

Case brief

Law



**ASSIGN
BUSTER**

Case Brief This case involves Gurmej Singh Dhillon who is the appellant (Plaintiff) and Jalal. A.

Jaffer, who is the respondent (Defendant). The case was presented before the Honorable Mr. Justice Donald, Honorable Madam Justice. D. Smith and Honorable Mr. Justice Hinkson.

The counsel for the appellant was P. E. Jaffer and the counsel for the respondent was A. A. Macdonald.

Hearings were conducted in Vancouver British Columbia on March 12 and 13 2012. Judgment was delivered on April 11 2012 at Vancouver, British Columbia. The case was an appeal from the discharge of action against the defendant for the transfer of funds of the plaintiff to the plaintiff's estranged wife. Honorable Justice Donald allowed the appeal on grounds that the defendant had breached his duty of caring for the plaintiff. In addition, he was liable because of his negligence leading to damages. Summary This case was as a result of a series of cases that led to the final appeal. The case was first brought to court in 1992 when the estranged wife of the plaintiff had attempted to sell off land in a flawed process.

She was taken to court where Justice MacDonald made an order that he did not vary in 1993. Mr. Dhillon filed for an appeal but was unsuccessful. Both Mrs. Dhillon and her son had disposed this property by 2000 and Mr. Dhillon took them to court on accounts of fraud. Justice Pitfield later negated the fraud claims.

Granting of Color of Rights Issue to Mrs. Dhillon provided grounds for appeal. The appellant has issued claims of damage. Consequently, Justice Donald has granted the appeal stating the defendant had been responsible for negligence that led to claimed damages. Mr. Jaffer had also breached the Duty of Care for the plaintiff. Legal issues addressed in this case include; Color of Rights issue, Breach of Contract, negligence, Special Power of Attorney and the Family Relations Act. Judge Donald's final analysis asserted that some of the legal principle had been overlooked in the prior cases while others had been inconclusive.

Case Brief Previous cases leading to the appeal were overseen by Justice Macdonald. In 1992, Mr. Dhillon brought the case before the court.

On November 1992, the judge rejected to vary the order he had made. He gave reasons in response to intentions of the respondent to protect Mrs. Dhillon and her interest in the property.

This was to be done by bringing proceedings under Family Relations Act. When the proceedings were not undertaken, the judge settled on his orders on February 18 1993. Orders stated that the defendant's title to the land in Vancouver to be placed in the plaintiff's Lakhvinder Sing Hajran and Paramajit Sing Hothi. Consequently, it was vested that the property title was kept under the purchaser's names and the proceeds paid unto the respondent. Further orders directed that the total net sales be paid direct to Nasib Kaur Dhillon. This order was not followed and the respondent filed for an appeal in 1993 but the judge of the court denied it a stay as a result discontinuing the appeal. Mr.

Dhillon in 2000 found the property disposed by his wife and sued Mrs. Dhillon and their son Manohar Singh for fraud. Both had faked the Special Power Of Attorney by selling his property and withdrawing money from his Credit Union of Accounts. Justice Pitfield gave judgment on the case Dhillon v. Dhillon that negated the fraud claims. Mrs. Dhillon was granted color of rights issue. This provided grounds for appeal.

These cases lead to the appeal case where Justice Donald has granted judgment to the appellant and the Supreme Court will assess the damages. The appellant based the damage claims on causes of action in three categories: Breach of contract because the appellant was the client of the respondent, negligence because the respondent failed in fulfilling a Duty of Care as a non-client to the appellant and that the respondent had breached his fiduciary duty towards the appellant. According to the judge, the conduct of the respondent was not at par with the Standard of Care as is expected from a competent lawyer in accordance with the circumstances. Honorable Justice Donald's decision was also agreed by Honorable Madam Justice Smith and honorable Justice Hinkson. The judge's analysis on legal principle and considerations were conclusive. The case is centered on Special Power of Authority.

It allowed Mrs. Dhillon to perform the Purchase Contract and sell on behalf of her husband. Purchasers had particularly enforced the agreement. The Power of Attorney followed the disposition of proceeds conforming to the agreement. However, the sale would not have taken place.

In the previous case, the judge had overlooked the law of negligence on ignoring whether as a non-client the appellant was owed by the respondent a Duty of Care. Loss according to this case was solely economic. It is therefore a requirement that the tortfeasor and the victim have a proximate relationship.

Categories of proximity provide clarity on the law of negligence at the same time allowing it to develop in meeting needs that arise from new circumstances. The court had identified a category that was able to relate to the current circumstances of the case. Accordingly, Mr. Jaffer had the obligation to mind the interests of the applicant. Responsibility for handling the property of Mr. Dhillon was entitled to him. He was supposed to act in concurrence to the wishes of the appellant. However, Mr.

Jaffer acted contrary to Mr. Dillon's expectations and paid all proceeds to his estranged wife. Law society rules are also employed by the judge to reach his decision. Honorable Macdonald employs decisions by Esser (where a vendor had also been defrauded) to form the basis of his orders. Contrary to Esser's case, the notary had followed the normal practice by conveyances but in this case, a conflict of interest had been established for the respondent. According to the judge, prior judgments did not follow Action within the Family Relations Act proceedings.

According to his precedence, Justice Macdonald had set the standards of solicitors at very low and risky levels. The respondent faces a problem of application of the primary principles that must be followed by all lawyers. Judicial precedents are used by judges as a basis for their decisions and the

final orders borrowed from decisions from judges in previous related cases (Yogis, et. al, 2003). Reasons stated by Justice Donald are clear, as the other judges had ignored basic principles. He followed the law under the Family Relations Act. This was in adherence to the law, which was ignored by prior cases leading to the appeal. One of the judges had also made an assumption in relation to a previous case leading to inconclusive orders.

Some of the principles overlooked include; the process of law must be followed and an individual's property should be taken without following set laws and regulations. Specific performance action is not part of a Family Relations Act as the previous judge had concluded without proper scrutiny of the case. Reference Yogis, J. A., & Gifis, S. H. (2003).

Canadian law dictionary. Hauppauge, NY: Barron's.