IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Wallin Company Inc. v. Knappett Projects Inc.,* 2026 BCSC 729

Date: 20260423
Docket: S2511291
Registry: Victoria

Between:

The Wallin Company Inc. dba Zoom Painting

Plaintiff

And:

Knappett Projects Inc. and Fiera (Gorge) Holdings Corp.

Defendants

And:

The Wallin Company Inc. dba Zoom Painting

Defendant by way of Counterclaim

Corrected Judgment: The text of the judgment was corrected at paragraph 20 on April 28, 2026.

Before: The Honourable Justice LeBlanc

Reasons for Judgment

Counsel for the Plaintiff/Defendant by Counterclaim:	M. Stainsby
Counsel for Defendants:	J. Aiyadurai
Place and Date of Hearing:	Victoria, B.C. March 13, 2026
Place and Date of Judgment:	Victoria, B.C. April 23, 2026

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Introduction

[1] The defendants have brought this application seeking an order that the plaintiff be required to post security for costs in the sum of $44,737.50. The defendants seek a stay of the action until the security is posted.

[2] In the underlying action, the plaintiff relies on the provisions of the *Builders' Lien Act*, S.B.C. 1997, c. 45 and alleges breach of contract. The plaintiff seeks judgment in the sum of $192,716.35. The defendants deny that they breached the contract and further deny any sums are owing to the plaintiff. This dispute arises out of an agreement by the plaintiff, a subcontractor, to supply painting materials and labour to Knappett Projects Inc., head contractor, regarding construction of an apartment building owned by Feira (Gorge) Holdings Corp. This action is in its infancy.

[3] On this application, the defendants submit that they have demonstrated that there is a real risk that they will be unable to recover costs of defending this proceeding if the plaintiff does not post security. The plaintiff submits that they have assets in British Columbia to cover a potential costs award, and that an order requiring them to post security may stifle their ability to pursue its claim.

Legal Test - Security for Costs re: Corporate Plaintiff

[4] I will start by outlining the applicable legal principles that apply when a party is seeking security for costs against a corporate plaintiff.

[5] The foundation for an order for security for costs against a corporate plaintiff is s. 236 of the *Business Corporations Act*, S.B.C. 2002, c. 57, which provides:

> 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.

[6] The burden is on the applicant to make out a *prima facie* case that the corporate plaintiff has insufficient assets in the jurisdiction to pay costs if the action

fails: *Truly Social Games, LLC v. East Side Games Group Ltd.*, 2024 BCSC 1260 at para. 52.

[7] If the applicant makes out a *prima facie* case, the burden shifts to the plaintiff to show that:

a) it has sufficient assets to satisfy an award for costs;

b) the defendant has no arguable defence to its claims; or

c) an order for security for costs would cause undue hardship for the plaintiff, such that it would stifle the action and prevent the plaintiff's case from being heard.

Protea Consultax Inc. v. Air Canada, 2018 BCSC 995 at para. 5.

[8] In *Kropp v. Swaneset Bay Golf Course Ltd.* (1997), 29 B.C.L.R. (3d) 252 (C.A.), the Court of Appeal provided directions to guide the exercise of the court's discretion in determining whether security should be posted:

1. The court has a complete discretion whether to order security, and will act in light of all the relevant circumstances;
2. 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;
3. 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;
4. 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;
5. The court can order any amount of security up to the full amount claimed, as long as the amount is more than nominal;
6. 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 probably that the claim would be stifled; and
7. The lateness of the application for security is a circumstance which can properly be taken into account.

[9] When considering whether security for costs should be required, corporate plaintiffs are not treated the same as individual plaintiffs: *Fat Mel's Restaurant Ltd. v. Canadian Northern Shield Insurance Co.* (1993), 76 B.C.L.R. (2d) 231.

[10] The courts have found on several occasions that a defendant should not have to go to a foreign jurisdiction to enforce an order for costs: *C.W. Holdings Ltd. v. Montreal Trust Co.,* [1997] B.C.J. No. 398; *Bank of Credit and Commerce International (Overseas) Ltd. (Liquidator of) v. Akbar*, [1998] B.C.J. No. 2320; *Culp Investments LLC v. KPMG Inc. et al*, 2007 BCSC 451.

Have the defendants made out a *prima facie* case?

[11] The burden rests on the defendants to make out a *prima facie* case that the plaintiff has insufficient assets in the jurisdiction to pay costs if it is unsuccessful in its action.

