

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Coast Mountain Aviation Inc. v. Carter*,
2026 BCSC 1648

Date: 20260828
Docket: S244348
Registry: Vancouver

Between:

Coast Mountain Aviation Inc.

Plaintiff

And

Helga Anita Carter

Defendant

Before: The Honourable Justice Stephens

Reasons for Judgment

Counsel for the Plaintiff:

D. Brar

Counsel for the Defendant:

J. Goldman

Place and Dates of Hearing:

Vancouver, B.C.
April 7, 2026, and July 24, 2026

Place and Date of Judgment:

Vancouver, B.C.
August 28, 2026

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Overview

[1] The defendant Helga Carter applies for “[j]udgment pursuant to Rule 9-6(4) dismissing the parts of the Plaintiff’s [Amended] Notice of Civil Claim relating to an interest in land, and that the certificate of pending litigation, filed in the Land Title Office on July 4, 2024, under registration number CB1424429 (the “CPL”),” against certain lands in Richmond (the “Richmond Lands”) be “cancelled in whole without the applicant posting any security” (at para. 1) and additional relief to discharge the CPL from title to the Richmond Lands (at para. 2).

[2] The defendant is an owner of the Richmond Lands as joint tenant with her sister and her mother, who lives in a senior independent living facility.

[3] The plaintiff opposes the application and, among other things, contends that summary judgment should not be granted since there are *bona fide* triable issues, including whether the plaintiff has an interest in land in the Richmond Lands (among other related triable issues).

[4] The issues on this application are:

1. Should summary judgment be granted dismissing the part of the plaintiff’s claim in the amended notice of civil claim to an interest in land?
2. If so, should the CPL be discharged under s. 254 of the *Land Title Act*, R.S.B.C. 1996, c. 250 [LTA]?
3. In the alternative, should the CPL be discharged under s. 256(1) of the LTA on grounds of hardship and inconvenience?

[5] The burden that the defendant must meet to obtain summary judgment under R. 9-6 is onerous, and the converse is true in that the plaintiff need only show that a genuine issue for trial exists including, where there is evidence, that such evidence has to be weighed to determine the issue, to successfully defend such an application.

[6] In my view, respectfully, the plaintiff's argument opposing summary judgment appears to constitute an assertion that, even though its pleaded basis of an interest in the Richmond Lands is a Loan and Security Agreement (the "LSA"), which does not reveal any common intention to create an interest in those lands, other evidence (not pleaded as material facts in the claim) nevertheless informs the interpretation of the LSA and gives rise to genuine issues for trial, with respect to whether an equitable mortgage was created over those lands.

[7] I add that some of the evidence relied on by the plaintiff in support of a triable issue includes asserted representations to the plaintiff by the defendant's husband, Mr. Steven Carter, during negotiations with the plaintiff prior to the LSA, although there are no material facts pleaded in the amended notice of civil claim that Mr. Carter was the defendant's agent.

[8] In these Reasons I find that, focussing on the plaintiff's pleaded claim to an interest in land in support of the CPL—the LSA—there is no genuine issue for trial and the plaintiff's claim, as pleaded, to an interest in the Richmond Lands is bound to fail. This is because the LSA clearly does not express any intention to create an equitable mortgage, as claimed by the plaintiff, or any interest in the Richmond Lands. And, even if certain other evidence (including documents and agreements other than the LSA) relied on by the plaintiff as factual matrix for interpreting the LSA were considered, the plaintiff's assertion to an interest in the Richmond Lands is also bound to fail.

[9] For these reasons, and those that follow, I find that the defendant has met the high burden required on a R. 9-6 application, and summary judgment should be granted dismissing the part of the plaintiff's claim that relates to an interest in land. Accordingly, the defendant shall consequently be able to seek cancellation and discharge of the CPL against the Richmond Lands in accordance with the procedure set out in s. 254 of the *LTA*.

Plaintiff's Claim to an Interest in the Richmond Lands

[10] The plaintiff filed a notice of civil claim on June 26, 2024, and filed an amended notice of civil claim on July 4, 2024 (the "AN OCC"). It was on the basis of the AN OCC that a CPL was registered over the Richmond Lands on July 4, 2024.

[11] The AN OCC pleads that the defendant is "an owner" of the Richmond Lands (at para. 3) and that she executed a guarantee document on or about July 5, 2022 (at para. 4) in which she, among other things, "[u]nconditionally guarantee[d] all present and future debts and liabilities of Steven George Carter" (the "Guarantee").

[12] Paragraph 5 of the AN OCC pleads the LSA as the basis of the plaintiff's claim for an interest in land:

5. Concurrently with, as part of the same transaction and for the same consideration as her execution of the Guarantee, Helga [the defendant] also executed a Loan and Security Agreement dated for reference June 30, 2022 (the "Agreement") in which, *inter alia*, she ~~gave security for the Guarantee by agreeing to pay Coast the sum of \$700.00 upon sale of the Lands~~ agreed that her interest in the Lands would stand as security for her guarantee of the payment to Coast of the sum of \$700,000.00.

[Underlining and strike through in the original.]

[13] At para. 6 of the relief sought, the plaintiff pleads for a declaration for an equitable mortgage charge against the defendant's interest in the Richmond Lands in the amount of \$700,000:

6. A declaration that Coast has an equitable mortgage charge against Helga's interest in the Lands in the amount of \$700,000.00.

[Underlining in original.]

[14] In part 3 at para. 1, the plaintiff pleads that in the "Guarantee, the Defendant guaranteed the payment of the Debt by the Debtor [Steven Carter] to a limit of \$700,000.00".

[15] In part 3 at paras. 4–6, the plaintiff sets out the legal basis for the assertion it has an interest in land in the Richmond Lands as an equitable mortgage. This part of the AN OCC alleges the existence of an interest in the lands "[i]n" and "pursuant to" the LSA, relying exclusively on the LSA:

4. In the [Loan and Security] Agreement, the Defendant pledged the first \$700,000.00 of the proceeds of sale of the Lands to the Plaintiff, and the Plaintiff has a corresponding interest in the Lands.

