

HONG KONG / JUDGMENT

RE SUCCESS LANE DEVELOPMENT LTD

[2026] HKCA 152

COURT

Court of Appeal

DECIDED

27 February 2026

BEFORE

Hon Chow
Harris
in C
ourt
Date

CASE / FILE NUMBER

CACV197/2025

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CACV

197/2025, [2026] HKCA

152

On Appeal From [2025] HKCFI

1121

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF APPEAL

CIVIL APPEAL NO

197 OF 2025

(ON APPEAL FROM HCCW NO

3 OF 2025)

IN THE MATTER of THE COMPANIES (WINDING UP AND MISCELLANEOUS PROVISIONS)

ORDINANCE, CHAPTER 32 OF THE LAWS OF HONG KONG

and

IN THE MATTER of SUCCESS LANE DEVELOPMENT LIMITED (

mi|vU\ gP

an application by the Petitioner for security for costs of the Company

s appeal (

the Appeal

) against an order made by Deputy High Court Judge Gary CC Lam (

the Judge

) on 17 March 2025 (

the Order

) for the winding up of the Company on the ground that it was unable to pay its debts under s 177(1)(d) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, Cap 32.

Having read the documents and the submissions filed by the parties, we consider that it is appropriate to determine the present application on paper without an oral hearing pursuant to Order 59, rule

14A(1) of the Rules of the High Court, Cap 4A.

BRIEF BACKGROUND

The basic facts of this case have been set out in the Reasons for Judgment of the Judge dated 18 March 2025 ([2025]

HKCFI

1121) (

the Reasons for Judgment

), and will not be repeated here.

In very brief terms, the petitioned debt in the total sum of HK\$734,667.58 (inclusive of interest accrued up to 24 October 2024) (

the Debt

) arose out of various costs orders (

the Costs Order

) made against the Company in an action commenced by the Company against the Petitioner in the District Court of Hong Kong (DCCJ 2191 of 2023,

the District Court Action

) for breach of contract and other causes of action. The Costs Order were either not appealed against, or were orders against which leave to appeal had been refused by the Court of Appeal, and remained unsatisfied despite a statutory demand served by the Petitioner on the Company on 24 October 2024.

At the hearing of the Petition on 17 March 2025, the Company raised 4 grounds to resist the Petition, namely:

the Costs Order ought to be set aside on the ground of the Petitioner

s failure to make full and frank disclosure to the court of some alleged illegality

, the details of which do not matter because it is not relied upon as a ground of appeal against the Order;

the Company had a cross-claim against the Petitioner for damages in the District Court Action which amounted to at least HK\$3,000,000 (

the Cross-Claim Ground

);

abuse of process on the part of the Petitioner in seeking immediate repayment of the Debt; and

the Company had offered a solicitors

undertaking at the hearing of the Petition to pay the Debt, initially

within a short period of time

and later changed to

the end of the same day

after the Petitioner

s counsel indicated that the Petitioner did not accept the undertaking (

the Undertaking Ground

).

All 4 grounds were rejected by the Judge, who made the usual winding up order against the Company at the conclusion of the hearing on 17 March 2025.

The Company

s notice of appeal dated 14 April 2025 against the Order consists of 4 grounds or paragraphs: paragraph 1 relates to the Undertaking Ground, while paragraphs 2 to 4 relate to the Cross-Claim Ground.

THE APPLICATION FOR SECURITY FOR COSTS

By a summons dated 30 June 2025, the Petitioner applies for security for costs of the Appeal on the ground of the Company

s insolvency. The Petitioner further contends that the Company should procure its former directors, Ms Yung Mei Chun and Mr Cheung Moon Hoi, to provide the security sought on the ground that they are causing and instructing the Company to pursue the Appeal. The amount of security sought by the Petitioner comes to a total of HK\$882,350, as set out in a draft skeleton bill of costs (the Skeleton Bill

) annexed to Y

Chan & Co

s pre-application letter to Charles Russell Speechlys LLP (the Company s former solicitors) dated 2 June 2025.

The Company resists the application on the ground that it has a viable cross-claim against the Petitioner and good prospects of succeeding on appeal and, in any event, the amount of security sought by the Petitioner is far from realistic or reasonable and the security awarded (if any) should be reduced substantially

.

DISCUSSION

Under Order 59, rule 10(5) of the Rules of the High Court, the Court of Appeal may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just. The principles for the exercise of this jurisdiction are well settled. For this purpose, special circumstances

include cases of insolvency or impecuniosity, or difficulty or expense in enforcing costs orders.

