IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *George v. Vossen,*
2024 BCSC 1764

Date: 20240925
Docket: S235149
Registry: New Westminster

Between:

Mary Ann George

Plaintiff

And

Patrick Vossen and Rodger Ivan Vossen

Defendants

Before: The Honourable Mr. Justice Blok

Reasons for Judgment on Costs

The Plaintiff, appearing in person:	M.A. George
Counsel for the Defendants:	R.J. Morton J.M. Jutras
Written Submissions Received from the Defendants:	July 31, 2024
Place and Date of Judgment:	New Westminster, B.C. September 25, 2024

I. Introduction

[1] The plaintiff's claim was dismissed on July 11, 2024, following a six-day trial. The reasons for judgment may be found at 2024 BCSC 1246.

[2] The successful defendants now apply for double costs as a result of formal settlement offers they made.

[3] In the last line of the judgment, I indicated that any party wishing to speak to costs should make arrangements to do so within 30 days. The defendants responded with written costs submissions filed July 31, 2024.

[4] On August 2, 2024, I issued the following memorandum to the parties:

> The Scheduling Manager in New Westminster has forwarded costs submissions submitted by the defendants. Although I did not direct that costs be dealt with in this way, I am content to do so, but some further directions are needed.
>
> In my reasons for judgment of July 11, 2024, I directed that any party wishing to make costs submissions should "make arrangements", meaning arrangements for a further Court hearing. However, costs are often dealt with in writing and since the defendants have already provided written submissions, I will allow the plaintiff to do so as well.
>
> Accordingly, I direct that Ms. George provide any written submissions on costs on or before August 31, 2024. Should Ms. George not provide submissions by that date, I will proceed to decide costs on the basis of the defendants' submissions alone. Submissions should be sent to the Scheduling Manager in New Westminster.

[5] The Court's communications system shows that the plaintiff, Ms. George, received that memorandum on August 8, 2024.

[6] Ms. George has not responded with any costs submissions and, as a result, I am proceeding to decide costs on the basis of the defendants' submissions alone.

II. Nature of the Case

[7] The full background of this case is set out in the reasons for judgment, and so I will not repeat that here. The brief circumstances are set out in the opening paragraphs of the judgment:

> [1] This case involves a dispute over the ownership and sale of a recreational property located east of Lone Butte, British Columbia (the "Cabin Property").
>
> [2] The Cabin Property was purchased in May 1981 for use as a summer place by members of the Vossen family.
>
> [3] The plaintiff, Mary Ann George, asserts that her interest in the Cabin Property is greater than that acknowledged by the defendants. She seeks a determination of her interest and an order conveying title to her to the extent of that interest, along with other relief.
>
> [4] The defendants also seek a determination of the ownership interests, but they also seek the sale of the property, which the plaintiff staunchly opposes.

III. The Offers to Settle

[8] The defendants made two offers to settle, with the first dated January 27, 2022, and the second dated June 8, 2023.

[9] The first offer involved a proposed payment to the plaintiff of $33,680.60. In making this offer the defendants attributed to the plaintiff an 11.614 percent interest in the disputed property and used an overall property value of $290,000, which was based on an appraisal obtained by the plaintiff. The offer was open until March 10, 2022. The plaintiff did not respond to that offer.

[10] The second offer, made 18 months later, proposed the listing and sale of the property, with the plaintiff to receive 18.18 percent of the net sale proceeds. That percentage matched the ownership percentage alleged by the plaintiff. The offer was open until June 30, 2023. The plaintiff did not respond to that offer.

[11] The result from the trial was that the defendants' figures for the interests of each of the eight family members were accepted, with the plaintiff's interest found to be 11.844 percent. The property was ordered listed and sold.

IV. Double Costs

[12] Offers to settle are governed by Rule 9-1, which sets out costs options available to the Court where an offer to settle has been made. One of those options is to award double costs of all or some of the litigation steps taken after delivery of the offer to settle.

[13] Rule 9-1(6) identifies certain factors the Court may consider when making a costs award following an offer to settle:

> (6) In making an order under subrule (5), the court may consider the following:
>
> (a) whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle 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;
>
> (d) any other factor the court considers appropriate.

