COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Mason v. The Mansion House Estates Ltd.,* 2023 BCCA 385

Date: 20231017
Docket: CA48527

Between:

Robert C. Mason

Appellant
(Respondent)

And

The Mansion House Estates Ltd.

Respondent
(Petitioner)

Before: The Honourable Madam Justice Stromberg-Stein
The Honourable Mr. Justice Fitch
The Honourable Justice Skolrood

On appeal from: An order of the Supreme Court of British Columbia, dated August 11, 2022 (*The Mansion House Estates Ltd. v. Mason*, 2022 BCSC 1364, Vancouver Docket S198446).

Counsel for the Appellant:	R.W. Grant K.C. L. Babbitt
Counsel for the Respondent:	J.K. Bienvenu A.K. Hall
Place and Date of Hearing:	Vancouver, British Columbia September 15, 2023
Place and Date of Judgment with Written Reasons to Follow:	Vancouver, British Columbia September 15, 2023
Place and Date of Written Reasons:	Vancouver, British Columbia October 17, 2023

Written Reasons of the Court

Summary:

The applicant seeks modification of an order requiring him to deliver vacant possession of a residential suite and to surrender for sale the corresponding shares in the respondent apartment corporation. The applicant submits that the chambers judge erred in failing to grant relief from forfeiture by: (1) treating coming to equity with "clean hands" as a "basic requirement" for equitable relief; and (2) failing to consider whether partial relief from forfeiture should be granted so as to permit the appellant to retain possession (but not occupancy) of the suite and his shares in the corporation, and to have conduct of the sale of those shares. The applicant also brings a new evidence application to support the argument on appeal. Held: New evidence application dismissed; appeal dismissed. The new evidence is inadmissible as it contains hearsay, argument, and unsupported opinions. In any event, the new evidence is largely irrelevant and admitting it would not affect the result. When read contextually and as a whole, the reasons of the chambers judge make clear that he did not treat the appellant's "unclean hands" as a condition precedent for relief from forfeiture. Further, the chambers judge was aware that the order in contemplation would require the appellant not only to vacate the suite, but also to surrender his shares and forfeit conduct of the sale. It is apparent that he wrestled with these issues in addressing the appellant's claim for relief from forfeiture. The appellant has not shown any basis warranting intervention with the discretionary order made by the chambers judge.

Reasons for Judgment of the Court:

I. Introduction

[1] This is an appeal from an order requiring the appellant, Robert C. Mason, to: (1) deliver vacant possession of his residential suite to the respondent, The Mansion House Estates Ltd. ("MHE"); and (2) surrender all of his shares in the capital stock of MHE to the respondent. The order also authorized MHE to sell the shares surrendered by the appellant, subject to reasonable diligence. The term allowing MHE to sell the shares was stayed by Justice Voith (In Chambers) pending the disposition of the appeal: 2022 BCCA 452.

[2] The appellant asserts that the judge committed an extricable error of law in declining to grant him relief (or partial relief) from forfeiture pursuant to s. 24 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 [*LEA*]. The error is said to be seated in the judge's incorrect conclusion that relief from forfeiture can never be granted to a party who does not come to equity with "clean hands".

[3] In addition, the appellant asserts that the judge gave no or insufficient weight to relevant considerations in conducting his relief from forfeiture analysis. The essence of the appellant's position on this point—as it was framed for the first time in oral argument—is that the judge failed to consider the totality of the order MHE was seeking. Namely, that the order would require the appellant to forfeit not only his right to possession of the suite, but also his shares in MHE and conduct of the sale of those shares. As a result of the alleged failure to meaningfully engage with each of the appellant's interests subject to forfeiture, the judge is said to have made an order that is disproportionate to the loss suffered by the respondent. The appellant submits that all that was required was an order compelling him to vacate the suite, and that the order made by the chambers judge could be amended to prohibit him from ever returning to the suite. The appellant submits that he should not have been ordered to transfer possession of the suite to MHE, surrender his shares in MHE, or forfeit conduct of the sale of those shares.

