IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Garib v. Randhawa,*
2024 BCSC 2159

Date: 20241128
Docket: S43266
Registry: Penticton

2024 BCSC 2159 (CanLII)

Between:

Jaswinder Kaur Garib

Plaintiff

And

(1) Malvindar Singh Randhawa,
(2) Harbans Randhawa,
(3) Jason Justindar Randhawa,
(4) Jaswinder Singh Garcha,
(5) Ritchelle Randhawa-Pagely,
(6) 0755291 B.C. Ltd.,
(7) 0719891 B.C. Ltd., and
(8) Malvindar Randhawa, Harbans Randhawa, Jaswinder Garcha, 0719891 BC Ltd. and 0755291 B.C. Ltd. carrying on business as a partnership

Defendants

Before: The Honourable Mr. Justice G.P. Weatherill

Reasons for Judgment

Counsel for Jaswinder Garib:	D.M. Duncan
Counsel for Intervener, 685781 B.C. Ltd. and Bobby Singh Jhutty:	L.Y. Babbitt
Appearing on his own behalf:	M. Randhawa
Appearing on her own behalf:	H. Randhawa
Appearing on his own behalf:	J. Randhawa
Place and Date of Hearing:	Penticton, B.C. November 8, 2024
Place and Date of Judgment:	Penticton, B.C. November 28, 2024

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I. INTRODUCTION

[1] In an application filed September 25, 2024 ("Application"), the plaintiff applied for a series of orders related to three contiguous residential properties located on Winnipeg Street, Penticton, B.C., and legally described as:

> PIDs: 010-706-241; 010-706-267; 006-536-352;
>
> Lots 2, 3 and 4; District Lot 4, Group 7 Similkameen Division Yale (Formerly Yale Lytton) District Plan 3853
>
> (the "Properties").

[2] Prior reasons for judgment involving the Properties include those with neutral citations 2019 BCSC 2176 ("First Reasons"), 2020 BCSC 263 ("Second Reasons") and 2022 BCSC 1999 ("Third Reasons"). Those judgments detail the background of the parties' dispute which I won't repeat.

[3] In the First Reasons, dated December 16, 2019, I ordered, among other things, that the plaintiff was a one-third beneficial owner in the equity in the Properties and that the registered owner, the defendant Malvindar Randhawa ("Malvindar"), held that interest in trust for her. Subsequent to the First Reasons being issued, Malvindar declared that he held the remaining two-thirds interest in the Properties in trust for his son, Jason Randhawa ("Jason"). At the hearing of the Application, Malvindar again confirmed that he has no equitable interest in the Properties and that he held his legal interest in trust for the plaintiff and Jason as to a one-third interest and two-thirds interest respectively.

[4] To determine the quantum of the plaintiff's equity interest, I ordered an accounting of receipts and expenses received/incurred by Malvindar and his wife, the defendant Harbans Randhawa ("Harbans"), from the time of purchase of the Properties in June 2005, to date and that her one-third equitable interest would be adjusted accordingly. In addition, I granted the plaintiff judgment against Malvindar and Harbans for the difference between:

a) her one-third equity in Properties assuming only the original first mortgage (“First Mortgage”) existed; and

b) her one-third equity in the Properties taking into account the Second Mortgage and Third Mortgage.

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[5] The rationale for these judgments was that the plaintiff had no knowledge of and received no benefit from either the Second Mortgage or the Third Mortgage that Malvindar allowed to be registered on the title to the Properties and that affected her equitable interest in them. These judgments put the plaintiff into the same position she would have been in had Malvindar not permitted the registration of the Second Mortgage and Third Mortgage on the Properties’ title.

[6] The order setting out my decisions in the First Reasons is dated February 20, 2020, was formally entered on July 10, 2020 (“First Order”).

