

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wilson v. G. Wilson Construction Co. Ltd.*,
2024 BCSC 1981

Date: 20241028
Docket: S243632
Registry: Vancouver

Between:

Blair Wilson

Petitioner

And:

G. Wilson Construction Co. Ltd. and Catherine Kelly Wilson

Respondents

Before: The Honourable Justice K. Wolfe

Supplementary Reasons to *Wilson v. G. Wilson Construction Co. Ltd.*, 2024 BCSC
1893, Victoria Docket S243632.

Supplementary Reasons for Judgment

Counsel for the Petitioner:

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No one appearing for the Respondent
G. Wilson Construction Co. Ltd.

Written Submissions Received:

October 22, 2024

Place and Date of Judgment:

Vancouver, B.C.
October 28, 2024

Introduction

[1] These are supplementary reasons about the ability of one party to register a certificate of pending litigation (“CPL”) in relation to property that is the subject of a derivative action.

[2] On October 9, 2024, I granted the petitioner, Blair Wilson (“Blair”), leave to commence a derivative action in the name and on behalf of the respondent, G. Wilson Construction Co. Ltd. (“GWC”), under s. 233 of the *Business Corporations Act*, S.B.C. 2002, c. 57 [BCA]. The application for leave was opposed by the other respondent, Catherine Kelly Wilson (“Kelly”). My reasons are indexed at 2024 BCSC 1893 (the “Reasons”). As in my earlier judgment, since the parties have the same last name, I refer to them by their first names without meaning any disrespect.

[3] I rely on the background and history of this matter as set out in the Reasons, so I will not repeat it here. By way of brief summary only, Blair is one of two directors and a 50% shareholder in GWC. Kelly is Blair’s stepmother, the other director of GWC and the beneficial holder of the other 50% of shares in GWC.

[4] Blair asserts that GWC is the beneficial owner of real property located at 138 West 8th Avenue, Vancouver (the “138 Property”), based in part on the history of its acquisition and management. Legal title to the 138 Property is registered to another company, 444653 B.C. Ltd. (“444”). Kelly is the sole director and officer of 444, as well as its sole beneficial shareholder. Blair sought to have GWC commence an action against 444 with ultimate goal of requiring 444 to transfer legal title to the 138 Property to GWC. Kelly, in her capacity as a director of GWC, did not agree that GWC should sue 444. As a result, Blair filed the underlying petition.

[5] In the Reasons, I concluded Blair had satisfied the requirements for leave under the *BCA*. I granted leave for Blair to commence the derivative action substantially in the draft form appended as Schedule A to the petition. I also granted Blair conduct of the litigation for the derivative action. However, because of certain complications potentially posed by litigation over the estate of Blair’s late father and Kelly’s late husband (the “Estate Litigation”), I granted leave on the specific term that

“after the filing and service of the notice of civil claim, no further steps may be taken in the litigation without further court order” (Reasons at para. 62).

[6] Blair filed the notice of civil claim in the derivative action on October 10, 2024, but has not yet served it on 444 because of the current disagreement between the parties. The question is whether the above term of leave precludes Blair from registering a CPL against the 138 Property without a further order. That issue was not addressed in the hearing before me.

[7] Counsel advised me of their disagreement by letter and offered to provide further submissions if necessary. I directed both parties to provide brief written submissions by end of day October 22, 2024 (maximum of 5 pages). Blair provided his submissions by the deadline. Without explanation or having sought an extension, Kelly’s submissions were not provided until two days later. However, as it is important to understand the precise nature of the disagreement, I have reviewed both sets of written submissions.

The parties’ positions

[8] Blair’s primary position is that his ability to register a CPL on GWC’s behalf is implicit in the Reasons. Pursuant to the usual practice, the draft notice of civil claim appended to the petition included a prayer for a CPL over the 138 Property. However, Blair says the right to register a CPL exists under s. 215(1)(a) of the *Land Title Act*, R.S.B.C. 1996, c. 250; a plaintiff does not require prior judicial approval. Blair says the Reasons explicitly state that leave was granted on terms in order to balance GWC’s right to advance the derivative action against Kelly’s concerns over the scope of the Estate Litigation. Allowing GWC to register a CPL is consistent with that rationale; it preserves GWC’s claim to the 138 Property. Further, as a CPL is usually registered between filing and service of a claim, Blair says the terms of leave do not preclude him registering a CPL before serving the derivative action on 444.

