COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Westfield Business Centre Ltd. v. GC Capital Inc.,*
2025 BCCA 108

Date: 20250321
Docket: CA50402

2025 BCCA 108 (CanLII)

Between:

**Westfield Business Centre Ltd., TDP Holdings Ltd.,
622013 B.C. Ltd., Crystal View Holdings Inc., 1352740 B.C. Ltd.,
1352749 B.C. Ltd., 1352764 B.C. Ltd., 0808774 B.C. 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 and Tarandeep Singh Gill**

Appellants
(Respondents)

And

GC Capital Inc. and Kismet Capital Ltd.

Respondents
(Petitioners)

And

0938080 B.C. Ltd. and MFPE Engineering Ltd.

Respondents
(Respondents)

And

**1063466 B.C. Ltd., HQ Real Estate Services Inc., 88 Supermarket (Surrey) Ltd.,
Ice Constructors Ltd., Zoom Engineering Ltd., Tides Consulting Ltd., and
Polo Security Services Ltd.**

Respondents

Before: The Honourable Justice Iyer
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated January 15, 2025 (*GC Capital Inc. v. Westfield Business Centre Ltd.*, 2025 BCSC 174, Vancouver Docket H230596).

Oral Reasons for Judgment

Counsel for the Appellants:	D.E. Gruber S. Bourns
Counsel for the Respondents, GC Capital Inc. and Kismet Capital Ltd.:	B.C. Gibbons S.B. Hannigan
Counsel for the Respondent, 0938080 B.C. Ltd.:	J.S. Malik
Counsel for 1262066 B.C. Ltd.:	J.D. Bradshaw J. Robertson-Taylor, Articled Student
Place and Date of Hearing:	Vancouver, British Columbia March 19, 2025
Place and Date of Judgment:	Vancouver, British Columbia March 21, 2025

2025 BCCA 108 (CanLII)

Summary:

The appellants seek leave to appeal a judge's approval for sale of a property in the context of foreclosure proceedings. Held: Application dismissed. The proposed appeal raises no point of significance to the practice. More significantly, it has very little merit, which also reduces its potential significance to the action. Therefore, granting leave is not in the interests of justice.

[1] **IYER J.A.**: The appellants (respondents in the court below) seek leave to appeal and a stay of the January 15, 2025 order of a chambers judge approving the sale of a distressed real estate project to 1262066 B.C. Ltd. ("126") in the amount of $56.5M. I will refer to the appellants as Westfield.

Background

[2] The project is a four-storey unfinished building on property in Surrey that has been vacant for 26 years (the "Property"). Westfield purchased the Property in April 2022 for $55M with funding through a first, second, and third mortgage, with a one-year term. There are also other charges on the Property.

[3] Westfield did not pay its property taxes and allowed its insurance to lapse. It was also in default of its loan obligations.

[4] The petitioners, GC Capital Inc. and Kismet Capital Ltd., to whom I will refer as GC, held the first mortgage over the Property. GC paid $2.3M in property taxes and property insurance to prevent loss of the Property by tax sale. It is a secured creditor in first position and is owed approximately $42M.

[5] On November 2, 2023, GC obtained an order *nisi* that expired after six months. The second mortgagee, 0938080 B.C. Ltd. had conduct of the sale initially, which GC then took over.

[6] On November 16, 2024, 126 offered to purchase the Property for $56.5M, subject-free with a $2.5M deposit ("126 Offer"). GC accepted the 126 Offer and, on November 29, 2024, applied for court approval. Westfield then applied to extend the redemption period.

2025 BCCA 108 (CanLII)

2025 BCCA 108 (CanLII)

Decision (2025 BCSC 174)

[7] Although set for two hours, the applications were heard over three days in January 2025. The chambers judge gave oral reasons two days later, on January 15, 2025. He approved the sale to 126 and dismissed Westfield's application for extension of the redemption period. The latter decision is not challenged in this Court.

[8] It was not disputed that the test governing approval for sale is first, whether the sale was conducted in a businesslike manner and second, that the sale is provident in all the circumstances. The onus is on the applicant.

