

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Samra Enterprises Inc. v. 1022724 B.C. Ltd.*,
2024 BCSC 1837

Date: 20241007
Docket: S210106
Registry: New Westminster

Between:

Samra Enterprises Inc. and Colossal Fortune Holdings Ltd.
Petitioners

And:

**1022724 B.C. Ltd., Rajvir Singh Parmar, Lakhvir Kaur Bhangu,
Charankamaljeet Kaur Pannu, Bawa Singh Bains and
Gurmej Kaur Bains, John Doe, Tenant, Jane Doe, Tenant**
Respondents

- and -

Docket: H220253
Registry: Vancouver

Between:

Tri City Nominee Services Ltd.
Petitioner

And:

**1022724 B.C. Ltd., Rajvir Singh Parmar, Tri City Mortgage Fund Ltd.,
Vaneagle Holdings Inc., Charankamaljeet Kaur Pannu,
Bawa Singh Bains, Gurmej Kaur Bains, Madan Joshi,
Ravinder Singh Gill, Ishoni Development Group Inc.,
Rameesh Kumar Thangaraja, Anup Holdings Ltd.**
Respondents

- and -

Docket: H220252
Registry: Vancouver

Between:

Tri City Mortgage Fund Ltd.
Petitioner

And:

**1022724 B.C. Ltd., Rajvir Singh Parmar,
Vaneagle Holdings Inc., Charankamaljeet Kaur Pannu,
Bawa Singh Bains, Gurmej Kaur Bains, Madan Joshi,
Ravinder Singh Gill, Ishoni Development Group Inc.,
Ramesh Kumar Thangaraja, Anup Holdings Ltd.**

Respondents

Before: The Honourable Madam Justice Forth

Reasons for Judgment

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Ltd. and R.S. Parmar in New Westminster
Action S210106 and Vancouver Actions
H220252 and H220253:

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New Westminster Action S210106 and the
Respondent M. Joshi in Vancouver Action
H220253:

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The Respondent, appearing on his own
behalf in Vancouver Actions H220252 and
H220253:

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Actions H220252 and H220253:

J.A. Van Netten

Place and Date of Hearing:

Vancouver, B.C.
May 1-2, 2024

Place and Date of Judgment:

New Westminster, B.C.
October 7, 2024

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Introduction

[1] This decision involves three foreclosures in respect of the same residential duplex located at 2681/2683 East 41st Avenue, Vancouver, B.C. (the “Property”).

[2] On March 30, 2021, Associate Judge Robertson granted a vesting order in the first foreclosure proceeding (the “Vesting Order”). Pursuant to this Order, the Property was to be sold to Madan Joshi for \$2,238,000. It is the events that occurred after the Vesting Order was granted that created the “bizarre mess” which the parties now ask me to resolve.

[3] In particular, counsel for the foreclosing mortgagee permitted the mortgage to be redeemed after the Vesting Order was granted, even though, at law, the Vesting Order extinguished the mortgagor’s right of redemption. The mortgage was paid out using funds secured by two new mortgages which were subsequently registered on title. The foreclosing mortgagee’s mortgage was then discharged from title. However, counsel for the foreclosing mortgagee continued to proceed with the sale of the Property pursuant to the Vesting Order, despite the fact that his client no longer had any legal or equitable interest in the Property sufficient to permit it to act as seller.

[4] The Vesting Order was stayed and appealed. Multiple adjournments occurred before the appeal was finally heard before Justice Groves, 11 months after the Vesting Order was granted. The appeal was dismissed but the Vesting Order was further stayed to allow counsel to raise an issue which was not pleaded in the appeal. That issue is before me today.

[5] At some time during all of this, the owner of the Property defaulted on the two new mortgages which he used to pay out the mortgagee in the first foreclosure proceeding. As a result, the two new mortgagees commenced foreclosure proceedings on the Property. These are the second and third foreclosure proceedings made in respect of the Property. In this application, I am asked to determine the enforceability of the Vesting Order and the sale which it authorized now three-and-a-half years after it was made.

[6] In these novel and “bizarre” circumstances, my decision must be governed by the interests of justice. I will set out in detail the factual matrix at the time the Vesting Order was made and the events that occurred.

The Parties

[7] The respondent, 1022724 B.C. Ltd., (“1022”), is the original and current registered owner of the Property. Rajvir Singh Parmar is the director of 1022 (collectively, “the Owners”). Both were represented in these proceedings by Vinay Verma.

[8] The Owners were in the process of subdividing and developing the Property when the Property went into foreclosure. In this application, they seek an order setting aside the Vesting Order under the inherent jurisdiction of the Court or, in the alternative, an order that it is of no force or effect.

[9] Samra Enterprises Inc. (“Samra”) and Colossal Fortune Holdings Ltd. (“Colossal”) are companies which previously held the first mortgage on the Property (the “Samra/Colossal Mortgage”) which, at the time of hearing, had been discharged. They were represented in the first foreclosure proceeding by George E. Richards.

[10] Lakhvir Bhangu held a second mortgage, Charankamaljeet Kaur Pannu held a third mortgage, and Bawa Singh Bains and Gurmej Kaur Bains held a fourth mortgage registered against the Property.

[11] Mr. Joshi was the purchaser under the Vesting Order. He was represented by Sikander Visram after the Vesting Order was made. He seeks an order that the terms of the Vesting Order be amended and that it be registered in the Land Title Office, as well as an order that the net proceeds of sale of the Property be paid into court.

[12] Tri City Nominee Services Ltd., (“Tri City Nominee”) and Tri City Mortgage Fund Ltd. (“Tri City Mortgage”) (collectively, the “Tri City Companies”) currently hold

the first and second mortgages registered on title to the Property (the “Tri City Mortgages”). They loaned money to the Owners which was used to pay off the Samra/Colossal Mortgage.

[13] The respondent, Ravinder Singh Gill, holds a third mortgage on the Property. The respondents Ramesh Kumar Thangaraja and Ishoni Development Group Inc. have builders’ liens filed against the Property.

The Proceedings

[14] The following foreclosure proceedings have been commenced in respect of the Property:

1. Foreclosure proceeding by Samra and Colossal in the New Westminster registry under Action No. S-210106 (the “First Foreclosure Proceeding”) on January 9, 2019;
2. Foreclosure proceeding by Tri City Mortgage in the Vancouver Registry under Action No. H-220252 (the “Second Foreclosure Proceeding”) on July 13, 2022; and
3. Foreclosure proceeding by Tri City Nominee in the Vancouver Registry under Action No. H-220253 (the “Third Foreclosure Proceeding”) on July 13, 2022.

Background Facts

History of the Vesting Order

[15] On August 23, 2018, Samra and Colossal had the Samra/Colossal Mortgage registered against the Property in the principal amount of \$1,580,000. On January 9, 2019, the First Foreclosure Proceeding was brought by Samra and Colossal in which they claimed that a loan made to 1022 was in default. Mr. Parmar was the guarantor. Samra and Colossal claimed that the Samra/Colossal Mortgage payments had been in default since November 22, 2018.

[16] On March 6, 2019, the Order Nisi was granted to Samra, with a six-month redemption period.

[17] The redemption period ended on September 6, 2019, and on September 26, 2019 Samra and Colossal were given exclusive conduct of sale of the Property. The Property was listed for sale.

[18] The application to sell the Property was set for hearing on September 3, 2020, but was adjourned by consent to allow the Owners to refinance the Samra/Colossal Mortgage.

[19] On January 5, 2021, Mr. Joshi signed a contract of purchase and sale (“Sales Contract”) with Samra and Colossal. The purchase price was amended to \$2,238,000. Schedule A to the Sales Contract included the following relevant terms:

1. Title will be transferred to the Buyer free and clear of all financial encumbrances in accordance with a Vesting Order of the Court.

...

3. Possession will be governed by the terms of the Vesting Order.

...

7. The acceptances of this offer by the Seller is pursuant to a Court Order for Conduct of Sale of the Property... The acceptance of this offer is subject to the approval of the Supreme Court of British Columbia and will become effective from the time an order is made approving this offer (the Vesting Order). The Seller hereby advises the Buyer that the Seller’s obligations in connection with this offer, until it is approved by the Court, are limited to putting this offer before the Court. The Seller is subject to the jurisdiction and discretion of the Court to entertain other offers and to any further Orders the Court may make regarding the Property...

8. Acceptance of this offer by the Seller and any obligations of the Seller to put this offer before the Court may be terminated at any time before the Court makes an order approving this sale if the mortgage which is the subject of these proceedings is redeemed, or if the mortgage is brought into good standing or at the option of the Seller in its sole discretion. This condition is for the sole benefit of the Seller.

