

CANADA / JUDGMENT

Chahal v. Chahal

2015 BCSC 2232

COURT

Supreme Court of British Columbia

DECIDED

23 October 2015

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2015 BCSC 2232 Chahal v. Chahal IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Chahal v. Chahal, 2015 BCSC 2232 Date: 20151023 Docket: E9697 Registry: Chilliwack Between: Bhupinder Chahal aka Bhupinder Singh Chahal Claimant And: Sarbjit Kaur Chahal aka Sarbjit Chahal, Satpal Kaur Boyal, Harjas Investment #1 Inc. and A Brosis Consulting Company Inc. Respondents And: Jaswant Singh Chahal and Gurmit Kaur Chahal Respondents by Counterclaim And: Bhupinder Singh Chahal aka Bhupinder, Sarbjit Kaur Chahal aka Sarbjit Chahal and Satpal Kaur Boyal Respondents by Counter Counterclaim Before: The Honourable Madam Justice Gray Oral Reasons for Judgment Counsel for the Claimant: P.S. Virk The Respondent, Sarbjit Chahal: In Person Counsel for the Respondents, Satpal Boyal and Harjas Industries #1 Inc.: N. Aggarwal Counsel for the Respondents by Counterclaim, Jaswant Singh Chahal and Gurmit Kaur Chahal G.K. Tiwana Counsel for the Respondents by Counter Counterclaim, Sarbjit K. Chahal R. Davidson Place and Date of Trial/Hearing: New Westminster, B.C. October 23, 2015 Place and Date of Judgment: Chilliwack, B.C. October 23, 2015

- [1] THE COURT: There are cross applications before me. According to my calculations, today is the 49th day of this family trial. It has proceeded in various segments, mostly because the trial has continued longer than the original and revised estimates.
- [2] The cross-applications relate to conduct of sale of two properties.
- [3] I made an order on October 24, 2014. Today is October 23, 2015, so the order was made almost exactly one year ago. It included terms by consent in paragraphs 9 through 12 dealing with these two properties.
- [4] I will summarize the relevant terms as saying that, by consent, a property in Whistler and a property in Hope would be listed for sale; that the claimant husband and the respondent wife would have joint conduct of the sale; that Rob Palm is the realtor who would list the Whistler property; and that the husband and wife were to agree on a realtor to list the Hope property.
- [5] Neither property has been sold.

- [6] I will deal first with the Whistler property. There is a letter from Mr. Palm, the realtor. An original version was attached to the fourth affidavit of Andrea MacDonald. Ms. Chahal provided today a copy of that same letter with some changes that Mr. Palm made. The changes that I could see were that he added some entries for July 21, October 17, and October 22, 2015. Apart from that it is the same letter.
- [7] I am not going to go through all of the dates, but I will say a few things from what Mr. Palm has written. He has essentially said that the wife told him that she did not want to have the Whistler property sold unless the Hope property was sold.
- [8] I am going to pause there and say that there was nothing in the court order that made the selling of the Whistler property dependent on the selling of the Hope property. The order provided that both properties were to be sold and there was to be joint conduct of the sale of both.
- [9] Most significantly, there was an offer to purchase the Whistler property. Some of what I am going to say comes from the husband's affidavit number 16, sworn August 10, 2015. In that affidavit the husband attached a number of email exchanges. I will summarize them as follows:
- a) there was an offer to purchase the property in Whistler for \$265,000;
 - b) Mr. Virk, for the husband, wrote Ms. Chahal saying that the husband accepted the offer;
 - c) there was correspondence that Ms. Chahal did not want the realtor, Mr. Palm, to communicate with Mr. Virk, and she gave instructions that she wanted all communications to be through her, not directly between Mr. Palm and either Mr. Virk or the husband; and
 - d) on April 17, 2015, Mr. Virk wrote Ms. Chahal, the wife, saying that the Whistler and Hope properties were separate, and that the husband would seek sole conduct of sale of the Whistler property if she did not provide the full documentation.
- [10] The Whistler property has not sold. The wife has instructed Mr. Palm not to communicate with Mr. Virk or the husband, despite the court order which provided that there would be joint conduct of sale.
- [11] The wife now says that she would like to borrow some money and make some improvements to the Whistler property, and that she feels some emotional connection to the property. That was not in evidence. That is something she said during submissions. She said that she asked her son if he could apply for a line of credit to raise the funds, but she does not know if those funds would be available.
- [12] With respect to the Hope property, from the information in Ms. Chahal's affidavit, it appears that there was a listing agreement signed for it. Mr. Lim tried to get Mr. Bhupinder Chahal to sign it, starting in February, and was finally able to obtain his signature in late April, when Mr. Bhupinder Chahal signed the Hope property listing agreement.

