

CANADA / JUDGMENT

Sahi v. Sahi

2025 BCSC 549

COURT

Supreme Court of British Columbia

DECIDED

27 March 2025

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2025 BCSC 549 Sahi v. Sahi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sahi v. Sahi,

2025 BCSC 549

Date: 20250327

Docket: E52141

Registry: New Westminster

Between:

Daljit Singh Sahi

Claimant

And

Daljit Kaur Sahi

Respondent

Before: The Honourable Justice Norell

Reasons for Judgment

Counsel for Claimant:

U. Dhaliwal

Counsel for Respondent:

S. Gadey

Place and Date of Hearing:

New Westminster, B.C.

January 21, 2025

Place and Date of Judgment:

New Westminster, B.C.

March 27, 2025

Overview

[1] Following a 14-day trial that was heard between June 2021 and October 2022, with written submissions submitted between November 2022 and April 2023, Justice Fleming gave reasons for judgment (the "Reasons") in this family law case, indexed at 2023 BCSC 736. In her concluding paragraph, Justice Fleming stated:

[405] In my view, the respondent is the substantially successful party. She is therefore entitled to regular costs. She has indicated however that she intends to seek a different form of costs order and recognizing there may be other circumstances I am unaware of, the parties have leave to schedule a costs hearing.

[2] Subsequently Justice Fleming was elevated to the Court of Appeal, and I was appointed to determine the costs issues. These are the reasons on two cross-applications for costs.

[3] Despite being the substantially unsuccessful party, the claimant husband seeks orders that:

- a) he be awarded the ordinary costs of this action, and double costs after October 17, 2022 the date on which he made a formal offer to settle (the "Offer to Settle"); and
- b) costs of this application be payable by the respondent to him forthwith.

[4] The substantially successful respondent wife opposes such orders. She seeks orders that:

- a) she be awarded the costs of this action as preliminarily indicated by Justice Fleming, at a scale of more ordinary difficulty;
- b) interest accrues on the costs payable to her from the date of this decision;
- c) the remaining funds held by Dhanu Dhaliwal Law Corporation in trust (approximately \$41,539) be released to her forthwith, as payment toward costs payable by the claimant to her;
- d) the claimant pay the remaining balance for costs and interest to her by a certain date; and
- e) costs of this application be payable by the claimant to her.

[5] After reviewing portions of the Reasons, I will address the parties' positions and my analysis under the following headings:

- a) Default Rule for Costs and Orders Otherwise;
 - b) Offer to Settle;
 - c) Scale of Costs; and
 - d) Interest and Payment of Costs.
- [6] For the reasons below, I dismiss the claimant's application. I order that the claimant shall pay to the respondent the costs of this action at a scale of more than ordinary difficulty. Interest under the Court Order Interest Act, R.S.B.C. 1996, c. 79 is payable on those costs from the date of this decision, and those costs once assessed, plus accrued post-judgment interest, shall forthwith be paid from the funds currently held in trust at Dhanu Dhaliwal Law Corporation, with any balance payable forthwith by the claimant. The respondent will also have the costs of these applications.

Reasons and Trial Orders

- [7] In the introductory paragraphs to the Reasons, Justice Fleming provided an overview of the significant issues in dispute in the trial as follows:
- [1] Married in 2001, the parties to this family law proceeding separated in 2003, reconciled in 2007 and then separated finally in 2016.
 - [2] At issue are parenting arrangements for their youngest child ("V") who is now 13 years old, child support and property division. The respondent seeks an unequal division in lieu of spousal support and asserts a small excluded property claim.
 - [3] The key issues at dispute are the claimant's parenting time and his income for child and spousal support purposes.
 - [4] The parties' dispute about the claimant's income relates to the business expenses he has deducted from the gross income he receives for his work as a long-haul trucker.
 - [5] The dispute about parenting time involves most significantly, serious allegations of family violence by the claimant and V's opposition to spending any time with him. The claimant denies all family violence allegations and blames the respondent for V's views.
 - [6] Subject to no contact conditions in a bail order followed by a "peace bond" after the separation, the claimant had no involvement with V until they participated in joint counselling in 2021 and 2022.
 - [7] Credibility is also a significant contested issue in this case, which I assess and make findings about after my discussion of the evidence related to parenting arrangements.

