

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *PCI West 4th Holdings Ltd. v. Origami 2 Investments Inc.*,
2025 BCSC 1438

Date: 20250725
Docket: S230621
Registry: Vancouver

Between:

**PCI West 4th Holdings Ltd., PCI West 4th Development Corp.,
HOOPP Realty Inc., PCI Projects Corp. and
PCI Developments Limited Partnership**

Plaintiffs

And

**Origami 2 Investments Inc. and Great Spirit Straits Development
Limited Partnership**

Defendants

Before: The Honourable Mr. Justice P. Walker

Reasons for Judgment

Counsel for the Plaintiffs:	A.B. Pressman P.H. Fogler
Counsel for the Defendants:	S.D. Coblin
Place and Dates of Hearing:	Vancouver, B.C. June 17 and 19, 2025
Place and Date of Judgment:	Vancouver, B.C. July 25, 2025

Table of Contents

[INTRODUCTION](#)

[LEGAL TESTS](#)

[Requirements to File a Certificate of Pending Litigation](#)

[Unjust Enrichment](#)

Remedial Constructive Trust

Summary

ANOCC

The Pleading

Factual Allegations

Relief Sought

Legal Basis

ANALYSIS

Interest in Land

Monetary Damages

Summary

SHOULD LEAVE BE REQUIRED TO FILE A FURTHER CERTIFICATE OF PENDING LITIGATION?

DISPOSITION

Introduction

[1] The parties' dispute concerns the propriety of a certificate of pending litigation ("CPL") registered by or on behalf of the plaintiffs against property ("Origami Property") owned by the defendants, Origami 2 Investments Inc. ("Origami") and Great Spirit Straits Development Limited Partnership ("Spirit Straits").

[2] Origami and Spirit Straits apply to have the CPL discharged per s. 215(1) of the *Land Title Act*, R.S.B.C. 1996, c. 250 [LTA], on the basis that the claim as pleaded in the plaintiffs' amended notice of civil claim ("ANOCC") fails to meet the requisite threshold criterion asserting an interest in land.

[3] The Origami Property is located at 44-64 West 4th Avenue in Vancouver. On August 15, 2019, Origami acquired title, which it holds pursuant to a bare trust agreement for the benefit of Spirit Straits. According to the plaintiffs, the Origami Property was used by Spirit Straits to operate a large-scale dry-cleaning business from 1995 to 2017.

[4] The Origami Property sits across from property located at 5 West 4th Avenue in Vancouver ("PCI Property") owned by the plaintiff, PCI West 4th

Holdings Ltd., as registered owner, and HOOPP Realty Inc. and PCI West 4th Development Corp. as beneficial owners. The development of the PCI Property is managed and administered by the plaintiff, PCI Developments Limited Partnership. PCI Projects Corp. was a party to a purchase and sale agreement of the PCI Property, but it is unclear from the ANOOC what its current status is in relation to that property.

[5] On April 7 2021, Notification of Likely or Actual Migration (“NOM”), a standard provincial government form designed to report that contamination from one property has, or has the potential to have, migrated to another property, was completed by or on behalf of Origami and Spirit Straits. The NOM indicated that the Origami Property, as a previously operating large-scale dry-cleaning business, has likely or actual “high risk conditions” that are associated with the likely or actual migration of substances from its property.

[6] The plaintiffs now claim recovery of damages for losses they allege they have and will suffer caused by the continued migration of contaminants from dry-cleaning solvents and associated contaminants (e.g., tetrachloroethylene and trichloroethylene) from the Origami Property onto the PCI Property. The plaintiffs allege that Origami and Spirit Straits have failed to take any steps to remediate the contaminants and to stem their ongoing migration onto the PCI Property.

[7] Part of the plaintiffs’ claim is grounded on the *Environmental Management Act*, S.B.C. 2003, c. 53 [EMA], alleging that Origami and Spirit Straits are, as “responsible persons” under the *EMA*, retroactively liable to reimburse them for all of the costs the plaintiffs have paid and will pay to remediate the PCI Property.

[8] Moreover, the plaintiffs contend that their action is not limited to an *EMA* costs recovery action. They also seek recovery for damages framed in nuisance, strict liability (from the rule in *Rylands v. Fletcher*), negligence, trespass, and unjust enrichment. The plaintiffs ground their entitlement to file the CPL on a claim for the imposition of a remedial constructive trust predicated on their unjust enrichment claim.

[9] I am told by counsel that whether an aggrieved party is entitled to file a certificate of pending litigation arising from environmental contamination migrating

from another property is a question of first instance. The plaintiffs acknowledge their claim is novel but assert that this is not a basis to discharge the CPL.

