
CANADA / JUDGMENT

Gill v. Jaspal

2010 BCSC 698

COURT

Supreme Court of British Columbia

DECIDED

18 May 2010

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2010 BCSC 698 Gill v. Jaspal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gill v. Jaspal,

2010 BCSC 698

Date: 20100518

Docket: S032052

Registry: Vancouver

Between:

Surjit Gill and Parmjit Gill

Plaintiffs

And

Balbirk Jaspal

Defendant

Before: The Honourable Madam Justice Dickson

Reasons for Judgment

Counsel for the Plaintiffs:

T. Bhullar

Counsel for the Defendant:

S. Grewal

Place and Date of Trial:

Vancouver, B.C.

January 9-11, 2007; May 22, 2007;

June 27, 2007; July 5-6, 2007;

October 4-5, 2007;

November 2-3, 19, 2009

Place and Date of Judgment:

Vancouver, B.C.

May 18, 2010

INTRODUCTION

- [1] The plaintiffs, Surjit Gill and Parmjit Gill, seek judgment against the defendant, Balbir Jaspal, for monies they say they loaned to Mr. Jaspal which he has refused to repay (the "Disputed Funds"). The Disputed Funds total \$25,000. They were advanced to Mr. Jaspal on November 15, 2000.
- [2] Mr. Jaspal is married to Kulwinder Jaspal, the niece of the plaintiffs. He admits that he received the Disputed Funds from Surjit Gill on November 15, 2000. He says, however, that they were advanced as a gift in connection with his impending marriage to Kulwinder and not as a loan.

ISSUES

- [3] The issue for determination is whether the Disputed Funds were advanced to Mr. Jaspal as a gift or a loan.

CREDIBILITY

- [4] The factual findings set out below are based in large measure on my assessment of the credibility of Surjit Gill, Parmjit Gill, Balbir Jaspal, and Inderjit Cheema. It is appropriate, therefore, to comment at the outset on the nature of that assessment. In making it, I have considered the evidence as a whole and the test for credibility assessment described by O'Halloran J.A. in *Faryna v. Chorny* (1951), 4 W.W.R. (NS) 171 (B.C.C.A.):

... The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of a story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions...

- [5] Surjit Gill was not a credible witness. He testified in a manner that was evasive and sometimes demonstrably inaccurate. In addition, his evidence conflicted in significant respects with that of his wife, his niece, Mr. Jaspal and Mr. Cheema. Further, as discussed below, his account of the circumstances in which the Disputed Funds were advanced to Mr. Jaspal on November 15, 2000 is inherently improbable.
- [6] Parmjit Gill was not a credible witness either. She gave her evidence in a pat manner in an apparent effort to mirror Mr. Gill's evidence. Her account of the events of November 15, 2000 suffers from the same inherent improbability as that of her husband.
- [7] Balbir Jaspal, on the other hand, was a generally credible witness. He answered the questions asked of him in a reasonably clear, straightforward manner. His account was coherent and consistent with that of other credible witnesses. The same was true of Inderjit Cheema, who was independent in the sense that he had no financial interest in the outcome of the trial although he is a close friend of Mr. Jaspal's.
- [8] Where the evidence of Mr. and Mrs. Gill conflicts with that of Messrs. Jaspal and Cheema, I accept the evidence of Messrs. Jaspal and Cheema and reject the evidence of Mr. and Mrs. Gill.

THE LAW

- [9] A determination of whether funds were advanced as a loan or a gift necessarily turns on the unique facts of each case. Factors for consideration when the advancement at issue occurs in a family context have, however, been identified in several case authorities. These factors were summarised by Wilson J. in *Locke v. Locke*, 2000 BCSC 1300. After citing the relevant authorities, he stated:
- [20] ... Factors considered by the courts in these cases include:
1. whether there were any contemporaneous documents evidencing a loan;
 2. whether the manner for repayment is specified;
 3. whether there is security held for the loan;
 4. whether there are advances to one child and not others, or advances of unequal amounts to various children;
 5. whether there has been any demand for payment before the separation of the parties;
 6. whether there has been any partial repayment; and
 7. whether there was any expectation, or likelihood, of repayment.

