

CANADA / JUDGMENT

Saini v. Jyoti

2022 BCSC 504

COURT

Supreme Court of British Columbia

DECIDED

29 March 2022

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2022 BCSC 504 Saini v. Jyoti

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Saini v. Jyoti,

2022 BCSC 504

Date: 20220329

Docket: S2159757

Registry: Prince George

Between:

Harpreet Kaur Saini

Plaintiff

And

Manik Jyoti

Defendant

Before: The Honourable Justice Tindale

Reasons for Judgment

In Chambers

Counsel for plaintiff:

R.A. Kemp

The defendant appearing on his own behalf:

M. Jyoti

Place and Date of Hearing:

Prince George, B.C.

January 10, 2022

Place and Date of Judgment:

Prince George, B.C.

March 29, 2022

[1] The plaintiff Harpreet Kaur Saini pursuant to a Notice of Application filed October 6, 2021 seeks judgment against the defendant Manik Jyoti in the sum of \$115,000 plus interest and costs.

[2] The defendant is opposed to this relief.

Background

[3] The plaintiff and the defendant were the sole shareholders in a restaurant called Muncheeze Pizza & Wings Ltd. ("Muncheeze").

[4] The plaintiff held 120 Class A Common Shares and the defendant held 80 Class A Common Shares in Muncheeze.

[5] On February 28, 2020 the parties entered into a written agreement whereby the plaintiff agreed to sell her 120 Class A Common Shares in Muncheeze to the defendant (the "Share Purchase Agreement"). The purchase price of the shares was \$115,000 (the "Purchase Price").

[6] Pursuant to the Share Purchase Agreement the defendant signed a promissory note. The defendant was to make monthly payments of \$1,916.67 to the plaintiff beginning on August 1, 2020 and ending on July 1, 2025.

[7] The promissory note included an acceleration clause at para. 3 which reads:

In the event of:

- a. a default by the Purchaser in the repayment of the Purchase Price, or
- b. the Purchaser agreeing to sell the business of the Company by way of sale of its assets or sale by the shareholders of the Company of their shares in the Company, or
- c. a default or breach by the Purchaser of any covenant or agreement by the Purchaser as provided in the Share Purchase Agreement or in the Security granted in accordance therein

then, and in such event, the Vendor may, at its option, accelerate the whole balance due and owing to it under the provisions hereof and declare the entire Purchase Price together with interest in the amount of Prime Rate as set by the Royal Bank of Canada, to be immediately due and payable. In the event of such acceleration, the rate of interest accruing on the Purchase Price at the date of such acceleration shall apply to such Purchase Price until judgment or payment.

(the "Acceleration Clause")

- [8] The plaintiff transferred her 120 Class A Common Shares in Muncheeze to the defendant on February 28, 2020.
- [9] The defendant has not paid any part of the Purchase Price to the plaintiff.
- [10] The plaintiff invoked the Acceleration Clause as a result of not being paid the Purchase Price by the respondent.

Position of the Parties

Plaintiff

- [11] The plaintiff argues that the defendant as of January 10, 2020 owes her \$119,068.01 which includes interest in the amount of \$4,068.01.
- [12] The plaintiff argues that the defendant in his affidavit filed November 23, 2021 acknowledges that he has not paid any portion of the Purchase Price.
- [13] The plaintiff argues that the defendant signed the Share Purchase Agreement in front of Jacqueline Trudel who was the solicitor for Muncheeze.
- [14] The plaintiff's husband Ajaypal Singh Saini in his 1st affidavit made on December 22, 2021 deposed to the following at para. 4:

Initially Mr. Jyoti and I met with Ms. Trudel in her office early in the morning of February 28, 2020, to review the share sale agreement and related paperwork that she had prepared. Harpreet was not present for this meeting because she had to get our children ready for school and take them there. Ms. Trudel reviewed all the paperwork with Mr. Jyoti and me, point by point, and explained everything. Then Mr. Jyoti signed the paperwork, in my presence, which Ms. Trudel had prepared. Then he and I left Ms. Trudel's office. After this meeting I went to work and stayed there while I understood that Harpreet then went downtown to meet with Ms. Trudel at her office to sign the paperwork.

