

Court of King's Bench of Alberta

Citation: PR Construction Ltd v Colony Management Inc, 2025 ABKB 664

Date: 20251119
Docket: 1403 15558
Registry: Edmonton

Between:

PR Construction Ltd.

Plaintiff

- and -

Colony Management Inc., the Guarantee Company of North America, Sinopec Canada Energy Ltd., Canadian Oil Sands Ltd, Murphy Oil Company Ltd., Mocal Energy Limited, Nexen Energy ULC, Suncor Energy Inc., Imperial Oil Resources Limited and Canadian Oil Sands Limited.

Defendants

- and -

Colony Management Inc.

Defendant (Plaintiff by Counterclaim)

- and -

Kevin Lacroix, 0989842 BC Ltd., PR Construction Ltd., and Paul Ronald

Plaintiffs (Defendants by Counterclaim)

**Ruling on Costs
of the
Honourable Justice Tamara L. Friesen**

Background

[1] In 2012, PR Construction Ltd. subcontracted with Colony Management Inc. to perform steel-related work on the Syncrude Mine Replacement Project. Disputes later arose due to a

significant schedule change, which pushed PR Construction's work into winter and ultimately increased its costs. The relationship between the parties deteriorated and Colony terminated the contract in March 2014. PR Construction sued Colony and the holder of Colony's Labour and Material Payment Bond, the Guarantee Company of North America (GCNA), for its unpaid invoices and damages. Colony counterclaimed, alleging breach of contract and conspiracy between PR Construction's owner, Paul Ronald, and Colony's former project manager, Kevin Lacroix, who later joined PR Construction.

[2] After a trial that spanned 29 days, taking place over almost two years, I granted judgment in favour of PR Construction for damages and interest against Colony and GCNA, granted part of Colony's counterclaim as against Lacroix and his numbered company (collectively, the Lacroix parties), and dismissed the third-party claim made by the Lacroix parties: ***PR Construction Ltd v Colony Management Inc***, 2025 ABKB 293 [the ***Trial Decision***].

[3] I gave the parties leave to return to me if they could not agree on the issue of costs. The parties have not been able to agree.

[4] PR Construction seeks an award of solicitor-client costs from Colony and GCNA jointly and severally, including a second counsel fee, owing to what it describes as the complexity of the litigation and the "consistent involvement of multiple counsel for all parties." PR Construction and Paul Ronald (collectively, the PR parties) also seek costs on the same scale for successfully defending the counterclaim.

[5] The Lacroix parties also seek solicitor-client costs against Colony and GCNA, jointly and severally, for the costs of the action, at a rate of 75% of the Lacroix parties' actual legal fees. They say that Colony and GCNA made serious and ill-founded claims of fraud, conspiracy, and professional misconduct, which Lacroix was substantially successful in defeating.

[6] Colony seeks costs as against the Lacroix parties based on Column 5 with a 2x multiplier based on the complexity of the action and the delays it says were caused by the Lacroix parties. Colony asserts that it was substantially successful as against the Lacroix parties because Lacroix's third-party claim was dismissed and part of Colony's counterclaim against the Lacroix parties was granted.

[7] The Lacroix parties resist Colony's application for costs, arguing that Colony was not substantially successful, any complexity was a result of Colony's tactical decisions, and the allegations of misconduct of the Lacroix parties were almost entirely disproven save for a claim that he had breached a term of his employment contract.

[8] GCNA claims that due to phrasing contained in the trial decision, it is only liable to Colony for "tariff costs" and not solicitor-client costs. It claims it is not liable for any of the Lacroix parties' costs, if awarded, because it was not party to Colony's counterclaim.

[9] To put these various costs arguments into greater perspective, PR Construction's claim was for damages in the amount of approximately \$6.5 million, plus interest, while Colony through its counterclaim sought approximately \$2 million, plus interest, amounting to about \$3.3 million. The Lacroix parties sought \$175,000 in their counterclaim. The final award to the PR parties was significant: over \$8 million, inclusive of judgement interest. In contrast, Colony was awarded zero damages in relation to its partially successful claim that Lacroix had breached his employment

contract. I also dismissed Lacroix's third-party claim against Colony for the amounts Lacroix asserted were outstanding under his employment contract with Colony.

[10] The PR parties and Lacroix parties submitted their Bills of Costs to the other parties in advance and provided updates on the application date. Colony did not submit any Bill of Costs either to the parties or to the Court in advance or at the hearing. Despite having had time to deal with any related billing issues prior to the application, Colony took no action and reserved its right to contest the PR and Lacroix parties' Bills after the fact.

