

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lam v. WS Scott Station Development
Limited Partnership,*
2025 BCSC 149

Date: 20250130
Docket: S240607
Registry: Vancouver

Between:

Lai Lin Lam

Plaintiff

And

**WS Scott Station Development Limited Partnership, Brian Keith Regehr,
1095355 B.C. Ltd., WS Lower Twelfth Development Limited Partnership,
WS Lower Twelfth GP Ltd., WS NW Phase 1 Nominee Ltd., Urban Village
Limited Partnership, 0864917 B.C. Ltd., West Village Parcel 6 Holdings Ltd.,
West Village Parcel 7 Holdings Ltd., and West Village Parcel 8 Holdings Ltd.**

Defendants

- and -

Docket: S244314
Registry: Vancouver

Between:

**Faye Young Holding Ltd., Yuan Lian Holdings Ltd.,
Life Intelligence Ltd., Xiaoshan Ming, Kingston Jin Heng Huang,
Tommy Mo, and TPNB Enterprise Ltd.**

Plaintiffs

And

**WS Scott Station Development Limited Partnership, Brian Keith Regehr,
1095355 B.C. Ltd., WS Lower Twelfth Development Limited Partnership,
WS Lower Twelfth GP Ltd., WS NW Phase 1 Nominee Ltd., Urban Village
Limited Partnership, 0864917 B.C. Ltd., West Village Parcel 6 Holdings Ltd.,
West Village Parcel 7 Holdings Ltd., and West Village Parcel 8 Holdings Ltd.**

Defendants

Before: The Honourable Justice Douglas

Reasons for Judgment

Counsel for the Plaintiffs:	D. Sue-A-Quan
Counsel for the Defendants:	D.R. Shouldice
Place and Dates of Hearing:	Vancouver, B.C. November 28-29, 2024
Place and Date of Judgment:	Vancouver, B.C. January 30, 2025

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I. OVERVIEW

[1] The defendants apply in these two actions to cancel certificates of pending litigation (“CPLs”) registered on title to lands in New Westminster, BC. They say the CPLs are incapable of supporting a viable claim to an interest in land, as required by s. 215 of the *Land Title Act*, R.S.B.C. 1996, c. 250 [*LTA*]. Alternatively, they say that registration of the CPLs constitutes a default under the existing mortgage on title to the subject lands, is preventing them from obtaining refinancing, and is therefore causing hardship and inconvenience, as contemplated by s. 256 of the *LTA*.

[2] The plaintiffs’ pleadings in both actions are substantially similar (apart from details relating to the identity of the named plaintiffs, filing dates, and registration particulars). In both actions, the plaintiffs plead that they invested as limited partners in the WS Scott Station Development Limited Partnership (“WS Scott LP”) which was engaged in the development and sale of land in Surrey, BC. They allege that, instead of receiving a return on their capital from the sale of this development project, all or part of those sale proceeds were improperly diverted to other entities related to the WS Scott LP, including those with an alleged beneficial interest in the lands on which the CPLs are registered.

[3] The plaintiffs say these allegations support them having a personal cause of action in unjust enrichment against the defendants, and that those claims give rise to a substantive or remedial constructive trust and/or an equitable tracing, thereby comprising a claim to an interest in land sufficient to justify registration of the CPLs.

[4] The defendants dispute the plaintiffs’ allegations. However, they accept that the pleaded facts in the notices of civil claim are deemed to be true for the purpose of determining whether the plaintiffs have a claim to an interest in land, as required by s. 215 of the *LTA*.

[5] For the reasons that follow, I conclude that the plaintiffs’ pleadings do not establish a claim to an interest in land and that the CPLs must therefore be cancelled. This finding makes it unnecessary to consider the defendants’ alternative argument based on hardship.

II. THE CLAIMS

[6] The relevant pleading is the one that was in place when the CPLs were registered: *Bilin v. Sidhu*, 2017 BCCA 429 at para. 62; *Nouhi v. Pourtaghi*, 2019 BCSC 794 at para. 30. Accordingly, although the plaintiffs subsequently amended their pleadings in both actions, I have relied on the notices of civil claim in place when they filed the CPLs. The parties agree that the plaintiffs' amendments to their pleadings are immaterial to the registration of the CPLs in any event.

