Court of King's Bench of Alberta

Citation: Niche Developments Corp. v. 2555436 Alberta Ltd., 2026 ABKB 284

Date: 20260413
Docket: 2503 20987
Registry: Edmonton

Between:

Niche Developments Corp.

Plaintiff

- and -

2555436 Alberta Ltd., 1981606 Alberta Ltd., Sam Dhaliwal, Vikas Sharma

Defendants

Reasons for Decision
of
Honourable Justice Douglas R. Mah

A. Nature of the Application

[1] The Defendants seek summary dismissal of this action and concurrent discharge of a Certificate of Lis Pendens (CLP) registered against certain lands as a consequence of this action.

[2] The lands are owned by the Defendant 2555436 Alberta Ltd (255). The Plaintiff Niche Developments Corp (Niche) has an unadjudicated debt claim in a separate action against 1981606 Alberta Ltd (198). 198 is also a corporate Defendant in this action. 198 previously owned the lands in question and transferred those lands to 255 while Niche's debt claim against 198 was unresolved. 255 is currently building a townhouse project on the land which requires continuing construction financing.

[3] Niche frames this action as a fraudulent conveyance action against 255 as the transferee of the lands and 198 as the transferor. It also claims that the personal Defendants, Mr. Dhaliwal and Mr. Sharma, benefitted from fraudulent preferences in that they received funds from the sale to partially retire shareholder loans owed to them by 198.

[4] The land was 198's only asset. As a result of the transfer and the distribution of sale proceeds, Niche says it has been wrongfully deprived of any recourse for its debt claim against 198. The Defendants say the transfer was a legitimate sale of the lands to a third party for fair market value consideration and therefore the transaction is unassailable. Moreover, 198 disputes Niche's debt claim. All the Defendants say that Niche's fraudulent conveyance allegation is nothing more than its attempt to thrust a spanner into 255's works in order to extract an undeserved payment.

[5] This application deals only with the fraudulent conveyance claim and the CLP that was registered by Niche in furtherance of that claim. I do not deal with the validity of Niche's underlying debt claim against 198 nor the merits of the fraudulent preference claims against Mr. Dhaliwal and Mr. Sharma.

B. Background

1. The 2023 Action

[6] In March 2019, Niche contracted with 198 to build a 29-unit commercial condominium on the lands in question. Mr. Dhaliwal was one of the principals of 198. A dispute between Niche and 198 arose, resulting in a termination of the contract on September 9, 2022. 198's position was that the totality of Niche's work consisted of digging a hole on the property which had to be filled in by 198 after the City of Edmonton declared the excavation to be unsafe.[1] 198 believed that Niche had been paid in full for its work and if anything had inflated its invoices.[2] Mr. Dhaliwal deposed that not only was the hole filled in, none of Niche's work has been incorporated in the new project.[3]

[7] Niche filed a builder's lien for what it believed was its unpaid work on February 13, 2023, well after the statutory lien period had expired. It was served with a Notice to Take Action under section 45 of the former *Builders' Lien Act* on March 16, 2023. In response, Niche filed its Statement of Claim on April 14, 2023 alleging both a contractual debt claim and a builders' lien against the land. 198 defended on May 4, 2023, denying the debt and stating the lien had not been filed in time.

[8] At that point, no CLP had been registered in respect of the purported lien as required under s 45 and the lien was removed from title on June 7, 2023. Counsel then acting for Niche appeared to acknowledge this outcome in email with 198's counsel on July 26, 2023.

[9] No further steps were taken to advance the remaining debt action until July 3, 2025 (more than 2 years later) when Niche filed its Affidavit of Records (AOR).

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[1] Questioning of Mr. Dhaliwal January 19, 2026 at page 47, 4-10.
[2] Affidavit of Sam Dhaliwal of December 23, 2025 at Exhibit D.
[3] Affidavit of Sam Dhaliwal of March 27, 2026, at para 10.

2. The Sale of the Lands

[10] The condominium project ran into difficulty in July 2023 when the mortgage holder, Canada ICI Capital Corporation, asked to be paid out and the project principals did not wish to put in more personal funds. Instead, they hit upon a plan to sell the land to another company (255) to develop it for a totally different use, an eleven-unit townhouse project. Canada ICI would be paid out.

