

CANADA / JUDGMENT

Cheema v. Mand

2025 BCCA 381

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 381 Cheema v. Mand

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Cheema v. Mand,

2025 BCCA 381

Date: 20251029

Docket: CA50988

Between:

Harjinder Singh Cheema, Cheema Brothers

Trucking Ltd., and Cheema Bros. Transport Ltd.

Applicants/Appellants/

Respondents on Cross Appeal

(Defendants)

And

Gurdarshan Singh Mand, Jagpal Kaur Mand,

Kuldip Singh Gill, and Sukhminder Kaur Gill

Respondents/

Appellants on Cross Appeal

(Plaintiffs)

Before:

The Honourable Madam Justice DeWitt-Van Oosten

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated

August 19, 2025 (Mand v. Cheema, 2025 BCSC 1595,

Vancouver Docket S205263).

Oral Reasons for Judgment

Counsel for the Applicants/Appellants/

Respondents on Cross Appeal:

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Appellants on Cross Appeal:

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Place and Date of Hearing:

Vancouver, British Columbia

October 23, 2025

Place and Date of Judgment:

Vancouver, British Columbia

October 29, 2025

Summary:

The appellant seeks a stay of execution of judgment pending appeal. The judgment includes an order for the sale of property in which the appellant was found to hold an 80% beneficial interest. Among other things, he says the judge erred in ordering a sale on the basis that he did not give an undertaking to purchase the beneficial interests of the other parties. He wanted to buy them out; however, it was his position he was entitled to know whether the plaintiffs had proved a beneficial interest and to what extent before the question of an undertaking was properly before the court. HELD: A stay of execution is granted pending appeal: (1) the appeal is not frivolous; (2) the appellant has shown the potential for irreparable harm arising from the loss of a right to purchase the interests of the other parties; and (3) the balance of convenience weighs in his favour. It is in the interests of justice to order that the appeal be expedited and the file is moved into case management for that purpose.

- [1] DEWITT-VAN OOSTEN J.A.: After a 108-day trial, a Supreme Court judge declared that the appellant, Harjinder Singh Cheema, holds legal title to certain property (the "Property") in trust for the respondents. The four respondents (Gurdarshan Singh Mand, Kuldeep Singh Gill, and their spouses) were each awarded a 5% beneficial interest in the Property, with Mr. Cheema retaining 80%. On August 19, 2025, the judge made various orders respecting the Property, including that it be listed for sale: *Mand v. Cheema*, 2025 BCSC 1595. The Property consists of a multi-acre lot that Mr. Cheema has leased to his own company for a truck-parking business. A listing agreement was signed on October 16, 2025, with an asking price of \$31.5 million. The parties have joint conduct of the sale.
- [2] Mr. Cheema and his co-appellants (Cheema Brothers Trucking Ltd. and Cheema Bros. Transport Ltd.) seek a stay of execution of the judge's orders under ss. 30(c) and 33 of the Court of Appeal Act, S.B.C. 2021, c. 6 [Act] and R. 20 of the Court of Appeal Rules, B.C. Reg. 120/2022. They say the appeal has merit, they will suffer irreparable harm without a stay, and the balance of convenience weighs in their favour.
- [3] The respondents oppose the application. They argue a stay will take the Property off the market and result in further delay. The respondents want their interests to be paid out.

Background

- [4] Mr. Cheema purchased the Property in 1996 for \$690,000. Mr. Mand and Mr. Gill were friends of Mr. Cheema and acted as his realtors.
- [5] The judge made several factual findings as to what transpired between the parties, both at purchase and afterwards. It is not necessary to set them all out. However, it will assist to refer to some of the main findings, including:
- Before completion of the purchase, Mr. Cheema, Mr. Mand, and Mr. Gill orally agreed that Mr. Cheema would hold legal title to the Property in trust for the three men--80% for Mr. Cheema and 10% each for Mr. Mand and Mr. Gill: at para. 229.
 - Both Mr. Mand and Mr. Gill made a capital contribution to the Property. Legal title vested in Mr. Cheema and a "validly constituted oral trust" was created, of which Mr. Cheema was the trustee. Mr. Mand and Mr. Gill were beneficiaries: at para. 232.
 - From September 1996 to June 30, 2004, Mr. Gill paid at least \$6,600 to Mr. Cheema in expenses. Mr. Mand did the same. These payments were made "on account of their proportionate share of the expenses incurred for the Property": at para. 268.
 - After June 2004, the beneficiaries made no further financial contributions to the Property: at para. 410.