- [8] At para. 52, Justice Fleming summarized her conclusions that the respondent and the two children of the marriage (the oldest was an adult at the time of trial) were subjected to years of family violence by the claimant in the form of physical and verbal abuse and controlling behaviour.
- [9] Justice Fleming ordered that the claimant will have no parenting time with V, except at V's request and with his consent: at para. 268. However, she left open the possibility that after the claimant took significant steps to fully acknowledge and properly address his family violence and its impact, he could seek a review of parenting time: at paras. 269-270. Justice Fleming ordered that the respondent will solely have all the parental responsibilities, except that the parties will both be able to request and receive health and education information regarding V, subject to the third parties' requirement for V's consent, and that the respondent will immediately notify the claimant of any medical emergencies affecting V through an agreed third party.
- [10] At para. 215, Justice Fleming summarized her conclusions that the respondent was a "credible and reliable witness" and that in "sharp contrast" she had "serious concerns about the claimant's credibility". The Reasons discuss many circumstances as to why Justice Fleming came to this conclusion. One example, is that she found that the claimant attempted to influence his oldest son A to not testify against him or to provide false evidence when criminal charges were brought against the claimant for assault and uttering threats against the respondent. Justice Fleming stated:
- [233] This means the claimant not only lied under oath in this proceeding, he engaged in frankly deplorable conduct that involved betraying A and undermining the integrity of the criminal justice system.
- [234] Ultimately I have determined I cannot safely rely on any of the evidence of the claimant unless it is undisputed or confirmed by other evidence I do accept.
- [11] At para. 290 of the Reasons, Justice Fleming set out in table form the expenses claimed by the claimant against his revenue as a truck driver, the parties' positions as to his income, and her findings as to the claimant's Guidelines income. The Guidelines income Justice Fleming found was much closer to the respondent's position at trial, than to that of the claimant.
- [12] The claimant was ordered to pay monthly child support of \$487.68. The entered trial order calculated the outstanding arrears of child support to December 2021 to be \$47,650.81 after crediting child support that had been paid. The claimant had paid less than \$8,000 in child support since the separation in 2016.

- [13] The claimant was ordered to pay the respondent \$35,380.52 for her excluded property contribution to the purchase of the former family home, plus an extra \$20,000 that had been paid by the respondent when she purchased the claimant's interest in the former family home after separation pursuant to court order. Some of the purchase price was held in trust until further order of court or agreement of the parties. Justice Fleming made other orders for property division that involved smaller sums for bank accounts, debt, and a vehicle.
- [14] In a subsequent hearing on February 23, 2024, Justice Fleming made further orders concerning the claimant's 2022 income, further arrears of child support that had accrued, and the payment of the monies in trust. This resulted in \$83,987.48 being paid to the respondent from funds in trust pursuant to the property division as outlined in the Reasons. This figure conveniently sets out the net amount payable for property division under the Reasons, except for the possibility of some undisclosed bank accounts in the claimant's name.
- [15] With that overview, I turn to the parties' arguments.

