

CANADA / JUDGMENT

Han-Earl Consulting Ltd. v. 1048661 BC Ltd.

2022 BCSC 1238

COURT

Supreme Court of British Columbia

DECIDED

20 July 2022

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2022 BCSC 1238 Han-Earl Consulting Ltd. v. 1048661 BC Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Han-Earl Consulting Ltd. v. 1048661 BC Ltd., 2022 BCSC 1238 Date: 20220720 Docket: S1911460 Registry: Vancouver Between: Han-Earl Consulting Ltd. Plaintiff And 1048661 BC Ltd., Blue Wolf Hotel Group Ltd., Guo Feng Yuan and Century 21 Coastal Realty Ltd. Defendants And Century 21 Coastal Realty Ltd. and Han-Earl Consulting Ltd. Defendants by way of Counterclaim Before: The Honourable Justice Stephens Reasons for Judgment re Costs Counsel for the Plaintiff: K. Tirmandi Counsel for the Defendants Blue Wolf Hotel Group Ltd. and Guo Feng Yuan: L.M.A. Kotler Written Submissions of Plaintiff: April 22, 2022 Written Submissions of the Defendants Blue Wolf Hotel Group Ltd. and Guo Feng Yuan: April 25, 2022 Written Reply Submissions of Plaintiff: May 3, 2022 Place and Date of Judgment: Vancouver, B.C. July 20, 2022

- [1] On April 5, 2022, in reasons indexed at 2022 BCSC 1073 ("Han Earl RFJ"), I granted judgment in favour of the plaintiff, Han-Earl Consulting Ltd ("Han-Earl") in this summary trial proceeding, ordering the release of a \$250,000 deposit (and any accrued interest) to the plaintiff, and invited submissions from the parties on costs.
- [2] The parties provided written submissions on costs. No request was made for an appearance before me to speak to costs, and so I am issuing my reasons for judgment based on the written submissions.
- [3] In its costs submissions, the plaintiff provided the court a previous settlement offer made on June 16, 2021 where it offered to settle for payment of the \$250,000 deposit (plus interest, and a waiver of costs). It seeks costs on Scale B for this proceeding up to June 16, 2021 and double costs thereafter.

- [4] In response, the defendants Blue Wolf Hotel Group Ltd. and Guo Feng Yuan (the "Yuan Defendants") seek an order that the parties bear their own costs or, in the alternative, that there be no order for double costs made against them. The Yuan Defendants provided the court a copy of an offer to settle made to the plaintiff dated September 27, 2021 for payment of \$50,000 to the plaintiff plus a release and consent dismissal order. This offer was rejected by the plaintiff on October 1, 2021.
- [5] For the reasons below, I order that Han-Earl shall recover against the Yuan Defendants costs of this proceeding at Scale B.
- [6] Costs of a proceeding must be awarded to the successful party unless the court otherwise orders: Supreme Court Civil Rules, BC Reg. 168/2009, R. 14-1(9). The onus is on the party who seeks to displace this usual rule that costs follow the event: *LeClair v. Mibrella Inc.*, 2011 BCSC 533 at para. 10 [*LeClair*]. In this case, judgment was awarded in favour of the plaintiff in the action and the Yuan Defendants' counterclaim was dismissed: *Han-Earl RFJ* paras 65-66. The plaintiff is plainly the successful party, engaging the default rule.
- [7] Two arguments have been made on costs. First, the plaintiff seeks double costs since it delivered an offer to settle in June 2021 which was not accepted. Second, the Yuan Defendants seek an order that each party bear their own costs due to what is asserted to be the plaintiff's misconduct during the course of the litigation. I reject both positions for the reasons below. Plaintiff's Request for Double Costs (June 16, 2021 onward)
- [8] The plaintiff seeks double costs from June 16, 2021 onward on the basis of its offer to settle from the same date (the "Plaintiff's Offer to Settle"). The legal issue in determining whether the plaintiff is so entitled is not whether the offer itself was reasonable, but whether it was unreasonable for the other party to refuse it: *Bains v. Antle*, 2019 BCCA 383 at para. 34 [*Bains*]. The factors in this assessment include: "the timing of the offer; whether it had some relationship to the claim; whether it could easily be evaluated; and whether some rationale for it was provided": *Bains* at para. 35.
- [9] I note that the Plaintiff's Offer to Settle was a brief, approximately one-page letter. There is one paragraph dealing with the Yuan Defendants' defences and it rather tersely rejects them. It refers to the discoveries which had, at that time, taken place. There was no analysis or discussion of the construction of the Purchase and Sale Agreement, including Schedule F, which became relevant to a main issue in the disposition of this action: see e.g. *Han-Earl RFJ*, paras. 31-33, 37. Nevertheless, although concisely articulated, I find there was "some rationale for the offer" (*Cottrill v. Utopia Day Spas and Salons Ltd.*, 2019 BCCA 26 at para. 29).
- [10] The more significant consideration in assessing the Yuan Defendants' failure to accept the Plaintiff's Offer to Settle is the timing of the offer: in particular that the discovery process had not yet concluded at the time it was made. A second examination for discovery of the plaintiff's representative took place in December 2021, approximately six months after the Plaintiff's Offer to Settle, and the plaintiff subsequently provided the Yuan Defendants with responses to certain discovery requests dated January 10, 2022 shortly before the summary