[20] On February 17, 2021, Mr. Joshi paid the deposit of \$100,000 to Century 21 Coastal Reality Ltd. in trust when his offer was accepted.

[21] On March 12, 2021, Samra and Colossal filed an application for approval of sale.

[22] On March 23, 2021, the application for approval of the sale was adjourned to March 30, 2021 to give the Owners an additional week to redeem the Samra/Colossal Mortgage.

[23] On March 30, 2021, Samra and Colossal, as represented by Mr. Richards, applied to have the sale of the Property approved.

[24] On March 30, 2021, Associate Judge Robertson granted the Vesting Order to Mr. Joshi to transfer the Property, free and clear of all financial encumbrances, upon payment of the purchase price of \$2,238,000, subject to the usual adjustments. The Vesting Order approved the sale of the Property to Mr. Joshi pursuant to the Sales Contract dated January 5, 2021. The sale proceeds were to be paid to the solicitors for Samra and Colossal, namely Richards and Richards in trust.

[25] The Vesting Order is as follows:

1. The sale of the following lands and premises:

Civic Address: 2681/2683 East 41st Avenue
Vancouver, B.C., V5R 2W6

PARCEL IDENTIFIER: 007-724-675

The East ½ of Lot 2, Except: (A) the South 7 Feet and (B) Part in Explanatory Plan 8160, Block 13, DL 394, Plan 1707

(the "Mortgaged Property")

to Madan Joshi, (the "Purchaser"), on the terms and conditions set out in the contract of purchase and sale dated Jan 2, 2021, as amended, for \$2,238,000 is approved.

2. Upon filing a certified copy of this Order in the New Westminster Land Title Office together with letters from the solicitor for the Petitioners authorizing such registration and subject to the terms of this Order, the Mortgaged Property be conveyed to and vest in the Purchaser in fee simple, free and clear of any estate, right, title, interest, equity of redemption and other claims of other parties, together with any other charges, liens, encumbrances, caveats, or certificates of pending litigation registered against the Mortgaged Property subsequent to the Petitioners' Certificate of Pending Litigation, but subject to the reservations, provisos, exceptions, and conditions expressed in the original grant thereof from the Crown;

3. The Completion Date be set for April 7, 2021. Vacant possession of the Mortgaged Property be delivered to the Purchaser at or before 5:00 p.m. on April 8, 2021;

4. The net purchase price after the usual adjustments between Vendor and Purchaser shall be paid to “Richards & Richards In Trust” and shall be paid out in accordance with the following priorities without further order:

- a. First, any arrears of taxes, water and sewer rates, interest and penalties thereon, and to any amounts owing under the Certificate of Lien of the Strata Corporation;
- b. Second, the real estate commission calculated at the rate of not more than 7% on the first \$100,000 and 2.5% on the balance, of the gross selling price;
- c. Third, to the Petitioners the amount required to pay the outstanding balance of its mortgage plus interest plus assessed costs or such costs as shall be agreed between the parties;
- d. The balance then remaining of the proceeds of the sale, if any, to be paid into Court to the credit of this action and to be held pending further order of this Court.

5. For the purpose of issuing title in respect of the Mortgaged Property the following charges, liens, encumbrances, caveats, mortgages and certificates of pending litigation be canceled insofar as they apply to the Mortgaged Property:

Respondent(s)	Nature of Charge	Registration No.
1022724 B.C. Ltd.	Registered Owner	CA4155493
Rajvir Singh Parmar	Guarantor	None
Samra Enterprises Inc. and Colossal Fortune Holdings Ltd.	Mortgage and Assignment of Rents and Priority Agreements	CA7019701 and CA7019702, CA7025223 and CA7025224
Lakhvir Kaur Bhangu	Mortgage and Assignment of Rents	CA 6923651 CA 6923652
Charankamaljeet Kaur Pannu	Mortgage	CA6974905
Bawa Singh Bains and Gurmej Kaur Bains	Mortgage	CA7088460
Samra Enterprises Inc. and Colossal Fortune Holdings Ltd.	Certificate of Pending Litigation	CA7292299

together with any other charges, liens, encumbrances, caveats or certificates of pending litigation registered against the Mortgaged Property subsequent to the Petitioners’ certificate of pending litigation.

6. The Petitioners shall be at liberty to enforce this Order by a Writ of Possession and that a Writ of Possession shall be issued without further order if the Respondent(s) fail to deliver vacant possession of the Mortgaged Property to the Purchaser on or before 12:00 p.m. on April 8, 2021.

7. The Petitioners shall be at liberty, at its sole option, to extend the completion date of the Contract of Purchase and Sale for a period of not more than 14 days.
8. The Parties may apply for such further direction as may be necessary to carry out this order.
9. Approval as to form of the Order by any party other than the Petitioner is dispensed with.

Events After the Granting of the Vesting Order

[26] As a result of the various stays obtained, the Vesting Order was not, and never has been, registered in the Land Title Office and thus title to the Property has not passed to Mr. Joshi.

[27] The Vesting Order provided a completion date of April 7, 2021, but could be extended for 14 days by agreement. On April 1, 2021, Mr. Richards and Mr. Visram agreed to extend the completion date to April 21, 2021. This was confirmed in an email dated April 1, 2021, sent by Mr. Richards' paralegal, Maria MacMillan, to Mr. Visram:

Attached is the draft Order which has been submitted for rush filing. We confirm our telephone conversation wherein an extension to the completion date has been agreed to April 21, 2021 pursuant to the Court Order.

[28] Mr. Parmar says that he was not advised that this extension was granted by Mr. Richards or his legal assistant. He further claims that he was told by Gurmukh Bhanghu, husband of Lakhvir Bhanghu, that Mr. Joshi had asked for an extension for the completion of the purchase of the Property and that Samra and Colossal had not granted the extension. In support of this, Mr. Parmar attached an affidavit of Mr. Bhanghu sworn April 28, 2021 which states at para. 3:

I understood from the Respondent Lakhvir that Madan Joshi had requested an extension of the completion date for the purchase of the subject property. I assumed that the Petitioners did not grant any extension, particularly as I understood from my discussions with the Respondent, Rajvir Singh Parmar, that the Respondent, 1022724 B.C. Ltd., being the owner of the subject property, had arranged financing to pay out the Petitioners' mortgage... [emphasis added]

[29] This paragraph of the affidavit does not support that Mr. Bhangu had been told that Samra and Colossal had not granted an extension, but only that he assumed this because the Samra/Colossal Mortgage had been paid out.

[30] Mr. Bhangu further, at para. 4, swears that:

On April 15, 2021, I spoke on the telephone to Amarjit Samra, who I have known for about a year. I understand Mr. Samra to be the owner of the Petitioner, Samra Enterprises Inc. During our April 15, 2021, telephone conversation, Mr. Samra confirmed to me that the Petitioners' mortgage had been paid out and at the same time he told me that he never agreed to extend the completion date for the sale to Madan Joshi...

[31] Mr. Parmar states in his affidavit #7 made March 22, 2022 at para. 24 that:

On or about April 7, 2021, Amarjit Samra the director of Samra Enterprises Inc., directly told me that Joshi requested an extension for the completion of the purchase of the Property, pursuant to the Order and that he denied the request for the extension and told me to pay-out the Petitioners, immediately.

[32] The evidence of Mr. Bhangu and Mr. Parmar about what Mr. Samra said, is inconsistent with the email sent by Ms. MacMillan on April 1, 2021 confirming the extension of time for the completion of the purchase of the Property by Mr. Joshi. It remains unclear to me on the evidentiary record why counsel for Mr. Samra was confirming the extension and Mr. Samra was allegedly telling others that he had not been granted an extension.

[33] On April 6, 2021, the Owners obtained a one-day stay from Justice Shergill of the Vesting Order pending the appeal of it. Mr. Joshi claims that the application for a stay was made on short leave and without notice to him or his counsel.

[34] I note that Mr. Joshi should have been served with the stay application pursuant to Rule 8-1(7) of the *Supreme Court Civil Rules*, as he was an interested party as the purchaser under the Vesting Order. Out of all the parties, Mr. Joshi's interest was the most adversely affected by this stay application. The responsibility for ensuring notice was given rested on the applicants, being the Owners. Inquires should have been made to determine how to serve Mr. Joshi.

[35] An appeal of the Vesting Order was filed on April 6, 2021 by the Owners.

[36] On April 7, 2021, Justice Marzari ordered a further three week stay of the Vesting Order so that the appeal could be heard. Mr. Joshi and Mr. Visram claim that no notice of this application was provided to them. Mr. Joshi should have been given notice of this application as well.

[37] On April 8, 2021, Mr. Visram sent the conveyancing documents to Mr. Richards to be executed by the Seller. The enclosed Seller Statement of Adjustment clearly states that the completion date is April 21, 2021.

