



NO. S-246877
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NATIONAL BANK OF CANADA

PETITIONER

AND:

MANNA INDUSTRIAL FUND (VALUE-ADD) LIMITED
PARTNERSHIP, MANNA INDUSTRIAL FUND (VALUE-
ADD) GP CORP., 8826 JIM BAILEY LTD., 375 POTTERTON
LTD., GENESIS MANNA HOLDINGS LTD. AND ALLION
HOLDINGS LTD.

RESPONDENTS

RESPONSE TO PETITION

Filed by: Institutional Mortgage Capital Canada Inc., as general partner of IMC Limited Partnership (the “IMC” or the “**Petition Respondent**”)

THIS IS A RESPONSE TO the Petition filed October 7 2024.

The Petition Respondent estimates that the application will take 1.5 hours.

Part 1: ORDERS CONSENTED TO

The Petition Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Petition: **ALL**

Part 2: ORDERS OPPOSED

The Petition Respondent opposes the granting of the orders set out in paragraphs **NIL** of Part 1 of the Petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Petition Respondent takes no position on the granting of the orders set out in paragraphs **NIL** of Part 1 of the Petition.

Part 4: FACTUAL BASIS

The Parties

1. The Petition Respondent is a corporation with an office at 199 Bay Street, Suite 1900, Commerce Court West, Box 271, Toronto, Ontario M5L 1E9.
2. The Respondent, Manna Industrial Fund (Value-Add) Limited Partnership (the “**Limited Partnership**”) is the beneficial owner of the Respondents, 8826 Jim Bailey Ltd. (“**Jim Bailey**”) and 375 Potterton Ltd. (“**Potterton**” and together with Jim Bailey, the “**Borrowers**”).

The Loan

3. Pursuant to a commitment letter dated February 25, 2022, as amended on September 27, 2023 (the “**Commitment Letter**”), IMC issued a second position non-revolving mortgage loan (the “**Loan**”) to the Borrowers in the principal amount of \$18,300,000, maturing January 1, 2024 (the “**Maturity Date**”) and bearing interest at the prime rate of interest charged by TD Canada Trust plus 6.55%.
4. The Limited Partnership, together with the Respondents, Manna Industrial Fund (Value-Add) GP Corp., Genesis Manna Holding Ltd. and, Allion Holdings Ltd., as well as Fa-Kai (Michael) Chiang and Yuan Hong (Nancy) Wei (collectively, the “**Guarantors**”) guaranteed the Loan.
5. The Borrowers are in default pursuant to the Loan as a result of, among other things, failing to repay the principal balance by the Maturity Date. The Loan has not been extended or renewed. The Borrowers were current on their monthly interest until October 1, 2024. As at July 16, 2024, the Borrowers are indebted to IMC in the amount of \$16,421,366.40 plus unpaid interest and legal fees.

Security Granted to IMC

6. IMC received the following, among other things, as security for the Loan:
 - (a) an inter-alia mortgage and assignment of rents (the “**Mortgage**”), granted by the Borrowers in favour of IMC, in the principal amount of \$18,300,000, registered on March 7, 2022, under registration numbers CA9768040 and CA9768041 over the following lands:

8826 Jim Bailey Crescent, Kelowna, B.C. V4V 2L7

PID: 024-666-947

Lot 6 Section 2 Township 20 Osoyoos Division Yale District Plan
KAP65805

(the “**Jim Bailey Lands**”); and

375 Potterton Road, Kelowna, B.C. V4V 2K8

PID: 023-839-171

Lot D Section 2 Township 20 Osoyoos Division Yale District Plan
KAP59703

(the “**Potterton Lands**” and together with the Jim Bailey Lands, the
“**Borrower Lands**”);

- (b) a General Security Agreement (the “**GSA**”) dated March 3, 2022, granted by the Borrowers and the Limited Partnership in favour of IMC;
- (c) a Beneficial Owner Agreement (the “**Jim Bailey Beneficial Owner Agreement**”) dated March 3, 2022, granted by Jim Bailey and the Limited Partnership with respect to the Jim Bailey Lands;
- (d) a Beneficial Owner Agreement (the “**Potterton Beneficial Owner Agreement**”) dated March 3, 2022, granted by Potterton and the Limited Partnership with respect to the Potterton Lands; and
- (e) a Full Recourse Guarantee (the “**Guarantee**”) dated March 3, 2022, granted by the Guarantors in favour of IMC.

Part 5: LEGAL BASIS

The Test for Appointing a Receiver

7. The purpose of a court-ordered receivership, generally, is to preserve and protect property pending the resolution of issues between the parties.

Pandion Mine Finance Fund LP v. Otso Gold Corp., 2022 BCSC 136 at para 53 [Pandion].

8. There are a number of factors the court may consider in exercising its discretion to appoint a receiver, including:
 - (a) whether irreparable harm might be caused if no order were made;
 - (b) the nature of the property;
 - (c) the preservation and protection of the property;
 - (d) the balance of convenience to the parties;

- (e) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- (f) the effect of the order upon the parties;
- (g) the conduct of the parties;
- (h) the cost to the parties;
- (i) the likelihood of maximizing return to the parties; and
- (j) the goal of facilitating the duties of the receiver.

Maple Trade Finance Inc. v CY Oriental Holdings Ltd.,
2009 BCSC 1527 at para 25 [*Maple Trade*];

Bank of Montreal v Gian's Business Centre Inc., 2016
BCSC 2348 at paras 23-24 [*Gian's*];

Bank of Montreal v Haro-Thurlow Street Project Limited
Partnership,
2024 BCSC 47 at para 73.

9. The above-noted factors are not a checklist, but a collection of considerations to be viewed holistically in an assessment as to whether, in all of the circumstances, the appointment of a receiver is just or convenient.

***Pandion* at para 54;**
***Gian's* at para 23.**

10. In applying these factors, this Court has held that the right of a secured creditor to apply for a receiver under a security agreement holds considerable weight, and is a “strong factor in support” of the appointment.

***Maple Trade* at para 26.**

11. Furthermore, the appointment of a receiver over mortgaged lands is not an “extraordinary remedy” where there has been a default under a mortgage; and in cases where the security documentation provides for the appointment of a receiver, the “extraordinary nature” of the remedy sought is less essential to the inquiry.

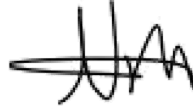
Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Co.,
2002 ABQB 430 at para 28;

BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc., 2020
ONSC 1953 at paras 43-44.

Part 6: MATERIAL TO BE RELIED ON

12. The First Affidavit of Ryan Fernandes made October 9, 2024.
13. The Material filed herein.

Dated at the City of Vancouver, in the Province of British Columbia, this 9th day of October, 2024.



Lawson Lundell LLP
Solicitors for the Petition Respondent,
Institutional Mortgage Capital Canada Inc.,
as general partner of IMC Limited
Partnership

Petition Respondent's address for service is c/o Lawson Lundell LLP, 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

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The name and office address of the Petition Respondent's solicitor is: Lawson Lundell LLP, 1600 - 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2 (Attention: Bryan C. Gibbons and Noor Mann).

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RESPONDENTS

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