

CANADA / JUDGMENT

Shergill v. Bains

2025 BCSC 1901

COURT

Supreme Court of British Columbia

DECIDED

2 October 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 1901 Shergill v. Bains

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Shergill v. Bains,

2025 BCSC 1901

Date: 20251002

Docket: S230264

Registry: New Westminster

Between:

Kuldip Kaur Shergill and Zorawar Singh Shergill

Plaintiffs

And

Talwinder Singh Bains, Gurjit Singh Bains and

Her Majesty The Queen in Right of the Province of British Columbia

Defendants

And

The Estate of Gurdial Singh Shergill

Defendant by Counterclaim

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

Counsel for the Plaintiffs and Defendant by Counterclaim:

D.E. Turner

B. Tsui

Counsel for the Defendants:

J. Malik

M. Naimi

Place and Date of Trial/Hearing:

New Westminster, B.C.

June 10 - 13, and 17-21, 2024

Place and Date of Judgment:

New Westminster, B.C.

October 2, 2025

Table of Contents

Procedural History. 3

Background.. 4

Evidence. 5

Deposit Payments to the Shergills in 2018. 7

Financing Issues experienced by Mr. Bains. 7

January 9, 2019, Meeting. 8

January 23, 2019, Meeting. 10

Telephone Call on March 15, 2019. 11

March 15, 2019 Meeting. 11

May 30, 2019 Accounting Agreement 11

The Mortgage. 12

Health issues for Mr. Shergill 13

Defendant's election to call no evidence. 13

Jaspreet Gill 14

Harjit Singh Billen. 14

Amrik Mattoo. 15

Expert evidence. 16

Analysis. 17

Credibility. 17

Hearsay Evidence. 18

Validity of the Mortgage. 19

Conclusion.. 20

- [1] This case began as a standard foreclosure petition on a large property in Langley, B.C. (the "Property"). The Property has a house on the land (the "Home"). The Home was originally constructed by the late Gurdial Singh Shergill ("Mr. Shergill"). Mr. Shergill was the husband of the petitioner, Kuldip Kaur Shergill ("Mrs. Shergill"), and the father of Zorawar Singh Shergill ("Zorawar"). Mr. Shergill passed away in May of 2020. Collectively, I will refer to the Shergill family as the "Shergills". The Shergills are the original petitioners, now the plaintiffs, and the defendants by counterclaim. I may also refer to them as the "plaintiffs".
- [2] The Shergills are seeking to foreclose on a mortgage they granted to Talwinder Singh Bains ("Mr. Bains") and his son Gurjit Singh Bains ("Gurjit"), who purchased the Property in 2019. I will refer to the Bains family collectively as the "Bains". The Bains are the respondents to the original petition, and now are the defendants, and the plaintiffs by counterclaim. I may also refer to them as the "defendants".

Procedural History

- [3] The procedural history of this case is described in the Reasons for Judgement of Justice Wilkinson, 2022 BCSC 1363, at paras. 4-11 and 21-28, in which the Court referred the petition to the trial list, and that the petition and response would stand as the notice of civil claim and response to civil claim. That Court also ordered that this file should be joined with New Westminster Supreme Court Claim No. S241258 such that the respondents' notice of civil claim will stand as a counterclaim to the converted petition.
- [4] On August 18, 2020, the Shergills filed a petition seeking repayment of a mortgage on the Property.
- [5] On or about September 1, 2020, counsel for the Bains advised that they would be seeking a referral to the trial list.
- [6] On October 28, 2021, the Bains filed a notice of civil claim against the Shergills and the Estate of Mr. Shergill, seeking a discharge of the mortgage due to lack of consideration, and an order that alleged loans made to the Shergills by the Bains be repaid.

