IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Four Top Hospitality Group Ltd. v. Olde Towne Developments Ltd.,* 2025 BCSC 107

Date: 20250123
Docket: S184816
Registry: Victoria

Between:

Four Top Hospitality Group Ltd., Rajiv Khaneja and Christopher Sparling

Plaintiffs

And

Olde Towne Developments Ltd., Aaron Usatch

Defendants/Plaintiffs by Counterclaim

And

Four Top Hospitality Group Ltd.

Defendant by Counterclaim

Before: The Honourable Madam Justice Tucker

Reasons for Judgment on Costs

Counsel for the Plaintiffs and the Defendant by Counterclaim Four Top Hospitality Group Ltd.:	P. Harrison
Counsel for the Defendants/Plaintiffs by Counterclaim:	H.M.E. Sevenoaks
Written Submissions of the Plaintiffs Received:	December 27, 2024 and January 7, 2025
Written Submission of the Defendants Received:	January 10, 2025
Place and Date of Judgment:	Victoria, B.C. January 23, 2025

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I. Introduction

[1] On December 13, 2024, I issued reasons for judgment following trial in this case, indexed as 2024 BCSC 2279 (the "Trial Reasons"). I will continue to use the same terms defined in the Trial Reasons in these reasons. In the Trial Reasons, I gave leave for the parties to make further submissions on costs. They have now done so.

[2] In 2015, CRAM rented the Premises from Olde Towne under the Lease, then finished it for use as a restaurant. In June 2018, Olde Towne purported to terminate the Lease for cause.

[3] CRAM claimed the termination was not in compliance with the Lease and that Olde Towne had breached a contractual duty of good faith and honest performance. Alternatively, CRAM asserted that the defendants had induced the breach of an alleged contract that CRAM was party to and/or committed the unlawful means tort.

[4] The individual plaintiffs, Mr. Khaneja and Mr. Sparling, alleged that Mr. Usatch had defamed them.

[5] Olde Towne counterclaimed alleging CRAM had breached the Lease.

[6] Following a 21-day trial, the outcome was as follows:

a) Olde Towne's termination was in breach of the Lease.

b) For breach of contract, Olde Towne was ordered to pay $450,000 in general damages and $100,000 in punitive damages. Olde Towne was also ordered to repay CRAM's $9000 damage deposit.

c) Both of CRAM's tort claims were dismissed.

d) The individual plaintiffs' defamation claims against Mr. Usatch were allowed and they were each awarded $25,000.

e) Olde Towne's counterclaim was dismissed.

II. Parties' Positions

[7] The plaintiffs seek special costs. In the alternative, they seek, under Appendix B of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*], costs at Scale C and an uplift in unit value and, under R. 9-1(5) of the *Rules*, double costs further to a settlement offer.

[8] The plaintiffs also ask the court to address certain disbursements.

[9] The plaintiffs say that as Mr. Usatch is the operating mind of Olde Towne, the order for costs should be payable jointly and severally by Mr. Usatch and Olde Towne. In the alternative, they submit that ninety percent of the costs should be allocated to Olde Towne to reflect the time allocation at trial.

[10] The defendants accept that costs should be awarded to the plaintiffs, but argue that they should be assessed as follows:

a) on Scale B of Appendix B (matters of ordinary difficulty);

b) with a thirty-five percent reduction to account for the dismissal of CRAM's tort claims; and

c) with all costs and disbursements to be assessed by the Registrar.

III. Analysis

A. Dismissal of CRAM's Tort Claims

[11] I do not agree that there should be a reduction in the costs to account for the fact that CRAM's tort claims were dismissed.

[12] While Rule 14-1(15) of the *Rules* confers a broad discretion to apportion costs based on parties' success on discrete issues in proceedings, that discretion must be exercised judicially, and apportionment is the "exception and not the norm": *Lee v. Jarvie,* 2012 BCSC 1521 at para. 12, aff'd 2013 BCCA 515 at paras. 40–42; *Cook v. Kang,* 2022 BCSC 1255 at para. 29.

