

CANADA / JUDGMENT

Canfield v. Bronze Wines Ltd.

2022 BCSC 1435

COURT

Supreme Court of British Columbia

DECIDED

19 August 2022

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2022 BCSC 1435 Canfield v. Bronze Wines Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Canfield v. Bronze Wines Ltd.,

2022 BCSC 1435

Date: 20220819

Docket: S18180

Registry: Nelson

Between:

Frances Jean Walbey Canfield

Plaintiff

And

Bronze Wines Ltd., Continental Appraisals Ltd., Air Touch Communications Ltd., Scot Stewart
and Howard H. Engman

Defendants

Before: The Honourable Madam Justice Horsman

Reasons for Judgment on Interest and Costs

Counsel for the Plaintiff:

T. Pearkes

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R. Sookorukoff

The Defendants Bronze Wines Ltd. and Scot Stewart, Appearing in Person:

S. Stewart

Counsel for the Defendant Howard H. Engman:

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Written Submissions of Plaintiff:

June 8, 2022

July 11, 2022

Written Submissions of Defendant, Continental Appraisals Ltd.:

June 24, 2022

Written Submissions of Defendant, Howard H. Engman:

June 24, 2022

Written Submissions of Bronze Wines Ltd. and Scot Stewart:

July 7, 2022

Place and Date of Judgment:

Nelson, B.C.

August 19, 2022

INTRODUCTION

- [1] In reasons for judgment issued on April 5, 2022 (indexed as 2022 BCSC 546 - the "Trial Judgment"), I allowed the action of the plaintiff Jean Canfield as against the defendants Bronze Wines Ltd. ("Bronze Wines") and Howard Engman. I dismissed Mrs. Canfield's action as against the defendants Scot Stewart and Continental Appraisals Ltd. ("Continental"). The parties all sought an opportunity to make further submissions on the issues of interest and costs after the Trial Judgment was rendered. They have now each had an opportunity to provide written submissions on these issues.
- [2] The factual background to this action is complex, and is reviewed in detail in the Trial Judgment. I will not repeat the facts other than to the limited extent necessary to provide context to the disputes over interest and costs that now require resolution.

PRE-JUDGMENT INTEREST

- [3] There is no dispute that the Trial Judgment is a "pecuniary judgment" within the meaning of s. 1 of the Court Order Interest Act, R.S.B.C. 1996, c. 79 [COIA]. Sections 1 and 2 of the COIA provide:

Court order interest

1 (1) Subject to section 2, a court must add to a pecuniary judgment an amount of interest calculated on the amount ordered to be paid at a rate the court considers appropriate in the circumstances from the date on which the cause of action arose to the date of the order.

- (2) Despite subsection (1), if the order consists in whole or part of special damages, the interest on those damages must be calculated from the end of each 6 month period in which the special damages were incurred to the date of the order on the total of the special damages incurred

- (a) in the 6 month period immediately following the date on which the cause of action arose, and

- (b) in any subsequent 6 month period.

- (3) For the purpose of calculating interest under subsection (2), and despite subsection (2), if the date of the order occurs

- (a) before a date 6 months after the date on which the cause of action arose, or

- (b) after the end of a 6 month period but before the end of the subsequent 6 month period,

interest must be calculated from the date on which the special damages were incurred to the date of the order.

- (4) If part of an order represents income loss arising from personal injury or death and one or more payments have been made before the date of the order to replace, provide indemnification for, compensate for or protect against some or all of the income loss or for any other purpose related to the income loss, the amount of the income loss on which interest may be calculated under this section must be reduced by the amount of each such payment as of the date of the receipt of the payment.

