COURT OF APPEAL OF YUKON

Citation: *Brad Paddison Contracting Ltd. v. Sumitomo Canada Limited*, 2025 YKCA 9

Date: 20250722
Docket: 23-YU911

Between:

Brad Paddison Contracting Ltd.

Appellant
(Petitioner)

And

Sumitomo Canada Limited

Respondent
(Respondent)

Before: The Honourable Chief Justice Marchand
The Honourable Madam Justice Fisher
The Honourable Mr. Justice Alibhai

On appeal from: An order of the Supreme Court of Yukon, dated November 28, 2023 (*Brad Paddison Contracting Ltd v. Minto Metals Corp.,* 2023 YKSC 67, Whitehorse Docket 22-A0125).

Counsel for the Appellant:	J.R. Sandrelli M.L. Burris
Counsel for the Respondent:	K.M. Jackson T.A. Posyniak
Place and Date of Hearing:	Whitehorse, Yukon May 15, 2025
Place and Date of Judgment:	Whitehorse, Yukon July 22, 2025

Written Reasons by:
The Honourable Chief Justice Marchand

Concurred in by:
The Honourable Madam Justice Fisher
The Honourable Mr. Justice Alibhai

Summary:

This appeal concerns the scope and registration of lien claims under the Miners Lien Act, R.S.Y. 2002, c. 151 [MLA]. Two issues of law arise: (1) Is a lien over mineral concentrate under s. 2(1)(e) extinguished once ownership of the concentrate changes hands? (2) To provide effective notice under s. 4(1)(d), must a claim of lien form specifically identify each type of property "to be charged"?

Held: Appeal allowed. The judge's interpretation of s. 2(1)(e) is correct. The respondent's interpretation—that the lien is transitory and is extinguished when title to the concentrate passes from a mine owner to a purchaser—is both non-compliant with relevant norms of statutory interpretation and inconsistent with the purposes of the MLA. So long as works or services are provided while the mineral concentrate is in the hands of the owner, the lien attaches to those minerals and can be followed to the purchaser. However, the judge erred in her interpretation of s. 4(1)(d). Respectfully, the judge's interpretation would create an impractical and burdensome process for potential lien claimants that would undermine the MLA's purpose of protecting unpaid suppliers of goods and services. As the appellant correctly argues, s. 4(1)(e), when read in light of the statute's overall scheme, only requires lien claimants to list the relevant mining lease, claim or grant numbers when registering their lien in the office of the mining recorder.

Reasons for Judgment of the Honourable Chief Justice Marchand:

Introduction

[1] This appeal concerns the scope and registration of lien claims under the *Miners Lien Act*, R.S.Y. 2002, c. 151 [*MLA* or *Act*].

Overview

[2] The appellant, Brad Paddison Contracting ("BP Contracting"), is a general contracting company specializing in mining projects. On November 9, 2022, BP Contracting registered a claim of lien for unpaid work supplied to the Minto Mine (the "Mine"). The claim was registered under s. 4 of the *MLA* in the Whitehorse mining recorder's office.

[3] BP Contracting submitted its claim in the standardized claim of lien form, as provided in the *Miners Lien Forms Regulation*, Y.O.I.C. 2016/084. In response to the claim of lien form's request for a "description of the property to be charged", BP Contracting attached a schedule to the form listing the mineral claims and leases comprising the Mine. It did not specifically identify "minerals" or "mineral concentrate" on the form or attached schedule.

[4] On January 3, 2023, BP Contracting filed a petition to enforce its lien. It then obtained a certificate of pending litigation ("CPL") from the Yukon Supreme Court. It filed the CPL in the mining recorder's office the following day in accordance with s. 8 of the *MLA*. It served the petition on the mine operator, Minto Metals Corp. ("Minto Metals"), on January 6, 2023.

[5] The respondent, Sumitomo Canada Limited ("Sumitomo"), is a company specializing in mining investment and export. As part of a 2019 offtake agreement, Sumitomo agreed to purchase 100 percent of the copper concentrate produced at the Mine up to a specified maximum amount. Minto Metals agreed to deliver purchased concentrate to Sumitomo free and clear of all encumbrances.

