

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Genesis Mortgage Investment Corp. v. Blais*,
2026 BCCA 157

Date: 20260407
Docket: CA51346

Between:

Genesis Mortgage Investment Corp.

Appellant
(Petitioner)

And

**Sebastien Joseph Blais,
Christine Jill de Vries also known as Christine Jill Devries,
FLR Construction Corp., SSK Construction Ltd., Advance Drywall Ltd., and
Tiara Door & Moulding Ltd. also known as Tiara Doors & Moulding Ltd. and
Tiara Doors and Moulding Ltd.**

Respondents
(Respondents)

Before: The Honourable Justice Francis
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated February 4, 2026 (*Genesis Mortgage Investment Corp. v. Blais*, 2026 BCSC 178, Kelowna Docket H142798).

Oral Reasons for Judgment

Counsel for the Appellant:

S. Stephens
L. Zhang

Counsel for the Respondents, Sebastien Joseph Blais, Christine Jill de Vries also known as Christine Jill Devries:

S.B. Coen

Place and Date of Hearing:

Vancouver, British Columbia
April 1, 2026

Place and Date of Judgment:

Vancouver, British Columbia
April 7, 2026

Summary:

Genesis Mortgage Investment Corp. (“Genesis”) loaned the respondents \$2,400,000 to finance the redevelopment of a property in Kelowna. This loan was secured by a mortgage against both the development property and the respondents’ family home. The respondents defaulted on the loan and Genesis commenced foreclosure proceedings. Pursuant to the order nisi, Genesis was awarded its costs on an indemnity basis. After the court-approved sale of the development property, the respondents requested an assessment of Genesis’s indemnity costs to ascertain the updated amount required to redeem the family home. Genesis claimed costs and disbursements in the amount of \$104,067.39 but refused to waive privilege over its legal accounts while litigation was ongoing, preventing assessment of its claimed costs. An associate judge ordered Genesis to have its costs assessed. This decision was upheld on appeal to a Supreme Court judge. Genesis applies for leave to appeal to this Court and for a stay of the orders below pending determination of its appeal.

Held: Leave to appeal and stay granted.

This appeal raises the question of whether a lender awarded indemnity costs in a foreclosure can be compelled to have its costs assessed while litigation is ongoing. Either outcome of the proposed appeal could have significant consequences to parties in foreclosure proceedings. The proposed appeal is important to the parties, has some merit, and will not unduly hinder the underlying proceedings. It is in the interests of justice to stay the orders of the court below pending appeal. There is risk of irreparable harm if Genesis is forced to waive solicitor-client privilege before the determination of its appeal. The respondents do not stand to suffer significant prejudice if the stay is granted.

FRANCIS J.A.:**Background**

[1] Genesis Mortgage Investment Corp. (“Genesis”) applies for leave to appeal the order of a Supreme Court judge upholding an associate judge’s order that it must produce its legal bills and proceed with an assessment of its costs in the underlying foreclosure proceedings. If leave is granted, Genesis also applies for a stay of the underlying order, pending determination of its appeal.

[2] The respondents are Christine de Vries and Sebastien Blais. They were formerly the joint owners of a property on Fuller Avenue in Kelowna, B.C. (the “Fuller Property”), which they sought to develop as a fourplex. Ms. de Vries also owns a property on Wilson Avenue in Kelowna, B.C. (the “Wilson Property”), which is the

couple's family home. They were granted \$2,400,000 from Genesis to finance the Fuller Property redevelopment. This loan was secured by a mortgage against both the Fuller Property and the Wilson Property.

[3] The respondents defaulted on the mortgage when the redevelopment project ran into difficulties. Genesis commenced foreclosure proceedings in February 2025. On March 26, 2025, it was granted an order *nisi*, conduct of sale of the Fuller Property, and costs on an indemnity basis up to the order *nisi*. The court approved sale of the Fuller Property completed on August 5, 2025. Shortly thereafter, the respondents' counsel requested an accounting, including a bill of costs, to ascertain the updated amount necessary to exercise the respondents' right of redemption over the Wilson Property. Genesis refused to provide a bill of costs, but indicated that the total amount required to redeem the Wilson Property was \$443,238.88, plus costs and disbursements claimed in the amount of \$104,067.39.

[4] On August 29, 2025, the respondents applied to have the indemnity costs and interest under the order *nisi* determined, or alternatively, for an order setting the redemption amount owing including interest and costs. On October 1, 2025, an associate judge ordered that Genesis was to file an appointment to have costs assessed, to be heard on a priority basis, with a bill of costs attached. He adjourned Genesis's application for conduct of sale of the Wilson Property to a date following the costs assessment.

