

CANADA / JUDGMENT

David v. Song

2025 BCSC 2244

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2244 David v. Song

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

David v. Song,

2025 BCSC 2244

Date: 20251114

Docket: S223541

Registry: Vancouver

Between:

Cindy David, also known as Qian Ma and

Cindy Ma, and Richard David

Plaintiffs

And

Jing Song, also known as Tracey Song, and

Zuquan Liu, also known as George Liu

Defendants

Before: Associate Judge Peck

(As Registrar)

Reasons for Judgment

Counsel for Plaintiffs:

M. Wolf

The Defendant, George Liu, appearing in person:

The Defendant, Jing Song, appearing in person:

G. Liu

J. Song

Place and Date of Hearing:

Vancouver, B.C.

October 22, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 14, 2025

Introduction

- [1] This is an assessment of special costs ordered after trial in the context of an escalated dispute between neighbours. Renovation issues, property access issues, and defamation crossclaims resulted in an originally-scheduled ten-day trial taking 35 days to complete. The plaintiffs were represented by counsel at trial and the defendants were self-represented. After a further one-day costs entitlement hearing, the trial judge awarded special costs to the plaintiffs for all but the last day of trial, including for the costs hearing, in reasons indexed at *David v. Song*, 2025 BCSC 704. The assessment of the quantum of special costs was referred to the registrar, including how to exclude the costs associated with the last day of trial.
- [2] The defendants acknowledge that they are jointly and severally liable to pay the plaintiffs' costs of the proceeding on a special costs basis and they did not appeal either the trial decision or the costs award. However, they challenge a number of the plaintiffs' specific special costs claims, some on principle and some on a more granular level. They also asked the court to make certain directions requiring the plaintiffs to produce additional supporting materials prior to concluding the assessment.
- [3] The plaintiffs claim a total of \$348,647.24 inclusive of fees, taxes, and disbursements in special costs. Based on my reasons below, I award the plaintiffs special costs in the amount of \$335,000 and decline to order any further document production.

Background

- [4] The background of this proceeding is set out in detail in the trial decision of this matter, indexed as *David v. Song*, 2025 BCSC 231. In summary, the plaintiffs, Mr. and Ms. David, are both immigrants to Canada, from Australia and China respectively. They moved to Canada in 2016. Ms. David became a Canadian citizen in 2023 and Mr. David remained an Australian citizen at the time of trial.
- [5] In May 2018, Ms. David was diagnosed with ovarian cancer and underwent surgery that same month. In October 2018, she purchased a home in Lions Bay as a residence for her and Mr. David.
- [6] The defendants Ms. Song and Mr. Liu are married, and live together in the neighbouring property to Mr. and Ms. David's Lions Bay residence. Ms. Song acquired that property in 2013. Ms. Song and Mr. Liu moved to Canada from China approximately 20 years ago.
- [7] The two properties rise steeply from the roadway. There is a driveway on Ms. Song's property that provides access to her residence and to Ms. David's residence. There is a registered easement in favour of Ms. David's property over that part of Ms. Song's driveway that is necessary to pass over in order to access the David residence.
- [8] In or around April 2021, the plaintiffs started some rather extensive construction that was complete in or around April 2022. This construction agitated the defendants and the relationship between neighbours began to sour.
- [9] In early April 2022, Mr. Liu, without obtaining any professional advice, dug a so-called "drainage trench" across the driveway and placed two sawhorses as "safety signs" which he claimed would be required by WorkSafe BC. This effectively blocked the shared portion of the driveway. This alarmed the plaintiffs, particularly given Ms. David's health challenges and desire for unimpeded access to medical assistance in an emergency. On April 1, 2022, Mr. David called the police regarding Mr. Liu's actions, and on April 6, 2022, plaintiffs' counsel sent a letter demanding that the digging stop and the barricades be removed within 24 hours. Mr. Liu kept digging and the barricades stayed in place until on or about May 19, 2022.
- [10] On or about April 7, 2025, Mr. Liu posted a series of messages in Chinese on a neighbourhood WeChat forum about the plaintiffs that the plaintiffs alleged, and the court ultimately found, were defamatory. Ms. David posted one message in reply, addressed to the entire group. The defendants unsuccessfully argued at trial that Ms. David's post was defamatory in its own right.

