

 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, TAKIO 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

RESPONSE TO PETITION

Filed by: Maskeen 177 Projects Ltd, 0676086 B.C. Ltd., Maskeen Developments Ltd.,
Maskeen Homes Ltd., 1302095 B.C. Ltd., 0943151 B.C. Ltd., 0816980 B.C. Ltd.
0816984 B.C. Ltd., Pro Ridge Homes Ltd and Proridge Ventures Inc. Jagdip
Singh Sivia, Amarjit Kaur Sivia, Jatinderpal Singh Gill Harbans Kaur Gill and
Prabhdev Singh Khera. (collectively, the "Petition Respondents")

THIS IS A RESPONSE to the Petition, filed January 7, 2025.

The Respondents estimate that the application will take: **1 day**.

Part 1: ORDERS CONSENTED TO

The Respondents consent to the granting of the orders set out in the following paragraphs of
Part 1 of the Petition: **NONE**

Part 2: ORDERS OPPOSED

The Respondents oppose the granting of the orders set out in the following paragraphs of Part 1
of the Petition: **ALL**

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Respondents take no position on the granting of the orders set out in the following
paragraphs of Part 1 of the Petition: **NONE**

Part 4: FACTUAL BASIS

1. The Petition Respondents adopt the terms and definitions as set out in the Petition, for convenience of reference only, and not as any admission.
2. In March 2025 the Petition Respondents had secured formal commitment letters from Laurentian Bank of Canada ("Laurentian") and Realtech Capital Group Inc. ("Realtech"), who was providing a mezzanine loan, to support the construction on Lot 2. Realtech failed to raise the necessary capital to proceed with funding which would have paid down MCAP's loan significantly.
3. MCAP maintained that the Lot 2 discharge was not available until a formal commitment letter for the Lot 1 lands had been secured. Given the real estate conditions, the Lot 1 financing was significantly delayed.
4. After Realtech failed to raise the mezzanine loan, a Letter of Intent was secured with Cameron Stephens Mortgage Capital ("CSMC"). The requested deposits were paid, and the Petition Respondents were working towards securing a commitment letter. Unfortunately, CSMC was unable to provide a formal commitment letter.
5. In September 2025, the Petition Respondents secured a letter of intent with Coast Capital Savings Credit Union ("Coast Capital"). The requested deposits were paid, and the Petition Respondents were working towards securing a commitment letter. Unfortunately, Coast Capital did not provide a formal commitment letter.
6. As several mezzanine lenders passed on the project, the Petition Respondents decided to proceed with the financing with Laurentian without the mezzanine loan financing and to inject the additional equity as required. Laurentian supported and was working towards an amendment and securing a commitment letter. This information was communicated to MCAP.
7. On or about February 2025, the Borrower secured a commitment letter from Vancouver City Savings Credit Union ("Vancity") for the refinance of Lot 4. The financing did not complete as MCAP refused to discharge the Mortgage on Lot 4, despite repayment of \$1.1M towards the paydown of their loan. On September 2, 2025, Vancity provided an amended commitment letter which has since expired as the Petition Respondents could not secure the release of MCAP's mortgage on Lot 4.
8. On or around August 15, 2025, the Borrower received a letter of intent from Peak Mortgage Company ("Peak") for the refinancing of Lot 1. This information was shared with MCAP. The loan was for \$13,000,000.00. The letter of intent did not convert into a commitment letter.
9. On or around August 6, 2025, the Borrower received a letter of intent from Union Lending Corporation ("Union") for the refinancing of Lot 1. This information was shared with MCAP. The loan was for \$12,800,000.00 with a funding date of November 5, 2025.
10. As a result of the loan from Union, the Borrowers entered into a Forbearance Agreement with the MCAP on October 6th, 2025, as the Borrowers expected Union to deliver a formal commitment letter and funding before the November 30, 2025 deadline.