[4] In support of his appeal, the appellant seeks the introduction of new evidence in the form of an affidavit sworn by his nephew, Richard Mason. Among other things, the affiant deposes that, after the order under appeal was made, the appellant executed a Power of Attorney authorizing him to make financial and legal decisions on the appellant's behalf. The affiant deposes that the appellant has moved into an assisted living facility for seniors and that, in the affiant's view, it is no longer in the appellant's interests to seek an order permitting him to resume occupancy of the suite. The affiant says he will, if necessary, attend to the payment of any outstanding fines levied by MHE against the appellant. The affiant further deposes that if the appeal is allowed, it is his intention to sell the suite when the market conditions are favourable. Given the current real estate market in Vancouver, the affiant asserts that a fair price for the suite would not be obtained if MHE was authorized to sell the appellant's shares.

[5] At the conclusion of the hearing, we dismissed the appeal with reasons to follow. These are those reasons.

II. Background

[6] This appeal arises out of petition proceedings brought, in part, pursuant to s. 21 of the *Commercial Tenancy Act*, R.S.B.C. 1996, c. 57. The background was nicely summarized by Voith J.A. in his reasons for judgment on the stay application:

> 4. MHE operates as an "Apartment Corporation", a form of apartment ownership which pre-dates strata corporations. MHE is regulated by its Articles of Association as a not-for-profit private company and, to the extent that anything is not covered by MHE's articles, by the *Business Corporations Act*, S.B.C. 2002, c. 57 [*BCA*]. MHE holds the legal title to the land and building. Each tenant in the building, including Mr. Mason, is a shareholder of MHE with a right to occupy a particular apartment unit as a private residence under a long-term lease with MHE. In their capacity as shareholders, "owners" are governed by the Articles of Association and the *BCA.* In their capacity as lessee or tenant, their occupancy rights are governed by the lease and written House Rules, which can be amended by either shareholders' resolutions or directors' resolutions. Technically, shareholders do not buy or sell their apartment; rather, they buy or sell their shares in MHE and are assigned, or assign, the lease of their unit with whatever balance remains of that lease's original 99-year term.
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> 5. Mr. Mason, who is 84 years old, purchased his shares in MHE in November 2000, and was assigned the lease of Suite 805. The lease which Mr. Mason acquired came into existence on March 1, 1961 (the "Lease"). The Lease requires strict compliance with the Articles and the House Rules and provides that the Board of Directors can terminate the Lease upon the happening of certain events, such as:
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> > a) if the lessee commits a breach of a covenant or condition or agreement forming part of the Lease;
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> > b) if the shareholders, by special resolution, determine to terminate the Lease because of objectionable conduct by the lessee; and
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> > c) if the lessee defaults in the payment of any rent, charge, or assessment for 60 days following proper notice thereof.

[7] Paragraph 5(b) of the Lease required the appellant to observe and strictly conform to the House Rules. Paragraph 6(e) defines "objectionable conduct" to include repeated violation of the House Rules. Paragraph 9(a) provides that upon termination of the Lease by reason of any default on the part of the lessee, the premises and the shares in the capital stock of MHE referable to those premises shall be surrendered, forfeited and delivered to MHE and that, subject to paragraph 12 of the Lease, the lessee shall have no proprietary interest in the premises or the shares. Paragraph 12 provides that where a lease is terminated and the lessee is

required to surrender and deliver to MHE its shares, MHE has the right, exercising reasonable diligence, to seek another person to purchase the shares and become the new lessee.

[8] Article 4.3 of the Articles of Association provides for a lien on the shares of any shareholder for all monies owed to MHE by that shareholder. Article 4.4 provides that MHE may seize the shares of any shareholder who is in breach of the Lease or the House Rules upon having first given written notice to the shareholder specifying the breach, and where the breach is not remedied within 60 days. In that event, MHE shall offer for sale the shares in a new lease of the suite. Article 4.5 provides that the proceeds of any share sale be applied in payment of all amounts respecting the lien, and that any residue be paid to the person entitled to the shares at the date of the sale. Article 4.21 provides that if MHE determines by special resolution to expel any shareholder, the Directors shall forthwith endeavour to sell the shares of that shareholder. The proceeds of sale shall be applied firstly to the payment of monies owing by the shareholder to MHE, and secondly to the cost of obtaining possession, expelling the shareholder, and selling the shares. The balance of the proceeds of sale must be paid to the expelled shareholder.

[9] The relationship between the appellant and MHE has been fraught for many years. These reasons address only some of the more recent events that led to the filing of the petition.

[10] On March 27, 2019, MHE delivered to the appellant a Notice of Default identifying alleged infractions of the House Rules and demanding that they be rectified within 60 days.

