

CANADA / JUDGMENT

Desai v. Desai

2025 BCSC 2090

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2090 Desai v. Desai

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Desai v. Desai,

2025 BCSC 2090

Date: 20251024

Docket: E67115

Registry: New Westminster

Between:

Shivani Desai also known as Shivani Pankajkumar Patel

Claimant

And

Kalpesh Vinod Desai

Respondent

Before: The Honourable Justice Girn

Reasons for Judgment

Counsel for the Claimant:

R.S. Gill

Counsel for the Respondent:

A.M. McMeans

Place and Dates of Hearing:

New Westminster, B.C.

August 20, 2024

April 2 and 23, 2025

June 5, 2025

Place and Date of Judgment:

New Westminster, B.C.

October 24, 2025

Introduction

- [1] The Respondent, Kalpesh Vinod Desai, seeks to have the parties bound by the provisions in the Minutes of Settlement dated April 4, 2024, with certain amendments that he says were agreed upon by the parties. In the alternative, the Respondent seeks to include certain terms in the Minutes of Settlement and require the parties to sign the amended Minutes of Settlement within 30 days.
- [2] The Claimant, Shivani Desai (also known as Shivani Pankajkumar Patel), opposes the application. She argues that the agreement was made based on financial non-disclosure and that she repudiated the agreement due to this non-disclosure. She argues that there was no meeting of the minds that gave rise to a binding agreement.
- [3] The Respondent does not accept the repudiation.

Background

- [4] The parties were married on June 25, 2004. They separated on April 3, 2023. There are two children of the marriage. The Respondent lives in the former family home with the children and his mother.
- [5] The Claimant filed her Notice of Family Claim on April 3, 2023. The Respondent filed a Counterclaim on September 8, 2023. The parties attended a Judicial Case Conference (JCC) on December 4, 2023. Prior to the JCC, the parties exchanged their financial statements as required.
- [6] At the time the parties attended the JCC, the Respondent worked for Amazon Inc. In his financial statement dated November 23, 2023, the Respondent reported his annual income as \$437,942.75.
- [7] The Respondent also noted in the financial statement that he anticipated significant changes going forward. Specifically, he wrote:

I. I will need to reorganize my finances as a result of the changes anticipated by our separation, including divisions of assets and allocation of child support payments.

II. I have been given notice that as of February 2024, I will be laid off from my employment with Amazon Inc. I do not presently have any other job offers available for me to accept and I do not know what my income will be in 2024.

- [8] On March 15, 2024, the parties exchanged their lists of documents ahead of a mediation scheduled for April 3, 2024. No documentation relating to the Respondent's termination at Amazon was included in the list of documents produced for the Claimant, nor was one requested by the Claimant prior to the mediation.
- [9] On April 3, 2024, the parties attended mediation. They failed to reach a settlement. The Minutes of Settlement were sent by the mediator to the parties on April 4, 2024. The Minutes of Settlement set out the terms that were discussed.
- [10] Both parties submitted extensive correspondence between their legal counsel as part of the record. Since the issue in this application is whether a settlement was reached, neither side objected to the court reviewing without prejudice communications. Therefore, I have taken those without prejudice communications into account in determining whether a settlement was reached.
- [11] The relevant correspondence begins on the same day, April 4, 2024. As I noted above, the mediator provided the parties with the Minutes of Settlement. The Claimant's counsel at the time, Mr. Bhangu, sent the first two emails to the Respondent's counsel with an offer to settle. The first email, sent at 12:36 p.m., stated:

Without Prejudice

Hi Allison,

I think we have an agreement, here [sic] hinging on one thing. Can up please call my cell

[12] Later, at 3:20 p.m., Mr. Bhangu sent a more detailed email to the Respondent's counsel:

My client, Shivani Desai ("Ms. Desai"), accepts the mediation agreement subject and conditional on one (1) condition:

1. The Surrey Family property be appraised for fair market value;
2. The parties will agree on an appraiser jointly;
3. Both parties will retain the appraiser; and
4. The parties will share the cost of the appraisal/ appraiser equally.

