No.: H230802
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

PETITIONER

AND:

HARO-THURLOW STREET PROJECT LIMITED PARTNERSHIP,
HARO AND THURLOW GP LTD., 1104227 B.C. LTD.,
CLOUDBREAK HOLDINGS LTD.,
CM (CANADA) ASSET MANAGEMENT CO. LTD.,
FORSEED HARO HOLDINGS LTD., 1115830 B.C. LTD.
TERRAPOINT DEVELOPMENTS LTD., KANG YU ZOU,
WEI DONG, WEI ZOU, XIA YU and
TREASURE BAY HK LIMITED

RESPONDENTS

RESPONSE TO PETITION

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

Filed by: Forseed Haro Holdings Ltd., (the "petition respondent")

THIS IS A RESPONSE TO the petition filed 23/Oct/2023

Part 1:ORDERS CONSENTED TO

The petition respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the petition: 21 and 22

Part 2:ORDERS OPPOSED

The petition respondent opposes the granting of the orders set out in paragraphs 6, 14 and 20 of Part 1 of the petition.

Part 3:ORDERS ON WHICH NO POSITION IS TAKEN

The petition respondent takes no position on the granting of the orders set out in paragraphs 1, to 5, 7, to 13, and 15 to 18 of Part 1 of the petition.

Part 4: FACTUAL BASIS

1. This is essentially an action to enforce the provisions of a mortgage. It seeks judgment, a Declaration of Charge, the fixing of a redemption period, and an immediate Order for Sale, through the medium of appointing a Receiver.

2. The Petitioner seeks almost none of that relief, instead it attempts to obtain an immediate Receivership Order for Sale without the granting of a period of redemption

3. Quite apart from that, from the point of view of the Respondents, it is difficult to know what, actually, to say in a factual way in response to the Petition.

4. The Petitioner has not alleged or sworn to any facts that in combination would entitle it to the relief it seeks and, as will be argued later, the onus to produce such evidence is on the Plaintiff.

5. There is no evidence of value, no evidence the assets are in danger, no evidence they are wasting, no evidence of any infusion of cash required to save an ongoing business, no evidence of corporate disarray which is impairing the assets, in short, none of the evidence required to support the Order sought.

6. The Order seems to be sought solely on the basis that the Respondent, a Limited Partnership and its General Partner agreed, in the Commitment Letter and Mortgage to the appointment of a Receiver, and that the Receiver will facilitate a sale.

7. The first is not sufficient and the second is legally unsound. A sale, at this stage, would improperly limit the mortgagor's equitable right of redemption, to the corresponding detriment of the second mortgage holders.

8. Indeed, the entire proceeding and application appear designed expressly to avoid bringing a standard foreclosure proceeding, in which, typically, redemptions periods are fixed, although the Petition is framed otherwise. If that is the object of the action, it is based on a fundamental misapprehension of the law surrounding the equity of redemption, the right to exercise which, in fact, is triggered by this very proceeding.

9. Be that as it may, the Respondents do produce evidence relevant to the Court's consideration, as follows:

   a. There is substantial equity in the property;

   b. The property was purchased for $172,750,000 in August 2018

   c. There is a very good prospect that the Plaintiff will be paid in full and redeemed by June 30, 2024, based on discussions presently underway;

   d. The business does not need a Receiver for its borrowing powers or for its financial stability;

   e. The Receiver would add a layer of cost and its appointment is not being sought for any purpose linked to the operation of any business;

   f. The appointment very well might jeopardize negotiations ongoing which are intended to save the whole development for all the stakeholders .

Part 5: LEGAL BASIS

Underlying Fundamentals

1. 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. In ***355498 B.C. Ltd. v. Namu Properties*, 1999 BCCA 138**, Madam Justice Southin sets out the oft cited judgment of Lord Jessell, M.R. in *Campbell v. Holyland* (1877), 7 Ch. 166:

> [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)

2. The equity of redemption, then, is something that arises out of the relationship between mortgagor and mortgagee. That fundamental relationship in the law of British Columbia was, of course, confirmed in the well-known case of *North Vancouver v. Carlisle*, 1922 CanLII 726 (BC CA). In British Columbia, despite the changes to the *Land Title Act*, RSBC 1996, c. 250 in 1989, a mortgage operates as if it were a conveyance with a right of defeasance. The right of defeasance, that is, the equity of redemption, does not arise as a result of a foreclosure proceeding being commenced. In fact, foreclosure proceedings were designed to bring some finite limit to the already existing right of redemption.

