

Court of King's Bench of Alberta

Citation: Staheli Construction Co Ltd v Concord Altitude Inc, 2026 ABKB 23

Date: 20260113
Docket: 2403 05013
Registry: Edmonton

2026 ABKB 23 (CanLII)

Between:

Staheli Construction Co Ltd

Plaintiff

- and -

Concord Altitude Inc

Defendant/Applicant/
Cross-Respondent

**Alva Fleur Elcano, Magdalena Naboye, Nerissa Garcia Aragon,
Marilee Cabarron and Mark Villanueva**

Respondents/
Cross-Applicants

**Memorandum of Decision
of
Applications Judge B.W. Summers**

Introduction

[1] The issue in this case is whether individuals that invested money in a project through a limited partnership have the remedy of a constructive trust for unjust enrichment with respect to the project lands because the certificate of limited partnership was not filed and registered with the Registrar of Corporations until after the limited partnership had been terminated.

Facts

[2] In 2019 the Defendant/Applicant Concord Altitude Inc (“Concord”) purchased a parcel of land (“Lands”) for the purpose of developing a condominium project (“Condo Project”).

[3] The sole director and shareholder of Concord, Stan Wong, solicited contributions from investors for the Condo Project. The five Respondents/Cross-Applicants (“Five Investors”) invested a total of \$170,000.00 (“Five Investors’ Investment”). The Five Investors put forward considerable evidence regarding the promises that Stan Wong made to them and how he took advantage of them.

[4] Concord and the Five Investors executed a written agreement called the Altitude Limited Partnership Agreement (“L. P. Agreement”) under which Concord was the general partner and the Five Investors were limited partners. The L. P. Agreement stated that the general partner would limit contributions from limited partners to \$10 million. As far as I am aware, the extent to which there were other limited partners has not been put into evidence.

[5] Little to no work was done to advance the Condo Project. Although development permits were obtained and units sold, ground was never broken.

[6] The Plaintiff commenced foreclosure proceedings against the Lands on March 12, 2024. On October 22, 2024 this Court granted an Order Approving Sale and Vesting Title to the Lands in favour of a third-party purchaser (“Sale of Lands Order”).

[7] On the same date, October 22, 2024, the Five Investors submitted to Land Titles Office caveats to be registered against the Lands (“Five Investors’ Caveats”). They were registered on December 6, 2024.

[8] The Five Investors’ Caveats claimed an interest in land as “beneficial owner pursuant to an agreement for sale or to an assignment of an agreement for sale”. The Five Investors did not have legal counsel at this time.

[9] The Sale of Lands Order was registered on March 10, 2025, subsequent to registration of the Five Investors’ Caveats. However, Land Titles Office refused to discharge the Five Investors’ Caveats based upon the Sale of Lands Order.

[10] On June 4, 2025 I granted an order releasing \$1,122,040.50 from the proceeds of sale of the Lands. The balance of \$387,228.63 was paid into a lawyer’s trust account, of which \$281,970.72 was to be held pending further agreement of the parties or an order of this Court.

[11] On August 14, 2025 a certificate of limited partnership was filed at Corporate Registry for the Altitude Limited Partnership (“Certificate of Limited Partnership”).

[12] On August 20, 2025 an order was granted providing for the release of \$10,000.00. The balance remaining in trust shall hereinafter be called “Remaining Funds”.

[13] On September 14, 2025 I granted a consent order discharging the Five Investors’ Caveats from title to the Lands, without prejudice to the Court’s determination as to the validity of the Five Investors’ Caveats.

[14] Meanwhile, Royal Bank of Canada filed a writ of enforcement against Concord at Alberta’s Personal Property Registry on April 25, 2025 (“RBC Writ”). The RBC Writ was not registered against the title to the Lands.

The Cross Applications

[15] Concord applied for an order that the Remaining Funds be paid to it. The Five Investors cross-applied for an order that the Five Investors' Caveats were validly registered and the Remaining Funds are subject to a constructive trust in favour of the Five Investors, to the extent of the Five Investors' Investment.

The Legal Issues

[16] The legal issues for consideration arising from these applications are: (1) Do the Five Investors have a claim for unjust enrichment against Concord; (2) if the Five Investors do have a claim for unjust enrichment against Concord, is the remedy of a constructive trust available to the Five Investors; and (3) if there is a constructive trust in favour of the Five Investors, does that constructive trust give to the Five Investors an interest in the Lands capable of supporting the Five Investors' Caveats?

Discussion

Effect of Failure to Register the Certificate of Limited Partnership

[17] Fundamental to the unjust enrichment claim of the Five Investors is that the L. P. Agreement terminated before the Certificate of Limited Partnership was registered and consequently there never was a limited partnership.

[18] Subsection 52(1) of the *Partnership Act*, RSA 2000, c P-3 states:

52(1) Subject to subsection (2), a limited partnership is formed when a certificate substantially complying with subsection (3) is filed with and recorded by the Registrar.

[19] Subsection (2) deals with partnerships that were formed in a jurisdiction other than Alberta. Consequently, it has no application here.

[20] The L. P. Agreement provided, in part that: (1) the business of the limited partnership was the development of the Condo Project; (2) the term of the limited partnership was from the time of filing the Certificate of Limited Partnership to the time it terminated in accordance with the L. P. Agreement; and (3) in the event that the Condo Project "did not proceed for any reason, any subscription proceeds received from a Limited Partner shall be refunded to the Limited Partner without interest, with the deduction of all appropriate business expenses incurred in relation to the Limited Partner's subscription".