[9] The chambers judge considered the evidence of how the Property was marketed, noting that Colliers, a leader in commercial real estate, was the agent, the Property had been on the market for nearly a year, and had received some media attention. He referred to the affidavit of Bill Randall, Colliers' executive vice-president setting out the marketing plan. He noted that Mr. Randall deposed that the 126 Offer represents fair market value, the purchaser was qualified and experienced, and that the sale was provident (paras. 5, 17).

[10] The chambers judge also considered other evidence about the value of the Property tendered by Westfield. That included an offer of $77.7M and a subsequent offer of $64.5M, both tendered during the hearing, BC assessment values of $32M for 2023, $114M for 2024, and $62.3M for 2025, and a letter the judge said was described to him as, "a letter of intent from a firm offering a loan [of] $66,204,245 premised on an as-is appraised value of $153,933,125": paras. 19–22.

[11] The chambers judge referred to the evidence about the conduct of the parties in relation to the Property. He noted that, while Westfield's initial intention was to develop a leasing project, after GC obtained conduct of sale it decided on a strata development concept: para. 9.

[12] The judge referred to the conduct of Mr. Bansal, Westfield's representative towards Mr. Rai, 126's principal. Mr. Brousson is counsel for 126. The judge wrote:

> [23] Recognizing that we have two applications that are clearly related and recognizing that the onus is on each applicant to establish the justification for the order that they seek; in assessing the totality of the evidence, the circumstances of this case are somewhat coloured by the less-than-honourable steps taken by Mr. Bansal towards the principal of the proposed purchaser. This was articulated in submissions by Mr. Brousson in some detail. The extent of this negative behaviour to malign Mr. Rai with unfounded accusations unfortunately dims my view of the case and the weight to be placed on the evidence put forward by the owners and lends weight to the petitioner's argument that the steps taken by the owners are simply to hamper, disrupt, and delay the process.
>
> [24] In my view, the actions of the owners are an attack on the marketing and sales process that this court ordered; demonstrate a lack of respect for the integrity of the court's process and furthers the concerns regarding the substance behind the offers and late new information tendered, namely, the absence of substance identified and spoken to at some length by Mr. Gibbons and Mr. Brousson. I am not criticizing the owners' counsel in this regard, as they are experienced, well regarded, and, they have come into this proceeding rather late.
>
> [25] I also note that the owners put the Property into jeopardy regarding the property insurance lapse and not paying property taxes. I also note the comment of Associate Judge Robertson, who on the circumstances before her regarding conduct of sale found that an adjournment application by the owners was an attempt at delay to improve its position at the prejudice of the petitioner. I note as well the with-prejudice offer which I mentioned proposed to place the $77.7 million offer into the primary position and for that offer to be approved, which was rejected, which erodes the case of the owners.

[13] The chambers judge assessed the competing offers of $77.7M and $64.5M. He wrote that the $77.7M offer was submitted after the deadline, with a $1M deposit tendered after the first day of hearing, but without an Appendix A letter. He referred to it as "non-compliant", in relation to PD-62. The judge said he had been informed of the $64.5M offer, tendered without a deposit: para. 19.

[14] The judge also referred to a written with-prejudice proposal circulated by 126 to have the court approve the $77.7M offer with a deposit of $2M and a closing date of March 31, 2025, with 126 as the backup-plan approved purchaser if things fell through. The judge wrote that Westfield had rejected that proposal.

[15] The judge referred to the decision of Justice Fitzpatrick in *Institutional Mortgage Capital Canada Inc. v. Plaza 500 Hotels Ltd.*, 2020 BCSC 888, and her comment that the provident price is not the best price one would expect in a non-

2025 BCCA 108 (CanLII)

forced sale situation: para. 28. He addressed the concern that the price was too low. He pointed to the wide variation in the BC Assessments, on which the appraisals were based, the hypothetical assumptions, cost and time it would take to create the value associated with a developed strata project.

2025 BCCA 108 (CanLII)

[16] He concluded:

> [36] In my view, I am satisfied that a proper marketing process was undertaken, with an experienced and well-qualified marketer, the agreed-to price is within the relevant range, and the proposed purchaser I am satisfied has the ability to complete.

Discussion

[17] I will first address whether leave should be granted.

