

CANADA / JUDGMENT

Sekhon v. Cruz

2025 BCSC 2267

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2267 Sekhon v. Cruz

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sekhon v. Cruz,

2025 BCSC 2267

Date: 20251119

Docket: M1812489

Registry: Vancouver

Between:

Pravdeep Sekhon

Plaintiff

And

Resty Cruz

Defendant

- and -

Docket: Vancouver

Registry: M200278

Between:

Pravdeep Sekhon

Plaintiff

And

Karandeep Singh Chandi and Jaswinder Singh Chandi

Defendants

Before: The Honourable Mr. Justice Gibb-Carsley

Reasons for Judgment

Re: Plaintiff's Application for Double Costs

Counsel for the Plaintiff:

R. Fang

Counsel for the Defendants:

R.C. Brun, K.C.

Place and Dates of Hearing:

Abbotsford, B.C.

October 27 and November 7, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 19, 2025

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I. Introduction

- [1] This is an application brought by the plaintiff, Pravdeep Sekhon, for double costs pursuant to R. 9-1 of the Supreme Court Civil Rules from the date he made a formal offer to settle his claim onward. The plaintiff argues that he is entitled to double costs because his offer ought reasonably to have been accepted in the circumstances.

- [2] The defendants oppose the application for double costs. The defendants argue that double costs are not warranted for two reasons. The first relate to the circumstances in which the offer was made. Specifically, the offer was made on the Thursday before the Monday on which the trial commenced and they were given 24 hours to respond. Additionally, the defendants submit that they received no explanation for the quantum assessment of the offer, which was significantly lower than the plaintiff's offer from the previous year. Because of these circumstances, the defendants say they had insufficient information and time to consider the offer properly.
- [3] Second, the defendants assert that the plaintiff's credibility was a serious issue for the defendants in assessing the plaintiff's claim. The defendants say that given the concerns of the plaintiff's credibility, it would be unreasonable for them to accept the offer to settle without an explanation for the reasons the plaintiff offered to settle, and as such a trial of the issue was required. The defendants assert that their concerns about the plaintiff's credibility in the pre-trial discovery process was proven accurate by the Court's concerns with the credibility of the plaintiff's testimony at trial.
- [4] Rule 9-1 is designed to avoid unnecessary litigation by encouraging parties to consider reasonable offers to settle. The double costs rule can relieve pressure from overburdened courts by encouraging parties to settle and face a penalty if they refuse to accept offers that are reasonable in the circumstances.
- [5] For the reasons that follow, I find that the plaintiff's offer to settle was reasonable in the circumstances and ought to have been accepted by the defendants. The defendants took the risk of proceeding to trial and the plaintiff was awarded a significantly higher amount than the amount it offered to the defendants to resolve the matter. In the circumstances, the offer reasonably ought to have been accepted by the defendants and, accordingly, the plaintiff is entitled to double costs from the date of the offer onward.

II. Background

- [6] These consolidated actions arise from two rear-end motor vehicle collisions, the first occurring on February 18, 2017, on 168th Street near 76th Avenue in Surrey, BC and the second on January 24, 2019, at the intersection of Fraser Highway and 140th Street in Surrey, British Columbia.
- [7] Initially, a trial was scheduled to proceed on January 17, 2022. However, the trial was adjourned on January 12, 2022, due to the COVID-19 pandemic restrictions placed upon in-person court appearances. The trial was rescheduled and the 10-day trial proceeded before me between November 28, 2022, and December 9, 2022.
- [8] I provided my judgment on March 15, 2023, with reasons indexed as *Sekhon v. Cruz*, 2023 BCSC 319 (the "Trial Decision"). I awarded the plaintiff \$437,348 in damages and costs at Scale B.

- [9] The parties had exchanged the following offers to settle prior to trial:
- a) February 23, 2018: An informal offer was sent by the defendants to the plaintiff;
 - b) December 7, 2021: A formal offer was sent by the defendants to the plaintiff;
 - c) December 24, 2021: A formal offer was sent by the plaintiff to the defendants open for acceptance until 4:00 p.m. Pacific Standard Time on January 14, 2022;
 - d) November 24, 2022, at 12:53 p.m.: A formal offer was sent by the plaintiff to the defendants for \$349,473 plus costs and disbursements, open for acceptance until 12:00 p.m. Pacific Standard Time on November 25, 2022 (the "November Offer"); and
 - e) November 24, 2022, at 3:10 p.m.: A formal offer was sent by the defendants to the plaintiff open for acceptance until 3:00 p.m. Pacific Standard Time on November 25, 2022 (the "Counteroffer").
- [10] The November Offer is the offer that the plaintiff says ought to have been accepted by the defendants. As such, the plaintiff seeks double costs from November 24, 2022, which is essentially for the two-week trial that occurred between November 28 and December 9, 2022.

