

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Sahota v. Sandher*,
2023 BCCA 327

Date: 20230728
Docket: CA49230

Between:

**Jaspal Singh Sahota, Baldip Kaur Sahota
and Amanpal Singh Sahota**

Appellants
(Respondents)

And

Mohinder Singh Sandher and Nadev Singh Sandher

Respondents
(Petitioners)

And

**1186368 B.C. Ltd., Balpreet Singh Bal, Amandeep Amy Kaur Bal,
Kiranjt Gill Harprit Singh Gill, Harshvir Kaur Buttar,
Prabhjopal Singh Brar, 1148991 B.C. Ltd., Jaspreet Batra,
Nachhattar Singh Sra, Balwinder Kaur Sra, KSP Shahi Catering &
Sweets Ltd. and His Majesty the King in Right of the
Province of British Columbia**

Respondents
(Respondents)

Before: The Honourable Mr. Justice Willcock
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
July 24, 2023 (*Sandher v. 1186368 B.C. Ltd.*, New Westminster Docket 245470).

Oral Reasons for Judgment

Counsel for the Appellants:

J. Singh

Counsel for the Respondents,
Balpreet Bal and Amandeep Bal:

C.R. Anninos

The Respondent J. Batra, appearing in
person:

J. Batra

Place and Date of Hearing: Vancouver, British Columbia
July 27, 2023

Place and Date of Judgment: Vancouver, British Columbia
July 28, 2023

Summary:

The applicants apply on short notice to stay an order approving the sale of a residential property in foreclosure. Held: Application dismissed. The chambers judge did not err in concluding the applicants' action for specific performance was bound to fail because they sought to enforce a contract the court had previously determined to be improvident. There is no basis for the argument that the judge erred in failing to adjourn the application for an order for sale to permit the applicants to consider whether they could make a competitive offer. There was no such offer before the court.

There being no impediment to the sale, the application for a stay is dismissed.

WILLCOCK J.A.:**Introduction**

[1] This is an urgent application brought on with short notice for an order staying an order made by a Supreme Court judge in chambers on July 24, 2023.

[2] That order granted the relief sought by Balpreet Singh Bal and Amandeep Amy Kaur Bal (the "Bals"). They sought an order approving the sale of residential property at 5585 148 Street in Surrey (the "Property"), registered in their names, to Dalvir Singh Khangura for \$3.3 million.

[3] The sale is to complete today, on July 28, 2023.

[4] Notice of the application for a stay was served on the respondents yesterday, on July 27, 2023. Some respondents did not appear on the hearing of the application. Their position is unknown.

[5] The applicants have filed a notice of appeal, but the order in question is a limited appeal order, and some of the respondents take the position that leave is required.

[6] The applicants intend to argue on appeal, if leave is granted, that:

- a) the petition judge erred in law by failing to appreciate the applicants' unique interest in the Property in issue, and erred in concluding that there was no

- apparent merit in the claim for specific performance of an agreement to purchase the Property that preceded the Khangura offer, in the alternative;
- b) the petition judge erred in law by failing to consider that there was sufficient equity in the Property in question to ensure that the owners of the Property, the Bal respondents, would not suffer prejudice as a result of delay in the completion of the Khangura sale; and
 - c) the petition judge erred in law by failing to adjourn the application for an order for sale so as to permit the applicants to make a further or better offer to purchase the Property.

Background

[7] In support of the application, the applicants have filed a three-volume application book. In addition to hearing the oral submissions of the applicants, the Bals, and the respondent Jaspreet Batra, I have now had an opportunity to review that record. I have also listened to the recording of the oral reasons for judgment of the petition judge.

[8] On August 15, 2022, foreclosure proceedings were commenced against the Property.

[9] On November 24, 2022, while those foreclosure proceedings were ongoing, the applicants entered into a contract of purchase and sale (as buyers) with the Bals (as sellers) to purchase the Property for \$2,350,000 on the following terms and conditions:

- a) the buyers would pay a deposit of \$600,000 directly to the sellers within 24 hours of acceptance of the offer;
- b) the completion of the purchase of the Property was to take place on January 25, 2023;

- c) the sellers would clear all financial charges from the title before the completion of the sale;
- d) the vacant possession and adjustment of the Property were set to take place on January 30, 2023; and
- e) to secure the buyers' deposit, the sellers would grant the buyers an option to purchase that would be registered on the title of the Property.

