

CANADA / JUDGMENT

Proudfoot v. Bryant

2025 BCSC 2205

COURT

Supreme Court of British Columbia

DECIDED

23 September 2025

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2025 BCSC 2205 Proudfoot v. Bryant IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Proudfoot v. Bryant, 2025 BCSC 2205 Date: 20250923 Docket: S202471 Registry: Victoria Between: William Alexander Proudfoot Plaintiff And Jeffrey Bryant and North Shore Law LLP Defendants Before: The Honourable Justice Thomas Oral Reasons for Judgment re Costs In Chambers Counsel for the Plaintiff: J.M. Aiyadurai Ms. Simpson Counsel for the Defendants: C.E. Selby Place and Date of Trial/Hearing: Victoria, B.C. September 19, 2025 Place and Date of Judgment: Victoria, B.C. September 23, 2025

- [1] THE COURT: These are my reasons with respect to costs associated with Proudfoot v. Bryant, 2025 BCSC 1437.
- [2] The plaintiff was successful at trial and was awarded \$107,629. As he was successful, the general rule is that he is entitled to his costs and disbursements. However, the defendants made a formal offer to settle on February 6, 2024, for \$100,000, plus costs and disbursements. The value of the damages awarded at trial as of February 6, 2024, the date of that offer, was \$101,379 (the difference is due to interest on the award).
- [3] It was agreed that the plaintiff was entitled to his costs and disbursements up to February 6, 2024. The defendant is not entitled to his costs after February 6, 2024, pursuant to Rule 9-1(5) (d), as the offer was less than the amount of judgment. The issue is whether the plaintiff should be deprived of some or all of his costs and disbursements after the February 6, 2024, offer.
- [4] The principles set out in *Hartshorne v. Hartshorne*, 2011 BCCA 29 should be considered in assessing this issue:
- (a) whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle was delivered or served or on any later date;
 - (b) the relationship between the terms of settlement offered and the final judgment . . .
 - (c) the relative financial circumstances of the parties; [and]
 - (d) any other factor the court considers appropriate.

- [5] The underlying purpose of the offer to settle rule is to encourage parties to seek resolutions by making reasonable settlement offers and discouraging parties from refusing such offers. I find the principles set out by Justice Funt in *Zhang v. Lin* in 2025 BCSC 1550 at paras. 21-25 and 30-33 provide a helpful summary of the principles to be considered.
- [6] I will now consider the four Hartshorne principles. Ought Reasonably to Have Been Accepted
- [7] I find Justice Gomery's characterization of this principle in *Kobetitch v. Belski*, 2018 BCSC 2247 at paras. 24-25, persuasive and applicable. The plaintiff argues that although the offer included a detailed explanation of the issues and rationale, the main question at trial in deciding whether the offer should reasonably have been accepted was whether the mother's interest in the condominium was covered by the will or constituted a gift outside the will. I reject this argument. In my view, this issue was relatively minor, as the court considers gifts outside the will when determining whether an apportionment should be made within the will.
- [8] In my view, it would not have been reasonable to reject the offer on this basis, as it would not reasonably be expected to have a significant impact on the damages. In my view, the offer was objectively reasonable.
- [9] The trial made it clear that the plaintiff's anger and sense of injustice stemming from the will stemmed from his belief that his brothers were criminals who received the family ranch for free, and from his baseless dismissal of George's extraordinary contributions to his mother's quality of life.
- [10] In my view, it is much more probable that these factors drove the plaintiff to reject the settlement offer as opposed to the explanation provided by his counsel. These subjective factors are not reasonable, and although the litigants are legally entitled to pursue claims based on these emotions and other what are unreasonable views, doing so weighs heavily against them in situations such as assessment of costs. Results at Trial
- [11] This factor also favours the defendant. Their offer was within one to two percent of the award. Relative Financial Circumstances
- [12] The defendant is insured and their insurer has enough assets such that they can take an aggregated view of risks. Although the plaintiff has significant assets in property, the implications of a cost finding against him would have a significantly greater impact. Depriving him of his cost award after the settlement offer would likely cost him in excess of \$20,000. This factor favours the plaintiff. Other Factors
- [13] The plaintiff raised a number of other factors that were not successful at trial, including a breach of fiduciary duty on the part of the defendants, loss of opportunity flowing from the breach of fiduciary duty, and medical distress.

