

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Boston Development Corp. v. Takhar*,  
2026 BCSC 784

Date: 20260414  
Docket: S260212  
Registry: New Westminster

Between:

**Boston Development Corp.**

Petitioner

And

**Gurdip Takhar also known as Gary Takhar**

Respondent

Before: The Honourable Justice Latimer

## **Oral Reasons for Judgment**

(In Chambers)

Counsel for the Petitioner:

R.S. Atwal

Counsel for the Respondent:

N.P.R. Bond

Place and Date of Hearing:

Vancouver, B.C.  
April 13, 2026

Place and Date of Judgment:

Vancouver, B.C.  
April 14, 2026

[1] **THE COURT:** These oral reasons for judgment have been edited for publication.

**Introduction**

[2] This is a petition for an order that the certificate of pending litigation filed by the respondent, Gurdip Takhar, also known as Gary Takhar, on January 10, 2024, in Kamloops Land Title Office, under registration number CB 1110376 (the “CPL”) be cancelled. The CPL was filed against the lands and premises situated in the city of Kelowna in the province of British Columbia, legally described as:

PID 007-574-797

Lot 1, District Lot 136, Osoyoos division, Yale district plan 8383  
(the “Property”)

[3] The following facts are not in dispute.

- a) This petitioner, Boston Development Corporation, is a company duly incorporated in the province of British Columbia. The petitioner is the registered owner of the property. The property is a four-plex development. The development is complete.
- b) Devinder Singh Sidhu, also known as Dave Sidhu (“Mr. Sidhu”), is the director of the petitioner.
- c) The respondent, Mr. Takhar, filed the CPL in an action commenced by way of notice of civil claim (“NOCC”) in the Vancouver registry of the Supreme Court of British Columbia, action number S240036 (the “Takhar Action”).
- d) Mr. Takhar and his corporate entity are the plaintiffs in the Takhar Action. However, only Mr. Takhar is named on the CPL filing.
- e) Mr. Takhar did not name the petitioner as a defendant in the Takhar Action.

[4] It is because of this last fact that the relief sought in this application is brought by petition rather than by notice of application in the existing Takhar Action. Neither the petitioner's standing nor the manner of proceeding is in dispute.

[5] The petitioner argues, pursuant to s. 215 of the *Land Title Act*, R.S.B.C. 1996, c. 250 [LTA], that the respondent has failed to plead an interest in the Property in the Takhar Action. In the alternative, if this Court finds an interest in land has been sufficiently pleaded, the petitioner argues, pursuant to s. 256 of the *LTA*, that this Court should exercise its discretion to cancel the CPL because it is causing hardship and inconvenience to the petitioner.

[6] The respondent opposes the relief sought.

### **Issues**

[7] The issues for determination are:

- a) Whether Mr. Takhar has pleaded an interest in the property in the Takhar Action; and
- b) If so, whether the Court should nevertheless exercise its discretion to cancel the CPL because it is causing hardship and inconvenience.

[8] For reasons I will explain, I have determined that the respondent has failed to plead an interest in the Property, and, therefore, the CPL must be cancelled pursuant to s. 215 of the *LTA*. In light of this finding, I need not consider the second issue of whether or not the petitioner has established hardship or inconvenience.

### **Analysis**

#### **Legal Principles**

[9] Section 215 of the *LTA* provides that a person who has commenced a proceeding and who is claiming an estate or interest in land may register a CPL against the land as follows:

- (1) A person who has commenced or is a party to a proceeding, and who is

- (a) claiming an estate or interest in land, or
  - (b) given by another enactment a right of action in respect of land,
- may register a certificate of pending litigation against the land in the same manner as a charge is registered, and the registrar of the court in which the proceeding is commenced must attach to the certificate a copy of the pleading or petition by which the proceeding was commenced, or, in the case of a certificate of pending litigation under Part 5 of the *Court Order Enforcement Act*, a copy of the notice of application or other document by which the claim is made.