5. It was the common intention of Helga and Coast to make the Lands security for the Debt pursuant to the Agreement.

6. The Agreement is an agreement in writing and duly signed, by which Helga's interest in the Lands was pledged by Helga as security for the Debt, and therefore it creates an equitable charge against her interest in the Lands.

[Emphasis added.]

[16] The underlined portions of these paragraphs of the ANOCC above are those the defendant seeks to dismiss under R. 9-6(4).

[17] In opposing this R. 9-6 application, the plaintiff elaborated its position on the ANOCC, by relying not simply on the LSA document, but also on evidence of matters not pleaded in the ANOCC: i.e. of evidence both preceding and contemporaneous with the LSA as asserted factual matrix evidence, which the plaintiff contends is relevant to interpreting the LSA and gives rise to a triable issue.

Discussion

Legal Principles: CPL Removal Application

[18] The “registration of a CPL is an extraordinary pre-judgment mechanism that secures an unproven claim by tying up the property owner’s title”: *1316215 BC Ltd. v. Davis*, 2026 BCCA 338 at para. 3.

[19] For a CPL to be validly registered, it must be supported by a notice of claim that “disclose[s] a claim to an interest in” land, as explained in *Zhao v. Jiao*, 2024 BCSC 2248:

[22] Section 215(1) of the LTA provides that:

Registration of certificate of pending litigation in same manner as charge

215 (1) A person who has commenced . . . a proceeding, and who is

(a) claiming an estate or interest in land, . . .

may register a certificate of pending litigation against the land . . .

- [23] Thus, as a precondition to registration of a CPL, the NOCC must disclose a claim to an interest in the Richmond Property: *Batth v. Sharma*, 2024 BCCA 29, at para. 22, citing *Xiao v. Fan*, 2018 BCCA 143, at para. 31.
- [20] The registration of “a CPL is not to be used as pre-judgment execution for a purely financial claim”: *Wang v. Cai*, 2022 BCSC 1312 at para. 12.
- [21] Thus, the court has inherent jurisdiction to cancel a CPL where a notice of civil claim fails to meet the precondition of a claim for an interest in land as required by s. 215. Such an application proceeds on the pleading alone: *Zhao* at paras. 24–35.
- [22] However, a party may also apply under R. 9-6 for summary judgment, with evidence, to cancel a CPL which does not establish a claim to an interest in land by seeking “judgment dismissing ... part of a claim in the claiming party's originating pleading”: R. 9-6(4). This alternative manner of challenging a claim to an interest in land which supports a registered CPL was explained in *Zhao*:
- [29] A party seeking to cancel a CPL on the basis that the opposing party does not claim an interest in land has two options. First, they can bring the application pursuant to s. 215(1), asserting that the pleading does not claim an interest in land. An application to cancel a CPL under s. 215 is based on the pleadings. The court is not to analyze the merits of the claim. The question is whether the facts pleaded, assuming they are true, are capable of supporting a claim to an interest in land: *GMC* at para. 41.
- [30] Additionally or alternatively, where a party asserts that there is no merit to the claim of an interest in land, they can apply for summary dismissal under Rule 9-6: *Batth* at para. 16, citing *Xiao* at paras. 13, 22 to 27; and *Ai Kang Yi Yuan Enterprises Corp. v 1098586 B.C. Ltd.*, 2022 BCSC 670 at para. 38.
- [Emphasis added.]
- [23] In *Xiao v. Fan*, 2018 BCCA 143, the court stated that if the relevant part of the claim asserting an interest in land over lands subject to a CPL is dismissed under R. 9-6, then a defendant may seek to have the CPL cancelled under s. 254 of the *LTA*:
- [27] ... If the merits of the claim for an interest in land are challenged, a defendant should apply for a summary dismissal of that part of the claim under Rule 9-6(4), where evidence may be considered, and the test to be

applied is whether there is a *bona fide* triable issue of fact or law. If that part of the claim is dismissed, a defendant may then apply to have the CPL cancelled under s. 254.

[24] Section 254 of the *LTA* states:

Cancellation of certificate of pending litigation if action dismissed

254 If an action in respect of which a certificate of pending litigation is registered has been dismissed, the registrar must cancel the registration as provided in the regulations, or, on

(a) application, and

(b) production of a certificate of the registrar of the court that issued the certificate of pending litigation, endorsed by the registrar of the Court of Appeal, certifying that

(i) the action has been dismissed and that the time limited for appeal has expired and no notice of an appeal has been filed with the registrar of the Court of Appeal, or

(ii) a notice of appeal has been filed and has been finally disposed of, and the dismissal of the action has not been set aside by the Court of Appeal or the Supreme Court of Canada.

[25] As stated in *Zhao*, a party's entitlement to a CPL is founded on the pleaded claim in respect of which the CPL was registered (para. 28).

[26] Similarly, on a R. 9-6 application to dismiss a claim for an interest in land (sought to then apply to cancel a CPL under s. 254), the court focuses on the plaintiff's claim to an interest in land in the subject property as set out in the plaintiff's notice of civil claim, including the material facts pleaded in support of that claim to an interest in land: *Trackside Holdings Ltd. v. Lakeshore Ventures Ltd.*, 2026 BCCA 291 at paras. 32–33, 35, 38, 44, 54–55 [*Trackside*]; *Kapoor v. Puri*, 2026 BCCA 313 at paras. 8, 10, 33, 35; and *Zhao* at para. 28.

