IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Brar v. 628564 B.C. Ltd.,*
2025 BCSC 1970

Date: 20251008
Docket: H06340
Registry: Abbotsford

Between:

Chint Kaur Brar

Petitioner

And

628564 B.C. Ltd., Blackstone (ASV) Holdings Ltd., Pawandeep Dhunna, Aarti Dhunna, Sonia Dhunna and Dave Singh Takhar

Respondents

Before: The Honourable Justice Caldwell

Reasons for Judgment

In Chambers

Counsel for the Petitioner:	R.S. Deol
Counsel for the Respondents, 628564 B.C. Ltd., Blackstone (ASV) Holdings Ltd., Pawandeep Dhunna, Aarti Dhunna and Sonia Dhunna:	M. Nied
Place and Date of Hearing:	Abbotsford, B.C. July 3, 2025
Place and Date of Judgment:	Abbotsford, B.C. October 8, 2025

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Introduction

[1] The petitioner seeks an order of foreclosure. The normal orders were addressed along with a request for a one-day redemption period.

[2] The respondents, save for Dave Singh Takhar, seek an order converting the petition to an action and referring it to the trial list.

Background

[3] The petitioner was the beneficial owner of the shares of 628564 B.C. Ltd. ("628"); 628 in turn owned three properties in Abbotsford. At least one of those properties involved the presence and operation of a Husky gas station.

[4] In March 2021, 628, as vendor, and the respondents, as purchasers, entered a contract of purchase and sale ("CPS") which was prepared by the respondents' real estate agent. That CPS contained no representations or warranties regarding environmental contamination but did provide subjects allowing for the purchasers to conduct a feasibility study and to obtain an environmental report.

[5] The purchasers asked the vendor to provide them with two previously prepared reports which related to environmental issues, including the presence of underground storage tanks for a gas station. Those were provided to the purchasers.

[6] Subsequently, the purchasers sought, and obtained, an extension of subject removals, specifically to allow them to obtain their own environmental assessment or report.

[7] Prior to completion of the CPS, in February/March of 2023, the parties determined to change the form of the transaction from a purchase of lands to a share purchase agreement ("SPA") for the shares of 628.

[8] The basic terms of the agreement were:

- Blackstone would buy the shares of 628 for $6.7 million;

- there would be five deposits totalling $1 million;
- there would be vendor take back financing of the $5.7 million balance;
- the first three months of financing would be at 10% per annum, calculated monthly;
- after three months, the financing would be at 20% per annum, calculated monthly;
- during the vendor take back financing, the purchaser would pay interest only; and
- the vendor take back financing would be secured by a mortgage over the three properties.

[9] The purchasers say that they expressed concerns about refinancing and possible environmental issues but that they were told by the vendor that there were no environmental concerns, no need for environmental investigations, and, further, that the vendor would assist the purchasers in obtaining timely refinancing. These allegations are denied by the vendor.

[10] The SPA was completed. The refinancing efforts failed. The purchasers fell into default of payments. The property is uninsured, and the property taxes are unpaid.

The Share Purchase Agreement

[11] The SPA did contain one or more warranties or representations regarding environmental issues, including one which stated that there were no underground storage tanks on the properties.

[12] Paragraph 4.1(d)(iii) states:

> The Company is not in breach of any law, ordinance, statute, regulation, bylaw, order, decree, covenant, restriction, plan, or permit to which it is subject or which applies to it, including without limitation any Environmental Laws, and the uses to which the assets of the Company have been put are

not in breach of any law, ordinance, statute, regulation, bylaw, order, decree, covenant, restriction, plan, or permit, including those regulating the discharge of material into the environment and the storage, treatment, and disposal of waste or otherwise relating to the protection of the environment and the health and safety of persons. For greater certainty, the assets of the Company have not been used in a manner which does or will give rise to any obligation of restoration or removal or any liability for the costs of restoration or removal or for the payment of damages to any third party. There are no underground storage tanks on any of the lands or leasehold properties which form part of the assets of the Company, nor is there located on them any Hazardous Substances.

[13] Paragraph 9.3 states:

> … At the Closing, the Vendors will tender to the Purchaser:
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> …
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> (d) a bring-down certificate of the Vendors certifying that:
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> (i) the representations and warranties of the Vendors contained in this Agreement are true and correct in all material respects on and as of the Completion Date; and
>
> (ii) all agreements, covenants and conditions required to be performed or complied with by the Vendors under this Agreement on or before the Completion Date have been duly performed and complied with by the Vendors in all material respects.
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> …

[14] Paragraph 10.1 provides:

> … The representations, warranties, covenants and agreements of the Vendors contained in this Agreement and in any document or certificate given under this Agreement will survive the closing of the transactions contemplated by this Agreement and remain in full force and effect indefinitely notwithstanding any waiver by the Purchaser unless such waiver was made after notice in writing by the Vendors to the Purchaser setting forth the breach.

