

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Gill v. Pannu*,  
2023 BCSC 539

Date: 20230406  
Docket: 37894  
Registry: Chilliwack

Between:

**Jasbinder Singh Gill**

Plaintiff

And

**Rupinder Singh Pannu, Gurdev Singh Randhawa, Dalbir Kaur Randhawa,  
Pannu Bros Holding Ltd., Pannu Bros Trucking Ltd., Abbotsford Banquet &  
Conference Centre Ltd., 3378 Laurel Holdings Inc., Maiken Andersen,  
Ronald A. Kelly, Baker Newby LLP, and John Klassen**

Defendants

Before: Master Keighley

## Reasons for Judgment

Counsel for the Plaintiff:

R.S. Arora

Counsel for R.S. Pannu and Pannu Bros  
Trucking Ltd.:

D. Sorensen

Place and Date of Hearing:

Chilliwack, B.C.  
February 6 and March 9, 2023

Place and Date of Judgment:

Chilliwack, B.C.  
April 6, 2023

[1] This is an application by the defendants Rupinder Singh Pannu (“Pannu”), Pannu Bros. Trucking Ltd. (“PBT”) and Dalbir Kaur Randhawa (“Randhawa”) for the following orders:

1. That the certificate of pending litigation registered under No. CA9954212 (the “CPL”) registered against the properties known and described as:
  - Civic Address: 3046 Bradner Road, Abbotsford, BC
  - PID: 009-862-803
  - LOT A, EXCEPT PART DEDICATED ROAD ON PLAN BCP13005, SECTION 22 TOWNSHIP 13 NEW WESTMINSTER DISTRICT PLAN 13775
  - (the “Bradner Property”)
  - Civic Address: 18205 60th Avenue, Surrey, BC
  - PID: 026-050-901
  - LOT 2 SECTION 8 TOWNSHIP 8 NEW WESTMINSTER DISTRICT PLAN BCP13329
  - (the “Surrey Property”)(together, the “Lands and Premises”)  
be cancelled upon such terms that this honorable Court deems just;
2. An order that the Plaintiff be required to post security for costs herein in the amount of \$40,000.00 or, in the alternative, an amount to be fixed by the Court;
3. An order that security for costs be posted in a form acceptable to the Registrar of the Supreme Court in Chilliwack and be posted within 30 days of the Court order.
4. An order that pending the posting of security as aforesaid, the action be, and hereby is, stated;
5. An order that, in default of the Plaintiff posting security for costs as aforesaid in the amount and by the date that has been fixed by the Court, that the Defendants have liberty to apply to dismiss the action; and
6. Special Costs, or alternatively, costs

[2] At the outset of the hearing, counsel advised that all relief claimed in the Notice of Application was to be adjourned generally by consent, except for the application to cancel the certificate of pending litigation (the “CPL”) secured against the property at 3046 Bradner Road (the “Bradner Property”) and the application for special costs. I so ordered. With the adjournment of the relief she had sought in the application, Randhawa did not participate in the hearing before me.

**Application**

[3] The applicants seek discharge of the CPL under both ss. 215 and 256/7 of the *Land Title Act*, RSBC 1996, c. 250 (“the *LTA*”).

[4] Section 215(1) of the *Act* permits a party to a proceeding who is claiming “...an estate or interest in land” to secure the claim by registering a certificate of pending litigation against title to the land. An application may then be made, as it is here, to discharge the CPL on the basis that the pleadings do not disclose a claim against the land.

[5] In the recent (March 29, 2023) case of *Sood v. Hans*, 2023 BCCA 138, the British Columbia Court of Appeal considered whether a master has jurisdiction to consider an application under s. 215 and determined that they do not. The jurisdiction to order cancellation under s. 215, the Court noted, arose not from statute or the rules of court, but from the exercise of the Court’s inherent jurisdiction (earlier noted by my colleague Master Bouck in the case of *Fritz v. 848 Yates Nominee Ltd.*, 2019 BCSC 1294). Lacking such inherent jurisdiction, a master, it may now be said conclusively, lacks jurisdiction to order cancellation of a CPL under s. 215.

