

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Yu v. 1020590 B.C. Ltd.*,
2024 BCSC 179

Date: 20240205
Docket: S232521
Registry: Vancouver

Between:

**Jun Min Yu, Xing Yuan International Investment Ltd.
and Da Xing Investment Ltd.**

Plaintiffs

And

**1020590 B.C. Ltd., 1077065 B.C. Ltd., Chang Jiang Capital Limited
Partnership and Morris Chen also known as Mao Hua Chen**

Defendants

Before: The Honourable Justice Jones

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.
October 13, 2023

Place and Date of Judgment:

Vancouver, B.C.
February 5, 2024

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I. INTRODUCTION

[1] The applicant/defendant, 1077065 B.C. Ltd. (“applicant”), applies for an order cancelling certificates of pending litigation (the “CPLs”) registered by the respondents/plaintiffs (“respondents” or “plaintiffs”) against three parcels of real property in Surrey, British Columbia, on the ground that the plaintiffs’ notice of civil claim is incapable of supporting a viable claim to an interest in the properties.

[2] The defendants, Chang Jiang Capital Limited Partnership and 1020590 B.C. Ltd., take no position on the application.

II. BACKGROUND

[3] The plaintiff, Jun Min Yu (“Mr. Yu”), alleges he advanced money to the defendants, and in particular to the defendant, Morris Chen (“Mr. Chen”), for Mr. Chen’s use in purchasing and developing four parcels of real property (the “Property”), including the three properties against which the CPLs were registered (the “CPL Properties”).

[4] The plaintiffs claim that Mr. Yu advanced the funds pursuant to an oral agreement with Mr. Chen that all the funds advanced were made for the purpose of purchasing and developing real property located in Surrey, British Columbia.

[5] The plaintiffs also plead that some or all of the advances of funds were documented by a limited partnership agreement, but plead it was the terms of the oral agreement that governed the plaintiffs’ advances of funds.

[6] The plaintiffs’ notice of civil claim (“NOCC”) was filed on March 27, 2023, including the claim for the CPLs against the CPL Properties.

[7] The plaintiffs registered the CPLs against title to the CPL Properties on March 30, 2023.

[8] A certificate of pending litigation (“CPL”) was not filed against title to the fourth property because the plaintiffs allege that without the plaintiffs’ knowledge or

consent, the fourth property had already been sold by the defendants to a third party.

III. ISSUE

[9] The narrow issue on this application is whether, at the time the CPLs were filed on March 30, 2023, the NOCC disclosed a viable claim to an *in rem* interest in the three CPL Properties sufficient to meet the interest in land threshold criterion under s. 215(1) of the *Land Title Act*, R.S.B.C. 1996, c. 250 [LTA].

[10] A further refinement of the issue is provided in the applicant's written submissions, as follows:

7. The scope of the issue joined on this application is narrower still, because the Applicant – for the purpose of this application – does not argue that the pleadings in the notice of civil claim of fraudulent misrepresentation, unjust enrichment, and breach of fiduciary duty are insufficient to ground a claim for a constructive trust over the Funds themselves.

8. Instead, the scope of the issue joined on this application is limited to whether the plaintiffs have pleaded a sufficient connection or nexus between 1) the Funds over which they claim a constructive trust, and 2) the CPL Properties against title to which they registered the CPL. The Applicant's position is that there is no such connection or nexus pleaded in the notice of civil claim.

[Emphasis in original.]

[11] For the following reasons, I agree with the applicant that the plaintiffs' pleadings in the NOCC fall short of establishing a substantial and direct link, a causal connection or a nexus, between the funds advanced by the plaintiffs and the CPL Properties, to support the registration of a CPL against the three CPL Properties.

IV. PARTIES' POSITIONS

Applicant's position

[12] The applicant submits that the pleading of an advancement of funds is not a pleading that the funds were used to purchase the CPL Properties.

[13] The applicant submits that there is a significant distinction between the pleading that the funds being advanced would be used to buy and develop the CPL Properties, and a pleading that the funds were actually used to purchase the CPL Properties.

Respondents' position

[14] The respondents submit that the funds were advanced for the acquisition and development of the Property, which supports the registration of the CPLs against the CPL Properties.

