IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1038573 B.C. Ltd. v. The Owners, Strata Plan NW289,* 2024 BCSC 405

Date: 20240131
Docket: S238586
Registry: Vancouver

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Between:

1038573 B.C. Ltd.

Plaintiff

And:

The Owners, Strata Plan NW289, Jenny Donna Dickison, Fernando Marcelino Dutra De Sousa, 1276331 B.C. Ltd., Carmelia Maria Da Silva, Hon-Ching Rudolph Cheng, 1161359 B.C. Ltd., Ricky Hee Meng Lai, Pia Faccio, 1184416 B.C. Ltd., Mark William Louttit and Sarah Kinuko Louttit, Barry Douglas Watson, as Administrator of the Estate of Kenneth John Watson, Li Ping Duan, Norman Victor Leech, Rolando Vinas Dizon and Narcisa Dizon, Nicholas George Karamouzos and Maria Karamouzos, Cui Ming Chen, Yankui Wang and Xin Tian, Maria Da Natividade Almeida, 1237765 B.C. Ltd., Ju-Shan Chiang and Flora Fu, 1184414 B.C. Ltd., Amarsingh Bhatia and Naranjan Kaur Bhatia, Phung Kim Vuong and Tuong Lam, Monica Paola Aliaga, Marcelino Lopes De Sousa and Olga Maria Dutra De Sousa, 1184413 B.C. Ltd., Lualhati Ongkeko Crisostomo, Richard Raymond Ravensbergen and Dawn Marie Ravensbergen, Yuk Far Cheung and Yin On Cheung, Gary Lucien Drees, Thomas Patrick Fleming, 1352962 B.C. Ltd., Wan Chen and Hong Yang, Su Juan Situ, Van Dao Nguyen and Thi Bich Hang Nguyen, Julian Bozsik, Christian Herbert Joson-Lim and Iris June Calibugan Adiong, Angela Joy Eykelbosh, Nguyen Thanh Vuong and Tuyet Ngoc Du, Om Parkash Loomba and Merran Loomba, Suzanne Juanita Kudelski, Yan Qiong Lu, Ping He, Edward Lawrence Thue, Richard Charles Patrick Spencer and Diane Marie Spencer, Arthur Summers Williamson, Gary Dale Charter and Cristina Rimando Gapal, Ju Tai Zhou and Yu Qing Li, Zhi Hao Yang, Daisy Cueto Evangelista and Maria Cherry Evangelista, Megan Mary Burghall, Nasim Bhaloo, Hui Lin Dong and Li Wang, Mansour Meshki, Hsiang Chiao Huang, Gordon William Paterson, Yvonne Jo-Anne England, Grace Joanna Levsen, Ping Chor Chan, So Fan Lee and Tak Tai Lui

Defendants

Before: The Honourable Mr Justice Crerar

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	C. Dennis, K.C.
Counsel for the Defendant, the Owners, Strata Plan NW289, as represented by the liquidator, Crowe MacKay & Company Ltd.:	S.B. Hannigan
No other appearances at this hearing	
Place and Date of Hearing:	Vancouver January 31, 2024
Place and Date of Judgment:	Vancouver January 31, 2024

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I. INTRODUCTION

[1] **THE COURT:** This is an application to set aside a certificate of pending litigation ("**CPL**") filed against the strata lots and associated common property on Strata Plan NW289, known as Cameray Gardens, located at 3925 Kingsway and 5715 Jersey Avenue, Burnaby, British Columbia (the "**Property**").

[2] As is almost always the case, there is some urgency in the removal of the CPL. I am going to deliver these abbreviated oral reasons for judgment now at 4:23 pm, rather than reserving. I make my usual reservation to edit and expand these reasons if a transcript is ordered or for any other reason.

[3] The applicant is the liquidator representing the defendant, The Owners, Strata Plan NW289. There are 101 units in the strata. The strata owners, collectively and individually, are listed as the defendants, although the present counsel seeking the removal of the CPL is acting for Crowe MacKay & Company Ltd., the liquidator.

[4] The background is critical for understanding this scenario, which both sides admit may be unique in the CPL jurisprudence.

