IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Vigier v. Darren Hart Law Corporation (Hart Legal),* 2025 BCSC 794

Date: 20250429
Docket: S188614
Registry: Vancouver

Between:

Alistair Vigier, The Wealthy Franchise Consultants Inc., Jova Xu, Etienne Vigier and Ramandeep Grewal aka Ryan Grewal

Plaintiffs

And

Darren Hart Law Corporation dba Hart Legal, Peter Darren Steven Hart aka Darren Hart, Hart Management Inc., Sylvia Murr, Trevor Jones, Victory Litigation Lending Corp. and Invictus Holdings Inc.

Defendants

And

Lisa Howden, Rong Bing Zhang aka Emma Zhang, and Rong-Ching Chang

Before: The Honourable Justice Gropper

Reasons for Judgment re: Costs

Counsel for the Plaintiffs, Alistair Vigier and Jova Xu:	E. Bojm H. Nie
The Defendant, Sylvia Murr, and representative for the Defendant, Invictus Holdings Inc., appearing in person:	S. Murr
Counsel for the Defendant by Counterclaim, Lisa Howden:	J. Cao
Defendant by Counterclaim's written submissions received:	September 16, 2024
Plaintiff's written submissions received:	September 18, 2024

Defendant's written submissions received:	October 11, 2024
Plaintiff's written reply submissions received:	October 31, 2024
Place and Date of Judgment:	Vancouver, B.C. April 29, 2025

Table of Contents

Introduction

[1] There are two applications before me in respect of costs, following my judgment in *Vigier v. Darren Hart Law Corporation (Hart Legal)*, 2024 BCSC 949.

[2] In my introduction to that judgment, I referred to the evolution of the proceedings and the parties that remained as litigants:

> [1] The plaintiffs, Alistair Vigier and his company, The Wealthy Franchise Consultants Inc., Jova Xu, Alistair's fiancé, and Etienne Vigier, Alistair's father, became involved with the defendants in what they believed was a legitimate pursuit of investment and other business activities with the law firm business of Darren Hart Law Corporation dba Hart Legal and Hart Management Inc., operated by Peter Darren Steven Hart aka Darren Hart, Sylvia Murr and at specific times Trevor Jones. Their investments and loans were lost.
>
> [2] The plaintiffs have referred to themselves by their first names. I will do so as well, meaning no disrespect.
>
> [3] The plaintiffs and others commenced this action against the defendants to recover their lost investment and loans provided to the defendants, alleging misrepresentation, breach of contract, breach of fiduciary duty and unjust enrichment.
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> [4] In response, the defendants denied the plaintiffs' claims and filed a counterclaim against the plaintiffs and the defendant by counterclaim, Lisa Howden, the law firm's former bookkeeper, claiming they had worked against the defendants in carrying out an alleged wrongful plan to take down the business. The plaintiffs and Ms. Howden deny this, responding that any problems alleged were the result of the defendants' own actions and design.
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> [5] The trial commenced on January 9, 2023 and continued to March 2, 2023 when it was adjourned for its completion in September 2023.
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> [6] During the hiatus in the trial, on March 21, 2023, Mr. Hart was petitioned into bankruptcy by one of his former clients, Jennifer Quaggin, who was one of his creditors. This resulted in a stay of proceedings against Mr. Hart. I lifted that stay at the behest of the plaintiffs on September 5, 2023 and approved a settlement of the claims between the plaintiffs and some of the defendants, Mr. Hart, Hart Legal, Hart Management, Victory Litigation Lending Corp. (Victory) … as well as a settlement of the claims between the plaintiffs and the defendant Mr. Jones and in this proceeding.
>
> [7] As a result of the settlements, the only parties left in this proceeding are the plaintiffs, the defendants Ms. Murr and her company, Invictus Holdings Inc. (Invictus) and Ms. Howden.
>
> [8] I will refer to Hart Management, Victory and Invictus as "related companies". The related companies were all under the auspices of Hart Legal and its owner Mr. Hart.