[13] The Court of Appeal has identified three factors for consideration where apportionment by legal issues is sought: (1) the party seeking apportionment must establish there are separate and discrete issues upon which it succeeded at trial; (2) there must be a basis on which the trial time attributable to such issues can be identified; and (3) it must be shown that apportionment would yield a just result: *Lee v. Jarvie,* 2013 BCCA 515 at para. 40*,* applying *Sutherland v. Canada (Attorney General)* 2008 BCCA 27.

[14] The defendants did not provide submissions on these three elements. In any event, none of the three are satisfied here. In particular, CRAM's tort claims were not sufficiently separate and discrete. The evidence relevant to those claims was part of the overall narrative. Significant parts of the evidence relevant to CRAM's tort claims were also relevant to contractual matters in dispute (including under Olde Towne's counterclaim), as well as punitive damages and the issue of malice for purposes of the defamation claims.

[15] The plaintiffs were substantially successful in the proceeding as a whole and apportionment by issue is not appropriate here.

B. Special Costs

[16] In *Parker Cove Properties Limited Partnership v. Gerow*, 2024 BCCA 316, Madam Justice Bennett recently set out a concise summary of the law on special costs:

> [57] The test for granting special costs is set out in *Smithies* at paras. 56–57:
>
> > [56] Special costs are typically awarded when there has been some form of reprehensible conduct on the part of one of the parties: *Young v. Young* 1993 CanLII 34 (SCC) , [1993] 4 SCR 3 at 134–138. Special costs are not compensatory; they are punitive: *Grewal v. Sandhu*, 2012 BCCA 26 at para. 106. They are awarded when a court seeks to disassociate itself from some misconduct: *Fullerton v. Matsqui (District)* (1992), 74 B.C.L.R. (2d) 311 (C.A.) at para. 23. There are circumstances where special costs may be ordered where there has been no wrongdoing: *Gichuru v. Smith*, 2014 BCCA 414 at para. 90. These reasons are not concerned with such types of cases.

> [57] The leading authority on special costs is this Court's decision in *Garcia v. Crestbrook Forest Industries Ltd*. (1994), 1994 CanLII 2570 (BC CA) , 9 B.C.L.R. (3d) 242 (C.A.). There, Mr. Justice Lambert, writing for the Court, set out that the threshold for special cost awards is "reprehensible conduct". He noted the continuum of circumstances in which special costs could be awarded, ranging from "milder forms of misconduct deserving of reproof or rebuke" to "scandalous or outrageous conduct":
>
> > [17] Having regard to the terminology adopted by Madam Justice McLachlin in *Young v. Young*, to the terminology adopted by Mr. Justice Cumming in *Fullerton v. Matsqui*, and to the application of the standard of "reprehensible conduct" by Chief Justice Esson in *Leung v. Leung* awarding special costs in circumstances where he had explicitly found that the conduct in question was neither scandalous nor outrageous, but could only be categorized as one of the "milder forms of misconduct" which could simply be said to be "deserving of reproof or rebuke", it is my opinion that the single standard for the awarding of special costs is that the conduct in question properly be categorized as "reprehensible". As Chief Justice Esson said in *Leung v. Leung*, the word reprehensible is a word of wide meaning. It encompasses scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke. Accordingly, the standard represented by the word reprehensible, taken in that sense, must represent a general and all encompassing expression of the applicable standard for the award of special costs.
>
> [58] In *Smithies*, this Court found that pre-litigation conduct should not be considered in determining whether an order for special costs is appropriate, as special costs should be reserved to punish and deter reprehensible conduct that occurs during the course of litigation: at paras. 128–134.

[17] The plaintiffs assert that the following conduct during the litigation falls within the definition of "reprehensible" for the purposes of special costs:

a) Mr. Usatch sought to intimidate or improperly influence the witness David Craggs (Trial Reasons, para. 160);

b) The defendants deliberately withheld relevant financial records of the corporate defendant (Trial Reasons, para. 353);

c) The defendants presented Ms. Weir as a neutral witness when she was not (Trial Reasons, para. 207); and

d) Mr. Usatch reiterated at trial that his defamatory statements were true after having stated in discovery that he would be prepared to "apologize for relying on the statements of others" (Trial Reasons, para. 340).

