

CANADA / JUDGMENT

Badyal (Re)

2016 BCSC 833

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Badyal (Re),

2016 BCSC 833

Date: 20160225

Docket: P21825

Registry: New Westminster

In the Matter of the Estate of Kuldip Kaur Badyal, deceased

Before: Master Keighley

Oral Reasons for Judgment

In Chambers

Counsel for the Public Guardian and Trustee:

P.A. Mazzone

Counsel for Malkiat Singh Badyal:

S. Grewal

Place and Date of Trial/Hearing:

New Westminster, B.C.

February 25, 2016

Place and Date of Judgment:

New Westminster, B.C.

February 25, 2016

- [1] THE COURT: I want to say at the outset that I am very grateful to counsel for their comprehensive and very helpful submissions.
- [2] The Public Guardian and Trustee for the Province of British Columbia (the "Trustee") seeks to be appointed personal representative of one Kuldip Kaur Badyal (who died March 3, 2009), without bond. Incidental to that application, the Trustee seeks an order that notice of this application to Manjit Singh Badyal ("Manjit") be dispensed with and that the submission for a grant of administration of the estate by Malkiat Singh Badyal be dismissed.
- [3] This application arises out of tragic circumstances. Kuldip Kaur Badyal was murdered in India on March 3, 2009. At that time, she was 32 years of age. She died leaving two children, both boys: D.B., who is 15 years of age, and G.B., who is 13 years of age. Kuldip was murdered by her husband, Manjit.
- [4] Manjit was arrested, either was tried or pleaded guilty to the murder of his wife, and is presently serving a sentence of life imprisonment in India for, what the materials indicate, was a contract killing.
- [5] Manjit's parents are Malkiat Singh Badyal ("Malkiat"), referred to in the prayer for relief, and his wife Surjit Kaur Badyal ("Surjit").
- [6] I want to say at the outset that Malkiat and Surjit have behaved in an exemplary fashion in their care of the children. In the months following their daughter-in-law's death they applied for and obtained an order granting them interim joint guardianship of the two boys. As Manjit, Kuldip and the boys were in India at the time of the murder, Malkiat and Surjit were instrumental in getting the boys back to Canada. The boys have lived with Malkiat and Surjit since returning to Canada in 2009.
- [7] There are two main assets of the estate: one, a piece of real property located in East Vancouver, owned by Manjit and Kuldip as joint tenants, and what I will refer to at this point as an interest in a taxi business.
- [8] In July 2012, a little more than three years after Kuldip's death, counsel for the Trustee wrote to the grandparents making certain inquiries with respect to the administration of the estate. It was noted in that letter that the children might be entitled to inherit all of Kuldip's assets, which would include her half-interest in the real property. The letter invited Surjit and Malkiat to contact the Trustee to discuss the status of the estate and how those assets were being preserved. It was understood at that time, and I am not sure where the information came from, I assume from the grandparents, that Manjit was appealing his conviction in India.

