IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1022081 B.C. Ltd. v. Heer,*
2026 BCSC 144

Date: 20260108
Docket: S257326
Registry: Vancouver

Between:

Balwinder Heer, Malkit Heer, Arvindervir Singh Kochar, Ying Cui also known as Ayaka Aoki, Jun Xia, Mingming Yang, Jeslyne Cara Liu, Garbo Ng, Hai Yen Anita Huang, Shi Yun Luo, Paulvinder Singh Ladher, Simritha Kaur Ladher, Surinder Pal Singh, Surinderpal Singh Chahal, Bhupinder Singh Sidhu, Chih Sen Wu , Yu Yu Luo, Harjit Singh Bhasin, Tania Nely So Che, Hang Kun Lui, Tammy Ting Ting Chan, Ying Zhu, 1155221 B.C. Ltd., Gurpreet Kaur Bhasin, Rebelle Kwai Fong Souza, Jian Ti Hu, Po Shan Lisa Ip, Zhi Hua Zhong, Cai Yi Xu, Adrian Kuo Ch'iang McCallum, Xi Pei Ma, Qiao Feng Chen, Gurminder Singh Brar, 1145343 B.C. Ltd., Trilochan Kaur Bhasin, Inderjeet Singh, Hari Prasad Mohana Velu, Anand Rajakumaran, Thi Thao Nguyen , Xuan Tien Dong, Puneet Walia, Sanjit Singh Sandhu and Maninder Kaur

Plaintiffs

And

1022081 B.C. Ltd., 0821034 B.C. Ltd., Ansu Development Ltd., Eddie Wing-Kut Chiu also known as Eddie Wing Kut Chiu also known as Eddie Wing Kut Chiu Jao also known as Eddie Chiu, Jordan Eng and Manuel Da Silva

Defendants

Before: The Honourable Madam Justice Morellato

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs: N.J. Muirhead
(December 19, 2025)

A. Levine
(January 8, 2026)

Counsel for the Defendants:	B.J. Hicks
Counsel for the Attendees, Domain Mortgage Corp. and Harbour Mortgage Corporation:	C.E. Chisholm
Place and Date of Hearing:	Vancouver, B.C. December 19, 2025
Place and Date of Judgment:	Vancouver, B.C. January 8, 2026

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I. INTRODUCTION

[1] **THE COURT:** In this application, the defendants seek an order to cancel certificates of pending litigation ("CPLs") under s. 215 of the *Land Title Act*, R.S.B.C. 1996, c. 250 [*LTA*].

[2] This action relates to a residential strata development in Surrey, British Columbia, known as Creekside Terrace ("Creekside Terrace Development"). The development is located on a parcel of land municipally described as 6388 King George Boulevard, Surrey. The plaintiffs executed a Purchase and Sale Agreement in relation to strata lots in the Creekside Terrace Development.

[3] The defendants acknowledge that the plaintiffs' notice of civil claim "relates to land". However, they argue that the plaintiffs' claim "is not for an interest in land" and as such, the threshold statutory requirement in s. 215 of the *LTA* is not met and the CPLs ought to be cancelled. The plaintiffs assert that their claim constitutes a cause of action against land, since they plead both proprietary estoppel and specific performance for the return of the strata lot properties in question at the Creekside Terrace Development. Accordingly, argue the plaintiffs, their CPLs properly give notice of the interest in land, they assert, over these strata properties.

II. FACTUAL BACKGROUND

[4] The plaintiffs' pleadings frame the following factual background, although I will be referring to some of the facts asserted by the defendants and provide context.

[5] The defendant 1022081 B.C. Ltd. ("Nominee") was registered on title to the Creekside Terrace Development land on December 30, 2014. The defendants 0821034 B.C. Ltd. and Ansu Development Ltd. (together, the "Beneficial Owners") beneficially own the development project. The Nominee held title as the bare trustee for the Beneficial Owners and at all times acted as the agent of the Beneficial Owners.

[6] The City of Surrey issued a development permit on November 6, 2017. On December 6, 2017, the Nominee and the Beneficial Owners (together,

the “Developer”) filed a disclosure statement, as that term is defined in the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 [*REDMA*].

[7] The Developer subsequently began to market strata units in the Creekside Terrace Development. Between November 23, 2017, and December 16, 2017, the Developer entered into contracts to sell 32 strata lots in the Creekside Terrace Development to plaintiffs in this action, or to persons who subsequently assigned the contract to a plaintiff in this action.

