IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Perry v. General Motors of Canada,* 2025 BCSC 2264

Date: 20251118
Docket: S218173
Registry: Vancouver

Between:

Richard Perry

Plaintiff

And

General Motors of Canada and
Dueck Richmond Chevrolet Buick Cadillac GMC Ltd.

Defendants

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

The Plaintiff, appearing in person:	R. Perry
Counsel for the Defendant, General Motors of Canada:	A.K. Foord E. Pitre
Counsel for the Defendant, Dueck Richmond Chevrolet Buick Cadillac GMC Ltd.:	N. Liu
Place and Date of Hearing:	Vancouver, B.C. October 29, 2025
Place and Date of Judgment:	Vancouver, B.C. November 18, 2025

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I. INTRODUCTION

[1] Before the Court are two parallel applications. Each of the defendants seeks an order that the plaintiff, Richard Perry, post security for costs by way of four equal monthly installments of $6,250, for a total of $25,000, failing which the action is to be stayed. Mr. Perry opposes the applications.

[2] For the reasons that follow, I have concluded that the applications should be allowed and the order granted on the terms sought.

II. BACKGROUND FACTS

A. Events Giving Rise to the Litigation

[3] On October 16, 2019, Mr. Perry purchased a used 2013 GMC Terrain (the “Vehicle”) from a used car dealership known as “LGN Auto Clearance Center” for $8,995. At the time, the Vehicle had an odometer reading of 113,500 km. Mr. Perry financed the purchase by way of a secured loan from the National Bank of Canada (“NBC”).

[4] Two days later, on October 18, 2019, Mr. Perry took the Vehicle into the dealership of the defendant, Dueck Richmond Chevrolet Buick Cadillac GMC Ltd. (“Dueck”), for a service. During the service, Dueck performed an inspection, changed the oil and replaced the front wheel rotors, apparently to address a concern Mr. Perry had raised about a grinding noise while driving.

[5] Mr. Perry alleges that over the next several months, the Vehicle was burning oil at a problematic rate. He says he had to top up the oil again in December 2019. By then, he says, the Vehicle was “continuously shunting, shaking and lunging around whilst slowing or idling in traffic.” In or about early January 2020, he says, he needed to top up the oil yet again, which again he did himself.

[6] Mr. Pery pleads that in February 2020, he received a letter from the other defendant, General Motors of Canada Company (“GMC”), informing him that the Vehicle, along with others in its class, was prone to excessive oil consumption and that GMC “would replace piston rings if the consumption was found to be excessive.”

[7] In response, he says, he took the Vehicle back into Dueck for a second service in early March 2020. At that time, he says, he was told that Dueck would have to monitor the level of oil consumption over several visits to determine if a warranty replacement was required. Dueck performed yet another oil change at that time.

[8] Over the next several months, Mr. Perry was told to bring the Vehicle into the dealership several more times to assess the level of oil consumption. Mr. Perry alleges that, during those visits, Dueck:

a) falsified records with a view to understating the amount of oil that the Vehicle was consuming;

b) required him to bring the Vehicle in for monitoring more frequently than was necessary to qualify it for warranty coverage; and

c) overfilled the engine with oil in an effort to conceal the true level of consumption.

[9] On August 18, 2021, GMC sent Mr. Perry an email offering to "complete the repairs to the pistons and rings" in accordance with one of its special coverage warranties, at no cost to Mr. Perry. However, Mr. Perry refused to have this work done because he did not believe it would solve the problem. Rather, in his view, the entire engine needed to be replaced but the defendants were unreasonably refusing to carry out that work.

B. Procedural History

[10] Mr. Perry commenced this action on September 15, 2021. He alleges that the defendants are liable to him for breach of contract, breach of warranty, deceit, fraudulent misrepresentation and conspiracy.

[11] In the claim as originally filed, Mr. Perry sought an order that the defendants replace the Vehicle's engine or, alternatively, pay him damages in excess of $40,000

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"so that [he] can have the engine and parts replaced and be fully compensated". He described his losses at that time as follows:

a) $30,000 for the engine replacement;

b) $1,500–$2,000 for the cost of the unnecessary service visits;

c) $7,000–$8,000 for "loss of income/business profits or "opportunity/chance" for the time he had to spend dealing with the issue; and

d) "Damages for the mental and emotional worry and distress".

