



S=261039

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MINA ANGELICOLA

PETITIONER

AND:

**1235922 BC LTD
FORT PELLY HOLDINGS LTD.
H.E. ROOMS INC.
THEODORE FROMSON
GILLIAN ANN FROMSON
JOHN DOE
JANE DOE**

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO:

1235922 B.C. Ltd.
201 – 1367 West Broadway
Vancouver, BC V6H 4A7

Fort Pelly Holdings Ltd.
201 – 1367 West Broadway
Vancouver, BC V6H 4A7

H.E. Rooms Inc.
201 – 1367 West Broadway
Vancouver, BC V6H 4A7

Christopher Robert Wall
235 East Hastings Street
Vancouver, BC V6A 1P2

Theodore Fromson
537 Louise Road
Ladysmith, BC V9G 1W7

Gillian Ann Fromson
537 Louise Road
Ladysmith, BC V9G 1W7

Pearl Ng, Agent
City of Vancouver Law Department
453 West 12th Avenue
Vancouver, BC V5Y 1V4

The address of the registry is: 800 Smithe Street, Vancouver, BC V6Z 2E1

The petitioner estimates that the hearing of the petition will take 2 hours.

This matter is an application for judicial review.

This matter is not an application for judicial review.

This proceeding has been started by the petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

TIME FOR RESPONSE TO PETITION

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the petitioner is: Farris LLP Barristers & Solicitors 2500 - 700 West Georgia Street Vancouver, British Columbia V7Y 1B3 Fax number address for service (if any) of the petitioner: None E-mail address for service (if any) of the petitioner: tlg@farris.com / slun@farris.com
(2)	The name and office address of the petitioner's lawyer is: Farris LLP Barristers & Solicitors 2500 - 700 West Georgia Street Vancouver, British Columbia V7Y 1B3 Attention: Tim Louman-Gardiner / Sandy Lun

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Petitioner, claims the right to serve this pleading/petition on the Respondents, or any of them, outside British Columbia on the ground that the proceeding is brought to enforce, assert, declare, or determine proprietary or possessory rights or a security interest in property in British Columbia,

pursuant to Rule 4-5(1) of the *Supreme Court Civil Rules*, BC Reg 168/2009 and section 10(a) of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28.

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. a declaration that a Mortgage and Assignment of Rents dated February 4, 2020, which was registered in the Vancouver Land Title Office on February 5, 2020 under number CA8022412 and CA8022413 (together, the "**Mortgage**") is a charge on the following lands and premises, located at 165 Pender St W, Vancouver V6B 1S4, B.C. with the following legal descriptions:

Parcel Identifier No. 010-401-113

LOT 34 BLOCK 28 DISTRICT LOT 541 PLAN 210

AND

Parcel Identifier No. 010-401-130

LOT 35 BLOCK 28 DISTRICT LOT 541 PLAN 210

AND

Parcel Identifier No. 015-501-922

LOT 36 BLOCK 28 DISTRICT LOT 541 PLAN 210

(collectively, the "**Lands**")

ranking in priority to the interests in the Lands of the Respondents and the heirs, executors, administrators, trustees, successors, and assigns of the Respondents and all persons claiming by, through, or under them.

2. a declaration that the general security agreement dated February 5, 2020 granted by Fort Pelly Holdings Ltd. in favour of Mina Angelicola, in respect of which a financing statement was filed in the Personal Property Registry of British Columbia (the "**PPR**") under base registration number 255662R, constitutes a charge in favour of the Petitioner on all present and after acquired personal property of Fort Pelly Holdings Ltd. (the "**Personal Property**") in priority to the interests therein or claim thereto of all Respondents (the "**GSA**", together with the Mortgage, the "**Security**");
3. a declaration that the Mortgage and the GSA are in default;

