IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Nicola Mortgage Corporation v. Salinger,* 2026 BCSC 493

Date: 20260313
Docket: H21678
Registry: Terrace

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Between:

Nicola Mortgage Corporation

Petitioner

And:

Avraham Rod Salinger, 0966040 B.C. Ltd., Krystyna Salfinger aka Krystyna Salinger, as represented by the Director of Maintenance Enforcement, John Doe and Jane Doe

Respondents

Before: The Honourable Justice Morley

Oral Reasons for Judgment

Counsel for the Petitioner:	D. Carroll
The Respondent Appearing on His Own Behalf:	A. R. Salinger
Counsel for the Respondent Director of Maintenance Enforcement:	J. Platt
Place and Date of Hearing:	Prince George, B.C. February 18, 2026
Place and Date of Judgment:	Terrace, B.C. March 13, 2026

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I. OVERVIEW

[1] Nicola Mortgage Corporation ("Nicola") applies for a final order of foreclosure (traditionally known as "order absolute") against a residential property at 3101 Solomon Way in Terrace (the "Property"), owned by the respondent Avraham Salinger.

[2] The mortgage is in arrears, Nicola has obtained Order Nisi, and the redemption period — as extended by past forbearance agreements — has now expired. It follows that Nicola is entitled to a final order of foreclosure, unless Mr. Salinger can ask that the redemption period be extended and I conclude that it should.

[3] I use the word "can" because Nicola argues that the terms of an April 2025 Forbearance Agreement, in which he consented to a final order of foreclosure once the forbearance period expired, prevent Mr. Salinger from even arguing for an extension to the redemption period now.

[4] Assuming Mr. Salinger still can ask for an extension, whether he should in fact get one turns on whether there is a "reasonable prospect of payment" and "sufficient value in the property to secure the outstanding indebtedness": *Imor Capital Corp. v. Bullet Enterprises Ltd.*, 2014 BCSC 2540, at para. 9, citing *MacDonald Development Corp. v. Canada House on Robson Ltd.*, 1999 B.C.J. No. 1138 (S.C.) at para. 26. While Nicola does not deny that there is sufficient value to secure its mortgage debt, it denies there is a reasonable prospect of payment.

[5] For his part, Mr. Salinger brings an application seeking to stay this petition pending determination of a notice of civil claim he brought against Nicola and others and/or taxation of the legal fees Nicola is claiming.

[6] For reasons I will set out at greater length, I do not think this is an appropriate case for a stay because Mr. Salinger has not demonstrated a *prima facie* case or that the balance of convenience favours a stay. I find both that the parties' April 2025 Forbearance Agreement should be enforced in the circumstances and that

Mr. Salinger has not established a reasonable prospect of payment if I were to extend the redemption period. I therefore grant a final order of foreclosure.

II. FACTUAL BACKGROUND

A. Parties and Subject Matter of Foreclosure Proceeding

[7] Nicola's first mortgage that is the basis of this foreclosure petition was filed in the land title office on March 8, 2021 against the Property under charge number CA8825883. Mr. Salinger is the borrower. The Property is legally described as PID 018-841-759, Lot 4, District Lot 6248, Range 5, Coast District Plan PRP14059. There is a second mortgage held by the respondent 0966040 B.C. Ltd. At the time of the original foreclosure petition, a charge had been filed on behalf of Mr. Salinger's ex-wife, although that appears to now be resolved.

[8] The mortgage went into default. On January 25, 2023, more than three years ago, Nicola commenced this proceeding by way of petition.

B. History of Foreclosure Proceeding Up to April 2025

[9] Mr. Salinger persuaded Nicola that more value could be obtained if he could do repairs on the property. In February 2023, they entered into the First Forbearance Agreement and Nicola advanced some funds for the repairs. That first Forbearance Agreement included a clause that on expiry, which was set in May 2023, Mr. Salinger irrevocably committed to foreclosure.