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[12] One month later, on October 15, 2021, Mr. Perry commenced a second action (Vancouver Registry Action No. S218847 – the "LGN Action") against the seller of the Vehicle (identified as LGN Auto Clearance Center, LGN Enterprises Inc. and their principal, Alex Bilgin) and NBC, alleging that those defendants too had committed fraud in relation to his purchase of the Vehicle. In his Notice of Civil Claim in the LGN Action, as originally filed, Mr. Perry pleaded that his "total loss including anticipated expenses and damages exceeds $35,000."

[13] Mr. Perry has since amended the notices of civil claim in both actions (on September 25, 2023, in this action, and November 14, 2023, in the LGN Action). The amended claims allege that the defendants have concealed relevant evidence, forged documents and committed perjury and spoliation. He now seeks damages in excess of $250 million in each action.

[14] The defendants have responded to the claims denying any liability.

[15] In the period of over four years that has elapsed since Mr. Perry initiated this action, the litigation has not advanced very far. There have been no examinations for discovery scheduled or conducted, and no expert reports delivered.

[16] Although the LGN Action has seen no activity since the close of pleadings, Mr. Perry has brought numerous interlocutory applications in this action, including applications brought November 1, 2021; January 10, 2022; September 12, 2023;

November 1, 2023; December 29, 2023; January 19, 2024; April 3, 2024; April 23, 2024; May 6, 2024; June 7, 2024; June 25, 2024; December 18, 2024; December 23, 2024; and January 16, 2025.

[17] Those applications, like Mr. Perry's pleadings, have been prolix, rambling, repetitive and in some cases highly improper, with the same or similar relief sought over and over again, at times after the matter has already been adjudicated. The most frequent category of relief sought has been Mr. Perry's request for orders to compel production of documents that he hoped would substantiate his allegations of fraud, forgery, evidence tampering and spoliation. He has also brought a number of applications seeking leave to make further amendments to the notice of civil claim. He has repeatedly sought orders to punish the defendants and their counsel for contempt of court and other alleged misconduct.

[18] Mr. Perry was successful, at least initially, in obtaining some of the relief he was seeking in relation to document production. On July 11, 2022, Fitzpatrick J. heard Mr. Perry's application filed January 10, 2022. In the result, she dismissed part of the application but granted the following relief:

a) Dueck was to advise Mr. Perry of the physical and email addresses of two of its employees;

b) Dueck was to produce information stored on its internal computer system concerning the servicing of the Vehicle between March 2020 and August 2021, to the extent it had not already been produced;

c) the defendants were to produce communications exchanged between them and Mr. Perry concerning the Vehicle, beginning in March 2020, to the extent they had not already been produced;

d) GMC was to produce documents reflecting its assessment of Mr. Perry's claim, to the extent they had not already been produced; and

e) Dueck was to identify the author of a number of its documents.

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[19] On November 21, 2023, Kent J. heard part of Mr. Perry's application filed November 1, 2023. There were two formal orders eventually entered in relation to that hearing. The first of those orders struck the paragraph of that application in which Mr. Perry had sought to ban defendants' counsel from the practice of law and, in addition, awarded costs in favour of those lawyers in the amount of $350 each, but otherwise adjourned the balance of the relief sought.

[20] The second formal order made that day was not settled until after a subsequent a hearing on May 21, 2024. That second formal order contained the following additional terms:

a) two items of relief sought in the November 1, 2023 application were dismissed (namely Mr. Perry's application seeking information in relation to one of Dueck's employees and an order requiring the defendants to respond to Mr. Perry's proposed amended pleadings);

b) Mr. Perry was at liberty to scrap the Vehicle with the understanding that the defendants waived any defence based on spoliation;

c) the defendants were to serve an affidavit sworn by a senior employee verifying their respective lists of documents and confirming whether or not certain specified kinds of records sought by Mr. Perry were in their possession and control;

d) Mr. Perry was to be at liberty to renew his application for production of additional documents, and to "seek any other relief that is appropriate for swearing false affidavits" if, after production of those affidavits, Mr. Perry claimed that there are other documents that exist and have not been produced; and

e) the remainder of the relief sought was adjourned generally.

[21] The transcript of the hearing on November 21, 2023 reveals that Kent J. made those orders after being satisfied that:

> … there are some clear instances of documents being produced that are not listed and other documents which appear to be in existence but which have not been listed and produced …

[22] On January 22, 2024, the parties appeared before Giaschi J. on the unresolved aspects of Mr. Perry's November 1, 2023 application. He dismissed some of the relief sought but ordered the defendants to produce the following:

a) audio-recordings of certain conversations, to the extent they existed;

b) the relevant service bulletins pertaining to oil leaks or oil consumption and applicable to the Vehicle; and

c) completed certified service inspection forms for every inspection of the Vehicle, if they exist.

