

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *0894045 B.C. Ltd. v. 1294778 B.C. Ltd.*,
2026 BCSC 1769

Date: 20260918
Docket: S253232
Registry: New Westminster

Between:

0894045 B.C. Ltd.

Plaintiff

And

1294778 B.C. Ltd., Gurdev Singh Sandhu and 1412023 B.C. Ltd.

Defendants

And

089045 B.C. Ltd. and Balpreet Singh Sangha

Defendants by Counterclaim

Before: The Honourable Justice Lamb

Reasons for Judgment

Counsel for the Plaintiff and Defendants by
Counterclaim:

M.S.S. Shergill

Counsel for the Defendants:

D. Gautam

Place and Date of Hearing:

New Westminster, B.C.
June 26, 2026

Place and Date of Judgment:

New Westminster, B.C.
September 18, 2026

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Introduction

[1] This is an application pursuant to ss 256 and 257 of the *Land Title Act*, RSBC 1996, c 250, to cancel a certificate of pending litigation filed on April 25, 2024 (the “CPL”) against certain lands located in Delta, British Columbia (the “Property”) because of hardship and inconvenience. The application is brought by the defendant 1412023 BC Ltd. (“141”).

[2] In November 2024, all defendants brought an application pursuant to Rule 9-6 to cancel the CPL on the basis that the plaintiff (“089”) failed to plead an interest in land or alternatively based on hardship. The defendants’ application was dismissed, as the Court found there was a properly pleaded interest in land and that the evidence was insufficient to establish hardship: *894045 B.C. Ltd. v 1294778 B.C. Ltd.*, 2025 BCSC 359 (“First CPL Decision”).

[3] On this application, 141 again claims difficulties in refinancing and relies on evidence not before the Court on the previous application to cancel the CPL. 141 says no security should be required, and that an undertaking as to damages by an individual said to be a director of 141 should be adequate if security is required.

[4] 089 relies on issue estoppel and *res judicata* and says this application should be dismissed because 141 faced the same alleged hardship when the first application to cancel the CPL was brought. In any event, 089 says that the evidence on this application is inadequate to prove hardship and inconvenience. If the CPL is cancelled, 089 says indemnity for the full amount claimed (\$750,000 plus interest) should be posted as security.

[5] I will briefly review the legal framework that applies and outline the facts based on the evidence filed before applying the law to the circumstances of this case.

Legal Framework

[6] The cancellation of a CPL based on hardship and inconvenience is governed by ss 256 and 257 of the *Land Title Act*. Section 256 outlines the process for

bringing an application to cancel, and s 257 sets out the court's authority on such an application.

[7] To succeed on such an application, 141 must demonstrate that it has suffered or will likely suffer hardship and inconvenience caused by the registration of the CPL that is more than trifling or insignificant: *Youyi Group Holdings (Canada) Ltd. v Brentwood Lanes Canada Ltd.*, 2014 BCCA 388 at para 28; *Treasure Bay HK Limited v 1115830 B.C. Ltd.*, 2024 BCSC 294 [*Treasure Bay*]. At para 37 of *Liquor Barn Income Fund v Becker*, 2011 BCCA 141 [*Liquor Barn*], the Court of Appeal confirmed that “hardship and inconvenience experienced or likely to be experienced by the applicant must be causally connected solely to the registration of the CPLs.”

[8] Once hardship and inconvenience are established, the court retains discretion to determine what relief, in any, should be granted under s 257: *Liquor Barn* at para 17.

Background Facts

[9] The nature of this proceeding is outlined in the First CPL Decision. I will highlight some facts relevant to this application based on the evidence filed. There are conflicts in the evidence, but those are not material to the issues I must decide, and I do not intend nor is it necessary to resolve any conflicts in the affidavit evidence on this interlocutory application.

[10] This dispute arises in the context of a joint venture agreement to buy and develop the Property.

[11] In January 2022, the defendant 1294778 B.C. Ltd. (“129”) entered into a contract of purchase and sale with the previous owner of the Property (“THA”) to buy the Property for a purchase price of \$5,850,000 with a completion date of May 30, 2022 (later extended to August 31, 2022).