[7] The court's role at this stage is not to determine whether the plaintiff's claim can be proved but rather whether it is sufficient to establish a claim to an interest in land: *Wang v. Cai*, 2022 BCSC 1312 at paras. 9-11; *Oikon Developments Inc. v. Chris & Mando Ltd.*, 2024 BCSC 1333 at para. 35 [*Oikon*]; *Yi Teng Investment Inc. v. Keltic (Brighthouse) Development Ltd.*, 2019 BCCA 357 at para. 36 [*Yi Teng*].

[8] Defence counsel submits that, although the plaintiffs advance multiple causes of action, it is only their pleaded claims for a substantive or remedial constructive trust and a tracing remedy that are relevant to the filing of the CPLs. The parties agree, and I accept, that success on an alleged fraudulent conveyance claim does not give rise to an interest in land sufficient to sustain a CPL: *Wang* at para. 27.

[9] The plaintiffs plead the following material facts in their original notices of civil claim filed on January 30, 2024 in Action No. VLC-S-S-240607 (the "Lam NOCC"), and on June 26, 2024 in Action No. S244314 (the "Faye Young NOCC"):

- a) They are limited partners in the WS Scott LP (Lam NOCC at para. 18; Faye Young NOCC at para. 24);
- b) 1095355 B.C. Ltd. ("WS Scott GP") is the general partner of the WS Scott LP (Lam NOCC at para. 3; Faye Young NOCC at para. 9);
- c) The corporate defendants are affiliated development entities, known as the WestStone Group, organized to buy, hold, develop, and sell real estate in BC (Lam NOCC at para. 17; Faye Young NOCC at para. 23);

- d) Defendant, Brian Keith Regehr, is the controlling mind of the WestStone Group entities (Lam NOCC at para. 16; Faye Young NOCC at para. 22);
- e) The purpose of the WS Scott LP was to raise funds for residential developments in Surrey, BC (the “Project”) (Lam NOCC at para. 19; Faye Young NOCC at para. 29);
- f) The sale of the Project was completed in two phases in 2022 (Lam NOCC at paras. 26 - 27; Faye Young NOCC at paras. 35 – 36);
- g) Instead of receiving a return of their capital from the sale of the Project, all or part of these proceeds were improperly diverted to other entities within the WestStone Group (Lam NOCC at paras. 28 and 33; Faye Young NOCC at paras. 37 and 44);
- h) This alleged diversion of all or part of the Project sale proceeds created a constructive trust over lands in Surrey and/or New Westminister sufficient to sustain the CPLs (Lam NOCC at paras. 47 - 54; Faye Young NOCC at paras. 58 – 65); and
- i) The plaintiffs seek an accounting and tracing of funds to determine if the Project sale proceeds were improperly disbursed and used to acquire, develop, and/or improve the subject lands in Surrey and/or New Westminister (Lam NOCC at para. 53; Faye Young NOCC at para. 64).

III. THE CPLS

[10] The plaintiffs registered the CPLs on January 31, 2024, and on June 27, 2024, against title to properties legally described as:

- a) 002-379-368 Lot “A” (P10967) Block 36 Plan 6702; and
- b) 006-642-284 Lot 33 City Block 36 Plan 73589 (collectively, the “New Westminister Lands”).

[11] The plaintiffs registered the CPLs on the New Westminster Lands but not on the subject lands in Surrey, as defined in the notices of civil claim.

IV. LAW AND ANALYSIS

A. Section 215 of the LTA

[12] Section 215 of the LTA provides as follows:

Registration of certificate of pending litigation in same manner as charge

215 (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.

[13] Registration of a CPL under s. 215 must be grounded in a claim to an interest in land and a plaintiff's pleading must adequately assert the foundation for that interest: *Sonnenberg v. Sonnenberg*, 2023 BCSC 957 at para. 12; *Lipskaya v. Guo*, 2022 BCCA 118 at para. 64. When the pleading fails to disclose a claim to an interest in land, the CPL will be cancelled immediately because it was improperly registered from the outset: *Sonnenberg* at para. 13; *Bajwa v. Singh*, 2016 BCSC 916 at para. 20; *Wang* at paras. 9 – 12.

