

CANADA / JUDGMENT

Grewal v. Grewal

2020 BCSC 435

COURT

Supreme Court of British Columbia

DECIDED

25 March 2020

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2020 BCSC 435 Grewal v. Grewal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Grewal v. Grewal,

2020 BCSC 435

Date: 20200325

Docket: S17239

Registry: Chilliwack

Between:

Harminder Singh Grewal

Petitioner

And

Harbans Singh Grewal and

Zora Singh Grewal

Respondents

Before: The Honourable Mr. Justice Harvey

Reasons for Judgment

Counsel for the Petitioner:

No appearance

The Respondent, appearing in person:

H. Grewal

Counsel for Jenkins Marzban Logan LLP:

G. Holeksa

Counsel for the Applicant, Singleton Urquhart Reynolds Vogel LLP:

E.P. Guevara

Representative for MacAdams Law Firm, appearing in person:

D. MacAdams, Q.C.

Place and Date of Hearing:

Chilliwack, B.C.

February 20, 2020

Place and Date of Judgment:

Chilliwack, B.C.

March 25, 2020

- [1] The joint applicants, Singleton Urquhart Reynolds Vogel LLP ("Singleton") and Harbans Singh Grewal ("Harbans"), one of the respondents in the within action, apply for an order that funds held collectively in the trust account of MacAdams Law Firm (\$180,627.37) and in the trust account of the applicant, Singleton Urquhart Reynolds Vogel LLP (\$150,000), be paid out in prescribed portions to each of the applicants.
- [2] The named respondents are of the wife of the respondent Harbans, Jasbir Kaur Grewal ("Jasbir"), Zora Singh Grewal ("Zora"), Harminder Grewal ("Harminder"), MacAdams Law Firm ("MacAdams"), Mackoff & Company ("Mackoff"), a judgment creditor of Harbans; the Director of Employment Standards (the "Director"), a creditor of Harbans, and Jenkins Marzban Logan LLP ("Jenkins Marzban"), solicitors for the respondent Zora.
- [3] Zora, Harminder and Jasbir either consent to the application or take no position.
- [4] The two law firms oppose the distribution of any of the funds. Mackoff and the Director oppose payment out unless their claims are also paid out of the funds paid to Harbans.
- [5] The proposed distribution of funds is that of the \$180,627.37 held in trust by MacAdams, one-half plus accrued interest be paid to each of the applicants, Singleton and Harbans.
- [6] Singleton seeks withdrawal of funds it holds "by and in trust for Harbans Singh Grewal in the approximate amount of \$150,000 and interest" to pay "such sum of monies as is necessary to fully satisfy any unpaid balance of its certificate of fees dated April 26, 2019 net of the MacAdams trust fund payments" and the remainder plus interest to Harbans.

- [7] Harbans agrees to the payment out of funds to Mackoff from any distribution to him but denies the Director has a valid claim against him, arguing that the judgment in favour of the Director has expired.

Background

- [8] The background to this matter arises from long-standing litigation involving the Grewal brothers, Harminder, Harbans and Zora. The litigation commenced in or about 2007. The original action, the within action, spawned various other disputes between the brothers.
- [9] The underlying action involved a claim for partition and sale of a blueberry farm jointly owned by the three brothers. Various claims were made by each of them alleging unequal interests in or unequal contributions to the enterprise. The result was a lengthy trial followed by appeals, re-hearings and numerous applications.
- [10] The underlying action has been resolved. The results bear little relation to the application at hand, such that I find it unnecessary to refer in detail to the whole litigation history save to say the two funds at issue in this application were created as a result of court orders made in the litigation.
- [11] All counsel involved on behalf of the Grewal brothers, notably, Mr. MacAdams, Mr. Holeksa from Jenkins Marzban and Mr. Guevara from Singleton, have expended significant efforts and billed substantial fees to each of their clients.
- [12] Some fees have been paid, some have not.

