

CANADA / JUDGMENT

Raj v. Jeet

2024 BCSC 83

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 83 Raj v. Jeet

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Raj v. Jeet,

2024 BCSC 83

Date: 20240117

Docket: S242213

Registry: New Westminster

Between:

Kanchan Mala Raj and Urmilla Mala Singh

Plaintiffs

And

Sashi Prabha Jeet, Suruj Mati and Vijay Maharaj

Defendants

Before: The Honourable Justice Edelmann

Reasons for Judgment

Counsel for the Plaintiffs:

G.S. Gabri

Counsel for the Defendants:

A.L. Barna

Place and Dates of Trial:

New Westminster, B.C.

March 27-31, November 7 and December 4, 2023

Place and Date of Judgment:

New Westminster, B.C.

January 17, 2024

Overview

- [1] This action relates to funds distributed from the estate of the parties' father Lakshman Kissun in Fiji. Mr. Kissun died intestate in 2011, leaving a property in Fiji. In addition to one son who is also deceased, Mr. Kissun had four daughters who are all parties to this litigation. The plaintiffs allege that the defendant Sashi Jeet misappropriated their share of their father's estate in Fiji and had it sent to herself in Canada. They seek damages in breach of contract or in breach of trust.
- [2] The Notice of Civil Claim in this matter was filed in December 2021. On January 5, 2022, Ms. Jeet filed a jurisdictional response under Rule 21-8 disputing the jurisdiction of the Court and submitting that the Court ought not to exercise its jurisdiction over her. On February 14, 2022, Ms. Jeet filed an application to have the case dismissed or stayed on jurisdictional grounds. She argues that Fiji is a more appropriate forum. For reasons that are unclear to me, the application was not heard before trial. Upon agreement of the parties, the jurisdictional issue was left to be decided after the evidence at trial had been heard. It will therefore be helpful to set out the relevant evidence before turning to the issues of jurisdiction and breach of trust.

Background

- [3] After Mr. Kissun's death, his son had become administrator of his estate. The son also passed away in 2019, leaving a spouse and three children. The plaintiff Urmilla Singh and the defendant Sashi Jeet went to Fiji for their brother's funeral. While they were in Fiji, Ms. Singh and Ms. Jeet attended at the office of lawyer Vijay Maharaj. All four sisters had agreed that the eldest sister, Ms. Jeet, would become the administratrix of the estate. Ms. Jeet claims she was only doing so reluctantly as no one else wanted to do it. Ms. Singh and Ms. Raj both say that Ms. Jeet was chosen as administrator as she was the only sister who travelled regularly to Fiji, and she was the eldest and played a maternal role in their lives. All four sisters signed the necessary paperwork for Ms. Jeet to be appointed as administratrix.
- [4] The property owned by Mr. Kissun was sold in April 2020 for FJD\$450,000.

