

CANADA / JUDGMENT

Hakimpour v. Grimm

2024 BCSC 685

COURT

Supreme Court of British Columbia

DECIDED

25 April 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 685 Hakimpour v. Grimm

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hakimpour v. Grimm,

2024 BCSC 685

Date: 20240425

Docket: M186942

Registry: Vancouver

Between:

Shahla Hakimpour

Plaintiff

And

Jennifer Raye Grimm

Defendant

Before: The Honourable Justice Tucker

Reasons for Judgment on Costs

Counsel for Plaintiff:

J. Hanson

P. Plunkett, Articling Student

Counsel for Defendant:

D. Perry

Place and Date of Trial:

Vancouver, B.C.

December 22, 2023

Place and Date of Judgment:

Vancouver, B.C.

April 25, 2024

Table of Contents

I. Introduction.. 3

II. Background.. 3

III. Issues. 5

IV. Double Costs. 5

Ought Reasonably to Have Been Accepted. 6

Comparison of Offer to Award. 11

Financial Circumstances. 11

Other Considerations. 12

V. Costs to The Successful Party. 12

VI. Conclusion.. 18

I. Introduction

- [1] In reasons for judgment dated August 31, 2021, and indexed as 2021 BCSC 1701 ("Decision"), I dismissed the plaintiff's personal injury action. The Decision was issued following a six-day trial on liability and damages. I found that the plaintiff had failed to establish liability.
- [2] The final paragraph of my reasons stated:
- [63] Absent considerations I am presently unaware of, costs will follow the event. Either party may contact the Registry regarding further submissions if they wish to seek a different disposition of costs.
- [3] Some two years later, on December 22, 2023, the parties provided submissions on costs. The defendant seeks double costs based on a settlement offer she made before trial. The plaintiff seeks an order that the parties each bear their own costs.

II. Background

- [4] On November 21, 2017, the plaintiff (and her son) were struck by a vehicle driven by the defendant. The plaintiff testified that the defendant's car hit her as she was walking along the side of the road. The defendant testified that she was driving within her lane when the plaintiff suddenly appeared in her path of travel and that there was nothing she could do to avoid hitting the plaintiff. I found that the evidence supported the defendant's version of the events.
- [5] The plaintiff was thrown by the impact but did not sustain any severe injuries. Primarily, her right shoulder was dislocated and her arm muscles were twisted. At trial, she claimed that she suffered ongoing pain and impairment. The plaintiff was not employed at the time of injury or at trial and had no plans to be employed in the near future. She was a stay-at-home parent, although she testified that planned to open a daycare some day.
- [6] The defendant took the position that the plaintiff was almost fully recovered as of trial and that, if liability were established, damages should be small in amount.
- [7] In April 2021, the parties unsuccessfully engaged in a mediation.
- [8] On April 23, 2021, following the mediation, the plaintiff made an offer to settle for \$145,000 (new money).
- [9] On May 5, 2021 at 12:23 p.m., the defendant sent the plaintiff an informal offer to settle for \$93,336 (all inclusive) ("First Informal Offer"). At the same time, the defendant advised the plaintiff that a formal offer was forthcoming and would be for about 25 percent less.
- [10] On the afternoon of May 6, 2021, the defendant withdrew the First Informal Offer and replaced it with another informal offer for \$95,612 (new money) ("Second Informal Offer").
- [11] On the morning of May 7, 2021, the defendant emailed the plaintiff advising that the Second Informal Offer would be replaced at noon by a formal offer that was "substantially lower" in amount.
- [12] At 12:26 p.m. on May 7, 2021, the defendant made a formal offer to settle for \$58,688 (new money) ("Formal Offer"). Under its terms, the Formal Offer expired at 4:00 p.m. on May 7th (i.e., that same afternoon).
- [13] The plaintiff did not accept the Formal Offer and the matter proceeded to trial.
- [14] The plaintiff, represented by different appeal counsel, filed a notice of appeal. The appeal was not pursued and fell to the inactive list.
- [15] There appears to have been no communication at all between the parties' trial counsel between the date of the Decision and September 7, 2023. Neither party took steps to draw up an order for entry in accordance with Rules 13-1 of the Supreme Court Civil Rules [Rules].

