

CITATION: Randhawa v. Randhawa
COURT FILE NO.: CV-18-593636-00CL
DATE: 20210916

SUPERIOR COURT OF JUSTICE – ONTARIO

(Commercial List)

RE: SWINDERPAL SINGH RANDHAWA

Applicant

AND:

RANA PARTAP SINGH RANDHAWA, PROEX LOGISTICS INC.,
GURU LOGISTICS INC., 1542300 ONTARIO INC. (OPERATED AS ASR
TRANSPORTATION), 2221589 ONTARIO INC., 2435963 ONTARIO INC.,
NOOR RANDHAWA CORP., SUPERSTAR TRANSPORT LTD.,
R.S. INTERNATIONAL CARRIERS INC., SUBEET CARRIERS INC.,
SUPERSTAR LOGISTICS INC., CONTINENTAL TRUCK SERVICES INC.,
and ASR TRANSPORTATION INC.

Respondents

BEFORE: Koehnen J.

COUNSEL: *John Picone, Natalie Levine* for the Receiver

Aaron Kreaden, for the Applicant

Lauren Mills Taylor, Shara Roy for the Respondents

HEARD: September 16, 2021

1. The Investigative Receiver in this matter seeks a variety of forms of relief. Almost all are agreed to. I have signed and attached orders relating to the unopposed relief. Those

orders relate to the sale of assets of a trucking business of which each of Paul and Rana owned 50%.

2. The only wrinkle in those orders is the request for a sealing order. The sealing order relates to the valuation of assets that an auctioneer is prepared to auction off.

3. I am satisfied that the sealing order meets the requirements *Sherman Estate v. Donovan*, 2021 SCC 25. Disclosing the confidential information protects a serious public interest, namely the interest of the two stakeholders to receive as much for their assets as possible. If that information were disclosed and the current proposal did not proceed, publication of the information could impair the value that the shareholders are able to receive for their assets in any subsequent transaction. The extent of the sealing is limited purely to the commercial terms on which the assets are being sold. The benefits of sealing that information outweigh the harm that would be caused if it were publicly disclosed.

4. The more contentious aspect of the relief the Investigative Receiver seeks is an order requiring Rana and his wife, Sukhdeep Randhawa to disclose what use they made of proceeds of a mortgage of approximately \$2.4 million on their family home which mortgage they entered into after the Receiver was appointed.

5. Rana opposes that order. He submits that such relief goes beyond the purpose of the receivership, would essentially appoint the Receiver as the personal Receiver of Rana and his wife without proper evidence, that the request for information about the mortgage is

grounded in Paul's speculation that he may be entitled to money from Rana, and that Sukhdeep is not a party to the proceedings and has not been served with them. Rana notes in particular that in appointing the Investigative Receiver, I noted that the receivership "should be carefully tailored to what is required to assist in the recovery while protecting the defendant's interests, and go no further than is necessary to achieve these ends": *Randhawa v. Randhawa* 2021 ONSC 3643 at paragraph 55.

6. The Receiver was appointed after the arbitrator in a proceeding between Paul and Rana had no success in obtaining sufficient information about the trucking business from Rana. The arbitrator appointed an inspector and directed the parties to move before this court if the inspector required powers against individuals who are not parties to the arbitration. The receivership and inspectorship orders authorize the Receiver to investigate the trucking business, including that of Motion Transportation.
7. The underlying concern was that Rana had a practice of moving money around with the possible effect of depriving Paul of his rightful share of the business. The arbitrator clearly came to that view. He noted that Rana had not acted in good faith, had not acted with transparency, and had failed to meet his disclosure obligations. In addition, the arbitrator made several findings that amounted to red flags for fraud: *Randhawa v. Randhawa* 2021 ONSC 3643 at paragraph 40-41.

8. The Receiver has become concerned about what appears to be a pattern of Rana dissipating his assets before the receiver submits its investigative report to the court. One issue in this regard is a \$2.4 million mortgage on his residential home.

