

CANADA / JUDGMENT

Brar v. Brar

2023 BCSC 993

COURT

Supreme Court of British Columbia

DECIDED

19 May 2023

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2023 BCSC 993 Brar v. Brar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Brar v. Brar,

2023 BCSC 993

Date: 20230519

Docket: E63228

Registry: New Westminster

Between:

Manjeet Kaur Brar

Claimant

And

Manjit Singh Brar

Respondent

And

Harpreet Kaur Brar

Respondent by Counterclaim

Before: The Honourable Justice Lamb

Oral Reasons for Judgment

In Chambers

Appearing on her own behalf:

M.K. Brar

Appearing on his own behalf:

M.S. Brar

Place and Date of Hearing:

New Westminster, B.C.

May 19, 2023

Place and Date of Judgment:

New Westminster, B.C.

May 19, 2023

Introduction

- [1] THE COURT: In this family law action, the claimant applies for an interim order to sell the family home, with the proceeds of sale to be used to pay the debts secured against the family home and a second home in which the claimant is currently living, property taxes and utilities owing on the second home, and the overdraft balance on the parties' joint bank account.
- [2] The respondent, who currently lives in the family home, opposes the application to sell.
- [3] There is urgency to this application, given that the family home is currently in foreclosure, with the redemption period to expire on July 5, 2023. If the mortgage is not redeemed before then, the mortgage holder will be in a position to seek an order for sale or an order absolute.
- [4] For the reasons that follow, unless the respondent redeems the mortgage on the family home by May 30, 2023, I am satisfied that it is necessary to sell the family home at this time.

Background

- [5] The parties were married on March 11, 1979. The parties separated in December 2019, according to Mr. Brar, and in March 2020 according to Ms. Brar.
- [6] Ms. Brar filed a notice of family claim on August 31, 2021. Mr. Brar filed a response and counterclaim on October 7, 2021. On May 10, 2022, Mr. Brar brought the parties' daughter into the action as a respondent by counterclaim, alleging that she holds title to the property where she resides and is on title in trust for her parents. The parties' daughter filed her own counterclaim seeking damages for breach of contract and unjust enrichment on the basis that she has been paying the carrying costs on the trust property and because she allegedly did not receive a financial gift of \$515,000 that was allegedly promised by her parents.

- [7] The daughter, Harpreet Brar, has also filed a civil action against her parents raising similar claims.
- [8] Ms. Brar and Mr. Brar have each been represented by counsel at times during this litigation. They and their daughter currently represent themselves.
- [9] A trial scheduled to begin April 3, 2023, was adjourned. I was not told whether a new trial date has been set, though the parties are scheduled to mediate this matter in early June 2023.
- [10] The claimant is 64 years old and scheduled to retire from her teaching position with the Surrey School District in June 2023. The respondent is 74 years old and a retired commissioned officer of the combat infantry of the Indian Army.
- [11] In this action, the parties seek orders for division of family property and debt. Ms. Brar claims an interest in various properties in India, in addition to the three properties in Surrey, British Columbia. Mr. Brar alleges he has an excluded property claim and that he holds some of the properties in India in trust for his 109-year-old father.
- [12] Ms. Brar alleges that Mr. Brar receives income from his holdings in India, which he denies.
- [13] There are three properties in Surrey that are in issue in this action:
1. the family home now occupied by Mr. Brar, located at 13242 56th Avenue in Surrey;
 2. the rental property now occupied by Ms. Brar, located at 13232 56th Avenue in Surrey; and
 3. the trust property registered in daughter Harpreet Kaur Brar's name, which she allegedly holds in trust for her parents, located at 13221 55A Avenue in Surrey.
- [14] The family home at 13242 56 Avenue, Surrey, was purchased in September 2010 and is currently in foreclosure. The family home was valued at \$2,282,000 by B.C. Assessment as of July 1, 2022. There is a high-interest mortgage registered against the property by First Circle Mortgage Investment Corporation with an outstanding balance as of March 31, 2023, of \$449,644.76. First Circle Mortgage payments since September 1, 2022, have not been made.
- [15] First Circle filed a foreclosure petition and obtained an order nisi on January 5, 2023, with a redemption date of July 5, 2023. If the mortgage is redeemed in accordance with the order nisi, then First Circle will reconvey the family home to whomever makes the payment. If the mortgage is not redeemed in accordance with the order nisi, then First Circle will be entitled to apply for an order absolute with respect to the family home.

