

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial
and Service Workers International Union
Local 2009 v. Ghag,*
2023 BCSC 930

Date: 20230601
Docket: S143950
Registry: Vancouver

Between:

**United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial and Service Workers International Union Local 2009**

Plaintiff

And

**Satnam Singh Ghag, the Estate of Swarn Singh Ghag, Gurmit Kaur Ghag,
Dharminder Happy Singh Ghag, Ravinder Robbie Singh Ghag,
the Estate of Gurdial Singh Ghag, Ghag Farms Partnership,
Ghag and Ghag Company Ltd., SGASS Holdings Co. Ltd.,
G & H Noble Custom Cut Ltd., Noble Custom Cut Ltd.,
S & G Lumber Ltd. and John Doe**

Defendants

Before: The Honourable Mr. Justice Macintosh

Reasons for Judgment

Counsel for the Plaintiff:

C. Gusikoski

Counsel for the Defendants:

R. Grant, K.C.
L. Babbitt

Place and Dates of Hearing:

Vancouver, B.C.
April 14 and 18, 2023

Place and Date of Judgment:

Vancouver, B.C.
June 1, 2023

[1] The Plaintiff seeks special costs from the Defendants for each phase of this litigation, which concluded with my judgment on March 23, 2021. (There was a subsequent appeal hearing, the costs for which are not part of the present application.) My reasons are indexed as 2021 BCSC 524. (The Court of Appeal's reasons are indexed as 2022 BCCA 360.) In 2007, this Court had found in two sets of reasons that one of the Defendants in this proceeding, Sonny Ghag, owed the Applicant's predecessor Union \$437,706.21 for his 40% share of responsibility for disruptions at Mainland Sawmills on December 16, 2003. Those earlier reasons are indexed as 2007 BCSC 1433 and 2007 BCSC 1734.

[2] All of the proceedings referred to above centred on the conduct of Sonny Ghag. He was the ringleader of the disruptions at Mainland Sawmills on December 16, 2003, and, in the proceeding before me, leading to my decision in 2021, he was the main witness. In the trial in 2021, the issue was whether the Defendants fraudulently conveyed properties and transferred shares to avoid Sonny's exposure to the damages he would face from anticipated litigation stemming from the events on December 16, 2003. I found that they did. (The issue in the Court of Appeal was whether the claims were statute-barred. The Court of Appeal found that the fraudulent conveyance claims were statute-barred but that claims based on resulting trust were not barred, with the result that the Defendants' appeal was dismissed and the Defendants remained indebted to the Applicant.)

[3] At the outset, it is worth noting that questions of costs address a party's conduct within the proceeding in question, as distinct from that party's conduct beforehand, which gave rise to the proceeding. Therefore, in this case, Sonny Ghag is not tarnished in the costs analysis by his wrongful conduct at Mainland Sawmills, as found in this Court's decisions in 2007. Similarly, in the trial before me, where Sonny Ghag's conduct was central to the costs application, it was put to him in cross-examination that he had sworn false affidavits in other proceedings, and had written misleading documents before the current proceeding was brought. Again, such prior conduct is not to be considered as a basis for an award of special costs,

given that it was not conduct within the course of this proceeding. In summary, the assessment of Sonny Ghag's conduct, and that of the other Defendants, must examine only what the Defendants did or did not do in the course of defending the claim.

[4] Before examining the facts further, it is probably worthwhile to review the legal principles applicable to a special costs analysis.

[5] The seminal case in this province remains *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A.). Justice Lambert wrote for the Court. He found at para. 11 that the principles which formerly governed the awarding of solicitor and client costs continue to govern the awarding of special costs. After reviewing several decisions, he summarized his view of the law as follows, at para. 17:

17 Having regard to the terminology adopted by Madam Justice McLachlin in *Young v. Young*, 84 B.C.L.R. (2d) 1, to the terminology adopted by Mr. Justice Cumming in *Fullerton v. Matsqui*, 74 B.C.L.R. (2d) 311, and to the application of the standard of "reprehensible conduct" by Chief Justice Esson in *Leung v. Leung*, 77 B.C.L.R. (2d) 314, in awarding special costs in circumstances where he had explicitly found that the conduct in question was neither scandalous nor outrageous, but could only be categorized as one of the "milder forms of misconduct" which could simply be said to be "deserving of reproof or rebuke", it is my opinion that the single standard for the awarding of special costs is that the conduct in question properly be categorized as "reprehensible". As Chief Justice Esson said in *Leung v. Leung*, the word reprehensible is a word of wide meaning. It encompasses scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke. Accordingly, the standard represented by the word reprehensible, taken in that sense, must represent a general and all encompassing expression of the applicable standard for the award of special costs.

[6] In essence, he found that "reprehensible" conduct was the key for deciding whether special costs should be awarded.

[7] In *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352, Justice Gropper, at para. 73(d), found that, "reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court's

process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant.”

