
CANADA / JUDGMENT

Ladret v. Stephens

2013 BCSC 2278

COURT

Supreme Court of British Columbia

DECIDED

3 May 2013

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2013 BCSC 2278 Ladret v. Stephens

THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ladret v. Stephens,

2013 BCSC 2278

Date: 20130503

Docket: M112853

Registry: Vancouver

Between:

Heather Irene Ladret

Plaintiff

And

Corey D. Stephens and Natasha L. Grsic

Defendants

Before: The Honourable Mr. Justice Greyell

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

A. Sayn-Wittgenstein

Counsel for the Defendants:

J.D. Morin

L.H. Leung

Place and Date of Trial/Hearing:

Vancouver, B.C.

May 3, 2013

Place and Date of Judgment:

Vancouver, B.C.

May 3, 2013

- [1] THE COURT: I am going to give brief oral reasons for judgment.
- [2] This is an application brought by the defendants for an order that -- to read from the notice of application -- the settlement of this matter be enforced at the amount of \$75,000, plus taxable costs and disbursements up to the date of acceptance, as per the defendants' written acceptance on April 22nd, 2013 of the plaintiff's formal offer to settle dated October 4, 2012.
- [3] The defendants seek costs of this application in any event of the cause and for costs and disbursements thrown away as a result of the trial preparation from April 22nd, 2013 onward.
- [4] This matter came on an expedited basis with short leave granted to file the material placed before the court today, as the trial of the matter is scheduled to commence this coming Monday to proceed for the next four days.
- [5] The defendant, as stated, says the matter was settled as the result of its acceptance of an offer to settle made by the plaintiff. The issue before me is whether the matter was settled.
- [6] I issue these short reasons late in the day on Friday as counsel requires an answer. As they are oral and expedited, they will not be in an artful form and, hence, I reserve the right to edit them should a transcript be ordered.
- [7] This action arises from a motor vehicle accident and a claim for damages for personal injuries arising from that accident which occurred July 2nd, 2009. Liability has been admitted; damages remain the outstanding issue.
- [8] The matter was originally set for trial December 11, 2012. In the course of the lawsuit the plaintiff and the defendants exchanged various offers to settle: both formal offers under Rule 9-1 and informal offers in an effort to expedite settlement.
- [9] On October 1st the defendants filed an offer pursuant to the requirements of Rule 9-1 offering to settle the case in the amount of \$50,000.

- [10] On October 4th, 2012 the plaintiff filed an offer pursuant to the terms of Rule 9-1 offering to settle the case for \$75,000.
- [11] On October 9th the defendants made an informal offer offering to settle the case for \$52,000.
- [12] The plaintiff did not respond to that offer and on November 1st the defendants renewed its efforts to settle the matter by making an informal offer of \$60,000.
- [13] That informal offer was followed by an offer pursuant to Rule 9-1 in the same amount, which offer was made on December 5th, 2012.
- [14] On December 10th, the day before the trial was to commence, the plaintiff made an informal offer advising the defendants that it was prepared to settle the action for \$72,500 plus taxable costs and disbursements. This was not an offer containing the necessary language required by Rule 9-1.
- [15] On the same date, the defendants made an informal offer in the amount of \$65,000.
- [16] On December 12th, the day following the day upon which the trial was to proceed -- and I note the trial did not proceed because a judge was not available that day -- the plaintiff made a further informal offer of \$72,500, noting that that offer was open for acceptance until 4:00 p.m. December 21st at which time the offer was withdrawn.
- [17] The matter was then reset or rescheduled for trial to May 6, 2013.
- [18] There were no further settlement discussions between the parties until August 15th, 2013.
- [19] The file within ICBC, who was representing the defendants, was transferred to a new claim's examiner in or about the middle of March, 2013. The plaintiff's file was one of a number of files that were transferred to her but the first scheduled to proceed to trial, and accordingly, received her early attention.
- [20] As the result of a combination of a trial management conference at which the trial management judge had raised the issue of whether settlement was a possibility in this case, and upon instructions from the adjuster's supervisor, she made contact with counsel for the plaintiff on April 22nd to see if the case could be resolved.
- [21] Now, there are two matters that are relevant to the initiation of that conversation. The first is that on the face of it, in any event, to her, the parties did not appear to be that far apart in their last positions. The defendants were at \$65,000 and the plaintiff had been at \$72,500, although that offer had had a time expiration date placed on it. It was an informal offer.
- [22] The other relevant factor is, I think, unbeknownst to the adjuster, the plaintiff had a report done which heightened in the plaintiff's mind the degree of the plaintiff's injuries and her ability to work.