- [16] On September 7, 2023, the defendant sent the plaintiff a draft order providing for costs to the defendant up to May 7, 2021 (i.e., the date of the Formal Offer), and for double costs to the defendant thereafter. This September 7, 2023 correspondence spurred on the costs hearing before me.
- [17] The defendant has offered no explanation for failing to take any steps respecting costs prior to September 2023.

III. Issues

[18] The following issues are raised:

- a) Is the defendant entitled to double costs from the date of the Formal Offer?
- b) Should the defendant be denied costs due to the delay in seeking a costs order following the Decision?

IV. Double Costs

- [19] The parties agree that the Formal Offer was an "offer to settle" for purposes of Rule 9-1(1), and also agree that the First and Second Informal Offers were not.
- [20] The Rules regarding offers to settle are designed to encourage the early settlement of disputes by rewarding the party who makes a reasonable offer and penalizing the party who declines to accept it: *Hartshorne v. Hartshorne*, 2011 BCCA 29 at para. 25.
- [21] Rule 9-1(4) permits the court to consider offers to settle in relation to costs. Rule 9-1(5) sets out the court's options where an offer to settle was made. The listed options include:
- (d) if the offer was made by a defendant and the judgment awarded to the plaintiff was no greater than the amount of the offer to settle, award to the defendant the defendant's costs in respect of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle.
- [22] Double costs are generally only available to defendants in exceptional circumstances. One such exceptional circumstance is where, as is the case here, the plaintiff's claim is dismissed altogether following rejection of an offer to settle: *C.P. v. RBC Life Insurance Company*, 2015 BCCA 30 at para. 91.
- [23] Rule 9-1(6) sets out factors for consideration where an order for double costs is sought:
- (a) whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle was delivered or served or on any later date;
 - (b) the relationship between the terms of settlement offered and the final judgment of the court;
 - (c) the relative financial circumstances of the parties;

(d) any other factor the court considers appropriate.

[24] I will now apply each of the 9-1(6) factors to the case before me.

Ought Reasonably to Have Been Accepted

[97] This factor is considered from the perspective of the person receiving the offer. It has both a subjective and objective component. The court is entitled to consider the reasons a party declined to accept an offer to settle, but must consider whether those reasons are objectively reasonable: C.P. at para. 97.

[25] Whether an offer ought reasonably to have been accepted is not assessed by reference to the award ultimately made. Rather, an offer is to be assessed in light of the circumstances that existed at the time it was open for acceptance: Hartshorne at para. 27. In discussing this assessment, the Court of Appeal in Hartshorne stated:

[27] reasonableness is to be assessed by considering such factors as the timing of the offer, whether it had some relationship to the claim (as opposed to simply being a "nuisance offer"), whether it could be easily evaluated, and whether some rationale for the offer was provided. We do not intend this to be a comprehensive list, nor do we suggest that each of these factors will necessarily be relevant in a given case.

[26] It is not asserted that the Formal Offer was a nuisance offer.

[27] I find that the plaintiff had all the information required to assess the Formal Offer at the time it was made. Mediation briefs had been exchanged. She had an appreciation of the evidence in the case. She knew the defendant's position on liability and on her claimed heads of damages. She had earlier made a settlement offer of her own. Further, the terms of the Formal Offer were forthright and uncomplicated.

[28] The central question is whether the plaintiff had sufficient time to consider the Formal Offer, given that it was only open for acceptance for three and a half hours.

[29] The defendant argues that the Formal Offer should be viewed in the context of her earlier Informal Offers. When the defendant provided the First Informal Offer on May 5th, she expressly advised that a formal offer would follow and that it would be for a lesser amount. The Formal Offer was then provided on May 7th.

[30] In *Dodge v. Shaw Cablesystems Ltd.*, 2009 BCSC 1765, Justice Masuhara, speaking with respect to Rule 9-1's immediate predecessor (Rule 37B), stated:

[14] A party requires a reasonable time within which to consider an offer and decide in the circumstances existing at the time of the offer whether it should be accepted or rejected: *Coquitlam (City) v. Crawford*, 2008 BCSC 1507. There is case law on Rule 37B that suggests that a reasonable amount of time to consider an offer is seven days. In *Arnold*, Butler J. cited *Bailey* when he stated at para. 22 that "[a] reasonable period of time to consider an offer to settle is seven days". In *Towson v. Bergman*, 2009 BCSC 978 at para. 70, Gray J. stated that the

seven day period "has been applied in the case law." I do not, however, read these cases as laying down a rule of general application. In *Wright v. Hohenacker*, 2009 BCSC 996, for example, Fisher J. did not consider a "seven day rule" when determining whether an offer should have been reasonably accepted, stating that, in the circumstances of that case, the fact that the offer was made only four days before trial was not particularly significant. Suffice it to say that every case must be judged on its own facts. Imposition of an inflexible rule as to what is considered a reasonable amount of time risks returning to the rigid consequences of the old Rule 37 and fettering the wide discretion intended under Rule 37B.