[6] This issue of jurisdiction was not argued before me, but now appears to have been conclusively resolved. I am left with the application to cancel the CPL under s. 256/7 to which I will return after a review of the background to this application.

**BACKGROUND**

[7] Pannu is a shareholder and director of PBT and Pannu Bros. Holdings Ltd. (PBH”).

[8] PBT owns the Bradner property.

[9] In or about 2003, the plaintiff, Pannu and Gurdev Singh Randhawa (“Gurdev”) entered a business venture, the goal of which was to establish a banquet hall business on Laurel Street in downtown Abbotsford, (the “Laurel Street Property”).

[10] The business was to be owned and operated by a corporation, which came to be incorporated as Abbotsford Banquet and Conference Centre Ltd. (“ABCC”). Pannu held 51% of the issued shares, the plaintiff, Jasbinder Singh Gill (“Gill”), 19% and Gurdev, 30%. Pannu had invested the most money, namely \$500,000, Gurdev, 30% and Gill, \$130,000. All three became directors of ABCC.

[11] The Laurel Street Property was acquired by ABCC in 2004 for \$1.0765 million, and two mortgages were then secured against title: the first funded by PBH in the amount of \$800,000 and the second, also funded by PBH, in the amount of \$300,000. The mortgages were approved and executed by all three directors.

[12] In 2016, PBH assigned the two mortgages to a numbered company. The principal balance of the second mortgage was, at the same time, increased to \$450,000.

[13] The business did not thrive and operated at a loss until it was shuttered in 2020. Pannu deposes that he made contributions to keep the business afloat for which he was not reimbursed by the other shareholders.

[14] The Laurel Street Property was sold in January 2020, for \$2.8 million. Gill says that Pannu undervalued the property. Pannu disagrees. The net proceeds, after deducting expenses relating to the sale was \$2,740,050.98. By this time, the balances owing on the two mortgages exceeded this amount, as ABCC had made no payments and significant interest had accumulated. Gill maintains that there was no agreement that PBH would charge interest.

[15] Once the Laurel Street Property was sold, the remaining assets of ABCC consisted mainly of conference table and chairs. These were sold or donated and the sales generated about \$33,000. This cash went to Pannu’s personal account, as partial compensation for the funding he had contributed over the previous years.

[16] In July 2020, Gill commenced this action, alleging that Pannu took money from the sale and distributed it to himself, PBT, PBH and Gurdev.

[17] Gill's Notice of Civil Claim (the "NOCC") alleges that the defendants invested money withdrawn from the company in properties they own. For the purposes of this application, that must be taken to mean that PBT received funds due to ABCC and invested some or all of those funds on the Bradner Street property. Specifically, at paragraph 42, he alleges:

42. To the detriment of the Plaintiff ... Mr. Pannu and Pannu Bros Trucking Ltd has diverted operating profits, asset sale proceeds and "cash" funds from ABCC and the Plaintiff's shareholders loans to their Fraser Hwy Property and the Bradner Road Property and used those funds for:
- (a) clearing and excavating the properties;
  - (b) readying the property for development and commercial purposes;
  - (c) constructing, maintaining and improving structures and buildings;
  - (d) constructing, maintaining and improving a yard for trucks, trailers and vehicles;
  - (e) making payments that increased the equity in both the Fraser Highway . . . and the Bradner Road Propert[ies];
  - (f) maintaining the lands; and
  - (g) other improvements and benefits as the Plaintiff will advise in due course.

[18] At paragraphs 46 and 47, respectively, Gill goes on to allege that the defendants have been unjustly enriched by their conduct and that Gill is entitled to a constructive trust against, *inter alia*, the Bradner Road Property. The NOCC goes on to provide that a monetary award is inadequate or insufficient to compensate Gill, but provides no particulars as to why this is so.

[19] By way of "relief sought" Gill seeks a wide range of remedies, including: a declaration of unjust enrichment, disgorgement of profits, tracing, conversion, a declaration that he has an interest in all property or assets improved or purchased with funds improperly taken from ABCC, a declaration that those interests are held by virtue of constructive or resulting trust and more.

