

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *National Bank of Canada v. VFC
Corporate Wings Aviation Ltd.*,
2026 BCSC 126

Date: 20260109
Docket: S258700
Registry: Vancouver

Between:

National Bank of Canada

Petitioner

And

VFC Corporate Wings Aviation Ltd.

Respondent

Before: The Honourable Mr. Justice Veenstra

Oral Reasons for Judgment

In Chambers

Counsel for Petitioner:

A. Teasdale
K. Jalilvand

Counsel for Respondent:

S. Batkin
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Company Ltd.:

D.D. Nugent

Counsel for the Attendee, Victoria Airport
Authority:

R.K. Gandhi

Place and Dates of Hearing:

Vancouver, B.C.
January 7-8, 2026

Place and Date of Judgment:

Vancouver, B.C.
January 9, 2026

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[1] **THE COURT:** This is the hearing of a petition brought by the petitioner, National Bank of Canada (the “Bank”), as successor to the Canadian Western Bank. The only relief sought in the Petition is an order appointing Crowe MacKay & Company Ltd. as receiver without security of all of the assets, undertakings, and property of VFC Corporate Wings Aviation Ltd. (“VFC”). The relief is sought pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [BIA], s. 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 [LEA], and with respect to any personal property involved, s. 66 of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359. The Bank says that a receivership is necessary in order to protect its security from evaporating.

[2] The Petition is vigorously opposed by VFC, which asserts that there has been no financial default, there is no risk to the Bank’s security, the affidavits filed in support of the Petition are largely non-compliant with rules of evidence and make allegations that are mostly demonstrably false, that there has been an inexplicable and unnecessary rush to put this matter before the court, and that the Petition is largely a colourable effort to use the court’s process to give the Victoria Airport Authority (the “VAA”) a basis to get rid of VFC. VFC says that the Petition should be dismissed with costs.

Background Facts

[3] The property in issue in this proceeding is approximately 8.5 acres of land on which several buildings, including aircraft hangars and an office building, have been constructed and which is located on the edge of the Victoria International Airport. The property hosts aviation-related air-side businesses, including aviation storage and operations, and has direct taxiway access.

[4] The principal of VFC is Jim McLaren, who is now 90 years old and has been involved in the real estate development business for 70 years. He was also, until recently, an avid pilot. He has been assisted with respect to VFC in recent years by a Mr. Peulen, who is married to Mr. McLaren’s granddaughter. Given his age, Mr. McLaren now recognizes that it is probably a good time to sell VFC.

[5] VFC's interest in the site dates back to a lease dated January 1, 1993, by which the federal government leased VFC a portion of the current site for a term ending June 30, 2036. By a supplemental agreement dated April 1, 1993, the leased area was increased to 2.91 acres. The agreement required that the land be used for development, operation, and maintenance of an aviation-related fixed-base facility, building, aircraft storage, hangars, and aviation operations.

[6] By 1995, VFC had constructed a 32,000 square-foot 22-hangar building known as "Hangar A" and a two-storey mixed-use office building. It rented individual hangars in Hangar A and space in the office building to various subtenants.

[7] In 1997, the federal government leased the Victoria International Airport site to the VAA, and the VAA became responsible for the operation of the airport and the airport lands. The federal government's lease to VAA was an 80-year lease, to expire in 2077.

[8] Because the airport is a federal undertaking, the VAA is not subject to municipal laws governing such matters as zoning and the regulation of building construction. At least in recent times, it appears that the VAA has contracted with a local code consulting firm to perform services such as permit issuance and building inspections. However, it appears that the North Saanich Fire Department performs the same fire and safety inspection role at the airport that it performs in the local community.

[9] Several years after the creation of the VAA to operate the airport in 2006, there was a series of transactions by which the federal government assigned its interest in the VFC lease to the VAA, the VFC surrendered its lease, and the VAA issued a new sublease to VFC. That sublease, as amended (the "Sublease"), is the indenture that continues to govern the relationship between VAA and VFC today. In 2006, the Sublease provided a leased area of 6.28 acres with a term expiring on June 30, 2036, but with rights of renewal that could extend it to 2077. The Sublease also required VFC, at its expense, to complete construction of two additional aircraft hangar buildings as well as additional office space.

[10] Material terms of the Sublease include:

a) A requirement in s. 4.5 that no construction take place unless proper plans have been submitted to and approved by the VAA, and that VFC conform to rules and regulations with respect to demolition, construction, and improvement matters, including any permitting process mandated by VAA;

b) Section 6.1(a), which requires VFC to:

... promptly observe and comply with all provisions of law including, without limitation, all requirements of all governmental authorities, including federal, provincial and municipal legislative enactments, bylaws and other regulations ... [and] ... observe and comply with all police, fire and sanitary regulations and recommendations imposed by any governmental authorities including federal, provincial or municipal ...

c) Section 6.2, which states that:

The Sublessee shall conduct its business in an efficient, businesslike, lawful and ethical manner and shall not carry on or permit on the Subpremises any noisome or offensive trade or business and no act or conduct whatsoever shall at any time during the Term or any renewal be done which may in the reasonable opinion of the Sublessor cause annoyance, nuisance, grievance or damage to the Sublessor, the public, other sublessees, other occupiers, or owners of adjoining lands or properties, or which may make void or voidable any policy of insurance carried by the Sublessor or which may result in any increase of premium for any such policy of insurance.

d) Section 12.2(a), which states that:

If and whenever:

...

- ii. the Sublessee shall not observe, perform and keep each and every of the covenants, agreements, stipulations, obligations, conditions and other provisions of this Sublease to be observed, performed and kept by the Sublessee and shall persist in such default, in the case of monetary payments, beyond the fifteen (15) Day period referred to in Subsection 12.2(a)(i) or, in the case of any other default, after thirty (30) Days following written notice from the Sublessor requiring the Sublessee to remedy that default;
- iii. the Sublessee makes an assignment for the benefit of creditors which was consented to or did not require a consent;

- iv. a receiver or receiver-manager is appointed in respect of any property of the Sublessee or is appointed to control the conduct of the business on or from the Subpremises;
- v. the Sublessee becomes bankrupt or insolvent or takes the benefit of an act now or hereafter in force for bankrupt or insolvent debtors;

...

then the current month's rent and the next ensuing three (3) months' rent immediately will become due and payable as accelerated rent and the Sublessor may re-enter and take possession of the Subpremises ... and this Sublease, at the option of the Sublessor, forthwith will become forfeited and determined. ...

[11] The Sublease was registered in the Land Title Office on April 15, 2009.

[12] In the years that followed, VFC constructed Hangar B, a 13,000 square-foot 10-hangar building, as well as Hangar C, which was 11,000 square feet in size.

