IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Brar v. Gill,*
2017 BCSC 2018

Date: 20170721
Docket: S103170
Registry: New Westminster

Between:

Narinder Kaur Brar also known as Narinder Kaur Gill

Plaintiff

And

Iqbal Singh Gill and Parminder Kaur Gill

Defendants

Before: The Honourable Mr. Justice Grist

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff (Applicant):	K.S. Taunk K. Macauley
Counsel for the Defendants (Application Respondents):	S.S. Grewal
Place and Date of Trial/Hearing:	New Westminster, B.C. July 21, 2017
Place and Date of Judgment:	New Westminster, B.C. July 21, 2017

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[1] **THE COURT:** This is an application in respect of costs following judgment rendered in this case in February of this year [*Brar v. Gill*, 2017 BCSC 186]. The applicant plaintiff applies for double costs and references an offer to settle that was delivered in 2015. Further, the applicant says that they were substantially successful in the matter and, if double costs are not appropriate, then costs should be paid pursuant to the *Supreme Court Civil Rules,* B.C. Reg. 168/2009 [*Rules*]*,* invoking Schedule B, the schedule which speaks of costs in the ordinary course of litigation.

[2] Dealing first with the application for double costs, the offer to settle contains this first paragraph:

> TAKE NOTICE that the Plaintiff, Narinder Kaur Brar … in action number S103170 and the Defendant … in action number S102615 … offers to settle these actions in their entirety for the sum of $175,000 … after taking into account rental income (basement rent and occupational rent) and all other associated expenses to maintain and preserve the subject property … [on] 88A Avenue, Surrey … The Offer includes court order interest assessed to the date of delivery of this offer and excludes costs.

[3] The first comment that I would make is that the offer to settle references the sum, $175,000, but then follows with the words, "After taking into account rental income … and all other associated expenses". When I first read that paragraph, I was left a bit at odds as to whether that was invoking some process for adjustment of the $175,000 or was an expression of a final offer of $175,000 after these other matters had been considered. I think that the fairest interpretation is the latter, that it was an offer for $175,000 without adjustment for these matters later spoken of, but the way it is expressed here does cause me some concern.

[4] The second paragraph causes something more of a quandary. The second paragraph says, "The offer is quantified as follows," and there are sub-items (a), (b), (c), and (d). Sub-item (a) has to do with what the plaintiff said she paid for her share of the down payment; and (b) references money the plaintiff says she was owed from employment at the defendants' pizza store; (c) has to do with expenses paid after purchase; and (d) has to do with the current appraised value of the house. Now, (a), (b), and (c) were numbers introduced in evidence in the course of these proceedings. Some of them were entirely extraneous to the decision here and,

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really, were other matters that had no particular relevance to the case, and some of them may not be entirely appropriate numbers. The one number that has some significance here is the then appraised value of the house, a B.C. Assessment Appraisal of $560,000. The plaintiff was on title as entitled to a third interest in the property and that would have been reflected in a monetary value of $187,000. So it could be said through all of this that the offer to settle at $175,000 was less than a third interest in the house at the time and, therefore, has some viability in being presented as it is today as an offer the defendants should have accepted.

[5] Turning to the judgment in this case, essentially, the plaintiff's position of being entitled to a third interest as reflected by the title was sustained on judgment with one caveat, and that had to do with an item of unjust enrichment in respect of any pay-down of the T.D. Canada Trust mortgage over the years subsequent to her leaving the house in August of 2003 to the time of judgment. That is a credit that may, if there was in fact a pay-down, be taken into account in the defendants' favour. I do not know what that number is, it has not been presented in evidentiary form; and perhaps more to the point on this consideration of costs, what that number would have been at the time of the presentation of the offer to settle back in 2015. It leads me to the conclusion that it is not absolutely clear that the offer is one that should have been accepted in light of the fact that this number is still outstanding. In addition, as I first indicated, the offer does present some challenges as to whether it is ambiguous or clear cut enough to be one to be considered on an application for double costs.

[6] I am aware of the law on a question such as this and the court has to recognize that there is a very particular purpose in the system adopting costs consequences of offers to settle. In *MacKenzie v. Brooks,* 1999 BCCA 623, the Court of Appeal gave encouragement to the process indicated in Rule 9-1 as useful in encouraging the early settlement of disputes by rewarding the party who made a reasonable settlement offer and penalizing the party who declined to accept such an offer; and, again, in *LeFler v. Anderson,* 2008 BCSC 1563, where the overriding consideration was set out as being whether an acceptance of an offer would have

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resulted in any significant saving for a party or the court, but for the reasons that I have just expressed, I do not find this to be an offer that I can rely upon in awarding double costs.

[7] Turning to the consideration of ordinary costs or Schedule B costs, and in respect of the litigation here, the question that presents itself is whether the plaintiff was substantially successful in the litigation. In *Bailey v. Victory* (1995), 4 B.C.L.R. (3d) 389 (C.A.), costs were classified as discretionary. It is a discretion that is a judicial one; an exercise in accordance with the consistent principles of degree of success. In *Sabir v. Mesmen and Mesmen,* (15 May 1990) Vancouver Registry CA010611 (B.C.C.A.), Mr. Justice Hinkson underlined that it is the success enjoyed by the parties at trial which bears upon the question of costs; and in *Graham v. Great West Life,* 2004 BCSC 1544: costs shall follow the event unless the court otherwise orders, being the words of Rule 57(9) under the previous version of the *Rules*, and there it is said that although the court does have a discretion to depart from this Rule, that discretion must be exercised judicially.

[8] Here, I do not see any viable distinction between the positions of the parties that would give rise to any intervention on costs. It boils down to a question of substantial success. As I think I have already said, the plaintiff here, in my view, was substantially successful in the major element of this litigation sustaining her interests in the property as indicated on title. The pay-down of the mortgage was a single item that may reflect some relief to the defendants. However, as I have said already, I do not know that number. I suspect that it is of fairly modest effect here and, accordingly, the appropriate order for costs is costs to the plaintiff at Scale B. That, of course, will have to be assessed on presentation to the registrar or a master sitting as a registrar to settle the final quantum of costs in this case.

"W.G. Grist J."

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