Default Rule for Costs and Orders Otherwise

- [16] The claimant seeks an order that despite being the substantially unsuccessful party, he be awarded costs of the action. The respondent opposes this, and argues that there is no reason to depart from Justice Fleming's preliminary view that as the substantially successful party she should receive her costs.
- [17] Costs serve several purposes: to deter frivolous actions or defences, to "encourage conduct that reduces the duration and expense of litigation and to discourage conduct that has the opposite effect", to encourage settlement where possible, and to encourage litigants "to make a careful assessment of the strength or lack thereof of their cases": *Giles v. Westminster Savings Credit Union*, 2010 BCCA 282 at para. 74.
- [18] Rule 16-1(7) of the Supreme Court Family Rules [SCFR] provides the default rule that costs must be awarded to the successful party unless the court "otherwise orders". As a family law case can involve a variety of issues, a flexible approach is taken and "success" for the purposes of costs is "substantial success", which is "about 75%" globally on the issues, but it is not a mathematical exercise: *Fotheringham v. Fotheringham*, 2001 BCSC 1321 at para. 45, leave to appeal ref'd 2002 BCCA 454; *Litt v. Gill*, 2016 BCCA 288 at para. 53.
- [19] In *Fotheringham* at para. 46, Justice Bouck endorsed the following approach in determining substantial success, and whether a court should "otherwise order":
1. First, by focusing on the "matters in dispute" at the trial. These may or may not include "issues" explicitly mentioned in the pleadings.
 2. Second, by assessing the weight or importance of those "matters" to the parties.

3. Third, by doing a global determination with respect to all the matters in dispute and determining which party "substantially succeeded," overall and therefore won the event.
4. Fourth, where one party "substantially succeeded," a consideration of whether there are reasons to "otherwise order" that the winning party be deprived of his or her costs and each side then bear their own costs.

[Emphasis added.]

- [20] The burden of establishing that the court should "otherwise order" under Rule 16-1(7) rests on the party alleging that the usual rule should not apply: *Louie v. Louie*, 1996 CanLII 3167 at para. 7, [1996] B.C.J. No. 1791 (S.C.); *S.D.W. v. C.W.W.*, 2006 BCSC 162 at para. 29.
- [21] In exercising its discretion as to whether to "otherwise order", the court may consider the following non-exhaustive list of factors: hardship; earning capacity; the purpose of the particular award; the conduct of the parties in the litigation; and, the importance of not upsetting the balance achieved by the judgment itself: *Gold v. Gold*, 1993 CanLII 1248 at para. 20, [1993] B.C.J. No. 1792 (C.A.).
- [22] Where a party who is substantially successful is deprived of their costs, generally each side would then bear their own costs: *Fotheringham* at para. 46.
- [23] In this case, Justice Fleming has already determined that the respondent was substantially successful and hence assessed the first three factors in *Fotheringham*. The claimant must therefore establish that the court should "otherwise order" that the respondent not only be deprived of her costs to which she is presumptively entitled, but also that the claimant should be awarded his costs.
- [24] This would be an exceptional order. It is "highly unusual" for an unsuccessful party to be awarded costs: *Brito (Guardian ad litem of) v. Woolley*, 2005 BCCA 357 at para. 9. The claimant did not point to any case authority where a substantially unsuccessful party was awarded costs in family law litigation.
- [25] In my view, there is no basis for this court to "otherwise order".
- [26] The theme of the claimant's assertion that he should be awarded costs is that he repeatedly tried to settle this action since 2019. He recounts steps he took starting in April 2019 with service of a Notice to Mediate, an unsuccessful mediation in August 2019, an unsuccessful settlement conference in January 2021, and unsuccessful mediation in October 2022. The parties also exchanged settlement proposals in January 2021 and June 2021 prior to the first five days of trial, and in October 2022, prior to the formal Offer to Settle (discussed below).

