

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Xintiandi Enterprises Ltd. v Hinds*,
2026 BCSC 1877

Date: 20260831
Docket: H240927
Registry: Vancouver

Between:

Xintiandi Enterprises Ltd.

Petitioner

And

Rory Hinds and Gui Liang Wei

Respondents

Before: Associate Judge Shirreff

Oral Reasons for Judgment

Counsel for the Petitioner:

W. Clark

Counsel for the Respondent, Rory Hinds:

H. Sevenoaks
(by videoconference)

No further appearances

Place and Date of Hearing:

Vancouver, B.C.
August 10, 2026

Place and Date of Judgment:

Vancouver, B.C.
August 31, 2026

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[1] **THE COURT:** These are my oral reasons with respect to the applications that were before the court on August 10, 2026. If a transcript is requested, I reserve the right to edit the reasons for grammar and to add citations, but the substance of the decision will not change.

Overview

[2] There are two applications before the court. Both arise within the context of a foreclosure proceeding relating to a residential property in West Vancouver.

[3] The petitioner seeks an order absolute and vacant possession of the property within 14 days. That application is not opposed by the respondent owner of the property. The application is, however, opposed by the respondent, Rory Hinds, who is an occupant or tenant at the property and has been for many years.

[4] Mr. Hinds filed his own application, seeking an order that the petition be referred to the trial list to allow him to raise issues about the validity of the loan agreement that underlies the second ranking mortgage registered against the property.

[5] There are foreclosure proceedings that have been commenced in relation to the second mortgage but no *order nisi* has been pronounced in that proceeding. That second mortgage is also held by the petitioner.

[6] The petitioner submits that Mr. Hinds' application should be dismissed because of a lack of standing. The petitioner says, as a starting point, that it is entitled to seek an order absolute in the proceeding in relation to the first mortgage at the expiration of the redemption period and in order to oppose an application of that nature, a respondent can only take the position that an extension of the redemption period is appropriate.

[7] The petitioner says that absent exceptional circumstances that are not present in this proceeding, a tenant occupying a property subject to a foreclosure proceeding has no legal right to redeem a mortgage, as the benefit of a redemption

period arises from the relationship between the mortgagor/owner and the mortgagee and the *in rem* rights in the property itself. As such, there is no basis for a tenant to seek to extend a redemption period.

[8] Mr. Hinds' position, in broad terms, is that the petitioner has not come to court with clean hands. Mr. Hinds suggests there to be a serious question about the legitimacy of the second mortgage on title that requires further examination by the court through disclosure and discovery processes, such that these are circumstances where the petition should be referred to the trial list.

[9] As I will outline in some detail, I have concluded that it is appropriate in these circumstances to grant the order absolute. I accept the petitioner's position that a tenant such as Mr. Hinds does not have standing to oppose the order being sought by the petitioner. However, despite that conclusion, I also believe it to be appropriate for the court to hear from a tenant in circumstances such as this where a matter involves establishing an appropriate date for vacant possession. It is my conclusion that the fair and reasonable decision in these circumstances is to provide Mr. Hinds with a longer period of time to vacate the property than is sought by the petitioner in its application.

Facts

[10] I will start with a brief recitation of the material facts. This is not comprehensive. Again, if there is a transcript requested, I might add additional facts to what I set out here.

[11] This is a foreclosure matter relating to a residential property in West Vancouver situated on Eagle Island. Eagle Island is boat access only. The property includes a house of approximately 6,000 square feet, as well as a private beach. The owner of the property is the respondent, Gui Liang Wei.

[12] The other respondent, Mr. Hinds, is a tenant or occupant on the property. Mr. Hinds has rented the property since November 1, 2016. It is his permanent home and residence. Mr. Hinds does not want to move, and he describes in some

detail in his affidavit material how moving off Eagle Island will be a time-consuming, expensive and logistically challenging endeavour.

[13] During his tenancy, Mr. Hinds has liaised over the years with a property manager and never directly with the registered owner. At times, Mr. Hinds was directed by the owner's agent to pay his rent to a number of different people and entities, including for a period the agent's local real estate agency.

[14] Mr. Hinds does not have a formal tenancy agreement. He says the current term of his tenancy is 2.5 years, running from November 1, 2024 through to April 30, 2027. However, he also says that his tenancy automatically renews for an additional 2.5 years on that date. Mr. Hinds says these terms were agreed to by the agent of the owner, who is a local real estate agent (note: there is no evidence before the court from the agent). Mr. Hinds explained that the length of the tenancy is designed to reflect the unique circumstances of access to and from Eagle Island to which Mr. Hinds, as I say, provided extensive affidavit evidence.

[15] Mr. Hinds' rent was paid through August 2026.