- [16] There is also an Envision mortgage registered against the family home that had a balance owing of \$384,524.62 as of April 15, 2023. Envision emailed Mr. Brar on April 17, 2023, advising that the Envision mortgage is in default due to the unauthorized charge on title, i.e., the First Circle mortgage, and the property tax arrears at that time. Mr. Brar deposes that he paid the property taxes on the family home, and a property tax certificate from the City of Surrey appears to confirm that to be true.
- [17] Before turning to Ms. Brar's application with respect to sale of the family home, I will briefly comment on the other two properties in Surrey.
- [18] The rental property at 13232 56 Avenue in Surrey now occupied by Ms. Brar is adjacent to the family home. The rental home was purchased in July 2003, and it used to be the family home before the property at 13242 56 Avenue was purchased. The rental property was valued at \$2,610,300 by B.C. Assessment as of July 1, 2022. There is a Royal Bank of Canada mortgage and a Royal Bank of Canada line of credit registered against the rental property with a balance owing of \$774,806.44 as of April 23, 2023.
- [19] The trust property that is in issue in these proceedings, which I will call the "trust property", is located at 13221 55A Avenue in Surrey. The trust property is directly south of the rental property and southwest of the family home. The trust property was purchased in September 2017. Title to the trust property is held in the name of Harpreet Brar, daughter of Mr. and Mrs. Brar. Harpreet Brar lives at the trust property with her child. There is apparently a bare trust agreement in place with Harpreet Brar as trustee and Mr. and Ms. Brar as beneficiaries, but this document was not included in the evidence on this application. Mr. Brar now says that the trust agreement is a sham.
- [20] The trust property was valued at \$2,548,000 by B.C. Assessment as of July 1, 2022. According to Ms. Brar's F8 financial statement, the trust property has a mortgage with an outstanding balance of \$1,253,288 as of February 27, 2023.
- [21] Mr. and Mrs. Brar took out the First Circle mortgage on the family home to provide funding of \$515,000 toward the purchase price of the trust property, an advance which has also been described as a gift to Harpreet Brar in some of the documents.
- [22] Mr. Brar alleges that he and Ms. Brar agreed to loan the \$515,000 to Harpreet Brar for one year. Mr. Brar attached to his affidavit some emails from close to the time of the purchase of the trust property that hint at a loan agreement between the parents and daughter, though no such loan agreement was actually in evidence before me.
- [23] Mr. Brar told me in submissions that Harpreet Brar agreed to pay and was paying the First Circle mortgage until shortly before Ms. Brar filed the notice of family claim, but I am not able to confirm that submission based on the evidence filed on this application.
- [24] In his affidavits filed in response to Ms. Brar's notice of application, Mr. Brar says that he has a claim for excluded property worth more than a million dollars from the equity in the family home and the rental property. Mr. Brar also alleges that the trust property belongs to

Harpreet Brar. As mentioned, Mr. Brar alleges that Harpreet Brar purchased the trust property by borrowing \$515,000 from her parents, financed by the First Circle mortgage on the family home. He alleges that the bare trust deed was fraudulently ante-dated to defend a claim made by Harpreet Brar's husband when they separated. A determination of whether or not this is true will have to await trial.

- [25] In July 2022, Justice Morellato ordered that Mr. Brar and Ms. Brar equally pay the mortgages and other financial obligations related to the family home and to the rental home. Each says they paid and that the other did not. Mr. Brar says that he has paid his 50-percent share of the mortgage cost for the family home as ordered by Justice Morellato. Ms. Brar deposes that she has paid all of the debt servicing costs for both the family home and the rental property. I am not able to determine on the evidence before me which of these statements is true. That issue will have to be resolved at trial where all the documents will be available and both witnesses will be subject to cross-examination. The fact remains that the family home is in foreclosure because the First Circle mortgage has not been paid since before September 2022.
- [26] In terms of the materials filed on this application, I have only considered the affidavit evidence identified in the notice of application and application response. I have not considered documents submitted by both Ms. Brar and Mr. Brar that were not properly before the court as attachments to an affidavit.

