IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Jacobs v. Yehia,*
2015 BCSC 267

Date: 20150224
Docket: S106849
Registry: Vancouver

Between:

Paul Jacobs, 657947 B.C. Ltd. and Columbia Cottage Ltd.

Plaintiffs

And

Sam Yehia, The Cambie Malone's Corporation, Cambie Holdings (Vancouver) Corp., 494989 B.C. Ltd., Cambie Holdings (Nanaimo) Corp., 0828508 B.C. Ltd., Esquimalt Holdings Corp., and 0790012 B.C. Ltd.

Defendants

Before: The Honourable Madam Justice Dickson

Reasons for Judgment

Counsel for the Plaintiffs:	James D. Vilvang, Q.C.
Counsel for the Defendants:	Tim Goepel
Place and Date of Hearing:	Vancouver, B.C. October 23 and 27, 2014
Written Submissions:	November 17 and 26, 2014 December 2 and 4, 2014
Place and Date of Judgment:	Vancouver, B.C. February 24, 2014

INTRODUCTION

[1] The defendants seek an order cancelling certificates of pending litigation filed by the plaintiffs against seven commercial properties (the "Properties"). Each of the Properties is owned by one of the corporate defendants and located in Vancouver, Nanaimo or Esquimalt, B.C. The underlying action concerns the parties' former business relationship and its ramifications. The plaintiffs filed the CPLs in connection with a Further Amended Notice of Civil Claim in which they claimed a wide range of relief, including various declarations, an equitable interest in the Properties, an accounting, tracing, damages and costs.

[2] By agreement, the trial was bifurcated. On May 12, 2014 I delivered reasons for judgment in the liability stage of the trial (the "Liability Reasons"). In the Liability Reasons, I addressed a host of issues for determination based on the parties' pleadings. On some issues, I ruled in favour of the plaintiffs. On others, I ruled in favour of the defendants.

[3] The order arising out of the Liability Reasons remains unsettled and is the subject of a separate application. On this application, however, the defendants submit that, by necessary inference, I dismissed the plaintiffs' claim for an interest in land and thus the CPLs should be cancelled immediately. This is so, they say, because in the Liability Reasons I stated that a monetary award is most appropriate on the plaintiffs' successful unjust enrichment claim and dismissed their claim for a partnership interest. In addition, they submit the CPLs should be cancelled based on hardship and inconvenience. Alternatively, they should be replaced by the posting of security in a specified amount and the plaintiffs should be ordered to provide an undertaking as to damages.

[4] The plaintiffs respond that they continue potentially to be entitled to a declaration of constructive trust sufficient to support the CPLs pending final judgment. In support of this position, they emphasize that, in my liability analysis, I traced their funds to the Properties but have yet to determine the extent to which they contributed to the Properties' increased value and grant a related remedy. In

these circumstances, they say they are entitled to continue claiming a constructive trust with respect to the Properties based on the doctrine of tracing. In their submission, this entitlement amounts to a claim for a proprietary interest sufficient to support the CPLs until the conclusion of the trial. The plaintiffs also dispute the defendants' assertion that they are suffering hardship and inconvenience. If the CPLs are to be cancelled, however, they suggest security in the range of $1,500,000 should be posted.

ISSUES

[5] The issues for determination are:

1. Should the CPLs be cancelled unconditionally?

2. If the CPLs should not be cancelled unconditionally, what orders, if any, should be made?

BACKGROUND

[6] The Liability Reasons are indexed at 2014 BCSC 845. They outline the relevant factual background and should be read together with these reasons for context.

[7] In brief summary, the personal defendant, Sam Yehia, is the sole shareholder, officer and director of the corporate defendants. The corporate defendants are part of what is known as the Cambie Malone Group of companies. Mr. Yehia owns and operates several restaurant, bar and hostel businesses through the Cambie Malone Group. The Properties are each owned by one of the Cambie Malone Group companies. They were acquired prior to 2002, when the parties began their business relationship.

[8] The personal plaintiff, Paul Jacobs, is the sole shareholder, officer and director of the corporate plaintiffs. In the Further Amended Notice of Civil Claim, the plaintiffs claimed, amongst other things, that the defendants were unjustly enriched by their $967,000 investment in the Cambie Malone Group businesses and real

estate holdings. As a result, they claimed entitlement to equitable relief and compensation, including a declaration of trust, an accounting and tracing. The plaintiffs also sought a declaration that they held an equitable interest in the Properties and filed the CPLs.

