

CANADA / JUDGMENT

Sidhu v. Sidhu

2023 BCSC 1682

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 1682 Sidhu v. Sidhu IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Sidhu v. Sidhu, 2023 BCSC 1682 Date: 20230928 Docket: E51558 Registry: Vernon Between: Manpreet Kaur Sidhu Claimant And Ravinder Singh Sidhu, Ajit Singh Sidhu, Banso Kaur Sidhu, Turtle Mountain Vineyards Ltd. and Kalview Park Enterprises Ltd. Respondents Docket: S57128 Registry: Kamloops Between: Ajit Singh Sidhu and Banso Kaur Sidhu Plaintiffs And Ravinder Singh Sidhu and Manpreet Kaur Sidhu Defendants Before: The Honourable Justice G.P. Weatherill Supplementary Reasons to Sidhu v. Sidhu, 2023 BCSC 449. Supplemental Reasons for Judgment Counsel for the Claimant: J.W.T. Robinson L. Nykolachuk Counsel for the Respondents, Ravinder Singh Sidhu and Turtle Mountain Vineyards Ltd.: T.M. Moore C. MacLeod Counsel for the Respondents, Ajit Sidhu, Banso Sidhu, Kalview Park Enterprises Ltd.: R. Lammers K. Butcher, Articled Student Place and Date of Trial/Hearing: Kelowna, B.C. July 10 and September 8, 2023 Place and Date of Judgment: Kelowna, B.C. September 28, 2023

- [1] On March 24, 2023, I issued reasons for judgment (indexed at 2023 BCSC 449) ("Reasons") that, among other things, dealt with the division of family property between the claimant, Manpreet Kaur Sidhu ("Min"), her estranged husband Ravinder Singh Sidhu ("Sid") (collectively the "Second-Generation Sidhus") and ownership of property as between them and Sid's parents, Ajit Singh Sidhu and Banso Kaur Sidhu (collectively the "First-Generation Sidhus").
- [2] The parties now seek clarification and/or correction on three matters:
- As between the First-Generation Sidhus and the Second-Generation Sidhus, who owns the June 1, 2008 opening shareholder loan of \$565,181 due from Turtle Mountain Vineyards Ltd. ("TMV");
 - Correction to the calculation of Sid's share of Min's pension; and
 - Whether Sid must account to Min for post-separation drawdowns of shareholder loans from TMV and Kalview Park Enterprises Ltd ("Kalview Park"). Ownership of the Unallocated TMV Shareholder's Loans as at June 1, 2008

- [3] For convenience, I will use rounded numbers when discussing shareholder loan amounts. This issue relates to how a \$565,181 shareholder loan due from TMV, as noted in TMV's financial statements at May 31, 2008, is to be allocated as between the First-Generation Sidhus and the Second-Generation Sidhus.
- [4] In preparation for trial, the parties jointly retained Mr. David Gautier, CPA, CA, to conduct an analysis of shareholder loan transactions for, inter alia, TMV. He prepared two reports, the first, dated February 23, 2021, dealt with TMV and Kalview Park shareholder loan transactions for the period June 1, 2008 through May 31, 2019 ("First Report"). The second report, dated June 28, 2022, dealt with TMV and Kalview Park shareholder loan transactions for the periods June 1, 2005 to May 31, 2008 and June 1, 2019 to May 31, 2022 ("Second Report").
- [5] At paras. 252 and 253 of the Reasons, I stated:
- [252] Mr. Gauthier [sic] was retained as a business valuation expert to allocate shareholder loans, including both allocated and unallocated loans as represented in the corporate financial statements. He was able to do so for some loans, but not all. Appendix 'B' sets out the shareholder loans that he was unable to allocate to a particular shareholder because of poor recordkeeping.
- [253] As will be seen later in these reasons, I have allocated the shareholder loans that Mr. Gauthier could not allocate between the shareholders in accordance with the respective shareholdings.
- [6] At para. 285 of the Reasons, I summarized what I determined was family property to be divided between the Second-Generation Sidhus and property owned by the First-Generation Sidhus. In that summary, I neglected to allocate the TMV shareholders loans.
- [7] The parties accept Mr. Gautier's reports and agree that as at the trial date, the total TMV shareholder's account was valued at \$1,293,323. That sum is made up of the shareholder loan amount of \$565,181 as at May 31, 2008 and a \$728,142 increase in shareholder loans over the years from June 1, 2008 through May 31, 2019. The parties accept Mr. Gautier's allocation of the \$728,142 increase as follows: a) First-Generation Sidhus: \$192,722 b) Second-Generation Sidhus: \$529,326 c) Unclassified/unallocated: \$ 6,094 Total: \$728,142
- [8] The parties agree that \$192,722 of the TMV shareholder loan account ought to be attributed to the First-Generation Sidhus together with the unallocated \$6,094 shareholder loan. That is, Min and Sid agree it is not to be allocated to the Second-Generation Sidhus as family property.