[15] The respondents submit that, at its core, the plaintiffs' pleading in the NOCC is that the funds advanced were impressed with a constructive trust, and those funds were advanced for and were used for, the acquisition and development of the Property.

[16] The respondents submit that the pleadings assert a claim to an interest in land based on tracing the money, impressed with a constructive trust into the Property.

[17] The respondents' position is summarized in the following paragraphs of Part 5 of their Application Response:

3. The Claim pleads an interest in the lands against which the CPLs are registered through a constructive trust. The Claim pleads the following bases for a constructive trust:
 - (a) Mr. Chen's fraudulent misrepresentation;
 - (b) Mr. Chen's unjust enrichment; and
 - (c) Mr. Chen's breach of fiduciary duty.
4. The Claim also asserts that there is a direct and substantial connection or nexus between the Advance and lands against which the CPLs are registered and that a monetary award is not sufficient.

[18] The respondents' focus at the hearing of this application was on the plaintiffs' NOCC pleadings regarding what is alleged to have been discussed between Mr. Yu and Mr. Chen. The respondents assert that the following NOCC pleadings establish the necessary connection between funds and property:

19. Mr. Yu departed Mr. Chen's home and British Columbia for China on December 13, 2014. However, before Mr. Yu's departure, Mr. Chen advised him that Mr. Chen wanted to buy the Property and develop same (the "Proposed Venture") and Mr. Chen asked Mr. Yu to advance money to him for use in developing the proposed Venture. Mr. Chen specifically told Mr. Yu to get funds together for that Proposed Venture and told Mr. Yu there were many other persons interested in contributing money to the Proposed Venture, but that Mr. Yu would be given priority over them.
20. Mr. Chen travelled to China in February-March, 2015. Based on the hospitality that Mr. Chen had extended to Mr. Yu on the latter's visit to British Columbia, Mr. Yu invited Mr. Chen to stay with him during his visit. While Mr. Chen was in China, Mr. Chen again raised Mr. Yu contributing to the Proposed Venture. Mr. Chen promised Mr. Yu that:
- a. The return on capital advanced for use in the Proposed Venture would double in five years' time or would match the rate of return as if Mr. Yu's money was treated as having been paid to purchase equity in the project, whichever was greater (the "**Promised Returns**");
 - b. Mr. Yu would receive back both the principal and the Promised Returns when the Proposed Venture was sold but, in any event, no later than five years from the date of each advance being made;
 - c. Regardless of the actual outcome of the Proposed Venture, Mr. Yu would receive the Promised Returns from Mr. Chen; and
 - d. Mr. Yu would not receive a lower return than any other person financially involved in the Proposed Venture
(collectively, the "**Promised Terms**").
21. Mr. Chen promised Mr. Yu that the Promised Terms would apply to any money advanced by Mr. Yu to Mr. Chen for use in the Proposed Venture. Mr. Chen also promised Mr. Yu that no person who contributed to the Proposed Venture would receive a better rate of return than Mr. Yu.
...
30. Mr. Yu, directly and indirectly, through himself, his wife, XY Ltd. and Da Xing Ltd., caused CAD\$3,016,252.00 (the "**Advance**") to be advanced to Mr. Chen, directly or indirectly, pursuant to the Promised Terms and for the development of the Proposed Venture, particularized as follows:
- (a) 2015-04-01 – CAD\$600,000.00;
 - (b) 2015-04-06 – CAD\$400,000.00;
 - (c) 2015-08-14 – CAD\$500,000.00;
 - (d) 2015-08-24 – CAD\$500,000.00;
 - (e) 2015-08-26 – CAD\$300,000.00;
 - (f) 2015-10-01 – CAD\$500,000.00;
 - (g) 2017-09-01 – CAD\$150,000.00; and
 - (h) 2018-02-04 – CAD\$66,252.00.

[Underline emphasis added.]

V. LEGAL FRAMEWORK

[19] The *LTA*, s. 215, provides that a party to a proceeding who is claiming an estate or interest in land may register a CPL against the land.

[20] A CPL is an extraordinary pre-judgment mechanism intended to protect a valid claim to an interest in land until issues can be resolved: *Chen v. Jin*, 2019 BCSC 567 at para. 8.

