IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ming Sun Benevolent Society v. Philippine Women Centre of B.C.,* 2025 BCSC 1705

Date: 20250903
Docket: S136642
Registry: Vancouver

Between:

Ming Sun Benevolent Society

Plaintiff

And

Philippine Women Centre of B.C. and Wan Yao Chow and Double Happiness Holdings (2007) Ltd.

Defendants

Before: The Honourable Justice Hoffman

Reasons for Judgment on Costs

Counsel for the Plaintiff:	E.L. Hansen
Counsel for the Defendants:	A. Soliman
Written Submissions Received from the Plaintiff:	July 4 and 24, 2025
Written submissions Received from the Defendants:	July 21, 2025
Place and Date of Judgment:	Vancouver, B.C. September 3, 2025

2025 BCSC 1705 (CanLII)

Table of Contents

2025 BCSC 1705 (CanLII)

2025 BCSC 1705 (CanLII)

Overview

[1] The plaintiff was largely successful in its action for damages in negligence and nuisance which arose out of a building collapse. In reasons indexed as 2025 BCSC 1073, I found in favour of the plaintiff and awarded damages in the amount of $1,537,740.26 but reduced the award by 15% to account for the plaintiff's contributory negligence. I also dismissed the defendants' counterclaim.

[2] The trial occupied 26 days.

[3] At the conclusion of the trial, the parties sought to make submissions following the release of my reasons. I have received the written submissions of both parties, including reply submissions from the plaintiff.

[4] Both parties concede that, as the successful party, the plaintiff is entitled to an award of costs. However, the parties do not agree on the underlying basis for that costs award. At issue is whether the plaintiff is entitled to:

a) a single holistic award of costs against the defendants on a joint and several basis;

b) recover 100% of its costs despite the finding of contributory negligence;

c) costs on an increased scale beyond the default Scale B and/or increased costs under s. 2(5) of Appendix B of the *Supreme Court Civil Rules*; and

d) double costs for all litigation steps after July 31, 2024, on the basis of an offer to settle made on that date.

[5] For the reasons that follow, the plaintiff is entitled to recover costs for their claim and the counterclaim, having been the successful party on both. The defendants are jointly and severally liable for 85% of the plaintiff's costs which are to be assessed on Scale B. The plaintiff is entitled to increased costs pursuant to s. 2(5) of Appendix B in respect of the units relating to the conduct on the trial. Finally, the plaintiff is entitled to double costs after July 31, 2024.

Is a single holistic costs award appropriate?

Positions of the Parties

[6] The plaintiff submits that an award for costs that reflects its success both on the claim and counterclaim for which the defendants are joint and severally liable is appropriate in the circumstances of this case.

[7] Under Rule 14-1(9), the plaintiff submits that as the successful party, it is entitled to its costs unless the court otherwise orders. A "successful" party is one that establishes liability and obtains a remedy, or a defendant who obtains a dismissal: *Loft v. Nat*, 2014 BCCA 108 at para. 46. The plaintiff says that the onus is on the defendants to displace the presumption that costs go to the successful party: *Grassi v. WIC Radio Ltd.,* 2001 BCCA 376 at para. 24.

[8] The plaintiff also relies on the usual rule that unsuccessful parties in multi-party litigation who have acted jointly in bringing or defending an action are jointly and severally liable for costs: *Westsea Construction Ltd. v. Veale,* 2014 BCCA 217 at para. 20.

[9] The plaintiff submits that as it relates to liability, the claims by Double Happiness Holdings (2007) Ltd. ("Double Happiness") and Mr. Wan Yao Chow were parasitic on the claim of the Philippine Women Centre ("PWC"). Further, it submits that the mirror-image quality of the core issue of who was responsible for the wall collapse renders it impossible to disentangle what aspects of the proceedings on that issue pertained to the claim versus the counterclaim. This, they submit, is reflected in the Court's finding that its conclusion on liability for the wall collapse was dispositive of the counterclaim.