[9] As noted, the trial was bifurcated. Its first stage concerned issues of liability alone. The primary focus at the liability stage of the trial was on two questions: i) whether Messrs. Jacobs and Yehia were partners; and, ii) if not, whether the defendants were unjustly enriched by the plaintiffs' $967,000 investment. I answered the first question "no" and the second question "yes".

[10] In the course of my analysis, I made a general finding that the plaintiffs' $967,000 was used to operate, renovate and develop the Cambie Malone Group properties and businesses. I found this constituted an unjust enrichment during some, but not all, of the period during which the parties' business relationship was extant. More specifically, I held the plaintiffs were entitled to 11.73 per cent of the increase in net equity of the Cambie Malone Group business and properties between February 2005 and October 2009 due to the unjust enrichment. I also agreed with the plaintiffs' submission that a monetary award based on a value survived approach is the most appropriate remedy.

[11] At para. 369 of the Liability Reasons, I stated:

> I agree with the plaintiffs that a monetary award based on a value survived approach is most appropriate. Such an award will match the parties' reasonable expectations and the extent of the enrichment unjustly retained by the defendants. In particular, it will allow Mr. Jacobs' proportionate contribution to the overall value of the Cambie Malone Group to be reflected in a comparable share in its value throughout the relevant period.

I went on to state, at para. 377:

> They [sic] plaintiffs are entitled to a declaration that the defendants have been unjustly enriched for the period February 2005 to October 2009 and they are entitled to equitable relief and compensation arising from that unjust enrichment in an amount to be determined at the second stage of the trial.

[12] I did not identify the form of "equitable relief and compensation" to which the plaintiffs are entitled any further in the Liability Reasons. In other paragraphs, however, I found that the plaintiffs were also entitled to an award for debt and interest and not entitled to relief in connection with the alleged partnership, rescission and repudiation of certain agreements.

[13] In final argument at the liability stage of the trial, counsel for the plaintiffs submitted that a monetary award based on a value survived approach is "likely" the most appropriate remedy for the unjust enrichment claim, should I find it was established. He described the constructive trust pleaded as "another way to get to the same place". He also stated "… if after the second phase of the trial some form of constructive trust is deemed to be necessary we have alleged the investment was held by Mr. Yehia on the basis of a trust arrangement …".

[14] Neither party asked me to consider or address the status of the CPLs pending conclusion of the trial's second stage, nor did I.

[15] The plaintiffs have not filed an appeal with respect to the liability stage of the trial.

[16] At one point in their submissions on this application, the plaintiffs alleged their 11.73 per cent share in the increase in value of the Properties during the relevant period is something in the range of $460,000. At other points, however, they appeared to resile from this position and described the value of the Properties as unknown. As to adequate security for their interest in the Properties, the plaintiffs most recently suggested that $1,500,000 would be an appropriate sum.

[17] The likely quantum of an award on the successful unjust enrichment claim is a matter of considerable contention. At this juncture, it is impossible to assess. Based on what I know so far, however, I accept that it is unlikely to be less than $400,000.

[18] According to the plaintiffs, the award for unpaid interest and debt in connection with my other findings will likely be something in the $300,000 range.

[19] After the Liability Reasons were delivered the defendants retained new counsel. He brings this application on their behalf to cancel the CPLs. In support of the application, amongst other things, he relies on an affidavit in which Mr. Yehia deposes:

> I meet regularly with Mr. Randy Foote, who acts as intermediary between the Defendants companies and the financial institutions or private investors, and he has informed me that the CPL's will not allow the Defendant Companies to raise any monies through debt or equity. I am unable to grow the Defendant Companies with the CPL's on title. If the lands drop in value, it can have an adverse effect on the Defendant companies and the employees that work in the locations.

[20] There are several mortgages registered on the titles to the Properties. Based on their assessed values, when indebtedness on the loans supporting the mortgages is subtracted there is roughly $9,000,000 in equity.

DISCUSSION

Should the CPLs be cancelled unconditionally?

Legal Framework

[21] Section 215(1) of the *Land Title Act*, R.S.B.C. 1996, c. 250 (the "*Act*") permits a party to a proceeding who is claiming "an estate or interest in land" to register a CPL against the land. The CPL will be cancelled, however, if the party fails to demonstrate an arguable or *prima facie* case for an interest in land: *0861695 B.C. Ltd. v. Meola*, 2013 BCSC 121, paras. 7-8.

