

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

JAN 13 2010

ENTERED

No. H-091522  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

COAST CAPITAL SAVINGS CREDIT UNION

PETITIONER

AND:

THE SYMPHONY DEVELOPMENT CORPORATION,  
GURMEL SINGH KAINTH,  
SHMINDER JOHAL,  
497308 B.C. LTD.,  
0769932 B.C. LTD.,  
EMCO CORPORATION  
PACIFIC UTILITY CONTRACTING LTD.,  
UNLIMITED EXCAVATING & LANDSCAPING LTD.,  
JACK CEWE LTD.,  
C & C TRUCKING (1988) LTD.,  
OCEAN CONSTRUCTION SUPPLIES LIMITED,  
NORA ROSALIE MARVIN,  
BASSI BROTHERS FRAMING LTD.,  
UNITED RENTALS OF CANADA INC.,  
MCRAE'S ENVIRONMENTAL SERVICES LTD.,  
GRAESTONE READY MIX INC.,  
VALLEY GEOTECHNICAL ENGINEERING SERVICES LTD.,  
D.K. BOWINS & ASSOCIATES INC.,  
VANCOUVER CITY SAVINGS CREDIT UNION

RESPONDENTS

ORDER NISI OF FORECLOSURE

BEFORE ) MONDAY, THE 30<sup>th</sup> DAY OF  
MASTER BAKER ) NOVEMBER, 2009.

UPON THE APPLICATION of the Petitioner coming on for hearing this day at the Courthouse at Vancouver, British Columbia; AND UPON HEARING Shawn A. Poisson, counsel for the Petitioner, and no one appearing on behalf of the Respondents although duly served (with the exception of the Respondent, Gurmel Singh Kainth); AND UPON READING the materials sworn and filed herein:

**THIS COURT ORDERS AND DECLARES THAT:**

1. A mortgage (the "**Mortgage**") dated June 30, 2006 granted by the Respondent, The Symphony Development Corporation (the "**Borrower**") as mortgagor in favour of the Petitioner, as mortgagee, registered in the New Westminster/Vancouver Land Title Office (the "**LTO**") on July 6, 2006 under No. BA113354 (as extended by BB239323), creates a financial charge on the legal and beneficial title in and to the following lands and premises situate in the City of Maple Ridge, British Columbia and more particularly known and described as:

| <b>Parcel Identifier</b> | <b>Legal Description</b>   |
|--------------------------|--|
| 027-523-969              | Lot 1 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-523-977              | Lot 2 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-523-985              | Lot 3 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-523-993              | Lot 4 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-001              | Lot 5 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-019              | Lot 6 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-027              | Lot 7 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-035              | Lot 8 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-043              | Lot 9 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-051              | Lot 10 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-060              | Lot 11 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-078              | Lot 12 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-086              | Lot 13 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-094              | Lot 14 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-108              | Lot 15 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-116              | Lot 16 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-124              | Lot 17 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-132              | Lot 18 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-141              | Lot 19 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-159              | Lot 20 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-175              | Lot 21 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-183              | Lot 22 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-191              | Lot 23 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-205              | Lot 24 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-213              | Lot 25 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-221              | Lot 26 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-230              | Lot 27 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-248              | Lot 28 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-256              | Lot 29 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-264              | Lot 30 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-272              | Lot 31 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-281              | Lot 32 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-299              | Lot 33 Section 10 Township 12 New Westminster District Plan BCP36341 |
| 027-524-302              | Lot 34 Section 10 Township 12 New Westminster District Plan BCP36341 |

| Parcel Identifier | Legal Description   |
|-------------------|---|
| 027-524-311       | Lot 35 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-329       | Lot 36 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-337       | Lot 37 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-345       | Lot 38 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-353       | Lot 39 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-361       | Lot 40 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-370       | Lot 41 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-388       | Lot 42 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-396       | Lot 43 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-400       | Lot 44 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-524-418       | Lot 45 Section 10 Township 12 New Westminster District Plan BCP36341  |
| 027-513-122       | Lot 1 Section 10 and 11 Township 12 New Westminster District Plan BCP35626 except: part subdivided by Plan BCP36341 |

(collectively, the "**Lands**"), ranking in priority to the right, interest, or claim of the Respondents;

