

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bali v. 1292795 B.C. Ltd.*,
2025 BCSC 1316

Date: 20250711
Docket: H254515
Registry: New Westminster

Between:

Arvind Bali, Harpal Bajwa and Sandeep Bhayana

Petitioners

And

1292795 B.C. Ltd., Charankamljit Singh Sandhu, Iqbal Singh Gill, Sij Logistics Inc., Charanjit Singh Kandola, Kandola Ventures Ltd., 1196012 B.C. Ltd. and All Occupiers of the Subject Lands and Premises

Respondents

Before: The Honourable Justice Douglas

Reasons for Judgment

Counsel for the Petitioners:

R.P. Barreto

Counsel for the Respondent,
1196012 B.C. Ltd.:

K.S. Atwal

No Other Appearances

Place and Dates of Hearing:

New Westminster, B.C.
May 8 and 16, 2025

Place and Date of Judgment:

New Westminster, B.C.
July 11, 2025

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I. OVERVIEW

[1] The respondent in these foreclosure proceedings, 1196012 B.C. Ltd. (“119”) applies to strike portions of the petition as disclosing no reasonable basis for a claim to an equitable mortgage, and as being unnecessary, scandalous, frivolous or vexatious, or otherwise an abuse of process. The alleged equitable mortgage is the sole pleaded basis for the certificate of pending litigation (“CPL”) which the petitioners registered on August 9, 2024, on title to lands owned by 119 and located at 19475 16th Avenue, Surrey, BC (the “16th Avenue Property”).

[2] By extension, 119 says the petition is incapable of supporting a viable claim to an interest in land, as required by s. 215 of the *Land Title Act*, R.S.B.C. 1996, c. 250 [LTA]. Alternatively, 119 says that registration of the CPL constitutes a default under the existing mortgage on title to the subject lands, is preventing 119 from disposing of the 16th Avenue Property or obtaining refinancing, and is therefore causing hardship and inconvenience, as contemplated by s. 256 of the LTA.

[3] The parties’ underlying dispute concerns a mortgage registered on title to property at 119-12827 76th Avenue in Surrey, BC (the “76th Avenue Property”) to secure a \$500,000 loan from the petitioners to the respondent, 1292795 B.C. Ltd (“129”). All respondents, except 119 and 129, were guarantors to this mortgage.

[4] The petitioners assert that 119, and others, entered into an agreement for this \$500,000 loan on August 22, 2023. They say this loan agreement contemplated additional security, in favour of the petitioners, in the form of an equitable mortgage against the 16th Avenue Property, if 129 did not repay the mortgage registered on the 76th Avenue Property within two months. 119 disputes the validity of this equitable mortgage and denies the alleged loan agreement was ever authorized by, or on behalf of, 119.

[5] 119 applies to strike those portions of the petition on which the petitioners rely to support the alleged equitable mortgage, the sole basis for their assertion of an interest in land sufficient to justify registration of the CPL.

[6] For the reasons which follow, I find the petition does not adequately plead the requisite elements of an equitable mortgage. It follows that the petition fails to plead a claim to an interest in land and that the CPL must therefore be discharged. Given my finding that the petition fails to disclose an interest in land, as contemplated by s. 215 of the *LTA*, it is unnecessary to address 119's alternative argument based on hardship pursuant to s. 256 of the *LTA*.

[7] I am unable to conclude on the evidence filed on this application that, if the petitioners had an opportunity to redraft their pleadings, their claim to an equitable mortgage is bound to fail. I am also unable to conclude on the evidence before me that allowing the petitioners to amend their pleading would result in an abuse of process. Accordingly, I decline to order that the petitioners are denied leave to amend the petition.

II. THE PETITION

[8] There is no dispute that the petitioners' alleged entitlement to an equitable mortgage is the only pleading that supports the filing of the CPL. The petitioners set out their request for this relief in Part 1, paras. 2, 3, and 4, of the petition. They plead the factual basis for the petition in Part 2, paras. 11(a) and (b):

- a) On or about August 22, 2023, 129 agreed to borrow \$500,000 from the petitioners.
- b) All respondents, except for 119 and 129, agreed to guarantee this loan on specified terms.
- c) This loan was to be secured by a \$500,000 mortgage registered on title to the 76th Avenue Property which 129 owned.

