

CANADA / JUDGMENT

Ali v. 1308529 BC Ltd.

2025 BCSC 151

COURT

Supreme Court of British Columbia

DECIDED

15 January 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 151 Ali v. 1308529 B.C. Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ali v. 1308529 B.C. Ltd.,

2025 BCSC 151

Date: 20250115

Docket: S256272

Registry: New Westminster

Between:

Asim Ali, Baljit Kaur Gill, Bhupinder Singh, Bhupinder Singh Sandhu, Caron Bouraor,
Gurdarshan Kumar, Harmeet Singh Sandhu, Inderjit Singh Garcha, Kamaljeet Kaur Mann and
Satvinder Singh Dhillon

Plaintiffs

And

1308529 B.C. Ltd. and Aleera Homes Corp.

Defendants

Corrected Judgment: The text of the judgment was corrected at the cover page on January 31, 2025.

Before: Associate Judge Robertson

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

J. Singh

Counsel for the Defendant 1308529 B.C. Ltd.:

M. Nied

No other appearances

Place and Date of Hearing:

Vancouver, B.C.

January 15, 2025

Place and Date of Judgment:

Vancouver, B.C.

January 15, 2025

Table of Contents

Background.. 3

Allegations of Hardship. 8

Legal Framework.. 9

Analysis. 11

Hardship. 11

Appropriate Security. 12

Conclusion and Orders Made. 15

- [1] THE COURT: When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered. I have made such edits without affecting the substance or final disposition.
- [2] The application before the court today is to cancel a certificate of pending litigation ("CPL") pursuant to ss. 256 and 257 of the Land Title Act, R.S.B.C. 1996, c. 250 (the "LTA") on the basis that the CPLs are causing hardship and inconvenience.

Background

- [3] The subject action raises various legal issues, including standing. In summary, the two defendants, 1308529 B.C. Ltd. ("130") and Aleera Homes Corp. ("Aleera") entered into a contract of purchase and sale whereby 130 would sell bare land property, which was intended to but had yet to be stratified into bare strata lots, with the contract being executed on November 4, 2021 (the "CPS").
- [4] The plaintiffs allege that they entered into their own agreements with Aleera to, once the sale to Aleera closed, buy some of the proposed bare strata lots. I will address the document relied upon, and payments made by the plaintiffs, in respect of their claims once I summarize the circumstances between 130 and Aleera.
- [5] The provisions of the CPS germane to this application include an assignment clause. Specifically, Aleera was entitled to assign the buyer's rights in the CPS with the "prior written consent of the seller" with 130, as seller, not to withhold its consent if a seller's disclosure statement had been provided in accordance with the Real Estate Development Marketing Act, S.B.C. 2004, c. 41 ("REDMA").
- [6] The sale price under the CPS was \$18.880 million with non-refundable deposits to be paid as follows:
- a) \$188,000 within 24 hours of acceptance;
 - b) \$1.7 million seven business days after acceptance; and
 - c) \$1.888 million on or before January 31, 2022.
- [7] The closing date in the original iteration of the CPS was based on a "closing notice" being delivered, with the closing to then be 30 days from that delivery. The closing notice was tied to some degree by the timing in which the properties were to become fully serviced lots in accordance with the requirements of the City of Chilliwack. At the time, the City of Chilliwack had accepted an application for the building permits for the bare land stratas as were contemplated to be created as a condition of the sale. The CPS contained an outside closing date of December 1, 2022, and the following term:
- Any time prior to December 1st, 2022 either party may extend the outside date to a future date by delivering written notice of such extension to the other party or the other party's lawyer provided that such notices will not extend the outside date beyond October 1st, 2023.
- [8] That date appears to have come and gone.
- [9] On October 20, 2022 an addendum was entered into by 130 and Aleera whereby the completion date was set on a two-tiered basis, the first being on April 2, 2024 for a portion, and the second on April 16, 2024 for the remainder, with there being a condition precedent that the lots be fully serviced as originally contemplated, and the concept of an outside date being deleted.

