

CANADA / JUDGMENT

Singh v. Singh

2020 BCCA 21

COURT

British Columbia Court of Appeal

DECIDED

23 January 2020

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

2020 BCCA 21 Singh v. Singh COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Singh v. Singh, 2020 BCCA 21 Date: 20200123 Docket: CA45627 Between: Sawaranjit Sarah Singh Respondent (Claimant) And Ranjit Singh also known as Ranjit Bopharai Appellant (Respondent) And Regency Park Capital Corporation, Regency Park Capital 2007, Koocanusa Projects Pvt. Ltd., Regency Park Capital 2011, Inc., and Regency Park Capital 2012 Inc. Respondents (Respondents) And Harkiran Raj Singh also known as Raj Singh Respondent (Respondent by Counterclaim) Before: The Honourable Madam Justice Smith The Honourable Madam Justice Garson The Honourable Madam Justice Fisher On appeal from: An order of the Supreme Court of British Columbia, dated September 4, 2018 (Singh v. Singh, 2018 BCSC 1513, Vancouver Docket E142797). Counsel for the Appellant: G.K. Thomas Counsel for the Respondent Sawaranjit Sarah Singh: D.E. Labun Place and Date of Hearing: Vancouver, British Columbia October 28-29, 2019 Place and Date of Judgment: Vancouver, British Columbia January 23, 2020 Written Reasons by: The Honourable Madam Justice Garson Concurred in by: The Honourable Madam Justice D. Smith The Honourable Madam Justice Fisher Table of Contents Paragraph Range I. INTRODUCTION

[1] - [4] II. HISTORY OF THE MARRIAGE

[5] - [8] III. REASONS FOR JUDGMENT

[9] - [157] A. Trial Judge's Conclusion as to Credibility and Reliability

[9] - [12] B. Reasons for Judgment on Division of Property, Support, and Costs

[13] - [157] IV. GROUNDS OF APPEAL

[21] - [25] V. OWNERSHIP AND VALUE OF THE CONTESTED PROPERTIES

[26] - [105] A. Standard of Review

[26] - [27] B. India Properties

[28] - [74]

1. Sector 35A - \$448,233

[38] - [49]

a) The Evidence at Trial

[38] - [41]

b) The Judgment Below and the Arguments on Appeal

[42] - [44]

c) The Fresh Evidence

[45] - [46]

d) Conclusion on Sector 35A

[47] - [49]

2. Sector 38C and Sector 8

[50] - [63]

a) The Evidence at Trial

[50] - [57]

b) The Judgment Below and the Arguments on Appeal

[58] - [60]

c) The Fresh Evidence

[61] - [61]

d) Conclusion

[62] - [63]

3. F44 Uppal's Marble Complex - \$434,489

[64] - [74]

a) The Evidence at Trial

[64] - [68]

b) The Judgment Below and the Arguments on Appeal

[69] - [71]

c) The Fresh Evidence

[72] - [72]

d) Conclusion

[73] - [74] C. Palm Springs Vacation Property

[75] - [82]

1. The Evidence at Trial

[75] - [77]

2. The Judgment Below and the Arguments on Appeal

[78] - [81]

3. Conclusion

[82] - [82] D. Jasjit Khurana Investment

[83] - [87]

1. The Evidence at Trial

[83] - [83]

2. The Judgment Below and the Arguments on Appeal

[84] - [86]

3. Conclusion

[87] - [87] E. Varinder Kumar and Surinder Gill Loans

[88] - [92]

1. The Evidence at Trial

[88] - [88]

2. The Judgment Below and the Arguments on Appeal

[89] - [91]

3. Conclusion

[92] - [92] F. Koocanusa Projects

[93] - [103]

1. The Evidence at Trial

[94] - [99]

2. The Judgment Below and the Arguments on Appeal

[100] - [102]

3. Conclusion

[103] - [103] G. Summary of Conclusions

- [104] - [104] H. Allocation of Properties, In Specie
- [105] - [105] VI. SECTION 95 - UNEQUAL DIVISION ORDER
- [106] - [147] A. Overview
- [106] - [111] B. The Judgment Below and the Arguments on Appeal
- [112] - [124] C. Standard of Review
- [125] - [126] D. Discussion
- [127] - [147] VII. MISCELLANEOUS GROUNDS OF APPEAL
- [148] - [148] VIII. SPECIAL COSTS
- [149] - [154] IX. DISPOSITION
- [155] - [157] Summary: The appellant appeals from several orders in this family law dispute, arguing that the trial judge made factual errors regarding ownership and valuation of assets, erred in fact and in law in reapportioning \$250,000 to the respondent, and erred in his exercise of discretion in awarding special costs to the respondent. Held: Appeal allowed in part. The trial judge made a palpable and overriding error in apportioning the value of the property known as Sector 35A to the appellant where the appellant does not own it and never has. The appellant has not demonstrated any other errors with respect to the remaining assets, the reapportionment, or the award of special costs. Reasons for Judgment of the Honourable Madam Justice Garson: I. Introduction
- [1] Ranjit Singh ("Mr. Singh") appeals from the order pronounced by Justice Masuhara in this high conflict family case. Justice Masuhara's reasons for judgment can be found at 2018 BCSC 1513. On appeal, the issues concern the division of property between Mr. Singh and his former spouse, Sawaranjit Sarah Singh ("Ms. Singh"). Mr. Singh states 13 grounds of appeal. In broad compass, he says the judge overvalued certain assets, erred in awarding certain assets in specie to Mr. Singh, erred in awarding Ms. Singh \$250,000 under s. 95 of the Family Law Act, S.B.C. 2011, c. 25 ("FLA"), to compensate for significant unfairness to her, and erred in awarding her special costs.
- [2] In reply, Ms. Singh contends that Mr. Singh has not identified any reviewable error and simply attempts to retry the case.
- [3] The trial lasted 27 days. It was complicated by Mr. Singh's inadequate and misleading disclosure of his assets. The judge found him to be an unreliable and untruthful witness.
- [4] For the reasons that follow, I would dismiss the appeal except with respect to the value ascribed to the property described as Sector 35A, located in India. II. History of the Marriage
- [5] I shall briefly outline the main events in the parties' marriage.

- [6] Mr. and Ms. Singh married in India in 1977. They immigrated to Canada in 1979. There are two adult children of the marriage, a daughter age 36 at the time of trial and a son age 32. After 37 years of marriage the parties separated in 2014. Mr. Singh was 65 years of age at the time of trial and Ms. Singh 62.
- [7] Ms. Singh is a registered nurse. She worked as a nurse throughout most of the marriage. Mr. Singh was a dental technician at the beginning of the marriage but he went on to become a businessman.
- [8] By the time of their separation, the parties, or Mr. Singh, owned property in British Columbia, Arizona, and India (the "India Properties"). The trial judge also found that Mr. Singh held an interest in a house in Palm Springs. The trial mainly concerned the conflicting claims to these assets, their values, and, in some cases, the legal ownership, as well as some loans. III. Reasons for Judgment A. Trial Judge's Conclusion as to Credibility and Reliability
- [9] In the introduction to his reasons for judgment, the trial judge summarized his views about the credibility and reliability of the parties as witnesses. He found Mr. Singh to be an unreliable and untrustworthy witness. He found Ms. Singh to be a careful and reliable witness. At paras. 20-22 he said:
- [20] Ms. Singh generally strove to be careful in the testimony that she gave. Though there are questions that arose regarding certain transactions such as her lack of understanding of monies she received from Columbian Recycling and evidence that Ms. Singh was somewhat disruptive when permitted to visit the Super 8 Motel; Ms. Singh was not involved in the financial side of the family and was so because Mr. Singh wanted it that way and she was and has been under significant stress. I sensed that Ms. Singh was submissive in the relationship and deferred to Mr. Singh during the marriage. On the whole and in the context of a stressful family dispute I found her evidence generally reasonable.
- [21] On the other hand, Mr. Singh's conduct and testimony was very troubling. One difficulty that I had with Mr. Singh was his inability to adequately formulate questions for witnesses he was examining. Mr. Singh has no difficulties in understanding English but seemed to have significant difficulties in finding the words to formulate questions. At trial, he was requested continuously to ask a witness questions and not to make statements as his statements did not constitute evidence. He was told numerous times not to provide answers to his witness while they were being cross examined. He gave estimates as to the length of his examination of witnesses but was unable to meet them. Even after being warned not to refer to without prejudice settlement proposals, Mr. Singh continued to attempt to do so.
- [22] I detail later the serious concerns that I developed increasingly over the course of the trial with Mr. Singh's credibility and reliability. Any concerns I have with Ms. Singh's testimony pale in comparison to that of Mr. Singh.

