IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Stoneman v. Cinnemousun Beach Properties Ltd.,* 2026 BCSC 817

Date: 20260501
Docket: S247329
Registry: Victoria

Between:

Lorne Stoneman and Teresa Stoneman

Petitioners

And

Cinnemousun Beach Properties Ltd., Janet Currie, Alan Deane, Douglas Pettman, Sandra Pettman, Jeff Zwarich, Frederic de Caigny, Tracey Prevost, Thomas Hartford also known as Jim Hartford and Alana Hartford

Respondents

Before: The Honourable Justice K. Wolfe

Reasons for Judgment re: costs of removing respondent Prevost

Counsel for the Petitioners:	J.A. Burgess
Counsel for T. Prevost:	S.M. Foster
Written Submissions of T. Prevost re: costs:	February 26, 2026
Written Submissions of Petitioners re: costs:	March 6, 2026
Place and Date of Judgment:	Victoria, B.C. May 1, 2026

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Overview

[1] This decision addresses costs after Tracey Prevost successfully applied to strike the petition as against her, thereby removing her as a respondent. Ms. Prevost seeks special costs of her strike application and the proceeding as a whole, together with disbursements. Alternatively, she seeks double costs from October 21, 2024 based on a formal offer to settle. In the further alternative, Ms. Prevost seeks an uplift of her party-and-party costs at Scale B. In each case, Ms. Prevost seeks to have her costs assessed before a Registrar.

[2] The petitioners acknowledge that Ms. Prevost is entitled to her costs but say they should only be ordinary costs at Scale B.

[3] For the reasons that follow, I dismiss Ms. Prevost's request for special costs, double costs and uplift costs, and instead order the petitioners to pay Ms. Prevost lump sum costs of $7,000.

Background and procedural history

[4] Some brief background is required to put this decision in context.

[5] The petitioners live at a property located along Shuswap Lake in the interior of British Columbia. The ownership structure underlying their property is somewhat unique. The respondent, Cinnemousun Beach Properties Ltd. (the "Company") owns five legal lots, which are notionally divided into 53 "lots" designated for the use and enjoyment of the Company's shareholders, as well as several common areas. Under the Company's articles, owning a share in the Company entitles the shareholder to the use and enjoyment of a specific designated "lot". The petitioners say this is akin to a form of bare land strata. The other respondents are or were members of the board of directors for the Company at the relevant time or are other shareholders.

[6] In overly simplified terms, the petitioners filed the underlying petition seeking an oppression remedy under s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57. They allege the Company has failed or refused to enforce the shareholder's agreement, as well as its applicable articles and rules, and has failed to address

their concerns about encroachments on and interference with the access area leading to their property. Among those named as respondents are individuals whose conduct the petitioners allege the Company has failed to address and / or whose interests could be affected by relief that may be granted to address their concerns.

[7] The respondents, Thomas Hartford (also known as Jim Hartford), Alana Hartford (collectively, the "Hartfords"), and Tracey Prevost, were of the view they had been improperly named as respondents. The Hartfords and Ms. Prevost each filed applications under R. 9-5(1)(a) and (d) of the *Supreme Court Civil Rules* [*SCCR*] to strike the petition as against them. The two strike applications and the petition came on for hearing on February 9, 2026. To settle the parties before the merits of the petition were argued, I addressed the strike applications first. I primarily heard submissions from counsel for the Hartfords, counsel for Ms. Prevost and counsel for the petitioners. I stood down to consider the issues.

[8] On the afternoon of February 10, 2026, I delivered oral reasons for judgment allowing the strike applications. I agreed with the applicants that the proper subjects of an oppression claim are the individuals or entities that have some ability to exercise corporate control or to influence corporate decision-making. I found the petitioners had not pleaded either that the Hartfords or Ms. Prevost exercised any corporate will or influence or that there was any causal link between their asserted conduct and the Company's decision-making. I also found the petitioners had not sought any specific relief against the three respondents.

