

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *TCC Mortgage Holdings Inc. v. Shawn
Oaks Holdings Ltd.*,
2025 BCSC 302

Date: 20250213
Docket: H241188
Registry: Vancouver

Between:

TCC Mortgage Holdings Inc.

Petitioner

And:

**Shawn Oaks Holdings Ltd., Landmark Shawn Oaks Development Ltd.,
Landmark Premiere Properties Ltd., Helen Chan Sun,
Peterson Investment Group Inc., The Owners: Strata Corporation VR 855 and
All Tenants or Occupiers of the Subject Lands and Premises**

Respondents

Before: The Honourable Justice K. Wolfe

Oral Reasons for Judgment

(Via MS Teams)

Counsel for the Petitioner: S.H. Stephens

Counsel for the Respondent, Peterson
Investment Group Inc.: C. Brousson (January 24, 2025)
H. Yuen

Counsel for the Respondents, Helen Chan
Sun and Landmark Premiere Properties Ltd.: D.B. Hyndman

Counsel for the Respondents, Shawn Oaks
Holdings Ltd. and Landmark Shawn Oaks
Development Ltd.: M. Buttery, K.C. (January 24, 2025)
C. Garton (February 13, 2025)

Counsel for the proposed receiver, Alvarez &
Marsal Canada Inc.: E. Watson (February 13, 2025)

Place and Date of Hearing: Vancouver, B.C.
January 24, 2025

Place and Date of Judgment: Vancouver, B.C.
February 13, 2025

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[1] These reasons have been edited for publication.

Overview

[2] The petitioner, TCC Mortgage Holdings Inc. (“TCC”), and the respondent, Peterson Investment Group Inc. (“Peterson”), are the first and second secured creditors in respect of loans and mortgages registered against a development property in Vancouver, British Columbia. The respondents, Shawn Oaks Holdings Ltd. and Landmark Shawn Oaks Development Ltd., are respectively the registered and beneficial owners of the property (the “Owners”). The respondents, Landmark Premiere Properties Ltd. (“Premiere”) and Ms. Helen Chan Sun, are the corporate and personal guarantors under the loans. Collectively, the Owners, Premiere and Ms. Sun are the debtors (“Debtors”).

[3] As of January 24, 2025, TCC was owed over \$72.8 million in principal and interest and Peterson was owed over \$27.8 million in principal and interest (collectively, the “Debt”). TCC’s mortgage matured on September 1, 2024; it has not been repaid and no payments of any kind have been made on its loan since October 7, 2024. Peterson’s mortgage has been in default since early November 2024 and no payments have been made despite demands. At the time of the hearing, the “burn rate” for the interest on the Debt was approximately \$45,000 per day, or \$1.4 million each month. As that amount is compounding, it continues to increase.

[4] TCC filed the underlying petition on December 20, 2024, seeking to enforce its security. On the application before me, TCC primarily seeks the immediate appointment of a receiver of the real and personal property secured in favour of its interests, with the goal being to arrange the sale of the property as soon as possible to repay the whole of the Debt. Given the circumstances, TCC obtained short leave to set its application for hearing on January 6, 2025. Premiere and Ms. Sun requested a one-week adjournment. TCC agreed to a one-week extension, however at the hearing on January 13, 2025, Premiere and Ms. Sun sought and obtained a

further adjournment. The Court re-set the application to January 24, 2025 and set deadlines for filing of materials.

[5] All parties agree the property must be sold. The dispute is about how that should be done. As the second secured creditor, Peterson supports TCC's application for a receiver, but says the receiver, rather than TCC, should have conduct of the sale. The Owners formally took no position on this application but in their response to petition indicated their desire to co-operate with, receive timely information from and provide input to any receiver appointed by the Court. Only Premiere and Ms. Sun are opposed; they seek further time – the standard six-month redemption period – to allow them the opportunity to arrange the sale and redeem their equity of redemption.

[6] This matter came on for hearing before me late on a Friday afternoon. At the start of the hearing, without having given previous notice to the other parties, counsel for Ms. Sun and Premiere sought a further adjournment, arguing both that there was insufficient time for the application to be heard and that there were issues, including in respect of valuation, on which counsel wished to consult his clients. Given the previous adjournments, the lack of notice that a further adjournment would be sought and the significant jeopardy from further delay, I refused the adjournment and proceeded with the hearing.

