

CANADA / JUDGMENT

Binpal v. Gill

2025 BCSC 1318

COURT

Supreme Court of British Columbia

DECIDED

11 July 2025

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2025 BCSC 1318 Binpal v. Gill

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Binpal v. Gill,

2025 BCSC 1318

Date: 20250711

Docket: S227342

Registry: Vancouver

Between:

Sukhwinder Singh Binpal and

Harinder Singh Sanghera

Plaintiffs

And:

Arvinder Gill

Defendant

Before: Associate Judge Robinson

Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

D.J. Taylor

Counsel for the Defendant:

E.J.S. Aitken

Place and Date of Hearing:

Vancouver, B.C.

June 16 & 20, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 11, 2025

INTRODUCTION

- [1] These reasons arise from an application by the defendant wherein he seeks two orders. First, the defendant seeks an order compelling 11 persons, none of whom are parties to the litigation, to attend to be examined for discovery either in their personal capacities or in their capacities as representatives of certain corporate entities. Second, the defendant seeks an order compelling the plaintiff, Sukhwinder Singh Binpal, to provide a response to an outstanding request arising from his examination for discovery in November 2023.

BACKGROUND

- [2] The underlying action concerns real property, located on 16th Avenue, in Surrey, BC (the "Property"). The parties acquired the Property in 2007 and it was sold in accordance with a court order in 2022. At the time of sale, each of the plaintiffs held a 30% legal interest in the Property and the defendant held a 40% legal interest.
- [3] Pursuant to an order of Mr. Justice Tammen, made on October 17, 2022, 40% of the proceeds arising from the sale of the Property, amounting to approximately \$4.6 million, was paid into trust (the "Tammen Order"). That amount has remained in trust and is the subject matter of the present litigation.
- [4] The plaintiffs contend that as the registered owners of the Property, they, along with the defendant, held the Property in trust, for the benefit of ten beneficial owners (the "Beneficiaries"). This is disputed by the defendant who asserts both a legal and beneficial interest in the remaining sale proceeds.
- [5] At the heart of the dispute is a document, titled "Declaration of Bare Trust and Agency Agreement" dated January 19, 2007 (the "Agreement"). Each of the parties are named in the Agreement as the "Nominees" and each of Beneficiaries are named as the "Owners". The Agreement expressly states that the Nominees hold legal title to the Property as bare trustees for and on behalf of the Owners, and further provides, inter alia:

- a) Any benefit, interest, profit or advantage arising out of or accruing from the Property is a benefit, interest, profit or advantage of the Owners and if received by the Nominees will be received and held by the Nominees for the sole use, benefit and advantage of the Owners ; and
 - b) The Nominees will, upon the unanimous written direction of the Owners, deal with the Property and do all acts and things in respect of the Property at the expense of and as directed by the Owners from time to time and will assign, transfer, convey, lease mortgage pledge, charge or otherwise deal with the Property or any portion thereof at any time in such manner as the Owners may determine, to the extent permitted under relevant laws; without limiting the generality of the foregoing, the Nominees will transfer legal title to the Property to or as directed by the Owners forthwith upon written demand of the Owners.
- [6] In late 2020, the Nominees entered into a contract with an arm's length entity to sell the Property (the "Sales Contract") which contemplated a completion date of August 31, 2022. As set out in the Agreement, each of the plaintiffs, in their capacities as Nominees, executed documentation necessary to give effect to the Sales Contract. The defendant however, refused to do so, apparently because he became aware that the entire sale proceeds would be distributed among the Beneficiaries and he would not receive any portion.
- [7] The defendant's refusal to execute the necessary sales documents resulted in the Beneficiaries issuing a unanimous written direction requiring the defendant to execute the documentation and further directing the plaintiffs to commence these legal proceedings on September 8, 2022.
- [8] The defendant filed a counterclaim as against the plaintiffs on October 6, 2022. The counterclaim names only the plaintiffs as defendants by counterclaim and does not name nor seek relief from any of the Beneficiaries.
- [9] Meanwhile, the arm's length purchaser of the Property had commenced concurrent proceedings wherein it sought specific performance of the Sales Contract. It was in that action that the Tammen Order was made and which gave rise to the funds which are central to the present dispute.
- [10] The defendant's position in this litigation is premised on the Agreement, which he contends is unenforceable. In taking this position, he contends that although the Agreement bears his signature, the signature is in fact a forgery and that he did not agree to hold his registered interest in the Property as trustee. He claims an entitlement to both a legal and beneficial interest in 40% of the Property and thus an entitlement to monies being held in trust, pursuant to the Tammen Order.
- [11] The foregoing constitutes an incomplete but, for present purposes, adequate summation of the circumstances in which the present application has arisen.