- [9] I can say at this point, to dispose of that issue, it appears from material before me today that there has been no direct contact between the grandparents and their son, Manjit, since 2009, and there is presently no information available with respect to any appeal by Manjit of his conviction.
- [10] That letter went out some three years after Kuldeep's death. About 10 months after the date of that letter, in May 2013, the grandparents met with representatives of the Trustee to discuss estate issues. A number of issues were discussed at that meeting, one of significant importance, namely the likelihood of commencing an action on behalf of the children against Manjit, pursuant to the provisions of the Family Compensation Act.
- [11] Obtaining a judgment in such an action would, of course, provide a mechanism by which Manjit's interest in the East Vancouver property might either entirely or substantially be the subject of execution proceedings with respect to the collection of any judgment obtained in an FCA claim. I do not think I have specifically mentioned at this point that Kuldeep had no will, but issues arising out of that fact were discussed by the parties at the May meeting. The Trustee, during the course of that meeting through its representatives, expressed the necessity for dealing with estate matters in some concrete way at the earliest possible date.
- [12] The representatives of the Trustee indicated that the Trustee would be prepared to step in and administer the estate for the benefit of the children, and commence a Family Compensation Act claim in the event that the grandparents were unable to act.
- [13] At that relatively early stage, it was expressed to the Trustee by the grandparents that they were concerned that the involvement of the Trustee in the administration of the estate and in light of the caveat that the Trustee had filed with respect to the estate, would lead to a sale of the East Vancouver property. That concern remains today. The grandparents explained that the children, and I believe it is fair to say they, the grandparents, as well, had an expectation that the children would live in the East Vancouver property someday. I do not know what actual connection the children have to that property, in particular how long they lived in it prior to their mother's death, but I think it is accurate to say that since they returned to Canada in 2009, they have not lived in that property. It has been tenanted and monies collected with respect to its rental are applied to the mortgage and the costs of maintaining the property.
- [14] Having heard this, the representatives of the Trustee explained that if the Trustee did take responsibility for the estate and commence an action against Manjit, it was likely that the property would have to be sold to pay for probate fees, taxes, administration fees, et cetera.
- [15] At this same meeting, the grandparents asked if the house could be preserved for the children if Manjit were to transfer his interest in the property to, or for, the benefit of the children entirely. The Trustee's representatives advised the grandparents that such was a possibility and that the grandparents would be well advised to meet with a lawyer who might be able to assist them in effecting this. They indicated that such a transfer would require an application by some adult person to be appointed trustee of the assets until the children

each reach the age of 19.

- [16] The understanding at the end of that meeting, the representatives of the Trustee say, is that the grandparents indicated they would seek legal advice and the Trustee's representatives asked them to do so before June 15, 2013, about a month following the date of that meeting.
- [17] There had been some mention in the press, I gather, about the existence of a life insurance policy on Kuldip's name taken out by Manjit. The grandparents at that time advised that there had been a lot of incorrect information in the newspapers and that they were not aware of any such policy. It subsequently came to light that while an insurance policy had not been "taken out" by Manjit on Kuldip's life, the mortgage on the property was life insured and the proceeds of that insurance were used in part to pay down the mortgage on the property after Kuldip's death.
- [18] The grandparents had also advised that a taxi was owned jointly by Kuldip and Manjit, and that it was currently being leased. The grandparents believed that what was owned was a full licence with the Sunshine Taxi Company. It has since come to light that Sunshine cabs are not owned by individuals, they are owned by the business entity, Sunshine Cabs, and individuals own shares in Sunshine Cabs. Holding two shares entitles the holder to one "physical" cab and the right to operate it day and night. Apparently Manjit owns one share and Kuldip owned one share, allowing them to operate one cab day or night.
- [19] I gather from an affidavit handed up to me today, that is the affidavit of Hardip Samra, a paralegal in the employ of counsel for the Trustee, that Manjit owns four other shares, equating to two additional cabs. This, together with his shares owned with Kuldip, give him a total of five shares or two and a half day and night taxis. I have no idea what the value of those shares might be. The value is likely substantial.
- [20] Following that meeting in May 2013, when the grandparents had advised that Manjit had appealed his conviction and had asked to be released from prison in India on bail, the family was asked by the Trustee to provide relevant court documents and their reply indicated that they thought they should be in a position to provide them in a couple of weeks. Nothing has been forthcoming.
- [21] The East Vancouver property is a single family dwelling located at 431 East 55th. A search of title to that property indicates that it is held in joint tenancy in the names of Manjit and Kuldip. The charges registered against the property are a Royal Bank of Canada mortgage registered August 14, 2007, and a caveat registered by the Trustee on June 19, 2012. The face value of the mortgage on the property is \$625,000. The 2015 assessed value of the property is \$922,000.
- [22] In due course, following the filing of the caveat in June 2012, the Trustee's representatives had discussions with Ms. Rohita Pannu, counsel for the grandfather, with respect to estate matters. The representative of the Trustee, Ms. Estaal, asked Ms. Pannu to provide details of Malkiat's plan for the administration of the estate. Ms. Pannu advised that it was proposed

that the property would be transferred to the grandmother, Surjit, and that a declaration of trust would be registered with the Land Title Office. Ms. Pannu indicated that Malkiat, the grandfather, had applied for administration of the estate and that the estimated value of the house was \$1 million, and that a power of attorney "had been granted in India" by Manjit.

