

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Freedom Capital Inc. v. 661010 BC Ltd.*,
2026 BCSC 1487

Date: 20260806
Docket: S224433
Registry: New Westminster

Between:

Freedom Capital Inc.

Plaintiff

And

661010 B.C. Ltd and Clive Kupritz

Defendants

Corrected Judgment: the text of the judgment was corrected at paragraph 15 on
August 12, 2026.

Before: The Honourable Justice Schultes

Reasons for Judgment - Costs

Counsel for the Defendants:

J. Rotstein

Written Submissions of the Defendants:

October 28, 2025

Place and Date of Judgment:

New Westminster, B.C.
August 6, 2026

Introduction

[1] On October 23, 2025, I released reasons for judgment in this matter (2025 BCSC 2074), dismissing the plaintiff's claim. At the conclusion of those reasons I advised that "[u]nless there have been offers to settle or other matters that would affect entitlement to or the scale of costs, in which case counsel may arrange to make written submissions, the defendants will receive their costs at the ordinary scale of difficulty" (para. 51).

[2] The defendants have since made written submissions, in which they seek double costs based on an offer to settle that they say ought reasonably to have been accepted. They also seek an ancillary order for payment to them of funds that have been held in trust by their counsel pending the resolution of this matter. The plaintiff, which has become self-represented since the reasons for judgment were released, did not make submissions.

Background

[3] This was a summary trial application in which the plaintiff sought judgment on an agreement that it would receive a broker fee of \$46,000 for arranging a mortgage on properties owned by the corporate defendant.

[4] It was common ground that the defendants failed to accept the financing that the plaintiff had arranged, but the question was whether this amounted to their "cancellation" of the loan, which was the applicable condition for the broker fee becoming payable.

[5] I found that the defendants had been unable to afford the fees payable on closing that it had agreed to, and then had turned down a more onerous offer to finance those fees over time. I also concluded that in the context of their agreement, "cancellation" meant "some kind of intentional conduct by the borrowers that prevented [the loan] from being carried into effect", and did not encompass any and all circumstances in which it failed to complete. This conclusion led to the application being dismissed (para. 47).

[6] In reaching this decision, I took into account the admission by the personal defendant Mr. Kupritz at his examination for discovery that he had “cancelled” the loan. I found that this concession, and his affidavit evidence that he had chosen not to follow through with it based on an economic analysis, were “explainable as an attempt to deny the inescapable fact that he and 661 were in financially straitened circumstances throughout the transactions in question, while still enabling him to avoid liability” (para. 48).

The Defendants’ Position on Costs

[7] On January 13, 2025, the defendants’ counsel sent a letter to the plaintiff’s counsel offering to settle the claim for \$3000, including costs. The letter contained the required language from Rule 9-1(c)(ii) of the *Supreme Court Civil Rules* reserving the defendants’ right to bring the offer to the court’s attention in relation to costs. The offer was open until January 31, but the plaintiff did not accept it.

[8] In his submissions, the defendants’ counsel points out that at the time that they made their offer to settle, there was no evidence that the defendants had “cancelled” the loan, as it is alleged in its notice of civil claim and notice of application for summary trial. On January 29, its counsel filed an affidavit attaching Mr. Kupritz’s examination for discovery, in which he made the admission of having done so.

[9] Counsel submits that even with the transcript there was no “specific” evidence of such a cancellation. Since that was the linchpin of the plaintiff’s position, it ought to have realized at the time the offer was made that it lacked the necessary evidence to succeed in the action (and, presumably, accepted the offer). In other words, it was an offer that ought reasonably to have been accepted.

Discussion

[10] Rule 9-1(5)(a) permits a court 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. Pursuant to Rule 9-1(6), the factors to be considered in making such an award are:

- 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.

[11] The purpose of the rule was explained in *Hartshorne v. Hartshorne*, 2011 BCCA 29:

[25] 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."

[12] Dealing specifically with the question of whether an offer "ought reasonably to have been accepted", the Court explained:

[27] The first factor...is not determined by reference to the award that was ultimately made. Rather, in considering that factor, the court must determine whether, at the time that the offer was open for acceptance, it would have been reasonable for it to have been accepted... As was said in *A.E. v. D.W.J.*, [2009] B.C.J. No. 748 "The reasonableness of the plaintiff's decision not to accept the offer to settle must be assessed without reference to the court's decision" . . . Instead, the reasonableness is to be assessed by considering such factors as the timing of the offer, whether it 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. We do not intend this to be a comprehensive list, nor do we suggest that each of these factors will necessarily be relevant in a given case.

[13] The defendants' counsel submits, and I agree, that this is the determinative factor in this case. The amount offered is obviously greater than the result of the claim being dismissed, and there was no evidence on the parties' relative financial circumstances, only that the defendants were under financial pressure at the time that they sought the loan.

[14] Counsel suggests that I also might wish to consider, under “any other factor the court considers appropriate”, the fact that the plaintiff’s position in the event that it succeeded was that it should receive “full indemnity costs”. Assuming that declaring an intention to seek such costs in the event of success could be considered improper in some circumstances, which not clear to me, that would be a matter for special costs. I do not see it as being related to the policy reason for the double costs rule’s existence, as explained in *Hartshorne*.

[15] With respect to the factors identified in *Hartshorne*, the offer was delivered far enough of the scheduled summary trial date (which was February 11 at that point) that it could be evaluated by the plaintiff. However, it had such a marginal relationship to the amount being sought that it is fairly described as a nuisance offer, there was no other apparent basis on which the plaintiff could have evaluated it, and it was not accompanied by any analysis that explained its rationale in greater depth.

[16] I also do not agree that the plaintiff should have recognized at that point that it had no evidence of the cancellation of the loan, and accepted the offer. Its position was in essence that the defendants’ overall conduct in relation to it amounted to such a cancellation. While my objective analysis of the contractual language in the context of the surrounding circumstances led to a different conclusion — distinguishing overt acts by the defendants from the simple failure of the agreement to complete — it was not at all unreasonable for the plaintiff to proceed to trial on that theory, and to reject an offer that bore no meaningful relationship to the amount in question.

[17] Accordingly, I dismiss the application for double costs. Instead, the defendants will receive ordinary costs, at Scale B. Since they were unsuccessful in the present application, they will not receive any costs in relation to it.

[18] Finally, the correspondence attached to this application indicates that the defendants’ counsel holds \$49,243.09 on undertakings not to release it until there has been “an agreement between the parties or an appropriate Court Order”. The defendants were required to pay that amount into trust at an earlier stage of the

litigation, in order to secure the release of a certificate of pending litigation that had been put in place by the plaintiff. I order that those funds can now be released to the defendants.

“Schultes J.”