# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Din v. Oliveira Funeral Services Ltd.,* 2024 BCSC 1193

Date: 20240704
Docket: S239575
Registry: New Westminster

Between:

**Yin Yin Hla Din**

Plaintiff

And

**Oliveira Funeral Services Ltd. dba Olivera Funeral Home, Consumer Protection BC and Laurie Hurtubise**

Before: The Honourable Justice Ahmad

## Reasons for Judgment as to Costs

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| Counsel for the Defendant, Oliveira Funeral Services Ltd. dba Oliveira Funeral Home: | A. Syer |
| Counsel for the Defendant, Laurie Hurtubise: | R. Tangry |
| Written Submissions of the Defendant, Oliveira Funeral Services Ltd. dba Oliveira Funeral Home | January 18, 2024 |
| Written Submissions of the Defendant, Laurie Hurtubise | January 18, 2024 |
| No Submissions filed on behalf of the Plaintiff | |
| Place and Date of Judgment: | New Westminster, B.C. July 4, 2024 |

## I. Introduction

[1] The self-represented plaintiff, Yin Yin Hla Din commenced this action against Oliveira Funeral Services Ltd. Home dba Oliveira Funeral Home (the "Funeral Home") and Laurie Hurtubise in respect of funeral and embalming services they provided on the death of the plaintiff's brother, Mr. Kyaw Naing Din (the "Deceased") in August 2019.

[2] The action against a third defendant, Consumer Protection BC was dismissed on January 27, 2023. The action against the two remaining defendants proceeded by way of trial commencing for four days on October 17 to 20, 2023 and continuing for a further two days on December 14 and 15, 2023.

[3] At the close of the plaintiff's case, the defendants brought a no-evidence motion pursuant to Rule 12-5 (4) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. The plaintiff's claims against the Funeral Home and Ms. Hurtubise were dismissed in their entirety.

[4] At the request of counsel for the Funeral Home and Ms. Hurtubise, I allowed the parties to make written submissions to address the issue of costs. Both the Funeral Home and Ms. Hurtubise filed written submissions in which each sought special costs against Ms. Din or, in the alternative, double costs. Ms. Din did not file any written response submissions.

[5] These are my reasons on the defendants' application for costs.

## II. Discussion and Analysis

### A. Is the Funeral Home or Ms. Hurterbise entitled to special costs?

#### *1. Legal Framework*

[6] The general rule is that costs are awarded to the successful party and are assessed as party and party costs in accordance with Appendix B of the Rules 14-1(1) and 14-(9).

[7] However, pursuant to Rule 14-1(1)(b), this court may order the costs of a proceeding to be assessed as special costs.

[8] Generally speaking, "[s]pecial costs are an extraordinary measure and an award of special costs should be made both cautiously and sparingly": *Concord Pacific Acquisitions Inc.* v. *Oei*, 2021 BCSC 129 at para. 42, citing *Grewal* v. *Sandhu*, 2012 BCCA 26 at paras. 106–107. "The purpose of an award of special costs is to chastise a litigant. Special costs are punitive in nature and encompass an element of deterrence.": *Mayer* v. *Osborne Contracting Ltd.*, 2011 BCSC 914 at para. 8.

[9] The question is whether, in the conduct of the litigation, the person against whom the order is sought has acted in a manner that is "sufficiently reprehensible to warrant chastisement of the court": *Gichuru* v. *Smith,* 2013 BCSC 1818 at para. 60. It is not necessary that all aspects of a party's conduct in the litigation are reprehensible in order to make an award of special costs that applies to the entire action: *Gichuru* at para. 58 (affirmed on this point, 2014 BCCA 414).

[10] "Reprehensible", is a word of wide meaning that encompasses scandalous or outrageous conduct, but also includes "milder forms of misconduct" that are "deserving of reproof or rebuke": *Mayer* at pars 8 – 9, citing *Garcia* v. *Crestbrook Forest Industries Ltd*. (1994), 9 B.C.L.R. (3d) 242, 1994 CanLII 2570 (BC CA) at para. 17.