[38] On April 12, 2021, Mr. Richards sent a letter to Paul De Lange, counsel for the Owners with respect to the payout of the Samra/Colossal mortgage, attending to the mortgage payout and new mortgage registration, stating, in part:

We acknowledge receipt of your email request for a payout figure dated January 31, 2020.

We confirm we are counsel for the above named mortgage holder. As requested this is a mortgage payout statement. The amount required to payout the above noted Mortgage, including interest to **April 12, 2021** is as follows:

.... **\$2,164,067.38**

[39] It is puzzling why Mr. Richards would have sent this payout statement given that he authorized the extension of the purchase of the Property by Mr. Joshi to April 21, 2021, as confirmed in his paralegal's email of April 1, 2021.

[40] On April 13, 2021, Mr. Verma, counsel for the Owners, notified Mr. Richards, counsel for Samra and Colossal, that the Samra/Colossal Mortgage was in the process of being paid out.

[41] On April 15, 2021, the Owners paid out the Samra/Colossal Mortgage and the Certificate of Pending Litigation was discharged from the Property. The amount paid was \$2,166,162.04, which included approximately \$586,000 in interest. On the same day, Tri City Nominee and Tri City Mortgage registered their respective Mortgages and Assignment of Rents.

[42] The Tri City Companies say that they were completely unaware of the Vesting Order that was made.

[43] On April 16, 2021, Mr. Verma, counsel for the Owners, emailed Mr. Richards, counsel for Samra and Colossal, to request an acknowledgment of payment and a notice of discontinuance.

[44] Mr. Richards responded to this request on April 20, 2021, stating, in part:

I can provide you with the Acknowledgment and Discontinuance as requested but the purchaser are [*sic*] pressing to complete the purchase and sale under Master Robertson's order. If I Discontinue and you allow the appeal to lapse does that leave Master Robertson's order in effect. If so, it seems to me, the law may be with the purchasers. I have pasted below some quick cites below:

(1) Montreal Trust Company v. Brown et al., [1974] 6 W.W.R. 524. An Order Approving Sale terminates the equitable right of redemption once Order [*sic*] is entered. The existence of an Order Approving Sale and vesting title in the purchaser precludes redemption.

(2) Morguard Mortgage Investments Ltd. v. Faro Development Corp. Ltd. (1974), 50 D.L.R. (3d) 426. Order Approving Sale extinguishes right to redeem.

(3) Farmers & Merchants Trust Company v. Church et al. (1977), 2 B.C.L.R. 252. No redemption after Order Approving Sale.

[45] On April 22, 2021, Mr. Verma responds noting:

Our position is that Madan Joshi was unable to complete the sale as he asked for an extension which was not given by the Petitioners. This extension was asked for before the stay of execution was granted as per Maria's email provided to us which I can forward you.

In the order of Master Robinson it clearly states that it is the Petitioners [*sic*] shall be at liberty, at its sole option to extend the completion date of not more than 14 days.

If you believe this is a concern, then I suggest we obtain leave from the court in order to discontinue the action.

[46] I have not located in the evidentiary record before me "Maria's email" referenced above. It appears that Mr. Richards did not directly respond to Mr. Verma's email of April 22, 2021 in which Mr. Verma noted that Samra and Colossal had not granted the extension.

[47] On April 27, 2021, Mr. Richards confirmed by letter that he was proceeding with the transfer of the Property to Mr. Joshi, despite having received funds sufficient to fully pay out the Samra/Colossal Mortgage (the “April Letter”). On the same day, Mr. Richards executed the conveyancing documents to transfer the Property to Mr. Joshi.

[48] Mr. Richards stated in the April Letter:

As you are aware, the stay granted on April 7, 2021 for 21 days is due to expire. The Appeal with respect to the above matter has not been adjudicated. Therefore, we enclose the executed Vendor’s documents as follows:

1. Vendor’s Statement of Adjustments; (as amended)
2. Certified Vesting Order;
3. Letter to Land Title Office authorizing registration of Vesting Order;
- ...

We would appreciate it if you could deposit the sale proceeds to our trust account as follows:...

[49] The Statement of Adjustments attached to the April Letter was amended to read that the Seller, by court order, is Samra and Colossal. It is not clear how Samra and Colossal were going to sell a Property for which they had no interest in as their mortgage had been fully redeemed.

[50] What is lacking from the April Letter is the information that the Samra/Colossal Mortgage has been paid out and removed from title, all of which was known to Mr. Richards as of the date the April Letter was sent.

[51] On April 27, 2021, Mr. Richards also emailed Mr. Verma advising:

This is the second time I am saying the following to you. If you allow the appeal to lapse, then the order approving sale comes back into force after the stay expires. With the order in force then the sale must complete according to its terms. The purchaser’s lawyer and I cannot simply choose to ignore the effect of the order because your clients wish us to do so.

...

With respect, your plans described below to get a further stay or to dismiss the claim against your client still do not recognize the reality which is that the order approving sale has been made. It is not “un-made” by an order staying its further effect for a limited period of time or an order dismissing the underlying claim.

[52] On April 28, 2021, the Owners filed a short-leave application to extend the three-week the stay of the Vesting Order. Justice Harvey ordered that the extension application would be heard on April 30, 2021.

[53] On April 30, 2021, Justice Armstrong heard the application to extend the stay order and extended the stay to May 7, 2021. Mr. Parmar says that Justice Armstrong noted that oral reasons were needed for the appeal and that Mr. Richards was to provide an affidavit addressing the issues raised. There is no order filed from the April 30, 2021 appearance.

[54] On May 3, 2021, Mr. Richards made an affidavit which stated, in part:

9. Between April 15 and April 20 the Borrowers offered to pay the Petitioners enough money to redeem Petitioners' mortgage. The Petitioners saw no reason to fight the appeal in the face of the Borrowers' wish to redeem. The Petitioners instructed me to take the money, provide a letter releasing the Petitioners' CPL from the Land Title Office and deliver a Form C discharge of mortgage signed by the Petitioners.

...

14. Up until about April 27, 2021, I understood from the purchaser's lawyer that the purchaser was not inclined to defend the appeal and was inclined to allow the vesting order to be set aside. I formed this impression as a result of my conversations with the purchaser's lawyer, Mr. Visram, after April 6 when the first stay order was made. However, at the same time, I also had conveyance documents from Mr. Visram received before April 6, 2021. These documents and Mr. Visram's position were clear. The purchaser intended to complete the purchase if the Vesting Order remained in effect. At no time did Mr. Visram tell me that the purchasers wished to collapse the purchase and get their deposit back.

15. When I returned the conveyancing documents to Mr. Visram I expected Mr. Visram to tell me that the purchaser did not intend to complete the purchase because of the ongoing appeal. He and I would then make arrangements to wind up the conveyance and release the purchaser's deposit being held by the realtors and perhaps exchange mutual releases. However, if Mr. Visram told me that the purchasers wished to complete the purchase because the Vesting Order had not been set aside then I planned to relay that message to the borrowers' lawyer, Mr. Verma, so that Mr. Verma would proceed with the hearing of the appeal.

16. The Petitioners' position has been consistent throughout. The Borrowers cannot redeem so long as the Vesting Order remains in force. The Vesting Order needs to be set aside to allow the Borrowers to perfect the redemption of the mortgage and avoid the sale of the property to the purchasers.

17. When the Petitioners accepted payment from the Borrowers of an amount sufficient to redeem the Petitioners mortgage it seemed to me that the Vesting Order would be set aside. The Petitioners were not opposed to the appeal. The purchasers had indicated to me, through their lawyer, that they were unlikely to oppose the appeal. None of the other Respondents were opposing the appeal.

[55] I note that Mr. Richards' affidavit does not expressly state that he had received instructions from his clients, Samra and Colossal, to grant the extension of completion of the purchase of the Property to April 21, 2021. However, the April Letter supports that the extension was granted.

[56] On May 5, 2021, Mr. Joshi paid a total of \$2,182,413.23 into Mr. Visram's trust account.

[57] On May 7, 2021, Justice Armstrong adjourned generally the stay application and reset it for June 4, 2021.

[58] Mr. Parmar says that he, 1022, and their lawyer Mr. Verma, did not know that Mr. Joshi was given an extension to complete the purchase of the Property until he received Mr. Joshi's affidavit signed on May 15, 2021. It is not clear which affidavit Mr. Parmar is referring to, but Affidavit #1 of Mr. Joshi made on May 5, 2021 states at para. 7:

With respect to the completion, I am advised by Mr. Visram that he spoke with Mr. Richards on April 1st 2021, and Mr. Richards confirmed that pursuant to order [*sic*] of Master Robertson the completion date could be extended by 14 days to April 21st, 2021.