· In March 2005, the three men entered into a written trust agreement that formally documented their arrangement. That written agreement, as well as one or more subsequent agreements or modifications, did not extinguish or change the parties' beneficial interests in the Property: at paras. 394-397, 403.

· Mr. Cheema, in his capacity as trustee, is entitled to reimbursement for the respondents' "respective proportion" of Property expenses paid by him: (1) for the period of July 2004 to March 2012; and (2) any expenses "not covered" by leases specific to the Property from 2012 until the Property is sold or there is a registrar's reference on expenses: at para. 504.

[6] At trial, the respondents sought orders for sale of the Property and a proportional division of net sale proceeds. The judge reviewed the Partition of Property Act, R.S.B.C. 1996, c. 347 [PPA]. She noted that under s. 8(2) of that statute, a court cannot order a sale if "the other parties interested in the property, or some of them, undertake to purchase the share of a party requesting a sale". She found that Mr. Cheema had "not made such an undertaking": at para. 535. Consequently, a sale was not barred by statute, and she was free to make the order: at para. 536; *Bagry v. Sandhu*, 2018 BCCA 14 at para. 10.

Appeal Proceeding

[7] The appellants filed a notice of appeal on September 17, 2025. In broad terms, the notice seeks to have the Supreme Court orders set aside, including the declaration of beneficial interests in the respondents' favour. Alternatively, the appellants ask that this Court finds the respondents in breach of their obligations as beneficiaries and order that they pay their fair share of expenses for the Property. In the further alternative, the appellants ask for an order that Mr. Cheema is entitled to purchase the respondents' interests in the Property and to declare he did not breach any of his obligations or duties as trustee.

[8] The respondents filed a notice of cross appeal on September 23, 2025, seeking:

that the award of equitable compensation be based on 20% of the fair market rents from and after April 1, 2012 as set out in the rent appraisal reports at Exhibits 45-46; or alternatively, an Order that [the] award of equitable compensation be based on 20% of the net truck parking revenue actually earned by the defendants/cross-respondents from and after April 1, 2012, in an amount to be assessed; together with court order interest thereon.

[9] The application for a stay was filed on October 15, 2025, shortly before the Property was listed for sale. Appellants' counsel says he was unable to secure a hearing date until then.

Legal Test for a Stay

[10] Section 30(c) of the Act authorizes a stay of all or part of proceedings, including execution, pending the outcome of an appeal. See also s. 33 of the Act and R. 20.

[11] To obtain a stay, an applicant must show:

- a) there is some merit to the appeal or a serious question to be tried;
- b) they will suffer irreparable harm if a stay is refused; and,
- c) the balance of convenience favours granting the stay.

Callahan v. MNP Ltd., Liquidator of 0081092 B.C. Ltd., 2025 BCCA 270 at para. 34 (Chambers).

[12] The overarching question is whether a stay is in the interests of justice. The applicant bears the burden of meeting that threshold: Callahan at para. 34.