[11] Mr. Dhaliwal and Mr. Sharma are the two directors of 255. They were also, along with another, the directors of 198. The four shareholders of 255 are also four of the six shareholders of 198 and include companies solely controlled by each of Mr. Dhaliwal and Mr. Sharma.

[12] 198 sold the lot to 255 for $1.6 million with a transaction closing date of November 16, 2023. Of that purchase price, $778,927.49 came from KV Capital, an accredited third-party mortgage lender, and the balance was raised from two of 255's shareholders: a total of $500,000 from 4D Investments Ltd (Mr. Dhaliwal's company) and a total of $350,000 from First Choice Financial (Mr. Sharma's company).[4]

[13] The sales proceeds were disbursed as follows:

- $1,174,129.56 to pay out the Canada ICI mortgage,
- $125,000 to First Choice Financial Incorporated (Mr. Sharma's company) to pay a loan;
- $144,801.33 to Samandeep Dhaliwal in partial payment of a shareholder's loan,
- $144, 801.32 to Vikas Sharma in partial payment of a shareholder's loan,
- small balance for vendor's legal fees.

[14] 198 is now defunct, has no assets and has been struck.

3. The 2025 Action

[15] At some point prior to July 31, 2025, Mr. Clarke (principal of Niche) drove by the lot in question and noticed that construction of sorts had resumed. He wondered about Niche's lien claim and contacted Niche's then counsel. Through that counsel's legal assistant, Mr. Clarke obtained a current certificate of title to the lands showing that title had changed hands (from 198 to 255) and that Niche's lien had been expunged.

[16] A curious exchange of email ensued between Mr. Clarke and Niche's then lawyer on July 31, 2025.[5] Mr. Clarke pointed out that the certificate of title disclosed that Niche's lien was gone and a new owner had taken over. The counsel expressed surprise that there was no CLP shown and said he would look into it. This is the same counsel who acknowledged to 198's counsel just over two years earlier that the CLP for the lien was invalid and would be removed.

[17] Niche's then counsel commenced the present action on October 14, 2025 and also sent a CLP in connection therewith for registration at Land Titles Office on October 21, 2025. However, the CLP erroneously related to Niche's invalid builders' lien from 2023.

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[4] Answers to Undertakings of Samandeep Dhaliwal filed March 25, 2026 at Tab 9.
[5] Affidavit of John Clarke of December 8, 2025, at Exhibit "J".

[18] By Order of the Applications Judge in this action on December 8, 2025, the CLP sent for filing on October 21, 2025 was struck. Niche had retained its current counsel by that time who advised that a new CLP, referencing this action, had been sent for registration. The Applications Judge suggested to counsel that a further application, dealing with both summary dismissal and discharge of this latest CLP, be brought before a Judge on the Commercial List.

[19] Thus, we are here.

C. Legal Principles

1. Summary Dismissal

[20] The legal test for determining whether to grant summary judgment is addressed in Rules 7.2 and 7.3 of the *Rules of Court.* Rule 7.3(1)(a) provides that a Court may grant summary judgment "in respect of all or part of a claim" where "there is no defence to a claim or part of it". If the application is successful "with respect to all or part of a claim," the Court may "give judgment for or in respect of all or part of the claim" and, if judgment is given "for part of the claim," refer the balance to trial: Rule 7.3(3)(a) and (c). The Court has jurisdiction to address a claim on a summary basis, in whole or in part.

[21] In ***Hryniak v Mauldin***, 2014 SCC 7, paras 23-25, 28, 34, 49, [2014] 1 SCR 87, the Supreme Court called for a "shift in culture" in favour of "a fair process that results in a just adjudication of disputes", which permits "a judge to find the facts necessary to resolve the dispute and to apply the relevant legal principles to the facts as found" in a proceeding which is "accessible - proportionate, timely and affordable". One of those processes is summary judgment.

[22] ***Hryniak*** set out a three-part test on when summary judgment is appropriate, para 49:

> There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[23] See also ***Windsor v Canadian Pacific Railway Ltd***, 2014 ABCA 108, para 14, 94 Alta (5th) 301; ***Weir-Jones Technical Services Incorporated v Purolator Courier Ltd***, 2019 ABCA 49, paras 15-21, 442 DLR (4th) 9.