[14] As noted in *Sonnenberg* at para. 14, and *Wang* at paras. 9 – 11, the applicable legal test asks two questions:

- 1) Are the pleaded facts, assuming them to be true, capable of supporting a claim to an interest in land?
- 2) Is there a nexus or causal link between the pleaded facts and the interest in land to which they would give rise, if ultimately proved?

[15] Whether the facts pleaded, assuming them to be true, are capable of supporting a claim to an interest in land, is a threshold issue: *Yi Teng* at para. 39. If the pleadings are found to meet this threshold, it connotes a nexus or causative link between the facts alleged and the interest to which they would give rise if the facts were ultimately proved: *Yi Teng* at para. 39.

[16] The whole of the notice of civil claim must be considered in determining whether the plaintiff has pleaded a claim to an interest in land: *Batth v. Sharma*, 2024 BCCA 29 at para. 30. No evidence is considered on an application to cancel a CPL for non-compliance with s. 215 of the *LTA* and the court does not analyze the merits of the underlying claim: *Xiao v. Fan*, 2018 BCCA 143 at para. 27.

B. Do the plaintiffs' pleadings disclose a claim to an interest in land?

[17] The defendants submit that the plaintiffs' pleadings disclose no claim to an interest in the lands subject to the CPLs for three reasons:

- 1) The plaintiffs have no claim for a proprietary interest in either the funds they invested in the WS Scott LP or the Project sale proceeds because limited partners have no direct interest in the real or personal property of a partnership;
- 2) The plaintiffs have no personal cause of action for unjust enrichment against the defendants because any such unjust enrichment would have been to the deprivation of the WS Scott LP and not its individual limited partners; and
- 3) The plaintiffs have not sufficiently pleaded a connection between the allegedly diverted sale proceeds from the Project and the lands subject to the CPLs.

[18] The defendants say that any one of these reasons comprises a sufficient basis for cancelling the CPLs and that, collectively, they demonstrate that the plaintiffs have no claim for an interest in land, as required by s. 215 of the *LTA*.

[19] I address each in turn.

1) Do the plaintiffs have a proprietary interest in partnership property?

[20] The defendants deny the plaintiffs have a proprietary interest in partnership property, a fact defence counsel says distinguishes this case from many of the authorities on which the plaintiffs rely. He notes that the plaintiffs advance personal causes of action against the WS Scott LP, a limited partnership in which they are limited partners. He says it is clear that, as limited partners, the plaintiffs have no proprietary interest in either the property of the WS Scott LP, or the Project sale proceeds. Rather, he says they have the right to bring a common law derivative action, in the name and on behalf of the WS Scott LP, against the other defendants. The plaintiffs have not proceeded in that manner.

[21] Section 55(2) of the *Partnership Act*, R.S.B.C. 1996, c. 348, defines a limited partner's interest in a limited partnership as personal property: *Asher Place Senior Residency Limited Partnership v. Balcom*, 2021 BCCA 162 at para. 28 [*Asher Place*]; *Harrison Hydro Project Inc. v. British Columbia (Environmental Appeal Board)*, 2018 BCCA 44 [*Harrison Hydro*] at para. 42; *Schmidt v. Balcom*, 2016 BCSC 2438 at paras. 42 - 43. Section 55 provides as follows:

Contribution of limited partner

55 (1) A limited partner may contribute money and other property to the limited partnership, but not services.

(2) A limited partner's interest in the limited partnership is personal property.

[22] Justice Harris described the legal characteristics of a limited partnership at para. 20 of *Asher Place*, quoting *Harrison Hydro* at para 55:

Several propositions come from these authorities. First, a limited partnership is not a legal entity. Second, a limited partnership acts through its general partner (subject to the hypothetical possibility that a limited partner could act contrary to the typical provisions of a limited partnership agreement and become involved in the management of the limited partnership, in which case he or she would lose the protection of limited liability and become the equivalent of a general partner). Third, a general partner has exclusive control of the management of the business of the limited partnership and its

property. Fourth, the property of the limited partnership can only be held by the general partner.

