

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Gill v. Taaj Jewellers Ltd.*,
2025 BCSC 2122

Date: 20251029
Docket: S258039
Registry: New Westminster

Between:

Amrit Pal Singh Gill and Harpreet Kaur

Plaintiffs

And

**Taaj Jewellers Ltd., Zevar Gold & Diamond Jewellers Ltd., Sandeep Sharma,
Meghna Kumar, Neha Kumar, Mamta Kumar, and Ranjeev Kumar**

Defendants

Before: The Honourable Justice Norell

Reasons for Judgment

Counsel for the Plaintiffs:

V. Sidhu

Counsel for the Defendants Taaj Jewellers
Ltd., Zevar Gold & Diamond Jewellers Ltd.,
Meghna Kumar, Neha Kumar, Mamta
Kumar and Ranjeev Kumar:

O. Kowarsky

Place and Date of Hearing:

New Westminster, B.C.
September 10, 2025

Place and Date of Judgment:

New Westminster, B.C.
October 29, 2025

Overview

[1] The plaintiffs apply pursuant to Rule 10-1 of the *Supreme Court Civil Rules*, BC Reg 168/2009, for a preservation order, specifically that upon the sale of certain property located on 148 Street in Surrey, BC (the “Property”), the net proceeds of up to \$67,500 shall be paid into court pending further court order or written agreement of the parties.

[2] For the following reasons, I dismiss the application.

Legal Framework

[3] The relevant portions of Rule 10-1 state:

(1) The court may make an order for the detention, custody or preservation of any property that is the subject matter of a proceeding or as to which a question may arise and, for the purpose of enabling an order under this rule to be carried out, the court may authorize a person to enter on any land or building.

(2) If the right of a party to a specific fund is in dispute in a proceeding, the court may order the fund to be paid into court or otherwise secured.

[Emphasis added.]

[4] The plaintiffs do not seek a *Mareva* injunction, which has a more onerous test.

[5] The test for a preservation order under Rule 10-1(1) is set out in *Osooli-Talesh v. Emami*, 2003 BCSC 1924 at para. 43:

- (a) Is there a claim on the evidence and not just on the pleadings to a proprietary interest in property?
- (b) Is there some evidence to render reasonable the belief of the plaintiff that the property is threatened with disposition or transfer outside the jurisdiction?
- (c) Is there a substantial question to be decided as to the plaintiff's entitlement to the property?
- (d) Does the balance of convenience favour the granting of the order?

[6] Rule 10-1 is designed to preserve the *status quo* for property that is the subject matter of a proceeding, pending trial: *Laxton v. Coglon*, 2006 BCCA 178 at para. 23.

[7] In *Kepis & Probe Financial Group Inc. v. Timis Corporation*, 2018 BCCA 420 at paras. 22-24, the Court discussed the first requirement of the test, and identified it as a “threshold” issue:

[22] The threshold issue is whether the applicant has established a proprietary interest in the disputed property. In the case of disputed property that involves a fund, the applicant must establish that a right to a specific fund is in question. The court may order the fund be paid into court or otherwise secured. This form of preservation order is typically referred to as an impound order.

[8] Although the parties addressed all requirements of the test under Rule 10-1(1), the focus of the defendants was on the first requirement, being whether there is a claim on the evidence to a proprietary interest in the Property. Given my findings, I only find it necessary to discuss that requirement.

Positions of Parties

[9] This action is primarily for an alleged debt of \$67,500, although other claims are made. The notice of civil claim alleges that the plaintiffs delivered 15 units of gold to the defendant Sandeep Sharma, who they say was the agent of the defendant Taaj Jewellers Ltd. (“TJL”). The gold was to be sold by TJL. Mr. Sharma provided the plaintiffs with two TJL cheques totalling \$67,500. The cheques were dishonoured for insufficient funds. Despite demands, the plaintiffs have not been paid the \$67,500. In addition to breach of contract, the notice of civil claim alleges breach of the duty of good faith, negligence, unjust enrichment, breach of fiduciary duty, knowing assistance in breach of trust, conversion, civil conspiracy, fraudulent and negligent misrepresentation, and vicarious liability, against all the defendants, and the remedy of tracing.