[5] Genesis appealed the associate judge's order to a Supreme Court judge. The judge upheld the decision of the associate judge.

[6] On February 18, 2026, upon hearing an urgent stay application, Justice Iyer of this Court ordered an interim stay of the orders of the associate judge and the judge pending hearing of this leave to appeal application.

The Judgment

[7] The judge dismissed Genesis's appeal, concluding that the associate judge was correct that the respondents are entitled to have Genesis's costs assessed

before the redemption period for the Wilson Property expires. She held that when Genesis elected to pursue indemnity costs, as opposed to claiming costs pursuant to the tariff under the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, Genesis was required to disclose the invoices supporting its indemnity costs to the respondents, and was required to submit to an assessment of those costs prior to the expiry of the redemption period. This was necessary for the respondents to know the precise amount required to redeem the Wilson Property.

[8] The judge rejected Genesis’s argument that, as a matter of law, it should not be required to waive solicitor-client privilege over its file — a result that would flow from disclosure of its detailed invoices — in order to avail itself of the indemnity costs to which it is entitled. She reasoned that allowing Genesis to avoid an assessment of their indemnity costs until after all litigation was concluded would allow a lender to claim absurdly inflated costs, requiring mortgagors to secure funds far exceeding what they truly owed in order to exercise their right of redemption. In her view, this tipped the balance between the right of redemption and the protection of privilege too far in favour of the protection of privilege.

[9] The judge also rejected Genesis’s argument that the respondents should not be allowed to demand an assessment of its costs without establishing their ability to secure sufficient funds to exercise their right of redemption. She held that it was not open to Genesis to criticize the respondents’ failure to provide conclusive evidence of their ability to redeem when Genesis controlled the information necessary for them to determine the actual redemption amount.

[10] In the judge’s view, Genesis had a choice to make in the face of the respondents’ demand for production of a bill of costs. If it wanted to claim the indemnity costs it was entitled to, it was obligated to provide the necessary accounting, despite the fact that doing so would waive privilege in the context of ongoing litigation. If it chose to protect privilege, it could elect to claim only costs pursuant to the tariff set forth in the *Supreme Court Civil Rules*.

[11] The judge also ordered that interest would cease to accrue on the indebtedness from October 1, 2025, until the first business day following the assessment of Genesis' indemnity costs.

Issues

[12] Genesis applies for leave to appeal to this Court. If leave is granted, it will argue that the judge erred in concluding that Genesis must have its indemnity costs assessed before the redemption period for the Wilson Property expires. Genesis also applies for a stay of the judge's order that it deliver its bill of costs to be assessed on a priority basis, pending determination of its appeal.

Leave to Appeal

Legal Framework

[13] Genesis requires leave to appeal as an order of a Supreme Court judge refusing an appeal from an order granting relief in foreclosure proceedings is a limited appeal order under Rule 11(a)(ix) and (g) of the *Court of Appeal Rules*, B.C. Reg. 120/2022.

[14] There are four criteria to consider when deciding whether to grant leave to appeal from a limited appeal order:

- 1) whether the point on appeal is of significance to the practice;
- 2) whether the point raised is of significance to the action itself;
- 3) whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and
- 4) whether the appeal will unduly hinder the progress of the action.

Goldman, Sachs & Co. v. Sessions, 2000 BCCA 326 at para. 10 (Chambers).

Analysis

[15] This appeal raises an issue that, according to the judge below, has not been judicially considered in this province. The question is whether a mortgagee who obtains an order for costs on an indemnity basis as part of an order *nisi* must provide copies of their privileged legal accounts and submit to an assessment for the purposes of allowing the mortgagor to determine the redemption amount, inclusive of costs, prior to the expiry of the redemption period, or whether in such circumstances the mortgagee can wait to have their indemnity costs assessed until all litigation is completed.

[16] I am satisfied that this is an issue that may be of importance to the practice. If the appeal is successful, borrowers may not be able to have a lender's indemnity costs assessed while foreclosure litigation is ongoing, even if this means that the borrower will be faced with a redemption amount in excess of what they ultimately will be liable to pay on a later costs assessment. If the appeal is unsuccessful, foreclosing lenders awarded indemnity costs could be forced to make a choice between waiving solicitor-client privilege in the face of ongoing litigation or electing to collect costs at a fraction of the indemnity costs that they have been awarded by the court. In other words, either outcome could have significant consequences to parties in foreclosure proceedings.

