

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Timeless Pictures Inc. v. Chandler*,
2026 BCSC 449

Date: 20260304
Docket: S253771
Registry: Vancouver

Between:

**Timeless Pictures Inc., Bam Writers Ltd.,
and Bam Writers 2 Ltd.**

Plaintiffs

And

**Doran Chandler,
Chandler Fogden Lyman Law Corporation**

Defendants

Before: Associate Judge Robertson

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

A. Richards

Counsel for the Defendants:

J. Dives, K.C.

Place and Date of Hearing:

Vancouver, B.C.
February 24, 2026

Place and Date of Judgment:

Vancouver, B.C.
March 4, 2026

[1] **THE COURT:** When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered. I have made such edits, without affecting the substance or final disposition.

[2] The defendants seek an order that the plaintiff post \$70,000 as security for costs within 60 days or, alternatively, that the majority shareholder of Timeless Pictures Inc. gives an undertaking to pay any costs award.

Background

[3] The underlying action is founded in solicitor’s negligence arising out of the previous retainer by the plaintiffs of the defendants, as their solicitors.

[4] The plaintiffs are corporations involved in Canadian movie production operations, with Bam Writers Ltd. and Bam Writers 2 Ltd. (the “BAM Companies”), being the wholly owned subsidiaries of Timeless Pictures Inc. (“Timeless”). Timeless has three shareholders. Mr. Silverman, who is the majority shareholder, and Mr. Coscas and Mr. Goldstein (the “Minority Shareholders”).

[5] The defendants were retained to provide legal services associated with the corporate structure for the plaintiffs, as well as the various single-purpose corporate vehicles (“SCVs”) which were, from time to time, incorporated for each individual movie project. During the time of the retainer the defendants incorporated some 44 SCVs which were each wholly owned by Timeless.

[6] The allegations against the defendants are that counsel failed to disclose certain alleged conflicts of interest with respect to them also being retained by other companies owned by the Minority Shareholders. Specifically, the plaintiffs allege that around mid-2024 the relationship between Mr. Silverman and the Minority Shareholders deteriorated and, while that was occurring, counsel accepted instructions from the Minority Shareholders to incorporate new companies that directly competed with Timeless and facilitated the stripping of assets held by the plaintiffs into these new companies controlled by the Minority Shareholders.

[7] The plaintiffs say that the discovery of these actions resulted in a termination of the solicitor-client relationship they had with the two defendants and, ultimately, have resulted in two separate litigation matters, one being an arbitration between the shareholders with such arbitration scheduled to be held in June 2026, and this litigation in respect of the allegations against counsel.

[8] This action was commenced by notice of civil claim filed May 20, 2025.

[9] Germane to this application is that in the notice of civil claim at para. 20 it is plead that assets were transferred from the plaintiffs to the competing corporations owned by the Minority Shareholders, and at para. 24 that:

... the plaintiffs have been wholly deprived of the benefit of the Transferred Assets, the loss of which has destroyed Timeless' value and rendered it unable to continue operating as a going concern.

[10] While a *pro forma* response was filed June 9, 2025, an amended response was then filed on October 23, 2025 by which a fulsome defence was raised. As a relatively high and general summary, the defendants deny all of the allegations, pleading that the defendants properly followed instructions with respect to the business operations and to the extent there may have been improper conduct by the Minority Shareholders in respect of the newly incorporated companies, the solicitor was not privy to such conduct and was not involved in a transferring of any assets from Timeless to the identified company that is alleged to have been the benefit of such transfers, with the defendants pleading that plaintiffs recourse is as against the Minority Shareholders.

[11] In this respect, the defendants plead at para. 11 that given the ongoing shareholder arbitration, this action is an abuse of process intended to be used to obtain evidence for the purposes of that arbitration.

[12] A notice of trial was filed in this action on November 19, 2025 setting a 16-day trial for October 13, 2026. This application was filed November 25, 2025.

[13] Notwithstanding that the trial has been set, the litigation is generally in its infancy given that the pleadings were closed, at least with more formal defences being raised, at the end of October 2025 and discovery not yet conducted.

