
CANADA / JUDGMENT

R.A.V. v. J.M.M.

2017 BCSC 609

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Supreme Court of British Columbia

DECIDED

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2017 BCSC 609 R.A.V. v. J.M.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.A.V. v. J.M.M.,

2017 BCSC 609

Date: 20170412

Docket: E150441

Registry: Vancouver

Between:

R.A.V.

Claimant

And

J.M.M.

Respondent

Before: The Honourable Madam Justice Arnold-Bailey

Reasons for Judgment Regarding Costs

Counsel for the Claimant:

Magal Huberman

Counsel for the Respondent:

Lewis Spencer

Date of Written Submissions:

July 12, August 10, September 14, September 22, and October 5, 2016

Place and Date of Judgment:

Vancouver, B.C.

April 12, 2017

Overview

- [1] These reasons pertain to the issue of costs.
- [2] Following a two-day chambers application, this Court ruled on an application brought by R.A.V. ("the Claimant") for a review of child support payable by her former husband J.M.M. ("the Respondent"), with oral reasons indexed at 2016 BCSC 1377. The Court dismissed the Claimant's application for retroactive child support payable by the Respondent. The Court altered a term of the separation agreement ("the Agreement"), ordering that the Respondent pay child support to the Claimant in the amount of \$900 per month. The parties had reached an agreement regarding their sharing of s. 7 and extraordinary expenses.
- [3] At the conclusion of the oral reasons for judgment, the Court stated (at para. 113) that "unless there are matters of which the Court is unaware, as success has been mixed, each party is to bear their own costs." Counsel for the Respondent then referred to an offer to settle ("the Offer"), and made brief submissions as to costs. The Court indicated that in the event the parties were unable to settle the issue of costs, they were at liberty to provide the Court with brief written submissions as to costs within 30 days.
- [4] This resulted in a flurry of written submissions to the Court by both parties, the last volley of which languished in the Vancouver registry without being brought to the attention of the Court until late December 2016, which, in turn delayed the final preparation of these reasons. Generally speaking, "brief written submissions" would not encompass the prolonged and detailed exchanges as occurred here, which are to be discouraged.
- [5] The Respondent now seeks an order for costs in relation to the application brought by the Claimant, to which the Claimant is opposed.

Previous Hearing of this Application

- [6] The Claimant brought the present application to be heard on October 27, 2015, but the Respondent sought orders that the matter be sent to mediation and that the Claimant provide financial disclosure relating to her current spouse, Mr. T.M.

- [7] Mr. Justice Bracken ordered that the parties attend mediation, and that the Claimant produce statements for the bank accounts she held jointly with Mr. T.M. in addition to providing a summary of expenses and financial benefits contributed to by Mr. T.M. Bracken J. declined to order the further financial disclosure sought by the Respondent as Mr. T.M. was not a party to the litigation and was not before the Court.
- [8] Bracken J. ordered that costs of that proceeding shall be costs in the cause in the event the parties come back before the Court.

The Present Chambers Application

- [9] The hearing of this application occurred on February 25 and March 31, 2016. The Claimant brought an application for a review of child support payable by the Respondent in relation to their child, S.I.V. ("the Child").
- [10] The Claimant sought an order that the Respondent pay increased amounts of child support retroactively for the years 2013, 2014, and 2015; an order that the Respondent pay ongoing child support in the full table amount or in the alternative, the set-off amount; an order that the Respondent pay his retroactive share of the Child's s. 7 special and extraordinary expenses and the Child's expenses as defined in the Agreement; an order that each party's respective share of the Child's expenses be adjusted; and an order for a number of additional terms to ensure timely exchange by the parties of information necessary to determine child support and special and extraordinary expenses.
- [11] In addition to the relief specified above, the Claimant sought an order pursuant to s. 148(3) of the Family Law Act, S.B.C. 2011, c. 25 [FLA], to set aside paras. 42(c), 43, 44, and 45 of the Agreement and replace them with the new child support orders. The parties have a shared parenting arrangement with regard to the Child.
- [12] The Claimant submitted the set-off amount of child support the Respondent was paying, \$600 per month, was insufficient. Based on the Federal Child Support Guidelines, SOR/97-175 [Guidelines], the Claimant submitted that the Respondent's significantly increased income in recent past years and presently as compared to hers, resulted in an obligation for the Respondent to pay her considerably more child support than the set-off amount of \$600 per month he had agreed to pay.
- [13] The Respondent submitted that the standard of living between the two households was equal, and that the \$600 per month he was paying is sufficient. He further submitted that he should not pay retroactive child support as he had paid the amount he has been required to pay, and had not engaged in any blameworthy conduct.
- [14] Having considered the factors for determining entitlement to retroactive child support in *D.B.S. v. S.R.G.*, 2006 SCC 37, I concluded (at para. 59) that both parties were responsible for not addressing the issue of the sufficiency of child support earlier, and held that a retroactive award of child support was not appropriate in this case. I denied the Claimant's

