

CANADA / JUDGMENT

Price v. 481530 B.C. Ltd.

2020 BCSC 1806

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1806 Price v. 481530 B.C. Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Price v. 481530 B.C. Ltd.,

2020 BCSC 1806

Date: 20201124

Docket: S149212

Registry: Vancouver

Between:

Michael James Price

Plaintiffs

And

481530 B.C. Ltd. doing business as Micron Laboratories, 8577935 Canada Corporation, Farrukh David Robson, Sabrina Yasmeen Robson,

Katrina Robson also known as Sheena Robson and Jonathan Robson

Defendants

Before: Registrar Nielsen

Reasons for Decision

Counsel for Plaintiff:

A. Narod

Appearing on own behalf:

K. Robson

J. Robson

Place and Date of Hearing:

Vancouver, B.C.

September 24-26, 2019;

November 21 & 22, 2019

& October 22, 2020

Place and Date of Decision:

Vancouver, B.C.

November 24, 2020

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INTRODUCTION

- [1] By court order dated June 26, 2017, the defendants were ordered to pay the plaintiff's special costs of this proceeding. As the court ordered that special costs be awarded for "the proceeding", the plaintiff is entitled to the costs of this assessment on a special costs basis. See 567 Hornby Apartment Ltd v. Le Soleil Restaurant Inc., 2020 BCCA 69 at paras. 137 to 139 and 141 where the court states:
- [137] I agree with the Appellants that there is no general rule that a party is entitled to special costs of the cost assessment. As noted in *Cogenix*, whether a party is entitled to special costs of the assessment is a matter of discretion.
- [138] That said, the issue for determination on this appeal is not the existence of a general rule, which I emphasize does not exist, but whether an order of a trial judge that the cost of the proceedings to be assessed as special costs, which is silent as to the cost assessment, extends to the costs of the cost assessment. In my respectful opinion it does.
- [139] The word "proceeding" refers to the whole event from the commencement of action by the issuance of the writ to the continuation of the trial and beyond: *Hughes v. O'Sullivan*, [1986] B.C.J. No. 1928 (S.C.). I would adopt the comments of Master Joyce, in the memo quoted by Master Doolan in *Sarkadee-Adoo*, that if the court orders the costs of the proceeding to be paid on a special cost basis, part of the proceeding is the assessment of the costs, and it follows from the order that the registrar is to allow the costs of the assessment as special costs. As noted by Master Joyce, there is no distinction between this situation and the case where costs are awarded on a party-and-party basis on a particular scale. In both cases, the order dictates the scale of the cost assessment. Master Joyce's reasoning is consistent with that of Justice Cowan in *Szpradowski*. In my opinion *Szpradowski* was correctly decided and should be followed.
- [141] In the result, I find that when a trial judge orders special costs of a proceeding, the award of special costs includes the cost of any special costs application and any subsequent proceedings to assess costs unless the court orders otherwise.

- [2] The claim began as a relatively straight forward wrongful dismissal case that should have taken four to five days to complete, however, it soon morphed into a case involving a wide range of issues involving constructive dismissal, alleged abandonment by the plaintiff of his position, an allegation of corporate theft against the plaintiff, piercing of the corporate veil of two corporations, personal liability of a director and shareholder, witness tampering, and alleged tortious conduct including conspiracy. The trial took thirty-one days to complete.
- [3] In addition, there were multiple court applications involving interrogatories, documents, amendments to pleadings, contempt, adjournments, an application to strike the action, security for costs, a special costs application, a mareva injunction application, and subsequent extension order.
- [4] The judgement amount following trial totalled 384,602.33. On this assessment the plaintiff seeks 1,014,278.92 in special costs and ordinary costs, comprising of fees, disbursements, and applicable taxes. Before trial the plaintiff had offered to settle the entire matter for fifteen months' severance.
- [5] The assessment of costs took six days to complete. Ms. Allison Narod, the lawyer having conduct of the plaintiff's case, provided oral evidence, as did Ms. Katrina Robinson on behalf of the defendants. Ms. Robson is a lawyer called in New York state, but not in Canada.

BACKGROUND

- [6] The factual background and issues arising in the case are described in *Price v. 481530 BC Ltd.*, 2016 BCSC 1940 at paras. 1 through 14 where the court states:
- [1] This high-conflict case arises out of the breakdown of a 20-year friendship and business relationship between Michael Price ("Mr. Price") and Farrukh David Robson ("Mr. Robson").

II. OVERVIEW

- [2] In addition to their business and personal relationships, both Mr. Price and Mr. Robson suffer from significant life-altering illnesses. The emotion engendered as a result of these factors led to a difficult and "hotly disputed" trial; particularly the factual matrix. Both sides accused the other of lies and fabrications. Within this context, the factual reality must be distilled.
- [3] An overview of this matter was set out in my earlier decision of July 27, 2015 (*Price v. 481530 B.C. Ltd.*, 2015 BCSC 1301).
- [4] Mr. Price was employed from 1994 to 2013 by 481530 B.C. Ltd. ("481"), doing business as Micron Laboratories ("Micron"). The company operated a hair loss clinic and engaged in the sale of products and services to remediate hair loss. Mr. Price is a 20% shareholder of 481 and worked as a manager of that company. He was allegedly terminated in June 2013 and has brought a claim for wrongful dismissal.

- [5] The defendant, Mr. Robson, is a 74% shareholder in 481 and a director and president of the company. Mr. Robson, his wife Sabrina Yasmeen Robson ("Mrs. Robson"), and their children, Katrina and Jonathan Robson are all defendants in this case (collectively the "personal defendants"). The personal defendants all reside in Ontario.
- [6] While Mr. Price and the personal defendants were at one point close friends, their relationship has since deteriorated. This was due in part to a concern originally identified by Mr. Price of alleged financial improprieties involving 481.
- [7] On December 27, 2012, Mr. Price was diagnosed with stage four colorectal cancer and began treatment. There is dispute between the parties concerning events from January to July 2013. Suffice it to say, sometime after Mr. Price's surgery and treatment for cancer in late May/June 2013, Mr. Robson hired a new manager for 481, replacing Mr. Price.
- [8] Mr. Price is 47 years of age. He has a dependant wife and three dependent children aged 21, 12 and 11. The 12-year-old is severely disabled. As a result, his wife works part-time in order to attend to her disabled child's needs.
- [9] In July 2013, the defendant 8577935 Canada Corporation ("857") was incorporated. It is alleged that 481 has ceased doing business and its assets have been transferred to 857, a business run by the personal defendants or by some of them. This is alleged to have occurred without proper authority or justification.
- [10] It is also alleged the defendants discontinued payment of Mr. Price's salary and benefits (including medical, dental, extended health benefits, and more) at a time when he was most in need. Accordingly, it is alleged the personal and corporate defendants engaged in conduct that amounts to bad faith and unfair dealing; and were deceitful, negligent, oppressive and unduly insensitive in the matter of Mr. Price's discharge.
- [11] Mr. Price claims the personal defendants are the alter egos of the corporations and the corporate veil separating the corporations and the personal defendants should be pierced. Essentially, he claims the personal defendants gutted 481 and transferred its business and assets to 857, all in order to deprive him of an ability to recover on any judgment against 481 by hiding its assets in 857.
- [12] A more in-depth review of the facts will be provided later in the analysis.

