



No.: S-260086
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

MCAP FINANCIAL CORPORATION

PETITIONER

AND

MASKEEN 177 PROJECTS LTD., 0676086 B.C. LTD., MASKEEN DEVELOPMENT LTD., MASKEEN HOMES LTD., 1302095 B.C. LTD., 0943151 B.C. LTD., 0816980 B.C. LTD., 0816984 B.C. LTD., PRO RIDGE HOMES LTD., PRORIDGE VENTURES INC., JAGDIP SINGH SIVIA, AMARJIT KAUR SIVIA, JATINDERPAL SINGH GILL, HARBANS KAUR GILL, PRABHDEV SINGH KHERA, FIRST WEST CREDIT UNION, TOKIO MARINE CANADA LTD., VANCOUVER CITY SAVINGS CREDIT UNION, BMW CANADA INC., FRONT STREET LEASING LP O/A DILAWRI LEASING, OPENROAD LEASING, TD AUTO FINANCE (CANADA) INC., COUNTRY GREEN EXCAVATING LIMITED, 1299615 B.C. LTD., NEXGEN ENVIRONMENTAL SERVICES LTD., INTEGRITY SHORING & CIVIL LTD. WITH ASSUMED NAME: ISC SHORING & CIVIL LTD., MADNESS FORMING & CONSTRUCTION SERVICES INC., and PDQ CONSTRUCTION LTD.

RESPONDENTS

APPLICATION RESPONSE

Application Response of: Madness Forming & Construction Services Inc. (the “**Application Respondent**” and “**Madness**”).

THIS IS A RESPONSE TO the Notice of Application filed on 14/AUG/2026 (the “**Receiver NOA**”) of AlixPartners Restructuring, Inc. (formerly KSV Restructuring Inc., as defined in the Receiver NOA) (the “**Receiver**”), the court-appointed Receiver of Maskeen 177 Projects Ltd. (“**Maskeen 177**”), 0676086 B.C. Ltd. (“**0676086**”), Maskeen Development Ltd. (“**Maskeen Development**”), Maskeen Homes Ltd. (“**Maskeen Homes**”), 1302095 B.C. Ltd. (“**1302095**”), and 0943151 B.C. Ltd. (the “**Nominee**”, and collectively with Maskeen 177, 0676086, Maskeen Development, Maskeen Homes and 1302095, the “**Debtors**”).

The Application Respondent agrees with the time estimate provided.

PART 1: ORDERS CONSENTED TO:

1. The Application Respondent consents to the granting of the orders set out in NONE of the paragraphs of Part 1 of the Notice of Application.

PART 2: ORDERS OPPOSED:

2. The Application Respondent opposes the granting of the orders set out in paragraphs 1 and 2 of Part 1 of the Notice of Application.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN:

3. The Application Respondent takes no position on the granting of the orders set out in paragraph 3 of Part 1 of the Notice of Application.

PART 4: FACTUAL BASIS.

1. There is a fairly significant issue related to service. Counsel for this Application Respondent has not had their availability canvassed at all – and was not served themselves with this material. Counsel is not available for the hearing of this application and thus relies upon this application response alone.
2. Broadly speaking, Madness resists the application of the Receiver, and supports the application by the Debtors / Maskeen – which includes terms related to the posting of security under s. 24 of the *Builders Lien Act*.
3. The Application Respondent adopts the terms and definitions as set out in the Receiver NOA, for convenience and reference only.
4. On 18/NOV/2025, the Application Respondent filed a Claim of Builders Lien under CB2461018 against Lot 2 of the Real Property for the sum of \$337,323.41 for formwork and tower crane rental (the “**Lien**”)

McNulty Affidavit #1, Exhibit “A”

5. The Application Respondent opposes any order which would result in Madness losing security, to wit, the Lien.

Incorrect Service

6. The Application Respondent hired Bear Creek Law LLP (“**Bear Creek**”) to be their legal representative with a service address as laid out in the Petition Response filed 16/MAR/2026 (the “**Petition Response**”) and reproduced as:

Petition respondents' address for service: 220-10524 King George Blvd., Surrey, BC V3T 2X2

Fax number address for service (please serve via email as well): 604-259-6202

E-mail address for service (please serve via fax as well): mmagaril@bearcreeklaw.com

Name of the petition respondents' lawyer, if any: Mikhael Magaril

(the “**Service Address**”).