claim for increased retroactive child support for 2013 and 2014. I found (at para. 69) that any claim for child support will be prospective, to commence as of February 2015 when the application was filed, based on a consideration of the parties' 2016 incomes.

- [15] With regard to the Claimant's application for ongoing child support, I found that there was no legitimate basis upon which this Court could order that the Respondent pay the full table amount based on his Guidelines income. The correct starting point to consider the amount of child support payable in this case was the set-off amount based on the incomes of each party, and then a consideration of the other factors set out in s. 9 of the Guidelines.
- [16] After such consideration, and upon replacing the obligation contained in para. 42(c) of the parties' Agreement, I found that the Respondent is required to pay to the Claimant a set-off amount of \$900 per month in child support in two equal payments of \$450 each on the first and 15th day of each month commencing March 1, 2015, until further court order or agreement in writing by the parties (at para. 111).
- [17] The Court dismissed the Claimant's application for an order that the Respondent be required to pay her his share of the Child's expenses, including s. 7 special and extraordinary expenses retroactive to January 1, 2013, as the Court was advised that the parties had reached an agreement to share such expenses with the Respondent paying 70 percent and the Claimant paying 30 percent. The Court ordered that any amounts owed are to be paid within 60 days of when they are incurred, and in the future such expenses are to be defined and paid as per the Agreement in proportion to their respective Guidelines' incomes.
- [18] The Court also dismissed the Claimant's application to set aside certain paragraphs of the Agreement, except as in relation to para. 42(c) of the Agreement, which was replaced by the obligation of the Respondent to pay child support to the Claimant in the amount of \$900 per month. Any future changes in the amount of child support to be paid are to be governed by the terms of the Agreement, and in the event of a disagreement, the parties are to proceed first to mediation before proceeding to court.
- [19] With regard to financial disclosure, I made an order that the parties will exchange the documents listed in the judgment by June 15 of every year.
- [20] Oral reasons were given on June 14, 2016, with the finding of mixed success with regard to the application, and the Court providing the direction as to further submissions in light of the Respondent's Offer as set out above. I declined to make an order as to costs at the time, suggesting that the parties attempt to settle the issue of costs, and failing that they were at liberty to provide the Court with brief written submissions as to costs within 30 days.

Initial Submissions of the Parties

The Respondent's Submission

- [21] The Respondent seeks costs for: the previous application heard before Bracken J. on October 27, 2015; and the two days of hearing for this application, February 25 and March 31, 2016, followed by the appearance on June 14, 2016, to receive oral reasons.
- [22] Counsel for the Respondent submitted materials comprised of a letter dated July 12, 2016, written submissions on the issue of costs, and a copy of the Offer sent on behalf of the Respondent to the Claimant on October 26, 2015, which contained an offer to settle the issues of child support and s. 7 expenses.
- [23] The terms of the Respondent's Offer included that the Claimant's retroactive child support and s. 7 expense claims be dismissed, and the child support and s. 7 expenses be varied effective November 1, 2015, such that the Respondent would pay \$1,000 per month in child support and be responsible for 90% of the agreed upon s. 7 expenses. The Respondent also raised the issue of costs in the Offer stating that the Respondent reserved the right to bring the Offer to the attention of the Court for consideration in relation to costs.
- [24] The Respondent's position in the written submissions was that he had been "substantially successful" in the present application, and therefore should be entitled to costs. This submission is based on the fact that the Claimant's claims for retroactive child support, s. 7 expenses, and child support based on full table amounts were unsuccessful at this hearing.
- [25] The Respondent also submits that he "won" the application that was heard on October 27, 2015, where Bracken J. ordered that the matter be sent to mediation, and that the Claimant provide limited financial disclosure relating to Mr. T.M.
- [26] Further, the Respondent's position is that the Respondent should be entitled to costs based on the Offer. The Respondent submits that the terms included in the Offer would have been a more favourable outcome for the Claimant than the Court's findings on June 14, 2016.
- [27] Counsel for the Respondent noted that the Claimant may require more than 30 days to reply to which he consented, and that the Respondent may provide reply submissions to the Claimant's written submissions if necessary.

