

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *0894045 B.C. Ltd. v. 1294778 B.C. Ltd.*,
2025 BCSC 359

Date: 20250304
Docket: S253232
Registry: New Westminster

Between:

0894045 B.C. Ltd.

Plaintiff

And

1294778 B.C. Ltd., Gurdev Singh Sandhu and 1412023 B.C. Ltd.

Defendants

And

0894045 B.C. Ltd. and Balpreet Singh Sangha

Defendants by Counterclaim

Before: The Honourable Madam Justice Sharma

Reasons for Judgment

Counsel for 0894045 B.C. Ltd. and Balpreet
Singh Sangha:

S. Shergill

Counsel for the Defendants:

J. Singh

Place and Date of Trial/Hearing:

New Westminster, B.C.
November 5 and 20, 2024

Place and Date of Judgment:

New Westminster, B.C.
March 4, 2025

[1] This is an application pursuant to Rule 9-6 of the *Supreme Court Civil Rules* for the discharge of a certificate of pending litigation (“CPL”) filed on April 25, 2024, against certain lands located in Delta, British Columbia. The application is brought by the defendants against the plaintiff, 0894045 B.C. Ltd., and the other defendant by counterclaim, Balpreet Sangha.

I. FACTS

[2] The parties are in dispute in relation to a failed joint venture amongst them to develop the property at issue. Before outlining the facts, I describe the parties and other entities involved in the factual narrative.

- a) Balpreet Sangha is the principal of the plaintiff 0894045 BC Ltd. (“089”). Both 089 and Mr. Sangha are defendants by counterclaim.
- b) The defendant Gurdev Sandhu is the sole director and operating mind of the defendant 1294778 BC Ltd. (“129”).
- c) The defendant 1412023 B.C. Ltd. (“141”) is a nominee company associated with Mr. Sandhu. Mr. Sandhu, 129 and 141 are the applicants of this application.
- d) Although not a party, THA Investment Ltd. (“THA”) is mentioned in the narrative of events. It owned the property located at 9568 Burns Drive, Delta, on which the CPL at issue was placed (the “Property”).

[3] 089 filed a notice of civil claim (“NOCC”) on April 25, 2024, naming Mr. Sandhu, 129 and 141 as defendants. In turn, the defendants filed both a response to the NOCC and a counterclaim against the plaintiff and Mr. Sangha on June 14, 2024. Mr. Sangha and 089 filed a response to the counterclaim on October 4, 2024.

A. Narrative of Events in the Notice of Civil Claim

[4] The recitation of facts in the NOCC covers a series of transactions and agreements too detailed to reproduce completely. For the purposes of this

application, in general, the following is a summary of events contained in the pleadings.

1. The Joint Venture

[5] In or about January 2022, 129 entered into a contract with THA to purchase the Property for \$5,850,000, with a closing date of August 31, 2022.

[6] In or about February 2022, Mr. Sandhu approached Mr. Sangha seeking his participation in developing the Property as a joint venture. The defendants claim Mr. Sangha approached them wanting to participate, but that factual dispute is not relevant to this application.

[7] The joint venture contemplated developing the Property as a restaurant and warehouse and then selling those for profit. The parties discussed an intention to be equal participants in the joint venture, meaning they would share equally in the costs of the project, which included the remaining purchase price and construction costs, and equally share in any profit or loss. In addition, 089 would pay 129 one half of the deposit already paid to THA (\$250,000) and an assignment fee of \$500,000.

[8] At that time, 129 said the expected construction costs would be about \$7 million. 089 alleges this was either a fraudulent or negligent misrepresentation.

[9] Mr. Sandhu also suggested to Mr. Sangha that Bahadar Singh be involved in the project, but Mr. Sangha stated he would not participate if Mr. Singh was involved. Mr. Sandhu assured Mr. Sangha that Mr. Singh would not participate. 089 alleges this was a fraudulent or negligent misrepresentation.

[10] Mr. Sandhu denies making either representation.

[11] Relying on the two alleged misrepresentations, the plaintiff entered into an assignment agreement in May 2022, which included, among others, the following terms:

- a) The plaintiff paid 129 \$400,000 as a deposit contribution and \$150,000 as part of the assignment fee. The remainder of the assignment fee (\$350,000) was paid to 129 *via* its law firm.
- b) 129 and 089 incorporated a nominee company and they each held 50 percent of the shares of that company.
- c) 089, 129 and the nominee company entered into three agreements in June 2022: a joint venture agreement, a bare trust and an agency agreement.

