

CANADA / JUDGMENT

Chahal v. Chahal

2016 BCSC 1848

COURT

Supreme Court of British Columbia

DECIDED

23 August 2016

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2016 BCSC 1848 Chahal v. Chahal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Chahal v. Chahal,

2016 BCSC 1848

Date: 20160823

Docket: E9697

Registry: Chilliwack

Between:

Bhupinder Chahal a.k.a. Bhupinder Singh Chahal

Claimant

And

Sarbjit Kaur Chahal a.k.a. 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:

No Appearance

Place and Date of Hearing:

New Westminster, B.C.

August 23, 2016

Place and Date of Judgment:

Chilliwack, B.C.

August 23, 2016

- [1] THE COURT: This is, by my count, the sixty-fourth day of this trial. The application before me has been brought by Mr. Bhupinder Chahal, the claimant. I will refer to him as "Bhupinder" and also to the others by their first name, to avoid confusion which could arise because there are several people with the same last name. Bhupinder's application is to add parties and to amend the notice of family claim and the style of proceeding.
- [2] This application really breaks into two parts. One part is that Bhupinder seeks to add as defendants Mr. Parminder Boyal ("Parminder") and Mr. Dhyan Boyal ("Dhyan") and to make amendments to the notice of family claim that relate to claims against those two men. The other amendments relate to claims against existing parties, Ms. Sarbjit Chahal ("Sarbjit") and Ms. Satpal Boyal ("Satpal").

- [3] Earlier, and it might have been in April 2016, I made an order permitting substitutional service of the application on Parminder and Dhyan by posting the document at an address on 129th Street, Surrey. That was done. I have been provided with affidavits of alternate service which say that was done on June 24, 2016. However, neither Parminder nor Dhyan have filed a notice of response or have appeared today at the hearing or have made any submissions.
- [4] This application - I am sorry - Mr. Aggarwal you are standing.
- [5] MR. AGGARWAL: I am sorry, My Lady, but the response was filed on behalf of Mr. Parminder Boyal and Mr. Dhyan Boyal on 10th July 2016.
- [6] THE COURT: Well, no one gave me that.
- [7] MR. AGGARWAL: It is the same Response as My Lady has from Ms. Chahal but it was filed. I have got an electronic copy of it.
- [8] SARBJIT CHAHAL: It was sent to him too in their office.
- [9] MR. AGGARWAL: It was sent to Mr. [indiscernible] too. So I just wanted to make a correction to --
- [10] THE COURT: Well, I do not know what it says and I was not given a copy of that. I do expect counsel to cooperate and make sure that I am given the right material. How do you expect a judge to make a proper decision without all the material?
- [11] MR. AGGARWAL: I understand, My Lady. I am not making any excuse for that but I was here yesterday and I was told that it is going to happen on Wednesday and I was planning something else and then (indiscernible) today morning I got a message from Mr. Virk that you are to come at two o'clock so I did not want to waste the time of this Honourable Court but it is the same reply as Ms. [Sarbjit] Chahal has filed and I have got the electronic copy showing that the Response was filed by Mr. [Parminder] Boyal and Mr. Dhyan [Boyal] too.
- [12] SARBJIT CHAHAL: And I have proof that it was sent to Mr. (indiscernible). I have proof of that.
- [13] MR. AGGARWAL: (Indiscernible)
- [14] SARBJIT CHAHAL: (Indiscernible) email. I will send it to your office. It was sent to your office.
- [15] MR. AGGARWAL: (Indiscernible)
- [16] SARBJIT CHAHAL: The file. The copy was sent to his office.
- [17] THE COURT: All right. It does not matter. I am going to carry on with my reasons for judgment.
- [18] MR. AGGARWAL: Thank you.

- [19] THE COURT: I have been told that an application response was filed by Dhyen Boyal and Parminder Boyal. I was not provided with a copy of that. Mr. Aggarwal says he has an electronic copy and that it is similar to the application response filed by Sarbjit.
- [20] I have a copy of one apparently signed by Sarbjit dated April 25, 2016. It has a date stamp on it that I cannot read. It might be April 26 or April 28, 2016. Incorrectly, it says it is the application response of Bhupinder, the claimant, but in fact it is signed by Sarbjit and it is her response. So I am going to carry on with my reasons for judgment.
- [21] I am now told that there was an Application Response filed by Parminder and Dhyen, apparently to the effect that they oppose the order sought.
- [22] In any event, they did not appear in person or through counsel at the hearing of this application, which took about 45 minutes starting at two p.m. Tuesday, August 23rd, 2016.
- [23] Mr. Virk on behalf of Bhupinder asks that these two men, Parminder and Dhyen, be added as parties to this lawsuit.
- [24] I accept that the Court has jurisdiction to add parties. One of the important issues for the Court in adding the party is to consider whether the party's attendance is necessary and what might be the prejudice of adding the party.
- [25] There is a summary of some of the law regarding adding parties in a decision by Mr. Justice Dley, *Meade v. Armstrong (City)*, 2011 BCSC 1591 [Meade]. He summarizes some of the applicable law at para. 16 as follows:
- [16] Mr. Meade's application is brought under Rules 6-1(1) and 6-2 (7) of the Supreme Court Civil Rules. These rules are to be interpreted as follows:
- 1) A party should be added where that party's participation is necessary for the proper determination of the case: *Van de Perre v. Edwards* 2001 SCC 60 (CanLII), [2001] 2 S.C.R. 1014 at para. 48;
 - 2) The discretion to add parties should be generously exercised so as to enable effective adjudication upon all matters: *Northern Construction Co. v. British Columbia Hydro and Power Authority*, [1970] B.C.J. No. 26 at para. 14;
 - 3) In exercising the discretion to add a party, the court should not concern itself as to whether the action will be successful other than to be satisfied that there may exist an issue or question between the applicant and the party being joined: *MacMillan Bloedel Ltd. v. Binstead*, 1984 CanLII 351 (BC CA), [1981] B.C.J. No. 1611 at para. 12;
 - 4) Evidence is not required in support of a joinder application. The pleadings may be sufficient to establish that there is a question to be tried between the parties: *Lasik Vision Canada Inc. v. TLC Vancouver Optometric Group Inc.*, [1999] B.C.J. No. 2796 at para. 15;

