IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *GC Capital Inc. v. Westfield Business Centre Ltd.,* 2025 BCSC 174

Date: 20250115
Docket: H230596
Registry: Vancouver

Between:

GC Capital Inc. and Kismet Capital Ltd.

Petitioners

And:

Westfield Business Centre Ltd., formerly 1267541 BC Ltd., TDP Holdings Ltd., 622013 BC Ltd., Crystal View Holdings Inc., 1352740 BC Ltd., 1352749 BC Ltd., 1352764 BC Ltd., 0808774 BC 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 BC Ltd., MFPE Engineering Ltd., The Crown In Right of British Columbia, Royal Bank of Canada, Simran Singh, Inderjit Singh, Navjot Kaur, Lahmber Singh, Kuldeep Kaur, Angel Raj, Itinder Jahal, Lovepreet Singh, Pravdheep Sidhu, Pavtarjeet Sidhu, All Tenants or Occupiers of The Subject Lands and Premises

Respondents

Before: The Honourable Mr. Justice Masuhara

Oral Reasons for Judgment

In Chambers

Counsel for GC Capital Inc. and Kismet Capital Ltd.:	B.C. Gibbons N.S. Mann

Counsel for 0808774 BC Ltd., 1352740 BC Ltd., 1352749 BC Ltd., 1352764 BC Ltd., 622013 BC Ltd., Jagjit Aujla, Kiran Bala, Ashok Bansal, Kuldeep Bansal, Crystal View Holdings Inc., Amneet Gill, Kulwant Gill, Tarandeep Gill, Kamaljit Sandhu, TDP Holdings Ltd., The Jag Aujla Family Trust, Westfield Business Center Ltd.:	D.E. Gruber M. Selnes
Counsel for 1262066 BC Ltd.:	C.D. Brousson
Counsel for 0938080 BC Ltd.:	J.S. Malik
Counsel for 1063466 BC Ltd.:	J. Jiang
Counsel for Devam Holdings Ltd.:	G. Khosa
Place and Date of Hearing:	Vancouver, B.C. January 9, 10 and 13, 2025
Place and Date of Judgment:	Vancouver, B.C. January 15, 2025

[1] **THE COURT:** I am going to provide you with my ruling on the applications for various orders. I reserve my l right to edit for citations, cases, and grammar should a transcript be requested.

[2] There are two competing applications before me, applications which were presented by able counsel over three days, not three full days but over three days, and it goes without saying that the materials were extensive and detailed requiring a fair degree of review by counsel with respect to the impact of the information and evidence on the respective applications.

[3] The first application is for an order approving the sale of two properties in Surrey, a parcel with an unfinished vacant commercial building, and a vacant nearby parcel, which I will refer to both as "the Property." The purchase price is $56.5 million.

[4] The competing application is by the owners of the Property, who seek an order for an extension of redemption period to March 17, 2025. The owners have clearly been in default of its loan obligations under the mortgages for some time. The original six-month redemption period expired some eight months ago on May 2, 2024. The *order nisi* had been obtained earlier by the petitioner on November 2, 2023.

[5] The conduct for sale was originally with a second mortgagee and then taken over after three months on August 27, 2024, by the first mortgagee, the present petitioners. The Property was marketed by Colliers through their executive vice-president, Bill Randall, who has extensive experience in commercial real estate in the Lower Mainland and has been involved with the Property for in excess of 20 years and has listed it several times over that period, and in February 2024, the owners had listed the Property with Mr. Randall.

[6] The petitioner, a secured creditor, is in first position and is owed approximately of $42 million. The second-position secured creditor is neutral with respect to this application or takes no position regarding approval of the sale, though

it expressed the desire that if the court found it appropriate, that it would support the higher value offer, which was $77 million.

[7] The third-position mortgagee is opposed. As I understand, they are owed about $5.7 million. Though from the materials, and what I was advised, the third mortgagee has additional collateral on other properties and assets sufficient to cover its outstanding amount.

[8] The Property consists of a four-storey unfinished vacant building in Surrey, which has been named the Westfield Business Centre, and the other parcel is meant to be for surplus parking. I am told, it is not up to the current building code. Though, there is indication the Property has been grandfathered in terms of the existing permit. The Westfield Business Centre takes up an entire city block near Surrey Town Centre and has been vacant for over 26 years. I am told that this property has received considerable media coverage because of the marketing efforts. The current owners purchased it in April 2022 for $55 million, with substantial funding under the first, second, and third mortgage. They had a one-year term that matured in the spring of 2023. I should also mention that there are other charges beyond the three mortgages against that property.