(emphasis added)

[13] Respondent's counsel responded on April 5, 2024, advising that she was to have discussions with the Respondent later in the afternoon:

I have a call with Mr. Desai this afternoon. One way or another, I'll let you know this afternoon what's going on.

[14] Not hearing back from the Respondent's counsel, the Claimant's counsel sent another email to the Respondent's counsel on April 6, 2024, at 6:52 am:

Just following up - I was hoping to hear from you as stated in your email.

[15] Later that morning at 11:42 a.m., the Respondent's counsel replied that she was waiting for further instructions from the Respondent and inquired that once they have a "deal" whether they should draft a consent order addressing the terms set out by the Claimant in the proposed settlement offer.

[16] On April 6, 2024, the Respondent's counsel responded advising that the Respondent accepts the offer:

Mr. Desai accepts Ms. Desai's offer of April 4, 2024, the terms of which are reflected in the attached agreement. If you are available, we can have a call on Monday to discuss whether to incorporate the terms into an order or an agreement.

[17] The attached agreement was the Minutes of Settlement. Nothing further was exchanged between the parties' counsel that day.

[18] Three days later, on April 9, 2024, counsel for the Claimant sent another email advising that the Claimant was no longer agreeable to the offer that had been accepted by the Respondent. Mr. Bhangu wrote:

Thank you for your email. I have received instructions from my client, Ms. Desai. At this time, she is not agreeable to the offer.

We are requesting the following information that Mr. Desai has not disclosed:

1. T4 Slips of 2023;
2. Record of Employment from Amazon;
3. CRA assessment for 2023; and
4. Most recent pay stubs from Amazon and Coast Capital Savings.

[19] Some context is required to explain the Claimant's repudiation of the agreement. The Claimant says that she repudiated the agreement because the Respondent did not provide the Amazon employment letter within 24 hours of the mediation as agreed upon. She also says that she communicated this to Mr. Bhangu.

- [20] I will provide more details on the relevant communications between the Claimant and Mr. Bhangu. I note that any solicitor-client privilege attached to these communications were waived. In an updated affidavit that was filed in response to questions from the Court during the August 2024 hearing, the Claimant swore a quickly prepared affidavit during the lunch break. This affidavit contains messages between herself and Mr. Bhangu on April 6, 2024, on WhatsApp wherein Mr. Bhangu asks her if she wants to agree to the "offer" if the Respondent accepts or if she wants to investigate the employment issue. It is unclear why Mr. Bhangu is asking her "if she agrees to the offer" when it was the Claimant who made the offer in the first instance.
- [21] In these WhatsApp messages the Claimant advises Mr. Bhangu that "she wishes to investigate it to see if the Respondent was lying about his employment." She reminds Mr. Bhangu that they asked for the employment letter which still had not been provided. At no point in these communications does the Claimant instruct Mr. Bhangu to withdraw the offer, which at this point had not been accepted by the Respondent. Nor does she instruct Mr. Bhangu to communicate to the Respondent's counsel that the offer is also contingent on the Respondent providing the said employment letter.
- [22] The Claimant deposes that Mr. Bhangu was out of the office until April 8, 2024, and therefore the first opportunity to revoke the offer was on April 9th. The difficulty with her explanation is that it does not explain why the issue of the outstanding financial disclosure including the Amazon employment letter was not communicated to the Respondent's counsel earlier. It makes no sense that the Claimant wanted to investigate this issue but chose to make the offer and sit on it until April 9th to then repudiate after it was accepted by the Respondent.
- [23] After the Claimant repudiated the agreement, on April 11, 2024, counsel for the Respondent wrote to Mr. Bhangu indicating that the Respondent had accepted the Claimant's offer and asked for details of the offer that had been made to ensure that there was not a misunderstanding between counsel.
- [24] On April 12, 2024, Mr. Bhangu responded as follows:
- Ms. Desai is not agreeable to the without prejudice mediation offer. She would like other documents to be disclosed to her, so she has a full understanding of Mr. Desai's financials.
- We are requesting those documents. Our position is that having a mediation without a discovery was premature. Ms. Desai was consistent with her position that she did not agree to mediate but was forced to mediate due to the service of the Notice to Mediate despite her wishes. She has not completed her obligation "to mediate and negotiated in good faith - however she is not satisfied with the disclosure of documents provided.