- [27] The claimant blames the respondent for this action not settling. His main assertion is that this was because the respondent unreasonably alleged that the claimant's income was more than it was. In support of his arguments, the claimant filed an affidavit of a legal assistant appending not only his own offers that pre-date the Offer to Settle (and which are not formal Offers to Settle within Rule 11-1(1)), but also the respondent's offers.
- [28] No objection was taken to this by respondent's counsel. Perhaps there was an agreement between counsel that they could each refer to the other party's without prejudice communications, although this was not mentioned. Most offers were marked without prejudice except as to costs, but they do not meet the definition of an offer to settle in Rule 11-1(1).
- [29] In *Kringhaug v. Men*, 2022 BCSC 185, the plaintiff requested special or increased costs, and argued that the court should consider not only her offers to settle, but also the defendant's formal offer to settle. The defendant opposed this on the ground that settlement privilege had not been waived. The court reviewed the equivalent Supreme Court Civil Rules regarding offers to settle, and concluded that nothing in those Rules permitted the plaintiff to disclose to the court, the opposing party's unaccepted offer: at paras. 30-34. In my view, that conclusion applies equally to whether a court ought to consider without prejudice offers in determining whether to "otherwise order" under Rule 16-1(7). However, given that neither counsel took objection to this, and both freely referred to the without prejudice offers between them, I will address their arguments.
- [30] The offers and counteroffers prior to the formal Offer to Settle on October 17, 2022 show that a significant, but certainly not the only major issue, was the claimant's income. The respondent initially sought imputation of income to the claimant of \$130,000 to \$140,000. However, this was well before the claimant had made any of the financial disclosure that had been repeatedly requested by the respondent. The respondent's counsel argues that had this disclosure been made in a timely way, she and her client would have been able to more accurately estimate the claimant's income, and the respondent's offers would have been less. Correspondence from the respondent's counsel to the claimant's counsel at the time stated that she and her client would reconsider imputation of income once financial disclosure took place by the claimant. Further, once financial disclosure was finally made by the claimant (over 2200 pages of records were obtained by respondent's counsel four days before the trial commenced) this is in fact what happened. In the respondent's last offer, she offered an imputation of income to the claimant of \$80,000 per year. On the other hand, during negotiations, the claimant took the position that his income was his line 15000 income reported on his tax return, or a figure a little above that. This is substantially less than found by Justice Fleming. I will return to the difficulty in obtaining the financial disclosure when discussing the scale of costs.
- [31] In my view, the claimant's argument ignores three facts. First, the respondent also tried to settle this matter. I cannot conclude that the reason this action did not settle was because of some unreasonable position or intransigence by the respondent. Second, the settlement did

not hinge solely on the claimant's income. Other issues were the claimant's assertion that he had an interest in the family home which the respondent had purchased from him through court order during the litigation, the excluded property claimed by the respondent, and significantly, the parenting arrangements for V and the allegations of family violence. These were all matters on which the respondent was successful at trial. Third, on the issue of the claimant's income, the respondent repeatedly sought financial disclosure from the claimant regarding the expenses he was claiming against his revenue, and this was not produced until four days before trial.

- [32] In my view, none of these circumstances support that the respondent should be deprived of her costs, let alone form the basis for a highly unusual order that a substantially unsuccessful party be awarded costs. In addition to rejecting the claimant's arguments, none of the factors in *Gold* weigh in favour of such an order. There is no suggestion of hardship if the claimant is required to pay the costs. The claimant has a far greater earning capacity than the respondent, and paid very little support after separation. There is no conduct on the respondent's part that would deprive her of costs or require her to pay costs. To do so would defeat the purpose of the financial order made in her favour.
- [33] It follows that the claimant's application that the court "otherwise order" and deprive the respondent of her costs, and further, award costs to the claimant, is dismissed. There is no persuasive reason to depart from the usual rule as set out by Justice Fleming, that as the substantially successful party, the respondent is awarded her costs of the action, subject to arguments that may be made with respect to the formal Offer to Settle.