[23] The defendants produced further documents in response to those orders. Some of those documents were redacted for privilege of various kinds. Mr. Perry did not believe that the defendants had complied with the orders or that the redactions were justified. He filed a new application on April 3, 2024, seeking further relief on that basis.

[24] In addition, on May 30, 2024, Mr. Perry served the defendants with an 80-page notice to admit, listing 296 proposed admissions. He was not satisfied with the defendants' response to the notice to admit and filed yet another application on June 25, 2024, repeating his request for the relief sought in the April 3, 2024 application and seeking further relief in relation to the defendants' responses to the notice to admit.

[25] On July 9, 2024, those two applications came on for hearing before Fitzpatrick J. In her unreported oral decision of that date, she summarised Mr. Perry's allegations against the defendants as follows:

a) they had perjured themselves and filed false affidavits;

b) their failure to produce relevant documents was ongoing;

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c) they have intentionally spoliated, destroyed or fraudulently concealed documents; and

d) GMC had failed to respond properly to the notice to admit.

[26] She summarised the relief that Mr. Perry was seeking as follows:

a) an order requiring the defendants to produce a business contract governing their relationship;

b) a finding that the defendants are guilty of contempt of court and other misconduct, including abuse of process, obstruction of justice, spoliation and perjury; and

c) an order requiring the defendants to provide another affidavit of documents to address alleged deficiencies in the previous ones.

[27] Justice Fitpatrick noted that the defendants disputed those allegations and asserted that they had fulfilled their discovery obligations, including those set out in the previous orders. She observed (at para. 13) that, “[o]n the face of it, that appears to be the case.” She added (at para. 15) that:

> … there is simply no evidence to support what can only be described as [Mr. Perry’s] speculation and suspicions at this time. I appreciate that Mr. Perry wishes to pursue what he says are inadequacies in the document production, but there is simply no basis upon which I would order further production by these defendants when they have given the court sworn evidence that these further documents do not exist. There is no evidence to suggest otherwise.

[28] Accordingly, she refused to grant all but one of the items of relief that Mr. Perry was seeking. In refusing to grant any relief in relation to GMC’s response to the notice to admit, she stated as follows at para. 17:

> … I appreciate that Mr. Perry is not satisfied with the response to the notice to admit; however, I cannot force [GMC] to respond with evidence that Mr. Perry wishes to hear, but with which they disagree. The evidence is the evidence. If Mr. Perry wishes to test that evidence, he will have to do so at an examination for discovery of a [GMC] representative or ultimately at a trial.

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[29] She refused (at para. 18) to order production of the contract between Dueck and GMC, on the basis that Mr. Perry had failed to establish the requisite evidentiary footing for such an order.

[30] She also refused (at para. 20) to order the defendants to provide a further affidavit of documents, stating as follows:

> There is absolutely no basis upon which I would order such an affidavit to be provided. Again, I appreciate that Mr. Perry is unhappy with what the defendants say are the relevant and available documents here. However, that is something that he will have to test through further court applications or examinations for discovery or at a trial, not on an application such as this.

[31] She adjourned the part of the application challenging the defendants' redactions because she did not believe that matter had been adequately addressed in the supporting materials that were before her.

[32] In dealing with the question of costs, she stated as follows at para. 29:

> In all of the circumstances, Mr. Perry has advanced serious allegations that have not been proven at the end of the day. In my view, they should have been advanced before the Court. I am satisfied that some level of costs should be awarded against Mr. Perry. I order that Mr. Perry pay $250 to each of the parties, payable by Mr. Perry in any event of the cause. I will not make an order as to when those costs should be payable.

[33] Finally, she concluded by making the following suggestion to Mr. Perry, at para. 31:

> Mr. Perry, in relation to you, I would strongly suggest that you get on with scheduling whatever examinations for discovery you want to conduct. I would also suggest that you speak with both defence counsel about setting this matter down for trial so that you have something to work toward in terms of an ultimate resolution of this matter one way or the other.

[34] The parties appeared before Loo J. on August 9, 2024 for a case planning conference. He set a full-day chambers hearing for September 12, 2024 to deal with the outstanding matters not yet dealt with by the order of Fitzpatrick J. but otherwise ordered that there be no further interlocutory applications brought unless scheduled at a future case planning conference. Although Loo J. also recommended that a case management judge be assigned, no such assignment was made.

