

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Skalbania v. 0055498 B.C. Ltd.*,
2025 BCSC 1291

Date: 20250710
Docket: S168169
Registry: Vancouver

Between:

Nelson Skalbania aka Nelson M. Skalbania

Plaintiff and
Defendant by way of Counterclaim

And:

**0055498 B.C. Ltd. formerly known as
Archer Investments Ltd.**

Defendant and
Plaintiff by way of Counterclaim

Before: The Honourable Mr. Justice Funt

Reasons for Ruling on Costs

Counsel for the Plaintiff and Defendant by
way of Counterclaim:

G. Douvelos

Counsel for the Defendant and Plaintiff by
way of Counterclaim:

B.M. Gordon

Place and Date of Hearing:

Vancouver, B.C.
July 7, 2025

Place and Date of Judgment:

Vancouver, B.C.
July 10, 2025

1. INTRODUCTION

[1] This ruling addresses costs related to my April 9, 2025 judgment indexed as *Skalbania v. 0055498 B.C. Ltd. (Archer Investments Ltd.)*, 2025 BCSC 668.

[2] At trial, Mr. Skalbania was the successful party. He seeks costs at Scale B.

[3] As may be seen from the style of cause, 0055498 B.C. Ltd. (“Archer Ltd.”) was the defendant and plaintiff by way of counterclaim (the “Counterclaim”).

[4] On April 2, 2019, Mr. Skalbania discontinued his claim against Archer Ltd.

[5] At trial, only the Counterclaim was engaged.

[6] I dismissed the Counterclaim.

2. SUPREME COURT CIVIL RULES – COSTS

[7] Rule 14-1(9) of the *Supreme Court Civil Rules* provides:

Costs to follow event

(9) Subject to subrule (12), costs of a proceeding must be awarded to the successful party unless the court otherwise orders.

[8] Mr. Skalbania was the successful party. Accordingly, the issue becomes whether I should “otherwise order”.

3. SHOULD I “OTHERWISE ORDER”?

[9] Archer Ltd. submits that the Court should “otherwise order” and, accordingly, not award costs to Mr. Skalbania although he was entirely successful in having the Counterclaim dismissed.

[10] Mr. Gordon, counsel for Archer Ltd., submitted the following (as I summarize):

- a) The Counterclaim was dismissed based upon the application of the doctrine of *ex turpi causa*;
- b) Mr. Skalbania was the “more culpable” party;

- c) If the Court will not assist Archer Ltd., then the Court should not assist Mr. Skalbania; and
- d) It would be unjust to dismiss the Counterclaim but award Mr. Skalbania costs.

[11] Mr. Douvelos, counsel for Mr. Skalbania, submitted the following (as I summarize):

- a) Mr. Skalbania had previously discontinued his claim;
- b) Mr. Skalbania had to defend against the Counterclaim in an action to which the doctrine of *ex turpi causa* applies; and
- c) Mr. Skalbania was only before the Court to defend against the Counterclaim.

[12] I will not “otherwise order”.

[13] Mr. Skalbania was the successful party and it is not “unjust” to award Mr. Skalbania his costs.

[14] Mr. Skalbania was not seeking the assistance of the Court other than to dismiss the Counterclaim.

[15] If Archer Ltd. had not pursued its Counterclaim, there would not have been the four day trial.

[16] Long before trial, on April 2, 2019, Mr. Skalbania had “thrown in the towel” with respect to his claim by discontinuing his claim. He did not wish to proceed to court to advance a claim or obtain other relief.

[17] In sum, I find that it is not unjust to award Mr. Skalbania costs, as the successful party, where he had no reason to be before the Court other than to defend against the Counterclaim.

4. CONCLUSION

[18] Mr. Skalbania is awarded his costs at Scale B.

“Funt J.”