

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *RStyle Enterprises Ltd. v. 1308879 B.C. Ltd.*,  
2026 BCCA 168

Date: 20260421  
Docket: CA50321

Between:

**RStyle Enterprises Ltd.**

Appellant  
(Plaintiff)

And

**1308879 B.C. Ltd.**

Respondent  
(Defendant)

Before: The Honourable Chief Justice Marchand  
The Honourable Justice Fleming  
The Honourable Justice Iyer

On appeal from: An order of the Supreme Court of British Columbia, dated  
December 9, 2024 (*RStyle Enterprises Ltd. v. 1308879 B.C. Ltd.*,  
2024 BCSC 2226, New Westminster Docket 254032).

Counsel for the Appellant: M.B. Funt

Counsel for the Respondent: S. Turner

Place and Date of Hearing: Vancouver, British Columbia  
January 14, 2026

Place and Date of Judgment,  
with Written Reasons to Follow: Vancouver, British Columbia  
January 14, 2026

Place and Date of Written Reasons: Vancouver, British Columbia  
April 21, 2026

**Written Reasons of the Court**

**Summary:**

*The appellant challenges the decision of the chambers judge made pursuant to s. 215(1) of the Land Title Act, cancelling a certificate of pending litigation (“CPL”). The appellant pleaded a claim to an interest in land in the amount of the deposit paid to the respondent, enforceable through a purchaser’s lien over the properties. In cancelling the CPL, the judge followed a BCSC decision that was subsequently overturned by this Court.*

*Held: Appeal allowed. As the case relied on by the judge is indistinguishable, this Court’s conclusion in that case governs here.*

**Reasons for Judgment of the Court:**

**Introduction**

[1] After the hearing of the appeal, the Court allowed the appeal with reasons to follow. These are those reasons.

[2] The appeal is from an order made pursuant to s. 215(1) of the *Land Title Act*, R.S.B.C. 1996, c. 250, cancelling a certificate of pending litigation (“CPL”).

[3] The underlying action arises from a failed real estate transaction. The appellant’s pleading includes a claim for an interest in land based on a purchaser’s lien, but the chambers judge concluded the pleading did not disclose a sufficient interest in land. In reaching his conclusion, the judge followed *1332404 B.C. Ltd. v. 1266685 B.C. Ltd.*, 2024 BCSC 592 [133 (SC)], which was subsequently overturned on appeal: *1332404 B.C. Ltd. v. 1266685 B.C. Ltd.*, 2025 BCCA 46 [133 (CA)].

[4] In 133 (CA), this Court held that a purchaser’s lien is an interest in land that can ground a CPL, and identified the material facts required to support a pleaded claim under s. 215(1). We agree with the appellant that the appeal must be allowed because the claim it has pleaded accords with 133 (CA).

**Background**

[5] The appellant entered into a contract with the respondent to purchase ten lots for \$11 million (the “Contract”). Pursuant to the Contract, the appellant paid a deposit of \$1.1 million directly to the respondent (the “Deposit”).

[6] The Contract required the respondent to provide certain services to the boundaries of the lots, and the appellant to complete the purchase within 30 business days of receiving written notice that these services had been installed.

[7] The respondent notified the appellant. A dispute arose as to whether the services were in fact completed and whether proper notice was given. The appellant refused to complete the purchase and alleged the notice of completion was

defective. The respondent accepted the appellant's failure to complete as a repudiation of the Contract and elected to treat the Deposit as forfeited to it.

[8] The appellant registered the CPL the day after it filed a notice of civil claim that sought specific performance of the Contract and damages (the "NOCC").

[9] The respondent applied for an order that the CPL be cancelled. Before the application was heard, the appellant filed and served an amended notice of civil claim (the "ANOCC"). Along with striking out the specific performance claim, the ANOCC added an allegation that the appellant accepted the respondent's refusal to complete the sale of the lots as a repudiation of the Contract and elected to terminate it. The ANOCC also asserted that in these circumstances the appellant was entitled to the return of the Deposit and to a purchaser's lien against the property for the amount of the Deposit paid.

### **Reasons for Judgment**

[10] The judge began his analysis by observing that a CPL may be cancelled under s. 215(1) if the pleaded claim does not meet the threshold criterion of claiming an interest in land. Citing *Treasure Bay HK Limited. v. 1115830 B.C. Ltd.*, 2024 BCSC 294, he also observed the issue is determined based solely on examining the pleadings.

