

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Desimone & Associates, LLC v. PD Group Industries Ltd.*,
2026 BCSC 83

Date: 20260119
Docket: S247819
Registry: Victoria

Between:

Desimone & Associates, LLC

Plaintiff

And:

PD Group Industries Ltd. and Paul Davis

Defendants

Before: The Honourable Justice LeBlanc

Reasons for Judgment

Counsel for the Plaintiff:

F. Finn

Appearing in person:

P. Davis

Place and Date of Hearing:

Victoria, B.C.
January 7, 2026

Place and Date of Judgment:

Victoria, B.C.
January 19, 2026

Introduction

[1] The plaintiff obtained default judgments against PD Group Industries Ltd. on October 16, 2024, and against Mr. Davis on January 6, 2025 (collectively the “Default Judgments”). The Default Judgments provide for damages and costs to be assessed.

[2] Prior to the hearing of this application, Mr. Davis sought to set aside the Default Judgments. I provided oral reasons dismissing Mr. Davis’s application. Mr. Davis sought a stay of my decision pending an appeal which I refused.

[3] Having obtained the Default Judgments, the plaintiff seeks an order assessing general damages, pre-judgment interest and punitive damages. The plaintiff also seeks special costs, or in the alternative, costs to be assessed as Scale B.

[4] In the action, the plaintiff sought judgment against Mr. Davis and PD Group Industries Ltd. in the amount necessary to purchase \$14,650.00 USD at a chartered bank located in British Columbia, interest, punitive damages against Mr. Davis, and special costs.

[5] The plaintiff’s claim arises from the plaintiff delivering two deposits totalling \$14,650.00 USD to PD Group Industries Ltd. for the purchase of furniture that was not delivered. Mr. Davis facilitated the transactions.

General Damages

[6] Rule 3-8(13) allows a court to assess damages summarily on affidavit or other evidence where a judgment has been awarded for damages to be assessed.

[7] It is not disputed that the plaintiff paid to PD Group Industries Ltd. \$6,000.00 USD on August 9, 2023, and \$8,650.00 USD on January 31, 2024. Mr. Davis submits that the payment was subsequently forwarded by PD Group Industries Ltd. to a 3rd party in the United Kingdom. Mr. Davis further submits that he was acting merely as agent and is not responsible in contract to the plaintiff. Mr. Davis’s

defence is immaterial to the assessment of damages on this application as the Default Judgments are valid against the defendants.

[8] As the payment was made in US currency, I am guided by the *Foreign Money Claims Act*, [RSBC 1996] Chapter 155 (the "FMCA"), for assessing damages and pre-judgment interest:

Definitions

1 In this regulation:

"Act" means the *Foreign Money Claims Act*;

"currency jurisdiction" means, in respect of a foreign money judgment, the country in the currency of which the judgment was awarded;

"determination date" means, in respect of any calculation of interest that is to be added to or that has accrued on a foreign money judgment, the date on which that calculation is made;

"foreign money judgment" means a judgment to which section 1 of the Act applies;

"foreign prime rate" means the interest rate in effect from time to time in a country other than Canada that, for that country, is most closely analogous to the rate of interest referred to in section 7 (1) of the *Court Order Interest Act*;

"periodical" means a publication published weekly or more frequently that is available, or can be made available, in British Columbia;

"Table" means Table 60p of the International Financial Statistics published from time to time by the International Monetary Fund.

Foreign prime rate to be applied

2 (1) If, on one or more days in a calendar month, interest is to be added to or to accrue on a foreign money judgment under Part 1 or 2 of the *Court Order Interest Act*, the interest rate at which that interest is calculated must be the foreign prime rate applicable to that calendar month.