[9] This \$500,000 mortgage is not the subject of the within application.

[10] The petitioners plead the following additional material facts regarding the alleged loan agreement in Part 2 of the petition:

- a) If the \$500,000 mortgage was not repaid in two months, 119 agreed to grant an "inter alia" mortgage on title to the 16th Avenue Property as additional security (Part 2, para. 11(b)).

- b) The term of this loan was four months, with the first three months closed and the fourth month open (Part 2, para. 11(c)).
- c) The interest rate for the first three months would be 18% and this would increase to 24% for the fourth month (Part 2, para. 11(d)).

[11] The parties agree that reference to the loan being “closed” for the first three months means that it was not repayable during this timeframe.

[12] The petitioners plead the following additional material facts to support the alleged equitable mortgage:

- a) 129 and the guarantors failed to repay the loan within two months and 119 failed to execute the mortgage security documents to provide the “inter alia” mortgage as additional security on the 16th Avenue Property (Part 2, para. 13).
- b) 119 defaulted on the loan agreement, and interest is due and owing (Part 2, para. 15).
- c) A demand was served on 119, for payment of monies secured by the loan agreement, and 119 failed and refused to pay those monies (Part 2, paras. 16 and 17).
- d) At all material times, petition respondents, Charankamljit Singh Sandhu and Iqbal Singh Gill, were the directors of 129 and 119 (Part 2, para. 19).

III. THE CPL

[13] The petitioners registered the CPL on August 9, 2024, on title to the 16th Avenue Property, legally described as Lot 2, Section 15, Township 7, Group 2, New Westminster District Plan LMP24699.

IV. LAW AND ANALYSIS

A. Should portions of the petition be struck pursuant to R. 9-5(1)(a)?

[14] 119 says the petition fails to plead the essential elements of an equitable mortgage. 119 seeks an order pursuant to the *Supreme Court Civil Rules* [SCCR], R. 9-5(1)(a), striking those paragraphs in the petition that reference the alleged equitable mortgage: namely, Part 1, paras. 2 – 4, and Part 2, paras. 11(b) and 13.

119 also seeks an order discharging the CPL that was registered based on those pleadings.

[15] A claim will only be struck pursuant to R. 9-5(1)(a) if it is plain and obvious, assuming the pleaded facts to be true, that the claim discloses no reasonable cause of action: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17. No evidence may be considered on an application under R. 9-5(1)(a): *SCCR*, R. 9-5(2).

[16] Because a petition need not disclose a “cause of action”, where the application to strike is made in respect of a petition, the test is modified such that the correct inquiry under R. 9-5(1)(a) is whether the petition sets out a foundation for a type of proceeding authorized to be brought by petition: *E.B. v. Director of Child, Family, and Community Services*, 2016 BCCA 66 at para. 42.

[17] 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 v. Smith*, 63 B.C.L.R. 180, 1985 CanLII 461 (C.A.) at para. 11, citing John Falconbridge, *The Law of Mortgages of Land: Registration of Deeds, Land Titles System, Limitation of Actions, Conflict of Laws*, 3rd ed. (Toronto: Canada Law Book Company Limited, 1942) at 69-74; *Treasure Bay HK Limited v. 1115830 B.C. Ltd.*, 2024 BCSC 294 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.

[18] 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.

[19] 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* (1978), 89 D.L.R. (3d) 411 at 416, 1978 CanLII 1448 (O.N.S.C.).

[20] Certainty and enforceability of the alleged agreement are also important features of an equitable mortgage: *Vancouver* at para. 20. Pursuant to section 59(3) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, a contract respecting land is not enforceable unless it is in writing, signed by the party to be charged, or the party charged has done an act or acquiesced in an act that indicates a contract not inconsistent with the alleged security.

[21] 119 underscores that the petition:

- a) Does not identify 119 as a party to the alleged loan agreement.
- b) Does not identify 119 as either a borrower or a guarantor in connection with the alleged loan agreement.
- c) Ascribes no role to 119 in relation to the alleged equitable mortgage.