[11] Turning to the ANOCC, the judge indicated that many of the paragraphs supporting an interest in land in the NOCC had been struck out and the ANOCC asserted a "very different" claim: at para. 18. He concluded the pleaded election to terminate the Contract and seek a return of the Deposit was inconsistent with the assertion of an ongoing interest in land, based on the reasoning in *133(SC)*, where the CPL was also cancelled under s. 215(1). The judge found the two cases were "materially indistinguishable": at paras. 20, 27, 32–33.

### **133 (SC)**

[12] In *133 (SC)*, the purchaser's pleading asserted an interest in the property equivalent to the deposits paid to the seller, by way of a purchaser's lien; and the

seller held title of the land in trust for the plaintiff by way of a remedial trust enforceable through a purchaser's lien. The remedies sought included rescission of the contract, return of the deposits and a purchaser's lien.

[13] The judge's reasoning began with the premise that "return-of-deposit" cases generally do not give rise to an entitlement to file a CPL because the purchaser is not asserting an interest in land. On her view, while it was "at least conceivable" that the claim for a purchaser's lien was an assertion of an interest in land, this could not be the case when the facts and remedies pleaded were inconsistent with such an interest: at paras. 22–29. The judge decided the CPL should be cancelled pursuant to s. 215(1), finding a clear inconsistency between the primary remedies sought, rescission and return of the deposits, and the notion that the plaintiff was seeking an interest in land.

**133(CA)**

[14] Justice Harris, writing for the Court, identified a purchaser's lien as an equitable interest in land that arises when a deposit is paid directly to a seller. Reciting and relying on the discussion of the nature of the purchaser's lien in *Pan Canadian Mortgage Group III Inc. v. 0859811 B.C. Ltd.*, 2014 BCCA 113 [*Pan Canadian*], he explained that a purchaser acquires an equitable interest in land from the moment the land is validly contracted to be sold; a purchaser's lien arises when the purchaser advances money to the vendor; and this too creates an equitable interest in land that continues even if the contract is lawfully rescinded by the purchaser: at paras. 5–10.

[15] Justice Harris went on to specify the material facts required to properly claim an interest in land based on a purchaser's lien include: the existence of a valid contract of purchase and sale between the parties; the payment of funds pursuant to that contract by the purchaser to the seller; and the contract having "gone off" through no fault of the purchaser: at para. 11. He emphasized that under s. 215(1) a CPL should only be cancelled when the pleadings *are incapable of supporting a*

claim to an interest in land, and not based on assessing the true nature of the pleaded asserted claim: at para. 14.

[16] Applying these principles, Harris J.A. concluded the judge erred by embarking on an impermissible assessment of the pleading and in concluding that pleading rescission was inconsistent with asserting a claim in land: at para. 32.

### **On Appeal**

[17] The appellant argues the appeal must be allowed because the judge made the same errors that were made in 133 (SC), in near identical circumstances and the facts alleged in the ANOCC include all of the material facts required to support a purchaser's lien claim established in 133 (CA): the Contract, a contract for the purchase and sale of real property; the payment of funds, namely the Deposit paid directly to the respondent pursuant to the Contract; and the Contract having gone off through no fault of the appellant.

[18] Accepting a purchaser's lien is an interest in the land, and without suggesting 133 (CA) is distinguishable, the respondent asserts that payment to the vendor under the contract on account of the purchase price, which the ANOCC does not plead, is also essential to support a purchaser's lien claim.

[19] Although the appellant disputes the assertion based on 133 (CA), it also makes the point that the Contract actually includes the words "on account of the purchase price". It is difficult to imagine how the respondent could reasonably oppose, or the court would refuse to allow an amendment to the ANOCC to add those words in light of what is said in the Contract, if it were the case that they are a part of the requisite material facts.

[20] The respondent relies on *Tang v. Zhang*, 2013 BCCA 52 for the notion that a deposit is non-refundable by nature. Since the Contract did not complete, the respondent argues, it follows that the Deposit was not made on account of the purchase price and therefore the ANOCC does not disclose an interest in land. On this logic, *Tang* would undermine every claim for a purchaser's lien that is

pleaded in accordance with 133 (CA), in so far as the contract “going off” through no fault of the purchaser (which is one of the requisite material facts) involves the contract not completing.