Decision

General Costs Principles

[11] Trial judges have considerable discretion in setting reasonable and proper costs under rr 10.29(1), 10.31, and 10.33: *Alberta Rules of Court*, Alta Reg 124/2010. A costs award may be "one or a combination of a party's reasonable and proper costs incurred or any amount the Court considers appropriate in the circumstances": *Serinus Energy PLC v SysGen Solutions Group Ltd*, 2024 ABKB 123 at para 12 [*Serinus*]; *Alberta Rules of Court*, r 10.31(1). There is no presumptive level of indemnification in the rules: *VLM v Dominey Estate*, 2023 ABCA 382 at para 6 [*VLM*].

[12] Reasonable and proper costs include costs incurred in bringing the action and in a costs assessment (unless ordered otherwise), but do not include court expert costs: *Serinus* at para 13; *Secure 2013 Group Inc v Tiger Calcium Services Inc*, 2018 ABCA 110 at para 12 [*Secure 2013 Group*].

[13] A court may award enhanced (or reduced) costs, in appropriate circumstances: *McAllister v Calgary (City)*, 2021 ABCA 25 at para 65. Enhanced costs are often awarded based on the trial judge's after-the-fact assessment of the litigation conduct of the parties. Such costs may flow from litigation misconduct, rejected settlement offers, and unsubstantiated allegations of fraud: *Lotoski v Lotoski*, 2019 ABCA 262 at para 7; *Stubicar v Calgary (Subdivision and Development Appeal Board)*, 2023 ABCA 98 at paras 52-53; *Borgel v Paintearth (Subdivision and Development Appeal Board)*, 2020 ABCA 321 at para 49; *H2S Solutions Ltd v Tourmaline Oil Corp*, 2020 ABCA 201; *Piikani Nation v McMullen*, 2020 ABCA 366 at para 84; *Conway v Zinkhofer*, 2007 ABQB 2 at para 21. In any event, costs should remain proportionate to the amounts in issue in the proceedings: *Sutherland v Sutherland*, 2023 ABCA 185 at paras 4-5; *Barkwell v McDonald*, 2023 ABCA 87 at para 57.

[14] Enhanced costs may also be awarded based on the level of damages sought or awarded or the complexity and/or duration of the litigation: *Indutech Canada Limited v Gibbs Pipe Distributors Ltd*, 2013 ABCA 111 at para 105; *Stewart Estate v TAQA North Ltd*, 2016 ABCA 144 at paras 25-26; *RVB Managements Ltd v Rocky Mountain House (Town)*, 2015 ABCA 304.

[15] Solicitor-client costs, as sought by the PR and Lacroix parties, are only awarded in rare and exceptional circumstances: *Luft v Taylor, Zinkhofer & Conway*, 2017 ABCA 228 at para 78; *Secure 2013 Group* at para 15; *Young v Young*, 1993 CanLII 34 (SCC), [1993] 4 SCR 3 at 134; *FIC Real Estate Fund Ltd v Phoenix Land Ventures Ltd*, 2016 ABCA 303 at para 4. Those rare and exceptional circumstances include situations where a party has engaged in reprehensible,

scandalous, or outrageous litigation conduct: *Goldstick Estates (Re)*, 2019 ABCA 508 at para 24; *Secure 2013 Group* at para 15.

[16] The general rule is that the successful party is entitled to costs against the unsuccessful party, subject to the Court's discretion: *Alberta Rules of Court*, r 10.29. A party will seldom be successful on every issue, so the rule contemplates costs entitlement based on substantial success, objectively assessed: *Uhuegbulem v Balbi*, 2025 ABKB 318 at para 61; *Mahe v Boulianne*, 2010 ABCA 74 at para 6. Costs are not usually apportioned on a claim-by-claim basis, although there may be circumstances where such an approach is appropriate: *Zuk v Alberta Dental Association and College*, 2018 ABCA 398 at para 4; *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2024 ABCA 384 at para 98.

