

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Persad v. Chahal*,
2024 BCSC 728

Date: 20240501
Docket: S251651
Registry: New Westminster

Between:

Rakesh Persad

Plaintiff

And

**Amritpal Singh Chahal,
Jaspreet K. Gill, P.R.E.C.,
Jarnail S. Saran, P.R.E.C.,
and Sutton Group Alliances R.E.S. Ltd.**

Defendants

Before: The Honourable Justice Lamb

Reasons for Judgment

Counsel for the Plaintiff:

K. Jalilvand

Counsel for the Defendants:

R.S. Atwal

Place and Date of Hearing:

New Westminster, B.C.
February 28, 2024

Place and Date of Judgment:

New Westminster, B.C.
May 1, 2024

Introduction

[1] The defendant Amritpal Singh Chahal applies to strike a Certificate of Pending Litigation (“CPL”) registered by the plaintiff against property located at 8847 Adachi Terrace, Mission, BC (the “Property”) on the basis that the amended notice of civil claim (“Amended NCC”) does not claim an interest in land. The Property is owned by Mr. Chahal.

[2] The plaintiff describes the nature of the claim against Mr. Chahal as follows at para. 7 of the Amended NCC:

This case concerns the Plaintiff who agreed to purchase an empty lot in Mission and then have [Mr. Chahal] construct a home on the property. The Plaintiff says [Mr. Chahal] has materially breached terms of the Purchase Contract giving rise to the Plaintiff’s right to rescind the contract and return of his deposit.

[3] Mr. Chahal says that the plaintiff fails to claim an interest in the Property in the Amended NCC.

[4] The plaintiff says that the Amended NCC includes the following claims to an interest in the Property:

- a) The plaintiff’s claim to an equitable interest in the Property to the extent of the deposit he paid to purchase the Property; and
- b) The plaintiff’s claim that Mr. Chahal’s actions give rise to a substantive constructive trust.

[5] While the Amended NCC is not a model pleading, I accept that the Amended NCC advances a substantive constructive trust claim in the Property arising from Mr. Chahal’s alleged misrepresentation. While the Amended NCC says the essential claim is for breach of contract and return of the deposit he paid to Mr. Chahal, the Amended NCC read as a whole also alleges that Mr. Chahal’s misrepresentation induced the plaintiff to enter the Purchase Agreement, pursuant to which he paid the deposit that was used to maintain or improve the Property. I find the plaintiff’s claim

for a substantive constructive trust interest in the Property is sufficient to maintain the CPL.

Legal Framework

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

[7] Section 215(1)(a) of the *Land Title Act*, R.S.B.C. 1996, c. 250 allows a person who has commenced a proceeding and who is claiming an estate or interest in land to register a CPL against the land.

[8] In *Bilin v. Sidhu*, 2017 BCCA 429 at paras. 54–55, the Court of Appeal confirmed that a CPL may be struck if it was not valid in the first place because it did not involve a claim against land.

[9] When assessing whether there is a claim to an interest in land, the notice of civil claim must be read as a whole: *Batth v. Sharma*, 2024 BCCA 29 at para. 30.

[10] An interest in land includes both legal and equitable interests; however, the fact that a claim relates to land does not convert it into a claim for a proprietary interest: *Jacobs v. Yehia*, 2015 BCSC 267 at para. 24, rev'd on other grounds, 2016 BCCA 38.

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

Overview of the Amended NCC

[12] I will now turn to the claims advanced in the Amended NCC in this case.

[13] The plaintiff alleges the following facts in the Amended NCC:

- a) At all material times, Mr. Chahal has been the vendor of the Property;

- b) The other individual defendants were realtors who were representing the plaintiff for the purchase of the Property;
- c) The plaintiff relied upon the realtors when he entered into a contract with Mr. Chahal to buy the Property (the "Purchase Contract");
- d) Pursuant to the Purchase Contract, Mr. Chahal agreed to sell and the plaintiff agreed to buy the Property for the sum of \$1,625,000;
- e) The plaintiff paid a deposit of \$100,000 to Mr. Chahal in accordance with the Purchase Contract;
- f) Mr. Chahal failed to comply with various terms of the Purchase Contract, including failing to provide final inspection approval by the municipality and failing to complete a deficiencies list;
- g) "[D]ue to his concerns with deficiencies, failure to provide the Final Inspection and misrepresentation", the plaintiff rescinded the Purchase Contract and requested repayment of his deposit, which Mr. Chahal has neglected or refused to repay;
- h) Mr. Chahal owes a duty of care to the plaintiff to ensure that the representations made directly or indirectly to the plaintiff with respect to the Property were complete, true and accurate;
- i) In breach of their duty to the plaintiff, Mr. Chahal and the realtors misrepresented that there was no agency relationship between the defendants or a conflict of interest with respect to the plaintiff;
- j) Mr. Chahal failed to disclose his relationship with the realtors and intended that failure to disclose to induce the plaintiff to purchase the Property;
- k) Mr. Chahal knew or ought to have known that the plaintiff would rely on the realtors' representations that they were knowledgeable about buying and selling real estate;