[8] On or about September 2018, the Developer ceased marketing the strata lots. The Creekside Terrace Development experienced delays. The Developer asserts that, in 2019 and 2020, amendments were made to the *REDMA* that included the introduction of a mandatory Condo and Strata Assignment Integrity Register effective from January 1, 2019, which required the Developer to file a new disclosure statement. On or about October 15, 2020, the Developer filed a new disclosure statement with the Superintendent of Real Estate for the Creekside Terrace Development.

[9] Following the filing of the 2020 Disclosure Statement, the Developer contacted the purchasers under the existing contracts and assignments to provide them with the option of either rescinding their existing contracts in accordance with the *REDMA*, or terminating them and entering into new contracts of purchase and sale in the form attached to the Disclosure Statement.

[10] Between December 31, 2020, and March 11, 2021, the Developer and 32 plaintiffs who had agreements to purchase strata lot units in 2017 entered into agreements to cancel their existing contracts and enter into new contracts for the sale of those 32 strata units.

[11] Between March 27, 2021, and April 7, 2021, the Developer entered into contracts with five plaintiffs or assignees of a plaintiff to sell strata units in the Creekside Terrace Development to those plaintiffs (or assignees). The plaintiffs

plead that, on June 15, 2022, one of the contracts was amended to change the strata lot being sold.

[12] All the Purchase and Sale contracts are in writing and are substantially the same and contain the following term concerning the completion date of the development:

> Completion Date: The completion of the purchase and sale of the Strata Lot shall take place on the day designated by the Vendor (the 'Completion Date")
>
> The estimated Completion Date is July 2022. The Completion Date is only an estimate based on the Vendor's best judgment as to when the building containing the Strata Lot will be completed.
>
> Completion shall take place when the Vendor notifies the Purchaser or their solicitor or notary (the 'Purchaser's Solicitors') that the City of Surrey is expected to grant written permission to occupy the Strata Lot provided that such day will be at least thirty (30) days after the date of such notice. Whether the Strata Lot is ready to be occupied refers to the Strata Lot specified in this Purchase Agreement and not any other strata lot or common property within the Development and the Strata Lot will be deemed ready for occupation on the Completion Date if the City of Surrey has given written permission to occupy the Strata Lot, whether such permission is temporary, conditional, or final. The notice of the Completion Date delivered from the Vendor or the Vendor's Solicitors to the Purchaser or the Purchaser's Solicitors may be based on the Vendor's estimate as to when the Strata Lot will be ready to be occupied. If the Strata Lot is not ready to be occupied on the Completion Date, then the Vendor may delay the Completion Date from time to time as required upon notice of such delay to the Purchaser or the Purchaser's Solicitors.
>
> Subject to Section 12 of this Purchase Agreement, if the Completion Date has not occurred by July 2022 (the 'Outside Date') then either party may by written notice to the other cancel this Purchase Agreement whereupon the Purchaser will be entitled to have the Deposit (or if not all the Deposit has been paid to the Vendor, then that portion that has been paid) returned and both parties will be released for their obligations in this Purchase Agreement.
>
> The Vendor may, at its option, exercisable by notice to the Purchaser, in addition to any extension pursuant to Section 12 and whether or not any delay described in Section 12 has occurred, elect to extend the Outside Date for two (2) separate periods of six (6) months.

[13] The plaintiffs plead that it was an express or implied term of the contract that the Developer would forthwith notify the purchasers when it estimated the City of Surrey would grant written permission to occupy the strata lots to which the contract pertained within 30 days, or alternatively, when the City of Surrey granted written

permission to occupy the strata lots to which the contract pertained, so that the sale of the strata lots could close in accordance with the contract.

[14] The plaintiffs have alleged, among other things, that the Developer owed a duty of good faith in the fulfillment of its contractual obligations, including a duty:

(a) to make a good faith attempt to fulfill its contractual obligations;

(b) to act in good faith to schedule a date for completion of the contracts as soon as was reasonably possible; and

(c) to act in good faith in relation to terminating the contracts on the basis that completion had not occurred by the "Outside Date."

[15] The City of Surrey granted occupancy permits for the strata lots in two phases: on November 1, 2024, for strata lots 1-40, and December 18, 2024, for strata lots 41-76.