Positions of the Parties

- [13] The appellants assert their appeal has merit and there are serious questions to be tried. They say the judge erred by: (1) making findings of fact in the respondents' favour after concluding that their evidence, particularly the evidence of Mr. Mand, lacked credibility and reliability; (2) drawing inferences from the record that are contrary to common sense; (3) accepting Mr. Mand's evidence that a handwritten note was evidence of payment for expenses related to the Property; (4) improperly assessing evidence regarding the date a second trust agreement was executed; (5) finding that the limitation clock began to run in June 2023; (6) incorrectly invoking the provisions of the PPA; and (7) misapprehending the appellant's submissions in finding that Mr. Cheema did not undertake to purchase the respondents' interests in the Property.
- [14] The appellants say there is a real risk of irreparable harm without a stay because the Property will be sold and Mr. Cheema will lose his ability to purchase the respondents' interests. The appellants also argue that the balance of convenience favours their position, for this same reason.
- [15] The respondents submit the appeal has no merit. They argue the appellants have taken a selective and piecemeal approach to the reasons for judgment. This was a fact-driven trial in which most issues were in dispute. The judge carefully assessed credibility and reliability, made findings of fact in the face of conflicting evidence, and the appellants face a significant hurdle in having those findings set aside. A deferential standard of review will apply. The respondents say the appellants have not identified a clear legal error, they misinterpret the judge's reasons in their favour, and they are simply trying to re-litigate the facts. The respondents put it this way in their written material: "The grounds advanced by the applicants are mere disagreements with the outcome of the trial masquerading as reviewable errors. This shotgun approach reflects a frivolous and vexatious effort to manufacture appealable errors".
- [16] On the question of irreparable harm, the respondents say the Property is not unique and if a sale completes, Mr. Cheema will be adequately compensated for his 80% interest. It will be a substantial sum (in the millions) and from the respondents' perspective, the balance of convenience clearly weighs in their favour.

Discussion

Merits of the appeal

- [17] The threshold for showing merit in support of a stay of judgment is not high. An applicant need only show that the appeal is neither frivolous nor vexatious: *Airbnb Inc. v. Ware*, 2025 BCCA 298 at para. 16 (Chambers).
- [18] I agree with the respondents that many (if not the majority) of the appellants' proposed grounds of appeal as currently framed will bring the judge's factual findings into play, including her assessment of the parties' credibility and reliability. Factual findings, findings of mixed fact and law, and discretionary decisions, attract a deferential standard of review and on my preliminary view of things, the appellants face significant challenges in having those aspects of the judgment set aside. The judge began her reasons with these comments:
- [2] The trial was compounded by serious allegations that all of the parties were fabricating their stories and had fabricated documents to support their version of events. Each side says the others' witnesses lack any credibility or reliability, and have fabricated their stories and certain documents with the clear intention of deceiving this Court.
- [3] There were an untold number of applications during the trial, starting with an application at the commencement of trial by the defendants to withdraw admissions made in their response to civil claim. While the trial was initially estimated to be 25 days, it ultimately resulted in 108 days of trial, spread over almost 19 months. Each side blames the other for the length of this unduly protracted and complicated trial.
- [8] Almost every material fact at issue in this case is in dispute. The fact-finding I must engage in is made difficult by the absence of clear documentary evidence which supports when the respective trust deeds were executed; it is even more so given that credibility and reliability are major obstacles for all of the significant witnesses.

[Emphasis added.]

- [19] Clearly this was a highly adversarial and fact-intensive trial in which the credibility and reliability of witnesses played a crucial role. This includes the credibility of Mr. Cheema. The judge had serious concerns about the evidence of all three parties to the "oral trust":
- [112] There is no doubt that credibility is a central issue in this case. Significant credibility issues arose for Mr. Cheema, Mr. Mand and Mr. Gill as a result of changes in their evidence from their examinations for discovery to trial, the nature and manner of their responses to questioning at trial (including but not limited to their demeanour and behaviour in the courtroom), their clear revision of their testimony to "fit" with newly disclosed documents and new theories of the case, the overall plausibility of their evidence, and the significant conflicts in the evidence of these three men