- l) The plaintiff relied on the representations and was induced by the representations “to buy the Property”;
- m) Mr. Chahal and the realtors “acted in concert to deceive [the plaintiff] and to induce him into signing the Purchase [Contract]”; and
- n) Mr. Chahal used the deposit to maintain, preserve or improve the Property.

[14] At para. 13 of Part 2 of the Amended NCC, the plaintiff seeks a declaration that the plaintiff is entitled to an interest in the Property in the amount of \$100,000 “as a result of SND using the Deposit to maintain, preserve or improve the Property”. “SND” is not defined in the Amended NCC nor is it a party to this action. The plaintiff does not specifically seek a similar declaration with respect to Mr. Chahal’s use of the deposit.

[15] At para. 14 of Part 2 of the Amended NCC, the plaintiff seeks a declaration that Mr. Chahal holds an express or resulting trust as trustee in favour of the plaintiff as beneficiary for the amounts owing to the plaintiff.

[16] At para. 16 of Part 2 of the Amended NCC, the plaintiff seeks “an order that the defendants have been unjustly enriched at the expense of the plaintiff”. However, the plaintiff acknowledged during submissions that the plea of unjust enrichment is not made out on the facts pleaded.

Plaintiff’s claim to an equitable interest in the Property

[17] The plaintiff argues that the alleged payment of the deposit of \$100,000 to Mr. Chahal for purchase of the Property entitles him to an equivalent equitable interest in the Property. The plaintiff relies on cases that recognized a claim for an interest in land may include a claim for a purchaser’s lien or for an equitable mortgage. However, the Amended NCC does not assert a claim to a purchaser’s lien or an equitable charge on the Property. Further, the Amended NCC does not claim a

purchase money resulting trust. In any event, and most significantly, the material facts required to support such claims have been pleaded.

[18] Section 215(1) of the *Land Title Act* allows a plaintiff to file a CPL if they claim an interest in land. The key issue is whether the Amended NCC includes a claim to an interest in land.

[19] The plaintiff says that he is entitled to a purchaser's lien, which is an equitable interest in land. In *Pan Canadian Mortgage Group III Inc. v. 0859811 B.C. Ltd.*, 2014 BCCA 113 [*Pan Canadian*], the Court of Appeal recognized a purchaser's lien in a case where a number of individuals had advanced funds pursuant to investment contracts with the expectation that they would receive a townhouse once the property was developed. The recipient of the funds made a number of misrepresentations, including that the property would not be encumbered other than by a construction mortgage. When the property was foreclosed upon, the remaining funds after sale of the property were claimed by various unsecured creditors and the individuals who thought they were buying a future townhouse. The Court of Appeal at para. 1 confirmed that a purchaser's lien is "available to a purchaser who has paid all or part of the purchase price to the vendor of real or other property pursuant to a valid contract". The lien provides the purchaser with a security interest or charge against the property to the extent of the money paid plus interest and costs if the purchase fails to complete through no fault of the purchaser.

[20] In *1305788 B.C. Ltd. v. Sodhi Dream Homes Ltd.*, 2023 BCSC 445, Justice Gibb-Carsley distilled the nature of a purchaser's lien from paras. 1, 2 and 32 from *Pan Canadian*:

[42] In my view, the important element of a purchaser's lien from the above passages is that it is an equitable remedy that developed to prevent injustice. In this regard, it is important that the failure of the transfer of legal title to the land, in other words the failure of the contract to complete, was not the fault of the purchaser. Second, a purchaser's lien appears available to a purchaser who provides a deposit for the purchase of land but has no other means to recover the funds paid as a deposit.