[10] Because foreclosure proceedings had been initiated, the sale required court approval. On April 12, 2023, the Bals applied for an order approving to the sale of the Property to the applicants. The application was dismissed by Justice Coval in chambers.

[11] On May 16, 2023, an *order nisi* was granted.

[12] On June 12, 2023, the applicants commenced an action against the Bals for specific performance (New Westminster Registry action no. 250068) of the November 24, 2022 contract, and filed a certificate of pending litigation against the title of the Property.

[13] On June 17, 2023, the Bals entered into the agreement to sell the Property to Mr. Khangura.

[14] On July 24, 2023 upon the application of the Bals, Madam Justice Francis approved the sale of the Property to Mr. Khangura. She ordered proceeds of the sale to be disbursed to mortgage holders in priority.

[15] The applicants say that two of the mortgage charges against the Property are *inter alia* mortgages, charging other properties. In particular, they say:

- a) the Mohinder Singh Sandher and Nadev Singh Sandher mortgage, securing approximately \$750,000, also charges property at 7505 Victoria Drive, Vancouver registered in the name of 1186368 B.C. Ltd.; and

- b) the Kiranjit Gill, Harprit Singh Gill, Harshvir Kaur Buttar, Prabhjotpal Singh Brar, 1148991 B.C. Ltd. mortgage (the “Gill Mortgage”), securing approximately \$1,250,000, also charges property at 4497 Puget Drive, Vancouver. That property was sold in February 2023, and the holders of the Gill Mortgage received \$398,607.45 from that sale.

Reasons

[16] In her oral reasons for judgment, yet to be transcribed, and necessarily brief given the urgency of dealing with the application, the petition judge first described the relief being sought. The Bals were seeking an order approving the sale of the Property in foreclosure on the terms set out in the June 17, 2023 agreement. They sought a vesting order, an order for vacant possession and an order cancelling all charges on the title: four mortgages and two certificates of pending litigation and judgments.

[17] She noted that concerns raised by the first mortgage holder, TD Bank, had been resolved, and all creditors but the Sahotas and Ms. Batra either approved the sale or took no position. She noted that the Property was heavily encumbered.

[18] In late 2022, while in foreclosure, the Bals had entered into an agreement to sell the Property to the Sahotas for \$2.3 million. A \$600,000 deposit had been paid and released immediately. An application to approve that sale was heard in April 2023 and denied because the proceeds of sale would be insufficient to discharge the mortgages. I note that order does not appear to have been appealed.

[19] The petition judge noted that on May 16, 2023, an *order nisi* had been granted to the Sandhers as petitioners by Master Nielsen.

[20] She noted that in June 2023, a civil claim had been commenced by the Sahotas against the Bals, seeking specific performance of the November 2022 contract and seeking damages in the alternative.

[21] She observed that the \$3.3 million Khangura offer that was before her would pay almost all mortgages in full.

[22] She concluded that the proposed sale was provident. The Property was assessed at \$2.672 million, its fair market value was appraised at \$2.61 million, and it was valued by a realtor at \$3.15 million. She was satisfied the Khangura offer was the best price that could be obtained in an open market

[23] The objections of the applicants and Ms. Batra to the sale were not founded upon improvidence but, rather, upon the view that a sale would rob them of security for a claim (in the case of the Sahotas) or the fruits of a judgment (in the case of Ms. Batra).

[24] She noted that Ms. Batra's claim, secured by the certificate of pending litigation, was for a \$125,000 monetary judgment embodied in a consent order made on March 31, 2023, not an interest in the Property. The judgment was registered, but did not give Ms. Batra priority over those with proprietary interests, and while she would be adversely affected by the sale, that was an unfortunate consequence of the fact there was insufficient value in the Property to satisfy all creditors, and did not stand as an obstacle to the approval of the sale. She held the Batra certificate of pending litigation should be removed as giving rise to hardship and inconvenience: the Bals carrying charges incurred as a result of inability to sell the Property and pay creditors in order of their priority.

