

CANADA / JUDGMENT

Travelbea v. Henrie

2012 BCSC 2009

COURT

Supreme Court of British Columbia

DECIDED

14 December 2012

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2012 BCSC 2009 Travelbea v. Henrie IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Travelbea v. Henrie, 2012 BCSC 2009 Date: 20121214 Docket: M45399 Registry: Vernon Between: Laura Travelbea Plaintiff And Jason Douglas Henrie Defendant Before: The Honourable Mr. Justice Barrow Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: M.J. Yawney Counsel for the Defendant: J.A. Jakel Place and Date of Trial/Hearing: Kelowna, B.C. December 12, 2012 Place and Date of Judgment: Kelowna, B.C. December 14, 2012

- [1] THE COURT: Following a trial, the plaintiff was awarded judgment in the sum of \$68,434. My reasons are indexed at 2012 BCSC 1532. What remains is the issue of costs. More specifically, the issue is whether the plaintiff is entitled to costs at Scale B or whether lump sum costs under Rule 15-1 or Rule 14-1(1) should be awarded.
- [2] The defendant argues that the plaintiff is entitled to costs assessed under the fast-track litigation regime set out in Rule 15-1. In the alternative, he argues that because the amount of the judgment is less than \$100,000, the plaintiff's costs are limited by operation of Rule 15-1(15) to (17) and Rule 14(1)(f), (i) or (ii). The plaintiff argues that the costs should be assessed under Appendix B on the basis that the case took more than three days or on the basis that an order should now be made removing the case from the strictures of the fast-track litigation regime. In the alternative, the plaintiff argues that the court should exercise its discretion to "otherwise order" either under Rule 15-1(15) or 14-1(1)(f).
- [3] The action was commenced by writ of summons and statement of claim in June 2010. The defendant filed a notice of fast-track action in Form 61 when he filed his response to the civil claim in December 2010. Thereafter, all of the defendant's filings were endorsed as required by Rule 15-1(2)(b) indicating that the action was "subject to Rule 15-1". Most of the plaintiff's filings contained a similar endorsement. In particular, the notice of trial for the initial trial date in April 2012, a date that had to be adjourned due to lack of court time, and the notice of trial for the September trial date, when the case was actually heard, both contained the endorsement "subject to Rule 15-1". The first notice of trial estimated that the trial would be completed in three days. The second notice of trial estimated that four days would be required. Both notices were filed by the plaintiff.

- [4] The trial took place over the course of four days. On the first day, the trial ended at 3 p.m. because other matters were scheduled at that time. There was an attenuated lunch hour to compensate for that booking conflict. The evidence finished at 3:15 on the third day. Argument took place the following morning and completed at the lunch break. Written reasons were issued October 18th.
- [5] Rule 15-1(1) describes the kinds of actions eligible for the fast-track regime and sets out the methods by which the Rule is engaged. The regime can be engaged by order of the court as provided in Rule 15-1(1)(d) or by consent of the parties as provided in Rule 15-1(1)(c). No order was made in the matter at hand, but by the filing of the requisite notice, the parties consented to the matter proceeding in the fast-track stream. Rule 15-1(6) sets out when the fast-track regime ceases to apply to a proceeding. It ceases to apply when the court so orders. There has been no such order in this case.
- [6] In general, the case was conducted in accordance with the parameters set by Rule 15-1. The plaintiff did not conduct an examination for discovery of the defendant. The defendant's examination for discovery of the plaintiff was completed within two hours. There were no interlocutory applications by either party. The only substantive exception to the limitations imposed by the fast-track regime is that the trial spanned four days.
- [7] There are two issues raised by these circumstances. The first is whether the court should order that the matter be removed from the fast-track regime after the trial has finished. While I accept that the court has the power to make such an order after a trial has completed, the better approach is to deal with the matter on the basis of whether the cost regime which ordinarily applies should be displaced, that is, whether the court should otherwise order under Rule 15-1(15). Proceeding in that way is countenanced by the Rules, and the parties are taken to know that. Ordering the matter out of the fast-track regime after the case has been conducted in accordance with the strictures of that Rule may give rise to unfairness.
- [8] In *Reid v. I.C.B.C.*, 2000 BCSC 1334, Shaw J. commented on when the court should "otherwise order". Although he was considering Rule 66, the predecessor to Rule 15-1, that Rule served the same purposes that are served by the present Rule, and it is the purposes served by the Rules that bear on the manner in which the discretion should be exercised. He wrote at para. 11:
- [11] The question, however, is when should the court's power to order "otherwise" be exercised? Keeping in mind that the objective of Rule 66 is to provide a "less expensive" method of trying actions which can be completed within two days, I am of the view that the costs limits set out in sub-rule (29) should be adhered to unless there are special circumstances warranting departure from the those limits. In my opinion, the special circumstances must be such that it would be unjust to apply the mandated costs limits.

- [9] In *Kailey v. Kellner*, 2008 BCSC 224, Parrett J. adopted and applied Shaw J.'s remarks in *Reid*. He did so in the context of determining the effect of offers to settle on the cost regime imposed by the fast-track litigation Rule. He exercised his discretion to award costs otherwise than in accordance with the Rule on the basis that the trial took four days that involved two actions that were heard at the same time. It is worth noting that the regime in effect in *Kailey* was one that applied to cases that could be heard in two days.
- [10] The only aspect of this case to which the plaintiff points by way of special circumstance is that the trial was set for four days and, in fact, took almost four days to be heard. I am not persuaded that the circumstance is sufficient to justify otherwise ordering. First, when the notice of trial was filed indicating that four days would be necessary, the plaintiff was content that the matter should remain in the fast-track regime. That is apparent by virtue of the endorsement on the notice and the fact that no application to the court or request to the defendant was made seeking to remove the case from the regime. Second, although the trial took more than three days, it took only marginally more, less than half a day.
- [11] I acknowledge the plaintiff's submission that the case may have taken much longer had counsel not dealt with the matter so efficiently and co-operatively. To accede to that submission would be, in effect, to sanction a party for doing that which the Rules are intended to promote, namely, to conduct trials in an expedient and efficient way.
- [12] In the result, I am satisfied that the lump sum costs provided for in Rule 15 ought to be imposed in this case, and I order that the plaintiff is entitled to costs under Rule 15-1(15)(c) in the amount of \$11,000.
- [13] From your perspective, Mr. Yawney, are there any questions?
- [14] MR. YAWNEY: So, My Lord, are you saying, then, that in terms of the lump sum costs we are stuck with, even though it went longer than the three days that the Rule deals with, that there is not a proportional increase with more time needed for the trial as is done when there is less than the one day on the other end of it?
- [15] THE COURT: Yes.
- [16] MR. YAWNEY: Okay.
- [17] THE COURT: Mr. Jakel, any questions from your perspective?
- [18] MR. JAKEL: No, My Lord.
- [19] THE COURT: Thank you. Barrow J.

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