

CANADA / JUDGMENT

Gill v. Samra

2022 BCSC 871

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Supreme Court of British Columbia

DECIDED

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2022 BCSC 871 Gill v. Samra

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gill v. Samra,

2022 BCSC 871

Date: 20220525

Docket: E60894

Registry: New Westminster

Between:

Ravinder Gill also known as Robin Gill

Claimant

And

Inderjit Singh Samra also known as Jeeta Samra, Vanstruction Properties Ltd., Vanstruction Kelly (GP) Ltd., Samra Homes Ltd., and Jasvinder Kaur

Respondents

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

In Chambers

Counsel for the Claimant:

P.K. Grewal

Counsel for the Respondents, Vanstruction Properties Ltd., Vanstruction Kelly (GP) Ltd. and Jasvinder Kaur:

C.D. Rodocker

Place and Date of Hearing:

New Westminster, B.C.

February 16, 2022, B.C.

Place and Date of Judgment:

New Westminster, B.C.

May 25, 2022

Introduction

[1] In this Chambers application, the respondents/applicants, Vanstruction Properties Ltd., Vanstruction Kelly (GP) Ltd. and Jasvinder Kaur ("the applicants"), seek orders to strike all of the claims against them in the notice of family claim herein ("NOFC"), as well as all references to the applicants. The applicants also seek an order that this family action be dismissed as against the applicants, and for an order that the style of cause in this action be amended to reflect the dismissal of the action against the applicants.

The Notice of Family Claim

[2] The NOFC was filed in the New Westminster Registry on October 6, 2020.

[3] In the section of the NOFC entitled "Information about the parties" there are descriptions of the claimant and of the respondent Inderjit Singh Samra, who is the husband of the claimant. There is also a description of the respondent Jasvinder Kaur as "the mother in law of the claimant and the mother of the respondent", Mr. Samra. In that same section of the NOFC, there is no reference to the corporate applicants and no recitation of the status of those companies. They are not mentioned by name in that section of the NOFC.

[4] In ss. 2, 3, and 4 of the NOFC, there is no mention of the applicants at all.

[5] In the NOFC, Schedule 1, entitled "Divorce", Schedule 2 of the NOFC entitled "Children" and Schedule 3 entitled "Spousal Support" contain no reference to the applicants.

[6] In Schedule 4 of the NOFC, entitled "Property", there is a claim alleged under the heading "A. Property and debt claims under the Family Law Act", where the claimant asks for an order for unequal division of family property and family debt in relation to unspecified property except for a property having a civic address at 2331 Kelly Avenue, Port Coquitlam, B.C. ("Kelly Avenue property"), to which the claimant claims an interest as family property. No registered owner(s) of the title or any charge on the title of the Kelly Avenue property is mentioned in the NOFC. There is no mention in the NOFC that any party to this action

purchased or sold or holds any interest in the Kelly Avenue property in a trust, constructive or otherwise, on their own behalf or on behalf of the claimant or any other party. There is no statement of facts nor an identified cause of action against any party disclosed in this paragraph.

- [7] On p. 10 of the NOFC under the title "B. Other property claims", the claimant seeks "an interest in the following property". At para. 1, the legal description to the Kelly Avenue property is set forth without any description of the claim or legal ownership of that property.
- [8] At para. 2, the only words which appear are "All jointly acquired property". Such property is not named or otherwise legally described in that paragraph. There are no material facts alleged at para. 2 indicating any legal title to the property or the joint ownership of the property with any party, person or other legal entity. Again, there is no cause of action against any party disclosed in this paragraph.
- [9] At para. 3, the words "Personal property [of] the Respondent, Inderjit Singh Samra aka Jeeta Singh Samra". This incomplete sentence does not contain any statement of material facts to support a cause of action against the applicants.
- [10] Paragraph 4 recites a claim against:

All jointly acquired businesses, including bu [sic] not limited to the following:

- i. Vanstruction Properties Ltd. and all its entities, incorporated business or carrying on as Vanstruction Properties Ltd. or in any other name;
- ii. Vanstruction Kelly (GP) Ltd. and all its entities, incorporated business or carrying on as Vanstruction Kelly (GP) Ltd. or in any other name;
- iii. Samra Homes Ltd., and all its entities, incorporated business or carrying on as Samra Homes Ltd. or in any other name.

Beyond the names of the corporate applicants contained in para. 4, there is no statement of material facts which might support any cause of action, and no cause of action alleged against any of the applicants in this paragraph.