[10] Origami and Spirit Straits assert that even if the facts pleaded in the ANOCC are assumed to be true (which is the basis on which a s. 215(1) *LTA* application is considered: see e.g., *Xiao v. Fan*, 2018 BCCA 143 at para. 27; *Save-A-Lot Holdings Corp. v. Christensen*, 2021 BCSC 2540 at para. 18; *Nouhi v. Pourtaghi*, 2019 BCSC 794 at paras. 9, 11), the pleading fails to meet the requisite elements to file a certificate of pending litigation. Specifically, they assert there is no basis to support the plaintiffs' claim for an interest in land (i.e. in the Origami Property) and their claims based on unjust enrichment or a remedial constructive trust, and that the plaintiffs' pleading that damages are an inadequate remedy is also deficient.

[11] Origami and Spirit Straits acknowledged at the outset of their submissions that there is an insufficient basis for an award of special costs (sought in their notice of application) and, instead, focused their submissions on the necessity for an order requiring the plaintiffs to obtain leave if they intend to file another certificate of pending litigation.

Legal Tests

Requirements to File a Certificate of Pending Litigation

[12] In *1077708 BC Ltd. v. Agri-Grow Farm Services Ltd.*, 2019 BCSC 977, Justice Murray highlighted at para. 17 that a certificate of pending litigation is an extraordinary pre-judgment mechanism intended to protect a valid claim to an interest in land until the dispute can be resolved: see also *Memphis Blues BBQ International Ltd. v. P.K. Johnson Inc.*, 2024 BCSC 497 at para. 49.

[13] The starting point in the analysis is s. 215(1) of the *LTA*, which sets out who may file a certificate of pending litigation:

215 (1) A person who has commenced or is a party to a proceeding, and who is

(a) claiming an estate or interest in land, or

(b) given by another enactment a right of action in respect of land,

may register a certificate of pending litigation against the land in the same manner as a charge is registered, and the registrar of the court in which the proceeding is commenced must attach to the certificate a copy of the

pleading or petition by which the proceeding was commenced, or, in the case of a certificate of pending litigation under Part 5 of the *Court Order Enforcement Act*, a copy of the notice of application or other document by which the claim is made.

[14] To be validly registered, a certificate of pending litigation must be supported by pleadings that assert an interest in the land covered by the certificate: *Memphis Blues* at para. 20. Valid registration is a threshold criterion for the sustained registration of a certificate of pending litigation under s. 215(1) of the *LTA*: *Bilin v. Sidhu*, 2017 BCCA 429 at para. 55; *Nouhi* at para. 9.

[15] It is clear from a long line of authorities in this province that if the plaintiffs' claim as pleaded in their ANOCC is not capable of supporting an interest in the Origami Property, then the CPL should be cancelled because, in essence, it was improperly registered from the start: *Bajwa v. Singh*, 2016 BCSC 916 at para. 20; *Nouhi* at paras. 9, 11, 13, 26; *Save-A-Lot Holdings* at paras. 20-21, 37; *Memphis Blues* at paras. 19-21; *Xiao* at paras. 19, 27; *Agri-Grow* at paras. 18-21; *Bilin* at paras. 38, 54-55, 58, 61-64; *Gill v. Gill*, 2021 BCSC 143 at para. 25; *Minhas v. 1289966 B.C. Ltd.*, 2022 BCSC 551 at para. 4; *Nu Stream Realty Inc. v. 1116191 B.C. Ltd.*, 2018 BCSC 911 at paras. 34-35.

[16] An interest in land cannot be premised on bare assertions without a pleaded factual basis: *Xiao* at para. 27; *Nouhi* at para. 11; *Agri-Grow* at paras. 18-21. The test to be applied is whether the pleadings, assuming them to be true, are capable of supporting the claim to an interest in land: *Memphis Blues* at para. 22, citing *Montaigne Group Ltd. v. St. Alcuin College for the Liberal Arts Society*, 2023 BCSC 1257 at para. 27. No evidence is to be considered, and the court is not entitled to cancel a certificate of pending litigation on the basis that the claim to an interest in land is weak or unlikely to succeed; it is purely a question of adequate pleadings: *Memphis Blues* at para. 25; *Nouhi* at para. 13. The relevant time to assess the pleading is the date when the CPL was filed with the Registrar of Land Titles, and not as the ANOCC may be further amended: *Memphis Blues* at paras. 22, 39, citing *Bilin* at para. 62. Here, the CPL was filed after the pleading was amended in its current form in the ANOCC.

Unjust Enrichment

[17] The law of unjust enrichment is uncontroverted. To seek a remedy for unjust enrichment, the plaintiff must plead the defendant was enriched, the plaintiff suffered a corresponding deprivation, and the absence of a juristic reason for the enrichment: *Kerr v. Baranow*, 2011 SCC 10 at para. 32.

