

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wai v. Chung*,
2024 BCSC 1238

Date: 20240612
Docket: S194800
Registry: Vancouver

Between:

Kimberly King Yi Wai

Plaintiff

And

Karen Elizabeth Lau Chung and Anthony Man Kit Yim

Defendants

Before: The Honourable Mr. Justice Brongers

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

C. Lo

Counsel for the Defendants:

F.K. Hodal
S. Ai, Articling Student

Place and Date of Hearing:

Vancouver, B.C.
June 12, 2024

Place and Date of Judgment:

Vancouver, B.C.
June 12, 2024

[1] **THE COURT:** Despite the able submissions of Mr. Ai on behalf of the defendants, I am not persuaded that it is plain and obvious that the plaintiff's notice of civil claim does not disclose a reasonable cause of action against the defendant, Mr. Yim, or that it would otherwise be justified to remove him as a party to this litigation.

[2] To the contrary, I find that the notice of civil claim arguably sets out a reasonable cause of action in fraud, conspiracy and/or unjust enrichment against the two defendant spouses, Ms. Chung and Mr. Yim. While the bulk of the factual allegations set out in the notice of civil claim pertains to the alleged conduct of Ms. Chung, paragraphs 35 to 38 include allegations that Ms. Chung misappropriated funds paid by the plaintiff, Ms. Wai, for the purpose of investing in a childcare business and instead used the funds to purchase real estate owned by Ms. Chung and her spouse, Mr. Yim. In my view, this pleading is sufficient to justify maintaining Mr. Yim as a named defendant.

[3] Now, it is true that the defendants were successful in applying to cancel a certificate of pending litigation, what I will refer to as a CPL, that had been registered against the real estate owned by Ms. Chung and Mr. Yim as per the decision of Justice D. MacDonald in *Wai v. Chung*, 2020 BCSC 34. In her reasons for judgment, Justice MacDonald wrote at paragraphs 29 to 31, and I quote:

[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.

[30] I have some sympathy for the position of the plaintiff because she may not be in possession of many of the relevant documents. That is the subject matter of another application. However, I am not persuaded the funds are sufficiently connected to the Property to satisfy the requirements of s. 215 of the *LTA*.

[31] In these circumstances it is appropriate to cancel the CPL.

[4] However, the test that applies to an application to cancel a CPL under the *Land Title Act* is different from the one that applies to a motion to strike. It does not follow that because a defendant succeeds in having a CPL set aside because the

pleadings do not show a sufficient interest in land that a defendant is then entitled to have the entire claim dismissed against them, as well.

[5] That said, I agree with Justice MacDonald that the plaintiff's pleadings regarding how the defendants used the funds to purchase the property are not as precise as they could be, although this may be because there has been insufficient discovery at this stage. Indeed, I understood Mr. Lo to say that efforts are going to be made to move this litigation forward, which I trust will include providing further particulars as more information is exchanged between the parties.

[6] However, in my view, at this stage of the proceedings the pleadings are adequate to give both defendants sufficient notice generally of the case they have to meet. They are certainly not so defective as to justify an order that would effectively dismiss the action as against Mr. Yim at this stage of the proceedings.

[7] For all of these reasons, the defendants' application is dismissed.

[8] Costs are in the cause.

[9] Thank you for your submissions.

“Brongers J.”