- [7] A hearing of the Shergills' petition was held on April 21, 2022, and May 20, 2022. At this hearing, based on their evidence, the Shergills asserted that the Bains purchased the Property for \$3,900,000 (the "Purchase Price") in accordance with the terms of a handwritten agreement (the "Handwritten Agreement"). The Shergills gave evidence that the Bains could only finance \$2,400,000 towards the Purchase Price, so a vendor takeback mortgage was granted for the remaining amount of \$1,400,000 (the "Mortgage"). The Mortgage was then registered against the Property in consideration for the unpaid portion of the Purchase Price.
- [8] On August 12, 2022, Wilkinson J. referred the matter to the trial list. In doing so, the following orders were made:
- a. The Shergills' petition was to stand as the notice of civil claim;
 - b. The Bains' response to petition was to stand as the response to civil claim;
 - c. The Bains' notice of civil claim in the New Westminster action was to stand as the counterclaim; and
 - d. The Shergills' response to the civil claim in the New Westminster action was to stand as the response to counterclaim.

Background

- [9] The Shergills sold the Property to the Bains in 2019. The sale was evidenced by the Handwritten Agreement dated January 8, 2019. That document was drafted by Gurpreet Bains ("Gurpreet"), the eldest son of Mr. Bains, in the presence of Zorawar and was marked as Exhibit 42 at trial.
- [10] The terms of the Handwritten Agreement set forth the parties, the Purchase Price of \$3,900,000, with a deposit of \$800,000, leaving a balance of \$3.1 million dollars to be paid by Mr. Bains. The Handwritten Agreement was signed by Mr. Shergill with the consent of Mrs. Shergill and was also signed by Mr. Bains and two other witnesses.
- [11] One of the witnesses was Mr. Bains' father-in-law, Nirmal Singh Dhillon, and another individual who was a friend of both families, named Harjit Singh Billen, the coach of a neighbourhood wrestling club. Zorawar was present and witnessed the Handwritten Agreement.
- [12] A subsequent agreement, dated January 23, 2019, deals with the interest payable on the remaining balance of the Purchase Price (the "Interest Agreement"). The Interest Agreement also confirms the Purchase Price for the Property was \$3,900,000. The Interest Agreement was signed two weeks after the Handwritten Agreement and the contract of purchase and sale ("CPS"). The CPS was an example of vendor financing, where the Shergills would receive \$2.4 million on closing and the balance over time. The CPS was prepared by the notary acting for the Bains.

- [13] Mr. Bains acknowledged signing the Handwritten Agreement but thereafter began providing a number of excuses as to why the Handwritten Agreement was not binding, notwithstanding he had taken possession of the Property. Mr. Bains purported to resile from the Handwritten Agreement for a few reasons, however, none of these explanations were supported in the evidence by the defendants as none of the defendants, nor anyone on their behalf, gave evidence at trial.
- [14] After the execution of the transfer documents for the Property, and the initial closing of that transaction, the Bains were making regular payments on the Mortgage on the Property. Following the death of Mr. Shergill, the Bains stopped making payments on the Mortgage and have been sued for the amount remaining owing on the Purchase Price.

Evidence

- [15] Both Mrs. Shergill and Zorawar testified for the plaintiffs. Mrs. Shergill testified that she was aware that the Property was listed on the market in 2016. She was told by Mr. Shergill that the Bains family was interested in purchasing the Property in 2018, and she attended several meetings where members of the Bains family came to inspect the Property. According to Mrs. Shergill, Mr. Shergill kept her apprised of the negotiations for the Property and she was advised that an initial purchase price of \$4,000,000 was agreed to and then reduced to \$3,900,000.
- [16] She recalled the meeting on January 9, 2019, where Mr. and Mrs. Bains with their children as well as Mr. Billen, Mr. Dhillon, and another family friend, Mr. Garcha, attended and inspected the Property.
- [17] Mr. Shergill had Zorawar attend all of the meetings with the Bains family concerning the purchase of the Property.
- [18] Zorawar testified that the Shergills originally purchased the Property in or around 2007. His recollection was that the Home constructed on the Property cost about \$2,500,000 as Mr. Shergill required high-quality materials and finishes at approximately \$500 per square foot as well as four original painted murals on walls inside the home.
- [19] The Shergills lived at the Home from 2014 to 2019. Zorawar frankly testified that the Home included three suites, two of which were illegal. He testified that his family received approximately \$6,500 per month in rental income for the suites as well as from a workshop located on the Property.
- [20] When the Property was transferred to the defendants the rental income from the suites was paid to the defendants.
- [21] Zorawar confirmed that he and his father, Mr. Shergill, first met Mr. Bains at a youth wrestling event. In 2017, Mr. Bains expressed an interest in purchasing the Home. In 2018, Mr. Bains and his family visited the Home on several occasions with other friends. Zorawar testified that the expressed intention of the Bains family attending the Home was to