[11] Referring to those principles, the case authorities have considered a variety of circumstances in which a litigant's conduct has been "reprehensible" so as to warrant an award of special costs. The defendants argue that several of those circumstances exist in this case and amount to reprehensible conduct. Generally speaking, those circumstances can be broken down into three broad categories:

a. The pursuit of a meritless or frivolous claim and is reckless with regard to its truth: *Mayer* at para. 11;

b. Where the reputation of a professional is “falsely assailed, the court’s reproof should be felt". Allegations of fraud or conspiracy must be based on something more than belief and speculation: *Mayer* at para 16 and 17;

c. Where the conduct amounts to an abuse of the court’s process: *Westsea Construction Ltd.* v. *0759553 B.C. Ltd*., 2013 BCSC 1352 at para. 53.

[12] I will consider each of those categories in turn.

## *2. Discussion and Analysis*

### *Was the action meritless?*

[13] As noted, the plaintiff’s claim was dismissed on the defendants’ no-evidence motion. However, that conclusion does not necessarily equate to a finding that the action was “meritless” or was so weak that it was bound to fail.

[14] The two primary causes of action pled were breach of contract and negligence. On the evidence before me, I was satisfied that there was some basis on which to commence both claims.

[15] Regarding the breach of contract claim, I concluded that taken at its most favourable, the plaintiff’s evidence was sufficient to establish that a contract was made regarding the application of makeup, specifically that the Funeral Home would not apply makeup to the wound on the Deceased’s face prior to the family’s first viewing.

[16] At trial, the plaintiff referred to two photographs as evidence that the Funeral Home did apply makeup. The first photograph, said to be taken at the Coroner’s office, showed what appeared to be an open and fresh wound; the second, taken in August 2019 after the Deceased’s body had been transferred to the funeral home, appeared to show a less fresh wound that appears to be healed. The plaintiff argued

that, by comparison, the second photograph evinced that makeup had been applied to the wound.

[17] However, the plaintiff failed to produce any evidence to indicate, among other things, what the wound looked like when the Deceased's body arrived at the funeral home, prior to the second photograph being taken. Without that evidence, it was impossible to conclude that the photograph was indicative of makeup being applied after the Deceased's body arrived at the funeral home, in breach of the contract as alleged.

[18] On the negligence claim, the plaintiff alleged that the defendants owed her a duty of care. Neither defendant disputed that allegation. The issue was whether they breached the standard of care imposed on them. However, the plaintiff did not adduce any expert evidence to establish the standard of care required in the circumstances. Without that evidence, the plaintiff was unable to prove that essential element of the claim.

[19] Notably, while the evidence was lacking to prove the allegations, neither the claim for breach of contract nor the claim of negligence was dismissed as having no basis at all. In other words, they were not necessarily meritless.

[20] As the Court noted on an application for special costs in *Basha Sales Co. Ltd.* v. *Adera Equities Inc*., 2017 BCSC 1715 at para. 14:

> The Plaintiffs were fully entitled to bring [the] claim [for breach of contract]. In my view, it was not strong, but that does not mean it should attract a special costs award when it failed. The fact that the Plaintiffs failed to prove that claim, viewed in isolation, could not properly lead to a special costs award.

[21] In this case, too, the plaintiff was entitled to bring the claims in contract and negligence. The fact that she was unable to prove those claims due to a deficiency in the evidence does not, in my view, merit an award of special costs.

***Was the professional reputation of the defendants' falsely assailed?***

[22] In *Basha*, although the Court declined to make an award for special costs based on the unsuccessful breach of contract claim, it did grant special costs on the basis of what it referred to as the "potentially damaging and certainly embarrassing" allegation of breach of fiduciary duty and for breach of honest performance. It concluded that there was no "adequate evidentiary foundation" for either allegation and that both were maintained with no purpose supportable at law: *Basha* at para. 19.

[23] That conclusion is consistent with the more general principle that for conduct to rise to the "reprehensible" standard, an exceptional element or "something more" is required, such as improper allegations of fraud, improper motives for bringing or maintaining proceedings, or improper conduct of the proceedings themselves: *Garcia* at para. 23; *Westsea* at para. 39; and *Sandhu* v. *Mangat*, 2019 BCCA 238 at para. 8.