[14] In this respect, I am advised that the defendants have not yet sought the plaintiffs' available dates. However, the defendants have requested that three days be set aside to discover the plaintiffs, that being more than the available time under the *Rules*.

[15] The subject application for security for costs is one of two extant applications.

[16] The defendants have also filed an application to postpone their obligations for disclosure pending an application for directions as to the scheduling of examinations for discovery given the disputes that have been raised in that respect. There has also been a prior application brought by the plaintiffs to compel document discovery, as well as a case planning conference.

[17] Thus, in the approximate six months since pleadings were formally closed in June 2025 (subject to the amended response being filed in October 2025), three notices of application have been filed, a case planning conference held, and requests for examinations for discovery to be scheduled, as noted, above the time limit normally available under the *Rules*, but no discovery concluded as of yet.

Legal Framework

[18] Section 236 of the *Business Corporation Act*, S.B.C. 2002, c. 57 gives the court its authority to compel a corporate party to post security for costs.

236 If a corporation is the plaintiff in a legal proceeding brought before the court, and if it appears that the corporation will be unable to pay the costs of the defendant if the defendant is successful in the defence, the court may require security to be given by the corporation for those costs, and may stay all legal proceedings until the security is given.

[19] The defendants argue that given the general authority set out in s. 236, that the form of security that can be ordered is broad and not necessarily limited to monetary security, meaning that the jurisdiction encompasses the alternative order

they seek; namely, to compel Mr. Silverman to provide a guarantee or indemnity of some sort by which he will agree to cover any costs award personally, stated to be an undertaking to the court. I will address that element of the application separately.

[20] As to the test for making an order for security in the first instance, the considerations for the court are well known and uncontentious and were summarized in both the defendants' application and the plaintiffs' response, although with the cases cited by each being different.

[21] In summary:

- a) The purpose of security for costs is to protect the defendants in the likelihood that in the event of its success it will be unable to recover its costs from the plaintiff: See *Fat Mel's Restaurant Ltd. v. Canadian Northern Shield Insurance Co.*, 1993 CanLII 1669 (BCCA) at para. 15.
- b) An order for security for costs prevent principals of the corporate plaintiff from hiding behind the corporate veil and protect "the community against litigious abuses by artificial persons manipulated by natural persons": *Bronson v. Hewitt*, 2007 BCSC 1751 at para. 41, cited with approval in *Ocean Pastures Corporation v. Old Masset Economic Development Corporation*, 2016 BCCA 12, at para. 21.
- c) There is a two-stage legal test on an application for security for costs. The onus is initially on the applicant at the first stage to satisfy the court that there is a *prima facie* case that the respondent would be unable to pay the applicant's costs if the respondent claim failed: *Integrated Contractors Ltd. v. Leduc Development Ltd.*, 2009 BCSC 965, at para. 11. If this threshold has been met the onus shifts to the respondent to show that it has sufficient and exigible assets to satisfy an award for costs and an order will stifle its ability to bring the case forward or that there is no arguable defence to its claim: *Integrated Contractors*, paras. 12 to 13; *Carhoun & Sons Enterprises Ltd. v. Canada (Attorney General)*, 2016 BCSC 500, at

para. 15; and *Truly Social Games, LLC v. East Side Games Group Ltd.*, 2024 BCSC 1260.

- d) In considering the first stage analysis, a *prima facie* case that the corporate plaintiff may be unable to pay costs can be satisfied by showing the absence of assets in British Columbia usually through the admission of Land Title and Personal Property registry searches: See *Kraft v. B.C.B.C.*, 2000 BCSC 1493, at para. 13 and citing *Ruko of Canada Ltd. v. Canadian Imperial Bank of Commerce*, [1991] 49 C.P.C. (2d) 105. However, in considering the second stage analysis the court must take into account all of the evidence presented and not just simply rely on both Land Title Office and Personal Property Registry searches as set forward by the applicant: *Hyper Hippo Entertainment Ltd. v Redcell Games General Partnership*, 2023 BCSC 1064 and *Moneywise Financial Inc., v. Key Life WCF Financial Inc.*, 2018 BCSC 1789, at paras. 36, 46, and 51. As to whether there is an arguable case, while the court may have regard to the merits of the action it should avoid going into detail of the merits unless success or failure appears obvious.
- e) The general considerations under the second stage have been set out by our Court of Appeal in *Kropp v. Swanese Bay Golf Course Ltd.*, 1997 CanLII 4037, at para. 17 as follows:
- (a) The court has a complete discretion whether to order security, and will act in light of all the relevant circumstances;
 - (b) 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;
 - (c) 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;
 - (d) 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;
 - (e) The court can order any amount of security up to the full amount claimed, as long as the amount is more than nominal;

