

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Phaneuf v. 0896459 B.C. Ltd.*,  
2026 BCSC 822

Date: 20260505  
Docket: S215588  
Registry: Vancouver

Between:

**Norman Phaneuf and Bradley Phaneuf**

Plaintiffs

And

**0896459 B.C. Ltd., Fremont Developments Ltd. and Vern Phaneuf**

Defendants

And

**BPYA 1286 Holdings Ltd., WCIL Investments Ltd., Irene Phaneuf, and  
Terry Phaneuf**

Defendants by Counterclaim

Before: The Honourable Justice Basran

## **Reasons for Judgment Re Costs**

Counsel for Norman Phaneuf, Bradley Phaneuf,  
BPYA 1286 Holdings Ltd., WCIL Investments  
Ltd., Irene Phaneuf, and Terry Phaneuf:

T.M. Cohen, K.C.  
C.R. Richards

Counsel for Vern Phaneuf:

R.W. Cooper, K.C.  
S. Ibrahim

No other appearances

Place and Date of Hearing:

Vancouver, B.C.  
December 12, 2025

Place and Date of Judgment:

Vancouver, B.C.  
May 5, 2026

**Table of Contents**

**INTRODUCTION ..... 3**

**FINDINGS OF FACT FROM TRIAL ..... 3**

    Litigation History ..... 9

**IS VERN LIABLE TO PAY SPECIAL COSTS? ..... 9**

    Legal Principles ..... 9

    Discussion ..... 12

**ARE NORMAN AND BRADLEY ENTITLED TO INDEMNIFICATION FOR THEIR COSTS? ..... 13**

**CONCLUSION..... 14**

**Introduction**

[1] After succeeding at trial, the plaintiffs, Norman Phaneuf ("Norman") and Bradley Phaneuf ("Bradley"), seek special costs against the defendant, Vern Phaneuf ("Vern"), to be assessed by the Registrar of the court.

[2] On August 7, 2025, the Court issued reasons for judgment in the underlying action indexed as *Phaneuf v. 0896459 B.C. Ltd.*, 2025 BCSC 1509 (the "Reasons"). A central finding in the Reasons was that this matter should have "been resolved long ago via a straightforward rectification by consent": Reasons at para. 7. Instead, what followed was over four years of entirely unnecessary, protracted, and expensive litigation.

[3] Norman and Bradley principally seek an order of special costs to denounce and deter Vern's litigation conduct. Alternatively, they seek an order for increased costs. They also seek an order for indemnification pursuant to the BC *Business Corporations Act*, S.B.C. 2002, c. 57 [BCA] and the articles of incorporation of 0896459 B.C. Ltd. ("089") and Fremont Developments Ltd. ("Fremont Developments") (together, the "Companies").

[4] Vern asserts that costs should be awarded at Scale B and alternatively, increased costs may be awarded. He denies that his conduct warrants an order of special costs. He acknowledges that the findings in the Reasons are of a kind that could support an award of special costs but they are not necessarily sufficient to do so. Vern denies that his conduct merits an award of special costs.

[5] If special costs are awarded, Vern submits that those costs should be fixed or awarded as a lump sum. He further asserts that a further order of indemnification is premature.

**Findings of Fact From Trial**

[6] By way of background, the Court made the following findings of fact, relevant to this application for special costs:

[3] Norman and Bradley brought this action to rectify an obvious, corporate, and mutual mistake in the articles of incorporation of two companies, 0896459 B.C. Ltd. (“089”) and Fremont Developments Ltd. (“Fremont Developments”) (together, “the Companies”). Vern resists this rectification.

[4] Each of the Companies respectively owns and operates an A&W franchise. These franchises were established and are run by Norman and Bradley. At the establishment of the Companies, Norman and Bradley decided that each of them would retain a 40% interest in the Companies in the form of Class A shares, and would provide each of their two brothers, Vern and Terry, with a 10% interest in the form of Class B shares.

[5] The articles, which were drafted by Vern, mistakenly refer to the Companies’ Class A shares as “non-participating”, meaning that Norman and Bradley, as holders of these shares, are not entitled to the payment of dividends or to share in the proceeds of the distribution of assets if the Companies were liquidated, dissolved, or wound up. The Companies’ Class B shares are identified as “participating”.

[6] The consequence of this error, if allowed to stand, is that Vern and Terry would be entitled to receive 100% of the profit which was created by Norman’s and Bradley’s successful entrepreneurial efforts.