4. an order, substantially in the form set out in Schedule "A" hereto, appointing BDO Canada Limited ("BDO") as Receiver-Manager over the assets of 1235922 B.C. Ltd. and Fort Pelly Holdings Ltd., without security, pursuant to section 39 of the *Law and Equity Act*, RSBC 1996, c 253 (the "*LEA*"), and section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "*BIA*") or in such other form as this Honourable Court may order;
5. a declaration that the amount of money required to redeem the Lands and the Personal Property that is charged by the Security is the sum of \$8,375,000.00, together with interest accruing thereon at the rate of 3% per annum from February 5, 2025 to the date of payment, and together with the Petitioner's costs of and related to this proceeding (the "**Amount Required to Redeem**");
6. judgment against 1235922 BC Ltd., Fort Pelly Holdings Ltd. and H.E. Rooms Inc. in the amount of \$8,375,000.00, together with interest accruing thereon at the rate of 3% per annum from February 5, 2025 to the date of payment, and together with the Petitioner's costs of and related to this proceeding;
7. an order that the Petitioner be at liberty to apply for a further summary accounting of any amounts of money which become due to the Petitioner for interest, taxes, arrears of taxes, insurance premiums, costs, charges, expenses or otherwise after pronouncement of any order made herein;
8. an order that the Petitioner be granted its costs of and in connection with this proceeding on a solicitor-client basis, or, in the alternative, on a party and party basis with liberty to apply to seek costs on an increased scale on a further application;
9. an order that the Petitioner shall be indemnified by the Debtors (as defined herein) for all of its legal costs and disbursements arising from this proceeding;
10. a Certificate of Pending Litigation; and
11. any other relief that to this Honourable Court may deem just.

Part 2: FACTUAL BASIS

The Parties and Background

1. The Petitioner is retired, having an address for delivery in this proceeding located at 2500 – 700 West Georgia Street, Vancouver, British Columbia. She acts by way of a power of attorney granted to her daughter, Brigitte Drew.
2. The corporate Respondents are companies incorporated pursuant to the laws of British Columbia. Each has a registered and records address of 201 – 1367 West Broadway, Vancouver, British Columbia.
3. The Respondent 1235922 BC Ltd. (the “**Nominee**”) is the registered legal owner of the Lands on which the Avalon Hotel, a single room occupancy hotel (“**SRO**”), is operated by the Respondent Fort Pelly Holdings Ltd. The Nominee has failed to file its annual report since 2022, and is in the process of being dissolved.
4. Until the sale described below, the Angelicola family had run the Avalon Hotel since the 1970s. To Ms. Drew’s knowledge, the Avalon Hotel is in partnership with BC supportive housing to provide on-site support for single adults, seniors and people with disabilities at risk of or experiencing homelessness. There are currently approximately 88 low-income tenants who rent at the SRO. The upper floors are for residential use, and to Ms. Drew’s knowledge, the three commercial ground floor retail units remain vacant. While Ms. Drew does not have personal knowledge of the rents collected on a monthly basis, to her knowledge the rents exceed \$50,000.00 per month.

Vendor Takeback Mortgage and the GSA

5. Pursuant to an offer to purchase agreement, dated November 6, 2019, as amended and assigned by H.E. Rooms Inc. (“**HE Rooms**”) to Fort Pelly Holdings Ltd. (the “**Borrower**”), the Petitioner agreed to provide vendor take-back financing to the Borrower to finance the purchase of the Lands by the Borrower (the “**Purchase Agreement**”).
6. On February 5, 2020, in connection with the Purchase Agreement the Borrower and the Petitioner entered into a promissory note (the “**Promissory Note**”). The Borrower agreed to provide a term loan in the principal amount of \$8,375,000.00 at the rate of 3.00% per

annum and interest only payments in monthly statements of \$20,807.83 until February 5, 2025 (the "**Monthly Interest Payments**", together the "**Loan**").

