COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Anderson v Double M Construction Ltd.,* 2026 BCCA 444

Date: 20261109
Docket: CA51317

Between:

Cheryl Anderson

Appellant
(Plaintiff)

And

Double M Construction Ltd. doing business as Owl's Nest RV Resort, Myles Murtack, Bill Powell, and Joan Powell

Respondents
(Defendants)

Before: The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Iyer
The Honourable Justice Warren

On an application to vary: An order of the Court of Appeal for British Columbia, dated June 8, 2026 (*Anderson v Double M Construction Ltd.*, Vancouver Docket CA51317).

Counsel for the Appellant:	N. Kamoosi M. Robson, Articled Student
Counsel for the Respondents:	T.W. Pearkes
Place and Date of Hearing:	Vancouver, British Columbia September 24, 2026
Place and Date of Judgment:	Vancouver, British Columbia November 9, 2026

Written Reasons by:
The Honourable Justice Iyer

Concurred in by:
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Warren

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Summary:

The appellant applies to vary an order requiring her to post security of $5,000 for costs of her appeal. She argues that as she is impecunious, the justice was required to conclude that her appeal was "bound to fail" before awarding security for costs. It was not sufficient for the justice to characterize the appeal as "weak".

Held: Application to vary dismissed. In deciding an application for security for costs, the justice must determine where the interests of justice lie in the particular case. The judge's preliminary assessment of the merits is weighed with other relevant factors, including the appellant's financial means. The fact that an applicant is impecunious does not change the test so as to require the judge to find the appeal has no merit before awarding security for costs.

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Reasons for Judgment of the Honourable Justice Iyer:

Introduction

[1] The appellant, Cheryl Anderson, applies to vary the order of a justice sitting in chambers requiring her to post security of $5,000 for costs of her appeal. She submits the justice made two related errors: he applied the wrong standard for assessing the merits of the appellant's underlying appeal and he misconceived material facts affecting his assessment of the merits of the appeal.

Background

[2] The underlying appeal arises from a dispute over the appellant's lease of a property in a private campground and damage to chattels, including a vehicle, that she kept on site. The corporate respondent, Double M Construction Ltd. doing business as Owl's Nest RV Resort ("Double M"), is the campground operator, and the individual respondents are a shareholder and two current or former employees of Double M.

[3] After Ms. Anderson's move to Double M in 2016, the relationship between the parties deteriorated, resulting in complex and protracted litigation. The proceedings leading to the underlying appeal concerned Ms. Anderson's claim that the respondents deliberately damaged her property, trespassed, bullied, and defamed her; and the respondents' counterclaim that Ms. Anderson had not fully paid the lease price or annual licence fee, and had defamed them. Both sides sought

damages; Ms. Anderson sought to remain on the property and the respondents sought vacant possession.

[4] Over seven days in 2024 and 2025, the judge heard applications by both sides. Ms. Anderson, who was unrepresented at the time, sought orders to strike the respondents' pleadings, a vexatious proceedings order, and various types of costs. She also sought to set aside an order made by another judge who had previously ruled on multiple applications by both parties, based on the alleged misconduct of the respondents in those proceedings. The respondents sought orders striking Ms. Anderson's pleadings and declarations that she had repudiated her contracts with Double M, that it is entitled to vacant possession, and that the judge should grant a vexatious proceedings order against Ms. Anderson. They also sought damages for defamation and various types of costs. Both parties sought determination of these matters by summary trial.

[5] In lengthy reasons indexed at 2026 BCSC 53, the judge found the matter suitable for summary determination. She struck Ms. Anderson's pleading in its entirety and dismissed her claim. She found Ms. Anderson had repudiated her contracts with Double M and that they were at an end. She declared Double M to be the owner of the property and required Ms. Anderson to deliver vacant possession. She ordered Ms. Anderson to pay damages for defamation to two of the individual respondents. Finally, she ordered special costs against Ms. Anderson based on her conduct during the litigation.

[6] Ms. Anderson (represented by pro bono counsel) appealed the judge's order but confined her grounds of appeal to the judge's treatment of what she characterizes as her "bailment claim", saying the judge failed to address or provide adequate reasons for dismissing that claim.