[10] The defendants Mr. Sharma and Ms. Meghna Kumar are the registered owners of the Property. The Property was their matrimonial home. Mr. Sharma and

Ms. Meghna Kumar are separated and have an ongoing family law proceeding. A foreclosure petition was commenced on September 4, 2025, and the Property is listed for sale.

[11] The plaintiffs submit that they have a strong case as evidenced by the dishonoured cheques. They submit that the sale of the Property is an attempt by Mr. Sharma and Ms. Meghna Kumar to liquidate their primary known asset in British Columbia to frustrate the enforcement of any judgment the plaintiffs may obtain in this action against them. Further, if the net sale proceeds are not preserved, there is a serious risk that the funds will be dissipated, rendering any potential judgment hollow. In support of their argument that there is risk, the plaintiffs point to the defendants' conduct which they say includes, but is not limited to, issuing dishonoured cheques and winding down the business operations of TJJ shortly after the impugned transaction. The plaintiffs submit that the balance of convenience favours them, as such an order would be minimally prejudicial to these defendants, and it merely preserves the disputed funds in a secure, interest-bearing account under the Court's control. Conversely, the prejudice to the plaintiffs would be irreparable if the funds are dissipated and their potential judgment is rendered unenforceable.

[12] The plaintiffs cite several case authorities which address *Mareva* injunctions, traditional interlocutory injunctions, removal of a certificate of pending litigation under ss. 256 and 257 of the *Land Title Act*, R.S.B.C. 1996, c. 250, and Rule 10 of the *Supreme Court Civil Rules*. In my view, they do not address the threshold issue here, which is whether the evidence reveals a claim to a proprietary interest in the Property. The plaintiffs cite *Sarzynick v. Skwarchuk*, 2021 BCSC 443 at para. 221 in support of an argument that where a defendant has a history of attempting to dispose of assets or obfuscate their dealings, a preservation order is necessary and just. *Sarzynick* does not stand for that proposition. The paragraph cited addresses that on the facts of that case, the probability of recovering damages was a relevant factor in deciding whether to grant a constructive trust following a trial.

[13] The defendants submit that none of the requirements in the test for a Rule 10-1(1) preservation order are met but focus on the first requirement. They submit that the Property is not the subject matter of the proceeding, nor is a right to the potential sale proceeds in dispute in the proceeding. There is no claim on the pleadings or the evidence to a proprietary interest in the Property.

[14] Mr. Sharma did not file an affidavit, or attend on the application, although he did file a response to the application which mirrors that of the other defendants. Counsel advised that he was in court when this application was adjourned at his request to this hearing date, and that he was personally served with the requisition setting down this hearing. Court was stood down for counsel to attempt to contact him. Counsel received a notification that his message to Mr. Sharma was read, but there was no response. I was satisfied Mr. Sharma had notice of the application and the application proceeded.

[15] Mr. Sharma's response to civil claim admits the allegation that on April 14, 2015, with the knowledge of all the other defendants, he attended the plaintiffs' residence on behalf of the defendants Mr. Sharma, Meghna Kumar, Neha Kumar, and TJL (the "TJL Parties"), and the plaintiffs delivered the gold to him. Mr. Sharma pleads that any interactions he had with the plaintiffs were in his capacity as manager of TJL and not in his personal capacity, and that TJL received the gold, and some of the proceeds from its sale. He alleges that Neha and Meghna Sharma appropriated the funds for their own personal use. Mr. Sharma has filed a third party notice against the TJL Parties making the same allegations.

[16] Counsel for the applicants also served this application on the two mortgagees on the Property. They advised counsel that they take no position on the application. It is unclear if there is equity in the Property.

Analysis

[17] The first threshold requirement of the test is whether there is a claim on the evidence and not just on the pleadings to a proprietary interest in Property.

