

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1355866 B.C. Ltd. v. Chahal*,
2024 BCSC 758

Date: 20240503
Docket: S245012
Registry: New Westminster

Between:

1355866 B.C. Ltd. and Olympia Holdings Inc.

Plaintiffs

And

**Amritpal Singh Chahal, Manpreet Kaur Chahal, 1356423 B.C. Ltd.,
1344192 B.C. Ltd. and RKK Logistics Inc.**

Defendants

Before: The Honourable Madam Justice Murray

Reasons for Judgment

Counsel for the Plaintiffs:

B.J. Hicks

Counsel for the Defendants, Amritpal Singh
Chahal, Manpreet Kaur Chahal, 1356423
B.C. Ltd. and 1344192 B.C. Ltd.:

R.S. Atwal

No Other Appearances

Place and Date of Hearing:

New Westminster, B.C.
April 26, 2024

Place and Date of Judgment:

New Westminster, B.C.
May 3, 2024

INTRODUCTION

[1] The Defendant applicants Amritpal Singh Chahal, Manpreet Kaur Chahal and 1356423 B.C. Ltd. (1356) apply to:

- a) cancel the certificates of pending litigation (“CPLs”) filed by the plaintiff 1355866 B.C. Ltd. (1355) pursuant to ss. 215, 256 and 257 of the *Land Title Act*, R.S.B.C. 1996, c. 250 (*LTA*);
- b) cancel the mortgage registered by 1355 on a residential property in Abbotsford pursuant to Rule 9-6; and
- c) have the plaintiffs post security for costs in the amount of \$25,000 and to stay this action until same is posted.

[2] The plaintiff companies are related entities. Both are controlled by property developers Gary Sran and his father Satinder Sran. The defendant companies 1356, 1344192 B.C. Ltd. (1344) and RKK Logistics Inc. (RKK) are also related entities. They are all controlled by Amritpal Chahal. Defendant Manpreet Kaur Chahal is Amritpal’s wife.

[3] This application involves three properties on McCallum Road in Abbotsford that are to be assembled for the purpose of building condominiums. The properties were originally purchased by Olympia. Olympia assigned the contract to 1344 who then on January 31, 2022, assigned it to RKK. Under the terms of the RKK assignment, RKK was to pay Olympia \$1,500,000: \$200,000 within 24 hours of signing and the balance upon closing of the purchase and sale of McCallum. RKK paid the \$200,000. The closing date was March 29, 2022.

[4] On the day before closing, March 28, 2022, Olympia demanded that RKK perform its obligations under the assignment stating that if they failed to do so Olympia would terminate the RKK assignment and purchase the McCallum properties itself. At a meeting that day, Mr. Chahal on behalf of RKK advised the representative of Olympia that RKK was having trouble arranging the purchase price

and assignment fee. Olympia agreed to reduce the remaining assignment fee to \$1.2m from \$1.3m.

- a) The next day, March 29, Mr. Chahal advised the Srans that he would not be able to pay the assignment fee and requested that the time to pay it be extended to 30 days after the closing. On March 30, 2022, Olympia entered into an addendum to the contract with the seller that provided that closing was moved from March 29 to April 4, 2022 for an extension fee of

[5] RKK agreed to pay the extension fee and additional deposit.

[6] On March 30, 2022, Gary Sran and Mr. Chahal met. What was agreed to on that date is in dispute. The defendant applicants say the plaintiffs agreed to loan them \$1.2m in return for mortgages on the McCallum properties and the Chahal's residential property in Abbotsford and the plaintiffs agreed to reduce the assignment fee to \$75,000.

[7] The plaintiffs contend that they agreed to restructure the assignment fee as follows:

- a) The total balance owing of the assignment fee would remain \$1.2m;
- b) The amount due on closing would be reduced to \$75,000 from \$1.2m;
- c) The balance, \$1.125m would be due and payable on May 4, 2022, and
- d) As security for the outstanding portion of the assignment fee Olympia would be entitled to a mortgage on each of the three McCallum properties and a mortgage on the Chahal's residential property in Abbotsford.

[8] Whatever the agreement, the mortgages were registered including a mortgage against the Chahal's residential property.

[9] In the meantime, Olympia took steps to be able to complete the sale if RKK could not, including depositing \$1.7m with their lawyers and arranging financing for the balance.

