IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cedar Village Holdings Inc. v. Beadle Enterprises Inc.,* 2026 BCSC 267

Date: 20260218
Docket: S101030
Registry: Nanaimo

Between:

Cedar Village Holdings Inc.

Petitioner

And:

Beadle Enterprises Inc., Peace Arch Properties Ltd., Teiv Holdings Ltd., Robyn Kelln and Wayne Hampton

Respondents

Before: The Honourable Justice K. Wolfe

Reasons for Judgment

Counsel for the Petitioner:	T.M. Hawthornthwaite
Counsel for the Respondents, Peace Arch Properties Ltd. and Teiv Holdings Ltd.:	R. Goddard
Respondents Beadle Enterprises Inc., Robyn Kelln and Wayne Hampton (duly served):	No appearance
Place and Date of Hearing:	Nanaimo, B.C. June 25, 2025
Further Written Submissions Received:	July 9, 2025
Place and Date of Judgment:	Nanaimo, B.C. February 18, 2026

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Overview

[1] The question on this petition is whether the limitation period has expired for claims in relation to a second mortgage over properties in a development project.

[2] The petitioner, Cedar Village Holdings Inc., says the limitation period has expired for all causes of action on the second mortgage (defined below), meaning the debt is extinguished and the mortgage should be cancelled and discharged. The petitioner's primary position is that the second mortgage was due to be paid in full in August 2009. Since no payments were made before or after August 2009, and the limitation period under the former *Limitation Act*, R.S.B.C. 1996, c. 266 [*1996 Act*] was six years, the petitioner says the limitation period expired in August 2015.

[3] In the alternative, the petitioner accepts the Court may find the debt under the second mortgage was confirmed in April 2012, when the second mortgage was extended to cover additional properties. But even if so, the petitioner says the limitation period would still have expired at the end of April 2018. The petitioner denies there was any agreement to extend the balance due date further and says that since no payments were made or enforcement steps taken, the debt has been extinguished. The petitioner seeks an order under one of ss. 244, 246 or 249 of the *Land Title Act,* R.S.B.C. 1996, c. 250, to cancel and discharge the second mortgage and a related mortgage of the second mortgage (defined below).

[4] The respondents, Peace Arch Holdings Ltd. ("Peace Arch") and Teiv Holdings Ltd. ("Teiv") (collectively, the "responding companies"), say the balance due date for the second mortgage was modified several times by agreement because the development project experienced financial challenges. They claim there was a "final agreement" in early 2013 which varied the contract, eliminating a precise balance due date for the second mortgage and instead making its payment contingent on two prerequisite events. As those two events have not yet occurred, the responding companies say the second mortgage has not yet come due and the limitation period is not yet running. Alternatively, they argue the petitioner should be estopped from relying on August 2009 as the balance due date and start of the limitation period.

[5] For the reasons that follow, I find the limitation period in relation to the second mortgage expired in March 2019 and the debt is therefore extinguished. I allow the petition and grant orders cancelling and discharging the second mortgage and the related mortgage of the second mortgage, as set out below.

Issues

[6] The petitioner and the responding companies agree the original registered balance due date for the second mortgage was extended to August 31, 2009. They disagree about what happened next and approached the questions before the Court from different perspectives.

[7] As noted, the responding companies contend that in early 2013, the parties to the second mortgage agreed it would not be due and payable until after certain events had first occurred. They say a letter from March 2013 “confirms” this agreement. The petitioner denies any such agreement and disputes the meaning the responding companies ascribe to the March 2013 letter. The petitioner says the balance due date for the second mortgage is governed by the registered mortgage documents, and, subject to any confirmation of the debt, the limitation period began to run when that date was missed.

[8] Given the parties’ positions, I frame the issues to be decided as follows:

a) Was there an agreement in 2013 to vary the balance due date of the second mortgage?

b) Was the second mortgage debt confirmed after August 2009 and has the limitation period expired?

c) What, if any, remedy should be granted?

[9] The petitioner and the responding companies also seek costs of the petition, which I will address at the conclusion of these reasons.

Background

[10] As this matter has a complicated history, it is helpful to begin with background common to all three issues. I will address further facts specific to each issue as I address the issues below. At the end of the hearing of the petition, I asked counsel to provide a joint chronology of events. I have relied on that chronology in drafting these reasons.

[11] On or around May 18, 2005, several parties, including the responding companies and 0700805 B.C. Ltd. (“805”), entered into a shareholders’ agreement for the purpose of acquiring and developing a property located on Cedar Road in Nanaimo, British Columbia. Peace Arch held 25 percent of the shares in 805 and Teiv held 20 percent. The goal was to develop a number of residential lots, a 75-unit seniors apartment site and a piece of land situated in the agricultural land reserve. The agreement contemplated that 805 would hold the property, which would be subdivided, with lots being sold as they were developed.

[12] Under the agreement, the directors of 805 were: Donald Reynolds (sole director and shareholder of Peace Arch), Terry Knebel (director and shareholder of Teiv), Ken Radom, Robyn Kelln and Wayne Sawatzky. Legal documents, contracts and agreements for 805 required the signature of two directors, being one of either Mr. Reynolds or Mr. Sawatzky and one of either Mr. Knebel or Mr. Kelln.

[13] To finance the initial construction for the project, 805 obtained a $3.5 million loan from Canadian Western Bank (“CWB”), which was secured by a mortgage registered against title on June 23, 2005 under Registration No. EX74867 (the “first mortgage”). The first mortgage was accompanied by a related assignment of rents in favour of CWB under Registration No. EX74868.

[14] In or around 2008, Mr. Kelln brought William Beadle into the development project. The parties agree Mr. Beadle acquired five percent of the shares of 805 but did not become a director at that time. There is no evidence Mr. Beadle signed a shareholders’ agreement.

[15] The development project needed additional funding, so on February 26, 2008, the directors of 805 passed a resolution authorizing 805 to borrow $1.381 million from certain individuals or companies and to grant a second mortgage over the property to secure that amount. The further loan was secured by a mortgage registered against title on March 14, 2008 under Registration No. CA725054 (the "second mortgage"). The second mortgage is the mortgage that is the subject of the petition. It is registered in priority behind the first mortgage and assignment of rents.