Legal Principles: Rule 9-6 Summary Judgment Application

[27] A defendant seeking summary dismissal bears the evidentiary burden of showing that there is “no genuine issue of material fact requiring trial”: *Latifi v. The TDL Group Corp.*, 2024 BCSC 832 at para. 52 [*Latifi*], *aff'd* 2025 BCCA 45, leave to appeal to SCC *ref'd*, 41757 (18 September 2025). *Latifi* further explains:

[54] The analysis under Rule 9-6(5)(a) focusses on whether the claim is without merit such that there is no genuine issue to be tried based on the material, including evidence.

[55] As set out in *Xiao v. Fan*, 2020 BCSC 69 at para. 46, a judge hearing a summary judgment application must examine the pleaded facts to determine what causes of action they may support, including identifying the elements of each cause of action and whether the necessary material facts have been pleaded. If insufficient material facts have been pleaded such that it is beyond a doubt that the cause of action is bound to fail, then the defendant has met its onus, and the claim must be dismissed.

[56] However, if sufficient material facts have been pleaded, the issue becomes whether the evidence adduced at the hearing is clear that there is no genuine issue for trial. A "genuine issue for trial"—sometimes referred to as a "*bona fide* triable issue"—may be one of fact or of law in the sense that a *bona fide* triable issue arises on the material before the court in the context of the applicable law.

[57] A genuine issue of fact arises from a material conflict in the evidence, although Rule 9-6 is still available where there are disputed facts in the pleadings: *McLean v. Law Society of British Columbia*, 2016 BCCA 368 at para. 36; *Lameman* at para. 11. Each party must put its "best foot forward" as to the existence or non-existence of material issues and the underlying materials facts: *Lameman* at para. 11; *McLean* at paras. 36, 38; *Pantusa* at para. 58.

[58] Accordingly, summary judgment cannot be defeated by vague references to what may be adduced in the future. Rather, it is judged on the basis of the pleadings and materials actually before the court, although the judge may make inferences of fact based on undisputed facts strongly supporting such inference: *Lameman* at paras. 11, 19.

[Emphasis added.]

[28] The "[m]aterial facts are the elements essential to formulate a claim or a defence": *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362 at paras. 45–48.

[29] The bar on a summary judgment application is high. *Latifi* states:

[52] The bar on a motion for summary judgment is high: a defendant that seeks summary dismissal bears the evidentiary burden of showing that there is "no genuine issue of material fact requiring trial", to ensure that "claims that have no chance of success be weeded out at an early stage": *Canada (Attorney General) v. Lameman*, 2008 SCC 14 at paras. 10–11; *Drummond v. Moore*, 2012 BCSC 496 at para. 25.

See also *Guo Law Corporation v. Li*, 2024 BCSC 1121 at paras. 44–51.

[30] *Guo Law Corporation* at para. 46 further states that to obtain summary judgment dismissing a claim on a R. 9-6 application the onus is on the applicant on a reasonable doubt standard.

[31] Under a R. 9-6 application, a judge is permitted to consider the evidence adduced on the application. However, the judge is not permitted to weigh the evidence beyond determining whether it is incontrovertible: *Trackside* at para. 17.

[32] Where a plaintiff pleads reliance on an agreement in support of its claim to an interest in land, the court may review the content of the agreement when placed in evidence on a R. 9-6 application to determine whether the agreement actually supports the plaintiff's claim to an interest in land: *Trackside* at para. 44.

Legal Principles: Equitable Mortgage

[33] An "equitable mortgage creates a charge, in equity, on the property" and such a charge "constitutes an interest in land that may support a CPL": *Wu v. Xiao*, 2021 BCSC 1692 at para. 33.

[34] Further, "a required element of any equitable mortgage is a common intention to make property security for a debt due or present advance", and "if the intention is lacking, no equitable mortgage can be created": *Stonewater Ventures (No. 185) Ltd. v. Stonewater Ventures (No. 168) Ltd.*, 2022 BCSC 114 at paras. 37, 42.

[35] In *1060700 B.C. Ltd. v. iFortune Homes Inc.*, 2026 BCSC 946 [*iFortune*], the court described the nature of an equitable mortgage as a contract which in equity creates a charge on property, but does not pass the legal estate to the mortgagee:

[48] An equitable mortgage is a contract which in equity creates a charge on property but does not pass the legal estate to the mortgagee: *Vancouver (City) v. Smith* (1985), 63 B.C.L.R. 180, 1985 CanLII 461 (C.A.) at para. 11 [*Vancouver*], citing John Falconbridge, *The Law of Mortgages of Land: Registration of Deeds, Land Titles System, Limitation of Actions, Conflict of Laws*, 3d ed. (Toronto: Canada Law Book Company Limited, 1942) at 69–74; *Treasure Bay* at para. 62. A duly signed agreement in writing, however informal, by which any property is made security for a debt due or a present advance, creates an equitable charge upon the property: *Vancouver* at para. 11.

[49] The purpose of an equitable mortgage is to charge certain property as security for a debt due or a present or future advance: *Treasure Bay* at para. 62. The common intention of the parties, the property in question, and the obligation it was intended to secure, even if not yet acquired, must therefore be ascertainable: *Treasure Bay* at para. 62.

[50] To sustain a claim of equitable mortgage, the parties must demonstrate an explicit intention to make the property security for a debt or a present advance: *Vancouver* at paras. 11 and 16. This is an important feature of an equitable mortgage. The parties to the mortgage contract must have a common intention to make the property in question security for the debt due. If this intention is lacking, an equitable mortgage cannot be said to have been created: *Vancouver* at para. 12, citing *Re Sikorski and Sikorski*, 1978 CanLII 1448 (O.N.S.C.), 89 D.L.R. (3d) 411 at 416.

[Emphasis added.]

