IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Gaukel v. Lalonde,*
2025 BCSC 955

Date: 20250502
Docket: S40752
Registry: Chilliwack

Between:

Timothy W. Gaukel

Plaintiff

And

**Michel Lalonde, M. Lalonde Holdings Ltd.,
Blue Pine Enterprises Ltd., Clearview Demolition Ltd.,
Robert Grant Wilson, Bridal Veil Mountain Resort Ltd.,
Norman Gaukel, 1194981 B.C. Ltd., and 1293448 B.C. Ltd.**

Defendants

Before: The Honourable Justice Walkem

Oral Reasons for Judgment

Appearing as Agent for Plaintiff, Timothy Gaukel:	R. Gaukel
Counsel for the Defendants:	A. Doolittle
Place and Date of Hearing:	Chilliwack, B.C. April 4 & 16, 2025 May 2, 2025
Place and Date of Judgment:	Chilliwack, B.C. May 2, 2025

Introduction

[1] **THE COURT:** This is my decision regarding the application to lift two CPLs.

[2] This matter arises in the midst of a proposed ski development in the Fraser Valley. The plaintiff had two CPLs placed on properties owned by the defendants, aside from Norman Gaukel, and this was the defendants' application to remove those CPLs.

[3] The defendants, aside from Norman Gaukel, appeared and were represented by counsel (for ease of reference, I will refer to those defendants as the “applicant defendants”). Norman Gaukel did not appear despite being served. The respondent, Tim Gaukel, appeared and sought leave of the court — with a supporting medical letter about his limited functioning due to stress — to have his spouse, Rochelle Gaukel, speak on his behalf. That leave was granted.

[4] At a subsequent appearance, he advised that Ms. Gaukel was unavailable and sought to have Mr. Eugenio Pugliese speak on his behalf. The applicant defendants were opposed and pointed out that Mr. Pugliese is involved in separate litigation against them. That application was denied and the matter continued until today's date when Ms. Gaukel was available.

Background

[5] This application is factually intertwined with separate litigation Norman Gaukel is involved with against the applicant defendants — I note that he is the brother of the plaintiff here — concerning land transactions and the proposed ski hill development. The applicant defendants suggest that the plaintiff, Tim, has filed the notice of civil claim (“NOCC”) and associated CPLs in support of Norman Gaukel's claims against them. This is an allegation that the plaintiff denies vigorously.

[6] Mr. Wilson and Mr. Lalonde are sole directors and shareholders of Bridal Veil Mountain Resort, 1194981 B.C. Ltd. (“119”), and 1293448 B.C. Ltd. (“129”) (collectively, “the Companies”), which have been incorporated to develop a ski resort.

[7] BC Mountain Resorts Branch completed a public consultation on February 28th, 2025 regarding the proposed ski hill developments. Government approvals are outstanding.

[8] Two properties which are part of the overall plan for the development of this ski resort are the two properties at issue here:

1) 515552 Allan Road, (the “552 Property”), and

2) 51691 Allan Road, Chilliwack, (the “691 Property”).

[9] Originally, Norman Gaukel appeared to have been developing the ski resort proposal with Mr. Lalonde and Mr. Wilson, while he was still involved as a director of 119, which purchased the 691 Property.

[10] At some point Norman Gaukel ceased to be involved in the Resort development project. Subsequent to that time, the defendants, Norman Gaukel and the applicant defendants, have been engaged in litigation and different actions which have resulted in a series of orders of this Court.

[11] Mr. Wilson, Mr. Lalonde, and the Companies have sued Mr. Norman Gaukel for breach of a non-disclosure agreement, breach of contract, and for defamation.

[12] On April 24, 2024, Justice Milman made an interlocutory order as follows:

- restraining Mr. Norman Gaukel from disclosing confidential information about the Companies;

- requiring that Norman Gaukel not file a NOCC or counterclaim against Mr. Wilson or the Companies without 7 days' written notice; and

- preventing Norman Gaukel from filing a CPL on any property owned by the Companies without leave of the court and upon 7 days' notice to Mr. Wilson and the Companies, (the “Milman order”).

[13] Norman Gaukel, nonetheless, distributed information about the Companies and was found in contempt of court by Justice MacNaughton on September 9, 2024, (the “MacNaughton order”). Norman Gaukel continued to disobey the Milman order.

[14] On December 6th, 2024, Justice Elwood found Norman Gaukel in further contempt of court and ordered him subject to a term of imprisonment of 60 days which was suspended for a year on the condition that he comply with this Court's orders, (the “Elwood order”).

[15] I list this litigation history because the applicant defendants allege that Mr. Norman Gaukel is, in effect, a defendant in name only and that the plaintiffs have brought the NOCC and associated CPLs in an attempt to circumvent the orders of this Court preventing Norman Gaukel from taking further actions on those fronts absent leave of this Court. They point out that the plaintiff has introduced affidavit evidence in this matter which attaches the confidential materials that Norman Gaukel was prevented in the Milman order from sharing. The plaintiff disputes this characterization.

