CITATION: Madison Homes Cornell Rouge Limited v Jiang, 2026 ONSC 2159
COURT FILE NO.: CV-23-00701065
MOTION HEARD: 20260324

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Madison Homes Cornell Rouge Limited, Plaintiff

AND:

Liangfu Jiang, Qiao Chen, Jane Doe and John Doe, Defendants

BEFORE: Associate Justice L. La Horey

COUNSEL: Shane Greaves, for the moving party plaintiff

Dr. Ran He, for responding parties Liangfu Jiang and Qiao Chen, defendants

HEARD: March 24, 2026

REASONS FOR DECISION

NATURE OF THE MOTION

[1] The plaintiff, Madison Homes Cornell Rouge Limited, brings this motion for a certificate of pending litigation ("CPL") over property located at 19 Honeybourne Crescent, Markham (the "Property"). The defendant Qiao Chen is the registered owner of the Property. She lives at the Property with her husband, the defendant Liangfu Jiang. The plaintiff has an outstanding judgment against Mr. Jiang. The plaintiff alleges that Ms. Chen holds all or part of the Property in trust for Mr. Jiang pursuant to a resulting and/or constructive trust. The plaintiff submits that its claim gives rise to a triable issue as to an interest in land and that the court should exercise its discretion to grant leave to the plaintiff to issue a CPL on a balancing of the equities.

[2] The defendants oppose the motion. In their factum, the defendants took the position that there is no triable issue. At the hearing, at the outset of his submissions, counsel for the defendants advised that his clients concede (for the purposes of this motion) that there is a triable issue raised by the plaintiff. Accordingly, he limited his submissions to the defendants' objections to the motion on the basis of the equities and submitted that the court should not exercise its discretion to grant a CPL.

[3] For the reasons that follow, the plaintiff's motion is granted.

BACKGROUND

[4] The plaintiff obtained summary judgment against Mr. Jiang in the amount of $242,759.29 plus $23,000 in costs on August 16, 2021 (the "first action"). The judgment was upheld by the Court of Appeal for Ontario on May 2, 2022, with costs payable to the plaintiff (2022 ONSC 351). The plaintiff's claim in the first action was for damages in respect of a failed agreement of purchase and sale for a pre-construction single family dwelling, entered into between the plaintiff as vendor and Mr. Jiang as purchaser on November 19, 2016. In October 2018 Mr. Jiang was not in a financial position to close the transaction. The plaintiff commenced its action against Mr. Jiang in November 2018 seeking damages for breach of the agreement of purchase and sale. The judgment is unpaid.

[5] In an effort to collect on its judgment, the plaintiff filed a writ of seizure and sale and examined Mr. Jiang in aid of execution. Mr. Jiang refused to answer questions that were later ordered to be answered pursuant to the order of Associate Justice Frank made January 24, 2023, who also ordered that Mr. Jiang pay costs of the motion of $3,250.

[6] The plaintiff commenced this action on June 14, 2023, alleging that Mr. Jiang is the beneficial owner of the Property. The Property was purchased on October 26, 2016, for $1,458,000. Ms. Chen was registered on title as the sole owner. The bungalow on the Property at the time of purchase was demolished in 2017 and a four bedroom two-storey home was constructed in its place.

[7] In its statement of claim, the plaintiff claims, *inter alia*: a) a declaration that Ms. Chen holds the Property in trust for Mr. Jiang pursuant to the doctrines of constructive trust or resulting trust and may be seized and sold by the plaintiff pursuant to subsection 9(1) of the *Execution Act*, up to the value of the outstanding judgment and cost awards; b) a CPL against the Property; c) an accounting order and a tracing order with respect to funds transferred from Mr. Jiang to Ms. Chen or others without consideration since 2016 (the "Funds"); d) a declaration that the transfer of Funds or property from Mr. Jiang to Ms. Chen is an unjust preference and/ or a fraudulent conveyance; and, e) damages against Ms. Chen for knowing receipt and unjust enrichment.

[8] The plaintiff had difficulty in serving the statement of claim. The plaintiff attempted personal service on the defendants on eight occasions between June 2023 and October 2023. Mr. Jiang's lawyer in the first action and current lawyer, Dr. He, did not accept service of the statement of claim when asked to do so in October 2023. The plaintiff then had to bring a motion for substituted service which was filed on November 12, 2023, and granted on February 7, 2024.