[18] The evidence does not establish that Mr. Usatch tried to intimidate Mr. Craggs. It appears to have been, at most, a quite ineffective appeal for sympathy.

[19] While the non-disclosure is worthy of some rebuke, Olde Towne's failure to provide full document disclosure grounded an adverse inference against Olde Towne in the Trial Reasons and was factored into the award for punitive damages. It has also been taken into consideration in respect of uplift costs (see below). In my view, special costs are not warranted for further denunciation and deterrence in these circumstances.

[20] The plaintiffs have put forward no authority for the proposition that the defendants had a positive obligation to disclose Ms. Weir's personal relationship with Mr. Usatch in calling her as a witness. It is not uncommon for the bias of a witness to be explored and established only under cross-examination.

[21] Mr. Usatch's examination for discovery testimony was far from a clear admission that the Statements were false and far from an offer to apologize for having made false statements. It is not possible to say he clearly contradicted himself in trial testimony, given that he failed to give a clear answer at discovery. The fact that Mr. Usatch continued to defend the Statements as either true or fair comment in his closing submissions is a separate matter, and was taken into consideration in assessing defamation damages.

[22] An award of special costs requires exceptional circumstances, or "something more" to justify the award: *Westsea Construction Ltd. v. 0759553 B.C. Ltd*., 2013 BCSC 1352 at para. 39; *Yeomans v. Buttar*, 2021 BCSC 1394 at para. 14. Even taken cumulatively, the conduct relied upon by the plaintiffs does not rise to the level that would warrant special costs.

C. Scale of Costs

[23] Unless ordered otherwise, costs are assessed as party and party costs in accordance with Appendix B of the *Rules* (Rule 14-1(1)). The relevant portions of Appendix B are as follows:

> **Scale of costs**
>
> 2 (1) If a court has made an order for costs, it may fix the scale, from Scale A to Scale C in subsection (2), under which the costs will be assessed, and may order that one or more steps in the proceeding be assessed under a different scale from that fixed for other steps.
>
> (2) In fixing the scale of costs, the court must have regard to the following principles:
>
> (a) Scale A is for matters of little or less than ordinary difficulty;
>
> (b) Scale B is for matters of ordinary difficulty;
>
> (c) Scale C is for matters of more than ordinary difficulty.
>
> (3) In fixing the appropriate scale under which costs will be assessed, the court may consider the following:
>
> (a) whether a difficult issue of law, fact or construction is involved;
>
> (b) whether an issue is of importance to a class or body of persons, or is of general interest;
>
> (c) whether the result of the proceeding effectively determines the rights and obligations as between the parties beyond the relief that was actually granted or denied.

[24] At the outset, there was no legal issue of more than ordinary importance in this case. It is not asserted otherwise. The plaintiffs rely on the complexity of the litigation as a basis for Scale C costs.

[25] In *Slocan Forest Products Ltd. v. Trapper Enterprises Ltd*., 2010 BCSC 1494 at para. 6 [*Slocan*], Justice McEwan lists the following as relevant factors for consideration in determining whether a matter is of “more than ordinary difficulty” for purposes of an award of costs at Scale C:

> (a) Length of trial;
>
> (b) Complexity of issues;
>
> (c) Number and complexity of pre-trial applications;
>
> (d) Whether or not the action was hard-fought with little or nothing conceded along the way;

> (e) The number and length of examinations for discovery;
>
> (f) The number and complexity of expert reports;
>
> (g) The extent of the effort required in the collection of and proof of the facts.

[26] The plaintiffs point to the fact that his case involved different claims and multiple issues. They concede that the contractual claims were not, on their own, unusually complex, but argue that the breadth of the evidence relevant to the punitive damages claim and the success of the defamation claims raises the case to this standard.

[27] Several pre-trial applications were heard, but none appears to have been complex: the defendants applied to remove a certificate of pending litigation and the posting of security for costs; the plaintiffs applied to adjourn the April 2022 trial dates; the defendants applied for additional document disclosure; the defendants applied to examine a CRAM employee, Ms. Danzinger; and the plaintiffs applied for additional document disclosure.

