

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pillar Capital Corp. v. Horseshoe Valley
Ranch Ltd.*,
2026 BCSC 1535

Date: 20260813
Docket: H220064
Registry: Vancouver

Between:

Pillar Capital Corp.

Petitioner

And

**Horseshoe Valley Ranch Ltd.,
Elvern Kenneth Esau, Stacy Elvern Esau,
and Leanne Alma Esau**

Respondents

Before: The Honourable Justice Loo

Reasons for Judgment

Counsel for the Petitioner:

A.P. Bains

Counsel for the Respondents:

B. La Borie

Place and Dates of Hearing:

Vancouver, B.C.
July 16, 2026

Place and Date of Judgment:

Vancouver, B.C.
August 13, 2026

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Introduction

[1] On November 16, 2022, the petitioner, Pillar Capital Corp. (“Pillar”), sought an *order nisi* in respect of collateral mortgages granted by the respondents over several parcels of land in the Peace River district of British Columbia and judgment on the outstanding debt which is comprised of two loan facilities. In my reasons dated January 19, 2023, indexed at 2023 BCSC 82, the factual background is set out in greater detail.

[2] The respondents raised several defences to the petitioner’s debt claim and sought an order that the proceeding be referred to the trial list pursuant to Rule 22-1(7)(d) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*]. I found that two defences advanced by the respondents—based on the doctrine of improvident realization and allegations of a criminal interest rate—raised triable issues that precluded the granting of an *order nisi*.

[3] In June 2025, a further hearing was held to determine whether the two defences were made out. I concluded that they were not, in reasons dated June 25, 2025, indexed at 2025 BCSC 1171.

[4] As of the date of this hearing, it was agreed between the parties that, subject to issues raised by the respondent which I will address shortly, the total owing under facility one is \$792,693.04 and the total owing under facility two is \$3,305,097.93.

[5] The petitioner asserts that the appraised value of the subject lands is \$6,161,583. As will be addressed below, the appraised value of the lands is a contested issue. There is a mortgage ranking ahead of the petitioner’s mortgage said to be in the amount of \$2,778,662.

[6] Assuming the totals owing under the two loan facilities set out above, there would be a shortfall after sales commission and legal costs exceeding \$900,000 if the property were sold immediately at the appraised value.

Issues

[7] Pillar now seeks an *order nisi* which will involve a final determination of the amounts owing under the two loan facilities. Pillar seeks a redemption period of one day and immediate conduct of sale in respect of the subject lands.

[8] The respondents submit that the Court should exercise its equitable jurisdiction to discharge the respondent guarantors or to limit the time period over which interest was property charged. They also submit that if an *order nisi* is to be granted, the standard six-month redemption period would be appropriate.

[9] I will address these issues in turn.

Discussion and analysis

Discharge of the guarantees and limits on the charging of interest

[10] In my view, there is no basis upon which this Court ought to vitiate the guarantees.

[11] Where the courts have vitiated guarantees based on performance of the underlying loan agreement (as opposed to misrepresentation at the time of contracting) the misconduct has materially increased the risk of the guarantor being called upon to pay. Often this occurs where the misconduct of the creditor causes, or increases the chance of, the principal debtor defaulting: *Century Services Corp. v. LeRoy*, 2017 BCSC 1880 (appeal allowed but not on this point) at para. 106.

[12] The respondents did not press this point and made no submissions identifying any way in which the creditor's misconduct materially increased the risk of them being called upon to pay.

[13] The respondents' arguments in relation to limits on the charging of interest are based on s. 19 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 [LEA] which provides:

Payment of interest after default

19 In a proceeding for the foreclosure of the equity of redemption in mortgaged property, the court must, unless exceptional circumstances exist, order that the payment of interest is to be calculated and payable to the date full payment is made to redeem the property.

[14] In *United Savings Credit Union v. 631252 B.C. Ltd*, 2003 BCSC 367 [United Savings] at para. 25, Justice J. Sigurdson discussed s. 19 and opined, in *obiter*:

[25] I think that section deals with the date to which interest is to be calculated to redeem the property rather than giving the court a statutory jurisdiction to vary interest in exceptional circumstances.

