

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *GC Capital Inc. v. Westfield Business
Centre Ltd.*,
2026 BCSC 112

Date: 20260126
Docket: H230596
Registry: Vancouver

Between:

GC Capital Inc. and Kismet Capital Ltd.

Petitioners

And

**Westfield Business Centre Ltd., formerly 1267541 B.C. Ltd., TDP Holdings Ltd.,
622013 B.C. Ltd., Crystal View Holdings Inc., 1352740 B.C. Ltd., 1352749 B.C.
Ltd., 1352764 B.C. Ltd., 1352774 B.C. Ltd., 0808774 B.C. Ltd., The Jag Aujla
Family Trust, Kuldeep Bansal, Kulwant Singh Gill, Kamaljit Singh Sandhu,
Jagjit Singh Aujla, Amneet Kaur Gill, Ashok Kumar Bansal, Kiran Bala,
Tarandeep Singh Gill, 0938080 B.C. Ltd., MFPE Engineering Ltd., The Crown in
Right of British Columbia, Royal Bank of Canada, All Tenants or Occupiers of
the Subject Lands and Premises**

Respondents

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

Counsel for the Petitioners:

B.C. Gibbons
N.S. Mann

Counsel for the Appellants/Respondents,
Westfield Business Centre Ltd. (formerly
1267541 B.C. Ltd.), TDP Holdings Ltd.,
622013 B.C. Ltd., Crystal View Holdings
Inc., 1352740 B.C. Ltd., 1352749 B.C. Ltd.,
1352764 B.C. Ltd., 1352774 B.C. Ltd.,
0808774 B.C. Ltd., The Jag Aujla Family
Trust, Kuldeep Bansal, Kulwant Singh Gill,
Kamaljit Singh Sandhu, Jagjit Singh Aujla,
Amneet Kaur Gill, Ashok Kumar Bansal,
Kiran Bala, Tarandeep Singh Gill:

D.E. Gruber
S. Bourns

Counsel for 1262066 B.C. Ltd.:

C.D. Brousson
J. Robertson-Taylor

Place and Date of Hearing:

Vancouver, B.C.
October 29, 2025

Place and Date of Judgment:

Vancouver, B.C.
January 26, 2026

Introduction

[1] This is a foreclosure proceeding, but the matter before the Court is an appeal from a rejection of a caveat in the Land Titles Office (“LTO”) by the Registrar of Land Titles (the “Registrar”). The Appellants (the debtor/respondents) attempted, unsuccessfully, to file a caveat in the LTO to stop the transfer of the subject property after a sale was approved by this Court.

[2] On the scheduled return date in October 2025, this appeal was attended by and opposed by two parties, being the purchaser of the subject property and the petitioners/first mortgagees (who had been paid out as a result of the completed sale).

[3] On its face, the appeal appeared to have been properly brought, as confirmed by assurances from the Appellants’ counsel at the hearing. However, it later emerged that there were serious flaws in the appeal, including that all necessary parties, including the Registrar, were not served or even aware that the appeal had been brought. Significant procedural and substantive issues have now been raised, well beyond the substantive issues raised at the October 2025 hearing.

Foreclosure History

[4] In August 2023, the petitioner/first mortgagees, GC Capital Inc. and Kismet Capital Inc. (collectively, “GC Capital”) began this foreclosure proceeding. The petition referred GC Capital having mortgages and other security on the main properties in issue, identified as the “TDP Lands” and the “622 Lands” in Surrey, BC (collectively, the “Lands”).

[5] The 622 Lands were comprised of a vacant unfinished commercial building named the “Westfield Business Centre”. The TDP Lands were comprised of vacant lands across the street apparently intended for surplus parking.

[6] In November 2023, GC Capital obtained an Order Nisi in respect of the Lands.

[7] In May 2024, this Court issued an order granting 0938080 B.C. Ltd., the second mortgagee, conduct of sale for three months, with GC Capital to assume conduct of sale effective August 27, 2024.

[8] In October 2024, GC Capital entered into a purchase agreement for the Lands at a price of \$56.5 million with 1262066 B.C. Ltd. (the “Purchaser”).

