

CANADA / JUDGMENT

Sandhu v. Mangat

2019 BCCA 238

COURT

British Columbia Court of Appeal

DECIDED

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2019 BCCA 238 Sandhu v. Mangat COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Sandhu v. Mangat, 2019 BCCA 238 Date: 20190628 Docket: CA45310 Between: Mandeep Sandhu Appellant (Claimant) And Rupinder Singh Rocky Mangat Respondent (Respondent) Before: The Honourable Madam Justice Saunders The Honourable Madam Justice Garson The Honourable Madam Justice Fisher Supplementary reasons to: Sandhu v. Mangat, 2018 BCCA 454 Counsel for the Appellant: R.N. McFee, Q.C. M.R. Isman Counsel for the Respondent: S.G.L. Label Counsel for Interested Party, Rajkamal Singh Mangat (Roger): D.F. Hepburn Written Submissions Received: April 26, May 15 and 23, 2019 Date of Supplementary Judgment: June 28, 2019 Supplementary Reasons of the Court Summary: The appellant successfully appealed an order disqualifying her lawyer from continuing to act in a family law dispute on the basis of a conflict of interest. She sought special costs against the respondent and the interested party on the basis that their conduct in bringing the application was reprehensible. Held: The court declines to award special costs, as this is a case of little merit that falls short of the kind of reprehensible conduct deserving of the court's rebuke. The appellant is entitled to her ordinary costs in the appeal and in the application below. Supplementary Reasons for Judgment of the Court:

- [1] In reasons for judgment indexed as 2018 BCCA 454, we allowed the appeal and set aside an order removing Megan Ellis, Q.C., as the appellant's counsel of record in this family law dispute. The appellant, Mandeep Sandhu, now seeks an order for special costs of the appeal and the application below.
- [2] The basis for this application is the appellant's contention that the respondent, Rupinder Singh Rocky Mangat, and his brother, Rajkamal Singh (Roger) Mangat as an interested party, engaged in conduct deserving of reproof or rebuke by respectively bringing and supporting "a misguided, baseless, and delayed application" to disqualify her counsel due to an alleged conflict of interest.
- [3] The respondent and Roger Mangat submit that this is not a case that justifies the extraordinary award of special costs. Special costs

- [4] The leading authority on special costs, *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A.), set out the threshold for special cost awards as "reprehensible conduct". Lambert J.A., for the court, noted the continuum of circumstances in which special costs could be awarded, ranging from "milder forms of misconduct deserving of reproof or rebuke" to "scandalous or outrageous conduct":
- [17] it is my opinion that the single standard for the awarding of special costs is that the conduct in question properly be categorized as "reprehensible". As Chief Justice Esson said in *Leung v. Leung*, the word reprehensible is a word of wide meaning. It encompasses scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke. Accordingly, the standard represented by the word reprehensible, taken in that sense, must represent a general and all encompassing expression of the applicable standard for the award of special costs.
- [5] Special costs are punitive, not compensatory, and are awarded when a court seeks to disassociate itself from some misconduct in the course of litigation: *Smithies Holdings Inc. v. RDV Holdings Ltd.*, 2017 BCCA 177 at paras. 56-57, 134. They can be awarded against both parties and non-parties: see *Dyer v. Dyer*, 2016 BCSC 1115 at para. 54, citing *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 at para. 73.

Issues

- [6] The appellant submits that the conduct of the respondent and Roger Mangat can properly be characterized as reprehensible for the following reasons:
- the respondent's application to disqualify Ms. Ellis was ill-founded and without evidentiary foundation;
 - the application was not brought promptly and this delay caused prejudice, including the loss of a trial date;
 - the application was brought a year after the respondent waived any potential conflict of interest; and
 - the respondent had an improper motive for bringing the application.

Analysis

- [7] In our view, this is a case of little merit that falls short of the kind of reprehensible conduct deserving of the court's rebuke.
- [8] In submitting that conduct may be reprehensible where a litigant brings an unwarranted application without any evidentiary support, the appellant refers at some length to the reasons for judgment of Justice Fisher in allowing the appeal, which we will not repeat here. Suffice it to say that the reasons express the view that the application had little merit. However, that in itself is not a reason justifying an award of special costs. As Lambert J.A. stated in *Garcia* at para. 23: 23 ... Something more is required, such as improper allegations

of fraud, or an improper motive for bringing the proceedings, or improper conduct of the proceedings themselves, before the conduct becomes sufficiently reprehensible to require an award of special costs.

- [9] This was reiterated more recently by Saunders J.A., for the court, in *Berthin v. British Columbia* (Registrar of Land Titles), 2017 BCCA 181 at para. 53:
- [53] In rare circumstances an entirely meritless claim may attract special costs as observed in *McLean v. Gonzales-Calvo*, 2007 BCSC 648, but those circumstances invariably have an extra element, for example, a case that was utterly without hope so as to amount to misconduct or an abuse of process. In circumstances of an extant appeal which, if successful, would support the litigant, and where the result may seem clear in hindsight but was not so clear as to attract extra costs from this court, I consider special costs as a sanction for lack of merit generally are to be eschewed for their potential to chill members of the community from solving disputes in the forum designed for that very purpose. This is an access to justice and openness of the court processes issue.
- [10] These comments are especially pertinent in the context of an appeal, where the judge below considered the application to have sufficient merit to warrant making the order sought.
- [11] The appellant relies on authorities at the trial level where special costs were awarded against applicants who unsuccessfully sought to disqualify counsel for the opposite party: *Global Chinese Press Inc. v. Zhang* (31 July 2015), Vancouver S148822 (B.C.S.C.), *Mayer v. Mayer*, 2016 BCSC 615; *Dyer*. In those cases, the judges considered special costs to be justified where the basis for bringing the application was speculative (*Global Chinese Press*); where significant delay in bringing the application, without explanation, increased the prejudice to the responding party (*Mayer*); and where there was significant delay, coupled with a finding of a significant tactical component (*Dyer*).
- [12] These authorities are of limited assistance in the context of a successful appeal from an order removing counsel of record. Issues of delay, waiver and improper motive are matters that trial judges are able to assess in the context of the litigation before them. While we agree that the conclusions of this court in the appeal support some of the appellant's submissions -- in particular regarding delay and waiver -- these were made in the context of the substantive matters in issue rather than the conduct of the respondent and interested party in the litigation. There was no conduct in the appeal that could be considered reprehensible. Moreover, whether the respondent's application to disqualify Ms. Ellis was based on an improper motive is not a matter that this court can properly address, as it would require findings to be made about the pre-trial steps taken in the litigation before the court below.
- [13] For these reasons, we decline to award special costs to the appellant.

[14] There is no dispute, however, that the appellant is entitled to her ordinary costs in this court, and it follows that she is also entitled to costs in the application below. "The Honourable Madam Justice Saunders" "The Honourable Madam Justice Garson" "The Honourable Madam Justice Fisher"

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