IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Shahrokhi v. Yazdani,* 2025 BCSC 676

Date: 20250410
Docket: S234302
Registry: Vancouver

Between:

Homa Shahrokhi and Vangate Immigration Consulting Inc.

Plaintiffs

And

Afshin Yazdani d.b.a. Yazdani Law Group and YLG Professional Corporation

Defendants

Before: The Honourable Madam Justice Sharma

Supplementary Reasons to *Shahrokhi v. Yazdani*, 2025 BCSC 531.

Supplementary Reasons for Judgment

Counsel for the Plaintiffs:	N. Abrahams
Counsel for the Defendants:	A. Salgado
Place and Date of Trial/Hearing:	Vancouver, B.C. February 28, 2025
Place and Date of Judgment:	Vancouver, B.C. April 10, 2025

[1] This judgment is a follow-up to judgment delivered in General Chambers on February 28, 2025, indexed at 2025 BCSC 531 (*RFJ*). The issue before me now is whether the order granted that day should be set aside.

I. BACKGROUND

[2] That judgment is brief, but sets out relevant background. For convenience, I reproduce most of it below.

> [1] **THE COURT:** This matter came before general chambers today, and it was stood down because of the volume of matters before the court. I also wondered initially if it could be heard in general chambers, or needed a whole day. In addition, the applicants (who are the defendants) were actually seeking to adjourn their own application, so that they could apply to cross-examine one of the plaintiffs. This all takes place in the context of the plaintiffs' having received default judgment against the defendants in December 2023.
>
> [2] Counsel for the defendants appeared by MS Teams, as did the personal applicant/defendant Afshin Yazdani.
>
> [3] Counsel were told to return to court at 2:00 p.m., at which time, depending on how many referral judges became available, I would determine which matter had priority, or, possibly, I would set a date for the application to be heard, potentially peremptorily on the defendants.
>
> [4] The matter was called after 2:00 p.m. Counsel for the plaintiffs (who are the application respondents) was here appropriately. Counsel for the defendants was not. I asked the plaintiffs' counsel contact counsel for the defendants to relay that I was expecting them in court. The plaintiffs' counsel indicated in the past he had difficulty connecting with the other side. The matter was again stood down.
>
> [5] The matter came back before me at about 3:00 p.m. Counsel for the plaintiffs informed me that he tried to call several times and he sent an email but received no response.
>
> [6] [CLARIFICATION OF ORDERS SOUGHT BY THE PLAINTIFFS]
>
> [7] I am concerned by counsel's non-appearance. In reading through the application response, it is also concerning that the plaintiffs object to conduct of one of the defendants and he happens to a member of the Law Society of Ontario. This is concerning to the Court. It is also concerning that counsel representing him and the other defendant did not return to Court as directed by me. There is always the possibility that some disaster has struck them, which I hope is not the case, but in the interim, there is no reason not to grant the orders sought by the plaintiffs given the other side's non-appearance.
>
> [8] Having read through the notice of application and the application response, I am satisfied it is appropriate to grant the orders sought by the plaintiffs (to dismiss the defendants' application and another order to do with service), not only because counsel for the defendants did not return and are

> not here to oppose those orders, which is reason enough, but because it is abundantly clear that it is appropriate to dismiss the application.
>
> [9] I am granting the orders sought by the plaintiffs, which is to dismiss the defendants' application. The plaintiffs' counsel also asked that I grant an order declaring that the personal defendant Mr. Yazdani has been properly served. Given the unique circumstances before me and given that he is a member of the Law Society of Ontario, and he appeared in court today by video, and actually attempted to speak, I am satisfied it is appropriate to grant that declaration, although I acknowledge it is a bit unusual.
>
> …
>
> [11] To be clear, the applicants/defendants do have leave to request a hearing before me to set aside the orders I am making today, so long as they make that request through the online "request to appear" portal no later than seven days from today, copied to counsel for the plaintiffs.

