

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ladhar v. Ladhar*,
2024 BCSC 153

Date: 20240201
Docket: S236503
Registry: Vancouver

Between:

**Harveer Ladhar, in her capacity as Administrator of the Estate of
Agya Pal Singh Ladhar, deceased**

Plaintiff

And

**Jaskirat Singh Ladhar, Navjeevan Ladhar, Ladhar Development Ltd., Ladhar
Development Group Ltd.**

Defendants

Corrected Judgment: The cover page and the text of the Judgement were corrected
at paragraphs 6 and 30 on February 7, 2024.

Before: The Honourable Justice K. Loo

Reasons for Judgment

Counsel for the Plaintiff:

E.B. Clavier

Counsel for the Defendants:

J.M. Richter

Place and Date of Hearing:

Vancouver, B.C.
January 25, 2024

Place and Date of Judgment:

Vancouver, B.C.
February 1, 2024

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[1] This is an application under s. 256(1) of the *Land Title Act*, R.S.B.C. 1996, c. 250 (the “LTA”) for an order cancelling a certificate of pending litigation (the “CPL”) filed by the plaintiff on September 22, 2023 against a property at 7946 14th Avenue, Burnaby, British Columbia (the “14th Avenue Property”).

[2] The underlying disputes are complicated. This claim is advanced by the estate of Agya Pal Singh Ladhar (“Paul Ladhar”) who died on March 21, 2020 (the “Estate”).

[3] There is a second action – Vancouver Registry no. 216433 (the “Prior Action”) – advanced by the Estate arising from the same fact situation although it seeks different relief. The Prior Action seeks relief on behalf of the Estate, including proprietary interests, in seven different properties, including a property at 6607 Randolph Avenue, Burnaby (“6607”), but not the 14th Avenue Property.

[4] I understand from counsel that the two actions are likely to be tried together.

[5] Jaskirat Ladhar is Paul Ladhar’s brother. Navjeevan Ladhar is Jaskirat Ladhar’s son.

[6] There are two companies with similar names. Ladhar Development Ltd. was a company owned by Paul Ladhar. It is no longer operating. Ladhar Development Group Ltd. is owned by Jaskirat Ladhar and Navjeevan Ladhar.

[7] Broadly speaking, the Estate submits that Paul Ladhar was successful in his real estate ventures, and he invested the profits earned into his company, Ladhar Development Ltd. and into various properties including 6607. It is alleged that Navjeevan Ladhar did not make any financial or other contributions to 6607.

[8] On December 18, 2020, Navjeevan Ladhar mortgaged 6607 to a private lender for the principal amount of \$600,000. In the present action, the Estate seeks to trace funds obtained by that mortgage (the “6607 Mortgage Proceeds”) into the 14th Avenue Property, and claims a constructive trust in the 14th Avenue Property.

[9] The 14th Avenue Property is owned by Navjeevan Ladhar.

[10] On September 21, 2023, the Estate commenced this action. The Notice of Claim seeks:

- a) A declaration that Navjeevan Ladhar, Jaskirat Ladhar, and or Ladhar Development Group Ltd. applied the Mortgage Proceeds and other funds belonging to Ladhar Development Ltd. towards the purchase and development of the 14th Avenue Property;
- b) A declaration that Navjeevan Ladhar, Jaskirat Ladhar, and or Ladhar Development Group Ltd. hold/s some or all of the 14th Avenue Property in a constructive trust for Paul Ladhar or the Estate and Ladhar Development Ltd.

[11] The “Mortgage Proceeds” referred to in the Notice of Civil Claim are the 6607 Mortgage Proceeds.

Legal Framework

[12] This application is governed by ss. 256 and 257 of the *Land Title Act*:

- 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.

(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.

[13] There are three issues to be determined on this action:

- a) Is there hardship and inconvenience in this case within the meaning of s. 256(1)(b)?
- b) If there is hardship and inconvenience, should this Court cancel the CPL under s. 257(1)(a) and order the defendants to pay security, or should it refuse to cancel the CPL under s. 257(1)(b) and order the plaintiffs to enter into an undertaking to abide by any order that the court may make as to damages, and to give security for that undertaking?
- c) If there is hardship and inconvenience and an order is made pursuant to s. 257, how much security should be ordered?

Hardship and Inconvenience

[14] In *Kaur v. Chandler*, 2018 BCSC 1283, this Court held:

[44] It is not enough to show "insignificant" or "trifling" hardship or inconvenience; on the other hand, the court is not to be "exacting" in its analysis: *Youyi Group* at para. 28.

[45] Examples of hardship and inconvenience will vary from case to case and require an analysis of the particular circumstances before the Court. Examples of hardship and inconvenience caused by CPLs can generally include: impeding the ability to close a sale (*Marrello and Enigma*); impeding a sale process where the CPL is dissuading persons from making an offer (*Watson Island Development Corp. v. Prince Rupert (City)*, 2015 BCSC 1474 at paras. 37-41); and impeding the ability to obtain financing for the continued development of the lands: *Syed v. Randhawa*, [1993] B.C.W.L.D. 1899 at paras. 15-19 and 23 (S.C.) (WL).

[15] In this case, the defendants have given evidence of a contract of purchase and sale between Navjeevan Ladhar and third-party buyers dated January 5, 2024. The completion date under the contract is April 16, 2024. The CPL would preclude this sale if it is not discharged before or at the time of the sale's completion.

[16] There is evidence before the Court that Navjeevan Ladhar financed the purchase of the 14th Avenue Property, in part, by funds borrowed from his father Jaskirat Ladhar and from Ladhar Development Group Ltd. and, in part, by means of mortgage loans from private lenders for \$800,000 and \$700,000. The interest rate for both mortgage loans is approximately 8%.