[24] ***Weir-Jones*** set out the principles for the grant of summary judgment. The Court said, para 47:

> (a) Having regard to the state of the record and the issues, is it possible to fairly resolve the dispute on a summary basis, or do uncertainties in the facts, the record, or the law reveal a genuine issue requiring a trial?

(b) Has the moving party met the burden on it to show there is either "no merit" or "no defence" and that there is no genuine issue requiring a trial? At a threshold level, the facts of the case must be proven on a balance of probabilities or the application will fail, but mere establishment of the facts to that standard is not a proxy for summary adjudication.

(c) If the moving party has met its burden, the resisting party must put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial. This can occur by challenging the moving party's case, by identifying a positive defence, by showing that a fair and just summary disposition is not realistic, or by otherwise demonstrating that there is a genuine issue requiring a trial. If there is a genuine issue requiring a trial, summary disposition is not available.

(d) In any event, the presiding judge must be left with sufficient confidence in the state of the record such that he or she is prepared to exercise the judicial discretion to summarily resolve the dispute.

[25] See also ***Hannam v Medicine Hat School District No. 76***, 2020 ABCA 343, paras 12, 13, 144-151, 454 DLR (4th) 202, leave to appeal denied 2021 CanLII 20326 (SCC); ***Calgary Co-operative Association Limited v Federated Co-operatives Limited***, 2025 ABCA 142, paras 20-25.

2. Fraudulent Conveyance

[26] A conveyance of property may be challenged as fraudulent under both s 1 of the *Fraudulent Preferences Act* and the *Statute of Elizabeth*. Both statutes require proof of fraudulent intent to defeat creditors on the part of a transferor but there is an important difference. The former requires an insolvent transferor at the time of conveyance while the latter does not. See ***Lay v Lay***, 2023 ABKB 354 at paras 44-47 citing ***Moody v Ashton***, 2004 SKQB 488 at para 122.

[27] The general legal principles flowing from the *Fraudulent Preferences Act* and the *Statute of Elizabeth* are not in dispute.

[28] Section 1 of the *Fraudulent Preferences Act* states the following:

> **Fraudulent transfers**
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> Subject to sections 6 to 9, every gift, conveyance, assignment, transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made
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> (a) by a person at a time when the person is in insolvent circumstances or is unable to pay the person's debts in full or knows that the person is on the eve of insolvency, and

(b) with intent to defeat, hinder, delay or prejudice the person's creditors or any one or more of them,

is void as against any creditor or creditors injured, delayed or prejudiced.

[29] The *Statute of Elizabeth* similarly provides a remedy to void a transfer, excluding the requirement of an insolvent transferor. The principles defining the remedy in the *Statute of Elizabeth* are set out in ***Proulx v Proulx***, 2002 ABQB 151 at para 14, and were endorsed by this court in ***Paragon Capital Corporation Ltd v Morgan***, 2013 ABQB 339 at para 4**:**

1. There must be a conveyance of either real or personal property;
2. The transaction must have been for no or nominal consideration;
3. It must have been the intent of the settlor to defraud, hinder or delay his creditors;
4. The intent of the settlor may be inferred from his circumstances and the circumstances of the settlement or may be the result of direct evidence;
5. The fact that there was no consideration or voluntary consideration will in most cases justify the inference of the necessary intent absent evidence rebutting that inference;
6. Inference of intent will be strong if the settlor was insolvent at the time of settlement or the settlement effectively denuded him of assets sufficient to cover existing obligations;
7. The party challenging the conveyance must be a creditor or someone with a legal or equitable right to claim against the settlor; and
8. The conveyance must have had the intended effect.

[30] See also ***Palechuk v Fahrlander***, 2006 ABCA 242 at para 31, leave to appeal to SCC refused, 31672 (1 March 2007).

[31] The jurisprudence addressing the *Statute of Elizabeth* outlines many "badges of fraud," which are a series of indicia on which a Plaintiff can rely when establishing intent. Proof of one or more badges of fraud will not compel a finding of intent in favor of the Plaintiff, but it does raise a *prima facie* case which the Defendants should attempt to rebut: CRB Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed (Toronto: Carswell, 1995) at 613.