[25] I note that the Claimant was represented by counsel, Mr. Bhangu, at the mediation. Surely, if the lack of financial disclosure was an issue at the mediation, it would have been communicated when the offer was made by the Claimant on April 4th. Further there is no explanation from the Claimant why the offer was made in the first place if the Amazon employment letter had not yet been provided.

[26] After April 11, 2024, there does not appear to be any other correspondence between counsel until May 1, 2024, when counsel for the Respondent wrote that an offer was made and accepted and the Respondent would seek to enforce the agreement:

On April 4, 2024, Ms. Desai made an offer and on April 6, 2024, Mr. Desai accepted the offer through correspondence between counsel, which created a contract between the parties.

Both the correspondence and the terms are clear. I have instructions to enforce the agreement between the parties. Please provide me with your availability for a chambers application in May and June. We will be seeking costs against Ms. Desai for her refusal to honour the contract between the parties.

[27] On May 6, 2024, Mr. Bhangu wrote on behalf of the Claimant outlining several issues including that the mediation was premature given that no examination for discovery had been completed. As well, Mr. Bhangu raised the issue of the employment letter from Amazon. That part of the letter states:

Mr. Desai stated that he would provide a letter from Amazon within 24 hours - which we did not receive. Is he still working for Amazon? We would like to see that on the Company's letterhead with contact information of HR department. We have not been given any clarification or a solid answer, it is my view that he continues to work for Amazon and is not being forthcoming about his employment in order to save on support payments and sharing of his income.

Ms. Desai is not agreeable to the mediation terms. She will not let Mr. Desai dictate what decisions should be made.

[28] Counsel for the Respondent wrote back on May 13, 2024, once again reiterating that an offer was made by the Claimant in writing which was accepted by the Respondent.

Discussion

[29] The I now turn to the issues before the Court:

- a) Did the exchange between counsel from April 4 to 6, 2024, give rise to a binding settlement agreement?
- b) Does the lack of financial disclosure prior to mediation invalidate the agreement?

Issue 1: Did the parties reach a binding settlement agreement?

- [30] The party seeking to prove the existence of a settlement agreement bears the burden on a balance of probabilities: *Hutton v. Hutton*, 2020 BCSC 2046 at para. 31; *Salminen v. Garvie*, 2011 BCSC 339 at para. 26.
- [31] In *Hutton*, then Chief Justice Hinkson confirmed that the Court must determine whether the parties reached an agreement on all essential terms, such that a contract has been formed: para. 32.
- [32] In *Sehic v. Sehic*, 2024 BCSC 1559, Justice Wolfe expands on this:
- [36] In *Hutton*, Hinkson CJ referred, in turn, to para. 35 of former Chief Justice McEachern's decision in *Fieguth v. Acklands Ltd.* (1989), 37 B.C.L.R. (2d) 62 (C.A.), for the proposition that, in considering whether there is agreement on all essential terms, it is necessary to "separate the question of formation of contract from its completion." In *Fieguth*, McEachern CJ held the contract completion stage may involve the provision of additional documents and further negotiations on non-essential terms without risk of rescinding the settlement agreement (para. 36).
- [37] The test for agreement as to essential terms is an objective one, having regard to the parties' communications in light of the facts known to them at the time; the parties' subjective understandings are not relevant: *M.G.T. v. L.S.R.*, 2024 BCSC 411 at para. 11. If a "reasonable person would find that the parties were in agreement as to a contract and its terms, then a contract would exist at common law": *Hutton* at para. 45, citing *Salminen v. Garvie*, 2011 BCSC 339 at para. 27.
- [38] Further, "it is not necessary that an original contract include all the ancillary terms that are already implicit in its content"; and "even if certain terms of economic or other significance to the parties have not been finalized, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a pre-condition to a concluded and legally binding agreement": *Hutton* at para. 33, citing *Apotex Inc. v. Allergan, Inc.*, 2016 FCA 155 at para. 32. When courts find an agreement on essential terms, they can imply non-essential terms into an agreement to give it effect: *Apotex* at para. 33; *M.G.T.* at para. 11.
- [39] The jurisprudence also confirms that settlement agreements in family law are not analyzed with the same rigour as in other contractual settings, and that, unlike in commercial contexts, fairness has a role to play where matrimonial contracts are concerned: *Spiegel v. Meilman*, 2017 BCSC 766 at para. 29.
- [33] The Respondent submits that the Claimant made a settlement offer and once he accepted it with the conditions that the Claimant imposed, it was binding on both parties. He does not accept the repudiation.