[10] On October 31, 2023, after the expiry of the First Forbearance Agreement, Nicola obtained an Order Nisi of Foreclosure. The redemption period was shortened to three months (i.e., expiring January 31, 2024), presumably in partial recognition of this First Forbearance Agreement.

[11] The amount of the mortgage debt was set at $467,787.60 plus interest at 8.54% per annum (or $100.41 per day) plus costs and "any amount which may become due to the Petitioner for taxes, insurance premiums, appraisal, inspection and maintenance fees and such other costs and expenses reasonably incurred by the Petitioner to monitor, safeguard and maintain the Petitioner's security interest."

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[12] The court gave Nicola conduct of sale effective February 1, 2024, i.e., the day after the redemption period expired.

[13] Nicola has received no payments towards the mortgage indebtedness since the Order Nisi.

[14] Mr. Salinger was unable to sell the property and applied to extend the redemption period. That application was dismissed by Justice Thomas on January 29, 2024.

[15] On January 31, 2024, Mr. Salinger obtained an offer to purchase the Property, which was set to close in May 2024. In March 2024, Nicola and Mr. Salinger agreed to a Second Forbearance Agreement to allow this sale to complete, and Mr. Salinger obtained court approval for it. Unfortunately, the sale did not in fact complete.

[16] Nicola then listed the property for sale. On October 15, 2024, Nicola obtained an offer to purchase the Property (the "October 2024 Sale"). Mr. Salinger opposed approval of the October 2024 Sale on the grounds the price was improvident.

[17] Mr. Salinger sought to cross-examine some of Nicola's affiants on its application to approve the October 2024 Sale. This application was heard and dismissed on January 17, 2025 by Justice Hori. On February 11, 2025, Justice Harvey approved the October 2024 Sale.

[18] In March, Mr. Salinger appealed both decisions and obtained a stay of closing of the sale in the October 2024 Sale ending the appeal. For its part, Nicola filed for a final order of foreclosure.

C. April 2025 Forbearance Agreement

[19] The parties resolved these competing legal proceedings with another forbearance agreement on April 3, 2025 (the "April 2025 Forbearance Agreement").

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[20] Under the April 2025 Forbearance Agreement, the second mortgagee, 0966040 B.C. Ltd. was given conduct of sale until October 2025, the appeals were abandoned, and Nicola's application for final order of foreclosure was adjourned generally.

[21] Clause 4(d) of the April 2025 Forbearance Agreement commits the respondents to consent to a final order of foreclosure once the agreement expired. I will analyze the text of this clause at greater length later.

[22] Neither Mr. Salinger nor 0966040 B.C. Ltd. were able to sell the property during the forbearance period.

D. Procedural Developments in Getting This Application Heard

[23] After the April 2025 Forbearance Agreement expired, Nicola sought to have this application set down for hearing.

[24] The parties, including 0966040 B.C. Ltd., appeared on November 17, 2025. The respondents obtained an adjournment, which was made peremptory on them.

[25] The matter came back to the Terrace assize on the week of December 15, 2025 (which was the last week in the calendar year). It was ultimately put over to the afternoon of the Friday of that week, December 19, which was the last regular court day before the winter break.

[26] Unfortunately, Associate Judge Keim, who was presiding over chambers, did not have time to address the application. She ordered that the application be adjourned and be set for half a day, with all parties having the right to attend by MS Teams and provided that the continuation could be scheduled in any registry.

[27] Mr. Salinger and counsel for 0966040 B.C. Ltd. said they were available for February 18, 2026. The Prince George registry had availability. On the morning of the hearing, counsel for the numbered company stated by email that he had another commitment. I declined to adjourn on that basis and heard Nicola's application for a final order of foreclosure.

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[28] Mr. Salinger asked for an adjournment on the basis that he has set down a stay application. With the consent of Nicola, I decided I would hear the stay application as well and therefore denied an adjournment on this basis.

[29] Mr. Salinger also raised the issue of whether the order of Associate Judge Keim permitting this to be heard in any registry was valid.