[10] Those dates were later adjusted and changed by way of notices of extensions with the last one being entered into on September 19, 2024 with the closing dates then being set for January 2, 2025 and January 16, 2025.

[11] Returning to the plaintiff's claims, the above negotiations and extensions of the CPS were carried out between 130 and Aleera without the plaintiff's involvement.

[12] However, as between the plaintiffs and Aleera, the transactional document that was entered into in respect of each proposed strata lot acquisitions, was a bare trust and agency agreement (the "Trust Document"). The recitals of each of the Trust Document in issue contains the following:

- a) A reference to the CPS;
- b) An acknowledgment that 130 was intending to subdivide the property into 32 fully serviced building lots, and that Aleera had acquired:

" legal title under the [CPS] to acquire the lots and desires effective from the date of this agreement to hold legal title to proposed lot X [with the lot identified in each contract] as nominee, agent, and bare trustee for the sole benefit and account of the assignee as principal and beneficial assignee of the assigned lot in accordance with this agreement."

- c) A term that Aleera, as nominee and assignee, would enter into a formal assignment agreement for the assigned lots:

" on the terms agreeable to both the nominee and assignee once 130 has prepared and filed a disclosure statement under [REDMA]"

and,

- d) A term that the agreement would automatically terminate and the nominee and assignee would be released from all obligations if the assignment agreement "on terms mutually acceptable to the nominee and assignee" were not fully executed on or before December 1, 2022."

[13] As to the price of each of the lots, each Trust Document contains a schedule which references the specific proposed lot that it relates to, along with a reference to a deposit being paid directly to 130 by the assignee. However, I did not notice a specific reference to what the ultimate purchase price would be for each lot.

[14] In any event, the plaintiffs allege that they paid the deposits as owing pursuant to the schedule of the Trust Document by providing Aleera with a cheque payable to 130 (the "Plaintiffs' Cheques"), which Aleera then delivered to 130 as the deposits to be paid in accordance with the CPS terms.

- [15] At this early stage the full facts are not developed, however the plaintiff's argue that the use of the Plaintiff's Cheques for the deposits gives rise to an interest in the lands. 130's position is that that the tendering of the Plaintiff's Cheques by Aleera was not sufficient to put 130 on any express notice as to the existence or any potential claim by the plaintiffs as 130 was not provided with the Trust Document at any time or any notice of an interest being acquired by the plaintiffs.
- [16] Some of the alleged Plaintiffs' Cheques are before the court today. They do make some reference to a notional "purchaser". For example, there are notations in the memo lines such as: "Purchaser Kamaljeet Mann" and "43450 Alameda Property. Purchaser: Karin Bouraor." Both Ms. Mann and Ms. Bouraor are named plaintiffs.
- [17] As things progressed the plaintiffs seem to have been relatively content to sit back and wait for the subdivision to occur, expecting at some point, I would suppose, to be notified that the strata had been accepted and that the CPS was going to be completed and their assignment agreements prepared and negotiated as a result.
- [18] In addition, during that period of time 130 and Aleera, again without the involvement of the plaintiffs, dealt with the initial reference to a disclosure statement under REDMA being delivered by 130 and waived that requirement. The parties do not dispute that a sale to one purchaser constitutes an exempt transaction under REDMA such that 130 would not have an obligation to prepare a disclosure statement to complete the terms of the CPS and transfer title to Aleera. As such, as the completion neared, further negotiations were entered into between Aleera and 130 whereby it was agreed that only Aleera would file the proper disclosure statements for the purposes of any of its sales to an end purchaser of a lot, with the costs of preparing the disclosure statement to be shared between 130 and Aleera.
- [19] During submissions, the plaintiffs referenced the obligation on 130 to prepare disclosure statements as an implicit acknowledgement by 130 that Aleera would be selling the individual lots. Similarly, the references noted above to certain of the plaintiffs on the Plaintiff's Cheques given to 130 is argued to be express or implicit notice of their interest.
- [20] Towards the end of 2024, as a result of not receiving satisfactory answers from Aleera as to the status of the project, the plaintiffs engaged counsel, who requested an update. The first letter that was written to Aleera in that regard was on September 17, 2024, copied to their counsel, requesting an update. Upon no response being received, a follow-up letter was sent on December 3, 2024.
- [21] Around that same time counsel for 130 was brought into the discussion by counsel for the plaintiffs in that counsel also sent an email to 130's counsel on September 24, 2024 requesting a copy of the CPS and all addendums and communications with Aleera, advising specifically that:

Aleera has subsequently assigned seven of these lots to our clients for which a deposit of \$826,000 was collected and paid to your client. Despite this transaction, our clients have not received any updates from Aleera since the assignment in 2022.

- [22] The proposed completion on January 2, 2025 did not occur. While 130 tendered its letter to indicate that it was ready, willing, and able to complete, Aleera advised that they were, unfortunately, not able to complete. As such, the notice of default or repudiation was delivered and accepted, effectively ending the sale.
- [23] The plaintiffs claim is, in general, one for unjust enrichment in that as a result of their collective payments of \$826,000 towards Aleera's deposit, which made its way into the hands of 130 under the auspices of it being the deposit required to be paid under the CPS, 130 was enriched and the plaintiffs suffered a corresponding deprivation. They specifically claim "an interest in the title to each Assigned Lot through the payment of Assignment Deposits to Defendant 130 and by virtue of the Trust [Document]". They also claim that Aleera holds the beneficial interest in the assigned lots in trust for the plaintiffs either by virtue of a resulting trust or remedial constructive trust, and that 130 breached the original CPS by not providing the disclosure statements to them under REDMA.
- [24] 130 argues that any claim for unjust enrichment will fail as the CPS constitutes a juristic reason for any such enrichment and deprivation. In addition, to the extent that there may be a claim for return of the deposits or funds paid by them (which is not admitted given the deposit is non-refundable), the plaintiffs have no standing as beneficiaries under a trust to advance a claim against 130.
- [25] Instead, any claim for recovery of trust property, they argue, must be advanced by the alleged trustee, Aleera.
- [26] In addition, 130 argues that the claims simply do not create an interest in the lands themselves. 130 argues that there is no privity of contract between 130 and the plaintiffs, or any relationship between them at all, that would give rise to any obligation by them to the plaintiffs. Further, to the extent that Aleera may have (again, no admission is made) an interest in and to the property as a result of the CPS, that interest no longer exists given the termination on its terms. Leaving aside an argument as to the validity of the Trust Document, Aleera can only grant an interest in the lands to the petitioners, that it holds, under the *nemo dat quod non habet* doctrine.
- [27] As this application is not being advanced under s. 215 of the LTA, merits are only relevant for the purpose of the court's consideration of the strength of the claim in setting appropriate security if a release of the CLP is granted.

Allegations of Hardship

- [28] When 130 initially brought this application the basis on which they relied for the release of the CPL was hardship, given the pending closing of the CPS and anticipation of its closing being frustrated by the CPL. Subsequently, since the sale under the CPS collapsed, 130 is proceeding with the application on different grounds of hardship. The plaintiffs did not take issue with the application proceeding on that basis, given the change in circumstances.
- [29] 130's claim of hardship is that the CPL creates an inability to sell the property. Since the collapse of the CPS, 130 needs to market and sell the property.
- [30] There is, currently, a first mortgage registered on title in favour of Prospera Credit Union ("Prospera") in the principal amount of \$8M. 130's expectation was that there would be a closing at the beginning of this year. As a result of there being no sale they now find themselves in the position of having to carry the holding costs themselves, which, in terms of the mortgage payment alone, amounts to roughly \$45,000 in interest per month.
- [31] Prospera has advised in writing by notice dated January 13, 2025 that, as a result of the CPL, they are not prepared to release any further draws under the credit facility, noting that while there was an imminent available draw, given substantial completion as reached in the fall of 2024, it will no longer be processed given the CPL. The letter puts 130 on notice that it will have to notify any of their trade payable partners to work out a solution. In addition, Prospera indicates an expectation that 130 will likely need to start paying that monthly interest from other means and raises the concern of further charges being registered on the property given that no further draws would be made noting that:

Unless these CPLs are taken care of immediately Prospera will likely demand the entire loan and change pricing to the Prime plus 5% stated in the commitment letter.

- [32] The commitment letter is not before the court today, so there may be an appropriate justification for an interest rate increase which, on the wording of that letter, appears to be on default. I make no finding in that regard, and accept that the holding costs, that being the mortgage payments, are significant regardless of the interest rate, particularly where 130's only operations are as a holding company with no revenues being generated.

Legal Framework

- [33] The parties do not disagree as to the law on applications such as this. There are a number of well-known decisions that set out the law such in this respect, such as:
- a) Jacobs v. Yehia, 2015 BCSC 267;
 - b) Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd., 2014 BCCA 388;
 - c) Liquor Barn Income Fund v. Becker, 2011 BCCA 141; and
 - d) Bilin v. Sidhu, 2017 BCCA 429.

- [34] In general, in order to satisfy the court that it is appropriate to release the certificate of pending litigation as against the property the applicant must satisfy the court that there is a hardship that arises as a result of the CPL being on title.
- [35] In *Kaur v. Chandler*, 2018 BCSC 1283, the court summarized the requirements to meet the test of hardship and inconvenience; it ultimately being the threshold question of any such application. Quite simply, if hardship and inconvenience cannot be shown then there is to be no release of the certificate of pending litigation under s. 256 of the LTA. The court noted as follows at paras. 44 to 48:
- [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).
- [46] Much of the submissions on this issue concerned whether 096 and Newmark Sagebrush had adduced sufficient evidence to meet the onus upon them. Any person seeking to cancel a CPL registered against their title must include affidavit evidence that sets out the "particulars" of the hardship and inconvenience experienced or likely to be experienced by the registration of the CPL: *Liquor Barn* at para. 26.
- [47] Generalizations, unsupported by specific proof of hardship and inconvenience, are not sufficient to meet the requirements of s. 256(1)(b): *Kwan v. Kwan* (1992), 33 A.C.W.S. (3d) 101 at paras. 27-28 (S.C.) (WL); *0771252 B.C. Ltd. v. 0764735 B.C. Ltd.*, 2012 BCSC 2039 at paras. 42-48.
- [48] In addition, speculation about potential business opportunities or sales are not sufficient: *Saunders v. Jaremco*, 2015 BCSC 2019 at paras. 23-28; *Aviawest Resorts Inc. v. Memory Lane Developments Inc.*, 2004 BCSC 999 at paras. 26-31.
- [36] Once hardship is established, the court turns its mind to whether or not security is appropriate, to be set on terms that the court has the full discretion to impose. In accordance with s. 257(1)(a) of the LTA, the court has the discretion to impose such security terms as it deems appropriate. That includes setting an amount of security, if security is to be given, or other terms.
- [37] One of the considerations for the court in determining an amount of security and whether security ought to be posted is an analysis of the merits of the claim advanced, specifically insofar as the claim advances a claim in and to the lands themselves.

