

CANADA / JUDGMENT

Bordignon v. Bordignon

2025 BCSC 1691

COURT

Supreme Court of British Columbia

DECIDED

29 August 2025

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2025 BCSC 1691 Bordignon v. Bordignon

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bordignon v. Bordignon,

2025 BCSC 1691

Date: 20250829

Docket: E127941

Registry: Kelowna

Between:

Lucille Bordignon also know as Lucille Puglisi

Claimant

And

Mark Angelo Bordignon, Giovanni Bordignon, Rebo Beton Pumping Ltd., 461334 B.C. Ltd. and
Rebo Beton Pumping Placing Finishing Ltd.

Respondents

Before: The Honourable Justice Hardwick

Reasons for Judgment

The Claimant, appearing on her own behalf:

L. Bordignon

Counsel for the Respondents, Mark Angelo Bordignon, and Rebo Beton Pumping Ltd.:

D.M. King

Counsel for the Respondents, Giovanni Bordignon, 461334 B.C. Ltd., and Rebo Beton Pumping Placing Finishing Ltd.

D R. Greig

Place and Date of Hearing:

June 23, 2025

Kelowna, B.C.

Place and Date of Judgment:

Kelowna, B.C.

August 29, 2025

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Introduction

[1] These reasons for judgment address, in part, the issue of costs arising from the 20-day trial in this family law action (the "Action"). The trial, presided over by Mr. Justice Betton, commenced in December 2023 and concluded in March 2024.

[2] The reasons for judgment resulting from the trial were released on July 10, 2024, and are indexed at 2024 BCSC 1226 (the "Trial Reasons").

- [3] Between the completion of the trial and the release of the Trial Reasons, Justice Betton retired from this Court.
- [4] On November 4, 2024, I was appointed the ex mero motu trial judge in place of Justice Betton and thereafter have also been case managing this action.
- [5] The primary players in this litigation, whom I shall refer to by their first names, meaning no disrespect, are:
- a) the claimant, Lucille Bordignon also known as Lucille Puglisi ("Lucille");
 - b) the respondent, Mark Bordignon ("Mark");
 - c) the respondent, Rebo Beton Pumping Ltd. (the operating company controlled by Mark and of which he is the operating mind).
- [6] The other players in this litigation are Giovanni Bordignon ("Giovanni"), 461334 B.C. Ltd., and Rebo Beton Pumping Placing Finishing Ltd. (collectively, the "Other Respondents").
- [7] Giovanni is Mark's father, and the other two corporate respondents are companies controlled by Giovanni.
- [8] On this occasion I am addressing the claim by the Other Respondents for costs as against Lucille in this Action. Specifically, the Other Respondents "seek an order for costs against Lucille, and an Order setting the scale at 'ordinary difficulty', but doubled, having regard to an Offer to Settle".

The Involvement of the Other Respondents in the Action

- [9] When Lucille originally commenced the Action on June 26, 2020, the claims advanced were solely between her and Mark.
- [10] The claims were also what would likely be expected following the breakdown of a long-term marriage wherein the parties had two "children of the marriage" as defined by the Divorce Act, R.S.C. 1985, c. 3, had accumulated assets during the course of the marriage, and had made a familial decision that Mark would be the primary income earner and Lucille would assume the primary parenting responsibilities for said children of the marriage.
- [11] On April 12, 2022, almost two years after Lucille commenced the Action, she brought a without notice application to, inter alia, amend the notice of family claim and add the Other Respondents as parties. Lucille pled numerous additional claims, including allegations of conspiracy and what I will describe as a derivative claim for unjust enrichment.
- [12] (Then) Master Keim granted the relief on April 26, 2022, and the amended notice of civil claim was filed on May 2, 2022.

