

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Buffalo Megan Holding Ltd. v. PKT Holdings Inc.*,
2025 BCSC 1322

Date: 20250714
Docket: S235069
Registry: Vancouver

Between:

**Buffalo Megan Holding Ltd., Buffalo Holding Ltd.
and William Wang**

Plaintiffs

And

**PKT Holdings Inc., Quad-City Real Estate Group Ltd.
Tina Mu, and Yangtao Chai**

Defendants

Before: The Honourable Madam Justice W.A. Baker

Reasons for Judgment

Counsel for Plaintiffs:

R. Clark, K.C.
R. LaPlante

Counsel for Defendants:

D. Parlow
D. Lucas

Place and Date of Hearing:

Vancouver, B.C.
July 8, 2025

Place and Date of Judgment:

Vancouver, B.C.
July 14, 2025

Introduction

[1] The defendants PKT Holdings Inc., Quad-City Real Estate Group Ltd. and Tina Mu (the “PKT defendants”) seek an order dismissing the plaintiffs’ action because of the plaintiffs’ failure to post security for costs in accordance with an order made April 29, 2025. The plaintiffs were ordered to post security in the amount of \$87,000 by May 29, 2025. While they have now posted security, they did so only on July 7, 2025, on the eve of this application.

Background

[2] The plaintiffs commenced this action on July 26, 2023, making a number of serious allegations against the defendants. I do not intend to repeat the allegations, as these are set out in my decision of April 29, 2025, indexed at 2025 BCSC 798.

[3] My decision of April 29, 2025 was made following an application by the PKT defendants to strike the claims of the plaintiff Mr. Wang, and to seek security for costs. In that decision I dismissed all claims brought by Mr. Wang. I did not dismiss the claims brought by the corporate plaintiffs. I ordered that the plaintiffs post security for costs in the amount of \$87,000 within 30 days of my order. I note that the plaintiffs conceded security was warranted, and the only issue on the hearing was the appropriate quantum for the security to be posted.

[4] There is no dispute that the plaintiffs did not post security within 30 days of my decision. The PKT defendants filed this application on June 23, 2025. After 4 pm on July 7, 2025, the day before this hearing, the plaintiffs provided the PKT defendants with evidence that payment into court was made.

The Law

[5] The PKT defendants apply pursuant to Rule 22-7(6). The parties agree that the applicable law in determining an application to dismiss for failure to comply with an order to post security for costs is *Toch v. Grove*, 2010 BCCA 428 [“*Toch*”]. In *Toch* the court of appeal addressed a failure to comply with an order to post security under the court of appeal rules.

[6] In *Toch*, the court held:

[2] In my view, it is incumbent on an appellant who resists an application to dismiss to provide to the Court an acceptable explanation why security has not been posted and a realistic assurance that it will be posted within an acceptable period of time. That said, the order is discretionary and the Court will take into account all of the relevant circumstances of the case.

[7] *Toch* has been applied in the supreme court in relation to applications under Rule 22-7(6). Both counsel rely on *Success Group Holdings Ltd. v. Fraser Valley Regional District*, 2025 BCSC 594 where the court applied *Toch* and *Tresoro Mining Corp. v. Mercer Gold Corporation (B.C.)*, 2016 BCSC 867 [*“Tresoro”*]. In *Tresoro*, after referring to the above principles from *Toch*, the court held:

[35] In *UA, Local 772 v. UA*, 2013 NBCA 33, the Court affirmed the motion judge’s decision to dismiss the action due to the plaintiff’s failure to pay security for costs. The Court explained:

[68] In determining a motion for dismissal of an action on account of the plaintiff’s failure to furnish security for costs, as ordered, the court must take a flexible, all-things-considered approach, whose objective is a disposition that is just for all parties. That approach requires the court consider the totality of the circumstances, including the action’s chances of success at trial. Where those chances are low, the court will more easily find dismissal is appropriate. By the same token, when the chances of success at trial are significant, the court will, as a rule, tend to shy away from such a Draconian disposition.

[36] While *Toch* related to security for costs of an appeal, and the applications to dismiss in both *Toch* and *Local 772* were made pursuant to statute (s. 24(2) of the *Court of Appeal Act*, R.S.B.C. 1996, c. 77 and Rule 58.05 of the *Rules of Court*, N.B. Reg. 82-73, respectively), in my view similar considerations apply on this application. In other words, I am to consider all the circumstances, including the plaintiff’s efforts to post security for costs, the possibility of future compliance, and the merits of the action.

[8] In the case before me, the security is now posted. Therefore, the only issues before me are whether the plaintiffs have provided an acceptable explanation for why security was not posted, and whether after taking all relevant circumstances into account I should exercise my discretion to order a dismissal of the plaintiffs’ claim.

Have the plaintiffs provided a reasonable explanation for why security was not posted?

[9] The plaintiffs have known since the prior application was argued that security for costs would be required. The only issue was the quantum to be ordered. The plaintiffs knew that the PKT defendants sought \$88,000 as security for costs. Therefore, the plaintiffs knew that they would have to post security in some amount, up to \$88,000.

