

CANADA / JUDGMENT

Urban Land Holdings Ltd. v. Babich

2020 BCCA 210

COURT

British Columbia Court of Appeal

DECIDED

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2020 BCCA 210 Urban Land Holdings Ltd. v. Babich

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Urban Land Holdings Ltd. v. Babich,

2020 BCCA 210

Date: 20200720

Docket: CA46762

Between:

Urban Land Holdings Ltd.

Respondent

(Petitioner)

And

Earl Steven Babich

Appellant

(Respondent)

And

Monique Jacqueline Babich

Respondent

(Respondent)

Before:

The Honourable Madam Justice Dickson

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated March 6, 2020 (Urban Land Holdings Ltd. v. Babich, Chilliwack Docket S33745).

The Appellant, appearing via teleconference:

E. Babich

Counsel for the Respondent, Urban Land Holdings Ltd., appearing via teleconference:

A. Habib

Appearing as agent for the Respondent, Monique Babich, via teleconference:

A. Sello

Counsel for the purchasers, Phuoc Hon Vo and Viet Phuoc Vo, appearing via teleconference:

N.T. Hooge

Place and Date of Hearing:

Vancouver, British Columbia

June 16, 2020

Place and Date of Judgment (Reasons to follow):

Vancouver, British Columbia

June 18, 2020

Place and Date of Written Reasons:

Vancouver, British Columbia

July 20, 2020

Summary:

The applicant seeks leave to appeal an order dismissing his appeal in the court below from an order approving the sale of a residential property in foreclosure proceedings. If leave to appeal is granted, he also seeks a stay of an order requiring him to deliver vacant possession of the property to the purchasers. Held: Applications dismissed. It would not be in the interests of justice to grant leave to appeal as the appeal lacks merit and, importantly, the sale of the property has already completed.

Reasons for Judgment of the Honourable Madam Justice Dickson:

Overview

- [1] On June 16, 2020 I heard two applications brought by Earl Babich, the respondent in foreclosure proceedings with respect to a residential property located in Mission, B.C. Mr. Babich appealed an order of Master Keighley approving a sale of the property in the court below. On March 6, 2020, Justice Ross dismissed Mr. Babich's appeal of the sale approval order. It is a term of the order that Mr. Babich deliver vacant possession of the property to the purchasers by 12:00 p.m., one day after completion of the sale.
- [2] Before me, Mr. Babich sought leave to appeal Justice Ross's order dismissing his appeal of the sale approval order and, if leave was granted, a stay of the vacant possession order pending determination of the appeal. He filed his notice of application for leave to appeal on March 18, 2020 and emailed it to counsel for the petitioner, Urban Land Holdings Ltd. ("Urban"), that evening. The next morning counsel responded and indicated that Urban would oppose the leave application, however, the sale completed the same day (March 19, 2020). On March 31, 2020, Urban filed a writ of possession. Mr. Babich has not provided vacant possession of the property.
- [3] I dismissed Mr. Babich's application for leave to appeal on June 18, 2020, with reasons to follow. These are those reasons. As a result of my decision on the leave to appeal application, it was unnecessary for me to deal with Mr. Babich's application for a stay pending determination of the appeal.

Background

History of the Foreclosure Proceedings

- [4] Mr. Babich purchased the Mission property in 2001, and has lived there since. His former spouse, Monique Babich, and the couple's four children also previously lived at the property.
- [5] Mr. Babich and Ms. Babich separated in December 2016. Ms. Babich was a respondent in the court below, and is one of the respondents to this application. She has registered a judgment obtained in their family law proceedings against the property.
- [6] Urban was the holder of a second mortgage in respect of the property. It filed a petition on January 9, 2018 in the court below, commencing the underlying foreclosure proceedings. Foreclosure proceedings were also brought by the first mortgagee on the property, CIBC, which proceedings are unrelated to this application.
- [7] On April 16, 2018, Master Keighley granted an order Nisi in the Urban foreclosure proceedings, giving Mr. Babich until October 16, 2018 to redeem the mortgage. The redemption period was later extended to December 16, 2018 by order of Master Caldwell.
- [8] On January 7, 2019, Master Caldwell granted Mr. Babich exclusive conduct of sale from January 7 - February 28, 2019, following which Urban would have conduct of sale.