[13] In December 2017, the Sublease was amended to increase the size of the leased area to just under 8.5 acres and to provide that VFC would grant an extension of the lease term to 2077, upon:

- a) completion of construction of a new wing of the office building that was then under construction; and
- b) the obtaining of an occupancy permit with respect thereto.

[14] On April 30, 2021, there was a further amendment to the Sublease, which confirmed in its recitals that:

... the Sublessee has been issued its occupancy permit and is in compliance with the terms of the Sublease; ...

[15] The extension of term was reflected in a Modification of Sublease, registered in the Land Title Office on December 2, 2022. This document was signed by an authorized officer of VAA on November 23, 2022. In the recitals it confirms that:

- D. [VFC] has been issued its occupancy permit and is in compliance with the terms of the Sublease;

[16] The document further confirms, in registrable form, that the term of the Sublease has been extended to March 30, 2077.

The Bank's Mortgage Loan

[17] In the meantime, in the fall of 2020, VFC had obtained financing from the Canadian Western Bank. That financing is reflected in a commitment letter dated October 1, 2020, which was subsequently amended by amending letters dated February 8 and July 5, 2021 (the “Commitment Letters”). The Commitment Letters provided for a demand loan in the sum of \$5,575,000, comprised of a principal sum of 5.5 million and a revolving credit facility in the amount of \$75,000. The Commitment Letters reflect that security is to be provided by way of, among others, a mortgage registered in the Land Title Office, a separate assignment of rents, a guarantee executed by Mr. McLaren, a Demand Promissory Note, and a General Security Agreement, plus such other security instruments, assurances, and supporting documents as the Bank may deem necessary or advisable.

[18] Schedule “F” provides certain “Standard Loan Terms”, including:

1.5 Our rights re demand Loans. We believe that the banker-customer relationship is based on mutual trust and respect. It is important for us to know all the relevant information (whether good or bad) about your business. [The Bank] is itself a business. Managing risks and monitoring our customers' ability to repay is critical to us. We can only continue to lend when we feel that we are likely to be repaid. As a result, if you do something that jeopardizes that relationship, or if we no longer feel that you are likely to repay all amounts borrowed, we may have to act. We may decide to act, for example, because of something you have done, information we receive about your business, or changes to the economy that affect your business. Some of the actions that we may decide to take include requiring you to give us more financial information, negotiating a change in the interest rate or fees, or asking you to get further accounting assistance, put more cash into the business, provide more security, or produce a satisfactory business plan. It is important to us that your business succeeds. We may demand immediate repayment of any outstanding amounts under any demand Loan. We may also, at any time and for any cause, cancel the unused portion of any demand Loan.

[19] In the Commitment Letters, there is a provision that permits the Bank to accelerate the debt and enforce security upon the occurrence of any one of several listed items of default, among them:

- (b) there is a breach by the Borrower of any other term or condition contained in this Agreement or in any other agreement to which the Borrower and the Bank are parties and the Borrower has not corrected such breach within 15 days of notice having been provided to the Borrower;

[20] One of the key security documents obtained by the Bank is a document called "Consent to Mortgage", which is dated July 26, 2021. There are three parties to the Consent to Mortgage: the VAA, the Bank, and VFC. Sections 1 to 4 of the Consent to Mortgage provide that:

1. The Landlord hereby:
 - (a) acknowledges to the Bank that;
 - (i) the Lease between the Landlord and the Tenant is in good standing as at the date hereof and the Landlord is not aware of any breach by the Tenant of any provision of the Lease which breach would give the Landlord the right to terminate or take any other proceedings under the Lease; and
 - (ii) all rent and other monies payable by the Tenant to the Landlord under the Lease have been paid up to the most recent date for payment thereof pursuant to the Lease; and
 - (iii) the Landlord has received a copy of the mortgage granted by the Tenant in favour of the Bank and has noted receipt of such mortgage in its records pertaining to the subject Lands described in Schedule "A" hereto and, as at the date hereof, advises the Bank that it has no record of any other financial encumbrances filed with the Landlord with respect to the Tenant's lease of the Lands; and
 - (iv) the Landlord consents to the granting of the mortgage by the Tenant in favour of the Bank; and
 - (v) the Landlord will only accept payment of rent from the Tenant as and when it falls due under the terms of the Lease, and will not accept a surrender of the Lease without first obtaining the consent of the Bank which consent will not be unreasonably withheld; and
 - (vi) the Landlord will not agree to any modification or amendment to the Lease which may adversely affect the Mortgagee's security interest without the prior written consent of the Mortgagee being first obtained.
 2. The Landlord and Bank agree that, so long as the mortgage is outstanding;
 - (a) The Landlord shall give to the Bank notice of any default by the Tenant in connection with the Lease where any action is proposed to be taken by the Landlord as a result of such default. On receipt of such notice, the Bank shall have a period of sixty (60) days in order to avoid a forfeiture of the Lease, to make any and all payments and do

and perform all acts or things which may be necessary or required to prevent such forfeiture and to remedy such default. In the event such default cannot be cured within sixty (60) days, the Bank shall have such further period of time as may be reasonably agreed to remedy the default considering the nature of the default, provided all sums due and owing under the Lease are duly paid,

- (b) In the event any default is not remedied within the hereinbefore stipulated time, then the Landlord shall be at liberty to exercise such rights or remedies to which it is entitled under the terms and conditions of the Lease without any further notice to the Bank.
 - (c) If the Bank should at any time foreclose or in any way realize on its security under the mortgage as against the Lease (or any renewal thereof) and the Lands, then:
 - (i) If the Bank shall enter into actual possession of the Lands, so long as the Bank shall pay the rents reserved in the Lease (or any renewal thereof), pay the taxes and other monies payable by the Tenant under the Lease, and observe and perform the other terms, covenants, and conditions therein contained, the Bank shall be entitled to enforce its rights under the mortgage without incurring any liability under the Lease (or any renewal thereof) in respect of any portion of the term of the Lease beyond the period of actual possession of the Lands enjoyed by the Bank; and
 - (ii) the Landlord will not unreasonably withhold its consent to the assignment, sale, or other disposition of the Lease or any renewal thereof by the Bank in so realizing on its security, whether or not the Bank shall have entered into actual possession of the Lands; and
 - (iii) so long as the Bank continues to remedy any default by the Tenant in any of the covenants, conditions, or agreements in the Lease, the Landlord will not exercise any of its rights and remedies to cancel or terminate the Lease.
3. The Landlord covenants and agrees with the Bank that, so long as the mortgage is outstanding, if the Lease is forfeited, surrendered, or otherwise terminated, it will grant to the Bank a new Lease of the Lands at the same rent and on the same terms and conditions as reserved and contained in the Lease (or any renewal thereof) for a term equal to the then unexpired portion of the term of the Lease (or any renewal thereof), PROVIDED ALWAYS, however:
- (a) The Bank shall have made a written request to the Landlord for such new Lease within sixty (60) days after receiving the notice of forfeiture, surrender, or termination, and such request is accompanied by an undertaking to pay to the Landlord all sums then due to the Landlord under the Lease together with the expenses of the Landlord, including reasonable legal and administration fees in connection with any of the foregoing and in connection with the proposed new Lease; and