[5] The present application arises from an assembly sale of all of the units in the strata development. The strata owners came together and agreed to appoint the liquidator to represent them in the sale. They made various agreements with the liquidator and amongst themselves. The key term is that if conditions are met, their units would vest in the liquidator, and the liquidator in turn would complete a sale of those units, collectively, to a purchaser. This arrangement was confirmed by a June 17, 2022 order of this Court issued by Justice Milman (the "**Winding-Up Order**") in Vancouver proceeding no. S223926:

> 1. The resolution passed at the special general meeting of the strata corporation, The Owners, Strata Plan NWS289, held on February 15, 2022, at which it was resolved to:
>
> (a) approve the voluntary winding-up of strata corporation, The Owners, Strata Plan NWS289, and its dissolution;
>
> (b) approve the appointment of a liquidator, Derek Lai, CPA, CMA, CIRP, of Crowe MacKay & Company Ltd. (the "**Liquidator**"), to

wind-up the strata corporation, The Owners, Strata Plan NWS289;

(c) cancel Strata Plan NWS289;

(d) dissolve the strata corporation, The Owners, Strata Plan NWS289;

(e) confirm the Interest Schedule to be applied pursuant to section 278 of the *Strata Property Act*, S.B.C. 1998, c. 43 (the "**Interest Schedule**");

(f) approve the estimate of costs of winding-up of the strata corporation, The Owners, Strata Plan NWS289; and

(g) surrender to the Liquidator each owner's interest in:

(i) the land shown on Strata Plan NWS289, including the common property (the "**Cameray Gardens Lands**");

(ii) the land held in the name of or on behalf of the strata corporation, but not shown on Strata Plan NWS289; and

(iii) the personal property held by or on behalf of the strata corporation, The Owners, Strata Plan NWS289 (the "**Strata Personal Property**").

be and is hereby confirmed.

…

4. Upon the filing of a certified copy of this order in the Land Title Office, the interest of each of the Petitioner and the Respondents set out on Appendix "A" to this Order (collectively, the "**Strata Owners**") in:

(a) the Cameray Gardens Lands; and

(b) the Strata Personal Property;

shall be and is hereby surrendered to and vests in the Liquidator, subject to the mortgages, assignments of rent, land use contracts and other charges registered on title to Strata Lots 1 to 101 and the common property of the Cameray Gardens Lands.

5. It is hereby declared that, upon the surrender to and vesting in the Liquidator of title to the Cameray Gardens Lands, it has been proven to the satisfaction of the court on investigation that the Liquidator has good, safeholding and marketable title to the Cameray Gardens Lands.

…

[6] While the individual unit owners are bound by the terms of their agreement and the Winding-Up Order, the individual units and all lands associated with the strata building and property will be surrendered to and vested in the liquidator only upon the filing of a certified copy of the Winding-Up Order in the Land Title Office. In short, the liquidator does not presently hold title in the 101 units.

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[7] Following on this plan, the plaintiff numbered company and the liquidator entered into a conditional purchase and sale agreement dated December 7, 2022, for the sale of all 101 strata units and the common property of Cameray Gardens, for $61 million.

[8] The agreed sale has gone sideways. The plaintiff numbered company has expressed concerns about the ability of the liquidator to deliver the Property on closing, free and clear of encumbrances, and to comply with other warranties in the purchase and sale agreement. Without determining the legitimacy of any of these assertions, I will quote Mr Dennis's letter of December 7, 2023, summarizing these concerns:

> (i) the outstanding claim in SCBC Vancouver Registry Action No. S204200, and the nature of the relief sought in that action;
>
> (ii) what we understand to be ongoing issues regarding claims by the City of Burnaby to tax arrears on several strata units; and
>
> (iii) what we understand to be multiple strata unit owners having entered into leases of their respective strata units, beyond the limited number of leases contemplated in the PSA (the number of these additional leases, and their respective terms, are at present not known to our client).

[9] For its part, the liquidator asserts that it was ready, willing, and able to proceed with the transaction on the closing date. Its own counsel, Lawson Lundell, responded to Mr Dennis's concerns. Needless to say, there is a back and forth between able counsel on this dispute. It is very much a live issue about who is right and who is wrong about the defendants' ability to complete this purchase.