[6] From December 2022 until May 10, 2023, Sumitomo purchased approximately USD 39 million worth of mineral concentrate produced by the Mine. Over USD 35 million was purchased after December 2022 and, as of May 10, 2023, title to all of this concentrate had passed to Sumitomo. Sumitomo did not conduct a search of the mineral claims and leases owned by Minto Metals prior to completing the purchases and was therefore unaware of BP Contracting's lien.

[7] In May 2023, Minto Metals announced it had ceased operations. In June 2023, Sumitomo commenced proceedings and, on July 24, 2023, obtained an order for the appointment of a receiver over Minto Metals.

[8] As a result of Sumitomo's receivership application, BP Contracting learned of Sumitomo's mineral concentrate purchases. On August 11, 2023, BP Contracting amended its petition to seek relief against Sumitomo. BP Contracting puts the current value of its claim at $188,000. This amount is in dispute—though not on this appeal.

[9] The chambers judge dismissed BP Contracting's petition to enforce its lien against the mineral concentrate purchased by Sumitomo. Her reasons for judgment are indexed as *Brad Paddison Contracting Ltd v Minto Metals Corp,* 2023 YKSC 67 [*RFJ*].

[10] On the view I take, two issues of law arise on appeal:

1. Is a lien over mineral concentrate under the *MLA* extinguished once ownership of the concentrate changes hands?

2. To provide effective notice, must a claim of lien form specifically identify each type of property "to be charged"?

[11] The chambers judge considered both issues.

[12] The first issue turned on her interpretation of s. 2(1)(e) of the *MLA*. Section 2(1)(e) provides a lien for work and materials is a lien on "the mineral when severed and recovered from the land while it is in the hands of the owner".

[13] The judge found "there is insufficient wording in the statute to support [Sumitomo's] interpretation that 'while in the hands of the owner' means the lien, once attached, is extinguished once title changes hands": *RFJ* at para. 45. Rather, so long as the lien is registered before title to the concentrate is transferred—as was the case here—the lien can be followed to the purchaser. She found this accorded with the remedial purpose of the *MLA*. She therefore concluded BP Contracting's lien was not extinguished after ownership of the mineral concentrate was transferred from Minto Metals to Sumitomo: *RFJ* at para. 52.

[14] However, the judge concluded BP Contracting had not provided sufficient information on its claim of lien form to provide effective notice of its lien. She determined s. 4(1)(d) of the *MLA*, which requires "a description of the property to be charged", requires a lien claimant to specifically describe the property intended to be covered by the lien, including mineral concentrate. As noted above, BP Contracting had only listed the mineral claims and leases held by Minto Metals on its form. According to the chambers judge, this was not in keeping with the *MLA's* procedure for registering liens and was insufficient to provide notice to potential third parties of a lien claim over mineral concentrate: *RFJ* at paras. 62–64, 69.

[15] The judge concluded Sumitomo would not have discovered if there were encumbrances on the mineral concentrate even if it had conducted a search for liens on the concentrate. She therefore held Sumitomo did not have constructive notice of the lien and took title to the mineral concentrate free and clear of the lien as a *bona fide* purchaser for value without notice: *RFJ* at paras. 60, 63, 69.

[16] On appeal, BP Contracting argues the judge erred in her interpretation of s. 4(1)(d). BP Contracting maintains it was not required to list "minerals" or "mineral concentrates" in its "description of the property to be charged" on its claim of lien form. Further, it submits the judge erred in finding Sumitomo did not have constructive notice of its lien.

[17] For its part, Sumitomo seeks to uphold the order on the basis the judge erred in concluding the lien still attached to the mineral concentrate after title to the

concentrate transferred to Sumitomo. It relies on s. 2(1)(e) of the *MLA*. It renews its claim that "while in the hands of the owner" means any claim of lien over concentrate is extinguished once title passes from the owner to a purchaser. In the alternative, Sumitomo says the judge was correct in her findings regarding constructive notice and the registration requirements under s. 4(1)(d) of the *Act*.