- [5] Both plaintiffs say they attended a meeting of all four sisters in Surrey, British Columbia in late 2020 in which there was an agreement about how the funds would be distributed. They say their brother's widow was consulted via video. They agreed that Ms. Jeet would get FJD\$114,000 and the other four beneficiaries would each get FJD\$74,000. Ms. Jeet was going to get a bigger share in recognition of her work as administratrix.
- [6] Ms. Jeet denies there was any such agreement. However, on November 19, 2020 Mr. Maharaj sent an email to Ms. Jeet which attached a draft direction for distribution of the estate on precisely those terms. The email was forwarded to the other sisters.
- [7] On November 23, 2020, Ms. Singh received an email from the office of Vijay Maharaj saying they could remit her share of FJD\$74,000 after obtaining income tax clearance and requesting her to send some completed forms. On December 6, 2020, Ms. Singh received another email saying the money would be sent as soon as they received clearance from Fiji Revenue and Customs Services.
- [8] On December 8, 2020, Ms. Singh received an email from the office of Vijay Maharaj saying that they understood she wanted her share of FJD\$74,000 transferred into Ms. Jeet's account in Canada. Ms. Singh responded the same day clarifying that she wanted the funds transferred to her account in Canada as per the banking details she had previously provided to them.
- [9] On December 20, 2020, Ms. Singh received an email from the office of Vijay Maharaj saying that they had received the necessary clearance and were in a position to transfer the FJD\$74,000 minus a fee of FJD\$500 for obtaining the clearance. The same day, Ms. Singh sent an email with her banking details for the transfer and authorized the payment of the fee.
- [10] The Agreed Statement of Facts stipulates that Ms. Jeet received FJD\$114,000 in her Canada Trust Account on or about December 21, 2020. The banking records in evidence show a deposit into Ms. Jeet's Canada Trust account on December 22, 2020 of \$68,328.60. There does not appear to be any disagreement that this is the deposit referenced in the Agreed Statement of Facts. While there is no direct evidence before me of the conversion between Fijian dollars and Canadian dollars I find on the basis of these facts that on or about December 21, 2020, one Fijian Dollar transferred to Canada would be converted to approximately \$0.60.
- [11] On January 4, 2021, Ms. Singh contacted the office of Vijay Maharaj inquiring as to why she had not yet received her funds. In an email response the same day, they said they were still waiting for approval from the Reserve Bank of Fiji and confirmed they would remit the funds as soon as that approval was obtained.
- [12] On January 26, 2021, Ms. Jeet received a transfer of \$43,589.25 from Fiji. Using the conversion from December, this would represent roughly FJD\$72,648.75.

- [13] On January 31, 2021, Ms. Singh followed up about payments to her and Ms. Raj. She received an email from Vijay Maharaj in reply saying that "our current instruction from the administratrix is to pay you [FJD]\$30,000 each".
- [14] On February 1, 2021, Ms. Jeet sent Ms. Singh a text saying, among other things, "I did every little thing in that house and the rest money will go to the kids in Fiji [] I should give you only 15,000 Fijian but I'm giving you 30,000 Fijian you should be happy in that." When Ms. Singh responded that she was getting a lawyer, Ms. Jeet responded "Just let me know if you want your 30,000 or not if not the money go to kids fund. Don't waste your 30,000".
- [15] On April 9, 2021, counsel for Ms. Singh sent a demand letter to Vijay Maharaj. Mr. Maharaj responded on April 17, 2021, advising that his office no longer held any monies from sale of the estate property. He went on to say:

On instructions from our client Sashi Prabha Jeet the remaining balance of the sale proceeds held in our Trust Account has been remitted to our client less the sum of \$50,000 which is currently held by the receiver of MC Lawyers.

- [16] It would appear that MC Lawyers was Mr. Maharaj's former firm, and that it had gone into receivership. Based on correspondence from Mr. Maharaj there were FJD\$50,000 of the estate monies that remained frozen in that process and inaccessible to him.
- [17] Ms. Jeet received an additional transfer of \$51,890.98 from Fiji on April 22, 2021. Using the conversion from December, this would represent roughly FJD\$86,484.97.

Ms. Jeet

- [18] Ms. Jeet gave testimony about her role as administratrix of the estate. I do not find her to be at all credible or reliable. The fictions presented during her evidence were internally incoherent and strained credulity on their face. In combination with the documentary and other evidence before me, I find Ms. Jeet repeatedly and deliberately lied and sought to mislead the Court. I would be reluctant to accept her testimony about her own name if it wasn't corroborated by other evidence.
- [19] When Ms. Jeet testified, she purported to be almost completely illiterate and unable to understand any of the relevant documents, including texts or emails sent by her and documents signed by her. Ms. Jeet's almost complete illiteracy was not clearly put to the other witnesses, both of whom were her adult sisters and may well have had evidence to provide on the issue. Given Ms. Jeet's almost complete disregard for the truth in other aspects of her testimony, I am not prepared to accept her testimony about the extent of her literacy.
- [20] Ms. Jeet travelled to Fiji in December 2022, not long before the trial in this matter. While she was there, she says her brother's children told her that two weeks earlier, in November, they had found a file with papers in it in the ceiling when they were cleaning or wiring. One of the papers was a document purporting to be the will of her father Lakshman Kissun dated

January 24, 2006. In the will, Mr. Kissun names her as executrix and directs that upon his death all properties and assets will be transferred to her. On its face, it strains credulity that two weeks before her trip to Fiji and shortly before trial, her brother's children would happen to find a folder with a will leaving the entire property to Ms. Jeet.

