IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Epix Developments Ltd. v. Bonnis Development Union Street Limited Partnership,* 2025 BCSC 1701

Date: 20250902
Docket: S222032
Registry: Vancouver

Between:

Epix Developments Ltd. and Epix Main Street Limited Partnership

Plaintiffs / Defendants by way of Counterclaim

And:

Bonnis Development Union Street Limited Partnership

Defendant / Plaintiff by way of Counterclaim

Before: The Honourable Justice K. Wolfe

Reasons for Judgment on Costs

Counsel for the Plaintiffs:	H. Poulus, K.C. H. Chu
No one appearing for the Defendant.	
Written Submissions of the Plaintiffs:	May 29, 2025
Written Submissions of the Defendant:	None provided
Place and Date of Judgment:	Vancouver, B.C. September 2, 2025

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Introduction

[1] After a 14-day trial in respect of a failed real estate transaction, on August 29, 2025, I released judgment allowing the claim of the plaintiffs, Epix Developments Ltd. and Epix Main Street Limited Partnership (collectively, "Epix") and dismissing the counterclaim of the defendant, Bonnis Development Union Street Limited Partnership ("Bonnis") in its entirety. At the conclusion of my reasons, indexed as 2025 BCSC 805 [*Reasons*], I held Epix was presumptively entitled to pre-judgment interest and costs of the action as the substantially successful party, but allowed the parties to provide further written submissions on costs if they wished: *Reasons* at para. 209.

[2] Epix provided written costs submissions on May 29, 2025. On the same day, Bonnis filed a notice of intention to act in person. Based on the schedule agreed between the parties, Bonnis was to deliver responding costs submissions by July 11, 2025 and Epix was to provide any reply by July 18, 2025.

[3] The Court did not receive responding submissions from Bonnis on July 11, 2025. On July 23, 2025, counsel for Epix confirmed that no costs submissions, other than Epix's May 29, 2025 submissions, had been exchanged between the parties. Accordingly, my decision on costs is based on my review of Epix's written costs submissions in light of the *Reasons* and the applicable costs principles.

[4] In respect of its own claim, Epix seeks double costs or alternatively increased costs for all steps taken after Epix delivered an offer to settle on April 4, 2024 (the "Settlement Offer"), and increased costs for all steps taken prior to that date. Epix says the Settlement Offer was a reasonable offer, including in light of the ultimate outcome, and ought to have been accepted. In respect of Bonnis' counterclaim, Epix seeks special costs on the basis that Bonnis made claims of malice and dishonest behaviour without foundation. Alternatively, if special costs are not warranted for the counterclaim, Epix seeks double costs or increased costs for all steps after the Settlement Offer and increased costs for all steps before it.

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Issues

[5] There are three issues to decide:

a) Do the allegations in Bonnis' counterclaim constitute reprehensible conduct deserving of rebuke through an award of special costs to Epix?

b) Was it unreasonable for Bonnis to have refused the Settlement Offer, considering the circumstances of the Settlement Offer, the final judgment and any other relevant factors, such that double costs are warranted?

c) Are there "unusual circumstances" that mean an award of party-and-party costs would be grossly inadequate or unjust, and Epix should instead be granted uplifted costs of 1.5 times the normal tariff rate?

Analysis

1) Does Bonnis' counterclaim warrant special costs?

[6] Special costs are an extraordinary, discretionary remedy. They are punitive rather than compensatory, and are awarded when the Court seeks to disassociate itself from conduct in the course of the litigation that is reprehensible and "deserving of reproof and rebuke": *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at paras. 56–57, citing *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 at para. 17, 1994 CanLII 2570 (C.A.). There is a high threshold to establish that an award of special costs is warranted; the party seeking special costs must demonstrate exceptional circumstances to justify such an order: *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 at para. 73.

