

In the Court of Appeal of Alberta

Citation: Habib v Habib, 2026 ABCA 316

Date: 20261005

Docket: 2601-0052AC;
2601-0163AC

Registry: Calgary

Between:

Azmin Habib, Shahin Habib, and Jenna Habib

Applicants

- and -

Alykhan Habib and Cynthia Leal Chiang

Respondents

**Reasons for Decision of
The Honourable Justice Kevin Feehan**

Applications to Restore Appeals and Limited Stay Pending Appeal

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I. Overview

[1] Azmin Habib, Shahin Habib, and Jenna Habib apply to restore their appeals to the record in both appeals 2601-0052, a contempt appeal, and 2601-0163, a sanctions appeal, pursuant to rr 14.47 and 14.65(1) of the *Alberta Rules of Court*, AR 124/2010. Their appeals were struck under r 14.64(a) for failure to file their appeal records within one month after their notices of appeal, contrary to r 14.16(3)(a), as fast-track appeals. If successful on the sanctions restoration application, they also apply in that appeal for a limited stay pending appeal.

[2] For the reasons below, the application to restore these appeals to the record is dismissed. The application for a stay in the sanctions appeal is dismissed.

II. Background

[3] The present applications are a continuation of acrimonious litigation between the parties, resulting in numerous oral and written decisions in the Court of King's Bench and six decisions in this Court: 2025 ABCA 59, 2025 ABCA 123, 2025 ABCA 216, 2025 ABCA 243, 2025 ABCA 268, and 2026 ABCA 263, all dismissed; and two unsuccessful applications for leave to appeal to the Supreme Court of Canada. All matters center around the division of the sale proceeds of four condominium units, three of which the parties no longer contest. The sale proceeds of the fourth condominium unit is in dispute. Alykhan Habib says those proceeds, approximately \$104,000, should be divided 50/50; Azmin and Shahin Habib, say it should be divided unequally with the larger portion accruing to them.

[4] As to the current appeals, on February 18, 2026, the case management judge issued an order finding Azmin Habib, Shahin Habib, and Jenna Habib in contempt of court: 2026 ABKB 110, for failing to comply with an order of April 14, 2025 to produce records, Jenna Habib for failing to prepare, serve, and file a rule-compliant affidavit of records, and each of them for failing to attend questioning independently, separate and apart from each other, on court appointed dates. The Court also found Azmin and Shahin Habib in contempt of court for failing to comply with an order of September 4, 2024, to properly prepare and serve an affidavit of records and produce records as ordered.

[5] The case management judge further ordered, by consent, the payment into trust of \$165,274.32, comprising Alykhan Habib's 50% share in the net sale proceeds of the first three condominium units and \$25,000 in costs. He finally ordered that the remaining notional 50% share of the net sale proceeds of the first and second condominium units were not to be dispersed to Azmin and Shahin Habib without further order of the court.

[6] A notice of appeal from the contempt decision was filed on February 20, 2026. In that notice of appeal, Azmin, Shahin, and Jenna Habib requested that the case management judge and counsel for Alykhan Habib be removed from the case immediately. They requested that distribution to Alykhan Habib of the 50% proceeds from the sale of the fourth condominium unit be dismissed, and that the citations for contempt be removed.

[7] On May 7, 2026, the case management judge issued a further order addressing sanctions: 2026 ABKB 110; striking the counterclaim of Asmin and Shahin Habib against Alykhan Habib and Cynthia Chiang, imposing a fine of \$10,000, and costs on a full indemnity basis of \$85,000, to be paid from funds held in court from the sale of the fourth condominium unit, after payment to Alykhan Habib of his 50% proportionate share of those sales proceeds.

[8] In his endorsement of May 7, 2026, the case management judge found that Azmin and Jenna Habib had by then substantially complied with the case management order of April 14, 2025, but had continued with “deliberate defiance and attacks” after having been found in contempt, such that sanctions remained necessary to “condemn their defiant and improper conduct.”

[9] In the sanctions appeal, Azmin, Shahin, and Jenna Habib appealed the release of funds, to which they had previously consented, for the sale of the first three condominium units, and to the release of 50% of funds to Alykhan Habib on the fourth condominium unit. They also appealed the fine and cost orders in full, failing to remove counsel for Alykhan Habib from the record, and dismissing their counterclaim against Alykhan Habib and Cynthia Chiang. Azmin and Shahin Habib again requested the removal of the case management judge from the file. They also complained about ownership of a storage unit belonging to the fourth condominium unit.