[22] Where there is no arguable case to be tried respecting a claim to an interest in land, the landowner should be free to deal with his or her land unburdened by a CPL even though a trial has yet to be conducted. This is so because the nuisance value of CPLs should not be permitted to override the legitimate exercise of the rights of landowners. In addition, a certificate of pending litigation should not be used as a tool to gain an advantage in litigation: *Buchan v. Rome*, 2011 BCSC 1206, paras. 78-79; *Seville Properties Inc. v. Coutre*, 2006 BCSC 1105.

[23] Pursuant to s. 254 of the *Act*, a CPL will also be cancelled if the action in respect of which it is registered has been dismissed and no appeal from the dismissal has been filed. In the usual course, where an action claiming an interest in land is dismissed at trial an order cancelling the CPLs forms part of the trial order: *DJ Estates Ltd. v. Rota*, 2008 BCSC 223; *Gadsby v. Barlow*, 2008 BCSC 1313.

[24] "An estate or interest in land" may include both legal and equitable interests. The test is not to be narrowly defined, but the mere fact that a claim relates to land does not convert it into a claim for a proprietary interest: *Montgomery v. Klaassen*, [1996] B.C.J. No. 1739, para. 22; *Seville Properties Ltd. v. Coutre et al.*, 2005 BCSC 1105.

[25] Where funds are obtained through wrongful means and can be traced to the acquisition or improvement of land, the court may impose a remedial constructive trust sufficient to sustain a CPL. In addition, the claim for tracing may, in and of itself, justify an equitable charge on land for purposes of supporting a CPL: *Meola*, para. 9; *Drucker, Inc. v. Hong*, 2011 BCSC 905, paras. 19, 22 and 36; *Samji (Trustee) v. Chatur*, 2013 BCSC 1915, paras. 60-64; *Lament v. Constantini*, [1985] B.C.J. No. 2988.

[26] Constructive trusts are equitable remedies available for acts such as fraud and unjust enrichment. In *Ibbotson v. Fung*, 2013 BCCA 171, Garson J.A. commented that the distinction between a value survived monetary remedy and a constructive trust largely dissipates in some unjust enrichment claims, except to the extent that a constructive trust encompasses additional property rights over an asset until it is sold. Remedies for unjust enrichment retain a large measure of remedial flexibility to deal with differing circumstances according to principles rooted in fairness and good conscience. However, a plaintiff must establish that a monetary award would be an insufficient remedy before a constructive trust will be imposed. One of the factors for consideration is whether a monetary award will be paid: *Drucker*, para. 30; *Ibbotson*, para. 28; *Kerr v. Baranow*, 2011 SCC 10, paras. 53 and 72; *Wilson v. Fotsch*, 2010 BCCA 226, at para. 47.

[27] Where an interest in land is claimed based on a constructive trust, the question on an application to cancel a CPL is not whether the plaintiff will be successful in proving entitlement to a constructive trust. It is enough to establish that a constructive trust is a possible remedy to sustain the CPL: *Samji,* para. 61.

[28] In *Tracy v. Instaloans Financial Solutions Centres (B.C.) Ltd.*, 2010 BCCA 357, the Court of Appeal considered the propriety of a constructive trust granted as a restitutionary remedy in a class action brought against the operators of a "payday loan" business. In doing so, the court reviewed the development of the remedy and some of the challenges associated with its application in the context of a commercial case. One such challenge relates to the timing of a plaintiff's election as between a monetary remedy or restitution in the form of a proprietary remedy, given the rule that a party cannot obtain both remedies.

[29] The court in *Tracy* noted that a plaintiff need not elect between a potential monetary or proprietary remedy until the time of final judgment. After referring to the English practice of split trials in which liability is determined before a plaintiff is required to elect between the alternative remedies of damages or an accounting of profits, Newbury J.A. stated, at para. 49:

> In my opinion, the same reasoning should apply in cases where damages and constructive trusts are sought as alternative remedies. I see no error in the trial judge's conclusion that the plaintiffs need not elect between the two until they are able to make an informed choice… As long as the plaintiffs make their election before final judgment is issued - and the order appealed from is obviously not a final order - it seems to me the defendants can have no objection. I need not decide whether, if the plaintiffs do not succeed in obtaining complete restitution by means of tracing, they may then revert to seeking damages. I do note Professor Smith's suggestion in *The Law of Tracing*, *supra*, that only full recovery by one route (*in personam* or *in rem* relief) will eliminate the other…

