

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *British Columbia (Attorney General) v. Malik*,
2009 BCCA 510

Date: 20091118
Docket: CA036403; CA036406; CA036413

Docket: CA036403

Between:

**Her Majesty the Queen in right of the
Province of British Columbia as represented by
the Attorney General of British Columbia**

Respondent
(Plaintiff)

And

Ripudaman Singh Malik

Appellant
(Defendant)

And

**Raminder Kaur Malik, Jaspreet Singh Malik, Gurdip Singh Malik,
Hardeep Singh Malik, Darshan Singh Malik, Khalsa Developments Ltd.,
Papillon Eastern Imports Ltd., 0760887 B.C. Ltd. and 0772735 B.C. Ltd.**

Respondents
(Defendants)

- and -

Docket: CA036406

Between:

**Her Majesty the Queen in right of the
Province of British Columbia as represented by
the Attorney General of British Columbia**

Respondent
(Plaintiff)

And

Raminder Kaur Malik

Appellant
(Defendant)

And

**Ripudaman Singh Malik, Jaspreet Singh Malik, Gurdip Singh Malik,
Hardeep Singh Malik, Darshan Singh Malik, Khalsa Developments Ltd.,
Papillon Eastern Imports Ltd., 0760887 B.C. Ltd. and 0772735 B.C. Ltd.**

Respondents
(Defendants)

- and -

Docket: CA036413

Between:

Her Majesty the Queen in right of the

**Province of British Columbia as represented by
the Attorney General of British Columbia**

Respondent
(Plaintiff)

And

Jaspreet Singh Malik

Appellant
(Defendant)

And

**Ripudaman Singh Malik, Raminder Kaur Malik, Gurdip Singh Malik,
Hardeep Singh Malik, Darshan Singh Malik, Khalsa Developments Ltd.,
Papillon Eastern Imports Ltd., 0760887 B.C. Ltd. and 0772735 B.C. Ltd.**

Respondents
(Defendants)

Before: The Honourable Chief Justice Finch
The Honourable Mr. Justice Frankel
The Honourable Mr. Justice Tysoe

Supplementary Reasons to: Court of Appeal, May 7, 2009
(*British Columbia (Attorney General) v. Malik*, 2009 BCCA 201,
Docket CA036403; CA036406; CA036413)

Counsel for the Appellant, Ripudaman Singh Malik: B.E. McLeod

Counsel for the Appellant, Raminder Kaur Malik: T.R. Manson

Appearing in person: J.S. Malik

Counsel for the Respondent: F.G. Potts and R.N. Hamilton

Place and Date of Hearing: Vancouver, British Columbia
March 3 and 4, 2009

Place and Date of Judgment: Vancouver, British Columbia
May 7, 2009

Written Submissions Received: September 28, October 13, 16, 19
and 20, 2009

Date of Supplementary Judgment: November 18, 2009

Supplementary Reasons of the Court

Supplementary Reasons for Judgment of the Court:

[1] In reasons for judgment dated May 7, 2009 (2009 BCCA 201), we allowed each of the three appeals brought by Ripudaman Singh Malik (Mr. Malik), Raminder Kaur Malik (Mrs. Malik) and Jaspreet Singh Malik (Mr. Malik Jr.) by setting aside, in its entirety, the *Anton Piller* order obtained by the respondent, and by setting aside the *Mareva* injunction obtained by the respondent as against Mrs. Malik and Mr. Malik Jr.

We did not set aside the *Mareva* injunction as against Mr. Malik. It was supportable on the basis that the respondent is entitled to a constructive trust or an equitable charge in respect of Mr. Malik's assets.

[2] The parties subsequently requested leave to make submissions as to costs and two other issues. Leave was given, and we have now received submissions on behalf of the three appellants and the respondent. The respondent is no longer contesting the issue relating to the discharge of the *Mareva* injunction registered in the Land Title Office against properties in the names of Mrs. Malik and Mr. Malik Jr. The other issue relates to the assessment of damages suffered by Mr. Malik Jr. as a consequence of the *Mareva* injunction and the *Anton Piller* order, and we will address this issue before dealing with the issues relating to costs.