[9] As a result, I found the oppression remedy sought by the petitioners was not the type of claim that could be brought by petition against the Hartfords or Ms. Prevost; the petitioners had admitted the applicants did not have any role from which they could have exercised or did exercise formal or informal control in respect of the Company. I therefore dismissed the petition against the Hartfords and Ms. Prevost under R. 9-5(1)(a) as it did not disclose the type of claim that could be brought by petition against those respondents: see *E.B. v. Director of Child, Family and Community Services*, 2016 BCCA 66 at para. 42. Given that conclusion, I did

not make specific findings on the alternative arguments that the petition was an abuse of process and should also be struck under R. 9-5(1)(d).

[10] As the successful parties on their respective applications, counsel for the Hartfords and counsel for Ms. Prevost sought leave to make further submissions on costs, including special costs. I set a schedule and parameters for the exchange of written costs submissions. After the Hartfords and Ms. Prevost provided their initial costs submissions, the Hartfords and the petitioners settled costs as between them and filed a certificate of costs. As a result, the petitioners were only required to respond to Ms. Prevost's costs submissions. They did so. Although Ms. Prevost had the opportunity to provide brief written reply, she did not. This decision is therefore based on the written submissions of Ms. Prevost filed February 26, 2026 and the written submissions of the petitioners filed March 6, 2026.

Issues

[11] The parties' written submissions raise three issues:

a) Is Ms. Prevost entitled to special costs?

b) If not, is Ms. Prevost entitled to double costs from October 21, 2024 forward based on her offer to settle?

c) If not, is Ms. Prevost entitled to uplift costs?

Analysis

[12] The Court has broad discretion when awarding costs but must always exercise that discretion judicially and in accordance with established principles and the applicable rules: *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at para. 113 [*Smithies Holdings*].

[13] Unless the Court otherwise orders, the default rule is that the successful party is entitled to their costs of a proceeding, assessed as party and party costs in accordance with Appendix B to the *SCCR*: R. 14-1(1) and R. 14-1(9). Rule 14-1(12) governs costs of applications. In relevant part, R. 14-1(12) provides that unless the

Court otherwise orders, a party who successfully brings an application is entitled to costs of the application if ultimately awarded costs of the proceeding.

[14] Rule 14-1(1)(b) permits the Court to order that costs of a proceeding, or of an application or step in the proceeding, be assessed as special costs. Rule 9-1 permits the Court to award double costs after the date of delivery of a formal offer to settle. Section 2(5) of Appendix B of the *SCCR* permits the Court to increase the value for each unit of costs that would otherwise apply if there are "unusual circumstances" that would make an award of costs on the fixed scale "grossly inadequate or unjust".

[15] Under R. 14-1(13), costs become payable at the conclusion of the proceeding, subject to the Court's discretion to order otherwise. Where an application ends the proceeding in respect of one or more responding parties, costs of the application and the proceeding as a whole can be decided. Rule 14-1(15) permits the Court to award costs for a proceeding or a step in a proceeding and to fix the amount of such costs, including as a lump sum.

Is Ms. Prevost entitled to special costs?

[16] 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". Reprehensible conduct encompasses a wide range of conduct; it can include "milder forms of misconduct" as well as "scandalous or outrageous conduct": *Smithies Holdings* 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.).

[17] Special costs awards are exceptional and the Court must exercise restraint in making them. There is a high threshold to establish that special costs are 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; *Morriss v. British Columbia*, 2021 BCCA 451 at para. 22, leave ref'd 2024 CanLII 22665 (S.C.C.).

[18] Exceptional circumstances may exist where: there is evidence of improper motive; a party makes improper allegations of fraud or dishonesty; a party recklessly pursues a manifestly deficient or meritless claim; a party continues to pursue a meritless claim after its deficiencies have been drawn to that party's attention; a party makes the resolution of issues far more difficult than it should have been; a party abuses the Court's process or misleads the Court; or a party persistently breaches the rules of court or of professional conduct in a manner that prejudices the costs applicant: *Westsea Construction Ltd.* at para. 73; *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 at para. 11.