- [13] Under the Supreme Court Family Rules [Rules], namely R. 8-2(11), the Other Respondents were not entitled to notice of the application to add them as parties to the Action unless the court otherwise ordered, which did not occur.
- [14] Once added as parties, the Other Respondents did, however, have an ability under the Rules to apply to strike some or all of the claims advanced by Lucille under R. 11-2.
- [15] The Other Respondents did not take this route. Rather, the Other Respondents engaged counsel who promptly filed responsive pleadings and actively engaged in the litigation. Importantly, in or about the fall of 2022, then counsel for Lucille conducted examinations for discovery of Giovanni on behalf of the Other Respondents and the Other Respondents' counsel completed examinations of Lucille. This was well prior to the discoveries as between Lucille and Mark.
- [16] The result of the claims advanced in the amended notice of civil claim was a trial which Justice Betton accurately described as follows in the Trial Reasons:
- [1] The parties seek a full spectrum of orders in this high-conflict family law case. There is virtually no common ground on any of the issues or the underlying factors that should determine them. This extends to such base issues as the date of the commencement of their relationship and their separation date.
- [4] The allegations include a conspiracy between Mark Bordignon ("MB") and his father Giovanni Bordignon ("GB") to diminish the value of or dispose of family assets. MB, at least, blames that decline in part on this litigation.
- [17] The claims as against the Other Respondents were wholly unsuccessful at trial.
- [18] The entirety of the analysis of the claims as against the Other Respondents is set out by Justice Betton at paras. 247-271 of the Trial Reasons. For current purposes, I am simply going to highlight paras. 253, 256 and 271:
- [253] I will not delve deeply into the question of whether this case is one of those rare examples where a conspiracy claim is appropriate from a policy perspective though. Even if it is, I am unable to conclude that [Giovanni's] conduct was "with a predominant purpose of causing injury to the [claimant]". It is for the claimant to prove the conspiracy.
- ...
- [256] My conclusions regarding [Mark's] lack of good faith do not mean that a conspiracy has been established. The onus is on the claimant to prove her claim and she has not.
- ...
- [271] Based on the above, the claims against [the Other Respondents] for conspiracy and unjust enrichment are dismissed. In addition, there is no basis for any relief pursuant to s. 95(2) (f).

- [19] Although there remains an existing appeal filed by Lucille (and now two existing appeals filed by Mark), Lucille has not appealed the dismissal of the claims as against the Other Respondents by Justice Betton.
- [20] Moreover, the Final Order confirming the dismissal of the claims against the Other Respondents, which was indeed the subject of its own appeal after having been settled by Associate Judge Schwartz, was resettled by Justice G.P. Weatherill on May 27, 2025.

The Law Regarding Costs in Family Law Proceedings

- [21] Rule 16-1(7) of the Rules provides that costs of a family law case must be awarded to the successful party unless the court otherwise orders.
- [22] In *J.L.M. v. G.G.M.*, 2024 BCSC 1643, I had the opportunity to consider various instructive authorities which assist in determining who is the successful party. I will return to *J.L.M.* in more detail in the subsequent reasons addressing the issue of costs as between Lucille and Mark.
- [23] However, as between Lucille and the Other Respondents that answer is simple. The Other Respondents were entirely successful as all the claims against them were dismissed.
- [24] Notwithstanding this conclusion, I have, as noted above, the discretion to "otherwise" make another order as to costs. In the circumstances, the burden is on Lucille to convince me that I should order "otherwise".
- [25] Ordering "otherwise" invokes the discretion of the court, but it is a discretion which must be exercised judicially: see *J.L.M.* at para. 42(c).
- [26] Financial hardship alone will not form a sufficient basis to otherwise order: see *J.L.M.* at para. 42(e).
- [27] Nor, as is effectively submitted by Lucille, does a lack of financial hardship alone from the successful party form a sufficient basis to otherwise order, particularly in this situation where the Other Respondents did not pursue any relief as against Lucille. Giovanni, who is, I accept, financially comfortable, had the resources to hire very capable counsel but he did so only to defend the claims brought against the Other Respondents.
- [28] In the circumstances, I can see no judicially appropriate basis to exercise my discretion to deny the Other Respondents an order for costs as against Lucille.
- [29] Lucille, with the benefit of counsel, made an intentional decision to add the Other Respondents to the Action for the purposes of advancing claims that were legally nuanced and factually challenging. Lucille was seeking significant damages in the millions of dollars. The Other Respondents actively participated in the Action and succeeded in defeating those claims in their entirety. To disentitle the Other Respondents from their entitlement to costs would, in these circumstances, incorrectly convey to family law litigants that there is no risk in advancing potentially precarious claims to trial, particularly where those claims include

allegations of fraudulent or, at minimum wrongful, conduct.