III. ISSUES

- [13] Essentially, Mr. Price makes three claims for damages resulting from (a) his wrongful dismissal, (b) tortious conduct arising out of his wrongful dismissal, and (c) the loss in value of his shares in 481.
- [14] The following issues are raised:
1. Was Mr. Price wrongfully dismissed?

This issue requires us to ask:

- (a) Was Mr. Price constructively dismissed or did he abandon his position?
- (b) Was there cause for the dismissal of Mr. Price?
- 2. If so, which defendants are liable to Mr. Price for the wrongful dismissal?

This issue requires us to ask:

- (a) Can the corporate veil be lifted between 857 and 481?
- (b) Is 857 a successor business or successor employer to 481?
- (c) Can David Robson be held personally liable as director and shareholder of 481?
- 3. Did the defendants engage in any tortious conduct?
- 4. Is Mr. Price entitled to any form of shareholder relief?

This includes asking:

- (a) Has Mr. Price brought a proper case for relief in his capacity as a shareholder of 481?
- (b) If so, is Mr. Price entitled to any relief in his capacity as a shareholder of 481?
- [7] In *Price v. 481530 B.C. Ltd.*, 2017 BCSC 1071, the trial judge articulated her reasons for awarding special costs at para. 17 wherein she states:
- [17] I conclude special costs should be awarded against the defendants in this matter. I do so on the basis of what I conclude was reprehensible conduct by the defendants during the course of this litigation. The conclusion is reached largely on the basis the defendants misled the court and abused the court processes in doing so, with persistent breaches of the Rules of Court to prejudice Mr. Price in his claim.
- [8] The subsequent procedural history is described in detail by the BCCA in *Price v. Robson*, 2017 BCCA 419, involving the defendant's application to seek leave to appeal the award of special costs. At paras. 4 through 21 the court states:

Procedural History

- [4] In the underlying action, Mr. Price successfully sued: (1) Farrukh David Robson ("Mr. Robson") and two numbered companies controlled by him, 481530 B.C. Ltd. ("481") and 8577935 Canada Corporation ("857"), for wrongful dismissal; and (2) Mr. Robson, his wife, Sabrina, and their children, Katrina and Jonathan, for civil conspiracy. Mr. Price was a minority shareholder in 481 and its managing director until his constructive dismissal in June 2013.

- [5] The trial judge found that the personal defendants agreed to take concerted action to deny Mr. Price any ability to recover on a judgment he might obtain against 481 for wrongful dismissal. They were found to have done so primarily by diverting the assets and revenues of 481 to 857, and by using funds belonging to 481 to pay off debts that were not 481's responsibility. The judge found that if the conduct of the defendants was lawful, they intended to cause damage to Mr. Price by "gutting" 481, thereby putting its assets out of his reach. If the conduct of the defendants was unlawful, the judge found that the conspirators knew or ought to have known that their actions would harm Mr. Price by denying him recovery on any judgment he might subsequently obtain for wrongful dismissal.
- [6] Mr. Price was awarded \$129,600 in damages for wrongful dismissal plus pre-judgment interest in the amount of \$2,535.90. Mr. Price was also awarded aggravated damages in the amount of \$50,000 relating to the manner of his dismissal. In this regard, the judge found that Mr. Robson constructively dismissed Mr. Price when Mr. Price was, to Mr. Robson's knowledge, recovering from surgery for cancer. Further, Mr. Robson and the other defendants were found to have made numerous unfounded allegations against Mr. Price, including theft, in aid of Mr. Robson's position that the dismissal was with cause. Mr. Price was also awarded \$24,145.89 for mitigation expenses he incurred. Finally, the judge ordered that the four individual defendants (Mr. Robson, Katrina, Jonathan and Sabrina) be jointly and severally liable to pay compensatory damages for civil conspiracy in the amount of \$100,000 plus pre-judgment interest in the amount of \$3,057.50.
- [7] Reasons for judgment in the main action were delivered on October 24, 2016, and are indexed as 2016 BCSC 1940 ("Trial RFJ"). The parties were given leave to speak to costs.
- [8] By notice of appeal dated November 23, 2016, the defendants appealed the underlying decision challenging, among other things, the judge's conspiracy finding. That appeal (CA44083) was abandoned on January 30, 2017, after the defendants failed to pay into court security for costs of the appeal (\$10,000) and security for the judgment below (\$175,000) pursuant to the order of Mr. Justice Harris made on December 23, 2016.
- [9] After the appeal from the main action was abandoned, Mr. Price applied for special costs against all the personal defendants. Following a hearing on May 12, 2017, the judge allowed the application against Mr. Robson, Sabrina, and Katrina, but refused to award special costs against Jonathan. Reasons for judgment in relation to the costs award were delivered on June 26, 2017, and are indexed as 2017 BCSC 1071 ("Costs RFJ").
- [10] The Costs Order reads as follows:
- The Defendants, Farrukh David Robson, Sabrina Yasmeen Robson and Katrina Robson shall pay the Plaintiff's costs of this proceeding as Special Costs.
- [11] The parties agree that the effect of the order is to make the personal defendants named therein jointly and severally liable for the costs award.

- [12] Only Katrina and Sabrina seek leave to appeal the special costs award. Their notice of motion for leave to appeal was filed on July 25, 2017.

