

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Ma v. Wu*,
2025 BCCA 229

Date: 20250620
Docket: CA48650

Between:

Zhi Yong Ma and Superoptionforex Consulting Inc.

Appellants
(Defendants)

And

Hong Fang Wu

Respondent
(Plaintiff)

Before: The Honourable Justice Dickson
The Honourable Madam Justice Fisher
The Honourable Justice MacNaughton

On an application to vary: An Order of the Court of Appeal for British Columbia,
dated May 8, 2025 (*Ma v. Wu*, 2025 BCCA 165, Vancouver Docket CA48650).

Oral Reasons for Judgment

The Appellant, appearing in person, and on
behalf of Superoptionforex Consulting Inc.:

Z.Y. Ma

Counsel for the Respondent:

Y. Wong

Place and Date of Hearing:

Vancouver, British Columbia
June 20, 2025

Place and Date of Judgment:

Vancouver, British Columbia
June 20, 2025

Summary:

Application to review the order of a justice dismissing the appeal as abandoned is dismissed. After the appeal was placed on the inactive list for a second time, the respondent obtained an order for security for costs of the appeal and costs of the trial, which was subsequently affirmed on review. The appellants did not comply with that order. The respondent applied to dismiss the appeal as abandoned. The appellants then applied to reinstate the appeal and for a no fee order. The justice made no error in law or principle, nor did he misconceive the facts in assessing the relevant factors and concluding that it was in the interests of justice to dismiss the appeal as abandoned. It was therefore unnecessary to address the appellants' applications.

[1] **FISHER J.A.:** This is an application to review an order Justice Edelman made May 8, 2025 in chambers, which dismissed the applicant's appeal as abandoned: *Ma v. Wu*, 2025 BCCA 165. The applicant, Mr. Ma, had failed to comply with an order made June 24, 2024 by Justice Groberman, to pay security for costs of the appeal and security for trial costs. That order gave Mr. Ma until August 23, 2024 to pay security. When the application came before Edelman J.A. eight months later, he had still failed to do so.

[2] This application is brought under s. 29 of the *Court of Appeal Act*, S.B.C. 2021, c. 6 [Act], which provides that a division of this Court may vary or cancel the order of a single justice. A review application is not a rehearing of the underlying application; it is a review of the justice's order, and the standard of review is highly deferential. A review application can only succeed where the justice was wrong in law, wrong in principle, or misconceived the facts. In the absence of such an error, a division will not interfere with the order: *Parihar v. Royal Bank of Canada*, 2024 BCCA 368 at para. 38.

[3] This application is the latest in a series brought in relation to the underlying appeal. Mr. Ma contends, among other things, that the hearing before Edelman J.A. was procedurally unfair and the merits of his appeal were not properly considered. The respondent, Ms. Wu, submits Mr. Ma has identified no reviewable error in the order, there was no procedural unfairness, and this application should be dismissed.

Background

[4] Mr. Ma's underlying appeal is from the order of Justice Winteringham, as she then was, ordering Mr. Ma and his company, Superoptionforex Consulting Inc., to pay approximately \$1.2 million in damages to Ms. Wu for breach of fiduciary duty and negligence: *Wu v. Ma*, 2022 BCSC 1737 (the SC Judgment). The losses were incurred as a result of Mr. Ma investing Ms. Wu's funds in a company known as DryShips, which went bankrupt. There was also a significant award of costs.

[5] Mr. Ma filed his notice of appeal in this Court on November 2, 2022. Thereafter, he took no further action and the appeal was put on the inactive list a year later. It was subsequently reinstated on April 24, 2024, by order of Justice Fenlon. After the appeal was reinstated, Ms. Wu brought an application seeking security for costs of the appeal and costs of the trial and the trial judgment.

[6] That application came before Groberman J.A., who ordered Mr. Ma to pay security for costs of the appeal in the amount of \$11,996.40 and security for trial costs in the amount of \$125,340. In making this order, Groberman J.A. expressed concern that Mr. Ma had divested himself of money he had received from the sale of his home immediately after Winteringham J.'s judgment was released:

[21] I am also, in the unique circumstances of this case, convinced that security for the trial costs of \$125,340 should also be ordered. I say this because there is some evidence that Mr. Ma did have access to a sizeable amount of funds immediately after the judgment was issued and that he quickly divested himself of money that came as proceeds from the sale of his home. I am satisfied that it would not be unjust to order security in at least the amount that he divested himself of in the immediate aftermath of the judgment.

