

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Royal Bank of Canada v. Parihar*,  
2024 BCSC 316

Date: 20240202  
Docket: H211146  
Registry: Victoria

Between:

**Royal Bank of Canada**

Petitioner

And

**Mohit Parihar, Chetna Parihar, Kuldeep Parihar,  
Harman Peter Eddy, Daryl Appleyard,  
His Majesty the King in Right of the Province  
of British Columbia, Jennifer Leslie, Joshua McInnes**

Respondents

Before: The Honourable Justice Chan

## **Oral Reasons for Judgment**

In Chambers

Counsel for the Petitioner:

L.G. Yang

The Respondent, appearing in person:

M. Parihar

Counsel for non-party Purchasers:

M. Melnyk

Place and Date of Trial/Hearing:

Victoria, B.C.  
February 2, 2024

Place and Date of Judgment:

Victoria, B.C.  
February 2, 2024

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**Introduction**

[1] **THE COURT:** This is an oral ruling. If a transcript is ordered, I reserve the right to make minor corrections for grammar, style, and citations. However, the substance will not change.

[2] There are two applications before the Court. Mr. Parihar applies to extend a stay of a writ of possession for a property in Victoria. The Royal Bank of Canada, (“RBC”), applies to set aside that stay. Counsel for the purchasers of the property has also attended today and the purchasers support the position of RBC.

**Factual Background**

[3] These applications arise from foreclosure proceedings. Mr. Parihar is one of the registered owners of a property on Lakehill Place (the “Property”). RBC started foreclosure proceedings against the Property in April 2021. On October 6, 2022, Justice Young granted an *order nisi* of foreclosure, setting the redemption period to expire on April 6, 2022. Justice Young found Mr. Parihar and the other registered owner, Chetna Parihar, to be in default of several obligations under their mortgage. One of the defaults was Mr. Parihar's failure to comply with municipal bylaws, as a result of which he had been convicted of bylaw infractions.

M. PARIHAR: Ma'am, that is under appeal.

[4] **THE COURT:** On October 21, 2022, Mr. Parihar applied before a Supreme Court Justice --

M. PARIHAR: No.

[5] **THE COURT:** -- for a reconsideration of the *order nisi*. His application to set aside the *order nisi* was dismissed.

[6] On October 31, 2022, Mr. Parihar filed a notice of appeal in the Court of Appeal registry.

[7] On November 22, 2022, Mr. Parihar applied in Supreme Court to dismiss the *order nisi*. Justice Saunders dismissed the application.

[8] On May 4, 2023, Marchand J.A., as he then was, heard and dismissed in oral reasons Mr. Parihar's applications for leave to appeal and a stay of proceedings.

[9] On May 8, 2023, Mr. Parihar applied to vary the order of Marchand J.A. Mr. Parihar did not file his materials within the required timeline.

[10] On June 12, 2023, Mr. Parihar's applications for an extension of time to file the application book, a stay of proceedings, and a dismissal of RBC's foreclosure proceedings were heard by Willcock J.A. Mr. Parihar's applications were dismissed in oral reasons the same date.

[11] On June 15, 2023, Mr. Parihar applied to a division of the Court of Appeal to vary the order of Willcock J.A. This was heard on September 14, 2023. RBC cross-appealed to declare Mr. Parihar a vexatious litigant. Both applications were dismissed: 2023 BCCA 378.

[12] On May 31, 2023, RBC was granted an order for conduct of sale which became effective on July 4, 2023.

[13] On July 28, 2023, RBC engaged a realty company to proceed with listing the Property for sale in accordance with the conduct of sale order. The Property was listed for 131 days, from July 28 to December 6, 2023. Three of the accepted offers collapsed as the purchasers could not remove subject conditions, as their lenders declined to finance due to risks associated with the Property.

[14] RBC ultimately accepted an offer from Mr. Gupta, Mr. Virk and Mr. Bajwa (the "Purchasers"), for \$679,900, subject to court approval. The application for court approval was scheduled to be heard on December 6, 2023.

[15] On December 4, 2023, a competing bid of \$720,000 was received for the Property. However, this bid was not submitted in compliance with the timeline set out in Practice Direction 62, as it was submitted too late.

[16] On December 6, 2023, a hearing was held by Master Bouck, as she then was. Mr. Parihar did not show up when the matter was called in chambers. Master Bouck proceeded with the hearing and considered the evidence. She approved the sale to the Purchasers.

[17] Mr. Parihar showed up in chambers after the order was made. The matter was recalled and Master Bouck conducted the hearing again. She heard from the bank and Mr. Parihar. Master Bouck concluded that notwithstanding Mr. Parihar's evidence, it was clear the offer from the Purchasers was the best compliant offer before the court. The sale was approved. Master Bouck's order included a provision that vacant possession be delivered to the Purchasers by 12:00 p.m. on January 25, 2024, failing which the bank may apply for a writ of possession.