Interest not awarded in certain cases

2 The court must not award interest under section 1

- (a) on that part of an order that represents pecuniary loss arising after the date of the order,
- (b) if there is an agreement about interest between the parties,
- (c) on interest or on costs,
- (d) if the creditor waives in writing the right to an award of interest, or

- (e) on that part of an order that represents nonpecuniary damages arising from personal injury or death.
- [4] Bronze Wines and Mr. Engman acknowledge that, pursuant to s. 1 of the COIA, Mrs. Canfield is entitled to an award of pre-judgment interest at the rates set by the Registrar. It also appears to be common ground that pre-judgment interest should run from March 6, 2012, the date Mrs. Canfield's property was transferred to Bronze Wines and the date on which the cause of action against Bronze Wines and Mr. Engman arose. The dispute between the parties is with respect to Mrs. Canfield's arguments that:
- a) the Court should award Mrs. Canfield equitable pre-judgment interest at a rate of 4% per annum; or,
 - b) alternatively, the Court should exercise its discretion to depart from the Registrar's rates in ordering pre-judgment interest under the COIA by setting the rate either at 4% per annum or at the post-judgment interest rate.
- [5] Pursuant to s. 7(1) of the COIA, the post-judgment interest rate is the annual simple interest rate that is equal to the prime lending rate. The pre-judgment rates of interest are customarily set at 2% below the prime lending rate. The Registrar updates the published table of interest rates every six months. During the relevant time period, the Registrar's pre-judgment interest rates varied between 1 and 1.45%. Mrs. Canfield calculates that pre-judgment interest at the Registrar's rates in the present case would be \$45,555, while pre-judgment interest at the prime lending rate would be \$136,899.
- [6] On her first argument--concerning equitable interest--Mrs. Canfield cites the Court of Appeal's judgment in *K.L.B. v. British Columbia*, 2001 BCCA 221 at para. 55 [K.L.B.], in support of the proposition that the court has an equitable jurisdiction to award interest as ancillary relief associated with an accounting for profits or some other property claim.
- [7] *K.L.B.* concerned a different fact pattern. The issue in that case was whether the court had jurisdiction add equitable pre-judgment interest to an award of general damages for personal injury despite the prohibition in s. 2(e) of the COIA on pre-judgment interest on non-pecuniary damages. The Court of Appeal concluded that equitable interest was not recoverable in those circumstances. In the present case, there is no issue that Mrs. Canfield is entitled to pre-judgment interest under the COIA. Indeed, pursuant to s. 1 of the COIA, the Court must add interest "at a rate the court considers appropriate" to Mrs. Canfield's judgment. As the COIA governs, there is no room for equitable intervention. The only issue is whether there is any basis in this case to award pre-judgment interest at a rate higher than the Registrar's rates.
- [8] This brings me to Mrs. Canfield's second argument--concerning the court's discretion under s. 1 of the COIA to set the rate of interest. Mrs. Canfield says that pre-judgment interest at the Registrar's rates would provide her with insufficient compensation for the loss of her property for the past decade. She relies on *Domtar Inc. v. Univar Canada Ltd.*, 2012 BCSC 510

[Domtar] and Destiny Enterprises Canada Ltd. v. Kim, 2015 BCSC 99 [Destiny Enterprises] in support of the Court's jurisdiction to depart from the Registrar's rate in awarding pre-judgment interest in order to ensure adequate compensation to the plaintiff.

- [9] I agree with Mr. Engman that Domtar and Destiny Enterprises are distinguishable. Domtar is a commercial case. Justice Fisher, as she then was, noted that the Registrar's rates may not be appropriate in commercial cases because a business wrongfully deprived of funds may have to either pay interest or lose the opportunity to earn interest, both at the commercial rates: Domtar at paras. 7-17. In Destiny Enterprises, the plaintiff was required to pay post-judgment interest on a previous judgment due to the wrongful actions of the defendants. Justice Armstrong held that in these circumstances, fairness required that the plaintiff be awarded pre-judgment interest at the post-judgment interest rate to ensure that he was adequately compensated.
- [10] The present case is not a commercial case, and it does not raise the fairness concerns present in Destiny Enterprises. Mrs. Canfield does not point to any other considerations that might warrant pre-judgment interest at a rate higher than the Registrar's rates. Mrs. Canfield emphasizes her sympathetic circumstances. However, as observed by the Court of Appeal in Kaufman v. Kaufman (1986), 7 B.C.L.R. (2d) 158 at para. 17, the Court should not "use the settling of the [pre-judgment interest] rate as a way of redressing inequities which the circumstances reveal".
- [11] I therefore order that Mrs. Canfield is entitled to pre-judgment interest at the Registrar's rates commencing March 6, 2012.