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[35] On August 12, 2024, Mr. Perry unilaterally scheduled a 34-day trial set to commence on January 5, 2026. I understand that the trial was adjourned generally following the hearing before me.

[36] Mr. Perry's challenge to the redactions, adjourned by Fitzpatrick J., came on for hearing before Hoffman J. on September 12, 2024. She conducted an *in camera* hearing, in Mr. Perry's absence, during which she reviewed the original, unredacted versions of the two customer service logs in dispute. Her reserved decision dated October 8, 2024 refusing, for the most part, Mr. Perry's application in relation to the redactions is reported as *Perry v. General Motors Canada*, 2024 BCSC 1857.

[37] In summary, she upheld GMC's claims of privilege in the redacted content, with only two minor exceptions. She concluded as follows at para. 29:

> There is nothing in the redacted material that would substantiate the allegations of Mr. Perry that GMC has engaged in corporate abuse or that would justify lifting the privileges claimed.

[38] In the result, she made the following orders (the order was not settled in this form until after the parties appeared before her again on January 6, 2025, as noted below):

a) Mr. Perry's application seeking production of the contract between Dueck and GMC was dismissed, but with leave to reapply if the notice of civil claim is successfully amended; and

b) his application in relation to the redactions was dismissed, but with two exceptions that required GMC to identify the class of privileged relied upon (in one case) and to reduce the amount of text redacted (in the other).

[39] She awarded costs of the redactions application to GMC in any event of the cause, at Scale B. In relation to the application to have the contract between Dueck and GMC produced, she ordered costs payable in the cause.

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[40] On October 2, 2024, while the decision of Hoffman J. was under reserve, the defendants filed a requisition setting a case planning conference for January 2, 2025.

[41] On December 3, 2024, Mr. Perry filed a requisition of his own setting a case planning conference for January 29, 2025. According to the requisition, he proposed on January 29, 2025 to make an application for leave to amend his claim and seek further documentary discovery once that was done.

[42] On December 18, 2024, Mr. Perry filed an application, without notice to the defendants, seeking to adjourn the January 2, 2025 case planning conference. The matter came on for hearing before Baker J. later that day. She ordered both case planning conferences adjourned to March 20, 2025. Ultimately, that hearing never went ahead either—the matter was later adjourned generally by consent.

[43] As I mentioned earlier, the parties disagreed about the form in which the order of Hoffman J. should be settled. On December 23, 2024, Mr. Perry filed an application seeking relief in relation to that question, including an application to have the defendants sanctioned by the court for, among other things, the manner in which their counsel had drawn the draft order. The order was finally settled following a further appearance before Hoffman J. on January 6, 2025.

[44] In the meantime, Mr. Perry filed on October 11 and November 13, 2024, respectively, applications in the Court of Appeal seeking leave to appeal the decisions of Fitzpatrick J. and Hoffman J. Those applications came on for hearing before Iyer J.A. on January 13, 2025. In the result, she refused both applications and ordered Mr. Perry to pay costs to the defendants in the amount of $250 each. Mr. Perry has since deposited that sum into defendants' counsel's trust account.

[45] On January 15, 2025, two days after receiving the decision of Iyer J.A., Mr. Perry applied to the Court of Appeal to vary her order, but the hearing of that application has not been scheduled.

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[46] The following day, on January 16, 2025, Mr. Perry filed an application seeking leave to further amend his claim. The defendants filed, on February 6 and 28, 2025, respectively, responses opposing the application on various grounds.

C. The Present Applications

[47] The defendants filed the applications that are now before the Court on July 23 and 25, 2025, respectively. Those applications first came on for hearing before Masuhara J. on August 11, 2025. They did not proceed at that time. Instead, Masuhara J. made the following orders:

a) the hearing of the applications was adjourned to September 23, 2025, for 1.5 hours, peremptory on Mr. Perry (the hearing was later adjourned again by consent to October 29, 2025, the date it proceeded before me, on the same terms);

b) Mr. Perry was to deliver a response of no more than 10 pages in length; and

c) Mr. Perry was to bring no further applications until these applications had been heard.

[48] Mr. Perry's formal response to the current applications, filed September 12, 2025, technically complied with the order of Masuhara J. insofar as it was less than 10 pages. However, it began with the following statement:

> Because I am limited to a 10 page Response and it is literally impossible to document my argument within 10 pages, I have written a full Response and set it out in my 26th Affidavit under Exhibit 1. …

[49] Exhibit "1" to Mr. Perry's 26th Affidavit, filed that same day (September 12, 2025) in opposition to the applications, takes the form of a 24-page submission to the court that repeats the arguments made in the formal application response, but at greater length and in greater detail.

