IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sall v. Sall,*
2024 BCSC 907

Date: 20240418
Docket: S193194
Registry: New Westminster

Between:

Parminder Singh Sall

Plaintiff

And

Ajminder Singh Sall, Mohinder Kaur Sall, and Lehmber Singh Sall

Defendants

And

Parminder Singh Sall, Lehmber Sall, and Premjeet Kaur Sall

Defendants by Counterclaim

Before: The Honourable Justice Gibb-Carsley

Oral Reasons for Judgment

In Chambers

Counsel for Parminder Sall, Lehmber Sall, and Premjeet Sall:	D.J. Taylor
Place and Date of Hearing:	New Westminster, B.C. April 4, 2024
Place and Date of Judgment:	New Westminster, B.C. April 18, 2024

[1] **THE COURT:** These are my reasons for judgment.

Introduction

[2] There are two related applications before me. Both applications have their genesis in a dispute between members of the Sall family relating to an alleged breach of trust concerning the ownership of real property located at 8381-147th Street, Surrey, British Columbia (the “Property”). The applicants in the two proceedings before me are Lehmber Singh Sall, Parminder Singh Sall, and Premjeet Sall. I will refer to these individuals collectively as the “Applicants”. The Applicants are represented by Mr. Taylor. Given that almost all of the parties share the same surname, I will refer to them by their first name, meaning no disrespect.

[3] The respondents to this application are Ajminder Singh Sall, Mohinder Kaur Sall, and Sharon Gill. I will refer to these individuals collectively as the “Respondents”. As I will discuss below, the Respondents did not appear before me at the hearing, despite the Applicants' assertion that the Respondents were duly served with the application materials and given notice that the hearing would be heard in chambers on April 4, 2024.

[4] In the applications before me, the Applicants ask the court to enforce an agreement that the Applicants say was agreed to between the Applicants and the Respondents on February 15, 2023. The Applicants say that despite the Respondents agreeing to the essential terms of the agreement in February 2023, the Respondents now refuse to sign the formal agreement. In short, the Applicants contend that there was an agreement as to the essential terms of the agreement that resolved the issues between the parties, and the Respondents are reneging on that agreement. As I will describe below, the agreement purportedly reached in February 2023 occurred during a trial between the parties. As a result of that purported agreement, the trial was adjourned.

[5] Courts are clear that generally, if parties agree to essential terms of an agreement, a change of heart or mind will not suffice to allow them to repudiate that

agreement. In my view, despite the somewhat convoluted history of these proceedings, the core issue before me is whether the agreement now sought to be enforced by the Applicants contains the same essential terms of the agreement reached by the parties on February 15, 2023.

[6] In these reasons for judgment, I will first provide some background facts for context. I will then address the issue of whether I am satisfied that the Respondents were properly served such that it is appropriate for me to give judgment. I will then turn to the issue of whether the agreement as presented by the Applicants should be enforceable.

Background Facts

[7] Lehmber and Mohinder are spouses and the parents of two sons, Ajminder and Parminder. Parminder's spouse is Premjeet. Ajminder's spouse is, or at least was at the time of the litigation, Sharon Gill. On or about April 11, 2001, the Sall family acquired the Property. The Property was registered in the name of the parents, Lehmber and Mohinder, both holding a 50 percent legal interest in the Property. All of the parties except Ms. Gill lived together in the Property from 2001 until approximately 2005. At that point, Ms. Gill moved into the Property with the other family members. Ms. Gill and Ajminder moved out of the Property in approximately 2007.

[8] Due to various issues which I need not delve into in any great detail, the ownership share of the Property changed over time. As I understand it, there was a dispute between the brothers, Ajminder and Parminder, involving issues related to a debt in an automotive business. As a result of these issues, their parents, Lehmber and Mohinder, transferred some of their 50 percent interest of the Property to their sons. However, to resolve the debt issues in respect of the sons, Lehmber and Mohinder reapportioned the ownership of the Property between the parties. It is my understanding that this purported transfer underpinned the disagreements between

the parties because in essence, the litigation relates to the parties' entitlement to ownership of the Property.