[9] Dr. He served the statement of defence on behalf of the defendants on or about April 8, 2024.

[10] The plaintiff served its affidavit of documents on July 9, 2024. The defendants served their affidavit of documents on August 11, 2024. Examinations for discovery took place on March 5, 2025.

[11] The plaintiff filed a requisition seeking to schedule this long motion on May 12, 2025. The plaintiff's motion originally included a request for an order requiring Ms. Chen to answer outstanding undertakings and questions refused from her examination for discovery. Prior to the hearing, the parties settled this aspect of the motion and I have signed a consent order.

APPLICABLE LAW AND ANALYSIS

Test for a CPL

[12] Section 103 of the *Courts of Justice Act*[1] authorizes the registration of a CPL when "an interest in land is in question."

[13] The test for a CPL is well known. Master Glustein (as he then was) summarized the applicable principles in *Perruzza v Spatone*[2] as follows:

(i) The test on a motion for leave to issue a CPL made on notice to the defendants is the same as the test on a motion to discharge a CPL (*Homebuilder Inc. v. Man-Sonic Industries Inc.*, 1987 CarswellOnt 499 (S.C. - Mast.) ("*Homebuilder*") at para. 1);

(ii) The threshold in respect of the "interest in land" issue in a motion respecting a CPL (as that factor is set out at section 103(6) of the *Courts of Justice Act, R.S.O. 1990, c. C.43*) is whether there is a triable issue as to such interest, not whether the plaintiff will likely succeed (*1152939 Ontario Ltd. v. 2055835 Ontario Ltd.*, 2007 CarswellOnt 756 (S.C.J.), as per van Rensburg J., citing *Transmaris Farms Ltd. v. Sieber*, [1999] O.J. No. 300 (Gen. Div. - Comm. List) at para. 62);

(iii) The onus is on the party opposing the CPL to demonstrate that there is no triable issue in respect to whether the party seeking the CPL has "a reasonable claim to the interest in the land claimed" (*G.P.I. Greenfield Pioneer Inc. v. Moore*, 2002 CarswellOnt 219 (C.A.) at para. 20);

(iv) Factors the court can consider on a motion to discharge a CPL include (i) whether the plaintiff is a shell corporation, (ii) whether the land is unique, (iii) the intent of the parties in acquiring the land, (iv) whether there is an alternative claim for damages, (v) the ease or difficulty in calculating damages, (vi) whether damages would be a satisfactory remedy, (vii) the presence or absence of a willing purchaser, and (viii) the harm to each party if the CPL is or is not removed with or without security (*572383 Ontario Inc. v. Dhunna*, 1987 CarswellOnt 551 (S.C. - Mast.) at paras. 10-18); and,

(v) The governing test is that the court must exercise its discretion in equity and look at all relevant matters between the parties in determining whether a CPL should be

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[1] RSO 1990, c C.43
[2] 2010 ONSC 841 (Master) at para 20

> granted or vacated (*931473 Ontario Ltd. v. Coldwell Banker Canada Inc.*, 1991 CarswellOnt 460 (Gen. Div.); *Clock Investments Ltd. v. Hardwood Estates Ltd.*, 1977 CarswellOnt 1026 (Div. Ct.) at para. 9).

[14] In *Karkoulis v Karkoulis,*[3] Justice R.M. Bell explained the "interest in land" component of the test as follows:

> 18 It is not the court's role to determine whether the plaintiff's claim will likely succeed at trial, but whether a triable issue exists with respect to a reasonable claim to an interest in land: *HarbourEdge Mortgage Investment Corp. v. Timbercreek Mortgage Investment Corp. (Trustee of)*, at para. 56.9 The onus is on the party opposing the CPL to show that there is no triable issue: *Boal v. International Capital Management Inc.*, at para. 64.
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> 19 In determining if there is a triable issue, the evidentiary bar is low: *Saggi v. Grillone*, at paras. 45 and 62; *Pauwa North America Development Group Co. Ltd. v. Skyline Port McNicoll (Development) Inc.*, at para. 38. The court is not to assess credibility or decide disputed issues of fact and credibility: *Huntjens v. Obradovic; Pauwa*, at para. 38.