[12] In March 2022, 089 and 129 entered into an assignment agreement with respect to the Property, pursuant to which 089 agreed to pay \$250,000 to 129

(representing 50% of the deposit 129 had paid on the Property) and a \$500,000 assignment fee to the 129 (the “Assignment Agreement”). 089 and 129 entered into a joint venture agreement and other agreements that would result in a nominee (a newly incorporated company owned 50% by 089 and 50% by 129) buying the Property in place of 129 (the “Joint Venture Agreement”).

[13] There is no dispute that 089 paid the following sums to 129:

- a) \$250,000 representing 50% of the deposit 129 paid to THA to purchase the Property; and
- b) \$500,000 as an assignment fee.

[14] The anticipated purchase of the Property did not proceed as scheduled in August 2022. The parties disagree about their respective intentions and their discussions at that time. Mr. Sangha, principal of 089, says he was prepared to let the completion date pass and forfeit the deposit and shared this plan with the defendant Gurdev Sandhu. On the other hand, Gurdev Sandhu says Mr. Sangha instructed him to obtain an extension from THA to complete the purchase of the Property.

[15] On or about August 31, 2022, Gurdev Sandhu secured an agreement from THA to extend the completion date for the purchase of the Property from August 31, 2022 to June 29, 2023 provided that:

- a) 129 paid an additional deposit of \$1,000,000 to THA by September 7, 2022;
- b) 129 paid an additional deposit of \$1,300,000 to THA by February 28, 2023; and
- c) 129 paid interest on the purchase price from March 1, 2023 until the date of completion (the “First Amendment”).

[16] The parties disagree about what happened next in terms of their joint venture:

- a) Gurdev Sandhu says:
- i. Mr. Sangha asked him to pay 089's 50% share of the September deposit (\$500,000) required by the First Amendment and then 089 failed to reimburse him, in breach of their joint venture agreement; and
 - ii. he accepted Mr. Sangha's proposal to terminate the contracts between 089 and 129 in exchange for 089's forfeiture of the deposit contribution of \$250,000 and the assignment fee of \$500,000;
- b) Mr. Sangha says that, shortly after the First Amendment was signed, he and Gurdev Sandhu agreed that:
- i. 129 would repay the assignment fee (\$500,000) to 089;
 - ii. 129 would be responsible for any real estate commissions relating to the assignment fee;
 - iii. 129 would be entitled to retain 089's deposit contribution of \$250,000; and
 - iv. the joint venture would be terminated with mutual releases (the "Termination Agreement").

[17] On Mr. Sangha's instructions, a lawyer drafted a document consistent with the Termination Agreement, but there is no evidence that Gurdev Sandhu signed that document on behalf of 089.

[18] On January 11, 2023, counsel for 089 wrote to the defendant 129 and demanded the repayment of the assignment fee as required by the Termination Agreement. On January 16, 2023, counsel for 129 and Gurdev Sandhu responded by asserting that there was no Termination Agreement as alleged and that 089 breached the joint venture agreement by failing to pay its share of the further deposits (which 129 and Gurdev Sandhu said were negotiated with Mr. Sangha's knowledge and consent). By that same letter, 129 gave 089 an opportunity to

remedy its alleged breach by paying half of the further deposits, which 089 did not do before 129 accepted 089's alleged repudiation of the joint venture agreement on May 16, 2023.

[19] On April 16, 2023, 129 assigned 129's rights under the purchase and sale agreement with THA to 141, including the \$2,800,000 in deposits paid to THA. The assignment agreement between 129 and 141 indicates that 141 had reimbursed 129 for deposits paid to THA, but there is no evidence on this interim application that 141 actually paid \$2,800,000 to 129.

[20] On July 10, 2023, according to Gurdev Sandhu, 141 "completed the purchase of the Property by using a combination of its own funds and a mortgage" from Blue Shore Financial Credit Union (the "Mortgage"). According to a mortgage commitment letter from Blue Shore Financial Credit Union dated May 17, 2023, Blue Shore approved financing to 141 in the amount of \$3,500,000 to be used together with a 141's "cash injection" of \$2,839,000 to fund the purchase price for the Property (\$5,985,000), an interest reserve (\$319,000), and an application fee (\$35,000).