[10] On December 18, 2023, the purchaser filed the CPL on title of all 101 strata lots. One hundred of these lots are owned by individual owners. A single lot, lot 66, is owned by the strata itself, which also owns the common property. It will be a common theme of the applicant liquidator that applying the CPL to all 101 strata units is overkill. The interests of the purchaser will be adequately protected by registering the CPL solely against lot 66: it will prevent the liquidator from selling the Property to another purchaser, and will allow the preservation of the purchaser's claim, based not in damages but in specific performance, to Cameray Gardens.

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[11] Although the liquidator's counsel is unable to locate or present any precedent that would support this less drastic means of accomplishing the goals of a CPL, she argues that the Court retains a discretion to craft an appropriate remedy that would address the prejudices suffered by both sides, including the individual strata unit owners.

II. DISCUSSION AND DECISION

[12] The parties are not significantly at odds with respect to the law on the discharge of CPLs. The applicant's counsel emphasises the refrain in the jurisprudence that a CPL is an extraordinary remedy, that is by its nature prejudicial to a property owner's rights. She refers to concerns expressed in British Columbia jurisprudence about the potentially abusive nature of CPLs: see, for example, *Motz v. McKean*, 2009 BCSC 1133 at para. 7; *Seville Properties Ltd. v. Coutre*, 2005 BCSC 1105 at para. 20; *Kamil v. Transtide Industries Ltd. and First National Mortgage Co.* (1980), 23 BCLR 344 (SC) at 350; and *Bilin v. Sidhu*, 2017 BCCA 429 at paras. 49–50. She emphasises that the imposition of the 100 CPLs on the individual owners is a particularly acute form of prejudice, inflicted not on a corporation but on ordinary people.

[13] The test for the discharge of a CPL is set out in *Bilin*:

> [41] This Court discussed the proper approach to applications made under s. 256 in *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2014 BCCA 388. At para. 28 of that case, Justice Newbury held that ***"[a]s a preliminary matter the applicant must show that it is experiencing or likely to experience 'hardship and inconvenience' as a result of the registration of the CPL. Once hardship and inconvenience are shown, cancellation does not automatically follow***; s. 257 of the *Land Title Act* provides that the application remains a matter of some discretion: *Youyi Group Holdings* at paras. 29, 39; see also *Liquor Barn Income Fund v. Becker*, 2011 BCCA 141 at para. 26.
>
> [42] Justice Newbury also clarified that, where an application is brought under s. 256, ***and the action underlying the challenged CPL involves a claim for specific performance, the applicant must satisfy the court it is plain and obvious the party seeking specific performance would not succeed on that claim at trial.*** In so holding, she drew on a long line of cases recognizing that cancelling a CPL absent this assessment would effectively determine the plaintiff's cause of action, and that "the right to sue for specific performance should not be denied on an interlocutory application": see

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> *Mercedez Benz of Canada Ltd. v. SAS Properties Ltd.* (1974), 10 B.C.L.R. 19 at 20 (S.C.), aff'd (1975), 10 B.C.L.R. 19 (C.A.); *Towne v. Brighouse* (1898) 6 B.C.R. 255 (S.C.).
>
> [emphasis added]

[14] I am satisfied that it is up to the applicant liquidator in this application to establish that:

a) the CPL is causing or will cause the applicant to suffer hardship and inconvenience; and

b) it is plain and obvious that the party seeking specific performance at trial—the plaintiff—will not succeed in obtaining that remedy.

[15] The purchaser raises a preliminary objection, disputing the liquidator's standing to apply to have removed the CPLs registered against the 100 individual strata units. The purchaser points to the plain wording of the statute, as illuminated by the jurisprudence. Section 256 of the *Land Title Act*, RSBC 1996, c 250 sets out the mechanism for applying to discharge a CPL from a property:

> **Cancellation of certificate of pending litigation on other grounds**
>
> **256** (1) A person who is the registered owner of or claims to be entitled to an estate or interest in land against which a certificate of pending litigation has been registered may, on setting out in an affidavit
>
> (a) particulars of the registration of the certificate of pending litigation,
>
> (b) that hardship and inconvenience are experienced or are likely to be experienced by the registration, and
>
> (c) the grounds for those statements,
>
> apply for an order that the registration of the certificate be cancelled.

[16] The purchaser emphasises that only two parties are contemplated in the plain wording of s. 256 as having standing to set aside the CPL: "[a] person who is the registered owner", or a person who "claims to be entitled to an estate or interest in land against which a certificate of pending litigation has been registered".