[16] Turning to the foreclosure proceedings, on October 7, 2024, the Bank of Montreal ("BMO"), commenced foreclosure proceedings against the property. BMO's mortgage was a first charge on title to the property. The present matter before the court is the same proceeding that was initially commenced by BMO. An *order nisi* of foreclosure was granted on September 29, 2025. The usual six-month redemption period was ordered, which established a redemption date of March 29, 2026.

[17] The amount owing on the BMO mortgage as at the date of the *order nisi* was \$1,405,208.74. The interest rate was 7.2% per annum.

[18] There was also a second mortgage registered against the property by the petitioner, Xintiandi Enterprises Ltd. ("Xintiandi") in the principal amount of \$20 million (the "Xintiandi Mortgage"). Xintiandi, by way of its director, Chao Yuang Feng, had previously commenced foreclosure proceedings against the property on March

31, 2023 in relation to the Xintiandi Mortgage. There has never been an *order nisi* pronounced in that foreclosure proceeding.

[19] January 30, 2026, BMO and Xintiandi entered into an assignment agreement whereby BMO assigned Xintiandi its foreclosure proceeding, the BMO mortgage, and all ancillary documents. There was a formal assignment agreement executed between the parties.

[20] On April 16, 2026, after the expiration of the redemption period, Xintiandi obtained an order substituting itself as the petitioner in place of BMO in this proceeding. After that date, Xintiandi advanced this proceeding and not the foreclosure matter it had started earlier with respect to its \$20 million mortgage.

[21] As of the date of the application, no monies had been paid to either Xintiandi or BMO with respect to either of the two mortgages. As of August 10, 2026, the amount outstanding on the BMO mortgage was just over \$1.4 million. The amount said to be outstanding on the Xintiandi Mortgage, again as of August 10, 2026, was over \$31 million.

[22] The court was also provided with an appraisal of the property dated May 9, 2025 obtained by the petitioner which indicated the fair market value of the property as being \$4.55 million. This amount, of course, exceeds what is owing in relation to the BMO mortgage, but is less than 15% of the total amount owing on account of both mortgages registered against title.

[23] It was against this backdrop that the petitioner sought a final order of foreclosure – an order absolute – together with an order that Mr. Hinds vacate the property within 14 days after the order absolute is granted. As I noted above, Mr. Hinds opposes the application and filed his own application asking the court to refer the matter to the trial list for an adjudication of the *bona fides* of the Xintiandi Mortgage, of which Mr. Hinds raised a number of issues or concerns in relation to.

Position of the tenant

[24] In my view, it makes sense to first discuss the positions taken by Mr. Hinds. He has raised arguments about both the validity of the Xintiandi Mortgage, as well as the process taken by the petitioner in this proceeding, in essence, to cease advancing matters in the Xintiandi foreclosure proceeding where the tenant would arguably have more rights with respect to challenging the validity of the Xintiandi Mortgage and to instead pursue the order absolute in relation to only the BMO first charge mortgage, to which there is no controversy.

[25] As set out in detail in his affidavit evidence, Mr. Hinds articulated a series of concerns with respect to the veracity of the Xintiandi Mortgage. Mr. Hinds emphasizes the changes to the evidence filed by Xintiandi in support of its foreclosure matter as the proceeding advanced, including after he had filed evidence objecting to or raising concerns about the validity of the underlying loan agreement.

[26] Mr. Hinds started by highlighting some of the facts in the Xintiandi petition with respect to its mortgage over the property in that proceeding. In particular, Mr. Hinds noted how Xintiandi described the loan agreement and mortgage. Mr. Hinds noted that, in the Xintiandi petition, the underlying matter was described as follows:

- a) by a Loan Agreement dated September 18, 2020, made between the Respondents, Chengdu Longhai Enterprise Management Group Co., Ltd., Lu Yang, Zhong Qiang Yang and Gui Liang Wei, as Borrowers, and Chao Yuan Feng, as the Lender, the Borrowers agreed to Borrow from the Petitioner, Chao Yuan Feng, and the Petitioner, Chao Yuan Feng, agreed to lend to the Borrowers the sum of \$20,000,000.00 CDN and that the said Borrowers agreed to repay the same together with interest at 10% per annum, calculated monthly, not in advance, as well as before any or all of maturity, default and judgment in monthly instalments until paid;
- b) the Respondents, Lu Yang, Zhong Qiang Yang and Gui Liang Wei and Xiaoyong Dai, are in default of the payments required to be made by the

terms of the Loan Agreement, Mortgage and Guarantees for principal and interest as due and the Respondents have refused or neglected to pay the same notwithstanding that payment was demanded, and as a result, the full balance due pursuant to the Loan Agreement, Mortgage and Guarantees is due and payable; and

- c) the principal sum advanced under the Loan Agreement, Mortgage and Guarantees was \$20,000,000.00 CDN or Chinese Yuan 105,000,000 and the principal sum now due under the Mortgage is \$25,631,191.45 as of February 23, 2023. The said amount claimed does not include any penalty or bonus.