- [31] Under Rule 9-1, the assessment of what amounts to a reasonable amount of time for evaluation continues to be a fact-specific determination. There is no rule of general application to be divined by review of earlier cases. However, a review of factually similar cases is of assistance in terms of identifying relevant facts and circumstances for consideration.
- [32] Dodge involved a slip and fall personal injury matter. As here, liability was disputed and the parties had participated in a mediation. The defendant made a \$50,000 "all-in" offer on Wednesday, January 7th that was open for acceptance until Friday, January 10th. The trial was slated to start on Monday, January 12th. The plaintiff declined the offer and then received only \$20,000 at trial.
- [33] The plaintiff contended that there had been inadequate time to consider the offer. Justice Masuhara agreed, saying:
- [15] In this case, the plaintiff was only given two days to consider accepting the offer before it expired. Apart from pointing out that the offer was made after mediation and after delivery of the defendant's expert reports, neither party has led any evidence surrounding the circumstances at the time the offer was made. It is known, however, that the plaintiff was a resident of Ontario at the time, whereas her counsel was resident in Abbotsford. While this alone is not determinative (the plaintiff has not led any evidence of her whereabouts at the time of the offer), when an offer to settle is received, counsel and client are required to make a careful appraisal of the merits, taking into account complex and subjective factors in appraising the eventual outcome of a trial, in this case, a jury trial. Complexity is increased where the plaintiff is asked to evaluate an "all-in" offer where, by the very nature of the offer, the actual amount offered in discharge of the action is not immediately apparent.
- [16] Taking into account that analysing the "all-in offer" would have required breaking out the appropriate cost consequences, and that plaintiff and counsel undoubtedly had many other things that required their attention, two days was an unreasonable amount of time in which to properly analyze the offer. Even if the offer did beat the result, counsel for the plaintiff did not have enough time to reach this conclusion within the deadline set by the defendant.

- [34] In *Wettlaufer v. Air Transat A.T. Inc.*, 2014 BCSC 607, the defendant conceded liability in the personal injury action. On October 18th, the defendant made an offer (\$100,000 all-inclusive) to settle damages. The offer set out the defendant's views regarding the weaknesses in the plaintiff's case.
- [35] The defendant later offered \$250,000 (all-inclusive) on Wednesday October 24th, with the offer open for acceptance until noon on Friday, October 26th. The trial was to commence on Monday, October 29th. The plaintiff refused the offer. The Court found that, "[in] the context of the [October 18th] offer and the nature of the litigation," the plaintiff had had adequate time to consider the second offer: *Wettlaufer* at para. 25.
- [36] Like *Wettlaufer*, *Parker v. Martin*, 2017 BCSC 1161, involved a personal injury action with an admission of liability. In February 2016, the defendant made an offer to settle damages for \$60,000 (plus costs). It was not accepted. In mid-August of 2016, the parties attended a mediation. On September 1, 2016, the defendant informally raised a second offer of 71,760.23 (plus costs). The defendant then delivered a formal offer on those same terms on Friday, September 2nd. September 2nd was the beginning of a long weekend, with the trial scheduled to begin the next Tuesday.
- [37] The plaintiff did not accept the September 2nd offer and then received only \$62,600 at trial. The Court found there had not been sufficient time to consider the second offer:
- [26] In my view the second offer of September 2, 2016 was not one that ought reasonably to have been accepted and the plaintiff should not be penalized for declining it. First, there is the issue of the timing of its delivery. Service on the Friday before Labour Day weekend, when trial was set to commence the following Tuesday, effectively amounted to service on the eve of trial. The plaintiff did not have a reasonable opportunity to consider the offer.
- [38] Turning back to the facts at hand, the Formal Offer was open for acceptance from 12:30 to 4:00 pm on Friday, May 7th. The existence and maximum value of the Formal Offer were foreshadowed by the May 5th First Informal Offer. If the period of foreshadowing were to count as time available for consultation with counsel and weighing the risks and benefits, there would have been a total of 52 hours (i.e., from May 5th at 12:30 pm to May 7th at 4:00 pm) for consideration.
- [39] There is no affidavit evidence addressing the specific circumstances of the plaintiff during the period the Formal Offer was outstanding. However, more generally, it was established at trial that, although the plaintiff can speak and understand basic English, her English is not sophisticated and she prefers to communicate in other languages. At the time of trial, she was a stay-at-home parent with responsibility for four children, including a toddler. Further, at trial and in the period leading up to the trial, the plaintiff's husband was employed in an occupation that consisted of driving to and performing work at customer homes.