- [127] In this case, I have significant concerns about the credibility of Mr. Mand, Mr. Gill and Mr. Cheema. I find that all three lacked credibility and reliability. Their evidence on key factual points conflicted, and must be scrutinised with particular care. Their respective testimony was frequently contradictory, problematic, and clearly self-serving. Significant credibility issues arose for each of these three main witnesses, including but not limited to: changes in their evidence both before, and during, trial; the overall plausibility or logic of their testimony; the responsiveness of their answers; and the self-serving nature of their evidence. I find that all three have been untruthful with the Court at various times, and have created a narrative intended to promote their own self-interest.
- [129] I will address in detail the difficulties inherent in their evidence in due course. At this point, it is enough to say that I cannot accept Mr. Mand's evidence, as I find he lacked credibility and reliability. Further, I accept Mr. Cheema and Mr. Gill's evidence only to the extent that it is corroborated by either independent documentary evidence that is not alleged to be fabricated, or by their own after-the-fact conduct. However, this lack of credibility and reliability from the three main parties is not determinative, as counsel for the defendants suggests. Rather, I must still attempt to ascertain whether I can ascertain the truth despite the lack of credibility and reliability of the parties ...
- [Emphasis added.]
- [20] This Court has repeatedly affirmed that findings of fact and factual inferences drawn from the evidence cannot be reversed without establishing palpable and overriding error. It is "not the role of an appellate court to retry cases and to "substitute its views for the views of the trial judge according to what the appellate court thinks the evidence establishes on its view of the balance of probabilities": *Garcha v. 690174 B.C. Ltd.*, 2023 BCCA 376 at para. 22, citing *Housen v. Nikolaisen*, 2002 SCC 33 at para. 3. Consequently, when questions of fact or mixed fact and law are raised on appeal, the Court's responsibility is to "review the reasons in light of the arguments of the parties and the relevant evidence, and then to uphold the decision unless a palpable error leading to a wrong result has been made by the trial judge": *Garcha* at para. 23, emphasis in the original, citing *Housen* at para. 4. To the extent that Mr. Cheema seeks to challenge the judge's factual findings, including her assessment of credibility and reliability, I consider it unlikely he will succeed.
- [21] However, Mr. Cheema's proposed grounds of appeal do raise at least one question of law: the proper interpretation and application of s. 8(2) of the PPA, and on that basis, I cannot say the appeal is frivolous. As explained in *Olson v. Miller*, 2019 BCCA 274:
- [65] Section 8 [of the PPA] deals with an application brought by minority owners for an order that the property be sold and the proceeds distributed. Section 8(2) permits the majority owners--i.e., the respondents to the petition--to avoid a public sale by undertaking to buy the minority's interest: see *Pelikan v. Quarry*, 2006 BCSC 269 at paras. 12–14, 39 R.P.R. (4th) 237. As Justice Allan observed in *Ching v. Ching*, 2005 BCSC 1368 at para. 99, 36 R.P.R. (4th) 159, s. 8(2) operates to prevent minority interest holders from forcing a sale, potentially to a

stranger.

[22] At trial, the appellants submitted that before the judge could order a sale, she was obliged to follow a two-step process. She first had to determine whether the respondents held a beneficial interest in the Property and declare the nature and extent of that interest. Only "then" would the respondents have standing to "move further under the legislation for partition and sale". Furthermore, until the existence of a beneficial interest and the entitlement to claim a remedy under the PPA was determined, it would be unfair to ask Mr. Cheema if he undertook to purchase the respondents' share in the Property. The appellant's counsel put it this way in his closing submissions:

when he's asked, well, is Mr. Cheema going to sell the property to us -- sorry -- buy our share if we win, he's asking at a time where there is a dispute as to whether they are beneficial owners at all. So at that point in time, he's asking for a commitment to buy the property. Why would anybody have to agree to that on pain of forfeiting the right if the plaintiffs eventually prove they're beneficial owners? Because that's what Mr. Parlow's running with, just like everything else. Let's go for it. Let's see what sticks.

it's not a technical position I'm taking. Quite separately from this position, it's going to be and -- and is my submission that Mr. Cheema has to be entitled to the right that is offered in the authorities and in the legislation to offer to buy the plaintiffs' share, which I understand is what he intends to do in the event the court rules against him. But that may be a process that goes on for, as we all know the possibilities are, quite some time.