[21] The court has jurisdiction to order the cancellation of a CPL on the basis that the underlying claim does not disclose or is incapable of supporting a claim to an interest in the subject land: *Bilin v. Sidhu*, 2017 BCCA 429 at paras. 54–56; *Nouhi v. Pourtaghi*, 2019 BCSC 794 at paras. 9–11.

[22] In *Nouhi*, Justice Matthews describes the valid registration of a CPL as requiring the support by pleadings that assert an interest in the lands subject to the CPL, referring to *Bilin*, at para. 55, where the Court of Appeal outlined two distinct approaches to cancelling a CPL.

[23] The first approach, which is the approach asserted by the applicant on this application, is where the party’s pleadings are incapable of supporting a claim to an interest in land, in which case the CPL fails to meet the interest in land threshold criterion under s. 215(1) of the *LTA*, and the court has jurisdiction to cancel the CPL for that reason. As stated in *Nouhi*:

[11] The first approach is where the party’s pleadings are incapable of supporting a claim to an interest in land. In such a case, the certificate of pending litigation will fail to meet the interest in land threshold criterion under s. 215(1) and the court has the jurisdiction to cancel the certificate of pending litigation immediately for that reason: *Bilin* at paras. 54-55 citing *RCG Forex Services Corp. v. Lin*, 1999 BCCA 644. As stated by Madam Justice Holmes in *Bajwa v. Singh*, 2016 BCSC 916 at para. 20, referred to with approval in *Bilin* at para. 51, “[i]f the claim could not give rise to an interest in land, the certificate of pending litigation will be ordered to be cancelled because, essentially, it was improperly registered from the start.”

...

[13] The distinction drawn between the two approaches is that in the first, the question is whether the pleadings disclose a claim for an interest in land without regard to the merits of the claim; it is purely a question of adequate pleadings. In the second, the applicant seeking to cancel the certificate of pending litigation contends

that the claim is without merit and applies to dismiss it summarily: *Xiao v. Fan*, 2018 BCCA 143 at para. 13. It is only in the first case that the s. 215(1) mechanism to cancel a certificate of pending litigation will apply.

[Emphasis added.]

[24] A constructive trust is sufficient to sustain a registration of a CPL (*Nouhi* at para. 20), but requires a plaintiff to establish, in addition to the cause of action on which the constructive trust is based: (1) a link to referential property; and (2) that a monetary award is inadequate, insufficient or inappropriate in the circumstances: *Nouhi* at para. 26.

[25] Pleadings are not to be read generously. The question is whether, at the time the CPL is registered, a plaintiff's pleadings disclose a claim to an interest in specific land capable of supporting the registration of those CPLs against that specific land. In *Nouhi* the Court stated:

[30] ... Unlike in an application to strike a claim for failing to disclose a cause of action, where pleadings are read liberally and are often not struck if they are inadequate but could be amended to disclose a cause of action, the party who filed the certificate of pending litigation may not maintain the certificate when the pleadings were inadequate to disclose a claim to an interest in land at the time the certificate was filed. If the pleadings were not adequate when the certificate was filed, the certificate was never valid and is immediately cancelled: *Bilin* at para. 62, citing *RCG Forex* at para. 62. In such a case, the plaintiff can seek to amend the pleadings and then file a valid certificate of pending litigation in the event that the amended pleadings disclose a claim to an interest in the land: *Bilin* at para. 68.

[26] In *Nouhi*, Matthews J. reviewed the causes of action that were said to entitle the plaintiff to a remedial constructive trust, including unjust enrichment. She concluded that the pleadings did not adequately claim a constructive trust based on unjust enrichment because the plaintiff did not state that monetary damages were, or could be, an inadequate or insufficient remedy; however, the pleading that the defendants "utilized the monetary contributions to purchase, service and maintain the properties" (*Nouhi* at para. 48), was found to satisfy the criterion of a causal connection or a nexus to the properties.

[27] The key pleading in *Nouhi* regarding the connection between funds and property is that the defendants utilized the funds to purchase, service and maintain the properties.

[28] Here, the respondents submit that the present matter is similar to *Nouhi*, where “the subject matter of the litigation concerns the very lands against which the CPLs are registered and the money at issue was pleaded as being used to acquire those lands”: respondents’ submissions at para. 59.