[18] The notice of civil claim does not mention the Property. However, paras. 69-70 and 76 in the Facts section allege that the plaintiffs claim an equitable proprietary interest in the gold and in any property, account, or asset into which the gold or their proceeds were converted. Those paragraphs further allege that the proceeds from the disposition of the gold have been converted, mixed or commingled into other property, which is said to be “business inventory, accounts, or real property” associated with all the defendants. Paragraph 99 alleges that the defendants used funds derived from the disposition of the gold to invest in “other properties, assets, and/or business ventures” and claims the remedy of tracing. This remedy and a constructive trust are claimed again in the Relief Sought section.

[19] I turn to the evidence which, given my conclusions, I will set out in some detail. The plaintiff Mr. Gill provided an affidavit in which he states:

- a) On April 10, 2025, he and his wife entered into an agreement with the TJL Parties. The TJL Parties, acting through their agent Mr. Sharma, agreed to purchase 15 units of gold from the plaintiffs for \$67,500. On April 14, 2025, Mr. Sharma attended at their residence to collect the gold on behalf of the TJL Parties. Mr. Gill alleges that he “understands” (which is inadmissible unattributed hearsay) that Mr. Sharma did so at the direction of Meghna and Neha Sharma;
- b) Mr. Gill gave the gold to Mr. Sharma, and he provided him with two post-dated cheques drawn on the corporate bank account of TJL, both dated April 19, 2025. The cheques were in the amounts of \$36,000.00 and \$31,500.00, for a total of \$67,500.00. When Mr. Gill deposited the first cheque, it was returned for insufficient funds. Despite repeated demands, the defendants have refused to pay for the gold or to return it to the plaintiffs;
- c) Ms. Meghna Kumar and Mr. Sharma are the registered owners of the Property, and it is currently listed for sale. Mr. Gill has requested that these defendants agree to have \$67,500 from the net sale proceeds be

paid into court pending a final order or settlement of this action, and they have refused;

- d) Mr. Gill is concerned that Ms. Meghna Kumar and Mr. Sharma are attempting to sell the Property to liquidate their assets and move the proceeds beyond the reach of the plaintiffs. His concern is based on the following: (i) the defendants provided him and his wife with cheques that they knew or ought to have known would be dishonoured; (ii) his view that the defendants have refused to communicate with them in good faith to resolve this debt; (iii) the defendants have, in their response to civil claim, denied the entire transaction in a manner that he believes to be untruthful; and (iv) the business of TJL appears to have been wound down or is in the process of being wound down, further limiting the plaintiffs' avenues for recovery; and
- e) Mr. Gill believes that if the Property is sold and the net proceeds are paid to Ms. Meghna Kumar and Mr. Sharma, there is a serious risk that those funds will be dissipated, and we will be unable to recover the money owed to the plaintiffs if they are successful at trial. The Property represents the only significant asset of which he is aware from which the plaintiffs might recover their losses.

[20] In my view, there is nothing in that evidence which shows a basis for a proprietary claim to the Property or to a specific fund in dispute. The plaintiffs also filed evidence of excerpts from police occurrence reports arising out of an incident on May 8, 2015, but they are not relevant to the first threshold requirement.

[21] I go on to consider whether the other evidence filed on this petition would provide some basis for a claim to a proprietary interest in the property. The only other evidence is that of Ms. Meghna Kumar which states:

- a) She and her sister, the defendant Neha Kumar, are the owners and directors of TJL. They are the daughters of the defendants Mamta Kumar

and Ranjeev Kumar, who own the defendant Zevar Gold & Diamond Jewellers Ltd. Mr. Sharma was a sales representative and manager of TJL;