The Claimant's Submission

- [28] The Claimant's position is that each party should bear their own costs.
- [29] Counsel for the Claimant submitted a letter on August 10, 2016, containing written submissions on the issue of costs.
- [30] The Claimant's position was that the Respondent was not "substantially successful" at the hearing of this application or the October 27, 2015 hearing before Bracken J. The Claimant pointed to the fact that the Claimant was not opposed to participating in the mediation that was ordered at the hearing on October 27, 2015, and that in the present application the Court regarded success as mixed.

- [331] With respect to the Respondent's Offer, the Claimant submits that the Respondent did not provide reasonable time for the Claimant to properly assess the terms of the Offer provided the day before the hearing on October 27, 2015, and ought not to be entitled to costs for that hearing. The Claimant also submits that the Respondent did not provide a rationale for the terms of the Offer.
- [332] Further, the Claimant submits that in the present application the Respondent did not obtain a judgment as favourable as or more favourable than the terms of the Offer. The Claimant submits that the difference between the terms of the order and the Offer does not warrant an award of costs to the Respondent.
- [333] Counsel for the Claimant submitted that the Respondent had not addressed the governing legislation in relation to costs, and requested leave to respond to any reply the Respondent may provide with regard to the governing legislation.

Follow-Up Submissions

- [344] Following the Claimant's submissions, the Respondent provided additional submissions on September 13, 2016, responding to the Claimant's submissions from August 10th.
- [351] Counsel for the Respondent provided additional support for the position that the Respondent was substantially successful during this application. Counsel for the Respondent also provided further support that the Respondent should be entitled to costs based on his Offer, this time referring to the governing legislation.
- [361] Next, on September 22, 2016, counsel for the Claimant submitted a letter in response to the Respondent's follow-up submissions, in which she submitted that the Respondent's follow-up submissions from September 13th should not be considered or should be rejected, arguing that they were not a reply to the new issues raised by the Claimant in her August 10th submissions, but rather an attempt to re-argue and expand upon the Respondent's initial submissions. The Claimant further submitted that the Respondent's September 22nd letter attempted to re-open the Court's determination that success in this application was mixed. In the event that the Court was prepared to re-open the matter of determination of success in this application, counsel for the Claimant sought to reinstate her application to re-open and reconsider additional aspects of the Court's oral reasons for judgment in this matter.
- [371] By letter dated October 5, 2016, counsel for the Respondent wrote that he did not believe that he had asked the Court to reopen or reconsider its decision and had no further reply to the Claimants' September 22nd letter.

