20400
Abbotsford Registry

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

THEODORE CHARLES SOUCIE

CLAIMANT

AND:

ICEFIELDS PARAMEDIC SERVICES LTD.

DEFENDANT

REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE CARYER

COPY

Counsel for the Claimant:	C. Drinovz
Counsel for the Defendant:	C. Wardell
Place of Hearing:	Abbotsford, B.C.
Date of Ruling:	October 26, 2012

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[1] THE COURT: This is an application in a civil matter for costs to be awarded, particularly penalty costs awarded pursuant to Rule 10(1) which allows the court a discretion to award costs or penalty up to 20 percent of the offer to settle. In this particular case, the claimant made an offer to settle of $11,000 in December of 2011 after the settlement conference. That was rejected by the defendant and the defendant counter-offered a $2,000 settlement which was rejected by the claimant.

[2] The original cause of action commenced in the Supreme Court of Chilliwack. The parties predominantly engaged in their business transactions in northern British Columbia. The claimant worked as a medic for the defendant's medic services company up in the Fort Nelson area, out in the oil patch and on different construction sites. I found that there was a deterioration of the relationship which resulted in the eventual actual dismissal of the claimant from the defendant's employ which resulted in the claimant being able to successfully sue for some damages as a result of dismissal. Although the action was generally couched in terms of constructive dismissal, I found that that was not necessary per se for me to find, as I found there was an actual dismissal.

[3] The claimant, I gather after making a request for some payments by the defendant and in response to their responses, hired counsel in Chilliwack, British Columbia. Eventually an action was started in the Chilliwack Supreme Court. By agreement between the parties the matter was transferred to the Provincial Court of British Columbia and ended up here in Abbotsford. The law firm for the defendant is situate in Vancouver and the law firm for the claimant is situate in Chilliwack.

[4] Rule 1 of the Small Claims Rules relative to the *Small Claims Act* of British Columbia says that:

> A claimant must file a claim and pay the required fee at the Small Claims registry nearest to where
>
> (a) the defendant lives or carries on business, or
>
> (b) the transaction or event that resulted in the claim took place.

[5] The Supreme Court of British Columbia of course has jurisdiction everywhere, and I suppose that there never was raised the issue of commencing the lawsuit in Chilliwack Supreme Court. Generally speaking though, in Small Claims court that action should have been started in Fort Nelson, British Columbia, which is a very long way from Abbotsford. While I am not in a way penalizing the claimant for ending up here in Abbotsford, because I believe that the jurisdiction of the Chilliwack Supreme Court would encompass any action that may well have been from a small claims perspective required to start in Fort Nelson, it is a factor that the action was started in the Lower Mainland rather than in and around where the actual business and interactions took place between the parties.

[6] I say that because the claimant has claimed a number of expenses for travelling from up north where he continues to work. I understand that the claimant's residential address is in and around the area of Hope, British Columbia, which is some 30-odd minutes or 35 minutes from Chilliwack, British Columbia and that is why he found counsel down here which is near his own residential address. He was, and I found he was, summarily dismissed by the defendant and as a result may well have been contemplating that he was going to have to stay in around the

Hope area. I do not know. But I do not blame him for coming to seek counsel near where he lives and counsel then starting the action in Supreme Court.

[7] However, the Provincial Court has a limited jurisdiction to award costs and expenses in these types of situations. The *Small Claims Act* in s. 2 talks about the purpose of the Act, which says:

> The purpose of this Act and the rules is to allow people who bring claims to the Provincial Court to have them resolved and to have enforcement proceedings concluded in a just, speedy, inexpensive and simple manner.

[8] That section was written before the jurisdiction of the Provincial Court in small claims went up to $25,000. Cases are becoming more complex in this court. This particular trial was complex to some degree. Counsel for the defendant has made the point today that both parties wish to have the issue of constructive dismissal litigated to get some, I guess, precedent for dealing with these matters and I did make a comment about -- at least somewhere I think I made a comment in my judgment about the seasonal nature of the employ and the fact that the claimant had worked over a number of years for the defendant. That may well have some precedential value to the parties. But in reality, the case itself did revolve around the testimony of the parties and quite frankly, I found that I accepted the claimant's evidence to some degree over that of the defendant's witnesses.

[9] However, it is not always simple in the Small Claims court in British Columbia. Rule 10.1 referencing offers to settle does say in subsection (7):

> A penalty under subrule (5) or (6) is in addition to any other expenses or penalties, and may be up to 20% of the amount of the offer to settle.

[10] When deciding the amount of a penalty under subrule (5) or (6), a judge must consider

> (a) the difference between the amount awarded at trial and the amount of the offer to settle,
>
> (b) the interest of the parties in proceeding to trial to determine the credibility of witnesses or a point of law, and
>
> (c) the time when the offer was made.

[11] In these circumstances, the offer to settle was made two days after the settlement conference which would have taken place here in Abbotsford. That was in December of 2011. The counteroffer was made a week or so later, which was obviously dismissive of the offer to settle of $11,000 by counter-offering at two, when the original claim was for more than $25,000 and the original claim in Small Claims was for $25,000.

[12] When considering the interests of the parties in proceeding to trial, I agree with Mr. Wardell that there appeared to be in the course of the trial and in the course of my judgment, a legitimate concern over what might constitute constructive dismissal and the definition, and the issue of, seasonal employment in the oil patch and construction sites up in northern British Columbia. I am, as a judge and a person, aware that there are many companies that operate up north and provide services to sites, whether it is the oil patch or in the construction business, and that that is a seasonal business because of weather issues. The people that go up there make good money but they do not always stay up there and live up there; they travel around, go from job to job. So that there was an issue to be decided that I do

not know if I actually resolved or not. But I accept that that was a point of law that had some interest to the parties.