- [9] In the Second Report, Mr. Gautier determined that between 2019 and 2021, the TMV shareholder loan account was reduced by \$33,500 which he attributed to the Second-Generation Sidhus, reducing the \$529,326 by \$33,500 to \$495,826. This means that the TMV shareholder loans attributed to the Second-Generation Sidhus from June 1, 2008 through trial of \$495,826 (\$529,326 - \$33,500) is to be divided equally between them.
- [10] Of note, the parties agreed to this allocation despite the fact that TMV's 2008-2019 accounting records continued to refer to the shareholder loan account as "due to Sidhu Orchards".
- [11] To summarize, the post June 1, 2008 TMV shareholder loan account will be allocated as follows:
- a) First Generation Sidhus: \$198,816 + \$6,094; and
 - b) Second Generation Sidhus: \$495,826.
- [12] What remains to be determined is the allocation of the TMV shareholder loan account of \$565,181 as it existed at May 31, 2008. Although the parties agree to the amount, they do not agree on whether it should be allocated to the First-Generation Sidhus, or the Second-Generation Sidhus.
- [13] In order to fairly determine the issue, it is necessary to revisit the background circumstances surrounding TMV's purchase of a vineyard, winery and events center located at 3111 Agnew Road in 2005 ("Winery") and subsequent events. Highlights include:
- a) On March 30, 2004, approximately one year prior to the Winery being purchased, Sid and Min incorporated Sidhu Orchards (2004) Ltd. with Sid holding all voting common shares and Min holding all non-voting common shares.
 - b) In 2005, a company that the Reasons refer to as 072 Ltd. was incorporated by Sid and three arms-length parties as the vehicle used to purchase the Winery. The purchase price was \$780,000.
 - c) In order to facilitate Sid's investment into 072 Ltd., Ajit and Sid obtained a \$500,000 operating loan through the Prospera Credit Union with both Ajit and Sid signing as borrowers ("Prospera Operating Loan"). The Prospera Operating Loan was secured by a mortgage registered against the Sidhu's family home at 4965 Bella Vista Road ("Family Home"). To satisfy Prospera Credit Union's requirements and because Ajit and Sid were joint borrowers, on June 15, 2005, Sid was registered on the Family Home's title as a 50% joint owner. On the same day, the Prospera mortgage to secure the Prospera Operating Loan was registered against the Family Home's title.

