

CANADA / JUDGMENT

Sanaie v. Chen

2025 BCSC 2272

COURT

Supreme Court of British Columbia

DECIDED

21 November 2025

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2025 BCSC 2272 Sanaie v. Chen IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Sanaie v. Chen, 2025 BCSC 2272 Date: 20251121 Docket: S246458 Registry: Vancouver Between: Yasaman Sanaie and 1230103 B.C. Ltd. Petitioners And Tina Tin Nar Chen also known as Tina Fung, Elecrae Apparel Inc. and 1230123 B.C. Ltd. Respondents Before: The Honourable Justice Morishita Reasons for Judgment Re Costs Counsel for the Petitioners: R.B. McLennan Counsel for the Respondents: C. Elrick Written Submissions of the Respondents: October 3, 2025 Written Submissions of the Petitioners: October 24, 2025 Place and Date of Judgment: Vancouver, B.C. November 21, 2025

- [1] In this petition proceeding, Ms. Yasaman Sanaie sought leave to start a derivative action on behalf of Elecrae Apparel Inc. ("Elecrae") against Ms. Tina Chen.
- [2] The hearing of the petition took place February 12 to 13, 2025. The Court issued reasons for judgment on August 12, 2025, indexed as 2025 BCSC 1546, dismissing the petition and awarding costs to the respondents at Scale B (the "petition reasons").
- [3] The Court did not invite submissions on costs. Nevertheless, following the release of the reasons, Ms. Chen requested to appear before the Court for an application to have costs assessed under a scale other than Scale B. In response to this request, the Court directed the parties to make written submissions on costs.
- [4] The respondents, Ms. Chen and 1230123 B.C. Ltd., seek special costs against the petitioners, Ms. Sanaie and 1230103 B.C. Ltd. In support of this, the respondents submit that the petitioners advanced serious allegations of misconduct against Ms. Chen, including allegations of misappropriation of funds, unjust enrichment, and breaches of fiduciary duty, without any credible foundation. In addition, they submit that the petitioners' submissions were "laced with inflammatory and personal attacks", which were unsupported and recklessly made. These actions, they submit, are the type of conduct that attracts special costs.
- [5] In support of their position, the respondents rely on *Creative Realty Corp. v. 333 Terminal Holdings Ltd.*, 2011 BCSC 1575, where the court awarded special costs in circumstances that the respondents say are identical to this case.

- [6] In response, the petitioners submit that the Court found their claim to be meritorious but, nevertheless, held that the costs of pursuing such a claim was not in Elecrae's best interests. In addition, they argue that the petitioners' allegations were not of a kind that typically warrant special costs, and that if their arguments on this application are accepted, it would have a chilling effect on anyone seeking to bring a derivative action. Last, the petitioners note that a significant portion of the reasons were devoted to the unanticipated arguments by the respondents objecting to all of the affidavits filed by the petitioner, which were almost entirely unsuccessful. The petitioners seek costs related to this application and the costs for the time at the hearing spent addressing the admissibility arguments raised by the respondents.
- [7] In *Lucarino v. Rast*, 2022 BCSC 1019, Mr. Justice Riley, as he then was, noted the following with respect to special costs:
- [18] The court has authority to award special costs under R. 14-1(1) of the Rules, and also as an aspect of the court's inherent jurisdiction to control its process: *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 [Westsea] at paras. 25-26. By either route, such a remedy is reserved for "exceptional cases": *Westsea* at para. 34.
- [19] The threshold for awarding special costs is "reprehensible conduct" on the part of one of the parties. The concept of "reprehensible conduct" is said to encompass not only "scandalous or outrageous" conduct, but also "milder" forms of misconduct that are "deserving of rebuke": *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at paras. 56-57.
- [8] In *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 at para. 8 (reversed on other grounds in *Mayer v. Mayer*, 2012 BCCA 77), Mr. Justice P. Walker set out a list of conduct, which could justify an award of special costs:
- [11] Special costs may be ordered in the following circumstances:
- a) where a party pursues a meritless claim and is reckless with regard to the truth;
 - b) where a party makes improper allegations of fraud, conspiracy, fraudulent misrepresentation, or breach of fiduciary duty;
 - c) where a party has displayed "reckless indifference" by not recognizing early on that its claim was manifestly deficient;
 - d) where a party made the resolution of an issue far more difficult than it should have been;
 - e) where a party who is in a financially superior position to the other brings proceedings, not with the reasonable expectation of a favourable outcome, but in the absence of merit in order to impose a financial burden on the opposing party;
 - f) where a party presents a case so weak that it is bound to fail, and continues to pursue its meritless claim after it is drawn to its attention that the claim is without merit;