V. Position of the Defendants

[14] As to the first offer, the defendants say that offer was made at an early stage in the proceedings; in fact, just one day after the defendants filed their response to civil claim and counterclaim. The offer was accompanied by a thorough review of the background of the dispute and a clear explanation of the basis for the offer.

[15] The defendants say that the first offer was a genuine attempt at compromise, as they aimed to reach a middle ground between the positions of the parties.

[16] Even if the first offer is found to be insufficient to warrant an award of double costs, the second offer was clearly one the plaintiff ought to have accepted given that, at 18.18 percent, it well exceeded the plaintiff's ownership percentage as determined after trial (11.844 percent).

[17] Also, the second offer came shortly after the parties had attended a judicial settlement conference and after a family vote, where all beneficial owners other than the plaintiff voted in favour of selling the property. The defendants say that by this point, the plaintiff had no reasonable basis to believe she could successfully oppose the sale of the property contrary to the wishes of the other owners.

[18] The defendants also emphasize that in making the second offer, they drew to the plaintiff's attention the applicable *Rules* concerning costs and explained the consequences that could flow from the plaintiff's failure to accept their offer.

VI. Discussion

[19] I am not satisfied that the first offer was “one that ought reasonably to have been accepted”, but I am satisfied the second offer meets that test.

[20] As to the first offer, I am satisfied there was more than money involved in this family dispute. The plaintiff, in particular, viewed the disputed property in a highly sentimental manner and felt the property should be somehow retained within the family for ongoing family use. She was particularly concerned that the wishes of all family members had not been properly canvassed.

[21] These matters had not really been addressed by the time of the first offer. However, they had been fully addressed by the time of the second offer. By that point, there had been a family vote heavily in favour of the sale of the property. In addition, the parties had also been before the Court on a contested application for the sale of the property, which failed because the judge held that a determination of that issue could not be made on a summary basis on the current evidence, and they had also attended a judicial settlement conference before that same judge. In other words, by the time of the second offer, the issues were clearly defined and the views of the family members well known. I agree that by that point, the plaintiff no longer had any reasonable basis to believe she could obstruct a sale of the property contrary to the wishes of the other owners.

[22] Accordingly, by that point the only substantive matter in issue was the plaintiff’s ownership percentage, and the second offer would have given the plaintiff exactly what she was claiming. Instead, she proceeded to trial and achieved a much smaller percentage.

[23] The defendants addressed the other factors set out in Rule 9-1(6), but I find it unnecessary to discuss these in detail. The “relative financial circumstances of the parties” is difficult to assess as there was little direct evidence on the subject, but I am satisfied the apparent financial circumstances of the parties are not so different that this factor is a material one here. The defendants also point to the various procedural defaults of the plaintiff (failing to deliver a list of documents despite

orders, failing to respond to outstanding discovery requests despite being ordered to respond), arguing that these matters also weigh in the defendants' favour, but I find it unnecessary to analyse those points as I am well-satisfied that double costs ought to be awarded in any event.

[24] The defendants also seek an order that the costs award be ordered deducted from the plaintiff's share of the sale proceeds from the property.

[25] I am satisfied I have the jurisdiction to make that order, based on s. 16 of the *Partition of Property Act*, R.S.B.C. 1996, c. 347 and Rule 14-1(16). The former says:

> [16] In a proceeding for partition the court may make an order it thinks just respecting costs up to the time of hearing.

[26] Rule 14-1(16) says:

> (16) If it is ordered that any costs are to be paid out of an estate or property, the court may direct out of what portion of the estate or property the costs are to be paid.

[27] The limited evidence of the plaintiff's financial circumstances suggests she probably does not have the ready ability to pay any award of costs from her own resources. That, together with the plaintiff's lack of diligence in complying with Court orders and other litigation obligations persuades me that the order sought by the defendants ought to be made.

VII. Summary

[28] I make the following orders:

a) The plaintiff shall pay the defendants' costs of the claim and counterclaim at Scale B up to June 6, 2023 and double costs at Scale B thereafter; and

b) The award of costs in favour of the defendants shall be deducted from the plaintiff's share of the net proceeds of sale of the subject property.

"Blok J."