

CANADA / JUDGMENT

## EMG Homes Ltd. v. ALH Design Builders Ltd.

2025 BCSC 2560

COURT

Supreme Court of British Columbia

DECIDED

31 December 2025

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2025 BCSC 2560 EMG Homes Ltd. v. ALH Design Builders Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

EMG Homes Ltd. v. ALH Design Builders Ltd.,

2025 BCSC 2560

Date: 20251231

Docket: S256968

Registry: New Westminster

Between:

EMG Homes Ltd. and Garry Mah

Plaintiffs

And

ALH Design Builders Ltd., Alleylane Homes Construction & More Ltd., Pranil Pratap Chandra,  
1512697 B.C. Ltd. and Sunita Devi Kumar

Defendants

Before: The Honourable Justice Hamilton

Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

V.S. Chahal

S.S. Singara

Counsel for the Defendants:

S. Grewal

Place and Date of Hearing:

New Westminster, B.C.

December 2, 2025

Place and Date of Judgment:

New Westminster, B.C.

December 31, 2025

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[1] The defendants seek an order discharging the Certificates of Pending Litigation (the "CPLs") filed against:

- a) the residential property located at 11693 95A Avenue, Delta, British Columbia (the "116 Property") owned by defendants Pranil Pratap Chandra and Sunita Devi Kumar; and
- b) the investment property located at 7695 115A Street, Delta, British Columbia (the "7695 Property"), which is owned by the defendant 1512697 B.C. Ltd., of which company the defendant ALH Design Builders Ltd. ("ALH") is a shareholder.

[2] Paragraphs 3 and 4 of the defendants' Notice of Application seek orders to strike and dismiss the plaintiffs' claims against Alleylane Homes Construction & More Ltd. ("Alleylane"), 1512697 B.C. Ltd. ("1512697") and Sunita Devi Kumar. However, those applications were adjourned by the defendants.

## Background

- [3] Sunita Devi Kumar and Pranil Pratap Chandra are common law spouses. Together, they own the 116 Property, which is their residence.
- [4] Mr. Chandra is the sole director of both ALH and Alleylane, and a director of 1512697. Neena Parmar is the other director of 1512697 and she is not a defendant.
- [5] 1512697 owns the 7695 Property, which is an investment property. 1512697 is owned 50% by ALH and 50% by a numbered company owned by Ms. Parmar. Ms. Parmar's numbered company is not a defendant.
- [6] Garry Mah entered into a written contract with ALH in June 2024 for ALH to build a home on property owned by Mr. Mah's company, EMG Homes ("EMG").
- [7] The contract appears to have been signed by Mr. Mah and by Mr. Chandra (on behalf of Alleylane and/or ALH). The defendants say that Alleylane was incorrectly mentioned on the signature line of the contract, although nothing turns on that in the application before me.
- [8] The written contract required Mr. Mah to pay Mr. Chandra \$85,000 plus GST for serving as a general contractor for the project, plus additional fixed payments pursuant to a payment schedule, all together totalling \$935,000 plus GST (\$981,750 including GST).
- [9] The plaintiffs state that after construction of the home began, ALH and Mr. Chandra tried to verbally change the contract so that Mr. Mah would pay the actual third-party invoices as opposed to the additional fixed payments set out in the payment schedule in the written contract. The defendants dispute this.
- [10] The parties agree that between June 2024 and January 17, 2025, Mr. Mah and/or EMG paid ALH a total of approximately \$450,000, with the final two payments being made on or about December 27, 2024, and January 17, 2025.
- [11] In February 2025, the plaintiffs ceased making payments and construction was halted when the plaintiffs discovered that ALH had provided the plaintiffs with altered copies of third-party invoices that were artificially inflated.
- [12] Further, Mr. Mah received information from Ms. Parmar that:
  - a) approximately \$140,000 of the \$450,000 he and/or EMG paid to ALH in late December 2024 was used by the defendants to purchase the 7696 Property on or about January 7, 2025; and
  - b) approximately \$50,000 of the \$450,000 he and/or EMG paid to ALH on or about January 17, 2025, was used by the defendants to purchase the 116 Property on January 28, 2025.
- [13] The defendants deny that either of the properties were purchased using Mr. Mah and/or EMG's moneys. They claim that Ms. Kumar provided the purchase moneys for the 116 Property and that Ms. Kumar and Ms. Parmar provided the purchase moneys for the 7695 Property.

