IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *GC Capital Inc. v. 1161359 B.C. Ltd.,* 2024 BCSC 2378

Date: 20241230
Docket: H190537
Registry: Vancouver

Between:

GC Capital Inc. (formerly 1162143 B.C. Ltd.)

Petitioner

And

1161359 B.C. Ltd., Cameray Garden Holdings Ltd., Helen Chan Sun, David Grewal (also known as Devinder Singh Grewal), The Owners, Strata Plan NWS289 (also known as The Owners, Strata Plan NW289), Richard John Hui, and Tenant(s)/Occupant(s)

Respondents

Before: Registrar Gaily

[Decision in Subpoena to Debtor Proceedings]

Counsel for Petitioner:	R.R. Hira KC & A.K. Hall
Counsel for Respondent, Helen Chan Sun:	D.P. Lucas
Place and Dates of Hearing:	Vancouver, B.C. March 27, May 13, August 13, and November 28, 2024
Place and Date of Decision:	Vancouver, B.C. December 30, 2024

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Introduction

[1] These are my reasons regarding the examination of the judgment debtor, Helen Chan Sun, under a subpoena to debtor filed on February 5, 2024 by the judgment creditor, GC Capital Inc. (formerly known as 1162143 B.C. Ltd.) ("GC").

[2] In 2018, GC issued a $4,500,000 mortgage to the respondents, 1161359 B.C. Ltd. and Cameray Garden Holdings Ltd. (together, the "Mortgagors"). Ms. Sun and Devinder (David) Singh Grewal (together, the "Guarantors") guaranteed the mortgage. When the Mortgagors defaulted, GC commenced foreclosure proceedings. On February 10, 2020, Master Elwood (as he then was) granted judgment in favour of GC against the Mortgagors and the Guarantors for $5,332,811.87, plus interest. GC registered judgment on property owned by Ms. Sun on June 1, 2020.

[3] In 2021, Ms. Sun entered into a settlement agreement with GC under which she agreed to pay GC $5,677,159.03 in installments. Ms. Sun paid approximately $3,000,000 towards the debt, but since the summer of 2022, Ms. Sun has refused to pay the balance owing.

[4] Given the history of the proceedings in this matter (described below), on the examination before me GC only seeks a payment order, asking that I order Ms. Sun to pay $300,000 per month until the debt is paid in full. In contrast, Ms. Sun's counsel submits that Ms. Sun's ability to pay the debt is adversely affected by the current real estate market and that she is "cash poor". He submits that given her liquidity issues, an appropriate payment order is $3,000 per month.

[5] As detailed below, the evidence before me on this subpoena to debtor examination is unlike any I have heard to date. Ms. Sun did not at any point during the examination testify that she does not have the ability to pay the debt in full. Although she says that her annual income is $60,000 to $70,000 and that she owes the Canada Revenue Agency some $5,000,000, she does not deny that she is personally owed approximately $18,000,000 for a shareholder's loan she made to one of her companies. There was no evidence before me that this company would

suffer financial hardship if Ms. Sun called in a portion of the loan to pay the debt owing to GC.

[6] Based on the evidence before me, I am satisfied that Ms. Sun has the financial means to pay the debt owing to GC and I find that in the circumstances, it is appropriate to order Ms. Sun to pay no less than $300,000 per month to GC, until the debt is paid in full. I accept that she may not be able to immediately access the funds. Accordingly, I order that Ms. Sun is to commence making the monthly payments to GC of $300,000 starting February 15, 2025, continuing on or before the 15th day of each month thereafter until the debt is paid in full.

[7] As discussed below, at the examination, the parties disputed the amount owing as they disagree about the applicable interest rate. At the conclusion of this decision, I have summarized the law regarding the usual interest rates applied in foreclosure proceedings, but as registrar sitting on a subpoena to debtor examination, I do not have the jurisdiction to determine the amount owing. If the parties are unable to resolve the issue, they should set down a hearing in foreclosure chambers.

Background of Underlying Proceedings

[8] The underlying proceedings involved a property development in Burnaby BC.

[9] On April 27, 2018, pursuant to a commitment letter, GC agreed to loan $4,500,000 to the Mortgagors (the “Loan”). In the statutory declaration Ms. Sun provided to GC dated April 29, 2018, Ms. Sun declared that her personal net worth was $94,419,300. On April 30, 2018, the Guarantors executed a guarantee agreement, guaranteeing that they would be liable to GC for the Loan. That same day, Ms. Sun also executed a general security agreement (“GSA”) granting GC a security interest in all of her “present and after acquired personal property”, which also charged Ms. Sun’s investment property. GC registered the GSA in the Personal Property Registry.