[18] Here, the plaintiffs must demonstrate in their ANOCC a link between their “contributions” and the defendants’ respective acquisition, preservation, maintenance, or improvement of the Origami Property. The point is drawn directly from decisions of the Supreme Court of Canada such as *Peel (Regional Municipality) v. Canada*, [1992] 3 S.C.R. 762, *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57, and *Kerr*.

[19] In *Peel*, the Court said at the heart of the doctrine of unjust enrichment is the restoration of a benefit, sparing or relieving the defendant of expense or liability, which justice does not permit one to retain:

[at 788]

At the heart of the doctrine of unjust enrichment, whether expressed in terms of the traditional categories of recovery or general principle, lies the notion of restoration of a benefit which justice does not permit one to retain. As Goff and Jones, *supra*, put it at p. 12: “Most mature systems of law have found it necessary to provide, outside the fields of contract and civil wrongs, for the restoration of benefits on grounds of unjust enrichment”. Thus for recovery to lie, something must have been given, whether goods, services or money. The thing which is given must have been received and retained by the defendant. And the retention must be without juristic justification, to quote Dickson J. in *Pettkus v. Becker*.

[at 789-790]

The difficulty lies not in establishing that the plaintiff made payments which might potentially attract the doctrine of unjust enrichment. The difficulty lies rather in establishing that the payments conferred a “benefit” on the federal and provincial governments which represents an unjust retention or enrichment. As Professors Goff and Jones note: “In restitution it is not material that the plaintiff has suffered a loss if the defendant has gained no benefit.” (See Goff and Jones, *The Law of Restitution*, *supra*, at p. 16.) As already noted, the concept of restoration of a benefit retained without juristic reason lies at the heart of the doctrine of unjust enrichment. The word “restitution” implies that something has been given to someone which must be returned or the value of which must be restored by the recipient. The word “enrichment” similarly connotes a tangible benefit. It follows that without a benefit which has “enriched” the defendant and which can be restored to the donor in specie or by money, no recovery lies for unjust enrichment.

[at 790]

Since the establishment of such a benefit is essential for recovery under any of the traditional categories, as well as under the general test for recovery which this Court has adopted, the remainder of these reasons focus on that concept. To date, the cases have recognized two types of benefit. The most common case involves the positive conferral of a benefit upon the defendant, for example the payment of money. But a benefit may also be 'negative' in the sense that the benefit conferred upon the defendant is that he or she was spared an expense which he or she would have been required to undertake, i.e., the discharge of a legal liability.

It is useful to begin by looking at the sort of benefit required for recovery under the category which fits most closely with the facts in this case, that of payment made under compulsion of law. The courts have consistently held that for a benefit to be established in this class of case, it must be shown that the plaintiff's payments discharged the defendant's liability. (See, for example, *Fridman and McLeod, Restitution* (1982), at p. 347, and *Brook's Wharf and Bull Wharf, Ltd. v. Goodman Brothers*, [1937] 1 K.B. 534.)

[Emphasis added]

[20] In *Kerr*, Justice Cromwell, writing for the Court, emphasized the benefit conferred must spare or relieve the defendant of the expense he or she would have had to take:

[38] For the first requirement — enrichment — the plaintiff must show that he or she gave something to the defendant which the defendant received and retained. The benefit need not be retained permanently, but there must be a benefit which has enriched the defendant and which can be restored to the plaintiff *in specie* or by money. Moreover, the benefit must be tangible. It may be positive or negative, the latter in the sense that the benefit conferred on the defendant spares him or her an expense he or she would have had to undertake (*Peel*, at pp. 788 and 790; *Garland*, at paras. 31 and 37).

[Emphasis added]

[21] Beyond demonstrating the defendants were enriched, the plaintiffs must also establish the enrichment the defendants received corresponds to a deprivation that the plaintiffs have suffered, and the absence of a juristic reason for the defendants' enrichment: *Kerr* at para. 39; *Peel* at p. 789-790. The absence of a juristic reason means there is no reason in law or justice for the defendants' retention of the benefit conferred by the plaintiffs: *Kerr* at para. 40; *Peel* at p. 784, 788.

Remedial Constructive Trust

[22] A remedial constructive trust will be imposed where a wrong is done by one party to the other such that even where there is no substantive trust relationship between them or arising from the wrong, a remedy is necessary in relation to the property, and a monetary award is inadequate or inappropriate in the circumstances of the case (as Justice Newbury said in *BNSF Railway Company v. Teck Metals Ltd.*, 2016 BCCA 350 at paras. 57-59, there is a longstanding rule of equity which generally prefers to act *in personam*).