[17] In cases where a counterclaim has been filed, if a party has been successful in relation to both the initial claim and a counterclaim, generally the costs of the counterclaim should reflect the amount by which costs of the initial proceedings increased as a result of the counterclaim: *956126 Alberta Ltd v JMS Alberta Co Ltd*, 2021 ABQB 121 at para 3 [*JMS*]; *Parrish & Heimbecker Ltd v All Peace Auctions Ltd*, 2002 ABQB 602 at para 29; *Griffin v Corcoran*, 2001 NSCA 73 at para 82. As Feth J (as he then was) explained in *JMS* (at para 4 [citations omitted]):

Where the claim and the counterclaim overlap extensively and essentially deal with the same issues, and where the counterclaim did not add appreciably to the length or complexity of the trial, it may be appropriate for the Court to exercise its discretion and award no costs with respect to the counterclaim.

Substantive costs decision

[18] PR Construction has been substantially successful in pursuing their claim against Colony, and the PR parties, jointly, have been substantially successful in defending against Colony's counterclaim. They are entitled to their costs throughout.

[19] Colony seeks costs as against the Lacroix parties on the basis that it was substantially successful in proving its claim (via counterclaim) against Lacroix, while Lacroix was unsuccessful in proving his claim against Colony. Colony has not limited its request for costs from the Lacroix parties to its successful defence to the third-party claim; rather, Colony claims the Lacroix parties should be liable for all the costs associated with Colony's counterclaim.

[20] Colony asserts its counterclaim was substantially successful against Lacroix because I found that Lacroix breached his employment duties and dismissed the Lacroix parties' claim relating to the contractual bonus on that basis. The counterclaim was otherwise unsuccessful, and I awarded no damages to Colony flowing from the breach by Lacroix. I dismissed Colony's action against the PR parties, and as against Ronald personally. Comparatively, the Lacroix parties succeeded in avoiding any liability for Colony's claim for \$2 million but were unsuccessful with respect to the third-party claim for \$175,000.

[21] The Lacroix parties' claim for the loss of Lacroix's employment bonus did not represent a significant portion of the trial, my decision, or the damages sought within this action. Colony's voluminous written submissions did not address Lacroix's counterclaim, much less offer up any defence to same. Objectively assessed, Colony was in fact substantially *unsuccessful* relative to the Lacroix parties in relation to this action. Considered in the context of the action as a whole, it

would be neither just nor equitable to award any costs against the Lacroix parties for Colony's successful defence of the third-party-claim. Each party will bear its own costs with respect to that claim.

[22] The Lacroix parties are entitled to costs from Colony as they were substantially successful in defending against Colony's claim.

Costs consequences related to litigation conduct

[23] The PR Parties argue that the circumstances of this case justify an award of solicitor-client costs against Colony. They say the following actions exemplify Colony's reprehensible litigation conduct:

1. The PR parties served a demand for particulars on Colony on October 7, 2015. The response from Colony was "evasive and unresponsive", according to the PR parties and it was followed by an expansion of Colony's pleadings. The PR parties, together with the Lacroix parties, brought a non-suit application at the close of Colony and GCNA's case. I found some of those pleadings to be deficient, although I did not grant the non-suit application: see *Non-Suit Decision* at para 157.
2. PR Construction served Colony and GCNA with two Notices to Admit Facts that they asserted were "largely based on documents produced with in the action" and related to facts not in dispute, like Colony's payment of certain invoices. Colony admitted 29 out of the 181 requested admissions in the first Notice, and 11 of 145 in the second. In the *Trial Decision*, a total of 150 of the admissions sought but not agreed to were found as facts. PR Construction notes it was served by Colony with its own Notice to Admit and PR Construction made 38 admissions out of the requested 49.
3. PR Construction questioned David Thompson from Colony for three days, including questioning on undertakings previously given, and answers and admission given during his testimony were relied on at trial. In contrast, Ronald from PR Construction was questioned for ten days, and his admissions were not used by Colony at trial.
4. Colony and GCNA maintained two allegations of fraud and conspiracy, which were largely based on factual assertions that during trial, Thompson agreed were untrue. Notwithstanding Thompson's concessions, neither party withdrew those allegations; rather, the allegations, while informally abandoned and not pursued in closing argument, were repeated in Colony's written submissions.

[24] The Lacroix parties quite properly point out that Colony's claims against Lacroix constituted a serious assault on his professional and personal integrity. The claims, including but not limited to theft, fraud, dishonesty, industrial espionage and professional misconduct, impacted his professional reputation and resulted in greatly increased costs associated with his defence. Colony continued to pursue the claims of fraud and conspiracy despite many of the associated claims either being dismissed (see e.g. *PR Construction Ltd v Colony Management Inc*, 2017 ABQB 600) or abandoned following the non-suit application. They emphasize that Colony's shifting and unsupported fraud and conspiracy claims were, in relation to the following, ultimately considered and dismissed: the formation of the PR Contract and specifically the flow-through provisions, the start date and related stand-by claims, and the formation of Change Order 15.

