

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Gill v. Sandhar*,
2024 BCSC 232

Date: 20240212
Docket: S215530
Registry: Vancouver

Between:

Mukhtiar Gill and Jasjit Gill

Plaintiffs

And

**Harpreet Singh Sandhar and
Flying Home Construction Ltd.**

Defendants

Before: The Honourable Justice Caldwell

Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

W. Zhang

No other appearances

Place and Date of Hearing:

Abbotsford, B.C.
September 7, 2023

Place and Date of Judgment:

Vancouver, B.C.
February 12, 2024

[1] The plaintiffs seek judgment by way of summary trial.

BACKGROUND

[2] The plaintiffs and the corporate defendant entered a contract in July 2018. Under that contract, the corporate defendant was to build a home for the plaintiffs. Various particulars were included in that contract.

[3] Over time, problems arose regarding the performance of the contract. The plaintiffs say that there were many delays and deficiencies. It appears that the defendants claim that they were owed additional money for their work. The plaintiffs had paid a total of approximately \$719,000 to the defendants on the project.

[4] By late 2020, matters were at a breaking point between the parties. Discussions took place and on February 17, 2021, a further agreement was prepared and signed. That contract has been referred to as an amendment and is, internally, also referred to as a settlement of the disputes between the parties. I will refer to it herein as “the Settlement”.

[5] The Settlement acknowledged that each of the parties had complaints about the other and their respective met or unmet obligations under the original contract. It sought to put those aside, and to establish a fairly clear and concise list of obligations to complete the house construction project in return for a clear schedule of payments totalling a further \$60,000. It established deadlines for the work to be accomplished and lump sum payments to be made by the plaintiffs as matters progressed. It also established specific damages to be paid in the event that the Settlement was not performed by way of completion of the house. Those damages were to be the return of any of the lump sum payments made by the plaintiffs under the Settlement, plus the return of 15% of the \$719,200 already paid by the plaintiffs under the original contract. In addition, the owners were to be indemnified against any lien claims filed by subcontractors.

[6] Part of the consideration for this Settlement agreement was that it was entered into by and obligated not only the corporate defendant, but also the principal of that company, Mr. Sandhar. The Settlement was signed by both.

[7] The plaintiffs paid the original \$15,000 deposit or lump sum under the Settlement. They say that some work was performed by the defendants but very little. Correspondence between the parties appears to corroborate that allegation. They say that the defendants are in breach of the Settlement and they have proceeded to address the various deficiencies personally or by hiring other trades to attend to the work.

[8] At the time this application was heard, the plaintiffs were still not living in the house as corrective work was still ongoing. A sub-trade lien relating to one of the defendant's sub-trades has been filed in the amount of \$26,749.50 and litigation has been commenced regarding that claim.

PROCEDURAL HISTORY

[9] Based on the failure of the defendants to perform under the Settlement, the plaintiffs filed their notice of civil claim in June 2021, and the defendants were served shortly thereafter.

[10] Neither of the defendants filed a response to civil claim and on September 27, 2021, the plaintiffs obtained default judgment against the defendants. That default judgment was set aside and on March 10, 2022, having retained counsel, the defendants filed a response and counterclaim. The counterclaim appears to acknowledge the Settlement but also claims significant monies relating to the original contract.

[11] After numerous demands, the defendants produced a list of documents in April 2023.

[12] Upon receipt of the list of documents, the plaintiffs' counsel began communicating with counsel for the defendants, seeking to set a date for a summary trial.

[13] In June 2023, counsel for the defendants withdrew.

[14] In August, the plaintiffs set the matter for summary trial and served the defendants.

[15] The defendants filed no responsive materials to the application.

[16] On September 7, 2023, the personal defendant, Mr. Sandhar attended at the New Westminster courthouse for the hearing of the application. Due to scheduling issues and judicial availability, they were directed to attend at the Abbotsford courthouse, as I had become available to hear the matter.

[17] Counsel for the plaintiffs attended before me as directed and advised me, as an officer of the court, that Mr. Sandhar had told her that he would not be attending in Abbotsford, that he "had work" and that he then "bolted" from the New Westminster courthouse before she could have further discussion with him. He did not attend the Abbotsford courthouse and there was no indication that he had attempted to contact either the Registry or Supreme Court Scheduling to advise of difficulties or to seek accommodation.

DECISION

[18] This matter ultimately proceeded as an unopposed application for judgment by way of summary trial. The defendants were served with the application materials and filed no materials in any way disputing or responding to those materials. Mr. Sandhar was clearly aware of the application. He attended court and then knowingly absented himself from the process thus abandoning his opportunity to address the court with any concerns which he might have or accommodation which he might seek.

[19] I note that his previous actions in failing to file responsive materials to the original claim resulted, to his knowledge, in judgment being granted against him. His conduct throughout appears to have been directed at avoiding both the process and the claims being made by the plaintiffs, and in doing as little as possible to address the substance of their claim. His actions amount to an abuse of the court process and a wasting of court resources.

[20] The materials filed by the plaintiffs, along with submissions of their counsel, are undisputed and unopposed and they satisfy me, on the balance of probabilities that:

- the parties, including Mr. Sandhar personally, entered into the Settlement as a mechanism to finalize and simplify their various disputes and disagreement arising from the original contract for the construction of the house;
- that Settlement established new obligations and compensation guidelines governing the relationship among the parties;
- the Settlement provided for three payments by the plaintiffs, the first \$15,000 being immediate and the subsequent \$15,000 and \$30,000 being conditional on performance by the defendants of their obligations under that Settlement;
- the plaintiffs paid the initial \$15,000 as required;
- the defendants failed to perform their obligations as outlined in and required by the Settlement; and
- the defendants' failure to perform their obligations constituted a breach of the Settlement entitling the plaintiffs to the orders which they seek.

[21] The plaintiffs are granted judgment against the defendants jointly and severally in the amount of \$154,629.50, plus pre-judgment and post-judgment interest in accordance with the *Court Order Interest Act*, R.S.B.C. 1996, c. 79. The

amount of \$154,629.50 is 15% of the \$719,200 that had been paid by the plaintiffs for construction before the Settlement was signed, plus the return of the \$15,000 deposit paid by the plaintiffs pursuant to the Settlement, plus \$26,749.50 as damages for the lien filed by HPA Construction Ltd. for which the defendants are liable to indemnify the plaintiffs, and \$5,000 as reasonable legal fees to discharge the HPA lien and the second lien filed on the property.

[22] Pre-judgment interest shall be applied from the date this action was commenced, June 9, 2021, until the date of this judgment. Post-judgment interest shall accrue from the date of this judgment until the amount is repaid.

[23] The counterclaim of the defendants is dismissed.

[24] The plaintiffs are entitled to their costs, and given the defendants' failures to address the claim, repeated delays and their avoidance of the court process, I award costs at 1.5 times Scale B rates, as contemplated by s. 2(5) of Appendix B of the *Supreme Court Civil Rules*. To award costs on the usual scale would be unjust given the defendants' conduct and the resulting extra time and expense of the plaintiffs.

“Caldwell J.”