[10] The plaintiff acknowledges that different legal and factual issues were raised in the counterclaim with respect to both liability and damages but submits that the application of the usual rule would make the defendants joint and severally liable for the plaintiff's costs in any event.

2025 BCSC 1705 (CanLII)

2025 BCSC 1705 (CanLII)

[11] The plaintiff also submits that the Court can infer from the way in which the trial was conducted and the evidence that PWC has assigned the conduct of its defence to Mr. Chow that Double Happiness and/or Mr. Chow were the directing minds of both PWC's counterclaim and the defendants' counterclaim. In light of these circumstances, a single holistic award of costs for which the defendants are joint and severally liable is appropriate.

[12] The defendants submit that costs should be awarded separately for the claim and counterclaim, should be apportioned and awarded severally as against the three defendants.

[13] They rely on the usual rule that an action and a counterclaim should be treated separately for the purposes of costs: *Litt v. Gill*, 2016 BCCA 288 at para. 55. Typically, an action should be viewed as though it stood alone, and the counterclaim should only bear the amounts by which it increased the costs of the proceeding: *Trinh v. Chan*, 1998 CanLII 5526 (B.C.S.C.) at para. 5.

[14] The defendants dispute that the claim and the counterclaim were intertwined and say that the claims of each party with regard to damages were vastly different and entirely separate involving different and discrete expert reports. Further, they submit that the evidence with regard to liability is almost entirely associated with the original action and that the counterclaim was solely confined to dealing with the claims of damages.

Analysis

[15] The claim and the counterclaim in this case are similar in nature. In the claim the plaintiff alleges the negligence of PWC was the cause of the wall collapse and seeks to recover damages in respect of the losses it suffered as a result. In the counterclaim, the defendants allege that the wall collapse was caused by the negligence of the plaintiff and, in turn, seeks to recover the damages that they incurred as a result of the collapse. I agree with the characterization that these allegations mirror one another. I cannot accept the defendants' characterization that issues of liability were confined to the action. They are squarely raised in the

counterclaim. What causes them to mirror one another is that the same type of evidence was relied upon by the parties in both the claim and the counterclaim to determine liability.

[16] While each party suffered different losses and sought to establish those losses by filing different evidence, their losses flowed from the same event. The bulk of trial time was devoted to issues relating to the cause of the wall collapse, and, as it related to liability, counsel did not clearly delineate what portions of evidence related to the claim or the counterclaim. Comparatively less time was spent on issues relating to damages. While it is the case that the plaintiff only claimed damages as against PWC, Double Happiness and Mr. Chow were added as defendants shortly before trial, and they were the directing mind of the litigation pursuant to the PWC's assignment of the conduct of the litigation to Mr. Chow.

[17] The court has the discretion to consider a claim and counterclaim together when they are intertwined: *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.,* 2017 BCCA 346 at para. 96; *British Columbia v. Canadian Forest Products Ltd.,* 2018 BCCA 124 at para. 198; and *Belpacific Excavating & Shoring Limited Partnership v. Crown and Mountain Creations Ltd.,* 2022 BCSC 412 at paras. 10–11.

[18] In any event, the plaintiff was successful in its action and was also successful in defending the counterclaim. This is distinguishable from *Litt*, relied upon by the defendants, where success was divided: the plaintiff was successful in its claim and the defendant made out its counterclaim. In that case, the court held that the claim and counterclaim should be dealt with separately to allow for costs to be set off to account for each party's respective success. Here, the defendants were not successful on almost all of the issues at trial.

[19] The defendants have advanced no valid justification to depart from the usual rule that unsuccessful parties in multi-party litigation are jointly and severally liable for costs.

2025 BCSC 1705 (CanLII)

[20] Accordingly, I find that the plaintiff is entitled to its costs for both the claim and the counterclaim and that the defendants are jointly and severally liable to pay these costs.

Should costs be reduced for contributory negligence?