(2) For the purpose of subsection (1), the following is evidence of the foreign prime rate applicable to a calendar month:

- (a) the rate that is, before the determination date, published in the Table as being the rate applicable to the currency jurisdiction for the calendar month;
- (b) if paragraph (a) does not apply, the rate that is, before the determination date, published in the Table as being

- the rate applicable to the currency jurisdiction for the calendar quarter in which the calendar month falls;
- (c) if paragraphs (a) and (b) do not apply, the rate that is, before the determination date, published in the Table as being the rate applicable to the currency jurisdiction for the calendar year in which the calendar month falls;
 - (d) if paragraphs (a) to (c) do not apply, the rate that is, before the determination date, published in a periodical as being the rate applicable to the currency jurisdiction for the calendar month and, if the parties propose different rates that comply with this paragraph, the proposed rate that has been most recently published;
 - (e) if paragraphs (a) to (d) do not apply, the most current monthly rate published in the Table that is applicable to the currency jurisdiction.

Enforcement process

- 3 (1) A person having a claim to payment of money owing under a foreign money judgment who wishes to enforce that claim in a manner contemplated by the *Court Order Enforcement Act* must convert the amount owing under the foreign money judgment into Canadian currency in the manner provided under section 1 (1) of the *Foreign Money Claims Act* and the conversion date for that purpose must be the business day preceding the day on which a record is filed in a court to initiate that manner of enforcement.
- (2) Subsection (1) does not apply to the registration of a judgment at a land title office under section 88 of the *Court Order Enforcement Act*.

[9] Pursuant to the *FMCA*, I have assessed the plaintiff’s general damages as the amount of Canadian currency that is necessary to purchase \$14,600.00 USD at a chartered bank located in British Columbia at the close of business on the day prior to which payment is made (the “Plaintiff’s General Damages”).

Pre-Judgment Interest

[10] The plaintiff seeks \$1,492.48 in pre-judgment interest, or alternatively, the amount of Canadian currency that is necessary to purchase USD \$1,072.49 at a chartered bank located in British Columbia at the close of business on the day prior to which payment of the judgment is made.

[11] The plaintiff has not put evidence forward to explain how it calculated the interest it is seeking and I am unable to assess interest on the record before me.

[12] Accordingly, the plaintiff is entitled to pre-judgment interest on the Plaintiff's General Damages in accordance with the *Court Order Interest Act*, [RSBC 1996] Chapter 79.

Punitive Damages

[13] The plaintiff seeks punitive damages against Mr. Davis in the sum of \$30,000.00. Mr. Davis disputes that his conduct is worthy of an award of punitive damages.

[14] In *Moore v. Barkley*, 2025 BCSC 2153, Justice E. Sigurdson, summarized the legal principles applicable to punitive damages:

[139] Punitive damages are discussed by our Court of Appeal in *Ojanen v. Acumen Law Corporation*, 2021 BCCA 189, referencing the Supreme Court of Canada in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18. The BC Court of Appeal summarized the category of punitive damages as follows:

[77] The three objectives of punitive damages are retribution, deterrence, and denunciation. Punitive damages awards should be approached with caution and restraint and resorted to only in exceptional circumstances: *Whiten* at para. 69. Punitive damages awards are rational only when compensatory damages do not adequately achieve the objectives of retribution, deterrence, and denunciation: *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19 at para. 87.

[78] In *Whiten* at para. 94, the Court set out the factors that should be taken into account when considering an award for punitive damages. The factors include:

- a) Punitive damages are the exception rather than the rule, imposed only if there has been high-handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour;
- b) Punitive damages are generally awarded only where the misconduct would otherwise be unpunished or where other penalties are unlikely to achieve the objectives of retribution, deterrence, and denunciation;
- c) Punitive damages are awarded only if compensatory damages (which to some extent are punitive in nature) are insufficient to accomplish these objectives, and the amount

awarded is no greater than necessary to rationally accomplish their purpose;

d) The purpose of punitive damages is not to compensate the plaintiff, but to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened;

e) Punitive damages should be assessed in an amount reasonably proportionate to the harm caused, the degree of the misconduct, the plaintiff's relative vulnerability, and any advantage or profit gained by the defendant, having regard to any other fines or penalties suffered by the defendant; and

f) Moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.