[17] I am also satisfied that the proposed appeal is of importance to the parties. There is likely a considerable difference between Genesis' indemnity costs and tariff costs. Being required to choose between taking indemnity costs and waiving privilege, or taking tariff costs and maintaining privilege, would have significant financial consequences for Genesis. With respect to the respondents, the outcome of the appeal is significant because, on their submission, their ability to have Genesis' costs assessed prior to the expiry of the redemption period may be the determinative factor in whether they can afford to redeem the mortgage on their family home.

[18] On the merits criteria, the question is “[w]hether the applicant has identified a good arguable case of sufficient merit to warrant scrutiny by a division of this Court”:

Johnston v. Matheson, 1994 CanLII 2614 (B.C.C.A.), 46 B.C.A.C. 158 at para. 10 (Chambers).

[19] As noted by the judge, there is little jurisprudence on this issue generally and there is no current appellate authority on the specific question in issue on appeal, namely whether a lender awarded indemnity costs in a foreclosure can be compelled to have its costs assessed while litigation is ongoing. Determination by this Court of this issue could provide guidance to lenders and borrowers alike.

[20] I find there is some merit to the appeal, and the appellant has an arguable case. As a result, the merits threshold for leave to appeal has been met.

[21] Finally, I must consider whether the proposed appeal will hinder the underlying proceeding.

[22] The respondents wish to resolve the question of indemnity costs so they can ascertain an accurate redemption amount and determine whether they can redeem the mortgage on the Wilson Property. However, the application for conduct of sale of the Wilson Property is, on the order of the court below, adjourned until after the assessment hearing. Further, interest on the mortgage is suspended from October 1, 2025, until the first business day following the assessment of Genesis' indemnity costs.

[23] Genesis has agreed to two further conditions to preserve the respondents' right of redemption pending appeal:

- a) On appeal, they will only seek to vary the order that interest ceases to accrue such that interest restarts the business day after the decision on appeal (as opposed to after the conclusion of an assessment).
- b) They will not seek costs of the proceedings below (apart from costs already awarded) or of the appeal.

[24] These concessions ensure that the respondents indebtedness will not increase as the appeal is proceeding. In these circumstances, I am satisfied that the appeal will not hinder the underlying proceeding.

[25] I conclude that it is in the interests of justice to grant leave to appeal.

Stay

Legal Framework

[26] The test for a stay of execution is the three-part test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 334, 337, 340–42. The applicant must demonstrate that:

- 1) there is some merit to the appeal;
- 2) the applicant will suffer irreparable harm if the stay is refused; and
- 3) the balance of convenience favours granting the stay.

[27] The ultimate consideration in deciding whether to grant a stay is the interests of justice: *Coburn v. Nagra*, 2001 BCCA 607 at paras. 7, 9.

[28] The merits threshold for a stay application is low, and “[a] prolonged examination of the merits is generally neither necessary nor desirable”: *RJR-MacDonald* at 338. A judge must be satisfied the issues raised on appeal are neither frivolous nor vexatious; the appropriate question is whether there is a serious question to be tried, not whether the applicant can establish a strong *prima facie* case: *RJR-MacDonald* at 335.

[29] If the Court has granted leave to appeal, that may be sufficient to establish there is a serious question to be tried: *Doman v. British Columbia (Superintendent of Brokers)* (1997), 27 B.C.L.R. (3d) 285 at para. 10 (C.A.).

Analysis

[30] For reasons expressed above, I am satisfied that the appellant has demonstrated a serious question to be tried.

[31] I am also satisfied that there is a risk of irreparable harm to the appellant if a stay is not granted. Absent a stay, Genesis will be required to produce its legal invoices to the respondents immediately and thereby waive solicitor-client privilege. Once lost, privilege cannot be restored, nor is lost privilege capable of being remedied with a monetary award.

[32] In terms of the balance of convenience, I note that the respondents do not stand to suffer significant prejudice if the stay is not granted. Their ability to redeem the mortgage is not undermined by a stay, because of the concessions made by Genesis, particularly their agreement that interest will not continue to accrue on their indebtedness pending the determination of the appeal. In fact, as Genesis points out, the delay in the resolution of the issues under appeal, and consequent delay of the application for sale of the Wilson Property, effectively extends the redemption period and enables the respondents to have more time to marshal funds to redeem the mortgage.

[33] In all the circumstances, I find it is appropriate to order a stay of the orders of the court below.

Disposition

[34] Leave to appeal is granted. The orders of the judge and the associate judge are stayed pending the determination of this appeal.

“The Honourable Justice Francis”