[32] The following have been identified as badges of fraud:

1. The consideration was grossly inadequate;
2. The transfer was accomplished quickly or with unusual haste;
3. A close or non-arm's length relationship exists between the parties to the conveyance or transfer;
4. The transfer was very general in nature in that it included virtually all of the assets of the transferor;
5. The transfer was made pending the creditor's efforts to obtain judgment;
6. The transfer documents contain false statements as to consideration;

7. The transaction was secret;
8. The transfer was made pending the writ;
9. The deed contained self-serving provisions;
10. The transferor continued in possession or occupation of goods or property for his own use after the transfer;
11. The transfer occurs when there are actual or potential liabilities facing the transferor;
12. The effect of the transaction is to delay and defeat creditors;
13. The absence of a sound business or tax reason for the transaction; and
14. Payment to a person not a party to the disposition.

[33] The list is not exhaustive: ***Builder's Floor Centre*** at para 43, referencing Dunlop; ***Alberta (Attorney General) v Doz (Samuel) Professional Corp*** (1993), 139 AR 198, 9 Alta LR (3d) 201; ***Dwyer v Fox*** (1996), 43 Alta LR (3d) 63, 1996 CanLII 10477 (Alta QB); ***Megbiz v Osprey Energy Ltd***, 2006 ABQB 630; ***Gerrow v Dorais***, 2010 ABQB 560; and ***Conte*** at para 43 and 46.

[34] Finally, where there has been a transfer for value, the *Statute of Elizabeth* is inapplicable unless the transferee is privy to the transferor's fraud: ***Krumm v McKay***, 2003 ABQB 437 at paras 15-16; ***McColman and Sons Demolition Ltd v Chmiliar Business Services Corp***, 2020 ABQB 664 at paras 29 & 34; ***KOR Machining and Mechanical Ltd v KOR Welding and Machining Inc***, 2017 ABQB 290 at para 29. The requisite intent on the part of the transferee may be inferred from the presence of "badges of fraud": ***Lay*** at paras 48-51 and ***Royal Bank of Canada v McLaughlin***, 2016 ABQB 80 at para 39.

3. Discharge of CLP

[35] A CLP is an instrument filed at the Land Titles Office, indicating that someone has commenced an action claiming an interest, or calling into question some title or interest, in the subject land. It does not create an interest in land but merely serves to give notice that the title to the land is being questioned: ***Prophet Capital Corp v Deer Valley Developments Ltd***, 2009 ABQB 609 at para 58.

[36] Section 148 of the *Land Titles Act* governs when a CLP may be filed:

> (1) A person claiming an interest in any land, mortgage or encumbrance may, instead of filing a caveat or after filing a caveat, proceed by way of action to enforce the person's claim and register a certificate of *lis pendens* in the prescribed form.
>
> (2) A person who has proceeded by way of action to call into question some title or interest in any land may register a certificate of *lis pendens* in the prescribed form.

[37] The Court may discharge a CLP by Order under s 190(1) of the *LTA*:

> In any proceeding respecting land or in respect of any transaction or contract relating to it, or in respect of any instrument, caveat, memorandum or entry affecting land, the judge by decree or order may direct the Registrar to cancel,

> correct, substitute or issue any certificate of title or make any memorandum or entry on it and otherwise to do every act necessary to give effect to the decree or order.

[38] In ***Patel v Cunningham High Performance Execution Team Corp***, 2022 ABCA 323 at paras 34-35, the Court of Appeal indicated the "preferred approach" for dealing with a CLP coupled with a disputed legal action:

> [34] Unlike the Registrar, the court is not limited to discharging a CLP in the circumstances outlined in s 152. Pursuant to s 190, the court can direct a CLP be discharged where doing so is just and equitable in the circumstances. Nonetheless, the preferred approach is to proceed by way of an application to strike, or for summary judgment to dismiss that aspect of the claim. It is only in extraordinary circumstances that a person "claiming an interest in any land, mortgage or encumbrance" or calling "into question some title or interest in any land" in an ongoing action and who has registered a certificate of *lis pendens* pursuant to s 148 should be prevented by court order from having that disclosed on the title to the lands in questions at the land titles registry, as long as the claims continue to be the subject of litigation: see, for example, ***Main v Jeerh***.
>
> [35] Where a certificate of *lis pendens* has been issued in an action which claims or calls into question an interest in land, an application can be brought to strike that aspect of the claim pursuant to rule 3.68, either on the basis of the pleadings where the allegations in the Statement of Claim do not disclose a reasonable claim (r 3.68(2)(b)), or on an appropriate evidentiary record pursuant to the other provisions of the rule. Alternatively, an application can be brought for dismissal of that aspect of the claim pursuant to rules 7.1, 7.2 or 7.3 …

[39] The CLP before me was registered in relation to the fraudulent conveyance action which calls into question the legitimacy of the land transfer from 198 to 255 and thus, absent extraordinary circumstances, the "preferred approach" described above applies.

