

# In the Court of Appeal of Alberta

**Citation: Cubbon Building Centre Ltd v Vrbanek, 2026 ABCA 101**

**Date:** 20260330  
**Docket:** 2503-0275AC  
**Registry:** Edmonton

**Between:**

**Cubbon Building Centre Ltd. and Miramar Holdings Ltd.**

Applicants

- and -

**Darren Vrbanek also known as Drago Vrbanek,  
Darren Vrbanek also known as Drago Vrbanek carrying on business as  
Darren's Homes, and Nancy Vrbanek**

Respondents

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**Reasons for Decision of  
The Honourable Justice Jane Fagnan**

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Application to Restore Appeal

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**Reasons for Decision of  
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[1] On February 12, 2026, counsel for the applicants received notice that the appeal had been struck due to a failure to file the appellants' factum within the timeline for fast-track appeals required by Rule 14.24(1)(a) of the *Alberta Rules of Court*, Alta Reg 124/2010.

[2] The applicants seek an order restoring their appeal.

[3] This Court has discretion on an application to restore an appeal under Rule 14.65. The relevant factors are: (a) arguable merit to the appeal; (b) explanation for the defect or delay which caused the appeal to be taken off the list; (c) reasonable promptness in moving to cure the defect and have the appeal restored to the list; (d) intention in time to proceed with the appeal; and (e) lack of prejudice to the respondents (including length of delay): *Prochazka v Alberta (Maintenance Enforcement Program)*, 2014 ABCA 448 at para 4; *McCormack v Alberta Health Services*, 2025 ABCA 63 at para 8. None of the factors is determinative; the question is whether, overall, it is in the interests of justice to permit the appeal to proceed. A restoration order may not be in the interests of justice even if all five factors are met: *Warren v Warren*, 2019 ABCA 20.

[4] The applicants filed and served both the Notice of Appeal and the Appeal Record within the required timelines. They moved promptly to restore the appeal following it being struck. They have attached the Factum they intend to file upon the appeal being restored. Their Extracts of Key Evidence are ready to be filed.

[5] The applicants submit they had an intention to file the factum within the deadline but mistakenly thought the standard appeal deadlines applied. A mere slip or inadvertence on the part of counsel will generally not prevent restoration unless other factors predominate: *Clarke v Hancharuk*, 2016 ABCA 291 at para 3; *Bishop v Bishop*, 1990 ABCA 296; *707739 Alberta Ltd v Phillips*, 2001 ABCA 219 at para 13, leave denied [2002] SCCA No 64 (QL); *Xu v Shou*, 2008 ABCA 368.

[6] The respondents oppose the application on the basis that the appeal has no arguable merit. "Arguable merit" in this context has been described as a "very low" threshold: *Warren* at para 62. It means that an appeal is not "hopeless or almost hopeless": *Holden v Holden*, 2022 ABCA 341 at para 62.

[7] The applicants' appeal relates to their attempt to enforce a judgment they obtained against Mr. Vrbanek, as against proceeds from the sale of real property located in the USA and registered in the names of Mr. Vrbanek and his wife. They allege the proceeds were used to purchase a condominium in Edmonton which is registered solely in the name of Mr. Vrbanek's wife and in

which both spouses reside. The applicants allege errors of law, mixed fact and law and fact in the court below. While the respondents submit the appeal is hopeless, I am satisfied based on the parties' submissions that the appeal meets the very low threshold applicable on this application to restore the appeal.

[8] The respondents take no position regarding prejudice. Indeed, they have not been required to take additional steps. Further, the applicants' writ of enforcement and certificates of *lis pendens* were discharged from title to the Edmonton condominium pursuant to an order in November 2024.

[9] The proposed Factum and Extracts of Key Evidence are to be filed within two days of this decision. Deadlines for all other steps in this appeal will be determined by the Rules and any directions from the Case Management Officer.

Application heard on March 26, 2026

Reasons filed at Edmonton, Alberta  
this 30th day of March, 2026

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Fagnan J.A.

**Appearances:**

J. Delgado (no appearance)

M. Harris  
for the Applicants

P. Greep  
for the Respondents