Scale Of Costs

- [30] The Other Respondents are not advancing an argument that costs should be on the scale of more than "ordinary difficulty" despite the reality of the complexities of the Action as alluded to above and as made clear in the Trial Reasons.
- [31] The Other Respondents are also only seeking their costs collectively on a "single bill" basis since they were represented by one counsel and their interests were aligned in opposing Lucille's claims.
- [32] Accordingly, subject to my below analysis, the Other Respondents are presumptively entitled to their costs of the Action as against Lucille as a single bill on the basis of "ordinary difficulty" under the tariff.
- [33] Relying upon the draft bill of costs provided by the Other Respondents to Lucille on or about July 29, 2024 (the "Draft Bill of Costs"), the Other Respondents' "single bill" based on ordinary difficulty is estimated to be approximately \$97,000, inclusive of disbursements and taxes. This does not include a \$3,000 stand-alone post trial costs order I made against Lucille in favour of the Other Respondents on June 17, 2024.

Rule 11-1: Offers to Settle

- [34] Rule 11-1 addresses offers to settle in family law proceedings.
- [35] An offer to settle that meets the definition under R. 11-1(1) may be considered by the court when exercising the court's discretion as to costs: see R. 11-1(4).
- [36] The options available to the court are set out in R. 11-1(5) and the optional considerations for the court to consider in making its order are set out in R. 11-1(6).
- [37] The options and considerations are as follows:

Cost Options

(5) In a family law case in which an offer to settle has been made, the court may do one or more of the following:

- (a) deprive a party of any or all of the costs, including any or all of the disbursements, to which the party would otherwise be entitled in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle;
- (b) award double costs of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle;
- (c) award to a party, in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle, costs to which the party would have been entitled had the offer not been made;

(d) if the party who made the offer obtained a judgment as favourable as, or more favourable than, the terms of the offer, award to the party the party's costs in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle.

Considerations of court

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

(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.

[38] In *J.L.M.*, I made certain observations about the application of R. 11-1 which are equally apt here:

[52] As explained in *Paul v. Pumple*, 2013 BCSC 1844, offers to settle made pursuant to Rule 11-1 are only considered after the court has first determined costs pursuant to Rule 16-1(7).

[53] In *Hartshorne*, the Court of Appeal outlined the policy reasons behind an award for double costs:

[25] An award of double costs is a punitive measure against a litigant for that party's failure, in all of the circumstances, to have accepted an offer to settle that should have been accepted. Litigants are to be reminded that costs rules are in place "to encourage the early settlement of disputes by rewarding the party who makes a reasonable settlement offer and penalizing the party who declines to accept such an offer" [citations omitted]. In this regard, Mr. Justice Frankel's comments in *Giles* are apposite:

[74] The purposes for which costs rules exist must be kept in mind in determining whether appellate intervention is warranted. In addition to indemnifying a successful litigant, those purposes have been described as follows by this Court:

· "[D]eterring frivolous actions or defences": *Houweling Nurseries Ltd. v. Fisons Western Corp.* (1988), 37 B.C.L.R. (2d) 2 at 25 (C.A.), leave ref'd, [1988] S.C.C.A. No. 200

· "[T]o encourage conduct that reduces the duration and expense of litigation and to discourage conduct that has the opposite effect": *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201 at para. 28 (C.A.);

· "Encouraging litigants to settle whenever possible, thus freeing up judicial resources for other cases": *Bedwell v. McGill*, 2008 BCCA 526, 86 B.C.L.R. (4th) 343 at para. 33;

· "[T]o have a winnowing function in the litigation process" by "requiring] litigants to make a careful assessment of the strength or lack thereof of their cases at the commencement and throughout the course of the litigation", and by "discouraging] the continuance of doubtful cases or defences": *Catalyst Paper Corporation v. Companhia de Navegaçao Norsul*, 2009 BCCA 16, 88 B.C.L.R. (4th) 17 at para. 16.

