

CANADA / JUDGMENT

Malhotra v. Water Front Homes Ltd.

2015 BCSC 1068

COURT

Supreme Court of British Columbia

DECIDED

22 June 2015

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2015 BCSC 1068 Malhotra v. Water Front Homes Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Malhotra v. Water Front Homes Ltd.,

2015 BCSC 1068

Date: 20150622

Docket: S65786

Registry: Nanaimo

Between:

Inder Paul Singh Malhotra and Harpal Kaur Malhotra

Plaintiffs

And

Waterfront Homes Ltd. and Ramnik Manhas

Defendants

And

Inder Paul Singh Malhotra and Harpal Kaur Malhotra

Defendants by way of Counterclaim

Before: The Honourable Mr. Justice McKinnon

Reasons for Judgment

Counsel for the Plaintiffs:

W. Geselbracht

Counsel for the Defendants:

C. Pagé

Place and Date of Trial:

Nanaimo, B.C.

November 3 - 7, 2014

January 12 - 15, 2015

Place and Date of Judgment:

Nanaimo, B.C.

June 22, 2015

- [1] It started like most matters that end up in acrimonious litigation. The Malhotra and Manhas families were the best of friends, courteous to each other and solicitous in respect to health and family issues. Riding the crest of friendship, the defendant's company, Waterfront Homes Ltd. ("Waterfront"), built a home for the plaintiffs, but neither bothered to document the agreement in any formal way. What resulted was disastrous. The plaintiffs, Inder Paul Singh Malholtra and Harpal Kaur Malholtra (the "Plaintiffs"), now claim an accounting, negligence in the construction and damages for "harassment, assault and intimidation".
- [2] The defendants, Ramnik Manhas and his company Waterfront (the "Defendants") deny these claims and by counterclaim seek payment of \$20,278.60, which they say is the balance due on a cost plus contract. In her submissions at the close of the trial, counsel for the Defendants further reduced this claim to \$16,005.03.
- [3] Mr. Malhotra is a highly educated master mariner who has worked throughout the world in various shipping capacities, including captain of large vessels. Presently he owns and operates BN Maritime Services Ltd., which provides consulting services to the marine industry. He travels extensively but is based in Nanaimo BC, where he has lived since 2005.
- [4] The plaintiff and his wife became acquainted with the Manhas family 25 years ago. Amrau Manhas and his wife Kay were travelling in India and were helped through an illness by Mrs. Malhotra's parents. In 1992, Mr. Malhotra came to Canada on a ship and stayed for a time with some branch of the Manhas family in Nanaimo. Through that connection he met Ramnik and Sukminder Manhas. In 2005, when he and his family moved to Nanaimo, the Manhas and the Malhotras re-established their friendship.

- [5] Mr. Manhas and his wife are the shareholders of Waterfront, which is a company that constructs primarily high end homes based in Victoria, BC. Mr. Manhas had three years of training in mechanical engineering and worked in England in that field until he moved to BC. He lived in Gold River, BC, for twenty years where he worked in the mill, built houses, a shopping mall and also owned and operated the Coast Hotel.
- [6] Mr. Manhas then moved to Victoria where he commenced working in home construction through his company. Over the years he has built as many as twenty four homes. He is experienced in both cost plus and fixed price contracts. I had no difficulty concluding that he is an experienced builder who appreciates the various issues and problems that can arise in the construction industry. Unfortunately, he did not deem it necessary to formalize his arrangements with the Plaintiffs, which he would have done absent their friendship.
- [7] Mr. Malhotra claimed ignorance of the home construction industry, testifying that this was the first home he had ever built. He testified to his reliance upon Mr. Manhas' expertise and experience. I had some difficulty accepting his claims in this respect. As noted, Mr. Malhotra has vast experience in the maritime shipping industry, and surely is no stranger to contracts and the need to protect one's position in the business world.
- [8] In my view, both parties were lulled into a sense of complacency by virtue of their friendship and as construction progressed each took a different view of their expected obligations. Initially, they could not agree whether this was a fixed price or cost plus contract. Ultimately, and by the time the trial commenced, the Plaintiffs, who had until then insisted this was a fixed price contract, conceded that this was a cost plus contract. The Defendants have always maintained that this was a cost plus contract.
- [9] If construction proceeded in accordance with the agreed plans, then on a fixed price contract, the Plaintiffs would not be concerned with receiving invoices or accounts as the work progressed. Instead, they would only be concerned that the finished product was completed according to plan and price. Since the Defendants always believed this was a "cost plus" contract, they were obliged to keep accurate business records in support of the cost.
- [10] Curiously, each party seems to have acted contrary to their stated belief as to whether this was a "fixed price" or "cost plus" contract. To trial, the Plaintiffs claimed a fixed price yet hounded the Defendants for invoices and other records of costs while the Defendants, claiming a fixed price contract, kept poor records and generally took a very cavalier approach to accounting responsibilities.