7. Pursuant to the Beneficiary Authorization and Charge Agreement, made February 5, 2020, (the "**Beneficial Charge Agreement**") the Nominee holds title to the Lands as nominee for the Borrower and is authorized to mortgage the Lands in favour of the Petitioner.
8. As a condition to the Petitioner making the Loan available to the Borrower, the Nominee granted a first-ranking mortgage to the Petitioner charging the Lands, and the Borrower granted the GSA, by which it pledged its present and after-acquired personal property to the Petitioner to secure performance of its obligations.
9. The Mortgage was registered against title to the Lands in the Vancouver Land Title Office on February 5, 2020 under number CA8022412 and CA8022413 (the "**Form B Mortgage**"). The financing statement was filed in the PPR under base registration number 255662R in favour of the Petitioner in respect of all present and after acquired property of the Borrower.
10. Pursuant to the terms of the Form B Mortgage, the Borrower, the Nominee, and HE Rooms (collectively, the "**Debtors**"), are obligants who are jointly and severally liable for the payment of all the secured obligations under the loan documents, being the Purchase Agreement, the Beneficial Charge Agreement, the GSA, the Promissory Note, the Form B Mortgage and all other documents evidencing or securing the payment of the Loan.
11. On or around May 2, 2022, Theodore Fromson and Gillian Ann Fromson as joint tenants registered a second mortgage under number CA9898334 under the Lands for the face value amount of \$750,000.00 at the rate of 6.00% per annum (the "**Second Mortgage**").
12. On February 5, 2025, the Loan matured and became due and payable. The full amount of the Loan became due and owing.
13. On or around August 31, 2025, the Petitioner and the Debtors entered into a forbearance agreement (the "**Forbearance Agreement**"), whereby the Debtors agreed, *inter alia*:
 - (a) To make the Monthly Interest Payments;

- (b) To provide full and complete access to the Lands and the Debtors' business records at the request of the Petitioner;
 - (c) By October 30, 2025, pay all property tax amounts due and owing;
 - (d) By the last business day of every month, make a monthly \$8,700.00 payment to the Petitioner in respect to the Petitioner's out of pocket expenses (the "**Expense Reimbursement**");
 - (e) By each of October 15, 2025 and January 1, 2026, instruct their realtor to reduce the listing price of the Lands; and
 - (f) By January 1, 2026, to have entered into a commitment to lease the vacant commercial space in the Lands.
14. Upon the occurrence of a default or expiry of the Forbearance Agreement, the Debtors consented to the following, at the Petitioner's election, *inter alia*:
- (a) Immediate appointment of a receiver over any or all of the Debtors' real or personal property;
 - (b) Order nisi of foreclosure with a one-day redemption period and immediate conduct of sale; and
 - (c) To draw the court's attention to the Forbearance Agreement and the Debtors' acknowledgement that they obtained a longer period of forbearance than they would be entitled to by way of redemption period in a foreclosure or receivership proceeding.
15. On or around October 2025, the Debtors defaulted on all the terms set out in paragraph 13(b) – (f). In particular, the Debtors:
- (a) have not paid property tax amounts when due, and property tax amounts remain in default (see paragraph 29);
 - (b) did not pay the Expense Reimbursement due on October 31, 2025, November 31, 2025 and December 31, 2025;

- (c) have not further reduce the listing price by January 1, 2026 (and only previously reduced the listing price after the required October 15, 2025, deadline) (see paragraph 31);
 - (d) have refused to provide business records requested by the Petitioner for the purposes of conducting an appraisal of the subject property; and
 - (e) have not entered into a commitment to lease the vacant commercial space in the Lands by January 1, 2026 (see paragraph 32).
16. In December 2025, the Petitioner engaged Grover, Elliott & Co Ltd. ("**Grover Elliott**") to conduct an appraisal of the Lands. Grover Elliott prepared an appraisal report based on the documents that the Petitioner provided as the Debtors refused to provide the documents and information requested by the Petitioner. The Grover Elliott report estimated the market value of the Lands to be \$8,530,000.00.
17. As of the date of the filing this Petition, the October, November and December 2025 Expense Reimbursement remains unpaid.
18. The Petitioner have worked with the Debtors with an alternative financing arrangement to address their financial challenges, but the efforts to date have been insufficient to ensure those operating assets, primarily being the monthly rental income, are being safeguarded and managed appropriately.