[27] That is how the Xintiandi Mortgage and loan agreement was described in the petition by Xintiandi.

[28] In the affidavit provided in support of the petition, which was sworn March 29, 2023, Chao Yuan Feng swore that he had read the petition and the facts contained therein were true.

[29] Mr. Feng also appended to his affidavit a copy of the loan agreement that he said resulted in the Xintiandi Mortgage, which was provided in Chinese but also translated to English as an exhibit to his affidavit.

[30] The terms of the loan agreement, as Mr. Hinds points out, were largely the same as how matters were described in the petition, but there were some important distinctions. As one example, in the actual loan agreement Gui Liang Wei was noted as a guarantor of the loan. In the petition, Ms. Wei was said to be a borrower.

[31] Mr. Hinds was served with the foreclosure materials and, on September 23, 2025, he filed and served a response to the petition opposing the relief sought by the petitioners. In his response materials, Mr. Hinds set out his specific concerns about the validity of the loan agreement and the Xintiandi Mortgage, including questioning whether any monies had, in fact, been advanced by the lenders to the borrower in relation to the property.

[32] Following the filing and service of Mr. Hinds' response materials, Xintiandi tendered further evidence in the foreclosure proceeding, specifically an affidavit from Daniel Wu, said to be the personal assistant of Mr. Feng. Mr. Wu's affidavit was sworn September 29, 2025.

[33] Mr. Wu's affidavit provided further and arguably different evidence from that set out in the initial petition. In some detail, Mr. Wu canvassed the loan arrangements between Xintiandi and the borrowers and guarantors. As Mr. Hinds highlighted in his application materials, Mr. Wu stated in his affidavit, and I am quoting:

... the petitioners did not advance the Loan in cash to the Borrower. Rather, Mr. Feng authorized the Borrower to use the Petitioner's property in China ...

And then Mr. Wu carried on and stated:

When the Chinese Loan went into default due to non-payment, the Chengdu property was sold and the net proceeds were paid to the Chinese bank in satisfaction of the Chinese Loan. Shortly thereafter, the Petitioners commenced these foreclosure proceedings. The Borrower does not dispute the amount owing.

[34] The Xintiandi foreclosure proceeding did eventually proceed to a hearing in relation to the *order nisi*, but the matter was not heard on October 2, 2025 as a result of a lack of court time. Since that date, as I discussed earlier, Xintiandi has not taken further steps with that foreclosure proceeding and there has never been an *order nisi* pronounced. In the result, Mr. Hinds' position is that there has been no adjudication with respect to the validity of the Xintiandi Mortgage.

[35] In this matter, in relation to the BMO mortgage, Mr. Hinds raised the same concerns that he had identified in the Xintiandi foreclosure proceeding, submitting that the court should require some level of inquiry into the validity of the Xintiandi Mortgage in circumstances where the petitioner is relying on the presence of that mortgage to support its position that an order absolute is appropriate and fair; particularly, Mr. Hinds says, given the impact that an order absolute might have on a long-term tenant of a property.

[36] The starting point with respect to the legal principles that Mr. Hinds refers to in his application response is the law that establishes the trade-off in a summary foreclosure process starts with the expectation that a petitioner will provide disclosure of all matters which could affect the court's consideration of the relevant factors, particularly when seeking an order absolute; the effect of which is to foreclose off the rights of all other parties with an interest in the properties (see: *Jin-Ocean Mortgage Investment Corporation v 1011066 BC Ltd.*, 2024 BCSC 857).

[37] Mr. Hinds submits that the petitioner has not met its obligations in this instance. With respect to the Xintiandi Mortgage, Mr. Hinds submits that instead of making full and proper disclosure, Xintiandi initially tendered false and misleading evidence through Mr. Feng in support of its petition in the Xintiandi foreclosure proceeding.

[38] According to Mr. Hinds, the facts set out in the Xintiandi petition, which Mr. Feng swore were true, left the impression that Cdn. \$20 million had actually been advanced to the borrowers. Mr. Hinds also notes that the petitioners, in support of the application for *order nisi* in the Xintiandi foreclosure matter, relied on the loan document appended to Mr. Feng's affidavit.

[39] It was only in September 2025, after Mr. Hinds raised concerns about the validity of the Xintiandi Mortgage, that the petitioner provided the additional evidence from Mr. Wu revealing for the first time that no cash had, in fact, been advanced to the borrowers pursuant to the loan agreement. Also, different evidence was provided about the loan document.

