# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cameron Stephens Mortgage Capital Ltd. v. Square Nine King George Development Ltd.,* 2025 BCSC 2404

Date: 20251204
Docket: S257283
Registry: Vancouver

Between:

**Cameron Stephens Mortgage Capital Ltd.**

Petitioner

And

**Square Nine King George Development Ltd.**

Respondent

- and -

Docket: S258449
Registry: Vancouver

**In the Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended**

And

**In the Matter of Square Nine King George Development Ltd. and Square Nine Builders Inc.**

Petitioners

Before: The Honourable Mr. Justice P. Walker

## Reasons for Judgment

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|---|---|
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| Counsel for the Proposed Receiver, MNP Ltd.: | K.M. Jackson |
| Counsel for the Attendees, C3 GP Ltd. and C3 Developments Limited Partnership: | A.E. Bowron |
| Place and Date of Hearing: | Vancouver, B.C.<br>November 13, 2025 |
| Place and Date of Judgment: | Vancouver, B.C.<br>December 4, 2025 |

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## Introduction

[1] Before me for hearing on November 13, 2025, were two highly contested, competing insolvency applications: one for the appointment of a receiver brought by the debtor's senior secured lender; the other brought by the debtor seeking relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [*CCAA*]. At the conclusion of the hearing, I told the parties of my decision to approve the relief sought by the debtor (with a come-back date scheduled for November 20, 2025) and to adjourn the receivership application (also to November 20), with reasons to follow. These are my reasons.

## Basis of the Receivership Application: VA S257283

[2] Cameron Stephens Mortgage Capital Ltd. ("CSMC") is the senior secured lender to Square Nine King George Development Ltd. ("Square Nine"). It provided funding to Square Nine, through a first mortgage bridge and inventory demand loan ("Loan") of $33.5 million, to allow it to market and sell Square Nine's 275-unit residential condominium project ("Belvedere Project") located in Surrey's Whalley neighborhood (the Belvedere also includes commercial condominium units and underground parking stalls). The Loan is guaranteed by Square Nine Developments Inc. ("Developments") and Manish Sharma, who is the principal of Developments (collectively, the "Guarantors").

[3] As at August 18, 2025, Square Nine owed CSMC over $18.6 million, which with interest accruing at approximately $116,000 per month, remains unpaid despite CSMC's demand for payment. Square Nine and the Guarantors do not dispute that Square Nine is in default of its obligation to honour the demand for payment.

[4] CSMC says that it has lost confidence in Square Nine's management. CSMC alleges that in default of its covenants under the Loan documents, Square Nine repeatedly misled and withheld information from CSMC. According to CSMC, Square Nine failed to disclose, as it was required to do, the existence of its loans from third parties at the time CSMC advanced Loan proceeds. CSMC also alleges that Square Nine did not disclose that it conducted a promotional one-day "flash"

sales event (called “Condo Day”) for its unsold residential strata units, where it agreed to sell 26 units below the permitted minimum purchase price prescribed in the Loan documents. Another reason grounding CSMC’s lack of confidence is it has learned that six trade creditors have commenced litigation against Square Nine with claims in the aggregate amount of approximately $2.6 million, and another has obtained judgment against Square Nine for $4 million on account of a guarantee provided for a different development project unrelated to the Belvedere Project.

[5] In the result, CSMC seeks the appointment of a receiver in what all parties agree is a soft, if not declining real estate market, pursuant to its specific right under the Loan documents as well as s. 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 and s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [*BIA*].

[6] CSMC’s position is that it has readily satisfied the just and convenient test and its subset of factors discussed in the case authorities: see, e.g., *Bank of Montreal v. Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 47 at paras. 72–75; *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25; *Textron Financial Canada Limited v. Chetwynd Motels Ltd.*, 2010 BCSC 477 at paras. 50, 52, 55; *Schmidt v. Balcom*, 2016 BCSC 2438 at paras. 74–75; *Coromandel Properties Ltd. (Re)*, 2023 BCSC 2187 at para. 23; *Cascade Divide Enterprises, Inc. v. Laliberte*, 2013 BCSC 263 at para. 81.