E. February 2026 Hearing to Date of Judgment

[30] The hearing before me took place on February 19, 2026. At the end of the hearing, I indicated that I would need to reserve to today's date (March 13, 2026). I provided that if there was a specific commitment for a specific amount of money to refinance between the date of the hearing and March 12, 2026, that fact could be provided to me through the Terrace registry and Nicola would be given an opportunity to put forward its perspective.

[31] Nothing was forthcoming prior to the March 12, 2026 date. This morning, Mr. Salinger indicated to me that he has an email from a lender interested in providing first mortgage financing in the amount of $480,500. This email was sent to 0966040 B.C. Ltd., which is apparently prepared to do what it needs to do to make this happen.

III. SHOULD I CONSIDER THE INFORMATION FROM THIS MORNING?

[32] Nicola objects to my considering the information Mr. Salinger provided me verbally this morning. It points out that neither 0966040 B.C. Ltd. nor Mr. Salinger has followed the direction I provided on February 19. It points out all the email says is that there is "interest" and that there is no firm commitment. Moreover, $480,500 is clearly less than the indebtedness, even on the most generous view to the respondents.

[33] I agree with these objections. It is clear that the respondents are not currently in a position to redeem and nothing provided materially changes the issue of whether there is a "reasonable prospect" for Nicola to be paid if the redemption period is extended, relative to what is already in the record.

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IV. CAN THIS APPLICATION BE HEARD OUTSIDE THE TERRACE REGISTRY?

[34] Before I get into an analysis of the substance of Mr. Salinger's application for a stay and Nicola's application for a final order of foreclosure, I will first address Mr. Salinger's argument that the matter cannot be heard out of the Prince George Registry at all because, he says, the local venue rule has not been properly displaced.

[35] The "local venue rule" is set out in s. 21(2) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253. If, as in this case, the land that is the subject of a foreclosure proceeding is in a municipality with a Supreme Court registry, the general rule is that all hearings must be heard in that registry, which, in this case, would be Terrace. However this is subject both to the Supreme Court Civil Rules and the phrase "unless the court orders otherwise".

[36] The purpose of the local venue rule is to promote access to justice for those affected by foreclosures, especially landowners and tenants. But as the phrase "unless the court orders otherwise" signifies, this local venue rule is a default rule and can be displaced at the discretion of a justice or associate judge. That discretion must of course consider the values the local venue rule is intended to protect and be exercised judicially.

[37] In this case, the clerk's notes and transcript of the hearing before Associate Judge Keim clearly indicate that she made precisely this order as a condition for making an adjournment, which was already peremptory on the respondents. She did not prevent the matter from coming back to Terrace as the local venue, but she recognized that this requirement might delay things further, in circumstances where there had already been a peremptory adjournment coming after a forbearance agreement. She was clearly trying to mitigate the prejudice to Nicola, as applicant, of another adjournment as a result of lack of chambers time in Terrace, and judged the benefits of a local venue to Mr. Salinger as being, in the circumstances, less

compelling than potentially compounding that delay by requiring that Terrace be the registry.

[38] Since this is an order of the court, and has not been appealed, the local venue rule does not apply unless Mr. Salinger can satisfy me not just that the order was wrong, or even “clearly wrong”, but that it should be set aside as a “nullity”.

[39] In support of this argument, Mr. Salinger invokes the principle that an order given without notice can be set aside: *Bache Halsey Stuart Shields Incorporated v. Charles*, 1982 CanLII 730 (BC SC). Mr. Salinger points out that the relief of having the local venue rule dispensed with has never been sought in a written notice of application by Nicola and, so, he says, he never had notice.

[40] As a general matter, *parties* must give notice of what they are seeking through a notice of application (although, in some cases, they may be able to get lesser-but-included relief from that sought in the notice of application or may get leave to modify their notice of application in chambers). But when a *presider* grants an adjournment, that presider can put *conditions* on the adjournment to lessen its prejudice even though these conditions were not specifically sought and therefore there is no *written* notice.

