

In the Court of Appeal of Alberta

Citation: Bosse v Carrigan, 2026 ABCA 267

Date: 20260814

Docket: 2601-0148AC

Registry: Calgary

Between:

Andrea Bosse

Respondent

- and -

Brad Carrigan

Applicant

**Reasons for Decision of
The Honourable Justice Jane Fagnan**

Applications for Permission to Appeal and to
Extend Time to File Notice of Appeal

**Reasons for Decision of
The Honourable Justice Jane Fagnan**

[1] The applicant applies for permission to appeal, if required, and for an order extending time to appeal.

[2] This matter relates to the sale of lands co-owned by the parties and governed by a co-ownership agreement. The matter was submitted to binding arbitration before an arbitrator pursuant to an arbitration agreement between the parties dated September 26, 2023.

[3] The parties' applications relating to the arbitration are voluminous and somewhat complex. However, the issues on this application are straightforward.

[4] The Arbitrator issued an interim award on July 28, 2025 and Directive 36 on August 18, 2025.

[5] On August 13, 2025 and August 27, 2025, the applicant filed applications seeking to overturn the interim award. The respondent brought a cross-application for enforcement of the interim award and Directive 36.

[6] Counsel for both parties appeared before a chambers justice on November 5, 2025. She sent them out of the courtroom to see if they could reach an agreement. They returned and read agreed terms of an order into the record.

[7] The November 2025 order struck the applicant's applications as he had not obtained leave as required by a January 2024 order. The November 2025 order confirmed, and made enforceable, the July 2025 interim award but stayed the paragraph in that award requiring the applicant to vacate the property, so long as he continued to meet certain conditions.

[8] The justice directed counsel to include additional provisions verbatim from the Directive, and standard enforcement provisions in the event the applicant was required to vacate for failing to comply with the conditions. Counsel were subsequently unable to agree on the form of order. The applicant's counsel ceased to act for him.

[9] The parties were involved in multiple applications before other justices before eventually appearing on April 20, 2026 with the same counsel and before the same justice involved in the November 2025 hearing to settle the terms of the November 2025 order. Applicant's former counsel appeared at the justice's request.

[10] Most of the terms of the respondent's draft of the order were confirmed. Some language incorporated from the Directive was deleted. Some additional wording was added on other points.

The resulting order, which is simply entitled “Order”, states that it was pronounced on November 5, 2025, but it was filed on April 30, 2026.

[11] The applicant filed a Notice of Appeal of that order on May 19, 2026.

[12] Another Court of King’s Bench justice granted leave in March 2026 to challenge a January 2026 interim award of the arbitrator. On May 1, 2026, a chambers justice rendered a decision, *inter alia*, refusing to stay the arbitration proceedings generally or to stay the November 2025 order. On May 7, 2026 the appeal of the January 2026 interim arbitral award was directed to be addressed in a special chambers hearing. The applicant says that this matter intersects with that appeal.

[13] On July 13, 2026 the arbitrator issued her final award.

[14] It is clear from a review of the proceedings before the chambers justice on November 5, 2025 and April 20, 2026 that, aside from the term striking the applicant’s applications for failing to obtain leave, the basic terms in the filed order which permitted the applicant to remain on the property on certain conditions were agreed to on the original hearing date. At the later hearing, some wording that had been included from the Directive was deleted. Other changes sought by the applicant’s former counsel and enuring to the applicant’s benefit were incorporated, such as wording addressing the eventuality of an amount to be paid by the applicant becoming due on a weekend or holiday, and a requirement to serve the applicant prior to enforcement steps being taken to evict him.

[15] The applicant’s Notice of Appeal does not take issue with the part of the justice’s order striking his applications for failure to obtain permission to file them.

[16] He appeals on the basis that the filed November 2025 order resulted from a “contested form-of-order process without a contested evidentiary adjudication on the merits while overlapping jurisdictional, validity, arbitral-authority, valuation, and procedural fairness issues remained unresolved before the Courts”.

[17] The transcripts of the November 2025 and April 2026 hearings make it clear that to the extent the order deals with enforcement of the July 2025 interim award and stay of the requirement to vacate on conditions, it is a consent order. The justice was aware of what had occurred during the November hearing and made some requested adjustments in April that favoured the applicant.

[18] Therefore, this is a consent order and permission to appeal is required under Rule 14.5(1)(d) of the *Alberta Rules of Court*, Alta Reg 124/2010.

[19] Permission to appeal a consent order will only be granted where the applicant satisfies the court that the appeal raises an important question of law or precedent, has a reasonable prospect of success, and the resulting delay will not unduly hinder the progress of the action or cause undue

prejudice to the parties: *Macdonald v King*, 2021 ABCA 149 at para 8. Various factors are relevant to the analysis: *Laanep v Lawson*, 2021 ABCA 214 at para 3; *Silliphant v Silliphant*, 2025 ABCA 317 at para 13.

[20] It is clear the applicant is unhappy with the results of the underlying arbitration. He has taken steps in the Court of King's Bench to address the issues he raises with the arbitral awards.

[21] However, there are no exceptional circumstances raised in relation to the November 2025 proceedings. Counsel read the terms of an agreed order into the court record. The applicant was present. The applicant says in oral argument that his counsel was not very familiar with the file and was not focused at the November 2025 proceedings. Nothing in the transcript suggests his counsel was not fulfilling his duties to his client in an informed and competent manner.

[22] The applicant also noted in oral argument that his former counsel was not acting for him at the April 2026 appearance to settle the terms. However, the changes to the draft order incorporated at that time relate to ancillary matters which only benefited him. The fact that the applicant reiterated at that time, as he continues to do, that he takes issue with the results of the arbitration is not material to this appeal.

[23] The appeal of the consent order does not raise any important issue of law or precedent. Nor does it have a reasonable chance of success.

[24] The proposed appeal before this Court would not resolve any of the fundamental issues in dispute. It would distract the parties from their real issues, would consume further time and resources, and would not move their matter forward.

[25] The application for permission to appeal is dismissed, and consequently so is the application for an extension of time. The applicant applied for ancillary relief, including orders deeming the Notice of Appeal to have been validly filed and for costs. Given the denial of the application for permission to appeal, all of those requests or applications are denied.

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

Applications heard on August 5, 2026

Reasons filed at Calgary, Alberta
this 14th day of August, 2026

Fagnan J.A.

Appearances:

B. Younggren
for the Respondent

Applicant B. Carrigan