- (b) The Bank shall pay to the Landlord at the time of the execution and delivery of the new Lease all sums which would at the time of the execution and delivery of the new Lease be due under the Lease but for such termination, or if the Lease shall have been terminated by reason of any default, the curing of which requires the Bank to be in possession, so long as the Bank shall, immediately on taking possession of the premises, commence and diligently prosecute the curing of such default and pay to the Landlord all expenses, including reasonable legal and administration fees and expenses incurred by the Landlord by reason of such default.
- 4. Subject to compliance with the terms of the Lease relating to transfers, assignments, and the like, the liability of the Bank pursuant to the terms of the Lease or a new Lease shall cease on transfer of the Bank's interest to another party who assumes the obligations of the Tenant as set out in this Lease or in any new Lease, and the Landlord shall not unreasonably withhold its consent to the assignment, sale, or other disposition of the Lease or any new Lease by the Bank.

[21] As can be seen, the Consent to Mortgage protects the Bank's security in three key ways:

- a) It provides an automatic 30 days beyond the time provided for VFC to correct any default to allow the Bank to correct a default on VFC's behalf;
- b) It provides for reasonable extensions to be granted to the Bank in the event that a default cannot be cured within the total 60 days; and
- c) It provides that if the lease is terminated by VAA, then VAA will grant to the Bank a new lease of the same lands on the same terms, including the same rent and the same 2077 expiry date, with the Bank then able to market and sell that new lease to a new sublessee on a non-recourse basis.

[22] A Form B mortgage of VFC's interest under the Sublease was registered in the Land Title Office on July 30, 2021. The provisions of that mortgage include:

- a) Section 5.9(f), which states that:

the Mortgagor will pay the rent reserved by the lease and will observe the covenants, provisos and conditions contained in the lease and on the lessee's part to be performed and observed and hereby agrees to keep the Mortgagee indemnified against all actions, claims and demands whatsoever in respect of the said rent and covenants or anything relating thereto;

b) Section 7.2, which states that:

The Mortgagor shall promptly observe, perform, execute and comply with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of every governmental, municipal and civil authority or agency concerning the Lands and further agrees, at the cost and expense of the Mortgagor, to do and perform all acts and things which may be required at any time hereafter by any such present or future laws, rules, requirements, orders, directions, ordinances and regulations and in particular, but without limiting the generality of the foregoing:

...

- (d) it will observe and comply in all material respects with all applicable laws, regulations, bylaws, ordinances and orders of any governmental authority having application to the Lands or the business of the Mortgagor in connection therewith which pertain to health and safety or industrial hygiene;

c) Sections 11.5-11.7, which state that:

11.5 In addition to the foregoing rights and powers, the Mortgagee may appoint by instrument in writing a receiver, receiver-manager or receiver and manager (herein called the "Receiver") of the Lands, with or without bond, and may from time to time remove the Receiver and appoint another in his stead. A Receiver appointed by the Mortgagee as aforesaid will be deemed to be the agent of the Mortgagor and the Mortgagor shall be solely responsible for the Receiver's acts or defaults and the Mortgagee shall not be in any way responsible therefor and the Mortgagee shall not be liable to the Receiver for his remuneration, costs, charges or expenses;

11.6 It is further specifically understood and agreed that the Receiver appointed by the Mortgagee shall have the following powers, subject to any limitations in the instrument in writing or any order of a court of competent jurisdiction appointing him, namely to:

- (a) take possession of the Lands;
- (b) rent the Lands or any portion thereof and receive and collect the rents, issues and profits thereof;
- (c) carry on or concur in carrying on the business of the Mortgagor in operating the business comprised of the Lands or which is conducted thereon by the Mortgagor;
- (d) pay any or all debts and liabilities in connection with the Lands;
- (e) sell or lease or concur in selling or leasing any or all of the Lands;
- (f) make any arrangements or compromises which the Receiver considers expedient;
- (g) borrow money, upon the security of the whole or any part of the Lands, to carry on the business of the Mortgagor comprised of the Lands or which is conducted thereon by the Mortgagor or to maintain

the whole or any part of the Lands in a manner that will be sufficient to obtain the amounts from time to time required in the opinion of the Receiver, and in so doing the Receiver may issue certificates (each herein called a "Receiver's Certificate") that may be payable as the Receiver considers expedient and bear interest as stated therein, and the amounts from time to time payable under any Receiver's Certificate shall charge the Lands in priority to this Mortgage and the Mortgagor hereby charges the Lands with the debt, if any, owing from time to time under any Receiver's Certificate; and

- (h) institute and prosecute all suits, proceedings and actions which the Receiver considers necessary or advisable for the proper protection of the Lands, to defend all suits, proceedings and actions against the Mortgagor or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted, and appeal any suit, proceeding or action;

11.7 In exercising his powers hereunder, any Receiver will be free to deal with the Lands and any assets of the Mortgagor related thereto in such order or manner as he may be directed by the Mortgagee, any rule of law or equity to the contrary notwithstanding, including, without limitation, the equitable principle or doctrine of marshalling.

Events of 2025

[23] In early 2025, Mr. McLaren asked Mr. Peulen, who is a licensed real estate agent, to help him find a buyer for VFC. Mr. Peulen did not formally list the property at that time but began informally marketing the Sublease and associated business. In July 2025, presumably in connection with those efforts, Mr. McLaren obtained an appraisal of the Sublease and related business.

[24] In the spring of 2025, VFC decided to perform upgrades to its buildings in the form of three staircases. It prepared a building permit application and, on May 20, 2025, was granted building permits for:

- a) Replacement of interior spiral stairs in the original building, which stairs led to a restaurant on the upper floor of the building;
- b) Construction of new exterior stairs to the second floor of the new wing of the office building; and
- c) Construction of new stairs to a mezzanine used by a sub-subtenant in Hangar C.

[25] Mr. McLaren explained that he wanted to replace the existing stairs in the original building because they were old and, although they had met Code requirements in the 1990s, were not up to date. The other two staircases I understand were new additions.