determine if it was suitable for the Bains' needs, including the potential for a family wedding. Zorawar confirmed that he was present and a witness to any and all meetings between Mr. Shergill and Mr. Bains.

- [22] After much negotiation, Mr. Shergill and Mr. Bains agreed to the Purchase Price of \$3,900,000.
- [23] On that same day, to confirm the transaction for the sale of the Property, Mr. Bains provided a \$10,000 cash deposit to Mr. Shergill, which Mr. Shergill provided to Zorawar for counting and storing.

Deposit Payments to the Shergills in 2018

- [24] As noted above, a payment of \$10,000 was made as an initial deposit by the Bains to the Shergills. That payment was followed by additional payments of:
- a) \$100,000 on October 1, 2018;
 - b) \$390,000 on November 5, 2018; and
 - c) \$300,000 on December 7, 2018.
- [25] Each payment was made by electronic bank transfers to the Shergill bank account.

Financing Issues experienced by Mr. Bains

- [26] Zorawar testified that his father had told him that Mr. Bains explained that he was having a problem obtaining sufficient financing to complete the purchase of the Home for \$3,900,000. Mr. Shergill told Zorawar that he suggested that while the Purchase Price of the Property would remain at \$3,900,000, a reduced price of \$2,400,000 on formal written documentation would assist Mr. Bains in obtaining the necessary financing which Mr. Bains required to complete the transaction and Mr. Bains agreed with this proposal.
- [27] This proposal was also agreed to in a meeting between Mr. and Mrs. Shergill and Mr. and Mrs. Bains, which meeting was attended and observed by Zorawar.

January 9, 2019, Meeting

- [28] Mr. and Mrs. Bains, together with their son Gurpreet, attended the Property and met with Mr. Shergill, Mrs. Shergill and Zorawar. Mr. Dhillon and Mr. Billen were also in attendance.
- [29] At this meeting, the Handwritten Agreement was prepared by Gurpreet and dated January 9, 2019, following instructions given to him by Mr. Bains and Mr. Shergill. The document set forth the Purchase Price for the Property at \$3,900,000. The document also noted that \$800,000 including the initial deposit and the 2018 deposit payments referred to above had already been paid by Mr. Bains, and that \$3,100,000 remained owing by Mr. Bains to Mr. Shergill for the purchase of the Property.