[16] The Developer failed, according to the plaintiffs, to set dates for closing the sales of the strata units after receiving permission to occupy the units from the City of Surrey. Instead, the plaintiffs plead, the Developer concealed from the plaintiffs that the units were ready to be occupied.

[17] In or about August 2025, the Developer issued notices to the plaintiffs purporting to terminate their contracts pursuant to clause 5 of the contracts on the basis that completion had not occurred by July 2022.

[18] The defendants assert that the plaintiffs were all purchasers under contracts of purchase and sale with the defendant 1022081 B.C. Ltd., as vendor for strata lots of the Creekside Terrace Development. However, the defendants assert that the purchase and sale contracts were validly terminated by the vendor in 2025 in accordance with the applicable contractual terms.

[19] The plaintiffs filed this action on September 26, 2025, alleging that the Developer breached its contract to sell 37 strata units to the plaintiffs. The plaintiffs plead proprietary estoppel and also seek specific performance. They obtained CPLs

in respect of 34 of the strata units. Notably, the other three units had been transferred by the Developer before the action commenced.

III. DISCUSSION AND LEGAL ANALYSIS

[20] Section 215(1)(a) of the *LTA* provides that "a person who has commenced or is a party to a proceeding" and is "claiming an estate or interest in land" may register a certificate of pending litigation on the property which is the subject of the litigation.

[21] A CPL is an extraordinary pre-judgment mechanism that protects a valid claim to an interest in land until the issue before the court can be determined on its merits: *Memphis Blues BBQ International Ltd. v. P.K. Johnson Inc*., 2024 BCSC 497, at para. 49.

[22] In *Jacobs v. Yehia*, 2015 BCSC 267, at para. 24, Madam Justice Dickson, as she then was, reasoned that an interest in land "may include both legal and equitable interests," adding that "the test is not to be narrowly defined." She also reasoned, however, that "the mere fact that a claim relates to land does not convert it into a claim for a proprietary interest."

[23] I am mindful that it is improper to use the CPL procedure merely to gain a tactical advantage in litigation or as leverage to secure a financial claim against the defendant where no interest in land has been claimed. Where the plaintiff's claim, in essence, is not for an interest in land, a CPL is not available: *Drein v. Puleo*, 2016 BCSC 593, at para. 8.

[24] Accordingly, this Court has jurisdiction to cancel a CPL that fails to meet the threshold criterion of a pleading claiming an interest in land, as this is a statutory requirement of s. 215 of the *LTA*: *Xiao v. Fan*, 2018 BCCA 143, at para. 25, citing *Berthin v. Berthin*, 2018 BCCA 57, at paras. 40-44. In such cases, the CPL is a “nullity” and must be cancelled.

[25] I agree with the defendants that the test to be applied in this application is whether the pleadings themselves disclosed a claim for an interest in land. I also

agree that the Court should not consider evidence on this application and ought to refrain from analyzing the merits of the claim: *Xiao*, at para. 27. Further, I agree with the defendants that the validity of a CPL is assessed based on the pleadings filed at the time the CPL is registered with the Land Title Office, not in any subsequent or potential amendments to these pleadings: *Bilin v. Sidhu*, 2017 BCCA 429, at para. 62 and *Wai v. Chung*, 2020 BCSC 34, at para. 22.

A. Defendants' Position

[26] The defendants argue that the plaintiffs have not claimed or pleaded a legal equitable interest in land but rather seek orders to enforce contractual rights. They acknowledge the plaintiffs seek, among other things, an order for specific performance of the purchase agreements, "or further or in the alternative, an order based on the principle of proprietary estoppel requiring the Developer to transfer the Strata Lots to the plaintiffs on such terms and conditions that the Court seems just". However, they submit these pleadings do not amount to a claim for an interest in land.

[27] The defendants also argue that specific performance is an equitable remedy available for breach of contract in appropriate circumstances, but that seeking an order for specific performance on its own does not constitute a claim for an interest in land. Further, they argue that, even where a court determines that an order for specific performance is appropriate, it may order damages in lieu of specific performance. In that circumstance, damages are determined as at the date of the trial rather than date of the breach, since damages in lieu of specific performance are intended to stand as a replacement for performance of the contract: *Semelhago v. Paramadevan*, 1996 CanLII 209, [1996] 2 S.C.R. 415, at paras. 11 and 16-19; and *1124259 BC Ltd. v. 1069185 BC Ltd*., 2018 BCSC 1655, at para. 157.

