



No. VLC-S-S-253697  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INSTITUTIONAL MORTGAGE CAPITAL CANADA INC., in  
its capacity as general partner of IMC LIMITED PARTNERSHIP

PETITIONER

AND:

MORTISE (SCOTT ROAD RESIDENTIAL) HOLDINGS LTD.,  
MORTISE (SCOTT ROAD OFFICE) HOLDINGS LTD.,  
MORTISE (SCOTT ROAD COMMERCIAL) HOLDINGS LTD.,  
1048799 B.C. LTD., BALJIT SINGH JOHAL, BANCORP  
BALANCED MORTGAGE FUND II LTD., BANCORP  
GROWTH MORTGAGE FUND II LTD., BANCORP  
FINANCIAL SERVICES INC., MANDATE MANAGEMENT  
CORPORATION, G4 CONSTRUCTION LTD., BULAND  
CONSTRUCTION LTD., LIFETIME CONSTRUCTION LTD.,  
BEST CANADIAN HOMES LTD., GILL 22 CONSTRUCTION  
LTD., 1370395 B.C. LTD., HARJUS CONSTRUCTION LTD.,  
AND 1507718 B.C. LTD.

RESPONDENTS

## **RESPONSE TO PETITION**

*FORM 67 (RULE 16-1(5))*

Filed by: Mortise (Scott Road Residential) Holdings Ltd.  
Mortise (Scott Road Office) Holdings Ltd.  
Mortise (Scott Road Commercial) Holdings Ltd.  
1048799 B.C. Ltd. and  
Baljit Singh Johal (the "petition respondents")

THIS IS A RESPONSE TO the petition filed May 14, 2025.

The petition respondents estimate that the application will take one hour.

### **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: NONE.

## **PART 2: ORDERS OPPOSED**

The petition respondents oppose the granting of the orders set out in paragraphs 3, 5 and 11 of Part 1 of the petition.

## **PART 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The petition respondents take no position on the granting of the orders set out in paragraphs 1, 2, 4, 6-10 and 12 of Part 1 of the petition.

## **PART 4: FACTUAL BASIS**

1. The crux of this petition proceeding is the relief sought by the petitioner to appoint a receiver over the assets, undertakings and lands of the below borrower respondents:
  - (a) Mortise (Scott Road Residential) Holdings Ltd.;
  - (b) Mortise (Scott Road Office) Holdings Ltd.;
  - (c) Mortise (Scott Road Commercial) Holdings Ltd.; and
  - (d) 1048799 B.C. Ltd.

(collectively, "Mortise").
2. If appointed, the receiver's primary duty will presumably be the sale of the lands subject to this proceeding (the "Lands"). As detailed in the Part 5: Legal Basis, the petitioner seeks to circumvent a foreclosure proceeding (depriving Mortise of a six month redemption period – a right that must be afforded to the borrower except in exceptional circumstances) through the receivership orders sought.
3. Mortise is the owner of the Lands which is a strip mall located at 8140 120<sup>th</sup> Street, Surrey, British Columbia and known as "Scott Road Centre". The strip mall is comprised of retail, office and restaurant tenants. The rental demand for the Lands remains high – only 2,600 square feet of the approximately 38,000 square feet comprising the strip mall remains vacant (by Mortise's choice).
4. The petitioner holds a first mortgage (the "IMC First Mortgage") registered against the Lands. The IMC First Mortgage matured approximately two months before this petition proceeding was commenced. Prior to the maturity date, Mortise kept the IMC Mortgage in good standing.

5. As at May 1, 2025, the borrowers are indebted to the petitioner in the amount of \$19,555,812.02.<sup>1</sup> There is significant equity in the Lands to secure the IMC First Mortgage. Specifically:
  - (a) the appraised value of the Lands is \$34M.
  - (b) the BC assessed value of the Lands is \$27.8M.
6. The respondents, Bancorp Balanced Mortgage Fund II Ltd., Bancorp Growth Mortgage Fund II Ltd., Bancorp Financial Services Inc. and Mandate Management Corporation, holds a second mortgage registered against the Lands (the "Bancorp Second Mortgage").
7. In the last year, Mortise entered into contracts to sell the Lands for \$32M and \$34M but for reasons outside of Mortise's control the deals did not ultimately complete.
8. Mortise is currently working with the real estate team at Attivo Capital to assist in finding a purchaser of the Lands.
9. In December 2024 to January 2025, Mortise and the petitioner engaged in various communications regarding a one year renewal of the IMC First Mortgage to give Mortise time to sell the Lands. The communications cumulated in a January 15, 2025 Teams meeting that ended in the petitioner telling Mortise it would inform Mortise of the renewal decision shortly.
10. Instead of receiving a decision from the petitioner, on February 5, 2025 (four days after the maturity date), the petitioner issued a demand letter and, on May 14, 2025, commenced this petition proceeding.

