



ORDR-8129430126-0163



Claim No: CA 005/2025

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF APPEAL

**BEFORE H.E. CHIEF JUSTICE WAYNE MARTIN, H.E. JUSTICE SIR PETER GROSS AND
H.E. JUSTICE RENE LE MIERE**

BETWEEN

LXT REAL ESTATE BROKER L.L.C

Claimant/Respondent

and

SIR REAL ESTATE LLC

Defendant/Appellant

REASONS OF THE COURT OF APPEAL FOR THE ORDER DATED 13 JANUARY 2026

Introduction

1. This is the Court's judgment on an appeal from a decision of the Court of First Instance ("CFI") concerning an application for security for costs. The Defendant appealed against an order of the Judge at first instance requiring the Claimant to provide security on specified terms. The Claimant sought permission to cross-appeal.
2. The appeal was heard on 12 January 2026. At the conclusion of the Hearing, the Court announced that the appeal would be allowed, that the application for security for costs would be remitted to the CFI for reconsideration in accordance with directions to be given by this Court, and that permission to cross-appeal would be refused. The Court also announced its conclusions on interim arrangements for security pending reconsideration by the CFI and on costs.

3. These reasons explain why the Court reached those conclusions and set out the orders made. In summary, the Court concluded that several key findings and evaluative judgments by the Judge at first instance regarding the scope, quantum, and effect of the security for costs order could not stand. Those matters must therefore be reconsidered afresh by the CFI, on the basis that the conditions for granting security for costs have been established and that the issues raised by the proposed cross-appeal have been determined adversely to the Claimant.
4. Until reconsideration, the existing order for security is to remain in place, and any security already posted pursuant to that order is to be maintained unless and until varied or revoked by the CFI. The Court also determined the appropriate orders regarding the costs of the appeal, the applications for permission to appeal and cross-appeal, and the costs of the application for security for costs before the CFI.
5. The Court ordered:
 1. The Appeal is allowed and the application for security is remitted to the Court of First Instance (CFI) for reconsideration on the terms set out in these orders.
 2. Pending reconsideration by the CFI, the order for security will remain in place, and any security posted pursuant to its terms will be maintained unless and until varied or revoked by the CFI following the remittal of the application.
 3. Any findings or conclusions of the Judge at first instance on the following matters:
 - (a) the portion of the proceedings to be covered by the security,
 - (b) the posting or staging of further security,
 - (c) the existence of any natural barrier or cap on the amount of security,
 - (d) the assessment of whether an order for security would risk stifling the claim,
 - (e) the effect of the Claimant's success on the Strike out application on the provision of security for the remainder of the case,
 - (f) any proposition that the presence of a litigation funder automatically entitles the Claimant to a reduction in the amount of the security to be posted, and
 - (g) the assessment of the quantum of the security to be provided, are set aside.

4. The Claimant's application for permission to cross appeal is dismissed.
5. The CFI is to deal with the remitted application for security on the basis that:
 - (a) the jurisdictional conditions for the grant of security have been satisfied; and
 - (b) the issues identified in Order 3 and the issues pertaining to the proposed cross appeal have been determined adversely to the Claimant as at the time of the original application for security

For the avoidance of doubt, nothing in these orders prevents the Claimant from raising any argument based on the Crabtree principle if and when the question of security is reconsidered following the filing of a counterclaim by the Defendant.

Otherwise, the quantum, timing and terms of the security to be posted by the Claimant are matters to be left to the determination of the CFI on the remitted application.

6. The order that there be no order in respect of the costs of the application for security is set aside and it is ordered that the costs of the application for security up to and including the determination by the Judge at first instance will be costs in the case.
7. The Claimant shall pay the Defendant's costs of:
 - (c) the initial application for permission to appeal;
 - (d) the renewed application for permission to appeal;
 - (e) the application for permission to cross-appeal; and
 - (f) the appeal;assessed and fixed in the amount of AED 550,000, to be paid within 14 days. If not paid in full within that period, interest shall accrue on any unpaid amount at the rate prescribed in respect of judgments of the Court.
8. The Defendant's application for permission to appeal against the costs order made by the Judge at first instance is dismissed as moot.
9. There is no order as to costs in respect of that application.

