# WHAT CAN YOU LIEN AND WHAT YOU CAN LIEN FOR

These materials were prepared by John S. Logan and Robert W. DuMerton of Jenkins Marzban Logan LLP for the Pacific Business & Law Institute course "Builders' Liens: Real World Problems and Solutions" held on April 18, 2012.

## TABLE OF CONTENTS


I. Introduction 3

II. What You Can Lien 4

A. The Interest of the Owner in the Improvement 5

1. The "Owner" 5

B. The Improvement 6

1. Improvement 6

2. Off-Site Work 8

3. Attachments 9

C. The Land 10

1. "Land" 10

2. Multiple Lots 11

3. Government Land 12

(a) Federal Crown 12

(b) Provincial Crown 12

(c) Public Authorities and Municipalities 13

4. Reserve Land 14

5. Mines 14

6. Demolition 15

D. The Material Delivered to or Placed on the Land 15

E. The Holdback 16

III. What Can You Lien For 17

IV. Conclusion 18

## WHAT CAN YOU LIEN AND WHAT YOU CAN LIEN FOR

### I. INTRODUCTION

Anyone working in or closely with the construction industry should have a basic understanding of builders' liens because they are an important tool for all market participants, owners, contractors, subcontractors, and material suppliers, to use to protect themselves. In British Columbia builders' liens are created and governed by the *Builders Lien Act*[1] (the "*Act*"). The object of the *Act* is to prevent an owner from obtaining the benefit of work and/or materials supplied to an improvement without paying for them.

The lien is one of three major remedies created by the *Act*, the other two being the trust and the holdback, and is a right which is enforced against the world at large attaching to the land and improvement where the construction occurred. This paper seeks to provide the reader with an understanding of two aspects of a builders' lien.

First, what a builders' lien attaches to, what you can lien. Given that a builders' lien is a creature of statue, it would not exist without the *Act*, the first place to look to see what can be liened is the *Act.* Section 2 states:

> 2(1) Subject to this Act, a contractor, subcontractor or worker who, in relation to an improvement,
>
> > (a) performs or provides work,
> > (b) supplies material, or
> > (c) does any combination of those things referred to in paragraphs (a) and (b)
>
> has a lien for the price of the work and material, to the extent that the price remains unpaid, on all of the following:
>
> > (d) the interest of the owner in the improvement;
> > (e) the improvement itself;
> > (f) the land in, on or under which the improvement is located;

[1] R.S.B.C. 1997, c. 41

> (g) the material delivered to or placed on the land.
>
> (2) Subsection (1) does not create a lien in favour of a person who performs or provides work or supplies material to an architect, engineer or material supplier.

Among many specific questions addressed in the first part of this paper are, "Who is the 'owner'?", "What is the 'improvement'?", "What is the 'land'?", and "Can I lien a road or highway?"

The second part of this paper will explore what can be liened for. Section 2 says, "…the price of the work and material, to the extent that price remains unpaid…". As you will see, what you can lien for is more straight forward than what you can lien. Questions addressed in the second part of this paper include, "Can I include lost profit in my lien?", "Can I include costs I incurred related to delays in my lien?", and "Can I lien for the remainder of my contract amount?"

## II. WHAT YOU CAN LIEN

As we saw above, section 2 of the *Act* provides that a prospective lien claimant has a lien,

> 2(1)…on all of the following:
>
> (d) the interest of the owner in the improvement;
> (e) the improvement itself;
> (f) the land in, on or under which the improvement is located;
> (g) the material delivered to or placed on the land.

We will begin our discussion of what can be liened with section 2 of the *Act* and related definitions and case law then examine specific types of land like highways or reserve land.

## A. THE INTEREST OF THE OWNER IN THE IMPROVEMENT

### 1. The "Owner"

Section 1 of the *Act* provides an inclusive definition of "owner" that is not intended to be exhaustive.

> "owner" includes a person who has, at the time a claim of lien is filed under this Act, an estate or interest, whether legal or equitable, in the land on which the improvement is located, at whose request and
>
> > (a) on whose credit,
> > (b) on whose behalf,
> > (c) with whose knowledge or consent, or
> > (d) for whose direct benefit
>
> work is done or material is supplied, and include all persons claiming under the owner, but does not include a mortgagee unless the mortgagee is in possession of the land;

The "owner" will usually be the registered owner and captures anyone on whose land the work was done with their express or tacit approval. It is notable that a mortgagee, the lender, is not an "owner" unless it is in possession of the land.