[12] The joint venture agreement had recitals confirming that 129 had assigned 50 percent of its interest in the Property to 089 in exchange for the assignment fee. That agreement also had terms that Mr. Sangha and Mr. Sandhu would jointly make major decisions respecting the operation of the joint venture, and that they would not transfer their interest unless the transferee agreed to be bound by the joint venture agreement.

[13] The bare trust agreement provided that the nominee company would acquire and hold title to the Property as nominee, agent and bare trustee for the sole benefit of 089 and 129.

2. Termination

[14] Prior to the date the Property purchase was to close, Mr. Sandhu provided to Mr. Sangha a design-build proposal for the development of the Property, which now estimated construction costs to be \$10,000,000.

[15] Due to the increased costs, Mr. Sangha informed Mr. Sandhu that the joint venture was no longer feasible. They had discussions about terminating the joint venture and came to an oral agreement, the terms of which included:

- a) 129 would re-pay the assignment fee to 089;

- b) 129 would be responsible for any real estate commissions relating to the assignment fee;
- c) 129 was entitled to keep the deposit contribution that 089 paid to it;
- d) the joint venture agreement would be terminated; and
- e) 089 and 129 would release each other from any other claims.

[16] 809 alleges 129 entered into the preceding agreement knowing that: (i) it was contrary to the existing joint venture, assignment and bare trust agreements; and (ii) it had no intention of repaying the assignment fee to 089.

[17] Counsel put the termination agreement into writing, but 089 claims the defendants failed to execute it and failed to repay the assignment fee.

[18] 089 further alleges that Mr. Sandhu and 129 took steps to wrongfully transfer funds relating to the joint venture to the defendant 141. 809 alleges this transfer was done in order to make 129 judgment- and creditor-proof against future claims.

[19] 089 also alleges that without its knowledge, and before the original closing date of August 31, 2022, 129 entered into an amendment of the purchase agreement it had with THA to do the following:

- a) to extend the closing date to June 2023;
- b) 129 would pay an additional \$1 million to THA by September 7, 2022;
- c) 129 would pay an additional \$1.3 million to THA by February 28, 2023; and,
- d) 129 would pay interest to THA until the new completion date.

3. Remedies Sought

[20] As a result of the foregoing, the plaintiff seeks in the NOCC:

- a) tracing of the assignment fee;
- b) accounting and disgorgement of any profits arising from the development and/or sale of the Property;
- c) declaration that 141 holds the Property upon a constructive trust representing a proportionate amount of the assignment fee and profits to be determined by disgorgement;
- d) damages for:
 - i. breach of the joint venture and bare trust agreements;
 - ii. breach of trust;
 - iii. breach of fiduciary duty,
 - iv. theft of corporate opportunity, and
 - v. conspiracy.
- e) in the alternative, rescission of the joint venture, assignment and bare trust agreements and return of the assignment fee and deposit contribution; and
- f) in further alternative, damages for breach of the termination agreement.

B. The Response and Counterclaim

[21] The defendants agree with some of the above facts, but their narrative as set out in the response and counterclaim differs on a number of critical points and mentions additional facts. Those facts most relevant to the issues before me include the following:

- a) 129's original agreement with THA included a term that allowed 129 to register an option to purchase the Property once all conditions were waived (the "Option").

- b) The defendants deny making the fraudulent and/or negligent representations attributed to them.
- c) At all material times, both Mr. Sandhu and Mr. Singh were “stakeholders” in 129.
- d) Mr. Sandhu claims that 089 knew or ought to have known that Mr. Singh was involved in the joint venture, and that Mr. Singh was present when the joint venture agreement was signed.
- e) The defendants allege that an agent acting on behalf of 809 (Atul Chopra) approached Mr. Sandhu, seeking to participate in the development of the Property, rather than Mr. Sandhu approaching Mr. Sangha.
- f) At the same time, 129 provided to Mr. Chopra its purchase agreement with THA and THA’s development plan in order for 089 to conduct its own due diligence of the project.
- g) At the insistence of Mr. Sangha, 129 paid a \$150,000 commission to Mr. Chopra and registered the Option against the Property in favour of 089.
- h) The design-build proposal was obtained in early July 2022 with the consent and agreement of 089 and Mr. Sangha.
- i) The increase in costs was attributable to supply chain issues remaining from the COVID-19 pandemic.
- j) Around August 5, 2022, 089 and Mr. Sangha instructed a lawyer to complete the purchase of the Property.
- k) A few weeks later, 089 was facing financial difficulties and instructed Mr. Sandhu to seek amendments to the original purchase agreement. Mr. Sandhu was successful in doing so by extending the closing date to June 29, 2023, and extending the possession and adjustment dates to