[24] As noted in *Mayer* at paras. 16 and 17, where the reputation of a professional is "falsely assailed, the court's reproof should be felt". Allegations of fraud or conspiracy must be based on something more than belief and speculation.

[25] In this case, in addition to breach of contract and negligence, the pleaded claims also include claims for intentional and negligent infliction of emotional pain and suffering and for statutory remedies under the *Cremation and Funeral Services Act*, S.B.C. 2004, c. 35 and the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 4. No allegations of fraud were pleaded.

[26] Nonetheless, I have considered that, like a fraud allegation or the claim of breach of fiduciary duty and honest performance in *Basha*, the claim of "intentional" infliction of emotional pain and suffering may be "potentially damaging [or]certainly embarrassing" to warrant special costs. That is especially true given the context of the defendants' business.

[27] However, unlike a standalone fraud claim based on belief and speculation, this claim is linked to specific conduct, namely the defendants' negligence. As I concluded that the negligence claim was not necessarily meritless, it follows that the same is true of this related claim.

[28] There is no basis on which to award special costs based on the claim of intentional infliction of emotional pain and suffering.

***Was the plaintiff's conduct during the course of the litigation sufficient to warrant an award of special costs?***

[29] Abusing the court's process will amount to reprehensible conduct: *Westsea* at para. 53, relying on, among other decisions, *Chudy v. Merchant Law Group*, 2009 BCCA 93 at para. 9.

[30] The defendant submits that the plaintiff's conduct during the course of the litigation is sufficient to warrant an award of special costs. In particular, they refer to her conduct, including:

a) Unilaterally setting the matter for trial, over the objections of counsel;

b) Failing to abide by court orders, including failing to provide documents or other information by ordered deadlines on at least two instances;

c) Applying for adjournments of the trial multiple times during the course of the trial, including the first day, and at least once on nearly each subsequent day of trial, citing among other things, her lack of preparedness, that she wished to prioritize those other related claims and the need for an interpreter for her witnesses;

d) Leaving the courtroom for an hour following the morning break on the third day of trial, without explanation, and causing the waste of half a morning of trial;

e) Forcing an adjournment of the trial on the fourth day by failing to properly ensure witnesses she wished to call would attend to give evidence;

f) Wasting additional court time by failing to arrange for interpreters for her witnesses, and then making an impromptu application for a court-appointed interpreter;

g) Making irrelevant submissions and leading irrelevant evidence during the trial;

h) Obtaining an *ex parte* order, contrary to the court order against doing so, for alternate service of a witness by incorrectly stating that counsel for the Funeral Home was counsel for that witness;

i) Making inappropriate or insulting remarks and allegations about counsel for the Funeral Home and Ms. Hurtubise during the trial and in email correspondence, as well as making inappropriate remarks about the Court during the trial and in email correspondence;

j) Walking out of court during the Funeral Home's submissions and refusing to return on the final day of trial, after the plaintiff's adjournment application had failed; and

k) Sending multiple emails to the Court, including to me as the trial judge, Court Scheduling, and the Chief Justice, attempting to reopen the trial or appeal the final order, without following the proper process.

[31] The defendants submit that the above conduct is a reprehensible abuse of process, conduct the court ought to disassociate itself from, and requires an award of special costs in their favour.

[32] While the guiding principles are well-known, conduct that amounts to reprehensible conduct varies from case to case and must be determined in the specific context of each case. In the specific circumstances of this case, I am not satisfied that the plaintiff's litigation conduct warrants an award of special costs.

[33] In reaching that conclusion, I have considered that the plaintiff was self-represented throughout these proceedings. To be clear, I do not suggest that self-represented litigants be granted licence to ignore the substantive law or procedural Rules that govern the conduct of litigation. Those laws and Rules apply equally to

self-represented litigants and litigants represented by counsel; neither are shielded from the possibility of an award of special costs where appropriate. However, in my view, the fact that the plaintiff did not have the benefit of counsel but was guided in large part by her understanding of the law and trial procedure, is part of the circumstances in which her conduct must be measured.

