COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *1316215 BC Ltd. v Davis,*
2026 BCCA 449

Date: 20261117
Docket: CA51156

Between:

1316215 BC Ltd.

Appellant
(Defendant)

And

Jessica Ashley Davis

Respondent
(Plaintiff)

And

Edward Archibald, 1270943 BC Ltd., Accorde (Wilson Crescent) Properties Ltd., 1249510 BC Ltd., Linden Street Management Inc., 1317439 BC Ltd., Phantom Projects Ltd., Andrea Neumann, Cloudburst Creek Property Inc., Michael Anthony Henson, Angie Vazquez, Tanya Kong, and Gerard Biegel

Respondents
(Defendants)

Before: The Honourable Mr. Justice Riley
The Honourable Justice MacNaughton
The Honourable Justice Brundrett

Supplementary Reasons to *1316215 BC Ltd. v Davis*, 2026 BCCA 338,
Vancouver Docket CA51156.

Counsel for the Appellant:	W.J. McMillan J.E. Les
Counsel for the Respondent, Jessica Ashley Davis:	P.S. Boles
Place and Date of Hearing:	Vancouver, British Columbia June 15, 2026
Place and Date of Judgment:	Vancouver, British Columbia August 12, 2026

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Written Submissions Received:	September 2, 2026 October 9, 16, 20, 26, 2026
Place and Date of Supplementary Judgment:	Vancouver, British Columbia November 17, 2026

Supplementary Reasons by:
The Honourable Mr. Justice Riley

Concurred in by:
The Honourable Justice MacNaughton
The Honourable Justice Brundrett

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Summary:

These are supplementary reasons on costs.

Held: The appellant, 1316215 BC Ltd., who was successful on the appeal, is awarded special costs of the chambers application in the court below and ordinary costs of the appeal.

Supplementary Reasons for Judgment of the Honourable Mr. Justice Riley:

Introduction

[1] These are supplementary reasons on costs. By way of background, the appellant, 1316215 BC Ltd. ("1316 Co."), was successful on appeal in overturning an order dismissing its application before a Supreme Court judge in chambers seeking removal of a certificate of pending litigation ("CPL"). In reasons indexed as *1316215 BC Ltd. v Davis*, 2026 BCCA 338, this Court found Ms. Davis's conduct in registering a second CPL while there was a pending application to cancel a prior CPL under s 252 of the *Land Title Act*, RSBC 1996, c 250 [*LTA*], was an abuse of process. The Court allowed the appeal and remitted the matter to the court below, with 1316 Co.'s application for removal of the second CPL to be assessed as if it were an application to cancel the first CPL under s 252 of the *LTA*.

Positions of the Parties

[2] 1316 Co. seeks special costs of the underlying chambers application and of the appeal. 1316 Co. says special costs are warranted for the chambers application, considering this Court's finding that Ms. Davis's registration of the second CPL was an abuse of process, and other allegedly reprehensible features of Ms. Davis's litigation conduct. In particular, 1316 Co. alleges that Ms. Davis's pleadings contained unproven, scandalous allegations of fraud and collusion, and that Ms. Davis intentionally disregarded filing deadlines to gain strategic advantage. 1316 Co. argues Ms. Davis should be ordered to pay special costs of the appeal based on the alleged continuation of her reprehensible litigation conduct in this Court.

[3] Ms. Davis submits that 1316 Co., as the successful party, should receive ordinary costs for the chambers application and the appeal. With regard to the

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chambers application, she maintains that the allegations of fraud and collusion advanced in her originating pleadings have yet to be determined on their merits, and there is no basis in fact or in law for finding that she sought to gain strategic advantage through non-compliance with the filing deadlines in the *Supreme Court Civil Rules*, BC Reg 168/2009. She emphasizes that this Court did not disturb the judge's finding that her second claim was a *bona fide* protective action. The only "abusive" feature of her conduct in the court below was in filing a second CPL while 1316 Co.'s application to cancel the first CPL was pending. Ms. Davis contends that this conduct, while found to be an abuse, was not reprehensible and thus not deserving of an order of special costs against her. Finally, Ms. Davis says her conduct in defending the appeal does not justify an award of special costs.

