

CANADA / JUDGMENT

Mann v. Jagpal

2020 BCSC 1919

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Supreme Court of British Columbia

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2020 BCSC 1919 Mann v. Jagpal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mann v. Jagpal,

2020 BCSC 1919

Date: 20201207

Docket: E52510

Registry: New Westminster

Between:

Manreet Kaur Jagpal aka Manreet Kaur Mann

Claimant

And

Dharminder Singh Jagpal

Respondent

And

Amrik Singh Jagpal and Ranjit Kaur Jagpal

Respondents

And

Docket: S207385

Registry: New Westminster

Between:

Manreet Kaur Jagpal aka Manreet Kaur Mann

Plaintiff

And

Rajwinder Singh Janda, Sukhvir Kaur Janda, Kuldeep Kaur Janda, and

Dharminder Singh Jagpal, Manjinder Singh Janda, Kiranjeet Kaur Janda, and Manjinder Singh Janda, and Defendants unknown to the Plaintiff and Better known to the other defendants

Defendants

Before: The Honourable Justice Giaschi

Reasons for Judgment

Counsel for Claimant and Plaintiff:

J. Dubas

Counsel for Respondent:

R. Khunkhun

V. Singh, Articled Student

Counsel for Respondents:

P. Mann

Counsel for Kuldeep Janda, Rajwinder Janda and Sukhvir Janda:

S. Sheena-Nakai

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Counsel for TD Bank of Canada:

K. Milinazzo

Counsel for Vancouver City Savings Credit Union and Coast Capital Savings Federal Credit Union:

S. Liesch

Place and Date of Trial/Hearing:

New Westminster, B.C.

February 5, 2020

August 27-28, 2020

Place and Date of Judgment:

New Westminster, B.C.

December 7, 2020

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Introduction

- [1] These reasons address two appeals and four applications brought by Manreet Jagpal, the claimant in action number E52510 (the "family action") and the plaintiff in action number S207385 (the "civil action"). The appeals and applications involve the production of documents from both parties and non-parties to the respective actions. The specific matters before me are:
- a) Two appeals, one in each action, appealing the order of Master Keighley dated October 15, 2019, reported at 2019 BCSC 1755, wherein he dismissed two applications brought by the plaintiff/claimant for production of documents;
 - b) Two applications, one in each action, for leave to admit new or fresh evidence on the appeals; and

- c) Two new applications filed after the order of Master Keighley, one in each action, for production of documents from both parties and non-parties to the respective actions.
- [2] For the reasons set out below, all of the appeals and applications are dismissed. The new/fresh evidence sought to be admitted on the appeals does not meet the applicable tests for the admission of such evidence. The applicant has failed to establish that Master Keighley was clearly wrong in dismissing her applications and, in any event, he was correct in his disposition of the applications. Finally, the new applications are almost identical to the ones heard by Master Keighley and are an abuse of process.

Background

- [3] I will refer to the parties by their first names in these reasons for simplicity and to avoid confusion. I mean no disrespect to the parties in doing so.

The Underlying Actions

- [4] The appeals and applications before me concern two actions commenced by Manreet. The first, New Westminster Registry action number E52510, is a family action against Dharminster and his parents Amrik and Ranjit. The second action, New Westminster Registry action number S207385, is a civil action against Dharminster and his sister, Sukhvir, and various relations of his sister; Rajwinder, Kuldeep, Manjinder, and Kiranjeet.
- [5] Manreet and Dharminster were married on January 10, 2008. The date the parties separated is disputed. Manreet claims the parties separated on January 24, 2017. Dharminster claims they separated on June 6, 2014.
- [6] An order for the divorce of Manreet and Dharminster was granted on January 11, 2016 in New Westminster in action E49457. However, in the amended notice of family claim, Manreet claims that the divorce was obtained by fraud and seeks to set aside the divorce order. Manreet further claims in the amended notice of family claim a determination of family property and a declaration that she has an interest in 14069 74 Ave, Surrey, which was the residence of Manreet, Dharminster, Amrik and Ranjit and is owned jointly by Dharminster and Amrik.
- [7] In the civil action, Manreet pleads, inter alia, that there was an agreement between the parties to that action that they would purchase properties together and that the registered owners of the properties would hold title in trust for the others. Specifically, she pleads that she and Dharminster have a 50% beneficial interest in various properties and that her interest is 25% to 50%. The specific properties that are identified in the second amended notice of civil claim are:
 - a) 7830 Swanson Dr., Delta, which Manreet pleads is owned by Rajwinder and Sukhvir;