[30] Funds may be traced before or after legal or equitable rights have been established. As Masuhara J. explained in *Drucker*, tracing is a process, not a claim or a remedy. He went on to describe the nature of the tracing process in the context of an application to cancel a certificate of pending litigation in an action involving funds that were allegedly misappropriated. At paras. 37-39, he stated:

> Hence, if the plaintiff successfully establishes a proprietary entitlement to the misappropriated funds in the hands of the defendant, it may trace or follow those funds from there into other property. The question is then whether or not the Property held by the defendant is sufficiently connected to those misappropriated funds to satisfy the requirements for a constructive trust. If it is, the plaintiff will then be entitled to assert a constructive trust against that property without the exercise of any further discretion by the court (*Tracy* at para. 33).
>
> In regard to tracing, it is neither a claim nor a remedy. It is merely a process by which a claimant demonstrates what has happened to his or her property so as to justify his or her claim that those proceeds be regarded as representing his or her property: *Foskett v. McKeown*, [2000] 3 All E.R. 97 (H.L.). There are three conditions which must be made:
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> i. the property must be traceable;
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> ii. there must be an equity to trace; and
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> iii. tracing must not produce an inequitable result.
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> See: *Snell's Equity*, 29th ed. (London: Sweet & Maxwell, 1990) at p. 299.
>
> Based on the following facts, I accept the position of the plaintiff that there is an arguable case for a remedial constructive trust in the Property or in the misappropriated funds which might be traced to the Property, either of which could sustain the CPL on the Property. This is sufficient to establish a claim in land within the meaning of s. 215(1) of the *Land Title Act*.

[31] The test for an interim injunction preventing the disposal of property is more stringent than the test for entitlement to a CPL. It requires an assessment of the merits of the case and the balance of convenience. In addition, pursuant to Rule 10-4 of the *Supreme Court Civil Rules*, if an interim injunction is granted unless the court otherwise orders the plaintiff will also be required to swear an undertaking as to damages: *Evergreen Building Ltd. v. IBI Leaseholds Ltd.*, 2005 BCSC 1161, paras. 23-25.

Analysis

[32] The defendants submit that I dismissed any claim the plaintiffs might have had for an interest in land by stating in the Liability Reasons "I agree with the plaintiffs that a monetary award based on a value survived approach is most appropriate" (para. 369). Given that statement, they say I made a determination on the merits with respect to the plaintiffs' claim for a proprietary interest in the Properties and found that there is none. In these circumstances, they say there is

no longer any legal basis for the CPLs to continue and they should be cancelled immediately. This is so because continuation of the CPLs would be inconsistent with the case authorities and the defendants should be entitled to exercise their rights as landowners unburdened by the CPLs.

[33] According to the defendants, if the plaintiffs want pre-judgment security for their monetary claims they must now apply for and obtain an interim injunction. However, they say, the plaintiffs are not entitled to do indirectly by the CPLs what they are not permitted to do directly: tie up real property in which they no longer claim an interest.

[34] The defendants also submit that the plaintiffs would never have had an equitable interest in the Properties or a proprietary claim to an interest in land, based on their pleadings. Rather, the plaintiffs were actually seeking a constructive trust over Mr. Yehia's shares in the corporate defendants and the remedy of an increase in the companies' value during the relevant period. In support of this submission the defendants rely on the well-known decision of *Rohani v. Rohani*, 2004 BCCA 605. In *Rohani*, the Court of Appeal confirmed that a corporate shareholder does not have an equitable interest in the assets held by a corporation.

[35] Despite the thorough and thoughtful submissions of counsel for the defendants, I find that I cannot agree.

[36] The parties agreed to bifurcate the trial of this action, presumably for purposes of cost-savings and efficiency. This was a sensible approach which should be encouraged so long as justice can be achieved. In my view, this aspect of the procedural context of the application and its implications should be considered when deciding whether to cancel the CPLs.

[37] In this case, it was necessary at the liability stage of the trial to trace the plaintiffs' funds to the Properties to determine whether the defendants were unjustly enriched by the plaintiffs. It was also necessary to determine the parties' reasonable expectations regarding any associated interest in the Properties. Faced with these

issues, the plaintiffs successfully established the requisite causal link between their deprivation and the defendants' corresponding enrichment. They also established an interest in the increased net equity in the Properties. Because of the bifurcation order, however, the extent of their interest was not determined and final relief was not granted.