Issues to be decided

- [27] Ms. Brar applies to have sole conduct of sale for sale of the family home, pursuant to Rule 15-8. She applies to have the proceeds of sale applied to the following:
- a) the closing costs;
 - b) the outstanding debt obligations on the family home;
 - c) the outstanding debt obligations on the rental home;
 - d) the outstanding property taxes and city utility charges on the rental home; and
 - e) the overdraft balance on the parties' RBC joint account which is in a deficit position.
- [28] Ms. Brar also sought to have the sale proceeds applied to the property taxes and city utility charges for the family home, but it appears that Mr. Brar has paid those charges.
- [29] The key issue to be decided is whether to order the sale of the family home pursuant to Rule 15-8 of the Supreme Court Family Rules.
- [30] If I decide that there should be an interim order for sale of the family home, then I must decide whether Mr. Brar should be given an opportunity to redeem the First Circle mortgage to bring an end to the foreclosure proceedings.

- [31] Finally, if the family home is to be sold pursuant to Rule 15-8, then I must determine the terms of such a sale and what should happen to the proceeds.
- [32] At the hearing of the application, Ms. Brar asked for an order that both she and Mr. Brar receive an interim distribution of \$50,000 from the sale proceeds. This proposed term of the order was not included in the notice of application, which means I will not consider including such a term. If the family home is sold, the parties could discuss and agree to an interim distribution if they choose to do so.
- [33] Before turning to the issues, I will set out the statutory framework to be applied.

Legal framework

- [34] This application is brought pursuant to Rule 15-8 of the Supreme Court Family Rules which provides that the court has the discretion to order a sale of property if it appears to be "necessary or expedient", and authorizes the court to make directions as to the conduct of the sale.
- [35] Although many of the cases consider whether it is necessary and expedient for property to be sold, Rule 15-8 clearly provides that property may be sold when it is necessary or expedient. Rule 15-8 is disjunctive, which means that proof of necessity or proof of expedience is sufficient.
- [36] Our Court of Appeal recently confirmed in *Dosanjh v. Lalli*, 2021 BCCA 204 at paragraph 33 that where necessity is not in issue, a court-ordered sale of property must be advantageous to both parties in order to qualify as expedient for the purposes of Rule 15-8.
- [37] The court may grant an order under Rule 15-8 in circumstances where the sale of the family home would be inevitable, given the financial circumstances of the parties: *Dion v. Dion*, 1998 CanLII 4314; *Dean v. Dean*, 2008 BCSC 1176. In *Harrison v. Harrison*, 1998 CanLII 2292, for example, the property was in foreclosure and neither party had the financial capacity to arrange refinancing, which led the court to order that the home be sold. The *Harrison* case is significant in my assessment of the circumstances of the case at bar.
- [38] In *K.J.M. v. P.D.A.*, 2011 BCSC 1729 a case cited by Ms. Brar, Master MacNaughton (as she then was), summarized the principles to be applied on a Rule 15-8 application as follows:
- a) If a sale is not necessary then, viewed objectively, it should be advantageous to both parties . . .
 - b) Any doubt about the justice of an order for sale should be resolved in favour of the status quo recognizing that the status quo for one spouse may perpetuate an injustice for the other . . .

- c) Where children are involved, the court should consider their need for stability and easy access to their school and friends, especially in the period immediately following separation . . .
- d) The availability and affordability of alternative accommodation for each party and their dependents . . .
- e) The emotional condition of each party especially the party who has primary parenting responsibility . . .
- f) External economic factors such as a declining market or the wasting of the asset . . .
- g) The capacity of the parties to maintain the asset . . . and
- h) The inability of one party to buy out the others interest and the inevitability of the ultimate sale of the property . . .

