



Form 33 (Rule 8-1(10))

No. H200590
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MCAP FINANCIAL CORPORATION

PETITIONER

AND:

MAIN STREET ARTS INVESTMENTS INC. et al

RESPONDENTS

APPLICATION RESPONSE

Application response of: Main Street Arts Investments Inc, Port Capital Development (Arts) Inc., Main Street Arts Development Limited Partnership, Port Capital Development Inc. and Macario Teodoro Reyes (the "application respondents")

THIS IS A RESPONSE TO the notice of application of MCAP Financial Corporation filed 13/April/2021.

Part 1: ORDERS CONSENTED TO

The application respondents consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms: none.

Part 2: ORDERS OPPOSED

The application respondents opposes the granting of the orders set out in all paragraphs of Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondents takes no position on the granting of the orders set out in no paragraphs of Part 1 of the notice of application.

Part 4: FACTUAL BASIS

1. The application respondents Main Street Arts Investments Inc, Port Capital Development (Arts) Inc. and Main Street Arts Development Limited Partnership collectively hold the legal and beneficial title to the property that is the subject of this proceeding. The application respondents

Port Capital Development Inc. and Macario Teodoro Reyes are guarantors of the secured mortgage debt on the subject property.

2. The property is held for future development, with the development plans being well advanced.

3. However, due to an acute liquidity crisis, the owners fell into default under the mortgage debt registered against the subject property and although forbearance arrangements were made, also fell into default under those forbearance arrangements. The application respondents did not oppose the appointment of a receiver over the subject property.

4. The receiver has marketed the subject property for sale and now seeks approval of an offer of Jim Pattison Developments.

5. The offer of Jim Pattison Developments, if approved and closed, would leave a shortfall in the secured mortgage debt on the subject property.

6. Given the situation, the application respondents have been working earnestly to find a solution that would see the petitioner mortgage lender made whole either by way of redemption of the mortgage indebtedness or by way of a sale of the subject property in an amount sufficient to fully satisfy the mortgage indebtedness.

7. The application respondents expect by the hearing date to have secured an offer to purchase the subject property from an affiliate of Synvest Capital Corporation ("Synvest") which if approved and closed will fully satisfy the mortgage indebtedness owed to the petitioner.

8. The Synvest offer is to be structured as a purchase of the beneficial ownership of the subject property by a special purpose entity formed for that purpose, and a purchase of the shares of the application respondent Main Street Arts Investment Inc., which holds legal title to the subject property as bare trustee and nominee.

9. The only condition to be associated with the offer is that it be approved by this Court including an approval and vesting order which would have the effect of enabling transfer of the beneficial ownership of the subject property and the shares of the application respondent Main Street Arts Investment Inc. free and clear of all financial encumbrances.

10. The offer would close in the same timeframe and on the same terms as contemplated under the Jim Pattison Developments offer.

11. The form of vesting order which is proposed, sometimes referred to as a "reverse vesting order" facilitates a greater economic recovery because it ensures that all municipal approvals associated with the subject property are acquired and also because property transfer tax is not triggered by the transaction.

12. The Synvest offer is supported by the holder of the certificate of pending litigation registered against the subject property and by the application respondents' equity investors.

13. In the event the Court does not accede to the application respondents' position and instead approves the Jim Pattison Developments bid, the application respondents seek that it be a term of the order that it be without prejudice to the application respondents ability to redeem the mortgage indebtedness to the petitioner, and if such redemption is made prior to closing of the purchase and sale transaction that the transaction be terminated.

Part 5: LEGAL BASIS

1. A mortgagor's equity of redemption is an estate in land which is jealously guarded by courts of equity. It will not be foreclosed in advance of judgment absent extraordinary circumstances.

Petranik v. Dale, [1977] 2 SCR 959

2. The Court will temper a receiver's ability to sell real property in light of the mortgagor's equity of redemption.

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

3. In British Columbia court pay less deference to a receiver's sale process where a late bid is well secured and there is a significant difference in price.

British Columbia v. Baron Enterprises Ltd., 2000 BCCA 317

Part 6: MATERIAL TO BE RELIED ON

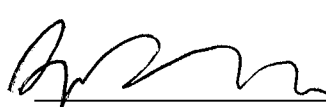
1. Affidavit #1 of Macario (Tobi) Reyes, made 23/Apr/2021.

2. Further affidavit evidencing the Synvest offer and financial ability to close to be filed.

The application respondents estimates that the application will take 1 hour.

- The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

Dated: 23/April/2021


Signature of David E. Gruber
 Application respondent
 Lawyer for application respondent

Benedict Daswani
on behalf of David
Gruber

THIS APPLICATION RESPONSE is prepared and delivered by David E. Gruber of the firm Bennett Jones LLP, Barristers & Solicitors, counsel for the Respondents, File No. 090034.00004, whose place of business and address for delivery is 2500 – 666 Burrard Street, Vancouver, British Columbia, V6C 2X8. Telephone: (604) 891-7500. Facsimile: (604) 891-5100. [gruberd@bennettjones.com]