- d) On June 23, 2005, \$415,000 was withdrawn on the Prospera Operating Loan representing the lion's share of Sid's \$425,000 share of the investment into 072 Ltd. for the purchase of the Winery. It is unclear and the parties do not agree on the source of the remaining \$10,000 of Sid's share.
 - e) In April 2007, Sid purchased all Class A common voting shares owned by the other three shareholders of 072 Ltd. for a total of \$525,000 (\$175,000 for each of the three other shareholders) which included all shareholder loans then existing. Sid thereby became TMV's sole shareholder. The parties agree that the source of the \$525,000 share purchase price was a \$350,000 cheque from Bella Vista Farm Market's (aka Sidhu Orchards) CIBC bank account and \$175,000 short-term vendor financing that was paid out in September 2007. The total 'buy-out' of \$525,000 was funded as follows:
 - i. \$200,000 drawn from the joint Prospera Operating Loan and deposited into Bella Vista Farm Market's (aka Sidhu Orchards) CIBC account; ii. An additional \$150,000 from Bella Vista Farm Market (aka Sidhu Orchards); and iii. \$175,000 from the proceeds of a new RBC farm mortgage owed by TMV ("RBC Mortgage").
 - f) The \$175,000 used to finalize the pay-out to the shareholders in September 2007 came from the proceeds of the RBC Mortgage that was registered against the Winery with TMV signing as borrower. The amount secured by the RBC Mortgage and made available to TMV was \$825,000.
 - g) It is clear that the \$565,181 TMV shareholder loan balance at May 31, 2008 was primarily related to:
 - i. Personal funds contributed to finance the Winery's purchase in 2005; and ii. Personal funds contributed to 'buy out' the other three investors in 2007, ("Personal Funds").
 - h) 072 Ltd. later changed its name to TMV.
 - i) On January 1, 2013, Ajit sold all non-real estate assets of Bella Vista Farm Market (aka Sidhu Orchards) to TMV for \$521,000, mostly paid for by Ajit receiving preferred shares of TMV.
 - j) On June 1, 2013, Sidhu Orchards (2004) Ltd. and TMV were amalgamated, following which Sid held all the Class "A" Common Voting shares with Ajit, Sid and Min each holding 100 different classes of preferred shares.
 - k) Sid remained a half-joint owner of the Family Home until October 30, 2014, when Ajit and he transferred their interest to Ajit and Banso as joint tenants.
- [14] Purchasing the Winery was something Sid and Min wanted to pursue and Sid spearheaded its purchase. Neither Ajit nor Banso wanted to be involved. Sid and Min's plan was that Sid would be responsible for operating the vineyard/winery and Min would be responsible for operating the wedding and events venue. Indeed, after the Winery was purchased, that is what the Second-Generation Sidhus did for a number of years.

- [15] The injection of the Personal Funds into TMV was recorded in TMV's accounting records under Acct. 2240 "due to/from Sidhu Orchards" ("Account #2240"). The records do not differentiate between the Sidhus personally, Sidhu Orchards (the partnership owned by Ajit and Banso) or Sidhu Orchards (2004) Ltd. (owned by Sid and Min). Mr. Gautier was unable to, nor did he attempt to, specifically allocate any part of the \$565,181 between the First-Generation Sidhus and the Second-Generation Sidhus. Other than noting that there were loans "owing to third parties" and "due to Sidhu Orchards", the accounting records do not specify where the Personal Funds came from nor to whom the loans were owed.
- [16] TMV's records suggest that Account #2240 and the "owing to third parties" account were "blended" in 2008 into one shareholder loan account called "due to shareholders". Min's Position
- [17] Min's position is that throughout her marriage to Sid, the Sidhu Family Enterprise involved all four members of the Sidhu family contributing in various and varying degrees to developing Sidhu family wealth. She says that the injection of the Personal Funds into the purchase of the Winery was no exception. It was part of the "one for all and all for one" family philosophy that I concluded in my Reasons. She argues that TMV's accounting records are key because they refer to the \$565,181 as a "shareholder's loan". Because Sid is the only equity shareholder of TMV, the \$565,181 loan must be allocated to the Second-Generation Sidhus. Although she accepts that the principal and interest payments on the Prospera Operating Loan were made by Sidhu Orchards, she contends that until her separation from Sid, she was part and parcel of the success of Sidhu Orchards, which was part and parcel of the Sidhu Family Enterprise as described in the Reasons.
- [18] Specifically, she points to para. 138 of the Reasons where I found that the Sidhu family was an integrated economic unit in which economic contributions of all members were pooled in Sidhu Orchards:
- [138] . . .
- a) Since the Marriage, Sid, Min and the Parents lived together as one economically-integrated household. Sid and Min worked with the Parents in the Sidhu Family Enterprise as needed. They shared one kitchen and ate meals together. Shopping for the household was shared between Banso and Min and paid for using cash generated by fruit sales, rent and capital gains on property sales. Income was deposited into Sidhu Orchards' bank accounts and cash sales were generally given to Banso to keep in her safe. If family members needed spending money, Banso supplied it on request. . . .
- d) Legal ownership of property was immaterial to the members of the Sidhu Household and their companies. . . . Ajit and Banso's Position
- [19] Ajit and Banso's position is that the Personal Funds were loans made by them and they are entitled to have the \$565,181 allocated to them. While they acknowledge that Sid was a co-signer on the Prospera Operating Loan, they say that in reality, it was Ajit who arranged the