- [30] This Handwritten Agreement was marked as Exhibit 11 at trial and was identified by Zorawar during his testimony.
- [31] Zorawar also testified that after the Handwritten Agreement was completed, he observed both Mr. Shergill and Mr. Bains sign the Handwritten Agreement and that he then saw Mr. Dhillon and Mr. Billen each sign the Handwritten Agreement as witnesses.
- [32] Mrs. Shergill testified that she was not present in her husband's office when the Handwritten Agreement was signed, but was informed thereof by her husband, who had her authority to sign the Handwritten Agreement. Mrs. Shergill also testified that no discussion about subdivision of the Property occurred in her presence, and she was not advised of any plan to subdivide the Property at any time.
- [33] Subsequently that evening the notary public retained by Mr. Bains, Sushant Rai, arrived at the Property with a draft copy of the CPS on which Mr. Bains and Mr. Shergill made further amendments, before the amended document was printed for their signatures. Mr. Rai was not informed of the \$3,900,000 Purchase Price of the Property, nor was he informed of the Handwritten Agreement.
- [34] After the execution of the CPS, Zorawar testified that his parents and Mr. and Mrs. Bains signed the CPS. It was suggested in cross-examination that the \$3,900,000 Purchase Price was not agreed to by Mr. and Mrs. Bains. Zorawar testified that no time did the Bains or either of them challenge or otherwise disagree with the \$3,900,000 Purchase Price.
- [35] Zorawar testified that there was no discussion that occurred with Mr. and Mrs. Bains and his parents regarding a portion of the Purchase Price being paid upon the subdivision of the Property into a number of building lots, nor about any plans or other aspect of subdivision of the Property.
- [36] Mrs. Shergill also testified that she signed the CPS but understood little of its purpose, except that she was told the CPS was a device to allow Mr. Bains to acquire financing necessary to complete the transaction.
- [37] In addition, Zorawar testified that his father and Mr. Bains did not have a separate meeting away from himself on that occasion on January 9, 2019.
- [38] Zorawar also testified that his father did not inform him of any private conversation with Mr. Bains after January 9, 2019.
- [39] Zorawar identified the document with amendments prepared by Mr. Rai, signed by the parties, and marked as Exhibit 12 in this trial.
- [40] Shortly after the January 9, 2019, meeting, Gurjit was added as a party to the CPS in place of Mrs. Bains. This change is reflected in Exhibit 12.

- [41] Because of the late hour that the CPS was executed by the parties and some inaccuracies in the document, such as a reference to a deposit to be paid by the purchaser on or before October 30, 2018, which was a clear error, completion and possession dates were not the subject of any demand by either party for timely completion of the sale of the Property.

January 23, 2019, Meeting

- [42] On January 23, 2019, a further meeting concerning the sale of the Property was held where persons present included Zorawar, Mr. and Mrs. Shergill, Jaskarn Shergill, Mr. Bains, Mr. Garcha, Mr. Dhillon and Gurjit. At this meeting, the parties confirmed the Purchase Price for the property of \$3,900,000 together with interest that was to be paid by Mr. Bains, which was contained in the Interest Agreement (Exhibit 13 at trial).
- [43] At this meeting, Zorawar saw Mr. Bains and Mr. Shergill sign the Interest Agreement, along with Mr. Dhillon and Mr. Garcha signing as witnesses. Zorawar testified that at the January 23, 2019, meeting, Mr. Bains expressed understanding of the Interest Agreement, and there was no mention nor discussion that any part of the Purchase Price was to be paid from the sale of building lots after subdivision of the property; subdivision was not a topic discussed during the January 23, 2019, meeting. Zorawar testified that the Property was located within zoning of the Agricultural Land Reserve and that rezoning into building lots would not be permitted. It must also be remembered that Mr. Bains elected not to testify in this trial.
- [44] During the months of January and February 2019, Mr. Bains made payments to Mr. Shergill as follows:
- (a) \$100,000 on January 25, 2019;
 - (b) \$30,000 on February 5, 2019; and
 - (c) \$20,000 on February 8, 2019.
- [45] These payments were collected and listed under the signatures of Mr. Shergill and the name of Gurjit was added as a purchaser in a document marked Exhibit 12 at trial. The \$100,000 payment listed January 25, 2019, was also listed in the Statement of Agreed Facts at Exhibit 1 and referred to in Exhibit 17 at trial, a bank statement.
- [46] Mrs. Shergill testified that she was informed by Mr. Shergill that Mr. Bains had delivered \$30,000 to him at the Bains' home, and that he received an additional \$20,000 from Mr. Bains at a later point.

