

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Salinger v. Nicola Mortgage Corporation*,
2025 BCCA 99

Date: 20250325
Docket: CA50452

Between:

Avraham Rod Salinger

Appellant
(Respondent)

And

Nicola Mortgage Corporation

Respondent
(Petitioner)

And

**0966040 B.C. Ltd. and Krystyna Salfinger aka Krystyna Salinger, as
represented by the Director of Maintenance Enforcement**

Respondents
(Respondents)

Before: The Honourable Madam Justice Bennett
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
February 11, 2025 (*Nicola Mortgage Corporation v. Salinger*,
Terrace Docket H21678).

The Appellant, appearing in person
(via videoconference):

A.R. Salinger

Counsel for the Respondent, Nicola
Mortgage Corporation
(via videoconference):

O. Verenca

Counsel for the Respondent, 0966040 B.C.
Ltd.
(via videoconference):

D.J. Manson

Counsel for the Respondent, Director of
Maintenance Enforcement
(via videoconference):

J.S. Platt
S.J. de Wit

Place and Date of Hearing:	Vancouver, British Columbia March 12, 2025
Place and Date of Judgment with Written Reasons to Follow:	Vancouver, British Columbia March 12, 2025
Place and Date of Written Reasons:	Vancouver, British Columbia March 25, 2025

Summary:

The appellant's application for a stay of proceedings was set down on an urgent basis by the Registrar. The underlying appeal is from an order approving sale of the appellant's home in the context of foreclosure proceedings. The sale was set to complete the day after the appellant's stay application. Held: Stay granted. On the limited record, there appears to be some merit to the appeal. If the house is sold for below its value, this will harm the appellant and other creditors. It is unlikely that harm can be later compensated. There is no evidence of prejudice to the buyers on this application. A short stay is granted until leave to appeal can be heard.

[1] The underlying appeal is from an order approving sale of the appellant's home in foreclosure proceedings. This is an urgent application to stay the order for sale pending an application for leave to appeal. I granted the application, setting a date for the leave to appeal application, with reasons to follow.

[2] The appellant, Avraham Rod Salinger (also known as Salfinger), owns a property in Terrace, B.C. The respondent, Nicola Mortgage Corporation ("Nicola") holds a first position mortgage on the appellant's home in the approximate amount of \$585,000. The respondent 0966040 BC Ltd. ("096") holds a second position mortgage valued at approximately \$717,000 as of December 2024. The Family Maintenance Enforcement Program ("FMEP") also has a judgment filed against the property in third position (counsel for FMEP appeared in a watching brief capacity on the application). On January 25, 2023, Nicola commenced foreclosure proceedings and obtained an order *nisi* of foreclosure with a three-month redemption period on October 31, 2023, which expired January 31, 2024, and an order for the conduct of sale effective February 1, 2024. The appellant applied to extend the redemption period, which was dismissed January 29, 2024. The appellant failed to pay the outstanding mortgage and costs within the redemption period.

[3] The appellant received an offer to purchase the property on January 31, 2024. Nicola and the appellant entered into a forbearance agreement, under which Nicola agreed to hold off on proceeding with the Order for Sale pending the completion of the January offer. That sale did not complete.

[4] On October 15, 2024, Nicola entered into an agreement with new purchasers to sell the property to them for the price of \$702,000. On November 16, 2024, Nicola applied for court approval of the October agreement, relying on three appraisals, which were in the \$700,000 range. The respondent 096 apparently (I say apparently as the reasons of Justice Harvey were not available as of the time of writing these reasons and I am relying on submissions) filed a market value appraisal of \$850,000. The appellant has filed several “comparable sales” in the range of \$1 million. I do not know if these were before Harvey J. The appellant sought to cross-examine some of the affiants who swore affidavits in support of the application for court approval. That application was dismissed by Justice Hori on January 17, 2025.

[5] The application for court approval of this sale was heard on January 29, 2025. Justice Harvey approved the sale on February 11, 2025. The order provided that if the appellant failed to deliver vacant possession of the property at noon on March 13, 2025, Nicola could enforce the order by writ of possession.

