
CANADA / JUDGMENT

Bagry v. Sandhu

2016 BCSC 536

COURT

Supreme Court of British Columbia

DECIDED

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2016 BCSC 536 Bagry v. Sandhu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bagry v. Sandhu,

2016 BCSC 536

Date: 20160329

Docket: S144448

Registry: New Westminster

Between:

Ravinder Bagry, Gursharn Bhullar, and Dalbir Thandi

Plaintiffs

And:

Gurjinder Sandhu also known as Gary Sandhu

Defendant

Before: The Honourable Mr. Justice D.M. Masuhara

Reasons for Judgment

Counsel for the plaintiffs:

C. Clark

M. Cheema

Counsel for the defendant:

P. Roxburgh

Place and Date of Trial:

New Westminster, B.C.

January 25-29, 2016

February 1-4, 2016

Place and Date of Judgment:

Vancouver, B.C.

March 29, 2016

Introduction

- [1] The dispute in this proceeding concerns a 20-acre farm in the Agricultural Land Reserve at 18787 16th Avenue, Surrey (the "Farm"). The plaintiffs, Mr. Bagry, Mr. Thandi, and Mr. Bhullar and the defendant, Mr. Sandhu purchased it in April 2004 as tenants in common, each holding a one-quarter interest.
- [2] The plaintiffs assert that the defendant has breached two oral agreements made between them in relation to the Farm.
- [3] The first oral agreement is said to have arisen at the time of the purchase of the Farm (the "Purchase Agreement"). It is pleaded that it was a term that should an owner fail to make his payments toward the Farm, namely, their one-quarter share of the mortgage payments and expenses for maintenance and upkeep of the Farm, then the others could buy out the defaulting owner's share.
- [4] The second oral agreement is said to have arisen after the house on the Farm was destroyed by fire in 2007. The plaintiffs plead that at a meeting following the fire the defendant promised to arrange and pay for a house in the same condition as the original house to be moved onto the property within a reasonable time; if he was unable to obtain such a house he would pay \$200,000 to the plaintiffs; that from August 2007 until the new house was put onto the Farm or the payment of \$200,000 was made, Mr. Sandhu was to pay \$2,000/month to the plaintiffs in lieu of rent; that Mr. Sandhu was to pay for the clean-up of the house destroyed by the fire in the amount of \$7,000; and in exchange the plaintiffs would not pursue legal redress against Mr. Sandhu in respect of the fire, the insurance, and the destruction of the house (the "Rebuilding Agreement").
- [5] The breaches of the defendant are said to be:

Under the Purchase Agreement

- (a) failing to pay his full portion of the down payment for the purchase of the Farm (\$65,000);

- (b) failing to pay his full portion of the mortgage payments; and
- (c) failing to pay his portion of the expenses related to the Farm;

Under the Rebuilding Agreement

- (d) failing to pay for a replacement home for the house on the Farm which had been destroyed by fire on August 2007; or to pay \$200,000 to the plaintiffs in lieu;
 - (e) failing to pay the loss of rental income from the Farm; and
 - (f) failed to pay for the clean-up costs in respect of the fire.
- [6] As a result, the plaintiffs seek an order vesting the Farm in their names (to the exclusion of the defendant) as tenants in common. Alternatively, they seek general damages or specific performance of the Rebuilding Agreement.
- [7] Mr. Sandhu denies the claims of the plaintiffs and has counterclaimed against Mr. Bagry for breach of a car purchase agreement. He also seeks an order for sale under the Partition of Property Act, R.S.B.C. 1996, c. 347 with net proceeds divided among the four owners. He had several claims in his counterclaim but during the trial abandoned them. They related to the conversion of two horses, a horse carriage, and a trailer, which were part of the property of the Farm, as well as claims under an investment agreement.
- [8] The car purchase agreement relates to approximately 20 vehicles that Mr. Sandhu says he purchased at ICBC auctions under Mr. Bagry's dealer licence between 2007 and 2010. The aggregate price is said to be \$90,000. Mr. Sandhu asserts that Mr. Bagry has refused to provide the cars and documentation to Mr. Sandhu.
- [9] Mr. Sandhu seeks in his counterclaim:
- (a) damages for breach of the Car Purchase Agreement;
 - (b) restitution for unjust enrichment;
 - (c) damages for conversion;
 - (d) aggravated or punitive damages;
 - (e) an order that all proper and necessary directions, accounts, inquiries and references be taken; and
 - (f) an order that the Farm be sold under the Partition of Property Act for its fair market value, and that the net proceeds following the sale of the Farm be divided among Bagry, Bhullar, Thandi, and Sandhu.