[21] Gurdev Sandhu attached a copy of the "mortgage" to his affidavit. The commercial term loan agreement between Blue Shore (lender), 141 (borrower), and Ajit Singh Sandhu and Rano Kaur Sandhu (guarantors) indicates that interest only would be paid until the balance due date, June 29, 2024. The commercial term loan agreement includes terms regarding renewal.

[22] On April 25, 2024, 089 filed this action and the CPL.

[23] On October 17, 2024, the defendants filed an application to cancel the CPL pursuant to s 215 of the *Land Title Act* or alternatively pursuant to ss 256 and 257 of the *Land Title Act*. In an affidavit made September 25, 2024, Gurdev Sandhu deposed as follows:

49. The Defendant, 141, is in the process of refinancing the Property to proceed with the project, or in the alternative, renewing the Mortgage.

50. As a result of the Certificate of Pending Litigation, the lender is unwilling to either renew the Mortgage or refinance the Property . . .

[24] In an affidavit made March 16, 2026, Ajit Singh Sandhu deposed that he is a director of 141. Ajit Singh Sandhu further deposed as follows:

5. The Property is currently subject to a mortgage in favour of Blueshore Financial Credit Union (the "Mortgage").

6. The Mortgage is presently outstanding in the approximate amount of \$3,500,000, and the mortgage facility has now passed its maturity date of April 10, 2025.

[25] Ajit Singh Sandhu did not attach a copy of the mortgage with a maturity date of April 10, 2025. There is no evidence explaining whether the original loan agreement with a balance due date of June 29, 2024 was renewed or extended and if so on what terms.

[26] On February 18, 2026, Blue Shore wrote to 141 as follows:

The above noted commercial mortgage facility has past the maturity date. The Lender has reached out on numerous occasions requesting updated information & confirmation that specific requirements have been satisfied. The loan will not be removed [sic] without the items below being removed from the title.

Below is a list of items that continue to remain outstanding:

- 1) Dispute between 0894045 BC LTD. – CPL must be discharged from title prior to renewal
- 2) Dispute between A&W Food Services of Canada Inc. - CPL must be discharged from title prior to renewal
- 3) BlueShore will not be able to fund the approved refinancing to replenish the debt service reserve with the CPL's in place.

The CPL's need to be removed within 60 days as the file is being transferred to our Special Loans Department and they will proceed with the process of getting full repayment of the commercial mortgage thru any legal process that is required.

[27] 141 does not presently have the ability to repay the full outstanding mortgage balance without refinancing the Property.

[28] More recently, on June 9, 2026, Beem Credit Union (as Blue Shore is now known) advised counsel for 141 that "we will wait for the outcome of your application [to remove 089's CPL] but the credit union may continue to take enforcement

actions". Beem Credit Union reminded counsel for 141 that "the loan is long overdue and must be renewed immediately upon the removal of the CPL's".

[29] 141 has made efforts to find alternate financing, but it has been advised that lenders will not consider a financing application while there is a CPL on title.

[30] In addition to the CPL filed by 089 against the Property, there is also a CPL filed by A&W Food Services of Canada Inc. against the Property. The trial of the A&W action did not proceed as scheduled in May 2026. Counsel for 141 says A&W and 141 have attended mediation, and they are close to resolving A&W's claim. As of the date of the application, the A&W CPL continued to be registered against the Property.

[31] To proceed with rezoning the Property and the next stage of the project to develop the Property, 141 will require further funding of approximately \$1,100,000. 141 says it requires financing from a lender to pay these costs. The two CPLs on the Property are preventing 141 from securing the necessary financing.

[32] The Property was listed for sale with a commercial realtor on May 11, 2026. On June 10, 2026, 141 accepted an offer to purchase the Property for \$3,950,000 (the "Purchase Agreement"). Pursuant to the Purchase Agreement, 141 gave a covenant to deliver (within 15 days of acceptance of the offer to purchase) confirmation satisfactory to the purchaser that the CPLs registered on title shall be discharged and removed before the completion date. In the Purchase Agreement, the offer to purchase is subject to a condition precedent that the purchaser and its solicitors are to be satisfied with the title within 30 days of receiving confirmation from 141 that the CPLs shall be discharged. The offer to purchase is also subject to the purchaser obtaining financing. To avoid prematurely paying application fees for financing, the purchaser says that it does not intend to apply for financing until the CPLs are removed.