[22] 119 submits that the petition pleads:

- a) No material facts to explain how the respondents, Charankamljit Singh Sandhu and Iqbal Singh Gill, were authorized to bind 119 by signing the alleged loan agreement in their personal capacity.
- b) No material facts to support the parties having the required common intention to create an equitable mortgage.
- c) Terms for the alleged equitable mortgage which are inherently contradictory and therefore uncertain and unenforceable.
- d) No act, or acquiescence in an act, that indicates a contract not inconsistent with the alleged equitable mortgage, pursuant to s. 59(3) of the *Law and Equity Act*.

[23] The petitioners submit that their pleading is sufficient to establish an interest in land, as required by s. 215 of the *LTA*. They say they are entitled to rely on the signatures of Charankamljit Singh Sandhu and Iqbal Singh Gill on the loan

agreement, in their capacity as directors of 119 or alternatively, as agents for the involved corporations, with the actual, implied, or ostensible authority to bind those corporations, citing *D. Fogell Associates Ltd. v. Esprit de Corp (1980) Ltd. et al*, 1997 CarswellBC 1131 at paras. 24 – 37, 1997 CanLII 3027 (S.C.) [*D. Fogell*]. The petitioners argue that the signatures of the directors of both 129 and 119 on the alleged loan agreement are sufficient to establish the parties' common intention to secure an equitable mortgage, and a link between the \$500,000 loan and the 16th Avenue Property.

[24] Notably, those assertions are not pleaded. The petition does not allege that the respondents, Charankamljit Singh Sandhu and Iqbal Singh Gill, were signing in their capacity as directors of 119, acting as agents for 119, or that they had the actual, implied, or ostensible authority to bind 119 for the purpose of securing 129's mortgage debt in the form of an equitable mortgage on the 16th Avenue Property.

[25] In *Treasure Bay*, on comparable facts, Justice Walker concluded that, although the amount of the loan and the specific property had been pleaded, there was no pleading to engage the common intention element of an equitable mortgage: *Treasure Bay* at para. 87. He noted there was "no pleading that the Zou BC Debtors were given the authority, direct or implied, by the Limited Partnership, Haro GP or Harlow, to agree to such security over the Haro Property": *Treasure Bay* at para. 86.

[26] The petitioners submit that their reliance on the signatures of Charankamljit Singh Sandhu and Iqbal Singh Gill on the alleged loan agreement, as directors of 129 and 119, creates a legal estoppel, thereby precluding those individuals from denying the truth of their representations in this capacity, citing *D. Fogell* at para. 28. The petition does not plead the material facts necessary to support this assertion.

[27] In *Corban Construction Co. Ltd. v. Nankivell*, 1995 CarswellBC 2890, 1995 CanLII 1837, Justice Powers struck out the plaintiff's bare assertion of an equitable mortgage as the pleadings disclosed no facts demonstrating a common intention to create an equitable mortgage. He noted that an essential feature of an equitable mortgage is a common intention that the property be made security for a debt due or

future advances; if that intention is lacking, no equitable mortgage can be created: *Corban Construction* at 14-15.

[28] *Stonewater Ventures (No. 185) Ltd. v. Stonewater Ventures (No. 168) Ltd.*, 2022 BCSC 114 involved a commercial share purchase which did not complete. The plaintiff advanced a claim to an equitable mortgage in the subject properties as an interest in land to secure deposit monies it had paid to the defendants: *Stonewater Ventures* at para. 22. The plaintiff subsequently amended its pleading to seek a declaration that it was entitled to an equitable mortgage in the properties in a specified amount: *Stonewater Ventures* at para. 23. Associate Judge Robertson found at para. 46 that the plaintiff had failed to plead:

- a) An intention to create a security interest.
- b) An agreement for a security interest.
- c) Acts consistent with an agreement for a security interest.

[29] As such, Associate Judge Robertson found the plaintiff had failed to plead the necessary elements of an equitable mortgage, the only basis on which the plaintiff could have established an interest in the subject properties capable of supporting a CPL.

[30] The petition pleads that the first three months of the alleged loan agreement were closed (meaning, the parties agree, that the loan could not be repaid during this period). The petition further pleads that the petitioners would receive additional security in the form of the alleged equitable mortgage if the \$500,000 loan was not repaid within two months (Petition, Part 2, paras. 11(b) and (c)). The petition pleads no material facts that address this apparent inconsistency which introduces some uncertainty regarding the repayment terms of the alleged equitable mortgage.