Costs and Offers to Settle

The Law

- [38] The governing provisions concerning costs and offers to settle are found in the Supreme Court Family Rules, B.C. Reg. 168/2009.
- [39] Rule 16-1(7) provides that costs must be awarded to the successful party, unless the Court orders otherwise.
- [40] Success has been interpreted as "substantial success": *Gold v. Gold* (1993), 82 B.C.L.R. (2d) 180 (C.A.).
- [41] In *Fotheringham v. Fotheringham*, 2001 BCSC 1321, leave to appeal ref'd 2002 BCCA 454, Mr. Justice Bouck stated that "substantial success" should be "decided by the trial judge looking at the various matters in dispute and weighing their relative importance". Bouck J. stated in *Fotheringham* at para. 45 that substantial success occurs when the prevailing party succeeds on 75 percent of the matters in dispute, considered globally.
- [42] Bouck J. suggested a four-step inquiry to determine substantial success in cases involving multiple individual issues:
1. First, by focusing on the "matters in dispute" at the trial. These may or may not include "issues" explicitly mentioned in the pleadings.
 2. Second, by assessing the weight or importance of those "matters" to the parties.
 3. Third, by doing a global determination with respect to all the matters in dispute and determining which party "substantially succeeded," overall and therefore won the event.
 4. Fourth, where one party "substantially succeeded," a consideration of whether there are reasons to "otherwise order" that the winning party be deprived of his or her costs and each side then bear their own costs.
- [43] A judge's determination as to the degree of success enjoyed by a party in a contested application or a trial is independent of offers to settle that may come to light after the hearing of the matter is completed and reasons for judgment are given.
- [44] In *Paul v. Pumple*, 2013 BCSC 1844 [Paul], at para. 16, Mr. Justice Goepel ruled that an offer to settle should not be considered in determining substantial success. See also: *P.G. v. D.D.G.*, 2002 BCSC 1582; *Dykman v. Dykman*, 2011 BCSC 1169; and *MacNutt v. MacNutt*, 2013 BCSC 1159. Substantial success is determined by comparing the positions taken at trial against the end result, and therefore an offer to settle falls outside this comparison.
- [45] Therefore, costs orders with regard to offers to settle are only considered after the court has first determined costs pursuant to Rule 16-1(7) of the Supreme Court Family Rules: *Paul* at para. 23.
- [46] Rule 11-1 of the Supreme Court Family Rules deals with the issue of costs when an offer to settle has been made:

- (4) The court may consider an offer to settle when exercising the court's discretion in relation to costs.
- (5) In a family law case in which an offer to settle has been made, the court may do one or more of the following:
 - (a) deprive a party of any or all of the costs, including any or all of the disbursements, to which the party would otherwise be entitled in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle;
 - (b) award double costs of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle;
 - (c) award to a party, in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle, costs to which the party would have been entitled had the offer not been made;
 - (d) if the offer was made by a respondent and the judgment awarded to the claimant was no greater than the amount of the offer to settle, award to the respondent the respondent's costs in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle.
- [47] The court is limited to the options set out in Rule 11-1(5) in exercising its discretion to award costs when it is considering an offer to settle: Paul at para. 24.
- [48] The decision to award costs under Rule 11-1(5) is a discretionary one. Rule 11-1(6) outlines considerations for the court in making an order for costs:
 - (6) In making an order under subrule (5), the court may consider the following:
 - (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 of the court;
 - (c) the relative financial circumstances of the parties;
 - (d) any other factor the court considers appropriate.
- [49] In *Hartshorne v. Hartshorne*, 2011 BCCA 29, the Court of Appeal stated in reference to the first factor:
- [27] Whether the offer to settle was one that ought reasonably to have been accepted - is not determined by reference to the award that was ultimately made. Rather, in considering that factor, the court must determine whether, at the time that the offer was open for acceptance, it would have been reasonable for it to have been accepted: *Bailey v. Jang*, 2008 BCSC 1372 (CanLII), 90 B.C.L.R. (4th) 125 at para. 24; *A.E. v. D.W.J.* at para. 55. As was said in *A.E. v. D.W.J.*, "The reasonableness of the plaintiff's decision not to accept the offer to settle must be

assessed without reference to the court's decision" (para. 55). Instead, the reasonableness is to be assessed by considering such factors as the timing of the offer, whether it had some relationship to the claim (as opposed to simply being a "nuisance offer"), whether it could be easily evaluated, and whether some rationale for the offer was provided. We do not intend this to be a comprehensive list, nor do we suggest that each of these factors will necessarily be relevant in a given case.

- [50] In discussing the second factor, the Court of Appeal noted in *Hartshorne* that it allows an analysis of whether the party declining the offer would have been financially better off, on a global basis, if they had accepted the offer as compared to the court's final determination (*Kopp v. Kopp*, 2011 BCSC 889, at para. 7). The relationship between the terms of the offer and the final judgment requires a consideration of whether the overall result of the trial is better than the offer in its entirety (*M.S. v. M.M.*, 2016 BCSC 470, at para. 22).
- [51] The third factor, the relative financial circumstances of each party, is self-explanatory (*Cameron v. Cameron*, 2014 BCSC 142 [*Cameron*], at para. 16).
- [52] The fourth factor provides for the Court to use its discretion. Examples include to sanction blameworthy conduct or to account for complexities in the nature of the proceeding or the content of an offer (*Cameron* at para. 17).