11. However, the Borrowers did not receive a commitment letter from Union until December 2, 2025 for the amount of \$10,000,000.00. A copy of the commitment letter was sent to MCAP.
12. All the security documents for the Union financing were signed and all the pre-funding conditions were met except for a commitment letter from Laurentian for Lot 2. Laurentian provided assurances that a formal commitment letter would be available by the week of December 8, 2025. However, the formal commitment letter from Laurentian was not received until January 8, 2026. Maskeen has paid the deposit in full further to the commitment letter from Laurentian.
13. It is expected that the Petition Respondents will ultimately be successful in refinancing the Property, and likely within the next 4-8 weeks.
14. Refinancing and payout of MCAP would proceed as follows:

Property	Details
Lot 1 – 13714 Bentley Rd.	\$7,500,000 ready for funding by Union, subject to MCAP holding off on filing any orders.
Lot 2 – 13744 Bentley Rd.	The balance of the residual loan and replacement of existing letters of credit.
Lot 4 – 13775 Grosvenor Rd.	\$1,500,000 by Vancity, subject to MCAP holding off on filing any court orders.

15. In the original commitment letter from MCAP, MCAP never intended, or had the specified right to retain security over Lot 3 and Lot 4 indefinitely. The commitment letter contemplated partial discharges upon achieving established pre-sales targets. However, as we did not proceed with obtaining construction financing of Lot 2, the established pre-sales targets would not have been applicable and MCAP ought to discharge the additional properties put up as collateral. MCAP has received a very favourable share of the Lot 3 sales proceeds (\$10,346,000.00) and would obtain an additional \$1,500,000.00 from the refinance of Lot 4 if it provided a partial discharge, an additional \$7,500,000.00 from the refinance of Lot 1 if it provided a partial discharge, and the remainder through the refinance of Lot 2, as set out above. The Petition Respondents understood from the commitment letter that partial discharges would be available as an expected term of funding and MCAP's unreasonable refusal to provide partial discharges has delayed, and in some cases, prevented refinancing.
16. MCAP's security is protected if it provides partial discharges based on the fact that the appraised value of Lot 2 based on a "raw land value" is \$22,750,000 and it is currently only owed \$15,429,766.00, and after the paydowns through refinances of Lot 1 and Lot 4, would only be owed \$6,429,766.00.
17. A Receivership Order will take away the Petition Respondents' ability to continue with their refinancing efforts and immediately wrench the project away from the Petition Respondents, putting the Petition Respondents' equity in jeopardy, as it will render all of the pre-sales unenforceable and actively prevent the current steps towards refinancing.

18. The appointment of a Receiver will add significant additional costs to be borne by the Petition Respondents, with no greater likelihood of maximizing returns, and which will “eat into” the equity in the project to the prejudice of the Petition Respondents.
19. The Property is currently well-managed, preserved, and protected; and the Petition Respondents are very motivated to continue and complete the refinancing of the Property, which is now imminent given the recent commitment letter from Laurentian.
20. In particular, the site is fully protected with construction fencing and there is no public access to Berg Road from Grosvenor Road or Bentley Road.
21. Moreover, the ground conditions are stable. The Petition Respondents geotechnical engineer has confirmed that the ground conditions are stable. The Petition Respondents have requested that the geotechnical engineer set out in more detail; however, given the timing, they were not able to obtain more. If this matter were adjourned for a week to allow their counsel to return to speak to the matter they would also have further information from their geotechnical engineer and on other issues to present to the court.
22. There is nothing that a Receiver might do that the Petition Respondents are not already doing to move this project forward and the Petition Respondents have been diligently seeking refinancing to pay out MCAP in full.
23. The Petition Respondents require an additional 4-8 weeks to pay off MCAP in full, whereas if this time is not provided and an order for a Receivership is made now, it will jeopardize months of refinancing efforts to the prejudice of the Petition Respondents.
24. In particular, if a Receivership order is made now, it will put into jeopardy the funding that the Petition Respondents have obtained. Moreover, it will result in all of the pre-sales no longer being enforceable, which is significant given the declining real estate market. In refusing to provide partial discharges despite being adequately secured, MCAP has actively prevented the Petition Respondents from obtaining refinancing to payout MCAP.