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[17] With respect to the first ground for standing, it is not disputed that the liquidator is not the present registered owner. With respect to the second ground, I agree with the liquidator that it is a person with an "interest in land against which a certificate of pending litigation has been registered". I reach this conclusion notwithstanding the fact that under the Winding-Up Order, title in those lands will not vest until and unless certain conditions are met.

[18] The purchaser itself can only claim its interest in the 100 units based upon the ability of the liquidator vendor to obtain, through a vesting of the 100 units, its immediate interest in the 100 units. I am satisfied that the purchaser is one step further removed from the liquidator in legitimately claiming an interest in land against which a CPL has been registered. The language in s. 256 of course echoes the language setting out the entitlement of a party to seek and obtain a CPL under s. 215(1) of the *Land Title Act*: that is, a person claiming "an estate or interest in land". In other words, on that part of s. 256, I am satisfied that the liquidator does have standing.

[19] The liquidator stumbles in its application, however, when we look at the wording as expanded in s. 256(1)(b): the applicant must establish "that hardship and inconvenience are experienced or are likely to be experienced by the registration". The plain wording of that subsection does not say "by the applicant": that conceivably leaves open the possibility that the requisite hardship and inconvenience be experienced by third parties.

[20] I am satisfied, however, that when read with the leading cases in the jurisprudence, including *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2014 BCCA 388, the applicant itself must be the affected party that experiences hardship and inconvenience:

> [28] As a preliminary matter ***the applicant*** must show that it is experiencing or likely to experience "hardship and inconvenience" as a result of the registration of the CPL. It appears that the degree of hardship required is the subject of disagreement in the Supreme Court of British Columbia. While some judges have proceeded on the basis that the hardship need not be "significant" (see, e.g., *Enigma Investments Corp. v. Henderson Land Holdings (Canada) Ltd.* 2007 BCSC 1379, and *0966349 B.C. Ltd. v. Shell*

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> *Canada Limited*, Reasons dated February 28, 2014, New Westminster Docket S151234), others have required "severe suffering" (see, e.g., the lower court decision in *Liquor Barn Income Fund v. Mather* 2009 BCSC 1092, at para. 7.) *The Shorter Oxford Dictionary* (6th ed., 2007) defines "hardship" to mean "the quality of being hard to bear" or "severe suffering or privation"; "significant" to mean "important, notable; consequential"; and "insignificant" to mean "of no importance; trivial, trifling" or "meaningless". To the extent that these or other decisions of the trial court suggest that "hardship" in s. 256(1) may be met by proof of hardship that is "insignificant" or "not significant", I would disagree. ***I doubt that the Legislature intended the threshold under s. 256 to be surmounted by proof of hardship that is only "trifling". On the other hand, I agree that a court should not be "exacting" in its analysis of hardship and inconvenience.***
>
> …
>
> [29] ***Once hardship and inconvenience are shown, it does not follow as a matter of course that the application under s. 256 must be granted.*** Section 257 provides that the court may order the cancellation of a CPL on satisfaction of the two conditions in that section, or that the court may refuse to order the cancellation, in which case it may order the party in whose name the CPL has been registered (here, the Purchaser) to enter into an undertaking as to damages and to give security in an amount and subject to such terms and conditions as the court considers proper. Thus ***even where hardship and inconvenience are shown, the cancellation of a CPL remains a discretionary matter.*** As stated by Madam Justice Smith for this court in *Liquor Barn* 2011 BCCA 141:
>
>> ... The plain and ordinary meaning of the words of ss. 256(1) and 257(1) provide that an application to cancel a CPL under s. 256(1) must include an affidavit that sets out the particulars of the hardship and inconvenience experienced or likely to be experienced by the registration of the CPLs ***to the applicant*** before the application can be heard. .... Even where the requirements of an application under s. 256(1) are met, the court retains the discretion to refuse either of the remedial orders and may dismiss the application. [At para. 26; emphasis added.]
>
> [emphasis added, underlining in original]

[21] In both of those paragraphs, the Court of Appeal, directly in para. 28, and indirectly in quoting *Liquor Barn*[1], refers to a hardship suffered by *the applicant*, i.e., by this liquidator. Accordingly, the liquidator's application founders on that basis.

[22] I will continue, however, with my analysis, although it is unnecessary to do so given this finding on standing.