- [15] The plaintiff says that this was a share sale and not an asset sale.
- [16] The plaintiff argues that it is important to note that the Purchase Price was renegotiated between the plaintiff and the defendant.

- [17] The plaintiff argues that the defendant signed the Share Purchase Agreement and she transferred her shares to the defendant. The plaintiff has not been paid for her shares and seeks judgment against the defendant.

Defendant

- [18] The defendant argues that he was unable to pay the monthly instalments of the Purchase Price due to the Covid 19 pandemic.
- [19] The defendant argues that he signed the Share Purchase Agreement under duress because he was leaving to go to India.
- [20] The defendant agrees that he renegotiated the Purchase Price with the plaintiff.
- [21] The defendant in his affidavit filed on November 23, 2021 deposes that he was not given a draft of the Share Purchase Agreement before he signed it. He signed the Share Purchase Agreement because the plaintiff had given him four extra months time to start making the payments of \$1,916.67 per month because he was going to India for his wedding.
- [22] The defendant applied for a Canada Emergency Business Account due to the Covid 19 pandemic however that loan was declined. The defendant was unable to pay the rent for Muncheeze after March 2020 because he was stuck in India because of travel restrictions due to the pandemic.
- [23] The defendant deposes that he had to borrow money from family and friends to pay the rent for Muncheeze for the months of April 2020 to August 2020.
- [24] The defendant argues that he is unable to pay the plaintiff and he is willing to return her shares to her for Muncheeze.
- [25] The defendant deposes in his affidavit made on November 25, 2021 that on July 10, 2021 Mr. Saini along with two of his friends threatened and assaulted the defendant in his restaurant.
- [26] The defendant has attached as Exhibit K to his affidavit made on November 23, 2021 a USB flash drive which contains video footage from Muncheeze's CCTV camera. This video footage appears to show a confrontation between a number of individuals. The defendant says this is the incident which occurred on July 10, 2021.
- [27] The defendant reported the incident to the police however he has not been provided with any information from the police as to the status of that investigation.
- [28] The defendant in his affidavit filed on December 31, 2021 deposes to the following at para. 4:
- I signed the 11th December 2019 Shareholder's Agreement with trust on Mrs. Saini that she has invested \$55,000 in the company as I didn't have the information regarding the amount each shareholder has contributed to the company as of 11th December 2019. Taxes for the company's financial year 2019 were filed in July 2020 only then I came to know about the amount of \$44,891.55 which is the original amount contributed by Mrs. Saini in the company. Attached is

Exhibit-E which is the email from my accountant Mrs. Shivali Gupta also brought to attention of Mrs. Saini.

[29] The defendant argues that the plaintiff cannot prove that she invested \$55,000 in Muncheeze.

[30] The defendant says that he is currently unemployed and Muncheeze is closed.

[31] The defendant says there was never a business valuation done for Muncheeze.

Decision

[32] The defendant is a self-represented litigant. The defendant did not file a Response to Notice of Application however the parties agreed to proceed with this application in any event.

[33] The defendant did file a Response to Civil Claim on August 30, 2021 which simply states under Part 3: Legal Basis:

I am running the Muncheeze Pizza & Wings Ltd. all by myself without any staff and I am in contact with lawyer's office but they are on vacations, please grant some time till October 2021.

[34] There is no dispute that that the parties came to an agreement whereby the plaintiff would sell her shares in Muncheeze to the defendant for \$115,000.

[35] There is no dispute that the parties executed the Share Purchase Agreement and that the plaintiff did in fact transfer her shares to the defendant.

[36] There is no dispute that the defendant also signed a promissory note obligating him to make payments to the plaintiff in the amount of \$1,916.67 per month.

[37] Finally, there is no dispute that the defendant has not paid any portion of the Purchase Price to the plaintiff. The defendant in his affidavit filed on November 23, 2021 acknowledged this debt when he deposed to the following at para. 1:

I never refused to pay the amount of \$1,916.67 per month to Harpreet Kaur Saini, but I was unable to pay because of the Covid-19 pandemic.

[38] The defendant has filed a number of affidavits on this application which include financial documentation for Muncheeze including the balance sheet and statement of income and retained earnings for Muncheeze as at December 31, 2019.

