IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *March v. Marcheterre,*
2025 BCSC 2107

Date: 20251107
Docket: E60973
Registry: Kamloops

Between:

Marie Elizabeth March

Claimant

And

Denis Marcheterre

Respondent

Before: The Honourable Justice M. Taylor

Reasons for Judgment re: Costs

Counsel for the Claimant:	R. Lammers
Counsel for the Respondent:	K. Hauer
Place and Date of Hearing:	Kamloops, B.C. September 5, 2025
Place and Date of Judgment:	Kamloops, B.C. November 7, 2025

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Introduction

[1] I released my reasons for judgment following a family trial in this matter on May 16, 2025 in *March v. Marcheterre*, 2025 BCSC 931 (the "RFJ"). In the RFJ, I granted the parties leave to speak to the issue of costs of the trial. Subsequently, the parties filed written submissions and a hearing was held on September 5, 2025. What follows are my reasons as to costs.

[2] The claimant seeks an award of special costs or, in the alternative, double costs, for the entire proceeding. She also seeks an order that $12,500 currently held in trust by respondent's counsel be transferred to counsel for the claimant on account of costs owed to the claimant by the respondent.

[3] The respondent opposes the costs award sought by the claimant. While conceding that tariff costs would ordinarily be payable in these circumstances, the respondent argues that a costs award under the tariff would impose excessive financial hardship on him and urges the court to depart from the default costs rule and cap the costs award at $12,500.

Analysis

Ordinary Costs

[4] Rule 16-1(7) of the *Supreme Court Family Rules,* B.C. Reg. 169/2009, states that costs of a family law case must be awarded to the successful party unless the court orders otherwise.

[5] Costs in family matters are normally assessed on the same principles as those in civil matters, i.e., they follow the result. However, as there are often multiple issues in family law cases on which success may be divided, costs in family proceedings will generally favour the party who has achieved substantial success: *Barnard v. Barnard*, 2017 BCSC 2162 at para. 25. Substantial success occurs when the level of one party's success is 75% or better: *Barnard* at para. 26; *Heirat v. Heidari*, 2025 BCSC 1451 at para. 12.

[6] Substantial success is measured objectively. In *Marquez v. Zapiola*, 2014 BCCA 35 at para. 20, the court accepted the four-step inquiry from *Fotheringham v. Fotheringham,* 2001 BCSC 1321 at para. 46. This inquiry is used to determine whether substantial success has been achieved:

1. First, by focusing on the "matters in dispute" at the trial. These may or may not include "issues" explicitly mentioned in the pleadings;

2. Second, by assessing the weight or importance of those "matters" to the parties;

3. Third, by doing a global determination with respect to all the matters in dispute and determining which party "substantially succeeded," overall and therefore won the event; and

4. Fourth, where one party "substantially succeeded," a consideration of whether there are reasons to "otherwise order" that the winning party be deprived of his or her costs and each side then bear their own costs.

[7] In this case the respondent concedes, and in my view there is no doubt, that the claimant achieved substantial success at trial. There were three principal issues addressed in the RFJ:

1. Whether the parties should be divorced;

2. Whether the Marriage Agreement is enforceable or should be set aside as unconscionable due to a fundamental flaw in the bargaining process; and

3. Whether there should there be a judicial reapportionment based on fairness in favour of the respondent under s. 65 of the *Family Relations Act*, R.S.B.C. 1996, c. 128 [*FRA*].

[8] There was no dispute between the parties with respect to the first issue relating to divorce, which was therefore not relevant to the question of substantial success. On the second issue, the claimant was 100% successful because I found

that the Marriage Agreement was enforceable and should not be set aside. On the third issue, the claimant was in my view approximately 83% successful in monetary terms. This is because, although I did grant the respondent's claim to full ownership in their Cadillac (which the parties valued between $23,000 and $30,000 at trial) (the "Cadillac"), I denied his more substantial claim to a share of the increase in value of their house in Kamloops (the "Kamloops Property"), which he valued at $150,000 as a minimum in closing argument (30,000/180,000 = 17%).

[9] I therefore have little difficulty concluding that the claimant was more than 75% successful on both the second and third contested issues individually and on all the issues collectively.

