COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Red Carpet Tailoring and Alterations Inc. v. Appia Development (Rosser) Limited,* 2025 BCCA 280

Date: 20250725
Docket: CA50764

Between:

Red Carpet Tailoring and Alterations Inc., Jafar Alizada

Appellants
(Plaintiffs)

And

Appia Development (Rosser) Limited

Respondent
(Defendant)

Before: The Honourable Justice Griffin
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated June 6, 2025 (*Red Carpet Tailoring v. Appia Development*, 2025 BCSC 1048, Vancouver Docket S248589).

Oral Reasons for Judgment

Counsel for the Appellants:	J.R. Pollard C. Zhu, Articled Student
Counsel for the Respondent:	H.K. Randhawa
Place and Date of Hearing:	Vancouver, British Columbia July 25, 2025
Place and Date of Judgment:	Vancouver, British Columbia July 25, 2025

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Summary:

A corporate plaintiff applies for leave to appeal and a stay of an order of the Supreme Court, ordering it to post security for costs of its action as against a commercial landlord. The judge found it possible that the applicant would not be able to pay costs if unsuccessful in its claim and an order for security could deter it from pursuing its claim against the commercial landlord. The applicant argues the chambers judge failed to consider that the defendant caused its impecuniosity, and it was probable it could not raise funds to post security since the individual plaintiff was also impecunious. Held: applications dismissed. There was no evidence as to the applicant's corporate structure or backers or ability to raise funds from these persons, and so there is no prospect that a division of this Court could find the chambers judge erred in the exercise of her discretion.

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[1] **GRIFFIN J.A.**: The appellant, Red Carpet Tailoring and Alterations Inc. ("RCTA"), applies for leave to appeal an order made in chambers in the trial court that it post security for costs in the amount of $12,000. It also seeks a stay of the order for security for costs, pending appeal. The order was made on June 6, 2025, with reasons for judgment indexed as 2025 BCSC 1048 (unreported). If the security is not posted within 60 days of June 6, 2025, the respondent, Appia Development (Rosser) Limited ("Appia"), may apply to have the claim against it dismissed.

[2] Appia opposes the applications.

[3] For the reasons that follow, I dismiss the applications. I find that the matter does not meet the threshold for granting leave to appeal, and therefore it is unnecessary to consider the stay application.

Background

[4] The general background is outlined in the reasons for judgment below and appears not to be in dispute on these applications.

[5] RCTA was a commercial tenant of Appia's and fell behind in the rent in January 2024. By the end of February 2024, RCTA owed rent arrears in the amount of $11,854.14.

[6] RCTA's director is Mr. Alizada, the personal plaintiff. He had agreed to indemnify Appia for any arrears. The business that was to be operated in the premises was a tailoring business.

[7] The lease itself contained an entire agreement clause and stated that there had been no representations by the landlord which were not set out in the lease.

[8] On February 29, 2024, Appia and RCTA entered into a lease surrender agreement. Pursuant to this, RCTA surrendered any rights under the lease and forfeited the balance of its deposit in the amount of $4,029.91; Appia forgave any rental arrears and future rent; and Appia and RCTA mutually released each other from any liability arising under the lease.

[9] Subsequently, on December 11, 2024, RCTA and Mr. Alizada filed a notice of civil claim against Appia, as well as against the commercial real estate broker, Ms. Morrow, who worked with a rental company to let the premises. That company is ABC Company Inc. dba Colliers, referred to as "ABC", also a named defendant.

[10] The theory of the claim is that prior to entering the lease, Ms. Morrow made misrepresentations to RCTA and Mr. Alizada about the retirement of a tailor who formerly ran a tailoring business in the premises, and that leasing the premises would give RCTA the opportunity to inherit the customers that had patronized the prior business for over 20 years. The claim alleges that the former tailor had not in fact retired, but instead simply moved her business to her home nearby and retained all her customers. Because of this, the business opportunity did not exist and RCTA never achieved profitability.

[11] RCTA alleges that Appia and the other defendant ABC are liable for Ms. Morrow's misrepresentation, on the theory of vicarious liability and agency.

[12] Mr. Alizada and RCTA submit that they are impecunious due to the business failing for the very reasons that are at issue in the underlying claim.

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[13] Appia brought an application seeking an order that each of RCTA and Mr. Alizada post security for costs.

The Decision

[14] The chambers judge analyzed the relevant factors against each plaintiff separately, noting that there is a higher threshold for a security for costs order against an individual.