[3] Counsel for the plaintiffs, Noah Abrahams, and counsel for the defendants, Alwin Salgado, appeared before me on March 26, 2025, pursuant to para. 11 of the *RFJ*. Their appearance was also pursuant to a March 6, 2025 memorandum sent to counsel on my behalf, excerpts of which are reproduced below:

> The purpose of [the hearing which occurred March 26] is two- fold.
>
> 1) Mr. Salgado to provide an explanation as to why he did not return to Chambers at 2 p.m. on February 28, 2025 as directed;
>
> 2) My consideration of what, if any, procedural orders should be made with regard to this file.
>
> …
>
> I am concerned by the tone and conduct of these parties' correspondence with Supreme Court Scheduling, which runs afoul of *Supreme Court Civil Practice Direction 27: Communicating with the Court*. Because of that and the defendants' non-appearance on February 28, 2025, I am seizing myself of this matter until further notice.

[4] Mr. Salgado filed an affidavit on March 21, 2025. In addition, I have reviewed both the audio recording and transcript of the February 28, 2025 proceedings relating to this matter.

A. The February 28, 2025 Proceedings

[5] There were over 20 matters set for hearing on February 28, 2025, totalling over 20 hours. Shortly before the lunch break, I began canvassing time estimates with counsel on the remaining matters that had not yet been heard. Counsel could

also tell me if there was urgency to the matter. The purpose of that canvas was to determine priorities for the afternoon in case a referral judge became available, and in the likely scenario that I would not have time to hear every matter. Given the length of the list, a number of matters were canvassed in this manner.

[6] The following is a summary of what happened with regard to this matter:

a) It was first called at 12:27 p.m.

b) Mr. Salgado, who was located in Toronto, appeared by MS Teams pursuant to a requisition filed February 11, 2025.

c) The defendants had originally set down an application to set aside default judgment granted in this action in December 2023. However, after receiving the plaintiffs' response materials, they wanted to apply to cross-examine an affiant.

d) On that basis, the defendants wanted to adjourn the set-aside application, which they originally had agreed to be heard on February 28, 2025. The plaintiffs objected to an adjournment and wanted the application to proceed.

e) Given the volume of material, I wondered whether the matter needed to be set for a day. Counsel for the plaintiffs did not agree, expressing his clients' concern at what they perceived to be continual and intentional delay tactics by the defendants, including agreeing to a date only to then seek to adjourn the hearing.

f) Mr. Salgado began addressing what I perceived to the merits of his application for an adjournment. I interjected as follows:

> THE COURT: I'm sorry, it's – it's past 12:30. I'm not sure I need to hear any of this. What I'll like you to do is talk to your friend, find a date soon that this matter can be heard --
>
> CNSL A. SALGADO: Yeah.

> THE COURT: -- and come back to me at two o'clock. I'll reset it to be peremptory.
>
> CNSL A. SALGADO Yeah, all right.
>
> CNSL. N. ABRAHAMS: Thank you Justice.
>
> COURT: Thank you. So the – yes, we're done.

[7] After that exchange, I heard from counsel on other matters to canvas time estimates before Court adjourned for the lunch break.

[8] Court resumed at 2:00 p.m. Mr. Salgado had not checked into court by MS Teams. A few matters were addressed before this matter was recalled at 2:42 p.m.

[9] Mr. Abrahams appeared. I asked him to contact Mr. Salgado, and the matter was stood down for that purpose.

[10] The matter was recalled at 3:00 p.m. Mr. Abrahams confirmed he tried several times to call the only phone number he had for Mr. Salgado, but was unable to reach anyone. Mr. Abrahams also said he sent an email. I asked him to confirm that I had asked counsel to return at 2:00 p.m., which he did.

[11] I then heard submissions and gave judgment.

