

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Diamant Cleaning Vancouver Inc. v. Li*,  
2026 BCCA 173

Date: 20260423  
Docket: CA51097

Between:

**Diamant Cleaning Vancouver Inc.**

Appellant  
(Plaintiff)

And

**Ouran Li**

Respondent  
(Defendant)

Before: The Honourable Chief Justice Marchand  
The Honourable Justice Griffin  
The Honourable Madam Justice DeWitt-Van Oosten

On appeal from: An order of the Supreme Court of British Columbia, dated  
October 9, 2025 (*Diamant Cleaning Vancouver Inc. v. Kindred Construction Ltd.*,  
Vancouver Docket S241701).

The Appellant, appearing in person: I. Martinez

Counsel for the Respondent: L. Seneviratne

Place and Date of Hearing: Vancouver, British Columbia  
March 23, 2026

Place and Date of Judgment: Vancouver, British Columbia  
April 23, 2026

**Written Reasons by:**

The Honourable Chief Justice Marchand

**Concurred in by:**

The Honourable Justice Griffin

The Honourable Madam Justice DeWitt-Van Oosten

**Summary:**

*The appellant appeals a summary trial judge’s dismissal of its claim in solicitor’s negligence against its former pro bono lawyer. Held: Appeal dismissed. The appellant has not shown any errors in the summary trial judge’s reasons. There is no basis to the claim the solicitor breached his duty of care to the appellant.*

**Reasons for Judgment of the Honourable Chief Justice Marchand:**

**Introduction**

[1] The appellant, Diamant Cleaning Vancouver Inc. (“Diamant”), appeals the dismissal of its claim in solicitor’s negligence against its former *pro bono* lawyer, the respondent, Ouran Li. Diamant has not shown that the summary trial judge erred in dismissing its claim. I would therefore dismiss the appeal.

**Background**

[2] These proceedings are the culmination of a series of other proceedings. I will set out only what I consider to be the essential background.

[3] On June 8, 2023, Diamant commenced an action against Kindred Construction Ltd. (“Kindred”) for non-payment of fees under a fixed price cleaning contract, an unspecified amount for extra cleaning work and other losses. To remove a lien filed by Diamant, Kindred paid the full amount of Diamant’s contract and extras claims into court.

[4] On July 8, 2023, Diamant applied for a summary determination of its claims. Kindred disputed only Diamant’s claims for extras and other losses. On July 19, 2023, in reasons that have not been published, Justice Fitzpatrick: (1) dismissed Diamant’s action; (2) directed that the amounts not in dispute (roughly \$22,000) be paid out of court to Diamant; (3) directed the balance (roughly \$14,000) be paid out of court to Kindred; and (4) ordered Diamant to pay Kindred’s costs at Scale B.

[5] On August 8, 2023, Diamant filed a notice of appeal. In response, on September 19, 2023, Kindred applied for an order for security for costs. On September 22, 2023, Mr. Li accepted a referral through the Access Pro Bono

Society of British Columbia to defend the security for costs application and provide advice to Diamant regarding its appeal.

[6] On October 18, 2023, Mr. Li appeared before a single justice of this Court, Justice Griffin, in chambers. He succeeded in having Kindred’s security for costs application dismissed. In unreported oral reasons for judgment, Griffin J.A. found there was merit to aspects of Diamant’s appeal, Diamant had some ability to pay costs if unsuccessful on appeal and there was potential for Diamant to be unable to proceed with its appeal if ordered to pay security for costs. At the conclusion of the hearing Griffin J.A. encouraged the parties to settle the appeal.

[7] Following the hearing before Griffin J.A., Mr. Li received a “walk away” offer to settle from Kindred’s counsel. In return for an abandonment of Diamant’s appeal, neither party would seek trial or appeal costs against the other and the parties would execute a mutual release. Mr. Li explained Kindred’s offer to Diamant’s owner and director, Isabel Martinez, and received her instructions to accept.

