

CANADA / JUDGMENT

Sangha v. Sangha

2021 BCSC 2145

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Supreme Court of British Columbia

DECIDED

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2021 BCSC 2145 Sangha v. Sangha

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sangha v. Sangha,

2021 BCSC 2145

Date: 20211103

Docket: E9598

Registry: Quesnel

Between:

Dalbir Singh Sangha

Claimant

And

Amarjit Kaur Sangha

Respondent

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

Counsel for the Claimant, appearing via teleconference:

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J.R. Shewfelt

Place and Date of Hearing:

Prince George, B.C.

October 1, 2021

Place and Date of Judgment:

Quesnel, B.C.

November 3, 2021

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I. Introduction

- [1] This matrimonial action has taken many unusual turns since it was first commenced in 1999 and the latest chapter is no exception. The parties believe that they have finally settled their dispute but there remains one piece of unfinished business that brings them back to court again. At issue in the competing applications before the court today is the question of how former counsel for Ms. Sangha is going to be paid.
- [2] This is not the first time that the parties believed their dispute to have been settled. The first time that occurred, in 2006, the settlement did not last because it later emerged in separate litigation that Mr. Sangha had, at the time, fraudulently concealed his most valuable assets.

- [3] After the concealment was brought to her attention, Ms. Sangha approached a lawyer, John Shewfelt of Miller Thomson LLP ("MTL"), seeking his assistance in recovering what she was owed. In March 2013, Ms. Sangha signed a retainer agreement that included, among other things, provision for legal fees to be paid according to a formula that depended, in part, on the success that MTL achieved on her behalf.
- [4] The trial of Ms. Sangha's renewed claim against Mr. Sangha took place before me between October 30 and November 3, 2017. In my decision dated December 12, 2017 and indexed as 2017 BCSC 2289, I granted judgment in favour of Ms. Sangha. I ordered Mr. Sangha to pay her, among other things, \$1,263,000 on a schedule that was supposed to have seen the entire payment made within one year. I also granted Ms. Sangha a charge over Mr. Sangha's minority stake in two family-owned companies to secure that payment.
- [5] In a subsequent ruling (indexed as 2018 BCSC 731), I ordered, among other things, that Mr. Sangha deliver the affected share certificates to Mr. Shewfelt's office. Mr. Shewfelt was to hold the share certificates for the purpose of perfecting Ms. Sangha's security interest in them. They have remained in Mr. Shewfelt's possession since then.
- [6] Until very recently, no part of the judgment had been paid. MTL, still unpaid itself, has repeatedly sought instructions from Ms. Sangha to realise on the security that it has been holding on her behalf with a view to forcing Mr. Sangha to pay the judgment. Ms. Sangha has refused to provide those instructions. Instead, she and Mr. Sangha eventually negotiated a tentative settlement on their own, without the involvement of MTL.
- [7] MTL formed the view that Ms. Sangha's refusal to follow its advice was attributable to undue influence exercised by either Mr. Sangha, the parties' adult son or both. MTL decided to take matters into its own hands and filed the first of the applications that, in its amended form, is before the court today. Subsequent events (as described in the next paragraph) have narrowed the scope of the relief that MTL seeks, which is now confined to the following items:
- a) a declaration that MTL holds a charge pursuant to s. 79 of the Legal Profession Act, S.B.C. 1998, c. 9 [LPA] over Ms. Sangha's interest in the judgment and any property transferred or money paid to her as a result of it, to secure payment of MTL's accounts; and
 - b) an order appointing MTL as receiver over that property, with the power to enforce the judgment and realise on the security in its own name, to the extent necessary to see its accounts paid (on the condition that MTL will hold what it recovers pending determination of the amount owing by way of a review under s. 70 of the LPA or by agreement).
- [8] While MTL's application was pending, Ms. Sangha, through her new counsel, formally terminated her retainer with MTL by letter dated June 16, 2021. The letter also directed MTL to negotiate directly with Mr. Sangha's counsel, Mr. Christiansen, for payment of its accounts. On the first day of the hearing, Ms. Sangha waived privilege over her communications with MTL.