- (f) 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
 - (g) The lateness of the application for security is a circumstance which can properly be taken into account.
- f) In terms of stifling an action, where a corporate plaintiff's principals have sufficient assets to loan funds to the company, any deterrence will be from the principal not wanting to risk those funds, effectively putting the risk to the litigation and of any resulting costs award on the shoulders of the defendants: *Henni v Food Network Canada Inc.*, 2022 BCSC 1113, at para. 27.
- g) If the court determines that security of costs is warranted it has the jurisdiction to order such costs be posted on a staggered basis: *Henry* at para. 29.

Evidence as to Ability to Pay a Costs Award

[22] The evidence relied upon by the defendants as to the plaintiffs' inability to pay a costs award arises from not only the negative results of the Land Title and Personal Property searches showing no obvious exigible assets in the names of the plaintiffs, but also the plaintiffs' own pleadings by which it claims that assets were transferred from it by the Minority Shareholders rendering Timeless "unable to continue carrying on business".

[23] In response, Mr. Silverman swore an affidavit on behalf of the plaintiffs in which he deposes that Timeless' assets are generated through the production of licenced films, through tax credits, licencing and distribution fees, and for certain films, on musical composition revenues and international sale advances.

[24] He deposes that as of December 2, 2025, Timeless "and its subsidiaries" hold approximately \$1.39 millions CDN, \$162,000 USD cash in their commercial bank accounts. In addition, the various SPVs hold intellectual property rights for over 30 films in post-production. Once production with respect to the SPVs is completed and

the accounting and legal fees paid by those SPVs, the usual process is to have the SPV amalgamated with Timeless such that the inventory cash credit revenue will ultimately be paid to Timeless. There is an expectation that approximately \$750,000 will be paid to Timeless through this process over the next two years.

[25] There are also receivables noted to be due and owing on licencing fees from Canadian broadcasters, anticipated to amount to some further \$750,000, to be paid over the next two years and a further \$350,000 to be paid in respect of French Canadian rights.

[26] Mr. Silverman also deposes that Timeless and its subsidiaries “do not have any significant upcoming liabilities or debts that would materially deplete these accounts,” referencing only three specific debts; a credit card with a balance of approximately \$34,000, loans of approximately \$255,000, and taxes owing of approximately \$120,000.

[27] Unaudited financial statements for the years 2023, 2024, and 2025 have been exhibited to Mr. Silverman’s affidavit. These financial statements are perplexing in many respects. For example, for some unexplained reason, the fiscal year end for each statement is different with it being December 31, 2023, May 21, 2024, and January 31, 2025 (subject to one issue addressed below), meaning that any review of the financial performance *may* have to be done with adjustments made as to timing and the number of months actually covered during the reported fiscal period in order to compare year to year, and determine if the company is losing or gaining assets.

[28] I use the word “*may*” as the notes to the financial statements fail to indicate if the period covered is for the fiscal year or since the last unaudited financial statement. That uncertainty is further illustrated by reference to the 2024 unaudited financial statement which includes the 2022 year as the prior year to 2024, omitting 2023 altogether, without any explanation as to why that would be.

[29] None of the financial statements are audited, which is not entirely unusual. However, except for one, they are also unsigned, which is unusual. At the very least, we would expect management to have endorsed the information contained within the financial statements. That is more problematic in that Mr. Silverman states in his affidavit only that they are attached. He notably does not disclose as to their accuracy or completeness.