- b) 7372 151A St., Surrey, which Manreet pleads is owned by Kuldeep, Rajwinder and Sukhvir; and
 - c) 12343 67A Ave., Surrey, which Manreet pleads is owned by Manjinder, Kiranjeet, and Rajwinder.
- [8] There is also a property in India which is not identified in the second amended notice of civil claim but is referred to in affidavits as the Jaghwara property and which Manreet believes had been purchased pursuant to the agreement alleged in the second amended notice of civil claim.
- [9] On July 25, 2018, Master Muir dismissed an application by Manreet to have the two actions consolidated or to have them heard at the same. Master Muir, however, order that the actions were to be heard sequentially before the same trial judge and, subject to the discretion of the trial judge, the civil action was to be heard first followed by the family action. An appeal from this order was dismissed by Mayer J. on September 20, 2018. The fact that the actions were not consolidated is important as it means the parties to one action are not parties to the other action.

The Applications

- [10] On September 26, 2019, Master Keighley heard three applications. One was by the Janda defendants in the civil action for production of various documents from Manreet. The other two were applications filed April 18, 2019 by Manreet for production of documents from the respondents and non-parties in the family action and from the defendants and non-parties in the civil action. Master Keighley granted most of the production orders sought in the application by the Janda defendants but dismissed the two applications brought by Manreet. In summary, he dismissed Manreet's applications for failure to comply with Rules 7-1(10) and (11) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Civil Rules] and because the document requests were overly broad and lacked specificity.
- [11] The production orders requested by Manreet in the two actions were substantially the same. I have attached as Schedule "A" the full orders sought in the family action.
- [12] The application in the civil action that was before Master Keighley involved requests for documents dating from January 2009 "on the basis that they prove or disprove a material fact and/or are relevant documents that could lead to a train of inquiry which could assist the plaintiff in establishing her case or addressing the defendants case".
- [13] Paragraph 2 of the application in the civil action purported to request documents from the defendants as well as from Amrik Kaur Gill and Ranjit Kaur Gill. Master Keighley recognized that this was an error and that production was being requested from Amrik Singh Jagpal and Ranjit Kaur Jagpal, who are not defendants to the civil action but are respondents to the family action. The documents requested from the defendants and from Amrik and Ranjit are set out in eight lengthy sub-paragraphs of paragraph 2 of the application. The documents

requested included: all documents related to any real estate or personal property transaction they have been involved with on a worldwide basis; documents that trace registered or beneficial ownership or property or funds; any documents establishing beneficial entitlement for Manreet or Dharminder to any real or personal property; any documents allowing the tracing of funds; income tax returns or assessments of "these people"; any communication about a new marriage or relationship of Dharminder and his new spouse; and any documents that will assist in tracing the proceeds from the disposition of any properties including those listed in the second amended notice of civil claim.

- [14] Paragraph 3 of the notice of application in the civil action requested documents from five financial institutions. The request was again very broadly worded. The actual documents requested were:

All documents in their possession, power or control not already disclosed on a worldwide basis, that trace any property purchased or funds received from any source being transferred between the above people and/or which can be used to trace any funds used by these people for the purchase, mortgaging or sale or use of any real or personal property and where the income/rent and funds from such property ended up including over this period any cheques, bank drafts, bank and investment accounts, credit cards, and credit line statements, debt statements, wire or electronic transfer documents or statements, mortgage applications and related documents in support of such applications, or any correspondence, texts or emails between these parties, and/or their lawyers or notaries or the financial institution and/or these people.

- [15] Paragraph 4 of the notice of application in the civil action requested documents from eight realtors, notaries, lawyers and law firms related to any transaction involving the parties to the civil action or Ranjit or Amrik. The documents requested were:

All documents related to the above people in their possession, power or control related to any real estate or personal property transaction they have been involved with on a worldwide basis, not already disclosed, including but not limited to, any email, text or written document evidencing any conversation with a realtor or notary or conveyance lawyer, or any such document with any credit union, bank or mortgage broker, including but not limited to any offer to purchase, any document related to the beneficial or registered ownership or the payment for that property or funds received for the sale or use of any such property including any bank draft, cheque, mortgage, direction to pay, or disburse funds, or statement of adjustment, or electronic transfer of such funds, title, transfer, or trust documents related to any such property.

- [16] Paragraph 5 of the notice of application in the civil action requested documents from the Attorney General of Canada on behalf of the Minister of Immigration related to any transaction involving Dharminder, Ranjit or Amrik. The documents requested were:

Any document respecting a sponsorship application to bring a third party to Canada including but not limited to any sponsorship application, document which shows who the party was and the reason for the application and its timing and any document that confirms the income, assets and liabilities of these people or anyone involved in the application.

