IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mand v. Cheema,*
2024 BCSC 1304

Date: 20240702
Docket: S205263
Registry: Vancouver

2024 BCSC 1304 (CanLII)

Between:

Gurdarshan Singh Mand, Jagpal Kaur Mand,
Kuldip Singh Gill, and Sukhminder Kaur Gill

Plaintiffs

And

Harjinder Singh Cheema, Cheema Brothers Trucking Ltd.,
and Cheema Bros. Transport Ltd.

Defendants

Before: The Honourable Justice Blake

Oral Reasons for Judgment

Counsel for the Plaintiffs:	N.C.M. Preshaw
Counsel for the Defendants:	D.J. Taylor S.K. Sheena-Nakai A. Ponton, Research Assistant
Place and Date of Hearing:	Vancouver, B.C. June 24, 2024
Place and Date of Judgment:	Vancouver, B.C. July 2, 2024

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[1] **THE COURT:** This is an application brought by the plaintiffs for the following relief:

a) further and better will-say statements for five non-party witnesses, namely Rajpal Cheema, Satpal Cheema, Alamjeet Cheema, Raj Binpal, and Swarn Sekhon; and

b) that the defendants, within seven days, provide the plaintiffs with their list of potential additional defence witnesses, and also provide legally compliant will-say statements for those witnesses.

[2] It is necessary to put this application into the appropriate context of what has become highly adversarial and extremely complex litigation.

[3] The litigation centres on a property located at 6728–152nd Street, Surrey, BC (the “Subject Property"). It is legally owned by the defendant Harjinder Cheema. The central issue at trial is what, if any, beneficial interest the plaintiffs have in the Subject Property, which they say is held by Mr. Cheema in his capacity as trustee.

[4] The trial of this proceeding was initially set for 25 days and commenced on June 12, 2023. For a number of reasons, including but not limited to the fact that at the beginning of trial the defendants applied to withdraw admissions, the time scheduled for trial was inadequate. In reasons indexed at *Mand v. Cheema*, 2023 BCSC 1388, I granted that application. That decision inevitably lengthened the trial of this matter.

[5] The trial continued on January 15, 2024. Due to an unfortunate illness of defendants' counsel, the trial proceeded for two days, stood down, and ultimately then proceeded on February 12, 2024, for another 16 days. It re-commenced for its second continuation on June 24, 2024, and it is now set for approximately ten weeks over the summer. Closing argument is set for two weeks in November 2024. At this time, the total estimate of time necessary for the trial to complete is now 95 days.

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[6] Will-say statements have proven problematic during this proceeding. At a judicial management conference on March 15, 2024, I ordered that all parties exchange will-say statements for all non-party witnesses on or before April 30, 2024. I held another judicial management conference on May 13, 2024, and directed the parties to ensure the will-say statements were exchanged by May 17, 2024. Ultimately, the defendants provided the will-say statements for the above witnesses on May 28, 2024. The defendants say this delay was unintentional, as they had complied with my strong recommendation that they attend a judicial settlement conference, and as part of that process, had already provided a brief summary of the anticipated additional evidence to be tendered at trial.

[7] All parties complained about the sufficiency of the will-say statements. On June 5, 2024, I ordered at another judicial management conference that they were each to file any such application to compel appropriate will-say statements on or before June 17, 2024. I also directed that any such application was to be heard in the first two weeks of the second continuation of trial. The plaintiffs brought such an application. The defendants did not.

I. BRIEF BACKGROUND

[8] At the commencement of the trial, the plaintiffs first called Mr. Cheema as an adverse witness. He testified for approximately seven days. He is now scheduled to testify later this summer in direct evidence for eight days, in cross-examination for another four days, and in re-direct for another day and a half, so for an estimated additional 14 days.

[9] The plaintiffs called Gary Mand as a witness on July 6, 2023, and he testified in direct examination for two days in July 2023 and another two days commencing January 15, 2024. For a variety of reasons, which I will address on another occasion, he then underwent a cross-examination that unexpectedly took 17 days. The plaintiffs now seek to tender two medical expert reports with respect to Mr. Mand, which they argue will be relevant to my assessment of his credibility and

reliability. That is the subject of another application currently scheduled for later this week.

[10] During the direct examination of Mr. Mand, testimony was given about two other properties the parties invested in located at 18861–16th Avenue and 18843–16th Avenue (collectively, “16th Avenue Properties”). Further, Mr. Mand testified as to various trust deeds that were entered into for these two trust properties, and various other transactions related to these two properties. The defendants objected to the relevance of this evidence, but I allowed the evidence to the extent that Mr. Mand was allowed to testify as to his knowledge of the events related to the 16th Avenue Properties. I expressly allowed the defendants to ultimately argue that this evidence should ultimately be given no weight.

