

CANADA / JUDGMENT

Derencinovic v. 7 West Homes Ltd.

2022 BCSC 276

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2022 BCSC 276 Derencinovic v. 7 West Homes Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Derencinovic v. 7 West Homes Ltd.,

2022 BCSC 276

20220223

Docket: S1811892

Registry: Vancouver

Between:

John Derencinovic

Plaintiff

And

7 West Homes Ltd., Jaspal Johal, Harpreet Kaur Johal, 0786688 B.C. Ltd. and Kashmir Singh Johal

Defendants

Before: The Honourable Justice Branch

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.

January 13, 2022

Place and Date of Judgment:

Vancouver, B.C.

February 23, 2022

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I. INTRODUCTION

- [1] The defendants, 7 West Homes Ltd. ("7 West") and Jaspal (Paul) Johal, apply to stay the execution of an order granted in favour of the plaintiff, John Derencinovic, following a summary trial (the "Summary Trial Order"). The Summary Trial Order declared a mortgage granted by 7 West to the plaintiff valid, and provided for the payment to the plaintiff of more than \$900,000 currently held in trust (the "Proceeds"). The reasons for judgment associated with the Summary Trial Order are indexed as *Derencinovic v. 7 West Homes Ltd.*, 2021 BCSC 1481 (the "Summary Trial Decision").
- [2] The stay is sought on the basis of an extant counterclaim brought by the defendants against the plaintiff.
- [3] For the reasons expressed below, the application for a stay is denied.

II. BACKGROUND

- [4] The relationship between the plaintiff and Mr. Johal began in late 2006 or early 2007, when they decided to pursue a real estate development in Prince George, BC. Over the next 11 years, the plaintiff, Mr. Johal and certain other business partners (including one Mr. Kooner), developed and sold townhouses in Prince George through 0786688 BC Ltd. ("688 BC Ltd.").
- [5] In 2011, the plaintiff and Mr. Johal went into business together to buy property in the Lower Mainland on which to develop and build luxury homes. In October 2011, they incorporated 7 West. They are each 50% shareholders of 7 West. Three or four homes were developed by 7 West (the precise number is a matter in dispute).
- [6] Mr. Johal was the sole director of 7 West at all material times. The plaintiff's role was largely that of passive investor, or "the bank". As the bank, the plaintiff raised capital from family and friends.
- [7] As the court noted in the Summary Trial Decision, the maintenance of 7 West's financial records left much to be desired:
- [2] . At the beginning of their business venture, the partners had no written agreement describing the business arrangement between them and 7 West. Record keeping of the construction projects was described as initially "casual" or, in my words, minimal and unsatisfactory.
- [8] Unsurprisingly, this lack of formality eventually resulted in disputes between the parties. Both sides allege that the other removed funds from 7 West inappropriately. For their part, the defendants now allege that, despite only advancing or arranging for \$369,000 to be put into 7 West, the plaintiff improperly received amounts totaling more than \$1.4 million from the company between 2012 and 2018, including:
- i. \$484,000, purportedly for salary;
 - ii. \$920,000, by way of payments to Dynamic Distribution Ltd., a corporation associated with plaintiff;
 - iii. \$14,000, paid by way of payments to the plaintiff's associate Paulo Almeida; and
 - iv. \$10,000, paid by way of payments to the plaintiff's associate, Mark Folganich.
- [9] On August 15, 2018, a second mortgage with a principal amount of \$1,331,449 (the "Mortgage") was issued by 7 West in favour of the plaintiff on one of the 7 West properties at 3828 West 35th Avenue, Vancouver, BC (the "W. 35th Property"). The Summary Judgment Decision describes the situation leading to the execution of the Mortgage as follows:

