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GUIDE TO BUILDERS' LIENS IN BRITISH COLUMBIA

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This publication features a comprehensive analysis of builders' liens law and practice in British Columbia. It is compact, practical and designed for everyday use.

This release includes updates to Appendix P—Quantum Table—Construction Law.

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Highlights

- **Quantum Table—Construction Law—Failure to Complete—**Given that Monalt's scope of work included demolition of the stairs and ceiling slab, it followed that the refusal by Monalt to perform that work was a breach of contract. Monalt demobilized in July 2020 on the basis that it had completed its work on the Hilliard Residence and was awaiting further instruction on proceeding with the Wood Residence. Identified deficiencies were rectified. Monalt sought payment of its invoices. At a meeting on August 20, 2020, BDA confirmed it would not be paying Monalt and Monalt advised it would not proceed with any further work. The following day, Paduraru sent an email confirming in writing that Monalt was suspending further work pending payment of unpaid invoices. At the time of suspending work for non-payment, Monalt had already been advised of the set-off claim being advanced for Monalt's failure to complete the stairwell and ceiling slab demolition. The Associate Justice concluded that Monalt had no contractual basis to demand payment as a precondition to continuing work. Monalt was in breach of contract for refusing to complete that work. BDA was justified in withholding payment from Monalt in the circumstances. Monalt's refusal to continue work without payment was an evinced intention not to complete the subcontract work, which was an act of repudiation. BDA was entitled to refuse that repudiation and sue for damages. The Associate Justice noted that whether the balance of BDA's proven damages were set-off first against the earned and unpaid contract funds or against the unearned contract balance would decide if there is any judgment awarded. In the Associate Justice's view, at a minimum, the circumstances warranted setting off BDA's damages directly attributable to the Hilliard Residence against the earned and unpaid contract funds because Monalt's position was that it completed all work on the Hilliard Residence. The Associate Justice concluded that it did not. The stairwell demolition and ceiling slab work was within Monalt's scope of contract work. Monalt breached the contract. BDA was the aggrieved party. That was a factor in assessing the equities of where first to apply set-off. Excluding extras, Monalt invoiced a total of $75,527.30 of the base contract work. Given Monalt's position that it had completed all work on the Hilliard Residence, and based on the purchase order amount of $120,000 plus HST, that meant that Monalt would have been entitled to bill over $60,000 to complete the Wood

Residence. The majority of BDA's claimed damages that were allowed related to completing Monalt's scope on the Hilliard Residence. The Associate Justice had allowed only $18,195, plus HST, for completing the Wood Residence. Applying BDA's damages first against the unearned contract balance would effectively be accounting for the costs of completing the Hillard Residence against amounts that ought to have been paid to complete the Wood Residence. In the Associate Justice's view, that put the benefit on Monalt and the burden on BDA by ignoring the reality that Monalt would have invoiced more than $60,000 to complete the Woods Residence. In the result, the Associate Justice concluded that the earned and unpaid amounts in favour of Monalt's were set-off in their entirety by BDA's proven damages, such that no amounts remained owing to Monalt. Since BDA's total proven damages did not exceed the total unpaid contract amount, BDA was also not entitled to any judgment against Monalt: *Monalt Environmental Inc. v. BDA Inc.,* 2024 ONSC 1417, 2024 CarswellOnt 4703 (Ont. S.C.J.).

- **Quantum Table—Construction Law—Improper Filing of Construction Lien—**In Justice Willcock's view, the judge erred in failing to give effect to settled law when she concluded the Owners had not established the Contractor knew or ought to have known that the evidentiary foundation for the Interference Claim was materially inaccurate, untrue, or otherwise unreliable. Justice Willcock explained that the critical question was whether the fact that a claim of lien is intentionally exaggerated or based upon false or misleading evidence was sufficient to support an abuse of process claim, without more. In Justice Willcock's opinion, the filing of a lien may be considered to be an act outside the ambit of the action. Where a lien is filed by a person who knows the value of the claim is unsupportable, it is open to a court to conclude that the *Builders Lien Act* is being used for an improper purpose because, in such circumstances, the lien has not been filed to secure a judgment the lienholder has a legitimate prospect of obtaining. In Justice Willcock's opinion, the inclusion of the value of the Interference Claim in the claim of lien amounted to an abuse of process. Bowie's recognition that the Owners did not interfere in the Contractor's work was imputed to the Contractor. The Contractor improperly employed the legal process to secure funds to which it knew or ought to have known it was not entitled. By doing so, it caused the Owners to suffer damages: the time value of the money held in court as

security. The Owners' compensatory claim was limited to interest on that amount at pre-judgment rates from April 14, 2016, the date security was posted, to the date of judgment: February 25, 2022. No evidence having been led with respect to the actual interest costs incurred by the Owners, only the statutory rate of interest as a measure of the Owners' loss was left: *601 Main Partnership v. Centura Building Systems (2013) Ltd.*, 2024 CarswellBC 572, 2024 BCCA 76, 2024 A.C.W.S. 970, 34 C.L.R. (5th) 155 (B.C.C.A.).