- [13] With respect to the Hope property, Jonathan Lim, the realtor, recommended a reduction in listing price from \$999,000 to \$799,000 on the basis of the condition of the property, because it had been used as a marihuana grow operation.
- [14] As I understand it from the communications that she has attached to her material, Ms. Chahal accepts the reduction in the listing price suggested by Mr. Jonathan Lim, and she herself has signed an amended listing agreement at this lower price. The listing agreement that was in effect expired on October 20, 2015, which was earlier this week. The evidence I have to this point is that the husband has not signed the amended listing agreement for the Hope property.
- [15] The wife's cross-application was just provided this morning. In contrast, the husband's application for sole conduct of the Whistler property was made in his notice of application filed August 10, 2015. I believe that his application commenced on August 10, 2015. Paragraph 3, which is the husband's application before me right now, was adjourned. There was discussion in the last two weeks of this trial about how that application would be dealt with. It was scheduled for this afternoon, October 23rd, 2015.
- [16] I am going to deal first with the wife's application. She has brought it very late. She proposes that she have two months to try to sell the Whistler property, and then if that fails, then she would give authority to the husband to sell it. She wants the same thing to happen with respect to the Hope property, with the husband having two months to sell it, after which the wife would get the authority to sell it. I should also note that there is a third owner of the Hope property, who is not a party to this lawsuit.
- [17] I am going to approach these cross-applications this way. It has already been almost a year since the order for joint conduct of sale, and neither of these properties has sold. I am very concerned that, when there was an order for a joint conduct of sale, the wife tried to restrict contact between the realtor and the husband. When there is joint conduct, one would expect the joint parties to have equal contact with the realtor.
- [18] Even more significant is the failure of Ms. Chahal to explain why the offer from last April was not accepted. It appeared from her correspondence that she was agreeable to it. The husband advised her that he accepted it. The realtor apparently recommended it, and simply did not get a response from Ms. Chahal.
- [19] It is in the interest of both parties to get the highest price for this property. It may be that the price would be higher if there were repairs, possibly even renovations, but it has taken too long to do that. Mr. Bhupinder Chahal, through Mr. Virk, asked about this last April, and threatened at that stage to seek sole conduct of sale. The wife has not since that time come forward with a proposal detailing what work would be done, where the money would come from, and how much would be required.