[9] In January 2025, Justice Masuhara heard a contested hearing to consider competing two applications: 1) by GC Capital to approve the sale to the Purchaser; and 2) by the Appellants (or some of them) to extend the redemption period to March 2025.

[10] On January 15, 2025, Masuhara J. approved the sale to the Purchaser: see *GC Capital Inc. v. Westfield Business Centre Ltd.*, 2025 BCSC 174. At the time, the Court noted that GC Capital was owed about \$42 million (para. 6).

[11] The Order Approving Sale (“OAS”) is at the centre of the current dispute. Paragraph 4 of the purchase agreement that was approved by the Court referred to a closing date for the sale. In addition, para. 4 of the OAS addressed extensions of the closing. It will suffice at this point to say that a dispute arose between GC Capital, the Purchaser and the Appellants as to whether or not the closing date could be extended beyond what was set out in the purchase agreement without further court order.

[12] In any event, on notice to the Appellants, in the morning of May 20, 2025, GC Capital acted upon the OAS when it was filed at the LTO to effect a transfer of title of the Lands to the Purchaser at the closing of the sale.

The Caveat and OAS

[13] The genesis of this appeal lies in the Appellants’ attempts to block the OAS from being registered in the LTO in order to prevent the sale from closing.

[14] On the morning of May 20, 2025, the Appellants, as the registered owners of the Lands, filed a caveat at the LTO. In essence, the caveat alleged that GC Capital

did not have authority to extend the closing date and that the OAS did not allow any extension of the closing date, such that the OAS was inoperative in order to transfer title at the LTO. The caveat was filed after the OAS was submitted for registration at the LTO.

[15] The efforts of the Appellants to file the caveat were not accepted by the Registrar, who issued brief reasons in a rejection notice that same morning. As a result, the OAS was fully registered, the sale closed, the Purchaser became the registered owner of the Lands, and the Purchaser paid the required purchase monies to GC Capital. GC Capital received full repayment of its loans. The remainder of the net funds (approximately \$9.4 million) were paid to the second mortgagee, although I understand that was not sufficient to fully repay those loans.

The Appeal

[16] On May 29, 2025, the Appellants filed this appeal in this foreclosure proceeding.

[17] In July 2025, responses to the appeal were filed by GC Capital, the second mortgagee and the Purchaser.

[18] I was told that there was some delay to obtain a hearing date. In any event, the hearing was eventually scheduled for October 29, 2025 and I heard the appeal. The only parties appearing to oppose the appeal were GC Capital and the Purchaser.

[19] During the course of the hearing, a question was raised as to why the Registrar was not present on the appeal or why he had at least not filed materials in response. I was assured by Appellants' counsel that the Registrar had been served, as required, but had simply decided not to participate.

[20] At the end of the hearing, I reserved my decision. I also directed Appellants' counsel to file an affidavit of service by the end of the week to confirm that the Registrar had in fact been served.

The Aftermath

[21] On October 31, 2025, an associate at the Appellants’ counsel’s firm filed an affidavit relating to the Registrar, as directed by the Court. She stated that, contrary to what counsel believed was the case, they had “inadvertently” not served the Registrar.

[22] Over the next two months, the failure to serve the Registrar was addressed as follows:

- a) On October 30, 2025, Appellants’ counsel “served” the notice of appeal on the Registrar by email. They also confirmed to the Registrar that the hearing had concluded the day earlier and I had reserved my decision. They asked the Registrar if he wished to take a position on the appeal;
- b) Within hours of “service”, the answer from the Registrar to the question posed was “Yes”. The Registrar responded by email to Appellants’ counsel indicating, on a preliminary basis, that there were “multiple issues” with the appeal, both procedural and substantive, some of which were listed. The Registrar confirmed that, if he had been served, he would have retained counsel to handle the matter;
- c) On November 4, 2025, I sent a memorandum to counsel, largely directed to Appellants’ counsel, asking how they wished to proceed, if at all. The Purchaser’s counsel responded, saying that he had reached out to the Registrar who declined to respond to the Court’s memorandum since he had not been served. Purchaser’s counsel proposed various scenarios if the appeal was abandoned or did proceed (which was adopted by GC’s counsel) and raised the matter of costs;
- d) On November 10, 2025, having heard nothing from the Appellants’ counsel, I convened a judicial management conference. The Appellants’ counsel still had no instructions. I directed that, if the Appellants wished to

respond to the Court's memorandum, they must do so by November 14, 2025, failing which I would issue my reasons;