- [9] Mr. Babich applied for a further extension of the redemption period on March 7, 2019. Master Keighley dismissed that application and Justice Forth dismissed Mr. Babich's appeal of Master Keighley's order.

The Sale Approval Order

- [10] On December 2, 2019, Urban applied for an order approving sale of the property. Urban had received an offer to purchase the property for \$940,000 and, after making the application, it received a second offer of \$1,201,500 from two parties with the last name Vo.
- [11] On December 13, 2019, Mr. Babich again applied for an order extending the redemption period by 90 days. This application was heard together with Urban's sale approval application on January 6, 2020 by Master Keighley.
- [12] The Master first considered whether the sale, based on the Vo offer, was provident. He noted that he had several appraisals before him in evidence, indicating that the property had a value ranging from \$900,000 up to, at one point, \$2,000,000. He then concluded the sale was provident, given the length of time the property had been marketed and the similarity between the Vo offer and the highest of the current appraised values.
- [13] The Master also dismissed Mr. Babich's application. Although he accepted there was sufficient equity in the property to provide security, he was not persuaded that there was a reasonable prospect of payment within the 90 days requested or within any reasonable amount of time. In explaining his conclusion, he acknowledged Mr. Babich indicated he intended to subdivide the property but commented that he was "somewhat vague" about these plans and that the application for subdivision was still in the early stages of the approval process.
- [14] As a result, the Master granted an order approving the sale to the Vo purchasers on the terms and conditions set out in a draft contract of purchase and sale. As a term of the sale approval order, he granted the vacant possession order, which, as noted, required Mr. Babich to provide vacant possession by 12:00 p.m., one day following completion of the sale.

Appeal of the Sale Approval Order

- [15] On January 20, 2020, Mr. Babich filed a notice of appeal in the court below from the sale approval order. He listed numerous grounds of appeal, primarily concerning the Master's finding that the sale was provident. In particular, Mr. Babich asserted that the marketing of the property was imprudent because it did not account for the potential for subdivision, which, he said, led to improvident offers. Mr. Babich contended the Master failed to consider whether the recent appraisals or the offers before the court properly accounted for the subdivision potential.

- [16] Mr. Babich also raised several other issues, including assertions that the Master had: relied on unreliable or impermissible evidence; refused to consider new evidence that was not before him when he dismissed Mr. Babich's previous application for an extension of the redemption period; and failed to consider the impact of the sale on the children.
- [17] On February 4, 2020, Justice Shergill stayed the sale approval order pending determination of Mr. Babich's appeal. The appeal was heard by Justice Ross on March 6, 2020 and dismissed the same day.

Reasons of the Chambers Judge

- [18] The judge began his reasons by summarizing Mr. Babich's arguments and noting the foundation for the appeal was that Mr. Babich was in the process of obtaining a subdivision for the property, which would create three lots that, together, would be worth more than the approved sale price.
- [19] The judge then discussed the applicable standard of review on an appeal from a Master's decision. Citing *Abermin Corp. v. Granges Explor. Ltd.* (1990), 45 B.C.L.R. (2d) 188 (S.C. Chambers), he stated that there are two standards of review. First, a review of a purely interlocutory decision of a Master is a true appeal and the Master's decision will only be interfered with if it is clearly wrong. Second, appeals involving a question of law, a final order, or a ruling that raises questions vital to the final issue in the case require a rehearing on the merits based on the record before the Master. On such a rehearing, the judge may properly substitute his or her own view for that of the Master, even where the decision under appeal is a discretionary order.
- [20] The judge also cited *Tekamar Mortgage Fund v. Hegel*, 2018 BCSC 1369, for the proposition that on an appeal from a final order of sale in foreclosure proceedings a rehearing on the merits is required because the order for sale raises questions vital to the final issue, but that the judge should still recognize the expertise that Masters bring to sale approval applications.
- [21] With this framework in mind, the judge found that both standards of review arose in the appeal. He held the decision rejecting Mr. Babich's application for an extension of time was an interim order that should only be interfered with if it was clearly wrong, while the sale approval order required a rehearing on the merits with due deference to the Master's experience in foreclosure matters. He went on to find that the order dismissing Mr. Babich's application for an extension of time was not clearly wrong.
- [22] As to the sale approval order, the judge noted that the overriding question was whether the sale was provident. He also noted Mr. Babich's position that the Master considered improper evidence and failed to consider the value of the property properly. Then he noted Urban's submissions regarding the efforts made to market the property between March 2019 and November 2019 and found that Mr. Babich had not provided any evidence of a real prospect of obtaining the subdivision approval, which approval was the foundation for his argument

that the property was worth more than the approved sale price. In the result, he concluded that the Master made his order with the proper legal test in mind, and that there was no evidence that could lead to a different conclusion.