The MacAdams Trust Funds

- [13] On July 19, 2007, after the commencement of the partition action, Madam Justice Arnold-Bailey ordered that all proceeds from the harvest of the 2007 blueberry crop be paid to MacAdams in trust and that same be paid out "only as agreed by all parties or as ordered by the court or as required to pay expenses of the harvest of the 2007 crop".
- [14] Pursuant to that order, made by consent, \$588,816.79 was paid in trust to the Khalsa Credit Union, James Klassen trust account and MacAdams trust account for the benefit of the three brothers in equal shares. Those funds represented the proceeds of the 2007 harvest.
- [15] Following the payment of certain expenses of the farm, the balance of funds held in the MacAdams trust account amounted to \$520,193.16, of which \$173,397.72 is or was held in trust for each brother.
- [16] As of December 31, 2018 the amount held in trust for Harbans in the MacAdams trust account, inclusive of interest, was \$180,627.37.

The Singleton Trust Funds

[17] The Singleton trust funds arose from orders made on January 23 and February 10, 2009, again in the within action. Justice Arnold-Bailey ordered that one third of Harban's share of the sale proceeds of the blueberry farm, specifically \$445,000, was to be held in trust for Harbans but as security for Harminder's and Zora's costs awards against Harbans in the various actions and related appeals in the following proportion:

1. \$340,000 as security for Harminder's costs; and
2. \$105,000 as security for Zora's costs.

[18] Those funds were placed in trust under Mareva principles to secure the potential costs of both Harminder and Zora. A consideration articulated by Arnold-Bailey J. in requiring the security was the conduct of Harbans within the litigation giving rise to the claim of special costs and the implausibility of voluntary payment by Harbans once costs, at any scale, were awarded and assessed.

[19] After the trial and appeal of this action and all related proceedings, special costs were awarded to both Harminder and Zora against Harbans. Those special costs were never taxed but Harminder claimed \$525,000 and Zora's counsel prepared a bill of costs seeking \$310,000 (rounded).

[20] On December 19, 2016, Harbans and Harminder agreed to the settlement of Harminder's costs claims against Harbans by allocating what was placed in trust as security for Harminder's costs as follows:

1. \$190,000 to Harminder; and
2. \$150,000 to Harbans.

[21] Thereafter, Harbans and Harminder successfully brought an application before Mr. Justice Verhoeven in New Westminster Registry No. S110167 on January 5, 2017 seeking orders in the farm action that the "Harminder security" be paid to them in the matter allocated by the terms of the memorandum of settlement and release.

[22] That order was subsequently set aside on February 28, 2017 when it came to the attention of Singleton on grounds that material facts and not been disclosed to Verhoeven J. when the application was made. In oral reasons indexed at 2017 BCSC 1004, Verhoeven J. noted:

[5] The clear implication of what I was told was that the only persons interested in the money held by Singleton Urquhart LLP were the two parties who appeared in court, Mr. Harbans Grewal and Mr. Harminder Grewal. That was not accurate.

