

MAR 22 2021

Court File No. H-210155  
Vancouver Registry

 **IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA

PETITIONER

AND:

WESTRIDGE MECHANICAL LTD.  
KEITH RICHARD WHITE  
VINCENT GRAHAM WHITE  
MNP LTD.

RESPONDENTS

**PETITION TO THE COURT**

**This proceeding has been started by the Petitioner for the relief set out in Part 1 below.**

If you intend to respond to this Petition, you or your lawyer must:

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for response to Petition described below, and
- (b) serve on the Petitioner
  - (i) 2 copies of the filed Response to Petition, and
  - (ii) 2 copies of each filed Affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.**

**Time for response to Petition**

A Response to Petition must be filed and served on the Petitioner:

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed Petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed Petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed Petition was served on you, or
- (d) if the time for response has been set by order of the court, within that time.

<b>(1)</b>	<b>The address of the registry is:</b>  800 Smithe Street, Vancouver, British Columbia V6Z 2E1
<b>(2)</b>	<b>The ADDRESS FOR SERVICE of the Petitioner is:</b>  c/o Kornfeld LLP 1100 One Bentall Centre, 505 Burrard Street, Box 11 Vancouver, British Columbia V7X 1M5 (Attention: Douglas B. Hyndman)
<b>(3)</b>	<b>The name and office address of the Petitioner's lawyer is:</b>  Kornfeld LLP 1100 One Bentall Centre, 505 Burrard Street, Box 11 Vancouver, British Columbia V7X 1M5 (Attention: Douglas B. Hyndman)

**ENDORSEMENT ON ORIGINAL PLEADING OR PETITION FOR  
SERVICE OUTSIDE BRITISH COLUMBIA**

The Petitioner claims the right, if necessary, to serve this Petition on the Respondents, or any of them, outside British Columbia on the ground, *inter alia*, that the proceeding: is brought to enforce, assert, declare or determine proprietary or

possessory rights or a security interest in property in British Columbia that is immovable or movable property pursuant to Subsection 10(a) of the *Court Jurisdiction and Proceedings Transfer Act* (the “Act”); and on the ground that the proceeding concerns contractual obligations pursuant to Subsection 10(e) of the Act; and on the grounds that the proceeding is brought to interpret, rectify, set aside or enforce a deed, will, contract or other instrument in relation to property in British Columbia that is immovable or movable property in accordance with sub-paragraph 10(c)(i) of the Act or moveable property anywhere of a deceased person who at the time of death was ordinarily resident in British Columbia in accordance with sub-paragraph 10(c)(ii) of the Act.

## **CLAIM OF THE PETITIONER**

### **Part 1: ORDER(S) SOUGHT**

1. A declaration that a mortgage and assignment of rents (collectively, the “**Mortgage**”) made in writing dated July 4, 2019, between the Respondent, Westridge Mechanical Ltd. (“**Westridge**”), as Mortgagor and the Petitioner as Mortgagee, which Mortgage was registered in the New Westminster Title Office on July 5, 2019 under Nos. CA7606567 and CA7606568 and is a mortgage and assignment of rents which are first financial charges on the following lands and premises:

ALL AND SINGULAR that certain parcel or tract of land and premises situate lying and being in the District of Mission, in the Province of British Columbia and more particularly known and described as:

Parcel Identifier No.: 027-862-551  
Strata Lot 3 Section 19 Township 17 Group 1 New Westminster  
District Strata Plan BCS3384

(the “**Lands**”)

in priority to all of the right, title and interests of the Respondents (together with their heirs, executors, administrators and assigns and all persons claiming by, through or under them) and any interest in the Lands registered subsequent to the Petitioner’s Certificate of Pending Litigation in these proceedings;

2. A declaration that a general security agreement executed by the Respondent Westridge on or about July 4, 2019 (the “**Security Agreement**”), and registered in the Personal Property Registry on the 5th day of July, 2019, under Base Registration No. 617337L, is a financial charge on all of the present and after-acquired personal property of the Respondent Westridge, wherever situate and as described in the Security Agreement (the “**Charged Property**”) in priority to the interest therein or claims thereto of the Respondents;
3. A declaration that the Mortgage and the Security Agreement (collectively, the “**Security**”) are in default and that all monies secured by the Security are now due and owing;
4. A declaration that the amount required to redeem the Security is \$638,893.09 as at February 18, 2021, together with interest thereon in accordance with the terms of the Security, from and including the 19th day of February, 2021 up to and including the date of payment, to accrue until the Security is redeemed or the Lands and the Charged Property are sold, whether or not redemption or sale occurs prior to or after the last date set for redemption, all as set out below, plus the costs of the Petitioner on a solicitor and client basis, plus any