Part 5: LEGAL BASIS

Guiding Equitable Principles

25. There is perhaps no area of the law where the contribution of equity is so complete as the law with respect to the enforcement of mortgages.
26. In *355498 B.C. Ltd. v. Namu Properties*, 1999 BCCA 138 [*Namu Properties*], Madam Justice Southin for the BC Court of Appeal affirmed the oft cited judgment of Lord Jessell, M.R. in *Campbell v. Holyland* (1877), 7 Ch. 166 as follows:

[12] The jurisdiction of a court of equity to re-open an order absolute of foreclosure is of considerable antiquity. The situation in equity is summed up in the judgment of Jessel M.R. in *Campbell v. Holyland* (1877), 7 Ch. 166, as follows:

Now, what is the principle? The principle in a Court of Equity has always been that, though a mortgage is in form an absolute conveyance when the condition is broken, in equity it is always security; and it must be remembered that the

doctrine arose at the time when mortgages were made in the form of conditional conveyance, the condition being that if the money was not paid at the day, the estate should become the estate of the mortgagee; that was the contract between the parties; yet Courts of Equity interfered with actual contract to this extent, by saying there was a paramount intention that the estate should be security, and that the mortgage money should be debt; and they gave relief in the shape of redemption on that principle. Of course that would lead, and did lead, to this inconvenience, that even when the mortgagor was not willing to redeem, the mortgagee could not sell or deal with the estate as his own, and to remedy that inconvenience the practice of bringing a foreclosure suit was adopted, by which a mortgagee was entitled to call on the mortgagor to redeem within a certain time, under penalty of losing the right of redemption. In that foreclosure suit the Court made various orders—interim orders fixing a time for payment of the money—and at last there came the final order which was called foreclosure absolute, that is, in form, that the mortgagor should not be allowed to redeem at all; but it was form only, just as the original deed was form only; for the Courts of Equity soon decided that, notwithstanding the form of that order, they would after that order allow the mortgagor to redeem. That is, although the order of foreclosure absolute appeared to be a final order of the Court, it was not so, but the mortgagee still remained liable to be treated as a mortgagor, subject to the discretion of the Court. (Emphasis added in the original)

27. The equity of redemption, then, is something that arises out of the relationship between mortgagor and mortgagee. The fundamental relationship in the law of BC was confirmed in the well-known case of *North Vancouver v. Carlisle*, 1922 CanLII 726 (BCCA).
28. In BC, despite the changes to the *Land Title Act*, R.S.B.C., c. 250 in 1989, a mortgage operates as if it were a conveyance with a right of defeasance. The right of defeasance, otherwise referred to as the equity of redemption, does not arise as a result of a foreclosure proceeding being commenced. This is because, as noted in *CIBC v. Burnham*, 1986 CanLII 1032 [Burnham] at ¶11, proceedings for redemption were invented *prior to* proceedings for foreclosure.
29. The concept of defeasance, or equity of redemption, is the long-standing equitable “golden thread” that runs throughout the mortgage relationship, and it impacts any actions taken to enforce the mortgage, or its terms, including the right to seek the appointment of a receiver.
30. It has been well-established that the Court will not allow a right of redemption to be fettered in any way. Put another way, a term that constitutes a clog on the equity of redemption is unenforceable.

Namu Properties, supra, at ¶13, 15

31. This long-standing principle was summarized by Mr. Justice Pearlman as follows:
[25] In explaining the rules of equity relating to the redemption of mortgaged property, W.M. Traub in *Falconbridge on Mortgages*, 5th Ed., (Aurora, Ontario: Canada Law Book, 2010) at p.3-2 refers to the speech of the Lord Chancellor in *Kreglinger v. New Patagonia Meat and Cold Storage Co., Ltd.*, [1914] A.C. 25 (H.L.) at p. 38:

... it is the essence of a mortgage that in the eye of a Court of Equity it should be a mere security for money, and that no bargain can be validly made which will

prevent the mortgagor from redeeming on payment of what is due, including principal, interest, and costs. He may stipulate that he will not pay off his debt, and so redeem the mortgage, for a fixed period. But whenever a right to redeem arises out of the doctrine of equity, he is precluded from fettering it. This principle has become an integral part of our system of jurisprudence and must be faithfully adhered to.

[26] The rule against clogs on the equity of redemption is set out in *Falconbridge on Mortgages* at p. 3-9:

There remains the rule that any stipulation which restricts or clogs the equity of redemption is void or, as stated more broadly, that any provision which is repugnant either to the contractual or to the equitable right to redeem is void:

It is the right of a mortgagor on redemption, by reason of the very nature of a mortgage, to get back the subject of the mortgage, to hold and enjoy as he was entitled to hold and enjoy it before the mortgage. If he is prevented from doing so, that which he is entitled to on redemption is prevented, and to constitute such prevention it is not necessary that the subject of the mortgage should be directly charged with whatever causes the prevention. If he be so prevented in fact, the equity of redemption is affected by what, whether very aptly or not, has been always termed "a clog". *Browne v. Ryan*, [1901] 2 I.R. 653, at pp. 667-8, *per* Andrew J., adopted by Collins M.R. in *Samuel v. Jarrah Timber and Wood Paving Corp., Ltd.*, [1903] 2 Ch. 1, at p. 7, *aff'd* [1904] A.C. 323 (H.L.).

