



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *94827 Newfoundland and Labrador Ltd. v. MLP Holdings Inc.*, 2026

NLSC 14

Date: February 12, 2026

Docket: 202601G0041

BETWEEN:

**94827 NEWFOUNDLAND AND
LABRADOR LTD.**

PLAINTIFF/
DEFENDANT BY COUNTERCLAIM

AND:

MLP HOLDINGS INC.

FIRST DEFENDANT/
FIRST PLAINTIFF BY COUNTERCLAIM

AND:

WALLACE PARSONS

SECOND DEFENDANT/
SECOND PLAINTIFF BY COUNTERCLAIM

Before: Justice Peter N. Browne

Place of Hearing:

St. John's, Newfoundland and Labrador

Date of Hearing:

January 29, 2026

Summary:

MLP Holdings Inc. and Wallace Parsons (“MLP and Parsons”) applied to vacate a *lis pendens* filed by 94827 Newfoundland and Labrador Ltd. (“94827”) on four properties they own. The *lis pendens* was filed following a failed purchase and sale arrangement for the properties. MLP and Parsons

claim that the properties are not unique and if the *lis pendens* is not vacated then it would cause them undue hardship.

HELD: The Court held that the evidence established that 94827 currently had a *prima facie* case for specific performance. MLP and Parsons had not discharged its burden of establishing that the properties were not unique nor had it established that there was a case for undue hardship at this point in time.

Appearances:

Gregory A.C. Moores,
K.C.

Appearing on behalf of 94827
Newfoundland and Labrador Ltd.

Kimberley R. Horwood

Appearing on behalf of MLP Holdings Inc.
and Wallace Parsons

Authorities Cited:

CASES CONSIDERED: *Procopio v. D'Abbondanza* (1969), 1969 CarswellOnt 952, [1970] 1 O.R. 127 (C.A.); *Semelhago v. Paramadevan*, [1996] 2 S.C.R. 415; *G.P.I. Greenfield Pioneer Inc. v. Moore* (2002), 2002 CarswellOnt 219, [2002] O.J. No. 282 (C.A.); *Residents of Old Bonaventure v. Trinity Historical Society Inc.*, 2021 NLSC 23; *11472 Newfoundland and Labrador Ltd. v. Bluewater Property and Development Inc.*, 2021 NLSC 133; *Chaulk v. Fairview Construction Ltd.* (1977), 14 Nfld. & P.E.I.R. 13, [1977] N.J. No. 35 (C.A.); *Infini-T Holdings Ltd. v. Bell Aliant Regional Communications Inc.*, 2010 NLTD(G) 205; *Anchorage Contracting Services Ltd. v. Moss Holdings Limited*, 2007 NLTD 33; *Paro Enterprises Limited v. Murphy*, 2015 NLCA 33; *Duffitt v. Conception Bay South (Town)*, 2016 NLTD(G) 89; *Bitmain Technologies Limited v. Great North Data Ltd.*, 2018 NLSC 130; *Johnson v. Benjamin*, 2012 NLTD(G) 51; *Dhatt v. Beer*, 2021 ONCA 137; *Lucas v. 1858793 Ontario Inc. (Howard Park)*, 2021 ONCA 52; *Matthew Brady Self Storage Corp. v. InStorage Limited Partnership*, 2014 ONCA 858, leave to appeal to SCC refused, [2015] S.C.C.A. No. 50; *Paterson Veterinary Professional Corporation v. Stilton Corp. Ltd.*, 2019 ONCA 746, leave to appeal to SCC refused, [2019] S.C.C.A. No. 420; *Di Millo v. 2099232 Ontario Inc.*, 2018 ONCA 1051, leave to appeal to SCC refused, [2019] S.C.C.A. No. 55; *Fram Elgin Mills 90 Inc. v. Romandale Farms Ltd.*, 2021 ONCA 201; *De Franco v. Khatri* (2005), 30 R.P.R. (4th)

