

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
YEXIN TIAN)	
)	
	Plaintiff)	
– and –)	Calvin Zhang, for the Plaintiff
)	
TONGFANG JIANG)	
)	
	Defendant)	Benjamin Salsberg, for the Defendant
)	
)	
)	HEARD: March 27, 2026

2026 ONSC 1947 (CanLII)

MCCARTHY J.

The Motion

[1] This matter returns before me for a consideration of whether leave should be granted to the Plaintiff to register a Certificate of Pending Litigation (“CPL”) on title to premises described as 10 McPhillips Avenue, Markham, Ontario (“the property”).

The Action

[2] The present action stems from an alleged unpaid private loan (“the private loan”) between the Plaintiff and the Defendant for the purpose of construction and improvements to the property and an abutting property, located on Milne Drive, from which it was severed (the “Milne property”).

[3] The statement of claim in this action was issued in December 2024. It sought a declaration of a beneficial interest in the property, a CPL, an accounting or, in the alternative, payment of the outstanding private loan.

The Private Loan

[4] The loan had been advanced by the Plaintiff to the Defendant in the context of a series of contractual agreements between the parties culminating in an agreement on July 18, 2023 (“the July agreement”), which stipulated, *inter alia*, that the parties would not sell the

properties until the private loan had been paid off but also that the private loan was not to be registered on title to the property.

The CPL

- [5] Following the issuance of the claim, the Plaintiff sought and obtained an *ex parte* order for the issuance and registration of a CPL. On June 10, 2025, the court set aside the CPL on the basis that the Plaintiff had failed to make full, frank, and fair disclosure on his *ex parte* materials, that the construction on the property was not yet complete, that the construction loans had not been paid off, that clause 5 in the July agreement precluded the private loan from being registered on title to the property, and that the Plaintiff had improperly asserted that the Defendant had been attempting to sell the property. The court left it open to the Plaintiff to renew its request for a CPL on notice to the Defendant.

The Plaintiff's Position

- [6] The Plaintiff asserts that he has a reasonable claim to an interest in the property because the private loan remains outstanding and that pursuant to the agreements, the Defendant is precluded from selling the property until the private loan is paid off. This creates a reasonable interest in the property.

The Defendant's Position

- [7] The Defendant argues that the Plaintiff has not demonstrated a proprietary interest in the property and that his claim is essentially contractual in nature. Moreover, the contractual agreements preclude the Plaintiff from encumbering title or registering the private loan on title to the property. The construction loan was not paid off but merely replaced and, in any event, construction on the property is not yet completed. A CPL is a discretionary remedy, and having regard to the various factors to be considered (“the *Dhunna* factors”), the court should decline to grant the relief sought. The Plaintiff’s initiative is a dressed-up attempt to obtain security for an unsecured loan which is not, in any event, repayable at any time.

The Law

- [8] The purpose of a CPL is to give notice that an interest in land is in question in litigation. It serves to prevent the claimed interest from being defeated by a transfer or other dealing with the land in favour of a person who otherwise could assert they acquired the land without notice of that claimed interest: *G.P.I. Greenfield Pioneer Inc. v. Moore* (2002), 58 O.R. (3d) 87 (C.A.), at para. 15; *Brock v. Crawford* (1908), 1908 CarswellOnt 16, at p. 146 (H.C.).
- [9] The recent decision of *Binio v. Kotarak*, 2026 ONSC 7330, explained how a CPL serves to notify third parties of a claimed interest in land in order to protect a party’s asserted proprietary claim pending its determination on the merits, but the certificate itself is not any right or interest in the land.