III. Governing Legal Principles

- [11] Rule 9-1(4) provides that "[t]he court may consider an offer to settle when exercising the court's discretion in relation to costs". Rule 9-1(5) provides guidance to the court in the exercise of its discretion, which include awarding double costs:
- (5) In a proceeding 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 proceeding 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 proceeding 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 proceeding 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 offer was made by a defendant and the judgment awarded to the plaintiff was no greater than the amount of the offer to settle, award to the defendant the defendant's costs in respect of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle.

- [12] Additional guidance to the considerations a court should apply in exercising the discretion to award double costs is set out in R. 9-1(6):
- (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.
- [13] Our Court of Appeal articulated the purposes and objectives underpinning the discretion for a court to award double costs in *Hartshorne v. Hartshorne*, 2011 BCCA 29. Our Court of Appeal's rationale, as well as other factors a court may consider when determining if double costs are appropriate, were helpfully summarized by Madam Justice Morellato in *Fryer v. Naksup Village*, 2023 BCSC 478:
- [14] In *Hartshorne v. Hartshorne*, 2011 BCCA 29, our Court of Appeal affirmed the punitive element underlying a double costs award, and reasoned:
- [25] An award of double costs is a punitive measure against a litigant for that party's failure, in all of the circumstances, to have accepted an offer to settle that should have been accepted. Litigants are to be reminded that costs rules are in place "to encourage the early settlement of disputes by rewarding the party who makes a reasonable settlement offer and penalizing the party who declines to accept such an offer" [cites omitted]. In this regard, Mr. Justice Frankel's comments in *Giles* are apposite .
- [15] In *Giles v. Westminster Savings and Credit Union*, 2010 BCCA 282, Justice Frankel reasons, at para. 74, that the purposes the costs rule exists must be kept in mind; in addition to indemnifying a successful litigant, those purposes include:
- a) deterring frivolous actions or defences;
 - b) encouraging conduct that reduces the duration and expense of litigation and to discourage conduct that has the opposite effect;
 - c) encouraging litigants to settle whenever possible, thus freeing up judicial resources for other cases;
 - d) facilitating a winnowing function in the litigation process by requiring litigants to make a careful assessment of the strength or lack thereof of their cases at the commencement and throughout the course of the litigation", and by "discourag[ing] the continuance of doubtful cases or defences"

- [16] Of significance, the Court in Hartshorne also reasoned, at para. 27, that in assessing whether the offer to settle was one that ought reasonably to have been accepted, the Court must not have regard to the award that was ultimately made; rather, the Court must consider whether, at the time the offer was open for acceptance, it would have been reasonable for the offer in question to have been accepted: see also *Bailey v. Jang*, 2008 BCSC 1372 at para. 24; *A.E. v. D.W.J.*, 2009 BCSC 505 at para. 55. The reasonableness of the offer may be informed by such factors as the timing of the offer, whether it could be easily evaluated, and whether some rationale for the offer was provided: see Hartshorne at para 27.
- [14] The determination of whether double costs are warranted is fact specific. The context of the litigation and the nature of the offer are crucial to properly evaluate if the offer made ought reasonably to have been accepted. Importantly, the refusal to accept the offer should not penalize a party by applying an overly harsh, retrospective analysis on the final outcome of the litigation. In other words, double costs should only be a penalty for unreasonable litigation and not simply a penalty for an inaccurate prediction or assessment of the outcome of the trial: Fryer at para. 17.
- [15] Courts must attempt to strike a balance between encouraging the acceptance of reasonable offers to settle, while not penalizing or chilling a litigant from pursuing meritorious claims. Further, it is within the court's discretion, exercised in a just and principled manner, "to consider a broad range of factors and there is no mandatory or prescriptive list that necessarily informs the assessment of double costs": Fryer at para. 18.
- [16] It is with these legal principles in mind that I turn to my analysis.

IV. Analysis

- [17] As set out at the commencement of these reasons, I will exercise my discretion to award double costs to the plaintiff. I find that when considering the factors listed under R. 9-1(6) the November Offer ought reasonably to have been accepted.
- [18] By not accepting the November Offer the defendants were required to pay an additional \$87,875 or 25.1% increase (\$87,875 / \$349,473). Accordingly, it is without question that had the defendants accepted the November Offer, the defendants would have achieved a better outcome than they received at trial. This supports an award of double costs, pursuant to R. 9-1(6)(b): see also *Johal v. Radek*, 2016 BCSC 1170 at para. 54.
- [19] The defendants assert that they did not have time to properly respond to the November Offer because it was sent on the Thursday before the start of the trial. Counsel for the defendants contend that sending an offer on the eve of trial makes it difficult for counsel to obtain instructions on short notice. Further, counsel asserts that in the days prior to trial, they are preparing for trial and do not have adequate time to fully consider a settlement offer. As such, the defendants argue that it is not unreasonable that they did not accept the offer.