- e) On November 14, 2025, Appellants' counsel responded taking the position that the failure to serve the Registrar was an irregularity and that he had now cured that irregularity by serving the Registrar properly (confirmed in an affidavit indicating service on November 13, 2025). He further proposed that the Registrar could respond if he wished and, depending on that response, the matter could be "re-opened";
- f) On November 17, 2025, I sent a further memorandum to all counsel directing that Appellants' counsel file an affidavit of service indicating exactly which persons were served, to be filed by November 19, 2025;
- g) On November 19, 2025, Appellants' counsel filed the Affidavit #2 of Parisa Shariati affirmed that date. She confirmed that the only persons served with the appeal materials in May and August 2025 were GC Capital, the Purchaser and the second and third mortgagees;
- h) On December 11, 2025, I send a further memorandum to all counsel asking if the Registrar had formally responded to the appeal after then having been served;
- i) On December 17, 2025, the Registrar's newly retained counsel, JFK Law ("JFK"), corresponded with the Court. JFK advised the Court that, based on its preliminary review of the matter, there were substantial procedural issues as to how the appeal was brought. JFK indicated that there was no appeal pending, arising from the appellant's failure to follow the proper procedures under ss. 309 and 311 of the *Land Title Act*, R.S.B.C. 1996, c. 250 [LTA]. In addition, JFK advised the Court that, even assuming that a valid appeal was brought (and any procedural errors cured), the Registrar intended to make substantive submissions with respect to its reasons for

the rejection of the caveat and the Appellants' arguments in relation to that decision;

- j) On December 18, 2025, Appellants' counsel indicated that he was seeking clarification from the Registrar. That clarification came via a further letter from JFK to the Court dated December 19, 2025, outlining various procedural issues, principally leading to the position that the appeal had not been properly commenced; and
- k) On December 29, 2025, Appellants' counsel's last letter indicated their disagreement with JFK's position, including referring to potential arguments that, if successful, could maintain the appeal as valid.

What is the Path Forward?

[23] Caveats may be lodged with the Registrar under ss. 282–294 of the *LTA*. Specifically, ss. 282 and 283 allow a person who meets certain requirements to seek the leave of the Registrar to lodge a caveat prohibiting dealing with land or disallowing the registration of an instrument affecting land unless other requirements are met.

[24] Section 308 of the *LTA* provides for procedures where the Registrar refuses to proceed with an “application”. Section 308(1) requires the Registrar to forthwith provide written notice of the refusal and briefly state reasons to the person who submitted the application.

[25] The notice of appeal filed by the Appellants specifically referred to s. 309 of the *LTA* as the basis upon which they sought to challenge the Registrar's refusal to file the caveat. They did so while also referring to s. 309(5) as the basis of the Court's jurisdiction to grant the requested remedy (more on this below).

[26] Sections 309 and 311 of the *LTA* set out the procedural requirements in respect of the bringing of an appeal from a decision of the Registrar to the Court:

309 (1) Within 21 days after a person described in section 308 (1) (a) or (b) receives a notice under section 308 (1), the applicant who made the

application or on whose behalf the application was made may make an application in the nature of an appeal to the Supreme Court, supported by the person's affidavit and, if necessary, the affidavits of other persons, stating

- (a) the material facts of the case, and
- (b) that to the best of the information, knowledge and belief of the deponents, all facts and things material to the title have been fully and fairly disclosed.

(2) All parties affected or interested, including the registrar and a person directed to be served by the court, must be served with the court application, together with copies of all material and exhibits proposed to be used on the hearing.

...

(5) The court may make any order it considers proper as to the notification of other parties, and on the hearing may make such order as the circumstances of the case require and such order as it considers proper as to costs in respect of the parties appearing.

...

311 (1) If a person is dissatisfied with

- (a) a summary rejection of an application by the registrar, or
- (b) an act, omission, decision, direction or order of the registrar in respect of an application, other than a refusal under section 308, that person may
- (c) require the registrar forthwith to provide written reasons for refusal, and
- (d) within 21 days after receiving the registrar's reasons, apply to the Supreme Court by way of appeal from the registrar's decision.