[15] As for the merits of the claim, the judge briefly addressed the contractual defences available to Appia based on the terms of the lease and lease surrender agreement. The judge noted that RCTA and Mr. Alizada argued that the "entire agreement" clause in the lease did not apply to representations intended to induce the other party into the agreement, relying on *Zippy Print Enterprises Ltd. v. Pawliuk* (1994), 100 B.C.L.R. (2d) 55, 1994 CanLII 1756 (C.A.). Further, the judge observed that RCTA and Mr. Alizada argued that the release in the surrender agreement was limited to claims "arising under the lease" and their claims were based in negligence.

[16] The chambers judge held:

> [31] In terms of the merits of the plaintiff's claim, in considering the respective positions and arguments from both sides, I am not able to conclude that either success or failure of the claim is obvious. In my view, there are triable issues and much would depend on the evidence at trial.

[17] The judge found that Mr. Alizada would not be able to pay costs if his claim failed and that it would "stifle his claim" to order him to pay security for costs, and Appia had not established special circumstances to justify an order for security for costs against him.

[18] The judge accepted that RCTA would not be able to pay costs if its claim fails, a point that was conceded by RCTA. The judge found that it was "possible that [RCTA] would be deterred by an order for security for costs from pursuing its claim": at para. 30.

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[19] The chambers judge dismissed the application against Mr. Alizada but allowed it against RCTA.

[20] Appia estimated the action would require at least two days of oral examinations and an 8-day trial and had prepared a draft bill of costs in the amount of approximately $24,000 plus estimated disbursements of $4,500. It sought an order for security of $20,000.

[21] However, instead of ordering security in the amount of $20,000 as sought by Appia, the chambers judge instead ordered security in the amount of $12,000. The chambers judge held:

> [32] In balancing the relevant injustices, in my view, it is appropriate to order the corporate plaintiff to pay security for costs in a lower amount than sought in light of RCTA's financial situation. I would set the amount at $12,000.

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Leave to Appeal Principles

[22] Court of Appeal Rule 11 itemizes several types of interlocutory orders which require leave to appeal, for which an order for security for costs is one: R. 11(f).

[23] The test for leave to appeal is well-established, as articulated by Saunders J.A. in *Goldman, Sachs & Co. v. Sessions*, 2000 BCCA 326 at para. 10 (Chambers):

> (1) whether the point on appeal is of significance to the practice;
>
> (2) whether the point raised is of significance to the action itself;
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> (3) whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and
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> (4) whether the appeal will unduly hinder the progress of the action.

[24] These are all criteria relevant to the overriding consideration of the interests of justice: *Hanlon v. Nanaimo (Regional District)*, 2007 BCCA 538 at para. 2 (Chambers); *Vancouver (City) v. Zhang*, 2007 BCCA 280 at para. 10 (Chambers). A party seeking leave to appeal bears the onus of establishing the conditions for leave are met.

[25] The merits question on appeal from a discretionary order asks whether there is an arguable case that the chambers judge erred in principle, made an order that is not supported by the evidence or gave insufficient weight to the evidence, or that the order is so clearly wrong that it will work an injustice. There must be a reasonable possibility that a division of the court would grant the appeal on the merits: *MacRae v. Woermke*, 2019 BCCA 355 at para. 4 (Chambers); *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19 at para. 27. An appeal court will not reverse a discretionary order simply because it might have exercised the discretion differently: *Law Society of British Columbia v. Canada (Attorney General)*, 2002 BCCA 49 at para. 7.

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Parties' Positions

[26] RCTA submits all the factors weigh in favour of granting leave, and if leave is granted, a stay is necessary otherwise the appeal will be pointless.

[27] The central argument that will be advanced by RCTA, if it is granted leave to appeal, is that the judge failed to fully or properly consider that the corporate claim will "probably" be stifled if the order for security for costs was made, in circumstances where its impecuniosity arises because of the very issues that are in dispute in the litigation.

[28] The judge recognized that the individual plaintiff's claim would probably be stifled if security for costs was ordered but said only there was a "possibility" that RCTA's claim would be stifled. RCTA submits this reasoning is in error.

[29] Appia submits that the chambers judge properly exercised her discretion, considered the correct legal principles and weighed all relevant factors. Appia submits that there is no merit to the proposed appeal, and no point raised that will be of significance to the practice.

Analysis

[30] In my view, the leave application turns on whether there is any merit to the proposed appeal from a discretionary decision. Respectfully, I do not see any

reasonable possibility that a division of this Court would grant the appeal on the merits. I reach this conclusion for several reasons.

[31] First, the judge instructed herself on the proper legal principles that apply to an application for security for costs against a corporation, citing at paras. 12–14 the principles stated in *Ocean Pastures Corporation v. Old Masset Economic Development Corporation*, 2016 BCCA 12 [*Ocean Pastures*] and *Fat Mel's Restaurant Ltd. v. Canadian Northern Shield Insurance Co.* (1993), 1993 CanLII 1669, 76 B.C.L.R. (2d) 231 (C.A.).

