

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wood v. Zaepernick*,
2023 BCSC 1046

Date: 20230609
Docket: S233980
Registry: Vancouver

Between:

Daniel Lawrence Wood, Jayde Lian Wood, and Yanan Wang
Petitioners

And

Rudy Zaepernick and Sofia Somani aka Sofia Sayani
Respondents

- and -

Docket: E211990
Registry: Vancouver

Between:

Rudy Zaepernick
Claimant

And

**Sofia Somani aka Sofia Sayani, Ice Queen Brands Inc.,
Ocean Drive Holdings Ltd., Portofino Management Inc.,
0913234 B.C. Ltd., Marine Drive Investments Inc., 1226 Capital Corp.**
Respondents

Before: The Honourable Justice Funt

Oral Reasons for Judgment

In Chambers

Counsel for Daniel Wood, Jayde Wood, and
Yanan Wang:

W.J. McMillan
W. Simek
(appearing as agent
for W.J. McMillan in P.M. on
June 9, 2023)

Counsel for Rudy Zaepernick:

S. Stanislaus

No other appearances

Place and Date of Hearing:

Vancouver, B.C.
June 8, 2023

Place and Date of Judgment:

Vancouver, B.C.
June 9, 2023

[1] **THE COURT:** The petitioners seek an order removing a certificate of pending litigation (“CPL”) registered against the title of a residential property with a civic address of 5517 Ocean Place, West Vancouver, BC (“Ocean Place”). The registered owner of Ocean Place is the respondent, Ms. Somani.

[2] The respondent, Mr. Zaepernick, and Ms. Somani were in a marriage-like relationship from around November 2011 to March 2020. Upon separation, family litigation arose. On July 21, 2021, Mr. Zaepernick filed a CPL which included Ocean Place.

[3] Ms. Somani was not present for the hearing. I am satisfied that she was effectively served and had the opportunity to be heard had she chosen to do so. In particular, I note her May 31, 2023 email she sent to the process server, in which she stated (in part): “You don't have proof of service”, and, “You have no case”.

[4] From the materials, it is apparent that Ms. Somani is very wealthy, with her wealth greatly exceeding by manyfold the value of Ocean Place.

[5] On March 17, 2023, the petitioners, Mr. Wood and Ms. Wood, agreed to sell their Burnaby residence. The petitioner, Mr. Wang, is Ms. Wood's father and resides with Mr. and Ms. Wood. The closing date of the sale of the Burnaby residence was June 8, 2023.

[6] At the time of entering into the binding contract of sale of their Burnaby residence, Mr. Wood and Ms. Wood had not made arrangements for residential premises upon the completion of the sale of their Burnaby residence.

[7] On March 26, 2023, Mr. Wood and Ms. Wood first viewed Ocean Place. On April 3, 2023, they entered into a contract with Ms. Somani for the purchase of Ocean Place for \$5.85 million (the “April 3, 2023 contract”). The April 3, 2023 contract include the following terms and conditions, among others:

- Subject to the Buyer obtaining, on or before Apr 07, 2023, legal advice satisfactory to the Buyer concerning their rights and obligations under this contract. This subject is for the sole benefit of the Buyer.

- Subject to the Buyer being satisfied, on or before Apr 07, 2023, with the title, encumbrances and legal notations affecting or benefitting the Property. This condition is for the sole benefit of the Buyer. If this condition is satisfied or waived, the Title will be incorporated into and form part of this Contract.
- Subject to the Buyer obtaining and being satisfied, on or before Apr 07, 2023, with a Property Disclosure Statement with respect to the Property. This condition is for the sole benefit of the Buyer. If this condition is satisfied or waived, the Property Disclosure Statement will be incorporated into and form part of this Contract.
- The Buyer and Seller acknowledge that the Brokerage and Designated agents do not provide legal or other expert advice in matters beyond the common standard of care in the Real Estate Industry. The parties have been advised to seek independent legal advice prior to the executing this Contract of Purchase and Sale.

[8] With respect to title, Ms. Somani agreed to provide on the completion date, June 9, 2023:

- Title: Free and clear of all encumbrances except subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restricted covenants and rights-of-way in favour of the utilities and public authorities, existing tenancies set out in Section 5, if any, and accept as otherwise set out herein.

[9] The petitioners were aware of the CPL before they signed the April 3, 2023 contract for the purchase of Ocean Place. At the time, the petitioners signed the April 3, 2023 contract, Ms. Sullivan, their agent, advised them to seek legal advice with respect to the CPL.