- [34] The Claimant submits that she reasonably relied upon the Respondent's statements that he would be laid off and that his income would dramatically decrease and that he was to provide disclosure of this information within 24 hours of the mediation. She believed and relied on this information when they entered mediation and subsequently when she made an offer to settle their family dispute. Although she acknowledges that the Minutes of Settlement nor the offer she made to the Respondent reflects this.
- [35] The Respondent argues that there was a meeting of the minds on the essential terms. The Claimant seems to argue that the Amazon employment letter was an essential term of the agreement because the Respondent had promised her that she would receive it within 24 hours of the mediation.
- [36] While I do not doubt that this is of some significance to the Claimant, if she considered them to be "essential terms" for the settlement of all claims as set out in the Minutes of Settlement, it is reasonable to expect this financial disclosure would have been addressed in the earlier exchanges of correspondence between counsel, the same way the Claimant raised and negotiated issues such as the sale of the former family home, parenting time and other issues agreed upon by the parties. In this regard, at para. 33 of *Campbell v. Campbell*, 2023 BCCA 384, the Court of Appeal referred with approval to the following comment of Justice Stratas in *Apotex Inc. v. Allergan, Inc.*, 2016 FCA 155:
- [53] If a party does not want to be bound until it has agreed to all terms it subjectively considers essential to the deal, in every offer it communicates it must make that wish objectively clear [emphasis added].
- [37] Nothing precluded the Claimant from raising the Amazon employment letter as an essential term of the agreement when she proposed the offer to settle. However, as noted, the Claimant did not include or refer to this which she now says was essential.
- [38] Applying the requisite objective test to the correspondence between, and the conduct of, the parties, I am unable to find they support a conclusion that agreement on a condition that the Claimant would receive the Amazon employment letter was a pre-condition to a binding settlement.
- [39] As noted, the Respondent's April 6, 2024 acceptance was in response to the offer from April 4 which had conditions attached to it. This offer was made the same day the parties received the Minutes of Settlement from the mediator. Furthermore, the offer was not accepted until two days later, giving her time to revoke the offer if she had a change of heart. Even after communications with her counsel on April 6, she could have still revoked the offer given her concerns of the lack of financial disclosure from the Respondent regarding his employment at Amazon. She did not do so. Accordingly, I find there was a meeting of the minds.
- [40] This is different than other cases where it was found that there was no meeting of the minds. In *Strench v. Strench*, 2002 BCSC 357, the Court declined to find the existence of a binding agreement because the letter which was said to have set out the terms of one party's offer

also contained requests for clarification. Justice Warren held it did not set out the terms of the proposed contract with sufficient certainty to be capable of acceptance. Further, Justice Warren held the acceptance was not "unconditional, clear and absolute" and did not "correspond precisely" with the terms of the offer, meaning no agreement had been reached: Strench at paras. 16-18.