- [21] Upon arriving in Canada, Ms. Jeet gave the document to her counsel who quite properly listed and disclosed the document. Upon further investigation by Ms. Jeet's counsel in Fiji, it would appear that the document was not registered and it is not being put forward as a genuine will of Lakshman Kissun. There was no attempt by Ms. Jeet to explain why she would have believed the contents of the document, which appeared to be at odds with the other information before me. Notably, there was no explanation as to why Mr. Kissun would name his illiterate daughter in Canada as executrix and sole heir when both his wife and Ms. Jeet's brother were still alive and living in Fiji at the time the will was purported to have been signed. Based on the evidence before me, I find the purported will to be a deliberate, if rather clumsy, forgery.
- [22] Furthermore, I do not accept Ms. Jeet's narrative about how she came into possession of the forged document. I find it very unlikely that her brother's children would have had a fake will created and then provided it to Ms. Jeet with a false story without letting her know it was a forgery. I find it much more likely that Ms. Jeet was well aware that the document was fraudulent and brought it back to Canada with some misconceived perception that it would be helpful to her case. Her attitude towards the document during her testimony confirms this finding, as she did not appear to be at all concerned that her family members had provided her with a forged document that was now before the court. I do, however, find her attitude to be consistent with her flagrant disregard for the truth in her testimony.
- [23] During part of the time she was in Fiji in December, Ms. Jeet says she stayed with a friend. When asked in cross examination, after some hesitation, she said her friend's name was Chandra. Ms. Jeet was able to obtain a series of receipts dated in February 2020 for various things related to "house renovation", totalling some FJD\$27,200. Aside from the rather obvious problem that one of the receipts is dated February 30th, all of the receipts are signed "Chandra". Ms. Jeet attempted to explain that the renovations on her father's house were done by a man named Chandra and that this was a common name in Fiji. I found Ms. Jeet's explanations about payments and renovations to be rambling, incoherent and confusing. I do not find the purported receipts to be genuine documents and I conclude they are fraudulent documents created by Ms. Jeet or at her behest to support her case.
- [24] In one of the more flagrant fictions Ms. Jeet sought to pass off in her testimony, Ms. Jeet testified that the transfers from Fiji in January and April were payments related to her investment in her brother's businesses. Ms. Jeet says her brother started a business in 2017 that consisted of a butcher shop and the sale of other items like cocoa and dog food. She claims to have invested in the shop and assisted her brother when she was in Fiji. The business was shut down a couple of months after her brother passed away in May 2019. At one point, she testified there was close to FJD\$150,000 in cash hidden in her brother's house

from the business which belonged to both of them. At some unspecified point prior to January 2021, machinery and a freezer from the butcher shop was sold and the funds were sent to her in Canada. When asked to specify, she said that the manager and her brother's wife sold the machinery, some FJD\$150,000 in leftover cocoa and other inventory. In cross examination, Ms. Jeet was unable to explain the ownership structure of the business or the status of the business between the time of her brother's death in May 2019 and the period between January and April 2021. She was unaware of when the alleged sales took place or whether the business had declared bankruptcy.

