

CANADA / JUDGMENT

Destiny Enterprises Canada Ltd. v. Kim

2021 BCSC 2262

COURT

Supreme Court of British Columbia

DECIDED

22 November 2021

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2021 BCSC 2262 Destiny Enterprises Canada Ltd. v. Kim IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Destiny Enterprises Canada Ltd. v. Kim, 2021 BCSC 2262 Date: 20211122 Docket: S83815 Registry: New Westminster Between: Destiny Enterprises Canada Ltd. Plaintiff And Richard Kim, also known as Hyun Chul Kim, 628047 B.C. Ltd., 680868 B.C. Ltd., Narland Properties (Tri-Cities) Ltd., and E-Mart Food Centre Ltd. Defendants And: Richard Kim, also known as Hyun Chul Kim, 628047 B.C. Ltd., doing business as A-Mart, 680868 B.C. Ltd., doing business as Hi-Mart, and Kyu-Hak Yon, aka Hyu-Hak Yon, aka Kyu Hak Yon, aka Kyuhak Yon, aka Kevin Yo Defendants by Counterclaim Before: Master Keighley, as a Registrar Reasons for Judgment Counsel for the Defendant, E-Mart Food Center Ltd.: D.H. Goodwin The Defendant and Defendant by Counterclaim, Richard Kim, also known as Hyun Chul Kim, appeared in person R. Kim The Defendant by Counterclaim, 680868 B.C. Ltd., doing business as Hi-Mart, appeared via representative: R. Kim Place and Date of Hearing: New Westminster, B.C. October 28, 2021 Place and Date of Judgment: New Westminster, B.C. November 22, 2021

- [1] The appointment to assess the Bill of Costs of E-Mart Food Centre Ltd. as against Richard Kim, also known as Hyun Chul Kim ("R. Kim", a defendant and defendant by counterclaim in this action and a defendant by counterclaim and action number S89349 joined with this matter for trial) and 628047 B.C. LTD. doing business as a A-Mart ("A-Mart", a defendant by counterclaim in actions numbered S83815 and S89349) came on for hearing before me as a Registrar on October 28, 2021.
- [2] The filing of the appointment followed the delivery of reasons for judgment by Armstrong, J. in both actions on February 25, 2014. The trial, which consumed 13 days, dealt with the parties' competing claims to the assets of a Korean grocery store located at 2755 Lougheed Highway, Port Coquitlam, B.C. In his reasons, Armstrong, J., after making findings of fraud and conversion and finding the E-Mart entitled to damages, including punitive damages, ordered R. Kim and A-Mart to pay E-Mart's costs of the action as special costs.
- [3] Mr. Goodwin, counsel for E-Mart at trial and on this appointment presented accounts totaling \$166,946.08 inclusive of disbursements and taxes.

- [4] Mr. Goodwin was counsel for E-Mart in this litigation from July, 2004 to the present. He was called to the Bar of this province in August 1988 and approximately 30% of his practice has been devoted to civil litigation over the course of his retainer in this file. His hourly rate is gradually risen from \$210 per hour in 2004 to \$395 per hour today.
- [5] It is quite apparent from Armstrong, J. reasons for judgement that the case was both complicated and highly contentious. Interpreters were engaged at each stage requiring testimony. Discoveries took 3 ½ days. A ½ days settlement conference was conducted, as were 2 case management conferences and 3 trial management conferences. A full day summary trial application was heard on May 12, 2011, but did not resolve the matter. The trial, as indicated, took 13 days and two additional attendances were required for issues relating to the delivery of reasons for judgement.
- [6] As indicated by the first page of these reasons, Mr. R. Kim appeared on his own behalf and on behalf of Hi-Mart. He did not choose to cross-examine Mr. Goodwin in his affidavit of verification and presented no evidence of his own. He did however, make submissions which focused although he did not specifically characterize them as such, on the issue of proportionality. He said that the result of the litigation cost him his house, which was sold to pay something in the order of \$450,000 to this point, without considering the costs sought on this assessment. He expressed disbelief that the issues raised in this litigation could have cost him and his family so much. I reviewed each of the 21 accounts rendered to the client by Mr. Goodwin in connection with this litigation and I am satisfied that the fees and disbursements charged to the client were appropriate. The matter does not end there, however. ASSESSMENT OF SPECIAL COSTS
- [7] Rule 14-1(3) of the Supreme Court Civil Rules provides as follows:
- (3) On an assessment of special costs, a registrar must
- (a) allow those fees that were proper or reasonably necessary to conduct the proceeding, and
- (b) consider all of the circumstances, including the following:
- (i) the complexity of the proceeding and the difficulty or the novelty of the issues involved; (ii) the skill, specialized knowledge and responsibility required of the lawyer; (iii) the amount involved in the proceeding; (iv) the time reasonably spent in conducting the proceeding;
- (v) the conduct of any party that tended to shorten, or to unnecessarily lengthen, the duration of the proceeding; (vi) the importance of the proceeding to the party whose bill is being assessed, and the result obtained; (vii) the benefit to the party whose bill is being assessed of the services rendered by the lawyer; (viii) Rule 1-3 and any case plan order.