> [9] The plaintiffs' remaining claims are against Ms. Murr and Invictus for fraudulent misrepresentation, or alternatively, negligent misrepresentation; unjust enrichment; breach of fiduciary duty; breach of contract; and conspiracy. Despite the settlement made between Mr. Hart and Alistair, the plaintiffs say that Ms. Murr's liability is joint and several, meaning that the plaintiffs have the right to recover for their entire loss attributed to the fault of non-settling defendants, in this case, Ms. Murr [and Invictus].
>
> [10] Invictus and Ms. Murr's remaining claims in their counterclaim against the plaintiffs and Ms. Howden are: defamation as against Alistair, Jova and Ms. Howden; unlawful interference with economic relations as against Alistair; and abuse of process by Alistair and Jova.

[3] I found Ms. Murr liable to the plaintiffs for negligent misrepresentation and awarded damages to Alistair in the amount of 112,500 CAD and 50,000 USD and to Jova in the amount of 50,000 USD. I dismissed the plaintiffs' actions for fraudulent misrepresentation, conspiracy, breach of contract, breach of fiduciary duty, and unjust enrichment.

[4] I dismissed the defendants' counterclaim against the plaintiffs for defamation, unlawful interference with economic relations, and abuse of process.

[5] I dismissed the defendants' claims of conspiracy, breach of confidence, abuse of process, conversion, unjust enrichment, unlawful interference with economic relations and defamation against Ms. Howden.

Positions of the Parties

[6] The plaintiffs, Alistair and Jova collectively seek the following orders as set out in their submissions as against the defendants:

> a. Sylvia Murr shall pay the Plaintiffs their costs relating to this action up to July 21, 2023 at Scale C; and
>
> b. Sylvia Murr shall pay double costs to the Plaintiffs relating to this action from July 22, 2023 onwards at Scale C.

[7] The plaintiffs assert that they are entitled to their costs on the basis that they were substantially successful at trial. They also assert that they are entitled to double their costs in this action from July 27, 2023 onward on the basis that they made a formal offer to settle this action that ought reasonably to have been accepted by Ms. Murr and which was significantly lower than the final judgment of

the Court. They also assert that the costs of this action ought to be set at Scale C for matters of more than ordinary difficulty.

[8] Costs are also sought by Lisa Howden, the defendant by counterclaim. I dismissed the claims of the defendants against her. She asserts that she has been entirely successful and is entitled to an award of costs against Ms. Murr and Invictus for the entire proceeding, jointly and severally with the other defendants, as increased costs at 1.5 times Scale B or alternatively as special costs, with double costs for the period of November 28, 2022 to the end of the proceeding as they did not accept the offer to settle made on that date.

[9] The defendants, Sylvia Murr and Invictus, assert that the plaintiffs were not substantially successful in this action as many of their claims were dismissed and are not entitled to costs. They say that the plaintiffs and defendants ought to bear their own costs.

[10] The defendants accept that Ms. Howden was successful in having the claims against her dismissed, although they argue that Ms. Howden's assertions in her submission on costs amount to reprehensible conduct and that, as a result, she should not be entitled to her costs.

[11] The defendants dispute the positions of the plaintiffs and Ms. Howden that they should be awarded double costs, based upon their respective offers to settle.

[12] The defendants say that if the plaintiffs and Ms. Howden are entitled to costs at all, they should be awarded at Scale B.

Analysis

Substantial Success

Legal Framework

[13] *Supreme Court Civil Rules*, B.C. Reg. 168/2009, Rule 14-1(9) sets out that costs must be awarded to the successful party unless the court orders otherwise. Except in specific circumstances, those costs are to be assessed as party and party

costs or ordinary costs at Scale B, the quantum of which is to be determined by the Registrar if not set by the court or otherwise settled by the parties.

[14] This "default rule" under Rule 14-1(9) - often referred to as "costs follow the event", has been held to be a "strong presumption" and a departure from the default rule which requires "special considerations": *Wingrave v. Pure Painters Inc.*, 2018 BCSC 166; *Briante v. Vancouver Island Health Authority*, 2017 BCCA 148.

