



NO. VLC-S-H-220132
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INSTITUTIONAL MORTGAGE CAPITAL CANADA INC., AS
GENERAL PARTNER OF IMC LIMITED PARTNERSHIP

PETITIONERS

AND:

0876242 B.C. LTD.
GATEWAY DEVELOPMENT LIMITED PARTNERSHIP
SEEB CAPITAL LTD.
MARK VANRY

RESPONDENTS

NOTICE OF APPLICATION

Name of Applicant: Institutional Mortgage Capital Canada Inc., as General Partner of
IMC Limited Partnership

To: The Service List attached as Schedule "B" hereto

TAKE NOTICE that an application will be made by the Applicant to presiding Judge at the Courthouse at 800 Smith Street, in the City of Vancouver, in the Province of British Columbia on the 23 day of June, 2022 at 9:45am for the order set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An Order substantially in the form attached hereto as **Schedule "A"** that The Bowra Group Inc. (the "**Receiver**"), the Court-appointed Receiver Manager over all of the assets, undertakings and property of 0876242 B.C. Ltd. and Gateway Development Limited Partnership (collectively, "**Gateway**"), including the real property located at 3333 Bridgeway Street, Vancouver, B.C. and legally described as Parcel Identifier No.

011-154-551, Block K, Except Part on Reference Plan 8675, Now Lane Town of Hastings Plan 5461 together with all other assets, undertakings and property located on the real property and used by Gateway in constructing a mixed commercial and industrial strata development, including all proceeds thereof (collectively, the “**Property**”), is authorized and empowered to:

- (a) market any or all of the remaining four unsold units in the Property (the “**Remaining Units**”), including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (b) to sell, convey, transfer, lease or assign the Remaining Units or any part or parts thereof, subject to court approval, and in each such case, notice under Section 59(1) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359, if applicable, shall not be required;
- (c) to apply for any vesting order or other orders necessary to convey the Remaining Units or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;

Part 2: FACTUAL BASIS

The Project

2. The Project is a six storey mixed commercial and industrial strata development and which was scheduled to complete in the Spring of 2020. The Respondent, 0876242 B.C. Ltd. is the registered owner of the Project Lands as nominee and bare trustee for Gateway Development Limited Partnership
3. As at June 1, 2022, Gateway is indebted to the Petitioner totalling \$35,534,846.55 as follows:
 - (a) \$30,901,641.59 on account of a Construction Loan advanced by the Petitioner to Gateway and;
 - (b) \$4,633,204.96 on account of a Cost Overrun Facility advanced by the Petitioner to Gateway.
4. Interest accrues on the foregoing indebtedness at approximately \$239,000 per month.

The Receivership Order

5. On May 10, 2022, the Honourable Mr. Justice Wilson made an Order appointing the Bowra Group Inc. as Receiver over the Project given the Project had stalled as a result of, among other things, a funding shortfall to complete the Project, ongoing disputes with the general contractor Prism Construction Ltd. (“**Prism**”) resulting in builders’ liens together with a CPL registered in favour of Seeb Capital Ltd. on title preventing sub-division of the Project Lands into individual strata lots. At that time Mr. Justice Wilson adjourned generally the application seeking Power of Sale in favour of the Receiver.

Equity Shortfall

6. Cushman and Wakefield ULC (“**Cushman**”), the real estate brokers retained by Gateway to market and sell the Project Lands, estimate that the gross revenue of the remaining four unsold units on the Project’s sixth floor to be between \$700 and \$800 per square foot.
7. As at June 1, 2022, IMC is owed approximately \$35,500,000, with interest accruing at approximately \$239,000 per month. According to IMC’s revenue projections, the projected equity in the Project before the Project’s completion costs and the Receiver’s fees and disbursements, based on the Remaining Units is as follows:

<u>Price Per Square Foot</u>	<u>Net Proceeds</u>	<u>Balance due to IMC (as at 06/01/2022)</u>	<u>Approximate Equity</u>
\$700	\$35,584,130	\$35,534,846	\$49,284
\$750	\$35,977,051	\$35,534,846	\$442,205
\$775	\$36,173,511	\$35,534,846	\$638,665
\$800	\$36,369,971	\$35,534,846	\$835,125
\$850	\$36,762,892	\$35,534,846	\$1,228,046

8. At a sale price of \$850/sq. ft, which price is higher than estimated by Cushman, and after accounting for Project completion costs, the Receiver’s fees & disbursements and ongoing accrual of interest, there will be a shortfall to the Petitioner.