But the point I'm making is that the relief that is sought is not appropriate. It's my submission it's a staged process. It's a staged process. First, the plaintiffs or the applicants have to show that they're entitled to partition and sale. Then following that, they can take the steps under the Act and the entitlement of the registered owner or the -- the owner who -- who's being claimed against kicks in. And that option and that election -- in my submission, it's unjust and unfair to require somebody while the issue is in dispute to make that commitment one way or another.

You can give the plaintiffs the relief with a declaration that they have a beneficial interest. You can make a determination whether or not it's pursuant to a bare trust. But since nobody's arguing that, I think that would not necessarily be an appropriate finding. And then the -- the parties can move forward, and whatever happens under the partition happens. It's -- it's -- that's the law. And -- and while I agree nobody, I'm quite sure, wants to be embroiled any longer than necessary in this proceeding, if it's necessary, then it's necessary.

I'm trying to protect for the benefit of Mr. Cheema is the -- is to prevent everything happening in one fell swoop and to retain for him the rights that he would have with the partition and sale proceeding, which should include the theoretical possibility of avoiding a sale by agreeing to purchase.

I'm not, to be honest, incredibly fussed over the mechanism, but it's that interest and right that I'm very anxious to protect.

[Emphasis added.]

[23] The judge acknowledged Mr. Cheema's indication of wanting to purchase any beneficial interests assigned to the respondents; however, she decided to proceed with an order for sale on the basis that he did not provide an "undertaking" within the meaning of s. 8(2) of the PPA:

[533] In their opening submissions, the plaintiffs indicated they would be willing to accept an offer to purchase their 20% beneficial interest for \$4,800,000.00, being 20% of the fair market value as set out in the Fenton Appraisal. However, otherwise, they say the [Property] should be sold on the open market for fair market value, and they should receive 20% of the net sale proceeds, plus equitable damages.

[535] In closing argument, for the first time in a year and a half, Mr. Cheema advised he wishes to buy out the plaintiffs, should they be found to still have a beneficial interest in the Property. However, s. 8(2) of the PPA provides the Court may not order a sale if another party with interest in the property undertakes to purchase the share of the party requesting the sale. Mr. Cheema has not made such an undertaking. It is only if such an undertaking is given that the Court may order a valuation of the share of the party requesting a sale in the manner the Court thinks fit: Haigh at para. 56.

[536] It would be neither proportionate, nor efficient, after 108 days of trial, to deny the plaintiffs the relief they seek, and prolong the litigation between the parties. I am satisfied the plaintiffs have established they are entitled to the order they seek--that the Property be sold. I will address in further detail below how the net sales proceeds from the sale of the Property are to be divided.

[Emphasis added.]

[24] There was discussion during closing submissions of safeguarding the potential for a buy-out by including a term in the final order allowing Mr. Cheema to pursue that option "for a period of some months"; however, no such term formed part of the order.

[25] The appellants have tendered no case law that supports a mandated two-stage process under s. 8 of the PPA, such that taking a different approach would amount to reversible legal error. Moreover, it appears from the face of the record that although he was aware of the pivotal (indeed jurisdictional) role of an undertaking in preventing an order for sale, Mr. Cheema elected to not take that step. The judge is correct--factually, he did not provide an undertaking. Instead, Mr. Cheema chose to argue in favour of a bifurcated process and to leave the assertion of an undertaking to another day. Had he provided an undertaking, he would have been legally obliged to follow through: Bagry at para. 12.