THE HISTORY

- [11] In July 2011, construction began on the Plaintiff's home located at 312 Dorchester Road in Nanaimo, BC. The plans were designed by Mr. Gordon Burdge and construction followed that design with no significant changes. The end result was a home that is 3,160 finished square feet, plus 1,115 square feet of garage, decks, porch and a utility room, for a total of 4,275 square feet.
- [12] Mr. Tom Crosbie was qualified as an expert able to give opinion evidence in respect to the value of the finished product. He has considerable experience as a quantity surveyor, a designation he obtained from the Royal Institute of Quantity Surveyors in 1969. He estimated the cost of construction for this home at \$562,300, which excluded land costs and design/architect/engineering fees, but included HST.
- [13] The Plaintiffs both testified, as did Mr. and Mrs. Manhas. Each, of course, has an entirely different view of what was agreed upon and each has differing views as to what was or was not done. Additionally, Mrs. Malhotra believes she was "harassed" and "assaulted" by Mr. Manhas. I have concluded that none of the four witnesses were accurate historians, as each slanted events to suit a particular bias.
- [14] This was particularly evident in respect to the claim of assault and harassment.

THE ASSAULT

- [15] The Plaintiffs are seeking compensatory damages in the range of \$75,000 to \$125,000 for assault, intimidation and harassment at the hands of Mr. Manhas.
- [16] In order to prove the intentional tort of assault, the Plaintiffs must show that Mrs. Malhotra apprehended immediate physical contact by Mr. Manhas, that her apprehension was reasonable, and that Mr. Manhas acted intentionally. In *The Law of Torts*, 7th Edition, (1987), Fleming describes the tort of assault as follows at p. 24:

It is sufficient if the threat would have aroused an expectation of physical interference in the mind of a reasonable person not afflicted with exaggerated fears or peculiar and abnormal timidity.

- [17] In the present case, as construction progressed, differences began to arise that ultimately culminated in hostility. The Plaintiffs were unhappy with the placement of piping and unhappy with various changes they had requested. Invoices they believed the Defendants were supposed to pay went unpaid, liens were filed and small claims actions were commenced in the Provincial Court.
- [18] On October 16, 2012, the parties attended the Provincial Court in Nanaimo with counsel for a hearing in respect to a related small claims matter. During a break, they were all in a hallway monitored by video camera, where Mrs. Malhotra alleges Mr. Manhas assaulted her.

- [19] I had the benefit of viewing this video and of course heard the several versions proffered by the witnesses.
- [20] Mr. Malhotra testified that as they left the hearing, his wife wanted to use the washroom, but was fearful of running into Mr. Manhas. When they turned the corner, he stated that Mr. Manhas stepped towards them with his fists raised in a threatening manner, swore at Mrs. Malhotra and called them both thieves. As a result, they attended the RCMP station to give a statement and Mrs. Malhotra saw her doctor. Mr. Malhotra stated he saw significant changes in his wife's behaviour following this incident, including paranoid thoughts that someone is trying to kill her, attending a psychologist and taking medication.
- [21] Mrs. Malhotra testified that she had several encounters with Mr. Manhas where she felt he was mocking her, causing her to feel stress and anxiety. She echoed her husband's testimony that Mr. Manhas charged at them with raised fists as they turned a corner while calling them thieves and uttering profanities. She stated she continues to suffer as a result of this incident, including being fearful while driving alone, being unable to sleep, not attending the Sikh temple out of fear of running into Mr. Manhas' extended family and experiencing worry over the safety of her family. She is also on medication to assist her with sleeping and anxiety. On cross-examination, she noted that she was between six and ten feet away from Mr. Manhas when he began shouting at her.
- [22] Mr. Manhas accepts he was angry and did call Mrs. Malhotra a "bitch", but denied any assault or conduct that could be construed as an assault.
- [23] The video recording of the incident shows an exchange between Mr. Manhas and Mr. Malhotra. At first, Mr. Manhas' hands are in his pockets as he spoke to Mr. Malhotra. He then raises his hands in order to "shrug off" his wife, who was grasping at him. This series of events was supported by the testimony of Mr. Manhas, Mrs. Manhas and Shavi Manhas. At no time is Mrs. Malhotra in the camera's view. I accept the series of events as stated by the Defendants and shown in the video footage.
- [24] Accordingly, I had no trouble concluding that there is no substance whatsoever to this allegation, and I dismiss the claims advanced in respect to this claim.
- [25] I accept that Mrs. Malhotra genuinely believes she has reason to fear Mr. Manhas. However, these exaggerated fears emanate from her fragile emotional state caused by events other than contact with Mr. Manhas. I heard evidence of some marital discord in the Malhotra family which may be part of the problem. I simply do not know what causes her to feel the fears she expressed at trial. However, it is not reasonable to blame Mr. Manhas for the condition. Contractual disputes resulting in litigation invariably create anxiety, fear and anger, and this case is no exception.

