

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: **Accent Leasing & Sales Ltd. v. Babic,**
2008 BCSC 58

Date: 20080115
Docket: S90955
Registry: New Westminster

Between:

Accent Leasing & Sales Ltd.

Plaintiff

And

Jasmina Babic and Darrell Bryant

Defendants

Before: The Honourable Mr. Justice Cullen

Reasons for Judgment

Counsel for the plaintiff	K.E. Ducey
Counsel for the defendants	T.J. Delaney
Written submissions of the plaintiff	Filed November 21, 2007
Written submissions of the defendants	Filed November 6, 2007 Vancouver, B.C.

[1] This application for costs arises out of an action brought under the **Personal Property Security Act**, R.S.B.C. 1996, c. 359 ("**PPSA**") for breach of a lease of a vehicle and seeking damages in the order of \$15,650.49. Although the damages sought were less than the Small Claims jurisdiction limit, actions under the **PPSA** must be brought in Supreme Court.

[2] In the result, I granted judgment to the plaintiff in an amount totalling approximately one-quarter of what was sought. There were a number of issues in the trial raised by the defendants in resistance to the plaintiff's claim which I rejected. In the final analysis, I gave judgment to the plaintiff on the issue of liability. The difference between the amount being sought and the award of damages granted rested on a determination that the proper measure of damages was not, as claimed by the plaintiff, the payments due under the lease plus the residual value of the vehicle less the net amount realized by the plaintiff in a sale of the vehicle, but rather the value of the unpaid lease payments to the point of termination, less the sale price of the vehicle plus costs associated with the defendant's breach of the lease.

[3] The trial of the matter took two days. Examinations for discovery of both parties was held.

[4] The plaintiff argues that it was substantially successful in resisting each of the defences to the action being advanced and in obtaining judgment, albeit for significantly less than was claimed. The plaintiff says it should be entitled to "solicitor and own client costs" in keeping with the terms of the lease, providing for "all costs and expenses in taking, removing, holding and repairing the vehicle, including legal fees ... incurred by Accent in enforcing its rights under the lease." In the alternative, the plaintiff sought an award of costs at Scale B on the footing that the matter was "far from one of little or less than ordinary difficulty" engaging an award on Scale A.

[5] The defendants submit either that each party should bear their own costs because there was divided success, alternatively that the plaintiff should receive only its disbursements, or in the further alternative, the defendant should be restricted to costs assessed at Scale A.

[6] I conclude that it is not appropriate to award costs in accord with the lease agreement on "a solicitor and own client basis" as that provision relates to costs and expenses in "taking, removing, holding and repairing the vehicle" not the costs associated to the plaintiff's suit for damages.

[7] In my view, some costs ought to be awarded to the plaintiff as it was successful in establishing liability which was contested by the defendants and damages, albeit at a level reduced from what it was seeking. As there was no offer made by the defendants to off-set the plaintiff's success in obtaining the damages it did, there is no rationale, in my view, for depriving the plaintiff of its costs. Given the nature of the case and the quantum of damages ordered, I would award costs on Scale A rather than Scale B. I accept that some success was achieved by the defendants in reducing the damage award, and that quantum of costs should reflect that fact and as well that, but for the **Act** under which the action was brought, it could have been pursued as a Small Claims trial.

"A.F. Cullen J."
The Honourable Mr. Justice A.F. Cullen