[39] The defendant argues that the plaintiff's application should be dismissed because he was rushed into signing the Share Purchase Agreement and he was threatened by Mr. Saini on July 10, 2021.

[40] The defendant further argues that he only signed the December 11, 2019 shareholder's agreement because the plaintiff had told him she had invested \$55,000 into Muncheeze. The defendant says that he later found out from his accountant that the plaintiff only contributed \$44,891.55 to Muncheeze.

- [41] The Share Purchase Agreement was drafted by Jacqueline Trudel who was the solicitor for Muncheeze.
- [42] Mr. Saini deposed in his affidavit of December 23, 2021 that Ms. Trudel reviewed the Share Purchase Agreement as well as the other related paperwork with the defendant on February 28, 2021 point by point.
- [43] The defendant argues that he felt pressured into signing the Share Purchase Agreement and did not have time to review it. I do not accept the defendant's evidence in this regard primarily because it is clear that the defendant renegotiated the Purchase Price with the plaintiff prior to the signing of the Share Purchase Agreement. In my view the defendant had a clear understanding of what the Share Purchase Agreement consisted of because he negotiated it.
- [44] Further, I accept the evidence of Mr. Saini that Ms. Trudel explained the contents of the Share Purchase Agreement point by point to the defendant.
- [45] The Share Purchase Agreement contains the following acknowledgement at para. 22:
- The Vendor and the Purchaser acknowledge and agree that they have both been urged to receive independent legal and tax advice with respect to the purchase and sale of the Shares. By signing this Agreement, the Vendor and the Purchaser agree that they have either sought such advice or waived their right to do so.
- [46] I accept that the defendant may have felt some pressure because he was about to leave to India to be married when he signed the Share Purchase Agreement however that pressure was not caused by the plaintiff, Mr. Saini or Ms. Trudel.
- [47] The defendant also says that Mr. Saini and others threatened or assaulted him in July 2021. While there is evidence that the defendant filed a police report regarding this incident it does not appear that the police have taken any action in this regard. Further the video footage evidence supplied by the defendant does appear to show a confrontation between a number of people however it is not clear to me who these people are.
- [48] If Mr. Saini was involved in this altercation it occurred long after the Share Purchase Agreement was executed and long after the defendant defaulted on paying the Purchase Price. In my view this incident is not relevant to the application before the court.
- [49] Finally, the defendant says he would not have signed the December 11, 2019 shareholder's agreement but for the plaintiff's representation that she had invested \$55,000 into Muncheeze. The defendant takes the position that because his accountant determined that \$44,891.55 was owing to the plaintiff as of December 31, 2019 she could not have initially contributed \$55,000 to Muncheeze.
- [50] The Share Purchase Agreement which the defendant signed has a representation from the plaintiff that \$48,500 was owed to her by Muncheeze.

- [51] The defendant has provided significant financial evidence relating to Muncheeze. In my view he was clearly aware of the financial situation of Muncheeze when the Share Purchase Agreement was executed.
- [52] He did not complain that the plaintiff said she invested \$55,000 at the time of the signing of the Share Purchase Agreement which clearly states that she was owed \$48,500.
- [53] In my view given the nature of the negotiations that led up to the signing of the Share Purchase Agreement and the defendant's knowledge of the financial situation of Muncheeze any discrepancy in what the plaintiff initially contributed to Muncheeze would not have impacted the defendant's decision to purchase the plaintiff shares in Muncheeze.
- [54] Unfortunately for the defendant Covid-19 intervened and led to Muncheeze not being economically feasible. This is not the fault of the plaintiff.
- [55] The parties came to an agreement that the defendant would purchase the plaintiff shares in Muncheeze for \$115,000.
- [56] The plaintiff did transfer her shares to the defendant and the defendant by his own admission has not paid any portion of the Purchase Price.
- [57] The plaintiff as she was entitled to do invoked the Acceleration Clause and as such is entitled to judgment from the defendant in the amount of \$115,000 as well as interest up to January 10, 2022 in the amount of \$4,068.01.

Conclusion

- [58] The plaintiff will have judgment in the amount of \$119,068.01 against the defendant.
- [59] The plaintiff has been entirely successful in this application and is entitled to her costs. The parties have leave to address me with regard to the issue of costs if necessary.

"The Honourable Justice Tindale"

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