

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sunnyside Electrical Maintenance
Services Ltd. v McCurley,*
2026 BCSC 1796

Date: 20260922
Docket: S248860
Registry: Vancouver

Between:

Sunnyside Electrical Maintenance Services Ltd.

Plaintiff

And

Kim Thao McCurley and Vincent Hoa McCurley

Defendants

Before: The Honourable Justice Whately

Reasons for Judgment on Costs

Counsel for the Plaintiff:

N.J. Muirhead
T.Z.Y. Ye

The Defendants, appearing in person:

K. McCurley
V. McCurley

Written Submissions of the Plaintiff:

April 30, 2026

Written Submissions of the Defendants:

May 26, 2026

Place and Date of Judgment:

Vancouver, B.C.
September 22, 2026

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[1] On March 6, 2026, I rendered my judgment in this matter. My reasons are indexed as *Sunnyside v. McCurley*, 2026 BCSC 389. In the result, I found in favour of the plaintiff, Sunnyside, and granted judgment in the amount of \$10,153, plus interest. I dismissed the defendants' counterclaim. As the plaintiff was the successful party, I awarded costs at scale B.

[2] The plaintiff subsequently requested leave to provide submissions regarding costs, in reference to an offer that had been made to the defendants prior to trial, pursuant to Rule 9-1(1) of the *Supreme Court Civil Rules*, BC Reg 168/2009 [*Rules*].

[3] The parties provided written submissions on costs in April and May of 2026. The plaintiff seeks double costs for the trial. The defendants state that I should not exercise my discretion to award double costs because to do so would be unnecessarily punitive and they are already subject to the financial burden of the litigation and their home renovations, as well as experiencing other financial pressures unrelated to the litigation.

[4] I note parenthetically that as this matter proceeded as a fast-track trial pursuant to Rule 15-1, the initial costs order ought to have been awarded pursuant to Rule 15-1(15), as opposed to scale B. In any event, this decision will replace my original order regarding costs.

[5] For the reasons that follow, I exercise my discretion to award double costs to the plaintiff with respect to the trial, and standard fast-track costs for the pre-trial period. The plaintiff provided a calculation of costs based on the fast-track rule and formula, plus tax, and I accept those calculations as appropriate.

Background

[6] This action was brought by the plaintiff, a licenced electrician and owner of Sunnyside Electrical Maintenance Services Ltd. ("Sunnyside"), for damages and a declaration of a builder's lien against the defendants, homeowners who contracted with Sunnyside for electrical services.

[7] The plaintiff's claims involved unpaid electrical work following the defendants' decision to terminate the contract prior to completion. The defendants counterclaimed, stating that Sunnyside breached the contract by demanding full payment before completing the work, and that its failure to complete the work caused delays to the home renovation, resulting in additional costs and damages.

[8] In the result, I found that the defendants clearly and unequivocally terminated the contract prior to completion of the work. I found that they created the circumstances leading to the plaintiff's demand for payment, and that any delays or additional costs were a result of decisions made by the defendants, and were not caused by the plaintiff.

[9] I granted judgment to the plaintiff, and further to the plaintiff's request, granted the parties leave to provide written submissions on the issue of costs.

The Offer

[10] The plaintiff's offer to the defendants contemplated a payment of \$7,500 to the plaintiff, and a dismissal of the action against the defendants without costs (the "Offer").

[11] The Offer was made in response to an initial offer made by the defendants to the plaintiff. In their offer, the defendants offered to pay \$1 to the plaintiff in respect of its claim and demanded a \$5,000 payment from the plaintiff to settle the defendants' counterclaim.

[12] The defendants' initial offer was made on June 6, 2025, and the plaintiff's Offer was made on June 20, 2025. The Offer was open to acceptance until June 25, 2025. The trial of this matter was set to commence on July 3, 2025.

[13] At the time of both offers, examinations for discovery were complete, and document disclosure, while ongoing in the lead-up to trial, was also largely complete.

[14] The plaintiff seeks double costs for the trial only, given the timing of the Offer, and an order for disbursements. The plaintiff also submits that the costs calculation

should be based on Rule 15-1(15), as this is appropriate for a trial that proceeded under the fast-track litigation rule.

