

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Date: 20140219  
Docket: S083845  
Registry: Vancouver

Between:

**Royal Bank of Canada**

Plaintiff

And

**Seikhon Farms, a Partnership,  
Mohinder Kaur Seikhon and Sukhdev Singh Seikhon**

Defendants

And

**Manjit S. Sandhu, Arjun & Sons Farms Ltd., Satwinder Sharma,  
Ranjit S. Sandhu, Jas Sandhu and Jasran Growers Ltd.**

Third Parties

And

Docket: B081815  
Registry: Vancouver

**In Bankruptcy and Insolvency**

**In the Matter of the Bankruptcy of Gurdial Sandhu**

And

Docket: B081816  
Registry: Vancouver

**In Bankruptcy and Insolvency**

**In the Matter of the Bankruptcy of Manjit Singh Sandhu**

And

Docket: B081817  
Registry: Vancouver

**In Bankruptcy**

**In the Matter of the Bankruptcy of Jasmail Singh Sandhu**

**(Summary Administration)**

Before: The Honourable Mr. Justice Weatherill

**Oral Reasons for Judgment**

In Chambers

Counsel for Royal Bank of Canada:

J.F. Poulsen

Counsel for Seikhon Farms, Mohinder Kaur  
Seikhon and Sukhdev Singh Seikhon:

A. Habib  
C.D. Drinovz

Counsel for Manjit S. Sandhu, Arjun & Sons  
Ltd., Satwinder Sharma, Ranjit S. Sandhu,  
Jasran Growers Ltd. and Jasmail Sandhu:

F.R. Eadie

Place and Date of Trial/Hearing:

Vancouver, B.C.  
February 19, 2014

Place and Date of Judgment:

Vancouver, B.C.  
February 19, 2014

[1] **THE COURT:** The applicant, Jasmail Sandhu (“Jasmail”), assigned himself into bankruptcy on June 5<sup>th</sup>, 2008. He now applies for an order pursuant to s. 172(1) of the *Bankruptcy and Insolvency Act* that he be discharged from bankruptcy.

[2] The application is opposed by one of Jasmail’s creditors, the Royal Bank of Canada, as well as by Mohinder Seikhon and Sukhdev Seikhon, who have raised unproven allegations of fraud and conspiracy against Jasmail, among others, in a related proceeding.

[3] The facts giving rise to this application are as follows. Jasmail’s father, Manjit Sandhu (“Manjit”), was in the blueberry farming business in and around Abbotsford, British Columbia. In 2006, Manjit purchased farm property on McCallum Road. The title to that property was taken in the name of Manjit, his wife Gurdial (“Gurdial”), and Jasmail.

[4] The blueberry farming business being carried out on the McCallum Road property was owned by Arjun & Sons Farms Ltd (“Arjun”). The directors, officers and sole shareholders of Arjun were Manjit and Gurdial.

[5] On March 5<sup>th</sup>, 2007, the McCallum Road property was sold by Manjit, Gurdial and Jasmail to Ravinder and Satwinder Sharma (collectively “Sharma”) for \$1.625 million by way of an agreement for sale. Sharma paid a deposit of \$300,000 in respect of the agreement for sale. Arjun continued to carry out its blueberry farming business on the property. The \$300,000 deposit was used by Arjun for farming operations. The closing of the purchase and sale transaction was to be sometime in 2010.

[6] On June 12<sup>th</sup>, 2007, Manjit, Gurdial, Jasmail, Manjit’s brother Ranjit Sandhu (“Ranjit”) and Ranjit’s wife agreed to purchase farming property on Huntingdon Road in Abbotsford pursuant to an agreement for sale. Manjit felt that the Huntingdon Road property was better suited to his future blueberry farming and blueberry processing plans.

[7] In March 2008, Arjun obtained a loan of \$3 million from the Royal Bank of Canada to allow it to develop the Huntingdon Road property as a blueberry farm. Manjit, Gurdial and Jasmail guaranteed the loan.

[8] In late March 2008, Arjun agreed to sell 405,000 blueberry plants to the defendants Mohinder Seikhon and Sukhdev Seikhon (collectively “the Seikhons”) for \$850,000. Delivery of the plants was to be made by Arjun within two weeks.

[9] There is a conflict on the evidence regarding what followed. Manjit says that by agreement with Sharma, the closing of the McCallum Road property purchase was moved from 2010 to April 9, 2008. However, the mortgages against the McCallum Road property exceeded the balance of the purchase price payable by Sharma by approximately \$360,000. Manjit says that Sharma agreed to loan that amount to Manjit, Gurdial and Jasmail in order to allow completion of the purchase free of encumbrances. Sharma secured this loan by taking a general charge over the blueberry plants on the property, which were not included in the agreement for sale and continued to be owned by Arjun.

[10] Manjit says that on April 9, 2008, Seikhon gave him two cheques totalling \$850,000 as payment for the blueberry plants, which Manjit then deposited into Arjun’s account at the Royal Bank. Immediately thereafter bank drafts were issued by the Royal Bank on this deposit.

[11] A bank draft in the amount of \$367,022 was used to pay off the loan from Sharma. A second bank draft in the amount of \$185,000 was wired to India to pay a debt that Manjit says he owed there. The balance of the \$850,000 deposit was used to pay down a line of credit owed by Arjun as well as other debts. Curiously, it appears that no one at the Royal Bank thought to check to see if the Seikhon cheques cleared before they issued the bank drafts.