Petition Response filed 16/MAR/2026

7. Further paragraph 7 of the Petition Response specifically pointed out that Madness wanted to be canvassed for dates and be appraised of all court dates.

8. An unfiled copy of the Petition Response was served on all parties on 16/MAR/2026 via email correspondence.

McNulty Affidavit #1, Exhibits “J” & “K”

9. The filed Petition Response was served on all parties on all parties on 18/MAR/2026 at 10:46 a.m. via email correspondence.

McNulty Affidavit #1, Exhibits “L” & “M”

10. The Receiver was appointed the receiver & manager of the Debtors on or about 17/MAR/2026 (the “**Receivership Order**”) and a consent to act as receiver and to immediate appointment was filed on March 17, 2026 (the “**Consent to Act**”).

McNulty Affidavit #1, Exhibits “B” & “C”

11. The Petitioner’s legal representative served Bear Creek with the Receivership Order and the Consent to Act on 18/MAR/2026 at 3:16 p.m. via email correspondence (the “**Initial Service**”).

McNulty Affidavit #1, Exhibit “D”

12. For reasons unknown to the Application Respondent, since the Initial Service, all parties have ceased to correspond with Bear Creek directly and have only contacted Madness directly despite being provided with the Service Address.

McNulty Affidavit #1, Exhibits “E” & “F”

13. Nonetheless, the Application Respondent was served with the Receiver NOA on 14/AUG/2026 at 4:02 p.m. via email correspondence deeming service as affected to be on the next business day being 17/AUG/2026.

McNulty Affidavit #1, Exhibit “E”

14. In addition, the Application Respondent was not served with any affidavit material nor the second receiver’s report on 14/AUG/2026.

15. The Application Respondent was served with the 2nd receivers report on 17/AUG/2026 at 4:22 p.m. via email correspondence deeming service as affected to be on 18/AUG/2026.

McNulty Affidavit #1, Exhibit “E”

16. On 20/AUG/2026 Bear Creek advised all counsel of the Service Address and that all counsel should have updated their service list once Petition Response material was filed.

McNulty Affidavit #1, Exhibit “G”, “H” & “I”

17. The Application Respondent has not been served within the requisite notice period of at least eight (8) business days.

18. Further, the Application Respondent has not been provided with a copy of the Confidential Supplement.
19. Indeed, none of the applicant's materials or service correspondence provide any indication as to how a party / person affected by the Order could even seek access to the Confidential Supplement.
20. The Application Respondent has been provided no information with respect to the Purchase Price and Madness is unable to determine the providence of the proposed transaction. It does however appear that the RVO contemplated would leave Madness, and all other lien claimants, with no remedy whatsoever.
21. The lack of information from the Confidential Supplement also deprives this Application Respondent from making fulsome arguments about whether the sales process was conducted in a businesslike manner, and whether any other competing bids or interest provide circumstantial evidence as to the fair market value of the property.
22. On 24/AUG/2026 at 1:04 p.m., the Receiver's counsel advised Bear Creek that as part of the Receivership Order, specifically paragraph 29 (the "**Para 29**"), that there is a positive obligation on any person wishing to be served with materials in the receivership proceedings to properly complete and deliver a Demand for Notice.

McNulty Affidavit #1, Exhibits "G"

23. On 24/AUG/2026 at 1:31 p.m., Bear Creek made it abundantly clear that Para 29 refers to a person and not a party/party of record. It is clear that the Petition Response was filed prior to the Receivership Order and that in the Petition Response at para 7 that Madness wants to be appraised of any and all court dates.