Telephone Call on March 15, 2019

- [47] On March 15, 2019, a telephone call between Mr. Shergill and Mr. Bains occurred. Zorawar was present with his father and heard the entire telephone conversation which was recorded by the Shergills. The recorded conversation was transcribed and translated into English by Kulvinder Kular.

- [48] Kulvinder Kular is a certified translator who confirmed his translation of the telephone conversation from the Punjabi language to the English language (Exhibit 35) and authenticated his translated transcript (Exhibit 34).
- [49] Zorawar testified that during this conversation, the Purchase Price of the Property was confirmed as \$3,900,000. It was also confirmed that Mr. Billen and Mr. Dhillon signed the documents as witnesses. At no time during the recorded conversation was there any conversation about subdivision of the Property or reduction of the Purchase Price to \$2,400,000.

March 15, 2019 Meeting

- [50] Later, on March 15, 2019, Mr. and Mrs. Shergill attended the office of Mr. Mattoo, a lawyer retained by the Bains to assist with the transaction, to sign documents necessary to register the transfer of the Property from Mr. Shergill to Mr. Bains and Gurjit.
- [51] On or around March 15, 2019, Mr. Bains paid a further \$1,500,000 to Mr. Shergill, which sum Mr. Bains received from the financing referred to above.

May 30, 2019 Accounting Agreement

- [52] A listing of amounts of money paid by Mr. Bains to Mr. Shergill for the purchase of the Property was drafted and executed by Mr. Shergill and Gurpreet on May 30, 2019. Zorawar was present while this document, marked as Exhibit 15, was drafted and executed by Mr. Shergill and Gurpreet. Exhibit 15 displayed that Mr. Bains had paid Mr. Shergill \$2,500,000 and continued to be obliged to pay a further \$1,400,000 to complete the purchase of the Property. At the same meeting, Gurpreet delivered a further \$50,000 to Mr. Shergill. This was a further document which evidenced the Purchase Price of the Property at \$3,900,000.

The Mortgage

- [53] In May 2019, the Shergill family moved out of the Property. A Form B Mortgage under the Land Title Act, RSBC 1996, c. 250, was filed at trial as Exhibit 19. The Mortgage amount corresponds exactly to the amount then owing to Mr. Shergill for the balance of the Purchase Price. As provided in Exhibit 19, the Mortgage required the payment for interest-only payments and accrued interest to be charged at 3% of the principal amount.
- [54] For some months, Mr. Bains failed to make interest payments and after persistent telephone calls by Mr. Shergill to Mr. Bains, all of which were heard by Zorawar, it was agreed the interest charged on the unpaid balance of the transaction was the prime rate plus 3%. Zorawar acknowledged that he heard the negotiations which led to the agreement by the parties that the defendants would pay interest at prime plus 3% interest on the outstanding mortgage balance. Payments were made by Mr. Bains in 2020.

[55] During the period from February 2020 up to and including May 4, 2020, Mr. Bains made payments as follows:

- (a) deposit to the Shergill joint account of \$25,000 on February 7, 2020;
- (b) a mobile deposit of \$8,000 on April 15, 2020; and
- (c) a bank transfer in the amount of \$150,000 on May 4, 2020.

[56] No evidence was led from the defendants that these payments were anything but payments owed to Mr. Shergill for the Property or the financing. The payments were recorded in Exhibits 20, 21, and 22 at trial.

Health issues for Mr. Shergill

[57] Mr. Shergill's health declined and he was hospitalized around March 30, 2020, due to a stroke. As a result of his father's declining health, Zorawar took over the responsibility for encouraging and collecting payments from Mr. Bains. Zorawar testified that he informed Mr. Bains of his father's ill health and Mr. Bains responded that Zorawar need not worry, and that he would continue to make payments faithfully. In response to questions on cross-examination, Zorawar denied that Mr. Bains protested regarding the balance due under the Mortgage, or that Mr. Bains claimed that Mr. Shergill owed any sum for loans allegedly made by Mr. Bains.

