

CANADA / JUDGMENT

Huang v. Lowe

2025 BCSC 2630

COURT

Supreme Court of British Columbia

DECIDED

24 November 2025

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2025 BCSC 2630 Huang v. Lowe

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Huang v. Lowe,

2025 BCSC 2630

Date: 20251124

Docket: S-256220

Registry: Vancouver

Between:

Huai Jian Huang

Plaintiff

And

Ricky Lowe, 1176632 B.C. Ltd., and 1460443 B.C. Ltd.

Defendants

Before: The Honourable Justice Giltrow

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

A. Kwok

Counsel for the Defendants:

W.V. Barta

Place and Date of Hearing:

Vancouver, B.C.

November 21, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 24, 2025

- [1] THE COURT: I have now had the opportunity to read the authorities that the parties referred me to in the application Friday afternoon.
- [2] The authorities make clear that on an application to cancel a certificate of pending litigation under s. 215 of the legislation, the only question before me is whether the pleadings are sufficient to establish an interest in land. I am not to consider evidence or assess the merits of the claim: *Bilin v. Sidhu*, 2017 BCCA 429, *Xiao v. Fan*, 2018 BCCA 143, and *Nouhi v. Pourtaghi*, 2019 BCSC 794 at para. 13.
- [3] A constructive trust is sufficient to sustain a registration of a certificate of pending litigation: *Nouhi* at para. 20.
- [4] In *Nouhi*, Justice Matthews held that two criteria must be satisfied to establish a constructive trust (whether remedial or substantive):
1. there must be referential property, i.e. the plaintiff must demonstrate a substantial and direct link, a causal connection or a nexus between the claim and the property upon which the remedial constructive trust is to be impressed;
 2. the plaintiff must demonstrate that a monetary award is inadequate, insufficient, or inappropriate in the circumstances.

Second Criterion for Constructive Trust

- [5] I note that the Court of Appeal has suggested that this second criterion may not be necessary to establishing a constructive trust where "the plaintiff has pleaded a link between the fraudulent use of the plaintiff's money and the specific property which is said to be impressed with the constructive trust": *Bath v. Sharma*, 2024 BCCA 29 at para. 35.
- [6] This is the circumstance in this case. The plaintiff pleads the defendant has used the plaintiff's money to acquire the property said to be impressed with the constructive trust.
- [7] Regardless, in this case the plaintiff also pleads that "a monetary award would be inadequate, inappropriate, or an insufficient remedy" para. 23(d) of the notice of civil claim.

- [8] If the first criterion to establish a constructive trust is otherwise met, I am not persuaded that the court should go behind the pleading.
- [9] *Drein v. Puleo*, 2016 BCSC 593, upon which the applicant relies and where the Court looked to the assertions of the plaintiff beyond the pleadings, precedes the Court of Appeal's decision in *Bilin* which confirmed that the Court has no independent or common law authority to cancel a CPL under s. 215 beyond the strict question of whether the pleadings are sufficient to establish an interest in land. As the Court said in *Nouhi*, s. 215 is purely a question of adequate pleadings.
- [10] The applicant argues that the pleading at s. 23(d) of the notice of civil claim is tantamount to a bare assertion that is unsupported in a notice of civil claim that otherwise advances a claim in debt. The applicant argues that this pleading is insufficient without pleadings explaining why a monetary award would be inadequate, inappropriate, or insufficient when, as the applicant put it in argument, "the claim is for the money the plaintiff says he should have been the beneficial owner of".
- [11] My concern is that there is a circularity to the argument. While it is true that other points of relief sought are with respect to monetary awards, such as the accounting and disgorgement of profits of the Delta Proceeds and the Lot 1 proceeds, that does not obviate the fact that the plaintiff also seeks a declaration of constructive trust over the Vancouver property. This is not an alternative relief sought. It is the relief sought in respect of the one property remaining that is still held by the defendant. The plaintiff claims a constructive trust in this property.
- [12] Assuming, without deciding, that the plaintiff must demonstrate that a monetary award is inadequate, insufficient, or inappropriate in the circumstances in order to establish a constructive trust, I am satisfied that the notice of civil claim sufficiently establishes this claim. The claim is directly made at paragraph 23(d).
- [13] Therefore, I would not accede to the applicant's argument that the claim to constructive trust is not established on the pleadings because it fails to meet the second criterion for constructive trust set out in *Nouhi*.