[3] As is required when applying for a *Mareva* injunction and an *Anton Piller* order, the applicant (the respondent) gave an undertaking as to damages to the Supreme Court. Mr. Malik Jr. asks this Court to include in its order allowing the appeals a provision stating that he is at liberty to commence an action against the respondent to assess his damages, if any, suffered as a result of the two orders. His reason for requesting this provision is to avoid waiting until the resolution of the main action in the Supreme Court before his damages are assessed.

[4] The undertaking was given by the respondent to the Supreme Court. It will be the Supreme Court that assesses any damages suffered by Mr. Malik Jr. In our view, the timing of an inquiry into damages should be left to the Supreme Court. Mr. Malik Jr. is at liberty to commence an action without the need to have the requested provision included in the order of this Court. As the provision has been requested as a means of giving direction to the Supreme Court, we conclude that the provision should not be included in the order of this Court.

[5] The issues on costs relate to the parties to whom costs should be awarded and the level of costs, both in this Court and in the Supreme Court. In their submissions on these issues, the parties made separate submissions with respect to the *Mareva* injunction and the *Anton Piller* order as if each of these orders was the subject matter of a separate appeal. However, both of the orders were appealed in all three of the appeals. In our view, it is more appropriate to deal with the costs of each appeal, rather than the costs pertaining to each order.

[6] Mr. Malik was successful in his challenge of the *Anton Piller* order and unsuccessful in his challenge of the *Mareva* injunction. As success was divided, we order that each party bear their own costs of Mr. Malik's appeal.

[7] Mrs. Malik and Mr. Malik Jr. were successful in their respective appeals and, unless the Court otherwise orders, they are each entitled to costs of their appeal by virtue of s. 23 of the *Court of Appeal Act*, R.S.B.C. 1996, c. 77. The respondent says they should only be entitled to one set of costs because their interests on appeal were identical and they succeeded on the same point of law. In our view, their positions on appeal were not identical, and they made submissions on different issues. The fact the two orders were set aside on an issue common to Mrs. Malik and Mr. Malik Jr. should not deprive them of a costs award to

which they are otherwise entitled.

[8] The costs of Mrs. Malik are to be assessed under Scale 2 set out in Appendix B to the *Court of Appeal Rules*, and are to be payable immediately following their assessment.

[9] Mr. Malik Jr. seeks a higher level of costs in his appeal. He says the costs should be special costs on the basis that unproven allegations of fraud or dishonesty are deserving of rebuke. Alternatively, he requests Scale 3 costs on the basis that the appeal was one of unusual difficulty or importance.

[10] The chambers judge had granted the *Mareva* injunction and the *Anton Piller* order on the basis of findings made by Madam Justice Stromberg-Stein in a *Rowbotham* application, made by Mr. Malik in connection with the costs of his defence in a criminal proceeding involving the 1985 Air India bombing, together with supplemental affidavit evidence. We allowed the appeal of Mr. Malik Jr. on the grounds that only some of those findings were admissible on the applications for the *Mareva* injunction and *Anton Piller* order, and that the admissible evidence did not establish a strong *prima facie* case of fraud or show a real possibility of destruction of incriminating documents.

[11] We did not find the allegations against Mr. Malik Jr. to be untrue. The appeal was decided on a point involving the doctrines of issue estoppel and abuse of process in relation to the admissibility into evidence of findings made on the *Rowbotham* application. In these circumstances, we do not believe that an award of special costs is warranted.

[12] We also do not regard the appeal to have been one of unusual difficulty or importance. We order the costs of Mr. Malik Jr. to be assessed under Scale 2 and to be payable immediately following their assessment.

[13] Finally, all three of the appellants request an order that they be entitled to the costs of the applications in the Supreme Court to set aside the *Mareva* injunction and the *Anton Piller* order. The allegations made by the respondent in obtaining the *Mareva* injunction and the *Anton Piller* order are substantially similar to the allegations the respondent will need to prove in the action against the appellants (other than the monetary judgment against Mr. Malik, which we understand the respondent has obtained). It seems to us that a relevant consideration in deciding an appropriate award of the costs of these applications would be the extent to which the respondent is able to prove the allegations at trial. Accordingly, we order the costs of the applications in the Supreme Court be left to the discretion of the trial judge.

“The Honourable Chief Justice Finch”

“The Honourable Mr. Justice Frankel”

“The Honourable Mr. Justice Tysoe”