- [23] Ms. Pannu forwarded the documents which she had prepared with respect to the submission for the estate grant on May 25, 2015.
- [24] Now, there are a number of errors in that documentation. I am not attributing those to Malkiat or Surjit. They appear to have arisen from carelessness on Ms. Pannu's part. The value of the property shown on the statement of assets, liabilities, and distribution was \$600,000, with no indication as to whether that is the full value for the property or a half value of the property. The same document refers to the owners, Manjit and Kuldeep, owning as tenants in common, whereas in fact the title search indicates that they held as joint tenants. Also, the statement of assets, liabilities, and distribution indicates that there was no mortgage against the property. That was, of course, also incorrect.
- [25] With respect to the taxi interest, the same statement indicates that the deceased owned a one-half share in Taxi No. 2 with the North Shore Taxi Company. In fact, that is not accurate as well. She owned, as I have indicated, one share. Whatever she owned, the value of her interest is shown as \$100,000.
- [26] There was also no affidavit of delivery and no schedules attached to the submission for the estate grant.
- [27] On that same day, it appears Ms. Estaal, on behalf of the Trustee, wrote to Ms. Pannu stating that in principle the Trustee did not object to a solution which would protect the interests of the children and allow them to retain the property, but that there was a necessity to have the work done to effect that appropriately.
- [28] Ms. Estaal indicated in that same email on May 25, 2015, that as the estate was a complex one, at least legally, that she had instructions to retain a lawyer to assist the Trustee in working with the grandparents to reach a satisfactory solution which would protect the interests of the children. That lawyer was Mr. Mazzone, who appears on behalf of the Trustee today, and it appears that the following day Mr. Mazzone made contact with Ms. Pannu. As he was moving his office at the time or shortly thereafter, he indicated that he would be in touch with her in due course to discuss the file.
- [29] On June 16, 2015, Mr. Mazzone, who had now completed his move, wrote to Ms. Pannu, setting out the Trustee's position and raising certain issues which had been raised before and some new issues with respect to his concerns about the status of the estate.
- [30] He referred to the fact that the application for a representation grant indicated that there was no mortgage on the East 55th Avenue property. He referred as well to the provision with respect to the share in the taxi company. He pointed out that the property, in fact, was held by the deceased and her husband as joint tenants, not as tenants in common. He pointed out

the problem with respect to the valuation of the property, as to whether the \$600,000 referred to was the valuation of a half interest or the entire value of the property. He pointed out the fact that the application specifically referred to there being no mortgage on the property, whereas in fact there was a mortgage in favour of the Royal Bank with a face value of \$465,000.

- [31] He pointed out that it was not clear to him why the property had been included as an estate asset at all, as it was held in joint tenancy, and in the normal course of events the interest in that property would pass by right of survivorship, without incurring probate fees.
- [32] There was a reference to the power of attorney which, presumably, by that time, Mr. Mazzone had seen. He indicated that it was incomplete and may not be capable of transferring the property as contemplated. In fact, I gather that counsel on behalf of Malkiat, I think Mr. Joshi, at some point had attempted to file a power of attorney in the Land Title Office and it was rejected as being in improper form.
- [33] Mr. Mazzone again sought some further information and corroborating documentation with respect to the state of the criminal proceedings against Manjit, and also sought further documentation with respect to the nature of the deceased's interest in the taxi business.
- [34] There was some further discussion between counsel following that letter, and in due course the grandparents apparently indicated a wish to have a further meeting. That meeting included, as it turned out, Mr. Mazzone and his paralegal, as well as Allison Catherwood, as a representation of the Trustee. That meeting took place on August 31, 2015, at Mr. Mazzone's office. At that meeting, some further information was provided by the grandparents, translation was provided by Ms. Pannu, and some further issues were brought forward which caused Mr. Mazzone and the Trustee some concern.
- [35] Mr. Mazzone wrote a letter dated June 16, 2015, which is in the material before me.
- [36] MR. MAZZONE: Your Honour, I think you said June 16; it's the next letter in the materials, September 29, page 17 of the exhibits.
- [37] THE COURT: Yes, thank you, Mr. Mazzone, it is the letter of September 29, 2015. In that letter, Mr. Mazzone confirmed his understanding with respect to additional information which had been provided. He said he understood that the advice of the grandparents was that there had been a mortgage of approximately \$465,000 on the East 55th property, which had been paid down to about \$74,000 as a result of insurance proceeds received. He confirmed that the grandparents were unable at that point to provide particulars as to the nature and extent of the insurance policy. Secondly, he confirmed the grandparents' advice that there is a line of credit existing in the name of both Kuldip and Manjit, which the family continued to service. Concern was expressed that no indebtedness was disclosed in the submission for the estate grant.

