

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Addenda Capital Inc. v. 0781995 B.C. Ltd.*,
2023 BCSC 252

Date: 20230221
Docket: H130173
Registry: Vancouver

Between:

Addenda Capital Inc.

Petitioner

And

**0781995 B.C. Ltd., Queensgate Development Inc., Paragon Development Inc.,
Elegant Development Inc., Jatinder Singh Minhas, Terry Kin Keong Lai, His
Majesty the King in Right of Canada and 1008599 B.C. Ltd.**

Respondents

Before: The Honourable Justice A. Ross

Reasons for Judgment

Counsel for Elegant Development Inc.,
Jatinder Singh Minhas, and Queensgate
Development Inc.:

K. E. Ducey

Counsel for His Majesty the King in Right of
Canada:

S. Singh
A. Sabzevari

Place and Date of Trial/Hearing:

Vancouver, B.C.
November 2, 2022

Place and Date of Judgment:

Vancouver, B.C.
February 21, 2023

Table of Contents

INTRODUCTION 3

NATURE OF CROWN’S CLAIM AND ORDERS SOUGHT 3

ISSUES TO BE DECIDED..... 4

FACTUAL BACKGROUND..... 5

POSITION OF THE PARTIES 14

 Are the Funds Held in Court Payable to 078Co?..... 18

 Are the Fund Held in Court Payable to Paragon? 18

 The Accounting and the General Ledger 19

 The Chan Notice of Civil Claim (“NOCC”)..... 24

 The Income Tax Returns 27

SUMMARY AND DECISION 28

ORDER..... 29

Introduction

[1] The parties to this proceeding bring cross-applications. These cross-applications constitute one of the last remaining steps in a long-running series of actions and petitions resulting from a property development that went awry.

[2] As described below, there were two individuals who were primarily responsible for the property development. Those individuals acted through corporate entities. This dispute is between one of the two developers, Jatinder Singh Minhas, and the Canada Revenue Agency (“CRA”). The issue arises because of a tax debt owed by the other developer Terry Kin Keong Lai.

[3] The properties that comprised the proposed development have been sold following foreclosure. The majority of the purchase funds have been dispersed to the creditors. The question for me to decide is whether the remaining funds currently held in court, approximately \$1,200,000, should be payable to Mr. Minhas or to the Receiver General for Canada to pay down the tax debt of Mr. Lai. In these reasons, for ease of reference, I use the terms “Receiver General for Canada”, “Crown”, and “CRA” interchangeably. Unless necessary, I do not distinguish between Mr. Minhas and his companies.

Nature of Crown’s Claim and Orders Sought

[4] The Crown’s claim against the funds held in court arise from two judgments that the Crown registered against companies substantially owned by Mr. Lai, 0781995 B.C. Ltd. (“078Co”) and Paragon Developments Ltd. (“Paragon”).

[5] In the first application, Queensgate Development Inc. (“Queensgate”), Elegant Development Inc. (“Elegant”), and Mr. Jatinder Singh Minhas seek a declaration that:

- a) 078Co did not have any beneficial interest in the four properties that are the subject of this proceeding at any time after June 29, 2007;

- b) the Crown has no claim against any of the funds paid into court to the credit of this proceeding; and
- c) the three applicants are entitled to an order that all funds remaining in court to the credit of this proceeding, including interest, be paid out to counsel for the applicants.

[6] In its cross-applications, the Crown seeks an order that the sum of \$1 million, plus applicable interest, be paid forthwith to the Receiver General for Canada.

Issues to Be Decided

[7] In my reasons below, I address the following questions:

- a) Did 078Co have any beneficial interest in the properties that were sold in foreclosure?
- b) If the answer to a) is “No”, then it follows that Paragon was a 50% owner of the properties. That being the case:
 - i. Is the Crown entitled to receive a payout of 50% of the funds that are held in court?

[8] Although these issues involve the tax debt of Mr. Lai, the real question for me to decide is an evidentiary one. Mr. Minhas says that Paragon is not entitled to receive payment of any of the funds held in court because the expenses for the development exceeded the amount received when the properties were sold. He says that he (not Mr. Lai) paid those expenses. On that basis, he says that he is entitled to receive the remaining funds held in court. He says no money is owed to Paragon. As a result, the ultimate question for me to decide is whether the accounting evidence supports Mr. Minhas’ contention that he paid the development expenses and whether those expenses exceeded the return when the development was sold.

[9] For the reasons set out below, I find that Mr. Minhas has satisfied the evidentiary burden to establish that he (or his company Elegant) paid the

development costs and expenses. I find that the Crown is not entitled to receive any payment out of the funds held in court.

Factual Background

[10] The underlying claim of CRA relates to a tax debt of Mr. Lai. As of October 19, 2022, Mr. Lai was indebted to CRA in the amount of \$9,938,274.69. That debt relates to Mr. Lai’s unpaid taxes in 2006, 2007, and 2008. As discussed below, CRA has pursued Mr. Lai’s tax debt through judgments obtained against two companies in which he was the controlling mind (078Co and Paragon).

[11] The factual background to this matter derives from a complex series of trusts, transactions, and incorporations.

[12] In December 2006, Mr. Lai approached Ms. Julie Chan and another person with a plan to purchase and develop four parcels of land located in the City of New Westminster (the “Four Parcels”).

[13] On December 22, 2006, Mr. Lai and Ms. Chan incorporated Paragon. Mr. Lai and Ms. Chan were the sole directors and shareholders of Paragon.

