COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Mann v. Grewal,*
2023 BCCA 88

Date: 20230227
Docket: CA48250

Between:

Amarjit Mann and Navtej Bains

Appellants
(Respondents)

And

Sukhwinder Grewal

Respondent
(Appellant)

Before: The Honourable Mr. Justice Willcock
The Honourable Justice Griffin
The Honourable Justice Skolrood

On appeal from: An order of the Supreme Court of British Columbia, dated April 6, 2022 (*Grewal v. Mann*, 2022 BCSC 555, Vancouver Docket S215017).

Counsel for the Appellant: T.A. Hakemi
S.J. Marescaux

Counsel for the Respondent: E.J.S. Aitken

Place and Date of Hearing: Vancouver, British Columbia
January 10, 2023

Place and Date of Judgment: Vancouver, British Columbia
February 27, 2023

Written Reasons by:
The Honourable Justice Skolrood

Concurred in by:
The Honourable Mr. Justice Willcock
The Honourable Justice Griffin

Summary:

The parties, former business partners, entered into a settlement agreement when disputes arose. A subsequent disagreement resulted in an arbitration. The arbitrator made an award in favour of the appellants. The respondent was granted leave to appeal, and appealed the award to a chambers judge, who found the arbitrator had erred in his interpretation of the settlement agreement and had in fact created a new contract. The appellants appeal the judge's decision, arguing that she erred in her interpretation of the settlement agreement and in failing to remit the matter back to the arbitrator. Held: Appeal dismissed. The judge did not go beyond the scope of the question on appeal and did not err in finding that the arbitrator's interpretation was not grounded in the language of the settlement agreement. She therefore did not err in finding that the award was unreasonable. Having found this, it was open to the judge to amend the award to give effect to the parties' intentions as set out in the settlement agreement.

Reasons for Judgment of the Honourable Justice Skolrood:

Introduction

[1] The parties to this appeal are former business partners who were previously engaged in a number of joint business and real estate ventures. Disputes arose between the appellants, Mr. Mann and Mr. Bains, and the respondent, Mr. Grewal. As a result, the parties decided to separate their business interests.

[2] In May 2014, the parties entered into an agreement to engage in a mediation/arbitration process in order achieve this objective. This process led to a settlement agreement dated October 30, 2015 (the "Settlement Agreement") facilitated by the mediator, Wally Oppal, K.C.

[3] While the Settlement Agreement was intended to resolve all of the matters in dispute between the parties, a disagreement subsequently arose over one piece of property located in Gibsons, British Columbia (the "Gibsons Property"). The Settlement Agreement dealt specifically with the Gibsons Property, however the parties disagreed on the proper interpretation to be given to the relevant provisions of the Agreement. The central issue in dispute was the distribution of sale proceeds from the sale of the Gibsons Property.

[4] As required by the Settlement Agreement, the dispute went to an arbitration before Mr. Oppal, who rendered an arbitral award dated May 15, 2020 (the "Award") in favour of Mr. Mann and Mr. Bains.

[5] Mr. Grewal sought and was granted leave to appeal the Award. The appeal was heard on October 22, 2021, and on April 6, 2022, the chambers judge issued reasons for judgment in which she found that the arbitrator erred in his interpretation of the Settlement Agreement and in effectively creating a new agreement between the parties. She therefore allowed the appeal and amended the Award to favour Mr. Grewal.

[6] Mr. Mann and Mr. Bains now appeal to this Court, seeking an order reinstating the Award, or alternatively, remitting the matter to the arbitrator.

Background

Dispute about the Gibsons Property

[7] While the essential facts are outlined above, it is useful to provide some additional background, particularly about the procedural history.

[8] The parties' business relationship dates back to approximately 2004. As noted, over a number of subsequent years, the parties owned and developed various business and real estate projects.

[9] One of their joint interests was the Gibsons Property, which was purchased in 2008, and which was co-owned with several other individuals. The Gibsons Property was registered in the name of a numbered company and held in trust for the individual beneficial owners, including Mr. Mann, Mr. Bains, and Mr. Grewal. Each of these parties held a 14.44% interest in the Property, which cumulatively amounted to a 43.3% interest.

[10] The parties decided in May 2014 to separate their interests, utilizing the services of Mr. Oppal, which culminated in the Settlement Agreement. That Agreement was in the form of an email exchange between counsel for the parties.