COSTS

- [12] The question of costs in the present case is complicated by the fact that Mrs. Canfield succeeded against only two of the four defendants, and by the existence of pre-trial settlement offers that the parties say ought to influence the costs order. The parties' submissions include the following arguments:
- a) Mrs. Canfield says that Mr. Engman and Bronze Wines ought to pay double costs from July 29, 2019, which is the date of Mrs. Canfield's formal global offer to settle sent to all parties;
 - b) In the alternative, Mrs. Canfield says that the Court should order Bronze Wines to pay Mr. Stewart's costs and Mr. Engman to pay Continental's costs pursuant to Rule 14-1(18) of the Supreme Court Civil Rules, 168/2009 [SCCR], in the form of a Bullock or Sanderson order;
 - c) Mr. Engman says the Court should order an apportionment of costs so that he would be liable for only one-third of Mrs. Canfield's costs;
 - d) Mr. Stewart says that he should receive double costs from the time he made an informal to settle at a pre-trial settlement conference; and

- e) Continental seeks an award of double costs after delivery to Mrs. Canfield of its formal offer to settle on October 16, 2020.
- [13] I will address each argument in turn.
- a) Should costs against Mr. Engman and Bronze Wines be awarded as double costs from the date of Mrs. Canfield's offer to settle?
- [14] Mrs. Canfield delivered a global offer to the defendants on July 29, 2019. At this time, the defendant Air Touch Communications Ltd. ("Air Touch") had not yet reached a settlement with Mrs. Canfield. The terms of Mrs. Canfield's offer were:
- (1) Air Touch would cap its claim in the foreclosure proceeding at \$106,555;
 - (2) Continental and Mrs. Canfield would equally share the remaining funds from the proceeds of sale of the property (creating a shortfall for Continental on the mortgage debt it was owed by Bronze Wines); and
 - (3) Mr. Engman would pay Mrs. Canfield \$150,000.
- [15] By letter dated July 9, 2020, Mrs. Canfield confirmed that her formal offer to settle of July 29, 2019 remained open for acceptance. By that time, Mrs. Canfield had examined Mr. Engman for discovery. In her letter of July 9, 2020, she reviewed the discovery evidence that she considered demonstrated the strength of her claim against Mr. Engman.
- [16] While Mrs. Canfield acknowledges that the July 29, 2019 offer was a global offer to all defendants, she says Bronze Wines and Mr. Engman could have settled the case by picking up the share of the remaining defendants. Furthermore, Mrs. Canfield says not only that Bronze Wines and Mr. Engman should be liable for double costs after July 29, 2019, but also that Mr. Stewart ought to be deprived of his costs after that date. Mrs. Canfield says Mr. Stewart was the "guiding mind" of Bronze Wines, and that he and Bronze Wines were jointly represented at trial. For these reasons, Mrs. Canfield argues that Mr. Stewart ought to face costs consequences as a result of the unaccepted offer despite the fact that the action against him in his personal capacity was dismissed.
- [17] Mr. Engman argues that Rule 9-1 of the SCCR does not provide a mechanism for making a joint offer to parties who do not have a joint interest in all of the claims addressed. In support of this proposition, Mr. Engman cites *Sherwood v. The Owners, Strata Plan VIS 1549*, 2018 BCSC 2105 at para. 48 [Sherwood]. *Sherwood* in turn relies on *AWD v. CCDD and SJD*, 2006 BCSC 450 at para. 16 [AWD]. The decision in *AWD* was based on the wording of the former Rule 37(31), which Justice Gray interpreted to limit joint offers to multiple defendants to circumstances where the defendants are jointly liable. In *Canadian Forest Products Ltd. v. B.C. Rail Ltd.*, 2005 BCCA 460 at paras. 22-28, the Court of Appeal similarly held that, under the former Rules, a global offer to settle to multiple defendants was valid only in those cases where the defendants are joint tortfeasors.