[14] On January 10, 2007, Ms. Chan advanced \$885,000 to Mr. Lai. That amount represented 20% of the proposed purchase price of the Four Parcels. Another person, who was related to Ms. Chan, advanced a loan of \$1,280,000 to Mr. Lai for the same purpose. The other person and her investment are not relevant to this proceeding. However, it is relevant that the other person advanced “loan” funds toward the project, while Ms. Chan says she advanced funds directly toward the purchase of the Four Parcels. I return to discuss Ms. Chan’s advance of these funds below when addressing the Crown’s position.

[15] On February 6, 2007, 078Co was incorporated. Paragon was the sole shareholder. One month later, Mr. Lai and Ms. Chan were appointed as the directors of 078Co.

[16] In March 2007, Mr. Lai transferred \$1,000,000 to 078Co for no consideration. According to CRA, Mr. Lai made this transaction while he was indebted to the Crown. These are the funds that CRA seeks to recover in this proceeding.

[17] On March 6, 2007, 078Co purchased the Four Parcels. The total purchase price for the Four Parcels was \$4,276,151.02. As discussed below, the Four Parcels were ultimately sold in foreclosure. The funds held in court represent the remainder of the sale proceeds after paying out the other creditors.

[18] Also, in the spring of 2007, Mr. Lai approached Mr. Minhas and invited him to enter into a joint venture agreement to develop the Four Parcels. Mr. Minhas agreed to the arrangement. The arrangement was not papered until June 2007. Mr. Minhas owned a company named Elegant Development Inc. In general terms, the understanding was that Mr. Lai would supply the properties, and Mr. Minhas would supply his expertise in developing properties.

[19] The development of the Four Parcels required the lands to be rezoned from “industrial” to “residential”. I am informed that, shortly after the two principals negotiated the agreements described below, the City of New Westminster imposed a moratorium on rezoning. That moratorium remained in place until 2012, and it accounts for much of the delay in the development of the Four Parcels.

[20] The evidence establishes (and it is not disputed) that:

- a) Ms. Chan was not aware of the involvement of Mr. Minhas and his related companies in the development of the Four Parcels; and
- b) Mr. Minhas was not aware of Ms. Chan’s contribution toward the purchase price of the Four Parcels.

[21] Also, in the Spring of 2007:

- a) Mr. Lai and Mr. Minhas incorporated Queensgate on May 18, 2007. Paragon and Elegant were each 50% shareholders in Queensgate.

- b) Mr. Lai and Mr. Minhas agreed that, at some point in the future, title to the Four Parcels would be transferred from 078Co to Queensgate in exchange for the purchase price of \$5,000,000 (these funds were to be paid to 078Co which was 100% owned by Paragon).
- c) Mr. Lai and Mr. Minhas signed a trust agreement (the “First Trust Agreement”) providing that Queensgate would hold the Four Parcels in trust for the joint venture partners, Paragon and Elegant (50% each).
- d) Mr. Lai and Mr. Minhas signed a second trust agreement wherein 078Co agreed that it held title to the Four Parcels as bare trustee for Queensgate (the “Second Trust Agreement”).

[22] On June 29, 2007, Mr. Lai and Mr. Minhas, on behalf of Paragon and Elegant, signed a joint venture agreement (“JVA”) relating to the beneficial interest in, and their intention to develop, the Four Parcels. The JVA provided that Elegant would manage the project and be entitled to be paid as project manager. Ms. Chan was not aware of the JVA.

[23] The JVA further provided that:

- a) each of Elegant and Paragon would contribute on a *pro rata* basis to all costs, expenses, liabilities, and obligations in respect of the development;
- b) Elegant would pay \$1,275,000 to Paragon by July 6, 2007;
- c) Elegant would obtain financing of more than \$3,250,000 by August 31, 2007;
- d) from that financing, Elegant would receive \$400,000, and Paragon would receive \$2,850,000;
- e) the sale proceeds from the completed development would be paid out (in order of priority) toward:

- i. the security bond for the new home warranty program;
- ii. any mortgage financing and all other expenses of the project;
- iii. remaining development costs, including funds owed to Elegant pursuant to the project management agreement; and
- iv. the remaining balance to Paragon and Elegant in accordance with their *pro rata* shares in the venture.

[24] I pause to note that the main dispute in this case relates to:

- a) whether Elegant and Paragon contributed equally to the project: and
- b) whether the remaining funds fall under item ii), iii), or iv) above.

[25] Elegant paid \$1,275,000 to Paragon in July 2007.

[26] Elegant did not obtain financing within the time parameters set out in the JVA (*i.e.*, not by August 31, 2007). However, Elegant did obtain financing in May 2008 from Coast Capital Savings Credit Union (the “Coast Capital Mortgage”). That financing was in the amount of \$3,000,000. Those funds were disbursed as follows:

- a) to pay property taxes of \$56,885.19;
- b) to pay legal fees of \$5,204.64;
- c) \$400,000 to Elegant (pursuant to the JVA);
- d) \$2,262,662.59 to Paragon.

[27] From the funds paid to Paragon, Paragon then loaned \$700,000 back to Elegant.

[28] As noted, the development stalled. In November 2010, Queensgate borrowed a further \$250,000 from an individual, Mr. Nunrha, and granted a further mortgage over the Four Parcels as security.

[29] In September 2011, the Coast Capital Mortgage came due. Queensgate obtained replacement funding in the amount of \$3,700,000 from Addenda Capital Inc. (the “Addenda Mortgage”). Those funds were disbursed:

- a) \$3,012,353.43 to pay out Coast Capital Mortgage;
- b) \$124,111.55 to pay out Mr. Nunrha;
- c) \$466,299.90 to Mr. Lai (on behalf of Paragon);
- d) \$32,923.61 to legal fees.