[40] As Mr. Hinds put it in his application response, Xintiandi did not disclose that there was a different complicated foreign jurisdictional lending arrangement in place involving property in China and where no funds actually changed hands between the alleged borrowers and lender.

[41] Mr. Hinds built on that submission and said that because of the manner in which the evidence was presented by Xintiandi, the court has no ability to critically

assess the legitimacy of the underlying loan that is said to have resulted in the Xintiandi Mortgage.

[42] Mr. Hinds' submission is that the conduct of Xintiandi in terms of the manner in which it presented evidence to the court in relation to that foreclosure proceeding, but also again with respect to the matter currently before the court, should cause the court to be concerned and gives rise to serious and important questions about whether there is a *bona fide* triable issue regarding the validity of the loan and the Xintiandi Mortgage and the ability of Xintiandi to commence foreclosure proceedings in relation to the second mortgage.

[43] If the Xintiandi Mortgage is not *bona fide*, Mr. Hinds submits this to be a situation where the petitioner will receive a windfall considering the appraised value of the property and the equity available if the only valid mortgage on title is the first ranking mortgage originally held by BMO.

[44] Taking all of that together, Mr. Hinds submits that he has raised a triable issue regarding the validity of the loan agreement and the second mortgage, which goes to the very root of the foreclosure, including the equities of this situation. Mr. Hinds submits that these matters should be investigated through further disclosure, discovery, and sufficient evidence before the court grants any relief to Xintiandi. Mr. Hinds submits these to be appropriate issues for the court to refer to the trial list with directions concerning the conduct of the trial and the pretrial proceedings.

Position of the petitioner

[45] In response, Xintiandi submits that the result on this application should be determined on the basis of standing. Xintiandi says there is no requirement in these circumstances, where the proceeding before the court is in relation to the BMO mortgage, for the Xintiandi Mortgage (the second mortgage) to be considered to any degree as there has already been an *order nisi* pronounced specifically with respect to the BMO mortgage.

[46] The petitioner says that in the usual course a mortgagee has an automatic right to seek an order absolute following the expiration of the redemption period (See: *Jin-Ocean*, para 39).

[47] The petitioner emphasized that, as at the date of the application, on August 10, 2026, no funds had been paid in respect of the BMO mortgage by the owner to the petitioner. The lack of payment in relation to the BMO mortgage allows the mortgagee to appropriately seek an order absolute at this juncture. If there is a position to be taken with respect to the circumstances being a potential windfall for the petitioner, or some challenge to be made about the validity of either mortgage, the Xintiandi Mortgage or the BMO mortgage, the petitioner submits those arguments can only be made by the owner or mortgagor, Ms. Wei, and not by a tenant such as Mr. Hinds.

[48] The petitioner emphasized that there is no opposition in these proceedings to the application for an order absolute from the actual owner of the property, despite having been properly served with the foreclosure materials in this proceeding, as well as several other legal proceedings that I will refer to below.

[49] At the end of the day, in a very general sense, the petitioner took the position that the tenant, Mr. Hinds, has no standing to raise the arguments he now wishes to pursue, even if a named respondent in the proceeding, as tenants do not have redemption rights in relation to an owner's mortgage.

[50] The court canvassed a similar standing issue at some length in *Instafund Mortgage Management Corp. v Ranga*, 2025 BCSC 1990, at paras 12-20. It is a lengthy passage, but I will quote it in full:

[12] The petitioner and Mortgagors argue that a respondent who is named only in their capacity as an occupant or tenant has no right of redemption notwithstanding the standard term of the order *nisi* that provide that upon the "respondents, or any of them" paying the amount to redeem, the petitioner shall reconvey the lands. As Manny has no right to redeem, he has no interest in the specific terms of the mortgage itself, i.e. its validity, the amount to redeem, or the redemption period.

[13] In considering Manny's standing, the historical nature and purpose of a redemption period as a matter of equitable principles is of note.

[14] Prior to the Torrens land title system, a lender seeking security in real property, a mortgage, would obtain that security through a transfer of the deed of title itself whereby the mortgagee would then hold that physical deed of title as security for payment of the obligations. Given the paramountcy of property rights and need for some protection from an immediate loss of possession of the property which the borrower otherwise retained, the courts of equity imposed the concept of a redemption period to prevent mortgagees from effectively evicting borrowers and taking their property rights over what could be a minor default. Before that could be done, the courts of equity determined that a reasonable period ought to be afforded to the borrowers for them to effectively cure those defaults and "redeem" their title, or ownership, of the property.

