

CANADA / JUDGMENT

Wang v. Li

2025 BCSC 571

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 571 Wang v. Li

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wang v. Li,

2025 BCSC 571

Date: 20250328

Docket: E143039

Registry: Vancouver

Between:

Hao Huo Wang

Claimant

And

Bi Xia Li, Cheng Jun Wang, Jia Liu, Cheng Jie Wang, and 0912838 B.C. Ltd.

Respondents

And

Kit Yu Li

Respondent by Counterclaim

Before: The Honourable Mr. Justice Brongers

Reasons for Judgment

Counsel for the Claimant:

W. Leung

D. Sue-A-Quan

Counsel for the Respondents, Cheng Jun Wang, Jia Liu, and Cheng Jie Wang:

J.-K. R. Bienvenu

Counsel for the Respondent, Bi Xia Li:

K. J. Learn

No other appearances

Place and Dates of Hearing:

Vancouver, B.C.

August 27, September 24, 2024

and January 31, 2025

Place and Date of Judgment:

Vancouver, B.C.

March 28, 2025

OVERVIEW

- [1] The applicants in this matter seek the dismissal of a family law claim for want of prosecution and, in the alternative, the cancellation of several certificates of pending litigation ("CPLs").
- [2] The claim in question was started by Hao Huo Wang ("Mr. Wang") in 2014. In addition to his spouse, Bi Xia Li ("Ms. Li"), Mr. Wang also named as individual respondents his two adult sons - Cheng Jun Wang ("Jun") and Cheng Jie Wang ("Jie") - along with his daughter-in-law Jia Liu ("Jia"). Mr. Wang alleges that Jun, Jie, and Jia hold certain family property in which Mr. Wang and Ms. Li have a beneficial interest. Until very recently, Mr. Wang has made no real effort to advance this litigation procedurally.
- [3] Ms. Li, Jun, Jie, and Jia all submit that Mr. Wang's claim has been outstanding for too long and should now be dismissed for want of prosecution. If it is not, they want three CPLs filed by Mr. Wang to be removed from the properties they encumber.
- [4] Mr. Wang is opposed to the relief being sought by the applicants. He submits that there are good reasons why he has not moved his claim forward in the past, and that he should not be denied the chance to advance it now. Mr. Wang also says that the CPLs should be kept in place.

- [5] After having reviewed the record before me, I am not persuaded that this litigation should be dismissed for want of prosecution. While Mr. Wang's delay has been inordinate, I find that it is excusable in the circumstances.
- [6] As for the CPLs, the one challenged by Jie will be cancelled. The two challenged by Ms. Li will be maintained.
- [7] A case planning conference will also be scheduled to establish procedural deadlines for the remaining pre-trial steps.
- [8] My detailed reasons for reaching these conclusions are set out below.

Background

The Parties and the Pleadings

- [9] Mr. Wang and Ms. Li were born in China, and were married in the city of Guangzhou in 1982. They have two sons: Jun (now 41 years old) and Jie (now 33 years old). Jun is married to Jia.
- [10] The family immigrated to Canada in 2006, settling in Vancouver. It is apparent that Mr. Wang and Ms. Li brought with them a considerable amount of money, which is said to have originated from the proceeds of the sale of Mr. Wang's business interests in China. Once in Canada, the family effected a number of significant real estate and business transactions.
- [11] Mr. Wang and Ms. Li separated in October 2014. The circumstances surrounding the breakdown of their marriage are unclear, but Ms. Li and Jie both allege that Mr. Wang became romantically involved with another person, Kit Yu Li ("Kit"), and started another family with her. This allegation has not been clearly confirmed or denied by Mr. Wang or Kit.
- [12] On November 7, 2014, Mr. Wang filed a notice of family claim. As has been noted, the named individual respondents are Ms. Li, Jun, Jie, and Jia. A numbered company was also initially named as a respondent, but that aspect of the litigation was discontinued in May 2016.
- [13] Mr. Wang's notice of family claim was amended on March 26, 2015. He claims an equal division of all family property and family debt. Five residential real estate properties in Greater Vancouver are identified in the pleading as being family property, although none were registered in Mr. Wang's name. Instead, they were registered in the names of Ms. Li, Jun, Jie, or Jia. For those properties whose title was in the name of Jun, Jie, or Jia, Mr. Wang alleges that they were being held in trust for him and Ms. Li. Mr. Wang also claims compensation in respect of a commercial property in Burnaby that was once owned by the numbered company referenced in the preceding paragraph, and a declaration of beneficial interest in the shares held by Ms. Li and Jie in this company. Mr. Wang has not sought a divorce order in his notice of family claim.

- [14] Ms. Li filed her response to family claim on March 30, 2016. A separate response to family claim was filed collectively by Jun, Jie, and Jia on April 26, 2016. Both pleadings dispute all of the relief sought by Mr. Wang.
- [15] Ms. Li filed a counterclaim on June 10, 2016. She seeks various relief against Mr. Wang, including spousal support, an unequal division of family property and debt, and compensation from Mr. Wang. Ms. Li has also named Kit as a respondent by counterclaim. Ms. Li asserts a claim in respect of real estate in Richmond whose title was registered in Kit's name, alleging that it is family property held in trust for Ms. Li and Mr. Wang. Ms. Li does not seek a divorce order in her pleading.
- [16] Kit filed a response to Ms. Li's counterclaim denying the relief sought on August 15, 2016. Mr. Wang has not filed a response to counterclaim.

