

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Clough Pacific Joint Venture and PPM
Civil Contractors, ULC v. AECOM Canada
Limited,*
2025 BCSC 164

Date: 20250124
Docket: S-236677
Registry: Vancouver

Between:

Clough Pacific Joint Venture and PPM Civil Contractors, ULC

Petitioners

And:

AECOM Canada Limited

Respondent

Before: The Honourable Justice K. Wolfe

Oral Reasons for Judgment

Counsel for the Petitioners:

A. Aghaamoo

Counsel for Respondent
(in-person January 22-23, 2025 and
by Videoconference January 24, 2025):

J. Sapers
G. Matheson
N. Sapiuha A/S

Place and Date of Hearing:

Vancouver, B.C.
January 22-23, 2025

Place and Date of Judgment:

Vancouver, B.C.
January 24, 2025

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[1] These reasons have been edited for publication.

[2] **THE COURT:** These are my oral reasons for judgment. Should either party order a transcript, I reserve the right to edit and make changes for clarification and grammar, and to add case citations and references, but the substance of my decision will not change. If the parties wish to request that I publish the judgment, they are invited to let the Court know at the end of the judgment.

Overview

[3] The petitioners, Clough Pacific Joint Venture and PPM Civil Contractors, ULC (together, the “petitioners”) apply for a declaration that certain builders’ liens filed by the respondent, AECOM Canada Limited (“AECOM”), were extinguished. They also seek an order that those liens be cancelled and removed from funds previously deposited with the court on September 29, 2023 as security for earlier liens.

[4] At its simplest, the petitioners say a certificate of completion was issued on July 26, 2023, triggering the 45-day time limit for filing a lien under s. 20(1) of the *Builders Lien Act*, SBC 1997, c. 45 [*BLA*]. As AECOM filed the liens in question on August 2, 2024, well past the 45-day time limit, the petitioners say the liens were extinguished under s. 22 of the *BLA* and the Court should cancel them under s. 25.

[5] The petitioners’ sought additional relief in their notice of application filed December 20, 2024, but at the commencement of this hearing, advised the Court they would adjourn their request for the injunctive relief sought at paragraphs 3 and 4 of the draft order attached to the notice of application. Those paragraphs sought to prevent further claims by AECOM. Given the petitioners’ position, I adjourned that relief generally on the first day of the hearing.

[6] AECOM opposes the application, arguing that as the certificate of completion and the related notice required under the *BLA* did not meet the applicable statutory requirements, the 45-day time limit under s. 20(1) of the *BLA* was not triggered. As a result, the liens in question were not filed out of time and are not extinguished under

s. 22. Rather than cancelling the liens, AECOM says the Court should dismiss the application and award AECOM its costs.

[7] For the reasons that follow, I dismiss the petitioners' application.

The legal framework

[8] The *BLA* is a complete code governing the filing of liens associated with work done by contractors and subcontractors in respect of "improvements", as that term is defined in the statute. The *BLA* also articulates the options available after a claim of lien is filed.

[9] The *BLA* can be seen as a technical statute, in that it imposes specific requirements and time limits on both lien claimants and those who may be subject to lien claims. This is consistent with what the British Columbia Court of Appeal recognized as an "evident statutory goal" of ensuring "certainty and fairness for all stakeholders in the construction industry": *Iberdrola Energy Projects Canada Corporation v. Factory Sales & Engineering Inc. d.b.a. FSE Energy*, 2018 BCCA 272 [*Iberdrola*] at paras. 34-35, citing *Bank of Montreal v. Peri Formwork Systems Inc.*, 2012 BCCA 4 at para. 62.

[10] The operative provisions of the *BLA* in this case are ss. 7, 20, 22, 24 and 25.

[11] Section 7 addresses certificates of completion, including who can request one and how one is issued (s. 7(3)), requirements after a certificate is issued including for notice (s. 7(4)) and the form of a certificate (s. 7(10)).

