

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Eagle Mountain Farm Ltd. v. Satnam
Education Society of BC,*
2023 BCSC 1509

Date: 20230803
Docket: S225968
Registry: New Westminster

Between:

Eagle Mountain Farm Ltd.

Plaintiff

And:

**Satnam Education Society of British Columbia (also known as Satnam
Education Society) and Ripudaman Singh Malik**

Defendants

Before: The Honourable Justice Elwood

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff (by video):

K. Rejminiak

Counsel for the Defendants (by video):

J.S. Malik

Place and Date of Hearing:

New Westminster, B.C.
August 1, 2023

Place and Date of Judgment:

New Westminster, B.C.
August 3, 2023

[1] **THE COURT:** The defendants, Satnam Education Society and Ripudaman Singh Malik, apply for an order discharging a certificate of pending litigation on the basis the pleadings do not disclose a claim to an interest in land as required by s. 215 of the *Land Title Act*, RSBC 1996, c. 250.

Background

[2] This action is one of several related actions arising out of the lease of a property for a blueberry farm. The plaintiff, Eagle Mountain Farm Ltd., filed the notice of civil claim and registered a CPL against the subject property on March 23, 2020.

[3] Eagle Mountain is engaged in the business of blueberry farming or growing. It leased the subject property from the defendant Society. In the notice of civil claim, Eagle Mountain alleges at paragraph 12 that:

12. The Plaintiff agreed to lease the Leased lands on the following further representations of the Defendant Society:
 - a. that the entirety of the Leased Lands could be made suitable for blueberry farming, and
 - b. that the Defendant Society would be responsible for the work required to make the leased lands suitable for blueberry farming.

[4] In paragraphs 18 and 19 of the notice of civil claim, Eagle Mountain alleges that:

18. As part of the Lease Agreement, the Defendant Society agreed to develop and prepare the leased lands so that the Leased Lands could be ready for planting of the blueberry plants by the Plaintiff.
19. However, the Defendant Society was negligent in preparing or failed to prepare the field for planting, as a result of which the start date for the lease was amended multiple times by the Parties.

[5] In paragraph 27, Eagle Mountain alleges:

As a result of the Defendant Society's negligence, the Plaintiff incurred additional expenses to improve the Leased Lands to the benefit of the Defendant Society, including ...

And here I will paraphrase slightly:

- a) The cost of labour incurred by the plaintiff as a result of the defendant's failure to properly prepare the property for blueberry farming;
- b) The cost of blueberry plants to replace the ones damaged as a result of the defendants' failure to install a proper fence to keep out wild bears;
- c) The cost of blueberry plants to replace the ones damaged as a result of drainage issues on the property; and
- d) The insulation of a fertilizer pump and a heavy duty plug on the lands.

These are defined by Eagle Mountain as "the Improvements."

[6] In paragraph 28, Eagle Mountain alleges as a result of the Improvements, the value of the property has increased. In paragraph 29, it alleges:

29. The Defendant Society agreed with the plaintiff to amend the amount payable under the Lease Agreement to reflect the issues that the Plaintiff was facing, however, the Defendant Society failed to do so. The Plaintiff relied on the said promises and continued to farm the Leased Lands to its detriment.

[7] In the relief sought section of the notice of civil claim, Eagle Mountain claims:

6. a declaration that the Improvements resulted in the unjust enrichment of the Defendants;
7. an order that the Defendant Society holds the Leased Lands in trust for the Plaintiff;
8. an order that the Defendant Society transfer its interest in the Leased Lands to the Plaintiff.

Analysis

[8] Section 215 of the *Land Title Act* provides that a person who has commenced a proceeding and who is claiming an estate or an interest in land may register a CPL against the lands.

[9] In *Xiao v. Fan*, 2018 BCCA 143, the Court of Appeal held that the test to be applied on an application to cancel a CPL is whether the pleadings disclose a claim

for an interest in the land, and that on such an application, no evidence is to be considered.

[10] The question of whether the pleadings disclose a claim of an interest in land is to be determined on the basis of the pleadings when the CPL was registered, not as those pleadings may be amended: *1046537 BC Ltd. v. 1277224 BC Ltd.*, 2023 BCSC 236, at paragraphs 37 to 39.

[11] An interest in land is claimed where title may change as a result of the proceedings: *Lipskaya v. Guo*, 2022 BCCA 118, at paragraph 64.