[36] Further, “the essence of an equitable mortgage is an intention to make property security for a debt due or a present advance” and while “the document need not use the formal wording of ‘transfer’ or ‘mortgage’ or ‘assign’”, nevertheless “it must in some manner show that intention to create a charge on property in equity or, put another way, to grant a property interest to the mortgagee as security for a debt”: *Thompson v. Lagace*, 2000 BCSC 847 at para. 5, citing *Duncalm Resort Inc. v. Rendezvous Lodge Ltd.*, 52 B.C.L.R. (3d) 64, 1998 CanLII 4882 (C.A.); see also *Wu* at para. 33.

[37] Principles regarding equitable mortgage were also set out in *Anderson Square Holdings Ltd. (Re)*, 2025 BCSC 186:

[48] In equity, a mortgage is created by contract, for valuable consideration, “to execute, when required, a legal mortgage, or by a contract so evidenced and for valuable consideration that certain property is to stand as security for a certain sum”: *Nazari* at para. 32, quoting *Thompson v. Lagace*, 2000 BCSC 847 at para. 6; *Vancouver v. Smith*, 52 B.C.L.R. 99 at para. 12, 1984 CanLII 430 (S.C.).

[49] The “important feature of an equitable mortgage is the common intention of the parties to the mortgage contract to make the property in question security for the debt due” such that “[i]f this intention is lacking, an equitable mortgage cannot be said to have been created”: *Forjay* at paras. 178–179, quoting *Vancouver v. Smith*, 63 B.C.L.R. 180 at 183, 1985 CanLII 461 (C.A.) [*Vancouver BCCA*]; see also *Thompson* at para. 7, quoting *Corban Construction Co. Ltd. v. Nankivell*, [1995] B.C.J. No. 1077, 1995 CanLII 1837 (S.C.). A lack of certainty “as to which property [is] to be the subject of the equitable charge” can render it unenforceable: *Forjay* at para. 179, citing *Vancouver BCCA*.

Findings: Summary Judgment Application to Dismiss Plaintiff's Claim to an Interest in Land (in the Richmond Lands)

[38] The defendant deposes in her affidavit #2 that at no time did she agree that her interest in the Richmond Lands “would stand as security for any guarantee or any payments owing to the Plaintiff” by her husband or otherwise (at para. 8).

[39] The defendant contends that there is no genuine issue for trial as to whether the plaintiff has a claim for an interest in land as an equitable mortgage arising out of the LSA, as the plaintiff pleads in the ANOCC.

[40] I find on this R. 9-6 application that I must analyze the plaintiff's claim to an interest in land to support the CPL based on the plaintiff's pleading in the ANOCC. This is consistent with the analytical approach in *Trackside*, where the Court of Appeal focussed on the pleaded claim for an interest in land, both as it related to an application to cancel a CPL under s. 215 of the *LTA*, and on the R. 9-6 summary judgment application to dismiss the claimed interest in land: at paras. 15–18, 33, 38, 44, 54- 55.

Plaintiff's Position

[41] The plaintiff opposes this application, contending that the defendant asks the court “to determine, on conflicting affidavit evidence and competing interpretations of contemporaneous written agreements, that Coast Mountain has no arguable proprietary interest in the Richmond Lands.” The plaintiff contends that multiple triable “issues arise from the written agreements, the surrounding negotiations, the parties' longstanding course of dealing, and conflicting affidavit evidence. They require findings concerning contractual interpretation, objective intention, authority, credibility and reliability that cannot properly be made on a Rule 9-6 application.”

[42] The plaintiff submits that there is a genuine issue for trial as to whether it has an interest in land in the form of an equitable mortgage, on the basis of the claim pleaded at para. 5 of the ANOCC, that the defendant executed a LSA “in which... she agreed that her interest in the Lands would stand as security for her guarantee of the payment to Coast of the sum of \$700,000.00”.

[43] The plaintiff submits there are conflicting affidavits on this application, and it is not suitable for R. 9-6 disposition.

[44] The plaintiff submits that the issue on this application is not whether the plaintiff's position that it holds an interest in the Richmond Lands is correct, but simply whether on the evidence, which the court cannot weigh on this R. 9-6 application, there is a genuine issue for trial that it holds an interest in land in the form of an equitable mortgage. The plaintiff submits that there is a genuine issue for trial and the notice of application must be dismissed.

[45] The plaintiff elaborated in oral submissions that the plaintiff's claim to an interest in the Richmond Lands is found in the LSA, as considered objectively and in all the surrounding context and circumstances including the factual matrix of: (1) prior verbal discussions, (2) prior text messages, (3) the defendant signing the LSA, which makes reference to the Richmond Lands, and (4) the existence of several related documents which the defendant also signed contemporaneously.

[46] The plaintiff submits that the evidence on this application, including the other agreements and the surrounding circumstances, including prior verbal and text discussions, is evidence to be weighed that is reasonably capable of supporting an interpretation of the LSA that there was a common intention to grant an interest in land over the Richmond Lands. The plaintiff submits the surrounding circumstances are disputed, and since evidence cannot be weighed on a summary judgment application, the R. 9-6 application must be dismissed.

1. Loan and Security Agreement (LSA)

[47] I deal first with the pleaded basis for an interest in the Richmond Lands: the LSA.

[48] The LSA is dated for reference June 30, 2022, and identifies Steven Carter (the defendant's husband), and two other companies, as debtors. The defendant also signed the document in her personal capacity. The copy of the LSA in evidence

is not countersigned by the plaintiff, and so not fully executed, although in my view ultimately nothing turns on that for the purposes of these Reasons.

[49] The LSA refers to the Richmond Lands at para. 2(b) as follows:

2. The Mortgage Debt of \$980,000 is to be retired as follows:

...

b. Lump Sum payment of \$700,000 upon the sale of [the Richmond Lands]

[50] The above reference to the Richmond Lands does not express any common intention to create an interest in those lands in favour of the plaintiff or state that it grants security in the Richmond Lands for a debt due.

[51] There is no other reference to the Richmond Lands in the LSA.

