

CANADA / JUDGMENT

Peoples Trust Company v. 1016138 BC Ltd.

2020 BCSC 1429

COURT

Supreme Court of British Columbia

DECIDED

24 July 2020

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2020 BCSC 1429 Peoples Trust Company v. 1016138 BC Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Peoples Trust Company v. 1016138 BC Ltd., 2020 BCSC 1429 Date: 20200724 Docket: H160700 Registry: Vancouver Between: Peoples Trust Company Petitioner And: 1016138 BC Ltd., Fraser River Terminal Holdings Inc., 1017055 BC Ltd., CCH Investment (BC) Inc., 0999334 BC Ltd., Norman Chun Fai Kwan, Zun Yong Wen, Soo Kin Teh, Bancorp Balanced Mortgage Fund II Ltd., Bancorp Growth Mortgage Fund II Ltd., Bancorp Financial Services Inc., Tonggui Xie, Canphoenix Enterprises Ltd., Inspire Group, Trites Project Corporation, Inspire Group Development Corporation and Her Majesty the Queen in Right of the Province of British Columbia Respondents Before: The Honourable Madam Justice Adair Oral Ruling re request to adjourn a Notice of Application In Chambers (by Telephone) Counsel for 0999334 BC Ltd. and Soo Kin Teh: M. Morgan Counsel for 1016138 BC Ltd. and Fraser River Terminal Holdings Inc.: D.K. Fitzpatrick Counsel for 1017055 BC Ltd.: L.Y. Babbitt Counsel for Canphoenix Enterprises Ltd., Inspire Group Development Corporation, Inspire Group Trites Projection Corporation and Tonggui Xie: C. Dennis, QC S. Chang Place and Date of Hearing (by telephone): Vancouver, B.C. July 24, 2020 Place and Date of Ruling (by telephone): Vancouver, B.C. July 24, 2020

- [1] THE COURT: This is my ruling on the request by the Xie respondents to adjourn the notice of application that was filed by 0999334 B.C. Ltd. and Ms. Teh on March 11, 2020. We have spent most of the time this morning dealing with the arguments advanced by the Xie respondents, and by Ms. Teh, who opposes the adjournment.
- [2] The Xie respondents are requesting an adjournment to September 25, 2020, which has already been scheduled for a day.
- [3] The test on an adjournment application is well established. It is a matter of discretion, which is to be exercised in accordance with the interests of justice. That requires the court to balance the interests of the competing sides, where the paramount consideration is to ensure that there will be a fair hearing on the merits of the application.

- [4] Here, the Xie respondents seek a relatively brief adjournment of two months in order to allow their new counsel, who was retained last month, to come up to speed on both the proceeding in which the notice of application has been filed (that is, in fact, a foreclosure proceeding), and also a related action, in which the Xie respondents are the plaintiffs, that was filed in 2016 and is currently set for trial in September of 2021.
- [5] The record that I have before me on Ms. Teh's application - I think to call it voluminous is an understatement. There have also been very recent developments that took place yesterday, where a companion application was filed on behalf of Ms. Teh and her company in the Action for the same relief that is sought in the notice of application that was filed on March 11. There was also a notice of application that was filed by the Xie respondents in the Action. I do not actually have either of those notices of application before me this morning.
- [6] The Xie respondents have said that there is no prejudice to Ms. Teh and her company arising from the brief adjournment that is proposed, as the funds that the applicants seek to have released are secure and are held by the receiver that was appointed in the foreclosure proceedings. The Xie respondents are willing to agree not to initiate any steps in the Action until the application by Ms. Teh and her company is heard and determined.
- [7] Ms. Teh and her company, on the other hand, have argued in opposition to the adjournment that there is prejudice that they will suffer if this matter is put off to September. Mr. Morgan, counsel for Ms. Teh and her company, outlined some of the litigation history in the action and explained that the notice of application was, in fact, filed for hearing in accordance with deadlines and orders that were made in a case planning order that was pronounced by Master Dick on March 3rd.
- [8] I have concluded that the interests of justice require that this matter be adjourned to the hearing date that has been set in September, so, that is September 25, 2020, for one day.
- [9] In my view the potential prejudice to Mr. Morgan's clients that would arise or may arise from the brief adjournment can be addressed through terms, and on the other hand, in my view, the prejudice to the Xie parties, represented by Mr. Dennis, outweighs the potential prejudice to Mr. Morgan's clients. The Xie parties and their new counsel should have the opportunity to bring themselves fully up to speed so that they can deal with the application in an efficient way, having regard in particular to the time that is now being set for the application. So, the parties will have a day on September 25, 2020, to deal with the matters in issue.
- [10] I would say there is also some prejudice to the court in attempting to go ahead with matters today, insofar as I do not even have the notices of application that were filed yesterday and that were intended to be before me this morning.
- [11] So, the orders that I am going to make this morning are as follows. The notice of application filed on March 11, 2020, is adjourned to September 25, 2020, for one day. At that time Mr. Morgan's clients will be permitted to have the notice of application that was filed yesterday

