

CANADA / JUDGMENT

Hatton v. Leahy

2009 BCSC 1355

COURT

Supreme Court of British Columbia

DECIDED

1 October 2009

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2009 BCSC 1355 Hatton v. Leahy THE SUPREME COURT OF BRITISH COLUMBIA Citation: Hatton v. Leahy, 2009 BCSC 1355 Date: 20091001 Docket: S086616 Registry: Vancouver Between: Melanie Hatton and Jeffrey MacLean Plaintiffs And Patricia Ann Leahy and Paul Michael Leahy Defendants Before: The Honourable Madam Justice Adair Reasons for Judgment on Costs Counsel for the Plaintiffs: Adeline Kong Counsel for the Defendant: Todd L. Kerr Written Submissions from Plaintiffs: September 17, 2009 Place and Date of Judgment: Vancouver, B.C. October 1, 2009

- [1] This action involved a dispute concerning the interpretation of a written agreement between the parties. Following the trial on August 25, 2009, I found that, on a proper construction of the Letter Agreement, the defendants were required to pay the plaintiffs \$30,000 within 15 days of the end of the plaintiffs' tenancy, or August 31, 2008, as full and final compensation for the plaintiffs' agreement to end the tenancy early, and I granted judgment accordingly on September 4, 2009. My reasons are indexed at 2009 BCSC 1216.
- [2] In the final paragraph of my reasons, I wrote: Unless the parties wish to make submissions on costs, the plaintiffs will have their costs on Scale B. If the parties wish to make submissions on costs, they must do so in writing. The plaintiffs' submissions must be delivered within 14 days of the date of this judgment, and the defendants' submissions must be delivered within 7 days of receipt of the plaintiffs' submissions.
- [3] On September 17, 2009, the plaintiffs delivered their written submissions. However, I have not received any written submissions on behalf of the defendants. I have concluded that the defendants are content in the circumstances to have me rule on costs in the absence of submissions from them.
- [4] In their written submissions, the plaintiffs seek costs at Scale B, with double costs for all steps taken after July 29, 2009.
- [5] On July 29, 2009, the plaintiffs delivered an offer to settle to the defendants under Rule 37B, offering to settle this action on the following terms:

- (a) the defendants pay to the plaintiffs the all-inclusive sum of \$22,500, in full and final settlement of the plaintiffs' claims in the action;
 - (b) the parties consent to a dismissal of the action, without costs;
 - (c) the parties execute a mutual release in a reasonable form to be agreed between the parties' legal counsel.
- [6] The defendants did not accept the plaintiffs' offer.
- [7] The relevant parts of Rule 37B provide:
- (4) The court may consider an offer to settle when exercising the court's discretion in relation to costs.
 - (5) In a proceeding in which an offer to settle has been made, the court may. . . : . . .
 - (b) award double costs of all or some of the steps taken in the proceeding after the date of delivery of the offer to settle.
 - (6) In making an order under subrule (5), the court may consider the following:
 - (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 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;
 - (d) any other factor the court considers appropriate.
- [8] The underlying legislative policy behind Rule 37B is to encourage the early settlement of disputes by rewarding the party who makes a reasonable settlement offer and penalizing the party who declines to accept such an offer. See *Radke v. Parry*, 2008 BCSC 1397, 64 C.P.C. (6th) 176, at para. 38; and *A.E. v. D.W.J.*, 2009 BCSC 505, at para. 61.
- [9] The plaintiffs submit that their offer ought reasonably to have been accepted by the defendants. They say the offer reflected a substantial concession by them, and it was for an all-inclusive sum that was significantly lower than the \$30,000 judgment that the defendants knew the plaintiffs could recover at trial. The plaintiffs say further that the offer was delivered well in advance of the scheduled trial date, and the defendants had more than sufficient time to consider it. The plaintiffs also submit that the defendants should have known that, given the facts, the defence had little likelihood of success, since the terms of the parties' contract were clear. I agree.
- [10] The plaintiffs' offer was considerably lower than the \$30,000 judgment plus costs awarded to the plaintiffs at trial.

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- [11] The plaintiffs also say, based on the evidence at trial, the defendants have the ability to pay costs in this matter, including double costs after July 29, 2009. In support, the plaintiffs point out that the apartment they were renting from the defendants was an investment property for the defendants, who live in Colorado. The plaintiffs also point out that the apartment sold for \$1,150,000, and the defendants had the financial ability to waive two months' rent and compensate the plaintiffs for ending their tenancy early.
- [12] Based on the above, I am satisfied that this is an appropriate case to award the plaintiffs double costs for all steps taken after July 29, 2009, when their offer to settle was delivered.
- [13] I therefore order that the plaintiffs recover their costs on Scale B of Appendix B, with double costs for all steps taken after July 29, 2009. "The Honourable Madam Justice E. J. Adair"
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