

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Nouhi v. Pourtaghi*,
2026 BCSC 624

Date: 20260407
Docket: S184410
Registry: Vancouver

Between:

Massimo Aki Nouhi

Plaintiff

And

Nahid Pourtaghi and Naki Enterprises Inc.

Defendants

And

Massimo Aki Nouhi

Defendant by way of Counterclaim

Before: The Honourable Justice Veenstra

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff/Defendant by way
of Counterclaim:

C. Dennis, K.C.
R. Power

The Defendant, Nahid Pourtaghi, appearing
in personal capacity and as Representative
for the Defendant, Naki Enterprises Inc.:

N. Pourtaghi

Place and Date of Hearing:

Vancouver, B.C.
April 2, 2026

Place and Date of Judgment:

Vancouver, B.C.
April 7, 2026

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[1] This is the resumption of an application that I adjourned on February 25, 2025, for reasons set out in oral reasons for judgment which have been transcribed and are indexed at 2025 BCSC 327 (the “Adjournment Decision”).

Background

[2] The circumstances are somewhat unusual, as I explained at para. 2 of the Adjournment Decision:

[2] By way of background, this action was commenced in April 2018, with the defendants filing a counterclaim later that year. When the action went to trial before Justice Harvey commencing on October 4, 2021, the plaintiff filed a discontinuance of his claims. The trial proceeded with respect to the counterclaim. In reasons for judgment released on May 16, 2022, and indexed at 2022 BCSC 807, Justice Harvey granted the defendants judgment against the plaintiff for US \$400,000 plus CA \$12,700. He gave the parties leave to apply with respect to costs.

[3] Justice Harvey subsequently dealt with the defendants’ request for special costs in reasons for judgment which are indexed at 2023 BCSC 306 (the “Costs Judgment”). He granted the defendants only a part of what they were seeking:

- a) Costs of the plaintiff’s claims (up to the date of discontinuance) as special costs, other than with respect to one application as to which costs had already been fixed;
- b) Costs of the defendants’ counterclaim (which went to trial) as increased party-and-party costs (Scale B times 1.5); and
- c) Costs of the costs hearing as party-and-party costs at Scale B.

[4] Justice Harvey was asked to but declined to summarily assess costs, concluding at para. 125 of the Costs Judgment that the Registrar is in the best position to assess costs in this matter.

[5] There also remains outstanding the assessment of the costs of a two-day pre-trial application hearing, which were ordered by Justice Skolrood (as he then was) to be assessed as party-and-party costs.

[6] A few months after Justice Harvey gave the Costs Judgment, the defendants became self-represented. The plaintiff retained new counsel, Mr. Dennis, who had not previously acted in this matter.

Events Leading to the Adjourment Decision

[7] On October 4, 2023, the defendants filed an Appointment to assess their various entitlements to costs, including some \$310,000 which was claimed in respect of the special costs that were awarded. Beginning on October 31, 2023, there was a series of pre-hearing conferences before Registrar Gaily. A primary focus of those conferences was the plaintiff's requests for document production. I reviewed what happened at those conferences in detail at paras. 10-47 of the Adjourment Decision. With respect to the first three conferences, I note for present purposes that:

- a) On October 31, 2023, Registrar Gaily, relying on the judgment in *Gichuru v. Smith*, 2014 BCCA 414, ordered that the defendants produce the files of their solicitors.
- b) Dr. Pourtaghi subsequently wrote to Mr. Dennis, disputing that *Gichuru* justified a blanket order to disclose the entirety of the solicitor's file.
- c) At a pre-hearing conference on January 11, 2024, after inviting and receiving further submissions from the parties with respect to the need for document production, Registrar Gaily confirmed her earlier document production order.
- d) Later in January 2024, one of the defendants' former lawyers provided Mr. Dennis with a USB drive containing certain files. It appeared that the USB drive did not contain any privileged documents, and in April 2024, Mr. Dennis wrote to Dr. Pourtaghi demanding production that would include all correspondence between lawyer and client as well as experts, witnesses and all others engaged in the litigation.

- e) In April 2024, one of the defendants' former lawyers wrote to Mr. Dennis, asserting that there were no "additional materials whose production was required for the costs assessment", and further explaining that:

I also do not understand why privileged email communications between Don Sorochan and Nahid would need to be produced. The most recent case I am aware of (*Pyper v. Schuetze*, 2023 BCSC 2321 at para. 27-28) held that it was proper for a Master to deny production of solicitor-client communications, as an award of special costs does not automatically waive privilege with respect to the entirety of a file, and that production can be limited to those materials demonstrated to be necessary to assess the reasonableness of the claimed fees.

