

CANADA / JUDGMENT

Neustaeter v. ICBC

2020 BCSC 208

COURT

Supreme Court of British Columbia

DECIDED

18 February 2020

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2020 BCSC 208 Neustaeter v. ICBC IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Neustaeter v. ICBC, 2020 BCSC 208 Date: 20200218 Docket: 55213 Registry: Kamloops Between: Keturah Anne Neustaeter Plaintiff And Insurance Corporation of British Columbia Defendant Before: Master J.M. Keim as Registrar Corrected Judgment: The text of the judgment was corrected at para. 17 on February 26, 2020 Corrigendum to Reasons for Judgment on Costs Counsel for the Plaintiff: E.C. Hughes Counsel for the Defendant: T.J. Decker Place and Date of Hearing: Kamloops, B.C. November 21, 2019 & January 6, 2020 Place and Date of Judgment: Kamloops, B.C. February 18, 2020 Place and Date of Corrigendum: Kamloops, B.C. February 26, 2020

- [1] This is an application for costs pursuant to an accident that occurred on July 18, 2016. The notice of civil claim in this action relates to the Part 7 benefits that were claimed as a result of the accident. Another notice of civil claim relating to the accident was filed in the Kamloops registry file number 55160 on October 20, 2017 (the "main action"), which sets out the alleged injuries and claim for damages.
- [2] This matter was settled by way of agreement on October 23, 2019 when the plaintiff agreed to accept the sum of \$103,209.44 in full and final settlement of any claims made in the main action or in this action. I note that the final release states the following: In consideration of the payment of, or the promise to pay, the sum of One Hundred Three Thousand Two Hundred Nine Dollars and Forty Four Cents (\$103,209.44). Plus taxable costs and disbursements to be agreed or assessed. The undersigned, for themselves, their heirs, executors, administrators, successors and assigns, hereby release and forever discharge with respect to liability under Part 7 of the Insurance (Vehicle) Regulations, the Insurance Corporation of British Columbia from any and all actions, causes of action, claims and demands [Underline emphasis in original.]
- [3] It is clear that the settlement was to capture both the main action and this action for Part 7 benefits, and that taxable costs and disbursements were to be part of the settlement. LAW
- [4] The starting point for any assessment pursuant to the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Civil Rules] is Rule 14-1. Subrule 14-1(2) reads: Assessment of party and party costs

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- (2) On an assessment of party and party costs under Appendix B, a registrar must
- (a) allow those fees under Appendix B that were proper or reasonably necessary to conduct the proceeding, and
 - (b) consider Rule 1-3 and any case plan order.
- [5] Rule 1-3 which sets out the object of the Civil Rules reads: Object
- (1) The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits. Proportionality
 - (2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to
 - (a) the amount involved in the proceeding,
 - (b) the importance of the issues in dispute, and
 - (c) the complexity of the proceeding.
- [6] With respect to disbursements, subrule 14-1(5) provides: Disbursements
- (5) When assessing costs under subrule (2) or (3) of this rule, a registrar must
 - (a) determine which disbursements have been necessarily or properly incurred in the conduct of the proceeding, and
 - (b) allow a reasonable amount for those disbursements.
- [7] The plaintiff has advanced her claim for costs in this action and states that undertaking this action in addition to the main action was a reasonable and necessary step in relation to this accident.
- [8] The defendant's primary position is twofold:
- 1. At no time had the defendant breached the contractual terms of the Part 7 benefits; and
 - 2. That as the most recent payment for Part 7 benefits was made on January 8, 2018, the plaintiff was in no danger of an expired limitation period at the time when she filed the notice of civil claim in November 2017 since the limitation period would not expire until January 8, 2020 at the earliest.
- [9] Defence counsel referred to *Zendedil v. Popiela*, 2016 BCSC 1817, wherein Master Muir did not allow a claim for expenses related to a civil claim for Part 7 benefits. She noted that as the Part 7 benefits had been paid continuously throughout and that the limitation period would not begin to run until the last payment of a Part 7 benefit, it was both unreasonable and unnecessary for the plaintiff to have filed the Part 7 action.