[26] With respect to the new exterior stairs, Mr. McLaren said that:

39. VFC proceeded with work pursuant to the 2025 Building Permit. As the result of my miscommunications with the architect, and my misunderstanding of the requirements of the 2025 Building Permit, I upgraded the Exterior Stairs from wood to concrete. I honestly believed I was actually exceeding the requirements of the 2025 Building Permit, which would be permitted. I subsequently understood that this was not in compliance with the Permit, and I take full responsibility for this.

[27] This came to the attention of VAA and its Code consultant. On August 27, 2025, VAA posted a stop-work order on the fence around the area around the exterior stairs. VAA took the position that the stop-work order applied to all three projects, notwithstanding that they were in different buildings. Mr. McLaren engaged in discussions with VAA about how to move forward with the three projects, whether by regularizing the concrete construction or by replacing what had been built with wood construction. Although there was not a lot of specific evidence about those discussions, it seems clear that they became antagonistic. VAA came to the conclusion that they did not want to deal with Mr. McLaren anymore, and he had to go.

[28] VAA advised VFC that it would deem the building permit to have expired on November 20, 2025, notwithstanding that work had commenced. VFC instructed its architect and engineer to prepare a new building permit application.

[29] On September 19, 2025, the North Saanich Fire Department was brought in to inspect the VFC buildings. It is not clear what gave rise to that inspection. The inspection report noted that the fire extinguishers, fire alarm systems, and fire sprinkler systems were all due for testing. VFC arranged for that testing to occur on October 14, 2025, and it was successfully completed.

[30] I infer from the evidence that:

- a) At some point in the fall of 2025, VAA began communicating information to the Bank; and
- b) The Bank did not see any need to advise VFC of the information it was receiving or seek VFC's response to that information.

[31] No particulars of any such discussions are before me, but the inference that they occurred is inescapable in light of the Bank's actions as described below.

[32] The Bank decided to do a review of VFC's file. On September 29, 2025, the Bank's solicitor wrote to VFC as follows:

We are solicitors for the Lender in relation to the above-captioned matter.

We are instructed that you are in breach of your obligations and covenants to the Lender under the Commitment Letter, in that you have failed to:

- comply with the postponement agreement by repaying shareholder debt owed to Jim McLaren for the fiscal years ending 2022 to 2023 without the consent of the Lender;
- maintain the Cash Flow Coverage Ratio covenant, as evidenced by reporting received as of August 2024 (rent roll); and
- provide required reporting for the fiscal year ending 2024. The year end financial statements for fiscal year ending 2024 were due by no later than March 31, 2025.

We are further instructed that the Mortgage is in default as a result of your various breaches of Land Sublease No. YYJB341. In particular, you have undertaken unauthorized construction on the Lands and have failed to remedy multiple safety issues, including the Stop Work Order effective August 27, 2025, and outstanding fire code violations.

We hereby give you formal notice of these defaults. If these defaults are not cured within seven (7) days, our client will be at liberty to issue demand, which may include demand under the related credit facilities.

We encourage you to give this matter your immediate attention.

[33] The evidentiary record before me is not clear as to what happened in the days following the September 29, 2025 letter. It seems clear that the Bank did not provide any further details of the allegations that were made, but it is not clear whether VFC requested any immediately upon receipt of the letter. The only

document in the record from the three and a half weeks following September 29 is the testing report with respect to the fire safety systems.

[34] On October 23, 2025, the Bank's solicitor wrote again to VFC asserting that \$5,092,958.20 was owing under the credit facilities and stating:

On behalf of our client, we hereby make formal demand upon you for payment of the Indebtedness pursuant to the Commitment Letters and the Demand Note. We also make demand upon you pursuant to the GSA and the Mortgage.

This letter is to advise you that unless payment of the Indebtedness, plus interest to the date of payment as set out above, plus legal costs, is made into this office by certified cheque or bank draft payable to Lawson Lundell LLP, in trust, on or before November 4, 2025, legal proceedings, which may include enforcement of the Bank's security, as well as foreclosure proceedings with respect to the Mortgage, may be commenced against you without further notice.

This letter is also to confirm that at the expiry of the demand period herein, the Bank will be at liberty to terminate the Operating Line at the Bank's option and without further notice, in which case no further cheques/debits will be honoured.

Pursuant to the provisions of the *Bankruptcy and Insolvency Act*, we are enclosing a Notice of Intention to Enforce Security in the prescribed form.

All inquiries and payments should be directed to the attention of the writer to ensure that due credit is given immediately to your account.

[35] A Notice of Intention to Enforce Security was enclosed with the letter.

[36] VFC initially obtained the assistance of the solicitor who had represented it with respect to putting the loan in place, Ms. Orr. Ms. Orr wrote to the Bank's solicitor on October 24, 2025. When asked about the nature of her retainer, Ms. Orr advised on October 27, 2025, that:

I have acted for VFC in the past and acted for them when this financing was put in place. Whether I act for them further will depend where this goes (I do not do litigation). I would like to see the demand so I will know whether I can continue to act or whether I should recommend they seek other counsel.

[37] The demand was forwarded to Ms. Orr that afternoon, and she responded by way of a letter emailed on October 30, 2025, stating:

We confirm we are solicitors for the Borrower and the Guarantor with regard to the captioned Mortgage and GSA.

We are in receipt of your demand letter of October 23, 2025 in which you have claimed that the Borrower is "in default of your obligations to the Bank". Your letter, however, does not outline the manner in which the Borrower is in default of its obligations to the Bank. The Borrower has never missed a payment under the Mortgage and that the Mortgage is, in fact, in good standing. In addition, the attached appraisal of the Property will show that the Property is worth well in excess of the value of the Mortgage. As well, the Borrower is in a very healthy position financially, as evidenced by its financial statements for the past two years, and, therefore, there should be no concern on the part of the Bank that its Mortgage is in jeopardy of default.

The Borrower is in the process of completing some remedial work at the Property, however, they have been frustrated by delays regarding completing the architectural work. The Borrower has hired an engineer who is simply awaiting the completion of the architectural drawings and then the engineer will complete their work to enable the Borrower to complete the construction. In any event, the Borrower hopes to have this work completed as soon as possible.

If there is another issue that is of concern to the Bank, the Borrower wishes to know what that issue is so the Borrower can rectify matters as soon as possible to the satisfaction of all parties.

Having said the above, if the Lender wishes to proceed with the demand for repayment, the Borrower will proceed to find alternate financing arrangements, however they will need more than ten days to put together financing in this amount. There is considerable value in the Property so the Borrower believes they will be able to find a lender, however, again, it may take a few weeks to put that in place. In addition, the Borrower is considering selling the Property but will again require more time to find a buyer who might need financing to complete the purchase. We submit that if you take immediate action on your security, you will prejudice the Borrower's ability to obtain new financing which will be to the detriment of all parties.