[8] Ms. Martinez signed a mutual release on October 23, 2023. She signed and filed a notice of abandonment of Diamant’s appeal on November 14, 2023. As far as Mr. Li knew, the dispute between Diamant and Kindred had been resolved to the mutual satisfaction of the parties. But, in Ms. Martinez’s view, that was not the case.

[9] On December 27, 2023, Diamant filed a notice of application in its appeal seeking “dismissal” of the mutual release. On January 9, another justice of this Court sitting in chambers, Madam Justice Newbury, dismissed Diamant’s application without prejudice to its ability to reinstate its appeal if it obtained an order in the Supreme Court setting aside the mutual release.

[10] On March 13, 2024, Diamant filed a notice of civil claim against Kindred, naming Mr. Li as a “third party”. Among other things, Diamant’s claim alleged misrepresentation and negligence against Kindred and Mr. Li.

[11] On March 14, 2024, Diamant filed a summary trial application seeking to set aside the mutual release. On May 6 and May 9, 2024, Mr. Li and Kindred each filed summary trial applications to dismiss the claims against them.

[12] On December 11, 2024, Justice Thomas heard the parties' competing summary trial applications. That same day, in oral reasons indexed as 2024 BCSC 2439, Thomas J. concluded Kindred had no reason to believe Mr. Li did not have authority to settle Diamant's claim against Kindred such that the settlement and mutual release were valid. Justice Thomas therefore dismissed Diamant's action against Kindred with costs: paras. 15, 27–28. Given a conflict in the evidence of Ms. Martinez and Mr. Li, Thomas J. adjourned Mr. Li's summary trial application with leave for Mr. Li to cross-examine Ms. Martinez.

[13] On June 12, 2025, Diamant's appeal of the dismissal of its action against Kindred was dismissed with costs payable to Kindred. Those reasons are indexed as 2025 BCCA 227.

[14] On September 22, 2025, the parties to this appeal cross-examined one another. Mr. Li and Diamant's competing summary trial applications were then heard on October 3, 2025.

[15] On October 9, 2025, the summary trial judge dismissed Diamant's claim against Mr. Li with costs at Scale B payable by Diamant to Mr. Li. The summary trial judge's reasons are unreported. Briefly, he concluded there was no reasonable basis for Mr. Li to doubt Ms. Martinez fully understood she was settling all of Diamant's claims against Kindred, and there was no basis on which Diamant could establish Mr. Li breached the duty of care he owed Diamant. This is the order under appeal.

### **Issues**

[16] Diamant's factum raises a number of issues that relate to earlier orders not under appeal. With respect to the order now under appeal, Diamant generally

asserts it did not consent to the settlement or mutual release and did not receive adequate legal advice from Mr. Li on the consequences of abandoning its appeal.

**Standard of Review**

[17] Except for Mr. Li's brief involvement, Diamant has represented itself via Ms. Martinez throughout these and the related proceedings. As was explained to Ms. Martinez during the appeal hearing, it is not open to this Court to review the record and arrive at its own conclusion regarding the merits of Diamant's claim against Mr. Li. Nor may this Court address Diamant's original claim about the extras it says are owed by Kindred. This Court may intervene only if it identifies reversible errors on the part of the summary trial judge in the order under appeal.

[18] This Court applies a deferential standard of review to questions of fact and questions of mixed fact and law. The Court may only intervene if it identifies a palpable (obvious) and overriding (material) error. Absent palpable and overriding error, the front-line judge alone decides questions of fact and questions of mixed fact and law: *Housen v. Nikolaisen*, 2002 SCC 33 at paras. 10, 36.

[19] This Court does not apply a deferential standard of review to questions of law. It applies a correctness standard. This means the front-line judge must get the law right: *Housen* at para. 8.

**Analysis**

[20] Ms. Martinez speaks English as a second language. Although her written materials are difficult to follow, she expressed herself clearly and effectively at the appeal hearing.

[21] In oral submissions, Ms. Martinez made the following key submissions:

- Mr. Li's retainer only extended to defending Kindred's security for costs application and providing advice in relation to Diamant's appeal. Diamant did not request a settlement and Mr. Li's retainer did not extend to negotiating a settlement of its claims.