The Defaults

19. On June 4, 2025, the Petitioner demanded the amount owing pursuant to the Mortgage and Promissory Note.
20. The full amount of the Loan remains due and owing.
21. As at January 12, 2026 the amount owing was approximately \$8,609,729.45 together with interest accruing at the rate of 3% per annum, exclusive of legal and other costs.
22. On January 27, 2026, the Petitioner delivered notice to the Debtors of the occurrence of the forbearance defaults as set out in paragraph 15 herein and advised that the Petitioner elects to proceed with enforcement steps as set out in paragraph 14 herein.

Need for Receivership Order

23. On or around the third Wednesday of each month the provincial government pays income and disability assistance. Low-income tenants through the BC supportive housing program use their income and disability assistance payments to pay for their monthly rent at the Avalon Hotel. To Ms. Drew's knowledge, the tenants' monthly rent payments are made out directly to the Borrower. The Debtors would typically collect those amounts to remit, in part, to the Petitioner to make Monthly Interest Payments. The Petitioner received her last such payment in January 2026.
24. The Loan remains unpaid, and the Petitioner continues to incur carrying costs, while financing the Debtors with the Petitioner's capital with no return to the Petitioner. Specifically, the Petitioner had to pay capital gain tax upwards of \$1,308,736.76 in connection with the transfer of the Lands to the Nominee without receiving any money from which to pay that amount. The Petitioner has had to fund to pay that obligation with debt and is required to make monthly payments in the amount of approximately \$8,000.00 to service that indebtedness. The Debtors failed to make the October, November and December 2025 Expense Reimbursement. The Petitioner has no other source of cash to finance that obligation and depends on reliable monthly payments from the Debtors to service that loan.
25. The Petitioner understands that the Avalon Hotel generates approximately \$50,000.00 in revenue per month.
26. The Petitioner is also concerned that the Debtors are not meeting their other obligations such as source deductions and property taxes on the Avalon Hotel. The Petitioner does not have access to recent bank statement or reconciliations that would demonstrate the Debtors are using their profit to meet their current liabilities. It is also unclear if the Debtors are meeting its obligations under the Second Mortgage.
27. To Ms. Drew's knowledge, there are unpaid vendors who are owed monies upwards of \$80,000.00, and collection agencies are calling the Avalon Hotel on a daily basis. Ms. Drew is also aware that five related foreclosure proceedings have been commenced by mortgagees in respect of similar properties controlled by Mr. Chris Wall, the principal of the corporate Respondents.

28. Furthermore, to Ms. Drew's knowledge, as of October 1, 2025, heat has been disconnected from the Avalon Hote due to the Debtors' failure to pay unpaid heating bills payable to Creative Energy Vancouver Platforms Inc. ("**Creative Energy**"), a private district heating company. Creative Energy operates a steam production plant and associated distribution network in downtown Vancouver and False Creek. Creative Energy's steam piping system supplies heat to the Avalon Hotel and four other buildings, which have been disconnected, and to Ms. Drew's knowledge, is due to the Debtors' failure to pay bills for the past five years. Ms. Drew believes the outstanding amount owed to Creative Energy for the past five years is approximately over \$200,000.00. The Petitioner is greatly concerned about the safety of the low-income and elderly tenants of the Avalon Hotel especially during the winter months.
29. On January 9, 2026, the Petitioner obtained a property certificate for the Lands (the "**Property Tax Certificate**"). The Property Tax Certificate show that the Nominee has been delinquent since 2023 with significant arrears accruing with a total taxes owing of \$221,964.76, and unpaid utilities and arrears with a total account owing of \$17,049.76. The Petitioner's real property security is at risk of tax sale if the Nominee does not pay outstanding property taxes and, in any event, the property tax amounts and interest continue to accrue in priority to the Petitioner's mortgage, eroding the Petitioner's security.
30. The Petitioner does not have funds available to pay any property tax arrears.
31. The Lands were listed for sale on MLS at \$12,900,000.00 for over 250 days and was only recently reduced to \$10,750,000.00 (after the required October 15, 2025, deadline under the Forbearance Agreement). The Debtors were required to further reduce the listing price by January 1, 2026, and has failed to do so. The Debtors have not communicated whether or not they have instructed their realtor to reduce the list price as required under the Forbearance Agreement, nor have the Debtors communicated whether or not there have been any offers made in respect of the Lands.
32. The Debtors also agreed to enter into a commitment to lease the vacant commercial space in the Lands by January 1, 2026. To Ms. Drew's knowledge, the Debtors have not entered into any commercial lease agreements.
33. The Lands' current BC Assessed Value is \$8,574,000.00, a significant drop from the Lands' 2025 BC Assessed Value of \$9,577,000.00.