[10] The evidence led by the plaintiffs to explain why security was not posted, was contained in an affidavit sworn by Mr. Chiang, who describes himself as a consultant with the corporate plaintiffs. He is not an officer, director or shareholder of these companies. His affidavit does not state he is authorized by the corporate plaintiffs to swear an affidavit on their behalf.

[11] Mr. Chiang states that Ms. Lv is a principal shareholder of the companies, who has taken over conduct of the companies, and lives in Vancouver, BC. He states that the companies fell into financial difficulty during COVID and are only now beginning to recover from the difficulties. Mr. Chiang references a number of lawsuits the “Buffalo” companies are involved in, other than this one. He defines “Buffalo” as all the related companies with “Buffalo” in their name, that are owned by Ms. Lv and Mr. Wang, including the corporate plaintiffs in this action.

[12] Mr. Chiang does not provide details of the financial difficulties experienced by the companies. He states the facts contained in the response to this application are true. The relevant paragraphs of the response refer to claims against a company known as Buffalo Properties that resulted in CPLs being registered against “certain properties”. There is no evidence as to which properties were subject to CPLs, and no evidence that any properties held by the plaintiffs in this action were affected by the financial difficulties alluded to in Mr. Chiang’s affidavit or the response to this application.

[13] Mr. Chiang attaches a net worth statement for Ms. Lv. He does not state who prepared it, or if he has a reasonable belief, based on information provided by an

identified person, that it represents an accurate statement of her net worth. The net worth statement reveals the following:

		Assets	Liabilities	Ownership	Title under
Cash, chequing, savings, investments	on shore	\$50,000		100%	
780 West 54 th Ave, Vancouver	primary residence	\$4,815,000	\$1,600,000	100%	
4096 Torquay Dr	primary residence	\$11,500,000	\$2,500,000	100%	Buffalo Enterprise Inc.
205-8877 Odlin Cres, Richmond	Office	\$1,250,000	\$500,000	100%	Buffalo Megan Holdings
550 & 552 West 64 th Ave, Vancouver	primary residence	\$5,800,000	\$3,700,000	100%	1160429 BC Ltd.

[14] In the response to this application, the plaintiffs state, “While Ms. Lv has a significant net worth, the existing litigation prevents her from accessing it for purposes of security for costs in this proceeding.” There is no further explanation for this bald statement.

[15] Mr. Chiang states that in mid-2024, settlement discussions occurred in relation to one lawsuit involving a company known as Buffalo Properties (not one of the plaintiffs in this action), but it did not conclude. He states that after my decision was released, he consulted with Ms. Lv about how to raise the funds to pay the security for costs, and they determined they would reopen negotiations in relation to the other lawsuit. He states that a settlement was reached on June 10, 2025, and resulted in funds being made available to Buffalo. It is not clear from the affidavit which company received the funds, but I assume it was Buffalo Properties.

[16] An affidavit sworn by a legal assistant with counsel for the plaintiffs on July 8, 2025, the day of the hearing of this application, states that settlement funds in the amount of \$225,000 were received by counsel on July 7, 2025, and \$87,000 was deposited with the court in this action on July 7, 2025.

[17] Mr. Chiang's affidavit is very short, and speaks mostly in generalities. It does not explain why Ms. Lv was not able to secure funds against of the properties identified as principal residences on her net worth statement. These properties have a combined value of \$22,115,000, and are subject to liabilities in the combined amount of \$7,800,000. In other words, on the face of the net worth statement presented by Mr. Chiang in explanation for the delay on the part of the plaintiffs, Ms. Lv had equity in the amount of \$14,315,000. The security required to be posted is a tiny fraction of the equity held, 100%, by Ms. Lv, according to her net worth statement. The one property where title is held by one of the plaintiffs, Buffalo Megan Holdings, has equity of \$750,000.

[18] None of the properties listed on the net worth statement are held by Buffalo Properties, the only company with respect to which Mr. Chiang provided any kind of detail regarding financial difficulties.

[19] There is no evidence before me as to how the plaintiffs unsuccessfully attempted to obtain a line of credit, or some kind of borrowing, against the assets described on Ms. Lv's net worth statement. There is no evidence as to how they planned, following the prior hearing, to have funds available to pay the security that they admitted should be ordered. There is no evidence as to how the existing litigation prevented Ms. Lv from accessing her net worth for posting security for costs in this proceeding.

[20] There is no evidence from Ms. Lv herself on this application. The PKT defendants submit that I should draw an adverse inference from the fact that Ms. Lv did not provide any evidence on this application. They submit I should draw the inference that Ms. Lv could have paid the required security, but did not want to swear an affidavit and be cross examined.

[21] In *Singh v Reddy*, 2019 BCCA 79, the court of appeal provided a helpful summary of the relevant law, summarizing the factors to be considered by the court in making an adverse inference:

[10] The judge in the case at bar began her analysis by stating, correctly, that the approach to drawing an adverse inference engages the court's discretion and requires the trier of fact to consider the following factors:

- a) Whether there is a legitimate explanation for failing to call the witness;
- b) Whether the witness is within the exclusive control of the party or is equally available to both parties; and
- c) Whether the witness has key evidence to provide or is the best person to provide the evidence in question.