> Proceedings for redemption were invented before proceedings for foreclosure.
>
> ***CIBC Mtge. Corp. v. Burnham*, 1986 CanLII 1032,** para. 11

3. Indeed, the concept of the equity of redemption is the golden thread, to borrow from criminal law, that runs through the mortgage relationship, and impacts any actions taken to enforce the mortgage or its terms.

> A Court would not allow a right of redemption to be in any way fettered.
>
> ***355498 B.C. Ltd., supra,*** para. 13, see also para. 15

> At p. 329 A.C.:
>
> The doctrine "Once a mortgage always a mortgage" means that no contract between a mortgagor and a mortgagee made at the time of the mortgage and as part of the mortgage transaction, or, in other words, as one of the terms of the loan, can be valid if it prevents the mortgagor from getting back his property on paying off what is due on his security. Any bargain which has that effect is invalid, and is inconsistent with the transaction being a mortgage.
>
> ***Dical Investments Ltd. v. Morrison (C.A.)*, 1990 CanLII 6606 (ON CA)**; and
>
> See also ***Dhillon v. Jhutee*, 1998 CanLII 5414 (BC SC)** paras. 15 - 19

> [26] In *Fairclough v. Swan Brewing Co.* (1912), 28 T.L.R. 450, which was an appeal from the Supreme Court of Australia, Lord MacNaghten stated:
>
> > The arguments of counsel ranged over a very wide field. But the real point was a narrow one. It depended upon a doctrine of equity which was not open to question. 'There is,' as Vice-Chancellor Kindersley said in *Gossop v. Wright*, 32 L. J. Ch. at p. 653, 'no doubt that the broad rule is this: that the Court will not allow the right of redemption in any way to be hampered or crippled in that which the parties intended to be security, either by any contemporaneous instrument with the deed in question or by anything which this Court would regard as a simultaneous arrangement or part of the same transaction ... it [is] now firmly established by the House of Lords that ... that equity would not permit any device or contrivance being part of the mortgage transaction or contemporaneous with it to prevent or impede redemption. Counsel on behalf of the respondents admitted, as he was bound to admit,

> that a mortgage could not be made irredeemable. That was plainly forbidden.

***Chien v. Teh*, 2015 BCSC 2287**, para. 35

4. The equity of redemption is a concept that equity imposed upon the parties to a mortgage, regardless and, in fact, despite, the wording of the contract between them. However, there is, today, usually a contractual right as well.

CIBC, supra, paras. 9 & 11;
355498, supra;

5. The contractual right of defeasance is a separate contract between the parties and is to be strictly enforced, without importing into it the other terms of the mortgage.

***Moore v. North Pacific Fish Ltd.*, 1980 CanLII 360 (BC SC)**

6. That fundamental right is not lost by an election on the part of a mortgagee to sue on the covenant and seek an Order for Sale. It is certain, of course, that a mortgagee may decide to commence action on the covenant or to appoint a Receiver, all without commencing a foreclosure proceeding.

7. In those circumstances, however, the equity of redemption is neither side-stepped nor avoided.

> That passage defines what is now the everyday procedure in these cases. Where the mortgage seeks a power to sell, it ordinarily should not be granted that power until after the expiration of a fixed period of redemption.

***F.B.D.B. v. F.J.H. Const. Ltd.*, 1988 CanLII 3004 (BC CA)**, para. 16

8. The Court also adopted a decision of Taylor, J.:

> But I am satisfied that the granting of an order for sale at that stage would be as much a matter of discretion as the granting of an order for sale after decree nisi and I do not accept the proposition that a mortgagee who thus obtained an order for sale in lieu of decree nisi would be relieved of the normal

> obligation to account and the setting of a period within which the mortgagor may redeem. While the court may waive the requirement for accounting and the establishment of a redemption period, it is no more likely, I think, to do so in one case than in the other.

