



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

STATEMENT OF ACCOUNTING

Construction Loan Balance owing as at June 1, 2022 pursuant to Paragraph 4 of the 1 st Affidavit of Trevor Herr sworn herein on June 8, 2022	\$30,901,641.59
Cost Overrun Facility Balance owing as at June 1, 2022 pursuant to Paragraph 4 of the 1 st Affidavit of Trevor Herr sworn herein on June 8, 2022	\$4,633,204.96
Total amount due as at June 1, 2022	\$35,534,846.55

RELIEF SOUGHT

- | | |
|--|--|
| 1. Redemption Period: | One (1) day from date of the Order Nisi
<i>Draft of Order Nisi Attached</i> |
| 2. Redemption Amount as at June 1, 2022: | \$35,534,846.55 |
| 3. Annual Interest Rate: | 1. \$30,901,641.59 – the greater of TD
Canada Trust Prime plus 3.3% or 6.5%
2. \$4,633,204.96 – 15%

calculated and compounded pursuant to
the terms of the Mortgages |
| 4. Personal Judgment Against: | \$35,534,846.55 against 0876242 B.C.
Ltd. |
| 5. Costs: | Solicitor and own client costs as
provided for in the Petitioner's loan and
security documents |
| 6. Appointment of Receiver: | Previously appointed |
| 7. Order for Sale by Petitioner: | No (but Power of Sale sought in favor of
Receiver by way of separate Notice of
Application) |
| 8. Right to Apply for a Further Accounting | Yes |
| 9. Other | No |

THIS STATEMENT OF ACCOUNTING & RELIEF SOUGHT is prepared by Lawson Lundell LLP, Barristers and Solicitors, of 1600 – 925 West Georgia Street, Vancouver, BC, V6C 3L2 (Telephone: 604-685-3456) Email: bgibbons@lawsonlundll.com

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ORDER MADE AFTER APPLICATION

ORDER NISI

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

THE HEARING of the Petition 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 mortgage (the “**First Mortgage**”), dated March 9, 2018, which was registered in the New Westminster Land Title Office on March 15, 2018 under number CA6681010, granted to the Petitioner by the Respondent 0876242 B.C. Ltd. (the “**Borrower**”) as Mortgagor, as modified by a Modification of Mortgage (the “**First Mortgage Modification**”) was registered in the Land Title Office on September 15, 2020, under number CA8430029, and each of the First Mortgage and the First Mortgage Modification are valid and enforceable charges on the following lands and premises:

City of Vancouver
Parcel Identifier: 011-154-551
Block K, except part on Reference Plan 8675, now lane
Town of Hastings Plan 5461

(the “**Lands**”);

2. The assignment of rents (the “**Assignment of Rents**”) dated March 9, 2018, which was registered in the New Westminster Land Title Office on March 15, 2018 under number CA6681011, granted to the Petitioner by the Borrower as Transferor, is a valid and enforceable charge against the Lands;
3. The Beneficial Owner Agreement, dated March 9, 2018, creating a first priority equitable mortgage (the “**First Equitable Mortgage**”, and collectively with the First Mortgage, the “**First Mortgages**”) in and to the Lands, executed by the Borrower, Gateway Development Limited Partnership (the “**LP**”) as Beneficial Owner, and the Petitioner as Lender, is a valid and enforceable charge of the interest of the LP as beneficial owner in and to the Lands in favour of the Petitioner;
4. The following security agreements:
 - a. a General Security Agreement
 - b. an Assignment of Material Documents; and
 - c. an Assignment of Sale Agreements

(collectively, the “**First Security Agreements**”),

each dated for reference March 9, 2018, and granted to the Petitioner by the Borrower and the LP, notice of which was registered at the British Columbia Personal Property Registry on March 7, 2018, under base registration No. 611266K and No. 611268K, are each valid and enforceable charges on the specific personal property set out therein including all

presently owned and after-acquired personal property of the Borrower and LP described in the General Security Agreement (collectively, the “**Personal Property**”);

5. The mortgage (the “**Second Mortgage**”), dated September 11, 2020, which was registered in the New Westminster Land Title Office on September 15, 2020, under number CA8430043, granted to the Petitioner by the Borrower as Mortgagor, is a valid and enforceable charge on Lands;