- [10] At paras. 85-116 the trial judge enumerated his findings that Mr. Singh breached court orders, made untruthful statements in affidavits, gave inconsistent and conflicting testimony, falsely swore his Form F8 Financial Statement, testified that amounts up to \$10,000 were not material in terms of his disclosure, gave false testimony in court, disregarded the judge's instructions not to discuss his testimony while under cross-examination, admitted that he did not read affidavits he swore, admitted he "doctored a document" in order to mislead the court, forged Ms. Singh's signature, breached a restraining order, and commenced a bankruptcy proceeding in Arizona for an improper purpose.
- [11] The judge concluded in the face of all this that he could place little if any reliance upon Mr. Singh's testimony.
- [12] To illustrate the nature of Mr. Singh's testimony, I excerpt some of the trial judge's findings:
- [85] The evidence is clear that Mr. Singh, in violation of an order prohibiting him from doing so transferred funds from the account of RPC 2011 [Regency Park Capital 2011 Inc.] into personal accounts. Mr. Singh was found in contempt by the Arizona Superior Court for his actions. Mr. Singh testified that the judge indicated that the judge [sic] had made a mistake in issuing the contempt order, however, he provided no independent evidence to support this
- [86] Mr. Singh also admitted that statements he made under oath in various affidavits were not true. He blamed his daughter and his lawyer for putting things into the affidavit which were wrong and which he did not read or understand. He stated that he was mentally suffering and under financial hardship when he signed the affidavits. I do not accept any of these excuses.
- [91] Another example was Mr. Singh resiling from his sworn statement in affidavit #5 wherein he stated: "I have never sent any money to India, if anything I have only every [sic] brought monies from India to Canada. He stated at trial that the statement was untrue and stated he had not read the affidavit. This was a repeated excuse in the trial.
- [92] Also concerning was Mr. Singh's testimony regarding the monies he was owed. At one point he stated that the only person who owed him money was Mr. Saini. He then spoke of someone else owing him \$50,000. Mr. Kumar owed him money. When reminded that he had earlier testified that only Mr. Saini owed him money, he said that he was mistaken and was positive that only Mr. Saini and Mr. Kumar were the only persons who owed him money.
- [93] Also concerning was Mr. Singh's testimony that all of the monies he owes people and what they owe him, as well as monies paid or taken, is all captured in his mind and not documented. More surprisingly was his testimony that he did not consider amounts from \$5,000 to \$10,000 to be material in terms of the amount people owed him and I presume what he owed to others. He also made an incredible statement that though he regularly paid Mr. Samra \$2,000 on monies borrowed, he did not know how much he owed Mr. Samra. He

stated that if he needed to know the amount owed he would just ask Mr. Samra. At one point during cross examination he stated that no one owed him money other than Mr. Saini, and shortly afterwards said that other people did. My sense of this testimony was to provide him flexibility in whatever statements he made which were not quite accurate.

- [96] On Day 19 of the trial, Mr. Singh made the astonishing statement under cross examination that he never read any of the affidavits in this proceeding, except maybe for some 2 or 3 pages.
- [97] Mr. Singh also admitted that he had doctored a document, he scratched out Mr. Saini's name on a bank document. He did so to mislead the court and Ms. Singh into believing the account was his.
- [98] I also note that documents produced by Mr. Singh regarding monies advanced by Bikram Gill have signatures of Mr. Gill on them which Mr. Singh acknowledges are quite different between the documents.
- [99] On Day 16 of the trial, Mr. Singh admitted to forging Ms. Singh's signature on banking documents.
- [102] On January 16, 2018, Mr. Singh agreed that what he said in an affidavit sworn in the Arizona State court proceedings on September 18, 2015, Exhibit 52, was wrong. I did not find his testimony persuasive.
- [105] This again demonstrated the elasticity in Mr. Singh's thinking and recall.
- [106] I also take note of Mr. Singh's admission, that he initiated the bankruptcy proceeding in Arizona because of the Arizona State Court's order in the derivative action requiring him to pay Ms. Singh's for her legal bills.
- [107] On January 17, 2018, Mr. Singh admitted that his sworn Form F8 financial statement made June 4, 2015 wherein he stated that RPC 2007 owed RPC 2011 \$1.1 million USD under a promissory note was not true. He admitted that no monies had ever been provided to RPC 2007.
- [114] Mr. Singh also admitted to lying about having pre-signed cheques for a credit card payment when he was confronted by the cheque which had his signature stamp affixed to it. B.
Reasons for Judgment on Division of Property, Support, and Costs
- [13] As I have said, the calculation and apportionment of family property was complicated by the unreliability of Mr. Singh's testimony. The parties disagreed about the existence, ownership, and value of assets, particularly with respect to the India Properties.

- [14] The judge determined that Ms. Singh had made significant financial and non-pecuniary contributions to the family and its investments and therefore rejected Mr. Singh's contention that it was solely his finances that led to the acquisition of the family assets and wealth. He rejected Mr. Singh's submission that some of the family wealth was derived from an inheritance to Mr. Singh from his father. The judge also found that Mr. Singh kept Ms. Singh "in the dark" with respect to the family's financial dealings.
- [15] The judge found it troubling that Mr. Singh petitioned Regency Park Capital 2011 Inc. ("RPC 2011"), an Arizona company jointly owned by the parties, into bankruptcy specifically to avoid paying Ms. Singh's legal bills pursuant to the order of an Arizona court that he do so.
- [16] Given the findings about Mr. Singh's credibility, the judge decided that the evidence justified his making findings of fact adverse to Mr. Singh with respect to the value of some of the family property. The trial judge also rejected Mr. Singh's position that much of the impugned property should be excluded from the calculation either because it was not a family asset or because it was an inheritance (the latter issue is not under appeal). In addition, the judge found that Mr. Singh's conduct engaged the significant unfairness concerns under s. 95 of the FLA, which permits the court to order an unequal division of family property, and awarded the respondent an adjustment of \$250,000 as a result.
- [17] Turning to the issue of spousal support, the judge found that Ms. Singh was entitled to support on the basis of both compensation and need. The factors relied upon included the long duration of the marriage, her role as a caregiver of the children, her role as an employee of the family businesses, and her chronic injuries which limited her future earning capability.
- [18] The judge additionally decided Ms. Singh was entitled to lump sum spousal support. He held "[t]here is little prospect that Mr. Singh can be relied upon to make periodic regular payments based on his conduct": at para. 174. The award for spousal support is not under appeal.
- [19] Finally, the judge awarded special costs against Mr. Singh because he found that Mr. Singh's conduct "demonstrated a clear disregard for the administration of justice": at para. 176.
- [20] At paras. 155-157, the judge made the following division of assets:
- [155] In my view, having considered the evidence, the asymmetry of knowledge in the business affairs of the family held by Mr. Singh, the presumption favouring equal division of family property and debt, the test of "significant unfairness" to justify departing from equal division; the adverse inference that I have made against Mr. Singh, and that to effect division, property and debt can be specifically allocated to a party i.e., through compensation, the following division with adjustments noted below the chart is determined as appropriate:
- | Item | Amount | Ms. Singh | Mr. Singh |
|-------------|-------------|--|-----------|
| RPC 2011 | \$2,087,395 | | |
| \$1,043,697 | \$1,043,647 | RPCC | \$942,972 |
| \$942,973 | | RPC 2012 | \$0 |
| RPC 2007 | \$0 | Koocanusa Projects | \$100,000 |
| \$100,000 | \$100,000 | Proceeds from sale of family residence in Surrey | \$822,251 |
| | | | \$822,251 |

Timeshares Parties to pick alternatively Mr. Singh has first pick India Properties Section 8 \$321,558 \$321,558 Section 38 \$155,907 \$155,907 Section 35A \$448,233 \$448,233 F44 Uppal's Marble Complex \$434,489 \$434,489 Palm Springs' vacation property \$78,591 \$78,591 Jasjit Khurana "investment" \$96,500 \$96,500 Varinder Kumar Loan \$38,976 \$38,976 Surinder Gill Loan \$48,721 \$48,721 1988 Mercedes 560 SL \$27,400 \$27,400 2003 Mercedes Truck 500ML \$1,000 \$1,000 2001 BMW Z3 \$1,000 Municipal Pension \$489,600 \$244,800 \$244,800 CPP/OAS to be divided per plan Jewellery divided - - TOTAL: \$3,054,722 \$3,039,822

[156] To effect the distribution, RPC 2011 should be liquidated in the manner authorized by the Bankruptcy Court. Net proceeds are to be divided as specified in these Reasons including the adjustments which follow. Ms. Singh's municipal pension plan is to be divided pursuant to the terms of her plan. Mr. Singh is to make any elections regarding his entitlement in the pension, he is to do so pursuant to the terms of the plan.