[7] TCC and Peterson say it is just and convenient to appoint a receiver given, among other things, the very significant burn rate, legitimate concerns that there is insufficient equity in the property at present to repay the full amount of the Debt, and the fact that both secured creditors have lost confidence in the Debtors, or at least Premiere and Ms. Sun. On the last point, TCC and Peterson say Ms. Sun did not disclose that she and Premiere are minority shareholders in Landmark Shawn Oaks Development Ltd. until August 2024, which means they lack governance control of the latter company. Further, they say Ms. Sun has failed to provide requested information and, despite having had months, has also not provided evidence of any real efforts to market the property. All parties appear to accept that the property is

somewhat unique and will require expertise to be marketed and sold to maximize its value. As required, TCC provided evidence that Alvarez & Marsal Canada Inc. (“Alvarez”) has consented to act as receiver if the Court so orders.

[8] Ms. Sun and Premiere dispute the positions of TCC and Peterson, and say there is sufficient equity in the property to satisfy the Debt. They say there is also no requirement to appoint a receiver because the property is being managed by a property manager which collects the rents. Ms. Sun and Premiere characterize TCC’s application as an attempt to circumvent the usual foreclosure process. They say the application to appoint a receiver ought to be adjourned generally, in favour of an order granting a six-month redemption period.

[9] For the reasons that follow, I allow TCC’s application and appoint Alvarez as receiver, largely pursuant to the blacklined modified terms of the B.C. Model Receivership Order presented to me at the hearing. I will discuss the terms of order further below.

The legal framework and the issue

[10] The legal framework is not in dispute. Section 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 [LEA] allows the Court to appoint a receiver where the Court considers it “just or convenient” that the order be made. A receiver can also be appointed under s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [BIA], however, in addition to determining that it would be just or convenient to do so, the Court must find the borrowers to be insolvent. Ms. Sun and Premiere say the authority under the BIA does not apply here as there is insufficient evidence of insolvency. TCC and Peterson say there is sufficient evidence, but given how the hearing unfolded, I am not satisfied I have sufficient evidence to conclusively decide if the Debtors are not paying their liabilities as they become due. As TCC relies on both provisions, I conclude it is not necessary to decide if the Debtors are insolvent within the meaning of the BIA. The authority under s. 39 of the LEA can be exercised without any such finding, and, accordingly, I base my decision on the LEA alone.

[11] The courts in British Columbia have recognized that the appointment of a receiver, particularly pre-judgment, is an “extraordinary” remedy, to be granted “cautiously and sparingly”: *Bank of Montreal v. Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 47 [*Haro-Thurlow*] at para. 70. Many different factors may be relevant to a Court’s determination of whether a receiver should be appointed. The non-exhaustive list of factors is well-known and not disputed; it has been set out in many cases, including *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 [*Maple Trade*] at para. 25 and *Textron Financial Canada Limited v. Chetwynd Motels Ltd.*, 2010 BCSC 477 [*Textron*]. I will not recite the list here.

[12] This Court has repeatedly held that the relevant factors are to be viewed and considered “holistically”: see *Haro-Thurlow* at para. 74, citing *Bank of Montreal v. Gian’s Business Centre Inc.*, 2016 BCSC 2348 and other cases. In other words, no one factor is necessarily determinative. Further, certain factors may carry more weight in certain circumstances.

[13] The party seeking appointment of a receiver bears the burden to demonstrate why the requested order is just or convenient. While it remains an extraordinary remedy, where the agreements between the parties expressly contemplate and grant a right to appoint a receiver under the instrument, the burden on the applicant for appointment of a receiver is somewhat relaxed: *Maple Trade* at para. 25; *Textron* at paras. 50, 75. This is not to say appointment of a receiver by the Court is automatic where a receiver can be appointed under an instrument. It is one factor to be considered, and in appropriate circumstances, it is a factor upon which the Court may place additional weight: *Textron* at para. 55; *Maple Trade* at para. 26; *Haro-Thurlow* at paras. 114-116.

[14] The issue, then, is whether, considering the relevant factors holistically, it is just or convenient to appoint a receiver on the facts of this case. I turn to a brief overview of those facts.

Background facts

[15] The lands in question comprise an almost 139,000 square foot development site in the Shaughnessy / Oakridge neighbourhood in Vancouver. There are 72 stratified town homes located on the lands, which are rented to third parties at a monthly revenue of approximately \$155,000. As set out below, this amount is insufficient to service the monthly interest expense of the Debt. It is unclear on the materials whether the shortfall was previously managed and if so, how. At present, Fraser Park Realty Ltd. acts as the property manager and is responsible for collecting rents and remitting them to the Owners.