- [14] The plaintiffs filed a Notice of Civil Claim (the "NOCC") in March 2025 alleging, inter alia, breach of contract, negligent misrepresentation, breach of fiduciary duty and fraudulent misrepresentation. The plaintiffs filed CPLs against the 116 Property and the 7695 Property at that time.
- [15] The defendant's application to remove the CPLs was filed back in May 2025 but did not proceed until December 2, 2025. In the meantime, the plaintiffs filed their Amended Notice of Civil Claim in November, 2025 (the "ANOCC"). Both the NOCC and the ANOCC are addressed in more detail below.
- [16] The defendants submit that the CPLs should be discharged for two reasons:
- a) the plaintiffs' pleadings do not claim an interest in the 116 Property or the 7695 Property, as required in s. 215 of the Land Title Act, R.S.B.C. 1996, c. 250 [LTA];
  - b) alternatively, the CPLs are causing the defendants significant hardship and should be cancelled pursuant to ss. 256 and 257 of the LTA.

### **The Law Regarding Cancellation of a CPL Under Section 215 of the LTA**

- [17] The right to register a CPL is found in s. 215 of the LTA, which sets out the threshold requirements for registration. If those requirements are not met, the CPL may be cancelled: 1332404 B.C. Ltd. v. 1266685 B.C. Ltd., 2025 BCCA 46 at para. 12.
- [18] Section 215 of the LTA provides:
- (1) A person who has commenced or is a party to a proceeding, and who is
    - (a) claiming an estate or interest in land, or
    - (b) given by another enactment a right of action in respect of land,
- may register a certificate of pending litigation against the land in the same manner as a charge is registered, and the registrar of the court in which the proceeding is commenced must attach to the certificate a copy of the pleading or petition by which the proceeding was commenced, or, in the case of a certificate of pending litigation under Part 5 of the Court Order Enforcement Act, a copy of the notice of application or other document by which the claim is made.
- [19] However, the court may order the cancellation of a CPL where the pleadings fail to meet the threshold criterion of supporting a claim to an interest in land, as required by s. 215 of the LTA: 1332404 B.C. Ltd. at para. 13; Bilin v. Sidhu, 2017 BCCA 429 at paras. 54-56; Berthin v. Berthin, 2018 BCCA 57 at para. 40.
- [20] The Court of Appeal in both 1332404 B.C. Ltd. and in Berthin referred to the Court of Appeal in Bilin as follows:

- [40] Bilin stands primarily for the principle that the court has jurisdiction to cancel a CPL which fails to meet the threshold criterion of a pleading claiming an interest in land as required by s. 215 of the Land Title Act. But it also stands for the principle that where an interest in land is claimed, but the claim is contended to be without merit, the proper approach is to apply under the summary judgment rule to dismiss the claim, in which case the CPL may only be cancelled in conformity with s. 254 of the Land Title Act ...
- [21] Thus, where the pleadings are incapable of supporting a claim to an interest in land, the CPL should be cancelled pursuant to s. 215. However, where the material facts pleaded support an interest in land, any cancellation of the CPL must rely on other sections of the LTA. In other words, a CPL cannot be cancelled for failure to comply with s. 215 if the pleadings support an interest in land: 1332404 B.C. Ltd. at para.14.
- [22] It is not for a judge, acting under s. 215, to assess the merits of a claim, or determine whether there is a triable issue, or to interpret pleadings that assert a claim to an interest in land to assess the "true" nature of the claim: 1332404 B.C. Ltd. at para. 14.

#### Analysis Regarding Cancellation of the CPL under Section 215 of the LTA

- [23] The question is whether the pleadings are capable of supporting a claim to an interest in land.
- [24] Here, there is both a NOCC and an ANOCC. Both counsel's submissions focussed on the ANOCC. However, the adequacy of the pleadings alleged to support a CPL must be considered as of the date the CPL was filed--any deficiencies in those pleadings cannot be salvaged by subsequent amendments: Batth v. Sharma, 2024 BCCA 29 at para. 8 quoting Billin at para. 62.
- [25] Therefore, the question is whether the NOCC was capable of supporting a claim to an interest in land. The NOCC contains paragraphs including as follows:
14. On or about June 27, 2024, pursuant to a contract that was partly written and partly oral, with both express and implied terms, the Plaintiffs as client and the Defendants, ALH and Chandra as builder, entered into agreement whereby ALH and Chandra would act as general contractor for the Project (the "Agreement").
  15. Terms of the Agreement included, but were not limited to, inter alia:
    - a) The Client will be invoiced as follows:
      - i. First payment of commitment June 27th, 2024 for submission and application of building permits, etc. 85,000.00 plus GST.
      - ii. Second payment starting of the demolition of the existing home and ready for excavation 200,000.00.
      - iii. Third payment at the start of framing 200,000.00.

iv. Fourth Payment at completion of lock up stage-windows, temporary doors and roof installed 150,000.00.

v. Fifth payment at the start of drywall, rough in for electrical, plumbing, HVC, low voltage, framing and insulation 200,000.00.

vi. Sixth and final payment (the "Holdback") after final occupancy permit has been accepted and ready for occupancy after 45 days of the occupancy permit date has been issued 100,000.00.

vii. All draws are subject to GST.

