

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pacifica Mortgage Investment Corporation
v. 2490 Marine Drive Ltd.*,
2026 BCSC 506

Date: 20260303
Docket: H251461
Registry: Vancouver

Between:

Pacifica Mortgage Investment Corporation

Petitioner

And:

**2490 Marine Drive Ltd., Dundarave Beachside GP Ltd., Dundarave Beachside
Limited Partnership, 1165886 B.C. Ltd., 1165877 B.C. Ltd., 1165857 B.C. Ltd.,
Evan Mont Wang, Hongpeng Yang, 1548341 B.C. Ltd., and All Tenants or
Occupiers of the Subject Lands and Premises**

Respondents

Before: The Honourable Madam Justice Fitzpatrick

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

S. Stephens
L.Y. Zhang

Counsel for the Respondent, 1548341 B.C.
Ltd.:

H. Esslinger

Counsel for the Respondents, Evan Mont
Wang and 1165857 B.C. Ltd.:

N. Yan

Counsel for the Attendee, RTR Terra
Contracting Ltd.:

M. Robinson

Counsel for the Respondents, Hongpeng
Yang and 1165877 B.C. Ltd.:

B. La Borie

Place and Date of Hearing:

Vancouver, B.C.
March 3, 2026

Place and Date of Judgment:

Vancouver, B.C.
March 3, 2026

[1] **THE COURT:** This is a foreclosure proceeding. The petitioner, Pacifica Mortgage Investment Corporation (“Pacifica”) seeks the appointment of a receiver under its mortgage security against lands in West Vancouver. The subject matter of the proceeding is an undeveloped property in the southwest area of the 2400 block of Marine Drive, West Vancouver owned by the first four respondents that was intended to be a condominium development known as “Pierwell” (the “Property”).

[2] Pacifica seeks the appointment of MNP Ltd. as receiver of the respondent debtors and their assets in order to take control of the Property and take whatever steps are necessary to realize on those assets.

[3] A number of parties are before me, who I will describe in more detail below. In general terms, one party supports the application, one party takes no position, and two other parties, including the second mortgagee, oppose the relief sought.

The Parties

[4] The first named respondent, 1165886 B.C. Ltd., is the parent of the respondent, Dundarave Beachside GP Ltd., the general partner (the “GP”). The development is held through a limited partnership. The respondent, Dundarave Beachside Limited Partnership (the “LP”) owns the Property. The LP and GP’s nominee company, the respondent 2490 Marine Drive Ltd. (the “Nominee”), holds title to the Property. I will describe these respondents collectively as the “Debtors.”

[5] The Debtors have been served with the petition materials and the application materials. However, they have not responded to this proceeding in any way and they are not attending on this application, either in person or through counsel.

[6] The next named respondents are Hongpeng Yang (also known as “Tom Yang”) and his company, 1165877 B.C. Ltd. (“877”), who are both covenantors of Pacifica’s debt.

[7] The next named respondents are Evan Mont Wang and his company, 1165857 B.C. Ltd. (“857”), who are both covenantors of Pacifica’s debt.

[8] The next named respondent is 1548341 B.C. Ltd. (“341”), the second mortgagee and the party who opposes this application.

Brief Background

[9] This petition was filed on December 16, 2025. There have been three responses to petition filed, one by 341, the second mortgagee, and the others by Mr. Yang/877 and Mr. Wang/857. Both 341 and a lien claimant, RTR Terra Contracting Ltd. (“RTR”) have filed responses to this application.

[10] Pacifica’s evidence is found in the various affidavits of Sidney Rubin, a director of Pacifica.

[11] Mr. Rubin’s Affidavit #1 recounts the specifics of Pacifica’s security. I will not review that in any detail save to make a few points. Firstly, the security includes a real property mortgage dated in October 2021 against the Property and a general security agreement from the Debtors. Of some significance is that Pacifica’s security documentation contractually provides that Pacifica has the right to appoint a receiver in the event of default under its loans.

[12] Secondly, Pacifica’s security documents include what their counsel have described as a restrictive covenant, in the sense that there is a positive covenant by the Debtors not to demolish or make or permit to be made any alterations or additions to the Property without Pacifica’s consent. Also, the Debtors were not allowed to permit the Property to remain unoccupied or unused and were not to permit any building to be erected on the Property to remain unfinished or without any work being done for a period exceeding ten days.

