

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Seylynn (North Shore) Phase II GP Ltd. v. Seylynn (North Shore) Properties Phase II Limited Partnership*,
2025 BCCA 412

Date: 20251126
Docket: CA50227

Between:

Seylynn (North Shore) Phase II GP Ltd.

Appellant
(Claimant)

And

Seylynn (North Shore) Properties Phase II Limited Partnership

Respondent
(Respondent)

Before: The Honourable Mr. Justice Groberman
The Honourable Madam Justice Horsman
The Honourable Justice Riley

Supplementary Reasons to *Seylynn (North Shore) Phase II GP Ltd. v. Seylynn (North Shore) Properties Phase II Limited Partnership*, 2025 BCCA 330,
Vancouver Docket CA50227.

Counsel for the Appellant: S.D. Coblin

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Place and Date of Hearing: Vancouver, British Columbia
March 6, 2025

Place and Date of Judgment: Vancouver, British Columbia
September 22, 2025

Written Submissions Received: October 17 and 31, 2025,
November 7, 2025

Place and Date of Supplementary Judgment: Vancouver, British Columbia
November 26, 2025

Supplementary Reasons of the Court

Summary:

The Court issues supplementary reasons on the costs following its dismissal of the applicant's application to vary a decision of a justice in chambers refusing leave to appeal an arbitration award. The respondent is entitled to its costs from the applicant. The Court declines to order that costs are payable by the non-party director of the applicant who was granted leave to commence the derivative proceeding on the applicant's behalf.

Supplementary Reasons for Judgment of the Court:

[1] In reasons issued on September 22, 2025, the Court dismissed the application of Seylynn (North Shore) Phase II GP Ltd. ("Phase II GP") to vary the order of a judge in chambers dismissing its application for leave to appeal an arbitration award. We concluded that the applicant had not identified an extricable question of law arising out of the award as required by s. 59(2) of the *Arbitration Act*, S.B.C. 2020, c. 2. The reasons are indexed at 2025 BCCA 330.

[2] At the parties' request, we granted them leave to provide further submissions on the issue of costs. Those submissions have now been received.

[3] The respondent Seylynn (North Shore) Properties Phase II Limited Partnership ("Phase II LP") seeks an order that one of the directors of Phase II GP, Mr. Abo Taheri, personally pay its costs of the application for leave to appeal and the variation application.

Background

[4] To understand this request, some brief context is required.

[5] As set out in more detail in our reasons on the variation application, Phase II GP and Phase II LP were parties to a partnership agreement relating to the development of residential lands in North Vancouver, known as the Seylynn Gardens Project (the "Phase II Project"). The directors and owners of Phase II GP were Mr. Taheri and Mr. Abbasali Hosseini. The dispute concerned Phase II GP's

entitlement to management fees, both before and after Phase II GP was removed as the general partner in March 2021.

[6] There was another partnership agreement relating to the development of other residential lands in North Vancouver, known as the Seylynn Village Project (the “Phase I Project”). Seylynn (North Shore MP Ltd.) (“Seylynn I GP”) was the general partner under that agreement. Mr. Taheri and Mr. Hosseini were the directors of Seylynn I GP. A similar dispute over management fees arose in relation to the Phase I Project.

[7] Mr. Taheri obtained leave to commence derivative proceedings on behalf of Seylynn I GP (in the Phase 1 Project) and Phase II GP (in the Phase II Project) to recover management fees.

[8] In reasons for judgment issued on May 11, 2023, Burke J. granted Mr. Taheri leave to bring a derivative proceeding in relation to the Phase I Project: *Taheri v. Hosseini*, 2023 BCSC 801. Justice Burke found that: (1) Mr. Taheri had made reasonable efforts to have Mr. Hosseini agree to prosecute Seylynn I GP’s claims; (2) Mr. Hosseini was in a conflict of interest because he had continued as a director of the new general partner after Seylynn I GP was removed; (3) due to this conflict, Mr. Taheri had a “better claim to the moral high ground of good faith” than Mr. Hosseini; (4) the proceeding was in the best interests of Seylynn I GP; (5) while Mr. Taheri stood to personally gain from the proceeding, his self-interest coincided with the interests of Seylynn I GP; and (6) the claim had a reasonable prospect of success. Justice Burke also found it relevant that Mr. Taheri was willing to indemnify Seylynn I GP for any costs ordered against it if Seylynn lost the derivative proceeding.

[9] The order granting leave for a derivative proceeding in relation to the Phase II Project was granted by Ahmad J. on August 24, 2023. No party appeared to oppose the order, and Ahmad J. did not give reasons for judgment. It was a term of the order that Mr. Taheri shall indemnify Phase II GP for costs ordered against it if Phase II GP lost the derivative proceeding.