[12] Section 20 establishes time limits for filing lien claims. Where a certificate of completion has been issued in respect of a contract or subcontract, s. 20(1) provides that a lien must be filed within 45-days of the certificate being issued. In practical terms, where a certificate of completion is issued, it abridges the timeframe within which lien claims must be filed. If no certificate of completion has been issued, the 45-day timeframe runs from the date any head contract is completed, abandoned or

terminated, or, in the absence of a head contract, the date the improvement is completed or abandoned (s. 20(2)).

[13] Section 22 provides that if a claim of lien is not filed “in the manner and within the time provided in [the *BLA*]” it is extinguished.

[14] Section 24 allows for applications to the Court to cancel a claim of lien on payment of sufficient security.

[15] Section 25 permits certain persons to apply to the Court to cancel a claim of lien in certain circumstances. For present purposes, s. 25(1)(a) allows a subcontractor (among others) to apply to the Court to have a claim of lien cancelled if the Court is satisfied that a lien is extinguished under s. 22.

Issues

[16] The primary question before the Court is whether the certificate of completion and notice of certificate of completion issued on July 26, 2023 complied with the requirements of s. 7 of the *BLA*.

[17] If both the certificate of completion and notice of certificate of completion are found to have met the statutory requirements, AECOM accepts that the liens at issue on this application were filed outside the 45-day timeframe, and are therefore extinguished under s. 22 of the *BLA*. However, AECOM disputes that there was compliance with the statutory requirements.

Background

[18] Before turning to the issues of statutory compliance, it is helpful to set out some of the uncontroversial background.

[19] The project and properties against which the subject liens have been filed is the liquified natural gas facility and export terminal currently under construction on about 400 hectares of land in and around Kitimat, British Columbia. In *BLA* terms,

this is the “Improvement”, which is owned by LNG Canada Development Inc. (“LNG Canada”).

[20] LNG Canada retained JGC Fluor BC LNG Joint Venture to be the head contractor for the Improvement (“Head Contractor”). The Head Contractor is, in turn, a joint venture between JGC Corporation Ltd. and Fluor Canada Ltd.

[21] The Head Contractor retained one of the petitioners, Clough Pacific Joint Venture (“CP”) as a subcontractor for the engineering, procurement and construction of the loadout line trestle component of the Improvement. On December 20, 2020, CP in turn entered into a subcontract with AECOM to perform geotechnical analysis, engineering, design and related services and works in relation to the loadout line trestle.

[22] A dispute arose between AECOM and CP in relation funds said to be owing to AECOM under their subcontract.

[23] As a result, on July 7, 2023, AECOM registered a lien (CB742012) against land with PID: 031-253-636 in the amount of \$1,123,014.13 (the “First Lien”). I was advised that at the time the First Lien was registered, there was a lack of clarity about which properties were actually associated with the Improvement. It is not clear on the materials if the petitioners accept that the First Lien was filed against Improvement land. This uncertainty is a source of significant concern for AECOM, since it may mean that the First Lien cannot be proven.

[24] The petitioners filed a petition and brought an application, under s. 24 of the *BLA*, to have the First Lien cancelled on payment of sufficient security into court. There were discussions between counsel for both parties about the application, but AECOM did not appear at the hearing of that application.

[25] On September 29, 2023, Associate Judge Nielson granted an order requiring the First Lien to be cancelled upon the petitioners depositing \$1,123,014.13 with the Registrar of this Court. That same day, the petitioners deposited the required

amount and obtained a registrar's certificate, and the Land Title Office ("LTO") cancelled the First Lien.

[26] On August 2, 2024, AECOM registered three further liens (CB1486599, CB1486605 and CB1486607) against 14 Improvement lands [see table in Appendix A]. Each of the three liens was for the same amount as the First Lien, namely, \$1,123,014.13 (the "Second Liens"). On the same day, AECOM's counsel wrote to petitioners' counsel (among others) to advise the Second Liens had been registered and to propose that the security deposited on September 29, 2023 be used to secure and cause the discharge of the Second Liens.

[27] Unlike with the First Lien, the petitioners accept that the Second Liens were filed against properties that are Improvement lands. This means AECOM may stand to lose more if the Second Liens are extinguished, since, as noted, it is not clear if the First Lien was filed against Improvement land.