[23] Justice Harris confirmed in *Asher Place* at para. 27 that, in BC, a limited partnership is a creature of statute and governed by Part 3 of the *Partnership Act*. As noted by Alison R. Manzer in her text *A Practical Guide to Canadian Partnership Law*, (Aurora, Ont.: Canada Law Book, 1994) (loose-leaf updated December 2014), at 9-10 and 9-11, and cited with approval in *Asher Place* at para. 27, the limited partnership was designed to facilitate the raising of capital, while maintaining the partnership structure required for many enterprises.

[24] Typically, a limited partner does not participate in the management of the limited partnership, a function reserved for the general partner, and, as a rule, a limited partnership acts only through its general partner: *Asher Place* at para. 28. Limited partners are passive investors in a limited partnership but nonetheless have an interest in it: *Asher Place* at para. 28. A limited partner may advance a derivative claim, in the name and on behalf of a limited partnership, against the general partner alleged to have wronged the partnership: *Asher Place* at para. 40-41.

[25] A limited partner does not have a claim to an interest in land in the real property which formed part of the partnership property under section 25 of the *Partnership Act*. *Schmidt* at paras. 40 - 44. As noted by Justice Choi in *Schmidt* at para. 42, section 55(2) of the *Partnership Act* specifically defines the interest of a limited partner as “personal property”. As a result, she found that the plaintiff’s assertion that a limited partner holds a direct proprietary interest in the assets of the limited partnership, including land, cannot be reconciled with s. 55(2), which describes the interest as personal property: *Schmidt* at para. 42.

[26] The dissolution of a partnership triggers a partner’s entitlement to an equitable lien which, in turn, entitles the partner to a CPL: *Schmidt* at para. 43. Defence counsel underscores that the plaintiffs here have pleaded no such an allegation.

[27] The defendants submit that, when the plaintiffs subscribed for limited partnership units in the WS Scott LP, their capital investment (or “Principal”, as defined in the notices of civil claim) formed part of the assets of the WS Scott LP, and the plaintiffs no longer had a direct proprietary interest in those funds. The defendants further submit that the Project sale proceeds also form part of the assets of the WS Scott LP, held by its general partner, WS Scott GP; they deny the plaintiffs have a direct proprietary interest in them.

[28] The defendants concede that a limited partnership may claim an interest in land that is not partnership property: *Canada Long Investment Group Corporation v. Russo*, 2023 BCSC 884 [*Canada Long*] at paras. 40 – 41. They say that the WS Scott LP, by its general partner, is the only party that can make a proprietary claim to the Project sale proceeds. Defence counsel notes that the plaintiffs cite no authority for their claim to a proprietary interest in these sale proceeds, and that they advance individual personal causes of action, and not common law derivative actions, in the name and on behalf of the WS Scott LP.

[29] The plaintiffs rely heavily on *Treasure Bay HK Limited v. 1115830 B.C. Ltd.*, 2024 BCSC 294 [*Treasure Bay*], a decision they say supports the proposition that a limited partner can establish a claim to an interest in land, sufficient to justify a CPL, despite s. 55 of the *Partnership Act*.

[30] In *Treasure Bay*, the corporate plaintiff did not seek to sustain a CPL against the equitable proprietary interests of a limited partnership in which it was a limited partner; accordingly, Justice Walker found that s. 55 of the *Partnership Act* was inapplicable: *Treasure Bay* at paras. 58 - 59. He noted that Justice Tucker adopted the same approach in *Canada Long* where, in analogous circumstances, she declined to discharge a CPL filed by a limited partner against land where legal title was held by a company related to the limited partnership’s general partner, but not the limited partnership itself: *Treasure Bay* at para. 60. The corporate defendant against whose property the CPL was filed, was not a partner of the limited partnership: *Treasure Bay* at para. 60. Justice Walker found that, although Justice

Tucker's determination (at para. 41) referred to s. 25 of the *Partnership Act*, her analysis was apposite to s. 55: *Treasure Bay* at para. 60.