[9] In respect of the litigation underlying these applications, in 2016, Ajminder and Ms. Gill commenced a petition in the New Westminster Registry under court file number S186508 seeking a partition and sale of the Property. I will refer to that as the “Petition”. The respondent of the Petition was originally Lehmber. The Petition was amended on June 21, 2021, to include Parminder and Premjeet as respondents.

[10] In 2017, Parminder commenced a notice of civil claim in the New Westminster Registry bearing court file number S193194. I will refer to that as the “Action”. The defendants in the Action were Ajminder, Mohinder, and Lehmber. A counterclaim was filed by Ajminder in which he named Premjeet as a defendant by counterclaim. The relief sought by Parminder in the Action included a declaration that the entirety of the interest in the Property was held in trust for him.

[11] In my view, the specific details of the Action and the Petition are generally unimportant for my determination. The primary relevance of the Action and Petition is that they were enjoined and heard together at the trial presided over by the Honourable Justice Stephens.

[12] The trial commenced on July 25, 2022, and continued to August 5, 2022. It did not complete during that time. As such, it was scheduled to continue February 13 to February 23, 2023. On February 15, 2023, at a court break in the midst of Ajminder's cross-examination, the parties, through their counsel, reached an agreement to settle the matter. The agreement was spoken to before Justice Stephens, and the trial was adjourned generally to finalize the details of the agreement.

[13] As I will describe in a moment, at the trial break, at 11:22 a.m. on February 15, 2023, an email was sent by then counsel for the Respondents, Mr. Cole D. Rodocker, to counsel for the Applicants, Mr. Taylor, setting out eight terms of

settlement. I will refer to that as the “February 2023 Agreement”. Mr. Taylor responded by email shortly after, at 11:34 a.m., indicating that the settlement terms were acceptable to his clients and agreed upon. The parties then informed Justice Stephens of the agreement, and the trial was adjourned generally.

[14] The parties then began the work of memorializing the terms of the agreement to ensure that proper steps were taken to deal with the title of the transfer of the Property and prepare the necessary releases. At this point, Mr. Taylor, who is the Applicants’ litigation counsel, turned conduct of the file over to his colleague, Mayank Khosla, a solicitor, to finalize the terms of that agreement. The Applicants prepared a draft of the settlement agreement and presented it to Mr. Rodocker in May 2023. I will refer to that as the “Final Settlement Agreement”.

[15] On May 15, 2023, sometime after receiving the Final Settlement Agreement, the Respondents discharged Mr. Rodocker as their counsel. The Respondents filed a notice of intention to act in person on May 30, 2023. The Respondents provided an address of service on that notice of 12257-214th Street, Maple Ridge, BC, in an email of aj[REDACTED]@hotmail.com.

[16] The Applicants have had no further response from the Respondents as to whether they will sign the Final Settlement Agreement. As such, they brought this application to have the terms of the Final Settlement Agreement enforced by the court. As I will discuss in a moment, the Applicants assert that they properly served the Respondents with the application material and gave them notice of the hearing.

Discussion

Service of the Application Materials

[17] I will first discuss whether I am satisfied that the Respondents, despite not appearing before me, have been properly served with the application materials such that it is in the interests of justice for this matter to proceed without the appearance of the Respondents. At the hearing, I was not provided with an affidavit of service of the materials. However, Mr. Taylor advised me that he had affidavits of service

sworn March 26, 2024, that set out that the Respondents were served personally on March 20, 2024, and their address for service was 12257-214th Street, Maple Ridge.

[18] Given the importance of being satisfied that the Respondents were served, I requested through court memo that Mr. Taylor file and provide me with affidavits of service. He did so on April 11, 2024. Specifically, I was provided with five affidavits of service, and have had the opportunity to review them. The affidavits of service indeed provide that on March 20, 2024, Dean Price, a process server, personally served Ajminder, Mohinder, and Ms. Gill with the notices of application and a letter alerting them to the fact that the applications were scheduled to be heard in court on April 4, 2024. That letter from Mr. Taylor also stated that "I recommend that you seek legal advice".

[19] Mr. Price served the Respondents at 12257-214 Street, Maple Ridge, BC, which is the address for service provided by the Respondents on their notice of intention to act in person filed with the court in May 2023. Upon reviewing the affidavits of service, I am satisfied that the application materials were personally served on the Respondents on March 20, 2024, at the address provided by the Respondents in the notice of intention to act in person, and that the Respondents were aware of the application that was set to be heard on April 4, 2024.

