

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Abdul-Ahad v. Challa*,
2025 BCSC 2405

Date: 20251204
Docket: S209228
Registry: New Westminster

Between:

**Karam Abdul-Ahad, K. Jekki Pharmaceuticals Ltd.
and K&M Jekki Yogurt Ltd.**

Plaintiffs

And

**Dr. Lakshmikanth Challa, Dr. L. Challa Inc., Madhavi Challa
and New Pitt Meadows Medical Clinic Ltd.**

Defendants

And

C.J.A.D. Holdings Ltd.

Third Party

And

Karam Abdul-Ahad and K. Jekki Pharmaceuticals Ltd.

Defendants by way of Counterclaim

- and -

Docket: S245774
Registry: New Westminster

Between:

Madhavi Challa

Petitioner

And

**K. Jekki Pharmaceuticals Ltd., K&M Jekki Yogurt Ltd.
and Karam Abdul-Ahad**

Respondents

Before: The Honourable Mr. Justice Milman

Reasons for Judgment Re Costs

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Respondents in NW S245774:

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Dates of Written Submissions Received:

November 3 and 17, 2025

Place and Date of Hearing:

Abbotsford, B.C.
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Place and Date of Judgment:

New Westminster, B.C.
December 4, 2025

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I. INTRODUCTION

[1] On May 6, 2025, I released my decision, now indexed as 2025 BCSC 848 (the “Trial Decision”), following the trial of this action and related petition. The background to these matters is set out at length in the Trial Decision and I will not repeat it here.

[2] In the result, I made the following orders:

- a) in the action, two of the defendants (Dr. Challa and NPMMC) were ordered to pay, to one of the plaintiffs (KJPL), compensatory damages that I quantified at \$403,061.56, for the premature termination of a sublease;
- b) the petition was dismissed; and
- c) the parties were given leave to arrange a supplemental hearing before me if they were unable to agree on the appropriate order as to costs in light of my decision.

[3] On June 5, 2025, the defendants and the petitioner filed two appeals from the Trial Decision – one in relation to the action, the other in relation to the petition proceeding. Those appeals have yet to be heard.

[4] On June 20, 2025, the parties arranged for final orders to be entered in each of the action and the petition, based on the Trial Decision (the “Final Orders”).

[5] In the meantime, the parties were unable to agree on costs and therefore set down a supplemental hearing before me to address that issue, as contemplated by the Trial Decision and Final Orders.

[6] At that hearing, the plaintiffs/petition-respondents sought the following relief:

- a) an order to vary the final order in the action by adding provision for pre-judgment interest (relief that, although pleaded, had not been sought at the trial or at any time prior to the entry of the Final Orders); and

- b) costs for both proceedings, payable as double costs, or alternatively, ordinary tariff costs at Scale “B”.

[7] The defendants and the petitioner oppose that relief. In their submission, it would be improper to vary the final order in the action as proposed, inasmuch as:

- a) this Court is now *functus officio*;
- b) the plaintiffs’ only recourse, if they wished to pursue a variation of that kind, was to bring an appeal or cross-appeal, which they have not done; and
- c) such a variation could properly be ordered only on an application supported by evidence, and there is no such application before the Court.

[8] In addition, they argue that the appropriate order as to costs is that costs should be payable at Scale “B”, as follows:

- a) the plaintiffs should receive only 50% of their costs in the action, inasmuch as only one of the plaintiffs was successful, and then only as against two of the defendants; and
- b) the petition-respondents should receive 100% of their costs in the petition proceeding.

[9] These supplemental reasons for judgment address those matters. Any capitalised terms used herein have the meanings ascribed to them in the Trial Decision.

II. DISCUSSION

A. Interest

[10] In arguing that this Court can and should vary the final order in the action, although already entered, the plaintiffs rely on the so-called “slip rule” (namely,

Rule 13-1(17) of the *Supreme Court Civil Rules* [SCCR], formerly R. 41(24)), which states as follows:

The court may at any time correct a clerical mistake in an order or an error arising in an order from an accidental slip or omission, or may amend an order to provide for any matter that should have been but was not adjudicated on.

[11] The circumstances in which recourse may properly be had to that Rule were explained in the following oft-cited remarks of Finch C.J. in *Harrison v. Harrison*, 2007 BCCA 120:

[28] The scope of a trial judge's discretion to vary an order after pronouncement depends on whether a formal order has been entered. So long as the order remains unentered, the judge retains "an unfettered discretion" to re-open the matter. That discretion should be used sparingly: *Sykes v. Sykes* (1995), 1995 CanLII 2387 (BC CA), 6 B.C.L.R. (3d) 296 (C.A.). Although this discretion is sometimes treated as part of the discretion granted by Rule 41(24), the "Slip Rule", it is in fact a common law discretion recognized by this Court in *Clayton v. British American Securities Ltd.*, 1934 CanLII 229 (BC CA), [1934] 3 W.W.R. 257, [1935] 1 D.L.R. 432.