- [11] At para. 5 under the title "B. Other property claims", there is a single sentence dealing with "investments and/or savings and/or pensions acquired during the cohabitation of the parties". There are no facts pleaded which could support any cause of action and there is no cause of action alleged against any of the applicants in this paragraph.
- [12] On p. 10 of the NOFC, in the final paragraph entitled "2. Certificate of Pending Litigation", there is reference to an application for a certificate of pending litigation to be filed against the Kelly Avenue property. In this paragraph, there is no statement of facts or material information as to the acquisition date of the Kelly Avenue property, the cost of that property, the contributors to the cost or the current registered owner(s) of the Kelly Avenue property,

nor any factual basis alleging how it is that the holder of the registered title or any holder of a trust interest in the Kelly Avenue property is connected with this family claim. There are no facts contained in this paragraph which could support a cause of action against the applicants.

- [13] In the balance of the paragraphs in the NOFC from p. 11 to p. 16 under the heading "Schedule 5 - Other Orders", there are no statements of material facts but a listing of orders sought under the Family Law Act, S.B.C. 2011, c. 25. At para. 2 on p. 11, the claimant seeks a declaration that:

investments, business [sic] (including by [sic] not limited to Vanstruction Properties Ltd. Vanstruction Kelly (GP) Ltd., Samra Homes Ltd. or personal [sic] which the Respondent owns or has an interest in, including but without restricting the generality of the foregoing, property, assets, registered retirement savings plans, stocks, bonds, shares, bank accounts, pensions, term deposits and life insurance policies, are family assets.

- [14] The next time that the corporate applicants are mentioned in the NOFC is at para. 7 where the claimant seeks an order that the "Respondent", unspecified in this paragraph, "be restrained and enjoined from dealing with any family or other assets, except in the ordinary course of business including but not limited to the following properties and their contents and business assets, which the Claimant has, or may an in interest pending final determination of this action without consent in writing of the Claimant or further order of this Court." At sub-para. (e), there is reference to jointly acquired businesses, including but not limited to Vanstruction Properties Ltd. and Vanstruction Kelly (GP) Ltd., but this paragraph again lacks any material facts which would identify a legal basis establishing a cause of action.

- [15] At para. 23, there is a claim for an injunction restraining the applicant, Jasvinder Kaur, from dealing with the Kelly Avenue property, but without any material facts connecting Jasvinder Kaur to the Kelly Avenue property or any actions or transactions in relation thereto. Paras. 24, 25, and 26 seek orders declaring that Jasvinder Kaur holds her interests in "the Assets" in trust for Inderjit Singh Samra or for Ravinder Gill, but without any particulars whatsoever which identify any property which comprised the subject of any alleged express trust, resulting trust or constructive trust.

- [16] As a result of a review of the cited portions of the NOFC, there are no statements of material facts that refer to the applicants or could otherwise support a cause of action against the applicants. Hence, there is no cause of action alleged against the applicants in the NOFC.

History of the Action

- [17] The respondents Jasvinder Kaur and Vanstruction Kelly (GP) Ltd. filed a response to family claim on May 25, 2021 pleading that they held no property nor other interest in trust for the claimant or Inderjit Singh Samra by express trust, resulting trust or constructive trust.

- [18] The respondent Vanstruction Properties Ltd. filed a response to family claim on August 24, 2021 which noted that references made to the "Respondent" in the NOFC were not clear as to whether they referred only to Inderjit Singh Samra and/or the other respondents. Further, Vanstruction Properties Ltd. asserted that the claimant and Inderjit Singh Samra owned no interest in the property of Vanstruction Properties Ltd., and had not contributed, financially or otherwise, to the business of Vanstruction Properties Ltd.
- [19] On July 14, 2021, counsel for the Applicants provided counsel for the claimant with the corporate records of the Applicant companies and two related companies. According to para. 7 of the notice of application ("NOA"), the corporate records did not show Mr. Samra had an ownership interest in these corporations or related entities, nor was there evidence that any of those companies held rights, title or interests in any property in trust for Mr. Samra.
- [20] On July 16, 2021, counsel for the claimant requested the complete financial statements and bank statements of the corporate respondents from their respective dates of incorporation to the present date. By letter dated July 20, 2021, counsel for the applicants refused this request on the basis that the request was overly broad and amounted to "a fishing expedition".
- [21] On the same date, counsel for the applicants delivered to counsel for the claimant a demand for particulars within 14 days. Having not received a response to the demand for particulars, counsel for the applicants filed a notice of application on August 18, 2021 seeking to compel production of the requested particulars.
- [22] A hearing of the application for production of requested particulars was scheduled for September 28, 2021. On September 24, 2021 counsel for the claimant delivered a proposed form of amended notice of family claim to counsel for the applicants. While the proposed form of amended notice of family claim was not produced by either party on this Chambers hearing, at para. 11 of the NOA, the respondents assert that the proposed claim did not include any new or additional material facts sufficient to ground the claimant's claims against the applicants. The claimant filed no response to that assertion. No amended notice of family claim has been filed to date.
- [23] On September 27, 2021, counsel for both parties signed a consent order that required the claimant to provide a response to the demand for particulars within 14 days. On October 12, 2021, counsel for the claimant produced a response to particulars which stated, among other things, that particulars could not be provided due to a lack of document production by Mr. Samra. Counsel for the applicants submitted that the contents of the response to particulars did not provide any new basis for any claim against the applicants.
- [24] Counsel for the claimant then began a period of maternity leave. During that period, counsel for the applicants delayed this application out of respect for the condition of counsel for the claimant.