[28] The trial was 21 days in length. A 21-day trial may – but not necessarily will – reflect a degree of complexity in the proceeding: *Slocan* at para. 9; *Acciona Infrastructure Canada Inc. v. Allianz Global Risks US Insurance Company*, 2014 BCSC 1907 at paras. 20–24.

[29] All matters were, in fact, hard fought here, but “hard fought” is a factor to be approached with caution. As Goepel J. noted in *Monument Mining Limited v. Balendran Chong & Bodi*, 2013 BCSC 179 at para. 13:

> While the action was hard fought, consideration of this factor "must be approached with caution": *Slocan Forest Products v. Trapper Enterprises Ltd*., 2010 BCSC 1494 at para. 14. The fact that the parties were tenacious in putting forward their clients' case is a hallmark of most actions. It does not make the proceeding more than ordinarily difficult.

[30] There were a significant number of legal issues to be addressed, but no thorny issues were explored. While there were two expert reports, neither was

lengthy or technical and neither expert was subject to particularly lengthy cross-examination.

[31] There were examinations for discovery of Mr. Usatch as the representative of Olde Towne and as an individual, of Mr. Khaneja as the representative of CRAM, and of the individual plaintiffs. The discoveries appear to have been within the typical range.

[32] Considering the factors identified by Justice McEwan and acknowledging that they provide guidance and do not comprise a checklist, I am not persuaded that the marshalling of the facts and law required here made the case one of more than ordinary difficulty. The request for costs at Scale C is dismissed.

D. Uplift Costs

[33] Courts may "uplift" the unit value under Appendix B of the *Rules* where unusual circumstances make it appropriate: *Kemp v. Vancouver Coastal Health Authority Ltd*., 2016 BCSC 1541 at para. 26; *J.P. v. British Columbia (Children and Family Development)*, 2018 BCCA 325 at paras. 56–57: *Shen v. West Continent Development Inc. (BC0844848)*, 2022 BCSC 462.

[34] The relevant portions of s. 2 of Appendix B read 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).
>
> (6) For the purposes of subsection (5) of this section, an award of costs is not grossly inadequate or unjust merely because there is a difference between the actual legal expenses of a party and the costs to which that party would be entitled under the scale of costs fixed under subsection (1) or (4).

[35] In *Shen*, Justice Maisonville recently provided a concise review of the applicable principles:

> [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.

[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.

[36] The plaintiffs submit that the unusual circumstances in this case are the length of the trial, the defendants' approach to evidence, and the fact that a contractual dispute, a punitive damages claim, and a defamation claim were closely intertwined. They rely on their submissions under special costs (outlined above) for the purpose of establishing wrongful and improper conduct by the defendants.

[37] As noted under special costs, the defendants' failure to disclose documents relating to the rental payment it received after the termination of the Lease (or even the subsequent rental related agreements) was improper. As I noted in the Trial Reasons at para. 353, I am satisfied that relevant documents did exist and yet went undisclosed. I am satisfied that the non-disclosure of these documents made it significantly more challenging for CRAM to marshal evidence to support its damages claim for loss of opportunity to earn profit. In particular, the non-disclosure most likely affected both the content of the Snell Report and the assessment of the need for the Snell Report at all. Similarly, I am satisfied that if the defendants' had properly disclosed those documents, it would have been a significant factor for the plaintiffs' consideration in determining whether they should also adduce evidence to attempt to support a claim based on loss of opportunity to operate a restaurant. In my view, this non-disclosure is, in itself, sufficient to warrant uplift costs in the circumstances.

[38] However, I am also satisfied that the defendants' approach to evidence – both with respect to adducing and objecting to evidence – did unnecessarily and significantly extend the length of the trial. I note that the matter was originally set, by agreement, for a 10 day trial. While 10 days may have always been aspirational, it

was not a trial that should have taken 21 days. I agree with the plaintiff's that the trial hearing was significantly lengthened by time spent by defendants focussed on matters, both on cross-examination and in direct, that were ultimately uninformative. On the objection side, after agreeing to the admission of a joint book of documents into the record, the defendants then advanced multiple admissibility objections to documents so admitted.

