

CANADA / JUDGMENT

Singh v. Rekhi

2012 BCCA 60

COURT

British Columbia Court of Appeal

DECIDED

1 February 2012

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2012 BCCA 60 Singh v. Rekhi COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Singh v. Rekhi, 2012 BCCA 60 Date: 20120201 Docket: CA039272 Between: Amarpreet Singh Appellant (Plaintiff) And Baldev Rekhi and Kuldip Johal Respondent (Defendant) Before: The Honourable Chief Justice Finch The Honourable Madam Justice D. Smith The Honourable Madam Justice MacKenzie On appeal from: Supreme Court of British Columbia, July 15, 2011 (Singh v. Rekhi, Vancouver Registry S112452) Oral Reasons for Judgment Appellant appeared In Person: Counsel for the Respondent, Baldev Rekhi: D. Unterman Place and Date of Hearing: Vancouver, British Columbia February 1, 2012 Place and Date of Judgment: Vancouver, British Columbia February 1, 2012

- [1] FINCH C.J.B.C.: Mr. Singh seeks to appeal from the judgment of the Supreme Court of British Columbia, pronounced 15 July 2011, by Justice Savage, dismissing Mr. Singh's appeal from the judgment of the Provincial Court on 9 March 2011, pronounced by Judge Bahen.
- [2] The case before the Provincial Court was Mr. Rekhi's claim for the return of monies advanced by Mr. Rekhi to Mr. Singh for the purposes of establishing a business, following the breach of their partnership agreement. The parties gave conflicting evidence. The judge preferred the testimony of Mr. Rekhi to that of Mr. Singh. He pronounced judgment in Mr. Rekhi's favour in the sum of \$25,000, plus pre-judgment interest from 25 July 2003, and costs.
- [3] Mr. Singh appealed to the Supreme Court of British Columbia as permitted by the provisions of the Small Claims Act, RSBC 1996, c. 430. The appeal was heard by Justice Savage. He noted that the case in Provincial Court was essentially decided on a question of credibility. He saw no error in the judge's decision, and he dismissed Mr. Singh's appeal.
- [4] Mr. Singh filed a notice of application to this Court on 12 August 2011. He named both Mr. Rekhi and Mr. Kuldip Johal, who was Mr. Rekhi's counsel in both the Small Claims Court and the Supreme Court, as the respondents. Mr. Rekhi and Mr. Johal applied for summary dismissal of the appeal, and a judge of this Court in chambers dismissed that application.
- [5] The relevant provisions of the Small Claims Act are: 5 (1) Any party to a proceeding under this Act may appeal to the Supreme Court an order to allow or dismiss a claim if that order was made by a Provincial Court judge after a trial.

- (2) No appeal lies from any order of the Provincial Court made in a proceeding under this Act other than an order referred to in subsection (1). ... 12 An appeal to the Supreme Court under this Act
- (a) may be brought to review the order under appeal on questions of fact and on questions of law, and
- (b) must not be heard as a new trial unless the Supreme Court orders that the appeal be heard in that court as a new trial. ... 13 (1) On an appeal, the Supreme Court may do one or more of the following:
- (a) make any order that could be made by the Provincial Court;
- (b) impose reasonable terms and conditions in an order;
- (c) make any additional order that it considers just;
- (d) by order award costs to any party to the appeal in accordance with the Supreme Court Rules.
- (2) There is no appeal from an order made by the Supreme Court under this section
- [6] Mr. Singh contends that he was denied the opportunity to lead fresh evidence in the Supreme Court of British Columbia because an earlier direction of a Supreme Court judge did not make clear that he was required to file, as well as serve, notice of any further materials he wished to rely on.
- [7] The fresh evidence was said to consist of documents found by a co-worker of Mr. Singh, in a warehouse where Mr. Singh had both control and access. In the course of the hearing, Savage J. found that the evidence could have been introduced at trial given due diligence on Mr. Singh's part, and accordingly ordered that the matter proceed as a trial on the record: ...it seems to me that there is no basis on which that material could not have been, with diligence or appropriate diligence, introduced at the trial of this proceeding before the provincial court judge. In light of that fact and in light of the fact that this is an appeal from the order of the provincial court judge, it seems to me that both because of the failure to comply with the order of Madam Justice Ballance and the fact that such an information could have been introduced at trial with due diligence on the part of Mr. Singh, that the way this matter should proceed is as a trial on the record that was before the provincial court judge. And that is the way it will proceed. [Tr. p. 27]
- [8] Mr. Justice Savage accordingly heard the appeal on the record presented at trial in Provincial Court and, as noted above, he dismissed it.
- [9] The Small Claims Act provides a very limited right of appeal from orders of a Provincial Court judge made after a trial. Those rights of appeal are set out in s. 12 of the Small Claims Act.

- [10] Section 6 of the Court of Appeal Act, R.S.B.C. 1996, c. 77, provides: 6 (1) An appeal lies to the court
- (a) from an order of the Supreme Court or an order of a judge of that court, and
 - (b) in any matter where jurisdiction is given to it under an enactment of British Columbia or Canada.
- (2) If another enactment of British Columbia or Canada provides that there is no appeal, or a limited right of appeal, from an order referred to in subsection (1), that enactment prevails.
- [11] In *Shaw Cablesystems Ltd. v. Er-Conn Development Inc.*, 2004 BCCA 542, [2004] B.C.J. No. 2144, Madam Justice Rowles said:
- [24] ... When s. 13(2) provides that there is no appeal from an order made under s. 13(1), it would be anomalous for there to be an appeal to this Court of an order about how the appeal in the Supreme Court is to be conducted, that is, either as an appeal on the record or as a new trial. ...
- [12] She concluded that in the circumstances of that case there was no jurisdiction in the Court of Appeal to entertain the proposed appeal.
- [13] This case is similar. The Supreme Court judge refused a trial de novo on the basis that the proposed new evidence could, with due diligence, have been introduced at the trial in the Provincial Court.
- [14] In my opinion this Court is without jurisdiction to hear Mr. Singh's appeal and I would dismiss it accordingly.
- [15] D. SMITH J.A.: I agree.
- [16] MACKENZIE J.A.: I agree.
- [17] FINCH C.J.B.C.: The appeal is dismissed for want of jurisdiction and I would dispense with the appellant's signature on the order. When the order has been entered, Mr. Singh will be provided with a copy.
- [18] Costs will follow the event. "The Honourable Chief Justice Finch"

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