

CANADA / JUDGMENT

Hong v. Yin

2025 BCCA 419

COURT

British Columbia Court of Appeal

DECIDED

6 November 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCCA 419 Hong v. Yin

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Hong v. Yin,

2025 BCCA 419

Date: 20251106

Docket: CA51079

Between:

Flora Yunying Hong and Andy Ruilong Yin

Appellants

(Defendants)

And

Xiao Hai Yin

Respondent

(Plaintiff)

Before:

The Honourable Madam Justice Fisher

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
September 23, 2025 (Yin v. Hong, 2025 BCSC 1841 Vancouver Docket S230237).

Oral Reasons for Judgment

Counsel for the Appellants:

R. Lo

Counsel for the Respondent:

N.J. Muirhead

F. Karimi

Place and Date of Hearing:

Vancouver, British Columbia

November 6, 2025

Place and Date of Judgment:

Vancouver, British Columbia

November 6, 2025

Summary:

The appeal concerns orders dismissing the appellants' application for relief from forfeiture and directing certain funds to be paid to the respondent in partial satisfaction of a consent judgment. The appellants apply under s. 33(1) of the Court of Appeal Act to stay the execution of the consent judgment and the order directing funds to be paid out to the respondent pending the determination of the appeal. The respondent applies under s. 34(1) for an order for security for costs both for the appeal and in the court below.

The appellants' application for a stay is granted. Although the merits are not strong, the appeal is not bound to fail. There is no certainty that the appellants will suffer irreparable harm, but there is a risk of non-recovery given the absence of evidence from the respondent as to his means and assets. The balance of convenience favours the appellants as the respondent has received over \$1,200,000 towards payment of the consent judgment.

The respondent's application for security for costs is dismissed. The appellants cannot post security and the appeal is not bound to fail. The interests of justice do not favour granting security for costs to the respondent.

- [1] FISHER J.A.: The appellants, Flora Yunying Hong and Andy Ruilong Yin, appeal an order dismissing their application for relief from forfeiture and directing certain funds to be paid to the respondent, Xiao Hai Yin, in partial satisfaction of a consent judgment.

- [2] There are two applications before me. The appellants apply under s. 33(1) of the Court of Appeal Act, S.B.C. 2021, c. 6 [Act] to stay the execution of the consent judgment and the order directing the funds to be paid out to the respondent pending the determination of the appeal. The respondent applies under s. 34(1) of the Act for an order for security for costs of the appeal and in the court below.

Background

- [3] The appellants are mother and son and the respondent is the ex-spouse of Ms. Hong and the father of Mr. Yin.
- [4] In January 2023, the respondent commenced an action against the appellants in respect of a dispute over two properties in Richmond that were being redeveloped. By that time, one of the properties was completed but the other was not.
- [5] In July 2024, the parties entered into a settlement agreement in which the appellants agreed to pay the respondent \$3,500,000 for the properties in two instalments: (1) \$1,000,000 within six months of the execution of the settlement agreement; and (2) the remainder within two years of the execution of the agreement. The agreement provided the appellants with a 30-day extension for the first instalment if they required more time to pay and if this occurred, they were to pay the respondent an interest payment of \$15,000. It also provided them with an extension of up to 12 months for the second instalment, with interest payable to the respondent at a rate of prime plus 5% compounded monthly. Importantly, to secure payment, counsel for the respondent held a fully executed consent judgment for the full \$3,500,000 on an undertaking not to use it unless either appellant breached the payment terms.
- [6] The appellants were able to refinance the two properties in July and August 2024, facilitated by the respondent removing (temporarily for one) certificates of pending litigation (CPLs) he had registered against them. The refinancing apparently generated over \$1,000,000 for the appellants. Despite this, they failed to make any payment of the first instalment to the respondent by the original due date or the 30-day extension, which was February 3, 2025.
- [7] Due to this non-payment, the consent judgment was entered in March 2025 and the respondent took steps to enforce it. In May 2025, the appellants commenced an application for relief from forfeiture and reinstatement of the settlement terms.
- [8] On June 2, 2025, the finished property was sold. The net proceeds were \$1,764,449. From this, \$1,200,000 was paid to the respondent and the balance of \$564,449 was paid into a solicitor's trust account.

- [9] The appellants' application was heard on August 26 and 27, 2025. At the conclusion of the hearing, the chambers judge ordered an interim stay of execution proceedings while the matter was under reserve. On September 23, 2025, the judge dismissed the application. On October 23, 2025, the judge directed that the net sale proceeds of \$564,449 be released to the respondent and ordered the appellants to pay the respondent costs in the amount of \$4,950. The costs order was by consent.
- [10] The appellants commenced this appeal on October 22, 2025.