III. Striking the Appeals and the Restoration Applications

a) Failure to file Appeal Record on time

[10] Azmin, Shahin and Jenna Habib ordered transcripts for the hearing of the contempt application on February 20, 2026. The appeal record on the contempt appeal was originally due March 20, 2026. On March 18, Azmin Habib asked the case management officer to postpone that filing date saying: “I will decide whether I need to proceed with this appeal after [the sanctions] decision”. The respondents consented to the postponement.

[11] The case management officer corresponded to Azmin, Shahin, and Jenna Habib on February 23, 2026, advising that the contempt appeal was categorized as a fast-track appeal, and on June 1, 2026 that the sanctions appeal was also a fast-track appeal. In the latter letter, she acknowledged the contempt appeal “had been suspended pending the issue of a decision on sanction and a further appeal from that decision.” She therefore advised that both appeals would proceed and be heard together, that the applicants must file a single, joint appeal record for both appeals, and the deadline for filing the joint appeal record was “the deadline set by the rules for

this new appeal,” July 2, 2026. She referred Azmin, Shahin, and Jenna Habib to the appeal deadlines set out on this Court's website and warned:

Parties are encouraged to review the applicable deadlines as failure to comply with them will result in consequences being imposed, including the appeal being struck if the appellant fails to file the appeal record . . . by the applicable deadline.

[12] She also warned that it was “strongly recommended that documents be prepared and filed *in advance* of any deadline in order to allow sufficient time to address any issues or make any necessary corrections” [emphasis in original].

[13] On March 5, 2026, Azmin, Shahin, and Jenna Habib brought an application for stay pending appeal of the contempt order. That application was dismissed on August 7, 2026: 2026 ABCA 263, with the duty judge saying: “I am not satisfied that the applicants have demonstrated an arguable case on appeal”. She said that in the notice of appeal and written materials for the application, Azmin, Shahin, and Jenna Habib, “have not identified any particular issue of law, fact, or mixed fact and law” to be addressed. She said they made only “generic allegations of error, and they make accusatory and derogatory comments about the case management justice and the respondents’ counsel, but those do not demonstrate an arguable appeal.” She also noted the notice of appeal asked for relief that was not before the case management judge, and the granting of first instance relief is not generally the role of this Court. She noted that before her, Azmin, Shahin, and Jenna Habib conceded that the funds to be paid out to Alykhan Habib did belong to him. There is no contest about his entitlement to those funds. They only thought it unfair that the remaining funds would not be paid out to them at the same time.

[14] Azmin, Shahin, and Jenna Habib ordered transcripts for the sanction appeal on June 4, 2026. Both contempt and sanctions transcripts were filed on July 2, 2026. However, no appeal record was filed on or before July 2, 2026.

[15] On July 3, 2026, the case management officer issued Certificate-Late Appeal Records in both the contempt and the sanctions appeals, indicating that both appeals had been struck pursuant to rr 14.16(3) and 14.64(a) of the *Rules of Court*.

[16] The Registry or case management officer told Azmin, Shahin, and Jenna Habib on four occasions, July 3, 6, 9, and 29, 2026, that their appeals had been struck, and they must proceed very expeditiously to file an application to restore the appeal if they wished to do so.

[17] Azmin, Shahin and Jenna Habib brought this application to restore both the contempt and sanctions appeals to the record on September 15, 2026, 74 days after the appeal was struck, with a return hearing date of October 1, only two days before it was to be deemed to be abandoned, r 14.65(3). Alykhan Habib says that even though he has appeared by counsel to contest the applications, he has still not actually been served with the applications to restore the appeal to the record or for the stay.

b) Restoration of an Appeal

[18] The applicable rules for restoration of an appeal to the record are rr 14.47 and 14.65:

Application to restore an appeal

14.47 An application to restore an appeal that has been struck, ...
(a) must be filed and served as soon as reasonably possible, and
(b) must be returnable no later than . . .
(ii) for a fast track appeal, 3 months after having been struck

...

