

CANADA / JUDGMENT

Elliott v. McCliggot

2020 BCSC 1128

COURT

Supreme Court of British Columbia

DECIDED

31 July 2020

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

2020 BCSC 1128 Elliott v. McCliggot IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Elliott v. McCliggot, 2020 BCSC 1128 Date: 20200731 Docket: M144097 Registry: Victoria Between: Patricia Dawn Elliott Plaintiff And Ryan McCliggot and Slegg Construction Materials Ltd. Defendants Corrected Judgment: The citation and heading were corrected on September 29, 2022. Before: The Honourable Justice Winteringham Reasons for Judgment (Costs) (Via teleconference) Counsel for the Plaintiff: K.J. Hauer Counsel for the Defendants: M.F. O'Meara Written Submissions received: Victoria, B.C. June 25, 2020 Place and Date of Judgment: Victoria, B.C. July 31, 2020

- [1] The plaintiff, Patricia Dawn Elliott, seeks an order that she be entitled to double costs on the basis that she delivered a timely offer to settle that was well exceeded by the verdict of a jury. The defendants take the position that the offer to settle was ambiguous and that the ambiguity arose in two respects:
- a) First, the plaintiff referred to an "early bird discount" in the offer; and
 - b) Second, it was unclear whether the offer took into account monies that had already been paid to the plaintiff.
- [2] Briefly, this was a personal injury action relating to a motor vehicle accident that occurred in Victoria, BC, on November 8, 2012. Liability was admitted. The parties each selected a trial by jury, where their only task was to assess damages. The trial proceeded from January 27, 2020 - February 4, 2020. The jury rendered its verdict in the evening of February 4, 2020.
- [3] At trial, the plaintiff sought an award in the range of approximately \$100,000 plus non-pecuniary damages and agreed upon special damages of \$3,885.54. The jury awarded \$463,385.54, distributed across the relevant heads of damages as follows:
- a) Special damages: \$3,885.54;
 - b) Past loss of income earning capacity: \$46,500;
 - c) Loss of future income earning capacity: \$45,000;
 - d) Cost of future care: \$15,000;

- e) Loss of housekeeping capacity: \$3,000; and
 - f) Non-pecuniary damages: \$350,000.
- [4] The plaintiff now seeks an order for double costs as a consequence of an offer to settle made on January 13, 2020[1] for \$99,999 plus costs and disbursements.
- [5] The parties agreed to deal with costs by way of written submissions given the restricted operations of the court during the COVID-19 pandemic.
- [6] I will note that offers to settle are governed by Rule 9-1 of the Supreme Court Civil Rules, B.C. Reg. 168/2009.
- [7] Rule 9-1(5) sets out the options available to the court where an offer to settle has been made, including in subparagraph (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.
- [8] Rule 9-1(6) identifies a number of factors that the court may consider when making a costs award in the face of an offer to settle, including: . . .
- 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; and
 - d) Any other factor the court considers appropriate.
- [9] The Court of Appeal summarized the purposes of costs awards in *Giles v. Westminster Savings and Credit Union*, 2010 BCCA 282. Those purposes include:
- a) Deterring frivolous actions or defences;
 - b) Encouraging conduct that reduces the duration and expense of litigation and discouraging conduct that has the opposite effect;
 - c) Encouraging litigants to settle whenever possible, thus freeing up judicial resources for other cases; and
 - d) To have a winnowing function in the litigation process by requiring litigants to make a careful assessment of the strength or lack thereof of their cases at the commencement and throughout the course of the litigation and by discouraging the continuance of doubtful cases or defences.
- [10] While the Supreme Court Civil Rules and the cases interpreting them are instructive, the issue of costs is in the discretion of the trial judge.
- [11] I turn to a consideration of the factors set out in Rule 9-1(6).

- [12] First, was the plaintiff's offer one that ought reasonably to have been accepted?
- [13] The plaintiff submits that this was a straightforward monetary offer in a lump sum, and in an amount that a reasonable jury, properly instructed, easily could have awarded.
- [14] The defendants submit the offer was ambiguous, relying on *Ostiguy v. Hui*, 2010 BCSC 641 for the principle that it is necessary that "the offer be clear, unambiguous and unconditional." Again, the defendants submit the offer was ambiguous because of the language and because it was not clear whether the offer took into account approximately \$1,000 previously paid.
- [15] I disagree with the defendants' submission in this regard. I have little difficulty concluding, having reviewed the offer and its terms, that the offer set out clearly that the plaintiff was prepared to accept the amount indicated, plus costs and disbursements, and there was nothing ambiguous about the language used or the calculation of the wage loss. In my view, the defendants were in a position to evaluate her offer and the offer was clearly within the range of possible outcomes. I am satisfied, on the first factor that the plaintiff's offer was one that the defendant ought reasonably to have accepted.
- [16] The second factor is the relationship between the terms of the settlement offered and the final judgment of the court. The authorities caution against relying on hindsight to assess the reasonableness of an offer particularly as jury awards are somewhat more difficult to predict than assessments by judges. See, for example, *Smagh v. Bumbragh*, 2009 BCSC 623. Nonetheless, the relationship between the offer and the final result is a relevant factor. Here, the plaintiff's offer of \$99,999 plus costs and disbursements was approximately \$350,000 less than what she was awarded at trial. The analysis of this factor favours the plaintiff.
- [17] The third factor is the relative financial circumstances of the parties. The parties did not say much about this factor. In light of the circumstances presented here and having taken into account the plaintiff's financial position, I have concluded that this is a relatively neutral factor.
- [18] The fourth factor is whether there exists any other factor that the court considers appropriate. In my view, there are no other factors or considerations that inform the analysis in the circumstances presented here.
- [19] I am satisfied that the offer to settle made by the plaintiff on January 13, 2020 in the amount of \$99,999, plus costs and disbursements, was reasonable and is one that the defendants ought to have accepted. The plaintiff will thus have her ordinary costs and disbursements until January 24, 2020, the day the offer expired, and double costs thereafter through until the end of the trial.
- [20] The plaintiff is entitled to ordinary costs of this application. "Winteringham J."
- [1] The offer to settle was dated Saturday, January 11, 2020.

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/20/11/2020BCSC1128cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/elliott-v-mccliggot-2020>

Prepared on 29 October 2026 · Esheria