[7] A useful discussion of those factors is found in the recent decision of *Haro-Thurlow Street Project*:

> [72] As is well-known, for at least over a decade now, those authorities have invariably endorsed the Court’s consideration of many different factors in deciding whether the appointment of a receiver is justified. These non-exhaustive factors are found in Frank Bennett, *Bennett on Receiverships,* 2nd ed. (Toronto: Carswell, 1999) at 130, and were applied in *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 [*Maple Trade*] at para. 25; *Textron Financial Canada Limited v. Chetwynd Motels Ltd.*, 2010 BCSC 477 [*Textron Financial*] at para. 50 and many other cases.
>
> [73] The *Maple Trade* factors include:

a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;

b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;

c) the nature of the property;

d) the apprehended or actual waste of the debtor's assets;

e) the preservation and protection of the property pending judicial resolution;

f) the balance of convenience to the parties;

g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;

h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;

i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;

j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;

k) the effect of the order upon the parties;

l) the conduct of the parties;

m) the length of time that a receiver may be in place;

n) the cost to the parties;

o) the likelihood of maximizing return to the parties;

p) the goal of facilitating the duties of the receiver.

[8] Specifically, in this case, CSMC submits that irreparable harm will occur if the order is not made, the nature of the Belvedere Project consists primarily of residential strata units in a declining market, the balance of convenience is in its favour, it has a right to appoint a receiver under the Loan documents, a court appointment is necessary to enable the receiver to carry out its duties more efficiently, it points to the misconduct of Square Nine, and it says the proposed receiver’s expertise will maximize return to the parties.

[9] Square Nine’s opposition to the appointment of a receiver is encapsulated in its position grounding its *CCAA* application, discussed below.

**Basis of the *CCAA* Proceeding: VA S258449**

[10] Square Nine sits within what it says (in its *CCAA* petition) is the "Square Nine group of companies, a real estate development group focused on concrete high-rises, townhomes, and investment properties." It admits it is insolvent and acknowledges that it owes over $38.7 million to various stakeholders, including over $22 million globally to CSMC and the other secured creditors ($18.6 million to CSMC), $6 million to the Canada Revenue Agency, $6.3 million to trade creditors, and $4.4 million to various other creditors (not accounting for inter-company indebtedness and shareholder loans).

[11] Square Nine opposes the appointment of a receiver and maintains instead that proceeding under the *CCAA* will afford it the time to obtain interim financing, continue marketing the unsold residential units in the Belvedere Project without interruption, and facilitate the completion of the sale of the commercial units scheduled for late January 2026. It submits that proceeding in a *CCAA* regime will promote the orderly means in which to efficiently and effectively realize maximum value for all stakeholders and avoid the almost certain prospect of distressed sales in a receivership setting.

[12] According to Square Nine, there is more than sufficient equity to satisfy its indebtedness to CSMC when taking into account the appraised value (as at May 16, 2025) of the remaining unsold residential units of $27.365 million and the value of the sales transaction of the five commercial units (just over $8 million).

[13] Square Nine blames its financial difficulties primarily on the softening of the residential condominium market in the Lower Mainland, resulting in both the failure of 15 pre-sale purchases to close (with an approximate value of $11 million) and difficulties in selling unsold units thereafter.

[14] Square Nine denies it has engaged in misconduct. It says it acted in good faith towards CSMC as it has, up until recently, made payments (approximately $13.5 million in principal, interest, and fees) reducing the Loan amount, conducted

the Condo Day promotional event in a rapidly softening market to raise funds to pay down its indebtedness to CSMC, and negotiated an agreement in principle with certain trade creditors (that must be approved by the court in a *CCAA* proceeding) to apply the amounts owing to them as deposits toward the purchase of residential units which it says will generate net sales proceeds of approximately $3 million to further pay down its debt to CSMC. According to Mr. Sharma, the third-party loans predate the Loan from CSMC, they were necessary after the loss of several pre-sales to allow it to finalize construction, and the security for those loans remains subordinate to CSMC's security.

