IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lakeshore Ventures Ltd. v. Trackside Holdings Ltd.,* 2025 BCSC 1937

Date: 20251006
Docket: S229612
Registry: Vancouver

Between:

Lakeshore Ventures Ltd., Dockside Management Ltd., Beau-Fort Industries Ltd., 0733354 B.C. Ltd., B.F. McLaren Ltd., Lasco Holdings Ltd., 574215 B.C. Ltd., Bob Plowright Realty, 613459 B.C. Ltd., 390697 B.C. Ltd., R. Craig Barton, James S. Barton, Harry Geddes, David Moon, Jeffrey Reimer, Darlene Wenham and Kathleen Renwick

Plaintiffs

And

Trackside Holdings Ltd. and 0720305 B.C. Ltd.

Defendants

Before: The Honourable Justice E. McDonald

Reasons for Judgment

Counsel for the Plaintiffs:	G.E.H. Cadman, K.C.
Counsel for the Defendants:	J.B. Maryniuk
Place and Date of Trial/Hearing:	Vancouver, B.C. April 1, 2025
Place and Date of Judgment:	Vancouver, B.C. October 6, 2025

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Overview

[1] In 2022, the plaintiffs filed a notice of civil claim and a certificate of pending litigation (the "CPL") against the title to a property located in Chilliwack, British Columbia.

[2] There is no dispute that the defendant, 0720305 B.C. Ltd. ("072"), holds title to the property as bare trustee for the other defendant, Trackside Holdings Ltd ("Trackside").

[3] The defendants submit that the true nature of the dispute concerns an allegation of breach of contract, namely, whether the defendants breached a "Participating Loan Agreement" in respect of repayment of certain loans made to them by the plaintiffs (the "Agreement").

[4] The defendants seek to cancel the CPL in one of three ways: (1) by challenging the merits of the plaintiff's claim for an interest in land; (2) by asserting that the pleading does not claim an interest in land; and (3) by showing that no step has been taken in the proceeding for one year. The defendants do not seek an order dismissing the whole of the claim.

[5] For the following reasons, the defendants' application is denied.

Should the Claim Asserting an Interest in Land be Dismissed or Struck Out?

[6] In a summary judgment application such as this, where there is a challenge to the merits of a claim for an interest in land, the applicable test is whether, based on the evidence, there is a *bona fide*, or genuine, triable issue of fact or law disclosed in the pleading: *Xiao v. Fan*, 2018 BCCA 143 at para. 27.

[7] The defendants submit there is no *bona fide* triable issue respecting the claim to an interest in land because the Agreement contradicts the claim's bald assertion that the property is being held in trust for the plaintiffs.

[8] Before analysing the merits of the challenge to the plaintiff's claim for an interest in land, I will review the pleading, followed by the terms of the Agreement.

The Claim

[9] The claim alleges that Trackside solicited and received funds from the plaintiffs pursuant to the Agreement for the express purpose of acquisition and development of properties situated in the City of Chilliwack, British Columbia.

[10] In the claim, it is alleged that the material terms of the Agreement include that it identifies each plaintiff as an "Investor", designates the monies invested by each plaintiff as "Capital", and directs each plaintiff to make their cheque payable to Trackside.

[11] The plaintiffs allege in para. 28 of the claim that Schedule "B" of the Agreement contains the terms whereby the parties agreed that 072 will hold the land in trust as bare trustee on behalf of Trackside and for the plaintiffs as capital investors in the project. Schedule "B" contains a project organization chart.

[12] The plaintiffs allege in para. 29 of the claim that until the "last property" is sold, Trackside has a continuing obligation to account to the plaintiffs for return of their capital invested.

[13] In para. 31 of the claim, it is alleged that pursuant to the terms of the Agreement, 072 continues to hold the property as bare trustee for Trackside and for the benefit of and by way of a constructive trust and security in favour of the plaintiffs to the extent of their invested capital. The plaintiffs allege that this invested capital totals $3,550,000 in aggregate.

[14] The relief sought in the claim includes requests for:

a) a declaration that 072 holds the lands in trust, together with Trackside, by way of constructive trust in favour of the plaintiffs;

b) judgment against Trackside and 072 in the amount of $3,500,000;

c) an accounting for the proceeds of any sale by the defendants of the lands; and

d) a CPL.