[10] On April 5, 2022, RKK assigned its interest in the contract to 1356. On April 11, 2022, 1356 completed the purchase and sale of the McCallum properties.

[11] Prior to this application, the defendant applicants did not dispute their obligation to pay the balance of the assignment fee or to have mortgages registered on the McCallum properties.

[12] The mortgage remains on the Chahal's residence however there are other charges on the property that exceed its value making it unlikely that 1355 would ever be able to realize anything.

ISSUES

[13] The issues on this application are as follows;

- 1) Whether the mortgage filed by 1355 should be cancelled pursuant to R. 9-6;
- 2) Whether the CPLs filed by 1355 should be cancelled; and
- 3) Whether the plaintiffs should have to post security for costs in the amount of \$25,000.

[14] I will consider each in turn.

ISSUE 1: Whether the mortgage filed by 1355 should be cancelled pursuant to Rule 9-6

[15] Rule 9-6, the summary judgment rule, is employed to prevent claims or defences that have no chance of success from proceeding to trial.

[16] The onus is on the party seeking the summary dismissal to prove that there is no genuine issue for trial. If the defendant is able to meet this high bar, the burden

shifts to the plaintiff to refute or counter the defendant's evidence: *Canada v. Lameman*, 2008 SCC 14 at paras.10 and 11.

[17] The applicant in this case has failed to meet that burden. The respondents' version of events leading to the registration of the mortgages is plausible. Additionally, there is evidence upon which it could be found that Mr. Chahal controls or at the very least acted on behalf of both RKK and 1356.

[18] The application under R. 9-6 is dismissed.

ISSUE 2: Whether the CPLs filed by 1355 should be cancelled

[19] A CPL is an extraordinary pre-judgment mechanism intended only to protect a valid claim to an interest in land until issues can be resolved.

[20] Section 215(1) of the *LTA* permits a party to a proceeding who is claiming "an estate or interest in land" to register a CPL against the land.

[21] The key to s. 215(1)(a) is that the CPL must be grounded in a claim to an interest in land.

[22] It is improper to file a CPL as leverage to secure a financial claim: *Drein v. Puleo*, 2016 BCSC 593 at paras. 8-10.

[23] If the plaintiff has raised a triable issue, the court may still cancel the CPL on the basis of hardship and order the posting of alternate security, particularly where damages will be an adequate remedy if the plaintiff succeeds at trial: *0861695 B.C. Ltd. v. Meola*, 2013 BCSC 121 at para. 10.

[24] The authority to cancel a CPL derives from ss. 256 and 257 of the *LTA*. Section 256 allows the registered owner of property to apply to have a CPL cancelled if hardship and inconvenience are, or are likely to be experienced as a result of it. Pursuant to s. 257 the court if satisfied may, *inter alia*, order the cancellation of the registration of the CPL either in whole or in part on the applicant posting security.

[25] The hardship or inconvenience does not have to be significant: *Enigma Investments Corp. v. Henderson Land Holdings (Canada) Ltd.*, 2007 BCSC 1379 at para. 24. In determining what alternate security is appropriate, the court may consider the strength or weakness of the plaintiff's claim: *De Cotiis and Others v. De Cotiis et al*, 2004 BCSC 1658 at para. 40

[26] The applicant argues that the respondents' pleadings do not disclose an interest in the property. I disagree. The plaintiffs plead an equitable mortgage over the McCallum properties as security for the unpaid security which gives them an interest in the properties.

[27] According to the applicants, they are in the midst of developing the McCallum properties and have procured financing to satisfy the existing mortgages on title. This financing is subject to the cancellation of the respondents' CPLs.

[28] The respondents concede that the CPLs are causing the applicants undue hardship. The question then becomes what if any security is appropriate.

[29] The applicants argue that the respondents have at best a weak claim to an interest in the land and that as such the CPLs ought to be cancelled without security or undertaking as to damages. The respondents submit that the applicants should post security of the amount owing on the assignment fee inclusive of interest which equals just over \$1.15m.

[30] The applicants are not in a position to post security. The properties are in foreclosure. The refinancing will allow them to pay the debts in its entirety.

[31] I am satisfied that the plaintiffs' claim is for the McCallum properties. This conclusion is based on the respondents' assertions that the properties could have been sold for substantially more than they were sold for. To not cancel the CPLs at least temporarily will make foreclosure a certainty which seems to be the aim of the respondents. If the applicants are foreclosed on, the respondents can sell the properties for a higher price.