[7] He ordered the appeal stayed pending the payment of that security within 60 days and directed that Ms. Wu could apply to have the appeal dismissed as abandoned if Mr. Ma failed to comply.

[8] Mr. Ma failed to comply. He did not pay security. Instead, he applied to vary the order of Groberman J.A. That application was dismissed on September 19, 2024 by a division of this Court: *Ma v. Wu*, 2024 BCCA 332, leave to appeal to the SCC denied April 3, 2025.

[9] On October 22, 2024, Mr. Ma's appeal went on the inactive list for a second time. Mr. Ma did not pay the security as ordered and took no steps to reactivate his appeal until January 2025, after Ms. Wu applied to dismiss the appeal as abandoned. Mr. Ma then applied to reinstate his appeal and for a no-fee order. Ms. Wu agreed to adjourn her application until after the Supreme Court of Canada

released its decision denying Mr. Ma leave to appeal. All three applications were heard together by Edelmann J.A. on May 8, 2025.

The chambers judgment

[10] Justice Edelmann set out the history of the litigation as described above and the legal framework under s. 36(c) of the *Act*, granting him the power to dismiss an appeal as abandoned where an appellant has failed to comply with an order. He noted the considerations guiding his exercise of discretion as set out in *Ashraf v. Jazz Aviation LP*, 2023 BCCA 434 at para. 13 [*Ashraf*], *aff'd* 2024 BCCA 45:

1. What was the reason for the appellant’s noncompliance, and is there a realistic assurance security will be posted within an acceptable period?
2. Will the delay in posting security prejudice the respondent?
3. Do the merits of the appeal justify declining to dismiss the appeal?
4. Is dismissal in the interests of justice?

[11] The justice held the onus lay with the appellant to satisfy him it was in the interests of justice to allow the appeal to continue, citing *Ashraf* and *Quinn v. Coutts*, 2018 BCCA 433 [*Quinn*]. He then considered the guiding factors from *Ashraf* one by one.

[12] Mr. Ma’s explanation for his noncompliance was financial hardship. He submitted he was in significant debt and could not afford to post the security. He asked the justice to set aside or vary the security order. The justice considered he was not able to do so after the security order had been affirmed by a full division. Even if an application to vary the order was possible, he found no material change in circumstances capable of sustaining a variation.

[13] The justice considered Ms. Wu would be prejudiced by any further delay, given she had not been able to collect any significant portion of her judgment to date

and it seemed likely that, without security, she would not be able to collect her costs of the appeal, the application, or any subsequent applications.

[14] On the question of merits, Edelmann J.A. noted two other justices had already commented that Mr. Ma’s appeal was weak or lacked apparent merit. He further noted nearly all of Mr. Ma’s grounds of appeal focused on questions of fact or mixed fact and law reviewable on the deferential standard of palpable and overriding error. He was not satisfied that any limited merits of the appeal justified declining to exercise his discretion to dismiss the appeal as abandoned.

[15] Justice Edelmann concluded it was in the interests of justice to dismiss the appeal as abandoned, reasoning as follows:

[26] Mr. Ma has not complied with the order requiring him to pay security for costs. He has no plan to do so in the near future, if ever. It would not be in the interests of justice to put Ms. Wu to the time and expense of allowing this appeal to continue indefinitely, in particular in circumstances where she is unlikely to recover any costs from ongoing applications like the ones before me.

[16] He ordered the appeal be dismissed as abandoned with costs to Ms. Wu and accordingly there was no need to consider Mr. Ma’s applications.

Position of the parties on this application

[17] Mr. Ma is self-represented, as he was before Edelmann J.A. In his written materials, he says the justice erred in dismissing his appeal solely on the basis of “technical noncompliance with the security for costs requirement” without properly considering the full record and the merits of his appeal. He says the hearing was procedurally unfair, as he was not given adequate time to make his arguments, and his evidence was not all considered. He says the justice misinterpreted his evidence of financial hardship, failed to consider his applications and failed to give due consideration to his substantive arguments on the merits of his appeal. His oral submissions focused on his financial situation and his inability to pay security for costs, which he says forecloses him from pursuing a meritorious appeal. He seeks an order from this Court to reactivate his appeal and direct Ms. Wu to pay into court

as the security \$19,766 of funds which had been successfully garnished in execution of the judgment of Winteringham J.

