

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Altin Capital Limited v. Main Street Arts 2
Development Limited Partnership*,
2026 BCSC 830

Date: 20260506
Docket: H210089
Registry: Vancouver

Between:

Altin Capital Limited

Petitioner

And

**Main Street Arts 2 Development Limited Partnership, Main Street Arts 2
Investments Inc., Port Capital Development (1940 Main) Inc., Port Capital
Development Inc., Port Capital Group Inc., Macario Teodoro Consunji Reyes
a.k.a. Macario Tobi Reyes, Altin Capital Limited, ABC Main Auto Centre
(Holdings) Ltd. and Propane Depot Inc.**

Respondents

Before: The Honourable Justice Morishita

Reasons for Judgment

Counsel for the Petitioner:

D. Lucas

Counsel for the Respondents Main Street
Arts, Port Capital, and Macario Tobi Reyes:

R. Clark, K.C.

Counsel for MIB Enterprises Ltd.:

D. Magnus

No other appearances

Place and Date of Hearing:

Vancouver, B.C.
January 7, February 6, and
March 26-27, 2026

Place and Date of Judgment:

Vancouver, B.C.
May 6, 2026

Introduction

[1] This is a foreclosure proceeding. The petitioner, Altin Capital Limited (“Altin”), seeks an order absolute (i.e., a final order of foreclosure) with respect to three commercial parcels of land, located at 1940 Main Street in Vancouver (the “Lands”).

[2] Altin is the first and second mortgagee. When this proceeding was commenced, BCMP Mortgage Investment Corporation (“BCMP”) was the first mortgagee. Pursuant to an assignment agreement dated January 20, 2022, BCMP assigned to Altin all its interest in the foreclosure proceeding. On July 10, 2025, Altin obtained an order substituting it as the petitioner in this proceeding (the “Substitution Order”).

[3] Mr. Lucas is counsel for Altin. Mr. Clark, KC, is counsel for the borrower and guarantor respondents (“Main Street Arts”), i.e., all respondents other than ABC Main Auto Centre (Holdings) Ltd., Propane Depot Inc., and MIB Enterprises Ltd. (“MIB”). MIB is the third mortgagee and is represented by Mr. Magnus. ABC and Propane Depot are tenants on the Lands and did not participate in this application.

[4] Main Street Arts and MIB oppose the application. Main Street Arts seeks a six-month extension of the redemption period.

[5] The Notice of Application was filed on July 31, 2025, and was originally scheduled for hearing in general chambers. For various reasons, the hearing of the application was delayed until January 7, 2026. The hearing was set for one day; however, by late morning it became evident that one day would not be sufficient. The hearing was ultimately adjourned in the afternoon due to counsel's illness and was adjourned to February 6, 2026.

[6] On January 29, 2026, Main Street Arts filed a Notice of Application to be heard at the February 6, 2026 hearing. Main Street Arts estimated that the hearing of their application would take 45 minutes. Main Street Arts did not seek short leave for the matter to be heard within the *Rules*-imposed deadlines. In their Notice of

Application, Main Street Arts sought an order setting aside the Substitution Order. On February 4, 2026, Altin filed their Application Response opposing Main Street Arts' application.

[7] At the February 6, 2026 hearing, the Court canvassed with counsel the issues of sequencing, timing, and time estimates. Specifically, the Court asked whether the Main Street Arts application should be heard first, with a decision rendered before proceeding with the order absolute application, or whether the applications could be heard together, and, if so, how much additional time would be needed. The parties took the position that the applications should be heard together. The court ultimately agreed with the parties and determined that a full-day hearing would be required. Because addressing these preliminary issues took time and the application materials were prepared on very tight timelines, the court adjourned the hearing to March 27, 2026.

[8] The hearing proceeded and concluded on March 27, 2026. For the reasons that follow, I am adjourning the petitioner's application for three months to allow the parties time to address the issues relating to the Substitution Order. In the meantime, I will be seized of this proceeding.

Background and Procedural History

[9] The loans to BCMP and Altin have been in default since January 2021.

[10] BCMP commenced these foreclosure proceedings by filing the petition on February 16, 2021. At that time, BCMP was the first mortgagee and Altin the second. In December 2021, MIB advanced funds to the respondent, Main Street 2 Arts Investment Development Limited Partnership, and, after BCMP commenced these proceedings, registered its mortgage in January 2022.

[11] None of the Main Street Arts respondents have filed a response to the petition.

[12] Altin filed its response to the petition on April 9, 2021.

