

CANADA / JUDGMENT

Gill v. Pannu

2021 BCSC 2607

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Supreme Court of British Columbia

DECIDED

17 December 2021

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2021 BCSC 2607 Gill v. Pannu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gill v. Pannu,

2021 BCSC 2607

Date: 20211217

Docket: S37894

Registry: Chilliwack

Between:

Jasbinder Singh Gill

Plaintiff

And

Rupinder Singh Pannu, Gurdev Singh Randhawa, Dalbir Kaur Randhawa, Pannu Bros Holdings Ltd., Pannu Bros Trucking Ltd.,

Abbotsford Banquet & Conference Centre Ltd., 33738 Laurel Holdings Inc., Maiken Andersen, Ronald A. Kelly, Baker Newby LLP, and John Klassen

Defendants

Before: The Honourable Mr. Justice Kirchner

(appearing by videoconference)

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff appearing by videoconference:

R.S. Arora

Counsel for the Defendants Rupinder Singh Pannu, Pannu Bros Holdings Ltd., and Pannu Bros Trucking Ltd. appearing by videoconference:

D.A. Sorensen

No other appearances

Place and Date of Hearing:

Chilliwack, B.C.

December 15, 2021

Place and Date of Judgment:

Chilliwack, B.C.

December 17, 2021

- [1] THE COURT: This is an application by three of the defendants in this case to cancel certificates of pending litigation filed by the plaintiff against two properties.
- [2] One of the properties, which I will refer to as the "Fraser Highway Property" is owned by the defendant Rupinder Pannu. The other, which I will refer to as the "Bradner Road Property" is owned by the defendant Pannu Bros Trucking Ltd. Mr. Pannu is the owner and director of Pannu Bros Trucking. He is also an owner and director of another company called Pannu Bros Holdings Ltd.
- [3] The claim that underlies the certificates of pending litigation ("CPLs") was brought by the plaintiff, Jasbinder Singh Gill. It arises out of the failure of a banquet hall business venture that Mr. Gill entered into with Mr. Pannu and another defendant, Gurdev Singh Randhawa. The banquet business, which was called Abbotsford Banquet & Conference Centre Ltd. ("ABCC") was founded in 2003 and operated out of a property on Laurel Street in Abbotsford (the "Laurel Street Property").
- [4] Mr. Pannu was the majority shareholder in ABCC at 51% and had the largest investment in the business at \$500,000. Mr. Gill held 19% of the shares and had the smallest investment at \$130,000. Mr. Randhawa held 30% of the shares on a \$240,000 investment.
- [5] The Laurel Street Property was acquired by ABCC in 2004 for \$1.075 million. The purchase was financed by way of two mortgages granted through Pannu Bros Holdings, one in the amount of \$800,000 and the second in the amount of \$300,000. These mortgages were approved by resolutions passed and signed by all three directors of ABCC.

- [6] In 2016, Pannu Bros Holdings assigned the mortgages to a numbered company. At the time, the principal amount on the second mortgage was increased from \$300,000 to \$450,000. The evidence does not explain why this was done.
- [7] Over time, the business relationship between the three shareholders and ABCC deteriorated and, starting around 2013, the company operated at a loss until the business was closed in 2020. Mr. Pannu deposes that throughout this time, and perhaps before, he was making contributions to the business to keep it going for which he was not reimbursed by the two other shareholders. He has particularized some of these contributions for a six-month period from July 2019 to July 2020, but states these represent only a portion of the total contributions.
- [8] In January 2020, ABCC sold the Laurel Street Property, effectively closing the business. The property sold for \$2.8 million. Mr. Gill claims that Mr. Pannu was solely responsible for the conduct of the sale and that the property was undervalued. Mr. Pannu disputes this. The net proceeds of the sale of the Laurel Street Property was \$2,740,050.98 after the expenses of the sale were deducted. At the time, the balance owing on the mortgages exceeded this amount. It appears that ABCC did not make payments on the mortgage, and thus the principal amount grew as interest accumulated. Mr. Gill asserts there was no agreement that Pannu Bros Holdings would charge interest on the mortgage and thus claims that Pannu Bros Holdings was overpaid when it received the full sale proceeds of the Laurel Street Property. That is an issue for trial.
- [9] The remainder of ABCC's assets comprised mostly of conference tables and chairs. These were sold or donated, the sales generating approximately \$33,000 in cash. This cash was deposited into Mr. Pannu's personal account, presumably by Mr. Pannu, reportedly as a partial reimbursement for the various expenses he had contributed to ABCC over the previous years.
- [10] On July 28, 2020, Mr. Gill commenced this action by filing a notice of civil claim. In it, he alleges that Mr. Pannu wrongfully withdrew or took monies from or belonging to the company and distributed them amongst himself, Pannu Bros Trucking, Pannu Bros Holdings, as well as Mr. Randhawa. Specifically, in respect of this aspect of the claim, the notice of civil claim states this at para. 26:
26. Funds from the sale of the [Laurel Street] Property were distributed amongst the Defendants Mr. Pannu, Mr. Randhawa, Pannu Bros Holdings and Pannu Bros Trucking.

