As noted, Graham brings this application to strike under the *Supreme Court Civil Rules*, Rule 9-5, on the basis that the plaintiff's approach is an abuse of process. Graham argues that Intercon has already commenced its action in Small Claims Court and should not be allowed to pursue a second claim in this Court at the same time, raising the same issues.

[14] The Supreme Court of Canada has recognized that duplicative litigation can amount to an abuse of process: *Saskatchewan (Environment) v. Métis Nation - Saskatchewan*, 2025 SCC 4:

[38] A multiplicity of proceedings which engage the same issues can amount to an abuse of process. In the foundational case of *McHenry v. Lewis* (1882), 22 Ch. D. 397, Sir George Jessel observed that: ". . . it is prima facie vexatious to bring two actions where one will do" (p. 400). Examples of where a multiplicity of proceedings has amounted to an abuse of process include: where two parallel class actions involving the same parties were brought in two different jurisdictions (*Englund v. Pfizer Canada Inc.*, 2007 SKCA 62, 284 D.L.R. (4th) 94, at paras. 38-40); where plaintiffs initiated multiple actions claiming Aboriginal and treaty rights over the same land and natural resources (*Dixon v. Canada (Attorney General)*, 2015 ABQB 565); and where the plaintiffs provided "no viable explanation" for bringing a second action that duplicated the issue of ownership of a trade name which encapsulated the original defendants (*Cashin Mortgages Inc. v. 2511311 Ontario Ltd.*, 2024 ONCA 103, 170 O.R. (3d) 107, at para. 14).

[39] However, the fact that there are two or more ongoing legal proceedings which involve the same, or similar, parties or legal issues, is in itself not sufficient for an abuse of process. As this Court recognized in *Toronto (City)*, "[t]here may be instances where relitigation will enhance, rather than impeach, the integrity of the judicial system" (para. 52). Similarly, there may be instances where parties have a valid reason for bringing separate, but related, proceedings; in such cases, a multiplicity of proceedings can serve to enhance the administration of justice (see, e.g., *Birdseye Security Inc. v. Milosevic*, 2020 ONCA 355, at paras. 20-22). The inverse can also be true: pleadings do not need to be identical in order for a multiplicity of proceedings to amount to abuse of process (see, e.g., *Dixon*, at para. 85; *Fillion v. Degen*, 2005 MBCA 58, 195 Man. R. (2d) 2, at para. 23).

[40] Thus, the abuse of process analysis does not end when multiple or similar proceedings exist. Rather, the analysis needs to focus on whether allowing the litigation to proceed would violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice, as discussed above. Where, for example, having duplicative proceedings would waste the resources of the parties, courts and witnesses, or risk inconsistent results and therefore undermine the credibility of the judicial process, this can amount to an abuse of process.

[15] For the following reasons, I agree that the advancement of the BCSC Action qualifies as an abuse of process (with one caveat discussed below):

- a) The core claim is the same – breach of contract.
- b) The addition of an unjust enrichment claim does not justify the BCSC Action. The weight of authority suggests that unjust enrichment claims can be advanced in Small Claims Court: *Housewise Construction Ltd. v. Whitgift Holdings Ltd.*, 2016 BCSC 2245 at paras. 54–55; *Dulay v. Gill*, 2011 BCSC 890 at para. 49; *Heating v. RKI Properties*, 2023 BCPC 196 at para. 221.
- c) Intercon made a clear, unequivocal choice, with counsel assistance, to abandon its claim for damages above the Small Claims Court limit. It would be unfair and inequitable to allow the plaintiff to resile from the abandonment of this aspect of its claim, particularly after the one-year period for filing a BCSC claim has expired.
- d) Intercon was notified by the defendants that the one-year period for advancing a BCSC claim had expired, yet chose to proceed in any event.

[16] Any prejudice to Intercon from this dismissal is mitigated by the fact that:

- a) It retains the right to pursue its initial contractual claim against Graham in Small Claims Court.
- b) It retains the right to apply to amend their Small Claims Court claim to add further causes of action: *Small Claims Rules*, BC Reg 261/93, R. 8.

- c) To the extent Intercon was not properly advised about the effect of filing a capped Small Claims Action, it may have a remedy against its former solicitor.

[17] As such, I find that any claim for a monetary remedy in the BCSC Action should be struck. Intercon “made its bed” by pursuing more limited monetary relief in the Small Claims Action. Further, with respect to any claims under the *BLA*, the plaintiff missed the one-year BCSC limitation period for claims.

