In the Court of Appeal of Alberta

Citation: Kong v Condominium Corporation No 0313339, 2026 ABCA 379

Date: 20261125
Docket: 2501-0187AC
Registry: Calgary

Between:

Zhao Xia Kong

Appellant

- and -

Condominium Corporation No 0313339

Respondent

The Court:

The Honourable Justice Jolaine Antonio
The Honourable Justice Kevin Feehan
The Honourable Justice Tamara Friesen

Memorandum of Judgment

Appeal from the Order of
The Honourable Justice S. Parker
Dated the 21st day of May, 2025
Filed the 30th day of May, 2025
(Dockets: 2301-02695; 2401-15144)

Memorandum of Judgment

The Court:

I. Overview

[1] Zhao Xia Kong appeals paragraphs 11 through 15 only of the order of a chambers judge dated May 21, 2025. An extension of time to appeal these aspects of the order was granted by a single judge of this Court on January 12, 2026: 2026 ABCA 3. The appealed paragraphs read:

> **2301 Action – Application filed December 10, 2024**
>
> 11. The Appeal filed by Zhao Xia Kong on July 19, 2024 in the 2301 Action is struck out.
>
> 12. The Condo Corporation is granted judgment for costs against Zhao Xia Kong in the 2301 Action in the amount of $5,031.25.
>
> **2401 Action – Application filed December 10, 2024**
>
> 13. The Statement of Claim and Amended Statement of Claim in Action 2401-15144 is struck out as an abuse of process.
>
> 14. The Condo Corporation is granted judgment for costs against Zhao Xia Kong in the 2401 Action in the amount of $5,031.25.
>
> 15. Zhao Xia Kong may file no documents (whether applications, affidavits, submissions, statements of claim, originating applications, or otherwise), in the 1901 Action, the 2301 Action, the 2401 Action, or otherwise, which name, seek a remedial order, or seek declaratory or other forms of relief against the Condo Corporation, its board, or its manager, or any of their employees, agents, contractors or other persons acting on behalf of any of them, without first obtaining leave of a Justice of the Court of King's Bench of Alberta on notice to the proposed respondents/defendants, and only then upon presenting such Justice a copy of this form of Order along with any proposed documents sought to be filed.

[2] For the reasons below, Ms Kong's appeal is dismissed.

II. Background

[3] The present appeal arises out of contentious litigation between Ms Kong and her condominium corporation. The litigation has generated numerous oral chambers decisions in the Court of King's Bench and five reported decisions of this Court: 2025 ABCA 273, 2026 ABCA 3, 2026 ABCA 78, 2026 ABCA 90, and 2026 ABCA 134. Since the filing of the present appeal, Ms Kong has filed two further appeals from chambers decisions: 2601-0039 and 2601-0091. As this Court has noted, the original underlying dispute was about whether Ms Kong or the corporation is responsible for a $552 toilet repair invoice issued in 2018. “The dispute has since taken on a life of its own”: 2025 ABCA 273, para 5; 2026 ABCA 78, para 2.

[4] These appeals arise out of two claims filed by Ms Kong against the corporation in King’s Bench actions 2301-02695 and 2401-15144, identified as the 2301 and 2401 actions.

[5] The corporation filed two applications on December 10, 2024: to strike Ms Kong’s appeal of the dismissal of her 2301 action, or in the alternative, seeking costs if that appeal was withdrawn; and to strike the 2401 action and impose court access restrictions on Ms Kong. Of importance, Ms Kong, without leave, amended the 2401 action on May 9, 2025, shortly before the May 21, 2025 hearing of the applications.

III. Grounds of Appeal

[6] Ms Kong advances 13 grounds of appeal. They may be simplified into four grounds, alleging that the chambers judge:

(a) breached procedural fairness in not allowing effective interpretation, departing from the hearing structure previously directed, failing to review materials from the parties and failing to allow her to make adequate submissions;
(b) erred in striking her appeal in action 2301, making inconsistent findings, awarding enhanced costs, and causing her procedural prejudice;
(c) erred in striking the action 2401 without considering the amended statement of claim of May 9, 2025, applying the principles of *res judicata* and estoppel, relying on evidence from other actions before it in the application; and
(d) erred in awarding enhanced costs and imposing a filing restriction.

