

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MCAP FINANCIAL CORPORATION

PETITIONER

AND:

MAIN STREET ARTS INVESTMENTS INC.,
PORT CAPITAL DEVELOPMENT (ARTS) INC.,
MAIN STREET ARTS DEVELOPMENT LIMITED PARTNERSHIP,
PORT CAPITAL DEVELOPMENT INC.,
MACARIO TEODORO REYES and
SEA INVESTMENTS LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION
(ORDER NISI)

BEFORE)
)
) THE HONOURABLE)
) MADAM JUSTICE FITZPATRICK) 08/JAN/2021
)
)

ON THE APPLICATION OF the Petitioner coming on for hearing via teleconference at Vancouver, British Columbia on this date, AND ON HEARING Robert Millar, counsel for the Petitioner, David Gruber and Arora Raminder, counsel for the Respondents, Main Street Arts Investments Inc., Port Capital Development (Arts) Inc., Main Street Arts Development Limited Partnership, Port Capital Development Inc. and Macario Teodoro Reyes, and no one appearing for the Respondent, Sea Investments Ltd.

THIS COURT DECLARES that:

1. The indenture of mortgage (the “**Senior Mortgage**”) and assignment of rents dated July 17, 2017, granted by Main Street Arts Investments Inc. as mortgagor in favour of the Petitioner as Senior Lender (the “**Senior Lender**”) as mortgagee and registered in the New Westminster Land Title Office on July 18, 2017 under Charge Numbers CA6154587 and CA615488, are a mortgage and assignment of rents charging those certain parcels of lands and premises situate in the City of Vancouver and enumerated in attached **Schedule “A”** (the “**Mortgaged Lands**”) in priority to the interests therein or claims thereto of all Respondents.
2. The indenture of mortgage (the “**Subordinate Mortgage**”) and assignment of rents dated July 31, 2019, granted by Main Street Arts Investments Inc. as mortgagor in favour of the Petitioner as Subordinate Lender (the “**Subordinate Lender**”) as mortgagee and registered in the New Westminster Land Title Office on August 1, 2019 under Charge Numbers CA7661215 and CA7661216 are a mortgage and assignment of rents charging the Mortgaged Lands in priority to the interests therein or claims thereto of all Respondents.
3. The Beneficial Authorization and Direction to Charge dated July 17, 2017 granted by Main Street Arts Investments Inc. and Port Capital Development (Arts) Inc. acting as general partner of Main Street Arts Development Limited Partnership constitutes a mortgage and charge in favour of the Senior Lender in respect of the beneficial interest in the Mortgaged Lands owned by Port Capital Development (Arts) Inc. or Main Street Arts Development Limited Partnership in priority to the interests therein or claims thereto of all Respondents.
4. The Beneficial Mortgage and Direction to Charge dated July 31, 2019 granted by Main Street Arts Investments Inc. and Port Capital Development (Arts) Inc. acting as general partner of Main Street Arts Development Limited Partnership constitutes a mortgage and charge in favour of the Subordinate Lender in respect of the beneficial interest in the Mortgaged Lands owned by Port Capital Development (Arts) Inc. or Main Street Arts Development Limited Partnership in priority to the interests therein or claims thereto of all Respondents.
5. The General Security Agreements dated July 17, 2017 granted by Main Street Arts Investments Inc., Port Capital Developments (Arts) Inc. and Main Street Arts Development Limited Partnership in favour of the Petitioner (the “**Senior Security Agreements**”), in respect

of which a financing statement was filed in the Personal Property Registry at Victoria under base registration number 137682K on July 13, 2017, constitutes a charge in favour of the Petitioner on all personal property of Main Street Arts Investments Inc., Port Capital Developments (Arts) Inc. and Main Street Arts Development Limited Partnership located at, related to or derived from the Mortgaged Lands (the “**Senior Personal Property Charges**”) in priority to the interests therein or claims thereto of all Respondents.

6. The General Security Agreements dated July 31, 2019 granted by Main Street Arts Investments Inc., Port Capital Developments (Arts) Inc. and Main Street Arts Development Limited Partnership in favour of the Petitioner (the “**Subordinate Security Agreements**”), in respect of which a financing statement was filed in the Personal Property Registry at Victoria under base registration number 141772K on July 26, 2019, constitutes a charge in favour of the Petitioner on all personal property of Main Street Arts Investments Inc., Port Capital Developments (Arts) Inc. and Main Street Arts Development Limited Partnership located at, related to or derived from the Mortgaged Lands (the “**Subordinate Personal Property Charges**”) in priority to the interests therein or claims thereto of all Respondents.

7. The payments due under the Senior Mortgage, the Subordinate Mortgage, the Senior Security Agreements and the Subordinate Security Agreements are in default and that all monies secured by the Senior Mortgage and the Subordinate Mortgage and the Senior Security Agreements and the Subordinate Security Agreements are due and owing.