[30] A further and more concerning inconsistency is shown between pages 4 and 5 of the financial statement attached as being part of the one created by the accountant under the cover letter dated July 31, 2025 (pages 48 and 49 of the exhibit itself). The balance sheet on page 5 is noted to be, for some inexplicable reason, in respect of the fiscal year ending December 31, 2025 despite every other page referencing a year end of January 31, 2025.

[31] The affidavit to which this financial statement is attached was sworn on December 4, 2025 such that one would assume that reference to them being in respect of a later in time, December 31 2025, year end is likely an error. However, that page is the only page that is signed or contains a signature on it.

[32] Also of note is that, on that page, despite it being dated weeks after the swearing of the affidavit, and the apparent date of the bank statements separately attached and referenced above being December 2 and 3, 2025, the cash on hand is noted to be only \$22,953. There is no explanation as to that discrepancy.

[33] Assuming the December 31, 2025 date on that one page is a typographical error, and that the proper date is January 31, 2025, other issues arise. Specifically, sales for the period ending January 31, 2025 totalled \$1,283,339, which appears to be an increase in revenue between that date and May 21, 2024 by some \$300,000. That would mean that revenue increased in the period after the actions which are the basis for the two outstanding pieces of litigation arose, which is inconsistent with the pleadings.

[34] However, if the May 2024 figure covered only December 23, 2023 to May 2024, that would indicate a decrease in revenue if comparing or extrapolating this based on a month-by-month basis, which would indicate a potential risk to an ability to pay.

[35] In any event, the expenses that were paid from the net sale of proceeds are indicated to be \$917,986 during that period, with a significant cost being “management fees” of some \$584,079, leaving income net of taxes of only \$218,000 for the fiscal period ending January 31, 2025.

[36] There are retained earnings noted to be approximately \$46,634 for the fiscal period ending January 31, 2025 bringing the total then to \$255,375 when added to the previous retained earnings.

[37] That level of net income and retained earnings are insufficient to cover legal expenses being incurred, as I will address further below, and Timeless’ debt.

[38] Notwithstanding the statement made by Mr. Silverman in his affidavit as to the debt, Timeless’ liabilities as disclosed in the financial statements are significantly higher – close to \$4.5 million. What Mr. Silverman has failed to address in his affidavit is that there are intercorporate loans of over \$3.5 million, specifically to a company 1258462 BC Ltd. (“125”). Mr. Silverman is the sole director and president of 125.

[39] This lack of disclosure may arise from the qualifier made by Mr. Silverman as to what debts are “upcoming”. Nonetheless, it is not clear on the materials, nor has Mr. Silverman addressed, what could trigger the obligation to repay these amounts, including whether the results of the arbitration in the summer will do so, or if Mr. Silverman could simply demand the obligation be repaid. Based, however, on the indebtedness noted in the financial statements, the debt to 125 makes up approximately 80% of Timeless’ debt. It is, in all respects, significant and the absence of any explanation or particulars as to that obligation is notable.

[40] In addition, Mr. Goldstein, one of the Minority Shareholders, has sworn an affidavit in reply to Mr. Silverman's evidence. He deposes that "Timeless is no longer carrying on an active business" due to the breakdown in the relationship between the shareholders. He further deposes that the only significant assets of Timeless are the tax credits expected to flow to it through the SPVs.

[41] Mr. Goldstein has exhibited a statement to his affidavit which he deposes as being received from Timeless' accountant, as identified, that speaks to the legal expenses, that being just one current expense expended by Timeless from February 2025 to January 2026. This statement shows the payment of legal fees of over \$1.5 million during that time period with approximately \$800,000 of it being spent in the last two months, from December 1, 2025 to January 22, 2026, meaning that even if there was more than \$1.5 million in Timeless' bank account from December 2, 2025, payment of those legal expenses would have a significant effect on the cash at hand.

[42] Turning then to the arbitration, Mr. Silverman's evidence is that the arbitration will resolve the disputes concerning the alleged misappropriated intellectual property and related claims and that while it has caused disruption "it does not affect the liquidity of the companies or the receivables coming in".

