

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CIBC MORTGAGE CORPORATION

PETITIONER

AND:

**MARKE ANTONSEN, BARBARA ANTONSEN,
VANCOUVER CITY SAVINGS CREDIT UNION,
CHERYL ARCHAMBAULT,
NORECOL ENVIRONMENTAL CONSULTANTS LTD.,
and P. TAABEL & CO.**

RESPONDENTS

REASONS FOR JUDGMENT

OF

MASTER JOYCE

Counsel for the Petitioner:

P. Kent-Snowsell

Counsel for Van City Savings Credit Union:

J. Micner

Appearing as agent for Barbara Antonsen:

Marke Antonsen

Place and Date of Hearing:

New Westminster, B.C.
December 10, 1998

[1] The respondent Vancouver City Savings Credit Union ("Van City") seeks an order permitting it to "effect remediation" on the property which is the subject matter of this foreclosure proceeding. It also seeks an order for conduct of sale jointly with the petitioner and an order for vacant possession or, alternatively, forced entry in order to show the property to prospective purchasers.

[2] The petitioner is the holder of a first mortgage. Van City is the holder of a second mortgage. The respondents Marke and Barbara Antonsen were the owners of the property. Marke Antonsen has made an assignment in bankruptcy so he no longer has an interest in the property. His wife, Barbara Antonsen, is not bankrupt and remains an owner. The Antonsens reside on the property.

[3] An order nisi of foreclosure was granted in favour of the petitioner on July 18, 1995 which provided for a 6 month redemption period that expired January 18, 1996. The amount required to redeem the first mortgage at this time is approximately \$359,000 plus costs.

[4] Van City has not commenced its own foreclosure proceedings so far as I am aware nor has a declaration been made as to the amount required to redeem its mortgage. However, the evidence indicates that approximately \$211,000 is owing to Van City on the second mortgage.

[5] On March 21, 1996 Van City was granted an order for conduct of sale of the property. On September 5, 1997 the petitioner was granted exclusive conduct of sale with directions that the property be listed for sale at a list price of \$650,000. On June 24, 1998 an order was made that the list price be reduced to \$625,000.

[6] No offers to purchase the property have been obtained. The problem is that in 1990, prior to the granting of the Van City mortgage, the owners dumped a large quantity of hog fuel on the lands which caused a problem of leeching into the river which flows by the property. The Ministry of Environment, Lands and Parks has issued Pollution Abatement and Pollution Prevention Orders, the most recent of which is dated July 10, 1996. That order requires, amongst other things, that the owners to submit for approval a written plan for correcting the pollution problem and to implement the plan as approved. That has not been done.

[7] It is apparent that prospective purchasers are most apprehensive because of the uncertainty as to the extent and cost of the work which would be required to comply with the Pollution Abatement and Pollution Prevention Order.

[8] Counsel for Van City submits that remediation is required to make the lands saleable at a price which will enable Van City to recoup at least some of the mortgage debt. He submits that at present there is no equity in the property for his client. Van City has provided a proposal prepared by Next Environmental Inc., a firm

specializing in investigation and remediation of contaminated sites, for the investigation and removal of the woodwaste material from the property. That firm estimates a cost of between \$19,000 and \$36,000 for remedial work.

[9] The order Van City seeks would permit it to retain Next Environment Inc. to proceed in accordance with the proposal. The order if made would impose no limit on the amount which Van City might spend on remediation. While Van City does not seek, at this time, any order with respect to how the costs of remediation would be recoverable, counsel submits that Van City would be entitled, pursuant to the terms of the mortgage, to add the costs to the mortgage debt and to recover them from the proceeds of sale, after payment of the amount due to the petitioner and that it would be entitled to seek judgment against Barbara Antonsen for the mortgage debt including the cost of remediation.

[10] Barbara Antonsen is opposed to the order because of the potential it has for increasing her personal liability. Mr. Antonsen, acting as agent for Mrs. Antonsen, submits that the quotation which Next Environment Inc. has given is substantially less than the quotations which the owners have received for the rehabilitation of the property and that there is insufficient evidence that the work proposed by Next Environment Inc. will be sufficient to satisfy the Ministry of Environment, Lands and Parks. He says that his wife should not be exposed to liability for such costs in these circumstances.

[11] Assuming, without deciding (as the question is not actually before the court on this application), that any costs incurred by Van City in removing the hog fuel would be added to the amount required to redeem the mortgage and to the amount which the mortgagors have covenanted to pay pursuant to the mortgage, I have come to the conclusion that the application should be dismissed. The expenditures sought to be made by Van City are not simply protective disbursements incurred to preserve and protect the property and its value. They are costs which are sought to be incurred to improve the property and enhance its value. But there is a lack of evidence to conclude that by spending \$20,000 to \$36,000, or possibly more, the value of the property would be enhanced by an amount at least equal to the amount of the expenditure. The plan put forward by Van City has no guarantee of success. If this work failed to rectify the pollution problem and failed to increase its market value by at least the amount spent the result would be an increase in the shortfall which Van City may seek to recover from Mrs. Antonsen.

[12] I am of the opinion, however, that given the risk which Van City faces with respect to its investment it is entitled to have input in the marketing of the property. I therefore grant to it joint conduct of sale together with the petitioner.

[13] The evidence does not persuade me of the necessity for an order for forced entry to enable the property to be shown. The conduct of sale order requires the Antonsens to permit access for the purpose of showing the property. If there are problems in the future Van City or the petitioner may renew the application for forced entry. That application will be adjourned generally.

"B. Joyce, Master"