- Mr. Li was looking out for Kindred’s interest, not Diamant’s. As evidence, Ms. Martinez points to the fact Kindred’s counsel prepared some of the concluding documents.
- Ms. Martinez struggled with English, was experiencing mental health issues and was economically vulnerable when she signed the mutual release and filed the notice of abandonment.
- Mr. Li did not explain the scope of the release to Ms. Martinez and was unresponsive to questions she emailed to him. Ms. Martinez did not understand Diamant would be abandoning its claims for interest and lost opportunities.
- Mr. Li made false statements to Ms. Martinez to induce her to sign the mutual release and file the notice of abandonment.
- Mr. Li’s affidavit evidence that Diamant’s appeal lacked merit is at odds with the arguments he made in successfully defending Kindred’s application for security for costs.
- The summary trial judge did not follow constitutional law, did not allow Diamant to adduce evidence, did not review the evidence and only cut and pasted information from Mr. Li’s affidavit.

[22] Very respectfully, most of Diamant’s arguments have no foundation. I will deal with those issues summarily. I will spend more time addressing the issues of substance.

[23] It is true Mr. Li’s original retainer only extended to defending Kindred’s application for security for costs and providing advice regarding Diamant’s appeal. But the evidence of both Mr. Li and Ms. Martinez is clear: Mr. Li sought and received instructions from Ms. Martinez to settle Diamant’s appeal. Assisting Diamant to settle its appeal was therefore within Mr. Li’s scope of work.

[24] There is nothing in the record to support Diamant's contention Mr. Li was acting in Kindred's best interests rather than Diamant's. Mr. Li successfully defended Kindred's application for security for costs and brought a reasonable settlement offer to Ms. Martinez as he was professionally obliged to do. The mutual release reflected Mr. Li's understanding of the terms of settlement. The fact Kindred's counsel prepared certain concluding documents was perfectly normal and does not suggest Mr. Li was not acting exclusively in Diamant's best interests.

[25] Presumably for accuracy and efficiency purposes, the summary trial judge reproduced aspects of Mr. Li's affidavit in his reasons for judgment. That does not demonstrate the judge did not thoroughly review the record. In fact, his reasons demonstrate he did. He accepted and relied on evidence presented by both sides, including Ms. Martinez's evidence about her circumstances, the evidence she gave on cross-examination and her email exchanges with Mr. Li.

[26] Diamant's appeal involves a contract dispute and a professional negligence claim. It does not raise any constitutional law issues.

[27] Diamant's arguments about Mr. Li's unresponsiveness and lack of understanding are not supported by the record. The three most relevant email exchanges are reproduced below as originally written.

[28] The following exchange occurred between October 29 at 2:17 pm and October 31 at 9:38 am:

Ms. Martinez: Hello Ouran, there is a part on this form it says about the costs will be for the person who abandons the appealing.

Can we get the form from The judge of appealing and enclosed together with this form.

only way they wont charge me costs for abandon or cancel the appealing.

...

Ms. Martinez: Can you answer my question, please!!!

About the costs for abandoning the appealing.

Please thank you!!

Mr. Li: As I previously advised, parties are preparing closing documents – I’ll reach out to you once they’ve been finalized.

There’s no need to reach out to me for an update before then.

[29] The following exchange occurred between 10:41 am and 1:46 pm on November 9, 2023:

Ms. Martinez: Good Morning Ouran. Before to send you the documents. Which percentage I had to win on the court for extras???

Mr. Li: I don’t understand your question.

[30] Finally, the following exchange occurred between 10:44 and 11:17 am on November 12, 2023:

Ms. Martinez: Did exit ed the realized?

Mr. Li: I don’t understand your question.

Ms. Martinez: You sad you received from Kindred execute realized to you have this in writing or signed.

Ms. Martinez: Do you have few minutes tomorrow I will come to 800 Smithe st. On Supreme Court.

Mr. Li: I have Kindred’s executed release, that I’m holding in trust. You will need to file the notice of abandonment on your own.