The Settlement Agreement provided for payments to Mr. Grewal in three instalments totalling $18.6 million, with the final payment due by June 30, 2016. In exchange, Mr. Grewal agreed to transfer his shares and relinquish all claims to any interest in the parties' jointly owned businesses and properties, other than the Gibsons Property.

[11] That Property was addressed in clauses 4 and 8 of the Settlement Agreement:

> 4. All Mann and Bains' interest in Gibsons transferred to [Grewal]. Mann and Bains will quit claim their interests in the property and their shares in the bare trustee will be redeemed for $1. An appraisal of the value of the [parties'] interest in the land will be conducted within 30 days by an appraiser appointed by the mediator/arbitrator. If the value of the interest of the parties in the land is less than $2,000,000, the difference between $2,000,000 and that lesser value will be added to the payment in paragraph 2 above. If the value of the interest of the parties in the land is greater than $2,000,000, the difference between $2,000,000 and that greater value will be deducted from the payment in paragraph 2 above.
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> …
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> 8. The purpose and intent of this agreement is that all of [Grewal's] interest in the jointly held businesses, other than Gibsons, will be transferred to Mann and Bains or their nominees and Mann, Bains and the jointly held companies will have all benefit of, and all liability for those businesses and properties. <u>The parties will agree on language intended to limit the release of all parties so that it does not apply to liability arising from claims by non-parties to this agreement against the released parties.</u>
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> [Emphasis in original.]

[12] A further clause of the Settlement Agreement provided that any dispute relating to the settlement of the parties' issues would be settled by the arbitrator. The Settlement Agreement also contemplated that the parties would endeavour to prepare a more detailed agreement to memorialize the terms set out in the email exchange, however that never occurred.

[13] As set out in clause 4 of the Settlement Agreement, the arbitrator was to appoint an appraiser to determine the value of the parties' interest in the Gibsons Property.

[14] While the Settlement Agreement contemplated the appraisal to take place within 30 days, it was not in fact completed until April 16, 2016. I note that the judge refers to the date of April 16, 2017 in her reasons, but it is common ground that this is a typographical error.

[15] The reasons for the delay are not explained by either the arbitrator or the judge, and the parties advance different explanations. However, little turns on why the appraisal was not undertaken until April 2016. What is important is that in the arbitrator's instructions to the appraiser, he directed that the value of the Gibsons Property should be assessed as of October 30, 2015, the date of the Settlement Agreement.

[16] On April 11, 2016, the appraiser, Mr. Steckley, delivered his appraisal report (the "Steckley Valuation") with an estimated market value for the Gibsons Property of $4,040,000 as of October 30, 2015.

[17] The parties disagree on what happened thereafter. In their factum, Mr. Mann and Mr. Bains refer to the Award where the arbitrator stated that "Mann and Bains immediately questioned the validity of the appraisal", and that they sought an opinion from a different appraiser, Mr. Doolan, who identified certain alleged flaws in the Steckley Valuation (Award at para. 8).

[18] In contrast, Mr. Grewal points to the judge's finding at para. 3 that "a dispute arose from [Mann and Bains]' mistaken belief in the extent of their ownership interest in the Gibsons Property", which led to a delay in the parties dealing with the transfer of the Property.

[19] On March 20, 2017, Mr. Grewal applied to the arbitrator for a declaration that the value of the parties' collective interest in the Gibsons Property was $1,750,666.34 based on the Steckley Valuation. Relying on clause 4 of the Settlement Agreement, Mr. Grewal further applied for an order that Mr. Mann and Mr. Bains pay him $249,333.34, representing the difference between the value of the parties' interest and $2,000,000.

[20] Mr. Mann and Mr. Bains took the position that the parties' interest in the Gibsons Property was 50%, and that based upon the Steckley Valuation, that interest was valued at $2,020,000, resulting in a deduction of $20,000 from the money otherwise payable to Mr. Grewal under the Settlement Agreement.

[21] While this dispute was unfolding, the Gibsons Property was sold in June 2017 for $7.98 million. The sale proceeds were distributed to the other owners in accordance with their interests in the Property, and the balance of approximately $3.4 million was paid into trust. As noted by the judge, the parties agreed that $2 million of those funds should be paid to Mr. Grewal, but disagreed on who was entitled to the remaining $1.4 million.

[22] On July 5, 2018, Mr. Mann and Mr. Bains filed an application with the arbitrator seeking to obtain the balance of the sale proceeds over the $2 million that was payable to Mr. Grewal. In this application, they raised the alleged flaws in the Steckley Valuation identified by Mr. Doolan. They took the position that the value of the Gibsons Property should be based upon the sale price from June 2017.