[15] The plaintiff alleges that Mr. Davis has engaged in deceptive conduct that contravened the *Business Practices and Consumer Protection Act*, SBC 2004, c. 2. In particular, that Mr. Davis represented that the ordered furniture was available when it was not available for delivery. The plaintiff alleges that Mr. Davis made concerted efforts to conceal the defendants' wrongdoing over a protracted period, and in doing so, engaged in conduct that enticed the plaintiff to continue its consumer relationship and make a further payment to PD Group Industries Ltd.

[16] To consider whether there has been misconduct that departs to a marked degree from ordinary standards of decent behaviour, a review of the exchanges between the plaintiff and Mr. Davis is necessary:

August 8, 2023	Mr. Davis sends an invoice to the plaintiff, represented by Mr. DeSimone, and asks for payment of a \$5,900.00 USD deposit which can be paid by "wire transfer, check or direct deposit".
August 9, 2023	Mr. Davis emails Mr. DeSimone attaching the wire transfer details for PD Group Industries Ltd.

August 10, 2023	Mr. Davis emails Mr. DeSimone confirming (i) receipt of a \$6,000.00 USD deposit; and (ii) the order for a 300-Presidents Desk (72x48 oak/brown leather) is being processed.
December 4, 2023	Mr. DeSimone emails Mr. Davis to enquire on the status of the order. Mr. Davis responds advising that he will be back in the office the next day and will check on progress then and call Mr. DeSimone.
December 7, 2023	Mr. DeSimone emails Mr. Davis requesting an update on the status of the order. Mr. Davis responds and advises that he will call shortly.
December 8, 2023	Mr. Davis emails Mr. DeSimone to advise that he called on December 7 and 8, 2023. Mr. Davis advises that the frames and bottom carvings are complete, but they are still weeks away as “we” have a back log with the Oak supplies from the drying facility. Mr. Davis advises that he will check on the progress next month.
December 8, 2023	Mr. DeSimone asked Mr. Davis to use his cell number for communication and advises that if the order is not received by the end of January, he will be cancelling his order as it was supposed to be delivered by the end of November.
January 12, 2024	Mr. DeSimone emails Mr. Davis requesting an update on the status of his desk. Mr. Davis responds advising that that he will get up an update and advise.
January 22, 2024	Mr. Davis emails Mr. DeSimone to advise that the desk is not finished and there are still several more

	panels to carve. He confirms that it will not be finished by the end of the month.
January 23, 2024	Mr. DeSimone emails Mr. Davis asking how long it would take if he ordered the “Reagan writing table”. Mr. Davis responds and advises that it can be completed at the same time as the desk if it is paid in full.
January 30, 2024	Mr. Davis emails Mr. DeSimone asking if he wanted to add the table to the desk order as it can be added by tomorrow if he wants it finished at the same time.
January 31, 2024	Mr. DeSimone emails Mr. Davis advising that he has wired \$8,650.00 USD and that he wants to add the Reagan chair if it does not delay receipt of the two desks. Mr. DeSimone confirms that if it can’t be completed with the desks [within 4 – 5 weeks] then the additional funds should be added to the balance owing on the Resolute Desk. Mr. Davis provides Mr. DeSimone with an invoice confirming receipt of \$8,650.00 and confirms that the addition of the chair shouldn’t be a problem as it doesn’t have any carvings and the frames are in stock.
February 29, 2024	Mr. DeSimone emails Mr. Davis asking for the status on his order. Mr. Davis responds and advises that he gets updates on Fridays and will let him know then.
March 7, 2024	Mr. DeSimone emails Mr. Davis seeking an update on the status of the order.