- [21] After completion of the third project, i.e. that on West 38th Ave., Mr. Derencinovic was concerned about the investment he had in 7 West. The fourth project was to be at 3828 West 35th Ave. respecting which Mr. Johal had purchased the land in 2016 .
- [22] Subsequent correspondence and meetings between Mr. Derencinovic and Mr. Johal led to Mr. Derencinovic instructing a lawyer to prepare a Co-Developers Agreement relating to the West 35th Ave. property ("the Agreement")
- []
- [28] the Agreement had included clause 3.2.6 which states, "the project will be complete on or about July 1, 2018". Nonetheless, there were construction delays resulting in further concern on the part of Mr. Derencinovic. Mr. Derencinovic also argues that in summer 2018 he discovered that funds were being diverted at this time without his approval.
- [29] This concern led to Mr. Derencinovic seeking a mortgage that would be registered as a second charge against the West 35th Ave. project to secure amounts he considered to be owed to him by 7 West, which were \$306,101 in shareholders' loans and \$895,348 in retained earnings.
- [10] On August 28, 2018, plaintiff's counsel demanded payment out of the Mortgage.
- [11] On September 7, 2018, November 5, 2018, December 21, 2018, and January 11, 2019, the plaintiff and Mr. Kooner began four proceedings with varying degrees of overlap in subject matter and parties.
- [12] In the present action, the plaintiff alleged breach of fiduciary duty, fraud, and oppression. The core allegation is that between 2011 and 2018, Mr. Johal misappropriated shareholder and company funds and resources for his own benefit and the benefit of his family members.
- [13] The plaintiff filed a certificate of pending litigation against the W. 35th Property (the "CPL"). In December 2018, the plaintiff was able to freeze 7 West's bank account.
- [14] On January 16, 2019, Mr. Johal and the plaintiff entered into an agreement which facilitated completion of construction on the W. 35th Property and removal of the CPL. In return, Mr. Johal agreed to terms regarding the reporting of expenses and the joint conduct of the sale of the W. 35th Property. On January 17, 2019, the plaintiff removed the CPL.
- [15] On January 18, 2019, the plaintiff registered the Mortgage with the permission of first mortgagor Vancouver City Savings Credit Union.
- [16] Mr. Johal completed construction of the W. 35th Property in early May 2019, and it was then listed for sale.

- [17] On June 27, 2019, the defendants wrote to the plaintiff stating Mr. Johal's position that the plaintiff had promised to advance further funds to 7 West and that the Mortgage was only granted to the plaintiff to secure those anticipated further funds. The defendants alleged that those promised funds were never provided. On this basis, the defendants asserted that the Mortgage was unenforceable.
- [18] The plaintiff denies that he had promised to advance further funds to 7 West, or that he had any desire to continue in business with Mr. Johal at all by that point
- [19] In August 2019, the plaintiff's claim was consolidated with four other claims filed against the defendants (the "Consolidated Action").
- [20] The parties entered into a consent order on October 31, 2019, whereby any proceeds from the sale of the W. 35th Property would be paid into court. The parties also agreed that they would forthwith schedule a case planning conference for the purpose of setting a schedule for the orderly determination of the parties' dispute regarding the validity of the Mortgage as soon as reasonably possible.
- [21] On or around November 5, 2019, the sale of the W. 35th Property completed for \$4.2 million. The net proceeds of sale after satisfaction of the first mortgage totalling \$914,434.44, were paid into court (the "Proceeds").
- [22] Pursuant to a case plan order of Justice Brundrett made November 12, 2019, the plaintiff was to file and serve his summary trial application regarding the Mortgage by February 3, 2020.
- [23] An amended consolidated notice of civil claim was filed November 18, 2019. The claim raises grounds for relief which extend beyond the Mortgage. The Consolidated Action will be tried together with an action brought by other plaintiffs who were raising similar misappropriation issues relating to the Prince George development.
- [24] On May 6, 2020, the defendants filed an amended response to civil claim ("Amended Response") in which Mr. Johal alleged, inter alia, that, the Mortgage was granted to secure funds which the plaintiff failed to advance. The Amended Response did not seek to set-off any payments already alleged to have been improperly made to the plaintiff.
- [25] On November 30, 2020, the plaintiff filed his summary trial application, seeking a declaration that the Mortgage was valid, and for payout of the Proceeds.
- [26] On January 4, 2021, Mr. Johal and 7 West filed their application response, along with Affidavit #1 of Mr. Johal dated December 31, 2020 (the "Johal Affidavit").
- [27] The contents of the Johal Affidavit raised issues different from the defences in the Amended Response in a number of ways. Most notably, the Mr. Johal asserted that the Mortgage was supposed to secure funds which the plaintiff had already been paid by 7 West, which he had promised to return, but did not return. This contrasted with the prior position that the Mortgage was based on a promise to advance fresh funds. The defendants argued that the Mortgage failed to account for the monies taken out of 7 West by the plaintiff by way of

salaries, loans, and advances on future profits.

