

CANADA / JUDGMENT

Sood v. Hans

2022 BCSC 2416

COURT

Supreme Court of British Columbia

DECIDED

15 February 2022

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

2022 BCSC 2416 Sood v. Hans

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sood v. Hans,

2022 BCSC 2416

Date: 20220215

Docket: S190810

Registry: Vancouver

Between:

Aditya Sood and 1139314 B.C. Ltd.

Plaintiffs

And

Baldev Singh Hans and Karamvir Pawar, also known as Kam Pawar

Defendants

- and -

Docket: S209415

Registry: New Westminster

Between:

Baldev Singh Hans

Plaintiff

And

Aditya Sood and 1139314 B.C. Ltd.

Defendants

- and -

Docket: S231998

Registry: New Westminster

Between:

Aditya Sood

Plaintiff

And

Gurpreet Singh Toor

Defendant

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

In Chambers

Counsel for Aditya Sood and 1139314 B.C. Ltd. in S190810 and S209415:

W.E. Knutson, Q.C.

Counsel for Aditya Sood in S231998:

P. Grewal

Counsel for Baldev Hans:

C. Kooner

Counsel for Karamvir Pawar:

F. Lamer

L. Kotler

Counsel for Gurpreet Toor:

B.S. Khatra

Place and Date of Trial/Hearing:

Vancouver, B.C.

February 10, 2022

Place and Date of Judgment:

Vancouver, B.C.

February 15, 2022

Table of Contents

Paragraph Range

I. BACKGROUND

[1] - [8]

II. LEGAL PRINCIPLES

[9] - [12]

III. FACTS

[13] - [49]

A. Involvement of Mr. Hans and Mr. Pawar

[19] - [25]

B. Involvement of Mr. Toor

[26] - [31]

C. Summary the Pleadings

[32] - [49]

i. Hans Action

[32] - [37]

ii. Pawar Action

[38] - [45]

iii. Toor Action

[46] - [49]

IV. ANALYSIS

[50] - [134]

A. Common Claims, Disputes and Relationships

[56] - [81]

B. Interweaving of Actions

[82] - [99]

C. Delay

[100] - [102]

D. Convenience

[103] - [107]

E. Stage of Proceedings

[108] - [134]

I. BACKGROUND

- [1] THE COURT (by videoconference): The defendant Gurpreet Toor brings an application pursuant to R. 22-5(8) of the Supreme Court Civil Rules seeking to have Sood v. Toor, New Westminster Registry No. S231998 (the "Toor Action"), tried together or consecutively with two other actions. The Toor Action is currently set for a ten-day trial in New Westminster starting in September 2022. As this action is in the New Westminster Registry, the defendant also seeks an order transferring the file to Vancouver for all purposes pursuant to R. 23-1(13).
- [2] The defendant is not seeking to consolidate the actions, but seeks an order the trials be heard together and other standard orders allowing for pretrial procedures and evidence for any action to be applicable to the other two actions, (including a waiver of the implied undertaking to achieve that).
- [3] The actions to which the defendant wants his trial joined are currently scheduled for a 20-day trial in Vancouver starting April 25, 2022. Those actions are:
- a) Hans v. Sood, New Westminster Registry No. 209415 (the "Hans Action"), for which the notice of civil claim was filed December 13, 2018; and,
 - b) Sood v. Hans, Vancouver Registry No. S190810 (the "Pawar Action"). The notice of civil claim in this action was filed in January 2019.
- [4] Collectively, I will refer to the Hans Action and Pawar Action as the "Related Actions".
- [5] I will briefly describe the parties:
- a) Aditya Sood, a businessman, is a party in all three actions.
 - b) 1139314 B.C. Ltd. ("113") is a company involved in the relevant transactions. Its sole director is Mr. Sood's brother-in-law. The purpose for which it was incorporated is disputed.

- c) Baldev Singh Hans is a professional engineer who is a party in both the Hans Action (as the plaintiff) and the Pawar Action (as a defendant).
- d) Karamvir Pawar is a real estate agent, and his only involvement is as a defendant and plaintiff by counterclaim in the Pawar Action.
- e) Gurpreet Singh Toor is a businessman, and his only involvement is as a defendant and plaintiff by counterclaim in the Toor Action.
- [6] Mr. Hans and Mr. Pawar support Mr. Toor's application to have the Related Actions tried together with the Toor Action.
- [7] Mr. Sood and 113 were represented by the same counsel in the Hans and Pawar Actions, but he has separate counsel for the Toor Action. Both counsel made submissions opposing Mr. Toor's application.
- [8] Before outlining the factual context of the different actions, I address the legal principles, which were not disputed.

II. LEGAL PRINCIPLES

- [9] The test for having actions tried together and for consolidation of actions pursuant to R. 22-5(8) is well-known and involves two steps.
- [10] In the first step, the court asks if the proceedings involve common claims, disputes, and relationships as determined by a review of the pleadings alone: *Raymond James Investment Counsel Ltd. v. Clyne*, 2018 BCSC 720 at para. 36 [Clyne], citing *Hui v. Hoa*, 2012 BCSC 1045 at para. 33. See also *Merritt v. Imasco Enterprises Inc.*, 2 C.P.C. (3d) 275 at para. 19, [1992] B.C.J. No. 160. In analysing this issue, the court is required to consider not just whether the pleadings have common elements, but to consider whether those pleadings reveal commonality in the material factual and legal issues to be determined: see *Li v. Liang*, 2021 BCSC 1856 at paras. 21-24.
- [11] In the second step, the court asks whether the proceedings are so interwoven as to make separate trials at different times before different judges undesirable or fraught with problems and extra expense: see *Clyne* at para. 36, citing *Hui* at para. 34. This requires considering a number of factors, including the following:
 - a) Will combining the actions create savings in pretrial procedures or reduction in number of trial days?
 - b) Would any party be seriously inconvenienced by being required to attend a trial in which the party only has a marginal interest?
 - c) Will there be a savings in experts' time and witness fees?
 - d) Is one of the proceedings at a more advanced stage than another?