[9] In the alternative, if the ability to register a CPL before serving the claim is not implicit, Blair says since there is no prejudice to Kelly, and 444 is in the same position as any other defendant would be, the Court should vary or clarify the

Reasons to permit Blair to register a CPL on behalf of GWC. In other words, Blair says GWC should not be required to bring a separate application for a further order to register a CPL.

[10] In response to Blair’s submissions, Kelly’s primary position is that the Reasons contemplated *only* filing and service of the notice of civil claim. She says the Reasons did not permit any other step, even one that might usually be taken between filing and service. While registering a CPL may be a “usual step” between filing and service, Kelly says as it was not specifically raised at the previous hearing, given the terms on which leave was granted, the Court would need to vary its previous order to permit that step.

[11] That said, Kelly does not, in principle, oppose such a variation. Rather, Kelly’s concern is that the prohibition against taking further steps in the derivative action without court order should not operate to prejudice her or 444. While she recognizes that certain steps with respect to a CPL would require a subsequent application in any event, others could ordinarily be taken without. For example, Kelly says that if GWC decides, or GWC and 444 agree, to cancel the CPL, that should also be permitted after service without the need for a further court application.

Discussion

[12] There is no dispute this issue was not expressly raised at the previous hearing. I acknowledge that the draft notice of civil claim for the derivative action included a request for a CPL. However, my discussion with counsel about the terms on which leave might be granted was limited to concerns about filing and service of the notice of civil claim. In that sense, counsel for Kelly is correct that steps other than filing and service, even other litigation steps that might ordinarily be taken where an interest in land is at stake, were not within the Court’s contemplation.

[13] On the other hand, I agree with counsel for Blair that, read literally, my order precludes further steps in the litigation after filing and service. I accept that the registration of a CPL is often done between filing and service, so that the CPL can be served with the notice of civil claim. I also agree that, given the wording of

s. 215(1)(a) of the *Land Title Act*, a person who has commenced or is a party to a proceeding and who is claiming an interest in land does not usually require approval of the Court before registering a CPL. But the fact that my previous order restrains the steps that can be taken in the derivative action without court approval makes the present situation unusual.

[14] In the circumstances, I agree there is some ambiguity with respect to the impact of my order on Blair's ability to register a CPL. I am not convinced the ability to do so is implicit in this case. Instead, some clarification is required.

[15] Permitting Blair, on behalf of GWC, to file a CPL is consistent with my previous order, which was designed to preserve GWC's ability to advance its claim. I agree with Blair that filing a CPL serves the same purpose. As noted, Kelly does not oppose a variation to clarify that a CPL may be registered, as long as the variation also permits the parties to the derivative action to cancel the CPL in future without a court order. There is no dispute that if a party to the derivative action wished to take a step that requires a court application (for example, applying to cancel the CPL after a one-year period of dormancy under s. 252 of the *Land Title Act*), the terms of my previous order would first require the party to obtain leave. I am conscious that Kelly's role in this petition is as a director of GWC and not as a representative of 444, and the concern as raised appears primarily connected to 444's interests, despite 444 not being a party before me. However, the lines between Kelly's various roles have, perhaps understandably, not been clearly demarcated throughout this proceeding.

[16] I am satisfied that I should vary my order of October 9, 2024 to clarify that, in addition to filing and serving the notice of civil claim, Blair is also entitled to register a CPL on behalf of GWC against the 138 Property. I am also satisfied that the terms of my previous order should not require the parties to the derivative action to seek court approval before cancelling the CPL if GWC wishes to do so, or GWC and 444 agree to that step. Accordingly, I modify the term of order pronounced at para. 63(d) of the Reasons to provide as follows:

- a) Apart from the registration or cancellation of a certificate of pending litigation, after filing and service of the notice of civil claim, no further steps will be taken in the litigation without further order of the Court in this proceeding.

[17] For clarity, counsel are not required to file a separate order to reflect just this variation. Counsel are permitted to file one order, reflecting the terms of order granted October 9, 2024 with the variation noted above. The form of order should reference the further exchange of written submissions and both October 9, 2024 and the date this order is made.

[18] Each party will bear their own costs in relation to these further submissions.

“K. Wolfe J.”