

Case Name:

Luco v. Beveridge

Between

**Ken Luco, plaintiff (respondent), and
John Beveridge and Creative Solutions, defendants (appellants)**

[2002] O.J. No. 937

Divisional Court File No. 01-DV-000622

Court File No. 96-CU-108888 SR

Ontario Superior Court of Justice
Divisional Court - Toronto, Ontario

Farley, Valin and Thomson JJ.

February 21, 2002.

(3 paras.)

Civil procedure -- Appeals -- Costs.

Appeal by the defendant Beveridge from an unfavourable judgment.

HELD: Appeal dismissed. There was no palpable or overriding error in the judge's decision. For the purposes of costs, a motion for summary judgment that led to a dismissal that was subsequently set aside did not extinguish an offer to settle that expired one month following the commencement of trial on the action, unless it was withdrawn earlier.

Counsel:

John F. Scheulderman, for the defendants (appellants).

Martin P. Forget, for the plaintiff (respondent).

The following judgment was delivered by

1 THE COURT (endorsement):-- We see no palpable or overriding error in the decision of Power J. In our view, for the purpose of costs at the end of trial, a motion for summary judgment leading to a dismissal which was subsequently set aside does not extinguish an offer to settle which includes the clause "the offer is to expire one month following the commencement of trial on this action unless it is withdrawn earlier."

2 The appeal is dismissed.

3 Parties were agreed that \$4500 costs of the appeal are to go to the respondent.

FARLEY J.

VALIN J.

THOMSON J.

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