[11] There are five defence witnesses whose will-say statements the plaintiffs say are inadequate. Rajpal Cheema and Satpal Cheema are sons of Mr. Cheema, and Alamjeet Cheema is the nephew of Mr. Cheema. All three were allegedly presented with the possibility of becoming beneficial owners of the Subject Property. Raj Binpal was counsel for Mr. Cheema, and Swarn Sekhon is a realtor in Surrey who allegedly did work for Mr. Cheema to investigate the potential rental of the Subject Property.

II. APPLICABLE LEGAL PRINCIPLES

[12] The parties are in relative agreement on the applicable legal principles, which I will summarize briefly.

[13] Rule 1-3 of the *Supreme Court Civil Rules* [*Rules*] is clear that the object of the *Rules* is to secure a just, speedy, and inexpensive determination of every proceeding on its merits. This includes, to the extent practicable, conducting the proceeding in ways that are proportionate to the amount involved, the importance of the issues, and the complexity of the proceeding.

[14] As I have already noted, this proceeding has ballooned from an originally estimated 25 days to an incomprehensible 95 days. I have repeatedly made it clear

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to both counsel and to the parties who are present in the courtroom, that in my opinion this matter is no longer proportionate to the legal issues and amounts involved.

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[15] Rule 12-2(9)(g) of the *Rules* permits a judge presiding over a trial management conference to order a party to provide a summary of the evidence that the parties' witnesses will give at trial. In my capacity as the trial judge of this proceeding, I made such an order on March 15, 2024.

[16] Will-say statements are generally understood as being a procedural tool to ensure fairness, efficiency, and preparedness and to prevent ambush at trial. They are intended to be a summary of the substance of what a witness will say when that witness testifies, no more and no less: *Bartch v. Bartch*, 2017 BCSC 1625 at para. 11 [*Bartch*]; *Padda v. Lalli*, 2020 BCSC 1272 at para. 25 [*Padda*].

[17] The argument that appropriately detailed will-say statements may require inordinate time and expense to prepare has been rejected: *Bartch* at para. 11. Will-say statements that are too general to be useful, which identify only the general topic on which a witness will testify, but not the substance of the evidence, are not sufficient: *Padda* at para. 27.

[18] Will-say statements are not adequate if they provide only a very general description of the general topics of evidence that a witness is expected to testify about: *Bartch* at paras. 7–10; *Greenfield v. Tran*, 2023 BCSC 1787 at para. 28.

III. ANALYSIS

[19] This application must be placed into its appropriate context. This litigation has become unnecessarily protracted and is now out of all proportion to the matters at stake. Notwithstanding the efforts to case manage this proceeding, the parties continue to require significant court direction and case management to ensure proper steps are taken in ensuring this matter proceeds as efficiently as possible in these unfortunate circumstances.

[20] I will turn first to the issue of the more detailed will-say statements sought by the plaintiffs. As Justice G.P. Weatherill stated in *Bartch* at para. 7, a proper will-say statement is a "procedural tool available to ensure fairness, efficiency, and preparedness at trial and to prevent ambush". It cannot be merely a general list of topics to be discussed, as that is too general to be useful. Rather, it must in summary form set out the substance of the evidence expected to be tendered at trial. Will-say statements that merely "provide brief and nebulous statements on the topics of evidence" do not meet the standard: *Padda* at para. 25.

[21] The defendants advance a number of arguments. First, they argue that the witnesses for whom will-say statements are sought are all witnesses who are not under the control of the defendants. They suggest that the *Rules* have other mechanisms available for the plaintiffs to try to contact, speak, or interview them, and they castigate the plaintiffs for not exhausting those other mechanisms. I do not accept this argument has any merit, coming as it does in the middle of the plaintiffs' case and after I made clear orders for the exchange of proper will-say statements. The *Rules* do not provide for an order of relief which parties must proceed through before seeking an appropriately detailed and comprehensive will-say statement.

[22] Second, they argue the will-say statements they have provided must be put into the context of the other information that has already been disclosed to the plaintiffs through document disclosure, examinations for discovery, document production orders, and their cross-examination of Mr. Cheema as an adverse witness. They argue that when viewed in that context, the will-say statements are actually quite specific and focused and are sufficient to accomplish the purpose of ensuring trial efficiency, trial fairness, preparedness, and to prevent ambush at trial. That argument in a similar form was rejected by Justice G.P. Weatherill in *Bartch*. I also do not find it to be persuasive. I ordered the will-say statements be provided before this second continuation, on the basis that they were necessary to allow the plaintiffs to properly prepare for cross-examination of the non-party witnesses. The defendants cannot now try to argue such an order was unnecessary, which is the effective result of the argument they are advancing.

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[23] Third, the defendants say they should not be put to what they argue will be an inordinate amount of work to provide further and better will-say statements. Again, a similar argument was made before Justice G.P. Weatherill in *Bartch* and was also rejected. The will-say statements are not required to be fulsome minutes of evidence, they are required to be a summary of the substance of what a witness will say when that witness testifies, no more and no less. The fact that it must occur in the middle of this second continuation of trial is the inevitable by-product of the will-say statements failing to be sufficient.

