IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Gill v. Raiwal,*
2017 BCSC 1014

Date: 20170620
Docket: S32070
Registry: Chilliwack

Between:

Mohinder Singh Gill, Nachhattar Mann and Bhajan Singh Toor
Plaintiffs

And

Balbir Singh Raiwal
Defendant

Before: Master Keighley

Reasons for Judgment

Counsel for the Plaintiffs:	B. Robinson
Counsel for the Defendant:	B. Vickers
Place and Date of Trial/Hearing:	Chilliwack, B.C. May 29, 2017
Place and Date of Judgment:	Chilliwack, B.C. June 20, 2017

The Application

[1] This is an application by the plaintiffs for an order that this action, which concerns claims by the plaintiffs Gill and Mann for damages for defamation against the defendant Raiwal (the “Gill action”), be tried at the same time and place as an action earlier commenced by the defendant Raiwal and his company Raiwal Developments Ltd. against the Khalsa Diwan Society of Abbotsford, Mann, Gill and others (the “Raiwal action”) in which the Raiwal plaintiffs seek damages for defamatory words spoken of them or either of them by others including Mann and Gill.

Background

[2] It appears to the writer that both claims arise, directly or indirectly, out of dispute concerning the renovation, at least 12, and perhaps 13 years ago, of the Khalsa Diwan Society (the “Society”) Temple located at 33094 South Fraser Way, in Abbotsford, British Columbia. The renovation work was performed by Raiwal and Raiwal Developments Ltd. and the restoration was substantially completed by May 2007. The Society maintains that the Raiwals had overcharged the Society for the work done. It is alleged in the Raiwal action that in or about July 2013 Mr. Mann and Mr. Gill, acting both personally and as agents for the Khalsa Diwan Society, of which they were officers, said of the Raiwal plaintiffs that the Society had been "fraudulently overcharged” and that “Raiwal ripped off the Society along with [another]", respectively.

[3] In the Raiwal action, it is also alleged that other defendants, Heer and Mahil, also spoke defamatory words.

[4] The Raiwal action was commenced October 17, 2013. It is set for trial for 24 days (apparently 25 have been set aside) commencing October 2, 2017. The action in which this application is brought, namely the Gill and Mann claim against Raiwal, was filed February 10, 2017. A Response to Civil Claim was filed on March 7 and no significant steps have been taken in this action since the filing of the response.

[5] The reader should note that in the Raiwal action, the Khalsa Diwan Society has filed a counterclaim claiming damages for a breach of contract as a result of the alleged overcharging on the part of Raiwal and his company.

Why should the trial of the matters occur at the same time and place?

[6] Mr. Ian D. McKinnon, a solicitor for the applicants says as follows at paragraph nine of his affidavit #1 sworn May 5, 2017:

> 9. I do verily believe it will be more convenient and less expensive to all parties, including experts and witnesses, to have these matters heard at the same time as opposed to two separate trial dates and that there are common questions of fact that make it desirable to dispose of both actions at the same time. If one examines the Response filed the Defendant in the Within Action (see Exhibit “B”), qualified privilege and fair comment have been plead. In order to properly explore both of those potential defences, the entire construction dispute in the Other Action and the defamation in the Other Action would need to be4 canvassed.
>
> 10. I do verily believe that setting the Within Action and the Other Action to be tried at the same time will add no more than one day to the scheduled October 2, 2017 trial.

The law

[7] In the case of *Merritt v. Imasco Enterprises Inc.,* 1992 BCJ number 160 Master Kirkpatrick, as she then was, stated the applicable law as follows:

> 19 I accept that the foundation of an application under R. 5(8) is indeed disclosed by the pleadings. The examination of the pleadings will answer the first question to be addressed: do common claims, disputes and relationships exist between the parties? But the next question which one must ask is: are they "so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and economic expense"? Webster v. Webster (1979) 12 B.C.L.R. 172 (C.A.). That second question cannot, in my respectful view, be determined solely by reference to the pleadings. Reference must also be made to matters disclosed outside the pleadings:
>
> > (1) Will the order sought create a saving in pre-trial procedures, (in particular, pre-trial conferences)?
> >
> > (2) Will there be a real reduction in the number of trial days taken up by the trials being heard at the same time?;
> >
> > (3) What is the potential for a party to be seriously inconvenienced by being required to attend a trial in which that party may have only a marginal interest?; and
> >
> > (4) Will there be a real saving in experts' time and witness fees?