[41] That is because conditions on an adjournment are a lesser remedy than getting what the applicant wants, and the greater relief (in this case, a final order of foreclosure) includes the lesser (in this case, an adjournment with terms that would allow the matter to be heard more quickly than it would if the local venue rule was enforced). There must be considerable flexibility for conditions of adjournment to provide for relief that mitigates the prejudice against the party who wants to go ahead. Presiders are thus entitled to act creatively in the interests of justice.

[42] However, this does not mean the condition can be granted without any notice at all. Even where an order is a condition of an adjournment to mitigate the effects of that adjournment, there is still a basic principle of procedural fairness that the party affected by the condition must be given an effective opportunity to be heard before

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an order affecting their interests is given. A presider may try to come up with creative solutions to get a matter that has been unavoidably delayed heard as quickly as possible. But if the presider does this, procedural fairness requires giving the party that might be affected by the condition a clear indication that this is what the presider is thinking of doing and some opportunity to indicate their opposition and their reasons for that opposition.

[43] In this case, that is precisely what the associate judge did. First, she determined that Mr. Salinger had submissions that would clearly exceed the 20 minutes she had left. She then canvassed all the parties about her proposed solution of having the matter set down for half a day in the earliest available registry. Mr. Salinger opposed the abridgment of the local venue rule. He was given a chance to provide his reasons for this, including that he had difficulty with his hearing and with following along by video. The associate judge gave brief reasons acknowledging this concern and emphasizing that the matter could come on in Terrace if available, but also setting out the difficulty of getting a half day in Terrace in a reasonable time frame.

[44] This was thus clearly not an order "without notice" in the sense relevant to setting it aside. Mr. Salinger had notice and was given a chance to be heard. It was made to accommodate the equities at stake, in the context of a further adjournment of a matter already made peremptory. I do not believe I could set it aside and, in any event, would not do so.

V. SHOULD I GRANT MR. SALINGER A STAY?

[45] By way of a Notice of Application filed December 31, 2025, Mr. Salinger seeks a stay of the foreclosure proceeding pending:

a) Determination of a notice of civil claim filed against Nicola;

b) Taxation of Nicola's legal fees;

c) Costs of the hearings of January 16 and 17, 2025 in this proceeding;

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d) Determination of the validity of “mortgage impairment insurance” claimed by Nicola.

[46] The “notice of civil claim” referred to is Mr. Salinger’s Notice of Civil Claim in Terrace Registry Action No. Ter-S-S-22685 (the “22685 Action”).

[47] The heart of the factual allegations in the 22685 Action are:

a) that up until December 2025, all potential lenders approached by the Plaintiff Homeowner required an appraisal of the Property from a local appraiser,

b) that the only local appraiser in Terrace is a Mr. Cullis, who operates Cullis Appraisals,

c) that, on all occasions from mid-2023 onward, Mr. Cullis refused to provide an appraisal, citing an unexplained “conflict of interest”,

d) that, in fact, this was due to inappropriate collusion between Mr. Cullis and Nicola, and

e) that the inability to get another appraisal resulted in the failure of potential sales and a failure to obtain re-financing.

[48] The Notice of Civil Claim also contains an allegation that Nicola inappropriately disclosed settlement privileged discussions to the court in this proceeding, and failed to disclose connections between counsel for Nicola and members of this court who ruled in this proceeding. There is also an allegation that the October 2024 Agreement for sale was improvident, and caused problems getting an appropriate appraisal subsequently.

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A. Test For a Stay of Foreclosure Proceedings Because of Related Litigation

[49] It is clear that a court may stay a foreclosure proceeding if there is related litigation: *Fahey v. Hayashi*, 1993 CanLII 798 (BC CA) [*Fahey*]. However, there are some unresolved issues about when this should occur.

[50] *Fahey* involved a private mortgage granted by Mr. Hayashi to the wife of his business partner in a mining venture. The mortgage indebtedness consisted of the amount Mr. Hayashi originally agreed to settle the business litigation. When this settlement broke down, the business dispute was set down for trial. The Court of Appeal stayed the foreclosure proceeding pending the result of that trial.

