IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1046537 B.C. Ltd. v. 1277224 B.C. Ltd.,* 2023 BCSC 236

Date: 20230130
Docket: S224791
Registry: Vancouver

Between:

1046537 B.C. Ltd.

Plaintiff

And

1277224 B.C. Ltd., Yan Zhou and Jie Zhou

Defendants

Before: The Honourable Justice Branch

Oral Reasons for Judgment

Counsel for the Plaintiff:	D. Huang
Counsel for the Defendants:	D.F.Y. Young
Place and Date of Hearing:	Vancouver, B.C. January 25, 2023
Place and Date of Judgment:	Vancouver, B.C. January 30, 2023

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I. INTRODUCTION

[1] I begin with a reflection. In making agreements involving property or parties in or from multiple jurisdictions, parties are well advised to follow the old adage to "keep it simple" - clearly designate a single comprehensive controlling agreement prepared in a single language and governed by the law of a single jurisdiction. Unfortunately, that is not what occurred here, leaving the parties with the burden of expensive litigation in order to determine "whose contract is on first."

[2] On this particular application, the defendants seek a declaration that, contrary to s. 215(1)(a) of the *Land Title Act*, R.S.B.C. 1996, c. 250 [*LTA*], the plaintiff's claim under one of the many contracts does not adequately disclose a claim for an interest in property the defendants purchased from the plaintiff. If that finding is made, the defendants ask that the Certificate of Pending Litigation ("CPL") placed on their property by the plaintiff be cancelled.

[3] Based on the language of the original pleading, this case would appear to be a simple debt claim based on a failure to satisfy the payment terms set out in a single agreement. However, the situation becomes far more muddied if the court is to have regard to all of the evidence presented. Based on that evidence, it would appear that the parties and their principals signed a long series of agreements, some of which are in English and some of which are in Chinese, some of which have individual signatories and some of which have corporate signatories, some of which refer to the other agreements and others which do not, and some of which overlap with terms in other agreements and others which do not. This will clearly require a long and difficult trial, should it reach that stage.

[4] Thankfully, as it relates to the present application, the determination to be made by this Court is simplified by the fact that the governing law provides that the determination of the validity of the CPL is determined based on the pleading alone. As noted, the pleadings here ignore the complexity reflected in the evidence. For the reasons expressed below, I find that that the pleadings are insufficient to sustain the CPL, and I grant the application on certain terms designed to give the plaintiff an

opportunity to bring their pleadings more into alignment with the evidence and their arguments presented at the hearing before me. It may be possible to craft a claim that engages an interest in property sufficient to sustain a CPL, but this potential is not enough to resist the present application.

II. BACKGROUND FACTS

[5] This action revolves around the sale and purchase of the property located at 6251 Yew Street, Powell River, British Columbia (the "Property"), and with the following legal description: PID: 008-319-561, LOT 10 BLOCK 12 DISTRICT LOT 450 PLAN 4533. On the Property is a hotel which operates under the name of "Rodmay Heritage Hotel" (the "Hotel").

[6] Up until February 28, 2021, the plaintiff owned and operated the Hotel. There is also a liquor store business operating on the Property.

[7] Beginning in late 2020, the plaintiff and defendants engaged in discussions for the purpose of negotiating the sale of the Property and associated businesses.

[8] The defendants allege that during the course of those discussions, the plaintiff made representations as to the inclusion of certain equipment, vehicles, permits and licenses necessary and incidental to the operation of the Hotel (the "Representations").

[9] The defendants say that in reliance on the Representations, on December 25, 2020, 1277224 B.C. Ltd. (the "Corporate Defendant") entered into an agreement wherein it was agreed that the Corporate Defendant would purchase the Property, inclusive of the Hotel and the associated business assets (the "Agreement"). The Agreement was written in English. The only contracting parties were the plaintiff and the Corporate Defendant. Neither of the individual defendants Yan Zhou nor Jie Zhou were parties to the Agreement.

[10] There is reasonable degree of consistency between the position advanced by the defendant and the plaintiff's initial pleading. The Amended Notice of Civil Claim

filed June 24, 2022 (the “ANOCC”), also relies on a single agreement similarly dated:

> 8. On or about December 25, 2020, an agreement for the sale and purchase of commercial real estate and business assets (the "Agreement") was signed between 104 and 127 regarding the sale and purchase of the inventory and real property located at 6251 Yew Street Powell River British Columbia V8A 4J9 Canada (the "Property")…

[11] The ANOCC pleads that pursuant to the paragraph 2(d) of the Agreement, the Corporate Defendant had to follow the following payment terms:

> The parties agree that the balance outstanding of the purchase price which shall be $870,000.00 shall be paid by the Buyer to the Seller in 12 equal consecutive monthly installments over a 12-month period after completion date.