- b) Total cost of construction for the Plaintiffs to be \$935,000 plus GST;
- c) Invoices submitted by the Builder to the Client are due upon receipt;
- d) Builder will not be reimbursed for any expenses incurred in connection with providing the services of the contract;
- e) Any amendments or modifications to the contract or additional obligations assumed by either party in connection with the contract will only be binding if in writing and signed by each party or an authorized representative;

(the "Contract Terms")

[26] Paragraph 16 of the NOCC states that the plaintiffs paid approximately \$585,000 of the total amount payable pursuant to the contract. The plaintiffs now concede that the correct figure is approximately \$450,000. However, both of these figures are significantly less than the \$935,000 total contract price.

[27] Paragraphs 17 and 18 of the NOCC go on to state that the defendants ALH and Mr. Chandra breached the contract between January and February 2025 by:

- a) Providing the plaintiffs with third-party invoices for materials and labour despite the fact that the agreement was for fixed payments; and
- b) Attempting to change the agreement from a fixed-cost agreement to a cost-plus contract in which the plaintiffs would be responsible for paring the invoices.

[28] Notably, in paragraph 19 of the NOCC, the plaintiffs state that they did not agree to amend the agreement in any way. That is, the plaintiffs did not agree to changing the contract from a fixed price contract to a cost-plus contract based on third-party invoices.

[29] Despite paragraph 19, the NOCC goes on to address the content of the third-party invoices. The plaintiffs plead that Mr. Chandra and ALH knowingly or recklessly altered and inflated third party invoices, presented them to the plaintiffs and the plaintiffs were induced to:

- a) Make payments to ALH and Mr. Chandra;
- b) Incur additional costs with respect to the project;

- c) Suffered damages including additional costs and delays;
- [30] In paragraphs 30 and 31 of the NOCC, the plaintiffs assert that AHL and Mr. Chandra owed them a fiduciary duty to act in their best interests and accurately advise on the true costs of the project.
- [31] The plaintiffs further allege that the AHL and Ms. Chandra's breach of fiduciary duties and negligent or fraudulent misrepresentations have and continue to cause the defendants loss or damages.
- [32] Then the NOCC goes on to state that on January 15, 2025, a portion of the moneys the plaintiffs paid AHL and Mr. Chandra were used in 1512697's purchase of the 7695 Property and on February 3, 2025, a portion of the moneys were used by Mr. Chandra and Ms. Kumar to purchase the 116 Property.
- [33] The NOCC (para. 38) alleges that AHL and Mr. Chandra absconded with the plaintiff's funds.
- [34] Paragraph 42 of the of the NOCC claims that the defendants were unjustly enriched and the plaintiffs were correspondingly deprived, for which there is no juristic reason.
- [35] In reviewing the NOCC as a whole, I do not find that it is capable of supporting an interest in land. The plaintiff's claims for breach of fiduciary duty, fraudulent or negligent misrepresentation, tracing and constructive trust are all linked to the third-party invoices. However, the material facts set out in the NOCC are that the plaintiffs agreed to a fixed price contract in which they would pay Mr. Chandra and AHL (and/or Alleylane) \$935,000 plus GST to build a residence at the plaintiffs' property.
- [36] Paragraph 19 of the NOCC makes it clear that the plaintiffs did not agree to any modifications of the contract including changing it from a fixed price contract to one where they would pay actual invoices. Therefore, the plaintiffs allege that the contract remained a fixed price contract throughout--i.e. the third-party invoices were irrelevant to the agreement.
- [37] The NOCC then states that the plaintiffs only paid \$585,000 (which as mentioned they now concede was only approximately \$450,000) of the total contract price--i.e. they did not overpay. The plaintiffs state that they incurred damages, including additional costs and delay, there are no facts pleaded in the NOCC to support this assertion.
- [38] The plaintiffs also claim that AHL and Mr. Chandra breached fiduciary duties owing to the plaintiffs, but the facts as pleaded do not support that fiduciary duties were owed to the plaintiffs by the defendants.
- [39] Further, the NOCC does not allege that the defendants 1512697 and Ms. Kumar were parties to the contract or involved in the alleged fraudulent or negligent misrepresentations or that they received the payments.