- [11] The plaintiffs filed their claim on April 29, 2022, originally to remedy obstruction of the driveway only, seeking injunctive relief and damages. They obtained a mandatory interlocutory injunction on May 19, 2022 for removal of the barricades and prohibiting further digging by Mr. Liu, and only then did Mr. Liu accede to the plaintiffs' demands in that regard.
- [12] In May 2023, the plaintiffs amended their notice of civil claim to include claims for defamation related to Mr. Liu's April 2022 WeChat posts.
- [13] The defendants filed a counterclaim on May 30, 2022 alleging that the plaintiffs' renovations had caused "substantial damage" to the driveway that the plaintiffs should repair, as well as alleging nuisance due to construction noise and dust. They also claimed blockage of the driveway, trespass, and breach of privacy. On June 9, 2023, the defendants amended their counterclaim to also plead defamation, and to include additional particulars of their existing claims.
- [14] The trial was set for 10 days commencing October 28, 2024 and did not conclude for an additional 25 days. On December 20, 2024, the last day of trial, the defendants apologized for Mr. Liu's WeChat comments and subsequently posted an apology to the WeChat group. Including a day for submissions in early 2025 on the impact of the Apology Act, SBC 2006, c 19, and the costs entitlement hearing, the trial of the matter took a total of 37 days.
- [15] The court made the following statements in the reasons for judgment after trial that are particularly relevant to the current assessment of special costs:
- a) For many of the days of trial, including in closing submissions, Mr. Liu maintained that his defamatory statements were true (para. 132).
 - b) The defendants withdrew their claims related to trespass and privacy breaches only on December 20, 2024 (para. 156).
 - c) Despite having apologized for the WeChat statements as of December 20, 2024, at the costs hearing in March 2025, Mr. Liu continued to claim that Ms. David was only identified as the target of his WeChat comments when she responded to his posts, an argument the court described as "blaming the victim" (paras. 240-241).
- [16] The following statements from the costs decision are also of particular note on this assessment:
- a) "The defendants' written closing submissions at trial are consistent with an attempt to exhaust or financially drain the plaintiffs" (para. 25).
 - b) Mr. Liu only stopped digging the trench and otherwise obstructing the shared driveway when the plaintiffs obtained an injunction some six weeks later to prohibit him from doing so. That behaviour, too, "aligns with their motive to exhaust or financially drain the plaintiffs" (paras. 27-28).

- c) "The defendants confused and hindered matters by challenging the straightforward evidence at trial" (para. 31).
- d) "While the defendants are self-represented litigants, licence is not given to self-represented litigants to frustrate the object of [Rule 1-3 of the Supreme Court Civil Rules, BC Reg 168/2009 (the "Rules")] by taking senseless positions" (para. 44).
- e) "The foregoing are examples of obfuscation and hindrance in the context of the defendants' improper motive, which wasted court time" (para. 46).
- f) "In circumstances such as these, where one party is represented and the other party is not, involving a relatively small claim, absent special costs, there is a financial incentive for the self-represented litigant not to proceed expeditiously knowing that his or her opponent is incurring significant legal fees. Without an award of special costs in the case at bar, self-represented litigants may be encouraged to purposely thwart and frustrate matters as they present their case or defence" (paras. 54-55).

Costs Assessment Materials

- [17] A pre-hearing conference before Registrar Gaily prior to the costs assessment provided helpful guidance to the parties in terms of preparation for the hearing, and, as such, the materials and submissions were thorough and well-organized. All parties prepared comprehensive written submissions. All parties also expressed their strong desire to complete the costs assessment hearing in the one day for which it was scheduled, and given the parties' advance preparation and the organized materials that was possible.
- [18] Plaintiffs' counsel Mr. Wolf's affidavit of justification in particular was very comprehensive, spanning two three-inch binders and some 1100 pages of exhibits.
- [19] Mr. Wolf deposed that the plaintiffs' claim for special costs excluded costs for December 20, 2024. He also excluded some fees incurred in February and March 2025, as well as in July 2025, since they related to settlement discussions and other matters not properly claimable as costs of the proceeding. The pre-tax amount claimed in the bill of costs presented at the assessment hearing was approximately \$5,600 more than the bill attached to the pre-hearing conference appointment filed July 3, 2025; the defendants were notified of the increase prior to the assessment hearing and made no particular objections about that increase that are different from those of the nature discussed generally in these reasons.