[31] In each of these exchanges, Mr. Li did respond to Ms. Martinez. Having said that, I recognize Mr. Li did not provide specific answers to Ms. Martinez’s questions about (1) whether Diamant, as the abandoning party, would be responsible for Kindred’s costs of her appeal and (2) what the chances of success were with respect to the appeal from the dismissal of Diamant’s claim for extras. Mr. Li also did not respond directly to Ms. Martinez’s request to meet with him at the courthouse and, I understand, he did not meet with her.

[32] In my view, nothing turns on these exchanges because:

- With respect to Ms. Martinez’s question about whether Diamant would be responsible for Kindred’s costs of appeal, Ms. Martinez was anxious to ensure that would not be the case – and it was not.

- With respect to Ms. Martinez’s question about the chances of succeeding on Diamant’s extras appeal, the matter must not have been of pressing concern because Ms. Martinez did not follow up. And, in any event, the parties had already agreed to the terms of their settlement.
- With respect to Ms. Martinez’s request to meet Mr. Li, it appears that request was tied to Ms. Martinez’s question about whether Mr. Li had received Kindred’s signed release. Mr. Li subsequently answered that question by email explaining that, yes, he had received and was holding Kindred’s signed release in trust.
- Ms. Martinez’s conduct is at odds with her assertion she did not understand Diamant would be abandoning its claims for interest and lost opportunities. When she decided to return to court, she began by seeking to set aside the release. If she did not understand Diamant had abandoned its interest and lost opportunities claims, Diamant presumably would have simply initiated a claim for those items. There would have been no need for Diamant to set aside the release.
- Finally, and in any event, Diamant could not have recovered the interest charges Ms. Martinez incurred on her credit card as a result of Diamant’s dispute with Kindred. On my review of the contract between the parties, at most, Diamant could have recovered a very modest amount of interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79. Further, Diamant’s claimed opportunity losses flowed from the litigation, not the breach of contract, and were not recoverable at law.

[33] Next, there is no evidence whatsoever Mr. Li made any “false” statements to induce Ms. Martinez to settle Diamant’s claim against Kindred. At most, Ms. Martinez disagrees with Mr. Li’s opinion that her appeal lacked merit — which leads to the only real issue on appeal, namely whether Mr. Li’s work fell below the standard of a reasonably competent lawyer. In my view, it did not.

[34] In defending against Kindred's security for costs application, Mr. Li took the position Diamant's appeal had some merit. In her reasons for dismissing the application, Griffin J.A. agreed.

[35] In her reasons, Griffin J.A. highlighted two issues that appeared to have merit. She was unsure why Fitzpatrick J. had dismissed Diamant's claim when, as a consequence of its action, it had recovered \$22,000 in unpaid fees from Kindred. Justice Griffin commented this may have resulted in an error in the costs award made by Fitzpatrick J. Further, Griffin J.A. identified Diamant may have a valid claim for interest.

[36] In addition, during the hearing of the appeal, Ms. Martinez took the Court to documents showing Kindred had paid invoices from Diamant totalling in the neighbourhood of \$7,000 which included amounts for extras. Ms. Martinez argued this demonstrated (1) Kindred had in fact agreed to pay Diamant extras and (2) the \$22,000 released to Diamant by Fitzpatrick J. did not make Diamant whole with respect to the contractual claims that Kindred did not dispute.

[37] Contrary to the position Mr. Li took before Griffin J.A., his affidavit evidence before the summary trial judge set out why he believed Diamant's appeal lacked merit. He noted Diamant's appeal did not identify reviewable errors or the standards of review that would apply. In his view, the appeal was essentially a rehashing of the issues decided by Fitzpatrick J.

[38] Respectfully, this background reveals no professional negligence on Mr. Li's part. Taking a claim to court comes with no guarantees. Every case carries some degree of risk. Lawyers often take instructions to advance claims after advising their clients of the risk they will not succeed. They may advance arguments in court that do not align with the views on the merits they express to their clients.