[15] When it came to subsequent lenders, it was only that right to redeem that could then be extended to them, given that title was already transferred. Thus, when a second or subsequent mortgage was granted, the security was not an interest in the property itself but rather an interest in the right of redemption. That subsequent mortgagee's security was the right to step into the shoes of the mortgagor to redeem.

[16] After the creation of Torrens land title registration system there was no longer a transfer of deed of title. However, the equitable principles as to redemption remain, including by virtue of provisions of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, including s. 14 which provides that if "a mortgagor" is entitled to redeem, the mortgagor may require an assignment of the mortgage and the mortgage debt to a third party. In other words, the concept that the right to redeem flows through the mortgagor is still a guiding one.

[17] I agree with the petitioner and the Mortgagors that the benefit of the redemption period is a benefit to those who have a right to redeem which flows from their relationship with the Mortgagors or *in rem* rights to the property itself.

[18] The respondents who are entitled to redeem a prior mortgage are only those that would otherwise be entitled to step into the shoes of the mortgagor and exercise its rights to redeem. More often than not, that will be a contractual right.

[19] As an example, para. 2(3) of the prescribed mortgage terms as set out in *Schedule B* of the *Land Title Act*, R.S.B.C. 1996, c. 250 (the "LTA") specifically provide that a mortgage is not only a charge in the land, but a release of "the mortgagor's claims to the lands". That implicitly means the mortgagor's rights of redemption. This is further illustrated by para. 6 which allows the mortgagee to spend money to perform any of the borrowers' obligations and add the amount incurred in doing so to the mortgage balance, with the obligation in para. 5(c) being to comply with all terms and conditions of charges or encumbrances ranking ahead. Similar terms are generally included in filed standard mortgage terms.

[20] I agree that a right to redeem does not arise solely based on being a named respondent. As an occupant, or potentially a tenant under the *Residential Tenancy Act*, Manny has no right to redeem the petitioner's mortgage.

[51] In *Instafund*, the tenant sought to extend or vary a redemption period as well as oppose the petitioner's application seeking conduct of sale. The court concluded that the tenant had no right to redeem the mortgage and therefore no standing to dispute the validity of the mortgage or the terms by which the mortgage is to be enforced (at paras 23-24).

[52] Based on the evidence before the court, the petitioner also submitted that Mr. Hinds is unable to meet the legal test to show that an extension of the redemption period would be appropriate.

[53] The test for an extension of a redemption period is well established. First, there must be a reasonable prospect of payment. Second, the property must have sufficient value by way of security for the outstanding amount (*1103969 B.C. Ltd. v 1069185 B.C. Ltd.*, 2019 BCCA 73, at paras 25-26).

[54] Even if one were to assume for the sake of argument that the court should disregard the presence of the Xintiandi Mortgage and start from the assumption that the property value is worth more than the BMO mortgage, the petitioner submitted that the test for an extension of the redemption period is still not satisfied in these circumstances, as there was no evidence before the court from Mr. Hinds or some other party that there is a reasonable prospect of payment of even the BMO mortgage.

[55] Of course, the petitioner does not concede that the analysis should only include an assessment of the value of the BMO mortgage. The petitioner referred to several decisions where the courts have concluded that on an application seeking an order absolute it is appropriate and necessary for the court to assess the value of all mortgages on title (*1055249 B.C. Ltd. v Grace Mtn. Land Company, Ltd.*, 2024 BCSC 1916, at paras 61 and 68; affirmed on other grounds 2025 BCCA 92).

[56] After this matter was argued there was another Court of Appeal decision released in *Grace Mtn.*, which also noted that the value of other mortgages on title is a relevant consideration (see 2026 BCCA 349, at para 40).

[57] In this proceeding, the petitioner emphasized that the court has direct evidence from Xintiandi about the amount owing on the mortgage in the updated affidavit evidence sworn by Mr. Feng in June 2026. The petitioner noted that there is no evidence before the court that counters Mr. Feng's evidence in relation to what was owing with respect to both mortgages. Again, the petitioner submitted that if there was to be opposition to the fact that the amounts claimed in relation to the Xintiandi Mortgage are, in fact, properly due and owing, that opposition is required to come from the owner of the property.

[58] The petitioner submitted this to be a complete response to Mr. Hinds' argument that there may be a windfall situation if the order absolute is granted. The lack of participation by Ms. Wei establishes this is not a situation where there is to be a windfall.

[59] In any event, the petitioner also argued that a potential windfall to a mortgagee is also not dispositive in terms of trying to avoid an order absolute. If there is a potential windfall to a lender or mortgagee taking title to a property, that is only one factor in the analysis, which must also include an assessment of any prejudice to the mortgagee. On that point, the petitioner cited the Court of Appeal decision in *Grace Mtn. Land Company Ltd. v 1055249 B.C. Ltd.*, 2025 BCCA 92, at para. 21 and the Ontario Court of Appeal's statements in *Winters v Hunking*, 2017 ONCA 909, at para 40.

