FORM 67
(RULE 16-1(5) AND RULE 25-14(2))

No. 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

RESPONSE TO PETITION

Filed by: **1144001 B.C. Ltd., AP & Sons Residential Holdings Ltd., BST Trading Ltd., 1138768 B.C. Ltd., Concerto Development Corporation 1061833 B.C. Ltd., and Veramax Holding Ltd.** (collectively, the "petition respondents")

THIS IS A RESPONSE to the petition filed June 19, 2024

The petition respondents estimate that the application will take 45 minutes.

Part 1: ORDERS CONSENTED TO

The petition respondents consent to the granting of the orders set out in the following paragraphs of Part 1 of the petition: N/A

Part 2: ORDERS OPPOSED

The petition 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 petition respondents take no position on the granting of orders set out in the following paragraphs of Part 1 of the petition: N/A

Part 4: FACTUAL BASIS

THE OPPOSING UNITHOLDERS

1. The petition respondent, 1144001 B.C. Ltd. ("**114**"), is a B.C. company with a registered and records office at 679 West Queens Road, North Vancouver, B.C. V7N 2L2.

2. The petition respondent, AP & Sons Residential Holdings Ltd. ("**AP & Sons**"), is a B.C. company with a registered and records office at 2200 - 700 West Georgia Street, Vancouver B.C. V7Y 1K8,

3. The petition respondent, 1138768 B.C. Ltd. ("**113**"), is a B.C. company with a registered and records office at #1100 – 1111 West Hasting Street, Vancouver, B.C. V6E 2J3.

4. The petition respondent, 1061866 B.C. Ltd. ("**106**"), is a B.C. company with a registered and records office at the 10th floor, 938 Howe Street, Vancouver, B.C., V6Z 1N9.

5. The petition respondent, BST Trading Ltd. ("**BST**"), is a B.C. company with a registered and records office at 128 Roe Drive, Port Moody, B.C. V3H 3M8.

6. The petition respondent, Concerto Development Corporation ("**Concerto**"), is a B.C. company with a registered and records office at 301 – 2225 Twin Creek Place, West Vancouver, B.C. V7S 3K4.

7. The petition respondent, Veramax Holding Ltd. ("**Veramax**"), is a B.C. company with a registered and records office at 1100 – 1111 West Hastings Street, Vancouver, B.C. V6E 2J3.

   (114, AP & Sons, 113, 106, BST, Concerto and Veramax, collectively, the "**Opposing Unitholders**").

THE OPPOSING UNITHOLDERS' UNITS AND INVESTMENTS

8. The Opposing Unitholders hold a substantial majority of units in 3000 Henry Street Limited Partnership ("**Henry LP**"). A breakdown of the classes of units, amount of units and monetary investments by the Opposing Unitholders are as follows:

a) 113:

i. Class A – 29,455

ii. Class B – 0

iii. Class C – 0

iv. Total monetary investment $100 x 29,455 = $2,945,500

b) 114:

i. Class A – 318

ii. Class B – 5,396

iii. Class C – 629

iv. Total monetary investment $100 x 6,343 = $634,300

c) AP & Sons:

i. Class A – 3,891

ii. Class B – 0

iii. Class C – 535

iv. Total monetary investment $100 x 4,426 = $442,600

d) 106:

i. Class A – 29,455

ii. Class B – 0

iii. Class C – 4,048

iv. Total monetary investment $100 x 33,503 = $3,350,300

e) BST Trading:

i. Class A – 288

ii. Class B – 5290

iii. Class C – 0

iv. Total monetary investment $100 x 5,578 = $557,800

f) Concerto:

i. Class A – 0

ii. Class B – 5,396

iii. Class C – 0

iv. Total monetary investment $100 x 5,396 = $539,600

g) Veramax:

