

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tomar v. Chandan*,
2025 BCSC 1055

Date: 20250227
Docket: S254693

Registry: New Westminster

Between:

Abhishek Tomar

Plaintiff

And

Aditya Rajkumar Chandan

Defendant

Before: The Honourable Justice Lamb

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

B. Hans

The Defendant appearing on own behalf:

A. Chandan

Place and Date of Hearing:

New Westminster, B.C.
February 26, 2025

Place and Date of Judgment:

New Westminster, B.C.
February 27, 2025

[1] **THE COURT:** The plaintiff Abhishek Tomar agreed to sell 32 shares in 1362482 B.C. Ltd. (“the Company”) to the defendant Aditya Rajkumar Chandan for \$135,000. The parties entered into a share purchase agreement on or about January 18, 2024 setting out the terms of the transaction, and Mr. Chandan paid the \$25,000 deposit.

[2] Mr. Tomar acknowledges that the completion date was extended twice, but he now seeks to enforce the agreement and recover the balance of the purchase price and indemnification for other losses. He seeks judgment against Mr. Chandan on this summary trial application.

[3] Mr. Chandan acknowledges he agreed to buy Mr. Tomar's shares in the company, but Mr. Chandan says Mr. Tomar agreed to extend the completion date to March 31, 2025. Mr. Tomar says the second and final extension expired on May 31, 2024.

[4] Mr. Chandan says this conflict in the evidence cannot be resolved on a summary trial application as it turns on the credibility of the parties. Mr. Tomar says this matter is suitable for resolution on a summary trial application as there is objective documentary evidence consistent with his version of events.

[5] For the reasons that follow, I am satisfied that I am able to find the facts necessary to decide this matter on a summary trial application, and the plaintiff is entitled to judgment against the defendant.

Legal Framework for Proceeding by Summary Trial

[6] Rule 9-7(15) of the *Supreme Court Civil Rules* authorizes the court to grant judgment in favour of a party on the hearing of a summary trial application unless:

- (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
- (ii) the court is of the opinion that it would be unjust to decide the issues on the application.

[7] In *Davies v. Canada Shineray Suppliers Group Inc.*, 2016 BCSC 1853, at paras. 32 and 33, Fleming J. (as she then was) summarized the law on assessing suitability for summary trial.

[32] *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 1989 CanLII 229 (BC CA), 36 B.C.L.R. (2d) 202 (C.A.) remains the leading authority on the principles to be applied in deciding the issue of suitability for summary trial. Chief Justice McEachern, writing for the Court of Appeal, identified some of the factors the court may consider in determining whether it would be unjust to give judgment, including the amount involved, the complexity and urgency of the matter, any prejudice likely to arise by reason of delay, the cost of taking the case forward to conventional trial, and the course of the proceedings to date. Other factors include whether the summary trial would take considerable time, whether credibility is a

critical factor and has cross examination occurred, and whether the summary trial may create unnecessary complexity in the resolution of the dispute or “result in litigating in slices ...”

[33] On the question of suitability more broadly, the jurisprudence makes it clear that even significant conflicts in the affidavit evidence do not inevitably lead to the conclusion that the necessary facts cannot be found. Other admissible evidence, including discovery evidence, may permit the court to conclude that the evidentiary conflict can be addressed and the matter resolved without simply preferring one version of events over the other: ...

[Citations omitted.]

Is This Matter Suitable for Resolution by Summary Trial?

[8] I am satisfied that this matter is suitable for resolution by summary trial. The following factors support this conclusion:

- a) The amount in issue does not justify the cost of a conventional trial lasting three or more days given that Mr. Chandan does not dispute his obligation to pay the remaining \$110,000 (just the timing) and my finding that Mr. Tomar has failed to prove Mr. Chandan is liable for any consequential loss: essentially, the difference in the parties' positions is interest and costs;
- b) Mr. Tomar has incurred and will continue to incur litigation costs if this matter is not resolved by way of summary trial, litigation costs that may very well exceed the difference between the parties' positions;
- c) the matter is not complex: the only factual dispute is whether Mr. Tomar agreed to extend the completion date to March 31, 2025 as alleged by Mr. Chandan, and there is a written agreement that makes that factual dispute irrelevant; and
- d) the conflicts in the evidence regarding the alleged extension on March 31, 2025 can be addressed by considering the written share purchase agreement and the surrounding circumstances.

