

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Callahan v. MNP Ltd., Liquidator of
0081092 B.C. Ltd.,
2025 BCCA 270*

Date: 20250722
Docket: CA50721

Between:

Edward Callahan

Appellant
(Respondent)

And

MNP Ltd., Liquidator of 0081092 B.C. Ltd.

Respondent
(Petitioner)

And

**Callahan AE #3 Trust, Robert Callahan, Bruce Callahan,
and Douglas Callahan**

Respondents
(Respondents)

Before: The Honourable Justice MacNaughton
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
May 5, 2025 (*In the Matter of 0081092 B.C. Ltd., In Liquidation*, 2025 BCSC 913,
Vancouver Docket S232641).

Oral Reasons for Judgment

Counsel for the Appellant:

P.J. Sullivan
G.M. Haggett

Counsel for the Respondent,
MNP Ltd., Liquidator of 0081092 B.C. Ltd.:

A.M. Nathanson
B. Hunt

Counsel for the Respondents,
Callahan AE #3 Trust, Robert Callahan, and
Bruce Callahan:

T. Young

Counsel for the Respondent,
Douglas Callahan:

A.H. Sabur
Y. Gao

Place and Date of Hearing:

Vancouver, British Columbia
July 21, 2025

Place and Date of Judgment:

Vancouver, British Columbia
July 22, 2025

Summary:

The appellant applies for a stay of execution of a court order approving the sale of the lands and assets of the respondent company, made pursuant to a liquidation process, until his appeal of the order is determined. The appellant submits that the judge erred by failing to exclude the successful bid for non-compliance with the prescribed bid template, or by failing to allow adjustments to be made to the other bids, and by rejecting a conditional bid made by one of the appellant's associated companies.

Held: Application dismissed. Although the appeal has some merit, the appellant did not establish that he would suffer irreparable harm if the stay was refused, and the balance of convenience favours the respondents. It is not in the interests of justice to grant the stay.

MACNAUGHTON J.A.:

Overview

[1] Edward Callahan (“Ted”) applies for a stay of Justice Loo’s May 5, 2025 order approving, in underlying private liquidation proceedings, the sale of 0081092 B.C. Ltd.’s lands and assets to 1531519 B.C. Ltd. (“519”). In these reasons, I will refer to Loo J.’s May 5, 2025 order as the “Sale Order” and to 0081092 B.C. Ltd as the “Company”. Justice Loo is seized of the liquidation proceedings.

[2] Justice Loo’s reasons for accepting the 519 offer to purchase are indexed at *In the Matter of 0081092 B.C. Ltd., in Liquidation*, 2025 BCSC 913 (the “Loo Decision”).

[3] Ted has appealed the Sale Order, and the appeal is currently scheduled for hearing on October 16, 2025. The sale to 519 is to complete on August 29, 2025.

[4] In this application, Ted seeks to stay the Sale Order until a decision has been rendered in his appeal.

Background

[5] The Company owns five contiguous parcels of significantly valuable land in Kelowna, consisting of approximately 18.5 acres, and various other assets (the “Assets”). The value of the land parcels (the “Property”) is derived primarily from their development potential. The Property is currently operated as a mobile home park under the name “Shasta Mobile Home Park”.

[6] The Company and its assets have been the subject of protracted and extensive litigation between Ted and his brothers, Robert, Bruce and Doug Callahan. Justice Newbury summarized the background of their family dispute in *Callahan v. Callahan*, 2022 BCCA 387 (the “2022 Appeal”):

[2] The four sons of Lloyd and Marjorie Callahan — Douglas, Edward, Bruce and Robert — received from their parents what should have been a legacy of financial security that could have been expected to extend into at

least the next generation. But while the enterprises they were given have been largely successful, the extreme disaffection that has plagued the relationship between [Ted] on the one hand and his three brothers on the other has overshadowed that success.

[3] The Callahan family began developing its substantial assets in the 1950s when the father, Lloyd, launched a trucking business operating in the northern part of the province. Eventually, he branched out into construction and real estate. Beginning when they were teenagers, each of the four brothers has been involved in some capacity in the family businesses. Each has some education or training relevant to real estate or construction. However, it was Ted who, at his father's request, left law school to assist Lloyd in extricating the Callahan companies from financial difficulties they encountered in the 1980s. Ted became general manager of the Callahan group of companies and as the chambers judge stated, oversaw their "administration, acquisition, financing, strategic planning, leasing, sales, and property management" for over twenty years. (At para. 31.)