The Underlying Action

- [13] The underlying dispute involved the acrimonious breakdown of the friendship and business relationship between Mr. Price and Mr. Robson. Both Mr. Robson and Mr. Price are very ill. Mr. Robson has required regular dialysis since late 2007. Mr. Price is terminally ill with cancer. He was diagnosed with stage four colorectal cancer and began treatment in December 2012. He has three children, two of whom are school-aged. His 13-year-old son is autistic and requires care. His wife works part-time as a result. Mr. Price is currently being treated on a palliative basis in an effort to manage his symptoms.
- [14] Mr. Price was employed by 481 from 1994 to 2013. Mr. Robson was the majority shareholder, a director, and the president of 481. The company operated a hair loss clinic and sold hair loss products.
- [15] In late 2012, Mr. Price discovered what he considered to be financial irregularities in the running of 481. In December 2012, he e-mailed Mr. Robson regarding the funnelling of funds from 481 by the Robson family for purposes he considered to be unrelated to the running of the company. Over the course of the winter and spring of 2013, e-mail exchanges between Mr. Price, Mr. Robson, and Katrina became increasingly acrimonious as Mr. Price attempted to make offers to buy 481. During this time, Mr. Price was also undergoing treatment for cancer.
- [16] The judge found that Mr. Price was constructively dismissed from 481 in June 2013. She rejected the defendants' argument that Mr. Price was dismissed for cause for various transgressions, including: theft; misappropriation of funds; misappropriation of company property; misappropriation of a corporate opportunity; and other fraudulent and dishonest conduct. The judge awarded aggravated damages against Mr. Robson in conjunction with the wrongful dismissal claim, finding that Mr. Robson's conduct as an employer was unfair, insensitive, and in breach of his duty to act in good faith in dealing with Mr. Price.
- [17] With respect to the civil conspiracy claim against Mr. Robson, Sabrina, Katrina, and Jonathan, the judge found the "[e]vidence shows the Robsons were making payments from the bank account of 481 to CRA to pay off personal tax debts and other debts not belonging to 481" (Trial RFJ at para. 278). She found that "on Mr. Robson's own admission, the revenues of 481 were transferred with the intention of removing them from Mr. Price's reach" (Trial RFJ at para. 281). She also found that the Robsons "in effect agreed to protect their family by denying Mr. Price an ability to recover on an unfavourable judgment against 481" (Trial RFJ at para. 300). Each personal defendant was found to have taken actions to achieve this goal. For example, Mr. Robson and Jonathan moved assets from 481 to 857, which company was incorporated one month after the dismissal, in order to deprive Mr. Price of relief on any judgment he might obtain. Although Mr. Robson was the "mastermind", the other personal

defendants "made significant contributions with the overall intent (actual or constructive) of causing Mr. Price harm" (Trial RFJ at para. 311).

- [18] The judge reviewed the participation of Katrina and Sabrina in the civil conspiracy. She found that Katrina "made a significant contribution to the conspiracy, most notably by typing e-mails according to her father's dictation under her name and using the weight of her position as a lawyer with the intent of harming Mr. Price" (Trial RFJ at para. 323). The judge found that Katrina used her status as a lawyer to influence Mr. Price and deceive him into dropping his claims (Trial RFJ at paras. 318, 320). Even though she was a non-practicing lawyer and claimed she provided no legal advice to her father, the e-mails she sent to Mr. Price falsely claimed that she was handling the situation in her capacity as a lawyer (Trial RFJ at para. 318). She claimed multiple times during the trial that she was merely a "buffer" between Mr. Price and Mr. Robson and simply transcribed the e-mails for her father (Trial RFJ at para. 317). The judge found, however, that Katrina allowed "her position as a lawyer to be abused" in the e-mails in order to "manipulate" Mr. Price (Trial RFJ at para. 320). She found that this deception "made her role more than a mere buffer" (Trial RFJ at para. 320).
- [19] Sabrina was found to have contributed to the tort of civil conspiracy by becoming a shareholder and director of some of Mr. Robson's companies and facilitating the corporate actions of those companies in stripping 481 of assets (Trial RFJ at para. 327). The judge did not accept that Sabrina was "just a housewife" with no involvement in the business (Trial RFJ at para. 326).
- [20] The judge characterized Sabrina and Katrina as "combative" witnesses at trial (Trial RFJ at paras. 317, 326). Katrina "repeatedly noted she was extremely busy and did not have time to be a witness" (Trial RFJ at para. 317).

The Special Costs Order Sought to be Appealed

- [21] As noted earlier, the judge allowed Mr. Price's application for special costs in relation to both causes of action against Mr. Robson, Sabrina, and Katrina. Special costs were not awarded against Jonathan.
- [9] The plaintiff died March 30, 2018.
- [10] The amount awarded at trial remains unpaid. What monies have been collected on the judgement have been obtained through various execution proceedings. No monies have been paid on the judgement voluntarily.

ANALYSIS

- [11] An assessment of special costs is governed by SCCR 14-1(3) and (5), which provides:
- (3) On an assessment of special costs, a registrar must
- (a) allow those fees that were proper or reasonably necessary to conduct the proceeding, and

- (b) consider all of the circumstances, including the following:
 - (i) the complexity of the proceeding and the difficulty or the novelty of the issues involved;
 - (ii) the skill, specialized knowledge and responsibility required of the lawyer;
 - (iii) the amount involved in the proceeding;
 - (iv) the time reasonably spent in conducting the proceeding;
 - (v) the conduct of any party that tended to shorten, or to unnecessarily lengthen, the duration of the proceeding;
 - (vi) the importance of the proceeding to the party whose bill is being assessed, and the result obtained;
 - (vii) the benefit to the party whose bill is being assessed of the services rendered by the lawyer;
 - (viii) Rule 1-3 and any case plan order.
- (5) When assessing costs under subrule (2) or (3) of this rule, a registrar must
 - (a) determine which disbursements have been necessarily or properly incurred in the conduct of the proceeding, and
 - (b) allow a reasonable amount for those disbursements.
- [12] A party who has been awarded their special costs is only entitled to those costs which are objectively reasonable. The fact that a lawyer has billed a certain amount does not make that amount reasonable. As stated by the BCCA in *Gichuru v. Smith*, 2014 BCCA 414 at paras. 104, 105 and 155:
- [104] As we explained above, the principle underlying R. 14-1 is that parties are only entitled to their objective reasonable legal costs as determined by the precise scale of costs they were awarded. In order to determine if a legal fee is reasonably objective, it is often necessary to know the particulars of what the lawyer did to accrue it. As noted by Kirkpatrick J., as she then was, in *Canadian National Railway Co. v. A.B.C. Recycling*, 2005 BCSC 1559 at para. 28 [A.B.C.], it is difficult to conceive that a proper examination of a party's incurred legal costs can take place without disclosure of the other side's file and an examination of the other side's lawyers in respect of the file and the matters arising therefrom.
- [105] The fact that a lawyer has billed a certain sum does not necessarily make the fee reasonable. This is of particular importance when the other party to the litigation is paying the bill. As noted by Seaton J.A. in *Royal Trust Corporation of Canada v. Clarke* (1989), 35 B.C.L.R. (2d) 82 (C.A.) at 88:

The party who made that arrangement, the successful party in the litigation, might have made a very poor bargain. The bill rendered pursuant to the agreement might be justifiable between the solicitor and his client but thoroughly unjustifiable to impose on another. The client might have

demanded more work to be done than was appropriate in the circumstances, or more lawyers and more expensive lawyers to be retained than were appropriate in the circumstances. Of course, at the taxation, if the other litigant is paying the bill the client will be particularly pleased to see that the bill is as high as possible.