- [6] There was no service of the application on the other party to the underlying proceeding; that is, Mr. Zora Grewal, who is another brother of Harbans and Harminder. I am now told that there has been much litigation that has stretched over many years between these parties.
- [7] Counsel for Zora Grewal has now appeared and said that had the Notice of Application been given to Zora, counsel would have attended and opposed it, because Zora Grewal has a judgment against Harminder for \$30,000. He also has claims for costs. There are five orders for costs. They are going to be assessed beginning in June of this year. The claims are large.
- [8] So it is clear that Zora should have been given notice of the application and was not.
- [9] I was also not told that there was a previous order made by Master Tokarek in family litigation involving Harbans that precluded Singleton Urquhart LLP from paying the monies out. That order is Master Tokarek's order of November 29, 2013. It is in favour of Ms. Jasbir Grewal, wife or former wife of Harbans Grewal. That order remains in existence. Mr. Harbans Grewal tells me today that at some point in time, there was an agreement between himself and his wife and that the issues are settled, so he contends that the order was no longer important or relevant as of January 5. However, I should have been told about that order, and that explanation should have been given to me at that time, and I would have considered the matter.
- [10] Singleton Urquhart LLP makes a claim for a solicitor's lien as former counsel, as does the MacAdams Law Firm. Those claims of lien are quite large. It is argued is that those claims of lien have not yet been resolved. They have not been established or proven. The MacAdams Law Firm lien claim is for \$360,000, and the Singleton Urquhart LLP claim of lien is \$329,000. As I said, I was not told about any other possible claims.
- [11] Mr. Harbans Grewal and Mr. Harminder Grewal tell me today that they were not aware of the claims for solicitor's liens.
- [12] It is not necessary for me to determine whether they were or were not aware of that at the time they applied for the release of the funds. The fact is that there are clearly other substantial claims which I was not aware of when I made the order. In any event, I should have been told about the order of Master Tokarek, and I was not. Moreover, Mr. Zora Grewal certainly should have been made a respondent to the application, he has claims to the money and he would have taken a position on the hearing of the application.
- [23] Justice Verhoeven made clear in his February 28, 2017 reasons that setting aside the payment out did not affect the validity of the Harminder settlement.
- [24] That order was appealed by Harminder but eventually the appeal was abandoned.
- [25] MacAdams has taken no steps to set aside the settlement between Harminder and Harbans in the approximate three-year period from Justice Verhoeven's order to date.

- [26] The joint applicants argue that for the purposes of this application, the \$150,000 allocated to Harbans pursuant to the settlement with his brother Harminder and the interest accruing thereon be referred to as the Singleton trust funds.
- [27] Singleton holds other funds in trust arising from the payment to it of \$445,000. To date they total approximately \$473,546.82. The amount "allocated" as being Harbans' funds amount to \$157,938.10 inclusive of interest. \$190,000 together with accumulated interest are described as the Harminder trust funds and \$105,000 together with accumulated interest are, for reasons I shall come to, designated by Singleton as Harbans' trust funds.

The Singleton Lien

- [28] Singleton acted for Harbans as counsel for a significant portion of the proceedings of this action and other actions. In the course of those proceedings, legal services were billed to the account of Harbans, a significant portion of which, \$329,390, remain unpaid.
- [29] Singleton asserts a solicitor's lien over the trust funds allocated to Harbans as well as other property.
- [30] A complicating factor, although Jasbir has not filed a response, is a divorce order made final as between she and Harbans in December 2014 wherein she was awarded an equal share in all of Harbans property which, by definition, would include monies held in trust to his credit (subject to any other claims with priority).
- [31] The other respondents, Mackoff and the Director, have a certificate of fees and a judgment, respectively, against Harbans.
- [32] Mackoff has a certificate of fees dated September 24, 2015 in the amount of \$6,934 under Vancouver Registry No. S145032.
- [33] The Director has a notice of seizure in the amount of \$5,501.65 dated February 13, 2009.
- [34] While there are other claims referenced in the material, notably from Southwest Crop Consulting, WorkSafeBC and BC Hydro, none of those entities appear to be judgment creditors of Harbans.
- [35] Harbans acknowledges that from his share of the funds in the MacAdams Trust Fund, the Mackoff claim should be paid.
- [36] He argues the Director's claim is no longer enforceable due to the expiration of the 10-year limitation period on the enforcement of a local judgment for the payment of money.
- [37] On April 15, 2019, Singleton and Harbans entered into a settlement agreement to settle outstanding taxation proceedings. The relevant provisions of the settlement agreement are:
- a. the parties shall agree to the issuance by the Registrar of a Certificate of Fees indicating a balance owing on the Accounts to Harbans to Singleton Reynolds in the amount of \$150,000;

b. the parties shall cooperate to bring Court applications for the release and payment of the Trust Funds as follows:

(i) from the MacAdams Trust Funds:

A. to Singleton Reynolds, an amount equal to one-half of the MacAdams Trust Funds, to be applied in partial payment of the Certificate of Fees;

B. to Harbans, an equal amount to one-half of the MacAdams Trust Funds, less any and all Claims (as that term is defined in the Settlement Agreement);

(ii) from the Singleton Trust Funds:

A. to Singleton Reynolds, the unpaid balance of the Certificate of Fees after application of its one-half share in the MacAdams Trust Funds; and

B. to Harbans, the remaining balance of the Singleton Trust Funds.

[38] Jasbir Grewal signed an acknowledgement and consent waiver waiving any interest she may have in the funds which are the subject matter of this application.