[7] Litigation conduct encompasses allegations made in pleadings. Unfounded allegations of fraudulent or dishonest behaviour can be considered reprehensible and may attract an award of special costs in some circumstances, in recognition of the potential damage such an allegation may cause and the corresponding need not to make such allegations lightly: *Roussy v. Savage*, 2020 BCSC 487 at para. 17. However, the fact that an allegation of dishonest conduct is not ultimately successful is not enough, in itself, to justify an award of special costs. Instead, the Court must

consider if the allegation was “obviously unfounded”, “recklessly made” or “made out of malice”: *Roussy* at para. 19, further citations omitted. The question is whether the allegation of dishonest conduct was “reasonable” at the time it was made, in the sense that there was at least an arguable case for the allegation: *Roussy* at paras. 19–21.

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[8] Epix contends Bonnis made “serious and unfounded allegations of malice” in its second amended counterclaim, filed October 5, 2023. However, in its written costs submissions, Epix does not identify the specific allegations of malice in the counterclaim with which it takes issue. Instead, it points to a blanket statement in its response to second amended counterclaim, filed October 26, 2023, which merely repeats its position that the “defendant makes serious and baseless allegations of wrongdoing against the plaintiffs”. Epix emphasizes para. 188 of the *Reasons* where I concluded that the theory underlying Bonnis’ counterclaim was based on an erroneous interpretation of the parties’ agreements and the surrounding circumstances. Epix says there was no foundation to Bonnis’ allegations, and defending those allegations drove up Epix’s costs “significantly”. Epix does not provide evidence for the latter assertion.

[9] I have reviewed the *Reasons*, as well as Bonnis’ counterclaim and Epix’s response. The counterclaim alleged, among other things, that Epix’s decision to file and maintain a certificate of pending litigation (“CPL”) over the property at issue constituted slander of title and abuse of process. The crux of Bonnis’ argument was that Epix filed and maintained the CPL improperly to exercise an element of control over the property in the hopes of negotiating a better deal, despite not being legally entitled to file a CPL. Bonnis’ theory regarding the CPL rested primarily on its interpretation of the agreements between the parties. While I ultimately did not accept Bonnis’ interpretation, I am not satisfied that Bonnis’ allegations regarding the CPL were “obviously unfounded” or “recklessly made” such that they constitute reprehensible conduct warranting an award of special costs.

[10] As the *Reasons* make clear, the litigation between the parties stemmed from a fundamental dispute about how the agreements ought to be interpreted, and therefore what rights and obligations flowed to each party as a result. This was the central issue at trial, and it was hard fought on both sides, with both sets of counsel advancing arguable positions based in well-established authorities. There is no question Bonnis genuinely believed that its interpretation of the parties' agreements would prevail. I find Bonnis pursued its counterclaim on that basis, rather than out of any malicious or reckless attempt to paint Epix as commercially deceptive. My conclusion that Bonnis' allegations of slander of title and abuse of process in relation to the CPL were unfounded was directly tied to my findings about the correct legal interpretation of the parties' agreements.

[11] In these circumstances, I am not persuaded that Bonnis' pursuit of its counterclaim amounts to litigation conduct meriting punishment through an award of special costs. I therefore dismiss Epix's claim for special costs.

2) Are double costs warranted because it was unreasonable for Bonnis to have refused the Settlement Offer?

[12] Where a party to a proceeding has made an offer to settle in accordance with R. 9-1(1) of the *Supreme Court Civil Rules* [*Rules*], R. 9-1(4) permits the Court to consider the offer when exercising its discretion in relation to costs. Rule 9-1(5) sets out a number of options the Court may consider in awarding costs, which include the option to "award double costs of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle": R. 9-1(5)(b). In deciding whether to make an order under R. 9-1(5), the Court may consider the following factors set out in R. 9-1(6):

> (a) whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle was delivered or served or on any later date;
>
> (b) the relationship between the terms of settlement offered and the final judgment of the court;
>
> (c) the relative financial circumstances of the parties;
>
> (d) any other factor the court considers appropriate.

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[13] As part of its written costs submissions, Epix provided evidence that on April 4, 2024, it sent the Settlement Offer to Bonnis, offering to settle all of Epix's claims for payment of the $1.1 million deposit (together with all accrued interest), the execution of mutual releases and a consent dismissal of the litigation. I have reviewed the Settlement Offer; it conforms to the requirements of R. 9-1(1) and was open for acceptance until 4:00 p.m. on April 9, 2024. Epix also provided evidence that there was no response to the Settlement Offer. In the absence of any submissions to the contrary from Bonnis, I accept that to be the case.

