

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Realtech Capital Group Inc. v. 8866999
(New Oakridge) Ltd.*,
2023 BCSC 2188

Date: 20231121
Docket: H230433
Registry: Vancouver

Between:

**Realtech Capital Group Inc., Peterson Investment Group Inc.,
and Earlston Mortgage Corp.**

Petitioners

And:

**8866999 (New Oakridge) Ltd., New Oakridge Investment Limited Partnership,
New Oakridge Investment Ltd., Zhong Liang, He Xing Liang, JPV Real Estate
Capital Ltd., JPV Real Estate Capital (Oakridge) Ltd., Align BC Properties
Corp., Align BC Development (Oakridge) Corp. and Others**

Respondents

Before: The Honourable Justice Edlmann

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners:

C.D. Brousson

Counsel for the Respondents 8866999
(New Oakridge) Ltd., Align BC Development
(Oakridge) Corp., Align BC Properties
Corp., JPV Real Estate Capital (Oakridge)
Ltd., JPV Real Estate Capital Ltd., He
Liang, Zhong Liang, New Oakridge
Investment Limited Partnership, and New
Oakridge Investment Ltd.:

F.D. Finn

Place and Dates of Hearing:

Vancouver, B.C.
November 16 and 21, 2023

Place and Date of Judgment:

Vancouver, B.C.
November 21, 2023

[1] **THE COURT:** The Applicants before me, who are a group of the Respondents on the underlying petition, seek an order that affidavit no. 1 of Mildred Schutte, affirmed on November 16, 2023, be sealed in the court file in this foreclosure proceeding. In the underlying proceeding, the lenders are seeking conduct of sale, having already obtained an Order Nisi in July of 2023.

[2] On November 7, 2023 the Applicants filed a notice of application seeking, among other things, an extension to the redemption period provided in the Order Nisi on the basis that there is a reasonable prospect of repayment of amounts secured by the mortgage. In particular, they will seek to rely on an executed offer for the purchase of the lands at issue (the “PSA”) which has been provided to the Respondents on a confidential basis.

[3] Before me, the Applicants assert that the PSA contains commercially sensitive material and confidential business information related to the Applicants and the Purchaser, and a confidentiality clause at Article 12.1 that expressly prevents the Applicants from disclosing the terms of the PSA.

Legal Framework

[4] Court proceedings are presumptively open to the public, as set out in *Sherman Estate v. Donovan*, 2021 SCC 25. The party seeking a sealing order must show that:

- 1) Court openness poses a serious risk to an important public interest.
- 2) The order sought is necessary to prevent this serious risk to the identified interest because the reasonably alternative measures will not prevent this risk.
- 3) As a matter of proportionality, the benefits of the order outweigh its negative effects. [*Sherman Estate* at para. 38.]

[5] The term "important interest" includes the general commercial interest in preserving confidential information: *Sherman Estate* at para. 41. In *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para. 59, the Supreme Court of Canada held that the preservation of confidential information constitutes a sufficiently important commercial interest provided certain criteria are met. The

criteria are that the information has been treated at all relevant times as confidential, the applicant's commercial interest could reasonably be harmed by its disclosure, and that it has been accumulated by with a reasonable expectation that it will be kept confidential. That is at para. 60 of *Sierra Club*.

[6] It would appear evident that for the most part, the information in the PSA has been treated as confidential by the Applicants and has not been publicly disclosed. The PSA itself contains a confidentiality clause. The Applicants submit that the public disclosure will prejudice them as well as the proposed Purchaser, may frustrate the PSA, and may also negatively impact any future sales process for the lands if the transaction contemplated in the PSA does not close. They say there are important public interests in:

- a) The integrity of the distressed sale's processes generally, including in foreclosure proceedings; and
- b) Contractual obligations of confidentiality.

