

CANADA / JUDGMENT

# Chohan v. Sohi

2020 BCSC 182

## COURT

Supreme Court of British Columbia

## DECIDED

16 January 2020

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2020 BCSC 182 Chohan v. Sohi IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Chohan v. Sohi, 2020 BCSC 182 Date: 20200116 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 Oral Reasons for Judgment In Chambers Counsel for Petitioners: J.S. Malik Counsel for Respondents: V. Verma Place and Date of Trial/Hearing: Vancouver, B.C. January 16, 2020 Place and Date of Judgment: Vancouver, B.C. January 16, 2020

- [1] THE COURT: In October, when these parties came before me, I heard the petitioner's petition for the conduct of sale of a property that is owned, essentially, one-third to the petitioners and two-thirds to the respondents.
- [2] At that time, I made an order on the basis of an unconditional undertaking, that was only given at the time of the hearing of the petition in October, that the respondents were to buy out the petitioner's one-third share at fair market value. I considered whether or not to simply rely on the only reliable appraisal that was before me, but, ultimately, I made an order giving the respondents the option to buy the petitioners out for \$1.1 million, less mortgage expenses, or to get an updated appraisal.
- [3] It appears that an updated appraisal was obtained by the respondents, and an updated appraisal was also obtained by the petitioners. These show that the current market value of the property has decreased since the initial JRC appraisal obtained by the petitioners, which is now about a year old. The value provided by the petitioners for the 1/3 interest is 1,050,000, and the value provided by the respondents' appraiser is \$1,040,000. Both appear to be --
- [4] MR. MALIK: Can I just clarify that, My Lady?
- [5] THE COURT: Yes.

- [6] MR. MALIK: It's one million forty-six thousand -- for- -- forty-six seventy. Because it would be a thirty -- it's a 10,000 total difference. When you divide it by three, it works out to one million forty-six and whatever the change is, and 33 cents, when you divide it by three.
- [7] THE COURT: Okay.
- [8] MR. MALIK: Sorry.
- [9] THE COURT: No. Thank you for that clarification. Can you tell me those numbers again? So, if I accept the JRC appraisal --
- [10] MR. MALIK: It is ten fif- --
- [11] THE COURT: -- one-third is ?
- [12] MR. MALIK: Ten fifty.
- [13] THE COURT: -- ten fifty. And if I accept the respondent's appraisal, the amount is . . .?
- [14] MR. MALIK: Less by thirty -- \$3,333.33.
- [15] MR. VERMA: Based on their interest.
- [16] MR. MALIK: Correct. Because it would be one third of that.
- [17] THE COURT: Based on the one third.
- [18] MR. VERMA: Yeah.
- [19] THE COURT: So, there is only a three thousand --
- [20] MR. VERMA: Thirty-three hundred. Yeah.
- [21] THE COURT: -- three hundred thirty three dollar difference --
- [22] MR. MALIK: Difference. Yes. Ultimately, to --
- [23] THE COURT: -- between ten fifty and ten forty-six point seven, something like that.
- [24] MR. MALIK: Yes.
- [25] THE COURT: All right. Thank you. That correction will be noted, if these reasons are requested.
- [26] So the numbers are very, very similar, in the result. There is very little to distinguish them. The value of the land is set at the same value per square foot in both appraisals. I propose to split the difference, in terms of the value. So, it is a little -- the math is more complicated than I had realized.
- [27] MR. VERMA: I do have the math, in a second.
- [28] MR. MALIK: If you go to the very end of Tab 11, My Lady. Those are my friend's offer to settle, which has the number, because we proposed to split the difference.

- [29] MR. VERMA: It would be one million fo- -- I will just say the number: one zero four eight three three three point three three --
- [30] THE COURT: All right.
- [31] MR. VERMA: -- would be the middle grounds.
- [32] THE COURT: All right. I am going to order that the value of the petitioners interest is middle ground, which is \$1,048,333.33. That is the value of the petitioner's interest in this land, less one-third of outstanding mortgage amounts. And so, that is the value for the respondents' purchase of that interest.
- [33] I am now going to deal with the issue that has been brought up to me, today, with respect to deductions, and what the appropriate deductions are to be made from that, in terms of the respondents' and the petitioners' interests. The petitioners say that no deductions should be made, because the respondents have essentially profited from the delay in their being bought out, because the value of the property has gone down. I do not consider that to be a profit for the respondents. They have lost value in their property. I do not see that as a profit, one way or the other. On the other hand, I am not convinced that the respondents would not be able to roll over their mortgage in some way.
- [34] This is what I am going to order, with respect to the deductions: The petitioners will pay one third of any costs, including banking charges, having to do with the change in ownership, as a result of the respondents buying out the petitioners.
- [35] MR. VERMA: The early discharge fee, one-third of that you are saying, basically.
- [36] THE COURT: If there is an early discharge fee --
- [37] MR. VERMA: Yes.
- [38] THE COURT: -- it would be one third of that. If there is other banking charges related to a rollover or a change in name --
- [39] MR. VERMA: One third of that. Okay.
- [40] THE COURT: -- it would be one third of that, so one-third of any of the fees, in accordance with the petitioners' interest.
- [41] I do not consider -- I have heard the petitioners' arguments, as to why they should not have to make up their payments for the mortgage payments they have not been making, since the outset of this. I have not heard them say anything about the property taxes. But in any event, I am not convinced by the petitioners' arguments in that regard. I consider that they should make the respondents whole for those property tax payments, one third of the value, in accordance with their interest, and one third of the mortgage payments and any late fees that may have been charged that have been missed, over the course of this dispute. So, those are the deductions that I am approving, in terms of the value.

- [42] As to the timing, the petitioners are seeking the end of February, on the basis that a 30-day closing would be appropriate; but they are willing to extend it to month-end. The respondents seek three months, I assume to get their affairs in order. In that regard, this matter has been now going on for too long, and I prefer and I am going to set the earlier date between the two parties, so February 29, 2020, for closing.
- [43] MR. MALIK: My Lady, I just looked. February 29th is a Saturday, so if it could be February 28th, which would be the last working day?
- [44] THE COURT: I will push it over to the --
- [45] MR. MALIK: March 1st --
- [46] THE COURT: -- March 1st, then, or --
- [47] MR. MALIK: -- or sorry, March 2nd would be the --
- [48] THE COURT: March 2, 2020. That would allow the month-end to occur, and then those numbers to be crunched or whatever needs to be done. Of course, the respondents are free to do that sooner, should they wish to close sooner. I do not think the petitioners would object.
- [49] With respect to costs, it seems that costs have become the most difficult issue between the parties because the numbers with respect to appraisals and the payments and the property taxes do not amount to a great deal of money. Those differences amount to less than the disbursements that are being claimed on this matter.
- [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. The decrease between what the petitioners sought and what they received was solely due, in my view, to a change in market conditions. However, the difference between what the respondents were offering and what the petitioners were seeking was a difference in the quality of the appraisal, and the fact that the respondents did not have an appraisal that properly set out the market value of the property, and relied upon

an inadmissible and even older appraisal than the petitioners.

[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.

[53] I had some concern with respect to the costs of the second JRC appraisal, given that it came in so close to the respondents' appraisal, as to whether that was a necessary expense. However, I have been satisfied that the petitioner, in order to get the appraisal and response, needed to order it in advance of knowing what the respondents' number was. So I would award half of that appraisal amount to the petitioners, in terms of their disbursements.

"Marzari J."

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