34. The Petitioner is concerned with her ability to recover the Loan from the Debtors. The apparent equity in the Lands, exclusive of any source deductions that may be owing, is as follows:

	2025 Assessed Value of the Lands	Current Assessed Value of the Lands
	\$9,577,000.00	\$8,574,000.00
Property Tax and Utility	-\$239,014.52	-\$239,014.52
Commission	-\$256,121.25 (assuming sold at 2025 assessed value, calculated at 7% first \$100,000.00 and 2.5% of the remainder, plus GST)	-\$229,792.50 (assuming sold at current assessed value, calculated at 7% first \$100,000.00 and 2.5% of the remainder, plus GST)
Approximate Net Proceeds	\$9,081,864.23	\$8,105,192.98
1 st Mortgage (Petitioner) plus pre-judgment interest of 3% per annum from February 5, 2025 to January 12, 2026 excluding legal costs	-\$8,609,729.45	-\$8,609,729.45
Amount Remaining after First Mortgage	\$472,134.78	\$-504,536.47 (shortfall)

Second Mortgage (Theodore Fromson and Gillian Ann Fromson) at face value	-\$750,000.00 (plus 6.00% per annum from May 2, 2022)	
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35. The appointment of a receiver would ensure the collection of rents and to ensure the business keeps operating, while reducing the obligations owing for the benefit of the first and second mortgagees and any other third-party creditors.
36. Finally, despite repeated demands, the Debtors have not responded to requests for financial information with respect to the business and affairs of the Debtors, which information is necessary to understand the current economic state of the business.

Consent of Licensed Trustee

37. BDO, a trustee within the meaning of section 2 of the *BIA*, is qualified to act as receiver and manager of the Lands and Personal Property and has consented and agreed to act as such and is acceptable to the Petitioner.

Part 3: LEGAL BASIS

1. The Petitioner relies on:
 - (a) Rules 1-3, 2-1, 10-2, 13-5, 14-1, 16-1, and 21-7 of the *Supreme Court Civil Rules*, BC Reg 168/2009 (the "**SCR**");
 - (b) section 39 of the *LEA*;
 - (c) section 243 of the *BIA*;
 - (d) section 66 of the *Personal Property Security Act*, RSBC 1996, c 359; and
 - (e) such other legal basis as counsel may advise.
2. Section 39 of the *LEA* provides that the Court may appoint a receiver where it is just or convenient to do so.
3. Rule 10-2 of the *SCR* provides that the court may appoint a receiver in any proceeding either unconditionally or on terms.

4. The Petitioner applies for an order appointing BDO as the receiver-manager of the Lands and Personal Property.
5. The Petitioner is a secured creditor, pursuant to the Mortgage and the GSA. The Petitioner's interest in the Lands rank ahead of the of the interests of all other persons in the Lands, and the assets are charged by the GSA.
6. There is no doubt in this proceeding that there has been a default, and that the Petitioner is entitled, under the terms of its Security, to appoint a receiver.

