

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bruush Oral Care Inc. v Besharat*,
2026 BCSC 1838

Date: 20260928
Docket: S251550
Registry: Vancouver

Between:

Bruush Oral Care Inc.

Plaintiff

And

**Kia Besharat, Robert Ward, Brett Yormark, Mandeek Manhas and
Alan MacNevin**

Defendants

And

Aneil Singh Manhas and Amjil Capital Corp.

Third Parties

Before: The Honourable Justice Latimer

Reasons for Judgment

Counsel for the Plaintiff:

T.W. Clifford
A. Jacobs

Counsel for the Defendants, Kia Besharat,
and Robert Ward:

M.G. Goldberg

Counsel for the Defendant, Brett Yormark:

D.R. Shouldice

No other appearance

Place and Date of Hearing:

Vancouver, B.C.
September 4, 2026

Place and Date of Judgment:

Vancouver, B.C.
September 28, 2026, 2026

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Introduction

[1] The defendants, Kia Besharat and Robert Ward, apply for security for costs against the plaintiff pursuant to s 236 of the *Business Corporations Act*, SBC 2002, c 57 [BCA].

[2] The plaintiff opposes the order sought.

[3] The remaining parties take no position on this application.

Issues

[4] The issues on this application are:

- a) Have the applicants made out a *prima facie* case that the plaintiff would be unable to pay their costs if its claim fails? Has the plaintiff shown that it has exigible assets that could satisfy an award of costs?
- b) Has the plaintiff shown that the applicants do not have arguable defences to its claim?
- c) Is or might the financial hardship of the plaintiff be due to the very actions of the applicants at issue in the action?
- d) If security for costs is to be ordered, what should be the terms of the order including the quantum of costs?

Analysis

Legal Principles

[5] The parties agree upon the legal principles that underly the court's analysis.

[6] Section 236 of the *BCA* provides that if a corporation is the plaintiff in a legal proceeding and if it appears that the corporation will be unable to pay the defendant's costs if the defendant is successful, the Court may require the corporation to give security for those costs and may stay the proceeding until security is given.

[7] An order for security for costs is a discretionary order: *Kropp v Swanaset Bay Golf Course Ltd.* (1997), 1997 CanLII 4037 at para 17, 29 BCLR (3d) 252 (BCCA).

[8] The purpose of security for costs is to protect a defendant from the likelihood that, if successful, it will be unable to recover its costs from an impecunious corporate plaintiff.

[9] The first stage of the legal test on an application for security for costs is the requirement that the applicant make out a *prima facie* case that the respondent would be unable to pay the applicant's costs if the respondent's claim fails: *Integrated Contractors Ltd. v Leduc Development Ltd.*, 2009 BCSC 965 at para 11 [*Integrated Contractors*].

[10] If the applicants do meet this requirement, the respondent may resist an order for security for costs by showing that it has sufficient exigible assets to satisfy an award of costs: *Integrated Contractors* at para 12.

[11] The respondent to a security for costs application can resist an order for security for costs if it can show there is no arguable defence to its claim: *Integrated Contractors* at para 13.

[12] In addition, the following principles set out in *Kropp* at para 17 inform the analysis:

[17] ...

1. The court has a complete discretion whether to order security, and will act in light of all the relevant circumstances;
2. The possibility or probability that the plaintiff company will be deterred from pursuing its claim is not without more sufficient reason for not ordering security;
3. The court must attempt to balance injustices arising from use of security as an instrument of oppression to stifle a legitimate claim on the one hand, and use of impecuniosity as a means of putting unfair pressure on a defendant on the other;
4. The court may have regard to the merits of the action, but should avoid going into detail on the merits unless success or failure appears obvious;

5. The court can order any amount of security up to the full amount claimed, as long as the amount is more than nominal;
6. Before the court refuses to order security on the ground that it would unfairly stifle a valid claim, the court must be satisfied that, in all the circumstances, it is probable that the claim would be stifled; and
7. The lateness of the application for security is a circumstance which can properly be taken into account.