financing by placing Sid on title of the Family Home thus providing the required security for the Prospera Credit Union. He says that throughout the term of the Prospera Operating Loan, it was Sidhu Orchards that paid all interest and principal payments, not Sid. Ajit and Banso are not suggesting that they be repaid these payments, they simply want the Personal Funds returned to them. Referring to TMV's accounting records, they point out that Account #2240 describes the monies as owing to "related parties" and/or "Sidhu Orchards". That is, they say, the Personal Funds were not intended as shareholder loans but rather were third-party loans from Sidhu Orchards to TMV. Accordingly, they say that the entire \$565,181 shareholder loan balance on May 31, 2008 ought to be allocated to the First-Generation Sidhus. Sid's Position

- [20] Sid's position is aligned with Ajit and Banso's. Discussion
- [21] There were two significant transactions that affected the TMV shareholder loan account, one in 2005 when Sid purchased an interest 072 Ltd. when the Winery was purchased, and one in 2007 when Sid bought out the other three investors' shares of 072 Ltd. In each case, Ajit and Sid were both involved in the funding and both pledged their credit using the Prospera Operating Loan. That is, both Ajit and Sid were the borrowers on the Prospera Operating Loan. Because the Prospera Operating Loan would have been considered a family debt and as between Sid and Min, Min would have been equally responsible on separation for it.
- [22] Specifically, TMV's books as at May 31, 2008 showed two accounts: a) Acct. 2240 - Due to/ from Sidhu Orchards: \$562,905.76 b) Acct. 3100 - Sidhu's: \$2,274.92 Total: \$565,180.68 (rounded: \$565,181)
- [23] Mr. Gautier reviewed the year-end adjusting journal entries for Account #2240 that summarized various shareholder loan transactions between May 31, 2005 and May 31, 2008. He did not have the General Ledger Report for the years ended May 31, 2006 or May 31, 2007. Account #2240 comprised the year-end adjusting journal entries with the history of the transactions posted to the account. However, some of the adjusting journal entries were reallocations and he did not have the general ledger details for the source accounts.
- [24] Mr. Gautier also reviewed the purchase documents related to the Winery. The purchase price was \$780,000. Including tax and closing costs, the total outlay was \$794,500. Sid's share was funded by \$415,000 borrowed from Prospera, \$30,000 from Kalview Park and \$30,000 from Bella Vista Farm Market (aka Sidhu Orchards).
- [25] It is evident that the monthly payments made to Prospera to pay down the Prospera Operating Loan of mostly \$3,000 per month with intermittent lump-sum payments were made by funds drawn from what I described in the Reasons as the Sidhu Family Enterprise, that is, as a result of monies earned by the joint efforts of the First-Generation Sidhus and the Second-Generation Sidhus. At the time Sid and Min separated in the summer of 2016, the Prospera Operating Loan balance was approximately \$155,000. By August 2021, the Prospera Operating Loan was entirely paid off.