[10] A CPL is an extraordinary pre-judgment mechanism to preserve a valid claim to an interest in land until the issues in dispute can be resolved: *Sagebrush Golf Course Holdings Ltd. v. Craig*, 2026 BCSC 529, at para. 7. A CPL is not to be used as a pre-judgment execution for a purely financial claim: *Lipskaya v. Guo*, 2022 BCCA 118, at para. 65.

[11] The relevant law was succinctly summarized in *Lipskaya* as follows:

[64] The court has inherent jurisdiction to cancel a CPL that does not meet the preconditions for registration, that is, where no interest in land is claimed: *NextGen Energy Watervliet TWP, LLC v. Bremner*, 2018 BCCA 219 at para. 7; *Bilin v. Sidhu*, 2017 BCCA 429. An “interest in land” is claimed where title may change as a result of the proceedings: *V.B. v. K.B.*, 2013 SKQB 412 at para. 72. The court can cancel a CPL where damages would be adequate relief: *Wai v. Chung*, 2020 BCSC 34 at paras. 26–28. An application to cancel a CPL for non-compliance with s. 215 of the LTA does not involve a weighing of the evidence or an assessment of the strength of the claim—the court only considers whether such a claim is pleaded: *Yi Teng* at paras. 36–38.

[12] The test to be applied on an application to cancel a CPL that is alleged not to meet the preconditions of s. 215 is whether the facts pleaded, assuming them to be true, are capable of supporting a claim to an interest in land. In such an application, no evidence is to be considered: *Sagebrush* at para. 8.

[13] As counsel for the petitioner noted, the adequacy of the pleadings alleged to support a CPL must be assessed on the date which the CPL was filed, and any deficiency in those pleadings cannot be salvaged by subsequent amendments: *Batth v. Sharma*, 2024 BCCA 29, at para. 62.

[14] When assessing whether pleadings disclose a claim to an interest in land, the pleadings must be read as a whole: *Sagebrush* at para. 9.

**Application to the Facts**

[15] In the present case, the respondent emphasizes the nature of the parties' relationship, which is set out in the pleadings. Is it alleged to be a close, longstanding relationship giving rise to extensive reliance.

[16] With respect to the interest in the Property at issue on this application, the following facts are pleaded:

62. In or around 2018, Mr. Takhar, Mr. Senghera and Mr. Sidhu agreed to purchase bare land and develop residential properties in Surrey, British Columbia (the "3 Lot Surrey Project"). The material terms of the oral agreement are set out as follows (the "3 Lot Surrey Agreement"):

- (a) Mr. Takhar, Mr. Senghera and Mr. Sidhu would each contribute equally to the purchase of bare land Surrey, namely lots 12, 13 and 14 located at 2058 165 Street, Surrey British Columbia ("Surrey Property").
- (b) Boston Construction would develop and construct residential homes on the Surrey Property and the homes would be sold once completed.
- (c) Mr. Takhar would receive one-third of the profits from the sale of home from Mr. Sidhu, or a company over which Mr. Sidhu has control.

63. At all material times, Mr. Takhar trusted and relied on Mr. Sidhu and his business acumen to ensure that his contribution was used to give effect to the 3 Lot Surrey Agreement and that Mr. Sidhu was acting in the best interest of Mr. Takhar and Mr. Senghera in order to complete the 3 Lot Surrey Project and 3 Lot Surrey Agreement.

64. In accordance with the 3 Lot Surrey Agreement:

- (a) Mr. Takhar provided a draft cheque in the amount of CDN \$250,000.00 to Mr. Sidhu to be held in trust by Mr. Sidhu's lawyers and pooled for the purpose of purchasing the Surrey Property (the "3 Lot Investment" collectively with Walnut Grove Investment, Boston Investment, Takhar Calgary Investment, Calgary Plans Investment, April Creek Cash Investment, April Creek Plans Investment, 3 Lot Investment "Takhar Investments").

(b) Boston Construction developed and constructed residential homes on the Surrey Property and these homes were sold.

65. On or around October 2019, Mr. Sidhu represented to Mr. Takhar that the profits owing to Mr. Takhar were CON \$1,000,000.00 ("Surrey Project Profit").