First Criterion for Constructive Trust

- [14] I consider then whether the first criterion for establishing constructive trust is met.
- [15] The applicant says that the nexus claimed cannot rest on bare, unsubstantiated assertion, relying on *Wai v. Chung*, 2020 BCSC 34:
- [21] In both *Chen and 1077708 BC Ltd. v. Agri-Grow Farm Services Ltd.*, 2019 BCSC 977 [*Agri-Grow*], the plaintiffs alleged certain funds paid by the plaintiff were misappropriated by the defendant to maintain and preserve the subject properties. In both decisions the court held there was no information in the pleadings about how the property was maintained. There was no specified time period identified and there was no indication of how much money was

misappropriated. These bald assertions, without a foundation as to how the money flowed from the defendants to the properties, did not meet the threshold of claiming an interest in land. As stated by Justice Murray in *Agri-Grow* at para. 39: "An interest in land can not be based solely on unsubstantiated assertions with no factual- whether they ultimately are proved to be true or not- underpinning. Such an extraordinary and powerful pre-trial tool must be grounded on more than mere conjecture."

- [16] Unlike those cases where the allegation was funds were misappropriated to "maintain and preserve" the property said to be impressed with the constructive trust, here the allegation is that the property said to be impressed with the trust was purchased using the plaintiff's funds. In those cases, the pleadings fail to disclose how the property was maintained, the time period identified, or how much money was misappropriated.
- [17] In this case, with respect to the purchase -which is the conduct at issue, distinct from maintenance and preservation - all of these points are pled. The funds alleged to have been misappropriated are the Delta Proceeds, which are \$1.622 million; the dates are pled, the Delta property sold in February 2022, the Vancouver property was purchased in July 2024; and the plaintiff expressly pleads that the purchase of the Vancouver property was made with the Delta Proceeds.
- [18] In my view, the required nexus to establish a constructive trust is pled.
- [19] In coming to this conclusion, I am mindful of the Court of Appeal's decision in *Batth* in 2024 in which the Court addresses both *Agri-Grow* and *Wai v. Chung*. Paragraph 39, Justice Skolrood, then on the Court of Appeal, notes that the appellants cite *Agri-Grow*, where Justice Murray made the comment that I have already read out from paragraph 39 of *Agri-Grow*. Justice Skolrood notes that:
- [40] *Agri-Grow* was cited with approval by Justice D. MacDonald in *Wai v. Chung* . . . at para. 21, where she similarly found that the pleadings lacked a factual foundation sufficient to support a CPL. MacDonald J. noted that the plaintiff there did not plead an interest in the subject property or any direct link between the allegedly misappropriated funds and the purchase of the property . . .
- [20] However, Justice Skolrood goes on to say at para. 41:
- [41] *Agri-Grow* and *Wai* are distinguishable. *Agri-Grow* involved a lease dispute in which the defendants allegedly breached the lease by failing to pay the contractually required rent. The plaintiff alleged that the principal of the defendant misappropriated an unstated amount of funds from the defendant that would otherwise have gone to paying the rent and used those funds to maintain a wholly unrelated property. Justice Murray quite properly held that the pleadings lacked the [sufficient] factual foundation to support a CPL. There was no pleaded allegation that the defendants even held an interest in that unrelated property.