[4] The "disputes and litigation" involving Ted, his brothers, and their father had begun by the date of death of Marjorie Callahan in 2002. For the most part, the chambers judge observed, Ted was the "outlier" in these disputes, as his brothers normally aligned with their father.

[5] Over the last twenty years, the enmity in the family has resulted in a series of long and costly proceedings of which this oppression action is only the most recent example. The past proceedings include a mediation/arbitration led by the late Mark Andrews, that lasted 14 years and finally achieved the separation of Ted's interests in several of the Callahan companies from those of Bob and Bruce; the "Hywood Proceedings", an oppression action brought by Ted which was dismissed in 2011 by Madam Justice Gerow (see 2011 BCSC 40); the "Chilkoot JV Proceeding," concerning certain properties in Yukon that were ultimately subdivided among the brothers; and in 2015, an unsuccessful application by the three brothers for the court-ordered winding-up of Shasta Properties Ltd. ("Shasta") under the "just and equitable" ground in s. 324 of the *Business Corporations Act*, S.B.C. 2002, c. 57 (the "Act"). ...

[7] In November 2020, the majority of the Company's shareholders resolved, by special resolution, to commence its liquidation. The 2022 Appeal upheld the liquidation resolution.

[8] The litigation between the brothers continued after the 2022 Appeal and the subsequent history was reviewed in *Callahan v. Ernst & Young Inc. (as Liquidator)*, 2025 BCCA 11.

[9] Ted applied to the Supreme Court of Canada for an extension of time and for leave to appeal from the 2022 Appeal. His application for an extension was granted but his leave application was dismissed: [2023] S.C.C.A. No. 15.

[10] After the 2022 Appeal, there were a number of applications and appearances by the parties and the liquidator—initially Ernst & Young Inc., replaced by MNP Ltd. (the “Liquidator”)—for orders regarding the sale process for the Property.

[11] Justice Loo was assigned as the case management judge, and in that role, rendered a number of decisions. Ted appealed two of them, issued in April 2024, to this Court. His appeal was dismissed from the bench with reasons to follow. In reasons indexed as *Callahan v. Ernst & Young Inc. (as Liquidator)*, the Court wrote:

[50] The chambers judge was tasked with making a discretionary order and his conclusions are entitled to considerable deference. Ted has not demonstrated any manifest error in the initial reasons for judgment or in the Supplemental reasons and there is no basis for this Court to interfere....

[51] In summary, the chambers judge considered the admissible evidence concerning appropriate terms to include in the Order. He exercised his discretion to arrive at a sales process that he considered to be reasonable, taking into account all of the *CCM [CCM Master Qualified Fund v. blutip Power Technologies Ltd., 2012 ONSC 1750]* factors.

[12] On July 11, 2024, Loo J. dismissed Ted’s application to vary the terms of the two-phase sealed bid process to be conducted by the liquidator.

[13] On October 30, 2024, Loo J. varied the target dates for marketing contemplated in his earlier order.

[14] In December 2024, after extensive submissions from all parties, Loo J. approved a specific process to market and sell the Property and for evaluating any sealed bids received by the Liquidator.

[15] That process was set out in two orders. A December 6, 2024 order governed the marketing and sale of the Property (the “December 6 Order”), and a December 5, 2024 order established the process for the submission, review, and evaluation of sealed bids (the “December 5 Order”).

[16] Under the December 5 Order, the Court was to make an Order approving a sale, which in the Court’s view was in the Company’s best interests, having regard to several listed factors (the “Bid Factors”):

11. ... the Court will then make an Order approving a sale on the basis of the bid which, in the Court’s view, is in the best interests of the Company, having regard to various factors, including the following Bid Information and Terms:
 - a. price, as the primary variable;
 - b. the identity, circumstances and ability of the bidder to successfully complete the proposed transaction, including any conditions precedent in favour of the bidder attached to the bid and the likelihood of waiver or satisfaction of such conditions;
 - c. the form of the bid;
 - d. factors affecting the speed, certainty and value of the transaction;
 - e. assets included in or excluded from the bid;
 - f. the proposed closing date of the transaction;
 - g. the amount of the deposit contemplated; and
 - h. the ability of the bidder to finance and ultimately consummate the proposed transaction.