Background

6. The Claimant and the Defendant entered into a 10-year Partnership and Services Agreement under which the Claimant provided marketing and branding services in return for annual Partnership Fees, calculated as the higher of fixed minimum amounts or a percentage of the Defendant's gross revenues, together with specified financial reporting obligations.
7. The Claimant alleges that the Defendant breached the Agreement by failing to provide the required audited and accurate financial statements, underreporting gross revenue, underpaying Partnership Fees between January 2021 and June 2023, and unlawfully terminating the Agreement on 28 September 2023, thereby constituting repudiation.
8. The Claimant claims debt or damages of AED 405,351,504, exclusive of interest, costs, and any further discretionary relief.
9. On 17 October 2024, the Claimant filed its Claim Form.
10. On 27 November 2024, the Defendant filed an acknowledgement of service stating that it intends to defend the claim.

Security for costs application

11. On 10 December 2024, the Defendant filed an application for security for its costs of the proceedings in the amount of USD 1,750,000.
12. On 16 December 2024, the Defendant filed an application for an order that the Claim be struck out pursuant to Rule 4.16 of the Rules of the Dubai International Financial Centre Court ("RDC") and/or that immediate judgment be entered for the Defendant pursuant to RDC 24.1 (the "Strike-out Application"). The Defendant asserted that the Claimant's claims disclose no reasonable grounds, have been artificially inflated to obstruct the just disposal of proceedings, and/or constitute an abuse of the DIFC Court's process.
13. On 19 March 2025, the Judge at first instance delivered reasons for judgment on the security for costs application and ordered the Claimant to provide security for costs in the amount of USD 250,499.26, in respect of the Defendant's projected costs up to and including the Case Management Conference. His orders included an order that: "Security for costs may be extended post Case Management Conference subject to the outcome of the Strike-out Application."

14. The day after the Judge's orders with reasons were published, the Claimant emailed the Court seeking clarification of inconsistencies between the reasons and the orders.
15. On 26 March 2025, the Judge published amended orders with reasons, although the appended reasons were unchanged. The amended orders are:
 1. The Application is granted; Security for Costs for the projected costs amount will be permitted until the Strike-out Application.
 2. Quantum for Security for Costs shall be USD 250,499.26.
 3. The Security shall be paid into the Court account within 10 days from the date of issue of the amended Order.
 4. Costs of the Application shall be assessed on the standard basis. Parties shall file their costs submissions, to be no longer than 3 pages, within 7 working days of the date of issue of the amended Order.

(the "Security Order").

Appeal and cross-appeal

16. On 16 April 2025, the Defendant filed an application for permission to appeal those parts of the Security Order by which the Judge
 - (1) Ordered the Claimant to provide security for the Defendant's costs, but only in the sum of USD 250,499.26 and only up to the hearing of the Defendant's application to strike out the Claimant's claim (in circumstances where the Defendant's total costs of defending the claim to trial were estimated to be USD 2.5 million); and
 - (2) Amended the original version of his Order, which had been issued a week earlier, by removing or limiting the Defendant's absolute right (which was reflected in the original version of the Order, and which in any event arises as a matter of law) to apply for further security for costs following any case management conference, on the basis that the level and quantum of security would "not be subject to change or extension" (as stated at paragraphs 42 and 57 of the Amended Reasons).
17. On 2 July 2025, the Judge refused permission to appeal.
18. Also on 2 July 2025, having considered the parties' submissions on the costs of the security for costs application, the Judge ordered that there be no order as to costs (the "Costs Order"). In his reasons, the Judge found that the Defendant was not entirely

successful because the security ordered was less than sought, and concluded that the most reasonable outcome was to make no order as to costs.

19. On 22 July 2025, the Defendant filed a renewed application seeking permission to appeal the Security Order.
20. On 23 July 2025, the Defendant applied for permission to appeal the Costs Order. The Defendant contends that the Judge erred in making no order as to costs and that the Judge should have held that the Defendant was the successful party, with no reason to displace the general rule that the successful party should be awarded its costs.
21. On 25 August 2025, H.E. the Chief Justice allowed the renewed application in part, granted permission to appeal on ground 1, and refused permission on the other grounds. Ground 1 is:

“The Judge wrongly exercised his discretion, and/or wrongly evaluated the evidence before the Court, by ordering security only up to the hearing of [the Defendant’s] strike out application and awarding only USD 250,499.26 as security for its costs. In particular, but without prejudice to all of the submissions to made in support of [the Defendant’s] appeal:

