

CANADA / JUDGMENT

Waters v. Michie

2022 BCSC 822

COURT

Supreme Court of British Columbia

DECIDED

17 May 2022

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2022 BCSC 822 Waters v. Michie IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Waters v. Michie, 2022 BCSC 822 Date: 20220517 Docket: D109625 Registry: Vancouver Between: Jodi Lynn Waters Claimant And James Alexander Michie and Dawn Lanelle Michie Respondents Before: The Honourable Justice Matthews Supplementary Reasons on Costs In Chambers Counsel for the Claimant (by video): J.R. Shewfelt Counsel for the Respondents (by video): G.A. Hooper Place and Date of Hearing: Vancouver, B.C. March 10, 2022 Written Submissions Received: March 17 and 23, 2022 Place and Date of Ruling: Vancouver, B.C. May 17, 2022

Introduction

- [1] On March 10, 2022 I dismissed Ms. Waters' appeal of the order of Master Muir made September 25, 2019 in reasons indexed at 2019 BCSC 1620 and directed that the parties provide me with written submissions on costs. My March 10, 2022 reasons are indexed at 2022 BCSC 818.
- [2] Ms. Waters seeks an order that each party bear their own costs of the March 10, 2020 appeal based on an offer made in a Calderbank letter offering to abandon the appeal if Mr. Michie paid the balance owing on a previous assessment of costs made by Registrar Cameron.
- [3] Mr. Michie's position is that the letter was not an offer to settle and cannot be considered by the Court on costs. Alternatively, he argues that it was not unreasonable to reject the offer because there was an error in the calculation of interest on amounts owing such that if he accepted it, he would have overpaid. Discussion
- [4] It is common ground between the parties that the offer was not made pursuant to Rule 11-1 of the Supreme Court Family Rules.
- [5] Ms. Waters asserts that it is a Calderbank offer governed by the same principles that animate Rule 11-1, namely that offers capable of resolving a matter ought to be accepted and if they are not, there should be costs consequences. She relies on *LeFler v. Anderson*, 2008 BCSC 1563 at para.18, *King v. Insurance Corp. of British Columbia*, 2010 BCSC 1742 at para. 31, *Brar v. Gill*, 2017 BCSC 2018 at para. 6, *Crookall v. Higby*, 2018 BCSC 1544 at para. 7, and *Tr-X Excavating Ltd. v. Morman*, 2018 BCSC 2241 at para. 8.

- [6] Mr. Michie asserts that Calderbank offers that do not comply with Rule 11-1 cannot be considered. That proposition is amply supported by the jurisprudence: *BCI Bulkhaul Carriers Inc. v. Wallace*, 2015 BCSC 107 at para. 22.
- [7] It is not apparent to me why Ms. Waters asserts that her offer was a Calderbank common law offer and not a Rule 11-1 offer. If it is a concession that the offer does not meet the requirements of Rule-11-1, that is the end of it. However, that concession has not clearly been made.
- [8] Mr. Michie submits that the offer does not meet the requirements of Rule 11-1 because it was not served on Mr. Michie (either personally or by service on his counsel) and because it does not contain language required by Rule 11-1.
- [9] With regard to service, the offer was sent to Mr. Michie's counsel by email on the evening of March 7, a few days before the March 10 hearing. Counsel for Mr. Michie had not provided his email as a method of service. In *BCI Bulkhaul Carriers*, Justice Brown considered the same alleged failure of service and explained that Rule 11-1 is strictly construed such that where an offer is delivered by email but email is not a provided means of service, there has been no service. I consider it appropriate to come to the same conclusion as a matter of stare decisis.
- [10] It is therefore not necessary to consider the other bases Mr. Michie relies on to submit that the Court cannot consider the offer with regard to costs or should find that it was not unreasonably rejected.

Disposition

- [11] There is no valid offer to settle affecting the determination of costs on this appeal.
- [12] Mr. Michie was successful on the appeal and he is entitled to ordinary costs.
- [13] The appeal took slightly in excess of a full day. I award \$2,000 in costs payable on a lump-sum basis. "Matthews J."

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