[7] In the Second Reasons, dated February 26, 2020, I directed a reference to the Registrar to determine receipts and expenses respecting the Properties since their purchase. I reiterated that the plaintiff’s equity would be determined by ignoring the Second Mortgage and the Third Mortgage and that the plaintiff would receive judgment against Malvindar and Harbans for one-third of the equity that was lost due to those mortgages. Specifically, I stated the following:

> [11] Accordingly, and to ensure my intention respecting the plaintiff’s Lost Equity Judgments is accurately reflected in the order, I decline to award her interest on the Lost Equity Judgments pending the determination of the accounting now being ordered. Paragraphs 165 (d) and (e) of my Reasons are deleted and are replaced with the following:
>
> > d) In order to determine the amount of the plaintiff’s one-third equity in the Winnipeg Street Properties, I direct that there be an accounting of the receipts and expenses received by Malvindar and/or Harbans respecting the Winnipeg Street Properties from the date of its purchase to present;
> >
> > e) The difference between the plaintiff’s one-third equity in the Winnipeg Street Properties had there only been the original RBC First Mortgage on title (namely had the RBC Second Mortgage and Jhutty Third Mortgage never been registered) and one-third of the current equity in the Winnipeg Street Properties. The plaintiff will be entitled to judgment against the defendants Malvindar and Harbans Kaur

> Randhawa for that difference, if any. The plaintiff will not be entitled to interest on that difference.

[8] The reference took place before Associate Judge Schwartz on November 23, 2021 and January 17, 2022. His report and recommendations were issued on January 24, 2022 ("Schwartz Recommendations").

[9] The Third Reasons, dated November 16, 2022, confirmed the Schwartz Recommendations as to the accounting of receipts and expenses. Expenses exceeded receipts by $180,396.31 and I determined the plaintiff's one-third share of that deficit was $60,132.10 ($180,396.31 / 3). I also determined that she was responsible for one-third of the balance of the original first mortgage, namely $65,902. In addition, I ordered that Malvindar was entitled to a set-off of the $60,132.10 deficit against the judgment I awarded in the plaintiff's favor in respect of any lost equity in the Properties (First Reasons, para. 163).

[10] Finally, to determine the plaintiff's one-third equity in the Properties, I ordered that they be appraised. The plaintiff retained Mr. Harvey Erickson of North Country Appraisals, whose opinion was that the highest and best use value of the Properties, as at April 29, 2024, was $2,925,000 ("Appraisal"). As part of the Application, the Appraisal was filed in evidence in affidavit form without debate.

[11] At the plaintiff's behest, Mr. Erickson also prepared a report stating that based on market rents between June 2005 and July 2024, the Properties could potentially have fetched aggregate rental income of $1,005,321 ("Market Rent Appraisal"). The Market Rent Appraisal was obtained to support the plaintiff's contention, brought for the first time in the Application, that Malvindar mismanaged the Properties by failing to obtain market rents throughout the period the Properties have been owned. The plaintiff asserts that instead of recovering rents of over $1 million as suggested by the Market Rent Appraisal, Malvindar only received rental income of $557,675 from June 2005 through November 2021, as determined by the Schwartz Recommendations.

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II. THE JHUTTY PARTIES

[12] In addition to the parties of record, Mr. Bobby Singh Jhutty (Malvindar and Harbans' son-in-law) and a company he represents, 685781 B.C. Ltd. (together, the "Jhutty Parties"), were granted standing on the Application, pursuant to Rules 8-1(7) and (9), to make submissions and oppose the plaintiff's application for an order for sale on the basis that they have valid mortgages registered against the Properties. In addition to the Third Mortgage, in August 2022, the Jhutty Parties paid out and assumed the First Mortgage ($336,543.01) after it went into default, and as such, are assignees of the First Mortgage. On August 15, 2024, the Jhutty Parties commenced an action (Penticton Reg #S-50085) to enforce the First Mortgage ("Jhutty Action"). In the Jhutty Action, the amount alleged to be required to redeem the Properties is $2,396,529.77 as at August 15, 2024, together with 18% per annum interest thereafter calculated monthly.

[13] No issue was taken by any party to the Jhutty Parties' standing to make submissions.

III. THE APPLICATION

[14] In the Application, the plaintiff seeks the following:

a) A declaration that the highest and best use market value of the Properties is, based on the Appraisal, $2,925,000;

b) A declaration that Malvindar's conduct as trustee of the Winnipeg Street Properties caused damage to her;

c) Judgment against Malvindar for $149,215.33;

d) A declaration that her one-third interest in the Properties is $848,965.23;

e) Judgment against the defendants for $848,965.23;

f) An order pursuant to Rule 13-5(1) of the Supreme Court Rules, that the Properties be sold with an accounting to follow;

g) Special or uplifted costs;

h) Reimbursement from the defendants for two-thirds of the cost of the Appraisal and Market Rent Appraisal, or $6,650.00.

