

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wong v. Wong*,  
2024 BCSC 1786

Date: 20240927  
Docket: S175809  
Registry: Vancouver

Between:

**Donald Wong**

Plaintiff

And:

**Stewart Steve Wong, also known as Stewart Wong,  
also known as Stewart Steve C. Wong, doing business  
as S Wong & Associates and InsideEdge Capital  
& Strategy Management**

Defendant

Before: The Honourable Mr. Justice Riley

## **Reasons for Judgment on Costs**

Counsel for the Plaintiff:

M.T. Wolf

Counsel for the Defendant:

A. Grewal

Written Submissions of Plaintiff:

8 August 2024

Written Submissions of Defendant:

29 August 2024

Place and Date of Judgment:

Vancouver, B.C.  
27 September 2024

**Introduction**

[1] In reasons for judgment indexed as *Wong v. Wong*, 2024 BCSC 1305, I granted judgment in favour of the plaintiff on his claims of breach of contract, breach of trust, and unjust enrichment. Those reasons offered the parties the opportunity to file further submissions on costs. These supplementary reasons address that issue.

**The Positions of the Parties**

[2] The plaintiff was wholly successful at trial and is presumptively entitled to party and party costs. However, the plaintiff argues that he should be awarded special costs based on reprehensible conduct of the defendant. In particular, the plaintiff alleges the defendant gave false testimony at trial and tendered documents that had been altered and falsified to support his case. The plaintiff says this reprehensible conduct was compounded by other “milder” forms of impropriety, including “using strategies to delay the trial,” failing to properly disclose documents, and making unfounded allegations of impropriety against the plaintiff and his counsel.

[3] The defendant accepts that since the plaintiff was successful at trial, he is entitled to party and party costs, but argues there is no basis for an award of special costs. He denies any suggestion of having deliberately delayed the proceedings. He does not appear to dispute that there was late disclosure of documents, but evidently takes the position that this too was not part of any deliberate strategy to gain advantage in the litigation. With respect to his testimony at trial, counsel for the defendant points out that, although I found the plaintiff’s testimony to be more credible than the defendant’s, this is not enough to justify an award of special costs. Otherwise, the successful party would be entitled to special costs solely by virtue of having prevailed at trial.

**Legal Principles**

[4] Costs awards are within the discretion of the Court, although this discretion must be exercised judicially. The general rule is that a successful party is entitled to

its costs, on a party and party basis, per the tariffs set out in Appendix B to the *Supreme Court Civil Rules*, B.C. Reg. 168/2009: Rule 14-1(1), (12).

[5] The Court has authority to award special costs under Rule 14-1(1)(b)(i), and also as an aspect of the inherent jurisdiction to control its process: *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 at paras. 25–26. By either route, such a remedy is reserved for “exceptional circumstances”: *Westsea* at para. 39.

[6] Special costs are not compensatory, but rather punitive. They are awarded where a court seeks to disassociate itself from a litigant’s misconduct: *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at para. 56.

[7] Special costs may be ordered against a party who has engaged in “reprehensible conduct.” The concept of “reprehensible conduct” is said to encompass not only “scandalous or outrageous conduct,” but also “milder forms of misconduct deserving of reproof or rebuke”: *Smithies Holdings* at para. 57, citing *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A.).

**Analysis**

[8] I have considered the submissions of the parties as to the procedural history of the case. Although multiple trial dates were adjourned at the instance of the defendant, I am not prepared to find that this was part of some strategy on his part to delay or frustrate the proceedings. The defendant sought and was granted a number of adjournments to obtain counsel or due to changes in counsel, and I infer from the entire record that there were issues with the defendant’s ability to fund counsel at various points in time.

[9] The defendant clearly failed to make timely disclosure of some of the documents that became evidence at trial. This had an impact on the trial, and is a relevant consideration in terms of the plaintiff’s claim for special costs. However, absent some more flagrant impropriety, this conduct would not be enough on its own to support an order of special costs, at least not in the circumstances of this case.

[10] I would say the same thing about the allegations of impropriety made by the defendant against the plaintiff. I commented upon and rejected some of the defendant's unfounded allegations in my reasons for judgment. By way of example, see paras. 162 and 233 of the reasons. Although the defendant made unfounded allegations and threatened the plaintiff with legal action, in the end the defendant was not the moving party in the case and he did not press the unfounded allegations in court to support of a claim against the opposing party. This is no excuse for the defendant's unfounded allegations against the plaintiff, but these observations put this particular aspect of the defendant's conduct in context.

[11] The aspect of the defendant's conduct that is most blameworthy and most deserving of rebuke is his reliance on false documents to support his position at trial. In my reasons for judgment, I found at para. 177 that the defendant "intentionally altered" certain documents, and, in some cases, "completely falsified" documents to suit his case.

[12] I accept defence counsel's submission that a trial judge's decision to prefer the opposing party's testimony, or even a finding that a party's testimony was lacking in credibility, would not be enough to warrant an order of special costs. As the case law acknowledges, something more than this would generally be required to characterize the unsuccessful party's conduct as reprehensible.

[13] In this particular case, it is the defendant's conduct in falsifying documents and then relying upon them at trial that was reprehensible. The defendant sought to support his trial testimony by reference to documents that he knew to be false. It is impossible to characterize this as anything other than a deliberate and considered attempt to mislead the Court. An award of special damages is necessary for the Court to disassociate itself from, denounce, and deter this reprehensible conduct.

[14] What remains for consideration is the scope of the special costs order. The plaintiff relies on *Gichuru v. Smith*, 2013 BCSC 1818 at para. 58, aff'd 2014 BCCA 414 and *Din v. Oliveira Funeral Services Ltd.*, 2024 BCSC 1193 at para. 9 for the proposition that special costs may be ordered for the entire action even where not all

aspects of a party's conduct have been reprehensible. I accept that proposition as sound. Nevertheless, in the particular circumstances of this case, I find that the appropriate response to the defendant's misconduct – in relying upon false documents at trial – is an order for special costs covering a portion of the trial.

[15] A proportionate response to the defendant's misconduct is to require him to pay special costs for the last four days of the nine-day trial. I appreciate that since the objective of special costs is not to compensate the plaintiff, the order need not be tailored to address the added costs to the plaintiff associated with the defendant's misconduct. Nonetheless, because the aspect of the defendant's conduct that is most deserving of rebuke is his reliance at trial on false documents, a just response (in this case at least) is to require the defendant to pay special costs reflective of the impact of his misconduct on the trial process.

**Conclusion**

[16] The plaintiff is awarded costs of the litigation on as follows:

- a) Tariff costs at Scale B for the first five days of the trial;
- b) Special costs for the final four days of the trial; and
- c) Tariff costs at Scale B for the balance of the proceedings, subject of course to any previous costs orders with respect to prior steps in the proceedings.

“The Honourable Mr. Justice Riley”