



NO. H-230574
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ATRIUM MORTGAGE INVESTMENT CORPORATION

PETITIONER

AND:

MARVEL DEVELOPMENTS (LIONS GATE VILLAGE) LTD.
RAHIM FAKHARI
FERESHTEH AMIN

RESPONDENTS

NOTICE OF APPLICATION

Name of Applicant: Atrium Mortgage Investment Corporation

To: the Respondents

TAKE NOTICE that an Application will be made by the Petitioner to the Presiding Associate Judge at the Courthouse at 800 Smithe Street, Vancouver, on August 29, 2024 at 9:45 a.m. for the Order set out in Part 1 below.

The Petitioner estimates that the Application will take 15 minutes.

☒ This matter is within the jurisdiction of an Associate Judge

☐ This matter is not within the jurisdiction of an Associate Judge

PART 1: ORDER(S) SOUGHT

1. An Order substantially in the form of draft Order attached hereto as **Schedule "A"**, approving a sale of the lands and premises which are the subject of this foreclosure proceeding (the "**Property**");
2. An Order substantially in the form of draft Order attached hereto as **Schedule "B"**, sealing the Confidential Affidavit of Michèle Hay sworn on August 14, 2024, which contains a true copy of an appraisal of the Property (the "**Confidential Affidavit**"); and

3. Such further and other relief as counsel may advise and this Honourable Court may deem just.

PART 2: FACTUAL BASIS

1. This is a foreclosure proceeding.
2. The mortgage (the "**Mortgage**") which is the subject of this proceeding is in favour of the Petitioner and is a first financial charge registered against the Property.
3. Order Nisi was made in this proceeding on September 14, 2023, and the redemption period expired on March 11, 2024.
4. The Mortgage has not been redeemed.
5. An Order (the "**Order for Conduct of Sale**") was made in this proceeding on March 14, 2024, giving the Petitioner exclusive conduct of sale of the Property.
6. The Petitioner listed the Property for sale with a real estate service firm.
7. The Petitioner has accepted an offer to purchase the Property (the "**Offer to Purchase**"), subject to Court approval.

PART 3: LEGAL BASIS

Approval of Sale

8. By the terms of the Mortgage, the Petitioner can sell the Property.
9. By the terms of the Order for Conduct of Sale, any sale of the Property shall be subject to the approval of this Honourable Court, unless agreed to in writing by all parties.
10. Rule 13-5 of the BC Supreme Court Civil Rules provides that the Court may order a sale of property which is the subject of a proceeding, and give directions for the purpose of effecting a sale.
11. Rule 21-7(5)(i) provides that the Court may order a sale of property which is the subject of a foreclosure proceeding.
12. Rule 21-7(7) provides that a party of record in a foreclosure proceeding may apply for an Order that the mortgaged property be sold.
13. Section 15 of the BC Law and Equity Act provides that the Court may, in a proceeding by a mortgagee, direct a sale of the property which is the subject of the proceeding.
14. Section 34(1) of the BC Land Title Act provides that "...the Registrar must not register an indefeasible title in favor of a person under a direction contained in an Order of a Court

unless the Order declares that it has been proved to the satisfaction of the Court on investigation that the title of the person designated in the direction is a good safe holding and marketable title.

15. The Function of the Court when considering an application seeking approval of sale of an asset or property is to examine and determine whether proposed sale is provident. The Court should consider evidence when determining whether a sale is reflective of market value including the appraisal of the asset or property and the exposure of the property to market.

Romspen Mortgage Corporation v. Lantzville Foothills Estate Inc., 2013 BCSC 222

16. Ultimately, where the proposed sale price reflects the fair market value of the property the proposed sale is a provident one. The Court should consider whether the property has been listed and marketed for an appropriate period of time, and whether the best indication of the property's fair market value is the proposed offer or offers that have been made for the property. The efforts to market the property must be genuine.

Kokanee Mortgage MIC Ltd. V. 669665 B.C. Ltd., 2014 BCSC 458

17. Although the court should consider appraisals of the property, there comes a point where the market speaks and the appraisal does not amount to much more than a prediction. When a property has been exposed to the market and no competing offers have emerged, the Court should accept that the proposed offer of sale is reflective of the market.

Romspen, supra

Sealing Order

18. The Petitioner seeks a Sealing Order directing that the Confidential Affidavit be placed under seal, with such affidavit to remain under seal pending further Order of the Court.
19. In the leading case of *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court of Canada held that a sealing order may be granted where
 - (a) such an order is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
 - (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on

the right to free expression, which includes the public interest in open and accessible court proceedings.

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 at para. 53

20. The Supreme Court of Canada, in *Sherman Estate* breaks down the two-part test from *Sierra Club* into three parts to help clarify the prerequisites "without altering its essence". As clarified, the applicant must establish that:
- (a) Court openness poses a serious risk to an important public interest;
 - (b) The order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
 - (c) As a matter of proportionality, the benefits of the order outweigh its negative effects.