[33] I note that as recently as March 2026, Ajit Sandhu believed that the Property was worth more than \$6,000,000. He relied upon the BC Assessment value of

\$5,841,000 and an appraisal from August 2024 that valued the Property at \$7,400,000 (though Ajit Sandhu acknowledged market conditions have softened since then).

Analysis

Is 141's application barred by issue estoppel or *res judicata*?

[34] I accept 089's submission that the First CPL Decision was an interlocutory decision based on the circumstances at that time, and the First CPL Decision does not bar 141's renewed application based on different circumstances. I accept that circumstances have changed since November 2024: the lender is threatening legal proceedings to enforce its right to repayment of the loan and refuses to renew unless the CPLs are removed, and a potential sale of the Property cannot move forward with the CPLs on title.

[35] It is not surprising that circumstances related to hardship and inconvenience may change over the course of several years, and an unsuccessful early application to remove a CPL based on hardship should not preclude a further application should circumstances change.

Has 141 established hardship and inconvenience?

[36] 141 submits it is facing hardship in that it is unable to renew its mortgage on the Property because of the CPL and because the CPL is interfering with a potential sale of the Property. 141 contends that hardship or inconvenience does not have to be significant to satisfy the s 256 precondition for cancellation of a CPL: *Enigma Investments Corp. v Henderson Land Holdings (Canada) Ltd.*, 2007 BCSC 1379 at para 24.

[37] The parties do not dispute the applicable legal principles. However, 089 submits 141's evidence of hardship is insufficient and fails to meet the necessary burden of proof. 089 relies on the principle that general or unsupported evidence lacking specific proof is insufficient: *Liquor Barn* at para 37; *Save-A-Lot Holdings Corp. v Christensen*, 2023 BCCA 35 at para 43. 089 says that 141's inability to

refinance is akin to speculation about a potential business opportunity, which the court has previously found does not amount to hardship: *Saunders v Jaremco*, 2015 BCSC 2019 at paras 23-28. These submissions are not persuasive and fail to recognize the specific evidence presented by 141.

[38] I am satisfied 141 has demonstrated that it has suffered or is likely to suffer hardship and inconvenience because of 089's CPL registered against the Property, both in terms of impeding 141's efforts to refinance and 141's efforts to sell the Property.

[39] In terms of refinancing, the lender requires both CPLs on title to be removed before it will renew the mortgage on the Property. There is evidence from a mortgage broker that alternate financing is not likely to be available while the CPLs remain on title. 141 has no source of income, which means that, without refinancing, 141 does not have the financial resources to pay the balance owing on the mortgage or to continue to make interest-only payments. 141's inability to renew its mortgage or obtain alternate financing constitutes hardship and inconvenience in the context of 141's financial circumstances.

[40] Though 089's CPL is not the only CPL causing hardship, I accept that 089's CPL is likely causing hardship and inconvenience, as 141 cannot move forward with refinancing with 089's CPL on title. At paras 137 to 144 of *Treasure Bay*, Justice P. Walker did not accept the plaintiff's submission that the CPL must be the *only* impediment to refinancing before the court will exercise its discretion to remove a CPL for hardship; instead, the key is a direct link between the registration of the CPL and the alleged hardship. I am satisfied that 141 has established a direct causal link between 089's CPL and 141's inability to renew the Blue Shore loan or obtain alternate financing.

[41] If the mortgage is not renewed or 141 is not able to refinance the loan secured by the Property, there is evidence of a credible risk that the lender will take steps to enforce the term of the loan that requires 141 to repay the balance of the loan. Based on the evidence tendered by 141, it seems likely that foreclosure will

lead to a sale of the Property, which would be further hardship and inconvenience for 141 if the Property is sold in foreclosure.