[19] Ms. Prevost contends the petitioners' conduct warrants rebuke sufficient to attract an award of special costs. In particular, she submits the petitioners were on notice as of her October 11, 2024 formal offer to settle, that Ms. Prevost did not consider the petition to advance a cause of action or seek relief against her. Ms. Prevost says that although the Hartfords subsequently raised similar concerns, the petitioners did not take any steps to consider the asserted deficiencies in the pleadings or to develop a "cogent articulation" of why the claim against Ms. Prevost was properly advanced. This ultimately led Ms. Prevost to incur additional costs to respond to the petition and file the application to strike. In essence, Ms. Prevost contends the petitioners ought not to have persisted with their claim against her once she asserted she was not a proper respondent. Further, Ms. Prevost contends special costs are warranted as she was named for an improper or collateral purpose – i.e. to obtain her evidence for use against the Company.

[20] The petitioners say their conduct does not rise to a level that requires rebuke through an award of special costs. Citing *Hoem v. Macquarie Energy Canada Ltd.*, 2025 BCSC 1508 at para. 15, they say the fact that a party takes a meritless position is not sufficient to warrant special costs. Rather, something more is required, such as improper allegations of fraud, an improper motive for taking the position, being reckless about the truth or taking a position so utterly hopeless that advancing it amounts to misconduct or abuse. The petitioners say the petition was struck on a technical or procedural basis – i.e. who should be named as a respondent. In

circumstances that the Court recognized as being “somewhat unique”, the petitioners say their error in naming Ms. Prevost was not for a collateral purpose. Rather, it was based on a genuine belief that she should be named because the relief sought might affect her and some of Ms. Prevost’s conduct in relation to the access area grounds the oppression claim.

[21] I have reviewed the parties’ submissions, their supporting documentation and the underlying petition and application materials, as well as the relevant case law. I do not agree this is an appropriate matter for an award of special costs.

[22] First, despite both parties suggesting that I struck the petition against Ms. Prevost and the Hartfords as an abuse of process under R. 9-5(1)(d), I have reviewed the DARS of my oral reasons and I made no such finding. While I referenced the *arguments* of the Hartfords and Ms. Prevost that they were named for the improper or collateral purpose of obtaining their evidence, the basis for my decision to strike was wholly grounded in R. 9-5(1)(a). I concluded that an oppression claim brought by petition could not be advanced against an individual or entity that lacks any corporate decision-making power or influence. It was thus not necessary for me to consider the additional “abuse of process” grounds for striking the petition and I did not do so.

[23] Absent that basis, what remains of Ms. Prevost’s argument is her assertion that the petitioners ought not to have continued their claim against her once they were advised by Ms. Prevost (and the Hartfords) that there was no legal basis for seeking oppression remedies against her. As the Court of Appeal confirmed in *Vassilaki v. Vassilakakis*, 2024 BCCA 15 at paras. 47-49, special costs awards are not made solely because a party has brought a claim without merit, even when the party ought to have recognized the deficiency. Instead, there must be something more that makes the party’s conduct reprehensible, as that term is understood. Taking a position, with the benefit of legal advice, even when that position is then proven not to be sound, is not sufficient: *Vassilaki* at para. 48. Were it otherwise, special costs awards would be the norm and not the exception.

[24] Litigation unfolds every day in courtrooms across this province because reasonable counsel disagree about what the law says or about how it applies on the facts of a particular case. There is no question that counsel for Ms. Prevost and counsel for the petitioners take a very different view of the scope of the oppression remedy and the obligation to name as respondents those whose interests might be affected by a claim. The petitioners advanced a basis for having named Ms. Prevost that they considered arguable – namely that her conduct was part of the alleged oppression and the Court might ultimately fashion a remedy that could negatively affect her interests. The fact that I did not agree that required Ms. Prevost to be named as a respondent does not make the petitioners' conduct in advancing those arguments worthy of rebuke through an award of special costs.