- [155] When assessing special costs, summarily or otherwise, a judge must only allow those fees that are objectively reasonable in the circumstances. This is because the purpose of a special costs award is to provide an indemnity to the successful party, not a windfall. While a judge need not follow the exact same procedure as a registrar, the ultimate award of special costs must be consistent with what the registrar would award in similar circumstances. Thus, a judge must conduct an inquiry into whether the fees claimed by the successful litigant were proper and reasonably necessary for the conduct of the proceeding as set out in R. 14-1(3)(a), taking into account all of the relevant circumstances of the case and with particular attention to the non-exhaustive list of factors in R. 14-1(3)(b).
- [13] In *Tanious v. The Empire Life Insurance Company*, 2019 BCCA 329, the BCCA confirmed that while there is a close relationship between special costs and actual legal costs, they are not the same. Further, special costs are not a substitute for damages or a means of ensuring the successful party is not put to any expenses whatsoever. Their purpose is to censure and deter litigation misconduct, not to compensate the plaintiff. The successful party is only entitled to those fees and disbursements that were proper and reasonably necessary to the proceeding. In *Tanious*, *supra*, the BCCA states:
- [49] Special costs provide a much greater degree of indemnity than party and party costs. However, while there may be a close relationship between actual legal expenses and special costs, they are not necessarily the same. In fairness to the losing party who must pay the special costs, the successful party is entitled only to those fees and disbursements that were proper or reasonably necessary to conduct the proceeding. In *Bradshaw Construction Ltd. v. Bank of Nova Scotia* (1991), 54 B.C.L.R. (2d) 309 at para. 28 (S.C.), *aff'd* 73 B.C.L.R. (2d) 212 (C.A.), Justice Bouck stated that a special costs assessment will usually amount to about 80 to 90 per cent of an assessment of a similar bill reviewed under the Legal Profession Act, S.B.C. 1998, c. 9.
- [50] Rule 14-1(3)(b) sets out a non-exhaustive list of factors for a registrar to consider in undertaking a special costs assessment. These include the complexity of the proceeding, the amount involved and the conduct of any party. When a judge fixes special costs under Rule 14-1(15), he or she must consider the same factors: *Gichuru* at paras. 85, 91, 102.
- [51] Importantly, special costs are not a substitute for damages. They are not a remedy for a breach of contract, a means of shoring up a damages award or a means of ensuring that a successful party is not put to any expense whatsoever. Nor should special costs be conflated with damages for mental distress, punitive damages or contractual costs. To the extent that special costs were awarded on any of those bases in *Wright* or the other category (b) cases the judge mentioned in his reasons, in my view they are no longer good law: *Hunt v. TD*

Securities Inc. (2003), 229 D.L.R. (4th) 609 (O.N.C.A.) at paras. 124-127; *Marchen v. Dams Ford Lincoln Sales Ltd.*, 2010 BCCA 29 at para. 69; *Canadian Petcetera Limited Partnership v. 2876 R Holdings Ltd.*, 2010 BCCA 469 at para. 42. In addition, as discussed further below, in this province the category (a) duty to defend cases the judge mentioned do not reflect the current state of the law: *West Van Holdings* at para. 109.

- [53] In contrast, special costs serve different functions. They address the results and conduct of the parties in the course of litigation and are generally awarded where there has been some form of reprehensible conduct: *Young v. Young*, [1993] 4 S.C.R. 3 at 134-135; *Marchen* at para. 69. In these circumstances, their purpose is to censure and deter litigation misconduct, not to compensate the plaintiff. Pre-litigation misconduct is not to be considered in determining whether special costs should be awarded for purposes of censure because there are other suitable mechanisms of censure that apply: *Smithies Holdings* at para. 134.
- [14] In making a determination of what is objectively reasonable, the registrar is to consider all the circumstances, and those factors enumerated in SCCR 14-1(3).

Complexity of the Proceeding and Difficulty or the Novelty of the issues

- [15] The pre-trial, trial, and post-judgement issues all had a layer of complexity.
- [16] The defendants refused to participate in pre-trial proceedings until their application to strike was heard, which occurred on the eve of trial. An adjournment was not an option for the plaintiff given his terminal medical condition. With the benefit of hindsight, the defendant's application was a waste of time and expense. It also prejudiced the plaintiff's ability to properly prepare his case in a timely fashion as the defendants did not provide complete and timely disclosure of documents and witness's. The plaintiff submits that as a result of the defendant's refusal to comply with pretrial processes the plaintiff had to go to great lengths in preparing for cross examination during the trial. To add to the complexity there was a flux in the law regarding the tort of conspiracy and unlawful means.
- [17] Both the flux in the law, and the prejudice to the plaintiff brought about by the defendant's late application to strike, were commented upon by the trial judge in *Price v. 481530 BC Ltd.*, 2015 BCSC 1301 at paras. 44 to 50 of her reasons where she states:
- [44] The plaintiff in this case argues, however, this law has changed in British Columbia. The Supreme Court of Canada in *Hunt* concluded the mere fact the plaintiff alleges a defendant committed other torts is not a bar to pleading the tort of conspiracy. While the law in BC developed to permit such claims to be struck, more recently, in *Watson*, Chief Justice Bauman indicated he preferred the approach of the Court in *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2014 SCC 57 and would not merge the unlawful means conspiracy claim at this stage of the proceeding. While he acknowledged *Tortora* and *Waters* were binding on the court, he noted they did not deal with the Competition Act, R.S.C., 1985, c. C-34.

- [45] The defendants, as a result, distinguish the case on that basis.
- [46] While no doubt there is precedent, it is clear the law is developing and I cannot find it is plain and obvious this claim would not succeed. While the defendants say all the cases cited involve the Competition Act, in my view, it is legitimate to argue a change may be evident and that will be for the trial judge to decide.
- [47] I conclude therefore it is not "plain and obvious" the plaintiff's statement of claim failed to disclose a reasonable claim, given the jurisprudence in this area. Nor is it plain that allowing the action to proceed will amount abuse of process. Whether the tort would fit within this context is a matter for the trial judge to consider. It is enough the plaintiff has some chance of success.
- [48] The fact a plaintiff alleges a defendant committed other torts is not a bar to pleading the tort of conspiracy. The question of recoverable damages can be dealt with as part of a remedy: Hunt at 991.
- [49] As an aside, I note further Willcock J. in Bains v. Green, 2012 BCSC 1733, declined to strike pleadings on the basis they did not distinguish between multiple defendants in a case where conspiracy was alleged. He noted the nature of the claim is such that the particulars "may be within the knowledge of the defendants alone": at para. 63.
- [50] In addition, the defendants have taken the position the plaintiff cannot avail himself of pre-trial examinations for discovery until this application is dealt with. I agree this puts the plaintiff in the position of being unable to refine his pleadings.
- [18] The complexity of the trial itself is reflected in the trial judge's summary of the issues at para. 14 of her reasons in Price v. 481530 BC Ltd., 2016 BCSC 1940 where she states:

[14] The following issues are raised:

1. Was Mr. Price wrongfully dismissed?

This issue requires us to ask:

- (a) Was Mr. Price constructively dismissed or did he abandon his position?
 - (b) Was there cause for the dismissal of Mr. Price?
2. If so, which defendants are liable to Mr. Price for the wrongful dismissal?