[157] Adjustments from the proceeds from the liquidation of RPC 2011 are:

- (a) Mrs. Singh is to receive compensation of \$68,416.50 to equalize the use of RRSPs by the parties;
- (b) Mrs. Singh is entitled to \$43,157.98 as preservation debt under s. 86(b) of the FLA;
- (c) Mr. Singh is to be solely responsible for the Hittrich legal bill of \$59,552.76;
- (d) Mr. Singh is to pay to Mrs. Singh a lump sum equal to retroactive and prospective spousal support calculated as per my reasons under spousal support below;
- (e) Taking into consideration: Mr. Singh's actions and motivation to file for Chapter 11 protection and the significant related expenses to RPC 2011, his actions engage the significantly unfair consideration under s. 95 of FLA; unspecified properties and funds in India in which I find Mr. Singh to have an interest; and equalization of division for Mr. Singh in family property; an overall adjustment for these entitles Mrs. Singh to a further \$250,000;
- (f) With respect to Mrs. Singh's claim for \$125,000 under s. 213(2)(d) of the FLA, the basis for this amount was not fully developed. To the extent these costs were incurred in the derivative action in Arizona, such costs may be recovered in the proceeding once the stay is removed. In this proceeding, the maximum penalty under s. 213 of the FLA appears to be \$5,000 and is awarded to Mrs. Singh; and
- (g) Costs for Mrs. Singh as awarded below. IV. Grounds of Appeal

[21] The grounds of appeal as set out in Mr. Singh's factum are convoluted and repetitive. I would restate the appellant's grounds of appeal in the following way, which I believe captures Mr. Singh's arguments on appeal.

[22] First, Mr. Singh says that the judge made palpable and overriding errors in his valuation of certain assets. He asserts that there was no evidence to support the values attributed by the judge to the following assets:

- a) India Properties
 - b) Palm springs vacation property
 - c) Khurana Investment
 - d) Koocanusa projects
 - e) Kumar loan
 - f) Gill loan A sub-issue to this ground of appeal is the contention that the judge allocated all of what I would call the "risky" assets to Mr. Singh in specie, further decreasing the value of the assets awarded to Mr. Singh. In saying risky, I refer to the litigation concerning some of the India Properties and the somewhat uncertain state of the loans. Also related to this ground of appeal is Mr. Singh's position that the judge improperly treated some assets as family property, although he did not press this point in oral argument.
- [23] Second, Mr. Singh says the judge made palpable and overriding errors of fact and an error of law in awarding \$250,000 to Ms. Singh pursuant to s. 95 of the FLA. He says the basis for making the award was not supported by the evidence (based on "unspecified properties" in India) or was wrong in law (based on improper considerations, including the unspecified properties and Mr. Singh's alleged misconduct in the US Chapter 11 bankruptcy proceedings).
- [24] Third, Mr. Singh says the judge erred in awarding special costs of the proceeding, including the 27-day trial, to Ms. Singh. Alternatively, he says that the judge should have exercised his discretion to award special costs for only part of the proceeding. Mr. Singh also says that if this Court allows the appeal, even in part, the award of costs at the trial should be reviewed and adjusted accordingly. Further, he says that the basis of the order for special costs was the same conduct for which he was penalized by the s. 95 order, "effectively imposing upon [him] two levels of special costs."
- [25] There are some additional miscellaneous grounds of appeal that I shall mention below. V. Ownership and Value of the Contested Properties A. Standard of Review
- [26] Mr. Singh's arguments regarding the value of the contested properties are based on alleged errors of fact. As noted in *Parton v. Parton*, 2018 BCCA 273 at para. 32, "[t]he standard of review for findings of fact is highly deferential. An appellate court will interfere with a trial judge's factual conclusions only if there is an obvious (palpable) and material (overriding) error: *Housen v. Nikolaisen*, 2002 SCC 33 (S.C.C.) at paras. 5, 6, 8, 10."

- [27] As mentioned above, Mr. Singh also raised issues regarding the judge's finding that the contested properties are family property, but he did not press this point in oral argument. His arguments in this regard appear to go to the judge's findings of fact or to the application of the law to those facts. He does not raise any extricable questions of law and, accordingly, a deferential standard of review is also required: *Xu v. Chu*, 2019 BCCA 414 at para. 27. B. India Properties
- [28] The India Properties include four properties identified as: Sector 8, Sector 38, Sector 35A, and F44 Uppal's Marble Complex ("F44").
- [29] At trial, Ms. Singh attributed the following values to the India Properties, as set out at para. 126 of the judge's reasons:
- a) Sector 8: \$321,558.60
 - b) Sector 38: \$155,907.20
 - c) Sector 35A: \$448,233.20
 - d) F44: \$438,489.00
- [30] The judge accepted Ms. Singh's valuation of the India Properties at para. 141 and as set out above at para. 155 of the judge's reasons.
- [31] Mr. Singh's position at trial was that the India Properties should be excluded property under s. 85(1)(b) (property acquired by inheritance) and (g) (property derived from the disposition of property acquired by inheritance) of the FLA. He testified that his father died in 1990 leaving him \$1 million and that he invested one half of this inheritance in the India Properties.
- [32] At para. 134 the judge found that Mr. Singh has money and property in India which he had not disclosed. The judge rejected Mr. Singh's testimony about the inheritance and, accordingly, found that the India Properties were not excluded property: at paras. 138-141.
- [33] The judge allocated all of the India Properties to Mr. Singh. The formal order in that respect is as follows: 1(d) The parties' interest in properties in India are apportioned 100% to Ranjit Singh.
- [34] In a subsequent order pronounced February 11, 2019, the judge ordered that: paragraph 1 (d) of the Final Order is stayed pending determination of the appeal. However the Respondent is to provide a full written report respecting the status of his litigation regarding the properties in India within 14 days of pronouncement of this order.

- [35] Mr. Singh applied to this Court in September of this year for admission of new evidence in the form of affidavits updating the status of the litigation regarding the India Properties. I would admit this fresh evidence as Mr. Singh was required by Justice Masuhara to produce this information. It proved relevant and helpful in determining the appeal related to the valuation of the India Properties.
- [36] On appeal, Mr. Singh says the judge erred as to the value he attributed to these properties and erred by awarding these properties to Mr. Singh in specie, thereby failing to divide the assets equally. He says there was no cogent evidence as to the value of the India properties and that neither party holds title to F44. He contends that the India properties are in litigation that may take years to resolve, further reducing their value. In her factum, Ms. Singh says that the judge did the best he could with Mr. Singh's inadequate disclosure as to the value of the India Properties and the litigation relating to them.
- [37] I now turn to the evidence concerning the four India Properties in order to determine if the judge erred with respect to the valuations of each and his finding that they are family property. In doing so, I shall refer in part to the new evidence related to the litigation in India.
1. Sector 35A
 - a) The Evidence at Trial

[38] A deposit receipt adduced at trial shows that Mr. Saini (a sometime friend and business associate of Mr. Singh) and Mr. Singh each paid a deposit of 55 lakhs (approximately \$100,000 CAD) for the Sector 35A property. The Agreement to Sell indicates the final purchase price of the house to be 4 crore and 6 lakhs (approximately \$846,400 CAD) and that the Saini family and Mr. Singh each purchased a 50% share, leaving Mr. Singh's interest at \$448,233 (the amount at which the judge valued his interest).

[39] In her testimony, Ms. Singh acknowledged that the ownership of Sector 35A was in dispute. She testified that because the deal was not completed, she did not think her husband's name was on the title.

[40] Mr. Saini testified that he and Mr. Singh "bought" the property in 2008. The purchase price was 4 crore 60 lakhs (approximately \$846,400). However, in confusing testimony, he suggested that the purchase did not go through although a deposit was paid. In addition, he suggested that Mr. Singh paid \$10,000 CAD to the daughter-in-law of the vendor, Mr. Bawa, in relation to this sale. Finally, he suggested that Mr. Singh had sold his interest to a third party.

[41] Mr. Singh testified that the Sector 35A property was bought with inheritance money. In addition, in his closing, he stated that Sector 35A "is only deposit". He further stated that the agreement to purchase did not close because Mr. Saini did not have the required funds.