- e) Will trying to hear actions together result in delay in the trial of one of the proceedings, and whether the prejudice of that delay outweighs the potential benefits and is there a risk of inconsistent findings on identical issues?

See Merritt at para. 19; Shah v. Bakken, 20 B.C.L.R. (3d) 393 at para. 15, 1996 CanLII 2522 (S.C.); Wheatland Industrial Park Joint Venture v. Soo, 2017 BCSC 2109 at para. 16.

- [12] These factors are not exhaustive, and ultimately, the court needs to make a determination of what makes sense in the circumstances: Sohal v. Argitos, 2010 BCSC 916 at para. 12, citing Merritt at para. 18; Bene (Oval) Development Ltd. v 1148538 B.C. Ltd., 2021 BCSC 1161 at paras. 15-16. This involves a balancing exercise, whereby the court must determine whether the degree of commonality and interweaving of issues outweighs the prejudicial factors raised by the party opposing order: Simmonds v. The Corporation of the City of Victoria, 2016 BCSC 951 at para. 25.

III. FACTS

- [13] All parties in the three actions had some dealings regarding the purchase of seven lots of land located on Ravine Road in Surrey ("Ravine Lands"). The occurrence of certain events is not in dispute, although the parties may differ as to their importance or characterization.
- [14] I have summarized what I understand to be the allegations in a roughly chronological order. Nothing in the following narrative constitutes facts or findings. These are the descriptions of the allegations, and I have relied primarily on counsel's written submissions for this summary.
- [15] In the Toor Action, the allegation is that Mr. Toor spoke in Punjabi on the radio and made statements defaming Mr. Sood. The alleged defamatory statements referred to Mr. Sood's behaviour, specifically the deception of Mr. Hans, to which Mr. Toor is alleged to have drawn a comparison to how he was treated by Mr. Sood. In part, Mr. Toor responds to the defamation allegation by saying that to the extent he made any of the statements as alleged, they were justified as being substantially true.
- [16] With regard to the Related Actions, the critical transactions are not disputed:
- a) Around November 30, 2017, 113 entered into a contract to buy the Ravine Lands from their owner at the time ("Apolla Contract"). The Apolla Contract required payment of a \$500,000 deposit.
 - b) Around December 2018, 113 assigned the Apolla Contract to another numbered company, 114, for \$1.6 million plus reimbursement of the \$500,000 deposit (the "114 Flip"). Of the money 113 received, \$800,000 has remained in Mr. Sood's counsel's trust account ("Trust Funds"). All of the parties in the related actions lay claim to some portion of the Trust Funds.

- c) In between those events, there are alleged to have been certain dealings that some of the parties contend resulted in legal obligations entitling them to some portion of the proceeds. My understanding is that while Mr. Sood and 113 may acknowledge discussions took place, they deny those resulted in any actionable agreements between them and Messrs. Hans, Pawar, and/or Toor.
- [17] The parties' version of events of what happened after this point differs. Messrs. Toor, Hans, and Pawar argue the events constitute a continual cohesive timeline of Mr. Sood's dealings with the Ravine Lands that go a long way to establish the existence of common issues.
- [18] Mr. Sood argues there are two distinct phases of his dealings with the Ravine Lands for which there are only some overlapping facts, transactions, or legal issues.

A. Involvement of Mr. Hans and Mr. Pawar

- [19] Mr. Hans alleges that in October 2017, he entered into a joint venture with Mr. Sood to purchase the Ravine Lands for the sole purpose of developing the land and then selling it (as opposed to treating it like an investment and simply flipping it). Mr. Pawar's position is similar, except that he alleges it was not a joint venture between Mr. Hans and Mr. Sood, but a partnership amongst the three of them.
- [20] No one disputes that in late October 2017, 113 was incorporated and its sole director was Mr. Sahota, Mr. Sood's brother-in-law. The parties differ on the purpose for which 113 was created, and 113 has since been dissolved.
- [21] Mr. Sood alleges that there was never any joint venture with Mr. Hans, but rather he entered a joint venture with 113 (the "113-Sood Joint Venture"). He further claims that in early December 2017, Mr. Pawar suggested assigning the 113-Sood Joint Venture to Mr. Hans and Mr. Sood for a fee of \$2.25 million. Mr. Sood alleges Mr. Pawar had an undisclosed financial stake in that proposed assignment.
- [22] Mr. Sood says that Mr. Sahota, on behalf of 113, would not agree to that deal and therefore no binding agreement was ever reached with Mr. Hans. Thus, he contends his joint venture with 113 remained intact. He says that at all material times, Mr. Pawar and Mr. Hans knew about the continuation of the 113-Sood Joint Venture. He also contends that during 2018, Mr. Hans never contacted him and had no involvement with any transaction involving the Ravine Lands. I infer the important implication of that position would be that Mr. Hans believed any deal they had was "dead".
- [23] Mr. Pawar alleges that in October 2017, he along with Mr. Hans and Mr. Sood had a partnership, operating under the name Can Brothers Enterprises ("Can Brothers"), to acquire profit from real estate trading and transactions. He claims that together they identified the Ravine Lands and realized the need to make an urgent offer to buy it. He says that happened before Can Brothers was incorporated. Mr. Pawar maintains that Mr. Sood proposed that 113 would make the offer simply to secure the property quickly, but it held

that contract in trust for the partnership.