[13] On April 13, 2021, BCMP obtained an Order *Nisi* of Foreclosure, providing for a three-month redemption period and judgment against the Main Street Arts respondents in the sum of \$17,291,680.17, plus interest thereafter at 18% per annum, compounded monthly, resulting in a daily rate of \$8,477.24. At that time, the amount owing to Altin, as second mortgagee, was approximately \$7,048,909.10. In addition, on April 13, 2021, Altin was granted exclusive conduct of the sale of the Lands for 90 days.

[14] The redemption period and Altin's conduct of sale period ended on July 12, 2021, but were ultimately extended by a consent order to August 5, 2021.

[15] By the end of the extended redemption period, the mortgage had not been redeemed, and BCMP obtained an order for conduct of sale on August 21, 2021, granting it exclusive conduct of sale.

[16] As noted, on January 20, 2022, BCMP and Altin executed the assignment agreement. Under the agreement, Altin was obliged to seek an order substituting Altin as the petitioner in these proceedings. On October 3, 2024, MIB filed its response to the petition.

[17] None of the respondents has redeemed the Lands, and the Lands have not been sold pursuant to the order for the conduct of sale.

[18] As noted, Altin obtained the Substitution Order on July 10, 2025. The Main Street Arts respondents were not given notice of the application, which was heard in general chambers. The Substitution Order was granted as sought and contained the following terms:

- a) Altin Capital Limited (the "New Petitioner") be substituted as the Petitioner in the within proceedings in the place of BCMP Mortgage Investment Corporation, and that the style of proceedings herein be amended accordingly;
- b) the New Petitioner be at liberty to amend the Petition accordingly, as required;
- c) the New Petitioner not be required to file an amended Petition or any amended pleadings;

- d) the New Petitioner not be required to serve a copy of the amended pleadings on any parties to this proceeding.

[19] As of December 15, 2025, more than \$30 million is owing under the first mortgage and more than \$15 million under the second mortgage.

[20] Altin obtained an appraisal dated July 23, 2025, from Ryan ULC. According to that appraisal, the fair market value of the Lands as of December 4, 2024 was \$22,200,000.

[21] The BC Assessment value for the Lands as of July 1, 2024 was \$23,715,000.00.

[22] There are significant property tax arrears on the Lands. In November 2025, Altin caused a payment of \$479,131.13 to be made to the City of Vancouver to settle the 2024 arrears and to prevent a tax sale of the Lands.

[23] Mr. Macario Teodoro (Tobi) Reyes is the director and sole shareholder of the corporate entities that constitute the Main Street Arts respondents. In an affidavit, he deposes that since 2021 he has been working with Altin to address the outstanding debt on mortgages secured against the Lands. He says he has a long-standing agreement with Altin under which repayment is deferred until he finalizes a deal for the Lands that will allow Altin to be paid out, or until it becomes clear that a deal will not proceed. Mr. Reyes provided evidence of the steps he has taken to develop the Lands and obtain financing to pay out the mortgages. Specifically, the plan is to develop the Lands to include a 30-story tower with a large hotel and a cultural centre for the Filipino community. Implementing this plan will require rezoning the Lands. To that end, Mr. Reyes has been working with governments and community stakeholders to garner support for his proposal. On December 10, 2025, Vancouver City Council unanimously passed a motion directing City staff to prioritize and expedite review of the project. Main Street Arts provided evidence that the Lands could be valued at approximately \$53 million if rezoning and development approval

are obtained. Main Street Arts has also provided evidence from lenders who are interested in providing financing.

The Substitution Order

[24] As indicated, after the hearing of the petitioner's application for an order absolute began, the Main Street Arts respondents filed an application to set aside the Substitution Order. They maintain that if they are successful in that application, the court cannot grant the order absolute. Accordingly, I will address this issue first.

Parties' Positions

[25] Main Street Arts seeks to set aside the Substitution Order (which they characterize as *ex parte*) on the grounds of material non-disclosure and that the court was misled. They say this led the court to make an improper, in some sense illegal, order. More specifically, Main Street Arts states that Altin did not advise the court of the body of law that prevents the substitution of a party after judgment. They submit that the only order that could possibly have been made is an order substituting Altin as petitioner in respect of the *in rem* aspects of the proceeding, as judgment has not yet been granted on those aspects (whereas judgment has been granted on the *in personam* aspects).

[26] In addition, Main Street Arts argues that Altin failed to advise the court that, although it did not file a response in this proceeding, it had filed a response in a sister foreclosure and had appeared at the hearing of the application for an order for conduct of sale. Further, Main Street Arts states that Altin should have advised the court that the assignment agreement between it and BCMP required Altin to give notice of the assignment to all parties, which, they say, was not done. Main Street Arts submits that had the court been properly advised of the law and the facts regarding notice, it would not have granted the Substitution Order.