International Taoist Church of Canada v. Ching Chung, 2010 BCSC 1164 at ¶¶25-26

32. The reasoning for this inviolable and sacrosanct prohibition was explained by the Ontario Court of Appeal as follows:

The doctrine which prohibits clogs on the mortgagor's equity of redemption was designed to preserve the inviolability of the mortgagor's right to redeem. The mortgagor is entitled to recover his security completely and unimpaired by the terms of the mortgage. The doctrine was designed to protect necessitous landowners from oppressive agreements. Equity has always sought to protect the mortgagor from lenders who would take advantage of his vulnerability at the time of the land. Subject to the power of sale under the mortgage, the mortgagor cannot be deprived of his property except through foreclosure, which tests the value of the property and preserves the mortgagor's inviolable right to redeem.

Dical Investments Ltd. v. Morrison (C.A.), 1990 CanLII 6606 at p. 8
see also *Dhillon v. Jhutee*, 1998 CanLII 5414 (BCSC) at ¶¶15-19

33. The equity of redemption is a concept that equity imposed upon the parties to a mortgage, despite the wording of any agreement to the contrary, as an inviolable and sacrosanct principle of equity. In other words, no provision in a mortgage can be construed so as to be inconsistent with the right of redemption - period.

Bank of Montreal v. Beilstein, 1998 CanLII 6982 (NWTSC) at ¶¶11, 15, 17 & 21
Imor Capital Corp. v. Bullet Enterprises Ltd., 2012 BCSC 899 [*Imor*] at ¶¶12-14

34. The court in *Imor*, recognized that the "usual rules" in foreclosure proceedings regarding a 6-month redemption period apply equally to proceedings relating to a debenture.

Imor, supra, at ¶¶21-22

35. The “usual rule” is set out in section 16(2) of the *Law and Equity Act* and provides that:

If, in a foreclosure, the purchaser or person claiming through the purchaser is given time to redeem, the court must order that the time for redemption be 6 months, unless the court considers, in the circumstances, that a shorter or longer period is justified.

36. One of the oft-quoted cases on this is *Burnham*, a decision of Madam Justice Southin (as she then was) where she laid out the following principles:

One must start with the proposition that the usual period of redemption is six months.

The shortening of that period is a matter of sound judicial discretion. The burden is on the mortgagee to show facts which warrant the court depriving the mortgagor of what is almost an implied term that he has six months to redeem.

...

But without the mortgagor’s consent, to deprive him of any time for redemption simply because the land is said, as is frequently the case, by the unsworn evidence of an appraiser to be worth less than the mortgage, seems to me on the case as to be going too far.

Burnham, supra, at ¶12-14

37. *Burnham* is still good law - as re-stated by Mr. Justice Tysoe for the BC Court of Appeal in *BC (Attorney General) v. Malik*, 2009 BCCA 202 [*Malik*] at ¶53:

The purpose of a 6-month redemption period is to enable the mortgagor to redeem or sell the mortgaged property on as favourable a basis as the mortgagor can arrange during the redemption period.

38. As noted by McEachern C.J.S.C., as he then was, in *On Foreclosure Practice*:

The redemption period should not be less than six months unless:

- a. The premises are abandoned or suffering waste. The fact that premises are vacant does not necessarily mean that they are abandoned.
- b. The mortgagor has no equity and is unlikely to be able to refinance and the mortgagee will likely suffer a loss or increased loss if the usual order is made.
- c. Even in these circumstances, an immediate order absolute or a shortened redemption period will not always be made, particularly in the case of a residential premises where the mortgagor is in occupation. The court retains the discretion in this connection, but, in most cases, the position of the mortgagee should not be worsened materially.

quoted in *Lanyard Investments Inc. v. 3771 No. 3 Road Inc.*, 2024 BCSC 1664 [*Lanyard*] at ¶18

39. A party foreclosing on a mortgage *must* afford the borrower the opportunity to redeem the lands in all but exceptional circumstances. Where the debtor’s principal asset is real estate, the lender should not be permitted to use the power to appoint a receiver as a means of doing an “end run” around the usual 6-month redemption period, unless there

are special circumstances such that the lender should have conduct of sale before judgment and consideration of an appropriate redemption period.