[13] Also of course, I am to consider the difference between the amount that was awarded at trial and the amount of the offer to settle. The offer to settle was $11,000. I think the final amount that was awarded was 11,500. It was not particularly easy for the court to determine what exact amounts should have been to be awarded. I spent some time with a calculator calculating what I thought were the numbers, particularly including things like holiday pay and a living allowance, which was imprecise but I found numbers and came up with that, and the normal costs associated such as filing fees and service fees, which I awarded. I think it was about 11,500-some odd dollars.

[14] I am, of course, entitled to consider any expenses that I consider directly relate to the conduct of this proceeding in an award of costs, if you will, or expenses to the successful party. That is, outside of an award of the penalty for not meeting the offer range up to 20 percent. In this case, Mr. Drinovz on behalf of the claimant has requested a fair bit of money as a result, he has requested the 20 percent of the $11,000 offer, which would be $2200. He has requested costs particularly since the offer was rejected of -- I'd have to calculate that out, but some $900 for a flight, parking in Fort St. John airport, a rental car and gas. He requested lost wages of $476 and he requested costs for attending the aborted settlement conference of almost $700. That was as a result of the defendant's counsel not being advised of the date of the settlement conference and the claimant attending to the Lower

Mainland, taking holidays and driving down to the Lower Mainland to attend the settlement conference. I cannot attribute that to the defendant. Quite frankly, I do not know why counsel were not notified, but the notifications of those things are done by the registry and I cannot attribute that to the defendant's *laches* or inappropriate conduct in any way. Counsel was on record at that point, so in my respectful view that is an inappropriate request.

[15] I go back to my initial point that in the Provincial Court the jurisdiction usually is in the area where the transaction took place or the defendant carries on business. The claimant chose to come to the Lower Mainland to start in the Supreme Court. I do not blame him for that, but I also do not believe that his travel costs to come down to the Lower Mainland are appropriately laid at the feet of the defendant. Quite frankly, this matter could have been transferred back to Fort Nelson or Fort St. John in northern British Columbia in the Provincial Court, in which case perhaps the counsel that appeared before me on the trial and today would not be the counsel representing the parties in the north, but that is a different issue and I am not prepared to make an order respecting specific costs for flights and parking and rental cars and gas. The court certainly is entitled to make a general award of costs for a party. That is not unusual. It is not unusual that we award costs, say $300 general costs to a party, not referencing filing fees and service fees, but general costs. That is not an unusual situation and I will make such an order, as I would have whether this was in Fort St. John or Fort Nelson or in Abbotsford.

[16] I found in the course of this case that the defendant treated the claimant in a cavalier attitude. I will quote from paragraph 45 of my judgment:

> The claimant was basically left with no job, no housing and no meal allowance in the dead of winter in northern British Columbia, certainly not an enviable position. The conduct of the defendant suggests an arrogance and cavalier attitude toward the claimant.

I will refer to paragraph 41 of my judgment:

> Immediately "relieving" him in response to that message suggests the true tone of the defendant's attitude toward the claimant. Rather than discuss the issue, the defendant effectively fired the claimant with absolutely no notice. It was not a layoff, it was not a seasonal adjustment; rather, it was a dismissal.

[17] As a result of those findings of fact I am quite satisfied and remain convinced that the attitude of the defendant toward the claimant was one of cavalier indifference and appears to suggest a tone of arrogance that I find to some degree offensive.

[18] In this particular case, I am satisfied that although there may have been some interest in litigating this, the claimant made a very reasonable offer to settle of $11,000, given that he started the action in Supreme Court. The very dismissive counteroffer simply suggests that the attitude of the defendant toward the claimant carried on throughout the litigation.

[19] I am satisfied that a penalty is appropriate. Mr. Wardell has suggested that penalizing a party because they make the wrong guess at the outcome of the litigation is counterproductive to the stated purpose of the *Small Claims Act*, which is to allow people to have just, speedy, inexpensive and simple resolutions to their

matters. I do not believe that the defendant has conducted itself in a manner that is consistent with that purpose of the *Small Claims Act* and procedures. They were, in my respectful view, more interested in putting up roadblocks to the claimant's application than they were to legitimately trying to resolve the issue. Although Mr. Wardell and Mr. Drinovz may well have had a reason to seek some sort of precedential decision respecting constructive dismissal et cetera, I am quite satisfied that given the attitude of the defendant toward the claimant that that is not what they were interested in, and in fact that is not how it unfolded. I found that they dismissed him without notice, in a cavalier and arrogant fashion. Accordingly, I am prepared to make a penalty award and I will make it in the amount of 20 percent. That is then $2200.

[20] I am further making a general award of costs. Mr. Soucie, the claimant, was put to significant expenses in terms of the conduct of the litigation over the course of the time since the offer to settle was made, and I am accordingly awarding him a general cost of $300. I am taking into account the fact that he had to travel back and forth to the Lower Mainland to conduct the litigation, I am taking into account the fact that it was stressful and I am taking into account the fact that the defendant's attitude toward him remained that of a cavalier, arrogant tone. So the total amount is $2500 in costs are awarded against the defendant in favour of the claimant. That is as much as I am going to say about it.

(RULING CONCLUDED)