Subsequent Proceedings

- [23] On March 18, 2020, Mr. Babich filed his application for leave to appeal Justice Ross's order. Among other things, he sought an order staying the sale approval order or, in the alternative, an order extending the time to provide vacant possession. As I have noted, he emailed the notice to counsel for Urban on the evening of March 18, 2020 and the next morning counsel for Urban advised him that it would oppose the application.
- [24] On March 19, 2020, the sale of the property was completed pursuant to the approved contract of purchase and sale. It appears from the materials filed below that the Vo purchasers obtained a mortgage in the amount of \$781,000, on which they are required to make monthly interest-only payments of \$6,182.92.
- [25] Pursuant to the vacant possession order, Mr. Babich was required to provide vacant possession by 12:00 p.m. on March 20, 2020. He did not do so.
- [26] On March 26, 2020, Urban filed a writ of possession, which was accepted for filing in the registry on March 31, 2020.
- [27] On April 2, 2020, Associate Chief Justice Holmes issued an order staying the writ of possession, with leave to the Vo purchasers to apply to set the stay aside. It appears that this stay was issued for reasons relating to the COVID-19 pandemic.
- [28] On May 7, 2020, the Vo purchasers applied in the court below to set aside the order staying the writ of possession order. The application was heard by Justice Armstrong on May 29, 2020, who reserved his decision.
- [29] On June 1, 2020, the parties appeared in this Court before Justice Fenlon, at which time Mr. Babich sought a stay of the vacant possession order. Justice Fenlon noted that Justice Armstrong's decision was reserved until the following day, June 2, 2020. She also noted that the respondents to the stay application, Ms. Babich and Urban, had no interest in whether Mr. Babich remained in possession of the property, but clearly had an interest in whether the sale should be undone, assuming that was even possible. It was unclear whether the Vo purchasers had been served with the notice of application and their counsel appeared on the application at the request of the Court. Justice Fenlon granted an interim stay of the vacant possession order pending Mr. Babich's application for leave to appeal.
- [30] On June 2, 2020, Justice Armstrong set aside the stay of the writ of possession issued by Associate Chief Justice Holmes.

Positions of the Parties

Mr. Babich

[31] Mr. Babich filed a large volume of material on these applications, all of which I read, including the transcripts of the hearings before Master Keighley and Justice Ross. In his memorandums of argument he makes many of the same arguments he previously advanced in the courts below. For example, he asserts that he has undertaken significant work toward subdividing the property and that "improvements" were not accounted for in the marketing or the offer approved by the sale approval order. In support of his position, among other things, he points to an appraisal report prepared on March 2, 2020 by Tamara Best, which valued the property at \$1,600,000, and complains that Justice Ross prevented him from referring to that appraisal at of the hearing of his appeal of Master Keighley's order approving the sale.

[32] In a memorandum of argument under the heading "In this specific case there are numerous serious questions to be answered" Mr. Babich lists the following twelve questions:

At what specific point in a transaction does a matter become moot?

Does the BC Court of Appeal have the power to reverse and unwind a transaction that has become moot and what are the conditions that must exist to do so: such as fraud, state of emergency such as a global?

Does the BC Court of Appeal have the power to order the Attorney General of British Columbia to intervene in a matter for the interest of justice?

What is the proper standard of review for this matter? Justice Mr. Ross provided in his oral reasons for judgment at para. 16 "In this case, both standards of review apply"

As provided in reply book of the petitioner "Whether the Honourable Mr. Justice Ross made an error of mixed law and fact by failing to exercise his discretion judiciously, amounting to an injustice?

What is a denovo hearing in the province of British Columbia? Is it a review or a rehearing? Is it a rehearing with fresh evidence?

What is the responsibility of a Justice to a self-litigant or any party to be informed regarding any consequence they may suffer?

What is the responsibility of a Master or a Justice to hear evidence and argument of a party with the extreme pressures of limited time during court proceedings to not commit a denial of procedural fairness and error in law?