D. Arguments of the Parties

A. Defendants' Argument

[40] In requesting summary dismissal of the fraudulent conveyance claim, the Defendants argue that the sale of the land from 198 to 255 was a legitimate fair-market value transaction that is incapable of being set aside as a fraudulent conveyance. In particular:

- The purchase price is unquestionably FMV based on an independent March 27, 2021 appraisal showing the unimproved land value as $1.55 million.[6]

[6] See Affidavit of Sam Dhaliwal of December 23, 2025 at Exhibit "C", page 5.

- The purchase price exceeded the amount that Niche itself felt the land was worth (variously reported as $650,000, $900,000 to $1.1 million or $1.5 million) and from informal verbal advice from realtors consulted by 198 indicating a likely sale price of $1.5 million.
- The full purchase price was actually advanced in cash, as described above. 198 has been fully transparent, to the extent of disclosing the entirety of the vendor's solicitor's file.[7]
- The intention behind the transaction was not to defeat Niche's claim but rather liquidate 198's sole asset (the land) because the commercial condo project was no longer viable and it had to pay out the mortgage which had become due. 198 was simply winding-down its business in the normal course.
- As its lien had expired, Niche has no claim against the land and only has a claim against the remaining cash proceeds (after payment of the Canada ICI mortgage) from the sale.

[41] The Defendants assert that:

- Niche's fraudulent conveyance claim fails at the summary dismissal stage because the Defendants have shown, on the record before the Court and on a balance of probabilities, that the land was conveyed for more than adequate consideration and there was no intent on 198's part to defeat Niche's debt claim.
- Niche has not put its evidentiary "best foot forward" as required by the summary judgment test in Alberta and has not rebutted the Defendants' proof of adequate consideration and no intent.
- By bringing the 2025 action and registering the most recent CLP, Mr. Clarke and Niche are merely acting in an opportunistic manner by threatening the townhouse project.

B. Niche's Argument

[42] Niche argues that, on this record, there are genuine issues to be tried and therefore summary dismissal is not appropriate.

[43] It says that in commencing the 2025 action and in registering the latest CLP, it is not relying on or trying to revive its lien claim from 2023. It acknowledges that the lien claim is dead and buried. Rather, Niche argues, that it relies on its unadjudicated debt claim against 198 as the basis of the fraudulent conveyance claim. That claim is sufficient to justify the continued registration of the latest CLP.

[44] Moreover, Niche argues that the summary judgment test does not shift the evidentiary burden in this case. Instead, it asserts that the Defendants have failed to discharge their onus of showing "no claim" because:

[7] See Exhibit "F" to the December 23, 2025 affidavit of Sam Dhaliwal.

- the law in Alberta recognizes that a fraudulent conveyance may be established even where a transfer for value has occurred: ***Krumm*** at para 15 and ***KOR*** at para 29;
- While the challenging creditor must prove concurrent intent on the part of the transferor and transferee, where, as here, they are closely related, that intent may be inferred from the so-called "badges of fraud": ***Lay*** at paras 48-51.
- There are badges in this case: *all* of 198's property was conveyed; the overlap or close relationship between transferor and transferee; the conveyance was made in the face of an ongoing legal process; some benefit (i.e. cash) was retained by 198's shareholders: ***Ernst & Young Inc v Aquino***, 2021 ONSC 527 at para 153; 198 was insolvent at the time of conveyance: ***Lay*** at para 50.
- The Defendants have not displaced the inferences of fraud arising from the presence of these "badges" even if the transfer is said to be for value.

[45] Finally, with regard to the CLP, Niche says that the CLP should continue to run with the action per ***Patel*** para 34.