The Formal Offer

- [39] On or about May 29, 2023, approximately six months before the trial commenced, the Other Respondents delivered an offer to settle under R. 11-1 (the "Formal Offer"). The Formal Offer complies with the requirements of R. 11-1(1).
- [40] At that point in the Action, discoveries relating to the claims against the Other Respondents had occurred, there had been document disclosure (albeit somewhat still ongoing as I will address) and there had been several interim applications.
- [41] The Formal Offer was very straightforward. It offered Lucille the opportunity to abandon her claims against the Other Respondents on a no-costs basis. There was also an explanatory cover letter explaining the potential of double cost consequences. Although not forming part of the Formal Offer itself, I accept there were some other communications exchanged consistent with the subjective view of the Other Respondents that the Formal Offer was bona fide and not merely a nuisance offer.
- [42] The Formal Offer was open for acceptance until September 1, 2023. Counsel for the Other Respondents somewhat concedes that this date was relatively arbitrary. Rather, what they say is that three months was more than enough time for Lucille to obtain legal advice (counsel was technically off the record during that period of time but still included in most correspondence before coming back on the record as trial counsel) and it contemplated that significant legal fees would be incurred between September 1, 2023, and the commencement of the trial which could be avoided by acceptance of the Formal Offer.
- [43] In light of the submissions made by counsel for the Other Respondents, I am treating the effective date of the Formal Offer to settle as September 1, 2023, which I conclude is permissible under R. 11-1(5)(b), which allows me to "award double costs of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle" (emphasis added). Practically speaking, this has a very minor impact on the Other Respondents' claim for double costs given the extremely limited steps taken for the purposes of the tariff between May 29, 2023 and September 1, 2023.
- [44] Lucille did not accept the Formal Offer. Hence the claims against the Other Respondents proceeded to trial and were dismissed as described above. Those costs are, subject to assessment, in the range of approximately \$97,000. Lucille clearly would have been in a better position had she accepted the Formal Offer at some point prior to September 1, 2023,

[45] Despite failing to accept the Formal Offer, Lucille seeks to avoid an order for double costs after delivery of the Formal Offer pursuant to R. 11-1(5)(b) effectively on three bases:

- a) an inability to assess her options when the Other Respondents made the Formal Offer due to incomplete disclosure;
- b) financial hardship; and
- c) the Other Respondents' obstructive conduct during the litigation.

Other Respondents Conduct During Litigation

[46] Starting with the issue of the Other Respondents' conduct, there is nothing in the evidence tendered before me or contained within the Trial Reasons that would support a finding that the Other Respondents' conduct in defending the claims against them in the Action was obstructive such that it would disentitle them to the benefit of double costs under the Rules.

[47] In this regard, I acknowledge that Lucille advanced an argument at trial that obstructionist conduct by the respondents (collectively) frustrated disclosure and impeded obtaining important and reliable expert opinions warranting adverse inferences. This was considered in some detail by Betton J. given the significance of the valuation issue in the Action. Justice Betton ultimately did not reach any conclusion because, given he rejected Lucille's proposed valuation date, Betton J. stated he did not need to consider whether the weaknesses in the expert report tendered by Lucille could be overcome on the basis of adverse inferences regarding the respondents' cooperation: see Trial Reasons at para. 290.

Incomplete Disclosure

[48] Turning then to the issue of document disclosure. It is correct that this court should consider whether a party was unable to properly assess a formal offer due to lack of disclosure or incomplete discovery: see *Luzuka v. Chuang*, 2009 BCSC 1424 at para. 16.

[49] However, the difficulty that Lucille faces in making this argument is, I conclude, two-fold:

- a) Firstly, although there was some disclosure provided after September 1, 2023, by the Other Respondents, the nature of the particular disclosure provided did not materially impact Lucille's claims against the Other Respondents. Rather, it was primarily in the way of updated financial information. Most specifically, more current versions of financial documents which had already been produced. If that updated financial information had been relevant to the quantum of Lucille's claims against the Other Respondents, then that would factor into my analysis. However, Lucille's claims against the Other Respondents were dismissed entirely. The quantum of her claims does not factor in. There was also some ambiguity in the affidavit evidence about exactly when the serial numbers for certain corporately owned vehicles were provided by the Other Respondents pursuant to an order made by Justice G.P. Weatherill on July 14, 2023. Correspondence provided to me at the hearing, albeit not appended to an affidavit, confirmed it was completely provided in its

entirety by September 1, 2023. Even if I did not accept that correspondence into evidence, I again cannot conclude that this very limited information was not material to considering the Formal Offer; and

- b) Secondly, the practical reality is that Lucille has never been satisfied with the document disclosure provided in the Action. This resulted in multiple interim applications, with all but one directed at Mark and not the Other Respondents. Justice Betton also addressed broad complaints about document disclosure in the Trial Reasons: see paras. 296 and 299. In both instances, Justice Betton acknowledged the complaint of non-disclosure but noted that Lucille did not develop any specific argument as to what should result from that failure. Further, Lucille's concerns about document disclosure have continued since the trial. I addressed this in fairly recent reasons for judgment primarily addressing the calculation of Guideline income and determination of the appropriate quantum of prospective support in which I also dismissed the disclosure sought by Lucille: see *Bordignon v. Bordignon*, 2025 BCSC 1113 at paras. 61-68.
- [50] In the result, I am not satisfied that Lucille could not properly assess the Formal Offer due to a lack of document disclosure between May 29, 2023 and September 1, 2023. Supporting my conclusion in this regard is, importantly, the lack of any document applications brought by Lucille as against the Other Respondents between September 1, 2023 and the trial.