6. The Beneficial Owner Agreement, dated September 15, 2020, creating a second priority equitable mortgage (the “**Second Equitable Mortgage**”, and collectively with the Second Mortgage, the “**Second Mortgages**”, and collectively with the First Mortgages, the “**Mortgages**”) in and to the Lands, executed by the Borrower, the LP as Beneficial Owner, and the Petitioner as Lender, is a valid and enforceable charge of the interest of the LP as beneficial owner in and to the Lands in favour of the Petitioner;

7. The following security agreements:

- a. a General Security Agreement;
- b. an Assignment of Material Documents; and
- c. an Assignment of Sale Agreements

(collectively, the “**Second Security Agreements**”, and collectively with the First Security Agreements, the “**Security Agreements**”),

each dated for reference September 15, 2020, granted to the Petitioner by the Borrower and the LP, notice of which was registered at the British Columbia Personal Property Registry on March 7, 2018, under base registration No. 611266K and No. 611268K, are each valid and enforceable charges on the Personal Property.

8. The Mortgages, Assignment of Rents and the Security Agreements (collectively, the “**Security Documents**”) all rank in priority to the interests in the Lands and the Personal Property of the Respondents, and each of them, and the respective heirs, executors, administrators, successors, and assigns of the Respondents and all persons claiming by, through, or under them.

9. There has been default under the Security Documents, and each of them.

10. The last day for redemption shall be one day from the date of this Order (the “**Redemption Date**”).

11. The amount of money required to redeem the Lands and the Personal Property is the sum of \$35,534,846.55 as at June 1, 2022, together with interest thereafter as follows:

- a. on the sum of \$30,901,641.59, at the greater of:
 - i. TD Canada Trust prime rate plus 3.3% per annum; and
 - ii. 6.5% per annum; and
- b. on the sum of \$4,633,204.96, at the rate of 15% per annum

compounded and payable monthly in accordance with the terms of the Mortgages , to accrue until the Lands and Personal Property are redeemed or sold, whether or not redemption or sale occurs prior to or after the last date set for redemption herein, together with the Petitioner's costs of this proceeding (the "**Amount Required to Redeem**").

12. Upon the Respondents or any of them paying into the Vancouver Registry of this court at 800 Smithe Street, Vancouver, B.C., or to the solicitors for the Petitioner or if no such solicitor exists to the Petitioner, the Amount Required to Redeem before pronouncement of an order absolute or an order approving a sale of the Lands, then the Petitioner shall reconvey the Lands and Personal Property free and clear of all encumbrances in favour of it or by any person claiming by, through or under it, and shall deliver up all documents in the Petitioner's custody relating to the Lands and Personal Property to the Respondent or Respondents who made payment.
13. If the Lands and Personal Property are not redeemed, the Petitioner shall be at liberty to apply for an order absolute and upon pronouncement of order absolute then the Respondents and the heirs, executors, administrators, successors and assigns of the Respondents and all persons claiming by, through or under them shall thenceforth stand absolutely debarred and foreclosed of and from all right, title, interest, and equity of redemption in or to the Lands and Personal Property, and shall immediately deliver to the Petitioner vacant possession of the Lands and Personal Property.
14. The Borrower shall pay to the Petitioner the sum of \$35,534,846.55 (the "**Judgment**"), plus the Petitioner's costs of and in connection with this proceeding as set out in Section 16 herein.
15. The Petitioner is at liberty to apply to this court for a further summary accounting of any amounts that are due to the Petitioner pursuant to the Mortgage, before or after the date of pronouncement of this order, and for an order varying the Amount Required to Redeem accordingly.

16. The costs of and in connection with this proceeding 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

H.C. Ritchie Clark Q.C.
COUNSEL FOR THE RESPONDENTS
0876242 B.C. LTD. AND GATEWAY
DEVELOPMENTS LIMITED
PARTNERSHIP

BY THE COURT

REGISTRAR

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IMC LIMITED PARTNERSHIP

PETITIONER

AND:

0876242 B.C. LTD. AND OTHERS AND
OTHERS

RESPONDENTS

ORDER



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Attention: Bryan C. Gibbons
bgibbons@lawsonlundell.com