[51] *Fahey* was decided before what is now the seminal case concerning the availability of interlocutory injunctions and stays of proceedings, namely *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311 [*RJR-MacDonald Inc.*] and did not explicitly address the three-part injunction test *RJR-MacDonald* adopted from *American Cyanamid Co. v. Ethicon Inc.*, [1975] A.C. 396 (H.L.).

[52] However, in substance, the Court of Appeal in *Fahey* conducted the *RJR-MacDonald* inquiry. Proudfoot J.A. asked whether Mr. Hayashi would suffer irreparable harm (calling it "prejudice") and implicitly considered whether the balance of convenience with the irreparable harm the petitioner would face outweighed the irreparable harm to Mr. Hayashi: *Fahey* at para. 10.

[53] Although I was unable to find a case in which the *RJR-Macdonald* test was explicitly applied to a stay of a foreclosure proceeding, it would be anomalous not to refer to a test that has been well-established for three decades in so many other cases.

[54] A stay should therefore only be granted if, but only if, the applicant can:

a) sustain a preliminary assessment of their case on the merits,

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b) show irreparable harm, and

c) persuade the court that the balance of convenience favours granting a stay.

[55] But while the general framework of *RJR-Macdonald* surely applies, there are some issues that arise specifically in the context of staying foreclosure proceedings.

[56] The first is that a stay pending disposition of civil litigation is not about the merits and balance of irreparable harm depending on the resolution of the foreclosure proceeding itself (which is intended to be summary and has a well-developed law about timing and equitable remedies within it), but based on *related* litigation. It is thus only available if the other litigation is sufficiently related to the foreclosure proceeding: *Royal Bank of Canada v. Kirkpatrick*, 2022 BCSC 811. So, for example, if the other proceeding involves different parties, it may not be appropriate to stay the foreclosure, as *Kirkpatrick* decides.

[57] Second, an unresolved issue is the test to be applied at the first stage of the *RJR-Macdonald* case. In *RJR-MacDonald* at p. 337, the Supreme Court of Canada followed the decision of the House of Lords in *American Cyanamid* in holding that the presumptive standard for this preliminary assessment is not whether the applicant for the injunction has a *prima facie* case, but whether there is a "serious question to be tried."

[58] A "serious question to be tried" is a much lower standard than a *prima facie* case and therefore does not require the same degree of evidence on the part of the applicant or the same potentially-prejudicial fact finding on the merits by the judge hearing the application. The Supreme Court of Canada stated the following about the indicators that a serious question to be tried exists (*RJR-MacDonald* at pp. 337-8):

> There are no specific requirements which must be met in order to satisfy this test. The threshold is a low one. The judge on the application must make a preliminary assessment of the merits of the case. […]

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> Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests [i.e., irreparable harm and the balance of convenience], even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable.

[59] The rationale, both for the House of Lords and the Supreme Court of Canada, in moving from a *prima facie* case to a “serious question to be tried” at the preliminary assessment of the merits stage was to avoid turning interlocutory injunction applications, which need to be decided quickly and early, into summary trials. As long as the judge deciding the injunction is persuaded that the ultimate claim on the merits is not frivolous or vexatious, their attention should be directed to what situation pending trial best minimizes irreparable harm to the ultimately successful party or, if there are broader public interest issues, addresses those, not digging into the merits. This should save time in injunction applications with the added benefit of avoiding premature findings that could be problematic for the trial judge who will be in a better position to rule on disputed points.

[60] However, there are exceptions to the generally low standard at the first stage. In *RJR-MacDonald*, the Supreme Court said the higher *prima facie* standard would be required if interlocutory injunctive relief would “effectively resolve the dispute between the parties” or if the merits of the claim could be resolved as a pure question of law: *RJR-MacDonald* at pp. 338-9. The *prima facie* standard is required for mandatory injunctions and *Mareva* orders.

