



No. S-252591
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

1069016 B.C. LTD., 1183011 B.C. LTD., MANOJ SIKKA,
MARK JOSEPH CATROPPA and SAMIRA PERERA

RESPONDENTS

RESPONSE TO PETITION

Filed by: The Respondents, Manoj Sikka and Mark Joseph Catroppa (together, the "**Sikka Respondents**")

THIS IS A RESPONSE TO the Petition filed April 4, 2025.

The respondents estimate that the hearing of the petition will take a half-day.

PART 1: ORDERS CONSENTED TO

The Sikka Respondents consent to the granting of **none** of the orders set out Part 1 of the Petition.

PART 2: ORDERS OPPOSED

The Sikka Respondents oppose the granting of **all** of the orders set out in Part 1 of the Petition.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Sikka Respondents take no position on **none** of the orders set out in Part 1 of the Petition.

PART 4: FACTUAL BACKGROUND

A. Overview

1. The petitioner seeks the exceptional remedy of appointing a receiver over commercial lands formerly operated as a restaurant, now vacant (the "**Property**"). The basis for this request is a mortgage default that began in December 2024. While the respondents acknowledge the

default, they respectfully submit that a receivership, particularly one with conduct of sale powers, is neither necessary nor proportionate in the circumstances.

2. The Property is not at risk. It is vacant, but static – there is no business to manage, no operations requiring oversight, and no evidence of deterioration. The petitioner has not shown that its security is impaired or at risk of dissipation. To the contrary, recent sale efforts indicate that the property retains significant value. In these circumstances, the appointment of a receiver is not just unnecessary; it would be affirmatively prejudicial and inequitable.

B. Receivership Unnecessary and Inappropriate

3. As noted, the Property is a former restaurant site that is presently vacant. No active care or management is needed. While the Property is not income-generating at present, there is no evidence that the land or improvements are deteriorating, or that any protective or preservative action is required.

4. More importantly, there is no suggestion that the petitioner's security is under threat. Recent attempts to sell the Property, which the respondents undertook in good faith, support the view that the petitioner remains adequately secured. The Property is actively listed for sale through Colliers Canada, a commercial realtor selected by the petitioner, with an asking price of \$4.9 million CAD.

Affidavit #1 of Manoj Sikka, at para. 2 and Exhibit A

5. Multiple recent valuations confirm that the Property retains substantial value, including:

- a. a 2025 BC Assessment of \$4,188,500 CAD, unchanged from the 2024 assessment;
- b. a February 2024 appraisal from Ryan LLC, implying a range of \$4 million to \$11 million for the Property; and
- c. a January 2023 appraisal from Avison Young (Canada) Inc. estimating value at \$5.39 million.

Affidavit #1 of Manoj Sikka, at para 4 and Exhibits B, C, D

6. The respondents wish to be afforded the chance to pursue a sale, whether in the context of a foreclosure proceeding or otherwise. Absent an ability to market and sell the Property within the context of a foreclosure proceedings, the respondents ought to have the opportunity to pursue other possible solutions, including potential investment or refinancing.

7. The Property can be marketed and sold without the unnecessary and significant cost of a receivership. The respondents would ultimately bear that cost. That outcome would be wholly inequitable. The respondents ought to be afforded a chance to realize at least some return on their investments.

PART 5: LEGAL BASIS

C. A Receiver is Not Appropriate

8. The appointment of a receiver is a significant and exceptional remedy. Courts exercise this power cautiously and only in cases where no other, less disruptive, alternative would adequately protect the interests at stake. Even where a contractual right to a receiver exists, the court retains discretion and must ask whether the remedy is necessary and proportionate.

Textron Financial Canada Ltd. v. Chetwynd Motels Ltd., 2010 BCSC 477

Coromandel Properties Ltd. (Re), 2023 BCSC 2187 at paras 23 and 40

9. The petitioner appears to ground its request for a receivership on two primary assertions:

- a. That there has been a default; and
- b. That the relevant agreements contain a clause permitting or contemplating the appointment of a receiver.

10. Those two premises alone are insufficient. Were that enough, receivers would follow every contractual default — yet the law makes clear that such outcomes are exceptional. A contractual right to a receiver does not displace the need for judicial scrutiny and discretion.