Positions of the Parties

[21] The plaintiff asks this Court to exercise its discretion to depart from the usual apportionment of costs in proportion to liability provided for in s. 3(1) of the *Negligence Act,* R.S.B.C. 1996, c. 333, and argues that many of the considerations identified by the courts for the exercise of this discretion weigh in favour of departing from the usual rules. With reference to the list of factors set out in *Moses v. Kim,* 2007 BCSC 1820 at para. 13, varied 2009 BCCA 82 [*Moses BCCA*], the plaintiff submits that a departure is appropriate in this case because:

- Ming Sun suffered serious injuries in that its existence was tied to its building and without it, and the rental income it generated, Ming Sun could not perform its functions to provide support to the community;
- Ming Sun faced difficulties in establishing liability given the paucity of evidence due to the removal of the PWC building and difficulties in accessing other records;
- Ming Sun was forced to go to trial not only to recover its damages and defend against the allegation that it was 99% at contributorily negligence but also to defend against a mirror-image counterclaim;
- reducing Ming Sun’s costs by 15% would be out of proportion to the 2.5 days of trial time devoted to the evidence relied upon by the court to make the finding of contributory negligence (testimony of Xi Yuan Huang and Kent Wong);
- the case took over 11 years to get to trial which occupied 26 days; and

2025 BCSC 1705 (CanLII)

- Ming Sun succeeded in virtually every aspect of the case.

[22] The defendants submit that an apportionment of costs will not work an injustice and that the plaintiff has not met its burden to justify a departure from the usual rule that costs should reflect the 15% reduction for the plaintiff's contributory negligence.

Analysis

[23] The Court of Appeal in *Forsyth v. Sikorsky Aircraft Corp.,* 2002 BCCA 231, identified a number of factors that guide the court's exercise of discretion in this regard. The principal factor is whether following the unusual rule will work an injustice: *Moses BCCA* at para. 70. The circumstances in which the discretion is exercised do not need to be exceptional. Whether a departure is appropriate is dependent on the facts of each case: *Dhaliwal v. Kakkar*, 2024 BCSC 2182, citing *Ekman v. Cook*, 2015 BCSC 1863 at para. 27.

[24] I am not persuaded that the seriousness of Ming Sun's injuries in this case justify a departure from the usual rule because the defendants also suffered serious injuries: each party ultimately lost the use of their respective buildings.

[25] While there is no doubt that the loss of both buildings made the liability issue more complicated, this difficulty was not confined to the plaintiff. The defendants were equally hampered by the loss of physical evidence that could have assisted experts retained by both sides in arriving at their opinions. As such, this factor does not weigh in favour of departing from the usual rule.

[26] This case turned on the expert evidence regarding the cause of the collapse, and Ming Sun and the defendants each advanced a theory of liability that was supported by the expert evidence they tendered. This case is distinguishable from a situation where a plaintiff is forced to go to trial to recover damages in circumstances where the liability of the defendant could be easily established. Here, careful consideration of the respective expert opinions and their evidence at trial was required to make findings as to the cause of the collapse. Nor do I accept the

2025 BCSC 1705 (CanLII)

submission that the evidence relating to the finding of contributory negligence occupied only 2.5 days of trial. That conclusion was based on not only the evidence of the Ming Sun directors who testified but also the opinions of the experts relating to the repairs to the Ming Sun building that were carried out in 1992 or 1993, as well as the documents relating to those repairs. These factors do not provide a sufficient justification to deprive the defendants of the benefit of s. 3(1) of the *Negligence Act.*

[27] Finally, I am not persuaded that the lengthy delay in bringing this matter to trial is a factor supporting the plaintiff's position that they are entitled to 100% of their costs. In her submissions, plaintiff's counsel candidly admits that Ming Sun bears some responsibility for delay in the period leading up to 2019. Accordingly, the delay cannot be entirely attributed to the defendants.

[28] Accordingly, I find that the defendants are entitled to a 15% reduction of the costs payable in the action to account for the finding of contributory negligence in accordance with s. 3(1) of the *Negligence Act.* The plaintiff is entitled to 100% of its costs arising from its successful defence of the counterclaim.

Is the plaintiff entitled to costs on Scale C or increased costs?

