

CITATION: Wang v. Wu, 2024 ONSC 2411
COURT FILE NO.: CV-24-00718398-0000
DATE: 20240424

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Fei Wang, Plaintiff (Moving Party)

AND:

Wei Wu, Defendant (Respondent Party)

BEFORE: L. Brownstone J.

COUNSEL: *David N. Bleiwas and Shane Greaves*, for the Plaintiff/Applicant

HEARD: In writing, April 24, 2024

ENDORSEMENT

[1] The plaintiff moves without notice for a Mareva injunction against the defendant enjoining and restraining the defendant from drawing upon, using or otherwise dealing with a CIBC revolving line of credit bearing Account Number 02632-31-6603 (the “line of credit”) held at CIBC, and an order permitting the plaintiff to obtain and register a certificate of pending litigation (“CPL”) against the property municipally known as 62 Patrick Boulevard, Toronto (“the property”).

Background

[2] The plaintiff and defendant are cousins. The defendant normally resides in China, the plaintiff in Toronto. In 2014, the defendant was considering immigrating to Canada. As the defendant did not have funds to purchase a home, the parties jointly purchased the property.

[3] The property was purchased in 2014. Title to the property is in the defendant’s name. The line of credit is in the defendant’s name. The plaintiff claims the property is subject to a trust. He states that the parties agreed that the property is beneficially owned by both parties proportionately to their respective financial contributions to the property’s purchase, and that the defendant would purchase the property from the plaintiff when she was financially able to do so.

[4] The plaintiff provides evidence that a few months before the closing of the purchase of the property, the parties opened two bank accounts with CIBC to be used to deposit funds to be used towards the downpayment. Each time one of the parties deposited funds, they would both sign a “Money Deposit Agreement”, drafted without lawyers, confirming the value of the contribution.

[5] There are nine such agreements. Each agreement indicates the address of the property and reiterates that the CIBC accounts were opened to purchase the property. Importantly, each

agreement, signed by both parties, contained a statement that the property “will be held jointly between [the parties] with the ownership percentages. The ownership percentages will be finalized based on how much money both [parties] contribute to the banking accounts... for making the property (Real Property as described above) down payment and paying the mortgage loan for the property (Real Property as described above) before August 18, 2015.” The amount deposited each time was also included.

[6] According to the agreements, the plaintiff deposited \$271,525 between May and September 2014, and the defendant deposited \$77,975.00 during this same period. This translates to 77.69 % being deposited by the plaintiff and 22.31% by the defendant.

[7] In July, 2014, the defendant was temporarily in Canada. She executed a power of attorney in favour of the plaintiff, under which the plaintiff could carry out transactions with CIBC. They were negotiating with CIBC for a mortgage to fund the balance of the purchase price. In lieu of the standard term requiring the power of attorney to be used solely for the benefit of the defendant, the following was inserted: “My attorney may use my property for the benefit of anyone including my attorney.”

[8] The property was closed using the funds from the CIBC account referred to above and a CIBC mortgage in the amount of \$637,000. The defendant, as title owner, was the sole mortgagor.

[9] The plaintiff swears that he made the majority of the mortgage payments, as the defendant returned to China to live. The mortgage was paid off in 2016, but the charge on the property in favour of CIBC remains, because the mortgage loan was converted into the line of credit with a credit limit of \$637,000. The defendant was the sole account holder on the line of credit.

[10] The plaintiff swears that the defendant has made no further payments in connection with the property. She and her family have continued to live primarily in China. The plaintiff has been responsible to manage the property, including managing the tenants, maintenance, and insurance.

[11] In 2023, the plaintiff offered the defendant employment with his company, and the defendant came temporarily to Canada.

[12] In 2024, the parties discussed the defendant transferring a portion of title to the property to the plaintiff’s parents in satisfaction of the plaintiff’s beneficial ownership claim to the property. The plaintiff swears that the defendant offered to transfer a two-thirds ownership to his parents, and retain a one-third interest for herself. Although he believes his beneficial claim is higher based on the percentage of funds contributed, he tentatively agreed to the agreement. He also agreed to pay the defendant’s legal fees in relation to the intended transfer.

[13] In early March, each party attended their respective counsel in order to effect the transfer. The plaintiff paid the defendant’s counsel’s legal fees.

[14] Shortly thereafter, the plaintiff’s company terminated the employment of the defendant, having learned that she was working for a second employer in contravention of the terms of her work permit.

[15] A few weeks later, on April 9, 2024, the plaintiff learned the defendant had listed the property for sale on the open market without the plaintiff's knowledge or consent. He called the defendant's lawyer who advised that the proposed transfer to the plaintiff's parents had been cancelled.

[16] The property's listing materials indicate the seller intends to return to China.

[17] The plaintiff has registered a caution against title to the property, which will expire on June 9, 2024.

[18] With respect to the line of credit, there had been no significant withdrawals since 2016. A small sum was transferred to China by the defendant on April 5, 2024. The plaintiff believes this was a test and she "may have plans to transfer much larger amounts, and perhaps even the full balance remaining, imminently." CIBC first advised the plaintiff to seek a court order if he wished to freeze the account. It has since agreed to temporarily lock the line of credit.

[19] The plaintiff has started an action seeking a declaration that the defendant holds the property in trust, an order vesting the property in his name and a CPL against the property.