Royal Bank v. Astor, 1986 CanLII 1072 [Astor] at ¶¶34-35
Textron Financial Canada Limited v. Chetwynd Motels Ltd., 2010 BCSC 477
[Textron] at ¶¶58-74, 89

40. While receivership proceedings are considered to be more flexible than foreclosure proceedings, the Court has recognized that the equitable right to a redemption period still exists in receivership proceedings, to be considered by the Court in terms of whether a receiver should be appointed, and if so, whether that receiver will be granted the power of sale, and if so, when. This is because the power to sell the subject lands affects the borrower's equity of redemption and limits the borrower's ability to sell or refinance the subject lands.

Bank of Montreal v. Haro-Thurlow Street Project Limited Partnership, 2024 BCSC 47
[Haro] at ¶¶94-95 & 101-103

41. The lender bears the onus of establishing the initial appropriateness of the appointment of a receiver. If the appointment is appropriate, the Court will then proceed to consider what powers should be granted to the receiver, including whether there should be a power of sale and, if so, when any power of sale becomes effective.

Haro, supra, at ¶¶98-99

42. In considering the length of the redemption period, the Court has recently rejected the argument to simply subtract the pre-application delay from the typical six-month redemption period, noting that 6-month redemption periods are routinely given in foreclosure proceedings, starting on the day that the *Order Nisi* is granted, not when the demand was made.

The Bank of Nova Scotia v. Sidhu, 2025 BCSC 1344 [Sidhu] at 46

43. The Court in *Sidhu* found that it would *not* be just or convenient to automatically shorten the redemption period if one refinancing plan fell through, expressly recognizing that the equity of redemption and the longstanding caselaw applying that principle still apply in a receivership application.

Sidhu, supra, at 47

44. The Court has the discretion to extend the redemption period in appropriate circumstances.

45. An application to extend the redemption period can be made either before or after the expiry of the redemption period.

1103969 B.C. Ltd. v. 1069185 B.C. Ltd., 2019 BCCA 73 at ¶¶25-28

46. In order to obtain an extension of the redemption period, the mortgagor must establish:
- a. the property has sufficient value by way of security for the amount outstanding;
 - b. there is a reasonable prospect of repayment within the extended redemption period

47. Both requirements are met in this case, and in particular:
- a. the Lands have sufficient value by way of security for the amounts outstanding; and
 - b. the refinancing provides for a reasonable prospect of repayment within the extended redemption period.
48. In *Bancorp Growth Mortgage Fund II Ltd., v. Rouleur (Woodland) Limited Partnership*, 2021 BCSC 898, Master Elwood adjourned the petitioner's application for conduct of sale and granted a three-month extension of the redemption period, in circumstances where the respondents had obtained an offer to purchase the subject properties for an amount that exceeded the amount required to redeem the subject properties.
49. The offer remained subject to a number of conditions precedent in favour of the purchaser and Master Elwood held that to extend the redemption period, the law required a "reasonable prospect" of repayment, not a commercial certainty, and granted an extension of the redemption period notwithstanding the risk that the offeror may not remove subjects.
50. In *Mission Creek Mortgage v. Angleland Holdings Inc.* ("*Mission Creek*"), the court granted an six-month extension of the redemption period after the respondents received a letter of intent to finance concluding that refinancing was a reasonable prospect if pursued with vigour and focus.

Mission Creek, 2010 BCSC 1593 at ¶15, 30, 31, 35

51. A short delay of the redemption period is in the best interests of all parties, if it results in a successful refinancing and payout in full.

Test for Appointing a Receiver

52. The granting of a receivership order is "extraordinary relief, which should be granted cautiously and sparingly". If there is a remedy other than receivership, it should be considered because receiverships are intrusive interferences with the affairs of the company. They can be harmful to the reputation of the company, and the cost of a receivership can be considerable.

Mirage Trading Corporation v. Ghahroudi, 2025 BCSC 588 at ¶95

53. The fact that the creditor has the right to appoint a receiver under the documentation provided for in the loan is but one factor to be considered. No presumption of entitlement to a court appointment arises from the fact that the documentation allows for such an appointment.

