

CANADA / JUDGMENT

Ghuman v. Ghuman

2025 BCSC 1320

COURT

Supreme Court of British Columbia

DECIDED

9 May 2025

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2025 BCSC 1320 Ghuman v. Ghuman IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Ghuman v. Ghuman, 2025 BCSC 1320 Date: 20250509 Docket: S217871 Registry: New Westminster Between: Roop Singh Ghuman, Deceased, by his litigation representative Narinder Kaur Ghuman and Narinder Kaur Ghuman Plaintiffs And Sukhwinder Singh Ghuman and Harinder Kaur Ghuman Defendants Before: The Honourable Justice S. Sukstorf Oral Reasons for Judgment In Chambers Counsel for the Plaintiffs: J.S. Virk Counsel for the Defendants: R.S. Arora Place and Date of Hearing: New Westminster, B.C. May 9, 2025 Place and Date of Judgment: New Westminster, B.C. May 9, 2025

- [1] THE COURT: The defendants apply under Rule 10-1(2) of the Supreme Court Civil Rules for a preservation-type order in relation to \$273,335.42 they recently paid to the plaintiff, Harinder Kaur Ghuman, on May 1, 2025, in satisfaction of a judgment. They now seek to restrain her from disposing of those funds pending the hearing of their stay application before the Court of Appeal scheduled for June 6, 2025.
- [2] This matter arises from a familial dispute concerning contributions made by the plaintiff and her late husband toward the purchase of their child's home. In May 2023, after several days of trial, the dispute was resolved by consent. The resulting consent judgment was entered by Justice Verhoeven on May 31, 2023. It required the defendants to pay the plaintiff \$340,000 reflecting an acknowledgment of the parents' financial contribution to the defendants' home and resolution of the unjust enrichment claim. The parties agreed to a repayment schedule. Initially, the defendants were to pay \$100,000 immediately followed by monthly payments of \$1,500. After they were unable to make the initial payment, the schedule was revised to require a \$70,000 upfront payment, \$30,000 by October 31, 2023, and continued monthly payments thereafter. The defendants defaulted again in September 2023.
- [3] The plaintiffs initiated enforcement proceedings under the Court Order Enforcement Act, R.S.B.C. 1996, c. 78. On April 8, 2025, following a one-day hearing, Justice Caldwell ordered that the defendants' home be offered for sale on or after May 1, 2025, to satisfy the consent judgment. During the same hearing, he considered and dismissed the defendants' application seeking rectification of the consent agreement and a temporary stay of execution. The defendants have appealed those dismissals and have appealed Justice

Caldwell's order before the Court of Appeal which is expected to be heard on June 6, 2025.

- [4] On May 1, 2025, the defendants voluntarily paid the plaintiff \$273,335.42 representing the outstanding balance of the consent judgment and accrued costs. That payment followed two judicial orders: one from Justice Verhoeven, the consent judgment, and one from Justice Caldwell, enforcement, each directing actions necessary for the plaintiff to receive her funds. Despite this history, the defendants now return to court through a different route seeking an order to effectively enjoin the very funds they previously agreed to pay and which they, in fact, did pay only nine days ago pursuant to binding court orders. They have raised a new action that alleges misrepresentation and fraud in relation to the original consent judgment. It is in that context that they now seek a preservation order. The Legal Framework
- [5] The parties are in agreement that Rule 10-1(2), preservation order, is a targeted form of injunction intended to preserve specific assets that are the subject of litigation. It is not a general freezing order and must meet a four-part test: a serious question to be tried, irreparable harm if the relief is refused, a proprietary interest in the specific property sought to be preserved, and a reasonable basis to believe that the property is at risk of disposition or removal from the jurisdiction. Issue
- [6] The issue is whether the defendants have satisfied the requirements for a preservation order over funds paid pursuant to a final consent judgment and subsequent enforcement order. My Analysis A Serious Question to Be Tried
- [7] The threshold is low, but context matters. The funds were paid to satisfy a judgment that was agreed to by the defendants after days of trial. The consent order was entered before Justice Verhoeven and remains valid. The recent appeal concerns a refusal of Justice Caldwell to stay execution of Justice Verhoeven's order and his refusal to grant rectification. The appeal does not challenge the validity of the judgment itself. Two justices of this court, Justice Verhoeven and Justice Caldwell, have made respective orders consistent with a finding that the plaintiff is entitled to receive those funds. Justice Caldwell refused to grant a stay of the original order. Despite that, the defendants now seek to relitigate the same issue indirectly by invoking Rule 10-1(2) effectively requesting an injunction to prevent disposition of assets they themselves have acknowledged and voluntarily paid.
- [8] In assessing the proprietary interest in the risk of disposition, I find that the defendants have not established any proprietary interest in the funds. The money is not connected to any tangible asset such as land nor does it represent a debt currently owed to them. It was paid to the plaintiff in satisfaction of a final enforceable judgment. The defendants now seek to enjoin those funds not on the basis of any ownership or legal entitlement, but as a form of security in the event they succeed in a future claim alleging fraud or misrepresentation. This amounts to seeking an insurance mechanism, not the protection of a proprietary interest. That is insufficient to meet the standard under Rule 10-1(2).

