In the Court of Appeal of Alberta

Citation: Stephenson v Romspen Investment Corporation, 2026 ABCA 356

Date: 20261105
Docket: 2603-0230AC
Registry: Edmonton

2026 ABCA 356 (CanLII)

Between:

Eileen Evelyn Stephenson

Applicant

- and -

Romspen Investment Corporation and 1411846 Alberta Ltd.

Respondents

Reasons for Decision of
The Honourable Justice Jane Fagnan

Application to Extend Time to File Notice of Appeal
Cross-Application for Security for Costs

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2026 ABCA 356 (CanLII)

[1] The applicant applies to extend the time to appeal under Rule 14.37(2)(c) of the *Alberta Rules of Court*, Alta Reg 124/2010. The respondents cross-apply for security for costs under Rules 4.22 and 14.67.

[2] In April 2026, the applicant filed a statement of claim in the Court of King's Bench.

[3] The respondents requested that the claim be stayed or dismissed under the summary procedure set out in *Civil Practice Note 7 (Apparently Vexatious and Abusive Proceedings)*, submitting it amounted to a collateral attack or an attempt to relitigate issues that were already fully adjudicated and therefore it was frivolous, vexatious, or otherwise an abuse of process.

[4] In August 2026, Associate Chief Justice Nielsen struck the applicant's statement of claim under Rule 3.68(1), finding the claim was frivolous, vexatious, or an abuse of process as it was an attempt to relitigate matters that the Court of Appeal had already decided.

[5] The applicant attempted to file an appeal of that order.

[6] The deadline to file the appeal was September 14, 2026. On September 17, 2026 the applicant asked the Registry to backdate the Notice of Appeal to Sunday, September 13, 2026. The applicant said that she attempted to file the appeal on September 13, 2026 but was having technical difficulties and the problem was not rectified until September 16, 2026.

[7] On September 17, 2026, the Deputy Registrar wrote to the applicant, telling her that the Notice of Appeal would not be backdated. Even if she had been successful in uploading her appeal on the September 13, 2026, it could not have been filed until she paid the filing fee. She did not pay the filing fee until after the close of business on September 16, 2026. However, since it was paid just one minute after the deadline, the Registry filed the Notice of Appeal as of September 16, 2026.

[8] The Deputy Registrar's letter also noted that there was no record of the applicant having contacted the Registry or the CAMS Unit prior to September 16, 2026, at which time the filing fee was paid and the Notice of Appeal was filed.

[9] On the application to extend time to appeal, the applicant must show:

(a) there was a *bona fide* intention to appeal while the right to appeal existed, and there was some special circumstance that would excuse or justify the failure to appeal;

(b) an explanation for the delay and that the other side was not so seriously prejudiced by the delay that it would be unjust to disturb the judgment, having regard to the position of both parties;

(c) the appellant has not taken the benefits of the judgment from which appeal is sought; and

(d) the appeal would have a reasonable chance of success if allowed to proceed.

Cairns v Cairns, [1931] 4 DLR 819 at 826-827 (Alta SC (AD)); ***Sohal v Brar***, 1998 ABCA 375, 223 AR 141 at para 1.

[10] This is the applicant's fourth appeal relating to this matter, from which it can be inferred that she is familiar with the Court's filing system and the need to abide by the Court's deadlines. She is also aware that filing fees must be paid before a Notice of Appeal can be filed.

[11] However, the delay was short and it can be inferred from her prompt attempt to remedy the situation that she maintained a *bona fide* intention to appeal while the right to appeal existed.

[12] The applicant must also establish there is a reasonable chance of success if the appeal is allowed to proceed.

[13] Details regarding the background are set out in ***Stephenson v Stephenson***, 2026 ABCA 146 and ***Romspen Investment Corporation v Stephenson***, 2020 ABCA 437.

[14] Briefly, the applicant was involved in litigation for many years concerning a guarantee on a loan from Romspen to the principal debtor, L&E Ranch LLC, in relation to a development project in Hawaii. As collateral security for the debt, Romspen obtained a guarantee from the applicant. As security for the guarantee, the applicant granted a mortgage on property she owned in Sherwood Park, Alberta. Following default on the loan by L&E, Romspen foreclosed on the Hawaii property. A Hawaiian Commissioner conducted a sale of the property by public auction. The Commissioner recommended, and the Hawaiian court accepted, a bid from Romspen to purchase the Hawaii property for US$15.3 million, at a time when the outstanding mortgage debt was over US$26 million, leaving an apparent deficiency on the debt in excess of US$10 million.

[15] Romspen also foreclosed against the applicant's property. The applicant's obligation under the guarantee was limited to the value of the property in Sherwood Park. Sale of the Sherwood Park property was judicially approved for its appraised value, CDN$5.4 million, with that amount to be set off against the debt owed by L&E.

[16] The applicant maintains the Hawaiian courts have not finally determined there is a deficiency in the original loan owed by L&E to Romspen.

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[17] The Alberta Court of King's Bench and the Alberta Court of Appeal have issued judgments relating to the foreclosure proceedings including:

(a) an order for sale of the applicant's property;

(b) ***Romspen Investment Corporation v Stephenson***, 2019 ABQB 798, staying the sale order;

(c) an unreported decision overturning and dismissing the initial stay;

(d) ***Stephenson v Romspen Investment Corporation***, 2020 ABCA 316, staying the stay dismissal decision pending appeal of it; and

(e) ***Romspen Investment Corporation v Stephenson***, 2020 ABCA 437, dismissing the applicant's appeal of the stay dismissal decision.

