

Court of Appeal for British Columbia
Neilson v. Mooney
Date: 1984-06-25

D. Shaw, Q.C., for applicant Hancock.

F. Potts, for respondent First Western Capital Ltd.

(Vancouver No. CA002537)

[1] 25th June 1984. SEATON J.A. (orally):—This is an application to stay execution proceedings pending appeal. The appeal is from an order made in the course of execution proceedings. In the course of foreclosure proceedings the petitioner recovered judgment against this appellant, Dr. Hancock, and several others [52 B.C.L.R. 242], About \$200,000 remains owing by them.

[2] On an application by the petitioner, Judge Rowles ordered that Dr. Hancock's interest in his home, which I understand he holds in joint tenancy, and his interest in two apartments be sold. While there are other debtors, probably Dr. Hancock's assets are the most visible target, at least the petitioner has sought this order and has sought other orders in the two years that the judgment has been outstanding.

[3] When the matter came on for hearing in the court below the appellant asked that any sale made by the sheriff come back to the court for approval. The chambers judge said that she could not make that order. This appeal arises out of that term only in the order made below. The appellant asks that there be no sale without the approval of the court. The order under appeal was made on 1st June this year and has not yet been entered. The appeal is on a narrow issue and will take less than one half a day. If the appeal is to be heard there must be a stay. By the time the appeal comes on, the property would have been sold if there is no stay. I am prepared to permit the appellant to have his appeal but it will be upon terms and the order I would make would apply only to the home property, that is to say, I would make no order respecting execution on the two apartment properties. With respect to the home, I would order a sale be stayed. I make no other order respecting a stay. I do order, as a condition of this stay, that the appeal book be filed within ten days. In view of the urgency of the matter, it will be sufficient if it is in xerox form. It will, I expect, only be copies of documents that are already on file. The appellant must file its factum within ten days after the appeal books are filed. The case will then, when the respondent has filed its factum, go on the stand-by list and it will be heard at any time upon two days' notice to the appellant's counsel, who will not be able to say, "That date is not convenient to me". Someone else can argue the case.

[4] On those terms I grant the stay respecting the house. Costs should be in the appeal.

Application allowed.