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[15] As the primary issue, the plaintiff seeks a determination of the plaintiff's one-third equity in the Properties. A secondary issue is the plaintiff's claim against Malvindar for damages for alleged breaches of fiduciary duties respecting the Properties' rental income.

[16] All orders the plaintiff seeks are opposed by the defendants. While taking no position on the plaintiff's application for judgment against Malvindar and Harbans, the Jhutty Parties strenuously oppose an order for sale of the Properties.

IV. DISCUSSION

[17] I shall deal with the Application in order of the relief sought:

a) Whether there should be a declaration as to the Properties' value;

b) Whether Malvindar's conduct caused the plaintiff damage;

c) Whether a further judgment should be granted against Malvindar for breach of trust;

d) Whether there should be a declaration as to the value of the plaintiff's equitable interest in the Properties;

e) Whether judgment should be granted against the defendants for the amount of the plaintiff's one-third equity in the Properties;

f) Whether there should be an order for sale of the Properties;

g) Costs; and

h) Reimbursement of appraisal costs.

a. Declaration as to the Properties' value

[18] The plaintiff seeks a declaration that the value of the Property is $2,925,000. She seeks this declaration in order to quantify the amount of the judgment she seeks against Malvindar.

[19] In my view, it serves no purpose to make such a declaration at this juncture and I decline to do so. I have already ordered that the plaintiff has a one-third equity in the Properties, whatever that equity may be. As noted earlier, I already granted the plaintiff judgment against Malvindar and Harbans in the First Reasons respecting the Second Mortgage and the Third Mortgage. Her one-third equity in the Properties can only be determined if and when the Properties are sold.

b. Did Malvindar's conduct cause the Plaintiff damage?

[20] The plaintiff seeks a declaration that Malvindar's conduct as trustee of the Properties caused damage to the plaintiff. While somewhat unclear, I take it that the plaintiff's position is that because the Market Rent Appraisal estimates that between June 2005 and 2024, the potential aggregate rental income the Properties could have generated was $1,005,321 and because the total actual rental income Malvindar received on the Properties was only $557,675, she should be entitled to damages of one-third of the difference, or $149,215.33 ($1,005,321 - $557,675 x 33.33%). She makes this claim on the basis that Malvindar breached the fiduciary duty owed to her as trustee to ensure that market rental rates were received throughout.

[21] She correctly points out that a trustee must act honestly and in good faith and make decisions in the beneficiaries' best interests and place the beneficiaries' interests ahead of his own. She argues that Malvindar failed to act honestly and in good faith and did not exercise the care, diligence and skill that a reasonably prudent trustee would exercise in similar circumstances.

[22] She points to the following factors in support:

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a) He allowed the registration of the Second Mortgage and the Third Mortgage against the Properties without her knowledge or consent;

b) The proceeds of the Third Mortgage were apparently used to cover debts owed by himself and Harbans in an unrelated matter;

c) Had Malvindar increased rents by the permissible rent increases between 2005 and 2024, the aggregate rental income from the Properties would have been $1,005,321, which in turn would have provided the necessary funds to maintain the Properties, including 377 Winnipeg Street that had to be demolished; and

d) He failed to properly account for rental receipts.

[23] Given his failure to prudently manage the Properties, the plaintiff says she has suffered damages representing one-third of the potential additional rental income, namely $149,215.33 and she seeks judgment against Malvindar in that amount.

[24] While I am sympathetic to the plaintiff's position, in my view, her breach of trust claim is premature and cannot be properly assessed in the Application. There are simply too many unknown factors at play that would have affected what rental income could have been reasonably achieved.

[25] First, the Market Rent Appraisal assumes the Properties were rented out continuously between June 2005 and December 2023, with permissible market rent increases, with the exception of 377 Winnipeg Street which was demolished in 2020. It assumes no rental income was earned by 377 Winnipeg Street from 2020 onwards. There could have been many legitimate reasons why the Properties could not have been rented continuously throughout the period of ownership and why market rents could not have been achieved.