[21] Mr. Chahal says and I agree that the plaintiff may be entitled to claim a purchaser's lien, which would amount to an equitable claim to an interest in the Property; however, the Amended NCC fails to assert such a claim. The requisite material facts have not been pleaded, as there is no allegation that the plaintiff has no way to recover the funds paid as a deposit except through a purchaser's lien. In any event, the Amended NCC fails to advance a claim for a purchaser's lien.

[22] The plaintiff says that he is entitled to equitable relief in the form of an equitable mortgage. Justice Horsman (as she then was) explained an equitable mortgage as follows in *Wu v. Xiao*, 2021 BCSC 1692:

[33] The essence of an equitable mortgage is an intention to make property security for a debt or a present advance. The document creating the mortgage need not use the formal wording of "transfer" or "mortgage" or "assign", but it must in some manner show an intention to grant a property interest to the mortgagee as security for the debt: *Dunclm Resort Inc. v. Rendezvous Lodge Ltd.* (1998), 52 B.C.L.R. (3d) 64 (C.A.) at para. 7. An equitable mortgage creates a charge, in equity, on the property: *Ben 102 Enterprises Ltd. v. Ben 105 Enterprises Ltd.*, 2007 BCSC 1069 at para. 32. Such a charge, in my view, constitutes an interest in land that may support a CPL.

[23] In *Wu*, the plaintiff alleged that the defendants misappropriated the plaintiff's funds and used those funds to improve or maintain two properties. The relief sought by the plaintiff in *Wu* included a declaration that the plaintiff held an equitable mortgage based on the defendants' broken promise that the plaintiff's funds would be secured by a mortgage over the two properties. Horsman J. confirmed that the plaintiff's pleading of an equitable mortgage was sufficient to establish an interest in land under s. 215 of the *Land Title Act*.

[24] Once again, Mr. Chahal says and I agree that the plaintiff may be entitled to claim an equitable mortgage, which would amount to an equitable claim to an interest in the Property; however, the plaintiff acknowledged during submissions that he did not assert an equitable charge on the Property in the Amended NCC. Further, the requisite material facts to support such a claim have not been pleaded, as there is no allegation that Mr. Chahal agreed to secure the deposit funds by granting the

plaintiff a mortgage against the Property: *Wu* at paras. 33–34. In any event, the Amended NCC fails to advance a claim for an equitable mortgage.

[25] The plaintiff relies on *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33 to argue that a resulting trust may arise when a party pays a deposit in partial payment of the purchase price for property. The Supreme Court of Canada explained the nature of a purchase money resulting trust as follows:

[21] The purchase money resulting trust is a species of gratuitous transfer resulting trust, where a person advances a contribution to the purchase price of property without taking legal title. Gratuitous transfer resulting trusts presumptively arise any time a person voluntarily transfers property to another unrelated person or purchases property in another person’s name (D. W. M. Waters, M. R. Gillen and L. D. Smith, eds., *Waters’ Law of Trusts in Canada* (4th ed. 2012), at p. 397).

[26] However, in this case, according to the Amended NCC, the plaintiff did not advance the funds “gratuitously”. Instead, the plaintiff paid the deposit in accordance with the terms of the Purchase Contract and in exchange for consideration to be provided by Mr. Chahal.

[27] Further, the plaintiff did not contribute to the purchase of the Property in Mr. Chahal’s name; Mr. Chahal already owned the Property. As stated by the Supreme Court of Canada at para. 12 of *Kerr v. Baranow*, 2011 SCC 10, “the trust of a legal estate, whether in the names of the purchaser or others, ‘results’ to the person who advances the purchase money”. However, the plaintiff did not advance the purchase money that allowed Mr. Chahal to buy the Property. The plaintiff simply paid a deposit toward the purchase price as part of his agreement to buy the Property from Mr. Chahal.

[28] As the Supreme Court of Canada explained in *Nishi*:

[29] ... equity presumes bargains rather than gifts (*Pecore*, at para. 24). In the context of a purchase money resulting trust, the presumption is that the person who advanced purchase money intended to assume the beneficial interest in the property in proportion to his or her contribution to the purchase price (see *Waters’ Law of Trusts in Canada*, at p. 401).

[29] That is not the case here. The deposit was not a contribution to the purchase price (as was the case in *Nishi*), and the plaintiff did not intend to assume ownership in proportion to the down payment. In this case, the plaintiff intended to receive transfer of title to the Property in accordance with the terms of the Purchase Contract.