[28] On February 12, 2021, with the summary trial scheduled for the week of February 15 on the assize in Abbotsford, the defendants delivered their own notice of application, filed on short notice without leave, seeking:

- i. leave to file a further amended response to civil claim;
- ii. leave to file a counterclaim; and
- iii. should a ruling issue in favour of the plaintiff, a stay of execution of the Summary Trial Order pending the resolution of the counterclaim on its merits.

[29] The proposed further amended response also sought, for the first time, set-off of amounts allegedly already paid to the plaintiff, as well as set-off for alleged slander of title from the filing of the CPL. This application was before Justice Jenkins during the summary trial on February 18-19, 2021. However, while the defendants made submissions regarding their proposed amendments and counterclaim, they agreed to set the application down for hearing at a later date.

[30] 7 West opposed the summary trial application on the basis that:

- i. the matter was not suitable for summary trial;
- ii. the Mortgage was unenforceable on the basis that the plaintiff did not advance funds or failed to prove prior advances or debts to be secured by the Mortgage;
- iii. there was an alleged collateral agreement that contradicted the language of the Mortgage; and
- iv. the Mortgage was an unconscionable agreement and was reached under duress.

[31] In response, the plaintiff argued that he had raised funds from friends and family members for the benefit of 7 West, two of whom were Dev Parmar and Mark Toljanich. In particular, the plaintiff asserted that the payments to Messrs. Parmar and Toljanich noted above were partial repayments of funds borrowed. The plaintiff did not dispute that he had been paid the funds identified above as salary, but disputed that such payments were in fact an advance on future profits that could undercut the validity of the Mortgage.

[32] On July 29, 2021, Justice Jenkins granted judgment in favour of the plaintiff. Justice Jenkins held that the Mortgage was both valid and enforceable, and ordered that the Proceeds plus any interest, be paid out to the plaintiff. In the Summary Trial Decision at paras. 42-44, 55, 67, 71-72, 77, Justice Jenkins concluded that:

- i. the enforceability of the Mortgage was a discrete issue, and it was appropriate to determine this aspect of the claim summarily;
- ii. Mr. Johal's denial that 7 West agreed to secure the funds owing to the plaintiff was without merit;

iii. the written agreements between the parties entailed the totality of the agreement between Mr. Johal and the plaintiff; and

iv. there was no evidence of duress or unconscionability.

[33] In particular, Justice Jenkins noted that Mr. Johal was the person responsible for 7 West's finances, undermining the defendants' arguments about financial improprieties in relation to the release of funds from 7 West to the plaintiff:

[55] Having executed the mortgage and being given a breakdown of the amount of the mortgage, and having previously admitted having "kept all the numbers" and "keeping track of every thing", while maintaining all of the records of 7 West, Mr. Johal's denial of his agreement as to what was owed to Mr. Derencinovic rings hollow.

[56] The defendants have failed to produce records sufficient to undermine the evidence respecting the amount and execution of the mortgage. Those records that were produced were clearly incorrect, which was admitted by Mr. Johal and his accountant.

[57] Based upon the records that were produced by the defendants which were clearly inaccurate, a full trial of the issue would most likely conclude that the best evidence as to the amount of the mortgage was what had been agreed to between the parties.

[34] Shortly after the release of the Summary Trial Decision, 7 West advised that it intended to file an appeal. A notice of appeal was filed August 26, 2021.

[35] The parties agreed that the defendants' appeal of the Summary Trial Decision would be held in abeyance pending resolution of the remaining issues in the Consolidated Action, and that the defendants would not seek a stay from the Court of Appeal.

[36] An order providing leave for the filing of the counterclaim and to permit amendments to the defendants' response to civil claim was entered on December 8, 2021. The counterclaim was filed on December 13, 2021. It seeks repayment of largely the same payments to or on behalf of the plaintiff which the defendants raised as defences to the Mortgage during the summary trial, with some adjustment (including that the defendants now alleged that Dynamic Distribution was paid \$920,000, rather than the \$270,000 figure used at the summary trial and that there were payments totalling \$14,000 to Paulo Almeida).