Offer to Settle

- [34] The claimant asserts that double costs should be awarded to him after he made a formal Offer to Settle on October 17, 2022, the first day of the resumption of the trial after an adjournment of more than a year.
- [35] Rules 11-1(5) and (6) of the SCFR govern the potential cost consequences of an offer to settle that complies with sub-rule (1). Those state:
- (5) In a family law case in which an offer to settle has been made, the court may do one or more of the following:
 - (a) deprive a party of any or all of the costs, including any or all of the disbursements, to which the party would otherwise be entitled in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle;
 - (b) award double costs of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle;

- (c) award to a party, in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle, costs to which the party would have been entitled had the offer not been made;
 - (d) if the party who made the offer obtained a judgment as favourable as, or more favourable than, the terms of the offer, award to the party the party's costs in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle.
- (6) In making an order under subrule (5), the court may consider the following:
- (a) whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle was delivered or served or on any later date;
 - (b) the relationship between the terms of settlement offered and the final judgment of the court;
 - (c) the relative financial circumstances of the parties;
 - (d) any other factor the court considers appropriate.

[36] The order that the claimant seeks is again unusual. As the claimant is not the substantially successful party and does not have an award of costs in his favour, he is not entitled to double costs under Rule 11-1(5)(b). As summarized by Justice Forth in *D.N. v. M.R.*, 2020 BCSC 475:

[82] Rule 11-1(5)(b) allows the court to award double costs; however, an award of costs simpliciter is an essential pre-requisite for an award for double costs: *Paul v. Pumple*, 2013 BCSC 1844 at para. 27. Since I have found the respondent is not entitled to costs under the "substantial success" analysis, R. 11-1(5)(b) does not apply.

[83] However, R. 11-1(5)(d) allows the court to award costs after the date of an offer to settle when the offer is better than the result the other party obtained, and is not dependant on the party being substantially successful at trial: *Paul* at para. 29. I will go on to consider whether the respondent is entitled to costs under R. 11-1(5)(d).

See also *H.K. v W.K.*, 2018 BCSC 1447 at para. 18.

[37] However, as the parties' arguments are the same, I will consider whether to order that the respondent be deprived of costs after the Offer to Settle pursuant to Rule 11-1(5)(a), and whether to order that the claimant be awarded costs after the Offer to Settle under Rule 11-1(5)(d). Neither of these sub-rules require that the claimant already have an award of costs in his favour as the substantially successful party.

[38] In considering whether to make a costs order authorized by Rule 11-1(5), the court may consider the factors in Rule 11-1(6). With respect to whether an offer was one that ought reasonably to have been accepted, the offer is considered only in relation to the circumstances in existence at the time it was made, and not with the benefit of hindsight

knowing the award made at trial: *Findlay v. George*, 2021 BCCA 12 at para. 95. The question is whether it was unreasonable to refuse the offer and not whether the offer was reasonable. The court "may consider the recipient's subjective reasons for rejecting the offer, but must also decide whether those reasons are objectively reasonable": *Bains v. Antle*, 2019 BCCA 383 at para. 34. Factors to consider in determining whether a party should be penalized for proceeding to or continuing with trial are: the timing of the offer; the ease with which it could be evaluated; any rationale for it; the size of the offer relative to the amount claimed; whether there was a basis for reasonable confidence in the claim, including if there was objective evidence supporting it; and if the recipient knew the court's assessment of credibility would be central to the disposition of the claim: *Hartshorne v. Hartshorne*, 2011 BCCA 29 at para. 27; *Bains* at paras. 36-37.