[20] Further, I am satisfied that the application materials contained a version of the Final Settlement Agreement that the Applicants now seek to have enforced. As such, there can be no argument that the Respondents were unaware that the Applicants sought to have the terms of the Final Settlement Agreement in force and were seeking costs of the application.

[21] Finally, in respect to the issue of service, during the application it appeared from the covering letters put before the court that the application materials had been served by email to aj[REDACTED]@hotmail.com. This email was different because it was missing the second L in the address and so was different than the email provided by the Respondents in their notice to act in person. I was concerned that

the materials that were served by Mr. Taylor's office did not reach the intended recipients by email.

[22] However, on April 11, 2024, in addition to providing me with the affidavits of service, Mr. Taylor provided me with email confirmations that the materials were served by email to the correct email address, being aj[REDACTED]@hotmail.com. I reviewed that material, and I am satisfied that in addition to being personally served with the application materials, that the Respondents were also served by email. I note that either the personal service or email service would have satisfied me that the Respondents were aware that the application was to be before the Court.

[23] Given the forgoing, I have no hesitation that the Respondents were properly served in person on March 20, 2024, and have not responded nor appeared at the hearing before me. As such, I find that their decision not to appear and participate in this application is of their own choice, and it is appropriate for me to proceed with judgment in this matter despite their non-appearance.

Is the Agreement Enforceable?

[24] As I have already stated in these reasons, the crux of this application is whether on February 15, 2023, the Respondents agreed to the essential terms that are now set out in the Final Settlement Agreement. For the reasons that follow, I am satisfied that the terms set out in the Final Settlement Agreement became the essential terms agreed to by the parties on February 15, 2023, and set out in Mr. Rodocker's email. Any additional terms in the Final Settlement Agreement are, in my view, non-essential and could not warrant the Respondents resiling from the agreement.

Analysis

[25] I must be satisfied on a balance of probabilities that the parties agreed to the essential terms now contained in the Final Settlement Agreement: see *Hutton v. Hutton*, 2020 BCSC 2046 at para. 31. Our Court of Appeal has established that the ordinary rules of contractual interpretation apply in determining whether there was a

binding settlement agreement between the parties. In *Fieguth v. Acklands Ltd.*, 37 BCLR (2d) 62, 1989 CanLII 2744 (B.C.C.A.), Chief Justice McEachern writing for the court stated that:

> [35] In these matters it is necessary to separate the question of formation of contract from its completion. The first question is whether the parties have reached an agreement on all essential terms. There is not usually any difficulty in connection with the settlement of a claim or action for cash. That is what happened here and as a settlement implies a promise to furnish a release and, if there is an action, a consent dismissal unless there is a contractual agreement to the contrary, there was agreement on all essential terms.

[26] In *Hutton*, Chief Justice Hinkson, citing *Fieguth*, held that the Court must determine whether the parties reached an agreement on all essential terms: see para. 32. Chief Justice Hinkson then continued citing Justice Stratas of the Federal Court of Appeal in *Apotex Inc. v. Allergan, Inc.*, 2016 FCA 155, at paras. 32 to 33. In *Apotex*, Justice Stratas articulated the test to determine if an enforceable settlement had been reached as follows:

> [32] The court is to view the specific facts of the case objectively in light of the practical circumstances of the case and ask whether the parties intended to be legally bound by what was already agreed or, in other words, whether an "honest, sensible business [person] when objectively considering the parties' conduct would reasonably conclude that the parties intended to be bound or not" by the agreed-to terms: *G Percy Trentham Ltd. v. Archital Luxfer Ltd.* (1992), [1993] 1 Lloyd's Rep 25, 63 B.L.R. 44 (C.A.) at paras. 50 and 86; *Ward* at para. 61; *Hughes v. City of Moncton*, 2006 NBCA 83, 304 N.B.R. (2d) 92 at para 6. Put another way, looking not through the eyes of lawyers, but through the eyes of reasonable businesspeople stepping into the parties' shoes, was there something essential left to be worked out? See *Investors Compensation v. West Bromwich Building Society*, [1998] I All E.R. 98; [1998] 1 W.L.R. 896 (H.L.); *Chartbrook v. Persimmon Homes*, [2009] UKHL 38, [2009] A.C. 1101; *Re Sigma Finance*, [2009] UKSC 2, [2010] 1 All E.R. 571. Another way of putting it is to ask how "a reasonable [person], versed in the business, would have understood the exchanges between the parties": *Bear Steams Bank pic v. Forum Global Equity Ltd.*, [2007] EWHC 1576 (Q.B.D. Comm.) at para 171.