Analysis

Hardship

- [38] Applying those principles to the matter at hand, I am satisfied that hardship has been established.
- [39] I accept that the hardship analysis has to be based on hardship that arises as a result of the CPL. While, in the case at bar much of the hardship that is being suffered arises, or initially arose, from the breach of CPS, now that that breach of the sale agreement has occurred, 130 finds itself in a position that it must deal with this property, and it is now the CPL that is causing the hardship.
- [40] While the evidence as to the concern and risk with Prospera calling its mortgage is not as strong as it would be if an actual demand letter had been issued, I am satisfied that Prospera is in a position to demand and have indicated that it is "likely" if the CPL remains on title or, presumably, they are not paid out forthwith. I would classify the letter as a "soft demand" which highlights for 130 where this matter will proceed if the CPL is not promptly resolved.
- [41] I am also satisfied that given that 130 is a holding company whose purpose was to develop this land such that there is an absence of any cashflow being generated as there are no traditional operations, also causes a hardship in having to cover the holding costs.
- [42] In short, there is no ability to generate cash to pay the mortgage, to pay property taxes, to pay any ongoing or unpaid creditors, which may include lien claimants (although counsel for 130 concedes that most of the trades have been paid or have nominal amounts outstanding). The inability to meet payments as they fall due puts 130 into a technical state of insolvency which is also evidence of hardship.

Appropriate Security

- [43] Turning then to what security, if any, ought to be posted, the primary position of the plaintiffs is that the full amount of the deposits they paid through Aleera that they believe went into either the deposits or, where there is no corresponding cheque, into the betterment of the lands, that being \$826,000 that they paid to Aleera, is an appropriate amount of security.
- [44] There is no evidence before the court, other than the Plaintiffs' Cheques, to establish where the amounts they allege to have paid to Aleera ended up. That may be a feature of this claim being in its infancy with no disclosure as of yet, however, those deposits amount to approximately \$315,000, by my quick math, however it is not \$826,000.

[45] As noted, there is also an issue as to whether or not the Trust Document is a binding agreement at all, notwithstanding that there is no privity between the plaintiffs and 130 in that respect, or an "agreement to agree" given their terms and absence of material terms. On the other hand, the plaintiffs argue that regardless of these issues, 130 must have had constructive or express knowledge of their existence and interests by, as noted above, the assignment clause in the CPS and the memo lines on the Plaintiffs' Cheques.

[46] In *Instafund Mortgage Management Corp. v. Garrow*, 2020 BCSC 1017, the court considered the analysis of the merits when determining security, noting at para. 69, citing 1043325 Ontario Ltd. v. CSA Building Sciences Western Ltd., 2012 BCSC 1058 at paras. 24 to 26.

Given these concerns about the strength of the plaintiff's case, I find that the security should be constrained. However, the case is not so weak that the security should be nominal.

[47] The other factor emphasized by 130 is standing of the plaintiffs to seek any recovery from 130 of trust property, even if the trust is established.

[48] In *Centurion Apartment Properties Limited Partnership v. Sorenson Trilogy Engineering Ltd.*, 2024 BCCA 25 the court commented on the limited standing of a beneficiary under a trust claiming as against third parties in that case in negligence when the cause of action is more properly that of the trustee or nominee. The trial judge noted as follows at para. 49 of its reasons for judgment:

It is trite law that only the trustee of trust property has standing to bring a claim in respect of it, the beneficiary of the trust property does not:

[49] Considering that issue on the appeal, the court agreed with the trial judge, although did say that there are special circumstances that would justify a departure from that general rule such as fraud, collusion between the trustee and the third party that is involved with the matter, conflict of interest, or "where the trustee has failed in its duty to protect the trust estate or the interests of the beneficiary and trust."

[50] Here, 130 has raised the issue as to standing and specifically takes the position that the merits of the plaintiffs' claim as against 130 as a third party to the trust agreement are weak. At this early stage, it is not possible to determine if the plaintiffs will be able to bring themselves within one of those special circumstances.

