IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Home Equity Mortgage Corporation v. Hirji,* 2025 BCSC 1364

Date: 20250501
Docket: H200040
Registry: Vancouver

Between:

Home Equity Mortgage Corporation

Petitioners

And:

Mohd Ali Hirji, Parin Mohamedali Hirji Lalani, The Owners, Strata Plan VR 44

Respondents

Before: Associate Judge Robertson

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:	C.E. Ewasiuk
The Respondent Mohd Ali Hirji, appearing in person:	M.A. Hirji
No other appearances	
Place and Date of Hearing:	Vancouver, B.C. May 1, 2025
Place and Date of Judgment:	Vancouver, B.C. May 1, 2025

[1] **THE COURT:** When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered. I have made such edits, without affecting the substance or final disposition.

[2] The application before the court today is for an order *nisi*, on the standard six-month redetermination period terms. The complicating factor is that it is not the usual or typical financial breach of payment terms that is being relied upon as the basis for default, but rather a breach of the covenant prohibiting subsequent financial encumbrances from being filed against title to the subject property.

[3] Specifically, there are two judgments registered on title in favour of the strata corporation that arise as a result of a rather long history of litigation between the mortgagor and the strata corporation. The history of that has been set out in the affidavit filed in support of this application and has been the subject of many issued reasons for judgment.

[4] As a brief summary, the mortgagors commenced an action against their strata on February 7, 2007 in which they claimed damages in excess of $1 billion for the strata's alleged failure to maintain and repair decks and outdoor areas adjacent to their strata property.

[5] That action was dismissed on November 6, 2015, in reasons indexed at *Hirji v. The Owners Strata Corporation Plan VR 44*, 2015 BCSC 2043. In addition, in further later reasons issued on February 22, 2016, indexed at *Hirji v. Owners Strata Corporation VR44*, 2016 BCSC 548, the court awarded the strata special costs, later assessed by the registrar in the amount of $919,549.26.

[6] That original decision was appealed. On September 14, 2016, the Court of Appeal dismissed the appeal in reasons indexed at *Hirji v. The Owners Strata Corporation Plan VR 44*, 2016 BCCA 392. A request for a reconsideration by a three-member panel was dismissed on November 25, 2016, with reasons for that dismissed indexed at *Hirji v. The Owners Strata Plan VR 44*, 2016 BCCA 482. On April 27, 2017, an application was brought by the mortgagors for leave to appeal, and it was dismissed on that day with costs to the strata. A further application for reconsideration of the refusal to grant leave was denied on November 1, 2017.

[7] Subsequently, on May 6, 2019, the mortgagors commenced a second action against the strata. In that action, they claimed negligence in failing to maintain and repair common property, fraud, fraud against the courts, miscarriage of justice, and breaches of, among other statutes, the *Constitution Act,* R.S.B.C. 1996, c. 66 and *Canadian Charter of Rights and Freedoms*.

[8] On September 12, 2019, in reasons indexed at *Hirji v. The Owners Strata Corporation Plan VR 44*, 2019 BCSC 2356, this court ordered that the action be struck as an abuse of process largely because it was *res judicata*. In doing so, the court also prohibited the mortgagors from instituting any further legal proceedings against the strata without leave of the court or until payment was made in full with respect to the costs order.

[9] Once again, the mortgagors sought to appeal that decision. They were again unsuccessful, with those reasons being indexed at *Hirji v. The Owners Strata Corporation Plan VR 44*, 2020 BCCA 285. They again sought leave to appeal that decision to the Supreme Court of Canada. That was dismissed. The request for a reconsideration of that decision was denied.

[10] Turning, then, to these foreclosure proceedings, the mortgage terms have a provision which provides that it is a default under the mortgage if any charges are levied as against the property without the consent of the mortgagee. The title search has been filed, which evidences the two strata judgments as registered charges levied against the property, and renewed from time to time as required under the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78 to establish that they have not expired, as well as an underlying strata lien. There is sufficient evidence to conclude that the terms of the mortgage have been breached. The mortgagors are, therefore, in default.