[10] The partnership agreements for the Phase I and Phase II Projects each contained an arbitration clause. Accordingly, the derivative claims went to arbitration. As reviewed in our judgment on the appeal, the Phase I and Phase II arbitrations proceeded separately on separate timelines. In the Phase II arbitration at issue on this appeal, the tribunal issued an award on October 1, 2024, dismissing Phase II GP's claims and allowing Phase II LP's counterclaim to recover management fees. The tribunal ordered Phase II GP to pay Phase II LP's costs on an indemnity basis.

The costs of the leave and variation applications

[11] As the successful party, Phase II LP is entitled to its costs of the leave and variation applications from the unsuccessful party Phase II GP. However, Phase II GP is insolvent.

[12] Phase II LP argues that Mr. Taheri is the "real litigant" in this appeal. They say he personally funded the appeal process seeking a personal gain while knowing that Phase II GP was insolvent. Phase II LP contends that Mr. Taheri has taken the "invidious position" that he is not required to indemnify Phase II GP for costs because the company is insolvent and cannot pay costs, and so there is nothing to indemnify. Phase II LP relies on *Perez v. Galambos*, 2008 BCCA 382 and *Interclaim Holdings Ltd. v. Down*, 2002 BCCA 632, for the proposition that this Court has a wide discretion to make an appropriate award of costs, including against a non-party.

[13] In response, Phase II GP raises the preliminary jurisdictional objection that this Court has no statutory jurisdiction to order costs against a non-party where the appeal is from an arbitration panel under the *Arbitration Act*. Alternatively, if the Court does have jurisdiction, Phase II GP says that this is not an appropriate case to exercise it. Mr. Taheri was granted derivative leave to bring this arbitration on behalf of Phase II GP and therefore it must be assumed that the proceeding was in the company's best interests. All parties have known from the outset that Phase II GP was defunct and assetless. However, the only indemnity provision included in the order granting leave was a term requiring Mr. Taheri to indemnify Phase II GP.

Mr. Taheri notes that Mr. Hosseini has recently filed a petition in the BC Supreme Court seeking leave to commence a derivative action on behalf of Phase II GP to enforce the costs indemnity.

[14] We consider it unnecessary to address Phase II GP's jurisdictional objection. Assuming this Court has jurisdiction to order costs against a non-party on an appeal from an arbitration award, we would not exercise that jurisdiction in these circumstances.

[15] In *Perez*, this Court stated that "an award of costs against a non-party is unusual and exceptional, and should only be made in 'special circumstances'": *Perez* at para. 17. Special circumstances may include "situations where the non-party has engaged in fraudulent conduct, an abuse of process, or gross misconduct in the commencement and/or conduct of the litigation, or when the non-party is the 'real litigant'": *Perez* at para.18.

[16] In this case, there is no allegation that Mr. Taheri engaged in fraudulent conduct or conduct that amounts to an abuse of process. There is no question that Mr. Taheri stood to personally gain from this proceeding. However, he was granted leave to bring a derivative proceeding on behalf of Phase II GP. Leave was necessary because the only other owner and director of Phase II GP, Mr. Hosseini, would not agree to commence the claim. In granting leave to bring a derivative claim in relation to the Phase I Project, Burke J. concluded that Mr. Taheri was acting in good faith and that a derivative proceeding was in the company's best interests. The order for leave to bring a derivative proceeding in relation to the Phase II Project was granted without opposition.

[17] This is not a case in which Mr. Taheri shielded himself behind a defunct company to avoid costs. It was known to all participants from the outset that Phase II GP was insolvent. A derivative action was the only vehicle through which Mr. Taheri could bring the claim for management fees under the partnership agreement. Mr. Taheri has not engaged in conduct amounting to maintenance and champerty. Under the order granting Mr. Taheri leave to bring a derivative claim, he was

required to indemnify Phase II GP for costs. The order does not require him to indemnify Phase II LP. Mr. Hosseini has filed a petition seeking leave to commence a derivative proceeding to enforce the costs indemnity. The Supreme Court is the proper venue for determining the legitimacy of Mr. Taheri's position that he should not have to indemnify Phase II GP for costs.

[18] Mr. Taheri has also not engaged in misconduct in pursuing an application for leave to appeal. Phase II GP raised arguable points on the application. We do not agree with Phase II LP's characterization of the proceeding in this Court as "meritless".

Disposition

[19] Phase II GP shall pay Phase II LP's costs of the leave application and the application to vary. We decline to hold Mr. Taheri personally liable for those costs.

"The Honourable Mr. Justice Groberman"

"The Honourable Madam Justice Horsman"

"The Honourable Justice Riley"