[16] 129 purchased the 552 Property in March 2021 for $1.5 million. Shaun Dean was a tenant of the 552 Property with the first right of refusal to purchase it. He assigned that right to 129 for a dollar. The NOCC alleges that there was a separate agreement whereby the defendants agreed to either pay Scott Dean $100,000 or a future subdivided lot on the 552 Property in return for his agreeing to assign a contract of purchase for that property.

[17] The plaintiff and his spouse live on the 552 Property. The plaintiff entered a Residential Tenancy Agreement with 129 on October 1st, 2021, for a one-year term, thereafter month to month, with a monthly rent of approximately $2,200.

[18] The applicant defendants allege that Norman Gaukel has placed a cabin (or modular mobile home onto the 691 Property).

[19] The plaintiff argues that he sold his family home and invested the proceeds into the purchase and development of lands associated with the ski resort.

[20] The plaintiff's submissions were that he understood that title to the 552 Property would ultimately be transferred to him after other events associated with the ski resort development had occurred and that he entered a Residential Tenancy Agreement to pay rent for that property solely to circumvent tax.

[21] The resort property completed a stage of public review by the provincial government in February 28th, 2025. On February 24, the plaintiff filed the NOCC. The CPLs were issued on February 25th.

[22] The plaintiff introduced affidavit evidence which was not served in a timely fashion in which the applicant defendants did not reply to. In any case, the applicant defendants argue that the contents of the affidavits do not matter as an application to cancel a CPL should be made solely on the contents of the plaintiff's pleadings at the time the CPL was filed, and that evidence, such as that found in the affidavits filed by the plaintiff, are not to be considered.

[23] The plaintiff was self-represented and his spouse made submissions on his behalf. The plaintiff in submissions outlined facts and background not in evidence and expressed frustration that the submissions (not in evidence) could not be considered.

[24] As Justice Shergill did in *Porter v. Porter*, 2023 BCSC 2181, at para. 8, I outline the above history solely to provide context to this application. The decision on whether the CPLs should be cancelled relies solely on the law, and consideration of the pleadings as outlined below.

Law

Notice of Civil Claim

[25] A request to cancel a CPL must be considered on the face of the pleadings themselves. I first review in some detail the NOCC itself.

[26] The NOCC claims that:

> 2. … Timothy Gaukel was invited to invest $500,000 in two parcels of land the Defendants own … He ended up investing a total of $650,000 and … has not received any consideration.

[27] In the NOCC, Tim Gaukel seeks a 100% share of 552 and a 45% share of 691.

[28] The claim to land in the NOCC can be briefly outlined as follows:

> 20. Another related property was a 45 acre parcel adjacent to [552] located at 8361 Nixon Road, Chillwack, BC ("**Nixon**"). The Defendant 119 had a contract of purchase and sale dated November 26th, 2020 for the purchase of Nixon which later was assigned to 129.
>
> …
>
> 27. Concurrently, the Defendants approached Tim Gaukel and invited him to be a part of the Resort project. Specifically, they asked him to invest $500,000.00 into the Resort as follows ("**Agreement 2**"):
>
> a. $100,000.00 to pay Mr. Scott Dean for previously assigning the contract of purchase and sale for the purchase of [552].
>
> b. $400,000.00 for improvements to [691]
>
> c. The Plaintiff was expected to help the Defendants to subdivide the property and help with the future build due to the Plaintiff's 50 plus years as a professional builder.
>
> 28. Tim Gaukel was offered the following consideration for his $500,000.00
>
> a. Ownership of [552]
>
> b. 45% ownership of [691]
>
> 29. Tim Gaukel was told by the Defendants that upon the completion of the Nixon property sale they would provide him with his consideration. *The Nixon property ultimately closed in October of 2023. To this date Tim Gaukel has not received any consideration.*

[29] In submissions, the applicant defendants argue that the claims the plaintiff make do not make fiscal or business sense. That is, as I understood their arguments, that it does not make sense that, in return for the plaintiff's stated contribution, that they would have promised the interest in land that he alleges. They further argue that the oral agreements he alleges absent a reference to the *Law and*

Equity Act, R.S.B.C. 1996, c. 253 in his pleadings are insufficient to grant a claim to land.

Issues

[30] The applicant defendants apply to cancel the CPLs on two grounds:

1. that it does not meet the threshold requirement of pleadings to claim an interest in land under s. 215 of the *Land Title Act,* R.S.B.C. 1996, c. 250 [*LTA*] in which case they argue the court has inherent jurisdiction to cancel the CPLs as having been improperly granted; or,

2. that the CPLs are causing significant hardship to the defendants and are appropriately replaced with an undertaking as to damages under ss. 256 and 257.