- [10] The witnesses appearing in the plaintiffs' case were: Mr. Bagry, a plaintiff; Ms. Dhatt, the insurance agent who provided insurance for the Farm; Mr. Graeca, an excavator operator who was hired to remove the debris from the Farm fire; Ms. Van Someren, branch manager of the Greater Vancouver Community Credit Union ("GVC"); Mr. Bhullar, a plaintiff; Ms. Lakwinder Bhullar, Mr. Bhullar's wife; and Mr. Thandi, a plaintiff.
- [11] The plaintiffs also tendered a market value appraisal report of the Farm written by Mr. Coley-Donohue of Campbell and Pound Commercial Ltd. dated October 30, 2015. The report opined that as at October 29, 2015, the estimated market value of the Farm was \$2,009,000.
- [12] The witnesses appearing in the defendant's case were: Mr. Kallianotis, the vendor of the Farm to the parties; Mr. Sidhu, a friend of Mr. Sandhu; Ms. K. Lacroix, a friend of Mr. Sandhu; Mr. M. Panasar, a customer of Mr. Sandhu; Mr. R. Phull, a friend and customer of Mr. Sandhu; Mr. Ranjit Rai, a former customer of Mr. Sandhu; Ms. Sandhu, the defendant's wife; Mr. Karnjit Bahd, a former customer of Mr. Sandhu; Mr. Norm Rakhra, a friend and former customer of Mr. Sandhu; and Mr. Rob Bassi, a friend and former customer of Mr. Sandhu.

Background

- [13] The plaintiff Mr. Bagry is a businessman. He is the sole shareholder of Quick-Fixx Autobody & Glass Ltd. ("Quick-Fixx"). It holds a dealer licence which permits it to participate in ICBC's salvage vehicle auctions. Quick-Fixx has around 40 bidders who participate in the ICBC auctions. Quick-Fixx usually charges these bidders a fee of \$100 to \$200 per transaction plus expenses such as for the towing of a vehicle, parts and GST. The bidders usually make repairs to the vehicles and then sell them, hopefully at a profit. Quick-Fixx, being the registered owner of vehicles bought at auction, provides the transfer documentations to the buyers upon the payment of the transaction fee, any expenses, and GST. I note that Quick-Fixx is not a party to these proceedings.
- [14] The plaintiff Mr. Bhullar is an electrician and is Mr. Bagry's brother-in-law.
- [15] The plaintiff Mr. Thandi owns and runs an air conditioning installation and servicing company in England. He and Mr. Bhullar have been friends for years. Mr. Thandi met Mr. Bagry and Mr. Sandhu through Mr. Bhullar at the time of the Farm purchase. His home is in England and during the subject period he travelled to Canada from time to time.
- [16] The defendant Mr. Sandhu says he is a businessman. He and Mr. Bagry met in the early 1990s and formed a friendship. Mr. Bagry saw himself as an older brother/mentor to the defendant. Mr. Sandhu got into the reselling of salvage vehicles and did so by bidding through Quick-Fixx to purchase salvage cars, rebuilding, and selling them. In many cases, he already had an order for a vehicle before bidding. He was in this line of work for many years. Mr. Bagry estimated that over the years Mr. Sandhu purchased approximately 500 vehicles through Quick-Fixx. However, as a result of the dispute with Mr. Bagry, Mr. Sandhu has left this business and now works in development and construction with relatives.