[18] Ms. Wu submits Edelmann J.A. made no reviewable error. She says there was no error in his decision not to consider Mr. Ma's other applications, as, having determined the appeal should be dismissed, they were moot. She submits there was no procedural unfairness, as the justice considered all the evidence before him, and Mr. Ma was given a fair opportunity to make his submissions and be heard. She argues the other submissions from Mr. Ma are an attempt to relitigate the merits of his appeal, which is not the proper role of this Court on review.

Analysis

[19] I have already described the standard of review for a review application as highly deferential. Applying that standard, in my view, Edelmann J.A. made no error in law or principle, nor did he misconceive the facts.

[20] Justice Edelmann identified the proper legal framework guiding his exercise of discretion. Section 36(c) of the *Act* provides that a justice may dismiss an appeal as abandoned if an appellant fails to comply with the *Act* or the *Rules* or an order or direction of the court. Mr. Ma had the onus of demonstrating that the interests of justice supported the continuation of his appeal: *Ashraf* at para. 14; *Quinn* at para. 13. The justice was entitled as a matter of law to dismiss the appeal as abandoned on the basis of the appellant's noncompliance with the order to pay security for costs. The only question is whether he made a reviewable error in considering the factors guiding his discretion to do so.

[21] I do not accept Mr. Ma's submission that Edelmann J.A. wrongly focused only on his failure to meet the security for costs requirement without looking at the full record that included his application to remove the appeal from the inactive list and to waive fees. First, while the justice first addressed Ms. Wu's application to dismiss the appeal, he noted that her application addressed a "number of considerations relevant to Mr. Ma's applications" and he considered the materials filed by Mr. Ma: at para. 2. I also note the order states that the Court had read the materials filed and

received but not filed. Second, the justice was not wrong to focus on Mr. Ma's non-compliance with the security for costs order because this was a key issue relevant to the factors to be considered in respect of Ms. Wu's application. That said, it is also evident in the reasons that the justice considered all four factors in balancing the interests of justice.

[22] I also do not accept Mr. Ma's submission that Edelmann J.A. misapprehended the evidence of his "demonstrable financial hardship". It is clear from the reasons that he was well aware of Mr. Ma's financial situation. The justice noted his "significant debt" and his assertions about his inability to pay, which had been considered by Groberman J.A., all of which suggested that Mr. Ma had no plans to pay security for costs and no plan to pay costs should he be unsuccessful in his appeal. In considering the possibility of an application to vary the security order, the justice was not satisfied Mr. Ma had shown a material change in circumstances, in particular that he had addressed the concerns identified by Groberman J.A. about his divesting of funds after the sale of his home:

[15] ... The only additional information about the divesting of funds after the sale of his home, which was an essential issue in Groberman J.A.'s decision, is that Mr. Ma has listed the names of the persons to whom he alleges that he repaid debts. No further information about the purported loans or conditions of repayment have been provided. Notably, there is no evidence on behalf of the persons who purportedly received the repayments, nor has there been an explanation other than Mr. Ma's submissions today of the coincidence of repaying all the personal loans shortly after the order of Winteringham J. in the underlying action.

[23] Much of Mr. Ma's argument on this point focused on errors he asserts were made about his financial circumstances that occurred before the trial court in the course of the litigation. I appreciate Mr. Ma's frustration with an order to pay security when he does not have the funds, but I see no reviewable error in the justice's conclusion that the record before him disclosed no change in circumstances since the security order was made. Justice Edelmann was required to assess the record before him on the issue he was asked to decide.

[24] The justice also properly considered the prejudice to Ms. Wu if the posting of security was delayed further.

[25] As for the merits of the appeal, I do not agree with Mr. Ma that Edelmann J.A. erred in relying on the views of Fenlon and Groberman JJ.A. rather than conducting his own analysis of the merits. The justice was entitled to take notice that other justices of the Court had noted Mr. Ma's appeal appeared to be weak. He was not required to address all of Mr. Ma's substantive arguments on the merits of the appeal. He reached his own conclusion, stating:

[23] The vast majority, if not all, of Mr. Ma's arguments focus on questions of fact, or of mixed fact and law. On appeal, this Court will only interfere with those findings if Mr. Ma can demonstrate that Winteringham J. made a palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 10. While not insurmountable, this is a high bar and a trial judge's factual findings are entitled to considerable deference.

[26] On this application, Mr. Ma has once again focused heavily on the merits of his appeal, and the arguments he raises demonstrate that his appeal largely hinges on questions of fact, including credibility, and mixed fact and law.

