

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***British Columbia (The Attorney General) v. Malik,***
2008 BCSC 1033

Date: 20080731
Docket: H070591
Registry: Vancouver

Between:

**Her Majesty the Queen in Right of the
Province of British Columbia as represented by
the Attorney General of British Columbia**

Petitioner

And

**Ripudaman Singh Malik, Raminder Kaur Malik,
0772735 B.C. Ltd., Gurdip Singh Malik, Balbir Singh Bajwa
and Khalsa Developments Ltd.**

Respondents

Before: **The Honourable Mr. Justice McEwan**

Reasons for Judgment

Counsel for the Petitioner:

F.G. Potts
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Counsel for the Respondent
Khalsa Developments Ltd.:

J.C. McKechnie

Dates and Place of Trial/Hearing:

January 21-25; and
January 31, 2008
Vancouver, B.C.

[1] The Province petitions for foreclosure of Ripudaman Singh Malik's half interest in what is referred to as the "Hamilton Street" property and the other as against Khalsa Developments Ltd.'s interest in what has been called

the “Executive Inn” property.

[2] Ripudaman Singh Malik (“R.S. Malik”) made no submissions further to those he made in a motion for consolidation, same time and place, and stay, which preceded the hearing of the petition proper, and is filed in this proceeding.

[3] Khalsa Developments Ltd. (“Khalsa”) appeared by its own counsel and did make a submission.

[4] The Petition was commenced October 23, 2007. The relief sought is set out as follows:

A. A declaration that pursuant to:

a. a Mortgage granted by the Respondent, Ripudaman Singh Malik, in favour of Her Majesty the Queen in Right of the Province of British Columbia as Represented by the Attorney General for British Columbia (the “Petitioner”) dated October 28, 2003 and registered in the Vancouver Land Title Office on November 24, 2003 under number BV487522 (the “Malik Mortgage”), the Petitioner is entitled to a Mortgage charging all of the Respondent Ripudaman Singh Malik’s interest in that certain parcel or tract of land and premises situated, lying and being in the City of Vancouver in the Province of British Columbia, and being more particularly known and described as:

Parcel Identifier: 012-842-486

Lot 34 Block 76 District Lot 541 NWD Plan 3469

(the “Hamilton Street Property”); and

b. a Mortgage granted by Khalsa Developments Ltd. in favour of the Petitioner dated November 4, 2003 and registered in the New Westminster Land Title Office under number BV487519, on November 24, 2003 (the “Khalsa Mortgage”), the Petitioner is entitled to a Mortgage charging the following parcels of real property legally described as follows:

PID: 023-296-518

Parcel 1 Section 13, Township 4 Range 29 West of the Sixth Meridian NWD Plan LMP26375

PID: 000-734-217

Lot 2 of Lots 23 and 24 Block 1 Fractional Section 13 Township 4 Range 29 West of the Sixth Meridian NWD Plan 251

(collectively the “Executive Hotel Property”)

in priority to the claims of the Respondents in these proceedings.

B. A declaration that pursuant to a General Security Agreement dated October 28, 2003, granted by the Respondent, Ripudaman Singh Malik, to the Petitioner (the “Malik General Security Agreement”), and registered in the Personal Property Security Registry on October 14, 2003 under base registration number 325831B, the Petitioner is entitled to a valid and enforceable security interest in all of the present and after acquired property of the Respondent, Ripudaman Singh Malik save and except consumer goods (the “Malik Collateral”) in priority to the claims of the Respondents in these proceedings.

C. A declaration that pursuant to a General Security Agreement dated November 3, 2003, granted by Khalsa Developments Ltd. to the Petitioner (the “Khalsa General Security Agreement”) and registered in the Personal Property Security Registry on October 14, 2003 under base registration number 325819B, the Petitioner is entitled to a valid and enforceable security interest in all of the present and after acquired property of Khalsa Developments Ltd. save and except consumer goods (the “Khalsa Collateral”) in priority to the claims of the Respondents in these proceedings.

D. The Malik General Security Agreement and the Khalsa General Security Agreement are hereinafter collectively referred to as the “General Security Agreements”. The Malik Collateral and

Khalsa Collateral are hereinafter collectively referred to as the "Collateral".