[16] The second mortgage provides that the lenders have an undivided interest in the second mortgage in proportion to their respective contributions to the loan, which were as follows:

a) Tanmar Properties Inc. - $828,600;

b) Peace Arch - $276,200;

c) Teiv - $149,148;

d) Mr. Kelln - $63,526; and

e) Wayne Hampton - $63,526.

[17] Mr. Beadle was the sole director and shareholder of Tanmar Properties Inc. Before Tanmar Properties Inc. was voluntary dissolved in October 2009, its interest in the second mortgage was subsequently assigned to the respondent, Beadle Entreprises Inc., which is, itself, wholly owned by the petitioner. Mr. Beadle is the sole director and shareholder of both Beadle Entreprises Inc. and the petitioner.

[18] On the Form B document registered with the Victoria Land Title Office, the balance due date for the second mortgage was originally listed as "on demand", and the interest rate was set at 3 percent per annum calculated monthly after July 2, 2008. The Form B also states the prescribed standard mortgage terms apply. At the time, the prescribed standard mortgage terms were set out in Schedule B to the *Land Title (Transfer Forms) Regulation,* B.C. Reg. 53/90 (those standard terms were subsequently repealed by B.C. Reg. 332/2010, effective January 1, 2011).

[19] On August 13, 2008, a modification of the first mortgage was registered on title under Registration No. FB201795, increasing the principal amount of the first mortgage to $5.8 million. All other terms of the first mortgage remained the same.

[20] On June 1, 2009, a modification of the second mortgage was registered on title under Registration No. CA1133405. It changed the principal amount of the second mortgage to $1.5 million, the interest rate to 10 percent per annum and the balance due date to August 31, 2009.

[21] Mr. Reynolds and Mr. Knebel depose the August 31, 2009 balance due date was chosen because the holders of the second mortgage believed 805 would be able to meet that payment deadline. They depose there were two major setbacks that prevented 805 from meeting the deadline: an issue with the engineering firm that led to litigation and changing demands from the local district that impacted subdivision proposals. Regardless of the reasons, there is no dispute that 805 did not meet the August 31, 2009 due date to repay the second mortgage in full.

[22] The responding companies say that on March 1, 2010, there was a further written agreement to extend the balance due date for the second mortgage to December 31, 2011 (the “March 2010 Agreement”), in the hopes that the issues with the project would be resolved and 805 would be selling lots by then. It is not suggested a further modification was formally registered with the Land Title Office to extend the balance due date, but Mr. Reynolds appends a two-page document entitled “Mortgage Extension” to his affidavit. The petitioner contests the enforceability of the March 2010 Agreement as the space for Mr. Kelln’s signature on the document is blank. I will address this dispute under the second issue below.

[23] The development project required additional funding around this time. The responding companies say funds were needed to obtain the subdivision registration. Again, regardless of the precise reasons, the parties agree the petitioner loaned $500,000 to assist with the project. That loan was secured by way of a mortgage of the second mortgage, registered against the interests of the second mortgage holders on March 18, 2010, under Registration No. CA1492442 (the “mortgage of

the mortgage"). The list of second mortgage holders on the Form B reflects the change referenced above: Tanmar Properties Inc. has been replaced by a numbered company which subsequently changed its name to Beadle Entreprises Inc. on June 17, 2010.

[24] As the responding companies put it, Mr. Beadle was on all sides of the mortgage of the mortgage. He was sole director and shareholder of the petitioner as lender; sole director and shareholder of one of the second mortgage holders, Beadle Entreprises Inc.; and a shareholder of 805.

[25] Under the mortgage of the mortgage, the second mortgage holders are the "borrowers" who, in exchange for the loan, granted the petitioner all their rights and privileges under the second mortgage, including the right to cure any defaults under other registered charges and to pay taxes on the property. The principal amount of $500,000 bears interest at a rate of 14 percent per annum. The express mortgage terms annexed to the Form B state that, at the petitioner's discretion, all payments the petitioner makes to third parties on behalf of the second mortgage holders are a charge on the property, are added to the principal amount and incur interest.

[26] By April 2012, the property had been subdivided. On April 26, 2012, the charges of the first mortgage (and assignment of rents), the second mortgage and the mortgage of the mortgage were extended by formally registered Form C extensions (Registration Nos. CA2508947, CA2508948, CA2508949 and CA2508950 respectively) to cover the newly subdivided lots.

[27] By November 2012, the balance remaining on the first mortgage was just over $4 million dollars. In his 4th Affidavit, sworn June 13, 2025, Mr. Beadle deposes that through the petitioner, he refinanced and arranged for the transfer of the loan from CWB to Greyfriars Mortgage Investment (2012) Corporation ("Greyfriars") because 805's funds had run out. He deposes the petitioner incurred more than $1.1 million in legal costs and interest charges from March 5, 2010 to December 31, 2012 to deal with CWB and the required refinancing. The responding companies did not

dispute such costs were incurred or suggest the refinancing and interest were paid from a different source.

[28] The parties agree Greyfriars paid CWB $4 million to take an assignment of both the first mortgage and the assignment of rents. The formal transfers were registered on December 4, 2012 under Registration Nos. CA2899233 and CA2899234 respectively. The principal amount of the first mortgage was therefore reset at $4 million, recorded in Greyfriars' account no. 150-102.

[29] I will address the alleged agreement from early 2013 under the first issue below, however, it is common ground that on May 6, 2023, 805 began selling lots from the development project, the proceeds of which were used to pay down the first mortgage. Lot sales continued through 2014, 2015 and the first half of 2016.

[30] On May 6, 2016, the solicitors for 805 sent Greyfriars a letter enclosing what was asserted to be the final payment on the first mortgage. However, in late September 2015, Greyfriars had advanced an additional $1 million to 805 under a separate account no. 150-108. Both Greyfriars and Mr. Beadle refer to this as "Loan B" (in contrast to account no. 150-102, which is called "Loan A" in the Greyfriars' statements of account). The parties disagree about whether the directors of 805 authorized the September 2015 additional advance. Mr. Reynolds and Mr. Knebel say they were not aware of the advance at the time and Mr. Beadle had not yet assumed control of 805.