[52] The plaintiff nevertheless submits that “[t]he Richmond Lands are specifically identified in the Security Agreement.” While that is so, nothing in how the Richmond Lands are referred to in the LSA expresses any intent to create an interest in land in the Richmond Lands.

[53] Further, while the LSA in para. 3 does state that certain specified property is provided as security—*i.e.* a mortgage is given as “Security to be granted for the Debt”—that mortgage is over certain other Langley property (the “Langley Lands”), and not the Richmond Lands.

[54] On its face the LSA is not a “signed agreement in writing... by which” the Richmond Lands were made “security for a debt due”, nor does the LSA “demonstrate an explicit intention to make the property security for a debt”: *iFortune* at paras. 48–50.

[55] Further, the LSA does not “in some manner show [an] intention to create a charge on” the Richmond Land “in equity or, put another way, to grant a property interest to the mortgagee as security for a debt”: *Thompson* at para. 5.

[56] Indeed, there is no reference to security over the Richmond Lands in the LSA at all.

[57] The only reference to the Richmond Lands in the LSA is to payout proceeds of a sale of the Richmond Lands to the plaintiff.

[58] The Guarantee, which is also pleaded in the ANOCC, also does not make any mention of an intention to grant the plaintiff an interest in the Richmond Lands.

[59] In my view, the pleaded basis for an interest in the Richmond Lands is bound to fail on the face of the documents which are pleaded as relied on – the LSA, and Guarantee.

[60] On the plaintiff's claim as pleaded, which relies solely on the LSA and also refers to the Guarantee, and on reviewing those documents in evidence before me, it is clear that there was no expression of any common intention to create an interest in the Richmond Lands: *Trackside* at para. 44.

[61] However, the plaintiff further submits that the court must have regard to the surrounding circumstances and, when considered, there are genuine issues for trial, including whether the LSA expresses a common interest to grant an equitable mortgage, such that the R. 9-6 application must be dismissed. The plaintiff relied on the words in the ANOCC “[c]oncurrently with, as part of the same transaction” as support for having pleaded other factual circumstances related to the interpretation of the LSA.

[62] The plaintiff characterized these other factual circumstances, including at para. 17 of Mr. Malamas' affidavit, as factual matrix to the LSA (not as a verbal agreement). Factual matrix evidence is the background facts and “surrounding circumstances” relevant to the interpretation of a contract, although the “surrounding circumstances cannot overwhelm or contradict the words employed in the contract”: *Han-Earl Consulting Ltd. v. 1048661 BC Ltd.*, 2022 BCSC 1073 at para. 28. I set out principles of contractual interpretation in *Han-Earl Consulting Ltd.*:

[28] Contractual interpretation requires a practical, common sense approach not dominated by technical rules of construction. The overriding concern is to determine the objective intent of the parties and the scope of their understanding. To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of the formation of the contract, otherwise known as a “factual matrix”: *Penguin Enterprises* at para. 31 (relying on *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 [S]CC 53 at para. 47; *BG Checo International Ltd. v. British Columbia Hydro and Power Authority*, [1993] 1 S.C.R. 12 at 23-24); *Group Eight Investments v. Taddei*, 2005 BCCA 489 at para. 20, and *Sandhu* BCCA at para. 39. The factual matrix is the background facts both parties must clearly have been taken to have known and to have in mind when they composed the written text of their agreement and at the time the contract was executed: *Tang* BCCA at para. 16; *Sandhu* BCSC at para. 41. However, surrounding circumstances cannot overwhelm or contradict the words employed in the contract. In addition, where the words of an agreement are unambiguous, extrinsic evidence is not permissible to alter, vary, interpret, or contradict the words in the contract: *Sandhu* BCSC at para. 40, following *One West Holdings Ltd. v. Greata Ranch Holdings Corp.*, 2014 BCCA 67 at para. 27.

[Emphasis added.]

[63] Given that the LSA itself is silent about the Richmond Lands providing security to the plaintiff, the factual matrix asserted here by the plaintiff to have the effect of reading into the LSA evidence of an equitable mortgage in the Richmond Lands is more than peripheral: it is, instead, material to the plaintiff’s position that the LSA granted the plaintiff and interest in the Richmond Lands.

[64] The defendant argues that the factual matrix evidence (including documents and agreements other than the LSA) relied on by the plaintiff is not pleaded in the ANOCC and must not be considered on this application. A summary judgment application is “judged on the basis of the pleadings and materials actually before the court”: *Latifi*, at para 58. Further, when considering a R. 9-6 application, the first question is whether insufficient material facts have been pleaded such that it is beyond a doubt that the cause of action is bound to fail. Only if sufficient material facts have been pleaded does the issue become “whether the evidence adduced at the hearing is clear that there is no genuine issue for trial”: *Latifi* at paras. 55–56.

[65] However, there is a measure of uncertainty as to whether the factual matrix relied on by the plaintiff for interpretative purposes on this application constitutes “material facts” (for pleadings purposes) in support of a claim to a cause of action of an equitable mortgage under the LSA.

[66] Giving the plaintiff the benefit of the doubt as to whether it should be permitted on this application to rely on evidence not pleaded as material facts in the ANOCC concerning the asserted factual matrix to the LSA which should inform its interpretation which gives rise to an interest in land, I address below the plaintiff’s arguments in this regard.

2. Plaintiff’s Asserted Agreement and Discussions with Defendant’s Husband

[67] The plaintiff relies on the evidence of its representative, Mr. Malamas, who deposes that prior to the execution of the LSA on June 16, 2022, he and Steven Carter (the defendant’s husband) exchanged text messages about the Richmond Lands, among other things:

16. Prior to execution of the Security Agreement on June 16, 2022, S. Carter and I exchanged text messages regarding the structure of security for the Loan. We discussed registering mortgages on both the Richmond Lands and Langley Lands. S. Carter wrote that registering a mortgage on the Richmond Lands, his mother-in-law’s residence, would “trigger a lot of family stuff” and cause him stress. A true copy of those text messages, ported into four column table format using the “SMS Backup and Restore” application, is attached to this Affidavit as Exhibit “J”.

