

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Daws v. Buckler*, 2004 YKSC 6

Date: 20031211
Docket: S.C. No. 02-B0072
Registry: Whitehorse

BETWEEN:

PATRICIA NORAH DAWS

Plaintiff

AND:

DAVID BRYAN BUCKLER

Defendant

Before: Mr. Justice Veale

Appearances:
Shayne Fairman
Glen Thompson

For the Plaintiff
For the Defendant

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): This was a trial that took five days on October 27, 28, 29, 30 and 31 of 2003. The plaintiff made an offer of settlement on September 5, 2003, which was essentially offering to pay the defendant \$7,500. A further offer of settlement was made on October 17, 2003, which, in effect, increased the offer to \$19,000, i.e. the payment to the defendant.

[2] The only issue before me is to determine the date at which double costs will be assessed and whether that date will be September 5, 2003 or October 17, 2003.

There is no disagreement that the plaintiff shall have her costs on scale 3, up to whatever date is chosen.

[3] The *Bains v. Indo-Canadian Times Inc.*, [1995] B.C.J. No. 541 (QL) case in the Court of Appeal, whether one agrees with it or not, does have the advantage of clarity in the sense that if a second offer is filed, my view of it is that the first offer is implicitly withdrawn or terminated. Although, on the circumstances of this case, that has an aspect of unfairness to it, in my view, the *Bains, supra*, rationale is appropriate so that there is only one outstanding offer at a particular time.

[4] It seems indeed unfortunate in this case, to penalize the plaintiff for making an improved offer, but in my view, that is the effect of the *Bains, supra*, decision. That is not a decision that was rendered by the Court of Appeal without consideration for those aspects so I am going to follow that decision and order that the double costs commence on October 17, 2003.

VEALE J.