- [20] I agree that earlier offers to settle are preferable to those made on the eve of trial or on the "courthouse steps". Early offers give the parties time to carefully consider offers and even to potentially negotiate a resolution without trial. Early offers can reduce costs and free much needed court time for other matters. However, in this case, the defendants made a counteroffer to the plaintiff at 3:10 p.m. on November 24, 2022, just over two hours after the plaintiff had served the November Offer. The Counteroffer, like the November Offer was open for 24 hours.
- [21] Given the defendants had time to make their own offer to settle the matter, I have no hesitation in concluding that it had the ability to consider the November Offer and obtain at least some instructions. In the circumstances of this case, I find no merit in the defendants' argument that the late timing of the plaintiff's presentation of the settlement offer makes it unreasonable and warrants that the court decline to order double costs.
- [22] Despite the many advantages to providing early offers to settle, an offer does not become unreasonable simply by virtue of it being made close to the start of trial. A late offer made on reasonable terms in the circumstances can still avoid the time and expense of a trial. Further, an offer made late in the litigation that reasonably ought to have been accepted in the circumstances may still attract double costs against the party who refuses to accept that offer.
- [23] To further support its argument that they could not accept the offer because of the uncertainty of the context in which the offer was made, the defendants assert that there was no explanation as to why the November Offer was reduced to \$349,473 from its previous offer of December 24, 2021, in which the plaintiff offered to settle this claim for \$2,189,016.75. The defendants contend that without an explanation of why the plaintiff drastically reduced its offer, it would not be reasonable for it to accept the offer. I do not understand the logic of this argument. If anything, the disparity in the offers would signal to the defendants that the November Offer presented an opportunity for the defendants to reduce its litigation exposure to a larger award of damages. Additionally, the Counteroffer was even lower than the November Offer, signaling to me that the reduction cannot be large enough a concern to negate the reasonableness. In my view, the defendants took the risk of doing better at trial than the November Offer. The result was that the defendants achieved a less favourable outcome than if they had accepted the offer.
- [24] Secondly, the defendants argue that it was not reasonable to accept the November Offer because the plaintiff's credibility was a serious issue throughout the steps of the litigation. In this regard the defendants argue that they could simply not know how to assess the plaintiff's injuries or losses because it viewed him as untruthful or not transparent with his treating physicians regarding other injuries he had received. Given this uncertainty, caused by what the defendants say is the plaintiff's lack of transparency, it could not reasonably accept the offer. The defendants argue that they could not reliably assess the truth of the extent of the plaintiff's injuries or how his future losses should be assessed to reasonably respond to the November Offer. In support of this, the defendants point to my findings at

trial that the plaintiff's testimony had a "patina of exaggeration".

- [25] I accept that in cases where credibility is an issue the court may exercise its discretion to not award double costs. In *Lakhani v. Elliott*, 2010 BCSC 281 the Court declined to award double costs based on the Court's concern that the plaintiff's conduct was worthy of censure:
- [24] In this case, the specific findings I referred to go beyond the "normal trial process" and do extend to a finding that the plaintiff sought to mislead the court and to significantly exaggerate the claim being advanced. Such conduct is worthy of censure and, in the circumstances of this case, disentitles the plaintiff to the award of double costs that she seeks.
- [26] In the Trial Decision, I described my concerns with the plaintiff's credibility as follows:
- [32] I am most troubled, in respect of Mr. Sekhon's credibility, by his failure to disclose his other injuries to the experts who examined him for this case. When asked about the other injuries Mr. Sekhon suffered in the Subsequent Accidents, each expert testified that it would have been important for them to know of these injuries. They said that in the normal course of their examinations, they would ask an examinee about other events that might have impacted her or his health. I find it a glaring omission that Mr. Sekhon would not mention the Subsequent Accidents to the experts. After all, in most cases, the primary purpose of an expert conducting an IME is to determine the cause of a plaintiff's injuries and provide a diagnosis and prognosis of those injuries. Without a complete picture of a plaintiff's medical history, and especially other motor vehicle accidents with a similar mechanism of injury to the Accidents, the value of the opinions are lessened.
- [34] In summary in respect of my assessment of Mr. Sekhon's credibility, I found him generally credible. However, his testimony was encumbered by a patina of exaggeration. I am left with the impression that he overstated both his pre-accident level of health and the post-accident impacts of his injuries on his life. Further, his failure to disclose the Subsequent Accidents to the experts reduces the force of those experts' attribution of the long-term impacts in this case solely to the Accidents.
- [27] In cases where a party is not transparent thus depriving the opposing party of understanding the underlying facts of a case, I accept that it may be inappropriate to award double costs. It could be seen as rewarding a party for being so opaque during the pre-trial discovery procedures that the opposing party is rendered unable to accurately assess the case, thus making consideration of a settlement offer unsafe or untenable.
- [28] In the case at bar, while I found that the plaintiff exaggerated and failed to understand the importance of testifying with precision, I do not find that his conduct rises to the level to prohibit him from receiving double costs. In this regard, I distinguish the case at bar from *Lakhani*, where the Court found that the plaintiff "sought to mislead the court": at para. 24.