- [17] The four men were brought together by an opportunity to purchase the Farm. The owner of the Farm had died and the executor of the owner's estate, Mr. Kallianotis, was seeking to sell it. This came to the attention of Mr. Bagry who initiated discussions with Mr. Kallianotis.
- [18] Mr. Bagry then sought out partners for the purchase of the Farm and the three other parties to this action agreed to participate.
- [19] All of the discussions as to the purchase price were conducted between Mr. Kallianotis and Mr. Bagry alone. The negotiations entailed a purchase price "on paper" and an "under the table" payment to Mr. Kallianotis. This was communicated by Mr. Bagry to his partners.
- [20] In 2004 the parties purchased the Farm in equal shares as tenants in common. The purchase price stipulated on the contract of purchase and sale was \$625,000. The purchase was enabled by a mortgage to the GVC in the amount of \$550,000. At present the assessed value of the Farm by the property tax assessment authority is about \$41,000. However, the appraised market value report estimated its value at just over \$2 million. The outstanding balance of the mortgage on the Farm is about \$395,000.
- [21] In terms of the "under the table" payment, Mr. Bagry testified that this amount was \$160,000, while Mr. Kallianotis testified that it was \$100,000.
- [22] One document, the contents of which were acknowledged as true by Mr. Bagry and Mr. Kallianotis, reads as follows:

March 01, 2004

Buyer: Mr. Ravinder Bagry

Seller: Mr. Vailios Kallianotis

18787 -16th Avenue Surrey, B.C.

I Ravinder Bagry owe Mr. Vailios Kallianotis \$80,000 dollars. After subject removal of property 18787 16th Avenue Surrey, B.C., Mr. Vasilios Kallianotis will be paid in full by Ravinder Bagry in the amount of \$80,000.00 dollars.

Ravinder Bagry (Buyer) [signature of Mr. Bagry]

Vasilios Kallianotis (Seller) [signature of Mr. Kallianotis]

Witness [signature of Tim Jacobson]

- [23] Mr. Bagry agrees that he paid Mr. Kallianotis the \$80,000 referenced in the letter but says he also paid him another \$80,000.
- [24] Mr. Bagry had no documents to substantiate his cash payments.
- [25] Mr. Bagry was the central figure in arranging the purchase of the Farm and upon purchase in managing the affairs of the Farm investment for the four partners. The latter is evidenced by the power of attorney he was granted by the three other partners at the time of the Farm

purchase. The others said they trusted Mr. Bagry and he was placed in a position of trust. His responsibilities included the payment of the property taxes, the payment of the insurance for the Farm, the collection of rent, the repair and maintenance on the Farm, and keeping all of the owners informed as to finances and the circumstances of the Farm. I note at this point that it was acknowledged by Mr. Bagry's counsel that Mr. Bagry owed his partners a fiduciary duty given that he had asked to be and was appointed the attorney for each of the owners. Unfortunately, he failed in some of the responsibilities and the result is this lawsuit.

[26] The terms of the powers of attorney granted to Mr. Bagry by the others were drafted by a lawyer at the time of the purchase. The terms are very broad, identical in language, and contain the following:

I appoint the following person:

Ravinder Singh Bagry, Manager, of 4938-184th Street, Surrey, B.C. V3S 0L5

to be my attorney in accordance with the Power of Attorney Act and to do on my behalf anything that I can lawfully do by an attorney.

This Power of Attorney is subject to the following conditions and restrictions:

- 1) In accordance with the Power of Attorney Act I declare that this power of attorney may be exercised during any subsequent mental infirmity on my part.
- 2) Section 56 of the Land Title Act (1996) R.S.B.C., c. 250 and amendments thereto, is expressly excluded from application to this Power of Attorney.

[27] Also at the time of the completion of the purchase of the Farm, the parties were advised by their lawyer that a written agreement between the owners should be considered; however they chose to not expend the monies to have such an agreement drafted.

[28] In July 2006, the tenant who had been renting the Farm left. She had been paying \$1,500/month. It is acknowledged by all of the owners that Mr. Sandhu had the view that the rent was low.

[29] In August 2006, Mr. Sandhu registered himself as the BC Hydro account holder for the Farm. Mr. Sandhu placed a "For Rent" sign on the Farm with his phone number on it. Mr. Sandhu stated he did this on the direction of Mr. Bagry.

[30] A man named Josh contacted Mr. Sandhu expressing interest in renting. Mr. Sandhu met him and showed him the house. They agreed on rent at \$2,000/month. Mr. Sandhu testified that he received Mr. Bagry's approval for all of this. The tenant provided a damage deposit. Mr. Sandhu stated that Mr. Bagry was present when the damage deposit was paid and, in fact, received the deposit. Mr. Sandhu says that over the course of the tenancy Josh paid rent to Mr. Sandhu in cash. The tenant would meet Mr. Sandhu at different places and pay him. The payments were not always the full amount and were intermittent. Mr. Sandhu testified

that he paid the BC Hydro bills.