[32] In *Ocean Pastures*, this Court at para. 17 cited the legal principles that are derived from earlier authorities, such as *Kropp v. Swaneset Bay Golf Course Ltd.* (1997), 29 B.C.L.R. (3d) 252, 1997 CanLII 4037 (C.A.) [*Kropp*]:

> 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.

[33] Second, this is not a case where it can be said the judge overlooked a factor. The judge did consider the possibility that the corporation's claim would be stifled if an order for security for costs would be made because it has no assets and is no longer operating, as set out at para. 30.

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[34] The central problem with RCTA's argument in the court below, and with its position on this application, is that RCTA adduced no evidence as to its corporate structure and ability or inability to fundraise through shareholders or investors or other backers. RCTA's position seems to rest solely on evidence that it has no assets and ceased operating, and that Mr. Alizada has no funds. But it was open to the chambers judge to not be satisfied that the evidence went far enough.

[35] The affidavit of Mr. Alizada deposed that he was a director and that the company had no assets and ceased operating due to the losses incurred in the business. There was also a statement that RCTA had, through its prior operations, acquired tailoring equipment valued at approximately $6,000 and inventory of approximately $60,000. No financial statements were produced. Importantly, neither Mr. Alizada nor RCTA provided any evidence as to RCTA's shareholders or investors or RCTA's ability to fundraise from these persons.

[36] In my view, based on the lack of evidence, the judge below could not know whether other parties lay behind RCTA's corporate veil who would benefit from the litigation without incurring any risk if no security for costs order was made.

[37] On this application, RCTA seems to recognize the reasoning in *Kropp*, but, respectfully, does not grapple with it. In *Kropp*, the Court was critical of the fact that the evidence that the corporate plaintiff was impecunious was simply a statement in the affidavit of the company's principal. There was no evidence that the corporate plaintiff could not otherwise raise funds sufficient to post security for costs: at paras. 21, 23. As this Court noted in *Kropp*, "[t]o succeed in showing that an order for security would stifle the action the [corporate] plaintiff must do more than show that it has no assets": at para. 22.

[38] This Court in *Kropp* cited with approval well-established authority that the purpose of the requirement that a corporate plaintiff post security for costs is to protect "the community against litigious abuses by artificial persons manipulated by natural persons": at paras. 16, 22, citing *Pearson v. Naydler*, [1977] 3 All E.R. 531.

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[39] When a corporation advances a claim but asserts impecuniosity and an inability to post security for the defendant's costs, the courts are concerned about an uneven playing field and the lack of a deterrent to advancing weak or meritless claims.

[40] Here, for example, Appia would appear to have some merit to defences based on the no-representation clause in the lease and the release in the lease surrender. If Appia loses the case and its defences fail, it will no doubt be ordered to pay costs of RCTA. But if its defences succeed, Appia will be unlikely to recover its costs due to RCTA's lack of assets. This is what creates an uneven playing field.

[41] Where persons such as shareholders or other investors lie behind a corporate veil and will potentially benefit if the corporation's claim is successful, it can be unjust to allow those persons to benefit from the corporation litigating against a defendant, while free from the risk of bearing a costs award if the claim fails.

[42] For these reasons, it is generally necessary for a corporation seeking to avoid an order for security for costs to provide some evidence regarding its finances and corporate structure, to establish that it has no other means of raising funds for security.

[43] This Court in *Parkbridge Lifestyle Communities Inc. v. New West Custom Homes (Kelowna) Inc.*, 2022 BCCA 299 [*Parkbridge*], was critical of the evidence of the company that was trying to resist an order for security for costs, as the principal's evidence did not go far enough in establishing that the company lacked the means of raising money for security. This Court held:

> [54] In determining this issue the court should consider not only whether the plaintiff company can provide security out of its own resources to continue the litigation, <u>but also whether it can raise the amount needed from its directors, shareholders, or other backers or interested persons</u>. It is for the plaintiff to satisfy the court that it would be prevented by an order for security from continuing the litigation: *Kropp* at para. 22; *0962118 B.C. Ltd. v. Salty's Fish and Chips Ltd.*, 2015 BCSC 1934 at para. 23.