[31] The petitioners submit that 119 has acquiesced in acts that are not inconsistent with the requirements of the loan agreement, making the contract enforceable pursuant to s. 59(3) of the *Law and Equity Act*. They say execution of the alleged loan agreement by Charankamljit Singh Sandhu and Iqbal Singh Gill, as

borrowers and directors of 129 and 119, is such an act. This disputed fact is not pleaded.

[32] The petitioners rely on the following extrinsic evidence to support their assertion that 119 has acquiesced in acts not inconsistent with the alleged loan agreement:

- a) 119 subsequently offered to repay the \$500,000 loan on terms.
- b) 119 permitted the registration of a subsequent mortgage on title to the 16th Avenue Property, subject to the CPL.
- c) 119 agreed to remove another mortgage registered on title to the 16th Avenue Property, in relation to a previous loan by the petitioners to 119.

[33] The petitioners have not pleaded these alleged material facts, on which they rely to support their claim to an equitable mortgage on the 16th Avenue Property. No evidence is admissible on an application under *SCCR*, R. 9-5(1)(a).

[34] Ultimately, assuming the pleaded facts in the petition are true, I conclude they are insufficient to establish the common intention requirement for an equitable mortgage and, by extension, the petitioners' entitlement to the CPL: *Treasure Bay* at para. 88. I reach this conclusion for the following reasons:

- a) The petition does not identify 119 as a party to the alleged loan agreement.
- b) The petition does not plead that 119 signed the alleged loan agreement.
- c) The petition does not plead that the directors of 129 and 119 signed the alleged loan agreement in their capacity as directors.
- d) The petition does not plead that the directors of 129 and 119 had the actual, implied, or ostensible authority to sign the alleged loan agreement on behalf of 119.
- e) It is unclear from the petition what, if any, consideration 119 received in exchange for its alleged agreement to secure 129's mortgage debt with the alleged equitable mortgage.

[35] Additionally, I conclude that the petition fails to plead a contract that is sufficiently certain. Assuming the pleaded facts are true, the agreement contains

inconsistencies which create uncertainty as to its terms. I therefore conclude on this basis, as well, that the claim for an equitable mortgage fails to set out the foundation for a proceeding authorized to be brought by petition.

[36] Given my finding that the petition discloses no reasonable claim to the alleged equitable mortgage, I order that the petition, Part 1, paras. 2 – 4, and Part 2, paras. 11(b) and 13, be struck pursuant to *SCCR*, R. 9-5(1)(a).

B. Should portions of the petition be struck pursuant to R. 9-5(1)(b) or (d)?

[37] In the alternative, 119 asserts that the petitioners' allegation of the existence of an equitable mortgage is vexatious and an abuse of the court's process.

[38] At any stage of a proceeding, the court may order the whole or any part of a pleading or petition to be struck out on the ground that: (b) it is unnecessary, scandalous, frivolous, or vexatious; or (d) it is an abuse of the process of the court: *SCCR*, R. 9-5(1)(b) and (d). In considering applications under R. 9-5(1)(b) or (d), the court must consider whether it is plain and obvious that the pleading offends either provision: *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress*, 36 CPC (4th) 266, 1999 CanLII 5860 at para. 45. Unlike applications under Rule 9-5(1)(a), evidence is admissible on an application to strike pleadings under R. 9-5(1)(b) or (d).

[39] Vexatious actions include those brought for an improper purpose, such as the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights: *Freshway Speciality Foods v. Map Produce LLC et al*, 2005 BCSC 1485 at para. 49.

[40] There is no bright line dividing a vexatious proceeding from one that is an abuse of the court's process: *Acumar Consulting Engineers Ltd. v. The Association of Professional Engineers and Geoscientists of British Columbia (APEGBC)*, 2014 BCSC 814 at para. 29 [Acumar]. Abuse of process is a wider concept and may extend beyond vexatious proceedings to capture any circumstance in which the

court's process is used for an improper purpose: *Freshway* at para. 52. Abuse of process may be established if proceedings are oppressive or if they violate the fundamental principles of justice underlying the community's sense of fair play and decency: *Acumar* at paras. 28–30.