[8] Finally in the legal analysis, I refer to a decision written by Justice Goepel in the Court of Appeal, and another, by Justice Voith, when he was still a member of this Court. In *AM Gold Inc. v. Kaizen Discovery Inc.*, 2022 BCCA 284, Justice Goepel wrote as follows at paras. 59-60:

[59] Dishonest testimony alone is not sufficient to warrant an order for special costs. There must be something more egregious in the impugned conduct for it to be considered reprehensible: *Gill v. Bassi*, 2016 BCSC 754 at para. 15. There is a distinction between evidence that is rejected by the court and evidence that was intended to mislead or was given with an improper motive; only the latter warrants rebuke in the form of an order for special costs: *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 at paras. 70–73; *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 at paras. 12–15. The evidence must be considered from the perspective of the person giving the evidence at the time they testified or at the time the allegations were made.

[60] In *Behan v. Park*, 2014 BCSC 1982, Justice Voith, set out three factors that identify testimony worthy of a rebuke in the form of an order for special costs:

- [49] ... where a party gives:
- i. false evidence that has been contrived, concocted or fabricated;
 - ii. with an intention to mislead;
 - iii. on an issue that is central to the matter before the court, and, which if accepted, would “drive [the opposing party] from the judgment seat”.

[Citations omitted in *AM Gold*.]

[9] In addition to para. 49 from *Behan v. Park*, quoted in part above, Justice Voith said the following, at paras. 44-45:

[44] However, a deliberate attempt to mislead must be contrasted with a simple finding that a court does not accept the evidence of a witness. There are a great many instances where a party’s recollection may be poor or where a witness may be honest but mistaken. There are many instances where the witness’s evidence is considered unreliable. Indeed there will be cases where the witness has, over the course of time, come to remember a

set of events in a more positive light that is ultimately determined to be accurate.

[45] Thus in *Grewal v. Sandhu*, 2012 BCCA 26 at para. 107, leave to appeal ref'd [2012] S.C.C.A. No. 120, the court remarked, "but special costs are not awarded based on the acceptance or rejection of testimony. If it were otherwise, instead of being an extraordinary measure, special costs could be imposed whenever credibility was an issue": see also *Kongrecki v. Rafael* (1994), 2 B.C.L.R. (3d) 196 at paras. 16, 18 (S.C.), aff'd 19 B.C.L.R. (3d) 301 (C.A.); *O'Cadlaigh v. Madiuk* (1994), 33 C.P.C. (3d) 117 at para. 6 (B.C.S.C.); *Bronson v. Hewitt*, 2011 BCSC 102 at paras. 144-146.

[10] The legal tests and principles for ordering special costs, as I have distilled them above, govern me in the following analysis.

[11] The trial before me had to address why, on January 8, 2004, all real property in Sonny Ghag's name, and all his share interests in Defendant companies, were transferred to his son for no consideration. The timing would arouse suspicion in the most trusting of onlookers. The events at Mainland Sawmills had taken place only about three weeks before that. The next day, January 9, the Mainland Sawmills claim was served on the Union, where Sonny was an officer. (That was the litigation resulting in the two judgments of this court in 2007.)

[12] Mr. Gusikoski, for the Applicant, in his thorough and well-structured submissions, argued that the Defendants' conduct at each stage of the litigation, pleadings, document production and discovery, and trial, warrant the punishment that a special costs order is intended to convey.

[13] For reasons which follow, I have concluded that the Defendants will not have to pay special costs for the phases of the litigation prior to trial, but that they are liable to a special costs award for the days of the trial itself, where, led by the Defendant Sonny Ghag, they intended to mislead the Court with a story that the conveyances and transfers on January 8, 2004 were for innocent purposes.

[14] With respect to their pleadings, the Defendants denied the allegations against them. Whether a responsive pleading is sparse or lengthy, special costs will generally not be awarded, and will not be in this case, on the ground that the

pleading set out a position later rejected by the court. Subject to complying with BC Supreme Court Civil Rule 3-3 (Responding to a Notice of Civil Claim), defendants are entitled to plead whatever defence they intend to present. In this case, there was no interlocutory challenge to the defence pleading, and the claim proceeded in the ordinary course, whereby the Court eventually had to determine which side was right.

[15] After pleadings were closed, and up to the start of the trial, is a more difficult phase to analyse in this case in the context of a special costs application. The Defendants dragged their feet throughout the protracted document production phase of the case. Fortunately, Justice Funt took over the management of document production pre-trial, and was able, eventually, to move things along. He presided at many applications. Such management was necessitated by a combination of factors. There were 12 named Defendants. Some were people, others were companies. The action was not commenced until 2014, 10 years after the transactions which were eventually found to be fraudulent. Many of the documents were in the hands of third parties, including banks and governments.

[16] I note also that in the document production phase of the case, there were no findings of contempt, or even applications argued in which contempt was alleged for deficient production. None of the orders, or transcripts of proceedings during the document production phase, appear to criticize the conduct of the Defendants.

[17] None of that is to say that the Defendants were properly responsive in their obligations to produce documents. As I said above, they dragged their feet. However, I find myself unable to reach the conclusion that their conduct was reprehensible in that phase of the case, so as to incur the punishment of special costs.

[18] The Applicant pointed to answers given in examinations for discovery, as part of its submissions concerning the Defendants' pre-trial conduct, but even there, I did

not see the unequivocal evidence of deceit a court would look for before making a special costs order.