Litigation History (2014 to 2023)

- [17] Other than the filing of pleadings, very few procedural steps have been taken in this litigation prior to the filing of the present applications. A summary of those steps is set out here.
- [18] Following his notice of family claim in November 2014 and its amendment in March 2015, Mr. Wang registered a number of CPLs against various properties in connection with his claim. Five of them are relevant to the present applications. The addresses of the properties subject to these CPLs and the individuals whose names were on title at the time of filing are:

Address

Registered Owner

1055 West 55th Avenue, Vancouver

("W. 55th Property")

Ms. Li

10591 Blundell Road, Richmond

("Blundell Property")

Ms. Li

5549 Baillie Street, Vancouver

("Baillie Property")

Jie

469 West 46th Avenue, Vancouver

("W. 46th Property")

Jun

6630 Heather Street, Vancouver

("Heather Property")

Jia

- [19] The filing of a CPL on the Heather Property led to the first interlocutory application in this proceeding. Specifically, Jia brought an application to have the CPL cancelled on November 26, 2014. In her notice of application, Jia asserted that the property was purchased in June 2012 by Mr. Wang and Ms. Li as a gift for Jun and Jia, with title being registered solely in Jia's name. At the time, Jun and Jia wanted to sell the Heather Property in order to buy an apartment in Guangzhou. Mr. Wang filed a response to application on November 28, 2014 in which he denied that the Heather Property had been gifted, and asserted that Jia was holding it in trust for Mr. Wang and Ms. Li. However, the application was never heard, and the Heather Property was sold in December 2014.
- [20] I note parenthetically that the sale of the Heather Property was able to proceed because Mr. Wang agreed to release the CPL he had registered upon it. Mr. Wang did the same in respect of the W. 46th Property, whose title was registered in Jun's name, when it was sold in January 2015.
- [21] The next interlocutory applications brought in this case were filed by Mr. Wang on May 19 and June 1, 2016. These were for property protection orders to restrain Ms. Li, Jun, Jie, and Jia from dissipating the alleged family property in issue. Ms. Li filed an application response opposing this relief on June 13, 2016. However, these applications were not heard either, having been adjourned generally by consent.
- [22] No other procedural steps were taken by any party until Ms. Li filed a notice of intention to proceed on June 22, 2020, and then a notice of judicial case conference ("JCC") on September 18, 2020. A JCC took place on December 9, 2020 before Justice Beames. Mr. Wang did not attend, and it appears that the main item discussed at the JCC was the withdrawal of his lawyer. The parties were then released from the JCC program.
- [23] There were no further procedural steps for the next three years, with the exception of the filing on May 30, 2022 of a notice of change of lawyer by which Mr. Wang appointed his current counsel. During this time, however, Mr. Wang initiated a divorce proceeding against Ms. Li in China. A copy of a decision dated December 28, 2022 of the Chinese People's Court of Liwan District, Guangzhou City, Guangdong Province, is in the application record. According to an English translation, the document indicates that a divorce was granted to Mr. Wang and Ms. Li, and that there has been some adjudication of their dispute over certain assets located in China.

The Present Applications

- [24] On September 22, 2023, Jie filed an application to dismiss Mr. Wang's claim for want of prosecution and, in the alternative, to cancel the CPL on the Baillie Property, to which Jie has title. Mr. Wang filed a response to the application on November 29, 2023, and a notice of intention to proceed on December 12, 2023. None of the other parties - Ms. Li, Jun, Jia, or Kit - responded.
- [25] Over the next year, Jie's counsel made multiple attempts to have his application heard, but it had to be adjourned and rescheduled for various reasons. Finally, the application came before me in chambers on August 27, 2024.
- [26] While notice had been given to all parties, this hearing was only attended by counsel for Jie and counsel for Mr. Wang. After they presented their submissions, I indicated that I was not inclined to render a decision immediately. In particular, it was unclear to me whether I could or should dismiss the entirety of a family law claim involving multiple respondents when such relief had been requested by just one party, especially where there is a pending counterclaim brought by another respondent. However, I also indicated my concern about the pace of the proceedings to date, particularly since Jie has now taken issue with the CPL on the Baillie Property.
- [27] Accordingly, I adjourned the hearing to permit the parties to discuss whether they might agree on a proposal for advancing the litigation forward towards a resolution of the claim, at least in relation to the issue of ownership of the Baillie Property. I also said that I would remain seized of the application.
- [28] We reconvened on September 24, 2024. In addition to counsel for Jie and counsel for Mr. Wang, this hearing was also attended by counsel for Ms. Li. Furthermore, counsel for Jie indicated that he was now representing Jun and Jia as well. The parties advised that they had discussed a litigation plan for going forward, but that it was complicated by a recent development. Specifically, Mr. Wang was now incarcerated in China after having been convicted of bribery and dangerous driving. He is presently serving a custodial sentence there and is not expected to be released until November 2026. While counsel for Mr. Wang assured the court of their client's desire to proceed with his claim in British Columbia, counsel for Jie, Jun, Jia, and Ms. Li expressed skepticism that this would be possible given Mr. Wang's situation.
- [29] Ultimately, I decided to adjourn the matter for four months to permit the parties to discuss further whether a mutually agreeable litigation plan could be developed. However, I also indicated that, if necessary, I would hear the dismissal for want of prosecution and CPL cancellation applications on January 31, 2025. Furthermore, I set a schedule for the filing of updated application materials.