[29] However, as discussed in more detail below, I find that the NOCC does not plead that the Advance payments were used to acquire the lands, and that is the key distinction between this case and *Nouhi*.

[30] Here, the plaintiffs allege that Mr. Chen represented to Mr. Yu that any funds received would be used for the purpose of purchasing and developing the Property, and Mr. Yu made the Advance payments with the intention that the Advance payments would be used to purchase and develop the Property, but the NOCC does not plead that the Advance payments were used to purchase and develop the Property.

[31] In addition to *Nouhi*, the parties referred to a number of other cases where pleadings were found to have either sufficiently or insufficiently pled an interest in property to support a CPL. These cases are discussed below following the analysis of the pleadings in the NOCC.

VI. ANALYSIS

[32] As set out above in *Nouhi*, the two criteria for a constructive trust, in addition to the cause of action or circumstances on which the remedial or substantive constructive trust is based, are:

- (a) there must be referential property, that is, the plaintiff must demonstrate a substantial and direct link, a causal connection or a nexus between the

claim and the property upon which the remedial constructive trust is to be impressed;

- (b) the plaintiff must demonstrate that a monetary award is inadequate, insufficient or inappropriate in the circumstances.

[33] Here, the plaintiffs have satisfied (b). The issue relates to (a): whether or not the plaintiff has pleaded a sufficient connection between the Advance, the funds over which the plaintiffs claim a constructive trust, and the CPL Properties.

[34] The respondents refer to the NOCC paragraphs 19–21 and 30 fully quoted above, which they submit establish the connection between the Advance and the CPL Properties. The key points of these NOCC paragraphs are summarized for emphasis, as follows:

19. In December 2014 in British Columbia, Mr. Chen advised Mr. Yu he wished to buy the Property and develop same (the “Proposed Venture”) and asked Mr. Yu to advance funds for use in developing the Proposed Venture.

20. In February-March 2015 in China, Mr. Chen again raised the subject of Mr. Yu contributing to the Proposed Venture to buy the Property and develop it, and promised Mr. Yu specified terms of return on capital advances advanced for the Proposed Venture to buy the Property and develop it (the “Promised Terms”).

21. Mr. Chen promised Mr. Yu that the Promised Terms would apply to any money advanced by Mr. Yu to Mr. Chen for use in the Proposed Venture to buy the Property and develop it.

30. In April 2015 through February 2018, Mr. Yu advanced to Mr. Chen, directly or indirectly, a total of CAD\$3,016,252.00 (the “Advance”), pursuant to the Promised Terms and for the development of the Proposed Venture to buy and develop the Property.

[35] What is missing is the allegation that any or all of the Advance was used to purchase the Property or to develop the Proposed Venture, that venture being the purchase and development of the Property.

[36] The NOCC pleadings allege discussions between Mr. Chen and Mr. Yu about Mr. Chen's representations to Mr. Yu that he intended to purchase and develop the Property, and that Mr. Yu made the Advance to Mr. Chen, directly or indirectly, with Mr. Yu's intention that the funds be used for the purchase and development of the Property; however, the allegation is not made that the funds were actually used for that purpose, with particulars, so as to assert a direct and substantial connection or nexus between the Advance and the CPL Properties.

[37] The distinction in the two forms of pleading is emphasized by the respondents' written submissions at sub-para. 35(e), which refer to para. 30 of the NOCC, not by quoting the pleading, but by paraphrasing para. 30(a)-(h), as follows:

- (e) the Advance was used for the Property's acquisition and development (Claim [NOCC], Part 1, para. 30(a)-(h));

[38] However, the wording of para. 30 of the NOCC does not plead that the Advance was used for the acquisition and development of the Property, it pleads that Mr. Yu "caused [the funds] to be advanced to Mr. Chen, directly or indirectly, pursuant to the Promised Terms and for the development of the Proposed Venture"; that is, Mr. Yu advanced the funds with his intention being that the funds would be used by Mr. Chen for the acquisition and development of the Property.

[39] Again, the pleading does not allege that Mr. Chen or anyone else used the funds for what the plaintiff alleges was the agreement between Mr. Chen and Mr. Yu: that the Advance was intended to be used for the acquisition and development of the Property.

