

CANADA / JUDGMENT

Brah v. Brah

2023 BCSC 1635

COURT

Supreme Court of British Columbia

DECIDED

22 August 2023

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2023 BCSC 1635 Brah v. Brah

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Brah v. Brah,

2023 BCSC 1635

Date: 20230822

Docket: S03901

Registry: Abbotsford

Between:

Hardip Singh Brah and Parminder Kaur Brah

Plaintiffs

And

Harvinder Kaur Brah and Ravinder Kaur Brah

Defendants

Before: The Honourable Madam Justice McDonald

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

U.K. Dhaliwal

Counsel for the Defendants:

P. Sanghe

W. Sweeney

Place and Date of Trial/Hearing:

New Westminster, B.C.

August 16, 2023

Place and Date of Judgment:

New Westminster, B.C.

August 22, 2023

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- [1] THE COURT: I am delivering my reasons in respect of these applications orally. Should the parties request a transcript of these reasons, I may edit them to add headings, citations, or to anonymize for the purpose of privacy, but the outcome will not change.

Introduction

- [2] There are cross applications before me related to disputes about who owns and who is entitled to occupy certain residential properties. The parties are all members of the Brah family.
- [3] The defendants allege that they are the sole legal and equitable owners of the properties. The defendants want the plaintiffs' certificates of pending litigation ("CPL") filed against the properties removed from title and vacant possession. The defendants allege that the claim and the CPLs are bad-faith actions of the plaintiffs, especially their father, who they say seeks revenge against them for reporting current and historical abuse that they allege he committed against them.

- [4] The plaintiffs allege that they hold an equitable interest in the properties because they contributed to the purchase, upkeep, and improvement of the properties. The plaintiffs want exclusive occupancy of one of the properties, and an injunction restraining the defendants from entering this property. They also seek, among other things, the return of personal items that they say the defendants have wrongly removed or retained.

Background

- [5] The plaintiff Parminder Kaur Brah (the "mother") and the plaintiff Hardip Singh Brah (the "father") are the defendants' parents. The plaintiffs are currently in their mid-seventies and retired.
- [6] The defendant Harvinder Kaur Brah, also known as Nina Brah ("Nina"), and Ravinder Kaur Brah, also known as Rupe Brah ("Rupe"), are sisters and, as mentioned, the plaintiffs are their parents. The defendants are presently in their mid to late forties. Nina is a police constable and Rupe works in accounting.
- [7] In 2016, Rupe gave birth to a daughter, (the "Child"), who is now approximately seven years old. The defendants are raising the Child together and they are both her parents and legal guardians. Unfortunately, both the Child and Nina have had significant health problems. The Child requires ongoing medical treatment from specialists in Vancouver.
- [8] The defendants appear to have a very close sibling relationship. The defendants moved away from their parents and family in Alberta in the early 2000s, in part to achieve independence. The defendants moved to the Lower Mainland and, in 2004, they purchased their first property, a condominium where they resided together.
- [9] On April 16, 2007, the defendants purchased a townhome at 36020 Stephen Leacock Drive in Abbotsford (the "Auguston Property"). The defendants owned the Auguston Property on a 99/100 basis and a 1/100 basis respectively, but in August 2011, Nina became the sole registered owner. The defendants financed the purchase by way of a mortgage pursuant to which they were both borrowers.
- [10] On January 22, 2015, the defendants completed the purchase of a home at 3395 Applewood Drive, Abbotsford (the "Applewood Property"). The defendants appear on the title as joint tenants, and they financed the purchase through a mortgage on which they are listed as the borrowers.
- [11] The defendants deny that the plaintiffs contributed to the purchase, maintenance, or improvement of the Auguston Property or the Applewood Property, and they deny the plaintiffs paid the mortgage payments. The defendants also deny that the plaintiffs lived with them in either property prior to 2015, because until the plaintiffs moved into the Applewood Property in 2015, the plaintiffs resided in Alberta.