(1) The Judge erred in principle and/or erred by taking into account an irrelevant consideration (that was unsupported by the evidence before the Court) in concluding that granting security up to trial risked stifling [the Claimant’s] claim. [The Claimant] had not raised any argument nor adduced any admissible or reliable evidence that its claim would be stifled if security was ordered up to trial, and, on the contrary, [the Claimant’s] own evidence (which was not admitted by the Defendant, in the absence of any disclosure by [the Claimant] of its own financial statements, or the financial statements of its shareholders) was that the [Claimant] had available resources from third party litigation funders to [the provide security for costs at least up to the sum of USD 1 million. The potential risk of ‘stifling’, therefore, was not a factor that the Judge was entitled to rely upon, and it was not a conclusion that he was entitled to draw on the evidence before the Court.

(2) The Judge erred in principle and/or erred by taking into account an irrelevant consideration in concluding that [the Claimant] would be in a better financial position if it succeeded on the Strike- out Application and obtained an order for payment of its costs, and/or that [the Defendant] could suspend payment of any costs order in those circumstances. The Judge was not in a position to assess, or to predict, or to pre-Judge, the hypothetical outcomes of [the Defendant’s] Strike-out Application and the Judge’s implied suggestion that [the Claimant] might be able to set off a costs order against any security was too speculative to be properly considered as part of his evaluation.

(3) The Judge erred in principle and/or erred by taking into account an irrelevant consideration in concluding that the existence of an alleged litigation funder (or funders) automatically entitled [the Claimant] to provide a reduced security figure. That conclusion is unsupported by any legal authority and is wrong as a matter of principle.

(4) The Judge failed to take into account a relevant consideration, being the additional prejudice to [the Defendant] associated with a lack of costs protection, and/or additional uncertainty and additional expense involved

in only ordering security for costs up to the Strike-out Application, rather than ordering security for [the Defendant's] costs of defending the whole proceedings (even if that security was to be paid in tranches)."

22. On 18 September 2025, the Claimant applied for permission to cross-appeal on the following ground.

"The learned Judge wrongly exercised his discretion and/or did not take into consideration a relevant factor in his multi-factorial assessment by ordering security when [the Defendant] (i) had not yet filed its defence, but (ii) had made multiple indications that it intends to file a counterclaim and/or cross-claims that overlap substantially with the subject matter of the claim. In particular:

- (1) The principle established in *B J Crabtree (Insulations) Ltd v GPT Communications Systems Ltd* (1990) 59 BLR 43 ("the Crabtree principle") is that where a counterclaim is based wholly or in a very substantial part on the same facts or substantially the same facts as the Claimant's own claim, the default position is that the Court will not order security for costs.
- (2) The Crabtree principle is a well-established principle in evaluating whether to order security for costs.
- (3) In [26] of the Judgment, the learned Judge recognised [the Claimant's] reliance on the Crabtree principle. However, the learned Judge then failed to state his reasons on why the Crabtree principle should not be followed in the circumstances of this case.
- (4) Had the learned Judge taken into account the Crabtree principle and applied it, the learned Judge would have found that security for the costs of the claim should not be ordered."

23. The Claimant sought orders that the Security Order be set aside, the Defendant's security application be dismissed, the security be released to the Claimant, and the Defendant pay the Claimant's costs of the Application.

24. In its Respondent's Notice, the Claimant submits that, alternatively, the Security Order should be upheld for the following further or alternative reason:

- (1) The learned Judge ordered that security for costs shall be provided until the resolution of the Strike-out Application.
- (2) The learned Judge refused to order security in respect of costs to be incurred after the Strike-out Application.
- (3) That conclusion should be upheld for the following further reason.
- (4) There is presently no basis, upon which the quantum of security may be assessed adequately in circumstances where the Strike-out Application remains extant, no defence and/or counterclaim or cross-claims have been pleaded, there is therefore no clarity on what the issues in the claim will be. There is also no agreed time estimate for trial, no agreement on whether expert evidence should be allowed,

and no realistic basis upon which the expenses associated with disclosure can be estimated. Therefore, the proper time for [the Defendant] to make a reasoned application for security for costs would be at the first case management conference. Prior to that point, the only costs for which [the Defendant] may want to seek security are those of the Strike-out Application.