What is the duty of a justice to make certain the rules of the court are followed?

What is the standard for hearsay evidence to be stated on record before the court?

Did Justice Mr. Ross error in the fact he stated at line 3 of page 11 of the transcript from March 6, 2020 "the only way you get me to overturn the approval of the sale is to establish that the final order, however he got there, was improvident."?

Can a foreclosure petition proceed to a sale without the consideration of the criminal act and family law action CPL and curt delay that caused the foreclosure?

[33] In the same memorandum, among other things, Mr. Babich seeks orders that the Vo purchasers and others be cross-examined on their affidavits and that due to the COVID-19 global pandemic the Attorney General intervene in this matter by co-signing a Bank of Montreal mortgage with him to unwind the purchase transaction. In other filed materials, he sets out "talking points" in which he alleges the following errors were made:

The judge applied the incorrect standard of review to the Master's ruling dismissing Mr. Babich's application to extend the redemption period. The judge found the standard of review was "clearly wrong", but this was incorrect because the extension application was heard together with the sale approval application. The choice before the Master was to either extend the redemption period or approve the sale and thus the order, viewed as a whole, was a final order.

The judge was entitled to accept new evidence that was not before the Master, and he fettered his discretion in holding that he was not permitted to do so. As a result of the lack of clarity in BC, the proposed appeal raises an issue of general importance in this regard.

The judge failed to resolve conflicts in the evidence regarding the value of the Property. The judge relied on a November 2019 appraisal cited by the Master, which valued the Property at less than \$1,000,000, but failed to consider the November 2019 tax assessment, which valued the Property at \$1,400,000. The judge also failed to consider evidence that Mr. Babich's application for "restructuring" was pending in assessing whether the sale was fair.

Mr. Babich was denied procedural fairness by both the Master and the judge as they did not adequately review the materials.

[34] At the hearing of the applications, Mr. Babich expanded upon his written arguments and advanced others in his oral submissions. For example, he characterized the opposing counsel's submissions to the court as inadmissible hearsay, argued that Ms. Babich was not entitled to alter her position on whether the sale approval order should be granted and contended the orders were stayed by the prime minister and government by their response to the global pandemic. He also emphasized what he described as procedural unfairness on Justice Ross's part in failing to review all of his application materials or allow him to refer to Ms. Best's appraisal to refute the position of opposing counsel.

[35] As to his application to stay the writ of possession, Mr. Babich argues that he will suffer irreparable harm if a stay is not granted and contended the balance of convenience favours granting a stay.

Urban

- [36] Urban opposes both applications, arguing that the appeal is not of importance to the parties or litigants generally as applications for approval of sale are routine and the sale approval order of Master Keighley does not raise a novel point of law. It also argues that there is no utility to the appeal as the property has been sold and it says the prospects of success are low because this Court can only set aside the order of Justice Ross if it was made based on an error of principle or is plainly wrong and Mr. Babich has raised no arguable grounds of appeal and is instead asking for a hearing de novo;
- [37] Urban argues further that a stay should be denied because Mr. Babich did not bring the application in a timely fashion, has failed to establish an arguable appeal, has not demonstrated that he will suffer irreparable harm, and the balance of convenience weighs against granting a stay. In advancing its position, Urban notes that the sale approval order has already been implemented, the first mortgage has been paid in full, Urban has paid its mortgage amount, and the Vo purchasers now own the property. In support, it relies on *Resmor Trust Company v. Laus Holdings Ltd.*, 2011 BCCA 492, where an application for a stay was brought in similar circumstances after a court approved sale had completed and this Court held that the question of whether the order for sale was properly made was moot.

The Vo Purchasers

- [38] The Vo purchasers also oppose Mr. Babich's applications, particularly the stay application. Taking into account Justice Fenlon's order and their direct interest in the litigation, at the hearing of the application I accepted that they were entitled to make submissions.
- [39] The Vo purchasers argue that the application for a stay is moot, given that the sale has completed, and that, in any event, Mr. Babich has not met the test for a stay. They note that Justice Armstrong set aside the stay order below on the same evidentiary record and say that any harm Mr. Babich would suffer if a stay is denied is not irreparable as he can recover damages if leave is granted and he is successful on appeal.

