

CANADA / JUDGMENT

Gill v. Canada

2012 BCSC 1640

COURT

Supreme Court of British Columbia

DECIDED

30 October 2012

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2012 BCSC 1640 Gill v. Canada IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Gill v. Canada, 2012 BCSC 1640 Date: 20121030 Docket: S116960 Registry: Vancouver Between: Harjit Singh Gill Plaintiff And Government of Canada, Attorney General of Canada, TSX Venture Exchange, Attorney General of British Columbia, City of Surrey, City of Delta, Rani Kaur Gill, Swinder Singh Gill, Harbans Senghera, Amarjit Mann, Eclipse Medical Inc., Rotary International, Rotary District 5040, Salvation Army, Royal Bank of Canada, Bank of Nova Scotia, AMS Homecare Inc., KPMG LLP, Merrill Lynch Canada Inc., Alterinvest Fund LP, Todd McMahon Inc., Vancity Capital Corporation, Business Development Bank of Canada, 6833110 Canada Inc., Royal Canadian Mounted Police, Canadian Security Intelligence Service, Vancouver Police Department, Jane Doe, John Doe Defendants Before: The Honourable Mr. Justice Savage Oral Reasons for Judgment Appearing on his own behalf: H. Gill Counsel for KPMG Inc. and KPMG LLP: S. Anderson Place and Date of Trial/Hearing: Vancouver, B.C. October 30, 2012 Place and Date of Judgment: Vancouver, B.C. October 30, 2012

- [1] This is an application by KPMG LLP and KPMG Inc. for declarations that it is not a defendant in this proceeding, and amendments to the civil claim filed October 15, 2012 are a nullity. The amendments purport to be pursuant to Rule 6-1 and make broad allegations inter alia of conspiracy, terrorism, fraud, torture and kidnapping.
- [2] There are three over-arching problems with the amendments the filing purports to make.
- [3] First, the amendments do not qualify as amendments that may be made without leave of the court under R.6-1(1)(a). In the circumstances, amendments may be made only with leave of the court or with written consent as provided by R. 6-1(1)(b). Leave was not sought nor consent given. The proposed amendments are therefore without effect.
- [4] Second, the proposed action pertains to the conduct of KPMG Inc. as a court appointed monitor or as court appointed receiver, and thus in the capacity of a court officer. There are two orders that have a bearing on this issue.
- [5] The order of Madam Justice Brown in action B070905 dated June 28, 2007, appointing KPMG Inc. as monitor (the "First Order") contains express provision that no action can be taken or continued against the monitor without leave of the court. The First Order was terminated

August 24, 2007, by order of Madam Justice Ballance and replaced with an order appointing KPMG Inc. interim receiver (the "Second Order"). The Second Order likewise contained a provision that no action could be commenced against the receiver except with the written consent of the receiver or order of the court.

- [6] It is plain that the actions of KPMG Inc. acting in its capacity as monitor and receiver are the gravaman of the proposed amendments. As no leave was sought or consent given they are a nullity.
- [7] Finally, the plaintiff is an undischarged bankrupt. Any cause of action he has against KPMG LLP or KPMG Inc. is vested in his trustee in bankruptcy, pursuant to section 71 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3. It remains an asset of the bankrupt estate, even where, as is the case here, the trustee has been discharged: see subsection 41(10). A trustee must be appointed by the court to realize such an asset of the estate: subsection 41(11).
- [8] In the circumstances there will be an order striking the amendments to the notice of civil claim. "The Honourable Mr. Justice Savage"

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