It is Just and Convenient that a Receiver be Appointed

7. Under the test for the appointment of a receiver, the court is required to review the matter holistically and decide whether, on the whole of the circumstances, it is just and convenient to appoint a receiver.

Maple Trade Finance Inc. v CY Oriental Holdings Ltd., 2009 BCSC 1527 ("Maple Trade") at para 25

8. There are a number of factors the court may consider in exercising its discretion to appoint a receiver, including:
 - (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed;
 - (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
 - (c) the nature of the property;
 - (d) the apprehended or actual waste of the debtor's assets;
 - (e) the preservation and protection of the property pending judicial resolution;
 - (f) the balance of convenience to the parties;

- (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- (h) the enforcement of rights under a security instrument where the security holder encounters or expects to encounter difficulty with the debtor and others;
- (i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
- (k) the effect of the order upon the parties;
- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties; and
- (p) the goal of facilitating the duties of the receiver.

Maple Trade at para 25, see also *Bank of Montreal v Gian's Business Centre Inc.*, 2016 BCSC 2348 ("**Gian's**") at paras 23-24

9. Furthermore, in considering whether an appointment of a receiver is "just or convenient," the Court in *Bank of Montreal v. Haro-Thurlow Street Project Limited Partnership* ("**Haro-Thurlow**") considered the debtor's equity of redemption, and whether that receiver will be granted the power of sale and when. The consideration of *any* equity of redemption comes within the *Maple Trade* factors.

Haro-Thurlow, 2024 BCSC 47 at para 101

10. On the whole, the factors favour granting of a receivership order and the appointment of a receiver of the Lands and Personal Property is appropriate in the circumstances of this case.

11. The consideration of a creditor's right to appoint a receiver is even more significant when it is contained within a forbearance agreement since that agreement is entered into at the time the debtor was in default.

Institutional Mortgage Capital Canada Inc. v Mortise (Scott Road Residential) Holdings Ltd., 2025 BCSC 1500 ("**Mortgage Capital**") at para 30; see also *Gian's* at para 25

12. The Forbearance Agreement, Mortgage and the GSA provides for the appointment of a receiver of the Lands and Personal Property upon an event of default by the Borrower.
13. The essence of the underlying commercial transaction is a vendor take-back. The Debtors obtained the right to operate the business without paying cash to the Petitioner, in return for a promise to pay the funds to the Petitioner on maturity. This is not a case where a borrower has defaulted on a true bank loan; rather, the borrower here is operating a business without having actually paid for it. The Debtors effectively seek to continue to retain operational profits by use of the Petitioner's capital and at the Petitioner's risk, while remaining in default of their obligations to the Petitioner.
14. There is clear risk of irreparable harm to the Petitioner given that the Avalon Hotel is operational and receives predicable and reliable monthly stream of rent from their tenants. The Debtors continue to use the Petitioner's capital gratuitously while the Petitioner receives nothing in return. The Petitioner has seen none of this profit. If the Lands sell at a shortfall, the Petitioner will be without a remedy and will have lost the ability to capture any rents realized with her capital.
15. The Petitioner also requires the collection of monthly rents to ensure that she is able to finance the loan she needed to borrow to pay the capital gains tax.
16. The Petitioner thus requires the appointment of a receiver to ensure those operating assets, primarily being the monthly rental income, are being safeguarded and managed responsibly pending a sale of the Lands. The tenants' monthly rent payments are currently made out directly to the Borrower.
17. There are also present risks to the Petitioner's Security, namely the unpaid utilities and property taxes. The appointment of a receiver will allow for borrowing or cash flow to reduce those risks.