[23] In response, Mr. Grewal relied on a report prepared by another appraiser, Ms. Cawley, who opined that the Steckley Valuation had not in fact undervalued the Gibsons Property.

The Award

[24] The arbitration took place on December 2, 2019, and the arbitrator issued the Award on May 15, 2020. The Award is relatively brief, with the arbitrator's analysis set out in the following three paragraphs:

> 11. The starting point in any discussion on this point is that Mann and Bains were to pay to Grewal a total sum of $20.6 million in property and cash. Of that sum, $18.6 million was to be paid in 3 installments. The remaining $2.0 million was to come from the sale of the Gibsons property. That much is clear from the wording of paragraph 4. The $2.0 million was clearly a part of the $20.6 million. It was never the intention of the parties to transfer the property to Grewal unconditionally. The Gibsons transfer to Grewal was not a stand-alone transaction. In fact the parties carefully considered the wording that went into paragraph 4. The formula is not complicated. If the value was less than $2.0 million then Mann and Bains would be required to make up the

> shortfall through an additional payment. However, if it was in excess of $2.0 million it would be deducted from the total purchase price stated in paragraph 2. If I were to accede to Grewal's argument, the total purchase price would exceed $20.6 million. That clearly was not the intention of the parties.
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> 12. I pause here to note that much has been said about the value of the property. With respect, Mr. Steckley's appraisal seems to be somewhat suspect in light of the questions raised by Mr. Doolan and of course the eventual sale price. In any event as stated above, the intentions of the parties was to pay Grewal $20.6 million. Of that amount, $18.6 [million] was to be paid in installments, the remaining $2.0 million was to come from the sale of the Gibsons property.
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> 14. In reaching my decision the overall consideration must be the intent of the parties which is embodied in paragraph 4 of the settlement agreement. In summary it is not in dispute that the total purchase price was $20.6 million. As well there is no dispute that $18.6 million was to be paid in installments. Accordingly there will be an order that of the monies that are held in trust with McQuarrie Hunter, $2.0 million ought to be paid to Grewal while [the] remaining funds will be paid to Mann and Bains.

[There was no para. 13 in the Award.]

Appeal Proceedings

[25] Mr. Grewal sought leave to appeal the Award to the Supreme Court of British Columbia pursuant to s. 31 of the *Arbitration Act*, R.S.B.C. 1996, c. 55 (repealed and replaced by the *Arbitration Act*, S.B.C. 2020, c. 2). The arbitration was commenced prior to the coming into force of the new *Act*, hence the former *Act* applied. Throughout the balance of these reasons, references to the *Arbitration Act* will be to the former Act. Mr. Grewal's application was heard and decided on January 18, 2021 (indexed at 2021 BCSC 220). Justice Edelmann granted leave on the three errors of law alleged by Mr. Grewal (at para. 16):

> (1) the Arbitrator disregarded the valuation process for the Gibsons Property provided in paragraph 4 of the Agreement and created instead a new valuation process for the Gibsons Property not provided in the Agreement, effectively creating a new agreement between the parties;
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> (2) the Arbitrator failed to apply the correct legal test to [Mann and Bains]' challenge to the Steckley Valuation that was commissioned by [the arbitrator] in accordance with paragraph 4 of the Agreement; and
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> (3) the Arbitrator ignored, forgot or misconceived the evidence concerning the timing of [Mann and Bains]' challenge to the Steckley Valuation.

[26] With respect to the first alleged error, Justice Edelmann said at para. 19:

> I am satisfied the petitioner has raised an arguable case that the Arbitrator allowed the factual matrix to overwhelm the text of the contract and has therefore raised an extricable question of law for the purposes of leave. In particular, I note that clause 4 of the contract on its face appears to require the transfer of the Gibsons property to the petitioner, and not simply the transfer of $2 million. Not only does the Arbitrator's decision fail to engage with this aspect of the contractual text, but selects a valuation method directly at odds with the Petitioner's ownership of the property. I am unable to discern any engagement or justification in the decision for a valuation date of July 2017, if the Petitioner was to be the owner of the property as of October 2015. I note that my comments are based on a preliminary review of the materials before me at the leave stage and should not be taken as binding on a judge ultimately hearing the case.