[41] Courts have an inherent jurisdiction and discretion to prevent misuse of the court's procedure in a way that would be manifestly unfair to a party or bring the administration of justice into disrepute: *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 at para. 39.

[42] Applied here, 119 says there is "little doubt" that the petitioners' bare assertion of an equitable mortgage to justify registration of the CPL against the 16th Avenue Property, thereby preventing 119 from disposing of it, solely in an attempt to recover funds which the petitioners cannot recover pursuant to the mortgage they secured on the 76th Avenue Property, is vexatious and abusive.

[43] The intentions of the parties as to the terms and extent of the alleged equitable mortgage may be established by extrinsic evidence: *Treasure Bay* at paras. 63 and 79, citing *Stonewater Ventures* at para. 38. The parties have filed conflicting affidavit evidence on this application.

[44] Petitioner, Harpal Bajwa, deposes in his Affidavit #1:

- a) On August 22, 2023, 129 borrowed \$500,000 from the petitioners on the terms set out in the petition.
- b) 129 and the guarantors failed to repay the loan in two months and 119 failed to execute the security documents necessary to provide the alleged equitable mortgage on the 16th Avenue Property.
- c) On or about July 23, 2024, the petitioners demanded repayment of the monies they were owed pursuant to the loan agreement.
- d) At all material times, Charankamljit Singh Sandhu and Iqbal Singh Gill were the directors of 129 and 119.

[45] The alleged loan agreement is appended to Harpal Bajwa's Affidavit #1. It indicates, in part, as follows:

- a) The “borrowers” are 129 and 119.
- b) The “guarantors” are Charankamljit Singh Sandhu, Iqbal Gill, Charan Kandola, 1395212 BC Ltd, SIJ Logistics Ltd, and all directors and shareholders of “all three [unspecified] companies”.
- c) The loan amount is \$500,000.
- d) The property to be mortgaged was the 76th Avenue Property.
- e) The term was to be “fixed 3 months closed” and the “4th month open”.
- f) The alleged equitable mortgage would be security for the mortgage on the 76th Avenue Property “if the mortgage not paid by 2 months Interlalia [sic] on [the 16th Avenue Property] will be registered and any such other Security deemed necessary by our solicitors”.
- g) This agreement was signed by:
 - i. Charankamal Jit Singh Sandhu and Iqbal Gill as borrowers and “Applicants 1 and 2”.
 - ii. Charan Kandola as “Applicant 3”.
 - iii. Harpal Bajwa, Arvind Bali, and Sandeep Bhayana as “Lenders”.

[46] The \$500,000 mortgage registered on title to the 76th Avenue Property and appended to Harpal Bajwa’s affidavit makes no reference to 119, as either borrower or guarantor.

[47] The petitioners say there is ample extrinsic evidence to demonstrate that the alleged loan agreement is valid and enforceable. In support of this argument, they rely, in part, on evidence of a subsequent mortgage in the amount of \$1.8 million, which they say was registered on October 15, 2024, on title to the 16th Avenue Property, subject to the CPL (the “Bahad Mortgage”). Counsel for 119 denies the Bahad Mortgage is subject to the CPL.

[48] The words “subject to CPL CB1498636” appear in small font on page one of the Bahad Mortgage. There is also reference, under the heading “Prior Encumbrances Permitted by Lender”, on page two of the Bahad Mortgage to “CB1498636 Certificate of Pending Litigation”. Counsel for 119 notes the absence of

any express term in the Bahad Mortgage, under the heading “Additional or Modified Terms”, that makes the Bahad Mortgage subject to the CPL. The parties apparently disagree about what “subject to the CPL” means in this context.

[49] The petitioners say the extrinsic evidence demonstrates that 119 has acquiesced in acts not inconsistent with the requirements of the loan agreement: namely, offering to repay the loan on terms, registration of the Bahad Mortgage subject to the CPL, the signatures of Iqbal and Sandhu as borrowers and directors of 119 on the alleged loan agreement, and removal of the petitioners’ mortgage on title to the 16th Avenue Property in relation to a previous loan, to permit 119 to secure refinancing from TD.