[68] The plaintiff relies on para. 17 of Mr. Malamas’ affidavit, where Mr. Malamas deposes that Coast Mountain “agreed to a compromise”:

17. To accommodate the Carters and avoid family tension, Coast Mountain agreed to a compromise whereby its interest in the Richmond Lands would be protected through the Security Agreement rather than by immediate registration of a mortgage. This was intended to avoid family conflict without diminishing Coast Mountain’s security position.

[69] While Mr. Malamas does not state so expressly, it is clear in this paragraph that Mr. Malamas is deposing that the plaintiff “agreed to a compromise” with Mr. Steven Carter, the defendant’s husband, and that Mr. Malamas did not

communicate with the defendant about this. This is because earlier in his affidavit Mr. Malamas deposes that he only dealt with Mr. Steven Carter, and not the defendant Ms. Helga Carter. Specifically, he deposes that “[d]uring all of my dealings with the Carters and their companies, I have exclusively dealt with S. Carter” and “I have no recollection of ever having met or spoken with H. Carter” (at para. 4).

[70] Even though Mr. Malamas deposes that the plaintiff “agreed” with Mr. Carter that “its interest in the Richmond Lands would be protected through the Security Agreement”, the plaintiff does not rely on this evidence for the existence of a separate agreement between the plaintiff and Steve Carter or the defendant. Instead, the plaintiff asserts that this is part of the factual matrix evidence relevant to the interpretation of the LSA and I consider it on this basis.

[71] There is no evidence that Steven Carter is an owner of the Richmond Lands and as such that he had authority in his personal capacity to agree with the plaintiff to grant it as security to the plaintiff under the LSA or otherwise. However, the plaintiff contends that the evidence that the plaintiff and Mr. Steven Carter agreed to make the Richmond Lands security is relevant to the interpretation of the LSA through the law of agency.

[72] Specifically, the plaintiff submits that Mr. Steven Carter was the defendant’s agent and contends that “[w]hether S. Carter had actual or ostensible authority to negotiate the security arrangements on behalf of [the defendant] H. Carter is a further bona fide triable issue.”

[73] Mr. Malamas deposes, in support of an asserted agency relationship between Steven Carter and the defendant, that

4. ... On numerous occasions S. Carter told me, and I verily believe, that he was authorized to act on behalf of [the defendant] H. Carter and their companies in all business matters. He has repeatedly told me that H. Carter is a schoolteacher and that he manages their business affairs full-time. He has also told me, and I verily believe, that he takes documents to H. Carter for her signature when required.

5. This pattern of dealing has been consistent for several years. In all prior transactions between Coast Mountain and the Carters or their companies,

including the execution of guarantees, mortgages, and loan agreements, S. Carter conducted all communications and negotiations, after which H. Carter signed the resulting documents without further discussion with me.

[74] Mr. Malamas further deposes in his affidavit:

23. Based on my experience and long-standing course of dealings with the Carters, I verily believe that S. Carter has acted at all material times with actual and ostensible authority on behalf of H. Carter and their companies. All significant transactions, including the Guarantee and Security Agreement executed by H. Carter, were negotiated entirely through S. Carter and subsequently signed by her in accordance with his representations.

[75] The nature of a legal agency is set out in *Mac's Convenience Stores Inc. v. Basyal*, 2025 BCCA 284 at para. 23, quoting Fridman in *The Law of Agency* (5th ed. 1983):

Agency is the relationship that exists between two persons when one, called the *agent*, is considered in law to represent the other, called the *principal*, in such a way as to be able to affect the principal's legal position in respect of strangers to the relationship by the making of contracts or the disposition of property.

[Italic emphasis in original.]

[76] *Mac's Convenience Stores Inc.* notes two types of legal agency, through actual authority and apparent (ostensible) authority:

[25] Broadly speaking, there are two ways in which an agency relationship may be created: first, by the grant of actual authority and, second, through the grant of apparent authority.

[26] Actual authority includes both the authority the principal expressly gives the agent by the terms of an oral or written agreement and authority that the principal has consented to by implication in the grant of actual authority: Fridman's *Canadian Agency Law*, 3rd ed (Toronto: LexisNexis, 2017) at 73, 77.

[27] Agency based on apparent authority occurs where: 1) the principal makes a representation to a third party that the agent has authority to enter into a contract or dispose of property on the principal's behalf; 2) the principal intends the third party to act on the representation; and 3) the third party does act on it to its prejudice. In effect, the law imposes an agency relationship on the principal and agent even though they did not expressly enter into such an arrangement because the principal by their conduct should be estopped from denying an agency relationship in these circumstances.

[77] *Mac's Convenience Stores Inc.* further describes the difference between “true” agency at law, and agency “in common parlance”:

[28] It is important to recognize that, in common parlance, “agency” is often used loosely to refer to anyone acting on someone’s behalf. But at common law it has a precise meaning, scope, and purpose. The foundational element—the essence—of a true principal and agent relationship is the power of the agent to affect the legal position of the principal by entering into contracts with third parties that bind the principal: *Fridman’s Law of Agency* (4th ed) at 8, 9, 12–14 [*Fridman 4th Ed*]; *Trophy Foods Inc. v. Scott*, 1995 NSCA 74 at 14–15.

[Emphasis in original.]

[78] Mr. Steven Carter, for his part, deposes that at no time did he agree on behalf of the defendant, or otherwise, to grant the plaintiff an interest in the Richmond Lands. The plaintiff submits that this conflict in the evidence gives rise to an additional genuine issue for trial.