Strike-out application

25. The Strike-out Application was heard by the case management Judge on 10 and 11 December 2025.
26. On 9 January 2026, the case management Judge ordered:
 - (1) The Strike-out and Immediate Judgment Application is dismissed, save in respect of the claims for breach of fiduciary duty advanced at paragraphs 7.2 and 33.15 of the Amended Particulars of Claim, which paragraphs and claims are hereby struck out pursuant to RDC 4.16 (1).
 - (2) The Claimant has permission to amend its Particulars of Claim in the form appended to this Order, subject to the order at 1 above striking out the paragraphs referred to.
 - (3) Failing agreement between the Parties in relation thereto, the allocation of liability for costs of and incidental to the Applications and their assessment, shall be decided on written submissions to be provided in accordance with directions to be agreed by the Parties or determined by the Court.
 - (4) Reasons are to follow.

Legal Framework

27. The RDC adopts a two-stage analysis for security for costs. Stage 1 is a mandatory factual gateway, while Stage 2 involves the Court's discretion.
28. At Stage 1, the applicant must establish that at least one of the conditions in RDC 25.103 is met. These conditions are jurisdictional prerequisites: unless a gateway condition is satisfied, the Court has no power to order security. This is a question of fact. In the present case, the Judge found that condition (2) was satisfied—namely, that the Claimant is a company and there is reason to believe it will be unable to pay the Defendant's costs if ordered to do so.

29. Once a gateway is established, the Court proceeds to Stage 2 and determines whether, in all the circumstances, it is just to order security. This is a discretionary assessment that considers factors such as whether security would stifle a genuine claim, the parties' conduct, proportionality, and the overall justice of the case.
30. A satisfied gateway does not entitle the applicant to security; it merely permits the Court to consider it. The ultimate decision is discretionary and guided by the overriding objective.
31. Where litigation is third-party funded, Practice Direction 2 of 2017 requires disclosure of the funder's identity and the existence of the funding agreement, although the terms of the agreement need not be disclosed unless ordered. The Practice Direction provides that the DIFC Courts may take into account a party's disclosure that it is a funded party when making determinations on applications for security for costs, but that the fact that a party is a funded party shall not by itself be determinative.
32. Where the appeal is directed solely at the Judge's exercise of discretion at Stage 2, the appellate court's intervention is constrained. Under RDC 44.117, an appeal may only be allowed where the decision was "wrong" or "unjust because of a serious procedural or other irregularity."
33. In the context of discretionary case-management decisions, this standard means that the appellate court will interfere only if the Judge erred in principle, took into account irrelevant matters, failed to consider relevant matters, or reached a conclusion that falls outside the range of reasonable decisions open to a Judge properly directing themselves.
34. Against that framework, the Defendant submits that the Judge wrongly exercised his discretion and/or wrongly evaluated the evidence in limiting security to the costs up to the strike-out hearing and in fixing the amount at USD 250,499.26. The Judge is said to have failed to properly assess the evidence of likely costs, given undue weight to factors said to justify a limited order, and failed to consider whether the order would adequately protect the Defendant from the real risk of irrecoverable costs. These errors, individually and cumulatively, if made out, render the decision "wrong" within the meaning of RDC 44.117 and justify appellate intervention.
35. If the Court of Appeal concludes that the Judge's discretionary assessment was wrong within the meaning of RDC 44.117, it has broad powers to intervene. Those powers include the ability to substitute its own order, for example, by increasing the amount of

security or extending it beyond the strike-out hearing, where the evidential record is sufficiently clear for the Court to determine the appropriate order itself.

36. Alternatively, the Court may remit the matter to the CFI for reconsideration. Remittal may be more appropriate where the Judge's error affects the factual evaluation in a way that requires fresh assessment, or where circumstances have materially changed since the original decision.

