

CANADA / JUDGMENT

Label v. Albanese

2008 BCSC 1679

COURT

Supreme Court of British Columbia

DECIDED

4 December 2008

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2008 BCSC 1679 Label v. Albanese IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Label v. Albanese, 2008 BCSC 1679 Date: 20081204 Docket: S076221 Registry: Vancouver Between: Susan G. Label Solicitor And Salvatore N. Albanese Client Before: Master Taylor (As Registrar) Reasons for Decision (Costs) Counsel for the Solicitor: S.G. Label Counsel for the Client: J.S. Piamonte Written Submissions on Costs: Solicitor: October 30, 2008 Client: November 14, 2008 Solicitor's Reply: November 21, 2008

- [1] Following a three-day review of the solicitor's accounts, I gave written reasons on September 9, 2008. After receipt of my written reasons, the solicitor, Ms. Label, requested the opportunity to make submissions with respect to costs. Mr. Piamonte requested the opportunity to provide written submissions. I determined that written reasons would be provided and required Ms. Label to furnish her written submissions by October 30, 2008. Thereafter, Mr. Piamonte for Mr. Albanese was to have his written submissions to me by November 14, 2008 and Ms. Label was to have until November 21, 2008 for a reply.
- [2] Ms. Label submits that as a result of having sent a formal Offer to Settle to Mr. Piamonte dated May 7, 2008, and due to the fact that I awarded more in fees to her than was set out in her offer to settle, she should be entitled to double costs thereafter from the date of the offer to settle.
- [3] On behalf of Mr. Albanese, Mr. Piamonte's submissions contain the following paragraph:
1. The solicitor is entitled to party and party costs on such 'Appendix B' items as were proper or reasonably necessary to conduct the Review, together with a reasonable amount for disbursements, again necessary and properly incurred, in conducting same.
- [4] The submission on behalf of the client also dealt with why the client exercised his right to a review in the first place - that being my finding that the solicitor's fees "are likely higher than they might ordinarily be." My finding in that regard was that Ms. Label's accounts "would not be as high as they are were it not for the client, his demands, his telephone calls and emails."

- [5] Neither party addressed the issue as to whether an offer to settle applies to the taxation of a solicitor's account pursuant to the Legal Profession Act. However, Mr. Justice Goepel did so in *Long, Miller, and Mullins v. Sawchuk*, 2002 BCSC 542 from which I now quote starting at paragraph 94:
- [94] In *Boe v. Waters* (1998), 24 C.P.C. (4th) 252 B.C.S.C. Reg.) Master Horn found that he had the power to award double costs. He based his decision on Rule 37(2) that indicates that a party to a proceeding may make an offer under Rule 37. A "proceeding" includes a review of a solicitor's bill under the Legal Profession Act. See: *Holmes Greenslade v. Starcom International Optics Corp.* (1997), 49 B.C.L.R. (3d) 159 (S.C.). Master Horn did not consider any of the other provisions of Rule 37.
- [95] The difficulty is that although a taxation is a proceeding, only offers made under Rule 37 by plaintiffs or defendants trigger double costs. While for the purpose of Rule 37 those terms are expanded to include petitioners and respondents, the parties to a taxation under the Legal Profession Act do not fall under any of those categories. The proceedings are between solicitor and client, not plaintiff and defendant.
- [96] In the context of Rule 37 this is of more than academic concern. The operation of the rule is dependent upon whether or not the offer is made by a plaintiff or defendant. The consequences of accepting or failing to accept an offer differ depending whether it is the plaintiff or defendant who made the offer. In the taxation of a legal account there is no plaintiff, there is no defendant.
- [97] Several of the provisions of Rule 37 give jurisdiction to the court to make orders. I refer in particular to Rules 37(7),(11),(21),(27)and(33). These provisions are integral to the operation of the rule. A registrar does not have the jurisdiction of the court and when masters are sitting as registrars they have the jurisdiction of registrars and do not fall within the definition of "court." See: *Aydin & Co. v. Schaber* (2000), 49 C.P.C. (4th) 77 (B.C.S.C.). Accordingly on a taxation neither a registrar nor a master can make any of those orders found in Rule 37 which are reserved to a court.
- [98] Because only plaintiffs or defendants can make offers under Rule 37 and only the court can make certain orders required by the rule, I am of the opinion that Rule 37 does not apply to taxations under the Legal Profession Act and accordingly the Master in this case was without jurisdiction to make an order for double costs.
- [99] I am also of the opinion that an award of double costs would be contrary to the provisions of section 72 of the Legal Profession Act. That section sets out, subject to special circumstances, that the awarding of costs of a taxation depend upon whether or not more than 1/6th of the total account is subtracted. Although an offer to settle might constitute special circumstances that could be considered in awarding costs, such an offer does not in itself trigger double costs.

- [6] While the rule relating to costs has been amended since Goepel, J. gave his reasons in Long, Miller and Mullins, I am of the view that the same principles apply. Section 72(1) of the Legal Profession Act is a complete code in regard to costs involved in the review of a lawyer's bill. That section provides that costs of a review of a lawyer's bill must be paid by:
- (a) the lawyer whose bill is reviewed, if 1/6 or more of the total amount of the bill is subtracted from it;
 - (b) the person charged, if less than 1/6 of the total amount of the bill is subtracted from it;
 - (c) a person who applies for a review of a bill and then withdraws the application for a review.
- [7] In this case section 72(1)(b) is applicable to this review. Accordingly, and for the reasons set out in Long, Miller & Mullins, the solicitor is not entitled to double costs. "Master G.C. Taylor"

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