[20] On the basis of these claims Gill registered certificates of pending litigation against various properties, including the Bradner Road property.

[21] Pannu, PBT and PBH then brought an application (the “Prior Application”) to dismiss the CPLs registered against the Bradner Road Property and another property on the Fraser Highway. The application was heard December 15, 2021 by Kirchner J., whose reasons for judgment, dated two days later included the following:

[18] A second basis on which a CPL may be cancelled is under s. 257 of the *LTA*, where its registration causes hardship or inconvenience to the registered owner of the land. In essence, s. 257 provides that the court may order that the CPL be cancelled if satisfied that the registered owner of the land will suffer hardship and inconvenience by the continued registration of the CPL, that an order requiring the registered owner to give security in place of the CPL is proper in the circumstances, and that damages will provide adequate relief to the party who has registered the CPL.

[19] The applicants seek to discharge the CPLs on both these grounds.

[20] With regard to the first basis, the analysis of whether a claim to an estate or interest in land is properly disclosed is based solely on the pleadings without regard to evidence: *Wai v. Chung*, 2020 BCSC 34 [*Wai*] at para. 18. However, the mere assertion in a notice of civil claim with no proper factual foundation is insufficient to support the registration of the CPL: *Wai* at para. 20.

[21] A pleading that lacks particulars of the claim to an estate or interest in land will not suffice. As Justice Murray stated in *1077708 BC Ltd. v Agri-Grow Farm Services Ltd.*, 2019 BCSC 977 at para. 39, about a CPL, “[s]uch an extraordinary and powerful pre-trial tool must be grounded on more than mere conjecture.”

[22] A CPL is not a bargaining tool to be used as leverage to extract prejudgment payment of a financial claim: *Drein v. Puleo*, 2016 BCSC 593. Nor is it intended to provide security for a monetary judgment in a claim that has no real connection to the land over which the CPL is registered. It is designed to preserve a claim to the land itself, pretrial, by preventing that land from passing to an innocent third party. A CPL is not a shortcut to a *Mareva* injunction, which is an extraordinary prejudgment remedy that freezes a defendant's assets to secure judgment in a claim.

[23] Thus, the mere fact that a notice of civil claim pleads that the defendant appropriated money and spent that money on a piece of property is not necessarily sufficient to disclose a claim to an estate or interest in that property such that it would support the registration of the extraordinary prejudgment remedy of a CPL. In *Wai*, Justice MacDonald ordered a CPL cancelled on the basis of s. 215. She described the pleading in that case as follows at para. 29:

[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.

[24] In my view, para. 42 of the notice of civil claim in this case suffers from the same deficiencies. While that paragraph provides a list of ways in which it is alleged the properties were improved with monies allegedly drawn from ABCC, it is nothing more than a longer list of the same kind of bare assertions described in *Wai*. The only parcel of land that is truly the subject of this litigation is the Laurel Street Property which was owned by ABCC and sold. The Bradner Road Property and the Fraser Highway Property have nothing to do with Mr. Gill's claim and have only been drawn into this litigation by way of the bare assertions made in para. 42 of the notice of civil claim.

[25] Moreover, the lack of particularity in para. 47 of the notice of civil claim, where it is said that a monetary award is inadequate, underscores the point that this claim is not about an estate or interest in the Bradner Road or Fraser Highway Properties. If a monetary award is truly inadequate, the plaintiff ought to be able to say why in the notice of civil claim.

[26] I acknowledge the plaintiff may not be in a position to provide more detailed particulars of the allegations in para. 42 of the notice of civil claim at this stage. This is evident by the fact that subparagraph (g) of para. 42 states the funds were used for "other improvements and benefits as the plaintiff will advise in due course." However, the inability to provide particulars of the allegations at the pleadings stage does not justify registration of a CPL: see *Wai* at para. 29.

[22] Kirchner J. concluded that the NOCC did not disclose a claim for an estate or interest in either of the two properties and ordered that the CPLs registered against both properties must be cancelled. The learned Judge went on to say that he would also have cancelled the CPLs under s. 257 of the *LTA* on the basis of what he characterized as hardship and inconvenience to the applicants.