[28] Further, the defendants argue that simply seeking an order "based on the principle of proprietary estoppel" does not constitute a claim to an interest in land. They acknowledge that proprietary estoppel is an equitable doctrine that can be invoked to fashion a remedy where there has been an injustice concerning property.

However, they assert, among other things, that the elements of proprietary estoppel are improperly pleaded in this case.

B. Plaintiffs' Position

[29] The plaintiffs begin their submissions by asserting that the modern system of filing certificates of pending litigation comprises a legislative refinement of the common law doctrine of *lis pendens*. The doctrine of *lis pendens* provided that a person who acquired title to land, while litigation was pending concerning that land, was bound by the court's decision, even if the person was not a party to that litigation. The doctrine prevented landowners from defeating a claim against land by conveying the land before the case was decided but at the cost of a potential injustice to an innocent purchaser: *Caroline A. Needham, Pending Litigation Against Registered Land,* (1983) 61 Can. Bar Rev. 799.

[30] The plaintiffs submit that the earliest reported case in British Columbia confirms that a *lis pendens* could be filed when a plaintiff claims specific performance of a contract for the purchase of land. The court in *Towne v. Brighouse*, [1898] B.C.J. No. 42 (S.C.), declined to cancel the registration of a *lis pendens* on an interlocutory application, because to do so would defeat the claim for specific performance:

> To cancel the registration of the *lis pendens* would be to turn this application into a motion for judgment, at least to this extent that it would in the result amount to a declaration of refusal of specific performance.

[31] The plaintiffs underscore that the reasoning in *Towne* has been frequently followed, although they note that the circumstances in which the court would cancel the registration of a CPL on an interlocutory application evolved over time. They assert that no reported decision in British Columbia has ever questioned the proposition that a CPL was properly filed where a plaintiff sought specific performance of the sale of land or that such relief was available. The plaintiffs rely on the reasons of our Court of Appeal in *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd*., 2014 BCCA 388, at para. 39 where the Court reasons:

> [39] In my respectful opinion, these cases confirm the principle that where specific performance is being sought and the court is considering an application to order the cancellation of a CPL under s. 256 of the *Land Title Act*, it is for the applicant (here, the Vendor) to satisfy the court that it is plain and obvious the person seeking specific performance would not succeed on that claim at trial. If there is a triable issue as to whether damages would provide an adequate (or appropriate) remedy, the application should be dismissed and the matter proceed to trial. The chambers judge does not, then, decide on the merits whether damages will be adequate – only whether specific performance can be eliminated as having no reasonable chance of success. …
>
> [Emphasis in original.]

[32] Counsel for the plaintiffs notes that he has not been able to locate any cases where an applicant even questioned the proposition that a claim for specific performance of a contract for the sale of land supports registration of a CPL. Counsel asserts that the closest case he found was *Enigma Investments Corp. v. Henderson Land Holdings (Canada) Ltd*., 2007 BCSC 1379, which concerned an argument based on language in the contract at issue which included the following clause: “This offer and the agreement which results from its acceptance create contractual rights only and not any interest in land.” The contract in the instant case contains similar language. Justice Goepel, as he then was, rejected this argument, reasoning as follows:

> [22] Pursuant to s. 215 of the *Act*, it is a pre-condition to the filing of a CPL that the applicant is claiming an interest in land. The defendants submit that paragraph 2.1 of the Contracts that states the Contracts do not create “any interest in land” precludes such a claim. With respect, I disagree. At this stage the issue is not whether the plaintiffs can prove an interest in land; the issue is whether they are claiming [an interest in land]. The Statement of Claim makes such a claim. That is all that is required to file a CPL. …

[33] As recently as October 29, 2025, Justice Gomery of our Court of Appeal, for a unanimous panel of that Court, reaffirmed that a CPL is appropriate where a plaintiff claims specific performance: *St. Alcuin College for the Liberal Arts Society v. Montaigne Group Ltd*., 2025 BCCA 370.

[34] The plaintiffs submit that the defendants' proposition that the claim for specific performance is a claim that relates to land, yet not a claim for an interest in land, is made without citing any supporting authority. The plaintiffs argue the defendants'

unsupported proposition goes against not only the history of the development of CPLs and over a century of binding authority, but also against the applicable statutory language and its purpose.

