

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bob Landscaping Corp v. Fang*,  
2023 BCSC 1689

Date: 20230815  
Docket: S215907  
Registry: New Westminster

Between:

**Bob Landscaping Corp.**

Plaintiff

And

**Isabella Fang and George Lin**

Defendants

Before: The Honourable Mr. Justice Brongers

## Oral Ruling on Costs

In Chambers

Agent for the Plaintiff:

B. Vujcic

George Lin appearing on his own behalf  
and as agent for Isabella Fang:

G. Lin

Place and Date of Trial:

New Westminster, B.C.  
August 15, 2023

Place and Date of Judgment:

New Westminster, B.C.  
August 15, 2023

[1] **THE COURT:** This is a costs application brought by the plaintiff, Bob's Landscaping Corp. ("Bob"). The respondents are the defendants Isabella Fang and George Lin ("the Defendants").

[2] Bob brings its application further to my trial judgment of March 3, 2023 in the matter of *Bob Landscaping Corp. v. Fang*, 2023 BCSC 318. In that judgment, I allowed Bob's claim in part, and ordered the Defendants to pay Bob \$5,280 in damages for breach of contract.

[3] In the final paragraph of this judgment, I wrote:

[107] Both parties seek costs with respect to this proceeding. While Bob has been awarded damages, the amount ordered is significantly less than what was claimed. Furthermore, I have held that much of the basis upon which Bob founded its claim lacked merit. In my preliminary view, therefore, the parties have enjoyed divided success and should each bear their own costs of this proceeding. That said, if there are matters of which I am unaware, the parties are at liberty to contact the Registry to schedule a hearing to address costs provided they do so within 30 days of this judgment.

[4] Bob feels that there are matters of which the Court is unaware that would justify granting Bob either an "award for partial indemnity costs and disbursements", or an award for "special costs". Bob points to three such matters in particular.

[5] First, Bob said that it incurred significant legal expenses in order to successfully enforce its contract. Bob argues that these are the damages it suffered as a result of the Defendants' conduct, and Bob should be able to recover them as costs.

[6] Second, Bob says that the Defendants used overly aggressive litigation tactics against Bob.

[7] Third, Bob says that the Defendants wrongly refused Bob's reasonable settlement offers, even though Bob acted reasonably by agreeing to settle the Defendants' counterclaim.

[8] As for the Defendants, they take the position that this costs hearing should be adjourned and deferred until their appeal of the trial judgment is dealt with by the Court of Appeal. They say that because the Court of Appeal might overturn the trial judgment, it would be more "thorough and just" to resolve the issue of costs after the appeal is finished. The Defendants also note that Bob has cross-appealed in pursuit of costs.

[9] On the other hand, the Defendants have not presented any substantive submissions on Bob's request for a costs award.

[10] I will first address the Defendants' request for an adjournment of this hearing pending the outcome of their appeal. In my view, it must be refused.

[11] In Justice L. Smith's decision in *Carter v. Canada (Attorney General)*, 2012 BCSC 1587, it was noted at paragraph 20 that:

The usual practice is for this Court to address the matter of costs, rather than leave it to the Court of Appeal (even if an appeal is pending).

[12] One of the parties to that case, the Attorney General of Canada, had argued that it would be more efficient to simply leave the matter of trial costs to the Court of Appeal. Justice Smith disagreed. She wrote at paragraph 55:

However, to decline to rule on costs would mark a dramatic departure from long-established practice. The Rules contemplate that the trial court will address costs, and the Court of Appeal defers to trial courts' exercise of discretion as to costs.

[13] Like Justice Smith, I am not prepared to defer a decision on costs in this case. While the Court of Appeal may ultimately agree with the Defendants and overturn my trial judgment, this is not the basis for refusing Bob's legitimate request for an immediate ruling on costs. Furthermore, my ruling on costs can also be reviewed by the Court of Appeal.

[14] In sum, the Defendants' request to defer or adjourn today's hearing is denied.

[15] I turn now to the merits of Bob's request for a costs award.

[16] Having heard from the parties and reviewed their submissions, I remain of the view that this is a case where no costs should be awarded to either party in respect of Bob's claim. This is because, as noted at paragraph 107 of my reasons for judgment, they enjoyed divided success at trial. In addition, I am not persuaded that any of the three matters raised by Bob justify coming to a different conclusion. I will address each one briefly.

[17] First, Bob is wrong to argue that he should be able to recover as costs the legal expenses he incurred simply because this money was spent to enforce his contractual rights. Costs are not the same as damages, and the issue of whether legal expenses are recoverable following a breach is determined in accordance with ordinary costs principles. Those principles include the notion that if there has been divided success at trial, it is within the discretion of the trial judge to decide that each party should bear the cost of their own legal expenses.

[18] Second, I do not find that the Defendants' litigation conduct was reprehensible or otherwise deserving of rebuke. In particular, I do not agree with Bob that the Defendants took any steps which unnecessarily lengthened the time required to hear this case.

[19] Third, none of Bob's settlement offers were for amounts lower than what the Defendants were ultimately ordered to pay to Bob. Therefore, these offers can have no bearing upon the court's determination of a costs award in respect of Bob's claim.

[20] Finally, I note that the Defendants' counterclaim was the subject of a consent dismissal order entered on September 21, 2022. It provides that:

The within counterclaim be dismissed against the defendants by way of counterclaim, without costs to any party of the proceeding. [my emphasis]

[21] Accordingly, there is no valid basis for taking into account any aspect of the Defendants' counterclaim - including the parties' litigation conduct - when determining an appropriate costs award for Bob's claim.

[22] In sum, I will order that no costs are payable by either party in respect of Bob’s claim against the Defendants.

[23] Finally, I will address the issue of costs in respect of today's application.

[24] I am of the view that Bob’s request for this costs hearing was unwarranted and needlessly put the Defendants to the trouble and expense of responding to it. This is particularly the case when I indicated in my trial judgment that the Court was inclined not to award costs given the parties' divided success.

[25] That said, I note that rather than simply asking for the dismissal of Bob’s request for costs, the Defendants argued that the issue of costs should be deferred pending their appeal of the trial judgment. This is a position that I also found to be without merit.

[26] Accordingly, while I will award the Defendants their costs in respect of this application today, it shall simply be fixed in a lump sum of \$150.

[27] To conclude, then, I order as follows:

- (1) With respect to the claim brought by Bob Landscaping Corp. against Ms. Fang and Mr. Lin that was the subject of a trial and a judgment dated March 3, 2023, indexed as *Bob Landscaping Corp. v. Fang*, 2023 BCSC 318, no costs are payable by any party.
- (2) With respect to this costs application heard and decided today on August 15, 2023, costs are payable by Bob Landscaping Corp. to Ms. Fang and Mr. Lin, jointly, fixed in a total amount of \$150.

“Brongers J.”