Sherman Estate v. Donovan, 2021 SCC 25, at para 38. [**"Sherman Estate"**]

21. The Confidential Affidavit includes a true copy of the property's appraisal, detailing its appraised value (the "**Appraised Value**"). The Petitioner requests that the Appraised Value be kept confidential until the transaction contemplated in the Offer to Purchase is completed.
22. Should the Offer to Purchase fail to close, the disclosure of the Appraised Value could adversely impact market conditions by skewing prospective buyers' perceptions of the Property's perceived market value and influence any potential future offers.
23. Additionally, the disclosure of the Appraised Value can create an anchoring bias where the disclosed figure sets a baseline for subsequent future offers, regardless of market dynamics, resulting in an inability to achieve a fair market transaction.
24. In light of these considerations, the Petitioner argues that a sealing order is essential to mitigate a serious risk to the Petitioner's commercial interest.

Clerical Error

25. The Petitioner seeks an Order correcting a clerical error that was inadvertently made in the Order Nisi and Order for Conduct of Sale.
26. Rule 13-1(17) allows the court, at any time, to correct a clerical error.

Appointment of a Receiver

27. Rule 10-2 allows the court to appoint a receiver in any proceeding, whether or not the appointment of a receiver was included in the relief claimed by the applicant.

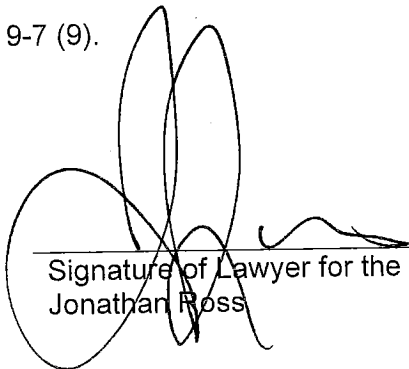
PART 4: MATERIALS TO BE RELIED ON

1. the Affidavit of Carter Kerzner made August 14, 2024;
2. the Affidavit of Azadeh Kharazmi made August 14, 2024; and
3. the confidential Affidavit of Michèle Hay made August 14, 2024.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this Application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every Affidavit, and of every other document, that
 - (i) you intend to refer to at the Hearing of this Application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the Applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed Affidavits and other documents that you intend to refer to at the Hearing of this Application and that has not already been served on that person;
 - (iii) if this Application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

August 14, 2024



Signature of Lawyer for the Petitioner
Jonathan Ross

TO BE COMPLETED BY THE COURT ONLY

Order made

- ☐ in the terms requested in paragraphs _____ of Part 1 of this Application
- ☐ with the following and additional terms

Date _____

Signature of ☐ Judge ☐ Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matters concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ other

NO. H-230574
VANCOUVER REGISTRY

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The Corporation of the District of North Vancouver
Parcel Identifier: 004-811-054
Lot 1 of Lot 1, Block 15, District Lot 764, Plan 14885

The Corporation of the District of North Vancouver
Parcel Identifier: 005-260-817
Lot 3, Block 15, District Lot 764, Plan 10846

is approved for the price of \$50,188,000 to 1495746 B.C. Ltd. (the "**Purchaser**");

2. on registration of a certified copy of this Order in the New Westminster land title office together with a letter from the Petitioner's lawyers authorizing its registration, the Lands and all the right, title, interest, and equity of redemption in and to the Lands of the Petitioner and the Respondents and the heirs, executors, administrators, and assigns of the Petitioner and the Respondents and all persons claiming by, through, or under them shall vest in fee simple in the Purchaser, without further instrument of transfer, free and clear of all encumbrances and certificates of pending litigation of the Petitioner and the Respondents and all persons claiming by, through, or under them including, without limiting the generality of the foregoing all personal charges, security interest or claims evidence by registration pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system and the British Columbia Registrar of Land Titles is hereby directed to:

- (a) enter the Purchaser as the owner of the Lands together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and
- (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered encumbrances.

3. all persons claiming possession of the Lands or any portion thereof shall deliver vacant possession of the Lands to the Purchaser, and shall remove all personal property from the Lands, on or before 12:00 noon on thirty (30) days following this Order becoming a final order (as defined in the Offer to Purchase dated August 9, 2024) (the "**Completion Date**");
4. if any person fails to deliver vacant possession of the Lands to the Purchaser on or before 12:00 noon on the Completion Date, then the Petitioner shall be at liberty to apply to the Registrar for a Writ of Possession, under Rule 13-2(13) and without further Order;
5. the proceeds of the Sale, less the usual adjustments, shall be disbursed through the trust accounts of Gowling WLG (Canada) LLP, or any other lawyer or notary that Gowling WLG (Canada) LLP may authorize on their behalf, as follows:
 - (a) firstly, in payment of outstanding taxes, water and sewer rates, and interest and penalties thereon, owing with respect to the Lands;
 - (b) secondly, in payment of real estate commission owing with respect to the Sale, plus GST thereon;
 - (c) thirdly, to the Petitioner the amount due under the mortgage which is the subject of this proceeding;
 - (d) the balance, if any, to be paid into Court to the credit of this proceeding;
6. the Petitioner is at liberty, with the agreement of the Purchaser, to extend the Completion Date of the Sale to such later date as the parties may agree without the necessity to further Order of this Court;
7. Notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of the Respondents now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of the Respondents,

