

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Singh v. Sidhu*,
2026 BCSC 249

Date: 20260213
Docket: S258903
Registry: New Westminster

Between:

**Gurwinder Singh, Sukhpreet Kaur, Manjit Kaur Sangha
and Jerry Brar Mortgages Inc.**

Plaintiffs

And

**Raghubir Singh Sidhu, Karmjit Kaur Sidhu and
Kevin Charnjeev Sidhu**

Defendants

Before: The Honourable Justice Lamb

Reasons for Judgment

Counsel for plaintiffs:

B. Atwal

Counsel for defendants:

M. Noguera

Place and Date of Hearing:

New Westminster, B.C.
November 6, 2025

Place and Date of Judgment:

New Westminster, B.C.
February 13, 2026

Introduction

[1] In these reasons for judgment, I will attempt to use the defined terms used in the notice of application filed October 17, 2025, and the notice of civil claim (“NOCC”). Further, I recognize that the corporate plaintiff took an assignment of the mortgage referenced in the NOCC from a non-party individual. However, for simplicity and because it does not affect the outcome, I will refer to the plaintiffs as if they were the original lenders.

[2] According to the NOCC, in or about June 2022, the plaintiffs loaned \$600,000 (the “Mortgage Funds”) to the defendants Ragbir Sidhu and Karmjit Sidhu (together, the “Borrowers”). The Borrowers granted the plaintiffs a mortgage over two properties (the “Mortgage”). Those two properties have been sold in foreclosure at a loss. The plaintiffs did not recover anything on the sale of the two mortgaged properties; however, by order *nisi* in the foreclosure proceeding, the plaintiffs were granted judgment against the Borrowers for \$560,082 on June 14, 2023.

[3] On July 28, 2025, the plaintiffs filed the NOCC alleging that the Borrowers conspired to divert the Mortgage Funds to purchase four properties in the name of the defendant Kevin Sidhu, the Borrowers’ son. On July 29, 2025, the plaintiffs filed certificates of pending litigation (“CPLs”) against the four properties. The plaintiffs filed an amended notice of civil claim on September 16, 2025.

[4] The defendants apply for an order pursuant to s. 215 or s. 256 of the *Land Title Act*, R.S.B.C. 1996, c. 250 discharging the CPLs. The defendants seek an order that the plaintiffs require leave before filing further CPLs on the four properties. The defendants also seek an order for special costs on the basis that the plaintiffs filed the CPLs strategically.

[5] The defendants oppose the relief sought.

[6] I will consider first whether the CPLs ought to be struck on the basis they do not disclose an interest in land before considering the question of hardship and inconvenience.

Does the notice of civil claim disclose a valid interest in land?

[7] I am satisfied that the NOCC includes a validly pleaded claim for an interest in the four properties.

Legal framework

[8] Section 215(1)(a) of the *Land Title Act* allows a person who has commenced a proceeding and who is claiming an estate or interest in land to register a CPL against land.

[9] In *Bilin v. Sidhu*, 2017 BCCA 429, at paras. 54 to 55, the Court of Appeal confirmed that a CPL may be struck if it was not valid in the first place because it did not involve a claim against land.

[10] Although the plaintiffs have filed an amended notice of civil claim, the parties agree and I find that the validity of the CPLs turns on the claims advanced in the NOCC, which is the pleading filed in support of the CPLs: *Bilin* at para. 62.

[11] When assessing whether there is a claim to an interest in land the NOCC must be read as a whole: *Batth v. Sharma*, 2024 BCCA 29, at para. 30.

[12] The key question on an application pursuant to s. 215 is whether the NOCC includes a properly pleaded claim against Kevin Sidhu to an interest in the four properties he owns. More specifically, does the NOCC plead material facts required to establish a cause of action that gives rise in an interest in the four properties?

Claims advanced in notice of civil claim

[13] In the NOCC, the plaintiffs plead material facts about the loan to the Borrowers, including that:

- a) the plaintiffs advanced the Mortgage Funds to the Borrowers in or about June 2022, secured by the Mortgage;
- b) the Borrowers defaulted on the Mortgage;

- c) on June 14, 2023, an order *nisi* was granted in the foreclosure proceeding, granting judgment to the plaintiffs against the Borrowers;
- d) the two properties secured by the Mortgage were sold at a shortfall by other mortgagees that were positioned in priority to the plaintiffs; and
- e) the plaintiffs received nothing from the sale of the two mortgaged properties.

[14] The plaintiffs plead the following properties were purchased by the defendant Kevin Sidhu after judgment was granted in the foreclosure proceeding:

- a) the University Drive Property, purchased on October 19, 2023;
- b) the 45A Avenue Property, purchased on March 14, 2024; and
- c) the Grade Cres Property, purchased on March 28, 2025.