[30] I, again, pause to note that, upon receiving the \$466,299.90 in September 2011, Mr. Lai had received approximately \$4,000,000 (\$1,275,000 + \$2,262,962.59 + \$466,299.90) after signing the JVA with Mr. Minhas. As discussed below, the evidence is clear that Mr. Lai did not repay any funds to Ms. Chan. The original purchase price of the Four Parcels was \$4,276,000. Of that amount, Mr. Lai (with some loan financing) paid approximately \$3,391,000, and Ms. Chan paid \$885,000. Hence, the evidence establishes that by the end of September 2011, Mr. Lai had received more than his investment in the project. This is not to say that he would not be entitled to profit, if a profit was made. However, it is the underpinning of Mr. Minhas’ position that Mr. Lai and Paragon are not entitled to any further payments.

[31] The City of New Westminster lifted the moratorium on rezoning in January 2012. Mr. Minhas then pursued the application to rezone the Four Parcels with the city.

[32] However, Addenda commenced foreclosure proceeding on February 14, 2013. The amount owing on the Addenda Mortgage was \$3,751,977.34. In the foreclosure proceeding, Addenda recognized that Queensgate held the Four Parcels in trust for Paragon and Elegant, and that 078Co held the same lands in trust for Queensgate.

[33] The order *nisi* was granted March 18, 2013, with a six-month redemption period.

[34] In November 2013, Queensgate negotiated a deal to sell the Four Parcels for \$8,000,000. That sale was not approved by the court, and it did not complete.

[35] On June 10, 2014, CRA registered a certificate against 078Co in Federal Court pursuant to s. 223 of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) [ITA]. The certificate has the same force and effect as a judgment. The certificate was filed in the amount of \$1,000,000 plus interest (the “078Co Judgment”). The underpinning of the 078Co Judgment was the March 2007 non-arm’s length transaction wherein Mr. Lai, who was a tax debtor at the time, transferred \$1,000,000 to 078Co for no consideration (see para.16 above). Pursuant to the 078Co Judgment, 078Co was indebted to the Crown in the amount of \$1,000,000. As of the date of this application, that figure has increased to \$1,538,610.18 with fees and interest. The 078Co Judgment is one of the two judgments upon which CRA relies in this application.

[36] On June 23, 2014, CRA registered the 078Co Judgment against 078Co’s interest in the title to the Four Parcels.

[37] Jumping ahead, I note that CRA also took further steps in its pursuit of Mr. Lai:

- a) On April 11, 2016, CRA raised a further assessment against Paragon for \$1,000,000 for the transfer of 078Co’s (half) interest in the Four Parcels to Paragon.
- b) On July 25, 2016, CRA registered a separate certificate in Federal Court in the amount of \$1,000,000 plus applicable interest against Paragon (the “Paragon Judgment”). The Paragon Judgment could not be registered against title to the Four Properties because Paragon was not the registered owner. This is the other judgment that CRA relies upon in its application.

- c) CRA also raised a further assessment against Elegant (in the amount of \$700,000) based upon amounts that Paragon loaned to Elegant in May 2008 (see para. 27 above). Elegant successfully appealed that notice of assessment to the Tax Court of Canada (see paras. 52–54 below).

[38] Returning to the chronology, on August 28, 2014, Ms. Chan (one of the two original shareholders in Paragon) commenced an action against Mr. Lai, Paragon, and Queensgate. She also registered certificates of pending litigation (“CPLs”) against title to the Four Parcels. The nature of her claim is in dispute. I discuss the allegations in her notice of civil claim below. She alleged that she was entitled to a 20% beneficial interest in the Four Parcels. The Crown submits that she was suing based upon her interest in Paragon.

[39] On May 4, 2015, Master Baker approved a sale of the Four Parcels for \$7,550,000. There was a dispute over the successful bid which delayed the completion until May 20, 2016, after nine applications to deal with a back-up bidder.

[40] The order of Master Baker (approving the sale) required the funds to be paid out in order of priority toward taxes, commissions, and the payout of the Addenda Mortgage. The remaining amount (\$2,506,130.88) was paid into court.

[41] Although the sale amount (\$7,550,000) exceeded the price at which 078Co transferred its beneficial interest to Queensgate (\$5,000,000), Mr. Minhas says that the sale constituted a loss for the project overall. He says that the total expenses exceeded \$8,000,000 after factoring in the financing fees, interest, development costs, and legal and accounting fees. The Crown disputes the nature and amount of the expenses as well as Mr. Minhas’ claim that he paid the majority of them.

[42] On May 9, 2016, the Crown was added as a respondent in this (foreclosure) proceeding.

[43] As noted above, on July 25, 2016, CRA registered its judgment against Paragon.

[44] On October 31, 2016, a settlement was reached between Queensgate, Elegant, Paragon, Mr. Minhas, Mr. Lai, and Ms. Chan (the “Settlement Agreement”). The purpose of the Settlement Agreement was to resolve all outstanding accounting and claims between those parties and agree on the distribution of the proceeds from the sale of the Four Parcels. The settlement was specifically stated to be subject to any claim of the Crown. The recitals of that Settlement Agreement include:

- a) “The Crown ... registered a judgment against the interest of (078Co) in the (Four Parcels) with respect to a tax debt owed by [Mr.] Lai.”
- b) “[Mr.] Lai has received from Paragon monies in excess of his investment into Paragon, and Chan is owed money from Paragon in excess of \$1.1m.”

[45] The Settlement Agreement does not mention CRA’s judgment against Paragon (only 078Co).

[46] As I discuss below, the Crown submits that the recitals and terms of the Settlement Agreement are not binding. In other words, the parties cannot contract out of the actual underlying facts. Neither can the parties create the underlying facts by drafting them into the recitals. I accept that submission. However, as noted above, as of the date of the Settlement Agreement (in fact, since September 2011) Mr. Lai had, in fact, received more funds out of the project than he had invested into the project.