- [30] The parties did have further discussions about a litigation plan, and some procedural steps were taken in December 2024 and January 2025. In particular, two notices to admit directed at Mr. Wang were sent and responded to. Lists of documents were exchanged by Mr. Wang, Ms. Li, and Jie. Mr. Wang prepared a F8 financial disclosure form. Attempts have also made to schedule examinations for discovery, although difficulties have arisen in making such arrangements for Mr. Wang given his imprisonment in China. However, Jie, Jun, Jia, and Ms. Li are dismissive of Mr. Wang's recent efforts to proceed with his claim, which they say are inadequate.
- [31] On January 8, 2025, Ms. Li filed her own application to dismiss Mr. Wang's claim for want of prosecution. Ms. Li also seeks, in the alternative, cancellation of the CPLs on the W. 55th Property and the Blundell Property, to which Ms. Li has title. In the further alternative, Ms. Li requests that certain deadlines be set and directions issued for future procedural steps to be taken in this litigation.
- [32] On January 15, 2025, Jun and Jia filed their own application to dismiss Mr. Wang's claim for want of prosecution. Their notice indicates that Jun and Jia are also seeking, in the alternative, cancellation of the CPL on the Baillie Property. The latter relief is requested even though neither Jun nor Jia have title to or an apparent interest in the Baillie Property.
- [33] The three applications to dismiss for want of prosecution and to cancel CPLs brought by (1) Jie on September 22, 2023, (2) Ms. Li on January 8, 2025, and (3) Jun and Jia on January 15, 2025, were then presented before me on January 31, 2025. Jie, Jun, and Jia were collectively represented by a single counsel. Ms. Li was represented by separate counsel. Counsel for Mr. Wang responded to all three applications. Kit did not appear or file any materials in response.

ISSUES

- [34] The applications before the court give rise to the following questions:
1. Should Mr. Wang's family law claim be dismissed for want of prosecution?
 2. Should the CPLs registered on the Baillie Property, the W. 55th Property, and/or the Blundell Property be cancelled?
 3. Should deadlines and/or directions be set in respect of future procedural steps to be taken in Mr. Wang's family law claim?

ANALYSIS

Dismissal for Want of Prosecution

- [35] While the applicants have presented three separate applications to dismiss for want of prosecution, there is no practical difference of any consequence between their positions or interests with respect to this issue. All four applicants - Jie, Jun, Jia, and Ms. Li - seek to have Mr. Wang's family law claim dismissed in its entirety, and this litigation to be concluded summarily without a determination on its merits.
- [36] Of particular note is the fact that Ms. Li is wholly supportive of the positions taken by Jie, Jun, and Jia, even if it may arguably be contrary to Ms. Li's personal financial interests to do so. Indeed, a significant aspect of Mr. Wang's claim is his assertion that Jie, Jun, and Jia have legal title to certain assets which they allegedly hold in trust for Mr. Wang and Ms. Li's benefit, and that these assets are therefore family property to be divided between Mr. Wang and Ms. Li. Yet Ms. Li takes the position that these assets were gifted to Jie, Jun, and Jia, which is the same position that is being advanced by her sons and daughter-in-law. In other words, Ms. Li is not interested in having this family law claim pursued against the other respondents, even if she may stand to gain from it financially.
- [37] It is also noteworthy that Ms. Li is content to have her counterclaim against Mr. Wang and Kit dismissed if the court dismisses the family law claim for want of prosecution. Counsel for Ms. Li sought and received instructions to this effect from his client at the January 31, 2025 hearing in order to address my concern about how to deal with the counterclaim in the event Mr. Wang's claim is dismissed summarily.
- [38] Accordingly, the three applications to dismiss for want of prosecution will be considered and analyzed together.

Legal Framework

- [39] The court's authority to dismiss a family law claim for want of prosecution is provided by the Supreme Court Family Rules, B.C. Reg. 169/2009 at Rule 21-2(5), which reads:

21-2(5) Despite this rule [Rule 21-2(4), which limits a party from proceeding if no step has been taken for one year], a respondent may apply to have a family law case dismissed for want of prosecution without serving a notice of intention to proceed in Form F48.

- [40] It is, for all intents and purposes, the equivalent of Rule 22-7(7) of the Supreme Court Civil Rules, B.C. Reg. 168/2009, which is the dismissal for want of prosecution rule that applies to civil claims.

