

In the Court of Appeal of Alberta

Citation: Just Biofiber Corp v Just Biofiber Structural Solutions Corp, 2025 ABCA 307

Date: 20250916

Docket: 2501-0217AC

Registry: Calgary

Between:

Just Biofiber Corp., and Perkins Property Investments Ltd.

Applicants

- and -

**Just Biofiber Structural Solutions Corp., Michael DeChamplain,
Lionel Terry Radford, Victor Boname, The Estate of Victor Boname,
Peter Brown, Mark Faber, Karen Kuwica, Trans-Eco Capital Corp.,
Arno Keinonen, John Doe and ABC Corp.**

Respondents

**Reasons for Decision of
The Honourable Justice Jolaine Antonio**

Application for Permission to Appeal

**Reasons for Decision of
The Honourable Justice Jolaine Antonio**

[1] The applicants, Just Biofiber Corp (JBF Corp) and Perkins Property Investments Ltd (Perkins), are two of three plaintiffs suing Just Biofiber Structural Solutions (JBFS Solutions) for oppression, among other causes of action. The applicants filed an application seeking various forms of interlocutory relief. The chambers judge dismissed the application, finding the applicants had provided insufficient evidence to substantiate their claims. He awarded solicitor-client costs against the applicants, in the maximum amount of \$329,586.32, subject to assessment. The applicants seek permission to appeal the costs order.

Facts:

[2] In May 2024, the applicants filed an application seeking relief including an attachment order and a *Mareva* injunction. The chambers judge dismissed the application in its entirety on February 24, 2025. In written reasons, he found *inter alia*: Perkins had not proved it was a shareholder of JBFS Solutions and therefore lacked standing to bring the application; JBF Corp had provided no evidence of its reasonable expectations; neither applicant adduced proof of any alleged undervalue transactions or of specific harm or prejudice; and no *prima facie* case for oppression had been made out. He concluded the respondents were entitled to costs on a scale to be determined and set deadlines for filing costs submissions. The applicants' deadline was March 21, 2025: *Just Biofiber Corp v Just Biofiber Structural Solutions Corp*, 2025 ABKB 102.

[3] On March 11, 2025, former counsel for the applicants filed a notice of withdrawal. The March 21 deadline passed. On April 23, 2025, the chambers judge's assistant emailed the applicants' former counsel to inquire as to the status of the costs submissions. The same day, the applicants' former counsel informed her they had withdrawn and would not be making any submissions as to costs.

[4] The applicants retained new counsel who filed a Notice of Change of Representation on June 2, 2025. The chambers judge's assistant directly emailed the applicants on June 10, 2025, asking if they intended to provide costs submissions and, if so, to provide them by 4:30 PM on Friday, June 27, 2025. On June 30, 2025, the chambers judge's assistant again emailed the applicants, asking if they intended to file submissions.

[5] In a costs endorsement dated July 3, 2025, the chambers judge noted the applicants had filed no costs submissions as of 2:00 PM on July 2, 2025, despite having sufficient opportunity to do so. He also reviewed his findings of allegations made with no evidence and noted JBF Corp had "barraged some of the Respondents with found-to-be-unsubstantiated allegations of fraud,

deceit, and bad faith”: *Just Biofiber Corp v Just Biofiber Structural Solutions Corp*, 2025 ABKB 407 at paras 15, 25-31 [*Costs Endorsement*]. He concluded at paras 31-32:

[31] Given the serious evidence shortcomings, the unproved allegations of serious wrongdoing, and the absence of any counter-position or counter-argument on costs, I award the Respondents solicitor-client costs against Just Biofiber in the requested amount of \$329,586.32 subject to assessment-officer certification of those claimed costs or disbursements (or award such lesser amount that may be certified on such review) if, by 4.30 pm on July 11, 2025, Just Biofiber requests such certification.

[32] Given its alignment with Just Biofiber on the reasonable-expectations, undervalue-transactions, and other application issues and on the allegations of wrongdoing, I find that Perkins Property is jointly and severally responsible for the same solicitor-client costs as approved above, also subject to Perkins Property’s right to request assessment-officer certification of that amount, with the same deadline for so requesting.

[6] The same day the *Costs Endorsement* was issued, the applicants’ new counsel became aware of the correspondence from the Court dated June 30. They wrote to the Court indicating their intention to make costs submissions. On July 7, 2025, the applicants provided their costs submissions to the Court. The chambers judge denied their request for a fiat permitting the submissions to be filed.

[7] The applicants filed a Notice of Appointment for Assessment of Costs on July 23, 2025.

[8] The applicants seek permission to appeal the *Costs Endorsement* only.

Analysis:

[9] Permission is required to appeal a costs order: *Alberta Rules of Court*, Alta Reg 124/2010, Rule 14.5(1)(e). The applicant must demonstrate:

- (i) a good arguable case having sufficient merit to warrant scrutiny by the court;
- (ii) the issues are of importance both to the parties and in general;
- (iii) the costs appeal has practical utility; and
- (iv) no delay in proceedings will be caused by the costs appeal.