[40] The cases establish that even the assertion that funds were used to purchase or maintain a property may be insufficient to establish the required connection for an interest in the property. Further particulars are needed, for example, who purchased the property, when it was purchased, and when and how the funds that are alleged to have been advanced for the purchase and development of the property were used in that way.

[41] I agree with the applicant that another provision of the NOCC, para. 49 quoted below, is significant for its pleading that the plaintiffs do not know the use to which Mr. Chan has put the Advance:

49. Mr. Chen, through his control over the Limited Partnership, the General Partner and the Registered Owner, has utilized the Advance or the Sale Proceeds in a fraudulent and dishonest manner, for his own use and benefit or for the benefit of others, knowing he was breaching his fiduciary obligation to the Plaintiffs, and knowing that he was causing the General Partner to breach its fiduciary obligations to XY Ltd. and the terms of the LP Agreement. Particulars of the use to which Mr. Chen, or entities controlled by him, have put the Advance or the Sale Proceeds are not currently known by the Plaintiffs.

[Emphasis added.]

[42] If there was an earlier pleading that the Advance had been used to purchase and develop the Property, then logically, for the pleadings to be consistent, the para. 49 pleading would be pled in the alternative, that the plaintiffs do not know to what use the Advance has been put.

[43] The pleadings assert an intention to use the Advance for the purchase and development of the Property (NOCC paras. 19, 20, 21 and 30), which can be read consistently with the para. 49 allegations that the plaintiffs do not know the use to which Mr. Chen or entities controlled by him, have put the Advance (para. 49). The pleadings do not plead that the Advance was used to purchase and develop the CPL Properties.

[44] Similarly, another relevant provision of the NOCC is para. 28, which pleads that Mr. Chen's representations to Mr. Yu gave Mr. Nu comfort in advancing money to Mr. Chen, as follows:

28. The representations made by Mr. Chen to Mr. Yu, as set out in the Notice of Civil Claim, gave Mr. Yu comfort in advancing money to Mr. Chen for use in Mr. Chen's real estate development projects. Over the course of their relationship, Mr. Chen would advise Mr. Yu that additional capital was needed for one of Mr. Yu's projects, including the Proposed Venture, and Mr. Yu, trusting Mr. Chen, would cause money to be advanced based on Mr. Chen's instructions.

[Emphasis added.]

[45] This pleading refers to the Proposed Venture, but does not specifically plead that any of the Advance was used for the purchase or development of the specific CPL Properties. It pleads that Mr. Chen requested funds for use in Mr. Chen's development projects, generally, including for use in the Proposed Venture, and Mr. Yu advanced funds in response to that request, but it does not plead that the Advance was used to purchase or develop the CPL Properties.

[46] Finally, the NOCC at paras. 68–69 pleads a constructive trust over the Advance, and claims some of the Advance was used in relation to real or personal property, but the pleading does not specifically claim that the funds were used in relation to the CPL Properties, as follows:

68. All of the Advance or the Sale Proceeds [from the fourth property] received by the Recipients [the defendants and other persons unknown] are subject to a constructive trust in favour of the Plaintiffs.

69. The Recipients used some of the Advance or the Sale Proceeds to purchase, pay mortgages on, maintain, repair, improve or enhance real or personal property and the Plaintiffs have acquired an interest in any such property.

[47] The conclusion that the pleadings do not establish the required connection between the Advance and the CPL Properties is highlighted by reference to the cases cited by the parties, as follows, with the focus on the pleadings related to the issue of the connection between funds and property.

Instafund Mortgage Management Corp. v. Garrow

[48] The respondents cite *Instafund Mortgage Management Corp. v. Garrow*, 2020 BCSC 1017 [*Instafund*], in which the plaintiff registered CPLs against four properties based on alleged fraud in the transfer of mortgage funds to the defendant owners of the properties.

[49] The specific pleading is not quoted in the decision, but is summarized by Justice Branch as follows:

[29] The plaintiff alleges that the Mortgage Funds, or some portions of them, were transferred to the remaining defendants, and were used for the

purchase, betterment, improvement and maintenance of properties, including the Applicants' properties, or to service mortgage debt on them.

[Emphasis added.]