E. A declaration that the Respondents, Ripudaman Singh Malik and Khalsa Developments Ltd., have made default under the Malik Mortgage, the Khalsa Mortgage and the General Security Agreements and that all monies thereby secured and charged upon the Hamilton Street Property, the Executive Hotel Property and the Collateral are due and owing to the Petitioner.

F. A declaration that the amount required to redeem the Hamilton Street Property, the Executive Hotel Property and the Collateral and which is due and owing to the Petitioner is \$1,609,027.52 as at March 26, 2005, together with interest thereafter pursuant to the *Court Order Interest Act* to the date of payment.

G. An Order that one month be given for redemption of the Hamilton Street Property, the Executive Hotel Property and the Collateral.

H. An Order that the Petitioner recover Judgment against the Respondent, Ripudaman Singh Malik in the sum of \$1,609,027.52 together with interest pursuant to the *Court Order Interest Act* from May 1, 2005 to the date of judgment.

I. An Order that the Hamilton Street Property, the Executive Hotel Property and the Collateral be sold out of Court by private sale subject to the approval of the Court and that the Petitioner have conduct of the sale and be authorized to list the Hamilton Street Property, the Executive Hotel Property and the Collateral for sale with a duly licensed real estate agent or firm and pay such agent or firm a commission not exceeding 7% on the first \$100,000.00 of the purchase price and 2 ½% on the balance, such commission to be paid from the proceeds of any sale.

J. An Order appointing a receiver or receiver and manager.

K. An Order that in default of the Respondents, paying into Court to the credit of this proceeding at the Court Registry, Courthouse, 800 Smithe Street, Vancouver, British Columbia, the amount required to redeem the Malik Mortgage, the Khalsa Mortgage and the General Security Agreements the Petitioner shall be at liberty to apply for an Order that the Respondents and their respective heirs, executors, administrators, successors and assigns, and all persons claiming by, through or under them, shall stand and be absolutely and forever debarred and foreclosed of and from any and all right, title interest, claim, estate and equity in and to the Hamilton Street Property, the Executive Hotel Property and the Collateral.

L. An Order that in default of payment as aforesaid, the Petitioner recover vacant possession of the Hamilton Street Property, the Executive Hotel Property and the Collateral.

M. An Order for Occupation Rent.

N. An Order for a Certificate of Pending Litigation;

O. An Order that the Petitioner be at liberty to apply for a further accounting of what monies have become due and owing to the Petitioner since the date of the filing of the Petition.

P. Special Costs

Q. An Order for all necessary accounts, directions and enquiries together with such further or other relief as this Honourable Court deems meet.

R. Interest pursuant to the *Court Order Interest Act*.

S. A declaration that the transactions between the Respondents Ripudaman Singh Malik, Raminder Kaur Malik and 0772735 B.C. Ltd. under which 0772735 B.C. Ltd. acquired mortgages originally granted by the Respondents Ripudaman Singh Malik and Raminder Kaur Malik to HSBC Bank of Canada (formerly Hongkong Bank of Canada) and Desjardins Financial Security Life Assurance Company (formerly The Imperial Life Assurance Company of Canada) on the Hamilton Street Property are void as against the Petitioners or alternatively, that the said mortgages were made with intent to delay, hinder or defraud the Petitioner of its just and lawful remedies and are void and of no effect against the Petitioner and that no monies are owing to 0772735 B.C. Ltd. on account

of those mortgages, and that the said mortgages be discharged.

A Certificate of Pending Litigation was filed on October 24, 2007.