Special Costs

[10] The claimant seeks an award of special costs of the entire proceeding.

[11] The court may award special costs for all or part of a proceeding pursuant to subrule 16-1(1)(b) of the *Supreme Court Family Rules*, which states:

> (1) If costs are payable to a party under these Supreme Court Family Rules or by order, those costs must be assessed in accordance with Appendix B unless any of the following circumstances exist:
>
> …
>
> (b) the court orders that
>
> (i) the costs of the family law case be assessed as special costs, or
>
> (ii) the costs of an application, a step or any other matter in the family law case be assessed as special costs in which event costs in relation to all other applications, steps and matters in the family law case must be determined and assessed under this rule in accordance with this subrule;

[12] In *B.L.S. v D.J.S.*, 2022 BCSC 764, Justice Norell helpfully summarized the applicable analysis relating to special costs:

> [29] With respect to the claimant's argument, special costs may be awarded where there has been reprehensible conduct on the part of the opposing party during the course of the litigation: *Gichuru v. Pallai*, 2018 BCCA 78 at para. 86; *Tsai v. Li*, 2020 BCCA 264 at para. 16. Special costs are punitive in nature, and not a bonus to the winning party. The party seeking special costs

> bears the burden of establishing exceptional circumstances, and the court must exercise restraint in awarding special costs: *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 [*Westsea*] at para. 73.
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> [30] The impugned conduct must be within the litigation and not pre-litigation conduct: *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 [*Smithies*] at para. 134. This "bright line rule" applies in the family law context: *Sebok v. Babits*, 2022 BCCA 2 [*Sebok*] at para. 51.
>
> [31] Reprehensible conduct "encompasses scandalous or outrageous conduct" and "milder forms of misconduct deserving of reproof or rebuke": *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 119 D.L.R. (4th) 740, 1994 CanLII 2570 at para. 17 (C.A.). Not all misconduct attracts special costs: *Westsea* at para. 73. It is not necessary that all aspects of a party's conduct be reprehensible to award costs for the entire proceeding, but the court may award special costs for only certain aspects of a proceeding if it would be disproportionate to award special costs of the entire proceeding: *Sebok* at para. 35. In the family law context, the types of conduct that may attract an award of special costs include: delayed disclosure of or a failure to disclose documents; dissipating or not disclosing assets; misleading the parties and court; depriving or disregarding the other party's interest in family assets; pursuing meritless claims and being reckless with regard to the truth; improper motive and improper allegations of fraud; and making the resolution of an issue far more difficult than it should have been, including using superior financial resources to make litigation difficult or costly: *Chapman v. Chapman*, 2020 BCSC 1896 at paras. 4-10; *Mayer v. Mayer*, 2011 BCSC 914 at para. 11.

[13] Taking into account the principle as reiterated in *B.L.S.* that the court must exercise restraint in awarding special costs (particularly in the family law context), it is my view that the conduct of the respondent during the course of the proceedings, although problematic and deserving of rebuke in certain respects, was not sufficiently egregious or exceptional, taking into account the overall context, to merit an award of special costs.

[14] The principal argument made by the claimant relating to special costs is that the respondent made a meritless argument that the claimant had forged his signature on the Marriage Agreement and that he must have known that this argument was "bound to fail". The claimant also emphasizes that this meritless claim consumed at least six days of court time before it was withdrawn mid-trial, imposing an unnecessary cost on the claimant.

[15] While I agree that the forgery allegation ultimately proved to be meritless at trial, I am not persuaded that this necessitates a special costs award for four reasons.

[16] First, I note that this was not a situation where the respondent had stubbornly maintained the meritless fraud claim from the outset of the proceedings through to the end of the trial. To the contrary, in the original counterclaim filed April 25, 2022, the respondent made no allegation of forgery, alleging instead that the Marriage Agreement should be set aside on the basis of *non est factum*, unilateral mistake and significant unfairness under s. 93(5) of the *Family Law Act*, S.B.C. 2011, c. 25. It was only on the first day of trial that the respondent sought and obtained an order granting the right to amend pleadings to assert the forgery allegation.