[15] Success for costs purposes is defined as substantial success: *Fotheringham v. Fotheringham*, 2001 BCSC 1321 at para. 53. At the most basic level, substantial success is "the plaintiff who establishes liability under a cause of action and obtains a remedy" or the "defendant who [obtained] a dismissal of the plaintiff's case": *Loft v. Nat*, 2014 BCCA 108 at para. 46.

[16] In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2017 BCCA 346, the Court described how in simple cases the successful party is either the plaintiff who establishes liability under a cause of action and obtains a remedy, or the defendant who obtains a dismissal of the plaintiff's case; however, in cases where there are multiple causes of action the more flexible "substantial success" test will usually be more appropriate.

[17] Generally speaking, a successful plaintiff is entitled to an order for costs even where he or she did not succeed on every issue: *Robbins v. Pacific Newspaper Group Inc.*, 2006 BCSC 872 at para. 17.

[18] The fact that the damages awarded were less than what was sought by the plaintiffs is not, by itself, a proper reason for depriving them of costs: *3464920 Canada Inc. v. Strother*, 2010 BCCA 328 at para. 43.

Discussion

[19] The plaintiffs' claim against the defendants included fraudulent or negligent misrepresentation, unjust enrichment, breach of fiduciary duty and in the alternative, breach of contract, and conspiracy. These causes of action arose from substantially

the same set of facts involving the expansion plan carried out by Mr. Hart, Ms. Murr and the related companies.

[20] The plaintiffs were successful in proving a case of negligent misrepresentation and were awarded damages against the defendants. The plaintiffs were also successful in defending against all of the defendants' counterclaims, which included defamation, unlawful interference with economic relations, and abuse of process.

[21] While I have the discretion to find that the plaintiffs ought to bear their own costs because they did not succeed on most or all of the claims they made, I decline to do so here. The facts in dispute all arose from the same event, the expansion plan. Each of the plaintiffs and the defendants had multiple claims against each other. The plaintiffs were successful in proving their claim for negligent misrepresentation. The defendants did not prove any of their claims against the plaintiffs.

[22] I find that the plaintiffs enjoyed substantial success in this trial and accordingly, are entitled to the costs of the action.

[23] Ms. Howden was entirely successful in having the counterclaim against her dismissed. As a result, she is entitled to her costs of this action.

Increased Costs or Special Costs

Legal Framework

[24] Section 2(5) of Appendix B of the Rules allows the court to increase or "uplift" costs once costs are fixed in a proceeding due to unusual circumstances where an award of costs on that scale would be "grossly inadequate or unjust." In those circumstances, 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 have otherwise applied under the applicable scale.

[25] The intent of increased costs is to allow the party who is entitled to costs to be compensated to a greater extent than would occur by application of the usual principles of costs assessment if the application of those usual principles would be "unjust" in the circumstances.

[26] The concept of "grossly inadequate or unjust" was discussed *Bajwa v. Veterinary Medical Assn.*, 2008 BCSC 905 at para. 76:

> In my view, misconduct in the litigation process … continues to be an important consideration in determining whether an award of increased costs should be made under [s. 2(5)]. Rarely will serious misconduct of the type addressed in that case not amount to "unusual circumstances" since it is expected that parties to litigation will not engage in such practices. If they do so … it will usually follow that the innocent party will be required to expend costs associated with that which should never have happened. To allow otherwise would be "unjust". To the extent that the costs associated with the misconduct are great, cost recovery under usual principles may also be "grossly inadequate".

[27] These increased costs are meant to indemnify the successful party, not punish the unsuccessful party: *Sheppard v. Vancouver Coastal Health Authority*, 2021 BCSC 539 at para. 56.