- [17] The application in the family action that was before Master Keighley also involved requests for documents dating from January 2009 "on the basis that they prove or disprove a material fact and/or are relevant documents that could lead to a train of inquiry which could assist the plaintiff in establishing her case or addressing the defendants case".
- [18] Paragraph 2 of the notice of application in the family action requested documents from the respondents to that action as well as from Rajwinder, Sukhvinder, Manjinder, Kiranjeet and Kuldeep, who were not parties to the family action but were parties to the civil action. With the exception of the names of the persons against whom production was sought, the documents requested in para. 2 of notice of application in the family action mirrored those requested in para. 2 of the notice of application in the civil action.
- [19] Paragraphs 3, 4 and 5 of the notice of application in the family action were essentially identical to paras. 3, 4 and 5 of the notice of application in the civil action.

Reasons of Master Keighley

- [20] Master Keighley noted that the applications brought by Manreet violated the rule that a notice of application be no more than 10 pages in length and also noted various errors in the notices of application, one of which I have referred to above. The Master also commented that Manreet had conflated the disclosure requirements of Rule 7-1(1) with the requirements under Rule 7-1(11) of the Civil Rules.
- [21] More substantively, Master Keighley dismissed Manreet's applications for essentially three reasons: first, he held that Manreet had failed to make a demand for the documents prior to bringing the applications as is required by the Civil Rules 7-1(1) and (11); second, he held that the document requests were overly broad; and, third he held the overly broad nature of the requests and the lack of specificity amounted to a fishing expedition. His reasons are set out at paras. 29 - 31 as follows:

Noncompliance with the Rules

- (29) I have already noted that both Notices of Application exceed the number of pages allowed by the Rules. In addition, Manreet has brought an application seeking additional documentation prior to complying with the requirements of the Rule 7-1 (10) and (11) by failing to issue demand identifying with reasonable specificity of the documents or classes of documents sought and specifying why such documents ought to be disclosed. The authorities clearly indicate that the procedure contemplated by the rule is meant to encourage a focused and rationally-based request for the production of additional documents which will then, hopefully, generate a discussion between counsel which will

then allow for a focused application in the event that they cannot reach agreement with respect to production.

Overly Broad Requests

- (30) Manreet seeks production of broad classes of documents without demonstrating any connection between the documents sought and the issues raised in this litigation beyond a mere possibility that there may be such a connection. Such requests, often referred to as "fishing expeditions" are not sanctioned by the Rules. Generally, the connection between the documentation or information sought and the issues raised in the litigation is established by some evidence. It is not enough, for example, for Manreet to allege, as here, that "there is some property in India" without providing evidence with respect to the possibility of that property, if it exists, may be encumbered by a trust in favour of Manreet and the legal basis for disclosure relating to it.

Lack of Specificity

- (31) The overbroad and nonspecific requests for documentation and information brought by Manreet not only support a characterization of her applications as "fishing expeditions" but also render practically impossible any useful response by the defendants or by the third parties from whom materials are sought. Colloquially, one might say that Manreet's request for disclosure is akin to asking the defendants and the third-party providers to simply "empty their pockets". Manreet's request, if granted, would result in the production of irrelevant, duplicated and perhaps privileged documentation and information which may or may not have any relation to the issues raised in this litigation. How, for example, is a third party provider to determine whether it possesses documentation related to this litigation? How might such an entity deal with privacy or privilege issues? A party to litigation or a third party document provider is entitled to know precisely what documentation is sought and why it is sought.

Analysis

- [22] I will address the appeals and applications in the following order. First, I will address the two applications for the admission of new or fresh evidence. I will then address the two appeals. Finally, I will address the two new applications for production of documents.

New Evidence on Appeal

- [23] The test for the admission of fresh or new evidence on appeal depends on the nature of the evidence sought to be admitted.