See also *Campbell v. Campbell*, 2022 BCSC 2213 at para. 55.

[27] In respect of non-essential terms in *Hutton*, Chief Justice Hinkson found it is appropriate for the court in finding that there was an agreement on essential terms to

imply non-essential terms. More importantly, at para. 33 the Chief Justice cited the following statement from Stratas J. in *Apotex* at para. 33:

> The lack of agreement on non-essential terms will not stand in the way of a finding of an agreement.

[28] As set out above, counsel for the Respondents, Mr. Rodocker, sent an email to Mr. Taylor, counsel for the Applicants, at 11:22 a.m. on February 15, 2022. I accept that the email was sent during the morning court break. The email sets out the following terms for settlement:

1) Premjeet, Harminder, and Lehmber will pay to Ajminder, Sharon, and Mohinder $225,000 in full and final settlement of all claims between the parties relating to the Action and Petition;

2) Ajminder will transfer his 50 percent legal interest in a conveyance transaction to Parminder for 30 percent and Premjeet for 20 percent on each side and will bear the normal cost of that conveyance;

3) The conveyance will occur on or before April 15, 2023;

4) All parties shall use good-faith efforts to execute all necessary documentation to effect the conveyance;

5) All parties will release any certificate of pending litigation on the Property pursuant to the conveyance;

6) Moneys delivered to Ajminder and/or Sharon as the case may be pursuant to the settlement and conveyance will be held in trust for Mohinder;

7) The parties will enter into a settlement agreement and mutual release prepared by counsel to Ajminder and Sharon and Mohinder with terms to be confirmed in the normal course between counsel for the parties acting reasonably and on terms contained therein; and

8) The trial will be adjourned generally and a consent dismissal order will be entered on the finalization and execution of the above settlement agreement and mutual release.

[29] As set out above in response to Mr. Rodocker's email, counsel for the Applicants, Mr. Taylor, sent an email at 11:34 a.m. on February 15, 2023, writing "the settlement terms are acceptable to my clients and are agreed upon". The parties then reappeared before Stephens J., and the matter was adjourned generally.

[30] Ajminder was released from cross-examination. In my view, it is clear that the parties relied on the fact that an agreement had been achieved, as it is evident that the trial and specifically Ajminder's cross-examination was halted. This demonstrates to me that the Applicants relied on an agreement being reached by accepting that Ajminder could be released from cross-examination and the trial halted.

[31] I reviewed the terms of the Final Settlement Agreement that was sent by counsel for the Applicants to Mr. Rodocker for signature on May 11, 2023. The unsigned Final Settlement Agreement was attached to the notice of application. I am satisfied that the Final Settlement Agreement simply memorializes the terms of the February 2023 Agreement and includes language to give effect to those terms. In other words, the other terms contained in the Final Settlement Agreement are non-essential terms. I reiterate, as referenced above, that the lack of an agreement on non-essential terms will not stand in the way of a finding of an agreement: *Apotex* at para. 33, cited in *Hutton* at para. 33.

[32] I conclude that the essential terms of the February 2023 Agreement between the applicant and the Respondents are that $225,000 would be paid to the solicitors of Ajminder in trust in full and final settlement of all claims relating to the claims. In exchange for the settlement amount, Ajminder would transfer his 50 percent legal interest in the Property to Premjeet and Parminder as joint tenants.

[33] As a result of this primary transaction relating to the Property, all claims regarding the parties in the Action and the Petition would be dismissed and the parties released from future liability. In my view, if these events and the agreements are looked at “through the eyes of a reasonable businessperson”, I conclude that the reasonable businessperson would not find that there was anything else essential to be “worked out” between the parties: see *Apotex* at para. 32. As I just mentioned, in reliance of that agreement on February 15, 2023, the trial was halted and adjourned. It strikes me as profoundly unfair that the Respondents would now resile and renege from the essential terms of that agreement.