[18] On December 7, 2023, Mr. Parihar filed a notice of appeal in Supreme Court of Master Bouck's order. I am advised Mr. Parihar unilaterally set the date of the appeal hearing for judges' chambers on August 13, 2024.

[19] On January 16, 2024, Mr. Parihar appeared in judges' chambers before Justice MacDonald, *ex parte*, without notice to RBC, to seek a stay of the writ of possession portion of the Master Bouck order. Counsel for RBC had no notice of this hearing and did not attend. On the basis of Mr. Parihar's submissions, Justice MacDonald granted a three-week stay of the writ of possession, expiring on February 15, 2024, three weeks from the possession date. Justice MacDonald required Mr. Parihar to give notice to RBC of any applications to extend the stay.

[20] There was no stay of the court-approved sale of the Property by Justice MacDonald's order. The purchase and sale of the Property completed on January 24, 2024, pursuant to the order of Master Bouck.

**Position of the Parties**

[21] RBC takes the position that as the sale has completed, Mr. Parihar's application to extend the stay of the writ of possession is moot, as the Property has vested in the Purchasers: *Resmor Trust Company v. Laus Holdings Ltd.*, 2011 BCCA 492, at

para. 27. A *bona fide* purchaser for value who is not a party to this proceeding is the registered owner of the Property. The Purchasers were entitled to rely on the completion of the sale approved by the court and unchallenged prior to the transfer: *Genworth Financial Mortgage Insurance Company of Canada v. Doan*, 2019 BCCA 350, citing at para. 21 *Bank of Montréal v. Pay*, [1993] B.C.J. No. 2013 (C.A.).

[22] RBC relies on *Galway Capital Corp. v. Nikolov*, 2005 BCCA 375. In *Galway*, an *order nisi* was granted and the redemption period had expired. A sale was approved by a master. The mortgagor appealed that order to a Supreme Court justice, which was dismissed. The mortgagor applied for leave to appeal this dismissal, while the mortgagee applied to quash the appeal. The Court of Appeal found at para. 5 there was “sufficient time before the closing date of the sale for Mr. Nikolov to launch an appeal from Mr. Justice Ehrcke’s dismissal order and to apply to this Court for a stay of the sale. Instead Mr. Nikolov elected to skirmish in Supreme Court chambers while the closing date came and went. With the passing of time the new owner, Michael Lawler, paid the purchase price, obtained a writ of possession and took title pursuant to a vesting order. As a matter of law, the dispute is over.”

[23] In this case, RBC argues there was sufficient time for Mr. Parihar to have applied for a stay of the transaction itself before the sale completed. Mr. Parihar only sought a stay of the writ of possession, which was granted without notice to RBC. RBC argues Mr. Parihar had seven weeks between the date of Master Bouck’s order (December 6, 2023), and the original date of possession (January 25, 2024) to apply for a stay.

### **Legal Framework**

[24] Mr. Parihar seeks to extend the stay and RBC seeks to set it aside. As RBC’s application is to set aside a stay that was granted *ex parte*, it is a *de novo* application as to both the law and the facts: *Kliman v. Kinrade*, 2022 BCSC 1193 at para. 19. As I understand it, on both the application for a further stay and the motion to set aside, the test is whether a stay should have been granted and if it should be continued.

[25] Both applications involve the consideration of the test for the granting of a stay. The test for the granting of a stay is well-known: there must be a serious question to be tried; irreparable harm to the applicant if a stay is not granted; and the balance of convenience favours a stay. The burden is on the applicant for a stay to meet all three parts of this test: *B2B Bank v. Sinnarajah*, 2021 BCSC 1475 at paras. 69 -70.

[26] In *B2B Bank*, the mortgagor was seeking a stay pending appeal of an order of a master approving a sale of a property in foreclosure proceedings. Justice MacNaughton declined to exercise her discretion to grant a stay pending appeal of the master's order. She found there was no merit to the proposed appeal. A master's function in approving a sale is to consider if it is provident: *B2B* at para. 75.

### **Analysis**

#### **(A) Serious Question to be Tried**

[27] Mr. Parihar has not tendered any evidence to show that the sale to the Purchasers was improvident. Mr. Parihar's argument centres around his view that his house is worth more than the price paid by the Purchasers. He argues his basement is worth more than is set out in the appraisal. As far as I can see, his arguments about the price for his house were made before Master Bouck. Though Mr. Parihar insists his arguments were not before Master Bouck, I have reviewed the transcript of the hearing on December 6, 2023, and he appeared to make the same arguments before Master Bouck - that is, he brought to her attention he believes the sale price is half of what it should be and that his basement --

M. PARIHAR: That's where she made the mistake.

[28] THE COURT: -- is legal: Transcript of Proceedings December 6, 2023, p. 11, l. 47- p.12, l. 6.