[11] On May 27, 2019, MHE's Board of Directors resolved to call an Extraordinary General Meeting of its shareholders on the issue of whether the appellant's lease should be terminated because of his objectionable conduct.

[12] The meeting was held on June 20, 2019. MHE shareholders overwhelmingly voted to terminate the appellant's Lease.

[13] On June 25, 2019, MHE delivered to the appellant a Notice of Termination and Notice to Quit.

[14] On July 26, 2019, MHE delivered to the appellant a Demand for Possession. The appellant refused to vacate the suite.

[15] In response, MHE filed the petition arguing that the appellant had wrongfully refused to give up possession of the suite. MHE sought orders requiring the appellant to deliver vacant possession of the suite and forfeit to the company his shares in the capital stock of MHE. MHE pleaded that the appellant repeatedly breached the House Rules, including by failing to pay fines imposed in respect of those breaches. MHE also sought orders giving them conduct of the sale of the appellant's shares and a lien on the funds resulting from the sale of the shares together with its costs and expenses incurred in recovering possession of the premises and shares and finding a new purchaser.

[16] In his Amended Response to Petition, the appellant denied breaching certain House Rules and pleaded that other alleged breaches had been cured. In the alternative, if the Court found that the fines were validly imposed in relation to House Rule breaches, the appellant sought relief from forfeiture under s. 24 of the *LEA* arguing that it would neither be fair nor equitable to force him to forfeit a valuable property for the sole reason that he owed MHE what he said amounted to $12,000 in fines.

[17] The appellant does not appear to have argued in the Supreme Court (as he does on appeal) that the judge was obliged to consider whether relief from forfeiture should be granted in relation to each of the interests the appellant stood to lose—his possessory interest and right to occupy the suite, his ownership of the shares, and his ability to have conduct of the sale of those shares. As noted above, this nuanced approach to the relief from forfeiture claim is advanced for the first time on appeal.

III. Reasons for Judgment

[18] In reasons for judgment indexed as 2022 BCSC 1364 ("RFJ), the chambers judge framed the issues for determination in these terms: whether the special resolution which resulted in the Notice of Termination issued to the appellant was validly made and legally enforceable and, if so, whether relief from forfeiture was appropriate in the circumstances: RFJ at para. 50.

[19] The judge had no difficulty concluding that the appellant deliberately and repeatedly violated the House Rules and that his conduct supported termination of the Lease. He characterized the appellant's refusal to remove his personal property from the fire escape stairwell as "particularly egregious", noting that it posed a "potential safety risk for the other occupants of the building": RFJ at para. 54. He found that the appellant refused to abide by any of the House Rules to which he objected, and refused to pay fines levied in relation to those breaches: RFJ at paras. 56–58.

[20] The appellant's claim to relief from forfeiture appears to have been based on his attachment to the suite and its favourable amenities, and the fact that the fines assessed against him were said to represent less than 1% of the value of his shares.

[21] The judge recognized that whether a party seeking relief from forfeiture has "clean hands" is a factor to be considered in the application of s. 24 of the *LEA*: RFJ at para. 91, citing *Airside Event Spaces Inc., v. Langley (Township)*, 2021 BCCA 306 at para. 22. He recognized that the case for relief from forfeiture is more compelling where the sum forfeited is out of all proportion to the loss suffered.

[22] In rejecting the appellant's claim for relief from forfeiture the judge said this:

> [92] Mr. Mason's primary argument is that the loss of his home, which will be extremely difficult to replace, is out of all proportion to any loss that may have been suffered by MHE. It is an argument for which I have sympathy because, quite frankly, I do not wish to be the judge responsible for "kicking an elderly couple out onto the street". And yet, for the reasons that follow, I am obliged as a matter of law to do so.
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> [93] MHE argues that Mr. Mason:

> … is the maker of his own misfortune. He has flouted the Articles, the House Rules and the terms of his Lease … [his] conduct has been, and continues to be, objectionable. He takes no responsibility for his actions, and has taken no steps to correct his conduct, even though he knows that his behaviour causes harm to others. He is not a good neighbour … He is ungovernable.
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> [94] While I do so reluctantly, I am compelled to agree with MHE's submissions on this point.
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> [95] Mr. Mason has been involved in litigation with MHE for over 15 years. He is stubborn and incorrigible. Even though he knows full well that continued residency at MHE is at stake, he refuses to acknowledge the authority of MHE's Council, refuses to come into compliance with the House Rules and refuses to moderate his conduct. In seeking relief from forfeiture, Mr. Mason tenders no apology to his neighbours, nor does he even promise to comply with House Rules in the future. It is clear that he simply will not change his ways.
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> [96] The affidavit evidence tendered on behalf of MHE, which I accept, makes it clear that the Board spends more time dealing with issues raised or caused by Mr. Mason than all of the other residents combined. Indeed, MHE is facing a crisis with respect to ongoing corporate governance because no one is willing to volunteer for Board positions so long as Mr. Mason remains a resident in the complex. They simply do not wish to deal with him.
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> [97] Mr. Mason's conduct is deliberate. He knows what he is doing. He does not seem to understand the impact his conduct has on other residents in the complex or, if he does, he simply does not care. He has no intention of changing his ways. In such circumstances, he does not "come to equity with clean hands", which is a basic requirement for the equitable remedy of relief against forfeiture.
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> [98] It is true that Mr. Mason is going to lose his home. He will not, however, lose all of its value because the net proceeds of its sale (technically, the sale of his shares and interest in the Lease) will be paid to him.
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> [99] Mr. Mason's counsel also points out, correctly, that it is within the Court's discretion to impose terms as a basis for granting relief from forfeiture. That is so, but there is no point in imposing terms which, as past conduct has amply demonstrated, will simply be ignored. I am not satisfied that Mr. Mason would comply with any terms requiring ongoing observance of the House Rules or cessation of his objectionable conduct.
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> [100] In all the circumstances, I exercise my discretion to deny relief from forfeiture.
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> [Emphasis added.]

[23] The judge concluded that the appellant's Lease with MHE was validly terminated, granted the petition, ordered that the appellant vacate the premises, with the assistance of the Sheriff if required, and ordered that he surrender his shares so that they may be sold by MHE at fair market value to a new owner: RFJ at para. 28.

IV. Grounds of Appeal

[24] In his factum, the appellant advanced a detailed argument challenging the judge's conclusion that he repeatedly violated the House Rules. He submitted that the judge's reasons for coming to this conclusion reflect palpable and overriding factual error. He argued that these palpable and overriding errors caused the chambers judge to wrongly conclude that termination of the Lease was warranted. This argument was advanced to the end of permitting the appellant to resume occupancy of the suite. In light of the new evidence suggesting that the appellant will not seek to resume occupancy of the suite, this ground of appeal was abandoned by counsel for the appellant in a letter delivered to the registry the day before the hearing. As a consequence, the hearing proceeded with the appellant not disputing the termination of the Lease.

[25] Instead of pursuing the main argument addressed in the factum, counsel for the appellant reframed the appeal in oral argument and submitted that the appellant should not have been required to transfer possession of the suite to MHE, surrender his shares to the company, or give up conduct of the sale of those shares. The appellant submitted that requiring him to forfeit these interests was not necessary to address any valid concern of the respondent. By failing to address the relief from forfeiture claim with each of these separate interests in mind, the judge is said to have failed to give sufficient weight to relevant considerations and to have granted an order that gives rise to an injustice, as it was both unnecessary and disproportionate to the loss suffered by the respondent.

[26] It is worth emphasizing that the chambers judge was not specifically asked to exercise his discretion on the appellant's application for relief from forfeiture through this more nuanced lens. The appellant does not appear to have explicitly argued that it was necessary for the chambers judge to unbundle the appellant's possessory and proprietary interests in the property to properly resolve his relief from forfeiture claim. It is, therefore, a curious feature of this appeal that the chambers judge is said to have erred in the exercise of his discretion by failing to consider the availability or merits of an order not sought by the appellant at the summary hearing.

[27] In any event, the order the appellant now seeks would prevent him from re-occupying the suite, but would allow him to retain possession of the suite and market the shares at a time of his choosing. It would also permit the appellant to continue exercising his voting rights as a shareholder.

[28] To reiterate, the appellant also submitted in his factum and in oral argument that the judge committed an extricable error in law in suggesting that coming to equity with “clean hands” was a condition precedent to the granting of relief from forfeiture.

V. Analysis

1. The new evidence application

[29] Counsel for the appellant, wisely in our view, did not press for admission of the new evidence in oral argument and candidly recognized its shortcomings.

[30] At the conclusion of the hearing, we determined not to admit the new evidence for the following reasons.

