



No. S-247764
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

6511 SUSSEX HEIGHTS DEVELOPMENT LTD.
and
MINORU SQUARE DEVELOPMENT LIMITED PARTNERSHIP
and
MINORU VIEW HOMES LTD.

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: KingSett Mortgage Corporation (the “Petitioner” or “KingSett”)

To: The Service List

TAKE NOTICE that an application will be made by the applicant to Justice Masuhara at the courthouse at 800 Smithe Street, Vancouver, BC on January 20, 2025 at 9:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 10 minutes.

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

Part 1: ORDER(S) SOUGHT

1. The Petitioner seeks the following Declarations and Orders, substantially in the form attached as **Schedule "A"**:
 - (a) A declaration that the Mortgage dated October 26, 2021 and Assignment of Rents dated October 26, 2021 (the "**First Mortgage**" and the "**Assignment of Rents**") granted by Minoru View Homes Ltd. (the "**Nominee**") in favour of KingSett, which are registered in the Land Title Office (the "**LTO**") under registration numbers CA9469145 and CA9469146 are valid charges on the Property (as defined below).
 - (b) A declaration that the Mortgage dated March 9, 2022 (the "**Second Mortgage**") granted by the Nominee in favour of KingSett, which is registered in the LTO under registration number CA9774692 is a valid charge on the Property (as defined below).
 - (c) A declaration that the Mortgage and assignment of Rents dated March 14, 2024 (the "**Collateral Mortgage**") granted by the Nominee in favour of KingSett, which are registered in the LTO under registration numbers CB1229022 and CB1229023 are valid charges on the Property (as defined below).
 - (d) A declaration that the General Security Agreement dated October 29, 2021 (the "**General Security Agreement**") granted by the Nominee in favour of KingSett in respect of which a financing statement was filed in the British Columbia Personal Property Registry (the "**PPR**") under base registration number 334886N on October 28, 2021, constitutes a charge in favour of KingSett.
 - (e) A declaration that the a Beneficial Direction, Acknowledgement, and Security Agreement dated October 29, 2021 (the "**Beneficial Security Agreement**") granted by Nominee and Minoru Square Development Limited Partnership (the "**Limited Partnership**" and collectively with the Nominee, the "**Borrowers**") in favour of KingSett in respect of which financing statements were filed in the PPR

under base registration number 334886N on October 28, 2021, constitutes a charge in favour of KingSett.

- (f) A declaration that the first mortgage loan in the amount of \$72,650,000 (the “**Loan**”), provided for in the Commitment Letter (as defined below) to Borrowers by KingSett is in default.
- (g) A declaration that the amount of money secured by the Security (as defined below) is the sum of \$76,599,425.45 as of January 6, 2025, (plus interest and fees that continue to accrue) and is justly due and owing.
- (h) Judgment against the Borrowers, jointly and severally, in the amount of \$76,599,425.45 as of January 6, 2025, plus interest from and after the date of this Notice of Application at the Contractual Interest Rate (defined below) or in the alternative, pursuant to the *Court Order Interest Act*, RSBC 1996, c 79.
- (i) Such further and other relief as counsel may advise and this Court deems to be just and convenient in the circumstances.

Part 2: FACTUAL BASIS

A. Loan Agreement and Loan Documents

- 2. Pursuant to a commitment letter dated October 18, 2021, as amended by a first amending agreement dated February 14, 2022, a second amending agreement dated March 20, 2023 and a third amending agreement dated February 23, 2024 (as may be further amended, restated, or supplemented from time to time, the “**Commitment Letter**”), KingSett provided the Loan to the Borrowers.
- 3. Pursuant to the Commitment Letter, the Borrowers agreed:
 - (a) to make monthly interest payments and missing an interest payment constitutes an “**Event of Default**” under the Commitment Letter;