- [9] Further, there is no evidence that the plaintiff intends to transfer the funds out of the jurisdiction or dissipate them. She is an elderly woman who has already waited more than two years for enforcement. There is no indication of any imminent or improper use of the funds. Irreparable Harm
- [10] Any potential loss is compensable. In damages, the defendants have not shown that the plaintiff is unable or unwilling to repay if required in future litigation. Balance of convenience favours the plaintiff. She has pursued enforcement in good faith and has finally received the funds after multiple delays. Granting a preservation order at this stage would effectively stay execution of a judgment through indirect means undermining the authority of the two prior court orders.
- [11] In conclusion, the defendants have not demonstrated a serious issue to be tried in relation to the specific funds nor have they established a proprietary interest or a real risk of dissipation. No irreparable harm has been shown and the balance of convenience does not favour relief. Therefore, the application for an order under Rule 10-1(2) is dismissed.
- [12] Nobody said anything about costs.
- [13] CNSL J. VIRK: Justice, I do have submissions. I am seeking special costs today. The reason is my client has been to court numerous times and we have received usual costs in the proceedings. She spent thousands of dollars in my fees to come here and all she can recover is probably about 10 percent of that every time.
- [14] As I just made -- we did make an offer pursuant to Rule 9-1 to my friend by way of an email. This email went out on May 5. We gave him two days to make a decision whether to continue with the application or not. We suggested not, saying that we will waive our costs for now and the application should be dismissed. We gave him reasons why it should be dismissed and not continued. Here's a copy of the email, my friend already has one and, based on that, I would seek special costs pursuant to Rule 9-1 which says an offer to settle, if not accepted and should have been accepted at the time, then the plaintiff is entitled to special costs in those circumstances. "Double the costs" is the word, but I'm seeking special costs on a solicitor-client basis because of all the litigation that she has had to go through, including a without notice application on April 9; April 30th, there's several -- I don't wish to bring each and every application, but essentially six or seven applications were brought that were all dismissed. Those are my submissions.
- [15] THE COURT: Counsel?
- [16] CNSL R. ARORA: Justice, I'd say regular costs are appropriate. My friend did seek special costs for a portion of the applications that were before Justice Caldwell. I say him bringing those previous -- seeking -- grounding the special costs order based on those previous applications is relitigating that issue. That ask for special costs was denied. I am -- do -- I mean I've just heard the court's decision. The -- there's -- well, the Court of Appeal still needs to chime in. I mean my original position was that perhaps the Court of Appeal can -- this

costs for -- to his application can be dealt with in the appeal proceedings, but if the court is inclined to make a costs order, I say my clients' conduct has not been reprehensible such that it warrants special costs. So regular costs are appropriate.

- [17] THE COURT: Let me just take a look at the Rule here. I forgot my glasses today so, of course, I've been straining. Okay.
- [18] I am prepared to offer special costs under Rule 9-1. I think that because there has been a valid offer that has been extended that this needs to be given significant weight. This is a family that is likely divided as a result of this ongoing litigation and, if anything, it is going to encourage them to come together and, hopefully, work through two very confident counsel to resolve it. So, for those reasons, I think there has to be a message sent. I am a bit concerned about the fact that we are here despite Judge Caldwell's order and I know you take your directions from your clients, I appreciate that, but I think that both parties need to understand the risks of taking these matters to court and having them resolved. So, in light of Judge Caldwell's level of tolerance with respect to the earlier findings and the fact that we are somewhat revisiting the same issue and the fact that there was a reasonable offer made, I am going to order special costs. "Sukstorf J."

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