[26] For example, as Malvindar points out, the Market Rent Appraisal does not take into account various valid factors such as if tenants were on disability and

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unable to pay market rents, vacancies through no fault of his, and occasions when one or more of the individual properties was not in rentable condition, such as black mold, roof leaks and hazardous materials requiring remediation.

[27] In the end, and as the evidence stands, the plaintiff has not met the burden of showing that Malvindar breached his obligation as trustee to obtain market rents for the Properties during the ownership. Should the plaintiff seek to maintain such a claim against Malvindar, she will need to commence a separate breach of trust action.

[28] In any event, during the initial hearing of this matter resulting in the First Reasons being issued, the matter of Malvindar's alleged breach of trust for failure to obtain market rental income was not dealt with, or indeed, argued. The First Order is now entered and I cannot entertain new or additional breach of trust arguments.

[29] Should the plaintiff seek to pursue such a claim, she will need to commence a new action.

c. Is the Plaintiff entitled to a declaration of judgment against Malvindar?

[30] For the reasons noted above, it is premature for the plaintiff to seek a declaration that Malvindar's conduct for his alleged failure to obtain market rental income for the Properties caused her damage, and I decline to do so.

d. Is the Plaintiff entitled to a judgment against Malvindar for that conduct?

[31] For the same reasons, it is premature for the plaintiff to seek judgment against Malvindar for his alleged breach of trust respecting market rentals from the Properties.

e. The value of the Plaintiff's equitable interest in the Properties

[32] The plaintiff seeks a declaration that her equity in the Properties as at July 9, 2024, is $848,965.23. She calculates that sum this way (from the Third Reasons,

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rounding as necessary and correcting arithmetical errors made in the plaintiff's written submissions):

a)	Erickson Appraisal:	$2,925,000
b)	Rents received:	557,675
c)	Mortgage payments:	(505,494)
d)	Property Taxes:	(124,401)
e)	Insurance payments:	(38,089)
f)	Other Expenses:	(70,086)
g)	Balance of First Mortgage:	(197,708)
	Total:	$2,546,897
	One-third:	**$ 848,965**

[33] Respecting the market value of the Properties, it is undisputed that their highest and best use market value as of April 29, 2024, was $2,925,000. The expenses and balance of the First Mortgage noted above were settled in the Third Reasons.

[34] The plaintiff is entitled to a one-third equity interest in the Properties ignoring the Second Mortgage and Third Mortgage. On that basis, and everything else being equal, the plaintiff's equity in the Properties is $848,957 as noted above.

[35] What remains are the Second Mortgage and the Third Mortgage with the original amounts of $186,000 and $380,000 respectively. As noted earlier, the Jhutty Parties are claiming to be owed over $2.3 million which is secured by their mortgages over the Properties.

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[36] The status of those mortgages is not before me and will be determined in other proceedings. The plaintiff suggests those mortgages may be invalid as against either the Properties, herself, or both. I understand that issue will be taken up in the Jhutty Action.

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[37] While the plaintiff seeks a declaration as to the quantum of her one-third equity, such a declaration at this time would serve no purpose. Should the Properties be sold in the future, either through a court ordered sale or otherwise, the plaintiff's one-third equity will be determined then. Meanwhile, the plaintiff is at liberty to execute on the judgments she had against Malvindar and Harbans as she sees fit.

f. Is the Plaintiff entitled to judgment against the Defendants for the amount of her equity in the Properties?

[38] For the reasons stated above, and on the material before me, the quantum of the plaintiff's equity in the Properties cannot yet be determined. Such a determination will have to await the outcome of the Jhutty Action and/or other actions.

g. Should the Plaintiff be granted an order for sale of the Properties?

[39] The plaintiff's application for an order for sale is based on Rule 13-5(1), the relevant portion of which provides:

> 13-5(1) If in proceeding it appears necessary or expedient that property be sold, the court may order the sale . . .