Discussion

Applicable Principles

- [20] Special costs are not compensatory, they are punitive; the purpose of special costs is to censure and deter litigation misconduct, not to compensate the plaintiff: 567 Hornby Apartment Ltd. v. Le Soleil Restaurant Inc., 2020 BCCA 69, at para. 42. Self-represented parties are not exempt from special costs orders if their conduct warrants sanction (see, for example, The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc., 2015 BCCA 424).
- [21] Special costs are frequently used as a shorthand for legal fees incurred (see, for example, Gichuru v. Smith, 2014 BCCA 414, at para. 122). However, an assessment of special costs "is not an exercise in determining [the party's] actual legal costs and then deducting some artificial percentage". Rather, it is an assessment of the objectively reasonable legal costs involved in managing the proceeding: Chao Yin Canada Group Inc. v. Xenova Property Development Ltd., 2023 BCSC 390, at para. 23 [Chao Yin], citing Canadian National Railway Company et al v. A.B.C. Recycling Ltd., 2005 BCSC 1559, at para. 15. Special costs are usually intended to indemnify a successful party, fully or at least substantially, but they are not to be a windfall to that party.
- [22] The assessment of costs is a summary process. It does not require a line by line accounting of the legal bills of the party seeking to assess special costs in their favour. That said, the claiming party, who bears the onus of proof, is required to provide evidence to support the costs claimed. In the Continuing Legal Education Society's Practice Before the Registrar, under the heading, "evidence at the assessment of costs", the authors state the following: "The assessment of costs requires the appropriate evidence in support. The onus of proof rests on the party submitting the bill to establish the propriety and reasonableness of both the fees and disbursements claimed. This is typically facilitated with an affidavit of justification that speaks to both the units and disbursements claimed" (§2.18).
- [23] Pursuant to Rule 14-1(3), on an assessment of special costs, the registrar must allow fees that were proper or reasonably necessary to the conduct of the proceeding, having regard to the following factors:
- a. the complexity of the proceeding and the difficulty/novelty of the issues involved;
 - b. the skill, specialized knowledge and responsibility required of the lawyer;
 - c. the amount involved in the proceeding;
 - d. the time reasonably spent in conducting the proceeding;
 - e. conduct that tended to shorten or unnecessarily lengthen the proceeding;
 - f. the importance of the proceeding to the party whose bill is being assessed, and the result obtained;
 - g. the benefit to the party whose bill is being assessed of the services rendered by the lawyer; and

h. Rule 1-3 (i.e. proportionality) and any case plan order.

[24] With respect to disbursements, Rule 14-1(5) provides that when assessing costs under Rule 14-1(3), "a registrar must determine which disbursements have been necessarily or properly incurred in the conduct of the proceeding, and allow a reasonable amount for those disbursements."

[25] The authorities confirm that whether work for which fees are claimed should be allowed must be determined objectively. A step was necessary if it was indispensable to the conduct of the proceeding. A step was proper if it was not necessary but was nevertheless reasonably taken or incurred for the purpose of the proceeding: see Chao Yin, at para. 19.