[60] In these circumstances, where the court can be satisfied that the owner has been served with the foreclosure materials, if the owner is not participating and is not raising any issues or concerns about a potential windfall to the petitioner, that should be the dominating factor for the court.

[61] Finally, in response to the arguments about the validity of the Xintiandi Mortgage, the petitioner submitted there to be no reasonable evidentiary basis for reaching any conclusions about Mr. Hinds' serious allegations of fraud and said that the allegations outlined by Mr. Hinds have not been properly pleaded or particularized to a level where the court could reasonably make conclusions with respect to the potential for any such mischief with respect to the Xintiandi Mortgage.

Analysis

[62] Having reviewed and considered the submissions of both parties, I have concluded that the issue of standing is determinative with respect to these applications.

[63] In my view, the decision in *Instafund* sets out, in detail, why Mr. Hinds as a tenant does not have standing with respect to the matters presently before the court. Mr. Hinds is a respondent to the proceeding, but his rights to the property arise only from his position as an occupant or tenant.

[64] As a tenant, the requirements of section 94 of the *Residential Tenancy Act*, [SBC 2022], c. 78 are such that any order in this proceeding for which Mr. Hinds did not have notice would be potentially unenforceable against him. In the result, in keeping with the usual practices in foreclosure matters, Mr. Hinds was added to the proceeding as a respondent to address his tenancy interests.

[65] Being a respondent in the capacity as a tenant does not result in Mr. Hinds having the same legal interests as the owner of the property, for the reasons outlined in detail in *Instafund*.

[66] When one considers the historical nature and purpose of mortgage security and redemption periods, it is long-established that the equitable benefits of redemption only flow to those parties that have a right to redeem a mortgage. That is based on the contractual relationship between the mortgagee and the mortgagor and/or the parties *in rem* rights to the property itself.

[67] A tenant is not a party to an agreement with the mortgagee. A tenant also does not have an *in rem* interest in the property that they are renting.

[68] In the result, for the same reasons articulated by the court in *Instafund*, I have concluded that Mr. Hinds does not have standing at this juncture to oppose the granting of the order absolute in relation to the BMO mortgage.

[69] My conclusions in this regard are further informed by the fact that Mr. Hinds was unable to point the court to any previous decision where a tenant had been permitted to challenge an order absolute or seek an extension of a redemption period or, for that matter, succeeded on an application of this nature to have the court delay granting an order absolute to allow a tenant to pursue some argument in a foreclosure proceeding about the validity of a mortgage by having a matter referred to the trial list.

[70] Mr. Hinds relies, in part, on Associate Judge Robertson's comments at para 22 of *Instafund* that there may be exceptional circumstances, such as fraud, where a tenant might be able to challenge an *order nisi*. First, it must be noted that, although Mr. Hinds has formally challenged the *order nisi* in the Xintiandi foreclosure matter, he is not seeking to challenge the *order nisi* in this proceeding in relation to the BMO mortgage. He is, instead, asking the court to consider arguments that he wishes to make with respect to the *bona fides* of the second mortgage.

[71] That being said, in my view the court's comments in *Instafund* about the possibility for exceptional circumstances were not intended to allow a tenant to raise the types of arguments now being advanced by Mr. Hinds in this proceeding. There is no evidence at all to suggest the BMO mortgage was anything but legitimate. Mr. Hinds does not say otherwise. As I interpret Associate Judge Robertson's comments in *Instafund*, the court was referring to the potential for a possible fraud with respect to the process of obtaining the *order nisi* and was not intending to broadly extend to a tenant the right to challenge the validity of an agreement between a mortgagor and mortgagee.

[72] As noted in the decisions that I have referred to above, even if there is a windfall situation resulting from a petitioner seeking an order absolute, that is only one factor in the analysis in terms of the court's assessment of the equities between the parties. In this instance, without any complaint or position from the mortgagor/owner, Ms. Wei, taking issue with the order being sought, I do not think it would be reasonable for the court to conclude that there is a windfall for Xintiandi on the basis of only the speculative evidence and positions put forward by Mr. Hinds.

[73] In reaching my determination with respect to the evidence not establishing a windfall, I have also considered the decisions that establish that it is appropriate on an application for an order absolute for the court to take into account and assess the value of all mortgages on title. I appreciate this may be a somewhat unusual situation, as the order absolute is being sought by the first mortgagee, but I believe in looking at the equities between the parties the court is required to also consider the value of the Xintiandi Mortgage. That evidence is not contradicted.

