



Court File No. **PRG-S-S-2361963**

Court File No. _____
Prince George Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

TEROTECH SOLUTIONS INC.

Plaintiff

AND

SOUTHWEST DESIGN & CONSTRUCTION LTD. and THE DISTRICT OF
MACKENZIE

Defendant

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The Plaintiff, Terotech Solutions Inc. is an entity engaged in the construction business, and has an address for service as c/o Pathfinder Law Corporation Ltd., 104-2001 McCallum Road, Abbotsford, BC, V2S 3N5. The Plaintiff.
2. The Defendant, Southwest Design & Construction Inc., is engaged in the business of general construction contracting, having a place of business at 11453 98 Avenue, Grand Prairie, Alberta, T8V 5S5, and has an address for service that is unknown to the Plaintiff.
3. The Defendant, the District of Mackenzie is a municipality with an address for service that is unknown to the Plaintiff.
4. The District of Mackenzie (the “**Owner**”), is the registered owner of the lands located in the District of Mackenzie and legally described as:

LOT 1 DISTRICT LOT 12463 CARIBOO DISTRICT PLAN 19877,
EXCEPT PLANS 22053 AND 30797

PID: 010-333-924

(the “**Lands**”)

Claim of Subcontractor

5. The Defendant, Southwest Design & Construction Inc. was appointed as the general construction contractor by the Owner to carry out improvements on the Lands.
6. On or about August 2021, the Plaintiff entered into an agreement with the Defendant, Southwest Design & Construction Inc., whereby the Plaintiff agreed to provide construction work including but not limited to the provision of labor and materials to construct the external cladding of the building on the Lands (the “**Improvement**”). The parties further entered into oral agreements pertaining to the Improvement, including but not limited to expanding the scope of the work (collectively referred to as the “**contract**”).
7. In accordance with the terms of the contract, the Plaintiff provided construction work including but not limited to the provision of labor and materials to construct the external cladding of the building on the Lands and appropriately invoiced the Defendant, Southwest Design & Construction Inc. The conduct of the Defendant, Southwest Design & Construction Inc. caused the Plaintiff to incur extra and excessive costs to complete the work contemplated under the contract.
8. In breach of the contract, the Defendant, Southwest Design & Construction Inc. has refused or neglected to make payment, despite the demands to do so. There remains due and owing the sum of \$191,839.30 to the Plaintiff from the Defendant, Southwest Design & Construction Inc., for work performed and/or materials supplied and delivered to the lands.
9. The Plaintiff has demanded payment of the owing sum of \$191,839.30 from the Defendant, Southwest Design & Construction Inc., however, the Defendant has refused or neglected to pay the same.
10. On March 15, 2022, the Plaintiff by its authorized representative made a claim of lien pursuant to the *Builders Lien Act*, S.B.C. 1997, c. 45, alleging that the sum of \$191,839.30 was due and owing on February 25, 2022, by causing the said claim of lien to be filed against the Lands at the Land Title Office in the City of Prince George, the Province of British Columbia under number CA9788829.
11. The Plaintiff has complied with the provisions of the *Builders Lien Act* and is entitled to a builder’s lien on the Lands.
12. The District of Mackenzie (i.e. the Owner) was obligated by section 4 of the *Builders Lien Act* to retain a holdback pursuant to that section.

13. On or around July 26, 2022, the sum of \$191,839.30 was paid into court by the Defendant, Southwest Design & Construction Inc., pursuant to section 24 of the *Builders Lien Act*.

Claim for Breach of Trust

14. The Defendant, Southwest Design & Construction Inc., as the general contractor, received certain sums of money from the Owner on account of the contract price entered into with respect to the Improvement. These sums constitute a trust fund for the benefit of the Plaintiff pursuant to section 10 of the *Builders Lien Act*.
15. The Defendant, Southwest Design & Construction Inc. has appropriated or converted all or part of the sums received to uses not authorized by the trust.

Part 2: RELIEF SOUGHT

1. A declaration that the Plaintiff is entitled to the amount of \$191,839.30 against:
 - (a) the lands owned by, the District of Mackenzie, and located in the District of Mackenzie and legally described as:

LOT 1 DISTRICT LOT 12463 CARIBOO DISTRICT PLAN 19877,
EXCEPT PLANS 22053 AND 30797

PID: 010-333-924

(the “Lands”);
 - (b) the Improvement;
 - (c) the interest of Southwest Design & Construction Inc., in the Improvement;
 - (d) the material delivered to or placed on the Lands;
 - (e) any security posted or funds paid into Court in substitution for the Lands (the “Security”); and
 - (f) the holdback retained by, the District of Mackenzie.
2. A judgment or order that in default of payment in the amount of \$191,839.30 plus costs for the material supplied, and the Improvement charged by the security be realized for the purposes of realizing the amount of the Plaintiff’s lien and costs pursuant to the provisions of the *Builders Lien Act* and that the proceeds of such sale be applied in payment of the Plaintiff’s lien and costs;

3. An order that all proper and necessary directions, accounts, inquiries, and references be taken for the purposes aforementioned;
4. A judgment against the Defendant, Southwest Design & Construction Inc., in the sum of \$191,839.30, including contractual interest, or interest in the alternative, pursuant to the *Court Order Interest Act*;
5. Costs of this Action including a reasonable sum for the costs of drawing and filing the claim of lien filed in the Land Title Office in the City of Prince George under number CA9788829; and
6. Such further and other relief as the nature of this case may require and this Honorable Court may deem just.

Part 3: LEGAL BASIS

1. The Plaintiff performed work and/or supplied material in relation to the Improvement on the Lands pursuant to a contract with the Defendant, Southwest Design & Construction Inc.
2. The Plaintiff is entitled to judgment for the unpaid amount due and owing under the contract.
3. In breach of the contract with the Plaintiff the Defendant, Southwest Design & Construction Inc., has refused or neglected to make payment of the due and owing sum of \$191,839.30, despite demand.
4. The sums of money received by the Defendant, Southwest Design & Construction Inc., on account of the contract price from the Contract in respect of the Improvement constitute a trust fund for the benefit of the Plaintiff pursuant to section 10 of the *Builders Lien Act*.
5. The Plaintiff claims costs pursuant to the *Act* and the *British Columbia Supreme Court Civil Rules*.

Plaintiff's address for service:

c/o Pathfinder Law Corporation
104-2001 McCallum Road
Abbotsford, BC, V2S 3N5

Fax number address for service: N/A

Email address for service: timothy@pathfinderlaw.ca

Place of trial: Prince George Registry
The address of the registry is:

250 George Street
Prince George, BC, V2L 5S2

Dated: 13 March 2023

A handwritten signature in black ink, appearing to read 'Timothy S. Bhullar', written over a horizontal line.

Signature of lawyer for the plaintiff

Timothy S. Bhullar, B.A., J.D.

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

APPENDIX

Part 1: Concise summary of nature of claim:

Part 2: This claim arises from the following:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☒ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3:

- ☐ a class action
- ☐ maritime law
- ☐ Aboriginal law

☐ constitutional law

☐ conflict of laws

☒ none of the above

☐ do not know

Part 4:

Builders Lien Act, Court Order Interest Act