[38] In the ordinary course, the CPLs would remain in place until final judgment is granted on both liability and remedy. After final judgment, the plaintiffs will be entitled to register the judgment on the titles to the Properties to facilitate complete recovery, if necessary. Continuous security vis-à-vis the Properties would thus have remained in place throughout had the trial proceeded in the usual manner. If the defendants are correct, however, the successful plaintiffs have compromised their access to security by agreeing to bifurcate the trial and acknowledging what is common in most unjust enrichment claims: at the end of the day, a monetary remedy will likely be sufficient.

[39] Given that their funds have been traced to the Properties, I find this result would not be fair to the plaintiffs. It would also be inconsistent with the remarks of Newbury J.A. in *Tracy* and Masuhara J. in *Drucker* cited above. Further, it might discourage other litigants from adopting a similar, otherwise reasonable, approach to bifurcating trials in unjust enrichment claims. In my view, none of these results are desirable.

[40] I did not dismiss any and all claims the plaintiffs might have for any interest in the Properties at the liability stage of the trial, either expressly or by necessary implication. In particular, I did not dismiss any and all claims for a constructive trust to the extent one may be necessary to sustain the CPLs pending final judgment or obtain complete recovery on the unjust enrichment claim. Taking into account the trial's two-stage procedure, the unjust enrichment finding, the tracing result, and the interim protection afforded by the CPLs pending final judgment, I find the issue was not finally determined at the trial's liability stage. Such a determination would be

premature until the prospect of full recovery by the alternative remedial routes is explored in the trial's second stage and final judgment is issued.

[41] The plaintiffs were not required to elect between a potential monetary or proprietary remedy at the trial's liability stage, nor did they. Rather, their counsel expressed a view of what will likely be the most appropriate remedy following the second stage without completely abandoning either alternative remedy. I agreed with his view. However, I was not asked to consider the status of the CPLs or assess whether complete recovery would be achieved via one remedial route or the other, and did not do so. Plaintiffs' counsel left open the question of whether "some form of constructive trust" would be deemed necessary at the end of the trial and I left open the nature of the "equitable relief and compensation" to be determined at the second stage of the trial.

[42] As with many unjust enrichment claims, in the final analysis a monetary award based on a value survived approach will likely provide a sufficient remedy in this case. Nevertheless, I am satisfied fairness requires that the plaintiffs' constructive trust claim remain extant and the CPLs remain in place until final judgment is issued.

[43] As to the defendants' additional submission, I do not accept that the plaintiffs' claim was actually for a constructive trust over Mr. Yehia's shares in the corporate defendants rather than for an equitable interest in the Properties. On the contrary, the plaintiffs claimed, and I found, that the corporate defendants received and used their funds to renovate and develop the Properties and were unjustly enriched as a result. Unfortunately, in the Liability Reasons I referred, in error, to Mr. Yehia alone in the question posed regarding the alleged unjust enrichment. In the analysis, however, I made it clear that the unjust enrichment findings pertained to all defendants, and did the same regarding the appropriate remedy.

[44] It is true that Mr. Jacobs claimed he expected to receive shares in the corporate defendants based on Mr. Yehia's promises of partnership. It is also true, however, that I dismissed his claims in connection with the partnership alleged. In

addition, and importantly, Mr. Jacobs claimed, and I found, that he and Mr. Yehia dealt with one another throughout in both their personal capacities and as agents of their respective corporations. Mr. Yehia's unfulfilled promises regarding future shareholdings do not detract from the fact that the corporate defendants were unjustly enriched by the plaintiffs' $967,000, which was traced to the Properties, or from their claim for an associated interest.

If the CPLs should not be cancelled unconditionally, what orders, if any, should be made?

Legal Framework

[45] Sections 256 and 257 of the *Act* permit the court to cancel a CPL where hardship and inconvenience are experienced and, if satisfied that damages will provide an adequate remedy, to order the posting of security. Sections 256 and 257 of the *Act* provide, in relevant part:

> **Cancellation of certificate of pending litigation on other grounds**
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> **256** (1) A person who is the registered owner of or claims to be entitled to an estate or interest in land against which a certificate of pending litigation has been registered may, on setting out in an affidavit
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> (a) particulars of the registration of the certificate of pending litigation,
>
> (b) that hardship and inconvenience are experienced or are likely to be experienced by the registration, and
>
> (c) the grounds for those statements,
>
> apply for an order that the registration of the certificate be cancelled.
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> **Power of court to order cancellation**
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> **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
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> (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
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> (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.
>
> (2) The form of the undertaking must be settled by the registrar of the court.
>
> (3) In setting the amount of the security to be given, the court may take into consideration the probability of the party's success in the action in respect of which the certificate of pending litigation was registered.