[16] TCC and Peterson allege the rents have not been remitted for application to the loans, but have instead been retained by the Debtors. Premiere and Ms. Sun say the funds that were remitted to TCC and Peterson were comprised, in part, of the rents. In any event, Premiere and Ms. Sun say TCC and Peterson did not at any time formally demand payment of rents to either of them directly, as they were contractually entitled to do. Further, Premiere and Ms. Sun say other net rent funds were utilized for the project on the lands.

[17] With respect to that project, the Debtors' intention was to rezone the lands for development. The lands are subject to the City of Vancouver's enhanced rezoning process because of their location as well as the large scale and complexity of the site. The development proposal contemplated construction of some combination of a 31-story strata residential building, a 33-story strata residential building, a six-storey residential building with approximately 180 social housing units and a one-story building for a 37-space childcare facility. The current status of rezoning efforts is unclear. TCC and Peterson allege the rezoning process has stalled, including due to the Debtors' lack of financial wherewithal. Premiere and Ms. Sun contend that steps have been taken. However, there is no real dispute that there is considerable work outstanding, and that additional funds will be required, before any development could move forward.

[18] TCC is the agent for and nominee of Trez Capital Limited Partnership (“Trez”). In December 2019, Trez advanced a loan to the Owners that was subsequently increased to a principal amount of \$67,661,000. As security, one or more of the Debtors granted the following in favour of Trez:

- a) A mortgage and assignment of rents dated January 14, 2020;
- b) A beneficial mortgage dated January 15, 2020, as amended by an acknowledgment and agreement dated for reference October 4, 2021;
- c) A project-specific security agreement dated January 15, 2020;
- d) A guarantee, indemnity and postponement of claims dated January 15, 2020, as amended by the same acknowledgment and agreement (collectively, the “Security”).

[19] Trez’s Security is supplemented by an assignment of insurance, a general assignment of material contracts and an environmental indemnity agreement, all dated for reference January 15, 2020. Under the terms of the mortgage and the security agreement, Trez is entitled to the appointment of a receiver if an event of default occurs. Before this proceeding was commenced, the previous agent and nominee for Trez assigned, transferred and set over all of its interest in the Security to TCC as the new agent for and nominee of Trez, and the necessary registrations were transferred accordingly. For ease, I will simply refer to TCC.

[20] TCC’s loan matured September 1, 2024. It was not repaid on maturity. TCC issued formal repayment demands on November 26, 2024, but there has been no repayment. Further, TCC says the Debtors have failed to remit loan payments. There have been no payments on account of TCC’s loan since October 7, 2024 and the last full payment of monthly interest was received in June 2024. At the time of the hearing, TCC was owed approximately \$72.8 million in principal and interest, excluding any penalty or bonus. Per diem interest on TCC’s loan was more than \$29,000 in mid-December 2024, before compounding.

[21] In December 2021, Peterson advanced a loan to the Owners in the principal amount of \$25 million. Peterson took second-ranking security, behind that of TCC. Peterson's security is comprised of a second-ranking mortgage and assignment of rents dated February 10, 2022 (as amended), two security agreements dated February 4, 2022, and a guarantee dated February 4, 2022. Peterson's security is supplemented by additional agreements similar to those for TCC.

[22] On November 6, 2024, Peterson made demand for payment and issued notice of its intention to enforce security as a result of the Debtors defaulting on their loan obligations. The Debtors have not paid the outstanding amounts, nor remitted loan payments in at least several months. At the time of the hearing, Peterson was owed approximately \$27.8 million in principal and interest. Per diem interest was more than \$16,900 as of January 1, 2025, before compounding.

[23] Collectively, as of the date of the hearing, TCC and Peterson are owed in excess of \$100 million. The total interest payable on the Debt – often referred to as the “burn rate” – is approximately \$45,000 per day, or \$1.4 million per month. As noted, because interest is compounding, these figures continue to increase.

[24] There was no dispute that the loans are in default, nor was there any argument about the amounts said to be owing to TCC and Peterson, or the “burn rate” on the Debt. As noted above, all parties, including Premiere and Ms. Sun, agree that the property should be sold in an orderly manner.

