

COURT OF APPEAL FOR ONTARIO

CITATION: Labyrinth Partners Ltd. v. Iberbanco Ltd., 2026 ONCA 644

DATE: 20260910

DOCKET: M57415 (COA-26-OM-0240)

Lauwers J.A. (Motion Judge)

BETWEEN

Labyrinth Partners Ltd. and Athena Advisory Ltd.

Applicants (Moving Parties)

and

Iberbanco Ltd.*, Carl Kuur*, Jibril Galadima Hamidu* and Seker IBU (also falsely operating as Sekerbank IBU and Seker Bank and Seker International)

Respondents (Responding Parties*)

Macdonald Allen and Hashim Sohail, for the moving parties

Suvendu Goswami and Khalid Arshad, for the responding parties

Heard: September 9, 2026

REASONS FOR DECISION

[1] The moving parties say they were victims of a complex international fraud scheme in which their funds were diverted through Iberbanco Ltd. (“Iberbanco”), a registered money service business, to a pretender “bank”, Seker IBU, also falsely operating as Sekerbank IBU, Seker Bank, and Seker International.

[2] In an endorsement dated February 4, 2026, Parghi J. granted relief as against Iberbanco. Iberbanco's appeal of that decision was dismissed by the Divisional Court with reasons reported at 2026 ONSC 3013, and no leave to appeal to this court was sought. Following the application decision, Parghi J. ordered costs against Iberbanco in an endorsement dated April 7, 2026, with reasons reported at 2026 ONSC 2036. Costs were ordered on an elevated basis, in the amount of \$185,000. Iberbanco sought leave to appeal the costs decision.

[3] The only live issue before this court relates to the costs decision.

[4] Justice Parghi outlined five reasons why she ordered costs on an elevated basis, at paras. 13-17:

- (1) "Iberbanco has displayed an ongoing and willful disregard for orders of this court" (para. 13);
- (2) "Iberbanco has made misrepresentations to the court" (para. 14);
- (3) "Iberbanco advanced serious and unfounded allegations about the integrity of the applicants, suggesting before me, with no evidentiary basis, that the applicants were involved in the fraud rather than victims of it" (para. 15);
- (4) "Iberbanco has impeded the applicants' efforts to investigate the fraud against them" (para. 16); and

- (5) “Iberbanco’s improper conduct permeated and complicated virtually every aspect of this proceeding. Iberbanco sought to hide the ball. It abused the court’s processes. Its behaviour threatens to bring the administration of justice into disrepute. It is entirely appropriate to award costs against Iberbanco on an elevated scale, to communicate the court’s strong disapproval of Iberbanco’s conduct” (para. 17).

[5] Each of these findings is more developed in the paragraphs cited.

[6] Justice Parghi made an all-inclusive costs award of \$185,000, which was a reduction of about \$6,000 from the amount the moving parties sought. She concluded, at para. 24: “Stepping back and viewing the matter as a whole, I consider this a fair and reasonable result.”

[7] The moving parties seek the following:

1. An order requiring the responding parties to pay into court the sum of \$292,846.12, an amount equivalent to:
 - a. US \$68,449.97 owing by Iberbanco to the moving parties, pursuant to the order of Parghi J. dated February 4, 2026;
 - b. \$11,375.15 owing by Iberbanco to the moving parties pursuant to the endorsement of Parghi J. dated March 9, 2026;
 - c. \$185,000 owing by Iberbanco to the moving parties pursuant to the costs order dated April 7, 2026; and
 - d. \$35,000 for security for costs if leave is granted to hear the costs appeal;
2. An order requiring Iberbanco to pay into court US \$371,850.83, an amount equivalent to the amount that Iberbanco was ordered to cause

and direct an insolvency administrator in the U.K. to pay into court pursuant to Parghi J.'s order dated February 4, 2026;

3. In the alternative to paras. 1 and 2, an order requiring the responding parties to post an irrevocable letter of credit from a Canadian financial institution payable on demand in favour of the moving parties in a cumulative amount of \$327,846.12 and US \$371,850.83.

[8] To summarize, the moving parties seek an order for the payment of existing unpaid amounts, costs orders, and security for costs of an appeal if leave is granted. I agree with Iberbanco that those requests are premature. The only live issue for me is whether to require Iberbanco to post security for the costs order made by Parghi J. in the amount of \$185,000.

The Governing Principles

[9] The moving parties agree that the order they seek is extraordinary but argue that the circumstances justify it. They invoke ss. 133-134 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, especially s. 134(2), as interpreted in *Wiseau Studio, LLC v. Harper*, 2021 ONCA 31, 66 C.P.C. (8th) 94, motion to review allowed in part, 2021 ONCA 396. The sections provide:

Leave to appeal required

133 No appeal lies without leave of the court to which the appeal is to be taken,

(a) from an order made with the consent of the parties; or

(b) where the appeal is only as to costs that are in the discretion of the court that made the order for costs.

