

CANADA / JUDGMENT

Sangha (Re)

2017 BCSC 388

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Supreme Court of British Columbia

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2017 BCSC 388 Sangha (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sangha (Re),

2017 BCSC 388

Date: 20170309

Docket: B150826

Registry: Vancouver

In the Supreme Court of British Columbia

In Bankruptcy and Insolvency

In the Matter of the Bankruptcy of

Jaswant Singh Sangha

Before: The Honourable Madam Justice B. J. Brown

Reasons for Judgment

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(Appearing in Person)

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Piara Singh Johal

(Appearing in Person)

Place and Date of Hearing:

New Westminster, B.C.

February 6, 2017

Place and Date of Judgment:

Vancouver, B.C.

March 9, 2017

[1] The applicants, Grewal Management Ltd., Jasprit Singh Grewal, 0731431 B.C. Ltd., Daljit Singh Mattu, 0892995 B.C. Ltd., and Rajpreet Singh Sangha (the "Grewal Applicants") apply to have me recuse myself in this matter.

[2] They argue that:

1. In reasons for judgment released October 4, 2016 on an application by the Garcha Plaintiffs in Action VA S151275, I granted leave to the Garcha Plaintiffs to proceed with a lawsuit against the bankrupt Jaswant Singh Sangha. They say that in those reasons for judgment I made comments which a reasonable, well-informed person would interpret as an inclination or predisposition to favour the suitability of bankruptcy proceedings over litigation for the full and final resolution of disputes amongst various competing parties.
2. On November 16, 2016 the applicants had scheduled an application before me to lift the stay of proceedings against the corporate defendants in action S142529. They were not heard on that day. Instead I permitted counsel for the trustee in bankruptcy to use almost all of the available court time.

3. Their motion to lift the stay against the corporate defendants has not been rescheduled despite Mr. Rajpreet Singh Sangha's attempt to do so on January 4, 2017. Two other hearing dates had been scheduled to deal with issues that the trustee in bankruptcy and its legal counsel wished to advance.
4. At the hearing on January 4, 2017 I made comments to the effect that I had "pushed" for resolution of all disputes within the context of the bankruptcy proceeding. Those comments, together with other comments made by me led the applicants to conclude that I may have an inclination or predisposition to favour the position of the trustee. They argue that my comments are made out of context and are contrary to Mr. Sangha's submissions on January 4, 2017. Similarly, they say that comments in my reasons of October 4, 2016 are dicta and indicate a preference for the bankruptcy process.
5. A hearing date was scheduled for January 24, 2017 to hear from the parties regarding the form of appeals which have been taken from decisions made by the trustee in bankruptcy. The Grewal Defendants say that the Court should not permit the appeals to proceed until all issues in their action have been resolved by the Court.
6. The Grewal Defendants argue that I have failed to appreciate or give weight to the order of the Court of Appeal made April 8, 2016.
7. They argue that scheduling of other matters means that they have not been able to obtain evidence necessary for them to appeal the trustee's decision on their claim.
- [3] They are supported in this application by Daljit Garcha and Jaswinder Garcha. The trustee and Raveen and Parmjit Sangha oppose the application.

Discussion

- [4] On November 17, 2015 I was appointed case management judge of a number of related actions:

0731431 B.C. v. Panorama Parkview Homes Ltd. [VA S142529] - Lead case

Virk v. Sangha [NW S159687]

Sidhu v. 690174 B.C. Ltd. [VA S153116]

Sangha v. Crowe MacKay & Company Ltd. [VA B150826]

Garcha v. 690174 B.C. Ltd. [VA S151275]

0941187 B.C. Ltd. v. Sangha [VA S146611]

Heer v. Panorama Parkview Homes Ltd. [VA S157117]

Johal v. Panorama Parkview Homes Ltd. [VA S153097]

Singh v. Panorama Parkview Homes Ltd. [VA S162581]

Westminster Savings Credit Union v. 690174 B.C. Ltd. [VA H141078]

Bhandal v. Panorama Parkview Homes Ltd. [VA S157116]

B&B Contracting Ltd. v. 690174 B.C. Ltd. [NW S169988]

The various actions related to property development undertaken by Mr. Jaswant Singh Sangha and his companies, Panorama Parkview Homes Ltd., 690174 B.C. Ltd. and 927613 B.C. Ltd. I understood that the Grewal Applicants had an application before Mr. Justice Bowden to annul the bankruptcy and that they be permitted to continue proceedings against Mr. Sangha.