## **PART 5: LEGAL BASIS**

11. The granting of a receivership order is "extraordinary relief which should be granted cautiously and sparingly", and if there is a remedy other than receivership, it should be considered because receiverships are intrusive interferences with the affairs of company, harmful to the reputation of the company and the cost of a receivership can be considerable.

*Mirage Trading Corporation v. Ghahroud*, 2025 BCSC 588 at para. 95
12. Mortise opposes the appointment of a receiver over the corporate respondents sought by the petitioner pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA") and s. 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253. Regarding appointment under the BIA, the petitioner does not tender evidence to establish that the corporate respondents are "insolvent".

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<sup>1</sup> Petition, Part 2: Factual Basis at para. 22.

13. The draft receivership order seeks, *inter alia*, the power to forthwith sell the Lands:

1. . . .

(s) to market any or all of the Lands, including advertising and soliciting offers in respect of the Lands or any parts or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;

(t) to sell, convey, transfer, lease or assign the Lands or any part or parts thereof out of the ordinary course of business with the approval of this Court in respect of any transaction . . . ;

(u) to apply for any vesting order or other orders necessary to convey the Lands or any part or parts thereof to the purchaser or purchasers, free and clear of any liens or encumbrances;

. . .

14. The appointment of the receiver takes away the respondents right to redeem which is a core principle of real estate law. A party foreclosing on a mortgage must afford the borrower an opportunity to redeem the Lands in all but exceptional circumstances.

*Textron Financial Canada Limited v. Chetwynd Motels Ltd.*, 2010 BCSC 477  
at paras. 58-74 [*Textron*]

*BCIMC Construction Fund Corporation v. The Clover on Yonge Inc.*,  
2020 ONSC 3659 at para. 40

15. In *Petranik v. Dale*, *infra*, Chief Justice Laskin held at p. 969:

What emerges from the *DeBeck* case is a reassertion of the well-established proposition that the equitable right to redeem is more than a mere equity but is, indeed, an interest in the mortgaged land which is not lightly to be put aside and which is enforceable by courts of equity: see Falconbridge, *Law of Mortgages* (3rd. ed. 1942), pp. 50-53. I question, therefore, whether it can be put aside by a rule of practice that would preclude a Court from considering all the circumstances that may support a discretion to allow redemption, albeit on terms.

*Petranik v. Dale*, [1977] 2 S.C.R. 959 (SCC) at p. 969

16. Where the debtor's principal asset is real estate, the lender should not be permitted to use the power to appoint a receiver as a means of avoiding the usual redemption period unless there are special circumstances such that the lender should have conduct of sale before judgment and consideration of an appropriate redemption period.

*Textron*, *supra* at para. 89

17. The court in *IMOR Capital Corp. v. Bullet Enterprises Ltd.*, 2012 BCSC 899, recognized that the “usual rules” in foreclosure proceedings regarding a six month redemption period applied equally to enforcing proceedings relating to a debenture. On this basis, the court adjourned generally the appointment of a receiver pursuant to a debenture and granted a six month redemption period.
18. In the present case, the petitioner does not argue that there is no equity in the Lands to secure the IMC First Mortgage. Both the appraised and BC assessed values demonstrate significant equity. Accordingly, the “usual” foreclosure law ought to apply to grant Mortise a six month redemption period. The relief regarding the appointment of a receiver ought to be dismissed or, alternatively, adjourned generally until the expiration of the six month redemption period.