PRESENT APPLICATION

a) Examination of the Beneficiaries

[12] Insofar as the defendant's application to examine each of the Beneficiaries is concerned, the defendant relies on Supreme Court Civil Rules Rule 7-2(6), as follows:

a person for whose immediate benefit an action is brought or defended may be examined for discovery.

[13] The foregoing establishes at least three clear criteria which inform the present application:

- a) First, whereas a party of record may to examine other parties of record who are adverse in interest as of right, the ability to examine a person "for whose immediate benefit an action is brought or defended" is subject to the Court's discretion;
- b) Second, it is not sufficient that the proposed examinee is a person who merely has an interest in the outcome of the litigation or that the proposed examinee stands to derive a benefit from the litigation. The proposed examinee must stand to derive an "immediate benefit" in the proceeding; and
- c) Third, even in situation where the proposed examinee stands to derive an "immediate benefit" from the litigation, that in itself is not sufficient. The Court must be satisfied that the underlying action is being brought or defended for the immediate benefit of the proposed examinee. If the proposed examinee is positioned to receive an immediate benefit in the litigation, but that benefit is incidental to the dispute, the application must fail.

[14] Further guidance emerges from the authorities, of which there are few. The paucity of prior decisions considering the operative Rule was addressed by Master Harper (as she then was) in *Robb v. Sloan*, 2020 BCSC 945 [Robb]:

[6] There are very few cases on Rule 7-2(6). I would hazard a guess that that is because the result sought is an extraordinary one and one that is far outside the fact patterns of most litigation

[15] As an aside, I agree that the orders sought on this application are extraordinary. Orders made pursuant to Rule 7-2(6) require non-parties to become active participants in litigation. The potential abuse and injustice that might arise if strict and relatively narrow parameters are not applied can be envisioned without difficulty.

[16] In this *Abakhan & Associates Inc. v. Braydon Investments Ltd.*, 2008 BCSC 1883 [Abakhan & Associates Inc.], Court considered an application brought pursuant to Rule 7-2(6). That case concerned an action commenced by a trustee in bankruptcy against the defendant. The defendant sought to examine two of the bankruptcy creditors on the basis that they were persons for whose immediate benefit the action was brought.

[17] In concluding that an examination for discovery of the two creditors was appropriate, Gerow, J. held:

- [28] It is clear that the trustee has no interest in the assets of the bankrupt. A trustee in bankruptcy is an administrative official required by law to gather in and realize on the assets of the bankrupt and then to divide the proceeds among those entitled in accordance with the scheme set out in the BIA: L.W. Houlden et al., *Bankruptcy and Insolvency Law of Canada*, 3d ed., looseleaf (Scarborough: Thomson Carswell, 2005) at 1-64.
- [29] Although the trustee argues that it is an autonomous entity and not a representative of others, the only reason the trustee has brought the action is to benefit the creditors. If the trustee's action succeeds, a substantial amount of real property and other assets will be available to the estate to satisfy the claims of the various creditors. The creditors are paying the costs of the action in that the trustee is entitled to be indemnified by the creditors, and the creditors will benefit immediately if the action succeeds. In my view, the creditors are persons for whose immediate benefit the action is brought. [emphasis added]
- [18] Subsequently, in *Concord Pacific Acquisitions Inc. v Oei*, 2018 BCSC 1308 [Concord Pacific], Voith, J. refined the applicable criteria. In that case, it had been argued that because the proposed examinee stood to potentially benefit from the outcome of litigation, he was a person for whose immediate benefit the action had been brought. Voith J. rejected this argument as unduly broad, noting that any entitlement accruing to the proposed examinee was contingent and conditional on a separate agreement, not at issue in the litigation, and that the separate agreement constituted an intermediate circumstance thus precluding a finding of any immediate benefit:
- [42] whatever benefit Mr. Chen may receive if Concord is successful in this action is not an "immediate benefit" that flows or ensues from the action. Mr. Chen has no status in the action and the resolution and determination of the issues in the action will not, without more, confer any benefit on Mr. Chen. Instead, any benefit that Mr. Chen may ultimately receive would be a product of the separate and independent agreement that he reached with Concord and/or Mr. Oei. I do not consider that benefit "immediate", and I do not consider that it falls within the purview of Rule 7-2 (6).
- [19] The foregoing reasoning was applied by the Court in *Robb* which concerned a real property dispute involving siblings. The plaintiff sought to examine the defendant's spouse (who was not a party to the litigation). In doing so, she relied on the fact that the proposed examinee had contributed to improvements on the real property and had an interest in protecting his investment.
- [20] Master Harper rejected the application, holding:
- [9] The reasoning of Voith J. in para. 42 of *Concord Pacific* applies directly to this case, in my view. Any benefit that Dr. Sloan might receive from a dismissal of the action is an indirect benefit and subject to any separate agreement, if any, that he has with his wife. The notion that Dr. Sloan should be examined because he is the person most knowledgeable about the key meetings and agreements does not, in my view, put this case into Rule 7-2(6) of the Rules