[29] Once an order has been entered, however, the court which made the order is *functus officio* with respect to the issues therein: *Piyaratana Unnanse et al v. Wahareke Sonuttara Unnanse et al*, 1950 CanLII 435 (UK JCPC), [1950] 2 W.W.R. 796 (P.C.). Once the judge is *functus*, the power to re-visit an order is much narrower. Generally speaking, that power is confined to making corrections or amendments in two situations: first, under Rule 41(24) of the Supreme Court Rules where there has been a 'slip' in drawing up the order or where a matter should have been but was not adjudicated upon; and second, where there has been an error in expressing the manifest intention of the court: *Buschau v. Rogers Communications Inc.*, 2004 BCCA 142; see also *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), [1989] 2 S.C.R. 848.

[Emphasis added.]

[12] The plaintiffs argue that the successful plaintiff's entitlement to pre-judgment interest was a matter that "should have been but was not adjudicated upon". In support of that argument, they rely on s.1(1) of the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 [COIA]. That provision states as follows:

... a court must add to a pecuniary judgment an amount of interest calculated on the amount ordered to be paid at a rate the court considers appropriate in

the circumstances from the date on which the cause of action arose to the date of the order.

[Emphasis added.]

[13] This court has at times seen fit to vary a previously entered order to add provision for pre-judgment interest upon being satisfied that such a term should have been included in the order, whether by operation of the *COIA* or as a matter of equity: *Kim v. Choi*, 2020 BCSC 1790 [*Kim*]; *0731431 B.C. Ltd. v. Panorama Parkview Homes Ltd.*, 2024 BCSC 614 [*Panorama*]. I agree with the plaintiffs that these authorities are directly on point.

[14] In *Kim*, Dley J. exercised the jurisdiction conferred by R. 13-1(17) to vary an order, previously entered, to add provision for pre-judgment interest as mandated by the *COIA*, even though the plaintiff sought the variation long after the order was entered, the resulting appeals concluded, and the judgment already paid. In *Panorama*, P. Walker J. relied on R. 13-1(17) to vary a previously entered order to add provision for pre-judgment interest, even though the *COIA* itself did not apply to the judgment.

[15] In opposing the variation proposed here, the defendants rely on *Bank of Montreal v. Nyhus Holdings Ltd.* (1984), 55 B.C.L.R. 73, [1984] B.C.J. No. 2950 (S.C.) [*Nyhus*]. In that case, a foreclosing mortgagee sought to correct the redemption amount set out in an order *nisi*, on the basis that it had made a calculation error when it applied for the order. Justice Robinson refused to exercise the discretion available to him under the slip rule in those circumstances, for various reasons. One of those reasons was that there was no evidence adduced on the application to explain the error and how it was made.

[16] I am satisfied that it is appropriate in this case to vary the final order to add provision for pre-judgment interest under R. 13-1(17), as was done in *Kim* and *Panorama*. This is not a case like *Nyhus* in which evidence is needed to explain why the order is deficient as entered. The *COIA* requires the court to add pre-judgment

interest to every pecuniary judgment. Accordingly, the question of pre-judgment interest was one that should have been but was not adjudicated upon.

[17] The more difficult question that arises is how to calculate the amount of pre-judgment interest owing, given the manner in which damages were assessed in this case.

[18] The damages award was based on the plaintiffs' calculation of the loss as presented in their closing argument at trial, measured as the difference between:

- a) the amount of rent and startup expenses paid by the plaintiffs as a result of the termination of the sublease, from the time it was terminated (June 18, 2018) through to the end of what would have been the second renewal term (March 31, 2029); and
- b) the amount of rent the plaintiffs would have paid during that same period had the sublease remained in effect throughout.

[19] After applying a 24.5% discount on part of the amount claimed to reflect the petitioner's shareholdings during part of the damages period, the plaintiffs sought damages totalling \$806,123.15. That figure was comprised of two components, namely, the discounted "additional rent" paid or payable over the entire damages period (\$791,106.63) and the discounted "startup expenses" paid to open the new clinic in June and July 2018 (\$15,016.52). I arrived at the final damages award (\$403,061.56) by reducing the net amount claimed by 50%, for reasons set out in the Trial Decision.

