

CANADA / JUDGMENT

Gadhri v. 0760815 B.C. Ltd.

2020 BCSC 614

COURT

Supreme Court of British Columbia

DECIDED

22 April 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 614 Gadhri v. 0760815 B.C. Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gadhri v. 0760815 B.C. Ltd.,

2020 BCSC 614

Date: 20200422

Docket: S129050

Registry: New Westminster

Between:

Sarbjeeet Gadhri

Plaintiff/Judgment Debtor

And

0760815 B.C. Ltd.

Defendant/Judgment Creditor

Harmadan Gadhri and Raj Kumar Gupta

Defendants by Counterclaim /Judgment Creditor

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment

In Chambers

Counsel for Sarbjeeet Gadhri:

A. Randhawa

Counsel for Raj Gupta:

R. Davidson

Place and Date of Hearing:

New Westminster, B.C.

October 9, 2019

Place and Date of Judgment:

New Westminster, B.C.

April 22, 2020

- [1] The application before the Court relates to how payments of a debtor with multiple debts are to be allocated between creditors. The applicant, Sarbjeet Gadhri, who is a plaintiff in the present action, is also a judgment debtor in another action, and seeks an order that "Mr. Ross Davidson, counsel for Raj Kumar Gupta, shall return the amount of \$102,054 to McQuarrie Hunter LLP, in trust, within two days from the date of this order". Mr. Davidson, with his client, was the only party opposing the application.
- [2] The Legal Basis for the application of Sarbjeet Gadhri for the order sought is stated in Part 3 of the Notice of Application as:
1. Inherent jurisdiction of Court; Powers of Court under SCCR; and
 2. Trust accounting principles.
- [3] The applicant fails to express or refer to any specific rules of the court or accounting principle that could possibly be the basis for this application.
- [4] The factual summary of how the parties have ended up before the court on this application was ably presented by counsel for Mr. Gupta in his Application Response and I repeat that summary below:
1. The within proceeding, being New Westminster Registry No. S.129050, was one of three actions heard together at trial before Madam Justice Burke who rendered her Reasons for Judgment on March 24, 2016. The second action involved was Action No. 134046, Harmadan Gadhri v. Simranjeet Singh Dhanoa, 0760815 B.C. Ltd. and 0758528 B.C. Ltd., and the third action involved was Action No. 130642, Raj Gupta v. Harmadan Gadhri. 076815 B.C. Ltd. is hereinafter referred to as "815". 0758528 B.C. Ltd. is hereinafter referred to as "528", and Mr. Dhanoa, 815 and 528 are hereinafter referred to collectively as "the Dhanoa Group".

2. All three actions related to a joint venture which had been formed in 2006 for the purpose of developing some residential property in Surrey, British Columbia. The joint venture involved 3 joint venturers, being the partnership of Mr. Gupta and Mr. Gadhri, 815 and 528. The joint venturers incorporated a company, being 091442 B.C. Ltd. (hereinafter referred to as "442"), for the purpose of carrying out the joint venture.
3. In her Reasons for Judgment, Madam Justice Burke granted the Dhanoa Group a judgment for damages against Harmadan Gadhri for abuse of process in the sum of \$25,000. She further awarded special costs against Harmadan Gadhri and Sarbjeet Gadhri in favour of the Dhanoa Group, which was subsequently set at \$443,000.00, and she ordered that Raj Gupta obtain judgment against Harmadan Gadhri for \$276,506.62, plus costs, which were subsequently set at \$85,000.
4. The Dhanoa Group sought to enforce its judgments against Sarbjeet Gadhri and Harmadan Gadhri, and Mr. Gupta sought to enforce his judgment against Harmadan Gadhri.
5. The judgments of the Dhanoa Group and the judgment of Mr. Gupta were all filed against title to the property at 8869 Edinburgh Drive, Surrey, British Columbia (the "Edinburgh Property"), which was owned by Sarbjeet Gadhri and Harmadan Gadhri.
6. The Dhanoa Group and Mr. Gupta each sought to force the sale of the Edinburgh Property, pursuant to the Court Order Enforcement Act.
7. In the meantime, Harmadan Gadhri had petitioned the Court in New Westminster Action No. 199944 for leave to commence a derivative action. He sought leave to sue one of the joint venturer partners, 815, on behalf of the joint venture company, 442, claiming that 815 owed money to the joint venture.
8. The Dhanoa Group and Mr. Gupta each filed separate Notices of Application in all three court actions for the sale of the Edinburgh property, all of which came on before Madam Justice MacNaughton on February 22, 2019. Harmadan Gadhri and Sarbjeet Gadhri were represented by the same lawyer at the application and both opposed the sale. Their lawyer claimed that if the petition was successful and Mr. Gadhri ultimately proved that 815 owed money to the joint venture, of which Mr. Gadhri was a part, then the Gadhri's would ultimately be able to pay the judgments which had been awarded against them without the need to sell the Edinburgh property.
9. Madam Justice MacNaughton made the identical Order in all three actions, specifically that:
 - a. The Edinburgh property be sold;
 - b. But if the judgment debtors, being Harmadan Gadhri and Sarbjeet Gadhri, posted the amount of \$204,108.00 into Court on or before March 4, 20[1]9, the sale would be deferred; and