What constitutes knowledge according to (c) of the definition of "owner" has been the subject of considerable case law. The owner must have knowledge of the specific work being done, not simply the possibility of work being done during the term of the lease.[2] A provision in a lease requiring repair and improvement can be sufficient to impose knowledge on the owner.[3]

A purchaser's interest in lands may be lienable pursuant to section 3 of the *Act* which provides:

> 3(1) An improvement done with the prior knowledge, but not at the request, of an owner is deemed to have been done at the request of the owner.

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[2] *Supreme House Movers Ltd. v. Strege,* 1997 CanLII 2038 (BCSC).
[3] *Advanced Electric Ltd. v. Marino* (1977), 5 B.C.L.R. 120.

> (2) Subsection (1) does not apply to an improvement made after the owner has filed a notice of interest in the land title office.
>
> (3) Subsection (1) does not apply to an improvement on land owned by the government.

"Notice of interest" is defined in section 1 of the *Act* and means a notice filed at the land title office that says the owner's interest in the land is not lienable unless an improvement is undertaken at the express request of the owner.

Where work or materials are supplied prior the sale of lands and a lien is registered after the sale of the lands before expiry of the lien filing period the lien will be valid notwithstanding the sale because it is right *in rem*. Note that a section 35 of the *Act* limits a purchaser in good faith's liability for liens to 10% of the purchase price of the improvement, not the land.

## B. THE "IMPROVEMENT"

### 1. Improvement

The definition of "improvement" is vitally important to the scheme created by the *Act* because the lien can be against the interest of the owner in the improvement and the improvement itself. "Improvement" is defined in section 1 of the *Act*:

> "improvement" includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunneling, filling, grading or ditching of, in, on or under land.

The broad and inclusive definition of "improvement" should be no surprise given the purpose of the *Act* to prevent an owner from obtaining the benefit of work and/or materials supplied to his or her improvement without paying for them.[4] Generally speaking, an improvement is an investment in or a modification or addition to realty which enhances its value or utility. If there is

[4] David A. Coulson, *Guide to Builders' Liens in British Columbia*, looseleaf (Toronto: Carswell, 2009), at page 1.

an enhancement of value or utility as a result of an investment of money or effort then, under the *Act*, there has been an improvement of the realty, regardless of whether or not that improvement is a fixture.[5]

The work must be done on the "improvement" or no right to a lien exists.[6] Engineering studies are not claimable if construction of the improvement does not proceed, even if the studies were performed on site and even though the value of the land was enhanced by the studies.[7] Irrigation pipes installed underground are intended to become part of the improvement, and thus it has been held that a lien may be filed in respect of them.[8]

In the case of condominiums which are stratified during the course of construction, the "improvement" is the entire construction irrespective of stratification. Anyone involved in constructing condominiums should be aware of section 87 of the *Strata Property Act*[9] which states, "Despite any other enactment, in a phased strata plan a claim of lien under the *Builders Lien Act* may be filed against only the strata lots in the phase in which the materials were supplied or the work was done." In *Engineering & Plumbing Supplies (Vancouver) Ltd. v. Total Ad Developments Ltd.*[10] a lien claimant filed against the property upon which the improvement was constructed. Subsequently, the owner took steps to create a phased development by filing a "Declaration of Intention to Create a Strata Plan by Phased Development" and treat the improvement which the contractor filed against as phase one. The idea of the owner was that by phasing development the lien would be partially avoided because it only applied to the lands related to the first phase. Indeed, the new owner sought to have the lien discharged from the phase two lands. The court interpreted section 87 of the *Strata Property Act* as not capable of affecting vested rights, it "cannot defeat the validity of lien rights accrued prior to the filing of

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[5] *Ibid*. at page 44.
[6] *Langtry v. La Liberte*, 2005 BCSC 169.
[7] *Klohn Leonoff Ltd. v. Pacific Rim Equipment Ltd.* (1987), 26 C.L.R. 130.
[8] *Re Application 3554* (1967), 60 W.W.R. 509.
[9] S.B.C. 1998, c. 43.
[10] (1975), 59 D.L.R. (3d) 3316.

the phased strata plan." The purpose of section 87 is to protect the individual owners of one phase from the creditors of subsequent phases.[11]

**2. Off-Site Work**

Off-site work in the context of the *Act* refers to two distinct situations. First, where the lien claimant did work at a different location, perhaps a shop, then delivered the finished product for use on the improvement. An example of this type of off-site work is the construction of trusses at a contractor's yard for use in a residential home. After construction in the yard the trusses are trucked to the site of the home and installed. The second situation is where the work or material provided are not on the actual land the lien claimant would like to file against but, nonetheless, enhance the value of it. As will be discussed below, an example of this type of off-site work is work on a roadway during the construction of a subdivision.

