

CANADA / JUDGMENT

Stoeff v. Stephenson

2025 BCSC 1689

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Supreme Court of British Columbia

DECIDED

29 August 2025

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2025 BCSC 1689 Stoeff v. Stephenson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stoeff v. Stephenson,

2025 BCSC 1689

Date: 20250829

Docket: S216209

Registry: Vancouver

Between:

Taylor Stoeff

Plaintiff

And

Cindy-Lea Stephenson, carrying on business under the firm name and style of T's Once Upon a Leaf, Music Heals Charitable Foundation, and

DB Prakash Properties Ltd.

Defendants

Before: The Honourable Justice Underhill

Reasons for Judgment on Costs

Counsel for the Plaintiff:

R. Thomas

Counsel for the Defendant, Cindy-Lea Stephenson under the firm name and style of T's Once upon a Leaf and DB Prakash Properties Ltd. :

J.B. Abrioux

Counsel for the Defendant, Music Heals Charitable Foundation:

B. Folarin

Place and Date of Hearing:

Vancouver, B.C.

March 31, 2025

Written Submissions of the Defendant Music Heals Charitable Foundation:

May 21, 2025

Written Submissions of the Defendants Cindy-Lea Stephenson under the firm name and style of T's Once upon a Leaf and DB Prakash Properties Ltd.:

May 22, 2025

Written Submissions of the Plaintiff:

June 4, 2025

Place and Date of Judgment:

Vancouver, B.C.

August 29, 2025

Introduction

- [1] In reasons for judgment issued April 22, 2025 and indexed as 2025 BCSC 737, I allowed the summary trial application of the defendants Cindy Lea-Stephenson carrying on business as T's Once Upon a Leaf (Ms. Stephenson) and DB Prakash Properties Ltd. (Prakash), and dismissed the plaintiff's claim against them. During the course of the hearing on March 31, 2025, the plaintiff agreed to discontinue her claim against the defendant Music Heals Charitable Foundation (Music Heals).
- [2] The plaintiff's claim arose from a trip and fall accident at a charitable event put on by T's Once Upon a Leaf, a store owned by Ms. Stephenson in a building owned by Prakash. Music Heals was the beneficiary of the event.
- [3] Ms. Stephenson and Prakash now seek an order for double costs from the time of their first offer to settle on August 8, 2023, or alternatively from their second offer made on November 8, 2024, both of which offered to waive costs in return for a dismissal of the claims against them. Music Heals seeks special costs from April 12, 2023, the date Music Heals says the

plaintiff was examined for discovery (it appears she was in fact examined on May 26, 2023), or alternatively October 22, 2024, when Music Heals alleges Ms. Stephenson made an admission of occupier status. In the alternative, Music Heals seeks double costs from April 12, 2023.

- [4] For the reasons that follow, I have determined that Ms. Stephenson and Prakash are entitled to regular costs until August 8, 2023, and double costs thereafter. Music Heals is entitled to double costs from October 4, 2023 to December 11, 2024, and regular costs otherwise.

Background

- [5] The relevant dates for purposes of assessing costs are as follows.
- [6] The notice of civil claim was originally filed on July 6, 2021, and amended on September 10, 2021 to correct the names of the defendants. Music Heals filed its response to the amended notice of civil claim on May 5, 2022, and the response of Ms. Stephenson and Prakash was filed on July 18, 2022. All of the defendants denied liability, including occupier status under the Occupiers Liability Act, R.S.B.C. 1996, c. 337.
- [7] Music Heals delivered a formal offer to waive costs in exchange for a dismissal of the claim against them on June 24, 2022, which expired on July 15, 2022.
- [8] Following the exchange of lists of documents between the plaintiff, Ms. Stephenson and Prakash, the defendants examined the plaintiff on May 26, 2023.
- [9] On August 8, 2023, Ms. Stephenson and Prakash extended a formal offer to waive costs in return for a dismissal on a "BC Ferries basis" (i.e., a term that requires the plaintiff to abandon all claims for damages which are attributable to the settling defendants, with any damages attributable to the non-settling defendant being adjusted accordingly), with a deadline for acceptance of August 22, 2023. The content of the offer relied principally on the examination for discovery evidence of the plaintiff (the First Offer).
- [10] On October 4, 2023, Music Heals made an offer to accept \$1,000 in costs if the plaintiff would dismiss her claims against it. I note that the letter extending the offer has a date of June 24, 2022, but it is apparent that this date is an error because the letter references the plaintiff's examination for discovery. Music Heals says that the actual date of this offer is October 4, 2023, and the plaintiff has not contested that.
- [11] In September 2023, Ms. Stephenson and Prakash commenced efforts to schedule a summary trial. A hearing date was secured for March 25, 2024, but the plaintiff retained new (and current) counsel in January 2024, who indicated they were not available on that date.
- [12] On April 26, 2024, the plaintiff delivered a settlement offer for \$100,500.
- [13] On September 13, 2024, the plaintiff delivered a further settlement offer of \$25,000, which it subsequently rescinded on November 5, 2024.