Financial Hardship

- [51] Turning next to the issue of financial hardship. I already addressed this factor in determining whether to exercise my discretion under R. 16-7 to "otherwise order" that that the Other Respondents should not be entitled to their costs.
- [52] However, the issue of financial hardship is relevant again in deciding whether to award double costs payable from September 1, 2023. Specifically, R. 11-1(6)(c) provides that I may consider the parties' relative financial circumstances in making an order under R. 11-1(5).
- [53] For context, based upon the Draft Bill of Costs, the estimated costs, if costs are doubled after September 1, 2023, are approximately \$159,000 inclusive of taxes and disbursements. Accordingly, the imposition of double costs would increase the financial burden on Lucille by approximately \$62,000.
- [54] This is not an insignificant increase. Particularly in light of Lucille's financial situation. In this regard, Lucille is employed on a full-time basis and in receipt of both child and spousal support. She is thus capable of generally meeting her prospective living expenses. Lucille's financial situation from a property/debt perspective, however, is rather bleak.
- [55] To a great degree Lucille's current bleak financial circumstances are a product of her own making due to this litigation. As noted in the Trial Reasons, the parties borrowed some \$600,000 against the Former Family Home to fund the litigation: see para. 7. In addition to that, Lucille owes a very significant sum to her former counsel for fees billed in relation to

the trial and that counsel is seeking to enforce those fees as against her interest in the Former Family Home (which is currently for sale for \$1,750,000 pursuant to a recent order I made reducing the list price down from \$1,900,000).

- [56] Had Lucille accepted the Formal Offer she would, as noted, not be liable to pay the Other Respondents some approximately \$97,000 claimed ordinary costs. Moreover, by accepting the Formal Offer, the legal complexity of the trial would have been "somewhat reduced". I very clearly say simply "somewhat reduced" as this will dovetail into my forthcoming reasons addressing the costs as between Lucille and Mark but there can be little doubt that not having to address the conspiracy claim and unjust enrichment claim, and generally having three less respondents would have made the trial of the Action more efficient and less costly.
- [57] Balanced against this, Giovanni is financially comfortable. The difference between the ordinary costs and double costs will not be financially crippling to Giovanni. Rather, the difference is that ordinary costs will indemnify Giovanni for approximately half of his actual legal fees incurred in defending the Action whereas with the benefit of double costs from September 1, 2023, a costs order will indemnify him for approximately 80% of his actual legal fees. Consequently, I find the relative financial circumstances of the parties weigh against making a double costs award.

Other Factors

- [58] In addition to the foregoing, Rule 11-1(6)(d) specifically permits me to consider "any other factor" I consider appropriate in exercising my discretion in making an order under R. 11-5. In this particular instance, I consider it appropriate to recognize certain post-trial jurisprudence from this Court regarding the viability of claims of conspiracy in family law actions. Although Lucille did not specifically raise this in her oral argument, counsel for the Other Respondents is very live to it and indeed referred in his written submissions to the "Hail Mary" nature of this particular claim.
- [59] Justice Betton ultimately elected not to address the issue of whether the Action "was one of those rare examples where a conspiracy claim is appropriate from a policy perspective": see para. 253 of the Trial Reasons.
- [60] However, in *Barnes-Morrison v. Koliass*, 2025 BCSC 715, I had the opportunity to consider this issue in detail, including with specific reference to the Trial Reasons, and identified what I concluded to be an apparent discrepancy in the ratios between our Court of Appeal's decision in *Waters v. Michie*, 2011 BCCA 364, and a more recent Ontario Court of Appeal's decision in *Leitch v. Novac*, 2020 ONCA 257. Although I did not allow the proposed amendments to the pleadings in *Barnes-Morrison* to include the tort of conspiracy in their current form and in light of *Waters*, I noted that the public policy consideration of deterrence favoured allowing the claim to proceed against one of the proposed respondents given the concern about the participation of "invisible litigants": see para. 81.