[6] The appellant appealed the order on February 19, 2025. 096 also appealed the order on March 4, 2025 (CA50504). The appellant has also appealed the decision of Justice Hori (CA50450).

[7] On March 12, 2025, the appellant filed an application to have his application for a stay of proceedings heard on an urgent basis. This application was granted by Registrar Outerbridge, who set the matter down for hearing later that day. As noted above, I granted a brief stay of the order with reasons to follow.

Legal framework

[8] The applicable statutory provisions are ss. 30(c) and 33 of the *Court of Appeal Act*, S.B.C. 2021, c. 6. They read as follows:

General powers of a justice

30 In an appeal or other matter before the court, a justice may do one or more of the following:

...

(c) make interim orders to prevent prejudice to any person

Stays of proceeding

33 (1) After an appeal or application for leave to appeal is brought, a justice may, on terms and conditions the justice considers appropriate, order a stay of all or part of proceedings, including execution, in the cause or matter from which the appeal is brought.

(2) After an appeal has been decided, a justice may, on terms and conditions the justice considers appropriate, do one or both of the following:

(a) make an order under subsection (1);

(b) make any other order to preserve the rights of the parties pending further proceedings.

(3) Without limiting subsection (1) or (2), a justice may order one or more of the following:

...

(b) that possession of land or personal property be given;

[9] The test for a stay of proceedings or execution is the three-part test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 334, 337, 340–42. The applicant must demonstrate: (1) there is some merit to the appeal or a serious question to be tried; (2) the applicant will suffer irreparable harm if the stay is refused; and, (3) the balance of convenience favours granting the stay. The ultimate consideration in deciding whether to grant a stay is the interests of justice: *Coburn v. Nagra*, 2001 BCCA 607 at para. 7.

Analysis

A serious question to be tried

[10] The application was brought on an urgent basis as the purchase was to complete the next day. Although the reasons for judgment had been ordered, they have not found their way to Harvey J. for signature, thus assessing error with any confidence is difficult. On the material available, it appears that the price obtained for the property may be significantly lower than its actual value, in which case, it is likely not a provident sale. However, at this stage, the record is not clear. The threshold for merit is not high, and I am prepared to find that, on the material before me, there is an arguable appeal. The issue of merit may well be revisited at the leave to appeal application with a more complete record.

Irreparable harm

[11] Nicola submits that any harm can be compensated by money, and therefore there is no irreparable harm. However, that is not quite correct. If the property is sold in a sale that is subsequently found to be non-provident, who would be responsible for damages to the appellant? That is not an easy question to answer. It seems to me that if the property is sold, and the appellant is successful on his appeal, he will suffer irreparable harm in that it would be very difficult, if not impossible, to recover the loss.

Balance of convenience

[12] If the sale proceeds, and the appellant is correct, that it is not a provident sale, Nicola will recover its funds, 096 will be owed in the range of \$600,000 by the appellant and FMEP will see nothing. Nicola submitted that the *bona fide* purchasers have been waiting since October to purchase the property, and Nicola might lose the sale if a stay is granted. First, there is no evidence that the potential purchasers will suffer any prejudice if a stay is granted, nor that they will walk away from the sale. This does not appear to be a situation where there is a domino effect of property sales. Next, the stay will be of short duration pending a leave to appeal application, which is set for March 27, 2025. In my view, the balance of convenience favours granting a stay.

Interests of justice

[13] The stay of proceedings will be for a short time in order for the parties to have a proper record, hopefully including the reasons for judgment, for a judge to assess whether leave to appeal should be granted.

[14] There appears to be no prejudice to Nicola or to the potential purchasers of the property. There is significant prejudice, indeed irreparable harm, if the property is sold at a price that is far below its actual worth.

[15] It is, in my view, in the interests of justice to grant the stay of proceedings from the order for sale pending the application for leave to appeal.

Disposition

[16] The stay of proceedings is granted to the date of the leave to appeal application, presently set for March 27, 2025.

“The Honourable Madam Justice Bennett”