- [14] A new hearing date of September 25, 2024 was secured for the summary trial, but in the days leading up to the hearing, the plaintiffs delivered a demand for disclosure of Part 4 documents (i.e., documents for which privilege from production is claimed) to Ms. Stephenson and Prakash. That demand ultimately led to a consent adjournment at the hearing on September 25, 2024 to allow for the privileged documents motion to be brought, and for the plaintiff to conduct examinations for discovery of the defendants, with costs thrown away against the plaintiff.
- [15] The privileged documents motion was heard and dismissed on October 17, 2024, with costs in the cause.
- [16] On October 21, 2024, Music Heals served a list of documents on the plaintiff, and the plaintiff conducted examinations for discovery of the defendants on November 5 and 7, 2024.
- [17] On November 8, 2024, Ms. Stephenson and Prakash, and on behalf of Music Heals, extended an offer to waive costs in exchange for a dismissal of all claims, which was left open until November 22, 2024 (the Second Offer).
- [18] Music Heals delivered an amended list of documents on November 26, 2024.
- [19] On December 11, 2024, the plaintiff offered to discontinue her claim against Music Heals in return for a waiver of costs.
- [20] Another hearing of the summary trial application on December 19, 2024 was adjourned because of a lack of court time, and it subsequently came on for hearing before me on March 31, 2024.
- [21] At that hearing, Ms. Stephenson admitted occupier status under the Occupiers Liability Act for purposes of the trial, and later in the hearing the plaintiff agreed to discontinue the action against Music Heals.

Analysis

Ms. Stephenson's and Prakash's Claim for Double Costs

- [22] Ms. Stephenson and Prakash seek costs up to the date of the First Offer, and double costs thereafter. Alternatively, they seek double costs from the date of the Second Offer.
- [23] Rules 9-1(4) to (6) of the Supreme Court Civil Rules provide:

Offer may be considered in relation to costs

- (4) The court may consider an offer to settle when exercising the court's discretion in relation to costs.

Cost options

- (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.

Considerations of court

- (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.
- [24] The applicable principles were summarized by Justice Abrioux (as he then was) in *Bideci v. Neuhold*, 2014 BCSC 1212 (and see also *Makara v. Peter*, 2024 BCSC 975 at para. 11):
- [51] The applicable law has recently been conveniently summarized by Mr. Justice Voith in *Brewster v. Li*, 2014 BCSC 463. After setting out Rules 9-1(4) to (6), he stated:
- [14] The present Rules provide the court with considerable discretion to define and fix an appropriate cost award: see *Bailey v. Jang*, 2008 BCSC 1372 at para. 10; *Bennett v. Scanlan*, 2010 BCSC 50 at para. 29. That discretion is, however, constrained by the considerations outlined in subparagraph (6); *Bailey* at para. 18.

[15] The regime in Rule 9-1 can advance various important objects: see for example *Lakhani v. Elliott*, 2010 BCSC 281 at paras. 11-16; *Bailey* at para. 18. Its dominant and overarching object, however, is to promote reasonable settlements and to attach some consequence to the failure of a party to accept a reasonable settlement: *Bennett* at para. 28, *Gonzales v. Voskakis*, 2013 BCSC 675 at para. 13.

[16] This dominant object was summarized in *Catalyst Paper Corporation v. Companhia de Navegação Norsul*, 2009 BCCA 16, where the court said at para. 16:

It seems to me that the trend of recent authorities is to the effect that the costs rules should be utilized to have a winnowing function in the litigation process. The costs rules require litigants to make careful assessments of the strength or lack thereof of their cases at commencement and throughout the course of litigation. The rules should discourage the continuance of doubtful cases or defences. This of course imposes burdens on counsel to carefully consider the strengths and weaknesses of particular fact situations. Such considerations should, among other things, encourage reasonable settlements.