- [41] In *Giacomini Consulting Canada Inc. v. The Owners, Strata Plan EPS 3173*, 2023 BCCA 473 [Giacomini] a five-judge division of our Court of Appeal reconsidered and revised the longstanding test that must be applied when adjudicating an application to dismiss for want of prosecution. The new test requires the chambers judge to first answer two questions:
- (1) Has the applicant established that the respondent's delay in prosecuting the proceeding is inordinate?
 - (2) Is the delay inexcusable?
- [42] If either of these questions are answered in the negative, the application must be denied. However, if both questions are answered in the affirmative, the court then must answer a third and final question:
- (3) Is it in the interests of justice for the action to proceed despite the existence of inordinate and inexcusable delay?
- [43] If the answer to this last question is yes, the application will be denied. If it is no, the application will be granted and the underlying proceeding will be dismissed without a trial on its merits.
- [44] *Giacomini* involved a civil claim and an application brought under Rule 22-7(7) of the Supreme Court Civil Rules. The Court of Appeal did not expressly consider whether this new analytical framework should also apply to dismissal for want of prosecution applications brought under Rule 21-2(5) of the Supreme Court Family Rules. Such applications are relatively rare when compared to how often they are brought in the context of civil claims. A possible reason for this was noted by Justice Baird in *Varga v. Poole Estate*, 2023 BCSC 1222 at para. 7, namely, that family law claims are usually pursued with a certain energy and determination.
- [45] Given the similarity between the two rules and the absence of a compelling basis for treating family law cases differently from civil cases with regard to summary dismissal for delay, however, I am of the view that the *Giacomini* test must be applied to the applications before me as well. This approach was also followed by Justice B. Smith in *Wright v. Wright*, 2024 BCSC 2065, another family law claim that was recently the subject of an application to dismiss for want of prosecution.

Question 1: Delay

- [46] The notion of "inordinate delay" is explained in *Giacomini* at paras. 38 and 39:
- [38] An inordinate delay is one that is uncontrolled, immoderate, excessive and out of proportion to the matters in question: *Wiegert v. Rogers*, 2019 BCCA 334 at para. 32. The question of whether delay is inordinate is "not just a question of temporal arithmetic", but rather requires consideration of the circumstances of the case: *Sun Wave Forest Products Ltd. v. Xu*, 2018 BCCA 63 at para. 25. As explained by Saunders J.A. in *Sun Wave*, "some cases by their nature are susceptible of faster carriage or by the nature of the allegations call for

more expeditious prosecution than others": at para. 25. For example, a court may be less forgiving in assessing litigation delay where the allegations impact the defendant's personal reputation, such as where fraud is alleged: *Sun Wave* at para. 25.

- [39] The date of the commencement of the action is typically identified as the point from which delay is measured: *Wiegert* at para. 32. Delay must be considered holistically; the question is whether the overall delay is inordinate: *Ed Bulley Ventures Ltd. v. The Pantry Hospitality Corporation*, 2014 BCCA 52 at para. 38.
- [47] This family law claim was commenced in November 2014, over ten years ago. That is a very long time for any case to be left pending without a resolution. While there are some complex aspects to the claim, such as the involvement of parties other than the spouses themselves, there can be no suggestion that it could not have been brought to trial by now if reasonable diligence had been exercised by the litigants. It is therefore clear that the ten year delay is uncontrolled, immoderate, excessive, and wholly out of proportion to the matters in question.
- [48] In sum, I have no hesitation in finding that there has been an inordinate delay in this case. The first question of the *Giacomini* test is therefore answered in the affirmative.

Question 2: Excuse

- [49] The Court of Appeal in *Giacomini* provided this guidance on how to assess whether there has been an acceptable excuse for inordinate delay:
- [40] Whether the reason offered by the plaintiff for the delay amounts to an excuse also depends on the circumstances. As a rule, unless a credible excuse is offered, the natural inference is that inordinate delay is inexcusable: *Irving* at para. 8. The evidence led to explain delay may go to the issue of whether the delay was intentional and tactical, or whether it was the result of "dilatoriness, negligence, impecuniosity, illness or some other relevant cause": 0690860 *Manitoba Ltd. v. Country West Construction Ltd.*, 2009 BCCA 535 at para. 27. A party who intentionally delays the prosecution of an action may be said to assume the risk of dismissal. Where the delay is also tactical, in the sense of intended to prejudice the defendant, this will weigh more heavily against the plaintiff in the analysis: *Ralph's Auto Supply (B.C.) Ltd. v. Ken Ransford Holdings Ltd.*, 2020 BCCA 120 at para. 47. Where the reason for the delay is a lack of diligence on the part of plaintiff's counsel, this might amount to a reasonable excuse in some cases, but in others it might not: 0690860 *Manitoba Ltd.* at para. 29; *Wiegert* at para. 33.
- [50] Counsel for Mr. Wang offered the following explanation for the fact that their client has not taken any active steps to advance his claim until a few months ago.
- [51] First, they note that this is a family law claim that involves Mr. Wang's former spouse and their adult children. Mr Wang says that for the first six years after it was commenced, he wanted to see if it could be resolved without much court intervention, with the goal of