[7] Ms. Anderson applied for a stay pending appeal and a waiver of fees, and the latter was granted. The respondents sought payment of security for costs of the appeal, in the event a stay was granted. Justice Butler heard the applications for a stay and for security. In reasons indexed at 2026 BCCA 103 [Stay and Security

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RFJ], he dismissed Ms. Anderson's application for a stay, applying the three-part test in *RJR-MacDonald Inc. v Canada (Attorney General)*, 1994 CanLII 117, [1994] 1 SCR 311 (SCC). He found Ms. Anderson had not shown her appeal raised a triable issue, characterizing her arguments on appeal as "bald assertions unsupported by concrete demonstration of legal or factual errors": Stay and Security RFJ at para 36. Accordingly, it was not necessary for him to address the respondents' application for security and it was adjourned generally.

[8] The respondents renewed their application for security, which was heard in chambers on June 8, 2026. In brief, unpublished, oral reasons delivered that day, a justice granted the application and ordered Ms. Anderson to post security of $5,000 within 30 days, failing which the respondents could apply to have the appeal dismissed: *Anderson v Double M Construction Ltd.* (8 June 2026), Vancouver CA51317 (BCCA) (Chambers) [Reasons].

Chambers Decision

[9] At the outset of the Reasons, the justice noted the onus is on an appellant to show why security should not be ordered, and that the timeliness of the application, the means of the appellant, and the merits of the appeal are relevant considerations: Reasons at para 2.

[10] The justice was satisfied the application was timely. He noted the tension between the obstacle a security for costs order poses for an appellant of limited means and the potential harm of non-recovery of costs to a respondent who has been successful below: Reasons at para 7.

[11] He discussed the merits as follows:

> [8] Having read the pleadings, the reasons of Justice MacNaughton below, and the factums of both parties, which I am fortunate to be in a position to review, I am of the opinion that it is more likely the respondents will suffer irreparable harm if the order is refused than the appellant will suffer such harm if security is ordered.
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> [9] That is because I see little prospect the appeal will succeed, for reasons set out in the respondents' memorandum of argument. The appeal as framed is apparently, to some extent, inconsistent with the pleadings that

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> framed the case before the trial judge. That, in a case where the trial judge expressed difficult identifying issues and claims, and expressly ordered the appellant to identify the claims she intended to advance at trial. Despite that order the case, as framed and apparently argued, focused primarily upon intentional and willful, and at most negligent acts, and not upon liability of the respondents as a bailee.
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> [10] A division of this Court in *Chung v. Shin*, 2017 BCCA 355, helpfully discussed the merits criteria in the test, observing:
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> > [24] … If the appeal appears to be meritorious and a security order might prevent an appellant without means from pursuing it, security for costs will generally not be ordered: *Gardezi v. Canadian Union of Public Employees, Local 3495*, 2016 BCCA 462 at para. 10. On the other hand, if an appeal appears to be weak, the impecuniosity of an appellant will not prevent an order for security for costs from being issued, as "without an order for security for costs, the appeal is a gamble by the appellants with the respondents' money": *Daymax Management Inc. v. WHA 820 Holdings Ltd.*, 2004 BCCA 414 (in Chambers) at para. 24.
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> [11] The merits of this appeal, like the appeal considered in *Chung*, in my view, are "not strong". In my view, security should be required.
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> [12] The respondents seek an order requiring the appellant to post security in the sum of $9,750. In my view, that request is on the high side.

[12] The justice declined to order security in the amount of $9,750 as the respondents sought because he considered it high. Instead, he ordered the appellant to post $5,000 security within 30 days and stayed the appeal until security had been posted: Reasons at paras 12-14.

Issues

[13] The appellant's written submission frames two issues: did the judge err in law or principle by applying an overly high standard for assessing the merits of the appeal, or by misconceiving key facts pertaining to his assessment of the merits.

[14] As the appellant effectively abandoned the second issue in oral argument, it is not necessary to address it.

Assessment of the Merits of the Underlying Appeal

[15] There is no dispute that the standard of review on a variation application is deferential. As recently stated in *Ashraf v Jazz Aviation LP*, 2024 BCCA 45 at

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para 3, “the applicant must demonstrate that the justice was wrong in law or principle or misconceived the facts”. It is worth remembering why this is so.

[16] Discretionary decisions are those which have no single right answer, in which the decision maker of first instance is called upon to weigh the relevant considerations and exercise judgment in arriving at an outcome. In such cases, absent reviewable error, the interests of finality and conservation of judicial resources militate against appellate intervention.

[17] An application for security for costs has these features. The justice hearing the application is best positioned to weigh the competing considerations, which include the appellant’s financial means, the merits of the appeal, the timeliness of the application, and the likelihood costs will be recoverable. The ultimate question is whether the order would be in the interests of justice: *Arbutus Bay Estates Ltd. v Canada (Attorney General)*, 2017 BCCA 133 at para 17 (Chambers).