[14] Epix says it was unreasonable for Bonnis to refuse the Settlement Offer. The parties were 11 days from the start of the hybrid trial, and because of an earlier unsuccessful attempt to have the matter heard as a summary trial in November 2023 (for which no justice was available), the parties had already been in possession of each other's direct evidence and positions for several months. Pleadings were set, examinations for discovery had been completed and expert reports had been exchanged. Epix says the litigation was at an advanced stage and Bonnis, a sophisticated litigant advised by experienced counsel, ought to have known that its legal position was weak.

[15] Further, Epix says there is no question that when the Settlement Offer is compared to the final judgment, Bonnis would have been better off accepting the Settlement Offer. Bonnis would have avoided the time and expense of the 14-day trial, the award of $190,000 in damages and pre-judgment interest, and its liability for costs. Finally, Epix says the Court may also consider that Bonnis engaged in conduct that unnecessarily lengthened the trial, particularly in light of the amounts at issue, including but not limited to lengthier cross-examination of Epix's main witness, unfocused closing submissions and misrepresentations of evidence in submissions and affidavits.

[16] In *Hartshorne v. Hartshorne*, 2011 BCCA 29, the British Columbia Court of Appeal held that, as a general rule, double costs should be awarded against a party who did not accept a settlement offer that ought reasonably to have been accepted.

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When considering if an offer ought reasonably to have been accepted, the question is "whether it was unreasonable to refuse the offer" based on the circumstances in existence at the time the offer was made, rather than with the benefit of hindsight after judgment has been rendered: *Findlay v. George*, 2021 BCCA 12, at para. 95, citing *Bains v. Antle*, 2019 BCCA 383 at paras. 34–37. The Court may consider factors such as the timing of the offer, whether it bore some relationship to the claim or was a “nuisance” offer, whether it could be easily evaluated, and whether some rationale for the offer was provided: *Hartshorne* at para. 27.

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[17] At the core of Epix’s claim was its request for the return of the deposit. While both parties also sought damages, and Bonnis’ damages claim was more substantial than that advanced by Epix, the real crux of the dispute was which party repudiated the agreements and was therefore entitled to the deposit. The Settlement Offer was directly connected to the heart of the claim and could be easily evaluated. In making the Settlement Offer, Epix expressly referenced the inherent risks of litigation and the legal fees and expenses each party stood to incur if the trial proceeded (at that point, it was scheduled for eight days).

[18] I accept that when the Settlement Offer was made, the majority of the evidence to be adduced at trial had been exchanged, such that both sides were in a position to assess their likelihood of success at trial. Although the Settlement Offer had a short window for acceptance, in my view, the advanced stage of the litigation and the impending trial dates made that timeframe both appropriate and sufficient. While I appreciate that Bonnis maintained a different interpretation of the parties’ agreements, and sought to recoup some of the additional expenses it incurred in carrying the property after the deal with Epix failed, applying the *Hartshorne* factors, I find Epix’s Settlement Offer was reasonable and ought to have been accepted.

[19] I also agree that Bonnis would clearly have been better off to accept the Settlement Offer. As Epix submits, the deposit was already being held in trust and was therefore inaccessible to Bonnis. By not accepting the Settlement Offer, Bonnis became liable for damages and pre-judgment interest, legal fees and expenses for

the preparation and conduct of a 14-day trial, and costs of this litigation. I do not find it necessary to consider the other factors identified by Epix, other than to note that given the ultimate amounts in dispute, it is hard to imagine how those amounts could ever have justified the expense of an eight-day trial, let alone the 14-day trial that ultimately occurred.

[20] I therefore exercise my discretion to award Epix double costs for all steps in the litigation taken after April 4, 2024. For clarity, this includes all steps in relation to both Epix's claim and Bonnis' counterclaim.

3) Are there "unusual circumstances" that should entitle Epix to an award of uplifted costs?