[40] The plaintiff argues that Rule 13-5(1) is apropos because it applies to a "proceeding" (defined to include an "action"). This "proceeding" is continuing, and she says it is both necessary and expedient that the Properties be sold. She contends that there is no basis to restrict or confine Rule 13-5(1)'s application to matters where orders for sale were not initially contemplated when the proceedings were brought. Further, she argues that:

a) Rule 13-5(1) gives the court broad discretion to make an order for sale where if appears necessary or expedient. She argues that it is both

necessary and expedient to order the sale of the properties without any further delay. She argues that the Properties will be sold at some point in any event and failure to order them sold would only delay the inevitable and run up costs.

b) The dispute been the parties has been continuing since February 2015 when the first of the three actions (subsequently consolidated to be heard together) was filed. The time has come to put the matter to bed.

c) There is no evidence that would suggest that Jason is able to purchase her one-third interest and he has not offered to do so. Indeed, the evidence and submissions suggest the contrary.

[41] For various reasons, mostly emotional and/or attempting to revisit my earlier decisions, Malvindar, Harbans and Jason oppose an order for the sale. Though Malvindar, Harbans and Jason all say that, as a one-third owner, the plaintiff should simply take one of the individual properties (save the one in the middle lot) with Jason taking the other two. They argue that such an arrangement would be fairest to all. The plaintiff has made it clear she has no interest in resolving the matter in that fashion.

[42] The Jhutty Parties take a more legalistic approach. They maintain that no order for sale can be made in this action because:

a) the rule upon which the plaintiff relies, Rule 13-5(1) is not applicable; and

b) having rendered the First Reasons, Second Reasons and Third Reasons, and the First Order having been entered, this Court is *functus officio* and cannot now make an order for sale.

[43] They argue that there are only two grounds available to the plaintiff to seek an order for sale of the Properties:

a) In a petition being brought under the *Partition of Property Act*, RSBC 1996, c. 347 ("*PPA*"); and/or

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b) An application brought under the *Court Order Enforcement Act,* RSBC 1996, c. 78 ("*COEA*").

[44] The Jhutty Parties assert that Rule 13-5 cannot apply as a basis for ordering the sale of the Properties because the issue of sale did not arise in the course of this proceeding, a necessary prerequisite. Here, they argue, the issue did not arise until after the conclusion of the proceeding when the only remaining issue left open was the determination of the quantum of the plaintiff's equity in the Properties. Everything else had been decided, the First Order entered and no appeal was taken. They point out that the plaintiff did not seek an order for sale as a remedy, nor was it awarded within the trial decision.

[45] Accordingly, they say that this Court is now *functus officio* and has no jurisdiction to add an order for sale to its decision: *The Owners, Strata Plan K855 v. Big White Mountain Mart Ltd.*, 2017 BCCA 438.

[46] In support of their position that orders for sale in such cases as this must proceed under either the *PPA* or the *COEA*, the Jhutty Parties rely on *Nguyen v. Pham*, 2023 BCSC 1246 at para. 52; *Ostrikoff v. Ostrikoff*, 2023 BCSC 77 at para. 38; and *Phoenix Homes Ltd. v. Takhar*, 2017 BCSC 699 at para. 19.

[47] First *Nguyen* was a case where one tenant in common of recreational property sought an order under the *PPA*, or alternatively Rule 13-5, for the sale of the property over the other owner's objections. The respondent co-owner, in a separate action, was seeking specific performance of a contract to purchase the property from the petitioner, was seeking to have the matter referred to the trial list, and argued that the matter was not suitable for summary determination. The Court agreed stating that to order the sale of the property would have the effect of determining the respondent's claim for specific performance without a trial. Further, the Court held that it was not possible on the then current state of the evidence to make findings of fact as to what took place, including whether there was repudiation of the contract. In other words, there were triable issues that could not be resolved summarily.

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[48] The Court also held (at para. 11) that the issue under Rule 13-5 is whether a sale is necessary or expedient, and that the rule applies when the issue of the sale of property arises in the course of a proceeding (para. 52):

> [53] Necessity may exist where neither party has the financial means to buy out the other.
>
> [54] Expediency is satisfied if the sale is objectively determined to be advantageous to both parties, irrespective of their wishes.