 - b) The Judgment Below and the Arguments on Appeal

[42] As noted, the trial judge rejected Mr. Singh's assertion that an inheritance was used to purchase the property: at para. 138. The judge found that there was clear value in the India Properties given Mr. Singh's active engagement in litigation. The trial judge concluded that an adverse inference was warranted, holding that Mr. Singh had an interest in the properties and at the values submitted by Ms. Singh: at para. 141. Accordingly, the trial judge determined that the Sector 35A property was family property and apportioned a value of \$448,233 to Mr. Singh in specie: at para. 155.

[43] Mr. Singh argues on appeal that this determination was incorrect because the purchase of the property was never completed and the property is the subject of ongoing litigation in India.

[44] Ms. Singh argues that, because the financial information was exclusively in the hands of Mr. Singh, the trial judge was correct to make an inference as to the value of the property. Ms. Singh further asserts that Mr. Singh would not engage in years of litigation in India to obtain an asset with an option value worth anything less than the contract price. She argues that the contract price of \$448,233 was conservative.

c) The Fresh Evidence

[45] The Indian court judgment filed in relation to Sector 35A is illegible in parts, but it appears that Mr. Saini and his sons sued Mr. Bawa for specific performance of the contract of sale, or for damages. Mr. Saini also named Mr. Singh as a defendant in the suit as Mr. Saini sought, in the alternative, recovery of the amount of his deposit from Mr. Singh. The Indian judge rejected all of the plaintiff's claims, finding that both Mr. Saini and Mr. Singh were responsible for frustrating the contract, not Mr. Bawa. The judge found that both Mr. Saini and Mr. Singh paid a deposit of 55 lakhs (approximately \$100,000 CAD), which was forfeited.

[46] Mr. Singh has appealed this Indian judgment.

d) Conclusion on Sector 35A

[47] In my view, the testimony of the parties and Mr. Saini, the documents tendered at trial, and the fresh evidence are consistent in showing that Mr. Singh does not have legal title to Sector 35A. It is clear that the purchase was never completed and Mr. Singh is not a 50% owner of the property. His interest is in a claim to specific performance or return of his deposit, which claim the court in India has rejected. Although Mr. Singh intends to pursue an appeal of this decision, the outcome of such an appeal is highly uncertain.

[48] In my view, the judge made a palpable and overriding error in attributing the value of this property to Mr. Singh in circumstances where he does not own it and never has. The trial judge used the fact that he was engaged in ongoing litigation to support a conclusion that there was value in the India Properties, including Sector 35A. Ms. Singh echoes this argument on appeal. I conclude, however, that Mr. Singh's prospects of receiving an interest in Sector 35A are too uncertain to ascribe any value to it. In my view, the judge made a palpable and overriding error in ascribing a value to this property on the basis that Mr.

Singh had legal title to the property.

[49] I note that no other basis was argued for this ground of appeal and, as such, I have not considered potential issues related to conflict of laws or the interpretation of s. 84 of the FLA. The circumstances regarding Sector 35A are sufficiently uncertain that I would accede to this ground of appeal on that basis alone.

2. Sector 38C and Sector 8

a) The Evidence at Trial

[50] The record at trial contained two Agreements to Sell, one for a 50% share of Sector 38 and one for a 50% share of Sector 8. Both list Mr. Singh as the seller and Mr. Saini as the purchaser.

[51] The Agreement to Sell for 50% of Sector 38 is dated May 9, 2012, and indicates the property was valued at 1 crore (approximately \$184,000). A Receipt section indicates that Mr. Singh had already received a deposit of 20 lakhs.

[52] The Agreement to Sell for 50% of Sector 8 is dated May 9, 2012, and indicates the property was valued at 2 crore 50 lakhs. A Receipt section indicates that Mr. Singh had already received a deposit of 50 lakhs.

[53] A document dated in 2012 indicates that Mr. Saini sued Mr. Singh for specific performance of the contract related to the sale of Sector 8, or, in the alternative, 1 crore in damages. A letter from HDB Financial Services to Mr. Saini dated April 8, 2013, indicates that Mr. Saini at that point already owned 50% of Sector 8 and was to purchase the rest. What appears to be a government document dated February or May of 2013 indicates that Mr. Singh was entitled to receive consideration for the properties, 2 crore 50 lakhs for Sector 8 and 1 crore for Sector 38, "subject to deduction of tax at source."

[54] What appears to be a court document summarizes the arguments in a suit for specific performance filed by Mr. Saini against Mr. Singh related to Sector 38, indicating that a dispute arose over who was to pay money to the estate office to clear the title. This document appears to be an interlocutory decision granting an injunction enjoining Mr. Singh from alienating his share of the property to anyone other than Mr. Saini.

[55] The testimony at trial about these two properties is difficult to follow. It would appear from Mr. Saini's testimony that Mr. Singh and Mr. Saini both initially bought 50% of the properties. Mr. Saini attempted to purchase Mr. Singh's share, and put a deposit down on each, but the deal was frustrated by a dispute over a change to the tax rules in India. It would appear this dispute was over who would pay taxes or for a certificate of no objection to clear the title and complete the deal.

- [56] In his testimony, Mr. Singh indicated a willingness to close the deal on Sector 8 but a desire to continue litigating 38. This may be because he seems to believe Sector 38 is worth more than the price indicated in the Agreement to Sell.
- [57] There was some indication that a settlement between Mr. Saini and Mr. Singh was arrived at during the present case. There was also an indication that Mr. Saini was willing to pay 50% of the outstanding dues owed to the estate office.
- b) The Judgment Below and the Arguments on Appeal
- [58] The trial judge assigned a value of \$321,558 to Sector 8 and \$155,907 to Sector 38 to Mr. Singh. These values are based on the purchase price in the Agreements to Sell less the deposit already paid (2 crore for Sector 8 and 80 lakhs for Sector 38).
- [59] Mr. Singh argues on appeal that the evidence regarding these properties was incomplete "by reason of the manner of the answers and numerous inaudible responses". Mr. Singh notes the litigation is ongoing and argues it was not clear how the values were arrived at owing to the status of the India litigation. Mr. Singh then states the value was not premised upon a valuation but the purchase and sale price from 2012.
- [60] Ms. Singh argues that the value of these properties was clear and that Mr. Saini had testified he was ready and willing to pay Mr. Singh. Ms. Singh notes that Mr. Singh testified that Sector 38 was worth twice as much as the contract price. Ms. Singh argues that the litigation could result in payment to Mr. Singh or Mr. Singh could continue to hold his interest in the properties, but either way the evidence supports a value of no less than what Mr. Saini was willing to pay.
- c) The Fresh Evidence
- [61] The fresh evidence does not contain any new information regarding these properties, aside from Affidavit #1 of Mr. Singh, as well as the attached lawyer's statement, indicating that litigation with regard to these properties is ongoing.
- d) Conclusion
- [62] The interest of Mr. Singh in these properties is much clearer than his interest in Sector 35A. Unlike Sector 35A, it is clear that Mr. Singh has title to 50% of these properties. Mr. Singh's current ownership of these two properties does not appear to be at issue in the India litigation. Rather, the issue is whether Mr. Singh must sell his interest to Mr. Saini. In addition, the valuation arrived at by the judge by taking the Agreements to Sell from 2012 and subtracting the deposit already paid is sufficiently clear.
- [63] In my view, the trial judge did not err in treating Sector 8 and Sector 38 as family property. There was evidence to support the judge's conclusion as to the values and I see no palpable and overriding error in this regard. If there is any uncertainty as to Mr. Singh's legal interest or the properties' values, it is entirely of his own making.