- [61] Following Barnes-Morrison, Justice B. Smith recently allowed a portion of a family law action advancing a conspiracy claim relating to property division to proceed: see Kennedy v. Kennedy, 2025 BCSC 1165 at para. 37. Importantly, Kennedy remains at the pleadings stage. Whether the claim proceeds to trial and, if so, the outcome of the claim remains unknown.
- [62] The result of the foregoing highlights, in my view, the particular legal difficulty of advancing conspiracy claims in family law proceedings in this province at this time. It is clear that there is a window and that this window must be very narrow, but the precise parameters of that window remains somewhat uncertain.
- [63] As is obviously apparent, if Lucille had accepted the Formal Offer, the conspiracy claim would have not proceeded to trial and there would not have at least been the opportunity for this Court to consider the policy considerations relevant to the tort in the context of family law proceedings based on actual facts instead of only allegations of material facts contained in pleadings.
- [64] Further, and I consider importantly, there is a difference between the importance of using double costs as a means deterring frivolous cases, as Hartshorne clearly stands for, versus using the threat of double costs to discourage legally novel cases from ever reaching our trial court.
- [65] Finally, although I have chosen to address this issue in the context of R. 11-6(d) as I think that is where it most appropriately fits in my overall analysis, there is also a connection to R. 11-1(6)(a) which directs that a court may consider whether the offer to settle was one that ought reasonably to have been accepted during the time it was open for acceptance. Given the uncertain status of conspiracy claims of this nature in this province during the summer of 2023, there is an argument to be made that it was reasonable for Lucille to decline the Formal Offer.

Conclusion

- [66] In the result, I elect to exercise my discretion to decline to award the Other Respondents double costs from September 1, 2023 based on the Formal Offer. By electing to proceed to trial and failing to prove her claims, I have concluded that Lucille is obligated to pay the Other Respondents their ordinary costs. That costs order provides a partial indemnity to the Other Respondents for their actual legal fees and represents a very significant financial burden to Lucille. Further increasing that burden with double costs, in light of the fact that the only option available was to wholly abandon a legally challenging claim, and given the reality of the relative current financial circumstances of the parties, does not accord with the objectives of R. 11-1. It is simply too harsh a consequence for not accepting the Formal Offer.

Lump Sum Cost Award

- [67] The court has the discretion to award lump sum costs under R. 16-1(c) and (d). Lump sum costs may be ordered to save the parties the time, expense, and further conflict associated with assessment of costs: see *Mousa v. The Institute of Electrical and Electronics Engineers, Incorporated*, 2014 BCCA 415 at para. 34.
- [68] Although recognizing that the usual route is to order that costs, now ordered, be assessed by the registrar, the Other Respondents suggest that this is the kind of case where it is fair and reasonable for the court to award costs on a lump sum basis on the following grounds:
- a) the "litigation war" between the Lucille and Mark continues unabated, in this Court and in the Court of Appeal. There is presently no end in sight;
 - b) Giovanni is closing in on 80 years of age. He has been actively participating in the Action for approximately three years and is entitled to closure, given the dismissal of all claims against the Other Respondents; and
 - c) there is reason to believe that a further opportunity for prolonged acrimony and rancour of a multi-day registrar's hearing is not in the best interests of anyone, and runs afoul of the provisions in the Rules for a "just, speedy, and inexpensive determination of the case on its merits".
- [69] After quite considerable contemplation, I accede to the Other Respondents' suggestion. By virtue of the tariff included in the Rules, the assessment of "ordinary costs" in a family law case should usually be fairly straightforward and is routinely done, even where there is not consensus, by the Registrar utilizing their accumulated skillset in this regard. Assessment of costs is not done in the ordinary course by trial judges, particularly not "ex meru motu" trial judges.
- [70] The practical reality of the Action, however, is that nothing (or almost nothing) is straightforward. The Other Respondents have been waiting to have the costs issue addressed since the Trial Reasons were released in July 2024. During that time, Lucille (and her former counsel before going off the record) had the benefit of the opportunity to review and critique the Draft Bill of Costs (which, as noted, was provided on or about July 29, 2024).
- [71] I certainly recognize that the issue of costs and particularly the possibility of double costs was very live and so substantive comment may have been potentially prejudicial to Lucille until the issue came squarely before me in my capacity as the case management judge in the spring of 2025. However, once I set a date for the delivery of additional materials and further submissions regarding the issue of costs and fixed a hearing date, Lucille was on clear notice that the Other Respondents were requesting lump sum costs on the basis of the Draft Bill of Costs.