- (b) to pay KingSett accrued interest at a rate of the Royal Bank of Canada's Prime Rate plus 5.54% (with a floor rate of 12.24%), per annum, calculated on the daily outstanding balance, compounded and payable monthly (the "**Contractual Interest Rate**");
 - (c) to pay KingSett all costs and expenses incurred by KingSett in connection with the Loan; and
 - (d) that if an Event of Default occurs, KingSett may demand repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs incurred by KingSett and may declare the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs be forthwith due and payable.
4. As security for the Loan, the Borrowers provided the following, among other things, in favor of KingSett:
- (a) the General Security Agreement executed by the Nominee;
 - (b) the First Mortgage and the Assignment of Rents executed by the Nominee;
 - (c) the Second Mortgage executed by the Nominee; and
 - (d) a Beneficial Security Agreement executed by the Borrowers.
- (collectively, the "**Security**").
5. The First Mortgage is in the principal amount of \$61,000,000, and, charges the lands owned by the Nominee legally described as LOT 1 SECTION 5 BLOCK 4 NORTH RANGE 6 WEST NEW WESTMINSTER DISTRICT PLAN EPP112775, PID 031-656-561 (the "**Property**").
6. The Second Mortgage is in the principal amount of \$80,000,000 and charges the Property.
7. KingSett has a security interest registered against, *inter alia*, the Borrowers at the PPR under base registration number 334886N against all of the Borrowers' present and after

acquired personal property located at, relating to, arising from, or used in connection with the Property (the “**Site Specific Personal Property**”).

B. The Highline Loan Agreements and Loan Documents

8. As detailed in the first affidavit of Daniel Pollack made November 5, 2024 (the “**First Affidavit**”), the Borrowers provided certain guarantee to KingSett in connection with the obligations of a related entity, 6511 Sussex Heights Development Ltd. (the “**Highline Borrower**”), due and owing to KingSett (the “**Guarantee**”).
9. As security for the Guarantee, the Nominee provided a collateral mortgage and assignment of rents to KingSett in the principal amount of \$80,000,000 registered against the Property (the “**Collateral Mortgage**”).

C. The Default and Demand

10. On September 1 and October 1, 2024, the Borrowers failed to make monthly interest installment payments to KingSett, as required pursuant to Article A.15 of the Commitment Letter. The failure to make a monthly interest payments constitutes an Event of Default under the Commitment Letter and the Security.
11. On October 11, 2024, KingSett exercised its right to demand payment of the Borrowers’ outstanding indebtedness, which at the time totalled \$74,159,665.83.

D. The Receivership

12. On December 13, 2024, this Court granted an order to appoint KSV Restructuring Inc. (the “**Receiver**”) as receiver without security, of all of the assets, undertakings and property of the Borrowers and the Highline Borrower.
13. KingSett understands that the Receiver will seek an Order of this Court to market and sell the Property.
14. In connection with the sale of the Property, KingSett is seeking a declaration that:

- (a) each of the First Mortgage, the Assignment of Rents, and the Second Mortgage is a valid charge against the Property;
- (b) the Collateral Mortgage is a valid charge against the Property;
- (c) each of the General Security Agreement and the Beneficial Security Agreement constitutes a security interest perfected with respect to the Borrowers' Site Specific Personal Property; and
- (d) the Borrowers are liable to KingSett for the Indebtedness (as defined below).

E. Borrowers' Indebtedness

15. To date, the Borrowers have failed to make payment in response to the KingSett's demands. The Borrowers remain indebted to KingSett as follows as of January 6, 2025:

- (a) \$72,650,000.00 with respect to the principal amount due and owing with respect to the Loan;
- (b) \$3,849,295.54 with respect to accrued and unpaid interest;
- (c) \$100,129.91 with respect to costs incurred and unpaid in connection with the Loan; and
- (d) \$42,445.34 in legal fees incurred in connection with the Loan, with these fees continuing to accrue

for a total of \$76,641,870.79 (the "**Indebtedness**") due and owing to KingSett. The Indebtedness is incurring interest at a rate of \$25,644.00 a day and professional fees continue to be incurred.

16. The Indebtedness is fully due and owing and payable to KingSett and the Borrowers have failed or neglected, and continue to fail or neglect, to pay.