- [31] In about March 2007, Ms. Dhatt, the representative for the fire and property insurer for the Farm, sought information of the tenant at the Farm as renewal of the policy was coming up. Ms. Dhatt contacted Mr. Bagry. He referred her to Mr. Sandhu. She contacted Mr. Sandhu who advised her that he would get her the information. She followed up several times with Mr. Sandhu to obtain the information, as did one of her co-workers, but both were unsuccessful. Letters were sent to the owners advising them of the imminent lapse of the insurance policy. Nothing was done and the policy expired mid-April 2007.
- [32] On August 22, 2007, a fire destroyed the house on the Farm. It seems the premises contained hazardous flammable materials. The substance was not identified. Mr. Graeca was hired by Mr. Sandhu to remove the debris as the owners had been directed to do so by municipal authorities. When Mr. Graeca sought payment, he could not reach Mr. Sandhu, so he went to Mr. Bagry, who paid him the base fee of \$6,500. Mr. Graeca testified he is still owed \$2,000 for the extra work for the removal of the special hazardous waste. He stated that in the course of his demolition and clean up of the remains from the fire a green liquid was uncovered and caused a fire to start which he was able to contain himself. He also was told by the waste disposal site that the debris that he had dumped had combusted and he was told to take the remaining debris to a special waste site.
- [33] The other owners testified that they did not have details as to the identity or contact information for the tenant. It is puzzling that no attempt was made during Josh's tenancy to look in on him at the Farm particularly when Mr. Bagry lived very close to the Farm, had management responsibility over the Farm, and when it was known that the property insurance was about to expire and Josh's particulars were required to renew the insurance. It is further puzzling that no attempt was made by the owners to contact him after the fire. This is particularly so in regard to Mr. Bagry, who held the overall management responsibilities for the Farm. I was left to wonder if there ever was a Josh; or if there was, what his activities were on the Farm.
- [34] After the fire, Mr. Sandhu began to pay \$2,000, in addition to his regular payments, towards the Farm investment to make up for the loss of rental income. He made the \$2,000 payments from August 2007 through December 2010. This totalled \$78,000.
- [35] The Farm has more recently been rented out to Mr. Daniels who raises cattle on the land. He pays \$10/year and the property tax. This allows the owners to retain the designation of the property as a farm. The house has not been replaced.
- [36] Mr. Sandhu continued to purchase vehicles at ICBC auctions through Quick-Fixx. He continued to do so until about February 2010. During this period he purchased about 75 vehicles.

- [37] Ms. Van Sommeren testified that there were no real difficulties with mortgage payments from 2004 to October 2009. After that she said that she had to contact Mr. Sandhu and ask him for payment and that at times he would answer or reply to her calls and make payments; however, when he did not respond or attend to make payments she would call Mr. Bagry who would then make payment.
- [38] In 2009, Mr. Sandhu and his wife sold their home which they had purchased in 2007. I understand that the home had been registered solely in the name of Ms. Sandhu.
- [39] On around November 11, 2009, following the sale of his home, Mr. Sandhu provided to Mr. Bagry a bank draft made out to Mr. Bagry for \$10,000.
- [40] In 2010, Mr. Sandhu visited Ms. Dhatt and asked for a copy of the insurance policy on the Farm. He says that it was in that meeting that he understood that there was no insurance claim for the fire, which was contrary to what Mr. Bagry had told him. Mr. Sandhu testified that prior to this he had been led to believe from Mr. Bagry that an insurance claim had been filed and once it was paid out he would be reimbursed for the \$2,000 payments he had been making. Ms. Dhatt stated that Mr. Sandhu made no inquiries of her along those lines. In any event, Mr. Sandhu stopped making payments towards the Farm at around this time.
- [41] On December 12, 2013, Mr. Thandi revoked the power of attorney which he had granted to Mr. Bagry on March 25, 2004. The other two have not done so.
- [42] Since December 2014, Mr. Sandhu has been paying his share of the mortgage. This is pursuant to an order allowing the adjournment of trial conditional upon a lump sum payment of \$10,000 by Mr. Sandhu to the trust fund of plaintiffs' counsel and monthly payments of \$500/month starting January 1, 2015 until the end of the trial.
- [43] In regard to the counterclaim, Mr. Bagry has produced ICBC invoices for salvage vehicles which Mr. Sandhu has paid but which Mr. Bagry has refused to issue transfer papers for because Mr. Bagry says he is owed for fees, expenses and taxes. Mr. Sandhu also stated that he made payments towards the purchase of the Farm indirectly by having customers pay Mr. Bagry directly from his sales.
- [44] Mr. Sandhu had various witnesses testify as to their dealings with him regarding vehicles:
- Mr. Rai bought a 2000 BMW 323 for \$10,085.66 on March 4, 2004. He paid Mr. Bagry directly.
 - Mr. Phull purchased through his company a 2008 Chevrolet Van for \$9,800.34 on February 24, 2009. He paid Mr. Bagry directly.
 - Mr. Johal paid Mr. Bagry directly for a 2005 Chrysler 300C sedan which he bought from Mr. Sandhu for \$10,000.
 - Mr. Rakhra bought a 2000ish BMW X5 from Mr. Sandhu in about 2005 or 2008. He paid Mr. Bagry \$1,000 more than the price he agreed on with Mr. Sandhu on the basis that Mr. Sandhu owed Mr. Bagry some money.

