

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Canadian Imperial Bank of Commerce v. Nguyen*,
2026 BCSC 115

Date: 20260105
Docket: H240842
Registry: Vancouver

Between:

Canadian Imperial Bank of Commerce

Petitioner

And

**Tan Thuc Nguyen, Do Van Huynh, Olympia Trust Company, Minh Kien Le,
Huan Thanh Nguyen, The Crown in Right of British Columbia, Jade Chong also
known as Thi Ngoc Thuy Chong**

Respondents

Before: Associate Judge Muir

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

J. Van Netten

Counsel for the Respondent, Huan Thanh
Nguyen:

J. Lee

Counsel for the Respondent, Minh Kien Le:

A. Truong

Counsel for the Respondent, Olympia Trust
Company:

M. Wong

No other appearances

Place and Date of Hearing:

Vancouver, B.C.
January 5, 2026

Place and Date of Judgment:

Vancouver, B.C.
January 5, 2026

[1] **THE COURT:** This is an application by the respondent, Mr. Huan Thanh Nguyen (the “applicant”), the holder of the fourth and fifth mortgages on the property in foreclosure.

[2] The primary orders that he seeks are that the mortgage of the petitioner, Canadian Imperial Bank of Commerce (“CIBC”), be assigned to him, the holder of the fourth and fifth mortgages, and that the fourth and fifth mortgages held by him shall become first priority charges on the property. There are other orders sought, but I do not think they are particularly important to my reasons.

[3] The application is opposed by both CIBC and the second and third mortgagees on the basis that it offends what is known as the “redeem-up rule”, and further, that this is a discretionary order and should not be granted if it would lead to significant abuse or mischief.

[4] The obvious concern is that the applicant, Mr. Nguyen, seeks to place himself in priority of the second and third mortgagees. In addition, the potential is that having done so, he will seek an order absolute and foreclose them off title.

[5] The applicant objects to me relying on the materials provided by CIBC, that is, the response materials to the application, as they were provided late. I found it was not necessary to refer to them in any event, so I will not resort to them.

[6] The applicant relies on s. 14(1) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, which provides:

Mortgage may require mortgagee to assign

14(1) Despite any stipulation to the contrary, if a mortgagor is entitled to redeem, the mortgagor may require the mortgagee, or the mortgagee's personal representatives or assigns, instead of giving a certificate of payment or reconveying, and on the terms on which the mortgagee would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person as the mortgagor directs and the mortgagee is bound to assign and convey accordingly.

[7] They also rely on paragraphs 4 and 5 of the *order nisi*, paragraph 4 being the important one for present purposes, which says:

Upon the Amount Required to Redeem being paid into the Vancouver Registry of this Honourable Court at 800 Smithe Street, Vancouver, or to the lawyer for the Petitioner or (if there is no lawyer for the Petitioner) to the Petitioner, before Order Absolute or an Order approving a sale of the Lands is made, then the Petitioner shall reconvey the Lands, free and clear of all encumbrances in favour of the Petitioner, or by any person claiming by, through or under the Petitioner, to the Respondent that made payment.

And then paragraph 5 deals with the ability to seek order absolute.

[8] The issue raised here is dealt with in several cases referred to by the application respondents. The cases referred to by the applicant in support of his application are decisions rendered in other jurisdictions with different statutory frameworks, and I am not satisfied that it is appropriate to rely on them in those circumstances. The cases brought forward by the application respondents include *Bank of Montreal v. Oldroyd et al*, 2005 BCSC 1260, and *Scotia Mortgage Corporation v. Chin*, 2022 BCSC 1763.

[9] It is only necessary for me to refer to the *Scotia Mortgage* decision. It is a decision of Master Robertson (now Associate Judge Robertson), that deals quite extensively with the two issues that are raised by the respondents. She deals with the redeem-up rule in quite some detail, but it is only necessary, for my purposes, to deal with paras. 24, 25, and 26. Starting at para. 24:

[24] In *Teevan v. Smith*, (1982) 2 Ch. D. 724 (C.A.) at pg. 729, the court of chancery noted as follows in considering the rights of subsequent mortgagees to redeem under a provision of the *Conveyance and Law of Property Act* 1881, that being the original English equivalent to s. 14 of the *[Law and Equity Act]*:

Every mortgagor is entitled to redeem, but there is a difference in their rights. Where there is one mortgagor and one mortgagee, his right to redeem is absolute. But where there are several successor mortgagees the mortgagor can redeem that next to him without redeeming any other; but if he wishes to redeem any anterior mortgage he must also redeem all who are between that mortgagee and himself. A puisne mortgagee indeed is in rather a worse position than this; for, although he is entitled to redeem those above him, he cannot do so without foreclosing those between himself and the ultimate equity of redemption.