[31] There were six lot sales between May 24 and August 24, 2016, at which point only three individual lots remained. There is a dispute about whether the proceeds of those six lot sales went only to the outstanding balance on Loan B under the first mortgage or were also credited to the mortgage of the mortgage. On September 10, 2016, the president of Greyfriars sent Mr. Beadle an email confirming that all personal guarantees for the first mortgage were "no longer in effect" as the loan had "been paid in full". Mr. Beadle deposes the personal guarantees were only contained in Loan A of the first mortgage. Mr. Beadle forwarded the Greyfriars email to Mr. Sawatzky, who in turn, forwarded it to Mr. Reynolds, Mr. Knebel and

Mr. Hampton, seemingly in connection with an upcoming meeting to discuss the transfer of shares of 805 to the petitioner.

[32] On September 12, 2016, Teiv agreed to transfer its shares in 805 to the petitioner in exchange for final release and indemnity agreements. On December 6, 2016, Peace Arch also agreed to transfer its shares in 805 on the same terms. While the petition record does not address any other shareholders of 805, Mr. Reynolds and Mr. Knebel depose they stepped down as directors, and the parties agree that on December 6, 2016, the petitioner (and Mr. Beadle) assumed full control of 805.

[33] On January 1, 2018, the petitioner amalgamated with 805. As a result, the petitioner became the borrower under the first and second mortgages, while remaining the lender under the mortgage of the mortgage.

[34] On August 30, 2024, counsel for the petitioner wrote to Peace Arch, Teiv and Mr. Hampton to request their agreement to discharge the second mortgage on grounds that the limitation period for enforcing the second mortgage had expired, thereby extinguishing the debt. Counsel's letter advised the petitioner would agree to discharge the mortgage of the mortgage provided the second mortgage was also discharged.

[35] On October 3, 2024, Mr. Reynolds responded by email for Peace Arch, Teiv and Mr. Hampton, indicating they did not agree to discharge the second mortgage.

[36] On October 24, 2024, Mr. Beadle provided written consent on behalf of Beadle Entreprises Inc. to release and discharge the second mortgage against the remaining properties. On October 29, 2024, Mr. Kelln provided a similar written consent to discharge the second mortgage. It is not surprising, then, that neither Beadle Enterprises Inc. nor Mr. Kelln filed responses to the petition or appeared at the hearing; the petition seeks relief to which they have already confirmed consent.

[37] Peace Arch and Teiv filed a joint response to petition and appeared through counsel at the hearing of the petition. Mr. Hampton, who is said to be impacted in a

similar manner to the responding companies, did not file a response to petition or appear. In the first half of December 2024, Mr. Hampton sent petitioner's counsel an unfiled response dated December 6, 2024. On December 16, 2024, petitioner's counsel wrote to advise Mr. Hampton that if his response remained unfiled when the petition was heard, the petitioner would oppose it being considered. Mr. Hampton did not file his response and it was not included in the petition record, although a copy was provided to the Court for information. I agree with petitioner's counsel that Mr. Hampton's response was not properly before the Court.

[38] By the time the petition was heard, one of the three remaining individual lots listed in Part 1, para. 1 of the amended petition (filed January 10, 2025) had been sold. Specifically, counsel advised the Court that Lot 13 was sold in late March 2025. Against the backdrop of foreclosure proceedings Greyfriars commenced in January 2025 in relation to the first mortgage (presumably, the outstanding balance of Loan B), Mr. Beadle deposed and counsel confirmed that the proceeds from the sale of Lot 13 were paid to Greyfriars to secure the discharge of the first mortgage against Lot 13. As Lot 13 has been sold, it is no longer necessary to deal with the relief sought at Part 1, para. 1(b) and 2(b) of the amended petition.

[39] At the hearing of the petition, counsel for the petitioner also noted the same typographical error in three paragraphs of the amended petition, where the legal description of one of the remaining properties referred to "Lot 13", rather than "Lot 56". I allowed an amendment to the amended petition so that the legal description of the property listed at Part 1, paras. 1(c) and 2(c), and Part 2, para. 8(c), reads as follows: "PID 028-841-956, LOT 56 SECTION 14 RANGE 1 CEDAR DISTRICT PLAN EPP3591".

The statutory framework for limitations

[40] The petitioner relies on the statutory limitation period established by the *1996 Act*. That statute governed limitation periods when the second mortgage was registered in 2008, but it was repealed and replaced in 2013 by the current *Limitation Act*, S.B.C. 2012, c. 13 [*Current Act*]. The transition provisions of the

Current Act, set out in s. 30, are tied to the "effective date" for that section, which was June 1, 2013 (see B.C. Reg. 290/2012).

[41] Under s. 30(3) of the *Current Act*, if a pre-existing claim was discovered before June 1, 2013, the limitation periods under the *1996 Act* continue to apply. A "pre-existing claim" is defined in s. 30(1) of the *Current Act* as a claim "based on an act or omission that took place before" June 1, 2013 and for which no court proceeding was commenced before June 1, 2013.

[42] Under s. 3(6)(a) of the *1996 Act*, the limitation period for a mortgagee (lender) to either sue on the covenant to pay the debt, or to foreclose on the equity of redemption, is six years from the date the cause of action arose: *492621 B.C. Ltd. v. Bustin Farms Ltd.*, 2010 BCCA 561 [*Bustin Farms*] at para. 10; see also *Shuey v. Muller*, 1992 CanLII 1692 (B.C. C.A.), 74 BCLR (2d) 326 at para. 22 (addressing the identical section under the *Limitations Act*, R.S.B.C. 1979, c. 236 [*1979 Act*]). When faced with a limitation question under the *1996 Act*, the Court must therefore determine, in light of the applicable mortgage terms, when the right to bring a cause of action first arose: *Bustin Farms* at paras. 14-24. That date will start the running of the limitation period.

