

ICBC Claims, Settlement Offers And Timelines For Acceptance

January 6th, 2009

Interesting reasons for judgement were released today by the BC Court of Appeal setting aside a settlement of an ICBC injury claim.

In this case the Plaintiff was allegedly injured as a result of a 2001 BC motor vehicle collision. In September, 2006 the parties attended a mediation and ICBC made an offer to settle the Plaintiff's claim for \$50,000 plus costs and disbursements. The Plaintiff did not accept the offer at mediation and the mediation came to an end.

The following month the Plaintiff's lawyer attempted to accept the settlement offer. The defendants refused to proceed with the settlement, stated that the offer was revoked and attempted to proceed to trial.

The Plaintiff brought an application to enforce the alleged settlement and appeared before the BC Supreme Court. The presiding judge ordered that there was a binding settlement. The Defendants appealed. The Court of Appeal ordered that there was no settlement or if a settlement was reached it was 'void for uncertainty and unenforceable'.

The court's key discussion is set out at paragraphs 15 - 21 which I set out below:

[15] *In my view, on the evidence presented in this rather unsatisfactory record, a settlement cannot be said to have been reached for two reasons. First, the offer made in mediation was not accepted within a reasonable time. Second, the terms of the purported settlement lacked certainty.*

[16] *What is a reasonable time is a question of fact. However, it is a question to which the learned chambers judge never directed her attention in either of the two sets of reasons she gave. In the absence of any express provision, a reasonable time for acceptance of the offer at mediation depended on all the circumstances. The mediation concluded with no agreement. The trial date was approaching. Both sides were no doubt preparing for trial and incurring the attendant costs. The reasonable observer would, if asked, have concluded that the time for acceptance of the offer, even if it continued after the mediation had ended, had gone by.*

[17] *Nor can the terms of the purported settlement be said to be certain. The offer at mediation was to pay \$50,000 plus costs and disbursements. The letter of 20 October 2006 purported to accept an offer of \$50,000 "plus party and party costs in the tort action". The letter did not specify the date at which such costs were to be determined. It did not specify the amount of the costs, nor the manner in which they were to be determined. If the letter of 20 October 2006 can be said to have concluded an agreement, it was at best an agreement to agree.*

[18] *The learned chambers judge recognized this difficulty. She said:*

It is apparent that the parties have not agreed upon the matter of costs.

[19] *She then directed that the issue "be referred to the trial judge". There was no trial, and there was no trial judge. Moreover, there was no order as to who should pay what costs, at what level, or for what period of time. None of the factors which might guide a judge in making a ruling on costs were known or knowable.*

[20] *Even if one were to read this direction as one for taxation of costs before the Registrar, there is nothing in the evidence to suggest that this was what either party intended, or the basis on which a Registrar could conduct a taxation.*

[21] *If there was any kind of an agreement reached, it was void for uncertainty and unenforceable. And in any event, the offer not having been accepted within a reasonable time, no agreement can be said to have been reached.*

This case illustrates the fact that if an informal settlement offer is made (as opposed to a formal settlement offer under Rule 37B) it is important for the parties to have a meeting of the minds and know exactly what is being offered. Does the offer include court costs? Disbursements? How long is the offer open for acceptance? These and other questions are important factors when considering a settlement offer for an ICBC claim.