[17] Navjeevan Ladhar has deposed that he needs to sell the property to stop the substantial interest payments on this debt, which he says total more than \$14,000 per month.

[18] As indicated in *Kaur*, the fact that a CPL impedes the ability to close a sale can be hardship within the meaning of that word as it is used in s. 257, and I find that hardship exists for that reason in this case.

The Appropriate Order Under s. 257.

[19] Counsel for the Estate advised the Court that the Estate is not prepared to offer an undertaking pursuant to s. 257(1)(b). In other words, counsel advised that if an undertaking as to damages from the Estate is a condition of an order refusing the cancellation of the CPL, the Estate elects to seek security from the defendants in connection with the cancellation of the CPL instead.

[20] In light of the Estate's position on this issue, the CPL will be cancelled under s. 257(1)(a). The next issue to be considered concerns the amount of security to be ordered.

Quantum of Security

[21] As indicated above, s. 257(3) provides:

(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.

[22] Regarding the application of this sub-section, I find the decision in *Wosnack v. Ficych*, 2022 BCCA 139 to be of assistance. In that case, the Court of Appeal held at paras. 39 and 42:

... Perhaps more importantly, it is my view that the judge erred by failing to undertake any assessment of the respondents' probability of success in their claims to the Property. Instead, the judge required the appellant to establish his probability of entitlement to the proceeds and effectively defaulted against him because the matter was brought too early in the proceedings...

Given that the application was brought on short leave in the early stages of the litigation, the record was deficient in many ways. Affidavits filed by the parties included inadmissible hearsay and opinion, and assertions of belief with little if any supporting facts. Given the undeveloped state of the record, the judge could only have concluded that many essential facts were in dispute and the outcome was uncertain. In these circumstances, and in light of the principles the judge was obliged to apply, the amount of security should have been no more than 50% of the proceeds of sale. Any more than that would exceed the amount the respondents could hope to obtain in relation to their claims to the Property.

[Emphasis in the original.]

[23] In this case, the plaintiff makes a point similar to the view taken by the trial judge in *Wosnack* – that it is too early in the proceedings to quantify the Estate's claim or to assess its probability of success and so the Court should secure all of the net proceeds.

[24] As in *Wosnack*, it is not possible for the Court on this application to make a comprehensive assessment of the merits, but it would be an error for this Court to

fail to make any assessment. It is required to give some consideration to the probability of success in the underlying action.

[25] In this regard, the defendants have advanced evidence showing the sources of funds used to purchase the 14th Avenue Property. As indicated above, Navjeevan Ladhar deposed that he financed the purchase of the property in part by funds borrowed from his father Jaskirat Ladhar and from Ladhar Development Group Ltd. and in part by means of mortgage loans from private lenders for \$800,000 and \$700,000. They submit that this evidence demonstrates that the funds for the 14th Avenue Property did not come from the 6607 Mortgage Proceeds as alleged.

[26] Further, they argue that the mortgage on 6607 was discharged before the 14th Avenue Property was purchased, and that, therefore, the 6607 Mortgage Proceeds could not have been used to purchase the 14th Avenue Property.

[27] In response, the Estate alleges that the 6607 Mortgage Proceeds flowed to Jaskirat Ladhar and Ladhar Development Group Ltd. and that tracing may well show that the funds received by Navjeevan Ladhar to purchase the 14th Avenue Property included some or all of the 6607 Mortgage Proceeds.

[28] This case is like *Wosnack* in the sense that the record is undeveloped, many essential facts are in dispute and the outcome is uncertain. In light of the conflicting positions and the lack of clarity in the evidence, it is my view that it would be appropriate to require the defendants to post security, as a condition of the removal of the CPL, equal to half of the net proceeds of the sale of the 14th Avenue Property.

[29] Those net proceeds shall be the sale proceeds (expected to be \$2.75 million), less the amounts required to pay out the two mortgages on the 14th Avenue Property (which would have priority over any claims of the Estate), less any transaction costs, including realtor costs and legal costs of the sale.

[30] The defendants take the position that the other loans made by Navjeevan Ladhar to purchase the 14th Avenue Property were high interest loans, like the mortgage loans, and that the defendants should be entitled to pay back those

amounts as well, using the sales proceeds. However, these are debts personally owed by Navjeevan Ladhar, not claims secured against the property. The fact that Navjeevan Ladhar or one of the other defendants may be required to pay significant interest on amounts which must be posted as security may be the subject of a later claim against the Estate if the Estate's claim against the 14th Avenue Property fails, but it is not a reason to exclude those amounts from an order for security.

[31] The defendants also argue that in the Prior Action, there are CPLs over other properties including 6607 whose aggregate value exceeds \$10 million, as well as approximately \$1.2 million held in a lawyer's trust account. However, in my view, these facts do not assist the defendants. These CPLs are registered and those funds are held in a different action in support of different claims. If the Estate were to succeed in its proprietary claim against the 14th Avenue property, it is not at all clear that the security obtained in the Prior Action could assist the Estate in this action.

Conclusion

[32] The CPL registered against the 14th Avenue Property shall be discharged upon the posting of security by the defendants equal to one half of the net proceeds from the sale of that property. Those net proceeds shall be comprised of the sale proceeds, less the amounts necessary to pay out the two mortgages on the 14th Avenue Property, less any realtor and other transaction costs.

[33] Alternatively, the sale will complete by the Estate providing a discharge letter to the conveyancing solicitor on his or her undertaking that the security amount described above shall be deducted from the proceeds before any amount is paid to the Estate and held in trust.

[34] The defendants seek special costs of this application but the findings and conclusions I have reached do not warrant such an order. Costs of this application shall be in the cause.

“The Honourable Justice Loo”