[43] However, under s. 5(1) of the *1996 Act*, the limitation period may be restarted if the person against whom the action lies confirms the cause of action before the limitation period expires: *Cadwell Estate v. Martin*, 2021 BCSC 1089 at para. 152. Under ss. 5(2) and (3) of the *1996 Act*, a person "confirms" a cause of action by acknowledging the cause of action or the right (such as a debt or right to realize on collateral), or by making a payment in respect of the cause of action or right. An acknowledgment must be in writing and signed by the person making it (s. 5(5)). A confirmation must be made to the person seeking its benefit, or to a person through whom they claim (s. 5(6)), however, an agent may give or receive a confirmation on behalf of a principal (s. 5(9)).

[44] As a result, if the right to bring a cause of action in respect of the second mortgage arose or was confirmed before June 1, 2013, the *1996 Act* applies and the

limitation period is six years. However, if the right to bring a cause of action did not arise before June 1, 2013, or was acknowledged (under s. 24 of the *Current Act*) after June 1, 2013, the *Current Act* applies, and the limitation period is two years: *Current Act*, s. 6(1).

[45] One final point on the statutes bears note. The *1996 Act* contains provisions that expressly extinguish causes of action on the expiry of limitation dates. Section 9(1) provides that if a limitation period expires for a cause of action to recover any debt, damages or other money, or for an accounting in respect of any matter, the right of the person that formerly had the claim is extinguished. In other words, the expiry of the limitation period extinguishes the right to sue on the debt and therefore, in practical terms, the debt itself: *Shuey* at paras. 23 and 27.

[46] Section 9(2) of the *1996 Act* similarly provides that if a limitation period expires for a cause of action to realize on collateral in possession of the debtor, the title of the person who formerly had a cause of action for the collateral itself is extinguished. In other words, the secured party cannot bring foreclosure proceedings to realize on the security; the right is extinguished: *Shuey* at paras. 24-27. Section 9(3) likewise extinguishes causes of action to recover arrears of interest on a principal sum if the limitation period for an action to recover the principal sum has expired.

[47] The *Current Act* does not contain equivalent provisions that address "extinguishment" of causes of action, however s. 9 of the *1979 Act* was identical to the provisions in the *1996 Act*.

Analysis

Issue 1: Was there an agreement in 2013 to vary the balance due date of the second mortgage?

[48] The primary basis on which the responding companies oppose the petition is their assertion that, in early 2013, the second mortgage holders and 805 varied the balance due date for the second mortgage by further agreement. Mr. Reynolds and Mr. Knebel each depose that under what they call the "final agreement", the second

mortgage holders and 805 agreed the second mortgage would be paid from the proceeds of lot sales only once the first mortgage and the mortgage of the mortgage had first been paid in full. The responding companies say this agreement varied the balance due date, such that the second mortgage only becomes due and payable once the first mortgage and the mortgage of the mortgage have been fully paid out. In practical terms, they say this means the limitation period for the second mortgage is not yet engaged because the two prerequisite events have not occurred.

[49] The responding companies say a March 1, 2013 letter written by the solicitor for 805 (which was also the conveyancing firm for the project) is determinative. They say the letter "confirms" the agreed-upon sequence of payments and therefore the final agreement to vary the balance due date. Further, they contend the parties' conduct after the final agreement is admissible as evidence of the contract variation they alleged: *Newman v. Beta Maritime Ltd.*, 2018 BCSC 1442 at para. 32. They say the variation of the mortgage contract is enforceable without fresh consideration: *Rosas v. Toca,* 2018 BCCA 191.

[50] The petitioner says there is no evidence in support of the alleged final agreement being reached in early 2013 or at all. In his capacity with Beadle Enterprises Inc., Mr. Beadle is one of the second mortgage holders allegedly involved in the final agreement. He deposes he does not recall "any such separate, independent agreement" being made. He admits that in exchange for him funding the legal expenses and refinancing costs of the transfer from CWB to Greyfriars, the "deal the stakeholders came to" was that he would be paid first after the project was finished.

[51] Mr. Kelln, another of the second mortgage holders, likewise denies the existence of a separate agreement among the second mortgage holders to wait to enforce the second mortgage until the other two mortgages were paid out. He deposes no such discussion occurred. Instead, like Mr. Beadle, Mr. Kelln deposes that Mr. Beadle or his companies were to be paid back the funds they provided to save the project, including to pay for the refinancing, legal costs, property taxes, development costs and interest, which Mr. Kelln deposes were significant.

[52] With respect to the March 1, 2013 letter from 805's solicitor, Mr. Beadle deposes it simply reflects an agreement by the second mortgage holders to pre-sign Form C discharges to expedite the sales process and sets out the conditions on which they would be signed. Petitioner's counsel submitted this is standard practice for development projects so that individual lot sales are not held up while waiting for discharges to be signed at the last minute. Mr. Beadle also deposes Mr. Reynolds and Mr. Knebel, on behalf of Peace Arch and Teiv, demanded the return of the pre-signed Form C discharges after the petitioner assumed control of 805 in December 2016 and they were returned.

[53] Having considered the evidence as a whole, I am not persuaded there was a final agreement as alleged by the responding companies.

[54] The affidavit evidence from the four second mortgage holders in the record does not support the existence of such an agreement. Mr. Beadle and Mr. Kelln deny the parties reached any independent agreement as asserted by the responding companies. Mr. Reynolds and Mr. Knebel provide only general statements about the alleged terms which are said to have varied the second mortgage contract. Further, they do not provide specifics about where or how the agreement was reached, or a date or range of dates on which the agreement was said to have been concluded. The lack of specific detail does not align with the alleged significance of the agreement.

[55] Apart from the March 1, 2013 letter, the petition record does not contain any documentation of the alleged final agreement, despite it purporting to vary the terms of a contract respecting an interest in land. There are no emails or letters among the second mortgage holders referencing the "final agreement" as described by the responding companies. Considering the importance the responding companies place on the final agreement; this complete absence is surprising.