[23] More specifically, a party seeking a remedial constructive trust must satisfy two criteria in addition to the cause of action or circumstances on which the remedial trust is based (i.e. unjust enrichment): *Nouhi* at para. 26. First, there must be a referential property – the party must demonstrate a substantial and direct link, a causal connection or nexus between the claim and the property on which the constructive trust is to be imposed: *Nouhi* at para. 26, citing *BNSF Railway* at paras. 57, 60. Second, the party must demonstrate that a monetary award is inadequate, insufficient, or inappropriate in the circumstances: *Nouhi* at para. 26, citing *Kerr* at para. 50, *Pro-Sys* at para. 92, and *Li v. Li*, 2017 BCSC 1312 at para. 227.

[24] In that event, a declaration will be issued, creating a constructive trust by one of the parties in favour of the other: *Atlas Cabinets and Furniture Ltd. v. National Trust Co.* [1990], 45 B.C.L.R. (2d) 99 (C.A.) at 108.

[25] This was explained in further detail in both *Pro-Sys* and *Kerr*.

[26] In *Pro-Sys*, Justice Rothstein said the Court's decision in *Kerr* was the controlling authority:

[90] As a remedy for the alleged unjust enrichment, Pro-Sys submits that an amount equal to the overcharge from the sales of Microsoft operating systems and Microsoft applications software in British Columbia should be held by Microsoft in trust for the class members. In other words, Pro-Sys is asking that Microsoft be constituted a constructive trustee in favour of Pro-Sys.

[91] *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269, is the relevant controlling authority on constructive trusts. In *Kerr*, Justice Cromwell explains that in order to find that a constructive trust is made out, the plaintiff must be able to point to a link or causal connection between his or her contribution and the acquisition of specific property:

. . . the constructive trust is a broad and flexible equitable tool used to determine beneficial entitlement to property (*Pettkus*, at pp. 843-44 and 847-48). Where the plaintiff can demonstrate a link or causal connection between his or her contributions and the acquisition, preservation, maintenance or improvement of the disputed property, a share of the property proportionate to the unjust enrichment can be impressed with a constructive trust in his or her favour (*Pettkus*, at pp. 852-53; *Sorochan*, at p. 50). [para. 50]

[Emphasis added]

[27] In *Kerr*, the Court made clear that there must be a nexus between the contribution and the acquisition, maintenance, or improvement of the referential property:

[50] The Court has recognized that, in some cases, when a monetary award is inappropriate or insufficient, a proprietary remedy may be required. *Pettkus* is responsible for an important remedial feature of the Canadian law of unjust enrichment: the development of the remedial constructive trust. Imposed without reference to intention to create a trust, the constructive trust is a broad and flexible equitable tool used to determine beneficial entitlement to property (*Pettkus*, at pp. 843-44 and 847-48). Where the plaintiff can demonstrate a link or causal connection between his or her contributions and the acquisition, preservation, maintenance or improvement of the disputed property, a share of the property proportionate to the unjust enrichment can be impressed with a constructive trust in his or her favour (*Pettkus*, at pp. 852-53; *Sorochan*, at p. 50). *Pettkus* made clear that these principles apply equally to unmarried cohabitants, since “[t]he equitable principle on which the remedy of constructive trust rests is broad and general; its purpose is to prevent unjust enrichment in whatever circumstances it occurs” (pp. 850-51).

[51] As to the nature of the link required between the contribution and the property, the Court has consistently held that the plaintiff must demonstrate a “sufficiently substantial and direct” link, a “causal connection” or a “nexus” between the plaintiff’s contributions and the property which is the subject matter of the trust (*Peter*, at pp. 988, 997 and 999; *Pettkus* at p. 852; *Sorochan*, at pp. 47-50; *Rathwell*, at p. 454). A minor or indirect contribution will not suffice (*Peter*, at p. 997). As Dickson C.J. put it in *Sorochan*, the primary focus is on whether the contributions have a “clear proprietary relationship” (p. 50, citing Professor McLeod’s annotation of *Herman v. Smith* (1984), 42 R.F.L. (2d) 154, at p. 156). Indirect contributions of money and direct contributions of labour may suffice, provided that a connection is established between the plaintiff’s deprivation and the acquisition, preservation, maintenance, or improvement of the property (*Sorochan*, at p. 50; *Pettkus*, at p. 852).

[52] The plaintiff must also establish that a monetary award would be insufficient in the circumstances (*Peter*, at p. 999). In this regard, the court may take into account the probability of recovery, as well as whether there is a reason to grant the plaintiff the additional rights that flow from recognition of property rights (*Lac Minerals*, at p. 678, *per* La Forest J.).

[53] The extent of the constructive trust interest should be proportionate to the claimant's contributions. Where the contributions are unequal, the shares will be unequal (*Pettkus*, at pp. 852-53; *Rathwell*, at p. 448; *Peter*, at pp. 998-99). As Dickson J. put it in *Rathwell*, "The court will assess the contributions made by each spouse and make a fair, equitable distribution having regard to the respective contributions" (p. 454).

