

In the Court of Appeal of Alberta

Citation: Stuart Financial Corporation v Kiehlbauch, 2026 ABCA 311

Date: 20261001

Docket: 2601-0169AC

Registry: Calgary

Between:

**Stuart Financial Corporation,
on behalf of itself and all other members of a class having claim**

Respondent

- and -

Milton Ross Kiehlbauch

Applicant

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

Application to Extend Time to File Notice of Appeal

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

[1] The applicant seeks an extension of time to file an appeal of an April 29, 2026 order under Rule 14.8 of the *Alberta Rules of Court*, Alta Reg 124/2010.

[2] The chambers justice's order denied the applicant's application to set aside a default judgment granted in 2019, prohibited him from filing any further pleadings relating to the same facts without permission of the court, found him to be in contempt of court for failing to provide a completed Form 13 and failing to attend questioning as ordered, directed him to complete the Form 13 and attend questioning, and gave further directions regarding money paid into court.

[3] On this application to extend time to appeal, the applicant must establish:

- (a) The applicant had a *bona fide* intention to appeal while the right to appeal existed;
- (b) The applicant has an explanation for the failure to appeal in time that serves to excuse or justify the lateness;
- (c) An absence of serious prejudice to the respondent such that it would not be unjust to disturb the judgment;
- (d) The applicant has not taken the benefits of the judgment under appeal; and
- (e) The applicant has a reasonable chance of success on appeal.

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.

[4] The applicant asserts that he has always had a *bona fide* intention to appeal. His efforts to file an appeal before the deadline do reflect this intention. However, the Court must also consider whether his explanation for the delay justifies the lateness.

[5] The appeal was due by May 29, 2026, but was not filed until June 8, 2026. The applicant says the Court's filing portal incorrectly registered a payment on June 1, 2026 under the wrong file number, deleted/discarded all records previously submitted and cancelled the initial hearing date.

[6] In fact, the Court's record shows that the applicant submitted an appeal package on May 26, 2026 without the required filing fee. After the Registry contacted him regarding the outstanding

payment, no payment was received, and the appeal was rejected the following day. Following the rejection, the applicant attempted to obtain a fee waiver. The application was not properly commissioned and was not accompanied by the required supporting documentation. The fee waiver application was never completed in full, and therefore, could not be approved. The applicant then advised the registry that he was experiencing difficulties with the online payment portal. He was informed that payment could be made directly at the Court counter, which he completed on June 3, 2026. Following payment, the applicant attempted to file his Notice of Appeal electronically. However, the materials continued to be submitted incorrectly and were rejected. As a result, there was a delay between the payment date of June 3, 2026, and the eventual filing of the appeal on June 8, 2026.

[7] The Case Management Officer subsequently directed that an application to extend time must be made before the appeal can proceed. An application to extend time to appeal was not filed but the applicant did schedule a hearing date on July 30, 2026. When he failed to file the required materials, it was taken off the list. On July 21, 2026, the Case Management Officer sent an email to the applicant to confirm that the application was properly taken off the list, explained the steps that had to be taken, and attempted to address the applicant's confusion on a number of other issues. On August 5, 2026, the applicant finally filed his application materials in relatively acceptable form and the application was eventually set for this hearing.

[8] Self-represented litigants are required to know the rules under which litigation is conducted: *Kuzik v Hagel*, 2021 ABCA 241 at para 14. It appears the applicant not only was confused with respect to the rules but also had difficulty following the Case Management Officer's clear directions. In the circumstances, the applicant has not established an excuse for the delay that excuses or justifies the lateness.

[9] However, even assuming there is a reasonable excuse for the delay, the application must be dismissed as there is no reasonable chance of success on appeal.

[10] The appeal must be *prima facie* meritorious, or not frivolous: *Alberta Treasury Branches v Conserve Oil 1st Corporation*, 2016 ABCA 87 at para 6. It would be inappropriate to permit an appeal that has no chance of success to proceed by extending the time to appeal: *RD v LT*, 2020 ABCA 179 at paras 19, 22.

[11] A default judgment was granted in this matter by Poelman J in November 2019. In December 2024, the applicant's application to set aside the default judgment was heard by Hollins J in special chambers. The applicant had legal representation and both counsel submitted detailed written submissions. Hollins J dismissed the application to set aside the default judgment, and the order – signed by both counsel - was filed in February 2025.

[12] The order now appealed is an April 2026 order of Kuntz J in which she dismissed a second application to set aside the 2019 default judgment. The respondent on the application before Kuntz J had argued the matter was *res judicata*.

[13] The applicant asserts that Hollins J made statements during the special chambers hearing suggesting the case should be fully adjudicated. However, he did not appeal her refusal to set aside the default judgment.

[14] The applicant has raised no legal error in relation to Kuntz J's decision to dismiss the application to set aside Poelman J's order, specifically regarding her jurisdiction to grant relief already sought and denied by Hollins J.

[15] The proposed grounds of appeal in relation to the contempt finding are that the applicant was restricted to two minutes of oral submissions and the application was served only one day prior to the hearing. At a certain point during oral argument, Kuntz J told the applicant he would have two minutes to wrap up his submissions. As for short notice of the application, the applicant has not asserted or explained how he may have been prejudiced as a result. There is no chance of success on either of these arguments.

[16] Based on the materials filed, no other terms of the Kuntz J order appear to be in issue.

[17] As there is no chance of success on appeal, the application to extend time is denied.

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

Application heard on September 23, 2026

Reasons filed at Calgary, Alberta
this 1st day of October, 2026

Fagnan J.A.

Appearances:

Applicant M.R. Keihlbauch

I. Bernardo, KC
for the Respondent