[79] However, the plaintiff does not plead the existence of an agency relationship between the defendant (as principal) and her husband (S. Carter, as agent) in the ANOCC. The agency relationship the plaintiff asserts is now sought to support the plaintiff’s argument as to a claim to an interest (equitable mortgage) in the Richmond Lands.

[80] I find that material facts giving rise to an allegation of an agency relationship in this context must have been specifically pleaded to be relied on by the plaintiff: *Hodgins v. British Columbia*, 2022 BCSC 1152 at paras. 24–27; *Pirooz v Levi*, 2021 BCSC 1068 at paras. 12–13. Having not pleaded agency, and any material facts giving rise to agency, in the ANOCC, an agency relationship between Mr. Steven Carter and the defendant as principal cannot be relied on in support of the plaintiff’s claim to an interest in land on this application.

[81] In any event, even if an assertion of agency could be relied on by the plaintiff on this application, I find there is no evidence to be weighed in favour of the existence of a legal agency relationship between Steven Carter and the defendant. This is because:

- a) there is no evidence that Mr. Steven Carter had actual authority to enter into agreements on behalf of the defendant; and,
- b) Mr. Malamas does not depose that the defendant (the purported principal) made a representation to him (or the plaintiff) that Mr. Steven Carter had authority to enter into a contract on her behalf, and there is no evidence to be weighed in favour of an apparent authority agency between Mr. Steven Carter and the defendant: *Mac's Convenience Stores Inc.* at para. 27.

[82] I also do not find that Mr. Malamas' evidence that the defendant would sign documents with the plaintiff after Mr. Malamas spoke with her husband to be meaningful evidence to be weighed in favour of the existence of an agency relationship between Steven Carter and the defendant. The fact that the defendant may have signed a document in her personal capacity, after her husband spoke with the plaintiff is not, without more, evidence that her husband acted as the defendant's agent at law.

[83] Therefore, in my view, there is no genuine issue for trial that Steven Carter was an agent for the defendant and agreed with the plaintiff on the defendant's behalf, prior to the LSA, to grant security to the plaintiff over the Richmond Lands,

[84] The Plaintiff submits that the negotiations preceding the LSA give rise to a *bona fide* triable issue, and summary judgment should be dismissed:

41. The Defendant and S. Carter now deny that H. Carter intended to provide security over the Richmond Lands. Their evidence is directly at issue with Coast Mountain's evidence concerning:

- a. the negotiations which preceded execution of the Security Agreement;
- b. the purpose for which the Security Agreement was prepared and executed;
- c. the decision not to register a mortgage immediately over the Richmond Lands; and
- d. the common intention of the parties.

42. These competing accounts raise *bona fide* triable issues concerning authority, contractual intention and credibility that cannot properly be resolved on this application

[85] However, in the absence of any genuine issue for trial of an agency relationship between Steven Carter and the defendant—pleaded or on the evidence—the conflict in the affidavits between Mr. Malamas (at para. 17 of his affidavit) and Mr. Steven Carter (at para. 3 of his affidavit) about whether Mr. Steven Carter agreed with the plaintiff to security over the Richmond Lands is immaterial to the disposition of this application. The evidence of Mr. Malamas’ asserted agreement with Steven Carter is not material to whether the defendant expressed any intention to grant an interest in lands to the Richmond Lands in the plaintiff’s favour.

[86] I also find that the text message evidence from June 2022 between Mr. Steven Carter and the plaintiff (attached as Exhibit J to Mr. Malamas’ affidavit), is not evidence that must be weighed in favour of the defendant agreeing to grant the plaintiff an interest in the Richmond Lands or bearing on the interpretation of the LSA in support the plaintiff’s claim to an interest in land.

3. Defendant’s Conduct in Signing the LSA

[87] The plaintiff further contends that the defendant’s conduct signing the LSA is evidence in support of a common intention to create an interest in the Richmond Lands in favour of the plaintiff.

[88] I disagree. The defendant’s signature on the LSA does not tend to prove a common intention to grant an interest in land of the Richmond Lands to the plaintiff—I find it tends to demonstrate the opposite, since there is no reference to granting such an interest in the Richmond Lands, and the only reference to the Richmond Lands in the LSA refers to the payment of proceeds of a sale at para. 2(b).

4. Other Documents which the Defendant also Signed

[89] Nor do I find the plaintiff’s argument that there were “layers of security” entered into to be evidence in support of a genuine issue for trial.

[90] The plaintiff submits that the defendant's position on this application "overlooks the integrated nature of the transaction" and that:

17. The security arrangements made in June and July 2022 included:
 - a. a written acknowledgment of indebtedness executed by the Carters;
 - b. a registered mortgage over the Langley Lands;
 - c. a personal guarantee executed by H. Carter in favour of Coast Mountain; and
 - d. a loan and security agreement executed by H. Carter and dated for reference June 30, 2022.
18. The foregoing instruments were negotiated together, executed contemporaneously, and formed an integrated security transaction intended to secure the indebtedness.

[91] The plaintiff submits that the "proper interpretation of those interrelated agreements is a bona fide issue for trial."

(a) Acknowledgment & Mortgage on Langley Lands

[92] Two of the documents relied on by the plaintiff—an Acknowledgment and a registered mortgage over the Langley Lands—are not pleaded in the ANOCC.

[93] In any event, these other transaction documents do not constitute evidence to be weighed in favour of a common intention of the defendant granting an equitable mortgage in the Richmond Lands.

[94] The description of the property in the Acknowledgment dated July 5, 2022, which the defendant co-signed, is that of the Langley Lands, not the Richmond Lands.

[95] Similarly, the mortgage is stated to be over the Langley Lands, not the Richmond Lands. While there is a reference to the Richmond Lands in the "additional terms" of the mortgage, the words in that document do not state or suggest that any interest in the Richmond Lands had been granted to the plaintiff. Instead, the mortgage terms merely state: "A lump sum payment in the sum of \$700,000 will become due and payable upon the sale of [the Richmond Lands]".

