In the Court of Appeal of Alberta

Citation: MCAP Service Corporation v Klein, 2026 ABCA 345

Date: 20261027
Docket: 2603-0229AC
Registry: Edmonton

2026 ABCA 345 (CanLII)

Between:

MCAP Service Corporation

Respondent

- and -

Travis Klein also known as Travis Micheal Klein

Applicant

Reasons for Decision of
The Honourable Justice April Grosse

Application for Stay of Enforcement Pending Appeal

Reasons for Decision of
The Honourable Justice April Grosse

2026 ABCA 345 (CanLII)

[1] The applicant applies to stay an order of the Court of King's Bench pending appeal. For the reasons that follow, the application for a stay pending appeal is dismissed.

[2] The respondent, MCAP Service Corporation ("MCAP"), holds a mortgage registered on title to lands in Edmonton (the "Mortgaged Lands"). Title to the Mortgaged Lands is in the name of Travis Klein. MCAP commenced foreclosure proceedings in respect of the Mortgaged Lands, claiming that the mortgage was in default. On October 16, 2025, an applications judge granted a Redemption Order confirming the validity of the mortgage and the indebtedness and directing that, unless the indebtedness was repaid by April 16, 2026, the Mortgaged Lands would be listed for sale. The applicant did not appeal the Redemption Order. Later, the applicant brought two applications relating to the Redemption Order and the Mortgaged Lands, which were dismissed other than a stay of the Redemption Order for 30 days. Those dismissals were not appealed. Ultimately, on September 11, 2026, a Court of King's Bench justice in chambers dismissed a further application by the applicant to dismiss the foreclosure action or stay the Redemption Order. The chambers justice granted a cross-application by the respondent for possession of the Mortgaged Lands. The chambers justice directed that the applicant and any occupants or tenants of the Mortgaged Lands comply with the Redemption Order by October 30, 2026, failing which the respondent would be entitled to immediate possession of the Mortgaged Lands on October 31, 2026. On September 15, 2026, the applicant filed a Notice of Appeal in this Court in respect of the September 11, 2026 order, along with an application to stay enforcement of the September 11, 2026 order pending appeal.

[3] When considering whether to exercise its discretion to grant a stay pending appeal, the Court generally considers whether the applicant has demonstrated: (1) a serious question to be determined on appeal; (2) that the applicant will suffer irreparable harm if the stay is not granted; and (3) that the balance of convenience favours granting the stay: *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311 at 334.

[4] The threshold to establish a serious question to be determined on appeal is low; the appeal must only be arguable and not frivolous or vexatious: *RJR* at 337-338. Even applying this low threshold, I am not satisfied the applicant has an arguable appeal based on the Notice of Appeal, materials filed in support of the application for a stay, and the applicant's oral submissions at the stay hearing. The applicant's main argument is that the respondent has never proved the indebtedness underlying the foreclosure action, nor proved who is the debtor. However, as noted by the chambers justice, in obtaining the Redemption Order, the respondent filed an affidavit of default that was accepted by the court as proving both the validity of the mortgage in the name of Travis Klein or Travis M Klein and the indebtedness. The applicant does not accept the affidavit

of default, questions the validity of the land titles system, claims that his name is actually “Travis-Michael:Klein” and he is a trustee or steward of the Mortgage Lands as opposed to an owner, argues that the respondent failed to respond to his demands to validate the debt, and makes other related arguments. On the available materials, none of these arguments give rise to an arguable appeal. Many of them amount to a collateral attack on the Redemption Order.

[5] The Notice of Appeal also refers to an alleged breach of natural justice at the chambers hearing on the basis that the applicant was not fully heard. On the face of the transcript, the chambers justice had reviewed all the written materials in advance and allowed the applicant to make his oral submissions without interruption. He offered the applicant an opportunity to reply after hearing from the respondent’s counsel. The applicant argues that he was not heard on the respondent’s cross-application, but the application and the cross-application were intertwined and heard together. I am not satisfied that the record before me identifies an arguable appeal based on natural justice or procedural fairness.

[6] I note that my assessment of the merits is necessarily preliminary. It will be up to the panel hearing the appeal to determine the merits based on the materials before them. In its memorandum for the stay application, the respondent asked that the appeal be dismissed, but that request is not properly before me.

[7] Even if I were to assume that the applicant had narrowly met the threshold of an arguable appeal, I would dismiss the application for a stay because I am not satisfied that the applicant would suffer irreparable harm and, in any event, the balance of convenience weighs in favour of the respondent. The applicant works in another province and does not regularly reside at the Mortgaged Lands. The chambers justice already accounted for the presence of another occupant of the property when he extended the date for possession to October 31, 2026. The applicant has not provided evidence about the nature of the Mortgaged Lands or his connection to them to establish a risk that the sale of the Mortgaged Lands would cause non-monetary loss. There appears to be substantial equity in the property, and the applicant advises that both he and the trust he claims is involved have ample funds to pay any claimed indebtedness. Yet, in the year that has passed since the Redemption Order was issued, the applicant has not redeemed the mortgage, even under protest. Any harm the applicant will suffer if a stay is not granted will be the result of his own inaction. On the other hand, the respondent has already waited many months to exercise its rights. In these circumstances, and in light of the low chance of success on appeal even if I assumed the arguable appeal threshold was met, a stay of enforcement is not just and equitable.

2026 ABCA 345 (CanLII)

[8] The application for a stay of enforcement of the September 11, 2026 order of the Court of King's Bench is dismissed.

[9] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

Application heard on October 14, 2026

Reasons filed at Edmonton, Alberta
this 27th day of October, 2026

Grosse J.A.

2026 ABCA 345 (CanLII)

Appearances:

C.J. Lintott
for the Respondent

Applicant T. Klein

2026 ABCA 345 (CanLII)