[56] While s. 59(3) of the *Law and Equity Act,* R.S.B.C. 1996, c. 53, allows that oral contracts respecting interests in land can be enforceable in certain limited circumstances, generally speaking, agreements about interests in land must be in

writing and be signed by the party or parties against whom they are sought to be enforced. This safeguard ensures there is sufficient certainty as to the essential terms of the agreement.

[57] The prior conduct of the parties to the second mortgage suggests general adherence to the idea that agreements respecting the second mortgage would be reduced to writing. The parties registered a formal modification of the second mortgage in June 2009 with the Land Title Office, to substitute the August 31, 2009 balance due date for the original term of payment "on demand". They also drafted and, with one exception, signed the March 2010 Agreement to extend the balance due date for the second mortgage to December 31, 2011. Given those prior written agreements, it is inconsistent not to have a written and signed agreement reflecting what is arguably a significant change: the elimination of a previously specified balance due date for the second mortgage.

[58] Nor am I persuaded the March 1, 2013 letter is evidence that "confirms" the existence of the final agreement, as urged by the responding companies. The letter is addressed to Peace Arch, Tiev, Mr. Hampton, Mr. Kelln and Beadle Enterprises Inc. The subject line reads "Re: Cedar Village Sales: Lots 2 to 52, inclusive and Lot 56, all of Plan EPP3591 and Lot A, Plan VIP57874". The first paragraph of the letter states the solicitor's understanding that the recipients have agreed to pre-sign a Form C discharge for each of the properties "to facilitate and expedite all sales, as and when the[y] arise". It confirms the law firm will hold and not use the pre-signed discharges until there is a sale.

[59] There is no indication the letter is also intended to confirm a specific agreement between the second mortgage holders and 805 to vary the balance due date for the second mortgage. If that were one of its purposes, one would expect the letter to expressly say so.

[60] I accept the letter goes on to confirm the order in which proceeds from any lot sales would be paid out, and the order stated aligns with the payment sequence allegedly agreed to under the final agreement. However, I accept the submission

that it is common practice for a conveyancer to confirm the order for payment of funds after the sale of property before such sales begin. Below the description of the pay out sequence, the letter again focuses on the Form C discharges. It says nothing about a variation of the balance due date for the second mortgage. I am not persuaded the March 1, 2013 letter "confirms" there was a final agreement on the terms the responding companies allege.

[61] In any event, the payment sequence under the alleged final agreement is consistent with the priority of payments already required by the documents registered with the Land Title Office. There is no dispute the first mortgage has priority, so it is required to be paid out first; the Form Bs for both the second mortgage and the mortgage of the mortgage reflect the first mortgage as a prior encumbrance permitted by the lender. As a result, I do not consider payment of proceeds of lot sales to the first mortgage to be evidence of conduct consistent with the final agreement; rather, it is evidence of conduct consistent with the first mortgage's previously established priority.

[62] By design, under the mortgage of the mortgage, the second mortgage holders assigned all of their interests under the second mortgage to the petitioner, meaning the mortgage of the mortgage was to be addressed next. This is consistent with Mr. Beadle deposing that he structured the mortgage of the mortgage to ensure he would be paid first once the project was finished. In addition, both Mr. Reynolds and Mr. Knebel depose the directors of 805 passed a resolution authorizing the mortgage of the mortgage to be executed and "placed on title ahead of" the second mortgage.[1] Further, the express terms of the mortgage of the mortgage provide that the second mortgage holders (as borrowers) irrevocably assign to the petitioner the proceeds paid or payable to the second mortgage holders by any third party in connection with the sale, assignment, transfer or disposition of the property (para. 26.1: Assignment of Proceeds).

[1] Affidavit #1 of D. Reynolds, made May 14, 2025, filed May 22, 2025, at para. 11; Affidavit #1 of T. Knebel, made May 7, 2025, filed May 22, 2025, at para. 10.

[63] As a result, by the time the mortgage of the mortgage was registered on title on March 18, 2010, the order of payment priority ostensibly agreed to under the final agreement had already been established through the Land Title Office documents. The responding companies therefore cannot claim a change in their conduct in reliance on the alleged final agreement; the pay out order they have described is what the Land Title Office registrations would have required in any event.

[64] In summary, I reject the responding companies' assertion that the second mortgage holders and 805 reached an agreement in early 2013 to vary the balance due date for the second mortgage that had previously been established. I am not persuaded there was any such agreement.

Issue 2: Was the second mortgage debt confirmed after August 2009 and has the limitation period expired?

[65] The second issue requires that I determine when the limitation period for the second mortgage was triggered and if it has expired.

[66] The petitioner says 805's failure to meet the August 31, 2009 balance due date triggered the running of the limitation period. However, even if the Court finds 805 subsequently confirmed the debt, the petitioner maintains the six-year limitation period has still expired. For their part, absent the Court accepting the final agreement as alleged, the responding companies argue the petitioner is estopped from relying on the limitation defence and the August 31, 2009 date, in particular.

[67] To determine when the limitation period for the second mortgage began to run, I must consider its terms. The second mortgage is subject to the prescribed standard mortgage terms that were contained in Schedule B to the *Land Title (Transfer Forms) Regulation* at the relevant time. Those standard terms provide that the "maturity date" is the "balance due date shown on the mortgage form and is the date on which all unpaid mortgage money becomes due and payable, or such earlier date on which the lender can lawfully require payment of the mortgage money" (s. 1(1)). The parties agree the second mortgage was originally payable "on

demand", but the balance due date was changed to August 31, 2009 through the modification registered on June 1, 2009.

[68] Section 7(1)(a) of the standard mortgage terms provides that a default occurs if the borrower breaks any of the borrower's promises and agreements under the mortgage. One such promise is the borrower's obligation to pay the lender the mortgage money in accordance with the payment provisions set out in the mortgage form and the standard terms (s. 4); this includes an obligation to pay any outstanding amounts owing under the mortgage on the balance due date.

