COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Stewart v. Ryan Mortgage Income Fund Inc.,* 2026 BCCA 15

Date: 20260106
Docket: CA50890

Between:

Asheley Aaron Stewart

Appellant
(Respondent)

And

Ryan Mortgage Income Fund Inc.

Respondent
(Petitioner)

Before: The Honourable Chief Justice Marchand
The Honourable Justice Gomery
The Honourable Justice Francis

On an application to vary: An Order of the Court of Appeal for British Columbia, dated October 16, 2025 (*Stewart v. Ryan Mortgage Income Fund Inc.*, 2025 BCCA 377, Vancouver Docket CA50890).

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 January 6, 2026
Place and Date of Judgment:	Vancouver, British Columbia January 6, 2026

Summary:

The appellant asks the Court to grant a stay of Chan J.'s order (which authorized a lender to force entry of properties in foreclosure) and vary Justice Edelmann J.A.'s order (which denied both a stay of and leave to appeal Chan J.'s order). Held: Appeal dismissed. Justice Edelmann did not err in law, act on a wrong principle, or misconceive the evidence in any way that was material to the decision to refuse leave to appeal.

GOMERY J.A.:

Overview

[1] The appellant owns several residential properties in Prince George that have been in foreclosure since 2022. An order *nisi* of foreclosure was made in October 2022. Following expiration of the redemption period, the lender was granted an order for sale with exclusive conduct of sale in August 2023. To date, it has not managed to sell the properties. It complains that the appellant has not cooperated in showing them to prospective purchasers.

[2] On the lender's application, Justice Chan authorized the lender to force entry to three of the properties between the hours of 9:00 a.m. and 9:00 p.m., for the purpose of enforcing its rights under the order for conduct of sale. This was on August 1, 2025.

[3] The appellant applied for leave to appeal Chan J.'s order, and for a stay of the order until the appeal is heard. The application was dismissed by Justice Edelmann on October 16, 2025. His reasons are indexed at 2025 BCCA 377.

[4] The appellant asks us to vary Edelmann J.A.'s order and grant leave to appeal and a stay of Chan J.'s order in the court below. Alternatively, to the request for a stay, he seeks an order expediting the appeal.

[5] For the reasons that follow, I would dismiss the application to vary.

Justice Chan's reasons

[6] Justice Chan made the following findings:

a) There were many unsuccessful attempts to show the properties from at least January 2024 to the present (at para. 7);

b) There were 12 occasions when a realtor showed up and was unable to obtain access following notice to the appellant (at paras. 8–9);

c) Impeded access caused at least one potential sale to fall through (at para. 11);

d) It is clear from the appellant's affidavits that he is very reluctant to provide access for showings and it may be inferred that he wishes to draw out the process so that he has more time to obtain refinancing (at para. 15);

e) The lender's access to the properties has been impeded and it has not been able to adequately access the properties as required by the order for sale (at para. 16);

f) The appellant and the tenants are bound by the order for sale (at para. 16);

g) The amount owing by the appellant has grown from approximately $528,000 when the order *nisi* was pronounced in 2022 to almost $700,000 and there may well be a shortfall when the properties are sold (at para. 17); and

h) The appellant has failed to comply with the order for sale by restricting access to two days a week and only when he is able to be present (at para. 17).

Justice Edelmann's reasons

[7] Justice Edelmann identifies the settled criteria considered in determining whether to grant leave to appeal, namely:

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, is frivolous; and

d) Whether the appeal will unduly hinder the progress of the action:

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

[8] Justice Edelmann further notes that these criteria are guides to an assessment of the interests of justice and, even when they are satisfied, leave may still be denied if it would not be in the interests of justice to grant it, citing *Movassaghi v. Aghtai*, 2010 BCCA 175 at para. 27 (Chambers). He cites *V.F. v. E.B.*, 2011 BCCA 238 at para. 23 (Chambers) for the proposition that leave to appeal 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".

[9] Justice Edelmann identifies three issues raised by the appellant on appeal. The first concerns an absence of notice to tenants of the application for forced entry. The second concerns the admissibility of hearsay contained in the affidavits relied upon by Chan J. And the third concerns the adequacy of the jurisprudence pertaining to forced entry generally.

[10] Justice Edelmann finds that:

a) There is nothing to the point about notice to the tenants because they were notified that an application for forced entry was being sought, did not attend the hearing, and were not seeking to appeal or vary the order;

b) The other issues raised by the appellant are of little significance to the practice;

c) None of the issues is meritorious;

d) If the forced entry order is being enforced unreasonably or abusively, that is best addressed in the Supreme Court; and

e) It is not in the interests of justice to grant leave to appeal.

[11] Having determined that leave should not be granted, Edelmann J.A. declined to address the application for a stay of proceedings; it was moot.

Legal framework governing an application to vary

[12] The application to vary Edelmann J.A.'s order is brought pursuant to s. 29 of the *Court of Appeal Act*, S.B.C. 2021, c. 6. A division of the Court may cancel or vary an order made by a single justice, other than an order granting leave to appeal. However, a division will not interfere with the decision of a single Court of Appeal judge in chambers unless the Court is satisfied the chambers judge was wrong in law, or in principle, or misconceived the facts: *Haldorson v. Coquitlam (City)*, 2000 BCCA 672 at para. 7.