[13] Finally, the plaintiff urges consideration of the following factor as particularly relevant on the facts of this application:

[14] ...

- c) Where the financial hardship that may give rise to the respondent's inability to pay costs is due to the very actions of the applicants at issue in the respondent's claim: [citation omitted].

Integrated Contractors at para 14(c).

Position of the Parties

[14] The plaintiff admits that it would be unable to pay the defendants' costs if its claims in this action fail. It does not attempt to point to any exigible assets available to satisfy a costs award. It specifically does not claim that an order of security for costs would stifle its claims nor that the lateness of the application is a factor for consideration on the procedural facts leading to this application.

[15] Instead, it argues that:

- a) the defendants have no arguable defence to its claims; and
- b) an order for security for costs would be inequitable in circumstances where its financial hardship that gives rise to its inability to pay costs is due to the very actions of the defendants at issue in the plaintiff's claim.

The plaintiff would be unable to pay the defendants' costs if its claims fail

[16] The defendants have established that the plaintiff will be unable to pay their costs if the claim fails. The plaintiff is impecunious. No evidence has been provided of any exigible assets that might satisfy an order for costs.

The defendants have an arguable defence to the plaintiff's claims

[17] A forensic assessment of the merits of a claim or a defence is not appropriate on an application for security for costs. The threshold for establishing an arguable defence is quite low for the purposes of a security for costs application: *Integrated Contractors* at paras 22, 27.

[18] “[O]n an application for security for costs parties are not obliged to meet all the allegations of fact of each other. The parties are obliged to show that they have an arguable case and that it is *bona fide*.”: *Dong v Au*, 2007 BCCA 37 at para 23.

[19] The plaintiff's claim arises from fraudulent schemes allegedly carried out by its former CEO, Aneil Manhas, who is not named as a defendant in this action. The plaintiff says the schemes led to losses of over \$20 million. All of the defendants, including the applicants, were former officers or directors of the plaintiff. None of them are alleged to have participated in or profited from the schemes. The plaintiff alleges that these defendants have breached various duties owed for failing to detect, prevent, and/or investigate the alleged fraud.

[20] This case is unlike *Integrated Contractors* where this Court held that a general denial, where all allegations were flatly denied and no material facts were pleaded, did not raise an arguable defence.

[21] In this case, several substantive and arguable defences are pleaded. These defences include denial of breach of duty; denial of causation; the responsibility of Aneil Manhas as CEO; the responsibility of Mandeek Man as CFO; the responsibility of Navdeep Hanspal as bookkeeper and participant in the bank verification process; lack of the applicants' knowledge or authorization of the impugned transaction;

contributory negligence and corresponding apportionment under the *Negligence Act*, RSBC 1996, c 333; failure to mitigate; and remoteness and foreseeability.

[22] The applicants also plead the existence of indemnity agreements and the corresponding denial of a breach of the duty of good faith. The plaintiff disputes that the indemnity agreements are defences. I need not resolve that issue for the purpose of this application because I find the other substantive defences pleaded raise arguable defences.

[23] The plaintiff argues these defences will obviously fail but in order to reach that conclusion this Court would have to embark on an inappropriate examination of the merits of the defences and to prefer the contested position of one party over the other on the limited record before the Court.

[24] For example, the court would have to accept the plaintiff's argument about, among other things, what standard of care applied to these directors in their roles and to do so without expert evidence.

[25] Second, this Court would be required to accept contested interpretations of documentary evidence and contested submissions about the adequacy of steps taken in response to documented concerns being taken.

[26] For example, the plaintiff argues that in a 2022 Audit Report, the auditors concluded that there were inadequate controls which indicated a material weakness in that Bruush Oral Care Inc. ("Bruush") had not maintained effective internal controls over its financial reporting. It is argued that no steps were taken by the Audit Committee or the directors to strengthen internal controls or exert a higher level of supervision over Bruush's financial affairs in response to this 2022 Audit Report.