- [40] The NOCC also claims a constructive trust in land based on unjust enrichment, but the facts pleaded do not appear to support the claim for a constructive trust based on unjust enrichment. For example, the pleadings do not state how the plaintiffs were allegedly deprived.
- [41] Overall, I find that the NOCC is not capable of supporting an interest in either the 116 Property or the 7695 Property. The existing CPLs registered against title are hereby cancelled.
- [42] However, parties are free to may amend their pleadings and refile new CPLs: Bilin at para. 68. In this case, the plaintiffs have already filed an ANOCC and are free to file new CPLs based on their amended pleadings. To spare another application, I will address whether the ANOCC is capable of supporting an interest in land.
- [43] Notably, the ANOCC no longer contains the facts pleaded in paragraphs 18 and 19 of the NOCC. That is, the plaintiffs no longer assert that:
- a) AHL and Mr. Chandra breached the contract by changing the agreement to a cost-plus agreement; or
  - b) The plaintiffs did not agree to the amendments.
- [44] As a result, the ANOCC now appears to allege that the contract price was changed to consist of the \$85,000 management fee (plus GST) and the actual third-party invoices as opposed to the fixed fee set out in the written contract. Because of these amendments, the allegations that the defendants fraudulently inflated the third-party invoices become material facts in support of the plaintiffs' claims in land.
- [45] The ANOCC now includes the following paragraphs:
16. On or about June 27, 2024, pursuant to a contract that was partly written and partly oral, with both express and implied terms, the Plaintiffs as client and the Defendants, ALH and Chandra as builder, entered into agreement whereby ALH and Chandra would act as general contractor for the Project (the "Agreement").
  17. Terms of the Agreement included, but were not limited to, inter alia:
    - a) The Client will be invoiced as follows:
      - i. First payment of commitment June 27th, 2024 for submission and application of building permits, etc. 85,000.00 plus GST.
      - ii. Second payment starting of the demolition of the existing home and ready for excavation 200,000.00.
      - iii. Third payment at the start of framing 200,000.00.

iv. Fourth Payment at completion of lock up stage-windows, temporary doors and roof installed 150,000.00.

v. Fifth payment at the start of drywall, rough in for electrical, plumbing, HVC, low voltage, framing and insulation 200,000.00.

vi. Sixth and final payment (the "Holdback") after final occupancy permit has been accepted and ready for occupancy after 45 days of the occupancy permit date has been issued 100,000.00.

vii. All draws are subject to GST.

- b) Total cost of construction for the Plaintiffs to be \$935,000 plus GST;
- c) Invoices submitted by the Builder to the Client are due upon receipt;
- d) Builder will not be reimbursed for any expenses incurred in connection with providing the services of the contract;
- e) Any amendments or modifications to the contract or additional obligations assumed by either party in connection with the contract will only be binding if in writing and signed by each party or an authorized representative;

(the "Contract Terms")

- 18. At all material times following the execution of the Agreement, the Defendants, ALH and Chandra, advised the Plaintiffs that they would manage construction of the Project for the fixed sum of \$89,250.00, inclusive of GST, and that the Plaintiffs would be responsible for paying each tradesperson's invoice as construction progressed on the Project (the "Management Agreement").
- 19. To date, pursuant to the Management Agreement, the Plaintiffs have paid the Defendants approximately \$454,555.10.
- 20. From July 2024 to February 2025, the Defendants, ALH and Chandra, provided the Plaintiffs with invoices for expenses for both labour and materials for the Project.
- 23. During the course of the Project, the Defendants, Chandra, ALH, and [Ms. Kumar], altered legitimate invoices obtained from tradespersons for the Project by inflating the amounts due, and submitted altered and inflated invoices from tradespersons to the Plaintiffs for payment.
- 24. The altered and inflated invoices included, but are not limited to, invoices from the following trades or suppliers:
  - a. North Coast Lumber;
  - b. A1 Trusses Ltd.;
  - c. Naya Dampproofing and Waterproofing Ltd.;

- d. Praxis Site Services Ltd.;
  - e. Sunrise Windows Ltd.; and
  - f. Sangha Framing Ltd..
30. In the alternative, the Defendants, ALH, [Ms. Kumar] and Chandra, fraudulently misrepresented to the Plaintiffs of the amount payable to the tradespersons with respect to their invoices, by way of alteration and inflation of the said invoices.
31. The Defendant, [Ms. Kumar], actively assisted in the alteration of legitimate invoices obtained for the Project, by using technology to create duplicate invoices with increased or inflated amounts owing by the Plaintiffs.
38. The monies obtained by the Defendants, ALH and Chandra, through the fraudulent and/or negligent misrepresentations outlined above, constitute trust monies held beneficially for the Plaintiffs.
39. Such monies were diverted by the Defendants, ALH and Chandra, for the purposes other than the Project, and were so diverted in breach of that trust.
40. On or about January 15, 2025, Defendant 1512697 B.C. Ltd. became the registered owner of the property civically located at 7695 115A Street, Delta, BC V4C 5R1 and legally described as:

City of Delta

PID: 005-877-156

Legal Description: LOT 677 SECTION 24 TOWNSHIP 4 NEW

WESTMINSTER DISTRICT PLAN 40977

[the "7695 Property"]

41. On or about February 3, 2025, Defendants Chandra and [Ms. Kumar], as joint tenants, became the registered owners of the property civically located at 11693 95A Avenue, Delta, BC V4C 7A9 and legally described as:

City of Delta

PID: 031-576-133

Legal Description: LOT D SECTION 36 TOWNSHIP 4 NEW

WESTMINSTER DISTRICT PLAN EPP113146

[the "116 Property"]

42. Through breach of the Agreement and the Representations, ALH and Chandra absconded with the Plaintiffs' funds (the "Funds"), an accounting of which is yet to occur.

43. The Funds were obtained from the Plaintiffs, by the Defendants, through fraudulent means and used to acquire the 7695 Property and 116 Property.
44. Specifically, \$143,583.60 of the Funds were paid by the Plaintiffs to ALH on or about December 27, 2024, which were then wrongfully transferred, converted and formed part of ALH, Chandra and [Ms. Kumar]'s \$228,500 January 8, 2025 contribution for the purchase of [the 7695 Property].
45. Further, the Plaintiffs paid Funds of \$196,721.50 to ALH on January 18, 2025, of which \$150,000 was paid by ALH to Parminder Makkar Notary Corporation by January 30, 2025 and used for the purchase of [the 116 Property], thereby wrongfully transferring, converting and using the Funds.
46. ALH, [Ms. Kumar] and Chandra used the Funds for the acquisition and/or maintenance of both [the 7695 Property and the 116 Property], thereby creating a substantive constructive trust in favour of the Plaintiffs over both properties.
47. In the alternative, usage of Funds by the Defendants to acquire both [the 7695 Property and the 116 Property] created a remedial constructive trust in favour of the Plaintiffs, for which an award for monetary damages or a remedy for damages is inadequate and insufficient.
49. By using the Plaintiffs' Funds for the purchase and maintenance of [the 7695 Property and the 116 Property], ALH, [Ms. Kumar] and Chandra are holding their interests in both properties in trust for the Plaintiffs.
50. The Defendants, ALH, [Ms. Kumar], Chandra and 1512697 BC Ltd. directly benefited from the wrongful usage of the Funds, which were obtained by fraudulent means.
51. By using the Funds to acquire [the 7695 Property and the 116 Property], the Plaintiffs acquired a beneficial or a proprietary interest in those properties.
53. The Defendants, including [Ms. Kumar] and 1512697 BC Ltd., have been unjustly enriched by the Funds while causing the Plaintiffs to suffer a corresponding deprivation for which there is no juristic reason.
54. As a result of the Defendants' breaches, fraudulent misrepresentation, negligent misrepresentation and breach of trust, the Plaintiffs have and continue to suffer loss and damages, the accounting and particulars of which shall be presented at the trial of this action.
- [46] As set out above, the ANOCC asserts that Ms. Kumar was involved in altering the invoices-- i.e. she is not innocent as to the alleged fraud. The ANOCC also expands the facts pleaded in support of the claim that all defendants including Ms. Kumar and 1512697 benefited from the plaintiffs' payment of the fraudulent invoices.
- [47] The ANOCC then goes on to claim relief, including the following:

1. judgment against ALH, Ms. Kumar, and Mr. Chandra;
  2. aggravated damages against ALH, Ms. Kumar, and Mr. Chandra;
  3. special damages against ALH, Ms. Kumar, and Mr. Chandra;
  4. a declaration that the plaintiffs are the beneficial owners of [the 116 Property and the 7695 Property] by way of a constructive trust;
  5. a CPL against [the 116 Property and the 7695 Property]; and
  6. an accounting and tracing of all monies received and obtained by ALH, Ms. Kumar, and Mr. Chandra with respect to [the 116 Property and the 7695 Property].
- [48] The plaintiffs claim that the contract between the parties was partly written and partly oral. In the ANOCC, the plaintiffs claim that they were supposed to pay the actual third-party invoices, not fraudulently inflated third-party invoices. In the ANOCC, the plaintiffs allege that between July 2024 and January 2025, they were provided with fraudulently inflated invoices, which they paid. They further allege that the defendants diverted a portion of the plaintiffs' payments to purchase the 116 Property and the 7695 Property. The plaintiffs claim, among other things, a substantive constructive trust in the 116 Property and the 7695 Property based on fraud or breach of fiduciary duty. In the alternative, the plaintiffs seek, among other things, tracing and a remedial constructive trust.
- [49] A constructive trust is sufficient to sustain a registration of a CPL: *Nouhi v. Pourtaghi*, 2019 BCSC 794 at para. 20.
- [50] Courts have found that constructive trusts can arise in cases when defendants use fraudulently obtained moneys to acquire or maintain property: see for example, *Batth v. Sharma*, 2024 BCCA 29, and *Soulos v. Korkontzilas*, [1997] 2 SCR 217.
- [51] With respect to tracing and remedial trusts, in *Jacobs v. Yehia*, 2015 BCSC 267, Madam Justice Dickson (as she then was) stated as follows:
- [30] Funds may be traced before or after legal or equitable rights have been established. As Masuhara J. explained in *Drucker*, tracing is a process, not a claim or a remedy. He went on to describe the nature of the tracing process in the context of an application to cancel a certificate of pending litigation in an action involving funds that were allegedly misappropriated. At paras. 37-39, he stated:

Hence, if the plaintiff successfully establishes a proprietary entitlement to the misappropriated funds in the hands of the defendant, it may trace or follow those funds from there into other property. The question is then whether or not the Property held by the defendant is sufficiently connected to those misappropriated funds to satisfy the requirements for a constructive trust. If it is, the plaintiff will then be entitled to assert a constructive trust against that property without the exercise of any further discretion by the court (*Tracy* at para. 33).

In regard to tracing, it is neither a claim nor a remedy. It is merely a process by which a claimant demonstrates what has happened to his or her property so as to justify his or her claim that those proceeds be regarded as representing his or her property: *Foskett v. McKeown*, [2000] 3 All E.R. 97 (H.L.). There are three conditions which must be made:

- i. the property must be traceable;
- ii. there must be an equity to trace; and
- iii. tracing must not produce an inequitable result.

See: *Snell's Equity*, 29th ed. (London: Sweet & Maxwell, 1990) at p. 299.

Based on the following facts, I accept the position of the plaintiff that there is an arguable case for a remedial constructive trust in the Property or in the misappropriated funds which might be traced to the Property, either of which could sustain the CPL on the Property. This is sufficient to establish a claim in land within the meaning of s. 215(1) of the Land Title Act.

[52] In the ANOCC, the plaintiffs assert a direct link between funds they paid toward the fraudulently inflated invoices and the purchase of the 116 Property and the 7695 Property. The plaintiffs make specific reference as to the portion of their funds that can be traced to the purchase of the 116 Property and the 7695 Property.

[53] The defendants disagree that the plaintiff's funds were used in the purchases of either property. The defendants state that they have evidence that other funds were used to purchase the 116 Property and the 7695 Property. The defendants also claim that the \$450,000 paid by the plaintiffs was not enough to even cover their out-of-pocket costs for the project. However, as set out in 1332404 BC Ltd., the court's task on s. 215 applications is not to assess evidence, consider the merits of the case, or go behind the pleadings to assess the "true nature" of the case: para. 37.

[54] The court's task on these applications is simply to determine if ANOCC supports a claim for an interest in land. In my view, the ANOCC does. The ANOCC sets out material facts which support claims for substantive constructive trusts or, in the alternative, tracing and remedial constructive trusts. These are claims to the land.

[55] To recap, I have granted the defendant's application to cancel and discharge the existing CPLs pursuant to s. 215 of the LTA based on the NOCC. I have also commented on how the current ANOCC would support claims to land. I will now address the defendants' alternative argument for cancelling the CPLs based on hardship under sections 256 and 257 of the LTA, in case I am wrong in concluding the existing CPLs ought to be dismissed based on the NOCC.

The Law Regarding Cancellation of the CPL under sections 256 and 257 of the LTA for Hardship and Inconvenience

[56] The defendants submit that the CPLs should be cancelled for reasons of hardship under ss. 256 and 257 of the LTA, which provide as follows:

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 undertaking must be settled by the registrar of the court.

(3) In setting the amount of security to be give, 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.

[57] An applicant seeking discharge of a CPL must provide particulars of real or expected hardship that is causally connected solely to the registration of the CPL: *Save-A-Lot Holdings Corp. v. Christensen*, 2023 BCCA 35 at para. 30 [Save-A-Lot]; *Montaigne Group Ltd. v St. Alcuin College for the Liberal Arts Society*, 2023 BCSC 1257 at para. 52.