[Emphasis added]

[28] *Memphis Blues* at para. 24, citing *Samji (Trustee) v. Chatur*, 2013 BCSC 1915 at para. 61, points out that for the purpose of this s. 215 application, the issue is whether there is a triable issue demonstrated in the ANOCC in respect of the plaintiffs' claim for an interest in land based on a constructive trust remedy, not whether the plaintiffs will be ultimately successful in proving their entitlement at trial.

Summary

[29] Thus, in summary, the mere pleading of the claims for unjust enrichment and the imposition of a remedial constructive trust does not give rise to an interest in land. Simply pleading unjust enrichment and a claim for a remedial constructive trust in relation to a referential property without establishing an interest in land is insufficient. That was the Court of Appeal's determination in *Bilin* at paras. 29-31, 63; see also *Gill* at paras. 30-32; *Nouhi* at para. 26; *Save-A-Lot Holdings* at para. 42; *Agri-Grow* at para. 39.

ANOCC

[30] I turn now to consider the allegations contained in the ANOCC which the plaintiffs assert are sufficient to support a claim for an interest in the Origami Property.

The Pleading

Factual Allegations

[31] I start with the allegations concerning environmental contamination in Part 1: STATEMENT OF FACTS.

[32] The word "Property" in the ANOCC excerpted below refers to the plaintiffs' property (the PCI Property), and not the Origami Property, from which the migration of contaminants is said to originate:

17. Contaminants have migrated, and continue to migrate, to the Property from the Source Site.
18. On or about April 7, 2021, the defendant, Great Spirit LP completed a Notification of Likely or Actual Migration (“**NOM**”), through its environmental consultant, PGL Environmental Consultants.
- ...
20. The NOM indicated that the Property, as well as several City of Vancouver-owned roads, including West 4th Avenue (the “Roads”), have “likely or actual high risk conditions ... associated with the likely or actual migration of substances from the [Source Site]”. The NOM also indicated that the “Confirmed or Suspected Source of Contamination” from the Source Site was a “Dry cleaning facility”.
21. The Property is a “contaminated site” and the defendants, as owners and/or operators of the Source Site [Origami Property], are each a “responsible person” for remediation with respect to the Property, as those terms are defined in the [EMA] and the *Contaminated Sites Regulation* [citation omitted] [CSR].
22. In particular, the Contaminants on the Source Site have migrated, and continue to migrate, to the Property from the Source Site and from the Roads, which has caused and continues to cause the plaintiffs loss and damage, including, without limitation, the costs of investigation of the Property with respect to the Contaminants. The plaintiffs will also incur the costs of further investigating and remediating the Property, and other financial and economic losses.
23. The plaintiffs have thus incurred and continue to incur significant costs, including “costs of remediation” as that term is defined in the EMA and CSR, as a result of the Contaminants on the Property, and the costs incurred are reasonable in the circumstances.
24. Despite requests from the plaintiffs, the defendants have refused to remediate the Contaminants.

[Bold in original]

Relief Sought

[33] Under Part 2: RELIEF SOUGHT, the plaintiffs seek the following:

- (a) judgment for the costs of remediation incurred by the plaintiffs at the time of trial;
- (b) an order directing the defendants to indemnify the plaintiffs for all future costs of remediation incurred by the plaintiffs and all measures taken by the plaintiffs to prevent the continued migration of the Contaminants onto their property;

- (c) in the alternative, a remedial constructive trust over the Origami Property on the basis of unjust enrichment;
- (d) a certificate of pending litigation; and
- (e) general and special damages, damages for economic losses, including delays in developing the plaintiffs' property.

[Emphasis added]

Legal Basis

[34] Under Part 3: LEGAL BASIS, the plaintiffs predicate their claim for recovery of costs incurred to date as well as future costs for the investigation and remediation of the plaintiffs' property in part upon the recovery provisions of the *EMA* [excerpted below] and the *Contaminated Sites Regulation*, B.C. Reg. 375/96 [CSR]:

Liability under the Environmental Management Act

- 26. As set out above, the Property is a "contaminated site" pursuant to the EMA and CSR. As a current owner and/or operator of the Source Site, from which the Contaminants have migrated to the Property, each of the defendants is a "responsible person" for remediation of the Property pursuant to section 45(2)(a) of the EMA.
- 27. Pursuant to s. 47 of the EMA, as responsible persons, the defendants are absolutely, retroactively and jointly and separately [*sic*] liable for reasonably incurred costs as described under the EMA.

[35] The plaintiffs also advance claims framed in negligence, nuisance, trespass, the doctrine of *Rylands v. Fletcher*, and unjust enrichment (incorporating a claim for a remedial constructive trust over the Origami Property): ANOCC at paras. 29-39.