[74] Despite the arguments advanced by Mr. Hinds in relation to that mortgage, I do not believe the evidence allows at this point for any reasonable conclusion that there is something fraudulent or untoward about the Xintiandi Mortgage. Mr. Hinds may raise questions about the legitimacy of the underlying arrangements, but the evidence that he relies on in relation to these matters at this point is, in my view, characterized as nothing more than speculation.

[75] At its highest for Mr. Hinds, on the basis of the differences between the petition, the Feng affidavit, and the later Wu affidavit, both of which I discussed above, Mr. Hinds argues that Xintiandi has misled the court and filed false evidence. These are serious allegations.

[76] There may have been a lending arrangement that is unusual by domestic standards that took place in China, but the evidence before the court does not allow for a conclusion that the arrangements were not legitimate. The court regularly deals with foreclosure proceedings that involve a broad range of lending arrangements, often between property owners and private lenders. Even if I had concluded that

Mr. Hinds had standing on this matter, it is still a situation where I would have determined it not appropriate to refer the matter to the trial list as Mr. Hinds requested.

[77] Again, if there is a position to be taken with respect to the validity of the Xintiandi Mortgage as being not legitimate or being based on an invalid loan agreement, that is a position, in my view, that can only be advanced by the owner and mortgagor. There would be the potential for much mischief in foreclosure proceedings if a tenant given standing in these situations to challenge the validity of mortgages.

[78] Although I did not refer to these facts when I recited the relevant evidence earlier, I also did review the additional evidence provided by the petitioner in response to Mr. Hinds' application, which sets out a series of realization steps being taken by the petitioner against other parties said to have been involved in the underlying loan agreement. I will not repeat that evidence at this juncture, but it is described in detail in Section "F" of the petitioner's response to Mr. Hinds' application.

[79] The point made by the petitioner with respect to these other matters, which I accept to be relevant, is that other borrowers named in the \$20 million Xintiandi loan agreement have also been the subject of foreclosure procedures in relation to local properties. In a number of those situations, the Xintiandi Mortgage had also been registered against those properties, exactly what had occurred in this proceeding. In some matters, the petitioner obtained orders that surplus funds paid into court be paid out to Xintiandi. In one matter, relating to a property on Acadia Road, Xintiandi and Mr. Feng obtained an order substituting themselves for the petitioner in place of BMO and then proceeded to take the exact steps being taken in this proceeding, obtaining an order absolute pursuant to a first ranking mortgage.

[80] The fact that none of these additional matters appears to have been opposed by the owners of those properties, in my view, offers additional support for the petitioner's position that the underlying \$20 million loan and Xintiandi Mortgage was

bona fide, at least in the sense that the borrowers pledged various properties as security and there has been an acceptance that funds are due and owing to Xintiandi.

[81] All of that being said, I also accept that there can be risks present in these circumstances that none of the underlying transactions are legitimate. It is important to note that there are already checks and balances in place outside of the court's processes intended to prevent against the foreclosure system being used for an illegitimate purpose. As but one example, counsel involved in mortgage transactions are subject to detailed and comprehensive client identification and verification obligations.

[82] In my view, there is no evidence before the court on this application that would suggest that, in the absence of a reason or position being taken by a party with standing to advance these types of arguments, this is a matter that the court should be investigating on its own initiative.

[83] That brings me to the appropriate order to be made with respect to vacant possession. Neither party pointed me to any decisions with guidance in terms of how the court should exercise its discretion with respect to the amount of time to permit a tenant to vacate a property subject to an order absolute. The petitioner seeks vacant possession within 14 days. Mr. Hinds submits that is unreasonable and points to his evidence addressing the access issues with the property as well as his lengthy tenancy.

[84] I have reviewed Mr. Hinds' evidence as set out in his affidavit filed July 3, 2026 and I accept that there are significant access issues with respect to the property (parking; the community dock; necessity to barge materials and property from the island; etc.). It will no doubt be logistically challenging for Mr. Hinds to move. I appreciate and accept that and have considered those difficulties, as outlined in his affidavit, in terms of trying to determine what is an appropriate period of time for him to vacate the property.

[85] That being said, I am also mindful of the fact that Mr. Hinds has had notice of these foreclosure proceedings for some time. He was served with the petition and affidavit seeking the *order nisi* on February 7, 2025. The Xintiandi petition had been filed even earlier. In the result, Mr. Hinds has known for over a year, to put it conservatively, that steps were being taken by BMO to foreclose on the property. He would also have known that these foreclosure proceedings would have the possibility, in some way, of impacting his tenancy.