[18] In its written argument, Westfield advances three grounds of appeal:

1. The Chambers Judge erred in principle by failing to give appropriate consideration to higher offers for the Property presented to the court;

2. The Chambers Judge fettered his discretion by applying PD-62 to conclude that the higher offers should not be considered; and

3. The Chambers Judge erred in law by misapprehending the evidence of the appellants.

[19] *Goldman, Sachs & Co. v. Sessions*, 2000 BCCA 326 at para. 10 (Chambers) sets out the criteria to be considered in granting leave:

> (1) whether the point on appeal is of significance to the practice;
> (2) whether the point raised is of significance to the action itself;
> (3) whether the appeal is prima facie meritorious or, on the other hand, whether it is frivolous; and
> (4) whether the appeal will unduly hinder the progress of the action.

[20] These criteria are “all considered under the rubric of the interests of justice”: *Vancouver (City) v. Zhang*, 2007 BCCA 280 at para. 10 (Saunders J.A. in

Chambers); *Hanlon v. Nanaimo (Regional District)*, 2007 BCCA 538 at para. 2 (Saunders J.A. in Chambers).

[21] Leave to appeal a discretionary order, such as the order in this case is rare. It will only be granted where the applicant shows an arguable case that the order is clearly wrong, a serious injustice will occur, or the discretion was exercised on a wrong principle or not judicially: *Institutional Mortgage Capital Canada Inc. v. Plaza 500 Hotels Ltd.*, 2020 BCCA 193 at para. 48, citing *William v. Taseko Mines Limited*, 2019 BCCA 479.

2025 BCCA 108 (CanLII)

[22] In my view, the proposed appeal is of no significance to the practice. The first and third grounds arise from, and are confined to, the facts of this particular case. There is no dispute on the law governing approval of sale in a foreclosure proceeding and that law is well-settled. Practice Directive 62 was in place during COVID but was replaced by PD-66 on March 3, 2025.

[23] I accept that there may be significance to the action in that some creditors who will not be repaid out of the $56.5M sale could be repaid out of the $77.7M offer if it completes.

[24] The focus of all parties' submissions was on the merits. I emphasize here that the standard of review is deferential.

[25] Westfield characterizes its first ground of appeal, failing to adequately consider the higher offers, as an error in principle. With respect, it has not identified what the applicable principle is. The judge identified defects in each of the higher offers and explained why he had concerns about the substance behind them (paras. 19, 24). He considered all of the evidence before him in reaching his conclusions, both with respect to the value of the Property and with respect to which offer to approve. I agree with the respondents that Westfield's reliance on receivership cases is misplaced.

[26] Westfield's characterization of the judge as "rigidly adhering to the procedure set out in PD-62" is inaccurate. While the judge noted that the offers were not

compliant (at para. 19), his analysis did not end there. As I have said, he gave other reasons for rejecting the other offers. It cannot be an error for a judge simply to refer to the requirements of an applicable practice directive. I can see no basis for Westfield's argument that the judge was unaware of or failed to apply para. 10 of PD-62, which expressly affirms the court's discretion in approving applications for sale.

2025 BCCA 108 (CanLII)

[27] Turning to the third ground of appeal, Westfield says that the judge misapprehended the evidence it tendered about Mr. Rai, 126's principal, when he characterized it as consisting of "unfounded accusations". Westfield argues that its allegations against Mr. Rai have some foundation. It is clear from the reasons below and the record that Westfield tendered a great deal of evidence about Mr. Rai, which Mr. Rai refuted, and that Mr. Rai's character was a hotly contested issue. It was within the judge's discretion to draw conclusions about Westfield's decision to call Mr. Rai's character into question and its relevance to the position it was taking on the sale. Westfield's disagreement with the judge's conclusion does not rise to the level of reviewable error.

[28] Westfield submits that granting leave will not unduly hinder the progress of the action. It says that although closing is on April 15, 2025, there is an automatic 60-day extension, and the appeal could be expedited and heard before then. While I consider this optimistic, particularly since it does not allow time for a decision to be issued, I am prepared to treat this factor as neutral.

[29] In my view, it is not in the interests of justice to grant leave to appeal. The proposed appeal raises no point of significance to the practice. More significantly, it has very little merit, which also reduces its potential significance to the action.

[30] Westfield's application for leave is dismissed. It is therefore unnecessary to consider its stay application.

"The Honourable Justice Iyer"