[15] On October 8, 2024, the defendants Kevin Sidhu and Raghbir Sidhu purchased the Kelowna Property. The plaintiffs have registered the foreclosure judgment against Raghbir Sidhu's ownership interest in the Kelowna Property.

[16] Under the heading "Constructive Trust" in the NOCC, the plaintiffs plead as follows:

15. At all material times, it was an express or in the alternative implied purpose of the Mortgage that the Mortgaged Properties would be improved with the Mortgage Funds (the "Purpose of the Mortgage").

16. In breach of the Purpose of the Mortgage, the Defendants wrongly and without consent conspired with each other to divert the Mortgage Funds (the "Fraudulent Misappropriation") to purchase the following Properties:

- a. University Drive Property;
- b. 45A Avenue Property;
- c. Kelowna Property; and
- d. Grade Cres. Property.

[17] The plaintiffs allege that the purchase of the Kelowna Property by the defendants Kevin Sidhu and Raghbir Sidhu demonstrates a nexus between them

that supports their “acting in concert” to acquire the four properties. The plaintiffs allege there is a temporal nexus between the advancement of the loan funds to the Borrowers, the grant of judgment in the foreclosure proceeding and the purchase of the four properties.

[18] The NOCC alleges the four properties were purchased in the name of Kevin Sidhu to “defeat, delay or hinder the lawful remedies of the Plaintiffs and as such the [...] Properties are owned by the [plaintiffs]”. The NOCC alleges the defendants hold the four properties in trust for the benefit of the plaintiffs.

[19] At para. 20 of the NOCC, the plaintiffs plead as follows:

20. The Plaintiffs are entitled to a constructive trust, or in the alternative, a resulting trust over the [...] Properties, resulting from the Misappropriation of the Mortgage Funds in their purchase, maintenance and/or development, or, in the alternative, the unjust enrichment of the Defendants by receipt of the Mortgage Funds, and the use of the Mortgage Funds in the purchase, maintenance and/or development of the [...] Properties.

[20] The plaintiffs assert that a monetary award would be inadequate. They seek an accounting and tracing of the Mortgage Funds to determine if the Mortgage Funds were used to purchase the four properties, and a constructive trust over the four properties because of that tracing.

[21] In terms of relief sought, the plaintiffs seek a declaration that the defendants hold the four properties in trust for the benefit of the plaintiffs and that the plaintiffs are the actual owners of the four properties. The plaintiffs seek judgment against the defendants or against Kevin Sidhu for the amount that can be traced to him. The plaintiffs seek “an accounting of the Mortgage Funds traceable” to the four properties.

Analysis

[22] While not a model pleading, I accept the NOCC includes a properly pleaded claim to an interest in land owned by Kevin Sidhu.

[23] The plaintiffs allege a constructive trust over the four properties. A constructive trust is sufficient to sustain a registration of a CPL: *Nouhi v. Pourtaghi*,

2019 BCSC 794 at para. 20. A constructive trust “may be imposed where good conscience so requires”: *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217 at para. 34. Traditionally, courts have recognized that a trust may arise from the defendant’s wrongful act: *Vidcom Communications Ltd. v. Rattan*, 2022 BCSC 562 at para. 23, quoting *BNSF Railway Company v. Teck Metals Ltd.*, 2016 BCCA 350 at para. 24.

[24] To assert a constructive trust over property owned by Kevin Sidhu, the plaintiffs must properly plead a wrongful act on the part of Kevin Sidhu that may give rise to a constructive trust. The plaintiffs have alleged conspiracy against all the defendants.

[25] At para. 16 of the NOCC, the plaintiffs allege that the defendants conspired to divert the Mortgage Funds. As recently noted by our Court of Appeal in *Flanagan v. VINN Automotive Technologies Limited*, 2025 BCCA 410:

[36] ... there are two types of civil conspiracy recognized in Canada: predominant purpose conspiracy and unlawful means conspiracy. Predominant purpose conspiracy asserts an agreement of two or more persons with the primary objective of harming a plaintiff. Unlawful means conspiracy involves an agreement to use unlawful means (which may be a tort) where it is known or ought to be known that harm to the plaintiff is likely. It has often been remarked that where the unlawful means involved in a conspiracy are tortious, alleging a conspiracy is redundant.

[26] The elements that must be proven to establish predominant purpose conspiracy are the following:

- a) an agreement or concerted action between two or more persons;
- b) with the predominant purpose of causing injury to the plaintiff; and
- c) overt acts committed that cause damage to the plaintiff.

