

CANADA / JUDGMENT

Brach v. Letwin

2017 BCSC 101

COURT

Supreme Court of British Columbia

DECIDED

23 January 2017

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2017 BCSC 101 Brach v. Letwin IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Brach v. Letwin, 2017 BCSC 101 Date: 20170123 Docket: M140863 Registry: New Westminster Between: Tajinder Singh Brach Plaintiff And Joan Leanne Letwin, Sukhdev S. Pattar and Davinder S. Pattar Defendants -AND- Docket: M136478 Registry: New Westminster And Tajinder Singh Brach Plaintiff And Mandeep Singh Mangat and Gurbachan Singh Singara Defendants And Insurance Corporation of British Columbia Third Party Before: The Honourable Mr. Justice Williams Supplementary Costs Ruling Counsel for Plaintiff: S. Cope Counsel for Defendants, G. Singara and the Third Party ICBC: J. Miller Place and Date of Trial: New Westminster, B.C. January 11, 2017 Place and Date of Judgment: New Westminster, B.C. January 23, 2017

- [1] This ruling is issued in respect of a further application brought by the third-party ICBC and the defendant Ms. Letwin. Both were represented by the same counsel at trial and in the costs application. Although they are different parties, for the purposes of the costs ruling, they may be referred together, which represents the functional reality of the matter.
- [2] The application is essentially in the nature of further submissions seeking clarification or further direction of this Court's costs ruling made on November 17, 2015 (2015 BCSC 2081). This ruling should be read in the context of that previous ruling.
- [3] Briefly, by way of background, the application relates to a trial in respect of two actions brought by the plaintiff for injuries arising from two separate motor vehicle accidents.
- [4] The first accident occurred on November 21, 2010. The plaintiff brought suit against two defendants, Mr. Mangat and Mr. Singara. Both liability and the damage claim were contested. Those defendants did not appear to defend the action. ICBC, joined as a third party, conducted the defence.
- [5] The second accident occurred on September 15, 2011. Liability was admitted by the defendant Ms. Letwin; only the determination of damages was at issue.
- [6] The actions were tried together in one trial; that was a jury trial which took place over 15 days.

- [7] The plaintiff's claim in the first accident was dismissed. In regards to the second accident, the jury awarded the plaintiff nonpecuniary damages of \$35,100; damages for past income loss in the amount of \$10,000; past special damages of \$3,000 and \$2,000 for future care. The jury made no award for loss of earning capacity (future income loss).
- [8] Because of the mixed success at trial, with the plaintiff's First Action being dismissed and his Second Action being substantially successful, but with a total recovery of less than \$100,000, this Court ordered that the plaintiff should recover a fixed costs award in the amount of \$14,000. The basis for that finding was as set out in the cost ruling:
- [36] The approach which I find must govern the outcome, broadly stated, is this:
- a) For the First Action, in accordance with the general principle that costs follow the event, because the plaintiff failed to prove his case, he is liable to pay the costs of the Defendants and Third Party.
 - b) However, some of the evidence called by the plaintiff to support his claim in the First Action was also applicable to the Second Action.
 - c) The plaintiff was successful in his prosecution of the Second Action - certainly substantially successful - and is thus entitled to his costs. I do not see a proper basis to apportion the costs of this action.
- [37] I have considered and weighed the submissions of the parties in terms of allocation of trial time. In my view, the appropriate assignment of the fifteen days is as follows:
- a) 8.25 days should be attributed to the First Action. Those will be allocated between the parties on the basis that the Defendants and Third Party are entitled to recover for five days and the plaintiff will recover for the balance, three and a quarter days. The practical effect of that order is that, for that part of the trial, after allowing for offset, the Defendants and Third Party will have the costs of one and three-quarter days.
 - b) 6.75 days should be attributed to the Second Action. The plaintiff will have his costs for that part of the trial.
 - c) In the final analysis, after offsets, the plaintiff will recover costs of five days of trial.
- [9] As for the quantum of costs, I found that because the award was less than \$100,000, Rule 15-1(15) was applicable. The sum ordered was in recognition of there having been five days of trial for which the plaintiff was entitled to recover his costs.
- [10] Accordingly, a fixed cost award of \$14,000 was made.
- [11] In this application, the third party seeks an award of costs with respect to the First Action, permitting it to recover \$24,675 costs which it claims to have incurred from the start of litigation to the beginning of the trial. The third party says it should be entitled to these costs because it was successful in having the claim for the First Action dismissed.

- [12] In my view, this further claim must fail.
- [13] The basis upon which the costs award of November 17, 2015, was made is clear. The two actions were tried together. Because each side had success, the trial time was allocated according to my best assessment of what was fair. The order for costs reflected that. That is how trial costs were allocated. Disbursements are a separate matter and I will address that separately.
- [14] For the third party to now seek an order for its pretrial costs is entirely at odds with that approach.
- [15] The fact is, pretrial costs are included as part of the general costs model: see Supreme Court Civil Rules Appendix B Tariff.
- [16] In the matter at bar, this Court's order that the plaintiff recover his fixed costs is the resolution of all costs issues in the trial. It is a final disposition and there will be no further order made.
- [17] The third party also raises the matter of disbursements.
- [18] When I speak of disbursements, I mean as may be determined by the registrar as a reasonable amount for disbursements necessarily or properly incurred in the conduct of the proceedings, as per Rule 14-1(3).
- [19] In this Court's ruling of November 17, 2015, at para. 50, I ordered that the plaintiff would be permitted to recover 75% of his disbursements with respect to a number of doctors and experts called at trial (Dr. Anderson, Dr. McGraw, Dr. Moola, Dr. Robinson, Mr. Dimu, Dr. Sidhu, Dr. Sohal, and Dr. Longridge). That was in recognition of the fact that these witnesses were prepared and called in part for the action which had been dismissed.
- [20] The third party advises that it has reviewed the plaintiff's bill of costs and disbursements and has found that full disbursements have been claimed for all items that are not expert reports. In the submission of the third-party, a 25% reduction should apply to the remainder of the disbursements to the extent that they are not solely related to the second accident.
- [21] Further clarification is required, and it is as follows: · the plaintiff is not entitled to recover his disbursements where they are solely attributable to the First Action. · the plaintiff is entitled to recover all of his disbursements where they are solely attributable to the Second Action. · the plaintiff's disbursements, where they are relevant to both actions are recoverable, may be recovered, but must be reduced by 25% in accordance with para. 50 of the earlier ruling.

- [22] The issue of recovery of disbursements by the third party and the defendant was not raised in the earlier application. It is apparent now that the issue must be addressed and I will do so as follows: · the third party is entitled to recover its disbursements where they relate solely to the First Action. · the defendant Ms. Letwin is not entitled to any recovery of her disbursements in respect of the Second Action · with respect to disbursements made in connection with both actions, the recovery is limited to 75% of the disbursement.
- [23] By way of explanation, I have concluded that the partial recovery of 75% is a fair and fit allocation on the basis that the third party was successful in its defence of the First Action and that Ms. Letwin was substantially unsuccessful in defending the claim against her. The percentage I have allocated for disbursements which are related to both actions is the same as I made for the plaintiff. Having considered the issue carefully, I see no principled reason to treat one "side" differently than the other.
- [24] These decisions with respect to both costs and the recovery of disbursements are made in the exercise of the substantial discretion that a trial judge has to effect a globally fair outcome. "J. Williams J."

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