

CANADA / JUDGMENT

Abby Pharmacy Ltd. v. Ghag

2021 BCSC 2742

COURT

Supreme Court of British Columbia

DECIDED

20 October 2021

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2021 BCSC 2742 Abby Pharmacy Ltd. v. Ghag

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Abby Pharmacy Ltd. v. Ghag,

2021 BCSC 2742

Date: 20211020

Docket: S209439

Registry: Vancouver

Between:

Abby Pharmacy Ltd.

Plaintiff

And

Brendan Ghag

Defendant

And

Charmaine Ghag, The Sukie Ghag Family Trust,

Hardeep Khabra and Harvinder Dhaliwal

Defendants by Counterclaim

- and -

Docket: S212078

Registry: Vancouver

Between:

Brendan Ghag

Petitioner

And

Veena Charmaine Ghag

Respondent

- and -

Docket: S214010

Registry: Vancouver

Between:

Brendan Ghag

Plaintiff

And

Veena Charmaine Ghag, Executor of the Estate of

Sukhvinder Singh Ghag and Veena Charmaine Ghag,

Ashton Ghag, Cheyenne Ghag, Shaylene Ghag

Defendants

Before: The Honourable Mr. Justice Kent

Oral Reasons for Judgment

Counsel for Abby Pharmacy Ltd., Charmaine Ghag:

A.Dosanjh

C. Gallant

Counsel for Brandan Ghag:

Self-represented

Counsel for Hardeep Khabra, Harvinder Djaliwal:

D.K. Georgetti

Place and Date of Hearing:

Vancouver, B.C.

October 19-20, 2021

Place and Date of Judgment:

Vancouver, B.C.

October 20, 2021

- [1] THE COURT: I have before me, today four applications in three separate actions, namely Vancouver Registry actions S209439, S212078, and S214010. All applications seek dismissal of claims made by Mr. Brendan Ghag ("Mr. Ghag"). As well, a vexatious litigant order is sought under s. 18 of the Supreme Court Act, RSBC 1996, c443, prohibiting Mr. Ghag from instituting any further proceedings without leave of the court first being obtained.
- [2] These are oral reasons delivered after two days of submissions. If a transcript is ordered, I reserve the right to edit both the syntax and content of the reasons in a non-substantive fashion; however, the result will of course remain the same. The style of cause in any transcribed judgment should reflect all three actions as they appeared on the cover page of the application record.
- [3] I am satisfied that Mr. Ghag was properly served with these applications, that he was informed of the hearing dates, and that he deliberately absented himself from the hearing. He did, however, provide written submissions dated July 5, 2021, which I have read and taken into account.
- [4] Two paragraphs of Mr. Ghag's written submissions should be noted at the outset:

The written argument below, the affidavits I have submitted, and my pleadings will be the extent of my submissions in this matter. I do not believe I have sufficient oral skills to change matters. I will admit that my experience has led me to have minimal faith in the integrity in the court system. It appears more plutocratic than bureaucratic, which is problematic to say the least. Where bureaucracy has a place and purpose, plutocracy is more akin to rot and disease.

- [5] It should be noted that Mr. Ghag is a lawyer. As a member of the bar, albeit a non-practicing member at present, it is rather disturbing to see him accuse the court system of rot and disease. Mind you, much more disturbing is the content of certain parts of Mr. Ghag's materials and correspondence. Among other things, that content includes the following:
1. an admission that he has fabricated evidence in the past and manufactured losses;
 2. an admission that he prepared and had his father sign affidavits which he, Mr. Ghag, knew were false;
 3. an admission that he had created a sham family trust; and,