- [9] MTL's application is opposed by both Ms. Sangha and Mr. Sangha on various grounds.
- [10] First, they say that MTL must respect Ms. Sangha's instructions and refrain from taking any steps to realise on the judgment by selling the shares. Neither of them wishes to see the shares disposed of for less than their true value in a fire sale. They say that allowing MTL to enforce the judgment in its own name as proposed would delay and complicate the tentative settlement they have reached.
- [11] Second, they say that MTL has consistently refused to render an account, despite their demands. They say that the amount they understand to be claimed, \$457,228.40, is exorbitant given the nature of the work that was done. Ms. Sangha asserts that the terms of the retainer agreement are unfair to her and should not be enforced against her because, among other things, they were never properly explained to her and she did not agree to them. All of this requires that the accounts be reviewed before any further step is taken, it is argued. Mr. and Ms. Sangha say that the relief sought by MTL is unnecessary because MTL will be paid once its accounts are reviewed.
- [12] In further response to MTL's application, Mr. Sangha has brought a competing application of his own, supported by Ms. Sangha, seeking the following relief:
- a) an order directing a transfer of the funds in Mr. Sangha's registered retirement savings plan ("RRSP") accounts, having a collective value of approximately \$522,843.32, to Ms. Sangha by way of spousal rollover, on the basis that 90% of that value will be applied to reduce his outstanding judgment debt (this aspect of the application was unopposed and therefore granted during the hearing);
 - b) an order that the transfer referred to in the preceding paragraph occur free of any charge in favour of MTL;
 - c) an order directing that MTL's accounts be reviewed by a registrar pursuant to s. 79(3) of the LPA;
 - d) an order enjoining MTL from taking any steps to seek payment of their accounts, other than the review referred to in the previous paragraph, without further order of the court;
 - e) to vary my previous order granting Ms. Sangha a charge over Mr. Sangha's shares by substituting as collateral the shares of an affiliate; and
 - f) leave to seek further directions.
- [13] MTL opposes all of the relief sought by Mr. Sangha (other than the first item, which I have already granted). It argues that Mr. Sangha lacks standing to seek such relief and indeed that he ought not to be heard on either application, given that he is in contempt of my trial order. MTL is prepared to receive the share certificates of the affiliate as additional collateral, rather than in substitution for those it already holds.

[14] For the reasons that follow, I have concluded that both applications should be allowed in part.

II. Discussion

A. Does Mr. Sangha have standing?

[15] MTL argues that Mr. Sangha lacks standing both to oppose its application and to seek the contentious relief enumerated in his own.

[16] I am satisfied that Mr. Sangha has a sufficiently direct interest in the subject matter of both applications to afford him standing. That interest arises by virtue of the following:

- a) the nature of the relief sought, including the appointment of a receiver with power to sell his shares forthwith;
- b) the parties' stated belief that they have now settled their dispute, at least as between themselves; and
- c) Ms. Sangha's stated position that MTL should now look to Mr. Sangha for payment of its accounts.

[17] In any event, as a practical matter, little turns on the question of Mr. Sangha's standing because his position is echoed in every respect by Ms. Sangha, whose standing on all matters is beyond question.

[18] As for Mr. Sangha's failure to comply with my order of December 12, 2017, there has been no finding that he is in contempt of that order and none is sought. Mr. Sangha says that he has been unable to pay the judgment to date because he has no ready access to cash, despite his substantial net worth. While I agree with MTL that his assertions in that regard must be viewed with considerable skepticism given the history of this matter, the parties themselves now consider the dispute between them to be settled, including by way of the partial payment that I have just ordered. In these circumstances, the fact that the face amount of the judgment remains mostly unpaid should not preclude Mr. Sangha from addressing the issues that are now before the court.

[19] For those reasons, I am satisfied that Mr. Sangha has the requisite standing to oppose the relief sought by MTL and to seek the relief that he does in his own application.

B. MTL's Application

[20] MTL seeks the court's recognition of a charge under s. 79 of the LPA, which states in relevant part as follows:

Lawyer's right to costs out of property recovered

79 (1) A lawyer who is retained to prosecute or defend a proceeding in a court or before a tribunal has a charge against any property that is recovered or preserved as a result of the proceeding for the proper fees, charges and disbursements of or in relation to the proceeding, including counsel fees.

(3) The court that heard the proceeding or in which the proceeding is pending may order the review and payment of the fees, charges and disbursements out of the property as that court considers appropriate.

(7) A proceeding for the purpose of realizing or enforcing a charge arising under this section may not be taken until after application has been made to the appropriate court for directions.

[21] The test to be applied in determining whether to recognise such a charge was recently summarised by Willcock J.A., writing for the Court, in 625536 B.C. Ltd. v. Fulton & Company LLP, 2019 BCCA 397 [Fulton & Company]. As set out in Chouinard v. I.C.B.C. et al, 2002 BCSC 655, in order to qualify for such relief, the solicitor must, as a preliminary matter, demonstrate that:

- a) the solicitor was retained in the matter;
- b) the solicitor will not be paid unless the charge is recognised; and
- c) property was recovered or preserved as a result of the solicitor's work in the proceeding.