- f) On July 5, 2024, Registrar Gaily ordered that:
2. The defendants and plaintiffs by counterclaim, Nahid Pourtaghi ("N. Pourtaghi") and Naki Enterprises Inc. ("Naki") shall file an affidavit of each of their former counsel, Dale Lysak and Donald Sorochan, K.C., which shall attest to:
 - a. whether there are additional materials in their respective counsel files (the "Files") which have not been produced, and if so, a description of that material;
 - b. if there are further materials in The Files, whether privilege is claimed over any such material, and the basis for that privilege; and
 - c. if the Files do not contain email correspondence, communication between lawyers and clients, timekeeping records, or pre-bills, an explanation as to why those materials are absent from the File.
(the "Lawyers Affidavits").
 3. N. Pourtaghi and Naki shall serve the Lawyers' Affidavits on counsel for the plaintiff and defendant by counterclaim, Massimo Aki Nouhi ("M. Nouhi") by August 9, 2024.
 4. N. Pourtaghi and Naki shall take no further steps in respect of the special costs assessment in this proceeding, except for those steps set out in this Order, until after both of the following have occurred:
 - a. the parties have attended the pre-hearing conference on September 11, 2024; and
 - b. the Lawyers' Affidavits have been served on counsel for M. Nouhi.
- g) In August 2024, two of the defendants' former lawyers – Mr. Sorochan and Mr. Lysak – provided affidavits. Each of the two lawyers asserted

generally that there were privileged communications in the files, and that they had not received instructions to waive privilege. As I noted in the Adjournment Decision at para. 40:

[40] ... it seems clear to me that both Mr. Sorochan and Mr. Lysak appear to have been provided with the Court Summary Sheet for July 5, 2024. Mr. Lysak also appears to have been provided with Mr. Dennis' letter of April 2, 2024. It seems doubtful that either of them was aware that Registrar Gaily had already made an order for production of the solicitors' files.

[8] As noted at paras. 41-47 of the Adjournment Decision:

[41] There was a further pre-hearing conference before Registrar Gaily on September 11, 2024. I have reviewed the transcript of the September 11, 2024 hearing. It is clear from the transcript that Registrar Gaily had not been provided with the affidavits of Mr. Sorochan and Mr. Lysak. That of course made it impractical for Registrar Gaily to gauge whether there had been proper compliance with her orders.

[42] Mr. Dennis, in his submissions, asserted that there had been "a doubling down by Dr. Pourtaghi on the refusal to comply with" the document production order, and suggested that the matter should go back before Justice Harvey. The defendants, on the other hand, asserted that the lawyers' affidavits adequately explained that all that was properly producible had been produced, and asked that a hearing be set down and Mr. Dennis ordered to finalize his list of objections. The defendants went on to question the Registrar's earlier ruling with respect to production of files, in response to which the Registrar made clear that she was aware of the *Pyper* decision referenced by the defendants.

[43] There was a brief discussion during the hearing about simply starting the hearing and cross-examining the lawyers, with an adjournment if it turned out there were documents that had not been produced. Mr. Dennis objected to this as being a highly inefficient approach, and it was not pursued further.

[44] There was some further discussion near the end of the pre-hearing conference about scheduling the costs assessment for several months down the road. It is clear to me that those discussions were premised on the assumption that any production and privilege issues would be resolved in advance of any hearing proceeding.

[45] At the conclusion of the hearing, the only order made (other than as to who should sign the formal order) was that:

1. The audio recordings of the pre-hearing conferences conducted in this proceeding on October 31, 2023; January 11, 2024; July 5, 2024; and September 11, 2024 (the "Pre-Hearing Conferences") be released for the purposes of obtaining written transcripts of the Pre-Hearing Conferences.

[46] Registrar Gaily explained the order as follows:

I'm granting leave or I'm ordering that a transcript of the pre-hearing conference proceedings be provided to the parties. Mr. Dennis has indicated that his client, Mr. Nouhi, will bear that expense. Once you have copies of those transcripts and you can review the orders that were made, the discussions that were had -- I mean, there's two options here. You can come back before me and I can -- you know, with enough time I can ask and insure that all the materials that I need are before me so that I can then decide whether or not the orders for production have been complied with, or [the matter can be referred to a Justice].

[47] No further steps were taken prior to the filing on January 30, 2025, of the Notice of Application that I heard on February 20, 2025.

[9] The reasoning for the Adjournment Decision is set out at paras. 54-59:

[54] I begin by noting that the special costs assessment in this matter will be a complex one. It will involve review of the various steps taken over a 3½-year period from the time the action was commenced until the plaintiff discontinued his claim. For most of those 3½ years, the defendants' counsel would have been working concurrently on advancing their counterclaim – for which they are entitled to tariff costs only. Presumably, all time entries would have been recorded on one file, yet the Registrar will be required not only to determine what portion of each time entry related to the claim, as opposed to the counterclaim, but also the reasonableness of the work performed and time recorded. As Registrar Gaily noted during the September 11, 2024, hearing:

When Justices do that, when they chop things up and have special costs, party and party costs, increased costs for different periods, it really is challenging as a presider not to have very clear cut chunks of information from the lawyers who worked on this.

[55] Knowing the task ahead of her, Registrar Gaily made a document production order. Her jurisdiction to do so is provided by Supreme Court Civil Rule 23-6(5)(a). Her orders have not been appealed, despite her having pointed out to the defendants that that was their available remedy. I agree with the plaintiff that those orders should not be subject to collateral attack.

