



DAVID MARSHALL



LAURA WARNER

FORMAL OFFERS IN COURT OF APPEAL PROCEEDINGS

864503 Alberta Inc v Genco Place Properties Ltd, 2019 ABCA 248 is a costs decision arising out of an application by Genco for summary judgment before a Master. Genco alleged that 864 filed an action in 2014 that was an impermissible attempt to re-litigate issues settled in a previous lawsuit. The Master granted summary judgment and awarded enhanced costs of \$185K. 864 appealed to a judge, at which time Genco served a Formal Offer for \$175K.

The Chambers Judge allowed the appeal but was reversed on further appeal to the ABCA, with the Master's decision being restored.

In this separate costs decision, the Court of Appeal considered Rule 14.59 which provides for the making of a Formal Offer to settle the appeal. Where such a Formal Offer is made, Rule 4.29 applies to ABCA costs (double costs for all steps taken after the Formal Offer).

Genco filed its Formal Offer under Rule 4.29 in Queen's Bench, after the Master's decision and before the appeal to the Chambers Judge. It did not file a separate Formal Offer for the appeal under Rule 14.59. The ABCA held that the absence of a separate Formal Offer "in relation to the appeal" meant that appeal costs should not be doubled, even though the Queen's Bench costs were. Genco was entitled to two times column 5 because of the complexity of the matter, the amounts involved, and the res judicata nature of the claims. It was not, however, entitled to double costs under Rules 14.59 and 4.29.

The upshot: formal offers made at any point during QB proceedings will not apply to any steps taken at the Court of Appeal unless the formal offer is renewed under Rule 14.59. This held in this case even though it was the Court of Appeal judgment that ultimately rendered the Formal Offer at the QB level as a better outcome.