The Borrower understands the urgency of this matter but hopes that the Lender will grant at least sixty days to allow them to put alternate financing in place. The Borrower will, of course, act as expeditiously as possible to get this matter completed.

We look forward to your early response.

[38] The Bank's lawyer sent a preliminary response by email on October 31, 2025, stating:

Attached is the Notice of Default issued to your clients. The demands stem from the multiple breaches under the Commitment Letters and the Security as noted therein. In particular, we note the Stop Work Order and the various violations relating to the improvements made to the property, including fire violations. These matters place your clients in breach of the sublease and, in turn, have resulted in a default under our client's mortgage.

[39] A more formal letter was sent the following Tuesday, November 4, 2025:

We are the solicitors for Bank, which has now amalgamated with Canadian Western Bank, with respect to the above-captioned matter. We write in response to your letter dated October 28, 2025.

On September 29, 2025, the Bank, through its solicitors, issued a Notice of Default to the Debtors in respect of various breaches of the Debtors' obligations and covenants to the Bank under the Commitment Letters, the Security, and the Guarantee. The Debtors failed to remedy the defaults within the seven-day cure period specified in the Notice of Default. A copy of the Notice of Default is enclosed for your reference.

On October 23, 2025, the Bank, again through its solicitors, issued demands to each of the Debtors for payment of \$5,092,958.20, together with interest and costs as of October 22, 2025, pursuant to the Commitment Letters, the Security, and the Guarantee. The demands are set to expire on November 4, 2025.

This letter is to advise that unless we receive written confirmation to our office from the Victoria Airport Authority by November 4, 2025, that all outstanding defaults have been fully cured and waived, our instructions are to proceed with enforcement of the demands and take all appropriate steps to preserve and protect the Bank's security and interests.

Given the seriousness of these matters, we trust that they will receive your client's immediate attention, and we look forward to receiving your prompt response.

[40] The following Monday, November 10, Ms. Orr left a voice mail for the Bank's lawyer, asking for a call. That call did not occur; rather, on November 13, 2025, the Bank's solicitor submitted a request to the court registry for assignment of an insolvency judge to hear a 45-minute application for the appointment of a receiver during the week of November 24, 2025.

[41] One of the results of the stop-work order was that a restaurant on the upper level had lost its second staircase and was then directed by the North Saanich Fire Department to close. On November 17, 2025, the North Saanich Fire Department issued a notice permitting the restaurant to reopen in part but subject to a maximum capacity of 60, given that only one staircase was available. The VAA, upon learning of this, reissued an order to close the restaurant.

[42] On November 18, 2025, Crowe MacKay & Company signed a Receiver's Consent to Act in these proceedings as receiver of the assets, undertakings, and property of VFC.

[43] On November 19, 2025, a Mr. Chan on behalf of the Bank affirmed an affidavit, and that affidavit was filed in the court registry along with the Petition in this matter. Although these documents were filed on November 19, 2025, they were not immediately sent to Ms. Orr.

[44] On November 20, 2025, the Bank obtained a further affidavit from a paralegal at the Bank's law firm. The paralegal deposed that:

Attached hereto and marked as Exhibit "A" is a copy of a letter dated November 19, 2025, from the Victoria Airport Authority with respect to the within matter.

[45] The attached letter, dated November 19, 2025, was signed by VAA's president and CEO and was addressed to Mr. Chan at the Bank. It is the first indication in the record before me of the sort of information that the VAA was communicating to the Bank. I agree with counsel for VFC that none of the assertions in this letter are admissible as proof of those assertions. This is particularly so given that a number of the allegations are contradicted by Mr. McLaren's evidence and the documents he has attached to his affidavit, while the letter itself is clearly double hearsay evidence. As well, several of the allegations as to unpermitted work predate the 2021 and 2022 documents which confirm that VFC "has been issued its occupancy permit and is in compliance with the terms of the Sublease."

[46] The Petition and the two affidavits were emailed to Mr. Orr at 3:26 p.m. on Thursday, November 20, 2025. The next day a notice of hearing was issued, scheduling the hearing for 45 minutes at 9:00 a.m. the following Tuesday, November 25, 2025.

[47] VFC retained litigation counsel, Mr. Batkin, who wrote a lengthy letter on Sunday, November 23, 2025, objecting, among other things, that:

... the Petition has not been properly set down, cannot be heard on November 25 or in 45 minutes (it will need a day), and there is no urgency because, inter alia, s. 2 of the Consent to Mortgage dated July 26, 2021, between the VAA and Bank (the "Consent to Mortgage"), provides that no steps with respect to the Sublease can be taken by the VAA until, at the earliest, January 18, 2026.

The alleged breaches of the Mortgage, if they were actually in issue, were remedied by November 7, 2025, and the alleged breaches of the Sublease have either already been remedied – fire extinguisher, fire alarm, and fire sprinkler testing has been done and signed off by the Fire Department – or will be remedied within 30 days. VFC is in a healthy financial state and not insolvent, the Property and the Sublease are worth more than 2.5 times the amount owed to the Bank, and, if the Bank wants to get paid out, as VFC has already offered, it can refinance this debt or sell the Property. There is simply no reason for the draconian remedy sought and, in any event, no reason to proceed on one business day's notice at 9 am on November 25, 2025.

[48] After various discussions between counsel, the hearing was adjourned, and a walkthrough of the VFC premises was scheduled for December 2, 2025. That walkthrough included a Ms. Brooks from VAA, two building Code consultants (one retained by VAA, the other retained by VFC), VFC's architect, a Mr. Allan of Crowe MacKay, Mr. McLaren, and Mr. Batkin.

[49] On December 9, 2025, the hearing of the Petition was rescheduled for January 7, 2026.

[50] Mr. Allan subsequently tendered an affidavit, dated December 23, 2025, giving evidence as to what he overheard being discussed between the Code consultants and the opinions he came to as a result of listening to those conversations. It appears that no effort was made to obtain an affidavit, report, or even a brief letter from any of the consultants themselves.

[51] Mr. McLaren and Mr. Peulen assert that many of the Code issues that the two consultants were said to have discussed relate to compliance of buildings constructed in past decades dating back to the 1990s with the 2025 building codes. Mr. Peulen says:

49. It is likely that some aspects and features of the buildings on the Subleased Lands are not compliant with the *current* building code. However, that is how those buildings were constructed in accordance with the then-applicable codes, and received all required approvals and occupancy permits.

[Emphasis in original.]

[52] Mr. Peulen's evidence is that:

48. In response to ¶21-22 of the Allan Affidavit, and ¶8-9 of the Lai Affidavit, other than the issue with the second fire exit for the Restaurant that is in the process of being rectified, there are no code violations that need to be rectified immediately or otherwise.