- [40] The plaintiff and her counsel would have needed to arrange to meet and have discussions. Those opportunities were limited by mutual availability. Although some evaluation would have been done at the point of mediation, plaintiff's counsel would have needed to assess and value what both sides had incurred in litigation costs in subsequent trial preparation. The plaintiff could reasonably have wanted someone who could interpret to be there for the consultation. Given the plaintiff's financial circumstances, that person might reasonably be her husband, but he would have had to make it fit within his work schedule. Further, the evidence at trial was that the plaintiff's husband was in charge of the family finances. It would be reasonable in any event for the plaintiff to need his input in order to weigh the consequences of accepting or refusing the offer in terms of the impact on family finances.
- [41] As noted, the terms of the Formal Offer were straightforward. However, the liability issue was not. Liability was disputed and split liability was a potential outcome (e.g., that the plaintiff did cross in front of the car's path, but that the defendant's speed was excessive to the circumstances).
- [42] A three and half hour window for acceptance under the Formal Offer was clearly insufficient for purposes of meeting and making an informed assessment in these circumstances. Further, even if I were to accept the proposition that the period from May 5th at 12:30 pm through May 7th at 4:30 pm was time available to consider the Formal Offer (which I need not decide), I would still find that that period was inadequate in all the circumstances.
- [43] Neither party made submissions as to whether a finding of inadequate time for consideration is dispositive of the double costs analysis. Rather than delve into the question, I will address the other factors as the outcome is the same in any event.

Comparison of Offer to Award

- [44] As the plaintiff's claim was dismissed in its entirety at trial, this factor favours the defendant.

Financial Circumstances

- [45] This factor allows the court to consider the relevant financial circumstances of the parties. The plaintiff attests that she has no personal income, although the trial evidence indicates that is a consequence of a family decision for her to function as a stay-at-home parent. She attests that she owns no equity in any property, however, again, it is unclear whether that reflects the way in which the family has chosen to organize its finances.
- [46] In any event, I adopt the following paragraphs from Justice Fitzpatrick's decision in *Gonzales v. Voskakis*, 2013 BCSC 675:

- [37] It is now well settled that the involvement of ICBC on behalf of the defendant is a factor that may be considered: *Smith v. Tedford*, 2010 BCCA 302 at paras. 16-19. As with the first two factors, each case must be analyzed based on the particular circumstances at hand. It therefore remains to be decided whether this is a relevant factor and, if so, what weight should be given to it: *Mazur v. Lucas*, 2011 BCSC 1685 at para. 53.
- [38] The defence submits that the resources of ICBC are not a significant factor, citing *Hunter v. Anderson*, 2010 BCSC 1591. In that case, the court held that the insurance coverage did not create any unfair advantage leading to unnecessary or protracted proceedings: para. 22.
- [39] In this case, I find the reasoning in *Hunter* persuasive. I do not consider that ICBC's greater financial clout is a significant factor. It is easy to portray ICBC as a large, well-funded corporation, able to run roughshod over less financially secure plaintiffs. But it must be remembered that although ICBC is well-funded, its resources largely come from the premiums of many individual insurers, who expect that these funds will be managed for the benefit of the insurance system as a whole. As such, costs either against or in favour of the defence must reflect the decisions that are generally made in litigation -- such as making an offer to settle -- in light of the benefits and detriments that the underlying policy holders would have borne themselves. These policy holders should not be penalized per se simply because they have insurance.
- [47] The defendant concedes that she is insured. However, the plaintiff has not identified any strategy or conduct engaged in by the defence, such as unnecessary motions and other costly strategies, to leverage the defendant's financial position as an unfair litigation advantage.
- [48] Looking at all the circumstances, I conclude that this factor is neutral.

