

CANADA / JUDGMENT

Rehak v. Zalanfy Estate

2019 BCCA 87

COURT

British Columbia Court of Appeal

DECIDED

21 February 2019

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2019 BCCA 87 *Rehak v. Zalanfy Estate* COURT OF APPEAL FOR BRITISH COLUMBIA Citation: *Rehak v. Zalanfy Estate*, 2019 BCCA 87 Date: 20190221 Docket: CA45435 Between: Terezia Rehak and Laszlo Saska Appellants (Plaintiffs) And The Estate of Charlotte Ilona Zalanfy, and Steven Joseph Butz as the Executor and Trustee of the Estate of Charlotte Ilona Zalanfy, Deceased Respondent (Defendant) Before: The Honourable Madam Justice Saunders The Honourable Mr. Justice Willcock The Honourable Madam Justice Fisher On appeal from: an order of the Supreme Court of British Columbia, dated June 14, 2018 (*Rehak v. Zalanfy*, 2018 BCSC 2443, Victoria Registry No. 170982) Oral Reasons for Judgment on Special Costs The Appellant, appearing in person: T. Rehak The Appellant, appearing in person: L. Saska Counsel for the Respondent: H.D. Fisher Place and Date of Hearing: Victoria, British Columbia February 19, 2019 Place and Date of Judgment: Victoria, British Columbia February 21, 2019 Summary: The appeal having been dismissed, the respondent seeks special costs or, alternatively, costs assessed as a lump sum. Held: Application for special costs dismissed; order for costs to be assessed as a lump sum allowed. The impugned allegations, which the summary trial judge said were offensive and "came close to" resulting in an order for special costs, should not have been in the appellants' factum, but they did not form a substantial part of the appellants' argument. The respondent should receive costs at a lump sum to avoid the necessity of taxation and the potential for further conflict with the appellants.

- [1] WILLCOCK J.A.: This appeal having been dismissed for Oral Reasons for Judgment pronounced this morning, the respondent applies for an order for special costs and, if that order is not granted, an order for costs to be assessed at a lump sum without the necessity of taxing the bill.
- [2] In her submissions, counsel for the respondent says the appellants have repeated, in their factum, allegations of wrongdoing on the part of witnesses that were made at trial and were the subject of comment by the trial judge. He concluded the allegations ought not to have been made, were offensive and "came close to" allegations that should result in an order for special costs at trial. The trial judge, however, did not make that order, believing apparently that it was sufficient to advise the plaintiffs at trial that their conduct came close to the line and ought not to be repeated.

- [3] In her submissions this morning, counsel for the respondent referred the Court to the judgment of this Court in *Garcia v. Crestbrook Forest Industries Ltd.*, 1994 119 D.L.R. (4th) 740 (B.C.C.A.), where, speaking for the Court, Mr. Justice Lambert described factors that would describe circumstances justifying an order for special costs. He said what the Court should look to is conduct, in connection with the appeal, which is reprehensible in the sense of deserving reproof. Counsel says the conduct of the appellants, in this case, deserves such reproof, to the extent that they have repeated the allegations against the individuals that they were told they ought not to have made below.
- [4] I have considered the submissions of counsel, and considered the allegations in the factum in light of the manner in which the appeal was conducted. I am of the view that while the appellants conduct, again, comes close to the line, it does not amount to conduct that should result in an order for special costs in this Court. The impugned allegations ought not to have been contained in the factum but they were not referred to in the course of submissions and they did not form any substantial part of the argument made by Mr. Saska. I think it is sufficient to make it clear to Mr. Saska that those allegations should not have been repeated and ought not to have been in the factum.
- [5] I am, however, of the view that in the circumstances that the respondents should have an order setting their costs at a lump sum so as to avoid the necessity of taxation and potentially further conflict with the appellants. I have had an opportunity briefly to review the bill of costs provided by counsel. The costs items come to approximately \$7,300 before disbursements. After disbursements are added, and all of the disbursements appear reasonable to me, the total claim comes to approximately \$7,800. As Mr. Saska has indicated some of the units claimed under the costs tariff are at the high end of the allowable range, I am of the view there should be some marginal reduction in the amount claimed as units on the tariff and would allow costs at a lump sum of \$7,000 inclusive of the disbursements in the bill provided to us in draft form by counsel.
- [6] SAUNDERS J.A.: I agree.
- [7] FISHER J.A.: I agree.
- [8] SAUNDERS J.A.: In summary again, this appeal is dismissed. The respondents shall have their costs of the appeal in the lump sum of \$7,000 all inclusive. The order may be submitted, Ms. Fisher, to the registry with an explanatory letter if the draft that you send Mr. Saska has not been returned within seven days of your sending it to him. In any case, the order always comes to a Judge of the division that heard the case and we look at the orders carefully, so it is going to have that scrutiny in any event, but Mr. Saska says that he always returns things like this and there is no reason to think he will not in this case. "The Honourable Mr. Justice Willcock"

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