Defendants' position

[26] Mr. Liu on the defendants' behalf made the following arguments to challenge the special costs sought by the plaintiffs:

- a) Time entries are vaguely described and include block billing.
- b) Mr. Wolf's billing during the trial was sometimes 6 to 6.75 hours per day despite there only being 4 to 4.5 hours in the court day.
- c) The defendants object to the charges related to Mr. Wolf's articling student, Ms. MacDonald, who attended parts of the trial (at a total cost claimed of \$12,615 at \$100 per hour) on the basis that her attendance was unnecessary and of administrative assistance only.
- d) Fees claimed for certain specific tasks (e.g., drafting the amended notice of civil claim, responding to the particulars sought by the defendants on the special costs assessment) are excessive, duplicative, and represent work not being assigned to the right personnel.
- e) There was a difference between the costs that Ms. David deposed would be payable from and after the costs hearing in March 2025 and the costs ultimately claimed (they admittedly increased by approximately \$8,100, including taxes). In their costs submissions before the trial judge, the plaintiffs also included, as alternative relief, that they should be entitled to their costs at Scale B. The defendants say that "acknowledgment" should be reflected in the form of a reduced entitlement.
- f) The taxable disbursements claimed are excessive.
- g) The plaintiffs did not adduce sufficient proof that the invoices rendered by counsel were paid.

Analysis

[27] Because the registrar is required to consider the factors listed in Rule 14-1(3), I will address them each in turn below. I will then turn to any of the objections raised by the defendants that are not subsumed in the discussion of the specific Rule 14-1(3) factors. While I may not directly mention each and every objection the defendants raised in their oral and written submissions, I am satisfied that I have accounted for all such objections in my decision.

The complexity of the proceeding and the difficulty/novelty of the issues involved

[28] In all of the circumstances, this case was of ordinary complexity, though the requirement for an immediate injunction is somewhat unusual, and the defendants being self-represented throughout added some additional responsibilities to Mr. Wolf's plate as the only member of the bar involved. In isolation, this is a neutral factor.

The skill, specialized knowledge and responsibility required of the lawyer

[29] Mr. Wolf is now a 39-year call. He submitted that the matter required more senior handling, given the need for an immediate injunction application, and became more so when the allegations of defamation were pursued.

[30] This factor is usually cited by an objecting party to argue that the case was not sufficiently complex to warrant the high hourly rates charged by counsel with conduct of the file. However, I note that Mr. Wolf's hourly rate throughout this proceeding was \$375, which is more than reasonable given his seniority and experience. The rates charged for Ms. MacDonald and plaintiffs' counsel's support staff are similarly very reasonable (\$135 for paralegal time and \$100 for the articling student).

[31] This case was handled on the part of the plaintiffs using professionals with appropriate skill, knowledge and experience.

The amount involved in the proceeding

[32] The defendants point to the total damages award of \$108,750, including aggravated and punitive damages, to suggest that the special costs sought are disproportionate. However, while the proceedings involved a monetary component, they also involved property access issues as well as what became the central claim, once the interim injunction was issued and complied with, namely the defendants' defamatory conduct.

[33] Counsel for the plaintiffs points out that, while financial compensation was sought, addressing reputational damage more broadly was key to both plaintiffs. The trial judge noted that the reputational damage to Ms. David was particularly harmful. First, she was trying to establish herself as a real estate agent, which requires a good reputation in the community. Second, as a cancer survivor, the intentional sting of Mr. Liu's defamatory words, which the court held were motivated by malice, caused her mental injury. The

monetary compensation awarded does not tell the full story in terms of the harms addressed.

- [34] I note the court also awarded all of what the plaintiffs were seeking as damages for defamation then applied a 5% discount given the last-day-of-trial apology and retraction. The plaintiffs' damages sought were rather modest in the circumstances, which ultimately is to the defendants' benefit, and that should not have a negative impact on the plaintiffs' recovery of special costs in the circumstances. I do not find the special costs claim to be disproportionate.