18. On a sale at the appraisal estimate of \$8,530,000.00 or the current BC appraised value of the Lands at \$8,574,000.00, the Petitioner is almost certain to suffer a shortfall, having regard to outstanding property taxes and real estate commission. It is extremely unlikely that the Debtors can give clear title through a sale process.
19. The appointment of a court-appointed receiver will also be in the best interests of all stakeholders.
20. The Avalon Hotel operates as a SRO, a highly regulated sector that involves working with the provincial government and are subject to City of Vancouver bylaws. A court-appointed receiver can navigate that process and ensure that the business remains operational. By contrast, during a foreclosure, the Petitioner (and any occupants or tenants) will have no certainty of control of the business or its operations. Once a foreclosure has been commenced, no party has any certainty of who is in control of the operations, and the registered owner may have no incentive to maintain or otherwise ensure that the subject property retains its value.
21. Likewise, in the event there are any issues related to the SRO, the appointment of a receiver ensures that an appropriate individual with appropriate authority, who is accountable to the Court, is in a position to address anything arising in a timely manner.
22. Furthermore, the appointment of a receiver promotes certainty and judicial economy with respect to the rights of tenants. In three of the five related foreclosure proceedings that have been commenced by mortgagees in respect of similar properties controlled by Mr. Wall, tenants in those SRO properties have filed Petition responses stating that their tenants' rights under the *Residential Tenancy Act*, SBC 2002, c 78 have been impacted under those foreclosures. Furthermore, in two of the related foreclosure proceedings controlled by Mr. Wall with respect to property located at 488 Carrall Street, Vancouver, B.C. (also known as, the "**West Hotel**"), the Vancouver Sun on October 23, 2025, reported on a recent police raid at the West Hotel where one of the tenants reported feeling unsafe living at the West Hotel, particularly during social-income cheque week. The social-income cheque week is the same tenants' monthly rent payments that are made out directly to the Borrower and the Debtors would then collect those amounts to remit, in part, to the Petitioner to make monthly payments. Mr. Wall stated in the same interview that "[i]t's wonderful that they found all these drugs and cash and weaponry, but there needs to be

more active policing. That block has been infiltrated by drug dealers and those carrying out gang-related crime”. A receivership will promote stability and ensure an orderly workout rather than a listing in a foreclosure with an uncertain outcome.

23. Furthermore, there is likely clear irreparable harm to the Petitioner and safety concerns to the low-income tenants of the Avalon Hotel. To Ms. Drew’s knowledge, as of October 1, 2025, heat has been disconnected from the Avalon Hotel due to the Debtors’ failure to pay Creative Energy their unpaid heating bills. Creative Energy operates a steam production plant and associated distribution network in downtown Vancouver and False Creek. Specifically, Creative Energy’s steam piping system that supplies heat to the Avalon Hotel and four other buildings have been disconnected due to the Debtors’ failure to pay heating bills for the past five years.
24. It is a severe safety concern especially during the winter months. As noted in Creative Energy’s 2023 Revenue Requirements Report to the BC Utilities Commission, “the owner in control of the Avalon Hotel – having not paid its bills in almost two years. Creative Energy has made repeated attempts to seek payments to no avail. This building serves the housing needs of its low-income residents and Creative Energy has therefore been reticent to date to disconnect service during the winter heating season”. After five years of unpaid bills, Creative Energy has now disconnected service. A receivership will ensure the Property is being maintained, preserved and protects its value.
25. The Petitioner is also concerned that the Debtors are not meeting their other obligations such as source deductions and property taxes on the Avalon Hotel. Property taxes remain delinquent since 2023, and the Petitioner’s real property security is at risk of tax sale. The court-appointed receiver can engage and enter into any agreements with the City of Vancouver with respect to unpaid property taxes. It is also unclear if the Debtors are meeting its obligations on its Second Mortgage.
26. Additionally, to the Petitioner’s knowledge, the three commercial ground floor retail units remain vacant, a lost business revenue, which the court-appointed receiver may be able to monetize. There exists no such opportunity in a foreclosure context.
27. There is no requirement that the redemption period runs from the date of the hearing of the petition. The Court in *Mortgage Capital* considered that the debtors have already been

extended their full six-month redemption period given the original due date being the formal demand letter.