This issue requires us to ask:

- (a) Can the corporate veil be lifted between 857 and 481?
 - (b) Is 857 a successor business or successor employer to 481?
 - (c) Can David Robson be held personally liable as director and shareholder of 481?
3. Did the defendants engage in any tortious conduct?

4. Is Mr. Price entitled to any form of shareholder relief?

This includes asking:

(a) Has Mr. Price brought a proper case for relief in his capacity as a shareholder of 481?

(b) If so, is Mr. Price entitled to any relief in his capacity as a shareholder of 481?

[19] During the course of the trial the defendants persisted in their allegation of just cause, and attempted to expand that allegation without any supporting evidence. This approach necessitated the plaintiff to invest considerable time and effort towards disproving the allegation.

Skill, Specialized Knowledge and Responsibility Required

[20] In *567 Hornby Apartment Ltd. v. Le Soleil Hospitality Inc.*, 2016 BCSC 1340, Registrar Cameron, as he then was, observed that a case involving proof of fraud and deceit requires counsel with a high degree of skill. At paras. 54 and 55 he states:

[54] This litigation required a high level of skill on the part of counsel to maintain a clear focus and plan to prove fraud and deceit.

[55] There was also a significant responsibility on counsel to continually assess and re-assess the most effective and cost effective manner in which to proceed faced with the complete lack of candour of the Louie Defendants and Mr. Nomani throughout the proceedings.

[21] The plaintiff submits this statement applies equally to the instant case as one of the hallmarks of conspiracy is the secrecy maintained by the defendants, who are unlikely to confess their conduct in cross-examination, leaving the difficult task of proving otherwise to counsel by adducing indirect and circumstantial evidence during cross-examination from which inferences of conspiracy and fraud can be drawn. I agree with this submission.

[22] Counsel was also able to recognize and pursue the tort of conspiracy on a novel basis, conspiracy to injure and unlawful means conspiracy.

[23] There was a necessary level of skill and expertise required to prosecute this case beyond that of a junior lawyer. Further, the case required a level of perseverance and tenacity that comes with experience which has been aptly displayed by counsel for the plaintiff throughout the proceeding.

The Amount Involved in the Proceeding, and; (vi) the Importance of the proceeding to the Plaintiff

[24] The court awarded the plaintiff 384,602.33 in damages at trial. The plaintiff's claim had been 827,507.17. The importance of the amount to the plaintiff was substantial given that he was dying of cancer and it would be the last monies he would contribute to his family. The plaintiff had lost his income stream and his investment in a business.

- [25] The plaintiff was a husband with a partner who did not work outside the home, and was the father of three children, one who was on the cusp of going to university, and another who is severely disabled and unable to care for himself. The financial loss to the plaintiff was further exacerbated by the fact that he was dying of cancer and needed the matter resolved in a timely fashion for the sake of his family.
- [26] The importance of the amount is expressed by Harris J.A. in *Price v. 481530 B.C. Ltd.*, (2016) Vancouver registry, Docket: CA44083 (BCCA) at paras. 19 to 21, as quoted above.
- [27] In addition to the monetary amounts, the allegations of the defendants had put the plaintiff's character and reputation at issue by accusing him of theft and fraud. Allegations dismissed by the trial judge. One's reputation and character have intrinsic value. Therefore, allegations of this nature increase the amount at issue in the proceeding. See *Hegel Estate v. Logan*, 2015 BCSC 527, at para. 30.

Time Reasonably Spent in Conducting the Proceeding

- [28] During the course of the legal proceeding, the defendants took a scorched earth approach to their defence. This approach effectively drove up the costs of the litigation and turned what should have been a five-day trial into a thirty-one-day marathon.
- [29] During the course of the hearing concerning the plaintiff's application for special costs, the defendants took the position that it was the plaintiff's fault that the trial took as long as it did. In *Price v. 481530 B.C. Ltd.*, 2017 BCSC 1071, at paras. 25 and 26 of her reasons, the trial judge dismissed this argument stating:
- [25] The defendants also seek a reduction to account for what they maintain was Mr. Price causing the trial to extend as long as it did. They say the manner in which he presented his case was the direct cause of the lengthy trial, saying he raised over a dozen different causes of action and argued each one fully at trial. While I agree the materials were lengthy and even duplicative at times, the defendants are primarily responsible for the trial's length. Mr. Price, in view of his failing health, took steps to move the trial along in a speedy fashion, requesting short turnarounds and early hearing dates. The defendants were the source of delay in the delay in providing documents. They also denied the conspiracy all along, necessitating a full and lengthy presentation of evidence to establish the claim.
- [26] Lastly, the defendants say that not all of them should bear the responsibility to pay special costs if ordered. They say that their conduct was not equally blameworthy and that the court should only make the order against those whose conduct was reprehensible. Although some defendants did engage in milder forms of misconduct, especially compared to the others, their conduct may still qualify as reprehensible, so long as it is deserving of rebuke: *Smithies* at para. 132. They should not avoid liability simply because some were worse than others.

- [30] The defendants are the authors of their own misfortune in both the award of special costs against them, the increased time needed to address their unwarranted allegations, and their failure to produce documents in a timely fashion, or at all. All of which caused the time needed, and associated fees, to increase exponentially.

Conduct that Tended to Unnecessarily Lengthen the Duration of the Proceeding

- [31] The defendants showed an animus towards the plaintiff throughout the course of the proceeding. There were unnecessary adjournment applications, unnecessary applications to amend the defendant's pleadings, both before and during the trial, frustration of pre-trial processes, persistent breaches of the SCCR's and generally abusing the court's processes. In *Price v. 481530 B.C. Ltd.*, 2017 BCSC 1071, the court summarized this misconduct at paras. 20 to 23 stating:
- [20] Furthermore, Mr. Robson interrupted family witnesses during their cross-examination, despite repeated directions from the court to stop interfering with their testimony. This was with the apparent intention of correcting or interfering with their evidence on critical points in the case. I find to be a direct interference with the evidence to perpetuate the misrepresentation of the actual facts. Indeed I conclude as in *Jogia v. Aetna Life Insurance Company of Canada*, [1999] B.C.J. No. 1502 (S.C.), there has been a deliberate attempt to mislead the court through fabricated evidence. Such conduct can found an order for special costs.
- [21] The defendants made unfounded allegations of dishonesty against Mr. Price with total disregard for the consequences of their actions. To perpetuate these claims, the defendants abused the court processes and mislead the court throughout the litigation process. Most notably, the defendants fabricated a self-serving story about why Mr. Price was fired for cause and constructed evidence to suit their purposes. They adduced fabricated negative employee letters about Mr. Price which were obtained from staff under pressure and promises of reward. They continued this action at trial by presenting these letters and as a witness, the author of one of the fabricated negative employees' letters in support of their case. In her testimony a second employee recanted her allegations in a negative letter about of Mr. Price, noting Mr. Robson's pressure to provide such a letter. This misconduct which continued in the course of the trial, in and of itself, weighs strongly in favour of awarding special costs: *Westsea* at para. 73(d).
- [22] The defendants counter that Mr. Price is seeking to characterize every step taken by them as wrongful as though their very decision to resist Mr. Price's claims was, in and of itself, a justification for special costs. The defendants cannot be faulted for every step they took, such as, for instance, changing lawyers multiple times, assuming it was done in good faith. I agree. I conclude, however, the behaviour of the defendants went above and beyond simply resisting the claim by the actions noted above.