[18] The applicant did not appeal the stay dismissal appeal to the Supreme Court of Canada, nor did she appeal the sale order. She has not owned the relevant property for five years.

[19] During the related litigation, the Court of Appeal has considered the applicant's contention that no deficiency had been established in Hawaii and therefore the foreclosure process should effectively be unwound. In ***Stephenson v Stephenson***, 2026 ABCA 146, a judge of this Court recently reiterated the Court's earlier conclusion in ***Romspen Investment Corporation v Stephenson***, 2020 ABCA 437 that the applicant had no defence to the unappealed Alberta order for sale and that her "real remedy", if Romspen had ultimately recovered more than it was owed, was an accounting and potential monetary recovery:

> 33 Ms Stephenson's real remedy is as suggested by this Court in [***Romspen Investment Corporation v Stephenson***, 2020 ABCA 437] and in the April 10, 2026 decision of the chambers judge. If, when the Hawaiian legal proceedings are finally completed, Romspen is said to have recovered more than the debt owing to it, then Romspen will have to account to L&E Ranch, which in turn then will have to account to Ms Stephenson. That is a matter extant in the courts of Hawaii.

[20] On this application, the applicant refers to the ongoing litigation in the courts in Hawaii concerning the deficiency.

[21] She submits her April 2026 claim in Alberta contained a new and different allegation against Romspen, being that registration of the certificate of title to her property was procured by fraud on the Court as it was based on a deficiency that does not exist and has never been adjudicated in any court of competent jurisdiction, citing ss 183 and 203 of the *Land Titles* Act, RSA 2000.

[22] The justice's reasons for striking the claim are brief:

> The substance of the Plaintiff's Written Submissions are similar to that recently considered by the Court of Appeal in ***Stephenson v Stephenson***, 2026 ABCA 146 [***2026 Decision***]. In that decision, the Court of Appeal considered the Plaintiff's contention that no deficiency had been established in Hawaii and that the foreclosure process should effectively be unwound. The Court of Appeal nevertheless reiterated its earlier conclusion in ***Romspen Investment Corporation v Stephenson***, 2020 ABCA 437 that the Plaintiff had no defence to the unappealed Alberta Order for Sale and that, if it ultimately transpired that Romspen recovered more than it was owed, the appropriate remedy would be an accounting and potential monetary recovery. The Court of Appeal again described that accounting remedy as the Plaintiff's "real remedy": see ***2026 Decision*** at para. 33. Accordingly, the Plaintiff's Written Submissions do not provide a basis upon which this Court could depart from the conclusions reached in the prior appellate decisions.

[23] The applicant's Notice of Appeal sets out the issues on appeal as being: whether the justice erred in striking the claim, and whether it was an error to treat as an abuse of process the claims that no deficiency was determined in the Hawaii proceedings and Alberta lacked a proper foundation to treat the applicant as indebted.

[24] In her written memorandum, she noted permission to appeal is not required, asserted the ground of appeal is arguable without any elaboration, and submitted the merits are for the panel.

[25] The applicant did amplify her submissions in oral argument. She argued the action is not similar to previous litigation: Romspen was not a party and the allegation of fraud and reliance on s 183 of the *Land Titles Act* amounts to a new cause of action. Further, she says the justice misapplied *Civil Practice Note 7* and failed to consider whether to grant permission to amend the pleading.

[26] The applicant's 2026 claim sought to unwind the judicially approved sale of the Sherwood Park property through (a) a declaration that the judicial sale was "procured by fraud" (essentially the same issue which continues to be litigated in the Hawaii courts) and (b) an order to cancel the registration as a result of the foreclosure process and to "rectify the register by restoring title to the Sherwood Park property in the applicant's name, free and clear of all encumbrances". The 2026 claim did not seek an accounting or damages from either Romspen or L&E Ranch.

[27] The justice concluded that the court could not grant the relief sought in the April 2026 claim without departing from the conclusions in the prior related decisions regarding the completed foreclosure of the Sherwood Park property. The applicant's concern about the deficiency had been a feature in the previous litigation. The justice reiterated the comments by this Court as to a possible course of action once the Hawaii proceedings are completed.

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[28] There is no chance of success on appeal with respect to any of the appeal grounds raised by the applicant.

[29] Consequently, the application to extend time is dismissed.

[30] In the result, it is not necessary to consider the cross-application for security for costs.

[31] The respondents have been successful and are entitled to costs: Rule 14.88. They seek solicitor-client costs. Such an order generally requires misconduct, *mala fides* or unreasonable conduct. No costs were ordered in the lower court. The applicant attempted what she believed was a novel and viable way to raise her ongoing concerns. The request for solicitor-client costs is denied.

[32] Rule 9.4(2)(c) is invoked. The Court will prepare the resulting order.

Application heard on October 28, 2026

Reasons filed at Edmonton, Alberta
this 5th day of November, 2026

Fagnan J.A.

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Appearances:

Applicant E.E. Stephenson

J. Stephenson-Coflin
as agent for the Applicant

K.E. Barr, KC (no appearance)
N.L. Brisson
S.A. Chehade
for the Respondents

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