- Mr. Panasar bought a 2002 Corvette from Mr. Sandhu in 2007. He paid Mr. Sandhu \$17,000 but Mr. Bagry would not give him the transfer papers.
- Ms. Lacoix had Mr. Sandhu purchase her husband's salvage motorcycle at auction in about 2009 for \$2,000. She says that Mr. Bagry would not release the transfer documents unless her husband paid a further \$1,500 to Mr. Bagry, which he did. Ms. Lacroix did not have direct knowledge of the dealings between Mr. Bagry and her husband.

[45] I note that all of the sales agreements and transfer documents specify that the transactions were with Quick-Fixx.

Issues

[46] The issues distill to:

1. In the plaintiffs' claim:
 - (a) Was there an oral Purchase Agreement and did it include terms for disentitlement?
 - (b) Did Mr. Sandhu breach the Purchase Agreement disentitling him to his one-quarter share of the Farm?
 - (c) Who was responsible for placing insurance on the Farm and did that person fulfill this duty? and
 - (d) Did Mr. Sandhu breach the Replacement Contract by failing to rebuild the House, to provide money in lieu, and to pay rental income?
2. In the counterclaim:
 - (a) Did Mr. Bagry misappropriate funds relating to the down payment of the Farm?
 - (b) Did Mr. Sandhu make his proportionate share of the payments towards the Farm?
 - (c) Can Mr. Bagry be held liable for the alleged breach of contracts between Quick-Fixx and Mr. Sandhu? Has Mr. Sandhu's claim been brought against the wrong party?

Discussion

[47] I will start with some general comments. In this case there is a clear conflict in the evidence of the opposing sides and limited or even no independent and objective corroborative evidence in support of one side or the other on the critical issues. It is important to note for the benefit of the parties that the evidentiary burden rests upon the party advancing a claim and that it is the responsibility of the advancing party to establish their claim on a balance of probabilities.

[48] Given the lack of objective evidence and certain puzzling circumstances, the credibility and/or reliability of the witnesses on each side is an issue. It is apparent to me that there is more to the dealings between the parties than has been disclosed. There is unhappiness between the plaintiffs and the defendant. I also sense there is unhappiness between the plaintiffs.

[49] My assessment of the body of evidence is that it is not particularly compelling in supporting the cases for the particular side having the burden of proof. I note:

- the lack of information regarding the finances of the Farm which should have been kept by Mr. Bagry;
- the incredible testimony of Mr. Sandhu and Mr. Bagry as to their lack of knowledge as to the identity and other particulars of the tenant "Josh";
- Mr. Bagry's correction on his second day of testifying as to who he meant by the initials "G+R" on bank statements, a day after testifying that it had a different meaning;
- Mr. Bagry's and Mr. Bhullar's testimony that indicated Ms. Bhullar had financial information to support Mr. Bagry's position when it appeared she had little to no information;
- Ms. Bhullar's reversal in her testimony between not having documentation regarding the Farm and then indicating in answer to the next question that she had records, and when reminded that she had just said she had no records, she resiled from that;
- the absence of evidence, such as a power of attorney, to show the transfer of responsibility for the Farm from Mr. Bagry to Mr. Sandhu;
- the distancing of Mr. Bagry from carrying out his duties in securing the tenant information for the insurance and having no details as to the tenant, even though he held formal responsibilities for the Farm;
- financial numbers regarding the purchase and contribution to the mortgage and expenses paid which do not add up;
- Mr. Bagry's confused explanations regarding the finances between Mr. Sandhu and himself or Quick-Fixx;
- Mr. Bagry's unconvincing testimony regarding a letter which he said he drafted in July 2006 and which he said was signed by Mr. Sandhu stating that Mr. Sandhu was renting the Farm for \$2,500, the signature having no resemblance to Mr. Sandhu's signature, Mr. Bagry stating he had no idea why he had asked Mr. Sandhu to sign the letter and Mr. Sandhu denying that he did;
- Mr. Bagry knowing that the insurance policy was in peril of lapsing, and then knowing that it had lapsed, and doing nothing to reinstate it;
- the lack of documents of Mr. Sandhu to support his position in the action against him and in his counterclaim;

- Mr. Sandhu's denial of any meetings of the owners post purchase; and
- Mr. Sandhu's unconvincing testimony regarding the tenant at the Farm including his testimony that he asked Josh for his name and Josh told him that he would get back to him.
- the general lack of knowledge as to the management and affairs of the Farm of Mr. Thandi and Mr. Bhullar.

[50] I make specific note of Mr. Bagry's testimony that he kept "notes" of his financial dealings on his cell phone, and then transposed them to bank statements and onto documents he created on his computer. He testified that his phone was stolen a year after this lawsuit was started. There was no explanation as to why such important information was not saved to another device or location or simply printed out and provided to counsel. Mr. Bagry owed a fiduciary duty to the other three men. His failure to keep and maintain records for the benefit of them is puzzling given that he has been in business for years. I also note the documents he did refer to were for his "own" use and not for the partnership. I did not find Exhibit 12 (the master spreadsheet) and Exhibit 20 ("Gary's Det" [sic]) tendered by Mr. Bagry as being compelling in light of all the other circumstances that I have mentioned.

[51] I will address first the plaintiffs' claim and then the defendant's counterclaim.

1. The Purchase Agreement dispute

[52] My findings on the issues related to the Purchase Agreement follow.

[53] In regard to the "under the table" payment, I prefer the evidence of Mr. Kallianotis that \$100,000 was paid "under the table." Mr. Kallianotis appeared to be open about what he had done. He was not shaken in cross examination. He did not have an interest in this dispute and as far as I could see he seemed quite comfortable about receiving the "under the table" payment. I did not detect any sense that he was being untruthful about the amount he received.

[54] In regard to the first oral agreement, my assessment of the evidence is that the plaintiffs have not met the standard to establish their claim. There is no objective corroborative evidence to establish their assertion of a term permitting a buyout (the "Buyout Provision"). This is contrasted to the steps taken by the parties to formalize the appointment of Mr. Bagry to manage their farm investment. The idea of a buyout and the granting of a power of attorney were discussed by the owners at the same time. The concept of ousting an owner in the terms described by the plaintiffs is reasonably straightforward to set down in writing, yet it was not. It is my view that while the idea may have been discussed the specifics were not agreed. The plaintiffs spoke at trial of the trust the owners had in each other at the start of the relationship. It is more likely that this trust is what they relied upon in resolving future problems rather than agreeing to terms. My view is that the consequence of an owner being delinquent was something left to be dealt with at a future date which is not uncommon in business dealings.

- [55] This is evidenced by the acknowledged lack of specificity as to the period of time or amount an owner would have to be delinquent before the Buyout Provision could be invoked. Further, the idea of paying out the defaulting owner for what he had paid is not expressed in the pleadings but was expressed at trial. In this regard, the failure of Mr. Bagry, who had the responsibility to keep the accounts for the Farm, to keep for the benefit of the partners a proper account and the inadequacy of the "for his own use" documents diminishes the force of the plaintiffs' argument that there was a Buyout Provision. Similarly, the idea of a majority vote is not set out in the pleadings but was expressed at trial; moreover it was only expressed by Mr. Bagry and not the other plaintiffs. Further, it was apparent that the plaintiffs had not thought through what would happen if the value of the Farm diminished and a partner became delinquent. Mr. Thandi's testimony confirmed this. According to the manner described the plaintiffs, they could only oust that partner by paying him all of the monies paid in regardless if the one quarter value of the Farm did not cover those payments.
- [56] Given all of the foregoing deficiencies, including my view as to credibility and reliability, I conclude the existence of the Purchase Agreement has not been established.