- [12] On May 16, 2023, the plaintiffs filed a notice of civil claim (the "Claim"). On May 17, 2023, the plaintiffs amended and further amended the Claim. However, none of those amendments or further amendments make a substantial change to any of the paragraphs in the original Claim that is material to this application.
- [13] On May 17, 2023, the plaintiffs registered a CPL against each of the Auguston Property and the Applewood Property. Each CPL is stamped as entered in the Supreme Court registry on May 16, 2023, and they certify that a proceeding was commenced, the particulars of which are set out in the Claim attached. However, the registered CPLs attach a copy of the further amended Claim that is stamped as entered in the Supreme Court registry on May 17, 2023.
- [14] It is not clear how, on May 16, 2023, the registrar certified that a proceeding had been commenced, which was particularized in a document that was not entered until the following day. I have unanswered questions about the entry dates of these documents and how they came to be registered as shown in Exhibits B and D of the affidavit #2 of Harvinder Brah made August 2, 2023. However, even with those unanswered questions, I conclude, for reasons that I will explain, that nothing material to this application turns on the amendments that the plaintiffs made to their Claim on May 17th.
- [15] The defendants allege that around Christmas time in 2015, they received a late-night call from their mother telling them that the plaintiffs had been kicked out and they were driving from Alberta to BC because they had nowhere to stay. The defendants agreed to allow the plaintiffs to come and stay temporarily at the Applewood Property. The defendants allege that the plaintiffs agreed that their stay at the Applewood Property would be "short term". However, the defendants allege that after the plaintiffs arrived at the Applewood Property, the abusive behaviour began again.
- [16] The defendants' evidence is that they asked the plaintiffs to leave the Applewood Property many times, starting in 2019, but they refused. There have been many problems and conflicts between the defendants and the plaintiffs. The defendants allege that the current problems are a continuation of an unhappy and abusive family dynamic involving abuse by their father.
- [17] In February 2023, the defendants reported alleged abuse by the father to the police, but when the police attended and asked the plaintiffs to leave the Applewood Property, the plaintiffs told the police that they were tenants. After the plaintiffs claimed that they were tenants, the defendants then served the plaintiffs with an eviction notice, and on June 12, 2023, an RTB arbitrator declined jurisdiction when the plaintiffs claimed they were not tenants, but rather owners of the Applewood Property.

- [18] Starting in February 2023, the defendants and the Child began residing in temporary Airbnb accommodations because the defendants say that they cannot live in the same home as the plaintiffs. There are allegations that the plaintiffs have harassed and threatened the defendants. The defendants allege the father's abuse has escalated to include physical abuse such as hitting, pushing, and spitting on them.
- [19] On July 27, 2023, the father was arrested in relation to allegations of contravening s. 810 of the Criminal Code, namely causing fear of personal injury, and he was released on that day on an undertaking to, among other things, not attend the Applewood Property or communicate with the defendants or the Child.
- [20] The defendants placed the Child into a private school and, in order to be closer to her school, they signed a contract to purchase a new home under construction in Maple Ridge. This occurred in February of 2023. The new home is closer for purposes of attending ongoing medical treatment for the Child and Nina in Vancouver. The defendants have paid a deposit of approximately \$147,000 for the purchase of the new home. The purchase of the new home is set to complete on August 28, 2023.

Application Pursuant to s. 215 of the LTA

- [21] The defendants apply, pursuant to s. 215 of the Land Title Act, R.S.B.C. 1996, c. 250 [LTA] to cancel the CPLs registered against the properties without security. The defendants submit that in the Claim, the plaintiffs do not advance any substantive claim which might entitle the plaintiffs to an interest in the Auguston Property or the Applewood Property.

- [22] Section 215 of the LTA provides:

Registration of certificate of pending litigation in same manner as charge

215(1) A person who has commenced or is a party to a proceeding, and who is

- (a) claiming an estate or interest in land, or
- (b) given by another enactment a right of action in respect of land,

may register a certificate of pending litigation against the land in the same manner as a charge is registered, and the registrar of the court in which the proceeding is commenced must attach to the certificate a copy of the pleading or petition by which the proceeding was commenced, or, in the case of a certificate of pending litigation under Part 5 of the Court Order Enforcement Act, a copy of the notice of application or other document by which the claim is made.

- (2) The land affected by the certificate of pending litigation must be described in a manner satisfactory to the registrar.
- (3) On registration of a certificate of pending litigation, the registrar must forthwith mail a copy to the owner against whose title the certificate has been registered.

(4) If, after registration of a certificate of pending litigation, a change of parties occurs, the registrar,

(a) on receiving a certificate of pending litigation showing the new party, and

(b) on compliance with this Act,

must register the certificate of change in the same manner as a modification of a charge.

(5) Despite subsection (1), if a person entitled to enforce a restrictive covenant or building scheme has commenced an action to enforce it, the person may register under this section a certificate of pending litigation in the form approved by the director against land in respect of which a breach is alleged to have occurred.

