IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Emond v. British Columbia (Attorney General),* 2024 BCSC 861

Date: 20240521
Docket: S055295
Registry: Vancouver

Between:

Jean-Claude Emond

Plaintiff

And

His Majesty the King in Right of the Province of British Columbia as Represented by the Ministry of the Attorney General and Ministry of Public Safety and Solicitor General, His Majesty the King in Right of Canada as Represented by the Ministry of Attorney General and Ministry of Public Safety and Solicitor General of Canada, Constable K. Meglic, Constable B. Williams, Constable R. Heppell, Constable D. Thompson, Constable J. Wilson and Constable Pawar

Defendants

Before: Associate Judge Nielsen

Reasons for Judgment on Costs

Counsel for the Defendants, His Majesty the King in Right of Canada as represented by the Ministry of Attorney General and Ministry of Public Safety and Solicitor General of Canada, Constable K. Meglic, Constable B. Williams, Constable R. Heppell, Constable D. Thompson, Constable J. Wilson and Constable Pawar:	C.N. Landsiedel
Written Submissions from the Defendants:	May 3, 2024
Place and Date of Judgment:	Vancouver, B.C. May 21, 2024

[1] In reasons for judgement cited *Emond v. British Columbia (Attorney General)*, 2024 BCSC 582, the plaintiff's costs were assessed at $65,636.73 before adjustment for a finding of contributory negligence by the trial judge, and before consideration of an offer to settle the bill of costs made by the defendants prior to the assessment, pursuant to section 8 of Appendix B of the *SCCR's*. With a deduction of 25% for contributory negligence, the plaintiff's total recovery for costs would be $49,227.55, subject to the defendants offer to settle.

[2] A schedule for submissions regarding the defendants offer to settle costs was established, but for reasons not explained, the plaintiff did not provide any written submissions within the time frame, or at all.

[3] Section 8 of Appendix B provides:

> 8. A party to an assessment may serve on another party an offer to settle the amount of the bill of costs in Form 123 and, after the assessment has been completed, may produce the offer to the registrar, and the registrar must determine whether the offer should have been accepted and, if so, may disallow items of the Tariff that relate to the assessment to the party presenting the bill, and
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> (a) allow, by way of set-off, items of the Tariff that relate to the assessment to the party making the offer, or
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> (b) allow double the value of items of the Tariff that relate to the assessment to the party presenting the bill and making the offer.

[4] On February 6, 2023 the defendants served the plaintiff with an offer to settle in the amount of $48,000 in Form 123. The offer quantified the plaintiff's costs at $63,914.91 before the deduction for contributory negligence. In the final result, the defendants offer to settle is $1,227. 55 less than the result following assessment.

[5] The defendants submit that the fact their offer did not beat the assessment amount in favor of the plaintiff is not the end of the analysis. The defendants submit that the court may consider whether an offer should have been accepted even if the amount offered is less than the amount awarded. The defendants submit that the court's approach, according to s. 8 of Appendix B, is to take a holistic approach "to determine whether the offer should have been accepted, and if so, disallow items of

the Tariff that relate to the assessment to the party presenting the bill". It is not merely an arithmetic calculation.

[6] The defendants cite *Couture v. Oviatt*, 2009 BCSC 155 where the registrar states at paras. 3, 7, and 9:

> [3] The parties have now delivered written submissions regarding the effect of various offers to settle delivered by the defendants. One of those offers was delivered pursuant to *Rule 37A* (repealed by B.C. Reg. 130/2008, effective July 1, 2008). I need not consider the effect of that offer. *Rule 37B* now governs the impact of offers made under former *Rule37A.* However, *Rule 37B* does not apply to matters before the registrar. Only the court may consider the impact of an offer to settle under that *Rule* when exercising its discretion as to costs, and the registrar is not the court: *Long, Miller v. Sawchuk*, 2002 BCSC 542 at paras 97 and 98.
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> …
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> [7] I reject this submission. The registrar may consider whether the offer should have been accepted even if the offer is less than the amount awarded. Reference to both the former *Rule 37* and *Rule 37B* supports this conclusion.
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> …
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> [9] In contrast, under *Rule 37B*, the costs consequences are not determined by an arithmetic calculation. Rather, the court "may consider an offer to settle" when determining costs: *Rule 37B (3).* One of the considerations for the court is "whether the offer to settle was one that ought reasonably to have been accepted". Section 10 of Appendix B uses similar language: the registrar "shall determine whether the offer should have been accepted".

[7] I agree the approach mandated by s. 8 of Appendix B is not merely an arithmetic calculation. Rather, it requires a nuanced consideration of whether the offer to settle ought to have been accepted in all the circumstances.

[8] The plaintiff was self represented at the assessment of costs, and has been for some time prior to trial. The plaintiff advanced seven offers to settle his bill of costs ranging between $158,000 and $378,000. The defendants, in rejecting the plaintiff's various offers to settle, explained their position in writing, and provided their assessment of each individual tariff item and disbursement claimed. The defendants also urged the plaintiff to obtain legal advice. The defendants served their offer to settle the plaintiff's costs in the amount of $48,000 on February 6, 2023.

[9] During the course of the assessment of costs it was clear that the plaintiff did not understand what constituted a proper disbursement. Also, where the tariff provided for a range of units claimable, the plaintiff consistently claimed the maximum amount regardless. As a result, the plaintiff's views concerning his claim for costs were completely unrealistic. This combination of factors made the potential for settlement of the plaintiff's bill of costs illusive at best. These findings are not meant to be a negative reflection upon the conduct of the plaintiff during the assessment of costs. The plaintiff was, at all times during the assessment, polite, cordial, and accommodating. However, in my view, the plaintiff's position with respect to the claims put forward at the assessment of costs were objectively unrealistic and unreasonable in the circumstances.

[10] Further, if the tariff items representing the assessment of costs including a half day for the pre-hearing conference and two days for the assessment of costs are removed from the equation, the defendants did beat their offer to settle the plaintiff's bill of costs. At para. [37] of *Emond v. British Columbia (Attorney General)*, 2024 BCSC 582 a total of 14 units were awarded for the costs associated with the assessment. This totals $1,540. If this amount is subtracted from the 49,227.55 the remainder is $47,687.55, an amount less than the $48,000 offered in settlement by the defendants.

[11] The preparation of the hearing record by the defendants at a cost of $2,130.88, a pre-hearing conference in accordance with AN-8, and a two-day assessment of costs was not warranted in all the circumstances given the ultimate outcome, nor was it warranted on a reasonable assessment beforehand. The defendants offer to settle the plaintiff's bill of costs in the amount of $48,000 was reasonable and it ought to have been accepted in the circumstances.

[12] The defendants seek a certificate that further reflects a reduction of the plaintiff's costs in the amount of $1,320 representing twelve units for the two-day assessment. They also seek a further reduction in the amount of $1,320 for their appearance at the two-day assessment, and a further reduction in the amount of

$2,130.88 for their costs associated with the production of the hearing record. This would reduce the costs awarded to the plaintiff, before the deduction of contributory negligence to $60,865.85, and after, to $45,649.39.

[13] Section 8 of Appendix B allows the registrar to "disallow items of the Tariff that relate to the assessment to the party presenting the bill", and subsection 8(a) allows for a corresponding award of units to the defendants and their disbursements incurred on the assessment, "by way of set-off". I agree with the submissions of the defendants that the reduction they seek is appropriate in the circumstances. Accordingly, a certificate in the amount of $45,649.39 may be submitted for signature.

"Associate Judge Nielsen"