[51] As to the claim for unjust enrichment, the plaintiffs argues that they have an arguable case, particularly on the first two factors, that being a benefit to 130 and a corresponding deprivation to them. 130 does not necessarily dispute, for the purpose of this application, that those elements may be established at the end of the day, particularly having regard to the recently decided decision by our Court of Appeal in *Bao v. Welltrend United Consulting Inc.*, 2025 BCCA 3, where the court noted that the benefit need not flow directly to the recipient from the grantor, preferring a more expansive approach to this remedy, the heart of which is the notion of "restoring a benefit which justice does not permit one to retain" (at para. 26).

- [52] However, 130 argues that there was a juristic reason for the payments, that being Aleera's obligation under the CPS to pay the deposit. Where Aleera obtained those funds it was contractually obligated to pay does not change the obligation or that there is no privity between 130 and the plaintiffs.
- [53] 130 relies on *Kazemi v. 1004633 B.C. Ltd.*, 2021 BCSC 1638, where there was a somewhat slightly similar situation in terms of the contractual relationships, specifically, the applicant was a subtenant who had a claim regarding improvements done to the leasehold property, which it claimed was, ultimately, for the benefit of the landlord despite that its agreement was a sub agreement and not with the landlord at all. The court noted that the lease between the main tenant and the landlord was a sufficient juristic reason to allow the enrichment to occur, particularly given there indicated that there would be no liability for any losses.
- [54] I am hesitant to, nor should I wade too far into the merits. This matter is a very new one. The notice of civil claim was filed December 19, 2024, there has been no document disclosure of any significance other than some answers to some inquiries when the issue was raised in September 2024 and the documents as attached to the affidavits.
- [55] Ultimately, this matter will go to trial where the merits will be fully tested on a fulsome argument. Nonetheless, at this early stage, I do have concerns as to the strength of the case vis-a-vis a property interest in and to the lands themselves. It is the strength of that claim which is ultimately the issue that the court is concerned with on considering the release of a CPL.
- [56] As noted by the court in *Garrow*, supra, I propose to make an order that is constrained and addresses the hardship of 130, but also provides some protection that is more than nominal.
- [57] The sale price under the original contract of purchase and sale with Aleera was, as I noted, \$18.88 million. The principal amount owing to Prospera under its mortgage is \$8 million, at this point, with the balance increasing particularly if interest payments cannot be made.
- [58] Regardless, there does appear to be more than ample equity in the property such that any security that is ordered can be addressed, rather than by having it paid into court now, by having it be an order of the court that the sale proceeds after payment of all prior encumbrances, including the mortgage and any other creditors, particularly builders who would otherwise potentially have claims under the Builders Lien Act, S.B.C. 1997, c. 45, and priority in that respect, can be paid and dealt with, with any security ordered herein to be set aside from the net sales proceeds thereafter.
- [59] As I noted, the amount of the deposit cheques that indicated any reference to a particular purchase were approximately \$315,000. Given my concern as to the merits of the case, an appropriate amount of security is approximately one-quarter of that amount.
- [60] Thus, I order security of \$75,000. However, it is to be paid from the net sale proceeds, not in exchange for the certificate of pending litigation.

Conclusion and Orders Made

[61] To summarize, I am granting the order that the certificate of pending litigation shall be cancelled in accordance with paras.1 and 2 of the notice of application as drafted. Paragraph 3 will be on the terms that 130 will hold all net proceeds of sale, to a maximum of \$75,000, after payment of all usual adjustments, including professional fees, financial encumbrances, and any outstanding debts to builders or contractors, counsel to 130's trust account pending further court order or agreement of the parties.

[62] Paragraph 4 is dismissed.

[63] THE COURT: With respect to costs, I will hear quick submissions on costs.

[64] CNSL M. NIED: Thank you, Your Honour, I think costs in the cause would be appropriate.

[65] THE COURT: Do you have any concern with that?

[66] CNSL J. SINGH: No. I believe there was mixed success.

[67] THE COURT: Okay. Costs will be in the cause then.

"Associate Judge Robertson"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/01/2025BCSC0151cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/ali-v-1308529-bc-ltd-2025>

Prepared on 26 October 2026 · Esheria