Importantly, Lacroix was not specifically cross-examined at trial on any of these serious fraud claims.

[25] Colony says none of this represents reprehensible litigation conduct, noting that not all unsuccessful claims of fraud, deceit, and bad faith attract awards of solicitor-client costs: see e.g. *Recovery Production Equipment v McKinney Machine Co*, 1998 ABCA 239 (allegations of bribery did not result in an award of solicitor-client costs). While I agree with Colony that not all unproven claims of fraud, deceit, and the like will necessarily attract awards of solicitor-client costs, I disagree with how Colony has characterized these particular claims against Ronald and Lacroix.

[26] The claims of fraud and conspiracy in this case were not simply unproven, having appeared to have a solid foundational basis prior to trial – these claims were wholly unsuccessful and appeared, at one point, to have been properly abandoned based on lack of evidence. Nonetheless, they were never fully withdrawn. To add insult to injury, Colony, in this application, sought to have its entire counterclaim costs paid by the Lacroix parties. This is illustrative of Colony's intransigence throughout these proceedings. I agree that the way Colony conducted the litigation in this case is deserving of condemnation by way of a costs award: see *VLM* at para 4; *Dechant v Law Society of Alberta*, 2001 ABCA 81 at para 8.

[27] Awards of solicitor-client costs are not automatic when there are unsuccessful allegations of fraud: *Hamilton v Open Window Bakery Ltd*, 2004 SCC 9 at para 26. Nor is an award of solicitor-client costs justified merely because a party was unsuccessful in litigation, even if the application had little merit: *Young* at 134. Other factors may be considered. Here, I do not find that an award of solicitor-client costs would be reasonable or proportionate, particularly considering the sizeable award that PR Construction has already received as the successful claimant. Instead, I am of the view that a multiplier would best compensate the PR and Lacroix parties for the conduct of Colony throughout.

[28] Considering the overall damages awarded in this case, a 2x multiplier based on Column 5 of Schedule C of the *Rules* would be a reasonable and proportionate consequence for Colony's questionable litigation conduct in this case. I am also satisfied that such a multiplier would reflect the degree to which the counterclaim increased the trial time and the complexity of the matter. This award is subject to the following restrictions.

Costs associated with pretrial applications

[29] Colony argues that Lacroix engaged in litigation misconduct by filing what they say were unmeritorious applications, namely the striking decision previously decided, the abandoned summary trial application that followed, and the midtrial non-suit application. Colony argues that this was conduct that unnecessarily lengthened and delayed the proceedings.

[30] With respect to the striking decision, costs of that application have already been determined. I am not troubled by the dismissal of the application to strike, and do not view it as a delay tactic as effectively suggested by Colony. I am, however, troubled by the remarkably similar arguments contained in the midtrial non-suit application: *Non-Suit Decision* at paras 22-25. I agree with Colony that the application was dubious and not an efficient use of resources; however, it did have some utility in that it resulted in Colony amending its pleadings, abandoning some of its

arguments and better articulating other arguments prior to trial. As such, each party shall bear its own costs with respect to the non-suit application.

[31] Similarly, while I understand Colony's concerns with respect to the abandoned summary trial application, the abandonment does not necessitate a separate award of costs against the Lacroix or PR parties. All parties share an obligation imposed by the *Rules* to move matters expeditiously towards resolution, and summary trials are an avenue parties should explore. It was not improper to do so in this case, considering the magnitude of the litigation and the incredible amount of time and money that would have been saved had the matter proceeded in that way. As noted by the Lacroix parties, the summary trial application was ultimately thwarted by Colony's filing of copious response materials that included Thompson's sworn affidavit asserting that Lacroix committed fraud, conspiracy, breach of confidence and contract. Each party will bear its own costs with respect to the abandoned summary trial application.

Second counsel costs

[32] Whether to award second counsel costs is a matter of judicial discretion. The Court of Appeal has outlined a number of factors as being relevant in exercising this discretion (*Alberta Productions Corporation v Canada Lands Company CLC Limited*, 2004 ABCA 25 at para 2 [*Alberta Productions*]):

The general importance of the issues, to the parties or to others

- The value of the case
- The complexity and scope of the issues
- The size of the trial record
- The manner in which opposing counsel conducted the case
- Whether second counsel addressed the court

[33] The PR parties seek a second counsel fee across the entire action. Flowing from the "complexity [of the legal issues] and the consistent involvement of multiple counsel" by all parties. Colony does not oppose the application. Applying the factors articulated by the Court of Appeal in *Alberta Productions*, I find that a second counsel fee is appropriate in this case.