However, even in such cases, the court retains a discretion not to order security if the appellant can demonstrate sufficient countervailing factors which would militate against the making of an order of security for costs (see Hong Kong Civil Procedure 2026, Vol 1, 59/10/26, 27 and 32).

It is well established that where a limited company appeals alone from a winding-up order without joining any one personally responsible for costs, security for costs should generally be ordered. The rationale for this rule was explained by Kwan VP (giving the judgment of the Court of Appeal) in *Re China Silver Asset Management (Hong Kong) Limited* [2021] HKCA 376, at

The Company has been adjudged insolvent. The appeal is pursued on its behalf by former directors and/or the parent company, who are not parties in the appeal. There is a real risk that should the appeal fail and an adverse costs order is made, the Company will be laden with an additional debt which prejudices not only the petitioner but its creditors as a whole. It is established that a limited company which appeals alone from a winding-up order, without joining any one personally

responsible for costs, will be ordered to give security.

Further, such security should normally be ordered to be provided by those who are behind the prosecution of the appeal: *Re China Silver Asset Management (Hong Kong) Limited*, at 8; and *Re SY Engineering Co Ltd*, CACV

1896/2001 (unreported, 27 February 2002),

20.

The above are, of course, general and not absolute or inflexible, rules, and may be departed from in appropriate circumstances.

In the present case, the Company

s insolvency cannot be disputed. Quite apart from the fact that a winding up order has been made against the Company on the ground of inability to pay its debts, in a letter from the Joint Provisional Liquidators of the Company dated 30

April 2025, they informed the District Court that they had not yet been able to obtain the books and records, or identify any bank accounts or assets, of the Company. Taking into account also the Company

s repeated failures to satisfy costs orders made against it in the District

Court Action which give rise to the Debt, we consider this to be a clear case where security for costs should be ordered unless the Company can demonstrate strong countervailing factors against the making of such order.

Insofar as the Company

s prospects of succeeding on appeal are concerned, this is not the occasion for any in-depth consideration of the merits of the Appeal, which will have to be fully ventilated at the substantive hearing of the Appeal. All that is required at this stage is for us to form a preliminary view on the merits of the Appeal. The Company relies on two matters, namely, its cross-claim against the Petitioner, and the undertaking to pay the Debt which the Company offered at the hearing of the Petition. These matters were considered by the Judge. In respect of the former, the Judge took the view that costs orders, like cheques, should be regarded as

free-standing

, and thus the court

s approach towards petitions based on cheques and cross-claims on separate matters should be adopted. The Judge also examined the merits of the Company

s cross-claim, but was not satisfied that the Company had raised any cross-claim of substance, essentially because of the lack of particulars/evidence in support of the cross-claim

. In respect of the latter, the Judge was not impressed by the last-minute undertaking offered by the Company

s counsel

. The Judge

s views on the merits of the Company

s cross-claim, and whether to withhold the making of a winding up order by reason of the

undertaking offered by the Company, are matters of judgment based on his evaluation of the

primary materials before him. We are not satisfied that the Company has demonstrated a high

probability of success in the Appeal. It has, at best, an arguable appeal. The merits of the Company

s appeal fall far short of being sufficient countervailing factors to militate against the making of an order of security for costs in the present case.

Insofar as the quantum of security sought by the Petitioner is concerned, we have considered the criticisms advanced by Mr Abraham Chan, SC at 8(1)-(11) of the Company's Skeleton Submissions, and Mr Cedric Yeung's responses at 8.1-8.5 of the Petitioner's Reply Submissions. It is not necessary for us to deal with each and every item of the Skeleton Bill criticised by the Company individually. It suffices for us to say that many of the criticisms have force, eg (i) the need for a solicitor to attend a call-over hearing and the substantive hearing of the application for security for costs, when the well-known, usual practice of the Court of Appeal is to deal with such application on paper, (ii) the time taken to draft a 1-page, 5-paragraph demand letter (involving 2 solicitors spending a total of 1.5 hours), (iii) the time taken to draft the Skeleton Bill (again involving 2 solicitors spending a total 2 hours), and (iv) the estimated time required to consider comment review finalise and take instruction from client in relation to matters concerning the Appeal (involving 2 solicitors spending a total of 24.5 hours), when the issues in the Appeal are straightforward, the papers truly relevant to the Appeal are not substantial, and Y T Chan & Co acted for the Petitioner throughout the proceedings below and in the District Court Action. The estimated brief fee of senior counsel to be engaged by the Petitioner for the Appeal also seems to us to be excessive for a simple appeal like the present one. Mr Yeung's reliance on the fact that the Company has not expressly challenged the estimated fees of the Petitioner's counsel is misplaced. The Court is not bound by any view that the Company or its legal representatives may have formed as regards the reasonableness or otherwise of any part of the Petitioner's estimated costs.

