

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Jerry Brar Mortgages Inc. v. Schuetz*,  
2025 BCSC 62

Date: 20250115  
Docket: H250146  
Registry: New Westminster

Between:

**Jerry Brar Mortgages Inc., Gobind Finance Ltd., Balbir Kaur Sangha,  
Manjit Singh Parhar, Jaswinder Kaur Parhar, Amarjit Singh Chahal,  
and Amerdeep Singh Chahal**

Petitioners

And

**Joerg Schuetz, Silke Petra Schuetz, and John Doe**

Respondents

- and -

Docket: H251930  
Registry: New Westminster

Between:

**1352001 B.C. LTD.**

Petitioner

And

**Joerg Schuetz, Silke Petra Schuetz Geb. Heise, Jerry Brar Mortgages Inc.  
Gobind Finance Ltd., Balbir Kaur Sangha, Manjit Singh Parhar,  
Jaswinder Kaur Parhar, Amarjit Singh Chahal, Amerdeep Singh Chahal, and  
Tenant or Occupants**

Respondents

Before: The Honourable Justice Kirchner

**Reasons for Judgment**

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H250146 and Respondents, Jerry Brar  
Mortgages Inc. Gobind Finance Ltd., Balbir  
Kaur Sangha, Manjit Singh Parhar,  
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H251930:

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Place and Date of Hearing:

New Westminster, B.C.  
November 19, 2024

Place and Date of Judgment:

New Westminster, B.C.  
January 15, 2025

**Table of Contents**

**INTRODUCTION ..... 4**  
**BACKGROUND..... 5**  
**LEGAL PRINCIPLES ..... 9**  
**ANALYSIS..... 10**  
**CONCLUSION..... 14**

**Introduction**

[1] The applicants, Joerg Schuetz and Silke Petra Schuetz, bring applications in each of these two foreclosure proceedings seeking to set aside orders *nisi* made at hearings they did not attend. Their application is brought under Rule 22-1(3) of the *Supreme Court Civil Rules*. They argue they failed to attend the hearings because they did not understand their purpose and, specifically, did not understand that the orders *nisi* would confirm the validity of the mortgage. They were represented by counsel at the time (who was not their counsel on these applications) but claim the lawyer had ceased work on the file because the Schuetzes had been unable to keep up the retainer.

[2] The applicants argue that Jerry Brar Mortgages Inc. and its principal, Jerry Brar, who are petitioners in one of the two foreclosure proceedings, conspired with other petitioners and other persons to persuade Mr. Schuetz to enter into a first and second mortgage for a property he owns in Langley, B.C. They allege that Mr. Brar and a lawyer introduced to them by Mr. Brar acted negligently and in breach of fiduciary duty in relation to the mortgage transactions. They also allege that Mr. Brar fraudulently misrepresented the terms of the mortgage and made false promises to renegotiate better terms in the future. They argue these points raise a defence that is worthy of investigation such that the orders *nisi* should now be set aside.

[3] The notices of application also seek, in the alternative, an order extending time to appeal the orders *nisi*. The alternative relief was not addressed in the Legal Basis section of either notice of application or spoken to in oral submissions. The test for an extension of time to appeal from an order of an Associate Judge is different to the one under Rule 22-1(3). In the absence of any submissions on the point, I decline to consider the alternative relief.

[4] For the reasons that follow, I dismiss the applications.

**Background**

[5] The applicants have owned the property in Langley since 2014. It is registered only in Mr. Schuetz’s name but both applicants are named as borrowers under the mortgage. The TD Bank had a mortgage on the property which presumably was granted by the applicants when they bought the property in 2014. In August 2022, Mr. Schuetz was looking to obtain a further mortgage and approached Mr. Brar who is a mortgage broker. He says he told Mr. Brar that under no circumstances did he want to replace the TD Bank mortgage as it had a favourable interest rate.

[6] Mr. Brar soon presented Mr. Schuetz with a proposal from two lenders, one who proposed an open first mortgage of \$5 million and one who proposed an open second mortgage for \$2 million. Both mortgages had a one-year term and broker and lender fees set at 3%. However, the lenders demanded to take over and pay out the TD Bank mortgage as a condition of loaning the money.