F.B.D.B. v. F.J.H. Const. Ltd., supra, para. 19

9. In other words, whether by way of action on the covenant, appointment of Receiver, or otherwise, an immediate Order of Sale can only be made if the facts and evidence justify it. Absent such evidence, before any Order for Sale is made, a mortgagor is entitled to a redemption period of some length – routinely six months.

10. Indeed, usually it is the commencement of enforcement proceedings by the mortgagee, on the covenant or otherwise, that triggers the mortgagor's right to enforce its equity of redemption.

***Bank of Montreal v. Sam Richman*, 1974 3. O.R. (2d) 191** –No provision in a mortgage contract can be construed so as to be inconsistent with the right of redemption.

***Ryder Park Ltd. v. Marsh*, 1994 CanLII 10236 (NB QB)**, p. 8; and
***Bank of Montreal v. Beilstein*, 1998 CanLII 6982 (NWT SC)**, paras. 11, 15, 17 & 21

12 The Court of Appeal undertook a very complete analysis of the right of a mortgagee to seek a sale of the property based on the mortgage contract, without commencing a foreclosure proceeding, in ***South West Marine Estates Ltd. v. Bank of B.C.*, 1985 CanLII 570 (BC CA)**. the Court said:

> [12] The following submission is contained in the factum of the appellant:
>
> > 16. While a mortgagor's equity of redemption is an interest in land that equity has always guarded, it is respectfully submitted that protection of the equity of redemption by the setting of a redemption period is only appropriate, in a situation where a mortgagee seeks the aid of the Court in the enforcement of its remedy of foreclosure.
>
> [13] I do not agree with this submission. Even though the

> mortgagee had a contractual right to obtain title in the event of default, the courts of equity intervened to protect the equity of redemption by fixing a redemption period. The intervention by a court of equity to restrain the exercise of a contractual power of sale during the redemption period is a similar interference with contractual rights in order to protect the equity of redemption.
>
> [14] If I am wrong in concluding that the courts of equity would intervene to prevent the exercise of a contractual power of sale during the redemption period, it appears to me that this is a proper case for bringing the rules of equity into accordance with modern practice. Firstly, in order that there be certainty in commercial matters it is, in my opinion, necessary that the same principles apply to all proceedings whether by way of foreclosure or by way of exercise of a contractual power of sale. This rule is as follows:
>
> > Except in special circumstances the court will not make an order for sale or permit a sale to be made pursuant to a power of sale until the expiry of the normal redemption period (6 months).
>
> Secondly, the courts should intervene to protect the equity of redemption. To distinguish between a sale in foreclosure proceedings and a sale made pursuant to a contractual power of sale as a means of permitting the mortgagee to effectively eradicate the equity of redemption is not in accordance with the basic tenets of equity. The rules of equity are not to be fashioned on semantic or technical distinctions but must be framed so as to do justice between mortgagor and mortgagee. Justice requires that, except in special circumstances, the equity of redemption will be protected by fixing a redemption period of six months.

See also ***Imor Capital Corp. v. Bullet Enterprises Ltd.*, 2012 BCSC 899**

A. APPOINTMENT OF RECEIVER – POWER OF SALE

13 A Receiver should only be appointed if, in all the circumstances, it is just and convenient to do so.

14 An immediate power of sale should only be granted in exceptional circumstances. It should not be granted before the expiration of a period of redemption.

B. APPOINTMENT OF RECEIVER

15 The grounds advanced by the Petitioner for the appointment of a Receiver seem to be:

a. There has been default;

b. The contracts contain an agreement to the appointment of a Receiver; and

c. A Receiver can more efficiently sell the property than the Respondents.

16 That is not enough. Whether or not to appoint a Receiver calls for a "holistic" review of all the circumstances, "and a robust review" of them, to determine whether it is just and convenient to appoint a Receiver.