Consequence of settlement offer

[34] In the initial batch of written submissions provided to me on costs, the PR parties disclosed that a formal offer to settle had been made to Colony in accordance with r 4.29 of the *Rules of Court* and asserted its entitlement to double costs on that basis. The offer itself was disclosed on the hearing date.

[35] The jurisprudence associated with r 4.29 provides that in order for a formal offer to settle to justify an award of double costs, it must represent a genuine compromise, which is to be determined at the time the offer was made: *Norris v Norris*, 2024 ABKB 600 at para 108; *Breen v Foremost Industries*, 2024 ABKB 9 at para 37; *Allen (Next Friend of) v University Hospitals Board*, 2006 ABCA 101 at para 13. It also requires that the judgment awarded be equal or more favourable to the plaintiff than the offer, including interests and costs, as assessed on the date of the offer: *Whitford v Agrium Inc*, 2007 ABCA 109 at para 3.

[36] Colony argued that although the PR parties were granted judgment for an amount somewhere in the realm of \$8 million, that amount included post-judgment interest. As of the date the offer was made (October 21, 2021), the post-judgment interest that would have accumulated would *not* have resulted in a judgment exceeding the amount contained the formal offer to settle. The burden to prove that the judgment awarded is equal to or greater than the formal offer rests on the party seeking to rely on the rule: *Madge v Meyer*, 2000 ABQB 156 at para 14.

[37] Following the hearing, PR Construction reviewed the applicable jurisprudence and provided a follow-up letter in which they appropriately conceded that the double costs rule was not engaged.

GCNA's liability for costs

[38] In my reasons for decision, I found that GCNA was liable to PR Construction pursuant to the Labour and Materials Bond for "the amount of the judgement it recovers against Colony in contract, including contract interest, plus tariff costs." Colony argues that this represents a final order which limits GCNA's indemnity to PR Construction alone and to tariff costs.

[39] I disagree. This trial finding was clearly directly related to liability as expressed under to the terms of the Bond itself. Responsibility for the litigation costs in this case, writ large, are not limited by the terms of that Bond. The Court enjoys a broad discretion to order payment of costs: *Aubin v Quantiam Technologies Inc*, 2022 ABCA 288 at para 51; *Great North Equipment Inc v Penney*, 2025 ABKB 42 at paras 83-86; *Wang v Alberta*, 2022 ABCA 79 at para 20; *Jones v Green*, 1995 CanLII 9223 (ABKB); *Court of King's Bench Act*, RSA 2000, c C-31, s 21.

[40] As noted by the Lacroix parties, GCNA joined forces with Colony early on in the litigation process by hiring the same law firm to represent their interests. Together, Colony and GCNA defended the claim, and named Lacroix as a defendant in the counterclaim, which asserted fraud and conspiracy as against Ronald and Lacroix personally. Together, Colony and GCNA pressed forward with those claims to the bitter end: see *Ernst & Young Inc v Central Guaranty Trust Company*, 2010 ABQB 26 at para 110.

[41] GCNA is therefore jointly and severally liable for any costs payable to PR and Lacroix parties ordered under this judgment.

Disposition

[42] The PR parties are jointly entitled to 2x Schedule C, Column 5 costs as against Colony and GCNA jointly, plus disbursements, subject to the identified exclusions.

[43] The Lacroix parties are entitled to 2x Schedule C, Column 5 costs as against Colony and GCNA jointly, plus disbursements subject to the identified exclusions.

[44] The parties will each bear their own costs in relation to Lacroix's counterclaim, the summary trial application, and the midtrial non-suit application.

[45] The parties are directed to attend before an Assessment Officer should any disputes arise with respect to PR or Lacroix's Bill of Costs.

Heard at the City of Edmonton, on the 14th day of October, 2025.

Dated at the City of Edmonton, Alberta this 19th day of November, 2025.

Tamara L. Friesen
J.C.K.B.A.

Appearances:

B. McLean and M. Pruski
for PR Construction and Paul Ronald

J. Thorlakson, A. Alibhai and C. Dayan
for Colony Management Inc and Guarantee Company of North America

R. Fleming
for Kevin Lacroix and 0989842 BC Ltd.