192, [2005] O.J. No. 1890 (Sup. Ct. J.); *Silverberg v. 1054384 Ontario Ltd.* (2008), 77 R.P.R. (4th) 102, [2008] O.J. No. 4585 (Sup. Ct. J.), aff'd at 2009 ONCA 698; *John E. Dodge Holdings Ltd. v. 805062 Ontario Ltd.* (2001), 56 O.R. (3d) 341, [2001] O.J. No. 4397 (Sup. Ct. J.); *Ali v. 656527 B.C. Ltd.*, 2004 BCCA 350; *904060 Ontario Ltd. v. 529566 Ontario Ltd.* (1999), 85 A.C.W.S. (3d) 1195, [1999] O.J. No. 355 (Ct. J. (Gen. Div.)); *Greenforco Holding Corp. v. Yonge-Merton Developments Ltd.*, [1999] O.J. No. 3232 (Sup. Ct. J.); *Chaulk v. Fairview Construction Ltd.* (1977), 14 Nfld. & P.E.I.R. 13, 1977 CarswellNfld 1214 (C.A.); *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2014 BCCA 388; *Bilin v. Sidhu*, 2017 BCCA 429; *Patrick Street Holdings Limited v. 11368 NL Inc.*, 2016 NLTD(G) 177

TEXTS CONSIDERED: *Anger & Honsberger Law of Real Property*, 3rd ed., looseleaf (Toronto: Canada Law Book, 2011)

REASONS FOR JUDGMENT

BROWNE, J.:

INTRODUCTION

[1] The Defendants/Applicants, MLP Holdings Inc. and Wallace Parsons (“MLP and Parsons”), make an interlocutory application to vacate a *lis pendens* registered to their properties located at 24 Carol Crescent, 26 Carol Crescent, 28 Carol Crescent and 30 Carol Crescent in the Town of Paradise (“the Properties”).

[2] They argue that the filing of the *lis pendens* is improper because the Properties are not unique and any claim for specific performance will not succeed at trial. Further, the continuation of the *lis pendens* would cause them undue hardship because they have incurred substantial costs in readying the Properties for sale.

[3] In response, Plaintiff/Respondents, 94827 Newfoundland and Labrador Ltd. (“94827”) argues against the lifting of the *lis pendens* because they are seeking specific performance of the Purchase and Sale Agreement (“the Agreement”) between the parties. This is because of the unique qualities and irreplaceable nature of the Properties at the time the application to vacate is being made.

[4] As a procedural issue, MLP and Parsons argue that 94827 has not properly perfected the *lis pendens* because it did not issue it contemporaneously with the Statement of Claim.

[5] The substantive issues I must decide are: (1) has 94827 provided the Court with sufficient evidence to establish it has a possible claim for specific performance and, if so, vacating the *lis pendens* will eliminate the availability of this remedy; (2) should I vacate the *lis pendens* based on the likelihood that the default presumption at law is that 94827's claim can be satisfied by an award of damages, and not lifting the *lis pendens* would cause undue hardship to MLP and Parsons.

[6] For the reasons which follow, I decline to grant the application of MLP and Parsons.

ISSUES

Issue #1: Was the registration of the Notice of *Lis Pendens* coincident with the filing of the action?

Issue #2: Is the remedy of specific performance available to 94827?

Issue #3: Have MLP and Parsons established a claim for hardship as a basis to vacate the Notice of *Lis Pendens*?

THE POSITION OF THE PARTIES

94827

[7] It argues that it entered into the Agreement with MLP and Parsons to acquire the Properties specifically for the purpose of renting them to tenants and availing of Mortgage Loan Insurance Select (“MLI Select”). MLI Select is a federal insurance program offered by Canadian Mortgage and Housing Corporation (“CMHC”) to

incentivize the construction of affordable, accessible and energy-efficient rental housing.

[8] In this case, the Properties were advertised as “perfect for rental income” this is because they were constructed with Insulated Concrete Form (“ICF”). (see Affidavit of Bryan Robbins dated January 23, 2026, at Appendix 3). This construction technique highlights energy efficiency and soundproofing. They are unique and irreplaceable to 94827 because of this construction quality and they constitute a cluster of eight (8) residential units on a single parcel of land capable of common ownership; (see Appendix A to the Affidavit of Wallace Parsons, dated January 12, 2026).