[69] Under s. 8 of the standard terms, if a default occurs, among other things, the lender has the right to sue the borrower for all money due and owing (an action in debt) or commence foreclosure proceedings (an action in equity). The event of default itself gives rise to the right to bring a cause of action in respect of the mortgage and this is what triggers the running of the limitation period. As the Court of Appeal noted in *Bustin Farms*, the "determining factor under the [*1996 Act*] is when the right to bring the action first arose": *Bustin Farms* at para. 21. Under the standard mortgage terms, the right to bring an action arises as soon as the first default occurs, regardless of whether the lender takes any steps: *Bustin Farms*, at paras. 11, 16-18, 21-22.

[70] The parties agree the second mortgage was not paid out in full by the August 1, 2009 balance due date. Since this constituted a "default", I agree the six-year limitation period under the *1996 Act* was triggered on August 31, 2009. However, that does not end the analysis.

[71] As noted, under s. 5 of the *1996 Act*, the limitation period would restart if 805 confirmed the cause of action before the limitation expired, either by acknowledging the cause of action or making a payment in respect of it.

[72] There is no evidence 805 made any payments in respect of the second mortgage. On the evidence before me, however, I find 805 confirmed the mortgage several times after August 31, 2009, thereby restarting the limitation period.

[73] As noted, despite 805's failure to meet the August 31, 2009 due date, the responding companies contend that on March 1, 2010, the second mortgage holders and 805 signed the March 2010 Agreement to extend the balance due date to December 31, 2011. The petitioner says the March 2010 Agreement is not enforceable because it was not signed by Mr. Kelln, a second mortgage holder and required signatory.

[74] I accept that the copy of the March 2010 Agreement in the petition record does not include Mr. Kelln's signature. It is signed by all the other second mortgage holders and by the required directors of 805. Mr. Kelln provided an affidavit in these proceedings. He did not suggest the March 2010 Agreement was invalid because he did not sign it; he did not address that issue at all. Mr. Beadle provided four separate affidavits in this proceeding, none of which asserted that the March 2010 Agreement was rendered invalid because Mr. Kelln did not sign it. This argument appears to have arisen for the first time at the hearing of the petition.

[75] The mortgage of the mortgage was registered several weeks after the alleged extension agreement, on March 18, 2010. By its terms, it depended on the validity of the second mortgage. The payment provisions on the Schedule to the Form B state that the second mortgage holders are to pay the petitioner the "Principal Amount together with all accrued interest to December 31, 2011". The Form B was signed by Mr. Kelln on March 10, 2010. This suggests the December 31, 2011 date was in the contemplation of the relevant parties at the relevant time.

[76] In the circumstances, I am satisfied the March 2010 Agreement varied the balance due date for the second mortgage by extending it to December 31, 2011. The second mortgage was not paid in full by December 31, 2011, which would have been a further default, again triggering the limitation period. However, even if I am incorrect in that, I find the March 2010 Agreement is a written acknowledgment by 805 of the debt owing under the second mortgage. As such, it was capable of restarting the six-year limitation period on March 1, 2010.

[77] The parties agree that on April 26, 2012, the first mortgage, the second mortgage and the mortgage of the mortgage were all extended over the additional lots that had been created through the subdivision of the original property. I find the registration of the Form C extension, under charge CA2508949, is a further confirmation of the debt under the second mortgage. The six-year limitation period was therefore restarted again on April 26, 2012.

[78] I am also satisfied that the March 1, 2013 letter, while not evidence of the alleged final agreement, is a further confirmation of the debt owing under the second mortgage. The letter was written by the solicitor and agent for 805 to the second mortgage holders and it acknowledges the debt owing under the second mortgage. As a result, I find the six-year limitation period restarted again on March 1, 2013.

[79] As noted above, lot sales began in May 2013. The evidence is clear that the proceeds from sales between 2013 and the end of April 2016 only went to the first mortgage, so those sales did not affect the running of the limitation period for the second mortgage.

[80] On June 1, 2013, the *Current Act* came into force, changing the limitation period for causes of action in respect of mortgages to two years. The *Current Act* preserves the possibility for a limitation period to be restarted where a cause of action is acknowledged (s. 24).

[81] Between June 1, 2013 and the end of September 2016, there were numerous developments relating to the first mortgage, including communications between 805 (both its solicitor and Mr. Beadle) and Greyfriars as the lender. This included the further $1 million advance under the first mortgage in September 2015 that Mr. Reynolds and Mr. Knebel say they learned about when Greyfriars filed foreclosure proceedings in early 2025. It also includes Greyfriars' email confirmation in September 2016 that the first mortgage had been paid in full and personal guarantees released. However, none of the communications and activities in relation to the first mortgage amount to 805 confirming or acknowledging the debt under the second mortgage in a manner that could restart the limitation period.

[82] The parties agree that between May and August 2016, six further lots were sold and proceeds were paid to the first mortgage under the separate account number associated with the additional $1 million advance. The petitioner says some of those proceeds were also credited to the mortgage of the mortgage; the responding companies dispute this, arguing the statement of account from Greyfriars demonstrates the sales proceeds were only credited to the first mortgage.

[83] This dispute requires resolution. If any of the sales proceeds between May and August 2016 went towards the mortgage of the mortgage, that may be an acknowledgment by 805 of the debt under the second mortgage that could restart the limitation period.

[84] While Mr. Beadle deposes that some of the proceeds from lot sales during the relevant timeframe were credited to the mortgage of the mortgage, he does not provide any independent documentation to substantiate this. Mr. Beadle's 4th affidavit appends a spreadsheet prepared by petitioner's counsel for purposes of estimating the possible balance of the mortgage of the mortgage in 2025. Among the credits towards the mortgage of the mortgage, the spreadsheet lists specific proceeds amounts for sales of six particular lots between May and August 2016.

[85] However, in his 3rd affidavit, Mr. Beadle appends a version of the Greyfriars statement of account for the first mortgage (albeit, for Loan B under the separate account number), printed on November 8, 2016, that records the exact same proceeds amounts for the exact same lot numbers as credits towards the first mortgage. As the petition was originally filed in November 2024, it is logical to assume the Greyfriars statement of account printed in November 2016 predates the spreadsheet prepared by petitioner's counsel by a number of years. There is no explanation for how the same dollar figures for the same lots can properly be credited towards both mortgages.