[35] The plaintiffs also submit that the defendants incorrectly assert, again without citing any supporting authority, that a claim for proprietary estoppel is not a claim for an interest in land. The plaintiffs rely on the reasons of the Supreme Court of Canada in *Cowper-Smith v. Morgan*, 2017 SCC 61, at para. 21, where the Court states: “It has commonly been understood in Canada that proprietary estoppel is concerned with interests in land…”. The plaintiffs also rely on the Court of Appeal decision in *Delane Industry Co. Ltd. v. PCI Properties Corp.*, 2014 BCCA 285, at para. 49, where the Court reasons that “[p]roprietary estoppel is a term used to describe estoppel relating to an interest in land and requires that it would be unconscionable for the person having the right sought to be enforced, to continue to seek to enforce it.”

[36] The plaintiffs also take issue with the defendants’ argument that their claim of proprietary estoppel had been pleaded improperly. The plaintiffs assert that proprietary estoppel is a flexible, equitable remedy aimed at doing justice, and rely on the decision in *Idle-O Apartments Inc. v. Charlyn Investments Ltd.*, 2014 BCCA 451, at paras. 46-52. They assert that its essential elements have been stated in various ways. They rely, for instance, on the following reasons in *Idle-O Apartments* as to the elements of proprietary estoppel:

> 1. Is an equity established? An equity will be established where:
>
> a. There was an assurance or representation, attributable to the owner, that the claimant has or will have some right to the property, and
>
> b. The claimant relied on this assurance to his or her detriment so that it would be unconscionable for the owner to go back on that assurance.
>
> 2. If an equity is established, the court must determine the extent of the equity and the remedy appropriate to satisfy the equity.

[37] In a similar vein, in *0980131 B.C. Ltd. v. The Owners, Strata Plan KAS2615*, 2019 BCSC 913, at para. 30, Justice Hori articulated the following three-part test for proprietary estoppel:

(a) Did the defendant do anything beyond mere delay to encourage the plaintiff to believe the defendant did not intend to rely on its strict rights;

(b) Did the plaintiff act to its prejudice upon that belief, and

(c) Would it be dishonest or unconscionable to allow the defendant to enforce its strict right.

[38] The plaintiffs further assert that the notice of civil claim properly pleads proprietary estoppel. They specifically refer to the following paragraphs in their pleadings:

(a) paragraphs 39 and 40, which allege the Developer took steps to assure the plaintiffs that they would obtain an interest in property and specifically sets out a communication alleged to have been made by the Developer to the plaintiffs;

(b) paragraph 41 alleges detrimental reliance; and

(c) paragraph 42 alleges unconscionability.

IV. ASSESSMENT AND CONCLUSION

[39] Having carefully considered the defendants' arguments and the plaintiffs' pleadings, I agree with the plaintiffs that their claim encompasses a claim to an interest in land. The plaintiffs' claim for specific performance essentially embodies a claim against the land itself and, as such, is a claim to an interest in land requiring notice by way of a CPL. The plaintiffs seek to enforce the transfer of property to them of the land comprising the strata lots, effectively claiming proprietary rights or equitable interest that allows the plaintiffs, as buyers, to obtain title to the land and not just monetary compensation.

[40] Cases such as *Semelhago* upon which the defendants rely, are readily distinguishable on their pleaded facts. The courts' reasons in those cases are informed by entirely different contexts than those that are before this Court in this case.

[41] In light of the plaintiffs' express pleadings in this case, I also agree that their proprietary estoppel claim constitutes a cause of action for a right to property and, in particular, the strata lots in question: e.g., *Cowper-Smith*, at para. 21, and *Delane*, at para. 49.

[42] In the final analysis, the plaintiffs' notice of civil claim asserts a right to the interests to the land itself and not simply a personal or contractual claim against the defendants. Of course, whether the plaintiffs will ultimately be successful on their pleadings at trial in seeking specific performance of the purchase and sale agreements or establishing a proprietary estoppel remains to be seen. Nevertheless, these are not issues before me at this hearing at this juncture.

V. CONCLUSION

[43] The plaintiffs' notice of civil claim includes a claim for an interest in land. Accordingly, their pleadings meet the statutory requirements of s. 215 of the *LTA*.

[44] The defendants' application is dismissed, and the plaintiffs are entitled to their costs.

[45] I reserve the right to edit these reasons, including adding proper citations.

"Morellato J."