(*Watson v. Bank of America Corporation*, 2015 BCCA 362 at para. 125.)

[27] Reading the NOCC as a whole, it appears to plead the material facts necessary to establish Kevin Sidhu is liable to the defendants as part of a predominant purpose conspiracy. Para. 16 of the NOCC outlines the alleged

agreement, i.e., that the defendants “conspired with each other to divert the Mortgage Funds” to purchase the four properties. Para. 19 of the NOCC alleges that the defendants’ primary objective was to harm the plaintiffs, i.e., that the properties were purchased in Kevin Sidhu’s name to “defeat, delay or hinder the lawful remedies of the Plaintiffs”. In terms of “overt acts”, the NOCC alleges that the defendants diverted the Mortgage Funds (which the plaintiffs allege the Borrowers agreed to use to improve the two mortgaged properties) to purchase four properties in Kevin Sidhu’s name. To be clear, assessing the merits of the plaintiffs’ claims is not part of a s. 215 application. The only question is whether the conspiracy claim is properly pleaded.

[28] I accept that predominant purpose conspiracy is a wrongful act that may give rise to a constructive trust in favour of the plaintiffs in respect of the four properties. This is sufficient to sustain the registration of the CPL.

[29] On the other hand, although the NOCC uses the terms “unjust enrichment” and “misappropriation”, I do not find the plaintiffs have pleaded material facts to maintain such causes of action.

Should the CPLs be removed from the properties due to hardship?

[30] I am satisfied Kevin Sidhu has demonstrated hardship in respect of two of the four properties.

Legal Framework

[31] The cancellation of a CPL based on hardship is governed by ss. 256 and 257 of the *Land Title Act*. Section 256 outlines the process for bringing an application to cancel, and s. 257 sets out the court's authority on such an application.

[32] To succeed on such an application, Kevin Sidhu must demonstrate that he has suffered or will likely suffer hardship and inconvenience caused by the registration of the CPL that is more than trifling or insignificant: *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2014 BCCA 388 at

para. 28; *Liquor Barn Income Fund v. Mather*, 2009 BCSC 1092 at paras. 5 to 12; *TCC Mortgage Holdings Inc. v. Rohland*, 2019 BCSC 190 at paras. 13 to 16.

Analysis

CPLs on the University Drive Property and Kelowna Property

[33] According to Kevin Sidhu, the registration of the CPLs on the University Drive Property and the Kelowna Property has prevented the closing of the sale of these properties, which he describes as bad investments. Foreclosure proceedings have been filed by the mortgagees of the University Drive Property and the Kelowna Property (the status of which is unknown). I accept Kevin Sidhu will suffer hardship if the CPLs are not removed from the University Drive Property and the Kelowna Property. I order the CPLs be removed to facilitate the sale of these two properties, subject to the terms that follow.

[34] Where the hardship test is met, the Court may impose such security terms as it deems appropriate: *Land Title Act*, s. 257(1)(a). I am prepared to discharge the CPLs on the University Drive Property and the Kelowna Property upon payment into court of net proceeds of sale, not to exceed \$100,000, subject to agreement between the parties or further court order.

[35] It appears that the sale of the University Drive Property is unlikely to result in any net proceeds. The pending purchase and sale agreement indicates the University Drive Property will be sold for \$510,000. The foreclosure proceedings filed in respect of the University Drive Property indicate the mortgagee advanced a principal sum of \$1,300,000 pursuant to a mortgage granted October 2, 2024. The principal owing on the mortgage exceeded \$1,000,000 as of May 13, 2025. It is unclear how Kevin Sidhu secured a mortgage in October 2024 for more than twice the price he paid to acquire the property in October 2023.

[36] It is unclear whether the Kelowna Property will result in any net proceeds. The current sale price is not disclosed in the evidence before the court. Kevin Sidhu and Raghbir Sidhu purchased the Kelowna Property for \$610,000 in October 2024. The mortgagee initially advanced a mortgage of \$1,800,000, which Kevin Sidhu

understands “was due to fraudulent actions on behalf of the [mortgagee] mortgage broker involved”. Kevin Sidhu deposes that he returned “all excess funds” to the mortgagee. The foreclosure proceedings filed in respect of the Kelowna Property indicate the mortgagee advanced a principal sum of \$1,800,000 pursuant to a mortgage granted October 4, 2024 and that the principal owing on the mortgage exceeded \$660,000 as of May 13, 2025.