[61] In my view, a stay of all foreclosure remedies pending resolution of a civil litigation whose pace is under the control of the mortgagor amounts to effectively resolving the dispute between the parties since it effectively extends the redemption period for years. As *Fahey* shows, this will sometimes be appropriate, but since it defeats the summary process under which foreclosures proceeds, it effectively resolves that proceeding, at least for a period much longer than would be available as a redemption period, and therefore requires meeting the *prima facie* standard.

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[62] Finally, the concept of “irreparable harm” needs to be sensitive to the already-equitable nature of foreclosure proceedings. In general, irreparable harm is harm that cannot be compensated for in damages, because, in general, what is available in a civil proceeding is damages. This principle that harm recoverable in damages is not the basis for an equitable interim remedy arises from the more general principle that equity only intervenes when there is a legal gap. Where there is a foreclosure proceeding, “irreparable” harm is harm that cannot be repaired either by damages at the end of the civil trial *or* in the foreclosure proceeding.

[63] I am thus satisfied that the *RJR-MacDonald* test applies to an application to stay a foreclosure proceeding pending determination of another civil proceeding, with the following modifications:

a) At the first stage of the test — the “preliminary assessment of the merits” — the question is the merits of the *related* proceeding.

b) The applicant must satisfy the court that they have a *prima facie* case in that other proceeding.

c) Among the questions that must be asked is whether that proceeding is sufficiently related to the foreclosure proceeding for a stay to be appropriate.

d) “Irreparable harm” must refer to harm that cannot be compensated for by success in the related proceeding (typically in the form of a damages award) *or* in the foreclosure proceeding.

B. Do the Issues Other Than the 22685 Action Justify a Stay?

[64] As I have noted, Mr. Salinger asks for the stay not simply with respect to his Notice of Civil Claim in the 22685 Action, but also pending determination of the amount of the mortgage indebtedness, including legal fees, costs of earlier applications, and what he refers to as “mortgage impairment insurance”.

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[65] I am not going to stay an order for final foreclosure on these grounds for two reasons:

a) These issues can all be addressed in the foreclosure proceeding itself.

b) None of these issues matter to whether an order for final foreclosure should be granted, at least on the litigation posture Nicola is adopting.

[66] On the first point, if an order absolute is appropriate, then the mortgage debt is no longer recoverable, pursuant to s. 33 of the *Property Law Act*, R.S.B.C. 1996, c. 377. If it is unsuccessful, Mr. Salinger can address all his points in this proceeding.

[67] The amount of the mortgage indebtedness is not relevant to this application. Nicola grants that there is sufficient equity to pay its mortgage debt and is resting its opposition to an extension of the redemption period on the April 2025 Forbearance Agreement and what it characterizes as the lack of evidence of a reasonable prospect of repayment even of the amount found to be due and owing in the order nisi (i.e. $467,787.60 plus $100.41 daily in interest).

[68] The result in this application depends on whether Mr. Salinger has established a "reasonable prospect" of repayment of *any* of the mortgage debt and thus does not depend on the allowable amounts for legal fees or "mortgage impairment insurance".

[69] These considerations also apply to the costs of the January 16 and 17, 2025 hearings. If, for some reason, these should be awarded in any event of the cause, I can address that after I have ruled on whether foreclosure should be granted. I can also address whether Nicola should get special costs, or any costs, notwithstanding s. 33 of the *Property Law Act* at that point.

C. Stay Pending Determination of 22685 Action

[70] I turn then to whether I should stay the foreclosure proceeding pending the hearing of the 22685 Action.

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[71] In my view, Mr. Salinger has not established a *prima facie* case.

[72] Mr. Salinger will likely not be able to establish a cause of action for any of the court orders made in this proceeding, since he will be up against the relitigation doctrines of abuse of process, issue estoppel and *res judicata*. While I am not deciding whether these aspects of his claim should be struck, I must presume regularity in my colleagues' presiding on various applications in this case and I am not prepared to stay the foreclosure proceeding on the basis he might be successful in attacking these decisions on the grounds of connections to counsel to Nicola.