The appellant's arguments on this application to vary

[13] The appellant submits that Edelmann J.A. erred in finding that the tenants were given notice of the application in the court below, in concluding that Chan J. relied on hearsay evidence that was properly admissible, and in concluding that a decision on appeal will not add to the limited jurisprudence on the subject of forced entry. He contends that the proposed appeal is important to the practice of law because it raises for decision in this Court a controversy concerning the rights of tenants pursuant to s. 94 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78, and because the legal issues of the admissibility of hearsay in affidavits and the question of forced entry are generally significant. He submits that the proposed appeal is

important to the action, not bound to fail, and will not unduly interfere with progress in the underlying action.

[14] In oral submissions today, the appellant advanced other arguments pertaining to the fairness and implementation of the foreclosure process in the court below generally. As we explained to the appellant, those matters are not before us on this application. As Edelmann J.A. observed, the Supreme Court is in a much better position to assess the ongoing enforcement and possible modification of its order should implementation be causing difficulties for the appellant or his tenants. The order for sale requires court approval of proposed sales and any concerns as to the adequacy of offers presented may be addressed in that context.

Analysis

[15] Justice Edelmann's statement of the legal principles governing an application for leave to appeal is unimpeachable and undisputed by the appellant.

The issue concerning notice to the tenants

[16] The appellant argues that Edelmann J.A. erred in concluding that the tenants were given notice of the forced entry application. In October 2024, the lender had served the tenants with notice of an application for forced entry, but that application was adjourned by Associate Judge Krentz to address a preliminary objection by the appellant that the notice of application was defective in that it did not properly state the legal basis of the application and the lender's affidavits were not properly sworn or affirmed. The lender prepared fresh affidavits for the application heard by Chan J. in August 2025. It did not amend its notice of application or prepare a fresh notice of application.

[17] The failure to amend the notice of application might have been led Chan J. to refuse the application, but it is clear from the two application responses filed by the appellant that he understood the legal basis for the order sought and was prepared to address the application on its merits. In the circumstances, I do not think that the

judge was obliged to refuse the application or that her decision to hear it raises any issue of general significance.

[18] I should add that the appellant complains today that he and his former lawyer did not have adequate notice that the application would proceed before Chan J. when it did. This complaint is not supported on the record. He was represented by counsel on the application. There is nothing to indicate that any objection was taken to proceeding or that an adjournment was sought.

[19] The appellant says that, for the application before Chan J., the materials were not served on the tenants. He contends that fresh service on the tenants was required by R. 8-1(7) of the *Supreme Court Civil Rules*.

[20] The argument is technical because it relies on technical deficiencies in the materials prepared for the first application. Moreover, it is doubtful that further notice to the tenants was required. The tenants obtain their rights of possession through the appellant, whose interest in the property has been under foreclosure since the order *nisi* was made: *Royal Bank of Canada v. Ng*, [1999] B.C.J. No. 741 (S.C., M.), 1999 CanLII 6689. The tenancies post-date the order for sale. It expressly provides that any person in possession of the properties must "permit any duly authorized agent acting on behalf of the [lender] to inspect, appraise or show to any prospective purchaser, the Property including the interior of the premises between the hours of 9:00 a.m. and 9:00 p.m. Monday through Saturday inclusive but excluding statutory holidays". The order for sale was included in the materials sent to the tenants with the original forced entry application.

[21] The appellant relies on s. 94 of the *Residential Tenancy Act*. It states:

> 94 Despite any other enactment, no order of a court in a proceeding involving a foreclosure, an estate or a matrimonial dispute or another proceeding that affects possession of a rental unit is enforceable against a tenant of the rental unit unless the tenant was a party to the proceeding.

[22] Section 94 must be understood in light of a line of authority dating back to *CIBC v. Garneau* (1986), 1 B.C.L.R. (2d) 53 (S.C.) at para. 14, 1986 CanLII 992. It

holds that, in a foreclosure context, s. 94 (then s. 50(4) of preceding legislation) only applies to tenants until the order *nisi* is pronounced and does not protect tenants under tenancies that come into existence subsequently.

[23] In *First National Financial Corp. v. Sirotka*, 2011 BCSC 340, at para. 11, Master Young (as she then was) followed *CIBC v. Garneau* and *Royal Bank of Canada v. Ng* and held that the tenants entitled to notice would be those whose tenancy was established preceding the filing of a certificate of pending litigation (an event that takes place prior to obtaining an order *nisi*).

[24] The appellant submits that these authorities are contradicted by *SWS Marketing Inc. v. Zavier*, 2024 BCSC 2178. I do not agree. *SWS Marketing* involved an order for sale made to resolve a dispute among owners who were parties to a joint venture. Justice Burke ordered that the order for sale be amended to preserve for the tenants the protection of notice provisions required under the *Residential Tenancy Act*. The rights assured to tenants under the *Act* are not to be prejudiced by disputes among different factions within the landlord. The position of tenants vis-à-vis a lender who is entitled to realize upon the landlord's property given as security for a debt, after the order *nisi* has been made, is substantially different.