[39] The application is opposed by Jenkins Marzban. Mr. Holeksa or members of his firm acted throughout for Zora and have accounts outstanding as between themselves and Zora in amounts exceeding \$1.5 million.

[40] In this proceeding, Action No. S17239 and Action No. S110167, Zora obtained six orders for special costs as against Harbans which were presented for assessment in the amount of \$269,732.93 and in the Court of Appeal, for orders for costs which were presented for assessment in the amount of \$40,000.

[41] Those bills were never taxed.

The Settlement between Zora and Harbans

[42] On February 15, 2017 as the taxation process was proceeding following a pre-hearing before Registrar Nielsen, Harbans and Zora reported to enter into an agreement to settle the claims for costs by Zora advanced against Harbans for \$50,000.

[43] Jenkins Marzban challenges the validity of the settlement.

[44] As between it and its client Zora, Jenkins Marzban asserts a solicitor's lien over the funds owed by Harbans to Zora and says that the agreement is a fraud perpetrated by Zora and Harbans to deny payment to Jenkins Marzban of fees rightfully due and owing to it.

[45] As evidence of that, Mr. Holeksa points to email exchanges between he and Harbans occurring after the purported settlement wherein Harbans makes no mention of it and seemingly is taking steps to abide by the directions of Registrar Nielsen to prepare for the June 2017 registrar's hearing.

- [46] Harbans and Zora, without notice to any other affected party, applied in court in June 2017 to validate the settlement and attempted to have monies paid out of court. That order was denied.
- [47] Upon learning of the purported settlement, Jenkins Marzban commenced a petition in the Supreme Court of British Columbia against Zora, Harbans and others claiming charging orders over all funds awarded to Zora pursuant to the costs awards; an order that Zora's purported settlement with Harbans is void as against Jenkins Marzban; an order pursuant to s. 79(6) of the Legal Profession Act, S.B.C. 1998, c. 9, that Harbans must pay the amount of Zora's cost to Jenkins Marzban; and for an order that the funds held in trust by MacAdams not be removed from trust.
- [48] It goes on to seek orders restraining distribution in respect of two funds; the MacAdams trust fund for Harbans benefit and the \$105,000 in trust with Singleton held to the credit of Zora's costs entitlements. It makes no reference to the funds held by Singleton to the credit, originally, of Harminder for his costs but now, as a result of the settlement between Harminder and Harbans, in two segregated funds of \$190,000 and \$150,000 (each with accumulated interest). The Jenkins Marzban petition has lain dormant since service.
- [49] Despite the order of Verhoeven J. in February 2017, neither Jenkins Marzban nor MacAdams have initiated steps to challenge to validity of that settlement or to seek separate orders in respect of those funds.
- [50] On March 5, 2019, Jenkins Marzban commenced an action in the Supreme Court of British Columbia as against Zora, Harbans and others claiming to set aside the purported settlement of the bills of costs as a fraudulent conveyance; an order that an equitable receiver be appointed over Zora's interest in the bills of costs and that the bills be assessed and Harbans pay the amount of the bills of costs to Jenkins Marzban. All of this leads to Jenkins Marzban submitting that all funds in trust remain in trust pending resolution of their claims.
- [51] Originally Jenkins Marzban did not object to the payment to Singleton of \$150,000 on account of the outstanding legal fees. Jenkins Marzban revised their application response based upon Jenkins Marzban's previous allegedly mistaken assumption that Singleton was entitled to a solicitor's lien over the funds. Jenkins Marzban now suggest that Singleton should be treated as any other judgment creditor of Harbans.
- [52] That said, with the exception of Mackoff and, possibly, the Director, no other creditors of Harbans have been identified either by Jenkins Marzban or MacAdams.
- [53] MacAdams opposes the distribution of any funds, noting the Mackoff and the Director's claims, claims of lien by Singleton, Zora and Jenkins Marzban, and potential claims of persons by the name of Baring which may entitle the Baring plaintiffs to funds Harbans may be required to pay Zora.