[22] Assuming those prerequisites are met, the court must next determine whether it would be "just and proper" to recognise the charge: *FitzGibbon v. Ma*, 2011 BCSC 1854, *aff'd sub nom. FitzGibbon v. Piters*, 2012 BCCA 269 at para. 32. In exercising that discretion, the court is directed to consider "all the circumstances relevant to the equities of the situation": *Fulton & Company*, at para. 20.

[23] With respect to the first prerequisite (the fact of the retainer), it is not disputed that Ms. Sangha entered into a retainer agreement dated March 11, 2013. The retainer agreement was approved by this court on April 5, 2013. Ms. Sangha has conceded as much in her application response, although she argues that its terms should not be enforceable against her for various reasons. I am satisfied that the first prerequisite has been met, inasmuch as MTL was duly retained in this matter.

[24] The third prerequisite (that property was recovered as a result of MTL's work in the proceeding) is likewise not seriously contested. It is clear that, through MTL's work on Ms. Sangha's behalf, Ms. Sangha obtained both the judgment and her interest in the collateral that MTL now holds for her to secure payment.

[25] The second prerequisite (as to the necessity for the charge) is more contentious.

[26] MTL has reproduced and relies in this regard primarily upon a financial statement filed by Ms. Sangha in this action in 2016. The financial statement suggests that, at that time at least, she would not have had the means to pay MTL's accounts. There is no evidence before me to suggest that her financial position has improved substantially since then.

[27] Nevertheless, in her response to MTL's application, Ms. Sangha denies that there is a risk that MTL will be left unpaid. On the contrary, she asserts that:

At no time was there a risk to Mr. Shewfelt not receiving the outstanding legal fees as [Ms.] Sangha has on numerous occasions asked Mr. Shewfelt to render his accounts so she is able to pay the outstanding fees or get them reviewed as per her right.

[Ms.] Sangha has repeatedly asked for Mr. Shewfelt to have his accounts rendered so she can proceed to pay the accounts and/or have them reviewed however, this has not been provided to Ms. Sangha.

[28] The mere fact that Ms. Sangha seeks to have the accounts reviewed before paying them is not to be taken as evidence of her inability or unwillingness to pay. In *Fulton & Company*, the Court of Appeal ultimately reversed an order recognising a charge of this kind for precisely that reason. Justice Willcock explained the Court's conclusion in that regard as follows:

[42] In the case at bar, the judge concluded the disputed accounts would not be paid without a charging order, for five reasons. The first four reasons (the falling out of the parties, the long delay in payment, the fact the accounts were not paid when one long standing dispute was settled thus freeing up funds, and the fact the client had not pressed the Registrar to review the accounts) all related to the client's unwillingness to pay the accounts before the Registrar's review. The last factor is of questionable significance, given the fact the solicitors could themselves have set the review for hearing. In any event, I agree with and adopt the view expressed by the Ontario Court of Appeal in *Weenen [v. Biadi, 2018 ONCA 288]*, at para. 25, that the fact a client contests the amount that is owed, pending the Registrar's review, is not evidence of inability or unwillingness to pay. That being the case, the judge placed significant weight upon a consideration that should have been irrelevant to the exercise of the discretion.

[Emphasis added.]

[29] MTL's concern about getting paid does not flow exclusively or even primarily from Ms. Sangha's insistence on a review, however. Rather, the evidence suggests that Ms. Sangha will only be in a position to pay MTL's accounts using a portion of the money that she recovers from Mr. Sangha on the judgment. Recognising this, Ms. Sangha says that she will pay MTL once the tentative settlement she has reached with Mr. Sangha is implemented.

- [30] The difficulty I have with that submission is that the property that Mr. Sangha has agreed to transfer to Ms. Sangha in partial satisfaction of the judgment (namely, the contents of his RRSP accounts and an encumbered piece of real property said to be worth approximately \$350,000, with a promise that Mr. Sangha will continue to make the mortgage payments on her behalf), cannot readily be converted into cash.
- [31] This leaves what appears to be Ms. Sangha's primary answer to this dilemma, which is that MTL can look to Mr. Sangha for payment as part of their settlement. In an effort to demonstrate that he can and will make that payment on her behalf, Mr. Sangha says that he has deposited \$125,000 into his counsel's trust account for the purpose of funding a settlement with MTL.
- [32] Even assuming those funds are and will remain available for that purpose, however, MTL claims to be owed substantially more than that. Mr. Sangha's failure to comply with my trial order therefore looms large in this context. His efforts to explain that failure merely add fuel to the fire. In one of the affidavits adduced for this hearing, for example, his explanation was as follows:
- I have a net worth sufficient to satisfy the judgment of [Ms.] Sangha against me but most of my net worth is tied up in assets which are difficult to raise funds against.
- [33] In another, the following explanation was offered:
- I have tried to borrow money so that I can use it to partly satisfy [Ms. Sangha]'s judgment but the existence of the trial judgment has the result that banks refuse to lend to me.
- [34] In light of that evidence, coupled with the inference I draw that Mr. Sangha would have shown no interest in paying MTL's accounts had MTL not been holding security of value to him, I am satisfied that MTL has demonstrated that it will not be paid in the absence of a charge.
- [35] Having found all three of the prerequisites to be met, what remains to be decided is whether it is "just and proper" to make the declaration sought.
- [36] MTL currently holds Mr. Sangha's share certificates on behalf of Ms. Sangha but it no longer acts for her. MTL requires a charge so that it can now hold them to secure its own position. The arguments advanced by Mr. and Ms. Sangha in opposing MTL's application are directed primarily at the issue of whether a sale of those shares should be allowed to occur at the present time. Those arguments do not undermine the equitable foundation for a charge, however. I have therefore concluded that the charge should be recognised on the terms sought by MTL.