Did the Defendant Breach the Agreement Between the Parties?

[9] I find that the defendant breached the agreement between the parties by failing to pay \$110,000 on or before May 31, 2024 while the plaintiff remained ready and willing to transfer the shares to the defendant.

[10] By way of background, the plaintiff and defendant each owned 32 common shares in the company, which was incorporated on May 12, 2022. The other two shareholders are Anish Duggal and Aman Jeet Singh, who own 32 shares and 4 shares respectively. The company runs a restaurant called “The Indian Club” located at 13648 105A Avenue in Surrey, BC.

[11] In or around November 2023, Mr. Tomar met with Mr. Chandan and the other two shareholders. By that time, Mr. Tomar had noticed that he and the others did not agree on decisions related to the day-to-day operations of the restaurant. At that meeting, Mr. Chandan offered to buy Mr. Tomar’s shares, and Mr. Tomar agreed to sell his shares to Mr. Chandan.

[12] On January 18, 2024, Mr. Tomar and Mr. Chandan entered into a share purchase agreement to effect the transfer of Mr. Tomar’s shares to Mr. Chandan. The share purchase agreement was drafted by counsel retained by Mr. Chandan. Mr. Tomar did not have advice from legal counsel regarding the agreement.

[13] The key terms of the share purchase agreement were the following:

- a) The purchase price for Mr. Tomar’s 32 common shares was \$135,000;
- b) Mr. Chandan agreed to pay a deposit of \$25,000, and the balance was payable on the completion date, which was February 15, 2024;
- c) Mr. Chanda had the option to extend the completion date by 10 days by providing written notice of his election to extend as long as he was not in default;
- d) At the completion date, Mr. Tomar was required to tender a copy of corporate director resolutions satisfactory to the plaintiff authorizing the execution and delivery of the agreement and sale of the shares, the share certificates endorsed for transfer and any other documents required by law to effect the transfer; and
- e) The share purchase agreement constituted the entire agreement between the parties, and the agreement could not be amended or modified except by written instrument signed by the parties.

[14] Mr. Chandan paid the deposit of \$25,000 to Mr. Tomar on January 18, 2024 in accordance with the share purchase agreement. Mr. Chandan elected to extend the completion date to February 25, 2024. Mr. Tomar acknowledges that he verbally extended the completion date to February 25, 2024. Mr. Tomar acknowledges that he agreed on May 2nd, 2024 to further extend the completion date to May 31, 2024.

[15] Mr. Chandan claims at paragraph 15 of his affidavit made January 31, 2025 that he encountered significant financial stress and money problems after signing the share purchase agreement, which had an impact on his ability to meet the deadlines for payment of the purchase price. Mr. Chandan said he approached both Mr. Tomar and Mr. Duggal, and “we verbally agreed to extend the completion date once again, this time to March 31, 2025.” Mr. Tomar denies granting any further extension to the completion date past May, 31, 2024.

[16] Even with this conflict in the evidence, I am satisfied that Mr. Tomar is entitled to enforce the share purchase agreement subject to his acquiescence to modify the completion date to May 31, 2024. Article 7.3 of the share purchase agreement provides that the share purchase agreement could not be modified or amended in any respect except in writing. Mr. Tomar did not agree in writing to extend the completion date to March 31, 2025, which means that Mr. Chandan cannot enforce any verbal agreement to that effect even if such a conversation took place.

[17] Further, I find it is more likely than not that Mr. Tomar did not verbally agree to a further extension after May 31, 2024. Mr. Chandan’s evidence regarding the alleged verbal agreement to extend lacked detail or corroboration, and it makes little sense in the surrounding circumstances.

[18] In his response to civil claim, Mr. Chandan alleged that Mr. Tomar agreed on May 2, 2024 to extend completion to no later than March 31, 2025. However, the text messages exchanged between the parties in May 2024 make it clear that Mr. Tomar expected to be paid by the end of May 2024 and that Mr. Chandan led him to believe that would happen.

[19] In his affidavit made January 31, 2025, Mr. Chandan provides no date for the alleged conversation between him, Mr. Duggal, and Mr. Tomar for the

extension to March 31, 2025. In oral submissions, Mr. Chandan suggested the conversation happened sometime in June 2024. However, this new date does not fit with text messages from Mr. Duggal to Mr. Tomar in July 2024 suggesting that Mr. Chandan was willing to settle -- without reference to a further extension to the completion date. It makes no sense that Mr. Duggal would send a text to Mr. Tomar in June 2024 suggesting Mr. Chandan was willing to settle if the deadline for payment had been extended to March 2025.