[25] Turning to the Sahotas' objection to the sale, she observed that an action for specific performance of a contract of sale may stand as an obstacle to approval of a competing bid unless it is plain and obvious that the specific performance claim will fail.

[26] She concluded the specific performance claim was bound to fail for three reasons:

- a) The Sahota offer did not receive court approval because it was improvident, the proceeds of a sale to the Sahotas would be insufficient to discharge the

- mortgages. That improvidence would continue to stand as a bar to specific performance.
- b) An order for specific performance would visit inappropriate hardship on the creditors. Equity cannot be invoked in these circumstances.
 - c) The specific performance claim was bound to fail on its merits because it is only available where the property sold has unique qualities, uniqueness is not presumed and, in the judge's view, there was inadequate evidence of uniqueness on the record.

Grounds of Appeal

[27] I have already described briefly the proposed grounds of appeal raised in oral argument yesterday. In their memorandum of argument, which I have now had the opportunity to review, the applicants say the petition judge overestimated the value of the charges against the Property and underestimated the Bals' equity because she did not weigh the fact the Gill Mortgage and the Sandher mortgage were *inter alia* mortgages and did not have to be fully discharged from the proceeds of sale of the Bals' Property. In the event the proposed sale completes, the Sandher mortgage and the Gill Mortgage will be almost entirely paid off, and 1186368 B.C. Ltd. will enjoy what the applicants say is a "windfall".

[28] The applicants say the judge failed to weigh the fact that the application to approve the sale was brought by the Bals "strategically to prejudice the interest of the Appellants".

[29] They say the judge failed to consider "the Appellants' request for the adjournment for bringing a cross-application for vesting order to purchase the Property".

[30] They say the petition judge "failed to follow the bidding procedure outlined in the Supreme Court of British Columbia practice directions for Foreclosure Proceedings".

Analysis

[31] Dealing with the two last arguments first, I am of the view there is no basis for the argument that there was a procedural error. The applicants did not make an offer on Monday, July 24, or at any time in the interval between the service of the motion for an order to approve the sale in early June, and the hearing of the application. It would have made no sense to adjourn an application to approve an attractive offer to simply permit the applicants to consider whether to make a better offer. There were no competing bids before Francis J., and no call to engage in the sealed bidding process described in Practice Directive 62. That direction expressly provides:

Nothing in this Practice Direction prevents any party or interested party from applying to the Court for approval of a bid and sale process other than that set out herein.

[32] Mr. Anninos, counsel for the Bals, says the fact the Sandher mortgage and Gill Mortgage also charged other properties was irrelevant, and it was not an error for the petition judge to consider the Bals’ equity to be reduced by those charges or to order the proceeds to be disbursed to the mortgage holders in priority. I agree.

[33] Similarly, he says the fact the application for approval of the sale was brought by the Bals was irrelevant. The petition judge expressly addressed the Bals’ interest in having the sale approved and the charges cancelled. I see no basis for leave to appeal being granted to address the question whether the Bals have acted “strategically to prejudice the interest of the Appellants” by seeking to have the Khangura offer approved and the mortgages paid and discharged, even if doing so will reduce the debt secured against other properties in which the applicants have no security. This proposed ground of appeal is, in substance, an impermissible collateral attack on the April 2023 dismissal of the application to approve the sale to the applicants, on the grounds that it was an error to refuse to approve the sale because the proceeds of sale would be insufficient to discharge the mortgages.

[34] Finally, in my view, whether or not there was any evidence of the unique features of the Property before the petition judge—I note there was evidence in Jaspal Sahota’s second affidavit, sworn July 20, 2023, that the Sahota family

purchased the Property for use as an intergenerational home for the family and because there was a pool and amenities close by—the judge was right to say there is no prospect a claim for specific performance of a contract that has been expressly rejected by the court will succeed. The Bals did not complete the Sahota sale because the court would not approve it. I agree with the petition judge that equity cannot be invoked to enforce a contract that has been held to be improvident.

[35] In my view, the applicants have not made out a *prima facie* case. Prejudice will be suffered by the Bals if a stay is ordered. The balance of convenience does not favour the granting of a stay. For that reason, I dismiss the application for a stay.

“The Honourable Mr. Justice Willcock”