

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Zou v. Miracon Development Inc.*,
2026 BCSC 85

Date: 20260120
Docket: S258821
Registry: New Westminster

Between:

Jinlu Zou and Huan Yi Zhou

Plaintiffs

And

Miracon Development Inc.

Defendant

Before: The Honourable Mr. Justice Blok

Reasons for Judgment on Costs

The Plaintiffs, appearing in person:

J. Zou
H. Zhou

Counsel for the Defendant:

P. Sheppard

Submissions by Defendant:

December 5, 2025

Submissions by Plaintiff:

December 12, 2025

Reply Submissions by Defendant:

December 24, 2025

Place and Date of Judgment:

New Westminster, B.C.
January 20, 2026

I. Introduction

[1] On December 12, 2025, the plaintiffs obtained judgment against the defendant for sums totalling \$4,800. The reasons for judgment may be found at 2025 BCSC 2476.

[2] The defendant had asked for the opportunity to make submissions on costs and so in the reasons for judgment I set a timetable for the exchange of submissions. Those submissions have now been received and considered.

[3] The full context of this matter is set out in the earlier reasons for judgment, but briefly, this was a dispute between landowners and a builder who was constructing a home on neighbouring property.

[4] The defendant asked for permission to enter onto the plaintiffs' property to take some protective measures in advance of excavation work, but the plaintiffs refused. Excavation work commenced despite the refusal, but the work resulted in portions of the plaintiffs' property sloughing away and caused parts of a fence to collapse. The defendant's employees briefly entered onto the plaintiffs' property to remove fallen fence panels and brace the remaining fence, but the plaintiffs continued to deny access for any remediation work or further protective measures.

[5] Ultimately, I concluded that the plaintiffs, in refusing the defendant's offers to remediate, had failed to mitigate their damages.

[6] The plaintiffs, who are self-represented, brought claims in trespass, nuisance and negligence, and they also claimed relief under a variety of statutes. They sought damages, a certificate of pending litigation (CPL) and an injunction. The damages they sought were in the range of \$39,600, excluding items that would fall under costs, although they also sought additional damages in an unascertained amount for the placement of allegedly substandard backfill.

II. Positions of the Parties

A. Defendant

[7] The defendant argues that it was substantially successful and so it should be awarded costs.

[8] In this regard, the defendant notes the disparity between the amount claimed and the amount awarded, the fact that the award is only slightly more than the defence offer (\$4,200), and its success on various issues: failure to mitigate, the claims in negligence and alleged statutory breaches, and the claimed remedies of a CPL and an injunction. The defendant also says the plaintiffs ought to have accepted its settlement offer.

[9] In addition, the defendant submits:

- a) It should be awarded lump-sum special costs of approximately \$1,200 for the effort involved in responding to the plaintiffs' AI-generated fictional cases (see paras. 57 and 80 of the reasons for judgment);
- b) Even if the plaintiffs could be said to have been "substantially successful", the amount they have recovered is within the monetary jurisdiction of the Provincial Court under the *Small Claims Act*, R.S.B.C. 1996, c. 430 and, having failed to show sufficient reason for bringing this matter in Supreme Court, they are not entitled to costs other than disbursements; and
- c) The plaintiffs should not be allowed to recover the cost of their land survey.

B. Plaintiffs

[10] The plaintiffs emphasize that this case arose out of the defendant's wrongful conduct, the Court found liability in the plaintiffs' favour and the plaintiffs were awarded damages against the defendant. The plaintiffs say they were successful at the core of the dispute and should be awarded Scale B costs.

[11] As to proceeding in Supreme Court, the plaintiffs say that when they filed their proceedings, their land had been damaged, and the defendant had not completed restoration. Injunctive relief “remained a live and reasonable concern”.

[12] As to the plaintiffs’ references to AI cases, they say the defence argument is “overstated and legally irrelevant”. They note they are self-represented litigants, and these cases were referred to only as illustrations of general legal principles. They note the Court did not use these cases and no prejudice or delay was caused.

[13] The plaintiffs submit that the costs of their survey ought to be allowed. The survey was necessary to document the boundary and the extent of disturbance, and to preserve a record of the scene before it was altered.

C. Defendant – Reply

[14] The defendant made brief reply submissions on the plaintiffs’ use of AI-generated cases, noting that prejudice was in fact caused because the defendant was put to the task of preparing written submissions in response to those fictitious references. Costs consequences for this type of misbehaviour should not turn on whether the Court or the opposing litigant was in fact duped.

III. Discussion

Substantial Success

[15] I am satisfied that it is proper to characterize the plaintiffs as having been substantially successful in the litigation. The defendant focuses on the disparity between the claimed amount and the award, but “substantial success” is not a mathematical exercise; instead, it is a general assessment based on a variety of factors. Here, the plaintiffs were successful in establishing liability in both trespass and nuisance, and they were awarded damages. The fact that they did not succeed on their other causes of action or in refuting the defence of failure to mitigate, does not mean they were not substantially successful.