11. More concerning, the petitioner seeks to appoint a receiver for the purpose of selling the Property. This request effectively bypasses the traditional foreclosure process, stripping the respondents of their equitable right to redeem and eliminating the fixed redemption period. It would also involve the appointment of a receiver prior to the petitioner obtaining judgment, which requires special circumstances and when necessary to preserve the assets from deterioration or jeopardy. That is not the case here.

South West Marine Estates Ltd. v. Bank of B.C., 1985 CanLII 570 (BC CA)

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

Toronto Dominion Bank v. First Canadian Land Corp. (1989), 77 C.B.R. (N.S.) at para 8

12. As recently affirmed by the Court in *Royal Bank of Canada v. Tourmaline Enterprises Ltd.*, 2024 BCSC 47 at para. 101:

“The Court should consider the debtor's equity of redemption in terms of whether a receiver will be appointed and, if so, whether that receiver will be granted the power of sale and when. Such a consideration is clearly relevant to the question as to whether any such appointment and power is 'just or convenient', again having regard to the nature of the relief sought.”

13. The petitioner has another clear, effective, and far less invasive remedy available: foreclosure. Foreclosure would serve the petitioner's legitimate interest in realizing on its security, while preserving the procedural and substantive protections that respondents are entitled to – including the right to redeem and the opportunity to pursue other solutions. A foreclosure action would also avoid the unnecessary costs and complexity associated with a receivership.

14. The test for the appointment of a court-appointed receiver is whether it would be “just or convenient” in all the circumstances. This is a fact-driven inquiry that requires the court to weigh multiple considerations. While there is no closed list, past decisions have taken into account factors such as:

- a. 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;
- b. The preservation and protection of the property;
- c. The balance of convenience to the parties;
- d. Whether the applicant has a contractual right to the appointment of a receiver;
- e. Whether irreparable harm might be caused if no order is made;
- f. Whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
- g. The costs to the parties;
- h. The likelihood of maximizing return to the parties; and
- i. The goal of facilitating the duties of the receiver.

Textron Financial Canada Ltd. v. Chetwynd Motels Ltd., 2010 BCSC 477

Maple Trade Financing Inc. v. CY Oriental Holdings Ltd., 2009 BCSC 1527

15. As stated in *Cascade Divide Enterprises Inc. v. Laliberte*, 2013 BCSC 263 at para. 81:

“[a]n important consideration is that a receivership is extraordinary relief which should be granted cautiously and sparingly. Accordingly, if the court can fashion a remedy that avoids receivership, then that is certainly something that should be considered. Both counsel before me are experienced insolvency counsel, and it is well taken that the appointment of a receiver is an extraordinary remedy that can, and in some cases, likely will, cause harm to the company in terms of the public perception and public reaction to that event. There is also, of course, the cost of the receivership, which, in respect of this type of a company, I have no doubt would be considerable. To that end, this Court must consider whether there are other

measures that might be employed to balance the interests of the parties pending trial.”

16. In this case, the appointment of a receiver is neither justified nor appropriate, for reasons that include:

- a. The Property is vacant. There is no risk of harm or need to protect or preserve the Property;
- b. There is no evidence that the petitioner’s security is impaired or inadequate. If anything, the available material suggests that the value of the Property is sufficient to protect the petitioner’s interest;
- c. The receivership would impose material prejudice on the respondents, depriving them of the redemption period and eroding equity through unnecessary administrative and legal costs;
- d. The costs of receivership would be substantial, with no offsetting benefit. The goals the petitioner seeks to achieve, namely, realization of its mortgage, can be accomplished more appropriately and economically through foreclosure;
- e. The petitioner has not tendered any evidence showing that foreclosure would be inadequate or that a receivership is required in this case; and
- f. Any sale of the Property, whether by the respondents following redemption or by the petitioner post-foreclosure, would achieve full value. There is no demonstrable need for a receiver to accomplish that objective.

17. For all of these reasons, the respondents respectfully submit that the petition should be dismissed in its entirety.

PART 6: MATERIAL TO BE RELIED ON

1. The pleadings and proceedings filed herein.
2. Such further and other materials counsel may advise and this Honourable Court may permit.

Date: May 12, 2025



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