[7] Mr. Schuetz claims that he had his own lawyer at the time but Mr. Brar persuaded him to instead take advice from another lawyer who was connected with Mr. Brar. Mr. Schuetz says he felt pressure from Mr. Brar to accept these two proposals and, while he did not want to lose his TD Bank mortgage, he ultimately accepted the proposals given to him by Mr. Brar out of concern that the proposed lenders would back out and he would not otherwise be able to obtain the mortgage he needed.

[8] Mr. Schuetz says at some point after that, Mr. Brar told him that the lenders were no longer willing to proceed on the original terms and it would be necessary to reduce the mortgage term and increase the interest rate and the fees. Ultimately, on August 25, 2022, Mr. Brar presented Mr. Schuetz with proposals for:

- a) a first mortgage comprised of:
  - i. a \$4 million total loan;

- ii. 12% interest over a 12-month open term;
- iii. \$150,000 broker fee for Jerry Brar Mortgages; and
- iv. a 2% (\$80,000) lender fee.

and

- b) a second mortgage comprised of:
  - i. a \$3 million total loan;
  - ii. 18% interest over a six-month open term;
  - iii. \$110,000 broker fee for Jerry Brar Mortgages; and
  - iv. a 2% (\$60,000) lender fee.

[9] Mr. Schuetz claims he was pressured by Mr. Brar to accept these terms but told that if he did accept them, he would receive more favourable terms for refinancing at a later date. Mr. Schuetz says he relied on this representation in deciding to accept the terms.

[10] On September 7, 2022, Mr. and Ms. Schuetz entered into loan agreements for each of the two mortgages. Both mortgages were registered against the property but the money was not initially advanced.

[11] A short time later, and before the mortgage funds were advanced, Mr. Brar told Mr. Schuetz there would be a delay in advancing the funds for both mortgages. Despite that, he said Mr. Schuetz needed to pay the interest due for the month of September on both mortgages and the lenders would walk away if the interest was not paid. Mr. Schuetz made the interest payment and says Mr. Brar promised to personally reimburse him for that payment but has not done so.

[12] At some point in late August or early September 2022, Mr. Brar told Mr. Schuetz that the mortgage documents had to be re-signed due to some

problems with the first mortgage documents and because the lender for the second mortgage would now be replaced with Mr. Brar himself as lender. Mr. and Ms. Schuetz signed the new first mortgage document on September 9, 2024. It substituted the petitioner, 1352001 B.C. LTD. (“135 Ltd.”) as the lender in place of five individuals named in the original documents. It also changed the interest rate so that the 12% applied only for the first six months and, thereafter, the Schuetzes had an option to extend the mortgage for a further six months but at 20% interest. Mr. Schuetz says Mr. Brar did not specifically inform him of this change.

[13] Mr. Schuetz signed the new documents for the second mortgage at the office of Mr. Brar’s lawyer on September 16, 2022. Under the terms of this document, the numbered company was removed as lender and Jerry Brar Mortgages Inc., Gobind Finance Ltd., and Balbir Kaur Sangha were added as lenders along with the original two personal lenders. The interest rate on this mortgage was also changed to a six-month period after which point it would rise to 25%. Again, Mr. Schuetz says he was not specifically advised of the changes. He also says he objected to the terms but Ms. Brar assured him that, since he was now one of the lenders, he would make sure that Mr. Schuetz received more favourable terms at a later date.

[14] At some point after this, the mortgage monies were advanced to the Schuetzes by each group of lenders.

[15] In November 2022, Mr. Brar began calling Mr. Schuetz demanding payment on the mortgages. Mr. Schuetz also asserts that Mr. Brar and other unknown persons began sending persons to the property who were purportedly interested in buying it. He says they submitted suspicious offers to buy the property and these were well below what Mr. Schuetz considers to be fair market value. He suggests this was done to make Mr. Schuetz believe the property had a lower value than it actually does. He later obtained a professional appraisal of the property dated June 1, 2023 which values it at \$13.6 million.

