

In the Court of Appeal of Alberta

Citation: Kong v Condominium Corporation No 0313339, 2026 ABCA 78

Date: 20260313
Docket: 2601-0039AC
Registry: Calgary

Between:

Zhao Xia Kong

Applicant

- and -

Condominium Corporation No. 0313339

Respondent

**Reasons for Decision of
The Honourable Justice Michelle Crighton**

Application to Stay Order

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The Honourable Justice Michelle Crighton**

[1] Zhao Xia Kong applies for a stay pending appeal of an order, pronounced on February 5, 2026, striking the appeal of a redemption order granted on June 24, 2024. The applicant seeks an immediate stay of all enforcement proceedings against the applicant's residential condominium property, including enforcement of the redemption order and five writs of enforcement registered against the property. For the reasons that follow, the application for a stay pending appeal is dismissed.

Background

[2] The underlying dispute arises from a charge of \$552.34 for the repair of a water supply line leak in the applicant's property. Three actions in the Court of King's Bench have followed, including the action that resulted in the redemption order. The applicant has also been granted an extension of time to appeal to this Court on separate matters: *Kong v Condominium Corporation No 0313339*, 2026 ABCA 3.

[3] An applications judge granted a redemption order declaring that the respondent had a valid charge over the applicant's property to collect on amounts owing, including condominium fees, charges for the water supply line repair, and applicable legal costs. The redemption period expired December 24, 2024. The respondent claims it has not taken any additional steps to foreclose on the property to date. The applicant claims sale proceedings were initiated by the respondent on the eve of appeal. There is no evidence before me that this occurred.

[4] On November 7, 2024, the applicant applied to the Court of King's Bench for a stay of enforcement of the redemption order, which was denied. The applicant attempted to appeal that decision to the same court, which was dismissed on May 21, 2025. An application to this Court for an extension of time to further appeal this decision was denied: *Kong v Condominium Corporation No 0313339*, 2026 ABCA 3 at para 26.

[5] On February 5, 2026, the applicant appealed the applications judge's redemption order at the Court of King's Bench. The transcript of that proceeding was not properly put before me. The applicant claims the appeal raised issues of jurisdiction, substantive legal error, and procedural fairness. The applicant further asserts that the appeal was not heard on the merits and was struck because interpretation services were not provided and proposed alternatives were not accepted by the chambers judge.

[6] The applicant was offered an interim stay of enforcement of the redemption order by consent of the respondent. The applicant disputed a provision allowing the respondent to provide

45 days written notice of its intention to bring active enforcement on the redemption order, resulting in this application being initiated by the applicant.

Law/Analysis

[7] The test for a stay pending appeal is set out in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 334, 111 DLR (4th) 385 [*RJR-MacDonald*]. The applicant must show that:

- i) There is a serious question to be determined on appeal;
- ii) The applicant will suffer irreparable harm if the stay is not granted; and
- iii) The balance of convenience favours granting the stay.

[8] The applicant asserts that each prong of the *RJR-MacDonald* test is met; the respondent disagrees. In addition, the parties dispute the scope of the stay that can be imposed. The applicant seeks a stay of all enforcement proceedings against the property. The respondent argues that there is no basis to stay orders or enforcement mechanisms that are not under appeal in this matter. In addition, it argues the stay application is a collateral attack on the decision to not grant a stay of the redemption order in the court below. The scope of a stay is only relevant if I determine the applicant has met the requirements for a stay to be imposed.

[9] Whether there is a serious question to be determined on appeal is a low threshold: *RJR-MacDonald* at 337. It is met where an appeal is arguable and is neither vexatious nor frivolous. It is not necessary to conduct an in-depth examination of the merits of the appeal when determining if a stay should be granted.

[10] The applicant asserts the chambers judge denied the applicant procedural fairness by striking the appeal in the court below, which constitutes a serious question on appeal. The respondent states that a determination of the merits cannot be made without a transcript but otherwise takes no position on whether the appeal raises a serious question. Based on the information provided, I will proceed as if the low threshold has been met, but had the respondent challenged this part of the test more vigorously, I would not likely have done so without resorting to the transcript.

[11] Irreparable harm is harm that can either not be quantified in monetary terms or cannot be cured: *RJR-MacDonald* at 341. An applicant bears the onus of demonstrating irreparable harm on

evidence that is clear, not speculative: *Aymax Aircraft Leasing Inc v Air X Charter Limited*, 2022 ABCA 252 at para 79; *Modry v Alberta Health Services*, 2015 ABCA 265 at para 82.

[12] The applicant argues that a monetary award could not repair the harm resulting from the sale of the property and any foreclosure proceeding would render the appeal moot. The applicant refers to evidence demonstrating limited financial means and an inability to secure alternative housing if the property is sold.

[13] The respondent asserts there is no evidence that a judicial sale is imminent or that the applicant could not redeem the mortgage if a sale was initiated. In addition, it argues that irreparable harm does not arise out of the sale of property unless the property is proven to be unique. Finally, the respondent argues there is no evidence before the court regarding the applicant's income, assets, impecuniosity, efforts to obtain financing, or inability to secure alternative housing.

[14] I am not satisfied the applicant has met the onus of demonstrating irreparable harm with clear, unspeculative evidence. There is no evidence before me to corroborate the claim that the applicant has limited financial means and would be unable to secure alternative housing if the property is sold. In addition, the appeal would not be moot if the property was sold. The underlying issue that prompted the litigation relates to unpaid condominium fees, charges for the water supply line repair, and applicable legal costs. This issue can still be determined if enforcement measures are initiated.

[15] Because the applicant has not demonstrated irreparable harm, I need not determine the balance of convenience, but it does not favour granting a stay. Briefly, the balance of convenience considers if the applicant will suffer greater harm if the stay is not granted than the respondent will suffer if a stay is granted. While the applicant claims the respondent will suffer minimal prejudice if the stay is granted, namely a delay in enforcement while the appeal is heard, a stay would jeopardize the respondent's priority to validly enforce against the only known asset of the applicant, and promptness is necessary in foreclosure proceedings: *Canadian Western Trust Co v Robson*, 2003 ABCA 63 at para 13.

Disposition

[16] The application for a stay pending appeal is dismissed. Because I have dismissed the stay, there is no need to determine the scope of the stay available to the applicant.

[17] The applicant seeks costs in her favour while the respondent seeks solicitor and own client costs or in the alternative, double costs under Schedule 2, Column 3.

[18] In my view, there is no reason to depart from the default rule that awards costs under the appropriate column to the successful party. However, as this application is for non-monetary relief, the appropriate column is Column 1 plus disbursements. The respondent is entitled to costs on that basis.

[19] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order or judgment.

Written submissions filed on February 27, 2026 and March 4, 2026

Reasons filed at Calgary, Alberta
this 13th day of March, 2026

Crighton J.A.

Appearances:

Applicant Z. Kong

J. Gilbert

E. Berney

for the Respondent