June 30, 2022. In addition, it was agreed that 089 and 129 would pay an additional deposit of \$1 million to THA by September 7, 2022.

- l) At about the same time, Mr. Sangha asked Mr. Sandhu to cover his share of the deposit, promising to repay it.
- m) Mr. Sangha breached the joint venture agreement in early September 2022 by telling Mr. Sandhu he was no longer interested in participating in the Property's development because he wanted to pursue other business opportunities in Alberta. He also informed Mr. Sandhu that 089 was willing to forfeit both its deposit contribution and assignment fee if THA agreed to release both 129 and the plaintiff (as assignee) from the terms of the purchase contract. THA declined to release 129 and any assignee from the contract.
- n) Once Mr. Sangha was informed of THA's refusal, he reiterated that he would not complete the purchase, and 089 failed to fulfill its obligations under the assignment agreement and joint venture agreement.
- o) Because of 089's breaches of the agreements, Mr. Sandhu negotiated with THA for amendments to their agreement which included 129 paying \$1 million in two instalments and extending the closing date.
- p) 129 remained obligated to purchase the Property and assigned its agreement to 141 in order to arrange for sufficient funds.
- q) The draft termination agreement was prepared unilaterally by Mr. Sangha, but 129 refused to execute it because 089 had forfeited the deposit.

II. ANALYSIS

[22] The applicants seek to discharge the CPL either because:

- a) the CPL fails to meet the necessary precondition of pleading an interest in land and, therefore, it should be cancelled pursuant to s. 215 of the *Land Title Act*, R.S.B.C. 1996, c. 250 [*LTA*]; or,
- b) in the alternative, 141 is facing hardship and inconvenience and, therefore, the CPL should be cancelled pursuant to ss. 256–257 of the *LTA*.

[23] For the reasons set out below, I dismiss the application.

[24] Section 259 of the *LTA* permits a party to litigation who is claiming an interest in land to register a CPL against the property at issue. A CPL is an extraordinary pre-judgment mechanism that protects a valid claim to an interest in land until the underlying issues in the litigation are resolved: *Wai v. Chung*, 2020 BCSC 34 at para. 13, citing *Chen v. Jin*, 2019 BCSC 567 at para. 8.

[25] To be valid, a CPL must be grounded by an interest in land, which must be established in the relevant pleadings. A mere assertion with no proper factual foundation, such as being based solely on unsubstantiated assertions without a factual underpinning, may justify cancelling the CPL: *Wai* at paras.19–21; *Batth v. Sharma*, 2024 BCCA 29 at para. 16.

[26] Section 249 of the *LTA* permits the cancellation of any charge registered against land if a question is raised as to its validity, and the court considers that question is sufficiently material to the case.

[27] In this case, the applicants allege the plaintiff's claim falls short of asserting an interest in land so the CPL should be cancelled. The plaintiff relies on his pleading of a constructive trust. The plaintiff claims the defendants concocted a scheme to induce it to enter into a joint venture agreement, trigger its withdrawal and forfeit of deposit in order to keep that money to pursue the development on their own. The plaintiff specifically pleads a constructive trust and seeks tracing and disgorgement of the very property at the heart of the alleged scheme.

[28] The applicants argue the parties' joint venture and associated agreements were terminated and, therefore, the plaintiff is precluded from claiming an interest in land, citing, among others, *Kang v. Steveston Public Market Inc.*, 2017 BCSC 544. That case is distinguishable as there was no plea for a constructive trust.

[29] The applicants point out that the criteria for establishing a constructive trust over property are stringent and two criteria must be satisfied, including that the plaintiff must demonstrate a substantial and direct link, a causal connection or nexus between the claim and the property upon which the constructive trust is to be impressed: *Nouhi v. Pourtaghi*, 2019 BCSC 794 at para. 29. The plaintiff submits it has met that criteria by its allegation of the concocted scheme to induce and then deprive it of the deposit.