[34] For example, the defendants cite the plaintiff's mid-trial application for a court-appointed interpreter for her brother, one of her proposed witnesses, as one way in which she delayed the proceedings. However, in an unrelated previous action, the Court had ordered that an interpreter be appointed for the same brother, albeit in circumstances in which her brother was a party to the action. As I understand it, that appointment was made after the trial had commenced. In other words, the plaintiff's application for a court-appointed interpreter during the trial was based on her experience and understanding of the process. I cannot conclude that it was a strategic attempt to delay the trial or force the defendants to incur expense.

[35] I give the plaintiff the same latitude with respect to the defendants' complaint that she "failed to ensure witnesses she wished to call would attend to give evidence", forcing the adjournment of the trial. It is notable that those witnesses were Ms. Hurtubise, Maria Oliveira, and Antonia Oliveira, all of whom are directly or indirectly related to the parties and all of whom the plaintiff expected would attend the trial or would give evidence on behalf of the defendants. They did not.

[36] Again, I do not suggest that the plaintiff is relieved from the obligation to ensure that she complies with the Rules, including Rules 12-5(19) – (26) that govern adverse witnesses. Her failure to do so should not be at the expense of the defendants. However, the clear relationship of the witnesses to the action does provide some explanation of the plaintiff's failure to take the steps that were required of her.

[37] Other of the plaintiff's impugned conduct, including her mid-trial applications, inadequate time estimates, and lack of adequate trial preparation, can also be attributed to her status as a self-represented litigant. Unfortunately, even with

counsel, such conduct is not unusual. Regardless, it is difficult to conclude that such conduct, by itself, warrants an award for special costs.

[38] I accept, as the defendants assert, that the net effect of the impugned conduct served to delay the completion of the trial in the time allotted to it. However, the trial resumed and was concluded within two months with the addition of two days. Given its minimal impact, in my view, any delay caused by the plaintiff's conduct is not sufficient to warrant an award of special costs.

[39] It is correct, as the defendants submit, that some of the plaintiff's comments regarding counsel and the Court were inappropriate. However, none, in my view, rose to the level to warrant the order sought.

[40] I appreciate that the defendants have been frustrated with the claimant's pursuit of what they perceive as meritless claims and her attempts to delay the trial. Their submissions on the claim for special costs reflect that frustration. However, while the claims were ultimately dismissed, the defendants' frustration, and even the expense incurred, in defending the claims do not provide sufficient basis for special costs.

[41] While not exemplary, I cannot conclude that the plaintiff's conduct during the course of the litigation falls within the "milder forms of misconduct deserving of reproof or rebuke" as contemplated in *Garcia* at para. 17. The "something more" required to justify special costs is not present in this case.

#### *3. Conclusion on Application for Special Costs*

[42] The defendants' application for special costs is dismissed.

### B. Is the Funeral Home or Ms. Hurtubise entitled to double costs?

#### *1. Legal Framework*

[43] The usual costs rule is that the successful party is awarded its costs. Except in specifically enumerated situations, those costs are to be assessed as party and

party costs, the quantum of which is to be determined by the Registrar: Rule 14-1(1)(5).

[44] Rule 9-1 allows the court to depart from the general costs rule where an offer to settle has been made. Rule 9 1(5)(b) provides: “In a proceeding in which an offer to settle has been made, the court may… [among other things]… 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”.

[45] At para. 25 of *Hartshorne v. Hartshorne*, 2011 BCCA 29, the court discussed the guiding principles of the double costs rule, stating:

> 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”: [citations omitted].

[46] Similarly, in *Giles v. Westminster Savings and Credit Union*, 2010 BCCA 282 at para. 74, the court summarized the purposes of the double costs Rule as follows:

- [D]eterring frivolous actions or defences”: [citations omitted];
- [T]o encourage conduct that reduces the duration and expense of litigation and to discourage conduct that has the opposite effect": [citations omitted];
- [E]ncouraging litigants to settle whenever possible, thus freeing up judicial resources for other cases: [citations omitted];
- [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": [citations omitted].

[47] Where the court considers making a double costs award under Rule 9 1(5), Rule 9 1(6) provides that 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; and

d) any other factor the court considers appropriate.