[26] I do not consider Mr. Cheema's argument that the judge misinterpreted or misunderstood the PPA and the process under s. 8 to be a strong argument. It is also my view that if Mr. Cheema was serious about purchasing the respondents' interests in the Property, he should have been prepared to provide an undertaking to that effect, in the event the judge found

that the respondents held a beneficial interest and as an alternative submission. He made a tactical (perhaps strategic) decision not to do so, and a division may well find that in those circumstances, it was open to the judge to exercise her discretion as she did. See, for example, the discussion in *Bard v. Bird*, [1993] B.C.J. No. 1644, 1993 CanLII 2478 (C.A.) at paras. 6-8. Understandably, in exercising her discretion to order a sale, the judge was concerned about the need for finality. Based on the judge's comments about how the trial unfolded, including multiple interlocutory applications, its highly adversarial nature, and the fact that an estimated 25 days turned into 108, this was a legitimate concern.

- [27] Nonetheless, given Mr. Cheema's indication at trial that he wanted to preserve his "right" to purchase the respondents' interests and the jurisdictional implications of that assertion under s. 8(2), I am prepared for purposes of this application to assume the appellants have an arguable case to advance on appeal. In this context, I see the case as somewhat different from *Bard*, in which a stay was denied because the trial record showed no indication of an intent to purchase, and it appears the issue was likely raised for the first time on appeal: at para. 8.
- [28] At the same time, I would not describe the appeal as compelling, or even strong. In my view, there is some merit to the respondents' contention that the current framing of the appeal represents an attempt to re-litigate the beneficial interests assigned to Mr. Mand and Mr. Gill and the question of remedy. Whether that contention bears itself out will be for a division to decide; for now, I will proceed with the remainder of the analysis assuming the appellants have established the first element of the three-part test for a stay.

Irreparable harm

- [29] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 341, 1994 CanLII 117, sets out the requirement of irreparable harm:

At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicants' own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.

"Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other

- [30] Since *RJR-MacDonald*, this Court has characterized irreparable harm as "the critical factor in the stay test": *Hardy v. Graham*, 2023 BCCA 406 at para. 28 (Chambers). Clear proof of irreparable harm is not required; rather, it is sufficient to show the potential for irreparable harm: *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395 at para. 59. Irreparable harm may be established if an appeal would become moot if a stay is not granted: *Creative Wealth Media Lending LP 2016 v. Access Road Capital, LLC*, 2023 BCCA 208 at para. 37 (Chambers).

- [31] The loss of "unique property" may give rise to irreparable harm: HGE Administrative Services Ltd. v. Perrick, 2010 BCCA 576 at paras. 22-24 (Chambers). In HGE, for example, the applicant argued she would suffer irreparable harm if foreclosures on multiple waterfront properties were allowed to proceed because the property was "unique" and had "important personal and non-monetary value to her and her family": at para. 22. A stay was granted.
- [32] In Tomic v. Tough, 2013 BCCA 212 (Chambers), the Court granted a stay of the sale of the appellant's home, which she considered "unique". Justice Chiasson commented:
- [34] The judge did not consider that the loss of the Home was irreparable harm because "any loss is remediable in damages". In my view, in the circumstances of this case, that may be too narrow an approach to the issue. This Court has taken uniqueness into account, albeit with mixed results (see Hutchingame v. Johnstone, 2006 BCCA 332; HGE Administrative Services Ltd. v. Perrick, 2010 BCCA 576; Palkovics v. Barta, 2012 BCCA 306). In any event, I conclude that a stay of relatively short duration is in the interest of justice.
- [33] In Aldergrove Credit Union v. Hoessmann Estate, 2013 BCCA 213 (Chambers), there was "no evidence to support a special, unique or significant relationship between [the appellant] and the Property that would not be satisfied by the sale proceeds or any damages she may recover against the respondent": at para. 31. Thus, a stay was denied: at para. 37.
- [34] As I read these authorities and others, this Court sparingly finds irreparable harm in the context of the sale of property. In Callahan, for instance, the applicant characterized the harm resulting from the loss of developmental lands to which he had a sentimental connection as irreparable. Justice McNaughton rejected that argument at para. 54, citing Higgins v. Nova Scotia (Attorney General), 2013 NSCA 118 at para. 16 (Chambers). See also British Columbia (Director of Civil Forfeiture) v. Angel Acres Recreation and Festival Property Ltd., 2023 BCCA 259 at paras. 46-49 (Chambers).
- [35] However, I acknowledge there are some cases in which irreparable harm has been found to arise from the sale of property without the necessity of uniqueness, provided there are concerns about compensation or a permanent loss of a particular entitlement. See, for example, Salinger v. Nicola Mortgage Corporation, 2025 BCCA 99 at para. 11 (Chambers); Jin v. Yang, 2018 BCCA 90 at paras. 19-21 (Chambers); and Airside Event Spaces Inc. v. The Township of Langley, 2021 BCCA 90 at para. 30 (Chambers).
- [36] In my view, and in the circumstances of this case, Mr. Cheema has established the potential for irreparable harm. Not because the Property is unique or of sentimental value to him (indeed, he has tendered no affidavit evidence to that effect, including showing the impact a sale may have on his truck-parking business). Rather, it is because of the nature of the issue he has raised on appeal specific to s. 8(2) of the PPA. If the Property is sold to a third party, Mr. Cheema will receive his 80% interest. However, he will lose the right to buy-out the respondents' interests, a right that if exercised, functions as a jurisdictional impediment to a sale. If Mr. Cheema loses the right to purchase, it will render an important part of his appeal moot.