The stay application

- [11] To obtain a stay of the orders until the appeal is heard and decided, the appellants must show: (1) there is merit to the appeal in that there is a serious question to be tried; (2) they will suffer irreparable harm if the stay is not granted; and (3) the balance of convenience favors granting the stay: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 341.
1. The merits
- [12] The merits threshold is low, and a prolonged examination is unnecessary. The issues raised on appeal must not be frivolous or vexatious and the applicant must show an arguable case that has a reasonable chance of success.
- [13] The chambers judge dismissed the application for relief from forfeiture primarily because he held that the remedy was not available to the appellants. This was because he concluded the provision in the settlement agreement that entitled the plaintiff to enter judgment for the entire amount owing where the defendants were in default of the payment terms was an acceleration clause, and an acceleration clause is not a forfeiture, citing *Emerald Christmas Tree Company v. Boel & Sons Enterprises Ltd.*, 105 D.L.R. (3d) 75, 1979 CanLII 607 (B.C.C.A.). He also concluded that the exceptions to this principle in s. 25 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 did not apply. Those exceptions apply where there has been default in payment under a mortgage of land or an agreement for sale of land.
- [14] In the event he was incorrect in this conclusion, the judge went on to consider whether the court's discretion should be exercised in favour of the appellants. He assessed this in accordance with the factors established in the leading jurisprudence and concluded that it would not be unconscionable to refuse to grant relief. He was not satisfied that the appellants had met their burden to establish a sufficient basis to grant relief from forfeiture.
- [15] The appellants submit there is a serious question to be tried with respect to the chambers judge's interpretation of s. 25 of the *Law and Equity Act* and whether he applied the correct test to the facts of the case in exercising his discretion to refuse relief. They do not dispute the judge's conclusion that the provision in the settlement agreement permitting the respondent to enter the consent judgment is an acceleration clause. Rather they point to a material error of fact in that the judge found the CPL that was registered on the property

was pre-existing and not something created through the agreement. The appellants say the CPL was not pre-existing but was registered after the agreement.

- [16] As to the judge's alternative discretionary conclusion, the appellants say the judge ought to have considered jurisprudence that distinguishes between relief from forfeiture for pure money issues or other issues, such as where the breaching party has done something not quantifiable by monetary damages. They also say that the judge placed undue weight on the unconscionability factor in denying the relief sought.
- [17] The respondent submits the appellants have not met the test for merit, as the chambers judge's interpretation of s. 25 and whether it applied to the settlement agreement was correct. Even if he erred on this point, the respondent submits that the judge made no reviewable error in the exercise of his discretion not to grant the relief sought as he applied the correct test and relevant factors to the facts. He also says it is not arguable that there is a new standard that should apply in this case.
- [18] In my view, the merits are not strong, but I cannot say that the appeal has no reasonable chance of success. The primary basis for the denial of relief was a question of law and the issue raised by the appellants is whether the judge properly applied the law to the facts, i.e., in concluding that the exception in s. 25 of the Law and Equity Act did not apply to the settlement agreement term. This question appears to me to be a question of mixed fact and law that may be reviewable on the standard of palpable and overriding error. However, the settlement agreement was somewhat unique given the context of the dispute. It involved payment by the appellants for land the respondent purported to beneficially own in the context of a rather complicated dispute where titles to the lands had been transferred among the parties several times. The timing of the registration to the CPL may be important in assessing this. As for the judge's secondary discretionary ruling, I accept that it will be difficult for the appellants to establish reviewable error given the deference to be accorded to such decisions. But overall, I do not consider the appeal to be frivolous, and I am prepared to accept that there is a serious question to be tried.

2. Irreparable harm

- [19] Irreparable harm refers to the nature of the harm, not its magnitude. It includes harm that cannot be cured, which usually arises because one party cannot collect damages from the other.
- [20] The appellants submit that if a stay is not granted, the net sale proceeds from the first property will be released to the respondent and the appeal becomes moot. This is because the purpose of the appeal is to allow the appellants to use those proceeds to complete the construction on the second property and in turn to enable them to sell it for a high enough value to pay the respondent the balance of the consent judgment. They also say that there is a real risk that if these funds are released to the respondent they will not be repaid this money. They point out that the respondent does not live in Canada and has no assets here and importantly, he has filed no evidence in these proceedings (or even in the proceedings

below). While he may have means to pay, there is no evidence about this one way or the other.