[52] In *Giles v. Westminster Savings and Credit Union*, 2010 BCCA 282, Frankel J.A., writing for the Court, stated at paras. 74-75:

[74] The purposes for which costs rules exist must be kept in mind in determining whether appellate intervention is warranted. In addition to indemnifying a successful litigant, those purposes have been described as follows by this Court:

- "[D]eterring frivolous actions or defences": *Houweling Nurseries Ltd. v. Fisons Western Corp.* (1988), 37 B.C.L.R. (2d) 2 at 25 (C.A.), leave ref'd, [1988] 1 S.C.R. ix;
- "[T]o encourage conduct that reduces the duration and expense of litigation and to discourage conduct that has the opposite effect": *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201 at para. 28 (C.A.);
- "[E]ncouraging litigants to settle whenever possible, thus freeing up judicial resources for other cases: *Bedwell v. McGill*, 2008 BCCA 526, 86 B.C.L.R. (4th) 343 at para. 33;
- "[T]o have a winnowing function in the litigation process" by "requir[ing] 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": *Catalyst Paper Corporation v. Companhia de Navegação Norsul*, 2009 BCCA 16, 88 B.C.L.R. (4th) 17 at para. 16.

[75] Lastly, it must be also remembered that "the person who seeks to displace the usual rule [as to costs] has the burden of persuading the judge that the rule should be displaced": *Grassi v. WIC Radio Ltd.*, 2001 BCCA 376, 89 B.C.L.R. (3d) 198 at para. 24.

- [25] Ms. Stephenson and Prakash rely on *Riley v. Riley*, 2010 BCSC 822, for the proposition that a "walk away" offer, or an offer to waive costs, can be the sort of settlement offer that entitles a defendant to double costs:
- [14] The plaintiff argues the defendant's offer to settle was not a true offer to settle as it was simply "an invitation to the Plaintiff to abandon the litigation". The plaintiff says it would be "untenable both logically and philosophically" if a defendant who succeeds in defeating a plaintiff's claim can expect to receive double costs.
- [15] While acknowledging the facts in this case to be different, the plaintiff cites *Wilson v. Leung*, 2008 BCSC 1828, where Sinclair Prowse J. stated, at para. 11:
- [11] It was not obvious as to the outcome of this action nor is it obvious as to the finding of the Jury. As has just been touched upon, the Jury could well have based their dismissal on the finding that the recollection of the Plaintiff was equally plausible to the recollection of the Defendants. Given this situation, it would be inappropriate, in my view, to conclude that the Plaintiff ought reasonably to have accepted the offer (namely, withdrawn her action). For these reasons, I am dismissing the Defendants' application for double costs.
- [16] An offer by a party to waive or forgo costs if the other party abandons pursuit of its claim is an appropriate offer to settle pursuant to Rule 37B. There are many claims commenced in this Court which are ultimately dismissed or which are subject to dismissal. To accept the plaintiff's argument would take away a valuable settlement tool from the parties and be contrary to the intent of Rule 37B.
- [17] In *Ludwig v. Bos*, 2010 BCSC 695, Truscott J. considered whether an offer to settle issued by the defendant whereby the plaintiff would discontinue the action and pay certain taxable costs and disbursements to the defendant constituted a proper offer pursuant to Rule 37. He found it did, concluding at para. 8:

I reject both submissions of the plaintiffs. Dealing with their first submission an offer to settle under Rule 37B in my view can be an offer to accept a discontinuance of a claim, and not just an offer of a compromise of the claim.

- [26] While *Riley* has been followed in cases such as *Johnson v. Jamieson*, 2015 BCSC 648, the plaintiff says that it has all but been overtaken by subsequent jurisprudence, citing *P.S.D. Enterprises Ltd. v. New Westminster (City)*, 2011 BCSC 1646, *Casses v. Canadian Broadcasting Corporation*, 2016 BCSC 949, and *Hill v. Herd*, 2024 BCSC 1653, among others.
- [27] From my review of the caselaw, *Riley* has not been overtaken; rather the task of the Court is to consider whether, in the circumstances of the particular case, a walk away offer can be considered a true compromise and incentive to settle, with a key factor being the complexity of the plaintiff's claims. This is captured by Justice Lyster's analysis in *Hill*, where the court declined to order double costs flowing from a walk away offer:

- [26] The first factor to consider is whether the Village's Formal Offer was one that ought reasonably to have been accepted. As held by the Court of Appeal in *Hartshorne v. Hartshorne*, 2011 BCCA 29 at para. 27, this factor is not determined by reference to the award ultimately made by the court, but by whether, at the time it was open for acceptance, it would have been reasonable for it to be accepted. As the Court of Appeal further explained in *Cottrill v. Utopia Day Spas and Salons Ltd.*, 2019 BCCA 26 at paras. 30-31, drawing on the analysis of Mr. Justice Gomery in *Kobetitch v. Belski*, 2018 BCSC 2247, "the issue is not whether the offer was reasonable but whether it was unreasonable to refuse it".
- [27] The Formal Offer was made in May 2021, approximately 11 months before this matter went to trial. At the time, the parties had exchanged their initial lists of documents, and the Hills had been examined by the Village. The Hills had not yet examined the Village's representative. The Formal Offer remained open for nearly three months.
- [28] I accept the Village's submission that the Formal Offer clearly explained the rationale for its terms, and that it was incumbent on the Hills to evaluate the validity of the legal arguments put forward by the Village in support of its position. However, I also accept the Hills' submission that disclosure was not complete at the time the offer was made, and that significant documents were disclosed by the Village in its March 1, 2022 amended list of documents. Further, the Hills had not yet examined the Village's representative at the time the offer was made and remained open. At the time the offer was made and remained open, the Hills did not have access to important factual information which may have affected their ability to assess the Formal Offer.
- [29] I also accept the Hills' submission that the Village's position only assesses the reasonableness of the Formal Offer objectively, and fails to address the Hills' subjective reasonableness, as required under *C.P. v. RBC Life Insurance Company*, 2015 BCCA 30 at para. 9.
- [30] As stated by Madam Justice Gropper in *In P.S.D. Enterprises Ltd. v. New Westminster (City)*, 2011 BCSC 1646 at para. 26, an offer must offer an incentive to settle:
- [26] . . . The weight of authority suggests that the court should consider whether the offer truly provided an incentive to the plaintiff to settle the matter. In settlement parlance, the question is whether it gave the plaintiff a problem, something with which it had to grapple. This question is analysed based on the facts of each individual case and is done with a view of the circumstances at the time the offer was made. The fact that the offer was a nominal one may influence the analysis. . . . [Emphasis in original.]
- [31] The Formal Offer was a consent dismissal without costs. As observed by Madam Justice Adair in *Casses v. Canadian Broadcasting Corporation*, 2016 BCSC 949 [Casses] at para. 54, such an offer may offer more than nuisance value, but still not offer anything in relation to the plaintiff's claims. As in *Casses*, this action was complex. The Formal Offer offered no genuine compromise and no incentive to the Hills to settle.

- [32] Considered at the time the offer was made and remained open, I conclude that it was not unreasonable for the Hills to refuse the Formal Offer. The first factor favours not awarding double costs to the Village.
- [28] I have concluded that, in the circumstances of this case, the First Offer was a genuine compromise and incentive to settle (I note that Ms. Stephenson and Prakash fairly conceded a defect in the service of the First Offer, but I do not understand the plaintiff to say she did not receive it at the time).
- [29] In reaching that conclusion, I rely on the relative lack of complexity to this case, and that it was primarily decided on the plaintiff's own evidence, all of which, as the defendants pointed out in their submissions, was elicited at the examination for discovery on May 26, 2023 and set out in some detail in the First Offer.
- [30] This was not a case like Hill where the plaintiff was missing key information at the time of the settlement offer which was later uncovered at an examination for discovery or through subsequent document disclosure. While the plaintiff did conduct examinations for discovery in the fall of 2024 well after the First Offer, the plaintiff has not pointed to any information it could have unearthed at that or any other time which would have affected its consideration or analysis of the First Offer. Simply put, this case turned on the evidence of the plaintiff, and in particular her failure to exercise a "modicum of awareness", all of which was apparent by and fully laid out in the First Offer.
- [31] I find therefore that Ms. Stephenson and Prakash are entitled to costs up to August 8, 2023, and double costs thereafter.

Music Heals' Claims for Special Costs or Double Costs

- [32] Music Heals cites a number of authorities in support of its argument that it is entitled to special costs for what it says was the "reprehensible conduct" of the plaintiff, including Yukon Zinc Corporation (Re), 2015 BCSC 1991 and Mayer v. Osborne Contracting Ltd., 2011 BCSC 914. It relies in particular on para. 11 of Mayer, which provides as follows:
- [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.