[39] An order under Rule 15-8 of the Supreme Court Family Rules is discretionary. The onus is on the applicant to establish that the sale is either necessary or expedient. *Bodo v. Bodo*, [1990] B.C.J. No. 346 (S.C.) is a case that says that the status quo should prevail if the applicant cannot satisfy the onus. The court pointed out at para. 35 in *Reilly v. Reilly*, 1992 CanLII 742 (BC CA) that the status quo may well work an injustice on one of the parties and at para. 37 that the promotion of settlement is an additional reason for the order.

Is the sale necessary or expedient?

[40] Ms. Brar identified the following factors as relevant in this case:

- a) whether the parties have the capacity to maintain the asset, including with regard to the foreclosure;
- b) whether the sale is advantageous to both parties;
- c) whether the asset is wasting; and
- d) whether it is inevitable that the house will have to be sold because of the inability of the parties to buy out each other's interest.

[41] I would add to the list of relevant factors:

- e) whether the sale of the house will make settlement more likely;
- f) the availability of suitable alternative accommodation; and
- g) prejudice to the parties.

[42] In the notice of application and her affidavits, Ms. Brar argues that Mr. Brar has shown a history of delaying matters with respect to the family home. Even if true, this would not be a factor in assessing whether or not it is necessary or expedient to sell the family home.

[43] I will now turn to the factors that are relevant to this Rule 15-8 application.

Do the parties have the capacity to maintain the family home?

- [44] The available evidence is clear that neither Mr. Brar nor Ms. Brar, either individually or collectively, have the income to pay the monthly debt obligations on the family home. The family home is in foreclosure. The monthly First Circle mortgage payment has increased from \$4,792 in September 2022 to \$5,467 in March 2023, with the rise in interest rates.
- [45] According to First Circle, the monthly mortgage payments since September 1, 2022, remain outstanding.
- [46] On top of the First Circle mortgage payments, Envision monthly mortgage payments on the family home total \$2,414.
- [47] According to his F8 financial statement, Mr. Brar has annual income of \$19,176. Ms. Brar currently earns approximately \$95,000 per year, but her income will drop dramatically after June 30, 2023, when she retires.
- [48] The debt load on the family home is crushing and cannot be sustained.
- [49] The same can be said for the rental property, but the status of the rental property is not before me on this application.
- [50] Mr. Brar takes umbrage with the prospect of selling the family home which he lives in and to which he claims some sentimental attachment, all because his daughter stopped paying the mortgage they took out to help her buy the trust property. Mr. Brar's perspective is understandable but beside the point on this application.
- [51] The First Circle mortgage is a debt obligation owed by Mr. and Ms. Brar, and this court has already recognized First Circle's right to proceed with foreclosure on the family home. Unless the parties can settle their differences, the financial issues and obligations between the parties, including their daughter, will have to be sorted out at trial on a full record.

Is the sale of the family home inevitable?

- [52] This issue is closely tied to the parties' inability to service the debt on their various properties. In my view, the sale of at least one of the Surrey properties is inevitable. The family home has come up for consideration first because of the default on the First Circle mortgage.
- [53] Whether the sale of the family home is inevitable generally involves a preliminary assessment of whether either party will be able to afford to buy out the other party's interest in family property. That question is complicated in this case due to the dispute over ownership and valuation of properties in India and Mr. Brar's claim for excluded property. What is clear, however, is that the three Surrey properties are valuable but heavily leveraged, and it is unlikely that Mr. or Ms. Brar would qualify for traditional mortgage financing after next month.

- [54] Unless property in India is sold and the funds used to pay down the mortgage debt on the three Surrey properties, the sale of at least one Surrey property is inevitable. The family home happened to fall into foreclosure first.
- [55] As set out above, each of the properties has an assessed value of at least \$2,280,000 with the family home having the lowest assessed value. However, each of the properties is heavily encumbered. The trust property has the least equity on paper, approximately \$1.3 million, with the family home close at \$1.45 million, and the rental property at \$1.84 million. However, it is not possible for Mr. or Ms. Brar to service the debt on the family home and the rental property on a sustained basis, particularly when there is no longer rental income coming in.
- [56] For these reasons, in my view, the sale of at least one of the Surrey properties is inevitable.