[7] This matter should have been resolved long ago via a straightforward rectification by consent. Instead, Vern has tried to leverage a simple and obvious mistake in the articles of the Companies both to obtain an entirely unearned and undeserved share of the hard-earned successes of Norman and Bradley, and to litigate longstanding grievances against Norman, Bradley, their mother, Irene, and other family members.

[8] Based on both statutory and equitable grounds, I am entirely satisfied that the Companies’ articles of incorporation ought to be rectified to recognize that the Class A shares are participating and, consequently, that Norman, Bradley, Vern, and Terry, respectively hold a 40%, 40%, 10%, and 10% interest in the participating share equity of the Companies.

[9] This finding is largely based on my acceptance of the evidence provided by Norman, Bradley, and their sister, Elaine, coupled with my outright rejection of Vern’s evidence. As described in detail below, my findings are also consistent with both documentary records and commercial common sense.

[...]

[19] In 2010, A&W offered Norman and Bradley an opportunity to enter into a multi-site development agreement (“MSDA”), pursuant to which up to three restaurants could be opened in a specific geographical area. Norman and Bradley offered both Vern and Terry a 10% interest in the MSDA, with the understanding that Norman and Bradley would each retain a 40% interest in this franchise expansion opportunity.

[20] Norman and Bradley essentially made the offers of 10% as gifts and in recognition of past services as Vern had provided accounting and other

business services to the A&W franchises and Terry initially loaned Norman some of the funds to open the East Maple Ridge A&W in 1987.

[21] On November 28, 2010, Vern incorporated 089 online, while at Norman’s house. The intention was for 089 to be the company which held the MSDA. Norman and Bradley were both present when Vern incorporated 089. The initial directors of 089 were Norman, Bradley, and Vern. There were five share classes established under 089’s Authorized Share Structure. The initial intention was for Norman, Bradley, and Vern to each hold Class A shares, and for Terry to hold Class B shares.

[22] On or about December 17, 2010, A&W sent Norman and Bradley a draft of the MSDA that would govern the prospective franchises. The draft MSDA reflected the share structure set out above. It also stipulated that since Norman, Bradley, and Vern were the principals of 089, they were required, among other things, to personally guarantee the performance of all present and future obligations of 089, and its principals, by signing a standard Guarantee, Indemnity, and Personal Assurances Agreement (“PAA”).

[23] After receiving the draft MSDA, Vern advised Norman and Bradley that he would not provide a personal guarantee. He also engaged Boughton Law Corporation (“Boughton”).

[24] In March 2011, Vern requested that the draft MSDA be amended to remove him as a principal, and to remove the need for him to provide a personal guarantee. He also requested that his shareholdings in 089 be changed from 100 Class A shares to 100 Class B shares. He also advised that he would resign as a director of 089 to avoid liability.

[...]

[27] On April 1, 2011, Bradley signed a number of corporate documents at Boughton’s office.

[28] Around this time, 089’s articles were amended, and Vern’s shares changed from Class A shares to Class B shares. The 089 articles describe the Class A shares as being “non-participating”, this means, as noted, that these shares are not entitled to any payment of dividends or to share in proceeds of a distribution of the assets and property in the event of a liquidation, dissolution, or winding up of the Companies. Conversely, the Class B shares were described as being “participating”.

[29] Vern prepared the 089 articles.

[30] At trial, Vern initially resisted the assertion that he incorporated 089 and set up its share structure. In the course of the litigation, he produced a copy of the index to the 089 articles as an unsigned, single-page document. When asked about the document by way of outstanding requests, Vern said he did not recall where it came from. Metadata for the document shows that it was created on March 29, 2011, at 1:20 p.m., approximately 45 minutes after a paralegal at Boughton requested it. The metadata further reveals that Vern’s assistant worked on this document.

[31] The Boughton paralegal also asked for a signed copy of 089’s Incorporation Agreement. The Incorporation Agreement, which was ultimately provided to Boughton, had handwriting on it indicating the company name,

date, name of incorporator, and number of shares. On cross-examination, Vern admitted that this appeared to be his handwriting. I have no difficulty concluding that Vern created the 089 articles and the associated share structure.

[32] I accept Norman's evidence that he did not understand or know what the terms "participating" or "non-participating" meant. At this time, he relied on Vern to deal with the formalities of incorporating and filing for 089.

[...]

[36] On April 17, 2012, Vern instructed Boughton to incorporate a new company that would "mirror" 089. Accordingly, on May 15, 2012, Boughton incorporated Fremont Developments with the same share structure and nearly identical articles as 089.