The time reasonably spent in conducting the proceeding

- [35] Overall, this proceeding unfolded in a fairly lean way. There was the immediate injunction application, and pleadings were amended in a substantive way approximately one year into the litigation, but otherwise the litigation proceeded in a relatively streamlined fashion prior to trial. The injunction application was heard on the first attempt, there were minimal other interlocutory applications, and the trial proceeded as originally scheduled, 2.5 years after the proceedings began, meaning no duplicative effort due to adjournments or other delays to the trial. There were only two half-day discoveries performed.
- [36] The defendants challenge some of the time spent by counsel preparing for the interlocutory injunction application heard in May 2022. However, injunctions are notoriously labour-intensive given the enhanced duties owed by counsel to the court, and the heavy burden the party seeking an injunction bears. The court agreed that the plaintiffs were entitled to the injunction they sought after having suffered the consequences of a blocked driveway for six or more weeks. As noted, counsel confirmed that the injunction application proceeded on the first day it was scheduled so there was no time charged for attendance where the matter had to be adjourned for lack of court time.
- [37] With respect to the amount claimed for amending the notice of civil claim to plead defamation, it is on the high side at approximately \$11,000. However, I do not accept Mr. Liu's assertion that this was an intentional attempt to increase costs. Pleadings are the foundational documents of any claim, and frankly often do not get the drafting time, care and attention they deserve. The court awarded the plaintiffs damages for all of the claims added by way of these amendments, meaning that they were well-constructed and provable. Defamation claims also have to be meticulously pleaded, given the requirements of Rule 3-7(21) of the Rules and the fact that they rest on precise words and the context in which they are used.
- [38] The defendants also challenge the counsel costs incurred on translation issues. The WeChat messages that were central to all parties' defamation claims were in Chinese and needed certified translations in order to present them in court. The plaintiffs obtained one set of translations, but Ms. David expressed some concern about their accuracy so they retained a second translator. The author of the second translations was cross-examined at trial for

more than one day and they were predominantly accepted; the defendants themselves also submitted some of those translations as their evidence. Mr. Wolf points out that spending more than minimal time on the translation issue, and obtaining a second set of more accurate translations, was justified given their central role in the claims. I agree.

- [39] In terms of trial preparation billing in October 2024, the defendants claim that the 60 hours and \$19,000 attributed to that time period is excessive. I disagree. Even for the originally scheduled 10-day trial, a total of 60 hours of preparation time is reasonable and the time descriptions show proper steps taken.
- [40] Similarly, there is no merit to the defendants' argument that counsel recording up to 6.75 hours in a day of trial is excessive. Many days, Mr. Wolf billed less than that, and he explained his and his colleagues' trial billings in his affidavit of justification, which outlined what occurred on each day of trial.
- [41] The defendants' complaints about Ms. MacDonald's attendance at trial are also overblown. Ms. MacDonald swore an affidavit in support of the assessment confirming that she recorded the time, and performed the work, reflected on the supplied invoices. Mr. Wolf confirmed that she did more than take notes at trial. She performed legal research, prepared chronologies, and prepared charts tracking changes to the translations of particularly critical documents, as some examples of her duties. She was not involved in the proceeding at all until closer to trial. The bills reflect an average billing of approximately 3.6 hours per day of trial for Ms. MacDonald's time, which is not a complete court day. It is almost certain that Ms. MacDonald's involvement allowed Mr. Wolf to bill fewer hours on some days of trial, effectively at a discount of \$275. It is also reasonable to have more than one legal representative at a trial such as this one, given the higher than average chance that unexpected issues or evidence could arise.
- [42] Finally, in terms of specific tasks to which the defendants raised an objection, they point to the costs incurred to prepare for the special costs assessment, which according to Mr. Wolf's summary of legal expenses amounted to approximately \$29,000, all-inclusive. That is a significant sum, though also resulted in a set of materials that allowed the assessment hearing to proceed in an efficient and comprehensive fashion, to all parties' benefit. Only a portion of those materials were actually referred to at the hearing, however. I agree that a reduction should be applied to plaintiffs' counsel's preparation for the special costs assessment. In the circumstances it made sense for the plaintiffs to be overprepared in terms of assessment materials rather than under prepared, but there is a limit and not all of the materials submitted were reasonably necessary or "proper" as that term is used in Rule 14-1(3).
- [43] Another general argument the defendants raise is that the wrong personnel performed tasks. Some of the specific examples they point to are Mr. Wolf dealing with service issues when the injunction application was being prepared, calling the court registry, participating in document disclosure, and him speaking to "contractors", which he explained were, in

fact, witnesses. In some cases, counsel are best placed to address issues with some administrative qualities since they are the ones with the appropriate knowledge and authority required to deal with an issue most efficiently. Speaking to witnesses, returning calls from the registry, and finalizing lists of documents are all appropriate tasks for counsel to perform in some circumstances.