2. An assignment of rents dated June 30, 2006 (the "**Assignment of Rents**") made between the Borrower as assignor and the Petitioner as assignee, registered in the LTO on July 6, 2006 under no. BA113355 (as extended by BB239324), creates a financial charge on the legal and beneficial title to the Lands, ranking in priority to the right, interest, or claim of the Respondents;
3. A general security agreement (the "**GSA**") executed by the Borrower on June 30, 2006 in favour of the Petitioner, in respect of which a financing statement was registered in the Personal Property Registry of British Columbia (the "**PPR**") on June 26, 2006 under base registration no. 090309D, creates a fully attached and perfected security interest charging all of the Borrower's presently owned or held and after acquired or held goods, chattel paper, instruments, documents of title, money, securities and intangibles located at, or on about the Lands or used or acquired in connection with or primarily related to the business of the Borrower conducted on or with respect to the Lands, other than funds deposited or required to be retained under the *Builders Lien Act*, S.B.C. 1997, c. 45 (the "**BLA**"), which are held in trust by the Borrower or charged with payment of liens arising under the BLA (collectively, the "**Assets**"), ranking in priority to the right, interest or claim of the Respondents (with the exception of the Respondent, Vancouver City Savings Credit Union);
4. The Mortgage, the Assignment of Rents and the GSA (together, the "**Security**") are in default and that all monies secured by the Security are now due and owing.

5. The amount required to redeem the Security as at the date of this Order is \$11,370,493.71, together with interest on amounts advanced under and secured thereby at the Petitioner's Prime Rate plus ¾ % per annum, compounded monthly under the Security, not in advance, being a current daily rate of \$925.58 until December 1, 2009, subject to compounding of interest monthly thereafter as provided for in the Security and changes in the Petitioner's Prime Rate in the ordinary course of its business, from this date to and including the date of payment, plus the costs of the Petitioner in this proceeding to be assessed at Scale A (all of which amounts are collectively referred to as the "**Redemption Amount**").
6. The last date for redemption shall be May 30, 2010 (the "**Redemption Date**").

**THIS COURT FURTHER ORDERS THAT:**

7. Upon the Respondents, or any of them, prior to the pronouncement of Order Absolute of Foreclosure or an Order confirming the sale of the Lands and the Assets, paying into Court to the credit of this proceeding or to the solicitor of record for the Petitioner, the Redemption Amount and any further monies that may then be owing to the Petitioner, then the Petitioner shall reconvey the Lands and the Assets free and clear of encumbrances done by the Petitioner or by any person claiming by through or under the Petitioner, and shall deliver up upon oath if required, all deeds, titles and documents in the Petitioner's custody relating to the Lands and the Assets to the Respondent making payment or to whomever such Respondent shall appoint.
8. If the Lands and the Assets are not redeemed, the Petitioner may, at any time following May 30, 2010, apply for an Order Absolute of Foreclosure and upon pronouncement of an Order Absolute of Foreclosure, the Respondents, their heirs, executors, administrators, successors and assigns and all persons claiming by through or under them shall henceforth stand absolutely debarred and foreclosed of and from all right, title, interest and equity of redemption in or to the Lands and the Assets and all monies paid under the Security shall become the property of the Petitioner free from any right of the Respondents and that thereupon the Respondents shall immediately deliver to the Petitioner vacant possession of the Lands and the Assets.
9. The Petitioner recover judgment against the Respondent, The Symphony Development Corporation for the sum of \$11,370,493.71 as at the date of this Order, plus post-judgment interest thereon and the Petitioner's costs in this proceeding to be assessed or agreed as provided herein.

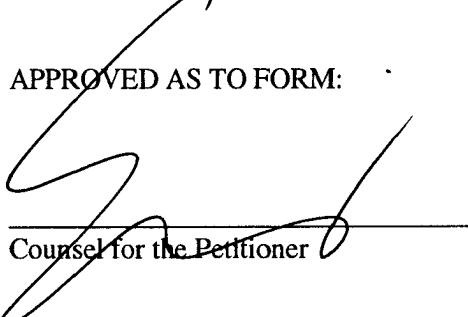
10. The Petitioner recover judgment against the Respondent, Shminder Johal for the sum of \$3,324,682.91 as at the date of this Order, plus post-judgment interest thereon and the Petitioner's costs in this proceeding to be assessed or agreed as provided herein.
11. The Petitioner's application to recover judgment against the Respondent, Gurmel Singh Kainth is adjourned generally.
12. The Petitioner be at liberty to apply for a further summary accounting of any amounts which become due to the Petitioner for interest, taxes, arrears of taxes, insurance premiums, costs, charges, expenses or otherwise, and that such amounts may be proved by way of an Affidavit sworn on behalf of the Petitioner.
13. The Petitioner's application for the relief sought against the Respondent Vancouver City Savings Credit Union is adjourned generally.
14. This Order is made without prejudice to any parties' right or ability to seek or oppose an order seeking marshalling or subrogation of any proceeds of sale of the Lands and Assets.
15. The costs of and in connection with this proceeding be awarded to the Petitioner at Scale A.

By the Court:



Ed Seager  
District Registrar

APPROVED AS TO FORM:



Counsel for the Petitioner