preserving family relationships and minimizing legal expenses. Second, Mr. Wang has been living in China since October 2019. Upon his arrival, he was placed in "protective custody" by Chinese authorities because of threats upon his life, during which he had limited ability to communicate with his Canadian counsel. Third, after his release from protective custody in August 2020, Mr. Wang discovered that Ms. Li had sold some of their family property. This led Mr. Wang to realize that this litigation is unlikely to be resolved amicably. Mr. Wang then initiated divorce proceedings in China, with the intention of completing that litigation so as to first resolve the parties' dispute over their Chinese assets. Fourth, after the Chinese court issued its divorce judgment in December 2022, Mr. Wang became aware of foreclosure and other proceedings in British Columbia relating to the Baillie Property, the W. 55th Property, and the Blundell Property. Mr. Wang then was focused on these disputes. However, since Jie brought his application to dismiss for want of prosecution in September 2023, Mr. Wang has been aware of the importance of moving this family law claim forward, which he now intends to do.

- [52] Counsel for Jie, Jun, Jia, and Ms. Li did not present detailed submissions on the specific question of whether the delay is inexcusable, focusing instead on interests of justice issues such as prejudice and the merits of the claim. However, their general position is that Mr. Wang's past approach to this claim was not justified. They also note that Mr. Wang has always had the financial means to litigate, as shown by the fact that he was able to pursue the Chinese divorce proceeding when he chose to.
- [53] While this case is very close to the line, I do not find that the inordinate delay that has taken place is inexcusable. I conclude this for three reasons in particular.
- [54] First, I accept Mr. Wang's evidence that his initial approach to this litigation was to not actively pursue it while there remained, in his mind at least, the possibility of resolving it amicably. Such an approach is not unheard of in family law litigation, especially where there are no parenting issues and the protagonists were once on close and intimate terms. In this case, the assertion is supported by Mr. Wang's evidence that he once agreed to release the CPL on the W. 55th Property so that the house being built on it could be completed for the ultimate benefit of Ms. Li and Mr. Wang, as well as their sons and grandsons. Mr. Wang seems to have taken a similar approach to the CPLs on the Heather Property and the W. 46th Property, which he released in order to allow Jun and Jia to sell this real estate in late 2014 and early 2015.
- [55] In my view, this provides an acceptable justification for the lack of progress in this particular case from 2014 to 2020. While I am not suggesting that delay should necessarily be excused if inaction is motivated by the hope that an amicable resolution might be reached, I find that this can be a relevant consideration, particularly if the opposing party gives no indication of any interest in actively litigating either. That was the situation here, at least until Ms. Li filed a notice of intention to proceed and convened a JCC in 2020. I also accept that Mr. Wang was unaware of the JCC at that time since he was in China and had lost contact with his then counsel.

- [56] Second, I accept that Mr. Wang revised his litigation approach after concluding that he could not trust Ms. Li to not sell family property in dispute. In 2021, he began to take steps to initiate litigation against Ms. Li in China to address family property issues in relation to their Chinese assets. He then prioritized that proceeding and pursued it to its conclusion in December 2022. I also accept Mr. Wang's assertion that he was further focused on the multiple foreclosure and civil proceedings in British Columbia that were occurring around that time. This litigation - which was directed at Jie, Ms. Li, and Mr. Wang - was related to the Baillie Property, the W. 55th Property, and the Blundell Property.
- [57] I find that all of these other proceedings explain and justify Mr. Wang's disinclination to pursue his British Columbia family law claim from 2021 until Jie filed his application to dismiss for want of prosecution in 2023. I so find because I accept that it was reasonable for Mr. Wang to believe that these other proceedings could have an impact on how Mr. Wang might prosecute his family law claim, and how Ms. Li and Jie might respond to it. I also note that in *Ghag v. Ghag*, 2024 BCSC 400 at paras. 41-42 (aff'd on this point in *Ghag Estate v. Ghag*, 2025 BCCA 88 [Ghag Estate] at paras. 39-42), it was held that uncertainty about how to proceed in the face of related court actions may be an acceptable excuse for inordinate delay.
- [58] Finally, there is no indication in the record that Mr. Wang has delayed his family law claim intentionally or for tactical purposes in order to gain a litigation advantage over Jie, Jun, Jia, or Ms. Li. Furthermore, counsel for the applicants have not suggested otherwise.
- [59] For all of these reasons, I find that the delay that has occurred in this case is not inexcusable. The second question of the Giacomini test is therefore answered in the negative.

Question 3: Interest of Justice

- [60] It is not necessary to answer the third question of the Giacomini test given my findings set out above: *Ghag Estate* at para. 43.

Conclusion

- [61] In sum, I have concluded that while the delay in this case is inordinate, it is not inexcusable. In my discretion, I therefore will not dismiss this family law claim for want of prosecution.

Cancellation of the Certificates of Pending Litigation

- [62] Unlike the applications to dismiss for want of prosecution, there are some significant differences between the parties' respective CPL cancellation applications.