[17] The December 5 Order required that bids “be substantially in the form of the asset purchase agreement template attached as Appendix ‘B’ to this Order”.

Appendix B contains the following provision in the preamble:

- B. The Vendor has agreed to sell and the Purchaser has agreed to purchase the Purchased Assets (as defined below) on the terms and conditions set forth in this Offer to Purchase.

[18] Appendix B defines the Purchased Assets as the Property, Chattels, and “the benefits of the Leases and Service Contracts arising from and after the Closing Date”.

[19] In turn, each of the terms “Property”, “Chattels”, “Leases” and “Service Contracts” are defined.

[20] The December 5 Order also noted that the highest, or any, sealed bid would not necessarily be accepted. The sealed bids were scheduled to be reviewed on May 5, 2025.

[21] On May 1, 2025, Ted sought to extend the bid deadline to October 6, 2025. Ted argued that a Court of Appeal decision—rendered in family proceedings between him and his former spouse that increased, by \$29 million, the amount he was required to pay to her for her interest in the growth of his business interests—caused him financial uncertainty and made it unfair to require him to submit a bid by May 5, 2025. Justice Loo dismissed Ted’s application on May 2, 2025.

[22] Ted also argued that there was a dispute between him and the Liquidator regarding access by his representatives to the tenants of the Shasta Mobile Home Park that was situated on the Property.

[23] In oral reasons cited as *In the Matter of 0081092 B.C. Ltd., in Liquidation*, 2025 BCSC 960, Loo J. dismissed Ted’s application, writing:

[39] In conclusion, much effort and time were spent by this Court and counsel in fashioning a fair process and timeline. In arriving at that process and that timeline, this Court considered the factors in *CCM Master Qualified Fund v. Blutip Power Technologies*, 2012 ONSC 1750 [“*CCM*”] which are relevant to the assessment of the reasonableness and adequacy of a court-supervised sales process. It also considered the requirements set out in the December 5 order, that the sale bid process would be conducted in a manner that protects the respective interests of the shareholders, as shareholders of the company, and that ensures fairness to all shareholders and phase 2 qualified bidders. For the reasons I have stated, I am not persuaded that this Court ought to exercise its discretion to extend the bid deadline as sought by Ted Callahan.

...

[41] I have found that neither the Court of Appeal’s decision in the family law proceeding nor the issue regarding the mobile home tenants makes the May 5 bid deadline unfair to Ted Callahan. Excluding otherwise qualified bidders from the process would be antithetical to one of the liquidator’s primary objectives under *CCM*, which is to optimize the chances in the particular circumstances of securing the best possible price for the assets up for sale.

[24] This decision is also the subject of an appeal.

[25] On May 5, 2025, the following six sealed bids were submitted for review by Loo J.:

- a) a bid from Ted;
- b) two bids from corporations controlled by Ted (Shasta Properties Ltd. (“SPL”) and Midwest Ventures Ltd.);
- c) two bids from 1531519 B.C. Ltd., a company controlled by the three other Callahan brothers;
- d) a bid from Infinity Properties Ltd., which Loo J. understood to be a company that was unrelated to the parties otherwise involved in this proceeding.

Loo Decision at para. 8.

[26] Two of these bids are material to this stay application:

- a) a bid from 519 for approximately \$42 million, which added a term to the purchase agreement to include various intellectual property assets in the purchase (the “519 Bid”); and
- b) the bid from SPL, for approximately \$45 million, which was subject to Ted being able to seek certainty regarding the \$29 million family law award made to his former spouse, ordered by this Court in *Bradley v. Callahan*, 2025 BCCA 69 (the “SPL Bid”).

[27] In his case management role, Loo J. accepted the 519 Bid, which included a term that the sale would include particular intellectual property owned by the vendor (the “IP Term”). Specifically, the IP Term provides that the sale would include:

... all intellectual property of every nature owned or used by the Vendor in connection with the business being carried out on the Lands, whether registered or unregistered, including the name ‘Shasta Mobile Home Park’ and all other trademarks, trade names, websites, social media sites, internet domain name registrations and email addresses” (the “IP term”).

