

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Rahman v. Windermere Valley Property Management Ltd.*,
2026 BCCA 88

Date: 20260218
Docket: CA50815

Between:

Monie Rahman

Appellant
(Plaintiff)

And

Windermere Valley Property Management Ltd. dba First Choice Realty

Respondent
(Defendant)

Before: The Honourable Justice Iyer
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
June 27, 2025 (*Rahman v. Windermere Valley Property Management Ltd.*,
2025 BCSC 1221, Vancouver Docket S185869).

Oral Reasons for Judgment

The Appellant, appearing in person
(via videoconference):

M. Rahman

Counsel for the Respondent:

M.K. Sterns

Place and Date of Hearing:

Vancouver, British Columbia
February 18, 2026

Place and Date of Judgment:

Vancouver, British Columbia
February 18, 2026

Summary:

The respondent applies for security for costs of the appeal and of the proceeding below. The chambers judge granted summary judgment and dismissed the appellant's claim pursuant to Rule 9-6(5) because the claim was statute barred by expiry of the limitation period, each of the pleaded causes of action had no prospect of success, and the claim could be dismissed under Rule 22-7(2) due to the appellant's failure to pay an outstanding costs award. HELD: The application for security for costs of the appeal is granted. The appeal is weak and the appellant's failure to pay the costs award raises a concern about recoverability. The application for security for costs below is granted for the fixed portion of costs, with leave to reschedule after assessment of the remainder of costs.

IYER J.A.:

Background

[1] The respondent, Windermere Valley Property Management Ltd. dba First Choice Realty ("First Choice"), applies for security for costs of the appeal of \$15,000 and of the underlying summary judgment of \$15,000. The appellant, Monie Rahman, opposes the application.

[2] The underlying dispute arises from Ms. Rahman's purchase of a home in Invermere, British Columbia, in September 2010 ("Property"). First Choice was Ms. Rahman's broker.

[3] In May 2018, Ms. Rahman commenced a civil claim against First Choice seeking damages for professional negligence, breach of contract, breach of fiduciary duty, and negligent or fraudulent misrepresentation. She alleged First Choice misrepresented the nature of the neighbourhood and the town, focusing on the conduct of her neighbours and a deer cull by the town.

[4] First Choice applied to dismiss the claim under Rule 9-6 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. Justice Gomery (as he then was) granted the application, finding the action was statute barred by a limitation period: 2021 BCSC 118. However, this Court allowed the appeal: indexed at 2022 BCCA 258 [*Rahman BCCA*]. As a result, Ms. Rahman's claim continued.

[5] First Choice brought two further applications to dismiss Ms. Rahman’s claim. The first application, filed in October 2024, sought to dismiss the claim by way of summary judgment pursuant to Rule 9-6(5), and the second, filed in March 2025, sought to dismiss the action pursuant to Rule 22-7(2).

[6] The chambers judge heard both applications. In reasons indexed at 2025 BCSC 1221, she granted First Choice’s application under Rule 9-6(5), finding that there was no genuine issue for trial because Ms. Rahman’s claims were statute-barred by the expiry of a limitation period (at paras. 39–56). She examined each of Ms. Rahman’s pleaded causes of action and found that none had any prospect of success, which was another basis for dismissal under that Rule (at paras. 65–111).

[7] In the alternative, the judge found dismissal was justified under Rule 22-7(2) for non-compliance with a court order. Ms. Rahman had not complied with the order of an Associate Judge to pay special costs of \$3,500, despite numerous requests for payment by First Choice (at paras. 113–125).

[8] The judge also granted First Choice’s application for special costs (at paras. 133–141). She found Ms. Rahman had failed to comply with court orders and continued to misstate what occurred in prior hearings before other decision-makers. She held Ms. Rahman’s conduct was deserving of rebuke.

[9] Ms. Rahman filed her notice of appeal in July 2025. She filed her appeal record on October 7, 2025, and her factum and appeal book on November 3, 2025.

[10] In October 2025, before the deadline for filing Ms. Rahman’s factum, First Choice informed Ms. Rahman it would be applying for security for costs. January 2026 was the earliest date Ms. Rahman was available, and the parties agreed to adjourn the hearing to today.

Security for Costs on Appeal

[11] Section 34(1) of the *Court of Appeal Act*, S.B.C. 2021, c. 6 [Act], permits a single justice to order security for the costs of an appeal. The onus is on the party

against whom the order is sought to demonstrate why security should *not* be required: *Creative Salmon Company Ltd. v. Staniford*, 2007 BCCA 285 at para. 9 (Chambers).