[56] All of that said, I am not satisfied that this matter is at a point where a stay is appropriate. In my view, there has been no judicial determination to this point as to whether the defendants have complied with Registrar Gaily's order, and that is something that is properly done by the Registrar. As well, Registrar Gaily has indicated a willingness to consider the producibility of documents that may be in possession of Mr. Sorochan and Mr. Lysak that relate to litigation in other jurisdictions. There has been no opportunity for Registrar Gaily to decide that issue, nor any mechanism established to have any such documents identified in a manner that will facilitate her decision-making.

[57] In my view, this matter is best referred back to Registrar Gaily for a further pre-hearing conference to consider these issues. I suspect that dealing with the specific issues I have identified will require at least a half-day, and so the substantive hearing with respect to document production

should be scheduled accordingly. Whether there is merit to having a prior pre-hearing conference, limited to the usual 30 minutes, to discuss how the substantive hearing will proceed, is something that I will leave to the parties and to Registrar Gaily.

[58] I will direct that Registrar Gaily be provided with a record in advance of the next pre-hearing conference that should contain all of the affidavits that were put before me, and including all of the transcripts that were obtained pursuant to the order she made on September 11, 2024.

[59] I intend to have my oral reasons for judgment transcribed. I will direct that a copy be provided to Registrar Gaily so that she is aware of my reasoning. The transcribed reasons will also facilitate the defendants obtaining legal advice with respect to their position, should they choose to do so.

The Compliance Hearing

[10] There were various delays in scheduling the hearing before Registrar Gaily. There is no suggestion that either party bears any particular responsibility for those delays.

[11] Ultimately, there was a pre-hearing conference before Registrar Gaily on August 11, 2025, and the compliance hearing itself was held on December 8, 2025. Registrar Gaily issued written Reasons for Decision on February 12, 2026, which reasons are indexed at 2026 BCSC 246 (the “Compliance Decision”).

[12] Registrar Gaily began by noting the complexity of the costs assessment:

[2] As the parties know, at the conclusion of the trial of the counterclaim, Harvey J. refused to summarily assess the defendants’ costs as special costs and directed the assessment to the registrar. The assessment will be complex and lengthy for several reasons. Harvey J. awarded the defendants costs of the litigation as special costs, party-and-party costs, and as increased party-and-party costs. The bulk of the costs claimed are special costs (approximately \$310,000 of \$500,000), based on the bills of the defendants’ former lawyers. However, no effort has been made to separate from the lawyers’ bills the fees for the work performed on the counterclaim, for which Harvey J. awarded the defendants increased party-and-party costs. Further, the parties were (or are) involved in concurrent litigation in Ontario, Michigan and Switzerland. The defendants’ former lawyers admit in their affidavits that they did not maintain separate client files for the proceedings outside BC. Dr. Pourtaghi acknowledges that the special costs claimed includes fees related to these other proceedings, which she asserts should be included because of Mr. Nouhi’s conduct. Harvey J. reiterated that he had no jurisdiction over costs in the Court of Appeal, but Dr. Pourtaghi also

acknowledges that the special costs claimed also might include fees for the appeal proceedings.

[13] Registrar Gaily referenced briefly the orders she had made for production of documents, and the basis on which those orders were made:

[14] As Veenstra J. noted, knowing the task ahead, I made a document production order at a PHC on October 31, 2023, which I reiterated at a PHC on January 11, 2024 (the “Production Order”) (Stay Judgment, para. 55). The jurisdiction to make the Production Order is afforded the registrar under Rule 23-6(5) of the *Supreme Court Civil Rules* [SCCR]. As I discussed with the parties on more than one occasion, the Production Order follows *Gichuru v. Smith*, 2014 BCCA 414, in which the Court of Appeal discussed how “it was difficult to conceive how a proper examination of a party’s reasonably incurred legal fees can be made without disclosure of the party’s file” and that, where a party is claiming its legal accounts are privileged, “it can elect to waive privilege, wait until all appeals are exhausted before having its costs assessed or choose to abandon its claim to special costs” (see *Gichuru*, paras. 111–120).

[15] The defendants have never appealed the Production Order (see also Stay Judgment, para. 24).

[14] Registrar Gaily also noted the discussion of legal principles in a recent similar case:

[24] In June 2025, Associate Judge Robertson, sitting as Registrar, released reasons in an assessment of special costs where the disclosure of the successful party’s solicitor’s file was in issue, in *De Angelis v. Sierny*, 2025 BCSC 1031. In *De Angelis*, the successful defendants, like Dr. Pourtaghi and Naki in this case, had asked the trial judge to summarily assess their costs as special costs in a specific amount, based on affidavits filed by their counsel. The trial judge in *De Angelis*, Justice A. Ross, declined the request, directing the assessment to the registrar, commenting that the affidavit evidence before him “[boiled] down to a partner at the firm indicating that the time recording was accurate and reasonable” (para. 19). Like this case, in *De Angelis*, the counsel provided legal services to the defendants for other matters but did not bill the other matters to separate file numbers and as Robertson A.J. noted, “legal costs incurred in respect of matters outside of this action are not recoverable from the plaintiff and need to both be separated out, and quantified” (para. 20). Associate Judge Robertson summarized the evidence in the lawyers’ affidavits of justification at paras. 21 through 32 of *De Angelis*.