[10] In June 2019, the Mortgagors defaulted under the Loan.

[11] GC commenced foreclosure proceedings and, as noted, on February 10, 2020, Master Elwood granted judgment in favour of GC against the Mortgagors and the Guarantors for $5,332,811.87 (the "Elwood Order *Nisi*"). Paragraph 9 of the Elwood Order *Nisi* determined the amount owing as follows:

> The amount due and owing under the Loan and Security as of February 10, 2020 is the sum of $5,332,811.87, plus *per diem* interest currently at the rate of $3,047.32 from and including February 10, 2020, plus [GC's] costs of this proceeding on a special costs basis, or, alternatively, a party and party costs basis pursuant to Scale B or such other scale as may be appropriate (the "Amount Required to Redeem").

[12] In para. 10, Master Elwood noted the interest rate under the Mortgage and in para. 11 of the Elwood Order *Nisi*, the redemption period was set for one day. In para. 13, Master Elwood specifically found that the Guarantors "have made default under the terms of the GSA dated April 30, 2018 and all monies secured thereby are due and owing." With respect to judgment, the Elwood Order *Nisi* provides as follows in paragraph 14:

> 14. Judgment be granted in favour of the Petitioner against the … Mortgagors, and the … Guarantors in the sum of $5,332,811.87 plus per diem interest currently at $3,047.32 from and including February 10, 2020 to and including the date of judgment together with the Petitioner's costs of this proceeding on a special costs basis or, alternatively, a party and party costs basis pursuant to Scale B or such other scale as may be appropriate.

(the "Judgment")

[13] On June 1, 2020, pursuant to the Elwood Order *Nisi*, GC registered the Judgment against property owned by Ms. Sun on West 37th Avenue in Vancouver, BC.

[14] On March 11, 2021, GC filed an application seeking various orders against Ms. Sun, including orders for disclosure and an order permitting GC to seize shares of companies of which she was a shareholder, pursuant to the GSA (the "Disclosure Application").

[15] On March 24, 2021, GC and Ms. Sun entered into a settlement agreement, pursuant to which the parties agreed to adjourn generally the Disclosure Application

and Ms. Sun agreed to pay GC $5,677,159 in installments between April 1, 2021 and March 31, 2023 (the "Settlement Agreement"). Pursuant to the schedule set out in the Settlement Agreement, Ms. Sun made the following payments: $100,000 on March 31, 2021; $400,000 on July 2, 2021; $750,000 on September 29, 2021; $750,000 on December 17, 2021; and $750,000 on March 30, 2022.

[16] When Ms. Sun did not make the $750,000 payment scheduled for June 30, 2022, GC set the Disclosure Application down for hearing.

[17] On July 26, 2022, Justice Brundrett heard the Disclosure Application. In the order he pronounced on July 26 (which was entered on August 31, 2022) (the "Disclosure Order"), Ms. Sun was ordered to attend a two-day examination in aid of execution and, within four weeks of the date of the Disclosure Order, Ms. Sun was to produce and deliver to GC the following documents:

- The most recent financial statements for any corporations in which she is a director and/or shareholder and/or officer and/or which she controls;
- The most recent financial statement for any limited partnership and/or general partnership in which she is a partner and/or shareholder and/or officer and/or which she controls;
- Updated financial and/or personal worth statements providing full particulars of Ms. Sun's assets, debts and sources of income;
- Ms. Sun's personal income tax returns and any notices of assessment for the years 2019, 2020 and 2021;
- The income tax returns and any notices of assessment for any companies and/or corporations and/or partnerships in which Ms. Sun is a director and/or partner, and/or shareholder, and/or officer and/or controls for 2019, 2020 and 2021; and
- Copies of the share certificates for any of Ms. Sun's companies, including the share certificates of the companies listed in the attached schedule.