[15] A claim that a judgment debtor is the beneficial owner of property as a result of a resulting or constructive trust is a claim that calls into question an interest in land.[4] In its claim, the plaintiff has pleaded that Mr. Jiang is the beneficial owner of the Property. If the plaintiff succeeds in its action, the plaintiff can look to the Property to satisfy its judgment against Mr. Jiang pursuant to section 9 of the *Execution Act*.[5]

[16] The plaintiff alleges that the Property was purchased with funds which were beneficially owned by both Mr. Jiang and Ms. Chen. Specifically, they allege that the Property was purchased using funds received by Mr. Jiang and Ms. Chen in connection with the sale of shares in two corporations. They also allege that the proceeds of sale of property owned by Mr. Jiang were used to finance the renovations to the Property.

[17] Mr. Jiang and Ms. Chen each filed an affidavit in response to the motion. They both depose that the Property was purchased with Ms. Chen's own funds and that Ms. Chen does not hold any part of the Property in trust for Mr. Jiang.

[18] As noted above, the defendants concede that a triable issue exists.

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[3] 2023 ONSC 499 at paras 18 – 19
[4] *Ontario (Securities Commission) v. Tsatskin*, 2024 ONSC 4720 (Assoc. J.) at paras 44, 58 – 60; *Karkoulis* at para 24
[5] RSO 1990, c. E.24. *Ontario (Securities Commission)* at para 55; *Avan v Benarroch*, 2017 ONSC 4729 (Assoc. J.) at para 22

Consideration of the Equities

[19] Even if there is a triable issue, a CPL may still be refused after a consideration of the equities.

[20] A consideration of the equities includes consideration of what are commonly called the *Dhunna* factors.[6] These factors are not intended to be exhaustive nor is any one determinative.

[21] The traditional *Dhunna* factors may not all be relevant in a case where a tracing order and trust is sought, as opposed to an action for specific performance.[7]

[22] The court's overarching task is to exercise its discretion in the interests of justice, having regard to all of the equities between the parties.

Delay

[23] Courts have held that a party's delay in seeking a CPL is an equitable factor that weighs against granting leave to issue a CPL.[8]

[24] The defendants submit that the plaintiff's delay in seeking a CPL is significant and unexplained and militates against the exercise of the court's discretion to grant a CPL.

[25] I disagree.

[26] From the issuance of the statement of claim to the date the plaintiff filed its requisition for this motion is approximately two years. Some of the litigation delay is attributable to the defendants. As described above, the plaintiff was compelled to obtain an order for substituted service which was obtained on February 7, 2024.

[27] Thereafter, pleadings were closed and affidavits of documents were served in relatively short order. Examinations for discoveries were held in March 2025. The plaintiff has moved expeditiously in proceeding with the action.

[28] The defendants argue that the plaintiff has delayed as it could have brought a motion for a CPL after the claim was issued. I agree with the defendants that it was reasonable to go through the discovery process before bringing this motion given the complexity of the case. This is not a relatively straightforward case of a failed agreement of purchase and sale, as was the case in *Sethi v Calexico Holdings Inc*.[9] where I found that the plaintiff's delay in prosecuting the claim militated against a CPL.

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[6] These are described in *Perruzza*, para 20(iv) quoted above.
[7] *Avan* at para 36; *Ontario (Securities Commission)* at para 83
[8] *Mafi v Sadati*, 2025 ONSC 6182 at para 22; *Ontario (Securities Commission)* at para 104; *Claireville Holdings v Botiuk*, 2014 ONSC 6505 at paras 24 – 25, leave to appeal refused 2015 ONSC 694 (Div. Ct.)
[9] 2022 ONSC 1170 (Assoc. J.) at para 58

[29] The defendants suggest that the plaintiff was in a position to bring its motion by January 2023, when Mr. Jiang had been examined in aid of execution and had been ordered to deliver answers to undertakings. Given that the plaintiff had to bring motions to compel answers given at the examination in aid of execution and on discovery, this argument is not compelling. Further, it was reasonable for the plaintiff to wait to have Ms. Chen's discovery evidence before launching this motion. There is also no evidence that the defendants have changed their position to their detriment such that the late registration of a CPL would work to their detriment.

[30] In my view, delay is not a factor in this case.