MLP and Parsons

[9] They counter 94827’s argument, saying that the Properties are not unique, as any property that contains 5 units or more is eligible to apply for the CMHC MLI Select Program. Plus, there are numerous other opportunities in Phase 3 (where there are at least 140 lots) that could be eligible for the CMHC MLI Select Program.

[10] The ICF construction does not make the Properties uniquely eligible for the CMHC MLI Select Program. This helps with obtaining points due to the level of energy efficiency. The same level of energy efficiency could be achieved by constructing an R2000 home, or by using other optional features or construction methods.

[11] They further argue that the Properties constructed at 24-30 Carol Crescent can be reproduced within a timeframe of 6 to 8 months, as there are several other ICF builders locally and ICF construction is quite common.

THE RELEVANT JURISPRUDENCE

Application to Vacate *Lis Pendens*: The Considerations

Threshold Test - A Triable Issue

[12] An application to vacate a Notice of *Lis Pendens* does not involve an assessment of the merits of the plaintiff's claim *per se*. Rather, the interlocutory application and its associated pleadings must reveal that there is a triable issue to support an interest in the Properties and whether specific performance is the appropriate remedy.

[13] In *Procopio v. D'Abbondanza* (1969), 1969 CarswellOnt 952, [1970] 1 O.R. 127 (C.A.), at page 128, the Ontario Court of Appeal held a certificate of *lis pendens* should not be discharged where "there is a triable issue as between the parties as to an interest in the lands in question". Likewise, the nuances of title to the real property and the legal obligations that may or may not flow from a purchase and sale agreement and any other considerations about the substance of the claim cannot be adequately addressed on an interlocutory application; (see *Semelhago v. Paramadevan*, [1996] 2 S.C.R. 415, at para. 22; cited with approval in *G.P.I. Greenfield Pioneer Inc. v. Moore* (2002), 2002 CarswellOnt 219, [2002] O.J. No. 282 (C.A.), at para. 18).

[14] Where the factual evidence on the interlocutory application reveals a fair, real and substantial justification for specific performance, a reasonable trier of fact should not vacate the *lis pendens* at this stage; (see *Residents of Old Bonaventure v. Trinity Historical Society Inc.*, 2021 NLSC 23, at para. 43; *11472 Newfoundland and Labrador Ltd. v. Bluewater Property and Development Inc.*, 2021 NLSC 133, para. 17; *Semelhago v. Paramadevan*, at para. 22, citing *Chaulk v. Fairview Construction Ltd.* (1977), 14 Nfld. & P.E.I.R. 13, [1977] N.J. No. 35 (C.A.), at p. 21; *Infini-T Holdings Ltd. v. Bell Aliant Regional Communications Inc.*, 2010 NLTD(G) 205, at para. 16).

The Question of Uniqueness

[15] In the decisions of *11472 Newfoundland and Labrador Ltd. v. Bluewater Property*, and *Chaulk v. Fairview Investments Ltd.* at paragraph 21, our Court considered whether the property was unique or irreplaceable so as to support an order for specific performance at trial and whether damages would be an adequate remedy. In both cases, the Court vacated the Notice of *Lis Pendens* because the properties in issue were simply land and/or houses in a subdivision.

The Question of Hardship

[16] A claim of hardship by a defendant is not determinative when deciding whether to vacate a Notice of *Lis Pendens*. In *Anchorage Contracting Services Ltd. v. Moss Holdings Limited*, 2007 NLTD 33, the Supreme Court refused to vacate a Notice of *Lis Pendens* despite acknowledging the existence of hardship, holding instead that where hardship is claimed a court will scrutinize the claim of uniqueness more closely.

ANALYSIS

Issue #1: Was the registration of the Notice of *Lis Pendens* coincident with the filing of the action?