[15] Similarly, in *Century Services Corp. v. LeRoy*, 2022 BCCA 239 [Century Services], the Court of Appeal held that the trial judge had erred in purporting to exercise an equitable jurisdiction to disallow the contractually agreed upon rate of interest, but in relation to s. 19 stated:

[88] As we have seen, there are some authorities (see paras. 52–3 above) in which courts have varied terms concerning the payment of interest — most often, to vary the *date from which interest runs* in a foreclosure. In that context, of course, s. 19 of the *Law and Equity Act* applies, requiring the Court to order the payment of interest to the date of payment in full unless "exceptional circumstances" exist...

[16] Finally, and most recently, Justice Hardwick addressed this issue in *Genesis Mortgage Investment Corp. v. Blais*, 2026 BCSC 178 [Genesis]. After referring to *Century Services* and to *United Savings* she stated:

[80] Importantly, what the respondents seek here is not a variation of the contractual interest rate. The relief sought is a time limited "pause" in the accrual of the contractual rate of interest. This is a proposition which Justice J. Sigurdson indicated, in *United Savings*, in *obiter*, was within the scope of the equitable jurisdiction conferred by s. 19 of the *Law and Equity Act*. That *obiter* is, in my view, effectively endorsed by the Court of Appeal in *Century Services* even though the issue was again not squarely before them.

[17] Leave to appeal has been granted with regard to Justice Hardwick's decision in *Genesis* but not on the issue relevant to this application.

[18] In that case, Justice Hardwick exercised the court's equitable jurisdiction under s. 19 of the *LEA* on the basis that the petitioner had been required to but did not deliver its bill of costs in October 2025 pursuant to an order of Associate Judge Schwartz in support of indemnity costs claimed in the foreclosure. Rather, the petitioner appealed and successfully obtained a stay of that order pending a determination of the appeal.

[19] The Court found that the interest that had been accruing under the mortgage during this intervening time was significant and further jeopardized the prospect of the respondents' ability to exercise their equitable right of redemption. In those circumstances, Justice Hardwick ordered the interest on the mortgage to be halted from October 1, 2025, until the first business day following the assessment of the petitioner's indemnity costs.

[20] In this case, the respondents allege that between April 2, 2019, and the making of an affidavit by a representative of the petitioner, Keaton O'Brien, on February 3, 2022, no statements of the amounts owing were provided to the respondents.

[21] It is of some importance that on December 3, 2018, Pillar seized equipment owned by the respondents. That equipment was sold at auction between April 11 and April 13, 2019, and the proceeds were applied to the loan facilities in May of that year. The respondents allege that they did not receive a reconciliation of the amount due, resulting from the equipment sale, until one was provided with Mr. O'Brien's affidavit.

[22] Regarding whether the respondents sought any statements or reconciliations between April 2019 and February 2022, the evidence advanced by the respondents is thin. No copies of demands for a reconciliation or a statement are found in the

materials. It appears that the sole piece of evidence in relation to this point is a sentence in an affidavit sworn by Mr. Esau who deposes that:

[Pillar] provided statements only periodically prior to 2020. Thereafter, despite requests, no statements were provided until we received the Affidavit #1 of Keaton O'Brien in 2022. The lack of clarity materially affected our ability to obtain refinancing.

[Emphasis added.]

[23] On the other hand, the petitioner has not responded to this evidence or to the respondents' submissions that they had made requests for statements in the relevant time period.

[24] The respondents also depose that since the outset of their relationship with Pillar, they have had difficulty understanding the petitioner's accounting, especially with regard to interest. They depose that they have been refused information to back up the petitioner's loan or interest calculations, and an excel spreadsheet that documents the formulas used for interest or additional costs.

[25] In light of the foregoing, I have concluded that it was incumbent upon the petitioner to provide statements of amounts due after April 2, 2019. The fact that there was no reconciliation of the equipment sales provided to the respondents weighs heavily in the analysis. It is noted that under s. 33 of the *Property Law Act*, R.S.B.C. 1996, c. 377, a mortgagee must provide a payout statement under a mortgage on request. In my view, it would have been reasonable for the petitioner to provide those statements by April 30, 2019.

[26] In my view, this case is analogous to *Genesis* wherein the petitioner appealed the associate judge's order rather than complying with it and delivering a bill of costs and the associated invoices as ordered.