[47] On January 23, 2017, Master Muir ordered that (from the original amount of \$2,506,130.88 paid into court) \$1,200,000 should continue to be held in court, and that the excess funds (\$1,306,130.88) should be paid out to Queensgate in accordance with the Settlement Agreement. From the \$1,306,130.88:

- a) Ms. Chan received a portion of the funds to which she is entitled under the Settlement Agreement (\$697,560.98);
- b) certain funds were paid to retire other Queensgate debts; and

c) the balance was paid to Elegant.

[48] CRA asserted a claim to the funds held in court in July 2020 when CRA filed an application for a charging order over those funds.

[49] There are other facts that are relevant, but fall outside of the chronology listed above.

[50] First, Mr. Minhas filed income tax returns for 078Co and Queensgate in January 2014. In those filings, he stated that 078Co was the owner of the Four Parcels. Mr. Minhas says that he filed those returns in error. The Crown submits that it was not an error. Mr. Minhas says that he is re-filing those returns. The import of the tax returns relates to Mr. Minhas' position that (following the Second Trust Agreement) 078Co ceased to have any beneficial interest in the Four Parcels.

[51] Second, as I noted above (at para. 37), CRA also filed a notice of assessment against Elegant pursuant to s. 224 of the *ITA*. The basis of that assessment was that, as of 2008, Elegant owed Paragon \$700,000 based upon the loan (see para. 22). At the same time, Paragon owed the Crown \$1,000,000 (pursuant to a Requirement to Pay that CRA served on Paragon).

[52] Elegant appealed that assessment. The Tax Court of Canada allowed Elegant's appeal in reasons released on August 31, 2022, and indexed at *Elegant Development Inc. v. The Queen*, 2022 TCC 97.

[53] The procedure under s. 224 of the *ITA* that allowed the Crown to claim against Elegant is well explained by Justice Boccock in para. 1 of the decision:

[1] In Canada, Her Majesty the Queen (the "Crown") has many tools for collecting taxes owing. One of those tools, section 224 of the *Income Tax Act* RSC 1985, c.1, as amended (the "*Act*"), empowers the Crown to require a disinterested debtor to pay Her Majesty moneys otherwise owing by that debtor to its creditor. The creditor must be a "tax debtor". The disinterested debtor must be liable to pay the money to the tax debtor at the time the debtor receives a requirement to pay ("RTP") or will become indebted within one year. Further, if the debtor fails to pay, the Crown may assess the disinterested debtor for the lesser of the tax debtor's tax liability or the outstanding balance due from the disinterested debtor to its creditor. In short,

if A (the tax debtor) owes C (the Crown) tax and B (the disinterested debtor) owes A a debt, then C can require B to pay A's tax debt. However, B must owe A the money at the time B receives the RTP.

[54] Justice Boccock continued, with the following statement:

[49] Both Mr. Minhas and Ms. Chan were clear that at the time of the execution of the Settlement Agreement, Paragon and Mr. Lai were owed nothing from anyone. Further, both believed Paragon and Mr. Lai were entitled to nothing because of the moneys Mr. Lai and Paragon received from both of them over the years. This was achieved largely by the non-disclosure and deception of Mr. Lai concerning Ms. Chan's role to Mr. Minhas, and vice versa.

[55] To be clear, this finding in the Tax Court has no influence on my decision. I accept the Crown's position that this paragraph is *obiter*. I am bound by the evidence in this hearing. I note, however, that Mr. Minhas takes the same position in this litigation as he did in the prior tax litigation.

Position of the Parties

[56] Mr. Minhas takes three separate but related positions.

[57] First, he says that 078Co has no ongoing interest in, or claim against, the Four Parcels nor the funds that now represent the Four Parcels. Mr. Minhas submits:

- a) The trust agreements are clear that 078Co held the lands as bare trustee for Queensgate. Hence, 078Co did not have any beneficial interest in the Four Parcels at the time the CRA judgment was registered in June 2014.
- b) Hence, any claim the Crown asserts must be through its judgment against Paragon.

[58] Second, Mr. Minhas submits that Queensgate held the lands as bare trustee for Paragon and Elegant. Hence, at best, the Crown has a claim to half of the remaining funds.

[59] Mr. Minhas' third position (which is not alternative to the second position, but is in addition to it) is based upon the accounting for the expenses related to the

development. Mr. Minhas submits that the total amount expended on the Four Parcels, including purchase price, interest costs, and development expenses, exceeds that amount recovered in the sale of the Four Properties. He submits:

- a) The sale proceeds held in court are not “profits” that are being distributed. Instead, each party suffered a loss. Each party is only entitled to receive funds pursuant to the terms of the JVA (as adjusted by the Settlement Agreement).
- b) The JVA obligated Mr. Minhas and Mr. Lai (*via* Elegant and Paragon) to pay equal amounts toward the development expenses.
- c) During the period from 2007–2012, Mr. Minhas (through Elegant) paid significant expenses toward the development of the Four Parcels. Mr. Lai (through Paragon) did not.
- d) Mr. Minhas says that he contributed approximately \$1,400,000 toward those expenses. He says that Mr. Lai and his companies only contributed approximately \$159,500 toward those expenses. (As discussed below, the Crown disputes Mr. Minhas’ accounting.)
- e) Pursuant to the JVA, Mr. Minhas (*via* Elegant) is entitled to be paid out the amount of the “other expenses” and “development costs” that he paid toward the development of the Four Parcels. Paragon is only entitled to receive funds if there was a profit. There was no profit. (See para. 23 above.)
- f) Thus, Mr. Minhas says that Mr. Lai (*via* Paragon) has been fully paid out for his investment in the project. As a result, Mr. Lai and Paragon do not have any claim against the remaining funds held in court.
- g) CRA’s claim to the funds held in court can only be as good as Paragon’s claim to the funds. Hence, if no funds are payable to Paragon, then the CRA has no claim.