[18] Achieving the interests of justice where the appellant is of limited means and it is unlikely the respondent will recover its costs is particularly challenging. Where, as here, timeliness in applying for security is not an issue, assessment of the merits of the appeal takes on heightened importance for both sides.

[19] I appreciate the impetus behind the appellant’s argument that it would be unjust to effectively end an appeal by ordering security for costs if the appeal has any chance of success, no matter how small. From the perspective of an appellant, it feels wrong that their financial constraints will end their appeal whereas an appellant with more means whose appeal is as weak or even weaker can proceed.

[20] However, from the respondents’ perspective it also feels wrong that, having succeeded in the court below, they must now defend against the appeal with very little chance of recovering those costs.

[21] That is why the interests of justice require a case-specific assessment and contextual balancing of all relevant factors. In my view, mandating a determination that the appeal is “bound to fail” before ordering security to be posted by an

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appellant with limited financial means would wrongly collapse a multi-factorial and nuanced case-by-case determination into a categorical rule.

[22] This is for two related reasons. First, the interests of justice analysis only requires a preliminary assessment of the merits: *R.G.B. v J.G.S.*, 2025 BCCA 60 at para 35 (Chambers). Mandating that chambers justices conclude an appeal has no prospect of success is an invitation to delve more deeply into the merits and reach definitive conclusions about the issues raised in support of appellate intervention. This Court has expressed doubt that a single justice sitting in chambers has authority to decide the merits of an appeal: *Sekhon v Armstrong*, 2003 BCCA 318 at para 28; *E.B. v British Columbia (Child, Family and Community Services)*, 2020 BCCA 263 at para 15 (Chambers).

[23] Second, the appellant's position wrongly turns consideration of the merits from one factor in the analysis into a precondition in that where the appellant is impecunious, security for costs may only be considered if the justice determines the appeal is bound to fail.

[24] In my view, none of the factors relevant to the assessment of the interests of justice in a security for costs application are categorical. The merits of an appeal may range from overwhelmingly strong to virtually hopeless. Similarly, "impecunious" appellants will have different financial constraints. Even if these were the only relevant factors in a particular case, balancing them to achieve the interests of justice—for both appellant and respondent—calls for the exercise of judgment grounded in the circumstances of that case.

[25] The appellant submits that this Court's decision in *Chung v Shin*, 2017 BCCA 355 [*Chung*], which held that the impecuniosity of an appellant will not prevent an order for security if the appeal "appears to be weak", is inconsistent with an earlier line of cases. She characterizes those cases as holding that an impecunious appellant should not be ordered to post security unless their appeal is "bound to fail", citing *Focken v Fraser Health Authority*, 2023 BCCA 81 at para 42 (Chambers)

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[*Focken*], *Campbell v The Bloom Group*, 2022 BCCA 364 at para 46 (Chambers), among others.

[26] I do not agree the cases support the proposition that there is a mandatory "bound to fail" standard against which the merits are assessed. Typically, these decisions cite a few cases, after which the justice describes the strength of the appeal in their own words: including "weak" (*Chung*), "bound to fail" (*Focken*), "uphill challenge" (*England Securities Ltd. v Ulmer*, 2023 BCCA 11 at para 22 (Chambers)), or "little prospect of success" (*Moradi v Whole Foods Market*, 2026 BCCA 105 at para 34 (Chambers)). These authorities demonstrate that an assessment of the merits of the appeal is case-specific and falls along a spectrum, not that it must pass a fixed threshold.

[27] Here, the justice considered how to balance what he described as the irreparable harm to each party to achieve the interests of justice. He considered the likelihood of the respondent suffering irreparable harm was greater than the appellant by reference to his assessment of the merits of the appeal. He explained the basis for that assessment: the pleadings, the reasons below, and the factums. He concluded that he saw "little prospect the appeal [would] succeed" and, citing *Chung*, that it was "not strong": Reasons at paras 9, 11. He explained why: he agreed with the respondents' arguments, and he considered the appellant's emphasis on bailment as the issue on appeal to be inconsistent with the primary focus of her pleadings and submissions below.

[28] Further, having concluded the interests of justice favoured an order for security, the justice turned his mind to the amount and ordered security in an amount significantly lower than that sought by the respondents.

[29] In my view, the justice made no error in his treatment of the merits assessment on an application for security for costs.

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Disposition

[30] For these reasons, I would dismiss the application to vary.

"The Honourable Justice Iyer"

I AGREE:

"The Honourable Madam Justice DeWitt-Van Oosten"

I AGREE:

"The Honourable Justice Warren"

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