Is the sale advantageous to both parties?

- [57] The sale is advantageous to both parties from the perspective of avoiding foreclosure and reducing debt carrying charges. Mr. Brar will suffer a disadvantage in that he will lose his current accommodation, but that will happen anyway if the First Circle mortgage is not redeemed.
- [58] I note that there was no evidence before me regarding the availability of suitable alternative housing for Mr. Brar.

Is the asset wasting?

- [59] Ms. Brar submitted that Mr. Brar is not maintaining the family home and that it is in a poor state of repair. I have no evidence on this application to support that submission.

Will the sale of the house facilitate final resolution of the dispute between the parties?

- [60] In many family law cases, the family home represents the most significant and sometimes the only asset to be divided. As Justice Huddart said in Bodo, sale of the family home "may bring some reality to an emotionally laden conflict" and allow the parties to settle their financial affairs.
- [61] The issue is not so straightforward in this case. The value and true ownership of the assets in India, Mr. Brar's excluded asset claim, and the claim with respect to the trust property make it unlikely that sale of the family home will necessarily facilitate settlement of the financial issues between Ms. Brar and Mr. Brar.

Conclusion regarding Rule 15-8 factors

- [62] Weighing all of the factors, I am satisfied that it is necessary to order the sale of the family home at this time. The foreclosure proceedings and the parties' inability to service the debt make it necessary to order the sale of the family home on this interim application.

[63] I will now turn to the next issue.

Should Mr. Brar be given an opportunity to redeem the mortgage?

[64] In submissions, Mr. Brar said that he may be able to secure funds from a family member in order to redeem the mortgage. He asked for an opportunity to arrange such funding before the family home is sold. He initially asked for an extension until a week before the redemption deadline of July 5, 2023. Mr. Brar's proposed timeline would not give any opportunity to sell the property before the redemption period has basically expired.

[65] I recognize that Mr. Brar has known since September 2022 that the First Circle mortgage was not being paid and since at least early January 2023 that First Circle was bringing foreclosure proceedings. He could have taken steps before now to arrange alternative funding. Mr. Brar says he was hopeful that all of the issues in this matter could be resolved at trial that was set to proceed in early April 2023, but he failed to consider that a final decision after trial may not have been available right away.

[66] Mr. Brar also identified that he wanted to ensure that he would be given credit in the final accounting between the parties if he paid off the First Circle mortgage. I cannot decide that issue at this point, but s. 95(2)(f) of the Family Law Act may provide some guidance.

[67] In any event, I am prepared to give Mr. Brar a small window of time in which to try to redeem the mortgage.

[68] I order that Mr. Brar has until Tuesday, May 30, 2023, at 4:00 p.m. to redeem the First Circle mortgage in accordance with the terms of the order nisi made January 5, 2023, in Vancouver Registry Action Number H-220452, before the interim order for sale of the family home will be effective. Mr. Brar must provide written confirmation of the redemption to Ms. Brar by that deadline.

[69] In the event that Mr. Brar is able to obtain an extension of the redemption date of July 5, 2023, from First Circle, then he may seek a further order of this court to extend the deadline for redeeming the mortgage before this Rule 15-8 order for sale becomes effective.

[70] I will now turn to the next issue.

If Mr. Brar does not redeem the First Circle mortgage, what are the appropriate terms for the order for sale?

[71] Ms. Brar seeks an order for sole conduct of sale. I am satisfied that sole conduct of sale is appropriate in this case. There is a history of the parties' inability to cooperate or agree with one another.