[20] The plaintiffs seek to have pre-judgment interest applied only to the retrospective component of that damages award, calculating the interest owing on that basis as follows:

- a) the period from June 18, 2018 to the date of the judgment (May 6, 2025) is 63.83% of the total damages period from June 18, 2018 to March 31, 2029;

- b) 63.83% of the damages award (\$403,061.56) is \$257,274.19; and
- c) on the assumption that the plaintiffs incurred a loss of \$257,274.19 on June 18, 2018, the defendants owe interest of just over \$42,000 (the plaintiffs stated the total to be \$42,110.85 in their written argument but \$42,236.88 in a more recent calculation presented at the hearing).

[21] I agree with the defendants that a pre-judgment interest award calculated in that manner would over-compensate the plaintiffs, for the following reasons:

- a) the plaintiffs did not incur a loss of \$257,274.19 on June 18, 2018 (rather, the “additional rent” component of the loss has been accumulating only gradually since that date, in much smaller monthly increments);
- b) as calculated by the plaintiffs, the size of those monthly increments is steadily increasing over time (i.e., from \$5,376.68 per month in July 2018 to \$8,206.37 per month in March 2029);
- c) although the “startup expenses” and part of the “additional rent” component of the loss are properly treated as having been incurred prior to judgment, the future component of the “additional rent” payable has yet to be incurred; and
- d) any pre-judgment interest awarded on damages not yet paid, for losses already incurred, should be offset by a notional amount of “interest” on that part of the compensation that the plaintiffs will receive in advance for losses that have yet to be incurred.

[22] In summary, I have concluded that the final order in the action should be varied to add provision for pre-judgment interest under the *COIA*, with such interest to be payable at the registrar’s rate of prime less 2%, not compounded.

[23] However, I am unable on the material before me to quantify the amount of pre-judgment interest that should be paid. The parties have been unable to find any authority that speaks to the manner in which pre-judgment interest should be

calculated under the *COIA* in a context like this. They may need to adduce expert evidence to assist the Court in doing so. If they are unable to agree on the appropriate figure, the question is to be referred to the registrar for determination in accordance with the Trial Decision and these supplemental reasons for judgment.

B. Costs

1. Are the plaintiffs entitled to double costs?

[24] Rules 9-1(5) and (6) of the *SCCR* state as follows:

Cost options

(5) In a proceeding in which an offer to settle has been made, the court may do one or more of the following:

- (a) deprive a party of any or all of the costs, including any or all of the disbursements, to which the party would otherwise be entitled in respect of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle;
- (b) 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;
- (c) award to a party, in respect of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle, costs to which the party would have been entitled had the offer not been made;
- (d) if the offer was made by a defendant and the judgment awarded to the plaintiff was no greater than the amount of the offer to settle, award to the defendant the defendant's costs in respect of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle.

Considerations of court

(6) In making an order under subrule (5), the court may consider the following:

- (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.

[25] To qualify as an “offer to settle” for this purpose, the offer must have met the requirements of R. 9-1(1), which defines the term “offer to settle” to mean an offer that, among other things:

- a) is made in writing by a party to a proceeding; and
- b) has been served on all parties of record.

[26] In their written submissions, the plaintiffs sought double costs against the defendants pursuant to those Rules, relying on offers delivered on November 23, 2018, October 11, 2019, and May 17, 2021. During the hearing, however, they acknowledged that the first two of those offers could not support that relief, although they maintained that the most recent one was sufficient for that purpose.

[27] In that most recent offer, the plaintiffs offered to release the claims then being advanced against the defendants in exchange for a payment of \$51,000 and the transfer of Ms. Challa’s shares in KJPL to the plaintiffs (the parties agree that those shares were worth \$51,000 – the plaintiffs later purchased them from Ms. Challa for that amount).

[28] It is not disputed that a settlement on those terms would have been far more advantageous to the defendants than the outcome at trial. Nevertheless, the defendants submit that that offer too was deficient because it was:

- a) served prior to the filing of the petition on August 24, 2022; and
- b) not served on all of the parties of record in the action (the defendants had issued third party notices to several third parties, none of whom were served with the offer).

[29] In support of that submission, the defendants cite *Bronson v. Hewitt*, 2011 BCSC 482, in which the plaintiff’s failure to serve a settlement offer on one of the defendants was found to be fatal to the application for double costs, even if that defendant was no longer participating in the litigation. Justice Goepel, then of this court, rejected the plaintiff’s submission, relying on *Roach v. Dutra*, 2010 BCCA 264

(upon which the plaintiffs in this case also rely), that there had been “fundamental compliance” with R. 9-1(1)(c)(ii) despite the failure to serve all parties of record.