[25] In *Sirotka*, Master Young added that good foreclosure practice requires the lender to attempt to notify persons in possession of an impending application for an order for sale. Here, it is clear that attempts to notify tenants were made at various stages in the proceeding. At no stage have the tenants responded by coming to court.

[26] The appellant submits that R. 8-1(7) required service of an amended notice of application on the tenants. The rule requires service of a notice of an application on parties of record together with "every other person, other than a party, who may be affected by the orders sought". The service requirement is engaged by an order that affects the legal interests of a person, and not only their personal circumstances. For example, a long-term houseguest of a person who is the subject of an application for

an order for possession will be affected personally if the order is made, but need not be served with the application.

[27] The appellant's argument based on R. 8-1(7) is subject to the same legal infirmity as his other arguments. The infirmity is that the tenants' assertion of a legal position in opposition to the lender's right to have the property sold is doubtful, at best.

[28] In short, I do not agree that there is significant merit to the service issue raised by the appellant. Nor do I discern in the authorities a controversy as to the rights of tenants in foreclosure proceedings that warrants attention from this Court.

Issue as to the admissibility of affidavits

[29] The appellant maintains that the affidavits submitted by the lender and relied upon by Chan J. contain hearsay statements that were not admissible in evidence. This is in reference to two affidavits made by a realtor, Ms. O'Neill, and one made by a disappointed potential purchaser, Mr. Hinkley. The appellant acknowledges that hearsay is admissible on this kind of application pursuant to R. 22-2(13) on information and belief, if the source of the information is given. Ms. O'Neill recounts what she was told by other realtors about appointments made to view the properties where the appellant did not show up. The appellant's objection is that Ms. O'Neill's affidavits do not always: (1) state who provided the information; or (2) assert Ms. O'Neill's belief in the truth of the information provided to her. He relies on *Ulrich v. Ulrich*, 2004 BCSC 95 at paras. 21–24.

[30] Justice Chan addressed the hearsay objection as follows:

> [6] With respect to the objection of hearsay evidence, I note this is not a final order and hearsay is admissible. Mr. Stewart objects to the admissibility of the activity logs prepared by Ms. O'Neill. In these activity logs, Ms. O'Neill writes information about showings provided by other realtors to her, including for example, whether the other realtor was able to access the properties. Hearsay may be admissible if the source of the information is provided. In these circumstances there is some indicia of reliability, as the information provided to Ms. O'Neill is from other realtors in the course of their work. I find the reports made to Ms. O'Neill admissible, as the source of the information is

> stated with the names of the realtors, and the dates the information was provided in the affidavit.

[31] Unfortunately, the appellant has not included all of Ms. O'Neill's affidavits in the application record on this application to vary. Exhibits to the affidavits are omitted. In particular, the record includes only the affidavit attaching the activity logs discussed by Chan J., and not the activity logs themselves.

[32] Justice Edelmann rejects the argument that Chan J.'s findings were grounded on inadmissible evidence. He states at para. 18:

> 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.

[33] Ms. O'Neill's principal affidavit lacks the language usually used to establish the admissibility of statements made on information and belief for their truth. However, reading the affidavit as a whole, I do not doubt that the affiant is asserting her belief in the statements she attributes to others. She identifies those others by name. I agree with Edelmann J.A. that Ms. O'Neill's affidavits, taken together with the other evidence to which Chan J. referred, provided a proper evidentiary basis for the findings made by the judge.

[34] In sum, the appellant's objections to the admissibility of Ms. O'Neill's affidavits lack merit.

The issue of forced entry generally

[35] The appellant submits that the only case that speaks to the issue of forced entry in foreclosure proceedings is *CIBC Mortgages Inc. v. Zhang*, 2022 BCSC 21, at para. 91, and that it is a case that offers very limited guidance. I am unpersuaded that appellate guidance is called for. This is the kind of issue that should be addressed by front-line judicial officers—justices and associate judges of the Supreme Court—who deal with foreclosure proceedings regularly. If conflicts arise in

the jurisprudence or questions of broad principle are engaged, then this Court may need to intervene to resolve them. As matters stand, appellate intervention is unnecessary.

Conclusion

[36] Accordingly, I am unpersuaded that Edelmann J.A. erred in any way that should lead us to set aside his decision and grant leave to appeal. He did not err in law or act on a wrong principle. He did not misconceive the evidence in any way that is material to the decision to refuse leave to appeal. In other words, any technical deficiencies with Ms. O'Neill's affidavits and the absence of a fresh notice of application do not undermine Edelmann J.A.'s conclusion that it is not in the interests of justice to grant leave to appeal.

Disposition

[37] I would dismiss the application to vary Edelmann J.A.'s order.

[38] **MARCHAND C.J.B.C.**: I agree.

[39] **FRANCIS J.A.**: I agree.

[40] **MARCHAND C.J.B.C.**: The application to vary is dismissed.

"The Honourable Justice Gomery"