***Bank of Montreal v. Gian's Business Centre Inc.*, 2016 BCSC 2348**, paras. 23 & 24

17 The Petitioner advances the notion that there are two competing lines of authority as to the law applicable to the appointment of a receiver in British Columbia.

18 Since the decision of the Court of Appeal in ***Ward Western Holdings Corp. v. Brosseuk*, 2022 BCCA 32**, that argument cannot really be credibly advanced.

19 The first line of authority is said to consist of two decisions of Mr. Justice Burnyeat – ***United Savings Credit Union v. F & R Brokers Inc.*, 2003 BCSC 640** and **Canadian Imperial Bank of Commerce v. Can-Pacific Farms Inc., 2012 BCSC 437.**

20 The other line of authority is the fairly large number of cases that follow **Textron** (see post), **Maple Trade** (see post) and **BMO v. Gian** (see ante), generally regarded as the three leading authorities in the prevalent line of cases.

21 In paragraphs 15 and 17 of ***United Savings Credit Union (supra)*** Mr. Justice Burnyeat makes his view of the law clear:

> " A mortgagee is entitled to the appointment of a receiver or receiver manager as a matter of course when the mortgage is in default" (absent extraordinary circumstances)

22 ***CIBC (supra)*** was decided after what are now considered two of the three leading cases –

Textron* v. *Financial Canada Limited v. Chetwynd Motels Ltd.*, 210 BCSC 477**and ***Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527** Mr. Justice Burnyeat attempted to distinguish and to apply ***Re: Hansard Spruce Mills to ***Textron***, on the basis that, although ***Textron*** referred to ***United Savings Credit Union (supra)*** it relied on ***Maple Trade*** which had not considered it.

***Canadian Imperial Bank of Commerce v. Can-Pacific Farms Inc.*, 2012 BCSC 437** para 16

23 That is a dubious proposition at best, as it appears that Mr. Justice Masuhara did consider such cases.

Maple Trade at para. 13

24 In any event, Justice Burnyeat considered that those two cases did not correctly state the law in British Columbia.

CIBC para 16

25 The principal, expressed in the so called first line of authority relied on by the Petitioner cannot be maintained as an extant line of authority with any credibility since the Court of Appeals decision in ***Ward Western Holdings Corp v. Brosseuk*, 2022 BCCA 32**, quite apart from the ***Textron, Maple Trade, Gian's Line of Authorities***

26 In that case, the learned Chamber judge, in one passage of his decision had specifically referred to both ***United (supra)*** and ***CIBC (supra)*** and the concept that if there was a receivership clause in the mortgage in question, the mortgagee was ordinarily entitled to the appointment of a receiver and that the attention to be paid to the other factors was less exacting in those circumstances.

***Ward Western Holdings Corp v. Brosseuk*, 2021 BCSC 919 para 55**

26. The Court of Appeal said this:

> "The statements made by the judge in paragraph 55 are expressed too strongly. In isolation, they appear to understate

the burden on the appellant for a court appointed receiver"

***Ward Western Holdings Corp v. Brosseuk*, 2022 BCCA 32** para 57

27. Moreover, the court found that:

> [62] The judge's reasons as a whole demonstrate that the existence of a provision in the GSA allowing for the appointment of a receiver where an event of default occurred was but one of numerous considerations that he addressed. Moreover, his reasons demonstrate that he did not ultimately attach any inappropriate pre-eminence to the fact that the GSA provided for the potential appointment of a receiver.

28. The court then went on to consider those factors and to cite with approval, the triumvirate of ***Maple Trade***, ***Textron***, and ***BMO v. Gian***

29. Indeed, contrary to Mr. Justice Burnyeat' s statement, those three authorities do now represent the law in British Columbia.

30. The factors to be considered are numerous. In ***Maple Trade Finance Inv. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527**, Mr. Justice Masuhara set out a list of some matters to consider:

> [25] There are a number of factors that figure in the determination of whether it is appropriate to appoint a receiver. In Bennett on Receivership, 2d ed. (Toronto: Carswell, 1999), at p. 130, a list of such factors is set out as follows:
>
> a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
>
> b) 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;
>
> c) the nature of the property;
>
> d) the apprehended or actual waste of the debtor's

assets;

e) the preservation and protection of the property pending judicial resolution;

f) the balance of convenience to the parties;

g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;

h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;

i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;

j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;

k) the effect of the order upon the parties;

l) the conduct of the parties;

m) the length of time that a receiver may be in place;

n) the cost to the parties;

o) the likelihood of maximizing return to the parties;

p) the goal of facilitating the duties of the receiver.