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III. THE LEGAL TEST

[50] The court has inherent jurisdiction to require an individual plaintiff to post security for costs. The purpose of such an order was explained in *Fat Mel's Restaurant Ltd. v. Canadian Northern Shield Insurance Co.*, 1993 CanLII 1669, 76 B.C.L.R. (2d) 231 (C.A.), as follows:

> [15] It is appropriate to start with the question of what is the purpose of an order for security for costs[.] In *Island Research & Development Corp. v. The Boeing Co.* (3 January 1991), Vancouver C902161 (B.C.S.C.), Spencer J. said (at p. 3):
>
>> The purpose of security for costs is to protect a defendant from the likelihood that in the event of its success it will be unable to recover its costs from the plaintiff. The plaintiff is not to be permitted a free ride on an unlikely claim at the defendant's expense. The factors to be considered in achieving a just balance between the defendant's right to protection and the plaintiff's right to advance a potential claim for adjudication include the chance of the claim's success, the anticipated level of cost in conducting the action and the prospect of the plaintiffs ever having assets from which to pay the defendants' costs if the claim fails. …

[51] Where, as here, the plaintiff is an individual as opposed to a corporation, a more stringent test applies. In *Ocean Pastures Corporation v. Old Masset Economic Development Corporation*, 2016 BCCA 12, Goepel J.A., writing for the Court, cited with approval the following formulation of that test in *Han v. Cho*, 2008 BCSC 1229:

> [27] The onus is on the applicant to establish that he or she will be unable to recover costs … The fact that the plaintiff resides outside the jurisdiction, has no assets within the jurisdiction, or is impecunious, is not sufficient in itself. The power to order security for costs against an individual is to be exercised cautiously, sparingly, and only under special circumstances, sometimes described as egregious circumstances. Such special circumstances could arise if an impecunious plaintiff also has a weak claim, or has failed to pay costs before, or refused to follow a court order for payment of maintenance.

[52] The factors to be considered when deciding whether the requisite "special circumstances" or "egregious circumstances" are present for that purpose were enumerated in *I.J. v. J.A.M.*, 2013 BCSC 270, as follows:

> [14] A number of factors have been considered by the Court in determining whether it is appropriate to make an order for security costs

> against an individual claimant: (a) the merits of the plaintiff's claim: *Tordoff*, supra, at paras. 19-20; *Frank Hillis Logging Co. v. Hoeya Sound Logging Ltd.*, [1971] 2 W.W.R. 471 (B.C.C.A.); and *Launer*, *supra; Mobilificio Trebbianco, S.p.A. v. Rome*, [1981] B.C.J. No. 374 (S.C.); (b) the inability of defendants to recover costs from a plaintiff such as where the plaintiff is bankrupt or insolvent: *Han*, supra, at para. 16; (c) whether the plaintiff has demonstrated an intention not to comply with previous orders relating to costs payable; (d) if there is a risk that the plaintiff is not "findable": *Han, supra*, at para. 17; and (e) where there was evidence suggesting that a false description of residence or a false name had been given to the court or used generally: *Fraser v. Palmer* (1883), 3 Y.& C. Ex. 279; and *Swanzy v. Swanzy* (1858), 4 K.& J. 237.

[53] Another list of factors to be considered can be found in *Extra Gift Exchange Inc. v. Accurate Effective Bailiffs Ltd.*, 2008 BCSC 440, at para. 14, as follows:

> 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 probable 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.

[54] More recently, in *Iwasaki v. Redford*, 2016 BCSC 504, Warren J. (then of this court) summarised the principles that should guide the exercise of the court's discretion in the case of both individual and corporate plaintiffs, in the following terms:

> [57] In summary, if a defendant establishes a real likelihood that he or she will be unable to enforce a costs award, then it is necessary to assess the risk of a legitimate claim being stifled. This requires a consideration of all the

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> relevant factors present in the case in question. The ability of the plaintiff to post the security sought and the merits of the plaintiff's claim are obvious factors to consider. While the court cannot delve deeply into the merits on an application of this sort, if it is plain and obvious that the claim lacks merit then the concern not to frustrate legitimate claims is engaged with less force. If the plaintiff's claim is arguable but there is no reason to believe that the plaintiff will not be able to prosecute the claim if ordered to post security, then the concern not to frustrate legitimate claims does not arise. In my view, if the defendant establishes a real likelihood that it will be unable to enforce a costs award in circumstances where there is no risk of a legitimate claim being stifled, that amounts to special circumstances justifying an order for security for costs. In contrast, where it appears that an order for security for costs is likely to preclude an individual plaintiff's right of access to the courts, security should not be ordered, even where the defendant establishes that it will be unable to enforce a costs award, except in egregious circumstances.