See: Garcia at 748; International Hi-Tech at paras. 7-13; Webber v. Singh, 2005 BCSC 224 at para. 28; McLean v. Gonzalez-Calvo, 2007 BCSC 648 at paras. 26, 29; Buchan v. Moss Management Inc., 2008 BCSC 1286 at paras. 11-12; and Edwards v. Bell, 2004 BCSC 399 at paras. 12, 43-45.

[33] Music Heals says that subparas. (a), (c), (d), (f) and (i) all apply in this case and justify an award of special costs.

[34] For her part, the plaintiff cites Westsea Construction Ltd. v. 0759553 B.C. Ltd., 2013 BCSC 1352 at para. 73, where Madam Justice Gropper summarized the principles for awarding special costs:

- a) the court must exercise restraint in awarding special costs;
- b) the party seeking special costs must demonstrate exceptional circumstances to justify a special costs order;
- c) simply because the legal concept of "reprehensibility" captures different kinds of misconduct does not mean that all forms of misconduct are encompassed by this term;
- d) reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court's process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant;
- e) special costs can be ordered against parties and non-parties alike; and
- f) the successful litigant is entitled to costs in accordance with the general rule that costs follow the event. Special costs are not awarded to a successful party as a "bonus" or further compensation for that success.

[35] I agree with the plaintiff that this case does not present exceptional circumstances justifying an award of special costs. It is apparent that not much was done by the plaintiff to prosecute her case until her current counsel were retained in early 2024. The consecutive settlement offers that were put forward by the plaintiff in April and September 2024 suggest that she was aware of the difficulties with her case, and it appears she then attempted, on the eve of the summary trial hearing in September 2024, to gain some degree of leverage to try to effect a settlement. While those efforts were unsuccessful, I would not characterize that conduct

as reprehensible in nature.

- [36] Ultimately, it cannot be said the plaintiff proceeded with reckless indifference when she offered to dismiss the claim against Music Heals in December 2024 in return for a waiver of costs. I did not understand Music Heals to dispute the fact that the offer was received at that time, despite the affidavit material suggesting some confusion in that regard. I also note that the plaintiff's offer was delivered a little over a month after Music Heals extended the very same offer to the plaintiff in November 2024.
- [37] Music Heals also placed considerable emphasis on what it says was an admission on October 22, 2024 by Ms. Stephenson that she was an occupier under the Occupiers Liability Act, and that the plaintiff ought to have abandoned its claim against Music Heals immediately thereafter. First, I agree with the plaintiff that Music Heals is not entitled to rely on the alleged admission of Ms. Stephenson, as it formed part of without prejudice settlement correspondence between the plaintiff, Ms. Stephenson and Prakash. In any event, my understanding from that correspondence is that the admission was conditional, and that it was only formally made at the summary trial before me on March 31, 2024. I therefore see no basis for an award of special costs arising out of those circumstances.
- [38] As for double costs, Music Heals' primary position is that double costs should be awarded from the date of the plaintiff's examination for discovery. However, Rule 9-1(4) to (6) provides that the availability of double costs flows from the making of a settlement offer that meets the conditions of Rule 9-1(6). The first offer by Music Heals to waive costs in return for a dismissal was made on June 24, 2022, well before the examination for discovery of the plaintiff. At that early stage, I do not think it was unreasonable for the plaintiff to have rejected the offer, and I therefore find that Music Heals is not entitled to double costs from the time of that offer, nor is it entitled to double costs from the time of the plaintiff's first examination for discovery.
- [39] Unlike Ms. Stephenson and Prakash, Music Heals did not make another offer in the immediate aftermath of the plaintiff's examination for discovery in May 2023. However, in October 2023, they did offer to accept \$1,000 in costs with the plaintiff dismissing her claim against them. In my view, this offer should have been accepted by the plaintiff, for the same reasons set out above in relation to the First Offer.
- [40] The plaintiff then offered to dismiss her claim against Music Heals in return for the waiver of costs on December 11, 2024, which ought to have been accepted by Music Heals, particularly in light of the November 18, 2024 offer.
- [41] I therefore find that Music Heals is entitled to double costs, but only for the period between its offer on October 4, 2023, and the plaintiff's offer on December 11, 2024.

Conclusion

[42] In sum, Ms. Stephenson and Prakash are awarded regular costs, to be assessed at Scale B, up to August 8, 2023, and double costs thereafter. Music Heals is entitled to regular costs, to be assessed at Scale B, up to October 4, 2023 and after December 11, 2024, and double costs for the period between October 4, 2023 and December 11, 2024.

"Underhill J."

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