- [63] Jie's application was filed on September 22, 2023. It targets the CPL registered on the Baillie Property, on which he has title. The primary prejudice Jie alleges is that the CPL has required him to incur mortgage financing costs that are higher than they would be if the CPL were to be removed. Jie has tendered his own affidavit evidence in support of this assertion.
- [64] Ms. Li's application was filed on January 8, 2025. It targets the CPLs registered on the W. 55th Property and the Blundell Property, on which she has title. Ms. Li alleges that these CPLs inflict prejudice upon her by: (1) causing her to incur higher mortgage financing costs in relation to the W. 55th Property; and (2) creating a barrier to resolving litigation in relation to the Blundell Property. Ms. Li has tendered her own affidavit evidence in support of these assertions.
- [65] Jun and Jia's application was filed on January 15, 2025. It targets the CPL registered on the Baillie Property. There is no allegation in the notice of application that Jun or Jia are prejudiced by this CPL; rather, the notice only makes reference to the prejudice allegedly suffered by Jie as the actual titleholder to the Baillie Property. The record contains no affidavits from Jun. While there is an affidavit from Jia, it was made on November 26, 2014, over ten years ago. Jia's affidavit says nothing about Jie or the Baillie Property. Simply put, there is no indication in the record that Jun or Jie have any direct interest whatsoever in the Baillie Property CPL.
- [66] Accordingly, after setting out the applicable legal framework, I will first consider Jie's application to cancel the CPL on the Baillie Property. I will then turn to Ms. Li's application to cancel the CPLs on the W. 55th Property and the Blundell Property.
- [67] On the other hand, I will not entertain Jun and Jia's application to cancel the CPL on the Baillie Property, as they have no standing to seek such relief.

Legal Framework

- [68] Jie and Ms. Li are primarily relying on s. 252(1) of the Land Title Act, R.S.B.C. 1996, c. 250 (the "LTA") as authority for the CPL cancellation orders they seek. It provides:

252(1) If a certificate of pending litigation has been registered and no step has been taken in the proceeding for one year, any person who is the registered owner of or claims to be entitled to an estate or interest in land against which the certificate has been registered may apply for an order that the registration of the certificate be cancelled.

- [69] An extensive discussion of the test to be applied by the court when exercising its discretion under s. 252(1) of the LTA was set out by our Court of Appeal in *GMC Properties Inc. v. Rampart Estates Ltd.*, 2023 BCCA 172 [GMC]. I draw from this discussion the following principles:

- (a) a CPL is an extraordinary pre-judgment mechanism which is intended to protect a claim to an interest in land prior to the resolution of litigation by preventing the property owner from defeating the claim by transferring the land to a third party (GMC at para. 37);
 - (b) an application to cancel a CPL may be brought under s. 252 of the LTA where no step has been taken in the proceeding for one year (GMC at para. 42);
 - (c) the continued presence of a validly registered CPL is presumptively prejudicial to a property owner, and the purpose of s. 252 of the LTA is to keep the property from being tied up in dormant litigation (GMC at para. 43);
 - (d) a "step" for the purposes of s. 252 means a procedural act that is either required or permitted by the Supreme Court Civil Rules (or the Supreme Court Family Rules), and which moves the proceeding forward towards trial or resolution (GMC at para. 45);
 - (e) even where the statutory prerequisites (i.e., that the CPL has been registered and no step has been taken in the underlying proceeding for one year) have been met, the court retains the discretion to not cancel the CPL based on the interests of justice in all of the circumstances of the case (GMC at paras. 45, 57 and 67); and
 - (f) in exercising this discretion, however, prejudice to the landowner is presumed and the respondent must show that the prejudice is either not serious or outweighed by other factors that suggest cancellation of the CPL would be unjust (GMC at para. 45).
- [70] It is important to recognize that the test to be applied on an application to cancel a CPL under s. 252(1) of the LTA is different than the one that applies on an application to dismiss for want of prosecution: Ghag Estate, at paras. 48- 51. The former is less onerous than the latter. It also does not follow that when a chambers judge denies an application to dismiss for want of prosecution, that an application to cancel a CPL under s. 252(1) of the LTA sought in the alternative must necessarily be denied as well. In Ghag Estate, our Court of Appeal explained the difference between the two tests as follows:
- [48] With respect, the chambers judge conflated the test for dismissing a claim for want of prosecution and that for cancelling a CPL. The balance of the interests at play are fundamentally different in the two applications.
- [49] The power to dismiss an action for want of prosecution is not to be lightly exercised, as it deprives a plaintiff of an adjudication of their claim on the merits (Giacomini at para. 29). In contrast, a CPL is an extraordinary pre-judgment mechanism intended to protect a claim to an interest in land prior to the resolution of litigation (GMC at para. 37).
- [50] This Court has been clear that the test to be applied on an application to cancel a CPL under s. 252(1) is therefore less onerous than the test applied on an application to dismiss a claim for want of prosecution (GMC at para. 46, citing Kultak Financial Inc. v. Grewal, 2018 BCCA 94). It is reasonable to expect that in order to continue benefitting from an extraordinary pre-judgment mechanism the plaintiff be required to demonstrate they have pursued their case

with a level of diligence greater than that required to defeat an application for dismissal of the underlying action.