[16] On June 23, 2023, the lenders of the second mortgage filed their petition in the first of these two proceedings (the “Brar Foreclosure Proceeding”). Mr. Schuetz

retained a lawyer at Clark Wilson LLP who filed a response to the petition on October 5, 2023. Mr. Schuetz says the lawyer advised him that his priority should be to redeem the mortgages before commencing an action against Mr. Brar and others. The response to petition states that Mr. and Ms. Schuetz “oppose an Order Nisi with anything less than the standard 6-month redemption period” but there is nothing in the response to petition that challenges the validity of the second mortgage.

[17] On October 12, 2023, Associate Judge Nielson granted the order *nisi* in the Second Mortgage Proceeding with a six-month redemption period. Mr. Brar deposes that the redemption period was agreed to with the applicants’ lawyer at Clark Wilson in advance of the application. The Clark Wilson lawyer did not attend the hearing for the order *nisi*. Nor did the Schuetzes.

[18] On December 19, 2023, 135 Ltd. filed its petition in the second of these two foreclosure proceedings (the “135 Foreclosure Proceeding”) and on February 12, 2024, Clark Wilson filed a response to petition in substantially the same form as the one filed in the Brar Foreclosure Proceeding. On March 1, 2024, Associate Judge Krentz granted the order *nisi* with a six-month redemption period. Again, neither the Clark Wilson lawyer nor the Schuetzes attended the hearing for the order *nisi*.

[19] As I have said, neither responses to petition challenged the validity of either mortgage. Nor did they raise any of the factual allegations now made about the conduct of Mr. Brar and others in connection with the mortgages.

[20] On March 15, 2024, the lenders of the second mortgage applied for an order of conduct of sale. That application came on for hearing on May 15, 2024 but was adjourned to allow Mr. Schuetz, who appeared in person with the assistance of a friend, to prepare and file affidavit evidence. The application was again adjourned on June 18, 2024 but ultimately conduct of sale was granted to the petitioners in the Brar Foreclosure Proceeding by Associate Judge Vos on June 28, 2024. That order states that it would not to take effect until August 26, 2024 to allow further time for Mr. Schuetz to refinance the mortgage or sell the property.

[21] On July 10, 2024, the lawyer at Clark Wilson filed a notice of intention to withdraw as counsel. Mr. Schuetz says he realized by August 2024 that he would not be able to find a new lender so he began looking for new legal counsel. He retained his present counsel on August 30, 2024, just two days before the expiry of the redemption period. His new counsel immediately filed a notice of civil claim against Mr. Brar, Jerry Brar Mortgages and others claiming damages for negligence, conspiracy, and breach of fiduciary duty. It was filed quickly out of concern for a limitation period. It does not seek a declaration that either mortgage is invalid but, as Mr. Schuetz's present counsel points out, that would likely constitute a collateral attack on the orders *nisi*. If the relief sought in this application is granted, counsel expects to challenge to the validity of the mortgages.

[22] The notice of civil claim does not name 135 Ltd. as a respondent nor seek any relief against it. Paramjit Grewal, who is a director of 135 Ltd., deposes that Mr. Brar contacted him in August 2022 about a potential mortgage deal and asked if he (Mr. Grewal) would be willing to do a second mortgage on Mr. Schuetz's property. He said Mr. Brar took him to the property and gave him an extensive tour of the house. He then was willing to loan the money but only if his mortgage was first in priority. He also required some other terms and conditions. That offer was ultimately accepted. Mr. Grewal deposes he had no communication with the Schuetzes over the matter and has no knowledge of what was discussed between them and Mr. Brar. He says he knew Mr. Brar to be a mortgage broker and 135 Ltd. was simply a lender who entered into the mortgage agreement that Mr. Brar brokered. The Schuetzes have led no evidence to contradict this and, as I have said, have made no allegations against 135 Ltd. (or Mr. Grewal) in the notice of civil claim.