[28] In reasons rendered on May 15, 2025, Loo J. rejected Ted’s argument that the bid was non-compliant with the terms of the December 5 Order due to the inclusion of the IP Term. He wrote:

[19] As stated, Ted Callahan argues that both of 519’s bids are non-compliant because of the IP terms contained in them. He submits that there is an ongoing dispute regarding the brothers’ use of the name “Shasta” and that this Court ought not to put its imprimatur upon that dispute by approving a bid containing the IP term. However, in my view, this argument ought not to be accepted.

[20] It appears uncontested that the mobile park on the Property has been known for many years as the Shasta Mobile Home Park. As submitted by the liquidator, the IP terms provide only that a sale under a 519 bid will include whatever interest in the intellectual property the Company presently owns. In other words, if there is a dispute in a future proceeding about the ownership of the Shasta name, an order of this Court approving a 519 bid will not affect the outcome of that dispute.

[21] I note that the December 5 order provides that the sealed bids must be “substantially” in the form of the template attached, and that the Bid Factors contemplate assets being included or excluded from the bid. Given the evidence described above, it is my view that the IP terms are not particularly material, and their inclusion in the 519 bids does not constitute a substantial departure from the template. Further, given that bids are specifically permitted to include or exclude assets, I am unable to find that the IP terms are prohibited by the December 5 order.

[29] In assessing the bids, Loo J. applied the Bid Factors. He concluded that the 519 Bid was in the best interests of the Company, as although it was approximately \$2.4 million lower than the SPL Bid, it was subject-free and compliant with the December orders.

[30] On approving the 519 Bid, Loo J. was satisfied that it did not substantially depart from the form of the template. He also found that it appeared “uncontested” that the mobile home park on the Property was known for many years as the Shasta Mobile Home Park. He rejected Ted’s argument that approving the 519 Bid would put the Court’s imprimatur on any dispute between the brothers over the use of the name “Shasta”: Loo Decision at paras. 19–21.

[31] Conversely, Loo J. rejected the SPL Bid due to the inclusion of conditions that were “so subjective as to [be] incapable of objective assessment or enforcement by the Liquidator” (adopting the liquidator’s opinion in that regard):

[25] The Bid Factors require this Court to consider “conditions precedent in favour of the bidder attached to the bid and the likelihood of waiver or satisfaction of such conditions,” as well as factors affecting the “certainty” of the transaction. If the SPL bid were accepted, I find that there would be significant risk that SPL would decide not to waive the subject conditions or declare them satisfied, and that the Company would be required in October 2025 to start or continue the sealed bid process anew.

[32] Accordingly, Loo J. approved the sale of the Property to 519 for \$42,621,112.

Legal principles

[33] Stays of proceedings are provided for by ss. 30(c) and 33 of the *Court of Appeal Act*, S.B.C. 2021, c. 6.

[34] The test that informs the Court’s discretion to issue a stay requires the applicant to demonstrate that:

- a) there is some merit to the appeal, or a serious question to be tried;
- b) the applicant will suffer irreparable harm if the stay is refused; and
- c) the balance of convenience favours granting the stay.

The overarching question is whether granting the stay is in the interests of justice: *Coburn v. Nagra*, 2001 BCCA 607 at para. 3; *Creative Wealth Media Lending LP 2016 v. Access Road Capital, LLC*, 2023 BCCA 208 at para. 33 (Chambers).

Analysis

[35] Ted submits that a stay is warranted in the circumstances of this case, noting that if it is not granted, the appeal set down for this matter would be moot by the time it is heard. He advances two grounds of appeal:

- a) that Loo J. erred by finding that the IP Term was not material and did not constitute a substantial departure from the requirements of the December 5

Order, such that the 519 Bid should have been excluded from consideration or adjusted bids should have been allowed; and

b) that Loo J. erred by excluding the SPL Bid.

[36] Although the specifics of the respondents' positions on this application vary slightly, the respondents are generally aligned in opposing the issuance of a stay.

[37] They note that Loo J.'s decision is the culmination of a nearly five-year liquidation process and submit that the applicant has not identified any reviewable error in Loo J.'s decision, which was an exercise of discretion and is owed deference as a result.

[38] I will now consider the three factors applicable to a stay application.

