

2017 ONSC 4258
Ontario Superior Court of Justice

Beaumont v. Lewis et al

2017 CarswellOnt 10705, 2017 ONSC 4258, 281 A.C.W.S. (3d) 687

**Janette Beaumont (Plaintiff) and Joshua Lewis and The Estate of Charlotte Scott,
deceased, by her Litigation Administrator, Robert J. Nagel (Defendant)**

B.A. Glass J.

Heard: June 2, 2017
Judgment: June 2, 2017
Docket: 0088/11

Proceedings: refusing leave to appeal *Beaumont v. Lewis* (2016), 2016 CarswellOnt 21759, 2016 ONSC 4259, J.C. Corkery J. (Ont. S.C.J.)

Counsel: Gordon Marsden, for Plaintiff
M. Gregg Abogado, Andrew E. Franklin, for Defendants

Subject: Civil Practice and Procedure

Related Abridgment Classifications

Civil practice and procedure
[XXIII Practice on appeal](#)
[XXIII.10 Leave to appeal](#)
[XXIII.10.a General principles](#)

Headnote

Civil practice and procedure --- Practice on appeal — Leave to appeal — General principles
Parties were involved in action arising out of automobile accident — Parties arrived at settlement agreement offered by defendant that called for costs to be paid by agreement or as assessed — Defendant's motion for order that costs be payable to date of service of settlement was dismissed — Plaintiff entitled to costs to date of acceptance of offer, rather than date settlement offered — Trial judge found allowing plaintiff costs to date of acceptance did not give costs holiday and did not discourage settlement offers from being made — Defendants brought application for leave to appeal — Application dismissed — There was no conflict in relevant caselaw, and decisions of various courts had variations of interpretation that do not call for clarification — No reasons to doubt correctness of decision.

Table of Authorities

Cases considered by B.A. Glass J.:

Rosero v. Huang (1999), 1999 CarswellOnt 1613, 44 O.R. (3d) 669, 96 O.T.C. 302 (Ont. S.C.J.) — considered

Rules considered:

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Generally — referred to

R. 49.07(5) — considered

R. 62.02 — considered

APPLICATION by defendants for leave to appeal judgment reported at *Beaumont v. Lewis et al* (2017), 2017 ONSC 4258, 2017 CarswellOnt 10705 (Ont. S.C.J.), dismissing defendant's motion regarding costs.

B.A. Glass J.:

1 Application for Leave to Appeal Costs Order of Corkery J. to the Divisional Court

2 On December 13, 2016, Corkery J. released an order regarding costs following a settlement of the proceedings reached in May 2016.

3 The issue was costs flowing from the settlement offer of the Defendant. The offer referred to costs and disbursements to be agreed on or assessed.

4 Following settlement, an issue arose whether costs and disbursements ran to the date of service of the offer to settle or until the date of acceptance.

5 At stake was costs accumulation from March 21, 2016 until May 16, 2016. Disbursements during those months accumulated for an experts' reports as well.

6 Leave to appeal this decision to the Divisional Court may be granted pursuant to Rule 62.02 of the Rules of Civil Procedure if there are conflicting decisions on the issue and if there is foundation to question the correctness of the decision. Simply not liking a judicial decision is not sufficient for leave to appeal. A greater consideration must be involved.

7 This motion for leave to appeal to the Divisional Court is dismissed because the Defendants do not meet the grounds required for leave within Rule 62.02. In effect, there is not a conflict in principles regarding the interpretation of the meaning of costs and when they take effect. The realistic difference for example between the decision of Corkery J. in this case and that of the court in *Rosero v. Huang* (1999), 44 O.R. (3d) 669 (Ont. S.C.J.) is the application of the facts.

8 There are conflicting decisions to that of Corkery J.

9 The focus of the decision of Corkery J. is that when a Defendant made an offer of settlement in which costs were addressed, when do costs apply? In this case, should the costs cover the period to March 21, 2016 inclusive, or should they extend to May 16, 2016? There was some significance with disbursements for experts during this two month period because one expert died and another was engaged for the trial.

10 Rule 49.07(5) of the Rules of Civil Procedure provide for costs when offers emanate from the Plaintiff or the Defence. For example, Rule 49.07(5) states that if an accepted offer to settle does not provide for the disposition of costs, the Plaintiff is entitled to costs on a Defence offer as assessed to the date the Plaintiff was served with the offer. If the offer were a Plaintiff's offer, the Plaintiff is entitled to costs assessed to the date the notice of acceptance was served by the Defendant.

11 In the case before Corkery J., there is an argument that the offer to settle from the Defence did not provide for costs so that it is open for a judge to consider costs in the court's discretion within the limitations of Rule 49.07(5).

12 The theory of the Defence is that the court should approach the issue within the spirit of the Rules and cut off the time for costs at the March 24th date when the Defence made its settlement offer. Such was the case by Nordheimer J. in *Rosero v. Huang* (1999), 44 O.R. (3d) 669 (Ont. S.C.J.). That application embodied the time boundaries of the Rule even though the court found that the Rule did not apply. That amounted to an award of costs in the discretion of the court.

13 Corkery J. arrived at a different result than in *Rosero* in exercising his discretion.

14 I am satisfied that the decisions of various courts have variations of interpretation that do not call for clarification.

15 The first feature of leave to appeal is not established with conflicting decisions.

16 The second aspect of a request for permission to appeal the decision is whether or not there is good reason to doubt the correctness of the order. That feature is not met either. Rather, this is not an appeal of important matters beyond the parties in

this litigation. There is no need for correcting an order because of error in law.

17 Leave to appeal the decision to the Divisional Court is dismissed.

18 Costs are awarded to the Plaintiff in the sum of \$5000.

Application dismissed.

End of Document	Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved.
------------------------	--