[53] On December 18, 2025, VFC's architect and Code consultant submitted a new building permit application for replacement of the interior stairs. The VAA's Code consultant provided comments on that application on January 5, 2026, just prior to the hearing of this petition. VFC says that its applications for new building permits for the other two stairwells that were the subject of the May 2025 permit are ready to be submitted. VFC says that it has a contractor ready to perform the work under each permit as soon as they are finalized.

[54] In mid-December 2025, having received direct entreaties from the operator of the restaurant, the VAA decided to allow the restaurant to operate at partial capacity in accordance with the directions the North Saanich Fire Department had given on November 17, 2025. That permission was to be time-limited and expire on January 6, 2026.

[55] As all of this was going on, Mr. Peulen continued his efforts at marketing the Sublease. By December 2025, VFC and a potential purchaser were putting the finishing touches on a letter of intent. On December 19, 2025, VFC signed a listing agreement with Mr. Peulen's agency, with that listing agreement to take effect in the event the letter of intent did not come to fruition. Ultimately, the letter of intent, which was dated for reference December 4, 2025, was signed on December 30, 2025. The purchase price is significantly higher than the amount owed to the Bank. I note as well that the appraisal obtained by Mr. McLaren in July of 2025 also shows a value of VFC's primary assets significantly higher than the amount owed to the Bank.

The Petition

[56] The Petition seeks only one order, that is the appointment of Crowe MacKay & Company as receiver of VFC.

[57] Mr. Chan's affidavit sworn November 19, 2025, is the primary evidence in support of the Petition. It attaches the various security documents and confirms the loan balance. Under the heading "Defaults and Concerns," Mr. Chan notes having been provided, it is not clear how, with a copy of the North Saanich Fire Department's inspection report of September 19, 2025. He makes no mention of the fact that the issues identified in that report had been resolved more than a month before he made his affidavit.

[58] Mr. Chan then says:

21. The Petitioner became aware that the Borrower had undertaken unauthorized construction on the Lands, including the installation of an unauthorized mezzanine level which obstructed one of the designated exit doors when the hangar door was opened (the Unauthorized Improvements).
22. As a result of the Unauthorized Improvements, the City of Saanich issued a Stop Work Order effective August 27, 2025.

[59] Nothing in the affidavit indicates the basis on which Mr. Chan might have knowledge of these allegations. They are contradicted by the evidence of Mr. McLaren and Mr. Peulen.

[60] Mr. Chan also alleges the following:

24. The Borrower has also committed breaches under the Commitment Letters and the terms of the Security by:
 - (a) failing to maintain the Cash Flow Coverage covenant, as evidenced by reporting received as of August 2024 (rent roll);
 - (b) failing to comply with the Assignment by repaying the shareholder debt owed to the Guarantor for the fiscal years ending 2022 to 2023 without the consent of the Bank;
 - (c) failing to comply with all police, fire, sanitary regulations and recommendations imposed by any governmental authorities, regulations, and bylaws;
 - (d) failing to comply with the terms of the Sublease; and
 - (e) failing to provide required reporting for the fiscal year ending 2024.(The Breaches, and together with the Unauthorized Improvements and Fire Violations, the Defaults).

[61] Under the heading “Necessity of the Appointment of a Receiver”, Mr. Chan says:

30. Given all of the foregoing events described, including the Defaults, the Petitioner has lost all trust in the Borrower and its management or the Lands.

31. The Petitioner is of the view that the Defaults, particularly the Unauthorized Improvements and the Fire Violations, among other things, must be addressed expeditiously to maintain the relationship and Sublease with the Landlord. If the Landlord terminates the Sublease, the Petitioner's Security is at risk of being extinguished.

...

33. As a result of the foregoing, my view is that the appointment of a receiver over all of the present and future assets, undertakings and properties of the Borrower is critical to protect the interests of the Petitioner and to preserve and realize on the Security in an orderly fashion.

[62] Mr. Chan's affidavit was subsequently supported by the November 20, 2025 affidavit of a paralegal and the December 23, 2025 affidavit of Mr. Allan, both of which I have described above. Both are of limited, if any, evidentiary value.

[63] On January 5, 2025, VFC filed its Petition Response as well as detailed affidavits of Mr. McLaren and Mr. Peulen, responding to the various allegations of default.

[64] The Bank then tendered what was said to be a reply affidavit, sworn by a paralegal on January 6, 2026. It attached a letter from the VAA's lawyer, Mr. Gandhi, raising a number of new allegations, many of which predate the 2021 occupancy permit, and an August 28, 2025 notice from North Saanich Fire Rescue, the operative portions of which simply say “emergency exits.” VFC's lawyer objected to this as effectively being case-splitting. The inclusion of Mr. Gandhi's letter in an affidavit is probably best described as double hearsay that is more likely disguised triple or quadruple hearsay.

Positions of the Parties

The Bank

[65] The Bank says that it is not required to prove every allegation of default that it makes with admissible evidence. It says that it is sufficient if even one item of default

is established. In reply, the Bank went further, saying that because the Commitment Letter makes it clear that this is a demand loan, and that demand can be made at any time even without establishing an actual default, it is entitled to enforce its security.

[66] The Bank also relies on the statement of Ms. Brown of the VAA in her letter of November 19, 2025, to Mr. Chan, in which she asserts that:

Absent the appointment of a receiver, the VAA will take steps to terminate the VFC lease.

[67] The Bank says that, regardless of whether there has been any default, this justifies the appointment of a receiver as a termination would put VAA's security at risk. The Bank submitted that, in the event of a termination notice, the VFC's leasehold interest would simply disappear. [I note that the Bank did not reference the Consent to Mortgage in its initial submissions on this petition and addressed it only minimally in reply.]

[68] The Bank notes that it has a contractual right to appoint a receiver in the mortgage terms referenced in its Form B mortgage. It says that while that is not decisive on an application for a court-appointed receiver, it is a significant factor to be considered.

[69] The Bank says that Mr. McLaren acknowledges that the concrete stairwell was not compliant with the May 2025 building permit, and says that even if there is no admissible evidence of any other default under the Sublease, that is enough to create a real risk of termination of the Sublease and thereby a default under the Commitment Letter.

[70] With respect to the financial defaults alleged by Mr. Chan, the Bank says that:

- a) Although Mr. Chan's evidence about a cash flow covenant is perhaps conclusory in nature, and no calculations are shown, and it is disputed by Mr. McLaren, I should accept the conclusion expressed by Mr. Chan because he is a knowledgeable bank official;

- b) The fact that the 2024 financial statements show substantial shareholder debt owed to the guarantor does not change the fact that there were deficiencies in this in 2022 and 2023; and
- c) The fact that the 2024 and 2025 financial statements were produced in November 2025 is irrelevant to the fact that they were outstanding at the time the default notice was given in September 2025.