[12] The Agreement includes a provision allowing for the potential for the issuance of a Mortgage in favour of the plaintiff. Paragraph 2(f) states:

> The Buyer agrees that on demand by the Seller, the Buyer shall grant a First Priority Mortgage to the Seller for any balance of the purchase price remaining unpaid on the completion date.

[13] There is no evidence that any such mortgage was ever demanded or granted.

[14] Beneath the signatures to the Agreement is the following language: “There are other attachments in this contract. In case of any conflict, the Chinese Contract shall prevail”. However, the version in the materials does not have identified attachments, and the parties have not committed to a position on what documents they each say were the attachments. Furthermore, the term “Chinese Contract” is not defined.

[15] Inclusive of other related expenses, the Corporate Defendant was responsible to pay, the defendants accept that the total price payable to the plaintiff under the Agreement was $970,000. This total is confirmed by an addendum to the Agreement dated February 24, 2021 (the “Addendum”).

[16] Between late 2020 and the end of 2021, the Corporate Defendant made various payments, resulting in a net total of $776,000 being paid to the plaintiff, and

creating an outstanding amount of $194,000 (the “Shortfall”). In the Addendum the Corporate Defendant agrees to pay the Shortfall by December 26, 2021.The Addendum also states that “[p]aragraphs 2(a) to (f) of the contract dated December 25, 2020 signed by both parties as amended as stated therein”. The Addendum does not include a mortgage clause equivalent to that found at paragraph 2(f) of the Agreement.

[17] The Addendum also includes the following cryptic term underneath the signatures: “If there are [provisions] beyond the scope of the agreement in Chinese, they shall be executed in accordance with the contract in Chinese.” Again, the relevant contract is not defined, identified or attached.

[18] The Corporate Defendant did not pay the Shortfall within the timelines set out in the Agreement and the Addendum. Unsurprisingly, the plaintiff’s pleadings make recovery of the Shortfall the primary remedy sought. The ANOCC states:

> 9. According to paragraph 4 of the Agreement, there is an amount of $194,000.00 CAD outstanding which the Defendants neglected and refused to pay. :
>
> > "The total balance of $194,000.00 outstanding against the Buyer to the Seller as purchase price shall be paid by the buyer to the Seller within 12 months of completion date but no later than Dec 26, 2021. There shall be no interest charge on the balance outstanding."
>
> 10. The Defendants, agreed to pay the $194,000.00CAD within 12 months and no later than December 26, 2021. However, the defendants did not pay according to the Agreement.

[19] The Corporate Defendant offers the following explanation for the fact that the Shortfall has not been paid. After taking possession of the Hotel on February 28, 2021, the Corporate Defendant says it discovered that, contrary to the Representations made by the plaintiff, the Hotel was not ready for use and that the Representations were untrue, inaccurate, or misleading. Upon discovery of these issues, the Corporate Defendant made demands of the Plaintiff to rectify the situation by taking steps to secure the outstanding licenses, or to agree to reimburse the Corporate Defendant for any costs incurred by the latter in its own efforts to remedy the deficiencies.

[20] The Corporate Defendant says it also sought the plaintiff's agreement to compensate the Corporate Defendant for any loss of revenues occasioned by the licensing issues in the form of a "set-off" to any ongoing payment obligations owing under the Agreement. The Corporate Defendant's requests were either refused or ignored by the plaintiff.

[21] On or about November 3, 2021, not having received any response from the plaintiff as to its outstanding complaints or received any reimbursement for the additional expenses incurred in rectifying the deficiencies identified, the Corporate Defendant ceased further installment payments to the plaintiff.

[22] The Plaintiff responded to the failure to pay the Shortfall by filing a Notice of Civil Claim on June 14, 2022 ("NOCC"). The remedies sought in the NOCC were as follows:

> 1. The plaintiff seeks an order to pay in the amount of $194,000.00 CAD
>
> 2. The plaintiff seeks an order to pay in the amount of $30,000.00 CAD for the outstanding Debt Acknowledgement.
>
> 3. The plaintiff seeks an order to pay in the amount of no less than $53,784.55 CAD for cost.
>
> 4. A Certificate of Pending Litigation registered to the Property with legal description below:
>
> PID: 008-319-561
>
> Description of Land: LOT 10 BLOCK 12 DISTRICT LOT 450 PLAN 4533
>
> 5. Costs for civil claim
>
> 6. Such further and other relief as to this Honourable Court may seem just.