#### **Test to Appoint Receiver Not Satisfied**

19. In the alternative, if the court does not dismiss the relief sought in respect of the receiver in favour ordering a six month redemption period, the legal test to appoint a receiver (as applied to the present facts) is not satisfied. Specifically:

- (a) whether irreparable harm might be caused if no order were made;
- (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;

Present Case: the petitioner does not rely on (a) or (b) factors to support the appointment of the receiver. As indicated above, the petitioner is fully secured because there is equity in the Lands of \$14.44M based on the appraisal or \$8.24M based on the BC assessment.

- (c) the nature of the Lands;
- (d) the apprehended or actual waste of the debtor’s assets;
- (e) the preservation and protection of the Lands pending judicial resolution;

Present Case: the petitioner does not rely on (c), (d) or (e) factors to support the appointment of the receiver. The Lands are a well managed and tenanted strip mall in Surrey with no need for protection or oversight of a receiver. A receiver will cause unnecessary intrusion into the landlord/tenancy relationship and incur unnecessary costs to, among other things, manage the tenants.

- (f) the balance of convenience to the parties;

Present Case: the balance of convenience favours granting a six month redemption period instead of appointing a receiver. Without limitation, Mortise will be granted its equitable right to redeem the Lands and avoid

the unnecessary receivership costs. Mortise will have the opportunity to continue its efforts to sell the Lands while continuing to manage the strip mall, thereby remaining the status quo for the tenants. During the six month redemption period, the petitioner will receive the benefit of the accruing interest under the IMC First Mortgage which is fully secured by the equity in the Lands.

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

Present Case: Although the petitioner's hold a contractual right to appoint a receiver, the contractual right to appoint a receiver is but one factor to be considered and not an overwhelming factor necessarily. The Court must consider whether on the whole of the circumstances it is, in fact, just and convenient to appoint a receiver.

*Inca One Gold Corp, (Re)*, 2024 BCSC 1970 at para. 49

*Ward Western Holdings Corp. v. Brosseuk*, 2022 BCCA 32 at paras. 56-66 [*Ward*]

*Bank of Montreal v Gian's Business Centre Inc.*,  
2016 BCSC 2348 [*Gian*] at paras. 22-24

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

Present Case: the petitioner does not raise any specific experience with Mortise that suggest it will be difficult to deal with Mortise, other than Mortise not paying out the debt by the maturity date and not complying with the forbearance agreement payments. These breaches are not unique to an enforcement proceeding and do not suggest the petitioner will encounter difficulty with Mortise.

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

Present Case: this factor negates the appointment of a receiver. As cited above, the granting of a receivership order is "extraordinary relief which should be granted cautiously and sparingly", and if there is a remedy other than receivership, it should be considered because receiverships are intrusive interferences with the affairs of company, harmful to the reputation of the company and the cost of a receivership can be considerable.

*Mirage Trading Corporation v. Ghahroud*, 2025 BCSC 588 at para. 95

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

Present Case: the primary duty of the receiver would be to sell the Lands. A court appointed receiver is not required to sell the Lands. Under the usual rules of foreclosure law, upon the expiry of the redemption period, the petitioner may apply for an order for conduct of sale and retain a realtor to sell the Lands. A receiver would similarly need to retain a realtor to sell the Lands, however, unlike in a foreclosure sale where a petitioner instructs the realtor, the receiver would incur costs to instruct the realtor.

- (k) the effect of the order upon the parties;

Present Case: please see (f) above.

- (l) the conduct of the parties;

Present Case: please see (h) above.

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

Present Case: the petitioner does not address the length of appointment in the petition.

- (n) the cost to the parties;

- (o) the likelihood of maximizing return to the parties;

Present Case: the petitioner does not rely on (n) or (o) factors to support the appointment of the receiver. The petitioner has not provided any cost estimate for the receiver although concedes that "a receivership carries with it some added costs".<sup>2</sup> The significant and unnecessary costs of a receiver negate the appointment of the receiver.

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

Present Case: the petitioner does not rely on (p) factor to support the appointment of a receiver.

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<sup>2</sup> Petition, Part 3: Legal Basis at para. 45.



**PART 6: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Navjeet Gill, made June 16, 2025; and
2. Affidavit #1 of Channie Yoon, made June 16, 2025.

Date: June 16, 2025



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**HARPER GREY LLP**  
(Per Salman Y. Bhura/Erin M. Hatch)  
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