2. The Rebuilding Agreement

- [57] In terms of the second oral agreement, the Rebuilding Agreement, my assessment again is that the evidence is insufficient to make out the claim. I find that subsequent to the fire there was a meeting of the four owners to discuss the consequences of the fire. This only makes sense given that the income generating asset on the Farm had been destroyed and that this loss affected the payment each had to make towards the mortgage. However, I do not find that an agreement was reached as asserted by the plaintiffs. Similar to my finding that there was no Buyout Provision, there is nothing in writing to evidence the agreement and the plaintiff witnesses' testimony was not compelling.
- [58] Mr. Bhullar stated that at a meeting subsequent to the fire Mr. Sandhu apologetically stated that:

it was his responsibility to get the insurance for the house and that he screwed up and that he would step up and put a house on the Farm and pay \$2000 or \$2500 towards the mortgage plus his share of the rental.

When asked what he meant by rental, Mr. Bhullar stated that Mr. Sandhu said he would pay \$500. Mr. Bhullar then said Mr. Sandhu would put \$200,000 on the Farm and put a house on it. This was not particularly in line with the pleaded asserted terms.

- [59] Mr. Bhullar's testimony at trial conflicted with his evidence given in December 2015 at his examination for discovery with respect to a second meeting of the owners, where Mr. Sandhu was said to have agreed to take on full responsibility for the rental of the Farm. In his discovery, Mr. Bhullar said there was no such meeting but at trial he stated that there had been. He described it as a meeting where "four guys were having a drink and a meal - we trusted each other".

- [60] Mr. Bhullar's recollection was weak. He was not even able to state whether he knew if he had paid \$20,000 to Mr. Bagry.
- [61] Though I do not have much confidence in Mr. Sandhu's testimony, he was of limited financial means as I infer from the evidence. I do not see how he would have made a binding agreement or how the plaintiffs would have believed he would live up to such a promise. Mr. Bagry's testimony was that Mr. Sandhu had a poor history in payments. Though I can see Mr. Sandhu being apologetic and indicating that he would try to make things right and pay \$2,000/month (which he did) and look into finding a house to replace the one that was destroyed by fire, I am not of the view that a binding agreement was reached. I also question the lack of action by Mr. Bagry, who knew that the insurance on the property was in peril of expiring and then expired, all because the insurer could not obtain tenant information, which information he could have obtained given his proximity to the Farm. Keeping the property and fire insurance current on the Farm was one of the duties that he had been entrusted with by the owners, yet he did not do so. My view of the evidence is that this responsibility had not been transferred to Mr. Sandhu. I was left with the sense, given his central role in managing the Farm, that he was prepared to take the risk of renting to Josh given the higher rent that was being obtained. When things went wrong, he distanced himself from taking responsibility. Even if a promise could be made out, there is no evidence of a promise of forbearance by the other owners to sue Mr. Sandhu in respect of the fire, the lapse of the insurance, and the loss of the house. Thus, even if an offer could be made out, there was no consideration exchanged to establish a binding agreement. Mr. Bagry confirmed the absence of an exchange under cross-examination.
- [62] My view is that Mr. Sandhu's payment of \$2,000/month was a voluntary and gratuitous payment to reflect his moral responsibility for the loss of the rental income from the fire.
3. What should be done with the Farm?
- [63] Mr. Sandhu seeks the sale of the Farm on the open market and the net proceeds divided equally between the owners.
- [64] The plaintiffs wish to purchase Mr. Sandhu's interest in the Farm pursuant to s. 8 of the Partition of Property Act if the court does not grant the order sought or damages. The plaintiffs seek to purchase the interest on the basis of the value set out in the expert report tendered. In my view, this is the appropriate income. The purchase value will be the value set out in that report. Any amount owing by Mr. Sandhu is to be deducted from his one-quarter value.
- [65] While plaintiffs' counsel has provided some detailed allocation options regarding the balance paid and outstanding from each owner, I am not confident that the underlying information and attributions of payments are sufficient. As a result, I would direct a reference to the registrar for an examination as to the payments made by Mr. Sandhu towards the mortgage and expenses and outstanding amounts owing. The accounting is to reflect my findings that the "under the table" payments were \$100,000; that Mr. Sandhu paid