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

Textron Financial Canada Limited v. Chetwynd Motels Ltd., **2010 BCSC 477**, paras. 54 & 55

32. Appointing a Receiver can only be justified following a consideration and analysis of the position of both parties.

Textron, supra, para. 53

33. In doing so, the detrimental effect on the mortgagee must be considered.

> [38] The Court considered the applicant's argument that in cases where the appointment is made under a statutory provision "the appointment is made as a matter of course as soon as the applicant's right is established, and it is unnecessary to allege any danger to the property; for the appointment of a receiver is necessary to enable the applicant to obtain that to which he is entitled." Huddart J. dismissed that proposition at para. 12:
>
> > I have some difficulty with the proposition that the appointment of a receiver after the order nisi will usually be appropriate. The appointment by a court of a receiver and particularly of a receiver-manager says to the world, including potential investors, that the mortgagor is not reliable, not capable of managing its affairs, not only in the opinion of the mortgagee, but also in the opinion of the court. That is a large presumption for a court to make when it is considering whether need or convenience or fairness dictates an equitable remedy even if the contract at issue permits such an appointment by instrument.

Textron, supra,

See also ***Textron, supra***, para. 55

34. While a written agreement in the contract between the parties, to agree to the appointment of a Receiver is a factor of some weight, 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.

> [53] The Alberta Court of Appeal has more recently applied the criteria described in Bennett and commented on the extent to which there should be consideration of the hardship arising from the appointment of a receiver. In BG International, at para. 17, the Court held:
>
> > [T]he chambers judge must carefully balance the rights of both the applicant and the respondent. The mere appointment of a receiver can have devastating effects. The respondent referred us to the statement in Swiss Bank Corp. (Canada) v. Odyssey Industries Inc. (1995), 30 C.B.R. (3d) 49(Ont. Gen. Div.

[Commercial List]) at para. 31:

> ... With respect to the hardship to Odyssey and Weston should a receiver be appointed, I am unable to find any evidence of undue or extreme hardship. Obviously the appointment of a receiver always causes hardship to the debtor in that the debtor loses control of its assets and business and may risk having its assets and business sold. The situation in this case is no different.

This quotation does not reflect the law of Alberta. Under the Judicature Act, it must be "just and convenient" to grant a receivership order. Justice and convenience can only be established by considering and balancing the position of both parties. The onus is on the applicant. The respondent does not have to prove any special hardship, much less "undue hardship" to resist such an application. The effect of the mere granting of the receivership order must always be considered, and if possible a remedy short of receivership should be used.

[55] In light of these authorities, I conclude that the statutory requirement that the appointment of a receiver be just and convenient does not permit or require me to begin my assessment of the material with the presumption that the plaintiff is entitled to a court-appointed receiver unless the defendant can demonstrate a compelling commercial or other reason why the order should not be made. Of the considered judgments on the issue from this Court, I prefer the approach taken by Masuhara J. in *Maple Trade Finance*. That approach permits the court, when it is appropriate to do so, to place considerable weight upon the fact that the creditor has the right to instrument-appoint a receiver. It also permits the court to engage in that analysis described by Taylor J. in *Cal Glass* when considering whether the applicant has established that it is appropriate and necessary for the court to lend its aid to a party who may appoint a receiver without a court order.

Textron, supra

35. Of the factors listed by Mr. Justice Masuhara, there is a paucity, if not a total absence of

evidence from the Plaintiff:

a. There is no irreparable harm which might be caused;

b. There is no risk to the security holder, considering the equity situation;

c. This is a development project, not suited to a receivership;

d. There is no waste;

e. There is no need for protection of the assets;

f. The balance of convenience favours the Defendants considering the impacts arising from the appointment of a Receiver;

g. The Plaintiff does have a contractual right to the appointment;

h. There will be no difficulty in enforcing rights under the mortgage.

