

CANADA / JUDGMENT

Garib v. Randhawa

2020 BCSC 263

COURT

Supreme Court of British Columbia

DECIDED

26 February 2020

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2020 BCSC 263 Garib v. Randhawa IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Garib v. Randhawa, 2020 BCSC 263 Date: 20200226 Docket: S43266 Registry: Penticton Between: Jaswinder Kaur Garib Plaintiff And Malvinder Singh Randhawa, Harbans Kaur Randhawa, Jason Justindar Randhawa, Jaswinder Singh Garcha, Ritchelle Randhawa-Pagely, 0755291 B.C. Ltd., 0719891 B.C. Ltd. and Malvinder Randhawa, Harbans Randhawa, Jaswinder Garcha, 0719891 B.C. Ltd., and 0755291 B.C. Ltd. carrying on business as a partnership Defendants Before: The Honourable Mr. Justice G.P. Weatherill Supplementary Reasons for Judgment Counsel for the Plaintiff: J.M. Duncan D. Duncan Appearing on his own behalf: M.S. Randhawa Counsel for the Defendants, Harbans Kaur Randhawa and Jason Justindar Randhawa: P. Khaira No other appearances Place and Date of Trial/Hearing: Kelowna, B.C. February 20, 2020 Place and Date of Judgment: Kelowna, B.C. February 26, 2020

- [1] On December 16, 2019, I issued reasons for judgment in this case indexed as 2019 BCSC 2176 ("Reasons"). I allowed the parties to make submissions on costs, provided arrangements were made through Supreme Court Scheduling within 30 days of the release of my Reasons, and failing which the plaintiff was granted costs on Scale B.
- [2] All parties sought to make submissions on costs. Those submissions took place on February 20, 2020. At the same time, the parties sought clarification of my Reasons with respect to orders I made in favour of the plaintiff in relation to a group of properties referred to in my Reasons as the "Winnipeg Street Properties".
- [3] In my Reasons I ordered:
- a) that the plaintiff was declared to be a one-third beneficial owner of the equity in the Winnipeg Street Properties and that their registered owner, Malvinder Singh Randhawa ("Malvinder"), held that one-third interest in trust for her;
 - b) that the plaintiff was entitled to judgment against the defendant Malvinder in the sum of \$62,000 representing one-third of the net proceeds received on account of the RBC Second Mortgage registered against the Winnipeg Street Properties; and

- c) the plaintiff was entitled to judgment against the defendants Malvindar and Harbans Kaur Randhawa in the sum of \$126,667 representing one-third of the net proceeds received on account of the Jhutti Third Mortgage placed on the Winnipeg Street Properties.
- [4] The Winnipeg Street Properties were purchased on June 15, 2005 for \$625,000 and registered in Malvindar's name. The legal descriptions are as follows: PIDs: 010-706-241; 010-706-267; 006-536-352; Lots 2, 3 and 4; District Lot 4, Group 7 Similkameen Division Yale (Formerly Yale Lytton) District Plan 3853.
- [5] As my Reasons indicate, I found that the plaintiff was a one-third investor in the Winnipeg Street Properties. At the time they were purchased, a down payment of \$160,000 was made and the balance of the purchase price was made by way of a mortgage registered against the Winnipeg Street Properties in favour of the Royal Bank of Canada (referred to in my Reasons as the "RBC First Mortgage").
- [6] I concluded that approximately two years following the purchase of the Winnipeg Street Properties Malvindar borrowed \$186,000 from the Royal Bank of Canada and granted the Royal Bank a second mortgage against the Winnipeg Street Properties as security (referred to in my Reasons as the "RBC Second Mortgage").
- [7] I also found that in December 2015, Malvindar borrowed \$380,000 from his son-in-law Mr. Jhutti and as security for that loan provided Mr. Jhutti with a third mortgage over the Winnipeg Street Properties (referred to in my Reasons as the "Jhutti Third Mortgage") behind the RBC First Mortgage and the RBC Second Mortgage.
- [8] I held that the RBC Second Mortgage and the Jhutti mortgage had the effect of diluting the plaintiff's equity in the Winnipeg Street Properties. Given my conclusion that the plaintiff was a one-third investor and therefore one-third owner of the Winnipeg Street Properties, I intended to make orders that put her back in the same position she would have been in had the RBC Second Mortgage and the Jhutti Third Mortgage not been registered against the Winnipeg Street Properties ("Lost Equity Judgments").
- [9] During submissions on February 20, 2020, the plaintiff sought an order that she be entitled to interest on the Lost Equity Judgments at the contract interest rates set out in the RBC Second Mortgage and Jhutti Third Mortgage respectively from the dates the mortgages were registered against the Winnipeg Street Properties. The defendants opposed that application.
- [10] I was advised by Malvindar that at some point after the registration of the RBC Second Mortgage, that mortgage was consolidated with the RBC First Mortgage into one mortgage ("New RBC Mortgage"). Over the years, the New RBC Mortgage, initially in the amount of approximately \$660,000, was paid down and now has a current balance of approximately \$352,000. The defendants assert that the plaintiff has benefited from that pay down and the amount of that benefit requires an accounting.

- [11] Accordingly, and to ensure my intention respecting the plaintiff's Lost Equity Judgments is accurately reflected in the order, I decline to award her interest on the Lost Equity Judgments pending the determination of the accounting now being ordered. Paragraphs 165 d) and e) of my Reasons are deleted and are replaced with the following:
- d) In order to determine the amount of the plaintiff's one-third equity in the Winnipeg Street Properties, I direct that there be an accounting of the receipts and expenses received by Malvindar and/or Harbans respecting the Winnipeg Street Properties from the date of its purchase to present;
 - e) The difference between the plaintiff's one-third equity in the Winnipeg Street Properties had there only been the original RBC First Mortgage on title (namely had the RBC Second Mortgage and Jhutti Third Mortgage never been registered) and one-third of the current equity in the Winnipeg Street Properties. The plaintiff will be entitled to judgment against the defendants Malvindar and Harbans Kaur Randhawa for that difference, if any. The plaintiff will not be entitled to interest on that difference.
- [12] Paragraph 162 of my Reasons is also deleted and replaced with the following:
- a) In order to determine the amount of the plaintiff's one-third equity in the Winnipeg Street Properties, I direct that there be an accounting of the receipts and expenses received by Malvindar and/or Harbans respecting the Winnipeg Street Properties from the date of its purchase to present. "G.P. Weatherill J." The Honourable Mr. Justice G.P. Weatherill

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Prepared on 26 October 2026 · Esheria