(6) A party to a proceeding for an order under the Family Law Act respecting the division of property may register under this section a certificate of pending litigation in the form approved by the director in respect of any estate or interest in land the title to which could change as an outcome of the proceeding.

(7) Despite subsection (1), a person who has commenced an action under the Wills, Estates and Succession Act may register a certificate of pending litigation in the form approved by the director against the land affected.

(8) A judgment creditor who

(a) applies under section 9 of the Fraudulent Preference Act, and

(b) in the application, claims to be entitled to register the judgment against the land in respect of which the application was made, or against the judgment debtor's or another person's interest in the land,

may register a certificate of pending litigation in the form approved by the director against the land.

[23] A CPL can only be filed where the pleading discloses a claim for an interest in land and, if the pleadings fail to meet this precondition, a CPL may be cancelled: *Bajwa v. Singh*, 2016 BCSC 916 at para. 20 and *Xiao v. Fan*, 2018 BCCA 143 at para. 27 [Xiao].

[24] On an application pursuant to s. 215, evidence is not considered because the question is whether the claim discloses an interest in land: *Xiao* at para 27. In *Xiao*, the only basis for an interest in the lands was a general allegation in the pleading of an equitable mortgage, but without the necessary facts to support such a plea.

[25] In reaching my consideration of this matter, I have only considered the pleadings.

[26] In Part 1 of the Claim, the plaintiffs allege that the defendants are the legal owners of the Auguston and Applewood Properties.

[27] For the Applewood Property, the plaintiffs allege they paid \$50,000 towards the down payment on its purchase, and that they paid all mortgage payments from the date of the purchase to February 2023. The plaintiffs also allege that from 2015 to 2023, they paid certain costs to improve and maintain the Applewood Property.

[28] The plaintiffs allege in paragraph 10 that "it was the plaintiffs' intention that the Applewood Property would be equally owned with the defendants", and even though the defendants were "put on legal title, the plaintiffs believe that the defendants hold this property in trust for the plaintiffs."

[29] In para. 13, the plaintiffs allege as follows:

Notwithstanding the registered ownership, it was the parties' intention that they would both be beneficial owner of the Property and that the Defendants would hold an undivided one-half interest in the Property in trust for the Plaintiffs.

[30] Regarding the Auguston Property, the plaintiffs allege that Nina is the legal owner. The plaintiffs allege that Nina's paternal grandfather provided the \$15,000 down payment for the Auguston Property. However, the plaintiffs allege that the grandfather owed money to the father, so the father directed the grandfather to make the down payment on the Auguston Property as repayment of that loan.

[31] The plaintiffs also allege that they believe they paid amounts towards the monthly mortgage payments on the Auguston property from 2008 to 2015. The plaintiffs also allege that from 2008 to 2023, they paid costs associated with improving the Auguston Property.

[32] The plaintiffs allege in para. 23 that:

It was the Plaintiffs' intention that the Auguston Property would be equally owned with the Defendant Harvinder Kaur Brar. Although the defendant Harvinder Kaur Brar was put on legal title, the Plaintiffs believe that the [Defendant] hold[s] this property in trust for the plaintiffs.

[33] In para. 25, the plaintiffs allege as follows:

Notwithstanding the registered ownership, it was the parties' intention that they would both be beneficial owners of the Property and that the Defendant Harvinder Kaur Brah would hold an undivided one-half interest in the Property in trust for the Plaintiffs.

[34] Under Part 2 of the Claim in the relief sought, the plaintiffs seek, among other things, a declaration that the Applewood Property "shall henceforth be held jointly by all parties" and that the Auguston Property "shall henceforth be held by the plaintiffs and Harvinder Brah".

[35] Under Part 3 of the Claim, the plaintiffs rely on, among other things, the legal bases of the law of contract, the law of equity, the presumption of resulting trust, and unjust enrichment.

- [36] In the present case, as can be seen from the material facts alleged in the Claim, the plaintiffs state what their intentions were. In other words, they intended that they would be the equal owners with the defendants. The plaintiffs also state that their intention was that they would both be beneficial owners, regardless of who the registered owners were.
- [37] While the Claim alleges a legal basis of contract, resulting trust, and unjust enrichment, in my view it is devoid of material facts capable of supporting a claim for an interest or estate in lands. In other words, the facts pled, many of which concern the plaintiff's own intentions or beliefs, are insufficient to give rise to an interest in the lands, including because, in relation to a claim for a remedial resulting or constructive trust, there is no pleading that monetary damages are or would be an inadequate remedy: *Nouhi v. Poutaghi*, 2019 BCSC 794 at paras. 29-30, 49.
- [38] I find the pleadings are inadequate to support a claim for an interest in land and, as such, the CPLs were not valid when they were filed.