[28] There is controversy about what happened before and after the Second Liens were filed, particularly in respect of the certificate of completion the petitioners say was issued on July 26, 2023. As a result, I will address those events in my analysis of the issues below.

[29] For purposes of this summary, it is sufficient to note that by mid to late August 2023, there were communications between counsel for the parties regarding the Second Liens. Those communications culminated with Associate Judge Robertson granting a consent order on August 23, 2024, cancelling the Second Liens from title, with the security deposited on September 29, 2023 standing as security for the Second Liens and any claim for lien AECOM might have against a holdback. The same day, the LTO cancelled the Second Liens.

[30] As AECOM counsel advised is standard practice for interlocutory court orders that secure liens, the August 23, 2024 consent order included a term preserving the

rights of all parties under the *BLA*, including rights to argue, among other things, that the claims of lien are extinguished, improper or defective:

“Nothing in this Order shall affect the right of any person to claim that the said claims of lien are extinguished, improper or defective, or that the filing of the said claims of lien has been improper or defective, or otherwise affect any right of any person under the *Builders Lien Act*.”

[31] In practical terms, the Second Liens are no longer encumbrances on title to the Improvement lands. They are, however, still very much “in play”, as the underlying claims for payment for work AECOM completed are secured by the September 29, 2023 funds deposited with the Court.

[32] I was advised that the next step in a liens process is to commence an action in order to prove the lien claims. The caselaw suggests it is not uncommon for a lien claimant to file multiple lien claims where there is more than one property associated with an improvement. That way, if the lien claim fails in respect of one property, it may still be able to be proven in relation to another.

Analysis

[33] Since AECOM’s opposition to this application is rooted in its interpretation of the statutory requirements of s. 7 of the *BLA*, it is helpful to set out the relevant parts of that section:

Certificate of completion

7 (1) In this section, "payment certifier" means

(a) an architect, engineer or other person identified in the contract or subcontract as the person responsible for payment certification, or

(b) if there is no person as described in paragraph (a),

(i) the owner acting alone in respect of amounts due to the contractor, or

(ii) the owner and the contractor acting together in respect of amounts due to any subcontractor.

(2) A lien holder in respect of an improvement may, by making a written request, require that the payment certifier for the improvement deliver to the lien holder

- (a) particulars of any certificate of completion issued under this section before and after the request, or
 - (b) particulars of certificates of completion issued, before and after the request, with respect to stipulated contracts or subcontracts.
- (3) On the request of a contractor or subcontractor, the payment certifier must, within 10 days after the date of the request, determine whether the contract or subcontract has been completed and, if the payment certifier determines that it has been completed, the payment certifier must issue a certificate of completion.
- (4) If a certificate of completion is issued, the payment certifier must, within 7 days,
- (a) deliver a copy of the certificate to the owner, the head contractor, if any, and the person at whose request the certificate was issued,
 - (b) deliver a notice of certification of completion to all persons who submitted a request under subsection (2) in relation to the contract or subcontract, and
 - (c) post, in a prominent place on the improvement, a notice of certification of completion.

[...]

- (9) A payment certifier who fails or refuses to comply with subsection (4) or (7) is liable to anyone who suffers loss or damage as a result.
- (10) A certificate of completion may be in the prescribed form and, if it is in the prescribed form, it is sufficient to comply with this Act.

[34] AECOM alleges multiple bases on which it says either the certificate of completion or the notice of certificate of completion failed to comply with the statutory requirements of s. 7 of the *BLA*. AECOM says even one of alleged failures is sufficient to defeat the petitioners' application. I turn then to the evidence and arguments regarding the issuance of the July 26, 2023 certificate of completion (the "Certificate") and notice of certificate of completion (the "Notice"), and their compliance or not with the *BLA*.

The petitioners' position

[35] The petitioners say that by July 4, 2023, CP's contract with the Head Contractor was substantially performed, as that term is understood in the *BLA* context. They appear to rely on a notation on the Certificate which says "for the

purposes of the *Builders Lien Act*, the following contract or subcontract was completed on 04-Jul-2023”.