[13] Pacifica’s mortgage went into default and demand was made on November 6, 2025. At the time, the amount outstanding was approximately \$37.4 million. At that time, as far as Pacifica knew, the development had not proceeded to any degree beyond some preliminary work to prepare the site. Anyone familiar with the Dundarave neighbourhood of West Vancouver will know that the low-rise buildings that are on the site and were previously operated through various tenancies have

been vacant for some time now, presumably in anticipation of the development activities commencing.

[14] That is not what has happened.

[15] A development permit (“DP”) was issued in 2022 and renewed in 2024. The DP is due to expire in June 2026, failing any further renewal, which is a significant factor on this application. Anyone in the development industry will tell you that the expiry of a DP, which no doubt involved much cost and effort to obtain, can have very significant and potentially negative consequences to any development.

Pacifica’s Evidence

[16] Pacifica’s investigation of the Property since the time of default has revealed various circumstances.

[17] This foreclosure proceeding began on December 16, 2025. Pacifica’s application to appoint a receiver is the next step in the proceeding.

[18] Mr. Rubin’s Affidavit #2 was filed in support of the application. Mr. Rubin recounts some concerns about the use of the loan proceeds from Pacifica’s loan, since he says that the loan was only a refinance of the existing land loan that was in place when Pacifica placed its mortgage on the lands. Mr. Rubin emphasizes that the Debtors do not have a construction loan in place to fund any construction activities, and that appears to be the case, as I will later recount.

[19] Mr. Rubin states that Pacifica has lost confidence in the Debtors’ ability to manage the present circumstances, including advancing the project and/or obtaining a construction loan to pay the indebtedness. That is, in part, one of the reasons why they seek to appoint a receiver.

[20] Mr. Rubin also recounts that someone from Pacifica, perhaps him, attended at the site on January 22, 2026. The photographs taken at that time are before me. Those photos undeniably depict a scene showing a work site in a state of disarray. More significantly, the photographs depict a construction site that is not secured in

any fashion to prevent incursions by the public. One might conclude from these photographs that the state of the project could have posed some risk to anyone wandering near or on the site.

[21] Mr. Rubin also recounts that various parties involved in the development, such as Rennie, a realtor, and Swissreal, a development consultant, have not been paid. On that score, RTR's counsel also confirms that RTR is owed slightly in excess of \$1 million arising from work that it completed on the site in respect of sewer and water main work. I will deal with the failure to pay RTR later in these reasons.

[22] Mr. Rubin states that a receiver could take control of and stabilize the project, get clarity on any outstanding obligations. He also indicates that a receiver could address safety and liability risks associated with the site, which as I said was a legitimate concern given the state of the site on January 22, 2026. Mr. Rubin also states that the receiver could be tasked with developing and implementing a sales process to maximize recovery, which of course would include not only the amounts owed to Pacifica, but also to other parties, some of whom may yet be unknown.

[23] Mr. Rubin refers to the receiver possibly accessing and taking advantage of the work product and municipal approvals that have obviously been put in place to this point in time. He also refers to the possibility of this Court potentially granting a reverse vesting order ("RVO") in favour of a purchaser of the Property to take advantage of that prior work and parenthetically, also avoid payment of what would undoubtedly be significant property transfer tax.

[24] Finally, Mr. Rubin refers to the possibility of a receiver arranging for a re-tenanting of the Property. I frankly think that that is a faint hope given the state of the Property and that the previous tenants have no doubt found other premises from which to operate such that they would likely not be able or willing to return.

[25] The matter of the insurance is addressed by 341, and I will address that shortly.

[26] Mr. Rubin's Affidavit #3 sworn February 27, 2026 is also before me. Mr. Rubin refers to a priority and a postponement agreement between Pacifica and 341, the second mortgagee, which was signed on behalf of 341 by Mr. Yang (although, it is unclear to me what, if anything, comes from that).

[27] Mr. Rubin also confirms the outstanding balance under Pacifica's loan which, as of February 27, 2026, was in excess of \$38.8 million. The payout statement indicates that there is a per diem interest cost of about \$19,000, which translates into a monthly interest burden of about \$589,000/month. That, of course, means that delay in these proceedings bears a heavy cost in terms of not only Pacifica, but also any other creditors who may seek recovery of amounts owed and who are subordinate to Pacifica's debt.

[28] Evidence of value is before me. Pacifica has provided an affidavit of Zhao Vivienne Zhang, sworn February 27, 2026, which attaches a preliminary valuation range for the Property. Earlier today, I granted a sealing order with respect to that affidavit. For obvious reasons, I will not state the contents of that preliminary valuation, save to emphasize that this valuation would undoubtedly be of some concern to Pacifica and undoubtedly of greater concern the those who stand in priority behind Pacifica.