Interpretation of the Security Order

37. In its skeleton argument of 3 November 2025, the Claimant contended that the Security Order expressly leaves open the possibility of seeking further security thereafter.
38. In oral submissions, senior counsel for the Claimant, Mr Farhaz Khan KC, submitted that the Court should dismiss the appeal on the basis that, read fairly and generously, the Security Order permits the Defendant to seek further security after the resolution of the Strike-out Application, and that the Judge's reasons to the contrary are wrong.
39. The Court rejects that argument.
40. The Security Order, like any court order, must be interpreted in light of the reasons that led to it. As Lord Sumption explained in *Sans Souci Ltd v VRL Services Ltd* [2012] UKPC 6 at [13], the construction of a judicial order is a single, integrated process that goes beyond its bare language or the resolution of linguistic ambiguities. Its meaning depends on what the language would convey in the circumstances in which it was made, including the court's reasons, which provide an authoritative statement of the context and issues the order was intended to address and which are always admissible in interpretation.
41. Australian authorities support the proposition that ambiguity is not required before going beyond the court order. Court orders, whether ambiguous or not, should always be interpreted in the context of the reasons for judgment. It is therefore important to appreciate the close connection between court orders and the reasons for judgment from which they have derived. See, for example, *Athens v Randwick City Council* (2005) 64 NSWLR 58; *Yates Property Corporation Pty Ltd v Boland* (1998) 89 FCR 78; and *Australian Energy Ltd v Lennard Oil NL (No 2)* [1988] 2 Qd R 230.
42. Read together, the operative orders and the Schedule of Reasons confine security to the period up to and including the determination of the Strike-out Application, and they expressly state that the "level and quantum of Security is not subject to change". On that

construction, the Defendant is not permitted to apply for further security after the determination of the Strike-out Application.

43. That construction is supported by the following reasoning.

“1 Text of the order: Order [1] provides that “Security for Costs for the projected costs amount will be permitted until the Strike Out Application.” The temporal limit “until the Strike Out Application” fixes the endpoint.

2 In the “Level for Security for Costs” section of the reasons, the Judge identifies the strike-out as the “natural barrier” and, in [42], explains that granting security up to trial would risk stifling the claim by forcing the Claimant to commit excessive funds, thereby hindering its ability to meet its own costs beyond the Strike-out Application and Case Management Conference. This would be contrary to the overriding objective of proportionate case management. Security, therefore, “will not be subject to change or extension.” The reasons make clear that this is a deliberate case management choice to avoid stifling the claim.

3. The Conclusion section of the reasons reiterates at [57] that the amount of security will remain fixed, “the level and quantum of Security is not subject to change”, because, if the Strike-out Application fails, the Claimant will recover its costs, restoring financial balance between the parties.

4. Close attention to the Judge’s reasons is essential because the Judge amended the orders by omitting the order made on 19 March 2025 that “Security for Costs may be extended post Case Management Conference subject to the outcome of the Strike Out Application” because it was inconsistent with the reasons for judgment delivered on 19 March 2025.”

44. The proper interpretation of the Security Order has the following practical implications

“1 If the Strike Out Application is substantially granted, the case ends (subject to any residual issues), so further security is moot.

2 If the Strike Out Application is substantially dismissed: the Judge’s express bar on changing or extending security means the Defendant cannot rely on this order to seek more security for steps beyond the strike-out. Any attempt would need to be made by a fresh application on a new legal and factual basis (e.g., a material change of circumstances), and even then, it would run straight into the finding that security “is not subject to change or extension.”

45. On the proper interpretation of the Security Order, the Defendant cannot apply for further security after the Strike-out Application has been determined. Any contrary attempt would require a new application contending a material change—and would still have to overcome the Judge’s explicit case-management decision fixing the endpoint at the strike-out.

Grounds for allowing the appeal

46. The Appellant contends that the Judge erred in principle by confining security to the Strike-out Application.

47. In our judgment, the appeal must be allowed. The decision below was wrong and affected by errors of principle.
48. First, there was no evidential foundation for the finding that ordering security beyond strikeout would stifle the Claimant’s claim. To the contrary, the Claimant relied on a funding facility providing security of up to USD 1 million, and the Judge expressly acknowledged that the ordered security was well below that limit; yet gave no reason why a higher amount (still below USD 1 million) would prevent the claim from progressing. Further, there was no evidence excluding the prospect that the Claimant may have access to financial resources other than those available through the funding agreement which might be used to fund the claim and provide security for the Defendant’s costs. Treating stifling as a determinative consideration without evidence is an error of principle.
49. Secondly, the Judge reasoned that if the Claimant succeeded on strike-out, it would recover costs and be in a “better position”, and that the Defendant could “suspend payment” of any adverse costs award if further security were needed. The Defendant had no right to suspend payment of any adverse costs order, a matter exclusively for the Court. Those considerations are in any event speculative and/or irrelevant to the present risk addressed by security for costs; the Court must assess current risk, not hypothesise post-application outcomes. Considering irrelevant considerations is an error of principle.
50. Thirdly, the Judge erred and misdirected himself in law in concluding at [46] that the mere existence of a litigation funder and a funding agreement automatically justified a reduction in the amount of security for costs. The correct approach is not to treat funding as a categorical discount but to undertake a fact-sensitive, discretionary assessment of the evidence before the court. That assessment requires evaluating the substance of the funding arrangement and, critically, the funder’s financial capacity and the extent of its commitment to meet any adverse costs order. A presumption that the existence of litigation funding justifies a discount is inconsistent with that evaluative exercise and risks distorting the proper exercise of the court’s discretion.
51. Fourthly, the Judge failed to consider prejudice to the Defendant. Having found reason to believe the Claimant would be unable to pay the Defendant’s costs, the Judge did not weigh the prejudice to the Defendant of being left entirely unsecured for costs beyond strike-out if that application failed. That was a material consideration, the omission of which vitiates the exercise of the Judge’s discretion.