[18] For the reasons that follow, I would allow the appeal. I agree with the chambers judge's interpretation of s. 2(1)(e). However, I would not endorse her interpretation of s. 4(1)(d), as it creates an impractical and burdensome process for potential lien claimants that would undermine the *MLA*'s purpose of protecting unpaid suppliers of goods and services.

[19] Given the centrality of the *MLA* to the present appeal, I first set out the statute's purpose and relevant sections before turning to a discussion of the issues.

Statutory Framework

[20] The chambers judge surveyed both the jurisprudence and Hansard debates speaking to the dual purpose of the *MLA*: *RFJ* at paras. 32–37. The parties agree she correctly concluded the *MLA* "strives to balance the protection of unpaid suppliers of goods and services to a mine with the need for commercial certainty for financial investors in a mine": *RFJ* at para. 33.

[21] The *MLA* was amended in 2008. The chambers judge noted the following commentary from the Hansard debates in relation to those amendments:

> [32] … Debates occurred in the legislature in 2008 at the stage of second reading, and the statements of Minister Lang who introduced the amendments are instructive in determining legislative intent:
>
> > … The purpose of this amendment to the *Miners Lien Act* legislation is threefold: One, by modernizing the *Miners Lien Act*, … the Yukon government will continue to encourage investment in Yukon's mining sector; two, changes to the miners lien legislation will make the act easier to interpret and more in line with the newer legislation in other Canadian jurisdictions; three, these changes will assist mining companies, legal and financial firms, developers, contractors and suppliers that service the mining sector. Potential lien claimants, some of whom may be small Yukon businesses, should not need sophisticated legal aid to understand their rights.

[22] Section 2 of the *MLA* sets out who is entitled to a lien for work and materials, and the property to which the lien attaches. Section 2(1) of the *MLA* states (in relevant part):

> 2(1) A contractor or subcontractor who provides services or materials to a mine … is given a lien by this subsection and, notwithstanding that a person holding a particular estate or interest in the mine or mineral concerned has not requested the services or materials, the lien given by this subsection is a lien on
>
> (d) all the estates or interests in the mine or mineral concerned;
>
> (e) the mineral when severed and recovered from the land while it is in the hands of the owner;
>
> (f) the interest of the owner in the fixtures, machinery, tools, appliances and other property in or on the mines or mining claim and the appurtenances thereto.
>
> [Emphasis added.]

[23] Section 4 sets out the requirements for registering a lien:

> (1) A claim of lien may be deposited in the office of the mining recorder for the district in which the mine or mining claim is situate and shall state
>
> (a) the name and residence of the claimant and of the owner of the property to be charged and of the person for whom and on whose credit the work or service is performed or material furnished and the time or period within which it was or was to be performed or furnished;
>
> (b) the work or service performed or material furnished;
>
> (c) the sum claimed as due or to become due;
>
> (d) the description of the property to be charged; and
>
> (e) the date of the expiry of the period of credit agreed to by the lien holder for payment for their work, service, or material if credit has been given.
>
> (2) A claim shall be verified by the affidavit of the claimant or their agent having a personal knowledge of the facts sworn to.
>
> [Emphasis added.]

[24] Sections 6 through 8 set out the steps for a lien claimant to perfect their lien. Section 6 requires a claim of lien to be registered within 45 days from the last day on which the relevant work or service or material was supplied. Section 7 provides any lien not registered within this time period "shall cease to exist". Section 8 then states every registered lien will cease to exist unless the lien claimant commences

proceedings to enforce the claim within 60 days of registration, obtains a CPL from the Yukon Supreme Court, and files the CPL in the relevant mining recorder's office.