[27] In their Amended Response to Civil Claim, the applicants put into question both the plaintiff's characterization of the conclusions reached in the 2022 Audit

Report and whether that report sufficiently identified the risk that eventually materialized:

13. In specific response to paragraph 17 and 18, and with respect to the reports of the plaintiffs auditors, the plaintiffs auditors said they had "reduced" certain risks to the plaintiff, and that the auditors "did not identify and were not made aware of any instances of fraud or illegal acts" and had "no knowledge of fraud or suspected fraud" affecting the plaintiff, employees.

14. In specific response to paragraph 18, these Defendants deny that the 2022 Audit Report concludes that the Audit Committee and Board (as those terms are defined in the NOCC) failed to establish effective controls over financial reporting. Rather, the 2022 Audit Report contains only a possible risk that could lead to "misstatements in the interim and year-end financial statements". The plaintiffs auditors did not indicate any fraud risk, and to the extent that fraud was commented in its 2022 Audit Report, any risks were reduced, and indications of risk not identified.

[28] The plaintiff's argument that "no steps were taken by the Audit Committee or the directors" in response to this report is contradicted by the plaintiff's own pleadings. In the Notice of Civil Claim, it is pleaded that in 2023, a CFO was appointed and the directors implemented a two-step approval process for any transfers of funds from the bank accounts of the plaintiff.

[29] On the state of the record before the Court, it is not possible to resolve the extent to which the steps taken met the standard of care in terms of responding to the concerns raised by the 2022 Audit Report.

[30] Another argument advanced by the plaintiff relates to allegations of fraud raised in an action commenced by TD Bank. It is argued that despite the defendants' knowledge of certain actions of the CEO, no action was taken by the defendants to investigate the actions of the CEO or to protect the plaintiff against further fraud between the time the TD action was commenced in June 2023, and the institution of a Special Committee in March 2024. Instead, it is argued that on March 8, 2024, the Board passed resolutions to the effect that, in May 2023, the plaintiff had paid to the CEO a discretionary performance bonus in the amount of CAD \$2,350,000 in cash, and that the Board formally ratified, approved, and confirmed same. It is argued that this resolution was passed "in order to relieve the CEO of liability to the plaintiff for his actions which had resulted in the TD action".

[31] In support of this argument, the Court was referred to an email from Mr. Ward to the CEO and Mr. Besharat which provided as follows:

As per our discussion this evening I would like to formally note the following items:

The 2024-03-08 Board Resolution

The resolution was executed based on acknowledgment of precedent events by the CEO. These precedent events should be indicated on this or a new resolution to further define why the provisions present in the 2024-03-08 resolution were agreed upon. These precedent events include:

1. The 'performance bonus' was returned by the CEO prior to execution, such that there would be no claim of damages (or fraudulent activity) to the company
2. The documentation supporting this return was to be provided to any auditor(s) involved by the CEO
3. The CEO was actively collaborating with auditors to satisfy requirements for Reverse Merger planned
4. The remaining external board members did not conduct due diligence to verify the precedent events stated above. They relied on claims made by the CEO

* Due to allegations made I request an amendment and/or new resolution be executed. I would include the following language:

5. The 'performance bonus' was subject to the funds being returned (the CEO declined the bonus)
6. If a new resolution is executed, the 2024-03-08 resolution is cited and addressed as incomplete (referencing the new resolution as current and accurate).

[32] The plaintiff characterizes this as merely an effort to mitigate the risk of liability as opposed to a *bona fide* description of what led to the passing of the resolution. That is not an interpretation that can be accepted on this application in the absence of any evidence about the e-mail from Mr. Ward.

[33] I cannot conclude that the applicants lack any *bona fide* defences.

Is the financial hardship of the plaintiff due to the very actions of the defendants at issue in this proceeding?

[34] Where the applicants might have been a cause of the plaintiff's impecuniosity, the court must weigh that factor in deciding whether and, if so, how to exercise its discretion in respect of security for costs.