- [21] On the present application, the plaintiffs contend that the Beneficiaries are in an analogous situation to the proposed examinees in Concord Pacific and in Robb. They argue that the outcome of the litigation will not confer any immediate benefit to the Beneficiaries, and that the Agreement constitutes an intermediate circumstance. Specifically, if the plaintiffs prevail in the litigation, the Beneficiaries' rights are dependent on the plaintiffs adhering to the Agreement.
- [22] I disagree with this argument.
- [23] Here, the rights that are being asserted by the plaintiffs are the rights of the Beneficiaries. They stand in a position analogous to those of the creditors described in Abakhan & Associates Inc.. The present litigation was initiated at the behest of the Beneficiaries and the only reason for the underlying litigation is to benefit them. If the plaintiffs prevail, the Beneficiaries are poised to receive proportionate shares of the remaining sale proceeds. Meanwhile, any outcome realized by the plaintiffs will be subject to the Agreement and realized in trust for the Beneficiaries.
- [24] The existence of the Agreement does not, in my view, constitute an intermediate circumstance as contemplated by the Court in Concord Pacific. In that case, the status of the proposed examinee was very much in question. The Court determined that he was "a partner of the Plaintiff for some aspect of the proposed development of the lands in question" but did not address the proposed examinee's rights to participate in the proceeds of the litigation itself. Moreover, the Court in Concord Pacific did not address any express agreement which may have existed between the plaintiff and the proposed examinee.
- [25] Here, the Agreement - to which the parties and the Beneficiaries are signatories - is the basis for the litigation. The terms of the Agreement are not in dispute. Its enforceability will finally determine whether the disputed sale proceeds properly belong to the defendant or to the Beneficiaries.
- [26] It is disingenuous for the plaintiffs to argue that the Beneficiaries' rights, if any, are subject to subsequent determination. The plaintiffs' position in the litigation is premised on the assertion that the Agreement is binding. To entertain a suggestion that the rights of the Beneficiaries are contingent or in any way uncertain, would be to countenance positions that are not merely inconsistent, but diametrically opposed.
- [27] I find as a fact that the Beneficiaries are persons for whose immediate benefit the action has been brought. As a corollary, and for the same reasons, I also find that it is for the immediate benefit of the Beneficiaries that the counterclaim is defended.
- [28] That finding is not the end of the analysis, however. Under Rule 7-2(6), the Court retains direction. In the exercise of that discretion, Gerow, J. considered the following (Abakhan & Associates Inc., para. 30):
- a) Whether the proposed examinees are willing participants in the action;

- b) How much is at stake in the litigation; and
- c) What evidence may be obtained from the examinations.