[60] In response, the Crown says that it is entitled to rely on the judgments that it obtained against 078Co and Paragon.

[61] The Crown takes the following positions:

- a) In June, 2014, CRA certified 078Co's tax debt of \$1,000,000 and registered its judgment against 078Co's interest in the Four Parcels. As a result of that judgment, 078Co is, and was, liable to pay tax in the amount of \$1,000,000. 078Co is the registered owner of the Four Parcels, and there is no documentary evidence of the Second Trust Agreement.
- b) CRA certified Paragon's tax debt in the amount of \$1,000,000 in Federal Court on July 25, 2016. As a result of that judgment, Paragon is, and was, liable to pay tax in the amount of \$1,000,000.
- c) That tax debt has not been paid out.
- d) The onus of proof lies on the party challenging the Crown's judgments (Queensgate, Elegant, and Mr. Minhas).

[62] The Crown submits that it is entitled to receive payment out of:

- a) 100% of the funds held in court, if I should find that 078Co is the beneficial owner of the property.
- b) 50% of the funds held in court if I should find that Paragon is entitled to be paid out. The reasoning behind the 50% entitlement is that, on the Crown's theory, each of Paragon and Elegant are entitled to 50% of the funds held in court.

[63] The Crown submits that Mr. Minhas' application mis-states the priorities of payment. The Crown argues that the funds held in court are, in fact, owed to either 078Co or Paragon and that if Mr. Minhas and Ms. Chan have valid claims, those claims are against. However, before those claims proceed, the funds held in court must be paid out to 078Co or Paragon. The Crown submits that those funds will not

get to 078Co and Paragon because the Crown is entitled to its charging order over the funds.

[64] Put another way, the Crown argues that if Mr. Minhas has a claim for development expenses that were not paid by Paragon, then that claim is against Paragon, not against the land (now represented by the funds held in court). Similarly, the Crown argues that Ms. Chan's action is really a claim in her capacity as a shareholder in Paragon.

[65] A significant portion of the Crown's position relates to the accounting evidence tendered by Mr. Minhas. Mr. Minhas relies on that accounting evidence to establish that he (not Mr. Lai) paid the vast majority of the expenses associated with development. The Crown disputes Mr. Minhas' evidence and submits that this claim can be decided on the basis of the accounting evidence. The Crown notes that the onus of proof lies with Mr. Minhas. The Crown submits that:

- a) Mr. Minhas cannot prove that he (as opposed to Mr. Lai) paid the expenses;
- b) Mr. Minhas filed tax returns for 078Co for the years 2007–2012 indicating that 078Co owned the Four Parcels.

[66] The Crown further submits that the Settlement Agreement is not binding on the Crown. The fact that Mr. Lai did not seek any funds out of that settlement is not evidence of anything. At the time of the Settlement Agreement, Mr. Lai knew that CRA had a judgment against him, 078Co, and Paragon. The Crown submits that, by declining to assert a claim in the Settlement Agreement, Mr. Lai was improperly preferring the claims of his individual creditors over CRA.

[67] On the basis of the issues raised above, CRA argues that the funds held in court should either be paid out in full, or a 50% share, to the Crown.

[68] I discuss each issue below.

Are the Funds Held in Court Payable to 078Co?

[69] The Crown's original position was that 078Co was the registered owner of the Four Parcels and that there was no signed trust deed evidencing the transfer of the beneficial interest from 078Co to Queensgate (nor the further trust agreement between Queensgate, Paragon, and Elegant).

[70] The Crown's first position was that I should presume that the registered owner was, in fact, the registered owner of the property. That finding would make 078Co the owner, and would cement the Crown's position.

[71] However, after Mr. Minhas pointed to other evidence in related litigation confirming the existence of the trust agreements, the Crown resiled from its position. I return to this position below when discussing the income tax returns filed by Mr. Minhas.

[72] In addition, I note that Addenda, in the foreclosure proceeding, accepted that the Second Trust Agreement was effective as between the parties.

[73] On the basis of the evidence, I accept that 078Co did not have any beneficial interest in the properties after June 2007. Hence, the Crown cannot successfully assert an interest in the funds based upon the 078Co Judgment.

Are the Fund Held in Court Payable to Paragon?

[74] Based on my reasons above, 078Co had no interest in the Four Parcels. Hence, the Crown's claim must be based upon the Paragon Judgment. As noted above, Paragon held a 50% interest in the Four Parcels and similarly would have, at best, a 50% interest in the funds held in court.

[75] Mr. Minhas says that he is entitled to the funds because he paid the development expenses. In addition, he agreed to settle Ms. Chan's claim.

[76] The Crown raises three distinct evidentiary issues in relation to:

- a) the accounting and the general ledger;

- b) the nature of Ms. Chan's Claim;
- c) income tax returns filed by Mr. Minhas for 078Co.

[77] The Crown submits that on these issues, Mr. Minhas' evidence does not establish the necessary facts on balance of probabilities. I discuss each of these issues below.

The Accounting and the General Ledger

[78] Mr. Minhas' position is that no money is owed to Paragon because he paid the vast majority of the development costs and expenses which totalled more than \$1,400,000. During the same period, Mr. Lai only paid \$159,500.

[79] The Crown takes the position that Mr. Minhas cannot establish that he made those payments based on the accounting evidence.