[18] The following fourteen companies are those listed in the schedule to the Disclosure Order:

- Landmark Premiere Properties (Central Plaza) Ltd.
- Landmark Premiere Properties Ltd.
- Lord Street Holdings Ltd.
- Shawn Oaks Holdings Ltd.
- 1530 Foster Street Ltd.
- Landmark White Rock Holdings Ltd. (formerly 1038973 B.C. Ltd.)
- Oakridge Heather Baillie Holdings Ltd. (formerly 1037210 B.C. Ltd.)
- Landmark Stanton Limited Partnership
- Landmark Lord Street Holdings (G.P.) Ltd.
- Landmark Premiere Properties (White Rock) Ltd.
- Landmark Premiere Properties (Oakridge) Ltd.
- Landmark Premiere Properties (Shawn Oaks) GP Ltd.
- Landmark Premiere Properties (Guildford) Ltd.
- Landmark Premiere Properties (Alberta Street) Ltd. (formerly Landmark Premiere Properties Arbutus) Ltd.)

[19] Brundrett J. adjourned generally the rest of the Disclosure Application and seized himself of it.

[20] On October 4, 2022, GC filed an application seeking, among other things, a declaration that Ms. Sun was in contempt of the Disclosure Order (the “Contempt Application”). In response to the Contempt Application, Ms. Sun filed an affidavit on October 13, 2022 (which she swore on October 12, 2022), which exhibited a personal financial statement indicating her net worth was $33,277,542.10 (Ex. F to that affidavit). Ms. Sun filed a second affidavit on October 13, 2022, which she swore that same day, which exhibited a corrected personal net worth statement, indicating that her net worth was $33,277,542.10, but correcting the value of her real estate assets and the mortgage liabilities (Ex. B to that affidavit).

[21] Brundrett J. heard the Contempt Application on October 17, 2022. He ordered it dismissed, with leave to reapply for the same order or additional orders, after 30 days. Brundrett J. remained seized of the Contempt Application. In the oral reasons

he delivered (*GC Capital Inc. v. 1161359 B.C. Ltd.* (17 October 2022), Vancouver H190537 (B.C.S.C.)), Brundrett J. noted that Ms. Sun had paid some of the funds owing under the Judgment (para. 4), and that she had provided some of the documents listed in the Disclosure Order, but her disclosure was incomplete and the examination in aid of execution he had ordered had not been held (para. 6).

[22] On November 17, 2022, Ms. Sun filed three separate applications seeking various forms of relief in GC's enforcement proceedings against her. In support of her applications, she filed an affidavit on November 17, 2022, in which she attested that she does "not have steady income in the sense of employment income or monthly draws against a fund of money, or similar steady sources of income" (para. 5). On December 16, 2022, GC filed a requisition setting the hearing of Ms. Sun's three applications, as well as a renewed Contempt Application, before Brundrett J. for two days, commencing on February 23, 2023. GC filed its renewed Contempt Application on February 1, 2023.

[23] The parties appeared before Brundrett J. on February 23, 2023 and the court summary sheet reflects that he adjourned generally the Contempt Application, directing that it should not be reset until the parties had attempted the examination in aid of execution. He also directed that he was no longer seized of the proceedings.

[24] The examination in aid of execution was scheduled for late April 2023, but on April 26, 2023, Ms. Sun paid GC a further $100,000, and that examination was adjourned.

[25] On June 9, 2023, GC again filed a Contempt Application, setting it for hearing on July 5, 2023. The Contempt Application did not proceed on July 5 and was reset for October 5, 2023. On October 5, before Justice Crossin, the parties agreed to adjourn the Contempt Application by consent and Ms. Sun agreed to pay GC $50,000 in costs.

[26] The material before me also included an affidavit of Ms. Sun that was filed on October 5, 2023, before the examination in aid of execution. In this affidavit, Ms. Sun

attests that she is in the business of real estate development and the CEO of Landmark Premiere Properties Ltd. (“Landmark Premiere”) (para. 3). Among other things, in this affidavit, she attests that Landmark Premiere has completed “several successful real estate development projects in the greater Vancouver area”, citing the example of the “construction and occupancy by the purchasers of two condominium towers in White Rock, BC., known as the Foster Martin project” (paras. 3 and 4).

[27] GC’s counsel, Ravi Hira KC and Ashleigh Hall, conducted an examination in aid of execution of Ms. Sun on November 29, 2023, at which they made several requests for further information and documentation from Ms. Sun.

The Subpoena to Debtor Examination

[28] GC filed the subpoena to debtor on February 5, 2024, together with the second affidavit of Henry Chung, GC’s financial controller, made on February 2, 2024. On March 12, 2024, Associate Judge Vos granted GC leave to serve the subpoena and supporting materials on Ms. Sun by emailing them to her new counsel, Devin Lucas at Kornfeld LLP (as well as emailing them to her personally, and mailing them to her home address). The subpoena to debtor was initially set for a half day hearing at 2:00 on March 27, 2024.