- [29] Here, although none of the Beneficiaries are named as parties in the litigation, I have no hesitation in finding that they are willing participants. They collectively, and unanimously, directed the plaintiffs to initiate the claim. Moreover, they presumably have the discretion to end the litigation at any time and would need to ratify any settlement that may arise prior to trial. Moreover, while this is not determinative of willing participation, it is notable that the plaintiffs have expressly conceded on this application that the Beneficiaries "will all undoubtedly be witnesses at trial". This factor favours granting the orders sought by the defendant.
- [30] A consideration of the amount at stake evokes considerations of proportionality, which is expressly enshrined in Rule 1-3(2). Where practicable, that subrule requires a consideration of not simply the amount involved, but also the importance of the issues in dispute and the overall complexity of the proceeding.
- [31] Here, the amount at stake is significant - approximately \$4.6 million. At the same time, the underlying issues for determination are not unduly complex. Distilled to its essence, the dispute concerns the enforceability of the Agreement and the validity of the defendant's signature on the Agreement. While each party will certainly lead evidence to support their respective positions and the Court can expect extensive submissions, the issues themselves are not complex when compared to other commercial disputes.
- [32] Moreover, while the determination of these issues is of obvious importance to the parties (and to the Beneficiaries), this case is not one that is likely to have broader implications. The outcome of this litigation will likely come down to factual findings that are unique to the circumstances of this case.
- [33] It is against this backdrop that the Court must consider proportionality. The defendant has an unquestioned right to examine each of the plaintiffs for discovery. If this application is granted, he will be afforded an opportunity to conduct examinations of a further 11 persons, for a total of 13 separate examinations. Even if the examinations are abbreviated, they will require the parties and the proposed examinees, to expend resources, which in my view will certainly be disproportionate to the litigation itself. This factor militates against the exercise of discretion.
- [34] Finally, consideration must be given to the evidence that may be obtained from the examinations of the Beneficiaries. The defendant relies primarily in the apparent inability of the plaintiffs to give evidence surrounding the Beneficiaries' involvement in the preparation and execution of the Agreement and related "trust documents". He argues that the Beneficiaries are uniquely positioned to provide that evidence.

- [35] This may be correct and for the purposes of this application, it is not strongly contested. However, the mere fact that a non-party has relevant evidence to give is not a basis to require that non-party to submit to an examination for discovery. This point was made by Blake, J. in *Giesbrecht v Peace River Regional District*, 2023 BCSC 540:
- [10] The purpose of the examination for discovery is to obtain the evidence of the party being discovered, and "to obtain binding admissions on behalf of the party being discovered" It is not to give the opposing party the opportunity to examine all witnesses who may have information about the issues in the action, nor to examine all witnesses adverse in interest [emphasis added]
- [36] While the circumstances giving rise to the Agreement are unquestionably relevant in this litigation, that is not a sufficient basis to require all of the Beneficiaries to submit to examinations. This is particularly the case here since at least two of the Beneficiaries were not parties to the Agreement when it was initially made. Their beneficial interests allegedly arose in 2020 - more than a decade after the Agreement was created. Those entities cannot be expected to have any material evidence as to the circumstances giving rise to the Agreement or its alleged execution by the defendant.
- [37] With respect to the other Beneficiaries, it is conceivable, if not likely, that as signatories to the Agreement when it was initially created, they would have material evidence as to its creation. However, the depth of their knowledge and their recollections pertaining to events which occurred nearly 20 years ago is entirely speculative.
- [38] There is no reason to expect that any of the Beneficiaries would necessarily have more or better knowledge than either of the plaintiffs, both of whom the defendant can examine as of right. This factor militates against the defendant.
- [39] In all of the circumstances, while I am satisfied that the Beneficiaries are persons for whose benefit the action has been brought, I am not satisfied that they should be subject to examinations for discovery under Rule 7-2(6). Requiring them to submit to examinations for discovery would be to overlook the considerations of proportionality which often guide the Court's discretion. This is particularly true in cases where the Court is left to speculate as to the evidence that may be obtained through the discovery process such that the defendant may be allowed to embark on a metaphorical "fishing expedition" in the hope of obtaining evidence which may or may not exist.
- [40] Accordingly, the defendant's application under Rule 7-2(6) is dismissed.
- [41] In reaching that conclusion, I hasten to add that I am not foreclosing the possibility of the defendant availing himself of other means by which the evidence of the Beneficiaries may be obtained. Indeed, the Rule 7-5 expressly contemplates the process by which a party may obtain pre-trial evidence from a non-party. That option remains available to the defendant and, in my view, ought to have been the process followed.

b) Outstanding Discovery Request

[42] This aspect of the defendant's application was decidedly less contentious. It concerns a request arising for the defendant's examination for discovery of the plaintiff, Sukhwinder Singh Binpal.