March 8, 2024	Mr. Davis advises that he has sent an email to the workshop manager requesting an update and that they are making the chair frames as the ones in the warehouse had been allocated to another order.
April 1, 2024	Mr. Davis emails Mr. DeSimone confirming that the plaintiff's deposits will be returned in full and will call tomorrow to update him on the status of the order.
April 2, 2024	There is further communication between Mr. Davis and Mr. DeSimone with Mr. DeSimone attempting to call Mr. Davis and being advised that the line is disconnected.
April 4, 2024	Mr. Davis emails Mr. DeSimone to advise that the workshop has six more orders to complete before his. Mr. Davis advises Mr. DeSimone as follows: "You are our client and what ever you decide we will be happy to cancel the order, and return in full your deposit."
April 9, 2024	Mr. DeSimone requests a return of the deposits.
April 12, 2024	Mr. DeSimone requests a response and status of the return of his deposits.
April 18, 2024	Mr. DeSimone follows up and asks to have the matter wrapped up within the week.
April 19, 2024	Mr. Davis advises Mr. DeSimone that he has requested an update from the controller which he should get on Monday.
April 24, 2024	Mr. DeSimone emails Mr. Davis demanding return of the deposit funds and threatening legal action.

	Mr. Davis advises that he is working on return of the deposits.
May 3, 2024	Mr. DeSimone requests an update on the status of his deposits.
May 5, 2024	Mr. Davis advises Mr. DeSimone that the refund of the deposits will be sent within three to four weeks.
May 29, 2024	Mr. DeSimone emails Mr. Davis asking if the deposit transfer is on track.
May 30, 2024	Mr. Davis emails Mr. DeSimone advising that he won't hear back "from them" until next week and he will follow up.
June 6, 2024	Mr. DeSimone emails Mr. Davis requesting an update on the status of his deposits and confirming that four weeks has now elapsed. Mr. Davis responds advising that he is still working on getting the deposits returned, and that when the furniture is complete he hopes he can sell it to someone else.
June 12, 2024	Mr. DeSimone seeks an update from Mr. Davis. Mr. Davis responds that he is still working on it and will provide information by the weekend.
June 18, 2024	Mr. DeSimone emails Mr. Davis advising that the weekend has come and gone and he did not receive an update. Mr. DeSimone threatens increased action from law enforcement.
June 24, 2024	Mr. Davis emails Mr. DeSimone advising that he will not be reimbursed until the furniture is resold and that

	<p>his deposits were lost when the order was cancelled pursuant to the terms and conditions of purchase. Mr. DeSimone responds to Mr. Davis advising that there is no excuse for the furniture not to be complete considering the passage of time and requests proof that the furniture exists.</p>
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[17] Having that historical chronology in mind, did Mr. Davis act in a manner that markedly departs from the ordinary standards of decent behaviour?

[18] Having considered the applicable legal principles, I find that Mr. Davis’s conduct supports an award of punitive damages.

[19] Based on the representations made to the plaintiff concerning delivery timelines, the plaintiff was enticed to deliver more funds to PD Group Industries Ltd. for additional furniture when Mr. Davis ought to have known the original furniture order was not going to be ready as indicated. Once all delivery timelines had long since expired, Mr. Davis advised the plaintiff that it could cancel its order and have its deposits returned. The plaintiff accepted that proposal and cancelled its order.

[20] Months passed while the plaintiff continued to seek return of its deposits. When the plaintiff’s frustration levels peaked, Mr. Davis took the position that contractually the plaintiff was not entitled to return of the deposits until the furniture was resold. This was a much different position than was originally communicated to the plaintiff.

[21] Throughout, Mr. Davis was untruthful about returning the deposits to the plaintiff, leading the plaintiff to believe “the funds are on the way” when there was no intention to return the deposits to the plaintiff, as represented. This behaviour was high-handed and worthy of rebuke and sanction.

[22] The plaintiff relies on the decision of our Court of Appeal in *Chung v. Chung*, 2025 BCCA 136, and of this court in *Jeana Ventures Ltd. v. Garrow*, 2024 BCSC 33,

as supporting its position that punitive damages are appropriate in the circumstances here.