Ms. Babich

- [40] Ms. Babich also opposes Mr. Babich's applications. In her submission, the proposed appeal has no prospect of success because of the deferential standard of review applicable, the fact that Mr. Babich was unable to establish before either Master Keighley or Justice Ross that there was a reasonable prospect of paying the mortgage within a reasonable period, the sale was not improvident, the property has already been sold, and all stakeholders will share in the proceeds of the sale.

Law

[41] With the foregoing background in mind, I considered Mr. Babich's applications and declined to grant leave to appeal the order of Justice Ross. As I have noted, given that conclusion I did not deal with his application for a stay pending determination of the appeal. That being so, I will summarize only the principles that govern leave to appeal.

Leave to Appeal

[42] Under s. 7(2) of the Court of Appeal Act, R.S.B.C. 1996, c. 77, a "limited appeal order" cannot be appealed without leave of a justice. Rule 2.1(a)(vii) of the Court of Appeal Rules prescribes that an order made under Rule 21-7 of the Supreme Court Civil Rules (foreclosure and cancellation) is a limited appeal order, while Rule 2.1(g) provides that an order of a Supreme Court judge granting or refusing an appeal from any order referred to in paragraph (a) is a limited appeal order.

[43] In *Goldman, Sachs & Co. v. Sessions*, 2000 BCCA 326 at para. 10, Saunders J.A. (in Chambers) set out the following criteria to consider on an application for leave to appeal:

- a) whether the point on appeal is of significance to the practice;
- b) whether the point raised is of significance to the action itself;
- c) whether the appeal is prima facie meritorious or, on the other hand, whether it is frivolous; and
- d) whether the appeal will unduly hinder the progress of the action.

[44] The above criteria are "all considered under the rubric of the interests of justice": *Vancouver (City) v. Zhang*, 2007 BCCA 280 at para. 10 (Saunders J.A. in Chambers).

[45] The merits threshold is generally low, with applicants required only to show an arguable case: *Bartram v. Glaxosmithkline Inc.*, 2011 BCCA 539 at para. 16 (Prowse J.A. in Chambers); *A.L.J. v. S.J.M. et al.* (1994), 46 B.C.A.C. 158 at para. 10 (Hinds J.A. in Chambers).

Analysis

Is the appeal of significance to the practice?

[46] In my view, the appeal is of no significance to the practice. It is highly fact-specific and, although the factual context is unusual in some respects, there is no novel point of law raised on the record before me.

Is the point raised of significance to the parties?

[47] The sale has completed and, while Mr. Babich argues it may be possible to unwind it, that position is unsupported by any case authority. Although Mr. Babich clearly wishes to press on despite these realities, the real questions are whether the appeal is *prima facie* meritorious and whether it would be in the interests of justice to grant leave to appeal.

Is the appeal *prima facie* meritorious? Would it be in the interests of justice to grant leave to appeal?

[48] In my view, Mr. Babich's proposed appeal lacks merit. I agree with counsel for Urban that, in substance, Mr. Babich is really seeking a hearing *de novo*. That is not the role of this Court.

[49] Some of the questions raised by Mr. Babich are well-settled and do not raise arguable grounds of appeal based on the record. For example, the applicable standards of review are as Justice Ross described them and his responsibility procedurally was to conduct a hearing that was fair to all concerned. In my view, it is clear from the transcript and his reasons that is what occurred. In particular, Justice Ross provided Mr. Babich with ample opportunity to present and argue his case, appreciated the substance of the materials presented and made his decision based on a firm grasp of their import. While it may be arguable that he could have considered new evidence, it is also obvious, given his finding that there was no real prospect of Mr. Babich obtaining subdivision approval, that admission of Ms. Best's appraisal report would not have impacted his decision on whether the sale was provident or otherwise affected the outcome of the appeal.

[50] Other questions raised by Mr. Babich in his arguments, written and oral, are simply frivolous. For example, this Court plainly has no power to order the Attorney General to co-sign a mortgage with Mr. Babich. Nor did the prime minister and government stay the orders in question by their response to the COVID-19 pandemic. In addition, the submissions of counsel are not evidence. Nor was Ms. Babich obliged to take the same position on the sale approval order before the Master and Justice Ross. On matters such as these, nothing more need be said.

