

In the Court of Appeal of Alberta

Citation: Carrigan v Withers, 2026 ABCA 58

Date: 20260226
Docket: 2501-0360AC
Registry: Calgary

Between:

Brad Carrigan

Applicant/Cross-Respondent

- and -

Patricia Withers

Respondent

- and -

Andrea Bosse

Respondent/Cross-Applicant

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

Application for Stay Order
Application for Security for Costs

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

[1] The appellant Mr. Carrigan applies pursuant to Rule 14.48(b) of the *Alberta Rules of Court*, Alta Reg 124/2010 for an order staying all proceedings and enforcement steps related to an underlying arbitration pending resolution of his appeal. The arbitration is regarding a property dispute between Mr. Carrigan and the respondent Ms. Bosse. The respondent Ms. Withers is the arbitrator.

[2] Ms. Bosse applies for an order requiring Mr. Carrigan to post security for costs in relation to his appeal.

[3] Mr. Carrigan's application is denied and Ms. Bosse's application is allowed.

Background

[4] This matter has a long history in the Court of King's Bench. Mr. Carrigan and Ms. Bosse are co-owners of an acreage property. Ms. Bosse wants to sell the property. Through an arbitration agreement the co-owners entered arbitration before Ms. Withers in September of 2023 to determine issues related to the listing and sale of the property.

[5] Mr. Carrigan is not satisfied with the arbitration proceedings and has filed multiple applications in the Court of King's Bench challenging Ms. Withers' directives and awards and her jurisdiction. In January, 2024 Justice Johnston ordered that Mr. Carrigan required leave of the court or written consent of the parties prior to filing any further applications relating to the arbitration. (The respondents have not suggested this order amounts to a vexatious litigant order, such that rule 14.5(1)(j) would apply.)

[6] Since the time of Justice Johnston's order, the Court of King's Bench has issued various orders relating to the arbitration, including the following:

1. On May 16, 2024, Justice Kuntz ordered the awards and directives of the arbitrator relating to the immediate sale of the property were confirmed and fully enforceable as though they were orders of the Court of King's Bench.
2. On July 11, 2024, Justice Jeffrey declared that the arbitrator retained jurisdiction to arbitrate matters between the parties relating to the listing and sale of the property pursuant to the arbitration agreement.
3. On April 23, 2025, Justice Malik ordered further awards and directives of the arbitrator were confirmed and fully enforceable.

None of these orders is under appeal.

[7] To date Mr. Carrigan owes Ms. Bosse \$16,072 in unpaid costs orders resulting from applications in the Court of King’s Bench.

[8] In October 2025, Mr. Carrigan filed an originating application to challenge Ms. Withers’ jurisdiction on the basis that there were irregularities in the formation of the arbitration agreement. He named both Ms. Bosse and Ms. Withers as respondents. He did not apply for leave prior to filing the application.

[9] Ms. Withers applied to set aside the originating application, arguing in part that it had been filed without first obtaining leave as required by Justice Johnston’s order. Mr. Carrigan acknowledged he had not sought leave. He cross-applied for retroactive leave to file the originating application.

[10] Justice Funk heard the applications. She found Mr. Carrigan had not explained his failure to seek leave before filing the first application and had not established that leave should be granted. She dismissed the application for leave and set aside the originating application with costs to the respondents. It is from this order that Mr. Carrigan appeals.

Stay of Proceedings

Law

[11] Rule 14.48 provides:

14.48 An application to stay proceedings or enforcement of a decision pending appeal may be made

- (a) to the judge who made that decision, or
- (b) to a single appeal judge, whether or not the application was made to the judge who made the decision, and whether or not that application was granted or dismissed.

[12] Rule 14.48 anticipates a stay of proceedings or enforcement arising from a decision under appeal at this Court: *Bourque v Tensfeldt*, 2017 ABCA 236 at para 5. A stay of proceedings or enforcement pending appeal pauses certain consequences of the decision under appeal and cannot neutralize or reverse the decision itself: *Denis v Sauvageau*, 2022 ABCA 166 at para 15.