E. Ruling

[46] This is a close call.

[47] I say so primarily for the reason that some "badges of fraud" are present from which an inference of bilateral intention to defraud might be drawn in circumstances where the transferor and transferee are related. I am not saying that I do draw those inferences. I am only saying that they are available on this record. It may be that the Defendants are capable of rebutting them on an expanded record. For example, see ***Paragon Capital*** at para 38 and ***Westcorp Inc v H & H Stucco & Siding Ltd***, 2016 ABQB 650 at para 45. In the latter case, a "legitimate business purpose" was found to rebut the presumption of fraud.

[48] I'll deal with aspects of Niche's arguments about "badges" that I think are less problematic for the Defendants and then those that do present issues.

[49] First, I do not accept that the transaction was at undervalue. Niche suggested that the land was worth up to $9.35 million, according to 198's appraisal, but that was in its finished state with a brand new 29-unit commercial condominium building on it. The uncontroverted evidence is that the lot was bare land, that the hole Niche had dug had been filled in and that none of Niche's work was used. The appraisal showed that the land by itself was worth $1.55 million. Niche itself says it made its own highest offer for the land at $1.5 million about a year earlier. It is difficult for Niche to now complain about a $1.6 million purchase price in 2023.

[50] I am not concerned about the appraisal relied on by 198 (and Niche for that matter) being more than 2 years old. As this Court noted in ***Accel Canada Holdings Limited (Re)***, 2020 ABQB 204 at para 81, weighing the adequacy of consideration is not an exercise in precision but one of judgment. In the circumstances, I conclude on this record that the consideration was adequate.

[51] Having reached this conclusion, the record must also demonstrate that 255 as transferee was not privy to any fraudulent intent for summary dismissal to be granted.

[52] I do not put much stock in Mr. Dhaliwal's "admission" during questioning that 198 was insolvent at the time of that transaction. I accept that the context was that Canada ICI was looking for pay out of the mortgage and neither 198 nor its investors had the cash on hand to do that. Therefore, Mr. Dhaliwal was not necessarily saying that either form of the legal test for insolvency had been met. Counsel for the Defendants did invite me to examine 198's financial records and come to my own conclusion about its solvency. However, I am hesitant to analyze corporate financial records without guidance from an expert, the company's accountant or at least one of its principals or even counsel. I do note that 198 considered itself to have no other creditors apart from its shareholders when it came to distributing the cash balance from the transaction. Niche's first action was commenced in April 2023 and defended in May 2023, but no further steps had been taken to advance the litigation by the time of the transaction. It was and continues to be a contingent claim. In view of all of this, I come to no conclusion about 198's solvency or insolvency at the time of the conveyance.

[53] The issue of insolvency or not remains pertinent in order for this transaction to be set aside as a fraudulent conveyance under s 1 of the *Fraudulent Preferences Act*.

[54] I turn next to the problematic indicia, which include:

- The involvement of Mr. Dhaliwal and Mr. Sharma with both 198 and 255 and the overlap between directors and shareholders of the two entities. One could infer from the factual record that both of them knew about Niche's monetary claim and therefore could impute bilateral intention to deprive Niche of its remedy after judgment. Of the various "badges," the closeness of relationship between individuals and their own corporations involved in both sides of a transaction is the "most persuasive factor" that leads to a finding of fraud: ***Krumm*** at para 18; ***McLaughlin*** at para 39.
- The conveyance occurred while Niche's debt claim against 198 remained unadjudicated (although it is an unresolved question of fact whether it was done in "unusual haste".)
- All of 198's property was conveyed in the transaction.
- Cash was provided by each of Mr. Dhaliwal and Mr. Sharma to fund the balance of the purchase price and then substantial portions of the cash remaining after payment of the Canada ICI mortgage was funneled back to them and Mr. Sharma's company in repayment of shareholder loans.
- It might be said that Mr. Dhaliwal and Mr. Sharma, as principals of both 198 and 255 and through shareholdings in their companies, retained the benefit of the property.

[55] In my view, these problematic indicia give rise to inferences of concurrent intent on the part of 255 that are not rebutted by the evidence in the record as it presently stands. Therefore, there remains a genuine issue for trial as to whether under the *Statute of Elizabeth*, in a case where there is fair consideration, the bilateral intent required for fraudulent conveyance has been established by inference and, if so, is rebutted by evidence not yet in the record.