[28] What constitutes "unusual circumstances" or an award that is "unjust or grossly inadequate" will be a fact-based inquiry driven by the nature of the litigation and the conduct of the parties. The factors to be considered by the court in making this determination include:

a) positions or behaviour adding to the complexity of the litigation;

b) importance of the matter to a party;

c) misbehaviour by a party that added to the expense incurred by the cost's applicant (which does not need to be "reprehensible" and can include circumstances that would not normally support a special costs order); and

d) the degree of disparity between Scale B costs and actual legal fees.

See: *Globalnet Management Solutions Inc. v. Aviva Insurance Company*, 2020 BCSC 1361 at para. 30.

[29] Appendix B, s. 2(2)(c) entitles the court to fix the scale of costs at Scale C for matters of more than ordinary difficulty: *Slocan Forest Products Ltd. v. Trapper Enterprises Ltd.*, 2010 BCSC 1494 at paras. 3-6. In that case, the Court considered these factors for awarding costs at Scale C:

> 6. …
>
> (a) Length of trial;
>
> (b) Complexity of issues;
>
> (c) Number and complexity of pre-trial applications;
>
> (d) Whether or not the action was hard-fought with little or nothing conceded along the way;
>
> (e) The number and length of examinations for discovery;
>
> (f) The number and complexity of expert reports;
>
> (g) The extent of the effort required in the collection of and proof of the facts.

[30] The principles for awarding special costs are set out in *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 at para. 73. While the court must exercise restraint in awarding special costs, where there are exceptional circumstances of reprehensible conduct, special costs should be awarded. Examples of reprehensible conduct include where there is evidence of improper motive, abuse of the court's process, misleading the court and persistent breaches of the rules of professional conduct and rules of court that prejudice the cost's applicant.

Discussion

[31] The plaintiffs assert that they should be awarded costs at Scale C on the basis of the facts outlined in *Slocan Forest Products*, particularly, because of the length of trial, complexity of the issues, the number of parties involved, the extensive time period involved, the defendants' last-minute production of documents, the unnecessary delays and added complexity caused by Ms. Murr's non-attendance or

non-cooperation, and that the action was hard-fought by Ms. Murr with little or nothing conceded.

[32] The plaintiffs sent notices to admit to Ms. Murr in the summer of 2020, but she admitted few facts. She denied basic things that the plaintiffs had to prove at trial, including: Hart Legal and/or Darren Hart Professional Corporation was a law firm; Hart Management Inc. ("Hart Management") is the company that provides operations, management, and administrative services to Hart Legal; the directors of Hart Management were at all material times Peter Darren Steven Hart aka Darren Hart and Sylvia Murr, each of whom is a defendant in these proceedings; that the 50/50/50 plan was created January 10, 2016; that Alistair was a contractor and agent that provided capital raising services to Hart Legal and/or Hart Management; and in 2016, Hart Legal was working to expand its operations by opening new offices in Canada and the United States.

[33] Ms. Murr refused to admit the authenticity of any documents listed in the notices to admit that were admitted without objection during the trial.

[34] The defendants' response to civil claim was filed in December 2018. Although she disagrees with the plaintiffs, I find that Ms. Murr did not produce most of her documents until around January 7, 2023, two days before the trial began, and in breach of the case plan order dated January 7, 2020 that required document production by March 13, 2020. It was obvious that some of the documents were seen by the plaintiffs for the first time during their evidence. I agree that this caused significant delays during trial.

[35] Neither Mr. Hart nor Ms. Murr attended the case planning conference on December 8, 2020 although they had requested that it be scheduled.

[36] Ms. Murr did not respond to the interrogatories sent to the defendants by Alistair and The Wealthy Franchise Consultants Inc. on December 19, 2020.