[50] Rajinder Kaur Gill, director of 119, deposes:

- a) 119 did not authorize execution of the alleged loan agreement on its behalf.
- b) None of the signatories to the alleged loan agreement signed as directors of 119.
- c) 119 was neither a borrower nor a guarantor pursuant to the mortgage registered on title to the 76th Avenue Property.
- d) The petitioners had registered and subsequently removed two other mortgages from the 16th Avenue Property.

[51] Counsel for the petitioners describes this evidence as false and self-serving, noting that Rajinder Kaur Gill did not become a director of 119 until November 7, 2023.

[52] The alleged loan agreement is dated August 22, 2023. A notice of change of directors for 119 in evidence indicates that, effective November 7, 2023, Rajinder Kaur Gill and Navneet Kaur were new directors of 119, and that Iqbal Singh Gill and Charankamljit Singh Sandhu had then ceased to be directors of 119. A BC Company Summary in evidence indicates that, effective April 19, 2024, the directors of 129 were Iqbal Gill and Charankamljit Sandhu.

[53] Charankamljit Singh Sandhu deposes in his Affidavit #1:

- a) He never agreed to provide an equitable mortgage on the 16th Avenue Property.
- b) He was never authorized to encumber the 16th Avenue Property, on behalf of 119, the owner of the 16th Avenue Property.
- c) At all material times, he acted in his personal capacity regarding the “subject mortgage”.
- d) It was never the intention of any of the parties to encumber the 16th Avenue Property.

[54] Affidavit #1 of Iqbal Singh Gill is materially similar to Affidavit #1 of Charankamljit Singh Sandhu. Counsel for the petitioners describes them both as clearly false and self-serving.

[55] In his Affidavit #2, Harpal Bajwa disputes the evidence of Charankamljit Singh Sandhu and Iqbal Singh Gill that they did not agree to provide an equitable mortgage on the 16th Avenue Property. He deposes that Charankamljit Singh Sandhu and Iqbal Singh Gill were directors of 119 and 129 when the alleged loan agreement was signed. Appended to his affidavit is a letter dated September 25, 2024, addressed to Ms. Neena Bali, regarding “Proposal for repaying the [unspecified] loan” by “our [unspecified] clients” on terms, in exchange for removal of the CPL on title to the 16th Avenue Property. Counsel for the petitioners notes the absence of any statement in this letter that the CPL was improperly registered.

[56] The loan agreement is poorly drafted. It contains terms that are unclear and apparently inconsistent. The parties’ roles are not clearly defined. It is unclear whether Charankamljit Singh Sandhu and Iqbal Singh Gill were signing in their personal capacity only, and/or on behalf of 119 and/129. The parties’ evidence about the alleged loan agreement, and whether or not they intended to provide additional security for this loan by way of an equitable mortgage on the 16th Avenue Property, is contradictory. I am unable to resolve the evidentiary conflicts in the parties’ untested affidavits on this application.

[57] I accept that none of the signatories to the alleged loan agreement expressly signed by or on behalf of a corporation, although 129 was clearly intended to be a borrower, and the document refers to various other companies. Counsel for the petitioners asserts that Charanjit Kandola clearly signed the loan agreement, both as guarantor in his personal capacity and as director of Kandola Ventures Ltd. This conclusion is not apparent on the face of the document that the petitioners say sets out the terms of the alleged loan agreement.

[58] Although affidavit evidence is admissible when considering an application under *SCCR*, R. 9-5(1)(b) or (d), it is only helpful if it goes to “resolving the questions to be answered under these particular rules” (i.e. whether a claim is vexatious or an abuse of process): *Sidhu v. Nagpal*, 2025 BCSC 443 at para. 40. The affidavit evidence will rarely be sufficient to strike pleadings under Rules 9-5(1)(b) or (d) if it “does no more than contradict the allegations in the pleadings”: *Sidhu* at paras. 40-41.

[59] In my view, as in *Sidhu*, the affidavit evidence here does no more than contradict the allegations in the petition. In the result, I am unable to find that the petitioners’ claim for an equitable mortgage constitutes an abuse of process or vexatious conduct.

C. Does the petition disclose a claim to an interest in land?

[60] Section 215 of the *LTA* provides that a person who has commenced or is a party to a proceeding, and who is claiming an estate or interest in land, may register a certificate of pending litigation against the land in the same manner as a charge is registered.