- [18] There is no equivalent provision to the former Rule 37(31) in the current Rule 9-1. As noted by Justice Dillon in *Hall-Smith v. Yamelst*, 2016 BCSC 325 at para. 10 [Hall-Smith], Rule 9-1(1) (c) lists only three requirements for an "offer to settle": (i) it must be made in writing by a party to the proceeding; (ii) it must be served on all parties of record; and (iii) it must contain a sentence reserving the offering party's right to bring the offer to the attention of the court for consideration on costs. Justice Dillon concluded that under Rule 9-1, a global offer to settle is valid even where it involves parties without a joint interest, and even where the offer relates to more than one proceeding. She reasoned:
- [18] The goal of providing trial judges with a broad discretion in relation to costs and offers to settle would be undermined by taking a narrow view of what offers can be considered under Rule 9-1. While that might have been necessary under the former Rule 37, the discretionary nature of Rule 9-1 suggests that the focus of the court should shift from whether an offer can be considered at all, to whether the offer ought to attract cost consequences. The purpose and enactment history of Rule 9-1 and judicial interpretation of that rule to date support the conclusion that global offers can be considered under the rule.
- [19] It is not necessary for me to reconcile *Sherwood* and *Hall-Smith*. For the purpose of the present case I will assume without deciding the point that Mrs. Canfield's offer to settle was not invalid because it was a global offer to settle to defendants who were not joint tortfeasors. I conclude that double costs are, nevertheless, not appropriate in this case because the offer was not capable of acceptance by Bronze Wines and Mr. Engman without the cooperation of the remaining defendants, Continental and Air Touch, in acceding to Mrs. Canfield's proposed settlement terms.
- [20] Mrs. Canfield attempts to avoid this problem by suggesting that Bronze Wines and Mr. Engman could have picked up the share of the remaining defendants. It appears to be common ground that Bronze Wines has no earnings or assets. Accordingly, Mrs. Canfield's suggestion seems to be that Mr. Engman ought to have responded to Mrs. Canfield's offer to settle by agreeing to pay double the amount actually allocated to him in the global settlement offer. This, in my view, is not reasonable. Among other difficulties, this would not constitute acceptance by Mr. Engman of Mrs. Canfield's offer, but rather agreement to a set of terms that were never proposed.
- [21] For these reasons, I dismiss Mrs. Canfield's application for double costs as against Bronze Wines and Mr. Engman.
- b) Should the unsuccessful defendants be required to pay the costs of the successful defendants?
- [22] Mrs. Canfield alternatively says that the unsuccessful defendants should be required to cover the costs of the successful defendants--in the form of what is commonly known as a Bullock or Sanderson order--pursuant to Rule 14-1(18) of the SCCR. The terms of a Bullock order require the plaintiff to pay the costs of the successful defendant, which are then recoverable as a disbursement from the unsuccessful defendant. A Sanderson order

requires the unsuccessful defendant to directly pay the costs of the successful defendant. Mrs. Canfield says that Mr. Stewart should pay the costs of Bronze Wines, and that Mr. Engman should pay Continental's costs.