B. Mr. Salgado's Affidavit

[12] In his affidavit filed on March 21, 2025, Mr. Salgado deposed he recalled me making the following directions:

> a) The application was adjourned to another date to be agreed upon by the parties for a four-hour hearing.
>
> b) The parties would go back to me for the hearing of the application "as [Justice Sharma] continues to be seized of the matter".
>
> c) There might be costs consequences for the parties with regard to the application.

[13] Mr. Salgado also deposed as follows:

a) He had “no recollection hearing the court giving directions to the parties to be back at 2PM …as the final words [he] heard from her Honours [*sic*] were to the effect ‘this matter is done’ for the day”. Given that, he understood that he and opposing counsel would communicate on a date to return before me.

b) On February 28, 2025, at 8 p.m. (Toronto time), he received a draft order from Mr. Abrahams that contained terms that were a “total surprise” to him.

c) He attached to his affidavit an email he sent to Mr. Abrahams on March 3, 2025, at 12:40 p.m. stating the “text of the draft Order you prepared is not in accordance with the endorsement of the judge”. He sent another email at 1:44 p.m. stating, among other things, that he remembered “the judge endorsed for the parties to agree on a date to come back to the court before a judge on a 4-hours hearing”.

d) At para. 10 he deposed:

> I never received an email from the counsel for the Plaintiffs so we can confer from each other on the date we should return to the court and or advise the court on the same day February 28, 2005. I was not expecting any email or call for that purpose, nor under the impression to do so, precisely because of my understanding that we can agree on a new date to be back in the court at a later date.

e) He eventually received the court summary sheet of this matter from the February 28, 2025 hearing. He was surprised the application was dismissed. He stated that he “was only able to connect the dots when I came across the copy of the memorandum dated March 6, 2025”.

f) At para. 14, he deposed that he “had no intention of not returning to Chambers at 2 p.m. on February 28, 2025” and that his failure to do so was due to the following factors:

i. he had poor connectivity, audio and video quality. He claimed he was straining to hear what was going on.

ii. he was under the understanding the matter was adjourned for another day.

iii. "it [*sic*] was able to understand, however, when her Honours [*sic*] made the statement "this matter is done" for the day.

iv. he never heard the direction to return to court at 2 p.m.

v. at para.14(e) he repeated his claim that he "never received any advice from counsel for the Plaintiffs by email that the parties need to be back by 2PM".

vi. he also deposed at para. 4(g) that he was "at his desk all the time until 3:30 p.m. on February 28, 2005 … and I should have been able to login again immediately to attend the court proceedings provided I was informed to attend again at the courthouse remotely".

[14] He included in his affidavit a statement about his client's impression of what happened. That is hearsay, and I place no weight on it.

C. The March 26 Hearing

[15] Mr. Abrahams repeated the information he provided on February 28, 2025, about attempts to contact Mr. Salgado. He again mentioned sending an email, and I asked him to specify what time it was sent. He stated he sent it at 2:04 p.m.

[16] Mr. Salgado stated that he never got that email, which is consistent with his affidavit.

[17] I asked Mr. Salgado to check his email inbox. He did so and then admitted he got that email on February 28, 2025.

[18] Mr. Salgado asked the February 28, 2025 order be set aside so a hearing on his clients' application to set aside the December 2023 default judgment could go ahead. He submits his non-appearance was unintentional due to his not hearing me say counsel should return at 2:00 p.m.

[19] Mr. Abrahams submits the order should not be set aside because there was no valid reason for Mr. Salgado's non-appearance. His position was the Court should have no confidence in Mr. Salgado's evidence that his non-appearance was due to an honest error. He added that his clients continue to incur costs and be frustrated at what they believe to be intentional stalling tactics by the defendants.

II. ANALYSIS

[20] I will first analyze Mr. Salgado's explanation for not returning to Court.

A. Concerns with Mr. Salgado's Affidavit

[21] I find Mr. Salgado's evidence and statements to the Court to be troubling.