[59] Attached to this affidavit is the April 1, 2021 email from Mr. Richards' paralegal to Mr. Visram confirming that the extension to April 21, 2021 was granted.

[60] Mr. Parmar states in his affidavit #7, made on March 22, 2022, at para. 41:

I had no reason to pay-out the Petitioners if I knew that an extension was provided to Joshi. I only paid out the Petitioners because I was told by Gurmukh Bhangu and Amarjit Samra that no extension was provided to Joshi and I had no reason to believe otherwise once Mr. Richards provided us the documents to make the pay-out.

[61] On May 15, 2021, Mr. Joshi filed a Certificate of Pending Litigation on the Property.

[62] On May 27, 2021, Ishoni Development Group Inc. (“Ishoni”) filed a lien against the Property for \$385,000. On the same day, Mr. Thangaraja filed a lien against the Property for \$65,000. Both Ishoni and Mr. Thangaraja were hired by 1022 to complete construction work on the Property.

[63] On June 1, 2021, Ravi Singh Gill and Anup Holdings Limited each filed mortgages against the Property in order to secure their loans to 1022, the total amount of which, together, was \$340,000.

[64] On June 4, 2021, Justice Riley heard the stay application, ordered a stay until August 31, 2021, and directed that the appeal be set for hearing no later than August 31, 2021.

[65] On August 31, 2021, the Court extended the stay of the Vesting Order to October 29, 2021 and ordered that the appeal be set for hearing on the Chilliwack assize list for a full day during the week of October 25, 2021.

[66] On November 29, 2021, the Owners filed a requisition to reset the hearing of the appeal for January 25, 2022.

[67] On January 25, 2022, Justice Groves ordered the appeal take place on February 10 and 11, 2022.

The Appeal of the Vesting Order

[68] The appeal of the Vesting Order was heard by Justice Groves on February 10 and 11, 2022, and Groves J. dismissed the appeal on February 12, 2022 (the “Groves Order”). On February 10, 2022, Groves J. issued oral reasons respecting a request made by Samra and Colossal, as appellants, to argue an issue that was not set out in the appeal or the pleadings. The relief sought was that the court should exercise its inherent jurisdiction to grant the same relief sought, even if the Associate Judge had not erred. Justice Groves declined to hear the issue because it had not

been pleaded in the notice of appeal: *Samra Enterprises Inc. v. 1022724 B.C. Ltd.* (February 10, 2022), Vancouver H210106 (B.C.S.C.).

[69] On his own motion, Justice Groves extended the stay of the Vesting Order for another 60 days, until to April 12, 2022 so that the Owners could raise the issue of inherent jurisdiction: *Samra Enterprises Inv. v. 1022724 B.C. Ltd.*, 2022 BCSC 1936 at para. 45. Justice Groves stated in his reasons as follows:

[12] These circumstances that happened on April 15, 2021, and again on April 27, 2021, all lead to what can only be characterized, in a very non-legal term, as a real mess, a mess that most parties feel will be resolved by the overturning of the master's decision. I think they are right. If I was to overturn the master's decision, much of the problem created by 102 B.C. Ltd., Mr. Parmar, Samra Enterprises Inc. and their solicitor Mr. Richards, would be resolved. But that is not a basis to overturn a master's decision. In order to overturn a master's decision, and this is essentially a final order, the standard of review is one of correctness and the party who advances the appeal must show that the master erred, which brings me to another bizarre aspect of the appeal before me.

[13] This appeal is advanced by 102 B.C. Ltd. and Mr. Parmar. They are appealing a decision of a learned master of March 30, 2021. The petitioner, Samra Enterprises Inc., Mr. Richards' client, brought on the application which resulted in the vesting order. It is Mr. Richards and his client who applied to the court for the vesting order and were successful in getting the vested order. In fact, my review of the transcript shows that they argued strenuously for the vesting order. When a compromise was suggested by counsel for Mr. Parmar and 102 B.C. Ltd., a modest delay to allow Mr. Parmar a couple more days to get his financing in order, they argued further against that and how a further delay would be inappropriate.

[14] Now Mr. Richards and his client, Samra Enterprises Inc., have the temerity to argue, after all of that, that the learned master erred in doing what she did. This is what they proposed, what they asked for in an application and what they insisted she do. They strenuously advocated that the master should grant the vesting order on March 30, 2021, and they argued on February 10 and 11, 2022 that she erred in doing so. This matter is, on very many levels, quite bizarre.

...

[39] It cannot be said, in my view, with all those facts, that the master erred in granting the order she did. It cannot be said that she erred in proceeding that day. As such, based on all of what I have said, I have been unable to find that the master erred in any way and the appeal as such must be dismissed.

[40] But, I am going to say more. The law related to the actions of the petitioner and Mr. Richards is clear in my view, and, oddly enough, despite not following the law, Mr. Richards, by late April 2021, was pointing out this

law to Mr. Verma. That law is that once a vesting order is made there is no authority, none, no ability for a respondent to redeem the mortgage.

[41] Though numerous cases say this, the case of *Farmers & Merchants Trust Company v. Church*, 1977 CanLII 312, is a decision of the British Columbia Supreme Court and was binding on the master, if it had been brought to her attention. It is binding, essentially, on me. It is binding on those who practice in this area. That case, relying on a decision of *Montreal Trust v. Brown*, 1974 CanLII 1108, a decision of the B.C. Court of Appeal, confirms at para. 7 the following:

The [W.W.R.] headnote in the case of *Montreal Trust Co. v. Brown* reads as follows:

“The courts of British Columbia have no jurisdiction to allow a mortgagor of lands to redeem after a judicial sale of the property under court order where no further confirmation is needed and the order provides for a vesting in the purchaser. . .

[42] Despite being aware of this law, Mr. Richards facilitated an apparent payout by 102 B.C. Ltd. and Mr. Parmar a few weeks after the court, at his urging, had granted a vesting order. It is clear that Mr. Richards knew, at least a few weeks later, that that was contrary to the law, and why he did this is a great mystery. He has not come to court today or yesterday to explain this and he leaves it to the unfortunate Ms. Wong. Ms. Wong has had to bear the brunt of the court's concerns to deal with Mr. Richards' apparent actions on behalf of Samra Enterprise contrary to practice and contrary to law. Why he did what he did, which essentially has caused the legal quagmire that his actions have created, is a mystery. It is an explanation perhaps, for he and his client's bizarre, if not unprecedented position, that he supports an argument that a master erred when the master acted on his and his client's application. The master acted when he and his client strenuously insisted that she act.

[43] A final mystery on the facts is Mr. Richards' actions on April 27, 2021. This was the day before the then stay was to expire, the stay of Madam Justice Marzari. The bizarre act of forwarding documents signed by his client to facilitate the acting on a vesting order is inexplicable. The documents would have seen his client pay another \$2 million-plus for property when his client had already had their mortgage paid out. How he had the temerity to do this when his client has been paid, and, despite the representations in his affidavit that he did not have this intention, raises in my mind serious ethical considerations. What would he have done with the \$2 million? How, if he had received this, could he possibly have transferred the property and facilitated it? He could not, so why did he go through that charade?

[44] As I said earlier in my reasons at the beginning, allowing this appeal would solve all sorts of problems for Samra, for Mr. Richards, for Mr. Parmar, for 102, for perhaps subsequent mortgage holders, but it would not solve the problem, of course, or deal with Mr. Joshi's concern. Mr. Joshi is someone who appeared before court and got the benefit of a vesting order which then could not be acted on. But, solving a problem is not good enough. It may seem logical for the court to do this to solve the vast majority of everyone's problems, but a master should not be found to have erred when they have

not so as to solve problems later created by lawyers and parties. Appeals are only allowed when there is an error, and only then, and there is no error here.

[45] In addition to dismissing the appeal, which I have done, I am granting on my own motion a further stay of this vesting order for 60 days. These are the reasons why. The vesting order may in fact be inoperative on its face. It is a complicated series of problems now. There is a vesting order, on its face having expired, with a mortgage to be removed that is no longer there, it is a problem. It is a total quagmire and I, quite frankly, do not know how that is going to be solved.

[46] The second reason I am granting a stay is because counsel for 102 and Mr. Parmar, Mr. Verma, had wanted to advance an argument that the court should solve this problem by using its inherent jurisdiction. I did not allow him to make that argument, because frankly it was not pleaded. There was no notice of that argument in his appeal. Counsel may have a clever avenue available to make this argument. I do not know how, but there may be something out there. That is for him to decide, but I am going to give him the opportunity to do that, so that is a second reason why I am extending the stay for a further 60 days.