[21] But *Tang* does not support the respondent’s position. The issue in *Tang* was entirely different—whether *damages must be proven* for the seller to retain the deposit, *where the buyer fails to complete* the purchase as required, and the contract states the deposit is to be forfeited to the seller “on account of damages”. The Court held whether the deposit or other payment to the seller in advance of the purchase completing is forfeited to the seller, is generally a matter of contractual intention. Absent a contrary provision in the contract, when parties use the word “deposit” to describe such a payment, the word should be given its “normal” meaning in law. Its purpose is to motivate contracting parties to carry through with their bargains and if the contract is performed, the deposit is applied to the purchase price: at para. 30. *Tang* does not establish that a deposit is not on account of the purchase price, where the seller fails to complete as required by the contract.

[22] The respondent also relies on *Pan Canadian* as authority for its primary submission that “on account of the purchase price” must be pleaded to support a purchaser’s lien claim:

[1] The purchaser’s lien is a relatively obscure equitable remedy with roots dating back at least to the mid-19<sup>th</sup> century [citations omitted]. The lien is available to a purchaser who has paid all or part of the purchase price to the vendor of real or other property pursuant to a valid contract. If the transaction “goes off” without fault on the part of the purchaser, the lien provides him or her with a security interest, or charge, against the property to the extent of the money paid, plus interest and costs.

[Emphasis added.]

[23] In 133 (CA), Justice Harris recited the same passage but did not read it as requiring a plaintiff to plead “on account of the purchase price” to support a claim to an interest in property based on a purchaser’s lien, which is the very issue in this case. We see no basis to depart from the principle of horizontal *stare decisis*. In this Court, decisions of three-justice divisions are, with limited exceptions, treated as binding precedent. None of those limited exceptions are raised here.

[24] Finally, the respondent advances arguments based on its interpretation of the ANOCC's pleadings related to the Deposit. They include:

6. On or about May 12, 2023, the Plaintiff as the buyer, entered into a contract of purchase and sale with the Defendant as the seller, to purchase the Lots on the following terms *inter alia*:  
...
  - (b) The buyer would pay the deposit (\$1,100,000 (One Million and one hundred thousand dollars) directly to the seller in two installments as follows:
    - (i) The buyer to pay the first instalment of the deposit of \$500,000 by May 17, 2023; and
    - (ii) The buyer to pay the second instalment of the remaining deposit by June 9, 2023.  
(the "**Deposit**").
  - (c) The seller concurrently with the receipt of the Deposit would grant the buyer with an option to purchase (the "**Option**") in registrable form to secure the buyer's right to purchase the Lots pursuant to the terms of the Contract;  
...
    8. Pursuant to the terms of the Contract, the Plaintiff paid the Deposit to the Defendant.  
...
      20. The Plaintiff, in these circumstances, is entitled to the return of the Deposit and to a purchaser's lien against the Property for the amount of the Deposit paid by it, being \$1,100,000.00

[25] The respondent argues first, referring to clauses 6(c) and 8, that what is pleaded is payment of the Deposit under the Contract as consideration for the Option, rather than towards the purchase price. Second, relying on para. 8 of 133(CA), the respondent argues the Option pleading is a legal claim to an equitable interest that effectively ousts the purchaser's lien claim. In that paragraph, Justice Harris observed: "[i]t is helpful to note that, if a purchaser has paid a deposit to the vendor and has title deeds in their possession, then the purchaser has a legal lien; equity steps in where there is no legal lien to remedy that deficiency".

[26] But 133 (CA) makes it clear that a CPL will only be cancelled under s. 215(1) where the pleadings are incapable of supporting a claim to an interest in land.

[27] The respondent's interpretative argument does not meet this threshold. While the Option provision in clause 6(a) could be interpreted as impacting on, or constraining the purpose of the Deposit, in our view, it cannot be said that the ANOCC is incapable of supporting a claim to an interest in land based on a purchaser's lien claim.

**Conclusion**

[28] For these reasons, we allowed the appeal, set aside the judge's order and directed the appellant to give the respondent five business days notice prior to registering another CPL on any of the lots.

[29] If the issue remains outstanding, we further direct that the respondent is required to bring a new application to cancel any subsequently registered CPL, based on grounds other than s. 215(1) of the *Land Title Act*.

"The Honourable Chief Justice Marchand"

"The Honourable Justice Fleming"

"The Honourable Justice Iyer"