POSITION OF THE PARTIES

MLP and Parsons

[17] 94827 did not initiate legal action or issue a Statement of Claim with respect to the *lis pendens* until they were aware that MLP and Parsons would be filing an application seeking the release of the *lis pendens*. MLP and Parsons allege that the filing was an intentional attempt to strong-arm them into selling at below cost, knowing they were struggling financially to continue to carry these properties.

[18] They argue the actions amount to an abuse of the *lis pendens* process because the legal proceeding for specific performance was started after the filing of the *lis pendens*. They allege 94827 did not initially have any intention of starting court action. The case law requires that the registration of *lis pendens* must be co-existent with the filing of an action when it involves an interest or estate in land.

94827

[19] The Notice of *Lis Pendens* was registered on title to the Properties on November 26, 2025, providing notice of the pending lawsuit between 94827 and MLP and Parsons. On November 27, 2025, 94827 advised MLP and Parsons that the Notice of *Lis Pendens* had been registered. The Statement of Claim was issued on January 7, 2026.

[20] It argues the filings were coincident, such that any presumption against their validity is eliminated. The Notice of *Lis Pendens* cannot be vacated on this basis.

ANALYSIS

[21] Both parties accept the proposition that the case law in this Province supports the notion that the registration of the *lis pendens* must be coincident with the issuance of a Statement of Claim.

[22] MLP and Parsons argue that our Court of Appeal in *Paro Enterprises Limited v. Murphy*, 2015 NLCA 33 recognized that in certain circumstances there can be inappropriate conduct by a party in registering a *lis pendens* without first or coincidentally beginning an action. In the dissenting opinion at paragraph 80, White, J.A. noted that “the filing of a Notice of *Lis Pendens* can have pernicious effects”.

[23] Subsequent to *Paro*, Murphy, J. of our Court in *Duffitt v. Conception Bay South (Town)*, 2016 NLTD(G) 89, at paragraph 13, agreed with White, J.A.’s dissent

in *Paro*, saying that ‘as a matter of principle the scope of a cloud on title should be kept as narrow as possible’.

[24] This notion was explored further in *Bitmain Technologies Limited v. Great North Data Ltd.*, 2018 NLSC 130, where the issuance of a Statement of Claim occurred many months later simply to ground a Notice of *Lis Pendens*. At paragraph 45, Orsborn, C.J. (as he then was) stated that: “In and of itself, the sequence of events could raise the inference that the notice was filed for strategic reasons rather than to advise of a claim asserting an interest in land”.

[25] While MLP and Parsons raise concerns surrounding the true intentions behind 94827’s filing of the *lis pendens*, the question I must answer under this procedural issue is whether the *lis pendens* and the Statement of Claim are coincident.

[26] In *Paro*, at paragraphs 16 and 31, the majority confirmed that the registration of a Notice of *Lis Pendens* and the filing of a related action must be “coincident” holding that “[w]hat is required for effect at law is that the *lis pendens* and cause of action coincide, regardless of which of the two may be first in time”. That is, the coincidence of the Notice of *Lis Pendens* and commencement of litigation operates to make the Notice of *Lis Pendens* effective as of the date of coincidence.

[27] Based on the evidence that the filings were slightly over one month apart and involved different law firms at different points in time to perfect the claim, I conclude that they were coincident, such that any presumption against their validity is eliminated.

[28] The Notice of *Lis Pendens* cannot be vacated on this basis. As for MLP’s and Parsons’ argument surrounding the intentions behind the filings, I will address this argument as part of my uniqueness and hardship analysis below.

Issue #2: Is the remedy of specific performance available to 94827?

[29] A purchaser seeking specific performance must prove the property in question is unique to the extent that damages would not be an adequate remedy, rather than merely establishing an *in rem* claim against real property; (see *Anger & Honsberger Law of Real Property*, 3rd ed., looseleaf (Toronto: Canada Law Book, 2011), at c. 23.30.20, as cited at paragraph 71 in *Johnson v. Benjamin*, 2012 NLTD(G) 51).