- [54] While acknowledging that the quantum of the Mackoff claim, the Director's claim and the Singleton claim have all resulted in judgments, MacAdams submits the remaining matters as between Zora and Harbans and possible action by the Barings make it unwise to pay out any of the funds held by the MacAdams Law Firm until resolution of each and every dispute.
- [55] As against the \$310,000 (rounded) claimed costs arising from Zora's awards at trial, is an award made in the partition action granting judgment by Harbans against Zora for \$60,000. Curiously, at least in my mind, the \$60,000 owed by Zora to Harbans was not referenced in the settlement agreement between Harbans and Zora.
- [56] At its best and highest, subject to reduction of the costs on taxation, Zora had a claim for special costs of \$310,000 (rounded) which must be offset by the \$60,000 judgment rendered in Harbans' favour as against Zora resulting in a net claim for costs as against Zora of \$250,000.
- [57] When Zora settled, or purported to settle, his claim for costs with Harbans, he was apparently provided with a cheque for \$50,000, although it is disputed by Jenkins Marzban whether or not the cheque was actually paid.
- [58] With the settlement in mind, Singleton still retains the \$105,000 paid into trust to the credit of Zora as security for costs, but Singleton, relying on the settlement, now has designated them as Harbans' fund. The \$105,000 is not the subject matter of this application and remains in a segregated trust fund accumulating interest for its eventual beneficiary.
- [59] Jenkins Marzban argues that the settlement between Zora and Harbans is a fraud of their creditors.
- [60] The action recently commenced by Jenkins Marzban seeks to set the settlement aside as a fraudulent conveyance, tax Zora's costs as against Harbans and then assert a lien/charge over Zora's entitlement to collect from Harbans.
- [61] While it is not open to me to make factual findings as to the bona fides of the settlement between the two brothers, I note the following:
- a) The settlement, on its face, defies logical explanation. Zora agreed to take \$50,000 of a \$310,000 claim while leaving outstanding the \$60,000 judgment in favour of Harbans in this proceeding;
 - b) The settlement was affected without the knowledge of any of the solicitors who acted for each;
 - c) Harbans continued to engage in email exchanges with Mr. Holeksa concerning his objections to the accounts presented in the pre-hearing that preceded the scheduled June 2017 taxation without any reference to the fact he and Zora had settled matters as between them; and

- d) The brothers attempted to have the settlement approved and money paid from trust despite the fact the earlier attempt to do so by Harminder and Harbans had been set aside in similar circumstances;
- [62] The settlement has at least some of the 'badges of fraud' described in *Vancouver Coastal Health Authority v. Moscipan*, 2019 BCCA 17, at para. 43:
- (1) The state of the debtor's financial affairs at the time of the transaction, including [their] income, assets and debts;
 - (2) The relationship between the parties to [the] transfer;
 - (3) The effect of the disposition on the assets of the debtor, i.e. whether the transfer effectively divests the debtor of a substantial portion or all of [their] assets;
 - (4) Evidence of haste in making the disposition;
 - (5) The timing of the transfer relative to notice of debts or claims against the debtor;
 - (6) Whether the transferee gave valuable consideration [for] the transfer.