[29] The valuation also makes what I would describe as a fairly common-sense point, in the sense that, in a distressed or court-driven situation such as is before me, one can expect the market to take cognizance of that fact and act accordingly. The valuation also states that the ultimate value obtained for the Property may be more towards the lower end of the indicated range. I am told that this preliminary valuation is not intended to be the final answer on the issue of valuation that will ultimately be before the Court. Mr. Rubin states that there was some delay in obtaining a more conclusive valuation, which is understandable given the nature of the development property in question.

[30] 341's counsel takes the position that I should give little if any weight to Pacifica's preliminary valuation. I would not accede to that submission. Obviously it

is preliminary, and the weight accorded to it must be based on that fact. However, it does stand as the only valuation evidence before me and can be considered, not as determinative, but a factor to be considered in the context of all of the evidence.

[31] I will round out this discussion concerning the status of the development on one final point. As one might expect and as might be the case here, developers usually secure pre-sales in respect of any proposed development such as this. There is no information before me that the Debtors entered into any pre-sales of the proposed condominium units. That is, of course, perhaps understandable given the complete absence of the Debtors in terms of either responding to this proceeding or responding to this application.

[32] The failure of the debtors to respond to this application is, in my view, a very concerning factor in terms of what has gone on with this development and what is going on with this development. 341 has attempted to fill in some gaps in the evidence to the extent that it is known by 341, however, this concern is very much present at this time.

341's Evidence

[33] 341 has provided two affidavits. The first affidavit is by a legal assistant at 341's counsel's law firm that attaches demand letters dated January 8, 2026 with respect to 341's debt and security. Those demand letters indicate that the Debtors owe 341 about \$8.7 million. The time for payment under the demands expired on January 19, 2026.

[34] The second and more substantial affidavit provided by 341 is from Yun Zhang which was, as I said above, 341's attempt to fill in some gaps here. However, the affidavit provided is not even from a representative of 341. Rather, Ms. Zhang is a director of C&WHB Construction Ltd., who is defined as "Createworld". Ms. Zhang says that Createworld is a consulting firm engaged by 341 to provide services with respect to the Debtors' development project.

[35] Ms. Zhang’s knowledge of the matters is somewhat unclear, for obvious reasons. She does not purport to have any personal knowledge that might be in the possession of the Debtors; however, she does purport to give evidence concerning the Debtors and the ownership of the Property. She indicates that Createworld is a company created on January 24, 2025. The wife of Mr. Yang apparently is a director of Createworld, which indicates some connection, I suppose, to the Debtors.

[36] I would add that, even though Mr. Yang and Mr. Wang appear to have some connection to this development, it is entirely unclear to me why they are not able to give evidence concerning the status of the development and what the Debtors’ intentions are going forward. It is a complete mystery that has no answer on this application.

[37] All that Ms. Zhang on behalf of Createworld is able to offer, through a convoluted allegation concerning hearsay evidence, is that the Debtors have “run out of funds for the project and require additional financing”. Apparently, that was the impetus for 341 to get involved in the project when Mr. Yang approached 341’s principal, Tengfei Wang, to invest in the project. Ms. Zhang then, again apparently without any personal knowledge, refers to the loan agreement between 341 and the LP in referring to a loan of up to \$16 million. Ms. Zhang attaches various loan agreements, including the mortgage security agreements and a guarantee from the GP, the Nominee and the parent of the GP. Ms. Zhang also refers to the priority postponement agreement with Pacifica, to which Createworld is not a party.

[38] Ms. Zhang then specifically addresses the status of the development. She says that the project is in the “early stages of construction,” which I find a particularly vague statement that is very unhelpful in the circumstances. She refers to the DP and the renewal of the DP. She also indicates that on September 17, 2025, the Debtors (presumably through Createworld) applied for a stage 2 DP. No copy of that document is attached, nor is any copy of any DP attached so that one can see the full document.

[39] Ms. Zhang indicates that 341 engaged Createworld to provide “consulting services” with respect to the project. Ms. Zhang does not indicate when that occurred, although based on where it is mentioned in the affidavit, one might presume that happened in December 2025. In any event and more significantly, Ms. Zhang does not provide a copy of that consulting agreement so that the Court can consider the exact scope of Createworld’s engagement.