[31] As I will outline later, in the course of submissions, the parties reached a consent agreement regarding the temporary lifting of one of the CPLs.

[32] The applicant defendants argued that there is an associated real property transaction for a property adjacent to 691 in which they have deposited $500,000 toward purchase. That real estate purchase is dependent upon them issuing an easement to the seller of the property they seek to acquire over the 691 Property. They argue that though they have extended the closing date to May 15, 2025, they were at risk of losing their $500,000 deposit in that transaction if the deal does not close.

The Law

[33] “A CPL is an extraordinary pre-judgment mechanism ... intended to protect a claim to an interest in land prior to the resolution of litigation”: citing *GMC Properties Inc. v. Rampart Estates Ltd.,* 2023 BCCA 172, at para. 37. CPLs are an extraordinary remedy in the sense that they can, in effect, tie up an interest in land pending resolution of an outstanding claim.

[34] This application relies on ss. 215, 256, and 257 of the *LTA*.

Analysis

[35] The applicant defendants argue that the CPLs were improperly registered from the start as the plaintiff's pleadings do not meet the pre-condition under s. 215 of the *LTA*. They say that the facts pleaded, assuming them to be true, are not capable of supporting a claim to an interest in land. They made this argument on two grounds:

1) that the NOCC as filed on February 24, 2025, pleads insufficient material facts; and,

2) fails to cite or refer to the *Law and Equity Act*, despite its applicability to the claim.

[36] Further, they argue that the CPLs have caused hardship and inconvenience to the defendants and thus would be cancelled under ss. 256(1)(b) and 257(1)(a) and replaced with an undertaking as to damages. The applicant defendants argue that the CPL has been strategically timed to coincide with the critical juncture in the development of the resort and has created an immediate and substantial risk to the development that could jeopardize millions in capital already invested. Particularly, they say the CPL or CPLs could cause a failure to complete a contract of purchase and sale to an adjacent property as a contract requires registration of an easement against the 691 Property. This, they say, as I have outlined above, could result in the forfeiture of a $500,000 deposit and potential termination of the entire transaction, which is integral to the development as a whole.

[37] By consent, the parties reached an agreement to lift the CPL on the 691 Property to allow the easement to be registered. Therefore, the undue hardship claim remaining centres around the overall moneys the applicant defendants have invested in the ski resort, alleged to be in the neighbourhood of $15 million by one party alone, which may be at risk. The applicant defendants argue that the pleadings are incapable of supporting an interest in land. They argue the court has inherent jurisdiction to cancel the CPL in this case: *Yi Teng Investment Inc. v. Keltic (Brighouse) Development Ltd*., 2019 BCCA 357, at para. 39.

[38] The Court of Appeal has repeatedly confirmed (see also *Bilin v. Sidhu*, 2017 BCCA 429, *Xiao v. Fan*, 2018 BCCA 143, and *Berthin v. Berthin*, 2018 BCCA 57), that an application to cancel a CPL for non-compliance with s. 215 does not permit an analysis of the merits of the underlying claim. Rather, the court must consider only whether the pleadings contain a claim for an interest in land rather than engaging in an assessment of the strength of the claim itself: *Bilin* at paras. 53 to 55, *Berthin* at para. 40.

[39] As the Court of Appeal stated in *Yi Teng* at 39:

> [39] While the court has a "narrow" jurisdiction to cancel a CPL outside an application under ss. 256 and 257 of the *Land Title Act*, it is apparent from *Bilin* that the facts pleaded, assuming them to be true, must be capable of supporting a claim to an interest in land... This connotes a nexus or causative link between the facts alleged and the interest to which they would give rise if the facts were ultimately proved. If the facts assumed to be true would not give rise to an interest in land, then they are incapable of supporting such a claim and the pleadings do not meet the threshold criterion.
>
> [Reference omitted]

Section 215

[40] I first address the applicant defendants' arguments under s. 215 of the *LTA*. The analysis turns solely on whether the pleadings filed assumed to be true support a claim to an interest in land.

[41] The analysis does not involve a consideration of the merits of the pleadings and does not turn on whether the claim is weak or there is no triable issue: *Yi Teng* at para. 36.

[42] The applicant defendants' arguments that the claim by the plaintiff "lacks any commercial credibility" or "commercial rationale" are, in my opinion, urging the court to engage in a merits-based assessment. The court does not engage in such an analysis at this stage.

[43] The applicant defendants argue additionally that there are no material facts as to the $400,000 for improvements to the 691 Property that the plaintiff allegedly

paid to the defendants. The plaintiff pleads that he had “fulfilled his obligations to the terms of Agreement 2”: at para. 45 of the NOCC. The statement that the plaintiff had fulfilled his obligations under the contract taken to be true must mean that the plaintiff had paid the $400,000 for improvement to the 691 Property.