[12] The plaintiff is an Alberta company that despite past operations in British Columbia only recently registered as an extra-provincial company in British Columbia. The registration appears to have been undertaken in response to this application.

[13] In support of its application, the defendants submit as follows:

a) the plaintiff does not own any real estate in British Columbia;

b) all assets owned by the plaintiff are encumbered by personal property charges registered in Alberta;

c) there is no evidence that the plaintiff owns any liquid assets;

d) there is a judgment against the plaintiff in Alberta in the approximate sum of $52,000;

e) the plaintiff is being sued by Sherwood Williams for non-payment of materials supplied to it;

f) the plaintiff has an outstanding account with Workers' Compensation;

g) the plaintiff is engaged in a number of lawsuits in British Columbia; and

h) the plaintiff is on a month-to-month office lease in a shared leasing space and has no permanent presence in British Columbia.

[14] It is not disputed that the plaintiff does not own real estate in British Columbia.

[15] With respect to other assets, the plaintiff directs my attention to (a) its future looking contracts which it says have a contract value of $5,762,084; and (b) its equipment that it says has a value of $166,850. Further, the plaintiff submits that it has, or is in the process of, resolving the Alberta judgment, although evidence confirming this was not put before the court.

[16] I will first consider the plaintiff's business assets to determine if they are sufficient to rebut the defendants' position that the assets are insufficient.

[17] The plaintiff, through legal counsel, first provided a list of assets on February 11, 2026. In his affidavit made on March 5, 2026, Mr. Friedman, on behalf of the plaintiff, provided a supplemental list of assets located in British Columbia. There is some disparity between the two lists with respect to the location and value of the assets. For example, in the February list, a Dodge Caravan is valued at $10,000; however, in the March list, it has been given a value of $12,000. Similarly, a Haulette Lift is given a value of $75,000 in February and $85,000 in March. With respect to the location of assets, the February list includes a $35,000 Genie Lift as being located in British Columbia; however, the March list does not include this asset.

[18] Having reviewed the two lists, it is apparent that the assets, consisting primarily of vehicles and painting sprayers, are easily transportable and it would take little time for the plaintiff to move these assets out of the jurisdiction of British Columbia. Based on the evidence before me, it appears the assets are frequently

transported between British Columbia and Alberta based on the plaintiff's operational needs.

[19] Furthermore, and more importantly, these corporate assets are encumbered by personal property charges registered in Alberta. The Bank of Nova Scotia has a charge registered against all present and after-acquired personal property of the plaintiff. Business Development Bank of Canada also has a charge registered against all present and after-acquired personal property of the plaintiff. It is not known how much has been advanced by the Bank of Nova Scotia or the Business Development Bank of Canada. The plaintiff submits that I am not to consider this security as it has not been perfected in British Columbia. However, as the plaintiff only very recently registered as an extra-provincial company in British Columbia, I find it unlikely that the creditors have been given notice that this equipment is being used for business operations in British Columbia. The position taken by the plaintiff also seems to suggest they can avoid their obligations to their creditors by relocating their assets – the very issue the defendants are seeking to address by this application.

[20] The plaintiff says that they have future contracts in British Columbia that have significant values attached to them. The impact these contracts may have on the plaintiff's ability to satisfy a costs award is speculative and subject to many factors, including whether the contracts will be profitable. I find that these future looking contracts do not assist the plaintiff. There is no evidence before the court that the plaintiff currently has any liquid assets.

[21] Considering the above, the defendants have established a *prima facie* case that the plaintiff's assets will be insufficient to pay the defendants' costs if the action fails.

[22] While the defendants have raised a number of other compelling factors to suggest that the plaintiff is in a difficult financial position, having found that the defendants have established a *prima facie* case that the plaintiff's assets located in

British Columbia are insufficient to pay costs if it is unsuccessful in its action, I need not consider these other factors.

Has the plaintiff demonstrated that security should not be required?

[23] Now that the defendants have established a *prima facie* case that the plaintiff has insufficient assets in the jurisdiction to pay costs, the burden shifts to the plaintiff to demonstrate:

a) it has sufficient assets to satisfy an award for costs;

b) the defendants do not have an arguable defence to its claims; or

c) an order for security for costs would cause undue hardship for the plaintiff, such that it would stifle the action and prevent its case from being heard.

[24] As I have found above, the corporate assets are not sufficient to satisfy an award of costs as they are encumbered by two security interests. The plaintiff has not disclosed the sums owing to its creditors and therefore has failed to establish there is sufficient equity in the corporate assets to satisfy an award for costs.