IV. Analysis

a) Procedural Fairness in both the 2301 and 2401 Actions

[7] A careful examination of the proceedings before the chambers judge shows no procedural unfairness. The chambers judge reviewed the materials submitted by the parties and afforded significant opportunity for Ms Kong's interpreter to participate fully during the applications. He was entitled to control the court process, including reasonably limiting submissions in a busy morning chambers. Additionally, Ms Kong's allegations of judicial bias are unfounded. A reasonable person reading the transcript, and properly informed about court processes, would not conclude the chambers judge had a bias toward Ms Kong in his conduct of these applications in morning chambers.

[8] The chambers judge gave the parties one hour on the morning chambers list, permitted the active participation of Ms Kong's interpreter, asked Ms Kong if she had more submissions at the end of the applications, and conducted a hearing that was fair, reasonable, and appropriate for all parties.

[9] Ms Kong's appeal on the ground of breach of procedural fairness is dismissed.

b) 2301 Action

[10] Where a chambers judge applies discretion in applying rule 3.68 to strike a claim, the standard of review is reasonableness: ***Al-Ghamdi v College and Association of Registered Nurses of Alberta***, 2020 ABCA 81, para 9.

[11] Ms Kong says her 2301 action and appeal should not have been struck nor costs awarded against her, as she had already withdrawn the appeal. She points to an adjournment request form filed September 4, 2024 in which she had handwritten "cancellation/withdraw". She says she served that form on the corporation and advised it she had withdrawn the appeal. Although she acknowledges there was confusion in subsequent applications as to whether that withdrawal had occurred or had been effective, she now says the appeal was fully withdrawn and "removed from the active list". She says since it was withdrawn and removed from the list, the chambers judge was *functus officio* and there was no basis on which to strike it, "except perhaps as a formality".

[12] This, however, was not the position taken in earlier proceedings. When asked by an earlier chambers judge whether she had discontinued this action and her appeal, she replied that she had not, that she took back the handwritten adjournment request and that she wanted to continue. The earlier chambers judge challenged her on this position: "… opposing counsel has been … under the impression that it is withdrawn. Then you say it's not withdrawn, and that is a concern to the

Court", and "… you stand before me and you say it's not withdrawn. That [the September 4 adjournment request form] says it is. Emails say that it is as well".

[13] The earlier chambers judge concluded, "It's unclear … what the status of it was". Taking Ms Kong at her word that she had not withdrawn the action and appeal, the chambers judge set it down for a special sitting, because "it looks like you haven't filed a notice of withdrawal, so it's still a live action".

[14] At minimum, there was a live question as to whether the 2301 action and appeal was withdrawn or continuing, and it was reasonable and appropriate that this chambers judge strike that action and appeal, with costs following that result. The appeal from this portion of the order is dismissed.

c) 2401 Action

[15] The interpretation of pleadings is a question of law, so determinations as to whether a pleading discloses no cause of action or is an abuse of process are reviewed on a correctness standard: ***Waquan v Canada (Attorney General)***, 2017 ABCA 279, para 16, [2018] 4 WWR 361; ***Al-Ghamdi***, para 10. However, assessment of the facts, application of the law to the facts, and ultimate determination as to whether to strike a claim, is discretionary and subject to reasonableness review: ***Al-Ghamdi***, para 10. Further, where an abuse of process has been established, the court's choice of remedy to respond to that abuse of process is an exercise of discretion entitled to deference: ***Saskatchewan (Environment) v Métis Nation – Saskatchewan***, 2025 SCC 4, para 32, 500 DLR (4th) 279. Likewise, the exercise of discretion to refuse permission to amend pleadings is reviewable on the standard of reasonableness: ***Al-Ghamdi***, para 11.

[16] Ms Kong says the chambers judge erred in striking the 2401 action without considering the amended statement of claim filed on May 9, 2025. Amendments are a possible remedy to an application to strike: ***Stratkotter v Reitsma et al***, 2024 ABKB 689, paras 40, 41, citing ***Gay v Alberta (Workers' Compensation Board)***, 2023 ABCA 351, para 47.