- [14] The matter was hard fought, and the parties failed to agree on non-contentious issues that would have made the litigation more economical and efficient. In my view, by and large, both parties appear to have been guilty of this to various degrees. I will deal with one issue that I found to be particularly concerning and amounted, in my view, to an outlier from the general conduct of the parties later in my reasons. Conclusions
- [15] When I consider all these factors, I am of the view that the primary issue driving this litigation was the plaintiff's emotions and sense of injustice. In my view, this overwhelms the other issues. To be clear, the plaintiff was well within his rights to pursue the litigation after the February 6th offer. However, given the policy reasons that I referred to earlier, it would not be appropriate for him to receive costs and disbursements after the February 6th offer. Two Experts
- [16] The second issue raised by the defendants is that it would not be fair for her client to pay for the plaintiff's appraisal reports. Her client only had one report. She says it is, therefore, only fair that her client pays for one of the plaintiff's reports.
- [17] This mischaracterizes the fundamental point that determines costs. The issue is was the expense reasonable when it was incurred? In this case, in my view, it clearly was. The expert who provided the initial report could not attend the trial for health reasons, making it reasonable for the plaintiff to obtain a new report from an expert who could attend the trial. Therefore, in my view, this was a disbursement that was clearly reasonable. Insistence on Technical Requirements
- [18] The plaintiff seeks uplift costs for the defendants' insistence that Land Title documents had to comply with the Evidence Act such that the documents needed to be certified.
- [19] Apparently, historical Land Title documents, specifically those relevant to the ranch which was at issue in the trial, are not provided as certified by the Land Title Office. The defendant had no substantive concerns over the documents and simply decided to insist on technical compliance with the Act to be difficult. This position arose within the context of disagreements that were occurring between the parties that I referenced earlier.
- [20] The defendant was clearly entitled to take this position in the same way that the plaintiff was entitled to pursue his action after a reasonable settlement offer had been made. However, raising technical, non-substantive concerns solely to make things difficult, especially given that in this case the defendant knew their position would have a significant impact on the plaintiff's counsel's employees, entitles the plaintiff to a limited uplift in costs.
- [21] This type of conduct is to be discouraged through uplift costs. I agree with the plaintiff that \$1500 is appropriate.
- [22] I am aware that I have determined that in general, the plaintiff is not entitled to his usual cost award after the February 6th offer. However, in my view, giving the conduct of the defendant the \$1,500 award in uplift costs is appropriate notwithstanding that finding.

- [23] CNSL C. SELBY: I'm sorry, Justice, I'm not sure what the result is.
- [24] THE COURT: The result is this: The plaintiff is entitled to his costs and disbursements up to the February 6, 2024, offer, but not thereafter. The plaintiff is entitled to costs and disbursements incurred prior to February 6, 2024 to costs and disbursements for retaining both of the appraisal experts. My understanding is that the second appraisal expert, was retained and expenses were incurred prior to February 6, 2024.
- [25] And finally, the plaintiff is entitled to an uplift cost of \$1500, which relates to after February 6, 2024.
- [26] CNSL C. SELBY: So after February 6, 2024, each party bears their own costs?
- [27] THE COURT: Yes.
- [28] CNSL C. SELBY: Thank you.
- [29] THE COURT: With the one exception of that uplift.
- [30] CNSL C. SELBY: Yes, and the costs of this application goes to the defendant or is that just each party bears their own costs?
- [31] THE COURT: Each party bears their own costs, because in my view there has been split results for this application.
- [32] THE CLERK: Okay.
- [33] CNSL C. SELBY: Thank you very much.
- [34] CNSL J. AIYADURAI: Thank you, Justice.
- [35] THE COURT: Okay. Thank you all. "Thomas J."

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