3. F44 Uppal's Marble Complex

a) The Evidence at Trial

- [64] The evidence includes an appraisal of F44 listing the value of the property as 2 crore 25 lakhs (approximately \$414,000 CAD). This appraisal was carried out pursuant to a consent order granted by Justice Masuhara: para. 47(q).
- [65] There is a rental agreement between Ms. Singh and a Gurdial Singh dated April 9, 2015, for a tenancy of three years. There are a number of emails related to changing the locks on the unit and a dispute with a former servant.
- [66] In her testimony, Ms. Singh stated that she and Mr. Singh purchased F44. She rented it to her uncle.
- [67] Mr. Saini testified that the issue with the building was that the builder did not build 10% of the units for low income tenants as required by Indian law, so the builder is unable to alienate the property.
- [68] Mr. Singh testified that the value of F44 should be excluded because: he bought it with inheritance money, Ms. Singh encumbered the title by renting it to her uncle, he would need to sue the builders to sell it, and Ms. Singh made no contributions to the physical work on the property or the bills. He also testified he bought the property for orphans. He conceded that the property has value.

b) The Judgment Below and the Arguments on Appeal

- [69] The trial judge valued F44 at \$434,489. I note that the judge may have intended this figure to be \$438,489, which is the value Ms. Singh attributed to F44, given his finding that he accepted Ms. Singh's valuations of the India Properties.
- [70] Mr. Singh argues on appeal that Mr. Saini's evidence at trial related to F44 was problematic because he was employed as an expert on Indian property law. He notes that Mr. Saini conceded that the parties did not have title to the F44 property due to an issue over building violations, but that the parties were still the legal owners. The evidence is clear that the parties are beneficial owners.
- [71] In response, Ms. Singh argues that Mr. Singh provided no evidence to assist the court in valuing this interest.

c) The Fresh Evidence

- [72] In his Affidavit #1, Mr. Singh states that due to a class action neither he nor Ms. Singh "have legal or beneficial ownership of the property despite having possession of the property."

d) Conclusion

[73] In my view, while the property may currently be inalienable due to the building violations, the evidence supports a finding that the parties do have beneficial title to the property. The evidence is uncontroverted that Mr. Singh, either alone or together with Ms. Singh, purchased the property, and, as Mr. Singh acknowledges, the parties remain in possession of it. Accordingly, I see no error in the judge's treatment of F44 as family property.

[74] Further, in my view, it was open to the trial judge on the available evidence to value this property in the amount of \$434,489 (or \$438,489). This would appear to be based on the appraisal adduced at trial. There is undoubtedly value in the property, as Mr. Singh conceded at trial. C. Palm Springs Vacation Property

1. The Evidence at Trial

[75] A copy of a cheque for \$59,350 made out to Rashpal Samra from Mr. Singh with the memo notation Re: Palm Springs House was adduced in evidence.

[76] Ms. Singh and her son both testified that they believed Mr. Singh bought a 25% interest in a vacation home in Palm Springs.

[77] Mr. Singh testified that at one point he considered purchasing this interest but decided against it. He said the cheque that he wrote with the memo "Palm Springs House" was for some other purpose as he and Mr. Samra exchanged money back and forth. Mr. Singh testified that a previous statement he had made, to the effect that he held a one-quarter interest in the property, was incorrect. Mr. Singh also testified that he and Ms. Singh had been to the property once or twice.

2. The Judgment Below and the Arguments on Appeal

[78] The trial judge noted that Mr. Singh's testimony about the Palm Springs vacation home was unsatisfactory: at para. 109. He noted that on January 17, 2018, Mr. Singh was asked about a statement in his Affidavit #1 in which he agreed with Ms. Singh's statement that he held a 25% interest in a Palm Springs Rancho Mirage home, registered in the names of Daljit and Guardia Samra. Mr. Singh later resiled from that statement stating there had only been talk of buying a 25% interest with an Avtar Samra. He stated that there was no discussion of a specific interest; and that despite a cheque for \$59,350 provided to Rashpal Samra with the notation "Palm Springs House" on it, no interest was ever purchased. Mr. Singh could not explain why he had written "Palm Springs House" on the cheque.

[79] The trial judge found that Mr. Singh holds a 25% interest in the Palm Springs vacation property: at para. 151.

[80] Mr. Singh argues on appeal that there was no basis in the testimony of Ms. Singh or her son as to how they came to have the alleged knowledge as to the purchase. Mr. Singh concedes he wrote cheques for \$20,000 and \$59,350 to Gurdial Samra, the latter of which referenced the Palm Springs property, but these were "not to purchase an interest in the property". Mr. Singh further submits that no valuation of the Palm Springs property was admitted into evidence.

[81] Ms. Singh argues in response that when confronted with his earlier sworn statement in which he admitted that he had a 25% interest in the property, Mr. Singh denied that it was true, saying he had considered buying it, but had not done so. Ms. Singh also argues that the valuation of the property is based only on the cheque for \$59,350; plus an amount equivalent to compounded interest on the original \$59,350.00 investment at 3% for 9.5 years, to arrive at \$78,591.28.

3. Conclusion

[82] Based on Mr. Singh's inconsistent testimony, the fact that the family had visited the house at least once or twice, and the documentary evidence of the cheque with the notation "Palm Springs House", it was open to the trial judge on this evidence to find that the parties had purchased a 25% stake in the home initially valued at \$59,350. Accordingly, I see no error in the trial judge's finding that the parties' interest in the Palm Springs property is family property or in the value he ascribed to it. D. Jasjit Khurana Investment

1. The Evidence at Trial

[83] Ms. Singh testified that Jasjit Khurana was her son's ex-wife's uncle. Ms. Singh testified that she did not know why Mr. Khurana had paid Mr. Singh \$25,000. Mr. Singh testified that he had paid \$96,500 to Jasjit Khurana in May of 2007 to buy half the shares in a property in Langley.

2. The Judgment Below and the Arguments on Appeal

[84] The trial judge does not specifically discuss this investment, but values it at \$96,500 and apportions it entirely to Mr. Singh: at para. 155.

[85] Mr. Singh argues on appeal that the evidence for this debt is lacking. He argues that there was no evidence that the loan remained valid at the date of separation, and that there was no evidence to establish what happened to the funds or the investment at anytime, including the date of separation.

[86] Ms. Singh argues in response that the paucity of evidence on this point is entirely the fault of Mr. Singh given his failure to make complete and timely disclosure, his tendency to give false evidence and to disclaim prior statements under oath/affirmation, and his lack of clarity or corroborating evidence regarding the status of sums borrowed and lent by him to his associates. As such, the trial judge was warranted in making the adverse inference that the outstanding loan or investment was an asset of Mr. Singh.

3. Conclusion

[87] Mr. Singh admitted at trial that he had made the payment to buy property. In the absence of any evidence adduced by Mr. Singh that this loan was repaid, in my view, it was open to the trial judge to view this as an asset of Mr. Singh and to value it as he did. E. Varinder Kumar and Surinder Gill Loans

1. The Evidence at Trial

[88] Although his testimony about this loan was confusing, Mr. Singh admitted that he loaned Mr. Kumar 20 lakhs (approximately \$36,800 CAD) in 2012. In addition, he admitted he loaned Mr. Gill 25 lakhs (approximately \$46,000 CAD) in 2013.

2. The Judgment Below and the Arguments on Appeal

[89] The trial judge does not specifically discuss these loans, but valued them at \$38,976 for the Varinder Kumar loan and \$48,721 for the Surinder Gill loan. He apportioned them in specie to Mr. Singh: at para. 155.

[90] Mr. Singh argues that while he did loan Mr. Kumar 20 lakhs in 2012, Mr. Kumar had not paid him back and he was in court with him in India trying to collect payment. Mr. Singh also argues that there was no evidence that the loan to Mr. Gill existed as of the date of separation.

[91] Ms. Singh argues in response that Mr. Singh provided no evidence at trial that Mr. Kumar refused to pay or to support his testimony that he had taken Mr. Kumar to court over the money, and thus the trial judge was right to make an adverse inference against Mr. Singh. Ms. Singh also submits that the trial judge was not wrong to consider the loan to Mr. Gill as a family asset because Mr. Singh did not clarify when the loan took place.

3. Conclusion

[92] Given the oral testimony of Mr. Singh, it was open to the trial judge to find that Mr. Singh made loans to Mr. Kumar and Mr. Gill and that they remained outstanding. In addition, Mr. Singh's argument about the lack of evidence related to these loans is curious as, having admitted to lending this money, the onus was on him to evidence in some way that the loans had been repaid. As such, on this confusing evidentiary record it cannot be said the judge made a palpable and overriding error. It was within Mr. Singh's ability to clarify the record. He chose not to do so. F. Koocanusa Projects

[93] Koocanusa Projects was a corporate entity that at one point included a dental office; however, as of the trial the only assets held were four contaminated lots in Kimberly, BC.