In the first situation, where the work is done at another site and delivered to the land for integration into the improvement, a two step test must be applied to determine if the work allows for the creation of a lien.

1. The work must be an integral part of the actual physical construction of the project,

2. The work must contribute in a direct and material way to the construction on the project.[12]

In *Kettle Valley* the test was applied and valid lien was found for a subcontractor who supplied materials used to make asphalt. The subcontractor's work was done in a pit well away from the location of the road the asphalt was used to construct.

In the second situation, where the work or material provided are not on the actual land the lien claimant would like to file against but enhanced its value, the general rule is that a lien cannot be filed unless there is a direct and integral connection between the off-site work and the owner's

[11] *Alpin & Martin Consultants Ltd. v. Kwee Timber Resources Ltd.* (1992), 8 C.L.R. (2d) 19.
[12] *Kettle Valley Contractors Ltd. v. Cariboo Paving Ltd.*, [1986] B.C.J. 226 [*Kettle Valley*].

property. Essentially, a "direct and integral connection" means at least some of the work was done, or incorporated into, the lands which the claimant seeks to lien against.

A lien cannot be filed against lands which are adjacent to a roadway where work is performed even if the value of the lands was enhanced as a result of the work.[13] In *Urban Systems Ltd. v. Mission Hill Management Inc*[14] the claimant constructed roadways, parks, and water and sewer installations in a subdivision and filed a lien against the adjacent properties. The court dismissed the lien and said, "In the circumstances the *Builders' Lien Act* does not give any right to a Builders' Lien against any property other than the one upon which the work was done and upon which the improvement was actually constructed." In *Predre Contractors Ltd. v. 2725312 Canada Inc.*[15] the court allowed a lien for the installation of fibre optic cable contained in conduits which were installed underground on the lands the contractor filed a lien against and also extended out from the property below adjacent streets. The court found that the conduits constituted a single improvement and one that provided direct and essential benefit to the owners.

### 3. Attachments

Issues can arise with regard to whether equipment that is delivered to and installed on land, but can be removed relatively easily, is subject to a lien.

A leading case on the status of attachments is *Deal S.r.1. v. Cherubini Metal Works Limited.*[16] The trial court found that moulds which were intended to be removed did not entitle the supplier to a lien even though the moulds were bolted to the floor. The court of appeal came to the opposite conclusion and, relying on an earlier case,[17] decided the definition of "improvement" created a two part test for attachment. First, "The question must be whether, on the ordinary

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[13] *LGB9 et al. v. Metrocan et al.*, 2003 BCSC 1786.
[14] (1998), 41 C.L.R. (2d) 89 [*Urban Systems*].
[15] 2004 BCSC 1112 [*Predre*].
[16] 2000 BCSC 315, reversed 2001 BCCA 49 [*Deal S.r.1.*].
[17] *Boomars Plumbing & Heating Ltd. v. Marogna Brothers Enterprises Ltd.* (1988), 27 B.C.L.R. (2d) 305 [*Boomars*].

meaning of the words, the buildings were 'attached' or became part of the 'land'". Second, "The question under the *Builders Lien Act*, once the other requirements of the definition are satisfied, is simply whether the thing was "attached". If it was attached in any way, that may be enough." The court concluded that the attachment of the moulds was enough to make them an improvement in their own right.

In *Boomars* the court found a 120 unit motel consisting of modular units connected to the ground by their own weight was an improvement. A safe is not an improvement.[18] Scaffolding, which is not intended to become part of the land, is not part of an improvement.[19]

## C. THE LAND

### 1. "Land"

Section 2(f) and (g) provide a lien against the land in, on or under which the improvement is located and the material delivered to or placed on the land. "Land" is not defined in the *Act*.

The *Interpretation Act*[20] defines "land" as follows:

> "land" includes any interest in land, including any right, title or estate in it of any tenure, with all buildings and houses, unless there are words to exclude buildings and houses, or to restrict the meaning.

If a prospective lien claimant wants to use the *Act* to file a lien the land must be in British Columbia because, generally, provincial statues do not have extra-territorial operation. All of the other Canadian provinces have builder's lien acts of their own which operate similarly to the *Act* and can be used to lien land in their respective provinces.