[86] Mr. Hinds, instead of moving out and undertaking the logistically challenging process of finding a new property, has continued to reside at the property; has continued to pay rent; and has participated to one degree or another in this proceeding with a view to continuing to live at the property on Eagle Island.

[87] In light of those competing considerations, and exercising my discretion with respect to the length of time to grant for vacant possession, I have to balance Mr. Hinds' knowledge of the potential that he might at some point be required to vacate the property with the logistical and practical impediments that he has identified in his evidence.

[88] In my view, it is also relevant to consider potential prejudice to the petitioner caused by a delay with respect to vacant possession. The only prejudice I can see in that regard is the fact that interest continues to accrue on both mortgages. I acknowledge that I do not have the benefit of expert evidence on the point, but I do not see there as being a significant risk of a large decrease in the value of the property while the petitioner waits for Mr. Hinds to vacate.

[89] After weighing these factors, it is my view that the appropriate period of time to allow for vacant possession on the property is two months from the date of this order.

Conclusion

[90] That brings me to a summary of my conclusions. For the reasons I have set out, I have decided to grant the application of the petitioner, subject to my order in

relation to the date for vacant possession. I make the order absolute on the terms set out by the petitioner at Schedule “A” to its notice of application. Mr. Hinds’ application to have the matter referred to the trial list is dismissed. The order absolute will be effective at 4:00 p.m. tomorrow, September 1, 2026.

[91] With respect to addressing Mr. Hinds’ tenancy and a date for vacant possession of the property, having reviewed the circumstances of the foreclosure proceeding, as well as Mr. Hinds’ lengthy tenancy and access issues in relation to the property, my order is that the petitioner is entitled to vacant possession of the property by no later than October 27, 2026, being essentially eight weeks from the date of the order absolute.

[92] Finally, that brings me to costs. In its application response, Xintiandi had sought special costs against Mr. Hinds on the basis that he advanced this proceeding without it having any legal merit. I do not agree that this is an appropriate situation to order special costs. Mr. Hinds advanced a novel position in relation to a tenant’s standing to challenge an underlying mortgage, but I do not see there as having been any misconduct or other similar issues in terms of the manner in which the proceedings have been advanced by Mr. Hinds such that he should have special costs ordered against him.

[93] As the successful party in both applications, Xintiandi would ordinarily be entitled to its costs. That being said, in my view, Mr. Hinds was partially successful in relation to one of the applications, as I determined it is appropriate to grant him a considerably longer date to provide vacant possession of the property. Bearing in mind that costs are a discretionary matter, having taken into account the positions advanced by both parties, I exercise my discretion to order costs in favour of Xintiandi at Scale B payable by Mr. Hinds with respect to Xintiandi’s application seeking an order absolute and I have determined it is appropriate that the parties will each bear their own costs with respect to Mr. Hinds’ application.

[94] Subject to any questions, counsel, those are my reasons.

[95] CNSL H. SEVENOAKS: Thank you, Your Honour. I do want to raise one concern of my client that I did raise in my submissions through the hearing. Mr. Hinds paid a deposit to the borrower when his tenancy commenced, and if the court recalls, I asked for the court to consider what happens in that circumstance. And I will be looking for an order that that is repaid as part of the order granted today by this court in relation to these matters. He paid \$5,500 at the beginning of his tenancy.

[96] **THE COURT:** Yes. I saw that, Ms. Sevenoaks, in the materials and I did consider it. The challenge here is that the payment was made to the owner and not the petitioner. I cannot make an order without the participation of the owner in relation to the \$5,500. But with eight weeks here to deal with vacant possession, my hope would be that Mr. Hinds and the current petitioner will be able to resolve that potential repayment issue. And if not, I will give you leave to bring that matter back to court if there is a need. But I would hope that that can be addressed, together with what has to take place here to implement the orders that I just made.

[97] CNSL H. SEVENOAKS: Thank you. And just so I am very clear in your reasons, the vacant possession date would be October 27th, 2026.

[98] **THE COURT:** Yes. That is right.

[99] CNSL H. SEVENOAKS: Thank you.

[100] **THE COURT:** Okay. Thank you, counsel.

[101] CNSL W. CLARK: Your Honour, if I could make one comment. I'm just trying to be a little bit conscious of my experience dealing with the registries recently. I know this is kind of anecdotal, but I recently got an order submitted to the registry and it has already taken over two months to get that returned back and entered. I have a copy of an order here, but, of course, my friend hasn't seen it.

[102] **THE COURT:** Well, if you and your friend can sign the order you have leave from me let the registry know that they can send it up to me in the next day or so and I will deal with it quickly for you.

[103] CNSL W. CLARK: Perfect. Thank you, Your Honour.

[104] THE CLERK: Chambers is adjourned.

"Associate Judge Shirreff"