Part 3 LEGAL BASIS

9. Based on the facts set out above, the Petitioner's security position is at risk and in jeopardy if the Receiver is not permitted to sell the Remaining Units as there is a projected shortfall to the Petitioner after priority payment of Project completion costs, Receivers fees & disbursements, and ongoing accrual of interest owing on the Petitioner's mortgage loans.
10. In British Columbia, a court may grant a shortened redemption period where there is evidence of insufficiency of equity, abandonment or wasting.

British Columbia (Attorney General) v. Malik, 2009 BCCA 202 at para 54.

11. The Petitioner relies on section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253.

Part 4: MATERIAL TO BE RELIED

1. Receivership Order pronounced May 10, 2022
2. Affidavit #1 of Trevor Herr made June 8, 2022.
3. The Receiver's First Report to Court, dated June 9, 2022.
4. Such further and other material as counsel may advise and this Honourable Court may allow.

The Applicant estimates that the application will take 1 hour and be heard by Microsoft Teams.

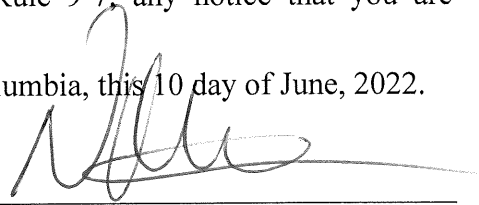
- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master. ~~The Honourable Mr. Justice Wilson has advised this matter should be heard before him~~

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 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 at the City of Vancouver, in the Province of British Columbia, this 10 day of June, 2022.



Lawson Lundell LLP
Solicitors for the Applicant

This Notice of Application is filed by Bryan C. Gibbons, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2, e-mail address: bgibbons@lawsonlundell.com; telephone number: 604-685-3456.

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:

Signature of Judge Master

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"

No. H220132
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INSTITUTIONAL MORTGAGE CAPITAL INC., IN ITS CAPACITY AS
GENERAL PARTNER OF IMC LIMITED PARTNERSHIP

PETITIONER

AND:

0876242 B.C. LTD.
GATEWAY DEVELOPMENT LIMITED PARTNERSHIP
SEEB CAPITAL LTD.
MARK VANRY

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE) THE _____ DAY OF
MR. JUSTICE WILSON) _____, 2022

ON THE APPLICATION of the Petitioner coming on for hearing on June 23, 2022, at Vancouver, B.C.; AND UPON HEARING, Bryan C. Gibbons, Counsel for the Petitioner and H.C. Ritchie Clark, Q.C. Counsel for the Respondents 0876242 B.C. Ltd. and Gateway Development Limited Partnership, and no-one else appearing on behalf of the other Respondents although given due notice of this application in accordance with the Supreme Court Civil Rules, and on reading the materials filed herein;

THIS COURT DECLARES AND ORDERS that:

1. The Bowra Group Inc. (the "Receiver"), the Court-appointed Receiver Manager over all of the assets, undertakings and property of 0876242 B.C. Ltd. and Gateway Development Limited Partnership (collectively, "Gateway"), including the real property located at 3333 Bridgeway Street, Vancouver, B.C. and legally described as Parcel Identifier 011-154-551 Block

K, Except Part on Reference Plan 8675, Now Lane Town of Hastings Plan 5461 together with all other assets, undertakings and property located on the real property and used by Gateway in constructing a mixed commercial and industrial strata development, including all proceeds thereof (collectively, the “**Property**”), is authorized and empowered to:

- (a) market any or all of the remaining four unsold units in the Property (the “**Remaining Units**”), including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (b) to sell, convey, transfer, lease or assign the Remaining Units or any part or parts thereof, subject to court approval, and in each such case, notice under Section 59(1) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359, if applicable, shall not be required;
- (c) to apply for any vesting order or other orders necessary to convey the Remaining Units or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;

2. Endorsement of this Order by counsel appearing on this Application other than the Petitioner is dispensed with.

3. The costs of and in connection with this Application are awarded to the Petitioner on a solicitor and own client basis as provided by the terms of the Petitioner’s loan and security documents.