[23] Following this judgment, Gill filed an Amended Notice of Civil Claim (the "ANOCC") in this action and once again filed CPLs against the Bradner Road property.

[24] The ANOCC characterizes the claims against Pannu, PBT and PBH as follows:

38. Pannu, as one of the directors with *de facto* control of ABCC since its incorporation, has conducted the affairs of ABCC in a manner oppressive or unfairly prejudicial to Gill by, *inter alia*, virtue of the following:
  - I. failing to account for the cash revenue of ABCC, including disbursing cash funds from ABCC from time to time to Gill's

- exclusion and failing to have the disbursements recorded in ABCC's accounting records:
- II. denying Gill access to ABCC's financial and corporate records despite Gill being a director of ABCC at all material times;
  - III. failing to call annual general meetings for 2017, 2018, and 2019 years and failing to provide audited financial statements to Gill for each of those years;
  - IV. failing to call a shareholders' meeting to vote on the sale of the only asset of ABCC:
  - V. contrary to the Mortgage Representations, causing ABCC's balance sheet to be amended in December 2019, just prior to completion of the sale transaction, by increasing the Pannu Holdings Mortgage balance from approximately \$1.1 million dollars, as had been recorded since approximately 2005, to approximately \$4 million dollars:
  - VI. authorizing a less than fair market value sale of the banquet hall to deprive Gill of his share of the sale proceeds by prioritizing an expeditious closing over maximizing the sale price of the banquet hall:
  - VII. failing to account to Gill regarding the true distribution of the sale proceeds of ABCC's only asset; and
  - VIII. receiving a portion of Gill's share of the sale proceeds from the sale of the banquet hall and related assets.
39. By virtue of his receipt of a portion of Gill's share of the sale proceeds, Randhawa was enriched. Gill suffered a corresponding deprivation, and there is no juristic reason for Randhawa's enrichment.
40. By failing to call a shareholders' meeting to vote in the sale of the only asset of ABCC, Pannu placed himself in a fiduciary position to Gill and breached his fiduciary duty owed to Gill by failing to remit Gill's share of the sale proceeds to him.
41. To the extent that Pannu Holdings received any funds from ABCC from the sale of its only asset, it received them with knowledge of Pannu's misappropriation of the said funds, of which Pannu was a trustee due to his fiduciary duty owed to Gill.
42. Pannu used a portion of the funds derived from ABCC by oppressing or unfairly prejudicing Gill or Pannu's breach of fiduciary duty owed to Gill at the time of sale of ABCC's only asset to renovate his property located at 18205 69 Avenue, Surrey, B.C., legally described as:
- PIP: 026-050-901
- LOT 2 SECTION 8 TOWNSHIP 8 NEW WESTMINSTER DISTRICT  
PLAN BC13329
- (the "Surrey Property")
43. Pannu used the funds derived from Pannu's oppressive or unfairly prejudicial conduct towards Gill or Pannu's breach of fiduciary duty owed

to Gill at the time of sale of ABCC's only asset to finance Pannu Trucking's operations. The said funds formed part of a loan advanced to Pannu Trucking by Pannu in the amount of \$3,600,000 in May 2020 and secured by a mortgage (the "Pannu Trucking Mortgage") registered against title to Pannu Trucking's lands located at 3046 Bradner Road, Abbotsford, B.C. and legally described as:

PIP: 009-862-803

LOT A PLAN NWP13775 PART 1 NW SECTION 22 TOWNSHIP 13  
LAND PISTRIC 36 EXCEPT PLAN BCP13005-RP

(the "Bradner Road Property")

44. Pannu holds a portion of the Pannu Trucking Mortgage in trust for Gill.

[25] In other words:

1. Pannu improperly conducted himself as a director of ABCC, possibly giving rise to remedies under the terms of the *Business Corporations Act*.
2. Pannu took money from ABCC to which he was not entitled, which in part belonged to Gill, and used that money, with other funds, to advance a loan to PBT for \$3,600,000 which was secured by a mortgage from PBT which charged the Bradner Road Property owned by PBT.
3. Gill's money went into the Bradner Road property, therefore he is entitled to maintain a CPL on title to secure his claim.

