



No. H220369
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PLW INVESTMENT LTD.

PETITIONER

AND:

1025332 B.C. LTD., 1025334 B.C. LTD., 1025336 B.C. LTD.,
CHONGYE DEVELOPMENTS LTD., WASHINGTON
PROPERTIES (POINT GREY) INC., WASHINGTON
PROPERTIES (QEP) INC., LUCKY FIVE INVESTMENTS
LTD., 1094321 B.C. LTD., PRARDA DEVELOPMENTS
CORPORATION, 1256306 B.C. LTD., 1256319 B.C. LTD.,
AMY BARSHA WASHINGTON (a.k.a. FENGYUN SHAO),
EDISON WASHINGTON (a.k.a. QIANG WANG), LINDA
WASHINGTON, 35 PARK PARKING INC. and EARLSTON
MORTGAGE CORP.

RESPONDENTS

RESPONSE TO PETITION

Filed by: 1025332 B.C. LTD., 1025334 B.C. LTD., 1025336 B.C. LTD., CHONGYE
DEVELOPMENTS LTD., WASHINGTON PROPERTIES (POINT GREY)
INC., WASHINGTON PROPERTIES (QEP) INC., LUCKY FIVE
INVESTMENTS LTD., 1094321 B.C. LTD., PRARDA DEVELOPMENTS
CORPORATION, 1256306 B.C. LTD., 1256319 B.C. LTD., AMY BARSHA
WASHINGTON (a.k.a. FENGYUN SHAO), EDISON WASHINGTON (a.k.a.
QIANG WANG), LINDA WASHINGTON and 35 PARK PARKING INC.
("these Petition Respondents")

THIS IS A RESPONSE TO the petition filed April 7, 2023.

PART 1: ORDERS CONSENTED TO

These Petition Respondents consent to the granting of the orders set out in the following paragraphs of Part 1 of the petition:

1. NONE

PART 2: ORDERS OPPOSED

These Petition Respondents oppose the granting of the orders set out in paragraphs 1 – 34 of Part 1 of the petition.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

These Petition Respondents take no position on the granting of the orders set out in paragraphs N/A of Part 1 of the petition.

PART 4: FACTUAL BASIS

1. These Petition Respondents do not accept the breadth of the declaratory relief sought in the Petition.
2. In particular, and without limiting the generality of the foregoing, the scope of security claimed by the Petitioner under the General Security Agreements referenced in Part 1, paragraphs 17 to 20, of the Petition exceeds the scope of the security agreed to by the parties in the 2018 Loan Agreement and the 2020 Loan Agreement as defined therein.
3. The Petitioner cannot now claim that it holds security over property not agreed by the parties to be charged pursuant to the said Loan Agreements.
4. In particular, and without limiting the generality of the foregoing, the Petitioner has specifically agreed that it holds and acquired no interest in Strata Lots 60 and 163 defined in Schedule “A” to the Petition as the “Amy Strata Lots” (“**SLs 60 and 163**”).
5. At all material times, the Petitioner was well aware, having been advised by these Respondents, that SLs 60 and 163 had been previously sold to arm’s-length buyers to pay off loans previously raised to inject equity into Cambie Street project (the “**QEP Project**”) of which they are part.
6. In and after May 2020, the Petitioner gave assurances to and covenanted with these Petition Respondents that, upon the arrangements being documented for the Petitioner to advance further funds and assume certain loan agreements with prior lenders (collectively, the “**Take-Out Loan**”), the Petitioner would formally disclaim any interest in SLs 60 and 163 and would allow these Petition Respondents to transfer SLs 60 and 163 free and clear to the arm’s-length buyers thereof.
7. Based on the Petitioner’s assurances and covenant as aforesaid, these Petition Respondents executed all requested Take-Out Loan documentation. However, the Petitioner then declined to release its purported security (the “**Purported 60/163 Security**”) so as to permit the transfer of SLs 60 and 163 to their arm’s-length buyers, stating instead that the Petitioner would defer the disclaimer until the sale of certain further lands over which the Petitioner had a security interest.

Receivership Order was obtained on false pretences

8. On October 24, 2022 these Petition Respondents provided a version of this Petition Response to the Petitioner’s counsel for inclusion in the Petitioner’s materials supporting

its claim for appointment of a Receiver. These Petition Respondents thereupon advised that they would be objecting on stated grounds to the appointment of a Receiver.

9. The Petitioner then gave assurances to and covenanted with these Petition Respondents that, if these Petition Respondents would agree *not* to oppose the appointment of a Receiver, the Petitioner would formally disclaim their Purported 60/163 Security so as to allow these Petition Respondents to transfer SLs 60 and 163 to the arm's-length buyers thereof free and clear of all encumbrances.
10. Based on the Petitioner's assurances and covenant as aforesaid, these Petition Respondents agreed *not* to oppose the appointment of a Receiver. The Order of Justice Giaschi was made and entered on October 27, 2022 without opposition.
11. Subsequently and despite repeated requests, the Petitioner has again failed to release the Purported 60/163 Security so as to permit the transfer of SLs 60 and 163 to their arm's-length buyers, pending the sale of yet further lands over which the Petition holds security.