9. There is some background to this transaction. When Paul was concerned that Rana was dissipating his assets, he asked about whether Rana was planning to sell his home. Rana denied that intention. Rana was then confronted with evidence that the house was being marketed for sale by a real estate agent. Rana then indicated that the intention had been to sell the house but that intention had now changed. Following those exchanges, the mortgage was registered. Paul then made inquiries about what the purpose of the mortgage was and what the funds were used for. Rana raised no objections to answering those questions. After a lengthy series of emails Rana answered that the house was in his wife's name, his wife had obtained the mortgage, and he was making inquiries with his wife about the use of the mortgage proceeds. When counsel followed up, Rana ultimately advised that "as a result of marital strife, he is unable to obtain the information sought with respect to the mortgage proceeds."

10. That answer is not credible. Rana is a guarantor of the mortgage. It is simply not believable that he would guarantee a \$2.4 million mortgage without having any knowledge of the purpose of the funds. The "marital strife" was a bald allegation. It was made in an email from his counsel to Paul's counsel. Rana has provided no evidence of efforts made to obtain the information. If it is in fact true that Rana cannot obtain this

information from his wife, then he should welcome the Receiver's efforts to obtain information about the use of \$2.4 million that Rana has guaranteed.

11. Rana's answer strikes me as a continuation of the lack of transparency that has made this whole matter as costly and time-consuming as it has been.
12. The lack of transparency is further complicated by the fact that Rana gave a series of undertakings on an examination. He committed to provide answers to those undertakings on September 9, 2021. He has not done so. Those undertakings include asking his wife about the details of the listing of the property on which the mortgage was ultimately placed. There are also a series of opaque financial transactions between Rana, his sons and Motion Transport.
13. Given that Rana claims he has no information about the use of the mortgage funds, it is appropriate for the investigator to seek that information from Rana's wife. I note that Sukhdeep is President and director of at least one of the transportation company businesses, Subeet Carriers Inc.
14. The Receiver notes in particular that if Rana is found to owe money to the business, the use of the proceeds of the mortgage could become particularly relevant. Rana submits through counsel that there has been no finding that he owes money to the business. The Receiver, rightly in my view, responds that the issue is not whether Rana owes money to the business but whether there is a basis to investigate that issue. The Receiver notes

further that it is obliged to report to the court, it cannot properly report to the court if it is not allowed to investigate what it believes should be investigated.

15. The Investigative Receiver's role is to investigate. The Receiver states it reasonably believes Sukhdeep has information relevant to the investigation. I am reluctant to require the Receiver to spell out in granular detail the specific way in which the use of the proceeds of the mortgage relates to its investigation. I am concerned that doing so will only lead Rana and his family members to further acts of deception. Requiring the Receiver to provide granular detail only gives Rana a roadmap of how to defeat the Receiver's investigation.

16. Given that the whole investigation is about the movement of money relating to the transportation business, Rana has admitted that money from the transportation business went into the house and given a series of opaque transactions between the transportation business, Motion Transport and Rana's family members, I am satisfied that the Receiver should be taken at its word if it says it reasonably believes that Sukhdeep has information relevant to the investigation.

17. The information the Receiver requests falls within the scope of its Investigative Mandate. Paragraph three of the amended and restated order appointing the Receiver provides that the Receiver is empowered to, among other things:

(ii) Investigate and report on any financial and operational issues ... and any other matters identified during the course of the Receiver's

investigation, in order to ensure that the Trucking Business is being sold in a manner that maximizes the value of that business.

18. For the foregoing reasons, I order Rana and Sukhdeep to disclose to the Receiver the use of the proceeds of the mortgage of the family home entered into following the commencement of the Receivership. As part of that disclosure obligation the Receiver will be entitled to examine either or both of Rana and Sukhdeep. If an examination occurs, neither Rana nor Sukhdeep will be entitled to attend the examination of the other.

Costs

19. The Receiver seeks costs of \$15,000 from Rana. Rana submits that if a cost order is made, it should be limited to \$5,000.

20. I order Rana to pay the Receiver's costs which I fix at \$15,000. That amount is payable within 30 days. As the Receiver noted, its request for costs is limited to the amended notice of motion and the Supplement to the Receiver's Fourth Report. Both of those documents relate primarily to the disclosure of mortgage information; not to issues that had been agreed to.



Koehnen J.

Date: September 16, 2021