1. The Evidence at Trial

- [94] In her Notice to Admit dated March 10, 2017, Ms. Singh asserts that Koocanusa holds title to the four properties, that they are contaminated, and that because of this contamination the market value of the properties was negligible.
- [95] In his Response to Ms. Singh's Notice to Admit, dated March 24, 2017, Mr. Singh submitted that on one of the lots sits a warehouse that is rented to "Columbia Salvage" for \$630 per month, and that the rent cheques were made out to Ms. Singh personally. Mr. Singh submitted that Ms. Singh had not disclosed this income to the courts nor had she paid property taxes: at paras. 18-19.
- [96] Mr. Singh denied that the lots were contaminated, stating that he had paid \$40,000 to have the lots remediated and that they were 75% remediated. Mr. Singh further denied that the value of the lots was negligible, submitting that they were worth their "assessed value" and that an appraisal was pending: at para. 21.
- [97] An expert appraisal dated April 20, 2017, was adduced at trial. The appraiser concluded that he was not able to complete a valuation without more information about the extent of the contamination and the cleanup required. The letter notes that the properties were listed in 2010 on an "as is" basis for \$27,000 and they did not sell. The appraiser opined that on non-contaminated market basis the lots were likely worth \$40,000 to \$50,000 each (for a total of \$160,000 to \$200,000). The report also notes that a phase two environmental study would be required to properly value the lots, and this may cost at least \$15,000.
- [98] At trial, Ms. Singh testified that she had been receiving \$630 per month since July or August of 2015 from Don Chown of Columbia Recycling, which operates a facility on one of the lots. She suggested that these payments were not pursuant to any lease agreement but rather because Mr. Chown knew Mr. Singh's character and Mr. Chown felt badly for Ms. Singh. On cross-examination, Ms. Singh stated the property taxes on the properties had not been paid. She also stated that the money was being deposited in a personal bank account.
- [99] Mr. Singh testified that he had spent \$40,000 to clean up the property. In closing submissions, Mr. Singh testified that Ms. Singh should have \$20,000 in income attributed to her from the monthly payments, and that she should be responsible for the property taxes because she had been receiving those payments. He also stated that the properties should be valued at \$100,000.

2. The Judgment Below and the Arguments on Appeal

- [100] The judge acknowledged Mr. Singh's testimony that in his opinion the lots were worth \$100,000 less \$20,000 for rent payments made to Ms. Singh: at paras. 127(l), 143. Apparently choosing to disregard the \$20,000, the trial judge attributed the full \$100,000 value of Koocanusa properties to Mr. Singh: at para. 155.

[101] Mr. Singh argues on appeal that there was no cogent evidence as to the value of the Koocanusa properties. Mr. Singh submits that although he opined as to the value of the properties in the court below, the evidence does not support such a conclusion.

[102] Ms. Singh agrees with the facts as stated by Mr. Singh.

3. Conclusion

[103] Mr. Singh is correct to note that evidence as to the value of the properties was lacking at trial. Indeed, the appraiser could not appraise the properties until an environmental assessment was carried out. However, Mr. Singh himself suggested the \$100,000 valuation. He also suggested that the lots were nearly remediated in his Response to the Notice to Admit. On the record before the trial judge, it was open to him to accept Mr. Singh's own evidence with respect to the valuation. Mr. Singh was knowledgeable about the state of his own property and its current condition. The trial judge made no palpable or overriding error in accepting Mr. Singh's own evidence of value. G. Summary of Conclusions

[104] I would not accede to any of the arguments on appeal related to these specific properties except Sector 35A. Aside from Sector 35A, I conclude that the judge rested his valuation on evidence, in most cases adduced by Mr. Singh. It was clearly in Mr. Singh's power to adduce more certain evidence but he elected not to do so. The judge drew adverse inferences where appropriate. Aside from Sector 35A, the judge made no palpable and overriding errors in his valuation or apportionment of the properties or in his findings that these properties constituted family property. H. Allocation of Properties, In Specie

[105] Mr. Singh also contends the judge erred in awarding the above properties in specie to him. The judge concluded that Ms. Singh had no control over the India Properties or the undocumented loans. This is an exercise of the judge's discretion. There was more than sufficient evidence supporting the judge's conclusion. I would not accede to this ground of appeal. VI. Section 95 - Unequal Division Order A. Overview

[106] The next ground of appeal concerns the s. 95 order.

[107] The judge adjusted the otherwise equal division of assets by allocating an additional \$250,000 to Ms. Singh, pursuant to s. 95 of the FLA. He explained the basis for his doing so as follows:

[157] Adjustments from the proceeds from the liquidation of RPC 2011 are:

- (e) Taking into consideration: Mr. Singh's actions and motivation to file for Chapter 11 protection and the significant related expenses to RPC 2011, his actions engage the significantly unfair consideration under s. 95 of FLA; unspecified properties and funds in India in which I find Mr. Singh to have an interest; and equalization of division for Mr. Singh in family property; an overall adjustment for these entitles Ms. Singh to a further \$250,000;

- [108] The FLA statutory regime presumptively provides for the equal division of property, subject to certain exceptions: 81 Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6 [Pension Division],
- (a) spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution, and
 - (b) on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt. 87 Unless an agreement or order provides otherwise and except in relation to a division of family property under Part 6,
 - (a) the value of family property must be based on its fair market value, and
 - (b) the value of family property and family debt must be determined as of the date
 - (i) an agreement dividing the family property and family debt is made, or (ii) of the hearing before the court respecting the division of property and family debt.
- [109] Section 95 is the provision that confers jurisdiction on the court to depart from the presumption of equal division: 95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to
- (a) equally divide family property or family debt, or both, or
 - (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,

- (i) substantially reduced the value of family property, or (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met. [Emphasis added.]
- [110] On appeal, Mr. Singh submits that the trial judge erred in his application of s. 95. He submits that the evidence did not rise to the high threshold of "significant unfairness," and that the judge erred in law by considering impermissible factors and failing to consider certain factors listed in s. 95(2) that weighed against unequal division in favour of Ms. Singh.
- [111] Ms. Singh argues in response that the trial judge's \$250,000 reapportionment was "modest" in the context of a body of assets worth an estimated \$6.1 million. Ms. Singh submits that the trial judge did not misapply s. 95 and had compelling reasons to order the payment. B. The Judgment Below and the Arguments on Appeal
- [112] There are two prongs to the trial judge's award under s. 95. First is the unfairness arising from Mr. Singh's conduct related to the bankruptcy of RPC 2011, and second is his lack of disclosure surrounding his assets in India. In both instances, Mr. Singh's conduct resulted in a reduction in value of assets available to Ms. Singh.
- [113] By way of background to the first prong, one of the assets in dispute at trial was RPC 2011, an Arizona company that owned a Super 8 Motel in Goodyear, Arizona: at para. 9. In 2015, the year following the parties' separation, Ms. Singh initiated a derivative action in the Superior Court of Arizona seeking removal of Mr. Singh from control of RPC 2011 and alleging misappropriation of RPC 2011 assets by Mr. Singh.
- [114] On June 30, 2015, the Arizona Superior Court ordered, in the Arizona proceeding, that Mr. Singh and RPC 2011 pay Ms. Singh's attorney fees: at para. 49 of the BC reasons for judgment. Mr. Singh and RPC 2011 did not pay the fees, citing insufficient funds following the payment of RPC's legal costs and compensation payments to Mr. Singh: at para. 50.

- [115] On September 28, 2015, a judge of the Arizona Superior Court found Mr. Singh and RPC 2011 in contempt and ordered them to pay Ms. Singh \$30,000 USD by October 2, 2015, and \$20,000 USD on the 2nd of each month until they had paid the amount owed: at para. 51 of the BC reasons for judgment. RPC 2011 paid \$30,000 USD to Ms. Singh's attorneys in October 2015 and a further \$20,000 USD in November 2015: at para. 52.
- [116] On December 1, 2015, immediately before the next \$20,000 USD was due to Ms. Singh, RPC 2011 filed for Chapter 11 protection: at para. 54. Mr. Singh admitted at trial that he did so as a tactic to avoid having to pay Ms. Singh. As a result of the bankruptcy proceeding, Mr. Singh obtained a stay of proceedings of the derivative action on account of the bankruptcy.
- [117] As the bankruptcy unfolded it became apparent that RPC 2011 was not insolvent, and Mr. Singh had fabricated evidence of debts owed by RPC 2011. The debts were disallowed in the bankruptcy as they could not be proven. Justice Masuhara found that Mr. Singh acted in bad faith in petitioning the company into bankruptcy. He considered the unnecessary cost of the bankruptcy proceeding a factor in awarding the \$250,000 reapportionment.
- [118] Of specific relevance to the second factor underlying the s. 95 order (the undisclosed assets), the judge said at para. 38 that "[o]ver the years Mr. Singh purchased and sold property in India."
- [119] The judge also explained the basis for his drawing adverse inferences about Mr. Singh's testimony concerning undisclosed India Properties. He wrote:
- [83] Disclosure was an issue. ... His list of documents was incomplete. Various unspecified properties in India in which Mr. Singh has [a]n interest, not previously disclosed were mentioned by him at trial.
- [116] The foregoing gives a flavour of Mr. Singh's flawed recall and mendacities in this case. Counsel for Ms. Singh covered many in their closing submissions. Mr. Singh does not respect court orders and does not value statements that he makes under oath or affirmation or otherwise. He told untruths to the court, admitted he had lied directly to the court, he admitted he altered a document, forged signatures and generally displayed an elastic and flexible approach to his evidence. Unfortunately, he is neither reliable nor credible. I place little weight upon his evidence. Adverse inferences and findings based on evidence are justified in this case.
- [120] Later the judge repeated his finding about undisclosed property in India:
- [134] I also find based on the evidence that Mr. Singh has funds and property in India which have not been disclosed.