[24] While I agree that the context within which such an application is brought is relevant, the jurisprudence is clear that a proper will-say statement must provide a summary of the evidence anticipated to be called at trial. It is not sufficient to merely set out topics upon which a witness is expected to testify, and then rely upon other evidence tendered to say that the expected witness will provide similar evidence. Likewise, it is not sufficient to say that the expected evidence will corroborate the evidence of Mr. Cheema.

[25] Finally, counsel argues that the will-say statements are neither brief nor nebulous, but are appropriate summaries of the evidence these witnesses are expected to testify to. I cannot agree. Although counsel eloquently argues that these witnesses will inevitably corroborate the evidence of Mr. Cheema, as it would be nonsensical to put forward a witness who would do otherwise, that does not affect the requirement that they provide substantive will-say statements for these witnesses. In my opinion, these will-say statements are merely a summary of the various topics the witnesses are supposed to canvass and not an appropriate substantive statement of the actual evidence they are expected to tender. Further, the fact that the will-say statements say the evidence of the witnesses is expected to corroborate the evidence of Mr. Cheema falls far short of a proper substantive will-say statement.

[26] I find it appropriate that the defendants provide properly detailed will-say statements which provide a proper summary of the evidence they expect these five

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witnesses to give at trial. Those will-say statements must include more than the current ones do, which are only a very general description of the topics of evidence they expect to address. They must provide, in a general way, the substance of the evidence they expect to be tendered for each general topic of evidence they expect they will address. I have reviewed carefully the notice of application, and the objections raised by the plaintiffs to the sufficiency of each of the five will-say statements in question, and agree that the identified omissions must all be addressed by the defendants in these further will-say statements. That is not to say that they must be detailed minutes of evidence, but rather that they must set out, in a general way, the substance of the evidence expected to be tendered at trial.

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[27] I must briefly address the defendants' argument that "this has been a long and arduous litigation with significant discussions and correspondence between counsel with respect to the expected testimony of certain witnesses" and that the plaintiffs' argument that they would be ambushed at trial is unsubstantiated. As of the date this application was heard, we were on day 43 of the trial which was initially estimated to be 25 days. There have been and continue to be, unexpected events at trial that have surprised both parties. To now argue that requiring them to provide appropriately detailed will-say statements would impose an unjustifiable burden on the defendants is disingenuous. Nor am I persuaded by the argument that this is plaintiff’s strategy to create as much work as possible for them in the middle of trial.

[28] Rather, I am satisfied that the plaintiffs have demonstrated, in the context of this highly adversarial litigation, that it is appropriate and necessary for more detailed will-say statements to be provided. Further, I am satisfied it is appropriate to ensure compliance with the purpose of the *Rules*.

[29] Accordingly, I order that the defendants provide further will-say statements for the five non-party witnesses sought, which must comply with these reasons for judgment. The plaintiffs suggest that this be done within seven days, but I am ordering that it be done on or before Friday, July 19, 2024, at 4:00 p.m. These further will-say statements must provide, in a general way, the substance of the

evidence they expect to be tendered by each witness for each general topic of evidence they expect they will address, and address the deficiencies noted by the plaintiffs in their notice of application.

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[30] Turning to the issue of the unidentified additional witnesses for the defendants, the plaintiffs seek an order that the defendants identify those potential witnesses and provide them with appropriate detailed will-say statements for those witnesses. However, those witnesses have been identified clearly by the defendants as being potential witnesses whose necessity may arise as a result of the evidence that may be tendered with respect to the two 16th Avenue Properties. There is a further unexpected issue which has arisen—the plaintiffs advised the defendants the Thursday evening before this second continuation, that they seek to tender two medical expert reports related to Mr. Mand. As already noted, that application addressing the admissibility and relevance of those two expert opinions is now scheduled for July 3 and 4, 2024. At this time, I have not seen either of the expert reports, the plaintiffs' notice of application, nor the defendants' response to application. It may be that the result of that application affects the defendants' decision to call any additional witnesses.

[31] In any event, the defendants have been consistent that they may need to call further witnesses to answer the evidence adduced by the plaintiff. They have maintained their position that the evidence tendered at trial ought to have no weight placed upon it, and that once the breadth of the evidence of the 16th Avenue Properties as tendered by the plaintiffs is called, they will be in a position to immediately assess the need, if there is one, to call additional witnesses.

[32] Given that, I am satisfied that it is appropriate to allow the defendants to advise the plaintiffs of any anticipated additional witnesses they intend to call within 24 hours of the plaintiffs closing their case. Any additional witnesses may only be tendered to address the issue of the evidence adduced by the plaintiffs with respect to the 16th Avenue Properties. I also find it reasonable that the defendants provide appropriately detailed will-say statements for any such additional evidence within 72

hours of the plaintiffs closing their case on the condition that the unknown additional witnesses must be called at the end of the defendants' case.

[33] Given the parties' divided success on this application, I order the costs of the application are to be costs in the cause.

[34] As these were oral reasons, they have been edited where necessary and quotes from the caselaw have been inserted, but the overall substance and result has not changed.

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“Blake, J.”