[25] I have also found that the future-looking contracts are speculative and do not establish that the plaintiff has sufficient assets to pay costs, if a costs award is awarded against it.

[26] Accordingly, the plaintiff has failed to establish that it has sufficient assets to satisfy an award for costs.

[27] The plaintiff submits that the defendant's response to civil claim and counterclaim do not identify any real defence to its claims. In its response to civil claim, the defendants plead that the plaintiff did not complete its contractual scope of work, that work was deficient, that the plaintiff caused delays on the project, and that the plaintiff charged amounts contrary to the contract. These are all matters that will need to be determined at a trial but considering the response to civil claim and the

record that is before me, I cannot conclude that the defendants have no arguable defence to the plaintiff's claims.

[28] Lastly, the plaintiff submits that ordering security for costs now will stifle their ability to bring their claim forward; however, it anticipates that its financial position will improve over time. If an order for security for costs is made, it requests that the requirements for payment be staggered.

[29] The plaintiff's evidence is not sufficient to establish that the action will be stifled if security for costs is required. In *Kropp*, Justice Finch (as he then was), found that to determine this issue, the court should consider not only whether the plaintiff company can provide security out of its own resources to continue the litigation, but also whether it can raise the amount needed from its directors, shareholders, or other backers or interested persons and that it is for the plaintiff to satisfy the court that it would be prevented by an order for security from continuing the litigation. The plaintiff has not addressed whether it could raise the amount needed from its directors or shareholders and has failed to establish that a security for costs order would stifle its ability to pursue its claims against the defendants.

[30] The plaintiff has failed to meet its burden to demonstrate why an order for security for costs should not be made. I am of the view that this is an appropriate case in which to exercise my discretion to make an order for security for costs.

[31] Accordingly, the question now turns to the amount that should be required.

What amount of security is appropriate?

[32] The defendants seek security for costs in the amount of $44,737.50 for a five-day trial. The defendants have prepared a draft bill of costs to support the amount they seek. The draft bill is to be used as a guideline only.

[33] The plaintiff submits that the amounts sought are too high and includes tariff items relating to its counterclaim which should not be recoverable. Further, the

plaintiff submits that the sum of $10,000 for an expert report relating to the delay claims is not reasonable.

[34] The existence of a counterclaim should not result in the dismissal of the application for security; however, its existence is a proper factor to consider in determining the amount of security that should be posted: *Parkbridge Lifestyle Communities Inc. v. New West Custom Homes (Kelowna) Inc.*, 2022 BCCA 299 at para. 67.

[35] Having reviewed the response to civil claim and the counterclaim, the issues raised as a defence and those included in the counterclaim are interwoven, as is typical in construction litigation. Whether plead as a set-off to the plaintiff's claim or included in a counterclaim, the issue of delay is raised by the defendants in its response to civil claim and is a defence the defendants are entitled to pursue notwithstanding its counterclaim. Furthermore, it is common in construction litigation for the parties to retain experts. Based on the pleadings, there is no reason to conclude this case will be any different.

[36] Accordingly, I do not find that it is unreasonable for the defendants to seek security for disbursements anticipated in defending the plaintiff's claims, including the need to retain an expert.

[37] I do agree with the plaintiff that the counterclaim may extend the litigation, but I do not agree with the extent upon which the counterclaim will impact the cost of the litigation if the counterclaim was not part of it. As I have found above, the counterclaim is intertwined with the defence and does not add any additional issues that are not included in the defendant's response to civil claim. As such, a reduction in the security to account for the counterclaim should be minimal.

[38] Having reviewed the draft bill of costs, I do find that the defendants have sought tariff items at the complex or high level on several occasions. The litigation is in its infancy and there is no indication that it will be unusually complex. A small reduction to the amount would be appropriate to adjust for this.

[39] The court has discretion to order security in any amount up to the full amount claimed, as long as the amount is more than nominal: *Ocean Pastures Corporation v. Old Masset Economic Development Corporation*, 2016 BCCA 12 at para. 29.

[40] Given the circumstances, I would order the plaintiff post security for costs in the sum of $40,000. The plaintiff's action will be stayed until the security is posted and if the plaintiff does not post security within 45 days of the date of these reasons, the defendants are at liberty to bring an application to have the plaintiff's action dismissed. In the absence of any evidence on the plaintiff's ability to raise funds from directors, shareholders or others, I am declining the request.

[41] The defendants are awarded their costs of this application in the cause.

"LeBlanc, J."