- [24] Like Mr. Pawar, Mr. Hans alleges there was a valid assignment of the Apolla Contract in December 2017 to Can Brothers for consideration of one dollar. He refutes the existence of the 113-Sood Joint Venture. He also refutes Mr. Sood's claim that he did not communicate with Mr. Sood during 2018 about the Ravine Lands.
- [25] Mr. Sood and 113 claim any document purporting to reflect any agreement or arrangement they had with Can Brothers was forged for the purpose of extorting them.

B. Involvement of Mr. Toor

- [26] It was around this time that Mr. Toor became involved for the first time. He alleges that shortly before January 31, 2018, (the subject removal date on the Apolla Contract), Mr. Sood approached him and a third party, Amarinderjit Singh Nandha, to enter a joint venture. Mr. Toor specifically alleges that Mr. Sood represented that he controlled 113 and that he intended to flip the Apolla Contract prior to the closing date, which was then set for October 2018.
- [27] Mr. Toor says Mr. Sood agreed that he and Mr. Nandha would collectively contribute \$250,000 to a deposit and share in one-half of the profits from the sale of the Apolla Contract. To carry out this deal, 113 would assign the Apolla Contract to another numbered company (referred to as 115), in which Mr. Sood would hold a 50% share, and Mr. Toor and Nandha would each have 25% shares.
- [28] It is undisputed that at this point, Mr. Toor knew nothing of Mr. Sood's dealings, whatever they were, with Mr. Hans and Mr. Pawar. It is also undisputed that Mr. Toor and Mr. Nandha did pay \$250,000 to 113, and 113 paid the deposit on the Apolla Contract to buy the Ravine Lands.
- [29] Thereafter, certain events are not disputed, but who knew what and what representations were made about those events are issues of controversy.
- [30] As noted, Mr. Toor alleges that his deal with Mr. Sood was that 113 would assign the Apolla Contract to 115, who would then sell the interest to another entity, pocketing the profit. Mr. Toor alleges that he brought prospective buyers to take assignment of that contract, but that Mr. Sood refused to negotiate and/or refused to allow 115 to enter any of those contracts. Mr. Toor then alleges that Mr. Sood deceived him by saying that 113 and/or 115 would actually buy the property (as opposed to flipping it) and, relying on that representation, Mr. Toor resigned as director of 115, transferring his shares to Mr. Sood. Mr. Toor says he never would have done so but for Mr. Sood's misrepresentations.

- [31] Mr. Toor also alleges that Mr. Sood, at least in September 2018, was at the same time, without informing him, arranging for the 114 Flip for his own benefit. Mr. Toor claims that had he known about Mr. Sood's plans, he would not have resigned from 115 and, on that basis, he claims some share of the \$1.6 million.

C. Summary the Pleadings

i. Hans Action

- [32] The notice of civil claim in the Hans Action was filed by Mr. Hans against Mr. Sood and 113 on December 13, 2018. An amended notice of civil claim was filed on December 14, 2018. Mr. Hans also filed certificates of pending litigation ("CPLs") on the Ravine Lands.
- [33] In the notice of civil claim, Mr. Hans alleges that Mr. Sood breached the October 2017 joint venture agreement relating to the purchase, development, and sale of the Ravine Lands when he assigned the Apolla Contract to a third party for profit, which he then retained. Mr. Hans alleges that Mr. Sood was unjustly enriched by this action, that Mr. Hans had suffered a corresponding deprivation, and that there was no juristic reason for the assignment.
- [34] The relief sought includes claims for damages, special damages, an injunction enjoining Mr. Sood from dealing with the properties and/or the company without Mr. Hans's written consent, CPLs for the properties, specific performance of certain contracts, and both a beneficial and equitable interest in the Ravine Lands.
- [35] On December 17, 2018, Mr. Sood filed his response. In it, he denies there was ever any binding agreement between himself and Mr. Hans with regards to the assignment of the Apolla Contract.
- [36] On December 18, 2018, Master Caldwell ordered the CPLs be cancelled upon completion of the Apolla Contract, and that \$800,000 from the sales proceeds be kept in trust (the aforementioned Trust Funds).
- [37] On January 25, 2022, this Court heard an application brought by 113 to release the Trust Funds and interest. That decision is under reserve.

ii. Pawar Action

- [38] The notice of civil claim in the Pawar Action, was filed by Mr. Sood on January 24, 2019, naming Mr. Hans and Mr. Pawar as defendants.
- [39] In the notice of civil claim, Mr. Sood alleges Messrs. Hans and Pawar planned to extort him, and that this represented an actionable abuse of process. This planned extortion was said to represent intentional interference with the plaintiffs' contractual relationships. The defendants were also said to have breached fiduciary duties owed to the plaintiffs.
- [40] The relief sought includes claims for general damages, damages for economic loss and loss of opportunity, special damages, aggravated damages, and punitive damages.