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[55] Before reaching those conclusions, Warren J. distilled from the jurisprudence the following summary of the principles to be applied on applications of this kind:

- In exercising the discretion to order security for costs, a distinction is drawn between individual plaintiffs and corporate plaintiffs.
- In the case of a corporate plaintiff, once the defendant has demonstrated that the plaintiff would be unable or unlikely to pay costs, security for costs is generally ordered unless the plaintiff shows that there is no arguable defence. This reflects a concern to prevent the principals of a corporate plaintiff from hiding behind the corporate veil to avoid personal exposure for costs. Accordingly, the possibility that a company might be deterred from pursuing its claim is not a sufficient reason, on its own, for not ordering security for costs against a corporate plaintiff.
- In the case of an individual plaintiff, the court must balance the risk that a successful defendant will be unable to recover costs against the possibility of stifling a legitimate claim. Because of the longstanding principle that poverty is not a bar to access to the courts, a concern that a legitimate claim could be stifled by an order for security for costs will almost always override a concern that a successful defendant will be unable to recover costs if security is not ordered.
- "The power to order security for costs against an individual is to be exercised cautiously, sparingly, and only under special circumstances, sometimes described as egregious circumstances": *Han* at para. 27.
- In the case of an individual plaintiff, it is not enough for the applicant to establish that the plaintiff resides out of the jurisdiction and has no assets in it. Further, the fact that the plaintiff's jurisdiction of residence is a non-reciprocating jurisdiction for the purpose of enforcement of court orders "is of little import": *Bronson v. Hewitt*, 2007 BCSC 1751 at para. 44.
- The authorities do not establish an exhaustive list of the circumstances that would be special enough or egregious enough to justify an order for security for costs. As Madam Justice Dillon noted in *Han*, if the plaintiff is

> impecunious, the fact that the plaintiff's claim is weak or that the plaintiff has failed to pay a costs award in the past, might tip the balance in favour of granting the order.
>
> - Again, as Mr. Justice Shaw put it in *Fraser* [*v. Houston,* 1997 CanLII 3227, 36 B.C.L.R. (3d) 118 (S.C.)] at para. 11, where an order for security for costs would preclude an individual plaintiff's right of access to the courts, it will not be made "except in egregious circumstances amounting to a likely abuse of the court's jurisdiction".

[56] That summary was subsequently endorsed by Newbury J.A., sitting in chambers, in *Kim v. Choi*, 2016 BCCA 375 at para. 5.

IV. THE PARTIES' ARGUMENTS

A. The Defendants

[57] The defendants argue that that test is met here. They say that Mr. Perry:

a) has no assets in British Columbia;

b) is advancing a weak claim;

c) will likely continue to cause these proceedings to be unduly lengthy and protracted; and

d) has a history of abusive litigation conduct, bankruptcy and non-payment of costs awards, as evidenced by a series of judgments against him in unrelated proceedings in the United Kingdom (relying on the following published judgments there: *Brundle v. Perry,* [2014] EWHC 979 (IPEC) ["*979*"]; *Perry v. F.H. Brundle & Ors.,* [2015] EWHC 2737 ["*2737*"]; and *Perry v. F.H. Brundle & Ors.,* [2017] EWHC 678).

[58] Further, they argue that the proposed order is not likely to stifle his claim, relying on his earlier statements and pleadings that attest to his having:

a) access to "acquaintances that are prepared to fund the rest of the litigation for a slice of the action", such that "now money for this case isn't even an issue";

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b) "accumulated a 40bn [*sic*] assets portfolio" as well as a "thriving international business that benefited hundreds of millions of people worldwide"; and

c) "built up a multi-million dollar business with over $1bn in personal assets."

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[59] Although the defendants acknowledge that the applications have come relatively late in the litigation, they say that this is because the "special or egregious circumstances" upon which they rely have arisen only over time, as the scope and cost of the litigation have expanded due to Mr. Perry's conduct. They submit that delay is not a bar to the order sought "unless the plaintiff has been lulled by the delay into a false sense of security and has thereby been prejudiced" (citing *Extra Gift Exchange* at para. 18) and there would, they say, be no such prejudice here.