- [23] While the defendants say the alleged conspiracy was commenced pre-litigation and therefore actions taken under it may not be considered in assessing special costs: *Smithies* at para. 133, the defendants perpetuated these actions throughout the litigation by presenting false evidence and with Mr. Robson in particular, attempting to interfere with witnesses. This conduct committed during the litigation in furtherance of the conspiracy is therefore relevant. I had excluded conduct committed pre-litigation as per the recent direction of the Court of Appeal in *Smithies*.
- [32] The court further commented on the defendant's misbehaviour and outrageous conduct in the course of their defence in *Price v. 481530 B.C. Ltd.*, 2016 BCSC 1940 at paras. 147 to 149 and 223.
- [147] However, this series of events can be considered part of a pattern that made Mr. Price's continued employment intolerable. It commenced in January 2013; Mr. Robson sought to create negative descriptions of Mr. Price almost immediately after Mr. Price identified financial irregularities. This demonstrates a breakdown in the relationship, further evidenced by the vitriol of the emails. Mr. Robson's focus on embezzlement issues (discussed further below) is troubling, as he appeared to be using the adage "the best defence is a good offence" by turning the table to accuse Mr. Price of the financial irregularities.
- [148] I conclude Mr. Robson's intent was to create a reason to replace Mr. Price, with whom he was engaging in what can only be described as a vitriolic fight.
- [149] The existence of the May 20, 2013 email from Mr. Robson to Mr. Price supports this proposition, Mr. Robson was seeking to establish grounds for dismissal rather than waiting for Mr. Price to recover and return to work. The email states in part:
- Your actions are that of a dishonest man at present, a thief. . I will not rest and neither will my adult kids till we get everything that is ours that you have stolen.
- [223] Overall, I conclude as was the case in *MacDonald v. Newfoundland (Canada Games Park Commission)*, [1986] N.J. No. 335 (D.C.), the plethora of allegations against Mr. Price are an attempt to disguise the real reason why Mr. Price was fired. This was likely his discovery of financial improprieties. Mr. Robson sought to grasp at straws to establish some sort of grounds to justify Mr. Price's dismissal. The evidence simply does not establish any of the accusations.
- [33] It was the defendant's conduct alone that ultimately increased the duration of the proceeding and the associated increased fees.

Benefit to the Plaintiff from the Lawyer's Services

[34] The lawyer successfully navigated a very difficult case to a successful conclusion with special costs awarded for the proceeding. The plaintiff and his family have clearly benefited from the skill and expertise of the lawyer in advancing a difficult and hotly contested case at every step.

SCCR 1-3

- [35] The Registrar is to consider the principle of proportionality when assessing special costs, including the amount involved in the proceeding, and the importance and complexity of the dispute. The importance and complexity of the dispute have already been addressed.
- [36] The amount awarded following trial was 384,602.33. The amount claimed in special costs totals 1,014,278.92 in fees, disbursements and taxes. I don't consider the amount claimed in special costs for trial, and the assessment of special costs, to be disproportionate to the amount awarded at trial given the scorched earth tactics of the defendants. Considerable effort and time was required as a consequence.
- [37] During the assessment of costs, the defendants did not misconduct themselves, nor did they lengthen this aspect of the proceeding. However, the reference by Ms. Robson, in her written submission, to counsel having sworn at her while she gave evidence was not correct. This simply didn't happen. However, cross examination, while wholly appropriate, was pointed, and may have given the impression of being personal.

The Retainer

- [38] The lawyer originally assumed conduct of the case on a contingency fee basis. The retainer agreement was executed October 28, 2014. Sections 6 and 7 of the retainer agreement are relevant to the assessment. They provide:
6. In addition to reimbursing the Firm for all disbursements, the Client agrees to pay to the Firm for its services the following percentage of any funds "recovered":
 - (a) before Examination for Discovery beings 20%
 - (b) up to 61 days before trial 25%
 - (c) 60 days before Trial and thereafter 33 1/3%
 7. As an alternative, the Firm in its sole discretion may choose to accept in lieu of the fees set out in the preceding paragraph any costs to which the client is entitled upon any settlement or trial award. If the Firm chooses to receive the costs as its fee instead of accepting a percentage fee fro the Client, the Client will receive 100% of the amount of the settlement or trial award (i.e. less costs).

- [39] When the plaintiff initially retained the lawyer he had limited funds given his dismissal from his employment and the loss of his investment in the business. The plaintiff's partner did not work outside the home, and he had three dependant children, one of whom is severely disabled.
- [40] The contingency fee arrangement essentially facilitated his access to justice. It was the key to the courthouse door. The client could not have otherwise financed the case on an hourly basis. The retainer limited the lawyer's fee, unless the award of costs exceeded the amount of the contingency. Special costs are an exceptional remedy. There was never a guarantee the lawyer would receive payment equal to her time invested in the proceeding. This risk was entirely assumed by the lawyer.
- [41] Pursuant to the terms of the retainer agreement, the law firm has elected to take the costs awarded in the proceeding rather than a percentage of the damages.

THE BILLS AND FEES

- [42] Pursuant to an order pronounced at a pre-hearing conference the defendants were ordered to advise, in writing, what they took issue with and why in regard to the lawyer's bill for special costs. The defendants did not do so in any meaningful way, stating they were given the bill without sufficient time. As a consequence, the lawyer was required to methodically go through her entire bill.
- [43] The lawyer's hourly rate at her law firm increased from 495 to 555 during the course of the proceeding. She has since retired from the firm and now practises on her own.
- [44] The lawyer was called to the bar in 1983 and has been practising law since in the areas of employment law generally, including labor, wrongful dismissal, and administrative law. Her practise also includes family law where there is a high net worth involved. As a result, the lawyer has experience with issues related to the hiding of assets, the use of pre-tax income to pay expenses, and how business profits can be transferred and tracked. These skills were of assistance in the context of this case.
- [45] The lawyer has constructed hourly bills for the entire proceeding including all the pre-trial, trial, and post trial matters for which Appendix B cost awards were not made, and therefore fall within the special cost order pertaining to the "proceeding". The bills, for the most part, are essentially constructed after the award of special costs given that the retainer was not originally based upon an hourly rate.
- [46] Considerable time was spent reviewing the bills and going over what was done, why it was done, and the time taken performing the various tasks.

