

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *GC Capital Inc. v. Westfield Business
Centre Ltd.*,
2024 BCSC 2396

Date: 20240527
Docket: H230596
Registry: Vancouver

Between:

GC Capital Inc. and Kismet Capital Ltd.

Petitioners

And:

**Westfield Business Centre Ltd., formerly 1267541 BC Ltd, TDP Holdings Ltd.,
622013 BC Ltd., Crystal View Holdings Inc., 1352740 BC Ltd., 1352749 BC Ltd.,
1352764 BC Ltd., 0808774 BC Ltd., The Jag Aujla Family Trust, Kuldeep
Bansal, Kulwant Singh Gill, Kamaljit Singh Sandhu, Jagjit Singh Aujla, Amneet
Kaur Gill, Ashok Kumar Bansal, Kiran Bala, Tarandeep Singh Gill, 0938080 BC
Ltd, MFPE Engineering Ltd., The Browin in Right of British Columbia, Royal
Bank of Canada, and All Tenents or Occupiers of the Subject Lands and
Premises**

Respondents

Docket: H248116
Registry: New Westminster

Between:

Gulf and Fraser Fisherman's Credit Union

Petitioner

And:

Ashok Kumar Bansal, Kiran Bala, GC Capital Inc., and Kismet Capital Ltd.
Respondents

Before: Associate Judge Robertson

Oral Reasons for Judgment Re Conduct of Sale

In Chambers

Counsel for 0938080 BC Ltd.: J.S. Malik

Counsel for Kiran Bala and Ashok Bansal: M. Laity

Counsel for GC Capital Inc. and Kismet
Capital Ltd.: B.C. Gibbons
N.S. Mann

Counsel for Gulf & Fraser Credit Union: S. You

No other appearances

Place and Date of Hearing: Vancouver, B.C.
May 27, 2024

Place and Date of Judgment: Vancouver, B.C.
May 27, 2024

[1] **THE COURT:** When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered. I have made such edits, without affecting the substance or final disposition.

[2] These are my oral reasons for judgment subsequent to my previous reasons issued earlier today declining to adjourn this application for approval of sale of bare land in Surrey, that being a portion of the property which is the subject of these two foreclosure proceedings.

[3] There are also two competing applications by the two separate petitioners/mortgagees for conduct of sale of the remaining properties. Those conduct of sale applications are the subject of further reasons being issued today.

Background

[4] The petitioner, Gulf and Fraser Credit Union, obtained order *nisi* on July 20, 2023, with a six-month redemption period expiring January 20, 2024. The amount to redeem at that time was \$2,270,143.83, plus interest at prime plus 3.25% and costs.

[5] Included in that order was a term that the petitioner would have sole conduct of sale triggered upon the expiry of the redemption period. Accordingly, upon the redemption period's expiry on January 20, 2024, they began marketing and listing the property in the usual ways, including by listing the property on MLS on January 22, 2024, initially at a price of \$3.3 million.

Marketing Evidence

[6] The marketing evidence before the court is hearsay evidence, namely a marketing report exhibited to an affidavit of someone other than the realtor.

[7] I do have concerns with it being hearsay.

[8] Hearsay evidence is not admissible on final orders, as commented upon by our court of appeal specifically in respect of a realtor's marketing report in *Elite Mortgage Corp. v. Derewenko*, 2019 BCCA 125. However, as the court acknowledged at para. 28, R. 22-1(4)(e) does allow the court to receive "other

forms” of evidence, albeit on a limited basis, subject to the formal requirements of R. 22-2(12) and (13) as to the need to properly identify the source of a deponent’s information and belief.