[13] This is a limited jurisdiction and an applicant for a stay “must identify an action authorized by the judgment under appeal that it wants stayed”: *Alberta Energy Regulator v Grant Thornton Limited*, 2017 ABCA 278 [AER] at para 70. Where the order appealed from does not require or

authorize any person to do anything, there is nothing to stay; this includes situations where the justice refuses all relief: *AER* at para 72; *Dr Vu v College of Physicians & Surgeons of Alberta*, 2023 ABCA 377 at paras 14-16.

[14] In determining whether to grant a stay of proceedings or enforcement courts consider whether there is a serious question to be tried, whether the applicant will suffer irreparable harm if the stay is not granted and whether the overall balance of convenience favors granting or denying the stay; the overriding question is whether a stay “is just and equitable in all of the circumstances of the case”: *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 25.

Analysis

[15] Mr. Carrigan has appealed the order of Justice Funk, but he seeks “an order staying all arbitration proceedings, directives, and enforcement steps pending determination of the appeal.”

[16] The order under appeal set aside the applicant’s applications, awarded costs, and made directions regarding the form and service of the order. In setting aside the applications, the order does not require or authorize any person to do anything; there is nothing to stay. The directions regarding form and service have been carried out, so no action remains to be stayed.

[17] It appears the core relief Mr. Carrigan seeks is to stay all remaining arbitration proceedings. Mr. Carrigan denies he is seeking stays of court orders that are not under appeal, though this denial seems somewhat contradictory to the sweeping relief he seeks. In any event, I cannot stay the enforcement of orders other than the order now under appeal. Rule 14.48 provides this Court with jurisdiction to “stay ... enforcement of a decision pending appeal”; it does not extend to other orders. If an application to stay proceedings or enforcement seeks to contradict an existing order that is not under appeal, it is a collateral attack on that order: *Inter Pipeline Ltd v Teine Energy Ltd*, 2025 ABCA 368 at para 13.

[18] Mr. Carrigan asks me to stay the ongoing arbitration proceedings and any award made to date. This request was not made below. Even if Mr. Carrigan had succeeded in obtaining leave to file his application in the court below, it would not have resulted in a stay of the arbitration proceedings. I am not convinced it is appropriate in this case to grant relief that was unrelated to the success or failure of his application below.

[19] Ms. Withers raises the preliminary question of whether this Court has jurisdiction to stay arbitral proceedings or awards. Certainly no such jurisdiction is bestowed by rule 14.48. It provides that “an application to stay proceedings or enforcement of a decision” may be made “to the judge who made that decision” or to a single appellate judge “whether or not the application was made to the judge who made the decision.” The Rule contemplates a stay of a decision made by a judge. As defined in the Appendix to the *Rules* “judge” can mean a justice of the Court of King’s Bench or the Court of Justice, or an applications judge, depending on the circumstances. Therefore, this Court may stay the enforcement of a decision of a judge, but not a decision of an administrative

body: *AlphaBow Energy Ltd v Alberta Energy Regulator*, 2023 ABCA 164 at paras 29-36. There is no principled basis on which to conclude that the rule grants this Court the power to stay proceedings of a non-judicial body when it is not empowered to stay enforcement of its decisions.

[20] Mr. Carrigan submitted, in writing and orally, that s 30 of the *Arbitration Act*, RSA 2000, cA-43, provides the courts with supervisory authority over arbitrators, implying that the courts have broad powers to intervene in arbitration proceedings as they see fit. I reject this submission. Section 30 deals with an arbitrator's powers to compel production of evidence. The Court of King's Bench and the Court of Justice are empowered to stay arbitration proceedings in certain narrow circumstances that do not apply here: s 8(1)(c). The *Act* bestows no stay powers on the Court of Appeal. While the courts have certain defined appeal powers, that does not equate to the kind of "supervisory" power Mr. Carrigan envisions. Certainly no such power is found in s 30, to which Mr. Carrigan repeatedly referred. When confronted with this manifest contradiction, Mr. Carrigan said he made a mistake. It is understandable that a person without legal training may sometimes misconstrue the meaning of a statutory provision, but in my view there is no way a person who had read section 30 could interpret it as bestowing broad supervisory jurisdiction. Mr. Carrigan was responsible for ensuring, to the best of his ability, that his materials were accurate: see e.g. Court of Appeal of Alberta, Court of King's Bench of Alberta, Alberta Court of Justice, "Notice to the Public and Legal Profession, Ensuring the Integrity of Court Submissions When Using Large Language Models" (6 October 2023), online (pdf): <https://albertacourts.ca/docs/default-source/qb/npp/tri-court-notice-to-profession-and-public---large-language-models.pdf?sfvrsn=713d5a82_7>. Mistakes of this kind are serious, as they have the potential to mislead the court.