THE FACTS

- [10] Surjit Gill came to Canada from India in 1972. His wife, Parmjit Gill, joined him in 1979. They have three children, the youngest of whom is a teenager. The Gill family lives in Surrey, British Columbia.
- [11] Mr. Gill is a highly successful blueberry farmer. He and Mrs. Gill own substantial landholdings in Canada and India, and have interests in local canneries and a dairy farm in the United States. As a general rule, Mr. and Mrs. Gill make their financial decisions jointly.
- [12] Mr. Gill has two brothers and a sister. His brothers live in Canada. His sister, Kulwant Kaur Dhinsa, lives in India. She and her husband have two sons and a daughter, Kulwinder. Over the years, Mr. Gill has maintained close and supportive relationships with his siblings' children, including his niece.
- [13] Mr. Jaspal is also of Indian origin. He met Mr. Gill in 1995, when he worked as a van driver for Mr. Gill's contractor on the farm. He and his friend, Mr. Cheema, frequently chatted with Mr. Gill when they were at the farm working. As a result, a friendship developed between the three men.
- [14] In 1997, Mr. Gill told Mr. Cheema that he wanted to find a husband for his sister's daughter, Kulwinder. Kulwinder lived with her mother and other family members in India at the time. Mr. Gill asked Mr. Cheema to speak to two of the young men with whom he worked about the prospect of marrying her and said he would give a gift of \$25,000 to whoever agreed to do so. In response, Mr. Cheema undertook to act as a matchmaker for Mr. Gill's niece.
- [15] Mr. Jaspal was one of the two young men in question. Shortly after Mr. Cheema agreed to act as matchmaker, however, the other young man left his job. As a result, Mr. Jaspal was the only person Mr. Cheema approached regarding the prospect of marrying Kulwinder. When he did, Mr. Cheema told Mr. Jaspal that, should he agree, Mr. Gill would give him a gift of \$25,000 to help the newlyweds settle into married life.
- [16] In 1998, Mr. Gill gave Mr. Cheema a photograph of Kulwinder to show to Mr. Jaspal. Mr. Jaspal was impressed by her beauty. Thereafter, on several occasions, Mr. Gill and Mr. Cheema encouraged Mr. Jaspal to marry Kulwinder. For example, Mr. Gill told him that his niece was a good girl, that he would receive \$25,000 as a gift and that the marriage would help Mr. Gill deal with a property dispute that had arisen in his family.
- [17] In mid-1998, Mr. Jaspal decided to marry Kulwinder.
- [18] In late 1998, Mr. Gill and Mr. Cheema went to India. When they were there, Mr. Gill met with several members of Mr. Jaspal's family at a gathering held at Mr. Cheema's residence. A week later, an engagement ceremony for Mr. Jaspal and Kulwinder was held at Kulwinder's parents' home. Mr. Gill and other family members were in attendance. Mr. Jaspal was not.

- [19] In June, 1999 another engagement ceremony was conducted, this time in Canada. It took place at Mr. Cheema's residence. Mr. Jaspal was present, but Kulwinder was not as she was still in India. Mr. Gill and his family attended the ceremony, as did other members of the Jaspal and Cheema families.
- [20] The wedding was scheduled for January 17, 2001 in India.
- [21] On November 15, 2000 Mr. Gill advanced the Disputed Funds to Mr. Jaspal. He did so by writing a cheque on a Surrey Metro Savings Credit Union account he held jointly with his wife (the "Cheque").
- [22] The circumstances surrounding the advancement are hotly contested. As a result, I will summarise the conflicting accounts prior to setting out my findings and conclusion on the question of whether the Disputed Funds were advanced as a loan or a gift.
- [23] According to Mr. Gill, on November 15, 2000 at approximately 10:00 a.m. Mr. Cheema called him and announced that he and Mr. Jaspal were coming over in about 15 minutes. Shortly after they arrived, the three men went into Mr. Gill's home office. Mr. Cheema told Mr. Gill that Mr. Jaspal was going to India to get married and needed money to "take care of things" and "finish some business". He and Mr. Jaspal asked Mr. Gill for a \$25,000 loan for this purpose. They assured him the money would be repaid within a year.
- [24] Mr. Gill claimed that he was shocked by the sudden, unexpected request for a loan of \$25,000. He told Messrs. Jaspal and Cheema he did not have the funds and his bank account was overdrawn. According to Mr. Gill, despite his protests they persisted and he eventually relented. He wrote the Cheque on the joint account, which was, in fact, overdrawn but had an \$80,000 line of credit.
- [25] Mr. Gill testified that Messrs. Jaspal and Cheema left his home shortly after he wrote the Cheque. In total, the meeting lasted approximately one half hour.
- [26] Mr. Gill also testified that he did not consult with Mrs. Gill before writing the Cheque, although she came into the office to serve tea during the course of the meeting. After Messrs. Jaspal and Cheema left, Mr. Gill claims that he and his wife argued about the fact that he had made the loan in the absence of any consultation.
- [27] Mrs. Gill generally corroborated her husband's account of the events of November 15, 2000.
- [28] Messrs. Jaspal and Cheema provided a very different account of what occurred on November 15, 2000 at the Gill residence. According to both, it was Mr. Gill who initiated the meeting that day, not Mr. Cheema. At Mr. Gill's request, they went together to his house to discuss the up-coming trip to India and the wedding. In the course of the discussion, Mr. Gill handed Mr. Jaspal the Cheque, hugged him, and said "This is what I promised you" and "You are going to become a family member".