- [41] On February 22, 2019, Mr. Hans filed a response in which he denied the allegations in the notice of civil claim.
- [42] On March 8, 2019, Mr. Pawar filed a response in which he also denied the allegations. Mr. Pawar states that he seeks an accounting of the profits the plaintiff derived from the 114 Flip and possesses an in rem interest in the Trust Funds.
- [43] Mr. Parwar also filed a counterclaim on March 8, 2019. He makes allegations against Mr. Sood and 113 including breach of trust, breach of fiduciary duties, breach of the partnership agreement, and wrongful inducement of breach of contract or, alternatively, wrongful interference with contractual relationship amongst partners. Mr. Parwar seeks remedies including damages, an accounting of the profits from the 114 Flip, and a constructive trust in the Trust Funds to securing one third of the profits.
- [44] On April 8, 2019, Mr. Sood and 113 filed a response to the counterclaim in which they denied that the partnership agreement referred to in the counterclaim had ever come into existence.
- [45] In April 2019, the parties to the Hans Action and Pawar Action consented to an order that they be tried at the same time in the Vancouver Registry. They also consented to an order that the Hans Action be transferred to Vancouver for all purposes. They additionally consented to other standard orders relating to having the two actions heard together. Mirror orders were granted in the other lawsuit.

iii. Toor Action

- [46] In October 2020, Mr. Sood filed an action for defamation against Mr. Toor. He claims that on October 8 and 9, 2020, Mr. Toor made statements in Punjabi that were broadcast over radio, including the following which he alleges were defamatory:
- a) "[Mr. Sood] has deceived [Mr. Hans]";
 - b) "[Mr. Sood] had got a fake power of attorney on his name";
 - c) "We have filed a suit in court, and [it is] still pending in court";
 - d) "[Mr. Sood] committed fraud with me";
 - e) "The way [Mr. Sood] cheated [Mr. Hans], the same thing he has done to us";
 - f) "We have sued him"; and,
 - g) "[Mr. Sood] deceived us and has used our money to clear the subjects".
- [47] Mr. Sood also alleges that Mr. Toor is guilty of "reprehensible, insulting, high-handed, spiteful, malicious and oppressive conduct" such that the Court should impose exemplary damages and special costs.

- [48] Mr. Toor filed a response to the civil claim on Jan. 29, 2021. He denies making the specific statements attributed to him in the notice of civil claim. However, he says further that to the extent that he made those statements in the Punjabi language, they were justified as they were substantially true:

In this regard, the defendant here repeats and realleges the facts set out in Part 1 of his Counterclaim filed concurrently herewith. To the extent the defendant made statements about Mr. Sood on the radio, it was in reference to these events and to the fact that Mr. Sood has breached his fiduciary duty and fraudulently cheated the defendant out of his share the profits from the assignment of the [Apolla] Contract.

- [49] On January 29, 2021, Mr. Toor filed a counterclaim against Mr. Sood. He alleges breach of contract, breach of fiduciary duties, fraudulent misrepresentation and unjust enrichment. He seeks an accounting of profits from the 114 Flip, and either: the disgorgement of these profits, common law or equitable damages equal to 50 percent of these profits, or restitution of all moneys contributed by Mr. Toor towards the assignment of the Apolla Contract.

IV. ANALYSIS

- [50] Mr. Toor submits that the pleadings in all three actions concern the same property and the same chronology of events, involving, at various points in time, all of the parties. Specifically, he points out that Mr. Sood and 113 are consistently involved throughout. Moreover, he submits all of the actions implicate the Apolla Contract for the Ravine Lands and the 114 Flip, although the parties have different versions of what happened and slightly different timelines for critical events.
- [51] Mr. Toor argues that, should the Hans and Pawar Actions proceed first and independently of the Toor Action, the issue of entitlement to the profits for the 114 Flip would be decided to his prejudice. Mr. Toor also argues that by filing the defamation action, Mr. Sood has invoked common issues because the defamatory statements that Mr. Sood alleges Mr. Toor made involve Mr. Sood's dealings with Mr. Hans in relation to the Apolla Contract and the Ravine Lands. Mr. Toor's defence is that these statements were not made or, alternatively, were substantially true.
- [52] Messrs. Toor, Hans, and Pawar say those statements relate both to facts and issues in the Hans Action as well as in the Toor Action.
- [53] Mr. Sood's position is that the only commonality is the fact that the disputed transactions and relationships concern the same property. He says the question is not whether evidence about the same events will be adduced, but whether the material legal issues are common, and he says there are no common issues material to the Related Actions in the Toor Action.

- [54] Mr. Sood argues there are essentially two independent constellations of events that should be tried separately. He says the first period is roughly August to December 2017 concerning Mr. Hans and Mr. Pawar's dealings with 113 and Mr. Sood ("Period 1"). The second is roughly January to September 2018, involving 113 and Mr. Sood and Mr. Toor ("Period 2").
- [55] He says notwithstanding they all involve Mr. Sood, 113, and the Apolla Contract for the Ravine Lands, there is no overlap to the controversies that matter amongst the parties to each claim. To highlight this point, he says that Mr. Toor concedes that when he began dealing with Mr. Sood, he knew nothing about Mr. Sood's prior dealings with Mr. Hans and Mr. Pawar. Mr. Sood also submits there is significant prejudice to him and 113 that outweighs any potential savings in court resources, a point that he says has not been sufficiently demonstrated.