[32] As the applicants are not in a position to provide sufficient security to satisfy the respondents' claim, I am left with two alternatives: discharge the CPL on the applicants' undertaking to pay damages or temporarily lift the CPL to allow them to refinance. I am satisfied that the appropriate course is to order a temporary discharge of the CPLs to permit the applicants to complete refinancing. In reaching this conclusion I take into account my view that based on the evidence presented to me, the plaintiffs' case is such that success is not a certainty. In my view, there are triable issues. I find support for this decision in Walker, J's decision in *Treasure Bay HK Limited v. 1115830 B.C. Ltd.*, 2024 BCSC 294 [*Treasure Bay*].

[33] I order that the respondents remove the CPLs until refinancing is complete. Upon completion of the refinancing, the respondents may refile the CPLs. In addition, following *Treasure Bay*, I make the following orders to protect the parties in the interim: first, no other charge or security may be registered against title to the McCallum properties unless otherwise ordered by the court in this action; and second, no party to this action or anyone acting or purporting to act on their behalf may enter into any agreement that purports, directly or indirectly, to grant an equitable mortgage or any other charge in equity over the McCallum properties.

ISSUE 3: Whether the plaintiffs should have to post security for costs in the amount of \$25,000

[34] I will repeat the law as I stated it in *Protea Consultax Inc. v. Air Canada*, 2018 BCSC 995:

[3] The court has jurisdiction to require the plaintiff to post security for costs pursuant to s. 236 of the *Business Corporations Act*, S.B.C. 2002, c. 57 [BCA] which provides:

236. If a corporation is the plaintiff in a legal proceeding brought before the Court, and if it appears that the corporation will be unable to pay the costs of the defendant, if the defendant is successful in the defence, the court may require security to be given by the corporation for those costs, and may stay all legal proceedings until the security is given.

[4] The purpose of an order for security for costs is to protect a defendant from the likelihood that, in the event of its success, it will be unable to recover its costs from the plaintiff: *Fat Mel's Restaurant Ltd. v. Canadian Northern Shield Insurance Co.* (1993), 76 B.C.L.R. (2d) 231, B.C.J. No. 507.

[5] The legal test to be applied on an application for security for costs has been set out by our courts in this way:

- a) the defendant must make out a *prima facie* case that the plaintiff would be unable to pay the defendant's costs if the plaintiff's claim fails;
- b) the plaintiff may resist an order for security by showing that it has sufficient assets to satisfy an award for costs, or that the defendant has no arguable defence to its claim;
- c) if a security is warranted, the amount is discretionary; and
- d) the court can consider whether an order for security would visit undue hardship on a plaintiff such that it would prevent the plaintiff's case from being heard. This has also been described as the security order "stifling" the plaintiff's claim.

[35] I am not satisfied that the applicants have established a *prima facie* case that the plaintiffs would be unable to pay a costs award. Accordingly, this application is dismissed.

CONCLUSION

[36] I make the following orders:

- 1) The application to cancel the mortgage is dismissed;
- 2) The application for the respondents to post security for costs is dismissed;
- 3) The application to dismiss the CPL is dismissed;
- 4) The CPLs on the following properties are temporarily discharged to permit the applicants to secure refinancing. I leave it to the parties to work out the details:
 - a) Located at: 2272 McCallum Road, Abbotsford, British Columbia.
PID: 007-538-308
Lot 1 Section 15 Township 16 New Westminster District Plan 6068
 - b) Located at: 2262 McCallum Road, Abbotsford, British Columbia.
PID: 007-538-316
Lot 2 Section 15 Township 16 New Westminster District Plan 6068

c) Located at: 2272 McCallum Road, Abbotsford, British Columbia.

PID: 011-169-346

Lot 3 Section 15 Township 16 New Westminster District Plan 6068

- 5) In the interim no other charge or security may be registered against title to the McCallum properties unless otherwise ordered by the court in this action;
- 6) Further in the interim no party to this action or anyone acting or purporting to act on their behalf may enter into any agreement that purports, directly or indirectly, to grant an equitable mortgage or any other charge in equity over the McCallum properties.

[37] As success is divided the parties shall bear their own costs.

“The Honourable Madam Justice Murray”