[17] Ms Kong said the chambers judge dismissed this action on the basis that it was a "rehash" of prior proceedings, barred by *res judicata* and estoppel. In the permission to appeal application before a single judge of this Court, she noted the chambers judge "did not account for the fact that after the respondent filed the application to strike the 2401 Action on December 10, 2024, and before the May 21, 2025 hearing" she had filed the amended statement of claim: 2026 ABCA 3, para 36.

[18] The corporation responds that the amended statement of claim was only noted during this application in one sentence: "[a]s you may see from the new amended Statement of Claim, there

has also been an escalation with conflict being alleged at the most recent AGM". The filed order provided: "[t]he Statement of Claim and Amended Statement of Claim in action 2401-15144 [are] struck out as an abuse of process".

[19] Whether or not the chambers judge specifically noted the provisions of the amended statement of claim during the application, the entire claim was properly struck under rule 3.68. The respondent's application to strike pleaded both that the claim should be struck as an abuse of process and for disclosing no reasonable claim. To the extent the amendments to the claim plead new facts that are not a "rehash" or abuse of process by relitigation, they were nonetheless properly struck as disclosing no reasonable claim.

[20] The amendments add as defendants the members of corporation's board, its property management company and two individuals asserted to be employees or agents of the property management company. The added paragraphs address an annual general meeting of the corporation on April 23, 2024, where Ms Kong says the meeting was not being properly conducted by the chair. She says she was denied the opportunity to speak or vote for failure to pay her fees, and she felt humiliated. The added paragraphs do not plead facts grounding any viable cause of action against those defendants.

[21] Even if these allegations are true, and we are to assume them to be true for the purposes of this appeal, these paragraphs do not disclose a reasonable cause of action against the named defendants: ***R v Imperial Tobacco Canada Ltd***, 2011 SCC 42, para 17, [2011] 3 SCR 45.

[22] There was no error in the chambers judge's striking the claim in total, nor in the accompanying costs award. The appeal from this portion of the order is dismissed.

d) Filing Restrictions

[23] Filing restrictions within an action are entitled to deference as a case management step. Such housekeeping restrictions may be essential in matters of high conflict litigation. They are interlocutory in nature and fall within the court's inherent jurisdiction to control its processes: ***Grepe v Loam*** (1887) 37 Ch D 168 (UK) CA; ***Unrau v National Dental Examining Board***, 2019 ABQB 283, paras 344-352, 94 Alta LR (6th) 1; ***Piikani Nation v McMullen***, 2020 ABCA 183, paras 5, 8; ***Piikani Nation v Kostic***, 2024 ABKB 137, paras 10-14; ***Piikani Nation v Kostic***, 2025 ABCA 7, paras 4, 5, 14, 15; ***Piikani Nation v McMullen***, 2025 ABKB 481, paras 8-12; ***ATB Financial v 1719091 Alberta Ltd***, 2024 ABKB 461, para 25, application denied 2025 ABCA 291, further leave to appeal to a panel denied, 2025 ABCA 338.

[24] The chambers judge prohibited Ms Kong from filing any further documents in the ongoing issues between her and the corporation without first obtaining leave of a justice of the Court of

King's Bench of Alberta on notice to the proposed respondents or defendants, and only then upon presenting such justice with a copy of the May 21, 2025 order along with any proposed documents sought to be filed.

[25] Ms Kong submits the order was overly harsh and imposed without a proper legal or factual basis. The requirement for the order is evident on the record. This was a discretionary decision of the chambers judge which is owed deference. That deferential standard of review has not been met. This ground of appeal is dismissed.

V. Conclusion

[26] Ms Kong's appeal in the 2301 and 2401 actions is dismissed.

[27] Ms Kong was represented by counsel at the hearing of this appeal but filed a notice of change of representation on October 13, 2026, becoming a self-represented litigant. Rule 9.4(2)(c) is invoked, and the Court will prepare the order.

Appeal heard on October 09, 2026

Memorandum filed at Calgary, Alberta
this 25th day of November, 2026

Authorized to sign for: Antonio J.A.

Feehan J.A.

Friesen J.A.

Appearances:

R. G. Dalshaug
for the Appellant

J. Gilbert
E. Berney
for the Respondent