Serious question to be tried

[39] Ted correctly identifies that the threshold for granting a stay is based on an assessment that the appeal is not frivolous or vexatious, and presents a serious question to be tried: *Creative Wealth Media Lending LP 2016* at para. 33.

[40] Turning to Ted's first ground of appeal, which was the primary focus of his submissions, I agree that the intellectual property does not fall clearly within the definition of Purchased Assets in Appendix B to the December 5 Order. This was recognized by Loo J., who based his decision to accept the 519 Bid on his finding that it "did not constitute a substantial departure from the template" prescribed by the December 5 Order: Loo Decision at para. 21.

[41] The respondents submit that Loo J.'s decision reflects an exercise of discretion that is owed deference. They note Loo J.'s finding that the inclusion of the IP Term would not affect the outcome of any future dispute regarding ownership of the "Shasta" name, as the term only conveys ownership of whatever intellectual property the Company presently owns. They also submit that it was common ground among the parties that the sale of other assets, other than the Property itself, was contemplated by the December 5 Order, and that the successful bidder would

continue to operate the Property using the name “Shasta Mobile Home Park”. It cannot have been a surprise to Ted that the mobile home park would continue to be operated under the name Shasta Mobile Home Park until the development of the Property.

[42] I am not persuaded by Ted’s submissions that there is significant merit to this ground of appeal.

[43] The inclusion of the IP Term is unlikely to preclude Ted from asserting an ownership claim to the “Shasta” name. I note that, after Ted’s brothers voted, over his objection, to change the name of the Company to a numbered company, Ted registered the name Shasta Properties Ltd. in British Columbia and his brothers registered the name federally as a sole proprietorship.

[44] While intellectual property was not explicitly contemplated as part of the Company assets to be purchased under the December 5 Order, the order did not require that all bids be in the same form. It only required that a bid be “substantially” in the form of the attached Appendix B. The Bid Factors required an assessment of the assets that were included or excluded in any bid, which suggests that some variance was anticipated between bids.

[45] Although there may be little merit to this ground of appeal, I accept that it is sufficient to meet the low threshold required at this stage of analysis.

[46] As I have noted, the December 5 Order described the Purchased Assets as the Property, chattels, and various leases and service contracts. Justice Loo’s determination that the inclusion of the IP Term did not render the 519 Bid non-compliant may well be a valid exercise of discretion that does not give rise to any error. At this preliminary stage, however, I consider it at least arguable that intellectual property—limited in scope as it may be—was categorically different from the types of property articulated in the December 5 Order, such that Loo J. may have erred by finding the 519 Bid complied with the terms of the order.

[47] Accordingly, although the merit of this ground of appeal is dubious, I cannot conclude that it is frivolous or vexatious.

[48] I will next address Ted's second ground of appeal: that Loo J. erred in excluding the SPL Bid. Ted submits that Loo J. should have considered the SPL Bid in light of submissions made in a modification application that was heard a day before the sealed bids were opened, and that, in the context of that application, the conditions of the bid were capable of objective assessment.

[49] As the respondents submit, Loo J.'s discretionary decision is entitled to significant deference. Justice Loo was entitled to, and did, consider the Bid Factors in assessing the bids. Even if, as Ted submits, with the additional context from the modification application, the conditions could have been objectively assessed, Loo J. would have been entitled to place weight on the uncertainty that is intrinsically associated with a conditional offer.

[50] I do not find that there is a serious question to be tried in this regard.

Irreparable harm

[51] Ted submits that he will suffer irreparable harm if the stay is not granted, on two primary bases:

- a) that he has a sentimental attachment to the Company's property at issue; and
- b) that the appeal will become moot, with only the dispersion of funds remaining, if the stay is not granted.

[52] The respondents submit that Ted has not established irreparable harm, as sentimental attachment cannot constitute a basis for irreparable harm. They further submit that any harm that he may suffer could be rectified through monetary damages if he is successful on appeal.

[53] I acknowledge that, in some circumstances, the sale of "unique property" may constitute irreparable harm: *HGE Administrative Services Ltd. v. Perrick*, 2010

BCCA 576 (Chambers) at paras. 22–24. However, on this application, Ted characterizes the irreparable harm that he faces as resulting from the loss “of the developable lands that he has a sentimental connection to”.