[30] The Supreme Court in *Semelhago v. Paramadevan* held that it cannot be assumed that damages for breach of contract for the purchase and sale of real estate will be an inadequate remedy in all cases. At paragraph 22, it stated that specific performance should not be ordered “absent evidence that the property is unique to the extent that its substitute would not be readily available”, or absent “a fair, real and substantial justification” for the claim to specific performance.

[31] In the case at hand, the threshold issue under consideration is whether 94827 has successfully and sufficiently demonstrated there is a triable issue that the Properties are unique and irreplaceable to such an extent that their substitute would not be readily available.

[32] In other words, the overarching question is whether the Properties themselves, rather than their monetary equivalent, better serves justice between the parties; (see *Dhatt v. Beer*, 2021 ONCA 137, at para. 42).

The Factors to be Considered in the Exercise of Discretion for Specific Performance

[33] In *Lucas v. 1858793 Ontario Inc. (Howard Park)*, 2021 ONCA 52, at paragraph 73, the Ontario Court of Appeal held that when conducting the analysis as to whether to exercise the discretion to grant specific performance, courts typically examine and weigh together three factors: “...(a) a property’s physical attributes; (b) the purchaser’s subjective interests, or (c) the circumstances of the underlying transaction”.

[34] The governing considerations that typically inform the determination of these factors include: the nature of the agreement and the property; the objective uniqueness of the agreement and the property, and their subjective uniqueness to the purchaser at the time of purchase; the adequacy of damages as a remedy; and the behaviour of the parties having regard to the equitable nature of the remedy. The typical considerations encompassed in the third factor include delay, prejudice, unconscionability, or unfairness; (see *Matthew Brady Self Storage Corp. v. InStorage Limited Partnership*, 2014 ONCA 858, at para. 32, leave to appeal to SCC refused, [2015] S.C.C.A. No. 50; and *Lucas*, at para. 71).

[35] Whether a property is unique by virtue of its nature or by the features of the contract for its purchase and sale is only one of several factors a court must consider when determining entitlement to specific performance. Specific performance of an agreement is an equitable remedy granted where damages cannot afford an adequate and just remedy in the circumstances; (see *Matthew Brady*; and *Paterson Veterinary Professional Corporation v. Stilton Corp. Ltd.*, 2019 ONCA 746, at para. 22, leave to appeal to SCC refused, [2019] S.C.C.A. No. 420).

[36] Lastly, this exercise is a fact-specific inquiry that requires consideration of all the particular circumstances and the equities of the case; (see *Di Millo v. 2099232 Ontario Inc.*, 2018 ONCA 1051, at para. 67, leave to appeal to SCC refused, [2019] S.C.C.A. No. 55; and *Fram Elgin Mills 90 Inc. v. Romandale Farms Ltd.*, 2021 ONCA 201, at para. 288).

Canadian Jurisprudence on Uniqueness

[37] In *Johnson* at paragraphs 74 to 93, Fry, J. (as she then was) conducted an extensive review of the Canadian jurisprudence outlining how courts should apply the subjective-objective analysis of “uniqueness”. She found that generally speaking, Canadian courts have adhered to the following principles:

- (a) Specific performance should not be granted, absent evidence that the property is unique to the extent that its substitute is not readily available;
- (b) There must be some fair, real and substantial justification for the claim;

- (c) The plaintiff must show that an order for the property, rather than its monetary equivalent, better serves justice between the parties; and
- (d) The burden of proof to establish that property is unique and that damages are inadequate to do justice should be on the plaintiff; and there is a subjective and objective aspect to uniqueness; (see *De Franco v. Khatri* (2005), 30 R.P.R. (4th) 192, [2005] O.J. No. 1890 (Sup. Ct. J.), at para. 32). However, the plaintiff is not required to adduce specific evidence that there was not some other property available, at the time of the breach, that had some, most or all of the features that made the subject property unique; (see *Silverberg v. 1054384 Ontario Ltd.* (2008), 77 R.P.R. (4th) 102, [2008] O.J. No. 4585 (Sup. Ct. J.), upheld at 2009 ONCA 698, at paras. 131-134).