[27] Mr. Mann and Mr. Bains appealed the leave decision to this Court. That appeal was dismissed on January 28, 2022 (indexed at 2022 BCCA 30). Justice Abrioux for the Court said at paras. 37–40:

> [37] In my view, two of the arbitrator's conclusions are sufficient to dispose of this appeal.
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> [38] The first relates to para. 11 of the Award:
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> > 11. The starting point in any discussion on this point is that Mann and Bains were to pay to Grewal a total sum of $20.6 million in property and cash. Of that sum $18.6 million was to be paid in 3 installments. The remaining $2.0 million was to come from the sale of the Gibsons Property. That much is clear from the wording of paragraph 4. …
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> > [Emphasis added.]
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> [39] And yet para. 4 of the Settlement Agreement provides in part:
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> > …. All Mann and Bains' interest in Gibsons transferred to Sukhi [Grewal]. Mann and Bains will quit claim their interests in the property and their shares in the bare trustee will be redeemed for $1.
> >
> > [Emphasis added.]
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> [40] The second conclusion concerns the valuation date. The arbitrator instructed Mr. Steckley to provide his valuation as of the date of the Settlement Agreement, October 30, 2015. The Award, however, is based on the value as of the date the Gibsons Property was sold, that is June 2017.

[28] Mr. Grewal's appeal to the Supreme Court of British Columbia was heard on October 22, 2021, and the judge rendered her reasons on April 6, 2022.

[29] The judge noted some uncertainty in the law since *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65, about the standard of review on appeals from arbitral awards. She agreed with Justice Davies in *Spirit Bay Developments Limited Partnership v. Scala Developments Consultants Ltd*., 2021 BCSC 1415 (aff'd in part 2022 BCCA 407), that the Supreme Court of Canada has not yet resolved this issue, thus *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32 [*Teal Cedar*], remains binding authority, meaning that the standard of review is reasonableness (at paras. 9–12).

[30] The judge reviewed the key terms of the Settlement Agreement and the arbitrator's reasons. She identified the central question before her as whether, assessed on a reasonableness standard, the Award interpreted the Settlement Agreement or created a new contract. She concluded that, even applying the deferential reasonableness standard, the Award created a new contract between the parties that was materially different from the Settlement Agreement (at para. 17).

[31] The judge interpreted clause 4 of the Settlement Agreement to require Mr. Mann and Mr. Bains to transfer their interests in the Gibsons Property to Mr. Grewal at an assumed value of $2 million, subject to an adjustment based upon the appraised value (at para. 18). The parties intended, as reflected in clause 8, for Mr. Grewal to retain the Gibsons Property and for Mr. Mann and Mr. Bains to retain all other properties. According to the judge, the arbitrator's finding that Mr. Grewal was to receive a fixed amount of $20.6 million, with $2 million representing the assumed value of the Gibsons Property, was inconsistent with the wording of the Settlement Agreement, for three reasons:

> (1) Clauses 4 and 8 make it clear that Mr. Grewal, not Mr. Mann and Mr. Bains, was to retain the Gibsons Property, the consequence of which was that Mr. Grewal would assume the risks of any subsequent increase or decrease in value (at para. 20).
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> (2) The adjustment provisions in clause 4 do not support the arbitrator's conclusion that Mr. Grewal was to receive a maximum of $20.6 million in

total. Rather, Mr. Grewal was to receive cash and property which had a combined value as of the date of the transaction of $20.6 million (at para. 21; emphasis in original).

(3) Nothing in the words of the Settlement Agreement suggests the Gibsons Property would be sold. Under the Settlement Agreement, Mr. Grewal was to leave the business relationship with the Gibsons Property and a cash payment, with the separation of the parties' business interests intended to be completed by June 30, 2016, the date on which the final payment was due. By placing weight on the sale price of the Property in June 2017, the arbitrator failed to interpret the intention of the parties at the time of contract formation and impermissibly allowed subsequent events to inform his reasoning (at para. 22).

[32] The judge found the arbitrator's interpretation of the Settlement Agreement to be "unsustainable and unreasonable because it is not grounded in the words of the contract" (at para. 23). She therefore allowed the appeal, and amended the Award to provide that the remaining proceeds of sale held in trust be paid to Mr. Grewal (at para. 24).

Issues on Appeal

[33] I will address the issues on this appeal as follows:

(1) Did the judge err in her interpretation of the Settlement Agreement?

(2) Did the judge err in failing to remit the matter to the arbitrator?

Discussion

Standard of Review

[34] As discussed, the judge applied a reasonableness standard of review to the appeal from the Award, based on her finding that the law on this point remains unsettled.