[50] Justice Branch found these pleadings to be “somewhat unartfully drafted, and could benefit from some further particularization” (*Instafund* at para. 41), but the pleading disclosed an interest through the constructive trust alleged, and the claim did adequately plead an interest in land.

[51] The pleading in *Instafund* makes the connection between the funds and the specific property by alleging the funds were used for the purchase of the property, which distinguishes the pleading in *Instafund* from this case, in which that specific pleading is not made.

Nouhi v. Pourtaghi

[52] The respondents also refer to *Nouhi*, where, as noted above, the pleading that the defendants “utilized the monetary contributions to purchase, service and maintain the properties”, was found to satisfy the criterion of a causal connection or a nexus to the properties. However, the pleadings in *Nouhi* did not adequately claim a constructive trust based on unjust enrichment because the plaintiff did not state that monetary damages were, or could be, an inadequate or insufficient remedy.

[53] Similar to *Instafund*, above, in *Nouhi* the pleading is made that the funds *were* used to purchase, service and maintain the properties, which distinguishes *Nouhi* and *Instafund* from the case at bar where that specific pleading is not made.

[54] The applicant cites the following four cases as analogous to the case at bar in support of the submission that the plaintiff's pleadings do not establish the necessary connection between funds and property.

Chen v. Jin

[55] In *Chen*, the plaintiffs pled that they made an investment in the defendants' business by way of a share purchase procured by fraudulent misrepresentation. The

plaintiffs claimed that their money was applied to a real property owned by one of the defendants, and the plaintiffs registered a CPL against title to the property.

[56] Justice Murray found that there was no allegation that the funds were used to purchase the property, the plaintiffs simply pled that some of the funds were used to maintain or improve the property. That pleading was found to be insufficient to create a claim for an interest in the property in issue.

Wai v. Chung

[57] In *Wai v. Chung*, 2020 BCSC 34, the plaintiff alleged she invested money in the defendants' business operating a child care. The plaintiff alleged fraud and misrepresentation and pled that the defendant applied her money to the property against which she filed a CPL.

[58] Justice MacDonald summarized *Chen* and another case, *1077708 BC Ltd. v. Agri-Grow Farm Services Ltd.*, 2019 BCSC 977, emphasizing the need for particulars, as follows:

[20] Under the current approach the focus is on the plaintiff's pleadings. An interest in land must be established through the pleadings; a mere assertion with no proper factual foundation is insufficient: *Chen* at para. 27. As stated by Justice Holmes, as she then was, in *Bajwa v. Singh*, 2016 BCSC 916 at para. 20: "If the claim could not give rise to an interest in land, the CPL will be ordered to be cancelled because, essentially, it was improperly registered from the start."

[21] In both *Chen* and *1077708 BC Ltd. v. Agri-Grow Farm Services Ltd.*, 2019 BCSC 977 [*Agri-Grow*], the plaintiffs alleged certain funds paid by the plaintiff were misappropriated by the defendant to maintain and preserve the subject properties. In both decisions the court held there was no information in the pleadings about how the property was maintained. There was no specified time period identified and there was no indication of how much money was misappropriated. These bald assertions, without a foundation as to how the money flowed from the defendants to the properties, did not meet the threshold of claiming an interest in land. As stated by Justice Murray in *Agri-Grow* at para. 39: "An interest in land can not be based solely on unsubstantiated assertions with no factual - whether they ultimately are proved to be true or not - underpinning. Such an extraordinary and powerful pre-trial tool must be grounded on more than mere conjecture."

[Emphasis added.]

[59] *Wai* emphasizes the need for pleadings to particularize the link between the funds and the property, referring to the specific pleadings in issue as follows:

[29] The plaintiff pleaded generally that the defendants used her Investment Funds to purchase the Property. How they did so is not set out or particularized in any way. The plaintiff's pleadings are vague and imprecise, without any direct connection between the Investment Funds and the Property.

[60] In this case, there are some particulars pled in the amount of the Advance and the dates when portions of the Advance were paid to the recipients, but there is no pleading that the Advance was used to purchase or develop the Property, and no particulars of any use of the Advance in relation to the Property.