[22] Of serious concern is his admission in court that he received Mr. Abrahams' February 28, 2025 email sent at 2:04 p.m., which is a direct contradiction to two statements in his affidavit (at paras.10 and 14(e)). At para. 14(g) he stated he was at his desk until 3:30 p.m. on February 28 and able to log in immediately "provided [he] was informed to attend again at the courthouse remotely". Given his admission, I having difficulty relying on that statement.

[23] There are other aspects of Mr. Salgado's affidavit that are disquieting.

[24] He deposed that I gave a direction that the matter was adjourned and that I was seized of the matter.

[25] No such order, direction or statement was made.

[26] There are two inherent inconsistencies in his affidavit. He deposed at para. 4(a) that he recalled his application was adjourned to "another date to be agreed upon by the parties", but then stated at para. 10 that he was "not expecting any

email or call" from counsel. Knowing the plaintiffs opposed the application being adjourned, and believing I had directed the parties to agree on another date for that hearing, it is difficult to accept his statement that he was "not expecting" communication from Mr. Abrahams.

[27] The second inconsistency is his claim that he was straining to hear the proceedings, yet had recollections of specific words spoken, including that I was "seized" and the matter "was done for the day".

[28] Another concern is his claim that he had trouble hearing the proceedings on February 28, 2025. He did not refer to any difficulties on February 28, 2025, or in the correspondence attached to his affidavit. I confirm the voices of all counsel and the Court are clear and easy to hear in the audio recording.

B. Lack of Knowledge of British Columbia Supreme Court Practice and Procedures

[29] I have other concerns with Mr. Salgado's explanation for not returning to Court.

[30] Mr. Salgado had permission to appear remotely on the basis that he is located in Toronto. When the Court grants permission to counsel to appear remotely, it assumes that counsel will ensure their internet connection is stable and of a high quality. Obviously, technical problems can still occur. If during an appearance counsel have difficulty seeing or hearing the Court or other counsel, they should inform the Court immediately. That did not occur.

[31] Permission for out-of-province counsel to appear remotely is also premised on the Court's expectation that counsel will ensure they are familiar with the law in this province as well as this Court's rules, practice and procedure. Those expectations are not restricted to remote appearance; they apply any time out-of-province counsel appears in this Court. Those expectation are in keeping with counsel's professional and ethical duties not only to this Court, but to their clients.

[32] There are several indicia that Mr. Salgado had not made himself knowledgeable with this Court's practices and procedures.

[33] In his communications and affidavit, Mr. Salgado several times referred to "endorsements". This Court does not use endorsements in chambers. When he appeared on February 28, 2025, he was gowned. Counsel do not gown for chambers (Practice Direction 67: *Gowning Policy for Counsel)*. The defendants' notice of application filed January 31, 2025, is 20 pages long. Rule 8-1(4) of the *Supreme Court Civil Rules* states that a notice of application, excluding any attached draft order, must not exceed 10 pages in length.

[34] Also, in his affidavit and correspondence, Mr. Salgado consistently referred to me as "Her Honour Judge Sharma". Judges in British Columbia Supreme Court are to be addressed as "Justice", "Mr. Justice" or "Madam Justice" (Practice Direction 64: *Form of Address).* To be clear, it may be of little concern to the Court if during an appearance counsel mistakenly use the wrong form of address, as that is most likely a slip. It is surprising to see that mistake in counsel's affidavit.

[35] While mistakes with any of the foregoing, individually, may not be serious, they can reflect poorly on counsel. This is more likely when counsel make more than one mistake, or do so repeatedly. Both are true in this case.

[36] However, a more fundamental concern may arise when out-of-province counsel make these types of mistakes. The concern is not only a matter of compliance with practices and procedures. Rather, the mistake may signal that counsel has not made themselves sufficiently familiar with this Court's rules, practices and procedures. I state the obvious to say it would be unreasonable for counsel to assume the practice in this Court is the same as the practice in their home province.