[38] She noted further that Canadian courts have applied these principles in the following circumstances:

- (a) Where the property in question is being purchased as an investment, then this tends to favour against a finding of uniqueness; (see *Chaulk*);
- (b) Where the property in question is residential, not commercial; if so, then the subjective assessment would play a more prominent role for residential property such as a home; (see *John E. Dodge Holdings Ltd. v. 805062 Ontario Ltd.* (2001), 56 O.R. (3d) 341, [2001] O.J. No. 4397 (Sup. Ct. J.), at para. 59; and *Ali v. 656527 B.C. Ltd.*, 2004 BCCA 350);
- (c) In the granting of specific performance where the vendors refused to complete the agreement of purchase and sale for a commercial property, the analysis should include whether the property in question has a *quality that cannot be readily duplicated elsewhere*. This quality should relate to the proposed use of the property and be a *quality that makes it particularly suitable for the purpose for which it was intended*; (see also the comments of Low, J. in *904060 Ontario Ltd. v. 529566 Ontario Ltd.* (1999), 85 A.C.W.S. (3d) 1195, [1999] O.J. No. 355 (Ct. J. (Gen. Div.)), at para. 14); and
- (d) As for the timing of when the uniqueness analysis should be determined it is the date when an actionable act takes place, and the wronged party must decide whether to keep the agreement alive by seeking specific

performance or accept the breach and sue for damages; (see *Dodge*, at paragraphs 39-40; and *Greenforco Holding Corp. v. Yonge-Merton Developments Ltd.*, [1999] O.J. No. 3232 (Sup. Ct. J.), at para. 76).

EVIDENCE FROM THE PARTIES

[39] The factual basis in support of 94827's position is outlined in the Affidavits of Bruce Jarvis and Bryan Robbins. Jarvis is a director with 94827, and Robbins is a licenced real estate agent retained by 94827 to purchase the Properties.

[40] Both affiants state that because the Properties were constructed using ICF, this technique creates energy efficiency and soundproofing making them eligible for the CMHC-MLI Select Program. As a result, the Properties are unique and unlikely to be replaceable because there are no duplicate properties available in Newfoundland and Labrador at this time; (see Jarvis Affidavit, at para. 25; and Robbins Affidavit, at para. 5).

[41] In addition, MLI Select approval permits 94827 to obtain a fifty-year mortgage at five percent because it meets the requirement of a minimum project size of five (5) residential units on a single parcel of land under common ownership; (see para. 40 of the Jarvis Affidavit).

[42] The affiants for MLP and Parsons suggest otherwise. Evan King is a real estate agent for RE/MAX Infinity Realty and an Architectural Engineering Technologist and is the listing agent for the Properties. The other affiant, Pat Carey, acted as the builder for the Properties along with Parsons, the owner of MLP Holdings Inc., who purchased the lots.

[43] Collectively, these affidavits show the Properties were originally part of a discussion to construct twelve (12) units, as six (6) identical homes, but the actual construction and marketing was limited to the four (4) dwellings that were adjacent to each other at 24, 26, 28, and 30 Carol Crescent.

[44] The expired listing to the Agreement shows the four properties from 24–30 Carol Crescent as being advertised on the basis they could be sold to the same purchaser; (see Exhibit “A” to Carey Affidavit). However, Exhibit “E” to Carey’s Affidavit contains an email from the Town of Paradise stating that the Properties are four separate properties and that the Town would not accept them as a single parcel.

[45] The Carey Affidavit continues to state that every newly constructed home on Carol Crescent is a duplex and that he would not be able to promise eligibility for the CMHC MLI Select program; nor did he make such representations in this instance because the Carol Crescent properties are not unique since any property that contains 5 units or more is eligible to apply for the CMHC MLI Select Program.

[46] One of the main reasons advanced by MLP and Parsons to support its position that the Properties are not unique is that the developer of Jonathan Park Subdivision where the Properties are located has indicated plans for future phases where similar duplex arrangements could be built. These plans demonstrate that the same type of development could be replicated in multiple locations within even the same subdivision, further supporting that the 24–30 Carol Crescent project was not unique or irreplaceable; (see Exhibits “C” and “D” to the Carey Affidavit).