- [29] Further, I do not accept that the defendants were deprived of having sufficient information about the plaintiff's case or the risks of litigation that it would be unable to make a determination about the reasonableness of the November Offer.
- [30] At the time the November Offer was made, the defendants would have known its case well, as the trial was set to proceed on January 17, 2022. The trial was only adjourned due to COVID-19. At this point, the plaintiff had been examined twice and there were several expert reports (physiatry, orthopaedics, and occupational therapy) filed. The plaintiff's theory on his loss of earning capacity claim, which was the largest head of damage, was known to the defendants. Further, the parties entered a detailed agreed statement of facts that included the plaintiff's treatments, employment history, and past and future rates of pay according to the plaintiff's collective agreement.
- [31] Further, liability was admitted. As such, the defendants would be aware that the issue at trial would essentially be only the quantum of damages. Finally, the defendants would be aware that the plaintiff's sought an award for damages at trial of between \$1.6 million and \$3.4 million which is significant especially when considered against the November Offer.
- [32] I do not accept that the defendants were not in a position to know the case and its associated strengths and weaknesses at the time the plaintiff made its offer. Even with the plaintiff's credibility issues, there was an abundance of third-party information that would have allowed the defendants to understand the risks involved with going to trial. In my view, the defendants determined that it was willing to accept that risk by proceeding to trial and refusing the November Offer. Of course, the corollary to this is that the defendants ran the risk of having double costs awarded against them.
- [33] At its core, double costs should only be a penalty for unreasonable litigation. In my view, not accepting the November Offer resulted in unreasonable litigation. The defendants should be penalized for not accepting the offer. Our Court of Appeal summarized the principles underpinning offers to settle and their consequences in *C.P. v. RBC Royal Life Insurance*, 2015 BCCA 30:
- [95] A plaintiff who rejects a reasonable offer to settle should usually face some sanction in costs. To do otherwise would undermine the importance of certainty and consequences in applying the Rule: *Wafler v. Trinh*, 2014 BCCA 95 at para. 81. The importance of those principles was emphasized by this Court in *A.E. Appeal* at para. 41:
- [41] This conclusion is consistent with the importance the Legislature has placed on the role of settlement offers in encouraging the determination of disputes in a cost-efficient and expeditious manner. It has placed a premium on certainty of result as a key factor which parties consider in determining whether to make or accept an offer to settle. If the parties know in advance the consequences of their decision to make or accept an offer, whether by way of reward or punishment, they are in a better position to make a reasoned decision. If they think they may be excused from the otherwise punitive effect of a costs rule in relation to an offer to settle, they will be more inclined to take their chances in refusing to accept an

offer. If they know they will have to live with the consequences set forth in the Rule, they are more likely to avoid the risk.

- [34] I accept that the Legislature has placed importance on encouraging settlement offers by imposing consequences upon parties who refuse to accept offers that reasonably ought to be accepted.
- [35] In conclusion, the above analysis primarily focuses upon the factors for consideration under R. 9-1(6)(a) and (b). I have also considered the factor set out in R. 9-1(6)(c) regarding the relative financial circumstances of the parties. I find that this factor, while not significant, also favours awarding double costs to the plaintiff. In my view, there are already systemic advantages afforded to insurance companies in litigating personal injury matters including their resources.
- [36] Given the foregoing, I find that the plaintiff is entitled to double costs from the date of the November Offer onward.

V. Conclusion

- [37] In respect of the costs of this application, the plaintiff has been successful in its application and so is entitled to the costs of this application at Scale B.
- [38] I thank counsel for their submissions on this application.

"Gibb-Carsley J."

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