[35] Mr. Mann and Mr. Bains do not address this issue in their factum. Mr. Grewal submits that the Award cannot stand on either a correctness or reasonableness standard of review, but submits that if this Court is inclined to determine the standard of review question, then the proper standard is correctness, citing the minority reasons of Brown and Rowe JJ. in *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District,* 2021 SCC 7.

[36] This Court has thus far found it unnecessary to resolve the issue because the applicable standard of review has had no bearing on the outcome of the cases in which it has arisen: see, for example, *Nolin v. Ramirez*, 2020 BCCA 274 at paras. 30–39; *Escape 101 Ventures Inc. v. March of Dimes Canada*, 2022 BCCA 294 at paras. 99–101; *Spirit Bay Developments Limited Partnership v. Scala Developments Consultants Ltd.*, 2022 BCCA 407 at para. 58.

[37] I have come to the same conclusion. For that reason, and because the issue was not fully argued, the question of the proper standard of review on an appeal from an arbitral award will be left for another day.

(1) Did the judge err in her interpretation of the Settlement Agreement?

[38] It is well established that the scope of appellate intervention from an arbitral award is narrow, reflecting the fact that the courts strive to respect the mutual agreement of the parties to subject their dispute to arbitration: *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53 at para. 104 [*Sattva*]; *Teal Cedar* at para. 1.

[39] Exercise of that limited jurisdiction is restricted to errors of law in the arbitral award: *Sattva* at para. 106; *Teal Cedar* at para. 1.

[40] This limitation will often serve to immunize questions of contractual interpretation arising in an arbitration from appellate review given the Supreme Court of Canada’s determination that the interpretation of contracts involves issues of mixed fact and law “as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix” (*Sattva* at para. 50).

[41] That said, the Court in *Sattva* acknowledged that it may be possible to identify an extricable question of law in the interpretation process. Legal errors made in the course of contractual interpretation may include "the application of an incorrect principle, the failure to consider a required element of a legal test, or the failure to consider a relevant factor" (*Sattva* at para. 53, citing *King v. Operating Engineers Training Institute of Manitoba Inc.*, 2011 MBCA 80 at para. 21). The Court also noted that courts should be cautious in identifying such extricable questions of law (*Sattva* at para. 54).

[42] Mr. Mann and Mr. Bains submit that the judge engaged in an interpretive exercise that exceeded the scope of the question before her on appeal. They characterize that question as whether the arbitrator had erred by allowing the factual matrix to overwhelm the written text of the Settlement Agreement. They submit that this required the judge to review the analytical approach adopted by the arbitrator to determine if he had applied the proper legal test. Instead, they say, she engaged in her own contractual interpretation exercise.

[43] I do not agree that the judge went beyond the scope of the question on appeal. The first question on which leave was granted (see para. 25(1) above) was whether the arbitrator improperly disregarded the valuation process set out in the Settlement Agreement in favour of a different process, thereby effectively creating a new agreement between the parties.

[44] That is the very question the judge identified when she stated that the issue before her was whether "the Award interprets the contract or creates a new one" (at para. 16). In addressing this issue, the judge noted the fundamental principle, again emanating from *Sattva* and *Teal Cedar*, that contractual interpretation "must remain grounded in the text of the contract so as to avoid effectively creating a new agreement between the parties" (citing *Teal Cedar* at para. 63). The Supreme Court of Canada in both those decisions found that deviation from the text of the contract based upon undue reliance on the surrounding circumstances, and which effectively

results in the creation of a new contract, is an extricable error of law warranting appellate intervention (*Sattva* at para. 57; *Teal Cedar* at para. 63).

[45] With these principles in mind, the judge then reviewed the Award on a reasonableness standard, and concluded that the arbitrator had created a new agreement between the parties that was materially different from the Settlement Agreement. Specifically, she held that the arbitrator's finding that the parties intended Mr. Grewal to receive a fixed total amount of $20.6 million, with $2 million representing the assumed value of the Gibsons Property, "cannot be found in the words of the [Settlement] Agreement" (at para. 19).

[46] I agree with the judge's analysis. To be clear, this is not a case in which the judge was faced with two competing interpretations of the Settlement Agreement and simply chose her own over that of the arbitrator. Rather, as the judge found, the arbitrator's interpretation was not grounded in the language of the Settlement Agreement and, as such, the Award was unreasonable.

