

More On Settlement Offers And Rule 37B

Reasons for judgement were released today refusing to award the successful litigant double costs pursuant to Rule 37B.

The Petitioner City sued the Respondent Kennel operator seeking a declaration that the Kennel was in breach of a Bylaw and seeking conjunctive orders. Before trial (and before Rule 37 was replaced with Rule 37B) the Respondent offered to settle on the following terms *'this proceeding on the basis that the Petitioner's claim be dismissed and costs in accordance with Rule 37'*

The offer was delivered less than 7 days before the trial commenced. The claim was dismissed at trial.

The Respondents asked that the City pay them Double Costs. Madam Justice Loo refused to order double costs noting that the formal offer of settlement conferred no benefit to the Respondents aside from costs. The key reasons are set out at paragraph 13-15 which hold as follows:

[13] *The Court of Appeal in a number of cases has stated that the purpose of the double costs provisions of Rule 37 is to encourage early and reasonable settlements of disputes and discourage frivolous litigation: Skidmore v. Blackmore (1995), 122 D.L.R. (4th) 330, 2 B.C.L.R. (3d) 201 (C.A.) at para. 28; Vukelic v. Canada (1997), 37 B.C.L.R. (3d) 217 at paras. 9 to 13, 94 B.C.A.C. 147; Mackenzie v. Brooks, 1999 BCCA 623 at para. 24 (sub nom. Mackenzie v. Brooks et al.), 130 B.C.A.C. 95.*

[14] *Although Rule 37 is no longer in force, I find these statements of principle helpful in view of the express language of Rule 37B(4).*

[15] *The petitioner's claim was not frivolous and it was not a claim that was bound to fail. The offer to settle conferred no benefit on the petitioner aside from costs and conferred virtually no benefit to those who complained about the noise of the barking dogs.*

This is the second case that I'm aware of in Rule 37-B's short history which refuses to award double costs to a litigant who made what can be characterized as a nuisance value offer. It appears that if a claim is not frivolous and is not bound to fail, double costs might not be granted when the claim does indeed fail at trial if the formal settlement offer conveys 'no benefit aside from costs' to the litigant.

If you are proceeding to trial in an ICBC claim or are considering an ICBC settlement offer cases such as this one are worth reviewing. I will continue to post about Rule 37B cases as they come to my attention.

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This entry was posted on Thursday, November 6th, 2008