[25] To understand TCC and Peterson's positions that they have lost confidence in the other respondents, it is helpful to understand that the Owners are, in turn, owned by other companies. Shawn Oaks Holdings Ltd. is the wholly-owned subsidiary of Landmark Shawn Oaks Development Ltd., the direct and indirect majority owners (70%) of which are Kana (Canada) Enterprises Ltd. and 1216900 B.C. Ltd. Although Premiere is also an owner and shareholder of Landmark Shawn Oaks Development Ltd., it is not the majority shareholder, and therefore does not have the corporate authority to make decisions on behalf of the Owners. Peterson says at all material times prior to negotiating its loan and security, it understood

Ms. Sun to be the sole beneficial shareholder of the Owners, based on various representations regarding the corporate structure. Ms. Sun contends Peterson has known since August 2024 that she was a minority shareholder. TCC says it did not learn the truth of Ms. Sun's status until after this proceeding had been commenced.

[26] Further, TCC and Peterson contend they were not aware that there had been a falling out between Premiere and Ms. Sun and the majority shareholders of the Owners, or a decision that the property should be sold. They say that although Ms. Sun's affidavit confirms both events occurred at some point before October 18, 2024, neither TCC nor Peterson were advised. Further, Premiere and Ms. Sun have not provided any evidence of efforts to either refinance or take real steps to advance a sale. The only evidence of the latter is one paragraph in Ms. Sun's affidavit indicating she approached a national realtor "with a view to listing and selling" the lands and that realtor has "proposed a targeted, off-market marketing approach to confidentially engage select investors and developers over a 30-45 day period". Ms. Sun does not provide any further details, including when that inquiry was made, nor does she attach as an exhibit any documentation of the alleged marketing approach.

[27] Further, Peterson says on December 9, 2024, it specifically requested Ms. Sun to do two things: 1) provide information regarding January 2025 rent amounts (to confirm an earlier agreement that 100 percent of the January rents would be remitted to TCC); and 2) provide an accounting of rents collected between August 1 and December 1, 2024, and explain where the rents were used or spent or allocated. Peterson did not receive any of the requested information, and as the January rents were not remitted to TCC, it is clear the Debtors did something else with them instead of applying them against either loan.

[28] TCC commenced the underlying foreclosure proceedings on December 20, 2024. Consistent with the usual practice in such matters, the petition seeks, among other things, various declarations in respect of TCC's Security interest in the lands and property, default under that Security, and the amounts owing, as

well as judgment against the Debtors, and an order for sale subject to court approval. The request for an order appointing Alvarez as receiver, which was the focus of the hearing before me, appears alongside the other prayers for relief. At the hearing before me, counsel for Premiere and Ms. Sun advised that Peterson has filed its own foreclosure proceedings. That petition was not before me.

[29] There is a live question respecting the valuation of the property. At the hearing, the Court was provided with two appraisals over which a sealing order was sought and obtained. I will address the appraisals further in my analysis below.

Analysis

The parties' positions

[30] TCC and Peterson say the appointment of a receiver is just and convenient for multiple reasons which I will only summarize. TCC and Peterson note these are commercial loans between sophisticated commercial entities that had the benefit of legal advice. In that context, both TCC and Peterson negotiated contractual rights to appoint a receiver, as well as additional rights to control the lands and property in the event of a default. They say the Debtors lack the financial ability to move forward with the development project, as evidenced by their agreement that the property should be sold; they say this amounts to abandonment.

[31] Further, TCC and Peterson say the Debtors have not been able to meet their financial obligations, and have not taken any concrete steps to do so or to refinance in the more than four and a half months since TCC's loan matured. In light of that, and given the significant financial risk to TCC and Peterson (whose exposure grows by substantial amounts every day), they say there is no basis that could support granting the Debtors even more time through a redemption period. TCC and Peterson say the nature of the property, and the fact that its revenue does not come anywhere close to satisfying the monthly interest on the Debt, mean the sale of the property will require specialized expertise in order to maximize the likelihood of recovery for all concerned. That is best provided by a court-appointed receiver. Finally, TCC and Peterson say they have lost confidence in the Debtors, including as

a result of the failure to remit rents in accordance with legal priorities, to provide information as requested and to disclose the lack of corporate management authority.

[32] Premiere and Ms. Sun say there are no exceptional circumstances that justify appointing a receiver with the immediate power to sell the property before the expiration of a redemption period. They emphasized the significance of the equity of redemption and the need to ensure it is protected. Premiere and Ms. Sun contend that where appointment of a receiver is sought before judgment, there must be evidence to establish a receiver is necessary to preserve the assets from deterioration or jeopardy. They say there is no such evidence here. Further, given the existence of a professional property manager, they contend a receiver will not be directly involved in collecting rents in any event, meaning little will change in practice and a receiver is not necessary.