[17] Further, upon it becoming apparent after the testimony of the two handwriting experts at trial that the evidence would not support the forgery allegation, the respondent promptly withdrew the allegation the next day. Thus, during a three-year proceeding, the allegation of forgery was only "live" for six days of trial time until it was withdrawn in the middle of the trial. The respondent did not assert the forgery allegation in closing argument.

[18] Second, as explained by Justice Ross in *Procon Mining & Tunnelling Ltd. v. McNeil*, 2010 BCSC 1435, maintaining unfounded allegations of fraud throughout a trial is but one factor to considered and does not result in an "automatic" award of special costs:

> [9] Maintaining unfounded allegations of fraud throughout a trial is one factor that can form the basis of an award for special costs. However, it is not automatic that special costs will be awarded in such cases. The correct approach was described by Satanove J. in *Inmet Mining Corporation v. Homestake Canada Inc.*, 2002 BCSC 681 at para. 19:
>
> > The mere fact that an allegation of fraud was advanced and failed is not conclusive proof of conduct deserving rebuke. It is a factor to take into account together with the conduct of the litigation itself and the conduct of the litigants. (*Ahluwalia v. Richmond Cabs Ltd.* (1994), 28 C.P.C. (3d) 226 (B.C.S.C.)). It is always preferable that pleas of this nature, which cast aspersions on a party's integrity, be withdrawn at an early stage if they cannot be made out.

> [10] The correct test was stated by Newbury J., as she then was, in *Ahluwalia v. Richmond Cabs Ltd.* (1994), 1995 CanLII 1440 (BC CA), 28 C.P.C. (3d) 226 (B.C.S.C.) (aff'd. (1995), 13 B.C.L.R. (3d) 93, 42 C.P.C. (3d) 203 (C.A.)) at para. 5:
>
> > The question in every case is whether, on a consideration of the substantive conduct of the party making the allegation, and the conduct of the litigation itself, the person or persons against whom the order is sought, has acted in a manner that is sufficiently reprehensible to warrant chastisement by the court.

[19] As noted above, the fraud allegation was withdrawn once it became apparent it could not be made out. Further, in the context of this case, I have considered the following other relevant factors in weighing whether the conduct of the respondent was sufficiently reprehensible to warrant chastisement by the court:

- There was no evidence that the respondent failed to disclose material documents during the proceeding;

- There was no compelling evidence that the respondent dissipated or failed to disclose assets. Although the claimant alleged during and after the trial that the respondent had violated a s. 91 restraining order by making certain payments from his bank account to an apparent fraudster during the trial, this argument was in my view unsubstantiated due to the prior ruling of Justice Groves in this proceeding that the s. 91 order did not prohibit the parties from accessing their bank accounts;

- There was no evidence that the respondent used superior financial resources to make litigation difficult or costly for the claimant; and

- I made no finding in the RFJ that the respondent had misled the parties or the court with respect to the forgery allegation. I concluded that his evidence on this issue was unreliable and lacking in credibility, but I did not expressly conclude that he was intentionally seeking to mislead. It is true, as argued by the claimant, that I found in relation to certain other aspects of his testimony he had engaged in the “affirmative making of a false statement rather than a

mere inability to remember": RFJ at para. 86. However, this was in relation to testimony that was tangential to the forgery allegations and related to other issues at trial.

[20] Third, this is not a situation as in *Kouwenhoven Estate v. Kouwenhoven*, 2001 BCSC 1402 at paras. 2-4, where the forgery allegation was founded principally on "speculation and innuendo" and based solely on "affidavits containing hurtful opinions". As noted by counsel for the respondent, the context in which the forgery allegation was made is relevant in this case, as it emerged only in response to a relatively slow-developing allegation by the claimant during the proceeding that the Marriage Agreement had been located and that she intended to rely upon it. Specifically:

- In the Notice of Family Claim, the claimant alleged that there was a written or oral agreement dated June 27, 2011. Subsequently, the claimant's evidence at trial was that the Marriage Agreement was signed on July 14, 2011, and not June 27, 2011, as originally pleaded;

- On February 18, 2022, the claimant advised by letter that she intended to enforce the Marriage Agreement;

- On February 21, 2022, the respondent advised that he did not recall the Marriage Agreement;