[21] Given my conclusion above in relation to the reasonableness of the Settlement Offer, the remaining question is if there are "unusual circumstances" that would justify an award of increased or what are now called "uplift" costs for all steps taken prior to April 4, 2024. Section 2(5) of Appendix B of the *Rules* provides:

> If, after it fixes the scale of costs applicable to a proceeding under subsection (1) or (4), the court finds that, as a result of unusual circumstances, an award of costs on that scale would be grossly inadequate or unjust, the court may order that the value for each unit allowed for that proceeding, or for any step in that proceeding, be 1.5 times the value that would otherwise apply to a unit in that scale under section 3(1).

[22] Uplifted costs are designed to compensate a party to a greater extent than would occur by applying the usual principles of costs assessment, if the Court considers the outcome of applying the usual principles would be unjust. Increased or uplifted costs are meant to further indemnify the successful party, rather than punishing the unsuccessful party: *Vigier v. Darren Hart Law Corporation (Hart Legal)*, 2025 BCSC 794 at paras. 25 and 27.

[23] Deciding if there are "unusual circumstances" is a fact-based inquiry "driven by the nature of the litigation and the conduct of the parties": *Vigier* at para. 28. Relevant factors include: positions or behaviour that added to the complexity of the litigation, the importance of the matter to a party, misbehaviour of a party that added to the expense incurred by the party claiming costs, and the degree of disparity

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between costs calculated at Scale B and the actual legal fees incurred: *Globalnet Management Solutions Inc. v. Aviva Insurance Company,* 2020 BCSC 1361 at para. 30.

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[24] Epix relies on the same conduct referenced above in support of its position that Bonnis unnecessarily lengthened the trial, increasing Epix's costs. In addition, Epix says Bonnis took positions that added to the complexity of the issues in the litigation, spent unnecessary time on an issue Epix maintains was peripheral to the case (namely, Epix's obligation to demonstrate the financial means to close the deal earlier than the completion date), applied unsuccessfully to amend its counterclaim at the start of closing submissions (necessitating a response from Epix), and made unfounded allegations in its counterclaim. Epix also provided evidence that there is a significant disparity between costs calculated at Scale B and the actual legal fees Epix incurred.

[25] I have already found that Bonnis' counterclaim does not constitute reprehensible conduct deserving of an award of special costs. I am likewise not persuaded that those allegations, although ultimately unfounded, constitute litigation misconduct or that they alone created an additional expense for Epix that requires compensation. While counsel for Bonnis did take longer in cross-examination of Epix's main witness than anticipated, in my view, responsibility for that delay does not rest solely with Bonnis' counsel.

[26] In relation to Epix's concerns about misrepresentation of evidence, Bonnis' counsel acknowledged the error he had made respecting evidence of a response to the prior-to letter, and I concluded that many of the conflicts regarding the parties' interactions were as a result of differing understandings rather than any deliberate attempts to be untruthful or inaccurate: *Reasons* at para. 64. Considering the trial as a whole, I am also not satisfied that it was only Bonnis who took positions or engaged in conduct that contributed to the complexity and length of the litigation. As previously noted, the litigation was hard fought by counsel who have significant experience in contractual disputes. Strategic choices were made by both sides that

ultimately impacted the course of the trial. In addition, Epix has pointed only to the conduct at trial as justifying an award of uplifted costs for all steps taken prior to April 4, 2024. The notice of civil claim was filed in March 2022, meaning Epix seeks uplifted costs for more than two years of litigation leading up to April 2024. There is no suggestion that Bonnis' conduct over the timeframe prior to April 2024 was such that party-and-party costs at Scale B would be "grossly inadequate". Finally, the disparity between Scale B costs and actual legal expenses incurred will be mitigated somewhat by my decision to award Epix double costs from April 4, 2024 forward.

[27] On the whole, I am not satisfied this is an appropriate case in which to award uplifted costs for all steps or even some of the steps prior to April 4, 2024. Epix's claim for uplifted costs for that time period is dismissed.

Conclusion

[28] In conclusion, I order Bonnis to pay Epix costs of the entire proceeding on the following terms:

a) costs are payable as party-and-party costs;

b) the scale of costs is fixed at Scale B; and

c) Epix is entitled to double costs for all steps taken after April 4, 2024.

"K. Wolfe J."

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