- [51] As set out in the previous section, the application for dismissal for want of prosecution turned on the issue of whether the inordinate nature of the delay in this case was excusable. While I have not found the judge to have erred in the exercise of his discretion on that issue, I do not find it to be decisive on the cancellation of the CPLs. Unlike dismissal for want of prosecution, cancellation of a CPL is not predicated on inordinate delay, but on one year without steps being taken.
- [emphasis added, not in original]
- [71] In the alternative, the applicants have also invoked ss. 256 and 257 of the LTA. These provisions confer authority upon the court to cancel CPLs on the grounds of hardship or inconvenience. A concise summary of the test to be applied for such applications is found in *Save-A-Lot Holdings Corp. v. Christensen*, 2023 BCCA 35 at para. 30:
- [30] As a threshold requirement for obtaining an order under s. 257(1), a person applying to cancel a CPL under s. 256(1) must show hardship and inconvenience that is causally connected solely to the registration of the CPL. The evidence of hardship must include particulars that demonstrate real hardship; general allegations of inconvenience are not sufficient: *Liquor Barn* at para. 37. 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.
- [72] Another helpful distillation of what must be demonstrated by an applicant to meet the test of hardship and inconvenience is contained in Justice Fitzpatrick's decision in *Kaur v. Chandler*, 2018 BCSC 1283 at paras. 43-48:
- [43] The threshold question is whether 096 and Newmark Sagebrush have proven hardship and inconvenience arising from the registration of the CPLs, pursuant to s. 256(1)(b) of the LTA.
- [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.
- [73] If an applicant establishes that a CPL should be removed because of hardship or inconvenience, then the court considers whether or not security terms ought to be imposed in accordance with s. 257(1)(a) of the LTA. In setting the amount of security to be given, the court may take into consideration the probability of the party's success in the action: s. 257(3) of the LTA: *Instafund Mortgage Management Corp. v. Garrow*, 2020 BCSC 1017 at para. 65.

Jie's Application to Cancel the CPL on the Baillie Property

- [74] It is evident that the two statutory prerequisites for the court to exercise its authority under s. 252(1) of the LTA are met with respect to Jie's application to cancel the CPL registered against the Baillie Property. First, it is not disputed that this CPL was properly registered. Second, Jie filed his application to cancel the CPL on September 22, 2023. At that point, the last procedural step that had been taken was Mr. Wang's filing of a notice of change of lawyer on May 30, 2022. Assuming that this is a step which "moves the proceeding forward towards trial or resolution" (even though an argument could be made that it does not), it was still taken over one year prior to Jie's application.
- [75] Accordingly, the question on Jie's application is whether the court should nevertheless exercise its discretion not to cancel the Baillie Property CPL on the basis of the interests of justice. The burden lies on Mr. Wang to so persuade as Jie's prejudice stemming from the CPL is presumed.
- [76] Mr. Wang submits that cancellation of the Baillie Property CPL would deprive him of his only remedy against Jie should the property be sold by Jie. In addition, he disagrees that Jie has been prejudiced by the CPL. Mr. Wang notes that Jie was ultimately able to refinance the property and stave off foreclosure, albeit with private financing. However, Mr. Wang says that the higher rate of interest Jie is paying on his mortgage was not just caused by the CPL, but also Jie's past mortgage default and Jie's generally poor financial situation.

- [77] Jie disagrees. He notes first that Mr. Wang is not interested in obtaining the Baillie Property itself through specific performance or otherwise; rather, Mr. Wang just wants the value of its equity. Second, Jie denies having any intention to sell the property, as it is the place where he resides when he is in Vancouver. Furthermore, Jie intends to have his family that is presently in China live with him in the Baillie Property when they are all permitted to. Third, Jie submits that Mr. Wang does not need to secure his claim to the equity in the Baillie Property through a CPL. If Mr. Wang succeeds in establishing that it is family property over which there is a resulting trust, he will be able to obtain a compensatory payment drawn from the total value of Mr. Wang and Ms. Li's family assets, which will be significantly greater than the equity in the Baillie Property.
- [78] On my review of the evidence, I find that Mr. Wang has not discharged his burden to show that it would be in the interests of justice for the court to refuse to cancel the Baillie Property CPL notwithstanding Jie's presumptive entitlement to this relief given Mr. Wang's past delay. In particular, I do not agree with Mr. Wang's exaggerated assertion that his claim in respect of the Baillie Property is at significant risk of becoming illusory without the CPL. This is because I accept Jie's assertion that he has no intention of selling the property, and that the potential equity in this asset likely represents only a small fraction of the totality of the alleged family property that may ultimately have to be divided between Mr. Wang and Ms. Li.
- [79] In sum, an order directing that the CPL registered against the Baillie Property be cancelled will be issued pursuant to s. 252 of the LTA.