- On March 1, 2022, the claimant provided an unsigned copy of the Marriage Agreement and her counsel stated that "[m]y client advises Mr. Marcheterre assured her back in 2011 he did sign the document and provide it to her lawyer." It is notable in this respect that the claimant's version of events at trial was quite different than her initial position during the proceeding. At trial she did not assert that the respondent had provided the Marriage Agreement directly to her lawyer but instead asserted that she and the respondent had signed the agreement together in front of Ms. Gingras and that the claimant alone had delivered the signed document to her lawyer. In light of this

significant change of position, and the delay in producing a signed version, it was understandable that the respondent may have had some concerns about the authenticity of the document; and

- It was only over four months later that Ms. March was able to locate and provide a signed copy of the Marriage Agreement, which may reasonably have contributed to the respondent's concerns about the claimant's narrative and the authenticity of the document.

[21] Upon receiving this information, the respondent did not immediately seek to amend pleadings to allege forgery but instead sought to adjourn the original trial date to retain a handwriting expert to provide an opinion. This, in my view, was not unreasonable under the circumstances and was indeed a prudent course of action.

[22] Although I found in my reasons that the handwriting expert Ms. Ibrahim's evidence at trial was flawed for a variety of reasons, it is undeniable that her professional credentials and experience are substantial and that this has been judicially recognized. For example, in *Re/Max v. 2452303 Ontario Inc. et. al*, 2022 ONSC 776 at para. 229, Justice Shaw found that Ms. Ibrahim "demonstrated skills that all experts should have when testifying" and that the "depth of her knowledge in this field was impressive." Thus, the forgery allegation was not founded on "speculation and innuendo" but was instead grounded on the opinion of a judicially recognized expert.

[23] In *AM Gold Inc. v. Kaizen Discovery Inc.*, 2022 BCCA 284 at para. 68, citing *Hung v. Gardiner*, 2003 BCSC 285, aff'd 2003 BCCA 256 at para. 16, the Court of Appeal made it clear that an allegation of dishonest conduct that ultimately proves unsuccessful is not sufficient taken alone to justify an award of special costs. Rather, "[i]t must be shown, not just that the allegation was wrong, but that it was obviously unfounded, reckless of made out of malice."

[24] While the respondent's allegation of forgery was ultimately meritless, I am not persuaded that it was "obviously unfounded" or "reckless" at the time it was made.

Counsel for the claimant asserts that it was obviously unfounded due to the respondent's testimony on discovery where he appeared to acknowledge that it was indeed his signature on the Marriage Agreement. However, it must be stated that the respondent's testimony on discovery, as it was at trial, was in many respects unreliable, difficult to follow, internally contradictory and often verging on incoherent. Further, merely because he acknowledged on discovery that it was his signature on the document this did not fully foreclose the possibility that a forgery had occurred. For example, it could have been possible that he signed a different document and that his signature had been transposed to a different document or otherwise reproduced.

[25] After the cross-examination of Ms. Ibrahim was complete at trial it became apparent to all (including the respondent) that the forgery argument could not succeed. However, this does not establish that the argument was obviously unfounded at the time it was made. Indeed, a central purpose of a trial is to test claims and allegations in open court and subject them to the rigours of cross-examination, which is what occurred in this case.

[26] Fourth, the claimant alleges that the respondent engaged in certain other reprehensible conduct throughout the course of the proceeding that should be sanctioned. In particular:

- Leaving frightening notes, photographs and objects around the house before he moved out of the home;
- Refusing to comply with a JCC Order made May 3, 2022, by removing more items from the house than the Order indicated he could remove; and
- Violation of the s. 91 restraining order as discussed above.

[27] With respect to the first of the above examples of alleged reprehensible conduct, the Court of Appeal in *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at para. 134 made it clear that the impugned conduct must take place within the litigation context and cannot be pre-litigation conduct. Leaving frightening

notes, photographs and objects around the house before the respondent moved out of the home is pre-litigation conduct. It would therefore be an error of law to find that this conduct merits an award of special costs: *Real Organics & Natural House Ltd. v. Canadian Phytopharmaceuticals Corporation*, 2025 BCSC 1 at para. 69.

[28] With respect to the alleged removal of personal and other items from the house, the evidence at trial was relatively minimalistic and also disputed, as was the disagreement between the parties as to the amount and appropriateness of items removed. I find that there is insufficient evidence on this issue adduced at trial to rely upon it as a basis for an award of special costs.