- [39] Before discussing the terms of the Offer to Settle, I note that there is a dispute as to whether the Offer to Settle was received by the respondent. Claimant's counsel asserts that she handed the Offer to Settle to the respondent's counsel on October 17, 2022 at trial. Counsel for the respondent asserts that she has no memory of this, and nor does she have a copy of the Offer to Settle in her file. The first she heard of the Offer to Settle was when she was preparing for this application.
- [40] Disputes such as this are unfortunate. Neither counsel accuses the other, and they both simply accept that they have different recollections of what took place. I do not need to decide whether the Offer to Settle was delivered because of the conclusion I have reached on the assumption that the Offer to Settle was delivered on October 17, 2022.
- [41] In summary, the important terms of the Offer to Settle were:
- a) Both parties are guardians of V. The primary residence of V is with the respondent. However, the claimant "is ultimately seeking shared parenting". The Offer to Settle states that the claimant appreciates this cannot be achieved overnight and may not happen at all, but that he is committed to work toward this with the assistance of counselling and V's lawyer (counsel had been appointed for V). The Offer to Settle also states that the respondent "is going to need to engage in some sort of co-parenting counselling". The claimant sought joint decision making for important decisions, although the respondent would have day to day parenting responsibilities;
 - b) Child support payable based on Guidelines income of \$50,000 per year from 2016 with a review starting yearly in 2023. Income will not be less than \$50,000 starting in 2023 unless there is an "unforeseen change in circumstance";
 - c) Under the heading "Global Money Settlement":
 - i. \$50,000 which includes any arrears of child support less what had already been paid, and "extra funds" to settle the property issues including bank account, the gold, family property and spousal support;

- ii. \$20,000 to be credited toward child support; and
- iii. \$20,000 of the money held in trust will be paid to the respondent "as security for costs".

d) Each party will bear their own costs [which appears contrary to the above term].

[42] The threshold to make an order under Rule 11-1(5)(d) is that the overall result of the trial was no better than the Offer to Settle. The offer is considered in its entirety and not its individual components: *M.S.G. v. S.K.R.*, 2015 BCSC 913 at para. 26.

[43] The Offer to Settle does not meet the threshold criteria for application of Rule 11-1(5)(d). Financially, it is substantially less than the trial judgment. The arrears of child support to December 31, 2021 alone were nearly \$48,000, and would have been over \$50,000 by the date of the Offer to Settle. This would take up all of the \$50,000 which was allocated to past child support and settlement of all property issues. There would be no property division settlement in favour of the respondent. The respondent ultimately received more than \$85,000 in property division in addition to arrears of child support. In addition, the parenting arrangement terms were not equal to or better than the trial judgment. I will say more about this later.

[44] I turn next to Rule 11-1(5)(a) and the factors in Rule 11-1(6). First, considering only the circumstances in existence at the time the Offer to Settle was made, I find that the Offer to Settle was not one that ought reasonably to have been accepted by the respondent. The Offer to Settle did not explain how the \$50,000 for past child support and property division was arrived at, but it is apparent that for there to be any property settlement in favour of the respondent, the income imputed to the claimant was significantly less than what the respondent was seeking to impute to him. The \$20,000 to be credited to child support is simply offering security for payment of what was or would be owing in any event. The \$20,000 to be taken from trust (these were funds the respondent had paid) as security for costs is difficult to understand since another term was that each party bear their own costs. If this was intended to refer to any past costs owing, it is simply payment of what is already owing. Further, and importantly, the terms regarding the parenting time for V would not have resulted in any final and certain determination of that issue, but would have simply adjourned what the parties had not been able to resolve since separation. Given the significant allegations of family violence, that a lawyer had been appointed for V, and that V by then had made it clear that he had no interest in having counselling or parenting time with the claimant, particularly because of the claimant's failure to acknowledge any family violence, this was not an offer which the respondent could have confidence was in the best interests of V. The Offer to Settle also contained a term that the respondent participate in co-parent counselling. Although not stated explicitly, this suggests that she was contributing to V's decision to not see the claimant, contrary to V's reasons for not having parenting time with the claimant. In my view, given the significant family violence, it was reasonable to not accept the Offer to Settle.