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> [55] In this case, Mr. Butler filed an affidavit very similar to that filed in *Kropp*. In it, he said:
>
> > New West has no cash. Either I as a shareholder, or an associated company, will have to make any payment for security for costs. I do not have sufficient, unrestricted cash to pay the amount sought by Parkbridge for security for costs, nor does any company I control. Further, if I had to get that cash for security for costs, it would take away from my working capital requirements, and impair my ability to earn a living. Whether or not I am able to fund security for costs is dependant on the amount ordered.
>
> [56] As in *Kropp*, Mr. Butler's affidavit did not establish that the corporate plaintiff lacks the means of raising money for security. It provided no evidence of Mr. Butler's assets or debts, or that of his other companies. It is silent on the question as to whether it can raise security from others. …
>
> [Emphasis added.]

[44] In my view, the evidence of RCTA on the application for security for costs suffered from similar deficiencies to that in *Kropp* and *Parkbridge*. Here, we only have submissions from RCTA that it is unable to raise funds, and we do not have the evidence to support that submission. Counsel for RCTA submits before me that RCTA's inability to fundraise from shareholders or other backers can be inferred from the evidence that Mr. Alizada was impecunious, but I am not persuaded the chambers judge was in error for not drawing that inference. I do not see any prospect of RCTA succeeding on appeal in showing that the judge overlooked a factor regarding its impecuniosity, in the absence of any evidence regarding its shareholders or other backers and the ability of RCTA to fundraise from those persons.

[45] RCTA further submits that it is relevant that the individual claim would also be stifled if the corporation was required to post security, as the individual claim is derivative of the corporate claim and cannot stand on its own. I pause to note that begs the question of why Mr. Alizada is a named plaintiff if he does not have his own cause of action, but that question does not have to be answered on the present applications. I do not see this argument as advancing these applications in RCTA's favour.

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[46] As a further argument in support of its leave application, RCTA submits that the practice would benefit generally from clarity on the proper approach to the impecuniosity of a corporation on an application for security for costs, where the corporation's financial difficulties are due to the underlying conduct at issue in the action. RCTA suggests that the judge did not take this factor into consideration.

[47] I do not accede to this argument. On a fair reading of the judge's reasons, it cannot be said that the judge overlooked the allegation that RCTA's business was unsuccessful due to the untruthfulness of the representations about the previous tailor's business, made by the leasing agent's representative. This is evident from the judge's summary of the claim at para. 10. No other theory as to the reason for the corporation's impecuniosity was advanced.

[48] The judge stated that she was "balancing the relative injustices" in ordering security for costs against RCTA in an amount lower than that sought by Appia: at para. 32. Given the record before the judge and the whole of her reasons, in my view, this was the judge's way of recognizing the financial burdens placed on RCTA by the events which were the subject of the claim, and at the same time, recognizing the potential unfairness to Appia were it to succeed in its defence and not be able to recover any costs due to RCTA having no assets or operations. This is the kind of exercise of discretion, informed by the proper legal principles and all relevant factors, that this Court does not interfere with on appeal.

[49] I am also not persuaded that the profession needs further clarity about the relevance of the fact that a corporation's financial difficulties are due to the facts which are the subject of the claim. The authorities are already clear that this can be a relevant factor to be weighed in the exercise of discretion on an application for security for costs. As held in *PreveCeutical Medical Inc. v. Lotz*, 2024 BCSC 2105:

> [19] In addition, it has also been held that where the cause of the corporate plaintiff's impecuniosity is or may be the very conduct that is the subject of the claim, it may be appropriate to refuse to grant the order for security, or to reduce the amount ordered to be posted: *Protea Consultax Inc. v. Air Canada*, 2018 BCSC 995; *Tour-Mate Technologies Corp. v. Syntronix Systems Ltd.*, 1993 CanLII 2250, [1993] B.C.J. No. 599 (S.C.); ...

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[50] In this regard, see also *Carhoun & Sons Enterprises Ltd. v. Canada (Attorney General)*, 2016 BCSC 500 at para. 15(c), which refers to this being a factor in the "balance of injustices".

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[51] In my view, RCTA has not identified an issue of interest to the practice generally arising on the record in the proposed appeal.

[52] Regarding the significance of the issues to the action itself, I also do not accept the applicant's argument that the order for security for costs would end RCTA's action in its entirety if it does not comply. Even if RCTA is not capable of posting security, it remains open to RCTA to pursue its claim against the leasing agent and ABC. I must be careful not to opine on issues not before me, so I will simply observe that the merits of RCTA's claim as against the other defendants are different from that of the claim as against Appia, as the other parties may not have the contractual defences available to Appia. Further, should the other defendants seek to bring their own security for costs applications belatedly, RCTA would have the opportunity to file evidence in response to any such applications, potentially filling the gap in evidence that is apparent here.

Disposition

[53] For these reasons, I dismiss the applications.

"The Honourable Justice Griffin"