

CANADA / JUDGMENT

SHH Management Limited v. Philip

2020 BCSC 2069

COURT

Supreme Court of British Columbia

DECIDED

18 December 2020

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2020 BCSC 2069 SHH Holdings Limited v. Philip IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: SHH Holdings Limited v. Philip, 2020 BCSC 2069 Date: 20201217 Docket: S173277 Registry: Victoria Between: SHH Holdings Limited and SHH Management Limited Plaintiffs And Sinclair Philip, Frederique Philip, the Philip Family Trust and Sooke Harbour House Inc. Defendants And SHH Holdings, SHH Management Limited and Timothy Durkin Defendants by Way of Counterclaim Corrected Judgment: The first page of the judgment was corrected to correct the place and date of judgment on December 24, 2020 Before: The Honourable Mr. Justice Basran Oral Reasons for Judgment In Chambers Counsel for Defendants: J. Bloomenthal Appearing on his own behalf and appearing as a Representative of SHH Management Limited and SHH Holdings Limited: Timothy Durkin Place and Date of Trial/ Hearing: Victoria, B.C. December 14-18, 2020 Place and Date of Judgment: Victoria, B.C. December 17, 2020

- [1] Mr. Durkin applies for an adjournment of this application for special costs to enable him to obtain a medical opinion regarding Rodger Gregory's medical condition. Mr. Durkin is representing Mr. Gregory in this application.
- [2] The defendants served this application on Mr. Gregory on or about November 16, 2020, approximately one month ago.
- [3] On December 2, 2020, I conducted a case management conference to ensure that the parties were prepared to proceed with the post-trial applications scheduled to take place during the week of December 14, 2020 including this application for special costs. During that conference, Mr. Durkin confirmed that he would be representing Mr. Gregory in this matter and would be prepared to proceed with the applications from December 14 to 18, 2020.
- [4] I asked him to confirm his appointment to represent Mr. Gregory in writing and file that confirmation with the Court.
- [5] On December 3, 2020, Mr. Durkin filed a Statement signed by Mr. Gregory in respect of this matter. It states: "Further to the Case Management Conference held on December 2, 2020 and at the request of the Hon. Justice J. Basran, I am hereby providing notice that I do not have the financial capability to afford legal representation. I have been severely impaired by

a stroke that has paralyzed my right side and taken away my ability of coherent speech (sic). I have asked Mr. Durkin to represent me at the hearings before Mr. Justice Basran on December 14, 2020."

- [6] On December 16, 2020, Mr. Durkin sought an adjournment of this application at the conclusion of the defendants' submissions because it was only at this point that he appreciated the "gravity of the situation". He states that he is trying to look after Mr. Gregory's interests. Mr. Durkin requests an opportunity to obtain a medical opinion to support his theory that Mr. Gregory's medical condition affected his conduct during the trial.
- [7] Mr. Durkin had at least a month to prepare for this application. He did not adduce any evidence of Mr. Gregory's condition. There is no affidavit from Mr. Gregory, or anyone connected to him, that sets out the severity or details of his medical condition. The Court only has Mr. Durkin's characterization and description of Mr. Gregory's condition. The timing and motives surrounding Mr. Durkin's request for an adjournment are suspicious.
- [8] However, I must also consider that the special costs application before the Court involves a claim for over \$1 million. During the hearing of the application on December 16, 2020, counsel for the defendants submitted that if the defendants receive the special costs order, Mr. Gregory might be the only liable party with assets available to enable the collection of these costs. Therefore, his liability for special costs is very much in issue and the financial consequences of a finding that he is liable for special costs will be significant.
- [9] If there is some medical explanation for Mr. Gregory's conduct during the trial, it may be relevant to determining the issues in this application because Mr. Gregory's conduct at trial is crucial to a determination of his liability for special costs.
- [10] Having heard the submissions of counsel for the applicants, I am also concerned that Mr. Durkin's representation of Mr. Gregory may place Mr. Durkin in a conflict of interest. This is because the applicants seek an order that Mr. Durkin and Mr. Gregory, along with the corporate plaintiffs in this matter, ought to be jointly and severally liable for the costs award they seek. Therefore, if one of Mr. Durkin or Mr. Gregory successfully argue that they should not be liable for costs, the other may face heightened financial consequences.
- [11] This adjournment request places the Court in a difficult predicament. Aside from signing a statement that confirms that Mr. Gregory appointed Mr. Durkin to represent him, Mr. Gregory has not taken any other steps in respect of this matter. This may be because of his medical condition. His December 3, 2020 statement states, "I have been severely impaired by a stroke" and asserts that he cannot afford legal representation.
- [12] In these circumstances, I am reluctantly acceding to Mr. Durkin's request to adjourn the application in respect of the submissions on behalf of Mr. Gregory.

- [13] Mr. Gregory will have until January 15, 2021 to file and serve an affidavit containing a medical opinion regarding his condition. To be clear, Mr. Gregory or his representative must file this affidavit with the Court and serve it on the defendants by 4:00 pm on January 15, 2021.
- [14] If they so choose, the defendants will have until February 12, 2021 to file and serve a responding report.
- [15] I am also going to order a transcript of this ruling and direct that it be sent to Mr. Gregory and the parties.
- [16] By January 15, 2021, Mr. Gregory is required to file and serve an affidavit confirming that he received and understood this ruling and confirm that he either wants Mr. Durkin to continue to represent him or that he has made other arrangements for his representation.
- [17] As for today, Mr. Durkin is required to continue with the submissions on his own behalf and on behalf of the corporate plaintiffs. After he completes these submissions, the application in respect of the submissions on behalf of Mr. Gregory will be adjourned generally with a date to be determined in conjunction with the Scheduling Office of Supreme Court of British Columbia in Victoria.
- [18] When this matter reconvenes, I am granting leave to counsel for the defendants to provide further submissions in respect of the issue of the assessment of special costs with particular attention to our Court of Appeal's decision in *Gichuru v. Smith*, 2014 BCCA 414.
- [19] This concludes my ruling on Mr. Durkin's adjournment application in respect of the submissions on behalf of Mr. Gregory. "Basran, J."

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Prepared on 26 October 2026 · Esheria