Positions of the Parties

[29] The plaintiff seeks costs fixed at Scale C on the basis that this was a matter of more than ordinary difficulty. Using the factors enumerated in *Davies v. Canada Shineray Suppliers Group Inc*., 2017 BCSC 1729 at para. 33, the plaintiff submits that the following litigation steps takes this matter beyond ordinary difficulty:

a) Document production totalling 9,400 pages;

b) The need for Ming Sun to issue multiple demands for documents in 2020 and 2022 and lack of timely responses;

c) Four days of examination for discoveries;

d) Six applications that were filed but resolved without a full hearing;

2025 BCSC 1705 (CanLII)

e) Three trial management conferences;

f) The defendants' demands for documents shortly before the September trial date;

g) Numerous reports from a total of seven experts were exchanged in December 2022, and June and August 2024, and supplemental or corrected reports were delivered by the defendants in the weeks before and during the trial;

h) 26 days of trial;

i) The need to have submissions on costs.

[30] In addition, the plaintiff relies on the procedural history of the action leading up to Ming Sun's successful attempt to set aside the default judgment obtained by Ming Sun which was upheld on appeal: 2020 BCSC 423, aff'd 2021 BCCA 240.

[31] The plaintiff also seeks increased costs pursuant to Appendix B, s. 2(5), on the basis that the defendants conducted litigation by ambush in the lead up to and during the trial. The plaintiff submits that, in the face of such conduct, it took a pragmatic approach to resolve matters by consent in an effort to keep the trial on track. The plaintiff further submits that is efforts to resolve matters by consent should not detract from the unnecessary and unreasonable issues raised by the defendants that required additional effort to resolve during the trial, often at the last minute. In this context, the plaintiff says it should not be penalized for its reasonable efforts to resolve the issues created by the defendants' unreasonable conduct.

[32] The defendants submit that while the trial was lengthy, this factor alone does not justify a determination that this was a matter of more than ordinary difficulty. Further, they submit that there were no novel issues of law that the court was required to grapple with. The defendants acknowledge that the factual and legal issues at play were not simple and straightforward; however, they submit that they were not so complex to warrant a higher than usual scale of costs.

2025 BCSC 1705 (CanLII)

[33] With respect to the claim for increased costs, the defendants say their conduct falls considerably short of trial by ambush. They say that the majority of conduct complained of were matters that were resolved by consent and did not impact the progress of the trial.

Analysis

[34] In fixing an award of costs, the court may consider whether "a difficult issue of law, fact or construction is involved": *Supreme Court Civil Rules*, Appendix B, s. 2(3)(a).

Length of Trial

[35] While the length of trial can be an indication of the complexity of the matters resolved, I agree with the comments of now Chief Justice Skolrood in *Acciona Infrastructure Canada Inc. v. Allianz Global Risks US Insurance Compan*y, 2014 BCSC 1907 at para. 21, that this factor alone does not justify a finding that a matter is more than ordinary difficulty. That the trial occupied 26 days is a factor that weighs in favour of such a finding but is not determinative.

Complexity of Issues

[36] While this matter was far from simple, in my view, the legal issues before the court involved well-established principles of negligence, nuisance and trespass. The application of these principles to the facts in this case did not give rise to any novel legal questions.

[37] What actually caused the collapse from a factual perspective was a more complicated issue to resolve. However, again while far from simple, only two engineers were called to give expert opinions on this question. Given that this Court sees many matters where expert opinions from multiple disciplines are required to resolve complicated causation issues, the causation issue in this case was of ordinary difficulty. Further, the damages sought consisted of relatively straightforward claims for loss of income, property losses, incidental expenses, and business interruption losses.

2025 BCSC 1705 (CanLII)

Document Production and Examinations for Discovery

[38] The four days of discovery and less than 10,000 pages of document discovery, in my view, does not weigh in favour of a finding that this matter was of more than ordinary difficulty.