[27] For example, Mr. Ma contends that Ms. Wu "fraudulently obtained" the SC Judgment by submitting a biased expert report, concealing key evidence about DryShips, submitting falsified affidavits that concealed her prior knowledge of Mr. Ma's company and misrepresented facts about their meetings and discussions, and disobeying a document disclosure order by failing to reveal communications and agreements with her brokerage and Chinese lawyer. He also asserts that the trial judge erred by "erroneously brandishing Mr. Ma as dishonest while failing to account for [Ms. Wu's] noncompliance with the disclosure order", preventing him from testifying about relevant matters on the basis of hearsay, erroneously relying on Ms. Wu's biased expert report, wrongly characterizing Mr. Ma as an investment advisor, wrongly allowing Ms. Wu to amend the notice of civil claim to add new causes of action beyond the limitation period, incorrectly finding that DryShips was bankrupt, overlooking the fact that Ms. Wu had rights to pursue DryShips, and

overlooking the fact that Mr. Ma and his company were innocent victims of a fraudulent scheme that purported to dramatically increase the value of DryShips.

[28] In essence, Mr. Ma seeks to re-argue his case before this Court. However, this is not the function of this Court. As other justices have noted, it will indeed be challenging for Mr. Ma to establish that the trial judge made palpable and overriding errors in her findings of fact and credibility. I would add that it may also be challenging for Mr. Ma to establish that the trial judge made a legal error in permitting the notice of civil claim to be amended.

[29] In my view, Edelman J.A. did not misunderstand or ignore Mr. Ma's substantive arguments. He was not satisfied that the limited merits of the appeal justified him to decline to exercise his discretion to dismiss the appeal as abandoned. I can find no error in his conclusion.

[30] Finally, I am not persuaded that the hearing before Edelman J.A. was procedurally unfair. As Ms. Wu notes, Mr. Ma was given almost the entire length of the chambers hearing to make his oral submissions. Ms. Wu's materials filed in response to this application include a transcript of the chambers hearing prepared by a summer student with her counsel's firm. A review of this transcript shows that Mr. Ma had a fair opportunity to respond to questions from the justice and make oral submissions on matters relevant to the applications. I accept that there was more he would have said on the merits of his appeal had he been given the opportunity to do so but this does not undermine the fairness of the proceeding. It was not unfair for Edelman J.A. to question Mr. Ma about his financial circumstances since this was an important issue, and decline to hear from him orally on points that were less important. Mr. Ma had the opportunity to make both written and oral arguments and the justice had before him a considerable amount of written material. In the end, having concluded the appeal should be dismissed as abandoned, it was not necessary for the justice to consider Mr. Ma's applications. There was no unfairness to Mr. Ma in this regard.

[31] In this Court, Mr. Ma explained that his delay in seeking to have his appeal reinstated the second time was due to his application to review the security order of Groberman J.A. and his subsequent application for leave to appeal to the Supreme Court of Canada. While I understand he did so because he could not afford to carry on with the appeal in light of the security order, the unfortunate fact remains that there appears to be no prospect at all of an ability to pursue this appeal. His request for the use of the garnished funds as the only security is, in my view, unreasonable in the circumstances.

[32] The justice's conclusion that the interests of justice favoured dismissing the appeal was amply supported by the record and the lengthy procedural history of this appeal. The onus lay with Mr. Ma to satisfy Edelman J.A. that the interests of justice favoured allowing his appeal to continue, and he failed to meet this onus. In my view, the justice properly exercised his discretion to dismiss the appeal as abandoned under s. 36 of the *Act*.

Conclusion

[33] By operation of the *Act* and the *Rules*, Mr. Ma, by having his appeal placed on the inactive list twice and failing to comply with an order of this Court, was vulnerable to having his appeal dismissed as abandoned. The significant delay in proceeding with the appeal, Mr. Ma's noncompliance with the security for costs order, and the mounting cost in time and expense to Ms. Wu of defending the appeal all supported the justice's exercise of discretion.

[34] I see no reviewable error in the justice’s decision to dismiss Mr. Ma’s appeal as abandoned. I would therefore dismiss the review application.

[35] **DICKSON J.A.:** I agree.

[36] **MACNAUGHTON J.A.:** I agree.

[37] **DICKSON J.A.:** The application is dismissed.

“The Honourable Madam Justice Fisher”