\$65,000 towards the initial deposit for the Farm purchase; and that the \$10,000 cheque of November 11, 2009 made out to Mr. Bagry was a payment towards Mr. Sandhu's \$2,000/month voluntary payments for the loss of rental income and not towards the mortgage or other expenses of the Farm.

4. The Car Purchase Agreement

- [66] Mr. Sandhu has counterclaimed against Mr. Bagry for breach of the Car Purchase Agreement. Mr. Sandhu asserts that on various occasions between 2007 and 2010 he successfully bid on salvage vehicles auctioned off by ICBC through Mr. Bagry's company Quick-Fixx. Mr. Sandhu says that Mr. Bagry accepted approximately twenty cars for the aggregate purchase price of approximately \$90,000.
- [67] Mr. Sandhu asserts that he made full payment of the purchase price invoiced by ICBC to Mr. Bagry but that Mr. Bagry has failed, neglected, and/or refused to deliver to Mr. Sandhu the cars and/or their respective documentation. As a result, the vehicles have depreciated in market value. It is also pleaded that Mr. Bagry has wrongfully sold some of that cars that rightfully belong to Mr. Sandhu to other purchasers and has failed, neglected, and/or refused to deliver to Mr. Sandhu the payments that Mr. Bagry received or to account to Mr. Sandhu for such sales.
- [68] Mr. Bagry denies having entered into any agreement with Mr. Sandhu for the purchase of cars. Any agreement was through Quick-Fixx, which held the dealer licence which allowed it to participate in ICBC auctions. It is further asserted in the response to the counterclaim that Mr. Sandhu failed to pay ICBC for the purchases and that Quick-Fixx had to pay ICBC for the salvage cars purchased by Mr. Sandhu and that Mr. Sandhu has not paid Quick-Fixx for several of the cars he purchased, as well as for towing and repair fees incurred by Quick-Fixx despite Quick-Fixx's demand for payment.
- [69] Mr. Sandhu's claim fails on the basis that his grievance under the Car Purchase Agreement is with Quick-Fixx and not against Mr. Bagry. While Mr. Bagry is the sole director and owner of Quick-Fixx, it is clear that Mr. Sandhu from the start understood that it was Quick-Fixx that he had his arrangement with in terms of vehicles purchased at auction. Mr. Sandhu knew that it was Quick-Fixx which held the dealer licence and that the vehicles he was purchasing at auction were through that company. Quick-Fixx has a legitimate business in which Mr. Sandhu participated in for years. The documentary evidence shows that the purchases and transfer documents all named Quick-Fixx. While the evidence is clear that Mr. Sandhu's customers who were witnesses paid Mr. Bagry directly for the purchase of the vehicles, it is apparent he was collecting the money on behalf of Quick-Fixx. Further, Mr. Bagry could not have converted and transferred the vehicles as it was Quick-Fixx that held title to them and the transfer documents again prove this. I also understand that counsel for Mr. Bagry advised counsel for Mr. Sandhu as early as April 25, 2013 that the claim was against the wrong party yet no action was taken by Mr. Sandhu to add Quick-Fixx or to start a separate proceeding. Accordingly, Mr. Sandhu's claim under the Car Purchase Agreement is

dismissed.

Conclusion

- [70] The plaintiff's claims are dismissed. The plaintiff will be entitled to purchase Mr. Sandhu's one-quarter interest in the Farm based on the expert report less any monies owing.
- [71] I direct a reference to the registrar for an accounting with respect to monies paid towards the mortgage and expenses of the Farm. The cost of the accounting is a matter to be brought back before me upon completion of the accounting as well as the questions of costs generally.
- [72] Mr. Sandhu's counterclaim is dismissed.
- [73] The matters of costs are to be addressed following the findings of the registrar and determination of the court.

"The Honourable Mr. Justice Masuhara"

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