Pre-trial Applications, Trial Management Conferences, and Costs Submissions

[39] Likewise, six applications filed but not heard or resolved by consent and three trial management conferences does not place this matter beyond ordinary difficulty. Nor does the need for the parties to make submissions on costs weigh in favour of Scale C costs. This level of pre- and post-trial steps is, in my view, consistent with a matter of ordinary difficulty.

[40] The plaintiff also points to the fact that interpreters were required in the trial. While this likely lengthened the trial due to the extra time needed to provide interpretation, I cannot conclude that this factor renders the case of more than ordinary difficulty. The need for interpreters is a function of the need of the participants in the trial rather than the complexity of the issues.

[41] Accordingly, a majority of the factors support the conclusion that this was a matter of ordinary difficulty, costs are to be assessed on Scale B.

[42] The plaintiff also seeks an order pursuant to s. 2(5) of Appendix B which provides as follows:

> (5) If, after it fixes the scale of costs applicable to a proceeding under subsection (1) or (4), the court finds that, as a result of unusual circumstances, an award of costs on that scale would be grossly inadequate or unjust, the court may order that the value for each unit allowed for that proceeding, or for any step in that proceeding, be 1.5 times the value that would otherwise apply to a unit in that scale under section 3 (1).

[43] In *Shen v. West Continent Development Inc. (BC0844848),* 2022 BCSC 462, Justice Maisonville helpfully sets out the principles to be applied in determining when an order under s. 2(5) should be made:

2025 BCSC 1705 (CanLII)

[29] Costs under s. 2(5) are known as uplift costs. To award uplift costs, there must first be unusual circumstances and, second, the unusual circumstances must result in the award of costs being grossly inadequate or unjust: *Chandler v. Rasmussen*, 2013 BCSC 1461 at para. 39.

[30] Uplift costs are meant to indemnify the successful party where there are unusual circumstances, not punish the unsuccessful party: *Sheppard v. Vancouver Coastal Health Authority*, 2021 BCSC 539 at para. 56.

[31] Section 2(5) does not prescribe what constitutes "unusual circumstances" or an award that is "unjust or grossly inadequate". This inquiry is highly fact-specific: *Herbison v. Canada (Attorney General)*, 2014 BCCA 461 at para. 42.

[32] Misconduct may amount to an "unusual circumstance" justifying an award of uplift costs. However, the party asserting misconduct must show there was misconduct deserving of some form of rebuke, including disobedience of court processes, incivility, frivolity, actions taken in bad faith, and impertinence: *J.P. v. British Columbia (Children and Family Development)*, 2018 BCCA 325 at para. 57.

[33] The Court of Appeal in *Berthin v. British Columbia (Registrar of Land Titles)*, 2017 BCCA 181 at para. 41 set out this statement from *ICBC v. Patko*, 2009 BCSC 578 regarding the requirement for misconduct in awarding uplift costs:

> [18] It is also clear that before a party's conduct in the litigation process can constitute "unusual circumstances" within the meaning of s. 2(4.1), it must be conduct that is deserving of some form of rebuke: *Gurney v. Gurney*, 2007 BCSC 1745 (uplift not ordered); *Bajwa v. Veterinary Medical Association*, 2008 BCSC 905 (multiplicity of proceedings, failure to provide particulars, failure to abide by document disclosure obligations, general non-compliance with the Rules), *D. v. D.,* 2008 BCSC 1260 (wife's evidence unnecessarily lengthy, uninformative and irrelevant, needlessly and significantly prolonging the trial).

[34] Similarly, in *380876 British Columbia Ltd. v. Ron Perrick Law Corp*., 2009 BCSC 1209 at para. 37, Justice Allan noted that the following have been cited as factors that may attract an award of uplift costs:

- misconduct by the unsuccessful party;
- the serious nature of the allegations;
- the complexity or difficulty of the issues in the litigation; and
- the importance of the litigation to the parties or to the development of the law generally.

See also *J.P*. at para. 58.