[96] The plaintiff, in oral submissions, contended that there is no dispute that it was seeking repayment of its existing obligations at the time of the Acknowledgement. However, that it may have been seeking repayment at the time of these transactions is not itself evidence that must be weighed in support of an interpretation of the LSA that a common intention was expressed to create an interest in land (in the form of an equitable mortgage) in the Richmond Lands, when the LSA is silent about that.

(b) Guarantee

[97] The plaintiff submits that the “Guarantee and Security Agreement formed part of that integrated security transaction and must be interpreted together.”

[98] However, the Guarantee dated July 5, 2022, and signed by the defendant does not evidence, when considered with the other evidence on this application, any common intention by the plaintiff and defendant to grant security over, or confer an interest in land in, the Richmond Lands in favour of the plaintiff.

5. Other Arguments

[99] The plaintiff also argued that there was another triable issue as to whether the defendant has any beneficial interest in the Richmond Lands, which goes to her credibility.

[100] I find it is not necessary to address the plaintiff’s argument that there is a genuine issue for trial as to whether the defendant has a beneficial interest in the Richmond Lands.

[101] In the view I take of this application, it is unnecessary for me to make any finding on the defendant’s credibility. I have found that the plaintiff’s claim to an interest in land as pleaded, and on the evidence before me, is bound to fail, and it is not necessary to weigh the defendant’s credibility on this application to arrive at that conclusion. There is not, on the basis of the ANOCC pleading and evidence, a genuine issue for trial as to the plaintiff’s asserted interest in the Richmond Lands.

[102] I add that, in oral submissions and the application response, the plaintiff suggested it could seek to further amend its amended notice of civil claim. However, I have no application to amend the ANOCC before me, and this summary judgment application must be determined on the basis of the pleaded claim actually before the court: *Latifi*, at para. 58.

6. Nature and Extent of Defendant's Interest in the Richmond Lands

[103] The defendant also argued, as an additional basis to set aside the CPL, that she is only a one-third owner in the Richmond Lands, but “the Plaintiff has registered the CPL against the [Richmond] Lands as a whole and fails to specify in the Notice of Civil Claim (the basis for the CPL) that Ms. Carter holds only a one-third interest in the [Richmond] Lands” (amended notice of application at para. 15).

[104] However, having disposed of this application in the manner set out in these Reasons, it is not necessary to address the defendant's additional argument that the plaintiff improperly claimed an interest over the entirety of the Richmond Lands despite the defendant holding only a one-third interest.

[105] Given the absence of any *bona fide* triable issues on the plaintiff's asserted equitable mortgage over (and interest in land in) the Richmond Lands for the reasons I have stated, I find that I need not address the issue of the nature and extent of the defendant's interest in the Richmond Lands (in joint tenancy).

Summary: Is There a Genuine Issue for Trial on the Plaintiff's Claim to an Interest in Land in Support of the CPL?

[106] On this application both parties must put their best foot forward from an evidence perspective: *Latifi* at para. 57.

[107] The plaintiff submits:

32. Coast Mountain says that the Security Agreement, when read together with the contemporaneously executed Guarantee, the Mortgage, and the surrounding negotiations, is capable of supporting the conclusion that the parties intended H. Carter's interest in the Richmond Lands to stand as continuing security for the guaranteed indebtedness.

...

35. The interpretation of those provisions and circumstances raises bona fide triable issues which cannot properly be resolved on this application

[108] The plaintiff further argues:

7. The evidence raises bona fide triable issues concerning:

- a. the proper construction of the Security Agreement;
- b. whether the Security Agreement was intended to create security over H. Carter's interest in the Richmond Lands;
- c. whether the Security Agreement created an equitable mortgage or equitable charge;
- d. the relationship between the Guarantee, Security Agreement, and Mortgage;
- e. the parties' common intention;
- f. S. Carter's actual or ostensible authority;
- g. the nature and extent of H. Carter's interest in the Richmond Lands; and
- h. the equitable remedies available to Coast Mountain.

[109] I have considered the plaintiff's arguments, and the claim to an interest in land in support of the CPL based on the pleaded claim in the ANOCC.

[110] Having regard to the claim as pleaded to an interest in land, and evidence filed, I find there is no genuine issue for trial on that claim.

[111] I add that I find the evidence of the defendant's subjective intentions with respect to the Richmond Lands, which she appears to depose to in her affidavit #2 at para. 7, to be irrelevant to the disposition of this application, and I have not relied on that evidence on this application.

[112] In short, I find that the part of the plaintiff's claim in the ANOCC for an interest in land in the form of an equitable mortgage in the Richmond Lands is bound to fail.

[113] Accordingly, the plaintiff's claim to an interest in land in the Richmond Lands in the ANOCC must be dismissed under R. 9-6.

CPL Cancellation and Discharge Application under s. 254 of LTA

[114] Having dismissed the part of the plaintiff's claim for (and which relates to) an interest in land under R. 9-6, it follows that the defendant is now "able to seek cancellation of the CPL[] in accordance with s. 254" of the *LTA*: *Xiao v. Fan*, at para. 39; see also para. 29.

CPL Discharge Application for Asserted Hardship and Inconvenience

[115] In the manner I have disposed of this application, it is also unnecessary to address that part of the defendant's submissions (within the legal basis of the amended notice of application) seeking to set aside the CPL on the alternative grounds of hardship and inconvenience under s. 256(1) of the *LTA*: *Zhao* at para. 50.

Conclusion and Orders

[116] For these reasons, judgment is granted pursuant to R. 9-6(4) dismissing the parts of the plaintiff's ANOCC relating to an interest in land in the Richmond Lands, and the defendant is able to apply for cancellation of the CPL in conformity with the procedure set out in s. 254 of the *LTA*.

[117] Costs of this application shall be payable by the plaintiff to the defendant.

"Stephens J."