[9] All along, until the conduct of sale hearing, the owners' intention had been to develop the Property as a leasing project. This changed to a strata development concept in approximately August 2024 following the petitioner obtaining conduct of sale. I am told that the owners have not made any out-of-pocket payments on the mortgage since inception. Though, interest was funded from a reserve set up from the original financing funding.

[10] As I have mentioned, the building remains unfinished and vacant, and no moneys have been expended to complete. Further, the owners failed to pay property taxes and allowed property insurance to lapse. To prevent the loss of the Property by tax sale, the petitioners have had to pay $1.8 million in delinquent property taxes and have paid for the property insurance of $489,000, the two amounts totaling now $2.3 million.

[11] As I have mentioned, the owners' extension application appears to have been prompted by the filing of the application for a sale approval.

[12] The materials describe the considerable marketing activities of Colliers and the interest and several offers for the Property from various parties. The subject purchase agreement that is before the court presently arises out of that process. The subject purchase agreement is a subject-free offer of $56.5 million. This final amount was arrived at through exchanges of offers and counteroffers over a period of time. Materials describe that the offer is from a "well-known and respected company with the deposit structure and closing dates within market parameters." It is also noted that there is also a break fee of $80,000 in the event that the offer is not successful. This amount constitutes 0.14% of the purchase price.

[13] The plan now is for the owners to pursue a strata development with a strata plan for the development of 202 units, presell the units, and refinance the Property based on the pre-sales.

[14] At the early stage of the hearing before me, a written with-prejudice proposal was circulated by the proposed purchaser, 1262066 BC Ltd. (“126”). That proposal, as I understand it, was rejected by the owners. In essence, it was to have the court approve the $77 million offer by a company, which I understand is a non-arm's-length entity from the owners; that the deposit be increased to $2 million; that the closing date be set as March 31, 2025; that the proposed purchaser 126 be approved as the backup-plan purchaser; and failing the payment of the increased deposit or 135 being not ready, willing, and able to complete, that the 126 offer would be approved. As noted, that was a with-prejudice offer, which was brought to the notice of the court.

[15] The tests governing the applications are not in dispute. In regard to the approval for sale, the test is: a) the sale was conducted in a business like manner; and b) the sale is provident in all the circumstances. The onus is on the applicant to establish these things.

[16] In regard to the discretion to extend a redemption period, the test is that the property has sufficient value by way of security for the amount outstanding; and be a reasonable prospect of repayment within the extended redemption period. That prospect is to be reasonably probable, not simply possible, and the onus is on the applicant to establish these things.

[17] In terms of the petitioner's application, the petitioner points out that the Property has been on the market for close to a year, that Colliers is a recognized leader in commercial real estate through its experienced representative, Mr. Randall, who has been involved with this property over 20 years, and conducted the marketing of the Property in a full and proper way. The marketing program was described in some detail in the affidavit of Mr. Randall, on how the Property was exposed to the market, that the offer received represents fair value for the circumstances, that the purchaser is a qualified purchaser experienced in the area, and that the sale is provident.

[18] In terms of the respondent's application, for an extension of the redemption period, it is sought on the basis of a strata development strategy. The owners point to the pre-sale of units that has generated $540,000 in deposits, and once full payment of all the units is received, that would amount to $43.4 million. There is, however, some controversy as to the non-binding or binding aspect of these deposit agreements. It is noted that Mr. Bansal (the representative of the owners) has not signed the sales documents, and many of them, about nine, have not been signed by the purchasers.

[19] The owners also point to the offer submitted after the deadline, which was non-compliant, for $77.7 million. After the first day of this hearing, $1 million deposit was submitted. However, I am told an appendix-A letter has not been provided. The owners point to this as signalling value of the Property. I was also informed at the end of the hearing that a further offer had been submitted of $64.5 million. However, no deposit had been tendered.

[20] In further support of value for the Property, the owners point to BC Assessment values for 2023, 2024, and 2025 of $32 million, $114 million, and $62.3 million respectively.

[21] Earlier appraisals also are referred to. Though, it is pointed out that they are based on assumptions which are hypothetical.

[22] The owners also tendered, through a legal assistant, a letter that was described as a letter of intent from a firm offering a loan $66,204,245 premised on an as-is appraised value of $153,933,125.

[23] Recognizing that we have two applications that are clearly related and recognizing that the onus is on each applicant to establish the justification for the order that they seek; in assessing the totality of the evidence, the circumstances of this case are somewhat coloured by the less-than-honourable steps taken by Mr. Bansal towards the principal of the proposed purchaser. This was articulated in submissions by Mr. Brousson in some detail. The extent of this negative behaviour to malign Mr. Rai with unfounded accusations unfortunately dims my view of the case and the weight to be placed on the evidence put forward by the owners and lends weight to the petitioner's argument that the steps taken by the owners are simply to hamper, disrupt, and delay the process.