[47] The subdivision plans demonstrate there are numerous opportunities in Phase 3 that could be presented for the CMHC MLI Select Program, and that use of ICF construction does not make the units eligible for the CMHC MLI Select Program. Rather, it helps with obtaining points because of its energy efficiency, but the same level of efficiency can be achieved by constructing an R2000 home, or by using other optional features or constructions methods.

Application of the evidence to the law

[48] The case law regarding the consideration of uniqueness in the context of an application to lift a *lis pendens* supports the argument proposed by 94827 that the Court’s analysis should be temporal in nature; namely it should focus on the nature of the Properties in the timeframe that exists from the date of filing of the *lis pendens* to the date of the hearing of the application (see *Dodge*).

[49] The plaintiff is only required to show there is a triable issue as between the parties as to an interest in the land (see *Procopio*); and where the factual evidence on the interlocutory application reveals a fair, real and substantial justification for specific performance a reasonable trier of fact should not vacate the *lis pendens* at this stage; (see *Chaulk v. Fairview Construction Ltd.* (1977), 14 Nfld. & P.E.I.R. 13, 1977 CarswellNfld 1214 (C.A.), at p. 21; *Infini-T Holdings Ltd. v. Bell Aliant Regional Communications Inc.*, at para. 16).

[50] Applying this approach to this case, the evidence supports the proposition that the Properties are unique because there are no other substitutes available in the market at the time of the hearing of the interlocutory application. This situation may well change before the commencement of trial. I base this observation on the affidavit evidence that there are plans for the future construction of similar units that would clearly be of the Properties' qualities and readily duplicated.

[51] However, the affidavit evidence overall demonstrates that at this point in time (being January 29, 2026), the Properties have a quality that makes them particularly suitable for the purpose for which it was intended when 94827 signed the Agreement. The Properties are located in Subdivision One of the three subdivisions. The evidence shows that Phases 2 and 3 will also contain exact or comparable properties that will meet the MLI Select criteria. Thus, at some point in the future, 94827's uniqueness argument may become moot should these phases be completed. However, this is not something the Court can place weight on at this point in time.

[52] Based on the above, I conclude that 94827 will not be able to purchase property of equivalent design and value in Newfoundland and Labrador due to their currently unique qualities.

Issue #3: Do MLP and Parsons have a claim for hardship as a basis to vacate the Notice of *Lis Pendens*?

POSITION OF THE PARTIES

94827

[53] It argues this Court should refuse to vacate a Notice of *Lis Pendens* despite MLP's and Parsons' claim of hardship. This is because the Court is obligated to scrutinize the claim of uniqueness more closely where hardship is claimed. Here, the evidence does not withstand scrutiny. Rather, it establishes that damages would not be an adequate remedy because it is entirely possible that 94827 could succeed in its claim for specific performance if a trial were held at this time.

[54] Any claims of hardship were entirely foreseeable and would not give rise to the standard of "undue hardship".

MLP and Parsons

[55] MLP and Parsons say they are in a position to close the sale to 94827 but have been unable because of a dispute regarding extras, additions and alterations leading to an adjusted purchase price.

[56] The original Agreement of Purchase and Sale contemplated a garage on one side and apartment on the other. The Appendix to the Agreement of Purchase and Sale indicates that 94827 wished to modify the unit to have two apartments with wheelchair accessibility. These changes ended up costing MLP more money because the basement floors had been poured, the walls constructed and electricity started. However, following 94827's energy audit, it decided that it did not need both apartments to be accessible anymore because they had accumulated enough MLI select points without it.

[57] This meant that MLP incurred additional costs to reverse the walk-in shower, electrical and plumbing, and argues that 94827 is solely responsible for the delays in closing and that it has declined to purchase the properties even at a discounted price.