- [37] I have reached a different conclusion with respect to the receivership application. Although the concerns raised by Mr. and Ms. Sangha do not undermine the case for a charge, they do justify delaying any receivership until after MTL's accounts have been reviewed by a registrar and Ms. Sangha (or Mr. Sangha, as the case may be) has been given a reasonable opportunity to pay the amount that is found to be owed.
- [38] I am therefore not prepared to accede at this time to MTL's request for authority to sell the shares and hold the proceeds pending the review. The more just result is to adjourn the receivership application until after the registrar's review has taken place and the resulting certificate remains unpaid after a reasonable time.

C. Mr. Sangha's Application

Should the funds transferred into Ms. Sangha's RRSP account be exempt from the charge?

- [39] Mr. and Ms. Sangha argue that the funds that have been transferred into Ms. Sangha's RRSP account in partial payment of the judgment are exempt from seizure by MTL or anyone else by virtue of s. 71.3 of the Court Order Enforcement Act, R.S.B.C. 1996, c. 78 [COFA] and therefore cannot be covered by the charge. MTL disagrees. It argues that those funds fit within the broad definition of "property" recovered through its efforts and are therefore covered by the charge, regardless of that provision.
- [40] Subsection 71.3(2) of the COFA states that, "despite any other enactment, all property in a registered plan is exempt from any enforcement process". The term "enforcement process" is defined in s. 71.3(1) to mean:
- (a) attachment,
 - (b) garnishment,
 - (c) execution,
 - (d) seizure, or
 - (e) any other remedy or legal process to enforce payment of a debt
- [41] I accept that the imposition of a charge under s. 79 of the LPA is a "remedy or legal process to enforce payment of a debt." Nevertheless, pursuant to s. 71.3(3), s. 71.3(2) does not apply:
- (a) to property contributed to a registered plan after or within 12 months before the date on which the debt being enforced came due
- [42] Assuming that Ms. Sangha's indebtedness to MTL comes due within 12 months following the transfer, the exemption created by s. 71.3(2) will not apply. For that reason, I am not persuaded that the funds that have been transferred into Ms. Sangha's RRSP are necessarily exempt from the charge by operation of the COFA.

[43] Second, Mr. and Ms. Sangha argue that MTL is, in any event, adequately secured with the collateral that it already holds. I am not persuaded that is so. The value that may be realised from a sale of the shares that MTL holds remains to be seen.

[44] For those reasons, I am refusing to grant an order exempting the funds transferred into Ms. Sangha's RRSP from the charge.

Should MTL's collection efforts be halted pending the outcome of the registrar's review?

[45] For the reasons set out above, I have already concluded that this relief should be granted.

Should my previous order be varied to substitute different collateral?

[46] I have found that MTL is entitled to a charge over the property that it has recovered for Ms. Sangha through its work on her behalf, which includes Ms. Sangha's charge over the share certificates that MTL currently holds. I am not persuaded that MTL can properly be required, without its consent, to relinquish its right to that security, even if a more convenient alternative, said to be of comparable or even higher value, is proffered in its place.

[47] I am therefore refusing to make any such order.

III. Conclusion

[48] MTL's application for a declaration recognising a charge under s. 79 of the LPA is allowed on the terms sought.

[49] MTL's application to be appointed as receiver is adjourned pending:

- a) delivery of its bill, which MTL is to deliver to Ms. Sangha or her counsel within 30 days; and
- b) review of the bill before a registrar under s. 79(3) of the LPA, which the parties are to arrange forthwith upon delivery of the bill.

[50] Mr. Sangha's application for an order enjoining MTL from taking any further steps to collect on its accounts pending the outcome of that review is allowed.

[51] The remainder of the relief sought on both applications is refused.

[52] As success was divided, the parties will bear their own costs.

"Milman J."

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