[25] The *Miners Lien Forms Regulation*, which came into effect on May 4, 2016, prescribes the forms that must be deposited to register a lien under s. 4. Form 1 (the claim of lien form) and Form 3.23 (the affidavit) must both be deposited with the mining recorder's office.

Analysis

Applicable Principles of Statutory Interpretation

[26] The approach to statutory interpretation is well-settled: the words of an Act must be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme and purpose of the Act and the intention of the legislature: *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837. All statutes are understood to be remedial and should be given the fair, large and liberal interpretation that best ensures the attainment of their objectives: *Interpretation Act*, R.S.Y. 2002, c. 125, s. 10; *Rizzo* at para. 22.

[27] There is also a presumption against interpreting legislation "in a manner that would interfere with common law rights." Interfering with the common law therefore requires precise and explicit direction from the legislature, either in the express wording of the statute or by necessary implication: *Pioneer Corp. v. Godfrey*, 2019 SCC 42 at para. 85.

[28] Specific interpretive principles have also traditionally been applied to lien statutes such as the *MLA* that create purely statutory rights. The Supreme Court of Canada has referred to such statutes as "an abrogation of the common law" granting one class of creditors a security or preference not enjoyed by others: *Clarkson Co. Ltd. v. Ace Lumber Ltd.*, [1963] S.C.R. 110 at 114, 1963 CanLII 4.

[29] Accordingly, the Court in *Clarkson* held it was necessary for lien statutes to be interpreted strictly when determining whether a lien claimant is entitled to a lien

and has followed the necessary procedure to perfect the lien. Once the claimant's right has been clearly established, however, the statute should be "liberally interpreted toward accomplishing the purpose of its enactment": *Clarkson* at 114.

[30] The approach taken in *Clarkson* has been followed by several appellate courts: see e.g., *Canbar West Projects Ltd. v. Sure Shot Sandblasting & Painting Ltd.*, 2011 ABCA 107 at para. 14; *Tervita Corporation v. ConCreate USL (GP) Inc.*, 2015 ABCA 80 at para. 5; *Diavik Diamond Mines Inc. v. Tahera Diamond Corp.*, 2009 NUCA 3; *Kobi's Auto Ltd v. 5164245 Manitoba Ltd*, 2018 MBCA 134 at para. 41; *Rudco Insulation Ltd. v. Toronto Sanitary Inc.*, 167 D.L.R. (4th) 121, 1998 CanLII 5529 (O.N.C.A.).

[31] However, several appellate authorities indicate this approach has been superseded by the more general test set out in *Rizzo* and codified in statutes such as the *Interpretation Act*: see *Iberdrola Energy Projects Canada Corporation v. Factory Sales & Engineering Inc. d.b.a. FSE Energy*, 2018 BCCA 272 at paras. 26–34; *A.W. Kennedy Construction Inc. v. Wan*, 2021 BCCA 175 at paras. 25–28; *Grey Owl Engineering Ltd. v. Propak Systems Ltd.*, 2015 SKCA 108 at para. 32; *Farm Credit Canada v. Gustafson*, 2021 SKCA 38 at para. 54.

[32] As Justice Groberman, writing for the B.C. Court of Appeal in *Iberdrola*, explained, *Rizzo* and *Bell ExpressVu* relegate the concept of "strict construction" to a limited and secondary role in statutory interpretation:

> [30] Strict construction is a concept that is only applied if, after applying the modern rule of statutory interpretation, there remains "real" ambiguity in a statutory provision and the provision falls within a category of statutes that traditionally were strictly construed.

[33] He pointed to *Canada 3000 Inc. (Re); Inter-Canadian (1991) Inc. (Trustee of)*, 2006 SCC 24 at para. 84, where the Supreme Court affirmed the *Bell ExpressVu* approach applies where statutory regimes interfere with property rights: *Iberdrola* at para. 32.

