

CANADA / JUDGMENT

Debou v. Besemer

2015 BCSC 106

COURT

Supreme Court of British Columbia

DECIDED

26 January 2015

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2015 BCSC 106 Debou v. Besemer IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Debou v. Besemer, 2015 BCSC 106 Date: 20150126 Docket: M114317 Registry: Vancouver Between: Robert Granger Debou Plaintiff And Georg Besemer Defendant

- and - Docket: M120073 Registry: Vancouver Between: Robert Granger Debou Plaintiff And Paolo Tessarolo and Carmela Tessarolo Defendants Before: The Honourable Mr. Justice Cohen Supplemental Reasons for Judgment Counsel for the Plaintiff: D.C. Creighton H. Faramarzi Counsel for the Defendants: M. Killas Place and Dates of Trial: Vancouver, B.C. April 22-25 & 28-30, 2014 May 9, 2014 Place and Date of Judgment: Vancouver, B.C. January 26, 2015
- [1] This is an application by the plaintiff for an order awarding him double costs from the date of his formal Offer of Settlement (the "Offer"), March 24, 2014.
- [2] By letter delivered on March 24, 2014, to the defendants, the plaintiff made the Offer to settle his claims for the amount of \$390,000, plus taxable costs and disbursements. The Offer was delivered to the defendants one month before the scheduled commencement of the trial of the plaintiff's actions against the defendants.
- [3] By letter received by the plaintiff on April 8, 2014 (and dated April 4, 2014), the defendants offered to settle the plaintiff's claims for the amount of \$160,000.
- [4] Neither of the offers exchanged between the parties was accepted. The plaintiff's trial against the defendants lasted eight days. In Reasons for Judgment dated September 19, 2014, the plaintiff was awarded damages totalling \$753,289.71.
- [5] The law surrounding the application of Rule 9-1 (5) and (6) is well-settled: Hartshorne v. Hartshorne, 2011 BCCA 29; King v. Insurance Corporation of B.C., 2010 BCSC 1742; ICBC v. Patko, 2009 BCSC 578; Smith v. Tedford, 2009 BCSC 905; P.S.D. Enterprises v. New Westminster (City), 2011 BCSC 1646; Gibbon v. Manchester City Council, [2010] 5 Costs. L.R. 828 (C.A.).

- [6] All of the above cited authorities were relied upon by the plaintiff in support of his application asking that the Court exercise its discretion in favour of awarding him double costs.
- [7] By way of background, the examination-for-discovery of the plaintiff was held on November 23, 2012. The expert reports of Drs. Quirke and Armstrong were served on the defendants on January 27, 2014. The expert reports of Mr. Benning were served on the defendants on January 27 and 28, 2014. The parties participated in a mediation proceeding on March 20, 2014.
- [8] Defence counsel made a brief submission to the effect that the Offer was not one that should reasonably have been accepted by the defendants. He noted that the defendants conceded that the plaintiff sustained significant injuries, but submitted that the main issue for resolution at the trial was that of the plaintiff's past and future income loss claims. On this issue, counsel submitted that prior to the trial the defendants did not have much in the way of evidence available to them about the plaintiff's income loss in order to assess his claims. He submitted that the evidence that was available did not suggest that the plaintiff would be able to prove a substantial claim for wage loss. Thus, counsel submitted that the plaintiff's application should be dismissed.
- [9] With respect, I disagree with defence counsel's submission.
- [10] Upon a consideration of the applicable law, the background leading up to the trial and the outcome at trial of the plaintiff's claims, I am satisfied, and find that he should be awarded double costs.
- [11] As already noted, the parties engaged in a mediation proceeding and the defendants had the benefit of the plaintiff's discovery evidence, as well as the expert reports by the time that they received the Offer. Moreover, the fact that the defendants made an offer to the plaintiff indicates that they had an ample opportunity to evaluate the available evidence and to assess the strength of the plaintiff's claims, as well as their defence to his claims.
- [12] In my opinion, given that the Offer was delivered to the defendants one month before the commencement of the trial; that it was a comprehensive offer that, if accepted, would have resolved the need for the eight day trial; that the defendants had sufficient information to assess the Offer as well as make their own offer; and, the affidavit evidence before me of the plaintiff's dire financial situation, not challenged by the defendants, I find that the Offer ought reasonably to have been accepted by the defendants on the date that the Offer was delivered to the defendants.
- [13] In the result, I find that the plaintiff is entitled to an order for double costs from the date of the Offer. I understand from counsel that they have reached an agreement on all of the other items to settle the judgment. "B.I. Cohen J." The Honourable Mr. Justice B.I. Cohen

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