[25] I directed the parties to review *De Angelis* prior to the PHC before me because in it, Robertson A.J. had reviewed the relevant law on disclosure and privilege arising on the assessment of a party’s special costs (including summarizing *Pyper v. Schuetze*, 2023 BCSC 2321, a case cited by Mr. Lysak and relied on by the defendants as limiting *Gichuru*). In her decision,

Robertson A.J. noted that where disclosure is challenged on the basis of privilege, a party claiming that a document is subject to litigation privilege bears the onus of establishing that privilege (para. 76). In her conclusion in *De Angelis*, Robertson A.J. made the following observations, based on the authorities she had reviewed:

[89] A party presenting their accounts to be assessed to support a special costs award may find that disclosure of counsel's file materials which are otherwise subject to privilege will be necessary given that:

- a) They have the onus to establish that the accounts are reasonable and counsel's bare assertion, in sworn evidence or otherwise, that they are is generally not sufficient evidence; and
- b) the rules of natural justice require that the payor be able to test the reasonableness of those accounts, which may require production of their counsel's file materials; or
- c) they have implicitly waived privilege through the materials that they have filed to justify their accounts.

[90] It remains the discretion of the presider, typically the registrar, to determine the scope that will be necessary for the case before it, having regard to issues such as proportionality as set out in R. 1-3(2), as incorporated specifically in R. 14-1(3)(viii), and the balancing of the protection afforded by a claim of solicitor-client privilege and the fundamental rules of natural justice.

...

[92] In all cases the directions of the court in *Pyper* are apt, the registrar should consider and weigh the entitlement to solicitor-client privilege against the relevance and usefulness in ensuring the principles of natural justice are upheld, and then tailor disclosure to what is both necessary and proportionate having regard to the costs being assessed and the costs and effort of the procedural steps being proposed.

[26] In the circumstances of the case before her, Robertson A.J. found that it was appropriate to order tailored disclosure and, among other things, ordered the defendants to provide the plaintiff's counsel, "a list of their counsel's file contents, disclosing [the] documents over which they are asserting litigation privilege, solicitor-client privilege, and relevance, and the basis for each such claim" (para 108).

[27] When the parties appeared before me at the PHC on August 11 in advance of this Compliance Hearing, they confirmed that they had reviewed *De Angelis* (Mr. Dennis is counsel for the plaintiff in *De Angelis* and he also confirmed that the defendants had filed a notice of appeal from Robertson A.J.'s decision, but the appeal has not been heard). As I discussed with the parties, given the complexity of the assessment of the defendants' special costs in this case (summarized above) and the fact that the defendants acknowledged that they had not disclosed their counsel's files and were asserting the files were subject to solicitor-client privilege, I adopted the same approach as Robertson A.J. did in *De Angelis*, that is, tailored disclosure. I ordered that on or before September 15, the defendants were to

serve Mr. Nouhi with a list of the contents of their counsels' files, indicating those documents over which they are asserting litigation privilege, solicitor-client privilege, and relevance, and the basis for each claim.

[15] Registrar Gaily summarized the document production that had been provided by the defendants, both before and after the Adjournment Decision:

[4] At this Compliance Hearing, the defendants bear the onus to satisfy me that they have complied with the production order I made on October 31, 2023, and reiterated on January 11, 2024. There is no dispute that on January 19, 2024, Dr. Pourtaghi produced to Mr. Nouhi's counsel a USB stick containing nearly 900 documents (the "2024 USB"). There is also no dispute that since the production of the 2024 USB, the defendants admit that they did not produce all of the records in their counsel's files because they submit these records are subject to privilege and non-producible. After several pre-hearing conferences ("PHCs"), the application before Veenstra J. and his judgment, as well as a PHC in July 2025, in August 2025, the defendants provided Mr. Nouhi's counsel a list of 13,824 records from their counsel's files, which records had not been previously identified (the "August 2025 List"). As Mr. Nouhi's counsel notes, of the 13,824 records on the August 2025 List, 4,784 are identified as subject to solicitor-client privilege, 43 are identified as subject to litigation privilege, and 8,997 are identified as irrelevant.

[16] Thus, of the 13,824 newly listed documents, a grand total of 0 was considered to be producible. With respect thereto, Registrar Gaily commented that:

[25] ... there was no evidence before me at the Compliance Hearing confirming who prepared the August 2025 List, or providing further evidence on which the claims of privilege and relevance are based.

[17] Registrar Gaily noted at para. 48 that in her submissions, Dr. Pourtaghi said that it was former counsel who "prepared, reviewed and approved the production", but that there was no evidence of this, and no basis to determine whether the counsel's views had evolved from what was set out in the affidavits that were reviewed in the Adjournment Decision.

[18] Registrar Gaily explained that:

[5] To convince me that some or all of the 13,824 records on the August 2025 List should not be produced to Mr. Nouhi's counsel, I require evidence that satisfies me that the documents over which the defendants have claimed privilege (in this case, both solicitor-client privilege and litigation privilege) or which they identify as irrelevant to the assessment of their costs should not be produced to Mr. Nouhi. The affidavits of the defendants' former counsel

filed in July and August 2024 do not address the records in the August 2025 List. Critically, I have no further evidence from Dr. Pourtaghi or anyone else about the records in the August 2025 List, which explains in any detail the basis on which the privilege or irrelevance is claimed. The information that is provided in the August 2025 List as the basis for the classification of the records is unsatisfactory. For example, the defendants repeatedly state that a record is classified as subject to solicitor-client privilege on the basis that it is “email correspondence presumed privileged unless otherwise shown”. In several other instances, the defendants simply state that a record is identified as irrelevant on the basis that it is a “non email document, not relevant to BC special costs”.