in the Action also before the court. So, that notice of application will be set for hearing the same day. The notice of application that was filed by the Xie parties yesterday is adjourned generally, pending the hearing and determination of the applications brought by Mr. Morgan's clients. No steps will be taken by the Xie parties against Mr. Morgan's clients, that is, no steps in the Action.

- [12] What I am inclined to do with respect to the deadlines that have been set in the case planning order that was made by Master Dick in March is simply to suspend the dates for pre-trial steps pending further order or agreement between counsel. I think if counsel can agree on a new schedule, they should have the opportunity to do that, but in my view it does not make any sense to say that those dates are still effective to do anything. So, I will order that the dates for pretrial steps that are in the case planning order will be suspended until a further court order or agreement among the parties. [DISCUSSION RE XIE DISCOVERY]
- [13] THE COURT: I can make an order or direction that the discovery of Mr. Xie can proceed. That will be an exception. [DISCUSSION RE "FUTURE DATES" WORDING]
- [14] THE COURT: Next, as a term of the adjournment, I am going to order that \$50,000 may be paid out of the proceeds of sale held by the receiver, on account of fees and disbursements owed to Lawson Lundell LLP by Ms. Teh and her company. The payment of that amount is without prejudice to any of the claims or defences raised in the Action, and without prejudice to the validity or enforceability of the Mareva order.
- [15] With respect to the hearing on September 25, except for the notice of application of Ms. Teh and her company that was filed yesterday and any application responses that are filed and served in respect of that notice of application, nothing will be added in terms of evidence over and above the record that was prepared for the hearing today.
- [16] I am not sure that I can actually state this in the form of an order, but I will express it in terms of a direction. So that the hearing on September 25 can proceed efficiently and be completed in the time set, counsel are directed to make every effort to limit the record to evidence and other material that are truly necessary for the proper hearing and adjudication of the applications, and that will be referred to at the hearing. I am just going to pause there and I will direct this to you, I think, especially, Mr. Dennis, if you do not mind, because you have only been involved in this since last month. But what I would certainly hope is that counsel can bring a very sharp focus to what the court will actually need to know when these applications come on for hearing in September.
- [17] As I observed earlier this morning, the court simply does not have the time, and it is not fair either to the court or to other counsel to place a record that is 1500-plus pages before the court for a one-day hearing. It is not fair. It is not reasonable. So hopefully, with some additional time now, counsel will be able to bring matters into sharper focus and do some serious culling of the record, so that what the court has before it on September 25 is a much more streamlined record, with everything that is necessary but nothing more than that.

- [18] Then I am going to make a brief direction for the preparation of the materials for that hearing. So, for each affidavit that is relied on, counsel are to prepare an index to each of the exhibits listing: the exhibit letter; a brief description of what the exhibit is; where in the text of the affidavit the exhibit is referred to; and the page number where the exhibit can be found. The paper record is to be in binders that are no more than 2.5 inches wide.
- [19] Unless counsel have anything else that they wish to raise with me, those are the orders and directions that I am making this morning. "Adair J."
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