[20] In oral submissions, Mr. Chandan suggested that the fourth shareholder, Mr. Singh, was also present for the conversation in which Mr. Tomar allegedly agreed to extend the completion date to March 31, 2025. Despite saying there were two witnesses to this key conversation, Mr. Tomar did not present any affidavit evidence from either Mr. Duggal or Mr. Singh to corroborate his version of events.

[21] Finally, in the text messages between the parties, Mr. Tomar told Mr. Chandan repeatedly over the months preceding May 31, 2024 that he was anxious to receive the balance of the purchase price. A further extension of 10 months for no consideration makes little sense in the context of Mr. Tomar's text messages and the fact that he retained counsel in June 2024 to demand payment.

[22] In all of the circumstances, I find it is unlikely that Mr. Chandan's version of events is true. In short, Mr. Tomar is entitled to enforce the written share purchase agreement subject to his concession that he agreed to extend the completion date to May 31, 2024. It is thus not necessary to resolve the conflict in the evidence regarding the alleged verbal agreement to extend the completion date to March 31, 2025.

[23] Mr. Chandan does not allege any default on the part of Mr. Tomar. Mr. Tomar deposes that he was and is ready, willing, and able to complete the share transfer. Mr. Chandan does not provide any evidence to the contrary.

[24] I am satisfied that Mr. Chandan breached the contract between the parties by failing to pay the balance of the purchase price for the share purchase by May 31, 2024 and by failing to complete the share transfer.

What is the Appropriate Remedy?

[25] Mr. Tomar is entitled to enforce the contract and to require Mr. Chandan to pay the balance of the purchase price in exchange for the transfer of the 32 common shares to Mr. Chandan. In the result, I order Mr. Chandan to pay Mr. Tomar \$110,000.

[26] In addition, Mr. Chandan shall pay Mr. Tomar pre-judgment interest on that sum from June 1, 2024 to today's date. Post-judgment interest is payable from today's date.

[27] Mr. Tomar is entitled to his costs of this action.

[28] Upon payment by Mr. Chandan of the amounts owing pursuant to this order and upon Mr. Chandan providing Mr. Tomar with share transfer documents prepared by or on behalf of Mr. Chandan, Mr. Tomar is under a legal obligation to execute such documents so as to permit legal title to 32 common shares in 1362482 B.C. Ltd. to be transferred from Mr. Tomar to Mr. Chandan.

[29] In terms of further relief, Mr. Tomar seeks an order for indemnity for his losses allegedly arising from Mr. Chandan's breach of contract. In particular, Mr. Tomar claims that he only agreed to end his employment with the company due to the share purchase agreement. Mr. Tomar claims that Mr. Chandan must indemnify him for a drop in his employment earnings after November 2023.

[30] However, as noted already, Article 7.3 of the share purchase agreement provided that the share purchase agreement constituted the entire agreement between the parties. There is nothing in the share purchase agreement identifying Mr. Tomar as an employee of the company or stating that Mr. Tomar was required to resign as an employee of the company as a result of or as a term of the share purchase agreement. In short, if Mr. Tomar was, in fact, an employee of the company (which Mr. Chandan disputes), Mr. Chandan is not contractually obligated to compensate Mr. Tomar for giving up his employment with the company.

[31] Mr. Tomar relies upon Article 5.2 of the share purchase agreement to suggest that Mr. Chandan must indemnify him for all losses arising from Mr. Chandan's breach of contract, including his drop in employment earnings.

However, Article 5.2 of the share purchase agreement requires Mr. Chandan to indemnify Mr. Tomar for any breach of the warranties or representations in Article 4 of the share purchase agreement. There is no evidence that Mr. Chandan has breached any of the warranties or representations in Article 4 of the share purchase agreement. Mr. Tomar has not proven he is entitled to relief pursuant to Article 5.2 of the share purchase agreement.

Conclusion

[32] The plaintiff is entitled to judgment as indicated. The need to obtain Mr. Chandan's signature on the form of order is dispensed with.

[33] Those are my reasons.

"Lamb J."