- [58] The evidence must demonstrate real hardship, not merely general allegations of inconvenience: *Save-A-Lot* at para. 30, citing *Liquor Barn Income Fund v. Becker*, 2011 BCCA 141 at para. 37 [*Liquor Barn*].
- [59] The degree of hardship must be more than "trifling" or "insignificant", but a court is not required to be exacting in its analysis: *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2014 BCCA 388 at para. 28 [*Youyi*]; *Montaigne* at para. 53.
- [60] However, even if hardship is established, cancellation of a CPL is not automatic. As explained in *Yi Teng Investment Inc. v. Keltic (Brighthouse) Development Ltd.*, 2019 BCCA 357, s. 256 is discretionary:
- [28] Section 256(1) authorizes an application for cancellation where the registered owner of land claims that the CPL is causing or likely will cause the owner to experience "hardship and inconvenience". Where an applicant establishes "hardship and inconvenience", cancellation of the CPL is not automatic. Rather, the court has a discretion under s. 257 to order the cancellation upon being satisfied that an order for security is proper and damages will provide adequate relief to the party in whose name the certificate was registered, and security is in fact provided. Or, the court may refuse to order cancellation, in which case it may order the party who obtained the CPL to give an undertaking as to damages and security: *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2014 BCCA 388 at para. 29.

#### Analysis Regarding Cancellation of the CPL under sections 256-257 for Hardship and Inconvenience

- [61] The defendants submit that the CPLs have "strangled them financially".
- [62] Regarding the 7695 Property, the defendants claim the CPL has prevented them from obtaining refinancing at favourable rates, or at all, and prevented them from building a duplex at the 7695 Property.
- [63] In January, 2025, 1512697 secured initial financing from PHL Capital Corp for approximately \$1 million for a one-year term at an annual interest rate of 8.75%. The interest-only payments are approximately \$7400 per month. Mr. Chandra and Ms. Parmar are personal guarantors.
- [64] The defendants submit that conventional lenders will not lend moneys to 1512697 with the CPL in place. The defendants assert that even the current lender, PHL Capital Corp, is unlikely to renew 1512697's existing financing because of the CPL.
- [65] The defendants also claim that 1512697 has not been able to build the planned duplex at the 7695 Property because the City of Delta will not issue building permits when there is a CPL registered against title.

- [66] With respect to the 116 Property, the defendants Ms. Kumar and Mr. Chandra claim they are unable to refinance its mortgage because of the CPL. In January 2025, the couple took out a three-year mortgage with Home Trust for \$1.88 million against the 116 Property with an annual interest rate of approximately 5.09%. Ms. Kumar and Mr. Chandra submit that if the CPL was removed from title, they would be able to refinance the 116 Property, allowing them to: (1) obtain more favourable financing terms; (2) contribute to their daughter's engagement party and wedding; and (3) repay moneys they have borrowed from family members for their basic necessities.
- [67] Alternatively, if the CPLs were removed, the defendants say they would be free to sell the 7695 Property and/or the 116 Property.
- [68] The plaintiffs state that the defendants have not demonstrated actual hardship. They state that, analogous to the *Liquor Barn* case, the defendants have failed to produce sufficient evidence demonstrating any hardship or inconvenience caused by the registration of the CPLs.
- [69] I agree with the plaintiffs.
- [70] The defendants' statements that they could refinance the mortgage on the 116 Property to obtain more favourable terms, pay moneys for their daughter's engagement party and repay family members are not supported by sufficient details. There is no evidence, for example, that Mr. Chandra and Ms. Kumar have been approved for a better interest rate. Further, even if they could obtain a better interest rate, there is no explanation as to how that would compare to any penalty they may incur for refinancing the mortgage before the end of its term, January 2028.
- [71] There are also no details as to whether Mr. Chandra and Ms. Kumar would qualify for a mortgage of more than \$1.88 million to enable them to pay for their daughter's engagement party or repay family members. There are also no details as to what Mr. Chandra and Ms. Kumar owe their family members. There is also no evidence that refinancing the mortgage is their only option to repaying family members or contributing to their daughter's wedding as opposed to using funds from ALH, for example.
- [72] Generalizations, unsupported by specific proof of hardship and inconvenience, are not sufficient: *Save-A-Lot* at para. 43, citing *Liquor Barn* at para. 37; see also *Kaur v. Chandler*, 2018 BCSC 1283 at para. 47; *Montaigne* at para. 79.
- [73] To the extent that the defendants are experiencing any hardship in relation to the CPL registered against the 116 Property, I am also unable to conclude that their hardships result solely or even materially from the registration of the CPL: see *Save-A-Lot* at para. 40.