(2) Section 309 applies in respect to the application to the court and the proceedings on it.

[Emphasis added.]

[27] As the Appellants was or is perhaps now aware, it would have been obvious to anyone reading s. 309 that the Registrar had to be served with an appeal to this Court, as s. 309(2) says expressly just that.

[28] Appeals to this Court from a decision of the Registrar are also addressed by the BC *Supreme Court Civil Rules* [SCCR].

[29] Rule 18-3 – re “Appeals” – is the governing provision in the SCCR. Rule 18-3(1) provides:

(1) If an appeal or an application in the nature of an appeal from a decision, direction or order of any person or body, including the Provincial Court, is authorized by an enactment to be made to the court or to a judge, the appeal is governed by this rule to the extent that this rule is not inconsistent with any procedure provided for in the enactment.

[30] Also, the Appellants used the wrong form of notice of appeal. They used Form 121, being a “Notice of Appeal from Associate Judge, Registrar or Special Referee”, referenced in R. 23-6(8.1). The Registrar is obviously not an “associate judge”; nor is the Registrar a “registrar” or “special referee” as defined in R. 1-1 of the *SCCR*. At the outset, the Registrar pointed out this deficiency.

[31] As I will discuss below, the correct form of notice of appeal would have raised other procedural issues. Rule 18-3(2) provides that the appeal is started by the filing of a notice of appeal in Form 73 or 74. The difference in those Forms lies in terms of whether directions are needed from the Court as to the conduct of the appeal.

[32] In either event, the *LTA* requirement for service on the Registrar in these circumstances is also confirmed under R. 18-3(6):

- (6) Unless the court otherwise orders, a notice of appeal must be served on
 - (a) the person or body that gave the decision or direction, or made the order, being appealed, and
 - (b) all other persons who may be affected by the order sought.

[Emphasis added.]

[33] The Appellants have indicated their clear intention to proceed with the appeal. All of the correspondence that I have received from counsel since late October 2025 indicates agreement that a further hearing is required to fully address the issues in that event. However, I consider that the difficulties posed by these later developments are more fundamental.

[34] The Registrar and his counsel were not involved in the earlier hearing and, without reading a transcript, would have no knowledge as to what submissions were advanced and by which party. This of course would include submissions by the Appellants as to the basis upon which they argue that the Registrar improperly rejected the caveat. The Registrar now intends to advance both procedural issues

and substantive issues. The submissions of GC Capital and the Purchaser were many, mostly related to the interpretation of the OAS, the *LTA* provisions relating to caveats and the case authorities as to whether a caveat can affect a pending registration (like the OAS).

[35] Hearings are dynamic affairs, where parties review documents filed by all interested parties and they form positions and listen to and often respond to the positions and submissions of other parties.

[36] While there is some initial attraction in thinking that the Court could just “re-open” and “carry on” with the appeal that was heard in late October 2025, I consider that it would be inappropriate to do so in the circumstances. This is particularly so where the Registrar’s position seems to be that the appeal was fundamentally flawed from the outset and does not represent a validly brought appeal (as far as I’m aware, the Registrar has not yet formally stated his position in court filings). Even assuming the Appellants can overcome the procedural issues now raised, questions of substance relating to the merits of the appeal remain from all opposing parties, including relating to the remedy sought (and including those arguments already advanced by GC Capital and the Purchaser at the earlier hearing).

[37] I direct that the Appellants are to reset the appeal to be heard afresh once all proper persons have been served and all court filings have been completed. The initial hearing (with three counsel) took just under a day. I would therefore ask counsel to confer and consider an appropriate time estimate now that the Registrar (and perhaps others) intends to participate. Given the apparent complexity of the issues, I am also directing that the parties prepare written submissions for the hearing.

Consequential Issues

[38] Given my decision as to how to proceed, as above, a number of further issues arise relating to the record, service and costs.

[39] Firstly, the record must be complete. I direct Appellants' counsel to file an affidavit attaching all of the post-October 29, 2025 correspondence between the Court and various counsel, as I have set out above.

[40] Secondly, in my view, the service issues are not yet resolved, as I alluded to above.