McNulty Affidavit #1, Exhibits "G"

Request for Information

24. Madness has made numerous requests for information, many of which have not been provided by many parties.
25. On 30/JAN/2026 at 2:31 p.m., Bear Creek requested, but is not limited to the following information:
 - a. copies of the 1st Affidavit of Blake Johnston (the "**Blake 1st Affidavit**"), including exhibits, as well as the Order filed on 09/JAN/2026 (the "**Jan 9 Order**");
 - b. proof of service on Madness and advise of any dates that have been scheduled or being canvassed with respect to the Petition; and
 - c. that no further steps be taken in the matter until a Petition Response has been filed.

(the "**January Requests**").

McNulty Affidavit #1, Exhibits "P" & "Q"

26. Mr. Arad Mojtahedi of DLA Piper (Canada) LLP (“**Mr. Mojtahedi**”), counsel for the Petitioner, provided the Blake 1st Affidavit, advised that the Jan 9 Order had not been entered/filed and that a consent receivership order was granted which would be filed if the Petitioner is not fully repaid by 16/MAR/2026 and that he would accept a delayed Petition Response.

McNulty Affidavit #1, Exhibit “P”

27. Mr. Mojtahedi did not however provide proof of service.

28. On 31/MAR/2026 at 12:59 p.m., Madness, through its counsel, requested certain information under s. 41 of the *Builders Lien Act*.

- a. a copy of the head contract regarding the Application Respondent’s claims, or in the alternative particulars of the verbal agreement including but not limited to the names of the parties to the contract and contract price (the “**Said Contract**”);
- b. copies of invoices/progress claims and proof of payments for the Said Contract;
- c. the current status of the project, in particular the estimated date of completion. If substantial completion or completion has been achieved, a copy of the Certificate issued by payment certifier;
- d. particulars of holdback account including credits to and payments from the holdback account, including dates of credits/payments and the balance at the time the information is provide;
- e. name of address of bank or credit union in which holdback account has been opened and the account number; and
- f. a copy of any labour and material payment bond posted by the contractor with respect of the Said Contract.

(the “**March Requests**”).

McNulty Affidavit #1, Exhibits “N” & “O”

29. Until even date, there has been no response to the March Requests.

30. On 20/AUG/2026 at 12:17 p.m., Bear Creek on behalf of Madness, requested the following information, amongst other things:

- a. the Confidential Supplement;
- b. to advise if there is any familial or pre-existing relationship between the prospective purchaser (1343239 B.C. Ltd.) and the Debtor companies that are subject to the Receivership Order, any of their respective officers, directors, or shareholders who own at least 5% of the issued and outstanding shares; and
- c. to advise where the holdback is for Real Property.

(the “**August 20, 2026 request**”).

McNulty Affidavit #1, Exhibits “G” & “H”

31. On 20/AUG/2026 at 3:43 p.m., the Receiver's counsel responded without providing the Confidential Supplement and advising that they had conducted a corporate search of the Purchaser and that there was no familial relationship.

McNulty Affidavit #1, Exhibits "G" & "I"

32. Further correspondence ensued about the requirement unilaterally imposed by the Receiver to enter into a contractual NDA with them prior to viewing the Confidential Supplement. Again, it should be noted that there is nothing in the service materials that indicates how any person is to obtain the Confidential Supplement – despite it being part of the material that the Receiver intends to rely upon. A requirement for a NDA also varies from the former court procedures as to how sealed foreclosure bids can be viewed by counsel for the seller, and charge holders, which stated:

(d) The Seller, the Seller's counsel and any chargeholder's counsel shall undertake to maintain the confidentiality of all bids received, either in envelopes or electronically; and