[31] The affidavit of Richard Mason is replete with inadmissible hearsay (and double hearsay). The affiant offers his opinion that it would be contrary to the appellant’s best interests, including in the maintenance of his mental health, for him to swear an affidavit on appeal. As a consequence, some of the new evidence arguably relevant to the relief from forfeiture claim reflects the appellant’s experiences and thinking after vacating the suite as understood and related by the affiant. There is no medical evidence offered in support of the affiant’s opinion that the appellant could not have supplied his own affidavit on these issues or that it was necessary for the evidence to be presented in this way.

[32] In addition, some portions of the affidavit appear to have become irrelevant—for example, the stress and emotional trauma the appellant is said to have experienced as a consequence of being forced to give up possession of his suite after living in it for nearly two decades. The appellant sought to tender this evidence to establish that the order requiring him to give vacant possession of the suite to

MHE entailed inequitable consequences greater than what the chambers judge could reasonably have expected. This may have been relevant when the appellant sought an order that would restore his right to occupy the suite. But this is no longer a live issue on appeal. This is so because the appellant abandoned what was the primary ground of appeal—that the judge committed reversible errors of fact by finding repeated violations of the House Rules. Instead, the appellant advanced the position that he no longer seeks an order permitting him to resume occupation of the suite.

[33] The affidavit also contains a good deal of argument, much of it disguised as assertions of fact. Indeed, some of the arguments and opinions expressed by the affiant contradict factual findings made by the judge that are no longer challenged on appeal. For example, the affiant deposes that he was informed by the appellant, and verily believes to be true, that MHE subjected the appellant to "a series of baseless violations." The judge found otherwise.

[34] The affiant also express opinions on matters that would require expert evidence. For example, he deposes that a fair price for the shares could not be obtained at this time given the current state of the real estate market in Vancouver. The affiant is not qualified to give this evidence. In the absence of expert evidence, this Court is in no position to accept the affiant's assertion or take judicial notice of this alleged fact. This is particularly so given the unique nature of the property at issue.

[35] Applying the usual rules of evidence, we concluded that much of the affidavit contains inadmissible evidence.

[36] In addition, we concluded that much of the new evidence sought to be tendered by the appellant no longer bears upon a decisive or potentially decisive issue.

[37] Finally, we concluded that even if some portion of the new evidence was admissible, we believed it could not have affected the result.

[38] Applying the criteria in *Palmer v. The Queen*, [1980] 1 S.C.R. 759, 1979 CanLII 8 (SCC) and the guidance more recently provided in *Barendregt v. Grebliunas*, 2022 SCC 22, we determined to dismiss the appellant's application to adduce new evidence.

2. Did the judge commit extricable error in law in his relief from forfeiture analysis?

[39] The appellant argued that the judge erred in law by characterizing the need to come to equity with "clean hands" as a "basic requirement" or precondition to the availability of relief from forfeiture: at para. 97.

[40] We were unpersuaded by the appellant's submission on this issue. Reading the reasons as a whole, it is apparent that the judge recognized that the "clean hands doctrine" was but one factor to be considered on an application for relief from forfeiture. The judge engaged with the factors traditionally considered on an application for relief from forfeiture (proportionality, whether it would be unconscionable for relief not to be granted, the conduct of the applicant who seeks relief, including the gravity of their breaches, whether the applicant comes to equity with "unclean hands", and whether the applicant for relief is prepared to engage in behavioural modification).

[41] The appellant's position on this point is inconsistent with the analysis undertaken by the judge. We agree with the position of the respondent that the judge did not deny relief from forfeiture solely on the basis that the appellant came to equity with "unclean hands". Indeed, had the judge treated "clean hands" as a condition precedent to entitlement to relief from forfeiture, it would have been unnecessary for him to engage with any of the other factors. To accept the appellant's position on this point would require us to parse language used by the judge and ascribe decontextualized meaning to it. We cannot do this: see, for example, *R. v. G.F.*, 2021 SCC 20 at para. 69.

3. Did the judge err by giving no consideration to whether the appellant should be granted relief from forfeiture of his shares in MHE and conduct of the sale of those shares and thereby make an order that is overly broad and unjust?

[42] Relief from forfeiture is a discretionary remedy. A decision to grant or refuse it attracts considerable deference on appeal: *Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.*, [1994] 2 S.C.R. 490, 1994 CanLII 100 (SCC); *Stene v. White Castle Ventures Inc.*, 2022 BCCA 29 at para. 71.