[47] The final reason I am extending the stay for the further 60 days is that there are innocent parties here clearly adversely affected by what has happened. Those innocent parties, in my view, are the client of Mr. Van Netten, Tri City Capital; Mr. Thangaraja, who is a lien holder who has filed subsequent to the bizarre actions happening in March and April 2021; and Mr. Ravi Gill, a mortgage holder who has also seemingly lent funds after the bizarre happenings in April 2021. I am, of course, not including in this Mr. Cheema, who has represented the former mortgage holder Mr. Bhangu, and Ms. Pannu, who has appeared in this matter representing herself. The Bhangu mortgage and the Pannu mortgage were affected by the vesting order and they are not, by any stretch of the imagination, innocent parties affected by bizarre actions in April 2021.

[48] In regards to Tri City's Mr. Thangaraja, the [lien] holder, and Mr. Ravi Gill, the mortgage holder, they frankly may all have a claim against Mr. Richards and Mr. Parmar and 102 B.C. Ltd. Mr. Richards in negligence, as they may be adversely affected by his actions which were contrary to law in accepting the respondent's payout, and Mr. Parmar in perhaps fraud or deceit, depending on what representations Mr. Parmar made as to the title of the property. I note with interest that Mr. Van Netten, in his brief submissions to the court, advised the court that in granting the finance that his clients did they were unaware of the vesting order by Mr. Parmar and Mr. Parmar clearly knew of it. That may be defraud or deceit. It is certainly a material lack of disclosure not provided to a funder. For those three reasons, the stay is extended for a further 60 days.

[49] Having said all that, and if I may be so bold as to suggest what has to happen here. Mr. Joshi has suffered a loss. It might be a modest loss, but it is a loss nonetheless. It is a loss of opportunity to make some money on a residential property that he could have bought almost a year ago for \$2.238 million. The reason he suffered a loss is because of the actions of Mr. Parmar and Mr. Richards and his client, Samra Enterprises Inc. These parties, Mr.

Parmar, the numbered company, and Mr. Richards and his clients, Mr. Samra, would be smart, would be very smart if they have their counsel, or in Mr. Richards' case perhaps his insurer, try to settle this matter with Mr. Joshi. I urge them to consider that, because I firmly believe that the difficulty that this quagmire of improper action and this quagmire of difficult circumstances could no doubt result in many more years of litigation, and that is in no one's interest.

Events After the Appeal of the Vesting Order

[70] On March 24, 2022, the Owners filed a notice of application in the First Foreclosure Proceeding seeking to set aside the Vesting Order (the “Inherent Jurisdiction Application”). The Inherent Jurisdiction Application was set for hearing during the week of April 4, 2022 in Port Coquitlam. However, on that day, Justice Wilson adjourned it.

[71] On May 24, 2022, Mr. Joshi consented to a stay of the Vesting Order until the issue of the Inherent Jurisdiction Application could be addressed.

[72] On July 13, 2022, the Tri City Companies commenced the Second and Third Foreclosure Proceedings.

[73] On August 29, 2022, the Owners filed an amended notice of application seeking a declaration that the Vesting Order was of no force and effect. The application was set to be heard during the week of September 12, 2022.

[74] On September 2, 2022, Mr. Joshi filed notices of application in the Second and Third Foreclosure Proceedings seeking an order that the stay be lifted and that the Vesting Order be registered in the Land Title Office with the balance of the sale proceeds being paid into court. These applications were set for hearing on September 23, 2022, but were ultimately adjourned.

[75] On October 6, 2022, Mr. Joshi filed notices of application in the Second and Third Foreclosure Proceedings seeking a declaration that the Tri City Mortgages were invalid and of no force and effect, and that the First Foreclosure Proceeding be dismissed (the “October Applications”). These applications were scheduled for hearing on October 24, 2022.

[76] On October 7, 2022, Mr. Joshi filed a notice of application in the First Foreclosure Proceeding seeking the lifting of the stay, authorizing the registration of the Vesting Order with a new completion date, and the Vesting Order be amended.

[77] On October 18, 2022, Tri City Nominee and Tri City Mortgage filed responses to the October Applications taking the position that the application had to be held in the First Foreclosure Proceeding.

[78] On October 24, 2022, the Inherent Jurisdiction Application began before Justice Tammen but was adjourned for lack of time. Justice Tammen remained seized.

[79] On November 16, 2022, the matter began again before Justice Tammen but was similarly adjourned for lack of time.

[80] On April 19, 2023, the City of Vancouver issued a tax sale notice advising that the Property had been sold at a tax sale on November 2, 2022, with the last date to redeem being November 2, 2023.

[81] As of September 26, 2023, the outstanding taxes on the Property totaled \$195,887.52. The minimum amount required to redeem the Property from the tax sale, including interest up to October 3, 2023, was \$14,707.47.

[82] On October 4, 2023, Tri City Mortgage paid the City of Vancouver \$14,713.03 to redeem the Property. This amount represented the minimum redemption amount plus daily interest for October 4, 2023.

[83] On October 16, 2023, the City of Vancouver issued a notice of redemption from tax sale confirming that the Property had been redeemed.

[84] On November 7, 2023, the Inherent Jurisdiction Application was reset before Justice Tammen but counsel for Samra and Colossal was unavailable due to illness. As a result, Justice Tammen was no longer seized, and the matter was to be set for two full days to start *de novo*.

[85] On February 23, 2024, Mr. Visram, counsel for Mr. Joshi, unilaterally reset the Inherent Jurisdiction Application for March 11 and 12, 2024, without consulting the other parties.

[86] On April 25, 2024, Mr. Visram rescheduled the Inherent Jurisdiction Application for May 1 and 2, 2024. On those days, the Inherent Jurisdiction Application came before me.

State of Title of the Property

[87] The current state of title of the Property shows the following charges registered on title:

Charge	Registered Owner	Registration Date	Registration No.
Mortgage	Vaneagle Holdings Inc.	July 11, 2018	CA6923651
Assignment of Rents	Vaneagle Holdings Inc.	July 11, 2018	CA6923652
Mortgage	Charankamaljeet Kaur Pannu	August 1, 2018	CA6974905
Mortgage	Bawa Singh Bains & Gurmej Kaur Bains	September 26, 2018	CA7088460
Mortgage	Tri City Nominee Services Ltd.	April 15, 2021	CA8924260
Assignment of Rents	Tri City Nominee Services Ltd.	April 15, 2021	CA8924261
Mortgage	Tri City Mortgage Fund Ltd.	April 15, 2021	CA8924262
Assignment of Rents	Tri City Mortgage Fund Ltd.	April 15, 2021	CA8924263
Priority Agreement <i>(granting the Tri City Nominee mortgage priority over the Vaneagle mortgage and assignment of rents)</i>	n/a	April 15, 2021	CA8924886

Priority Agreement <i>(granting the Tri City Nominee assignment of rents priority over the Vaneagle mortgage and assignment of rents)</i>	n/a	April 15, 2021	CA8924887
Priority Agreement <i>(granting the Tri City Nominee mortgage priority over the Pannu mortgage)</i>	n/a	April 15, 2021	CA8924888
Priority Agreement <i>(granting the Tri City Nominee assignment of rents priority over the Pannu mortgage)</i>	n/a	April 15, 2021	CA8924889
Priority Agreement <i>(granting the Tri City Nominee mortgage priority over the Bains mortgage)</i>	n/a	April 15, 2021	CA8924890
Priority Agreement <i>(granting the Tri City Nominee assignment of rents priority over the Bains mortgage)</i>	n/a	April 15, 2021	CA8924891
Priority Agreement <i>(granting the Tri City Mortgage Fund mortgage priority over the Vaneagle mortgage and assignment of rents)</i>	n/a	April 15, 2021	CA8924892
Priority Agreement <i>(granting the Tri City Mortgage Fund assignment of rents priority over the Vaneagle mortgage and assignment of rents)</i>	n/a	April 15, 2021	CA8924893
Priority Agreement <i>(granting the Tri City Mortgage Fund mortgage priority over the Pannu mortgage)</i>	n/a	April 15, 2021	CA8924894
Priority Agreement	n/a	April 15, 2021	CA8924895

<i>(granting the Tri City Mortgage Fund assignment of rents priority over the Pannu mortgage)</i>			
Priority Agreement <i>(granting the Tri City Mortgage Fund mortgage priority over the Bains mortgage)</i>	n/a	April 15, 2021	CA8924896
Priority Agreement <i>(granting the Tri City Mortgage Fund assignment of rents priority over the Bains mortgage)</i>	n/a	April 15, 2021	CA8924897
Certificate of Pending Litigation	Madan Joshi	May 17, 2021	CA9010984
Mortgage	Ravinder Singh Gill	May 26, 2021	CA9036503
Builder's Lien	Ishoni Development Group Inc.	May 27, 2021	CA9040739
Builder's Lien	Ramesh Kumar Thangaraja	May 27, 2021	CA9040740
Mortgage	Anup Holdings Ltd.	June 1, 2021	CA9060423
Certificate of Pending Litigation	Ramesh Kumar Thangaraja	May 26, 2022	BB5001405
Certificate of Pending Litigation	Ishoni Development Group Inc.	May 26, 2022	CA9955860
Certificate of Pending Litigation	Tri City Nominee Services Ltd.	July 15, 2022	CB85797
Certificate of Pending Litigation	Tri City Mortgage Fund Ltd.	July 15, 2022	CB85825
Crown Lien	The Crown in Right of British Columbia	October 13, 2023	CB951507

[88] The priority agreements registered against title grant the Tri City Companies' respective mortgages and assignment of rents priority over the charges registered before them. As a result, the Tri City Companies currently hold the first and second mortgages on the Property.