trial.

- [11] As the Yuan Defendants' submit in their costs submissions, a main issue in this case was ultimately decided on first principles: Han-Earl RFJ, para. 27.
- [12] I find that it was reasonable for the Yuan Defendants to have refused the Plaintiff's Offer to Settle in the circumstances, where the discovery of the plaintiff had not concluded at the time of the offer. The plaintiff has not persuaded me to exercise my discretion to award double costs from June 16 2021 onward. Yuan Defendants' Request that Plaintiff be Deprived of Any Costs
- [13] The Yuan Defendants submitted that the plaintiff engaged in misconduct and should be deprived of any costs in this action.
- [14] I do not accept the Yuan Defendants' position that the plaintiff's conduct is deserving of rebuke and should be denied its costs. In LeClair, Voith J. (as he then was) stated that where "a party has intentionally or deliberately sought to mislead the court that party will normally be deprived of its costs": para. 10. However, "Rule 14-1(9) is not intended to provide an unsuccessful party with an opportunity to parse through the litigation conduct of the opposing party searching for behaviour that might be criticized"; instead, the rule allows the court a means of communicating censure "in relation to conduct that manifestly warrants rebuke": LeClair at para. 11.
- [15] The Yuan Defendants appear to be parsing through the plaintiff's litigation conduct as described in LeClair at para. 11. I note that not all of the steps in the discovery process referred to by the parties on this costs application were established by evidence in the application record. Nevertheless, on the evidence before me--and assuming the description of the litigation steps for which no evidence was filed on this application is accurate--I find no conduct during the plaintiff's documentary production or the discovery process which falls in the category of "conduct that manifestly warrants rebuke". What might be described as "imperfect or less than optimal" litigation conduct does not generally attract a costs sanction. In LeClair, the defendant produced one document initially, and then multiple documents in the middle of trial (paras. 25-26), and accordingly the court reduced the successful defendant's cost award by 50% to make "clear to the defendant that its conduct was improper" (para. 35). In the case before me, the plaintiff did not produce documents mid-trial, and any deficiency in its litigation conduct is not, in my view, of the same degree as the defendant in LeClair.
- [16] The Yuan Defendants also argue that the plaintiff filed a misleading affidavit, contending that the affidavit of Mr. Yi, the plaintiff's representative, was never translated for Mr. Yi from English into the Korean language. Mr. Yi did in fact have some knowledge of English, and notably, the Yuan Defendants themselves relied on portions of Mr. Yi's affidavit at the summary trial hearing, and also filed as evidence at trial (and relied on) written correspondence sent by Mr. Yi written in English. In addition, there is no evidence the plaintiff deliberately sought to mislead the court (LeClair at para. 11) or that the court was

misled. I do not accede to this argument.

[17] In the circumstances of this case I find that the plaintiff has not acted in a way that warrants rebuke so as to disentitle it costs of this action.

[18] In the result, the default costs rule applies, and the Yuan Defendants shall pay to the plaintiff costs of this proceeding. Order Granted

[19] I order that the plaintiff Han-Earl shall recover against the Yuan Defendants costs of this proceeding at Scale B. "Stephens J."

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Prepared on 26 October 2026 · Esheria