

CANADA / JUDGMENT

Peng v. Chen Estate

2026 ONCA 174

COURT

Court of Appeal for Ontario

DECIDED

9 March 2026

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Peng v. Chen Estate Collection Decisions of the Court of Appeal Date 2026-03-09 Neutral citation 2026 ONCA 174 Docket numbers COA-25-CV-0554, M56520 Judges van Rensburg, Katherine; Miller, Bradley; Coroza, Steve A. Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Peng v. Chen Estate, 2026 ONCA 174 DATE: 20260309 DOCKET: M56520 (COA-25-CV-0554) van Rensburg, Miller and Coroza JJ.A. In the Estate of Shun Kun Ma Chen, also known as Shun Kun Chen, deceased BETWEEN Xin Peng Appellant (Moving Party) and Estate of Shun Kun Ma Chen, also known as Shun Kun Chen, deceased, currently without an Estate Trustee, May Hing Tam*, personally and in her capacity as the named Estate Trustee of the Estate of Rafael Yang Ling Chen, also known as Rafael Chen, and Peter Chen, by his litigation guardian, the Public Guardian and Trustee Respondents (Responding Party*) Xin Peng, acting in person Shael Eisen and Juanita Valencia, for the responding party, May Hing Tam Heard and rendered orally: March 5, 2026 On review of the decision of Justice Darla A. Wilson of the Court of Appeal for Ontario, dated October 20, 2025. REASONS FOR DECISION

- [1] The moving party Ms. Peng brings a motion pursuant to s. 7(5) of the Courts of Justice Act, R.S.O. 1990, c. C.43 asking a panel of this court to set aside the order of Wilson J.A. dated October 20, 2025. That order required Ms. Peng to post security for costs of her appeal in the amount of \$50,000.
- [2] In a motion under s. 7(5), this court will only interfere if the motion judge erred in principle, reached an unreasonable result or if the decision reflects legal error or a misapprehension of material evidence: *Correct Building Corporation v. Lehman*, 2022 ONCA 723, at para. 3. No such error has been demonstrated here.
- [3] An order for security for costs of an appeal can be made pursuant to r. 61.06(1)(a) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194 if there is good reason to believe the appeal is frivolous and vexatious and the appellant has insufficient assets in Ontario to pay the costs of the appeal. Pursuant to r. 61.06(1)(b) and r. 56.01(c) the court can make an order for security for costs of an appeal when it appears that there is an outstanding order for costs that is unpaid in whole or in part in favour of the respondent. In deciding a motion for security for costs the court is required to consider all relevant considerations and to make an order that is just in all the circumstances: *Yaiguaje v. Chevron Corporation*, 2017 ONCA

827, at paras. 17-19.

- [4] The motion judge referred to the fact that there were 11 costs orders outstanding totaling over \$146,000, that some have been outstanding for more than two years, and that the moving party has satisfied only one costs order in the amount of \$500. She also concluded that there was good reason to believe the appeal lacks merit and is frivolous, based on the fact that Ms. Peng appears to be challenging the application judge's findings of fact (which would be entitled to significant deference on appeal) and her lack of diligence in perfecting her appeal, even after obtaining an extension of time to do so.
- [5] The motion judge also took into consideration the prejudice to the respondents. Due to the appellant's pending claims, the estate has been unable to make distributions to cover the costs of care of a party under disability who is a beneficiary.
- [6] At the hearing of the review motion before us Ms. Peng relied on affidavit evidence affirmed after the motion judge released her decision, and purporting to respond to the motion judge's reasons. It would be inappropriate for this court to reverse the motion judge's order based upon material that was not before her. In any event none of the additional materials persuade us that the motion judge erred.
- [7] The motion judge concluded, after considering the correct legal tests and all of the circumstances, that an order for security for costs in the sum of \$50,000 was warranted. We see no reason to interfere with this order.
- [8] The motion is accordingly dismissed. The moving party has until March 20, 2026 to pay the security for costs ordered by the motion judge, failing which the responding parties may move on notice to her for a dismissal of the appeal.
- [9] Costs fixed at \$10,000 payable by Ms. Peng to the responding party. "K. van Rensburg J.A." "B.W. Miller J.A." "S. Coroza J.A."

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