### **Legal Principles**

[23] The applicants apply to set aside the orders *nisi* under Rule 22-1(2) and (3) of the *Supreme Court Civil Rules* which read:

#### **22-1 – Chambers Proceeding**

(2) If a party to a chambers proceeding fails to attend at the hearing of the chambers proceeding, the court may proceed if, considering the nature of the

chambers proceeding, it considers it will further the object of these Supreme Court Civil Rules to do so, and may require evidence of service it considers appropriate.

(3) If the court makes an order in circumstances referred to in subrule (2), the order must not be reconsidered unless the court is satisfied that the person failing to attend was not guilty of wilful delay or default.

[24] In *CMHC v. Bhalla*, 2008 BCSC 1352, Justice Martinson outlined a three-prong test as follows for the application of this rule:

- a) the applicant must not be guilty of any wilful default in respect of the non-appearance;
- b) the application to set aside must have been made as soon as reasonably possible; and
- c) the applicant must show that there is a meritorious defence to the action or at least a defence worthy of investigation.

[25] Justice Martinson added at para. 32 that even if the applicant fails to establish all three components, the court must still be satisfied on a balance of probabilities that permitting the order to stand would not constitute a miscarriage of justice.

[26] This approach has been restated more recently in *The Toronto-Dominion Bank v. Buchholz*, 2022 BCSC 313 at paras. 19-22.

### **Analysis**

[27] I begin with the question of whether there is a defence to the foreclosure proceedings that is worthy of investigation.

[28] It seems obvious that the facts as outlined by Mr. Schuetz on this application give rise to serious issues that are worthy of investigation. It is notable that Mr. Brar does not directly challenge or dispute any of these facts on this application. He says they seem very similar to allegations that a person named David Steingard made against Mr. Brar in August 2024, purportedly on Mr. Schuetz' behalf. Evidently, Mr. Steingard was assisting Mr. Schuetz after Clark Wilson withdrew as counsel. Mr. Brar states that Mr. Steingard told him that Mr. Schuetz would be pursuing

“strategic litigation” which, Mr. Brar suggests, implies that the factual allegations may be more strategic than genuine.

[29] Counsel for Mr. Brar argues that Mr. Steingard’s allegations are of the kind seen in so-called “Organized Pseudolegal Commercial Arguments” that have not infrequently been advanced by vexatious litigants: see *Meads v. Meads*, 2012 ABQB 571. I disagree. Mr. Steingard’s allegations are a layperson’s attempt to articulate legal grounds for wrongful conduct alleged against Mr. Brar and others. It does not bear a resemblance to the kinds of pseudolegal arguments with which the court is (unfortunately) familiar. In my view, it is significant that Mr. Brar has not expressly denied any of the allegations that Mr. Schuetz raises in this application and I find on the material before me that there is a potential defence worthy of investigation for the second mortgage.

[30] I am not able to reach the same conclusion on 135 Ltd.’s mortgage. While Mr. Brar’s impugned conduct relates to the Schuetzes entering into both mortgages, there is no evidence on this application that 135 Ltd. or its principals and controlling minds were involved in any of that conduct. As I have said, the applicants have not challenged or disputed Mr. Grewal’s evidence on this application that he was approached by Mr. Brar as a broker and that he knew nothing of the dealings between Mr. Brar and Mr. Scheutz. The facts now alleged by Mr. Schuetz, if true, suggest the Schuetzes may have a claim against Mr. Brar and perhaps others for damages relating to the 135 Ltd. mortgage but they do not impugn 135 Ltd. and no argument has been made as to how Mr. Brar’s alleged misconduct as a broker might invalidate a mortgage granted to an innocent lender who knew nothing about the conduct.

[31] Thus, I find on the evidence before me that there is a defence worthy of investigation with respect to the validity of the second mortgage granted to Jerry Brar Mortgages Inc. and others but not with respect to the validity of 135 Ltd.’s mortgage.

[32] However, despite finding that a defence worthy of investigation has been raised for the Brar Foreclosure Proceeding, I find that Rule 22-1(2) is not engaged by the facts on this application because the Schuetzes and the Clark Wilson lawyer did not “fail” to attend the hearings at which the orders *nisi* were granted. Their decision not to attend was taken deliberately after they had secured agreement to the very relief sought in the responses to petition, namely the six-month redemption period.

