

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Brave Construction Ltd. v. Ianovici*,  
2025 BCSC 81

Date: 20250120  
Docket: S1912160  
Registry: Vancouver

Between:

**Brave Construction Ltd.**

Plaintiff

And

**Nicolai Ianovici, Trustin Construction Ltd. and Bank of Montreal**

Defendants

Before: The Honourable Justice Edelmann

## Reasons for Judgment Re Costs

Counsel for the Plaintiff:

P.M.B. Samarakoone

The Defendant, N. Ianovici, appearing in  
person and as Representative for the  
Defendant, Trustin Construction Ltd.:

N. Ianovici

Counsel for the Witness, Amin Sunderji and  
his employer, Bank of Montreal:

I. Loten  
(April 19, 2024 only)

Date of Written Submissions of the Plaintiff  
and Roman Portnoy Received:

September 23, 2024

Place and Date of Judgment:

Vancouver, B.C.  
January 20, 2025

**Overview**

[1] In August 2024, I found the defendants liable in civil fraud and breach of fiduciary duty to the plaintiff Brave Construction Ltd. after trial. I also found that 50% of the shares in Brave were held in trust for the personal plaintiff Roman Portnoy. As part of my decision, I presumptively awarded costs to Brave subject to submissions from the parties. Brave and Mr. Portnoy filed further submissions on the issue but no response from the defendants was filed. In October a memorandum from the court was sent to the parties directing a timeline in November for filing written submissions from the defendants. No submissions were filed. I will therefore address the issue of costs on the basis of the written submissions of the plaintiffs.

[2] Roman Portnoy seeks to have Brave indemnify him for the costs of the litigation pursuant to s.233(4)(b)(i) of the BC Business Corporations Act. Brave seeks double costs from the defendants as of August 15, 2023 when an offer to settle was made. Both plaintiffs seek to have a bill of costs approved and the defendant's signature dispensed with. I will address issue each in turn.

**Indemnity under the BCBCA**

[3] Although originally filed by Mr. Portnoy in his personal capacity, this claim was converted into a derivative action under s.233 of the BCBCA on behalf of Brave with retroactive effect. Mr. Portnoy was added again as a party at the end of the trial when it became evident that both parties sought to have the Court resolve the ownership issue.

[4] In a derivative action, section 233(4)(b)(i) grants discretion to the Court on final disposition to order that the company indemnify the person who brought the claim on its behalf:

(4) On the final disposition of a legal proceeding prosecuted or defended under this section, the court may make any order it considers appropriate, including an order that

(b)the company or any other party to the legal proceeding indemnify

(i)the complainant for the costs incurred by the complainant in prosecuting or defending the legal proceeding,

[5] Given my findings at trial in relation to the defendants' actions and the harm caused to Brave, I find it is appropriate for Brave to indemnify Mr. Portnoy for the costs he incurred in prosecuting the action on its behalf. The complicating factor is that not all of the issues that were litigated were relevant to Brave's interests. In particular, a portion of the trial was focussed on the issue of the beneficial ownership of Brave and Mr. Portnoy's claims with respect to salary and other matters. It was clear throughout the proceedings that the personal dispute Mr. Portnoy had with Mr. Ianovici was the animating force behind much of the litigation. Notably, it was not until the action was well underway that it was converted into a derivative action at all. Given the amounts that were sought at trial on behalf of Brave and the scope the litigation as a whole, I do not find it appropriate to order Brave to indemnify Mr. Portnoy for all the costs incurred in the litigation. As counsel has not proposed any mechanism for distinguishing the costs incurred in relation to Brave's interests and those of Mr. Portnoy, I find it is appropriate to order Brave to pay 50% of the costs incurred. Should the parties be unable to agree on the amount in question, those costs can be referred to the registrar for assessment.

### **Double Costs**

[6] Mr. Portnoy also seeks double costs for steps taken after August 15, 2022, when an offer to settle was made to Mr. Ianovici and Trustin Construction. Pursuant to Rule 9-1(5) (b), this court has discretion in a proceeding in which an offer to settle has been made to 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. The factors to be considered are set out in Rule 9-1(5):

(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.

[7] The offer that was made to Mr. Ianovici on August 15, 2022 set out the following terms:

1. Brave pay to Mr. Ianovici the sum of \$42,825.46, in full and final settlement for of this claim and for any and all work done for Brave Construction from inception to dissolution including his profit share of Brave.
2. Mr. Ianovici signs a release, releasing Brave and Mr. Portnoy from any and all claims to do with this matter, BCSC File No. S1912160, and the petition proceeding, BCSC File No. S225749 or anything related to these matters.
3. All remaining money (less the \$30,000 tax holdback) owed to and in the Brave Account be paid in full to Mr. Portnoy as a full and final settlement for his contribution to Brave from inception to dissolution, including his profit share of Brave and his salary.
4. Mr. Portnoy will release Mr. Ianovici from any and all claims to do with this matter, BCSC File No. S1912160, or any matter related to BCSC File No. S1912160.
5. Brave will be dissolved and will no longer operate.
6. Mr. Portnoy will discontinue this matter, BCSC File No. S1912160, and the petition proceeding, BCSC File No S225749, brought in the Vancouver Registry, against all parties.

[8] Many terms of the settlement have little if anything to do with the matters that were issues at trial or addressed in this Court's judgment. The underlined portions appear to address the terms under which Brave would be dissolved and the resolution of issues between Mr. Portnoy and Mr. Ianovici. The dissolution of Brave was neither sought nor granted in this proceeding, and there is no basis upon which I would decide whether it was reasonable for Mr. Ianovici to accept the dissolution on the terms set out above. In short, I am not satisfied that I should exercise my discretion to order double costs on the basis of the offer above and I decline to do so.

**Bill of costs and signature**

[9] The plaintiffs have not provided any basis upon which this Court would summarily approve a bill of costs or dispense with the defendant's signature and I decline to do so.

"Edelmann J."