[23] I also agree that the evidence of hardship and inconvenience advanced by the liquidator falls short of the level of hardship discussed in *Youyi* at para. 28, above: that is real hardship, not trifling or notional hardship.

[24] In the recent case of *Montaigne Group Ltd. v. St. Alcuin College for the Liberal Arts Society*, 2023 BCSC 1257, Justice Majawa similarly found that the evidence of hardship and inconvenience fell short of that contemplated in the s. 256(1)(b) jurisprudence:

> [69] The applicant argues that the CPL causes it significant hardship by preventing the development of an educational campus for its students. While the applicant has tendered evidence in support of its need to immediately refinance the subject lands to complete the development of its educational campus and the Montaigne Amenity Space, I am not of the view that the applicant has provided sufficient evidence in support of its claim for hardship.
>
> [70] I accept that the applicant does not have sufficient income to complete and finance the project and that they will not be able to complete the development without further financing. I also accept that their lenders will not likely finance this project while the CPL remains on title. However, the evidence falls short of establishing that the removal of the CPL is the only impediment to the applicant securing additional financing that is needed to complete the project without Montaigne's involvement.

[25] I will specifically review the forms of hardship cited by the liquidator applicant.

[26] First, one of the individual owners has faced difficulty in obtaining bridge financing in attempting to sell one of the units.

[27] The purchaser has already swiftly and meaningfully made a proposal to deal with that particular issue. I understand that the liquidator's counsel has not yet responded to that proposal. Although the liquidator makes the fair point that the plaintiff’s proposal has various conditions attached, it illustrates that if an actual hardship arises, the purchaser is responsive to a bespoke solution that will address that professed hardship.

[28] Second, one of the 100 owners attaches her mortgage terms to her affidavit. Amongst those mortgage terms is a boilerplate provision designed to protect the lender: if any of a long list of complications arises—including a lien, execution, court

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order, restraint order, injunction, or, expressly, a certificate of pending litigation—the lender is entitled to declare that the borrower is in default and that all moneys secured shall forthwith become due and payable.

[29] There is no evidence, apart from fear that a lender may act on such a boilerplate provision, that this poses anything more than a notional hardship.

[30] Again, based on the purchaser's proposal with respect to the bridge financing issue, I have every confidence that in the unlikely event that a lender acts on this small-print boilerplate provision, the plaintiff will similarly propose a reasonable resolution in order to avoid default.

[31] There are further responses to the concerns about potential hardship and inconvenience.

[32] First, obtaining a CPL is not a risk-free exercise. If at the end of the day, the CPL is found not to have been appropriate, and an individual has suffered a hardship, they can look to the purchaser for compensation for damages flowing from the CPL.

[33] Second, it is not at all clear under the Winding-Up Order and the agreement between the individual units and the liquidator that an individual strata owner, in the pendency of the marketing of the units and the closing of the sale, is entitled to sell units. Certainly, it would be contrary to the spirit and intention of the agreement to sell any units that are already subject to an agreement entered into by all of the individual strata owners for a collective sale. The best that the liquidator can point to is the absence of any express prohibition in the order or the agreement against an individual strata owner selling their unit pending the sale.

[34] Indeed, that agreement includes specific provisions allowing owners to deal with their units in specific manners pending the sale completion. The agreement does not expressly contemplate or permit the full sale of a unit: one would expect the agreement to similarly specify terms governing such a sale, if a sale were permitted or contemplated.

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[35] In any case, this is more of a hypothetical than a real issue. There is a purchase and sale agreement in place, with a specific upcoming closing date. In contrast to a CPL applied to a property that is presently on the market, the present CPL does not hinder sales efforts generally, or for any considerable length of time.

[36] Third, the liquidator itself has proposed that this matter be determined in the form of a summary trial, proposed for February. Mr Dennis was unable to attend on that particular date, but he reassures the Court that he is confident that he or another member of his firm will be able to attend a summary trial in the next two or three months. This short timeline for resolution further limits the practical prospect that any owner will seek to sell their, or its, units in that time. It further emphasises that it is a very brief period during which this notional hardship may occur.