[58] Mr. Shergill passed away on May 25, 2020. Thereafter, Mr. Bains and Gurjit stopped making any payments whatsoever towards the Mortgage. Further, Zorawar determined through research that Mr. Bains had removed active real estate listings for his properties very shortly after Mr. Shergill's death.

Defendant's election to call no evidence

[59] After the close of the case for the plaintiffs, the defendants elected to call no evidence. Thus, no evidence was led of any witness by the defendants.

[60] The defendants had tendered an expert opinion report of Mr. Doolan which they intended to rely upon as an element of the case for the defendants pursuant to Rule 11-7 of the Supreme Court Civil Rules. However, the defendants elected to call no evidence when called upon by the court to call evidence. In the circumstances of the election of the defendants not to call evidence, I cannot give any weight to the report of Mr. Doolan as it ceased to be admissible when the defendants elected not to call evidence.

[61] During cross-examination it was suggested by counsel for the defendants that Mr. Shergill was without resources and therefore needed to borrow money. Nothing said by the counsel for the defendants is evidence to the effect that the plaintiff was without financial resources or that the plaintiff had sought a loan or loans from the defendants. There was no evidence suggesting the plaintiff borrowed money from the defendants. Further Zorawar denied any loan had been made by the defendant to the plaintiff. Mrs. Shergill gave the same evidence.

In addition, Zorawar was very clear that Mr. Bains had never made any statement in the presence of Zorawar to the effect that the Purchase Price for the Property of \$3,900,000 was not accurate.

Jaspreet Gill

- [62] Jaspreet Gill was a real estate agent who helped the Shergills list the Property for sale on July 4, 2016, for a Purchase Price of \$4.5 million. Eventually the listing expired. Ms. Gill described the Property as a large beautifully built home with luxurious features.
- [63] When the Property was listed for sale in 2016, Ms. Gill and her business partner in real estate had first conducted a market evaluation to compute an appropriate listing price. The price computed by Ms. Gill was \$4.5 million. Ms. Gill testified that a number of parties viewed the Property but no formal offers to purchase were received.

Harjit Singh Billen

- [64] Mr. Billen met the Bains family at a wrestling training facility when Mr. Bains brought his children there for training. Mr. Bains provided blacktop tar paving services without charge at Mr. Billen's home and also provided \$3,000 to assist the foundation of the wrestling club. Mr. Billen did not charge fees for training Mr. Bains' children in wrestling.
- [65] Mr. Billen respected Mr. Shergill, however when Mr. Bains asked Mr. Billen to sign a document in relation to this action, that request brought an end to the relationship between Mr. Billen and Mr. Shergill.
- [66] As noted above, Mr. Billen attended the Property with Mr. Bains and his family on several occasions. Mr. Billen testified that he was aware of the Bains' interest in purchasing the Property and he became aware of the agreed purchase price of \$4,000,000. Mr. Billen put forward the idea that because there was no real estate agent involved in the transaction, no commission was due to a realtor, and as a result the Purchase Price was agreed to be reduced to \$3,900,000. Mr. Billen testified that the agreement to reduce the Purchase Price occurred at a barbecue at the Shergill home.
- [67] Mr. Billen testified that he attended a meeting on January 9, 2019, at the Property where the Handwritten Agreement, drafted by Gurpreet in the presence of Mr. Billen, was subsequently executed by Mr. Bains and Mr. Shergill. Then, Mr. Billen and Mr. Dhillon also signed their signatures on the Handwritten Agreement as witnesses.
- [68] Mr. Billen also testified that Mr. Bains expressed a good deal of happiness at being able to purchase the Property and that Mr. Shergill was also happy to have sold the property to Mr. Bains.