[23] The threshold requirement for either a Bullock or Sanderson order is that it was reasonable for the plaintiff to have joined the successful defendant in the action. If this threshold is established, then the question becomes whether it "would be just and fair in the circumstances" for the unsuccessful defendant to pay the successful defendant's costs: *Provost v. Dueck Downtown Chevrolet Buick GMC Limited*, 2021 BCCA 15 at para. 17 [Provost], citing *Davidson v. Tahtsa Timber Ltd.*, 2010 BCCA 528 at paras. 53-56. In *Provost*, the Court of Appeal explained the considerations relevant to the second stage of the analysis as follows:

[18] In *Grassi*, Justice Southin noted that "[t]here must be something which the unsuccessful defendant did, such as asserting the other defendant was the culprit in the case, to warrant his being made to reimburse the plaintiff for the successful defendant's costs": at para. 33 (emphasis added). Justice Southin elaborated:

34 orders under Rule 57(18) [now Rule 14-1(18)] are not restricted to cases where the unsuccessful defendant in the course of the litigation has blamed the successful defendant but may extend to acts of the unsuccessful defendant which caused the successful defendant to be brought into the litigation.

[19] In *Davidson*, this Court held that "a Sanderson or Bullock order requires some conduct on the part of the unsuccessful defendant in order to justify the award": at para. 54. There, even though the Court found that it was reasonable for the appellant to have joined both defendants in one action, it was not just and fair in the circumstances to make a Sanderson or Bullock order because there was no credible evidence to support the claim against the successful defendant: at para. 56.

[24] I will start by addressing Mrs. Canfield's request for an order that Bronze Wines pay Mr. Stewart's costs. In my view, Mrs. Canfield does not pass the threshold test for such an order because it was not reasonable for her to have joined Mr. Stewart as a personal defendant in the action. As reviewed at paras. 112-114 of the Trial Judgment, Mrs. Canfield never advanced a consistent and coherent theory as to how Mr. Stewart could be personally liable in the circumstances of this case in relation to a transaction entered into between Mrs. Canfield and Mr. Stewart's company, Bronze Wines. Mrs. Canfield ultimately argued that it was necessary for practical reasons to name Mr. Stewart to ensure Bronze Wines' participation in the action. I do not accept this argument. There are mechanisms in the SCCR which would have permitted Mrs. Canfield to compel the production of relevant evidence from Bronze Wines without naming an individual against whom she had no viable cause of action.

[25] I therefore decline to make an order requiring Bronze Wines to pay Mr. Stewart's costs.

- [26] I now turn to Mrs. Canfield's request for an order that Mr. Engman pay Continental's costs. Mr. Engman does not, as I understand his submission, argue that it was unreasonable for Mrs. Canfield to have joined Continental in the action. Instead, he says that it is not just and fair in the circumstances to require him to pay Continental's costs. Mr. Engman says that he did not do anything to cause Continental to be brought into the proceeding. The claims against Mr. Engman and Continental are entirely distinct. Mr. Engman also notes he did not point fingers at Continental in the course of the litigation.
- [27] I agree with Mr. Engman's submission. There is no conduct on Mr. Engman's part that would justify a Sanderson or Bullock order against him. I therefore decline to make an order requiring Mr. Engman to pay Continental's costs.
- c) Should there be an apportionment of costs?
- [28] Mr. Engman seeks an order apportioning costs pursuant to Rule 14-1(15) of the SCCR so that he is only liable for one-third of Mrs. Canfield's trial costs. Mr. Engman suggests that Mrs. Canfield's unsuccessful claims against Continental and Mr. Stewart consumed two-thirds of the trial time.
- [29] The test that guides the court's exercise of discretion to apportion costs under Rule 14-1(15) is set out in the Court of Appeal's judgment in *Sutherland v. The Attorney General of Canada*, 2008 BCCA 27 at para. 31 [Sutherland]:
- (1) the party seeking apportionment must establish that there are separate and discrete issues upon which the ultimately unsuccessful party succeeded at trial;
 - (2) there must be a basis on which the trial judge can identify the time attributable to the trial of these separate issues;
 - (3) it must be shown that apportionment would effect a just result.
- [30] An order apportioning costs is not a regular part of litigation and should be confined to "relatively rare" cases: *JVD Installations Inc. v. Skookum Creek Power Partnership*, 2022 BCCA 218 at paras. 14-16, citing *Sutherland* at para. 7.
- [31] In my view, none of the requirements of the test for an apportionment are met in the circumstances of the present case. First, there are no separate and discrete issues upon which Mr. Engman succeeded at trial. Second, even assuming that Mr. Engman can seek an apportionment based on the success of Continental and Mr. Stewart, there is no basis upon which I can identify the time attributable to these issues. Mr. Engman does not explain how he calculates the "roughly two-thirds" of trial time allegedly spent on Mrs. Canfield's unsuccessful claims. In my estimation, the vast majority of time at trial was spent on issues relevant to the claims on which Mrs. Canfield succeeded, including her claim that the transfer of her property was an unconscionable transaction.