- [42] The facts of Wai are closer to this case in that the claim alleged misappropriation of investment funds that were improperly used by the defendants to purchase personal property. However, as MacDonald J. found, the pleadings were manifestly deficient for the purpose of supporting a CPL given that no interest in the property was pleaded.
- [21] Significantly, Justice Skolrood went on at paragraph 43 to say:
- [43] In my view, the [notice of civil claim] here does not suffer from the same defects. Read as a whole, the [notice of civil claim] discloses a claim to an interest in the Properties. Mr. Sharma pleads that he paid money based on fraudulent misrepresentation and that money was then wrongly used towards the acquisition of, or increasing the equity in, the Properties. Mr. Sharma seeks a tracing of the loan funds and any profits made from wrongful use of those funds. He also pleads that the Batths and ICGS would be unable to pay monetary damages. If his facts as pleaded are assumed true, they support the substantive constructive trust claim.
- [22] I am of the same view in this case. If the facts pled by the plaintiff are assumed true, they support a constructive trust claim. This is an interest in land sufficient to sustain a registration of a certificate of pending litigation.
- [23] Accordingly, I cannot order the cancellation of the CPL under s. 215 of the Land Title Act, RSBC 1996, c. 250.

Hardship

- [24] I now turn to the question of hardship under s. 256 of the Act. As Justice Fitzpatrick held in *Kaur v. Chandler*, 2018 BCSC 1283:

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 . . .

- [25] At paragraph 45, Madam Justice Fitzpatrick said:

- [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 . . . impeding a sale process where the CPL is dissuading persons from making an offer . . . and impeding the ability to obtain financing for the continued development of the lands . . . [citations omitted]

- [26] As stated in *Kaur* at paragraphs 46 and 47:

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 . . .

And:

Generalizations, unsupported by specific proof of hardship and inconvenience, are not sufficient to meet the requirements of s. 256(1)(b) . . .

- [27] In this case, the affidavit of the defendant Mr. Lowe states that he received the certificate of pending litigation on August 25, 2025. He had by then a verbal offer and acceptance of the sale of the property. Formal acceptance of the sale was August 30, 2025, with a subject removal date of September 12, as he states in his affidavit.
- [28] He says if the CPL is not discharged, the contract of purchase and sale will not close, and it is his understanding he risks being sued for breach of contract by the buyer. He says also that the buyer has given notice to their landlord and the buyer will not agree to further extension of the completion date. And he says finally the proceeds of the property are to be used to pay construction costs and loans and are for further investment.
- [29] The plaintiff argues that any hardship is of the defendant's own making, as he entered into the contract for purchase and sale after the CPL was registered against title.
- [30] My concern with the evidence tendered in support of the hardship application is that the evidence of Mr. Lowe that if the CPL is not discharged, the contract of purchase and sale will not close, and that he understands he risks being sued for breach of contract by the buyer, is not substantiated.
- [31] Generally, an affidavit must state only what a person swearing or affirming the affidavit would be permitted to state in evidence at trial. Mr. Lowe's assertions about the buyer's intentions are either hearsay or they are speculation. Rule 22-2(12) and (13) of the Supreme Court Civil Rules sets out the requirements for affidavits:

Limitation on contents of affidavit

(12)Subject to subrule (13), an affidavit must state only what a person swearing or affirming the affidavit would be permitted to state in evidence at a trial.

Exception

(13)An affidavit may contain statements as to the information and belief of the person swearing or affirming the affidavit, if

- (a)the source of the information and belief is given, and
- (b)the affidavit is made
- (i)in respect of an application that does not seek a final order, or
- (ii)by leave of the court under Rule 12-5 (71) (a) or 22-1 (4) (e).

[32] In this case no source of information and belief is given by Mr. Lowe.

[33] There is no evidence from the buyers that they will not complete the sale without the removal of the CPL.

- [34] The CPL was in place when the contract for purchase and sale was made. The subjects of the contract, whose removal date was, on the face of the contract, September 10, and according to Mr. Lowe's affidavit, removal was September 12, include Subject Number 4, which states:
4. Subject to the Buyer approving the individual & common property title search results against the presence of any charge or other feature, whether registered or not, that reasonably may adversely affect the property's use or value.
- [35] Furthermore, Mr. Lowe provides no evidence that he does not otherwise have funds to pay the construction costs and loans.
- [36] In the circumstances, I am unable to find that the evidence supports the applicant's hardship argument made under ss. 256 and 257 of the LTA.
- [37] Accordingly, I find I must dismiss the application for cancellation of the CPL with costs to the respondent.

"Giltrow J."

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Prepared on 26 October 2026 · Esheria