[37] The obligation to be familiar with this Court's rules, practices and procedures is heightened considerably when counsel seek permission to appear remotely in General Chambers at the Vancouver Law Courts. General Chambers in Vancouver

is almost always fast-paced and dynamic. The Court often handles a list of matters that exceeds, to a significant degree, the time available, although often other judges become available throughout the day to relieve that pressure.

[38] Counsel appearing on matters set for longer than 30 minutes can be expected to be called upon briefly for the purpose of addressing the time estimate and urgency of their matter. Thus, counsel must be prepared to be called upon at any time during the day, often more than once, in order to explain, concisely, what their application is about and give a realistic estimate of how long it will take. These updates are not a substantive part of the matter's hearing, but they are a vital element of the Court's ability to handle the list.

[39] Counsel can agree to adjourn a matter on the list, but if they do so, they must update either the justice presiding in the courtroom or the registrar assisting the justice.

[40] Thus, it was clear, after counsel's brief interaction with the Court on this matter before the lunch break, that the matter was not adjourned and had not concluded for the day. It was also obvious that counsel needed to return at 2:00 p.m., even if I had not explicitly stated so.

C. Should the February 28, 2025 Order be Set Aside?

[41] Mr. Salgado's affidavit is inaccurate in denying receipt of an email from Mr. Abrahams about the need to return to Court at 2:00 p.m. Counsel have a fundamental duty and ethical obligation to be candid and not mislead the Court, even through carelessness. The Court assumes counsel are careful when drafting affidavits, and assumes counsel have increased vigilance to ensure accuracy when drafting their own affidavit.

[42] I assume Mr. Salgado did not intend to be dishonest. Because he was able to locate the email within seconds of me asking him to do so, I find it most probable that he did not bother to check his email before affirming his affidavit. In my view, that is consistent with him being careless in drafting his affidavit. Because he is an

officer of the court, such carelessness in drafting his own affidavit is a serious indiscretion on his part. Added to that are the other concerns with his affidavit evidence discussed above.

[43] Overall, I find the problems I have identified with Mr. Salgado's affidavit to be significant. I am not satisfied on a balance of probabilities that his evidence is reliable and credible. Combined with my conclusion that Mr. Salgado had not made himself familiar with the practices and procedures of this Court, I find that there exists no valid reason for the defendants' non-appearance in Court on February 28, 2025.

[44] In light of that conclusion, and for all the other reasons included in this judgment, I find the plaintiffs would suffer injustice if the February 28, 2025 order was set aside, and I decline to do so.

III. SPECIAL COSTS

[45] At paras. 10–12 of *RFJ*, I granted the plaintiffs an order for special costs, to be assessed.

[46] I also stated that if the defendants did not, within seven days, make an online request to appear to seek to set aside the February 28, 2025 order, the plaintiffs could file written submissions and an affidavit addressing the quantification of special costs, to be filed by March 14, 2025.

[47] Although the defendants did file an online request to appear, they mis-stated the purpose of that hearing and sought a full day hearing to argue their application to set aside the default judgment. This caused an exchange of submissions *via* Supreme Court Scheduling that prompted me to send the memorandum referenced above at para. 3.

[48] The plaintiffs provided written submissions and an affidavit directed at special costs. The plaintiffs rely on both and seek special costs in the amount of $9,438.96.

[49] The defendants have not had opportunity to address the issue of special costs. Since I gave the plaintiffs opportunity to file submissions, I extend to the defendants the same opportunity. The defendants may file brief written submissions of no more than five pages, directed to my attention, to respond to the plaintiffs' submissions on special costs. They must do so no later than 14 days from the date of this judgment.

IV. CONCLUSIONS

[50] I decline to set aside the order granted February 28, 2025, which dismissed the defendants' January 31, 2025 notice of application seeking to set aside the default judgment granted in this action in December 2023.

[51] The defendants have leave to provide no more than five pages of written submissions on the issue of special costs no later than 14 days from the date of this judgment.

"Sharma J."