[15] Ultimately, the only real difference between what would have been a standard costs order pursuant Rule 15-1(15) and an order that includes double costs for the trial itself, is an additional \$3,000. That is because the amount permitted for each day of the trial is \$1,500, for a total of \$3,000. A double cost order, as sought by the plaintiff, would come out to \$6,000 for the trial, which would then be added to the usual fast track pre-trial costs.

Position of the Parties

[16] The plaintiff states that on its face, the Offer rejected by the defendants was more favourable than the ultimate judgment against them. Not only is the \$7,500 approximately \$3,000 less than the total awarded, but the plaintiff also offered to discontinue with no costs. As a result, the difference between the Offer (\$7,500) and the ultimate result (\$10,153, plus interest, costs and disbursements, for a possible total of \$25,234 – as calculated by the plaintiff), is approximately \$17,700. The plaintiff states that the Offer to settle was reasonable, and a meaningful gesture of compromise.

[17] Further, the plaintiff states that there is no evidence that economic disparity between the parties played any role in the trial. Both parties were represented at the trial by counsel. The plaintiff is a small business, owned and operated by one man, and the defendants are Vancouver homeowners who hired various contractors in a significant home renovation project.

[18] Finally, the plaintiff states that while the Offer was open for a brief period, given the simple nature of the claims, and the state of the litigation, there was more than enough time for the defendants to properly consider it.

[19] The defendants state that an award of double costs would be disproportionate and unnecessarily punitive in the circumstances, given that their claims were *bona fide* and not vexatious, and the court was required to assess conflicting evidence.

They state that they did not engage in improper or obstructive conduct and participated in the litigation in good faith.

[20] The defendants also claim financial hardship, including a change in employment circumstances, ongoing mortgage obligations and household expenses including tuition costs for their children. They also reference the “additional and unanticipated costs” associated with hiring other contractors to complete the plaintiff’s work as part of their financial strain. They state that the original judgment plus costs is already a significant financial burden, and ask that the court take this into account.

Law

[21] Rule 15-1 governs the conduct of fast-track litigation. Subrule 15-1(15) provides fixed amounts that can be claimed for certain steps taken in the course of a fast track action:

(15) Unless the court otherwise orders or the parties consent, and subject to Rule 14-1 (10), the amount of costs, exclusive of disbursements, to which a party to a fast track action is entitled is as follows:

- a) if the time spent on the hearing of the trial is one day or less, \$8 000;
- b) if the time spent on the hearing of the trial is 2 days or less but more than one day, \$9 500;
- c) if the time spent on the hearing of the trial is more than 2 days, \$11 000.

[22] Subrule 15-1(16) provides that the rules governing costs consequences of rejecting formal offers to settle may also be considered in fast-track actions.

[23] Rule 9-1(4) of the *Rules* provides that “[t]he court may consider an offer to settle when exercising the court’s discretion in relation to costs”. Rule 9-1 (5) provides considerable options and guidance to the court in the exercise of its discretion, which include awarding double costs:

Cost options

(5) In a proceeding in which an offer to settle has been made, the court may do one or more of the following:

- (a) deprive a party of any or all of the costs, including any or all of the disbursements, to which the party would otherwise be entitled in respect of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle;
- (b) 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;
- (c) award to a party, in respect of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle, costs to which the party would have been entitled had the offer not been made;
- (d) if the offer was made by a defendant and the judgment awarded to the plaintiff was no greater than the amount of the offer to settle, award to the defendant the defendant's costs in respect of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle.

[24] Additional guidance to the considerations a court should apply in exercising the discretion to award double costs is set out in Rule 9-1(6) of the *Rules*:

(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.

[25] The underlying purpose of Rule 9-1 was set out in *Hartshorne v Hartshorne*, 2011 BCCA 29 at paras 25-35. The purpose of Rule 9-1 is to encourage the early settlement of disputes by rewarding the party that makes a reasonable offer to settle and penalizing the party that did not accept the offer. It should discourage the continuance of doubtful cases or frivolous actions, as well as such defenses, and is intended to reduce the time and expense of unnecessary litigation.