- [74] Regarding the 7695 Property, the defendants claim that because of the CPL, they cannot obtain financing for construction or even renew the existing mortgage, the term of which ends in January 2026. To this end, the defendants rely on unsworn, hearsay evidence in the form of a letter from Aman Bring of "East to West Financial Corp." dated November 12, 2025 addressed "To Whom it May Concern." Mr. Bring's letter does not state that he is aware that the letter is intended to be attached to an affidavit for court proceedings.
- [75] Mr. Bring's letter states that between November 5-12, 2025, "we" (Mr. Bring does not say who "we" refers to) have been working on submitting or strategizing on how to get the property refinanced. It goes on to state that "we" have submitted "the deal" (Mr. Bring does not specify what "the deal" refers to) to three lenders:
- a) PHL Capital Corp (the current lender);
  - b) Guards Capital Corp. and
  - c) Can Guard Capital.
- [76] Mr. Bring's letter goes on to say that "each of the [above three] lenders have expressed a reluctance to move forward specifically because of the pending litigation." The letter does not say that the three lenders refused to offer financing, just that they expressed "reluctance."
- [77] Mr. Bring further states "Assuming there was no CPL; our review of the financial statements and the character/management of the client let's us believe that we would be able to refinance the loan into a construction facility with a conventional lender." Nowhere, however, does Mr. Bring definitively state that with the removal of the CPL, financing would be available.
- [78] The other evidence before me -also hearsay evidence -would tend to show that it is not the CPL that is preventing financing for the 7695 Property. For example, on October 15, 2025, Ms. Parmar, whose company owns 50% of the shares in 1512697, had her counsel Mr. Singh send an email to the other counsel stating:

We have been informed by Ms. Parmar that the mortgage for [the 7695 Property] is due for renewal around January 13 or 15, 2026. Please be advised that our client will neither be applying for renewal nor she will [sic] be signing any renewal documents. Your client needs to get it refinanced in his name and based on his qualification or however he wants to deal with it prior to renewal date.

- [79] Previously, Ms. Parmar herself sent an email March 13, 2025, addressed "Hello All" stating:
- ..I am very stressed and sleepless, as I am dragged into the mess created between [Mr. Mah] and [Mr. Chandra]. I am widow of 2 daughters who invested \$150,000 with [Mr. Chandra] to purchase [the 7695 Property]. [Mr. Chandra] invested \$300,000.00 My remaining \$150,000.00 was to be held in interest reserve for mortgage payments until we got construction financing. [Mr. Chandra and Ms. Kumar] purchased their personal property the same week. When I went to the banks to apply

for construction financing, the banks refused as it showed [Mr. Chandra] has a mortgage of 2MM. On Feb 4 I told him that I cannot take all the risk. I will not be proceeding with construction financing.."

- [80] In her March 2025 email, Ms. Parmar's position seems to be, regardless of the CPL, that she did not wish to proceed with the construction of the duplex at the 7695 Property. Ms. Parmar also implies that Mr. Chandra's commitment to the \$1.88 million mortgage on his personal residence was what prevented them from securing financing for construction at the 7695 Property.
- [81] And as mentioned, recently in October 2025, Ms. Parmar's lawyer states that Ms. Parmar is not willing to renew the financing for the 7695 Property.
- [82] Ms. Parmar's email and her counsel's email are hearsay evidence. However, so is evidence of Mr. Bring. Overall, at best, I am left with the defendants' general statements that the CPLs are causing them hardship. These general statements are supplemented with problematic hearsay evidence of Mr. Bing that seems to raise more questions than answers.
- [83] As the case with the CPL on the 116 Property, I am unable to conclude that the CPL on the 7695 Property is causing the defendants' hardship. Alternatively, if the defendants are suffering hardship in relation to the CPL registered against the 7695 Property, I am not satisfied that the CPL is the cause of the hardship. According to her lawyer, Ms. Parmar, is not interested in proceeding with the construction on the 7695 Property or even renewing the existing financing. Ms. Parmar's cooperation appears relevant if not crucial in the renewal or refinancing of the 7695 Property, regardless of the CPL.
- [84] I also reject the defendants' submission that they are experiencing hardship because the CPLs prevent a sale of either property. There is no evidence that the defendants have tried to sell either property. There is no evidence that either property would be easier and faster to sell at a higher sale price if the CPL was removed. There are many instances where a CPL remains on title to a property listed for sale.
- [85] Accordingly, I would dismiss the defendants' application for cancellation of the CPLs on the basis of hardship under ss. 256 and 257 of the LTA.

## Conclusion

- [86] The defendants' application to cancel and discharge the CPLs pursuant to s. 215 based on the NOCC not supporting claims to land is granted.
- [87] The defendants' alternative application pursuant to s. 256 and 257 of the LTA is dismissed.
- [88] Costs will be in the cause.

"Hamilton J."

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