[36] The petitioners say there was a meeting on or about July 6, 2023 between the Head Contractor and the petitioners in Calgary, Alberta, at which the attendees discussed, among other things, the issuance of a certificate of completion. Following that meeting, on July 26, 2023, the petitioners say the Head Contractor issued both the Certificate and the Notice, and delivered them to the petitioners, all in accordance with the *BLA*. The petitioners say the Head Contractor prominently posted the Notice at four different locations in the “work areas”, namely two different lunchrooms and two different offices, from August 19, 2023 to October 4, 2023.

[37] The petitioners submit the Certificate was issued in response to the July 6, 2023 meeting, the implication being that the discussion at the July 6, 2023 meeting constitutes the necessary “request” under s. 7(3) of the *BLA*. The petitioners did not directly address the fact that, if the Court accepts the timelines they advance, then the Certificate was issued 20 days after the July 6, 2023 meeting, instead of the 10 days required by s. 7(3) of the *BLA*. Instead, the petitioners emphasized that the Certificate was in the form prescribed by the *Builders Lien Forms Regulation*, B.C. Reg. 1/98 [*Regulation*], and otherwise contained all the required information, and therefore, pursuant to s. 7(10), was “sufficient to comply with” the *BLA*.

[38] The petitioners admit the Notice was not posted within seven days of the issuance of the Certificate, as specified in s. 7(4) of the *BLA*. Instead, it was posted 17 days late, on August 19, 2023. However, based on their reading of paras. 11-12 of *Indy Electrical Ltd. v. Warn*, 2013 BCSC 2188, the petitioners say failure to post the Notice within seven days does not invalidate the Notice or the effect of the Certificate. At most, they appeared to suggest it would delay the running of the 45-day time limit until the Notice was posted.

[39] At a higher level, the petitioners urge the Court to interpret the requirements of s. 7 of the *BLA* in what they characterized as a purposive and liberal manner,

rather than requiring strict interpretation of and adherence to the statutory requirements, including the time limits. The petitioners rely on the British Columbia Court of Appeal's decision in *Iberdrola* at paras. 26-35 in support of their position that it is no longer appropriate to apply principles of "strict construction" to the *BLA*.

[40] Viewed on that basis, I understood the petitioners to effectively say the Certificate and Notice contained the necessary information, and were made sufficiently available at the Improvement, to provide potential lien claimants adequate notice "that the time for filing liens may be abridged and their lien rights potentially lost": *Alterra Property Group Ltd. v. Doka Canada Ltd.*, 2008 BCSC 1880 at paras. 14-15. Even taking the latest date from which the 45-day timeframe could have begun to run (i.e. August 19, 2023, when the Notice was first posted), the petitioners say the filing of the Second Liens on August 2, 2024 was well out of time, and the Court should grant the relief sought.

AECOM's position

[41] As noted, AECOM advances a series of arguments for why the Certificate and / or Notice do not comply with the requirements of s. 7 of the *BLA*, and therefore did not abridge the time for filing of the Second Liens. AECOM argues that to meet the *BLA*'s objective of providing "certainty and fairness", there must be strict compliance with provisions like s. 7 that impose specific procedural requirements and time limits. AECOM says to do otherwise is to invite what occurred here: where a process that s. 7 contemplates will take a maximum of 17 days (from when the request is made for a payment certifier to determine if a contract or subcontract has been completed to when the notice of certificate of completion must be posted) ended up taking 44 days (July 6, 2023 to August 19, 2023).

[42] In summary form, AECOM identifies the following deficiencies with the Certificate and Notice, any one of which it asserts is fatal to the petitioners' application:

- a) there is insufficient evidence to establish who the "payment certifier" is or that the Certificate was issued in response to a "request" (*BLA* ss. 7(1) and (3));
- b) the Certificate was not issued within 10 days of any request and does not state the work commencement date (*BLA* ss. 7(3) and (10));
- c) the Notice was not posted within 7 days of the Certificate being issued and there is no evidence it was posted in a prominent place on the Improvement (*BLA* s. 7(4)); and
- d) there is insufficient evidence to establish the Certificate and Notice were delivered to others as required by the *BLA* (*BLA* s. 7(4)).