Application Pursuant to ss. 256 and 257 of the LTA

- [39] If I am in error to conclude that the pleadings are inadequate to support a claim for an interest in land, then I will turn to the alternate basis for the defendants' application.
- [40] Section 256 of the LTA provides that a registered owner may apply to cancel the CPL on hardship and inconvenience grounds:

Cancellation of certificate of pending litigation on other grounds

256(1) A person who is the registered owner of or claims to be entitled to an estate or interest in land against which a certificate of pending litigation has been registered may, on setting out in an affidavit

- (a) particulars of the registration of the certificate of pending litigation,
- (b) that hardship and inconvenience are experienced or are likely to be experienced by the registration, and
- (c) the grounds for those statements,

apply for an order that the registration of the certificate be cancelled.

- (2) An owner whose indefeasible title or charge is registered subject to a certificate of pending litigation under section 217 (2) (a) or (c) (ii) may, on setting out in an affidavit
 - (a) that the pleading or petition by which the proceeding was commenced or notice of application attached to the certificate contains no allegation that the owner is not a purchaser in good faith and for valuable consideration,
 - (b) that the owner applied to register the owner's indefeasible title or charge before the certificate was received by the registrar, and

- (c) particulars of dates and times of receipt, application and registration of the owner's application and the certificate,

apply for an order that the registration of the certificate be cancelled.

- (3) An application under this section must be made to the court in which the proceeding was commenced and must be brought

- (a) as an application in that proceeding, if the applicant is a party to the proceeding, or

- (b) by petition, if the applicant is not a party.

[41] Section 257 sets out the powers available to the court upon ordering cancellation of a CPL, including by requiring security to be posted.

[42] The defendants' evidence is that they cannot afford to complete the purchase of the new home if they do not sell the Applewood Property and the Auguston Property. The defendants state that they cannot borrow sufficient additional funds to complete the purchase of the new home, and they could not cover those additional borrowing costs.

[43] The defendants' evidence is that the relationship with the plaintiffs has deteriorated to the point that the parties can no longer live together. There are concerning allegations of violence, threats, and intimidation levelled by all parties. The police have become involved and the father has been released in respect of criminal charges on an undertaking, including not to attend the Applewood Property. The mother's evidence is that she is afraid to leave the Applewood Property in case she gets permanently locked out.

[44] Nina and the Child have very serious health issues that require ongoing treatment with medical specialists in Vancouver. The defendants are rightly concerned about the negative effects of family disputes on the Child, and that she has been required to recover from surgery while living in temporary accommodation because they could not live in the Applewood Property.

[45] I am satisfied that the new home will provide the Child and the defendants with a home that is closer to the Child's school and Vancouver, where they need to attend for medical treatment. If the purchase of the new home does not complete, I find the defendants will lose a substantial deposit and potentially be liable for breach of contract.

[46] The CPL registered on the Auguston Property prevented the defendants from selling that property. On May 18, 2023, Nina entered into a contract to sell the Auguston Property to the tenants of the property for a purchase price of \$860,000, but her evidence is that the CPL registered by the plaintiffs on May 17, 2023, meant that the sale could not proceed.

- [47] The plaintiffs are elderly and they are accustomed to living in the Applewood Property. They wish to be close to the Child. The plaintiffs own a property in Alberta, so the evidence establishes that they have another home, although it is apparently occupied by a tenant at the moment. Since the father is not permitted to attend the Applewood Property, he has been staying elsewhere since July 2023, while the mother continues to reside in the Applewood Property.
- [48] I am satisfied that the preponderance of the evidence on this application establishes that there are hardships and significant inconvenience being experienced by the defendants as a result of the CPLs. Effectively, the CPLs are preventing the defendants from completing the purchase of another property that better suits their substantial and legitimate needs, while also exposing them to a significant financial loss that may only increase in the future. In my view, the hardship faced by the defendants is considerable.
- [49] The solution suggested by the plaintiffs' counsel that the CPLs be released only in respect of one property does not assist the defendants, since their evidence is that they cannot afford the new home without selling both the properties.
- [50] As I am satisfied that the defendants have established hardship and inconvenience due to the registration of the CPLs, and had I not granted the relief under s. 215 discussed earlier, I would have ordered the cancellation of the CPLs on being further satisfied that an order for security, namely an order for security in the amount of \$50,000, be posted by the defendants.
- [51] I am satisfied that this amount of security is appropriate, given my assessment of the strength of the plaintiffs' Claim, and because that is the amount of the only payment that the plaintiffs say they made directly to the defendants for the initial purchase of the Applewood Property.
- [52] I conclude that paragraph 6 of Part 1 of the defendants' application, namely the request to restrain the plaintiffs from filing future CPLs on the Applewood or Auguston Properties, is unnecessary due to my conclusions about the existence of hardship and inconvenience arising from the current CPLs.
- [53] Therefore, paragraph 5 in Part 1 of the defendants' application is dismissed.