[37] The plaintiff responded that the payments were all appropriate. The plaintiff notes that Mr. Parmar of Dynamic Distribution issued a cheque dated March 11, 2016, for \$350,000 to Magellan Law Group in trust. On March 15, 2016, 7 West closed on the purchase of the W. 35th Property. Magellan Law Group were 7 West's solicitors for that purchase. Hence, the plaintiff says that the \$350,000 paid by Mr. Parmar was to help finance the purchase of W. 35th Property, and hence supports the basis for repayments to Dynamic Distribution. Similarly, the plaintiff asserts that Paulo Almeida was another person from whom the plaintiff borrowed money for 7 West's benefit. Based on this, the plaintiff says that the newly alleged payments in the counterclaim fall within the same category as the payments

considered by Justice Jenkins when he accepted what was owed to the plaintiff pursuant to the Mortgage.

- [38] The trial of the remaining issues in the litigation was originally set to take place in September 2021 for 29 days. This date was adjourned by consent, and trial is now set for April 24, 2023.

III. THE LEGAL FRAMEWORK

- [39] Rule 13-2(31) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules], provides jurisdiction to grant a stay of execution of an order:

Stay of execution

- (31) The court may, at or after the time of making an order,
- (a) stay the execution of the order until such time as it thinks fit, or
 - (b) provide that an order for the payment of money be payable by instalments.
- [40] The court may also grant a stay pursuant to its inherent jurisdiction or, in the context of a summary trial application, under R. 9-7(15) of the Rules: *Concord Pacific Acquisitions Inc. v Oei*, 2020 BCSC 832 at paras. 25-26 [Concord].
- [41] The onus is on the defendant applicants to establish that a stay should be granted: *Concord* at para. 29.
- [42] The test for granting such a stay was outlined by Voith J. (as he then was) in *Concord*. The court concluded that the test set out *RJR - MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 [RJR], governs in this situation: *Concord* at para. 56. Prior to granting a stay of execution under the RJR framework, the court must:
- i. determine that there is a serious question to be tried;
 - ii. conclude that irreparable harm would be suffered if the application were refused; and
 - iii. weigh the balance of convenience to determine which of the parties would suffer greater harm from the granting or refusing of the stay.
- [43] A stay of execution is an equitable remedy, which is dependant on the facts of a given case. The court must consider where the "interests of justice" or "ends of justice" lie, or whether the "circumstances raise such circumstances as would warrant the exercise" of the court's discretion: *Concord* at para. 48. As an equitable remedy, additional factors may also be considered (*Concord* at para. 49) such as:
- i. the relatedness of the counterclaim to the judgment sought to be stayed;
 - ii. whether the amount of the counterclaim can be calculated with reasonable certainty; and
 - iii. the defendant's delay, if any, in pursuing their counterclaim.

[44] Specifically, courts have declined to exercise the discretion to grant a stay where a counterclaim is raised to delay execution proceedings and has no real expectation of success: *Rana v. Payless Tiles Ltd.*, 2008 BCSC 458 at para. 38.

IV. ANALYSIS

A. Serious Question to be Tried

[45] The defendants propose that a stay should be granted until resolution of the counterclaim. As noted above, the defendants' counterclaim is based on the following allegations:

- i. receipt of monies by the plaintiff (and others for the plaintiff's benefit) from 7 West, which allegedly constituted breach of fiduciary duty, breach of an oral joint venture agreement, and/or unjust enrichment; and
- ii. slander of title by the plaintiff in filing a CPL on the W. 35th Property.

[46] At this stage the court conducts only "a reasonably cursory assessment of the merits of an applicant's counterclaim or cross-claim", and a "prolonged examination of the merits is generally neither necessary nor desirable": *Concord* at paras. 35, 60. The threshold is low. The applicant must only establish that their claim is not vexatious or frivolous: *Chapman v. Chapman*, 2020 BCSC 1409 at paras. 7-9; *Nie v. Kwang Chyun Enterprise Ltd.*, 2017 BCSC 1941 at para. 55.

[47] The simplest--and likely the strongest--claim advanced in the counterclaim is for unjust enrichment. To establish unjust enrichment, the defendants are simply required to prove that:

- i. the plaintiff was enriched;
- ii. the defendants suffered a corresponding deprivation; and
- iii. the enrichment and corresponding deprivation occurred absent any juristic reason.