- g) where a party brings a proceeding for an improper motive;
 - h) where a party maintains unfounded allegations of fraud or dishonesty; and
 - i) where a party pursues claims frivolously or without foundation.
- [9] In my view, none of the circumstances outlined by P. Walker J. in *Mayer* are present in this case. While the petitioners were unsuccessful in the proceeding, it cannot be said that most or all of the allegations Ms. Sanaie made were baseless. In addition, the Court did not find that there was no evidence to support the claims advanced by the petitioners. The Court found that the evidence "just barely" established an arguable case in breach of fiduciary duty. Moreover, the Court did not find that there was no evidence to support the claims in conversion and unjust enrichment but, rather, that there was no evidence which showed those claims had a reasonable prospect of success. Although the difference is subtle, there is a difference.
- [10] In addition, I disagree with the respondents that the circumstances in *Creative Realty Corp.* are identical to this case. In *Creative Realty Corp.*, the court found that no evidence was advanced in support of the petitioner's allegations of criminal conduct, oppression, and breach of fiduciary duty. There were no allegations of criminal conduct in this case. Nor do I find that no evidence was adduced by Ms. Sanaie in support of her claims. On that basis, *Creative Realty Corp.* is distinguishable.
- [11] For these reasons, the respondents' application for special costs is dismissed.
- [12] I will now address the petitioners' claim for costs.
- [13] The petitioners seek costs for the portion of the petition hearing spent addressing the admissibility arguments raised by the respondents, as well as the costs of this application.
- [14] The hearing of the admissibility issue added about a half day to the hearing, which was scheduled for one day.
- [15] In my petition reasons, I found that had the admissibility issue not been raised, the hearing might have concluded in the scheduled time. As indicated in the reasons, the respondents should have brought a notice of application challenging the admissibility of the petitioners' affidavits. Instead, they raised the issue at the hearing, without providing any prior notice to the petitioners, or the Court for that matter. The respondents' application was dismissed on that basis.
- [16] The usual rule, as set out in Rule 14-1(9) of the Supreme Court Civil Rules, is that costs follow the event, subject to the court's residual discretion to deny a substantially successful party the costs to which it would otherwise be entitled: *Kakavelakis v. Boutsakis*, 2017 BCCA 396, at para. 94.

- [17] Costs represent an important instrument by which courts are able to promote or sanction litigation conduct. Cost considerations are intended to guide counsel and litigants in the choices and strategies they choose to pursue in prosecuting or defending a civil proceeding: Kakavelakis, at para. 94; LeClair v. Mibrella Inc., 2011 BCSC 533, at para. 10.
- [18] Applying at the hearing to have the petitioners' affidavits ruled inadmissible without prior notice to both the petitioners and the Court is conduct that should be sanctioned. It caused the hearing to take longer than the scheduled time, and required the petitioners to scramble to respond after the hearing had already commenced.
- [19] Accordingly, the respondents are awarded costs of the proceeding at Scale B, with the following exceptions:
- 1) The petitioners will have their costs at Scale B for the preparation and attendance of a half-day hearing, which is the time I estimate was devoted to the admissibility of the petitioners' affidavits.
 - 2) The respondents will have their costs at Scale B for the preparation and attendance of a one-day hearing.
 - 3) The petitioners will have their costs at Scale B for this application by written submissions. "Morishita J."

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