Analysis and Findings

"Substantial success"

- [53] In my oral reasons I found that success in this matter was mixed, and absent matters of which the Court was unaware, each party was to bear their own costs. Counsel for the Respondent then raised the matter of the Offer, and sought to have the Court change its view as the degree of success experienced by the Respondent.
- [54] The Court's view of the degree of success experienced by either party has not changed. The Claimant's application for a retroactive increase in the amount of child support to be paid was dismissed. Ongoing child support from March 1, 2015 was increased from \$600 to \$900 per month. The claim for s. 7 and extraordinary expenses was resolved between the parties.
- [55] The Claimant's claim for retroactive child support was complicated by the issue of notice. Both parties contributed to the confusion surrounding that issue in a case where given the parties' Agreement, the issue ought not to have arisen. The Respondent ought to have provided current information about his income in a timely way as required, and the Claimant ought to have been clear as to when she considered the amount the Respondent was paying to be insufficient.
- [56] I also note that the Respondent complicated the issue of the relative standards of living for the Child in both households by being overly focused on seeking detailed financial information from the Claimant's current husband, T.M.

- [57] Bracken J. declined to order that T.M. provide this information, stating that without making T.M. a party, the Respondent was not entitled to receive it. Instead, the Claimant provided additional information about what T.M. contributed to the household and records of joint accounts she held with T.M. The parties went to mediation as directed by Bracken J. and were unsuccessful in resolving the claims that were argued in this application. It cannot be said that either party was substantially successful with regard to the appearance before Bracken J.
- [58] Ultimately, the Claimant's application for varying child support in the set-off amount was granted, albeit for less than the straight set-off Guidelines' amount. Counsel for the Respondent stressed that the Claimant was originally seeking the table amount of child support, or alternatively a set-off amount based on shared parenting. This is so, but that issue did not consume much court time.
- [59] Having regard to the Fotheringham factors the matters in dispute included matters ruled upon, the issue of notice regarding a retroactive increase to child support and the issue of comparable standards of living in both households that included the issue of T.M.'s contribution. Assessing the weight of these issues and their "global determination" I do not find either party to have been substantially successful.
- [60] It was on this basis I found with regard to costs that success in this matter was mixed. I will not be ruling again on the parties' submissions in relation to substantial successful or lack thereof regarding this application.
- [61] It follows that the Respondent is not entitled to costs for February 25, 2016, March 31, 2016, and June 14, 2016, on the basis of substantial success.

The Respondent's Offer

- [62] As I have found that neither party was substantially successful at the hearing on October 27, 2015, and success at the present hearing was mixed, costs do not follow the event, Rule 11-1(5)(a) to (c) does not apply, and only Rule 11-5(d) with regard to offers to settle applies (Paul at paras. 25-29).
- [63] Rule 11-1(5)(d) states:
- (5) In a family law case in which an offer to settle has been made, the court may do one or more of the following:
- []
- (d) if the party who made the offer obtained a judgment as favourable as, or more favourable than, the terms of the offer, award to the party the party's costs in respect of all or some of the steps taken in the family law case after the date of the delivery or service of the offer to settle. [B.C. Reg. 119/2010, Sch. B., s. 12; B.C. Reg. 121/2014, Sch., s. 8.