Issues

[89] The issues in this case are as follows:

1. Was the right of redemption extinguished by the Vesting Order?
2. Should the Samra/Colossal Mortgage have been redeemed on April 15, 2021?
3. Do exceptional circumstances exist, or is it in the interests of justice, to declare that the Vesting Order is of no force and effect?

Position of the Parties

Position of Mr. Joshi

[90] Mr. Joshi says that the Owners' right to redeem the Property and their equity of redemption was extinguished by the Vesting Order. Accordingly, they had no further interest in the Property which they could "mortgage" to Tri-City Companies. This is because, by operation of the Vesting Order, Mr. Joshi owned the Property. The only interest the Owners had left in the Property was in the sale proceeds of the Property.

[91] Mr. Joshi argues that the mortgages that were granted after the Vesting Order did not detract from the Vesting Order itself. 1022 had no further interest in the Property which it could mortgage after the Vesting Order was granted. Therefore, the "mortgages" do not attach to the Property.

Position of the Owners

[92] These respondents argue that they are not seeking the court to make an order in their right to redeem. Instead, they say that Samra and Colossal chose to do so on their own accord when Mr. Richards, as their counsel, accepted funds from the Owners and then discharged the Samra/Colossal mortgage from title. This act effectively deemed the Vesting Order of no force and effect.

[93] The Owners say that Mr. Joshi's recourse is to start an action against Samra and Colossal, and possibly Mr. Richards, for breach of contract.

[94] They submit that Mr. Joshi is seeking specific performance of the Sales Contract to purchase the Property. To be successful, he must establish that he is ready, willing, and able to complete, and that the Property is so unique that damages would be insufficient remedy. They say that there is no evidence to support any uniqueness in the Property that cannot be compensated for by way of damages. Damages are therefore an adequate remedy.

[95] In this case, the Owners say that the only suitable remedy is for the Vesting Order to be deemed inoperative and to be set aside or, alternatively, to be declared of no force or effect.

Position of Tri City Nominee and Tri City Mortgage

[96] These petitioners claim that they were *bona fide* lenders for value without notice and relied on the state of title at the time the Tri City Mortgages were registered. They say that Mr. Joshi's claim remains an interest in the Property which was, and remains, unregistered.

[97] They argue that the court has an equitable jurisdiction to set aside orders made in a foreclosure proceeding in special circumstances or to avoid a miscarriage of justice.

[98] The Tri City Companies submit that the Vesting Order is no longer operative due to the material change in circumstances, in particular, the fact that the Samra/Colossal Mortgage has been discharged. In order for the Vesting Order to be effective, it would need to be redrafted with a new petitioner, new respondents, and new terms. It is not, as Mr. Joshi suggests, enough to simply amend the Vesting Order.

[99] Further, they argue that Mr. Joshi did not act in a timely manner to enforce the Vesting Order. The Vesting Order was granted on March 30, 2021, but Mr. Joshi waited 18 months to file a notice of application seeking to enforce it.

[100] The Tri City Companies also points out that the Sales Contract included terms that Mr. Joshi was subject to the jurisdiction discretion of the court and that the acceptance may be terminated if the Samra/Colossal Mortgage is redeemed, brought into good standing, or at the discretion of Samra or Colossal. Pursuant to these terms, the Sales Contract terminated when the Samra/Colossal Mortgage was redeemed. As a result, the contractual basis for the Vesting Order also terminated.

[101] Finally, the Tri City Companies note that if the Property is sold at the purchase price in the Vesting Order, there will be a significant shortfall suffered. The estimate of the shortfall as of May 2, 2024 is \$1,026,000.

Legal Principles

[102] In *Montreal Trust Co. v. Brown*, [1974] 47 D.L.R. (3rd) 603 at 608, 1974 CanLII 1108 (B.C.C.A.) [*Montreal Trust*], Justice Seaton states that, “a British Columbia Court has no jurisdiction to allow a mortgagor of lands to redeem after a judicial sale of the property under Court order where no further confirmation is needed and the [order] provides for a vesting in the purchaser”.

[103] Until a vesting order is granted, the mortgagor has the right of redemption, also known as an equity of redemption, which is the right to recover property before a foreclosure sale by paying the outstanding principal, interest, and other costs that are due: Bryan A. Garner, ed, *Black’s Law Dictionary*, 10th ed (St. Paul, M.N.: Thomson Reuters, 2014), sub verbo “equity of redemption”; *Rayman Investments & Management Inc. v. Granville Island Hotel and Marina Ltd.*, 1996 CanLII 2944 (B.C.S.C.) at para. 27 [*Rayman Investments*]. As Charles Herman Kinnane explained in his *First Book on Anglo-American Law*:

A mortgage is technically a conveyance of title to property as security for a debt. The law courts, with typical technicality, early adopted the rule that if the debt was not paid on the very day it was due, the debtor lost his land. The equity courts, however, with more liberality, and with more of a recognition of

the real purpose of the transaction, recognized the fact that the securing of the debt, rather than the act of conveyance of title was the principal thing giving character to the transaction. Accordingly they alleviated the severity of the legal rule by, in effect, giving the land back to the debtor if he would pay the debt, even though it had not been paid on time. This equitable right to redeem, even after default in paying the debt when it was due, was called the “equity of redemption”.

See Charles Herman Kinnane, *First Book on Anglo-American Law*, 2nd ed (Indianapolis: Bobbs-Merill Co., 1952) at 309.

[104] A vesting order extinguishes the right to redeem. Once a property is sold and the lot has vested in the purchaser pursuant to a vesting order, the mortgagor has no right or interest in the property by way of a right to redeem: *Canadian Imperial Bank of Commerce v. Grouse Nest Resorts Ltd.* (1982), 36 B.C.L.R. 248 at para. 16, 1982 CanLII 555 (B.C.S.C.) [*Grouse Nest*]; *Rayman Investments* at para. 27.

[105] The moment a vesting order is made, the debtor’s only remaining right or property interest would be to, or in, any surplus of sale proceeds: *Grouse Nest* at para. 17; *Montreal Trust* at 606.

[106] In *Scotia Mortgage Corporation v. Ludwig*, 2010 BCSC 232 at para. 8 [*Ludwig*], the Court confirmed that “[t]he Land Title system in British Columbia is based on the fundamental principle that those dealing in interests in land are entitled to rely on the registered title.”

[107] The Court has a judicial discretion to reopen a final order of foreclosure at any time on equitable grounds, but that discretion should only be exercised in very special circumstances or to avoid a miscarriage of justice: *Montreal Trust* at 608–609; *Accepted Financial Corporation v. 1225614 B.C. Ltd.*, 2022 BCSC 942 at paras. 52–53.

[108] The British Columbia Court of Appeal in *F.B.D.B. v. F.J.H. Const. Ltd.* (1988), 50 D.L.R. (4th) 105 at para. 21, 1988 CanLII 3004 (B.C.C.A.), adopted the following statement of law from *Canlan Investment Corporation v. Gibbons* (1983), 42 B.C.L.R. 199 at para. 7, 1983 CanLII 473 (B.C.S.C.):

The petitioner may be granted an order for sale in lieu of an immediate order absolute at the hearing of the petition where the facts set out in the material justifies such an order. If a sale is approved, the mortgagor then loses the right to redeem, except in very unusual circumstances...

[109] I was provided no case authority for what “very unusual circumstances” might include. Counsel referred me to the Halsbury’s Law of Canada, which provides an interpretation of what constitutes unusual circumstances, in the context of when execution of a judgment may be stayed:

Exceptional or unusual circumstances. Some courts have expressed the test as being that a stay should be granted only in **exceptional or unusual circumstances** having regard to the fact that the successful party should not be deprived of the fruits of their litigation. However, in determining what constitutes exceptional circumstances, these courts have often used an equivalent of the tripartite *RJR-MacDonald* test. The overarching consideration is the interests of justice... [footnotes omitted]

See Halsbury’s Laws of Canada (online), *Debtor and Creditor*, “Enforcing Judgments or Orders: Execution Against Debtor’s Assets: Legal Execution” (IV.4(1)) at HDC-66 “Stay of Execution” (2022 Reissue).