[47] As the judge found, clause 4 of the Settlement Agreement set out the parties' intention that Mr. Mann's and Mr. Bains' interests in the Gibsons Property would be transferred to Mr. Grewal. The parties agreed on an estimated value of the Gibsons Property of $2 million, which was subject to an adjustment based upon the value determined by an appraiser to be appointed by the arbitrator.

[48] The Award was based upon three fundamental errors made by the arbitrator in his interpretation of the Settlement Agreement. First, he found that Mr. Grewal was to be paid a total of $20.6 million, with $2.0 million to come from the sale of the Gibsons Property (Award at paras. 11 and 12). However, the Settlement Agreement did not in fact contemplate the sale of the Gibsons Property, or that Mr. Grewal would be paid out of the proceeds from any such sale. Rather, the Settlement Agreement provided for the absolute transfer of Mr. Mann's and Mr. Bains' interests in the Gibsons Property. This is evident from clause 4 which provided that Mr. Mann and Mr. Bains would quit claim their interests in the Gibsons Property and in their shares in the company that held the Property in trust. As the judge found, the

necessary consequence of this transfer of Mr. Mann's and Mr. Bains' interests was that Mr. Grewal would assume the benefit or risk of any subsequent increase or decrease in the value of the Property.

[49] Second, the arbitrator erred in finding that if Mr. Grewal received the additional funds realized on the sale of the Gibsons Property, he would be paid more than the $20.6 million total price agreed to by the parties for the separation of their business interests (Award at para. 11). The additional funds from the subsequent sale were not part of the compensation paid to Mr. Grewal for Mr. Mann's and Mr. Bains' interests in the Gibsons Property. Rather they represent Mr. Grewal's return on an asset that he had received from Mr. Mann and Mr. Bains as part of the Settlement Agreement. It is no different than Mr. Mann and Mr. Bains retaining the benefit of any increase in the value of the other assets that they retained under the Settlement Agreement, as specifically reflected in clause 8 of the Agreement. Nothing in the language of the Settlement Agreement supports an interpretation that Mr. Mann and Mr. Bains were to transfer and quit claim their interests in the Gibsons Property while at the same time retaining the right to share in future gains realized on the subsequent sale of that Property.

[50] Third, the arbitrator erred in basing the value of the Gibsons Property for the purpose of transferring Mr. Mann's and Mr. Bains' interests to Mr. Grewal on the sale price of that Property in June of 2017, rather than on the value as at October 30, 2015, the date of the Settlement Agreement, as determined by the appraisal process expressly stipulated in the Settlement Agreement. This is inconsistent with the clear intention of the parties at the time the Settlement Agreement was reached to complete the separation of their interests by June 30, 2016, and the arbitrator's own instruction to the appraiser to value the Gibsons Property as of October 30, 2015.

[51] In light of these errors, there is no basis for this Court to interfere with the judge's finding that the Award was unreasonable.

(2) Did the judge err in failing to remit the matter to the arbitrator?

[52] Section 31(4)(b) of the *Arbitration Act* provides:

> (4) On an appeal to the court, the court may
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> (a) confirm, amend or set aside the award, or
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> (b) remit the award to the arbitrator together with the court's opinion on the question of law that was the subject of the appeal.

[53] The judge cited s. 31(4) in support of her decision to allow the appeal and amend the Award (at para. 24).

[54] Mr. Mann and Mr. Bains acknowledge that the decision on remedy was a discretionary one and therefore entitled to considerable deference, but they submit that the judge failed to consider whether she should have remitted the matter to the arbitrator on the basis that there was inadequate evidence before her to decide the appeal on its merits.

[55] I am unable to find that the judge failed to consider whether she should have remitted the matter to the arbitrator. As noted, she expressly cited s. 31(4) of the *Arbitration Act*, which set out the remedy options available to her. The fact that she did not engage in a discussion of the various options in her reasons, does not mean she did not consider those options.

[56] Having found that the Award was not grounded in the language of the Settlement Agreement and was therefore unreasonable, it was open to the judge to amend the Award to give effect to the parties' intentions as set out in the Agreement. Further, apart from a general allegation that the judge lacked the "full factual matrix", Mr. Mann and Mr. Bains do not identify specific evidence that was absent before the judge or how that evidence would have impacted her analysis and interpretation of the Settlement Agreement.

[57] I therefore find that the judge did not err in failing to remit the matter to the arbitrator.

Conclusion

[58] Accordingly, I would dismiss the appeal.

‘The Honourable Justice Skolrood”

I agree:

“The Honourable Mr. Justice Willcock”

I agree:

“The Honourable Justice Griffin”