THE CONSTRUCTION PROCESS

- [26] The absence of a contractual document has resulted in both sides proffering evidence of oral discussions and conduct said to support their respective views. As an example, Mr. Manhas says he offered to supervise construction of the home through his company, Waterfront, for a fixed fee of \$26,000. Only \$13,000 was paid, which Mr. Malhotra says was the agreed fee.
- [27] The only document in support of this fee was a CIBC generated "agreement" (Exhibit 12) between the parties, which the bank clearly stated in an email (Exhibit 31) was merely "to satisfy our construction lending debt " That document sets out the total cost of construction at \$420,504.00, including HST. It also referred to an additional cost of \$13,600 for a "consulting fee". Counsel advised during final submissions that the Defendants were not pursuing any claim for additional consulting fees.
- [28] The Plaintiffs testified that they gave Mr. Manhas \$50,000 in cash, whereas he says it was only \$13,000. There is no issue that the Plaintiffs, at various times, obtained cash from their accounts. The issue is: where did this money go? The Plaintiffs say it went to Mr. Manhas. Mr. Manhas says he only received \$13,000, and that the rest must have been paid to trades. I accept the Plaintiff's evidence that the money went to the defendant, Mr. Manhas, although it is unclear what he did with those funds.
- [29] I found Mrs. Manhas to be a very unreliable witness. I agree with Plaintiffs' counsel that she was "evasive, non-responsive and self-serving" in her testimony. Initially, she denied receipt of cash from the Plaintiffs, but then conceded that her husband had given her \$13,000 in cash, which he apparently had been keeping for months before giving it to her.
- [30] Mr. and Mrs. Manhas added to the financial confusion by paying some invoices with their personal credit cards and then had Waterfront reimburse them. Other invoices were paid by company cheque, and I accept that still others were paid by cash, which came from the Plaintiffs. They also occasionally made one payment for combined invoices, some of which had nothing to do with the Plaintiffs' home.
- [31] The Plaintiffs claim payments to the Defendants totalling \$369,560, while the Defendants admit to receiving \$319,560. One of the many problems that arose in this dispute is the "fiddle" engaged by both parties to keep the cost of the HST as low as possible. Unrecorded cash payments were made for various goods and services, which also may be part of a "fiddle" to avoid taxes.
- [32] It is clear to me that even assuming a payment of \$369,560 was received by the Defendants, this amount is far less than it cost to build this home. Tom Crosbie testified that the cost of construction was \$562,300. That leaves an unaccounted sum between \$192,740 and \$242,740. It seems to me that the Plaintiffs must have paid in cash for various up grades and services additional to those initially contemplated.

- [33] The Plaintiffs filed extensive financial documentation in an effort to persuade this court to provide a forensic accounting of all the transactions they were able to record. I decline the invitation to do so simply because it is impossible to ferret out what actually occurred by looking at the many payments, invoices and deliveries to the site coupled with the convoluted methods of payment and the many changes in material, location and quality requested by the Plaintiffs.
- [34] There are various outstanding accounts for suppliers that are the subject of lien claims and Provincial Court Small Claims actions. I do not know the status of these claims. It seems to me that given my conclusion that Mr. Manhas was given \$50,000, for which he has not accounted, this would place the amount provided by the Plaintiffs at \$369,560. In addition there is a \$750 rebate from the City of Nanaimo that is owed to the Plaintiffs.
- [35] By my calculations, and accepting as I do, the figures submitted by the Plaintiffs in respect to this discrete area, I would give judgment to the Plaintiffs for \$50,750, plus the amount calculated for duplicated invoices.

THE CLAIM OF NEGLIGENCE

- [36] The Plaintiffs claim the Defendants were negligent in the construction of the home. They pointed to claims submitted to the Home Warranty insurer and to evidence in respect to relocating the HVAC system.
- [37] No expert evidence was led to establish any claim of negligence and the many submissions to the Home Warranty people struck me as negligible. Indeed, all of the many complaints were either rectified, or not acknowledged as a deficiency. I do not accept the Plaintiffs' evidence that the relocation of the HVAC system was done without their consent. As I indicated earlier in this judgment, Mr. Malhotra was much more involved in the construction process than he claimed. It was only after the parties had their falling out that these claims arose. Accordingly, the claim in negligence is dismissed.

THE COUNTER CLAIM

- [38] The Defendants claim \$16,005.03 by way of counter claim. This figure was determined after concluding that the defendant is owed \$47,267.33 less \$31,262.00 paid by the Plaintiffs. This exercise is a quantum leap in speculation. I can find no evidence to support that the defendant is "owed" \$47,267.33. The counter claim is dismissed.

CONCLUSION

- [39] There will be judgment for the Plaintiffs in the amount of \$50,750 plus whatever amount is due in respect to duplicated invoices. The Plaintiffs' claims for damages for assault are dismissed.

[40] I do not know what effect this judgment has on the issue of costs. Clearly, the Plaintiffs have not succeeded to the extent they claimed and, equally, the Defendants have not been entirely successful. Unless the parties can agree, the matter of costs will have to be determined by a judge appointed by the Chief Justice, as I am no longer a member of the Court.

"The Honourable Mr. Justice McKinnon"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/15/10/2015BCSC1068.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/malhotra-v-water-front-homes-ltd-2015>

Prepared on 28 October 2026 · Esheria