[37] In her submissions, Ms. Murr blamed the plaintiffs for the length of the trial and its complexities, and refers to two considerations:

> a. The length of the trial and complexity of the issues were due, in large part, to the plaintiffs' scattergun approach to its claim. The plaintiffs' alleged fraudulent misrepresentation, negligent misrepresentation, conspiracy, breach of contract, breach of fiduciary duty, and unjust enrichment, but succeeded only in negligent misrepresentation. Proportionately, the plaintiffs' case occupied far more trial time than Ms. Murr's counterclaims.
>
> b. The plaintiffs' settled with the Hart Defendants mid-way through trial. To the extent that any trial time was spent on matters involving the Hart Defendants only, and to the extent that any of those matters were overly complex, they are irrelevant to the analysis here in any respect of costs against Ms. Murr. The settlement agreement between the plaintiffs, Ms. Howden, and the Hart Defendants provides that the settling parties will bear their own costs in respect of each other.

[38] Ms. Murr also asserts that the other factors have no application here: there were no difficult issues of law, fact or construction; the claim did not involve an issue of importance to a class or body of persons, or of general interest; and the result of the proceeding did not effectively determine the rights and obligations between the parties beyond the relief that was actually granted or denied.

[39] I disagree that the plaintiffs adopted a "scattergun" approach to the trial. This is essentially the same argument that the defendants made regarding whether the plaintiffs enjoyed substantial success in the trial. I have dealt with that argument and I have not accepted it.

[40] I have found that the facts in dispute all arose from the same event, the expansion plan. Each of the plaintiffs and the defendants had multiple claims against each other. The settlement addressed the claims between some of the parties, but those same claims were made by the plaintiffs, Alistair and Jova against the defendants (Ms. Murr and Invictus) and by the defendants against the plaintiffs. The defendants chose to carry on with the trial, addressing these same claims. I considered all of the evidence in my reasons for judgment.

[41] The defendants, in choosing to proceed with the trial, accepted the risk that every litigant in every civil trial faces, the risk of costs being awarded against them.

[42] In respect of the other factors that are listed in *Slocan Forest Products*, I agree with the defendants that there were no difficult issues of law, fact or

construction; the claim did not involve an issue of importance to a class or body of persons, or of general interest; and the result of the proceeding did not effectively determine the rights and obligations between the parties beyond the relief that was actually granted or denied.

[43] As that is the case, I decline to order costs at Scale C, but consider that the scale sought by Ms. Howden under s. 2(5) of Appendix B is the appropriate scale for costs of the plaintiffs, that is increased costs at 1.5 times Scale B.

[44] It cannot be disputed that this litigation was lengthy and complex. The litigation took five years and 35 days of trial. The dispute was both an action and counterclaim with multiple causes of action involving multiple parties, counsel and self-represented litigants. There were many interlocutory steps and issues that had to be dealt with before judgment, and it is likely that there will be ongoing costs in relation to enforcement.

[45] The conduct of the defendants, as described by the plaintiffs above, amounted to intransigence. That was the course of action the defendants chose to pursue. Thus, I accept the plaintiffs' position justifies an award of costs with an uplift as provided in s. 2(2)(b) of Appendix B.

[46] Ms. Howden seeks increased costs at 1.5 times Scale B or, alternatively special costs. In addition to the conduct about which the plaintiffs complain, Ms. Howden refers in her written submissions to the following :

> [T]he Defendants commenced a counterclaim against Ms. Howden on the basis of five different causes of action, including serious allegations (conspiracy, breach of confidence, conversion of business assets or essentially, theft, related to her employment) which they pursued relentlessly until the last weeks of trial where Ms. Murr and Invictus said they would only be pursuing one claim (defamation) against Ms. Howden;

[47] Ms. Murr's claims against the plaintiffs and Ms. Howden were frivolous. Her "real complaint" was that Ms. Howden should have done something differently if she was concerned about the conduct of Mr. Hart and Ms. Murr, rather than make the

statement to Jova, but as I found, that does not make the statement defamatory. Ms. Howden's allegedly defamatory statements were true.

[48] I agree with Ms. Howden that the outcome of this proceeding was of special importance to her. The allegations were of a very serious nature: she was accused of conspiracy to take down a business, breach of confidence, abuse of process, conversion of business assets, unjust enrichment, unlawful interference with economic relations and defamation, all in relation to her work as a bookkeeper. These accusations were harmful to her personally and to her professional reputation, career and livelihood.