4. an admission that he was using threats of costly and unmeritorious litigation in an attempt to extract financial settlements in his favour.
- [6] For the reasons that follow, the applicants are granted the relief that they seek and special costs are awarded against Mr. Ghag.
- [7] Mr. Ghag's father died of brain cancer in 2017. Shortly before his death, steps were taken to minimize the impact of taxes and probate fees on the estate. They included the creation of the Ghag Family Trust in 2017 and transferring various assets into joint tenancy with Mr. Ghag's mother. The trust was established for the benefit of five named beneficiaries, namely the mother and the four children including Mr. Ghag. No beneficiary was given priority. Mr. Ghag was named as trustee and his mother as the replacement trustee.
- [8] The primary asset of the trust were the Class A common voting shares of Abby Pharmacy Ltd., shares which had formerly been owned by the father. The trust gave wide discretionary powers to the trustee to be exercised in the best interests of the beneficiaries.
- [9] Following the father's death, Mr. Ghag purported to restructure the ownership of Abby Pharmacy Ltd., and he distributed the shares in a manner that created himself as the majority shareholder. The result was that the family trust was left without any meaningful assets. He then purported to distribute to himself a series of dividends totalling \$1.295 million.
- [10] Once the mother and the other three sibling beneficiaries discovered Mr. Ghag's conduct, they issued a petition proceeding in Vancouver Registry action number S190923 seeking to have Mr. Ghag removed as trustee of the family trust and the mother appointed in his place. They sought an accounting and also to have the self-serving share transaction set aside. Mr. Justice Tammen of this Court granted judgment in their favour on June 21, 2020 (Ghag v. Ghag, 2021 BCSC 90). Mr. Ghag appealed the judgment. The Court of Appeal dismissed the appeal on January 27, 2021. The Court's reasons for judgment are indexed at Ghag v. Ghag, 2021 BCCA 106.
- [11] Mr. Ghag defended his conduct on the basis that the family trust was a sham and that his father's intentions regarding his estate and the wealth he had created during his lifetime were actually contained in a "secret agreement" executed in July 2016 a few days before the father underwent brain surgery. That agreement provided that the mother would inherit all of the father's assets in a fashion that would save taxes; however, Mr. Ghag was to be the true owner of the assets.
- [12] A copy of the agreement was later produced in the litigation. It purports to be signed by Mr. Ghag, his father, and his mother. The latter denies she ever signed any such agreement, and says that she saw the document for the first time when it was produced in the litigation. She also says that she spent the day on which it was purported to be signed by the father with her husband and that she did not see him sign the document either. Her evidence is essentially that the document is a forgery, presumably perpetrated by Mr. Ghag.

- [13] Mr. Justice Tammen expressly declined to comment on the alleged secret agreement and made no findings concerning its validity. For him, it was sufficient that Mr. Ghag had failed to administer the family trust in accordance with the trust deed and in accordance with his duty of loyalty to the named beneficiaries. Mr. Ghag's actions effectively deprived all the other beneficiaries of their rights. His refusal to provide an accounting for the money he had withdrawn was noted, as was Mr. Ghag's then counsel's acknowledgement that his client had taken the money for himself and used it for personal purposes.
- [14] The Court of Appeal treated Mr. Ghag politely, although it did note the "obviously improper and self-interested nature of these transactions". It also observed that Mr. Ghag had "appropriated the majority of the trust's assets for himself" notwithstanding the terms of the family trust, which were "clear and unambiguous and contrary to the intentions and secret agreement that Mr. Ghag says guided his decisions".
- [15] On June 26, 2020, less than one month before the hearing to remove him as trustee of the family trust, Mr. Ghag filed action number S228482 in the New Westminster Registry against the other beneficiaries in which he claimed ownership over essentially all the family's assets. In that action, he again relied upon the alleged secret agreement.
- [16] Following the removal of Mr. Ghag as trustee, the other beneficiaries applied for security for costs in the New Westminster action. On April 1, 2021, Madam Justice Duncan ordered security to be posted in the amount of \$25,000 within 60 days, failing which the action would be stayed. On June 15, 2021, Madam Justice Iyer of this Court dismissed Mr. Ghag's action for failure to post the required security.
- [17] On September 18, 2020, Abby Pharmacy issued Vancouver Registry action S209439 seeking judgment against Mr. Ghag for the \$1.295 million dollars he had misappropriated from the company by way of invalid dividends.
- [18] Mr. Ghag filed his Response to Civil Claim on October 14, 2020. Once again he relied on the 2016 alleged secret agreement as a defence, and he continued to claim that he was the "legal and beneficial shareholder of Abby Pharmacy Ltd." rightfully entitled to receive the dividends. He attached as an appendix to his pleading a copy of the Notice of Civil Claim he had issued in the June 2020 New Westminster action, S228482.
- [19] On February 18, 2021, one month after his appeal and the trustee petition had been dismissed by the Court of Appeal and five months after the Abby action had been issued to recover the misappropriated \$1.295 million dollars, Mr. Ghag filed a Counterclaim in the Abby action. He named as Defendants by Counterclaim the family trust, which is not a legal entity capable of being sued; his mother; and two pharmacists who were also directors, namely Mr. Khabra and Mr. Dhaliwal.