[30] In the Amended NCC, the plaintiff did seek a declaration that Mr. Chahal holds a resulting trust in favour of the plaintiff “as beneficiary for the amounts owing to the Plaintiff”. However, the pleading does not connect this remedy to the Property, based on the deposit paid or otherwise.

[31] The plaintiff pleads that he paid a deposit to purchase the Property pursuant to the Purchase Contract and that he is entitled to rescind the Purchase Contract and demand the return of his deposit because Mr. Chahal breached the Purchase Contract. This is far different from alleging material facts required to establish a resulting trust interest in the Property.

Plaintiff’s claim to a substantive constructive trust

[32] Reading the Amended NCC as a whole, the plaintiff has pled the facts necessary to support a substantive constructive trust and to claim an interest in land.

[33] The plaintiff does not expressly plead a substantive constructive trust, but the failure to do so is not determinative: *Batth* at para. 37. Further, as the law currently stands, it is not clear that it is necessary to *plead* that damages are an inadequate remedy in order to claim a constructive trust: *Batth* at paras. 34–35. On the other hand, it is necessary to *prove* that damages are inadequate before a constructive trust will be imposed: *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 92.

[34] A constructive trust “may be imposed where good conscience so requires”: *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217 at para. 34, 1997 CanLII 346.

Traditionally, courts have recognized that a trust may arise from the defendant’s

wrongful act: *Vidcom Communications Ltd. v. Rattan*, 2022 BCSC 562 at para. 23, quoting *BNSF Railway Company v. Teck Metals Ltd.*, 2016 BCCA 350 at para. 24.

[35] The plaintiff concedes that the pleadings do not allege a viable claim in unjust enrichment as against Mr. Chahal. There is no allegation that Mr. Chahal owed the plaintiff a fiduciary duty or that Mr. Chahal wrongfully converted funds.

[36] The plaintiff argues the alleged conspiracy to deceive between the defendants gives rise to a claim for a substantive constructive trust. In the Amended NCC, the plaintiff alleges that Mr. Chahal acted in concert with the realtors to deceive the plaintiff and induce him to enter the Purchase Agreement. The plaintiff also alleges that he paid the deposit pursuant to the Purchase Agreement. The plaintiff argues that these material facts give rise to a claim to a trust interest. The challenge is that the pleading does not establish a link between the alleged deceit and an interest in the Property.

[37] However, the plaintiff did allege that Mr. Chahal made misrepresentations that induced the plaintiff “to purchase the Property”. Although the plaintiff did not actually “purchase the Property”, I accept that this allegation read in the context of the Amended NCC suggests the plaintiff was induced to enter into the Purchase Contract and pay the deposit. This is the wrongful act that is capable of giving rise to a constructive trust. The plaintiff goes on to allege that the deposit was used by Mr. Chahal to maintain or improve the Property, thus providing the connection to the Property.

[38] The plaintiff does not expressly plead a substantive constructive trust in Part 2 of the Amended NCC; however, an express pleading is not required to find that an interest in land has been claimed: *Batth* at para. 37. The plaintiff does seek a declaration that he has an interest in land at para. 13 of Part 2 of the Amended NCC, though he misidentifies the basis upon which he alleges entitlement to such an interest. I am satisfied that reading the Amended NCC as a whole, the basis on which the interest is claimed is discernible: Part 1 of the Amended NCC at paras. 21, 23, 27, 30, 32 and 35.

[39] By explicitly identifying the nature of the claim as a claim for return of deposit, the Amended NCC implies that damages are an adequate remedy in this case, which raises the prospect that the substantive constructive trust claim is advanced to justify a CPL for the improper purpose of gaining leverage or securing a financial advantage: *Drein v. Puleo*, 2016 BCSC 593 at paras. 8 and 10. However, given my finding that the plaintiff has advanced a viable claim to a substantive constructive trust as an alternative to his claim for damages, it would be speculative to find that the substantive constructive trust claim was advanced for an improper purpose.

[40] As a result, I find that the Amended NCC alleges a viable constructive trust claim in the Property sufficient to satisfy s. 215 of the *Land Title Act*.

Conclusion

[41] Mr. Chahal’s application to strike the CPL registered against the Property is dismissed.

[42] I award the plaintiff costs of this application in the cause.

“Lamb J.”