[33] In reliance on their appraisal, Premiere and Ms. Sun contend there is adequate equity in the property to satisfy the Debt, so there is no real risk to either TCC or Peterson. In any event, they say there is particularly no risk to TCC, which means that it ought to be required to follow the usual foreclosure process, rather than circumventing it through appointment of a receiver. They say appointing a receiver will send a negative message to the marketplace about the Debtors, hampering the prospects that the sale will be able to maximize the return for all stakeholders. They propose adjourning the receivership application in favour of a standard six-month redemption period that will allow time to sell the property.

[34] Premiere and Ms. Sun also advanced a second technical argument, pointing to language they say demonstrates TCC's main affidavit was made purely on "information and belief" rather than on personal knowledge. I do not accept their position in this regard. I appreciate that the language in question could have been drafted with more precision and attention to detail. However, I nonetheless agree with counsel for TCC that, properly interpreted, there can be no question the affiant has personal knowledge of the matters addressed. To conclude otherwise would

lead to absurd results where, for example, the chief risk officer of Trez would be found not to have personal knowledge of Trez's Security interests.

Discussion of the relevant factors

[35] While I will not expressly discuss all of the *Maple Trade* factors in these reasons, I have considered them all in reaching my conclusion that it is just and convenient to appoint a receiver in this case.

[36] I recognize that both TCC and Peterson have a contractual right to the appointment of a receiver in the event of a default, as has occurred here. As Justice Fitzpatrick noted at para. 114 of *Haro-Thurlow*, where a secured creditor is entitled to appoint a receiver under a loan instrument, the "extraordinary nature" of the remedy is a less central consideration. While the contractual rights of TCC and Peterson are one factor to be weighed, I do not accord them particular significance on the facts of this case. I consider the appointment of a receiver to be justified for other reasons.

[37] One such reason is the nature of the particular property in issue here. All parties before me accept that this is a complex real estate situation. While the current usage is residential, the town homes are stratified and rented to third parties, which requires management. The property is very large, worth a significant amount of money and located in an area to which the City of Vancouver's enhanced zoning process applies. Although there is some evidence to suggest elements of the zoning process will be streamlined, this status also requires greater coordination and communication with the City before any development can be realized. Logically, these facts mean the property will not have universal market appeal and will require careful marketing to increase the likelihood of maximizing the return. The sale process is also likely to take several months, if not longer.

[38] In my view, the nature of the property here is similar to that at issue in *Haro-Thurlow*. I accept TCC and Peterson's submissions that selling the property will require specialized expertise. I consider it is also likely to need the kinds of steps outlined by Justice Fitzpatrick at para. 110 of the *Haro-Thurlow* decision. Since the

parties agree the property should be sold, it will be necessary to determine how any sale process may fit with the existing, albeit seemingly stalled, plans for rezoning and development. These realities further support the need for a court-appointed receiver, which will ensure the receiver has sufficient authority to carry out its duties efficiently, from a neutral perspective, with a view to maximizing the return. The receiver will need appropriate powers to access the property, and appropriate borrowing powers in the event external real estate or other assistance is required.

[39] I also consider the conduct of the parties to support the appointment of a receiver. My focus in this regard is on the facts that TCC and Peterson say have caused them to lose confidence in the Debtors' ability to deal effectively and efficiently with the property, especially in light of the agreement by all that the property should be sold.

[40] The first issue of concern is the lack of clarity about the shareholding structure of the Owners, and Ms. Sun's role in particular. Ms. Sun and Premiere say there is no evidence about when Ms. Sun's shareholding status changed and therefore no evidence of any impropriety at the time the loans were negotiated. In any event, Ms. Sun says Peterson, at least, was advised in August 2024. This submission fails to recognize that TCC's loan matured on September 1, 2024 and no concrete plans were in place for repayment, refinancing or extension. I agree with TCC and Petersen that, given the amounts involved and the timelines, it was incumbent on Ms. Sun (as the apparent primary contact) to advise the two secured creditors in a timely way of changes to the shareholding structure of the Owners that would impact corporate decision-making authority. The loss of confidence is understandable in the circumstances, especially given it is now clear that Ms. Sun no longer has sole authority to direct the actions of the Debtors.