[27] Altin submits that it was not required to serve a Substitution Order Notice of Application on Main Street Arts and that the hearing was not *ex parte*. In support of this position, Altin notes that Rule 8-1(7) required it to serve the application on each

party of record and on every other person, other than a party, who may be affected by the orders sought. Altin states that it was not required to serve the Main Street Arts respondents because none of them filed petition responses and were therefore not parties of record. In addition, Altin relies on *Matthes v. Manufacturers Life Insurance Company*, 2008 BCSC 6, where Mr. Justice Macaulay notes that if defendants do not file appearances, they do not become parties of record and are not entitled to notice of hearings. Justice Macaulay held, at paras. 43-44, that hearings where such parties are not provided notice are not *ex parte* hearings.

[28] More generally, Altin argues that this court lacks jurisdiction to set aside or vary the Substitution Order. It notes that the court has jurisdiction to vary or set aside default judgment orders under Rule 3-8(11) and orders made without notice on the basis of urgency under Rule 8-5(8). In addition, under Rule 22-1(3), the court can reconsider an order made where a party to a proceeding fails to attend the hearing, provided that party is not guilty of wilful delay or default. Altin submits that none of these circumstances apply, and therefore the court is *functus* and lacks jurisdiction.

[29] In the alternative, Altin argues that if the hearing was *ex parte*, the proper test is the three-part *Miracle Feeds* test, which Altin says Main Street Arts cannot satisfy. Further, Altin states that the application to vary or set aside the Substitution Order should be brought before the chambers judge who granted the order; otherwise, the hearing is *de novo*.

Discussion

[30] In my view, Mr. Justice Macaulay's reasoning in *Matthes* applies here. The Main Street Arts respondents did not file petition responses and were therefore not parties of record. Accordingly, Altin was not required to serve them with the Substitution Order Notice of Application. The July 10, 2025 hearing that led to the Substitution Order was not *ex parte*.

[31] I agree with Altin that none of the circumstances covered by Rules 3-8(11), 8-5(8), or 22-1(3) apply. Main Street Arts essentially submits that the court has

inherent jurisdiction to vary or set aside an order resulting from material non-disclosure. I do not agree with this submission. In my view, once that order was entered, the court was *functus* and only has the power to vary the judgment in the limited circumstances set out in the *Rules*.

[32] Although unclear at first, by the March 27, 2026 hearing, the parties agreed that the court was not permitted to make the Substitution Order. Unfortunately, the chambers judge hearing the application was not provided with any submissions or case law to that effect. Main Street Arts says this was a material non-disclosure. I do not agree. While the judge was not provided with the applicable law, there is no indication that this was due to material non-disclosure. It seems more likely that both counsel and the court were unaware that the order being sought was incorrect in law. In my view, this is not a situation where an order can be varied or set aside. Rather, the remedy is to appeal the order.

[33] I pause to note that the materials indicate that Main Street Arts was aware of the assignment prior to the July 10, 2025 hearing, and in any event would have been aware of the Substitution Order when they were served with the Notice of Application seeking an order absolute. As indicated, that application was filed on July 31, 2025, and was presumably served on Main Street Arts shortly thereafter, as Main Street Arts filed their Application Response on August 26, 2025. Nevertheless, Main Street Arts did not file the application to set aside the Substitution Order until five months later, on January 29, 2026. When asked about the delay in bringing the application, counsel seemed to suggest that they had only recently become aware of the issue.

[34] The next question is how the court can proceed. As noted, both parties agree that the substitution of the *in personam* aspect of the proceeding was incorrect in law. Nevertheless, Altin encourages the court to proceed because if the court grants the order absolute, the *in personam* relief will be moot. Alternatively, they submit that the court could vary the Substitution Order to apply only to the *in rem* claim. Main Street Arts submits that Altin should be required to “start over.” More specifically, it

should seek an order substituting it as petitioner for the *in rem* aspects of the petition, and, in the process, permit the court to consider concerns about proceeding with two petitioners in a single proceeding.

[35] In light of the above, it would be inappropriate for this Court to consider the merits of the application for an order absolute at this stage, given the state of the pleadings. As set out above, the court lacks jurisdiction to vary the Substitution Order to indicate that it applies only to the *in rem* claim. I am adjourning the application for an order absolute to give the parties an opportunity to address the Substitution Order – either through the Main Street Arts respondents attempting to appeal it or through Altin bringing an application, or both. The Court appreciates that Altin will suffer greater prejudice with any further delay; thus, the Main Street Arts respondents must act with haste if they intend to bring an appeal.

[36] To assist the parties in obtaining a timely resolution of these matters, I will be seized of this proceeding. If the parties make a Request to Appear and I am unable to schedule a timely hearing, I will grant the parties leave to appear before another judge.

“Morishita J.”