[29] I have addressed the alleged breach of the s. 91 order above and will not repeat that analysis here, other than to reiterate that the breach was not proved.

[30] Therefore, for all the above reasons, I find that it is not appropriate, when taking all the circumstances into account, to exercise my discretion to grant an award of special costs in this case.

Double Costs

[31] In the alternative to special costs, the claimant seeks double costs against the respondent.

[32] The rule on double costs is set out in R. 11-1(5) of the *Supreme Court Family Rules*, which states:

> In a family law case 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 family law case 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 family law case 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 family law case 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 party who made the offer obtained a judgment as favourable as, or more favourable than, the terms of the offer, award to the party the party's costs in respect of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle.

[33] Rule 11-1(6) of the *Supreme Court Family Rules* sets out some of the factors that may be considered:

> 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.

[34] Double costs are the rule rather than the exception: *I.J.G.P.G. v. K.M.*, 2017 BCSC 261, at para. 87 [*K.M.*].

[35] The Court of Appeal described the purpose of double costs in *Hartshorne v. Hartshorne*, 2011 BCCA 29 at para. 25:

> [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" (*A.E. v. D.W.J.,* 2009 BCSC 505, 91 B.C.L.R. (4th) 372 at para. 61, citing *MacKenzie v. Brooks,* 1999 BCCA 623, *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201 (C.A.), *Radke v. Parry,* 2008 BCSC 1397). In this regard, Mr. Justice Frankel's comments in *Giles* are apposite:
>
> > [74] The purposes for which costs rules exist must be kept in mind in determining whether appellate intervention is warranted. In addition to indemnifying a successful litigant, those purposes have been described as follows by this Court:
> >
> > - "[D]eterring frivolous actions or defences": *Houweling Nurseries Ltd. v. Fisons Western Corp.* (1988), 37 B.C.L.R. (2d) 2 at 25 (C.A.), leave ref'd, [1988] 1 S.C.R. ix;

> - "[T]o encourage conduct that reduces the duration and expense of litigation and to discourage conduct that has the opposite effect": *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201 at para. 28 (C.A.);
> - "[E]ncouraging litigants to settle whenever possible, thus freeing up judicial resources for other cases: *Bedwell v. McGill*, 2008 BCCA 526, 86 B.C.L.R. (4th) 343 at para. 33;
> - "[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": *Catalyst Paper Corporation v. Companhia de Navegação Norsul*, 2009 BCCA 16, 88 B.C.L.R. (4th) 17 at para. 16.

[36] A court may also consider revoked offers: *Fines v. Johnson*, 2020 BCSC 1045 at paras. 20, 26; *ICBC v. Patko*, 2009 BCSC 578 at paras. 34–36.

[37] In support of the claim for double costs, the claimant relies upon four offers made prior to the commencement of the trial, all of which were very similar in nature and quantum (the "Offers"):

1. Offer dated February 13, 2023 (the "First Offer"):

    a. Offer expired March 9, 2024;

    b. The respondent to keep the Cadillac;

    c. Payment to the respondent of $10,000;

    d. Respondent to return various personal and sentimental items to the claimant;

    e. Each party to bear their own costs (including costs thrown away awarded to the claimant on June 19, 2023); and

f. Claimant to bear costs relating to finalizing final order and divorce.

2. Offer dated May 18, 2023 (the “Second Offer”):

    a. Offer expired May 26, 2023;

    b. The respondent to keep the Cadillac;

    c. Payment to the respondent of $10,000;

    d. Respondent to return various personal and sentimental items to the claimant;

    e. Each party to bear their own costs; and

    f. Claimant to bear costs relating to finalizing final order and divorce.

3. Offer dated February 6, 2024 (the “Third Offer”):

    a. Offer expired March 9, 2024;

    b. The respondent to keep the Cadillac;

    c. Payment to the respondent of $10,000;

    d. Respondent to return various personal and sentimental items to the claimant;

    e. Each party to bear their own costs (including costs thrown away awarded to the claimant on June 19, 2023); and

    f. Claimant to bear costs relating to finalizing final order and divorce.