[41] This is compounded by the subsequent failures to remit rents as agreed or at all, and also by the failure to provide requested information. Ms. Sun and Premiere offer a vague explanation that while the bulk of the rents were paid to TCC, rent funds also had to be used to advance the development project. This is no answer for

a secured creditor whose loan has matured or who has made a payment demand. Without the information requested, or even a response to explain why it was not provided, it is understandably difficult for TCC and Peterson to have confidence the Debtors would respect their legal priorities during any redemption period. Nor is there any evidence here of a proposal by the Debtors to make any of the necessary repayments.

[42] In addition, the evidence of efforts to refinance or to move forward with marketing the property are wholly insufficient. In *Haro-Thurlow*, the borrowers provided some evidence that they had retained consultants, who in turn indicated a “strong willingness” to provide further financing in amounts sufficient to fully repay the outstanding debt, as well as a timeframe within which the borrowers expected to secure that financing (see *Haro-Thurlow* at paras. 45-49 and 162). As noted above, in this case, there is a single paragraph in Ms. Sun’s affidavit that states she approached a national realtor about a marketing proposal. As she does not specify the date on which she took such steps, it is not clear if she did so with appropriate authority. The evidence before the Court is that the majority shareholders of the Owners have formed a committee that does not include Ms. Sun, and which is charged with sole responsibility for negotiations and efforts to refinance the project or sell the project lands. If Ms. Sun’s inquiry with the national realtor was made before August 2024, then one would expect additional evidence about the marketing proposal, including documentation and an explanation of its current status in light of the change in governance authority.

[43] Further, while Ms. Sun and Premiere submit that the best approach would be for the parties to reach a consensual agreement to sell the property, including to avoid the stigma of a receiver, they provided no evidence of having broached that subject with TCC and Peterson, or with the majority shareholders of the Owners, much less any evidence of concrete steps towards such a consensual arrangement. When the burn rate is as high as it is, the passage of several months without action is difficult to comprehend, and supports the view that a receiver is needed to move matters ahead in a timely fashion to limit the ever-increasing exposure.

[44] As did the borrowers in *Haro-Thurlow*, in opposing the appointment of a receiver at this time, Ms. Sun and Premiere rely heavily on the importance of the equity of redemption. They say the “proper way” to address the defaults is through the usual foreclosure process and the granting of a reasonable redemption period. They characterize TCC’s request as “blowing up” the equitable concept of redemption in favour of a receiver.

[45] Very similar arguments were comprehensively addressed by Justice Fitzpatrick at paras. 77-105 of *Haro-Thurlow*, and I rely on her discussion in that regard. Justice Fitzpatrick concludes by stating, at para. 103 of *Haro-Thurlow*, that a Court should recognize that, even in a receivership, an equity of redemption exists, but should then consider, on the basis of all of the factors, what, if any, time should be afforded to the borrowers to attempt to redeem the mortgage.

[46] For their part, TCC and Peterson point out that the Owners, rather than Ms. Sun and Premiere, hold the equity of redemption, and the Owners (or at least the majority shareholders of them) do not oppose the appointment of a receiver. TCC and Peterson say given the failure to make any loan payments in recent months, the lack of a concrete plan, and the fact that the bulk of the Debt has been in default since September 1, 2024, there is no basis on which to afford the Debtors more time to redeem. They also say there are the requisite “special circumstances” here, including because the Debtors lack the financial ability to move matters forward, and the parties opposed to the appointment of a receiver lack the management authority to refinance, redeem or sell. Accordingly, TCC and Peterson seek the immediate appointment of a receiver, with no delay in the receiver’s power to sell. Ms. Sun and Premiere’s only counter-proposal was for the standard six-month redemption period, presumably to start from the date of a foreclosure order. I will address the timing for the receiver order below.

[47] With respect to the risk to the secured creditors and the potential for irreparable harm, Ms. Sun and Premiere say there is no risk to TCC or Peterson based on their appraisal, but if there is a risk, it is only to Peterson. Ms. Sun and

Premiere say this distinguishes the present case from *Haro-Thurlow*, where the bank was the single creditor at risk. However, there was also a different, much lower, “burn rate” in *Haro-Thurlow*, which affected the assessment of risk. Here, the collective, monthly burn rate is \$1.4 million and counting, and both creditors are already owed more than \$100 million. TCC itself was owed \$72.8 million as of the hearing date; that amount will have increased while this decision was under reserve. If this Court were to delay the appointment of a receiver for any significant period of time, such as the six months proposed by Ms. Sun and Premiere, the risk to TCC would necessarily grow, increasing the risk and exposure TCC alone faces. If viewed collectively, the increased exposure over six months could well begin to approach the equity even if the Court were to accept Ms. Sun and Premiere’s appraisal, especially when legal and other fees are considered.

