

In the Court of Appeal of Alberta

Citation: Mosca v Landmark West Capital Management Inc, 2026 ABCA 281

Date: 20260828

Docket: 2501-0261AC

Registry: Calgary

Between:

**Giovanni Mosca, Pasquale Mosca and the Estate of Marlene June Mosca by its personal
representatives, Frank Mosca and Linda Mosca**

Respondents

- and -

Landmark West Capital Management Inc.

Applicant

The Court:

**The Honourable Justice Jolaine Antonio
The Honourable Justice Jane Fagnan
The Honourable Justice Joshua B. Hawkes**

Memorandum of Judgment

Application to Reopen and Reargue

Memorandum of Judgment

The Court:

[1] In a memorandum of judgment filed April 27, 2026, this Court awarded costs of both an appeal and cross-appeal to the respondents against the applicant Landmark West Capital Management Inc: *Mosca v Landmark West Capital Management Inc*, 2026 ABCA 136 [*Mosca*]. No formal judgment has yet been entered. Landmark applies to vary the costs award, arguing the parties should bear their own costs.

[2] On August 26, 2025, a judge of the Court of King’s Bench made an order in this matter restoring a certificate of *lis pendens* registered by Landmark and refusing to order disclosure of certain documents from the respondents. Both sides appealed: the respondents appealed the restoration of the certificate of *lis pendens*, and Landmark cross-appealed the refusal to order disclosure.

[3] After receiving the judge’s reasons, a dispute arose over the wording of the order. Ultimately, Clause 3 was included in the order, requiring Landmark to “forthwith withdraw the CLP” upon the respondents amending their statement of claim to remove a claim for specific performance. Landmark did not appeal Clause 3 of the order.

[4] The respondents sought to amend the statement of claim to remove the claim for specific performance, but Landmark refused to consent. On February 24, 2026, the respondents asked this Court to grant the amendment as “consequential relief” related to their appeal, or alternatively to hear an application to amend at the same time as the appeal. On March 4, Landmark’s counsel objected. He asserted the respondents were trying to rely on “the very decision they continue to appeal”. Landmark did not object to the proposed amendment on its own but objected to the respondents relying on Clause 3 “for the purpose of automatically triggering the discharge of Landmark’s CLP” as a consequence of that amendment.

[5] On March 5, the panel directed that the respondents’ application to amend should be heard at first instance in the Court of King’s Bench, not in this Court. It recommended the parties proceed expeditiously in King’s Bench.

[6] On March 16, the respondents applied in the Court of King’s Bench for permission to amend their statement of claim.

[7] On March 17, Landmark’s counsel wrote to the panel to seek direction. He amplified his concerns about what he called an abuse of process by the respondents. He sought “the Court’s clarification on its intended scope regarding the appeal if/when the [respondents’] specific

performance amendment is approved” and asked the Court to regulate the tone of communications between counsel. The panel indicated it would not provide direction in response to these requests.

[8] On March 23, the respondent’s amendment application was granted. The panel received letters from both parties. The respondents’ counsel advised its amendment application had been granted, but nevertheless he indicated his clients wished to proceed with the appeal as scheduled on April 8. Landmark’s counsel clarified that while a King’s Bench judge had granted the amendment, the judge had not commented on the CLP. Counsel took the position that the respondents’ appeal was now moot because they had “embraced and acted in compliance” with the initial order, but Landmark’s appeal should proceed. He asserted the question of “what happens with Landmarks’ CLP going forward” was still outstanding. He proposed two options: the panel could hear “all the other grounds” raised before the King’s Bench judge and decide “whether any can sustain Landmark’s CLP”, or it could remit that question back to King’s Bench.

[9] The panel advised that the appeal would proceed as scheduled. It invited counsel to address the effect of intervening events on the issues raised in their factums.

[10] After hearing the appeal, the panel dismissed the respondents’ appeal as moot because, after the statement of claim was amended, Landmark became subject to a binding court order requiring it to “forthwith withdraw the CLP”. The panel also dismissed Landmark’s cross-appeal. It awarded costs of both appeals to the respondents according to the Schedule C tariff, noting “[t]he hearing of the [respondents’] appeal likely would not have been necessary if Landmark had complied with its obligation to discharge the CLP ‘forthwith’ after the [respondents] obtained permission to amend their statement of claim”: *Mosca* at para 23.

[11] On July 27, Landmark filed the current application to vary this Court’s costs award. In its supporting materials, it recounts the procedural history set out above and asserts it could not have complied with Clause 3, “a contested provision of [the] order, when the very basis of that order was under appeal to this Court”.

[12] Applications of this kind are typically heard in writing only. This Court issued a deadline for the respondents to file any responding materials, including any submissions on the costs of this application. No further submissions were received.

[13] Where a formal judgment has not been entered, as here, this Court may reconsider an appeal: *R v Ouellette*, 2022 ABCA 301 at para 23; *McNalley v Alberta (Director of SafeRoads)*, 2025 ABCA 283 at para 3. Landmark relies on Rule 9.13 of the *Alberta Rules of Court*, Alta Reg 124/2010, which allows for a judgment to be varied on application “if the Court is satisfied there is a good reason to do so”. Arguably, its application would fit more neatly under Rule 14.38(2)(c), which allows for an appeal to be reopened and reargued. Either way, this Court is to be guided by the same considerations: *Can v Alberta Securities Commission*, 2023 ABCA 202 at para 25. As stated in *Tailleur v McKiernan*, 2020 ABCA 199 at para 2:

The reargument of an appeal is only allowed in exceptional circumstances, and the test is high. The purpose of reargument is to address situations where the Court has been misled in regard to the record before it or the nature of the issues, or where it appears that the Court overlooked or misapprehended the evidence in a significant respect, or where patent errors are found in the decision or calculations. A rehearing is not meant to allow the parties to make or remake arguments that might have been or were made on the original hearing of the appeal...

[14] The panel was aware of the relevant procedural history when it made its initial costs order. Landmark has not established any exceptional circumstances that would warrant rearguing or reopening the costs decision. The panel was not misled, it did not overlook or misapprehend the evidence, and there was no patent error with its decision. Landmark's application is denied.

[15] As the respondents made no submissions in relation to this application, no costs are awarded for the application.

Written submissions filed on July 27, 2026

Memorandum filed at Calgary, Alberta
this 28th day of August, 2026

Antonio J.A.

Fagnan J.A.

Hawkes J.A.

Appearances:

P.M. Osadetz (no submissions)
for the Respondents

T. Runyowa
for the Applicant