[15] Square Nine's evidence is that it is in negotiations with (unnamed) third-party lenders to refinance the Loan, while in the meantime, it continues to actively engage in marketing the sale of the residential units.

[16] In addition, Square Nine submits that new recission rights will arise if a receivership is ordered, and in any event, all marketing efforts and sales will be postponed (for up to six months, it says) pending the filing of a new disclosure statement required by the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 [*REDMA*]. In the context of a *CCAA* proceeding with debtor-in-possession ("DIP") financing, Square Nine correctly points out that marketing and sales may continue as only an amended disclosure statement is required: see *Jameson House Properties Ltd. (Re)*, 2009 BCCA 339 at paras. 26–29, 41, 69–71.

[17] It also points out that under the *CCAA* proceeding, home warranty insurance would not be disrupted and contractual relationships with existing builders will be preserved which will in turn facilitate the resolution of deficiency claims.

[18] Thus, it argues that it is not just and convenient to appoint a receiver, the balance of convenience favours ongoing debtor-in-possession marketing to avoid the stigma of a receivership and its corresponding effect on market values (particularly in the event of a liquidation approach to monetizing assets), and denies any prospect of irreparable harm to CSMC if a receivership order is not issued.

**Analysis**

[19] The qualifications and expertise of the proposed Receiver and Monitor are not in issue as they are both well-qualified and highly experienced.

[20] The evidence supporting CSMC's lack of faith in Square Nine's management position is thin. The evidence is contained in an affidavit, much of which contains argument in the guise of evidence along with hearsay, from an external financial consultant who deposes that he is authorized to give evidence on behalf of CSMC.

[21] That said, CSMC's non-disclosure allegations are not overtly contradicted in evidence from Square Nine (for example, Square Nine does not deny that it failed to disclose the existence of the third-party loans to CSMC when it applied for the Loan). Instead, Square Nine's evidence attempts to justify the use of the *CCAA* based on the need for the third-party financing and the lack of any prejudice to CSMC, and emphasizes its ongoing good faith attempts to pay the amount owing to CSMC.

[22] From the evidence adduced at this juncture, I can only infer that Square Nine did not advise CSMC of the third-party loans when it applied for the Loan. At the same time, it appears that there is no prejudice to CSMC as its security is not affected. In these circumstances, while I recognize CSMC's concerns about management's conduct, I lack sufficient evidence to make any further findings concerning its lack of faith allegations. CSMC's evidence of lack of faith in Square Nine is thus insufficient to deny Square Nine's efforts to engage the *CCAA*.

[23] There is also no evidence to demonstrate at this point that Square Nine has not acted or is not acting in good faith in seeking to engage the *CCAA*.

[24] There is also no basis to find at this early stage that any plan that might be proposed is doomed to failure*: Pacific Shores Resort & Spa Ltd. (Re)*, 2011 BCSC 1775 at paras. 37–39.

[25] The fact that Square Nine's sole business is a single land development does not exclude it from seeking relief under the *CCAA*; Square Nine is part of an active corporate group. Neither the fact that Square Nine seeks to sell its assets to meet its obligations under the *CCAA* regime, nor the absence of a plan at this point, are bars to invoking that statute and the requisite stay: *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp*., 2008 BCCA 327 at paras. 24–32, 36; *Pacific Shores Resort* at paras. 50-53; *Re Lehndorff General Partner Ltd.* (1992), 17 C.B.R. (3e) 24 at para. 7 (Ont. Ct. Jus. – Gen. Div.); *Timminco Limited (Re)*, 2012 ONSC 506 at para. 50; *Re Anvil Range Mining Corp.* (2001) 25 C.B.R. (4th) 1 at para. 11 (Ont. Sup. Ct. Jus.), aff'd (2002) 34 C.B.R. (4th) 157 at para. 32 (Ont. C.A.); *Hush Homes Inc. (Re)*, 2015 ONSC 370 at paras. 21–23.