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[18] *Chubb Security Safes v. Larken Industries Ltd.* (1990), 36 C.L.R. 225.
[19] *Steeplejack Services Canada Ltd. v. Alan Clapp & Associates Ltd.* ([1987] B.C.W.L.D. 2741.
[20] R.S.B.C. 1996, c. 238 s. 29.

## 2. Multiple Lots

Section 16 of the *Act* allows a lien claimant to file against more than one lot where an owner enters a single contract for improvements on multiple lots. Section 16 of the *Act* says:

> 16(1) If an owner enters into a single contract for improvements on more than one parcel of land, a lien claimant providing work or material under that contract, or under a subcontract under that contract, may choose to have the lien follow the form of the contract and be a lien against each parcel for the price of all work and material provided to all of the parcels of land.
>
> (2) If a lien is claimed under subsection (1) against several parcels of land, on application to the court by any person with an interest in or charge on the land, the court may apportion the lien among the parcels for the purpose of determining the lien claimant's rights as against persons having right in particular parcels.

Common ownerships is required for the filing of a lien against multiple lots for an improvement which spans more than one lot. In *Joe's Bulldozing Ltd. v. Hanly Management Ltd., Sean Hanley, B.P.Y.A. 131 Holdings Ltd.*[21], the claimant was a subcontractor performing work on four lots owned separately pursuant to a contract with a single head contractor and liens were filed against each of the four lots for the total that remained owning under the subcontract. The court found that because there was no common ownership or interest in the lots each lien should be for the value of the particular work on the particular property.

[21] (1994), 93 B.C.L.R. (2d) 95 (C.A.) [*Joe's Bulldozing*].

## 3. Government Land

### (a) Federal Crown

The legislature of British Columbia cannot pass laws in respect of federal property, therefore, liens pursuant to the *Act* cannot be registered against the legal or equitable ownership of the federal Crown[22] or property registered in the name of its agent.[23]

When considering a lien against land registered to a federal Crown corporation the prospective lien claimant should always review the enabling legislation of the corporation and the *Government Corporations Operation Act*[24] to determine if it is an agent of the federal Crown. Importantly, some federal statutes creating a federal government body specifically allow liens against federal Crown property.

One such situation is the *National Energy Board Act*[25] which subjects federal Crown property to the *Act* with respect to pipelines.

Liens cannot be registered against the lands of the Vancouver Airport. In *Vancouver International Airport v. Lafarge Canada Inc.*[26] the court relied on the constitutional law doctrine of interjurisdictional immunity to prevent the filing of a lien under provincial legislation against lands owned by the federal crown despite the lease specifically providing that the *Act* does apply.

Although it is not the subject of this paper, the mere fact that federal land is not lienable does not mean that the trust provisions of the *Act* do not apply to funds received by a contractor or subcontractor for projects on federal land including reserve land.

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[22] *Deeks McBride Ltd. v. Vancouver Associated Contractors Ltd* (1994), 14 W.W.R. 509 (B.C.C.A).
[23] *Burg & Johnson Builders' Supply Ltd. v. Canada Mortgage & Housing Corp.* (1983), 48 B.C.L.R. 33 (C.A.).
[24] R.S.C. 1985, c. G-4.
[25] *National Energy Board Act*, R.S.C. 1985, c. N-7.
[26] 2009 BCSC 961.

**(b) Provincial Crown**

Lands owned by the province or held by an agent of the province can be liened but the *Act* does not allow for their sale to satisfy the judgment. Section 31(6) of the *Act* provides:

> No order for the sale of an interest in land owned by the Crown or a municipality may be made, but the court may give judgment for an amount equal to the maximum liability under this Act, as owner against either of them, and any money realized on the judgment must be dealt with as if it were the proceeds of a sale of the interest in land.

Section 1.1 of the *Act* specifically excludes its application from highways:

> Nothing in this Act extends to a highway, as defined by the Highway Act, or to any improvement done or caused to be done on it by a municipality, the Minister of Transportation and Highways, the BC Transportation Financing Authority or its subsidiaries or any other public body designated by regulation.

A lien cannot be filed against provincial Crown lands that are not within the land title system. The obvious reason is that there is no certificate in the land title registry to register the lien against.

**(c) Public Authorities and Municipalities**

Property owned by provincial public authorities and municipalities who are not Crown agents is lienable, although, in granting an order for sale to satisfy the lien the court must consider whether the sale is in the public interest.[27]

For example, in *Engineering & Plumbing Supplies Ltd. v. Quesnel (City)*[28], a lien on a sewage treatment plant was not contrary to public policy because, since money had been paid into court, there was no need for a sale to be conducted.