[37] In setting the amount of the security, the Court may consider the probability of the party’s success in the action: s. 257(3). At this stage, the Court is entitled to consider the available evidence, as well as the pleadings: *Aviawest Resorts Inc. v. Memory Lane Developments Inc.*, 2004 BCSC 999 at para. 28. I am required to consider the probability of success of the proprietary claims when determining whether to order security and in what amount: *Mariash v. 0715422 B.C. Ltd.*, 2012 BCSC 788 at para. 46.

[38] Based on the limited evidentiary record before me, the plaintiffs’ claims to an interest in the University Drive Property and the Kelowna Property are not obviously without merit. The timing and circumstances of the purchases of these two properties, including the source of initial funds, raises questions given the plaintiffs’ judgment against the Borrowers in June 2023. Kevin Sidhu’s ability to secure high ratio financing on his income raises additional questions. That said, at this early stage, security payable pursuant to s. 257(3) to discharge the CPLs on the University Drive Property and the Kelowna Property should be capped at \$100,000.

[39] Although it appears unlikely there will be any net proceeds payable to Kevin Sidhu from the sale of these two properties, I order that net proceeds of up to \$100,000 from the sale the University Drive Property and the Kelowna Property to the credit of Kevin Sidhu shall be paid into court, subject to agreement between the parties or further court order.

The Project Properties

[40] The situation with the Grade Cres. Property and the 45A Avenue Property (the “Project Properties”) is more complicated. Kevin Sidhu deposes that he

purchased the Project Properties to develop them. He plans to build a fourplex home on the 45A Property and a single-family home on the Grade Cres. Property. Kevin Sidhu deposes that he has been unable to secure further financing on the Project Properties to continue their development due to the CPLs.

[41] Kevin Sidhu purchased the 45A Avenue Property for just over \$1,000,000 in March 2024 with mortgage proceeds of more than \$900,000 from two different mortgagees. Foreclosure proceedings were filed by the mortgagee of the 45A Avenue Property (the status of which is unknown). The petition filed in the foreclosure proceedings indicates Kevin Sidhu granted a mortgage over the 45A Avenue Property on March 14, 2024, and the principal owing on the mortgage exceeded \$665,000 as of February 11, 2025.

[42] Kevin Sidhu purchased the Grade Cres. Property in March 2025 for \$820,000, with \$40,000 advanced by a “silent partner” and mortgage proceeds of \$755,000. Kevin Sidhu deposes that \$50,000 was held in trust as “interest reserved payments” from April to September 2025. The outstanding balance of the mortgage is unknown, and Kevin Sidhu does not indicate whether the mortgage on the Grade Cres. Property is in good standing.

[43] To complicate matters further, Kevin Sidhu was in the process of closing a sale for the purchase of another property, identified as the 69 Avenue Property in his affidavit. Kevin Sidhu deposes that he expected the funds required to complete the purchase of the 69 Avenue Property would come from securing a second mortgage on the 45A Property and the Grade Cres. Property and a new mortgage on the 69 Avenue Property.

[44] Kevin Sidhu deposes that “[a]ccess to financing is critical to continue not only the construction on the Project Properties but to complete payment for the 69 Avenue Property”. He outlines some engineering expenses that have been incurred and further engineering expenses that will be incurred. Kevin Sidhu deposes that the CPLs are causing delays in construction and extending the timeline for project completion, which means he is incurring interest costs attributable to the delays.

[45] Kevin Sidhu deposes that he has been “unable to obtain further financing on the Project Properties to continue with their development due to the CPLs”. Despite this assertion, I am not satisfied on the evidence before the court that Kevin Sidhu’s inability to obtain further financing is caused by the CPLs on the Project Properties. As noted by our Court of Appeal at para. 37 in *Liquor Barn Income Fund v. Becker*, 2011 BCCA 141, s. 256(1)(b) requires “the hardship and inconvenience experienced or likely to be experienced by the applicant [to be] causally connected solely to the registration of the CPLs”.

[46] I am not satisfied on the evidence that Kevin Sidhu’s inability to obtain further financing on the Project Properties is *caused by* the CPLs. There is no evidence that there are prospective lenders willing to extend financing if the CPLs are removed. Kevin Sidhu did not provide evidence there is equity in either of the Project Properties. He provides no evidence that he would be able to service any additional financing, which seems to be an obvious potential barrier to securing financing given the three foreclosure proceedings that have been filed.

[47] In sum, Kevin Sidhu has not met the test for cancellation of the CPLs on the Project Properties as a result of hardship and inconvenience. Kevin Sidhu is at liberty to reapply with further and better evidence of hardship and inconvenience.

[48] Success has been mixed on this application. The parties shall bear their own costs.

“Lamb J.”