- [26] TMV's accountant, Mr. Friesen, prepared TMV's annual financial statements. The May 31, 2006 financial statements (following TMV's first operating year) show: a) Due to shareholders: \$442,030 b) Due to related parties: \$485,000
- [27] TMV's May 31, 2007 financial statements show: a) Due to shareholders: \$2,150 b) Due to related parties: \$826,024
- [28] For reasons unexplained, the "due to shareholders" account was reduced by \$439,880 to \$2,150 and the "due to related parties" account was increased by \$341,024 to \$826,024. In any event, the records do not specifically disclose who the related parties are. It could have been Sidhu Orchards, meaning the First-Generation Sidhus or Sidhu Orchards (2004) Ltd., meaning the Second-Generation Sidhus, or a combination of both.
- [29] The Reasons put into context the realities of how the Sidhu Family Enterprise functioned throughout Sid and Min's marriage. In keeping with how they ran their household and business ventures, it is clear to me that the First-Generation Sidhus and the Second-Generation Sidhus pooled resources, pledged credit and made business decisions as one family unit. I conclude that Sid's decision to purchase and operate the Winery was simply part and parcel of how the Sidhu Family Enterprise operated from the outset. Both Ajit and Sid were joint borrowers on the Prospera Operating Loan. The sources of the Personal Funds were from that loan and other sources, the details of which are unclear. In my view, how the Personal Funds injected into 072 Ltd. were accounted for in TMV's bookkeeping records does not tell a complete story. The evidence is either unclear or lacking and makes it impossible to precisely allocate the TMV shareholder loans as at May 31, 2008, or at all.
- [30] Doing the best I can, I conclude that the fairest solution is to divide the shareholder loan account as at May 31, 2008, equally between the First-Generation Sidhus and the Second-Generation Sidhus. Therefore, the TMV shareholder loan account of \$565,181 as at May 31, 2008 will be attributed as follows:
- a) \$282,590 to the First-Generation Sidhus; and
 - b) \$282,590 to the Second-Generation Sidhus. Sid's Share of Min's Pension
- [31] Sid and Min agree, as do I, that through a miscalculation in the Reasons, I incorrectly assessed the amount of Sid's interest in Min's pension. Accordingly, paras. 262, 265, 266 and 285(g) of the Reasons will be replaced by the following paragraphs:
- [262] The joint expert evidence values Sid's after-tax interest in Min's Pension at \$139,800 on November 30, 2018 and \$166,000 on September 22, 2021. . . .
- [265] The difference between the two valuations is equal to \$26,200 (\$166,000 - \$139,800). Min's termination date in November 2020 is approximately 23 months after the earlier valuation date of November 20, 2018, out of the approximately 34 months between the two valuation dates of November 30, 2018 and September 22, 2021.

- [266] Accordingly, I assess Sid's interest in Min's Pension at \$157,523.53 ($\$139,800 + (\$26,200 \times 23/34 = \$17,723.53)$) . . .
- [285] . . . (g) Min's Pension - I have valued Sid's 50% share of Min's Pension at \$157,523.53. Sid's Post-Separation Drawdown of Shareholders Loans
- [32] TMV and Kalview Park's corporate records disclose that, following Min and Sid's separation in 2016, Sid drew down his shareholder's loans in TMV and Kalview Park in the total amount of \$102,698, as follows:
- a) \$30,000 from Kalview Park in 2018;
 - b) \$39,198 from Kalview Park in 2019; and
 - c) \$33,500 from TMV in 2019.
- [33] During their latest submissions, counsel for Min and Sid agreed that the \$39,198 draw from Kalview Park in 2019 represented Sid's income and ought not to be considered a shareholder's loan drawdown.
- [34] The balance of \$63,500, however, is in dispute. The Reasons state that Sid is required to account to Min for one-half of his post-separation drawdown of shareholder's loans due from Kalview Park and TMV.
- [35] There is no evidence as to what the \$63,500 shareholder loan draws were related to. Accordingly, the inference I draw is that Sid disposed of family property and must account to Min for one-half of its value.
- [36] Therefore, Sid must account to Min for \$31,750 representing one-half of his \$63,500 post-separation shareholder loan drawdowns. Costs
- [37] Costs were not spoken to. The parties have liberty to speak to costs if they wish by making the appropriate arrangements with Supreme Court Scheduling in a timely manner. "G.P. Weatherill J."

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