- [45] The Offer to Settle was made mid-trial but there was no suggestion that the respondent could not evaluate it with her counsel. By then, the claimant had been cross-examined which would have provided her with further advantage in assessing the offer. The respondent did not provide any affidavit evidence of her specific reasons for rejecting the Offer to Settle, but this is not surprising as her counsel stated that until she was preparing for this application, she had no recollection of or copy of the Offer to Settle. The Offer to Settle was significantly less than what the respondent was claiming. Finally, credibility was a central issue, particularly with respect to the allegations of family violence that were reported by the respondent and both the children.
- [46] Second, for the reasons discussed with respect to Rule 11-1(5)(d), the Offer to Settle was inferior to the final judgment of Justice Fleming.
- [47] Third, the claimant had far greater financial resources than the respondent. The claimant made this worse by paying very little child support since separation in October 2016. Both children had lived with the respondent since separation.
- [48] It follows from the above, that the claimant's application to have double or any costs awarded in his favour, including a denial of costs to the respondent, is dismissed. The respondent is awarded the costs of the action, payable by the claimant.

Scale of Costs

- [49] The respondent seeks costs at the "more than ordinary difficulty" scale. The claimant opposes this, arguing this was not an unusual case.
- [50] Section 1(1) of Appendix B of the SCFR states:
- 1(1) If a court has made an order for costs, it may determine if the family law case involves less than ordinary difficulty, ordinary difficulty or more than ordinary difficulty.
- [51] Cases where the court has awarded more than ordinary difficulty include where the evidence has shown deceit, a disregard of court orders, steps that lengthened the trial and made it more difficult, misleading the court by failing to provide full and proper disclosure, failure to provide information in a cooperative manner or other conduct that increased the difficulty of the case, significant issues with respect to valuation of assets and determination of income, and complicated and interrelated corporate structure for family assets: *Kopp v. Kopp*, 2012 BCCA 140 at para. 90; *Negus v. Yehia*, 2021 BCSC 254 at para. 15.
- [52] The respondent argues that the scale of difficulty should be increased for the following reasons:
- a) The claimant provided late disclosure and took an unreasonable position regarding production costs of his financial disclosure. I will detail these below;

- b) The claimant raised new claims during the trial which were not set out in his pleadings or trial brief. These were an allegation that the respondent bought a taxi licence and that she worked under the table at a pub: at paras. 57-60. At para. 231 of the Reasons, Justice Fleming noted that the claimant "gave direct evidence that was patently false", and cited various examples, including the claimant's evidence that the respondent invested their funds in the taxi and hid funds from him. At para. 280 of the Reasons, Justice Fleming addressed the allegation of undeclared cash income, and noted the respondent's DivorceMate calculations indicate he accepted her income was appropriately based on her income as stated in her annual tax returns;
 - c) The claimant's difficult position regarding the buyout of the former family home. The respondent obtained a mortgage from RBC to purchase the claimant's interest in the former family home in 2018. Prior to trial, the claimant was provided with the Order to Pay which shows that the funds were from an RBC mortgage, and invited the claimant's counsel to telephone the conveyancing lawyer to confirm this. Despite this, the claimant continued to assert that his interest in the family home was bought with family funds, and to seek disclosure regarding this. Although the claimant testified to this, the allegation was not pursued in closing argument: Reasons at paras. 54-55, 370-371. Justice Fleming noted that the "documents disclosed to him prior to trial and the evidence of conveyancing lawyer, A. Rai, made it clear the transaction was completed without funds from the respondent except for \$1,147 and cash of \$315": at para. 371; and
 - d) The volume of correspondence between the parties, with multiple emails being sent by claimant's counsel and unreasonable demands made for response. For example, sending an email after 7:00 pm on one day, and at 9:45 the next morning requesting "the courtesy of a reply".
- [53] The circumstances of the financial disclosure are illuminating and show the level of difficulty in obtaining disclosure from the claimant. The correspondence shows that despite multiple requests dating back to August 2018, the claimant failed to provide the disclosure requested by the respondent, in particular documents supporting his business expenses, and how his self-employment income was calculated. It was not until January 2021 that the claimant's counsel advised the respondent's counsel that she could attend the offices of the claimant's accountant and review his receipts. However, when respondent's counsel advised that she would attend and requested that a photocopier be made available to her there, claimant's counsel advised that her client had not given permission for respondent's counsel to copy any receipts. This was less than two weeks before the settlement conference that was scheduled to take place in January 2021. Given that five years of receipts were being reviewed, and that they ultimately turned out to be more than 2200 pages, this offer was of no benefit. Steps were then taken to reset a chambers application for production of the records, which had already been filed by the respondent in December 2020.