[34] As Groberman J.A. acknowledged, it may be the case that certain provisions of an Act need to be construed narrowly to ensure the statute operates in

accordance with its overall purpose. Lien statutes, which typically aim to create "certainty and fairness" for all stakeholders in the industry, are one example. But the starting point remains the context, purpose, scheme and text of the Act, rather than a blanket presumption that certain elements of the Act will be automatically subject to strict construction: *Iberdrola* at para. 34; see also *A.W. Kennedy Construction* at para. 26; *Grey Owl Engineering* at paras. 30–32.

[35] If, based on a purposive and contextual reading of the statute, there remains a real ambiguity in a statutory provision, then the ambiguity may be resolved by recourse to the principle of strict interpretation: *Bell ExpressVu* at para. 29; *Canada 3000 Inc.* at para. 84.

Issue 1: Is a lien over mineral concentrate under the *MLA* extinguished once ownership of the concentrate changes hands?

[36] Answering this question requires interpreting the scope of the lien created by s. 2(1) of the *MLA*.

[37] The *MLA* creates only one right: a lien. According to s. 2(1), that lien arises when a contractor or subcontractor "provides services or materials to a mine". By operation of s. 2(1)(e), the lien extends over "severed and recovered" minerals (e.g., mineral concentrate) "while it is in the hands of the owner" of the mine.

[38] In my view, the judge was correct to dismiss Sumitomo's claim that the words "while in the hands of" in s. 2(1)(e) mean the lien is transitory and is extinguished when title to the concentrate passes from a mine owner to a purchaser.

[39] According to Sumitomo, the "plain meaning" of s. 2(1)(e) is that the lien only exists while the severed minerals are in the hands of the owner. Sumitomo also points to the benefits of purchasers acquiring title to severed minerals free of any lien claims. It submits doing so ensures mine owners will have timely access to funds necessary to carry on operations, including to pay contractors and suppliers. According to Sumitomo, "[a]ny uncertainty concerning the ability of purchasers to

obtain clear title to severed minerals only serves to gum up mining operations to the detriment of all stakeholders."

[40] Sumitomo argues any concerns about mine owners being unable to pay contractors are misplaced, noting "contractors are free to move to seize any severed minerals before title passes (in addition to all other remedies available to them under the *MLA*)."

[41] Finally, Sumitomo says the legislative evolution of the *MLA* supports its claim because previous versions of the *MLA* contained explicit language that a lien continued to bind purchasers of severed minerals. For example, prior to the 2008 amendments, s. 2(3) of the *MLA* provided:

> On registration, the lien shall attach and take effect as against persons purchasing and mortgagees and other encumbrancers registering their mortgages or encumbrances after the start of performance of work or service or furnishing of material in respect of which the lien is claimed.
>
> [Emphasis added.]

[42] I agree with Sumitomo that s. 2(1)(e) can be read as meaning a lien against severed minerals only exists while the severed minerals are in the hands of the owner. However, the sub-section is equally capable of meaning the lien both arises and attaches to the severed minerals while they are in the hands of the owner.

[43] Of course, plain meaning alone is not determinative. The appropriate interpretation must be consistent with the purpose of the legislation and compliant with relevant norms of statutory interpretation: *Celgene Corp. v. Canada (Attorney General)*, 2011 SCC 1 at para. 21; *R. v. Alex*, 2017 SCC 37 at paras. 31–32.

[44] Here, Sumitomo's interpretation would abrogate the common law principle that a lien can follow the property to which it attaches as long as it remains identifiable: *RFJ* at paras. 41, 45; *British Columbia (Workers' Compensation Board) v. Canadian Imperial Bank of Commerce*, 157 D.L.R. (4th) 193 at para. 13, 1998 CanLII 4019 (B.C.C.A.). Abrogating the law in this way would require precise and explicit direction from the Legislature.

[45] The *MLA* is explicit and specific about when a lien "shall cease to exist":

> **7 Failure to deposit lien**
>
> Every lien that has not been duly deposited under this Act shall cease to exist on the expiration of the time previously limited for the registration thereof.
>
> **8 When lien ceases to exist**
>
> Every lien that has been duly deposited under this Act shall cease to exist on the expiration of 60 days after deposit unless proceedings are commenced to realize the claim and a certificate granted by the Supreme Court is duly filed in the office of the mining recorder.
>
> [Emphasis added.]