- [72] The only substantive objection which Lucille raised at the costs hearing as to the Draft Bill of Costs was the necessity of counsel for the Other Respondents to have attended all 20 days of the trial. That submission simply cannot succeed in this factual matrix. The trial date in the Action was set peremptory on Lucille. The trial commenced as scheduled in December 2023 but could not be completed within the agreed time estimate. Various continuation dates were set over the next few months with the recognition of Justice Betton's pending retirement. But for counsel for the Other Respondents being specifically excused from attending by Justice Betton on a specific date, which did not occur, counsel's attendance at trial each day was required to ensure that the trial was completed as efficiently as possible and within the finite timeframe available.
- [73] The Draft Bill of Costs can be broken down as follows:
- a) Part B tariff items totalling \$69,000; \$55,000 of which consists of costs related to the 20 days of trial (the first 5 days being at a rate of \$2,000 per diem and the remaining 15 days being at a rate of \$3,000 per diem); and
 - b) Part E tariff disbursements items totalling, inclusive of tax, \$20,199.57.
- [74] Considering the litigation history as detailed in the various affidavits, together with my own review of CEIS to confirm certain dates, I am satisfied that all of the units claimed in Part B are appropriate. As noted, these units amount to \$69,000. With GST and PST added to this \$69,000 at a rate of 12%, the taxes owing under Part B are an additional \$8,280 for a total of \$77,280.
- [75] In relation to Part E disbursements, Giovanni maintains residences in West Kelowna and New Westminster. Giovanni chose to retain out-of-town counsel for the Other Respondents. This was his prerogative. However, I am not satisfied it was required and accordingly, I am not allowing the claim for counsel's travel disbursements. Despite the length of the trial, these only amounted to \$8,564.81.
- [76] The only other disbursement requiring some consideration by the court is the claim by the Other Respondents for a \$5,000 contribution to the cost of joint business valuation expert, Simone Brunton. As I understand from the combined submissions received at the costs hearing, due to certain required updates, the valuation work of Simone Brunton was ongoing until late January 2024. In order to obtain a court ready copy of the updated expert report in time for the February 2024 trial dates, Simone Brunton tendered an additional and, again simply according to the combined submissions, unanticipated invoice. In order to obtain the much-needed updated valuation report and allow the trial continuation to proceed, the Other Respondents agreed to contribute \$5,000 on what I will loosely describe as a without prejudice basis to this additional invoice. Despite my finding that the Other Respondents are entitled to their ordinary costs against Lucille, I am not prepared to visit the entirety of that contribution in those particular circumstances on Lucille. Rather, I consider it appropriate that this disbursement item be reduced to \$2,500, representing half of the contribution made by the Other Respondents to Simone Brunton's additional invoice.

- [77] I am otherwise satisfied that the remaining disbursements claimed are all reasonable and appropriate. They total \$6,634.77 inclusive of tax.
- [78] The total allowable disbursements shall accordingly be allowed at \$9,134.77 inclusive of tax.
- [79] In addition to these trial costs, Lucille owes the Other Respondents \$3,000 in costs pursuant to my June 17, 2025, order.
- [80] Further, despite my exercising my discretion to decline to award the Other Respondents double costs from September 1, 2023, the Other Respondents were substantially successful on the issue of costs. They are accordingly also entitled to costs for the costs portion of the trial. Consistent with my June 17, 2025 order, the Other Respondents shall be entitled to their costs fixed in the amount of \$3,000 inclusive of disbursements pursuant to R. 16-1(14) (c). This is again a cumulative costs order which recognizes that the costs issue had been brought forward by the Other Respondents on several occasions before ultimately proceeding to a hearing before me on June 23, 2025.

Conclusion

- [81] In conclusion, the costs owing by Lucille to the Other Respondents in the Action total \$92,414.77. The Other Respondents are entitled to a certificate of costs in this amount.
- [82] Post-judgement interest on the amounts owing pursuant to the certificate of costs shall begin accruing pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79 effective August 29, 2025.

"Hardwick J."

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