Summary Accounting Amounts (all of which amounts are collectively referred to as the “**Redemption Amount**”);

5. An Order setting the redemption period, if any;
6. An Order that unless the Respondents or any of them pay the Redemption Amount into Court prior to the last date for redemption, the Petitioner shall be at liberty to apply for an Order Absolute of Foreclosure in respect of the Security and upon pronouncement of Order Absolute of Foreclosure the Respondents and each of them and their respective heirs, executors, administrators, successors and assigns and all persons claiming by, through or under them shall be foreclosed of all right, title, interest, estate and equity of redemption in or to the Security, the Lands and the Charged Property and that thereupon the Petitioner do recover vacant possession of the Lands and the Charged Property;
7. An Order that the Petitioner do recover judgment against the Respondent, Westridge Mechanical Ltd., for the Redemption Amount together with the Petitioner’s costs of this proceeding;
8. An Order that the Petitioner do recover judgment against the Respondents, Keith Richard White (“**Keith**”) and Vincent Graham White (“**Vincent**”), jointly and severally, in the amount of \$638,893.09 as at February 18, 2021, together with interest thereon in accordance with the terms of the Guarantee (as defined below), from and including the 19th day of February, 2021, up to and including the date of judgment and together with the Petitioner’s costs of this proceeding;

9. An Order for the appointment of a receiver or receiver-manager of the Lands and the Charged Property;
10. An Order directing the issuance of a Certificate of Pending Litigation;
11. An Order for Sale of the Lands and the Charged Property with the Petitioner having exclusive conduct thereof;
12. An Order for occupation rent;
13. An Order that the Petitioner may apply for a further summary accounting of amounts owed to the Petitioner for interest or as reimbursement for payments made for protective disbursements including, but not limited to, taxes, arrears of taxes, insurance premiums, strata charges or appraisals or for inspecting, repairing or maintaining the Lands and any premises located thereon or the Charged Property or for other expenses or costs which the Petitioner may incur before or after the date of the Order Nisi, before a Master in Chambers or by reference to the office of the District Registrar (collectively, the “**Summary Accounting Amounts**”);
14. An Order for costs of and in connection with this proceeding;
15. An Order for all necessary accounts, directions and enquiries and for such further or other relief as this Honourable Court deems appropriate.

## **Part 2: FACTUAL BASIS**

1. The Petitioner is a financial institution wholly owned by the government of Canada and operating pursuant to the Business Development Bank of Canada Act, S.C. 1995, c.28 and has an address for delivery for the purposes of this proceeding of 1100 - 505 Burrard Street, Vancouver, British Columbia.

2. Pursuant to a letter of offer to Westridge dated June 12, 2020 and accepted by Westridge and the Respondents Keith and Vincent on June 24, 2020 (the “**Letter of Offer**”), the Petitioner advanced the sum of \$637,400.00 to the Respondent Westridge by way of loan (the “**Loan**”) at its request, upon terms and conditions whereby the Respondent Westridge agreed to repay the Petitioner the sum of \$637,400.00, the Guarantors agreed to pay the guaranteed portion of the Loan, and all agreed to pay interest thereon at a rate per annum calculated in accordance with the Petitioner’s Floating Base Rate, plus a variance of 0.20% per year, calculated and compounded monthly.
3. By the Mortgage, the Respondent Westridge did grant and mortgage unto the Petitioner the Lands to secure repayment of all of Westridge’s present and future debts, liabilities and obligations to the Petitioner, together with interest thereon at such rate as may be agreed upon from time to time in writing between the Petitioner and Westridge, all as more particularly described in the Mortgage, the Security and the Letter of Offer.
4. The Mortgage was registered in the New Westminster Land Title Office on July 5, 2019, under Nos. CA7606567 and CA7606568.
5. The Respondent Westridge is the registered owners of the Lands.
6. By the Security Agreement made in writing dated July 4, 2019 and registered in the Personal Property Registry on the 5th day of July, 2019, under Base Registration No. 617337L, the Respondent Westridge charged all of the present and after-acquired personal property of the Respondent Westridge, wherever situate and as described in the Security Agreement, in favour of the Petitioner and in priority to the interest therein or claims thereto of the Respondents to secure repayment of all of Westridges’s present and future

debts, liabilities and obligations to the Petitioner, together with interest thereon at such rate as may be agreed upon from time to time in writing between the Petitioner and Westridge, all as more particularly described in the Mortgage, the Security and the Letter of Offer.

