

CANADA / JUDGMENT

Ghag v. Ghag

2020 BCSC 2136

COURT

Supreme Court of British Columbia

DECIDED

31 July 2020

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2020 BCSC 2136 Ghag v. Ghag

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ghag v. Ghag,

2020 BCSC 2136

Date: 20200731

Docket: S190923

Registry: Vancouver

Between:

Ashton Ghag, Cheyenne Ghag, Shaylene Ghag

and Veena Charmaine Ghag

Petitioners

And

Brendan Ghag

Respondent

Before: The Honourable Mr. Justice Tammen

Oral Ruling Re Petition to Remove a Trustee

In Chambers

Counsel for the Petitioners:

A.S. Dosanjh

C.R.J. Gallant

Counsel for the Respondent:

D.K. Magnus

Place and Date of Hearing:

Vancouver, B.C.

July 23-24, 2020

Place and Date of Ruling:

Vancouver, B.C.

July 31, 2020

- [1] THE COURT: This case concerns a dispute over the estate of the deceased patriarch of the Ghag family, Sukhvinder ("Sukie") Singh Ghag. The primary antagonists appear to be Sukie's spouse, Veena Charmaine Ghag, and the eldest child of the marriage, Brendan Ghag. Brendan's three younger siblings, Ashton, Cheyenne and Shaylene, are also parties to this and related litigation. All four siblings are adults ranging in age from 21 to 30. They are all beneficiaries of the Sukie Ghag Family Trust, as is their mother, Charmaine. Brendan is the sole trustee, and Charmaine is the alternate or replacement trustee pursuant to the terms of the trust document.
- [2] The primary relief sought in the petition is the removal of Brendan as trustee, with Charmaine proposed as a replacement trustee. The trust was created in February 2017, as part of Sukie's estate planning at a time when he was critically ill with brain cancer. It is not in dispute that Sukie undertook measures to minimize the impact of taxes and probate fees on his estate, which measures included transferring various assets into joint tenancy with Charmaine and the creation of a family trust. What is very much in dispute is the broader goal of the estate planning efforts. Brendan asserts that he and Sukie developed a plan to build a wealth portfolio during and after Sukie's lifetime that would provide financially for generations of the Ghag family. Brendan was to be the sole beneficial owner of almost all of Sukie's assets after Sukie's death, because only he was capable of managing those assets in a way that would build and sustain the portfolio in keeping with the plan.
- [3] Critical to these claims is a document that Brendan says was signed by him, Sukie and Charmaine on July 26, 2016, four days before Sukie's scheduled brain surgery. That document sets out the plan, and, says Brendan, creates a secret trust that takes precedence over the Sukie Ghag Family Trust. Charmaine denies signing the secret trust document, and deposes that she did not see Sukie sign it on July 26, 2016, although she was in his company most of the day.

- [4] I need not comment further on the alleged secret trust, nor make any findings concerning its validity. In separate proceedings filed June 26, 2020, Brendan seeks to enforce that agreement and have himself declared the true owner of the assets that passed to his mother on the death of his father.
- [5] For purposes of this application, it is sufficient that I make a finding, amply supported by all the evidence, including that of Brendan, that in administering the Sukie Ghag Family Trust Brendan took into account extraneous considerations, namely the secret trust and what he believed to be the settlor's true intentions, not those explicitly set out in the trust itself. In addition, Brendan concedes in his affidavits that he viewed his duty of loyalty to be to the settlor, not the named beneficiaries of the trust. His evidence is also clear that he did not view Charmaine as a true beneficiary of the trust, and his subsequent actions effectively deprived her of all rights as a beneficiary.
- [6] A further reason to remove Brendan as trustee is his withdrawal of \$100,000 from the trust bank account in November 2018, and his complete refusal to account to the beneficiaries when asked to do so. He has never provided an accounting for the family trust, and specifically has refused to give details concerning the \$100,000. When pressed by the beneficiaries on the point, he merely said it was "a dividend." His affidavits do not elaborate, but counsel conceded in oral submissions that Brendan took the money for himself and used it for personal purposes.
- [7] Following that exchange with the court, counsel for the respondent received instructions to concede that Brendan should be removed as trustee and replaced with his mother, Charmaine.
- [8] The respondent also agreed to most of the ancillary relief sought by the petitioners, including an accounting and an order for the return of some corporate records. However, there remains a dispute about one item of relief, namely item number 6, which seeks:
- ... a declaration that any transfer of shares out of the Sukie Ghag Family Trust and any issuance of new shares for Abby Pharmacy Ltd. authorized in 2018 or 2019 is null and void.
- [9] By way of general background, the primary family business is pharmacy. For years Sukie owned and operated two pharmacies, Abby Pharmacy and Blueridge Pharmacy. Charmaine was the bookkeeper for Abby Pharmacy for many years until her resignation at Brendan's request in early 2019. Until at least November 2018, Abby Pharmacy was owned solely by the Sukie Ghag Family Trust and was the main asset of the trust. Perhaps as early as October 30, 2018, but possibly some months later, Brendan purported to restructure the ownership of Abby Pharmacy and to redistribute the shares. He did so by way of a trustee resolution dated October 30, 2018, which is disputed by other beneficiaries who depose that they only learned of the share redistribution in March 2019.