Analysis

Interest in Land

[36] Citing Kerr at para. 38, *P.T. v. K.T. and others*, 2016 BCSC 2367 at para. 88, and *Accuworx Inc. v. Enroute Imports Inc.*, 2016 ONCA 161, the plaintiffs assert that the unjust enrichment in this case arises from a negative benefit conferred to Origami and Spirit Straits. They submit that a negative benefit "allows

a defendant to avoid incurring a cost”, because it “spares them an expense that they would otherwise have had to undertake”: Application Response at para. 16. They claim the cost is the remediation work that Origami and Spirit Straits would have had to incur had they not failed to prevent the alleged past and continuing migration of the contaminants onto the plaintiffs’ property.

[37] Their pleading in the ANOCC is framed as follows:

36. The defendants have been unjustly enriched by their failure to prevent the past and continuing migration of the Contaminants onto the Property. The defendants have derived a benefit by avoiding the costs of properly remediating the Contaminants or preventing their migration, to the detriment of the plaintiffs. The defendants were unjustly enriched by ignoring the past and continuing migration of the Contaminants causing the plaintiffs (rather than the defendants) to undertake actions to prevent the migration of the Contaminants onto the Property or be burdened by the consequences of the Contaminants migrating onto the Property. There is no juristic reason for the defendants’ enrichment.

37. The plaintiffs are entitled to a remedial constructive trust over the Source Site. There is a direct causal link or nexus between the plaintiffs’ deprivation and the defendants’ corresponding enrichment in avoiding the costs they ought to have incurred to prevent the migration of the Contaminants. There is a causal link between the benefit enjoyed by the defendants in avoiding or delaying remediation at the Source Site and on the Roads and the detriment suffered by the plaintiffs. The plaintiffs continue to suffer ongoing loss and damages as a result of the defendants’ failure to prevent the ongoing migration of the Contaminants from the Source Site and the Roads.

[38] The difficulty with those assertions is that Origami and Spirit Straits are not spared or relieved of liability for the costs to remedy the past and ongoing contamination to the PCI Property.

[39] There are no costs “retained’ by or spared to Origami and Spirit Straits spoken of in the excerpt from *Kerr* below:

[31] At the heart of the doctrine [of unjust enrichment] lies the notion of restoring a benefit which justice does not permit one to retain *Peel (Regional Municipality) v. Canada* [citation omitted]. For recovery, something must have been given by the plaintiff and received and retained by the defendant without juristic reason.

...

[38] For the first requirement – enrichment – the plaintiff must show that he or she gave something to the defendant which the defendant received and retained. The benefit need not be retained permanently, but there must be a benefit which has enriched the defendant which can be restored by the plaintiff *in specie* or by money. Moreover, the benefit must be tangible.

It may be positive or negative, the latter in the sense that the benefit conferred on the defendant spares him or her an expense he or she would have had to undertake (*Peel*, at pp. 788 and 790; *Garland*, at paras. 31 and 37).

[Underlining emphasis added]

[40] If the plaintiffs prove the contaminant flows from the Origami Property, then Origami and Spirit Straits are directly liable under the *EMA* to reimburse/indemnify the plaintiffs as responsible persons as defined under that legislation (they are also potentially liable under the other asserted common law causes of action for other losses claimed by the plaintiffs, identified in oral submissions to include stigma damages and losses arising from delayed development). As a consequence, it cannot be said that there is a benefit conferred to Origami and Spirit Straits by the plaintiffs' past and ongoing expenditures to remediate the contamination on the PCI Property.

[41] Justice Voith (as he then was) reiterated this point in *P.T.*:

[88] Whether a respondent received and retained a benefit is typically not, as a practical matter, a point of difficulty. The benefit need not be retained permanently, but the benefit must be tangible. The benefit may be positive or negative. A negative benefit allows the defendant to avoid incurring a cost; see *Kerr* at para. 38. ...

[Emphasis added]

[42] The facts of *Accuworx*, cited by the plaintiffs, where a negative benefit was found to support the unjust enrichment claim, are also distinguishable from the case at bar. In that case, the unpaid remediation work was performed by Accuworx, a third-party service provider, on property owned by Pydel Properties Inc. ("Pydel") and certain neighbouring properties at the request of a Mr. Pileggi, an officer of both Pydel and its tenant, Enroute Imports, resulting from a spill of approximately 20,000 litres of canola oil owned by Sunora Foods Ltd.

[43] As seen from the reasons excerpted below, the benefit was thus obtained by the landlord Pydel for remediation carried out at its request by a third-party to limit its liability exposure and remained unpaid, circumstances where a statutory right of recovery under legislation akin to the *EMA* was not available to Accuworx as a third-party service provider:

[8] In our view, the motion judge did not err in finding that Pydel received a negative benefit. Although it is arguable whether Pydel had "control of the pollutant" and faced exposure on that basis, there is no

doubt that as the owner of the property where the spill occurred, Pydel could be subject to a remediation order from the Ministry of the Environment and Climate Change (the "MOE"). This is especially the case given Enroute's insolvency. The evidence established that Mr. Pileggi took steps to clean up the spill in order to minimize or eliminate the risk that the MOE would make a remedial order.