- [24] Fresh evidence, is evidence that existed at the time of the trial or hearing. Fresh evidence is only admissible if it is established: (1) the evidence was not discoverable by reasonable diligence at the time of the original trial or hearing; (2) the evidence is relevant; (3) the fresh evidence is credible; and (4) if believed, the evidence could have affected the final result or, in family cases, it is in the interest of justice to admit it: *Jens v. Jens*, 2008 BCCA 392, paras. 28 and 30; *Kane v. Proffitt*, 2018 BCCA 106, para. 49.
- [25] New evidence is evidence that only came into existence after the trial or hearing. The test for the admission of new evidence is more stringent. New evidence is only admissible if it disproves an assumption that was made by the trial or hearing judge as to a future event: *Jens*, para. 29; *Kane*, para. 50.
- [26] The new or fresh evidence sought to be admitted by Manreet consists of two affidavits; one by Alisha Kokko, the legal assistant to Manreet's counsel, sworn January 14, 2020 and the other by Manreet sworn January 22, 2020.
- [27] Ms. Kokko's affidavit attaches correspondence, emails, lists of documents and supplemental lists of documents, and a few financial documents. The attachments, with a few minor exceptions, bear dates prior to the hearing before Master Keighley. The exceptions are three letters or emails from Manreet's counsel, a letter from the Department of Justice and a second supplemental list of documents of Manreet.
- [28] In my opinion, the affidavit of Alisha Kokko, sworn January 14, 2020, does not meet the tests for the admission of new or fresh evidence. Most of the attachments to the affidavit are documents bearing dates well before the appeal before Master Keighley. There is no suggestion that this evidence was not available or discoverable before the initial hearing. In fact, it seems clear that most of it was readily available. Thus, the first part of the test for the admission of fresh evidence is not met. Additionally, I am far from satisfied that the attachments could have affected the result or that it is in the interests of justice to admit them.
- [29] The attachments to the affidavit of Alisha Kokko, sworn January 14, 2020, that post-date the hearing before Master Keighley must meet the test for the admission of new evidence. They do not meet this test. The letters from Manreet's counsel merely set out the position of Manreet or are demands for production of documents. The letter from the Department of Justice merely sets out its position in relation to the application for production of documents from it. The second supplemental list of documents of Manreet lists additional productions of the plaintiff. None of these documents address an assumption made by Master Keighley as to a future event that was incorrect. In fact, no attempt was even made to show that these documents ought to be admitted under the test for the admission of new evidence.

- [30] Manreet's affidavit sworn January 22, 2020, attaches two copies of a cheque dated August 13, 2016. She identifies that one of the copies has "Loan Pay Back" written on it but the other does not. She also attaches a third cheque also dated August 13, 2016. She further deposes that there was never a loan by the Janda defendants. Finally, she deposes that at her discovery held in January 2020 she was not able to answer questions as to the sources of funds used to buy properties and that this confirms she requires additional disclosure.
- [31] Manreet's affidavit also fails to meet the test for admission or fresh or new evidence. It is not obvious from her affidavit that the copies of the cheques were only discovered after the hearing before Master Keighley. The balance of her affidavit is merely argument disguised as evidence.
- [32] Accordingly, I decline to admit the affidavits of Alisha Kokko, sworn January 14, 2020 and the affidavit of the plaintiff, sworn January 22, 2020, as evidence on the appeals.

The Appeals

What is the Standard of Review

- [33] Manreet submits that the standard of review to be applied on this appeal is one of correctness and that I may substitute my own view for that of the Master Keighley. I disagree.
- [34] The standard of review on the appeal from an order of a Master is most recently set out by Justice Milman in *Corix Water Products Limited Partnership v. Gilmore Pipe Sales, LLC*, 2019 BCSC 364, at para. 38. The order of a Master on a purely interlocutory matter may only be interfered with if it is clearly wrong.
- [38] The leading authority on the standard of review to be applied on an appeal from a master's order is the decision of Fenlon J. (as she then was) in *Ralph's Auto Supply (B.C.) Ltd. v. Ken Ransford Holding Ltd.*, 2011 BCSC 999; affirmed 2011 BCCA 390, as follows at para. 7:
- 1) Review of a purely interlocutory decision of a master is a true appeal and the master's decision is not to be interfered with unless it is clearly wrong.
 - 2) A question of law, a final order or a ruling that raises questions vital to the final issue in the case are reviewed by way of a rehearing on the merits based on the record before the master; even where an exercise of discretion is involved, the judge appealed to may quite properly substitute his or her own view for that of the master.

(Citations removed)

- [35] Justice Milman further addressed what may constitute a "clearly wrong" decision at para. 39:

- [39] I am satisfied that the order under appeal in this case was a discretionary decision disposing of an interlocutory application. Jindal must therefore show that Master Baker was clearly wrong. In *Genesis Fertility Centre Inc. v. Yuzpe*, 2017 BCSC 1037, at paras. 15-17, Gropper J. summarised the jurisprudence setting out what must be shown by an appellant to meet that standard, at paras. 15-17, as follows:
- [15] The parties agree that an appeal from a Master's decision on an interlocutory matter requires the applicant to establish that the Master's decision was "clearly wrong": *Abermin Corp. v. Granges Exploration Ltd.* (1990), 1990 CanLII 1352 (BC SC), 45 B.C.L.R. (2d) 188.
- [16] I adopt the plaintiffs' summary of the decisions that discuss what may constitute a "clearly wrong" decision: *Stancroft Trust Ltd. v. Can Asia Capital Co.*, [1991] B.C.J. No. 931 at page 5; *Lau v. Canada (Attorney General)*, 2014 BCSC 2384 at para. 138.
- [17] A "clearly wrong" decision is made where:
- a. the master abuses her discretion by acting arbitrarily or capriciously;
 - b. the master exercises her discretion under a mistake of law;
 - c. the master erred in law or principle;
 - d. the master misdirected herself;
 - e. the master disregards a principle;
 - f. the master misapprehends facts or takes into account irrelevant factors; or
 - g. the order of the master would result in an injustice.
- [36] The applications before me concern document production. Such applications, in my view, are purely interlocutory in nature and attract the clearly wrong standard. I am fortified in this conclusion by the decision in *JTG Management Services Ltd. v. Bank of Nanjing Co. Ltd.*, 2017 BCSC 242, at paras. 21-23 where the clearly wrong test was adopted in a document production appeal such as the present.
- [21] It is now well established law that an appeal from a master's order in a purely interlocutory matter should not be entertained unless the order is clearly wrong: *Abermin Corp. v. Granges Exploration Ltd.*, 1990 CanLII 1352 (BC SC), [1990] B.C.W.L.D. 1242, 45 B.C.L.R. (2d) 188 (S.C.); *Ralph's Auto Supply (B.C.) Ltd. v. Ken Ransford Holdings Ltd.*, 2011 BCSC 999, leave to appeal refused 2011 BCCA 390.
- [22] The "clearly wrong" test limits intervention to instances where a master was wrong in principle or wrong in his or her findings of fact: *Stephen v. McGillivray*, 2008 BCCA 472 at para. 17; *Chiu v. Yee*, 2014 BCSC 742 at para. 23.
- [23] As this appeal is clearly an interlocutory matter, this court ought not interfere with Master Dick's order unless it is clearly wrong.

Was the Master clearly wrong to dismiss the applications for failure to issue a prior demand in writing?

- [37] The first grounds upon which Master Keighley dismissed Manreet's application was for failure to comply with Rules 7-1(10) and (11) of the Civil Rules in the civil action and Rules 9-1(7) and (8) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [Family Rules] in the family action.
- [38] Master Kegihley's determination that Manreet failed to comply with Rules 7-1(10) and (11) is, in my view, not clearly wrong.
- [39] The rules have a clearly defined procedure to obtain additional documentary discovery from a party. The procedure is for the party demanding additional discovery to make a demand in writing under Rule 7-1(10) if the party believes first tier documents have not been produced or Rule 7-1 (11) if the party wishes production of documents relating to a question in the action (the broader Peruvian Guano test). The party from whom the additional disclosure is requested then has 35 days to comply with the demand. Pursuant to Rule 7-1(13), an application may only be brought if the demand is not complied with.
- [40] I note that Rule 7-1(14) gives the court discretion to waive the requirement for a prior written demand under Rules 7-1(10) and (11), however, no such application was made by Manreet and, in any event, the court should be cautious and reluctant to waive the demand requirement.
- [41] The requirement for a prior written demand in Rules 7-1(10) and (11) is not optional and failure to comply will not be readily forgiven. (See *Lit v Hare*, 2012 BCSC 1918, at para. 65) As was noted by Master Keighley, a purpose of the prior demand is to prevent unnecessary applications to the court relating to document production. A prior demand allows the parties to address the document disclosure issues, hopefully, without the expense and delay of an application. This process furthers the object of the Rules, as described in Rule 1-3, to secure the just, speedy and inexpensive determination of the proceeding on the merits.

1-3 (1) The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.

- (2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to
- (a) the amount involved in the proceeding,
 - (b) the importance of the issues in dispute, and
 - (c) the complexity of the proceeding.

- [42] Subsequent to the decision of Master Keighley, the appellant has sought to overcome the demand deficiency by making demands and filing new applications for production on the same terms as the original applications. This does not correct the deficiency that was before Master Keighley.
- [43] Accordingly, it is my view that Master Keighley was not "clearly wrong" in dismissing the applications for failure to comply with Rules 7-1(10) and (11) of the Civil Rules and Rules 9-1(7) and (8) of the Family Rules.
- [44] However, I would note that Master Keighley's dismissal of the applications for failure to comply with Rules 7-1(10) and (11) of the Civil Rules and rules 9-1(7) and (8) of the Family Rules is relevant only insofar as the applications concerned requests for documents from the parties to the respective proceedings. These rules have no application to requests for documents from non-parties. Document requests from non-parties are governed by Rules 7-1(18) of the Civil Rules and 9-1(15) of the Family Rules. Moreover, these rules also apply to the document requests made of Amrik and Ranjit in the civil action and of Rajwinder, Sukhvinder, Manjinder, Kiranjeet and Kuldeep, in the family action. Given that the actions are not consolidated, Amrik and Ranjit are not parties to the civil action and Rajwinder, Sukhvinder, Manjinder, Kiranjeet and Kuldeep are not parties to the family action. This nuance appears to have been ignored or not recognized by Master Keighley.