i. Class A – 0

ii. Class B – 0

iii. Class C – 4,048

iv. Total monetary investment $100 x 4,048 = $404,800

9. Collectively, the Opposing Unitholders:

a) Hold 72.64% (63,407/87,284) of Class A units

b) Hold 56.22% (16,082/28,606) of Class B units

c) Hold 74.01% (9,290/12,543) of Class C units

d) Hold 69.12% (88,779/128,433) of all units

e) Made combined monetary investments totalling $8,874,900

THE LANDS

10. Henry LP, by its then general partner, Henry GP Ltd. ("**Henry GP**"), was formed with the initial intent to rezone lands located at 3000 Henry Street, Port Moody, BC (the "**Lands**") and, subsequently, to develop a midrise building. The Lands are held by a nominee for Henry LP as the beneficial owner.

11. The project commenced in 2017. A development permit for the Lands was obtained in 2021. However, to date, the Lands remain unimproved bare land.

THE LIMITED PARTNERSHIP

12. On September 14, 2017, Henry GP, as general partner, Abana Capital Management Group Inc., as founding limited partner, and Henry LP, as limited partner, entered into an amended and restated limited partnership agreement, as subsequently amended (the "**Limited Partnership Agreement**").

13. 1215914 B.C. Ltd. ("**121**") replaced Henry GP as general partner of Henry LP in July 2019. Navid Morawej ("**Navid**") and Amin Eskooch ("**Amin**") are the directors and controlling minds of 121.

14. After 121 became the general partner, Henry LP contracted with Navid and Amin's company, Aultrust Financial Ltd. ("**Aultrust**"), to provide project development services. Aultrust has been paid well in excess of $600,000 for the provision of such services.

PRIOR SALE EFFORTS

15. Progress on the project was slow. Unitholders became increasingly dissatisfied. Eventually, unitholders asked that a realtor be hired to sell the Lands. 121 acceded and hired Colliers Macaulay Nicolls Inc. ("**Colliers**").

16. The unitholders became unhappy with Navid and Amin's handling of the marketing and sale efforts. Many formed the view that Navid and Amin were pursuing transactions with

a view to benefitting themselves personally (e.g., joint venture agreements that would enable them to continue to earn fees rather than outright sales).

17. In or about April 2023, the unitholders passed an extraordinary resolution to remove 121 as general partner and appoint a new general partner. The resolution was subsequently withdrawn in September 2023 for commercial reasons (e.g., pressure to meet a deadline of December 31, 2023 to submit building plans and thereby have the project "grandfathered" under the then prevailing building code provisions and concerns about protracted and costly litigation with Navid, Amin, 121 and Aultrust).

THE PURPOSE FOR WHICH THESE PROCEEDINGS WERE COMMENCED

18. On March 10, 2024, Amin sent an email to the unitholders indicating that the Lands would likely become the subject of a court proceeding.

19. In early June 2024, two of the Opposing Unitholders, Amir Sadeghi ("**Amir**") and Hossein Ghandchi ("**Ghandchi**"), were advised that they ought to meet with Jeremy Towning ("**Towning**"), the Director of Acquisitions at the property development company, Swissreal Properties Ltd. ("**Swissreal**").

20. The meeting was arranged and lasted approximately 30 to 45 minutes. During the meeting:

    a) Towning advised that he had found an equity partner to purchase the Lands for $15.5 million and that a deal in that regard had been worked out (during the course of the sale efforts discussed above, offers were received in the range of $27 to $30 million);

    b) Towning advised that Navid and Amin were involved in the deal and had initially commenced negotiations with Franz Gehriger ("**Gehriger**"), Founder and Executive Director of Swissreal;

    c) At Gehriger's instruction, Towning continued the negotiations with Navid and Amin and it was agreed that the equity partner would be brought in, Swissreal, Navid and Amin (though their own company) would become co-general partners,

and the project would be brought to construction with Kingsett Mortgage Corporation ("**Kingsett**") continuing to be the lender;

d) Towning advised that he could not come to an understanding with Navid and Amin during their negotiations as they insisted on a 50/50 profit-sharing arrangement with Swissreal;