[24] In my view, the actions of the owners are an attack on the marketing and sales process that this court ordered; demonstrate a lack of respect for the integrity of the court's process and furthers the concerns regarding the substance behind the offers and late new information tendered, namely, the absence of substance identified and spoken to at some length by Mr. Gibbons and Mr. Brousson. I am not criticizing the owners' counsel in this regard, as they are experienced, well regarded, and, they have come into this proceeding rather late.

[25] I also note that the owners put the Property into jeopardy regarding the property insurance lapse and not paying property taxes. I also note the comment of Associate Judge Robertson, who on the circumstances before her regarding conduct

of sale found that an adjournment application by the owners was an attempt at delay to improve its position at the prejudice of the petitioner. I note as well the with-prejudice offer which I mentioned proposed to place the $77.7 million offer into the primary position and for that offer to be approved, which was rejected, which erodes the case of the owners.

[26] While I received the information regarding the various reports, the appraisals, the so-called letter of intent, and other offers, there were no underlying commitment letters or information validating the ability and financing that would be required to complete. It was not clear whether the required $700,000 retainer fee under the letter of intent which was highly conditional, had been paid by the owners. There was no information regarding the background of the company that was offering the capital, and as observed by Mr. Brousson, there was little information regarding who the company is, just that it was appended as an exhibit to an affidavit of a legal assistant.

[27] Unfortunately, I conclude that the recent steps and documents offered do not reach the threshold, and in my view, are meant more to buy time than reach redemption and other aspects required under this test. It is an established principle that merely showing sufficient equity is not sufficient. Repayment within the extended redemption period must also be established.

[28] I note the comments of Justice Fitzpatrick in *Institutional Mortgage Capital Canada Inc. v. Plaza 500 Hotels Ltd.*, 2020 BCSC 888, "that provident price" is not the best price as one would expect in a non-forced sale circumstance where the owners can wait. Further there is no obligation on behalf of the petitioner to wait for whatever time is required to obtain approvals, create the lots, and perform the necessary site works, then find purchasers: *The Bank of Nova Scotia v. Marvin*, 2016 BCSC 1033, paras 9, 40 and 49. While in this case there is evidence of 40 pre-sales, the project envisions 202 units.

[29] I also note the fourth report tendered by the owners. The appraiser indicates its hypothetical value is premised on a 6- to 12-month exposure to the market, which

I accept to the extent that it indicates a much longer period than the proposed extension. The building, as mentioned by Mr. Gibbons, is nowhere complete. The stratification plan is in its pre-stages. What is relied upon is a drawing that is in the materials and is incomplete. There is little current evidence from a general contractor or qualified cost consultant to provide the cost of construction and development budget. Mr. Randall's reservation regarding the market for stratification is also noted.

[30] In any event, there is a wide difference in the cost to complete between the parties, and there is also a discrepancy with respect to the total rentable area.

[31] Further, as identified by the petitioner, under the *Strata Property Act* and the *Land Title Act*, a strata plan is a subdivision and requires the signatures of the mortgagees. While those signatures may be dispensed with under those *Acts* by the Registrar of Land Titles, that process, if contested, will no doubt delay matters further and extend the process.

[32] All of the aforementioned leads me to conclude that the time required to achieve the critical targets, to achieve redemption within the period of the proposed extension is unlikely. A reasonable prospect of repayment within the extended redemption period sought has not been established. I also have reservations as to the value of the Property advanced by the owners. Accordingly, the application for an extension is denied.

[33] I now turn to the purchase agreement. I have covered much of how the agreement was reached. While the third mortgagee opposes the approval on the basis that the price is too low and reliance is placed on the BC Assessment of 2024, I place minimal weight on the BC Assessment given the wide variation in the numbers. The range is so unstable that it is difficult to see any value in relying on them.

[34] The third mortgagee also raises a concern with the marketing that stated the second lot was stated to be across the street, and it was further down the block. I am not persuaded that that affects the values to any extent.

[35] As to the owners' argument the price is too low, I have already mentioned my concerns with respect to the appraisal and the BC Assessment documents they rely upon. With respect to the question of why the commercial property was not placed on the MLS, I am satisfied that the MLS was not a significant feature with respect to the marketing of a significant commercial property.

[36] In my view, I am satisfied that a proper marketing process was undertaken, with an experienced and well-qualified marketer, the agreed-to price is within the relevant range, and the proposed purchaser I am satisfied has the ability to complete.

[37] That concludes my ruling.

"Masuhara J."