[23] In terms of the legal bases for the claim, they were limited in the NOCC to the following:

> 1. The law of contract
>
> 2. The British Columbia Supreme Court Civil Rules, B.C reg. 168/2009
>
> 3. *Land Title Act*

[24] On June 17, 2022, the plaintiff filed the CPL against the Property. The accompanying certification asserting that a claim was filed that raised an interest in land is dated the same date. The charge was formally registered against the Property on June 27, 2022.

[25] In the meantime, on June 24, 2022, the plaintiff had filed an Amended Notice of Claim, which advanced a constructive trust claim for the first time. The following language was added:

> The Defendant, as trustee, is holding the land and Property in trust for the Plaintiff, as a beneficiary, until the outstanding balance is completely paid off.

[26] The plaintiff also added the following to the relief requested

> The plaintiff seeks …a declaration that the Defendants are constructive trustees and hold the Property in trust for the Plaintiff.

[27] No change was made to the legal basis for the claim. No reference was added to any other agreements.

[28] On November 22, 2022, the defendants entered into an agreement to sell the liquor store business operating at the Property. The buyer has required that the CPL be removed in order to proceed. The closing date is January 31, 2023. The pressure of this date has driven the need for the provision of these urgent oral reasons.

[29] In its evidentiary response to the application, the plaintiff seeks to add several layers of complexity to the contractual picture. They assert that there were about seven different agreements, in Chinese and English, signed on a variety of dates by a variety of different persons, made effective on a variety of dates, and containing varied terms, particularly in relation to the potential for the plaintiff to recover ownership of the Property under certain conditions.

[30] Plaintiff's Counsel also asserted that the Agreement itself was not signed on the December 25, 2020 date indicated thereon.

[31] For the reasons expressed below in relation to the scope of material to which I may have regard, I do not analyze this additional material from the plaintiff in any detail, but only to the extent required to determine the present application.

III. ANALYSIS

A. The Material Considered

[32] As noted, in responding to the application, the plaintiff sought to advance arguments based on additional affidavit evidence, as well as on its new counsel's representations as to additional evidence that could be filed and the additional pleas that could be advanced.

[33] Is the court entitled to rely on this additional material and representations? Unfortunately for the plaintiff, the answer is "no". In *Dhanani v. Kassam*, 2022 BCSC 2271, this Court stated:

> [38] The son seeks to rely on evidence to establish that she did receive proper payment from him for the Properties, but the assessment of the pleadings must be based on the pleadings alone: *1033695 B.C. Ltd* at para. 13.

[34] In the referenced decision in *1033695 B.C. Ltd. v. Logos Investment Inc.*, 2021 BCSC 308, the court stated:

> [13] The test to cancel a CPL is set out in *Xiao v. Fan*, 2018 BCCA 143 at para. 27. That test is whether the pleadings disclose a claim for an interest in land. No evidence is to be considered on such an application.
>
> > [27] Accordingly, the correct test to be applied in an application to cancel a CPL that is alleged to be non-compliant with s. 215 of the *Land Title Act* is simply whether the pleadings disclose a claim for an interest in land. In such an application, no evidence is to be considered. If the merits of the claim for an interest in land are challenged, a defendant should apply for a summary dismissal of that part of the claim under Rule 9-6(4), where evidence may be considered, and the test to be applied is whether there is a bona fide triable issue of fact or law. If that part of the claim is dismissed, a defendant may then apply to have the CPL cancelled under s. 254.

[35] See also *Wang v. Cai*, 2022 BCSC 1312 at para. 11

[36] As such, I must determine this application based on the pleadings alone. But which pleading?

B. The Pleading Considered

[37] Is the court to consider the NOCC or the ANOCC? Recall that when the CPL was filed, the NOCC was the extant pleading, but by the date of registration, the ANOCC had been filed.