4. Offer dated April 18, 2024 (the “Fourth Offer”):

    a. Offer expired April 24, 2024;

b. The respondent to keep the Cadillac as well as $12,500 funds held in trust pursuant to the Order of Justice Groves dated February 12, 2024);

c. Payment to the respondent of $10,000;

d. Respondent to return various personal and sentimental items to the claimant;

e. Each party to bear their own costs; and

f. Claimant to bear costs relating to finalizing final order and divorce.

[38] Applying R. 11-1(6)(a) of the *Supreme Court Family Rules*, it is my view that the Fourth Offer ought reasonably to have been accepted. In considering this factor, the court must determine whether it was unreasonable to refuse it at the time the offer was open for acceptance: *Cottrill v. Utopia Day Spas and Salons*, 2019 BCCA 26 at para. 30 [*Utopia Spas*]. This factor is not determined by reference to the award ultimately made, but with reference to what was reasonable during the time frame the offer was open: *Utopia Spas* at para. 29.

[39] In addressing R. 11-1(6)(a), Justice Arnold-Bailey in *K.M.*, set out some of the factors to consider when assessing the reasonableness of the Offer:

> [65] An assessment of the reasonableness of the Offer looks to such factors as the timing, its relationship to the claim, its ease of evaluation, and the rationale for the offer.

[40] In this case, the Fourth Offer was timely. It was made ten days prior to trial and, more importantly, it was not substantially different from the First Offer which had been made more than a year before the commencement of the trial. Indeed, after the First Offer expired on March 10, 2023, the claimant made three further Offers that were very similar in content to the First Offer, giving the respondent ample time to reconsider. The Fourth Offer, which was the most generous of all the Offers, was made ten days before trial, giving the respondent one last opportunity to reconsider. At this point, the respondent would have had the opportunity to review

and consider the expert report of Ms. Ibrahim and should have been aware of the weaknesses in the report that I identified in the RFJ. I conclude that the respondent was given more than ample time to decide to accept or reject the Fourth Offer.

[41] The Fourth Offer, and the earlier Offers, were directly related to the claim and counterclaim and were intended to resolve all outstanding issues, with the intention of averting the need for a trial; the Offers were not merely "nuisance offers". The Fourth Offer included an offer that the respondent would keep the Cadillac, that he would also receive a payment of $22,500 in cash and the claimant would cover the cost of the divorce and final order. While the Fourth Offer may not have been the equivalent of the respondent's "best day in court" it was a serious offer by any reasonable standard.

[42] The Offers were also set out in a manner that were easy to evaluate, as they addressed the respondent's interest in the Cadillac, a single monetary payment from the claimant to the respondent on account of his claim against the Kamloops Property, and the costs of the proceeding. The Offers were comprehensive and not overly complex, ambiguous or difficult to understand.

[43] The rationale for the Offers was also provided. In a letter dated February 13, 2023, counsel for the claimant explained that the First Offer was intended to address all outstanding issues in the proceeding. Counsel also explained the rationale for the First Offer which was that:

1. It was clear following the completion of the examination for discovery of Mr. Marcheterre that he had admitted he had signed the Marriage Agreement, understood what it was about, and had functioned at all times after the signing of the agreement in a manner that was consistent with the terms of the agreement; and

2. That the parties were careful to a fault during their relationship to keep their financial assets and expenses separate, which was precisely the manner in which their agreement indicated they ought to.

[44] The First and Second Offers did not address the forgery allegation because it had not emerged as a live issue in the proceeding at that time, and no expert reports had yet been prepared or considered. For that reason, I find it is not appropriate to award double costs from the dates of the First or Second Offers because the respondent had not had the opportunity to fully and fairly consider and assess the strength of his case at trial. Significantly, in my view, the First and Second Offers were made before the first trial date was adjourned on June 19, 2023 to enable the parties to obtain expert evidence on the new forgery issue, which played a significant role at trial and therefore altered the parameters of the settlement landscape. I find the same with respect to the Third Offer, as the final supplemental expert report of Ms. Ibrahim was not complete at that time. However, as of the date of the Fourth Offer, the respondent had all the information he needed on all issues, including the forgery allegation, to recognize the weakness of his legal position.