[43] To overturn the order, the appellant must establish that the chambers judge erred in principle, gave insufficient weight to all relevant circumstances, misapprehended the evidence or made findings not supported by the evidence, or made an order so clearly wrong that it amounts to an injustice: *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19 at para. 27.

[44] The appellant's assertion that the judge failed to conduct the required relief from forfeiture analysis with sensitivity to each of the separate and distinct forfeitures being sought by MHE is a new argument. The appellant did not ask the chambers judge to conduct such an analysis, and the appellant did not advance this ground of appeal in his factum. As noted above, it was raised for the first time in oral argument.

[45] Appellate courts do not generally consider new issues on appeal. There are profound functional justifications for the general rule. As explained in *R. v. Gill*, 2018 BCCA 144 at para. 9, the orderly and fair progress of litigation requires that a party raise issues in a timely way. In addition, the reviewing function of appellate courts is compromised when issues are raised for the first time on appeal, even where the record is sufficient to permit proper legal analysis of the issue.

[46] Particular problems arise where, as here, an appellant raises a new issue with the goal of inviting this Court to substitute its own decision for the discretionary decision made by a judge at first instance. In addition to the functional justifications for the rule just addressed, routinely entertaining new issues in a case of this kind risks eviscerating the standard of review applicable to discretionary decisions.

[47] For these reasons, we would be justified in declining to grant leave to the appellant to raise the argument for the first time on appeal. But we consider it preferable in this case to address the appellant's new argument on its merits.

[48] Assuming, without deciding, that the appellant's right of occupation, possessory interest in the suite, and associated rights as a shareholder of MHE can be unbundled in the way the appellant suggests, we were not persuaded to interfere with the manner in which the judge exercised his discretion on the appellant's claim for relief from forfeiture.

[49] In our view, the reasons for judgment demonstrate that the judge was alive to the fact that if the petition was successful the appellant would be required to give up vacant possession of the premises to MHE and surrender his shares in the capital of MHE for disposition by the company: RFJ at paras. 7, 28, 42–44. This relief was clearly set out in the petition and it would be unreasonable to suppose that it was lost upon the chambers judge that the relief from forfeiture claim would necessarily encompass the whole of what MHE was seeking by way of forfeiture.

[50] Moreover, we concluded that it was clear from the judge's reasons that he understood the whole of what was at stake. For example, in addressing the plea for relief from forfeiture, the judge noted the appellant's "primary argument" that the loss of his home was out of proportion to any loss that may have been suffered by MHE. On this aspect of the relief from forfeiture claim, the judge considered whether it might be possible to permit the appellant to remain in occupancy of the suite on terms requiring him to observe the House Rules. The judge rejected this option noting that he was not satisfied that the appellant would comply with any terms that might be attached to an order granting relief from forfeiture.

[51] Against this background, we were not satisfied that the judge considered the appellant's relief from forfeiture claim from an unduly narrow perspective. He noted, correctly in our view, that the appellant's relief from forfeiture application was primarily, but not solely, focused on the right of occupancy. The reasons are, in this

respect, responsive to the way in which the relief from forfeiture application was argued.

[52] In evaluating this ground of appeal, we are also required to have regard to the nature of the submissions made by counsel on the summary hearing. MHE argued in its written submission filed in support of the petition that requiring the appellant to surrender his shares for disposition by MHE would not visit a disproportionate or inequitable consequence on the appellant because he would be entitled to the balance of the proceeds of the sale of those shares. The issue was squarely before the judge and expressly addressed in his reasons: RFJ at para. 98. That the judge wrestled with the issue confirms that he did not err by failing to consider the relevant circumstances on the application for relief from forfeiture or otherwise take too narrow of a view of the interests engaged by that application.

[53] Finally, there is nothing in the reasons demonstrating that the judge confined his relief from forfeiture analysis to whether the appellant should be relieved from complying with the requirement that he deliver vacant possession of his suite to MHE.

[54] In the absence of demonstrable error in the judge's approach to the relief from forfeiture claim, we determined not to interfere with the way in which the judge exercised his discretion on this issue.

VI. Disposition

[55] It is for these reasons that we dismissed the appeal at the conclusion of the hearing.

"The Honourable Madam Justice Stromberg-Stein"

"The Honourable Mr. Justice Fitch"

"The Honourable Justice Skolrood"