[71] The Bank submits that it can rely on s. 243 of the *BIA*, in that because VFC has failed to repay the mortgage, it should be considered insolvent. In any event, the Bank submits that a receiver can be appointed under s. 39 of the *LEA* on grounds that it is just and convenient to do so.

[72] The Bank says that, while a receivership necessarily entails additional costs, such cost is warranted and proportionate in the present circumstances. The Sublease is at imminent risk of termination, and there exists a real and substantial risk that the Bank's security could be extinguished if the landlord exercises its available remedies. A neutral third party should assess the alleged Sublease violations, address those issues, engage with the VAA, and preserve the Sublease.

[73] The Bank submits the appointment of a receiver would be in everyone's interests, as it would give VAA the comfort it seeks to allow any Code issues to be corrected and the building to be sold through an insolvency-based marketing process. When asked about the prospect the appointment of a receiver would give VAA a clearcut basis to terminate the Sublease, the Bank suggested that since it was VAA that wanted the receiver, it was unlikely they would do so, and in any event, VAA would be prevented from doing so by the stay that is sought as part of the receivership order.

[74] The Bank says that no weight should be given to the letter of intent that VFC has entered into, because that letter of intent is non-binding and subject to a due diligence phase. As well, the purchaser is said to have only conditional financing

approval, and until the due diligence is complete, it will not be known whether that financing will materialize.

[75] In reply submissions, the Bank says that it makes no sense for the Court to dismiss the application now, because as soon as VAA issues a notice of default, the Bank will be back in court applying for the appointment of a receiver. The Bank further submitted that if there are issues with its evidence, then the Petition should be adjourned so that it can correct those issues.

VAA

[76] Counsel for VAA made only brief submissions to say that VAA has no confidence in Mr. McLaren. Counsel advised that his instructions are that if a receivership order is not granted, VAA's intended course would be termination of the Sublease.

VFC

[77] VFC submitted that this petition is ill-founded, premature and should be dismissed with costs.

[78] VFC says this is far different from most receivership applications, in that there has been no financial default whatsoever. All lease payments and all mortgage payments have been made, and VFC is a solvent and profitable business. VFC says that it is not insolvent, and that s. 243 of the *BIA* is not available as a basis for any order in the circumstances.

[79] With respect to s. 39 of the *LEA*, VFC says that it is not just and convenient to appoint a receiver in the circumstances.

[80] VFC disputes all of the alleged evidence of default other than with respect to the concrete stairs. It says that based on its current financial information, it meets the cash flow covenant, it has provided its financial statements up to date, and those statements show shareholder loans in accordance with the covenants. VFC says that the September 29, 2025 letter gave no details or documents supporting the

assertions made, yet demanded that they be cured within seven days, which VFC says was unreasonable. VFC says that it addressed all of them before the Petition was filed, yet the Bank simply repeated them at the same level of generality in Mr. Chan's affidavit in support of the Petition, again without any supporting documents or explanation.

[81] VFC says the only issue it has under the lease relates to the concrete stairwell, and that it has been diligently working to resolve that. It says that that simply does not provide a basis to either terminate the Sublease or to declare a default under the Commitment Letters.

[82] VFC says that the Consent to Mortgage provides a substantial protection to the Bank, such that a purported termination by VAA would not put the Bank's security at substantial risk. VFC says that it is ready to respond to any attempt to terminate the Sublease with an injunction application, and that the many and varied allegations in the two VFC letters are contested. VFC says that the protection given to the Bank by the Consent to Mortgage is such that, even if VAA is successful in terminating the Sublease, the Bank has the right to obtain a new sublease on the same terms that it can then market. VFC says that the Bank is at little, if any, risk in the circumstances.

[83] VFC says that VAA's threat to terminate the Sublease is the sole reason for the Petition and the receivership order sought. VFC says that the Petition is premature because VAA has not actually taken any steps to terminate the Sublease. It says that VFC is well down the road of selling the property and has a listing agreement in place if the letter of intent does not proceed.

[84] VFC says that in all of these circumstances, the appointment of a receiver is not necessary. There is simply no reason to incur the cost and delays of a receivership, much less the risk that a receiver who has no knowledge of the history of this property might spend substantial sums upgrading buildings that were built many years ago under different building codes, which are grandfathered and not required to upgrade.

[85] VFC says as well that many of VAA's alleged grounds to terminate the Sublease are demonstrably without merit, but that if a receivership order is granted, then that would in and of itself provide VAA with a basis for termination that is not subject to the same sort of controversy.

[86] VFC says as well that a receivership over all of its assets and undertakings would negatively impact its other business interests that have nothing to do with the Sublease. It also says that the stigma of a receivership will also likely result in a lower price for the Sublease.

[87] VFC says that substantial portions of the evidence tendered by the Bank are second- or third-level hearsay, opinions, or conclusory evidence without basis, and to the extent they are simple hearsay, they in many cases do not identify the source of the hearsay. VFC says that the various letters the Bank secured after filing the Petition are colourable efforts to bootstrap its position but are ineffective in doing so.

[88] VFC seeks a sealing order over those portions of the affidavit of Mr. McLaren that include confidential information about the letter of intent that is in place.

Legal Context

[89] This application is brought pursuant to s. 39(1) of the *LEA*:

An injunction or an order in the nature of mandamus may be granted or a receiver or receiver manager appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made.

[90] The Petition also references s. 243 of the *BIA*, which is available in respect of an "insolvent person". VFC points out that "insolvent person" is defined in s. 2 as being someone who (a) is unable to meet their obligations as they generally become due; (b) who has ceased paying their obligations in the ordinary course; or (c) the aggregate of whose property is not sufficient to pay all obligations, due and accruing due. VFC says that, in this case, it is meeting its obligations in the ordinary course and as they become due, and it has assets worth well in excess of its debt. It is in a

very solid financial position. Thus, it is not insolvent, and s. 243 of the *BIA* has no application.

[91] The granting of a receivership order pursuant to s. 39 has been the subject of commentary in a number of cases, many of which refer to the list of factors summarized by Justice Masuhara in *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527, at para. 25:

[25] There are a number of factors that figure in the determination of whether it is appropriate to appoint a receiver. In *Bennett on Receivership, 2d ed.* (Toronto: Carswell, 1999), at p. 130, a list of such factors is set out as follows:

- a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- c) the nature of the property;
- d) the apprehended or actual waste of the debtor's assets;
- e) the preservation and protection of the property pending judicial resolution;
- f) the balance of convenience to the parties;
- g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
- k) the effect of the order upon the parties;
- l) the conduct of the parties;
- m) the length of time that a receiver may be in place;
- n) the cost to the parties;
- o) the likelihood of maximizing return to the parties;
- p) the goal of facilitating the duties of the receiver.