- [44] A further argument the defendants make is that much of the work billed for was duplicative, though they provided few examples. Mr. Liu mostly pointed out that several individuals recorded time reviewing and revising documents, such as pleadings or application materials. The defendants' arguments related to this factor misunderstand the natural iterative process of preparing documents for litigation, the nature and progression of document revisions, and the good sense of having the bulk of the drafting done by those with lower billing rates but the need for more senior, final review.
- [45] I am not satisfied that there is any issue with duplication of work that should be taken into consideration in the costs assessment, or that adjustments should be made based on work not being performed at the correct experience level. With the one exception of some of the preparation for the special costs assessment, I find that the legal time spent on the proceeding was appropriate.

Conduct that tended to shorten or unnecessarily lengthen the proceeding

- [46] The defendants argued that they were trying to be as concise as possible at trial but the plaintiffs' strategy was to prolong the hearing. That statement is not supported by the trial judge's reasons. Rather, as noted above, it was the defendants' conduct that unduly complicated and lengthened the proceedings. This assessment is not a venue for the defendants to reargue facts found at trial.
- [47] There is no evidence of any conduct on the part of the plaintiffs that unnecessarily lengthened the proceedings.

The importance of the proceeding to the party whose bill is being assessed, and the result obtained

- [48] The proceeding was extremely important to the plaintiffs, both in terms of addressing significant access and property concerns and in terms of protecting their respective reputations. Mr. David is not a Canadian citizen, making challenges to his right to be in the country stressful, and Ms. David was trying to build a real estate business, which requires a certain reputational stature. The impact of the defendants' actions given Ms. David's significant health challenges also required redress. The trial addressed issues that were deeply important to the plaintiffs and rightly so.

The benefit to the party whose bill is being assessed of the services rendered by the lawyer

- [49] Mr. Wolf attested that the hourly rates that he charged the plaintiffs throughout the proceedings, for himself and those who assisted him, were very reasonable having regard to his level of experience and the complexity of the proceedings. As noted, above, I completely agree with that characterization.
- [50] Based on the evidence before me, I am satisfied that the plaintiffs benefited from the services rendered by Mr. Wolf and his associates for their success through a difficult trial and proceeding in general. I note also in this regard that counsel succeeded in obtaining punitive damages and special costs awards in favour of the plaintiffs, both of significant additional benefit.

Rule 1-3 (i.e. proportionality) and any case plan order

- [51] There was no case plan order in this proceeding.
- [52] Rule 1-3 sets out the object of the Rules, which is to "secure the just, speedy and inexpensive determination of every proceeding on its merits". This includes conducting the proceeding in ways that are proportionate to the amount involved in the proceeding, the importance of the issues in dispute and the complexity of the proceeding.
- [53] As discussed above, this case was about much more than financial compensation. The proceedings were conducted by the plaintiffs in as proportional a way as possible, given the claims and counterclaims made and the actions of the defendants, at trial and throughout. But for a small reduction related to the special costs assessment preparation, there is no issue of proportionality with the plaintiffs' special costs claim.

Disbursements

- [54] The non-taxable disbursements claimed in this proceeding are not challenged. The defendants make a general complaint that taxable disbursements, which totalled approximately \$16,000, were excessive. Only \$1,280 is claimed in disbursements after May 29, 2025, which plaintiffs' counsel submitted was already a discounted amount, based on the size of the affidavit of justification alone.
- [55] I have reviewed the legal invoices charging the plaintiffs the taxable disbursements claimed, as well as the invoices provided by third party service providers, some of which were paid for by counsel and passed through to the plaintiffs and some of which were paid by the plaintiffs directly. Without doing a line-by line analysis, which is not required, the nature, and in the case of some disbursements such as printing, the volume, are consistent with the proper conduct of this litigation. To the extent that more materials were printed for the special costs assessment than were proper or reasonably necessary, counsel has advised that the disbursement amounts claimed after entry of the trial judgment have already been discounted, and I am confident that the reduction I have applied for the special costs

assessment preparation cost covers any related disbursement overage.