[21] There has been no argument pertaining to any powers the courts may have under the *Judicature Act*, RSA 2000, c J-2 or any power the Court of King's Bench may have as part of its inherent jurisdiction, or whether any such powers are supplanted by applicable legislative regimes.

[22] Assuming, without deciding, that I have jurisdiction to stay the ongoing arbitration proceedings, I would decline to exercise it here. Mr. Carrigan argues the substantive issues he wanted to raise in his application below have merit, but Justice Funk did not decide those issues. She found leave should not be granted. That is a factually-sensitive determination that will attract deferential review. The harms Mr. Carrigan alleges he will suffer absent a stay are monetary in nature. Such harms will rarely give rise to irreparable harm in the context of the test for a stay: *Barron v Warkentin*, 2005 ABCA 162 at para 3; *Kassian v Hill*, 2002 ABCA 140 para 6. Given the history of these proceedings, I am satisfied the balance of convenience favours the denial of a stay. Finally, I am not satisfied it would be just or equitable to grant a stay of the arbitral proceedings.

[23] Mr. Carrigan has not expressly sought a stay of the costs aspect of the order under appeal. Presuming he intended to do so, I am not satisfied a stay is warranted. Mr. Carrigan has not identified a serious error that merits the attention of a panel and has not established that he would

suffer irreparable harm if required to pay. Given his history of non-payment of costs, the balance of convenience favours denying the stay.

[24] The application for a stay of enforcement and of proceedings is denied.

Security for Costs

Law

[25] Rule 14.67 permits a single judge of this Court to order a party to provide security for the payment of a costs award pursuant to Part 4 of the *Rules*.

[26] Rule 4.22 provides that the Court may order security for costs if it considers the order just and reasonable, taking into account the following factors:

- (a) Whether it is likely the applicant will be able to enforce an order or judgment against assets in Alberta;
- (b) The ability of the respondent to pay the costs award;
- (c) The merits of the action in which the application is filed;
- (d) Whether making the order would unduly prejudice the respondent's ability to continue the action;
- (e) Any other matter the Court considers appropriate.

An order for security for costs is discretionary and balances the reasonable expectations and rights of the parties to come to a just and reasonable conclusion: *Haymour v The Owners Condominium Plan No 802 2845*, 2016 ABCA 367 at para 8. The onus is on the applicant to show on a balance of probabilities that it is just and equitable to order security for costs or that the respondent will not be able to pay any costs order that may be awarded: *Spiess v Spiess*, 2025 ABCA 3 at para 20.

[27] In most cases, the failure to pay trial costs awards combined with a demonstrated inability to pay costs if the appeal is unsuccessful is a good reason to order security for costs: *DataNet Information Systems, Inc v Belzil*, 2011 ABCA 40 at para 4 [*DataNet*]. Concern about whether costs awarded will be paid is compounded when combined with modest prospect of an appeal's success: *Aski Construction Ltd v Markos*, 2017 ABCA 341 at para 8.

Analysis

Mr. Carrigan's ability to pay and Ms. Bosse's ability to enforce an order for costs.

[28] Ms. Bosse says that if Mr. Carrigan is not required to post security for costs she will be unable to collect any costs award that results from this appeal. She argues that Mr. Carrigan has multiple financial obligations in arrears and that he will have future costs in arbitration, making it unlikely she will be able to enforce a costs order resulting from this appeal against Mr. Carrigan's interest in the property, which she contends is his only real asset.