- [20] The wife's idea that each spouse would have sole conduct of sale of one property would have been more attractive had it been brought forward earlier. It comes very late, long after Mr. Bhupinder Chahal's counsel threatened last April to bring an application for sole conduct of sale of the Whistler property, and long after Mr. Virk in fact provided the court material in August. Here we are in October. In my view, it is simply too late to pursue the wife's idea.
- [21] In light of the wife's lack of explanation for her failure to accept the April 2015 offer on the Whistler property, and in the absence of any concrete steps having been taken over the last year for renovations or repairs, it is appropriate to give sole conduct of sale of the Whistler property to the husband.
- [22] With respect to the Hope property, I am not prepared at this point to make a change to my previous order. The existing listing just expired a few days ago. Mr. Bhupinder Chahal only received this material from the wife this morning. He has not explained what his position is, but I can understand it might take a little bit of time to consider a \$200,000 reduction on a property listed for almost one million dollars. I cannot at this stage see any ongoing fault on the husband's part regarding the Hope property. In addition, I do not have an explanation of the position of the third party owner.
- [23] So I am going to grant the application of Mr. Bhupinder Chahal, which is set out in the notice of application filed August 10, 2015. I think it just paragraph 3 you are asking for, for the sole conduct of sale.
- [24] MR. VIRK: That is correct, My Lady.
- [25] THE COURT: All right. So I grant sole conduct of sale of the Whistler property to the husband, varying my order of October 24, 2014, and I am dismissing Ms. Sarbjit Chahal's applications -- the documentation I have is simply dated October 2015, and not date-stamped, but they are her cross-applications regarding the sale authority over the Whistler and Hope property.
- [26] Is that clear?
- [27] MR. VIRK: Yes, My Lady.
- [28] THE COURT: Is that clear, Ms. Chahal?
- [29] SARBJIT CHAHAL: Yes, My Lady, it is.
- [30] THE COURT: Okay.
- [31] MR. VIRK: May we waive the signature of Ms. Chahal in the order? I will send her the order for her review.
- [32] THE COURT: All right. Do you have any submissions on that, Ms. Chahal?

- [33] SARBJIT CHAHAL: My Lady, in this matter, I know the order is made, and I should not say anything afterwards, but when we were doing the last part of trial, I did talk about doing some renovations, but I am trying to arrange some funds, and I did try on my own and that did not work. So that is why now I ask my son. And same with Mr. Palm, I told --
- [34] THE COURT: Yes. I am not the Court of Appeal. I have made my order.
- [35] SARBJIT CHAHAL: Yes, My Lady.
- [36] THE COURT: You may disagree with it, but I made the order. What I am asking you is, Mr. Virk is proposing that he prepare the form of order and send you a draft, but that it does not require your signature. It seems to me to be quite a straightforward order, do --
- [37] SARBJIT CHAHAL: No, I would like to signature, and I might make an appeal for this order, My Lady, because I did not --
- [38] THE COURT: Well, that will be up to you. I do not deal with appeals.
- [39] SARBJIT CHAHAL: Yes, okay, My Lady.
- [40] THE COURT: But if you appeal, it does not stop the court order unless you go to the Court of Appeal and they agree that the court order will be stayed, and order that it will not remain in effect until further order. But when I make the order, it is effective now.
- [41] SARBJIT CHAHAL: Yes, My Lady, so I would like to see that, and then sign it and then give it to him.
- [42] THE COURT: All right. Well, I am not going not dispense with the wife's signature. If there is any difficulty, I expect that the registrar could very quickly deal with this. I know for some reason lawyers seem reluctant to set registrar's hearings, although I think in most registries they can be set on quite short notice and for specific times. But I am not going to dispense with the signature. [SUBMISSIONS RE COSTS]
- [43] THE COURT: I am being asked to make an order respecting costs. Mr. Virk applied on Mr. Bhupinder Chahal's behalf for an order for changing joint conduct of sale of property in Whistler to sole conduct in favour of the husband. He was successful on that. Ms. Sarbjit Chahal brought cross-applications. She was unsuccessful on those. They were both dismissed. So the result is that the husband was wholly successful and the wife was wholly unsuccessful.
- [44] The usual rule in the court is that the party who is unsuccessful is required to pay court costs to the successful party. That is because the successful party would rather not have gone to the trouble and expense of bringing the court application to get what the court has ordered.

[45] I do not see a reason in law to depart from the usual rule, so the husband is entitled to his costs of this application. It took about one hour. It would be costs in the cause, which means it is not payable immediately. It has to be dealt with when all the costs are dealt with at the end of the trial. But the husband is entitled to his costs of these one-hour cross-applications.

[46] MR. VIRK: Thank you, My Lady. "Gray J."

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