[38] The defendant provided authority for the proposition that the relevant pleading is that in place when the CPL is "filed": *Nouhi v. Pourtaghi*, 2019 BCSC 794 at para. 30; *RCG Forex Service Corp. v. Lin*, 1999 BCCA 644 at paras. 6-8;

[39] I find that I must follow those authorities and rely on the NOCC rather that the ANOCC. Beyond the authorities, at a policy level, parties should be encouraged to ensure that the pleading purporting to support their CPL filing does disclose an interest in land. The filing of a CPL requires a true declaration as of the state of the claims advanced on the date it is filed. It should not be enough that the party may in the future advance a claim that seeks an interest in land. This will ensure that any filing is done with care. It also ensures that the Land Title Office need not perform their own searches of the court registry for more up-to-date filings.

[40] The plaintiff argued that the Land Title Office was aware of the ANOCC when it issued its registration on June 27 and that, as such, the challenge should be based on the ANOCC. However, this argument was based on the plaintiff's review of material from the Land Title Office that was not properly put before the court. Indeed, it was not before the court at all. Rather, plaintiff's counsel was purporting to rely on information he said he was able to read on his cell phone. Clearly, this is not the proper way to present material to the court, and I find that I cannot rely on same. This is particularly so where there was Land Title Office material before me that did not expressly refer to the ANOCC. Furthermore, the Registrar's signed certification set out on the CPL indicates that a review occurred on June 17, 2022, which would seem to make it clear that the Registrar must have been relying on the NOCC, not the ANOCC.

C. Does the NOCC Claim an Interest in Land?

[41] Turning to the NOCC, I find that it is insufficient to engage an interest in land. The claim advanced is for recovery of amounts owing, which amounts only became owing well after the Property had been disposed of by the plaintiff. This finding alone is sufficient to support removal of the CPL.

[42] The plaintiff's argument was essentially that it is sufficient that the NOCC involves an agreement for the sale of real property. With respect, that broader context is not sufficient. There must be an actual claim for an interest in land, which is not present in the NOCC. As the Court of Appeal noted in *Lipskaya v. Guo*, 2022 BCCA 118 at para. 64, "[a]n "interest in land" is claimed where title may change as a result of the proceedings." Not every claim flowing from a property transfer calls for a change in title. Here the NOCC advances a "purely financial claim": *Wang* at para. 12.

[43] The plaintiff also relied on the fact that the Agreement provides for the potential for a mortgage. However, there is no evidence that the plaintiff ever demanded that a mortgage be provided. Furthermore, the Addendum:

a) provided that paragraph 2(f) dealing with the potential for mortgage was "amended as stated therein"; and

b) did not then re-establish a right to a mortgage over the Property in the case of non-payment.

[44] As such, I find that the NOCC does not raise the requisite interest in land, and hence it is appropriate to strike the CPL.

D. The ANOCC Alternative

Generally

[45] In the alternative, even if the ANOCC were the relevant pleading, I would have found that it also fails to properly engage an interest in land. Although it purports to raise a constructive trust claim, there are flaws in the pleading such that the ANOCC cannot be said to raise a proper claim for an interest in land. It is not

enough to refer to include the “magic words” of a constructive trust in a pleading in order to support a CPL. The necessary material facts and law must also be pled. In this case, there are several pleading failings.

The Need for an Inadequacy of Damages Plea

[46] First, there is no claim that damages are an inadequate remedy for the alleged contractual failings. In *Goel v. Dhaliwal*, 2021 BCSC 2382, Justice MacDonald considered pleadings that included claims for both a constructive and resulting trust. Justice MacDonald concluded as follows:

> [65] To justify a CPL under s. 215 of the LTA, the pleadings must disclose an interest in land with the proper factual foundation: *Chen* at para. 27. The pleadings must also explain why damages cannot provide adequate relief: *Nouhi* at para. 26.

[47] It is true that there is an ongoing debate as to whether inadequacy of damages is a necessary element of a claim for a substantive constructive trust: *Dhanani* at paras. 24-32; *Nouhi* at para. 30; *Mayer v. Mayer*, 2018 BCSC 8; *Vidcom Communications Ltd. v. Rattan*, 2022 BCSC 562. However, counsel for the plaintiff advised that what was being sought here was a remedial constructive trust. Furthermore, given the failure of the pleading to clearly designate the type of constructive trust claimed, it is appropriate to treat it as a claim for a remedial constructive trust: *Cao v. Chen*, 2022 BCSC 2083 at para. 448. For this type of constructive trust, the law is clear that an inadequacy of damages plea is necessary: *Cao* at para. 448.