- [25] Ms. Jeet accepted in cross examination that the first time she had mentioned the butcher shop as a source for the funds was at trial, despite having been examined for discovery in this matter. She has provided no documentary evidence or witnesses to corroborate the source of the payments in January and April 2021. One would expect that if there was such an obvious and easily corroborated explanation for the transfers, it would have been mentioned long before trial and supporting documentation would have been forthcoming. I find it likely that Ms. Jeet only recently concocted the story and is a rather unsophisticated liar.
- [26] Given the timing and amounts of the transfers, I do not accept that they were payments from the butcher shop or other businesses. I conclude that the payments were from Mr. Maharaj and represented her sisters' portions of her father's estate. The plaintiffs agreed to have Ms. Jeet act as executrix for their father's estate because they trusted her to protect their interests. Once the house was sold, there was an agreement among all the beneficiaries that they would each get FJD\$74,000 and that Ms. Jeet would get FJD\$114,000. This is corroborated by the documentary evidence, Ms. Jeet's receipt of FJD\$114,000 and correspondence from the office of Mr. Maharaj with the plaintiffs.
- [27] At some point in January, Ms. Jeet decided she would take a portion of her sisters' inheritance for herself personally, offering them FJD\$30,000 each. The communications from both Mr. Maharaj and Ms. Jeet to the plaintiffs around this time coincide with the timing of the transfer, and the amount of the transfer in January is consistent with Ms. Jeet appropriating a portion of their shares. I find that by April, Ms. Jeet appropriated the rest of her sisters' portions. The communications from Mr. Maharaj to this effect coincide with the timing and amount of the transfer at that time.

Jurisdiction

- [28] Ms. Jeet accepts that both her and the plaintiffs are residents of British Columbia, and the funds at issue were received by Ms. Jeet in British Columbia. This Court therefore has territorial competence over the dispute. The only issue is whether this Court should decline to exercise its territorial competence in favour of Fiji.

- [29] Section 11(1) of the Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28 ("CJPTA") grants this Court discretion to decline to exercise its territorial competence on the ground that a court of another state is a more appropriate forum in which to hear the proceeding. Section 11(2) sets out that the factors to be considered in deciding to exercise that discretion include:
- (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
 - (b) the law to be applied to issues in the proceeding,
 - (c) the desirability of avoiding multiplicity of legal proceedings,
 - (d) the desirability of avoiding conflicting decisions in different courts,
 - (e) the enforcement of an eventual judgment, and
 - (f) the fair and efficient working of the Canadian legal system as a whole.
- [30] The factors set out in s. 11(2) are not exhaustive, and the ultimate question is whether it has been established on the evidence that Fiji is clearly a more appropriate forum than British Columbia (see *O'Melveny & Myers LLP v Tilt Holdings Inc.*, 2021 BCSC 124 [O'Melveny] at para. 23).
- [31] The plaintiffs presumptively ought to benefit from their choice of a competent forum, and the onus is on the defendant to demonstrate that another forum is clearly more appropriate. As noted by the Supreme Court of Canada in *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17:
- [109] [] The court should not exercise its discretion in favour of a stay solely because it finds, once all relevant concerns and factors are weighed, that comparable forums exist in other provinces or states. It is not a matter of flipping a coin. A court hearing an application for a stay of proceedings must find that a forum exists that is in a better position to dispose fairly and efficiently of the litigation.
- [32] Ms. Jeet relies on *McLeod v McLeod*, 2011 BCSC 1942 and *Morrison v Morrison*, 2021 BCSC 2523 for the proposition that this Court should not exercise its jurisdiction in relation to her actions as executrix in Fiji. I find the circumstances in both those cases to be quite different from those before me.
- [33] In *McLeod*, one of the forms of relief being sought was to remove an executrix who had been appointed in Alberta. The plaintiffs do not seek any relief with respect to Ms. Jeet's status as executrix in Fiji. I would note, however, that Justice Butler (as he then was) would have been prepared to make orders in relation to trust property that was located in British Columbia. As noted, the orders being sought in the present case relate only to funds received by Ms. Jeet in British Columbia.