- [25] Mr. Samra filed a list of documents on December 1, 2021. That list was accompanied by a letter which stated that Mr. Samra had no involvement nor interest in either of the corporate applicants.
- [26] During the hearing of this Chambers application, claimant's counsel requested an adjournment for the purpose of filing an amended notice of family claim. Counsel was unable, when asked by the court, to advise of any particulars or facts which would support causes of action against the applicants and again referred to the need to obtain documents from Mr. Samra first. Despite the period of time that has passed since the filing of the NOFC, the claimant has made no attempt before the court to obtain documents from Mr. Samra.

Legal Issues

- [27] The applicants seek an order to strike all claims against the applicants, as well as all references to the applicants in the NOFC based on Rule 11-2 of the Supreme Court Family Rules, which states:

Scandalous, frivolous or vexatious matters

- (1) At any stage of a family law case, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
 - (a) it discloses no reasonable claim or defence, as the case may be,
 - (b) it is unnecessary, scandalous, frivolous or vexatious,
 - (c) it may prejudice, embarrass or delay the fair trial or hearing of the family law case, or
 - (d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the family law case to be stayed or dismissed and may order the costs of the application to be paid as special costs.

- [28] The applicants argue that the pleadings in the NOFC do not disclose any facts that can serve as the basis for a claim against the applicants.
- [29] The purpose of pleadings is to set out the material facts of any cause of action being advanced by a party and particulars should follow and should be identified as such: *Gittings v. Caneco Audio-Publishers Inc.*, 1988 CanLII 2832 at para. 18, 26 B.C.L.R. (2d) 349 (C.A.). Any claim for relief must be supported by a statement of facts necessary to constitute a cause of action. Three elements are essential to every cause of action: (1) the claimant's right or title; (2) the defendant's wrongful act violating that right or title; and (3) the consequent damage, whether nominal or substantial: *Homalco Indian Band v. British Columbia*, 1998 CanLII 6658, [1998] B.C.J. No. 2703 (S.C.) at paras. 5-6 [*Homalco Indian Band*].
- [30] The applicants have also relied on Rule 4-6 of the Supreme Court Family Rules, which states:

Content of Pleadings

Inconsistent allegations

- (1) A party must not, in a pleading, make an allegation of fact or raise a new ground or claim inconsistent with the party's previous pleading.

Alternative allegations

- (2) Subrule (1) does not affect the right of a party to make allegations in the alternative or to amend or apply for leave to amend a pleading.

Particulars

Order for particulars

- (3) The court may order a party to serve further and better particulars of a matter stated in a pleading.

Demand for particulars

- (4) Before applying to the court for particulars, a party must demand them in writing from the other party.

Demand for particulars not a stay of proceedings

- (5) A demand for particulars does not operate as a stay of proceedings or give an extension of time, but a party may apply for an extension of time for serving a response to family claim or a response to counterclaim on the ground that the party cannot answer the notice of family claim or counterclaim respectively until particulars are provided.

[31] In the case at bar, after demand and receipt of a motion to compel the production of particulars, the claimant consented to an order that the claimant serve further and better particulars. The claimant did not thereafter serve those particulars, stating instead that the claimant had not obtained sufficient documents from Mr. Samra to allow the claimant to provide particulars.