> This is in no way intended to be an exhaustive list. It merely sets out some of the factors which, it seems to me, ought to be weighed before making an order under R. 5(8).

[8] In the case of *Shah v. Bakken*, [1996] B.C.J. No. 2836 20 B.C.L.R (3d) 393, Master Joyce, as he then was, after referring to the above, added two additional factors, namely:

> a) is one of the actions at a more advanced stage than the other, and
>
> b) will the order result in a delay of the trial of one of the actions, and if so, does any prejudice which a party may suffer as a result of that delay outweigh the potential benefits which combined trial might otherwise have?

[9] It has also been held that an additional reason for refusing an application to have matters tried together is that the order may deprive one party of their legal right to a trial by jury: *Gulamani v. Chandra* 2008 BCSC 179. There is a burden on the applicant to provide evidence, beyond a simple assertion, that matters ought to be heard together: *Simmonds v. Victoria (City),* 2016 BCSC 951. Where matters have so much in common that they ought to be heard together, the Court should nevertheless decline to exercise its discretion if the order would result in significant expense and prejudice to one party: *Pleasantville Trust (Trustee of) v. Aviva Insurance Co. of Canada*, 2013 BCSC 829.

Result

[10] In the result, I have determined that it would be inappropriate to grant the orders sought, for the following reasons:

[11] The Raiwal action is at a more advanced stage than the Gill action. That action, as indicated, is already set for 24 days of trial commencing April 2, 2017. Examinations for discovery have been conducted, the plaintiffs have elected to proceed without a jury and the trial has already been adjourned on a previous occasion.

[12] The Gill action, however, is in its infancy by comparison. In particular, the Response to Civil Claim was filed as recently as March 7, 2017. As of the date of the

application the applicants had not filed a list of documents. No examinations for discovery have been completed, no Notice of Trial has been filed, and no election has been made by any party with respect to the mode of trial. Raiwal also submits that 24 days were set for the trial of the Raiwal action to accommodate the significant number of witnesses.

[13] Just shy of 50 witnesses, I gather, will be called to testify. Accordingly, says Raiwal, 24 days may not be sufficient to complete a joint trial of the matters within 24 days and there is a real prospect of a further adjournment to the Raiwal action if the order sought is granted.

Common claims, disputes and relationships

[14] The only commonality between these two cases is that they involve some of the same parties. The pleadings do not indicate any other relationship. There is nothing in the pleadings in the Gill action to indicate any connection with issues arising out of the renovation of the temple premises.

There will be no great saving in pretrial procedures.

[15] The applicant has provided no evidence of any saving in pretrial procedures. Examinations for discovery have already been conducted in the Raiwal action.

There will not be any significant reduction in trial time.

[16] The applicants provide no evidence other than simple assertions, that trying these matters together will result in a significant reduction of the time required for trial. Rather, it seems sensible to assume that trial of these additional allegations, arising in different circumstances and at different times, will necessarily increase the time required for trial.

There is no real saving in expert time or witness fees.

[17] Expert evidence will be led in the Raiwal action with respect to the construction issue but is not necessary for the resolution of issues in the Gill action.

<u>Is there potential for a party to be seriously inconvenienced by being required to attend a trial in which that party may have only a marginal interest?</u>

[18] Although they are lawyers practising in the same firm, Mr. Vickers is counsel for Raiwal in the Gill action and Mr. Martin Finch Q.C. is counsel for Raiwal in the Raiwal action. There will be some inconvenience in each of those gentlemen attending portions of the trial in which they have no direct interest and there is also the issue of the other defendants in the Raiwal action (other than Gill and Mann) being obliged to sit through portions of a joint trial in which they have no particular interest.

[19] The application is dismissed. Raiwal will have his costs in the cause.

"Master Keighley"