- 5) Where an applicant relies on pleadings alone, the facts alleged, which if assumed to be true, must disclose a cause of action: *Harrington (Guardian ad litem) v. Pappachristos*, [1992] B.C.J. No. 2600;
- 6) Unless there is prejudice, amendments should be granted liberally to enable the issues to be tried: *Langret Investments S.A. v. McDonnell*, 1996 CanLII 1433 (BC CA), [1996] B.C.J. No. 550 at para. 43.
- [26] In the Meade, supra, case, Mr. Justice Dley was considering a proposed amendment apparently before the hearing of the trial had commenced.
- [27] In this case, the most significant factor is that the application was heard on the sixty-fourth day of the trial. Even though I do not see Parminder and Dhyan here, I expect there would be severe prejudice to them in being included as parties in this case, because they would be forced to consider what has happened in the last sixty-odd days of trial. They would not have had the opportunity to cross-examine witnesses in the ordinary course. They would not have had the opportunity to consider the nature of any claim made against them. In my view, this is severe prejudice, given the length of the trial to date.
- [28] On the other hand, I have considered why Bhupinder asks to have them added as parties. Bhupinder in fact does not agree that either Parminder or Dhyan has any interest in the assets against which Bhupinder is making a claim. Bhupinder brought this lawsuit against his wife Sarbjit and mother-in-law Satpal and some companies. Ordinarily, by law, the decision would be binding as between the parties to the lawsuit. The decision would not necessarily be binding on someone who is not a party to the lawsuit, such as someone who simply appeared as a witness or someone who was not involved in any way in the lawsuit.
- [29] Mr. Aggarwal on behalf of Satpal opposed the adding of the parties. He also said that the pleadings filed on behalf of Satpal on August 27, 2014 - almost two years ago - set out allegations about ownership by Parminder at least, and that the claimant Bhupinder has had long notice of that allegation. I am going to refer to the response to family claim filed August 27, 2014 by Satpal and Harjas Investment #1 Inc. Paragraph 3 says:

The respondent [and that is Satpal] claims that [Parminder] and [Satpal] used their family funds to acquire a 50 percent interest in A. Brosis Consulting Co.

- [30] I accept that this is an allegation made about two years ago that Parminder and Satpal used funds to acquire a 50 percent interest in A. Brosis Consulting Co. So I am not persuaded by Mr. Virk, at least with respect to Parminder, that the issue arose only during the evidence of Parminder. On my reading of this pleading of about two years ago, there was an allegation about Parminder participating in a 50 percent interest in A. Brosis Consulting Co.

- [31] In addition and more importantly, I must weigh the prejudice. In my view, the prejudice to Parminder and Dhyan of adding them after more than sixty days of trial outweighs any interest that Bhupinder may have of including them as people bound by any decision regarding ownership of these assets.
- [32] The decision may well have been different if Bhupinder's application had been brought before the trial commenced, or before it had proceeded for so many days, but at this stage it is too late. I dismiss the application to add Parminder and Dhyan as parties.
- [33] Mr. Chahal also seeks to make amendments to the pleadings as far as they relate to his claims against existing parties, being Sarbjit and Satpal.
- [34] Sarbjit, through Mr. Aggarwal, has said that she would like some time to get legal advice on that. Mr. Virk says that this notice of application has been long outstanding, and the notice of application is dated April 20, 2016.
- [35] The notice of application refers to amending the notice of family claim as set out in an appendix. That form of amended notice of family claim deals with adding these other parties, Parminder and Dhyan, as well as making other changes. The application was not provided in the form of saying, "I want to add these parties, and here are the amendments relating to those parties, and here are the amendments just dealing with my claims against Sarbjit and Satpal".
- [36] Because of that, it is my view that Sarbjit, who acts in person for much of this trial, has not had adequate notice of what changes are proposed which relate to just the existing parties. So I am going to adjourn the question of the form of amended notice of family claim, and ask that Mr. Virk provide his proposed amended notice of family claim in the form that he would seek to proceed to file without the addition of Parminder and Dhyan as parties, and then Sarbjit can consider that appropriately and we can schedule submissions on that if necessary.
- [37] So I am dismissing the application to add Parminder and Dhyan, and I am adjourning the application to amend the notice of family claim with respect to claims against Sarbjit and Satpal with the direction that Mr. Virk should provide the proposed amended notice of family claim and then we can schedule the application regarding that if that form of amended notice of family claim is opposed.
- [38] MR. VIRK: Thank you, My Lady.

"Gray J."

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