

COURT OF APPEAL FOR BRITISH COLUMBIA

Date: 20191203
Docket: CA45007

Between:

**Ajmer Singh Seikhon a.k.a. Jerry Seikhon and
Kamaljeet Kaur Basra a.k.a. Kiki Basra**

Respondents
(Plaintiffs)

And

Inderjit Dhillon

Appellant
(Defendant)

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

On appeal from: An order of the Supreme Court of British Columbia, dated
December 7, 2017 (*Seikhon v. Dhillon*, 2017 BCSC 2525,
Chilliwack Docket S025899).

Oral Reasons for Judgment

Counsel for the Appellant: R.S. Arora

Counsel for the Respondents: B. Vickers
T.M. Zoobkoff

Place and Date of Hearing: Vancouver, British Columbia
December 3, 2019

Place and Date of Judgment: Vancouver, British Columbia
December 3, 2019

[1] **GROBERMAN J.A.:** This is an application for security for appeal and trial costs, and for the amount of the trial judgment.

[2] The amounts at issue are significant. The appeal is not, on its face, a particularly strong one, but I cannot say that it lacks all merit.

[3] The appellant is employed and deposes that he has a very good credit rating. He does not indicate, however, the extent of his capacity to pay. The respondents' material suggests that it may be limited.

[4] The usual rule in this Court, citing *Creative Salmon Company Ltd. v. Staniford*, 2007 BCCA 285, is that security for costs will be ordered in respect of appeal costs, unless it would defeat an otherwise meritorious appeal. That is subject to discretion and a number of other considerations. In this case, I am satisfied that security for the appeal costs ought to be granted.

[5] Counsel for the respondents suggests that security for the appeal costs should be based on the premise that the Court will award special costs on the appeal. I am not persuaded that security for costs should be based on a special costs award. There is no indication that the appeal itself is being conducted in an oppressive or abusive manner.

[6] I am prepared to grant a generous amount in respect of security for appeal costs, but will base the amount on ordinary costs. I will order the posting of security for costs of the appeal in the amount of \$15,000, which is the high end of the range estimated by counsel for the respondents.

[7] With respect to the costs of the trial, they are high. Special costs were awarded in the amount of \$110,000. I am satisfied that this is a case in which some part of that amount ought to be deposited as a condition of proceeding, but I am not satisfied that this is a case where the full amount should be lodged with the Court. Lodging the full amount may well be impractical, which would defeat the appeal.

[8] The amount that the Court orders for security for costs is discretionary. That discretion is exercised on a principled basis but the amounts awarded, frankly, can sometimes appear little more than arbitrary.

[9] I am satisfied that in this case a total deposit for security for costs should be \$50,000, consisting of \$15,000 for appeal costs and \$35,000 towards the trial costs. I recognize that that is less than what is being sought by the respondents but, in my view, it is a very significant deposit for the appellant. Lodging that amount will show that the appellant has a genuine belief in the importance of the appeal and, also, can be taken as an indication that he can seriously begin to pay off the amounts owing.

[10] It is likely that the total amount of \$50,000 will be significantly less than the ultimate award, even if the appellant is successful in the appeal. So, I am satisfied that a deposit in the amount of \$50,000 is appropriate.

[11] I am not prepared to order security for the trial judgment itself, apart from the costs. I see no evidence that there is any prejudice to the respondents caused by the appeal, in terms of their ability to collect on the trial judgment. Security for a trial judgment is not normally awarded simply as an enforcement mechanism.

[12] My order is, then, that a total of \$50,000 be deposited. In terms of the consequences of not paying, I am ordering that the amounts be lodged within 30 days, failing which, the respondents will have liberty to apply to have the appeal dismissed for failure to comply with the order.

[13] I am not going to stay the appeal pending the payment, but I am going to order that time will not run as against the respondents in the interim so that if there are any deadlines that have not yet been reached for the respondents, they are suspended until such time as the security for costs is lodged.

[14] In terms of the technicalities of the lodging of the security, normally it would be lodged with the Registrar, but counsel can sometimes find preferable ways of dealing with the safeguarding of the security. I do not know whether counsel has discussed that or whether they wish to address that.

[Discussion with counsel re: payment of security for costs]

[15] **GROBERMAN J.A.:** I am going to order that the amounts be paid to Mr. Vickers' firm in trust, subject to any further order of this Court. If there is a change of counsel or anything like that, a judge in chambers will have the ability to modify the order. If there is disagreement regarding trust conditions, a chambers judge could modify the order to require the payment to be lodged with the Registrar.

[16] I am ordering that upon the lodging of security, counsel shall advise the Registrar in writing that the security has been deposited. That way, the registry will have a way of determining the time limits

[Discussion with counsel re: filing deadlines for factum]

[17] **GROBERMAN J.A.:** I am going to order that the time limit for the filing of the respondents' factum will be 15 days after the posting of the security.

"The Honourable Mr. Justice Groberman"