- [10] The party challenging the certificate must show that there is no triable issue as to whether the party seeking the certificate has “a reasonable claim to the interest in the land”: *G.P.I. Greenfield Pioneer Inc.*, at para. 20.
- [11] If the claimant has a “reasonable claim to the interest in the land”, it is appropriate for the court to weigh the equities, in particular the 8 factors suggested in *572383 Ontario Inc. v. Dhunna* (1987), 24 C.P.C. (2d) 287 (Ont. S.C.).
- [12] The court summarized the *Dhunna* factors in *Perruzza v. Spatone*, 2010 ONSC 841, including: (i) whether the plaintiff is a shell corporation, (ii) whether the land is unique, (iii) the intent of the parties in acquiring the land, (iv) whether there is an alternative claim for damages, (v) the ease or difficulty in calculating damages, (vi) whether damages would be a satisfactory remedy, (vii) the presence or absence of a willing purchaser, and (viii) the harm to each party if the CPL is or is not removed with or without security.
- [13] Courts will not issue a CPL where damages are sufficient. As observed in *Canadian West Trust Co. v. 1324789 Ontario Inc.*, 2019 ONSC 4789, at para. 30, a certificate is intended to protect an interest in land only where other remedies would be ineffective.

Analysis

- [14] In the case at bar, I am not persuaded that the Plaintiff’s claim discloses a reasonable claim for a proprietary interest in the property. There is no claim for a constructive trust or for a resulting trust. This is not a claim for specific performance of a sale based upon a breach of contract and the uniqueness of the property. There is no enforcement mechanism tied to the property such as the right of possession or the right to sale proceeds.
- [15] The covenant not to sell the property until the private loan has been paid off is entirely contractual – it does not create any proprietary interest in the property. If the Plaintiff were to sell the property before the private loan was paid off, it would amount to a breach of contract, and the Plaintiff could look to the Defendant for damages. While the Plaintiff may have an interest in when and if the property is sold, this does not on its own create a proprietary interest in land.
- [16] As stated by my brother Schabas J. in *Marmak Holdings Inc. v. Miletta Maplecrete Holdings Ltd. et al.*, 2019 ONSC 4630, at para. 23: “[a] CPL is intended to protect an interest in land in situations where other remedies would be ineffective. It is not intended to be an instrument to secure a claim for damages.”
- [17] I am not persuaded that other remedies here would be ineffective or insufficient. Simply put, if the debt is not paid in accordance with the agreements, the Plaintiff can obtain a monetary judgment.
- [18] If I am wrong in my determination that there is no proprietary interest in the property, I would deny the relief sought to the Plaintiff by applying the *Dhunna* factors.

- [19] There is not a shred of evidence that damages would not be an adequate remedy for the Plaintiff.
- [20] There is uncontradicted evidence that an additional \$156,000 is required to complete the construction on the property. The Plaintiff has ceased to provide funding for the completion of the construction. A CPL on title might unnecessarily hamper the Defendant's attempt to obtain secondary financing.
- [21] It remains uncertain how much, if any, of the private loan remains outstanding.
- [22] Damages are entirely capable of being ascertained. Both parties have engaged experts to assist in that endeavour.
- [23] This is not a *Mareva* injunction application seeking a non-dissipation of assets order. In any event, there is no evidence that the Defendant is attempting to dissipate or remove assets from the jurisdiction.
- [24] A review of the series of agreements establishes that the intention of the parties in first acquiring and then severing the Milne property was to allow each of them to independently develop their respective properties. They should be permitted to do so.
- [25] The Plaintiff specifically covenanted not to register the private loan on title and not to encumber the property. A CPL would be tantamount to registering the private loan on title. Moreover, a CPL would amount to an encumbrance if it were to hinder the Defendant from financing, marketing or selling the property.

Disposition

- [26] For the foregoing reasons, the Plaintiff's motion is dismissed. Leave to register a CPL on title to the property is denied.

Costs

- [27] If the parties are unable to agree on the issue of costs of this motion, they shall take out an appointment to address that issue before me through the trial coordinator at Newmarket (Newmarket.SCJ.TC@ontario.ca). That appearance shall take place by Zoom with the court to arrange the details.

MCCARTHY J.