



No. S-244083
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND

**3000 HENRY STREET LIMITED PARTNERSHIP
and
0790857 B.C. LTD.**

RESPONDENTS

NOTICE OF APPLICATION

Names of applicants: KINGSETT MORTGAGE CORPORATION (“**KingSett**”)

To: Service List, attached as **Schedule “B”**

TAKE NOTICE that an application will be made by the applicants to the Honourable Justice Stephens at the courthouse at 800 Smithe Street, Vancouver, BC on July 29, 2024, at 9:30 a.m.. for the orders set out in Part 1 below.

The applicants estimate that the application will take 5 minutes.

- This matter is within the jurisdiction of an associate judge.
- This matter is not within the jurisdiction of an associate judge.

Part 1: ORDERS SOUGHT

1. The Petitioners seek an order sealing the third affidavit of Samantha Tse, sworn July 24, 2024 (the “**Third Tse Affidavit**”).

Part 2: FACTUAL BASIS

2. Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to them in the Petition filed by KingSett on June 19, 2024 (the “**Petition**”).

3. The Third Tse Affidavit contains specific evidence on the values of bids received in a previous attempt to market and sell the Property, set out in the email from Amin Eskooch, a principle of 1215914 B.C. Ltd. (the “**General Partner**”).
4. The Petitioner has filed a redacted version of this evidence with the Court in the second affidavit of Samantha Tse, sworn July 24, 2024, but is now seeking a sealing Order to provide the unredacted information to the Court in the Third Tse Affidavit.

Part 3: LEGAL BASIS

5. The court may grant a sealing order in circumstances where:
 - (a) court openness poses a serious risk to a “public interest”, which is not restricted solely to the interests of the parties, but applies at the level of a general principle;
 - (b) such an order is necessary to prevent serious risk to the identified interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
 - (c) as a matter of proportionality, the positive effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the negative effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible Court proceedings.

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 at para 53

Sherman Estate v. Donovan, 2021 SCC 25 at paras 38, 41- 43

6. The Third Tse Affidavit contains unredacted information regarding the results and offers received for the Property in previous marketing efforts. The disclosure of prior marketing efforts and specific bids received could negatively impact the future sales process for the Property. It is in the best interest of all parties to ensure the future sales process is not hindered by the offers of past interested parties. The disclosure of the unredacted information in the Third Tse Affidavit could hinder the ability to maximize value for the Property.

7. There is an important public interest in: (i) protecting the interest of financial stakeholders and facilitating the maximization of value for a debtor's assets; and (ii) preserving the integrity of distressed sales processes generally.
8. As such, the Petitioner submit that a sealing order is appropriate in these circumstances.

Part 4: MATERIAL TO BE RELIED ON

1. Third Affidavit of Samantha Tse, sworn July 24, 2024.
2. Such further and other material as counsel may advise and this Court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated: July 24, 2024

Signature of Applicant(s)
 Lawyer for applicant(s)
Emma Newbery

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

.....
.....
.....

Date:[dd/mmm/yyyy].....

.....
Signature of Judge Associate Judge

Appendix

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

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RESPONDENTS

SERVICE LIST
as of July 24th, 2024

<p>Osler, Hoskin & Harcourt LLP Suite 3000, Bentall 4 1055 Dunsmuir Street Vancouver, BC V7X 1K8</p> <p>Attention: Mary Buttery, K.C. Emma Newbery Elie Laskin</p>	<p>Cassels Brock & Blackwell LLP 885 W Georgia St #2200 Vancouver, BC V6C 3E8</p> <p>Attention: Vicki Tickle Mihai Tomos</p>
<p>Email: mbuttery@osler.com enewbery@osler.com elaskin@osler.com</p>	<p>Email: vtickle@cassels.com mtomos@cassels.com</p>
<p>Counsel for the Petitioner, KingSett Mortgage Corporation</p>	<p>Counsel for Receiver, KSV Restructuring Inc.</p>

<p>Owen Bird Law Corporation 29th Floor -733 Seymour Street P.O. Box 1 Vancouver, BC V6B 0S6</p> <p>Attention: Scott Stephens Heather A Frydenlund</p> <p>Email: sstephens@owenbird.com hfrydenlund@owenbird.com</p> <p>Counsel for certain limited partners of the Respondent, 3000 Henry Street</p>	
<p>Bridgehouse Law LLP 9th Floor, 900 West Hastings St. Vancouver, BC V6C 1E5, Canada</p> <p>Attention: Benjamin La Borie</p> <p>Email: blaborie@bridgehouselaw.ca</p> <p>Counsel for Limited Partnership 1215914 B.C. Ltd. (the general partner of the Respondent, 3000 Henry St.) and the named respondent, 0790857 BC Ltd.</p>	

EMAIL SERVICE LIST
(as of July 17, 2024)

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