[31] Plaintiffs' counsel accepts that a limited partner cannot claim an interest in land that is an asset of the limited partnership in which they are a limited partner. He denies the plaintiffs advance such a claim here. Rather, he says the plaintiffs allege that the defendants misappropriated and diverted the Project sale proceeds to third party entities, other than the WS Scott LP, that have an ownership interest in the New Westminster Lands subject to the CPLs, and in which the plaintiffs are not limited partners. He denies the New Westminster Lands comprise an asset that is beneficially owned by the WS Scott LP; rather, the plaintiffs plead that the New Westminster Lands are owned by a separate entity, WS Nominee Ltd., as part of the Project controlled by the WS Lower Twelfth Development Limited Partnership and its general partner (Lam NOCC, para. 33; Faye Young NOCC, para. 44). Plaintiffs' counsel argues that fact distinguishes this case from the authorities on which the defendants rely and, as in *Treasure Bay*, renders s. 55 of the *Partnership Act* inapplicable.

[32] There is no dispute that a limited partner's interest in a limited partnership is personal and not real property. I conclude that the plaintiffs, as limited partners, have no direct proprietary interest in the assets of the WS Scott LP, including the allegedly diverted Project sale proceeds: *Schmidt* at paras. 30 – 31; *Canada Long* at para. 34; *Treasure Bay* at para. 44.

[33] I accept that the plaintiffs have filed CPLs on the New Westminster Lands which they say are not being held for the benefit of the WS Scott LP. While I assume that the pleaded facts are true for the purposes of this application, I conclude that the plaintiffs' remedy is to pursue a common law derivative action, in the name and on behalf of the WS Scott LP: *Asher Place* at paras. 19, 40-41; *Treasure Bay* at para.13. Plaintiffs' counsel provided no authority to support the proposition that the plaintiffs, as limited partners, can advance personal proprietary claims to an interest in the subject lands, in their own names and on their own behalf. Notably, in both

Treasure Bay and *Canada Long*, the plaintiffs' claims were common law derivative actions.

2) Do the plaintiffs have a personal cause of action?

[34] Individual limited partners have no personal cause of action when a wrong is done to a limited partnership: *Asher Place* at para. 32. As noted by Justice Harris in *Asher Place* at para 32, citing *Watson v. Imperial Financial Services Ltd.* (1994), 88 B.C.L.R. (2d) 88 (C.A.), 1994 CanLII 3293:

- a) Wrongs alleged to have been committed to a limited partnership are wrongs to the partnership itself;
- b) Individual partners are only incidentally or consequentially affected by the injury to the partnership, and do not have a personal right of action;
- c) A wrong to the limited partnership must be advanced in the name of the limited partnership; and
- d) Where the wrong is alleged to have been committed by the general partner, an exception to the rule in *Foss v. Harbottle* may permit a limited partner to advance the claim against the general partner in the name of and on behalf of the limited partnership.

[35] Based on the rule in *Foss v. Harbottle* (1843), 2 Hare 461, 67 ER 189 (UK Ch), any claim alleging wrongs against a corporation should either be brought in the name of the corporation itself or as a derivative action: *Yen v. Ghahramani*, 2023 BCCA 403 at para. 36.

[36] Accordingly, the defendants say any claims that a limited partnership's assets have been wrongfully diverted by its general partner, or parties controlling the general partner, must proceed by way of a common law derivative action, by or on behalf of the limited partner, and not (as pleaded here) as personal claims by the individual limited partners: *Schmidt* at para. 50; *Asher Place* at para. 37. The plaintiffs reply that they have personal claims in unjust enrichment which give rise to equitable remedies, including a substantive or remedial constructive trust and equitable tracing.

[37] Citing *Chung v. Chung*, 2022 BCSC 1592 and *Sidhu v. Bilin*, 2023 BCCA 361, plaintiffs' counsel submits that where unjust enrichment has occurred due to a misappropriation of funds, as alleged here, a court may fashion an equitable remedy, including a proprietary one based on a constructive trust, proportionate to the amount of the misappropriated funds and the appreciated value of the property, or a disgorgement of profits. Plaintiff's counsel further submits that relief in the form of a constructive trust may flow where, as pleaded here, monetary damages are inadequate and the plaintiff's contribution is linked to a property over which the constructive trust is claimed, citing *Virk v. Singh*, 2020 BCSC 225 at para. 169.