[48] The bigger problem for Ms. Sun and Premiere is that I agree with TCC and Peterson that Ms. Sun and Premiere’s appraisal is aspirational. Despite counsel’s efforts to convince the Court otherwise, the appraisal obtained by Ms. Sun and Premiere, and the residual land value figure it provides, is expressly based on extraordinary assumptions that include an assumption that the “proposed development will be approved by the City of Vancouver”. That is a future event that is not guaranteed. On that basis, I cannot rely on it. The only other evidence of valuation before the Court satisfies me that there is a legitimate risk of TCC and Peterson being under-secured – both collectively, and potentially even individually for TCC – depending on the length of any further delay.

[49] With respect to the balance of convenience, for the same reasons that Justice Horsman (as she then was) rejected the argument that appointment of a receiver would result in additional stigma, I reject the concerns about stigma raised by Premiere and Ms. Sun; the commencement of foreclosure proceedings makes the borrowers’ financial difficulties public in any event: *Prospera Credit Union v. Portliving Farms (3624 Parkview) Investments Inc.*, 2021 BCSC 2449 at para. 32; see also *Haro-Thurlow* at paras. 150-152. I acknowledge that a receivership order will have an impact on the Debtors, but I am also mindful that the majority

shareholders of the Owners do not oppose the appointment, and that all parties are agreed that sale of the property is the appropriate course, where there are significant defaults and the creditors are entitled to realize on their security.

Conclusion and direction regarding terms of order

[50] Based on the foregoing analysis, I am satisfied that it is just and convenient to appoint Alvarez as receiver-manager for the lands. Taking into account the relevant considerations, and the significant increase in exposure that accompanies the passage of each day, I find it appropriate to appoint the receiver immediately. I will, however, order that the receiver not undertake any sales efforts before February 24, 2025, and will not be able to file any application for approval for sale until after March 14, 2025. This will provide the Debtors, and in particular Ms. Sun and Premiere (if they can obtain approval of the majority shareholders of the Owners), a period of six months and two weeks from the date of their first default on September 1, 2024 to attempt to address the defaults.

[51] Counsel for TCC provided a revised blackline of the B.C. Model Receivership Order at the hearing before me, to reflect the terms of appointment sought by TCC. The revised blackline addressed certain comments raised by Premiere and Ms. Sun in their response. In particular, the most recent blacklined draft order reduces the amount that may be borrowed by the receiver to \$150,000. I have noted a number of other revisions that, in my view, may be necessary, including:

- a) the preamble to the blacklined order refers to an affidavit that was not provided for the hearing (affidavit #1 of L. Grillandini), does not include Ms. Buttery's correct title as King's Counsel and refers to her as counsel for the majority owners of the Owners, who are not parties to this proceeding, without referencing the Owners, who are named parties;
- b) given my determination above, the order should be made pursuant to s. 39 of the *LEA*, rather than both s. 39 of the *LEA* and s. 243 of the *BIA*;

- c) in paragraph 23 of the draft order, the receiver's borrowing charges should not be subordinate in priority to the petitioner's security; and
- d) there is inconsistent use of the terms "Debtor" versus "Debtors", without "Debtors" having been defined.

[52] There may well be other technical adjustments that are required.

[53] Premiere and Ms. Sun also raised concerns that the description of the property subject to the receivership order was broader than what is covered by TCC's Security, in that it refers to the "property" rather than just the "lands". In reply, TCC's counsel suggested the intent was to limit the receivership to the lands and their related property, but it is not clear if that intention has been adequately captured by the blackline.

[54] As indicated above, I consider it appropriate for the receiver to have access to the property as required to undertake its duties, and consider terms that allow for access to necessary financial and other records, including in respect of the rents, to be appropriate. I do not feel it necessary to restrict the receiver's ability to deal with the rental aspects of the property, as all parties have agreed the receiver is likely to continue to use the existing property manager in some manner in order to reduce costs. I confirm that that is my expectation as well.

[55] As noted, the petition also sought a number of declarations, many of which are in the usual form sought in foreclosure proceedings, and some of which would be inconsistent with the proposed terms for appointment of the receiver (for example, giving TCC sole conduct of any sale). The notice of hearing filed in this matter provided that the petition proper was to be heard. However, the hearing was conducted on the basis that the only relief sought was the appointment of a receiver, as a form of pre-judgment remedy. It is unclear what is to happen with the remainder of the relief sought in the petition at this time.