The Agreement

[15] Mr. Rogers, the principal of Trackside, attaches a copy of the Agreement to his affidavit #1. He states that 072 is bare trustee for Trackside in respect of the property against which the CPL is registered. Mr. Rogers also attaches a copy of the Agreement that is referred to in the claim. However, beyond attaching the claim, Mr. Rogers provides no evidence about the project or the Agreement.

[16] The plaintiffs have provided affidavits opposing the application with details of the capital they invested with Trackside, and attached copies of the Agreement that they executed. The plaintiffs state that their capital invested has never been repaid. The plaintiffs also state that they never agreed to release or waive any right to be repaid the capital amount that they invested with Trackside.

[17] As the parties have provided me with no evidence about the project, who drafted the Agreement, or why the capital investment was being sought at the time of the Agreement, I am left to review the Agreement itself as part of determining the merits of this application.

[18] The defendants submit the Agreement – on its face – provides the plaintiffs with no interest in the property, while the plaintiffs submit the opposite.

[19] The amount of “Capital Invested” by each investor is set out in the Agreement and the investor is directed to make the cheque payable to Trackside.

[20] The Agreement describes the purpose of the loan and project in the following way:

> **Participating Loan Agreement Purpose:** This loan, along with Capital Invested by other Investors, is to finance the acquisition of and real estate development works over Project properties at: 8250, 8290, 8340, 8418, 8500

> Chilliwack Mountain Rd and 8180 Aitken Road … which are owned by Trackside …
>
> The development works together with the Properties is the "Project". …
>
> [Underline added.]

[21] The role of the parties is described in the Agreement in the following way:

> **Role of Parties:** The Investors and the Developer are non-recourse Lenders to the Project. The Developer will provide the development expertise. Trackside and JC are the Borrowers, undertake all development and sales activity of the Project, will operate the Project bank accounts, and will hold the Properties of the Project through bare trustee subsidiaries. The Investors and the Developer agree to share in the financial results of the Project as set out herein. [Underline added.]

[22] Under the heading, "Project Acquisition Price & Developer Holding Costs", the Agreement states that, "[t]he Developer agrees to place ownership of the Chilliwack Properties … and other Project assets into the Project", and that, "[l]egal titles to the Properties are held through bare trustee companies owned by Trackside …".

[23] Under the heading, "Investor and Developer Contributions", the Agreement defines what is included in the capital invested and states that "[a]ll Investors' Capital Invested will be loaned on a non-recourse basis to Trackside …" [underline added].

[24] Respecting what the investor gets in return for their capital invested, the Agreement sets out the deductions from and the order of priority for distribution of the project income. The investors' priority to receive a return on investment, or a share of the profits from the project income, is ranked 4th, 5th and 6th behind project expenses, loan finder's fees paid to the Developer, "Guarantee Fees" to the Investors and Developer, and all bank and other third-party debt and interest (other than Investor and Developer Capital Invested).

[25] In the section providing for distribution of income, the Agreement includes a term limiting the recourse of the investors, stating as follows:

> The Investors acknowledge that in the event there is insufficient cash to return 100% of the Capital Invested, they shall have no recourse against the Developer, Trackside, JC or any other participant in the Project.
>
> [Underline added].

[26] The Agreement also states that, "the Project will end with the sale of the last property and distribution of all remaining net assets according to the formulas set out herein". There is no dispute that the property over which the plaintiffs have registered the CPL is the "last property" in the Project.

[27] The Agreement also includes a term addressing ownership and security for investment, stating as follows:

> **Property Ownership & Security for Investment During Development:** The Developer will operate the Trackside … bank accounts for the Project and provide day to day management, accounting and administration to complete the Project. Legal Title to the Properties are held by wholly owned subsidiaries of Trackside … acting as bare trustees. This Agreement sets of [sic] the rights of the Investors to profit sharing, return of Capital Invested, Project and financial reporting, approving of Project expansions and other matters. This Agreement shall be evidence, together with copies of invested cheques and banking records, of the Investor's Participating Loan investments. [Underline added.]

[28] At the end of the Agreement, there is a "disclosure of risks" section, which provides that investment in a Participating Loan involves various risks including that the project may not be financially successful and the project may lose money. The Agreement states that, "if there is a financial loss in the Project both the Investor's and the Developer's Capital Invested is at risk for loss". It also states that by signing the Agreement, the investor accepts the risks of investing in the project.