[110] In *Northwest Organics, Limited Partnership v. Maguire*, 2013 BCSC 1328 at paras. 86–88, the Court provided the following description of the inherent jurisdiction of the Court:

[86] The defendants also rely on the inherent jurisdiction of the Court. *R. & J. Siever Holdings Ltd. v. Moldenhauer*, 2008 BCCA 59, 291 D.L.R. (4th) 328, demonstrates an application of the Court’s inherent jurisdiction. In that case the Court of Appeal held at para. 14:

In addition to the powers conferred by the **Rules of Court**, the Supreme Court of British Columbia, as a superior court of record, has inherent jurisdiction to regulate its practice and procedures so as to prevent abuses of process and miscarriages of justice: see I.H. Jacob, “The Inherent Jurisdiction of the Court” (1970) 23 Current Leg. Prob. 23 at 23-25. As the author said, at 25,

The inherent jurisdiction of the court may be exercised in any given case, notwithstanding that there are Rules of Court governing the circumstances of such case. The powers conferred by the Rules of Court are, generally speaking, additional to, and not in substitution of, powers arising out of the inherent jurisdiction of the court. The two heads of powers are generally cumulative, and not mutually exclusive, so that in

any given case, the court is able to proceed under either or both heads of jurisdiction.

[87] Thus inherent jurisdiction exists to “prevent abuses of process and miscarriages of justice”.

[88] While the precise boundaries of the Court’s inherent jurisdiction remain unclear, that jurisdiction “is a procedural concept and courts must be cautious in exercising the power which should not be used to effect changes in substantive law”: *Goodwin v. Rodgerson*, 2002 NSCA 137 at para. 17, 210 N.S.R. (2d) 42.

[111] Justice Pearlman in *Yates v. Lee*, 2014 BCSC 1298 at paras. 23–26, summarized the principles concerning the scope and limits of the Court’s inherent jurisdiction:

[23] In *Lines v. W&D Logging Co. Ltd.*, 2009 BCCA 107, the Court provided the following summary of the scope of inherent jurisdiction at paras. 23 to 26:

[23] Inherent jurisdiction was described by Chief Justice Freedman in *Montreal Trust Co. v. Churchill Forest Industries (Manitoba) Ltd.* (1971), 21 D.L.R. (3d) 75 at 81, [1971] 4 W.W.R. 542 (Man. C.A.):

Inherent jurisdiction is derived not from any statute or rule but from the very nature of the court as a superior court of law: “The jurisdiction which is inherent in a superior court of law is that which enables it to fulfil itself as a court of law.” [I.H. Jacob, “The Inherent Jurisdiction of the Court” (1970) 23 *Curr. Legal Probs.* 23 at 27] Inherent jurisdiction cannot, of course, be exercised so as to conflict with a statute or rule. Moreover, because it is a special and extraordinary power, it should be exercised only sparingly and in a clear case.

[24] The Manitoba Court of Appeal again usefully added to the comment on inherent jurisdiction in *Gillespie v. Manitoba (Attorney General)*, 2000 MBCA 1, 185 D.L.R. (4th) 214:

[17] Although many instances can be found in which the inherent jurisdiction of the Queen’s Bench (or equivalent court in other jurisdictions) has been invoked to justify an order, no satisfactory definition of inherent jurisdiction has been enunciated. That is perhaps because inherent jurisdiction has never been conferred on a court expressly, but exists as an auxiliary power to be invoked when necessary for the court “to fulfil itself as a court of law” (to use the words of Master I. H. Jacob, in his article “The Inherent Jurisdiction of the Court” (1970), 23 *Curr. Legal Probs.* 23 at p. 27).

[18] I have chosen the word “auxiliary” to describe the power in order to emphasize the power’s supportive role. “Auxiliary” is defined in *Webster’s New World Dictionary, Third College Edition*, 1988, as “giving help or aid; assisting or supporting”

and as “acting in a subsidiary, or subordinate, capacity”. Inherent power, as I understand it, is the power a judge may draw upon to assist or help him or her in the exercise of the ordinary jurisdiction of the court. It does not generally stand alone waiting to be exercised on the judge's own initiative without a suit or application or without parties.

[19] The auxiliary nature of inherent jurisdiction is reflected in the words of Lord Morris of Borth-y-Gest in *Connelly v. Director of Public Prosecutions*, [1964] A.C. 1254 (H.L.). In *obiter* comments, he said (at p. 1301):

There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.

[25] I refer as well to *Borkovic v. Laurentian Bank of Canada*, 2001 BCSC 337, wherein Mr. Justice Smith endorsed this passage from *Halsbury's Laws of England* at para. 9:

[the Court] has an inherent power to regulate its own procedure, save in so far as its procedure has been laid down by the enacted law, and it cannot adopt a practice or procedure inconsistent with rules laid down by statute or adopted by ancient usage.

[26] In this case there was, in my respectful view, no gap requiring invocation of inherent jurisdiction. In January when the order was made it was open to Mr. Lines to enter an order setting out the terms of the damages award as they were made evident in December 2006, and then to seek to execute on that order. Had this procedure been followed, the doors to appropriate responses would have opened, such as an application under R. 42(21) for a stay or partial stay of proceedings or an order for payment in instalments or, in the event an appeal was filed of that order, an application for a stay of proceedings in this Court. In following the procedure used in this case the trial judge side-stepped the legislated process and relied instead upon an *ad hoc* solution that was not necessary to achieve the result. This, in my respectful view, and as seen in the passages referred to above, is not a proper exercise of inherent jurisdiction.

[24] Finally, in *Buchan v. Moss Management Inc.*, 2010 BCCA 393, the Court, in the course of upholding the inherent jurisdiction of a trial judge to determine special costs without a reference to the Registrar, addressed the scope and limits of inherent jurisdiction at paras. 29 and 30:

[29] As can be seen from the cases above, inherent jurisdiction is not a panacea for parties or the court. While it presumptively exists to assist judges, it can be ousted by statute, or a judge may refuse to exercise it when inappropriate. It is not appropriate to try to define

precisely either the scope or limitations of the court's inherent jurisdiction for all purposes, but with respect to the court's inherent jurisdiction to award costs, for that inherent jurisdiction to be ousted by statute there must be "clear and precise statutory language": *R. v. Rose*, [1998] 3 S.C.R. 262 at para. 123; *Ordon Estate v. Grail*, [1998] 3 S.C.R. 437, at para. 44. Such language is normally employed where there is some clear policy objective which would be done violence by the invocation of jurisdiction. Some examples include the promotion of certainty in settlement offers: *Brown v. Lowe*, 2002 BCCA 7, *Cridge v. Harper Grey*, 2005 BCCA 33; encouraging certainty and finality in custody matters: *Perteet v. British Columbia (Superintendent of Family and Child Service)* (1988), 48 D.L.R. (4th) 469 (B.C.C.A) or protecting the privacy of personal information: *Glover v. Glover (No. 1)* (1980), 113 D.L.R. (3d) 161. Rule 57(3) does not mandate exclusive jurisdiction for a Registrar, nor can it be considered a complete code, and, therefore it cannot oust the inherent jurisdiction of the court to determine the amount of special costs.

[30] However, even where inherent jurisdiction exists, it will be exercised sparingly, particularly where concurrent authority has been provided to another decision maker. Where a party has failed to avail itself of the proper procedures of the court, a judge will not exercise inherent jurisdiction to skirt the rules. Such was the case in *Lines*, where at para. 26 the court wrote: "when the order [for damages] was made it was open to Mr. Lines to enter an order setting out the terms of the damages award as they were made evident". Instead, in order for a court to invoke inherent jurisdiction, there must be some extenuating circumstances which the *Rules* do not appear to contemplate. Where no extenuating circumstances exist, inherent jurisdiction is not ousted – there is simply no basis for a judge to employ the unusual power.