[20] The plaintiff states that if "the Line of Credit is not frozen, I verily believe that funds may be withdrawn and transferred to China and leave me unable to satisfy any Judgment I may obtain against Ms. Wu. My belief arises from (i) the "test" transfer noted above, (ii) the sale listing for the Property which states that Ms. Wu intends to return to China and (iii) the fact that her temporary Work Permit expires in June 2025 (and/or may already be void given Ms. Wu's actions of working for another employer)."

The CPL

[21] A CPL may be issued when there is a triable issue of a reasonable claim to an interest in land. The court must exercise its discretion in equity and look at all relevant matters between the parties in determining whether a CPL should be granted or vacated: s. 103 *Courts of Justice Act*, RSO 1990, c. 43; *Roseglen Village for Seniors Inc. v. Doble*, 2010 ONSC 3239, 100 C.P.C. (6th) 176, aff'd 2010 ONSC 4680. A CPL is designed to protect an unregistered interest in land: *Todd Family Trust v. Barefoot Science Technologies Inc.*, 2013 ONSC 523 (Div. Ct.) at para. 13.

[22] The plaintiff claims an interest in the land on the basis of an express or resulting trust, or by way of constructive trust due to unjust enrichment. He has claimed a CPL in his statement of claim.

[23] A CPL may be granted without notice where there is urgency or real risk. Here, there is a caution on the property that does not expire until June 9, 2024. As will be seen below, I am granting the Mareva injunction requested with respect to the line of credit with a return date of May 6, 2024. I order that the plaintiff provide notice of its motion for a CPL to the defendant. The motion will be heard on May 6, 2024 at the same time I have scheduled the return of the Mareva.

The Mareva injunction

[24] The plaintiff is required to demonstrate particulars of its claim against the defendant, a strong *prima facie* case on the merits, grounds for believing the defendants have assets in the jurisdiction, and a real risk that the defendant will remove assets from the jurisdiction to dissipate those assets to avoid the possibility of a judgment. The moving party must provide an undertaking as to damages: *Aetna Financial Services v. Feigelman*, 1985 CanLII 55 (SCC), [1985] 1 SCR 2 at paras. 29-30. The balance of convenience must also be considered.

[25] With respect to the strength of its case, the plaintiff argues that the evidence, including the money deposit agreements, indicate that there was a certainty of intention, subject matter and objects, creating an express trust. He argues the language of the money deposit agreements, set out in paragraph 5 above, clearly indicates the parties' intention to create a trust interest in the property itself on behalf of the plaintiff, satisfying the three certainties required for a trust: *Angus v. Port Hope (Municipality)*, 2017 ONCA 566 at para. 95.

[26] The plaintiff argues the doctrine of resulting trust also applies, in that he provided a significant proportion of the funds for the property and never intended to do so as a gift. He also claims the defendant would be unjustly enriched by receiving the full proceeds of any sale, and he would therefore be entitled to a constructive trust remedy in respect of a significant portion of those funds.

[27] Based on the facts set out above, I am satisfied that the plaintiff has established a strong *prima facie* claim for a beneficial interest in the property. Based on the written agreements signed by the parties and the amount of funds the records indicate were paid by the plaintiff, there is a strong *prima facie* case for a trust claim in respect of the property. The fact that the negotiations between the parties to satisfy his claim only seem to have gone awry once the defendant lost her employment supports the strength of the plaintiff's case.

[28] The injunction is sought with respect to the line of credit that is solely in the defendant's name and she is on title to the property in issue; she clearly has assets in the jurisdiction.

[29] I am also satisfied there is a real risk of dissipation. The line of credit had been mostly dormant for years. It was only used by the defendant to transfer funds to herself in China once her employment was terminated and relations between the parties soured. The listing for the property's sale indicates that the defendant intends to return to China. Given that her work permit restricts her to working for the plaintiff's company, which has terminated her employment, it is reasonable to infer she may need to return to China to find work. Indeed, she has been in Canada for only a brief period of time, despite her earlier plans to move here.

[30] The plaintiff has provided the required undertaking as to damages.

[31] Finally, the balance of convenience strongly favours the plaintiff. He will suffer irreparable harm if the defendant draws further on the line of credit for her own use. Any profits from the sale of the property will be paid first to resolve the line of credit. The defendant will have removed the funds to China. The defendant has not drawn upon the line of credit to any significant degree in all the years of its existence. There is no evidence she will suffer any harm if it is frozen.

Disposition

[32] I make the following orders:

- a. The plaintiff shall provide notice to the defendant of its motion for a CPL on the property, which shall be heard before me by Zoom on May 6, 2024 at 9 am.
- b. The defendant is hereby restrained for a period of 10 days from the date of this Order, from drawing upon, withdrawing any money from, using or in any way dealing with the Line of Credit, being CIBC Account Number 02632-31-66031.
- c. CIBC, for a period of 10 days from the date of this Order, to forthwith freeze and prevent any withdrawal, removal or transfer of funds from the Line of Credit, being CIBC Account Number 02632-31-66031.
- d. Any motion to extend the orders in paragraphs b and c above shall be heard before me by Zoom on May 6, 2024, at 9 am.

[33] A signed order is provided.

L. Brownstone J.

Date: April 24, 2024