Double costs

[25] Rule 9-1(4) permits the Court to consider a settlement offer delivered in accordance with the requirements of R. 9-1(1) when exercising its costs discretion. Rule 9-1(5) sets out options the Court may consider, which include awarding double costs of all or some of the steps taken after an offer was delivered or served. 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): whether the offer was one that ought reasonably to have been accepted, the relationship between the offer and the Court's final decision, the relative financial circumstances of the parties and any other factor the Court considers appropriate.

[26] In *Hartshorne v. Hartshorne*, 2011 BCCA 29, the 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. 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: *Bains* at para. 35, citing *Hartshorne* at para. 27. The inquiry has both subjective and objective components: *Long v. Thanas*, 2020 BCSC 2203 at para. 21.

[27] The petitioners do not dispute that on October 11, 2024, Ms. Prevost served an offer to settle that complies with the requirements of R. 9-1(1). Ms. Prevost offered to waive all costs and disbursements in exchange for a dismissal of the petition against her and agreement that she need not file a response to petition. However, the petitioners disagree it was an offer they ought reasonably to have accepted in the circumstances.

[28] The petitioners say the offer was predicated on legal and factual positions with which they did not agree. Ms. Prevost also did not recognize that her actions were asserted to be part of the cumulative and ongoing oppressive conduct. The petitioners suggest their reluctance to accept the offer can also be traced to Ms. Prevost's failure or refusal to engage in without prejudice resolution discussions to that point, as well as the fact that she had not yet filed responding materials and had refused to commit to a timeframe for doing so. The petitioners say Ms. Prevost's offer must be viewed in light of the absence of any other good faith efforts on her part to take the litigation seriously or to seek resolution despite multiple invitations.

[29] In asserting the petitioners ought reasonably to have accepted the offer to settle, Ms. Prevost again relies on the lack of merit of the petitioners' position against her and on her erroneous belief that the Court found the petition to constitute an abuse of process. I am unable to accept Ms. Prevost's contentions. I have explained above that I did not strike the petition under R. 9-5(1)(d).

[30] At the time when the offer to settle was made, neither Ms. Prevost nor the Hartfords had filed a response to petition. The Company and other respondents had filed a response, but their response understandably did not address the conduct in relation to Ms. Prevost's use of the access area in any detail. Other than four brief subparagraphs in the offer letter itself (which also referred to the Company's main affidavit), the petitioners did not have any other basis on which to evaluate the offer

or against which to assess the strengths and weaknesses of their claim *in relation to Ms. Prevost*. This was not a situation, like in *Long*, where the offer was made after extensive responding materials had been exchanged; there was little here that would have allowed the petitioners to meaningfully engage in risk analysis. Ms. Prevost's response with relevant case authorities and evidence did not come until more than two weeks after the offer had expired. There is no dispute she did not make any further offers after providing her response and affidavit.

[31] As Justice Morley concluded at para. 34 of *Heffel v. Cole*, 2023 BCSC 2140, it will be a rare case where a rejected offer by a responding party to dismiss without costs will give rise to double costs, as such an offer effectively amounts to saying the claim ought not to have been brought or maintained in the first place. In the circumstances, I do not find it unreasonable for the petitioners not to have accepted the bare offer Ms. Prevost made on October 11, 2024. I dismiss Ms. Prevost's request for double costs.

Uplift costs

[32] Both parties agree, and I accept, that costs are appropriately fixed at Scale B; this is a matter of ordinary difficulty.

[33] If the Court declines Ms. Prevost's request for special and double costs, she says the Court should nonetheless exercise its discretion under s. 2(5) of Appendix B to order "uplift" costs of 1.5 times the value of each unit claimed. Ms. Prevost contends that, even if it is insufficient to justify an award of special costs, the petitioners' conduct (by which I presume she means continuing the claim despite having been advised it had no merit) remains deserving of rebuke. As a result, she says she has met the requirement that "unusual circumstances" be present.