[...]

[39] The parties' relationship began to deteriorate around 2014 or 2015. Their initial disputes arose around the same time that Irene decided to sell her shares in West Coast Investments Ltd. to Norman, Bradley, and Terry. At this time, West Coast Investments Ltd. owned the East Maple Ridge A&W and the Haney Place Mall A&W.

[...]

[41] While Vern was initially content to receive a 10% interest in the Companies, 089 and Fremont Developments, by 2018, after he was excluded from Irene's sale of her shares to Norman, Bradley and Terry, he became jealous and bitter. He repeatedly sought a larger proportion of what he perceived to be the "family's business". Tellingly, Vern did not consider his own venture as an investment advisor to be part of the "family businesses".

[42] During a dispute between the brothers in 2018, Vern pleaded that after 37 years, he was left with only "two 10 percents" of the family businesses. This refers to his 10% equity interest in 089 and Fremont Developments.

[43] In September 2017, 089 and Fremont Developments issued a profit distribution to the brothers in the form of management fees. Norman and Bradley were each paid out \$31,500, while Vern and Terry each received \$7,875. This reflects the brothers' 40%, 40%, 10%, and 10% ownership and equity interest in the Companies.

[...]

[45] In 2020, Elaine, who by then was acting as the Companies' sole accountant, recommended that the brothers begin issuing profits as dividends rather than as management fees. Accordingly, she prepared Shareholder Memorandums which listed the proposed profit distribution to the brothers, based on their 40%, 40%, 10%, and 10% share split.

[46] Vern objected to the percentages at the time because he wanted a higher percentage. For this reason, he signed the Shareholder Memorandums "under protest". However, at no time did he indicate, advise, or suggest that Norman and Bradley were not entitled to the receipt of profits

because of the “non-participating” status of the Class A shares. Vern was paid his dividends in July 2020; the dividends were paid to Pacific Ocean.

[...]

[47] In or around August 2020, Elaine, while taking steps to implement the profit distribution to Norman, Bradley, and Terry, discovered that the Class A shares were described as “non-participating” in the articles. She was on holiday in Saskatchewan at the time and therefore contacted Norman to advise him of her discovery and to tell him that she would need to look into it further once she returned from Saskatchewan and had access to additional documents. At the time of the phone call, Elaine thought that perhaps another share class had been inadvertently issued.

[...]

[49] At some point between December 12 and 18, 2020, Elaine spoke with Vern about this issue. She testified that when she told Vern that the Class A shares were non-participating, he was “surprised”. In his direct evidence, Vern initially denied that there had been any phone call between him and Elaine. He then said that there had been a phone call and that he had made a sarcastic statement in response to this information.

[50] In December 2020, having determined that the Class A shares were not entitled to the receipt of dividends, and that no further share class had been issued to Norman or Bradley, Norman wrote to his brothers to advise that dividends could not be paid to Class A shareholders, because their shares were non-participating.

[51] On December 18, 2020, for the first time, Vern took the position that only he and Terry held participating shares. On that day, Vern’s lawyer sent a letter demanding wide-ranging disclosure of the Companies’ documents and requesting a buyout. This was the first time Vern had sent a letter from his lawyer to his brothers.

[52] Elaine was shocked by Vern taking the position that he and Terry held all of the participating shares in the Companies. In her testimony, she confirmed that, to her knowledge, Norman and Bradley did not know what participating versus non-participating shares meant.

[7] In short, the Court:

- a) entirely rejected Vern’s evidence and accepted that of his siblings, Norman, Bradley, and their sister, Elaine;
- b) found that Vern’s evidence regarding the online incorporation of 089 was deliberately misleading; and
- c) concluded that Vern sought a significant financial benefit, at the expense of his siblings, that he had no right to.

[8] In describing the credibility of Vern’s testimony at trial, the Court concluded that:

- a) Vern lied repeatedly and unrelentingly during his testimony (para. 73);
- b) Vern’s evidence about leaving Saskatoon to move to BC shifted and was inconsistent (para. 75);
- c) Vern was unable to reconcile his so-called “equal ownership agreement” with the facts in evidence before the Court because it was “a fiction unsupported by any documents or logic” (para. 80);
- d) Vern’s assertion that he intentionally designed the share structure of 089 so that it would function as a *de facto* shareholders agreement ought to be completely rejected because it was fabricated and he advanced this narrative to take advantage of a mistake in an attempt to benefit himself (paras. 81–82);
- e) Vern’s assertion that he knew that the Class A shares of the Companies were non-participating ought to be rejected (para. 83);
- f) Vern’s evidence on the incorporation of the Companies was inconsistent and there was no rational explanation for this inconsistency (para. 86);
- g) The foregoing were only a few of the lies and inconsistencies advanced by Vern and virtually every element of his evidence lacked truth, clarity, and logic (para. 87); and
- h) Vern’s evidence ought to be rejected because it:
  - i. strained credulity and invoked “an absurd and commercially unreasonable proposition” (para. 88); and
  - ii. was “irrational, self-interested, and a seeming product of his imagination” and “nonsensical” (paras. 121 and 128).

### **Litigation History**

[9] On June 10, 2021, Norman and Bradley filed a petition against 089 and Fremont Developments, requesting that the court rectify the share rights and restrictions in the Companies' articles of incorporation to reflect the Class A shares as participating. Vern was not named in the original petition, but he was served and he objected to the relief sought, requesting that the matter be referred to the trial list.

[10] On September 29, 2022, Justice Jackson determined that the petition ought to be converted to an action and referred the matter to the trial list.

[11] On May 16, 2023, Norman and Bradley filed a notice of trial, setting the action down for a 13-day trial commencing March 25, 2024.

[12] On September 22, 2023, Vern filed a late response to civil claim and a counterclaim, naming Irene (his mother), Terry (his older brother), and others as defendants by counterclaim. As a result of the late filed counterclaim, the trial date had to be adjourned and was rescheduled to proceed for 14 days commencing January 27, 2025.

[13] On July 25, 2024, Justice Douglas struck the counterclaim as insufficiently connected to the main action, finding that all discretionary factors weighed in favour of Norman and Bradley, and dismissed Vern's cross-applications.

[14] The trial commenced on January 27, 2025. Vern did not provide a list of documents until November 7, 2024, with amended lists of documents provided on January 28, January 30, and February 4, 2025. On two occasions, he failed to attend oral examinations for discovery.

### **Is Vern Liable to pay Special Costs?**

#### **Legal Principles**

[15] The parties largely agree on the relevant legal principles. I adopt the description of these principles as set out in Norman's and Bradley's written submissions with some references from the defendant's submissions.

[16] The Court has jurisdiction to award special costs under Rule 14-1(1) of the *Supreme Court Civil Rules*, as well as pursuant to its inherent jurisdiction to control its process: *Wong v. Wong*, 2024 BCSC 1786 at para. 5.

[17] The standard for awarding special costs is that the conduct in question must be reprehensible. This includes scandalous and outrageous conduct and other milder forms of misconduct deserving of reproof or rebuke: *SHH Holdings Limited v. Philip*, 2021 BCSC 1232 [*SHH Holdings*] at paras. 4–5.

[18] In addition to the more serious forms of reprehensible conduct, such as misleading or deceiving the court and giving false evidence under oath, special costs may also be awarded against an individual who:

- a) withheld admissions and denied facts;
- b) delayed pre-trial procedures;
- c) failed to attend an examination for discovery;
- d) conducted themselves in an unreasonable or high-handed manner;
- e) engaged in obfuscation;
- f) wasted court time by mischaracterizing the evidence or raising trivial issues;
- g) pursued a meritless claim with reckless disregard for the truth;
- h) made improper allegations of fraud, conspiracy, or breach of fiduciary duty;
- i) made the resolution of an issue far more difficult than it should have been;
- j) brought a proceeding for an improper motive;
- k) maintained unfounded allegations of fraud or dishonesty; and

- l) pursued claims frivolously or without foundation.

*SHH Holdings* at para. 10.

[19] Special costs are punitive and intended to encompass an element of deterrence aimed at discouraging reprehensible conduct. The focus of the inquiry is on the party's blameworthiness and intent: *SHH Holdings* at para. 6.

[20] This Court set out the following principles for awarding special costs in *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 [*Westsea Construction*]:

[73] I have undertaken a thorough review of the cases involving special costs. Having examined the authorities provided by both sides, it is apparent to me that the courts have been somewhat inconsistent in their determination of what amounts to reprehensible conduct and that those authorities must be reconciled. Based upon my review of the authorities, I have derived the following principles for awarding special costs:

- a) the court must exercise restraint in awarding special costs;
- b) the party seeking special costs must demonstrate exceptional circumstances to justify a special costs order;
- c) simply because the legal concept of "reprehensibility" captures different kinds of misconduct does not mean that all forms of misconduct are encompassed by this term;
- d) reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court's process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant;
- e) special costs can be ordered against parties and non-parties alike; and
- f) the successful litigant is entitled to costs in accordance with the general rule that costs follow the event. Special costs are not awarded to a successful party as a "bonus" or further compensation for that success.