[30] The applicants argue that once 129 terminated the agreement because of the plaintiff's breach, the plaintiff was precluded from claiming an interest in the land to support registration of the CPL: *RVS Investment Inc. v. HH Maple Investments Ltd.*, 2021 BCSC 2412. I do not find that case helpful because the party that registered the CPL did not appear at the hearing of the application to have it removed. Nor is it clear that constructive trust was pleaded.

[31] Instead, I find *Batth* to be a helpful case because the nature of the arguments has some parallel to those raised by the parties in this case. The Court of Appeal also deals directly with pleadings based on the assertion of a constructive trust.

[32] The facts in *Batth* are as follows. Navdeep and Rupinder Batth alleged that they approached the defendant, Rakesh Sharma, to invest in Lifetec, which he eventually did by providing a \$100,000 loan. It was a six-month loan that had never been repaid. He claimed he was told by the plaintiffs that they were directors and/or operating minds of Lifetec and that they personally guaranteed the loan.

[33] The Court of Appeal quoted the judge's description of the claims made by Mr. Sharma in the notice of civil claim:

[18] The chambers judge reviewed the claims as pleaded by Mr. Sharma in the NOCC relating to the alleged misuse of the funds provided by Mr. Sharma. The judge concluded that the NOCC pleads:

- a) a fraud claim against the Batths, alleging that through their fraud they caused Mr. Sharma to provide \$100,000 to Lifetec (RFJ at para. 16);
- b) a claim in conversion against ICGS based on ICGS using all or some of the \$100,000 fraudulently obtained by the Batths to acquire or increase its equity in the ICGS Unit, knowing that the funds would have come from the Batths' wrongdoing (RFJ at paras. 17, 19);

[34] The Court of Appeal also reproduced the judge's reasoning as to why the CPLs would not be cancelled:

[19] On the question of whether the NOCC advances a claim to an interest in land, as required to support the two CPLs, the judge held:

[27] The plaintiff in the NOCC does not specifically describe the defendants' actions as giving rise to a "substantive constructive trust". That said, I am satisfied that the NOCC gives rise to a substantive constructive trust: NOCC, paras. 21 to 25 and 27 to 30.

[28] I read the NOCC as pleading that the Batths through fraud obtained \$100,000 from the plaintiff, which they then used to acquire or increase their equity in the Bath [Property]. Through ICGS (a corporation they controlled), the Batths also used the \$100,000 to acquire or increase the equity in the ICGS Unit. Lifetec and ICGS were no more than the Batths' instruments of subterfuge.

[20] The judge concluded:

[34] In the case at bar, the pleaded trust (a substantive constructive trust) arose immediately upon the pleaded fraud by the Batths. Through the Batths, ICGS would have known of the fraud. I find that the NOCC meets the threshold criterion of serving to plead an interest in land with respect to each of the subject properties and supports, without more, the two CPLs.

[35] The Court of Appeal confirmed that the action based on wrongful conversion did not amount to a pleading of an interest in land, but held the notice of civil claim needed to be read as a whole. In doing so, the chambers judge concluded the claim of tracing of the loan monies and disgorgement of profits were related to the allegation that the Batths made misrepresentations upon which Mr. Sharma relied to make the loan in first place. The chambers judge accepted the plaintiff's argument that the Batths held the property ultimately acquired in trust for Mr. Sharma, which was a "substantive" constructive trust.

[36] In response to that argument, the Batths argued that Mr. Sharma's claim for a constructive trust did not adequately plead that a monetary award would not be sufficient, thereby not meeting the requirement to plead an interest in land. The Court of Appeal disagreed:

[35] I am not convinced this is necessarily a requirement where the plaintiff has pleaded a link between the fraudulent use of the plaintiff's money and the specific property which is said to be impressed with the constructive trust: see discussion in *Save-A-Lot Holdings Corp.* at paras. 14, 16 and *Vidcom* at para. 34. However, the judge did not need to decide this question because Mr. Sharma has pleaded that the Batths and ICGS do not have the ability to pay a monetary award: NOCC Part 1, para. 34, which amounts to pleading that a remedy in damages would be inadequate.