Haro, supra, at ¶116

54. Receivers should only be appointed prior to judgment in special circumstances where it is necessary to do so to preserve the assets from some deterioration or jeopardy.

TD v. First Canadian Land Corp., (1989), 77 C.B.R. (N.S.) at ¶18

55. A receiver should only be appointed if, in all of the circumstances, it is just and convenient to do so. If such an order is made, the power of sale should only be granted *after* the expiry of the period set for redemption period.

56. Whether or not to appoint a receiver calls for a “holistic” review of all of the circumstances and a “robust review” of them, to determine whether it is ultimately “just and convenient” to do so.

Haro, supra, at ¶74

57. The factors to be considered in determining whether it is “just and convenient” to appoint a receiver are numerous with a non-exhaustive list established by Justice Masuhara in *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 [*Maple Trade*] at ¶25 and relied upon by the Court thereafter as a collection of considerations to be viewed “holistically” (the “*Maple Trade* Factors”).

Sidhu, supra, at ¶9

58. The onus is on the petitioner to introduce cogent evidence that it is just and convenient to appoint a receiver addressing those factors, even post-judgment.

Textron, supra, at ¶54-55

59. Appointing a receiver can only be justified following a consideration and analysis of the position of both parties, and in doing so, the detrimental effect on the mortgagee must be considered.

Textron, supra, at ¶53, 55

60. While a written agreement in the contract between the parties, to agree to the appointment of a receiver is a factor, the Court does not start with the presumption of an entitlement to the appointment on that basis. Nor does that affect consideration of all the factors on a holistic basis.

Textron, supra, at ¶53-55

Ward Western Holdings Corp. v. Brosseuk, 2022 BCCA 32 at ¶56-66

61. Above all, there is a “a principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly”.

Maple Trade, supra, at 25(i)

62. The onus on the petitioner to adduce cogent evidence in order to obtain an immediate Order for Sale is high. The petitioner must very clearly establish exceptional circumstances.

Bank of Nova Scotia v. Mrazek, 1985 CanLII 507 (BCCA) [*Mrazek*] at ¶13

63. The BC Court of Appeal in *Mrazek* goes on to hold that even the likelihood of a shortfall to the security holder is only a factor to be considered with other relevant factors,

64. In *Sun Life Assurance Co. of Canada v. 535401 B.C. Ltd.*, 2001 BCSC 605, the Court went so far as to make an order staying proceedings on a judgment recovered in foreclosure until the land was sold or the mortgage redeemed.

65. If a significant portion of the security consists of land, the order should not normally be made without affording a period of redemption, and that period of redemption should follow the “usual rule” of six months, unless there is reason to shorten that period.

Astor, supra, at ¶¶34-35
Textron, supra, at ¶¶63-65, 70, 73
Burnham, supra, at ¶15
Malik, supra, at ¶53
Lanyard, supra, at ¶18

66. The *Real Estate Development Marketing Act* [SBC 2004] C. 41 [REDMA] requires that if a receiver or trustee in bankruptcy is appointed, a developer must file a new disclosure statement with the Superintendent of Real Estate, which in turn triggers the rescission rights for all purchasers.

REDMA s. 1 “Material Fact”, s. 16 (1), (3), s. 21

Test to Appoint Receiver Not Satisfied

67. The petitioner has not adduced cogent evidence that it is just and convenient to provide the extraordinary relief, that should be granted only “cautiously and sparingly”, given the intrusive interference and reputational damage that appointing a receiver entails.
68. In conducting a “holistic” review of all of the circumstances and a “robust” review of them, the following *Maple Trade* factors should be considered:
- a. there is no evidence of irreparable harm if a receiver is not appointed;
 - b. there are no immediate safety concerns or security concerns for the Lots. The construction site is fully protected with construction fencing, there is no public access, and the Petition Respondent’s geotechnical engineer has confirmed that the ground conditions are stable;
 - c. there is no evidence of a shortfall in the security; in fact, the petitioner’s ongoing interests as a result of accruing interest are protected throughout a usual 6-month redemption period;
 - d. MCAP’s unreasonable refusal to provide partial discharges in exchange for receipt of the net funds from the petition respondents’ refinancing has delayed, and in some cases, prevented refinancing;
 - e. the effect of the order sought defeat Petition Respondents’ ability to continue with their refinancing efforts, which have recently borne fruit. The petition respondents’ refinancing efforts have made an additional \$7,500,000.00 from the refinance of Lot 1 available, 1,500,000 available from the refinance of Lot 4 from the refinance of Lot 4 available, subject to MCAP providing partial discharges on those properties, with the remainder to be paid from the imminent refinance of Lot 2;
 - f. the orders sought will also immediately wrench the development out of the hands of the Petition Respondents, despite being on the verge of refinancing, without the benefit of any redemption period, and with significant additional costs of a receiver (ultimately to be borne by the Petition Respondents), with no demonstrable practical or positive benefit;