Other Considerations

- [49] The plaintiff asks me to consider the defendant's delay as an additional consideration in her favour. I find it unnecessary to consider delay as a factor in relation to the issue of double costs. The delay could only weigh in favour of the plaintiff and I am satisfied that the factors above favour her position in any event.
- [50] I am satisfied that double costs should not be awarded here.

V. Costs to The Successful Party

- [51] Rule 14-1(9) provides that "costs of a proceeding must be awarded to the successful party unless the court otherwise orders."

- [52] In *British Columbia v. Worthington (Canada) Inc.* (1988), 29 BCLR (2d) 145 at 154-157, 1988 CanLII 175 (C.A.) [Worthington], the Court of Appeal confirmed that a trial court has broad discretion to determine by whom the costs are to be paid, but that the discretion to award or not to award costs must be exercised judicially, not arbitrarily or capriciously, and on grounds connected with the litigation.
- [53] A discussion of the "usual rule" and what is required to displace it is found in *Briante v. Vancouver Island Health Association*, 2017 BCCA 148:
- [198] The usual rule is that, absent special considerations, costs follow the event; they must be awarded to the successful party unless the court orders otherwise. As Goepel J.A. observed in *Loft v. Nat*, 2014 BCCA 108 at para. 46, "[a]t its most basic level the successful party is the plaintiff who establishes liability under a cause of action and obtains a remedy, or a defendant who obtains a dismissal of the plaintiff's case". The onus is on the party seeking to have the court exercise its discretion to depart from the usual rule: *Gill v. Canada (Minister of Transport)*, 2014 BCSC 2235. The onus is a substantial one. As noted in *Sutherland v. The Attorney General of Canada*, 2008 BCCA 27 at para. 26, "a successful litigant has a reasonable expectation of obtaining an order for the payment of his [or her] costs". This expectation has been given expression in Rule 14-1(9) of the Supreme Court Civil Rules,
- [54] The defendant seeks costs in the action at Scale B.
- [55] The plaintiff does not dispute that the defendant was the successful party at trial, but contends that her delay in seeking a costs order amounts to a "special consideration" for the purposes of departing from the usual rule on costs.
- [56] The plaintiff submits that costs awards under the Rules are discretionary and that one of the stated objectives of the Rules is to "secure the speedy determination of every proceeding").
- [57] The plaintiff submits that the delay in seeking costs has impacted her adversely in personal terms. She attests that, as she has no personal income and holds no equity in her name, the costs are a considerable financial burden and a source of stress to her. She attests that the accident and related litigation were very upsetting for her personally, and that the defendant's delayed pursuit of costs has reinvigorated those negative emotions to her detriment. She also attests that her injuries from the accident continue to impact her. As I understand it, the latter is an assertion that the impacts of her injuries renders her more vulnerable to the emotional and financial stress triggered by the late pursuit of costs.
- [58] Finally, the plaintiff thus contends that the defendant's delay in seeking a costs order undermines the efficient administration of justice and as such should be discouraged. She submits that denying costs on this basis will incentivize other successful parties to act more promptly.