Petitioner's frustration of fair market value sales

12. On or about March 8, 2023, the Petitioner refused to complete the sale of Unit B505 in the QEP Project, under a contract that it had entered into as registered owner.
13. The Petitioner has, without any valid reason, refused to approve transactions with arm's-length buyers of five other strata lots within the QEP Project.
14. In addition, the Petitioner has, without any valid reason, refused to approve the sale of 835 Eyremount, West Vancouver, BC, for its fair market value.
15. The Petitioner is abusing its power to release security in an effort to frustrate valid deals and place itself in a position to cause the re-appointment of a Receiver.
16. The Petitioner's refusal to approve market value sales to arm's length buyers is a breach of contract including, without limitation, a breach of its duty of good faith and honest performance in contract.

Receiver not warranted at this time

17. Although the appointment of a Receiver may be available to secured creditors where provided for in their security documents, it is a discretionary tool having regard to all the circumstances of this case.
18. The Petitioner has put in place a number of effective mechanisms to ensure its security interests are respected and that these Respondents' properties are sold in an effective and professional manner, with full information and approval being provided to the Petitioner throughout, and its consent secured before any of the properties are sold.

19. In the case at bar, the imposition of a Receiver at this time is without a valid rationale, and is being urged by the Petitioner as a means of exerting leverage upon and/or punishing the Petitioner, without having established that there would be a genuine benefit to recovery.
20. The lifting of the current stay of Receivership will cause an enormous unnecessary expense and these Petition Respondents' equity will thereby be unnecessarily eroded.

Inequitable to allow re-appointment of Receiver

21. Under all the circumstances as set out herein, it would be inequitable for this Honourable Court to permit the Petitioner to cause the reinstatement of the Receiver following its initial stay period.
22. On these grounds set out above and given these Respondents' ongoing good faith efforts to market and the properties at fair market value, the Court should not exercise its discretion to allow a Receivership, or if the stay has been lifted, the Receiver ought to be discharged or further stayed.
23. Further, and in the alternative, the amounts claimed by the Petitioner are overstated.

PART 5: LEGAL BASIS

1. The appointment by the Court of a Receiver may be made where it is just or convenient to do so. There is competing authority whether the Court should exercise its discretion not to make such an appointment only where a mortgagor or subsequent charge holder can show compelling commercial or other reason why such an order ought not to be made; or whether the appointment must be established by the Petitioner on the facts.

United Savings Credit Union v. F & R Brokers Inc. et al, 2003 BCSC 640, at paras. 17, 19; *Korion Investments Corp. v. Vancouver Trade Mart Inc.*, [1993] B.C.J. No. 2352 (S.C.) per Huddart J.; *Textron Financial Canada Limited v. Chetwynd Motels Ltd.*, 2010 BCSC 477

2. If the established procedures for foreclosure and judicial sale are accepted as serving the ends of justice, it follows that it would be unjust to allow mortgagees to revive the contractual remedy without it being tempered by the power of the court to allow time to the mortgagor and puisne encumbrancers. The original power of sale was a harsh and summary one. It was a remedy violently at odds with the expectation, now generally held by those having an interest in property, that they cannot lose that interest without notice.

South West Marine Estates Ltd. v. Bank of B. C. (1985), 65 B.C.L.R. 328 (C.A.) per Esson J.A., cited with approval in *IMOR Capital Corp. v. Bullet Enterprises Ltd.*, 2012 BCSC 899 at para. 17 per Burnyeat J.

3. It is the policy of the law, wherever possible, to treat similar problems in the same way and to avoid technical procedural differences in such matters. This conclusion is supported by the addition to the Law and Equity Act which requires realization on Agreements for Sale to be treated the same way as the foreclosure of a mortgage. If the exercise of a power of sale in a conventional mortgage is subject to the control of the Court's conscience by the imposition of principles analogous to foreclosure proceedings, then the same principle applies to the exercise of a power of sale in a debenture.

Royal Bank of Canada v. Camex Canada Corp. (1985), 63 B.C.L.R. 125 (S.C.), per McEachern C.J.S.C., as he then was, cited with approval in IMOR, supra, at para. 18.

4. In order that there can be commercial certainty and in order that the procedures relating to the enforcement of agreements for sale, mortgages and debentures can be dealt with in a consistent manner, the Court will be called upon in all of these enforcement proceedings to set a redemption period in accordance with the equities existing relating to the value of the property and to the debt owing under the security that is being enforced. If the position of the party enforcing the security is secured by the value of the property charged, then the usual redemption period of six months will apply. If not, a shorter redemption period will be ordered rather than the "usual" six months... The question is whether the lender has shown that its position is in jeopardy so that something less than a six-month redemption period is appropriate.

Imor, supra, at paras. 23-24.

5. No special circumstances exist that the petitioner should have an order for sale without regard to an appropriate redemption period.

Textron Financial Canada Limited v. Chetwynd Motels Ltd., 2010 BCSC 477

PART 6: MATERIAL TO BE RELIED ON

1. Affidavit of Amy Barsha Washington sworn April 10, 2023.

These Petition Respondents estimate that the hearing of the Petition will take **2 hours**.

Dated April 10, 2023



Signature of Lawyer for Petition Respondent(s)
Kornfeld LLP

Daniel S. Parlow

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