- [54] In May 2021, claimant's counsel advised that she had disclosure and asked respondent's counsel to attend her office and bring her own scanner to make copies. This was not acceptable to counsel for the respondent. Counsel for the claimant then agreed to produce a copy of the disclosure but advised of her intention to charge her assistant's time to photocopy at \$125 per hour plus \$1 per page. This was not acceptable to respondent's counsel. Eventually, after two attempts to have the chambers application heard for production of the records, there was a consent order made that documents be produced for "reasonable photocopying charges". Counsel then disagreed on what had been agreed between them regarding this term. On June 9, 2021, the copies were ready for pick up but when counsel for the respondent sent someone to pick them up, claimant's counsel refused without a trust cheque being first delivered for over \$2,400. Eventually, although the respondent's position was that a reasonable fee was 25 cents per page (the allowable rate on assessment) respondent's counsel paid the claimant's demand because she needed the documents to prepare for the pending trial. She received the documents four business days before the trial started in June 2021. At para. 52 of the Reasons, Justice Fleming noted that "[s]hortly before the trial, the claimant produced volumes of documents related to his income and the business expenses he deducts for income tax purposes". According to counsel, all of those receipts were filed at trial, and the detailed examination of them by Justice Fleming demonstrates they were important in assessing the claimant's income.
- [55] It is clear that this was hard-fought litigation. The disputes regarding financial disclosure and the allegations concerning the use of family funds to purchase the former family home, are telling of the level of difficulty that the claimant created. The claimant was dilatory in his disclosure of financial information. The dispute regarding the disclosure of financial information should not have had to take place at all. The disclosure should have been produced years earlier without all the correspondence and attendances in court. The claimant's position regarding the interest in the family property should have been resolved prior to trial, but it was raised repeatedly by the claimant prior to trial, with him demanding original documents despite being provided with the Order to Pay and invited to telephone the conveyancing lawyer. Counsel for the respondent provided a computer print out that listed correspondence between counsel (not legible) but in my view, that does not prove unusual difficulty.
- [56] In considering all of the above, I conclude that this matter was more than ordinary difficulty, largely because the claimant failed to provide information in a cooperative manner and because of his positions at trial which were either rejected, or made and then not pursued, and his evidence which Justice Fleming found was on occasions patently false. The respondent will have her costs at the more than ordinary scale.

Interest and Payment of Costs

- [57] The respondent seeks interest to accrue on the costs payable to her from the date of this judgment. Counsel did not refer to any case authority or to the Court Order Interest Act, RSBC 1996, c. 79.
- [58] I order that the respondent is entitled to post-judgment interest on the costs to be assessed or agreed to, from the date of this order. Post-judgment interest is payable on a costs award from the date of pronouncement of the judgment, and not the date of the certificate of costs, unless the court specifically provides that interest shall not run until some later date: *Syed v. Randhawa*, 1996 CanLII 2386 (B.C.S.C.) at para. 11; 24 B.C.L.R. (3d) 164.
- [59] The costs of the respondent are payable by the claimant to the respondent, forthwith upon assessment or agreement of the parties.
- [60] The respondent seeks that the remaining funds held by Dhanu Dhaliwal Law Corporation in trust (approximately \$41,539) be released to her forthwith, as payment towards costs payable by the claimant to her. In my view, the funds should only be paid from trust toward satisfaction of the award of costs once they have been assessed or agreed to, and I make that order.
- [61] The respondent is entitled to the costs of these applications.

"Norell J."

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