[11] The mortgagors, represented by Mr. Mohd Hirji, today argue that there has been no default because, he argues, the judgments that have been granted against the mortgagors in favour of the strata are void *ab initio* as they were acquired through a fraud on the courts.

[12] The evidence in support of that is an affidavit filed November 16, 2020, by Mr. Hirji, in which he raises various issues in that respect. He attempted to take me through what he says is evidence of that. So that there is no confusion on the record, I did not do so, as that argument is without merit as things currently stand. This court cannot, on this application, look behind the judgments. The judgments are registered against title. The judgments have been reviewed at every level of the courts in this country, from the Court of Appeal to the Supreme Court of Canada, and neither of those higher appellate courts have determined that the judgments are void.

[13] The attempt by the mortgagors to have me, in essence, review those judgments on this hearing amounts to an impermissible collateral attack. See for example, *R. v. Bird*, 2019 SCC 7:

> [21] A collateral attack is an attack on an order "made in proceedings other than those whose specific object is the reversal, variation or nullification of the order" (*Wilson v. The Queen*, 1983 CanLII 35 (SCC), [1983] 2 S.C.R. 594, at p. 599; *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585, at para. 60). This Court has recognized a general rule against collateral attacks on court orders: with limited exceptions, an order issued by a court must be obeyed unless it is set aside in a proceeding taken for that purpose (*Maybrun*, at paras. 2-3; *R. v. Litchfield*, 1993 CanLII 44 (SCC), [1993] 4 S.C.R. 333, at p. 349; *Garland v. Consumers' Gas Co.*, 2004 SCC 25, [2004] 1 S.C.R. 629, at para. 71) …

[14] I will comment on one aspect of the argument being raised, however, that being events that arose after the court's costs determinations which give rise to those judgments. Specifically, an unclaimed court-funds requisition was mailed in accordance with the *Unclaimed Property Act*, S.B.C. 1999, c. 48 (the "*Act*") to put all parties on notice that funds remained in court to the credit of the appeal proceedings which had not been claimed.

[15] The funds held in court are the result of Mr. Hirji posting $8,000 as security for costs, pursuant to an order made in the appeal proceedings.

[16] Mr. Hirji argues that as a result of this requisition there is, in his submission, an acknowledgment of some sort, or order that the Court of Appeal has made, that the judgment is void or that there is possibly nothing further owing in respect of the judgment given that the strata left the funds in court and has not yet applied for them to be paid out.

[17] It is not. The requisition, and notice being given to all parties who may have an interest in those funds is standard practice when any funds are in court, and not dealt with, for the prescribed period of time. The requisition gives notice that the funds paid into the court are deemed to be unclaimed and puts the parties on notice that they will be deemed to be unclaimed under the *Act*, unless and until a party makes an application for payment out, and their entitlement established accordingly. It is not a determination that any particular party has an interest. Nor does it in any way undermine the judgments that have been pronounced to date and reviewed at all levels of courts.

[18] I am not persuaded that there is any defence to the mortgage default or the foreclosure process.

[19] I am prepared to grant the order *nisi* on the terms as sought.

[20] As to the amount required to redeem, during submissions I raised questions as to the calculations contained on the order *nisi*. Specifically, there was an interest rate noted on the statement of accounting and relief sought that did not match the interest rate which was stated in the petition itself, although the mortgage itself provided for a change in interest rates from time to time. Notably, given the length of time that the strata issues were being litigated during which the petitioner held these proceedings in abeyance, there is a significant time lapse between the filing of the petition in January 2020, and this hearing. I requested clarification in that respect, namely that there had been adjustments to the rate in accordance with the mortgage terms.

[21] Counsel confirmed on the record the fluctuations in rate. As such, I am prepared to make the order as sought with the amount payable and calculated currently at the 7.29%. There is, I do note, an affidavit with a statement of account to May 1, 2025 that evidences the amount due and owing as of that date at his amount.

[22] Approval as to the form of the order will be dispensed with.

“Associate Judge Robertson”