[35] The direct cause alleged by the plaintiff for its financial hardship is the allegedly fraudulent actions of Aneil Manhas.

[36] The claim against the defendants is less direct: the plaintiff argues that these former directors, and the other defendants who were also directors and/or officers, should have detected or prevented that fraud.

[37] In my view the proper course in a case such as this is to order security but return to this question when setting the quantum of those costs.

Quantum

[38] Where the court finds an order for security to be appropriate, it has discretion to set the quantum of that security.

[39] Certain considerations relevant to the exercise of the Court's discretion are:

- a) The security should be such as the court thinks in all of the circumstances of the case is just;
- b) The court can order any amount of security up to the full amount claimed, as long as the amount is more than nominal;
- c) The approach to quantum should take into account that the security claimed is but an estimate, usually made at a very early stage of the proceeding. It is open to the Court, in the exercise of its discretion, to apply a discount to the estimate of costs presented to recognize future uncertainty including the possibility of settlement;
- d) The amount ordered should “sufficiently secure the defendants’ position without unduly burdening the plaintiff”;
- e) There is no dispute that an order for the posting of security for costs is usually limited to future costs;

- f) "The lateness of the application for security is a factor which can properly be taken into account". Delay, however, is less of a concern where the applicant seeks security for future costs only; and
- g) It is within the court's discretion and indeed, relatively common, for security to be ordered to be posted in instalments.

See *JTG Management Services Ltd. v Bank of Nanjing Co. Ltd.*, 2015 BCSC 1900 at para 16

[40] In this case, the applicants estimate their future costs at Scale B, at approximately \$100,000, with approximately \$30,000 of that being devoted to disbursements. They seek that \$100,000 be posted as security. The plaintiff argues this estimate is too high. The plaintiff estimates approximately \$52,000 with \$130 for disbursements. The plaintiff submits that only \$35,000 should be paid as security for costs.

[41] The plaintiff takes issue with an estimate of \$25,000 for an expert report without explanation as to the type of report needed. In my view, the need for expert evidence is likely given the allegations include failures in the applicants' professional duties as directors. It can reasonably be expected that the applicants will wish to defend themselves by saying they met the standard of care and that may require expert evidence.

[42] Both parties' bill of costs anticipated a 15-day trial. The trial has in fact been scheduled for 20 days. Both estimates are therefore low by at least \$8,250 based on the tariff units for preparation for and attendance at trial.

[43] I find the applicants' estimate to be more realistic. This is complex, high value commercial litigation with sophisticated parties and serious allegations that are likely to be vigorously defended.

[44] I consider the existence of indemnity agreements to be a relevant factor at this stage of proceedings.

[45] The applicants argue that they have the benefit of mandatory indemnification provisions in the Articles and in indemnity agreements with the plaintiff.

[46] Those indemnity agreements provide, among other things:

1.1 The Company will, subject to Section 2, indemnify and save harmless the Indemnified Party and the heirs and legal representatives of the Indemnified Party to the fullest extent permitted by applicable law:

(a) from and against all Expenses (as defined below) and Liabilities (as defined below) sustained or incurred by the Indemnified Party in respect of any civil, criminal, administrative, investigative or other Proceeding (as defined below) to which the Indemnified Party is involved in by reason of being or having been a director or officer of the Company or a Related Entity; and

(b) from and against all Expenses and Liabilities sustained or incurred by the Indemnified Party as a result of serving as a director or officer of the Company or a Related Entity in respect of any act, matter, deed or thing whatsoever made, done, committed, permitted or acquiesced in by the Indemnified Party as a director or officer of the Company or a Related Entity, whether before or after the effective date of this Agreement and whether or not related to a Proceeding.

"Expenses" means all costs, professional fees and retainers and other expenses of whatever nature or kind provided that any such costs, professional fees and other expenses shall be reasonable.

"Liabilities" means all charges, damages, awards, settlements, liabilities, fines, penalties and statutory obligations.