F. The City of Richmond Charges

17. The City of Richmond has registered three rent charges against the Property:

- (a) Rent Charge registered under charge number CA9783064 registered on March 14, 2022 (the “**First Rent Charge**”);
 - (b) Rent Charge registered under charge number CA9783017 registered on March 14, 2022 (the “**Second Rent Charge**”); and
 - (c) Rent Charge registered under charge number CA9783050 registered on March 14, 2022 (the “**Third Rent Charge**”, collectively with the First Rent Charge and the Second Rent Charge, the “**Rent Charges**”).
18. Pursuant to a priority agreement registered against the Property under charge number CA9783068 on March 14, 2024, the First Rent Charge has priority over the First Mortgage and the Assignment of Rents and the Second Mortgage.
19. Pursuant to a priority agreement registered against the Property under charge number CA9783022 on March 14, 2024, the Second Rent Charge has priority over the First Mortgage and the Assignment of Rents and the Second Mortgage.
20. Pursuant to a priority agreement registered against the Property under charge number CA9783052 on March 14, 2024, the Third Rent Charge has priority over the First Mortgage and the Assignment of Rents and the Second Mortgage.
21. Each of the Rent Charges is registered in priority to the Collateral Mortgage.
22. Therefore, insofar as the City of Richmond can prove to this Court that the Rent Charges are valid charges on the Property, the Rent Charges will have priority over the First Mortgage and the Assignment of Rents, the Second Mortgage, and the Collateral Mortgage.

Part 3: LEGAL BASIS

1. KingSett pleads and relies on the common law principle and applicable related statutes related to the laws of contract.
2. The Borrowers are indebted to KingSett in the amount of the Indebtedness, with interest continuing to accrue with respect to the Indebtedness.

3. The Commitment Letter, Security, and the Collateral Mortgage each constitutes a binding contract.
4. The First Mortgage, the Assignment of Rents, the Second Mortgage, the Collateral Mortgage, and the General Security Agreement have been properly registered with the LTO and the PPR, respectively, and provide security interests in the Property and related personal property, in favour of KingSett.
5. In breach of the Commitment Letter, the Borrowers have refused or neglected to pay the Indebtedness and the interest that continues to accrue.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Daniel Pollack, made on November 5, 2024;
2. Affidavit #2 of Daniel Pollack, made on January 8, 2025; and
3. Such other materials as counsel may advise and this Court allows.

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:

January 8, 2025



Signature of Applicant(s)

Lawyer for applicant(s)

Mary Buttery, K.C. / Lucas Hodgson

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

[The following information is provided for data collection purposes only and is of no legal effect.]

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

Schedule "A"

Draft Order

(See attached)

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

6511 SUSSEX HEIGHTS DEVELOPMENT LTD.
and
MINORU SQUARE DEVELOPMENT LIMITED PARTNERSHIP
and
MINORU VIEW HOMES LTD.

RESPONDENTS

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE RECEIVERSHIP OF 6511 SUSSEX HEIGHTS
DEVELOPMENT LTD. AND MINORU SQUARE DEVELOPMENT LIMITED
PARTNERSHIP AND MINORU VIEW HOMES LTD.**

ORDER MADE AFTER APPLICATION: MINORU JUDGEMENT

BEFORE } THE HONOURABLE JUSTICE MASUHARA) 2024/01/20

ON THE APPLICATION of the Petitioner, coming on for hearing at 800 Smithe Street, Vancouver, BC V6Z 2E1 on January 20, 2025.

AND ON READING Affidavit #1 of Daniel Pollack made on November 5, 2024 and Affidavit #2 of Daniel Pollack made on January 8, 2025 (the “**Second Pollack Affidavit**”); AND ON HEARING Mary Buttery, K.C. and Lucas Hodgson, counsel for KingSett Mortgage Corporation. and those other counsel as set out in **Schedule “A”**.

THIS COURT ORDERS AND DECLARES that:

1. The mortgage and assignment of rents dated October 26, 2021 (the “**First Mortgage**”) granted by Minoru View Homes Ltd. (the “**Nominee**”) in favour of KingSett Mortgage Corporation (“**KingSett**”), which are registered in the New Westminster Land Title Office (the “**LTO**”) under registration numbers CA9469145 and CA9469146, constitute valid charges in favour of KingSett in priority to the interest therein or claims thereto of all Respondents and all persons claiming by, through, or under them, against the following lands legally described as LOT 1 SECTION 5 BLOCK 4 NORTH RANGE 6 WEST NEW WESTMINSTER DISTRICT PLAN EPP112775, PID 031-656-561 and municipally described as 5768 Minoru Blvd, Richmond, British Columbia (the “**Property**”), subject only to the rent charges registered by the City of Richmond set out in Schedule “B” (the “**Rent Charges**”) in so far as the Rent Charges are found by this Court to be valid charges against the Property.
2. The mortgage dated March 9, 2022 (the “**Second Mortgage**”) granted by the Nominee in favour of KingSett, which is registered in the LTO under registration number CA9774692, constitutes a valid charge in favour of KingSett in priority to the interest therein or claims thereto of all Respondents and all persons claiming by, through, or under them, against the Property, subject only to the Rent Charges in so far as the Rent Charges are found by this Court to be valid charges against the Property and the First Mortgage.
3. The mortgage and assignment of rents dated March 14, 2024 (the “**Collateral Mortgage**”) granted by the Nominee in favour of KingSett, which is registered in the LTO under registration numbers CB1229022 and CB1229023, constitute valid charges in favour of KingSett in priority to the interest therein or claims thereto of all Respondents and all persons claiming by, through, or under them, against the Property, subject only to the Rent Charges in so far as the Rent Charges are found by this Court to be valid charges against the Property, the First Mortgage, and the Second Mortgage.
4. The general security agreement, dated October 29, 2021 granted by the Nominee in favour of KingSett in respect of which a financing statement was filed in the British Columbia Personal Property Registry (the “**PPR**”) against the Nominee under base registration number 334886N on October 28, 2021, constitutes a valid charge in favour of KingSett on

all present and after acquired personal property of the Nominee located at, relating to, arising from, or used in connection with or which is necessary to the use and operation of the Property in priority to the interest therein or claims thereto of all Respondents and all persons claiming by, through, or under them.

5. The beneficial direction, acknowledgement, and security agreement, dated October 29, 2021 granted by the Nominee and Minoru Square Development Limited Partnership (the “**Limited Partnership**”, together with the Nominee, the “**Borrowers**”) in favour of KingSett in respect of which a financing statement was filed in the PPR against the Borrowers under base registration number 334886N on October 28, 2021, constitutes a valid charge in favour of KingSett on all present and after acquired personal property of the Borrowers located at, relating to, arising from, or used in connection with, or which is necessary to the use and operation of the Property in priority to the interest therein or claims thereto of all Respondents and all persons claiming by, through, or under them.
6. The first mortgage loan advanced by KingSett to the Borrowers in the amount of \$72,650,000 (the “**Loan**”), pursuant to a commitment letter dated October 18, 2021, as amended by a first amending agreement dated February 14, 2022, a second amending agreement dated March 20, 2023 and a third amending agreement dated February 23, 2024, is in default.
7. The Borrowers are indebted to KingSett for their default of the Loan in the amount of \$76,599,425.45 as of January 6, 2025 (plus interest and fees that continues to accrue), and this amount is justly due and owing.
8. KingSett is hereby granted judgment against the Borrowers, jointly and severally, in the amount of \$76,599,425.45 as of January 6, 2025 plus interest from and after the date of this Order at the rate of the Royal Bank of Canada's Prime Rate plus 5.54% (with a floor rate of 12.24%), per annum, calculated on the daily outstanding balance, compounded and payable monthly, or in the alternative, pursuant to the *Court Order Interest Act*, RSBC 1996, c 79.
9. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days’ notice to the Service List and to any other party who may be

affected by the variation or amendment, or upon such other notice, if any, as this Court may order.

10. Endorsement of this Order by counsel appearing on this application, other than counsel for the Applicant is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:

Signature of Mary Buttery, K.C. / Lucas
Hodgson, lawyers for the Applicant

BY THE COURT REGISTRAR

Schedule "A"

Counsel Appearing

Counsel	Party Represented

Schedule "B"

City of Richmond Charges

Charge Holder	Charge Number
City of Richmond	Rent charge registered under charge number CA9783064 registered on March 14, 2022 against the Property
City of Richmond	Rent charge registered under charge number CA9783017 registered on March 14, 2022 against the Property
City of Richmond	Rent charge registered under charge number CA9783050 registered on March 14, 2022 against the Property