- [8] The reference to Rule 1-3 requires a registrar to consider the object of the Rules namely "to secure the just speedy and inexpensive determination of every proceeding on its merits". Securing that goal includes, so far is practicable "conducting the proceedings in ways that are proportionate to a) amount involved in the proceeding; b) the importance of the issues in dispute; and c) the complexity of the proceeding".
- [9] Putting those considerations and the enumerated matters set forth in Rule 14-1(3) to one side, one can generally say that special costs are not necessarily the fees that the solicitor for the party entitled to costs could claim from their own client; rather, they are the fees that a reasonable client would have to pay a reasonably competent solicitor to do the work for which the costs are claimed: *Bradshaw Construction Ltd. v. Bank of Nova Scotia* (1991), 54 B.C.L.R. (2d) 212 (C.A.). Put another way, special costs are an "offshoot" of solicitor/client costs, intended to provide indemnity for all legal expenses reasonably incurred: *Campbell River Woodworkers and Builders' Supply (1966) Ltd. v. British Columbia (Minister of Transportation and Highways)* 2004, 22 B.C.L.R. (4th) 210 (C.A.).
- [10] I reviewed each of Mr. Goodwin's accounts to his client in detail. Each category of service is accompanied by a time record and the purpose of each disbursement is clearly ascertainable. With the exception of a couple of hours allocated in the December 22, 2006 account to corporate reinstatement, unrelated to this dispute, all charges and disbursements seem to have been reasonably incurred as between solicitor and client and had this assessment been concerned with an assessment as between lawyer and client, I would have upheld the accounts, after deducting, say, \$1,000 for the reinstatement work. Having said that I now move to a consideration of Rule 14-1(3) considerations.
- [11] With multiple parties, both corporate and individual, making various and competing claims and testifying means or interpreters, the case was a complex and challenging one for counsel and for the Court, reflected in the detailed and meticulous 74-page judgement delivered by Armstrong, J. While novelty might not have been a factor, certainly the complexity of counsel's task over the 10 years of Mr. Goodwin's retainer must have reach near the upper limit of any scale of measurement.
- [12] While counsel would not have required special skills beyond those of a reasonably competent barrister to guide the client through this litigation, the case would have demanded meticulous preparation and attention to detail.
- [13] The amount involved in this case, in terms of damages awarded, was \$239,600 as far as E-Mart is concerned. Would a reasonable client incurred nearly \$170,000 in fees to recover that amount in absolutely objective terms, probably not. But here the client's was faced with no alternative, dealing with an opponent who was prepared to resort to fraud and deception to deny a remedy - a situation which may be addressed, as here, by an award of special costs. Armstrong, J's comments with respect to the conduct and credibility of Mr. R. Kim certainly suggests to me that he was of the view that Kim made every effort to defend the indefensible.

- [14] In terms of time spent by counsel conducting the proceeding, my review of the accounts suggests, except to the extent that I have indicated, a reasonable amount of work provided over the 10 years of retainer.
- [15] This litigation is vitally important to the client, which we have no recourse but to sue those who had caused it to suffer significant financial loss. The result is obtained after 10 years, was the best it could have hoped for: vindication and compensation.
- [16] In all I am satisfied that the fees and disbursements claimed on this assessment are those which are reasonable client would have paid a reasonably competent lawyer to do the work and that is appropriate to fix the quantum of special costs at \$166,000 after an appropriate deduction for the reinstatement work referred to. As the client is also entitled to special costs of this assessment, I would assess those costs at \$4,000 making the total amount payable \$170,000. "Master Keighley"

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Prepared on 25 October 2026 · Esheria