[56] The disbursements claimed should be awarded.

Other objections

[57] In terms of the alleged "inaccurate projected costs estimate" provided by Ms. David in her March 2025 affidavit, Mr. Wolf points out that the purpose of that affidavit was to support the plaintiffs' costs submissions, and that estimate was specifically stated as being calculated up to the entry of the trial order only, which occurred on June 11, 2025. As such, the proceeding has continued for more than three months since, and some expected costs have been incurred in that period. In any event, estimates are subject to change and the difference between the estimate provided and the amount claimed subsequent to the costs hearing is not significant, even if they related to the same time frame, which they do not. The plaintiffs' costs claim should not be constrained by Ms. David's March 2025 estimate.

[58] With respect to the Scale B costs reference in the plaintiffs' costs materials, that, too, does not serve to limit to the amount the plaintiffs can claim as special costs. The plaintiffs made a number of alternative submissions at the costs hearing, which submissions were included in the assessment materials, including that they should be entitled to increased costs or double costs after the date a settlement offer was made. The Scale B costs discussion was relevant as a baseline to that alternative relief sought, but became irrelevant when the court ordered special costs. The reference to Scale B costs has no impact on the special costs quantum assessment.

[59] On the issue of proof of payment, I agree with Mr. Wolf that a party seeking to assess special costs does not need to prove that the invoices were paid. Nevertheless, both Mr. Wolf and Mr. David have deposed that all invoices rendered to the plaintiffs have been paid, for all but the most recent two invoices issued. Mr. Liu argued the court should not accept Mr. David's evidence as to payment since he did not attach bank statements or other proof of payment beyond an assertion that he personally had paid the bills. I disagree and accept Mr. David's evidence as-is.

[60] Lastly, I point out that Mr. Liu used a number of figures and calculations in his submissions in an attempt to argue that there had been a significant and suspect increase in the fees charged by counsel, and ultimately claimed. However, without making it clear, he often compared pre-tax amounts to amounts including tax, amounts that did not include disbursements with those that did, and represented that certain amounts claimed did not include taxes when that was untrue, to project an artificially inflated discrepancy. His approach was misleading.

[61] I also find no evidence to support Mr. Liu's statement that the plaintiffs artificially inflated their costs incurred after judgment. Those costs are a very small percentage of the overall claim, are supported by reasonable invoices, and, as discussed, a number of post-judgment fees have already been removed by the plaintiffs' at their own initiative. To the extent that preparation costs for this assessment were not proper or reasonably necessary, I have accounted for that.

Conclusion

- [62] As stated, in assessing special costs, the registrar is not expected or required to conduct a line-by-line audit of the supporting invoices or a full accounting, but must allow those fees that were proper or reasonably necessary to the conduct of the proceeding, having regard to the factors set out under Rule 14-1(3).
- [63] Mr. Wolf was careful, conservative and diligent, in the evidence prepared in support of the costs assessment and in submissions. He reduced and removed even small claims that he did not think he could justify, some in direct response to the defendants' complaints. This is a commendable approach and gives the court further confidence in the reasonableness in general of the plaintiffs' costs claim. I have made a small deduction to the amount claimed to account for a special costs hearing preparation discount only.
- [64] While the defendants asked me to make directions for production of additional information prior to making an assessment, those directions, and the information they may generate, are neither appropriate nor necessary.
- [65] In the circumstances of this proceeding, taking into account the factors set out in Rule 14-1(3), the special costs claimed by the plaintiffs are assessed at \$335,000, including taxes and disbursements. I am satisfied that that award excludes the one day of trial for which no party was awarded costs.
- [66] I direct counsel for the plaintiffs to prepare a certificate of costs in Form 64 showing that the amount of special costs allowed after assessment is \$335,000.

"Associate Judge Peck"

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