66. At the same time, Mr. Sidhu advised Mr. Takhar that the Surrey Project Profit should remain with Mr. Sidhu so that it could be used to purchase two 4-plexes and a 30-lot Subdivision in Kelowna, British Columbia, for the purpose of developing and selling residential. Homes ("the "Surrey Project Representation" collectively with the Walnut Grove Representation, Boston Construction Representation, Calgary Representation, April Creek Representation, Sunnyside Representation, Tryus Representation, the "Sidhu Representations").

67. As always, Mr. Takhar trusted and relied on the Surrey Project Representation. On or about April 23, 2023, Mr. Takhar learned that Lovely Sidhu owns a Lot 12 Home and that he was not provided the full amount he is entitled from the sale of 3 Lot Surrey Project. Mr. Takhar has also learned that two 4-plexes and at least one home in Kelowna have been sold and that he did not receive his share of profits from the same.

68. Mr. Takhar has not received any profit from the sale of the 3 Lot Surrey Project homes or the properties in Kelowna despite having contributed funds and having ownership rights in those properties, namely (the "Kelowna 4-Plex"):

(a) Civic Address: 867 Morrison Avenue, Kelowna, BC  
V1Y 5E6

PID: 007-574-797

LOT 1, PLAN KAP8383, PISTRICOT LOT 136, OSOYOOS  
DIV OF YALE LAND DISTRICT.

[17] The Kelowna four-plex referred to at paragraph 68 of the NOCC is the Property which is at issue in these proceedings.

[18] The focus of the respondent's submission before me in respect of the asserted interest in land hinged on a claim of substantive constructive trust. It is therefore convenient to set out a summary of the current state of the law in respect of substantive constructive trust as articulated by Justice Grauer (as he then was) in *Mayer v. Mayer*, 2018 BCSC 8, in which he explained:

[135] A remedial constructive trust, as discussed above, is a judicial remedy constructed by the court and imposed to enforce an equity obligation arising from two categories: breach of fiduciary duty or (in our case) unjust enrichment. A substantive constructive trust, on the other hand, arises by operation of law as from the date of the circumstances that give rise to it, and may arise outside of the two categories that pertain to remedial constructive trusts. The court's function is merely to declare that it has arisen in the past; see *BNSF Railway* at paras 3-4. The court may declare that either type of constructive trust operates retrospectively.

[136] The purpose of the substantive constructive trust is to hold persons in different situations to high standards of trust and probity and prevent them from retaining property which in "good conscience" they should not be permitted to retain: *Soulos v Korkontzilas*, 1997 CanLII 346 (SCC), [1997] 2 SCR 217 at para 17. The emphasis, then, is on a wrongful acquisition as opposed to unjust enrichment. Conceptually, as noted by Cory J. in *Rawluk v Rawluk*, 1990 CanLII 152 (SCC), [1990] 1 SCR 70 at 81, it is very similar to an express trust.

[19] The respondent argues that the Takhar NOCC sufficiently pleads a substantive constructive trust in respect of the Property.

[20] The respondent summarizes the claims advanced in the Takhar Action as follows in his petition response:

6. In the NOCC in the Takhar action generally, Mr. Takhar alleges that some or all of the funds advanced by him and misappropriated by Mr. Sidhu were used to acquire and/or improve the lands such that the lands or a portion of their value are held on constructive trust for him.

7. In the NOCC, Mr. Takhar seeks certain relief against the defendants in the Takhar action, including for the CPL and the substantive constructive trust.

[21] However, there are several fatal difficulties with this submission.

[22] First, part one of the NOCC, which sets out the statement of facts upon which the claim is based, does not address legal or beneficial ownership of the Property. The petitioner is the registered owner but is not named as a party. There is no pleading, for example, that the petitioner holds any portion of its registered interest in the Property in trust for Mr. Sidhu or for the plaintiffs, nor is there any pleading that Mr. Sidhu has any beneficial interest in the Property or holds any type of interest in trust for the plaintiffs. Thus, the plaintiffs have not pleaded that Mr. Sidhu or any other defendant actually has an interest in the Property.