**McNulty Affidavit #1, Exhibits "G"
(Former) Practice Direction 62 at para 7**

33. The proposed NDA is not required by a Court order. The terms of the NDA contain unilateral obligations and are inappropriate, and prejudicial to this Application Respondent – and likely other lien claimants. There are numerous terms that are unlikely to be ordered by a Court. For instance:
- a. The non-disclosure terms prevents this Application Respondent from obtaining an expert report as to the adequacy of the marketing efforts – or the providence of the sale price / transaction. The Receiver has a unilateral veto power to simply not provide written consent, and furthermore this jeopardizes litigation privilege by requiring the Application Respondent to disclose the expert(s) that they wish to engage
 - b. Paragraph 2(c) imposes liability on the Application Respondent if there is any breach by its counsel. This creates a conflict as now the Application Respondent needs to obtain independent legal advice as it is assuming liability for certain actions or omissions by its counsel.
 - c. The destruction term creates an time consuming obligation on the Application Respondent and its counsel to destroy documents that are electronically stored and have cloud backups and cold-storage backups.

- d. It requires the Application Respondent to effectively agree to the appropriateness of an injunction ahead of time, for any breach or threatened breach, no matter no miniscule or inadvertent.

34. The Receiver has advised that there is no holdback established for the Real Property.

McNulty Affidavit #1, Exhibits “G”

35. It is unclear with the absence of the price (or any indication in the service materials as to how one obtains the Confidential Supplement), coupled with the proposed terms of the Reverse Vesting Order, that any of the lien claimants understand that their lien claims will likely be effectively worthless.

Part 5: LEGAL BASIS

36. Pragmatically, while Madness appreciates that the Petitioner is the senior, secured lender, with mortgage security, Madness (and other lien claimants) have actually put in significant value in constructing the improvement on the Lands, and have significant provided labour and materials. There is a significant unfairness in the Reverse Vesting Order that is proposed.
37. The lien claimants have added significant value to the Lands. This has likely improved the purchase price as more of the project has progressed – thus leaving less cost to complete the project. Every indication is that this project is going to continue until it is built according to the original plans.
38. However this results in a “windfall” for MCAP as they stand to realize more on their security than if there were no liens (as the lien claimants would have stopped work immediately after the first time they did not get paid). Instead these folks continued working and supplying material. Under the *Builders Lien Act* they should have had security in the Lands and in the holdback – however the holdback does not exist. Thus their only remedy is in the Lands itself.
39. A reverse vesting order remains an unusual and extraordinary remedy: *Harte Gold Corp. (Re)*, 2022 ONSC 653 at para 38. Part of the facts in approving an RVO involve looking at whether any stakeholder is worse off under the RVO. Given the Owner’s cross-application to redeem / extend the time to redeem, and post security under s. 24 of the *BLA* – all lien claimants would be significantly worse off under this proposal.
40. Against the s. 36(3) CCAA factors, Madness notes that it was not properly consulted and the effect of the proposed sale on the creditors and interested parties creates a chilling effect on the construction industry as it removes the security that would otherwise be available to lien claimants. This would send the message to contractors and subcontractors to not extend

credit and to cease working and supplying materials as soon as the first default or delay occurs – least the security of a builders lien turns out to be nil.

41. RVOs should not be generally employed under the CCAA and debtors should not seek RVOs to rid themselves of a difficult creditor or to expedite their desired result without regard to the remedial objectives of the CCA: *Quest University Canada (Re)*, 2020 BCSC 1883, at para. 171

42. Madness also relies on the *Builders Lien Act*, SBC 1997, c.45, including ss. 4 and 5 as it relates to the holdback.

43. Madness relies on the law of foreclosure and Rule 21-7 of the *Rules*.

Part 6: MATERIAL TO BE RELIED UPON

44. Affidavit #1 of Sheree McNulty made on 25/AUG/2026

Dated: 25/AUG/2026



pp: Kristina Pokhilko for:

Signature of Mikhael Magaril
Lawyer for the Respondent

Respondent's Address for Service:

c/o Bear Creek Law LLP
Attention: Mikhael Magaril
Suite 220 – 10524 King George Blvd.
Surrey, B.C. V3T 2X2
Tel: (604) 259-6200
Fax for service: (604) 259-6202 but please also serve by e-mail
Email for service: mmagaril@bearcreeklaw.com but please also serve by fax.