Restoring appeals

14.65(1) An appeal ... that has been struck ... may be restored
(a) ... by order of a single appeal judge on application under rule 14.47

[19] The test for restoring an appeal is discretionary and engages the following considerations:

- (a) arguable merit to the appeal;
- (b) an explanation for the defect or delay which caused the appeal to be taken off the list;
- (c) reasonable promptness in moving to cure the defect and have the appeal restored to the list;
- (d) intention in time to proceed with the appeal; and
- (e) lack of prejudice to the respondents, including the length of delay.

Li v Morgan, 2020 ABCA 186, para 6; *Prairie West Homes Inc v Baraka Homes Ltd*, 2023 ABCA 256, paras 9, 10; *JE v KE*, 2025 ABCA 298, para 8; *Okuns v Alberta Labour Relations Board*, 2025 ABCA 327, paras 13, 14.

[20] None of these factors are determinative. Failure by the applicant to meet one of them is not fatal, because all the factors are weighed to determine whether, overall, it is in the interests of justice to permit the appeal to proceed: *Li*, para 6; *Prochazka v Alberta (Maintenance Enforcement Program)*, 2014 ABCA 448, para 4. A restoration order may not be in the interests of justice even if all five factors are met: *Warren v Warren*, 2019 ABCA 20, para 15, 82 Alta LR (6th) 213; *Prairie West*, para 10; *Okuns*, para 15; *Abbasi v Khan*, 2026 ABCA 139.

[21] While no one factor is determinative, a lack of arguable merit is often fatal to an application to restore an appeal: *Basaraba v College of Chiropractors of Alberta*, 2026 ABCA 128, para 9;

Raymond James Ltd v Kostic, 2025 ABCA 296, para 7; *Scheffelmanier v Scheffelmanier*, 2026 ABCA 80, para 9.

IV. Analysis

a) Arguable Merit

[22] The grounds of appeal stated by Azmin, Shahin, and Jenna Habib, have little connection with the orders actually granted by the case management judge. This is similar to the situation before the duty judge of this Court on the contempt stay application.

[23] The applications for restoring to the record both the contempt and the sanctions appeals fail on the first criterion: there is no arguable merit to these appeals. The first factor, arguable merit, is a low bar; all the applicant must establish is that the appeal is not hopeless or frivolous: *Murphy v Haworth*, 2016 ABCA 219, para 23, 2 CPC (8th) 201; *The Owners: Condominium Plan No 982 6403 v CPI Crown Properties International Corporation*, 2018 ABCA 232, para 16, 76 Alta LR (6th) 318. The onus is on the applicant to show the appeal is not bound to fail: *932282 Alberta Ltd v Royal Bank of Canada*, 2019 ABCA 252, paras 18-19, 93 Alta LR (6th) 1.

[24] The contempt finding rests on two production orders which Azmin, Shahin, and Jenna Habib continue to contest. The September 4, 2024 order was appealed to this Court and the appeal was dismissed: 2025 ABCA 59; and see 2025 ABCA 123. The April 14, 2025 order was never appealed: 2026 ABKB 110, paras 17, 37, 42, 61. Neither order can now be attacked on an appeal from a finding of contempt: *492246 Alberta Ltd (Kensington Clinic) v Malley*, 1997 ABCA 54, paras 13, 14; *Habib*, 2022 ABCA 231, para 32; *Alston v Foothills No 31 (District of)*, 2022 ABCA 408, para 12, 2022 ABCA 231, para 32. There is “a public interest in upholding the rule of law and the enforcement of orders arising out of contempt proceedings”: *AHS v Scott*, 2021 ABCA 391, para 11.

[25] Removal of the case management justice and counsel for Alykhan Habib, and complaints about the ownership of the storage unit at the fourth condominium unit are outside the scope of the orders the subject of these appeals.

[26] None of Azmin, Shahin, or Jenna Habib provide an explanation for failing to comply with the procedural orders of September 4, 2024 and April 14, 2025 before the contempt order of February 18, 2026. They have not explained why their counterclaim against Alykhan Habib and Cynthia Chiang was valid and not frivolous or vexatious.

[27] Azmin, Shahin, and Jenna Habib complain in their notices of appeal about payment of funds on the first three condominium units, despite the fact that they consented to that payment and advised the Court their only concern was for payment of funds on the fourth condominium

unit. In oral submissions, they agreed the only remaining dispute is on the proceeds of sale of the fourth condominium unit.