[42] In the meantime, 141 has listed the Property for sale. Registration of the 089 CPL and the A&W CPL as impeded 141's efforts to sell the Property: the Purchase Agreement specifically provides that 141 must remove the CPLs as a condition precedent in favour of the purchaser. Again, while 089's CPL is not the only impediment to sale of the Property, the key issue is whether there is a direct causal link between 089's CPL and likely hardship and inconvenience. Given the terms of the Purchase Agreement (i.e., the condition precedent requiring removal of the CPLs) and the purchaser's unwillingness to pursue financing options, I accept the necessary causal link is established.

[43] In summary, I find 089's CPL is likely causing hardship and inconvenience to 141.

Should 089's CPL be removed and, if so, on what terms?

[44] Even where hardship and inconvenience are established, the court retains discretion regarding remedies under s 257 of the *Land Title Act*. Pursuant to s 257(1)(a), the court may order cancellation of the CPL upon

- (i) being satisfied that an order requiring security to be given is proper in the circumstances and that damages will provide adequate relief to the party in whose name the certificate of pending litigation has been registered, and
- (ii) the applicant giving to the party the security so ordered in an amount satisfactory to the court....

[45] In this case, I am satisfied that damages will provide adequate relief to 089. 089 does not seek an order transferring a share of title in the Property to 089. In 089's own pleading, 089 agreed to be an equal partner with 129 in a project to purchase the Property, construct improvements and then sell the Property with those improvements for a profit. There is no evidence that any loss suffered by 089 cannot be remediated by an award of damages, and 089 did not suggest the application to remove its CPL should fail on this basis.

[46] The challenge is determining the amount of security that should be posted for the cancellation of 089's CPL. 089 says the full value of its claim based on the funds invested (\$750,000) should be posted as security. 141 says an undertaking as to damages by a director of 141 should be adequate security.

[47] The combined effect of ss 215, 256 and 257 means that "the security the court may order when cancelling a CPL should be tied to the claim to the interest in land that grounds the CPL, whether that claim forms all or part of an action": *Wosnack v Ficych*, 2022 BCCA 139 at para 28 [*Wosnack*]. The relevant factors for assessing the amount of security include the probability of the party's success in respect of the claim to an interest in land and the possible range of damages to which a party may be entitled: s 257(3); *Wosnack* at para 30.

[48] In Part 2 of the notice of civil claim, 089 seeks a tracing of the assignment fee and a declaration "that 141 holds the Property upon a constructive trust in proportion to the amount of the Assignment Fee and the profits from disgorgement".

[49] In Part 3 of the notice of civil claim, 089 alleges that 141 has been unjustly enriched "through the use of the Plaintiff's Funds for the acquisition, development, maintenance or improvement of the Property", which justifies the imposition of a constructive trust in favour of 089. Though capitalized, the term "Plaintiff's Funds" is not defined in the notice of civil claim. Based on the relief sought, it appears 089 asserts a constructive trust in respect of the assignment fee of \$500,000.

[50] Whether 141 has been unjustly enriched will turn on whether the Termination Agreement reflects the release negotiated by Mr. Sangha and Gurdev Sandhu in September 2022.

[51] Assessing the likelihood of success of the relevant claims is challenging because, other than filing pleadings and responding to two applications to set aside its CPL, it appears that 089 has taken no steps to prosecute its claims in the two and a half years since filing this action. The action has not been set for trial, despite 089's submission that its claims have a high probability of success.

[52] The details of the agreement (if any) between Mr. Sangha and Gurdev Sandhu in August and September 2022 are not clear from the written correspondence provided by either party. Based on text messages between Mr. Sangha and Gurdev Sandhu exchanged on August 30, 2022, it appears likely that Mr. Sangha asked Gurdev Sandhu to ask THA for an extension of the August 31, 2022 closing date and that Mr. Sangha asked Gurdev Sandhu to “cover [his] portion of additional deposit for now”. Based on text messages in early September 2022, it appears likely that Gurdev Sandhu approached THA a few days later to seek a release from the agreement to buy the Property in exchange for forfeiting the deposits paid, a deal that THA refused. Instead, on September 9, 2022, Gurdev Sandhu sent the following email to Eric Vandergriendt, a lawyer apparently retained to complete the purchase of the Property:

Seller will not release me at all. Release will be only on assignment contract and I will be responsible to complete it. [Mr. Sangha] need to release fully from future consequences.