[23] The contents of what occurred during the communication are, in my view, significant and determinative of the issue, and I refer to that conversation which is recited in Mr. Gourlay's affidavit of May 2nd, Mr. Gourlay being counsel for the plaintiff, at paragraphs 9 and 10:

My Next discussion with Ms. Owen-Blas was at approximately 11:45 a.m. on Monday, April 22nd, 2013, when she called me. We discussed the matter at length. She asked me about the case because she was still new to it and I explained how I saw it. I explained how the matter had evolved since the last trial date and in that we had received a functional capacity evaluation and the plaintiff had attempted to return to work but had struggled in that attempt. I advised her that we had just received updated records from the plaintiff's GP which included an updated consult report from her treating psychiatrist and from her physical therapist. I specifically recall Ms. Owen-Blas asking me whether the offer was still on the table and I said no. I explained that I thought the claim was now worth more than it was prior to the last trial date. She asked me what we would need to resolve this matter and I said I could not recommend settlement to my client for less than \$100,000.

[24] The April 22nd conversation is again referred to in an e-mail from Mr. Gourlay to Ms. Klimo, who was a lawyer handling the file on behalf of the defendants, in which -- and I refer here to paragraph 4 of that e-mail, which is Exhibit C to Mr. Gourlay's affidavit. I will not read the whole paragraph, but he says, and this is shortly after the conversation. Well, it is at 7:00 p.m. that evening. It is on the same day as the conversation:

Ms. Owen-Blas specifically asked me whether the offer was still on the table and I said no. I can't recall whether she said the offer or the \$72,500 offer, but there is no question that we were on the same page, that the plaintiff did not have a settlement offer on the table, given that I had just said I would need \$100,000 to recommend settlement.

[25] Ms. Owen-Blas' report of the April 22nd conversation in notes she kept on her computer does not differ in significant regard from Mr. Gourlay's recollection of the conversation. I refer to Exhibit C to Ms. Owen-Blas' affidavit sworn May 2nd, 2013 where she writes, and I am quoting here in part on the e-mail:

He said she does not want to go to trial. Discussed he wants to go more than she does. He agrees he feels her case is worth more than what we are offering. She is sympathetic. She is having anxiety about going to trial. Mentioned it to GP. Advises at TMC judge said to negotiate given numbers close. Can we not settle?

[26] And there I think she is referring to the reason she initiated the call.

Can we not settle somewhere between 65,000 and 72,500? Split the difference?

[27] And then the response is noted as being:

No. He is looking for 100k. The 72,500 is no longer on the table. He will not recommend that. He says he thinks she will get 60 to 70,000 non-pecs, 8,500 wage loss and specials. Thinks she will get a marginal award for housekeeping and an award for income capacity which will put her at 100k.

- [28] Following this conversation and on the same day the defendants accepted or, at least, gave the plaintiff notice that they were accepting its written formal offer made under Rule 9-1 of \$75,000.
- [29] It is my view that that offer was not open for acceptance. It is my view, based on the facts that have been placed before me, that the offer of \$75,000 had been withdrawn expressly during the telephone conversation and that the defendants in accepting that offer proceeded to do so on the mistaken belief that the withdrawal of the offer had to be in writing to be effective.
- [30] I am supported in that finding by the following paragraph in an e-mail sent by the defendants to Mr. Gourlay, a portion of which reads:
- The crux is your formal did not stipulate an expiration and you did not revoke it. As such, it was open for acceptance by the defendants. As it was drafted, it was open for acceptance up until judgment. Although not required by Rule 9-1, if you intended to revoke your formal you would have to do so in writing.
- [31] The case law is clear that a revocation can be oral or written. The question is whether such revocation is clearly and unequivocally given, citing Janzen v. Janzen, 2011 BCSC 1146, 2011 B.C.J. No. 1605.
- [32] In my view, given the contents of the April 22nd discussion between Ms. Owen-Blas and Mr. Gourlay, it was clear the offer of \$72,500 had been revoked, that offer in itself revoking the \$75,000 prior offer.
- [33] THE COURT: Counsel, those are my reasons in this matter. Are there any issues arising?
- [34] MR. SAYN-WITTGENSTEIN: The only issue is we have a trial on Monday and we do have it before a judge alone and we have all this material now dealing with settlement discussions and such. Is it possible then to obtain an order at this time that the materials relating to this application be sealed and that the trial judge not be -
- [35] THE COURT: Well, I do not know how the trial judge would -- well, it would seem - it would seem to me to be appropriate. I mean, if you -- if you decide to appeal my decision you have certainly got that right and can do that in the ordinary course, but for the purposes of the trial commencing on Monday the trial judge should not be privy to any of the -- not that he -- not that I am sure he would. He simply has got enough on his plate, I am sure, he or she.
- [36] MR. MORIN: I'm fine with that.
- [37] THE COURT: Yes. Very well. So the contents of this file then will be -- will be frozen until further order of the court. Thank you.
- [38] MR. SAYN-WITTGENSTEIN: Thank you, My Lord.
- [39] THE CLERK: Order in chambers. Chambers is adjourned.

"Greyell J."

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