

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *685781 BC Ltd. v. Garib*,  
2025 BCSC 1075

Date: 20250513  
Docket: S254582

Registry: New Westminster

Between:

**685781 BC Ltd.**

Petitioner

And

**Jaswinder Garib  
Alexander Singh Garib  
580680 BC Ltd.**

Respondents

Before: The Honourable Justice Lamb

## Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner: R. Atwal

Counsel for the Respondents: P. Varga

Place and Date of Hearing: New Westminster, B.C.  
May 13, 2025

Place and Date of Judgment: New Westminster, B.C.  
May 13, 2025

[1] **THE COURT:** In these reasons I will refer to the parties as they are identified in the petition.

[2] The respondents apply for an order pursuant to s. 215 of the *Land Title Act*, R.S.B.C. 1996, c. 250 lifting a certificate of pending litigation from the property

identified at paragraph 1 of Part 1 of the notice of application filed March 31, 2025, which I will refer to as the “CPL property.” The respondents also seek an order for security for costs to be paid by the petitioner.

[3] The petitioner opposes the relief sought.

[4] I will address these issues in reverse order.

### **Security for Costs**

[5] The respondents assert that an order for security for costs should be made because “the petitioner 685 is a corporation without assets.” In support of that proposition, the respondents attach a Land Title search and a BC Personal Property Registry search to an affidavit showing no listings for the petitioner.

[6] In response to the notice of application, Mr. Pagely, a director and shareholder of the petitioner, deposes that the petitioner has funds in its bank account in the amount of \$46,000 and that the petitioner has no debts payable to Mr. Pagely’s knowledge. Mr. Pagely goes further and undertakes to pay any costs award against the petitioner should that be required.

[7] As the petitioner points out, the respondents’ application for security for costs is fatally flawed in that there is no evidence of the respondents’ anticipated costs for this petition proceeding. When asked the amount that ought to be ordered as security, the respondents’ counsel suggested half of the petitioner’s bank balance ought to be posted, or, alternatively, I could use my discretion to set the amount. However, in my view, this fails to address one of the key considerations on an application for security for costs.

[8] As recently noted by Associate Judge Bilawich at para. 16 of *1233580 B.C. Ltd. v. Western Sandpiper Holdings Ltd.*, 2024 BCSC 1377: “... the applicant is obliged to provide some evidence of what their anticipated costs are going to be.” In that case, there was at least a draft bill of costs attached as a schedule to the notice of application. Associate Judge Bilawich found there was no evidence to provide a factual connection to the matters in issue in that case and no basis to assess the reasonableness of the figures set out in the draft bill of costs. In the

case at bar there is not even a draft bill of costs. I am asked simply to choose an arbitrary amount of security, which is not how it works.

[9] As a result, I am not satisfied based on the materials filed that the petitioner would not be able to pay an award of costs against it because I have no evidence as to the respondents' anticipated costs in this matter.

[10] I will now turn to the application to remove the CPL.

### **Legal Framework**

[11] I will address first the legal framework that applies. "A CPL is an extraordinary pre-judgment mechanism intended only to protect a valid claim to an interest in land until issues can be resolved": *Chen v. Jin*, 2019 BCSC 567, at para. 8.

[12] Section 215(1)(a) of the *Land Title Act* allows a person who has commenced a proceeding and who is claiming an estate or interest in land to register a CPL against land.

[13] In *Bilin v. Sidhu*, 2017 BCCA 429, at paras. 54 to 55, the Court of Appeal confirmed that a CPL may be struck if it was not valid in the first place because it did not involve a claim against land.

[14] When assessing whether there is a claim to an interest in land the notice of civil claim must be read as a whole: *Batth v. Sharma*, 2024 BCCA 29, at para. 30.

[15] As canvassed at the hearing of this application, the key question on an application pursuant to s. 215 is whether the petition includes a properly pleaded claim to an interest in land. In this case, in my view, the petition includes a validly pleaded claim for a trust interest in the property and seeks a tracing remedy with respect to the CPL property.

[16] A constructive trust "may be imposed where good conscience so requires": *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217 at para. 34. Traditionally, courts have recognized that a trust may arise from the defendant's wrongful act: *Vidcom Communications Ltd. v. Rattan*, 2022 BCSC 562 at para. 23, quoting *BNSF Railway Company v. Teck Metals Ltd.*, 2016 BCCA 350 at para. 24.

[17] In this case, the petitioner pleads that the respondents Jas Garib and Alexi Garib wrongfully misappropriated and converted the proceeds of the sale of the Fairview property for their own personal use. The petitioner pleads that a constructive trust arose for the benefit of the petitioner and pleads a temporal connection between the receipt of the proceeds of the sale of the Fairview property and the purchase of the CPL property.

[18] The petitioner pleads that the respondents Jas Garib and Alexi Garib hold their registered interest in the CPL property in trust and for the benefit of the petitioner by way of a substantive constructive trust and seek a tracing remedy.

[19] The respondents say that the interest in land has not been validly pleaded in that there are no pleadings that damages are inadequate or inappropriate. At para. 16 in *1332404 B.C. Ltd. v. 1266685 B.C. Ltd.*, 2025 BCCA 46, our Court of Appeal confirmed that the court may not consider whether damages are an adequate remedy when considering whether an interest in land has been pleaded. In any event, as in *Batth*, the petitioner has pleaded that the respondents are not able to pay an award of damages.

[20] The petitioner relies on *Drein v. Puleo*, 2016 BCSC 593 at paras. 8 and 10 to argue that the CPL was placed for an inappropriate purpose of gaining leverage or securing a financial advantage. However, given my finding that the petitioner has advanced a viable claim to a substantive constructive trust, it would be speculative to find that the substantive constructive trust claim was advanced for an improper purpose.

[21] In summary, reading the petition as a whole, the petitioner has pled the facts necessary to support a substantive constructive trust claim and to claim an interest in land. The application to remove the CPL pursuant to s. 215 of the *Land Title Act* is dismissed.

[22] I will hear briefly from counsel on the issue of costs.

[SUBMISSIONS RE COSTS]

[23] THE COURT: Thank you. I am satisfied that this issue is sufficiently distinct from the merits of the petition that costs should be awarded in any event of the cause. I would not describe them as costs thrown away, however, because I take

Mr. Varga's point that some of the affidavits that were prepared may have some use going forward.

[24] Those are my reasons. Thank you.

"Lamb J."