Beijing Tian Zi Property Group Trading Ltd. v. Jia

[61] In *Beijing Tian Zi Property Group Trading Ltd. v. Jia*, 2021 BCSC 423 [*Beijing*], the pleading, in support of a CPL against properties, was that the funds were “used to acquire, preserve, maintain and improve” the properties: *Beijing* at para. 17.

[62] Justice Lyster found, referring to *Nouhi* and *Wai*, that the pleading did not contain sufficient detail of the linkage between the funds and the properties, to support a claim to an interest in the properties, as follows:

[45] Having considered the authorities relied upon by both parties, I conclude that Mr. Jia's amended counterclaim fails to give rise to an interest in land. As in *Nouhi* at para. 26, his pleadings are not sufficient to demonstrate a substantial and direct link, a causal connection or a nexus between the claim and the Properties upon which the remedial constructive trust is to be imposed. Nor has he pled that a monetary award is inadequate, insufficient or inappropriate in the circumstances, which I find necessary to support a CPL.

[46] The present case is very similar to *Wai*, in that the primary relief sought is a monetary judgment. There are no specific facts pled to support the claims for unjust enrichment; there are broad statements and assertions. There is no connection pled between the Funds and the Properties. Providing a Loan, where those funds may then have been used to purchase the Properties, does not establish an interest in land.

[Emphasis added.]

[63] Despite the pleading that the funds had been used to acquire, preserve, maintain and import the properties, that was found to be insufficient to demonstrate a substantial and direct link, and there was also no pleading that a monetary award was inadequate, insufficient or inappropriate in the circumstances.

Nazari v. Atti Management Group Inc.

[64] In *Nazari v. Atti Management Group Inc.*, 2022 BCSC 422, the plaintiffs pled support for a CPL based on equitable mortgage, unjust enrichment, and constructive trust.

[65] The key elements of two pleadings in *Nazari* relating to the connection between the funds and the property are taken from the quote at para. 16 of *Nazari*, as follows:

33. ... As a purpose of the Loan was for the deposit and the purchase of the Lands, along with mortgage towards the Lands and their maintenance and improvement, the Plaintiffs claim an equitable mortgage ...

34. ... To the Extent the Defendants improved or maintained the Lands with funds advanced to them by the Plaintiffs, or funds traceable therefrom, improved or maintained the Land with funds advanced to them by the Plaintiffs, or funds traceable therefrom, the Lands are impressed by this constructive trust ...

[Emphasis added.]

[66] Master Bilawich reviewed a number of the cases cited by the parties in this case, and found that the pleadings failed to set out an adequate basis for the plaintiffs to claim an interest in the property, and the CPLs were cancelled.

[67] The wording of the para. 33 pleading quoted from *Nazari*, above, is conceptually very similar to the pleading in this case. The *Nazari* pleading is that a purpose of the loan was for the deposit and purchase of the property, but does not plead that the loan was actually used for that purpose.

[68] Similarly, in this case the NOCC pleads the intention, or purpose of the Advance, based on the alleged agreement between Mr. Yu and Mr. Chen, was that the Advance would be used for the purchase and development of the Property, but does not plead that the Advance was actually used for that purpose.

[69] The wording of the para. 34 pleading quoted from *Nazari*, above, is similar in its qualified form to the plaintiff's pleading in this case at para. 69 of the NOCC, quoted above. That para. 69 pleading is that the plaintiffs claim an interest in any property for which the funds were used to pay mortgages on, maintain, repair, improve or enhance, without pleading that the Advance was used for any of those purposes in relation to the CPL Properties.

VII. CONCLUSION

[70] The review of the pleadings in the six cases referenced above support the conclusion that the plaintiff's pleadings in the NOCC do not establish the required connection between the Advance and the CPL Properties sufficient to meet the interest in land threshold criterion under s. 215(1) of the *LTA*.

[71] For these reasons, I order that:

- (a) the certificates of pending litigation registered on March 30, 2023 under registration number CB541961 in respect of the three CPL Properties identified by PID numbers 000-878-324, 011-359-226, and 011-359-234 be cancelled;
- (b) the Registrar of Land Titles shall remove the certificates of pending litigation registered against the CPL Properties;
- (c) the applicant, 1077065 B.C. Ltd., is entitled to its costs of this application in any event of the cause.

"Jones J."