[21] I agree with the Five Investors that: (1) a limited partnership is a creature of statute; (2) the Altitude Limited Partnership was not a limited partnership under the *Partnership Act* until the Certificate of Limited Partnership was registered on August 14, 2025; (3) at the time of registration of the Certificate of Limited Partnership the business of the Altitude Limited Partnership was impossible to carry out since the Lands for the Condo Project had been sold in the foreclosure proceeding.

[22] The Five Investors argue further that the Altitude Limited Partnership is not even a partnership. In my view, the Court does not have to determine whether the Altitude Limited Partnership is a partnership. No matter the classification or categorization of the Altitude Limited

Partnership, there is still a contractual agreement among the Five Investors (as well as other limited partners) and Concord.

[23] In *791007 Alberta Ltd v 703358 Alberta Inc*, 1999 ABQB 280 the Court had to consider the status of parties in an unregistered limited partnership where there was dispute over who owned the property in the limited partnership. The Court stated, at paragraph 5:

The failure to file the Certificate under the *Partnership Act* is not fatal to the continuation of the Limited Partnership. ... In any event, the failure to file has no effect on the legal status of the Limited Partners to bring any action, nor on the legal effect of the Limited Partnership Agreement itself.

[24] The L. P. Agreement has the following provision which reinforces the concept that there is still an agreement between the parties:

12.11 In the event any provision of this Agreement shall be invalid, illegal or unenforceable in any respect, it shall be considered separate and severable from the remaining provisions contained in this agreement and the validity, legality or enforceability of any of the remaining provisions in this Agreement shall not in any way be affected or impaired thereby.

[25] The L. P. Agreement specifically speaks to the fact situation that occurred here, as it provides that where the Condo Project “did not proceed for any reason, any subscription proceeds received from a Limited Partner shall be refunded to the Limited Partner without interest, with the deduction of all appropriate business expenses incurred in relation to the Limited Partner’s subscription”.

[26] That is what the Five Investors are entitled to: return of the Five Investors’ Investment less business expenses incurred in relation to the Five Investors’ subscription.

[27] This contractual provision also provides reason why a remedy of unjust enrichment is not available to the Five Investors. That is, there is a juristic reason why the Five Investors should not be entitled to this equitable remedy. The Five Investors’ remedy is an *in personam* claim in contract pursuant to the L. P. Agreement between the parties. The existence of a contract between the parties is an “established” category of juristic reasons: *Moore v Sweet*, 2018 SCC 52 (CanLII), [2018] 3 SCR 303.

[28] Although my conclusion that the remedy of the Five Investors is an *in personam* claim against the general partner (Concord) in contract disposes of claim of the Five Investors, I want to add some other observations that I think are relevant.

[29] Firstly, subsection 55(2) of the *Partnership Act* has relevance here. It states:

55(2) A limited partner's interest in the limited partnership is personal property.

[30] The British Columbia Supreme Court made reference to British Columbia’s identical provision in that province’s *Partnership Act* in the case of *Lam v WS Scott Station Development Limited Partnership*, 2025 BCSC 149. In that case limited partners commenced action and filed certificates of pending litigation (“CPLs”) against lands which they alleged were acquired using proceeds of sale of property of the limited partnership that they said should have been paid to them. The limited partners claimed a cause of action for unjust enrichment which gave rise to a remedial constructive trust and/or equitable tracing, thereby comprising a claim to an interest in land. The defendants applied to strike the CPLs on the basis that the limited partners did not have

an interest in land to support the CPLs. The Court granted the defendants' application. Although the case did not deal specifically with partnership property, but rather with property of a third party, the Court did note that a limited partner could not claim an interest in land with respect to real property in the limited partnership.

[31] The fact that limited partners do not have an interest in limited partnership property was also noted in *Marigold Holdings Ltd v Norem Construction Ltd*, 1988 CanLII 3490 (AB KB) at paragraph 172.

[32] Secondly, I wish to note the inherent unfairness in application of the argument made on behalf of the Five Investors. It allows some limited partners to recover and leaves behind any limited partner that did not file a caveat claiming an interest in the limited partnership real property. Furthermore, it rearranges priorities allowing limited partners to leapfrog ahead of the limited partnership's creditors. This is contrary to the *Partnership Act*, contrary to general principles of law and even contrary to the specific terms of the L. P. Agreement.

[33] Finally, I note the incongruity between the interest in land claimed in the Five Investors' Caveats (beneficial owner pursuant to an agreement for sale or to an assignment of an agreement for sale) and the interest in land being asserted on behalf of the Five Investors in this application (remedy of a constructive trust for unjust enrichment).

Conclusion

[34] The application of Concord is granted and the cross-application of the Five Investors is dismissed. The Remaining Funds shall be paid to Concord, for the benefit of Concord's creditors. If all of the claims of Concord's creditors do not exhaust the Remaining Funds, I am willing to consider an order that the balance of the Remaining Funds, after payment of Concord's creditors be held in trust, recognizing the contractual claim of the Five Investors (and potentially other limited partners) against Concord.

[35] Unless the parties wish to make an argument otherwise, I will grant costs to Concord on a party and party basis.

Heard on the 12th day of September, 2025.

Dated at the City of Edmonton, Alberta this 13th day of January, 2026.

B.W. Summers
A. J.C.K.B.A.

Appearances:

Jordan G. Chow
Biamonte LLP
for the Defendant/Applicant/Cross-Respondent
Concord Altitude Inc

Jessie E. Bakker
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