[19] Registrar Gaily reviewed at paras. 49-55 the nature of the claims of privilege and relevance in the list that she had been provided, then concluded at paras. 56-57 that:

[56] I find the August 2025 List does not provide enough evidence on which I can be satisfied that the records listed on it should not be produced because they are subject to the privilege claimed or are irrelevant.

Conclusion

[57] As detailed above, I am not satisfied on the evidence before me that the defendants have complied with the Production Order. I find that the defendants have not complied with the Production Order.

[20] The other matter addressed in the Compliance Decision was certain statements made by Dr. Pourtaghi in her affidavits, attributing statements to Registrar Gaily that were never made. With respect to those statements, Registrar Gaily said:

[44] I appreciate that Dr. Pourtaghi is representing herself and Naki and that she is frustrated that she has not been able to proceed with the assessment of their special costs, or to conduct an examination of Mr. Nouhi and execute on her judgment. However, this does not excuse Dr. Pourtaghi’s conduct in deposing to findings that I did not make, especially after this was brought to her attention by Mr. Nouhi’s counsel. At the Compliance Hearing, Dr. Pourtaghi read from her written submissions that the “misunderstanding” in her affidavits arose from her “good faith attempt as a self-represented litigant to summarize [the registrar’s] directions”, that she did not intend to mislead the court and believed that I had “expressed those *ideas* during the hearings” (her emphasis).

[45] Dr. Pourtaghi has been involved in litigation before the BC courts for several years and I have no doubt that she understands that an affidavit is a sworn statement of evidence. I do not accept her explanation that she was attempting to summarize my directions and simply made a “correctible” mistake in the paragraphs of the affidavits reproduced above, particularly in

the two affidavits she filed after Mr. Nouhi's counsel brought this to her attention. I find that in her affidavits she falsely deposed that I had made findings in her favour.

[21] Eight days after the Compliance Decision, on February 20, 2026, Dr. Pourtaghi submitted a Request to Appear before Registrar Gaily. Registrar Gaily advised that she would not consider the request without first being advised of the position of the other party. On February 26, 2026, counsel for Mr. Nouhi wrote saying:

I have conferred with Dr. Pourtaghi on this message and she has given her agreement to the statement of her position. Thus the positions of the parties are as summarized below:

Position of Dr. Pourtaghi

The attendance is intended to obtain procedural directions necessary to move the Special Costs assessment forward. In particular, Dr. Pourtaghi intends to seek guidance regarding:

- whether any steps remain outstanding before the assessment may be scheduled;
- whether any further materials are required from either party, if any;
- the appropriate sequencing and timetable for the assessment; and
- any related case-management directions needed to implement the prior orders.

Position of Mr. Nouhi

In light of the registrar's recent ruling, Mr. Nouhi's position is that it is premature to discuss directions for the special costs assessment. Dr. Pourtaghi's non-compliance with the court's order continues. Mr. Nouhi is taking steps to bring his application (which was adjourned pending the registrar's ruling) back before Justice Veenstra.

[22] The parties were then advised through Supreme Court Scheduling that:

Registrar Gaily has reviewed the below email and declines to hear the Request at this time, until a Justice has heard and determined the application to stay the special costs assessment.

[23] Mr. Nouhi had submitted a Request to Appear before me on February 26, 2026. A half-day hearing was scheduled for April 2, 2026, Mr. Nouhi filed an Amended Notice of Application on March 20, 2026, seeking the same relief as in his

original application of January 30, 2025, and Dr. Pourtaghi filed a new Application Response on March 26, 2026.

Positions of the Parties

[24] Mr. Nouhi, through his counsel, argues that the Court should now act to stay the award of special costs, either permanently or temporarily. While this is a significant and potentially draconian order, it is said to be appropriate in light of the finding of non-compliance, coupled with what counsel suggested are efforts to cover up that non-compliance through inaccurate affidavits about what Registrar Gaily had said, all read in the light of more recent affidavits prepared for purposes of this hearing which are said to reflect a determination to continue to refuse to produce documents over which Dr. Pourtaghi has claimed privilege.

[25] Mr. Nouhi acknowledges that a permanent stay is functionally equivalent to striking a claim, which is generally considered to be a draconian remedy. However, he submits that fairness can be done by allowing Dr. Pourtaghi to recover costs on a party-and-party basis, including increased costs to match the costs order made in respect of the counterclaim. Special costs were not something the defendants had an expectation of prior to the Costs Judgment, and the defendants would still obtain some recovery of their costs. Mr. Nouhi submits that:

- a) The refusal to comply with the Production Order is serious, has gone on for a long time, and its significance is exacerbated by the misleading affidavits that have been submitted;
- b) Dr. Pourtaghi has had multiple opportunities to comply with the Production Order, given that there have been several pre-hearing conferences since it was made as well as the hearing before me which led to the Adjournment Decision;
- c) A permanent stay would be a fit punishment for Dr. Pourtaghi's non-compliance, given the complexity and expense her non-compliance has brought to these costs proceedings; and

- d) There is no reason to believe that Dr. Pourtaghi's conduct will change, particularly given her recent affidavits.