- [59] The plaintiff says the findings she seeks here are supported by, and consistent with, the approach taken in *Bay v. Pieska*, 2014 BCSC 809 and *S.R.M. v. N.G.T.M.* 2017 BCSC 34, both decisions of Justice Butler while he was still a member of this Court.
- [60] Bay related to costs for a two-day personal injury trial. Three and a half years after the judgment, the defendant applied for costs as the successful party and for double costs for the period following a settlement offer. The plaintiff raised the delay in resisting the orders sought.
- [61] Justice Butler reviewed the relevant law and concluded that the three and a half year delay had, in fact, caused the plaintiff prejudice relevant to the application for double costs, but awarded the defendant his successful party costs:
- [27] The plaintiff relies on *Xerox Canada Inc. v. Sweany* (1990), 42 C.P.C. (2d) 101 (B.C.S.C.), where Finch J., as he then was, considered an appeal of a registrar's decision to disallow a defendant costs under Rule 57(32), now Supreme Court Civil Rules, Rule 14-1(38). The registrar disallowed costs sought to be taxed because the defendant failed to tax his bill of costs for two years, thereby causing prejudice to the plaintiff. Justice Finch allowed the appeal on the basis that the plaintiff failed to bring sufficient evidence to show that he had been prejudiced. He found the burden of proving prejudice due to delay was on the party alleging it and examined the facts that were said to establish prejudice in that case, namely: (1) a predecessor collections supervisor who had more knowledge of the matter had left her position; (2) the whereabouts of another employee, who on behalf of the plaintiff had instructed counsel at trial, were unknown; and (3) the plaintiff had closed its file "a very long time ago". Justice Finch did not accept these facts as establishing prejudice; rather he concluded at p. 108 that there was nothing to support the allegation of prejudice unless it was inferred "from the fact of delay alone."
- ...
- [30] While some delay is understandable, the delay in this case far exceeded a reasonable limit. Excessive delay is, of course, contrary to the object of the Rules as set out in Rule 1-3(1): to secure "the just, speedy, and inexpensive determination of every proceeding on its merits." By waiting so long to deal with the issue of costs, the defendant undoubtedly increased the cost of dealing with the issue for both parties and delayed the final resolution by years. It would be wrong to accept the delay without imposing any consequence on the defendant. It is in the interests of the court and of the parties to resolve disputes as soon as they arise to promote efficient use of court time. The inordinate delay in bringing this application is not acceptable.
- [31] In *Xerox*, Finch J. found that a party alleging prejudice has the evidentiary burden of showing that prejudice. While the evidence presented does not establish significant prejudice, the plaintiff has established that the defendant's delay in pursuing a costs award caused her and her counsel difficulty in responding to the application in as fulsome a manner as she would have been able to had the defendant sought costs soon after trial.

Similarly, it is much more difficult for the court to consider the costs claim so long after the trial has concluded.

- [33] Without the delay in the application, I would have found that the defendant was entitled to double costs from the date of Mr. Pasieka's examination for discovery. The plaintiff should have known from that time forward her claim was weak and should have accepted the offer. However, given the inordinate delay, I decline to make that order. Instead, I order that the defendant is entitled to costs at Scale B throughout.

[Emphasis added.]

- [62] It is evident that Justice Butler did consider what would be required for the delay in Bay to have been relevant to Rule 14-1(9) costs. The fact that he did so is indicated in his statement of the issues to be determined in para. 13.
- [63] In Bay, Justice Butler followed the holding in *Xerox Canada Inc. v. Sweany* (1990), 42 C.P.C. (2d) 101, 1990 CanLII 848 (B.C.S.C.), in which this Court found that delay is relevant to a costs application where the evidence establishes prejudice resulting from the delay in seeking the costs order.
- [64] Justice Butler did find that the evidence in Bay established prejudice arising from the delay. In particular, the plaintiff and her counsel had had to re-immersing themselves in the file in order to argue the double costs issues. The re-immersion process was time-consuming and thus costly to the plaintiff:
- [28] In support of a finding that the defendant's delay caused prejudice to the plaintiff, plaintiff's counsel advises that her memory of the sequence of events has diminished with time. She says that a change in the computer software used by plaintiff's counsel and the fact that counsel's support staff mistakenly dismantled part of the plaintiff's file made it difficult for her counsel to piece together the steps taken in the litigation.
- [65] That said, there was no need for the plaintiff and her counsel to re-immersing themselves in the file in order to respond to the Rule 14-1(9) application. The delay did not prejudice the ability to respond to the question of who was substantially successful. In Bay, the plaintiff had failed to establish liability and the personal injury claim was entirely dismissed. It was patent that the defendant was the successful party.
- [66] Thus, there was prejudice in relation to the litigation established on the evidence in Bay, but that prejudice related only to the application for double costs.
- [67] In *S.R.M.* at para. 17, Justice Butler reiterated the obligation to establish by evidence that delay had caused prejudice. He again found that the evidence before him established delay prejudicing the claimant's ability to respond to the costs application.

