

CANADA / JUDGMENT

Vant Geloof v. Grewal

2025 BCSC 1576

COURT

Supreme Court of British Columbia

DECIDED

22 July 2025

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2025 BCSC 1576 Vant Geloof v. Grewal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Vant Geloof v. Grewal,

2025 BCSC 1576

Date: 20250722

Docket: H07487

Registry: Abbotsford

Between:

Anthony Richard Vant Geloof and

Sarah Vant Geloof

Petitioners

And

Sukhdev Singh Grewal

Respondent

Before: Associate Judge Krentz

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners:

L.M. Robertson

Counsel for the Respondent:

K.E. Ducey

Place and Date of Hearing:

Abbotsford, B.C.

July 18, 2025

Place and Date of Judgment (via videoconference):

Abbotsford, B.C.

July 22, 2025

- [1] THE COURT: This is a foreclosure proceeding brought by the petitioners with respect to a second mortgage that they have on a property owned by the respondent. As sometimes is the case in foreclosure proceedings, the court is provided with minimal information with respect to the history of the property, the nature of the financial transaction or the background of the parties, other than that the petitioners are private lenders and are spouses. On title, the respondent is described as a businessman and the property is a two-acre rural property located in Surrey.
- [2] The mortgage matured on April 29, 2024, and has not been paid, and it appears was intended to be a short-term loan of \$1,850,000 for a period of 60 days.
- [3] The petitioners seek the usual six-month redemption period. The respondent does not oppose the order nisi being sought, except for the interest rate, as he submits it contravenes s. 8 of the Canada Interest Act, R.S.C. 1985, c. I-15.
- [4] I must first determine if it is appropriate for me as an associate judge to adjudicate on this matter. It is settled law that an order nisi is a final order. Practice Direction 50 states that an associate judge has jurisdiction to make final orders in a foreclosure proceeding when there is no triable issue.
- [5] Pursuant to Rule 21-7(7) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules], at a chambers hearing, the court may order a trial of the proceeding, either generally or on an issue.
- [6] In *Western Arres Capital Inc. v. Currey*, 2011 BCSC 522, Justice Grauer, then a member of this Court, stated the following:
- [19] Once it is determined that no triable issue is raised, then the master has jurisdiction to make the final order
- [20] As for practicality [he went on to say], I conclude that it makes more sense, and is more proportionate, for the master to proceed to make the appropriate foreclosure order once it [is] determined that no triable issue has been raised.

- [7] I find I have the jurisdiction to determine if a triable issue has been raised, and if no triable issue is raised, the proper course is to proceed with the petitioners' application.
- [8] Neither of the parties argued that there was a triable issue. From that, I assume the parties agree that these issues can be resolved on a summary basis. As I do not find there to be a triable issue, I will determine the issue on that basis.
- [9] There is no issue taken with respect to the length of the redemption period, so I will be ordering that the six-month redemption period will commence on July 18, 2025, which was the date of the hearing. I will now determine the issue in dispute.
- [10] The history of s. 8 was thoroughly canvassed by our Court of Appeal in *Reliant Capital Ltd. v. Silverdale Development Corp.*, 2006 BCCA 226 [Reliant]. In that case, the issue, when heard by a master in chambers, was whether the provision in a mortgage increasing the interest rate one month before the mortgage due date is unenforceable as being in conflict with s. 8 of the Canada Interest Act. That section provides:
- 8.(1) No fine, penalty or rate of interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage on real property that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears.
- [11] In *Reliant*, the mortgage secured the principal sum of \$3.5 million for a term of 13 months and 22 days, ending on the due date of September 1, 2002. The interest adjustment date was August 1, 2001.
- [12] The provision in the mortgage giving rise to the application was as follows, under the heading "Payment provisions" it stated:
- (b) Interest Rate:
- (i) 14% per annum for the first twelve months following the Interest Adjustment Date; and
- (ii) thereafter, 20% per annum.
- [13] The petitioner sought a declaration that the interest clause in the mortgage was enforceable. The master dismissed that application, holding that the stipulation for an increase in the interest rate was in the nature of a fine or penalty and therefore unenforceable.
- [14] The petitioner appealed the order and the chambers judge, in dismissing the appeal, held that the true purpose or substance of the interest clause was to create a penalty in the form of an increased rate of interest for non-performance and therefore in violation of s. 8.
- [15] In the Court of Appeal, Chief Justice Finch reviewed the history of s. 8 and noted the following:

- [38] The earliest cases in the courts of equity drew a distinction between interest clauses in mortgages that provided for an increase in the rate if the mortgage was in default, and those clauses which provided for a reduction in the interest rate stipulated if the principal was paid on or before the due date. Interest clauses providing for relaxation of the rate upon timely payment were held to be enforceable, but those which provided for an increased interest rate in case of default were held to be penalties, and therefore unenforceable.
- [16] The Chief Justice further noted:
- [43] The present day s. 8 first appeared in the precursor of the present Canada Interest Act "An Act Relating to Interest on Monies Secured by Mortgage of Real Estate"
- [44] The 1906 revision enacted the Interest Act substantially in its present form. Subsequently, s. 8 has remained virtually unchanged
- [17] Under the heading, Purpose of the Legislation, Chief Justice Finch goes on to say:
- [46] In equity, a lender who increased the rate of interest upon default was held to be imposing a penalty. It was considered that default in a loan contract would cause no further damage than the interest to be charged at the contract rate, and therefore anything above this amount was in the nature of a penalty
- [18] He further noted:
- [57] In *Coupland Acceptance Ltd. v. Walsh*, [1954] S.C.R. 90, the appellant held a second mortgage. The respondent contended that the interest clause in the mortgage was unenforceable as in contravention of s. 8. The Supreme Court of Canada agreed; the court said at [para.] 94:
- The respondents contend in any event, however, that the appellant's claim is to be reduced by the sum of \$2,126.25, representing interest at the rate of 2 per cent per month for the two months following the maturity of the mortgage to the time of its payment as recovery of any amount beyond the rate of 5 per cent payable before maturity is prohibited by s. 8 of the Interest Act
- [58] In *Coupland* the increase in interest rates was payable only after the loan matured and is therefore distinguishable from the case [before him in *Reliant*] where the interest rate increase becomes effective one month before the end of the term.
- [19] In *Reliant*, the mortgage holders were ultimately successful as the increase in the interest rate took effect one month before the mortgage term expired, although the respondents did argue that this was a clever device to avoid contravention of s. 8.
- [20] At paras. 78 and 79, Chief Justice Finch stated the following:

[78] Section 8 does not prohibit rates of interest that are higher on arrears than on monies owing that are not in arrears, only if the increase is dependent on default. The section prohibits higher interest [rates] on arrears than on other monies owing regardless of the contractual language that creates such a charge.

[79] Here, the increased interest rate becomes effective by the passage of time, not by payments falling into default. But in my view that would not save the interest clause from the protection of s. 8 if the effect of the clause were to charge more interest on the arrears than on the other monies owing. This interest clause does not do that. It simply stipulates for a higher interest rate effective one month before maturity, and applies equally to arrears and to monies owing that are not in arrears.

[21] This distinction requires a careful review of the subject mortgage and its terms in the instant case. The mortgage on its face contains the following:

- the principal amount was \$1,850,000 and the interest adjustment date was February 29, 2024. The last payment date was April 29, 2024 and it stipulates that the balance due date was April 29, 2024.

[22] The interest rate is set out in a schedule to the mortgage. Under the heading Payment Provisions, the following is stated:

Interest Rate: The Interest Rate is 6.00% per annum for the first SIXTY (60) Days and 18.99% thereafter.

[23] Under the heading Payment Dates:

The payment, principal plus interest is due at the end of the Term. The Term for this mortgage is for SIXTY (60) Days. The maturity date of the mortgage is April 29, 2024.

[24] Under the heading Amount of each periodic payment:

The payment, principal plus interest is due at the end of the Term. The Term for this mortgage is for SIXTY (60) Days. The maturity date of the mortgage is April 29, 2024. The Interest Rate is 6.00% per annum for the first SIXTY (60) Days and 18.99% thereafter.

[25] Under the heading Prepayment Rights is stated:

The Mortgagor and Mortgagee agree that the term of the Mortgage is for SIXTY days and is OPEN for the entire Term.

[26] At the end of the Schedule, under the heading Other Additional Terms is the following:

The Term for this mortgage is SIXTY-Days

The payment, principal plus interest is due at the end of the Term. The Term for this mortgage is for SIXTY (60) Days. The maturity date of the mortgage is April 29, 2024.