[38] Plaintiffs' counsel argues that a claim for a substantive or remedial constructive trust can be sufficient to sustain a claim to an interest in land, as required to support the registration of a CPL, citing *Vidcom Communications Ltd. v Rattan*, 2022 BCSC 562 [*Vidcom*] at paras. 30 – 35. He describes tracing as the process employed to identify and particularize the manner in which funds have been applied. He argues that the results of tracing permit a claimant to determine whether it will opt for a proprietary or monetary remedy: *Ruwenzori Enterprises et al. v. Walji et al.*, 2004 BCSC 741, aff'd 2006 BCCA 448.

[39] Notably, *Chung*, *Sidhu*, *Virk*, and *Vidcom* did not involve claims by plaintiffs who were limited partners in a limited partnership. In my view, all are distinguishable on their facts and not analogous here.

[40] The law regarding unjust enrichment is well-established. The parties agree that proving an unjust enrichment claim requires a plaintiff to establish the three elements outlined in *Kerr v. Baranow*, 2011 SCC 10 at paras. 36–40, *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 30, and *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217, 1997 CanLII 346 at para. 20, namely, that:

- 1) The defendant has been enriched;
- 2) The plaintiff has suffered a corresponding deprivation; and
- 3) There is no juristic reason for the enrichment.

[41] This analysis requires a plaintiff to show that there is no juristic reason for the enrichment from an established category. These established categories include a contract: *Garland* at para. 44. The existence of a contract presents an insurmountable barrier to a claim for unjust enrichment: *Moses v. Lower Nicola Indian Band*, 2015 BCCA 61 at para. 59. A contract which relates to the alleged unjust enrichment is a juristic reason for that enrichment and is fatal to an unjust enrichment claim: *Nazari v. Atti Management Group Inc.*, 2022 BCSC 422 at para. 38; *Kosaka v. Chan*, 2009 BCCA 467 at paras. 17 – 18.

[42] The Court of Appeal in *Bilin* at paras. 29 – 30 and 63, upheld an order cancelling a CPL on the basis that a promissory note and related advance of funds created a relationship of debtor and creditor between the parties, and there was therefore a juristic reason for the defendant’s enrichment when the funds were advanced. Accordingly, there was no claim for an interest in land to support the CPL: *Bilin* at para. 63; *Nazari* at para. 40. As summarized in *Nazari* at para. 41, Justice Mayer made a similar finding in *Gill v. Gill*, 2021 BCSC 143 at para. 32.

[43] The Court of Appeal considered when claims in contract and unjust enrichment can be pleaded concurrently in *676083 B.C. Ltd. v. Revolution Resource Recovery Inc.*, 2021 BCCA 85 [*Revolution Resource*]. Justice Voith, speaking for the Court, concluded that there are two broad categories in which claims in contract and unjust enrichment can be pleaded concurrently: 1) where a benefit is conferred beyond the scope of the negotiated terms of a contract; and 2) where there is some issue relating to the validity or enforceability of the contract in question, including, for example, illegality, capacity, or frustration: *Revolution Resource* at paras. 50–51. Based on the plaintiffs’ pleadings, I conclude that neither of those broad categories applies here.

[44] Plaintiffs’ counsel argued that, in addition to claims in unjust enrichment, the plaintiffs have independent personal debt claims and claims in conspiracy. The defendants deny the plaintiffs can plead a debt claim concurrently with unjust

enrichment, citing *Nazari* at paras. 38 - 44. Given the Court of Appeal's decision in *Resource Revolution* at paras. 50 – 51, I agree.

[45] Defence counsel underscores that pleadings alleging conspiracy must be as specific as possible. He denies the plaintiffs have adequately pleaded personal claims in conspiracy, citing *H.M.B. Holdings Limited v. Replay Resorts Inc.*, 2019 BCSC 1138 at para. 42, which, in turn, cites *Olenga v. British Columbia*, 2015 BCSC 1050 at para. 21.