[19] The trial is a different matter. The Defendants had to enter the trial with a plan to deceive the Court. They attempted to deceive the Court with their story, day after day. My reasons (2021 BCSC 524) analyze, against the Defendants, all of the strained explanations they gave as to why the transactions on January 8, 2004 were honest ones, not intended to hide and protect Sonny Ghag from the obligation to pay damages this Court had already ordered him to pay.

[20] I do not propose to repeat that analysis here. It is enough that I refer to a few things I said in the trial judgment:

- “Sonny testified in the present trial that he was unconcerned about having any personal financial exposure as a result of the events at Mainland. For reasons set out below, I do not believe him. Events that night put Sonny on notice that he was vulnerable to financial risk for what he did, and I find that he was, in fact, apprehensive that claims would be brought against him” (para. 12);
- “Sonny, before me, adamantly denied the December 2003 conversations about hiding assets. He testified further that he felt no vulnerability to personal financial exposure, first, because he did not believe there would be legal proceedings arising out of the Mainland incident, and second, even if there were such proceedings, he would be protected against personal financial exposure by either the IWA’s National Strike Fund, controlled by the national office of the IWA, or the Local Defence Fund, unique to, and controlled by, IWA local 1-3567, of which Sonny was president” (para. 22);
- “I do not accept Sonny's denial of the conversations in December 2003 about hiding assets. Even taking into account the finding against Earl Graham’s credibility, when he testified on an unrelated point in 2007, I find it more probable than not that in the heated and frenzied atmosphere at Local 1-3567

- in the days and weeks after the events at Mainland, Sonny was candid with his closest, most-trusted colleagues about hiding assets. Furthermore, even if Sonny had not had those conversations, he still would have been anxious about protecting himself against financial exposure” (para. 23);
- “Before turning to an assessment of Sonny's credibility generally, I examine the two reasons why, Sonny said, he would have had no reason to hide assets” (para. 24);
 - “The first was that he believed that Mainland Sawmills would not bring legal proceedings arising from the events on December 16, 2003. That was not true. Sonny believed there would be legal proceedings. His discovery evidence contradicted his trial testimony directly. ...” (para. 25);
 - “Turning to Sonny's second reason given for not fearing financial exposure from a lawsuit, he testified that he believed the National Strike Fund or the Local Defence Fund would cover him. That cannot have been true. Extensive evidence at trial addressed both of those funds” (para. 27);
 - “... In summary, I cannot accept Sonny's testimony that he believed either fund would bail him out” (para. 28);
 - “Sonny received \$140,000 from his father for work on the Ghag farm properties. The cheque for that payment was placed in evidence. In order to deny having received that money, which he denied because it evidenced his having a beneficial interest in the farm properties after 2004, Sonny in his testimony presented a complicated story of running the cheque back through the family bank to return the money to his father the same day he received it. Sonny's explanation was incomprehensible, and left me with the conclusion that he was simply trying to evade that he had received the \$140,000” (para. 33);

- “The last example I cite of Sonny’s dishonesty, as a witness or otherwise, is the evidence he gave that he was going to Mainland on December 16 in order to prevent trouble rather than to foster confrontation. He testified that he knew the Mainland workers were lawfully working, and that he had promised to honour their right to do so. Because that evidence was in startling contrast to the findings of Justice Fisher, I asked Sonny to repeat that evidence, which he did. For Sonny to attempt removing himself, in this trial, from the role of ringleader on December 16 is disingenuous. He called the Mainland workers scabs that night, and in the media the next morning” (para. 34); and
- “In summary, Sonny is generally not to be believed except where his evidence is corroborated, unequivocally, by objective, reliable and credible evidence” (para. 35).

[21] In addition, at paras. 44-54 of my reasons, I set out the evidence and found the facts which contradicted the Defendants’ explanation as to timing; that is, why the conveyances and other transfers took place when they did, on January 8, 2004.

[22] To repeat somewhat, the Defendants, led by Sonny Ghag, concocted a fabrication at trial from beginning to end, intended to deceive the Court about why the transfers took place. The Defendants’ conduct at trial squarely engages the reasoning of this Court and our Court of Appeal, in the cases cited at paras. 5-9 above, such that special costs are called for here. In summary, the Defendants’ conduct at trial was reprehensible, and thus deserving of special costs.

[23] It does not follow of course, that in every case where a finding of fraudulent transfer is made, special costs will follow. The law of fraudulent transfers is complex. Sometimes, what meets the test for such a transfer is relatively innocent conduct. The special costs analysis is focused on the particular facts of the case at bar, viewed through the lens of the special costs case law.

[24] In summary, the Plaintiff is entitled to special costs for the trial portion of this proceeding, and ordinary costs for the pre-trial portions. If the quantum of costs cannot be agreed to, either side may take out an appointment with the Registrar.

[25] I commend both counsel for their helpful submissions. Mr. Grant said all that reasonably could be said in support of his clients' position.

[26] Substantial success on this application was with the Union. I grant the Union ordinary costs for this costs application.

“Macintosh J.”