[35] Other factors that could constitute "unusual circumstances" include misbehaviour by a party that added to the expense incurred by the party claiming costs, and the degree of disparity between costs calculated at Scale B and actual legal fees incurred: *Neil v. Martin*, 2022 BCSC 134 at para. 36.

2025 BCSC 1705 (CanLII)

> [36] It is not necessary to provide evidence of the actual legal fees incurred in every case: *Chandler* at para. 60.
>
> [37] In *Kemp v. Vancouver Coastal Health Authority Ltd*., 2016 BCSC 1541 at para. 28, partially rev'd on other grounds 2017 BCCA 229, more specific examples were added, including:
>
> - the evidence at trial was unnecessarily lengthy, uninformative and irrelevant, which unnecessarily prolonged the trial by a significant amount;
> - the issues as presented needlessly complicated the matter and the innocent party spent a significant amount of time responding to the other party's misconduct; and
> - a party made unfounded and unsupported allegations of fraud.

2025 BCSC 1705 (CanLII)

[44] The plaintiff submits that the defendants' misconduct just prior to and at trial, characterized as trial by ambush, justifies an award of increased costs. This conduct is alleged to include:

a) the addition of Double Happiness as a defendant just a few months before trial and after the expiry of a limitation period which forced the plaintiff to obtain responsive expert reports on an expedited basis before trial;

b) a substantial last minute amendment to the defendants' pleadings;

c) late delivery of will-say statements;

d) late delivery of 80 documents in the weeks preceding and during trial;

e) last-minute proposal to admit over 1,000 pages of documents recently disclosed from the City of Vancouver as business records;

f) late and incomplete disclosure of expert file materials;

g) the filing of purported supplementary and correction reports some of which were not permitted in trial rulings;

h) a last-minute attempt to call a witness not disclosed in the defendants' trial brief which was not permitted at trial; and

i) a refusal to admit documents relating to the income loss of Ming Sun which required considerable court time to have entered into evidence, coupled with their failure to raise any concerns about these documents in cross-examination or raise any objections to their authenticity or characterization as business records, and to cross-examine on these records or raise any objections.

[45] In my view, the trial of this matter occupied more time than it should have, due to, at least in part, the conduct of the defendants outlined above. Counsel for the defendants made many last-minute proposals regarding the admission of evidence at trial, having given inadequate or no notice to counsel for the plaintiff: see for example *Ming Sun Benevolent Society v. Philippine Women Centre of B.C.,* 2024 BCSC 2015, which deals with the admissibility of a supplemental report delivered on the sixth day of trial.

[46] Not all of the last-minute matters can be laid at the feet of the defendants. One such issue that occupied a lot of trial time was how to treat several volumes of documents that were received from the City of Vancouver further to a consent order entered into shortly before trial.

[47] Nonetheless, the failure to provide timely disclosure of will-say statements and expert files, and the disclosure of other documents on the eve of and during trial, significantly interferes with the ability of opposing counsel's ability to focus their attention on putting in their own case. Many of these matters were within the control of defendants' counsel and could have been dealt with within the timelines set out in the trial management orders or agreements between counsel. Further, counsel for the defendants could have shortened the trial time required by consenting to routine information about damages that he did not challenge on cross-examination. While trials frequently involve unanticipated issues that divert counsel's attention, in this case, I am satisfied that the defendants' conduct during the trial resulted in excessive time being taken to deal with issues that could have been dealt with on a

2025 BCSC 1705 (CanLII)

timelier basis or could have been dealt with by consent. This justifies an award under s. 2(5) for an uplift of the units relating to the trial.

Is the plaintiff entitled to double costs?

Positions of the Parties

[48] The plaintiff seeks an award of double costs under Rule 9-1(5)(b) on the basis that the plaintiff offered to settle this matter on July 17, 2024, in terms substantially more favourable than the result achieved at trial and that this offer ought reasonably to have been accepted by the defendants. Ming Sun offered to pay PWC $160,000 and the defendants' taxable costs and disbursements up to the date of the offer. This offer remained open until July 31, 2024. A second offer was made on August 30, 2024, in the same terms and was left open until September 9, 2024.