[49] In her written closing submissions, Ms. Howden expressed how this litigation deeply and profoundly affected her:

> I can't stress enough how being accused and having to participate in this lengthy trial has affected my life personally and financially. Five year, five long years this has been going on and I only worked for Hart Legal and Hart Management for less than two years.
>
> My physician has diagnosed me with high blood pressure, extreme anxiety and depression all caused by the stress of this trial. I am now having to take medication, most likely for the rest of my life.
>
> I [lost] my job due to the time off I had to take for this trial, and I am unable to look for a new job until this trial is finished. This has caused me severe financial hardship.
>
> The hardest part is that I've lost precious time with my senior father that I can never get back.
>
> I've had to cope with all these life changing events and for what? I did nothing wrong during my employment with Hart Legal and Hart Management nor did I defame anyone...
>
> I find it inconceivable that I had to participate in this lengthy trial, and I feel I should be awarded costs against Ms. Murr and Mr. Hart. I understand that I signed to release Mr. Hart but the only reason I signed was because he threatened to drag this case out for longer and due to my recent health issues, I couldn't risk this to continue.

[50] Ms. Howden is entitled to the increased award of costs that she has sought.

[51] I am unable to find that special costs are appropriate in this case, for the reasons given in *Westsea*.

Offers to Settle

Legal Framework

[52] Under to Rule 9-1(5), the court has a number of options in awarding costs:

> (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 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.

[53] There are a number of factors set out in Rule 9-1(6) for the court to consider in making an order under Rule 9-1(5):

> (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.

[54] In assessing whether an offer ought reasonably to have been accepted, the court must consider factors such as the timing of the offer, whether it had some relationship to the claim or was instead a nuisance offer, whether it could easily be evaluated and whether some rationale for the offer was provided: *Hartshorne v. Hartshorne*, 2011 BCCA 29 at para. 27

[55] An explanation of the offer is not required for an offer to be considered reasonable: *Paskall v. Scheithauer*, 2014 BCCA 26 at paras. 83-84.

[56] The reasonableness of the offer must be assessed at the time the offer was made and thereafter. The court is to consider the circumstances that existed when the offer was made, and it should consider the information the parties were aware of at all relevant times: *Meghji v. Lee*, 2014 BCCA 105 at para. 112.

[57] The purposes of the double costs rule were summarized in *Giles v. Westminster Savings and Credit Union*, 2010 BCCA 282 at para. 74 :

a) to deter frivolous actions or defences;

b) to encourage conduct that reduces the duration and expense of litigation and to discourage conduct that has the opposite effect;

c) to encourage litigants to settle wherever possible, thus freeing up judicial resources for other cases; and

d) to have a winnowing function in the litigation process, by requiring litigants to carefully assess the strength (or lack thereof) of their cases at the beginning and throughout litigation and by discouraging the continuance of doubtful cases or defences.

Discussion

[58] During the hiatus of the trial, on July 27, 2023, the plaintiffs made a formal offer to settle under Rule 9-1 to Ms. Murr. They offered to settle all the claims between the plaintiffs and Ms. Murr [and Invictus] if she agreed to pay the plaintiffs a total all-in sum of $150,000. The offer remained open until July 31, 2023.

[59] By email dated July 31, 2023 to Alistair, Ms. Murr offered to settle this action if she received $150,000 by 4:00 p.m. on August 4, 2023.

[60] Despite the short period for acceptance, the plaintiffs' offer was made more than a month before the trial was set to re-commence. The plaintiffs assert that a short timeline was appropriate, since in the absence of settlement, they would need to begin preparing for the continuation of the trial on September 5, 2023. Ms. Murr

had the weekend to consider the offer. The plaintiffs say that this amount of time was sufficient for Ms. Murr to consider and accept the offer and she should have done so.