- [34] In Morrison, the fundamental claim was that the estate was administered improperly. There did not appear to be any allegation that the administrator had personally misappropriated assets that were to be distributed to the beneficiaries.
- [35] The crux of the dispute between the parties before me is in relation to the two wire transfers that Ms. Jeet received from Fiji in January and April, 2020. The fundamental problem for Ms. Jeet on the jurisdictional application is that she has not taken the position that the transfers were in any way related to the estate. To the contrary, she asserted in her sworn testimony that they were related to the sale of assets related to a butcher shop in Fiji that had nothing to do with the estate. It is clear on her own testimony that the funds were received by Ms. Jeet in her personal capacity. I have also found that Ms. Jeet's assertion that her sisters' portions of the estate are still in Fiji is false. I find Ms. Jeet was well aware that the two transfers she received in Canada in her personal capacity were funds from the estate. I also conclude that if the two transfers were in fact properly authorized in her capacity as administratrix, there would have been no reason to lie about them before this Court. I can only conclude that the reason Ms. Jeet lied to this Court and asserted that she had not received her sisters' portions of the estate in Canada is that she was not acting in her capacity as administratrix when she misappropriated the funds.
- [36] In summary, given that all of the parties involved in this litigation are residents of British Columbia and that the funds at issue were transferred to British Columbia, I find there to be a clear and compelling basis for the matter to be decided here. I do not find that Ms. Jeet has raised any countervailing interest in a trial in Fiji as she does not assert that the transfer of the funds was undertaken or justified as part of her role as administratrix. I therefore do not consider Fiji to clearly be a more appropriate forum.

Conclusion

- [37] I have little hesitation in finding that Ms. Jeet had a fiduciary duty to her sisters when she misappropriated their share of her father's estate. They agreed to her appointment as administratrix so that she could deal with the property in Fiji on their behalf. Ms. Jeet does not take the position that the funds were properly transferred to her. She was deliberately vague and evasive about the entitlement of her sisters to a portion of the estate. If the documentary evidence from Fiji is to be believed, as of May 2020 there was only FJD\$50,000 left in Fiji as Mr. Maharaj had distributed the rest of the funds. Ms. Jeet denies that any beneficiaries other than her got any funds. Ms. Jeet provides no explanation as to why she would be the first and only beneficiary to be paid, but in any event, she has demonstrated little interest or concern in finding or distributing the remaining funds in Fiji. I find the reason she takes little interest is because, aside from a possible FJD\$50,000, there are likely no funds from the estate remaining to be distributed. It is not even clear to me on the evidence that the FJD\$50,000 remained undistributed at the time of trial, as such a finding would be based only on Ms. Jeet's assertions about communications with Mr. Maharaj.

- [38] Ultimately, I find that Ms. Jeet misappropriated the FJD\$148,000 that was to be distributed to the plaintiffs and had the money transferred to herself in Canada. I find her actions to be in clear breach of her fiduciary duties to her sisters. Had the transfer been made in or around December 2020, when Ms. Jeet received her share of the estate, Ms. Singh and Ms. Raj would each have received approximately \$44,400.
- [39] I also accept that each of the plaintiffs provided \$4500 in cash to Ms. Jeet at her request, purportedly for renovations to the property in Fiji. I do not accept any of Ms. Jeet's testimony about the scope of renovations or the accounting related to the house. I find on a balance of probabilities that the money was either never used for renovations, or Ms. Jeet was in some manner personally credited in relation to the funds over the course of the sale and distribution of the estate. Given that Ms. Jeet is unable to account for the money given to her in trust, I order that she repay each of the plaintiffs the \$4500 they provided to her.
- [40] In conclusion, I order damages to each of the plaintiffs in the amount of \$48,900 plus pre-judgement interest pursuant to the Court Order Interest Act. The plaintiffs are presumptively entitled to their costs, but if the parties are unable to agree on the appropriate order, they may arrange to make submissions before me within 30 days of the release of these reasons. Should neither party do so, the plaintiffs are awarded their costs at Scale B.

"The Honourable Justice Edelmann"

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