And at para. 30:

30. Between June 2004 and January 2020, the Defendant Mr. Pannu withdrew funds from ABCC, which was to be applied to his shareholder loan. Mr. Pannu has been the only shareholder of ABCC to ever make a shareholder withdrawal. The total of these Shareholders withdrawals by Mr. Pannu are more than \$300,000.

And at para. 37(b):

- (b) Mr. Pannu, Mr. Randhawa and Ms. Andersen collected cash payments from ABCC which have not been deposited to the company bank accounts.
- [11] Mr. Gill also alleges that these defendants, that is to say the applicants in this application, invested the monies withdrawn from the company in properties they own, including the Bradner Road Property and the Fraser Highway property. Specifically, para. 42 of the notice of civil claim alleges:
 - 42. To the detriment of the Plaintiff Mr. Pannu and Pannu Bros Trucking Ltd has diverted operating profits, asset sale proceeds and "cash" funds from ABCC and the Plaintiff's shareholders loans to their Fraser Hwy Property and the Bradner Road Property and used those funds for:
 - (a) clearing and excavating the properties;
 - (b) readying the property for development and commercial purposes;
 - (c) constructing, maintaining and improving structures and buildings;
 - (d) constructing, maintaining and improving a yard for trucks, trailers and vehicles;
 - (e) making payments that increased the equity in both the Fraser Highway . . . and the Bradner Road Propert[ies];
 - (f) maintaining the lands; and
 - (g) other improvements and benefits as the Plaintiff will advise in due course.
- [12] At para. 46, the notice of civil claim alleges the defendants have been unjustly enriched by their conduct, and at para. 47, it alleges that Mr. Gill is entitled to a constructive trust and a resulting trust in the Fraser Highway property and the Bradner Road Property because monies by which the defendants were unjustly enriched are alleged to have been invested in those properties, as described in para. 42 of the notice of civil claim.

[13] The notice of civil claim then alleges:

In these circumstances, a monetary award is inadequate, insufficient, and inappropriate to compensate the Plaintiff for the Defendant Mr. Pannu's unjust enrichment and profitable wrongdoings..

No particulars are provided in the notice of civil claim as to why a monetary award is inadequate.

- [14] In the "relief sought" section of the notice of civil claim, Mr. Gill seeks a wide range of remedies, including a declaration of unjust enrichment, disgorgement of profits, tracing, conversion, a declaration that he has an interest in all property or assets improved or purchased by the defendants with funds from ABCC, a declaration that the defendants' interests in the properties are held pursuant to a resulting or constructive trust in favour of

Mr. Gill, certificates of pending litigation in respect of all the properties, and a host of other relief.

- [15] On the strength of this claim, Mr. Gill registered certificates of pending litigation on various properties owned by the defendants, including the Bradner Road Property and the Fraser Highway Property, both of which are the subject of this application. Mr. Gill also registered a CPL on another property in Surrey owned by Mr. Pannu. However, that CPL was discharged by agreement of the parties when Mr. Pannu wished to sell the property. As part of the agreement to discharge that CPL, the sale proceeds, being \$975,425.07, were paid into court pursuant to a consent order made by Master Cameron on March 12, 2021. These funds are also subject to another claim in a family law proceeding in which Mr. Pannu is the respondent. That matter has not yet proceeded to trial, but the existence of that claim casts some doubt on the extent to which these funds will truly serve as security for Mr. Gill's claim in this proceeding.
- [16] Mr. Pannu, along with Pannu Bros Trucking Ltd. and Pannu Bros Holdings Ltd., now applies to discharge the CPLs on the Bradner Road Property and the Fraser Highway Property.
- [17] There are at least two bases upon which certificates of pending litigation may be discharged under the Land Title Act, R.S.B.C. 1996, c. 250 [LTA]. The first is s. 215 which allows a person to register a CPL against property when an action has been commenced that claims an estate or interest in that property. However, where it is shown that the claim on which the CPL is based fails to disclose a claim for an estate or interest in the land, the CPL will be discharged because it was improperly registered from the start: *Bajwa v. Singh*, 2016 BCSC 916.
- [18] A second basis on which a CPL may be cancelled is under s. 257 of the LTA, where its registration causes hardship or inconvenience to the registered owner of the land. In essence, s. 257 provides that the court may order that the CPL be cancelled if satisfied that the registered owner of the land will suffer hardship and inconvenience by the continued registration of the CPL, that an order requiring the registered owner to give security in place of the CPL is proper in the circumstances, and that damages will provide adequate relief to the party who has registered the CPL.
- [19] The applicants seek to discharge the CPLs on both these grounds.
- [20] With regard to the first basis, the analysis of whether a claim to an estate or interest in land is properly disclosed is based solely on the pleadings without regard to evidence: *Wai v. Chung*, 2020 BCSC 34 [Wai] at para. 18. However, the mere assertion in a notice of civil claim with no proper factual foundation is insufficient to support the registration of the CPL: *Wai* at para. 20.