[43] Further, he deposes that the disruption will "have no bearing on the expected revenues over the next few years as those revenues flow from the completed film currently in distribution". No evidence has been put forward as to the Bam Companies' ability to satisfy a costs award with Mr. Silverman noting that given that they are wholly owned subsidiaries owned by Timeless, any award against them would be paid by Timeless in any event. The plaintiffs rely on *Norkum v. Fletcher*, 2019 BCSC 922, at para. 28 in this respect.

[44] Timeless has also not refuted the evidence of Mr. Goldstein with respect to the legal fees, although noted that the *Rules* do not allow for such sur-reply affidavits to be tendered absent court approval as the reason for that admission. Regardless, Timeless argues that little weight should be given to that evidence given

Mr. Goldstein's adverse position against Timeless and lack of ongoing involvement in Timeless and the BAM Companies pending the outcome of the arbitration, notwithstanding that the receipt of the reports is properly attributed to having come from the accountant who is fully identified.

Arguments and Analysis

Is Security Warranted

[45] The plaintiffs argued that the evidence tendered by the defendants is insufficient to make out a *prima facie* case for the inability to satisfy a costs award.

[46] I disagree.

[47] I am satisfied that a *prima facie* case for the inability to meet a costs obligation has been established by the defendants and largely on the pleadings themselves of statements that there is no ongoing business, such that the onus has shifted to the plaintiffs to establish the contrary, or, alternatively, that their case may be stifled if the order is made or that there is no arguable case.

[48] The financial picture of Timeless is not clear given the discrepancies in the financial statements being relied upon as outlined above.

[49] What the evidence does establish is that on December 2 and 3, 2025 Timeless had approximately \$1.6 million in exigible cash held by a bank that is subject to this court's jurisdiction, and a possibility of revenue of a further \$1.85 million over the next two years depended on the SPVs amalgamating with Timeless, although it is unclear if the Canadian broadcast licence and French Canadian market receivables also have to flow through the SPVs or are payable directly to Timeless.

[50] In any event, counsel for the defendants argue that the consideration as to an ability to meet a costs award is not to be made based on one status point in time in this case, that being time on which the responding affidavit was made, but on a more global basis having regard to the totality of the corporation's financial picture and

reasonable assumptions as to how it will look in the future time when a judgment and costs award would likely be made.

[51] Here, the defendants argue that the financial picture looks much bleaker given the cash burn rate, which on the materials before the court could reasonably exceed the cash on hand and revenue expected to be realized, noting that any such revenue must assume that the flow through the SPVs happens as contemplated, which the defendants argue is a large assumption to make.

[52] Specifically, the defendants point to the management fees of \$584,079, assuming that that amount will be paid out over the next seven months as it was in the seven-month period covered by the financial statements, or appearing to be covered by the financial statements, and the legal fees of close to \$800,000 as expended in the last two months alone, with more reasonably expected to be incurred over the next seven months given the June 2026 arbitration and pre-trial matters that will be undertaken in this matter, including discoveries to be conducted, all of which is necessary to lead up to the October 2026 trial date.

[53] In addition, the defendants argue that there are many ways that the assets, including the receivables from the SPVs could be diverted such that they would not be available to the defendants if, in the future, they are judgment creditors under a cost award.

[54] While at first blush, a transfer of assets to defeat a creditor's claim would be contrary to the *Fraudulent Conveyance Act*, R.S.B.C. 1996, c. 163 or *Fraudulent Preference Act*, R.S.B.C. 1996, c. 164, particularly if the approximately \$3.6 million debt to 125 was paid in priority to other creditors, the defendants point out that at present they are not a "creditor". As such, a dissipation of assets would not necessarily be improper or contrary to either *Act*, or more importantly provide them with remedy under either *Act*, insofar as a later costs award may be considered. At the very least, there may be an issue as to whether they would fall under those *Acts*.

[55] The defendants also point to the possibility of a wind-up or some sort of other asset transfer or transactions of that nature which, arguably, could be done upon the completion of the arbitration and resolution of the shareholder dispute. There is nothing on the evidence to establish that there is anything preventing that from happening given that there is no ongoing production being undertaken by Timeless.

[56] Of course, that argument is pure speculation. Namely, it is speculative that any steps could or would for that matter be taken.