[80] In support of his position regarding the payment of development expenses, Mr. Minhas produced the general ledger relating to the expenses incurred for the development of the Four Parcels. He says that the general ledger corroborates his statements about the extent of the development costs. However, he also concedes that the accounting was a "complicated mess" and that he was attempting to recreate records, and prove expenditures, for transactions that occurred over the span of the past 15 years.

[81] A CRA collections officer, Mr. Dao, reviewed the general ledger and swore two affidavits. Mr. Dao concedes that the general ledger does show that an amount of approximately \$1,400,000 was paid out in development expenses, including interest. He says that many, but not all, of those expenditures are supported by invoices and cheques.

[82] However, Mr. Dao's affidavit notes:

- i. Most of the invoices for development expenses were submitted to 078Co. A smaller number of invoices were submitted to the other companies, Queensgate and Elegant.
- ii. In total, invoices in the amount of:
 - (1) \$801,754 were issued to 078Co.;
 - (2) \$36,982 were issued to Queensgate; and
 - (3) \$197,710 were issued to Elegant.

[83] Mr. Dao could not discern any particular theory explaining why the invoices were submitted to any one of the three separate entities. In other words, Mr. Dao could not discern any delineated roles for the three companies.

[84] The general ledger indicates that:

- a) \$907,574 was paid out of the bank account of 078Co between November 7, 2007, and December 1, 2015;
- b) \$562,578 was paid out of the bank account of Queensgate between January 14, 2008, and December 1, 2015.

[85] Mr. Dao further determined that the cheques paid on behalf of Queensgate and 078Co were signed by both Mr. Lai and Mr. Minhas. There is no evidence of the source of the money in the two bank accounts.

[86] Based upon Mr. Dao's affidavit, the Crown submits:

- a) there is no evidence of the source of the funds that went into either of the bank accounts;
- b) to the extent that funds were paid out of the account of 078Co, the starting point for the court's analysis should be the assumption that someone other

than Mr. Minhas paid those expenses because they were not paid out of his company's bank account.

[87] The Crown further submits that Elegant borrowed \$700,000 from Paragon (see para. 27 above) and there is no evidence of that amount being paid back to Paragon. Hence, the Crown submits that it is possible that Mr. Minhas' position that he has paid \$1,400,000 really constitutes Mr. Minhas paying \$700,000 on behalf of Elegant, and the other \$700,000 represents the repayment of Paragon's loan to Elegant. On that basis, Mr. Minhas would not have overpaid the development expenses, and Paragon would be entitled to a share of the funds held in court.

[88] I note that this is a theory put forward by the Crown. There is no evidence to support this theory apart from the coincidence of the loan amount approximating half of the \$1,400,000 in expenses that were incurred over the subsequent 15 years. In my opinion, the Crown's theory amounts to speculation.

[89] In response to the Crown's submission, Mr. Minhas says that the evidence shows that there was a loss on this development. The parties are dividing up a sum of money, and each party is taking a loss. He concedes that the accounting is a complicated mess. However, he says that the evidence from general ledger and the Settlement Agreement make it clear that no funds are owed to, or going to, Paragon or 078Co.

[90] On the information contained in the general ledger, counsel for Mr. Minhas submits that he did his best in his attempt to recreate financial transactions that go back 15 years. Counsel notes that, despite being cross-examined on the financial records, the Crown does not point to any inconsistency or credibility problem arising from those transcripts. There is no evidence that Mr. Minhas has mis-stated any of the accounting.

[91] In considering this issue, I note that, over the course of this litigation, Mr. Minhas has sworn four affidavits in support of various aspects of this litigation.

[92] Three years before the signing of the Settlement Agreement, at a time when Ms. Chan, Mr. Lai, and the Crown were all pursuing funds from the sale of the Four Parcels, in his affidavit #1, filed December 2, 2014, Mr. Minhas stated, “Other than the initial cost of the Lands, Mr. Lai and/or Paragon has contributed approximately \$175,000 towards Queensgate’s expenses.”

[93] This statement is consistent with his position in this application. Of course, stating something twice does not make it more likely to be true. However, I find the fact that Mr. Minhas took the same position in relation to a dispute with Mr. Lai as he does with CRA assists in establishing the credibility of this statement.

[94] In affidavit #2, filed July 13, 2016 (while still adverse in interest to Ms. Chan and the Crown), Mr. Minhas indicated that his proposal was to:

... then pay the other debts shown on the list of accounts payable. After these payments have been made, I then propose to distribute any remaining balance on a *pro rata* basis between Elegant and Paragon based on the outstanding amounts of our shareholder loans.

[95] This affidavit was sworn by Mr. Minhas two weeks prior to CRA registering its judgment against Paragon. Obviously, the fact that he speaks of the possibility of paying funds out to Paragon suggests that Paragon may have had some claim to the funds as of mid-2016. However, the affidavit is clear that any such amount would be based upon the outstanding amounts of the shareholder loans. That statement is in line with the position that he takes in this application. His position is that he has made significantly more shareholder loans by way of payment of development costs and expenses than Mr. Lai and his companies.

[96] In affidavit #3, filed January 20, 2017, Mr. Minhas stated:

4. The Settlement Agreement reflects my position that as at the date when the Lands were sold [May 20, 2016] Paragon was not entitled to any of the net sale proceeds as Terry Lai and Paragon had already received a much greater return of funds from the joint venture than any other party involved in the joint venture.

5. In my view, it was Queensgate’s creditors, Elegant and Julie Chan that were entitled to receive the net sale proceeds from the [Four Parcels], subject

to any claim the Crown was able to prove as against the Lands based on their judgment against [078Co].