- [121] As to the unreliable nature of his testimony, the judge found at para. 91 that Mr. Singh resiled from his sworn affidavit, wherein he stated: "I have never sent any money to India, if anything I have only every [sic] brought monies from India to Canada." Later he said that statement was untrue and stated he had not read the affidavit. This was a repeated excuse in the trial". At para. 104 the judge found he had not abided by a court order, and then said this about the India transactions:
- [110] On January 17, 2018, he again resiled from his statement in an affidavit, where he stated that the value of a farm property he sold in India for \$600,000. He testified in court that the property was sold for \$200,000.
- [111] I also note the curious evidence of Mr. Singh, where he spoke of having adopted two males from India to bring them to Canada. He stated they were 27 years and 30 years old. He could only recall the name of one. He paid the legal fees for their immigration to Canada. This apparently enabled Mr. Singh to transfer \$100,000 through each to Canada. Mr. Singh also did this with the son of Mr. Saini. It seems Mr. Singh was involved in transactions called "Hawala" in Punjabi, a method for transferring money out of India to avoid Indian government rules and detection as described by Raj Singh.
- [112] I also note his strange evidence of having sent monies to India for legal services. When asked if he had a receipt, he stated that lawyers do not issue receipts in India and that he had no documentation to show any communication from his lawyer regarding the legal work requested.
- [122] On appeal, Mr. Singh says that the evidence does not meet the high standard required for an order under s. 95, and, moreover, that the judge erred in law in his consideration of the factors on which he relied to make the s. 95 order. Mr. Singh acknowledges that the judge must have based his award on s. 95(2)(i), but says that the two factors the judge relied upon to ground his award were not permissible factors under s. 95(2)(i). Further, he says the judge failed to recognize that weighing against a s. 95 adjustment are the duration of the relationship (37 years) and Mr. Singh's efforts post-separation to increase the value of RPC 2011.
- [123] Mr. Singh submits that the judge failed to explain in detail his rationale for making the award. He says that to the extent the award is based on undisclosed unspecified assets, as was the case in *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.), the judge erred in law because there was a wholly insufficient evidentiary basis to reach the conclusion that he owned other undisclosed properties in India: relying on *Wu v. Sun*, 2011 BCCA 239. In other words, Mr. Singh says drawing adverse inferences against him is not a substitute for evidence about specific assets: *Wu* at para. 41 citing *M.P.P. v. C.M.P.*, 2005 BCSC 1014.
- [124] Ms. Singh says the unequal division was justified. She contends that the inference that Mr. Singh owned undisclosed assets is supported partly on the basis of Mr. Singh's own testimony that in the past decade he had earned about 10 million from property sales. At one point in the trial he presented evidence of an accounting but left unaccounted for about

\$2,147,000. Ms. Singh said it would be significantly unfair to her to equally divide the known family assets owing to non-disclosure by Mr. Singh of properties and funds in India, and his costly, unilateral, and tactical move of putting RPC 2011 into Chapter 11 protection.

C. Standard of Review

- [125] Absent an error of law, the standard of review to be applied to an appeal of a s. 95 order is deferential, because in large part the order is discretionary. In *Venables v. Venables*, 2019 BCCA 281, an appeal also involving an order under s. 95, Justice Griffin noted the highly deferential standard of review required in the exercise of discretion in family law cases in order to promote certainty and finality: at para. 72, citing *Hsieh v. Lui*, 2017 BCCA 51 at para. 38: The standard of appellate review in family law matters is highly deferential. An appellant must show that there was a material error, a serious misapprehension of the evidence, or an error in law for an appeal court to intervene. This high standard recognises the discretionary nature of the trial judge's task and the benefits of having heard directly from the parties. It also promotes finality and limits expense in family law litigation: *McKenzie v. Perestrelo*, 2014 BCCA 161 at paras. 23-24, citing *Hickey v. Hickey*, [1999] 2 S.C.R. 518 at para. 12 and *Van de Perre. v. Edwards*, 2001 SCC 60 at paras. 14-15.
- [126] Here, Mr. Singh argues that the judge erred in law by basing his s. 95 order on improper considerations, or, alternatively, that he exercised his discretion in an unfair manner. I would apply a correctness standard of review to the former, and a deferential standard to the latter.
- #### D. Discussion
- [127] The issues on appeal are first whether the costs associated with a bad faith petition in bankruptcy and the judge's finding that there are undisclosed assets outside the jurisdiction come within permissible factors to consider in reapportioning family assets pursuant to s. 95(2)(i), and second, whether the judge improperly exercised his discretion in ordering an unequal division of assets.
- [128] Before turning to the manner in which the judge applied s. 95 to the facts he found, I shall review the jurisprudence on the scope of s. 95, the meaning of the language "significant unfairness," and the interpretation of ss. 95(2)(i).
- [129] First is the question of the meaning of the term "significant unfairness."
- [130] In *Jaszczewska v. Kostanski*, 2016 BCCA 286, Justice Harris, for the Court, engaged in an extensive analysis of s. 95. He first noted that the Legislature sought to increase certainty, fairness, and predictability in property division matters with the FLA by reducing the discretion of the courts to depart from equal division: at para. 36. The test in the previous legislation (Family Relations Act, R.S.B.C. 1996, c. 128) only required unfairness, whereas the FLA requires "significant unfairness." In addition, the legislature more precisely specified the factors to be considered in applying this threshold.

- [131] Justice Harris agreed with the analysis in *Remmem v. Remmem*, 2014 BCSC 1552, in which Justice Butler (as he then was) defines "significant" as "extensive or important enough to merit attention" and something that is "weighty, meaningful or compelling," concluding that to justify an unequal distribution "[i]t is necessary to find that the unfairness is compelling or meaningful having regard to the factors set out in s. 95(2)": at para. 41, citing para. 44 of *Remmem*. Justice Harris then noted that it would be unwise to attempt to define the meaning of "significant unfairness" but found that reapportionment under s. 95 would require "something objectively unjust, unreasonable or unfair in some important or substantial sense": at para. 42. He said:
- [44] in enacting s. 95(2)(i) the Legislature recognized that there may be factors other than those listed that could ground significant unfairness. Hence, while the Legislature intended to limit and constrain the exercise of judicial discretion to depart from equal division, it did not provide a closed list of factors and it did not eliminate the discretion.
- [132] Ultimately, Justice Harris held that unequal division was justified in the case under appeal given that the significant increase in value to one property in question was caused in part by the respondent after separation: at paras. 52-53.
- [133] In *V.J.F. v. S.K.W.*, 2016 BCCA 186, Justice Newbury described s. 95 as requiring a high threshold of "significant unfairness" to depart from equal division: at para. 81. Other cases have reached similar conclusions about the high threshold necessary to reapportion assets under s. 95. In *Khan v. Gilbert*, 2019 BCCA 80, for example, Justice Fenlon noted that cases in which unequal contribution was found to reach the significantly unfair threshold have involved marked, prolonged, and intentional or unexplained disparities in contribution to family burdens: at para. 32.
- [134] In summary, it is clear that the Legislature intended the general rule of equal division to prevail unless persuasive reasons can be shown for a different result: *Jaszczewska* at para. 41. Reapportionment will require something objectively unjust, unreasonable, or unfair in some important or substantial sense. This is in contrast to the previous legislation where courts had discretion under s. 65 to reapportion property or debt where it would be simply "unfair" not to do so. The threshold for "significant unfairness" is high. There must be a real sense of injustice that would permeate the result if the court did not deviate from the presumptive equal division.
- [135] Keeping the foregoing in mind, I turn to consider the interpretation of s. 95(2)(i) and whether the factors the judge relied on properly fall within its scope.
- [136] Section 95(2)(i) is a general term, allowing consideration of "any other factor that may lead to significant unfairness." As a general term preceded by a list of specific items, the rule of statutory interpretation known as *eiusdem generis* ("of the same kind"), or the limited class rule, may apply. In *National Bank of Greece (Canada) v. Katsikonouris*, [1990] 2 S.C.R. 1029, La Forest J. explained the rule thusly at 1040: Whatever the particular document one is construing, when one finds a clause that sets out a list of specific words followed by a

general term, it will normally be appropriate to limit the general term to the genus of the narrow enumeration that precedes it. [Emphasis added.]