Banovich v Banovic, 2023 ABCA 54 at para 11; *Nadarasah v Uthayakumar*, 2024 ABCA 22 at para 7; *Brill v Brill*, 2017 ABCA 235 at para 3.

[10] Costs awards, being discretionary, attract a high degree of deference; they should not be set aside on appeal unless the judge below made an error in principle or the award is plainly wrong: *Bun v Seng*, 2015 ABCA 165 at para 5.

[11] The applicants allege two legal errors in the *Costs Endorsement*.

[12] First, they say costs awards in oppression actions require unique consideration, since by their nature such actions will involve serious allegations that may or may not be substantiated. To award enhanced costs merely on the basis that serious allegations were not substantiated would have a chilling effect on oppression litigation. Therefore, enhanced costs in the context of oppression actions should require additional intentional misconduct separate from unfounded claims.

[13] The only authority the applicants have provided in support of this line of reasoning is a paragraph in a costs endorsement from the Court of King's Bench which reads, "I accept that in the statement of claim there were allegations of amongst other things, bad faith conduct on the part of the insurer. However, I do not find that such allegations in the context of a claim for insurance coverage are inflammatory as the Defendant asserts": *McGregor v Wawanese Mutual Insurance Company*, 2025 ABKB 352 at para 31. This statement does not purport to establish a legal principle; it is a fact-specific comment on the nature of one party's conduct. I agree with the respondents' position that there is no precedent for applying unique or different factors when considering enhanced costs in oppression actions.

[14] Contrary to the applicants' insinuation, the chambers judge did not base his costs award on allegations that simply did not carry the day. Plainly, he was concerned with a near-complete failure to provide evidence in support of serious allegations. The law supports that approach: eg *Hamilton v Open Window Bakery Ltd*, 2004 SCC 9 para 26; *Goldstick Estates (Re)*, 2019 ABCA 508 at para 24. It is highly unlikely a panel of this Court would fault the chambers judge for applying existing law when making a discretionary decision.

[15] Second, the applicants allege the chambers judge erred by grounding the award of solicitor-client costs partly on an absence of costs submissions. They suggest there is no basis in law for awarding enhanced costs *because* no costs submissions were made. They say the chambers judge erred in relying on cases where enhanced costs were awarded *and*, as a simple matter of fact, no costs submissions were made.

[16] It is not evident that the chambers judge awarded enhanced costs *because* no costs submissions were made. In context, it is not surprising he felt it prudent to recount the procedural history, to show the applicants were given opportunities to file submissions, and to observe they did not do so. His reference to "the absence of any ... counter-argument on costs" could be taken as a factor in his decision to award enhanced costs, as the applicants suggest, or as a factor in his decision to award the amount claimed by the respondents, subject to assessment. Both interpretations find parallels in the precedents cited in the *Costs Endorsement* (for the former, see *Beaver First Nation Band v ATN Farms Ltd*, 2001 ABQB 1046 at para 11; for the latter, see *Nordstrom v Stenco Incorporated*, 2016 ABQB 45 at para 96). Even if the chambers judge's reference to the absence of submissions could be an arguable issue, it depends sensitively on the

facts of the case and the wording of the *Costs Endorsement*. Accordingly, it is not an issue of general importance and does not merit the attention of a panel.

[17] The applicants suggest the quantum of costs ordered is a factor contributing to the importance of the appeal, both to the parties and in general. They cite *1985 Sawridge Trust v Kennedy*, 2017 ABCA 368 at para 5 for the proposition that a “person subjected to an out-of-the-ordinary costs award will often have a legitimate basis for appealing, and where there is doubt permission to appeal should be granted.” The respondents counter with authorities suggesting the quantum of costs alone is not a reason to grant leave: *Cold Lake Industrial Park GP Ltd v Abt (Estate)*, 2022 ABCA 23 at para 28-29; *Serfas v Spady*, 2024 ABCA 314 at para 11. I agree with Justice Ho’s analysis in *Cold Lake*: the quoted passage from *Sawridge Trust* “does not go as far as the applicant suggests or hopes”.

[18] The applicants have not satisfied me the proposed appeal would engage arguable issues that would merit consideration by a panel of this Court or that would be of public importance.

[19] The application for permission is denied.

[20] There is no suggestion the applicants’ conduct in this Court has been improper in any way. The applicants shall pay costs of this application on Column 3 of Schedule C of the *Alberta Rules of Court*.

Application heard on September 4, 2025

Reasons filed at Calgary, Alberta
this 16th day of September, 2025

Antonio J.A.

Appearances:

M.E. Mestinsek, K.C. (no appearance)

M. Zouravlioff

A. Bell

for the Applicants

M. Leci

A.N. Paul

L. Hale (no appearance)

S.A. Chehade (no appearance)

for the Respondents