- [69] Mr. Billen testified that there were no discussions about subdividing the Property or changing the Purchase Price, nor was there any discussion of a separate meeting between Mr. Bains and Mr. Shergill regarding the Handwritten Agreement.
- [70] Mr. Billen was aware that a notary public attended the premises shortly after the Handwritten Agreement was signed, however he had no discussion with the notary public.
- [71] According to his evidence, Mr. Billen received a telephone call from Mr. Shergill, who expressed upset that Mr. Bains was not paying interest payments. At that time, \$8,000 of interest was due and unpaid. Mr. Billen then placed a call to Mr. Bains, who denied that he was refusing to pay interest.

Amrik Mattoo

- [72] Mr. Mattoo is, as noted above, a lawyer who worked for Mr. and Mrs. Bains to complete the transfer of the Property from the Shergills. Mr. Mattoo testified that his role is set forth in Exhibit 33, a retainer letter, which he described as typical for simple conveyances where the vendor and purchaser have already signed a contract of purchase and sale, as was this case.

Expert evidence

- [73] The plaintiffs called an appraiser named Jass Saran of Saran Appraisals, an appraiser with 28 years of appraisal experience in various types of real estate including acreage and agricultural properties. He was qualified by the Court to provide expert appraisal opinions respecting properties located in the cities of Langley and Surrey, British Columbia. The expert report prepared by Mr. Saran dated July 18, 2023, set out historical value appraisals for the Property as of September 1, 2018, January 9, 2019, and July 6, 2023. His report also included an appraisal for a standalone 1210 square foot building which was located adjacent to the Home on the Property.

- [74] Mr. Saran's dated appraisals are as follows:

Date

Market Value

September 1, 2018

\$3,800,000

January 9, 2019

\$3,685,000

July 6, 2023

\$4,900,000

- [75] In his report at pages 48 and 49, three appraisal methodologies available to Mr. Saran were discussed. He concluded that the "direct comparison" approach was appropriate for the appraisal of the Property. He also explained why the "cost" approach was not appropriate, for several reasons, but most particularly that the cost approach would be unreliable due to the lack of comparable bare land properties.

Analysis

Credibility

- [76] A witness' credibility refers to their truthfulness or honesty when providing evidence. The credibility assessment involves determining whether the witness is telling the truth.
- [77] In *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, Justice Dillon outlined the legal principles to be applied when assessing witness credibility:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) [Faryna]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

[Emphasis added.]

- [78] The Court may accept some, part, or none of a witness' evidence and credibility may be determined based on a variety of factors. The Court may use "common sense and wisdom gained from observing the witness throughout the proceeding": *K.S.P. v. J.T.P.*, 2023 BCSC 1188 at para. 187. However, credibility may not be assessed using generalizations, stereotypes, or other matters not in evidence: *R v. S (R.D.)*, [1997] 3 S.C.R. 484, 1997 CanLII 324 at para. 129.
- [79] Overall, the Court must assess credibility in light of the evidence as a whole: *R.C.T. v. A.K.T.*, 2023 BCSC 654 at para. 7. Justice Crabtree in *Yang v. Duralia*, 2020 BCSC 806, summarized the analysis as follows:

[45] In summary, the assessment of a witness's credibility and reliability must include a critical assessment of the witness's evidence in the context of the evidence as a whole. This involves an assessment of whether the witness's evidence is at odds with other evidence in the case, and whether the testimony is implausible or improbable, having regard to the surrounding circumstances. The real test of the truth of the story of a witness must be its harmony with the preponderance of the probabilities, which a practical and informed person would readily recognize as reasonable in that place and in those conditions. A trier of fact must also bear in mind that an apparently honest, confident or convincing witness may not necessarily be an accurate witness.

[80] I found the Shergills to be credible and reliable witnesses. Their evidence was corroborated by other witnesses called in this trial, and by the documentary evidence filed.

Hearsay Evidence

[81] I note that there was an argument raised that much of Zorawar's evidence was hearsay.

[82] While Zorawar testified to things other individuals said and did, these were matters that he observed first-hand. Further, these observations that he testified to were often supported by documentary evidence, which Zorawar identified and authenticated in trial.