- [38] Thirdly, he confirmed the grandparents advised that there was a second mortgage on the property in the range of \$109,000 to \$210,000. The first mortgage was insured, but the second was not. No second mortgage had been disclosed in the submission for the estate grant. While reviewing the material before me on the application today, I noted that that mortgage, I believe the second mortgage, becomes due approximately two weeks from today.
- [39] The grandparents reported that G.B. has some special needs at school and appears to have some form of learning disability. The family was unsure whether the taxi was in the name of Manjit or Kuldip or under a company name. That issue now appears to be resolved by the affidavit of Ms. Samra, to which I referred earlier.
- [40] Now, on this basis, Mr. Mazzone, on behalf of the Trustee, says that Malkiat is not a proper administrator of the estate. The Trustee says that as a result of Malkiat's failure to effectively apply for appointment as administrator, and his failure to provide adequate information with respect to the estate, he has demonstrated an inability to be a proper administrator and trustee. In particular, he has failed to take steps to protect the interests of the children by commencing an action pursuant to the provisions of the Family Compensation Act or for a declaration of resulting trust with respect to Kuldip's interest in the East 55th property.
- [41] Mr. Mazzone, on behalf of the Trustee, also makes reference to the frankly "sloppy" way in which the application for grant was made, and the difficulty which the grandparents have appeared to experience in providing details with respect to the estate as further evidence of Malkiat's unsuitability.
- [42] In these circumstances, says Mr. Mazzone, there are special circumstances referred to, as contemplated by the Estate Administration Act and the Trustee should be appointed to administer the estate.
- [43] The application is brought pursuant to the Estate Administration Act, R.S.B.C. 1996, c. 122, and specifically s. 7 which reads, under the heading, "Discretionary power in appointment of administrator":

7 (1) This section applies if

- (a) a person dies intestate,
- (b) a person leaves a will, but without having appointed an executor willing and competent to take probate, or
- (c) the executor at the time of the death of the person resides out of British Columbia

and it appears to the court to be necessary or convenient by reason of the insolvency of the estate of the deceased or of other special circumstances to appoint some person to be the administrator of the estate of the deceased, or part of it, other than the person who, but for this section, would have been entitled to a grant of administration.

- (2) In the circumstances referred to in subsection (1), the court may, in its discretion, appoint a person it thinks fit to be the administrator, on the person giving security the court must direct.
- (3) An administration under subsection (2) may be limited or on condition or otherwise, as the court thinks fit.
- [44] Essentially then, in the circumstances of this case, I have a discretion to appoint some other administrator in the presence of special circumstances, as contemplated by s. 7(1).
- [45] Mr. Grewal appears on behalf of Malkiat, the proposed administrator. He says, and I agree with him, that there can be no suggestion that Malkiat has acted improperly, that he has appropriated funds properly for the benefit of the children, or that he has not, in terms of his care of the children, acted in anything other than an exemplary way. I am particularly impressed by the way the grandparents took charge in the aftermath of this horrific event, returning the children promptly to British Columbia and helping them to, apparently with some success, readjust to their new lives without their parents.
- [46] Mr. Grewal points out that Malkiat is now of an age which we would have described in a less-sensitive time as elderly; that he is uneducated; that Punjabi remains his first language; and that these circumstances have created obstacles for him in attempting to efficiently and effectively resolve issues arising out of the death of his daughter-in-law.
- [47] I accept that and I also accept that he does not appear, at least on the basis of the materials before me, to have, prior to his representation by Mr. Grewal, been very well served by the lawyers he has consulted.
- [48] I have two main concerns about Malkiat's objection to the appointment of the Trustee. He remains concerned that the appointment of the Trustee will result in the East 55th Avenue property being sold. He does not want it sold and he says the boys do not want it sold. He feels it is a good investment, an appreciating asset, and he says that he wants the boys to have the benefit of an opportunity to live in that property when they are of age. He says that they wish that as well.
- [49] He also says that he is prepared to agree to the appointment of the Trustee as administrator of this estate if they undertake or assure him that the property will not be sold. The Trustee is not prepared to limit its authority in that way.
- [50] I said there were two things I was concerned with. One is that it appears to me that Malkiat has blinders on with respect to the future of the East 55th property, and it seems to me that were he to be appointed administrator, he would preserve that property at all costs, without considering any other use of it or use to which the equity in it might be put, whether for the benefit of the boys or not.