## **DISCUSSION**

[26] As I lack jurisdiction to consider an application to discharge the CPL under s. 215, I am left with the application to discharge it under the provisions of s. 256 and 257 on the basis that its continued registration causes hardship and inconvenience to the applicant. Sections 256 and 257 of the *LTA* read as follows:

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.

(2)An owner whose indefeasible title or charge is registered subject to a certificate of pending litigation under section 217 (2) (a) or (c) (ii) may, on setting out in an affidavit

(a)that the pleading or petition by which the proceeding was commenced or notice of application attached to the certificate contains no allegation that the owner is not a purchaser in good faith and for valuable consideration,

(b)that the owner applied to register the owner's indefeasible title or charge before the certificate was received by the registrar, and

(c)particulars of dates and times of receipt, application and registration of the owner's application and the certificate,

apply for an order that the registration of the certificate be cancelled.

(3)An application under this section must be made to the court in which the proceeding was commenced and must be brought

(a)as an application in that proceeding, if the applicant is a party to the proceeding, or

(b)by petition, if the applicant is not a party.

Power of court to order cancellation

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.

(2)The form of the undertaking must be settled by the registrar of the court.

(3) In setting the amount of the security to be given, the court may take into consideration the probability of the party's success in the action in respect of which the certificate of pending litigation was registered.

(4) On hearing the application referred to in section 256 (2) and on being satisfied that

(a) the facts set out in the affidavit are consistent with the records of the land title office, and

(b) there is nothing in the pleading or petition by which the proceeding was commenced or notice of application attached to the certificate that expressly or by necessary implication alleges that the owner is not a purchaser in good faith and for valuable consideration,

the court may make an order declaring that the owner's indefeasible title or charge is not affected by the certificate of pending litigation or the outcome of the proceeding.

(5) On receipt of an order made under subsection (4), the registrar must file it and cancel the registration of the certificate of pending litigation.

[27] Hardship or inconvenience does not have to be significant, particularly in cases where an award of damages appears to be an adequate remedy: *Enigma Investments Corp v. Henderson Land Holdings (Canada) Ltd.*, 2007 BCSC 1379. Circumstances in which hardship or inconvenience have been found to justify cancellation of a CPL include: impediment to the closing of a sale, dissuading otherwise interested persons from making an offer to purchase or impeding the ability of the owner to finance development of the lands: *Kaur v. Chandler*, 2018 BCSC 1283.

[28] PBT is the owner of the Bradner Road property against which the subject CPL is registered. After hearing the prior application, Kirchner J. was satisfied that cancellation was justified under both sections 215 and 257. With respect to the issue of whether the ongoing registration of the CPL was causing hardship and inconvenience to PBT, the learned Judge said:

29 Mr. Pannu deposes he has suffered hardship as a result of the COVID-19 pandemic. Pannu Bros Trucking has seen a drop in its freight revenue from \$9.2 million in 2019 to just under \$7.8 million in 2020. Mr. Pannu does not expect this to improve in the foreseeable future. In fact, in a more recent affidavit sworn in August of this year, he states that Pannu Bros Trucking has recently lost a major grocery chain client, and thus the business is now suffering more. He deposes that he employs approximately 50 people and he is concerned that he might have to lay some of them off.

30 Mr. Pannu has also suffered loss of rental income on the Fraser Highway Property. He deposes that he and Pannu Bros Trucking are experiencing significant cash-flow difficulties.

31 Mr. Pannu states the CPLs severely limit his ability to raise cash because he cannot sell or leverage the equity in either the Bradner Road or the Fraser Highway Properties. He deposes he would like to sell the Bradner Road Property to generate cash for the business while the real estate market is doing well, but he cannot do so because of the CPL.

32 While Mr. Pannu appears to have a range of assets to draw on apart from these two properties, I accept in the circumstances of this case, and for the reasons that I will now describe, his inability to sell or leverage the equity in these properties causes hardship and inconvenience. I say that for three reasons.