Prejudice

[31] In their factum and in oral submissions, the defendants say that a CPL is prejudicial because it would materially impair Ms. Chen's ability to refinance or sell the Property. However, the defendants have tendered no evidence of prejudice. There is no evidence that Ms. Chen has any intention to sell or refinance the Property. Neither of the affidavits filed by the defendants on this motion addresses the issue of prejudice. Defendants' counsel says it is a matter of common sense that Ms. Chen will be prejudiced. In my view, if Ms. Chen was claiming prejudice, this should have been in an affidavit, so it could be tested on cross-examination. I find that there is little or no harm to Ms. Chen if the motion is granted.

[32] On the other hand, if the motion is refused, the plaintiff may be without any remedy for its judgment. Mr. Jiang's evidence is that he has no assets to pay the plaintiff's judgment in the first action. His beneficial interest in the Property, if found by a court to exist, appears to be the only asset available to satisfy the plaintiff's claim against him.

[33] To borrow the words of Justice Corbett in *Claireville Holdings v Botiuk*: "If relief is not granted, there is good reason to fear that the 'none-too-merry chase' for payment of the judgment will continue interminably."[10] In this case, the defendants have put up impediments to the plaintiff's collection efforts. The defendants refused to instruct their lawyer to accept service of the statement of claim in this action, necessitating a motion for substituted service after the plaintiff's eight attempts at personal service were unsuccessful. The plaintiff has been forced to bring two motions to compel disclosure from the defendants. First, in respect of the examination in aid of execution of Mr. Jiang and second, with respect to examinations for discovery of Ms. Chen.

[34] The prejudice to the plaintiff is the possibility that Ms. Chen could further encumber the Property and dissipate the equity before the plaintiff's claim that Mr. Jiang is a beneficial owner of the Property is ultimately adjudicated by the court. There is reason to be concerned that the defendants will place further obstacles in the way of getting this matter to trial in a timely way. Defence counsel argued that there is no reason to think that Ms. Chen will dispose of the Property, however she did not address this in her affidavit.

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[10] *Claireville Holdings* at para 26

Strength of the plaintiff's case

[35] In determining whether or not it is just that a CPL should be granted, the court may consider the strength of the plaintiff's case.[11]

[36] The defendants contend that although the plaintiff can meet the low evidentiary bar to satisfy the triable issue requirement, the plaintiff's case is weak and this militates against a CPL.

[37] The plaintiff's theory is that the funds for the purchase of the Property came from the completed sale of Mr. Jiang's shares in Muskie Bay Resort Inc. ("MBR") and deposit monies in respect of a share sale transaction for the sale of shares belonging to Mr. Jiang in Xinxin Corp ("Xinxin") that was not completed. The defendants deny this. The evidence is not straightforward.

[38] With respect to the sale of shares of MBR, the plaintiff relies on a document signed by Mr. Jiang and Ms. Chen titled "Sellers' Acknowledgment of Purchase Price Received from the purchaser". The document provides in part that "**we** have received the sum of $1,200,000 in Canadian Funds" from the buyer (my emphasis). On his examination in aid of execution, Mr. Jiang said that he sold his shares in MBR for "not much, several hundred thousand, maybe 200 … 300,000." This evidence is not consistent with the evidence of Ms. Chen when she said on discovery that neither she nor Mr. Jiang received any money because they were holding shares in trust for friends. In her affidavit on the motion, Ms. Chen says that she held shares in trust for friends and the payment for the shares was directed to those friends. She does not address her husband's ownership of shares. Her evidence was that they signed the acknowledgement because the accountant told her it was necessary for accounting purposes.

[39] The plaintiff alleges that Mr. Jiang has an ownership interest in Xinxin. This is denied by the defendants. In their affidavits they say that Ms. Chen is sole shareholder, director and officer of the company. They have produced articles of incorporation and articles of amendment which do not mention Mr. Jiang. However, they have not produced the share register or other corporate documents. There is evidence of Mr. Jiang's involvement in Xinxin, in the form of a land transfer tax statement in which he is identified as the "President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act" for Xinxin. Mr. Jiang is also the co-plaintiff with Xinxin in litigation with respect to the purchase of a tractor. Mr. Jiang said he purchased the tractor himself, although the settlement funds were paid to Xinxin.