[58] To finance the project, MLP entered into a short-term mortgage of \$1,084,640 to fund completion of the build, with a closing date of July 25, 2025. The monthly interest on this mortgage is \$11,741.23, and because the completed buildings are vacant and unsold, they attract increased insurance costs. MLP is owed in excess of \$260,000.00 with interest accumulating daily. In addition to this amount, additional payments are owed to various subtrades and suppliers.

ANALYSIS

[59] The British Columbia Court of Appeal has held that where a plaintiff seeks specific performance, and a defendant seeks to vacate a Notice of *Lis Pendens* on hardship grounds, the defendant must satisfy the Court that it is plain and obvious that the plaintiff would not succeed at trial; (see *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2014 BCCA 388, at para. 39; and *Bilin v. Sidhu*, 2017 BCCA 429, at para. 42).

[60] 94827 argues that MLP and Parsons have led no evidence to refute the uniqueness and irreplaceability of the Properties. I accept this is a correct observation based upon supporting affidavits filed by the parties; (see *Anchorage Contracting Services Ltd. v. Moss Holdings Limited*, at para. 9; *Duffitt v. Conception Bay South (Town)*, at para 30; *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, at para. 39; *Bilin v. Sidhu*, at para. 42; and *Patrick Street Holdings Limited v. 11368 NL Inc.*, 2016 NLTD(G) 177, at para. 24).

[61] In *Paro*, our Court of Appeal refused to lift the *lis pendens* and confirmed that the party seeking the lifting of the *lis pendens* bears the risk of agreeing to sell to another party despite being aware of the dispute and the Notice of *Lis Pendens* saying: “where a *lis pendens* is registered before litigation has been commenced, a person who proceeds to deal with the property without the *lis pendens* having first

been dealt with does so at the risk of the lis pendens becoming effective by the subsequent commencement of litigation”.

[62] In other words, a Court should not be swayed by any alleged hardship or urgency as a result of the pending closing dates of the agreements.

[63] Here, MLP and Parsons have created this circumstance, and elected to take on risk, by listing the Properties and entering into agreements of purchase and sale with third parties. 94827 argues it has offered MLP and Parsons every opportunity to minimize alleged hardship. Specifically, to resolve their purported financial challenges, MLP and Parsons need only sell the Properties to 94827 by the terms of the Agreement, including the Purchase Price, and sue for the added costs it has allegedly incurred.

[64] 94827 acknowledges that there is “some discretion” to vacate a Notice of *Lis Pendens* as a result of hardship but the exercise of that discretion is not unbounded. A Court should not rely on scant and uncorroborated evidence of hardship when contemplating vacating a Notice of *Lis Pendens* as this would have the effect of prohibiting an order for specific performance at trial and nullifying 94827’s opportunity to acquire the Properties.

[65] I conclude that it is plain and obvious that MLI Select was a major component of MLP’s marketing of the Properties and a key reason 94827 agreed to buy them. Furthermore, the Properties are unlike any other properties currently available in the Jonathan Park neighborhood, the Town of Paradise or the Avalon Peninsula, such that damages would not be an adequate remedy at this point in time. As I noted earlier, these circumstances will most certainly change with the future development of Phases 2 and 3 of the Jonathan Park Subdivision. Indeed, according to MLP and Parsons’ own evidence, this could occur as early as six to eight months from now.

[66] It is for these reasons I find that while there is evidence of hardship to MLP and Parsons, it does not rise to the level of displacing the presumption of uniqueness that currently exists. To presume, at this point in time, the only remedy appropriate

for 94827's claim is monetary damages would not better serve justice between the parties. This reasoning may very well change in the very near future.

[67] Accordingly, I will not vacate the *lis pendens* on the grounds of undue hardship. However, as I indicated to counsel during the hearing, like O'Regan, J. in *Anchorage Contracting Services Ltd v. Moss Holdings Limited*, should the parties consider the option of placing security, and the method of securing it, I would be prepared to hear from counsel on this issue.

DISPOSITION

[68] For the reasons cited above, the application by MLP and Parsons to vacate the *lis pendens* is dismissed. Costs will be costs in the cause on a Column III basis.

PETER N. BROWNE
Justice