7. By guarantee in writing and under seal dated August 18, 2020 (the “**Guarantee**”), the Respondents Keith and Vincent jointly and severally guaranteed the payment of 100% of the outstanding balance of the principal amount of the Loan outstanding on the date of demand for payment of the Loan, plus interest thereon and legal expenses.
8. The Respondents Keith and Vincent are sometimes collectively referred to herein as the “Guarantors”.
9. The Respondent Westridge is in default of the payments required to be made pursuant to the Security and the Letter of Offer.
10. By letter dated February 25, 2021, demand was made on the Respondent Westridge for the payment of the monies due and owing to the Petitioner and secured by the Security but the Respondent Westridge has failed or refused to pay those monies.
11. The Petitioner’s demand letter dated February 25, 2021 included a Notice of Intention to Enforce Security pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3).
12. By letters dated February 25, 2021, demand was made on the Guarantors for the payment of the monies due and owing to the Petitioner pursuant to the terms of the Guarantees, as such Guarantees are more particularly described



herein. The Guarantors, and each of them, have failed or refused to pay those monies.

13. By virtue of the provisions of the Security and Letter of Offer, the entire principal, interest and all other costs, charges, and expenses secured and payable thereby become due and payable upon default thereunder and the same are now due and payable and have not been paid.

14. As of February 18, 2021, there was justly due and owing by the Respondent Westridge to the Petitioner pursuant to the Security and Letter of Offer the sum of \$638,893.09, plus interest thereon, calculated as follows:

<b>LOAN AMOUNT as at February 18, 2021</b>	<b>PER DIEM from February 19, 2021</b>	<b>CURRENT INTEREST RATE</b>
\$638,893.09	\$82.94	4.75%

15. As of February 18, 2021, there was justly due and owing by the Respondents Keith and Vincent, jointly and severally, to the Petitioner pursuant to the Guarantee the following, plus interest thereon, calculated as follows:

<b>GUARANTEED AMOUNT as at February 18, 2021</b>	<b>PER DIEM from February 19, 2021</b>	<b>CURRENT INTEREST RATE</b>
\$638,893.09	\$82.94	4.75%

16. As at February 18, 2021, the Petitioner's Floating Base Rate of Interest was 4.55%.

17. The Respondent, MNP Ltd., is the Trustee in Bankruptcy of the Respondent Westridge and the holder of a caveat registered in the Land Title Office on February 23, 2021 under No. CA8790492, which caveat ranks in priority behind the interest of the Petitioner.

18. There are no other persons having a registered interest in the Lands or the Charged Property with respect to which the Petitioner's Security has priority.

**Part 3: LEGAL BASIS**

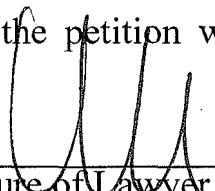
1. The Petitioner's application is made pursuant to the provisions of Rules 10-2, 13-5, 16-1 and 21-7 of the Supreme Court Civil Rules and Sections 15 and 39 of the *Law and Equity Act* R.S.B.C and the provisions of the *Personal Property Security Act*, R.S.B.C.

**Part 4: MATERIAL TO BE RELIED ON**

- 1. Affidavit #1 of Andrew Masse; and
- 2. Affidavit #1 of Douglas B. Hyndman.

The Petitioner estimates that the hearing of the petition will take 5 minutes if unopposed.

Dated: March 22, 2021.



\_\_\_\_\_  
Signature of Lawyer for Petitioner  
Kornfeld LLP  
(Douglas B. Hyndman)

*To be completed by the Court only:*

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application

with the following variations and additional terms:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Signature of  Judge  Master

Court File No.  
Vancouver Registry

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RESPONDENTS

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**P E T I T I O N**

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**KORNFELD LLP**

*Barristers & Solicitors*

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505 Burrard Street

Box 11

Vancouver, British Columbia V7X 1M5

Attention: Douglas B. Hyndman  
File No.: BDC001/WES211