[32] In my view, there is no reason in the present case to depart from the ordinary rule that, as the successful party, Mrs. Canfield is entitled to her costs against Mr. Engman pursuant to Rule 14-1(9) of the SCCR. I therefore dismiss Mr. Engman's request for an apportionment of costs.

d) Should Mr. Stewart be awarded double costs?

[33] Mr. Stewart submits that in settlement discussions, he offered Mrs. Canfield \$5,000 to settle her claim against him. There is no evidence before the Court to establish the existence of the offer, that it was in writing and served on all parties of record, or that it contained a sentence reserving Mr. Stewart's right to bring the offer to the attention of the court for consideration on costs. It is not even clear when Mr. Stewart maintains the offer was made. Accordingly, Mr. Stewart has not established that his offer, assuming it was made, is an offer to settle within the meaning of Rule 9-1 of the SCCR. For this reason, his request for double costs from the date of the unaccepted offer--whatever that date may be--is dismissed.

e) Should Continental be awarded double costs?

[34] Continental seeks its ordinary costs at scale B until October 16, 2020, the date of delivery of its formal offer to settle, and then double costs thereafter. In its formal offer to settle, Continental offered to pay \$5,000 to Mrs. Canfield in return for Mrs. Canfield discontinuing her claim against Continental and executing a release. The offer was open for acceptance until November 2, 2020, a period of 17 days. At the time the offer was made, the trial of the proceeding was set to commence on November 23, 2020. The trial did not proceed on that date, and the offer was not renewed.

[35] In a proceeding in which an ultimately successful defendant has served a formal offer to settle, Rule 9-1(5)(b) of the SCCR provides that the court may award double costs of all or some of the steps taken in the proceeding after service of the offer. The purpose of Rule 9-1 is to encourage the early settlement of disputes by rewarding a party who makes a settlement offer that should have been accepted and penalizing the party who declines to accept such an offer: *Hartshorne v. Hartshorne*, 2011 BCCA 29 at para. 25.

[36] The factors which guide the court in making an order for double costs are set out in Rule 9-1(6):

- (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.

[37] I will apply each of these factors to the circumstances of the present case.

