

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Stewart v. Ryan Mortgage Income Fund Inc.*,  
2025 BCCA 377

Date: 20251016  
Docket: CA50890

Between:

**Asheley Aaron Stewart**

Appellant  
(Respondent)

And

**Ryan Mortgage Income Fund Inc.**

Respondent  
(Petitioner)

Before: The Honourable Justice Edelman  
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated August 1, 2025 (*Ryan Mortgage Income Fund Inc. v. Stewart*, Prince George Docket 2261171).

## Oral Reasons for Judgment

The Appellant, appearing in person: A.A. Stewart

Counsel for the Respondent: J.E. Shragge

Place and Date of Hearing: Vancouver, British Columbia  
October 14, 2025

Place and Date of Judgment: Vancouver, British Columbia  
October 16, 2025

**Summary:**

*This is an application for leave to appeal. The applicant, Mr. Stewart, defaulted on a mortgage granted by the respondent over several rental properties. The respondent commenced foreclosure proceedings and obtained an order for conduct of sale of the properties. After being denied access to the properties by Mr. Stewart and his tenants, the respondent was also granted an order allowing it to force entry into the properties. Mr. Stewart seeks leave to appeal the order allowing forced entry.*

*Held: Leave to appeal denied. It is not in the interests of justice to grant leave as Mr. Stewart has not identified any prima facie meritorious grounds of appeal.*

**EDELMANN J.A.:**

**Nature of the Application**

[1] Mr. Stewart seeks leave to appeal an order allowing the respondent to force entry into several properties in order to market them for sale. If leave is granted, Mr. Stewart also applies to have that order stayed pending the hearing of the appeal.

**Background**

[2] In November 2020, Mr. Stewart granted the respondent a mortgage over several rental properties that he owns in Prince George. Mr. Stewart defaulted on the mortgage and the respondent commenced foreclosure proceedings.

[3] In August 2023, the respondent obtained an order giving it conduct of the sale of the properties. The order included a term compelling Mr. Stewart and any persons in possession of the properties to allow the respondent and its agents to inspect, appraise or show the properties to prospective buyers on any day except statutory holidays. Tenants moved into one or more of the properties after the order for conduct of sale was made.

[4] The respondent hired a realtor to market the properties. According to the respondent, Mr. Stewart and his tenants often refused to allow access to the properties. In October 2024, the respondent therefore applied for an order allowing forced entry into the properties. The hearing of that application was adjourned and eventually rescheduled for July 2025.

**Order Allowing Forced Entry**

[5] The chambers judge who heard the application granted the order allowing the respondent and its agents to force entry into the properties.

[6] In her reasons, the chambers judge noted several occasions on which realtors had arrived at the properties, sometimes to scheduled showings, only to be denied access by Mr. Stewart or his tenants. The chambers judge found evidence of at least one potential sale falling through for this reason.

[7] Mr. Stewart, who has said that he wishes to be present at all showings, provided some evidence of times he facilitated access. However, he also said that he is only available to show the properties on two days out of the week. The chambers judge found that this was not sufficient to give effect to the conduct of sale order.

**Application for Leave to Appeal**

[8] The following criteria are relevant when determining whether to grant leave:

- a) Whether the point on appeal is of significance to the practice;
- b) Whether the point raised is of significance to the action itself;
- c) Whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and
- d) Whether the appeal will unduly hinder the progress of the action.

See *Goldman, Sachs & Co. v. Sessions*, 2000 BCCA 326 at para. 10 (Chambers).

[9] The criteria for leave must be considered under the rubric of the interests of justice. Where the criteria are met, leave may still be denied if it would not be in the interests of justice to grant it: *Movassaghi v. Aghtai*, 2010 BCCA 175 at para. 27 (Chambers).

[10] Leave from a discretionary order will typically only be granted “where the order is clearly wrong or serious injustice will occur, or where discretion was not exercised judiciously or was exercised on a wrong principle”: *V.F. v. E.B.*, 2011 BCCA 238 at para. 23 (Chambers).

**a) Is the point on appeal of significance to the practice?**

[11] Mr. Stewart says that the proposed appeal is of significance to the practice for three reasons.

[12] First, he says that the appeal will clarify the rules governing notice in foreclosure proceedings where tenants have commenced their tenancy after a foreclosure has been made. Having reviewed the materials before me, it would appear that the tenants were given notice that the order for forced entry was being sought and did not appear at the hearing. It would also appear that none of the tenants have sought to appeal or vary the order.

[13] Second, Mr. Stewart alleges that the chambers judge admitted defective affidavits and says that the appeal will clarify the rules of admissibility in relation to hearsay in chambers proceedings.

[14] Third, he says that the appeal will add to the limited jurisprudence on the issue of forced entry in foreclosure proceedings.

[15] In my view, there is little of significance in the appeal that would clarify the second and third issues, which are well established in the jurisprudence.

**b) Is the point raised of significance to the action itself?**

[16] Mr. Stewart says that the points raised are of significance to the action itself because of the impact on the tenants. Mr. Stewart is not one of the tenants, nor does he reside in any of the affected properties. The appeal is not being brought by the tenants or on their behalf.

[17] At the hearing of the application, Mr. Stewart made allegations with respect to the manner in which the order is being enforced. However, should the manner that the process unfolded have been unfair to the tenants, they are the ones who would presumptively have standing to raise those issues on appeal. The only prejudice Mr. Stewart raises that impacts him directly is that he asserts he will lose the tenants if they continue to be subject to the order in question. Mr. Stewart concedes that all the tenancies started after the order for conduct of sale had been made, including the condition allowing access to the properties. Notably, he has not filed any supporting evidence from the tenants that would support his bare assertion, nor did he do so in the court below.

**c) Is the appeal *prima facie* meritorious?**

[18] I am not persuaded that any of the grounds proposed by Mr. Stewart are meritorious. It is not clear to me that any evidence considered by the chambers judge was inadmissible, nor that the contested evidence was central to her decision. Her findings of fact are subject to considerable deference from this Court and it is not clear how Mr. Stewart alleges her conclusions were the result of palpable and overriding error. To the contrary, on the face of the materials before her it would appear to have been open to her to conclude there were ongoing issues accessing the properties.

[19] As noted above, the tenants were notified of the hearing but did not participate. There was also no evidence filed from any of them about their alleged lack of cooperation with the order for conduct of sale. Mr. Stewart alleges that the order is being enforced in an unreasonable manner and that further conditions ought to have been included in the order. In my view, to the extent the order is being enforced in an abusive manner, that is an issue that can be addressed in the court below. The Supreme Court is in a much better position to assess the ongoing enforcement and possible modification of its order should the implementation be causing undue problems for the tenants or Mr. Stewart.

**d) Will the appeal unduly hinder the progress of the action?**

[20] The appeal itself will not hinder the progress of the action as the order will remain in force during the appeal unless it is stayed. This is a factor best considered on the stay application should leave be granted.

**e) Is it in the interests of justice to grant leave?**

[21] In my view, it is not in the interests of justice to grant leave. Mr. Stewart has not raised any *prima facie* meritorious grounds of appeal in which his interests are at stake.

[22] The application for leave to appeal is dismissed.

[23] As a result, the application for stay is moot. I therefore will not be addressing that application.

“The Honourable Justice Edelman”