Mortgage Capital at paras 47 and 58

28. The Debtors have had the benefit of several months since maturity and have not paid the amounts outstanding. The Debtors, in place of a redemption period, received the benefit of a forbearance agreement, which the Debtors breached almost immediately. The Loan matured in February 2025, the Petitioner demanded in June 2025 and the parties entered into a forbearance agreement in August 2025. By any measure, the Debtors have had ample time to redeem the Security and have had the benefit of more time than they would have had had the Petitioner commenced a foreclosure proceeding after demand.
29. The Debtors have listed the Property for sale for over a year, with no evidence of any offers.
30. While the Petitioner's shortfall may be relatively small today, the fact remains that a shortfall clearly exists, there is no practical alternative that will allow it to recover the amounts owing to it over and above the amount of its real property security. The Property has to be sold, and the Debtors are demonstrably unable to do so. The appointment of a receiver preserves the prospect of recovery for the Petitioner and other stakeholders.
31. Although a receivership will result in additional costs, a receivership will also ensure timely sales of the Lands. The Lands has been on the market for over 250 days and is listed above the current BC Assessed value. Given that the monthly interest burn rate under the Petitioner's mortgage is approximately \$21,000.00, and there is an additional interest burn under the first mortgage at the rate of \$688.36 per diem and with \$234,729.45 in interest already owing as of January 12, 2026, any additional costs resulting from a receivership would be offset by the sale of the Lands faster than could be accomplished by way of an ordinary foreclosure process.
32. Finally, the appointment of a receiver is in the interest of all stakeholders, by ensuring that rents are collected to maintain and preserve enterprise value while the Lands is sold. The Petitioner is facing a likely shortfall, the subsequent mortgagee is facing an almost certain shortfall. The appointment of a receiver will ensure that rents are collected and applied to

maintain and preserve enterprise value pending a sale. In the absence of a receiver, the Debtors will be motivated to keep the cash and allow the mortgagees' risk to increase.

33. Accordingly, it is appropriate and necessary to grant a priority charge to secure payment of the Receiver's fees.

Edmonton (City) v. Alvarez & Marsal Canada Inc., 2019 ABCA 109 at paras 14-19


34. Finally, the Petitioner should be entitled to costs on a solicitor-client basis. Not only is that provided for in the Security and Loan documentation, but this was a commercial transaction negotiated by counsel and the essence of the deal was that the Debtors could use the Petitioner's capital to generate profit. The Debtors essentially took on no risk here, the Petitioner's risk was non-payment, which risk was provided for in the provisions requiring payment of legal costs of enforcement. Those provisions should be enforced in this case.

Blueshore Financial v 1134038 B.C. Ltd., 2023 BCSC 2304

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Brigitte Drew, affirmed February 3, 2026;
2. Affidavit #1 of Kimberly Lopez, affirmed February 10, 2026; and
3. The pleadings filed herein.

Dated: February 10, 2026



Signature

Petitioner

Lawyers for the Petitioner

Tim Louman-Gardiner / Sandy Lun

To be completed by the court only:

Order made

- in the terms requested in paragraphs of Part 1 of this notice of application
- with the following variations and additional terms:

Date: _____

Signature of

- Judge Associate Judge

Gardiner and Sandy Lun, counsel for **the Petitioner** and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

APPOINTMENT

1. Pursuant to section 243(1) of the BIA, section 39 of the LEA, and section 66 of the PPSA, **BDO Canada Limited** is appointed Receiver-Manager, without security, of all of the assets, undertakings and property of the Debtors, including all proceeds (the "**Property**"), and including the real property owned by the Debtors, namely:

Parcel Identifier No. 010-401-113

LOT 34 BLOCK 28 DISTRICT LOT 541 PLAN 210

AND

Parcel Identifier No. 010-401-130

LOT 35 BLOCK 28 DISTRICT LOT 541 PLAN 210

AND

Parcel Identifier No. 015-501-922

LOT 36 BLOCK 28 DISTRICT LOT 541 PLAN 210

RECEIVER'S POWERS

2. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
 - (c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;