[39] Finally, the degree of disparity between the costs at Scale B and the actual legal fees incurred by the plaintiffs is significant, which also favours uplift costs. The plaintiffs say 523 units should be allowed based on the litigation steps leading up to December 13, 2024. In the event that double costs are allowed from the date of the settlement offer (discussed below), the plaintiff calculates that the number of units would increase to 848. This yields the following comparisons:

Number of Units	**Scale B $110/unit**	**Scale B Uplift $165 /unit**	**Fees charged to client**
523	$57,530	$86,295	$225,470
848	$93,280	$139,920	

[40] Overall, I am satisfied that there are sufficient circumstances here to support an order for increased costs. The application for uplift costs to the amount of $165 per unit is granted under s. 2(5) of Appendix B of the *Rules*.

E. Settlement Offer

[41] The plaintiffs seek costs based on a settlement offer they delivered to the defendants on August 10, 2023, in which they offered to settle all outstanding matters in the proceeding by payment of $305,000 to the plaintiffs ("Offer").

[42] The chronology of events relevant to the Offer includes the following:

Date	Event
March 14, 2023	Defendants deliver a settlement offer proposing consent dismissal of all claims with no payment to any party.
April 11, 2023	Defendants deliver a settlement offer with payment to the plaintiffs of $1000.
July 11, 2023	Plaintiffs' mediation brief delivered.
July 14, 2023	Mediation conducted.
August 10, 2023	Plaintiffs deliver the Offer ($305,000).
August 10, 2023	Defendants reject the Offer. Defendants deliver a settlement offer to pay $25,000 to the plaintiffs for consent dismissal without costs to any party.
August 15, 2023	Trial begins. Continues to August 30, 2023 and adjourns.
February 20, 2024	Trial resumes and then concludes on March 1, 2024.

[43] Rule 9-1(4) of the *Rules* permits the court to consider an offer to settle when exercising the court's decision in relation to costs. The defendants do not dispute that the Offer was an "offer to settle" for purposes of Rule 9-1.

[44] Rule 9-1(5) includes the following:

> **Cost options**
>
> (5) In a proceeding in which an offer to settle has been made, the court may do one or more of the following:
>
> (b) award double costs of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle[.]

[45] The availability of double costs, when an offer to settle has been rejected, is meant to encourage the early settlement of disputes by rewarding the party who makes a reasonable offer and penalizing the party who declines to accept it: *Hartshorne v. Hartshorne*, 2011 BCCA 29 at para. 25.

[46] Rule 9-1(6) sets out a number of factors for consideration when an order for double costs is sought:

> (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.

Whether the Offer Ought Reasonably to Have Been Accepted

[47] Whether an offer ought reasonably to have been accepted is not assessed by reference to the award ultimately made. A "hindsight analysis" should be avoided: *Bailey v. Jang*, 2008 BCSC 1372 at para. 24. The offer should be assessed in light of the circumstances that existed at the time it was open for acceptance: *Hartshorne* at para. 27; *Yip v. Saran*, 2014 BCSC 1593 at para. 17.

[48] In *Hartshorne,* at para. 27, the Court of Appeal identified several factors to consider in assessing this factor:

a) The timing of the offer;
b) Whether the offer had some relationship to the claim or was instead a nuisance offer;
c) Whether the offeree could easily evaluate the offer; and
d) Whether the offeror provided some rationale for the offer.

[49] The defendants submit that the Offer is not one that ought to have been reasonably accepted, as:

a) It was made six days before trial. At that stage, the defendants were prepared and ready for trial.

b) The defendants had reasonable confidence they would prevail at the trial.

c) No rationale for the Offer was provided and the Offer could not be easily evaluated.

[50] Whether an offer ought reasonably to have been accepted is considered from the perspective of the person receiving the offer. It has both a subjective and objective component. The court is entitled to consider the reasons a party declined to accept an offer to settle, but must consider whether those reasons are objectively reasonable: *C.P. v. RBC Life Insurance Company*, 2015 BCCA 30 at para. 97.

[51] The Offer was made six days prior to trial, which is hardly on the doorstep of the courthouse. Further, although the Offer as sent included no set expiry date, the defendants were able to respond that very day.