[34] While the Respondents are now self-represented, at the time of the February 2023 Agreement they were represented by counsel, Mr. Rodocker. There is no indication that he was not representing their interest during the formation of that agreement. Indeed, the strong inference available is that his clients were the genesis of the terms of the February 2023 Agreement, given the email originated with Mr. Rodocker at a break during Ajminder's cross-examination. It would be inconceivable that the Respondents were not aware of the settlement of the litigation through the proposed terms made by Mr. Rodocker in the email.

[35] A solicitor is an agent for his client, and absent representations to the contrary, the solicitor has authority to bind that client: see *Baldissera v. Wing*, 2000 BCSC 1788, at paragraph 31; *Chavez-Salinas v. Tower*, 2023 BCSC 89, at para. 32. Mr. Taylor, fairly in my view, informed me that the correspondence in May 2023 between the respondent’s counsel and Mayank Khosla, the solicitor who took over for Mr. Taylor in finalizing the Final Settlement Agreement, Mr. Rodocker stated that:

> Changes are acceptable. Except for an issue with the date but we are reaching out to our clients on this matter and will get back to you ASAP.

[36] As I understand his submission in this regard, Mr. Taylor brought me to this fact to demonstrate that neither the Respondents nor Mr. Rodocker unequivocally acknowledged that they agreed with the Final Settlement Agreement. I commend Mr. Taylor for bringing this fact to my attention, but it does not change my view that

given the Final Settlement Agreement contains the same essential terms agreed to in the February 2023 Agreement, the Respondents are unable to withdraw and the Final Settlement Agreement should be enforced.

[37] While it is unknown why the Respondents refused to sign the Final Settlement Agreement, because they have simply remained silent on this issue and refused to sign, one can only surmise that they have changed their minds. Courts are clear that a change of mind or heart is insufficient to justify refusing to sign an agreement made on the essential terms. The court in *Gaida v. McLeod*, 2013 BCSC 1168 held:

> [91] I have found that Mr. Gaida changed his mind shortly after he instructed Mr. Foisy to accept the defendants' offer of $440,000. He later received advice from new counsel that, in her opinion, the claim was worth more than the amount of the settlement. A change of mind based on further consideration of the law or facts concerning the possibility of success is not sufficient to set aside a settlement: *Adam v. I.C.B.C. et al.*, (1985), 1985 CanLII 584 (BC CA), 66 B.C.L.R. 164 (C.A.) at 171.

[38] The same principle that a court will not refuse to enforce an otherwise binding settlement agreement because a party changed their mind was articulated in *Roumanis v. Hill*, 2013 BCSC 1047, as follows:

> [44] However, the settlement before me was entered into with the knowledge of the client and on her express instructions. There is no dispute that the plaintiff agreed to the settlement but changed her mind a short time after her counsel had communicated her acceptance to the defendants' counsel. In other words, Mr. Bolda had the actual authority to settle the Actions on the agreed terms.
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> …
>
> [48] In my view *Robertson* and *Moric* stand for the proposition that a binding settlement agreement made by counsel on the instructions of a client is enforceable on the same basis as any other contract and that the court has no power to refuse to give effect to such a settlement because it considers it to be unjust. A judge hearing an application for summary enforcement of a settlement by means of a stay of proceedings pursuant to s. 8 of the *Law and Equity Act* can refuse summary enforcement and leave the issue of the enforceability of the settlement to trial or in a separate action. It would seem, however, that the dispositive issue to be determined at trial or in the separate proceeding will be whether the settlement is binding pursuant to contractual principles.

[39] Finally, I acknowledge that our Court of Appeal has commented that there is a strong public interest in favour of resolving disputes through agreement, and it is the policy of courts to promote and enforce settlement agreements: see *Turcotte v. Godine*, 2022 BCCA 24, at para. 52. It does not advance the administration of justice in the circumstances of this case if the Respondents, after agreeing to a settlement that resulted in a trial adjourning, were now able to resile from that agreement. It strikes me as an inefficient use of resources, unfair, and unjust.