[12] The two cheques from Seikhon bounced.

[13] The Seikhons tell a different story. They say that in March when they agreed to purchase the plants for delivery before April 9, 2008, they gave Manjit two

cheques totalling \$850,000 postdated to April 9, 2008, told Manjit that there were insufficient funds in their accounts at that time to cover the cheques, but that they were planning to resell the plants they had purchased from Arjun and that there would then be sufficient funds once the resale had taken place.

[14] They also say that on April 5, 2008, Manjit told them that Arjun would be unable to deliver 450,000 plants to them. They say that in response they told Manjit that as a consequence they would not be able to resell the plants and that there would not be sufficient funds in the account to honour the cheques. They say they told Manjit not to present the cheques to the bank and to return them.

[15] They say further that Manjit allowed Sharma to encumber the blueberry plants by a charge under the *Personal Property Security Act* despite the obligation to deliver the same plants to Seikhon the following day.

[16] The Seikhons also say that on May 2<sup>nd</sup>, 2008 Jasmail incorporated Jasran Growers Ltd. for the fraudulent purpose of selling the blueberry plants to parties other than the Seikhons.

[17] In May 2008, the Royal Bank commenced action no. S083845 against the Seikhons in respect of the dishonoured cheques. The Seikhons commenced third party proceedings against, among others, Manjit and Jasmail.

[18] On June 5, 2008, Manjit, Gurdial and Jasmail made assignments into bankruptcy. Actions B081815, B081816 and B081817 are the bankruptcy proceedings in respect of Gurdial, Manjit and Jasmail respectively.

[19] On June 4, 2008, in support of his assignment into bankruptcy, Jasmail swore a statement of affairs to the effect that he had not sold or disposed of any property within the last five years and that he had not operated a business within the last five years. It appears on the evidence that this sworn statement was false. Jasmail along with his brother and mother had sold the McCallum Road property less than two months earlier. Moreover, Jasmail had been heavily involved in the operation of the Arjun's business for the previous several years.

[20] Recently, complex and serious allegations of fraud have been made by the Seikhons that the blueberry plants were moved by Jasmail and others from the McCallum Road property to other property being used by Manjit and Jasmail for the fraudulent purpose of enriching themselves to the exclusion of others with an interest in the plants. Allegations of conspiracy have also been advanced.

[21] The allegations include that Jasmail participated in the incorporation of no less than two corporate vehicles for the purpose of selling the subject blueberry plants, that these corporate vehicles received proceeds from the sale of the blueberry plants, and that these proceeds were not reported to the trustee in bankruptcy.

[22] Sections 172(2) and 173(1) of the *Bankruptcy and Insolvency Act* provide, among other things, that where there is proof that the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities (s. 173(1)(d)), has been guilty of fraud – (s. 173(1)(k)) – or has committed an offence under the *Bankruptcy and Insolvency Act* or any other statute in connection with the bankrupt's property (s. 173(1)(l)) – the court shall either refuse an application for discharge from bankruptcy, suspend the discharge for such period as the court thinks proper or require the bankrupt, as a condition of his discharge, to perform such acts, pay such moneys, consent to such judgments or comply with such other terms as the court may direct.

[23] Here there is no proof that Jasmail has been guilty of fraud; rather, there are unproven allegations of fraud against him. Mere allegations are not sufficient to defeat a bankruptcy discharge application under s. 173(1)(k) of the *Bankruptcy and Insolvency Act*. That subsection requires proof that the bankrupt is guilty of fraud: *Re Sidhu*, 2004 BCSC 1589 at para. 5 and *Re Calogheros*, 2010 BCSC 885.

[24] However, in my view, there is satisfactory proof that Jasmail not only committed perjury when he swore his statement of affairs on June 4<sup>th</sup>, 2008, as part of his assignment into bankruptcy, but also that he has failed to account satisfactorily for his loss or deficiency of assets to meet his liabilities.

[25] He swore under oath in a statement of affairs that he had not sold or disposed of any property within the previous 12 month period, yet he and his parents sold the McCallum Road property for \$1.625 million less than two months before. Moreover, Jasmail did not disclose to the trustee that he had entered into a 25 year lease of certain farm property located on Vye Road on April 1<sup>st</sup>, 2008, just over two months prior to the assignment into bankruptcy.

[26] Jasmail has not provided any explanation for these false sworn statements despite having been warned by Master Tokarek during a previous application for discharge in October 2010 that he must do so . He has provided no evidence of his income, expenses, assets or liabilities since his assignment into bankruptcy.

[27] I have considered whether I should exercise my discretion in favour of suspending the operation of an absolute discharge order for a specified time or granting a discharge order subject to terms. However, I am persuaded that Jasmail has not demonstrated he is yet deserving of any form of discharge, primarily because of his failure to provide any explanation for the false statement of affairs that he provided in June 2008, more than five and one half years ago.

[28] In the circumstances, I am not satisfied that an absolute discharge should be granted. The application is dismissed, with liberty to Jasmail to reapply upon evidence that his defaults have been satisfactorily explained.

[29] Anything else? Thank you.

“G.C. Weatherill J.”