[57] Counsel for the defendants clarified that he was not suggesting at any time that improper steps were expected to be taken, just that that there is an inherent risk that steps could be, which should be considered having regard to the purpose of security for costs; namely, to protect the defendants from a legitimate legal debt in the event of a success, which it will be unable to recover from the plaintiff.

[58] In balancing the injustice arising from the use of security as an instrument of oppression to stifle a legitimate claim and the use of impecuniosity as a means of putting unfair pressure on a defendant, I find that this is an appropriate case to order security.

[59] The plaintiffs have not satisfied me that such an order would in any way stifle the action or that it is obvious on the financial evidence before the court that a costs order would be recoverable by the defendants by the time that such an award may be made.

[60] While the plaintiffs indicated during argument a staggered award ought to be made, suggesting some hardship from an order being made for the full payment, that was inconsistent with their argument as to the availability of cash right now to satisfy an award. I also do not accept the argument that it is the action of these defendants that is the cause of the cessation of business operations and any financial issues that might be experienced.

[61] Again, such an argument is inconsistent with the reliance of the cash in the bank account as of December 2 and 3, 2025. More importantly, the fault, for lack of

a better word, of any financial shortcomings or loss of business, assuming the allegations as made are true, lies more squarely at the feet of the Minority Shareholders.

[62] In addition, on the pleadings, and having regard to the limited considerations of the merits that I need to take on this application, the defendants have made out a sufficiently arguable case.

[63] While the argument of the defendants as set out in paras. 35 to 38 of their response to application, and the case references therein point to some weaknesses in terms of there being bare denials in the amended response, the whole of the amended response to civil claim is sufficient to establish an arguable case, including, for example, by the explicit denial of any knowledge as to the transferring of assets or the actions being taken in competition of the plaintiffs' business.

[64] Finally, on the totality of the evidence, I am unable to conclude that Timeless has met the onus upon it to establish that a costs award will likely be recoverable at the conclusion of the trial given the cash burn rate that could, if they have not already, exhausted the cash on hand, or that was on hand as of December 2 and 3 2025, and the uncertainty that all necessary steps will and are capable of being taken to realize any receivables from the SPVs at some future date.

[65] In this respect, I note that given the stated liabilities in the most recent financial statement there is a question as to Timeless' insolvency in that the recoverability on their assets may be less than the stated \$4.5 million in liabilities, particularly given the debt to 125, which, if that debt is valid, means that 125 would be entitled to the majority of any recovery if a *pro rata* creditor realization process became necessary.

[66] Having regard to that fact in the circumstances of this case this is a matter which, as noted in *Henry*, is one in which the risk of the litigation should be put on the shoulders of the plaintiffs' majority principal rather than the defendants who otherwise risk a dry judgment if a costs order is made.

[67] Finally, although submissions were not made on this point, I note that in its response the plaintiffs referred to the lateness of the application being brought. In my view, this litigation has been moved forward promptly. This application was brought within five months of the original pleadings being closed, and weeks after the amended response was filed. While the parties have been moving the matter forward quickly, I do not find there to be a sufficient delay to affect the court's analysis in this case.

Amount and Nature of Security

[68] That leads to the quantum of the security or alternative form of relief, that being an undertaking to the court by Mr. Silverman that he will pay the costs award.

[69] I will address that latter point first.

[70] While I do not necessarily find that making such an order is outside the court's jurisdiction, I am not satisfied that it is appropriate to make such an order without further clarification as to how that ought to be implemented. For example, it is unclear if Mr. Silverman would have to be made a party so that a cost judgment could be made against him directly, although I note the defendants did provide the court with authority for a trial judge to make a costs award against a corporate party's principal, albeit in the context of that being conduct driven.

[71] Without further argument as to the mechanics of such an order, I am not prepared to make the order absent consent of Mr. Silverman specifically. I also note that he was not personally represented at this application in that respect. However, if the parties can reach an alternative agreement, I do not wish to fetter that.

[72] As to the quantum itself, the defendants have provided a draft bill of costs. As noted by the plaintiffs, the draft bill of costs is merely a guideline and not determinative: see *Henry*, at para. 39.