[86] In my view, there is no logical basis on which the exact same proceeds from the exact same lot sales could be credited against both the first mortgage and the mortgage of the mortgage. I prefer the evidence contained in the Greyfriars

statement of account printed in November 2016; it is an independent record created by a neutral third party to these proceedings and issued to 805 long before this litigation was likely in contemplation. On the basis of that evidence, I find the proceeds from the lot sales between May and August 2016 were credited to the first mortgage. As a result, they do not have an impact on the limitation period in relation to the second mortgage that began to run again on March 1, 2013.

[87] On the evidence before me, I find 805 last acknowledged the debt under the second mortgage on March 1, 2013, thereby confirming the cause of action and restarting the limitation period. As I have not found any further confirmations after March 1, 2013, I find the six-year limitation period for causes of action in relation to the second mortgage expired on March 1, 2019.

[88] I will briefly address the responding companies' argument based on estoppel by convention argument. As framed in the response to amended petition and the written and oral submissions, the responding companies submit the petitioner should be estopped from arguing the August 31, 2009 balance due date was the due date for the second mortgage (presumably because that date is the starting point of the petitioner's limitation argument).

[89] The responding companies say that by March 1, 2013, the parties' dealings were based on a shared assumption that the second mortgage would only be paid out once the first mortgage and the mortgage of the mortgage had first been fully paid out. I note this is the same factual matrix that underlay the responding companies' argument about the final agreement, which I have rejected.

[90] Relying on the alleged shared assumption about how the various mortgages would be paid out, the responding companies say it was reasonable for them to wait, instead of taking steps to enforce the second mortgage, and they had no reason to believe their inaction would change their legal position. They say it would be unfair and unjust to allow the petitioner to insist on the August 31, 2009 balance due date for the second mortgage. They will not only suffer if the second mortgage is extinguished, but will also lose the benefit of the indemnity agreements they

received as part consideration for transferring their shares in 805 to the petitioner while the second mortgage remained outstanding.

[91] The petitioner contends the elements of estoppel that apply in the specific context of limitation of actions have not been made out. Relying on *Cadwell Estate*, the petitioner says the responding companies have not established any clear and unequivocal representation, by words or conduct, creating a shared assumption that a limitation defence would not be relied upon. Nor have the responding companies established they relied on such a shared assumption by failing to commence an action within the relevant limitation period: *Cadwell Estate* at paras. 158-160.

[92] I agree with the petitioner. While framed with a focus on the August 31, 2009 date, the thrust of the responding companies' estoppel argument is an attempt to prevent the petitioner from relying on the limitation period. However, there is no evidence of a manifest representation creating a specific shared assumption that the limitation period for the second mortgage would be waived: *Ross v. Insurance Corporation of British Columbia*, 2021 BCSC 1659 at paras. 45, 47-49.

[93] The March 1, 2013 letter on which the responding companies rely does not address limitation periods, nor does it make statements from which it could be inferred that 805 shared an assumption that it would not rely on a limitation period. Absent evidence that could support a shared assumption specific to the limitation period, I find the first element necessary for estoppel by convention is not made out. The petitioner is therefore not precluded from relying on the limitation period for the second mortgage.

Issue 3: What, if any, remedy should be granted?

[94] The petitioner says the Court could rely on one or more of ss. 244, 246 or 249 of the *Land Title Act* to grant the orders it seeks, namely, to discharge the second mortgage, and by extension, the mortgage of the mortgage. In each case, the petitioner relies on the expiry of the limitation period to ground its argument that the Court should order the mortgage to be discharged.

[95] Part 16 of the *Land Title Act* addresses cancellation of charges, including the circumstances in which a court may order a mortgage to be discharged, with the result that the registrar must cancel the registration of the charge.

[96] Under s. 244 of the *Land Title Act*, a borrower may apply to the Court if a lender, without just cause, refuses or neglects to give the borrower a discharge of a mortgage despite the borrower tendering or attempting to tender all money due and owing under the mortgage. On such an application, the Court has the same powers as it does under s. 243: the Court may order payment into court (or to the lender or another person) of any amounts owing or may order the discharge of the mortgage if the Court is satisfied the mortgage has been paid off. On receipt of a court order to discharge a mortgage on the basis there is no money owing, the registrar must cancel the registration of the mortgage.

[97] Section 246(1) of the *Land Title Act* provides that if a registered charge is determined by the effluxion of time (for example, by the expiry of a limitation date), the Court may order the mortgage be discharged. While the language of the section suggests the registrar has the authority to cancel a charge on application, the case law confirms the Court can order the registrar to cancel the registration of the charge if the Court is satisfied the claims in relation to the charge are barred by the effluxion of time: *Wosk v. Gould*, 2017 BCSC 2217 at paras. 30, 33-34.

[98] Section 249(1) of the *Land Title Act* provides that in a proceeding before this Court, if a question is raised about the validity of a registered charge or about the money owing on a registered charge, the Court may order the cancellation of the charge on payment into court of a specified amount and on any other terms the Court considers proper. The petitioner called s. 249 a “catch-all” provision.

[99] However, s. 249(2) specifies that, except where special circumstances have been established to the Court’s satisfaction, the Court is not to make an order under s. 249(1) to cancel the registration of a mortgage unless the full amount the lender states is due is paid into court. In other words, before ordering the cancellation of a mortgage under s. 249, the Court must generally require the full amount stated to be

owing to be paid into court. The special circumstances that may warrant a departure from the general requirement to pay the full amount into court is not clear. Petitioner's counsel did not provide case authorities to assist with that question.

[100] As set out above, I have determined that the six-year limitation period set by the *1996 Act* expired on March 1, 2019. That date is six years after 805 last confirmed the debt under the second mortgage via the March 1, 2013 letter. As indicated, I do not find there to have been any subsequent acknowledgments that restarted the limitation period, either under the *1996 Act* or the *Current Act*.