[49] The defendants submit that it would not have been reasonable for the defendants to accept either offer at the time each was made. They submit that reasonableness in this context must be considered in relation to the time that the offer was open for acceptance and should not take into account the award ultimately made at trial: *Belpacific Excavating & Shoring Limited Partnership* at para. 29. The defendants describe these as walk away offers as they related to the defendants, Double Happiness and Mr. Chow.

[50] Although the defendants submit that these offers did not offer costs to these defendants, the offer clearly provided for costs to all defendants. The defendants also submit that "the offer was made in such a way that PWC could not accept the offer without Mr. Chow and Double Happiness, neither of which party had any incentive to accept it."

Analysis

[51] The factors to be considered by the court in determining the impact of an offer to settle on costs are set out in Rule 9-1(6):

> (6) In making an order under subrule (5), the court may consider the following:

2025 BCSC 1705 (CanLII)

> (a) whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle was delivered or served or on any later date;
>
> (b) the relationship between the terms of settlement offered and the final judgment of the court;
>
> (c) the relative financial circumstances of the parties;
>
> (d) any other factor the court considers appropriate.

[52] At the time the formal offer was delivered, the defendants had the benefit of the engineering opinions, examinations for discovery, and considerable document disclosure. Based on the pleadings and the expert opinions, it should have been apparent to the defendants that going to trial would be an "all or nothing" scenario in that PWC's claim for damages could only succeed it they persuaded the court of their theory that the building collapsed due to the negligence of Ming Sun. The claims of Mr. Chow and Double Happiness had additional legal hurdles given the contractual issues between them and PWC arising from the sale of the PWC building which did not complete until after the collapse. Counsel for the plaintiff pointed out in the formal offer to settle that Mr. Chow's claim for losses was subject to an argument that, as a shareholder of Double Happiness, he could not personally recover losses of the company given the rule in *Foss v. Harbottle* (1843*),* 2 Hare 461, 67 E.R. 189.

[53] At the time the offer was made, the trial was set for 18 days.

[54] The objective of Rule 9-1 is to promote settlements and attach consequences to a party's failure to accept a reasonable offer: *Level One Construction Ltd. v. Burnham,* 2019 BCSC 548 at para. 14. An award of double costs for the period following a settlement offer to the end of trial is typical when a plaintiff recovers less at trial than was offered: *Level One Construction Ltd.* at para. 16.

[55] I am satisfied that the plaintiff has met the burden of establishing that it made an offer that ought reasonably to have been accepted by the defendants. It should have been apparent to the defendants that there was a substantial risk that they would not be successful at trial at all. There was also a substantial risk that, even if

2025 BCSC 1705 (CanLII)

the defendants' theory of liability was accepted by the court, only the damages of PWC could be recovered. These risks were thoroughly laid out in the plaintiff's formal offer to settle. The prospect of paying for counsel to conduct 18 days of trial, coupled with real possibility of recovering no damages and being required to compensate the plaintiff and pay costs, should have provided ample motivation to the defendants to accept the offer which would have covered their legal costs to date.

[56] The plaintiff is entitled to double costs after July 31, 2024.

Disposition

[57] The plaintiff is entitled to its costs for both the claim and the counterclaim and the defendants are jointly and severally liable for those costs. The defendants are entitled to a 15% reduction in the plaintiff's costs relating to the claim to account for the plaintiff's contributory negligence. Costs are to be assessed on Scale B although the plaintiff is entitled to an increase of 1.5 times the value of the units relating to the trial in accordance with the *Rules*, Appendix B, s. 2(5). The plaintiff is entitled to double costs from July 31, 2024. The 1.5 uplift ordered for trial costs should be calculated before doubling the costs pursuant to Rule 9-1.

[58] If the parties cannot agree on the quantum of costs, they should seek to set down the matter before the Registrar within 45 days of this judgment.

[59] As success was divided in respect of the issues relating to costs, each party shall bear their own costs associated with these submissions.

"Hoffman J."

2025 BCSC 1705 (CanLII)