[26] Dr. Pourtaghi says that the Compliance Decision has clarified the record and the parties can now proceed. She describes the issue that she was facing as relating to the level of detail that was required with respect to how her claims of privilege were categorized and explained, and that Registrar Gaily has now provided direction. She says that she acknowledges the need for greater clarity, and would like to proceed to meet the requirements described by Registrar Gaily.

[27] Dr. Pourtaghi says that she is self-represented and having to deal with complex issues of privilege – both with respect to the existence of privilege and the appropriate manner in which to list and describe documents over which privilege is asserted. She has relied on some comments from lawyers in moving forward, and is doing her best to respond to the directions given by the court in light of the issues raised as well as the information she is getting from the lawyers.

[28] She noted that she and Mr. Nouhi have ongoing litigation in other jurisdictions, and expresses concern about the risk of over-disclosure of privileged material unnecessarily prejudicing her ability to pursue that litigation.

Legal Context

[29] Mr. Nouhi has cited both Supreme Court Civil Rule 22-7(2) and Rule 13-2. Rule 22-7(2) provides that:

Subject to subrules (3) and (4), if there has been a failure to comply with these Supreme Court Civil Rules, the court may

- (a) set aside a proceeding, either wholly or in part,
- (b) set aside any step taken in the proceeding, or a document or order made in the proceeding,
- (c) allow an amendment to be made under Rule 6-1,
- (d) dismiss the proceeding or strike out the response to civil claim and pronounce judgment, or
- (e) make any other order it considers will further the object of these Supreme Court Civil Rules.

[30] Rule 13-2(31) provides that:

The court may, at or after the time of making an order,

(a) stay the execution of the order until such time as it thinks fit, ...

[31] While there is clearly jurisdiction to make the sort of order sought by Mr. Nouhi, the courts generally show restraint in doing so. The proper approach was summarized in *British Columbia (Director of Civil Forfeiture) v. Crowley*, 2013 BCCA 89 at para. 22:

[22] The appellant notes that striking pleadings is a draconian remedy (*Microsoft v. Eurocopter S.A.*, 2003 BCCA 229, 180 B.C.A.C. 316 at para. 4). The chambers judge was well aware of that. The appellant states that generally a party is given a “second chance”. The chambers judge was well aware of that as well. Counsel for the Director directed the judge’s attention to the factors that must be considered on an application to strike pleadings. These factors were recapitulated by Master Bouck in *British Columbia (Director of Civil Forfeiture) v. Zacchiana*, 2011 BCSC 989 at para. 54, referring to passages in *Schwarzinger v. Bramwell*, 2011 BCSC 304:

- The Court must start from the proposition that the relief will be granted “only in extreme cases”: para. 109;
- Parties are entitled to a “second chance” before the relief is granted: para. 112;
- There must be some element of proportionality between the impugned conduct and the remedy. That is, “the punishment must fit the crime”: para. 118;
- The court must consider whether there is a “lesser remedy” that would “cure the default and inspire confidence that the Court’s orders will be respected in the future”: para. 123; and
- The Court must take into account any explanation offered by the offending party for non-compliance with the court order: para. 135.

[32] As noted in *Barrie v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2021 BCCA 322 at paras. 103-105:

[103] An order dismissing a claim or striking out a response to civil claim is a draconian remedy, described by this Court as “a blunt tool, to be used sparingly”: *House of Sga’nisim v. Canada (Attorney General)*, 2007 BCCA 483 at para. 28. Nevertheless, in the most egregious of cases, such an order may be justified. In *Rise & Shine Grocery & Gas Ltd. v. Novak*, 2016 BCCA 483, this Court upheld an order dismissing the plaintiff’s claim in a negligence action based on its multiple flagrant and unexcused breaches of the *Rules* and court orders. In explaining why, Justice Goepel quoted

from *Breberin*, in which Justice Willcock, then of the Supreme Court of British Columbia, summarized the principles that apply:

[35] In *Breberin v. Santos*, 2013 BCSC 560 Willcock J. (as he then was) summarized the jurisprudence dealing with dismissal applications pursuant to Rule 22–7:

[52] Several principles identified in the jurisprudence describe and limit the appropriate application of Rule 22-7.

[53] The order sought by the defendants is not readily granted. Dismissal is a “blunt tool, to be used sparingly” in response to procedural delay: *House of Sga’nisim v. Canada (Attorney General)*, 2007 BCCA 483 at para. 28 [*House of Sga’nisim*]. The remedy is a “draconian” one, “only to be invoked in the most egregious of cases”: *Homer Estate v. Eurocopter S.A.*, 2003 BCCA 229 at para. 4. It is to be avoided where it is reasonable to do so: *House of Sga’nisim* at para. 30.

[54] Where failure to comply with the Rules or failure to comply with the terms of a court order is established, the party at fault bears the onus of proving a lawful excuse for the non-compliance or non-observance: *Balaj v. Xiaogang*, 2012 BCSC 231 at para. 36 [*Balaj*]; *Eisele v. B.A. Blacktop Ltd. et al*, 2004 BCSC 521 at para. 15.