[26] The court typically considers the factors listed in Rule 9-1(6), but they are not mandatory. The court has the discretion to consider any factors it considers appropriate. Nevertheless, the discretion regarding whether to award double costs

should be “exercised in a just, principled, and consistent way”: *Giles v Westminster Savings Credit Union*, 2010 BCCA 282 at para 88.

[27] The issue of reasonableness in a party’s rejection of an offer is not determined by reference to the award that was ultimately made. Rather, it is assessed by reference to the circumstances existing at the time the offer was open for acceptance: *Hartshorne* at para 27; *Yip v Saran*, 2014 BCSC 1593 at para 17.

[28] Nevertheless, a party who rejects a reasonable offer to settle typically faces some sanction in terms of costs to avoid undermining the importance of certainty and consequences in applying the Rule: *Waffler v Trinh*, 2014 BCCA 95 at para 81:

[81] I do not quarrel with the general proposition that a plaintiff who rejects a reasonable offer to settle should usually face some sanction in costs, even in circumstances in which it cannot be said that the plaintiff should have accepted the offer. To do otherwise would undermine the importance of certainty and consequences in applying the Rule. The importance of those principles was emphasized by this court in *Evans v. Jensen*, 2011 BCCA 279:

[41] This conclusion is consistent with the importance the Legislature has placed on the role of settlement offers in encouraging the determination of disputes in a cost-efficient and expeditious manner. It has placed a premium on certainty of result as a key factor which parties consider in determining whether to make or accept an offer to settle. If the parties know in advance the consequences of their decision to make or accept an offer, whether by way of reward or punishment, they are in a better position to make a reasoned decision. If they think they may be excused from the otherwise punitive effect of a costs rule in relation to an offer to settle, they will be more inclined to take their chances in refusing to accept an offer. If they know they will have to live with the consequences set forth in the Rule, they are more likely to avoid the risk.

Discussion

[29] The court is not to approach the reasonableness of offers with the benefit of hindsight. The question is whether the plaintiff’s Offer was reasonable based on the information known to the recipient at the time. A party that rejects a reasonable offer to settle can expect to face some form of sanction in terms of costs, so that courts do not undermine the importance of certainty and consequences in applying this rule.

[30] In this case, both parties made settlement offers at a time when discovery was complete, and trial was imminent. Both parties were represented by counsel and knew the case they had to meet. Given the amounts at issue, I find that the Offer of \$7,500 plus a discontinuance without costs, represented a reasonably significant compromise given the amounts at issue, the timing of the Offer, and the clear benefit of avoiding the trial and its associated costs and risk.

[31] The defendants argue that an order of double costs would be punitive, but as the case law demonstrates, the purpose of Rule 9-1 is to “encourage the early settlement of disputes by rewarding the party that makes a reasonable offer to settle and penalizing the party that did not accept the offer.”

[32] I do not find the increase in costs of the trial, as proposed by the plaintiff, to be disproportionately punitive under all the circumstances.

[33] Further, the defendants cite financial pressures relating to raising their children and running their household, and costs they have had to pay to complete the electrical work as reasons why I should not exercise my discretion to apply the double costs rule in this instance. These are not factors I am able to consider in this context. This is because they are cited in the absence of any evidence or detail regarding how such ordinary household costs or financial pressures can or ought to be assessed in relation to the costs award. The defendants also do not cite a legal basis to support such an argument.

[34] It would also be unreasonable, and contrary to the principles behind the costs rules, to deny a costs order that would otherwise be due to the plaintiff because the defendants have had to pay to complete electrical work that was the subject matter of the dispute. The defendants are responsible for any costs associated with the completion of the electrical work because I found it was due to their actions that the work was not completed by the plaintiff.

Conclusion

[35] I find that the plaintiff is entitled for double costs for the two days of trial, and ordinary pre-trial costs, calculated pursuant to Rule 15-1(15).

[36] I therefore award the plaintiff \$14,000, inclusive of taxes, plus \$4,441.83 in disbursements, plus the costs of this application.

“J. Whately J.”