[29] Ms. Sun, who testified through a Mandarin interpreter, was examined at length by Mr. Hira. The examination did not complete on March 27. It was continued on May 13 and August 13, and concluded on November 28, 2024.

[30] The evening of March 26, 2024, Ms. Sun provided some of the documents requested at the examination in aid of execution to GC’s counsel, including copies of her personal credit card statements for January through December, 2023 (the “TD Visa Statements”) (Ex. #2), and copies of bank statements from her personal account for January through December 2023 (the “BMO Account Statements”) (Ex. #4). During the course of the subpoena to debtor examination, Ms. Sun produced two copies of the corporate tax return for Landmark Premiere Properties (White Rock), for the tax year ending June 30, 2021 (Ex. #6).

[31] GC provided a documents binder containing the statutory declaration Ms. Sun made on April 27, 2018, as well as the four affidavits Ms. Sun filed on October 12, 13 and November 17, 2022 and October 4, 2023 (referred to above). The hearing record was marked as Exhibit #1, and it contains the transcript of the November 29, 2023 examination in aid of execution of Ms. Sun, as well as exhibits to the transcript, the Disclosure Order and the order of Vos A.J., as well as the affidavit of Melanie Yee, an assistant at Mr. Hira and Ms. Hall's law firm, made February 27, 2024.

[32] The evidence before me also included a binder prepared by GC's counsel as an *aide memoire* (Ex. #5) (the "*Aide Memoire* Binder"), which contained copies of various corporate records for twenty-six related companies. Ms. Sun does not dispute that, as set out in the *Aide Memoire* Binder, she is the sole shareholder and only director of Landmark Premiere, as well as of Landmark Premiere Properties (White Rock) Ltd. ("Landmark White Rock"), and Landmark White Rock Holdings Ltd. ("White Rock Holdings"). Ms. Sun does not dispute that she also personally holds shares in other companies (although she is not the sole shareholder of these companies), and she does not dispute that some of the companies she controls (in particular, Landmark Premiere) hold all or the majority of shares in other companies, as set out in the *Aide Memoire* Binder.

[33] Before me, Ms. Sun testified that she did not know the current value of her assets, that is, the value of her shareholdings.

[34] Ms. Sun acknowledged that on the personal financial statement exhibited to the affidavit she swore on October 13, 2022, her personal net worth is listed as $33,277,542.10. Ms. Sun also acknowledged that in the updated personal financial statement provided by her counsel to GC's counsel on November 24, 2023 (the "2023 Statement"), her personal net worth is listed as $21,238,533.41. The value of Ms. Sun's assets, made up of cash and financial instruments, real estate and private holdings, is listed on the 2023 Statement as $48,138,533.41. Her total liabilities on the 2023 Statement are listed at $26,900,000. When asked by Mr. Hira to estimate her current personal net worth, Ms. Sun said she did not know what it was and

refused to estimate it. She said she had not been told she would need to provide this information at the subpoena to debtor examination.

[35] Ms. Sun testified that the vehicles she drives are leased by the companies and that she lives with her mother and does not pay her mother rent.

[36] Ms. Sun testified that she earns between $60,000 to $70,000 CDN per year. Mr. Hira reviewed the BMO Account Statements with her and Ms. Sun agreed that they illustrate that she receives monthly payments of approximately $4,000 from Landmark Premiere. When Mr. Hira asked her about two deposits of $31,250 each, made on August 30 and October 30, 2023, Ms. Sun testified that these funds were provided to her by Landmark Premiere Properties (Central Plaza) Ltd. (“Landmark Central Plaza”) (a company of which she is one of two directors and in which another company solely owned by her owns 50% of the shares, according to the information in the *Aide Memoire* Binder). Ms. Sun said that the company had asked her to donate these funds on its behalf, but there was no evidence before me to confirm this (such as copies of donation tax receipts). Ms. Sun agreed with Mr. Hira that, based on the evidence in the BMO Account, her income in 2023 was in excess of $100,000.