[45] I also note that at the time that the respondent was subjectively considering all the Offers (and certainly the Fourth Offer), he was aware that during his prior examination for discovery conducted on January 27, 2023, he had admitted to signing the Marriage Agreement, which he subsequently denied at trial. Specifically, he had given the following responses:

494	Q.:	… Is this your signature on this document?
	A.:	It is, yeah.
…		
508	Q.:	No question is, did you sign this document on July 14, 2011?
	A:	By the way it says there, yeah, I just sign it without looking.
…		
527	Q.:	Just to be clear and since your lawyer raised it, is that or is that not your signature on that document?
	A:	It is my signature, yeah
…		
546	Q.:	So you signed it because you trusted Marie?
	A:	That’s right.

[46] Given his admissions on discovery that he had in fact signed the Marriage Agreement, the respondent would have been aware at the time of considering the Fourth Offer that any claim that his signature on the Marriage Agreement was forged would be very weak, if not hopeless. The respondent also had disclosure at that time of contemporaneous notes from a lawyer, Ms. Brothers, regarding two meetings with the respondent that were clearly not helpful to his case as they tended to demonstrate that he was aware of the Marriage Agreement, understood it and was agreeable to it. Specifically:

- A note from June 21, 2011, where Ms. Brothers told the respondent that she was preparing the draft Marriage Agreement, encouraged him to get legal advice, and where he provided information to her about his assets and liabilities that was included in the Marriage Agreement as a schedule, alongside a corresponding schedule of the claimant's assets and liabilities; and

- A note from a meeting with both parties on July 10, 2014, relating to the drafting of a will, where Ms. Brothers wrote: "Confirmed Marriage Agreement. They are both agreeable to terms and understand terms".

[47] The respondent likely understood when considering the Fourth Offer that, despite his admitted signing of the Marriage Agreement, he also had available an argument under s. 65 of the *FRA* and an unconscionability argument. However, given the contemporaneous notes of Ms. Brothers and the evidence that the parties had separate finances and expenses during the marriage, the respondent had to have understood at the time of considering the offers that these arguments were potentially a "long shot".

[48] With respect to R. 11-1(6)(b) of the *Supreme Court Family Rules*, and in considering the relationship between the Fourth Offer and the result at trial, the court should determine whether the "declining" party would have been financially better off, on a global basis, if they had accepted the offer as compared to going to trial: *Kopp v. Kopp*, 2011 BCSC 889 at para. 7.

[49] In my view the answer to this question is clearly that the respondent would have been better off. There is no question that the terms of all four Offers were more favourable to the respondent than the final judgment of the court. Specifically:

- The respondent would have obtained title to the Cadillac, which is what was ordered at trial;

- The respondent would have received a payment ranging from $10,000 in the Second and Third Offers up to $15,000 in the First Offer and $22,500 in the Fourth Offer, whereas I ordered at trial that the respondent would receive no payment;

- The proposal in the Offers that each party bear their own costs and that the Claimant would bear costs relating to finalizing the Final Order and divorce was more favourable on this issue that the final judgment; and

- The only issue on which the respondent would not have done better at trial was the request for the return of various personal and sentimental items to the claimant, as I made no order on this issue in the judgment. However, to the extent that these items were personal and sentimental to the claimant they would have little value for the respondent.

[50] Thus, the respondent would have been financially better off by accepting the Fourth Offer, which is a factor that favours a double costs award.

[51] With respect to R. 11-1(6)(a) of the *Supreme Court Family Rules*, the relative financial circumstances of the parties, I am not persuaded that this is a consideration that should preclude a double costs award. To the contrary, in the RFJ, I reached the conclusion that the financial circumstances of the parties were relatively balanced at the conclusion of the trial:

> [138] … Mr. Marcheterre … is economically independent and self-sufficient to the same relative extent that he was before entering the marriage. At the time of the marriage, both parties were already retired and drawing their pensions and CPP credits as they are today. Both parties will keep their pensions following the divorce which are comparable in monthly amounts. Both parties

> owned assets that were acquired entirely before the marriage (i.e. neither party contributed to the acquisition of these by the other), which they will keep. Both parties will also maintain the investment accounts that they held entering the marriage, and that they kept separate throughout the marriage.