[43] The application is brought pursuant to R. 7-2(18)(a) which provides:

Unless the court otherwise orders, a person being examined for discovery must answer any question within the person's knowledge or means of knowledge regarding any matter, not privileged, relating to a matter in question in the action.

[44] The test to be applied on this application is thus set out in the subrule itself. If the information sought is (a) within the persons knowledge or means of knowledge; and (b) if it relates to a matter in question in the actions, the question must be answered and the information must be provided unless it is privileged.

[45] The outstanding request in this case concerns two documents disclosed by the plaintiffs in this litigation, both of which relate a different property located in Surrey, BC. At his examination for discovery, Mr. Binpal was asked how the two documents came to be in the plaintiffs' possession and testified that he was unsure. The resulting request was straightforward. He was asked to advise as to who provided the documents to the plaintiffs.

[46] No objection was raised to this request in the context of the examination. However, in subsequent correspondence, counsel for the plaintiffs asserted that the information sought was protected by solicitor-client privilege.

[47] In their application response, the plaintiffs did not advance their assertion of privilege. Indeed, they did not address the outstanding request at all. Instead, in oral submissions, the plaintiffs objected to the request on the basis of relevancy and argued that the source of the documentation was not relevant to the issues in the proceeding.

[48] In my view, the plaintiffs' position is belied by the fact that the documents to which the request relates were disclosed in the plaintiffs' list of documents. In accordance with Rule 7-1(1) a party's list of documents must list

all documents that are or have been in the party's possession or control and that could, if available, be used by any party of record at trial to prove or disprove a material fact, and all other documents to which the party intends to refer at trial

[49] By disclosing the documents as part of their list of documents, the plaintiffs have, if not admitted, then certainly indicated that they are relevant (in the sense that they may be used to prove or disprove a material fact or that they may be referred to by a party at trial). It follows as a logical conclusion that if a document may be referred to by a party at trial, an adverse party is entitled to know the source of that document, if for no other reason than to assess its authenticity.

[50] In reaching that conclusion, I am mindful of the fact that determinations of relevancy are subject to a somewhat relaxed standard in the examination for discovery context. This point was made clearly by Griffin, J. (as she then was) in *Kendall v. Life Insurance Co. of Canada*, 2010 BCSC 1556, at para. 10:

Because of the nature of cross-examination and the generally wide scope of examinations for discovery, it will not always be clearly apparent that a single question will produce relevant evidence. Nevertheless, unless it is very clear that the answers may not be relevant to the issues, the better course is to allow the questions. In this regard, it has to be kept in mind that what might be a permissible question on discovery, without objection, is not a concession that the question, and evidence it adduces, is admissible at trial.

[51] A similar and more emphatic statement in this regard emerges from the decision of Willcock, J. (as he then was) in *Nwachukwu v. Ferreira*, 2011 BCSC 1755 at para. 32:

Rigid limitations rigidly applied can destroy the right to a proper examination for discovery. Useful or effective cross-examination would be impossible if counsel could only ask such questions as plainly revealed their purpose. An examination for discovery is in the nature of cross-examination. Counsel for the party being examined should not interfere except where it is clearly necessary to resolve ambiguity in a question or to prevent injustice.

[52] In the circumstances, having at least tacitly conceded the relevancy of the documents for the purposes of disclosure, it follows that information concerning the source of those documents satisfies the relatively low threshold under Rule 7-2(18).

[53] Accordingly, the defendant's application is granted insofar as it relates to the outstanding request made during the examination of Sukhwinder Singh Binpal.

COSTS

[54] Notwithstanding that the defendant was partially successful on this application, the overwhelming focus of the hearing (and the resulting reasons) concerned the proposed examinations of the Beneficiaries. In respect of that aspect of the application, the plaintiffs prevailed. Accordingly, the plaintiffs are entitled to their costs of this application, in the cause.

"Associate Judge Robinson"

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Prepared on 26 October 2026 · Esheria