

CANADA / JUDGMENT

J.M.C. v. Y.S.

2018 BCSC 1861

COURT

Supreme Court of British Columbia

DECIDED

16 October 2018

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2018 BCSC 1861 J.M.C. v. Y.S. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: J.M.C. v. Y.S., 2018 BCSC 1861 Date: 20181016 Docket: E042844 Registry: New Westminster Between: J.M.C. Claimant And Y.S. Respondent Corrected Decision: The names of the Claimant and Respondent have been initialized throughout this decision on October 31, 2018. Before: District Registrar Nielsen Oral Reasons for Decision In Chambers Counsel for the Claimant: J. Ling Appearing on her own behalf: Y. S. Place and Date of Hearing: New Westminster, B.C. October 16, 2018 Place and Date of Decision: New Westminster, B.C. October 16, 2018

- [1] THE COURT: This is an application for pre and post-judgment interest on the award of special costs. This matter involved a contentious family law case in which property division, custody, access, and parenting rights were at issue.
- [2] The family law case was resolved by Mr. Justice Bernard by court order dated October 1, 2015, filed June 20, 2016. The court's reasons for judgment are cited at J.M.C. v. Y.S., 2015 BCSC 1770.
- [3] During the course of the family law case, the respondent's conduct was found by the court to be scandalous and outrageous, and by order dated January 16, 2017, filed July 17, 2017, the court ordered that special costs were to be assessed by the registrar. The assessment of special costs took place over five days. The special costs were assessed and the claimant was awarded \$102,672.48. The reasons for decision regarding the assessment of special costs is cited at J.M.C. v. Y.S., 2018 BCSC 915.
- [4] The reference to the registrar to assess special costs was specific. There was no reference made to either pre-judgment or post-judgment interest.
- [5] The Court Order Interest Act, R.S.B.C. 1996, c. 79, provides in s. 1(1): Subject to section 2, a court must add to a pecuniary judgment an amount of interest calculated on the amount ordered to be paid at a rate the court considers appropriate in the circumstances from the date on which the cause of action arose to the date of the order.
- [6] Section 1 of the Court Order Interest Act is subject to s. 2. Section 2(c) of the Court Order Interest Act provides: The court must not award interest under section 1 ...

- (c) on interest or on costs ...
- [7] Pre-judgment interest on costs may not be awarded and, in my view, that effectively disposes of the issue of the claim for pre-judgment interest.
- [8] Part 2 of the Court Order Interest Act deals with post-judgment interest. Section 7(2) provides that: A pecuniary judgment bears simple interest from the later of the date the judgment is pronounced or the date money is payable under the judgment.
- [9] Section 9(1) of the Court Order Interest Act provides, in part: Interest under this Part is deemed to be included in the judgment for enforcement purposes.
- [10] Therefore, to the extent that a certificate for special costs is a judgment for the purposes of the Court Order Interest Act, interest under Part 2 of the Act would follow, as a matter of law, from the time of pronouncement.
- [11] This issue was canvassed by Master Bouck in *Couture v. Oviatt*, 2009 BCSC 15, wherein she states at paragraph 13: I have concluded that the registrar has no jurisdiction to "order" that post-judgment interest accrues on costs. Post-judgment interest accrues on a judgment as a matter of law as stipulated in Part 2 of the Court Order Interest Act, R.S.B.C. 1996, c, 79. Whether the issuance of an offer to settle is equivalent to the judgment or order of the court is a question that I need not (and should not) decide here. The defendants may choose to include post-judgment interest when demanding payment of their costs from the plaintiff. However, the registrar has no authority to decide whether the amount claimed by the defendants is correct. I note that Boyd, J. in *Syed v. Randhawa* commented that she "was not satisfied that a taxation hearing is necessarily the proper forum" for the determination of a party's entitlement to interest on a costs judgment.
- [12] So by way of disposition, the claimant is not entitled to pre-judgment interest on the special costs assessed by operation of s. 2(c) of the Court Order Interest Act.
- [13] The claimant is entitled to post-judgment interest on the special costs award from the date of pronouncement pursuant to sections 7 and 9 of the Court Order Interest Act. However, that amount is not to form part of the certificate in Form F72. "District Registrar Nielsen"

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