[51] Further, and importantly, even if an arguable ground of appeal could be discerned in my view it would not be in the interests of justice to grant leave to appeal given that the sale of the property has already completed. Although not identical to *Genworth Financial Mortgage Insurance Company of Canada v. Doan*, 2019 BCCA 350, in all respects, in my view this case is similar in significant ways. In *Genworth*, Justice Fenlon dismissed applications for leave to appeal and a stay of execution where a sale had completed in a foreclosure context but the applicant remained in possession of the property. Although Justice Fenlon found the appeal was arguable, she dismissed both applications based on the interests of justice criterion:

[18] In my view, the overarching and determinative consideration in this case is the interests of justice. Mr. Doan wishes to appeal because he does not want to lose his home. That is a difficult prospect for anyone, and it appears particularly difficult for Mr. Doan. However, Mr. Doan borrowed money and has not repaid the sums due under the terms of the mortgage he provided as security for that loan. He has had many opportunities over the past three years

to redeem the mortgage, including the opportunity granted under the forbearance agreement. Mr. Doan was granted no fee status in this Court on these applications. He acknowledged through counsel that if he were to succeed on the proposed appeal, he would not be in a position to redeem the mortgage. His hope is that the property, on being relisted and re-marketed, would sell for more than \$185,000 -- and indeed more than the \$210,000 plus required to satisfy the amount due under the mortgage so that he would realize some benefit from the sale.

- [19] Mr. Doan has not provided evidence challenging the sale as improvident. His only proposed ground of appeal relates to the form of the evidence tendered. That error could be corrected readily on a re-application to approve the sale. Mr. Doan's hope that a price in excess of \$210,000 could be achieved is speculative. Indeed, given the length of time the property was listed for sale, and its condition, it seems unlikely to be realized.
- [20] In assessing the interests of justice, it is of great significance that Mr. Doan sought leave to appeal and a stay of the order approving the sale after the property had vested in the purchaser. The mortgagee informed Mr. Doan on July 5, 2019 by way of letter that a sale was pending on his property subject to court approval and that the application to obtain that approval would be heard on July 24. Mr. Doan appeared on that date and opposed the approval application. The sale was approved that day and completed on August 22, 2019. Mr. Doan contacted counsel for the mortgagee on the completion date to advise that he was going to appeal the sale order.
- [21] Mr. Doan remains in possession of the property at this point, but a bona fide purchaser for value who is not a party to this proceeding is the registered owner of the property. The purchaser was entitled to rely on the completion of the sale approved by the court and unchallenged prior to the transfer: *Bank of Montréal v. Pay*, [1993] B.C.J. No. 2013 (C.A.). The fact that Mr. Doan has refused to vacate the property in accordance with a court order does not affect that analysis.
- [22] I conclude that it is not in the interests of justice to grant leave to appeal. I need not therefore address the third question as to whether a stay should be granted. However, I note that a stay of the order would in any event be moot, since the property has vested in the purchaser: *Resmor Trust Company v. Laus Holdings Ltd.*, 2011 BCCA 492 at para. 27.

[Emphasis at para. 21 added.]

- [52] In this case, Mr. Babich filed his notice of application for leave to appeal the day before the sale closed, but it appears that he did not serve the Vo purchasers, who were not named as respondents to the application. They are bona fide purchasers who were entitled to rely on completion of a sale approved by the court, which was, from their perspective, apparently unchallenged when completion was achieved. They are now the registered owners of the property and they have obtained a significant mortgage in respect of it which obliges them to make substantial monthly payments, but nevertheless Mr. Babich retains possession of their property. For her part, Ms. Babich has an interest in a share of the sale proceeds,

which are, for her, "a bird in the hand" she does not want to lose based on the hope that long-awaited subdivision approval might be forthcoming and a higher price thus achieved.

- [53] Like Mr. Doan in *Genworth*, Mr. Babich has not repaid the sums due under the terms of his mortgage and, although he has had many opportunities to redeem it, he has been unable to do so. He has also been unable to persuade two levels of court that there is a reasonable prospect he will be able to do so within a reasonable time or that the subdivision approval as he has long sought will soon become a reality.
- [54] Taking into account all of the foregoing, I conclude it is not in the interests of justice to grant leave to appeal Justice Ross's order. Although I need not address the question of whether a stay should be granted, like Justice Fenlon in *Genworth*, I note that, based on the analysis in *Resmor*, such an order would be moot in any event.

Conclusion

- [55] For the foregoing reasons, I dismissed Mr. Babich's application for leave to appeal.

"The Honourable Madam Justice Dickson"

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