

CANADA / JUDGMENT

Farren v. Elite Service Group Inc.

2020 BCSC 390

COURT

Supreme Court of British Columbia

DECIDED

16 March 2020

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2020 BCSC 390 Farren v. Elite Service Group Inc. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Farren v. Elite Service Group Inc., 2020 BCSC 390 Date: 20200316 Docket: S188534 Registry: Vancouver Between: Kevin Farren Plaintiff And Elite Service Group Inc. Defendant Before: The Honourable Madam Justice Iyer Ruling on Costs The Plaintiff, Appearing in Person K. Farren Counsel for Defendant: C.R. Wardell Written Submissions of Defendant: February 12, 2020 Place and Date of Judgment: Vancouver, B.C. March 16, 2020

- [1] The defendant, Elite Services Group Inc. ("Elite") applies for costs following from my decision granting its summary trial application finding that Mr. Farren was not an employee of Elite, and consequent dismissal Mr. Farren's wrongful dismissal action: Farren v. Elite Services Inc., 2020 BCSC 23.
- [2] Elite seeks a lump sum award of double costs in the amount of \$16,000 plus disbursements. Mr. Farren was provided with an opportunity to respond to this application, but did not do so.
- [3] Mr. Farren commenced his action against Elite on August 2, 2018 under the Fast Track procedure. Elite delivered a formal offer to settle for a total of \$500 on October 18, 2018. Mr. Farren did not respond to that offer and it expired on November 16, 2018.
- [4] Although he was initially represented by counsel, Mr. Farren became self-represented on January 10, 2019. He failed to provide a list of documents and did not take steps to proceed with the litigation. On October 21, 2019, Elite applied for a summary trial of the issue of whether Mr. Farren was Elite's employee or an independent contractor. Subsequently, on November 22, 2019, Mr. Farren attended his examination for discovery, but admitted he had done nothing to prepare for it. He did not respond to the requests made at his examination, and he did not file a response to the summary trial application.
- [5] I heard the summary trial application on December 13, 2019, after denying Mr. Farren's request for an adjournment.

- [6] Rule 15-1 of the Supreme Court Civil Rules, B.C. Reg. 168/2009, provides that, unless the court otherwise orders, the amount of costs (exclusive of disbursements) for a one day fast track hearing is \$8,000. In exercising my discretion, I may consider Elite's formal offer to settle (see Rule 15-1(16) and Rule 9-1).
- [7] Elite seeks double costs, relying on the Court of Appeal's decision in *Gichiru v. Pallai*, 2013 BCCA 60. There, the court upheld an award of double costs from the date of the offer to settle made after the completion of discoveries in a fast track case that was disposed of in a one day summary trial.
- [8] Applying the factors set out in Rule 9-1(6) in the circumstances of this case, I agree that \$500 offer to settle was reasonable in light of the weakness of Mr. Farren's claim and its ultimate disposition. I cannot take Mr. Farren's financial circumstances into account as he has not responded to this application. However, I do take into account his failure to participate in the litigation process he initiated, including by failing to produce a list of documents and to prepare for discovery. I agree that this is blameworthy conduct.
- [9] Considering all of these circumstances, most notably the fast track costs framework, the nature of the underlying claim, the amount of the settlement offer, Mr. Farren's conduct of the litigation, and the hearing time, I consider that a costs award of \$10,000 exclusive of disbursements is appropriate in this case.
- [10] In conclusion, I order Mr. Farren to pay Elite's legal costs in the fixed amount of \$10,000 and to pay Elite's disbursements. "Iyer J."

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