[39] Here, there was no inconsistency between Mr. Li: (1) forming the opinion Diamant's appeal, as formulated and advanced by Ms. Martinez, lacked merit; and

(2) putting forward a strong argument in defence to Kindred's application for security for costs.

[40] Further, in addressing Kindred's application for security for costs, Griffin J.A. was not called on to make a final determination of Diamant's appeal, did not have access to the full record and did not have the benefit of full argument on the merits. As one of several considerations, Griffin J.A. set her mind to whether Diamant's appeal had some level of merit and concluded it did. That, however, did not guarantee Diamant would ultimately prevail on appeal, or to what extent.

[41] Diamant's appeal was principally about extras, not costs, interest or opportunity losses.

[42] With respect to costs, before Fitzpatrick J., Kindred did not dispute the full amount owing under the contract. For that reason, Kindred was the substantially successful party, and it is highly unlikely this Court would have interfered with Fitzpatrick J.'s discretionary decision to award Kindred costs.

[43] With respect to interest, for the reasons set out above, Diamant's claim was very modest.

[44] With respect to opportunity losses, for the reasons set out above, Diamant had no viable claim.

[45] Finally, with respect to extras, Diamant's main risk was the contract stipulated a process for written approval of extras, but Diamant has no documents to demonstrate Kindred had approved any. Given that Fitzpatrick J.'s factual findings were subject to review on the deferential standard of palpable and overriding error, the heart of Diamant's appeal carried substantial risk.

[46] In sum, Mr. Li's opinion that Diamant's appeal lacked merit was reasonable.

[47] The final issue is whether Mr. Li properly advised Ms. Martinez about the terms of the settlement.

[48] Mr. Li's evidence was that he recommended settlement to Ms. Martinez due to the weakness of Diamant's appeal, the existing cost order against Diamant, and the risk of future costs awards against Diamant if it proceeded with the appeal. He explained the walk-away offer meant Diamant would give up its appeal, and Kindred would give up its entitlement to costs. Ms. Martinez did not indicate she had trouble understanding, and Mr. Li was satisfied she understood his advice and the reasons for it. Further, on October 13, 2023, after obtaining Ms. Martinez's instructions to accept, he showed her the draft acceptance email before sending it to Kindred's counsel.

[49] After reviewing the evidence, including the evidence given by Ms. Martinez on cross-examination and the emails exchanged by Ms. Martinez and Mr. Li, the summary trial judge determined the matter was suitable for disposition by way of summary trial. He also concluded:

- Ms. Martinez did not tell Mr. Li she was dealing with mental health issues at the time of the settlement;
- Ms. Martinez was worried about having to pay costs if Diamant lost its appeal;
- Ms. Martinez told Mr. Li she was not going to proceed with the appeal;
- Ms. Martinez understood if she abandoned the appeal, she would not have to pay costs;
- When she signed the settlement documents, she understood she was abandoning her claims against Kindred; and
- There was no reasonable basis for Mr. Li to doubt Ms. Martinez fully understood Diamant was settling all its claims against Kindred in any way associated with the subject matter of her notice of civil claim.

[50] Diamant has not identified any palpable and overriding errors with these findings of fact.

**Conclusion and Disposition**

[51] At the security for costs application, Diamant demonstrated its appeal from the order of Fitzpatrick J. passed a low threshold of having sufficient merit to defend that application. However, that was a far cry from showing Diamant would likely succeed on appeal.

[52] Further, the record demonstrates Ms. Martinez was very concerned about having to pay costs to Kindred if Diamant’s appeal was unsuccessful. With the benefit of competent legal advice, Diamant entered a final and binding settlement by which it gave up a viable but uncertain appeal in return for the guarantee of not having to pay any legal costs to Kindred. Although Ms. Martinez may see things differently now, this was a reasonable compromise.

[53] More to the point, Ms. Martinez has not established any factual or legal error committed by the summary trial judge. I would therefore dismiss the appeal.

“The Honourable Chief Justice Marchand”

I AGREE:

“The Honourable Justice Griffin”

I AGREE:

“The Honourable Madam Justice DeWitt-Van Oosten”