Real estate purchaser protections upheld: B.C. Court of Appeal confirms that a purchaser's lien survives despite an alternative claim for rescission

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A certificate of pending litigation (CPL) is a powerful tool in the litigator's arsenal. It is often used in claims for specific performance and constructive trusts (both remedial and substantive) as a means to freeze title and prevent the owner from dealing with the property, as they otherwise might have. CPLs are available when the plaintiff claims an interest in land, and they are generally *not* available when the claim is for monetary relief.

The recent case of *1332404 B.C. Ltd. v. 1266685 B.C. Ltd*., 2025 BCCA 46, highlights a nuance in this rule. In this case, the Court of Appeal for British Columbia held that a claim for purchaser's lien (security for a real estate deposit) can be the basis for a CPL, even when pleaded in the alternative to a claim for rescission or the return of a deposit.

What you need to know

Pursuant to s. 215(1)(a) of the *Land Title Act* (LTA),[1] a CPL can be registered against property by a plaintiff who is claiming an estate or interest in that property. If the plaintiff's claim does not give rise to an interest in land, and the CPL is challenged, the CPL will be cancelled.

In a claim for rescission, the plaintiff seeks to legally rescind the contract, *i.e.*, the contract will be "undone", and the parties placed back in the position they would have been in had the contract not been made.[2] A claim for rescission does not give rise to any interest in land.

A purchaser's lien is a relatively obscure equitable remedy. It provides a purchaser with a security interest for the return of deposits paid under a contract for the purchase and sale of land. The lien is said to have the same effect as if the vendor had executed a mortgage in the purchaser's favour.

The purchaser's lien arises if money is paid to the vendor (but not where money is paid to a stakeholder). The requisite facts to plead a purchaser's lien are:

- the existence of a valid contract of purchase and sale between the parties;
- the payment of funds pursuant to that contract by the purchaser to the vendor; and
- the contract having gone off through no fault of the purchaser.

Background

This case involved a dispute between a purchaser, 1332404 B.C. Ltd. (133), and a vendor, 1317903 B.C. Ltd. (131), over a failed transaction involving two development lots in Langley, British Columbia (the Property). 133 paid 131 a $1,417,000 deposit.

133 claimed, among other things, that the purchase and sale agreement should be rescinded and 133's deposit returned. 133 also claimed an interest in the Property equivalent to the deposit paid to 131 by way of a purchaser's lien and registered a CPL against the Property. 131 applied to cancel the CPL on the basis that 133 did not claim an interest in land.

The chambers judge considered that "at first glance" this was a monetary claim to recover a deposit, which would not entitle 133 to a CPL. However, 133 had also pleaded a purchaser's lien. The chambers judge considered that there was a "possibility" that 133 was asserting an interest in land, however, she ultimately concluded that the plaintiff's pleadings – namely, its claim for rescission – were *inconsistent* with such an assertion. Because of this "clear inconsistency", she determined that 133 had not genuinely asserted an interest in land and cancelled the CPL.

Analysis

133 successfully appealed. The Court held that when a purchaser's lien is properly claimed, it constitutes an interest in land that can ground a CPL. The fact that a plaintiff also sought rescission or the return of deposits paid does not defeat that assertion.

The Court explained that the only question under s. 215 is "whether the material facts pleaded support claiming an interest in land by way of a purchaser's lien". Concerns about the misuse of CPLs do not grant "a licence to courts to assess whether relief sought in a pleading is sought 'genuinely'". A judge hearing an application to cancel a CPL should not assess the merits, determine if there is a triable issue, or interpret pleadings to determine whether the claim for an interest in land is the "true" nature of the claim.

The Court clarified that there is no residual discretion under s. 215 to cancel a CPL on the basis that damages are an adequate remedy: the only question is whether the plaintiff has pleaded an interest in land (although, it may be that the claim for an interest in land advanced by a plaintiff requires them to plead that damages are not an adequate remedy if, *e.g.*, a plaintiff is claiming a constructive trust[3]).

The Court concluded that 133 had claimed an interest in land, and the CPL should not have been cancelled. There was no "inconsistency" in 133's pleadings of rescission and the return of the deposit, as well as a purchaser's lien. The law does not preclude a plaintiff from asserting a purchaser's lien where the contract is rescinded, or where specific performance of the agreement is not sought or available. It was permissible, at this stage, for 133 to seek those *alternative* remedies.

Key takeaways

- Pleading *alternative* remedies to a purchaser's lien, such as rescission and the return of a deposit, is not necessarily *inconsistent* with asserting an interest in land and will not necessarily defeat a CPL. A properly pleaded claim for a purchaser's lien, even if done in the alternative, is a claim to an interest in land, satisfying the requirements for a CPL set out in s. 215 of the LTA. However, parties should consider whether they are pleading remedies that are *alternative* (which is permissible) or *inconsistent* (which is not permissible).
- Purchaser's liens exists even where specific performance (a remedy requiring the parties to complete the property transaction) is not available or where damages would be an otherwise adequate remedy.[4]

The only question under s. 215 of the LTA is whether the material facts pleaded support claiming an interest in land. When assessing whether to cancel a CPL under s. 215, the courts should review the pleadings but not engage in any assessment of the merits, nor try to assess the "true nature" of the claim advanced.

Footnotes

[1] R.S.B.C. 1996, c. 250.

[2] *Kingu v. Walmar Ventures Ltd.* 1986 CanLII 142 at para. 17 (B.C.C.A.).

[3] See, e.g., *Zou v. Rai*, 2021 BCSC 1931 at paras. 15-17.

[4] *Pan Canadian Mortgage Group III Inc. v. 0859811 B.C. Ltd.*, 2014 BCCA 113 at paras. 1-2; *1332404 B.C. Ltd. v. 1266685 B.C. Ltd.*, 2025 BCCA 46 at paras. 5-11, 28.

By

Matthew G. Swanson, Jake Cabott, Sarah Péloquin, Alysha Flipse

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Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
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T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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