[49] On the facts of that case, the Court determined that a sale of the property at that time was neither necessary nor advantageous, although it might be in the future.

[50] A similar situation arose in *Phoenix* where a shareholder of a property development company commenced a derivative action against the other. One of the allegations was that the other shareholder had entered into an agreement to sell property owned by the company to a third-party defendant at less than fair market value. The company applied to sell the property at fair market value. The third-party defendant sued for specific performance. The Court held that a court ordered sale of the property would amount to a summary dismissal of the specific performance claim and declined to make the order sought. Justice Smith stated this at para. 15 respecting Rule 13-5:

> [15]…Although the court has broad discretion under the Rule, I am not persuaded that it goes so far as to include what would amount to a final decision on the merits of an issue in the action. Even if the court's jurisdiction under the rule does go that far, it would not be appropriate to exercise that discretion when I have already found that closely related issues cannot be decided summarily.

[51] In *Ostrikoff,* a co-owner of a property that she co-owned with her brother as tenants in common, sought an order for sale under Rule 13-5 or alternatively the *PPA*. The brother sought to purchase the petitioner's interest in the property, but his ability to do so was hampered by injuries, health issues and business issues that led to financial challenges. Other issues at play included the inability to determine what the petitioner's equity in the property was. The respondent sought an order for a reference to the registrar to determine the petitioner's equity. In the specific circumstances of that case, the Court found that the *PPA* was the more appropriate

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route to go and declined to order the sale pending further steps being taken by the parties, including a reference to the registrar to value the petitioner's equity.

[52] While none of these cases to which I have been referred place any specific restriction on the Rule 13-5(1)'s role in a proceeding where an order for sale is sought and their outcomes are confined to their facts, I am persuaded in this case that it would be preferable that any order for sale of the Properties be made under either the *PPA* or in the Jhutty Action, as the case may be:

a) First, there is far more to this matter than on first blush is apparent. Malvindar has made it clear in writing that he will do whatever it takes to ensure the plaintiff is thwarted in her attempts to realize her interest in the Properties. Further, the relationship between Malvindar, Harbans and the Jhutty Parties appears to be, in a word, incestuous. During the hearing, in addition to holding the Properties in trust for the plaintiff and Jason, Malvindar also appeared and made submissions for himself as trustee, Harbans and Jason's. He did not seem to appreciate that he was in a potential conflict.

b) Second, the *PPA* is better designed for disputes like this to deal with sales of properties with multiple owners and sets out the processes that should be applied when, as here, there are competing interests.

c) Third, because Malvindar has no equitable interest in the Properties, the plaintiff's judgments against him, if registered against the Properties, would result in her recovering nothing. I suspect that if the plaintiff attempted to register the judgments against the Properties and apply to have them sold under the *COEA*, she would be unsuccessful.

d) Fourth, the plaintiff's position is that no monies were advanced under the Third Mortgage and it is therefore invalid and/or unenforceable against her. The resolution of that position has yet to be determined.

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e) Included in the relief sought in the Jhutty Action is an order for sale of the Properties.

f) Further, having reviewed *Big White* and considered Mr. Babbitt's submissions, I am persuaded that I am *functous officio* and cannot make an order for sale in this proceeding:

> [38] In *Locarno Investments*, Tysoe J.A. wrote at 17:
>
> > It is a general rule that, except by way of appeal, no Court or Judge has power to rehear, review, alter or vary a judgment or order after it has been entered: See 22 Hals., 3rd ed., p. 785, para. 1665.
> >
> > The text of Halsbury indicates that there are certain limited exceptions to the general rule. For instance, clerical mistakes in judgments or orders, or errors arising from any accidental slip or omission can be corrected under [M.R. 315] of the Supreme Court Rules [now R. 13-1(17) of the Supreme Court Civil Rules] and error in expressing the manifest intention of the Court can be remedied.
>
> …
>
> [49] It is not enough to say that the trial judge had some continuing jurisdiction, the jurisdiction must continue in relation to the issue in question. As noted in *Harrison*, at para. 29, "Once an order has been entered … the court which made the order is *functus officio* <u>with respect to the issues therein</u>".
>
> [Emphasis in original.]

g) The First Reasons were issued, and the First Order has been entered. All that remained to be considered was the quantum of the plaintiff's equity in the Properties. Although in the August 2, 2016, notice of civil claim the plaintiff sought "an order for the judicial sale of the Winnipeg Street Properties", it was not pursued until the Application and was not included in the First Reasons. In other words, until the Application, the sale of the Properties was not an issue. Accordingly, there is no continuing jurisdiction to make an order for sale in this action under Rule 13-1(5) or otherwise.