[73] This would include the allegation that the court-approved sale in 2024 was "improvident". I understand Mr. Salinger appealed the contrary determination by this court. But he abandoned that appeal in return for the April 2025 Forbearance Agreement. Even if he had not abandoned the appeal, and even if it had been successful, it is difficult for me to imagine a successful civil action for acts taken further to a court-approved sale.

[74] With respect to Mr. Salinger's principal claim, namely that Mr. Cullis's refusal to work with him made it difficult for him to get another buyer or refinance, I also find a lack of a *prima facie* case. The claim that Mr. Cullis was influenced by Nicola comes down to hearsay from an unnamed lawyer who told Mr. Salinger that Mr. Cullis's purported "conflict of interest" was "due to Nicola". Even if I were to accept this evidence, it is not enough to show civil conspiracy or unlawful interference because there is nothing inherently unlawful or wrongful in declining work because of a real or perceived conflict of interest. Further, there is no evidence at all that *all* lenders insisted on an appraisal specifically from Mr. Cullis.

[75] I would therefore dismiss the application for a stay on the basis that there is no *prima face* case for success in the other action.

[76] If I am wrong about that, or if the correct test is a "serious question to be tried" at the preliminary assessment of the merits stage, then I would find that Mr. Salinger will suffer from irreparable harm if the stay is not granted, since even if

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he gets an extension on the redemption period, if he cannot refinance, he will have to leave his home before the civil action can plausibly be tried.

[77] However, I find that the balance of convenience would not favour a stay until this newly-filed civil action goes to trial. That would likely be a multi-year delay with the pace largely controlled by Mr. Salinger. The equities can more suitably be addressed in the foreclosure proceeding by considering whether the evidence of delay in getting a local appraiser justifies an extension to the redemption period now. A stay until a trial would overshoot any legitimate interest Mr. Salinger may have and would put Nicola at risk of not recovering the indebtedness until many years in the future and possibly not at all.

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VI. ARE THE RESPONDENTS ESTOPPED FROM REQUESTING AN EXTENSION TO THE REDEMPTION PERIOD BY THE APRIL 2025 FORBEARANCE AGREEMENT?

[78] The next issue I must consider is whether I should entertain Mr. Salinger's request for an extension of the redemption period in light of Clause 4(d) of the April 2025 Forbearance Agreement, which states as follows:

> If this Agreement terminates for any reason other than in accordance with Clause 2(a)(ii) herein, then upon Nicola continuing with the Foreclosure and re-setting the Final Order Application, all parties hereby irrevocably agree and consent to the relief sought by Nicola in the Final Order Application attached as Schedule A to this Agreement and the Debtor [i.e., Mr. Salinger] irrevocably consents to Nicola obtaining an immediate Writ of Possession for the Property if the Debtor or anyone claiming by or through the Debtor has failed to vacate the Property in accordance with this Agreement or any order granted pursuant to the Final Order Application.

[79] The exception of termination "in accordance with Clause 2(a)(ii)" refers to termination if Nicola was unable to obtain a release from the buyer under the disputed October 2024 Agreement. Since that release was in fact obtained, it does not apply.

[80] Since the "Final Order Application attached as Schedule A" is this application, Clause 4(d) commits 0966040 B.C. Ltd. and Mr. Salinger to agree to and consent to the relief sought. Obviously by asking for adjournments, seeking a stay and

ultimately opposing this application, Mr. Salinger is not doing what Clause 4(d) commits him to do. The question is what the legal consequences are.

[81] Forbearance agreements in which a foreclosure petitioner agrees not to pursue its remedies for some period of time in return for the respondent consenting to foreclosure and possession when the forbearance period comes to an end are obviously a practical and generally "win-win" way for first mortgagees, subsequent charge holders and property owners to compromise. Forbearance agreements should therefore be encouraged for the same reasons that settlement of civil actions should generally be encouraged, namely, to respect party autonomy and to reduce the systemic and private costs of lengthy proceedings.