[25] From these decisions of the Court of Appeal, I take the following principles concerning the scope and limits of this Court's inherent jurisdiction:

- Inherent jurisdiction is not a panacea for parties or the court: *Buchan* at para. 29;
- Inherent jurisdiction is an auxiliary power that a judge may draw upon to assist in the exercise of the ordinary jurisdiction of the court: *Lines* at para. 24;
- While inherent jurisdiction presumptively exists to assist judges, it can be ousted by statute, or a judge may refuse to exercise it when inappropriate: *Buchan* at para. 29;
- A Judge of the Supreme Court should not resort to inherent jurisdiction to grant orders where a party has failed to avail him or herself of the *Rules* appropriate to their situation: *Buchan* at para. 32, *Lines* at para. 26;
- Inherent jurisdiction is a special and extraordinary power: *Lines* at para. 23;

- Even where inherent jurisdiction exists, it should be exercised only sparingly and in a clear case, particularly where concurrent authority has been provided to another decision-maker: *Buchan* at para. 30; or where the exercise of inherent jurisdiction is contrary to and inconsistent with the common law and ancient usage, and no authority has been presented supporting a particular use: *Endean* at para. 61; and *Lines* at paras. 25, 27;
- For the Court to invoke its inherent jurisdiction, there must be some extenuating circumstances which the *Rules* do not appear to contemplate. Where no extenuating circumstances exist, there is no basis for a judge to employ the “unusual power” of inherent jurisdiction: *Buchan* at para. 30.

[26] To these principles, I would add that inherent jurisdiction may also be used, in addition to the powers conferred by the *Rules of Court*, to prevent abuses of process and miscarriages of justice: see *R & J Siever Holdings Ltd. v. Moldenhauer*, 2008 BCCA 59.

Analysis

Issue 1: Was the Right of Redemption Extinguished by the Vesting Order?

[112] The parties agree that the facts in this case are unique and that no analogous case could be located.

[113] As Justice Groves stated, by allowing the Owners to redeem the Samra/Colossal mortgage after the Vesting Order had been made and their right of redemption extinguished, Mr. Richards and his clients caused the “bizarre” mess that the parties now ask me to resolve. The law is clear that the Vesting Order extinguished the Owners’ right of redemption. If and until it was set aside, the Owners did not have the right to redeem.

[114] It appears that Mr. Samra led Mr. Parmar to believe that Mr. Joshi had not been granted the extension to purchase the Property and that the purchase would not proceed. That belief, and the assumption on which it was based, was factually incorrect.

[115] I do not have any direct evidence from Mr. Samra as to why he told Mr. Parmar and Mr. Bhangu that the extension was not granted when the evidence clearly establishes that such an extension was granted on April 1, 2021.

[116] Despite knowing that the Vesting Order had been made, the Owners proceeded to seek financing from the Tri City Companies to pay out the Samra/Colossal Mortgage. As already noted, Mr. Parmar says that Mr. Samra told him that Mr. Joshi was not granted an extension to complete the purchase of the Property. As such, he believed that the time period for the sale of the Property to proceed had expired.

[117] Even if that is so, the Owners should still have advised the Tri City Companies that the Vesting Order had been made and would need to be addressed. On the evidentiary record before me it appears that the Owners failed to advise the Tri City Companies that the Vesting Order had been made and that the Property was to be conveyed to Mr. Joshi thereunder. Under the Vesting Order, if Samra and Colossal, as the Seller, did not agree to an extension, then Mr. Joshi could not complete the purchase. In my view, these material facts should have been disclosed to the Tri City Companies.

[118] On the evidentiary record before me, I accept that via Mr. Richards' actions, Samra and Colossal effectively granted Mr. Joshi the extension to complete the Purchase. I have no direct evidence as to whether Mr. Richards actually had instructions from Samra and Colossal to do so. However, the extension was communicated to Mr. Joshi's lawyer, who acted upon it and, on April 8, 2021, sent the conveyancing documents to Mr. Richards for execution.

Issue 2: Should the Samra/Colossal Mortgage have been redeemed on April 15, 2021?

[119] Clearly, the Samra/Colossal Mortgage should not have been redeemed on April 15, 2021. The issue before me is whether, as the situation currently stands, the Vesting Order should be set aside in light of the wrongful discharge of the Samra/Colossal Mortgage. The fact that this mortgage was paid out and discharged from title has extinguished any rights or interest Samra and Colossal had in the Property. They are no longer in a position, at law, to transfer title to the Property to Mr. Joshi.

Issue 3: Do Exceptional Circumstances Exist, or is it in the Interests of Justice, to Declare the Vesting Order is of no Force and Effect?

[120] Ultimately, the issue I must address is whether there are extraordinary circumstances or, in the alternative, if it is in the interests of justice, for the Court to exercise its equitable discretion to set aside the Vesting Order. This is a difficult decision because any decision I make will cause prejudice to at least one innocent party.

[121] In all of these circumstances and for the reasons that follow, I find that it is in the interests of justice to set aside the Vesting Order.

The Vesting Order is Inoperative

[122] The Vesting Order is inoperative because the completion date has long passed and the sale of the Property never completed, as a result of the Samra/Colossal Mortgage being discharged. The current terms of the Vesting Order are not enforceable.

[123] In particular, the Vesting Order and Sales Contract would have to be modified to address the following issues:

- Samra and Colossal no longer have a legal basis upon which to act as Seller;
- the completion date under the Vesting Order and Sales Contract has long passed;
- the purchase price for the Property cannot be paid to Samra and Colossal, nor to their solicitor;
- additional charges have since been registered on title and there are now tenants in the Property;
- a number of the existing charge holders are not parties in the First Foreclosure Proceeding; and

- Mr. Richards, as counsel for Samra and Colossal, can no longer give a letter to the Land Title Office in support of registering the Vesting Order against title.

[124] Due to these problems, the terms of the Vesting Order and the Sales Contract would have to be substantially redrafted in order for either to take effect. I am not persuaded that it would be in the interests of justice to do so.

Impact on Tri City Companies and others

[125] If the sale proceeds to Mr. Joshi, I understand that there is the potential for a significant shortfall that the Tri City Companies will incur. The only evidence of value I have for the Property are appraisals provided by Tri City Companies dated January 19, 2021 which valued the Property at \$2.83 million, on the basis of the Property being stratified. However, the Property has not been stratified. There was also an opinion letter done by a certified relator on August 21, 2022 which valued the Property at \$3.1 million as a non-strata duplex.

[126] I accept that Tri City Companies were *bona fide* lenders who had no knowledge of the existence of the Vesting Order. They relied on the state of title certificate, as they were entitled to do, and it made no reference to the existence of the Vesting Order: *Ludwig* at para. 8. Mr. Parmar did not advise either company of the existence of the Vesting Order. If the registration of the Tri City Companies' mortgages is denied, then these companies will suffer significant prejudice because they will lose the security for their loans. On the evidentiary record before me, if the sale to Mr. Joshi proceeds there will be a significant shortfall suffered by the Tri City Companies.

[127] A number of the other current charge holders were not parties in the First Foreclosure Proceeding. Their interests will now be impacted if the Property is sold to Mr. Joshi. There is the potential that the Property will be sold for more, which may allow some recovery by the other charge holders.

[128] Mr. Parmar argues that he will suffer a great financial loss if the sale of the Property to Mr. Joshi proceeds. I accept that. However, I do not find this to be particularly persuasive. First, Mr. Parmar had two years in which to redeem the Property. A number of adjournments were granted to allow him more time to obtain financing. Despite this, it was not until just before the hearing before Associate Judge Robertson that he alleges that he had funds to pay out the Samra/Colossal Mortgage. 1022 had no right to redeem after the Vesting Order was made. The redemption should not have been allowed unless and until the Vesting Order was set aside.

[129] Second, Mr. Parmar should have told the Tri City Companies of the existence of the Vesting Order. In my view, the Owners should bear some responsibility for this mess.

Impact on Mr. Joshi

[130] I accept that Mr. Joshi will suffer a loss if the Vesting Order is set aside. I have no doubt that the Property has appreciated in value since March 30, 2021.

[131] However, in my view, Mr. Joshi has a claim in damages that he can bring against Samra, Colossal, and likely Mr. Richards, for his losses. In addition, if Mr. Joshi still wants to purchase the Property, he can make an offer in the Second and Third Foreclosure Proceedings to purchase it. Mr. Joshi will likely have to pay a higher price for the Property, but doing so will support his claim for damages against Samra, Colossal, and likely Mr. Richards for their alleged wrongdoing.

[132] I use the word “alleged” since I appreciate that Samra, Colossal, and Mr. Richards were not before me to make submissions. That was a choice they made. I will leave it to the judge that hears any further proceedings against these parties to ultimately decide whether they should be held responsible for Mr. Joshi’s losses.

Conclusion

[133] I declare that the order pronounced by Associate Judge Robertson on March 30, 2021, for an approval of sale of the Property to Mr. Joshi for the price of \$2,238,000 is of no force and effect.

[134] The applications brought by Mr. Joshi in the three proceedings are dismissed.

[135] I turn now to the issue of costs. I invite counsel to provide written costs submissions. I ask that they be provided to the registry within 30 days of these reasons being pronounced. If any party is of the view that oral submissions are needed on the issue of costs, I grant leave for them to request to appear before me.

“Forth J.”