- [29] According to Messrs. Jaspal and Cheema, the meeting at the Gill residence lasted approximately one half hour. At no time during the meeting was there any discussion of repayment or any suggestion that the Disputed Funds were being advanced as a loan.
- [30] There is nothing written on the Cheque to indicate whether the Disputed Funds were advanced as a loan or a gift.
- [31] There is no loan documentation or other written record evidencing the purpose for which the Disputed Funds were advanced.
- [32] Mr. Gill did not testify as to any discussion about the manner of repayment except that it would be made within a year.
- [33] No security was taken in connection with advancement of the Disputed Funds.
- [34] On December 7, 2000, Mr. Jaspal left for India. On January 17, 2001, the wedding took place. Mr. Gill was in attendance. He did not testify that he gave any other form of wedding gift to the newlyweds.
- [35] Mr. Gill returned to Canada a few days after the wedding. Mr. Jaspal returned a few months later.
- [36] In March 2002, Kulwinder Jaspal joined her new husband in Canada. The day she arrived, they went directly to the Gill home where they had lunch and dinner.
- [37] Mr. Gill was asked by his counsel whether the Disputed Funds were paid to Mr. Jaspal as a dowry. He stated emphatically that they were not. He went on to say that he sought repayment of the Disputed Funds approximately one and one-half years after he advanced them. When he did so, Mr. Jaspal flatly refused to repay.
- [38] According to Mr. Jaspal, he first learned that Mr. and Mrs. Gill were demanding return of the Disputed Funds in 2003 when Mrs. Gill telephoned his wife and demanded their repayment. He refused the demand, however, because the Disputed Funds were given to him as a wedding gift.

DISCUSSION

- [39] I accept Messrs. Jaspal and Cheema's account of the circumstances in which Mr. Gill advanced the Disputed Funds on November 15, 2000 to Mr. Jaspal. In my opinion, their account is consistent with the probabilities that surround the conditions in existence at the time. It follows that I reject the account of Mr. and Mrs. Gill.
- [40] In my opinion, it is inherently improbable that Mr. Gill loaned \$25,000 to Mr. Jaspal from an overdrawn bank account in circumstances of pressure for an unspecified business purpose without any loan documentation whatsoever being created. Rather, it is far more likely that the Disputed Funds were given as a wedding gift.

- [41] Mr. Gill advanced the Disputed Funds to his niece's fiancé shortly before his wedding in India. He was the family member responsible for initiating the engagement and had previously promised Mr. Jaspal he would give him \$25,000 if he agreed to marry Kulwinder. That is what Mr. Jaspal did.
- [42] The sum advanced was undeniably substantial. Mr. Gill is, however, a man of substantial means. He chose to offer and give Mr. Jaspal a wedding gift of this magnitude. For undisclosed reasons, he later had a change of heart.
- [43] I conclude that the Disputed Funds were advanced as a gift, not a loan. The plaintiffs' action is dismissed. Mr. Jaspal is entitled to his costs.

"DICKSON J."

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