- [47] Several areas of hourly billing were high. Fifteen hours were spent researching the issue of mitigation, twenty-two and a half hours was spent drafting the notice of civil claim, and a further twelve hours was spent revising it. Six hours was spent preparing a history of the litigation.
- [48] The amount of hours surrounding the assessment of costs was also considerable. At pages 68 to 71 of exhibit 8, thirty-five hours were spent in preparation of the special costs assessment with a further 32 hours logged at pages 73-75 of exhibit 8 for argument preparation. Then at pages 75 and 76 of exhibit 8 a further 30 hours was logged for preparation of the costs assessment, with a further fifteen and a half hours logged at pages 77 and 80, for research on the law of costs. At pages 81 to 84 a total of seventy-six hours are recorded as preparation for the costs hearing. At page 85, over four hours are recorded for consideration of the law of registrar practise.
- [49] I reference these recorded times not because I have any doubt that the time was indeed invested as recorded. However, they are, in my view, examples of where the recorded time is not objectively reasonable in all the circumstances. There is a measure of experience built into a lawyer's hourly rate, particularly when the hourly rate is at the higher end of the scale and commensurate with the lawyer's expertise and years of experience. While keeping abreast of the law is necessary and reasonable, it isn't reasonable to bill the actual hours spent doing so to an individual client on routine matters or those within the ambit of lawyer's expertise. That is a matter built into an hourly rate and thereby spread amongst many clients.
- [50] Aspects of this proceeding required a high degree of skill and experience and can objectively justify an hourly rate in the 500 per hour range, other aspects do not. While the lawyer made use of juniors where appropriate, the hours billed by them are significant as are the hours overall.
- [51] As the lawyer was retained on a contingency fee basis there was never an agreement between solicitor and client regarding an hourly rate, or the provision for the increase in the hourly rate. In the circumstances, the hourly rate must be objectively reasonable in regards to the tasks performed.
- [52] The lawyer's assistant did work on the file, including preparing charts for use at trial, which have not been billed. Further, the plaintiff and his brother assisted with work on the file which was not billed.
- [53] There was also a failed application during the course of the proceeding to add Anna Robson as a defendant. This failed application cannot be recovered within the special costs order.
- [54] The assessment of special costs adjourned November 22, 2019. In subsequent written submissions dated October 1, 2020, the defendant Katrina Robson submitted that the plaintiff's lawyer was hostile towards her and stated "At the costs hearing it was clear when M. Narod swore at Ms. Robson while she was on the stand". Counsel for the plaintiff was

certain she did not swear at the defendant. However, following the receipt of this written submission, counsel for the plaintiff listened to the entirety of the recording of the five days of the special costs assessment to satisfy herself. The plaintiff seeks \$34,918.41 in billable time as a result. This is not objectively reasonable in the circumstances. Counsel's denial and confirmation by the presider was all that was needed.

- [55] The plaintiff also seeks the costs of execution proceedings between January 27, 2017 and June 30, 2020 on a special costs basis. The invoices for this time period total \$42,157.78, and the amount obtained through the garnishment process totalled \$45,043.10. The net result of this process was roughly \$3,000 for an investment of \$42,000 in fees and disbursements.
- [56] The basis of the plaintiff's claim for the costs of the garnishment proceedings is the order of MJ McEwan dated March 27, 2019. The plaintiff interprets the order as providing special costs in perpetuity, or until the judgement is satisfied in full. I disagree. The court's order provides for the payment costs "from and after October 24, 2016 as special costs, subject to assessment by a registrar, including but not limited to, special costs of the plaintiff's application heard on March 27, 2019". There is no provision in the order for special costs relating to collection proceedings beyond March 27, 2019. Further, special costs are made to punish reprehensible conduct. It is was not possible to judge the defendant's future conduct, nor in my view, did the learned chambers judge intend to do so.
- [57] As a result, in addition to the assessment of special costs, the plaintiffs are entitled to special costs of those proceedings, including the execution proceedings, from and after October 24, 2016 to March 27, 2019 pursuant to the order of MJ McEwan pronounced March 27, 2019. This would not include those proceedings where the court has made a previous order as to costs. See 567 Hornby Apartment Ltd v. Le Soleil Restaurant Inc. 2020 BCCA 69, at paras. 95 and 108.

The claim for Costs against Jonathan Robson

- [58] The plaintiff's claim for special costs in the amount of \$1,014,278.92 encompasses the claim against Jonathan Robson. However, the plaintiff has submitted a bill for ordinary costs pursuant to Appendix B pertaining to Jonathan Robson for the purposes of having him be jointly liable for a portion of the ultimate costs award. The trial judge did not award special costs against Mr. Jonathan Robson. In *Price v. 481530 B.C. Ltd.*, 2017 BCSC 1071 at paras .27 and 28, the court stated:
- [27] In considering this point, I conclude the evidence does not support a finding of reprehensible conduct against Jonathon Robson. His testimony was relatively straightforward; indeed it was his testimony in particular that Mr. Robson sought to correct. Unlike the other defendants, I do not conclude he was engaged in a deliberate attempt to deceive in the course of the litigation proceedings.

[28] I conclude therefore the defendants' conduct in the course of the litigation, with the exception of Jonathan Robson, was reprehensible. Special costs are accordingly appropriate in these circumstances.

[59] The subsequent court order dated June 26, 2017 and entered August 21, 2017 reads:

1. The Defendants, Farrukh David Robson, Sabrina Yasmeen Robson and Katrina Robson shall pay the Plaintiff's costs of this proceedings as Special Costs.

[60] The court's order regarding costs makes no reference to costs being ordered against Jonathan Robson whether special or ordinary. It is entirely silent in this regard. At the time both orders were entered, the defendants, including Jonathan Robson, were represented by counsel as evidenced by their signature on both orders.

[61] The court's prior order following trial dated October 24, 2016 and entered March 13, 2017, invited the parties, within three months, to speak to the issue of costs in the event the parties could not agree. At paragraph 3 it states:

In the event the parties are unable to agree on costs, either party may file a request to speak to costs within three months of the date of this Order.

The order of June 26, 2017 was the product of that invitation.

[62] I am faced with the fact that both of the trial judge's order's regarding costs of the proceeding makes no order with respect to the defendant Jonathan Robson and his individual liability for costs to the plaintiff.

[63] It may be that the trial judge was of the view that the award of special costs against David Robson, Sabrina Robson and Katrina Robson provided sufficient indemnification to the plaintiff in this regard.

[64] If an individual order for ordinary costs had been made against Jonathan Robson, in addition to the special costs ordered against the other defendants, the registrar would have been faced with the necessity to apportion costs between the two bills pursuant to section 7 of Appendix B which provides:

If 2 or more proceedings have, by order, been tried at the same time or tried one after the other and no order has been made as to apportionment of costs, the registrar may

- a) assess 2 or more bills as one bill,
- b) allow an item once or more than once, or
- c) apportion the costs of an item or of the whole bill between the proceedings.