A. Common Claims, Disputes, and Relationships

- [56] Mr. Toor argues the common issues amongst the actions are the following:
- a) Mr. Sood is a party to three different joint ventures with respect to the Apolla Contract and the Ravine Lands;
 - b) Mr. Sood and 113 entered into three different assignments with respect to the Apolla Contract and Ravine Lands; and,
 - c) Mr. Sood owed contractual and fiduciary duties to 113, Can Brothers, 115, and Messrs. Hans, Pawar, Toor, and Nandha.
- [57] Mr. Toor argues that his claims, as a result of all the evidence he will adduce, are directly at issue in each of the related actions.
- [58] Mr. Sood submits a review of the pleadings reveals no or insufficient commonalities. He points out that none of Messrs. Toor, Hans, or Pawar draw any connection between Period 1 and Period 2. He also points out that the critical issues in the defamation action only involved alleged statements by Mr. Toor.
- [59] In terms of the Hans and Pawar Actions, it is apparent the court will be asked to determine, among other things:
- a) What were the dealings, if any, between Mr. Hans and 113 and Mr. Sood, including what was said by them about plans for the Ravine Lands, and did any of those dealings create legal obligations?
 - b) What were the dealings, if any, between Mr. Pawar and 113 and Mr. Sood, and did that create any binding legal obligations?

- c) What were the dealings amongst 113, Messrs. Sood, Pawar, Hans, and Can Brothers, and did any of those create binding legal obligations? Specifically, did Messrs. Hans or Pawar acquire any type of interest in the Ravine Lands or the Apolla Contract entitling them to either damages or a constructive trust?
 - d) What discussions or communications or knowledge, if any, did Messrs. Hans or Pawar have throughout 2018 about the 114 Flip? Answering this question may involve determining what discussions or representations, if any, may have been made about the 114 Flip or which ought to have been made about the 114 Flip.
- [60] Mr. Sood says in the Toor Action, the material issues are completely separate, involving determining the following questions:
- a) Did Mr. Toor make the statements as alleged?
 - b) Are the statements defamatory, and, if so, what remedies are available?
- [61] In my view, because Mr. Toor has pleaded justification, Mr. Sood's summary of the material issues under-describes them.
- [62] Counsel for Mr. Sood in the first two actions fairly acknowledged that, on first glance, one of the alleged defamatory statements--"The way [Mr. Sood] cheated [Mr. Hans], the same thing he has done to us" (para. 3(e) of the notice of civil claim)--could be seen as creating a nexus between the Toor Action and the Related Actions. I would add two other alleged defamatory statements alleged may also create an overlap: "[Mr. Sood] has deceived [Mr. Hans]" (para. 3(a)) and "[Mr. Sood] deceived us and has used our money to clear the subjects" (para. 3(g)).
- [63] However, Mr. Sood says that the nexus evaporates when one reads the allegations of the defamatory remarks together with Mr. Toor's response. He points out Mr. Toor denies the statements, which obviates any possible connection to the first two actions.
- [64] I do not find that persuasive because it is common in defamation actions that a defendant will deny the statements in order to force the plaintiff to strictly prove that, among other things, the statements were made by the defendant, were published, and were defamatory. Although he does not use the word "alternative" in his response, Mr. Toor does make the alternate plea at para. 3 that to the extent he made statements in the Punjabi language as alleged, they were justified in that they were substantially true.
- [65] Mr. Sood submits, however, that para. 3 of Mr. Toor's response in the Toor Action must be read together with para. 4, which qualifies the scope of Mr. Toor's justification defence. It essentially incorporates the allegations contained in Part 1 of his counterclaim in the Toor Action. Mr. Sood says there is no overlap in the recitation of facts in that counterclaim with the Related Actions. Thus, he says there is no common issue revealed on the pleadings.

- [66] I do not agree when reviewing the pleadings in each action as a whole that there is no overlap between the Toor Action and the Hans and Pawar Actions. The question is whether the overlap is material in such a way as to create common issues.
- [67] Mr. Sood acknowledges there may be references in the assertion of facts to some similar events, but he emphasizes the court needs to find that there are common legal issues, not merely common evidence. He argues the defendants have mistakenly melded the two steps of the test. He further suggested that is problematic, because the first step is essential before one proceeds to the second step.
- [68] It is not clear to me that the first step does, in fact, operate essentially as a precondition to the second. Among other things, that would seem to be inconsistent with the statements in the cases that there is essentially a balancing. Nonetheless, I do not determine the application on that basis.
- [69] I agree with Messrs. Toor, Hans, and Pawar that there is commonality among the claims and disputes. Specifically, Mr. Sood alleges Mr. Toor defamed him by saying that Mr. Sood deceived Mr. Hans. At para. 11 of the notice of civil claim in the Hans Action, Mr. Hans pleads that shortly after entering the joint venture agreement with Mr. Sood, Mr. Hans discovered that Mr. Sood had violated that agreement by engaging in the 114 Flip. While the word "deceived" is not used, it is clear from the overall narrative that Mr. Hans believes he was misled.
- [70] In Mr. Toor's counterclaim in the Toor Action, that same transaction, the 114 Flip, is put into issue, and it is also the subject of the Related Actions. Mr. Toor pleads the full particulars of the 114 Flip are known only to Mr. Sood and need to be provided following discovery in that trial. He also claims a share of the profits from the 114 Flip. In his counterclaim, Mr. Toor says had he known about Mr. Sood's arrangements for the 114 Flip, he never would have resigned from 115. That claim is pivotal to his entitlement to damages.
- [71] In the Toor Action, the substantial truth of at least some of those facts are key to Mr. Toor's defence. That means that the details of the 114 Flip may become an important fact in that action. Those issues are also implicated in the Related Actions.
- [72] I appreciate that Mr. Sood says that the 114 Flip did not involve any breach of any duties to Messrs. Toor, Pawar, or Hans. He says whatever facts are alleged to have led to the creation of alleged duties or obligations to Messrs. Hans and Pawar are independent from those that are said to have been owed to Mr. Toor.
- [73] In my view, this type of surgical dissection of the facts is too technical an approach. It is alleged that Mr. Sood and 113 were at the centre of the 114 Flip and that there were alleged breaches of duties owed to the other parties. What Mr. Sood will say about the 114 Flip in the Related Actions not only may be relevant but also material to what he would say in the Toor Action. In my view, there is a clear commonality of disputes, issues, and relationships which are anchored in the asserted existence of the 113-Sood Joint Venture.