[53] Gurdev Sandhu’s email suggests that he and Mr. Sangha had discussed a release for Mr. Sangha. Mr. Vandergriendt prepared a document consistent with the Termination Agreement. Neither party provided evidence on this application to show how and when Mr. Vandergriendt sent the written Termination Agreement to Gurdev Sandhu. One might have expected that if the Termination Agreement did not reflect the terms of the release referenced in his September 9, 2022 email, then Gurdev Sandhu would have objected promptly after receiving the document from Mr. Vandergriendt. However, there is no evidence of further communication between Mr. Sangha and Gurdev Sandhu about the dissolution of the Joint Venture Agreement until counsel for Mr. Sangha sent a demand letter on January 11, 2023, seeking to enforce the Termination Agreement. Counsel for 141 responded by letter dated January 16, 2023, denying the parties had agreed to terminate the Joint Venture Agreement.

[54] Significantly, in the January 16, 2023 letter, counsel for 141 did not suggest that 089 had agreed to forfeit both the \$250,000 deposit and the assignment fee, which is what Gurdev Sandhu deposited in his first affidavit in this action:

30. I informed Mr. Sangha that THA was unwilling to release the Defendant, 129, or any subsequent assignees in exchange for the forfeiture of the Deposit. However, Mr. Sangha remained adamant that the Plaintiff, 089, would not complete the purchase of the Property and would forfeit the Deposit Contribution and Assignment Fees.

[55] The failure of 141 to assert 089's forfeiture of the Assignment Fee in January 2023 makes it less likely that Gurdev Sandhu's evidence on this point is reliable. The fact that Gurdev Sandhu deposed at para 31 of his first affidavit that "in the alternative" Mr. Sangha and 089 breached their obligations under the Joint Venture Agreement tends to undermine Mr. Sangha's reliability. It is not obvious what it means to offer evidence "in the alternative".

[56] Neither party provided evidence from Mr. Vandergriendt on this application regarding the source or nature of his instructions for drafting of the Termination Agreement.

[57] At this preliminary stage, based on the evidence provided on this application, I am satisfied that there is a significant likelihood that 089 will succeed in its constructive trust claim in respect of the Assignment Fee. The contemporaneous correspondence suggests 089 and 141 agreed to a release in favour of 089. It appears more likely that 089 agreed to forego its \$250,000 deposit in exchange for terminating the Joint Venture Agreement and that 129 agreed to return the assignment fee to 089, which suggests that 089's claim for unjust enrichment giving rise to a constructive trust over the Property is likely meritorious. Based on what I have found likely, there is no obvious juristic reason (and none was pleaded) why 129 would be entitled to keep the assignment fee that 141 ought to have returned to 089.

[58] The next issue is the likely quantum of 089's constructive trust claim (as distinct from 089's claim for damages, which does not give rise to its interest in the Property and is not protected by the CPL). Based on the original purchase price and financing, the \$500,000 assignment fee would give rise to a constructive trust in respect of a 20% interest in the equity of the Property. Unfortunately, the fair market

value of the Property has apparently dropped precipitously since May 2023, and 20% of the equity in the Property is now worth closer to \$90,000 based on the Purchase Agreement. If the Property was still worth \$5,841,000 (the most recent BC Assessment value), then 089's constructive trust interest would be worth \$468,000.

[59] 141 says that an undertaking as to damages from one of its directors should be adequate security. However, 141 provides no case authorities in which such an undertaking has been found to be adequate security for release of a CPL.

[60] Based on the likelihood of success and quantum of the constructive trust claim, I am prepared to exercise my discretion to remove 089's CPL upon the posting of \$90,000 as security. If the parties are not able to reach an agreement on whether the security is to be posted from the proceeds of sale or refinancing or otherwise, then they may seek directions from me.

[61] Costs of this application shall be in the cause.

“Lamb J.”