[40] As set out in the cases above, the interests of justice are served by certainty in agreements. I conclude that the Final Settlement Agreement as appended to the notice of application should be enforced and enforceable with the following modifications I will now discuss.

[41] Being satisfied that the terms of the Final Settlement Agreement contain the essential terms agreed to by the parties on February 15, 2023, the Court declares that:

1) The settlement and release agreement attached as Schedule A to the notice of application is a binding and enforceable agreement between the parties regarding all matters in connection with the Action bearing court file S193194 and Petition bearing court file number S186508;

2) The settlement and release agreement attached to the notice of application as Schedule A shall be affixed to this order as Schedule A with the following modifications required to give it effect:

    i. The signatures of the respondent on the settlement and release agreement attached to the notice of application with the changes made pursuant to this order are dispensed with, and the settlement and release agreement shall be an enforceable agreement as between the parties.

ii. The terms of the settlement and release agreement as attached to the notice of application at Schedule A shall be enforceable as between the parties with the following amendments:

a. The signatures of the Respondents, Ajminder Sall, Sharon Gill, and Mohinder Sall, are dispensed with on the settlement and release agreement;

b. The address of the Respondents, Ajminder Sall, Sharon Gill, and Mohinder Sall, shall change from the Surrey address listed on the settlement and release agreement to 12257-214th Street, Maple Ridge, BC, being the current address of the Respondents;

c. Clause 3 of the settlement and release agreement is amended to provide that the exchange of Ajminder's interest for the settlement amount, the conveyance, will occur on or before May 10, 2024, or such other date as the parties may consent to, defined as the completion date.

3) For clarity, the Respondents shall complete all necessary steps required to comply with the terms of the settlement and release agreement as agreed to by the parties on or by the completion date;

4) Clause 7 of the settlement and release agreement is amended to remove the reference to the legal counsel of Ajminder Sall, Sharon Gill, and Mohinder Sall's legal counsel, Hamilton Duncan Law Corporation, and to reflect that the Respondents will take all necessary steps to remove the certificate of pending litigation currently charged on the Property no later than 15 days following the completion date;

5) The Action bearing court file number S193194 is dismissed;

6) The Petition bearing court file number S186508 is dismissed; and

7) The signatures of the Respondents, Ajminder Sall, Sharon Gill, and Mohinder Sall, on this order are hereby dispensed with.

Costs

[42] The Applicants seek lump sum costs of this application under Rule 14-1(15) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, in the amount of $7,500. The Applicants have been entirely successful in their application and so are entitled to an award of costs. However, I find the costs in the amount of $7,500 sought by the Applicants are excessive. I note that the Applicants did not seek special costs of this application. While no doubt frustrating to the Applicants, the Respondents have not engaged in any reprehensible or egregious behaviour that would attract an award of special costs.

[43] Under the tariffs at Scale B, costs for the application for a full day of chambers and appearing to receive the judgments would be in the range of $990, being three units for preparation, five units for attendance on the day, extra units for appearing to receive these reasons, all at a value of $110 per unit.

[44] Given the amounts of photocopies and preparation necessary, including the service of the materials and the related expenses of bringing the applications in both the Action and the Petition, I find that reasonable disbursements would be $500. I accept the submissions of counsel that the non-responsiveness of the respondent to any contact from the Applicants so far suggests that settling a cost award made under the tariff could prove inefficient to the Applicants and increase the cost required to conclude this matter.

[45] As such, I find that a lump sum cost in the amount of $1,600, which includes disbursements and taxes, should be payable by the Respondents to the Applicants in a lump-sum amount from the settlement proceeds. I find that that is appropriate in this matter and order accordingly.

Conclusion

[46] I thank Mr. Taylor for what I consider to be his fair and frank submissions, and the extra care he took given the Respondents did not appear at the hearing.

[47] That concludes my reasons for judgment.

[FURTHER SUBMISSIONS OF COUNSEL AND DICUSSION REGARDING TERMS OF THE ORDER TO BE REFLECTED IN THE FINAL ORDER]

[48] CNSL D. TAYLOR: No, I have understood. Thank you, Justice. Nothing else from my end, Justice. Thank you very much.

[49] THE COURT: Thank you.

"Gibb-Carsley J."