- [68] S.R.M. involved a 23 day family trial. The costs application was brought two years after the decision at trial. There had been multiple issues in dispute at trial. The costs application entailed determining who had succeeded on which issues and how the litigation costs should be allocated as between those various issues. The costs application record was massive. The delay in bringing the costs application forward for adjudication was attributed to the trial respondent.
- [69] The claimant and her counsel had to conduct an extensive review of the trial preparation and file materials to advance their position on the costs application. Justice Butler was satisfied that the delay increased the cost and difficulty of dealing with the costs application:
- [20] I do not know how much duplication in the claimant's legal expenses occurred as a result of the delay. However, it is significant that it took the respondent's new counsel six months to prepare the costs argument once she was retained in December 2015. There is no doubt that the case was unusual, complex and extremely hard fought. The greater the passage of time, the more challenging it is for any lawyer, including trial counsel, to recall or determine and assess the details and nuances of the circumstances that are relevant to costs. That is particularly the situation here given the unusual circumstances of this case. The lengthy delay following the release of the Reasons has undoubtedly been a real challenge for the lawyers now acting for the parties. I can readily conclude that the legal costs thrown away as a result of the delay are not insignificant.
- [21] I should also note that the claimant will have been required to spend additional time and effort to instruct new counsel, review materials and answer inquiries to assist counsel in coming up to speed. The prejudice she has suffered is not just the additional cost, it is also the additional time and effort required because of the delay.
- [70] Here, as in Bay, there is no difficulty in determining which party was substantially successful in the litigation. There are no issues or costs to parse out for allocation on this application. I find the delay did not prejudice the plaintiff's ability to respond to the application for costs under Rule 14-1(9).
- [71] The plaintiff further contends, however, that the delay is adverse to her interests in ways that are unrelated to her ability to respond to the costs application, but still related to the litigation.
- [72] Notably, although a number of cases discussing the evils of delay in unrelated legal contexts - e.g., as an aspect of natural justice (*Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44), and in relation to laches (*M.(K.) v. M.(H.)*, [1992] 3 SCR 6, 1992 CanLII 31 (SCC) - were referenced, counsel for the plaintiff agreed that these were intended only to illustrate the law's general abhorrence of delay.
- [73] Rather, counsel for the plaintiff described his argument regarding the impact on the plaintiff as seeking to expand the prejudice reasoning in Bay and S.R.M. to apply to a broader scope of detriment.

- [74] Notably, it is not alleged that the defendant represented that she would forgo costs, nor that the plaintiff did anything in reliance. Rather, it appears that the plaintiff inferred at some (undefined) point in time, and based solely on the delay itself, that the defendant was not going to seek costs. That inference was incorrect, but it was also unwarranted. I note that the Decision specifically said that costs would follow the event unless an application led to a finding otherwise.
- [75] The solace the plaintiff derived from her mistaken inference has no doubt been disturbed, but that disturbance does not provide any principled basis for finding the defendant was prejudiced. In fact, the defendant's delay has provided the plaintiff with a two-year grace period with use of the funds as a benefit. Further, to the extent the defendant's decision to seeking costs results in financial stress to the plaintiff, impecuniosity is not a basis for depriving a successful party of costs under Rule 14-1(9) in any event: *Greenway-Brown v. Kyung*, 2018 BCSC 846 at para. 22.
- [76] Any stress or other adverse psychological impact of the defendant's delay in seeking an order for costs is not connected with the litigation in the sense contemplated by *Worthington*.
- [77] Finally, the plaintiff submitted that I should exercise my discretion under Rule 14-1(9) to deny costs because doing so will incentivize parties to deal with costs following trial in a timely manner. Assuming without deciding that delay might at some point be sufficiently egregious to merit denial as a show of disapproval, while a two-year delay is hardly admirable, the *Bay* and *S.R.M.* decisions suggest that it is not beyond the pale in the absence of any proven prejudice.
- [78] I further note that while common practice dictates that typically, the successful party is expected to take the initiative to file an order, Rule 13-1 provides that any party may draw and seek entry of an order. The parties both have the ability to ensure that an order is filed within a reasonable period of time after trial: see, for example, *Selbstaedt v. Selbstaedt*, 2008 NSSC 19 at para. 8. If the plaintiff had wanted her costs obligations crystallized and made known following the Decision, she had means to push the matter forward.
- [79] As the plaintiff has failed to displace the application of the usual rule, the defendant is entitled to her costs as the successful party.

VI. Conclusion

- [80] There will be no order for double costs.
- [81] The defendant is entitled to costs at Scale B throughout.
- [82] As success was divided on this application, the parties will each bear their own costs on the application.

"Tucker J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/06/2024BCSC0685.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/hakimpour-v-grimm-2024>

Prepared on 29 October 2026 · Esheria