[23] *Chung* involved a dispute between two brothers over the management of properties they purchased as a joint investment and one of the brothers having been found to have misappropriated funds from the corporate trustees' bank accounts for personal use, including purchasing a residential property. The Court of Appeal awarded punitive damages in the amount of \$100,000 finding it was rationally required given the respondent's reprehensible conduct as a fiduciary, using over \$1.6 million for personal gain and then actively taking steps to conceal the wrongdoing.

[24] In *Jeana*, the defendants were found to have committed acts of civil fraud, and the plaintiff was awarded judgment in the amount of \$1,835,410.24. One of the defendants was found to have engaged in fraudulent conduct on three occasions that enticed the plaintiff to continue the relationship ultimately granting access to the plaintiff's investment funds. Punitive damages were awarded in the sum of \$75,000.

[25] The plaintiff submits that *Chung* is analogous to the facts before me on this case, as Mr. Davis undertook concerted efforts to conceal the wrongdoing over a protracted period. I do not find the facts of *Chung* or *Jeana* to be analogous to those before me on this application. The conduct in *Chung* and *Jeana* is a marked departure from Mr. Davis's conduct. While I don't find the facts to be analogous, I have considered the amounts awarded in *Chung* and *Jeana* along with the nature of the conduct relative to what would be an appropriate award in this case.

[26] Under all the circumstances, I conclude that a punitive damages award is appropriate in this case in the amount of \$500 against Mr. Davis. I make this award with consideration to the degree of the harm caused which was minimal, the degree of misconduct which was at the lower end, the relative profit gained by Mr. Davis which is unknown, the amount that was in dispute between the parties which was minimal, and the authorities that were provided to me by the plaintiff.

Costs

[27] The plaintiff was successful and is entitled to an award of costs. The plaintiff seeks special costs for the Default Judgments, for steps taken following the Default Judgments and for this application.

[28] The *Supreme Court Civil Rules*, BC Reg 168/2009 set out the basis for special costs under Rules 14-1(3) and 14-1(15). While various mechanisms, including punitive damages, are intended to address pre-litigation conduct, special costs are intended to punish and deter reprehensible conduct during the litigation: *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at para. 134; *Jeana* at para. 38.

[29] The plaintiff obtained the Default Judgments due to the defendants' non-participation in the litigation. With the plaintiff being awarded punitive damages for the pre-litigation conduct, there is no litigation conduct to consider in making an award for special costs.

[30] The plaintiff seeks special costs related to post-judgment conduct of Mr. Davis. In particular, his non-attendance at an examination in aid of execution and failure to respond to correspondence. In its notice of application, the plaintiff sought assessment of the costs awarded in the default judgments. Accordingly, any assessment of costs related to enforcement steps cannot be considered on this application as proper notice has not been provided to Mr. Davis.

[31] Lastly, the plaintiff seeks costs of this application as special costs. This application, and Mr. Davis's defence of it, does not warrant an award of special costs.

[32] Costs as set out in the Default Judgments is to be assessed at Scale B. The plaintiff is entitled to its costs of this application on Scale B.

Summary

[33] In summary, I grant the following orders:

- a) the plaintiff's general damages are assessed as the amount of Canadian currency that is necessary to purchase \$14,600.00 USD at a chartered bank located in British Columbia at the close of business on the day prior to which payment is made (the "Plaintiff's General Damages");
- b) the plaintiff is awarded pre-judgment interest on the Plaintiff's General Damages in accordance with the *Court Order Interest Act*, [RSBC 1996] Chapter 79 to be assessed by the Registrar;
- c) the plaintiff is granted punitive damages in the amount of \$500 to be paid by Mr. Davis; and
- d) The plaintiff's assessed costs and costs of this application are to be assessed by the Registrar on Scale B.

"Justice LeBlanc"