[40] In September 2016 a purchaser paid $500,000 as a deposit towards the sale of shares in Xinxin. At least some of the money was deposited into Xinxin's bank account. On September 7, 2016, $435,000 was paid out of the Xinxin account to Ms. Chen. The defendants produced a copy of a bank draft for the purchase of the Property dated October

[11] *Avan* at para 18; *Ontario (Securities Commission)* at para 81

25, 2016, for $470,050.35. Ms. Chen took title to the Property on October 26, 2016. The plaintiff's position is that Xinxin is at least partially owned by Mr. Jiang and part of the deposit money for the purchase of his shares was used to purchase the Property.

[41] Ultimately, the share purchase transaction for the Xinxin shares was not completed. The purchaser commenced an action against Xinxin, Mr. Jiang and Ms. Chen. The defendants filed a joint defence and counterclaim. The defendants' current position in this action that Ms. Chen is the sole shareholder in Xinxin is contradicted in their statement of defence and counterclaim where Mr. Jiang and Ms. Chen are both described as shareholders in Xinxin who were to receive payment for their shares. They plead that because the plaintiff breached the share purchase agreement, the defendants did not receive the closing funds and thus were not able to close another transaction. This transaction was Mr. Jiang's purchase from the plaintiff that gave rise to the first action. In her affidavit on this motion, Ms. Chen's evidence is that the statement of defence and counterclaim is incorrect insofar as it states that her husband was a shareholder of Xinxin.

[42] Mr. Jiang received net proceeds of $1,129,824.41 from the sale of 28 Queensgate Ct., Markham on January 12, 2017. This property was registered in Mr. Jiang's name. In his affidavit on this motion he describes it as his "former home". From this it can be inferred that it was the marital home.

[43] The closing of the 28 Queensgate sale occurred after the purchase of the Property. The plaintiff submits that it is reasonable to infer that the proceeds of the sale of the Queensgate property were used to pay for the demolition of the two bedroom bungalow on the Property and the construction of a four bedroom, 4,000 square foot home in its stead. This demolition and construction took place in 2017 – 2018.

[44] On discovery, Mr. Jiang said that he used the proceeds from the Queensgate property to pay back money he owed to other people but he did not have any documents to support this.

[45] Both Mr. Jiang and Ms. Chen in their affidavits say that they are hampered by not having all of the historical financial records as some bank accounts have been closed and the records are more than seven years old. They also say that they intend to bring a motion compelling the production of further financial records from the relevant financial institutions. The defendants have had years since becoming aware of this claim in 2023 to request records and bring any necessary motions to obtain records. In any event, one would have thought that the defendants would have more records with respect to these significant financial transactions.

[46] The plaintiff submits that it is significant that the defendants have produced no documents to show where the monies for the purchase of the Property came from, no documents to show where the proceeds of $1,129,824.41 from the sale of the Queensgate property went and no documents to show how the demolition and construction at the Property was funded.

[47] Because of the conflicting evidence and the evidentiary gaps I am not in a position to say how strong the plaintiff's claim is. I would have found that a triable issue existed, even if the defendants had not conceded the point. Beyond that, I am not in a position to weigh the evidence or make findings based on disputed facts. The strength of the plaintiff's case is not a factor in favour of or against a CPL.

Other factors

[48] The defendants argue that as the plaintiff is a judgment creditor, and as the first action is for damages, damages are a satisfactory remedy and that this factor weighs against a CPL. However, this action is primarily a claim for a declaration of a trust, not a claim for damages.[12]

[49] It is not disputed that the plaintiff is not a shell company. It has given an undertaking as to damages. This is a factor in favour of a CPL.

Conclusion on the equities

[50] Having considered and balanced the equities, I have concluded that it is just and equitable to grant the plaintiff's motion for a CPL.

DISPOSITON

[51] The plaintiff's motion is granted. The plaintiff is given leave to issue a CPL against the Property.

[52] The parties have agreed that the plaintiff, if successful, would be entitled to its partial indemnity costs in the all-inclusive amount of $15,000 payable in 30 days. As the plaintiff was successful, the defendants shall pay this amount to the plaintiff within 30 days of the release of this decision.

[53] The parties may submit a draft order in Word to me in accordance with the above.

L. La Horey, A.J.

Date: April 10, 2026

[12] The plaintiff has advanced a claim for damages against Ms. Chen for "knowing receipt and unjust enrichment". I do not understand the basis of this claim.