

CANADA / JUDGMENT

Chohan v. Sohi

2020 BCSC 364

COURT

Supreme Court of British Columbia

DECIDED

13 March 2020

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2020 BCSC 364 Chohan v. Sohi IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Chohan v. Sohi, 2020 BCSC 364 Date: 20200313 Docket: S216164 Registry: New Westminster Between: Bhagwant Kaur Chohan also known as Nina Kaur Chohan and Leagha Investments Inc. Petitioners And Simranjit Kaur Sohi, Succeed Holdings Ltd. and Grand Palazzo Holdings Ltd. Respondents Before: The Honourable Madam Justice Marzari Reasons for Judgment Re Costs In Chambers Counsel for the Petitioners: J.S. Malik Counsel for the Respondents: V. Verma Date of Written Submissions: January 31 and February 7, 2020 Place and Date of Judgment: Vancouver, B.C. March 13, 2020

- [1] THE COURT: On January 16, 2020, I gave oral reasons setting the terms of the respondents' unconditional offer to purchase the 1/3 interest of the petitioners pursuant to the Partition of Property Act, R.S.B.C. 1996, c. 347, as the parties were unable to agree on that date to the value of the property, the deductions to be made, the timing, and most particularly the costs of this proceeding.
- [2] In my reasons I stated as follows:
- [50] The real issue that seems to be before me today is costs. I ordered costs to the petitioners of the October hearing in any event of the cause on the basis that, in my view, the petitioners had been required to bring the petition that they did because they did not have an unconditional offer at that time to pay them market value. And even though the petitioners were not successful, at that time, in getting an order for sale, I was satisfied that, had they not brought the petition, they would not have been able to obtain fair market value for their one third interest in the property. I am still of the view that this petition was necessary in order for the petitioners to obtain the fair market value for their one-third interest in the property.
- [51] Mr. Verma has quite eloquently said everything that could be said on behalf of the respondents in this regard with respect to delay and his client's efforts at resolution without this litigation. Ultimately, however, the difference between what the respondent was offering to the petitioners based on the 2018 MacIntosh appraisal and the amount that I have found to be fair market value is substantial.

- [52] Ultimately, I am satisfied that the petitioner was justified in bringing this petition to seek their fair market value for their interest in the property. Even if they did not get conduct of sale, they have successfully obtained a purchase of their interest on the basis of fair market value. Applying the law with respect to substantive success, the petitioners were substantively successful. I find that the petitioners are entitled to their costs, including the costs of the disbursements for the initial JRC appraisal.
- [3] After I had delivered my reasons, the respondents requested that I reconsider costs, and provided me with additional evidence of settlement discussions. While I was not prepared to re-open my finding of the petitioners' substantial success, I directed the parties to provide written submissions and evidence with respect to any formal offers made that might affect costs pursuant to Rule 9-1.
- [4] The respondents filed written arguments and evidence arguing primarily that I was wrong in my assessment of which party was substantially successful in this litigation. Although I did not invite these submissions, I have reviewed them and they have not convinced me to reopen my determination that the petitioners were substantially successful in this litigation and entitled to their costs.
- [5] With respect to the arguments of the respondents pursuant to *Hartshorne v. Hartshorne*, 2011 BCCA 29, relating to the history of offers to settle, the respondents argue that they made a formal offer to settle on January 13, 2020, and argue that the petitioners should have responded to it. They seek costs of the January 16, 2020 hearing on that basis, or alternatively that both parties bear their own costs in relation to that hearing.
- [6] The evidence of the exchange of offers that has now been put before me is that by January 3, 2020 the parties had both exchanged informal offers that set the value of the petitioners share of the property at the precise amount I set at hearing: \$1,048,333.33. The only difference between the parties was the timing of the closing and costs. The petitioners had incurred significant appraisal and expert report costs which they were seeking to recover, and the respondents' offer was without costs. The petitioners rejected the offer of no costs and the respondents rejected the offers that they settle with costs, or settle everything else and simply speak to costs.
- [7] The respondents' January 13, 2020 offer was the only offer provided by either party that meets the requirements under the Rules for costs considerations. It was largely unchanged from January 3, with the exception of an offer to pay costs of \$750. This offer was received at close to 10:00 p.m. on January 13, 2020, only two business days before the hearing. It was neither accepted nor rejected, and petitioners' counsel sent correspondence to the respondents' counsel stating that the petitioners were unavailable to provide instructions on this offer as they were attending a wedding that week.

- [8] As noted above, one of the main issues at the January 16, 2020 hearing was the costs of the disbursements for the appraisals and expert opinions obtained by the petitioners. On this issue, the petitioners were largely successful, while the respondents were not.
- [9] Generally, it is the party who obtains a result that is better or similar to their offer that seeks costs consequences to the other party for failing to accept a reasonable offer made within a reasonable time.
- [10] In this case, the respondents are seeking costs on the basis of a very late offer that was not the same or better than the court's award on the significant issue between the parties, upon which the respondents were unsuccessful. I find that their offer was not one that the petitioners ought reasonably to have accepted under Rule 9-1, even had there been reasonable time to do so, which I find there was not.
- [11] I note as well that the issue before me on January 16, 2020 was not just the costs of that hearing, but of the petition as a whole, together with disbursements. That issue remained unresolved after the October 2019 hearing, and was decided in favour of the petitioners.
- [12] In the result, I confirm my order of January 16, 2020, that the petitioners were substantially successful in this matter, and are entitled to their costs of the petition, including disbursements for the first JRC appraisal and the JRC expert opinion report, and 50% of the costs of the second JRC appraisal. "Marzari J."

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