[9] There was clearly a corresponding deprivation as Accuworx has not been paid for its services. The fact that Accuworx may have a potential claim against other parties does not detract from this fact.

[10] We are also satisfied that there is no juristic reason why Pydel should maintain the negative benefit it received. With respect to the argument that Accuworx had no expectation of payment, a claim based on *quantum meruit* is not dependent on an explicit mutual agreement to compensate for the services rendered; it is sufficient if the services were furnished at the request, or with the encouragement or acquiescence, of the opposing party: *Consulate Ventures Inc. v. Amico Contracting & Engineering (1992) Inc.*, 2007 ONCA 324, 282 D.L.R. (4th) 697 (Ont. C.A.), at para. 99. In the present case, the request for the services was made by Mr. Pileggi who was an officer and director of both Pydel and Enroute.

[11] With respect to the argument that Mr. Pileggi made the request for Accuworx's services on behalf of Enroute as agent for Sunora, we note that the request for services went beyond the area of the property occupied by Enroute and thus Mr. Pileggi had no authority to request those services as an officer and director of that company. Moreover, the motion judge considered the argument that Mr. Pileggi was an agent for Sunora and concluded that it did not alter the fact that the benefit was conferred on Pydel with the encouragement and acquiescence of its officer and director, Mr. Pileggi. That conclusion was amply supported by the evidence.

[Emphasis added]

[44] In oral submissions, the plaintiffs suggested one possible improvement to the Origami Property and a corresponding enrichment to Origami and Spirit Straits resulting from the plaintiffs' expenditures sufficient to establish an interest in land. According to the plaintiffs, the Origami Property will ultimately be clear of what they contend is a finite amount of contaminant given the failure of Origami and Spirit Straits to stem migration, saving those parties the costs of remediation to the Origami Property itself. Their argument is that a negative benefit results to Origami and Spirit Straits as a result. Citing *Grant v. MacDonald*, 1992 CarswellBC 179, 68 B.C.L.R. (2d) 332 (C.A.), rev'g 1991 CarswellBC 670, [1991] B.C.J. No. 554 (S.C.), the plaintiffs also likened the circumstances to Origami and Spirit Straits enjoying the benefit of an unauthorized, non-consensual *de facto* easement to deposit contaminants on neighbouring property for private gain (the plaintiffs deny the existence of any implied easement).

[45] I am unable to accede to those submissions. Those allegations are not pleaded and there is no basis to discern them from the ANOCC. Nor are they raised in the plaintiffs' Application Response.

[46] Furthermore, there is no pleading asserting or particularizing the basis on which the plaintiffs' expenditures to remediate their own property, for which they have a right of recovery under the *EMA*, could be said to confer a benefit to the Origami Property. There is no pleading to the effect that the plaintiffs' expenditures have or will stop the flow of contaminant onto their or any other property which in turn would relieve Origami and Spirit Straits from further liability.

[47] I disagree with the plaintiffs' submission that the ANOCC pleads facts that make this case analogous to *Burns v. Kuhn*, 2008 BCSC 1767, where the pleading in that case established unjust enrichment and a remedial constructive trust claim sufficient to sustain a certificate of pending litigation based on factual allegations that the defendant neighbour obtained better views when it chopped down trees on the plaintiff's property (and, unlike this case, there was a corresponding pleading that it had increased the value of the neighbour's property).

[48] I also disagree with the plaintiffs' assertion that a benefit is conferred on Origami and Spirit Straits because their liability under the *EMA* is only for "reasonably incurred" costs since their claim extends beyond remediation costs (e.g., stigma damages which arise from a civil wrong that does not confer a benefit to Origami and Spirit Straits and does not ground a restitutionary claim).

[49] Lastly, I agree with the submissions of Origami and Spirit Straits that the American authorities cited by the plaintiffs finding "negative unjust enrichment" in environmental contamination cases decided in jurisdictions where no equivalent to the *EMA* exists offer little guidance.

[50] For these reasons, I have found that the ANOCC does not support the plaintiffs' unjust enrichment claim.

[51] The ANOCC also does not support the plaintiffs' constructive trust claim. The ANOCC does not establish the requisite substantial and direct link, causal connection (or nexus) between their expenditures and the specific acquisition, preservation, maintenance or improvement of the Origami Property needed to claim a remedial constructive trust. And as discussed below, the plaintiffs' pleading

concerning the inadequacy of a monetary award is also deficient and thus fails to meet the second requirement to establish a remedial constructive trust is merited.