[41] If the Appellants had used the correct form of notice of appeal, they would have been alerted to a consideration, as expressly set out in the form, as to whether other persons beyond the Registrar should have been served. The Forms provide for the naming of "all other persons who may be affected by the order sought" and service upon them.

[42] During the course of the hearing, the Appellants addressed the remedy they sought under s. 309(5) of the *LTA*, namely:

... an Order directing the Registrar to cancel the registration of the Lands to the Purchaser.

In essence, the Appellants are seeking to "cancel" the existing title in the name of the Purchaser and "restore" the title as it existed prior to the transfer to the Purchaser.

[43] It will be apparent to anyone—as already raised by the Purchaser—that there are significant issues raised by such a remedy. The Registrar also raised issues in this regard in JFK's correspondence. I need not address at this time whether it is possible to grant such a remedy and, if so, whether it is appropriate and if so, how it could be accomplished. This will no doubt be the subject of later arguments at the hearing of the appeal.

[44] This potential remedy does, however, affect service issues.

[45] At present, the Purchaser's title is subject to two mortgages, as confirmed by an affidavit filed in the course of the October 2025 hearing at the direction of the Court: a first mortgage in favour of National Bank (the "Bank"); and a second

mortgage in favour of GC Capital Inc. and Kismet Capital Inc. While I do not have a copy of the mortgages, the Purchaser's counsel indicated at the hearing that, not surprisingly, the Purchaser obtain financing from the Bank for its acquisition of the Lands, said to be in an amount over \$29 million.

[46] As I stated above, in November 2025, I directed that the Appellants file an affidavit confirming exactly who had been served with the appeal materials. As a result, the Shariati affidavit was filed in November 2025, confirming service on the three mortgagees and the Purchaser only. The Bank was not served.

[47] The significance of the remedy sought in this appeal—from the perspective of the Bank—is obvious. First and foremost, the Bank has acquired rights in respect of the Lands by reason of the registration of its mortgage under the *LTA*. I cannot help but comprehend the Bank's reaction at having their mortgage security “cancelled” from the title without notice to it, while having loaned millions of dollars on the basis of that security.

[48] It is imperative that this appeal be heard only after proper notice to all interested parties, particularly given the remedy sought. As such, I am giving these further directions as to the conduct of the appeal pursuant to R. 18-3(7).

[49] I am directing that the Appellants serve the Bank with all of the appeal materials, including these reasons. I am also directing that the Appellants serve these same materials on all other holders of registrations and charges that were on title prior to the transfer of the Lands to the Purchaser, given that the Appellants seeks to “restore” their registrations. I would also direct, if possible, that a copy of this “prior” title be put into the record for the appeal, along with a further affidavit of service once all of these parties have been served.

[50] Thirdly and finally, I must address the issue of costs. It is obvious that the need to essentially re-commence the hearing of the appeal lies entirely at the feet of the Appellants and their failure to abide by the very same statutory provision by which they filed this appeal. While this failure may not necessarily be described as

“misconduct”, it is clearly deserving of rebuke by the Court, despite the proffered apology. GC Capital and the Purchaser have incurred legal costs in preparing for and attending the prior hearing which is largely now of little assistance in advancing this appeal.

[51] In my view, an award of special costs in favour of GC Capital and the Purchaser is appropriate for their legal costs in preparing for and attending the prior hearing. These are payable by the Appellants forthwith.

[52] During the October 2025 hearing, counsel for both GC Capital and the Purchaser raised concerns about being paid for a previous costs award owing by the debtors to them. In response, Appellants’ counsel assured them that he had the monies in trust and would pay them. I have no reason to believe that the financial circumstances of the Appellants have improved beyond the outcome of the foreclosure where millions of dollars are still owing to various creditors.

[53] In that event, the Appellants may not reset this appeal until they have paid GC Capital and the Purchaser their special costs. If there is a dispute about the amount of those costs, the Appellants are required to place sufficient monies in trust to secure the claimed costs until such time as an assessment can be held (in which case the amount will include an estimate for the costs of the assessment, also on a special cost basis).

[54] By way of a final note, nothing in these reasons is to be taken as a determination of the legal issues to be raised and addressed on the appeal, either procedurally or substantively.

“Fitzpatrick J.”