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[27] *Defazio Bulldozing & Backhoe Ltd. v. W.A. Stephenson Construction (Western) Ltd.* (1986), 3 B.C.L.R. (2d) 349 (C.A.).
[28] (1987), 29 C.L.R. 64.

## 4. Reserve Land

It is questionable as to whether a lien can ever be pursued to judgment against reserve land. Section 89 of the *Indian Act*[29] provides that a leasehold interest in reserve land can be the subject of a charge and execution. In Alberta the court of appeal has upheld a lien against a leasehold interest on a reserve provided that the residual interest was not affected.[30]

## 5. Mines

Section 18 of the *Act* sets out the procedure for filing a claim of lien against mining properties held under the *Mineral Tenure Act* other than Crown-granted mineral claims, it says:

> (1) In order to file a claim of lien in respect of a mineral title held under the *Mineral Tenure Act* other than a Crown granted mineral claim, the lien claimant must
>
> > (a) file in the office of the gold commissioner in which the mineral title is recorded a claim of lien in the prescribed form, and
> >
> > (b) if the property that is the subject of a mineral title is registered in a land title office, also file in the land title office a copy of the claim of lien.
>
> (2) On the filing of the claim of lien under subsection (1), the gold commissioner must endorse a memorandum of the filing on the record of the mineral title in the gold commissioner's office.
>
> (3) If the property that is the subject of a mineral title described in the claim of lien is registered in a land title office, the registrar must endorse a memorandum of the filing on the register of title to the land or against the estate or interest in the land or mineral title described in the claim of lien.

To determine whether a mine is held pursuant to the provisions of the *Mineral Tenure Act* a lien claimant should contact the local office of the gold commissioner, there are six districts, and ask if they hold a copy of title in respect of the mine. If they do the claimant should forward the

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[29] R.S.C. 1985, c. I-5.
[30] *Western International Consultants Ltd. v. Sarcee Developments Ltd.*, [1979] 3 W.W.R. 631.

claim of lien to that office then file a duplicate or certified copy of it in the applicable land title office. Claimants can also conduct a search through the Mineral Titles website.[31]

### 6. Demolition

The partial demolition of a building has been held to be part of an improvement and lienable.[32] The reasoning of the Court of Appeal in *Rupert Reinforcing* was that since the definition of "improvement" used in the *Act* specifically included alterations to a building, any necessary demolition work performed as a prerequisite of such alterations is also an "improvement".

## D. THE MATERIAL DELIVERED TO OR PLACED ON THE LAND

The *Act* gives persons who are supplying materials to or on the land a claim for lien. Section 1 of the *Act* defines "material" as:

> movable property that is delivered to the land on which the improvement is located and is intended to become part of the improvement, either directly or in a transformed state, or is consumed or used in the making of the improvement, including equipment rented without an operator.

As per the definition, to be entitled to a lien the material supplier must prove either that the material was delivered to the land on which the improvement is located or that it was incorporated into the improvement.[33]

Where the owner, contractor, or subcontractor to whom the materials are provided, or its agent, signs an acknowledgment of the receipt of the materials, which states that they are received for inclusion in the improvement at a named address, the materials will be deemed delivered to the land described by the address in the absence of evidence to the contrary.[34]

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[31] https://www.mtonline.gov.bc.ca/mtov/home.do.
[32] *Rupert Reinforcing Ltd. v. Worldwide Connections Inc.*, [1981] 1 W.W.R. 747 (B.C.C.A.) [*Rupert Reinforcing*]; *Loedel v. Swanky* (1992), 8 C.L.R. (2d) 217 (B.C.S.C.).
[33] *Giroday Sawmills Ltd. v. Roberts*, [1953] 2 D.L.R. 737 (B.C.C.A.).
[34] The *Act,* s.29.

A lien will usually not be given for the transportation of materials.[35]

A supplier of raw material to a material supplier is entitled to a lien if it can show that it supplied material intended for use on an improvement, that the materials were actually used on the improvement, and that the materials were sold to a subcontractor, contractor, or owner.[36]

Two claimants, a supplier of sand and gravel[37] and a supplier of cement,[38] have been denied liens because they could not establish that they knew where the materials would be used at the time they were delivered.