- [74] Mr. Sood submits the court must be careful not to mistake the potential commonality of relevant evidence that might be adduced with commonality on legal issues. The first part of the test must be viewed on the basis of pleadings alone: Clyne at para. 36, citing Hui at para. 33.
- [75] He relies in part on Simaei (Re), 2016 ONSC 2046, where a court did not join a claim for defamation with a wrongful dismissal suit. That case is distinguishable for several reasons. Most notably, the court noted that truth was not raised as a defence and, therefore, the facts in that action were only of tangential importance to the libel action: Simaei (Re) at para. 113. That does not apply here.
- [76] Mr. Sood also raises the fact that Mr. Toor's response in the Toor Action does not conform with R. 3-7(21)(b) of the SCCR:

Particulars in libel or slander

- (21) In an action for libel or slander,
- (b) if the defendant alleges that, insofar as the words complained of consist of statements of fact, they are true in substance and in fact, and that insofar as they consist of expressions of opinion, they are fair comment on a matter of public interest, the defendant must give particulars stating which of the words complained of the defendant alleges are statements of fact and of the facts and matters relied on in support of the allegation that the words are true.
- [77] In response, Mr. Toor complains that he cannot be forced to plead those particulars when there remain flaws in the notice of civil claim. He asserts that the statements were alleged to have been made in Punjabi, but the pleadings are in English. He also says he has asked for particulars and not received them.
- [78] Mr. Sood denies the fact that all parties having made a claim to the Trust Funds creates a commonality of legal issues. This rests on his assertion that the result in the Related Actions will have no bearing on the result of Mr. Toor's counterclaim in the Toor Action.
- [79] I agree with Mr. Sood that it is possible for him to potentially be liable to all parties and subject to judgments exceeding \$800,000.
- [80] To the extent Mr. Toor says his legal entitlement to the \$800,000 would be prejudiced if the court declared that Mr. Hans and Mr. Pawar are entitled to that, I am not sure I agree. Instead, this argument is more about his desire to have security of access to those funds. Master Caldwell required the funds to be paid into trust to secure the CPLs in the Hans Action, so Mr. Toor cannot claim any type of legal entitlement to them, even if they have a practical importance to him.

- [81] However, in my view, that does not weaken the main point that it is the legal entitlement to the profits from the 114 Flip that is at issue in all three actions, a fact that supports the applicants' position.

B. Interweaving of Actions

- [82] Mr. Sood says, among other things, because the applicant adduced no evidence to support their assertions about pretrial proceedings, saving of trial dates or delay, I should discount those submissions. He relies on *McMartin v. Nestoruk*, 2002 BCSC 282 at para. 10.
- [83] In that case, the master dismissed an application to have two personal injuries heard together. In one, the plaintiff and his spouse were the plaintiffs. In another, it was simply the plaintiff making a claim against different defendants. The comment about lack of evidence was made after the master made statements regarding the factors that weighed heavily against the order being granted, including the different state of readiness of the two actions and, more importantly, that in one there was a right to a jury trial, whereas it was prohibited in another because of the involvement of the Attorney General: *McMartin* at para. 9.
- [84] The comments in *McMartin* at para. 10 about lack of evidence should, therefore, be read in that light. Specifically, it is not clear to me that lack of evidence is an absolute bar. Certainly, if counsel disagree strongly on the issue of savings of trial days or pretrial procedures, the court would prefer to have evidence, especially if those were to be determinative factors. Even then, however, at a preliminary stage, the evidence would surely be the differing views of counsel making it difficult for the court to determine which of the perspectives to accept.
- [85] I will add that there is no doubt that Mr. Sood will have to give evidence about his dealings with and the details of the 114 Flip in all three actions. In my view, that means that a common trial will involve some savings of time. There is obviously going to be some commonality among the witnesses.
- [86] I agree these savings may be offset to some degree by the unique nature of the evidence needed for the defamation claim. However, I do not think that that would completely offset it. I do not agree that there was no evidence brought by Mr. Toor, or that the nature of the evidence is such that I should disregard his submissions on that point.
- [87] In my view, the strongest point in favour of the defendants' application is the significant risk of inconsistent findings on identical issues. Mr. Toor says that such a risk can be established where there is a common question of law and fact of sufficient importance in proportion to the rest of the action.
- [88] He says that unless they are tried together, two different judges will be asked to make findings on the same set of facts and on certain legal issues, including:
- a) Did Mr. Sood and 113 enter a joint venture with Mr. Hans with respect to the Apolla Contract and, if so, when?

