



Important Builders Lien Decision

In *Quigg Homes WV345 Ltd. v. Bosma*, 2004 BCSC 1582, an owner had entered into multiple trade contracts (no general contractor), and had reserved the role of payment certifier to itself. Under the *Builders Lien Act*, this meant that lien and holdback deadlines started running on issuance of the relevant certificate of completion, or completion of the whole project, whichever of these two events came first.

The framing subtrade believed it had been partially unpaid. It filed a lien claim well after its own work was complete, but prior to the completion of the whole project.

The owner asked the court to invalidate the framer's lien claim on the basis that it had been filed later than the 45-day period after completion of the subtrade's work had been certified. In its defence, the framer argued that it had never asked for certification of completion.

Section 7(3) of the *Act* says:

"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."

The court found in the subtrade's favour, stating: "On my reading of s.7 of the *Builders Lien Act*, a certificate of completion may only be issued where there has been a request for such a certificate under s.7(3) of the *Act*. I see nothing in s.7 that allows an owner to unilaterally declare completion of the project or a part of it through the issuance to itself of a certificate of completion."

Although *Quigg Homes* dealt with an owner acting as payment certifier, it will apply equally to all who take on this responsibility. The result for contractors and trades is that at the end of each job they should (1) be sure to formally request a Certificate of Completion in a letter addressed to their payment certifier, to ensure that holdback will flow on time; and (2) be alert to the fact that a Certificate of Completion even if posted on site may not have been "requested", and therefore may not shorten the time within which a valid lien claim can be filed. Contractors who are themselves payment certifiers (of subcontracts) should be careful not to certify completion unilaterally, but instead should demand that their subcontractors apply in writing for certification.

The full decision is at <http://www.courts.gov.bc.ca/jdb-txt/sc/04/15/2004bcsc1582.htm> .

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