36. Cost and necessity militate against the appointment. Above all, there is "a principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly".

Maple Trade, supra, para. 25(i)

37. That principle has found very recent application in **Re: Coromandel Properties Ltd., Vancouver Registry Action No. S230854** paras 14 and 23. The principle is indisputable

C. REQUIREMENT OF A REDEMPTION PERIOD

38. The Court in *Textron, supra,* quotes from *Bennett on Receivership* to the following effect:

> [67] At p. 234:
>
> > While the court has the power to authorize a sale at any time, the security holder should have judgment against the debtor before the court authorizes a sale of the debtor's business, especially where real estate is involved. In real estate matters, the debtor would normally be entitled to a redemption period.

[68] Further, Bennett notes at p. 245:

> In the case of real property the court generally protects the debtor's equity of redemption for a period of time before it authorizes a sale. Where there are no meritorious defences, the security holder should obtain judgment first and then give the debtor an opportunity to redeem before the assets are sold.

39. The ***Royal Bank v. Astor Hotel Ltd.*, 1986 CanLII 1072** is directly on point. It was considering an application to sell through a receiver and held that, 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 a normal period should be six months.

Royal Bank v. Astor, supra, paras. 34 & 35;
CIBC v. Burham, supra, para. 15; and
***Textron, supra*, para.** 63 – 65, 70 and 73

D. IMMEDIATE ORDER FOR SALE

40. The onus on the Plaintiff to adduce cogent evidence in order to obtain an immediate Order for Sale is high. The Plaintiff must establish exceptional circumstances.

> [13] The law is clear that an immediate order for sale or an immediate order absolute can only be made on proof by the mortgagee of exceptional circumstances. See *Devany v. Brackpool* (1981), 31 B.C.L.R. 256, 21 R.P.R. 100, 127 D.L.R. (3d) 498 (S.C.) where a number of authorities are reviewed by Taylor J. See also *Cardan Invt. Corp. v. Gibbons*, 42 B.C.L.R. 199, [1983] 3 W.W.R. 226 (S.C.) and, in particular at p. 228, where the judgment of van der Hoop L.J.S.C. reads in part as follows:
>
> > The petitioner may be granted an order for sale in lieu of an immediate order absolute at the hearing of the petition where the facts set out in the material justifies such an order. If a sale is approved, the mortgagor then loses the right to redeem, except in very unusual circumstances, but is still liable for any deficiency outstanding on the judgment on the personal covenant to pay. It is therefore only under very clear circumstances that an immediate order for

sale should be granted. [The italics are mine.]

***Bank of Nova Scotia v. Mrazek*, 1985 CanLII 507 (BC CA)**

41. The Court of Appeal 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. In this case, of course, there is no danger of shortfall.

42. The application should be dismissed, with costs to the Defendants in any event of the cause.

43. Indeed, in ***Sun Life Assurance Co. of Canada v. 535401 B.C. Ltd.*, 2001 BCSC 605**, in similar circumstances, 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.

44. The cumulative effect of all the authorities is to demonstrate, however, the jealousy with which the Court protects a mortgagor's full exercise of all that is inherent in the equity of redemption, unless the mortgagee, by compelling and cogent evidence, can establish the special circumstances needed to justify a sale at this stage of the proceedings

Part 6: MATERIAL TO BE RELIED ON:

1. Affidavit # 1 of Kan Yu Canning Zou filed December 12, 2023

Date: December 13, 2023

Signature of ~~Lawyer for the petition~~ respondent(s)
H.C. Ritchie Clark, K.C.

Petition respondent's(s') address for service: H.C. Ritchie Clark, K.C
BRIDGEHOUSE LAW LLP
900-900 West Hastings Street
Vancouver, BC V6C 1E5
Telephone: 604-684-2550 ext. 214

Fax number address for service: 604-684-0916

E-mail address for service: rclark@bridgehouselaw.ca
Name of petition respondents lawyer: **H.C. Ritchie Clark, K.C.**