[46] The requirements of a pleading in conspiracy are conveniently summarized in *Ontario Consumers Home Services v. Enercare Inc.*, 2014 ONSC 4154 [*Ontario Consumers*]:

[24] To plead civil conspiracy a statement of claim must state with precision and clarity material facts as to:

- a) the parties to the conspiracy and their relationship of one to the other;
- b) the agreement between or amongst the defendants to conspire, including particulars as to the time, place and mode of agreement;
- c) the precise purpose or object of the conspiracy;
- d) the overt acts alleged to have been done by each of the alleged conspirators in pursuance and furtherance of the conspiracy, including the time, and place and nature of the acts; and
- e) the injury and damage caused to the plaintiff as a result of conspiracy.

[47] The following principles emerge from *Ontario Consumers* at paras. 25 - 29:

- a) Conspiracy is an intentional tort and a serious allegation;
- b) Material facts must therefore be pleaded with heightened particularity;
- c) It is insufficient to simply lump some or all defendants together in a general allegation that they conspired;
- d) It is inappropriate to plead allegations of conspiracy if, when preparing its pleading, the plaintiff does not have knowledge of the facts necessary to support the cause of action; and

- e) Pleadings of conspiracy which simply restate legal principles and make bald or speculative conclusions rather than alleging material facts must be struck as failing to disclose the cause of action.

[48] The plaintiffs allege in the Lam NOCC at para. 41 (with parallel allegations in the Faye Young NOCC at para. 52) as follows:

In breach of the express purposes of the Subscription Agreement, WS Scott LP, 1095355, and Regehr (the “Agreement Debtors”) wrongfully and without consent conspired with each other and with the Holding Entities to divert the New West Diversion and/or the Surrey Diversion containing *inter alia* the Principal and Accrued Interest by using them for purposes other than the development and construction of Phase 1 and Phase 2 (the “Fraudulently Used Proceeds”).

[49] Based on the Lam NOCC and the Faye Young NOCC, I conclude that the plaintiffs’ personal claims in conspiracy are not pleaded with sufficient particularity. I also conclude that the subscription agreement comprises a contract and, by extension, a juristic reason for the defendants’ alleged enrichment. In my view, such circumstances preclude the plaintiffs from pleading concurrent personal claims based on unjust enrichment and in contract for unpaid debts.

3) Is there a causal nexus to support a claim to an interest in land?

[50] There must be a nexus between the facts alleged and the interest to which they would give rise if ultimately proved: *Yi Teng* at para. 39; *Wang* at para. 10. The defendants deny the plaintiffs have particularized this requisite causal link in their pleadings.

[51] A bare allegation of funds being misappropriated and used to acquire or maintain property is insufficient to establish the necessary nexus to support a claim to an interest in land: *Sonnenberg* at para. 15; *Wai* at paras. 20 – 21; *Chen v. Jin*, 2019 BCSC 567; *1077708 BC Ltd. v. Agri-Grow Farm Services Ltd.*, 2019 BCSC 977 [*Agri-Grow*]; *Gill v. Pannu*, 2021 BCSC 2607 at para. 23 [*Pannu*]. A CPL is an extraordinary and powerful pre-trial tool that must be grounded on more than mere conjecture: *Agri-Grow* at para. 39.

[52] The plaintiffs rely on *Vidcom*, a case involving allegations of fraud by the plaintiff's former employee. There was no issue in that case about the connection between the defendant's use of the allegedly fraudulently obtained funds and the lands subject to the CPL: *Vidcom* at para. 26. In my view, *Vidcom* is not analogous.

[53] The plaintiffs seek an accounting and tracing of funds, to determine if the Project sale proceeds, which the plaintiffs allege were fraudulently used, were in fact improperly disbursed and used to acquire, develop, and/or improve the subject lands: Lam NOCC at para. 53; Faye Young NOCC at para. 64. The defendants describe this pleading as wholly speculative; they deny it is sufficient to establish a valid claim to an interest in land sufficient to sustain the CPLs, citing *Canada Long* at paras. 69 – 71.