[46] But nowhere does the *MLA* state a lien over concentrate shall cease to exist when the concentrate is sold. Nor does such an interpretation arise by necessary implication.

[47] Rather, Sumitomo's interpretation would be antithetical to the statute's scheme and purposes. Registering a claim of lien against mineral concentrate would serve no purpose. The lien would cease to exist following a sale of the concentrate, whether or not the purchaser had notice. This would encourage mine owners to defeat lien claims against concentrate by arranging for title to pass to a purchaser and purchasers would have no reason to pay heed to the presence of any lien claims. This would undermine the very rights the *MLA* seeks to protect.

[48] Further, I fail to see how a lien attaching to severed minerals at the time work is done or materials supplied would unduly "gum up" anything. It seems to me requiring contractors and suppliers "to seize any severed minerals before title passes", as Sumitomo suggests, would create two significant problems. First, some lien claimants would have no way of even knowing when the owner was selling the concentrate. Second, forcing lien claimants to undertake costly and otherwise unnecessary litigation would do far more to "gum up" the industry than requiring purchasers to make reasonable (and inexpensive) inquiries and possibly hold back funds to ensure contractors and suppliers are paid.

[49] Moreover, forcing contractors and suppliers to "move to seize any severed minerals before title passes" would be contrary to the Legislature's stated intention to

ensure potential lien claimants, including small Yukon businesses, would not need sophisticated legal assistance to understand and enforce their rights.

[50] Finally, the evolution in the statutory language cannot overcome the fact that Sumitomo's interpretation would abrogate the common law without precise and explicit direction from the Legislature and would be inconsistent with the purposes of the *MLA*. Its interpretation therefore cannot be correct.

[51] In my respectful view, on a proper reading of s. 2(1), so long as works or services are provided while the mineral concentrate is in the hands of the owner, the lien attaches to those minerals. To provide notice and allow for enforcement, the lien claimant is then required to register the lien under s. 4 of the *MLA*. But to be clear: the lien arises and attaches when the work is done, not when the lien is registered.

[52] Once registered, a lien can be followed to the purchaser. As the judge correctly held, "this [interpretation] accords with the purpose of the *Miners Lien Act* to protect unpaid workers, and with a large and liberal interpretation of a remedial statute that exists alongside of the common law": *RFJ* at para. 52.

[53] If a sale of concentrate occurs before the lien is registered, the lien still exists but would not be enforceable against a *bona fide* purchaser for value without notice. If a sale of concentrate occurs after registration, the lien would be enforceable against a purchaser because the purchaser would have notice (either actual or constructive) of the lien.

[54] Sections 6, 7 and 8 of the *MLA* balance the need to protect unpaid suppliers of goods and services with the need for commercial certainty for investors. Collectively, these sections require lien claimants to promptly register and take steps to enforce their lien claims. If they do not act within specified (and relatively brief) time periods, their claims cease to exist.

Issue 2: To provide effective notice, must a claim of lien form specifically identify each type of property "to be charged"?

[55] This question concerns the scope and meaning of s. 4(1) of the *MLA*, which sets out the information that must be included when a claim of lien is deposited in the mining recorder's office. Section 4(1)(d) is critical. It requires a claim of lien to include a "description of the property to be charged".

[56] As I noted above, lien claimants must submit a claim of lien form to properly deposit a claim: *Miners Lien Forms Regulation*, s. 2. The form tracks the statutory requirements found in s. 4(1). It is a single-page document consisting of a table with two columns. The first column lists each piece of information required by s. 4(1) of the *MLA*. Row four of the form provides as follows:

Description of the property to be charged (mineral claim grant number or mining lease number):	

[57] In this case, BP Contracting completed row four by referring to an attached Schedule 'A'. Schedule 'A' included a list of the grant numbers, lease numbers and claim labels associated with the Mine.