[52] The defendants were in a position to evaluate the Offer. As the defendants themselves note, they were fully prepared for trial. Further, the trial had been set and adjourned close to its trial date one before. The plaintiffs had provided the defendants with a mediation brief, and the parties had engaged in mediation. The defendants were in a position to appreciate their own evidence.

[53] The terms of the Offer itself were straightforward and uncomplicated. The defendants have not pointed to any particular reason that they found the Offer difficult to understand or evaluate. They seek any clarification before sending their August 10, 2023 letter rejecting the Offer, nor seek any clarification.

[54] No express rationale for the amount of the Offer was set out in the Offer letter, but it was clearly not a nuisance claim. In terms of rationale, the Second Amended Notice of Civil Claim expressly claimed that the costs CRAM incurred in renovating the Premises exceeded $320,000, placing a value on the unjust enrichment claim. The defendants were in possession of the Snell Report (which established a basis and range of damages valuing the loss of subleasing opportunity) and of the Matte Report (which outlined an operating loss of profit in the range of $391,000 to $478,000). The amount of the Offer could be readily evaluated as a compromise with respect to exposure risk under the damages claims advanced.

[55] I am satisfied that the defendants had the information and time required to assess the Offer at the time it was made.

Comparison of Offer to Award

[56] This factor favours the plaintiffs. The total amount of damages awarded to the plaintiffs under the Trial Reasons was $609,000. The Offer was almost exactly half of that amount. According to the plaintiffs, the pre-judgement interest owing, as of January 7, 2025, is itself more than $90,000.

Financial Circumstance

[57] This factor allows the court to consider the relevant financial circumstances of the parties. This factor is neutral. Both sides had sufficient funding to fully participate in the proceedings.

Other Factors

[58] No additional factors were identified for consideration.

[59] I conclude that an award of double costs from the date of the Offer is appropriate here. Given my findings above, I am satisfied that an award of double costs would serve the purposes of Rule 9-1 of deterring frivolous actions and requiring litigants to carefully assess the strength of their cases, as well as encouraging parties to accept reasonable offers: *Giles v. Westminster Savings and Credit Union,* 2010 BCCA 282; *Hartshorne* at para. 25.

F. Apportionment between the Defendants

[60] In the Trial Reasons, I found that Mr. Usatch personally defamed the individual plaintiffs. The remaining findings were made against Olde Towne.

[61] The plaintiffs argue that there should only be one order for costs, payable jointly and severally by Mr. Usatch and Olde Towne. They ask the Court to do so on the basis that Mr. Usatch is the “operating mind” of Olde Towne.

[62] There is no firm rule regarding an order of costs in multi-party litigation: *Seaport Crown Fish v. Vancouver Port Corp,* 2000 BCSC 68 at para. 33; *0928772 B.C. Ltd. v Ross,* 2024 BCSC 2217. The Court has a broad discretion to craft an

order for costs consistent with the *Rules* and responsive to the circumstances of the case: *Seaport Crown Fish* at para. 33.

[63] The defendants have not provided me with any authority for holding two defendants jointly and severally liable for costs in circumstances where two defendants were found liable at trial in relation to distinct causes of action. I am not persuaded that it would be appropriate here to hold the defendants jointly and severally liable for all costs.

[64] I find, based on the allocation of trial time, that ninety percent of the costs should be payable by Olde Towne and ten percent by Mr. Usatch personally.

G. Disbursements

[65] The plaintiffs also seek to have their share of mediation expenses and the fees relating to the expert reports addressed by the Court. Disbursements are regularly dealt with by the Registrar. I see no reason why they are not properly addressed by the Registrar here.

IV. Disposition

[66] The plaintiffs are entitled to their costs of the proceeding, at Scale B and with an uplift to $165 per unit, pursuant to Appendix B of the *Rules*.

[67] The plaintiffs are also entitled, based on the Offer, to double costs from August 10, 2023 onward in accordance with Rule 9-1.

[68] Ninety percent of the total assessed costs are payable by Olde Towne, and ten percent are payable by Mr. Usatch.

[69] The plaintiffs are also entitled to costs in relation to this costs application.

[70] All costs and disbursements shall be assessed by the Registrar.

"Tucker J."