Was the Master clearly wrong in holding the requests were overly broad and lacked specificity?

- [45] The second and third reasons given by Master Keighley for dismissing the applications was that the requests were overly broad and lacked specificity. He considered the applications to be "fishing expeditions" and that it would be practically impossible for any third parties to comply with the requests.
- [46] The authorities are replete with references to the need for document requests to be focused and specific. A notable and frequently cited authority is *Lit v. Hare*, 2012 BCSC 1918, at para. 68:
- [68] In my view, the applications are premature and framed in overly broad and vague terms. The lack of specificity which characterizes this application is fatal to its success. In addition to the challenges faced by the respondents as a consequence of the manner in which the applications have been framed, it is difficult for the court to adjudicate on a document production application where what is sought are "all documents not yet produced" in broadly defined categories. That the application lacks sufficient particularity is very likely a function of the failure to observe the procedure contemplated by the Rules. That failure cannot, in this case, be attributed to mere oversight. Had the written demand process mandated by the Rules been followed, I think it reasonable to suppose that many of the difficulties associated with this application would not have arisen. Moreover, had the procedure mandated by the Rules been observed, I think it is unlikely that it would have been necessary to file the volume of material that accompanied these applications. [Emphasis added.]

- [47] The above comments are in relation to production being requested from a party to a proceeding. However, there is a similar requirement for specificity when seeking production from non-parties. In fact, the rules mandate even more precision than requests for production from parties. Rule 7-1(18) of the Civil Rules and Rule 9-1(15) of the Family Rules address obtaining documents from non-parties in very similar terms. Rule 7-1(18) provides:
- (18) If a document is in the possession or control of a person who is not a party of record, the court, on an application under Rule 8-1 brought on notice to the person and the parties of record, may make an order for one or both of the following:
- (a) production, inspection and copying of the document;
 - (b) preparation of a certified copy that may be used instead of the original.
- [48] It is to be noted that this rule refers to "a document" and "the document". The use of these terms is suggestive of a higher level of specificity than is required when seeking documents from a party. This was recognized by Smith J. in *Centura Building Systems Ltd. v. Blackcomb Mountain Development Ltd.*, 2007 BCSC 939, at para. 9:
- [9] It is significant that Rule 26(1) refers to "all documents", while Rule 26(11) refers to "a document." Parties are expected to know the pleadings and the issues in the litigation and to make a thorough review of their documents in order to provide discovery of all relevant material. A stranger to the litigation has no such knowledge or obligation. It is up to the party seeking production to identify the specific document or documents being sought.
- [49] The limited scope of production from a non-party under Rule 7-1(18) was also addressed by G.C. Weatherill J. in *Northwest Organics, Limited Partnership v. Roest*, 2017 BCSC 673, at para. 81:
- [81] It is apparent from the wording of Rule 7-1(18) that it was not intended to provide broad discovery of documents from non-parties, but rather a mechanism by which parties can access specific documents or classes of documents when it has been demonstrated that they are in the possession or control of a non-party and are relevant to an action. With the exception of the specific documents ordered to be produced at paras. 1(b), (c) and (d) of the Order, evidence supporting the application was lacking. Master Baker did not consider the need for such evidence. [Emphasis in original.]
- [50] In my view, Master Keighley was not clearly wrong in deciding the document requests were overly broad and lacked sufficient specificity. In fact, it is my view that he was correct in so deciding.
- [51] I have included as Schedule "A" to these reasons the particular orders being sought as no summary can do justice to the broadness of the requests. They are very broad and, for the most part, lack any specificity. For example:

- a) The requests made in para. 2 of the applications would include every document relating to every transaction of any sort whatsoever that the individuals have been involved in since 2009;
 - b) The request made of the financial institutions would include every document in the institutions possession involving or relating to "the above people";
 - c) The request made of the realtors, notaries, lawyers and law firms includes all documents related to the above people in their possession, power or control related to any real estate or personal property transaction they have been involved with on a worldwide basis; and
 - d) The request made of the Attorney General of Canada on behalf of the Minister of Immigration included any document respecting a sponsorship application to bring a third party to Canada involving Dharminder, Ranjit or Amrik.
- [52] It is hard to imagine that the document requests could be framed more broadly than has been done by Manreet in these applications. The requests are completely lacking in any specificity whatsoever.
- [53] Moreover, no attempt appears to have been made to relate the requests to the pleadings. For example, it is not alleged that Amrik and Ranjit were parties to the agreement alleged to exist in the second amended civil claim or involved in the acquisition of properties under that agreement, yet Manreet asks for all documents related to any real estate or personal property transaction they have been involved with. Similarly, in the family action the identical document request is made of Rajwinder, Sukhvir, Manjinder, Kiranjeet and Kuldeep yet they are not parties to the family action and are not alleged to have had any involvement in that action. Additionally, the request made of the Attorney General for Canada in both actions has no connection to anything pleaded in either action.
- [54] I further agree with Master Keighley that it would be practically impossible for the third parties to comply with the requests. In particular, it would be a monumental task, if not a complete impossibility for the financial institutions to comply with the requests made of them.
- [55] In my opinion, Master Keighley was correct to dismiss the applications on the grounds that the requests were too broad and lacked specificity. He was further correct in his assessment that the applications were a fishing expedition.
- [56] Before leaving this issue, I wish to note that Master Keighley could have reviewed the voluminous amount of material that was filed in these various applications to possibly identify some specific documents or classes of documents that the parties and non-parties might properly be asked to produce. I could possibly have done likewise. However, that is not the proper function of this court. That is something that ought to have been done by Manreet or her counsel. If they had properly identified the specific documents or specific classes of documents production of which was required, and had made a proper limited demand for those specific documents, then it is possible that these applications might not