Discussion

- [63] The only unconditional opposition to the applications comes from the respondents, MacAdams and Jenkins Marzban. Mackoff and the Director take no position so long as their claims are paid out.
- [64] I pause to note that Mackoff and the Director have not made any application for payment out from either fund and, on the evidence before me, have only staked a claim in the funds held in trust to the credit of Harbans with MacAdams.
- [65] The latter may be because insofar as both those respondents were aware, at least until this application was served upon them, the funds held by Singleton were for the benefit of Zora and Harminder; not Harbans.
- [66] MacAdams' opposition is not based on any claim advanced on its own behalf against either of the funds held by it or Singleton, but on the basis that other creditors may step forward leading to an overall deficiency in the available funds if a distribution is made now to acknowledged judgment creditors, Singleton, Mackoff and, subject to an argument as to the expiry of the judgment, the Director.
- [67] In short, a distribution to acknowledged bona fide creditors might prejudice the rights of future creditors; known or unknown. Presently, the only known potential creditor is Jenkins Marzban.
- [68] The opposition by MacAdams, although expressed in several different ways, boils down to an issue of priorities between legitimate judgment creditors and potential claims such as those advanced by Jenkins Marzban and others such as a potential claim by the Barings.

- [69] MacAdams argues payment out of any funds constitutes an unfairness to the creditors of Harbans and an unfairness to the creditors of Zora who, through Zora, may have claims against funds MacAdams holds for Harbans and the creditors of Harbans.
- [70] On behalf of MacAdams, counsel argues there is no prejudice to Singleton to wait until the claims of those with claims against Harbans have been determined and the court has determined priorities among the claimants with judgments.
- [71] Jenkins Marzban argues, despite having taken no steps to obtain a Mareva-type injunction, that all of the funds should remain in place until their rights are determined as against their former client, Zora, and, through that determination, against Harbans.
- [72] The latter presumes the success of the action seeking to set aside the settlement between Harbans and Zora settling Zora's entitlement to special costs; not his indebtedness to Harbans under the judgment in this action. Until that time, Jenkins Marzban is no more than a potential creditor of Harbans.
- [73] In my view, Jenkins Marzban's position, along with that of Mackoff and the Director, are preserved by leaving the whole of the MacAdams Trust fund intact together with the \$105,000 remaining to the credit of Harbans in the Singleton trust funds (Zora's security if Jenkins Marzban is successful in their claim that the settlement between those two brothers were a fraud).
- [74] The net amount of Zora's claim against Harbans is \$250,000 given the \$60,000 award in favour of Harbans against Zora in this action.
- [75] The remaining funds, in trust, total in excess of \$285,000; an amount in excess of all known and proven claims against Harbans.
- [76] Three years have passed since the Harminder/Harbans settlement became known to MacAdams, and they have failed to take steps to secure some or all of the original \$340,000. I cannot see any prejudice to any of the respondents by releasing to Singleton from the \$150,000 held to the credit of Harbans in satisfaction of its certificate of fees as against Harbans. Singleton shall continue holding the remaining accumulated interest in trust for Harbans.
- [77] Although Singleton's application sought payment from both the Singleton Trust Funds and the MacAdams Trust Funds, convenience dictates that the payment be from the \$150,000 "Harbans fund" held by Singleton. Finally, I should note that at the conclusion of the hearing both Singleton and Harbans advised me that their applications, although brought together in one Notice of Application, were severable. Both agreed I could entertain Singleton's claim for payment out of funds without acceding to Harbans' request.
- [78] As to Harbans' application, given the history of the matter, the special costs awarded against Harbans for what was referred to as his egregious behaviour in this and the parallel proceeding, the settlement with Zora that has some of the earmarks of fraud, and his actions

before Verhoeven J. in attempting payment out of funds on a without-notice basis despite the ongoing taxation proceeding between him and Zora, it would be unwise and prejudicial to Jenkins Marzban, in my view, to release funds to Harbans until the action commenced by Jenkins Marzban has been heard and determined.

[79] In the result, Harbans' application is dismissed.

[80] The parties are at liberty to speak to costs if they wish.

"Harvey J."

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