### *2. The Offers*

[48] Each of the defendants delivered two formal offers to settle to the plaintiff: Ms. Hurtubise delivered her first offer (the "First Hurtubise Offer") on May 23, 2023; the Funeral Home delivered its first offer (the "First Funeral Home Offer") on August 23, 2023. I will refer to the First Hurtubise Offer and the First Funeral Home Offer together as the "First Offers".

[49] The defendants delivered a joint offer dated October 10, 2023 (the "Second Offer").

[50] The First Offers contained an offer pursuant to which the plaintiff would release the defendants[1] and dismiss the claim against them in exchange for which they would waive any entitlement to costs and disbursements.

[51] The First Hurtubise Offer also contained the factors that, in Ms. Hurtubise's view, justified the offer. Among others, she noted:

a) The plaintiff had not produced "any documentary evidence in the litigation to establish that Hurtubise failed to perform proper embalming services, or provided improper embalming services";

[1] In the Funeral Home's First Offer, the Funeral Home offered to enter into a "release on mutually agreeable terms". It is not clear if the proposed release was intended to be in its favour alone or if the release was intended to be a mutual release of all claims.

b) the plaintiff had "provided a waiver to not to hold Hurtubise or the Funeral Home responsible for any potential trauma or other conditions associated with viewing [the Deceased's] body";

c) issues relating to the plaintiff's delays in authorizing the embalming process; and

d) the plaintiff had not provided any documentary evidence, including medical evidence, in respect of the claims for infliction of emotional pain and suffering and the other statutory based claims.

[52] The First Hurtubise Offer did not expressly address the breach of contract claim, presumably because that claim appears to have been made against the Funeral Home.

[53] The First Hurtubise Offer, made on May 23, 2023, was open until June 16, 2023, four months before the scheduled trial date.

[54] As noted, the First Funeral Home Offer was made on August 23, 2023, and was open for acceptance until September 22, 2023, just over three weeks before the commencement of the scheduled trial date. It did not contain any rationale on which the offer was made. However, by that date, the plaintiff had received the First Hurtubise Offer and the deadline for producing expert reports had passed.

[55] The plaintiff did not respond to either of the First Offers.

[56] The terms of the Second Offer, made on October 10, 2023, six days before the commencement of trial, were:

a) The defendants would jointly pay the sum of $10,000 to the plaintiff, inclusive of costs, disbursements, and any other amounts that are or could be owed;

b) The defendants would not admit liability;

c) The parties would enter into a release on mutually agreeable terms;

d) The release would include a confidentiality clause, indicating that the terms of the settlement would not be disclosed to any person other than the plaintiff's financial or legal advisors or immediate family members;

e) The parties would execute a consent dismissal order; and,

f) The parties would bear their own costs of the Action.

[57] The Second Offer was available for acceptance for one day.

[58] The plaintiff did not accept the Second Offer.

### *3. Discussions and Analysis*

#### *Were the offers ones that ought to reasonably have been accepted at the time of the offer?*

[59] This factor is to be assessed without reference to the award which was made at trial. Rather, the question is: would it have been reasonable for the offer to have been accepted at the time the offer was open for acceptance? The answer to that question is informed by whether the offer had some relationship to the claim, as opposed to simply being a "nuisance offer", whether it could be easily evaluated, and whether some rationale for the offer was provided: *Hartshorne* at para. 27.

[60] In that regard, it is significant that the First Offers were nothing more than an offer to waive costs and disbursements in exchange for a dismissal of the claims, without costs. In other words, if accepted, the First Offers would not result in the payment of any amount to account for the possibility that the plaintiff might succeed on some aspect of her claim nor did it provide any potential for the acknowledgment of wrongdoing.

[61] In my view, when viewed without any reference to the outcome, the First Offers are properly characterized as nominal ones that did not provide the plaintiff with any genuine incentive to settle. In other decisions, both this Court and the Court of Appeal have held that offers lacking such incentives were not enough to warrant an award of double costs: *Giles* at para. 88; *P.S.D. Enterprises Ltd. v. New*

*Westminster (City)*, 2011 BCSC 1646 at paras. 26 and 31; *Leach v. Insurance Corporations of British Columbia*, 2022 BCSC 2243 at paras. 14 and 20.