[58] The judge held this was insufficient to provide notice of a lien claim over concentrate to a potential purchaser. The judge explained:

> [69] … The failure to describe the concentrate in the registration documents, in which other liened property was specifically described, and the absence of any other notice meant that no one, even on the exercise of due diligence, could know about this encumbrance. A strict interpretation of the procedure to be followed is in keeping with the creation of new rights for lienholders. A clear description of the property intended to be covered by the lien is not an onerous obligation on the lienholder and should not require sophisticated legal advice.

[59] However, interpreting the statute as requiring a description of the specific property to be covered by the lien raises several issues.

[60] First and foremost, such an interpretation would place a considerable onus on lien claimants. Suppliers of goods and services to a mine will be unlikely to know of all the potential property covered by their lien.

[61] And they should not need to. Section 2 already specifies the property the lien attaches to: (d) all the estates or interests in the mine or mineral concerned; (e) the mineral when severed and recovered from the land while it is in the hands of the owner; and (f) the interest of the owner in the fixtures, machinery, tools, appliances and other property in or on the mines or mining claim and the appurtenances thereto.

[62] Here, BP Contracting's lien form (with the attached schedule) listed the claim and lease numbers. These correspond to the definition of "mine" in the *MLA*, which is defined by the boundaries of a "recorded claim, or a recorded claim which is subject to a lease, or which is located in whole or in part within the boundaries of a group of contiguous claims": s. 1.

[63] The lease and claim numbers therefore provided notice of which mine the lien claim related to, rather than to the specific property to which it attached. The *MLA* then established which assets or interests derived, produced, or located on the mine were subject to the lien, namely the estates or interests in the mine or minerals (s. 4(1)(d)), severed and recovered minerals (s. 4(1)(e)) and the fixtures, machinery, etc., located in or on the mine (s. 4(1)(f)).

[64] I acknowledge a distinction needs to be drawn between the creation of the lien and the process necessary for perfecting a lien claim, including providing proper notice to third parties.

[65] But under the *MLA*, it would be counterproductive for a lien claimant not to register a lien against everything covered by s. 2(1). For example, by operation of s. 2(1)(f), a lien attaches to all the fixtures and machinery in or on the mine. To require a claimant to list out the specific machinery to perfect the lien, at the risk of

being under-inclusive and foregoing their legitimate lien claim on unlisted machinery, does not make sense.

[66] Alternatively, requiring a claimant to mechanically parrot the statutory language from s. 2(1) in the lien claim form to ensure their lien is perfected over all the property to which it is already attached would put form over substance.

[67] According to the judge, “Given that some of the property permitted to be covered by a lien by statute is listed on Form 1, but not all, it should not be the burden of a third party purchaser to assume its product may be subject to a lien”: *RFJ* at para. 63.

[68] Respectfully, the statute does not permit some property to be covered by a lien. As discussed above, a lien over the property specified in s. 2(1) arises by operation of law when a contractor provides services or materials to a mine. It is therefore reasonable to assume a lien claim over a particular mineral lease, claim or grant attaches to the estates or interests (d), severed and recovered minerals (e), and fixtures, machinery, tools, appliances and other property (f) associated with that lease, claim or grant—including mineral concentrate.

[69] The judge therefore erred in law by interpreting s. 4(1)(e) as requiring lien claimants to describe more than mineral leases, claims and grants in the form. Rather, s. 4(1)(e), when read in light of the statute’s overall scheme, and particularly in conjunction with s. 2, only requires lien claimants to list the relevant mining lease, claim or grant numbers. There is no real ambiguity.

[70] Even if there were, a strict interpretation would not result in a requirement for lien claimants to either regurgitate the statutory language or list all of the potential property to which their claim attaches—at the risk of foregoing a lien claim over property they did not know existed but to which their lien attached by operation of s. 2. Such an interpretation would not further the objective of commercial certainty.