[34] As part of her submissions, Ms. Prevost provided a draft bill of costs claiming 49 units at Scale B, which amounts to $6,036.80 after taxes. Ms. Prevost also claims $490.20 in disbursements. Ms. Prevost did not specifically articulate why an award of costs at Scale B would be "grossly inadequate or unjust". Instead, she noted that the purpose of an uplift is to compensate a party for unnecessary expense caused

by another's litigation misconduct. I infer that she contends costs at Scale B do not sufficiently compensate her for her actual litigation expenses, given that she was found not to have been properly named.

[35] The petitioners dispute there are "unusual circumstances" that merit an award of uplift costs. They say Ms. Prevost took limited, non-complex steps and relied to a great degree on the work done by others. They say the claim is relatively simple, they did not take positions or engage in behaviour that added to the complexity of the litigation, and the allegations were not of a particularly serious nature. The petitioners also say there is nothing to suggest an award of costs at Scale B would be grossly inadequate or unjust.

[36] I agree. While I accept Ms. Prevost's actual legal costs likely exceed the costs to which she would be entitled at Scale B, she did not provide evidence that would allow me to assess the degree of any such disparity. Further, s. 2(6) of Appendix B specifically provides that the *mere fact* of such a difference does not make an award of costs on a regular scale grossly inadequate or unjust. As noted, Ms. Prevost did not say why an award of costs at Scale B would be grossly inadequate or unjust.

[37] Above I declined to find the petitioners' pursuit of a claim against Ms. Prevost to be reprehensible conduct. I am likewise not persuaded that taking a position I ultimately found to be without merit amounts to litigation "misconduct". This is not a case like *Heffel*; the petitioners did not advance unwarranted allegations of fraud against Ms. Prevost that imposed an additional litigation or reputational burden on her. Other than naming Ms. Prevost as a respondent and not discontinuing earlier, the petitioners did not, in my view, engage in conduct that constituted misbehaviour or that added to Ms. Prevost's expenses. The prerequisites to an award of uplift costs are not made out here.

Conclusion and summary of orders

[38] In conclusion, I dismiss Ms. Prevost's claims for special costs, double costs and uplift costs. In my view, an award of party-and-party costs at Scale B, with reasonable disbursements, is the appropriate outcome. However, I am conscious

that Ms. Prevost sought to have her costs assessed before a Registrar, and these particular parties have been unsuccessful in resolving issues in the past. In these circumstances, I do not believe it is in the interests of Ms. Prevost or the petitioners to incur any further expense or to invest further time to settle the matter of costs, including costs associated with these written costs submissions.

[39] As noted, R. 14-1(15) gives the Court the authority to fix the amount of costs as a lump sum. The Court may do so where there is evidence to support a lump sum and where such an award would allow the parties to avoid the delay and expense of a registrar's hearing: *Herbison v. Canada (Attorney General)*, 2014 BCCA 461 at paras. 30-31; *Inwest Investments Ltd. v. R.*, 2015 BCSC 2170 at para. 70.

[40] I have reviewed the draft bill of costs submitted by Ms. Prevost. I have considered the units claimed in light of the materials provided for the hearing of the strike applications and the petition on the merits. I have also considered the draft bill against the record of court filings and the correspondence between counsel as submitted in appendices to the parties' written submissions on costs. Lastly, I am aware from the Hartfords' costs submissions that Ms. Prevost claims a similar number of units as them. As noted, the petitioners settled costs with the Hartfords.

[41] Ms. Prevost's draft bill of costs did not include a claim under item 23 for an application by written submissions, which is what I consider the written costs process to have been. In my view, it is appropriate to add either 3 or 4 units to her draft bill to account for the costs submissions. I otherwise consider the units claimed reasonable. I also consider the disbursements to be reasonable. Adding those 3 or 4 units results in a total of $6,896.60 or $7,019.80 respectively. To spare the petitioners and Ms. Prevost any further costs in relation to Ms. Prevost's involvement, and to eliminate any further litigation steps for her, I award Ms. Prevost lump sum costs of $7,000 payable by the petitioners.

"K. Wolfe J."