- [41] On careful examination of the April 4, 2024, and April 6, 2024, communications between counsel, and the communications between the Claimant and her counsel prior to the acceptance of the offer, and applying an objective test, I cannot accept that in this case, there was something essential left to be worked out between the parties. The April 6, 2024, response of the Respondent's counsel clearly and unequivocally accepts the Claimant's offer with the conditions imposed.
- [42] In my view, the present case is more factually similar to Campbell, where the acceptance letter was plain and simple. As in Campbell, the Respondent's acceptance on April 6, 2024, does not seek clarifications or modifications. It accepts the precise terms of the Claimant's offer as it stood on April 4, 2024.
- [43] Accordingly, I conclude that the communications exchanged on April 4, 2024 and April 6, 2024, constitute the clear offer and acceptance necessary to give rise to a binding settlement agreement. The substantive terms of that agreement are set out in the correspondence exchanged between counsel between April 4 and April 6, 2024, when I find the contract was formed.

Issue 2: Does the lack of financial disclosure prior to mediation invalidate the agreement?

- [44] I will now address the issue raised by the Claimant that the agreement is invalid because of the lack of financial disclosure, as it pertains to the Respondent's employment at Amazon.
- [45] Without sufficient financial information from the Respondent, the Claimant says she could not provide informed consent, and the agreement might well be inconsistent with the Supreme Court Family Rules on the parties' obligations to provide updated financial information. The Claimant says that the Respondent did not do so and therefore the mediation was based on inadequate financial disclosure.
- [46] In *Farrer v. Farrer*, 2013 BCSC 1088, a similar allegation of inadequate financial disclosure was at issue. This case concerned where the plaintiff sought to rescind a signed separation agreement on grounds of unconscionability. The plaintiff alleged the parties' negotiations were procedurally flawed because of non-disclosure of financial information, including the failure to provide a sworn financial statement.

- [47] In *Farrer*, Saunders J. determined that the evidence presented before him did not support a conclusion that insufficient financial disclosure had compromised the legitimacy of the bargaining process. Saunders J. concluded that, based on the financial information presented, the parties in *Farrer* took an informed decision to initiate the discussions. The Court held that while the information "may not have been perfect, this is not a case of an "informational asymmetry" having compromised a party's ability to negotiate": at para. 188.
- [48] Further, nowhere in the exchange of correspondence between counsel up to and including the Claimant's offer of April 4 and the Respondent's acceptance of April 6, does the Claimant take the position that the settlement between the parties is contingent on the Respondent providing further financial disclosure, including the Amazon employment letter, either at that or any future time. Nothing precluded the Claimant from raising the issue again prior to the Respondent's acceptance if she considered the financial disclosure to be inadequate.
- [49] Similar to the Court's conclusion in *Farrer*, I am not persuaded the alleged lack of financial disclosure jeopardized the negotiation process or resulted in a fundamental flaw in the settlement agreement. As in that case, the Claimant proposed a settlement on issues fully aware of the state of the Respondent's financial disclosure and the Claimant did not, at any time before making the offer on April 4, 2024, request the further disclosure, including the Amazon employment to help better inform her consent.
- [50] Both parties recognize they have ongoing legal obligations to provide income disclosure. To the extent that the stated incomes for child support and spousal support negotiated by the parties in April 2024 may not reflect the reality of their current incomes, there are avenues for the parties to negotiate or seek to compel adjustments, including retroactively.
- [51] Lastly, I note the jurisprudence recognizes that the degree of professional assistance provided to a party may compensate for certain systemic imbalances or vulnerabilities: see, for example, *Miglin v. Miglin*, 2003 SCC 24 at para. 82. The Claimant was represented throughout the negotiations by counsel. It is reasonable to expect that the Claimant's former counsel understood the Claimant's circumstances and goals at the time the proposal was made on April 4, 2024, to proceed with the offer expressly based on the existing state of the Respondent's financial disclosure.

Conclusion

- [52] I have determined that a binding agreement was reached between the parties on April 6, 2024, with the substantive terms set out in the Minutes of Settlement along with the conditions as outlined in the April 4, 2024, correspondence from the Claimant's counsel.
- [53] I have also rejected the Claimant's alternative submission that the agreement is fundamentally flawed due to alleged inadequate financial disclosure.

Costs

[54] Unless either party wishes to make submissions regarding costs, the Respondent will be entitled to costs at Scale B. If necessary, the parties may schedule time before me to make submissions as to costs through the Manager, Supreme Court Scheduling, New Westminster.

"Girn J."

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