[33] With respect to the October 12, 2023 application for an order *nisi* in the Brar Foreclosure Proceedings, the Schuetzes were indisputably represented at the time by Clark Wilson. Neither the Schuetzes nor their former counsel from Clark Wilson gave evidence on this application to explain why no one attended that hearing but I am satisfied it was because Clark Wilson had secured the petitioners’ agreement to the six-month redemption period sought in the response to petition. Since the response to petition did not challenge the validity of the mortgage itself and since the six-month redemption period was secured, there was no reason for counsel or the Schuetzes to attend.

[34] Rule 22-1(3) is only engaged when a party “fails to attend” the hearing. A deliberate choice not to attend a hearing may constitute a failure to attend under Rule 22-1(2) and (3) in some circumstances. For example, in *Anderson v. Toronto-Dominion Bank* (1986), 70 B.C.L.R. 267 (S.C.) judgment was granted against Ms. Anderson on a personal covenant under a mortgage. Ms. Anderson was under a misapprehension that she was no longer bound by the personal covenant because she had earlier transferred her interest in the mortgage to her former husband after separation. She did not know her personal covenant survived the transfer. The Court of Appeal found her failure to attend the foreclosure proceedings was deliberate but not blameworthy and it set aside the order against her.

[35] However, in the present case there was no such misapprehension. The reason the Schuetzes and their lawyer did not attend the hearing was that they had achieved through negotiation all they had sought in the response to petition. Their

decision not to attend was intentional and informed by the fact that they had achieved through negotiation all they might hope to achieve had they attended court.

[36] Mr. Schuetz now says he did not realize that the order *nisi* would confirm the validity of the mortgage and had he known he would have attended the hearing to raise that issue. However, he was represented by counsel at Clark Wilson at the time. The evidence does not explain why the factual allegations now made against Mr. Brar and others were not raised in either of the responses to petition or why Clark Wilson, in drafting those responses, did not challenge the validity of the mortgage on the basis of those allegations. In fact, it is not even clear that Clark Wilson was made aware of those allegations. Why those issues did not come out in the response to petition and why Clark Wilson did not challenge the validity of the second mortgage are matters between the Schuetzes and Clark Wilson. I am not persuaded it is a basis to now revisit the order *nisi*, at least under Rule 22-1(3).

[37] I reach the same conclusions for the March 1, 2023 application for an order *nisi* in the 135 Ltd. Foreclosure Proceedings. I do not accept Mr. Schuetz's evidence that counsel from Clark Wilson had ceased acting by that time because its retainer had been depleted. Counsel at Clark Wilson did not file a notice of intention to withdraw until July 10, 2024. On February 16, 2024, 135 Ltd.'s lawyer emailed counsel at Clark Wilson enclosing the notice of hearing and the statement of relief sought for the order *nisi* application. The statement of relief sought would have identified the six-month redemption period. Once again, since counsel at Clark Wilson had secured agreement to the six-month redemption period, there was no need to attend the March 1, 2023 application and I find the decision not to attend that hearing was wilful, informed, and deliberate.

[38] Further, on April 3, 2023, Clark Wilson emailed 135 Ltd.'s lawyer asking about the status of the order *nisi* and seeking an electronic copy. This is inconsistent with Mr. Schuetz's assertion that Clark Wilson had ceased working on the file before the March 1, 2023 hearing.

[39] Thus, even if there was a defence worthy of investigation for the 135 Ltd. Foreclosure Proceeding, I find the decision not to attend application for the order nisi was wilful, informed, and deliberate and I would not set aside the order *nisi* under Rule 22-1(3).

**Conclusion**

[40] For these reasons, while the evidence before me raises a defence worthy of investigation to the Brar Foreclosure Proceedings, I am not persuaded the applicants or their previous counsel *failed* to attend the hearings at which the orders *nisi* for both mortgages were granted. The decision not to attend was informed and deliberate. There was no misapprehension of the circumstances like there was in *Anderson*. I find that Rule 22-1(3) is not engaged in these circumstances and I would dismiss the applications with costs.

“Kirchner J.”