- [21] A pleading that lacks particulars of the claim to an estate or interest in land will not suffice. As Justice Murray stated in 1077708 BC Ltd. v Agri-Grow Farm Services Ltd., 2019 BCSC 977 at para. 39, about a CPL, "[s]uch an extraordinary and powerful pre-trial tool must be grounded on more than mere conjecture."
- [22] A CPL is not a bargaining tool to be used as leverage to extract prejudgment payment of a financial claim: Drein v. Puleo, 2016 BCSC 593. Nor is it intended to provide security for a monetary judgment in a claim that has no real connection to the land over which the CPL is registered. It is designed to preserve a claim to the land itself, pretrial, by preventing that land from passing to an innocent third party. A CPL is not a shortcut to a Mareva injunction, which is an extraordinary prejudgment remedy that freezes a defendant's assets to secure judgment in a claim.
- [23] Thus, the mere fact that a notice of civil claim pleads that the defendant appropriated money and spent that money on a piece of property is not necessarily sufficient to disclose a claim to an estate or interest in that property such that it would support the registration of the extraordinary prejudgment remedy of a CPL. In Wai, Justice MacDonald ordered a CPL cancelled on the basis of s. 215. She described the pleading in that case as follows at para. 29:
- [29] The plaintiff pleaded generally that the defendants used her Investment Funds to purchase the Property. How they did so is not set out or particularized in any way. The plaintiff's pleadings are vague and imprecise, without any direct connection between the Investment Funds and the Property.
- [24] In my view, para. 42 of the notice of civil claim in this case suffers from the same deficiencies. While that paragraph provides a list of ways in which it is alleged the properties were improved with monies allegedly drawn from ABCC, it is nothing more than a longer list of the same kind of bare assertions described in Wai. The only parcel of land that is truly the subject of this litigation is the Laurel Street Property which was owned by ABCC and sold. The Bradner Road Property and the Fraser Highway Property have nothing to do with Mr. Gill's claim and have only been drawn into this litigation by way of the bare assertions made in para. 42 of the notice of civil claim.
- [25] Moreover, the lack of particularity in para. 47 of the notice of civil claim, where it is said that a monetary award is inadequate, underscores the point that this claim is not about an estate or interest in the Bradner Road or Fraser Highway Properties. If a monetary award is truly inadequate, the plaintiff ought to be able to say why in the notice of civil claim.

- [26] I acknowledge the plaintiff may not be in a position to provide more detailed particulars of the allegations in para. 42 of the notice of civil claim at this stage. This is evident by the fact that subparagraph (g) of para. 42 states the funds were used for "other improvements and benefits as the plaintiff will advise in due course." However, the inability to provide particulars of the allegations at the pleadings stage does not justify registration of a CPL: see *Wai* at para. 29.
- [27] I am therefore satisfied that the notice of civil claim does not disclose a claim for an estate or interest in the Bradner Road or Fraser Highway Properties and I would make an order that the CPLs registered against those properties be cancelled.
- [28] If I am wrong in this conclusion, however, I would nevertheless have made an order cancelling the CPLs under s. 257 of the LTA. I am satisfied that the continued registration of the CPLs causes hardship and inconvenience to the applicant. While the Court of Appeal has rejected a low threshold for hardship that had been set out in previous decisions of this court, it did not elevate the standard to insurmountable heights. It noted that the court should not be exacting in its analysis of hardship and inconvenience: *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2014 BCCA 388 at para. 28.
- [29] Mr. Pannu deposes he has suffered hardship as a result of the COVID-19 pandemic. Pannu Bros Trucking has seen a drop in its freight revenue from \$9.2 million in 2019 to just under \$7.8 million in 2020. Mr. Pannu does not expect this to improve in the foreseeable future. In fact, in a more recent affidavit sworn in August of this year, he states that Pannu Bros Trucking has recently lost a major grocery chain client, and thus the business is now suffering more. He deposes that he employs approximately 50 people and he is concerned that he might have to lay some of them off.
- [30] Mr. Pannu has also suffered loss of rental income on the Fraser Highway Property. He deposes that he and Pannu Bros Trucking are experiencing significant cash-flow difficulties.
- [31] Mr. Pannu states the CPLs severely limit his ability to raise cash because he cannot sell or leverage the equity in either the Bradner Road or the Fraser Highway Properties. He deposes he would like to sell the Bradner Road Property to generate cash for the business while the real estate market is doing well, but he cannot do so because of the CPL.
- [32] While Mr. Pannu appears to have a range of assets to draw on apart from these two properties, I accept in the circumstances of this case, and for the reasons that I will now describe, his inability to sell or leverage the equity in these properties causes hardship and inconvenience. I say that for three reasons.