[55] In this context, a “lawful excuse” is “one which, in the discretion of the judge acting judicially, is worthy of acceptance”: *United Furniture Warehouse LP v. 551148 B.C. Ltd.*, 2007 BCSC 1252 at para. 24.

[56] Because an action may be struck when the lack of production has been occasioned by negligence, the degree of negligence required should be more than moderate on a scale ranging from mere negligence to gross negligence.

[57] Fundamental failures, such as failure to make appropriate disclosure of documents or records, must be treated as a serious default.

[58] A dismissal order will not usually be granted on a first application for relief arising from procedural delay, even intentional delay. Injustice might result from such a course of action.

[59] A dismissal order will not usually be granted until the plaintiff has been warned that result will follow upon further delay or obstruction.

[60] Lesser sanctions ought to be considered where any are available and appropriate.

[61] A self-represented litigant cannot be held to the same standards as a professional lawyer in terms of compliance with court procedures and rules. That said, a litigant who chooses to represent him- or herself cannot ignore his or her responsibilities with impunity.

[62] A persistent pattern of delay on the part of the plaintiff, as well as a persistent failure to comply with the Rules of Court and court

orders, may result in a dismissal order. Defaults must be seen in context. The plaintiff's conduct of the claim from its inception does have a bearing on the seriousness of the default before the court.

[63] When persistent conduct prevents the litigation from progressing at all, and when trial dates are lost through deliberate defaults, the failures may have an irreparable negative effect on the just determination of a case. Failing to comply with an order in a manner that causes an adjournment of trial is seriously prejudicial to the defendants.

[64] Refusal to comply with an order for reasons raised before the court and rejected amounts to an overt and deliberate flouting of the court order: *Balaj*; *House of Sga'nisim*; *Dhillon v. Pannu*, 2008 BCCA 514; *Kemp v. Dickson*, 2006 BCSC 288.

[104] In *Breberin*, Justice Willcock acknowledged the importance of securing a merits-based determination wherever possible. However, he stated, where a party has frustrated the proper conduct of litigation, at some point a just and efficient outcome on the merits of a claim may be unattainable:

[65] The desire to address claims on their merits is the preeminent objective of the courts. The Rules are written with a view toward achieving that objective in a just and efficient manner. At some point non-compliance with the Rules frustrates the pursuit of a just outcome. Even in cases where a defendant has admitted liability to a plaintiff, it is just to dismiss the plaintiff's claim if it is not being diligently and fairly pursued. The civil justice system is founded upon the assumption that parties will respect court orders, will comply with the Rules and will work together to resolve the claim or bring it to trial for resolution. A just and efficient outcome will not be obtained if one party frustrates its operation.

[105] The ultimate question on a Rule 22-7(5) application is whether the order sought serves the interests of justice. The order granted must be proportionate and the court must consider whether a lesser remedy will cure the default(s) and inspire confidence in future compliance: *House of Sga'nisim* at para. 26; *Schwarzinger v. Bramwell*, 2011 BCSC 304 at paras. 107, 118, 123. In assessing the overall interests of justice, the court must also consider and weigh the relative prejudice caused to the parties if an order dismissing a claim or striking a response to civil claim is granted or denied: *Canreal Management Corporation v. Mercedes-Benz Canada Inc.*, 2010 BCSC 642 at para. 35.

Analysis

[33] I begin by noting that I do not see any practical utility in imposing a temporary stay in these circumstances. I read Registrar Gaily's various comments as reflecting a decision on her part that there is no benefit to scheduling the actual assessment of costs until the document production issues have been resolved. Moreover, she has

concluded that it is not appropriate to require Mr. Nouhi to finalize his list of objections until document production is complete. These are both matters that are within the discretion and expertise of the Registrar, and I see it as appropriate to leave with Registrar Gaily the question of when the matter is ready for scheduling of a hearing. There is no benefit to imposing an additional order that would arguably necessitate an extra application to a judge to lift a temporary stay as a hurdle to moving forward with the costs assessment.

[34] I will make one further preliminary comment. In *De Angelis*, Associate Judge Robertson (sitting as a registrar) grappled with the varying authorities that balance the importance of ensuring a fair hearing on a special costs assessment with the protection of privilege. She drew conclusions as to the state of the law and made orders. Registrar Gaily appears to have adopted the approach of Associate Judge Robertson. That is of course appropriate given the application of principles of *stare decisis*.

[35] I am advised that Associate Judge Robertson's decision is under appeal. Nothing I say in this judgment should be taken as commenting on the merits of Associate Judge Robertson's conclusions in *De Angelis*. If the appeal of her decision proceeds, then the merits of her decision will be considered by one of my colleagues. Registrar Gaily's orders in this matter have not been appealed, and I have previously expressed the view that those orders should not be subject to collateral attack.

[36] That said, Registrar Gaily has acknowledged that it may be appropriate to consider the need to produce some of the privileged documents on a case-by-case basis, provided that an appropriate evidentiary basis is provided for that consideration. The fundamental difficulty in this case is that Dr. Pourtaghi's production to date appears to reflect repeated claims of a blanket privilege, asserted in a manner that defies review by the court.