[9] Foreclosure matters are summary in nature in that, by virtue of R. 21-7(1) they are to be commenced by petition. The summary process by which matters are to proceed recognizes the need for efficiency in the foreclosure process, in keeping with the overall objective of the rules to provide for a just, speedy, and inexpensive determination of a proceeding on its merits, so far as it is practicable, and proportionate to the amount in issue, the importance of the issues and the complexity of the proceeding. A further indication of the legislature’s intention that foreclosure applications be conducted in an efficient manner as possible is that, where an application is unopposed, including for a final order, Scale A costs are to be awarded, with some limited exceptions.

[10] The majority of applications go unopposed. Even if opposed, it is often with no notice of such opposition being given to the applicant, with the respondent opposing the matter doing so without having filed response materials. For the most part, the foreclosure bar allows such opposition to be made without the respondent’s formal response as doing so is more efficient and, ironically, an adjournment to allow the materials to be properly filed increases the costs as added to the amount to redeem the mortgage, which can be prejudicial to the owner if they are the party opposing the application.

[11] In terms of an application for approval of sale, under the above framework a foreclosure practice developed whereby the evidence as to marketing efforts is tendered by way of a realtor’s marketing report, which is then attached to an affidavit, generally sworn by a member of the applicant’s support staff, such that the evidence of the marketing history is on that deponent’s information and belief, and not direct evidence as would otherwise be required for a final order. In most cases such applications are unopposed such that efficiency, including as to cost, is a consideration.

[12] In the majority of cases, even if a sale is being opposed, there is no dispute as to the facts set out in that report, i.e. the history of the listing itself, such as the list price, adjustments to list prices, the “clicks” and “views” of the property posts on the realtor’s or MLS websites, and any difficulties encountered with the marketing. The dispute is generally as to (a) whether or not the actions taken by the realtor constitute a proper exposure to the market, so as to ensure that the sale is a provident one, or (b) the admissibility of what is often a gratuitous opinion by the realtor that the offer before the court is for “fair market value”.

Conclusion and Order

[13] In this case, the respondents do not raise any issue with the marketing report or its contents, or the facts within it.

[14] Specifically, they do not dispute that the property has been listed since January 2024, that there have been a number of offers that have been received in respect of the property and negotiated, with all of those offers seemingly falling in value, and being pulled or expiring without conditions being removed, with values lower than the offer that was accepted subject to court approval, and forms the basis of today's application.

[15] Given the summary nature of foreclosure proceedings, and as a matter of good practice to ensure the object of the rules cited above are met, namely the timely and efficient resolution of matters having regard to proportionality, there is some obligation on a party opposing a sale approval supported by a marketing report tendered in the usual manner, as hearsay evidence, to give notice to the applicant if they take issue with the marketing evidence. It is trite that the purpose of the notice of application and response is to give notice to the parties of such positions in advance of the hearing date. That includes an obligation to advise counsel if they take issue with the marketing report being hearsay, or if there is any dispute as to the facts set out therein.

[16] No such notice was given of any such issue, or dispute on the facts set out in the marketing report. Thus, I am prepared to admit into the report into evidence

notwithstanding that its contents are hearsay. I am satisfied that the evidence meets the formal requirements in that it properly identifies the source of the deponent's information and belief, and is reliable given the lack of dispute as to the facts set out therein.

[17] The marketing report also attaches in support of the factual statements the printouts of the "hits" with respect to the property's internet listing, a summary of contact the listing realtor had from interested parties including potential purchasers' realtors who have called from time to time and made inquiries, and a picture of the signage on the property.

[18] I am satisfied that the property has been fully exposed to the market and that the offer before the court represents a provident sale.

[19] I have been presented with competing bids pursuant to the sealed-bid process set out in practice direction number 62.

[20] There was an increased bid received from a new bidder as well as an increased bid from the original offeror before the court today.

[21] I am satisfied that the better offer is the higher of the two, that being the sealed bid in the amount of \$3,525,000 to Manjit Saini and Amarjit Saini, with closing and possession ten business days from court approval, which by my math is June 11, 2024. I will approve that offer. I understand that title will be taken in joint tenancy. The order will be granted on those terms.

"Associate Judge Robertson"