[40] Ms. Zhang on behalf of Createworld, then refers, not to the project as originally envisioned, but very unusually to engaging Michael Geller (a well-known development consultant in West Vancouver) to consider advancing a completely different type of project. That evidence is perplexing to say the least and seems to be untethered from any present situation facing the Property and the stakeholders.

[41] Finally, Ms. Zhang advances various arguments as to why a receiver is not necessary or is not necessary at this time. She says that Createworld is committed to working with 341 to advance a sales process. She refers to 341 engaging a real estate broker. 341’s counsel, in fact, mentions this in her argument about seeking an order for conduct of sale. However, since this foreclosure proceeding began in December 2025, 341 has made absolutely no effort to bring forward such an application.

[42] As Pacifica’s counsel has pointed out, there are no details whatsoever concerning how 341 would advance a sales process in these very unusual circumstances where the Debtors (who apparently vacated the scene) and the status of the development is anything but clear.

[43] Ms. Zhang also says that Createworld is actively and competently managing the site. She refers to fencing having been put up around the construction site and she attaches various photographs that were taken on February 24, 2026, just days ago. I acknowledge that this is a positive development, to the extent of addressing potential hazards. However, it is of some concern to me that the fencing was only put up as a reactionary response to Mr. Rubin pointing to the lack of any fencing and his evidence that the site was basically abandoned and open to anyone who sought

to access it. I do not accept that Createworld has been proactively managing the site because there is no evidence of that, and the late erection of the fencing would appear to confirm otherwise.

[44] Ms. Zhang acknowledges in her affidavit that a RVO in a receivership may be a viable way of dealing with any sale of the Property. In her view, a receivership can occur at the last minute and a receiver can seek a RVO for any sale arranged by 341 in advance of any closing of that sale.

[45] I find that approach problematic. While RVOs have been accepted as an appropriate type of transaction, it is not typically viewed as an appropriate means of closing a sale just that time simply for the purpose of avoiding property transfer tax. As counsel are no doubt aware, the *Harte Gold* factors would indicate a much broader range of considerations in respect of whether an RVO is appropriate, which includes fairness in respect of the stakeholders and preserving the integrity of the sales process: see *Harte Gold Corp. (Re)*, 2022 ONSC 653 and the many cases in this jurisdiction who have accepted the *Harte Gold* factors, including *British Columbia v. Peakhill Capital Inc.*, 2024 BCCA 246.

[46] Ms. Zhang also refers to having access to “much of” the existing work product, but she does not even indicate what work product they do have, what work product they do not have and how Createworld would propose to gain access to work product that might, in fact, be very beneficial to the parties at the end of the day.

[47] Finally, Ms. Zhang refers to the insurance and she has attached various certificates and cover notes in her affidavit. However, the insurance policies themselves have not been provided, which might have been reviewed by the stakeholders in terms of what insurance is in place and what other insurance might be validly considered by the parties.

[48] Also, as I alluded to earlier in these reasons, there is the matter of RTR’s debt in excess of \$1 million. In fact, RTR’s affidavit material confirms that Createworld is

the debtor who owed this amount to RTR. Ms. Zhang on behalf of Createworld makes no mention whatsoever of this debt and why they have not paid RTR when they contractually agreed to do so. The fact that Createworld has not seen fit to pay what is alleged to be a valid debt gives rise to some concerns on my end about their ability and/or willingness to advance the matter forward in a proper manner.

Discussion

[49] In Pacifica’s notice of application, it refers to the legal basis for the application which I will review briefly. The application is brought pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and s. 39 of the *Law and Equity Act*, RSBC 1996, c. 253 [LEA]. The test under the LEA is whether the appointment is “just or convenient”. Pacifica refers to the very many cases in this jurisdiction confirming that, despite a secured creditor having the contractual ability to appoint a receiver or to seek the appointment of a receiver by the court, this is not a governing factor that disregards all other factors. It is but one factor to be considered. As I stated in *Bank of Montreal v. Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 47, the extraordinary nature of a receiver appointment must be considered in the circumstances.

[50] Counsel refers, of course, to the well-known factors in *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527. Those factors are well known and have been applied repeatedly in this jurisdiction. They are not a checklist; rather, they are a compilation of various factors that will typically be considered by the Court in terms of assessing whether the appointment of a receiver is appropriate or as the phrase goes, “just or convenient”.

[51] I will address the *Maple Trade* factors briefly. Pacifica does have the contractual right to appoint the receiver. In terms of risk to the security holder, I have already referred to the fact that there are concerns here given the preliminary valuation that is before me, not only to Pacifica but those standing behind Pacifica in priority.