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[53] For all of these reasons, I am persuaded that an order for sale of the Properties cannot be made at this time under Rule 13-1(5) and that such an order must be made under either the *PPA* or in the Jhutty Action.

h. Costs

[54] Given the result, and in the circumstances, I am inclined to order that each party bear their own costs. Respecting the Jhutty Parties, who are not parties to this action, they too shall bear their own costs.

i. Reimbursement of Appraisal costs

[55] The plaintiff seeks reimbursement of two-thirds of the cost of the Harvey Erickson appraisals on the basis that on January 15, 2024, I ordered the appraisals be done. Mr. Erickson's account, paid for by the plaintiff, is $9,975.00 and she seeks reimbursement of $6,650.00.

[56] Mr. Erickson prepared not only a best use appraisal of the Properties, which I ordered, but also the Market Rent Appraisal, which was not ordered but was obtained solely at the plaintiff's behest.

[57] From what I can determine, the cost of obtaining the Appraisal was $6,000 plus $350 GST. The Market Rent Appraisal, which I gather totalled $3,625, brought the total to $9,975.00.

[58] In evidence are a series of email communications between Mr. Duncan and the defendants, either personally or through counsel while represented. On February 14, 2023, and again on June 5, 2023, Ms. Khaira, then representing Harbans and Jason, advised Mr. Duncan to proceed with Mr. Erickson's appraisal. It was to have been a joint retainer. Despite my order, Malvindar, Harbans and Jason failed to cooperate in jointly retaining Mr. Erickson and so the plaintiff proceeded with the retainer on her own.

[59] I am satisfied that Malvindar continues to control the process on behalf of himself, Harbans and Jason. It is also evident that, despite my order, he did

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whatever he could to thwart the plaintiff's efforts to obtain appraisals for the Properties, requiring the plaintiff to make an otherwise unnecessary application for an order appointing Mr. Erickson as the appraiser.

[60] I have no hesitation in ordering that Malvindar, Harbans and Jason reimburse the plaintiff for two-thirds the cost of the Appraisal, or $4,233.55 ($6,350 x 66.67%).

[61] The Market Rental Appraisal, however, is another matter. That appraisal was obtained by the plaintiff in support of her claim against Malvindar for breach of trust, which, as I have earlier stated, is not a claim she can make in the Application. It will have to await the outcome of a further action, should she decide to commence one.

[62] In sum, the plaintiff will have judgment against Malvindar, Harbans and Jason in the sum of $4,233.55, representing two-thirds of the cost of obtaining the Appraisal. She is not entitled to reimbursement for any portion of the Market Rental Appraisal at this juncture.

V. SUMMARY

[63] In sum, I make the following orders:

a) The plaintiff's application for a declaration as to the Properties' value is adjourned pending sale, if and when that should occur;

b) The plaintiff's application for a declaration that Malvindar's conduct caused her damage is dismissed;

c) The plaintiff's application for damages against Malvindar for breach of trust is dismissed;

d) The plaintiff's claim for a declaration of her current equitable interest in the Properties is adjourned;

e) The plaintiff's application for judgment against the defendants for the amount of that equitable interest is adjourned;

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f) Each party shall bear their own costs; and

g) The plaintiff is granted judgment against Malvindar, Harbans and Jason for two-thirds of the cost of the Appraisal, namely $4,233.55. Her application for reimbursement of the cost of the Market Rate Appraisal is dismissed.

VI. PARTING COMMENTS

[64] In order to expedite the resolution of this matter and the other issues between the current parties and the Jhutty Parties, I would encourage them to consider consolidating any enforcement actions that may be brought by the plaintiff respecting the Properties with the Jhutty Action.

"G.P. Weatherill J."

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