- [51] At present, no one has been managing this estate. The best that can be said is that the grandparents have simply maintained the status quo, kept the property rented, kept the rents coming in, and made sure the mortgage was paid, made sure the insurance proceeds paid down the mortgage balance, made sure that money continues to come in from the operation of the taxi licence. They have not managed the estate, they have presided over a status quo, and it seems to me that they have no more concrete plan for the administration of this estate in future than that.
- [52] It seems to me that in circumstances such as this, with the futures of two teenage boys to consider, there must be some more flexibility with respect to the possible fate of estate assets. It may well be that the retention of the East 55th Avenue property is the best plan at this point, and it may well be that the Trustee recognizes that the maintenance of the status quo is best. However, it does seem to me that the Trustee would be more prepared to consider some other use of that property, either by other rental arrangements, by sale, or by mortgage, and may be prepared to consider other uses of that property which might more directly benefit the boys, both of whom face some challenges. One, as I have indicated already, has a learning disability of some sort, the other appears to suffer from seizures. I do not really know any more about it than that.
- [53] There is also the question of dealing with Manjit's interest in that property. The grandparents, and particularly the grandfather, expressed concern that the Trustee will immediately sell the East 55th property. Of course, it cannot do that. The interest of Manjit in that property needs to be dealt with, either by a conveyance from Manjit directly or through a proper power of attorney, or through execution following a successful resulting trust proceeding, or an action under the Family Compensation Act. Getting that property in a condition in which it can be sold legally will take some time yet, but I am simply not satisfied, from what I have seen so far, that it is likely that the grandfather or either of the grandparents will proceed expeditiously with a resolution of that issue and through no other reason, it seems to me, than it is simply beyond them as a concept.
- [54] This estate, while not complex in terms of the assets, does give rise to some relatively complex legal issues and those need to be expeditiously resolved. I am satisfied that the circumstances of this estate represent special circumstances of the sort contemplated by s. 7 of the Estate Administration Act which favour the appointment of the Public Guardian and Trustee to administer the estate.
- [55] I am going to make orders in the terms of paragraphs 1, 2, and 3 of the notice of application.
- [56] Is there anything else?
- [57] MR. MAZZONE: Just a housekeeping matter, Your Honour, if I can file the original and a copy of the affidavit of Mr. Samra about the taxi? I handed up a copy.
- [58] THE COURT: Yes, yes, I have seen a copy of it.

- [59] MR. MAZZONE: Apart from that, Your Honour, there is nothing further.
- [60] THE COURT: No issue of costs at this time?
- [61] MR. MAZZONE: No.
- [62] MR. GREWAL: Does it mean that Mr. Malkiat Badyal can now relieve himself of his responsibilities with respect to this -- the management of this property.
- [63] THE COURT: Well, I guess the best I can say is that Mr. Mazzone will be in touch.
- [64] MR. GREWAL: Yeah, I think specifically with respect to tenants and stuff, those are ongoing issues. Thank you, Your Honour.
- [65] THE COURT: And it sounds to me as though the way things have gone in this file, that it is likely that he will enjoy the cooperation of the grandparents in doing what needs to be done. Thank you both.

"Master Keighley"

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