[27] As in that case, I find that the circumstances in this case are exceptional as that term is used in s. 19 of the *LEA*, and that it is appropriate to pause the interest charged on the loan facilities from April 30, 2019, to February 3, 2022.

Redemption period

[28] Section 16(2) of the *LEA* provides:

(2) If, in a foreclosure, the purchaser or person claiming through the purchaser is given time to redeem, the court must order that the time for redemption be 6 months, unless the court considers, in the circumstances, that a shorter or longer period is justified.

[29] In *Tri City Capital Corp. v. 0942317 B.C. Ltd.*, 2016 BCSC 1514 at para. 172, this Court held:

[172] The court may exercise its discretion to shorten the six-month redemption period if the circumstances justify it, such as if the mortgagor has no equity in the property, the property has been abandoned or is wasting, or the mortgagee would suffer undue hardship if a longer redemption period were granted: [citations omitted].

[30] Further, in *Lanyard Investments Inc. v. 3771 No. 3 Road Inc.*, 2024 BCSC 1664 at para. 17, Associate Judge Robertson quoted with approval from an article by the late McEachern, C.J.S.C., as he then was, in *On Foreclosure Practice*, (1983) 41 Advocate 583, wherein the former Chief Justice stated:

[18] ...

The redemption should not be less than six months unless:

- (a) the premises are abandoned or suffering waste.
The fact that premises are vacant does not necessarily mean that they are abandoned; or
- (b) the mortgagor has no equity and is unlikely to be able to refinance and the mortgagee will likely suffer a loss or increased loss if the usual order is made.

Even in these circumstances, an immediate order absolute or a shortened redemption period will not always be made, particularly in the case of residential premises where the mortgagor is in occupation. The court retains a discretion in this connection, but, in most cases, the position of the mortgagee should not be worsened materially.

[31] The primary question on this application is whether the mortgagor has no equity and is likely to be able to refinance.

[32] As stated, there is an appraisal before the Court valuing the subject lands at \$6,161,583. The respondents contest the amount of this appraisal but have not

advanced a competing appraisal. Rather, they rely on an “opinion of value” prepared by a realtor. However, the opinion of value expressly states that the author is not a licensed appraiser, and that the document is not an appraisal and should not be relied upon as one. The opinion of value is significantly higher than the appraisal.

[33] There is nothing before the Court that explains why the opinion of value is preferable or even why the two assessments are so significantly different. The respondents rely on the opinion of value for the proposition that the value of the land is “inconclusive” but in my view the opinion of value ought to be given little weight. I find that the only qualified appraisal evidence before the court is the appraisal proffered by the petitioner and the land ought to be valued for the purposes of this analysis at \$6.161 million.

[34] If the property were sold immediately at the appraised value, there would be a shortfall (not accounting for the interest pause ordered above) after sales commission and legal costs exceeding \$900,000.

[35] However, that is not the end of the analysis. Whether there is equity in the property depends both on the value of the properties and on the amount of the debt. Given the interest pause that I have ordered above, the debt will be significantly reduced.

[36] I received no submissions from counsel regarding the extent to which the debt would be reduced if the interest were so paused, but I note that the present contractual debt exceeds \$4 million, and that the interest rates on the two facilities are 21 percent and 24 percent respectively. The interest pause ordered above is for more than two years. It is evident from these figures that the total indebtedness will be reduced by more than \$900,000 as a result of the interest pause, and that this reduction ought to result in some equity being available to the respondents in the subject properties.

[37] No evidence has been shown to me demonstrating that the properties have been abandoned or are wasting, or the mortgagee would suffer undue hardship if a six-month redemption period were granted.

[38] As result of the foregoing, the redemption period shall be six months.

Conclusions and costs

[39] Pursuant to the court’s jurisdiction under s. 19 of the *LEA*, the calculation of interest on the two loan facilities shall be paused between April 30, 2019, and February 3, 2022.

[40] An *order nisi* is granted with a six-month redemption period.

[41] In my view, success on this application was mixed. Although the respondents have been successful on two issues—being the interest pause and the redemption period—the respondents’ application to have the guarantees discharged was dismissed, and an *order nisi* was granted to the petitioner. As a result, the parties shall bear their own costs.

“Loo J.”