

CANADA / JUDGMENT

1029865 B.C. Ltd. v. 1007442 B.C. Ltd.

2017 BCSC 2381

COURT

Supreme Court of British Columbia

DECIDED

22 December 2017

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2017 BCSC 2381 1029865 B.C. Ltd. v. 1007442 B.C. Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: 1029865 B.C. Ltd. v. 1007442 B.C. Ltd., 2017 BCSC 2381 Date: 20171222 Docket: S161485 Registry: Vancouver Between: 1029865 B.C. Ltd. and Aditya Mohan Plaintiffs And 1007442 B.C. Ltd., Hanson Wang, Royal Pacific Realty (Kingsway) Ltd. and Sutton Group - West Coast Realty carrying on business as Sutton Group West Coast Defendants Before: The Honourable Madam Justice Burke Reasons for Judgment on Costs Counsel for the Plaintiffs: P.T. Busch Counsel for the Defendant, 1007442 B.C. Ltd.: R.J. Morton Counsel for the Defendants, Hanson Wang and Royal Pacific Realty (Kingsway) Ltd.: C.J. Johnston Dates of Written Submissions: July 4, 2017 July 6, 2017 Place and Date of Judgment: Vancouver, B.C. December 22, 2017

Introduction

- [1] On June 5, 2017, the Court rendered its reasons for judgement in this matter, indexed at 2017 BCSC 926. The Court dismissed the claim of the plaintiff and granted the counterclaim of 1007442 B.C. Ltd. in this matter.
- [2] The issue of costs remains outstanding.
- [3] I will be brief.
- [4] Costs in the normal course at Scale B are awarded to the successful party.
- [5] The only issue is whether double costs arising from an offer to settle made in this matter should be awarded under Rule 9-1 of the Supreme Court Civil Rules, B.C. Reg. 169/2009.

Background

- [6] 1007442 B.C. Ltd. made an offer to settle pursuant to Rule 9-1 on March 11, 2016. This offer provided for payment of \$15,000 to the plaintiffs from the \$100,000 deposit held in trust by the defendant Sutton Group West Coast ("Sutton Group"), with the balance released to the vendor, 1007442 B.C. Ltd. It also set out a summary of the evidence available to the parties and the applicable law, which is argued to enable the plaintiffs to conclude they had no reasonable prospect of recovering the \$100,000 deposit.
- [7] The defendants, Hanson Wang and Royal Pacific Realty (Kingsway) Ltd. ("Royal Pacific") also made an offer to settle pursuant to Rule 9-1 on January 5, 2017. That offer consisted of a consent dismissal order in exchange for a waiver of costs, and it set out the reasons why there was no good claim for misrepresentation, negligence or otherwise against these defendants. Should double costs be awarded under Rule 9-1?
- [8] One of the purposes of costs is to deter litigation and the unnecessary costs associated with doubtful cases or defences: see *Hartshorne v. Hartshorne*, 2011 BCCA 29, at para. 25; *Catalyst Paper Corporation v. Companhia de Navegação Norsul*, 2009 BCCA 16, at paras. 13-16. The object is to lessen the expenses of litigation for parties who act reasonably and to impact on those who do not: *Hutson v. Michaels of Canada, ULC*, 2009 BCSC 1587, at para. 7.
- [9] Rule 9-1 states in relevant part: Offer may be considered in relation to costs
- (4) The court may consider an offer to settle when exercising the court's discretion in relation to costs. Cost options
- (5) In a proceeding in which an offer to settle has been made, the court may do one or more of the following:
- (b) award double costs of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle;
- (d) if the offer was made by a defendant and the judgment awarded to the plaintiff was no greater than the amount of the offer to settle, award to the defendant the defendant's costs in respect of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle. Considerations of court
- (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.

- [10] Ultimately, I must consider whether the offer to settle was an offer that ought reasonably to have been accepted.
- [11] Both offers were reasonable and set out in detail the arguments in support. The outcome in this case, however, depended in part on findings of credibility. While the documentary evidence better supported the defendants, as in *Aujla v. Kaila*, 2011 BCSC 466 at para. 10, credibility findings in their favour were required in respect of whether the provision of certain architectural plans was part of the contract between the parties, and whether the defendants made a statement to the plaintiffs that such plans would be included as part of the contract. As a result, some risk was faced by each of the parties should they proceed to trial.
- [12] In these circumstances I am not prepared to apply what is in essence a "punitive measure" against the plaintiffs for not accepting the offer.
- [13] Accordingly, I award ordinary costs at Scale B to the defendants in this matter. "The Honourable Madam Justice E. Burke"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/17/23/2017BCSC2381.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/1029865-b-c-ltd-v-1007442-b-c-ltd-2017-bcsc-2381>

Prepared on 29 October 2026 · Esheria