[44] The applicant defendants further argue that the plaintiffs have failed to plead the *Law and Equity Act* which they say is a necessity given the plaintiff relies on oral agreements regarding land.

[45] I do not find this ground to be the basis for the removal of the CPLs in this instance.

[46] The applicant defendants cite *Bottoms v. Witzke*, 2022 BCSC 1875, and comment by Justice Ahmad that the failure to include a claim under the *Law and Equity Act* in a notice of civil claim would be sufficient to dismiss the application. However, that matter did not deal with an analogous legal matter. The matter in *Bottoms* was a fairly complicated unjust enrichment claim, not about cancellation of a CPL.

[47] The plaintiff does plead facts, including that he made multiple trips to the property in question in the presence of the defendants, that the defendants “shook hands with the plaintiff” in confirming the terms of the agreement, that the defendants told the plaintiff to pay money to Scott Dean on their behalf, suggest that the applicant defendants allegedly as pleaded acted in some ways that are consistent with there being a contract as the plaintiff alleges.

[48] In addition, while the applicant defendants say that the $650,000 that the plaintiff spent was merely in performance of the contract and cannot constitute reasonable reliance, the plaintiff alleges that the contract in question required only $500,000 and the plaintiff's position is that he spent an additional $150,000 in reliance of the contract.

[49] The issue is not the overall sufficiency or likelihood of success of the pleadings. This is not an application to strike all or a portion of the pleadings.

[50] When the pleadings are read overall, it is clear the plaintiff is relying on the *Law and Equity Act*, I believe s. 59(3) (b) and (c), even though it is not cited.

[51] Self-represented litigants should be given some leeway, within bounds. Importantly, self-represented litigants should not be denied relief on the basis of a minor or an easily corrected deficiency of their case. The goal overall is to ensure fairness and that matters are heard and decided on their merits, not on a self-represented party's lack of knowledge about court procedure or rules. For this principle, I am referring to the Canadian Judicial Council "Statement of Principles on Self-Represented Litigants and Accused Persons", principle B2.

[52] To cancel the CPL on the basis that a statute was not cited alone would not be appropriate given my finding that the test under s. 215 of the *LTA* is otherwise met.

[53] Self-represented parties have an obligation to familiarize themselves with court process and procedures and to do their best to forward their case, including supporting materials in a reasonably expeditious manner and according to the timeline set out in the *Supreme Court Civil Rules,* B.C. Reg. 168/2009. The fact a party is self-represented, however, cannot in itself be used as a tool or device of delay.

[54] In this case, were I to cancel the CPLs on the basis of a failure to plead the *Law and Equity Act*, the plaintiff would only have to amend their pleadings to add reference to the *Law and Equity Act* and then revive their CPL. All of this conceivably could occur in the space of one day. More court time and resources would be engaged. Such an approach would tie up the court's time and the parties' resources without addressing the core issue.

[55] The question, as I have said, is not about adequacy or likely success of the pleadings; the question before me is solely whether the pleadings claim an interest in land sufficient to ground a CPL. I find that they do. I note that the test on an application to strike pleadings would be quite different.

Sections 256 and 257

[56] In the alternative, the defendants argue undue hardship. To cancel the CPL under s. 256, the party must show the hardship or inconvenience

1) is “causally connected solely to the registration of the CPL”;

2) is “more than ‘trifling’ or insignificant”; and,

3) rises above general allegations of inconvenience: *Save-A-Lot Holdings Corp. v. Christensen*, 2023 BCCA 35, at para. 30.

[57] Given the consent lifting of the CPL on the 691 Property, the only remaining hardship or inconvenience is, in essence, limited to the potential risk to the finances spent to develop the project proposal thus far. I earlier outlined the argument regarding a real estate deal and deposit potentially at risk. That matter has been resolved by a consent to lift the CPL on 691 to put the required easement in place.

[58] Thus, this alternative argument then rests on undue hardship regarding the overall risk of financial losses I have outlined above, that might happen to the investment.

[59] I do not find that potential undue hardship to be a ground for lifting the CPL on the evidence before me. The evidence of actual potential loss related to the CPL on the 691 Property had been addressed by way of the consent order between the parties. The remaining argument has to do with the risk of speculation inherent in developing a project such as this rather than undue hardship solely posed by the CPLs.

[60] I do not find that potential undue hardship to be a ground for lifting the CPL on the evidence before me. The evidence of actual potential loss related to the CPL on the 691 Property had been addressed by way of the consent order between the parties. The remaining argument has to do with the risk of speculation inherent in developing a project such as this rather than undue hardship solely posed by the CPLs.

[Discussion about costs.]

[61] The plaintiffs did not seek costs in their application and none are awarded.

"A. Walkem J."