have been required. The practice of making broad and vague document requests, especially of non-parties, is to be very much discouraged. An applicant should not expect or anticipate that the court will cure such defects by paring down such requests and doing what the applicant should have done in the first instance.

[57] Accordingly, the appeals are dismissed.

The New Applications

[58] Following the dismissal of Manreet's applications by Master Keighley, two new applications for production of documents were filed by Manreet on January 15, 2020. The orders requested in the new applications are almost identical to the orders sought before Master Keighley.

[59] I have no hesitation in dismissing both motions. They suffer from the same defects as the original applications, which is to say, the document requests are overly broad and lack any specificity whatsoever. The new applications are therefore an abuse of process in the sense that they are an attempt to re-litigate issues that have already been adjudicated: *M.K. v British Columbia (Attorney General)*, 2019 BCSC 166, para. 30.

Order

[60] I therefore make the following orders:

- a) The appeals are dismissed;
- b) The applications to introduce new evidence on the appeals are dismissed; and
- c) The new applications filed on January 15, 2020, for production of documents are dismissed.

[61] The parties have leave to speak to me on the matter of costs, if necessary.

"Giaschi, J."

Schedule "A"

2. Pursuant to Rule 9-1 of the Supreme Court Family Rules that by April 30, 2019, the Respondents and Rajwinder Singh Janda, Sukveer Kaur Janda, Manjinder Singh Janda, Kiranjeet Kaur Janda and Kuldeep Kaur Janda and be required to provide to the Plaintiff copies of the following documents from January 2009 to current both on the basis that they prove or disprove a material fact in this litigation and/or are relevant documents which could lead to a train of inquiry which could assist the Claimant in establishing her case or addressing the defendants case:
 - a) All documents in their possession, power or control related to any real estate or personal property transaction they have been involved with on a worldwide basis, not already disclosed, including but not limited to, any email, text or written document evidencing any conversation with a realtor or notary or conveyance lawyer, or any such document with any credit union, bank or mortgage broker, including but not limited to any offer to purchase,

any document related to the beneficial or registered ownership or the payment for that property or funds received for the sale or use of any such property including any bank draft, cheque, mortgage, direction to pay, or disburse funds, or statement of adjustment, or electronic transfer of such funds, title, transfer, or trust documents related to any such property;

- b) All documents in their possession, power or control, not already disclosed, on a worldwide basis, that trace beneficial or registered ownership of such a property, or any funds being transferred between them and/or that can be used to trace any funds used for the purchase, mortgaging or sale or use of any real or personal property and where the income/rent and funds from such property ended up including any title, transfer or trust documents related to the property or any cheques, bank drafts, bank and investment accounts, wire or electronic transfers, credit cards, and credit line statements, debt statements, mortgage applications, or any correspondence or emails between these parties, there realtors, notaries and conveyance lawyers where these matters were discussed, including but not limited to any such documents in the possession or control of any of the financial institutions, realtors, notaries and lawyers who are Respondents to this application;
- c) All documents in their possession, power or control, not already disclosed on a worldwide basis, which will establish the beneficial entitlement of the Claimant and/or DharminderJagpal to any real or personal property no matter who is the registered owner of the property or where it is located worldwide, including but not limited to any of the classes of documents described in items (a) and (b) above;
- d) Any and all documents in their possession, power or control not already disclosed on a worldwide basis which will disclose and allow for the tracing over the period to determine what funds the above people have received and what use they have made of any funds received from any source over the period including but not limited to, any funds received from borrowing in any form including but not limited to employment, unemployment, or workers compensation and where these funds and any income from the funds or other property has ended up including but not limited to any corporation in which any of the parties have a beneficial or registered interest, with such documents to include but not be limited to mortgage statements, debt statements, bank account statements, payment or disbursement letters or statements, credit card statements, expense statements, cheques, bank drafts, electronic money transfer or wire transfer statements;
- e) Any income tax returns and assessments of these people over this period with all attachments including but not limited to any statement of real estate rentals and expenses and all supporting documents for this rent and expenses for any properties worldwide in which they have a beneficial or registered interest;
- f) Any other documents not listed above with respect to any communications the above people has had between them about the new marriage or new relationship of Dharminder SinghJagpal and his current spouse that he married in 2016 or 2017in India and the end of

