

CANADA / JUDGMENT

Takhar v. Padda

2015 BCSC 1785

COURT

Supreme Court of British Columbia

DECIDED

2 October 2015

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2015 BCSC 1785 Takhar v. Padda IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Takhar v. Padda, 2015 BCSC 1785 Date: 20151002 Docket: M134985 Registry: New Westminster Between: Gurkirat Singh Takhar Plaintiff And Mangal Singh Padda aka Mangal Singh and Janet Padda aka Jasmyn Padda Defendants Before: Master Caldwell Reasons for Judgment In Chambers Counsel for the Plaintiff: D. Gautam Counsel for the Defendants: C.D. Steinberg Place and Date of Hearing: New Westminster, B.C. July 7, 2015 Place and Date of Judgment: New Westminster, B.C. October 2, 2015

- [1] The defendants apply for an order, expressly pursuant to s. 252 of the Land Title Act, R.S.B.C. 1996, c. 250, cancelling the Certificate of Pending Litigation filed by the plaintiff as against specified property registered in the names of the defendants.
- [2] The provisions of s. 252 are central to this application and read as follows: Cancellation of certificate of pending litigation 252(1) If a certificate of pending litigation has been registered and no step has been taken in the proceeding for one year, any person who is the registered owner of or claims to be entitled to an estate or interest in land against which the certificate has been registered may apply for an order that the registration of the certificate be cancelled.
- (2) An application under subsection (1) must be made to the court in which the proceeding was commenced and must be brought
- (a) as an application in that proceeding, if the applicant is a party to the proceeding, or
- (b) by petition, if the applicant is not a party.
- (3) The registrar must, on application and on production of a certified copy of the order of the court directing cancellation under subsection (1), cancel the registration of the certificate of pending litigation.
- [3] The action herein was commenced in May of 2011 but has, unfortunately, not moved forward with anything approaching reasonable dispatch.

- [4] The defendants lay the blame for the delay at the feet of the plaintiff who, they say, commenced a volley of actions against them and other family members in various different registries of both the Provincial and the Supreme courts. Some support may be found for that view in the fact that on at least one occasion the plaintiff has been found to have been a vexatious litigant by Schultes J.
- [5] The plaintiff admits commencing various actions but provides, through counsel, explanations regarding them and their subject matters. In particular, he notes that the North Vancouver Provincial Court matter was dismissed in December of 2011 at a case conference due to allegations by one of the plaintiffs herein that he had forged a document and placed it before the court at the conference.
- [6] That dismissal was set aside on review in June of 2012 and the matter was referred back for trial, however in the meantime the plaintiff was charged criminally for using a forged document and attempting to pervert or defeat the course of justice by using the document at the case conference. The plaintiff was acquitted of those charges in June of 2014 but says that once those charges came into play in the Spring of 2012, his focus and resources were focussed on addressing them in priority to worrying about or proceeding with his civil claims.
- [7] During the same period of time the defendants brought application, in December of 2011 for cancellation of the CPL which is the subject of this application. It appears that that application may have been brought pursuant to another section of the Land Title Act as there appears to have been discussion and/or evidence relating to prejudice being suffered by the defendants rather than simply the assertion that a year had passed with no steps having been taken.
- [8] The material before me suggests, and no issue is taken with the view, that at the time of that application, which was finally heard by Bernard J. in March of 2012, the defendants alleged that they were suffering hardship and prejudice because they wished to sell the property against which the CPL was lodged in order to purchase and or build on another property. Although it has never been entered, it is said that an order was made, possibly by consent, that the CPL be removed from this first property and placed against the second property instead.
- [9] In spite of such arrangements no order was entered, the CPL remained and the defendants never did attempt to sell the property.
- [10] Following the June 2014 acquittal of the plaintiff in criminal court, the defendants retained new counsel in July of 2014 and the plaintiff retained new counsel in September of 2014. Those lawyers continue as counsel in this matter at this time.
- [11] It appears from the material that there may have been some confusion regarding the details and extent of Mr. Gautam's retainer but I am satisfied that as of September 9, 2014 Mr. Gautam provided, by fax transmission to defence counsel, confirmation that he had been

retained in this matter. By January 26, 2015 Mr. Gautam's office was writing to obtain dates for examination for discovery and by February 5, 2015 Mr. Steinberg had responded and dates, times and terms were being finalized. On February 18, 2015 Mr. Gautam wrote indicating a need for a slight change in the dates for examination for discovery and on February 23, 2015 Mr. Steinberg wrote confirming the changes.

- [12] The setting of examinations for discovery and exchange of Appointments regarding same was clearly a step in the proceeding. This amended application, while filed on June 8, 2015, indicates on its face that the original application was filed on March 25, 2015 or approximately one month after examinations for discovery had been arranged.
- [13] In my respectful view, the requirements of s. 252 have not been met. The appointment of new counsel and, more importantly, the setting and arranging of examinations for discovery constituted steps in the action which were clearly intended to move the matter forward to resolution - see *Khan v. Johal*, 2006 BCSC 1547 at paras. 12-14 inclusive.
- [14] If I am wrong and the appointment of new counsel and the setting of examinations for discovery do not constitute steps in the action, then I note that the section provides that the defendants herein may apply for the relief sought, but the granting of the relief is not mandatory and clearly remains a matter of discretion to be exercised judiciously.
- [15] In this case, I would find that the plaintiff has offered a reasonable and acceptable explanation for the delay. I accept that he was focussed on the criminal charges which he was facing, which charges arose from allegations levelled by one of the defendants herein. I note that the charges were not proven to the criminal standard and that the plaintiff was acquitted following trial. Further, and although s. 252 focusses only on the passage of time to trigger the application, it is, in my view, appropriate to consider prejudice in the exercise of my discretion. No evidence of prejudice of any kind was placed before me on the part of the defendants.
- [16] The application is dismissed; costs will be in the cause. "Master Caldwell"

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