[18] This finding does leave one residual issue – whether the fact of a claim for a *Shimco* lien against the Holdback prevents the issuance of an order striking the BCSC Action in its entirety. I find that it does.

[19] In *Kingdom Langley Project Limited Partnership v. WQC Mechanical Ltd.*, 2025 BCCA 169 [*Kingdom Langley*], the Court of Appeal reaffirmed the validity of *Shimco* liens. As noted, *Shimco* liens are liens against the statutory holdback that must be maintained by owners, contractors and subcontractors under the *BLA*. *Shimco* liens were recognized by the Court of Appeal in its decision in *Shimco Metal Erectors Ltd. v. North Vancouver (District)*, 2003 BCCA 193 [*Shimco*]. In *Shimco*, the Court confirmed that the *BLA* establishes a distinct lien against the Holdback, a lien that is separate and apart from any other lien against the land and improvements.

[20] The five-member division of the Court of Appeal in *Kingdom Langley* was invited to overturn *Shimco*. However, while accepting that *Shimco* liens have created certain practical difficulties for owners and contractors, the Court reaffirmed the dual-lien structure, and confirmed that posting security under s. 24 of the *BLA* does not cancel or extinguish a *Shimco* lien against any holdback.

[21] There was a practical difficulty facing Intercon in the present case: it appears that a *Shimco* lien cannot be advanced in Small Claims Court. Research yields no reported Small Claims Court decision in which such a *Shimco* lien has been enforced by that Court. This makes sense, since such liens are a construction of this Court under the *BLA*. It is consistent with the fact that proceedings for a statutory

lien under the *BLA* must also be commenced in this Court: *BLA*, s. 1 (definition of “court”).

[22] Hence, I find that those aspects of the BCSC Action seeking the protection of a *Shimco* lien against the Holdback are not an abuse of process, since they could not have been pursued in Small Claims Court.

[23] Graham seeks alternative relief staying the BCSC Action indefinitely, or in the further alternative, until after the adjudication of the Small Claims Action. I find that this further alternative is the most reasonable outcome given the jurisdictional difficulties faced by Intercon, as:

- a) This remaining claim, which I will allow to proceed in this Court, is intended to serve as protection for any amount payable;
- b) Any amount payable will be determined by the Small Claims Court; and
- c) I have directed that the question of the amount recoverable for the underlying claim must be litigated in the Small Claims Court to properly hold the plaintiff to their commitment in that court.

[24] Hence, I find that a stay of the BCSC Action until the Small Claims Action is resolved is an efficient approach to the practical problem. It can be implemented immediately. It minimizes the inefficiencies noted with the *Shimco* lien process that only the legislature has the authority to address: *Wah Fai Plumbing & Heating Inc. v. Ma*, 2011 BCCA 26 [*Ma*] at paras. 26–28, 44.<sup>1</sup>

[25] Graham also seeks an order that the builder’s lien claim is extinguished, and that the Lien Bond may be released to Graham. I am prepared to make such a declaration, given that the one-year period expired without a claim being advanced:

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<sup>1</sup> I note that the BC Legislature has taken recent steps to address these issues with the passing of Bill 20, *Construction Prompt Payment Act*, 1st Sess, 43rd Parl, BC, 2025 (assented to November 27, 2025). The newly created act has yet to be brought into force by the Lieutenant Governor in Council, and in any event (and relevant to this decision) will not apply to contracts which were entered into before the bill comes into force (Bill 20, s. 50).

*Trans Canada Trenchless Ltd. v. Targa Contracting (2013) Ltd.*, 2022 BCSC 438. However, to be clear, any claim against the Holdback under *Shimco* has not expired since the holdback funds continue to exist: *Ma* at paras. 21–22.

**IV. CONCLUSION**

[26] The motion to strike is granted in part:

- a) All claims, except those seeking the security of the *Shimco* lien against the Holdback, are struck.
- b) The claim of Builders Lien registered by Intercon in the New Westminster Land Title Office on April 3, 2025, under registration number BB5007034 is extinguished.
- c) The Lien Bond may be released to Graham.
- d) The BCSC Action is stayed until the resolution of the Small Claims Action.

[27] Subject to either party seeking to make further submissions on costs, I find that, given that (1) Graham was only partially successful, and (2) the case raised novel issues regarding the interaction of *Shimco* liens with Small Claims Court proceedings, I would direct that each party bear their own costs. If either party seeks to make further submissions on costs, that must occur within 30 days of this judgment. The opposing party shall have 15 days to respond, and the original party shall have a further seven days thereafter to reply.

“The Honourable Mr. Justice Branch”