[28] On the payment of the 50% owing to Alykhan Habib on the sale proceeds of the fourth condominium unit, Azmin, Shahin, and Jenna Habib produced a July 23, 2020 document from their conveyancing lawyer, David Jung, to Alykhan Habib, copied to Azmin Habib, indicating instructions for payment on the fourth unit: “50% Shahin Hasham-Habib, 50% Alykhan Habib”. The case management justice relied upon those instructions.

[29] As to the costs order, the case management judge provided detailed reasons for his conclusion that it was just and appropriate for Azmin, Shahin, and Jenna Habib to indemnify Alykhan Habib for his reasonable and proper solicitor-client costs incurred in connection with the contempt proceedings, citing r 10.53, *Dreco Energy Services Ltd v Wenzel*, 2005 ABCA 185, para 11 and *Alston v The Municipal District of Foothills No. 31*, 2021 ABQB 951, aff’d 2022 ABCA 408. Azmin, Shahin, and Jenna Habib have not raised an arguable basis to challenge the costs decision, which is entitled to significant deference on appeal: *Hamilton v Open Window Bakery Ltd*, 2004 SCC 9, para 27, [2004] 1 SCR 303; *Bun v Seng*, 2015 ABCA 165, para 5.

[30] Both applications for restoration to the record are dismissed for lack of merit. They are hopeless, frivolous, and have no prospect of success.

b) Failure to move promptly

[31] Although the issue is not necessary to resolve, this application would also have been dismissed on the basis that Azmin, Shahin, and Jenna Habib did not move promptly to cure the defect that caused the striking out, and to have the appeal restored to the list. As indicated, the striking out occurred on July 3, 2026. Azmin, Shahin, and Jenna Habib were reminded on July 3, 6, 9 and 29 of their obligation to move promptly to restore the appeals, if they wished to do so. On July 6, they booked this renewal application for October 1, 2026, without notice to Alykhan Habib or his counsel, two days before the struck appeals were to be deemed abandoned pursuant to r 14.65(3). They then did nothing until filing their applications to restore the appeals on September 15, 2026. They never served those applications upon Alykhan Habib, Cynthia Chiang, or their counsel, although rr 14.47(a) and 14.65(3) both require service.

[32] This evidences failure to comply with the requirement for promptness, and an untimely application “must be dismissed”: *932282 Alberta Ltd v Royal Bank of Canada*, 2019 ABCA 252, paras 28-30, 93 Alta LR (6th) 1; *Wass v Wass*, 2020 ABCA 180, para 33; *Croswell v Koncur*, 2020 ABCA 349, paras 14-16; *Holden v Holden*, 2022 ABCA 341, paras 40-42; *Dynamo Coatings Ltd v Alberta Building Trades Council Benevolent Society*, 2023 ABCA 355, para 12.

V. Stay Application

[33] In oral submissions, Azmin Habib advised that all funds in trust have now been paid to Alykhan Habib; what they now want is to have those funds in dispute repaid to them.

[34] Given the decision in these reasons not to restore the sanctions appeal to the record, there is no need to address whether the sanctions order can or should be stayed pending appeal. In any event, such a stay application would have been dismissed on the same basis as the earlier contempt appeal stay application: 2026 ABCA 263.

VI. Costs

[35] Where an appeal has been struck, “the respondent is entitled to a cost award for having responded to the appeal”: r 14.90(2). Unless otherwise ordered, the scale on appeal follows the scale below, in this case, full indemnity costs: r 14.88(3); *Alberta v AUPE*, 2014 ABCA 326, para 5, 11 Alta LR (6th) 84.

[36] Azmin, Shahin, and Jenna Habib have filed three applications; the applications to restore appeals to the record in the contempt and sanctions appeals, and the stay application in the sanctions appeal. Alykhan Habib and Cynthia Chiang have been required to respond to each application. Counsel for Alykhan Habib and Cynthia Chiang, ask for \$16,000 in indemnity costs payable forthwith, in any event of the cause. They, however, have not provided a draft bill of costs setting out the calculation of those indemnity costs. As a result, and for the purpose of foregoing the need for an assessment of indemnity costs, they are set at \$10,000, all inclusive, covering all three applications.

VII. Conclusion

[37] The three applications sought by Azmin, Shahin, and Jenna Habib are dismissed with costs. Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

Application heard on October 1, 2026

Reasons filed at Calgary, Alberta
this 5th day of October, 2026

Feehan J.A.

Appearances:

Appellants A. Habib, S. Habib, J. Habib

B.Y. Minuk
for the Respondents