[15] Paragraph 10.2 provides:

> … The Vendors acknowledge and agree that the Purchaser has entered into this Agreement relying on the representations, warranties, covenants, and agreements, and other terms and conditions of this Agreement, and that no information which is now known, which may become known, or which could upon investigation have become known to the Purchase or any of its present or future officers, directors, or professional advisors in any way limits or

> extinguishes any rights the Purchaser may have against the Vendors, including without limitation, any right to indemnity under this Agreement.

[16] Paragraph 6.3 provides that:

> … Each of the Vendors covenant and agree with the Purchaser to indemnify the Purchaser against all liabilities, claims, demands, actions, causes of action, damages, losses, costs or expenses (including legal fees on a solicitor and his own client basis) suffered or incurred by the Purchaser, directly or indirectly, by reason of or arising out of:
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> (a) any warranties or representations on the part of the Vendors set forth in this Agreement being untrue;
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> (b) a breach of any agreement, term or covenant on the part of the Vendors made or to be observed or performed pursuant hereto.

[17] Devinder Singh Brar, husband of the petitioner, has provided an affidavit. He describes himself as a businessman. He does not identify himself as having any role with, position in or authorization to represent or speak on behalf of 628.

[18] At paragraph 6 of his affidavit, he deposes:

> I do not know how the warranty referred to in the SPA in respect of underground storage tanks came to be included and can only assume that it was included in error as the existence of such tanks was known to all of the parties involved in the sale and purchase transaction as indicated by the documents referred to above.

[19] The petitioner, Chint Kaur Brar, swears an affidavit basically confirming the contents of her husband's affidavit. She says that all dealings were accomplished through realtors and lawyers. She denies making representations or having direct dealings with the purchasers.

[20] One of the respondents, Pawandeep Dhunna, swears an affidavit where, at paragraph 7, she acknowledges knowledge of underground fuel tanks but claims the vendors represented that there were no possible environmental issues to be concerned about when it came to the tanks.

The Law

[21] Rule 22-1(7)(d) of the *Supreme Court Civil Rules* [*Rules*] provides that the court has jurisdiction to refer a chambers matter to the trial list. This can be a general referral or a referral on a specific issue. The jurisdiction extends to and covers foreclosure matters per Rule 21-7(5)(k) of the *Rules*.

[22] In *HGE Administrative Services Ltd. v. Perrick*, 2011 BCCA 308 the Court confirmed the approach in such applications, specifically in the context of a foreclosure:

> [16] The role of this Court on appeal is confined to determining whether the master erred when he failed to find a triable issue between the parties. Accordingly, this Court must consider whether the threshold test for a triable issue has been met. It is not for this Court to determine the merits of the issues or defences raised by Ms. Perrick.
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> [17] It is well established that an *order nisi* will not be granted unless it is "manifestly clear" that there is no *bona fide* triable issue. In *Northland Bank v. Kocken* (1993), 100 D.L.R. (4th) 753 at 760, 77 B.C.L.R. (2d) 377, this Court found:
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> > The issue raised by the appellants was whether the proceeding should go to trial in the ordinary way or be determined on affidavit evidence. In *Bank of British Columbia v. Pickering* (1983), 62 B.C.L.R. 136 (C.A.), this court set out the question that must be asked in deciding just such an issue. At p. 138 Mr. Justice Taggart said:
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> > > On an application such as this the provisions of R. 52(11) govern. ... There has been some suggestion in some of the authorities to which we were referred that there is a distinction to be drawn between what must be found in order to act under R. 18, the summary judgment rule, and that which must be found in order that the court may act under R. 52(11). I think the distinction is somewhat illusory. To me, I think the matter is stated as clearly as it can be stated by Seaton J.A. in the *Skalbania* case, [*Memphis Rogues Ltd. v. Skalbania* (1982), 38 B.C.L.R. 193, 29 C.P.C. 105 (C.A.)]. There at p. 202 he said:
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> > > > "The question has been stated in a number of ways: Is there no real substantial question to be tried? Is there no dispute as to facts or law which raises a reasonable doubt? Is it manifestly clear that the appellants are without a defence that deserves to be tried? Although cast in different terms, all point to the same inquiry, namely, is there a bona fide triable issue?"

> [18] In *Royal Bank of Canada v. Rizkalla* (1984), 59 B.C.L.R. 324 at 325, 50 C.P.C. 292 (S.C. Chambers), McLachlin J., as she then was, set out the principles that should guide the court in determining whether a petition for foreclosure should be referred to the trial list:
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> > There is no dispute as to the legal principles which should guide this court in determining whether the petitioner's claim should be referred for trial. Unless it is manifestly clear that the mortgagors are without a defence that deserves to be tried, their application to place the matter on the trial list should be granted.... [Emphasis added.]
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> [19] In determining whether a triable issue exists, the role of a judge in chambers or a master is not to determine any issue of fact or law. Rather, their function is limited to a determination of whether a *bona fide* triable issue arises on the material before the court in the context of the applicable law: *Re Hughes v. Sharp* (1969), 5 D.L.R. (3d) 760 at 763, 68 W.W.R. 706 (B.C.C.A.).
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> [20] In *Northland Bank*, this Court found at 760-761:
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> > In determining whether there is a *bona fide* triable issue the chambers judge does not enter upon a detailed consideration of the merits. This is so because there may be a trial of that issue in any event. Rule 18 does not give rise to a summary trial: see *Soni v. Malik* (1985), 1 C.P.C. (2d) 53, 61 B.C.L.R. 36 (S.C.).
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> > This distinction is especially relevant in mortgage proceedings. The introduction of Rule 50 recognized that in many, if not most, foreclosure proceedings default is not contested. Removing all foreclosure proceedings into chambers effected a saving in time and money in most cases. In my view, however, Rule 50 was not intended to derogate from the legitimate rights of mortgagors. The same can be said of the interests and rights of guarantors who may be joined in the same petition under Rule 50(3).