B. Mr. Perry

[60] In both the longer and the shorter versions of his response to these applications, Mr. Perry asserts that it is the defendants who are responsible for the slow pace of this litigation. He attributes this to their improper behaviour.

[61] In the longer version of his argument, Mr. Perry has enumerated the following 11 points in response to the applications:

a) the defendants have brought these applications not to secure any future costs award that may later be made in their favour, but rather as "just another ruse to prevent or delay the further amending of the pleadings and to try to avoid or delay the upcoming trial";

b) the defendants have refused to settle or otherwise compensate him for his loss;

c) the defendants have wrongfully refused to produce the documents he has demanded;

d) the defendants have engaged in "[i]ntentional spoliation and deliberate destruction of evidence, perjury, forgery, intentional fraudulent concealment of evidence and contempt of court";

e) the defendants have been "allegedly trying to corrupt the Judiciary and Judicial staff";

f) the proceedings in the United Kingdom upon which the defendants rely was "another complex fraud" to which he fell victim;

g) the defendants "have unlawfully shared private and confidential evidence with LGN about my transactions with Dueck" and thereby "delayed that claim";

h) he is working on an amended claim in this action;

i) he has received legal advice indicating that he has a strong claim;

j) he is dealing with a health issue attributable to the stress of this litigation; and

k) he has incurred over $30,000 in costs as a result of the defendants' misconduct, including almost $7,000 responding to these applications alone, and the defendants should be required to compensate him for those costs.

V. DISCUSSION

A. Are the circumstances sufficiently "special" or "egregious" to justify the order sought?

[62] There are a number of factors that weigh against the order sought.

[63] First, as the defendants acknowledge, the applications have come relatively late in the litigation. However, I place little weight on that factor in this case, for the reasons they have identified. This is not a case in which the defendants' delay in bringing the applications has occasioned prejudice to Mr. Perry, at least not prejudice of the kind contemplated by the authorities. I also accept that the defendants' case for the relief they seek has become more compelling over time, as

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the scope of the litigation has widened and its focus has drifted ever further off course.

[64] A more compelling factor weighing against the relief sought is the prospect that, if it is granted, the effect may be to stifle Mr. Perry's claim. I disagree with the defendants' submission that there is little risk of the claim being stifled insofar as Mr. Perry has previously asserted that he has access to significant assets. The outcome of the litigation in the United Kingdom (discussed below), which the defendants also rely upon, suggests the opposite to be true. Accordingly, I accept that there is a significant risk that, if the relief sought is granted, Mr. Perry will be unable to post security as needed to continue advancing his claim. That prospect is particularly troubling in view of the steep power and resource imbalance in favour of the defendants that is an important feature of this case.

[65] Nevertheless, there are also several important factors weighing in favour of the defendants. Foremost among these is the evident weakness of the claim that could be stifled. The central issue in dispute in this action is whether Mr. Perry was entitled, as he alleges, to insist on a complete engine replacement, rather than accept the more limited replacement of the pistons and rings that was on offer. Although Mr. Perry argues that the piston and ring replacement would not have solved the problem (and perhaps even made matters worse), he has made no apparent effort to garner the expert opinion evidence he will need to demonstrate that fact. After more than four years of litigation, this is a gaping hole in his case that shows no sign of being filled. His ongoing effort to obtain further document production and to sanction the defendants for alleged misconduct, which has been the focus of the litigation for most of its life, appears to have little, if any, bearing on that or any other central issue in the case.

[66] Even if Mr. Perry were able to demonstrate that he is advancing a meritorious claim, the scale of the litigation has become grossly disproportionate to the amount that is actually at stake, as reflected in the more realistic prayer for relief set out in the original version of Mr. Perry's notice of civil claim. I agree with the defendants

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that the road ahead promises an even greater misapplication of resources, including more wasteful interlocutory applications, to say nothing of the cost of the 34-day trial that Mr. Perry wishes to conduct.

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[67] Both sides blame the other for the delays that have occurred in this litigation. The truth is that both sides share a measure of responsibility.

[68] Mr. Perry was initially successful, at least in part, in his applications seeking further production of documents. In the decisions summarised above, several judges of this court concluded that the defendants should have been more forthcoming in meeting their discovery obligations.