[29] She further argues that Mr. Carrigan has failed to pay multiple costs orders owed to her and has repeatedly indicated to the court that he cannot pay these awards. This overstates the evidence provided; of the in-court statements pointed out by Ms. Bosse only one is an admission by Mr. Carrigan that he was unable to pay a costs award.

[30] Mr. Carrigan filed no materials in response to the application; however, in his oral submissions he acknowledged he owes costs to Ms. Bosse and does not have sufficient liquid funds to pay these outstanding amounts or to post security for costs.

Merits of the Appeal

[31] Regarding the merits of the appeal, Ms. Bosse argues that Justice Funk properly applied the test to grant leave in the face of a restricted court access order as set out in *Knutson (Re)*, 2023 ABKB 589 and was not satisfied that there were reasonable grounds for the litigation or that Mr. Carrigan had fully deposed the facts and circumstances surrounding the proposed litigation. As such she says the appeal is of doubtful merit.

[32] Mr. Carrigan says that his appeal is meritorious. As noted, however, his submissions focus on issues which were not decided by Justice Funk and the merits of the appeal must be assessed with regard to the standard of review, which will be deferential.

Undue Prejudice

[33] Finally, Ms. Bosse says that there is no undue prejudice to Mr. Carrigan in ordering security for costs as “[a]ccess to justice does not equate to accessing civil processes without fear of costs consequences”: *DataNet* at para 4. Mr. Carrigan argues that security for costs is protective and not punitive, and that ordering security for costs in any amount will prevent him from bringing an appeal with genuine merit before the court, which would be contrary to natural justice. He asks that I dismiss the application, and in the alternative that any order for security for costs should be modest.

[34] While courts are generally reluctant to prevent parties from advancing their cases in court, awarding costs to the successful party in civil litigation is an important control on the quantity and

intensity of litigation, which becomes ineffective where one party is “judgment proof” because they refuse or are unable to pay these awards: *Stoney v Trustees for the 1985 Sawridge Trust*, 2017 ABCA 437 at para 6. Mr. Carrigan has been unsuccessful in advancing his position in the Court of King’s Bench, he has repeatedly been ordered to pay costs to Ms. Bosse, and has more often than not failed to do so.

[35] Balancing all the factors, it is just and reasonable to order Mr. Carrigan to provide security for payment of a potential costs award for this appeal.

[36] Ms. Bosse requests security for costs including the amounts permitted for costs related to an appeal before a panel of this Court calculated on column 4 of the tariff contained at Schedule C of the *Rules*, plus an additional 25% to account for inflation: *Distinct Real Estate USA 2, LP v Wazonek*, 2025 ABKB 451.

[37] While column 4 of the tariff accurately represents the amounts at stake in the arbitration, the order appealed from denied leave to bring an originating application. I am not convinced there is any monetary amount underlying the action below, nor that Column 4 represents a suitable proxy for the complexity of the applications below. The appropriate quantum of security for costs is that for an appeal under column 1 of Schedule C. In the circumstances I decline to order any increase in the tariff amount for inflation. Of course this determination does not constrain any costs order that may be made by the panel that hears the appeal.

[38] The application for security for costs is granted on the following terms:

1. Mr. Carrigan shall post security in this Court in the amount of \$3375 in relation to Ms Bosse’s appeal costs by March 31, 2026.
2. All applications and other proceedings in this appeal are stayed until the ordered security is paid into this Court.
3. If the respondent fails to post security as ordered, his appeal will be deemed abandoned: *Rules*, Rule 14.67(2).

Costs of these applications

[39] Ms. Bosse seeks costs for the two applications before me. Ms. Withers seeks costs for the stay application. Mr. Carrigan asks that no costs be awarded for either application in any event of the outcomes.

[40] Ms. Bosse was successful on both applications and Mr. Carrigan shall pay her costs of the applications in the amount of \$2000 forthwith. I decline to award costs of the application to Ms. Withers.

[41] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

Application heard on February 19, 2026

Reasons filed at Calgary, Alberta
this 26th day of February, 2026

Antonio J.A.

Appearances:

Applicant/Cross-Respondent B. Carrigan

K.N. Hoy
for the Respondent P. Withers

B. Younggren
for the Respondent/Cross-Applicant A. Bosse