[48] The questions of enrichment and deprivation are reasonably clear: vast sums of money clearly flowed out from 7 West and to the plaintiff. The real question is whether there was an absence of juristic reason for such payments.

[49] For better or worse, the problematic nature of 7 West's accounting practices assists the defendants here. Of particular moment is that the plaintiff was unable at this stage to provide an accounting trail aligning the monies he or his associates paid into 7 West with those paid out to him or his associates either as repayment of loans, interest or a profit distribution. The Summary Trial Decision does not provide a determinative answer to this question. Rather, the Decision only answered the question as to whether the Mortgage was enforceable. I find that the present uncertainty on the record as to whether the plaintiff has a juristic reason for all of the payments made out to him or on his behalf creates raises a serious question to be tried. The fact that, absent a successful appeal, the plaintiff will have

already received a large award pursuant to the Mortgage, will presumably make it more challenging for the plaintiff to justify the receipt of further sums above and beyond the Proceeds.

- [50] Given that the defendants have established that there is at least an arguable basis to ground an unjust enrichment claim, it is unnecessary to go further to confirm whether any of the other more technically challenging causes of action also satisfy the test. However, and in any event, I would note that while the other claims alleged in the counterclaim will likely face an uphill battle at trial, I cannot say they are vexatious or frivolous at this juncture. That said, the relative merits of the claims are considered when weighing the balance of convenience.

B. Potential for Irreparable Harm to the Applicant if the Stay is Not Granted

- [51] The concept of irreparable harm was explained by the Supreme Court of Canada in *RJR* at 341:

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. Examples of the former include instances where one party will be put out of business by the court's decision (*R.L. Crain Inc. v. Hendry* (1988), 48 D.L.R. (4th) 228 (Sask. Q.B.)); where one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid*, supra); or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined (*MacMillan Bloedel Ltd. v. Mullin*, [1985] 3 W.W.R. 577 (B.C.C.A.)). The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect damages, although it may be a relevant consideration (*Hubbard v. Pitt*, [1976] Q.B. 142 (C.A.)).

[Emphasis added.]

- [52] The defendants argue that there is potential for irreparable harm, as there is a material risk that the plaintiff will not be able to satisfy any judgment on the counterclaim. They value the counterclaim at more than \$1 million.
- [53] The plaintiff responds that there is an opportunity for the plaintiff to satisfy any judgment on the counterclaim by way of set-off from the plaintiff's remaining claims beyond the Mortgage. Furthermore, and in any case, the plaintiff has the means to satisfy a judgment on the counterclaim if 7 West is successful at trial.
- [54] On the question of the risk of recovery, the plaintiff has given evidence that:

- i. he is a successful real estate developer;
- ii. he has historically earned an annual income of around \$100,000 from his various ventures, and continues to earn a similar annual income;
- iii. he is currently an investor in a residential real estate development on Vancouver Island;
- iv. he is a 20% investor in 688 BC Ltd., which owns 18 undeveloped lots in Prince George and one developed townhome in Prince George which is currently rented out; and
- v. he owns a vintage car which has been assessed at \$100,000.

[55] This is more than a "bare assertion" of having assets in the jurisdiction: *Dhillon v. Robertson*, 2021 BCCA 77 at para. 41. But the weight of such evidence is tempered. As the defendants note, it is difficult to ascribe a particular value to the 688 BC Ltd. investment, given that the company is embroiled in litigation. That said, the defendants' critique of the plaintiff's salary disclosure is somewhat unfair. The defendants essentially propose an approach that would make it difficult for any self-employed person who does not have significant capital assets to enforce on a judgment pending appeal. Our courts have generally been more forgiving where an individual has a good income, assets, and has not shown themselves to be willing to avoid court orders: *M.N. v. C.G.F.*, 2020 BCSC 2072 at paras. 26-29.

[56] That said, given the magnitude of the Counterclaim, I do have some concern about the ability of the plaintiff to satisfy a judgment on the counterclaim. While RJR notes that such a concern is not determinative, I still find that this factor does still militate in favour of granting a stay.

C. Balance of Convenience as Between the Parties

[57] At this stage, the potential prejudice to the plaintiff is also considered, and weighed against the prejudice to the defendants. The plaintiff says that he will be harmed if the stay application is granted, as he will be deprived of close to \$1,000,000 in funds for at least another few years, despite the court having determined that he is entitled to the Proceeds.