[61] Applying the *Hartshorne* factors, I find that the plaintiffs' offer ought to have been accepted. The amount of the offer was significantly lower than the damages awarded. I awarded 125,000 CAD and 50,000 USD to Alistair, 50,000 USD to Jova, and 37,688.19 CAD to Etienne, which amounts to 162,688.19 CAD and 100,000 USD (approximately 135,000 CAD) in total. The total amount awarded for damages was approximately twice the amount of the offer.

[62] As the plaintiffs note, the offer was made during the hiatus of the trial when the evidentiary portion was almost complete. Ms. Murr was in attendance during each day of the trial. As opposed to dealing with an offer to settle before the trial began, Ms. Murr was in an enhanced position to assess the likely outcome of the trial and to realize that the offer was reasonable.

[63] The plaintiffs are entitled to double costs from July 27, 2023.

[64] Ms. Howden made a formal offer to settle the counterclaim against her in a letter dated November 28, 2022, delivered by email from then-counsel for the plaintiffs to the defendants and their counsel.

[65] The terms of that offer were that in exchange for each party discontinuing the action and counterclaim, they would each bear their own costs of the proceeding.

[66] The offer to settle was open to acceptance until November 30, 2022, failing which the parties would continue to trial. None of the defendants accepted the offer to settle.

[67] I reach the same conclusions about an award for double costs as I did regarding the plaintiffs. The defendants were unsuccessful in their claims against Ms. Howden. The offer was reasonable and they should have accepted it.

[68] The defendants' claims against Ms. Howden were egregious, and were particularly harmful to Ms. Howden, whose profession is in the field of bookkeeping.

[69] The defendants, in their submissions, are critical of the plaintiffs for their "scattergun" approach in proceeding with this action. That approach better describes the defendants' actions. To expand this metaphor, Ms. Howden was caught in the cross-fire. She had nothing to do with the machinations of the expansion plan.

[70] I agree with Ms. Howden that an award of double costs to her, from the date of her offer to settle, meets the purposes as set out in *Garcia*.

[71] Ms. Howden is entitled to double costs from November 28, 2022.

Joint and Several Costs

[72] Ms. Howden seeks an order that costs must be awarded in consideration of the fact that some of the defendants (the Hart defendants and Mr. Jones) settled with the plaintiffs and Ms. Howden.

[73] The terms of the settlement with Mr. Hart and his companies were disclosed to me upon the plaintiffs' application to approve that settlement when then trial recommenced in September 2023. The only provision in the settlement agreement made between the plaintiffs, Ms. Howden and the Hart defendants on March 30, 2023, expressly dealing with costs is section 1(c)(iii), which provides: "the Defendants, Plaintiffs and Lisa [Howden] will each bear their own costs of the Action and Counterclaim against each other except the Defendant Peter Darren Steven Hart shall pay the hearing day fees for the Trial, pursuant to the Supreme Court Civil Rules, by consent".

[74] Section 1(c)(iii) of the settlement agreement is captured by the consent order executed and later filed by the parties to carry out their settlement.

[75] Section 4 of the settlement agreement provides:

> Each of the Parties to this Agreement further agree, for the aforementioned consideration, not to make any claim or commence or continue any action or

> proceeding against any person or corporation in which any claim could arise against any other Party to this Agreement either jointly or severally for contribution or indemnity relating to the matters referred to in this Agreement except insofar as the remaining claims by the Plaintiffs against the defendants, Sylvia Murr, Trevor Jones, and Invictus Holdings Inc., in the Action and the Counterclaim. The claims against Sylvia Murr, Trevor Jones and Invictus Holdings Inc. survive.
>
> [Emphasis added.]

[76] The settlement with Mr. Hart and his companies left open the opportunity for the remaining parties to pursue all other claims, including claims of contribution and indemnity and claims for costs, against the other defendants, Mr. Jones, Ms. Murr and Invictus, as applicable.