[54] As noted by Tucker J. in *Canada Long* at para. 70, connecting the dots to establish the required nexus may be easier in certain pleading scenarios than in others. In some cases, it may not be possible to obtain a CPL until there has been some disclosure: *Canada Long* at para. 70; *Wai v. Chung*, 2020 BCSC 34 at paras. 29 – 30. A pleading that funds may have been misappropriated to acquire lands is insufficient to establish a claim to an interest in land: *Wai* at paras. 30-31; *Beijing Tian Zi Property Group Trading Ltd. v. Jia*, 2021 BCSC 423 at paras. 46-47.

[55] In *Wai* at para. 27, Justice MacDonald found that the plaintiff's pleading lacked the necessary factual foundation to support the CPL. The plaintiff in *Wai* asserted that the funds in question were used to purchase the subject property but no funds were directly linked to the purchase: *Wai* at para. 27. The defendants say the plaintiffs' pleading here does the same thing and that the plaintiffs do not specify when or how much of the Project sale proceeds were diverted to acquire, develop, or maintain the lands in question: Lam NOCC at para. 33; Faye Young NOCC at para. 44. The mere use of funds to maintain or improve a property does not create a claim for an interest in the property in issue: *Gill* at para. 33. The inability to provide particulars regarding allegations in the pleadings does not justify registration of a CPL: *Pannu* at para. 26; *Wai* at paras. 29-30.

[56] Defence counsel argues that the facts in this case are closely analogous to those in *Canada Long*. In *Canada Long*, an individual limited partner brought a common law derivative action on behalf of the limited partnership (as defence counsel says ought to have occurred here) to recover allegedly wrongfully diverted funds due to the defendants' alleged breaches of fiduciary duty: *Canada Long* at paras. 4 and 7. The plaintiff pleaded that the defendant who owned the lands subject to the CPL had used the allegedly misappropriated funds for its own benefit, including to acquire, preserve, maintain, or improve the subject lands: *Canada Long* at paras. 17 – 18.

[57] Justice Tucker concluded that those allegations were insufficient to establish the required causal link between the disputed funds and the subject lands necessary to support the CPL: *Canada Long* at paras. 68 – 71. She noted, as stressed in *Nouhi* at para. 30, that the question was whether the pleadings disclosed a claim to an interest in land so as to support the CPL: *Canada Long* at para. 68. Justice MacDonald reached a similar conclusion in *Wai* at para. 30.

[58] Defence counsel argues that even if the plaintiffs had a direct proprietary interest in the Project sale proceeds (which he denies), or advanced their claim as a derivative action on behalf of WS Scott LLP (which they have not), they have still failed to adequately plead the necessary connection between allegedly diverted sale proceeds from the Project and the lands subject to the CPLs. I agree.

[59] As noted, a CPL is an extraordinary pre-trial remedy: *Agri-Grow* at para. 39; *Berthin v. Berthin*, 2018 BCCA 57 at para. 32. It is not intended as a way to freeze assets, as a form of pre-judgment security, or as a shortcut to a Mareva injunction: *Berthin* at para. 32; *Pannu* at para. 22.

4) Summary

[60] In summary, I make the following findings:

- a) As limited partners, the plaintiffs have no direct proprietary interest in the assets of the WS Scott LP;

- b) The plaintiffs' pleadings do not disclose personal causes of action but, as limited partners, they may bring common law derivative claims, in the name and on behalf of WS Scott LP, for alleged wrongs to the limited partnership; and
- c) The plaintiffs' pleaded allegations do not establish the necessary causal nexus between the disputed funds and the subject lands on which the CPLs are registered.

[61] I accept that any one of these findings would be sufficient to cancel the CPLs. It follows that the CPLs must be cancelled.

C. Have the defendants demonstrated hardship or inconvenience?

[62] Given my finding that the plaintiffs' pleadings do not establish claims to an interest in land, I need not consider their alternative ground for cancelling the CPLs due to hardship, pursuant to s. 256(1) of the *LTA*. By extension, I need not consider whether security ought to be posted and, if so, in what amount.

V. DISPOSITION

[63] The CPLs are cancelled effective immediately.

[64] The defendants are entitled to their costs of these applications in the cause.

“Douglas J.”