[101] By operation of ss. 9(1) and (2) of the *1996 Act,* when the limitation period expired on March 1, 2019, the rights of the second mortgage holders to bring an action to recover the debt or to realize on the collateral were also extinguished. As the Court of Appeal held in *Shuey*, the debt itself is effectively extinguished as no claim may be brought to recover any funds still owing under the second mortgage. This means there is no debt or other money owing under the second mortgage, and all claims in relation to such debt are barred by the passage of time.

[102] In *Wosk,* Justice Shergill dealt with an application to discharge and cancel a mortgage under s. 243 of the *Land Title Act*, which applies where the mortgagee cannot be found and the mortgagor contends the debt secured by the mortgage has been fully satisfied. As alternative relief, the mortgagor in *Wosk* also sought a declaration that any claims of the mortgagee with respect to the debt owing under the mortgage were barred by the effluxion of time, and an order, under s. 246 of the *Land Title Act*, that the mortgage be cancelled and discharged. The limitation period at issue in *Wosk* was six years, as established under the *1979 Act*.

[103] On the evidence before the Court in *Wosk,* Justice Shergill found there was no debt or other monies owing and the mortgage had been fully satisfied. Accordingly, she held the mortgage should be discharged pursuant to s. 243 of the *Land Title Act*. However, she also found that, in any event, any claims the mortgagee may have had with respect to the debt were barred because of the expiry of the limitation period and the corresponding extinguishment, under s. 9 of the *1979*

Act, of the mortgagee's right to bring a cause of action to recover the debt or realize on the interest in land. She concluded the mortgage should also be ordered to be cancelled under s. 246 of the *Land Title Act* based on the effluxion of time.

[104] As in *Wosk,* I am satisfied that, due to the expiry of the limitation period, the debt under the second mortgage has been extinguished and there are therefore no monies due and owing under it. This is a sufficient basis on which to order, pursuant to s. 244 of the *Land Title Act*, that the mortgage be discharged. It follows that the mortgage of the mortgage, which is dependent upon the underlying validity of the second mortgage, should also be ordered to be discharged.

[105] I am further satisfied that, in any event, any claims the petition respondents may have had with respect to the debt owing under the second mortgage are barred by the effluxion of time (the limitation period having expired on March 1, 2019). As a result, the second mortgage and the mortgage of the mortgage are also ordered cancelled and discharged under s. 246 of the *Land Title Act*.

[106] In the circumstances, it is not necessary to address the potential application of s. 249 of the *Land Title Act*, and I decline to do so.

Conclusion, summary of orders and costs

[107] In summary, I allow the petition and make the following orders and declarations:

a) An order under s. 244 of the *Land Title Act* that there is no debt or other money owing under the mortgage registered under Registration No. CA725054, modified by CA1133405 and extended by CA2508949 (the "second mortgage"), which is registered against:

   i. PID 018-587-712 LOT A, SECTION 14, RANGE 1, CEDAR DISTRICT, PLAN VIP57874, EXCEPT PARTS IN PLANS VIP59634, VIP67433, VIP76260 and EPP3591; and

ii. PID 028-841-956, LOT 56, SECTION 14, RANGE 1, CEDAR DISTRICT PLAN EPP3591 (collectively, the “Properties”)

and that the second mortgage is fully satisfied, released and discharged;

b) An order under s. 244 of the *Land Title Act* that the mortgage of the second mortgage registered under Registration No. CA1492442 and extended by CA2508950 (the “mortgage of the second mortgage”) is cancelled and discharged as against the Properties;

c) A declaration that any claims of the petition respondents with respect to the debt owing under the second mortgage and registered against the Properties are barred by the effluxion of time and an order, under s. 246 of the *Land Title Act*, that the second mortgage and the mortgage of the second mortgage are cancelled and discharged as against the Properties; and

d) An order that upon filing a certified copy of this court order in the Victoria Land Title Office, together with a letter from the solicitor for the petitioner authorizing such registration, and subject to the terms of this order, that the second mortgage and the mortgage of the second mortgage be cancelled, released and discharged from the title of the Properties and that the petitioner’s title to the Properties then be free and clear of any estate, right, title, interest, equity of redemption or other claim of the petition respondents.

[108] As the successful party on the petition, the petitioner is presumptively entitled to its costs of the petition proceeding, which I find should be payable at Scale B. The question is against whom the costs order should be made.

[109] The amended petition seeks costs against Peace Arch, Teiv and Mr. Hampton. The petitioner does not seek costs against Beadle Enterprises Inc. or Mr. Kelln, both of whom, as noted, provided prior consent to the relief eventually

sought on the petition. I agree no order for costs should be made against Beadle Enterprises Inc. or Mr. Kelln.

[110] Peace Arch and Teiv acted together in actively opposing the petition and were unsuccessful. It is appropriate that they are jointly and severally liable for the petitioner's costs of this proceeding.

[111] That leaves only Mr. Hampton. Although he did not formally participate in the petition proceeding, his refusal to consent to a discharge of the second mortgage was part of what necessitated the filing of the petition. He also sent petitioner's counsel an unfiled response indicating his continuing opposition to the relief sought. While he did not ultimately file the response, there is no evidence he confirmed to petitioner's counsel that he would not file it before the petition was heard. It was reasonable for the petitioner to prepare as if Mr. Hampton may appear and oppose the petition.

[112] In the circumstances, I exercise my discretion under R. 14-1(15) to order that Mr. Hampton is, with the responding companies, jointly and severally liable for costs of the steps leading up to the hearing of the petition. I do not order Mr. Hampton to pay costs associated with the hearing of the petition itself.

[113] Despite the above, if any party wishes to make further submissions on costs, they may do so in writing by filing a maximum of five written pages, on a schedule to be agreed between counsel, with the first submission to be filed with the Supreme Court Registry within 30 days of the release of these reasons. If further costs submissions will be made, the parties must confirm with Supreme Court Scheduling no later than 14 days after release of these reasons, setting out the agreed schedule for the exchange of costs submissions.

"K. Wolfe J."