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

Bryan C. Gibbons
COUNSEL FOR THE PETITIONER

BY THE COURT

REGISTRAR

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IN ITS CAPACITY AS GENERAL PARTNER OF
IMC LIMITED PARTNERSHIP

PETITIONER

AND:

0876242 B.C. LTD. AND OTHERS AND
OTHERS

RESPONDENTS

ORDER



Suite 1600 Cathedral Place
925 West Georgia Street,
Vancouver BC V6C 3L2

Phone: 604-685-3456

Attention: Bryan C. Gibbons

bgibbons@lawsonlundell.com

SCHEDULE "B"

No. H220132
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

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MARK VANRY

RESPONDENTS

SERVICE LIST

<p>Counsel for the Petitioner: Institutional Mortgage Capital Canada Inc.</p> <p>Bryan C. Gibbons Noor Mann, Lawson Lundell LLP, 1600 – 925 West Georgia Street, Vancouver, B.C. V6C 3L2</p> <p>Tel: (604) 631-9152 Fax: (604) 694-2958 Email: bgibbons@lawsonlundell.com nmann@lawsonlundell.com</p>	<p>Counsel for the Respondents: 0876242 B.C. Ltd. and Gateway Development Limited Partnership.</p> <p>Ritchie Clark, Q.C., Bridgehouse Law LLP, 9th Floor – 900 West Hastings St., Vancouver, B.C. V6C 1E5</p> <p>Tel: (604) 684-2550 Fax: (604) 684-0916 Email: rclark@bridgehouselaw.ca</p>
<p>Counsel for the Receiver, The Bowra Group Inc.</p> <p>Colin Brousson Jeffrey Bradshaw DLA Piper (Canada) LLP Suite 2800 – 666 Burrard Street Vancouver, B.C. V6C 2Z7</p> <p>Tel: (604) 643-6400 Fax: (604) 605-4875 Email: colin.brousson@dlapiper.com jeffrey.bradshaw@dlapiper.com</p>	<p>The Receiver, The Bowra Group Inc.</p> <p>#430 - 505 Burrard Street Vancouver, B.C. V7X 1M3</p> <p>Attention: <u>Mario Mainella & Kevin Koo</u></p> <p>Tel: (604) 689-8939 Fax: (604) 689-8584 Email: mmainella@bowragroup.com kkoo@bowragroup.com</p>

<p>Counsel for Mark Vanry & Rannoch Capital Ltd.,</p> <p>Doug Eyford, Q.C., Eyford Partners LLP 1744-1055 Dunsmuir Street Vancouver, B.C. V7X 1L2</p> <p>Tel: (604) 899-5226 Fax (604) 899-5216 Email: deyford@eyfordpartners.com</p>	<p>Counsel for Prism Construction Ltd.</p> <p>David Claassen Jenkins Marzban Logan LLP Suite 900 - 808 Nelson Street Vancouver, B.C. V6Z 2H2</p> <p>Tel: (604) 895-3168 Fax: (604) 681-0766 Email: dclaassen@jml.ca</p>
<p>Rannoch Capital Ltd.</p> <p>c/o Registered and Records Office 2080 – 1055 West Georgia Street PO Box 11170 Stn. Royal Centre Vancouver, B.C. V6E 3R5</p> <p>Tel: (604) 992-2651 Email: rannoch29@gmail.com</p>	<p>Counsel for DNA Electric Ltd.</p> <p>Daniel C. Richardson BTM Lawyers LLP 530-130 Brew Street Port Moody, B.C. V3H 0E3</p> <p>Tel: (604) 917-0126 Fax: (604) 937-5577 Email: dcr@btmlawyers.com</p>
<p>Seeb Capital Ltd.</p> <p>c/o Registered and Records Office 1020-1166 Alberni Street Vancouver, B.C. V6E 3Z3</p>	<p>Summit Cladding Systems Inc.</p> <p>c/o Registered and Records Office 103 – 8380 St. George Street Vancouver, B.C. V5X 3S7</p> <p>Attention: Elisha Bradburn</p>
<p>Ikonic Enterprises Ltd.</p> <p>c/o Registered and Records Office 19876 Old Dewdney Trunk Road, Pitt Meadows B.C. V3Y 2R8</p>	<p>Phaser Fire Protection Ltd.</p> <p>2 – 19080 96th Avenue, Surrey, B.C. V4N 3Y3</p> <p>Attention: Eric Kirwan</p> <p>Tel: 604-218-4474 Email: eric@phaserfire.ca</p>

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