the relationship that he had with the Claimant or any property that the above people own individually or jointly including but not limited to any emails, text, letters or any other written communications that do not include any communications with their current solicitor in this matter for the purpose of this litigation;

- g) To the extent that it not covered above any documents, including any banking documents, cheques, drafts, wire transfers and the like which will assist in determining the use made of any proceeds in disposition from any properties including but not limited to those properties specifically listed n the Second Amended Notice of Civil Claim filed in action S-207385 and including any proceeds from any property disposed of prior to the date of any order granted in this application; and
 - h) The above people provide all of the documents relevant to their counterclaim filed herein included but not limited to their claim for damages and their limitation defense.
3. Pursuant to Rule 9-1 of the Supreme Court Family Rules that by April 30,2019, the Royal Bank of Canada, Toronto Dominion Bank, TD Canada Trust, Van City Savings Credit Union and Coast Capital Credit Union and Van City Savings Credit Union provide to the Claimant respecting the Respondents and Rajwinder Singh Janda, Sukveer Kaur Janda, Manjinder Singh Janda, Kiranjeet Kaur Janda and Kuldeep Kaur Janda copies of the following documents from January 2009 to current both on the basis that they prove or disprove a material fact and/or are relevant documents which could lead to a train of inquiry which could assist the Claimant in establishing her case or addressing the case of the Respondents and these other people:
- a) All documents in their possession, power or control not already disclosed on a worldwide basis, that trace any property purchased or funds received from any source being transferred between the above people and/or which can be used to trace any funds used by these people for the purchase, mortgaging or sale or use of any real or personal property and where the income/rent and funds from such property ended up including over this period any cheques, bank drafts, bank and investment accounts, credit cards, and credit line statements, debt statements, wire or electronic transfer documents or statements, mortgage applications and related documents in support ofsuch applications, or any correspondence, texts or emails between these parties, and/or their lawyers or notaries or the financial institution and/or these people. 1
4. Pursuant to Rule 9-1 of the Supreme Court Family Rules that by April 30,2019, the Avtar Gill, Sutton Group West Coast Realty, West Coast RealtyLtd., Manjit Wallia and Wallia Law Group, Harinder Dail, Harinder Dail Notary Corporation, Ajaypal Dhaliwal be required to provide to the Claimant copies of the following documents from January 2009 to. Current both on the basis that they prove or disprove a material fact and/or are relevant documents which could lead to a train of inquiry which could assist the Claimant in establishing her case or addressing the Respondents case all of the following documents related to any transaction involving the parties hereto or Rajwinder Singh Janda, Sukveer Kaur Janda,Manjinder Singh

Janda, Kiranjeet Kaur Janda and Kuldeep Kaur Janda Ranjit Kaur Jagpal or Amrik Kaur Jagpal:

- a) All documents related to the above people in their possession, power or control related to any real estate or personal property transaction they have been involved with on a worldwide basis, not already disclosed, including but not limited to, any email, text or written document evidencing any conversation with a realtor or notary or conveyance lawyer, or any such document with any credit union, bank or mortgage broker, including but not limited to any offer to purchase, any document related to the beneficial or registered ownership or the payment for that property or funds received for the sale or use of any such property including any bank draft, cheque, mortgage, direction to pay, or disburse funds, or statement of adjustment, or electronic transfer of such funds, title, transfer, or trust documents related to any such property.
5. Pursuant to Rule 9-1 of the Supreme Court Family Rules that by April 30, 2019, the Attorney General of Canada on behalf of the Minister of immigration be required to provide to the Claimant copies of the following documents from January 2009 to current both on the basis that they prove or disprove a material fact and/or are relevant documents which could lead to a train of inquiry which could assist the Claimant in establishing her case or addressing the Respondent case all of the following documents related to any transaction involving Dharminder Singh Jagpal, Ranjit Kaur Jagpal or Amrik Kaur Jagpal:
 - a) Any document respecting a sponsorship application to bring a third party to Canada including but not limited to any sponsorship application, document which shows who the party was and the reason for the application and its timing and any document that confirms the income, assets and liabilities of these people or anyone involved in the application.

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