[65] As section 7 of Appendix B does not apply to the present assessment, no deduction was made with respect to the assessment of special costs for that part of the proceeding that may have been specific to Jonathan Robson. In my view, the proceeding took the course it did irrespective of the role played by Jonathan Robson, and therefore, no deduction, by

apportionment or otherwise, from the special costs awarded would be appropriate. The liability for those costs however is limited to the three specific defendants identified by the trial judge in her order.

- [66] In the circumstances, absent any court order, I decline to assess Appendix B costs against Jonathan Robson individually, in relation to the trial of the action. He is however jointly and severally liable for those special costs arising from the order of MJ McEwan.

Costs Awarded on the July 7, 2017 Application

- [67] The plaintiff brought a Mareva and contempt application which was heard June 28 and 29, 2017 by MJ Milman. By order dated July 7, 2017, and entered September 21, 2017, his Lordship granted many of the orders sought by the plaintiff, however, a contempt order was not granted. The costs of the application was awarded to the plaintiff. Paragraph 5 of the order reads "The Defendants shall pay the Plaintiff's costs of these applications as party and party costs on Scale B".
- [68] The plaintiff has prepared two bills for the July 7, 2017 application, one bill claiming 69,662.33 on a special costs basis, and the other bill claiming 4,065.60 on the basis of Appendix B of the Tariff. They are submitted in the alternative.
- [69] The plaintiff makes a claim for special costs as a result of the subsequent order of MJ McEwan, pronounced and entered March 27, 2019.
- [70] The order of MJ McEwan, was made following an application by the plaintiff for orders attempting to schedule a registrar's hearing to assess special costs. It also sought clarification that the defendants were liable for costs, on a special costs basis, for those proceedings post trial. There was no application before MJ McEwan to vary the prior Milman order for costs dated July 7, 2017, nor was an appeal ever taken in regard to MJ Milman's order. In my view, the order of MJ McEwan does not alter the costs order of MJ Milman, pronounced July 7, 2017, nor was there such an intention. The costs of the July 7, 2017 application will be assessed as ordinary difficulty Appendix B costs.
- [71] The plaintiff has claimed ten units under tariff item three. This is the maximum units allowable. The application took two days and the bill of special costs is helpful in detailing the correspondence, conferences, instructions, investigations and negotiations involved. The work and effort does not justify the maximum award but an award at the higher end of the scale is appropriate. Eight units are awarded for tariff item 3.
- [72] The remaining units are mathematical in nature. Six units are awarded for tariff item 21(b) and ten for tariff item 22(b) for the two days involved on the application. The plaintiff is entitled to one unit for tariff item 29 and two for tariff item 30 for the assessment of the costs. Finally, the plaintiff is entitled to one unit for tariff item 41 for the entry of MJ Milman's order. A total of 28 units are awarded at 110 per unit for a total of 3,080 plus applicable taxes in the amount of 369.60. The total awarded is therefore 3,449.60. There was

no claim for disbursements attached to either the special costs bill or the Appendix B bill.

Global Assessment of Special Costs

- [73] Although the Registrar is required to do an analysis of all the circumstances, including the factors in SCCR 14-1 (3)(b), there is no requirement to arrive at a fair fee with mathematical precision. The registrar may arrive at a fair fee through a global assessment of the value of the services provided. See *Smith Hutchison v. Victoria Golf Course*, 2009 BCSC 644 at paras. 79 through 84. In *567 Hornby Apartment Ltd v. Le Soleil Restaurant Inc.*, supra, the Registrar took a similar global approach to the assessment of special costs.
- [74] Taking a global approach to the assessment of special costs, and considering all the circumstances and the factors in SCCR 14-1(3), I allow 660,000 in fees plus applicable taxes, of which 60,000 is attributable to the assessment of special costs and the costs flowing from the order of MJ McEwan pronounced March 27, 2019.

Disbursements

- [75] Pursuant to SCCR 14-1(5) the Registrar is to determine which disbursements were necessarily or properly incurred in the conduct of the proceeding and allow a reasonable amount for those disbursements.
- [76] The disbursements sought and listed in the plaintiff's bill dated March 31, 2019 were necessary or proper, and the amount charged reasonable. They are therefore allowed with the following exceptions:

Document production

- [77] The plaintiff seeks 31,188.90 in document production consisting of; 439 color copies at 1.50 per page, 65,281 photocopies at .30 per page, printing 29,394 at .30 per page, and scanning 7,093 at .30 per page.
- [78] The retainer agreement is silent on charges related to document production. In view of this, AN-5 applies, absent any basis for increased costs in this regard, and there are none obvious here. Therefore, the plaintiff may recover the cost of photocopying and printing at a base rate of .25 cents per page, subject to a rough and ready assessment which follows.
- [79] The plaintiff will recover color copies at 1.00 per page and scanning at .15 cents per page, both of which are subject to a rough and ready assessment which follows. See *Turner v. Whittaker*, 2013 BCSC 712.
- [80] It is simply not possible to prove each and every document produced was necessarily or properly incurred in the context of SCCR 14-1(5) in a document intensive case such as this. In these circumstances a rough and ready approach to document production is appropriate. See *Gill v. Wiidjaja*, 2011 BCSC 1822. Taking a rough and ready approach I allow 25,000 for document production plus applicable taxes, covers photocopying, color copies and

scanning.

Overtime expense staff

- [81] The plaintiff claims 4,996.09 in overtime paid to support staff as a result of the need to conduct an examination for discovery at the last minute. In my view, this is overhead and not recoverable.

Computer research

- [82] The plaintiff seeks reimbursement for Quicklaw computer research in the amount of 757.41 and Westlaw computer research in the amount of 279.58. Both these charges are disallowed as the costs of these services were part of a monthly licensing fee and are therefore overhead. Further, the research involved has not been shown to have been unavailable on free sources. See *Semenoff Estate v. Bridgeman*, 2014 BCSC 1845 and *McEwan v. McEwan Estate*, 2015 BCSC 96.

Office stationary

- [83] The plaintiff seeks 220.75 in office stationary. Office stationary is traditionally viewed as overhead and there is no basis to depart from this rule in the present circumstances. This claim is therefore disallowed. See *Chow v. Nguyen*, 2012 BCSC, affirmed 2012 BCSC 1432.

Disposition

- [84] The plaintiff is awarded 660,000 in special costs for fees, plus applicable taxes. In addition, the plaintiff is awarded 3,449.60 in costs arising from the order of MJ Milman pronounced July 7, 2017. The plaintiff is also awarded their disbursements and applicable taxes as billed, with the exceptions referenced above. A certificate may be submitted through the registry for signature.

"Registrar Nielsen"

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