

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***British Columbia (Attorney General) v. Malik,***
2007 BCSC 1798

Date: 20071213
Docket: S077088
Registry: Vancouver

Between:

**Her Majesty the Queen in Right of
the Province of British Columbia as Represented by
the Attorney General for British Columbia**

Plaintiff

And

**Ripudaman Singh Malik, 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.**

Defendants

AND

Docket: H070591
Registry: Vancouver

Between:

**Her Majesty the Queen in Right of
the Province of British Columbia as Represented by
the Attorney General for British Columbia**

Petitioner

And

**Ripudaman Singh Malik, Raminder Kaur Malik,
0772735 B.C. Ltd., Gurdip Singh Malik,
Balbir Singh Bajwa and Khalsa Developments Ltd.**

Respondents

Before: The Honourable Madam Justice Stromberg-Stein

Reasons for Judgment

Counsel for the Plaintiff:

F.G. Potts
J. Gopaulsingh

Counsel for the Defendants, Jaspreet Singh Malik and
0760887 B.C. Ltd.:

Gary Nelson

Counsel for the Defendants, Hardeep Singh Malik, Darshan
Singh Malik and 0772735 B.C. Ltd.:

Monique Pongracic-Speier

Counsel for the Defendant, Raminder Kaur Malik:

Thomas Manson
Raminder Kaur Malik
Representative

Ripudaman Singh Malik:

Self-represented

Gurdip Singh Malik and Balbir Singh Bajwa:

No Appearance

Date and Place of hearing:

November 29, 2007
Vancouver, B.C.

[1] The plaintiff, Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Attorney General of British Columbia, seeks a declaration that there are no restrictions on the use of any material filed or evidence adduced in the **Rowbotham** proceedings relating to Ripudaman Singh Malik (*R. v. Malik*, Vancouver Registry No. CC010287); or alternatively a declaration that the parties in British Columbia Supreme Court actions S077088 (the “Fraud Action”) and H070591 (the “Foreclosure Proceeding”) are free to access and disseminate the **Rowbotham** materials as required in the Fraud Action and/or Foreclosure Proceeding; or alternatively, the parties be granted leave, *nunc pro tunc*, to access and disseminate the **Rowbotham** materials as required in the Fraud Action and/or Foreclosure Proceeding.

[2] By way of background, in the Fraud Action the Attorney General of British Columbia advances a claim in fraud, conspiracy and debt against the defendants, Ripudaman Singh Malik, his wife, Raminder Kaur Malik, his brother Gurdip Singh Malik, his three sons Jaspreet, Hardeep and Darshan, and corporate entities controlled by the Malik family, Khalsa Developments Ltd., Papillon Eastern Imports Ltd., 0760887 B.C. Ltd., and 0772735 B.C. Ltd., to recover approximately \$5.2 million advanced to Ripudaman Singh Malik for his defence in the Air India criminal trial. There is an allegation that the defendants conspired to make false statements at Ripudaman Singh Malik’s **Rowbotham** application.

[3] The Foreclosure Proceeding relates to a warehouse owned by Ripudaman Singh Malik and his wife, Raminder Kaur Malik, used to secure approximately \$1.6 million advanced to Ripudaman Singh Malik for his defence in the Air India criminal trial. The defendants are Ripudaman Singh Malik, Raminder Kaur Malik, Gurdip Singh Malik, Balbir Singh Bajwa and two companies, 0772735 B.C. Ltd and Khalsa Developments Ltd.

[4] The defendants in the Fraud Action raise concerns about the scope or breadth of the declaration sought. They express concern about protecting their privacy interests in relation to their business and financial affairs. However, all the defendants agree it is appropriate to make an order that all the parties be granted access to the **Rowbotham** file for the purpose of inspecting and copying the documents or evidence, including affidavits and exhibits, and that all parties be at liberty to obtain transcripts of the proceeding for use in the Fraud Action and for no other purpose.

[5] In the Foreclosure Proceeding, counsel for 0772735 B.C. Ltd., argues the petitioner pleads substantially the same facts and seeks the same relief as in the Fraud Action and it is an abuse of process to bring two proceedings for the same relief. Counsel asserts an intention on the part of the respondents to make an application to strike the duplicate claims “in due course”. In the meanwhile, counsel argues this Court ought not to make any order that would affect the Foreclosure Proceeding and ought not to exercise its discretion to make an order in the face of an

alleged abuse of process.

[6] This matter is before me because I heard the **Rowbotham** application which gives rise to the Fraud Action.

[7] At the **Rowbotham** proceeding, I made the following orders, by consent: setting aside publication bans imposed by Tysoe J. and Dohm A.C.J.; and maintaining a ban on publication in the specific terms set out in the Defence Counsel Agreement, subject to the right of the media or other interested applicants to apply to vacate or vary the order. These orders were made without prejudice to the right of Ripudaman Singh Malik or other interested parties to apply for a ban in the future.

[8] There has been confusion about whether I also made a sealing order at the **Rowbotham** proceeding with respect to the material filed and the evidence received. The confusion seems to arise from the Clerk's notes, which appear to indicate a sealing order was made at the same time as the Consent Orders. There is no sealing order on file. The transcript from the **Rowbotham** proceeding, placed before me on this application, shows that Mr. Nathanson, on behalf of Mrs. Malik, suggested that at some point he may apply for a sealing order. However, I have not been shown any record of Mr. Nathanson making this application or of me making a sealing order.

[9] This matter was last before me on December 6, 2006, when the Law Society of British Columbia applied for access to the **Rowbotham** materials for the purposes of inspecting and copying the affidavits and exhibits for use in professional disciplinary proceedings against Jaspreet Malik, and for no other purpose. At the time, the parties, relying on the Clerk's notes, proceeded on the basis that I had made a sealing order at the **Rowbotham** proceeding. I made an order that provided that such material not be disclosed to any other person, other than for the limited purpose of conducting the professional disciplinary proceeding.

[10] The defendants rely on the *Criminal Law Practice Direction* and the supervisory role of the court to ensure no abuse or harm to innocent parties is caused in releasing the material sought. The Attorney General asserts the *Practice Direction* has no application. I do not have to decide this issue.

[11] I am satisfied there are no restrictions on anyone, for any purpose, with respect to use of the **Rowbotham** materials and transcripts of proceedings. I agree with counsel for the Attorney General that the defendants voluntarily swore affidavits and gave evidence at the **Rowbotham** proceeding. There was no ban and no restriction on the use of the material. Even if there was, the Fraud Action and Foreclosure Proceeding concern the very subject matter of the **Rowbotham** proceeding and it would not be in the public interest or in the interests of justice to maintain such ban or restriction.

[12] There is no bar to the parties using the **Rowbotham** materials and evidence in the Fraud Action and Foreclosure Proceeding. I make a declaration that there are no restrictions on the use of any material filed or evidence adduced in the **Rowbotham** proceedings relating to Ripudaman Singh Malik (**R. v. Malik**, Vancouver Registry No. CC010287).

“The Honourable Madam Justice Stromberg-Stein”