Analysis

[29] As noted in *Wai v. Chung*, 2020 BCSC 34 at para. 21 citing *1077708 BC Ltd. v. Agri-Grow Farm Services Ltd.*, 2019 BCSC 977, an interest in land to support the extraordinary and powerful pre-trial tool of a CPL, cannot be based solely on unsubstantiated assertions without factual foundation.

[30] The plaintiffs cannot rely on the mere fact that they loaned money to Trackside as establishing an interest in land: *Beijing Tian Zi Property Group Trading Ltd. v. Jia*, 2021 BCSC 423 at para. 46.

[31] In the claim, it is alleged that Schedule B of the Agreement indicates that 072 will hold the land in trust as bare trustee on behalf of Trackside and the plaintiffs, and, for the benefit of and by way of a constructive trust and security in favour of the plaintiffs to the extent of their invested capital. In other words, the claim asserts that pursuant to the Agreement, there is an express bare trust and/or a constructive trust in favour of the plaintiffs.

[32] A constructive trust in respect of property "can arise when a party fraudulently uses money provided by the plaintiff towards the payment or maintenance of the property": *Batth v. Sharma*, 2024 BCCA 29 at para. 31. However, in the present case, there is no allegation that the defendants fraudulently used the capital invested. The agreement states that the capital invested by the plaintiffs would be used to loan to Trackside for the purpose of purchasing property and project development.

[33] In the Agreement, the parties turned their minds to identifying the risk of the investment, who would bear the risk of the project, and how the properties that formed the project would be held. The Agreement is clear that the capital invested by the plaintiffs would be loaned to Trackside, on a non-recourse basis against the "Developer, Trackside, JC or any other participant in the Project". However, the Agreement does not provide that investors have no recourse against the property making up the project.

[34] The parties also turned their minds to how property ownership would be held. The Agreement specifically provides that 072 would hold legal title to the properties as bare trustee.

[35] The organizational chart at Schedule "B" of the Agreement shows each of the investors and the developer being entitled to 50% of the profits from the project. The project is depicted as consisting of the property. Underneath the property, Trackside is identified as holding the bank account and operating the property, with 072 holding the property in trust as bare trustee.

[36] The defendants contend that the Agreement does not state that 072 will act as a trustee for the plaintiffs, and that the claim, at most, articulates a basis for a trust between 072 and Trackside. However, while the Agreement provides that Trackside "will hold the Properties of the Project through bare trustee subsidiaries", Schedule "B" allows for some ambiguity as to the proper interpretation of the term "bare trustee". In other words, the organizational chart at Schedule "B" could be interpreted to support the allegation that the investors have an entitlement to the project and the property making up the project.

[37] Furthermore, as already mentioned, while the Agreement states that the investors have no recourse against the Developer, Trackside, JC or any other participant in the Project, it does not state there is no recourse against the property.

[38] Based on my reading of the claim and the Agreement, and given the absence of evidence concerning the project or the circumstances surrounding how the capital came to be invested by the investors, I am unable to find that the claim clearly discloses no genuine, triable issue of fact or law respecting the plaintiffs having an interest in the property.

[39] Therefore, for the reasons I have explained, I dismiss the application for summary judgment pursuant to Rule 9-6 of the *Supreme Court Civil Rules*, B.C. Reg 168/2009 [*Rules*].

[40] Given that I have found that there is no basis to grant summary judgment, I also find that there is no basis, pursuant to Rule 9-5 and s. 215(1) of the *Land Title Act*, R.S.B.C. 1996, c. 250 [*Act*] and assuming the facts pleaded in the claim to be true, to strike out the claim on the basis that the pleading does not assert an interest in land.

Should the CPL be Cancelled for Delay?

[41] In the absence of a step being taken for one year, s. 252(1) of the *Act* provides that a party entitled to an estate or interest in land subject to a CPL may apply to cancel it. Courts have interpreted a "step" to mean a formal step, whether

required or permitted by the *Rules*, that advances the action towards trial or resolution: *Lawn Genuis Manufacturing (Canada) Inc. (Drainmaster) v. 0856810 BC Ltd.*, 2016 BCSC 1915 [*Lawn*] at para. 11. Mere exchanges of correspondence between counsel are not generally regarded as a step within the meaning of s. 252: *Lawn* at para. 18, citing *Motz Bros. Holdings Ltd. v. McKean*, 2009 BCSC 1133 [*Motz*] at para. 9.