"Proceeding" Includes a claim; demand, suit, proceeding, inquiry, hearing, discovery or investigation, of whatever nature or kind, whether anticipated, threatened, pending, commenced, continuing or completed, and any appeal, and whether or not brought by the Company or a Related Entity (Emphasis Added)

2.1 The rights provided to an Indemnified Party hereunder will, subject to applicable law, apply only if: (a) the Indemnified Party acted honestly and in good faith with a view to the best interests of the Company or a Related Entity, as the case may be; and (b) in the case of a criminal or administrative action or Proceeding that is enforced by a monetary penalty, the Indemnified Party had reasonable grounds for believing that his or her conduct was lawful.

...

3.1 For purposes of any determination hereunder the Indemnified Party will be presumed to have acted in good faith and/or in the best interests of the Company. The Company will have the burden of establishing the absence of good faith.

...

6.1 Subject to Section 6.2, the Company will, upon request by the Indemnified Party, make advances ("Advances") to the Indemnified Party of all Expenses and/or Liabilities for which the Indemnified Party seeks indemnification under this Agreement before the final disposition of the relevant Proceeding, including, without limitation, in circumstances where the Indemnified Party is required to pay or deposit any money as security for costs or in respect of any Expenses and/or Liabilities...

[47] While the applicants might have been a cause of the plaintiff's impecuniosity, unless they acted dishonestly or in bad faith without a view to the best interest so of the company, the Company has agreed to indemnify them not only for any liability arising from these proceedings but also for their Expenses as defined. The plaintiff has agreed to make Advances to that end before final disposition of the proceedings.

[48] The plaintiff argues that the agreements may not be enforceable pursuant to s 142 of the BCA. I need not resolve that issue. This is not an application to enforce the indemnity agreements. Nevertheless, the existence of those agreements is relevant to the weighing of the parties interests in the interest of justice analysis.

[49] "The court can order any amount up to the full amount claimed. ... Historically, dollar-for-dollar security has not been awarded. This reflects the reality that the quantum of security claimed will always be based on an estimate, usually made at a very early stage in the proceeding, and it may be relevant to discount the estimate for the prospects of settlement.": *Iwasaki v Redford*, 2016 BCSC 504 at para 70.

[50] In this case, I am satisfied that the amount of \$80,000 appropriately reflects the uncertainty with respect to the estimate including that the estimate itself does not account for the actual length of trial, the possibility of settlement, the possibility that the applicants caused the plaintiff's impecuniosity and the possibility that the indemnity agreements may or may not result in indemnification at the end of the day. The plaintiff does not argue that any order for security for costs would stifle its claim or otherwise deter it from putting its claim forward.

[51] Accordingly, I order that the plaintiff post the sum of \$80,000 as security for costs in the following amounts and times:

- a) The sum of \$20,000 shall be deposited to an interest bearing trust account held by the plaintiff's solicitors on or before two weeks of this Order.
- b) The sum of \$20,000 shall be deposited to an interest bearing trust account held by the plaintiff's solicitors on or before two weeks prior to the next examination for discovery.
- c) The sum of \$40,000 shall be deposited to an interest bearing trust account held by the plaintiff's solicitors on or before no later than sixty days prior to trial.

[52] In all cases, the plaintiff's solicitors shall provide proof of the deposits to the defendants' solicitors no later than five days after the deposit is made.

[53] Until the plaintiff makes the initial periodic payment, or fails to make a required payment, this action is stayed and the plaintiff is restrained from taking any steps in this action that would cause the defendants to incur costs until proof of deposit has been provided to their solicitors.

[54] I further order that if the plaintiff fails to pay security in accordance with this order, and such default is not rectified within 14 days, the defendant is at liberty to seek dismissal of this action. Lastly, the defendant is granted liberty to apply for an order that the plaintiff post further and better security should the need arise and on terms to be determined.

[55] Given the nature of the application and its outcome, I determine that costs should be in the cause.

"Latimer J."