[48] The plaintiff did provide affidavit evidence about her strong familiar connection to the Property, but again, this issue can only be considered on the basis of the pleadings.

[49] Furthermore, even if the plaintiff had asserted that what was being sought here was a substantive constructive trust, the ANOCC fails to properly assert such a claim. The ANOCC relies solely on the Agreement, which does not provide for a return of the Property if the necessary future payments were not made. The usual

remedy for late payment in a contract claim is to sue for recovery of the amounts still owing, precisely as the plaintiff has done here.

E. The Effect of the Chinese contracts

[50] As noted above, there is language in the Agreement and Addendum which may allow the plaintiff to argue that there is a Chinese contract which is predominant in the case of conflict, although the failure to define the term "Chinese Contract" will undoubtedly provide room for the defendants to advance responding arguments.

[51] Relying on this language suggesting the predominancy of a particular "Chinese Contract", the plaintiff notes that there is a Chinese language contract in evidence which provides that the Property may revert to the plaintiff for non-payment. The clause in that agreement dated December 26, 2020 ("December 26 Contract") reads (according to the certified translation):

> 6.3 Should this contract is nullified due to reasons cased by Party B, Party A has the right to reclaim the ownership fo the hotel, including its land title and business licenses…

[52] There are several problems with the plaintiff's reliance on this particular Chinese contract:

a) The ANOCC itself does not purport to rely on any Chinese contract as the basis for the plaintiff's claim.

b) Even if it did, the Agreement is not clear as to which Chinese contract it is referring. As noted above, the plaintiff itself asserts that there were several Chinese language agreements.

c) In a similar vein, it is not clear whether the December 26 Contract was attached to the Agreement, which would presumably strengthen the plaintiff's argument.

d) The December 26 Contract was not executed by the Corporate Defendant, who actually holds the title to the Property. The name of the Corporate Defendant is not even referred to therein. The December 26 Contract was

executed by the individual defendant, Yan Zhou. In order to advance a position that this still qualifies as execution by the Corporate Defendant such that the December 26 Contract can be enforced against it, the plaintiff would need to advance an alter ego or like plea. But the ANOCC does not advance such a plea.

e) The plaintiff seeks to rely on documentary evidence to establish that the individual defendants also treated the Chinese Contract as the true governing agreement. However:

   i. as noted above, the application is to be considered on the basis of the pleadings alone; and

   ii. for certain proposed evidentiary material, there was no official translation, contrary to the direction provided in *Conseil Scolaire Francophone de la Colombie-Britannique v. British Columbia*, 2012 BCCA 282. The court there held as follows:

> [64] Having found that the requirement for civil proceedings in British Columbia to be conducted in English is prescribed by statute, I conclude that there is no discretion for a judge of the Supreme Court of British Columbia presiding over civil proceedings to admit documentary evidence in any other language for the truth of its contents without an accompanying English translation.

   iii. Some of the evidence presented was under cover of an English-language affidavit sworn by a Chinese-speaking deponent, who:

      (1) accepts that she does not understand English in the body of at least one affidavit;

      (2) did not appear to have had the affidavits read to her in her native language; and

      (3) did not involve a competent interpreter to certify the translation;

This approach to the evidence runs afoul of Rule 22-2(7): *Tut v. Evershine Land Group Inc,* 2022 BCCA 63 at paras. 30, 38-39.

f) The plaintiff also seeks to rely on the defendants' Response to suggest that they have admitted that the December 26 Contract governs. I find that this overstates what the defendants have plead. Paragraph 9 of Part 1 Division 2 of the Response states only that:

> Part of the Representations were documented in writing, in the form of a Chinese language document (the "Chinese Document"), which purports to contemplate a sale of the Hotel by the Plaintiff to the Defendant Yan Zhou, with the latter as a proposed buyer in her personal capacity.

This does not qualify as an admission that the particular Chinese contract relied upon by the plaintiff is the primary contract in relation to all of its terms. Indeed, the plaintiff's argument about the admission of contractual force of the Chinese Contract is undercut by language in the following paragraph 10 of the Respose which states "As such the Chinese Document is simply documentation of the Representation made by the Plaintiff, rather than a binding contractual document."

F. The Potential for New and Better Claims to be Advanced

[53] The plaintiff sought to rely on the potential that they could advance resulting trust or fraud claims in order to support an interest in the Property. However, and once again, the application must be considered on the basis of the pleadings as they are, not as they might be.