Balance of convenience

- [37] Under this component of the RJR-MacDonald test, the appellants submit that if a stay is denied and the Property sold, Mr. Cheema will suffer a "disproportionate amount of harm". I have concluded Mr. Cheema meets the test for irreparable harm, grounded in loss of the entitlement to purchase. As I understand it, consistent with his indication at trial, Mr. Cheema has advised the respondents post-trial that he continues to want to purchase their interests. The respondents do not have the same statutory right.
- [38] The respondents counter by saying that if a stay is granted, they will be denied long-awaited proceeds, and the appellants will retain control of the Property and continue to unfairly profit from its use. The litigation has taken a considerable time to make its way through the courts and they are desirous of finality.
- [39] The respondents have not tendered affidavit evidence in support of the harm they say they will suffer from a stay. I have no real sense of their personal finances or the importance of their share of the sale proceeds to their financial well-being. According to the judgment, their beneficial interests have existed since 1996. They have been functioning without a payout for close to 30 years. There is no evidence before me of urgency, financially or otherwise. Whether the respondents' interests are purchased by Mr. Cheema or paid out through sale proceeds (assuming they survive appellate review), it is unlikely a stay will substantially dissipate the value. I also note that the terms of the order, if upheld on appeal, appear to entitle the respondents to a cumulative 20% interest in any lease payments Mr. Cheema collects for the Property until the sale or completion of a reference to the Supreme Court's Registrar.
- [40] In the circumstances, considered as a whole, I have concluded the balance of convenience weighs in favour of Mr. Cheema. A stay is necessary to prevent irremediable damage by preserving the subject matter of the litigation while the appeal unfolds: *Bea v. The Owners, Strata Plan LMS 2138*, 2010 BCCA 463 at para. 19, citing *Roe v. McNeill* (1994), 49 B.C.A.C. 247 at para. 6, 1994 CanLII 2105 (Chambers).

Disposition

- [41] For the reasons provided, I consider a stay of execution pending the appeal to be in the interests of justice. Accordingly, I grant Mr. Cheema's application.
- [42] However, given the history of the litigation and the potential for a protracted proceeding, I consider it to be in the interests of justice that the appeal be expedited. Accordingly, I direct that this matter moves into case management for the purpose of setting a schedule for the steps required to bring the appeal to hearing. The parties are directed to attend the first case management hearing with a proposed schedule, including an estimate of the time required for the hearing of the appeal and possible dates.

"The Honourable Madam Justice DeWitt-Van Oosten"

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