[58] I find that the balance of prejudice weighs against granting the stay of execution. The Mortgage was granted as a means of giving the plaintiff protection in the face of disputes about the management of West's funds. Preventing the plaintiff from making use of this "insurance policy"--particularly after his legal entitlement thereto has been vindicated by the court--undermines the purpose for which it was issued in the first place. This carries more weight than the marginal prejudice to the defendants I have found above. As the court held in *Barclays Bank of Canada v. N.B. Cook Corporation Ltd.* (1983), 48 B.C.L.R. 364 at 369 (S.C.):

To adjourn or delay execution until realization would mean that the court was directly rewriting a contract between the parties in the teeth of its provisions and this could never be a proper exercise of judicial discretion .

Sympathetic though I am to companies placed in financial difficulties by present business conditions, I cannot see my way clear by the exercise of a discretion to emasculate a contract and deprive the plaintiff of a specific contractual right, which is what I would be doing, and under these particular circumstances I grant judgment and refuse the relief of adjournment or stay of execution, all with costs.

- [59] As noted above, the court is also entitled to consider any other relevant consideration in assessing the balance of convenience. Here, the two raised by the parties are the relatedness between the claim and counterclaim and the defendants delay in bringing the counterclaim.
- [60] With respect to relatedness, although the legal test is not identical, the fact that Justice Jenkins found that it was appropriate to determine the Mortgage issues separately in a summary trial weighs against a finding of connectedness. It is true that there is some factual overlap between the Mortgage claim and the Counterclaim. But by executing the Mortgage, 7 West assumed an obligation that was clear and in writing. That assumption of responsibility necessarily embedded the risk that that the clear written obligation could be enforced in summary fashion. Indeed, to a certain extent, the granting of the Mortgage negated the need to examine the complexities of the financial relationship between the parties raised by the Counterclaim. The clarity and straightforwardness of the Summary Trial Decision reflects this point as well
- [61] The defendants rely on *Glacier Creek Development Corporation v. Pemberton Benchlands Housing Corporation*, 2007 BCSC 286, in which a stay was issued on a debt judgment obtained by the plaintiff in the face of a counterclaim. However, in that case, there was always a plan to have the actions heard together. Here, the litigation plan--which was sanctioned by several court orders and directions--had for some time been for the Mortgage issues to be considered separately.
- [62] With respect to delay, the defendants waited two and a half years after commencement of litigation before advancing the counterclaim. I find that this delay weighs against granting the stay. The defendants argue that the delay was reasonable, as it was only triggered to advance this claim after the plaintiff's February 2021 admission on examination that he viewed his entitlement to funds under the Mortgage as distinct from various other payments he had received from 7 West. With respect, the plaintiff's own legal characterization of his entitlement does not create any justification for delay in the filing of a counterclaim based on the actual conduct of the plaintiff. I accept that there was no unreasonable delay following the Summary Judgment Trial, but there was little reason for the delay prior to that hearing. The defendants argue that any delay in this period is the fault of their prior counsel, and should not be visited upon them. However, the real reason to focus on delay in this context is to consider the extent to which the plaintiff will be impeded from collecting funds to which they are legally entitled, and not really (or necessarily) to attribute blame for said delay. As the cardinal axiom provides, justice delayed is justice denied.

[63] Finally, the established strength of the Mortgage claim as opposed to the questionable strength of the Counterclaim also weighs against the granting of the stay.

[64] Overall, I find that the balance of convenience weighs heavily against the granting of the stay.

V. CONCLUSION

[65] Given that the balance of convenience favours the plaintiff's position, I find that the application for a stay should be dismissed.

[66] Unless the parties seek to make further submissions on costs, the plaintiff shall have his costs in the cause. If either party seeks to make written submissions, they shall be made on the following basis:

- i. Plaintiff: Written submissions of no more than 10 pages within 30 days of this judgment.
- ii. Defendants: Written submission of no more than 10 pages within 30 days of the receipt of the plaintiff's submissions.
- iii. Plaintiff's Reply: Written submission of no more than 5 pages within 7 days of the receipt of the defendants' submissions.

"The Honourable Mr. Justice Branch"

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