[12] The ultimate question on such an application is whether an order would be in the interests of justice. In *Lu v. Mao*, 2006 BCCA 560 at para. 6 (Chambers), this Court set out four relevant considerations:

- (1) appellant's financial means;
- (2) the merits of the appeal;
- (3) the timeliness of the application; and
- (4) whether the costs will be readily recoverable [in the event the appellant is unsuccessful].

[13] The ability of the appellant to pay costs if the appeal is dismissed is important. Where there is a serious concern that costs may not be recoverable there is “almost a presumption” in favour of granting security: *Lu* at para. 5.

[14] While security may be refused or reduced if it would prevent an appellant from pursuing a meritorious appeal, an appellant's impecuniosity will not prevent an order for security in respect of an appeal with no merit: *Tan v. TD Bank Group (The Toronto Dominion Bank)*, 2024 BCCA 91 at para. 37 (Chambers).

[15] Ms. Rahman deposes that she does not have the means to post security of \$30,000 and she does not own real property in British Columbia. She has provided no objective evidence of her financial circumstances. While she made submissions at the hearing about her financial circumstances and her health conditions, as I explained, this is not evidence and I have not considered it. On the basis of the evidence she chose to put before the Court, she has not satisfied me that an order for security for costs of the appeal of \$15,000 or less would prevent her from pursuing the appeal, only that such an outcome is possible.

[16] In my view, Ms. Rahman's appeal is weak. The chambers judge's detailed reasons show she applied well-settled legal principles, carefully assessed the

evidence, and applied this Court's guidance in *Rahman BCCA*. She held Ms. Rahman's claim raised no genuine issue for trial on three separate grounds.

[17] Ms. Rahman's failure to pay outstanding costs awards, including the special costs order of \$3,500 and the award to First Choice of costs thrown away made by a different chambers judge in an amount not yet assessed, demonstrates there is a genuine concern about recoverability.

[18] With respect to timeliness, First Choice informed Ms. Rahman of its intended application for security for costs on October 10, 2025, after her appeal record was filed but prior to filing the factum or appeal book. I consider the application timely: *Nova-BioRubber Green Technologies Inc. v. Investment Agriculture Foundation British Columbia*, 2021 BCCA 368 at para. 12 (Chambers).

[19] In summary, Ms. Rahman has not demonstrated that the relevant criteria mean that an order for security should not be made. For the reasons I have given, I am satisfied that it is in the interests of justice to make that order.

[20] First Choice seeks \$15,000 based on a two-day appeal. The appeal is not complex and should not require more than a day. First Choice proposed an amount of \$6,500 based on a one-day appeal. I would so order.

Security for Costs of the Proceedings Below

[21] Unlike an application for security for costs of an appeal, the applicant bears the onus of showing that it is in the interests of justice to order security for the proceedings below. Consideration should be given to the merits of the appeal, the effect of such an order on the ability of the appellant to continue the appeal, and the prejudice to either party if the order is made or refused: *Musselman v. Vanderstelt*, 2025 BCCA 289 at para. 28 (Chambers).

[22] Subject to narrow exceptions, security for trial costs will not be ordered before the costs are assessed and certified by the registrar in the court below: *Musselman* at para. 27.

[23] First Choice seeks \$15,000 for security for special costs of the proceedings below based on a draft bill of special costs of \$30,784.81. It argues it will be prejudiced if the order is not made because Ms. Rahman has no exigible assets in British Columbia. It has not argued any prejudice directly connected to the prosecution of the appeal.

[24] Neither the special costs awarded at trial nor the costs thrown away order have been settled. I would adjourn the application in respect of those costs until that has been done. However, I would grant security for costs of the judgment of \$3,500, because that amount has been fixed.

Disposition

[25] First Choice’s applications for security for costs are granted. Ms. Rahman must post security for costs of the appeal of \$6,500, plus security for costs of the judgment of \$3,500 (a total of \$10,000) within 30 days of today’s date in a form acceptable to the registrar or in such form as the parties may agree.

[26] The appeal will be stayed to allow Ms. Rahman the opportunity to post security. If she does not do so, the respondents have leave to apply pursuant to s. 36(c) of the *Act* for the appeal to be dismissed.

[27] First Choice’s application for security for trial costs is adjourned with leave to reschedule after costs of the proceedings below are assessed.

[Discussion with parties re: dispensing with the appellant’s signature on the form of order]

[28] **IYER J.A.:** The need for Ms. Rahman’s signature is dispensed with on the draft order.

“The Honourable Justice Iyer”