33 First, the value of Mr. Gill's claim is grossly disproportionate to the value of these properties. Mr. Gill states in his affidavit that the monetary value of his claim ranges between \$330,000 to a maximum of, as I understand it, \$610,000 in a best-case scenario. Mr. Pannu estimates that the Bradner Road property is valued at around \$11.9 million and the Fraser Highway property is valued at around \$11 million. Thus, Mr. Pannu is faced with some \$22.9 million worth of property being locked up over a claim that is, at most, valued at \$610,000.

34 Second, Mr. Gill's evidence for a claim to an estate or interest in land is weak. I have heard and read a great deal about the merits of Mr. Gill's claim and of Mr. Pannu's defences to that claim. Through voluminous affidavit material, the parties have sought to persuade me of the merits of the positions each will take at trial. It is difficult to assess the relative merits in this application since much will turn on the testimony of the parties and their credibility. However, it is not the merit of the claim in general that matters, it is the merit of the claim to an estate or interest in the lands over which the CPLs have been registered: *De Cotiis v. De Cotiis*, 2004 BCSC 1658 [*De Cotiis*] at paras. 39 and 40.

35 In my respectful view, Mr. Gill's claim to an estate or interest in the Bradner Road and Fraser Highway Properties is weak on the evidence before me. It amounts to assertions that monies were spent on or in respect of those properties in the months following the sale of ABCC's Laurel Street Property. Mr. Gill asks the court to infer from the sequencing that the monies expended on these Properties must have come from the earlier sale of the Laurel Street Property. In my respectful view, however, this is little more than conjecture that provides a very thin basis on which to establish an estate or interest in lands that are otherwise wholly unrelated to the business of ABCC.

36 Third, I find Mr. Gill's claim is a monetary claim and the Bradner Road and Fraser Highway Properties have only been drawn into this litigation through the tenuous thread of para. 42 of the notice of civil claim. It is clear on the pleadings and the voluminous evidence before the Court on this application that this case is about money, not land, and if it is about land, it is not about the land over which the CPLs have been registered.

37 In these circumstances, I find that Mr. Pannu has established hardship and inconvenience in not being able to sell and leverage the Bradner Road or the Fraser Highway Properties because of the CPLs and, had I not found that the CPLs should be discharged under s. 215 of the *LTA*, I would have ordered that the CPLs be discharged under s. 257 of the *LTA*, subject to security.

[29] With the exception of hardship compounded by the Covid 19 pandemic, the effects of which may now be alleviated somewhat, PBT's inability to raise cash by selling or mortgaging the Bradner Property continues to cause hardship and inconvenience. Although I have not been at liberty to consider whether the plaintiff's pleadings disclose a claim for an estate or interest in land, it is clear to me that his claim is for money, not for land and continuing to impede PBT's dealings with a property, the value of which exceeds a likely money judgment, should the plaintiff succeed, by several orders of magnitude, is not in the interests of justice to maintain the CPL. I am satisfied that in these circumstances, which are essentially the same as those before Kirchner J., the registration of the CPL must be cancelled.

[30] Should security be ordered? I note, as did Kirchner J., following the hearing of the Prior Application, that where, as here, the plaintiff's claim for an estate or interest in specific lands may be weak, an undertaking to pay damages may constitute sufficient security. I note from the materials before me that Pannu has deposed to his willingness to provide such an undertaking.

## **RESULT**

1. The certificate of pending litigation registered under number CA9954212 against title to the Bradner Property will be cancelled;
2. Pannu will provide his undertaking in his own capacity and on behalf of PBT and PBH to abide by any order for damages that this Court may make as a result of cancellation of the CPL;
3. The Registrar of Land Titles shall cancel registration of the CPL accordingly;

4. The applicants will have their costs of this application at Scale B in any event of the cause payable forthwith after assessment.

[31] I have considered, and reject, the applicant’s claim for special costs of this application. I am not prepared to find that the plaintiff’s conduct in amending the NOCC following Kirchner J.’s findings was “reprehensible”, “scandalous”, “outrageous” or “worthy of rebuke”. While evidence in due course may establish that the filing of the CPL was designed to exert commercial pressure on the applicants, as is alleged, I am not satisfied, at this point, that the plaintiff was so motivated.

“Master Keighley”