[21] Special costs are justified if a person knowingly misleads the court or gives false evidence on matters in question. Evidence is "false" when it is knowingly untrue, not just erroneous: *Westsea Construction* at paras. 65–72; *Chudy v.*

*Merchant Law Group*, 2009 BCCA 93 at paras. 9–10; *Brown v. Lowe*, 2002 BCCA 7 at para. 149; *SHH Holdings* at para. 8.

[22] An order for special costs is warranted where a party gives:

- a) false evidence that has been contrived, concocted, or fabricated;
- b) with an intention to mislead;
- c) on an issue that is central to the matter before the court and which, if accepted, would drive the opposing party from the judgment seat.

*K.B. v. J.B.*, 2016 BCSC 1904 at para. 84, citing *Behan v. Park*, 2014 BCSC 1982 at para. 49.

[23] “The power to award special costs is exercised sparingly, and is limited to exceptional circumstances”: *Puppet Killer Productions Inc. v. IndustryWorks Studios Inc.*, 2024 BCCA 135 at para. 22, citing *Garcia v. Crestbrook Forest Industries Ltd.*, 1994 CanLII 2570 (B.C.C.A.), 9 B.C.L.R. (3d) 242 at para. 17.

### **Discussion**

[24] Based principally on my extensive findings of facts in the Reasons in respect of Vern’s lies, deceptions, and misconduct in seeking a financial benefit to which he was not entitled, I have no difficulty in concluding that Vern is liable to pay special costs. He falsified and fabricated evidence that was intended to mislead the Court and deprive his brothers of substantial profits from the businesses in which they had a majority of the voting shares and had worked tirelessly for over many years. Vern tried to leverage an obvious mistake in the articles of incorporation to obtain a significant interest in businesses that he had no right to.

[25] In furtherance of this scheme, Vern concocted evidence that spanned over four different decades in support of his dishonest claims. He stubbornly clung to these false, implausible narratives, and outright lies, over four years of this unnecessary litigation including to the end of the closing submissions.

[26] Particularly galling was his ongoing denial of any involvement in the incorporation of 089 despite evidence of metadata that revealed his assistant edited this document. Although Vern refused to agree that the handwriting on the document was his, he meekly conceded that “it appeared to be”.

[27] I agree with Norman’s and Bradley’s submission that Vern demonstrated a deliberate and conscious disregard for the truth and the integrity of the judicial process. This is clearly one of the exceptional circumstances in which Vern’s reprehensible conduct must be deterred and denounced by ordering special costs.

[28] Parenthetically, I do not agree with Norman’s and Bradley’s submission that Vern’s conduct was reprehensible by stalling pre-trial procedures with a view to obstructing and delaying the litigation process. I recognize that Vern’s late filing of the response to civil claim and ultimately unsuccessful counterclaim, and his late provision of lists and amended lists of documents, combined with his failure to attend oral discoveries on two occasions, must have been frustrating for Norman and Bradley. However, in my view, this conduct, viewed on its own, does not rise to the level of being reprehensible.

[29] I accept Norman’s and Bradley’s view that the special costs ought to be assessed by the Registrar. I have not been provided with any evidence to support an assessment of a lump sum or fixed costs. In my view, the calculation of special costs must be made with reference to the actual legal fees and disbursements and a determination that they were proper and reasonably necessary.

**Are Norman and Bradley Entitled to Indemnification for Their Costs?**

[30] Norman and Bradley seek court approval pursuant to s. 161 of the *BCA* and the Companies’ articles of incorporation for the Companies to repay them for any costs, above those ordered to be repaid to them by Vern. In the further alternative, they seek an order pursuant to s. 164 of the *BCA* for indemnification.

[31] I am not satisfied that a court order is required for the Companies to repay eligible expenses to Norman and Bradley. They have control of the Companies’

voting shares so they can ensure that the necessary and appropriate funds are paid to themselves. In any event, an indemnification order is premature and ought not to be granted on the basis that it might be required at a later date.

**Conclusion**

[32] Norman and Bradley are entitled to special costs based on their actual legal costs and disbursements, to be assessed by the Registrar of the court, including the costs of this application.

“Basran J.”