[71] As the judge noted at para. 67 of her reasons, in *Yukon Zinc Corporation (Re)*, 2015 BCSC 836, one of the liens filed against a mine owner included not only a claim against certain quartz claims, but also against:

> [31] …
>
> [A]ll minerals severed and recovered from the Project, including but not limited to all of Yukon Zinc Corporation's present and after-acquired concentrates and inventory wheresoever situated.

[72] According to the judge, this level of detail is indicative of what is necessary to provide sufficient notice.

[73] I am not inclined to give *Yukon Zinc* the weight ascribed to it by the judge. First, the fact a particular lien claimant included certain information when filing their particular lien claim does not mean that information was required to perfect the lien.

[74] Second, the filing in *Yukon Zinc* predated the introduction of the standardized lien claim form. As BP Contracting notes, this form came into effect with the introduction of the *Miners Lien Forms Regulation* on May 4, 2016. The lien claim form now asks the lien claimant to set out a "description of the property to be charged (mineral claim grant number or mining lease number)". Although it is the interpretation of the *Act* not the form that is at issue, this suggests the lien claimant is to provide only the mineral claim grant number or mining lease number.

[75] This makes sense, as the mining recorder's office registers mining leases, claims and grants, not interests in mineral concentrate or chattels.

[76] Sumitomo points to the French version of the lien claim form which asks lien claimants to provide "Description du bien à grever (<u>avec</u> le numéro de l'acte de concession du claim minier ou du bail minier)" (emphasis added). Sumitomo argues the use of the word "avec" means "the mineral claim numbers should be included *with*—or in addition to—the description of the property to be charged."

[77] In the absence of an official interpretation, and considering the proper holistic, purposive and contextual interpretation of s. 4 of the *Act*, I am not prepared to place any special weight on the use of the word “avec” in the French version of the form.

[78] Again, under the statutory regime, the sole purpose of registration is to give notice to the world of the already-existing lien. A prudent third party, upon conducting a search of the relevant mineral claims and leases, would discover the existence of a lien connected to those claims and leases. Looking to the *MLA*, the purchaser would understand the scope of the lien, which encompasses mineral concentrate. Within 60 days of the lien having been registered, their search would also lead them to discover the CPL detailing the specific relief sought in respect of the lien claim. Respectfully, the chambers judge’s finding to the contrary is not available on the record.

[79] If the claim of lien form failed to register a particular lease, grant or claim, it would be defective and a *bona fide* purchaser for value would prevail in the setting of priorities due to the lack of actual or constructive notice.

[80] But where (as here) the contractor’s claim of lien form included the relevant leases, grants and claims, a purchaser has constructive notice of the lien. By operation of the *MLA*, the lien covers everything under s. 2(1)(d)–(f), including mineral concentrate in the hands of the mine owner. So long as the contractor (again, as was the case here) commences proceedings to realize the claim and files a CPL with the mining recorder within 60 days of depositing their lien claim, that lien remains in place.

[81] This interpretation is in keeping with the remedial objective of lien legislation and, more specifically, the purpose of the 2008 amendments to the *MLA*. Those amendments were meant to “make the act easier to interpret” and assist “potential lien claimants, some of whom may be small Yukon businesses” who “should not need sophisticated legal aid to understand their rights.” Furthermore, nothing in this interpretation is inconsistent with the objective of “continu[ing] to encourage investment in Yukon’s mining sector.”

Conclusion and Disposition

[82] On a proper interpretation of s. 4(1), BP Contracting filed a valid lien covering all leases, grants and claims comprising the Mine. Its lien covered everything under s. 2(1)(d), (e), and (f), including the concentrate produced after BP completed its work.

[83] For the reasons above, I would allow the appeal, set aside the judge's order, and declare that BP Contracting's lien is a first charge, lien or encumbrance against the concentrate purchased by Sumitomo, and that Sumitomo is not a *bona fide* purchaser without notice of the lien.

"The Honourable Chief Justice Marchand"

I AGREE:

"The Honourable Madam Justice Fisher"

I AGREE:

"The Honourable Mr. Justice Alibhai"