In the Court of Appeal of Alberta

Citation: Carbone v Whidden, 2026 ABCA 133

Date: 20260424
Docket: 2501-0174AC
Registry: Calgary

Between:

Angela Carbone

Appellant

- and -

Dr. Peter Whidden and
Peter G. Whidden Professional Corporation

Respondents

Corrected judgment: A corrigendum was issued on May 5, 2026; the correction has been made to the appearances page and the corrigendum is appended to this judgment.

The Court:

The Honourable Justice Michelle Crighton
The Honourable Justice William T. de Wit
The Honourable Justice Karan M. Shaner

Memorandum of Judgment
Delivered from the Bench

Appeal from the Decision by
The Honourable Justice C.M. Jones
Dated the 5th day of June, 2025
(2025 ABKB 340, Docket: 0401 06241)

Memorandum of Judgment
Delivered from the Bench

The Court:

[1] The appellant, Angela Carbone, appeals a chambers decision dismissing her application for a stay of two orders of an applications judge pending their appeal in the Court of King's Bench.

[2] The matter arises out of a lengthy litigation in which the appellant's action was ultimately dismissed against the respondents, who were awarded $149,226.49 in costs in July 2014. The appellant paid $50,000 of that award in late 2015 to secure the removal of a writ against the title of her property but has not paid anything further.

[3] The judgment was set to expire on July 29, 2024, under s 11 of the *Limitations Act*, RSA 2000 c L-12. The respondents made an application to renew the judgment, which was granted by an applications judge on February 10, 2025, in the amount of $115,132 inclusive of interest up to July 28, 2024. The applications judge also awarded the respondents costs for the application ($4,185 granted March 7, 2025) including for throw away costs for various adjournments.

[4] The appellant appealed the new judgment and costs orders and sought a stay of those orders pending her appeal. The application came to include an allegation that the respondents had taken "enforcement steps" both before and after the new judgment order was issued, by making a report to the credit bureau on or about February 1, 2025, obtaining a writ of enforcement on March 24, 2025, and registering it with the Personal Property Registry on April 2, 2025. The appellant argued these steps were contemptuous of her stay application and established irreparable harm, and she sought punitive costs in the amount of $25,000. She further argued the writ of enforcement and the Personal Property Registry report were "invalid" under ss 186(e) and (f) of the *Business Corporations Act*, RSA 2000 c B-9 (the *Act*), as they were filed under the respondent corporation's pre-amalgamation name.

[5] In a detailed written endorsement (the Decision), the chambers judge dismissed the stay applications finding that the appellant had not met any of the three parts of the test for a stay set down in ***RJR-MacDonald Inc v Canada (Attorney General)***, 1994 CanLII 117 (SCC), [1994] 1 SCR 311. Namely, the appellant had not established that:

1. there was a serious issue to be tried on appeal;

2. she will suffer irreparable harm if the stay is not granted; and

3. the balance of convenience favours granting the stay.

The chambers judge further dismissed the appellant's request for punitive costs and her arguments related to amalgamation of the respondent corporation.

[6] The appellant alleges that the chambers judge erred on all three parts of the test for a stay. She further states that the chambers judge erred in dismissing her request for punitive costs in the face of what she continues to argue is "uncontested evidence of contemptuous conduct" by the respondents for reporting the judgment to the credit bureau and he misinterpreted the *Act* relative to the effect of corporate amalgamation on judgment enforceability.

[7] While the appellant argues the chambers judge committed various errors of law, at their core the appellant's submissions are an attempt to reargue her application for a stay of the judgment and costs orders in the hope of securing a different result. That is not our role. As set out in ***Attila Dogan Construction and Installation Co Inc v AMEC Americas Limited***, 2015 ABCA 406 at para 13, while the "statement of the legal test for a stay is a question of law reviewed for correctness. . . [f]indings of fact, such as those relating to irreparable harm and the balance of convenience, are entitled to deference. The ultimate exercise of . . . discretion in granting or denying a stay will not be overruled unless it is based on an error of principle, or is unreasonable" (citations omitted); see also ***HML Contracting Ltd v Pinder***, 2022 ABCA 185 at para 15.

[8] As the appellant acknowledges, the chambers judge correctly found that the test for whether there is a serious issue to be tried on appeal is "a low threshold. It is an assessment of whether the appeal is frivolous or vexatious. . . A claim that is baseless, hopeless or not arguable is 'frivolous or vexatious' . . . because it has no reasonable prospect of success" (citations omitted): Decision at para 62. There is no merit to the appellant's argument that the chambers judge erred by improperly conducting an "in-depth merits-based" review of her appeal. The chambers judge was entitled to undertake a preliminary assessment of the merits to determine if the appeal had a "reasonable prospect of success". His determination that it had no such prospect, is reasonable, devoid of error, and is entitled to deference. More specifically, the chambers judge was entitled to find that the appellant could not use the respondents' renewal application to relitigate the underlying trial costs award, there was no evidence the judgment had been satisfied, or intentionally delayed or inflated, and further that the applications judge properly exercised her discretion to award costs for the renewal application. These findings responded directly to the arguments the appellant made on her application and are not the product of an improper application of the serious issue test or flawed reasoning.

[9] There is similarly no merit to the appellant's arguments that the chambers judge erred in law related to irreparable harm or his balance of convenience analysis. The onus was on the appellant to establish these parts of the test had been met. Deference is owed to the chambers judge's finding that the appellant had "provided no evidence" and "has not satisfied me that she will suffer irreparable harm if the requested stays are not granted": Decision at paras 78-88. The chambers judge neither "ignored" the appellant's claims that the respondents had "falsely" reported a judgment to the credit bureau, nor improperly focused on harm that has already happened instead of that which would result if the stay was not granted. His findings that the evidence presented by the appellant did not establish any attempts at enforcement of the judgment against the appellant, nor any harm that could not later be remedied with an order directing the

respondents to pay the appellant, is sound. There is further no support for the appellant's argument that the chambers judge found the balance of convenience favoured the respondents because they had legal counsel.

[10] Lastly, the chambers judge did not err in dismissing the appellant's request for punitive costs, or in finding that ss 186(e) and (f) of the *Act* preserves an amalgamated corporation's judgments both for and against it and transfers them to the amalgamated corporation. The chambers judge determined that the appellant had provided "no evidence that Respondent's counsel reported anything to the credit bureau. . . [thus] no evidence that the reduction in the Applicant's credit rating. . . is attributable to the Respondents or their counsel. The Stay Application did not preclude filing a Writ of Enforcement. Justice Kendall did not order a stay, so filing a Writ of Enforcement did not breach her Order": Decision at para 30. These are findings of fact supported on the record. Moreover, as s 186(f) makes clear: an "order or judgment in favour of. . . an amalgamating corporation may be enforced by. . . the amalgamated corporation"; despite the appellant's arguments, nothing turns on the fact that the "pre-amalgamation professional corporation . . . ceased to exist".

[11] The appeal is dismissed.

[12] After hearing oral submissions on costs, the default rule applies. The successful respondent is entitled to costs in accordance with Column 1, Schedule C in the amount of $3375.

[13] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order or judgment.

Appeal heard on April 15, 2026

Memorandum filed at Calgary, Alberta
this 24th day of April, 2026

Crighton J.A.

Authorized to sign for: de Wit J.A.

Shaner J.A.

Appearances:

Appellant A. Carbone

T. Ryan (no appearance)
J. Larter
for the Respondents

Corrigendum of the Memorandum of Judgment

Appearances Page: correction to Counsel for the Respondent, J. Larter has been added as Counsel for the Respondent – Counsel should read:

T. Ryan (no appearance)
J. Larter