- c. She granted liberty to all of the judgment creditors to reapply for further directions following the hearing of the Petition in Action No. 199944.
- 10. Counsel for Harmadan Gadhri and Sarbjeet Gadhri paid into court the sum of \$204,108 in accordance with the Orders of Madam Justice MacNaughton.
- 11. The Petition in Action No. 199944 came on for hearing before Mr. Justice Skolrood on March 14, 2019 and he delivered his Reasons for Judgment on April 12, 2019 wherein he ordered that Harmadan Gadhri not be granted leave to bring a derivative action and that the Petition was therefore dismissed with costs in favour of the Respondents, being 815, Raj Gupta and Dhanoa.
- 12. In all three actions, the judgment creditors then applied for an order that the monies paid into court, pursuant to the Order of Madam Justice MacNaughton be paid out of court and that the Edinburgh property be immediately liable to be sold. The applications in all three actions came on for hearing before Mr. Justice Saunders on May 15, 2019 and he made the identical Order in all three actions, being that the \$204,108.00 paid into Court pursuant to the Order of Madam Justice MacNaughton be paid out of court to counsel for the Dhanoa Group, McQuarrie Hunter in trust, and that the Edinburgh property be immediately liable to be sold.
- 13. On or about May 29, 2019, McQuarrie Hunter received the payout from Court of the \$204,108.00, plus interest accrued, pursuant to the Order of Mr. Justice Saunders. McQuarrie Hunter then paid to James L. Davidson & Company, in trust for Mr. Gupta, the sum of \$102,353.83 representing half of the monies paid out of Court, which sum Mr. Gupta used to pay down the amount owing on his judgment against Harmadan Gadhri.
- 14. The Dhanoa Group then obtained an Order for Conduct of Sale of the Edinburgh property and their application for an order approving the sale came on for hearing on July 26, 2019 before Mr. Justice Grauer, who ordered the sale be approved.
- 15. The sale completed on or about July 26, 2019 and Mr. Gupta discharged his judgments in exchange for the balance owing to him under those judgments, receiving the sum of \$131,041.10 on September 26, 2019.
- [5] A transcript of the application before Madam Justice MacNaughton on February 22, 2019 was attached to the affidavit of Melanie Coulter, a legal assistant with McQuarrie Hunter. The following statements by Mr. Gautam, counsel for Mr. and Mrs. Gadhri, are reproduced from p. 28, line 43 to p. 29, line 3:

Mr. Gautam:

I'll take you now to Mr. Gupta's application, and the reason why I do that is because I want to explain to you why, in my respectful submission, for today's purposes - - the entire 207,784 should be credited at least for the purposes of today because my instructions are to post 204,108 in trust, My Lady, to be paid out to the judgment creditors once the petition is heard.

[6] The Petition of Mr. and Mrs. Gadhri was heard by Mr. Justice Skolrood on March 14, 2019, and was dismissed with costs to the respondents.

[7] As well, Mr. Gautam stated, at p. 29, lines 32 to 37:

Mr. Gautam

The 204,108. That'll take away any prejudice that my friends have argued before you wherein the CRA might come in to scoop up and so an and so forth, because with the 204,108 going and being available, that is money available with the judgment creditors to satisfy their judgment.

[8] Respecting the funds in question on this application, the order of Mr. Justice Saunders made May 15, 2019, in all three actions, stated:

1) The amount of \$204,108 paid into this court pursuant to the order of Madam Justice MacNaughton on Friday, the 22nd day of February, 2019 (the "Sales Order"), plus any accrued interest, be immediately paid out to "McQuarrie LLP, in trust".

[9] Mr. Justice Saunders did not specify the funds being paid out of court were only in satisfaction of the judgment against Sarbjeet Gadhri. He was aware that McQuarrie Hunter were to receive the funds as counsel for the Dhanoa Group and as agent for Mr. Gupta.

[10] Those funds were paid out to McQuarrie Hunter on account of the judgment in favour of 815 and the judgment of Mr. Gupta. McQuarrie Hunter in turn paid one-half of the funds to Mr. Davidson, as contemplated by the court and by counsel for Mr. and Ms. Gadhri, as contemplated by the order of Justice Saunders.

[11] Also, the debtor did not specify how the payment was to be allocated amongst the judgment creditors. If a debtor has multiple debts to a creditor and pays over funds insufficient to satisfy all of the debts, the debtor can specify how the funds are to be allocated. If the debtor fails to make an allocation, then the creditors have the right to make the appropriation among themselves, which is what Mr. Gupta and the Dhanoa Group did, agreeing to equally share the \$204,108. See *Crescent Petroleum Ltd. v. Portserv Ltd.* (1997), 37 B.L.R. (2d) 118, 75 A.C.W.S. (3d) 288 (BCSC), and *Continental Steel Ltd. v. CTL Steel Ltd.*, 2018 BCCA 82.

[12] With the above proceeds and the proceeds of the sale of the Edinburgh property, the judgments of Raj Gupta and 815 against Sarbjeet and Harmadan Gadhri were satisfied.

[13] Based upon all of the above, the application by Sarbjeet Gadhri that Mr. Davidson, as counsel for Raj Kumar Gupta, shall return the amount of \$102,054 to McQuarrie Hunter, in trust, within two days of the date of this order is dismissed with costs to the judgment creditor, Raj Kumar Gupta.

"Jenkins J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/06/2020BCSC0614.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/gadhri-v-0760815-b-c-ltd-2020>

Prepared on 26 October 2026 · Esheria