[52] The next factor is the need to protect and safeguard the assets and preserve and protect the property. It is clear to me that the Debtors have left the scene, so to speak. Createworld seems to have some relationship with not only the Debtors, but also 341 and appears to be playing some role in terms of the site. In my view, their actions in respect of preserving the site are lacking, particularly arising from the fencing issue. They have not presented any more comprehensive security plan for the site, which is quite large and in an active residential and commercial area of West Vancouver.

[53] Another factor are the liabilities. Pacifica's loans are outstanding and 341's loans are also outstanding. Both stand as significant obligations of the Debtors. There is also a reference to the Debtors having other indebtedness owing to RTR, Rennie and Swissreal.

[54] In my view, there is an aspect of urgency here. As I have said, the interest burn under the Pacifica loan is very substantial. It is in the interests of not only Pacifica, but all of the stakeholders to act as quickly as possible to gain some appreciation of the status of the matter and take steps to advance the matter further.

[55] On that end, the urgency also arises with respect to the DP. As I said, the DP is due to expire in June 2026, and the consequences of not renewing that DP can be significant. This is another matter upon which Ms. Zhang on behalf of Createworld made no mention of whatsoever and again is a troubling aspect of how Createworld proposes to address the matter pending a possible application by 341 for conduct of sale.

[56] I appreciate that there are costs to the parties with a receivership, and that is not an insignificant concern. However, it is unquestionably the case that a receiver would be acting on behalf of all of the stakeholders, and the costs will redound to the benefit of all the stakeholders in terms of advancing the matter as quickly as possible. I appreciate that there is prejudice to both Pacifica and the stakeholders in terms of that cost, but unfortunately it is simply a cost that must be borne for what is hopefully a benefit to be achieved through a receivership.

[57] RTR supports the receivership. Mr. Wang/857 take no position. Mr. Yang/877's counsel simply says that the receiver is not necessary, however, no specific reasons for that position are explained. As such, I am unable to address any specifics that might otherwise have been given.

[58] The main opposition comes from 341, relying on the two affidavits that I have already mentioned. 341's counsel refers to the potential for an order for conduct of sale. However, in my view, 341 has not acted promptly in bringing any such application forward. Further, based on the evidence before me, 341 is not in any way, shape, or form even moving in that direction to any degree such that it could be considered as a reasonably potential step to be taken.

[59] 341's counsel also refers to the fact that they may wish to exercise their equity of redemption by, of course, paying Pacifica out in respect of its loan. I acknowledge that is a relevant consideration. However, the receivership order sought by Pacifica, which includes authorizing the receiver to sell the Property, will not result in any sale anytime soon. In my view, 341 will have plenty of time to decide whether they wish to exercise their equity of redemption or if necessary, apply to delay any sale by the receiver pending that happening.

[60] In all of the circumstances, I am satisfied that all of the *Maple Trade* factors support the appointment of the receiver. In my view, it is appropriate to have the court's officer assume control of this project to secure the Property, secure whatever assets might be of benefit in advancing the matter and finally, determine next steps in terms of what will happen with the Property. It is unknown whether that will involve a sale toward a continuation of the present development or some other type of development, as has been suggested by Createworld.

[61] Accordingly, I am granting the receivership order on the terms sought. I have been provided with a black line copy of the proposed receivership order, compared to the BC model receivership order. The proposed changes are appropriate with two exceptions.

[62] Firstly, with respect to the proposed paragraph 22(d), it is not appropriate to authorize the receiver to pay any amounts held by it to Pacifica at this time. If such a scenario arises, where the receiver has funds that it proposes to pay to Pacifica, the receiver can apply for such relief.

[63] Secondly, the proposed order includes a proposed borrowing amount for the receiver of \$1 million. I consider that amount to be excessive. I appreciate that the receiver is going to have to spend some time getting up to speed on the project and deciding on next steps; however, in my view those next steps should be subject to court supervision in terms of what they are and the anticipated costs of those next steps. Accordingly, I am limiting the receiver's borrowing powers at this time to \$500,000. This amount is, of course, subject to any later application on notice to the service list of any proposed increase.

[64] On a final note, I am assuming conduct of this matter. This will be on the usual basis such that counsel has to send in a request to appear before me. If it is urgent and I am not available, I will not hold things up and you can try to get in front of another judge or go to chambers.

"Fitzpatrick J."