[37] Mr. Hira also asked Ms. Sun about the TD Visa Statements, which reflect that throughout 2023, she regularly made expensive purchases at luxury stores. I note several of them. On January 15, 2023, she made a purchase for $2,430.40 at the Dior boutique in the Hotel Vancouver (“Dior”). Ms. Sun admitted she had travelled to Las Vegas in March 2023, and the TD Visa Statements show that, among other things, on March 20, 2023 she made a purchase of $703.94 CDN at the Cartier store at the Bellagio, as well as a purchase of $2,995.48 at the Duty Free by Nuance store. She said this trip was a personal trip and the purchases were for her. On April 30, she spent $1,176.28 at Dior, on May 12, she spent $616.28 at Hermes in Vancouver (“Hermes”), and on May 21, she spent $2,582.72 at Nordstrom in Vancouver. On June 24, she spent $1,797.57 at the Ports store in Richmond. The statement dated September 6, 2023, shows purchases on August 7 of $11,145.32 at

Holt Renfrew, on August 10 of $1,232.28 at Dior and one for $627.48 at Hermes, on August 18 of $1,948.80 at the Weekend by Max Mara store in Metrotown, and on September 2, two purchases at the Armani Outlet of $1,227.70 and $1,352.40 respectively. In November, 2023, Ms. Sun made three purchases at Holt Renfrew on the 23, 24 and 25, of $2,288.43, $3,453.86 and $595.73 respectively, and on November 25, she made a purchase of $1,540.28 at Hermes.

[38] Ms. Sun testified that many of the purchases on the TD Visa Statements were gifts and prizes for staff, or gifts for investors (for example, she identified a purchase on May 21, 2023 for $891 at the Le Petit Pont store as a gift for the grandson of an investor), but she maintained that she would have to check the records to determine which expenditures were hers personally and which were for her companies. She testified that for company expenses, she submitted receipts to the company and received money from the company to pay for the expenses. Ms. Sun admitted that she had not familiarized herself with the TD Visa Statements before attending the examination before me and throughout the examination, she could not identify most of the purchases. She tendered no evidence at the examination to support her testimony that some purchases reflected in the TD Visa Statements were company purchases.

[39] When asked why she did not use one of the company credit cards she had produced at the examination in aid of execution to make company expenditures, she testified that if she wasn’t carrying the company credit card (her example was that she did not carry the company cards on weekends), she would use her personal card.

[40] Mr. Hira pointed out to Ms. Sun that, as reflected on the TD Visa Statements, the balance owing is paid in full each month, but there are no payments from her personal account (as reflected on the BMO Account Statements) to the TD Visa. Ms. Sun testified that her mother had paid some of the balance owing on her credit card. She also testified that her company (she thought it was Landmark Premiere) paid the company expenses and that she paid some of her personal expenses from

the joint account she still has with her ex-husband. When asked why she had not produced copies of the bank statements of the joint account, Ms. Sun testified that she has not produced copies of these bank statements because her ex-husband refuses to consent to the production of this information.

[41] Mr. Hira questioned Ms. Sun extensively about her assets, namely, the shares she holds in those companies listed in the *Aide Memoire* Binder and, in particular, her shareholdings in the listed companies that have real estate holdings. Ms. Sun did not dispute that she holds shares in the various companies Mr. Hira asked about, either personally or through another company in which she holds all or the majority of shares. The companies that hold valuable real estate include 15160 North Bluff Road Ltd., 1530 Foster Street Ltd., Guildford Mall Holdings Ltd., and Landmark Shawn Oaks Development Ltd., but the shares in these companies are not issued to Ms. Sun personally, but to other companies in which she is a majority shareholder (in particular, to Landmark Premiere and Central Plaza).

[42] Mr. Lucas objected to Mr. Hira questioning Ms. Sun about the value of real property held by the companies in which Ms. Sun does not personally hold shares (but holds shares through another company). Mr. Lucas asserted that by asking Ms. Sun questions about the value of the properties held by these companies, Mr. Hira was improperly attempting to “pierce the corporate veil” of these companies (that is, look behind the corporate structure in place) and attribute the value of these companies’ assets (the real property held by these companies) to Ms. Sun herself.

[43] I permitted Mr. Hira to examine Ms. Sun to a limited extent about the value of the properties owned by the companies in which the shares are held by Ms. Sun’s other companies. It is clear from the financial statements she exhibited to her sworn affidavits in these proceedings that Ms. Sun’s assets are her shareholdings. Given Ms. Sun’s refusal to estimate her personal net worth when asked by Mr. Hira, I find he was entitled to attempt to determine the value of Ms. Sun’s shares by questioning about the value of properties held by the companies in which she holds shares, or in which her companies hold shares.

[44] In any event, Ms. Sun's invariable response to Mr. Hira's questions about the value of the real properties was that she did not know the value of any of the properties Mr. Hira asked her about and she would have to check with others. When Mr. Hira put to her copies of publicly available assessment reports from the website of the BC Assessment Authority to verify the value of particular properties, Ms. Sun's response was that she could see the value on the assessment report put to her (the value "on paper"), but she could not herself confirm the value of the property in question and would have to check with the company. She said that because there were frequent disagreements about the assessed values of properties, the companies appealed the assessments, and she did not know the results of the appeals. When Mr. Hira asked Ms. Sun if she would agree with him that certain of the companies owned specific properties based on searches of the Land Title Office, Ms. Sun again responded that "on paper" the company owned them, but she would not agree because she would have to check with the company itself.

[45] Mr. Hira put to Ms. Sun evidence that her company, Landmark Premiere, owes her several million dollars in a shareholder loan, as set out on the Landmark Premiere financial statement for the year ending June 2022, which she had signed (an exhibit to the transcript of the examination in aid of execution contained in Ex. #1 before me). This financial statement shows that as the sole shareholder, Ms. Sun is owed over $18,000,000 by Landmark Premiere. Ms. Sun's evidence was that she could not confirm the exact amount owing to her because she did not have "the data". When asked by Mr. Hira to estimate the amount owing to her, she refused to estimate it, but said that she could "acknowledge" that it owes her a substantial amount of money. She also admitted that she has never received any payments from Landmark Premiere for the shareholder loan she advanced.

Discussion

[46] As set out in Rule 13-3(4) of the *Supreme Court Civil Rules* [*Rules*], an examination under a subpoena issued by a creditor who has obtained an order of the court for the payment of money, addresses the income and property of the debtor, the debts owed to and by the debtor, the disposal the debtor has made of

any property, and the means the debtor "has, or has had, or in future may have", of satisfying the order.

[47] The subpoena that is issued to a debtor in Form 56 of the *Rules* states that the debtor is required to appear personally at the courthouse to be examined on oath as to the debtor's income and property, the debts owed to and by the debtor, the disposal the debtor has made of any property and the means the debtor has, or has had, or in future may have, of satisfying the order.

[48] Ms. Sun testified before me over the course of the subpoena to debtor proceedings on four separate occasions. Ms. Sun was clearly frustrated that she was being examined as a result of the subpoena and I found her to be frequently hostile to Mr. Hira. For example, when asked why she had not produced statements for the credit cards that she had produced at the examination in aid of execution, she asserted that she had not voluntarily produced those credit cards, but that Mr. Hira and Ms. Hall had taken them from her by force. When Mr. Hira questioned her about that assertion, she said that they forced her to take them from her purse (but she admitted that her counsel, Mr. Lucas, attended the examination with her).

[49] I found Ms. Sun was evasive throughout the examination before me and that her refusals to answer questions estimating her personal net worth and the amount owing to her by Landmark Premiere under the shareholder loan were purposely obstructionist. I am satisfied that Ms. Sun was informed about the nature of the questions she would be asked on the subpoena to debtor examination – as noted above, this is clearly set out on the subpoena itself – but that she chose to avoid giving evidence by stating she needed to check or confirm with others.

[50] Mr. Lucas submits that on a subpoena to debtor examination, the court cannot make an order for substantial monthly payments, such as those sought by GC here, when "there are not actual means shown" that the judgment debtor can make the payments. He submits that Ms. Sun has not disclosed that she has the "actual" means to pay the judgment and that she is "cash poor", pointing to the evidence in the BMO Account Statements, and that I should take the evidence

before me of her net worth set out in the personal financial statements “with a grain of salt”.

[51] Despite Mr. Lucas’s submissions, I find that the evidence before me establishes that Ms. Sun has the means to pay the debt owing to GC. Ms. Sun refused to estimate her personal net worth when asked by Mr. Hira, but she did not tender any evidence to refute the amounts set out on the personal net worth statements she had exhibited to her affidavits filed in court.

[52] Like some of the debtors in the cases the parties referred me to, despite her evidence that she has a modest annual income of $60,000 to $70,000, Ms. Sun regularly makes purchases at luxury stores and does not deny that she has travelled since the Judgment was rendered. I cannot ignore the evidence in the TD Visa Statements. I find that Ms. Sun leads a lavish lifestyle making regular purchases at luxury stores, which are indicative of someone whose income well exceeds the $60,000 to $70,000 she claims to make on an annual basis. I found her testimony that many of the purchases were gifts or prizes for persons at her companies or investors lacks credibility and her inability to remember or identify specific major purchases (such as the $11,000 purchase at Holt Renfrew) defies credulity.

[53] Unlike the debtors in the cases cited by the parties, Ms. Sun does not deny that she is owed money well in excess of the debt to GC, namely the $18,000,000 owed to her by Landmark Premiere under her shareholder loan. Despite her evidence that she did not know the value of properties held by her companies or her own net worth, I find that Ms. Sun is a sophisticated businessperson who has invested heavily in real estate development in the lower mainland and I am satisfied on the evidence before me that her personal net worth exceeds $20,000,000, such that she has the ability to pay the debt owing to GC. Ms. Sun did not tender any evidence to refute this and despite Mr. Lucas’s submissions, as I noted, Ms. Sun did not once testify before me that she does not have the ability to pay the debt owing to GC.

[54] I am also satisfied that Ms. Sun has the ability to access the funds to pay the debt by calling in some of the shareholder's loan owed to her personally by Landmark Premiere. Ms. Sun is the sole shareholder of this company and she holds all of her shares personally - the shares are not held by another company with which she is associated. Ms. Sun did not tender any evidence before me that if she demanded repayment of the shareholder's loan she made to Landmark Premiere it could not be repaid, for example by showing that Landmark Premiere is insolvent in that its liabilities, including the shareholder loan, exceed its assets. Without any evidence, Mr. Lucas's submission that the current real estate market and interest rates makes it difficult for Ms. Sun to muster the funds to meet monthly payments of $300,000 does not satisfy me that is, in fact, the case.

[55] Regardless, the fact that a debtor has sufficient assets that, if realized upon, could satisfy the debt, establishes that she has the means to do so. The fact that it may not be comfortable for Ms. Sun to do so does not change that determination, particularly where the difficulty arises solely from the complex corporate structure the debtor has established herself.

Disposition

[56] For the above reasons, I am satisfied that it is appropriate in the circumstances of this case to order the judgment debtor, Ms. Sun, to make monthly payments of no less than $300,000 to GC, the judgment creditor, until the Judgment is paid in full.

[57] As I noted in the introductory paragraphs of this decision, the parties dispute the amount owing for the Judgment.

[58] At each of the dates of the examination, GC's counsel provided an endorsement of the amount payable by Ms. Sun, which includes GC's calculation of the interest owing under the Elwood Order *Nisi*, as well as the post-judgment interest accrued under the *Court Order Interest Act*, RSBC 1996, c 79 [*COIA*], attaching a schedule calculating the post-judgment interest under the *COIA* (together, the "Endorsement"), which it updated (Ex. #7, as updated). (GC also provided a bill of

costs, calculating its costs on Scale B, which Mr. Lucas advised he does not take issue with.)

[59] As set out above, para. 14 of the Elwood Order *Nisi* provides that the amount owing on the Judgment is "the sum of $5,332,811.87, plus *per diem* interest currently at the rate of $3,047.32 from and including February 10, 2020 …". This same language regarding the interest rate was used in para. 9 to determine the amount required to redeem. In the Endorsement provided on November 28, 2024 (the last day of the examination), GC calculates that the total amount owing, including the *per diem* and post-judgment interest, is $3,491,251.68. Of this amount, GC calculates that $344,347.16 is owed in *per diem* interest, for the 113 days from the date of the Elwood Order *Nisi* (February 10, 2020) to June 1, 2020 (the date the Judgment was registered on property owned by Ms. Sun). From June 1, 2020, GC has calculated the interest as post-judgment interest under the *COIA*.

[60] Mr. Lucas disputes GC's calculation of *per diem* interest, submitting that post-judgment interest under the *COIA* begins running from February 10, 2020 (the date of the Elwood Order *Nisi*), not from June 1, 2020.

[61] The established law with respect to the applicable interest rate in foreclosure proceedings is that "the moment personal judgment is granted, the amount payable on that judgment and the amount payable on the mortgage begin to diverge" and "when the redemption period has expired there will be two quite different balances", one to pay out the personal judgment against the mortgagor and one to pay out the mortgage: see *Courtenay Savings Credit Union v. Harle*, 1987 CanLII 2792 (BC CA), 13 B.C.L.R. (2d) 35, [*Courtenay Savings*], at para. 22.

[62] In *Pan-Canadian Mortgage Group III Inc. v. 679972 B.C. Ltd*., 2014 BCSC 1884, Chief Justice Hinkson referred to *Courtney Savings* (and other cases) when discussing the divergent interest rates arising after an order *nisi* has been pronounced:

> [26] The application before me stands to be determined by the application of the reasoning of the Court of Appeal in *Courtenay Savings Credit Union v.*

Harle (1987), 1987 CanLII 2792 (BC CA), 13 B.C.L.R. (2d) 357, [1987] B.C.J. No. 1268 (C.A.).

[27] I accept the submission of the purchaser's lien claimants that there are two aspects to an *order nisi* in foreclosure proceedings: the *in personam* judgment against the individual party or parties, and the *in rem* aspect, which runs with the land and pertains to the amount required to redeem the subject mortgage.

[28] As Mr. Justice Seaton pointed out in *Courtenay Savings Credit Union* at page 361:

The separate nature of the proceeding for personal judgment and the proceeding with regard to the land were dealt with, correctly in my view, by Berger J. in *Martens v. First Nat. Mtge. Co.* (1982), 1982 CanLII 582 (BC SC), 38 B.C.L.R. 270; 24 R.P.R. 260; 138 D.L.R. (3d) 180 (S.C.). Foreclosure or sale terminates the mortgagors' interest in the property, together with all other interests subordinate to the mortgage. Personal judgment does not affect the mortgagors' interest in the property.

[29] This distinction between the two aspects of an *order nisi* of foreclosure was highlighted by the decision of Madam Justice Gropper in *Versatile Mortgage Corp. v. Hemmingson*, 2010 BCSC 1361. The issue in that case was the measure of interest payable on an amount found due and owing for money advanced under a mortgage; specifically whether the interest accruing on the amount due and owing was subject to interest in accordance with the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, or the interest rate set out in the mortgage.

[30] Gropper J. concluded that the interest rate specified in the mortgage applied to the amount to be paid during the redemption period in order to redeem the property, but as the judgment granted against the company in the *order nisi* in that case included the principal amount plus interest at the mortgage rate up to that date, thereafter, the rate of interest on the judgment was interest, at the rate prescribed under the *Court Order Interest Act*.

[31] Until an order absolute of foreclosure is granted, if a payment is made on the debt secured by the mortgage, it is applied to both the *in rem* account to reduce the amount required to redeem, and as well to the *in personam* account to reduce the personal debt owing by the judgement debtor.

[32] As Seaton J.A. explained in *Courtenay Savings Credit Union* at page 364:

If the mortgage interest rate is other than 5 per cent the moment personal judgment is granted, the amount payable on that judgment and the amount payable on the mortgage begin to diverge. The judgment is attracting interest at 5 per cent and the mortgage at the mortgage rate. When the redemption period has expired there will be two quite different balances. The mortgagors can pay the amount of the personal judgment against them with interest at 5 per cent and they are no longer liable. That does not pay out the mortgage. The sum necessary to redeem the mortgage includes interest at the mortgage rate. There must be two accounts kept. Proceeds of sales must be credited to each of those accounts to determine the new balance in each

> account. When those two accounts are considered in this case it appears that the personal judgments have been paid, but the mortgage debt has not been paid. It follows that the mortgagee can take no further steps on the personal judgments but can proceed on the mortgage.
>
> It is now open to the mortgagee to recover the mortgage debt by foreclosure or sale of the final lot. The mortgagee thought that it could not sell because nothing remained on the personal judgments and sale would be an execution proceeding. I have already indicated that that is not so.
>
> [33] Thus, until the order absolute of foreclosure is granted, if a payment is made on the debt secured by the mortgage, the *in rem* account is subject to interest accrual at the rate specified in the mortgage, and the *in personam* account is subject to interest accrual at the rate prescribed by the *Court Order Interest Act*.

[63] In the Elwood Order *Nisi*, Master Elwood referred to *per diem* interest under the Mortgage terms in the Judgment paragraph. I do not know if the issue of the applicable interest rate was argued before Master Elwood and he turned his mind to the contractual rate of interest being applied to the Judgment, which is not the normal course.

[64] As stated above, as registrar, I have no jurisdiction to determine the amount owing on the Judgment. If the parties are unable to resolve the issue regarding the interest rate on the Judgment, they will have to appear in foreclosure chambers.

"Registrar Gaily"