(a) Whether the offer ought reasonably to have been accepted

- [38] The question of whether an offer "ought reasonably to have been accepted" must be examined under the circumstances existing when the offer was open for acceptance and not by reference to the ultimate judgment. This inquiry has both a subjective and objective component. The court may take into account the reasons why the plaintiff declined the offer, but must also consider whether those reasons are objectively reasonable: *C.P. v. RBC Life Insurance Company*, 2015 BCCA 30 at para. 97.
- [39] In light of the wording of Rule 9-1(6), the issue is not whether the offer is reasonable but whether it was unreasonable for the plaintiff to refuse it: *Cottrill v. Utopia Day Spas and Salons Ltd.*, 2019 BCCA 26 at para. 30 [Cottrill].
- [40] Mrs. Canfield says that Continental's offer was not one that ought reasonably to have been accepted given that it was only open for acceptance for 17 days, and the evidence of Continental's witnesses had not yet been tested at the time the offer was delivered. It should be noted that this was not a case in which Mrs. Canfield had no opportunity to understand or test the evidence of Continental's witnesses. Continental filed a summary trial application in February 2019, which was fully argued in court. The application was ultimately dismissed on the basis that the matter was not suitable for determination as a summary trial. Continental's witnesses swore affidavits for that application which detailed their evidence. Mrs. Canfield could, at any point in time, have conducted an examination for discovery of a representative of Continental. She chose not to.
- [41] Mrs. Canfield says that she "explored her case against Continental at trial" through cross-examination. It was, of course, open to Mrs. Canfield to explore her case against Continental at trial rather than in advance of trial. However, her election to do so cannot shield her from the cost consequences of an unaccepted offer. Otherwise, there would be no onus on any party to take the steps necessary to properly assess whether a pre-trial settlement offer ought to be accepted. In other words, Mrs. Canfield's decision to wait until trial to explore her case against Continental is not an objectively reasonable basis to refuse Continental's offer to settle.
- [42] In its formal offer to settle, Continental explained in detail its rationale for the relatively low settlement amount. Continental pointed out that there was no evidence that it had any notice of Mrs. Canfield's interest in the Grand Forks property at the time it acquired its mortgage. This was eventually conceded by Mrs. Canfield in final argument at trial. In relation to the limitation issue, Continental noted that Bronze Wines had executed a standstill agreement in September 2016, which clearly constituted an acknowledgment of the mortgage security and debt. The low value of the offer was thus explained by the weakness of Mrs. Canfield's claim against Continental. I accept that Continental's offer was a genuine offer to settle.

[43] Mrs. Canfield had all the facts and evidence she needed to assess the strength of her claim against Continental as of the date of Continental's offer. While the offer was open for only 17 days, this was a sufficient time in the circumstances for Mrs. Canfield to properly assess the strength of her claim against Continental. By the time Continental delivered its offer to settle, the parties were weeks away from the first trial date and they had already been through a summary trial. I agree with Continental that by the time of delivery of the offer, the risks of proceeding against Continental should have been apparent to the plaintiff.

[44] In my view, in the circumstances, Continental's offer ought reasonably to have been accepted by Mrs. Canfield. This factor therefore weighs in favour of an award of double costs to Continental.

(b) The relationship between the offer and final judgment

[45] The claim against Continental was dismissed. If Mrs. Canfield had accepted Continental's offer to settle, she would have received a net benefit of \$5,000 and would not be facing liability for costs. This factor also weighs in favour of an award of double costs.

(c) Relative financial positions of the parties

[46] There is limited evidence before me regarding the relative financial positions of Mrs. Canfield and Continental. Even assuming that Continental had a financial advantage, there is no evidence that Continental improperly used that advantage in the litigation: Cottrill at para. 34. I therefore consider this factor to be neutral.

(d) Other considerations

[47] Neither Mrs. Canfield nor Continental identified any other consideration that is relevant to the issue.

Conclusion on Continental's request for double costs

[48] In my view, Continental's formal offer to settle was a genuine settlement offer that ought reasonably to have been accepted by Mrs. Canfield. The offer was more advantageous to Mrs. Canfield than the outcome at trial. There are no other considerations militating against cost consequences for the unaccepted offer. I therefore order that Continental is entitled to its costs at scale B to October 16, 2020, and to double costs thereafter.

SUMMARY OF ORDERS

[49] In summary, I make the following orders:

- a) Mrs. Canfield is entitled to pre-judgment interest at the Registrar's rates commencing March 6, 2012;
- b) Mrs. Canfield is entitled to her costs at scale B from Mr. Engman;
- c) Mrs. Canfield is entitled to her costs at scale B from Bronze Wines;

- d) Mr. Stewart is entitled to his costs at scale B from Mrs. Canfield;
- e) Continental is entitled to its costs from Mrs. Canfield at scale B to October 16, 2020, and to double costs thereafter.

"Horsman J."

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Prepared on 25 October 2026 · Esheria