The Plaintiff's Application

- [54] The plaintiffs' August 2, 2023, application seeks a number of orders, mainly related to ensuring that the plaintiffs can stay in the Applewood Property until the Claim is determined. The plaintiffs seek, among other things, exclusive occupancy of the entire Applewood Property and an injunction restraining the defendants from entering the said property.

- [55] When I consider the test for an injunction, I am not satisfied that the plaintiffs have satisfied that test. There is a serious question to be tried in respect of their Claim. However, I do not find that the requirement for irreparable harm has been made out.
- [56] The Claim seeks, among other things, declarations that the properties are jointly held, and orders for payment to the plaintiffs for their contributions and for increased property values. There is nothing demonstrating that the Applewood Property is so unique that monetary damages would be insufficient in the event the Claim succeeds.
- [57] Further, I find that the balance of convenience does not favour the plaintiffs. While I acknowledge that the plaintiffs are in their seventies and that they have lived in the Applewood Property for a number of years, there is evidence the plaintiffs own another real property. There is also evidence that the plaintiff Hardip Singh Brah is not even currently residing in the Applewood Property due to the undertaking. On the other hand, the potential prejudice faced by the defendants, including the risk of financial loss which I have already discussed, is significant.
- [58] This is a dispute between family members concerning the ownership of and contribution to, real properties held for many years in the defendants' names. In all of the circumstances, I do not find that the Occupiers Liability Act or the Trespass Act provides a basis to grant the plaintiffs exclusive occupancy of the Applewood Property at this juncture.
- [59] As discussed earlier, the evidence establishes that the release of the CPLs is necessary to allow the defendants to sell the Applewood and Auguston Properties and to complete the purchase of the new home.
- [60] The hardship would be perpetuated if the defendants were unable to deliver clear title and vacant possession of the Applewood Property to a purchaser because the plaintiffs refuse to vacate.
- [61] Therefore, I grant the defendants' request for a writ of possession in respect of the Applewood Property, and the plaintiffs, including Parminder Kaur Singh who is currently residing in the Applewood Property, shall vacate the Applewood Property by no later than 30 days from the date of this judgment.
- [62] Regarding the plaintiffs' request for the return of the mother's dentures, the defendants deny having those. However, if the defendants have possession or control of the mother's dentures, they shall forthwith return same to her.
- [63] Counsel for the plaintiffs adjourned paragraphs 4(b)-(d), paragraphs 5 and 6 of their August 6, 2023 of the plaintiffs' notice of application generally and, as such, I will not address those items.

Disposition

- [64] Pursuant to s. 215 of the LTA, the CPLs are cancelled and the relief sought in paragraphs 1, 2, 3, and 4 of Part 1 of the defendants' July 6, 2023, notice of application is granted.
- [65] The relief sought in paragraph 8 of Part 1 of the defendants' July 6, 2023, notice of application is granted, and the plaintiffs shall vacate the Applewood Property by no later than 30 days from the date of this judgment.
- [66] The balance of the defendants' July 6, 2023, notice of application is dismissed.
- [67] Regarding the plaintiffs' notice of application filed August 6, 2023:
- a) The relief sought in paragraph 4(a) of Part 1, is granted.
 - b) Paragraphs 4(b)-(d), paragraph 5 and 6 of Part 1 are adjourned generally; and
 - c) All other relief sought in the remaining paragraphs of Part 1 of the plaintiffs' notice of application is dismissed.
- [68] As the defendants have been largely successful in their application and in responding to the plaintiffs' cross-application, they are entitled to the costs of the applications in any event of the cause.
- [69] Those are my reasons. Thank you, counsel.

"E. McDonald J."

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