[16] As for the disparity between the amount claimed and the amount awarded, costs consequences for those kinds of disparities are usually addressed through the offer to settle process. Here, the defence offer fell short of the award.

Monetary Jurisdiction – Rule 14-1(10)

[17] Rule 14-1(10) provides as follows:

(10) A plaintiff who recovers a sum within the jurisdiction of the Provincial Court under the *Small Claims Act* is not entitled to costs, other than disbursements, unless the court finds that there was sufficient reason for bringing the proceeding in the Supreme Court and so orders.

[18] “Sufficient reason” is a term that is not defined in the *Rules of Court*, but it is not confined to the quantum of the claim or award and may arise from other circumstances: *Gradek v. DaimlerChrysler Financial Services Canada Inc. and Fletcher*, 2011 BCCA 136 at para. 19. The burden is on the plaintiffs to establish “eligible circumstances that are persuasive and compelling to justify ‘sufficient reason’”: *Gehlen v. Rana*, 2011 BCCA 219 at para. 37.

[19] Here, the plaintiffs argue that they were justified in bringing this action in Supreme Court because “injunctive relief remained a live and reasonable concern” at the time they filed their notice of civil claim. I do not agree. At the time of filing, excavation work was complete and the area was being backfilled. The fleeting trespass by Miracon’s employees to deal with the fallen fence had taken place nearly two months earlier and there was no reason to apprehend that it would be repeated. There was no reasonable prospect that injunctive relief might be engaged in these circumstances.

[20] The plaintiffs also submit they were “not required to gamble” that the defendant would later remediate the property as it did or that damages would be assessed at a lower amount than they claimed. However, I conclude that at the time the claim was filed, there was no reasonable prospect that damages would exceed the small claims limit. Had it emerged that there was much more damage than was apparent at the time of filing, the plaintiffs could have asked that the matter be transferred to Supreme Court.

[21] In brief, the plaintiffs have not met their burden of demonstrating there was sufficient reason for bringing their action in Supreme Court.

Use of AI-Generated Cases

[22] I accept that the plaintiffs' references to AI-generated cases, which were shown to be AI "hallucinations", stemmed from AI ignorance and legal unfamiliarity rather than as a deliberate attempt to mislead. I also accept that the defendant was put to the task of checking those references (although that part of the task would have taken minimal time and effort) and preparing brief written submissions in reply.

[23] I appreciate that using false case references generated by generative artificial intelligence programs is a highly concerning matter, as noted in several (real) cases including *Zhang v. Chen*, 2024 BCSC 285, where a lawyer used fictional cases generated by AI. I also appreciate that self-represented litigants also have a responsibility to not mislead the Court. However, the seriousness of this type of transgression depends on the circumstances. Here, I am satisfied that these self-represented plaintiffs likely did not know any better. I also note that counsel for the defendants immediately suspected the cases were fictitious as he made a comment to that effect during the hearing. No one was misled.

[24] This is not a situation where a lawyer acted unprofessionally, or where a self-represented litigant set out to mislead the Court. Generative AI is new to many people, and its limitations may not be widely known. While I am satisfied that a sanction is warranted, I am also satisfied it ought to be modest, in keeping with the nature of the transgression, the amount involved in this case and the fact that this is a small claims-level case where ordinary tariff costs are not awarded.

[25] A similar situation arose in *J.R.V. v. N.L.V.*, 2025 BCSC 1137, where the Court awarded costs of \$200 against a self-represented litigant who was unaware that generative AI might well provide non-existent case citations. I consider that to be an appropriate sanction here. I would not make an award of special costs in these circumstances.

Survey Cost

[26] The plaintiffs engaged a surveyor, who surveyed both the property boundary and the relevant portions of the excavated area. The evidence shows the surveyor was engaged relatively soon after the excavation work had taken place.

[27] I am satisfied that the cost of the survey ought to be allowed as a disbursement. It was reasonable for the plaintiffs to determine, or try to determine, whether the excavation work had taken place beyond the property line, thus amounting to a trespass. The survey was also useful to the Court, as noted at para. 64 of the reasons for judgment.

IV. Conclusion

[28] The plaintiffs were substantially successful in this action, but Rule 14-1(10) applies here as the plaintiffs have not shown a sufficient reason for bringing this matter in Supreme Court. Accordingly, the plaintiffs shall recover their disbursements only. Those disbursements are to include the cost of the survey obtained by the plaintiffs.

[29] Costs of \$200 are awarded against the plaintiffs for having submitted fictitious AI-generated cases in their submissions to the Court.

[30] The respective costs awards are to be set off against one another, such that defendant will pay the plaintiffs' disbursements, either as agreed or as assessed by the registrar, less \$200.

"Blok. J."