IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ibrahim v. Allibhai,*
2024 BCSC 2198

Date: 20241206
Docket: S2013505
Registry: Vancouver

Between:

Ali Ibrahim

Plaintiff

And

Karim Allibhai

Defendant

Before: The Honourable Madam Justice Murray

Reasons for Judgment on Costs Application

Counsel for the Plaintiff:	A. Grewal
Counsel for the Defendant:	A. Shee
Place and Date of Hearing:	Vancouver, B.C. October 18, 2024
Place and Date of Judgment:	Vancouver, B.C. December 6, 2024

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INTRODUCTION

[1] In May 31, 2024 Reasons for Judgment following a trial, indexed as 2024 BCSC 955, I dismissed all of the plaintiff, Mr. Ibrahim's claims, and granted the defendant Mr. Allibhai's counterclaim.

[2] As the successful party, Mr. Allibhai is entitled to costs.

[3] Mr. Allibhai seeks an order for double costs pursuant to Rule 9-1(5)(b) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, in respect to all steps taken in this litigation after July 7, 2021, the date upon which he made a formal offer to settle. He seeks ordinary costs for all steps prior to that date.

[4] The issue to be decided is whether double costs are appropriate.

[5] The factors to be considered in making an order for double costs are set out in Rule 9-1(6):

a) Whether the offer to settle was one that ought reasonably have been accepted, either on the date the offer was delivered or served or on any later date;

b) The relationship between the terms of settlement offered and the final judgment of the court;

c) The relative financial circumstances of the parties; and

d) Any other factor the court considers appropriate.

[6] The issue turns on the first factor, that is, whether the offer was one that ought reasonably to be accepted.

DISCUSSION

[7] On July 7, 2021, Mr. Allibhai made a formal offer to settle pursuant to Rule 9-1 in these terms:

a) Payment to Mr. Ibrahim of $5.00;

b) Mr. Ibrahim will discontinue all claims set out in his Notice of Civil Claim on a no costs basis;

c) Mr. Allibhai will discontinue all claims set out in his Counterclaim on a no costs basis.

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[8] At trial all of Mr. Ibrahim's claims were dismissed and Mr. Allibhai was awarded general damages for abuse of process in the amount of $3,336.11 and punitive damages in the amount of $5,000.

[9] Our Court of Appeal set out the principles to guide courts in determining whether to order double costs in *Hartshorne v. Hartshorne*, 2011 BCCA 29:

> [25] An award of double costs is a punitive measure against a litigant for that party's failure, in all of the circumstances, to have accepted an offer to settle that should have been accepted. Litigants are to be reminded that costs rules are in place "to encourage the early settlement of disputes by rewarding the party who makes a reasonable settlement offer and penalizing the party who declines to accept such an offer" (*A.E. v. D.W.J.*, 2009 BCSC 505, 91 B.C.L.R. (4th) 372 at para. 61, citing *MacKenzie v. Brooks*, 1999 BCCA 623, *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201 (C.A.), *Radke v. Parry*, 2008 BCSC 1397). In this regard, Mr. Justice Frankel's comments in *Giles* are apposite:
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>> [74] The purposes for which costs rules exist must be kept in mind in determining whether appellate intervention is warranted. In addition to indemnifying a successful litigant, those purposes have been described as follows by this Court:
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>> · "[D]eterring frivolous actions or defences": *Houweling Nurseries Ltd. v. Fisons Western Corp.* (1988), 37 B.C.L.R. (2d) 2 at 25 (C.A.), leave ref'd, [1988] 1 S.C.R. ix;
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>> · "[T]o encourage conduct that reduces the duration and expense of litigation and to discourage conduct that has the opposite effect": *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201 at para. 28 (C.A.);
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>> · "[E]ncouraging litigants to settle whenever possible, thus freeing up judicial resources for other cases: Bedwell v. McGill, 2008 BCCA 526, 86 B.C.L.R. (4th) 343 at para. 33;
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>> · "[T]o have a winnowing function in the litigation process" by "requir[ing] litigants to make a careful assessment of the strength or lack thereof of their cases at the commencement and throughout the course of the litigation", and by "discourag[ing] the continuance of doubtful cases or defences": *Catalyst Paper Corporation v. Companhia de Navegação Norsul*, 2009 BCCA 16, 88 B.C.L.R. (4th) 17 at para. 16.