[62] However, a nominal offer will not always deprive a party of double costs after the date of the offer. A nominal offer may be sufficient to warrant a double costs award where it is used as a "strategic choice to dissuade a plaintiff from continuing an unmeritorious claim" and where the offer explains why the claim is unmeritorious such that the offeree should have been alerted to the fact that they did not have a claim: *Leach* at para. 19, referring to *Oler v. Wheeler,* 2018 BCSC 664 at paras. 14, 22, and 37–38.

[63] In this case, the First Hurtubise Offer included Ms. Hurtubise's comprehensive rationale for the offer and, more specifically, why the plaintiff would not succeed in her claims. However, the timing of that offer, and the expiration of that offer, are significant.

[64] The most relevant of the claims against Ms. Hurtubise was the negligence claim. In respect of that claim, Ms. Hurtubise noted that the plaintiff had not produced any "documentary evidence to establish that [Ms.] Hurtubise failed to perform proper embalming services…". Even accepting that "documentary evidence" includes "expert evidence" (and it is not clear that it does), the deadline for producing expert reports had not yet passed, either at the time that the First Hurtubise Offer was made or by the time it expired on June 16, 2023. In other words, there was still time for the plaintiff to rectify any deficiency in her claim.

[65] The deadline for producing expert reports had expired by the time the First Funeral Home Offer was made. However, the claim against the Funeral Home was not only based on negligence. It also included a claim for breach of contract. The merits of that claim were not addressed in the First Hurtubise Offer, nor did the Funeral Home address it in its first offer.

[66] For the above reasons, I am not satisfied that the rationale set out by Ms. Hurtubise was sufficient to justify awarding double costs on the basis of the nominal offers made in the First Offers.

[67] The Second Offer was different. In it, the defendants offered the plaintiff the sum of $10,000. While it is difficult to assess the relationship of that amount to the claims made, in my view, it was sufficient to constitute some incentive to the plaintiff to resolve her claims. That incentive, together with the rationale set out in the First Hurtibuse Offer, makes the Second Offer one that reasonably ought to have been accepted at the time it was made.

**Relationship between the offer and the final judgment**

[68] As noted, the plaintiff's claim was dismissed in its entirety at the close of her case, with costs to be determined. Given the defendants' success at trial, regardless of the outcome of this application, they will be entitled, at a minimum, to party and party costs in accordance with Appendix B: Rule 9-1(9).

[69] Not only did the Second Offer contemplate the payment of monetary compensation to the plaintiff, but if accepted, it would have relieved the plaintiff of any obligation to pay costs. Although the contract claim was not expressly addressed in the offers, in my view, it is also significant that the reasons the negligence claim was dismissed mirrored the reasons set out in the First Hurtubise Offer.

[70] I am satisfied that the Second Offer significantly beat the outcome at trial. This factor also militates in favour of an award of double costs.

**The relative financial circumstances of the parties**

[71] There is no direct evidence regarding the relative financial circumstances of the parties. However, I accept, as the plaintiff testified that she is currently unemployed and has not been able to work as the result of a car accident in which she was involved several years ago.

[72] The Funeral Home continues to operate as a going concern and Ms. Hurtubise continues to be employed in the funeral services industry. However, there was no evidence of the specific financial circumstances of either party.

[73] This factor is neutral.

### *4. Conclusion on Application for Double Costs*

[74] One of the purposes of the double costs rule is to require litigants to carefully assess the strength of their claim and discourage doubtful cases: *Giles* at para. 74. While the claim was not wholly without merit, I am satisfied that had the plaintiff carefully assessed her case in light of the frailties that were identified in the First Hurtubise Offer, she would have concluded that she had limited prospect of success.

[75] I conclude that the Second Offer ought reasonably to have been accepted by the plaintiff when it was made on October 10, 2023.

[76] Accordingly, each of the defendants is entitled to:

a) party and party costs in accordance with Appendix B of the Rules up until October 10, 2023 (the date of the Second Offer); and

b) double costs for the steps taken in the litigation, including in this application, after October 10, 2023.

"Ahmad J."