- b) Did Mr. Sood and 113 enter a partnership with Messrs. Pawar and Hans, and potentially Can Brothers, and, if so, when?
 - c) Did Mr. Sood and 113 enter a joint venture with Messrs. Toor and Nandha with the same contract and, if so, when?
- [89] While Mr. Sood submits that the Toor Action and the Related Actions encompass two distinct sets of circumstances with no overlap, at this stage, that is merely his allegation. These events occurred relatively close in time. Mr. Sood may succeed in persuading the court that he owed no legal obligations and there was no overlap in what happened or what was going on between what he calls Stage 1 and Stage 2, but he may not.
- [90] Moreover, the commonality is not just the same property, but in fact the same type of transaction was alleged to have occurred or been breached with regard to the Ravine Lands. Messrs. Hans, Pawar, and Toor take the position that the identical transaction, the 114 Flip, breached rights or entitled them to a remedy.
- [91] Mr. Sood denies that, but in doing so, presumably he will advance a single narrative about what did happen, i.e., the 113-Sood Joint Venture narrative. That will be a contested issue in the Related Actions and the counterclaim in the Toor Action. It will involve the same witnesses, Mr. Sood, and perhaps his brother-in-law, talking about an identical transaction, the 114 Flip, before two different trial judges. That transaction is the lynchpin of all three actions. In my view, that very strongly favours the defendants' application.
- [92] Mr. Sood argues the court must be very careful because there is a danger it will be asked to make findings or conclusions about the alleged deceptive behaviour by Mr. Sood in the Toor Action because of his alleged deceptive behaviour in the Related Actions. Mr. Sood argues this amounts to propensity evidence, which is inadmissible. He alleges that is the true reason for the defendants' application to consolidate the proceedings.
- [93] He relies, in part, on *University of British Columbia v. Moscipan*, 2015 BCSC 1162 at paras. 32-33 [Moscipan]. In that case, there were two actions involving two different but related instances of fraud by the same person, who had been jointly employed by the University of British Columbia ("UBC") and the Vancouver Coastal Health Authority ("VCHA"). UBC claimed the defendant was paid for 100 percent of a full-time position when it should have been 20 percent because VCHA had been paying the defendant for 80 percent of her wages. There were also allegations by VCHA in its action that the defendant had drawn certain funds from a professional staff account. There were two different plaintiffs and, therefore, two different types of entitlement to funds.
- [94] Mr. Sood relies on the following comments of Master Muir in *Moscipan*:
- [32] I agree with the defendants that the evidence from one action could be construed as evidence of the propensity of Mrs. Moscipan to commit the frauds alleged in the other. Such evidence is not generally admitted.

- [95] I do not agree that this passage stands for the proposition that actions that involve two separate incidences of alleged fraudulent behaviour cannot be tried together because of the possibility that evidence from one could be construed in an improper manner. Instead, Master Muir simply identified that possibility in the matter before her. She had previously already said that the claims, for the most part, were discrete, and the evidence would not overlap other than in an explanation of the employment relationship: para. 29.
- [96] Accordingly, the factual matrix of Moscipan is quite different than the case before me. Master Muir had already concluded the events were discrete such that there was no overlap between the material issues in the two actions. Therefore, the common evidence (i.e., that related to the employment relationship) was not controversial.
- [97] In contrast, the nature of the common transaction, i.e., the 114 Flip, is controversial, and it is controversial in all actions.
- [98] More importantly, the fact that the evidence about one alleged fraudulent incident is likely inadmissible against another one does not mean the evidence could not be led at a common trial in front of the trial judge. Trial judges routinely admit evidence for some purposes and not others, and presumably, a trial judge will be able to determine at the time the evidence is being led the purpose to which it is to be put to avoid falling into error by relying on it for inadmissible purposes.
- [99] In my view, even though there is a chronology, not all of which implicates all parties, Mr. Sood and 113 are at its centre. It is not the amount of overlap in the controversies of their facts, but their materiality that I find to be significantly in favour of the application.

C. Delay

- [100] Mr. Sood argues that it is clear the ten-day defamation trial will not be able to be folded into the current 20-day trial and, therefore, there is a risk that trial dates will be lost.
- [101] While that is a possibility, it is not necessarily inevitable. More importantly, the parties most immediately prejudiced by a potential delay are all in favour of having those matters heard together.
- [102] I have seen some evidence about alleged difficulties in scheduling examinations for discovery. That is not necessarily an insurmountable barrier. In terms of any other procedural difficulties, in my view, that can be addressed by the parties at a trial management conference or earlier.

D. Convenience

- [103] I agree that there are some issues related to the alleged defamation, particularly the publication and the meaning attributed to the words, raise issues that are discrete and separate from the overall narrative of the dealings with the Ravine Lands. However, those are primarily issues to be determined on the basis of the transcript of the radio broadcast and legal argument about the characterization of the words.
- [104] In contrast, the defence of justification advanced by Mr. Toor is largely a factual determination that overlaps significantly with portions of the Hans Action, as already discussed. The other parties will likely be interested in evidence about the 114 Flip and what was said or represented about it.
- [105] I also note that in relation to the defence of truth, there would certainly be an overlap of documents, emails, and discovery evidence from Mr. Sood and 113.
- [106] I find that carving out some of Mr. Sood's dealings with the Ravine Lands from the others within a relatively short timeline, as would occur if the Toor Action and Related Actions were heard separately, could lead to a stilted narrative. It is difficult to imagine that a trial judge in any of the three actions would want to have the narrative cut off at a certain point in time. It is more likely that witnesses will want to give, and the trial judge would prefer to hear, the whole story. That is what creates the overlap in the evidence and the potential for inconsistent findings on material issues.
- [107] Since all of the parties lay some claim to a portion of the Trust Funds, based essentially on the deprivation of the opportunity to participate in the 114 Flip, there is at least some possibility that expert evidence as to the true value of various business proposals at various points in time may be an issue.

