

CANADA / JUDGMENT

Bhandar v. Bhandar

2001 BCSC 423

COURT

Supreme Court of British Columbia

DECIDED

20 March 2001

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Citation: Bhandar v. Bhandar Date: 20010320

2001 BCSC 423 Docket:

99/5629

Registry: Victoria

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JAGJEET SINGH BHANDAR ALSO KNOWN AS JAGJEET SINGH
PETITIONER

AND:

DAVID BHANDAR, ADMINISTRATOR AD LITEM
OF THE ESTATE OF HARBHAJAN KAUR SAMRA,
ALSO KNOWN AS HARBHAJAN KAUR, DECEASED
RESPONDENT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE E.R.A. EDWARDS

Counsel for the Petitioner: Hans J.R. Doehring

Counsel for :

Ragbier Singh Bhandar,

Surjeet Sarma and Ronnie Doman

Peter C.M. Freeman, Q.C.

Date and Place of Hearing/Trial: March 15, 2001

Victoria, BC

- [1] This is an unhappy family dispute over a 1997 bequest from the estate of the late Amar Kaur to her son the petitioner Jagjeet Singh Bhandar. The bequest was approximately \$21,620.
- [2] The petitioner suffers from schizophrenia so family members have helped him with financial matters. He lives with the respondent his brother David Bhandar.
- [3] The bequest was put in a bank account by Harbhajan Kaur Samra, a sister of the petitioner, at his request. She died intestate six months after the death of her mother Amar Kaur.
- [4] Mr. Doebling, solicitor for the petitioner, wrote to the late Ms. Samra's husband, Surjeet Samra, on 15 August 1999 asking him to confirm he was the personal representative of the estate of Ms. Samra and to account for the bequest. He also advised that legal proceedings would be commenced for an accounting and change of trustee on 31 October 1999, in the absence of a reply.
- [5] On 19 October 1999, Mr. Doebling again wrote Mr. Samra with the same requests plus an additional request in the form of an "Order and Direction to Pay" signed by the petitioner, demanding the bequest plus accumulated interest be paid into trust with the law office of Pearson and Company.
- [6] On 24 January 2000, Mr. Doebling wrote to the solicitors for the estate of Amar Kaur. He asked them to confirm their client Ragbier Singh Bhandar, another brother of the petitioner, had instructed them not to release to Mr. Doebling a copy of the cheque transferring the bequest from the Amar estate solicitors to Ms. Samra. This letter indicated that if it was necessary to bring an application to court to obtain a copy of the cheque so the bequest could be traced, solicitor-client costs would be sought against Ragbier Singh Bhandar.
- [7] An application was set for 6 March 2000. On 1 March 2000, the Amar estate solicitors replied sending Mr. Doebling a copy of the cheque.
- [8] On 6 March 2000 the Bank of Montreal wrote Mr. Doebling advising that the cheque, dated 7 April 1997, was deposited on 11 April 1997 and the funds held on deposit since the death of Ms. Samra amounted to \$22,613.27 on 6 March 2000.
- [9] The Bank of Montreal paid the whole amount on deposit into trust with the Cook Roberts law firm which represents Mr. Ragbier Singh Bhandar. It has since remained in trust there. There is no evidence that any funds have ever been taken from the original bequest or from interest earned on it. There is no need for the accounting the petitioner initially sought in these proceedings.

- [10] On 20 September 2000, counsel for the petitioner and for Ragbier Singh Bhandar appeared before me and indicated that in light of the amount of the bequest they had worked out an arrangement whereby their two firms would act gratuitously as joint trustees of the bequest. They have now agreed on a court order giving effect to that proposal. I hereby approve the form of order prepared by Mr. Doebling.
- [11] Both Mr. Doebling and Mr. Freeman are to be commended for this proposal, which solves an unfortunately acrimonious family dispute in a sensible way at some cost to each of their firms. It reflects the best traditions of the legal profession.
- [12] The remaining unresolved issue is costs. Both sides have instructed their counsel to seek special costs. Both counsel acknowledged that if such costs were awarded out of the bequest, the subject matter of the dispute would all be dissipated in costs and the petitioner would have gained nothing.
- [13] The point of my order on 20 September 2000 was to give effect to the proposal of counsel so as to preserve the bequest for the benefit of the petitioner. An award of costs from the bequest or against the petitioner would defeat this result.
- [14] Mr. Doebling argued that costs up to 1 March 2000 should be awarded against Mr. Sarma and his daughter Ronnie Doman for ignoring his requests for information about the bequest. Mr. Freeman responded that Mr. Sarma, who is illiterate in English, was absent in India at the relevant time. His daughter Ms. Doman was a mere volunteer with no official responsibility for the estates of either Amar Kaur or Harbhajan Kaur Sarma. She dealt with the petitioner's requests for money from the bequest in her father's absence. Her affidavit is consistent with these submissions.
- [15] Mr. Doebling argued that Ragbier Singh Bhandar was the person most responsible for the complexity and delay in this case, by instructing the Amar estate solicitors to withhold the cheque, but Mr. Doebling acknowledged he could see no basis for the court making an award of costs against Ragbier Singh Bhandar. In any event, I note that the copy of the cheque was provided before the scheduled application for which Mr. Doebling advised he would be seeking solicitor-client costs.
- [16] The two most active protagonists in this unhappy story appear to be the brothers David and Ragbeir.
- [17] David took the petitioner to Mr. Doebling to instruct him to find out what happened to the bequest and to recover it. He apparently encouraged the petitioner to engage Mr. Doebling on the basis of an unwritten contingency fee agreement, which Mr. Doebling disclosed to the court. The petitioner thought his other siblings Ragbier and Ms. Sarma had kept the bequest from him.

- [18] Ragbier only reluctantly disclosed the cheque which the petitioner had a right to know about. He was apparently concerned that David had already taken money from the petitioner which he had not repaid and was out to get his hands on the bequest. Both David and Ragbier claim to be acting in the best interests of the petitioner.
- [19] Mr. Doebling candidly acknowledged that he will be the loser if no award of costs is made, in light of his contingency fee agreement. I am unaware of any authority or principle which dictates that costs should or may be awarded in order to ensure that a party's lawyer will be paid. The arrangement between a solicitor and client for payment of fees normally does not concern the court. Sympathetic as I am to Mr. Doebling's predicament, I am not persuaded it provides a proper basis for me to make an award of costs against Mr. Sarma or Ms. Doman.
- [20] In light of all the circumstances I decline to make an award of costs to or against any person. All involved were seemingly acting in what they believed was the petitioner's best interest.
- [21] Mr. Freeman asked for a direction that he be authorized, as trustee, to decline to approve any payment of the petitioner's legal fees to Mr. Doebling. Since Mr. Doebling was engaged under a fee agreement which was not, as I understand, in writing, and since Mr. Doebling acknowledged there was an issue as to the petitioner's capacity to instruct counsel, I am unable to say on the basis of the information now before the court that the fee agreement is enforceable against the petitioner.
- [22] If the fee agreement is enforceable, then it may be a legitimate expense for payment on the petitioner's behalf from the bequest. I direct that there be no payment of legal fees to Mr. Doebling from the bequest without further order of the court. I would not make such an order in the absence of a recommendation from the registrar that the fee agreement is enforceable.

"E.R.A. Edwards, J."

The Honourable Mr. Justice E.R.A. Edwards

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