[52] The respondent adduced some evidence after the conclusion of the trial that the value of his assets was diminished because he was the victim of post-trial fraud at the hands of a third party. However, this evidence was somewhat vague and anecdotal in nature and unsupported by third-party evidence, leaving the court with more questions than answers. Further, the respondent did not provide a sufficiently full picture of his post-trial financial conditions and living arrangements which would enable the court to conclude that his financial circumstances have fundamentally changed since the conclusion of the trial. In this respect I note that there was no evidence that the respondent does not continue to draw a pension and CPP credits, which should give him a regular cash flow into the future.

Cap on Costs

[53] The respondent argues that a costs award under the tariff would impose excessive financial hardship on the respondent and accordingly asks the court to cap the costs award at $12,500.

[54] Rule 16-1(7) of the *Supreme Court Family Rules* provides the default rule that costs must be awarded to the successful party unless the court "otherwise orders". In *B.L.S. v D.J.S.*, 2022 BCSC 764, Justice Norell explained that the burden of proof is on the unsuccessful litigant and set out the list of factors to be considered:

> [26] With respect to the respondent's argument that the claimant should be deprived of costs, the burden of establishing that the court should "otherwise order" under Rule 16-1(7) rests on the unsuccessful litigant: *Louie v. Louie*, 1996 CanLII 3167 at para. 7, [1996] B.C.J. No. 1791 (S.C.).
>
> [27] In exercising its discretion, the court may consider the following non-exhaustive list of factors: hardship; earning capacity; the purpose of the particular award; the conduct of the parties in the litigation; and the importance of not upsetting the balance achieved by the judgment itself: *Gold v. Gold*, 1993 CanLII 1248 at para. 20, [1993] B.C.J. No. 1792 (C.A.) [*Gold*].

[55] Financial hardship, without more, is not a sufficient basis for the court to exercise its discretion to depart from the usual rule that successful parties are entitled to their costs: *S.A.M. v. J.A.M.*, 2017 BCSC 2348 at para. 7; *R.B. v M.J.B*, 2025 BCSC 1538 at para. 3.

[56] In my view the evidence adduced on post-trial financial hardship on the part of the respondent was not sufficiently detailed and compelling to justify departing from the usual rule. As noted above, I found that both parties have similar earning capacity as they are already retired and drawing their pensions and CPP credits. I also found that, although not amounting to a justification for a special costs award, the respondent's conduct in pursuing a meritless claim of forgery was open to question and bordered on reckless.

[57] A costs award would not in my view upset the balance achieved in the judgment itself because the essence of the award was that each party was "economically independent and self-sufficient to the same relative extent that he [or she] was before entering the marriage" and each party would be entitled to keep what they brought into the marriage: *March v. Marcheterre* at para. 138. Given that I did not order an economic rebalancing of assets between the parties I do not see the need to depart from the usual rule to compensate for or offset such a rebalancing.

[58] Finally, I note the well-established principle that the assessment of costs is within the purview of the registrar and that the court should exercise the discretion to assess costs sparingly, as noted by Fleming J. (then a judge of this Court) in *The Owners, Strata Plan NWS3075 v. Stevens*, 2018 BCSC 1784 at para. 89:

> [89] Rule 18-1 allows the court to direct an assessment by the registrar. Rule 14-1 identifies a registrar as the court officer before whom costs, including special costs, are to be assessed. Although judges may assess court costs, including special costs, the discretion to do so, is to be exercised sparingly. The superior expertise and experience of registrars in assessing court costs which involves considering the reasonableness of legal costs, disbursements and other expenses is well recognized: *Gichuru v. Smith*, 2014 BCCA 414. I accept therefore, a registrar is also best placed to assess the reasonableness of the "s. 133 costs" claimed by the Strata.

[59] In my view there are insufficient special circumstances in this case that would justify declining to refer the assessment of costs to the Registrar.

Order

[60] The claimant shall have her ordinary costs up to the date of the Fourth Offer on April 18, 2024. The costs will be assessed as double costs commencing from the date of the Fourth Offer. These costs shall be in addition to the "costs thrown away" order of Justice Hori dated June 19, 2023.

[61] The $12,500 currently held in trust by respondent's counsel shall be transferred forthwith to counsel for the claimant, on account of costs owed to the claimant.

"M. Taylor J."