[56] There is also an issue as to whether Niche has been deprived of its enforcement remedy against the land once it achieves judgment against 198. At present, the record discloses that 198

has gone out of business and has no assets. I do not have information about whether any cash from the transaction remains within reach of Niche, should Niche obtain its judgment.

[57] There is too much that is unknown on this record and it would not be fair for me to summarily decide the fraudulent conveyance matter at this point, under either s 1 of the *Fraudulent Preferences Act* or the *Statute of Elizabeth*.

[58] In consequence of the above, I dismiss the application for summary dismissal. I have no reason not to follow the general rule in ***Patel*** that the CLP should run with the action and so I refrain from discharging the CLP from title.

F. Next Steps

[59] Niche questioned whether the registration of the extant CLP has the effect of impeding the continued financing of the townhouse project. In his March 27, 2026, affidavit, Mr. Dhaliwal deposed that KV Capital, the lender providing the construction financing, has refused further advances in the face of a CLP that puts it in second place. 255 is obliged to deliver a completed project by year-end. The whole project is now in jeopardy.

[60] As an alternative remedy, 255 asked that if the Court was not prepared to grant summary dismissal and remove the CLP, then 255 be allowed to post security to stand in place of the CLP. 255's counsel suggested a certain amount. Niche's counsel took the position that the entirety of Niche's claim (most of which is disputed by 198 and includes projected lost profit) be secured. It was suggested that the security might come from the anticipated cash proceeds to be realized upon completion of the townhouse development and its delivery to the purchaser for whom it is being built.

[61] Based on what was presented to me in this record, there appear to be some serious issues as to the validity of Niche's debt claim against 198.[8] Having said that, I cannot make a summary determination of Niche's claim against 198, which is the subject of an entirely different action.

[62] It seems to me that none of the parties to this action would benefit from the townhouse project failing if KV Capital were to call its loan. It also seems to me critical that the validity and extent of Niche's debt claim against 198 be determined. If it turns out that the claim is less than the amount secured, then the security can be reduced pending the resolution of this action. Alternatively, if in fact it is Niche that owes money to 198 as a result of inflated billings (as 198's counsel suggests), then that determination disposes of both the debt action against 198 and this action.

[63] Accordingly, I direct as follows:

- Niche and 255 will agree upon an amount and form of security to stand in place of the CLP in order to discharge the CLP and resume the flow of construction financing.
- If the parties are unable to agree as to the amount and form of security, then 255 may make an application in Civil Chambers to determine same.

[8] Affidavit of Sam Dhaliwal sworn November 11, 2025 at Exhibit "D"; Affidavit of Sam Dhaliwal sworn March 27, 2026 at para 10.

- The parties will agree upon a method of summary determination of Niche's claim against 198. That outcome will also determine whether any further security in this action is still required, and if so, how much.

[64] The continuation of the CLP under this decision does not affect 255's rights under s 149 of the *LTA*. If the Court ultimately determines that Niche does not actually have a legitimate debt claim against 198 and the present CLP was only registered for leverage purposes, as counsel for the Defendants suggests, then Niche is in jeopardy for the financial consequences of a wrongful filing of a CLP.

[65] Furthermore, even if the land had not been sold by 198 to 255 and Niche had been able to obtain judgment against 198 and enforce it against the land, the extent to which the judgment is enforceable is at most the difference between the purchase price paid by 255 and the amount required to pay out the Canada ICI mortgage. There is no dispute that Canada ICI held a valid mortgage that takes priority. That amount is also the absolute maximum for the security to be posted under this decision. The strength of Niche's claim against 198 should be a factor for counsel to consider in negotiating the amount of security required under this decision.

[66] Counsel for the Defendants seemed to think that I am seized of this matter. I am not. I merely approved it for hearing on the Commercial List, and the hearing happened to fall during my Commercial Week. I am not in a position to take on any further seized matters in Edmonton.

[67] I am reserving on the costs of this application until I learn the outcome of the determination of Niche's claim against 198.

Heard on the 01st day of April, 2026.
Dated at the City of Edmonton, Alberta this 13th day of April, 2026.

Douglas R. Mah
JCKBA

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