

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Date: 20051124  
Docket: S026055  
Registry: Vancouver

Between:

**Belvedere Park Capital Corp.**

Plaintiff

And

**Bryan Bruce, Julia Molnar, Montgomery Homes (Thom Creek) and  
Montgomery Homes Inc.**

Defendants

Before: The Honourable Mr. Justice Bauman

**Oral Reasons for Judgment  
In Chambers  
November 24, 2005**

Counsel for Plaintiff

G. S. McAlister

Counsel for Defendants

C. A. Schuld

Place of Trial/Hearing:

Vancouver

[1] **THE COURT:** The plaintiff is a trustee for a group of investors. The principal defendant is Mr. Bruce, who undertook a development in the late 1990s in Chilliwack, British Columbia. He incorporated the plaintiff as a vehicle through which investors could participate.

[2] The investors complain that Mr. Bruce improperly diverted funds intended for the development to his own purposes in breach of the purpose trust for which those funds were invested.

[3] The defendant, Molnar, was, at the times material to the events, the common law spouse of Mr. Bruce. The two have since permanently separated. The development at Chilliwack has failed.

[4] The claim amounts to approximately \$570,000.

[5] The theory of liability advanced against Ms. Molnar is that she received money from Mr. Bruce, or benefited from such money, which she knew was subject to the trust in favour of the plaintiff or, alternatively, she was a volunteer without notice in respect of that money, and thereby personally attracted responsibilities as a trustee.

[6] The plaintiff seeks to trace the funds, in part, into real property now owned by Ms. Molnar which in turn was purchased, in part, from the proceeds of sale of a West Vancouver property which was in the joint names of Ms. Molnar and Mr. Bruce.

[7] In aid of that, the plaintiff has filed a Certificate of Pending Litigation against Ms. Molnar's current property in Shaughnessy.

[8] Ms. Molnar enjoys about \$1.2 million in equity in that property and she brings application for an order cancelling the Certificate of Pending Litigation from title to the property.

[9] In the alternative, she seeks this relief in her Outline:

... [T]he plaintiff corporately and through its directors personally:

- (a) provide an undertaking to abide by any order the Court may make as to damages properly payable to the Defendant, Julia Molnar, as a result of the registration of a certificate of pending litigation; or
- (b) post security for damages in the sum of \$100,000 or such other amount as determined by this Honourable Court, with the Registrar of the Supreme Court of British Columbia, Vancouver Registry on or before September 1, 2005, conditioned on the fulfilment of the undertaking and compliance with further terms and conditions, if any, the court may consider proper; and
- (c) in default of the Plaintiff depositing the required security for damages as directed by the Court on or before September 1, 2005, all claims by the Plaintiff in their Action as against Julia Molnar shall be dismissed with costs payable to Julia Molnar forthwith after assessment, all without further Order of this Court.

[10] Ms. Molnar also seeks an order requiring the plaintiff to post security for costs.

[11] The plaintiff opposes the applications.

[12] With respect to the Certificate of Pending Litigation, the plaintiff would accept a cancellation of it from Ms. Molnar's title provided she posts security in an amount satisfactory to the court.

[13] The Certificate of Pending Litigation has been registered against title to Ms. Molnar's home since 6 November 2002. In that light, it is hard to credit Ms. Molnar's claim that its registration is causing her hardship and inconvenience as contemplated by s. 256(1) of the ***Land Title Act***, R.S.B.C. 1996, c. 250.

[14] Section 257 of that *Act* deals with the power of the court to order cancellation of a Certificate of Pending Litigation so:

**257 (1)** On the hearing of the application referred to in section 256 (1), the court

(a) may order the cancellation of the registration of the certificate of pending litigation either in whole or in part, on

(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, or

(b) may refuse to order the cancellation of the registration, and in that case may order the party

(i) to enter into an undertaking to abide by any order that the court may make as to damages properly payable to the owner as a result of the registration of the certificate of pending litigation, and

(ii) to give security in an amount satisfactory to the court and conditioned on the fulfilment of the undertaking and compliance with further terms and conditions, if any, the court may consider proper.