[36] The appellants also assert that a plaintiff claiming a "substantive" constructive trust, must expressly used the words "substantive constructive trust" in their pleading. In this case, Mr. Sharma did not expressly include the word "substantive" in his pleadings. He simply alleged that based on the facts, the Properties were held in trust for him.

[37] The court in *Vidcom* found the fact that the word "substantive" was not expressly pleaded was *not* determinative of whether the NOCC included a claim for substantive constructive trust (at para. 28). I agree with the analysis in *Vidcom* and find that the judge in the present case did not err in relying on it.

[37] The facts in this case are stronger than in *Batth*. The financial agreement that went awry in *Batth* was unconnected to the property on which the CPL was ultimately placed. The plaintiff's argument was the defendants obtained money from him relating to Lifetec but then bought the properties by perpetrating a fraud on him, which is why he sought tracing and disgorgement. That was sufficient to meet the precondition of pleading an interest in land in order to validly place a CPL on the properties.

[38] The defendants rely on what they say is Mr. Sangha's and 089's breach of the agreements and their acceptance of both terminating the joint venture and forfeiting the deposit.

[39] In my view, the NOCC does meet the preconditions to establish the factual foundation for a claim to an interest in land. On their face, the pleadings do assert an interest in land by way of a constructive trust. Moreover, the plaintiff alleges a direct

link between the deposit and assignment fees it paid and forfeited to participate in a joint venture involving the Property on which the CPL was placed. The NOCC also directly links the plaintiff's payment and forfeit of the deposit and assignment fees to the claims of misrepresentation, breach of trust and breach of fiduciary duty.

[40] I add that after the parties argued the application before me, the Court of Appeal released *1332404 B.C. Ltd. v. 1266685 B.C. Ltd.*, 2025 BCCA 46. The applicants relied on the chambers judgment in that case, which cancelled the CPL. In that case, the party registering the CPL claimed a purchaser's lien. The chambers judge held she did not need to determine generally whether a purchaser's lien could in some circumstances justify a CPL, concluding the claim before her did not assert an interest in land sufficient to allow the registration of a CPL (para. 32).

[41] The Court of Appeal allowed the appeal, stating, among other things, that "the purchaser's lien, and corresponding equitable interest in land, continue even ... where the contract has been lawfully rescinded" (at para. 10) and that a purchaser's lien constituted an equitable interest in land (para. 11). This case strongly supports the plaintiff's position.

[42] Given that conclusion, it is not strictly necessary to examine whether the CPL should be cancelled on any other basis. However, in the event I am mistaken, I will address the alternative argument raised by the applicants.

[43] The applicants submit, in the alternative, that the CPL should be cancelled on the basis that 141 will experience hardship and inconvenience, and that either security or an undertaking for damages will provide an adequate remedy to the plaintiff. The court has discretion under ss. 256–257 of the *LTA* to cancel the CPL on that basis and order the posting of security: *0861695 B.C. Ltd. v. Meola*, 2013 BCSC 121 at para. 10.

[44] 141 submits it is facing hardship of being unable to renew its mortgage on the Property because of the CPL, and contends that hardship or convenience does not

have to be significant to qualify or to cancel the CPL: *Enigma Investments Corp. v. Henderson Land Holdings (Canada) Ltd.*, 2007 BCSC 1379 at para. 24.

[45] The parties do not dispute the applicable legal principles. However, the plaintiff submits the applicants' evidence or hardship is insufficient and fails to meet the necessary burden. General or unsupported evidence lacking specific proof is insufficient: *Liquor Barn Income Fund v. Becker*, 2011 BCCA 141 at para. 37; *Save-A-Lot Holdings Corp. v. Christensen*, 2023 BCCA 35 at para. 43.

[46] I agree. The applicants' evidence consists of Mr. Sandhu's assertion that a lender is unwilling to either renew or refinance the Property, which is supported by a single email. There is no explanation or evidence of other efforts made for financing by him or any other person or entity involved in the project. Moreover, the affidavit evidence does not address why that inability causes hardship and inconvenience. Given the nature of the project, and all the parties' past dealings and amount of money they were handling, I am not satisfied it is appropriate to infer hardship and convenience from the scant evidence provided.

III. CONCLUSION

[47] For all those reasons, I dismiss the application.

"Sharma J."