G. Pleading Amendments

[54] The defendants fairly acknowledge that based on the evidence filed, it appears that it may well be possible for the plaintiff to recast their pleading in order to raise a proper interest in land. The defendant was prepared to agree to a term that would prevent the corporate defendant from disposing of the property for a short period of time, in light of that prospect. I find that a 60-day period should be sufficient to avoid the prospect of urgent and expensive stay applications, and I so order.

[55] The defendants asked that the plaintiff be required to file any new CPL by a specific date, in order to provide the defendants with greater certainty that any Property transaction would not be undermined by the filing of last-minute CPL. I am concerned that such an order would call for undue interference by the Court in the parties' future decision making and litigation conduct. Should a late-filed CPL interfere with a pending transaction, the defendants will always be at liberty to bring an urgent application forward to strike the CPL under s. 256 of the *LTA*. Although I do not seize myself of any such application, either of the parties are at liberty to request that I hear such a matter, and I will consider the advisability and availability of my doing so at the relevant time.

H. Section 256 of the LTA

[56] In terms of s. 256 of the *LTA*, I note that I have already struck the CPL pursuant to s. 215 of the *LTA*. As such, it is unnecessary for me to analyze at this time whether the defendants are also suffering sufficient hardship and inconvenience to support striking the CPL pursuant to s. 256 as well.

IV. REMEDY AND CONCLUSION

[57] So in conclusion, I grant a declaration pursuant to s. 215(1)(a) of the *LTA* that the pleadings in this case do not adequately disclose a claim for an interest in lands and cannot sustain the CPL. I also grant the order that the CPL be cancelled. This is contingent on the term outlined above that the property will not be sold by the Corporate Defendant for 60 days.

[58] Of course these orders still leave the plaintiff in a position where they can seek to amend the pleadings and then potentially file a valid CPL in the event that the amended pleadings disclose a claim to an interest in land: *Nouhi* at para. 30.

V. COSTS

[59] [Discussion on Costs]

[60] In light of the substantial success of the defendants on this application, and the lack of clarity as to where this litigation is going to go from here, I am prepared to

make an award of costs to the defendants, but I am going to make that at Scale B. It will be payable in any event of the cause, given that this issue is segregable from the balance of the litigation. I make the amount payable within 90 days of the taxation of the amount or any agreement as to the amount.

[61] CNSL D. YOUNG: My Lord, if I could just read back to you what I have down as the form of the order?

[62] THE COURT: Sure.

[63] CNSL D. YOUNG: It may just expedite things. I have four items: Order 1, an order declaring that pursuant to s. 215(1)(a), that the pleadings do not adequately sustain the interest in land; Order Number 2, defendants are at liberty to apply for setting aside of any future CPL on a short leave basis; Number 3, defendant is to --

[64] THE COURT: Sorry, where are you getting that one from?

[65] CNSL D. YOUNG: I'm sorry, number 2?

[66] THE COURT: Yes.

[67] CNSL D. YOUNG: I thought I heard that we were at liberty to apply to set aside a future CPL if it was -- on a short leave basis.

[68] THE COURT: Oh, you can certainly make a request, but I am not prejudging the short leave point.

[69] CNSL D. YOUNG: Perhaps I should just remove that then.

[70] THE COURT: Yes, I think so.

[71] CNSL D. YOUNG: It is not a big deal for us to apply for short leave.

[72] THE COURT: Yes, I was not trying to make a special order in that respect.

[73] CNSL D. YOUNG: I misunderstood, I apologize. Number 2 then will be defendant is not to sell the underlying lands for 60 days. Obviously it does not affect

the liquor store sale. And 3, costs payable in any event of the cause at Scale B within 90 days of taxation, or by agreement between the parties.

[74] THE COURT: I think you missed the actual cancellation of the CPL.

[75] CNSL D. YOUNG: Oh yes, of course.

[76] THE COURT: You want that.

[77] CNSL D. YOUNG: Subject CPL is cancelled. That's right.

[78] THE COURT: I am sorry, give me your version of the last order again.

[79] CNSL D. YOUNG: The one dealing with costs?

[80] THE COURT: Yes, the costs term.

[81] CNSL D. YOUNG: Costs payable in any event of the cause at Scale B, within 90 days of a registrar's hearing or by agreement between the parties.

[82] THE COURT: All right, perfect. Thank you both.

"The Honourable Justice Branch"