[77] The settlement agreement did not exclude the plaintiffs or Ms. Howden's ability to pursue the remaining defendants for these other claims. There was no agreement by the parties to sever joint and several liability among the settling and non-settling defendants so that they could only recover against the non-settling defendants a portion of the loss attributable by the trial judge. I expressly found the settlement agreement did not include such a term.

[78] Ms. Howden says that all of the steps taken by the plaintiffs and Ms. Howden in this proceeding were ultimately necessary and required to reach the final resolution of the case on all matters, regardless of whether they were for the action, counterclaim, or a particular party. The claims were intertwined and the steps taken cannot be separated.

[79] Ms. Howden asserts that the costs awarded to her against the remaining defendants in this case should therefore be awarded as joint and several. The normal rule for costs where there are multiple defendants is that the defendants are jointly and severally liable for the costs together. It is exceptional and rare for the courts to apportion costs otherwise and deviate from this rule.

[80] Ms. Howden also argues joint and several costs should be awarded in cases like this one where the defendants acted together, with the same goal to pursue their joint defence and counterclaim, and where they had the same counsel. Such costs

will also be awarded where it would otherwise force the winning party to potentially pursue proceedings against multiple, different parties for a minor portion of costs. As the court noted in *Giles*, the trouble and risks in costs should rest with the parties who acted together and lost.

[81] Ms. Howden points out that the defendants chose to act together and any costs against them should be considered as a whole and recoverable by Ms. Howden. Ms. Murr should be found liable for costs accordingly. I agree.

[82] Ms. Howden argues that even if costs are not apportioned equally amongst the defendants, the courts will generally still award joint and several liability as the law grants each defendant the right between themselves to seek contribution from each other later to reduce their financial burden.

[83] Neither the plaintiffs nor the defendants have made any submissions in respect of Ms. Howden's position on costs being awarded on a joint and several basis.

[84] I agree that in the specific circumstances of this case, it is fair and equitable that the defendants continue to be treated as essentially a single collective entity for the purposes of costs. Notwithstanding that only Ms. Murr and Invictus continued the proceeding in the end and only Ms. Murr was found liable for misrepresentation, I conclude that all the defendants are jointly and severally liable for costs to Ms. Howden throughout and a single set of costs payable by them. The settlements only mean that Ms. Howden can no longer pursue the Hart defendants or Mr. Jones for payment. She can continue to pursue Ms. Murr and Invictus for any or all of that amount.

Lump Sum Costs Award to Ms. Howden

[85] I have found that Ms. Howden is entitled to costs against Ms. Murr and Invictus for the entire proceeding and as if jointly and severally with all the defendants, as increased costs at 1.5 times Scale B; and with double costs from the date of the offer to settle on November 28, 2022 to the end of the proceeding.

[86] I have the authority and discretion to award lump sum costs for the proceeding and to fix those costs to the amount the court considers appropriate under Rule 14-1(15). Ms. Howden has provided a bill of costs that demonstrates that an award of costs to Ms. Howden at Scale B times 1.5 would be $104,629.24, including disbursements of $771.64.

[87] Ms. Howden is also entitled to her costs of these submissions, which are included in her bill of costs.

[88] It is entirely appropriate for me to fix Ms. Howden's costs and to avoid her having to be involved in these proceedings further. I therefore order that her costs be awarded in a lump sum as reflected in her bill of costs.

Summary

[89] The plaintiffs are entitled to their costs as against Ms. Murr and Invictus for the entire proceeding, as increased costs at 1.5 times Scale B; and with double costs from the date of the offer to settle from July 27, 2023 to the end of the proceeding.

[90] Ms. Howden is entitled to costs as against Ms. Murr and Invictus for the entire proceeding and as if jointly and severally with all the defendants, as increased costs at 1.5 times Scale B; and with double costs from the date of the offer to settle on November 28, 2022 to the end of the proceeding.

[91] I award Ms. Howden lump sum costs for the proceeding and fix those costs to the amount based upon her bill of costs. She is entitled to costs of $104,629.24, including disbursements of $771.64.

"Gropper J."