[37] I will briefly touch upon the second matter that the liquidator bears the onus of establishing today: that the purchaser's claim for specific performance is plainly and obviously bound to fail. The liquidator has not made any particular efforts in that regard. I am satisfied on the brief materials before me that there is a particular value in this particular Property that is sought by the purchaser through the purchase and sale agreement: specifically, the Kingsway property's location, and proximity to transit, roads, and a park. There are few similar market opportunities available in the area. The plaintiff makes a persuasive case supporting its claim in specific performance.

[38] I say this on a very perfunctory view of the evidence before me at this interlocutory hearing, against the background of a legal test where the applicant bears the onus of establishing the frailty of a specific performance claim. I am not determining one way or the other the strength of the plaintiff’s claim for specific performance, which may well be undermined at trial on more full evidence.

[39] I will address the liquidator’s alternative proposal. The liquidator observed that a less drastic means of achieving the goal of preventing the wholesale sale of the Cameray Gardens units would be to simply apply the CPL to the single unit 66.

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[40] There are two further responses to the liquidator’s proposal.

[41] First, I am not satisfied on the jurisprudence before me that I have the discretionary power to override the plain wording of s. 256 with respect to standing, or a discretionary power to impose a more nuanced and crafted resolution on the parties, even if the Court were able to grant a remedy based upon the impediments in standing earlier discussed.

[42] Second, I recognise the purchaser's fear, which really should be a fear shared by the liquidator. If, indeed, the individual owners have the ability to sell or otherwise encumber their individual units despite the existence of the purchase and sale agreement and Winding-Up Order, it could greatly imperil the anticipated sale.

[43] If multiple individual unit owners sell their properties, it could raise the spectre of an innocent third party, without notice of the Winding-Up Order or the purchase and sale agreement, purchasing a unit and then being surprised after closing that they are obliged to sell their new unit. A single or indeed multiple single sale or encumbrance could cloud the title and work contrary to a claim in specific performance, which, of course, is founded in equity.

[44] I would also note that leaving the CPL on all 101 units accords with the spirit of the agreement amongst the individual owners, as confirmed by Justice Milman's Winding-Up Order. There shall be a sale of all units. That sale presumptively shall proceed in as smooth and uncomplicated a manner as possible, such that all of the other unit owners not be deprived of this lucrative opportunity to profit from the sale of their units either through delay, or litigation. It would expose the owners to the costs in time and money of litigation. Indeed, given that we can no longer be guaranteed that Vancouver real estate will continually rise in value, the other owners may face the prospect of diminished value in their units. In other words, the liquidator's constituents, viewed as a whole, have a vested interest in not clouding up title through individual sale or encumbrance of units that may occur if the liquidator were successful in removing the individual CPLs.

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[45] Regardless of whether there is any discretionary power, which discretionary power has not been established in the authorities before the Court, the Court would not exercise its discretionary power to limit the CPL against the single unit owned by the strata, but would leave it on all 101 units, for the reasons set out above.

[46] Costs will be to the plaintiff in the cause.

"Crerar J"

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[1] The facts of *Liquor Barn* also support this interpretation. Becker and Owen, two individuals amongst a larger group of named defendants, applied for cancellation of several CPLs; the plaintiffs claimed a constructive trust over the subject properties. Owen stated that he was a principal of a hotel, for which renovations were halted; the banks would not provide financing to the hotel given Owen's involvement in the proceedings underlying the CPLs. The Court rejected this argument, as the hotel lacked standing under s. 256: "[6] The provisions of the Act are clear. First, a CPL must be registered against a property owned by a person who applies under s. 256(1) of the Act. I am satisfied that ***this provision is not available to a third party who is not a registered owner or who does not claim to be entitled to an interest or an estate in land against which a certificate of pending litigation has been registered. Accordingly, even though Mr. Owen may be suffering hardship or inconvenience as a result of this Action being commenced against him, and even though Dalton Hotel & Suites Ltd. may be experience hardship and inconvenience as a result of Mr. Owen's involvement in that company and in this litigation, I am satisfied that an application under s. 256 of the Act could not be made by Dalton Hotel & Suites Ltd. Accordingly, the alleged hardship of Dalton Hotel & Suites Ltd. is not a hardship governed by s. 256(1) of the Act.*** The application of ss. 156 and 157 [sic] of the Act is limited to a person who is a registered owner of land, or claims to be entitled to an estate or interest in land against which a certificate of pending litigation has been registered. Accordingly, the consideration is whether the Becker and Owen Defendants have established hardship and inconvenience."