- [20] In the Counterclaim Mr. Ghag once again invoked the alleged secret agreement to claim ownership of the Abby Pharmacy Ltd., and among other things, he sought a declaration that the family trust was a sham. The Counterclaim is substantially similar to Mr. Ghag's Notice of Civil Claim in the New Westminster action.
- [21] It should be noted that the Counterclaim makes no claim against Abby Pharmacy Ltd. directly. Further, it was not filed within the 21 day time period required by Rule 3-4 of the Supreme Court Civil Rules. The Counterclaim is therefore an irregularity, if not a nullity.
- [22] On February 22, 2021, one month after losing his appeal of the trustee petition and four days after filing his Counterclaim in the Abby Pharmacy Ltd. action, Mr. Ghag issued a petition in Vancouver Registry action number S212078 seeking an order removing his mother as trustee of the family trust and appointing a neutral third party in her place. Ms. Ghag has pleaded in response that the petition is frivolous, vexatious and an abuse of process, and is also barred by the doctrines of res judicata and issue estoppel.
- [23] On March 31, 2017, Mr. Amrik Ghag had issued a lawsuit against his brother, Mr. Ghag's father Sukhvinder Ghag, in New Westminster Registry action S189435. In that action, the brother claimed the existence of an equal partnership between himself and Sukhvinder in various business ventures. Following Sukhvinder's death, his wife and Mr. Ghag's mother, Charmaine Ghag, was added as a defendant in that lawsuit in her capacity as executor of the estate of her husband.
- [24] On March 18, 2021, Mr. Ghag filed a Notice of Application seeking an order to have himself added as a party defendant in the lawsuit issued by his uncle. Until Mr. Ghag's application was filed, no meaningful steps had been taken in the action since 2018.
- [25] Mr. Ghag applied to be added to the action on the basis of the alleged secret agreement which he alleges gave him an interest in certain assets that were the subject matter of the litigation. That application is currently in abeyance.
- [26] Mr. Ghag had frequently threatened his mother and siblings that he would disclose privileged and confidential information to his uncle if they did not yield to his demands. The threats escalated after his appeal in the trustee removal proceeding was dismissed. As a result, on March 8, 2021, his mother, as executor of the estate of Mr. Ghag Sr., applied for and obtained an urgent ex parte injunction against Mr. Ghag to prevent disclosure. Shortly thereafter, Mr. Ghag applied to set aside that injunction, and in support of that application, he filed an affidavit exhibiting privileged and confidential information in contravention of the injunction. His mother then applied for and obtained a sealing order over that affidavit, and on April 30, 2021, in reasons indexed at 2021 BCSC 815, Justice Marzari of this Court continued the injunction with certain modifications.
- [27] On April 23, 2021, Mr. Ghag filed an action in Vancouver Registry number S214010 in which he seeks to remove his mother as executor of his father's estate. In that claim, he repeats the allegations respecting the existence of the alleged secret agreement. The allegations are

essentially a repetition of those made in New Westminster action S228482 which had been stayed as a result of the order granted by Madam Justice Duncan on April 1, 2021. The applicants allege, and I am inclined to agree, that Mr. Ghag's attempt to remove his mother as executor of his father's estate is effectively an attempt, and a rather transparent one at that, to stop her opposing his joinder in his uncle's action so that he can continue to pursue his claims based on the alleged secret agreement.