52. Fifthly, the Judge arbitrarily determined the quantum of security. The Judge's method of halving the Defendant's total estimate and then halving it again lacked a principled analysis of the work required for the selected milestone. That is an error of principle.
53. The errors identified go to the core of the reasoning and outcome, so the decision cannot stand. On a proper application of principle, these errors render the decision wrong, thereby satisfying the appellate standard under RDC 44.117.

Disposition of appeal

54. The question is whether this Court should substitute a new security order or remit the security application to the CFI.
55. The Defendant submitted that this Court should reject the staged approach to the provision of security and order that an appropriate amount should be posted now to secure the likely costs to be incurred by the Defendant up to and including trial. This is consistent with the position it took before the Judge, when it sought security of USD 1.75m to be provided in one single instalment. That amount was sought again before this Court.
56. In this context, there was argument about whether the Court should adopt a default position to the effect that security should be provided in a single instalment, subject to variation in an appropriate case, or whether the default position should be the provision of security in instalments, subject to variation in an appropriate case, noting that both positions find support in decisions in different common law jurisdictions.
57. This Court should follow the procedure mandated by the RDC, described above, without any fetter on the exercise of discretion in the second phase of the process by the assumption of a default position. The question of whether security should be provided in one instalment or in stages can only be answered by a consideration of all the relevant circumstances of the particular case, without a presumption or default position one way or the other.
58. Almost 11 months have passed since the application was heard, and, critically, the Strike-out Application has now been determined, altering the procedural landscape and the scope of costs exposure.
59. These developments and the fact-sensitive nature of security quantum and staging make it more suitable for the Judge actively managing the proceedings to reconsider the issue afresh.

60. Remittal avoids an artificial determination on an incomplete evidential foundation and permits integrated case-management directions. The appeal was therefore allowed, the Security Order set aside, and the security application remitted to the CFI for rehearing and fresh determination.

Cross-Appeal

61. The Claimant seeks permission to cross-appeal, contending that the Judge erred by failing to apply (or to explain the non-application of) the Crabtree principle, namely that security is generally inappropriate where a defendant advances a counterclaim raising substantially the same issues.
62. Applying RDC 44.19, we are not satisfied that the proposed cross-appeal has a real prospect of success, nor is there any compelling reason for it to be heard.
63. At the time of the security application, there was no pleaded defence or counterclaim, and the alleged overlap was speculative and unparticularised. In those circumstances, the Crabtree principle was not engaged. Had the Judge expressly considered its application, it could not have affected the outcome of the security application.
64. The Judge was entitled to assess security by reference to the claim as pleaded. The asserted omission to give reasons on the Crabtree principle does not render the order wrong or unjust. Permission to cross-appeal is therefore refused. This is not to say that the Crabtree principle might not be engaged at some time in the future, if a Counterclaim is brought.

Respondent's Notice

65. By the Respondent's Notice, the Claimant contends that the order should be affirmed because there was "presently no proper basis" to assess the quantum of security before defence/strike-out decisions and pleadings were settled. The absence of closed pleadings does not preclude the exercise of jurisdiction under RDC Part 25. Courts routinely adopt a stage-based approach, assessing security to the next procedural milestone. The Defendant's evidence of costs incurred to date and its estimate of future costs provided a proper and sufficient basis for that assessment. Accepting the Claimant's contention would undermine the protective purpose of security and render the mechanism ineffective. The alternative ground is therefore rejected.