Monetary Damages

[52] Origami and Spirit Straits also maintain that the plaintiffs are required to plead and demonstrate in the ANOCC that a monetary award is inadequate, insufficient, or inappropriate to warrant a remedial constructive trust. They submit that the plaintiffs' pleading, excerpted below, is deficient, in part because the allegation is framed in the alternative and thus a tacit admission that monetary damages are adequate; there is no pleading that both are sought as primary relief with the election to be made at or before trial. In this respect, they point to the decision of Justice Marchand (as he then was) in *Nu Stream*, where he determined the plaintiffs' pleading "from the outset" seeking repayment of their investment meant they considered damages to be an adequate remedy:

[52] Regarding the adequacy of damages, from the outset, the plaintiffs themselves have sought repayment of their "investment" plus other amounts. Clearly, the plaintiffs consider damages to be an adequate remedy.

[53] Origami and Spirit Straits also contend that the ANOCC is deficient because it lacks any material facts or particulars to support a pleading concerning the inadequacy of damages.

[54] Origami and Spirit Straits submit that the plaintiffs are not relieved from their obligation to deliver an appropriate pleading in this respect. They point out that the *dicta* in those case authorities that suggest it may not be necessary to plead the insufficiency of an award of damages (in particular, *Batth v. Sharma*, 2024 BCCA 29 and *Treasure Bay HK Limited v. 1115830 B.C. Ltd.*, 2024 BCSC 294) are inapplicable as they must be read in the context of claims involving fraud because "good conscience" does not require the claimant to assert the funds went into the referential property: see *Batth* at paras. 32, 34-35; *Treasure Bay* at paras. 16, 31 and 112 (noting that a remedy grounded on unjust enrichment was not sought).

[55] Turning to the ANOCC, in Part 2: RELIEF SOUGHT, the plaintiffs seek judgment for the costs of remediation incurred to trial and indemnity for all future costs of remediation, or in the alternative, a constructive trust over the Origami

Property on the basis of unjust enrichment. It is only in Part 3: LEGAL BASIS, where the pleading asserts that an award of monetary damages is insufficient:

[Part 2]

25. The plaintiffs seek the following relief against the defendants:

...

(b) judgment for the costs of remediation incurred by the plaintiffs at the time of trial;

(c) an order directing that the defendants indemnify the plaintiffs for all future costs of remediation incurred by the plaintiff and for all measures taken by the plaintiffs to prevent the continued migration of the Contaminants onto the Property;

(d) in the alternative, a constructive trust over the [Origami Property] on the basis of unjust enrichment;

...

[Part 3]

38. An award for monetary damages alone is insufficient or inadequate to satisfy the harm suffered by the plaintiffs. Damages at common law will not satisfy the continuing harm that the plaintiffs will suffer as a result of the ongoing migration of the Contaminants from the Source Site and the Roads onto the Property.

[56] There is nothing more in the ANOCC to articulate the grounds or basis in which a monetary award is insufficient, inadequate, or inappropriate.

[57] In the context of this case, given the extraordinary prejudgment mechanism of a certificate of pending litigation, I disagree with the plaintiffs that they are relieved from pleading at all, the inadequacy of an award of monetary damages, particularly where the relief they seek in respect of a constructive trust is framed in Part 3 of the ANOCC as alternative relief to the primary relief sought in Part 2 for judgment for damages. Here, the plaintiffs' pleading should have articulated the material facts grounding the alternative relief asserted in Part 3. Without more, the view taken by Marchand J. of the plaintiffs' tacit admission in *Nu Stream* is apposite to this case.

Summary

[58] The ANOCC fails to establish claims of unjust enrichment and a remedial constructive trust, and thus fails to disclose an interest in land sufficient to support the filing of the CPL.

Should Leave be Required to File a Further Certificate of Pending Litigation?

[59] In view of the substantive deficiencies in the ANOCC discussed above, I agree that the same approach that was taken in *Nu Stream* (at para. 55) and *Minhas* (at para. 13), requiring leave of the court before a further certificate of pending litigation, should be taken in this case. This does not deny the plaintiffs access to the court. Instead, it will ensure that they can appropriately establish, on any further amended pleading, that they have satisfied the requirements to file a certificate of pending litigation before a new one impacting the Origami Property is filed. Requiring leave will also minimize expense to the parties (who, I am told, have been bumped three times in trying to get before the court on the instant application) and promote judicial economy. If Origami and Spirit Straits unreasonably contest a leave application, it is a factor that could be considered in costs.

Disposition

[60] The CPL is discharged.

[61] The plaintiffs must seek leave of the court if they intend to file a new certificate of pending litigation.

[62] Origami and Spirit Straits are entitled to costs of the application at Scale B. I agree with them that costs should be payable forthwith in any event of the cause given the impact of an improperly filed certificate of pending litigation on another's property.

“Walker J.”