[25] At pg. 731, Lindley, L.J. quoted *Fisher* (Mortgages, 3rd ed., Vol. ii) at pg. 105 as follows:

A mortgagee is not bound to assign the estate, after payment, to the mortgagor or his nominee, if he have notice of an equitable claim by another person on the estate." That is, where there are several mortgages, the mortgagor, although entitled to redeem, is not entitled to call for a reconveyance from the first mortgage.

[Emphasis added by Master Robertson]

[26] These concepts were approved by this court in *Gulf Estates Ltd. v. Rix*, 1985 CanLII 392 (BCSC), where Chief Justice [McEachern] stated as follows:

[12] In the leading case of *Teevan v. Smith* (1882), 20 Ch. D. 724 (C.A.), Jessel M.R. had to consider the same section and, after discussing the state of the law before this enactment, he concluded that where there is more than one mortgagee, a mortgagor is only entitled to redeem within the language of section 15 if he redeems all mortgages.

[13] The situation is well stated in *Falconbridge on Mortgages*, 4th ed. (1977), at p. 389, as follows:

The mortgagee is bound to reconvey to the person best entitled to the estate, that is, to the owner of the equity of redemption, if there is no subsequent encumbrancer, otherwise to the first subsequent encumbrancer, but he is not obliged to convey to any other person who by virtue of the conveyance would acquire the position of mortgagee in priority to persons better entitled to the legal estate.

[14] Turning to s. 15, a mortgagor is not "entitled to redeem" in the sense of permitting him to require a mortgagee to assign the mortgage to a third party when the equity of redemption is in a subsequent mortgagee. In such circumstances the most a mortgagor can do, without the consent of the mortgagee, is pay off the mortgage and obtain a discharge which, upon registration, operates as a conveyance of the estate to the person best entitled.

[10] I conclude from the law with respect to "redeeming up", that the applicant is not entitled to the order sought here, despite the wording of the *order nisi* which contemplates that, upon payment, any respondent would be entitled to a reconveyance clear of all encumbrances. That order, in my view, cannot undermine the clear law in this province, that the applicant is not entitled to a redemption that would give priority to him in advance of others with a better interest in title. If I am

wrong in that, I also consider the issue of mischief dealt with by Master Robertson. She deals with that at paras. 36 and 37 of her reasons:

[36] This Court has confirmed that the court ought not exercise its discretion to order an assignment under section 14 when mischief may result.

[37] In *Giroday Sawmills Ltd. v. Grun*, 2002 BCSC 1694, the petitioner had already assigned the mortgage, with the assignor seeking to substitute herself as a petitioner and seek order absolute of the subject property, where there were five subsequent mortgagees that would be vested off title. The court found that the assignor was a straw man for the mortgagor such that the orders, if granted, would result in mischief, noting

[22] Clearly he may not directly foreclose out subsequent encumbrances by redeeming the first mortgage himself. *Teevan* is authority for the principle that he may not do so indirectly, by requiring the mortgagee to assign the property to a third party [...]

[11] The mischief, of course, that would result here would be that if the order was granted it would give priority to the fourth and fifth mortgagee over the second and third mortgagees. Thus, I am of the view that the application must be dismissed, and I do so.

[12] CNSL M. WONG: Your Honour, I didn't speak to costs earlier, and I would like to make submissions on that.

[13] THE COURT: Yes. Go ahead.

[SUBMISSIONS RE COSTS]

[14] THE COURT: I am satisfied that the general rule should be applied, and that is that the second and third mortgagees are entitled to costs as set out in their mortgage terms, which should be added to their mortgages, as they were required to protect the mortgages outside of their own proceeding. CIBC will have its costs at scale B.

[15] I considered this somewhat novel. I would not ordinarily agree that special costs, as submitted by Olympia Trust, would be warranted absent whatever provisions there are in the mortgage.

“Muir A.J.”