

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Kong v. Siddoo Kashmir Holdings Ltd.*,
2026 BCCA 131

Date: 20260303
Docket: CA51394

Between:

Stephen Kong

Appellant
(Petitioner)

And

**Siddoo Kashmir Holdings Ltd. and
Director of the Residential Tenancy Board**

Respondents
(Respondents)

Before: The Honourable Justice Edelman
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
February 27, 2026 (*Kong v. Siddoo Kashmir Holdings Ltd.*,
Vancouver Docket S261417).

Oral Reasons for Judgment

The Appellant, appearing in person:

S. Kong

Counsel for the Respondent,
Siddoo Kashmir Holdings Ltd.:

P.A. Kressock

Place and Date of Hearing:

Vancouver, British Columbia
March 3, 2026

Place and Date of Judgment:

Vancouver, British Columbia
March 3, 2026

Summary:

This is an application to stay the order of a chambers judge dismissing the appellant's application for a stay of an order of possession. The order of possession was the result of a settlement reached before the Residential Tenancy Branch.

Held: Application dismissed. This is the second time in less than two years that the appellant comes before this Court seeking a stay in almost identical circumstances. As was previously the case, the stay the appellant seeks would have no bearing on the landlord's ability to enforce the order of possession. It is not in the interests of justice to make an order that would allow the appellant to resile from his settlement and that, in any event, would have no effect on his underlying situation.

[1] **EDELMANN J.A.:** This is the second time in two years that the appellant comes before this Court seeking an urgent stay in almost identical circumstances. In July 2024, he came before Justice Abrioux in chambers, seeking to stay the order of a chambers judge dismissing his application to stay an order of possession pending judicial review. The Residential Tenancy Branch (“RTB”) had issued the underlying order of possession following a dispute resolution hearing which had resulted in a settlement. Mr. Kong alleged that settlement was obtained by fraud and was unconscionable.

[2] In the application before me, Mr. Kong again seeks to stay the order of a chambers judge dismissing his application for a stay of an order of possession. The underlying order was also the result of a settlement reached before the RTB. In the terms of the settlement agreement, the respondent landlord agreed to forgo two months rent in exchange for Mr. Kong vacating the apartment by February 28. Mr. Kong did not pay rent, but made an ex parte application before the chambers judge to stay the order of possession this past Friday. This time, he alleged that the settlement was obtained as a result of “procedural pressure”. The chambers judge dismissed his application.

[3] Mr. Kong sought to make an urgent stay application before this Court. The landlord became aware of this application yesterday and has filed responsive materials.

[4] Under s. 33(1) of the *Court of Appeal Act*, S.B.C. 2021, c. 6, “a justice may, on terms and conditions the justice considers appropriate, order a stay of all or part of proceedings, including execution, in the cause or matter from which the appeal is brought”.

[5] To obtain a stay, the applicant must satisfy a three-part test, establishing that: (1) there is a serious question to be tried; (2) the applicant will suffer irreparable harm if the stay is refused; and (3) the balance of convenience favours granting the stay: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117; *Save-A-Lot Holdings Corp. v. Christensen*, 2022 BCCA 39

at paras. 9–10. The overarching consideration is whether the stay is in the interests of justice: *Aulakh v. WIT Management Corp.*, 2022 BCCA 356 at para. 64.

[6] Mr. Kong alleges that the chambers judge erred in declining to grant a stay. He did not provide a copy of the decision of the chambers judge, but the respondent’s counsel has included notes setting out the decision based on a review of the audio recording of the hearing.

[7] The chambers judge considered the three-part test set out in *RJR MacDonald*.

[8] She was not persuaded that Mr. Kong had passed the low threshold for establishing a serious issue to be tried in relation to the validity of the order arising from the settlement agreement. Mr. Kong alleges that he was under “procedural pressure” in making the agreement. As pointed out by the respondent, there was a risk in going ahead with the hearing, and he made a decision to accept a reduction of two months’ rent. He now would like to resile from that agreement. Mr. Kong has not established any error in the manner the chambers judge assessed the lack of merit in the underlying judicial review.

[9] There was no evidence of irreparable harm in the record. In the notice of application for the stay, Mr. Kong made an assertion that he is completing his doctoral dissertation and that moving would disrupt his ability to do that. He repeated that assertion before me. The chambers judge was not persuaded that his having to move would constitute irreparable harm. She ultimately concluded that the balance of convenience did not favour granting a stay of the order of possession.

[10] The decision to grant or refuse a stay is discretionary and one which attracts a highly deferential standard of review. Mr. Kong has not identified any cogent grounds on which the chambers judge can be said to have erred in her exercise of discretion. I am not persuaded that he has established a serious issue.

Irreparable Harm

[11] The refusal of a stay by this Court would not result in irreparable harm to Mr. Kong. This was already explained to Mr. Kong last time he made a similar application in this Court:

[23] I begin by observing that a stay of Justice Latimer’s order refusing to extend the interim stay would have no bearing on the landlord’s ability to enforce the order of possession. Mr. Kong’s petition for judicial review dated June 11, 2024, has not yet been heard and decided. The order under appeal is that of Justice Latimer refusing to extend the stay which expired on July 29, 2024.

[24] *Lee v. Wedekind*, 2021 BCCA 372 is of assistance on this point. In that case, the applicant also sought a stay of a Supreme Court order refusing to stay an order of possession which had initially been made by the RTB. Justice Stromberg-Stein, sitting in chambers, noted that the applicant’s purpose in seeking a stay of the refusal was “ill-conceived and based on her mistaken belief that a stay in this Court would achieve a stay of the order of possession in the underlying matter”: at para. 32. It appears that Mr. Kong holds the same mistaken belief.

[12] In any event, even if the order under appeal were the order of possession, I agree with the conclusion of the chambers judge that Mr. Kong has not established irreparable harm in his having to find alternative accommodation in the circumstances.

Balance of Convenience

[13] In my view, the balance of convenience does not favour Mr. Kong being allowed to resile from the settlement. In any event, it is not in the interests of justice for this Court to make an order that would have no effect on Mr. Kong’s underlying situation.

[14] The landlord seeks special costs of this application against Mr. Kong. This is the second time in approximately 18 months that Mr. Kong has made a settlement at an RTB hearing, sought judicial review of the RTB decision reflecting the settlement, sought a stay of the associated order of possession, and then sought a stay of a refusal to extend or grant a stay in this Court.

[15] In the previous application before this Court, special costs were also sought. Although Abrioux JA declined to award special costs, he put Mr. Kong on notice that the case was very close to the line:

[42] The landlord seeks special costs in this Court, essentially on the basis that Mr. Kong's repeated applications in the Supreme Court, notwithstanding the settlement he agreed to amounts to an abuse of process. In my view, this case is very close to the line. I understand the landlord's frustration with the protracted nature of the underlying proceedings, but it is Mr. Kong's conduct in this Court which is relevant. Special costs are generally rare and are awarded "if the conduct of a party was scandalous, outrageous or reprehensible": *College of New Caledonia v. Kraft Construction Company Ltd.*, 2011 BCCA 172 at para. 27. It appears that this application was filed in large part based on the "ill-conceived and ... mistaken belief" referred to in Lee that a stay in this Court would achieve a stay of the order of possession in the underlying matter.

[16] Mr. Kong is a PhD candidate and not unsophisticated. He clearly chose not to heed the warning that was given last time he put another party to unnecessary expense in this Court. In my view, his conduct is worthy of rebuke, and I will therefore award special costs in the amount of \$3000.

"The Honourable Justice Edelman"