

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: Sangha v. Azevedo,
2005 BCCA 125

Date: 20050304
Docket: CA031780

Between:

Subeg Singh Sangha

Appellant
(Plaintiff)

And

Manuel Azevedo, Harry Rankin and Rankin & Company

Respondents
(Defendants)

Before: The Honourable Madam Justice Huddart
(In Chambers)

In person

Appellant

A. Macdonald

Counsel for the Respondent

Place and Date of Hearing:

Vancouver, British Columbia
28 February 2005

Place and Date of Judgment:

Vancouver, British Columbia
4 March 2005

[1] **HUDDART J.A.:** The respondents seek an order for security for costs of the appeal in the amount of \$5,500.63 and of the trial in the amount of \$40,672. The appeal is set for hearing on 22 March 2005. The orders under appeal are those of Martinson J. On 8 March 2004, she dismissed the appellant's claim for damages founded on claims of negligence, breach of contract, and conspiracy, after she refused Mr. Sangha's application for an adjournment and he advised he would be calling no evidence. On 4 June 2004, she awarded costs on Scale 3 to the date of the filing of the Amended Statement of Claim adding the conspiracy allegation, and special costs thereafter.

[2] Mr. Sangha's claims arise out of his retainer of Mr. Rankin to defend an action for damages for breach of contract. The action was allowed and Mr. Sangha's counterclaim dismissed in reasons released on 25 March 1996: ***B & A Bobcat and Excavating Ltd. v. Sangha***, [1996] B.C.J. No. 673 (Q.L.). Those reasons reveal an action that turned on the credibility of Mr. Sangha and Blaine Ursel, the principal of Bobcat. Mr. Sangha considers he lost that action for a number of reasons attributable to the conduct of his counsel, but primarily because Mr. Rankin and his junior, Mr. Azevedo, allegedly reached an improper agreement with counsel for Bobcat not to produce or to refer to a letter from the Agricultural Land Commission to the District of Surrey dated 29 June 1992.

[3] These applications require me to consider the timeliness of the application, the parties' means, the ease with which the respondents, if successful, could collect costs, and the merits of the appeal.

[4] This application is as timely as it could be. By a letter dated 10 August 2004, the respondents told Mr. Sangha they intended to apply for security as soon as costs were settled. The application has been delayed because of Mr. Sangha's unavailability to settle the trial order and for a hearing to assess the costs. The order was settled on 13 October 2004. The District Registrar issued the cost certificates on 17 February 2005. The application was set for hearing on February 18 in anticipation of that certificate being signed. The matter was adjourned to permit Mr. Sangha to file responsive materials. He was able to file very complete materials and make thorough submissions on them.

[5] Mr. Sangha did not suggest lack of means would prevent him from prosecuting his appeal. He produced no evidence of his means, but assured the court he could pay the costs of the appeal, if he loses, by borrowing money from the bank. He also advised that he will be able to pay the costs ordered at trial from the monies he will obtain following a successful appeal. He did not dispute that he executed and filed a Form A Transfer of a 7/10 interest in his Surrey farm to his wife 11 days after Martinson J. released her reasons for judgment on costs. From this transfer, I infer Mr. Sangha wishes to protect himself from execution on the Certificates of Costs and Special Costs. Undoubtedly, this transfer will make recovery of the costs more difficult, in time and money.

[6] In these circumstances security for the costs of appeal are usually awarded, unless the appellant can establish that his case has obvious merit: **Edwards (Guardian ad litem of) v. Moran** (2003), 186 B.C.A.C. 31, 2003 BCCA 443 per Hall J.A.

[7] After listening for over three hours to much of the submission Mr. Sangha proposes to make to a division of this court and reviewing the materials he filed, I am not persuaded his appeal has obvious merit. It will be very difficult for him to establish that Martinson J. exercised her discretion to refuse an adjournment of a trial that had been set peremptorily and that she considered had a “poor” chance of success; in view of his pleadings it is unlikely he will be successful in his appeal of the special costs award.

[8] In these circumstances, the respondents are entitled to an order that Mr. Sangha secure the costs of the appeal, and to do so before the appeal is heard. Moreover, in these circumstances, I am also persuaded the interests of justice require that Mr. Sangha secure the costs of the trial before the hearing of the appeal.

[9] In the absence of any submission on the amounts by Mr. Sangha, he is to post security in the amounts requested. Until he posts that security the appeal is stayed. It is not the practice of this court, even in the somewhat rare circumstances evidenced in this application, to make a “guillotine” order dismissing the appeal if the security is not paid within a fixed time.

“The Honourable Madam Justice Huddart”