The vesting of the Lands in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Respondents and shall not be void or voidable by creditors of the Respondents, nor shall it constitute or be deemed to be a transfer at undervalue fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. The clerical error in the Order Nisi entered September 14, 2023, and in the Order for Conduct of Sale entered March 14, 2024, which incorrectly lists the Parcel Identifier as: 005 - 290 - 817, is hereby amended to accurately display the correct Parcel Identifier as: 005-260-817;

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Petitioner and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner as may be necessary or desirable to give effect to this Order or to assist the Petitioner and its agents in carrying out the terms of this Order.

10. With the consent of the Purchaser, the Petitioner is at liberty to seek the appointment of a receiver (the "**Receiver**") over the Lands, among other things, and the Petitioner or the Receiver are at liberty to subsequently seek approval of an amended Offer to Purchase between the Purchaser or Receiver and the Petitioner that is structured as a share sale and subject to, and to be implemented by, a reverse vesting order. For clarity, and notwithstanding this provision, the Sale hereby approved remains binding to the Purchaser and the Petitioner unless or until it is replaced by a binding amended Offer to Purchase between the Purchaser or the Receiver and the Petitioner that has been approved by this Court.

11. the Petitioner is at liberty to apply for such further and other directions as may be necessary to carry out the full purport and effect of this Order;

12. the assessed costs of and in connection with this application are awarded to the Petitioner, on a solicitor and own client basis;

13. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT

Signature of lawyer for the Petitioner
Jonathan Ross

By the Court

Registrar

SCHEDULE A
LIST OF COUNSEL

COUNSEL NAME	PARTY REPRESENTED

NO. H-230574
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ATRIUM MORTGAGE INVESTMENT CORPORATION

PETITIONER

AND:

MARVEL DEVELOPMENTS (LIONS GATE VILLAGE)
LTD.
RAHIM FAKHARI
FERESHTEH AMIN

RESPONDENTS

**ORDER MADE AFTER APPLICATION
(ORDER APPROVING SALE)**



GOWLING WLG (CANADA) LLP

Lawyers

P.O. Box 30

2300 - 550 Burrard Street

Vancouver, B.C. V6C 2B5

604-891-2778

Attention: Jonathan Ross

jbr/azk

file number V57637

NO. H-230574
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

ATRIUM MORTGAGE INVESTMENT CORPORATION

MARVEL DEVELOPMENTS (LIONS GATE VILLAGE) LTD.
RAHIM FAKHARI
FERESHTEH AMIN

BEFORE) ASSOCIATE JUDGE) AUGUST 29, 2024
))
))

ON THE APPLICATION OF THE PETITIONER coming on for hearing at the courthouse at 800
Smithe Street, Vancouver, British Columbia, on August 29, 2024; AND ON HEARING Jonathan
Ross, counsel for the Petitioner and those other counsel listed on **Schedule "A"** hereto;
AND UPON READING the materials filed;

THIS COURT ORDERS that:

Access to Sealed Items permitted by:

[Select all applicable]

- ☒ Counsel for the Petitioner
☐ Counsel for the Respondents
☐ Parties on Record
☐ Further Court Order
☐ Others

Items to be sealed

Document Name:	Date filed: (Date on Court Stamp)	Number of copies filed, including any extra copies for the judge.	Duration of sealing order: (to specific date or until further order)	Sought	Granted	
					YES	NO
1) <i>Entire File</i>	<i>Various</i>			☐	☐	☐
2) <u>Specific Documents</u> Affidavit #1 of Michele Hay sworn August 14, 2024	To be filed	1 original to be filed (no copies)	Until further Court Order	☐	☐	☐
3) <i>Clerk's Notes</i>				☐	☐	☐
4) <i>Order</i>				☐	☐	☐
5) <i>Reasons for Judgment</i>				☐	☐	☐

1. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioner, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Jonathan B. Ross
Counsel for the Petitioner

BY THE COURT

REGISTRAR

SCHEDULE A
LIST OF COUNSEL

COUNSEL NAME	PARTY REPRESENTED

NO. H-230574
VANCOUVER REGISTRY

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MARVEL DEVELOPMENTS (LIONS GATE VILLAGE)
LTD.
RAHIM FAKHARI
FERESHTEH AMIN

RESPONDENTS

ORDER

(SEALING ORDER)



GOWLING WLG (CANADA) LLP

Lawyers

P.O. Box 30

2300 - 550 Burrard Street

Vancouver, B.C. V6C 2B5

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Attention: Jonathan Ross

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