- g. the appointment of the receiver or trustee in bankruptcy will trigger the rescission rights for all purchasers, which will in turn likely cause the parties to lose the benefit and value of those purchases;
 - h. the balance of convenience favours granting a 6-month redemption period under the “usual rule” to allow the Petition Respondents time to continue with the development, which will, in turn, positively affect refinancing efforts, with no prejudice to the petitioner whose security is well protected and the extra time for which is covered by accruing interest;
 - i. the fact that the petitioner has the right to appoint a receiver is but one factor to be considered, and is not an overwhelming factor;
 - j. there is no evidence that suggests it will be difficult to deal with the Petition Respondents, other than the Petition Respondents defaulting and/or delaying in payments, which are not unique to enforcement proceedings, as the very cause of the enforcement proceedings;
 - k. the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly is an overriding factor, as there are other more appropriate remedies available that are much less harmful to the affairs and reputation of the company, and that do not present the same additional costs, delay, and uncertainty that an appointment of a receiver does;
 - l. the primary duty of the receiver would be to sell the Property, and under the usual process for foreclosure the Petition Respondents could seek an order for sale, effectively providing them with that right, but without the additional and significant costs of a receiver;
 - m. the length of time that a receiver may be in place is not a factor in the proceedings, other than the fact that a receiver would be appointed to sell the Property, which can be accomplished by the appointment of a realtor as a result of an Order for Conduct of Sale;
 - n. the appointment of a receiver presents a significant additional cost which is to be borne by the Petition Respondents and is another factor overwhelmingly in favor of not granting an order at this stage, as an Order for Conduct of Sale after having the benefit of a redemption period is far more just and convenient;
 - o. the evidence suggests that the appointment of a receiver will be an additional cost to be borne by the Petition Respondents, with no greater likelihood of maximizing returns, and which will “eat into” the equity of any secured lenders behind the petitioner; and
 - p. the goal of facilitating the duties of the receiver does not factor into the analysis.
69. Given all of the foregoing, the petitioner has not established that a receiver should be appointed at this time. Instead, the foregoing very clearly sets out why the Petition Respondents ought to be afforded more time and a Receiver not appointed at this time.

Terms of Order Sought Ought Not to be Granted

70. The draft receivership order seeks, *inter alia*, the immediate powers for sale without any redemption period:
- 2. ...

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business ...

(m) to apply for any vesting order or other orders necessary to convey the property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;

71. The order sought is an "end run" around the usual foreclosure practice to defeat the longstanding, inviolable, and sacrosanct equitable period of redemption.
72. The order sought prevents, or at the very least, significantly limits, the respondents from selling or refinancing the Property, effective immediately, which exposes the respondents to the intrusive interferences of a receivership order and the harmful reputational hit that comes with it, without the equitable grace Courts have provided to debtors since before foreclosures had been established.
73. The order sought also purports to provide for the appointment pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "*BIA*"), and to provide for orders pursuant to the *BIA*, despite the lack of evidence to trigger its application.

Part 6: MATERIAL TO BE RELIED ON

1. The pleadings and materials filed in the within proceedings;
2. Affidavit #1 of A Cheema sworn January 13, 2025;
3. Such further and other material as necessary to respond to the Petition, as it becomes available, and any reply to new evidence advanced by the Petitioner.

Dated: January 13, 2026.



Signature of
☒ lawyer for Petition Respondents

Petition Respondents' address for service:
c/o McQuarrie Hunter LLP
15th Floor, 13450 102nd Avenue
Surrey, B.C. V3T 5X3

Fax number address for service (if any): N/A

E-mail address for service (if any): dmoseley@mcquarrie.com (service shall only be effective if also served on smartin@mcquarrie.com)

Name of the Petition Respondent's lawyer, if any: Dan A. T. Moseley