

CANADA / JUDGMENT

Wu v. Murray

2025 BCCA 365

COURT

British Columbia Court of Appeal

DECIDED

21 October 2025

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2025 BCCA 365 Wu v. Murray COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Wu v. Murray, 2025 BCCA 365 Date: 20251021 Docket: CA49002 Between: Jiaqi Wu Appellant (Plaintiff) And Collin Bruce Murray, Paulette Anne Nelson, Katherine Perry, and Jason Perry Respondents (Defendants) Before: Registrar T.R. Outerbridge Settlement of Order and Assessment of Costs Wu v. Murray, 2023 BCCA 270 (Chambers), dated July 5, 2023 The Appellant, appearing in person: J. Wu Counsel for the Respondents: C. Hartnett Place and Date of Hearing: Vancouver, British Columbia October 16, 2025 Place and Date of Decision: Vancouver, British Columbia October 21, 2025 Summary: Applications before the Registrar to settle an order and for costs of an appeal that was dismissed as abandoned, following 180 days on the inactive list. Held: No order can be settled by the Registrar, as no order was made by the Court. When an appeal is abandoned or dismissed as abandoned, costs may be assessed by the Registrar where there is no dispute over costs. Where there is a dispute, as there is here, the parties should follow the process in Rule 40 and request the matter be referred to the Court. With respect to the costs of these applications, the appellant's late filed response and presence of AI-generated hallucinations within justified an award of costs in favour of the respondents. Reasons for Decision of Registrar Outerbridge:

- [1] The respondents apply to settle the order and for costs of this appeal.
- [2] The appeal arises out of the purchase of a residential property owned by the respondents. There was a dispute about the contracts of purchase and sale as they related to a "back-up offer" made by the appellant. The chambers judge found that the appellant's offer was invalid and cancelled her certificate of pending litigation. The property was then conveyed, but that conveyance was impeded by several additional caveats and other certificates of pending litigation subsequently filed by the appellant.
- [3] The appellant filed her appeal of the chambers judge's decision on 19 April 2023. By August, the appellant's factum and the lower court order had been filed and the appeal was ready for hearing under Rule 32. However, no notice of hearing was filed within 60 days and so the matter was placed on the inactive list: Rule 50(1)(b). Six months later, the appeal was dismissed as abandoned under Rule 51(1). The appellant has no intention of seeking reinstatement.

- [4] On 3 October 2025, the respondents filed this application to settle an order and to have their costs assessed. In a late-filed written submission, the appellant raised three issues:
- a) She argues that both parties understood they would bear their own costs of the appeal;
 - b) She argues that the Registrar cannot "settle an order" when no order was made by the Court; and
 - c) She objects to the quantum of costs claimed by the respondents.
- [5] Unless otherwise ordered, the costs of an appeal and of all applications in an appeal are awarded to the successful party on the appeal: Court of Appeal Act, S.B.C. 2021, c. 6, s. 44(1).
- [6] When an appeal is abandoned, the respondent is usually entitled to the costs of that appeal unless there is a "compelling reason" otherwise: *Newport Realty v. Columbia National Investments Ltd.*, 2003 BCCA 253 at para. 2; *Hollander v. Mooney*, 2017 BCCA 238 at para. 93, leave to appeal ref'd [2017] S.C.C.A. No. 356; *Pinkerton v. Sport Dispute Management Inc.*, 2025 BCCA 355. Though these cases deal with abandonments by choice, their reasoning may be of assistance when an appeal stands dismissed as abandoned by operation of the Rules.
- [7] When an appeal is abandoned or dismissed as abandoned and there is a dispute about costs, the proper practice is to apply to the Court under Rule 40. Though this Rule may not strictly apply to abandonments, its use is consistent with the Court's intentions that entitlement, scale, and category of costs is to be decided by the Court: see, e.g., *Tom Harris Cellular Ltd. v. Chang*, 2017 BCCA 209; *Pinkerton*. Even absent a referral, abandonments do not always follow the event: see, e.g., *Moore v. Cheung*, 2025 BCCA 97 (Chambers) at para. 21.
- [8] Where there is no dispute about entitlement to costs, an assessment may proceed before the Registrar on an abandoned appeal, following a longstanding (but not well cited) practice that the abandonment allows an assessment to proceed: see, e.g., *Fry v. Botsford* (1902), 9 B.C.R. 207.
- [9] Here, there is a dispute. The appellant argues she let the appeal lapse intentionally because the respondents agreed to accept certificates of pending litigation on the title to the property, ending the need for an appeal. She concedes that costs were not addressed by the parties directly, but she considered an abandonment to include a waiver of costs by implication. The respondents disagree. They refer to evidence that shows just the opposite, including a statement they made on 19 July 2023 that the respondents considered the certificates were both an abuse of process and collateral attack.
- [10] While it seems unlikely an agreement was reached, whether these circumstances create a basis to depart from the usual practice is for the Court to decide. The matter is referred to a division.
- [11] Before I conclude, there remains the issue of the costs of these applications. The respondents seek their costs because:

- a) At the hearing of the application, and in response to questions by the Court, the appellant admitted to using generative artificial intelligence in the preparation of her written submission which produced two false cases on a central point in her application; and
 - b) Despite being served with the application materials in the required time under the Rules, the appellant did not file her response to these applications until yesterday.
- [12] In this Court, the use of artificial intelligence tools and other litigation aids is currently governed by the Registrar's Filing Directive (4 September 2025), made pursuant to s. 38 of the Court of Appeal Act. That Directive states: 7.3 Use of Litigation Aids & Artificial Intelligence Given the rapid development of artificial intelligence tools, the Court reminds all litigants that they are responsible for the authenticity and accuracy of all materials filed with the Court.
- [13] I appreciate that the appellant is not a lawyer, so her conduct is not governed by the various notices issued by the Law Society warning of the risks associated with generative artificial intelligence. However, the statement within the Directive applies to all those who conduct appeals in this Court. Whether the inaccurate representations are made by a lawyer or a self-represented party, the potential remains for a miscarriage of justice if those arguments or cases are relied upon and form part of the Court's reasoning: see *Zhang v. Chen*, 2024 BCSC 285.
- [14] Generative AI tools can be useful to self-represented parties to distill and understand complex legal principles. However, they are not designed to always provide truthful answers but instead to be human-like in their interactions. And not all humans, even those with natural intelligence, are always truthful. This Court is aware generative AI is being used by some, but like any litigation aid, the human behind the tool remains responsible for what comes before the Court.
- [15] In this case, the appellant recognized her error and was regretful of the mistake. In *J.R.V. v. N.L.V.*, 2025 BCSC 1137, the Supreme Court of British Columbia faced similar circumstances and made an award of costs, although in this case, there is the added factor of the appellant's late-filed submission. Given all the circumstances, ordinary costs of the applications under items 7 and 8 of the tariff are awarded to the respondents in any event of the cause of the appeal.
- [16] Though the appellant sought special costs, there are no circumstances that ground a punitive award here, even if I had the jurisdiction to make such an award, which is probably questionable: *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at paras. 56, 131-133.
- [17] The parties can expect to hear from my office with a timetable for their submissions to the Court. "T.R. Outerbridge, Registrar"

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