The Interest Rate is 6.00% per annum for the first SIXTY (60) Days and 18.99% thereafter.

[27] It is not in dispute that the principal and interest were due on April 29, 2024, which was the end of the mortgage term. This was confirmed in the demand letter from petitioner's counsel dated April 30, 2025, that contained the following:

The mortgage states that the term is for 60 days and the interest rate for that 60 days is six percent, and then 18.99 percent thereafter.

[28] It is argued by the respondent that this contravenes s. 8, as the default is failure to pay the principal and interest when the term expires, in which case a higher interest rate is charged on arrears than was charged on principal not in arrears.

[29] Prior to the demand letter being sent out from counsel, the petitioners deposed in their affidavits that they demanded on several occasions that the respondent repay the mortgage.

[30] Recently, this Court in *Gemstone Advantage Limited v. Zhang*, 2025 BCSC 1012 [Gemstone], reviewed the purpose of s. 8 and, in doing so, reviewed the principles set out in the *Reliant* case. At para. 24, the Court says:

[24] In *Reliant Capital* the Court of Appeal explained that higher interest rates for loans in arrears is not uncommon in the commercial world, and legitimate and effective to ensure prompt repayment of the loan; however, the exception is mortgages, the rationale for the exception for mortgages explained as follows

[31] The Court then refers to paras. 52 and 53 from *Reliant*:

[52] The prohibition against extra charges on arrears remains in place for loans secured by a mortgage. Moreover, the additional charge on arrears is prohibited in mortgage loans whether that charge is expressed as such, or whether the interest provision simply has "the effect" of increasing the charge in respect of arrears.

[53] Parliament has singled out mortgages on real estate for special treatment, or at least treatment that differs from loans that are not secured on real property. I infer that at least one legislative purpose was to protect the owners of real estate from interest or other charges that would make it impossible for owners to redeem, or to protect their equity. If an owner were already in default of payment under the interest rate charged on monies not in arrears, a still higher rate, or greater charge on the arrears would render foreclosure all but inevitable.

[32] In *Gemstone*, the interest rate was 12%, so long as payments were maintained, but upon default increased to 20% on the amount owing. The mortgage was security for the guarantee of the respondent. At para. 34, the Court concluded s. 8 was engaged because:

- a) it imposes a "rate of interest": the language in the term clearly refers to "interest" and the amount is framed in terms of a percentage
- c) it increases the charge on the arrears beyond the rate of interest payable on principal money not in arrears

- d) the arrears of principal or interest are secured by a mortgage on real property
- [33] As a result, in Gemstone, the Court made an order nisi for the amount owing as of the date of default with interest accumulating at 12%.
- [34] In this case, I come to the same conclusion. The increase in interest created a penalty in the form of an increased rate for the non-performance. This is in violation of s. 8. The facts in Reliant are distinguishable, as the increased interest rate had gone into effect prior to the expiration of the mortgage and due date. The effect of the penalty is obvious. The per diem interest rate during the term was \$304.11, then upon failure to pay the amount owing, it increases to a per diem of \$962.51.
- [35] The increased interest rate is unenforceable pursuant to s. 8.
- [36] I invite counsel to calculate interest accruing from the interest adjustment date of February 29, 2024, at 6% to be added to the principal, and then to provide a per diem rate from July 18, 2025, which again is the effective date of the order nisi of foreclosure.
- [37] If counsel is unable to agree on a calculation, then each party will provide a summary of their calculation to be determined by me thereafter.
- [38] That is my decision. Is there any submissions on costs briefly?
- [39] CNSL L. ROBERTSON: Just costs at Scale A for the order nisi.
- [40] THE COURT: Ms. Ducey?
- [41] CNSL K. DUCEY: I am not really sure what is appropriate, quite frankly. I mean, we were successful on this issue which required us to attend an application that I would otherwise not have had to attend. I would suggest that perhaps it would be costs at Scale A, except for the hearing, and the costs of the hearing be to the respondent, but -
- [42] THE COURT: I will do it this way then, yes, similar to that. The petitioners will have their costs at Scale A, except for the hearing on July 18, 2025. For that day, I award costs to the respondent at Scale B. There will be no costs to either party for today's appearance.

"Krentz A.J."

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