[83] In the instances where Zorawar testified to certain things said, especially by Mr. Shergill and Mr. Bains, I find that even if I were to place weight on those statements--which I need not given the availability of uncontroverted direct evidence and documentary evidence--I find that the requirements set out in *R v. Khelawon*, 2006 SCC 57, of necessity and reliability are met, and the statements would thus be admissible under the principled approach to hearsay. Mr. Shergill is deceased and unavailable to testify. Further, the circumstances are such that the contents of the conversations are supported by other witnesses as well as the documentary evidence adduced at trial.

Validity of the Mortgage

[84] The plaintiffs submitted that the Mortgage was valid and that there was a clear agreement between the parties based on the Handwritten Agreement, the Interest Agreement, and the CPS.

[85] The defendants submitted that the Mortgage was void for lack of consideration.

[86] While the Shergills did not make an advance in cash to the Bains, the real property was transferred without payment of the full amount of the Purchase Price. It cannot be said that the Mortgage was registered without consideration based only on the fact that no funds were advanced from the Shergills to the Bains. This is far too simplistic and goes against well-settled law on what can constitute consideration in forming a contract.

- [87] As the Court stated in *Leatherman v. 0969708 B.C. Ltd.*, 2018 BCCA 33, mortgages have two elements--a covenant to pay and security for the debt: at para. 45. In the case at bar, the covenant to pay is clear in the Handwritten Agreement, the Interest Agreement, and the CPS. The Mortgage was granted in this case to secure the pre-existing debt, being the outstanding Purchase Price for the Property.
- [88] The Mortgage was registered on the Property. I am satisfied that the Mortgage was properly executed, agreed to, and that the Shergills secured the existing debt owed by the Bains on the Property itself.
- [89] Further, the evidence before the Court was that the Bains had continued to make some payments on account of the Mortgage which is evidence of that Mortgage itself. This is not a case of an instrument being registered against a property where the property owner does not know the instrument is there, or has not received any benefit from it. The Bains knew that the Mortgage was in place, it was for value as they were transferred the Property despite not having paid the agreed Purchase Price, and they in fact made some (albeit insufficient) payments towards the amount owing.
- [90] I am not persuaded that the Mortgage was made without consideration or that there was no agreement between the parties. I have accepted Zorawar's evidence and that of the other witnesses called by the Shergills. Further, I have accepted the evidence filed at trial, namely the Handwritten Agreement and Interest Agreement.

Conclusion

- [91] On the whole of the evidence, I am convinced on a balance of probabilities that the plaintiffs have established that the Mortgage was validly filed and that a demand was made for payment of the balance due under the Mortgage. The defendants have utterly failed to demonstrate that the Mortgage lacked consideration. The plaintiffs are therefore entitled to judgment against the defendants, jointly and severally, in the amount of \$1,677,983.03 as of the first day of trial with interest on the unpaid balance of the principal amount at the prime rate of interest plus 3.0%, such interest to continue to run until the balance is fully paid.
- [92] The plaintiffs are entitled to costs of this trial as successful litigants and as specified in Exhibit 19, clause 6, which specifies that "Borrowers pay all legal expenses to register, renew and discharge this Mortgage".
- [93] The plaintiffs have also claimed solicitor and client costs based on the conduct of the trial.
- [94] If the parties are unable to agree on the amount of costs, including solicitor and client costs, within 30 days, the parties may apply for a one day hearing to assess costs before this Court. The hearing to assess costs shall be heard within 90 days of the publication of these reasons. If necessary, each party shall file written submissions on costs, such submissions not to exceed 20 pages, double-spaced. The plaintiffs shall file and serve their submissions on the defendants 21 days before the scheduled assessment hearing. The defendants shall file and

serve their submissions on the plaintiffs 14 days before the scheduled assessment hearing.

"Ball, J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/19/2025BCSC1901.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/shergill-v-bains-2025>

Prepared on 26 October 2026 · Esheria