Ms. Li's Application to Cancel the CPLs on the W. 55th Property and the Blundell Property

- [80] As with Jie's application under s. 252(1) of the LTA, the court must first be satisfied that Ms. Li's application meets its two statutory prerequisites, namely, that: (1) the impugned CPLs have been registered; and (2) there have been no litigation steps taken in the proceeding during the year prior to the filing of her application.
- [81] There is no dispute that the first prerequisite is present. On the other hand, I find that the second one is not.
- [82] Ms. Li's application to cancel the CPLs on the W. 55th Property and the Blundell Property was filed on January 8, 2025. She therefore can only avail herself of s. 252(1) of the LTA if there has been no procedural step taken to move the claim forward in the year prior to that date.
- [83] However, on December 20, 2024, counsel for Jie, Jun, and Jia served counsel for Mr. Wang with a notice to admit. On January 2, 2025, counsel for Mr. Wang answered with a response to a notice to admit. These are clearly "steps" for the purpose of s. 252(1) of the LTA. They are procedural acts permitted by the Supreme Court Family Rules, which move the claim forward towards trial or resolution. Furthermore, it is of no import that these steps were

taken by other parties to the proceeding as s. 252(1) of the LTA contains no such limitation. In sum, as the steps were taken just a few weeks prior to Ms. Li's notice of application, Ms. Li cannot seek cancellation of a CPL pursuant to s. 252(1) of the LTA.

- [84] This does not end the matter, however. The question remains whether the court ought to cancel the CPLs on either or both of the W. 55th Property and the Blundell Property on the grounds of "hardship or inconvenience" pursuant to ss. 256 and 257 of the LTA. Of course, as noted above, the applicable test is considerably different from the one that applies under s. 252(1) of the LTA. In particular, Ms. Li does not benefit from a presumption of prejudice, as Jie does on his application.
- [85] Ms. Li submits that the CPL on the W. 55th Property has caused her hardship and inconvenience in the aftermath of a mortgage foreclosure action by HSBC Bank that was commenced in respect of the property, which is where Ms. Li currently resides. In order to avoid foreclosure, Ms. Li assigned the mortgage to a third party who advanced the funds necessary to buy out the mortgage on terms that allowed her to continue living in her home. Ms. Li's specific explanation of the prejudice allegedly caused by the W. 55th Property CPL is set out in her January 8, 2025 affidavit as follows:
14. ... The assigned mortgage is due on February 17, 2025. I am currently trying to get an extension to pay out or refinance the assigned HSBC mortgage. Ending this 10 year plus inactive lawsuit and/or removal of all the CPLs will allow me to have much longer term financing at a lower rate.
- [86] With respect to the Blundell Property, Ms. Li notes that it is the subject of two breach of contract lawsuits before this court in which she is a co-defendant. In her January 8, 2025 affidavit, she explains that the Blundell Property CPL causes her prejudice as follows:
19. Once again I am prejudiced because it is difficult to try to resolve the Blundell Road law suits given [Mr. Wang] has a CPL registered against [the Blundell Property] and is taking no substantive action to advance this action.
- [87] While the two notices of civil claim are attached as exhibits to Ms. Li's affidavit, there is no further information provided about the genesis, current status, or anticipated future direction of these proceedings generally, and the impact the CPL has on them in particular.
- [88] In my view, these vague assertions in Ms. Li's affidavit fall far short of what is required. While exacting proof is not the standard, an applicant who seeks relief from an otherwise validly imposed CPL under ss. 256 and 257 of the LTA must provide sufficient particulars to show hardship or inconvenience that is causally connected solely to the CPL. Ms. Li has not done so in her evidence tendered for this application.
- [89] Accordingly, I will not be ordering the cancellation of either the W. 55th Property CPL or the Blundell Property CPL.

Procedural Deadlines and Directions

[90] Ms. Li has also requested the following orders in her notice of application:

4. In the further alternative an order that [Mr. Wang] within 35 days or such time as the court considers reasonable, prepare a list of documents which includes those documents sought by [counsel for Ms. Li] in his letter dated December 3, 2024 to [counsel for Mr. Wang];
5. In the further alternative an order that the court provide such directions as appropriate to continue this action including, without limiting the generality of the foregoing directions concerning timing of and place of discovery of the parties and provision of documents by the parties including provision of those documents set out in the letter from [counsel for Ms. Li] to [counsel for Mr. Wang] dated December 3, 2024.

[91] I agree generally that it would be appropriate for the court to issue procedural orders to establish a reasonable timetable for moving this litigation forward. In my view, this can best be accomplished by convening a case planning conference at which a comprehensive pre-trial schedule can be discussed and then set out in a binding case plan order. As I now have some familiarity with the issues in this matter, I will make myself available to preside at this conference.

Disposition

[92] The applications by Jie, Jun, Jia, and Ms. Li to dismiss Mr. Wang's family law claim are dismissed.

[93] The application by Jie to cancel the CPL on the Baillie Property is granted.

[94] The application by Ms. Li to cancel the CPLs on the W. 55th Property and the Blundell Property is dismissed.

[95] The parties are directed to contact Supreme Court scheduling forthwith to set down a case planning conference, at which I will preside.

[96] As success has been divided on these applications, I am inclined to order that each party shall simply bear their own costs. If any of the parties feel otherwise, they may contact Supreme Court scheduling to fix a date for a costs hearing before me within 30 days.

[97] I am otherwise not seized of this matter.

"Brongers J."

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