[46] The degree of hardship and inconvenience that would justify a CPL's cancellation has been somewhat controversial. In *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2014 BCCA 388, the Court of Appeal recently reviewed the hardship threshold and clarified its parameters. At para. 28, Newbury J.A. stated:

> As a preliminary matter the applicant must show that it is experiencing or likely to experience "hardship and inconvenience" as a result of the registration of the CPL. It appears that the degree of hardship required is the subject of disagreement in the Supreme Court of British Columbia. While some judges have proceeded on the basis that the hardship need not be "significant" (see, e.g., *Enigma Investments Corp. v. Henderson Land Holdings (Canada) Ltd.* 2007 BCSC 1379, and *0966349 B.C. Ltd. v. Shell Canada Limited*, Reasons dated February 28, 2014, New Westminster Docket S151234), others have required "severe suffering" (see, e.g., the lower court decision in *Liquor Barn Income Fund v. Mather* 2009 BCSC 1092, at para. 7.) *The Shorter Oxford Dictionary* (6th ed., 2007) defines "hardship" to mean "the quality of being hard to bear" or "severe suffering or privation"; "significant" to mean "important, notable; consequential"; and "insignificant" to mean "of no importance; trivial, trifling" or "meaningless". To the extent that these or other decisions of the trial court suggest that "hardship" in s. 256(1) may be met by proof of hardship that is "insignificant" or "not significant", I would disagree. I doubt that the Legislature intended the threshold under s. 256 to be surmounted by proof of hardship that is only "trifling". On the other hand, I agree that a court should not be "exacting" in its analysis of hardship and inconvenience.

[47] Once hardship and inconvenience are demonstrated, a CPL may be cancelled and replacement security may be ordered. Even where the requirements of an application under s. 256(1) of the *Act* are met, however, the court retains the discretion to dismiss the application: *Youyi Group Holdings*, at para. 29.

[48] When security is ordered, the court must specify the amount of security to be posted. In fixing the amount, the court must consider the probability of success in the action in respect of which the CPL is registered. In addition, the potential for substantial damages is a factor for consideration, as is the financial worth of the party called upon to post security: *0624708 B.C. Ltd. v. Wallace*, 2011 BCSC 1383, paras. 24-25.

Analysis

[49] The defendants submit the CPLs should be cancelled based on hardship and inconvenience. In support of this submission, they point to Mr. Yehia's sworn statement that he has been told the CPLs prevent him from raising money through debt or equity and thus from growing the Cambie Malone Group of companies. They also rely on his expressed concern that the Properties could drop in value, with potentially adverse effects for the corporate defendants.

[50] The defendants go on to say it is clear that there is more than enough equity in the Properties to cover any monetary judgment awarded on the plaintiffs' unjust enrichment claim. They say further that it appears the plaintiffs have miscalculated their potential entitlement to a monetary judgment in a profound way.

[51] In all of the circumstances, the defendants submit an undertaking to pay any damages ordered or an order for nominal security would be a sufficient replacement for the CPLs at this juncture. They also seek an order that the plaintiff give an undertaking to abide by any order the court may make as to damages properly payable as a result of registration of the CPLs.

[52] Based on the evidence presented, I am not persuaded the defendants are experiencing or are likely to experience hardship and inconvenience, as explained in

Youyi Group Holdings. Mr.Yehia's affidavit notes the sort of constraints that generally arise when a CPL is registered and mentions hypothetical concerns, but says nothing more. In particular, examples of real or reasonably likely difficulty for the defendants, such as an unmet need or intention to refinance, are notably absent. In these circumstances, I cannot conclude that the CPLs are causing hardship beyond the trifling range and thus decline to cancel them. Nevertheless, I grant leave to the defendants to renew the application in the event that circumstances change.

[53] I agree with defendants, however, that the plaintiffs may be miscalculating their potential entitlement to a monetary award on the unjust enrichment claim. Based on what I know so far, the plaintiffs' estimate that $1,500,000 is an appropriate amount for security, if and when required, appears to be unrealistically high. I also note that the CPLs relate only to the successful unjust enrichment claim, and not to the successful claims for debt or interest. All things considered, I conclude the plaintiffs should give an undertaking to abide by any order the court may make as to damages payable as a result of the CPLs and grant the defendants' application for an order to this effect.

"DICKSON J."