[92] Many cases reference the extraordinary nature of court appointment of a receiver, and that it is to be granted cautiously and sparingly: *Bank of Montreal v. Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 47, at para. 70. However, as noted in *TCC Mortgage Holdings Inc. v. Shawn Oaks Holdings Ltd.*, 2025 BCSC 302, at para. 13:

[13] The party seeking appointment of a receiver bears the burden to demonstrate why the requested order is just or convenient. While it remains an extraordinary remedy, where the agreements between the parties expressly contemplate and grant a right to appoint a receiver under the instrument, the burden on the applicant for appointment of a receiver is somewhat relaxed: *Maple Trade* at para. 25; *Textron* at paras. 50, 75. This is not to say appointment of a receiver by the Court is automatic where a receiver can be appointed under an instrument. It is one factor to be considered, and in appropriate circumstances, it is a factor upon which the Court may place additional weight: *Textron* at para. 55; *Maple Trade* at para. 26; *Haro-Thurlow* at paras. 114-116.

[93] As noted in *Mirage Trading Corporation v. Ghahroud*, 2025 BCSC 588, at para. 95:

[95] ... if there is a remedy other than receivership, it should be considered because receiverships are intrusive interferences with the affairs of company, harmful to the reputation of the company and the cost of a receivership can be considerable: *Callahan v. Callahan*, 2011 BCSC 40 at paras. 53 and 55; *Petersen v. Hawley*, 2021 BCSC 44 at paras. 48 and 69; *Cascade Divide Enterprises, Inc. v. Laliberte*, 2013 BCSC 263, at para. 81.

Analysis

[94] I begin by saying that I accept VFC's submission that s. 243 of the *BIA* is not available to the Bank. It is clear that VFC is not insolvent. All rent and all mortgage payments have been paid in the ordinary course, and the financial statements reflect a successful and financially stable business.

[95] I note the Bank's submissions as to this being a demand loan, such that the establishment of defaults is irrelevant. In my view, that submission misses the nature of the relief that is sought on this petition. The Bank is not asking to have its decision to make demand verified or approved. The Bank is seeking a court order to appoint a receiver under s. 39 of the *LEA*. Such an order would deprive VFC of control of its assets. It would cause there to be incurred tens if not hundreds of thousands of

dollars of receiver and legal fees. It would leave decisions as to whether to improve the property in the hands of someone who has no knowledge of whether any of the work the VAA would like to see done is actually legally required. It is an intrusive remedy, especially in the nature of a solvent and successful business.

[96] I have listed above Mr. Chan's summary of the alleged non-Sublease breaches. Mr. McLaren's evidence either affirmatively shows that the breaches have been corrected or, with respect to the more conclusory assertions, calls them into serious question. The Bank did not respond to those questions – either when asked for more details back in November, or in response to Mr. McLaren's affidavit. It is my view that none of those breaches have been established on a balance of probabilities.

[97] With respect to the Sublease-related breaches, I have grave concerns about the manner in which the alleged breaches have been presented. Mr. Chan's attempted summary of what he understands, in light of the actual evidence at the hearing, shows substantial confusion – presumably reflective of his decision to simply accept whatever he has been told by VAA at face value. VAA's letters are difficult to pin down. The more recent correspondence seems to be an attempt to raise issues that predate the 2021 occupancy permit and the 2021/2022 acknowledgment of full compliance. Others appear to be an attempt to add new documents in respect of issues already canvassed (e.g. the temporary loss of one stairwell to the restaurant, which has been made a long-term issue by the stop-work order).

[98] VFC's lawyer has advised that, should VAA attempt to terminate the lease, his instructions are to respond forthwith with an injunction application to prevent that termination. I suspect that there will be controverted facts at that hearing, that someone from this court will have to resolve. At that time, the court will need to consider whether it is appropriate to terminate what is intended to be a lease lasting another 50-plus years for property in which VFC has invested millions of dollars, in light of the allegations that are raised. On the actual admissible evidence before me,

however, there is no admissible evidence to establish any breach of the Sublease other than the installation of concrete stairs and the resultant stop-work order. The evidence is clear that VFC is working diligently to correct those matters.

[99] I am not in a position to speculate as to whether a justice hearing an injunction application in respect of termination of the lease would grant the injunction or allow the termination to proceed. In my view, however, that is clearly the proper forum to resolve the issues surrounding sublease compliance.

[100] In my view, the real question for me is whether the Bank security is truly at risk in circumstances in which there are threatened steps towards termination and threatened litigation as a result, that may or may not prevent that termination from going ahead.

[101] It is my view that the Consent to Mortgage is aimed at protecting the Bank and ensuring the adequacy of its security, even in the event of a breakdown of the relationship between VFC and VAA. The Bank made little attempt to address the Consent to Mortgage in its submission. I simply cannot see how the Bank can be seen to be seriously at risk in light of the extensive rights it is provided under the Consent to Mortgage.

[102] It may be that, if VAA attempts to terminate the Sublease, and if VFC is unsuccessful in obtaining an injunction, then it will become appropriate for the Bank to seek appointment of a receiver. If that is the case, however, the court will be in a much better position to assess the respective risks, knowing what has been decided with respect to the injunction application.

[103] Adapting these comments to the *Maple Trade* factors, I am not satisfied that irreparable harm might be caused if no receiver were appointed. I am not satisfied that there is any significant risk to the Bank's security at this time. The property itself is not at risk of waste, and VFC is adequately resourced to continue operations, to address the Sublease issues that have been identified, and to eventually accomplish its goal of selling the property without the need for a receiver. The fact that there is a

contractual appointment provision for a receiver in no way overcomes the serious concerns that impact directly on my discretion under s. 39 of the *LEA*.

[104] The appointment of a receiver should not be used as an end-run around appropriate proceedings as between a commercial landlord and a commercial tenant where there is a desire to terminate a lease in circumstances where the existence and significance of any breaches are hotly contested, and there is no financial default by the tenant.

[105] In my view, this is not a case in which it would be just and convenient to appoint a receiver, and in light of the conclusions I have reached with respect to the Consent to Mortgage, it is my view that there is nothing to be gained by simply adjourning the hearing.

[106] The Petition is dismissed with costs.

[107] I have been asked to make a sealing order, and I am satisfied that, to the extent the affidavit evidence includes details of confidential information as to the letter of intent, it is appropriate for there to be a sealing order with respect to the specific affidavits on condition that a redacted version of that affidavit is filed.

“Veenstra J.”