IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Innogene Technologies Corp v. Woodbine Enterprises Ltd., Inc. No. 429381,* 2025 BCSC 1130

Date: 20250505
Docket: S252673
Registry: Vancouver

Between:

Innogene Technologies Corp

Plaintiff

And:

Woodbine Enterprises Ltd., Inc. No. 429381

Defendant

Before: The Honourable Justice E. McDonald

Oral Reasons for Judgment

In Chambers

Counsel for the Defendant:	J. Sapers G. Matheson
No other appearances	
Place and Date of Hearing:	Vancouver, B.C. May 5, 2025
Place and Date of Judgment:	Vancouver, B.C. May 5, 2025

[1] **THE COURT:** These reasons for judgment were delivered orally and they have since been edited for distribution and publication.

[2] I have before me a notice of application filed April 30, 2025, in which the defendant seeks to cancel a certificate of pending litigation ("CPL") registered by the plaintiff on April 10, 2025, as charge number BB1553653 on title of subject property that is fully described in the notice of application. The defendant

proposes that the CPL be cancelled upon the defendant providing an undertaking to pay damages or upon it posting a nominal amount for security.

[3] The plaintiff is the tenant of the defendant in the premises located at the subject property. The plaintiff's April 10th, 2025 notice of civil claim appears to allege that the defendant breached a term of the lease agreement. The plaintiff also appears to allege that the parties agreed to renew the lease of the premises at the subject property for a period of five years.

[4] There is a sale of the subject property scheduled to complete on May 15, 2025, and importantly, the contract of purchase and sale worth $4.575 million was entered into on April 16, 2025, which is prior to the defendant learning of the registration of the CPL on April 17, 2025. The defendant submits that the plaintiff has not actually served it with the claim, and it only learned of the CPL when notified of the registration by the Land Title Office on April 17, 2025.

[5] As the defendant has not been served with the claim, no response has been filed. However, while there is no response, the defendant submits that the lease was never renewed as alleged in the claim. Rather, the defendant submits that the current lease expired on March 1, 2025, without renewal, and it rolled over to a month-to-month tenancy, which is presently ongoing.

[6] On April 28, 2025, the defendant demanded that the plaintiff discharge the CPL. Otherwise, the defendant advised that it would seek short leave to cancel the CPL. The defendant also provided the proposed date for the application to seek short leave, and the proposed date of May 5, 2025, for the hearing of the application to cancel the CPL. No response was received to this demand prior to the application for short leave occurring.

[7] On April 30, 2025, the defendant obtained short leave, and the defendant complied with the terms of the short leave order. The plaintiff was served with these application materials on April 30, 2025. The plaintiff had until 4:00 p.m. on May 1, 2025, to file responding material, but the plaintiff did not do so.

[8] On May 5, 2025, the defendant's counsel received an email from the plaintiff prior to attending court. That email indicates that the principal of the plaintiff is away at a trade show and is only seeing the email for the first time. The email also says the plaintiff opposes short leave and the application to cancel the CPL. The

plaintiff asks that the judge be informed of the plaintiff's position, and it asks for the location and time of the hearing, which was provided. I have been supplied with a copy of the plaintiff's email respecting its position, but obviously no formal response has been filed as required by the short leave order.

[9] The defendant submits that it is in compliance with the terms of the lease, and there is nothing in the lease that prevents it from selling the subject property. The defendant also asserts that the claim, while baldly alleging a breach of the lease, fails to indicate the term that it asserts has been breached. Importantly, the defendant asserts that the release of the CPL and the closing of the sale will not prejudice the plaintiff's position that its tenancy is for five years based on the alleged renewal of the lease.

[10] Among the relief sought in the claim is a request to enjoin the defendant from selling the subject property and damages for loss of business, amongst other things. What is not sought by the plaintiff is a declaration of a leasehold interest in the subject property.

[11] The grounds for removal are ss. 256 and 257 of the *Land Title Act,* R.S.B.C. 1996, c. 250 [*LTA*]. Under s. 256 and 257, the defendant must show hardship and inconvenience solely connected to the registration of the CPL.

[12] If the sale does not close, the defendant submits that it will be subject to hardship for loss of the sale and potential liability to a claim by the purchaser. The defendant submits that if the CPL is not cancelled, the plaintiff should be required to post-security or give an undertaking as to damages.

[13] The defendant also alleges the CPL is an abuse of process. In my view, given that the CPL will hinder the pending sale, which was entered into prior to the defendant learning of the registration of the CPL, there is a real risk that the defendant could be unable to complete the sale and be subject to a claim by the purchaser. This is at least some hardship and inconvenience justifying cancellation of the CPL, citing *Enigma Investments Corp. v. Henderson Land Holdings (Canada) Ltd.*, 2007 BCSC 1379 at paras. 1-10.

[14] As well, I am satisfied that damages would be an adequate remedy because the claim seeks, among other things, the payment of damages, and it seems on a preliminary view that it is appropriate at this stage and in the

circumstances of the application that the claim is weak, especially given that nothing in the lease prevents the land from being sold, and the claim itself seeks a remedy mainly of damages.

[15] In light of all of the evidence and submissions, I find it appropriate to exercise my discretion to order the cancellation of the CPL under ss. 256 and 257 of the *LTA* upon the defendant giving an undertaking to pay the plaintiff damages resulting from the cancellation of the CPL if damages are proven at trial.

[16] I find that such an undertaking is adequate in the circumstances. I have reached this conclusion based on my view there is evidence that the CPL will cause or is likely to cause hardship and inconvenience to the defendant which is causally connected to the CPL. In reaching this decision, I have taken into account that the plaintiff is self-represented and not here to speak to this application. However, the plaintiff was served in accordance with the short leave order, and the application is urgent given the pending sale.

[17] I have considered the plaintiff's email opposing this application, and I note that it provides no more than a bare opposition to the application. In my view, it is appropriate to proceed in the absence of the plaintiff because the plaintiff has not requested that the hearing be adjourned until such a time when the plaintiff could attend. Therefore, the order will go in the terms sought, and I will sign the order.

"E. McDonald J."