[82] To be sure, remedies in a foreclosure proceeding are equitable in nature and a forbearance agreement cannot act as a "veto" on the court's exercise of its discretion: *Beem Credit Union v. Global City Properties (Aloha Estates) Ltd.*, 2026 BCSC 215 ["*Aloha Estates*"] at para. 21 (in relation to indemnity costs, but the same principle applies to the extension of a redemption period).

[83] However, as Associate Judge Robertson emphasizes, in *Aloha Estates* even though the court is not *bound* by a forbearance agreement in exercising its discretion, it must give such an agreement weight: *Aloha Estates* at para. 22. Indeed, in that case, he ordered indemnity costs although there would have been factors such that they would not have been ordered had the forbearance agreement not been in place: *Aloha Estates* at paras. 23–24.

[84] Of course, like any other contract, a forbearance agreement can in principle be challenged on the grounds of unconscionability, or inconsistency with public policy or mistake or fraud. But if the forbearance agreement is enforceable, then the signor cannot be heard to oppose the relief to which they committed. This can be justified either as enforcement of a negative covenant in the contract or on the principle of promissory estoppel that it is inequitable for a party who has made a promise someone else has relied on to their detriment to take a legal position inconsistent with that promise.

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[85] It is important to note that the forbearance agreement binds the *parties*, not the *court*. The court still has its discretion under s. 16(3) of the *Law and Equity Act* to extend the redemption period. But if the forbearance agreement is enforceable, the circumstances in which it would do this would be similar to the circumstances in which it would make an extension where foreclosure was unopposed. In other words, it will be very rare.

[86] There is no argument that the April 2025 Forbearance Agreement at issue here as unenforceable. It was entered into after the extension of the redemption period and after court-approval of a sale the respondents opposed. It gave them more time to find the buyer they considered to be possible. Nicola gave up an existing sale, which had been approved at first instance, and agreed to a delay in getting paid. Mr. Salinger acknowledge he received independent legal advice. The redemption period as extended by the various forbearance agreement far exceeds the default time of six months provided for by s. 16(2) of the *Law and Equity Act*.

[87] Since I consider Mr. Salinger to be estopped from asking for an extension of the redemption period, and since the redemption period has clearly expired, I would make a final order of foreclosure in accordance with the Order Nisi.

VII. HAVE THE RESPONDENTS MET TEST TO EXTEND REDEMPTION MATERIAL?

[88] If I am wrong that Mr. Salinger is estopped from asking for an extension to the redemption period, I would still not grant an extension in the circumstances. There is no firm commitment from any lender to refinance even up to the uncontested indebtedness. The main obstacle Mr. Salinger has claimed to be in the way, namely the lack of a suitable appraisal, has been addressed. There is nothing that would qualify as a “reasonable prospect” of payment.

[89] Mr. Salinger attributes the delays in getting the property sold to not being able to get another appraiser. The evidence does not demonstrate that this was the reason and, in any event, Mr. Salinger has had an appraisal for several months now

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and has not been able to obtain a firm commitment to first mortgage financing sufficient to discharge the indebtedness owed to the petitioner.

[90] Mr. Salinger attributes the difficulty in getting an appraisal at the level he thinks is appropriate to the sale arranged by Nicola that he opposed as improvident. He says the record of this transaction drags the value down. However, this sale was upheld and he abandoned the appeal, so I cannot *assume* it did not represent the value of the property at the time.

[91] I recognize that Mr. Salinger has had various life challenges, including that in 2021 his mother passed away. However, this foreclosure proceeding has been going on for more than three years, and none of his challenges justify a further extension of the redemption period.

VIII. ORDER

[92] I therefore dismiss Mr. Salinger's application for a stay and make the orders sought in paras. 1 through 4 in Nicola's Notice of Application. I will hear the parties on costs.

[SUBMISSIONS ON TIMING FOR POSSESSION AND COSTS]

[93] Mr. Salinger will deliver up vacant possession in 30 days. By consent, I will dispense with Ms. Platt's signature. The Order can be signed in counterpart.

[94] As a result of s. 32 of the *Property Law Act*, there will be no order as to costs.

"J. G. Morley, J."
The Honourable Justice Morley

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