Interim arrangements

66. Although the appeal has succeeded, it is appropriate that the existing security order remain in place until the CFI reconsiders the application. Maintaining the order preserves the status quo and avoids prejudice to either party during the remittal process. Keeping the security in place does not impose any additional financial burden on the Claimant, who has already arranged security under the Security Order. Immediate discharge could lead to renewed applications and procedural disruption, which would not serve the overriding objective.
67. Maintaining the order ensures that the Defendant retains the protection originally granted, while leaving it open to the CFI to vary or revoke the order after a full reconsideration on the correct principles. Any security already posted will therefore be maintained unless and until the CFI determines otherwise.

Findings and conclusions set aside

68. The appeal succeeds because the Judge's determinations on several key matters disclose errors of principle and cannot stand. The Judge's findings and conclusions on the following matters are therefore set aside.":
 - (a) the portion of the proceedings to be covered by the security posted;
 - (b) the posting or staging of further security;
 - (c) the existence of any natural barrier or cap at which to limit security;
 - (d) the assessment of whether an order for security would risk stifling the claim;
 - (e) the effect of the Claimant's success on the Strike Out Application on the provision of security for the remainder of the case;
 - (f) any proposition that the presence of a litigation funder automatically entitles the Claimant to a reduction in the amount of security; and
 - (g) the assessment of the quantum of security to be provided.
69. The Judge's findings and conclusions on these matters were determined on incorrect principles and without proper regard to the relevant considerations. The application is therefore remitted to the CFI for reconsideration in accordance with the guidance given in this judgment.

Directions on remittal

70. The application for security is remitted to the CFI for reconsideration on a defined basis to ensure clarity and procedural fairness. First, the CFI is to proceed on the footing that the jurisdictional conditions for granting security have been established; those matters are not in dispute and do not require further determination.
71. Secondly, the issues identified in Order 3—being the findings of the Judge at first instance that have been set aside—and the issues raised in the proposed cross-appeal are to be treated as having been determined adversely to the Claimant as at the time of the original application. This approach reflects the Court's conclusions and avoids reopening matters that have already been resolved.
72. For the avoidance of doubt, nothing in these orders prevents the Claimant from advancing any argument based on the Crabtree principle if or when the Defendant files a counterclaim and should the security question be reconsidered thereafter.
73. Subject to these directions, the quantum, timing, and terms of any security to be posted by the Claimant are matters for the CFI to determine on the remitted application, applying the correct principles and the guidance given in this judgment.

Costs Appeal Dismissed as Moot

74. The Defendant's application for permission to appeal against the costs order made by the Judge at first instance is dismissed as moot. This is because the costs order under challenge no longer exists: it has been set aside on the basis of the substantive appeal. With the underlying order vacated, there is nothing left for a separate costs appeal to determine. In these circumstances, it is appropriate that the application be dismissed and that there be no order as to costs in respect of that application.

Costs

75. The Judge ordered that there be no order as to costs of the security application, reasoning that neither party was wholly successful: security was granted, but at a significantly lower quantum and limited to the Strike-out Application, reflecting the Claimant's submissions. That reasoning substantially applies even after this appeal, as each party was partly successful and partly unsuccessful in the positions taken at the original hearing.
76. However, the fairer outcome is that the party ultimately successful in the case should receive the benefit of its costs of the original application. For that reason, the order for

no costs is set aside, and it is ordered that the costs of the application for security up to and including the determination by the Judge at first instance will be costs in the case.

77. The Defendant has achieved substantial success on this appeal. While not every argument advanced was accepted, and although the Defendant was not granted permission to appeal on all the grounds it sought in the initial and renewed applications, the Defendant ultimately obtained the principal relief sought.
78. The Court applies a practical and holistic approach—taking the rough with the smooth—which means acknowledging that, despite partial setbacks, the Defendant's overall success warrants an order for costs. This approach reflects that minor failures are outweighed by the main success, and the justice of the case is that the Defendant should recover its costs because it prevailed on the central issues and secured the relief sought.
79. Accordingly, the Claimant shall pay the Defendant's costs of: (a) the initial application for permission to appeal; (b) the renewed application for permission to appeal; (c) the application for permission to cross-appeal; and (d) the appeal itself.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 21 January 2026
At: 10am

