

CANADA / JUDGMENT

Dosanjh v. Lalli

2020 BCSC 1252

COURT

Supreme Court of British Columbia

DECIDED

14 August 2020

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2020 BCSC 1252 Dosanjh v. Lalli IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Dosanjh v. Lalli, 2020 BCSC 1252 Date: 20200814 Docket: E200208 Registry: Vancouver Between: Ramneek Kaur Dosanjh Claimant And Harvir Singh Lalli, HSL Properties Inc. and 1134561 B.C. Ltd. Respondents Before: The Honourable Mr. Justice Macintosh Oral Reasons for Judgment In Chambers (via teleconference) Counsel for the Claimant, appearing via teleconference: T.R. Bell Counsel for the Respondents, appearing via teleconference: P.S. Virk Place and Date of Hearing: Vancouver, B.C. August 14, 2020 Place and Date of Judgment: Vancouver, B.C. August 14, 2020

- [1] The application today is to have stayed my order pronounced by telephone in civil and family chambers on August 4, 2020, approving the sale of the family residence to Mr. Lalli's parents. It is common ground that the three-part test, taken from *RJR - MacDonald Inc. v. Canada* (Attorney General) [1994] 1 SCR 311, is to be applied for the stay analysis.
- [2] As to whether there is an arguable case, the first part of the test, Mr. Bell, for Dr. Dosanjh, says this, at para. 17b in his notice of application, "Where it is not clear on the basis of the reasons whether or not a legal principle was considered and applied, the court cannot say that the matter is bound to fail", citing *Kapoor v. Makkar*, 2020 BCCA 132 at para. 47.
- [3] The applications came before me on August 4 when, as noted, I was the presiding judge on the civil and family chambers list, and my reasons and conclusions on the applications are brief indeed. In light of that, it would be unsafe to conclude that there is no arguable case. Put another way, I am not prepared to find that the appeal is doomed to fail, which is one of the common articulations for the first part of the RJR test. Thus, in my view, Dr. Dosanjh meets the first part of the test.
- [4] Concerning irreparable harm, if Dr. Dosanjh does not obtain the stay, she will be forced out of the home where she lives, and has lived for the past seven years. The three children, aged 6, 7 and 12, live there, when they are with her, on a shared parenting basis.
- [5] If the stay is granted, and the appeal fails, it will only postpone Mr. Lalli's parents getting the house, which they would obtain at the price they have already agreed to. Quoting from *Dixon v. Morgan*, 2020 BCCA 200, at para. 27: I find that if the sale is not stayed and the premises are sold prior to the hearing of the appeal, Mr. Morgan would suffer irreparable

harm. He would be forced to leave his residence of 4 years to find new accommodation for himself and his family. The sale would render his appeal moot, leaving only in issue the question of how the proceeds of the sale would be divided.

- [6] That passage has obvious application here. I find that the irreparable harm analysis resolves in Dr. Dosanjh's favour.
- [7] The balance of convenience analysis here, as in many stay and injunction applications, overlaps with the irreparable harm considerations. To quote from Kapoor, cited earlier, at para. 71 of the decision: But in the exercise of my discretion, the factors of irreparable harm and balance of convenience, when viewed within the rubric of the interests of justice, militate in Ms. Kapoor's favour. If the stay of the Occupancy Order is not granted, then she will be obliged to vacate the home by tomorrow night and the issue may be moot by the time the appeal is held.
- [8] Applying that reasoning to the facts before me, I find that the balance of convenience is resolved in Dr. Dosanjh's favour. The stay order is granted.
- [9] Turning to the terms, I refer to Part 1 of the notice of application filed August 13, 2020: The Claimant, Dr. Dosanjh, is directed to expedite the appeal, and within seven days from today, the parties are to establish a schedule for the conduct of the appeal. Dr. Dosanjh is to keep the insurance and property taxes in good standing on a without-prejudice basis as between the parties. In the event she is unsuccessful on the appeal, the purchasers will be entitled to purchase the property at the amount already accepted, notwithstanding any change in the value of the property between now and the disposition of the appeal.
- [10] The costs of this application are in the cause. "Macintosh J."

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