[29] The evidence is the Property was listed for more than four months. The sale price was originally higher and gradually decreased to attract a buyer. The Property was seen as having some risks associated with it which made potential lenders unwilling to advance funds. These risks are related to the bylaw contraventions

registered against title to the Property due to the unpermitted renovations, which have to be remedied to bring the Property into compliance. The master considered the evidence of the appraisal, the listing agent's evidence, the competing bid which was not compliant with the timelines for the sealed bid process, and the evidence and submissions of Mr. Parihar. She found that the market had spoken and approved the sale to the Purchasers.

[30] In my view, on a preliminary assessment of the merits, there is not a serious question to be tried.

**(B) Irreparable Harm**

[31] With respect to irreparable harm, I accept that if a stay is not granted, it will cause irreparable harm to Mr. Parihar, as he would be forced to move out of his home.

**(C) Balance of Convenience**

[32] However, on the balance of convenience, I agree with RBC and counsel for the Purchasers that the equities are in favour of the bank and the Purchasers. Mr. Parihar has known about these foreclosure proceedings since 2021. He has not paid the funds required to redeem the mortgage. He has had --

M. PARIHAR: Ma'am, how can I --

[33] THE COURT: -- ample time and opportunity --

M. PARIHAR: -- when they put -- put a lien?

[34] THE COURT: -- to do so. He has applied to the Court of Appeal for leave to appeal the *order nisi*. He has asked for extensions of time to file his materials at the Court of Appeal. He has brought his matter to a division of the Court of Appeal. He has exhausted his appeal avenues for the *order nisi*.

[35] He is now seeking to appeal to a Supreme Court justice Master Bouck's order approving the sale. However, instead of setting the appeal to be heard before the date of completion, he chose to set it in August 2024. Based on the number of applications



filed by Mr. Parihar in these proceedings since 2021, he knows how to bring an application to court --

M. PARIHAR: Ma'am, I was not aware --

[36] THE COURT: -- quickly.

THE SHERIFF: Stop interrupting.

[37] THE COURT: In fact, yesterday, in judges' chambers, Mr. Parihar arrived in the afternoon on an *ex parte* application seeking short leave in this same matter. It was unclear to me sitting as the chambers judge the nub of what Mr. Parihar was seeking yesterday. I advised him to return today, as I was aware of this application on the list.

[38] The Purchasers and the bank relied on Master Bouck's order to complete the sale. The Purchasers have paid the purchase price. The Purchasers now have legal title. The Purchasers have retained counsel, who attended this hearing, to advise the Purchasers are suffering harm and prejudice. They have paid the purchase price but do not have possession. They are in the meantime paying for the insurance and other costs associated with the Property.

[39] I have considered whether the fact that Mr. Parihar sought a stay of the writ of possession, as opposed to a stay of the transaction itself, due to him being a lay litigant, ought to weigh in the balance of convenience. In my view, in the totality of the circumstances, I do not find it does. Mr. Parihar sought that stay without notice to RBC. The evidence is he is well aware of how to serve legal documents on the bank.

M. PARIHAR: Ma'am, that --

[40] THE COURT: He has sent more than 1500 e-mails to the office of counsel --

M. PARIHAR: Ma'am, there is --

[41] THE COURT: -- for RBC.

M. PARIHAR: -- no time there --

[42] THE COURT: There is evidence that Mr. Parihar served RBC with notice of this application to extend the stay. I infer that Mr. Parihar intentionally chose not to provide notice to RBC for his application on January 16, 2024. This is not a situation which is deserving of the court's indulgence.

M. PARIHAR: Because they -- they don't --

[43] THE COURT: I have considered the submissions of Mr. Parihar. In my view, his arguments have little to no merit. It is also unclear to me whether this court could set aside Master Bouck's order approving the sale after the sale has already completed. The appeal of Master Bouck's order is not before me today, so I will say no more about it.

M. PARIHAR: I have Master Bouck's order,

**Conclusion**

[44] THE COURT: Mr. Parihar's application to extend the stay of Master Bouck's order is denied.

[45] RBC's application to set aside the stay granted by Justice MacDonald is granted.

[46] The certificate of pending litigation filed January 24, 2024 is of no force and effect.

[47] In the circumstances, RBC and the Purchasers are to have the costs of these applications at Scale B.

“Chan J.”