[23] In *Coast Capital Savings Federal Credit Union v. Arbutus Bay Estates Ltd.,* 2021 BCCA 185, the Court further commented on what is considered a triable issue in a foreclosure action:

> [33] Moreover, to be considered a bona fide triable issue, the issue must be one that goes to the root or foundation of the foreclosure action: *Griffin v. 0904713 B.C. Ltd.*, 2013 BCSC 273 at para. 41. In other words, the issue must call into question the validity of the mortgage, the ability of the mortgagee to claim foreclosure under the mortgage, or some other real question as to the amount owing under the mortgage: *Canadian Imperial Bank of Commerce v. Grigg*, 2017 BCSC 1711 at para. 21, citing *Griffin*.

[24] This basic approach, the triable issue question, has not changed. What has changed is the recognition that proportionality and efficiency must also factor into the courts' approach. The courts have found that a triable issue does not necessitate a

full trial in every case and that some triable issues can be sufficiently dealt with using the hybrid procedures available under the *Rules*. This approach was most clearly and recently recognized in the case of *Cepuran v. Carlton*, 2022 BCCA 76:

> [158] It should be kept in mind that the starting point for those matters that are properly brought by way of petition is that the *Rules* contemplate that a summary procedure will be appropriate: *Conseil scolaire* at paras. 29–30. This is different than the starting point for an action. There should be good reason for dispensing with a petition's summary procedure in favour of an action. The mere fact that there is a triable issue is no longer a good reason.
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> [159] The modern approach to civil procedure, as encouraged in *Hryniak*, is to allow parties and the trial courts to tailor the pre-trial and trial procedures to a given case, in the interests of proportionality and access to justice, while preserving the court's ability to fairly determine a case on the merits. In my view, R. 16-1(18) and R. 22-1(4) work to reflect this modern approach within a petition proceeding.
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> [160] To summarize, I am of the view that a judge hearing a petition proceeding that raises triable issues is not required to refer the matter to trial. The judge has discretion to do so or to use hybrid procedures within the petition proceeding itself to assist in determining the issues, pursuant to R. 16-1(18) and R. 22-1(4). For example, the judge may decide that some limited discovery of documents or cross-examination on affidavits will provide an opportunity to investigate or challenge the triable issue sufficiently to allow it to be fairly determined by the court within the petition proceeding, without the need to convert the proceeding to an action and refer it to trial.

Decision

[25] The questions to be addressed are, therefore, is there a triable issue on the material before me and if so, is this matter suitable for a hybrid process or does it require a full trial.

[26] In my view, there can be no question that there is at least one and possibly more triable issues raised by the material.

[27] The written document, the SPA, clearly contains statements, warranties and representations regarding environmental issues. It states, or may be interpreted as stating, that the SPA warranties and representations trump or over-ride the actual knowledge of the purchasers. The vendor petitioner says that these and other portions of the SPA must have been included by mistake. The respondents disagree.

[28] The SPA contains indemnification provisions relating to losses suffered by the purchaser respondents due to their reliance on the representations and warranties. It is possible that, if a court determines the warranties and representations to be effective, the entirety of the foreclosure itself may fail and the respondents may be entitled to be indemnified for all losses and expenses incurred in defending the claim.

[29] The above are only a couple of observations regarding clear triable issues upon which evidence will have to be led and challenged by the various parties. There are clearly both factual and legal issues that need to be resolved to determine the validity of the agreement. These go to the heart of the foreclosure action.

[30] I have considered the comments in *Cepuran* and the possibility that a hybrid approach might suffice. I am not convinced that it will. There are millions of dollars at issue and the dispute centres on whether a written document represents the agreement between the parties. What was said to whom and when is in factual dispute. I find it difficult to imagine such a dispute being resolved short of allowing a court to see and hear the witnesses give their evidence and be cross-examined in open court. Credibility may well be a central issue in the court's decision and a full trial with *viva voce* evidence will provide the best evidence for such assessment.

[31] I order that the matter be converted to an action, that the petition serve as the Notice of Civil Claim, and that the respondents have 45 days from the release of this decision to file a Response and, if they wish, a Counterclaim.

[32] In the circumstances, costs will be in the cause.

"Caldwell J."