[69] More recently, however, that dynamic has shifted. The decision of Fitzpatrick J. of July 9, 2024 can be seen as a turning point. On January 13, 2025, Iyer J.A. dismissed Mr. Perry's application for leave to appeal from that decision. As a result, there is no longer any basis for Mr. Perry to be pursuing further document production on the grounds rejected by Fitzpatrick J. Instead, he should have followed her advice by setting examinations for discovery and preparing the case for trial.

[70] Despite that advice, Mr. Perry has not changed course. He has applied for leave to amend his claim, so that he can, if successful in doing so, revisit the order of Hoffman J. and seek production of one or more of the contracts governing the business relationship between the defendants. His proposed further amended notice of civil claim is attached as Exhibit "1" to his 25th Affidavit made January 24, 2025. In it, he reiterates the same allegations of fraudulent conspiracy that have animated almost all of his previous applications as well as his response to these applications currently before me.

[71] Mr. Perry's response to these applications is itself emblematic of the problem. Rather than comply with the order of Masuhara J. limiting the length of that response to 10 pages, he opted instead to try to circumvent that restriction by attaching a

much lengthier argument as an exhibit to his supporting affidavit and incorporating it by reference into the (shorter) formal response.

[72] Moreover, in that response, both the long and the short version, he has reiterated the same allegations of spoliation, perjury, forgery and other falsification of evidence that he has been making all through this litigation. He attributes the glacial pace of this litigation entirely to the defendants' "delay tactics". He also advances the groundless allegation that his lack of success in the more recent interlocutory applications is attributable to the defendants' "bribing and corrupting members of the Judiciary and local government."

[73] I agree with the defendants that all of this has needlessly complicated and protracted the litigation, which shows no sign of shifting its focus to the real issues in dispute.

[74] I also agree with the defendants that their prospects of recovering their costs if they are ultimately successful in defeating the claim are dim. Mr. Perry owns no substantial assets in British Columbia. His address for service and delivery is a post office box. If both actions fail, then he will be exposed to costs awards in favour of not just these defendants, but also those in the LGN Action.

[75] In arguing that Mr. Perry has a history of failing or refusing to pay litigation costs, the defendants do not rely on the unpaid costs awards that are outstanding against him in this action. They emphasize instead the outcome of unrelated patent infringement litigation in the United Kingdom, in which Mr. Perry:

a) was ordered to pay £50,000 in costs to the opposing party after his claim was summarily dismissed as devoid of merit;

b) having been unable to do so, became the subject of a bankruptcy order; and

c) was found to be serially advancing unmeritorious claims (including by repeatedly attempting to relitigate matters already decided against him), and

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on that basis eventually prohibited from commencing further proceedings without leave of the court.

[76] In that litigation, the presiding judge, Hacon J., described some of the arguments that Mr. Perry had been advancing as “intemperate and eccentric” (*979*, para. 14). He noted “Mr. Perry’s tendency towards an unrestrained response to anything he does not agree with, whether coming from the court or his competitors” (*979*, para 19).

[77] In a subsequent decision (*2737*), Hacon J. observed that Mr. Perry’s behaviour “can become unrestrained and frequently abusive” (at para. 33). The “intemperate” arguments advanced by Mr. Perry in that litigation resemble those he has been advancing in this one. They included an unfounded allegation that the opposing parties, together with their counsel, were engaged in a fraudulent conspiracy to suppress his claim and that the earlier judgments of the court in their favour were procured by fraudulent means.

[78] I agree with the defendants that none of this bodes well for their prospects of keeping the costs of this litigation under control and then recovering those costs if they are ultimately successful in defeating Mr. Perry’s claim.

[79] On balance, I have concluded that the circumstances of this case are sufficiently “special” and “egregious” to justify an order requiring Mr. Perry to post security for costs.

B. What is the appropriate amount of security to be posted?

[80] The defendants have prepared draft bills of costs reflecting both a 34- and a 10-day trial. By their estimate, the defendants’ recoverable costs of the latter, assuming they are successful in defeating the claim, would be just under $60,000. Mr. Perry has provided no reason to believe that the actual figure would be any less than that.

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[81] On that basis, I agree with the defendants that Mr. Perry should be required to post security in the amount and on the terms sought in their Notices of Application.

VI. SUMMARY AND CONCLUSION

[82] The application is allowed. I am granting the order sought by the defendants, on the terms set out in paras. 1–4 of their Notices of Application.

[83] The costs of the applications are to be payable to the defendants in the cause.

"Milman J."

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