[23] Orally, counsel for the respondent submitted that the respondent's theory of the case was that the petitioner holds the Property in trust for the respondent directly, not indirectly through holding a portion of its registered interest in trust for Mr. Sidhu. In other words, the theory is that Mr. Sidhu does not have any interest in the Property. However, as noted, this is not pleaded. Also, this submission is inconsistent with part 2 of the NOCC which, although it does not specifically identify the Property, seeks a declaration that the defendants are constructive trustees for and liable to make good to the plaintiffs all sums, profits, property or benefits received by them arising from or related to the use or disposition of funds caused to be advanced by the plaintiffs as a result of fraud, equitable fraud, or as a result of unjust enrichment.

[24] Next, the plaintiffs have not pleaded that any funds were actually used to purchase the Property. Rather, as set out above, the NOCC alleges that Mr. Sidhu advised Mr. Takhar that the Surrey Project Profit should remain with Mr. Sidhu so that it could be used to purchase two four-plexes and a 30-lot subdivision in Kelowna.

[25] Third, although the plaintiff relies on the doctrine of substantive constructive trust, no wrongful acquisition or other wrongful act is asserted as against the petitioner. On the facts as pleaded there would therefore be no basis to make a declaration of substantive constructive trust as against the petitioner, either in favour of Mr. Sidhu or in favour of the respondent.

[26] Finally, the title to the Property in question could not change as an outcome of the Takhar Action because, again, the registered owners are not named as parties to the proceeding. The relief sought is purely against the defendants. This was conceded orally by the respondent's counsel who argued that the petitioner could apply to be added as a party or that the respondent can apply to add the petitioner as a party to the proceeding. However, again, my task on this application is to assess the adequacy of the pleadings alleged to support the CPL on the date on

which the CPL was filed. Deficiencies in those pleadings cannot be salvaged by subsequent amendments.

**Conclusion**

[27] In these circumstances, I am satisfied that the NOCC in the Takhar Action does not plead facts which, if proven, disclose a claim for an interest in the Property as required to support the filing of a CPL under s. 215 of the *LTA*. Even assuming the whole of the plaintiff's pleadings in the Takhar Action to be true, no interest in the Property is validly pleaded. It follows that there was no basis for the CPL to be filed and it must be removed.

[28] I therefore make the following orders:

- 1) The certificate of pending litigation filed by the respondent Gurdip Takhar, also known as Gary Takhar, on January 10, 2024, in Kamloops Land Title Office under registration number CB 1110376 be cancelled against the lands and premises situated in the City of Kelowna in the province of British Columbia, legally described as:

PID 007-574-797

Lot 1, District Lot 136, Osoyoos division, Yale district plan 8383.

- 2) The Registry of Land Titles of the New Westminister Land Title Office shall cause the said registered CPL to be wholly cancelled as against the lands upon receipt of an application submitted by Atwell & Associates Trial Lawyers, supported by a certified copy of this order of this Court.

[29] I decline to make any orders restraining the respondent from filing any further CPLs against the Property. As counsel both acknowledge at the hearing of this petition, it is open to the respondent to amend his pleadings and/or apply to add a party to the Takhar Action. In the event sufficient amendments were made, I would not prejudge the appropriateness of a CPL.

[30] THE COURT: Mr. Bond, the petitioner has sought costs fixed in the amount of \$2,000, payable forthwith. Given that the petitioner has been successful and that resolves this proceeding, he is presumptively entitled to his costs. Is there any brief submission you wish to make on the issue of costs?

[31] CNSL N. BOND: I do not. It would be -- you know if this were dealt with as part of the other proceeding, then it would be costs in the cause but of course it is not, so I cannot think of any -- any compelling submission to the contrary.

[32] THE COURT: All right. Well, the respondent has sought costs in the fixed amount of \$2,000 payable forthwith, and given this was a one-day hearing and this application finally resolves this proceeding, that costs order is appropriate and I make that order.

“Latimer J.”