[26] An important consideration in determining whether to grant a receivership order is that it is extraordinary relief which should be granted cautiously and sparingly. In *Cascade Divide Enterprises, Inc. v. Laliberte*, 2013 BCSC 263, Justice Fitzpatrick said that "if the court can fashion a remedy that avoids receivership, then that is certainly something that should be considered": at para. 82.

[27] The same point was made in *Schmidt v. Balcom*, 2016 BCSC 2438 at para. 75, citing *BG International Ltd. v. Canadian Superior Energy Inc*., 2009 ABCA 127:

> 16 <u>We agree that the appointment of a receiver is a remedy that should not be lightly granted. The chambers judge on such an application should carefully explore whether there are other remedies, short of a receivership, that could serve to protect the interests of the applicant.</u> For example, the order might be granted but stayed for, say, 48 hours to allow the company to cure deficiencies, propose alternatives, or clarify the record.
>
> [Emphasis added]

[28] Further instructive comments from *BG International* have also been cited with approval by Justice Willcock (as he then was) in *Textron Financial Canada Limited v. Chetwynd Motels Ltd*., 2010 BCSC 477:

> [53] The Alberta Court of Appeal has more recently applied the criteria described in Bennett and <u>commented on the extent to which there should be</u>

> consideration of the hardship arising from the appointment of a receiver. In *BG International,* at para. 17, the Court held:
>
> > [T]he chambers judge must carefully balance the rights of both the applicant and the respondent. The mere appointment of a receiver can have devastating effects. The respondent referred us to the statement in *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995), 30 C.B.R. (3d) 49 (Ont. Gen. Div. [Commercial List]) at para. 31:
> >
> > > ... With respect to the hardship to Odyssey and Weston should a receiver be appointed, I am unable to find any evidence of undue or extreme hardship. Obviously the appointment of a receiver always causes hardship to the debtor in that the debtor loses control of its assets and business and may risk having its assets and business sold. The situation in this case is no different.
> >
> > This quotation does not reflect the law of Alberta. Under the *Judicature Act,* it must be "just and convenient" to grant a receivership order. Justice and convenience can only be established by considering and balancing the position of both parties. The onus is on the applicant. The respondent does not have to prove any special hardship, much less "undue hardship" to resist such an application. The effect of the mere granting of the receivership order must always be considered, and if possible a remedy short of receivership should be used.
>
> [Emphasis added]

[29] The central, determinative question at this moment is whether there is a viable alternative remedy to receivership. I have determined that at least for now, proceeding under the *CCAA,* with certain enhanced powers granted to the Monitor and rights granted to CSMC to access information from Square Nine, is in fact a viable alternative.

[30] Proceeding under the *CCAA* regime will at least for now, allow continued marketing and sales, including the completion of the sale of the commercial units, facilitate ongoing home warranty insurance, avoid the creation of new recission rights, and maintain Square Nine's relationship with its builders to remedy deficiencies (since construction is complete). It will avoid the certainty of delay resulting from a receivership order (on account of the new disclosure statement filing requirement in *REDMA*) while interest continues to accumulate at $116,000 per

month, avoid the impact of a bar on the closing of the sale of the commercial units until a new disclosure statement is filed, minimize the risk of disruption to home warranty insurance coverage and the adverse effect on the existing goodwill of Square Nine, and avoid the stigma of a receivership and the risk of lower returns from realization/liquidation proceedings.

[31] I agree with Square Nine's submission, excerpted from its written submissions below, that proceeding under the *CCAA* provides flexible tools for all stakeholders in this case:

> The CCAA affords flexible tools – claims processes, structured approval and vesting orders for unit-by-unit sales, and targeted relief to address disclosure or warranty issues – that can be tailored to the cadence of condominium conveyances. The Monitor's reporting obligations ensure that sales metrics, pricing strategy, and cash waterfalls remain transparent to the Court and major stakeholders, without triggering the statutory disclosure reset that receivership would impose.