[43] AECOM says further that, on August 14, 2024, petitioners' counsel advised its counsel for the first time that the Head Contractor had allegedly issued the Certificate and Notice on July 26, 2023. In response, by letter dated August 16, 2024, AECOM sought particulars respecting the Certificate, as is its right under s. 7(2) of the *BLA*. AECOM says its letter ought to have informed the petitioners about what they would need to prove on this application.

[44] With respect to the lack of or sufficiency of evidence, in some respects – such as who is the payment certifier – AECOM says the petitioners have simply failed to provide any evidence. For example, they have not put in evidence the contract between CP and the Head Contractor. In other respects, AECOM says the evidence put forward by the petitioners is inadmissible. First, as the petitioners' application seeks final orders which would end the lien process in respect of the Second Liens, AECOM says Supreme Court Civil Rules 22-2(12) and (13) prohibit reliance on hearsay in the affidavits filed in support. Second, even if this is not an application for

final orders, such that statements made on information and belief could be admissible, the affidavits fail to attribute the source of the information sought to be provided.

Discussion

Evidentiary concerns

[45] I will first deal briefly with AECOM's evidentiary objections. In support of this application, the petitioners filed Affidavit #3 of Ms. Mago, a paralegal at the firm of petitioners' counsel, which attaches documents in relation to this matter, including the Certificate, the Notice and various pieces of correspondence. The petitioners also filed Affidavit #4 of Ms. Mago as a reply affidavit, after receipt of AECOM's materials.

[46] I agree with AECOM that the relief sought to declare the Second Liens extinguished and for an order cancelling and removing them from the security deposited with the court are in the nature of final orders. Final orders are orders that end a process or a claim: *Dupro Products Inc. v. Ground X Site Services Ltd.*, 2019 BCSC 590 at para. 15. When asked pointedly what would remain of the Second Liens if the petitioners were to succeed on their application, petitioners' counsel appropriately conceded that "nothing" would remain. It is no answer to suggest that AECOM will still have a lien process in respect of the First Lien; it was registered against a different property. If nothing would remain of the Second Liens, then the relief sought to achieve that end is in the nature of a final order, and, under Rule 22-2(13), hearsay evidence is not admissible in support of the application.

[47] Even if I am incorrect in that, the affidavits filed in support of this application do not sufficiently identify how the affiant knows the facts deposed to, which is the second requirement under Rule 22-2(13). Both of the affidavits contain the usual boilerplate preamble in paragraph 1 that the affiant is employed by the firm that represents the petitioners, and "as such", has personal knowledge of the facts and matters deposed to. Both of the affidavits use the standard "attached and marked

as” language to introduce an exhibit. In most cases, there is no further information provided about the exhibit, and where there is a statement to explain, the affiant does not identify the source of the knowledge. These types of boilerplate statements are insufficient to make the evidence admissible, particularly when offered for the truth of its contents: *L.M.U. v. R.L.U.*, 2004 BCSC 95 at paras. 31-39.

[48] The most critical example of a failure to attribute the source of the information is paragraph 2 of Ms. Mago’s Affidavit #4. In that paragraph, the affiant purports to provide evidence in respect of the July 6, 2023 meeting, which the petitioners characterize as the “request” for the Certificate. The affiant does not identify whether she has first-hand knowledge about the July 6, 2023 meeting because she attended, or if there is another source of information, such as having been advised by another individual, or reviewing materials specific to the July 6, 2023 meeting like minutes (which one might then expect to be attached). In short, there is no basis on which the Court can understand how the affiant can provide the evidence about the July 6, 2023 meeting and what transpired at it, and therefore no basis on which the Court can rely on it. There is therefore no reliable evidence to support the assertion that the Certificate was issued pursuant to a request arising from the July 6, 2023 meeting. In the absence of evidence about a request, I cannot be satisfied the Certificate was issued in response to a request, as required by s. 7(3) of the *BLA*: see *Indy Electrical Ltd.* at para. 7.