[5] On February 19, 2016 Mr. Justice Bowden released his decision dismissing the application for annulment and refusing to lift the automatic stay of proceedings under s. 69.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (BIA). The Grewal Applicants then appealed to the Court of Appeal.

[6] On April 8, 2016 the trustee and the Grewal Applicants entered a consent order in the Court of Appeal. It was my understanding that Madam Justice Kirkpatrick encouraged the parties in the Court of Appeal to reach a resolution. I have been provided with a transcript of that hearing where Madam Justice Kirkpatrick says:

it occurs to me that potentially the sensible solution to this problem that's thrown up is to permit - - and I preface this by saying I don't know the commercial interests of the parties at all and clearly counsel do, but it occurs to me that one solution might be to permit the Grewal Applicants to continue the litigation against Mr. Sangha and his related companies, and the bankruptcy continue unimpeded by a stay, and whatever protective things need to be put in place either by the applicants or by the trustee can be articulated, but in the meantime Grewal and Associates can pursue their litigation.

[7] After the court's intervention, as I say, the parties entered a consent order. Madam Justice Kirkpatrick said:

Well I think the order could be made - - well, it may not even require an order of this court if you both agree in the bankruptcy proceedings before Madam Justice Brown that the stay against the Grewal Applicants be lifted for the purposes of continuing their litigation Alternatively, an order could be made in this court

[8] Before me, as case management judge, the parties to the various actions appeared and a number of matters were dealt with, including: the sales of various lots that were held for development; payment of the "Virk mortgage" and certain builders lien claims; an application for an order that Mr. Sangha produce a list of documents in the Grewal litigation; an order that the Garchas be permitted to continue with their action and that the automatic stay in bankruptcy be lifted vis-à-vis them as well as the Grewal litigants.

[9] There is no dispute between the parties as to the law which applies to this application. In *Wewaykum Indian Band v. Canada*, 2003 SCC 45 [Wewaykum] the Supreme Court of Canada defined bias or prejudice at para. 58 as:

a leaning, inclination, bent or predisposition toward one side or another for a particular result. In its application to legal proceedings, it represents a predisposition to decide an issue or cause in a certain way which does not lead the judicial mind perfectly open to conviction. Bias is a condition or state of mind which sways judgment and renders a judicial officer unable to exercise his or her functions impartially in a particular case.

[10] The presumption of judicial impartiality carries considerable weight. To disqualify a judge there must be a reasonable apprehension of bias. At para. 60 of *Wewaykum*, the Supreme Court of Canada quotes from Grandpré J.'s definition of a reasonable apprehension of bias in *Committee for Justice and Liberty v. National Energy Board* at p. 394, which he describes as one:

held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is 'What would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously would not decide fairly'.

[11] Disqualification is the inevitable result if the party establishes that reasonable right minded and properly informed persons would apprehend bias. A judge may be disqualified because he appeared to favour one party's position (*Stuart Budd & Sons Limited. v. IFS Vehicle Distributors ULC*, 2016 ONCA 60 at paras. 54 to 69).

[12] The comments and conduct said to result in the reasonable apprehension of bias must be considered in the entire context of the proceedings.

[13] The applicants argue that the conduct complained of, individually and collectively, results in a reasonable apprehension of bias.

[14] I will first address the issues complained of on an individual basis.

1. In my reasons for judgment of October 4, 2016 on the application of the Garcha Plaintiffs to proceed with their lawsuit I made comments which a reasonable, well-informed person would interpret as an inclination or predisposition to favour the suitability of the bankruptcy proceedings. The applicants say that my comments in those reasons were dicta and this is in part the reason for concluding that I show bias.