[73] Most of the discretionary tariff ranges are at the high end.

[74] The defendants assume at least eight applications being needed and one expert as to the duty of care. In addition, with its counsel located in Victoria and this matter being in the Vancouver registry, there is significant travel costs being claimed.

[75] As to the number of applications expected, as noted in the last six months between pleadings being closed and this application being filed, three applications, including this one, were brought. Given the dispute as to the length of the discovery, it is not unreasonable to assume that at least one or two further applications may be necessary.

[76] In addition, I agree that the travel costs are recoverable for the purpose of effecting a reasonable amount of security, keeping in mind that any such order is not a predetermination as to the reasonableness of such costs, whether it be the tariff items or the disbursements themselves. A matter that is disputed would be subject to a final assessment of costs before the registrar. Nothing in an order for security for costs fetters the registrar's discretion in any way in that respect.

[77] By its nature, determining an appropriate quantum for a posting of security involves some crystal ball gazing as to what a costs award could ultimately be at the end of the day. However, that crystal ball gazing must be tempered by an assessment of anticipated litigation steps that are both reasonable and necessary to defend the action having regard to the nature of the cause of action and the litigation history to date.

[78] The proposed bill of costs as prepared by the defendants is higher than what is at this preliminary stage anticipated to be reasonable and necessary.

[79] Looking at the individual tariff items, in my view it is reasonable to reduce them by 13 units for the instructions, investigations, and court documents categories; 18 for applications and conference categories; and 10 for the other matters, for a total rejection of 51 units which, with taxes, reduces the amount by roughly just over \$6,000.

[80] As to the disbursements, while I accept that it is reasonable to include amounts for counsel's travel costs and expert fees, the total value of the disbursements with taxes at just under \$40,000 for those matters is on the high end. I would reduce those by another \$5,000. The bill of costs as submitted totals an amount higher than the amount of security being sought.

[81] I reduce the amount as sought by a total of \$10,000, and order that the defendants post security for costs in the amount of \$60,000.

[82] I do not see a basis on which that amount ought to be staggered. If there is cash on hand, as indicated, then security should be posted now, particularly given the uncertainty with respect to the cash burn rate.

Conclusion and Orders Made

[83] I just want to ask before I make the final orders, counsel, where would you like it to be posted, in court or with your trust account?

[84] CNSL J. DIVES: I'm not going to be insisting that it be posted in the court. I would accept it being held on appropriate undertakings in -- in my friend's trust account.

[85] THE COURT: I'm assuming, Ms. Richards, you don't have a problem with them being in your trust account.

[86] CNSL A. RICHARDS: No issue with that.

[87] THE COURT: Interest bearing or non-interest bearing?

[88] CNSL J. DIVES: I think it should be interest bearing.

[89] THE COURT: My orders are that:

- a) The plaintiffs shall, by May 3, 2026, post security for costs in the amount of \$60,000 to be held by counsel for the plaintiffs in their trust account, in

an interest-bearing account, on the usual undertakings further to this order.

- b) The parties are at liberty to waive the requirement of the cash security by written agreement between themselves and any third parties as to satisfactory alternative terms without further court order provided that such terms are agreed to by May 3, 2026;
- c) The plaintiffs' action is stayed pending either the posting of cash security or agreement as to alternative security as set out herein;
- d) If cash security is not posted or an alternative security arrangement not agreed to and implemented by May 3, 2026, the defendants are at liberty to seek an order dismissing the plaintiffs' action, such order being subject to the discretion of the presider; and
- e) Nothing in this order shall preclude the defendants from seeking additional security.

[90] I will just hear quick submissions as to costs.

[COST SUBMISSIONS]

[91] THE COURT: I did not find the position of the plaintiffs to be unreasonable. This is the type of application that is, however, one that can usually be done by consent, but I agree that costs of this application should be in the cause.

[92] Anything else arising from these reasons?

[93] CNSL J. DIVES: No, Your Honour.

[94] CNSL A. RICHARDS: No issues, Your Honour.

[95] THE COURT: All right. Thank you.

“Associate Judge Robertson”