Powers on appeal

134 (1) Unless otherwise provided, a court to which an appeal is taken may,

(a) make any order or decision that ought to or could have been made by the court or tribunal appealed from;

(b) order a new trial;

(c) make any other order or decision that is considered just.

Interim orders

(2) On motion, a court to which a motion for leave to appeal is made or to which an appeal is taken may make any interim order that is considered just to prevent prejudice to a party pending the appeal.

[10] In *Wiseau*, Thorburn J.A. ordered security for the costs of the trial judgment in an amount exceeding \$480,000. She noted at paras. 24-26:

[24] Security for judgment is an extraordinary remedy that should only be granted in exceptional circumstances: *Vaillancourt v. Cater*, 2017 ABCA 282, at para. 20; *Aetna Financial Services Ltd. v. Feigelman*, [1985] 1 S.C.R. 2 at p. 10; *C.H. v. M.H.*, 1997 ABCA 263, 53 Alta. L.R. (3d) 80 (*sub nom Hamza v. Hamza*), at para. 24.

[25] Such an order requires an appellant to post security for judgment before continuing with the appeal. In this way, security for judgment functions much like a *Mareva* injunction and restrains the appellant from disposing of or dissipating assets in order that they be available to satisfy the judgment should it be upheld and if security for judgment is ordered and not posted, the appeal is dismissed: *Vaillancourt*, at para. 20; *Vaccaro v. Twin Cities Power-Canada U.L.C.*, 2013 ABCA 252, 97 Alta. L.R. (5th) 193, at para. 14.

[26] Security for judgment has been granted in other jurisdictions in the following circumstances:

1. Where there are no assets in the jurisdiction against which to enforce a judgment and the appeal has little merit (*Vaccaro* at para. 11; *Creative Salmon Company Ltd. v. Staniford*, 2007 BCCA 285, at paras. 12 and 14; *Richland Construction Inc. v. Manningwa Developments Inc.*, 1996 CanLII 3188 (B.C. C.A.) at paras. 12-13);
2. To preserve assets that would otherwise be destroyed, disposed of, or dissipated prior to the resolution of the dispute: *Aetna Financial* at p. 12); and
3. To encourage respect for the judicial process and avoid abuse of process (*C.H.*, at para. 23, citing *Mooney v. Orr* (1994), 100 BCLR (2d) 335 at p. 348 (B.C. S.C.); *Vaccaro* at paras. 12-14; and in respect of Mareva injunctions, *Aetna Financial* at pp. 13-14).

The Principles Applied

[11] There is no evidence that Iberbanco has assets in Ontario. Iberbanco chides the moving parties for their failure to take enforcement actions yet offers no evidence that it has assets in Ontario. This is entirely consistent with the observation of Parghi J. at para. 17 of the costs decision sought to be appealed that “Iberbanco sought to hide the ball”.

[12] On review in *Wiseau*, the panel set aside the order for security for the judgment on the basis that an admission that the appeal was frivolous had been withdrawn. But the panel went on to sustain the order for security for costs: “We would not, however, interfere with the order for security for costs, both with respect

to the trial costs and the costs of appeal”: *Wiseau Studio, LLC v. Harper*, 2021 ONCA 396, 66 C.P.C (8th) 106, at para. 5, leave to appeal to S.C.C. refused, 39765 (April 14, 2022).

[13] Section 134(2) provides:

(2) On motion, a court to which a motion for leave to appeal is made or to which an appeal is taken may make any interim order that is considered just to prevent prejudice to a party pending the appeal.

[14] Counsel for Iberbanco relies on the closing three words of s. 134(2), “pending the appeal”. He argues that the section only swings into action when leave to appeal has been granted and a notice of appeal filed. But this interpretation ignores the plain reading of subsection 134(2). In terms of the text, the words, “a court to which a motion for leave to appeal is made”, would only apply before leave is granted. In terms of the context, the words “pending the appeal” signify the duration of the order for security for costs and do not impose what would be an inconsistent meaning. Finally, the purpose of s. 134 is also plainly stated: “to prevent prejudice to a party”.

[15] I conclude that the court is empowered under s. 134(2) to grant an order for security for the costs award before the leave motion has gone to a panel. I allow the motion and grant an order requiring Iberbanco to pay into court \$185,000 or suitable security within 30 days of this order failing which the motion for leave to appeal shall be dismissed as abandoned.

[16] Costs of this motion to the moving parties in the amount of \$7,000.

“P. Lauwers J.A.”