[42] Where the requirements of s. 252 are met, prejudice to the landowner is presumed. The onus will then shift to the plaintiff to show that the prejudice to the landowner is not serious, or it is outweighed by other factors making the cancellation of the CPL unjust: *Motz* at para. 12.

[43] In such cases, the court has residual discretion to decide to cancel, or not cancel, a CPL by considering factors such as:

a) whether the delay(s) in advancing the proceeding are explained and whether the explanation is compelling enough to excuse them: *Lawn* at para. 22(a);

b) the strength of the plaintiff's claim and the consequences to the plaintiff if the CPL is lost, for example, if considering the size of the claim, success on it would be hollow without the CPL in place: *Lawn* at para. 22(b);

c) whether the prejudice to the defendants from a CPL registered, which is a factual presumption, has been rebutted or not: *Lawn* at para. 22(c);

d) whether the prejudice to the defendants would in fact be incurred: *Charbonneau v. Charbonneau Estate*, 2023 BCSC 2463 at para. 44; and

e) whether, in all the circumstances, cancellation is in the interests of justice: *GMC Properties Inc. v. Rampart Estates Ltd.*, 2023 BCCA 172 [*GMC*] at paras. 57 and 60.

Analysis

[44] In the present case, it is clear the requirements of the relief sought have been met because the CPL has been registered and no step has been taken in this proceeding for more than one year since the last step. The plaintiffs agree that the last step occurred on June 16, 2023, when the defendants filed their response to civil claim.

[45] However, the plaintiffs point out that the full procedural history of this proceeding is relevant to deciding whether, in all the circumstances, it would be just to cancel the CPL. When no response to the claim was filed, the plaintiffs' counsel warned the defendants about the possibility of the plaintiffs taking default judgment. At that point, counsel for the defendants filed a response "under protest", while also acknowledging that the response filed on behalf of the defendants was merely "*pro forma".*

[46] Counsel for defendants further indicated that an amended response would be filed by July 14, 2023, but no amended response was ever filed. Instead of filing an amended response that complied with the *Rules*, the defendants' next step was to file the present application on July 4, 2024.

[47] By pointing out that an amended response was promised but never filed, I find that the plaintiffs have provided an explanation for some of the delay. However, I do not find that it completely excuses the delay since the plaintiffs never applied to strike out the "pro forma" response. On balance, I find that this factor weighs, albeit not strongly, in favour of cancelling the CPL

[48] The plaintiffs also submit that the defendants have not alleged any hardship because of the registration of the CPL. Mr. Rogers states in his affidavit #1 that because of the CPL, "I am unable to sell the lands or obtain financing using the lands".

[49] While prejudice to the defendants is presumed, I find there is no evidence to show actual prejudice to the defendants, such as an inability to fund the completion

of the project or to complete a pending sale of the property. Mr. Rogers' evidence is very general in nature, merely pointing to the existence of the CPL as an impediment to his dealing with the property. Given the lack of evidence of actual prejudice, I find that the factor of whether prejudice to the defendants would in fact, be incurred weighs in favour of declining to cancel the CPL.

[50] I have already determined that the claim raises a triable issue. The plaintiffs confirmed in their affidavits that they invested significant capital in the project and they never released or waived their right to be repaid as provided by the Agreement. The plaintiffs also confirm that the CPL is registered against the last remaining property in the project.

[51] In my view, the plaintiff's claim for an interest in land has a reasonable prospect of succeeding. The prospect of success is a factor to be considered in exercising my residual discretion under s. 252 of the *Act* and it weighs in favour of declining to cancel the CPL.

[52] When I consider all of the circumstances, I find that a cancellation is not in the interests of justice. For these reasons, I decline to exercise my residual discretion to cancel the CPL pursuant to s. 252.

[53] Therefore, I dismiss the alternative ground of relief seeking to cancel the CPL pursuant to s. 252(1) of the *Act*.

Costs

[54] Costs to the plaintiffs in the cause.

"E. McDonald J."