- [10] The resolution expressly excludes Charmaine as a beneficiary, ostensibly based on the intentions of the settlor of the trust. The resolution also states that Brendan is the only appropriate beneficiary to receive voting control of Abby Pharmacy based on the plan evinced by the secret trust. The redistribution of shares leaves Brendan with 55% and each of his siblings with 15% ownership of Abby Pharmacy. The Sukie Ghag Family Trust is left without any meaningful assets.
- [11] Against that backdrop, I have no hesitation in granting the declaratory relief sought. Both the trustee resolution and Brendan's affidavit demonstrate that he took into consideration irrelevant and inappropriate considerations in exercising his discretion as trustee. In addition, his decision to apportion the majority of the trust assets to himself and to exclude entirely one of the named beneficiaries is one that no even-handed, fair minded trustee could have made in the exercise of his discretion. In such circumstances, the court must intervene.
- [12] The respondent questions the jurisdiction or authority of the court to grant the relief sought. In addition, counsel submits that even if I have the power to grant the relief, a full trial on the merits is necessary to decide the question. I disagree. I have not weighed the evidence, nor decided disputed questions of fact in reaching my decision. I have simply drawn inferences from the undisputed facts, and in particular, based on material sworn and filed by the respondent. A trial would serve no useful purpose.
- [13] As for jurisdiction, I am guided by Supreme Court Rules, Rule 20-4, which permits the court to make binding declarations. In addition, various provisions of the Trustee Act, R.S.B.C., c. 464 allow for court orders to direct transfers of stocks. Although none of those provisions precisely confers the explicit power at issue here, I am satisfied that judges of this court can fall back on their inherent jurisdiction to fill any legislative gap in that regard. See *Public Guardian and Trustee v. Colwell*, 2004 BCSC 1622, at paragraph 32.
- [14] In short, I am satisfied that granting the declaration sought is an appropriate exercise of the court's power to supervise the administration of a trust. I therefore grant the relief sought at paragraph 6 of the amended petition and declare that any transfer of shares out of the Sukie Ghag Family Trust and any issuance of new shares for Abby Pharmacy Ltd. authorized in 2018 or 2019 is null and void.
- [15] The remaining issue concerns the precise order that should compel the respondent to return to his mother the corporate records of Blueridge Pharmacy. In my view, the order should be that Brendan Ghag provide Veena Charmaine Ghag with all the corporate records of Blueridge Pharmacy in his possession within seven days of this order, such records to include, but not be limited to, the minute book and related documents.
- [16] I grant the orders sought at paragraphs 1 and 2 of the amended petition. With respect to the order sought at paragraph 4, an accounting by the respondent, I grant that order and direct that it be done within 30 days.

[17] The petitioners are entitled to costs. I will consider written submissions on costs, not to exceed 10 pages.

"Tammen J."

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Prepared on 26 October 2026 · Esheria