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Discussion

[4] Special costs are punitive and exceptional. In the Supreme Court of British Columbia, special costs are reserved for "reprehensible" conduct in the course of the litigation. This is said to include conduct that is "scandalous or outrageous", or "milder forms of misconduct deserving of reproof or rebuke": *Morriss v British Columbia*, 2021 BCCA 451 at para 21, citing *Garcia v Crestbrook Forest Industries Ltd*., 1994 CanLII 2570, 9 BCLR (3d) 242 (CA) at para 17.

[5] With regard to costs of an appeal, special costs are generally reserved for reprehensible, abusive, or oppressive conduct in the course of the appeal proceedings: *Martyn v Walton*, 2025 BCCA 223 at para 94 [*Martyn*], citing *Seikhon v Dhillon*, 2019 BCCA 438 at para 5 (Chambers). While earlier misconduct may inform the assessment, standing on its own it is not normally sufficient to support an award of special costs of the appeal: *Martyn* at paras 94-96; *Morton v Cherkaoui*, 2026 BCCA 179 at paras 8, 15.

[6] Ms. Davis's actions in filing a second CPL and withdrawing a prior CPL in the face of a pending application to cancel were abusive and therefore deserving of rebuke. An award of special costs of the chambers application in the court below is necessary and appropriate to punish this abuse of the CPL process.

[7] 1316 Co. argues that Ms. Davis's "disregard for the time limits set out in the *Rules*" is a feature of her reprehensible conduct, in both the court below and in this Court. I disagree. There were many moving parts to the proceedings below, and I am not prepared to find that any delay in meeting filing deadlines was scandalous, outrageous, or otherwise warranting of rebuke. The abuse found in the Court's reasons on the merits of the appeal was limited to Ms. Davis's filing a second CPL as a means of circumventing 1316 Co.'s pending application to cancel the first.

[8] Nor do I accept 1316 Co.'s submission that Ms. Davis continued a "pattern of delay and ignoring procedural requirements and time limits" on appeal. Ms. Davis failed to file her factum within the time limit required under the *Court of Appeal Rules*, BC Reg 120/2022. Her counsel ultimately did so a mere two weeks before the scheduled hearing date. Although the late filing placed opposing counsel, and the Court, in a less-than-ideal situation, I am not prepared to infer that it was done for any improper purpose, and, in the circumstances, would not characterize it as conduct warranting rebuke through an order of special costs.

[9] I also reject the argument that Ms. Davis's reprehensible conduct in the court below included advancing unfounded allegations of fraud and collusion in her pleadings, and that Ms. Davis perpetuated or persisted in this reprehensible conduct on appeal by continuing to advance the unfounded allegations. It is true that Ms. Davis alleged fraud and collusion in her pleadings, but no court has yet to rule on the merits of those allegations, so this is not a case where one can say that her pleadings advance scandalous, frivolous, or baseless allegations of fraud that are deserving of rebuke by way of an award of special costs.

[10] I agree with Ms. Davis that *Martyn* is instructive. In that case, the Court upheld a finding of abuse of process warranting special costs in the court below, but awarded only ordinary costs for the appeal, finding that the appellant, though unsuccessful on appeal, did not engage in any continuation of the misconduct from the trial proceedings, or otherwise prosecute the appeal in an abusive fashion: *Martyn* at paras 94-95.

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[11] In this case, the distinct basis for awarding special costs of the chambers application in the court below is the finding that Ms. Davis's filing a second CPL and removing the first was an abuse of process. Although Ms. Davis sought to uphold the chambers judge's ruling in this Court, this alone does not justify the imposition of a punitive costs order for the appeal proceedings. There is nothing about Ms. Davis's conduct in this Court that would warrant anything more than the usual order for ordinary costs of the appeal.

Conclusion

[12] 1316 Co. is awarded special costs of the chambers application in the court below, and ordinary costs of the appeal.

"The Honourable Mr. Justice Riley"

I AGREE:

"The Honourable Justice MacNaughton"

I AGREE:

"The Honourable Justice Brundrett"

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