

CANADA / JUDGMENT

Bertolami v. Money Family Projects Ltd.

2020 BCSC 883

COURT

Supreme Court of British Columbia

DECIDED

12 June 2020

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

2020 BCSC 883 Bertolami v. Money Family Projects Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Bertolami v. Money Family Projects Ltd., 2020 BCSC 883 Date: 20200612 Docket: S174917 Registry: Victoria Re: In the Matter of Easements And In the Matter of Money Family Projects Ltd. Between: Attilio Bertolami Plaintiff And Money Family Projects Ltd. Defendant Before: The Honourable Mr. Justice Myers Reasons for Judgment on Costs Counsel for the Plaintiff: David T. Juteau Counsel for the Defendant: L. John Alexander Lindsay R. LeBlanc Written Submissions: Victoria, B.C. May 21, 2021 Place and Date of Judgment: Victoria, B.C. June 12, 2020

- [1] In August 2019, after a trial, I determined that the plaintiff was entitled to two road easements over different parcels of the defendant's land on Saturna Island: Bertolami v. Money Family Projects Ltd., 2019 BCSC 1433. The basis for the easements was promissory estoppel. I rejected a claim based on contract.
- [2] I held that, absent any offers to settle, the plaintiff was entitled to costs. If there were offers to settle that may affect costs, the parties could make written submissions. There were offers made by each side and I now have submissions on costs. The plaintiff seeks double costs and argues that I should assess them. The defendant argues that each side should bear their own costs.
- [3] The easements were referred to as the Harris Road Easement and the Payne Road Easement. In both instances the roads had been built before the trial and in both instances, I concluded that the plaintiff was entitled to an easement for the roads as they were then constructed. In my decision, I asked the parties to attempt to agree on the form of easement but they could not do so. They disagreed as to the lands to be benefitted, maintenance costs, improvement costs, utility rights and insurance. I dealt with those issues in a subsequent decision: Bertolami v. Money Family Projects Ltd., 2019 BCSC 2262. The end result was an order for the granting of the Payne and Harris Road Easements, requiring shared maintenance, with no utility or water rights.
- [4] Rule 9-1(6) sets out three factors that the court may consider in determining the effect of an offer to settle on costs:

- 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; In addition, there is the catchall of any other factor the court considers appropriate.
- [5] The defendant relies on an offer it made in May 2019. It attached forms of the easement it was prepared to grant. The offer included the following provision: Prior to delivery of the easement documents by the defendant to the plaintiff for registration, Mr. Bertolami shall cause the sum of \$289,000.00 to be posted in a solicitor's trust account in trust for the defendant, which is to be paid to the defendant as consideration for the easements 1 year from the date of registration, unless the construction requirements for the Harris Road easement in Section 2(1)(d) have been completed by that date.
- [6] While in the end result easements were ordered, the \$289,000 payment bears no resemblance to the end result. It is hard to see where the requirement for the payment is derived from. This is not an offer that ought to have been accepted. I decline to attach any cost consequences to it not being accepted.
- [7] The plaintiff relies on four offers. The first offer had the proposed easement benefitting a parcel of land referred to as the "Bertolami Lands". That was a contentious issue at trial and one that I held during the trial had not been pleaded. The ordered easements do not benefit that parcel of land.
- [8] The easement proposed in the second offer included rights to install power and water and well water rights. Those rights were not ordered in my final judgment.
- [9] In the third offer, the proposed easement would have benefitted a further potential subdivision and provided access to lands beyond those within the scope of the final order.
- [10] The fourth offer - on the plaintiff's own description - was "four offers in one" any one of which could be accepted. The offer was convoluted, incorporated references to the defendant's offer with modifications and, in some instances, was ambiguous. The proposed easements were not attached.
- [11] It strikes me that where a claim is for an easement involving permanent rights over land, the terms of the offer in comparison to the end result bears close scrutiny. The precise wording of the proposed easement in the offers is also something that must be considered. It is a more nuanced and complicated matter than assessing a monetary offer.
- [12] In my view the plaintiff's offers were not ones that ought to have been reasonably accepted. I decline to award the plaintiff double costs.

- [13] This brings me to the defendant's argument that each side should bear its own costs. I have already dealt with its offer to settle.
- [14] I do not agree with the defendant that this is a case of divided success, so that each party ought to bear their own costs. The issue for trial was whether the plaintiff was entitled to an easement. While the plaintiff did not succeed in his contract claim he did succeed in obtaining an easement through proprietary estoppel. He was therefore successful; the route to his success is not terribly relevant. Although not argued by the defendant, I would add that this is not a case where costs should be apportioned: the facts related to the contract claim were also relevant to and subsumed by the estoppel claim. The plaintiff is therefore entitled to his costs.
- [15] Lastly, the plaintiff argues that I should determine the costs amount. There is no reason for me to do so. If costs are not agreed to (as one hopes they will be) they must be assessed in the ordinary manner. "E.M. Myers J."

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/20/08/2020BCSC0883.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bertolami-v-money-family-projects-ltd-2020-bcsc-883>

Prepared on 25 October 2026 · Esheria