- [64] I turn now to the considerations listed in Rule 11-1(6)(a) through (d) that the Court may consider with regard to making an order for costs with respect to an offer to settle.
- [65] With regard to Rule 11-1(6)(a), "whether the offer to settle was one that ought reasonably to have been accepted" either on the date it was delivered or on any later date, the Offer was made on October 26, 2015, the day before the hearing before Bracken J. on October 27, 2015. I accept that given what was at issue this did not provide the Claimant enough time to meaningfully evaluate the Offer and choose whether or not to accept it before the hearing with Bracken J.
- [66] The Offer remained on the table up until the time the present application came before the Court on February 25, 2016. This provided the Claimant just under four months to evaluate and either accept or reject it. I find that the timing of the Offer with regard to the present application was reasonable. It was not a "nuisance offer". It was, however, hard to evaluate without an adjudication on the issues of notice and the standards of living for the Child as between his parents' residences.
- [67] With regard to Rule 11-1(6)(b), "the relationship between the terms of settlement offered and the final judgment of the court", the Respondent's Offer was for an increase in child support (from \$600 per month) to \$1,000 per month effective November 1, 2015, and for the Respondent to pay 90 percent of agreed upon s. 7 expenses.
- [68] The Court ordered an increase in child support as of March 1, 2015, and dismissed retroactive child support. Specifically, the Court ordered \$900 per month in child support to commence on March 1, 2015, which is eight months earlier than when the increase was to commence in the Offer, and ordered the Agreement be modified accordingly.
- [69] Based on an agreement reached by the parties, the full details of which were not shared with the Court in terms of amounts owing and retroactivity, the Court ordered that the Respondent pay 70 percent of the Child's s. 7 and extraordinary expenses, and the Claimant pay 30 percent, with any amounts owed to be paid within 60 days of when they are incurred; with such expenses in the future to be defined and paid according to the parties' Agreement in proportion to their line 150 Guidelines' incomes.
- [70] It does not seem appropriate to include in a comparison of the Offer and the result obtained in the application, the issue of s. 7 and extraordinary expenses as the parties reached an agreement on that issue. In any event, actual dollar amounts cannot be precisely determined when dealing with future expenses so as to accurately assess the difference between the Offer that the Respondent pay 90 percent "of agreed upon s. 7 expenses", and the amount of 70 percent that the parties agreed the Respondent was to pay, with the Claimant to pay the remaining 30 percent. Thus, without details, the Court cannot assess the Claimant's success or lack thereof on that issue in terms of retroactive expenses.

- [71] That leaves the Respondent's Offer for an increase in child support to be \$100 per month greater (\$1,000) than the amount obtained by court order (\$900). However, the Court awarded the increase (from \$600 per month) to \$900 per month effective March 1, 2015, and the Respondent's Offer of an increase to \$1,000 per month only commenced on November 1, 2015. As of November 1, 2015, eight months later than March 1, 2015, that results in a net increase to the Claimant in the amount of child support being paid by the Respondent to be \$2,400 (\$900 per month for 8 months = \$7,200, as opposed to \$600 per month for 8 months = \$4,800). Then, if one considers the \$100 more per month offered by the Respondent prospectively over 48 months from November 1, 2015, the difference between the amount in the Offer and as ordered pales to insignificance. Thus, I find that as between the Offer on the issue of child support and what the Court ultimately ordered, it was essentially "an even draw" as between the parties. Therefore, I find that the difference between the Offer and the terms of the order do not warrant an award of costs to the Respondent.
- [72] With regard to Rule 11-1(6)(c), "the relative financial circumstances of the parties", there is significant disparity between the incomes of the Claimant and the Respondent, with the Respondent's income being considerably larger. As well, the Claimant has less income with which to pay the mortgage on her home in North Vancouver, which she chose to be close to the Respondent's home for the convenience of the parties and the benefit of the Child. However, her current husband provides some indirect financial benefit to her and the Child. At the end of the day, while the Claimant is of less means overall, I do not regard this factor to be significant in this analysis.
- [73] Finally, with regard to Rule 11-1(6)(d), "any other factor the court considers appropriate", as I have previously indicated the Respondent's insistence on financial information from the Claimant's current husband beyond that to which Bracken J. found him to be entitled, is one such factor. Another is the unclear communications between both parties as to when notice was effectively given with regard to a retroactive increase in the amount of set-off child support to be paid. As well, the Claimant's application required a Guidelines' s. 9 determination involving the Contino factors (*Contino v. Leonelli-Contino*, 2005 SCC 63), and an exercise of principled judicial discretion to assess the set-off child support amount in the context of the parties' Agreement. These issues made it difficult for the Claimant to assess the appropriateness of the Respondent's Offer. They do not support an award of costs to the Respondent based on the terms of the Offer.

Conclusion

- [74] For these reasons, the parties will each bear their own costs for the hearing before Bracken J. on October, 27, 2015, and also in relation to the hearing of the application before the Court. This is due to a finding of mixed success throughout, which is not altered by virtue of the Respondent's Offer.

"The Honourable Madam Justice Arnold-Bailey"

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