[49] There are similar examples in other paragraphs of the third affidavit that display the same frailties. I do not consider it necessary to address each of AECOM’s evidentiary arguments in detail.

Other non-compliance with s. 7 of the BLA

[50] While the Certificate generally complies with Form 3 in the *Regulation*, it does not state the commencement of work date. In *W Redevelopment Group, Inc. v. Allan Window Technologies Inc.*, 2010 BCSC 1601 at paras. 55-56 and 62-63, Justice Pearlman found the failure to state the commencement of the work date, among

many other defects, meant the certificates at issue did not comply with the *BLA*. I note that Form 3 in the *Regulation* does not expressly require the commencement of work date to be listed and s. 7(10) of the *BLA* provides that if a certificate of completion is in the prescribed form that is sufficient. In these circumstances, I am not persuaded that the failure to state the commencement of the work date alone, without more, amounts to non-compliance with the *BLA*. To be clear, I am not ruling out the possibility that in a different case, where the commencement of work date has particular significance, that type of omission may constitute non-compliance with the *BLA*.

[51] More problematic, in my view, are the failures to issue the Certificate and to post the Notice within the specific time limits set by the *BLA*. I accept the petitioners' submission that *Iberdrola* confirms the principled approach to statutory construction is to be preferred over a strict construction, except in cases of "real ambiguity": *Iberdrola* at para. 30. But the principled approach requires that statutory provisions be read in context, in their grammatical and ordinary sense, harmoniously with the scheme and object of the statute and the intention of the legislature. Nothing about the principled approach would permit individuals to completely ignore precisely-stated statutory time limits. Section 7(3) of the *BLA* requires that "within 10 days after the date of the request" a payment certifier must make a determination and issue a certificate. This provision clearly establishes a 10-day limit for the issuance of the certificate if the payment certifier determines the contract or subcontract has been completed. Similarly, s. 7(4) of the *BLA* establishes a seven day time limit after issuance of a certificate within which other steps must be taken – including the requirement to post a notice.

[52] While I accept the petitioners' submission that they were not in control of issuing the Certificate or posting the Notice, that fact has no impact on whether there was compliance with the statutory time limits. The Certificate was issued 10 days after the statutory deadline for doing so. The Notice was posted 17 days after the statutory deadline. The petitioners do not dispute the fact of those delays; instead,

they appear to say the statutory deadlines in this part of the *BLA* should be treated as mere “suggestions”. This position is completely inconsistent with their request that AECOM be held to the strict statutory deadline of 45-days for filing a lien claim. There is no legal basis on which I can accept the petitioners’ submission in this regard. I find both the Certificate and the Notice failed to comply with the *BLA* because of their failures to adhere to the statutory time limits for issuance and posting respectively.

[53] As a result of both the failure to adhere to the statutory time limits, and the lack of any evidence that the Certificate was issued in response to a request, I find the Certificate and Notice are invalid and the petitioners are not entitled to rely on them. It follows that the time limit for filing a lien claim was not abridged under s. 20(1), and the Second Liens were not filed out of time. Based on those conclusions, s. 22 of the *BLA* does not operate to extinguish the Second Liens, and the petitioners are not entitled to relief under s. 25.

Conclusion

[54] For the reasons stated above, I dismiss the petitioners’ application for the relief sought at paragraphs 1 and 2 of the draft order attached to the notice of application. As AECOM has been successful in opposing the application, it is entitled to an order for its costs at Scale B.

“K. Wolfe J.”

APPENDIX “A”

Table of Second Liens registered by AECOM

Date Registered	Lien No.	Lien Amount	PIDs
2 Aug 2024	CB1486599	\$1,123,014.13	030-237-939 031-337-597 004-333-519 031-348-751 031-348-599 031-263-933 031-344-089 031-348-611 031-263-941 012-877-298 031-337-619
2 Aug 2024	CB1486605	\$1,123,014.13	030-409-055 016-334-558
2 Aug 2024	CB1486607	\$1,123,014.13	031-336-141 031-337-589 009-834-290 004-332-041