



No. KEL-S-H-141659
Kelowna Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

CONCENTRA TRUST

PETITIONER

AND:

KIRSTEN LAURA IRIS MILLER-NIVEN, A BANKRUPT and
TYLER JAMES NIVEN

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE) March 31st, 2025
LATIMER)
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)

ON THE APPLICATION of the petitioner coming on for hearing at Kelowna, British Columbia on the 31st day of March, 2025, AND ON READING the pleadings and materials filed herein and the consent of McEown and Associates Ltd., Licensed Insolvency Trustee, to act as the Receiver, AND ON HEARING Jeremy D. West, counsel for the petitioner, Concentra Trust, and no one else appearing although duly served.

THIS COURT ORDERS AND DECLARES that:

1. The mortgages dated March 9, 2022 and July 20, 2023 made between the respondent, Kirsten Laura Iris Miller-Niven, as borrower, and the petitioner as lender, and registered in the Kamloops Land Title Office under registration numbers CA9801479 and CB770565, respectively (collectively, the "**Mortgages**") are mortgages charging the following lands:

PID: 030-176-808

Lot 4 District Lot 374 Similkameen Division Yale District Plan EPP69000

(the "**Lands**")

in favour of the petitioner in priority to the interests therein or claims thereto of the respondents and their respective heirs, executors, administrators, successors and assigns, and any person claiming by, through or under them.

2. There has been default under the Mortgages and, as a result, the full balance due and owing thereunder is now due and payable to the petitioner.
3. The amount outstanding under the Mortgages as of March 3, 2025 is \$694,270.10, plus interest thereafter at the rate of 6.14% per annum, compounded semi-annually not in advance.
4. The petitioner is at liberty to apply to this court for a further summary accounting of any amounts that are due to the petitioner pursuant to the Mortgages, before or after the date of pronouncement of this order.

RECEIVERSHIP

5. Pursuant to section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA"), McEown and Associates Ltd. be and is hereby appointed Receiver (the "Receiver"), without security, of the Lands.
6. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Lands and, without in any way limiting the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Lands and any and all receipts and disbursements arising out of or from the Lands;
 - (b) to receive, preserve and protect the Lands, or any part or parts thereof, including, but not limited to, changing locks and security codes, engaging independent security personnel, taking physical inventories and placing insurance coverage;
 - (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
 - (d) to execute, assign, issue and endorse documents of whatever nature in respect of the Lands for any purpose pursuant to this Order;
 - (e) to market any or all of the Lands, including advertising and soliciting offers in respect of the Lands or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
 - (f) to sell, convey, transfer, lease or assign the Lands or any part or parts thereof out of the ordinary course of business:
 - (i) without the approval of this Court in respect of a single transaction for consideration up to \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and

- (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,

and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;

- (g) to apply for any vesting order or other orders necessary to convey the Lands or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
- (h) to report to, meet with and discuss with such persons as the Receiver considers appropriate on all matters relating to the Lands and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (i) to register a copy of this Order and any other Orders in respect of the Lands against title to any of the Lands;
- (j) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the respondents;
- (k) to enter into agreements with any trustee in bankruptcy appointed in respect of the respondents;
- (l) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, including the respondents, and without interference from any other person.

7. The respondents shall forthwith deliver to the Receiver all keys necessary to gain access to the Lands and any part thereof and all books, documents, papers and records of every kind and nature relating thereto.
8. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.
9. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Lands and the collection of any accounts receivable, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post-Receivership Accounts**”) and the monies standing to the credit of such Post-Receivership Accounts from time to time, net of any disbursements

provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

10. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Lands and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Lands (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of the Lands shall be entitled to continue to use the personal information provided to it, and related to the Lands purchased, in a manner which is in all material respects identical to the prior use of such information by the respondents, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.
11. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in possession of any of the Lands within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.
12. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
 - (a) before the Receiver’s appointment; or,
 - (b) after the Receiver’s appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver’s gross negligence or wilful misconduct.
13. Notwithstanding anything in federal or provincial law, but subject to paragraph 12 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Lands, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order.
14. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
 - (a) any gross negligence or wilful misconduct on its part; or
 - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

15. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Lands as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the Lands in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
16. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
17. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.
18. The Receiver is authorized and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Lands shall be and is charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, but subordinate in priority to the Receiver's Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
19. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
20. The Receiver is authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
21. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

22. Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the Lands.
23. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
24. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
25. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
26. The assessed costs of and in connection with this proceeding are awarded to the petitioner at Scale A, with liberty for the petitioner to apply for costs of any subsequent application at a different scale.
27. All other relief sought by the petitioner is adjourned generally.
28. Endorsement of this Order by counsel appearing on this application other than the Petitioner is dispensed with.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:



Signature of Jeremy D. West
lawyer for Concentra Trust

BY THE COURT



DISTRICT REGISTRAR

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT

\$ _____

1. THIS IS TO CERTIFY that McEown and Associates Ltd., the Receiver (the "**Receiver**") of 4850 Bassett Ave., Okanagan Falls, BC, PID: 030-176-808 (the "**Lands**") appointed by Order of the Supreme Court of British Columbia (the "**Court**") dated the [] day of [], 2025 (the "**Order**") made in SCBC Action No. KEL-S-H-141659 has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ [], being part of the total principal sum of \$ [] which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly] not in advance on the [] day of each month after the date hereof at a notional rate per annum equal to the rate of [] per cent above the prime commercial lending rate of [] from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Lands, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Lands in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at [].
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Lands as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the [] day of [], 202[].

McEown and Associates Ltd., solely in its
capacity as Receiver of the Lands, and not in
its personal capacity

Per:
Name:
Title: