IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *British Columbia Housing Management Commission v. Olympic Villas Inc.,* 2024 BCSC 833

Date: 20240424
Docket: H230891
Registry: Vancouver

Between:

British Columbia Housing Management Commission

Petitioner

And:

Olympic Villas Inc., TBS Procurement Interface Inc., John Doe, and Jane Doe

Respondents

Before: Associate Judge Bilawich

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:	D.D. Nugent
Counsel for the Respondent Olympic Villas Inc.:	R.S. Atwal
Place and Date of Hearing:	Vancouver, B.C. April 11, 2024
Place and Date of Judgment:	Vancouver, B.C. April 24, 2024

Introduction

[1] **THE COURT:** The petitioner applies for order *nisi* foreclosure. Relief sought includes:

a) A six-month redemption period;

b) Redemption amount of $18,040,130.72 as at April 11, 2024;

c) Interest accruing in accordance with the terms of the amended mortgage, currently $3,558.60 per day;

d) Personal judgment against the respondents Olympic Villas Inc. and TBS Procurement Interface Inc.;

e) Costs at Scale A; and

f) Right to apply for further summary accounting.

[2] The respondents Olympic Villas Inc. and TBS Procurement Interface Inc. (collectively, the “Borrowers”) oppose all of the relief sought. They say they have raised triable issues which make it necessary to convert this proceeding into an action and to refer it to the trial list. The Borrowers say a full trial is necessary to determine the veracity of an Addendum to the subject mortgage. They rely on *Cepuran v. Carlton*, 2022 BCCA 76 and seek relief from forfeiture and other general equitable relief available under the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended.

[3] The petitioner says the Borrowers have not identified a triable issue, or alternatively if they have, those issues can be adequately addressed by allowing the parties to exchange discovery of documents and conduct examinations for discovery, but it is not otherwise necessary to convert the petition into an action to effectively adjudicate the matters in issue.

Background

[4] This is a foreclosure proceeding. The petitioner is a provincial Crown agency.

[5] The respondent Olympic Villas Inc. (“Olympic”) is the registered owner of the lands and premises located at 4010 Walter Street, Merritt, BC (the “Property”). It acquired the Property in November 2018. It is described as a rectangular-shaped parcel of land with total site area of 2.06 acres (89,734 square feet) located in a newer uptown area in the City of Merritt. It was originally zoned C4 (Highway Commercial), but Olympic was subsequently successful in getting it rezoned to R4 (High-Density Multi-Family).

[6] The respondent TBS Procurement Interface Inc. (“TBS”) was the construction manager for the construction of a four-storey, 75-unit residential rental building on the subject Property, named Olympic Villas (the “Project”). It includes one-bedroom, two-bedroom and three-bedroom luxury apartments for rent, with various amenities and a view of the Nicola Valley.

[7] TBS shepherded the Project through development permits, city approvals, council meetings, traffic reports and engineering reports, to achieve rezoning and development approval. In October 2019, on-site civil works commenced at the Property.

[8] The Borrowers say that on November 29, 2022, the Project achieved internal occupancy approval. On October 24, 2023, it achieved a full occupancy permit. At the time that the Borrowers filed their petition response, 63 of the 75 units were tenanted, representing an occupancy rate of about 84%.

Petitioner's Financing

[9] The Borrowers approached the petitioner regarding financing for the Project. On August 29, 2019, the petitioner conferred provisional Project approval to Olympic and set out requirements that had to be met to receive final approval and be eligible for interim construction financing of $16,595,028.

[10] On January 6, 2020, the petitioner issued a loan commitment letter to Olympic and made available the $16,595,028 for construction of the Project, secured by a mortgage which is the subject of this proceeding. The mortgage and an

assignment of rents were registered on title to the Property on March 9, 2020, under LTO registration numbers CA8077755 and CA8077756. Olympic was mortgagor, and TBS was covenantor. The original term of the mortgage (Last Payment Date) was May 1, 2021.

[11] The interest rate applicable to the mortgage was a variable rate calculated as a weighted average of the interest charged by the Ministry of Finance of the Government of British Columbia to the mortgagee, plus administration spread of up to 0.5625%, and in any event not more than Royal Bank of Canada prime rate plus 1%. The variable rate was calculated and compounded monthly, not in advance.

[12] The Borrowers say that the initial budget for the Project was $19,715,133, of which Olympic was to contribute $3,128,205 and the petitioner was to advance the principal amount of the mortgage. For various reasons, the Project experienced a 19.8% cost overrun, and the final construction cost ended up being $23,615,000. The Borrowers say they paid that overage. The completion of the Project was delayed by approximately two years for various reasons, including those related to COVID-19, a flood in the City of Merritt and a dispute with an HVAC contractor.

[13] The Borrowers say they received the petitioner's last disbursement of funds in January 2022. They say the petitioner held back approximately $350,000, which formed part of the principal of the mortgage. They made numerous requests that these funds be advanced so they could be applied towards construction expenses. In January 2023, the petitioner took the position that these funds would be applied towards interest payments due on the mortgage.

[14] Due to the various delays encountered on the Project, the Borrowers and the petitioner negotiated a series of extensions of the original "Last Payment Date" on the mortgage and entered into mortgage modification or extension agreements for each. These included agreements dated May 4, 2021, January 25, 2022 and August 9, 2022.

[15] The first agreement extended the repayment date to December 31, 2021 and retained the same interest rate. The Borrowers signed the updated commitment letter and modification of mortgage, which was registered on title.

[16] The second agreement extended the repayment date to July 1, 2022 and retained the same interest rate. The Borrowers signed the updated commitment letter and modification and mortgage, which was registered on title.

[17] In June 2022, the principal of the Borrowers, Mr. Sonawala, sent an email to the petitioner's representative Mr. Chiew, regarding the status of the occupancy permit, which had not been issued at that point, and the pending repayment date of the mortgage. He stated:

> Unfortunately, we do need to extend it up to September end for the loan however leasing will start from July 20th and project will be completed by July end. I do not want to start leasing until I have occupancy in my hand or at least firm alarm tested done.
>
> I am expecting occupancy permit by 1st week of August. …

[18] Mr. Sonawala informed Mr. Chiew via email that a takeout lender was in place through a "sealed deal, but he wanted the timeline extended so the Project had 80% occupancy.

[19] On July 8, 2022, Mr. Chiew responded as follows:

> I was able to get an extension of the loan, however, I must stress that this is the last extension we can get for the project. Since it's the third modification, I won't be able to get approval for any further delays. We need to get set up for repayment by the end of October at the latest.
>
> As part of the extension, we also have to revise the interest to prime rate.

[20] The same day, Mr. Sonawala responded:

> Thanks, Ryan.
>
> Highly appreciate it. We are scheduled for occupancy permit on the first week of August. We will see if there are any specific issues, otherwise we should be able to get it.

[21] It is this third extension agreement which is the focus of the parties' dispute. It involved an amended commitment letter dated August 9, 2022, which was emailed to the Borrowers with a letter dated August 22, 2022, and a modification of the mortgage. These were sent to Mr. Sonawala and to the Borrowers' lawyer. It extended the time for the Borrowers to repay the mortgage to November 1, 2022 and provided for an increase in the interest rate charged to Royal Bank of Canada Prime Rate.

[22] For reasons which are not clear, the Borrowers did not sign and return the amended commitment letter and the mortgage modification at the time. The petitioner began charging them interest at the new rate. It also appears that efforts to tenant the building and arrange takeout financing did not proceed as planned.

[23] On April 13, 2023, Mr. Sonawala sent an email to Mr. Chiew which appears to confirm the former was well aware of the new higher interest rate that was being charged:

> Hello, Ryan.
>
> We only have 26 units leased up. In total, it is not paying more than $42,790. The total rent is way lesser than the $90,000 you have been charging us per month. It does not include my operating cost. I can't afford to pay any higher interest. I am pushing as much as I can to CMHK and through them CMHC. Please make sure that no further interest is added.

[24] The petitioner later realized the third extension documents had not been signed and returned, and followed up on or about July 17, 2023. The Borrowers had legal counsel, Ankit Batra, who assisted them with execution of the documents. At one point, he raised an objection to the higher interest rate reflected in the documents. In an email exchange dated July 19, 2023, Mr. Batra noted:

> Ryan,
>
> The documents have been received.
>
> But I have been advised that the modification to the interest rate is not agreeable to my client. They want the modification to the term but not to the interest rate.

[25] Mr. Chiew responded:

> Hi, Ankit.
>
> Unfortunately it is not possible to modify the interest rate. The project and the loan had been extended multiple times and approved with this structure. This was mentioned last year.
>
> Typically, we are to increase the rate to Prime + 6%, 3 months post-completion. The rate in the LCL is already a favourable term.

[26] There was a further exchange of correspondence between Mr. Batra and counsel for the petitioner on July 19, 2023, with Mr. Batra again indicating his client was not agreeable to the modification of the interest rate and counsel for the petitioner confirming that it was not able to change the modified rate.

[27] The Borrowers eventually signed and returned the documents. On July 31, 2023, the Borrowers had legal counsel, Mr. Batra, help them execute the modification of mortgage.

[28] The Borrowers say that in mid 2022, the petitioner threatened to declare them in default of the terms of the mortgage while the construction was still in progress. They say the petitioner presented a “take-it-or-leave-it” offer, which required that they either agree to a significantly increased interest rate for the modification agreement, or the petitioner would make a demand on the mortgage and commence foreclosure proceedings. The Borrowers also complain that the documents they signed in July 2023 were backdated to August 2022.

[29] The petitioner filed the executed modification of mortgage on title to the Property on September 7, 2023, under LTO registration number CB878474.

[30] On September 8, 2023, the petitioners sent a notice of default to the Borrowers, asserting they were in default of their obligation under the mortgage to pay property taxes, in particular 2022 and 2023 taxes were in arrears. They also said the Borrowers had failed to provide satisfactory evidence that insurance was in place on the Property.

[31] Olympic says it produced the insurance binder to the petitioner the same day, and on October 24, 2023, it paid the outstanding property taxes by bank draft, in the sum of $194,570.82.

[32] On October 13, 2023, counsel for the petitioner issued to the Borrowers a demand for payment of the full amount owing under the mortgage and a Notice of Intention to Enforce Security under s. 244(i) of the *Bankruptcy and Insolvency Act*. The petitioner said that the amount owing under the mortgage as of September 30, 2023 was $16,698,878.35. Later this was corrected to $17,088,002.67, plus legal expenses. Counsel noted that a certificate for renewed insurance from September 2023 onward had not been provided. At that point, property taxes were still in arrears, and there is an allegation that the Borrowers failed to make the November 2022 mortgage payment due to the petitioner.

[33] The original petition to the court was filed on November 16, 2023. It was amended on January 26, 2024. The Borrowers filed their response to the amended petition on March 28, 2024.

Applicable Law

[34] Rule 16-1(18) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, as amended, provides:

> Powers of court
>
> (18) Without limiting the court's right under Rule 22-1(7)(d) to transfer the proceeding referred to in this rule to the trial list, the court may, whether or not on the application of a party, apply any other of these *Supreme Court Civil Rules* to a proceeding referred to in this rule.

[35] The powers of the court in a foreclosure proceeding are set out in Rule 21-7(5):

> Powers of the court
>
> (5) The court may do one or more of the following in a proceeding under subrule (1):
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> …
>
> (k) make an order under Rule 22-1 (7).

[36] Rule 22-1(7)(d) allows the court on a chambers hearing to order a trial of the chambers proceeding generally or as to an issue:

> Power of the court
>
> (7) Without limiting subrule (4), on the hearing of a chambers proceeding, the court may
>
> > (a) grant or refuse the relief claimed in whole or in part, or dispose of any question arising on the chambers proceeding,
> >
> > (b) adjourn the chambers proceeding from time to time, either to a particular date or generally, and when the chambers proceeding is adjourned generally a party of record may set it down on 3 days' notice for further hearing,
> >
> > (c) obtain the assistance of one or more experts, in which case Rule 11-5 applies, and
> >
> > (d) order a trial of the chambers proceeding, either generally or on an issue, and order pleadings to be filed and, in that event, give directions for the conduct of the trial and of pre-trial proceedings and for the disposition of the chambers proceeding.

[37] In *HGE Administrative Services Ltd. v. Perrick*, 2011 BCCA 308 at paras. 17-20, the Court of Appeal set out the test for determining whether there is a triable issue:

> [17] It is well established that an *order nisi* will not be granted unless it is "manifestly clear" that there is no bona fide triable issue. In *Northland Bank v. Kocken* (1993), 1993 CanLII 287 (BC CA), 100 D.L.R. (4th) 753 at 760, 77 B.C.L.R. (2d) 377, this Court found:
>
> > The issue raised by the appellants was whether the proceeding should go to trial in the ordinary way or be determined on affidavit evidence. In *Bank of British Columbia v. Pickering* (1983), 1983 CanLII 178 (BC CA), 62 B.C.L.R. 136 (C.A.), this court set out the question that must be asked in deciding just such an issue. At p. 138 Mr. Justice Taggart said:
> >
> > > On an application such as this the provisions of R. 52(11) govern. ... There has been some suggestion in some of the authorities to which we were referred that there is a distinction to be drawn between what must be found in order to act under R. 18, the summary judgment rule, and that which must be found in order that the court may act under R. 52(11). I think the distinction is somewhat illusory. To me, I think the matter is stated as clearly as it can be stated by Seaton J.A. in the *Skalbania* case, [*Memphis Rogues Ltd. v. Skalbania* (1982), 1982 CanLII 469 (BC CA), 38 B.C.L.R. 193, 29 C.P.C. 105 (C.A.)]. There at p. 202 he said:

> "The question has been stated in a number of ways: Is there no real substantial question to be tried? Is there no dispute as to facts or law which raises a reasonable doubt? Is it manifestly clear that the appellants are without a defence that deserves to be tried? Although cast in different terms, all point to the same inquiry, namely, is there a bona fide triable issue?"

[18] In *Royal Bank of Canada v. Rizkalla* (1984), 1984 CanLII 396 (BC SC), 59 B.C.L.R. 324 at 325, 50 C.P.C. 292 (S.C. Chambers), McLachlin J., as she then was, set out the principles that should guide the court in determining whether a petition for foreclosure should be referred to the trial list:

> There is no dispute as to the legal principles which should guide this court in determining whether the petitioner's claim should be referred for trial. Unless it is manifestly clear that the mortgagors are without a defence that deserves to be tried, their application to place the matter on the trial list should be granted. ... [Emphasis added.]

[19] In determining whether a triable issue exists, the role of a judge in chambers or a master is not to determine any issue of fact or law. Rather, their function is limited to a determination of whether a *bona fide* triable issue arises on the material before the court in the context of the applicable law: *Re Hughes v. Sharp* (1969), 1969 CanLII 792 (BC CA), 5 D.L.R. (3d) 760 at 763, 68 W.W.R. 706 (B.C.C.A.).

[20] In *Northland Bank*, this Court found at 760-761:

> In determining whether there is a bona fide triable issue the chambers judge does not enter upon a detailed consideration of the merits. This is so because there may be a trial of that issue in any event. Rule 18 does not give rise to a summary trial: See *Soni v. Malik* (1985), 1985 CanLII 375 (BC SC), 1 C.P.C. (2d) 53, 61 B.C.L.R. 36 (S.C.).
>
> This distinction is especially relevant in mortgage proceedings. The introduction of Rule 50 recognized that in many, if not most, foreclosure proceedings default is not contested. Removing all foreclosure proceedings into chambers effected a saving in time and money in most cases. In my view, however, Rule 50 was not intended to derogate from the legitimate rights of mortgagors. The same can be said of the interests and rights of guarantors who may be joined in the same petition under Rule 50(3).

[38] In *Cepuran v. Carlton*, 2022 BCCA 76, at paras. 159-160, the Court of Appeal found that judges hearing petitions that raise triable issues now have greater discretion to proceed and are not required to automatically refer the matter to trial:

> [159] The modern approach to civil procedure, as encouraged in *Hryniak*, is to allow parties and the trial courts to tailor the pre-trial and trial procedures to a given case, in the interests of proportionality and access to justice, while

> preserving the court's ability to fairly determine a case on the merits. In my view, R. 16-1(18) and R. 22-1(4) work to reflect this modern approach within a petition proceeding.
>
> [160] To summarize, I am of the view that a judge hearing a petition proceeding that raises triable issues is not required to refer the matter to trial. The judge has discretion to do so or to use hybrid procedures within the petition proceeding itself to assist in determining the issues, pursuant to R. 16-1(18) and R. 22-1(4). For example, the judge may decide that some limited discovery of documents or cross-examination on affidavits will provide an opportunity to investigate or challenge the triable issue sufficiently to allow it to be fairly determined by the court within the petition proceeding, without the need to convert the proceeding to an action and refer it to trial.

Analysis

[39] The Borrowers say that they have raised triable issues which make it appropriate to convert the petition to an action and refer it to the trial list. These include:

a) With respect to the accounting, the petitioner has not included materials which confirm the accounting between the parties.

b) With respect to the amount owing under the loan, the August 2022 addendum was signed in July 2023. It was signed under duress and was unconscionable. They say the bargain reached was substantially unfair to the Borrowers, and they were at the mercy of the petitioner with respect to signing the addendum.

c) The petitioner was in a position of power relative to the Borrowers as at July 2023 and took advantage of that power by giving them an ultimatum of signing the backdated addendum or it would make a demand on the loan.

d) Borrowers were under economic pressure that amounted to duress when they signed the addendum.

e) The petitioner immediately made demand on the loan after they signed the addendum, which was unconscionable.

Duress

[40] In *Saran v. Cartonio, Inc.*, 2020 BCSC 556, at paras. 42-45, Justice Mathews summarized the law relating to duress:

> [42] Mr. Saran argues that in order to prove coercion of the will, Mr. Carnovale must lead evidence that he protested at the time, that he did not have an alternative course open to him, that he was not independently advised on the contract and that after entering into the contract he took steps to avoid it. Mr. Saran relies on *Dairy Queen Canada, Inc. v. M.Y. Sundae Inc.*, 2017 BCCA 442, at paras. 48 to 53, citing among other cases *Pao On v. Lau Yiu Long*, [1979] 3 All E.R. 65 (P.C.); and *Bell* (B.C.C.A.) at para. 83.
>
> [43] The defendants assert that there are two forms of duress. The first form is the traditional form of duress in which the elements are that there is coercion of the will of the contracting party and the pressure exerted on the contracting party is exercised in an unfair, excessive or coercive manner, see *Jestadt v. Performing Arts Lodge Vancouver*, 2013 BCCA 183, at para. 54. The second form is economic duress, which has three elements: One, a threat; two, threats were wrongful in that they were unfair, excessive or coercive; and three, wrongful threats overrode the targeted party's will to the point that that party had no choice, see *Song Woon Enterprises Ltd. v. 762138 B.C. Ltd.*, 2014 BCSC 967, at paras. 107-110.
>
> [44] The defendants submit that it is with regard to economic duress that the court must consider the evidentiary factors referred to in *Pao On*. Those are the same evidentiary factors about which Mr. Saran argues there must be evidence, including whether there was protest, whether there was an alternative course, whether there was independent advice and whether the party arguing duress took steps to avoid the contract after entering into it.
>
> [45] It is not clear to me whether the cases cited by both parties are referring to two different types of duress, ie: Traditional and economic (I note that it is clear that there is a type of duress called physical duress, but that is not relevant here), or whether the cases all refer to economic duress. In any event it is clear that there must be coercion of the will that is wrongful and that vitiates consent. The evidentiary factors pertaining to protest, an alternative course, independent advice and steps to avoid the contract are not determinative but considerations that inform the analysis: *Song Woon* at paras. 108-110, *Bell* (B.C.C.A.) at para. 83.

[41] I do not agree that on the evidence tendered there is a triable issue regarding there being possible duress involved with the third modification of mortgage. The parties had been through two previous modifications, both of which involved execution of amended agreement and modification of mortgage document, which was subsequently registered with the Land Title Office. The same approach was taken by the petitioner for the third modification. The Borrowers were clearly well aware of the looming expiry of the second modification and extension agreement and expressly requested a further extension. They did not adequately explain why they and their lawyer’s approach to execution of the formal legal documents which

were sent out in late August 2022 was markedly different than had been the case with the two previous extensions.

[42] There is no evidence suggestive of the proposition that the Borrowers were under unreasonable economic pressure exerted by the petitioner. The Project was far over budget and two years late in completing. It appears that the efforts to secure a final occupancy permit were significantly delayed. That needed to be done before the units could be rented and begin generating rental revenue. It appears the Borrowers' efforts to secure takeout financing were delayed or unsuccessful. Approaching July 1, 2022, the term of the second mortgage extension would expire, and the petitioner would be in a position to foreclose. These are simply the realities associated with a delayed and over-budget Project and the financing the Borrowers had arranged with the petitioner. It is understandable that the Borrowers were not happy that the interest rate increase was included in the third and final modification and extension agreement, but the petitioner conditioning an extension on an interest rate increase was its prerogative. If the Borrowers did not wish to accept this, they could have arranged other financing to take out the petitioner's mortgage or taken their chances that the petitioner might forbear initiating foreclosure proceedings after the second extension expired.

[43] I also note that the principal of the Borrowers is a sophisticated businessperson who had assistance of legal counsel when deciding to eventually execute and return the third extension agreement and modification of mortgage.

Unconscionability

[44] In *Pearce v. 4 Pillars Consulting Group Inc.*, 2021 BCCA 198 at paras. 195-204, the Court of Appeal summarized the law relating to unconscionability:

> [195] Two important presumptions support the doctrine of freedom to contract. First, the presumption that contracting parties are best situated to assess and protect their interests while bargaining. Second, the presumption that the contracting parties are relatively equal, and thus any contract is negotiated and agreed upon, and therefore fair: *Uber* at 56.

> [196] Where the facts of a case line up closely with the presumptions underlying freedom of contract, the arguments for enforcing such a contract will be at their strongest: *Uber* at para. 57.
>
> [197] Where these traditional presumptions are not true, however, the doctrine of unconscionability is available. Unconscionability is an equitable doctrine used to set aside unfair agreements that were formed due to an inequality in bargaining power: *Uber* at para. 54, citing John D. McCamus, *The Law of Contracts*, 2nd ed (Toronto: Irwin Law, 2012) at 424.
>
> [198] Thus, where it can be shown that an unfair bargaining process led to an unfair contract, the doctrine of unconscionability is available to prevent the "harshness of the common law" without risking undermining the core values on which freedom of contract is based: *Uber* at para. 59, citing *McCamus* at 10.
>
> [199] The doctrine of unconscionability is not available in cases where an unfair bargain is the result of a fair bargaining process.
>
> [200] The doctrine of unconscionability has two elements. First, the party claiming unconscionability must prove there was inequality of bargaining power between the parties. Second, the party must show the contractual term at issue is improvident: *Uber* at paras. 62–65.
>
> [201] Inequality of bargaining power exists where one party is unable to protect their interests in the contracting process: *Uber* at para. 66. Although differences in wealth, knowledge or experience can be relevant, there is no set class of inequities that will result in a finding of inequality. Importantly, the inequities do not need to be so serious as to negate the party's capacity to enter a valid contract: *Uber* at para. 67.
>
> [202] Examples of inequality are seen in "necessity" cases, where the weaker contracting party is dependent on the stronger party and would accept almost any terms. Other examples include "where a party is vulnerable due to financial desperation" or where there is a "special relationship of trust and confidence". Unconscionability may be established even where the circumstances of duress or undue influence are absent: *Uber* at paras. 69–70.
>
> [203] Another common example of inequality in bargaining power is where only one party could understand and appreciate the importance of the contractual term at issue. For example, the contract may contain dense or difficult to understand terms, which a layperson would have difficulty understanding (so-called "cognitive asymmetry"): *Uber* at 71.
>
> [204] The second element of unconscionability, an improvident bargain, requires either an undue advantage to the stronger party or an undue disadvantage to the weaker party. This is measured at the time the contract was entered into—if some subsequent development renders a previously fair contract unfair, the disadvantaged party will not be able to escape it through the doctrine of unconscionability: *Uber* at para. 74.

[45] On the evidence tendered, there is no factual basis which raises a triable issue regarding the third extension and the associated increase in interest rate being

unconscionable. The original interest rate granted on the mortgage was exceptionally low. The modified rate was RBC Prime Rate. The latter does not qualify as an unconscionable rate of interest, and the third extension and modification do not qualify as an improvident bargain generally. If the increase in interest was not acceptable, the Borrowers could have declined the third extension and made other arrangements.

Other Issues

[46] I am also not satisfied on the evidence presented that there is a triable issue regarding the accounting. The petitioner provided sworn evidence confirming the amounts claimed. The Borrowers simply argue it is not adequately supported, without identifying significant specific concerns and discrepancies which lend substance to their concerns.

[47] The other alleged triable issues appear to be related to duress and unconscionability. As noted, I am not persuaded that there is evidence making out a triable issue on either of those two points.

Order Made

[48] I grant an order *nisi* of foreclosure on the terms set out in the Revised Statement of Relief Sought for the April 11, 2024 hearing. That includes:

a) A declaration of default;

b) A six-month redemption period;

c) Redemption amount $18,040,130.72 as at April 11, 2024;

d) Personal judgment against Olympic and TBS; and

e) Right to apply for a further summary accounting.

[49] Given that this was a more complex application for order *nisi* than normal, I think it is appropriate to grant the petitioner costs at Scale B.

"Associate Judge Bilawich"