[22] No explanation was given for the failure of Ms. Lv to provide her own affidavit explaining how the litigation referred to by Mr. Chiang prevented her from accessing her net worth. Ms. Lv is responsible for the management of the plaintiffs. She is not equally available to the PKT defendants. Ms. Lv has key evidence to provide in relation to the plaintiffs' ability to comply with my order.

[23] I agree that an adverse inference should be drawn against Ms. Lv, and I find that her truthful evidence would not support the bald statement made in the response to this application.

[24] On balance, I am not satisfied that the plaintiffs have provided a reasonable excuse for their failure to comply with the order requiring them to post security for costs within 30 days of my prior decision. I am not satisfied that the evidence before me supports a finding that Ms. Lv or the corporate plaintiffs were unable to arrange finances to allow the security of \$87,000 to be posted, a relatively modest amount in contrast to Ms. Lv's reported net worth and the value of the property purportedly held by one of the corporate plaintiffs on the net worth statement.

Should I exercise my discretion to dismiss the plaintiffs' action?

[25] While I have found the plaintiffs have not established a reasonable excuse for their failure to comply, I must still exercise my discretion in a manner that is just for all parties, taking into account all relevant circumstances. An order dismissing the

plaintiffs' claim is draconian, and that is a significant factor when weighing the relevant circumstances.

[26] The plaintiffs submit the following factors weigh against an order for dismissal:

- a) They have paid the required funds into court, which demonstrates their intention to comply with the order. The order for security for costs was made to protect the defendants in the event the plaintiffs were unsuccessful at trial. That objective has been met by the fact that the funds are now posted.
- b) While they were late in posting the funds, the plaintiffs began taking steps to obtain settlement funds to pay the security shortly after receipt of my decision. They were able to obtain the settlement funds, and got the funds paid out one month after the settlement was approved.
- c) The five week delay in posting security has not caused any material prejudice to the PKT defendants. Any evidence of prejudice, namely Ms. Mu's affidavit which sets out difficulties in marketing the properties which are the subject of this litigation, or difficulties in obtaining financing, all of which arise from the spectre of this litigation, are based on hearsay and are not admissible on this application for a final order dismissing the plaintiffs' claims.
- d) The five week delay is not so serious that the plaintiffs should be deprived of their ability to continue their action.

[27] The PKT defendants submit that the following factors support a dismissal of the plaintiffs' claim:

- a) This action was started in 2023, and the plaintiffs have taken no steps to advance the litigation. There has been no document discovery, and no

discovery of representatives. Other than the applications brought by the defendants, no substantive steps have been taken in the litigation.

- b) The plaintiffs had notice that security for costs would be ordered as far back as June 2024, when they conceded such an order should be made. They are not taken by surprise, and ought to have made appropriate arrangements before now. Their actions amount to a wilful non-compliance with my order.
- c) There is no evidence that the financial position of the plaintiffs now is materially different from the position of the plaintiffs on the hearing of the original application. As stated by the court in *Success*, at para. 45:

...financial circumstances may provide an acceptable explanation for non-compliance but only insofar as those financial circumstances show a material change from what was before the court when the original order was made. To allow otherwise would also be an impermissible collateral attack on the order itself.
- d) The litigation poses a hardship for the PKT defendants, in that representatives of their marketing company suggest that prospective buyers are less likely to buy properties while the litigation continues, and their mortgage broker advises that lenders are not prepared to lend the PKT defendants money while the litigation continues.

[28] While the plaintiffs argue that the evidence of prejudice submitted by the PKT defendants is inadmissible hearsay evidence, I am satisfied that the PKT defendants do not need to show prejudice on this application. The PKT defendants have an order in their favour, and when such an order is not complied with it is my view that prejudice can be assumed. Parties are entitled to the benefit of orders made. Non-compliance with such orders will always be prejudicial.

[29] The prejudice outlined by the PKT defendants is a prejudice arising from the fact of the litigation itself. I do not agree that such prejudice is relevant on this application.

[30] The parties did not argue the strength of the plaintiffs' case on this application. While it can be a relevant factor for the court to consider, I note that I have insufficient evidence before me to assess the strength of the claims asserted by the corporate plaintiffs, which remain in place following the dismissal of the claims brought by Mr. Wang personally. As such, I am not able to consider this factor.

[31] I am very sympathetic to the position of the PKT defendants, particularly in light of the failure of the plaintiffs to meaningfully advance their claim. However, while I have found the plaintiffs have not provided an acceptable explanation for their non-compliance, and were delinquent in preparing for the satisfaction of a security for costs order which they knew would be coming after the application, I am not prepared to take the draconian step of dismissing the plaintiffs' claims. I find that such an order, given the plaintiffs have now complied with the order, would not be just for all the parties. Should the plaintiffs fail to comply with any future order, the court may be more inclined to dismiss their claims.

[32] I dismiss the application of the PKT defendants. However, because I find the conduct of the plaintiffs necessitated this application, and their compliance occurred at the very last moment before the application was heard, I award ordinary costs to the PKT defendants of this application, in any event of the cause, payable forthwith.

“W.A. Baker J.”