[32] Rule 5-1(28) of the Supreme Court Family Rules provides, in part:

(28) Without limiting Rule 21-5 and any other powers the court may have under the Family Law Act, if a party [] fails to comply with an order under this rule to provide particulars, the court may do any or all of the following:

- (a) order that the Form F8 financial statement, applicable income document or particulars, as the case may be, be filed or served or both on terms the court considers appropriate;
- (b) dismiss all or part of that party's claim or application;
- (c) strike out all or part of that party's response to family claim or response to counterclaim;
- (d) proceed under Rule 21-7 to punish the party for contempt of court;

- (e) impose a fine under section 213 (2) (d) (iii) of the Family Law Act;
- (f) draw an adverse inference against the party;
- (g) attribute income to that party in an amount the court considers appropriate;
- (h) make an order as to costs.

Affidavit of Ravinder Gill, the Claimant

- [33] The affidavit of Ravinder Gill dated January 28, 2022 presents a number of problems. At para. 7, the claimant refers to a belief with respect to the income of Mr. Samra. By using the word "believe", the claimant indicates that she does not have first-hand knowledge of Mr. Samra's income, but more critically, the belief is not admissible unless it is accompanied by a source of belief, which is not present in this paragraph. The contents of that paragraph are therefore not admissible.
- [34] At para. 13, the claimant asserts that Mr. Samra has his funds "co-mingled with the funds of Jasvinder and Vanstruction properties". The reference to Jasvinder is assumed to be a reference to Jasvinder Kaur, one of the applicants. It is not clear however what the reference to "Vanstruction properties" means. The document attached as Exhibit I is 3 pages of a Visa bill apparently in the name of Jasvinder Kaur. There is no suggestion by the claimant that she was present during any of the transactions, and therefore she cannot speak to the person conducting the transaction, nor the person who may have paid the bill. There is no mention of Mr. Samra nor either of the corporate applicants in this Visa bill, and as result Exhibit I could not demonstrate the co-mingling of funds with anyone. Further, this exhibit is a bill, representing funds spent, not a bank account or other place where funds could be deposited or held.
- [35] Further references to Vanstruction Group or Vanstruction Kelly Limited Partnership in several other exhibits, including Exhibit M, are not references to any party in this action and, as a result, do not provide a basis for a claim.

Conclusion

- [36] In short, the claimant has failed to describe in her pleadings, or particulars required by the consent order, any claim for relief supported by a statement of facts prescribed by substantive law as necessary to constitute a cause of action, by failing to specify: (1) the claimant's right or title; (2) the defendant's wrongful act violating that right or title; and, (3) the consequent damage: Homalco Indian Band at paras. 5-6.
- [37] In this case, the claimant's initial pleadings were devoid of statements of material fact which would provide the applicants any clue as to the case they were expected to answer. An initial request for particulars provided no answer except an assertion of a failure by Mr. Samra to provide disclosure of documents. The applicants did provide corporate records which demonstrated Mr. Samra's lack of involvement in the ownership of the corporate applicants.

The claimant has not taken any steps in court to obtain documents from Mr. Samra, despite a delay of over one year. The applicants obtained a consent order requiring the claimant to provide particulars. Notwithstanding that order, the claimant did not provide the particulars that it had agreed to provide, except to assert that documents needed to be provided by Mr. Samra.

- [38] When confronted by the present application, and the obvious outcome which should be in favour of the applicants, the claimant, orally and without notice, sought an adjournment to amend pleadings, but counsel was unable to provide the court with a description of the amendment which might be made. No application to amend in writing has been made despite notice of this application. Further, the particulars referred to in the consent order have not been provided despite an extended opportunity to comply. Given the lack of any attempt to amend pleadings in any timely way and without any written application to amend pleadings, this court cannot give effect to the request to adjourn to allow undefined amendments to the claimant's pleadings: see *Dennis v. Gill*, 2018 BCSC 1533 at paras. 60 to 69.
- [39] In these circumstances, the orders sought by the applicants are granted, pursuant to Rule 11-2(1) (a) and (d) of the Supreme Court Family Rules as follows:
1. All claims against Vanstruction Properties Ltd., Vanstruction Kelly (GP) Ltd., and Jasvinder Kaur as contained in the notice of family claim herein are struck out;
 2. All references to the applicants contained in the notice of family claim are struck out;
 3. This action against Vanstruction Properties Ltd., Vanstruction Kelly (GP) Ltd., and Jasvinder Kaur is dismissed; and
 4. The style of cause of this action shall be amended to remove the names of Vanstruction Properties Ltd., Vanstruction Kelly (GP) Ltd. and Jasvinder Kaur.
- [40] The applicants are entitled to their costs of this application pursuant to Rule 16-1(1) of the Supreme Court Family Rules, Appendix "B", as a matter of ordinary difficulty.

"Ball J."

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