

CANADA / JUDGMENT

Heng v. Anutooshkin

2013 BCSC 1414

COURT

Supreme Court of British Columbia

DECIDED

26 April 2013

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2013 BCSC 1414 Heng v. Anutooshkin IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Heng v. Anutooshkin, 2013 BCSC 1414 Date: 20130426 Docket: M103473 Registry: Vancouver Between: Nicholas Leng Wai Heng Plaintiff And Kelly Ann Anutooshkin and Sean P. Mahoney Defendants Before: District Registrar Cameron Oral Reasons for Decision on Costs Counsel for the Plaintiff: E. Orr-Ewing Counsel for the Defendants: D. Goldberg Place and Date of Hearing: Vancouver, B.C. April 26, 2013 Place and Date of Decision: Vancouver, B.C. April 26, 2013

- [1] Plaintiff's counsel seeks double costs for the preparation and attendance on this assessment of disbursements consequent upon the settlement of this personal injury action.
- [2] On February 13, 2013, plaintiff's counsel delivered an offer to settle costs, which in this case is disbursements only, for \$12,424.80. Before this assessment, counsel for the defendants accepted all of the disbursements claimed by the plaintiffs save for three. Those three were: The invoice of Dr. B. De Freitas, a psychiatrist who counselled the Plaintiff for a medical report in the amount of \$1,532. The defendant conceded that it was proper to obtain the report and did not take any objection to the fee charged for the report that was in keeping with the BCMA guidelines, but rather said the report was not helpful and of little value. For reasons that I gave earlier, I did not accede to those submissions and I allowed the cost for the report in full.
- [3] The second invoice that was put in issue was for a mediation cancellation fee. I concluded that the cancellation fee was made known in advance to the adjuster and the e-mail correspondence that was in evidence made clear that the adjuster did not object to paying the fee and I allowed it.
- [4] The last disbursement in question was for a cancellation fee for Dr. Yip, who was to testify at the trial on November 6, 2012. Dr. Yip was promptly notified of the settlement of the trial on November 1, 2012. Again, Mr. Goldberg for the defendant did not quarrel with the fact that a cancellation fee was charged by Dr. Yip, nor did he quarrel with Plaintiff's counsel having paid that fee in the sum of \$1,922 on November 2, 2012. The issue that the defendant raised was that Dr. Yip after being paid by Plaintiff's counsel was able on short notice to rebook 40 percent of his day on November 6 to see patients. Having found that this was a proper disbursement that was reasonable as to amount and properly paid by Plaintiff's counsel I

held that if there was any issue about the fact that Dr. Yip may have been overcompensated, that in the prevailing circumstances that was a matter for ICBC to take up with Dr. Yip directly.

- [5] In the result, with the offer to settle being made in a timely way, I award the Plaintiff double costs for tariff items 29 and 30 for preparation and attendance.
- [6] Tariff item 29 for one half day or less amounts to one unit and doubled is allowed at two units. Tariff item 30 for one half or less amounts to two units and doubled is allowed at four units for a total of six units at Scale B of \$660.
- [7] Are there any disbursements being claimed for the assessment, Mr. Orr-Ewing, other than the \$80 filing fee?
- [8] MR. ORR-EWING: Mr. Registrar, I don't believe so. There were no -- there was no fees incurred by talking to Mr. Yip -- Dr. Yip, the expert.
- [9] THE REGISTRAR: \$80 will be allowed for the filing fee, such that the result will be the Plaintiff will recover the costs of this assessment in the sum of \$740. I take it, then, if a certificate is necessary, it would be for \$12,424.80; is that right?
- [10] MR. ORR-EWING: Yes. I will say in addition, and then your -- the order you have made today.
- [11] THE REGISTRAR: Well, that would have to be an order for costs that you would have to draw up separately.
- [12] No objection to that, Mr. Goldberg?
- [13] MR. GOLDBERG: None.
- [14] THE REGISTRAR: All right. So the certificate, if one is necessary, will be for \$12,424.80.
"District Registrar Cameron"

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