[97] This affidavit was sworn after the Settlement Agreement and after Mr. Minhas was aware of the Paragon Judgment. Hence, it must be viewed in that context. However, the position that Mr. Minhas took at that time is consistent with his prior affidavits.

[98] In my opinion, the consistency in the positions taken in Mr. Minhas' affidavits, over time, lends credence to his statements that he has borne a significantly higher share of the development expenses than Mr. Lai did.

[99] I accept that there is no accounting information indicating the source of the funds that were being deposited to the bank accounts that were then funding the development. However, I note that, at no point was there evidence that Mr. Lai disputed Mr. Minhas' statements about Mr. Minhas' significant overpayment of the development expenses. It stands to reason that if Mr. Lai disputed Mr. Minhas' accounting, Mr. Lai would have attempted to contradict Mr. Minhas' affidavit. That is the case whether CRA had a claim over the funds or not.

[100] Counsel for Mr. Minhas further notes (although it is clearly not binding on me) that Justice Boccock in the Tax Court accepted the evidence of Mr. Minhas regarding the accounting in coming to the finding quoted above (see para. 54 above).

[101] Although there is evidence of money moving into, and out of, a bank account held in the name of 078Co, the Crown has put forward no evidence to counter Mr. Minhas' sworn statements, consistent over time, about those deposits; hence, those payments were made by with his funds.

[102] In that respect, I find on a balance of probabilities that Mr. Minhas' affidavits over time establish that he, and not Mr. Lai, paid the \$1,400,000 of development expenses.

[103] I return to the impact of that finding below.

The Chan Notice of Civil Claim (“NOCC”)

[104] I noted above (at para. 38) that Ms. Chan sued Mr. Lai, Queensgate, and Paragon in August 2014. Further, the Settlement Agreement provides that (if the Crown loses this application) some of the funds held in court will be paid out to Ms. Chan.

[105] The Crown’s position is that a payment to Ms. Chan is, in effect, a payment to Paragon. Put another way, the Crown submits that Ms. Chan’s only interest in the Four Parcels was based upon her ownership interest in Paragon. Paragon, in turn, owned 078Co which was registered on title to the Four Parcels.

[106] The Crown submits that the essence of Ms. Chan’s action is a claim against Mr. Lai for the steps he took against her interests as an investor in Paragon. Hence, the Crown submits, any funds paid to Ms. Chan would constitute a preference of Ms. Chan’s claim (through her interest in Paragon) against Mr. Lai. Hence, the Crown submits, paying Ms. Chan’s claim before the Crown’s claim would constitute an improper preference of Ms. Chan’s claim. In other words, the Crown submits that paying any funds to Ms. Chan would really mean that funds were paid to Paragon (against whom the Crown has judgment) and then paid to Ms. Chan. The Crown submits that Ms. Chan’s real claim is a claim against Mr. Lai for her interest in funds that are payable to Paragon.

[107] In support of this position, the Crown points to the inconsistency between the wording of the Settlement Agreement and Ms. Chan’s NOCC.

[108] In the Settlement Agreement, the nature of Ms. Chan’s claim is stated to be as follows:

Clause 4(a) Julie Chan will be paid \$1,100,000 in full and final settlement of her claims against Lai, Paragon, Queensgate and the [Four Parcels];

[109] Ms. Chan’s NOCC (as against Mr. Lai, Queensgate, and Paragon) alleges the following:

9. [Mr.] Lai (and) [Ms. Chan] ...later varied their agreement to provide that...Lai would pay 80% of the Purchase Price [for the Four Parcels] ...
10. Lai represented and covenanted to [Ms. Chan] that:
 - a. he would cause the [Four Parcels] to be purchased in the name of a certain company that was incorporated under the laws of the province of British Columbia under the name of [078Co];
 - b. [078Co] was owned by Paragon, which he controlled; and
 - c. he would cause Paragon to appoint himself and [Ms. Chan] as directors of [078Co] thereby ensuring that the Plaintiff would have to be consulted about, and consent to, any matters relating to the [Four Parcels].
11. On or about January 10, 2007, in reliance on such representations and covenants, [Ms. Chan] advanced the sum of \$885,000 to Lai ... on account of her 20% contribution to the Purchase Price.
...
13. Lai applied [Ms. Chan's funds] ... to the purchase of the [Four Parcels] and on or about March 6, 2007 caused legal title to the [Four Parcels] to be transferred to, and registered in the name of, [078Co] ...

[110] On this basis, the Crown submits that Ms. Chan's allegations in her action are inconsistent with the recitals in the Settlement Agreement.

[111] In response to the Crown's submission regarding a purported inconsistency, Mr. Minhas submits that Ms. Chan's NOCC alleges the opposite of what the Crown is arguing. Further, he says that the allegations were the reason that he had to settle with her.

[112] Mr. Minhas notes that there is no claim in Ms. Chan's action that any of the funds she invested were going to purchase an interest or shares in Paragon or 078Co. In other words, she did not invest the funds in Paragon. She did not receive shares in exchange for the funds. Instead, Ms. Chan's allegation is clear: her funds were provided to Mr. Lai who invested them in the purchase of the Four Parcels. In her NOCC, she was suing for her 20% interest in the Four Parcels.

[113] Mr. Minhas notes that Ms. Chan's action did not pursue an interest either in, or through, Paragon or 078Co. Instead, the relief she sought was a declaration that she is the holder of a 20% beneficial interest in the Four Parcels or a declaration of resulting or constructive trust.