- [137] Ruth Sullivan, in *Sullivan on the Construction of Statutes*, 6th ed. (Markham, Ontario: LexisNexis Canada: 2014) at pp. 235-236, sets out three requirements for this rule of statutory construction to apply: first, the specific items in the list must belong to a single identifiable class; second, this class must be narrower in scope than the general words that follow the list; and third, the rule cannot be invoked if the specific class inferred from the list has nothing, apart from those items, to apply to.
- [138] Applying these requirements to the provision at issue, if the rule applies, the class cannot be any factor "that may lead to significant unfairness" as this would violate the second requirement as set out by Sullivan. The other factors enumerated in s. 95(2) suggest consideration of aspects of the relationship between the spouses, including its duration, the terms of any agreement, as well as the characteristics of family assets and debt and how the spouses have influenced their value. One of the considerations in s. 95(2)(g) includes an analysis of a spouse's good faith or motive. These factors are broad. Nevertheless, in my view, they all relate to a limited class, namely, the economic characteristics of a spousal relationship.
- [139] The economic characteristics of a spousal relationship is a broad class, but one that is narrower than the general term in s. 95(2)(i). With regard to Sullivan's third requirement, there are clearly other factors relevant to the class that are not enumerated in s. 95(2)(a)-(h). For example, this limited class would allow for the consideration of the relative contribution of spouses to the acquisition, preservation, maintenance, or improvement of family property during the relationship, as suggested by Jaszczewska at para. 44.
- [140] Accordingly, I find that the limited class rule is applicable and I must consider whether the factors the judge relied upon are properly the subject of s. 95(2)(i). In my view, they are. The economic characteristics of a spousal relationship would clearly encompass the existence of undisclosed assets. This class would also permit consideration of the costs of bankruptcy, and a party's motivations for entering bankruptcy, as the trial judge did in the case at bar, and the consequent impact on the value of the asset. Alternatively, I note that the cost of the bankruptcy proceeding could also in this case fall under s. 95(2)(f): "whether a spouse, after the date of separation, caused a significant decrease in the value of family property "
- [141] I see no error in law in the judge's application of s. 95.
- [142] Keeping in mind the highly deferential standard of review regarding the judge's exercise of discretion in his consideration of the above factors, I also see no reason to interfere with his conclusion that an equal division of assets would be significantly unfair.

- [143] The judge made findings on the evidence as noted above that provide an evidentiary basis for his conclusion that Mr. Singh had additional undisclosed assets in India. In my view the judge's reasons, taken as a whole, paint a picture of an untrustworthy party, whose property disclosure could not be relied upon at all. There is sufficient evidence of the fluidity of his affairs between Canada and India, the nature of his real estate dealings in India, and his dishonest lack of disclosure, for the judge to have reached the conclusion, founded on Mr. Singh's own evidence, that there existed additional undisclosed and unidentified assets in India.
- [144] In my view, the judge did not "make something out of nothing" as was the case in Wu. Here, there was a reasonably based finding that there were additional undisclosed and unknown assets. This is an exceptional case. Usually such an award would need to be based on evidence tied to a specific asset but where, as here, the party has been found to be completely unreliable and his own evidence leads to a reasonable inference that he is hiding assets, a judge may be justified in making a restrained and conservative order such as was done here. I note that the s. 95 award is based only in part on the unspecified assets. I also note that, unlike in Wu, the judge did not ascribe any specific value to the undisclosed assets. Rather, he simply considered the strong likelihood of their existence in fashioning a fair division of assets. I would not disturb the award on this basis.
- [145] There was also ample evidence to support the judge's conclusion that Mr. Singh acted in bad faith in petitioning RPC 2011 into bankruptcy. It is clear that the judge was not intervening in the Arizona proceeding, nor was he acting outside his jurisdiction as was suggested by Mr. Singh. With the parties' consent, the judge communicated with the judge conducting the Arizona bankruptcy proceeding. That Arizona judge had to determine whether to order the liquidation of the bankrupt asset or the restructuring. He ordered liquidation. Having done so, the division between the spouses of the net proceeds of the liquidation was a matter entirely within the jurisdiction of the BC Supreme Court.
- [146] Justice Masuhara's consideration of the unnecessary burden of the bankruptcy costs was in no way encroaching on the foreign jurisdiction. It was a question entirely within his jurisdiction as to the division of the net proceeds between the parties. We were not directed to any specific evidence about the costs of those proceedings but it is within the appropriate range of matters over which a judge may take judicial notice that there are professional fees of significance associated with such a proceeding.
- [147] I would not disturb the award made under s. 95. VII. Miscellaneous Grounds of Appeal
- [148] Mr. Singh took considerable time in his factum and in oral argument to press the point that the judge erred in law by relying on evidence imported from the Arizona proceeding, including the forensic audit of the Arizona property. He asserts repeatedly that the judge erred in his reliance on evidence in the bankruptcy proceedings as to Mr. Singh's misappropriation of property. There is no merit to these submissions. The value of the Arizona property was not in dispute. In the final analysis the property was liquidated and

the proceeds divided equally subject to adjustments. None of the judge's final orders about the division of property were based on findings of misappropriation. VIII. Special Costs

[149] Mr. Singh appeals the order of special costs made against him.

[150] The Court order provides: The Claimant is awarded special costs of the proceeding.

[151] The judge said:

[176] Mr. Singh's conduct at trial has been reprehensible and deserving of rebuke. His conduct has prolonged this case, and added unnecessary time and cost, and demonstrated a clear disregard for the administration of justice. Mrs. Singh is awarded special costs.

[152] In his factum, Mr. Singh says that in the alternative to setting aside the entire special costs award, this Court should consider a partial award of special costs. He says Ms. Singh and her counsel were significantly responsible for the length of the trial and the voluminous irrelevant documents put before the court. He accuses Ms. Singh and her counsel of wasting time. In the alternative, he contends that if he is successful on appeal, the order for special costs should be revisited. In oral submissions, counsel for Mr. Singh sensibly did not rest his submissions on what would have been a futile effort to persuade us that the judge mischaracterized Mr. Singh's testimony. Rather, he stressed that the court has leeway in terms of whether the award should cover the totality of the proceeding or part. He also argued that the special costs order was in effect duplicated by the \$250,000 reapportionment under s. 95.

[153] The standard of review as to the award of special costs is highly deferential: *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9 at para. 27; *Tanious v. The Empire Life Insurance Company*, 2019 BCCA 329 at para. 33. Mr. Singh does not contend the judge erred in principle, in law, or made a palpable and overriding error in his award of special costs. The judge cites many examples of Mr. Singh's conduct in the course of the litigation. It was clearly deserving of rebuke. The judge is in the best position to determine if a partial award was appropriate. I would not interfere with the award of special costs for the whole proceeding, nor would I adjust the costs award based on the disposition of the appeal.

[154] I also would not accede to the argument that the judge effectively imposed "two levels of special costs" on Mr. Singh. The purpose of the two awards is entirely distinguishable. The s. 95 award, while in part the result of non-disclosure, is based on the conclusion that Mr. Singh owns additional undisclosed assets in India. The special costs award is based on Mr. Singh's conduct in the action. IX. Disposition

- [155] I would dismiss the appeal except with respect to the India Property titled Sector 35A. I would substitute a value of \$0 for the \$434,233 as found by the trial judge. The parties must make the necessary adjustment to the division of proceeds from the sale of RPC 2011 assets. If they cannot agree to the adjusted division after removing Sector 35A, they should reappear before the trial judge to settle the division of assets after removing the value of Sector 35A.
- [156] Mr. Singh has been successful on appeal in respect to the value of one of the assets, namely, Sector 35A. Nevertheless Ms. Singh has been substantially successful on appeal. Mr. Singh's argument on appeal was sprawling and unfocussed. Ms. Singh characterized his argument as one seeking to simply retry the case. She is not wrong.
- [157] In my view, Ms. Singh is entitled to her costs on appeal as the substantially successful party: *Malak v. Hanna*, 2020 BCCA 6 at para. 5. "The Honourable Madam Justice Garson" I AGREE: "The Honourable Madam Justice D. Smith" I AGREE: "The Honourable Madam Justice Fisher"
-

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/ca/20/00/2020BCCA0021.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/singh-v-singh-2020>

Prepared on 26 October 2026 · Esheria