e) Towning believed this was too high of a percentage for Navid and Amin due to their lack of development experience;

f) Navid and Amin thereafter ceased negotiating with Towning and engaged in direct negotiations with Gehriger;

g) Towning advised that his negotiations with Navid and Amin led him to believe that their motivation was personal profit and he wished to advise Amir and Hossein of the deal so that the unitholders could consider alternative options;

h) Towning suggested that Amir and Hossein could put in an offer, which he would advocate for, so that the unitholders could avoid losing their investments;

i) Towning was asked the identity of the potential equity partner, but he refused to so advise; and

j) Towning advised that Kingsett was planning to file a petition in furtherance of the deal amongst Swissreal, Navid and Amin.

21. Navid recently became the Director of Operations for Swissreal and Amin recently became its Director of Investment.

22. As a result of the meeting with Towning, Amir and Hossein asked a solicitor to occasionally check whether Kingsett had commenced a proceeding against Henry LP. The solicitor thereafter brought the within proceeding to their attention. The petition makes reference to a stalking horse bid; however, curiously, no such bid is in evidence.

23. It took some time for the Opposing Unitholders to organize and engage counsel. After some weeks, the Opposing Unitholders retained Owen Bird Law Corporation ("**Owen Bird**"). It was only after Owen Bird corresponded with Kingsett's counsel that Navid and Amin sent an email to the unitholders advising of the receivership application.

RECEIVERSHIP UNNECESSARY AND INAPPROPRIATE

24. As noted above, the Lands are bare land. No care or maintenance is required. There is no risk of damage or waste.

25. The only appraisal evidence is to the effect that Kingsett is well secured and not at risk. Offers made during the course of recent sale efforts also indicate that to be the case.

26. The Opposing Unitholders wish to be afforded the chance to pursue a sale, whether in the context of a foreclosure proceeding or otherwise. Absent an ability to market and sell the Lands within the context of a foreclosure proceedings, the Opposing Unitholders ought to have the opportunity to pursue solutions, including the potential removal of 121 as general partner and the pursuit of a sale, investment or refinancing.

27. The Lands can be marketed and sold without the unnecessary and significant cost of a receivership. The unitholders would ultimately bear that cost. That outcome would be wholly inequitable. The unitholders ought to be afforded a chance to realize at least some return on their investments.

Part 5: LEGAL BASIS

THE RECEIVERSHIP APPLICATION

1. The appointment of a receiver is extraordinary relief that should be granted cautiously and sparingly. Even if the appointment of a receiver would otherwise be appropriate, the court will consider whether other measures might be employed to balance the interests of the parties. Whenever possible, the court ought to fashion a less intrusive remedy.

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

Schmidt v. Balcom, 2016 BCSC 2438

Coromandel Properties Ltd. (Re), 2023 BCSC 2187 at paras 23 and 40

2. The grounds advanced by the petitioner for the appointment of a receiver appear to be:

   a) There has been a default; and

   b) The contracts contain an agreement to the appointment of a receiver.

3. Those grounds are insufficient. If those grounds were sufficient, then receivers would be appointed as a matter of course upon default. That is clearly not the law.

4. Furthermore, the petitioner seeks the appointment of the receiver for the express purpose of selling the Lands. An immediate sale order would wrongfully and unjustly defeat the equitable right of redemption and eliminate the customary fixed redemption period. It would also involve the appointment of a receiver prior to the petitioner obtaining judgment, which requires special circumstances and when necessary to preserve the assets from deterioration or jeopardy. That is not the case here.