[15] In my reasons I said:

[29] The Garcha's are amongst several claimants to the assets of Mr. Sangha, 690 and Panorama. There are numerous claimants with various and overlapping claims to a limited number of assets. This is a circumstance to which the Bankruptcy and Insolvency Act and its proposal provisions are ideally suited. As the court said in *Stone Sapphire Ltd. v. Trans-Global Communications Group*, 2008 ABQB 398 at paragraphs 40 to 41

40 One of the objects of the BIA is to provide that all creditors of the same class are treated equally, and that an "orderly distribution" is made, with creditors ranking *pari passu*. The statutory stay of proceedings achieves that by preventing one creditor from taking proceedings or steps which may give it an unfair advantage relative to the other creditors: *Holden & Moawetz*, *Annotated Bankruptcy and Insolvency Law of Canada* (3d) Vol. II.

41 Further the stay of proceedings allows a debtor such as Transglobal the breathing room necessary to focus its efforts to the reorganization of its debts and the making of a proposal for the benefit of all creditors, rather than expending its time and efforts to respond to formal court proceedings of one particular creditor, to the detriment of its other stakeholders.

[30] As well, in *re: Bischke*, 2011 ABQB 422 the court said: "the stay prevents creditors from trying to jump to the front of the line by collecting for themselves only. It saves time and money by avoiding multiple seizures and other collection efforts."

[31] I would not be inclined to lift the stay to permit the Garcha's to pursue their claims until the trustee has an opportunity to present a proposal or to assess the claims of the various claimants. However, in this case, the trustee has entered a consent arrangement with one of the group of creditors, the Grewal creditors which permits them to advance their litigation. It would be inequitable if the Grewal litigants advance claims to specific assets while the Garcha defendants are precluded from doing so.

[16] I do not agree with the applicants that these words constitute dicta or demonstrate bias on my part. As they concede in their submissions, the principle of law is well recognized. Nor is the statement dicta. I am responding to a particular argument made by the trustee and explaining why in the circumstances, although it is a recognized principle of law, I am not acceding to the trustee's argument. It does not indicate that I am biased in favour of bankruptcy proceedings. Indeed, I lifted the stay with respect to the Garcha Applicants.

2. The applicants say they had the only scheduled application on November 16, 2016, an application to lift the stay of proceedings against the corporate defendants in action S142529, but I did not proceed with that application and instead permitted counsel for the trustee to use almost all of the available court time.

[17] There is some dispute between the parties as to the purpose of November 16, 2016 hearing before me. It shows in the Supreme Court scheduling system as a case planning conference. That system also shows that a notice of case planning conference was filed November 7, 2016. Whether it was a case planning conference or a scheduled hearing for their application, the essence of the complaint made by the Grewal Applicants is that I, as case

management judge, gave priority to other matters over their application to lift the stay against the corporate defendants. They say that this demonstrates bias against them and in favour of the trustee.

- [18] Again, I do not accept this suggestion. The essence of the case management judge's role is to determine which applications can proceed at which particular times. Necessarily, certain applications precede others. All parties will not necessarily be happy with the case management judge's assessment of which applications should precede others.
3. The Grewal Defendants say that their application has not been granted appropriate priority and a hearing date by me as case management judge.
- [19] Scheduling further dates has been pre-empted by this application. I had asked the parties to obtain other dates for the hearings that remain outstanding. This application was agreed to be the most urgent of the remaining matters and hence this application took place on February 6, 2017.
4. The applicants say that at the hearing on January 4, 2017 I made comments to indicate that I had been pushing for resolution of all disputes within the context of the bankruptcy proceedings. This together with other comments led the applicants to conclude that I had an inclination or predisposition to favour the position of the trustee.
- [20] On this point, the applicants mischaracterize what I have said. It is correct that at the November 16, 2016 case planning conference, I urged the parties to consider a resolution of the matters outside of litigation. My intention was to communicate to all parties, including the trustee, the benefits of settlement rather than litigation.
- [21] On January 4, 2017 Mr. Rajpreet Singh Sangha appeared with an application to have the trustee, trustee's counsel, the inspectors and me removed from the matter. As I understood it, he had given his materials to the trustee the night before. The trustee was not prepared to proceed with Mr. Sangha's application. Moreover, the January 4 date had been set to deal with the application for fees for the trustee and trustee's counsel. In urging me to hear his application, Mr. Sangha made various submissions, including these:

if the trustee sees that there is a large amount of money that he can make, he will put you into bankruptcy. He will not try to find other avenues that he can go down to maybe resolve it. At the end of the day all the trustee cares about is the final payout that he's going to get.

[Emphasis added.]

[22] In response to this submission I said:

Your third complaint is that the process that has been undertaken does not address resolution - in anything other than continuing in court. It's my understanding - and I have been pushing - to try and get a resolution that does not see everybody wasting their money in court.

- [23] Although the applicants argue that Mr. Sangha did not make submissions with respect to resolution outside of litigation, that is my understanding of his words as quoted above and that was the reason that I made reference to my earlier comments encouraging the parties to try and resolve the matter without litigation. Again, in my view this is not dicta, it is responsive to Mr. Sangha's submissions and does not suggest a particular resolution. Rather, I am urging all parties, including the trustee, to try to resolve the matter rather than incur the expense of ongoing litigation. I am not suggesting that it needs to be resolved within the bankruptcy process. I also view encouraging the parties to consider settlement as an appropriate role for a case management judge.
5. The applicants argue that a hearing date was scheduled for January 24, 2017 to hear the parties regarding the form of appeals which had been taken from the decisions made by the trustee in bankruptcy. The applicants say their fundamental position on the hearing is that the Court should not permit the appeals to proceed at all until the issues in their actions have been resolved by the Court. They also say that because other applications have been scheduled ahead of their application to lift the stay against the corporate defendants, they are not in a position to properly respond to the trustee's decision on their claim.
- [24] I would expect these submissions to be made on the application with respect to the form of the appeals. In other words, I would expect them to argue at that hearing that the appeal should not proceed for the reasons they suggest. I do not see this as evidence of bias because it has not yet been argued before me.
6. The applicants say that I failed to appreciate or give weight to the order of the Court of Appeal which permitted them to proceed with their litigation.
- [25] Again, it is not that I failed to recognize or give weight to the order of the Court of Appeal. Rather, it is that I have determined scheduling of hearings in a manner different from that that they wished. That is the essence of case management. The various matters were referred to case management in part to determine which of the applications should properly proceed before others. That I did so is not evidence of bias.
7. The Garcha Defendants say that I have at various times demonstrated a clear bias in favour of bankruptcy proceedings.
- [26] This statement is unhelpful because I cannot address the essence of their complaint. I do not know which particular words they say lead to this conclusion. However, as with the Grewals, the Garchas are dissatisfied with the amount of time it is taking to get their application to lift the stay against the corporate defendants heard. They say they are harmed by this delay. That I have determined other applications take priority over theirs is not evidence of bias.

- [27] In summary, it is my view that a reasonable person properly informed and considering these matters as a whole would not conclude that my conduct, my reasons for judgment, or the manner in which I have scheduled the various applications before me individually or collectively demonstrates bias.
- [28] The application is dismissed.
- [29] However, as I have indicated to the parties in the various case planning conferences before me, I am concerned that my schedule is too fully booked to permit the various applications on this and related matters to be heard in a reasonable period of time. Accordingly, I am requesting that the Chief Justice assign a different judge as case management judge over these matters, one who will hopefully have more time available in his or her schedule than I do to address the matters that need to be addressed.
- [30] Finally, the trustee seeks costs from the applicants. I am not in a position to determine costs at this point in time. I would require further information which I anticipate would be forthcoming on the application to remove the trustee and inspectors from the estate in bankruptcy. In any event, I will leave this matter to be addressed by the subsequent case management judge.

"B. J. Brown J."

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