- [10] The defendant further submits that the plaintiff did not take any active steps in the action beyond filing and service the notice of civil claim. The defendant submits that this is significant since it further supports their position that the action was not a necessary or prudent step. The defendant submits that the plaintiff is, therefore, not entitled to any costs for this action.
- [11] The plaintiff submits that the Part 7 action was a necessary and prudent step to take in November, 2017 given the difficulties that the plaintiff had already experienced in accessing Part 7 benefits. Counsel referred me to *Park v. Koepke*, 2013 BCSC 1806, where Registrar Sainty states at paras. 12-13:
- [12] Here, Mr. Stewart advised that the Part 7 claim was filed to preserve the plaintiff's rights under the Insurance (Vehicle) Act to seek (and be reimbursed for) treatment directly related to the Accident.
- [13] In my view, the Part 7 action was a necessary adjunct to this litigation; i.e. but for the defendants actions which caused the Accident, the plaintiff would not have had to commence the Part 7 action to preserve her rights. Accordingly, I will award the plaintiff her disbursements associated with that action being: Non-Taxable Disbursements Amount Dye & Durham (Part 7 Notice of Claim) \$200.00 Dr. Juan Kim - Clinical Records \$103.70 Dr. Scott Park - Clinical Records \$100.90 Taxable Disbursements Amount Dye & Durham - Part 7 Notice of Claim \$16.12 TOTAL \$420.72
- [12] The evidence before me demonstrates that counsel for the plaintiff was retained in September 2016, just two months after the accident. Between October 2016 and February 2017, there were numerous communications between the plaintiff and representatives of the defendant regarding payment of the Part 7 benefits. Submitted expenses began to be paid in a timely manner but that lasted only a short time before the plaintiff was again required to undertake considerable effort to obtain approval for submitted expenses. The evidence is that between February 24, 2017 and October 24, 2017, plaintiff's counsel communicated with the defendant on approximately 21 occasions related solely to the payment of Part 7 benefits.
- [13] It is clear from the evidence before me that the plaintiff was put to some effort in order to obtain the Part 7 benefits. At times, various expenses were denied for payment, although ultimately approved, while payment of other expenses was significantly delayed. This resulted primarily due to:
- a) a difference of interpretation and approach taken by various ICBC personnel regarding the submitted expenses; and
 - b) transition of the file between various ICBC personnel as different individuals had responsibility for the file over the course of time.

- [14] In reviewing the circumstances of the case before me, I am satisfied that there was a reasonable basis for the plaintiff to be concerned regarding the payment of Part 7 benefits and to commence this action. The settlement of this action reflects the defendant's knowledge and expectation that costs and disbursements in this action and the main action would be payable as part of the settlement.
- [15] I now turn to the specific items being claimed on the bill of costs in relation to the guidance set out in the Civil Rules and authorities provided to me. Defendant's counsel did not provide submissions on any of the specific costs being claimed beyond the submission that none of the costs were appropriate as the action itself was neither necessary or reasonable. **TARIFF ITEMS** Tariff Item 1
- [16] The plaintiff has claimed 5 units out of a maximum of 10 units. While it is clear from the evidence that there was some correspondence required in 2016 and throughout 2017 solely relating to the payment of the Part 7 benefits, this action was then commenced in November 2017 and, therefore, the activities under this tariff item are of a relatively minor nature given the length of the matter. I allow 2 units under tariff item 1. **Tariff Item 2**
- [17] The plaintiff claims 7 units out of a maximum of 30 units. The evidence details the numerous correspondence that was required in following up with the defendant regarding the payment of various Part 7 benefits throughout the course of the litigation. Again, I am satisfied that the correspondence that is limited strictly to the Part 7 benefits and this particular action was of a relatively minor nature and, therefore, I allow 3 units. **Tariff Item 6**
- [18] The plaintiff seeks 3 units out of a maximum of 10 units. Again, given the relatively minor activities that were required under this action, I will allow 2 units. **Tariff Items 29 and 30**
- [19] Counsel submits 2 units under tariff item 29 and 2 units under tariff item 30. Given that the time spent on this bill of costs was relatively minor in comparison to the discussion of costs in the main action, I allow 1 unit for tariff item 29 and 2 units for tariff item 30. **Tariff Item 44**
- [20] The plaintiff claims 5 units. I allow all 5 units.
- [21] Therefore, the total number of units I have allowed is 15 units. **DISBURSEMENTS**
- [22] There are only two disbursements being claimed by the plaintiff. First, the court registry filing fee of \$294.00, which is allowed in its entirety and, secondly, office photocopies of \$75.00, which represents 300 photocopies at \$.25 per page.
- [23] Plaintiff's counsel acknowledged that this was a rough apportionment of the total photocopies made on the file, most of which were assigned to the main action. As is evidenced in many of the authorities provided to me, it is common practice to achieve a "rough justice" in relation to photocopying charges and reduce them by 25%, which reflects the reality that some photocopying necessarily relates to overhead and is not properly reimbursable under costs.

[24] In applying that same rule of thumb to this action, I allow photocopies in the amount of \$56.25.

[25] Plaintiff's counsel should submit a revised bill of costs and certificate of costs reflecting this decision. "Master J.M. Keim" MASTER KEIM

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Prepared on 26 October 2026 · Esheria