South West Marine Estates Ltd. v. Bank of B.C., 1985 CanLII 570 (BCCA)
Ryder Park Ltd. v. Marsh, 1994 CanLII 10236 (NB QB) at p. 8
F.B.D.B. V. F.J.H. Const. Ltd, 1988 CanLII 3004 (BCCA) at para 16
Bank ofMontreal v. Beilstein, 1998 CanLII 6982 (NWTSC) at paras 11, 15, 17 and 21
Toronto Dominion Bankv. First Canadian Land Corp. (1989), 77 C.B.R. (N.S.) at para 8
Moore v. North Pacific Fish Ltd., 1980 CanLII 360 (BCSC)
355498 B.C. Ltd. v, Namu Properties, 1999 BCCA 138
North Vancouver v, Carlisle, 1922 CanLII 726 (BCCA)

5. The petitioner also has an obvious and readily available less intrusive and less costly remedy: foreclosure. A foreclosure proceeding would respect and protect the petitioner's legitimate interest in being repaid, be vastly less expensive and, at the same time, provide the Opposing Unitholders time to pursue alternative options and redeem the mortgage.

6. To obtain the extraordinary remedy of appointing a court-appointed receiver, the petitioner must satisfy the court that the appointment of a receiver would be "just or convenient". The court determines whether an appointment would be just or convenient based on the specific circumstances of each individual case. There is no exhaustive list of relevant factors, however factors the court has considered relevant on other applications to appoint receivers have included:

a) The risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;

b) The preservation and protection of the property;

c) The balance of convenience to the parties;

d) Whether the applicant has a contractual right to the appointment of a receiver;

e) Whether irreparable harm might be caused if no order is made;

f) Whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;

g) The costs to the parties;

h) The likelihood of maximizing return to the parties; and

i) The goal of facilitating the duties of the receiver.

Textron

Maple Trade Financing Inc. v. CY Oriental Holdings Ltd., 2009 BCSC 1527

7. In the present case, the appointment of a receiver would not be just or convenient for reasons including:

a) The Lands are bare lands. There is no risk of harm or need to protect or preserve the Lands;

b) There is no evidence that the petitioner's security is at risk or that the petitioner stands to suffer a shortfall. To the contrary, the only evidence is to the effect that the petitioner is well secured;

c) The appointment of a receiver would significantly prejudice the Opposing Unitholders and cause them irreparable harm. The Opposing Unitholders would

lose the time and opportunity to redeem the mortgage and see their investments eroded as a result of unnecessary and significant professional fees.

d) The significant costs associated with a receivership would entail no corresponding benefit whatsoever. The remedy of a receivership is substantially out of proportion to the circumstances;

e) The petitioner has filed no evidence whatsoever that would support a receivership in preference to a foreclosure proceeding. The only evidence is that the petitioner's interests would be entirely protected with the context of a customary foreclosure proceeding;

f) Absent redemption of the mortgage, the Lands' market value will be realized through a sale. Either the unitholders or, if they are ultimately unable to redeem the mortgage, the petitioner, can secure a sale of the Lands without the additional layer of costs associated with a receivership. Which is to say, realizations will be maximized outside of a receivership proceeding; and

g) The meeting with Towning indicates that this proceeding was commenced under suspicious circumstances and Navid and Amin may be attempting to utilize a receivership as a means of maintaining an interest in the Lands while shedding themselves of the unitholders and avoiding any potential liability.

8. For all of the foregoing reasons, it is respectfully submitted that the petition ought to be dismissed.

SEALING ORDER

9. 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 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 salutary effects of the confidentiality order, outweigh the deleterious 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

Sherman Estate v. Donovan, 2021 SCC 25

10. Public disclosure of valuation evidence could negatively impact the future sales process for the Lands. Any adverse influence on sale price would pose a serious risk to the interests of the stakeholders. Disclosure could also hinder the ability to maximize the value obtained for the Lands. 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. Furthermore, the sealing order is sought on the basis that any interested party may apply to set it aside.

Ontario Securities Commission v Bridging Finance Inc., 2021 ONSC 4347

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of H. Ghandchi made July 22, 2024.
2. Such further and other materials as counsel may advise.

Date: July 22, 2024

Signature of lawyer for petition respondents,
Scott H. Stephens

Petition respondents' address for service:

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Name of the petition respondents' lawyer:	Scott H. Stephens