- [21] The respondent submits this is a problem of the appellants' own making and the appeal will not be moot if a stay is not granted as the Court can order him to pay that amount back if the appeal is allowed. He says there is no risk of non-recovery although his counsel acknowledges the lack of evidence from the respondent himself about this.
- [22] I agree with the respondent that the appeal will not be moot if the stay is not granted. Even if it is granted, the appellants will not be able to use the funds pending the appeal. As for the risk of non-recovery, there is no evidence in the material before me as to the respondent's financial means, but it is undisputed that he does not live in Canada and has no assets here.
- [23] I cannot say with certainty that the appellants will suffer irreparable harm, but I consider there is a risk of non-recovery given the absence of any evidence from the respondent.

3. Balance of convenience

- [24] The balance of convenience involves assessing which of the parties will suffer the greater harm from granting or refusing a stay.
- [25] The appellants submit that the respondent will not be prejudiced by a stay as he has already received over \$1,200,000 towards payment of the consent judgment. The respondent asserts that the balance of convenience favors him because of the risk he will not be paid on his judgment.
- [26] In my view, this factor is the most determinative. The respondent has been paid more than the first installment under the settlement agreement. The second instalment would not have been due until July 2026 or July 2027 had the consent judgment not been entered. The appellants are clearly struggling financially. The dispute among these parties has been long-standing, intense and very contentious. In my view, the balance of convenience favours the appellants. It will keep a relatively small proportion of the amount owing to the respondent in a neutral place pending a final resolution of this dispute in the appeal.
- [27] The application for a stay of the orders sought is therefore granted.

Security for costs

- [28] The jurisdiction to order security for the costs of the appeal is found in s. 34(1)(a) of the Court of Appeal Act. For such costs, the appellant has the onus of showing why security should not be required. This is a discretionary exercise and the ultimate question is whether the order is in the interests of justice, having regard to: (1) the appellant's financial means; (2) the merits of the appeal; (3) the timeliness of the application; and (4) whether the costs will be readily recoverable: *Lu v. Mao*, 2006 BCCA 560 at para. 6 (Chambers); *Creative Salmon Company Ltd. v. Staniford*, 2007 BCCA 285 at para. 9; *Nourifard v. Emadzadeh*, 2024 BCCA 49 at paras. 16-19 (Chambers).

- [29] The jurisdiction to order security for costs in the proceedings below is found in s. 34(1)(b) of the Act. Security for these costs is ordered less readily, and the onus is on the respondent applicant to show it is in the interests of justice to make the order. In assessing this, I am to consider the merits of the appeal, the effect of such an order on the ability of the appellant to continue the appeal, and the prejudice caused to either party by granting or dismissing the application: *Focken v. Fraser Health Authority*, 2023 BCCA 81 at para. 27.
- [30] An order for security for costs should not deprive an appellant of the financial ability to pursue a meritorious appeal, but the inability to proceed is not an obstacle where the appeal appears to be without merit: *Musselman v. Vanderstelt*, 2025 BCCA 289 at para. 6.
- [31] The respondent submits that the appellants are in financial trouble and recovery of costs will be difficult. He alleges they have diverted funds to pay excessive personal expenses, drained their bank accounts and accumulated considerable credit card debt. He also submits the appeal has no merit given that relief from forfeiture is a discretionary remedy that attracts considerable deference on appeal.
- [32] The appellants agree this application is timely and that they are in dire financial circumstances. They submit, however, that an order for security will effectively preclude them from pursuing this appeal. They say their appeal has sufficient merit that justifies a dismissal of the application. They also submit that recovery of costs will not be difficult since Ms. Hong is the registered owner of the second property against which the consent judgment has been registered, and the respondent will not suffer prejudice if security is not ordered. They point out that the costs order below was made by consent and the judge declined to make those costs payable forthwith.
- [33] In light of the stay I am granting of the order directing the payment out of the \$564,449 of net proceeds, I do not consider it in the interest of justice to grant an order for security of either the costs of the appeal or of the proceeding below. The appellants do not have the ability to post security and while the merits of the appeal are not strong, I would not say it is bound to fail. The net proceeds will remain in trust pending the determination of the appeal. If the appellants are unsuccessful, costs can be paid to the respondent from those funds. I appreciate that this will reduce his recovery on the consent judgment, but this is a small proportion of the overall debt.
- [34] The application for security for costs is therefore dismissed.

"The Honourable Madam Justice Fisher"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/25/04/2025BCCA0419.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/hong-v-yin-2025>

Prepared on 28 October 2026 · Esheria