

CANADA / JUDGMENT

Wiseman v. Wang

2020 BCSC 569

COURT

Supreme Court of British Columbia

DECIDED

15 April 2020

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2020 BCSC 569 Wiseman v. Wang IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Wiseman v. Wang, 2020 BCSC 569 Date: 20200415 Docket: M146234 Registry: Vancouver Between: Tamora Wiseman also known as Tammy Wiseman Plaintiff And Ruoyao Wang Defendant Before: The Honourable Mr. Justice Davies Reasons for Judgment Counsel for the Plaintiff: J.M. Richter Counsel for the Defendant: J. Greville J. Lord Place and Date of Trial/Hearing: Vancouver, B.C. February 26, 2020 Place and Date of Judgment: Vancouver, B.C. April 15, 2020

- [1] In Reasons for Judgment indexed as Wiseman v. Wang, 2019 BCSC 1320 after a 12-day trial that commenced on February 19, 2019 I awarded the plaintiff, Tamora Wiseman damages in the total amount of \$79,000 for injuries suffered by her as a consequence of the negligence of the defendant.
- [2] Prior to the start of the trial the defendant had delivered two formal offers to settle pursuant to Rule 9-1 of the Supreme Court Civil Rules, B.C. Reg. 168/2009.
- [3] The first offer was delivered on June 13, 2018 and offered to settle the plaintiff's claims for \$100,000 new money plus costs and was open for acceptance until 4:00 pm on the last business day prior to the commencement of trial.
- [4] The second offer was delivered on February 13, 2019 and offered to settle the plaintiff's claims for \$150,000 new money plus costs. It was also open for acceptance until 4:00 pm on the last business day before the commencement of trial.
- [5] Due to a provincial holiday, the last business day before the trial commenced was February 15, 2019.
- [6] Because both offers to settle were higher than the amount awarded to the plaintiff at trial the defendant now applies for an order that the defendant be awarded costs of the proceeding after June 13, 2018 or alternatively, after February 13, 2019.
- [7] The legal principles engaged by the defendant's application are straightforward.
- [8] Rules 9-1 (4) to (6) of the Supreme Court Civil Rules provide: Offer may be considered in relation to costs

- (4) The court may consider an offer to settle when exercising the court's discretion in relation to costs. Cost options
- (5) In a proceeding 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 proceeding 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 proceeding 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 proceeding 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 defendant and the judgment awarded to the plaintiff was no greater than the amount of the offer to settle, award to the defendant the defendant's costs in respect of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle. [am. B.C. Reg. 119/2010, Sch. A, s. 21.] Considerations of court
- (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.
- [9] Those rules provide the Court with considerable discretion. That discretion is, however, constrained by the considerations contained in sub-Rule 9-1(6). See: *Brewster v. Li*, 2014 BCSC 463.
- [10] Notwithstanding that sub-Rule 9-1(6) provides that a factor that may be considered is the relationship between the settlement offer and the final judgment the jurisprudence establishes that consideration of whether the offer was one that ought reasonably have been accepted is not to be addressed with the benefit of hindsight. See: *Gonzalez v. Voskakis*, 2013 BCSC 675; *A.E. v. D.W.J.* 2008 BCSC 1318 at para. 55, *aff'd* 2011 BCCA 279.
- [11] In this case, the most significant factors that resulted in the modest awards received by Ms. Wiseman were the unreliability of her own testimony and the extent to which her damages were limited by the extent of her pre-collision medical conditions.

- [12] The defendant submits that Ms. Wiseman ought to have known from the date of the first offer that her evidence was based largely upon her own subjective beliefs would be insufficient to allow her to succeed in recovering an award in excess of that offer. The defendant further submits that Ms. Wiseman ought to have been aware not only of the deficiency of her own evidence but also contradictory evidence that undermined the credibility of her damages claims.
- [13] The first offer was delivered before any expert reports were obtained and while the offer remained open for approximately two months after the exchange of reports was completed, I am not satisfied that given the contents of the reports filed by Ms. Wiseman, especially that of Dr. Helmer the psychiatrist upon which she so heavily relied, that she ought reasonably have accepted the first offer before it was revoked by the making of the second offer on February 13, 2019. Although in retrospect I found Dr. Helmer's opinions to be of little assistance largely due to Ms. Wiseman's lack of credibility, the fact that the defendants had filed only a critique of his opinions, and had not obtained or filed an independent medical examination in which another psychiatrist had examined Ms. Wiseman does not make her failure to accept the first offer unreasonable.
- [14] Similarly, although the second offer increased the settlement amount by \$50,000 the frailties in Dr. Helmer's opinions were not exposed until Ms. Wiseman's lack of credibility was exposed during her lengthy testimony. To that extent I must also observe that although Ms. Wiseman's own testimony was the primary reason for the limited damage award she received she did adduce other evidence that had her own evidence been more reliable could have resulted in a much higher award. It therefore seems to me that the defendant is in large measure relying upon hindsight based upon determinations of credibility that occurred at trial in making these costs submissions.
- [15] More significant, however, with respect to Ms. Wiseman's failure to accept the second offer is the timing of the offer and the circumstances in which it was delivered.
- [16] The second offer was only open for acceptance for less than two days. The defendant knew that Ms. Wiseman lived in Saskatchewan and was travelling to Vancouver for trial. The defendant also knew that Ms. Wiseman was an emotionally and mentally fragile individual.
- [17] In those circumstances there was in my view insufficient time for Ms. Wiseman and her counsel to reasonably evaluate the second offer and her failure to accept it was therefore not unreasonable.
- [18] The defendant's application is dismissed. "Davies, J."

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Prepared on 25 October 2026 · Esheria