[12] In this case, Eagle Mountain relies on its claim of a resulting trust or a constructive trust pursuant to which it alleges that the defendant Society holds the formerly leased lands in trust for the plaintiff.

[13] No facts are pleaded to support a resulting trust. A resulting trust may arise, for example, when a person advances funds to contribute to the purchase price of a property but does not take legal title to that property: *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33.

[14] Instead, the claim as pleaded is for an interest in the property as a remedy for unjust enrichment for unpaid labour and materials to improve the property. This is a claim to a remedial constructive trust as distinct from a pleading of a substantive constructive trust over the property: *BNSF Railway Company v. Teck Metals Ltd.*, 2016 BCCA 350, at paragraphs 52 to 55.

[15] In *Nouhi v. Pourtaghi*, 2019 BCSC 794, Justice Matthews held that, to maintain a CPL based on a remedial constructive trust, the plaintiff must plead: (1) a substantial and direct link between the claim and the property at issue; and (2) that a monetary award is inadequate, insufficient, or inappropriate in the circumstances.

[16] To satisfy this second requirement, Justice Matthews held the pleadings must explain why damages cannot provide adequate relief: see *Nouhi* at paragraph 27.

[17] *Nouhi* has been followed on this point in a number of recent decisions of this Court, including *1046537 BC Ltd.* referred to above, *1033695 BC Ltd. v. Logos Investment Inc.*, 2021 BCSC 308; and *Sonnenberg v. Sonnenberg*, 2023 BCSC 957.

[18] In the present case, there are two main aspects of the plaintiff's pleading, as I understand it:

- 1) a claim for breach of the lease;
- 2) a claim that the plaintiff did work outside the lease that enriched the defendants.

[19] On this second aspect of the case, the plaintiff alleges that it added fixtures to the land such as fencing, a drainage pump and blueberry plants that increased the value of the property.

[20] Essentially, the plaintiff alleges that the defendants delivered a property at the beginning of the lease that was not suitable for the purpose for which it was leased, specifically blueberry farming, and, as a result the plaintiff was required to improve the land in an effort to make use of it, such that what the plaintiff returned to the defendants at the end of the lease was a property that was suitable for blueberry farming.

[21] There are a number of different ways, in my view, of looking at this aspect of the plaintiff's case: negligent misrepresentation, breach of the lease agreement, *quantum meruit*, or unjust enrichment. Assuming the allegations are true and the defendants are liable to the plaintiff on any or all of these theories of liability, the plaintiff can be compensated with a monetary award.

[22] The rent it paid to the defendants may be abated. Damages may be awarded for its expenses and/or its economic losses. Payment may be ordered for the plaintiff's labour and materials, and compensation may be ordered for the value of the fixtures it installed on the land such as blueberry plants or a fertilizer pump.

[23] The gravamen of the plaintiff's assertion of an interest in land, in my view, is captured in paragraph 28 of the notice of civil claim: that as a result of the improvements, the value of the formerly leased lands increased.

[24] Plaintiff's counsel submits that damages cannot provide an adequate relief for this claim because the character of the land was changed fundamentally, from a bare land to a blueberry farm. Assuming this fundamental change can be inferred from the existing pleadings - something which the defendants dispute - I do not think it supports the assertion of a remedial constructive trust.

[25] There is no pleading that this particular property as a blueberry farm holds a unique value to the plaintiff. There is no pleading that the increase in the property value cannot be appraised as a question of fair market value. The fact that the character of the land may have changed to the benefit of the defendants does not mean that a monetary award is inadequate, insufficient, or inappropriate to do justice between the parties.

[26] In short, the pleadings as they currently stand do not explain why damages cannot provide adequate relief. On the authority of *Nouhi* and the numerous decisions that follow it, the notice of civil claim does not support a claim of a constructive trust and therefore does not claim an interest in land.

[27] Accordingly, the CPL must be cancelled.

[28] The application by the defendants is allowed.

[29] Counsel, are there submissions on costs?

(SUBMISSIONS ON COSTS)

[30] THE COURT: Thank you, counsel. I agree with Mr. Malik. This application did not advance the merits of the proceeding overall, and therefore an award of costs in any event of the cause is appropriate.

[31] In summary, there will be an order that the CPL listed in paragraph 1 of the notice of application be discharged, and the defendant Satnam Education Society will have costs of this application in any event of the cause. I would not make the costs payable forthwith, though.

“Elwood J.”