8. The amount of money secured by the Senior Mortgage and the Senior Security Agreements is \$11,999,316.64 and the amount required to redeem the Mortgaged Lands charge in favour of the Senior Lender and the Senior Personal Property Charges is the sum of \$11,999,316.64 together with interest and pro-rated extension fees accruing upon the Senior Mortgage and the Senior Security Agreements at the rate of \$2,011.57 per day or at such rate of interest as may be provided in the Senior Loan agreements or caused by fluctuations in the chargeable rate of interest, together with such other amounts as are payable pursuant to the Senior Loan agreements among the parties.

9. the amount of money secured by the Subordinate Mortgage and the Subordinate Security Agreements is \$9,976,752.24 and the amount required to redeem the Mortgaged Lands charge in favour of the Subordinate Lender and the Subordinate Personal Property Charges is the sum of

\$9,976,752.24 together with interest and pro-rated extension fees accruing upon the Subordinate Mortgage and the Subordinate Security Agreements at the rate of \$3,911.30 per day or at such rate of interest as may be provided in the Subordinate Loan agreements or caused by fluctuations in the chargeable rate of interest, together with such other amounts as are payable pursuant to the Subordinate Loan agreements among the parties.

THIS COURT ORDERS that:

10. The last date for redemption of the Mortgaged Lands in respect of the Senior Mortgage and the Subordinate Mortgage and the assets charted by the Senior Security Agreements and Subordinate Security Agreements, (collectively, the “**Charged Property**”) is February 8, 2021.

11. Upon the Respondents, or any of them, on or before the last day set for redemption herein, paying into Court to the credit of this proceeding at the Court Registry, the Court House, Vancouver, British Columbia, or paying to the solicitor of record for the Petitioner the entire amount required to redeem the Charged Property for both the Senior Mortgage and the Subordinate Mortgage, the Petitioner shall reconvey the Charged Property free and clear of all encumbrances in favour of the Petitioner or any person claiming by, through or under the Petitioner, to the Respondent so paying or to whom he shall appoint.

12. If the Respondents, or any of them, do not redeem the Charged Property on or before the last day set for redemption herein, the Petitioner may apply for an order absolute of foreclosure and upon pronouncement of an order absolute of foreclosure the Respondents and all persons claiming by, through or under them shall be absolutely foreclosed of and from all right, title and interest, either at law or in equity, in and to the Charged Property and that thereupon the Respondents and all persons claiming by, through or under them shall immediately deliver up to the Petitioner possession of the Charged Property.

13. The Petitioner is hereby granted Judgment in favour of the Senior Lender against Main Street Arts Investments Inc., Port Capital Development (Arts) Inc., Main Street Arts Development Limited Partnership, Port Capital Development Inc. and Macario Teodoro Reyes, jointly and severally, in the amount of \$11,999,316.64 and the Petitioner’s costs of and related to this proceeding.

14. The Petitioner is hereby granted Judgment in favour of the Subordinate Lender against Main Street Arts Investments Inc., Port Capital Development (Arts) Inc., Main Street Arts Development Limited Partnership, Port Capital Development Inc. and Macario Teodoro Reyes, jointly and severally, in the amount of \$9,976,752.24 and the Petitioner's costs of and related to this proceeding.

15. The Petitioner shall be at liberty to claim costs of this proceeding as provided in the agreements relating to the Senior Loan and the Subordinate Loan, or as provided by law, upon further application to the Registrar of this Court.

16. The Petitioner is hereby granted liberty to apply to this Honourable Court or to the District Registrar of this Honourable Court for a further summary accounting of any amounts which become due to the Petitioner for interest, taxes, arrears of taxes, insurance premiums, costs, charges, expenses or otherwise after the pronouncement of the Order Nisi or any other Order made herein.

17. The Petitioner is hereby granted liberty to apply for all other necessary accounts, directions and inquiries.

18. Endorsement of this Order by Counsel appearing on this hearing other than the petitioner is hereby dispensed with

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:



Signature of Lawyer for the petitioner
(Robert Millar)

BY THE COURT

REGISTRAR

SCHEDULE "A"
[Description of Lands]

Lands

1. 206 6th Ave E, Vancouver, BC & 2202/2204/2206/2208 Main Street, Vancouver, BC V5T 3C7

PID

Legal Description

010-136-576

Lot 1 Block 38 District Lot 200A Plan 197

2. 2216 Main Street, Vancouver, BC V5T 3C7

PID

Legal Description

015-553-230

Lot 2 Block 38 District Lot 200A Plan 197

3. 2218 Main Street, Vancouver, BC V5T 3C7

PID

Legal Description

013-273-825

Lot 3 Block 38 District Lot 200A Plan 197

No. H200590
Vancouver Registry

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MCAP FINANCIAL CORPORATION

PETITIONER

AND:

MAIN STREET ARTS INVESTMENTS
INC., PORT CAPITAL DEVELOPMENT
(ARTS) INC., MAIN STREET ARTS
DEVELOPMENT LIMITED
PARTNERSHIP, PORT CAPITAL
DEVELOPMENT INC., MACARIO
TEODORO REYES and
SEA INVESTMENTS LTD.

RESPONDENTS

**ORDER MADE AFTER APPLICATION
(ORDER NISI)**

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Matter No: 322531.00001