[32] I agree with CSMC that the "equity in the assets" valuation (from a May 2025 appraisal) suggested by Square Nine must be viewed with caution given what all parties agree is a continued softening market. At the same time, I accept Square Nine's point that even discounting that valuation by 20 to 25%, there is sufficient equity to satisfy the amount owing to CSMC (including interest accrued to date) and pay additional funds owing to other creditors when the closing of the sale of the commercial units (at just over $8 million) occurs.

[33] CSMC says it should not have to subordinate its security to an administration charge (sought at $75,000) and DIP financing capped at $750,000 with fees imposed in addition to its 14% interest rate, particularly in light of its contractual right to appoint a receiver (in contrast, CSMC proposes borrowings of $2 million, albeit at a lower interest rate of the greater of 7.95% and prime plus 2.25%, if a receivership is ordered).

[34] However, the known disadvantages (as discussed above) arising from the appointment of a receiver compared to the granting of a *CCAA* order outweigh the benefits, so long as the *CCAA* proceedings are closely supervised to minimize

professional fees and costs and accruing DIP financing, enhanced powers are granted to the Monitor to superintend Square Nine's ongoing business and marketing efforts, and obligations are placed on Square Nine to provide full access to its financial information and marketing efforts and plans.

[35] Appointing a receiver now would, I find, not serve to maximize recovery to CSMC and other stakeholders. CSMC's submission that it will be prejudiced by *CCAA* proceedings because the cash flow statement does not provide for any payment of principal or interest would not be answered through a receivership order given the impact of the *REDMA*'s requirement for a new disclosure statement before marketing and sales can continue. On the contrary, the effect of a receivership order is immediate financial prejudice to CSMC and other stakeholders while marketing and sales are suspended.

[36] Proceeding through the *CCAA* at this juncture will facilitate completion of the sales of the commercial units and continued uninterrupted marketing efforts of the residential units. I do not accept CSMC's submission that Square Nine is simply trying to "buy time" without any clear path forward. The amount of DIP financing is appropriately put on a conservative basis as it does not take into account the possibility of further sales in the next 13 weeks, which in turn would augment cash flow and reduce the amount required from the DIP lender to fund.

[37] At this juncture, proceeding under the *CCAA* with certain conditions and limitations discussed below, and with the proposed administration and DIP financing and associated fees, is a more viable option to maximize recovery for CSMC and other stakeholders than through receivership.

[38] Thus, in these circumstances, and upon a holistic consideration of the *Maple Trade* factors, including the principle that a receivership should be granted cautiously and sparingly, I conclude that it would not be just and convenient to appoint a receiver at this time.

[39] That said, I advised the parties that at this time, I could not see granting a stay beyond the end of January 2026 when the sale of the commercial units is scheduled to close.

[40] Should it become apparent that the purposes of the *CCAA* are no longer being met, either party is at liberty to apply to terminate the proceeding. I will also adjourn CSMC's receivership application with liberty to bring it back for hearing if it determines that it is prejudiced by continuing within the *CCAA* to the point that it outweighs the benefits.

[41] I also advised the parties that I would grant the relief sought by Square Nine, but only with a compressed return date for the come-back hearing so that the terms of an order granting specific powers to the Monitor and granting CSMC access to information can be worked out between the parties or determined by court order. I also told the parties that if that could not be resolved, I would consider whether the *CCAA* proceeding should be terminated.

[42] After I gave my ruling, counsel asked that the come-back hearing be scheduled for November 20, 2025, and I scheduled the come-back hearing (and adjourned the receivership proceeding) to that date.

## Disposition

[43] The relief sought by Square Nine in the *CCAA* proceeding, VA S258449, is granted. The come-back hearing is scheduled for November 20, 2025.

[44] The receivership proceeding, VA S257283, is adjourned to November 20, 2025.

"Walker J."