[56] In these circumstances, and subject to any further comments from counsel, I will ask counsel for TCC to prepare the draft form of order in light of my reasons

(including my questions about what is to happen with the remainder of the relief sought in the petition) and to circulate to all counsel for their review and comment. Once agreed among counsel, the draft order is to be submitted to my attention through Vancouver Supreme Court Scheduling (Civil) for endorsement. The parties are at liberty to request a further appearance before me in the event they are unable to reach agreement on the terms of the draft order in light of these reasons.

[57] Subject to any questions or further submissions, those are my reasons.

[58] CNSL STEPHENS: On behalf of the receiver, if we could include a specific term that would permit the receiver or another party to apply for the appointment to also be under s. 243 of the *BIA*, that gives some additional protections for receivers. The receiver, once it's in place, can obtain official evidence that the Court would want to satisfy itself as to the insolvency of the Debtors, in which case it would be appropriate and the receiver could appropriately obtain additional protections under the *BIA*. So I am essentially just asking for leave to seek an additional basis for the appointment.

[59] THE COURT: I don't have any problem with the receiver or another party seeking leave to make that additional request of the Court.

[FURTHER DISCUSSION WITH COUNSEL RE CERTAIN PROPOSED LANGUAGE IN DRAFT ORDER]

[60] THE COURT: I am going to direct that the parties enter the order absent that additional language at the end of para. 2(j) and that the parties are at liberty to make further written submissions if necessary. It may be that there is some way for the parties to resolve this without it having to come back to the Court. If that is not able to be done, then I will ask the parties to submit a further Request to Appear before me through Vancouver Supreme Court Scheduling (Civil) with a proposal for an exchange of written submissions not to exceed five pages. So I am going to put that back on the parties to provide that proposal if it is necessary and you can't work it out. Is that clear?

[61] CNSL HYNDMAN: It's clear.

[62] CNSL STEPHENS: Yes, thank you justice.

[DISCUSSION WITH CLERK RE TERMS OF ORDER]

[63] THE COURT: The order in this case is very long. What you should write down is that there is an order that appoints Alvarez and Marsal Canada Inc. as the receiver effective immediately today on further terms that are a modified version of the B.C. Model Receivership Order, which counsel will submit for my attention and endorsement.

[FURTHER DISCUSSION RE DATES AND REFERENCES TO BE REMOVED]

[64] CNSL YUEN: Justice, as you noted in your oral reasons, Peterson has commenced a separate foreclosure proceedings against the Debtors. I wonder whether I may seek leave of the Court now to continue those foreclosure proceedings against the Debtors. This is in relation to s. 8 of the receivership order where there is a stay and we would need to seek leave of the Court to continue those foreclosure proceedings. I note that the relief that we seek in our petition would be very similar (short of the receivership application) to the relief sought in TCC's petition before you. And I wonder whether we could then agree when we are agreeing to the terms of this order, where our order for the petition would mirror the relief which will be sought by TCC, for us to be able to continue our foreclosure proceedings against the Debtors in this case.

[65] THE COURT: Well, if I am going to have to hear submissions on that, Ms. Yuen, which I wasn't prepared for this morning, then I am out of time – I am supposed to be in a different courtroom at 10 o'clock. I don't know whether any of the other parties have submissions to make on that point and if so, then I think you are going to have to submit a request for a further appearance in relation to that particular matter. I haven't turned my mind to that, I haven't seen the petition and I have some concerns about being asked to grant leave for a petition to be continued when I don't know what it says.

[66] CNSL YUEN: Understood. So then maybe we will deal with it in a discussion between the parties as clause 8 of the receivership order does allow for the receiver to consent to the continuation of our proceedings. Thank you.

[67] THE COURT: I think that's preferable Ms. Yuen, because I am hesitant to make an order allowing something to go ahead when I haven't seen it.

[68] CNSL YUEN: Okay, sure. Thank you.

[69] THE COURT: Is there anything further that counsel need from me this morning?

[FURTHER DISCUSSION WITH COUNSEL]

[70] CNSL STEPHENS: Thank you very much for all your time and effort justice.

[71] THE COURT: I thank the parties for their helpful submissions and materials. I will bid you a good day and we will adjourn. Thank you madam Registrar.

"K. Wolfe, J."