[28] The applicants rely on Supreme Court Civil Rule 9-5(1), which allows the court to strike a pleading if:

- (a) it discloses no reasonable claim or defence, as the case may be,
- (b) it is unnecessary, scandalous, frivolous or vexatious, or
- (d) it is otherwise an abuse of the process of the court.

[29] In the Counterclaim, Mr. Ghag pleads the existence of several contracts and seeks damages for breach of contract; however, he fails to articulate the terms of the so-called Abby Agreement, and he fails to articulate who breached the contracts, the manner in which they were breached, or how any such breach actually caused damages.

[30] The Counterclaim purports to seek damages for breach of fiduciary duty and breach of trust, as well as a constructive trust for unjust enrichment. Breach of trust is one of the causes of action that must be pleaded with heightened particularity under Rule 3-7(18). None of the essential elements required for these causes of action are actually pleaded.

[31] I noted earlier how the Counterclaim was filed out of time and hence is at least an irregularity, if not a nullity. I would also observe that the Counterclaim may well have been tacitly dismissed when Madam Justice Francis pronounced judgment in favour of Abby Pharmacy Ltd. on April 8, 2021 (2021 BCSC 1402). First, she correctly noted that a trust is not a legal entity capable of being sued, and so the trust was improperly named as a defendant by Counterclaim. Second, and more substantively, she noted the Counterclaim repeats the defence relied upon by Mr. Ghag, i.e., the secret agreement made in July 2016 and that, there existed an indemnity agreement between Mr. Ghag and the company which precluded liability.

[32] Madam Justice Francis observed that such an indemnity agreement would "so manifestly be contrary to the best interests of the company that it would be invalid." She also noted that Mr. Ghag had not put either agreement into evidence, and hence "Mr. Ghag's defence to the summary judgment application cannot succeed." Judgment was therefore granted for the full amount claimed, and Abby Pharmacy Ltd. was awarded the "costs of this action as a whole."

[33] Madam Justice Francis' judgment is not simply a matter of procedure, it was a judgment on the merits. It upheld the validity of Abby Pharmacy Ltd.'s claims and expressly rejected Mr. Ghag's defences.

- [34] The same secret agreement and sham family trust allegations were alleged in New Westminster action number S228482, an action that was dismissed on June 15, 2021. The same secret agreement and sham family trust arguments were raised before the Court of Appeal in the original trustee removal petition proceeding and gained no traction in that forum. That appeal was of course dismissed on January 27, 2021.
- [35] All of the above provides powerful grounds for granting the applications before me today. Equally, if not more powerful, however, are the arguments that Mr. Ghag's litigation has been and continues to be vexatious and an abuse of process warranting dismissal pursuant to Supreme Court Civil Rule 9-5(1)(b) and (d).
- [36] The parties provided the Court with a document entitled "Chronology of Key Events." It is 18 pages long and chronicles matters relating to the various actions since 2017, the date the family trust was settled, through October 2021, the date the Court of Appeal dismissed Mr. Ghag's appeal in the Abby action.
- [37] The document also includes numerous extracts from correspondence between the parties and Mr. Ghag evidencing his numerous threats and improper motivations. The communications are cross-referenced to the material in the application record. The content of the chronology is far too long to recite here; however, it is well known to all the parties and is deemed to have been read into the record by me for the purpose of any transcript. Suffice it to say here that Mr. Ghag has made it perfectly clear he will relentlessly fight on every possible front for as long as he is allowed to do so.
- [38] I earlier alluded to some of the admissions made by Mr. Ghag both in his pleadings and in his correspondence. It is worth repeating here that he admits to fabricating evidence and manufacturing lawsuits; confesses to preparing false affidavits for execution by his father; has threatened to provide confidential information to his uncle to assist in the litigation against his father's estate, so much so that the court has issued an injunction preventing him from doing so; appears to have forged signatures on the so-called secret agreement which he has repeatedly and improperly tried to enforce; misappropriated and failed to repay almost \$1.3 million from Abby Pharmacy Ltd. and the family trust; admits to creating a family trust that is a sham, (at least when such an admission is seen by him as favouring his position); has threatened to sue counsel for his adversaries, to file certificates of pending litigation against property, and to involve third parties in the litigation; flatly and improperly refused to answer questions at his examination in aid of execution; and attempted on numerous occasions to use his vexatious litigation as a means of extracting settlement monies from his mother and siblings.
- [39] Courts in previous cases have recognized the following hallmarks of vexatious and abusive conduct: bringing one or more actions to determine an issue which has already been determined by a court of competent jurisdiction; instituting litigation for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings of little or no merit; instituting two or more actions dealing with the same