[37] Dr. Pourtaghi has filed three affidavits (#22, #23 and #24) with respect to the present application. There is some repetition as between them; however, generally

speaking, they address the development of the various document production that Dr. Pourtaghi has made. As I understand her evidence, the USB of documents produced in January 2024, which Dr. Pourtaghi describes as “Schedule A”, was prepared by her former counsel and is primarily if not exclusively non-privileged documents.

[38] Dr. Pourtaghi’s evidence with respect to the list of 13,824 documents produced in August 2025, as to which all documents were “coded” as either privileged or irrelevant, indicates (Affidavit #22, paras. 29-43) that Schedule B was prepared by Dr. Pourtaghi herself without the assistance of counsel, but with technical assistance from Triage Data Solutions. She also makes clear (Affidavit #22, paras. 26-28) that Schedule B contains documents from Dr. Pourtaghi’s own files, but does not include the files of her former counsel. She asserts in her affidavit that she does not have “custody or control of the complete litigation files maintained by” former counsel. She deposes in Affidavit #24 that the “coding” of documents as either privileged or irrelevant was created for purposes of “an organizational index” (para. 47), and “was not intended to provide a final legal determination of privilege or relevance, but to assist in locating documents and organizing the record”.

[39] It seems clear to me that this approach is not what was contemplated by Registrar Gaily; the clerk’s notes from the pre-hearing conference on August 11, 2025, set out the order made as:

On or before September 15, 2025, the defendants, Dr. POURTAGHI and NAKI Enterprises are to serve the plaintiff, Mr. NOUHI with a list of documents (the correspondence and email correspondence referred to in Mr. DENNIS’ letter from April 2, 2024) disclosing which documents over which they are asserting: litigation privilege, solicitor-client privilege and relevance, and the basis for each claim.

[40] In her affidavit #24, Dr. Pourtaghi deposes that:

8. In light of the Registrar’s reasons, I am prepared to take steps, including consulting with former counsel if necessary, to address any further clarification required in a manner consistent with the Court’s directions.

[41] While that sounds promising, other paragraphs in the affidavit suggest that Dr. Pourtaghi still believes that (to quote para. 7) the materials she produced back in January 2024:

... were those necessary to support the assessment, and that any further production would be addressed in response to specific and particularized objections.

[42] That is not the process that has been directed by Registrar Gaily. Registrar Gaily has directed that the solicitor's files, which of necessity include privileged documents, must be disclosed in order for the special costs assessment to proceed. She has indicated a willingness to consider requests to except specific documents from that production – particularly those documents that relate to other litigation. But the exclusion of documents from production is, as I read the directions Registrar Gaily has given, to be the exception and to be based upon a sufficient evidentiary foundation.

[43] It appears to me that Dr. Pourtaghi received advice from her former counsel back in 2024, which advice was provided without full understanding of the orders that had already been made. Registrar Gaily has made her orders, and Dr. Pourtaghi needs to ensure that she complies with those orders if she wishes to continue to advance her claim for special costs. Dr. Pourtaghi needs to understand that she cannot require Registrar Gaily to start an assessment hearing without having resolved the document production issues. She cannot impose a document production protocol on the court that is different from that mandated by Registrar Gaily. And she cannot advance a special costs claim of over \$300,000 in complex circumstances like this without allowing the claim to be challenged on a fair and informed basis. If she is unable or unwilling to do so, then she should be carefully considering Mr. Dennis' proposal that the costs of the discontinued claim be assessed as party-and-party costs.

[44] All of that said, I am not convinced that we are yet at a stage where the defendants' entitlement to special costs is to be lost by way of a permanent stay. In my view, Dr. Pourtaghi requires a further chance to provide the sort of disclosure

that is required in the circumstances. It is clear to me that Dr. Pourtaghi has been regrettably slow to depart from initial advice she received without full appreciation of the circumstances. However, while it by no means reflects compliance with Registrar Gaily's orders, I see the defendants' production of Schedule B as at the very least a partial step in the right direction. The defendants need to understand, however, that should there not be significant forward progress with respect to production, they are at risk of a further application similar to the present one.

Conclusion

[45] The application is dismissed. The matter should go back before Registrar Gaily for further directions.

[46] Although the defendants have been successful on this application, in my view their conduct is such that it is appropriate to order that each party bear their own costs.

[47] I intend to have my oral reasons for judgment transcribed. I will direct that a copy be provided to Registrar Gaily so that she is aware of my reasoning. The transcribed reasons will also facilitate the defendants obtaining legal advice with respect to their position, should they choose to do so.

[48] I hope there will be no need for further applications like this one. To the extent there is such a need, I am not seized.

[SUBMISSIONS AS TO COSTS]

[49] I would say that the non-compliance has been primarily at the registrar's stage, while the success on this application was the defendants'. In my view, balancing all those factors, what had occurred to me originally as the appropriate order is still what I view as the appropriate order – that the parties should bear their own costs. The defendants' have been successful here, but I am going to deprive

them of the costs they would ordinarily be entitled to because of the underlying circumstances.

“Veenstra J.”