Mr Yeung argues that the quantum of security should be assessed on an indemnity basis because it would not be just that any of the Petitioner's costs should be thrown upon the assets of the Company to the creditors' prejudice. Generally speaking, an indemnity costs order is appropriate where a company unsuccessfully appeals from a winding-up order (see *Re China Silver Asset Management (Hong Kong) Limited*, at 10). However, costs are ultimately a matter of discretion, and should not be tied down to any inflexible or absolute rule. Moreover, we are now considering what security ought to be ordered, not the costs order that should ultimately be made in the substantive appeal, although the prospect or likelihood of an order of indemnity costs being made at the end of the day is something that we would take into account when assessing the quantum of security to be awarded. In any event, where

some of the items of costs claimed by the Petitioner as set out in the Skeleton Bill are plainly unreasonable or excessive, such items ought to be disallowed or discounted even where costs are assessed on an indemnity basis. When considering the quantum of the security to be awarded, the Court does not conduct a microscopic taxation exercise, but adopts a broad-brush approach with a view to achieving practical justice in the circumstances of the case. We consider that the amount of security for costs that should be awarded in the present case is the sum of HK\$650,000.

Overall, we are satisfied, on the materials before us, that special circumstances exist in the present case which would render it just to make an order that the Company do procure Ms Yung and Mr Cheung to give security for the Petitioner's costs of the Appeal in the sum of HK\$650,000.

DISPOSITION

We allow the Petitioner

s application for security for costs, and make the following orders:

The Company do within 28 days from the date of the order herein procure its former directors, Ms Yung Mei Chun and/or Mr Cheung Moon Hoi, to provide security for the Petitioner's costs of the Appeal by paying into court the sum of HK\$650,000.

Until such payment into court be made and notice thereof given by the Company to the Registrar of Civil Appeals and to the solicitors for the Petitioner, all proceedings in the Appeal be stayed.

In default of making such payment into court within the time aforesaid, the Appeal, upon the solicitors for the Petitioner certifying such default to the Registrar of Civil Appeals, do stand dismissed without further order of the court with costs to be paid by the Company to the Petitioner, such costs to be taxed if not agreed, with liberty to the Petitioner to apply in relation to the basis of assessment of its costs.

Lastly, the Company shall pay the costs of the Petitioner in respect of the present application, to be summarily assessed. We decline to order the Petitioner

s costs to be assessed on an indemnity basis. The Company is at least entitled to challenge the quantum of security sought by the Petitioner, and has been successful in substantially reducing the amount of security awarded to the Petitioner. The Company shall have leave to file and serve a statement of objections (limited to 2 pages) to the Petitioner

s statement of costs dated 12 September 2025 within 14 days from the date of this judgment. Once assessed, the Petitioner shall have leave to apply for payment out from the sum paid into court pursuant to

19(1) above in satisfaction of the assessed costs.

(Anderson Chow)

Justice of Appeal

(Jonathan Harris)

Judge of the Court of First Instance

Mr Cedric Yeung, instructed by Y.T. Chan & Co., for the Petitioner

Mr Abraham Chan SC and Mr Alvin Cheung, instructed by Charles Russell Speechlys LLP (up to 3 October 2025) and Huen & Partners (up to 9 February 2026), for the Company, and thereafter, the Company has been unrepresented

See [2025] HKDC 17,

See

12 of the Company

s Skeleton Submissions dated 5 September 2025.

See

9 of the Company

s Skeleton Submissions dated 5 September 2025.

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Before:	Hon Chow Harris in C ourt Date
Written Submissions:	26 August, 5 &12 September 2025
Date of Judgment:	27 February

Hon Chow JA (giving the Judgment of the Court):

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There
before the Court
application
by the
Petitioner
security
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against

JUDGMENT

"Arial BRIEF BACKGROUND THE APPLICATION FOR SECURITY FOR COSTS DISCUSSION

DISPOSITION

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