[114] This submission leads to four points:

- a) Ms. Chan was seeking an interest in the Four Parcels in her own right and not as a shareholder in Paragon.
- b) When the Four Parcels were being sold, and the purchase funds were being dispersed, Ms. Chan's CPLs filed against title to the Four Parcels prevented the (non-CRA) parties from completing the sale. Hence, Ms. Chan had significant leverage over the (non-CRA) parties during the settlement negotiations. They needed her onboard with any settlement.
- c) Also following the sale of the Four Parcels, Ms. Chan's claim to an ownership interest of those properties has now been converted into a claim against the funds held in court.
- d) At the time of the Settlement Agreement, the recitals described every possible claim that Ms. Chan might assert in order to ensure that that Ms. Chan was releasing all possible claims, whether viable or not.

[115] On this issue, I accept the submission of Mr. Minhas for the following reasons:

- a) Ms. Chan filed her NOCC on August 28, 2014. (For context, CRA registered its judgment against the Four Parcels in June 2014.)
- b) While Ms. Chan's NOCC consists of allegations and not facts, it is clear that she put forward her claim on the basis that she was entitled to an interest in the Four Parcels. It was on that basis that she filed her CPLs.
- c) From a practical perspective, in the foreclosure proceeding, the Four Parcels were unsellable with the CPLs registered against title. Hence, Mr. Minhas, in an attempt to resolve all of the potential claims and get out of the development, was forced to deal with Ms. Chan.

[116] It follows from my finding above that I further find that, contrary to the Crown's position, Ms. Chan was not claiming any interest through Paragon or 078Co. Instead, she was claiming a direct interest in the Four Parcels (and now the funds held in court) on the basis of a constructive or resulting trust.

[117] Hence, the payment to Ms. Chan of any funds from the sale of the Four Parcels does not constitute a payment to Paragon (or 078Co). Instead, any such payment is a direct payment to Ms. Chan based upon the funds that she invested into the purchase of the Four Parcels.

[118] On that basis, I do not accept the Crown's submission regarding the nature of Ms. Chan's claim and the legal implications of paying settlement money to her.

The Income Tax Returns

[119] In further support of its position, the Crown notes that, in 2014, Mr. Minhas filed tax returns on behalf of 078Co and Queensgate for a number of prior years. In the 078Co returns, Mr. Minhas reported 078Co as the owner of the Four Parcels. The Crown submits that these documents constitute evidence that 078Co was the *de facto* owner of the Four Parcels.

[120] In response, Mr. Minhas says:

- a) In January 2014, as a result of an audit and request by the Crown, Queensgate stopped filing tax returns in its own name.
- b) In the place of its own returns, Queensgate caused tax returns to be filed by 078Co. In those returns, 078Co stated that it was the owner of the Four Parcels.
- c) Neither Queensgate nor 078Co had any income prior to 2015. Each company had expenses.
- d) He (Mr. Minhas) made errors in the 078Co returns when he reported that 078Co was the owner of the Four Parcels.

- e) He did not fully understand the legal effect of the trust agreements prepared by counsel in 2007.
- f) Since being advised of the error, he has instructed his accountant to file amended returns for Queensgate and 078Co.

[121] In my opinion, this issue is directly related to the Crown's earlier position that there was insufficient evidence to support Mr. Minhas' contention that the trust documents existed. I found above that the ownership issue was resolved when the Crown resiled from its position following the revelation of the evidence confirming the existence of the signed versions of the trust agreements. The trust agreements were binding on the parties. They are also binding on the Crown.

[122] The evidence of Mr. Minhas filing income tax returns which declared that 078Co owned the Four Properties, in my opinion, could only be relevant to the issue of whether the trust agreements were valid. The Crown accepts that the trust agreements were signed. Hence, the trust agreements were valid and enforceable as between the parties. The Crown cannot rely on Mr. Minhas' error in filing a tax return to establish that the Four Parcels were owned by 078Co, when it is clear that 078Co held no beneficial interest.

[123] In short, I find as a fact that Mr. Minhas was in error when he filed the tax returns indicating that 078Co owned the Four Parcels. Instead, the evidence makes it clear that 078Co and Queensgate held the Four Parcels in trust for other entities.

Summary and Decision

[124] It follows from my discussion above that:

- a) I do not accept the Crown's position that I should rely upon the filing of the income tax returns that stated 078Co was the owner of the Four Parcels. Those statements were based on errors made by Mr. Minhas;
- b) I do not accept the Crown's position that Ms. Chan's claim against the funds held in court is based in her position as a shareholder of Paragon;

- c) I find on a balance of probabilities that Mr. Minhas provided the funds for the vast majority of the development costs and expenses.

[125] With those findings in place, I return to the provisions of the JVA and the priorities set out therein. The JVA provides that the “other expenses” and “development costs” are to be paid in priority to the “remaining balance” which would be paid to Paragon and Elegant.

[126] It follows from my findings above that there is no “remaining balance” owed to Elegant and Paragon. Instead, all of the remaining funds must be paid out to reimburse Mr. Minhas (and Elegant) for the costs and expenses incurred for the development.

[127] It follows that the funds held in court must be paid out to Mr. Minhas and Elegant pursuant to the provisions of the JVA. Mr. Minhas is entitled to share any portion of those funds with Ms. Chan, in order to satisfy her claim for an interest in the Four Parcels.

Order

[128] In accordance with my findings above:

- a) I dismiss the Crown’s application for payment of the funds held in court.
- b) I grant the application of Queensgate, Elegant, and Mr. Minhas and declare that:
 - i. 078Co had no beneficial interest in the Four Parcels;
 - ii. the Crown has no claim against the funds held in court.
- c) I order that the funds held in court be paid out to counsel for these applicants to be dispersed in accordance with the prior agreement between the interested parties.

[129] I did not hear submissions on costs. If counsel are not able to come to an agreement, I will hear those submissions.

“A. Ross J.”