- b) She is separated from Mr. Sharma and in the process of ending their marriage. They had not lived together as “man and wife” for about two years before their separation, but they shared the Property, which is their matrimonial home. She moved out of the Property on March 21, 2025, about three weeks prior to the plaintiffs’ alleged agreement concerning the gold;
- c) She has never sold, delivered, or picked up gold or funds from either of the plaintiffs. She has never done business with the plaintiffs, and would have no idea who they are, were it not for an incident on May 8, 2025, when the plaintiffs attended TJL apparently attempting to get paid, and she was called to attend the premises. She understands now that these were the plaintiffs, but she did not know who they were then. The police attended and she gave a statement of what her sister told her. She denies the statements ascribed to her in the notice of civil claim;
- d) TJL was not a gold bullion retailer. It sold finished jewelry. From time to time, TJL would sell gold ounces which would be picked up from the bullion exchange, but all transactions would be at the store, and the time frame between purchase and delivery would be the same day, or at most a few days, at the current market rate. The actions that the plaintiffs allege Mr. Sharma did are outside of how Mr. Sharma would have been trained to conduct business and were outside the scope of his employment and authority with TJL. She has reviewed the books of TJL, and it has never received, been in the possession of, or had any benefit from the gold that was sold under the alleged agreement;
- e) She and Mr. Sharma purchased the Property in October of 2024. At no time were any funds from the plaintiffs applied to the purchase,

maintenance, or upkeep of the Property. The Property cost \$1,535,000, and she and her parents contributed \$160,000 to the down payment. Other purchase funds came from first and second mortgages totaling \$1,212,525. The first mortgagee has commenced foreclosure proceedings. She is seeking an unequal division of family assets, as the Property is the primary family asset in which she contributed a significant down payment; and

- f) At no time was the Property used as a storefront or a place of business. TJL was mismanaged by Mr. Sharma and is now defunct, and she and her sister are in the process of winding it up.

[22] Again, in my view, there is nothing in that evidence which shows an basis for the plaintiffs having a proprietary claim to the Property or to a specific fund in dispute.

[23] This application is similar to the situation in *Wong v. Grewal*, 2015 BCSC 2394, where Justice Burke dismissed an application for a preservation order. In that action, the plaintiff sought rescission of a purchase of shares in a company called Solaris. The plaintiff sought a preservation order over settlement proceeds arising from a dispute between the defendant and two others which concerned the separation of their business interests, including Solaris. I adopt Justice Burke’s reasoning as applicable here:

[43] To a great extent, I find this application is in fact more akin to that reflected in *Penner v. Williamson*, [1990] B.C.J. No. 2217 (S.C.) (QL). Mr. Wong is, in effect, seeking to use Rule 10 to require the defendants to furnish security before judgment.

[44] This is made clear by the comment at paragraph 29 of Mr. Wong’s first affidavit, where he deposes:

... I believe that if funds are not paid into court, Grewal will dissipate funds such that there will not be money available to satisfy any judgment that the plaintiffs obtained against the defendants.

[45] As set out in the succinct judgment of *Penner*, R. 10-1(1) does not authorize the court to grant an order that “would be tantamount to making the defendant furnish security before judgment.”

[46] Fundamentally, I conclude Mr. Wong is seeking to use R. 10-1(1) and (2) to furnish security before judgment. As noted in *Penner*, the ownership of the fund itself is not in dispute; it is not identified with any particularity and involves funds that are comingled with other monies to which Mr. Wong does not allege interest. Essentially, Mr. Wong seeks the funds as part of attempting to realize on a possible judgment in the future. This, in my view, is a veiled attempt to have the defendants furnish security before judgment. Mr. Wong is unable to establish the imminent disposition of assets, among other factors, and therefore I would not be inclined to grant this order.

[24] In my view, that is the same situation here. The plaintiffs are attempting to use Rule 10-1(1) and (2) to furnish security before judgment. The plaintiffs have not provided any evidentiary basis for a claim to a proprietary interest in the Property or a specific fund in dispute.

[25] As the plaintiffs have not established the first threshold requirement for a Rule 10-1(1) and (2) preservation order, I need not address the other three requirements.

[26] The defendants will have their costs of this application in the cause.

“Norell J.”