[15] Ms. Molnar argues that the Certificate of Pending Litigation is preventing her from selling her property in a very favourable market and that that is a hardship and inconvenience within section 256.

[16] I will accept that that is so.

[17] That takes me to the question of whether “damages will provide adequate relief to the party in whose name the certificate of pending litigation has been registered.” See s. 257(1)(a)(i).

[18] I conclude that damages would be adequate relief. While the plaintiff claims an interest in Ms. Molnar’s land on the theories of liability which I have discussed, it is money, not land which the plaintiff seeks. The land is simply security for the plaintiff’s monetary claim.

[19] I further conclude that contrary to the defendant Molnar’s submission, this is an appropriate case where an order requiring security should be made. This is not a case like those cited by Ms. Molnar, where the plaintiff’s case is frivolous, vexatious or has no significant prospect of success.

[20] Under s. 257(3) of the ***Land Title Act*** in setting the security to be given, I may “take into consideration the probability of a party’s success in the action in respect of which the certificate of pending litigation was registered.” See a discussion of this aspect in ***De Cotils v. De Cotils*** (2004), 27 R.P.R. (4th) 281, 8 C.B.R. (5th) 55 (B.C.S.C.).

[21] Here, the plaintiff has certainly raised an arguable case, but the defendant Molnar strongly counters that none of the development’s monies found their way into her property purchases, or the renovation of those properties. The record before me is not very developed because these applications were ordered heard before the plaintiff obtained further document discovery of the defendant Molnar, and conducted cross-examination of her on her affidavits filed on these applications.

[22] In the circumstances, I conclude that it is appropriate to order cancellation of the Certificate of Pending Litigation upon the filing of security satisfactory to the court. I will remain seized of this aspect of the action. That security is set in the amount of \$350,000.

[23] In the event that Ms. Molnar wishes to purchase a new property, she may apply to the court for the purpose of arranging a re-filing of the Certificate of Pending Litigation against title to her new property, as an alternative to posting security.

[24] After completion of further document discovery, examinations for discovery, or cross-examination on affidavits, either party before me may apply to the court concerning the Certificate of Pending Litigation, the amount of security in lieu thereof or otherwise.

[25] I turn to the issue of security for costs. The principles are of course set out in the leading cases, including: ***Fat Mel's Restaurant Ltd. v. Canadian Northern Shield Insurance Co.*** (1993), 76 B.C.L.R. (2d) 231 (C.A.); and ***Kropp (c.o.b. Canadian Resort Development Corp.) v. Swaneset Bay Golf Course Ltd.*** (1997), 29 B.C.L.R. (3d) 252 (C.A.).

[26] In the case at bar, the plaintiff is without assets except for this lawsuit. The litigation is being pursued through the plaintiff by a number of investors in the project who are beneficiaries of the trust.


[27] This case is very similar to the facts before the court in ***Cambridge International Bank Trust Co. v. Burns***, 2002 BCSC 1623.

[28] In my view, the principles in *Fat Mel's* and *Kropp*, and for reasons which prompted the decision in *Cambridge International Bank*, the real plaintiffs in this case should not be permitted to advance the litigation here, totally shielded from adverse cost consequences.

[29] The defendant Molnar estimates taxable costs on Scale 3 for an anticipated 15-day trial at approximately \$36,000. She does not include in that sum an allowance for expert accounting advice.

[30] I conclude that security for Ms. Molnar's costs in the amount of \$20,000 should be posted by the plaintiff in a form acceptable to the Registrar of this court. This must be done by 31 January 2006. Thereafter, and failing such deposit, this action will be stayed as against the defendant Molnar and she may thereafter apply to dismiss the action as against her.

[31] Costs in the cause.



Bauman J.