[54] Ted has provided no authority for the proposition that potential loss of an asset with sentimental value may constitute irreparable harm. To the contrary, at least one appellate court, albeit in a different context, has held that it does not: see e.g., *Higgins v. Nova Scotia (Attorney General)*, 2013 NSCA 118 at para. 16.

[55] In the absence of any submissions regarding the uniqueness of the property, and of any authorities supporting the proposition that sentimental attachment may ground a finding of irreparable harm, I would not accede to the applicant’s submission that the sentimental value of the Company’s property equates to irreparable harm arising from its potential sale.

[56] I turn now to the applicant’s argument that dismissing this application would render the appeal moot. The applicant relies on *Dixon v. Morgan*, 2020 BCCA 200 (Chambers). In that case, Justice Goepel found that the sale of a residential property would lead to the appellant suffering irreparable harm, as the sale would render the appeal moot, leaving only the question of how to divide the proceeds of the sale: *Dixon* at para. 27.

[57] Ted submits that a similar rationale applies here: if the sale is not stayed, the only remaining issue would be the dispersion of the proceeds.

[58] *Dixon* is distinguishable in that, unlike in this case, the applicant in *Dixon* would have been forced to leave his residence if the stay was not granted: at para. 27. In this case, given my conclusion regarding the weight to be placed on sentimental connection to an asset, there is no such collateral impact that has been argued in this application.

[59] Accordingly, I find that the applicant has not satisfied me that he would suffer irreparable harm if the stay is not granted.

Balance of convenience

[60] I do not accept Ted’s submission that prejudice to the respondents from the issuance of a stay would be minimal. While it is true that no third-party bidders would be negatively impacted, it is clear that the respondents would be prejudiced. The Company initiated the liquidation process in November 2020. The parties have been embroiled in protracted litigation involving the Property throughout and beyond this period. This has come at extensive cost to all parties.

[61] Although the hearing of this appeal is scheduled for October 2025, I also do not accept the applicant’s submission that the delay resulting from a stay would only be one or two months. The case may not be decided on the day of the hearing, and the decision may be released months later. There may be subsequent leave applications. These real and potential delays must be considered not only independently, but also in the context of the years of litigation involving these parties and in relation to this liquidation process. The prejudice that the respondents would suffer is significant, which weighs in their favour in this stage of the assessment.

[62] I also remain alive to the respondents’ submission that this application, and the entire appeal, may be a further effort by Ted to delay the conclusion of these proceedings due to dissatisfaction with the result or the present state of affairs.

[63] The balance of convenience does not favour Ted. It is not clear that his concerns, and the harms that may arise from the sale of the Property prior to the hearing of this appeal, could not be fully remedied with monetary damages. Additionally, Ted has not provided compelling evidence or submissions in support of his concern that the sale would have significant negative impacts on any future litigation regarding the intellectual property affiliated with the Company, including the use of the “Shasta” name.

[64] Lastly, I note that the respondents Bruce and Robert Callahan are incurring a \$8,300 *per diem* cost of financing the 519 Bid and have pledged other assets as a part of their financing arrangements. While this cost is significant, it and other losses

resulting from any delay caused by a stay would arguably also be quantifiable and compensable by damages. Accordingly, I place relatively little weight on this factor.

[65] I note, too, that Ted is prepared to give an undertaking as to any damages that result from a stay. I acknowledge that this militates slightly in his favour in the analysis. Bruce and Robert submit that this undertaking would provide little comfort, however. This is understandable, given the uncertainty regarding the outcome, duration and timing of any assessment process and the consequences that a stay would have on their less tangible interests (such as relations with tenants of the Property) in the interim.

[66] There is no outcome of this application that would avoid prejudice to all parties. On the whole of the record and submissions before me, however, I find that the balance of convenience favours the respondents.

Interests of justice

[67] I find that on an overall assessment of the circumstances before me, it is not in the interests of justice to issue the stay of proceedings.

New evidence

[68] The applicant included in their application for this stay an application to adduce new evidence. I have not addressed that application in these reasons, both because I found it unnecessary to resolve this matter, and as the applicant has requested that I do not opine on the admissibility of the affidavits. I know of no basis on which I could consider these affidavits, in the absence of determining admissibility.

Disposition

[69] The stay of the Sale Order is denied.

“The Honourable Justice MacNaughton”