E. Stage of Proceedings

- [108] Mr. Toor acknowledges that the defamation action is not at the same advanced stage as the others. However, he says the blame for that lies primarily with Mr. Sood, who is opposing the matters heard together, and that should not count against his application.
- [109] Mr. Toor claims he has had difficulties in having examinations for discovery confirmed. Counsel for Mr. Sood on the defamation matter takes issue with that characterization.
- [110] I do not intend to review correspondence to try to determine if there has been any dilatory behaviour. I assume and trust counsel do not intend to frustrate the progress of litigation for any untoward reasons.
- [111] I do find it relevant, however, that Mr. Toor asked for particulars of the defamation and the transcript of the alleged defamatory statements in Punjabi, and those have not been provided. The plaintiff has been put to the strict proof of the statements as an essential element, which is publication. That is a preliminary step in the defamation lawsuit. Even if

Mr. Toor had been difficult in terms of scheduling discoveries, that would not excuse Mr. Sood's failure to provide the fundamental primary documents grounding his defamation claim. Mr. Toor's response was filed just about a year ago, so it is difficult to believe that those particulars or a translation could not have been produced in that timeframe.

[112] To be clear, I am not making a finding of any dilatory behaviour, nor am I blaming anyone. I simply do not have the evidence as to why those things have not been done. However, there is a reasonable basis for Mr. Toor to raise the concerns.

[ADDITIONAL SUBMISSIONS ON ORDERS SOUGHT]

[113] THE COURT: In the written submissions, counsel on behalf of Mr. Sood and 113 in the Related Actions (although I believe the position is shared by counsel in the Toor action) did ask that not all orders as sought be granted. There was opposition to paragraph 5 of the draft order, which would have the effect of giving every party in all actions standing in any interim applications or pretrial procedures. Counsel for Mr. Sood and Mr. Pawar say that that ought not to be granted.

[114] They submit removing it does not preclude the possibility that any party can, upon being given notice of an application, seek to have standing, but that there would not be a default position that every party definitely has standing.

[115] In seeking that term, Mr. Khatra fairly points out that that is often a term that is included in these cases. In my view, Mr. Knutson and Mr. Lamer have made very valid points, and I do not grant that order. While it is a standard term, each case turns on its particular facts. This case is somewhat unusual because I have found a nexus in relation to the counterclaim that is filed in the defamation. I did not find the nexus arises from the defamation notice of civil claim itself. What that tells me is there could very well be serious and contested issues that come up that do not involve any other party, and those potentially would be to the detriment or prejudice of Mr. Toor and/or Mr. Sood if all parties were seen to have standing by default.

[116] I trust counsel to come up with appropriate wording. I do not have the application in front of me, but I agree with Mr. Knutson and Mr. Lamer's position.

[117] THE COURT: Okay, so for Madam Registrar, I am granting all orders except paragraph 5 in the notice of application.

[118] THE CLERK: Is that paragraph 5 in the notice of application in Action Number S231998, New Westminster, filed December 17?

[119] THE COURT: That is right.

[120] THE CLERK: It is the only one that had a number 5.

[121] THE COURT: Yes, that is the one.

[122] CNSL B. KHATRA: I am sorry, Madam Justice, I should clarify. It was not number 5 of the notice of application, it was --

[123] THE COURT: Oh, sorry.

[124] CNSL B. KHATRA: -- it was of the draft order that I had submitted.

[125] THE COURT: Oh, I am sorry, which I do not have in front of me.

[126] CNSL B. KHATRA: Yes, so I can try and get the --

[127] THE COURT: Okay. Madam Registrar needs some clarity.

[128] THE CLERK: Okay, so all the orders as sought in the three notices of applications in the three action numbers are granted?

[129] CNSL B. KHATRA: I can clarify. It would be the term -- the order sought number 4 in the notice of application, and I can read it out for the record, which is pretrial procedures in the related actions be conducted as if said actions were consolidated, with each party in each of the related actions entitled to notice of and standing to respond to any and all interlocutory applications brought by other parties in the related actions.

[130] THE COURT: I am not granting that term from the notice of application. So wherever that wording appears, I am not granting that. Is that right, Mr. Knutson?

[131] CNSL W. KNUTSON: Yes, thank you.

[SUBMISSIONS ON COSTS]

[132] THE COURT: Mr. Toor seeks costs of the application under the usual rule that he was the successful party.

[133] On behalf of Mr. Sood, counsel suggest that it should be costs in the cause. They refer to the fact that the orders that I have granted could result in a delay, adjournment, or other complications. They also point out that the application was brought quite late.

[134] I find this application brought in the context of the litigation referred to is a situation appropriate for costs in the cause. Obviously, I have granted the orders. However, the application was difficult and complex largely because of the factual matrix which at this stage amount to allegations.

"Sharma J."

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/22/24/2022BCSC2416.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/sood-v-hans-2022>

Prepared on 27 October 2026 · Esheria