[7] I accept that the Applicants have met the first criterion set out in *Sherman Estate* in relation to the contents of the PSA. Given the reality that the purchase foreseen in the PSA would depend on the result of the underlying application, the detailed information and negotiation strategies disclosed by the PSA could realistically undermine the purchaser's position in bidding on an eventual alternate sales process. Contractual obligations of confidentiality have also been recognized as an important public interest.

[8] The Applicants appear to accept that the amount of the offer and some of the general terms can be disclosed, and in fact, some of those details have already been discussed in open court before me. In the course of submissions, it became evident that the most contentious piece of information that the Applicants seek to have sealed is the identity of the proposed purchaser.

[9] The Respondents do not strongly oppose the sealing order, as they have been given an unredacted copy of the PSA on a confidential basis. The

Respondents do note, however, that the details of the offer will be at issue in the underlying application. In particular, the identity and motivations of the party making the offer will be a central issue in whether the redemption period should be extended. The Respondents will be seeking to tender two further affidavits related to the purchaser in the PSA. Without deciding the underlying application, the information put forward by the Respondents would seem to indicate the proposed purchaser may not be at arm's length from one or more of the parties in these proceedings.

[10] In considering the overall circumstances, I am satisfied that some form of sealing order is warranted, as the details of the PSA will unduly prejudice the parties to that agreement, and there do not appear to be any alternate measures that might mitigate those effects. However, in considering the necessary scope of the order and in balancing the proportionality of the order sought, I am not satisfied the scope of sealing sought by the Applicants is warranted.

[11] On its face, the respect of a confidentiality clause in a contract does present a compelling public interest. However, I find that the context of the clause before me is important. The parties to the PSA were undoubtedly aware of the ongoing court proceedings when they negotiated the agreement. I am not satisfied that there is a compelling public interest in sealing the identity of the proposed purchaser in the circumstances of this case. I accept that there is a clear preference on the part of the signatories of the PSA for the property not to be sold pursuant to an order of conduct of sale. However, in the context of an extension of the redemption period, I do not accept that the deliberate inclusion of a confidentiality clause by litigants or related entities in the context of ongoing matters before this court ought to be decisive of the public nature of the proceedings.

[12] In this case, the very core of the issue to be decided by the court on the underlying application will require grappling with the nature of the relationships between the related entities. In submissions from counsel, it became evident that maintaining the confidentiality of the proposed purchaser would likely require the

sealing of further affidavits, having the hearing *in camera*, and presumably having a sealing order or a redaction in the reasons on the underlying application. I do not find this approach to be proportional when considering the overall context and interests at play.

[13] I am satisfied, however, that the details of the PSA itself ought to be sealed. As the court proceedings are unlikely to be engaging with those details, I find that there is a more limited public interest in their disclosure. I find the countervailing commercial interests of both the Purchaser and the other stakeholders in an eventual sales process to warrant the sealing of the PSA itself. I will therefore order the sealing of Exhibit A of the affidavit of Mildred Schutte, with the exception of the basic terms of the purchase that have already been disclosed in open court, and the name of the proposed purchaser. I will hear submissions from counsel as to the length of time that is appropriate for the sealing order and any further terms that may require clarification.

[SUBMISSIONS OF COUNSEL]

[14] THE COURT: I am satisfied, given the nature of the confidentiality clause and my other comments with respect to the commercial interest, that the appropriate order is for the duration to be until further order of the court. I will therefore make that order as requested.

[SUBMISSIONS OF COUNSEL]

[15] THE COURT: The only information that is in [the affidavit itself] is the date. The only additional information is the date of the agreement, but I think there can be agreement that the date of the agreement is public, and then perhaps an additional affidavit [can be filed]. I will leave it to [counsel] to assess how to present the public information.

[16] CNSL C. BROUSSON: My submission would be perhaps it is just to seal the affidavit, and then that is easier for the registry to just say, oh, okay, good, we know this whole document is off to the side until further order of the court.

[17] THE COURT: From a logistical perspective, I do not see that anything turns on that. If it is going to make it easier for the registry, I will amend the order to that extent, that the entire affidavit will be sealed.

“Edelmann, J.”