- [33] First, the value of Mr. Gill's claim is grossly disproportionate to the value of these properties. Mr. Gill states in his affidavit that the monetary value of his claim ranges between \$330,000 to a maximum of, as I understand it, \$610,000 in a best-case scenario. Mr. Pannu estimates that the Bradner Road property is valued at around \$11.9 million and the Fraser Highway property is valued at around \$11 million. Thus, Mr. Pannu is faced with some \$22.9 million worth of property being locked up over a claim that is, at most, valued at \$610,000.
- [34] Second, Mr. Gill's evidence for a claim to an estate or interest in land is weak. I have heard and read a great deal about the merits of Mr. Gill's claim and of Mr. Pannu's defences to that claim. Through voluminous affidavit material, the parties have sought to persuade me of the merits of the positions each will take at trial. It is difficult to assess the relative merits in this application since much will turn on the testimony of the parties and their credibility. However, it is not the merit of the claim in general that matters, it is the merit of the claim to an estate or interest in the lands over which the CPLs have been registered: *De Cotiis v. De Cotiis*, 2004 BCSC 1658 [*De Cotiis*] at paras. 39 and 40.
- [35] In my respectful view, Mr. Gill's claim to an estate or interest in the Bradner Road and Fraser Highway Properties is weak on the evidence before me. It amounts to assertions that monies were spent on or in respect of those properties in the months following the sale of ABCC's Laurel Street Property. Mr. Gill asks the court to infer from the sequencing that the monies expended on these Properties must have come from the earlier sale of the Laurel Street Property. In my respectful view, however, this is little more than conjecture that provides a very thin basis on which to establish an estate or interest in lands that are otherwise wholly unrelated to the business of ABCC.
- [36] Third, I find Mr. Gill's claim is a monetary claim and the Bradner Road and Fraser Highway Properties have only been drawn into this litigation through the tenuous thread of para. 42 of the notice of civil claim. It is clear on the pleadings and the voluminous evidence before the Court on this application that this case is about money, not land, and if it is about land, it is not about the land over which the CPLs have been registered.
- [37] In these circumstances, I find that Mr. Pannu has established hardship and inconvenience in not being able to sell and leverage the Bradner Road or the Fraser Highway Properties because of the CPLs and, had I not found that the CPLs should be discharged under s. 215 of the LTA, I would have ordered that the CPLs be discharged under s. 257 of the LTA, subject to security.
- [38] With regard to security, in *0861695 B.C. Ltd. v. Meola*, 2013 BCSC 121, Justice N. Smith, citing Justice Sigurdson's decision in *De Cotiis* at paras. 35 to 36, noted that where the claim to an interest in land is weak, the defendant's undertaking to pay damages resulting from the cancellation of the CPL may constitute sufficient security for the purposes of s. 257 of the LTA.

- [39] In my view, had it been necessary to discharge the CPL under s. 257, this would be an appropriate case for security to be posted in the form of an undertaking. Having regard to the value of the claim as described by Mr. Gill in his affidavit, it is evident that the applicants hold more than enough assets to satisfy the damage award in the range that might potentially be ordered at trial.
- [40] Further, given what I have found about the weakness in the claim to an estate or interest in the Bradner Road and Fraser Highway Properties, I also consider that an undertaking is sufficient security in this case, had it been necessary.
- [41] Thus, if I am wrong that the CPL should be cancelled under s. 215 of the LTA, I would find that the CPL should be cancelled under s. 257 of the LTA. I find Mr. Pannu giving an undertaking in his personal capacity and on behalf of Pannu Bros Trucking Ltd. and Pannu Bros Holdings Ltd. to abide by any order for damages that the court might make arising out of the cancellation of the CPL would have been sufficient security. However, since I have found that the CPL should be cancelled under s. 215 of the LTA, it is unnecessary to give that undertaking now.
- [42] For these reasons, I order that:
- 1) the certificate of pending litigation in respect of the Bradner Road Property and the Fraser Highway property be cancelled;
 - 2) the Registrar of Land Titles shall remove the CPLs registered against both properties; and
 - 3) the applicants will have their costs of this application at Scale B in the cause.

"Kirchner J."

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