[61] Registration of a CPL under s. 215 must be grounded in a claim to an interest in land and a plaintiff’s pleading must adequately assert the foundation for that interest: *Sonnenberg v. Sonnenberg*, 2023 BCSC 957 at para. 12; *Lipskaya v. Guo*, 2022 BCCA 118 at para. 64. When the pleading fails to disclose a claim to an interest in land, the CPL will be cancelled immediately because it was improperly

registered from the outset: *Sonnenberg* at para. 13; *Wang v. Cai*, 2022 BCSC 1312 at paras. 9 – 12.

[62] As noted in *Sonnenberg* at para. 14, and *Wang* at paras. 9 – 11, the applicable legal test asks two questions:

- 1) Are the pleaded facts, assuming them to be true, capable of supporting a claim to an interest in land?
- 2) Is there a nexus or causal link between the pleaded facts and the interest in land to which they would give rise, if ultimately proved?

[63] Whether the facts pleaded, assuming them to be true, can support a claim to an interest in land, is a threshold issue: *Yi Teng Investment Inc. v. Keltic (Brighthouse) Development Ltd.*, 2019 BCCA 357 at para. 39 [*Yi Teng*]. If the pleadings are found to meet this threshold, it connotes a nexus or causative link between the facts alleged and the interest to which they would give rise if the facts were ultimately proved: *Yi Teng* at para. 39.

[64] The whole of the notice of civil claim must be considered in determining whether the plaintiff has pleaded a claim to an interest in land: *Batth v. Sharma*, 2024 BCCA 29 at para. 30. No evidence is considered on an application to cancel a CPL for non-compliance with s. 215 of the *LTA* and the court does not analyze the merits of the underlying claim: *Xiao v. Fan*, 2018 BCCA 143 at para. 27.

[65] The relevant pleading is the one that was in place when the CPL was registered: *Bilin v. Sidhu*, 2017 BCCA 429 at para. 62; *Nouhi v. Pourtaghi*, 2019 BCSC 794 at para. 30; *GMC Properties Inc. v. Rampart Estates Ltd.*, 2022 BCCA 92 at para. 26.

[66] The court's role at this stage is not to determine whether the plaintiff's claim can be proved but rather whether it is sufficient to establish a claim to an interest in land: *Wang* at paras. 9-11; *Oikon Developments Inc. v. Chris & Mando Ltd.*, 2024 BCSC 1333 at para. 35 [*Oikon*]; *Yi Teng* at para. 36.

[67] The parties agree that the sole basis for the petitioners' registration of the CPL is the alleged equitable mortgage. I have determined that the petition fails to plead the required common element necessary to establish an equitable mortgage. It follows that the petition fails to disclose a claim to an interest in land and that the CPL must be discharged.

D. Has 119 established hardship?

[68] Given my finding that the petition, as presently drafted, fails to plead a claim to an interest in land, as contemplated by s. 215 of the *LTA*, I need not address 119's alternative argument based on alleged hardship pursuant to s. 256 of the *LTA*.

E. Should the petitioners be granted leave to amend?

[69] Generally, a party will be given the opportunity to redraft inadequate pleadings: *Buchan v. Rome*, 2011 BCSC 1206 at para. 57; *Stonewater Ventures* at para. 53. However, where it is plain and obvious that a pleading is without legal foundation and bound to fail, even if it is redrafted, a party will not be granted leave to amend, particularly where to do so would constitute an abuse of process: *Buchan* at para. 57.

[70] As noted, I am unable to resolve the conflicts in the parties' untested affidavits on this application. It follows that I am unable to conclude that the petitioners' claim to an equitable mortgage is bound to fail even if the petitioners had the opportunity to redraft their pleadings. Accordingly, I do not deny the petitioners leave to amend the petition.

V. DISPOSITION

[71] In summary, I make the following orders:

- a) The CPL is discharged effective immediately.
- b) Part 1, paras. 2 – 4 and Part 2, paras. 11(b) and 13 of the petition are struck pursuant to *SCCR*, R. 9-5(1)(a).

- c) The petitioners are granted leave to amend the petition within 30 days following the release of these reasons.

[72] The parties' success on this application has been mixed. Costs of this application are in the cause at the ordinary scale.

"Douglas J."