[30] He explained his conclusion in that regard as follows:

[18] The situation in this case is, in my view, much different than in *Roach*. In *Roach*, the Court determined that there had been substantial compliance with the wording of the subrule. That is not the case here. Rule 9-1(c)(ii) mandates that offers to settle be served on all parties of record. Mason’s offers were not so served. While service on Mr. Tompkins may or may not have had any practical effect on the settlement of this particular action, Rule 9-1 does not contemplate the Court embarking on a case by case investigation as to the impact of non-compliance. The authors of the rules chose the language of the rule. It is not for the Court to rewrite the rule or otherwise interpret it. I find the failure to deliver either the Trial Offer or the Costs Offer to all parties of record is fatal to Mason’s application. The offers are not offers to settle as defined in Rule 9-1 and the provisions of Rule 9-1 are not engaged.

[31] I agree with the defendants that the same reasoning applies here, so as to preclude an award of double costs in this case.

[32] In any event, even if the May 17, 2021 offer had been technically compliant with R. 9-1(1), I would not have awarded double costs in the action on that basis because, when the offer was served, the issues in the litigation were not the same as those that later came to be tried before me. As I noted in para. 54 of the Trial Decision, many of the claims, counterclaims and third-party claims that were still live issues in May 2021 had, by the time of the trial, been resolved or abandoned. The issues in dispute changed again when Ms. Challa’s shares were transferred and the petition, subsequently filed on August 24, 2022, was ordered to be tried together with the action.

[33] In summary, I am not persuaded that the offer of May 17, 2021 should attract an award of double costs.

2. Should the plaintiffs receive less than 100% of their tariff costs in the action?

[34] In the event the claim for double costs is rejected, as it now has been, the plaintiffs seek, in the alternative, costs at Scale “B” as the successful parties in both the action and the petition proceeding.

[35] The petitioner (Ms. Challa) concedes that the petition respondents are entitled to 100% of their costs in the petition proceeding. However, she and the other defendants argue that, overall, success was divided in the action, such that the plaintiffs ought to receive no more than 50% of their tariff costs in that proceeding. In particular, the defendants assert that they were successful in defeating the claims advanced:

- a) by the plaintiffs Mr. Abdul-Ahad and K&M Jekki Yogurt; and
- b) against the defendants Ms. Challa and Dr. L. Challa Inc.

[36] They argue that although many of those unsuccessful claims were abandoned shortly before the trial, the defendants never agreed to waive their resulting entitlement to costs when that occurred.

[37] The plaintiffs respond that the abandoned claims did not add in any significant way to the cost of the litigation. The scope of the evidence adduced at trial would, they say, have been similar even if those claims had remained extant until the end. In addition, they note that Ms. Challa and Dr. L. Challa Inc., although they were not ultimately found liable individually, had been advancing a counterclaim of their own until February 7, 2025, when it too was abandoned (in that case, on a “no costs” basis).

[38] Moreover, the plaintiffs note that the defendants were represented collectively by one law firm throughout, which means that none of them incurred litigation costs separately from any of the others, so as to entitle one or more of them to a different outcome on costs (citing *Can-West Development Ltd. v. Parmar*, 2020 BCSC 439 and *Century 21 Coastal Realty Ltd. v. 0863846 B.C. Ltd.*, 2019 BCSC 5).

[39] I agree with the plaintiffs that the costs award in the action should mirror that in the petition proceeding. The two matters were inextricably linked. There was substantial overlap in the issues in dispute and hence in the evidence that was adduced in the two proceedings at trial. Both sides were represented collectively by the same counsel throughout. Both sides narrowed the issues considerably in the lead-up to trial. I am not persuaded that, in these circumstances, separate provision should be made in allocating costs in respect of the ancillary claims that were not pressed on either side.

[40] Accordingly, my order will be that:

- a) in the action, KJPL is entitled to 100% of its tariff costs, at Scale “B”, against Dr. Challa and NPMMC; and
- b) in the petition proceeding, the petition respondents are entitled to 100% of their tariff costs, at Scale “B”, against Ms. Challa.

III. SUMMARY AND DISPOSITION

[41] To summarise, I am making the following orders:

- a) the final order in the action is varied to add provision for pre-judgment interest under the *COIA*, with such interest to be payable at the registrar’s rate of prime less 2%, not compounded;
- b) if the parties are unable to agree on the amount of pre-judgment interest payable, the matter is to be referred to the registrar for determination;
- c) in the action, KJPL is entitled to 100% of its tariff costs, at Scale “B”, against Dr. Challa and NPMMC; and

- d) in the petition proceeding, the petition respondents are entitled to 100% of their tariff costs, at Scale “B”, against Ms. Challa.

“Milman J.”