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> ….
>
> [27] The first factor – whether the offer to settle was one that ought reasonably to have been accepted – is not determined by reference to the award that was ultimately made. Rather, in considering that factor, the court must determine whether, at the time that the offer was open for acceptance, it would have been reasonable for it to have been accepted: *Bailey v. Jang*, 2008 BCSC 1372, 90 B.C.L.R. (4th) 125 at para. 24; *A.E. v. D.W.J.* at para. 55. As was said in *A.E. v. D.W.J.*, "The reasonableness of the plaintiff's decision not to accept the offer to settle must be assessed without reference to the court's decision" (para. 55). Instead, the reasonableness is to be assessed by considering such factors as the timing of the offer, whether it had some relationship to the claim (as opposed to simply being a "nuisance offer"), whether it could be easily evaluated, and whether some rationale for the offer was provided. We do not intend this to be a comprehensive list, nor do we suggest that each of these factors will necessarily be relevant in a given case.
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> [Emphasis added.]

[10] Mr. Allibhai submits that the offer should have reasonably been accepted for two reasons:

a) Mr. Ibrahim ought to have known at the time the offer was made that his claims stood no chance of succeeding at trial; and

b) The offer involved a "significant discounting" by Mr. Allibhai of his counterclaim.

[11] Mr. Ibrahim argues that it was reasonable for him to not accept the offer at the time it was made, although it would have been reasonable for him to accept it closer to the trial. When pressed for when that was, Mr. Ibrahim was unable to say.

[12] At the time the offer to settle was made, (he later amended his NOCC to add additional claims), Mr. Ibrahim's sole claim was for misappropriation of rent. Specifically, Mr. Ibrahim claimed that Mr. Allibhai breached a verbal agreement to manage rentals of Mr. Ibrahim's home while Mr. Ibrahim was incarcerated by keeping the rent, thereby stealing $61,750. Mr. Ibrahim was aware, through the Response to Civil Claim that Mr. Allibhai denied ever collecting any rents. Mr. Ibrahim was further aware that Mr. Allibhai had filed a counterclaim seeking

damages for abuse of process for the Certificate of Pending Litigation (CPL) Mr. Ibrahim placed on his property.

[13] I find that that at the time of the offer, Mr. Ibrahim knew or ought to have known that his claim lacked merit and had little to no chance of success. It was based on his bare assertion. He had no evidence of any kind to substantiate his claim- no records of tenancies, no banking records, and no evidence from tenants stating that they paid Mr. Allibhai rent for Mr. Ibrahim's property. Mr. Ibrahim was aware that Mr. Allibhai denied collecting rents for him. It was his word against Mr. Allibhai's. Although Mr. Ibrahim would not have known that I would have trouble with his credibility, he ought to have known that he was not likely to succeed without some supporting evidence.

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[14] Further at the time of the offer, Mr. Ibrahim knew or ought to have known that there was a substantial likelihood that Mr. Allibhai would succeed in his counterclaim as the CPL was grounded on a spurious claim.

[15] Mr. Allibhai's offer presented Mr. Ibrahim an opportunity to abandon his action without having to pay costs and escape possible liability for filing an abusive CPL.

[16] There is an obligation on litigants to continually assess their cases and to not continue to pursue actions that have little to no chance of success. Mr. Ibrahim failed to do so.

[17] While it is infrequent that nominal offers to settle would be seen as ones that ought to have been accepted, in the unusual circumstances of this case, I am satisfied that the offer to settle was one that Mr. Ibrahim ought to have accepted.

CONCLUSION

[18] I order double costs for every step of the litigation from July 7, 2021, and ordinary costs up to that date.

"The Honourable Madam Justice Murray"