[72] Two events exemplify why I anticipate that joint conduct of sale would be unworkable:

- 1) Mr. Brar's application for a protection order against Ms. Brar in Provincial Court in December 2021, which Judge Cohen found to be a possession of real property matter in the guise of a protection application; and
 - 2) the difficulties Mr. Brar created when Ms. Brar served notice on the tenants in the rental property in January 2022 that she intended to move into that house, which led to a Residential Tenancy Branch hearing and a consequent delay of some eight months or more.
- [73] In addition to providing Ms. Brar with sole conduct of sale, I am ordering that unless Mr. Brar redeems the First Circle mortgage by May 30, 2023, or further order of the court to extend that deadline, Ms. Brar shall have sole conduct of sale, subject to court approval, on the following terms:
- a) Mr. Brar shall allow the realtor selected by Ms. Brar to access the family home for the purpose of the initial assessment of the market value and determining if there are any cosmetic improvements or repairs that need to be done to improve the value of the property;
 - b) Ms. Brar may complete any repairs or clean-up or cosmetic improvements recommended by the realtor, with the cost to be paid from the proceeds of sale;
 - c) Mr. Brar shall allow the realtor to post signs at the family home;
 - d) Mr. Brar shall allow the realtor to conduct open houses upon 24 hours' notice and shall allow the realtor to show the family home to prospective purchasers on six hours' notice;
 - e) Mr. Brar shall ensure that the family home is kept in a clean and tidy condition for open houses and showings. If Mr. Brar fails to clean the family home, then Ms. Brar may retain a cleaning company to clean the family home with the cost to be paid from the proceeds of sale; and
 - f) neither Mr. Brar nor Ms. Brar shall be present in the family home for any showing or open house.
- [74] Ms. Brar applied for an order that Mr. Brar remove the certificate of pending litigation on the family home within one week of this order, or that he will otherwise cooperate to facilitate removal of the certificate of pending litigation to facilitate the sale of the family home. This issue, which is paragraph 2 of the notice of application filed April 27, 2023, is adjourned to the application to approve the sale of the family home.

[75] I will now turn to the final issue.

If Mr. Brar does not redeem the First Circle mortgage, how should the proceeds from the sale of the family home be applied?

- [76] If Mr. Brar does not redeem the First Circle mortgage, Ms. Brar seeks an order to have the proceeds of sale apply to the closing costs, the debt obligations on the family home and rental home, the property taxes and city utility taxes for both properties, and the parties' joint bank account at Royal Bank to take it out of deficit position.
- [77] I am satisfied that it is appropriate to apply the proceeds of sale to the closing costs as set out in paragraph 3(i) of the notice of application, and the outstanding mortgages, lines of credit, and other charges on the family home, which is part of the relief sought in paragraph 3(ii). To the extent that there are any outstanding property taxes with respect to the family home, that is paragraph 3(iii), or city utility taxes, paragraph 3(iv), those charges should be paid out of the proceeds of sale, as well as the repair or clean-up costs referred to a moment ago.
- [78] However, I am adjourning the following items from the April 27, 2023, notice of application to the application that is going to be required to approve the sale of the family home:
- a) the relief sought in paragraph 3(ii) with respect to paying the mortgages, lines of credit, or charges on the rental property;
 - b) the relief sought in paragraph 3(iv) and (v) with respect to taxes and city utilities owing on the rental property; and
 - c) the overdraft balance for the parties' joint Royal Bank account that is in a deficit position.
- [79] I am not satisfied that the issues of whether I have authority to order the payment of these amounts or whether it would be appropriate to do so in this case were adequately addressed in the time we had available to hear this application. I am mindful of the fact that Ms. Brar lives in the rental home and an order that the debt and taxes in respect of the rental home be paid from the proceeds of sale from the family home where Mr. Brar lives might be viewed as giving her a financial advantage. I appreciate Ms. Brar takes the position that she has paid a disproportionate share of the debt-servicing costs since separation, but I am not prepared to decide this issue without giving Mr. Brar an opportunity to obtain advice and consider whether he wants to seek other relief if the family home is actually going to be sold.
- [80] Costs for this application will be in the cause.
- [81] Those are my reasons. Thank you.
- "Lamb J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/23/09/2023BCSC0993.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/brar-v-brar-2023>

Prepared on 29 October 2026 · Esheria