## E. THE HOLDBACK

In *Shimco Metal Erectors Ltd. v. Design Steel Constructors Ltd.*[39], the court of appeal interpreted section 4(9) of the *Act* as creating a lien against the holdback. Section 4(9) of the *Act* says,

> Subject to section 34, a holdback required to be retained under this section is subject to a lien under this Act, and each holdback is charged with payment of all persons engaged, in connection with the improvement, by or under the person from whom the holdback is retained.

A lien against the holdback has become known as a "*Shimco* lien". A *Shimco* lien is independent of the lien against the lands and is not extinguished when the lien against the land is extinguished, it is extinguished when the holdback is paid out. The *Shimco* lien's main use is to allow prospective lien claimants who file invalid liens or fail to start an action within the required time limit to claim against the holdback.

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[35] *Enerinax Fabricators Ltd. v. David L.S. Pearce & Associates Ltd.* (1986), 32 D.L.R. (4th) 59 (B.C.C.A.).
[36] *HBG Ent. Ltd. v. Lamarche Window Mfg. Ltd.* (1998), 55 B.C.L.R. (3d) 1.
[37] *Allard Contractors Ltd. v. Adams Properties Ltd.* (1986), 21 C.L.R. 198 (B.C.C.A).
[38] *Genstar Cement Ltd. v. Henfrey & Co.* (1984), 56 B.C.L.R. 357 (C.A).
[39] 2003 BCCA 193 [*Shimco*].

## III. WHAT YOU CAN LIEN FOR

The *Act* gives what can be liened for fairly short shrift when it says in section 2, "…a contractor, subcontractor, or worker…has a lien for the price of the work and material, to the extent that the price remains unpaid…"

As you would imagine, case law has had a large influence on what can be liened for. The general rule comes from *M3 Steel (Kamloops) Ltd. v. RG Victoria (Construction) Ltd.*[40] which applied a "close connection" test to determine what can properly be included in a lien. Mr. Justice Johnston wrote,

> I take from these authorities that it is important to look at the nature of the claims made, not the labels, such as "damages", put on the claims. If the claims are for work performed or provided, or material supplied, or are so closely connected to them that it is reasonable and proper that they should be included in the statutory regime under the *Builders Lien Act*, they are properly the subject of a claim of lien.

Generally speaking, the claim of lien should include any sum that is in dispute. It should include the value of unpaid invoices, holdback, extras, and change orders. If there is no contract the rules of *quantum meruit* apply and the lien amount may include a reasonable amount for profit and overhead expenses, otherwise, profit cannot be claimed.[41]

A lien claim can include damages for delay. In *Q West Van Homes Inc. v. Fran-Car Aluminum Inc.*,[42] the court said, "They [damages for delay] may be properly included if they represent the price of work performed or provided or material supplied or are so closely connected that it is reasonable and proper to include them in a claim of lien."

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[40] 2005 BCSC 1375.
[41] *Lauder Brothers v. Vanmor Holdings Ltd.*, [1987] B.C.W.L.D. 969; *Narduzzi v. Richardson,* 2009 BCSC 1254.
[42] 2007 BCSC 823.

The lien cannot include work not yet performed, materials not yet supplied, or amounts which have been paid. Lost profits resulting from the breach of a contract must be made in a claim for breach of contract, not a lien.[43] Tort damages cannot be included a claim of lien.[44] A lien claim cannot include interest.[45]

A claimant is allowed to prove an amount less than was originally claimed in the lien[46] but should be aware that section 45 of the *Act* makes it an offence to file a lien which contains false statement. Also, claims that are exceed the actual amount owing have been found to be an abuse of process[47] and section 25 of the *Act* allows the court to cancel a claim of lien if it finds it is vexatious, frivolous or an abuse of process.

## IV. CONCLUSION

What you can lien and what you can lien for is not always straight forward. Case law on the topic may have confused what seem to be relatively clear sections of the *Act*. Given the importance of properly completing and filing a lien potential lien claimants should think twice prior to filing without the help of a professional. If it is decide to file on your own behalf make sure you file against the right land and improvement and for the right amount.

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[43] *Tylon Steepe Homes Ltd. v. Landon*, 2010 BCSC 192.
[44] *Golden Hill Ventures ltd. v. Kemess*, 2002 BCSC 1215.
[45] *Horsman Bros. Holdings Ltd. et al. v. Lee et al.* (1985), 12 C.L.R. 145 (B.C.C.A.)
[46] *Brown v. Allan* (1913), 4 W.W.R. 1306 (B.C.C.A.).
[47] *Tylon Steepe homes Ltd. v. Pont,* 2009 BCSC 253.