[10] As I have noted, the petitioners had made the April 3, 2023 contract subject to their obtaining legal advice on or before April 7, 2023. Similarly, they had made the April 3, 2023 contract subject to their being satisfied on or before April 7, 2023 with the title, encumbrances, and notations affecting title. The petitioners also acknowledged that the real estate agents involved do not provide legal advice or other expert advice beyond the common standard of care.

[11] The relevant statutory provisions are ss. 256(1) and 257(1) of the *Land Title Act*, R.S.B.C. 1996, c. 250 [LTA]. These provisions read:

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.

[...]

257(1) On the hearing of the application referred to in section 256 (1), the court

- (a) may order the cancellation of the registration of the certificate of pending litigation either in whole or in part, on
 - (i) being satisfied that an order requiring security to be given is proper in the circumstances and that damages will provide adequate relief to the party in whose name the certificate of pending litigation has been registered, and
 - (ii) the applicant giving to the party the security so ordered in an amount satisfactory to the court, or
- (b) may refuse to order the cancellation of the registration, and in that case may order the party
 - (i) to enter into an undertaking to abide by any order that the court may make as to damages properly payable to the owner as a result of the registration of the certificate of pending litigation, and
 - (ii) to give security in an amount satisfactory to the court and conditioned on the fulfillment of the undertaking and compliance with further terms and conditions, if any, the court may consider proper.

[...]

[12] The respondent agrees that the petitioners have standing to bring the current application.

[13] Subsection 257(1), the provision for the cancellation of a CPL, is a permissive provision. It is based on the application under subsection 256(1).

[14] In the case at bar, if the petitioners suffer hardship or inconvenience, it is the result of their own actions. I find this for several reasons.

[15] First, the petitioners sold their Burnaby residence without first assuring they would have accommodation after the sale of the Burnaby residence completed.

[16] Second, they reserved the ability to get legal advice satisfactory to them on or before April 7, 2023 as to their rights and obligations under the contract. It appears that they subsequently chose not to do so. If they had, they would have been advised that a CPL does not usually secure a fixed or readily ascertainable sum, such as a mortgage, which is usually discharged as part of the conveyance with the purchaser's funds used for this purpose. The financial exposure presented by a CPL usually depends on the litigation underlying the CPL. Family litigation is often fraught with financial complexities.

[17] Third, the petitioners say that they relied on comments by their real estate agents as comfort that the CPL would be addressed prior to closing despite the clear language in the April 3, 2023 contract that they acknowledged that the real estate agents involved do not provide legal advice.

[18] Finally, it is usually folly to enter into any multi-million dollar contract without legal advice.

[19] In sum, the Court will not exercise its discretion to cancel the CPL. The removal of the CPL, in whole or in part, is a significant legal step that should only be taken with a grounded foundation as subsection 256(1)(c) of the *LTA* contemplates.

[20] If Ms. Somani does not complete the sale of Ocean Place under the petitioners' April 3, 2023 contract for purchase of Ocean Place, the petitioners' remedy may be one in damages.

[21] The petitioners' application is dismissed. Mr. Zaepernick will have his costs for a one-half day hearing.

[22] Anything further, counsel?

[23] CNSL S. STANISLAUS: Yes, Justice. I have two points. First, in my response to petition and counterclaim, I did seek special costs against Ms. Somani and the petitioners because, clearly, especially with Ms. Somani, this never should have happened and Mr. Zaepernick has sworn in his affidavit he is depleting his capital in order to keep up with these expenses, and so, although I appreciate that you have --

[24] THE COURT: No, I gave consideration to that. I am going to leave it.

[25] CNSL S. STANISLAUS: And one other clarification --

[26] THE COURT: Yes.

[27] CNSL S. STANISLAUS: -- Justice. In your order for costs simpliciter of a half day?

[28] THE COURT: Yes.

[29] CNSL S. STANISLAUS: There were multiple days. So is it only because of the afternoon yesterday because --

[30] THE COURT: That is the only thing that was before me and it took us more than a half day, but the estimate was an hour and a half.

[31] CNSL S. STANISLAUS: Of course. So is that towards the petitioners or towards the respondent, Ms. Somani? Who is paying the cost to Mr. Zaepernick? Who should I issue the bill of costs to? That is what I want to clarify.

[32] THE COURT: The petitioners. That is why we are here today.

[33] CNSL S. STANISLAUS: The petitioners. Okay.

[34] THE COURT: Is that not correct?

[35] CNSL S. STANISLAUS: Yes.

[DISCUSSION RE JUSTICE DUNCAN'S ORDER
AND FINALIZATION OF ORDERS]

“Funt J.”