subject matter; persistently pursuing unsuccessful appeals; and failing to pay the costs of unsuccessful proceedings; disclosing confidential and privileged information to deliberately inflict harm on others. See, for example, *Semenoff v. Semenoff*, 2017 BCCA 17, and *Rafique v. AWM-Alliance Real Estate Group Ltd.*, 2019 BCSC 247 at para. 51.

- [40] Mr. Ghag has done all of these things. His claims have no merit. There can be no doubt and I have no hesitation in concluding that he is a vexatious litigant whose conduct frequently amounts to an abuse of process. He will not relent unless an order is granted prohibiting further litigation.
- [41] Mr. Ghag is a lawyer. He knows exactly what he is doing. It is a virtual certainty he deliberately absented himself from this hearing to avoid probing questioning by the court about his improper conduct.
- [42] It is also apparent that Mr. Ghag was not truthful with the Court when he pleaded impecuniosity and hardship in resisting security for costs and/or sought adjournments both before the Supreme Court and the Court of Appeal.
- [43] The parties have adduced evidence on this application of Mr. Ghag and his wife taking what they describe as lavish vacations in Europe not once but twice this past summer.
- [44] In the result, I grant the relief sought in each of the four applications before me. I dismiss the claims made by Mr. Ghag and grant an order under s. 18 of the Supreme Court Act in the terms set out in the Abby Pharmacy Notice of Application filed May 7, 2021.
- [45] The applicants apply for special costs of these three proceedings. They should never have been commenced. They are largely duplicative of past pleadings filed by Mr. Ghag and were not brought for a bona fide purpose. They were issued in an effort to exert financial pressure on the applicants and to extract an improvident settlement. They wrongly allege criminal conduct against both the applicants and their counsel in connection with a further claim that he says is pending. Such behaviour is reprehensible and should be punished by an award of special costs.
- [46] I have been provided by counsel with a joint submission on the law of special costs. I accept those submissions. Suffice it to say at this time, however, I am satisfied that the abuse of the court's process by Mr. Ghag merits special costs. The inappropriate allegation of criminal conduct against the applicants and their counsel only reinforces that result. Special costs of these actions are therefore to be assessed by the registrar and awarded against Mr. Ghag
- [47] Is there anything further that is required?
- [48] CNSL C. GALLANT: No, My Lord.
- [49] THE COURT: I should add one other term. I dispense with any requirement for Mr. Ghag to approve the form of order before it is filed with the registry.

[50] CNSL D. GEORGETTI: My Lord, I was just going to ask that my signature also be dispensed with. It's important to get orders like this entered quickly, and I have full confidence in my learned friends and wouldn't want to delay them having to send it over, My Lord.

[51] THE COURT: Fair enough. So granted. Is there anything else?

[52] CNSL D. GEORGETTI: Nothing here, My Lord.

[53] CNSL C. GALLANT: Nothing here, My Lord.

[54] THE COURT: Thank you. We will leave it at that.

"Kent J."

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