[5] The two mortgages came about in the following circumstances:

a) On October 17, 2003 a document called the "Payment Agreement" between the Petitioner, the Respondent Mr. Malik, Crossin Coristine Woodall (Barristers and Solicitors) and William B. Smart Law Corporation was executed whereby the Petitioner agreed to pay fees for services rendered by lawyers acting for Mr. Malik in the Air India Trial, starting September 19, 2003 and running until the end of the Air India Trial. Under the terms of the Payment Agreement, fees were paid in accordance with a "review" agreement entered into on the same date between the Petitioner, Crossin Coristine Woodall (Barristers and Solicitors), William B. Smart Law Corporation and The Honourable Ross Collver, as reviewer.

b) Under the Payment Agreement and the Review Agreement, all accounts rendered by the lawyers for Mr. Malik after September 19, 2003 were reviewed and certificates were issued certifying the amount payable, and the Petitioner agreed to pay all fees as certified within 30 days of issuance of the Certificates, and within 45 days after the completion of the Air India Trial to notify Mr. Malik of the total amount paid in connection with such Certificates called the "Reimbursement Amount".

c) Mr. Malik agreed to pay the Reimbursement Amount on demand on the earlier of 45 days after completion of the Air India Trial, or default occurring under the terms and conditions of the Payment Agreement.

d) Mr. Malik also agreed to execute and deliver, or cause to be executed and delivered, to the Petitioner, the following security documents as security for repayment of the Reimbursement Amount;

- (i) a security interest in all of Mr. Malik's present and future assets of all kind;
- (ii) a mortgage and charge against Mr. Malik's legal and beneficial interest in certain lands and premises located in the City of Vancouver more particularly known and described as:

PID: 012-842-486

Lot 34 Block 76 District Lot 541 Plan 3469

(the "Hamilton Street Property")

- (iii) a guarantee to be executed by Khalsa Developments Ltd. of the indebtedness of Ripudaman Singh Malik to the Petitioner pursuant to the Payment Agreement limited to the sum of \$1,800,000.00;

(the "Guarantee")

- (iv) a mortgage and charge to be executed by Khalsa Developments Ltd., of its legal and beneficial interest of certain property in the Village of Harrison Hot Springs more particularly known and described as:

PID: 023-296-518

Parcel 1 Section 13 Township 4 Range 29 West of the Sixth Meridian NWD,
Plan LMP26375

PID: 000-734-217

Lot 2 of Lots 23 and 24 Block 1 Fractional Section 13 Township 4 Range 29
West of the Sixth Meridian NWD Plan 251

(collectively the "Executive Hotel Property")

- (v) a general security agreement to be executed by Khalsa Developments Ltd. creating a charge in favour of the Petitioner of all of Khalsa Developments Ltd.'s presently owned and after acquired property as security for payment of all

indebtedness and liability of Khalsa Development Ltd. to the Petitioner pursuant to the Guarantee referred to above.

- e) By a General Security Agreement executed October 28, 2004 (the "Malik General Security Agreement") and registered in the Personal Property Security Registry on October 14, 2003 under base registration number 325831B, Mr. Malik granted a security interest to the Petitioner in all of he presently owned and after acquired personal property save and except consumer goods as security for his obligations to the Petitioner for repayment of the Reimbursement Amount under the Payment Agreement.
- f) By a Mortgage dated October 28, 2003 and registered in the Vancouver Land Title Office on November 24, 2003 under No. BV487522 (the "Malik Mortgage") the Respondent, Mr. Malik granted a Mortgage on his undivided ½ interest in and to the Hamilton Street Property as security for his obligations to the Petitioner to repay the Reimbursement Amount pursuant to the Payment Agreement.
- g) By a Guarantee dated November 4, 2003 (the "Guarantee"), Khalsa Developments Ltd. guaranteed payment by Mr. Malik to the Petitioner of the Reimbursement Amount under the Payment Agreement provided that the obligation of Khalsa Developments Ltd. and recourse pursuant to the terms and conditions of the Guarantee were limited to recovery of the lesser of \$1,800,000.00 or one-half of the amount of the net sale proceeds upon the sale of the Executive Hotel Property.
- h) By a Mortgage dated November 3, 2003 and registered in the New Westminster Land Title Office on November 24, 2003 under number BV487519 (the "Khalsa Mortgage") between Khalsa Developments Ltd. as Mortgagor and the Petitioner as Mortgagee, Khalsa Developments granted a mortgage on the Executive Hotel Property to the Petitioner as collateral security for payment of all liabilities of Khalsa Developments Ltd. to the Petitioner pursuant to the Guarantee.
- i) By a General Security Agreement dated November 3, 2003 (the "Khalsa General Security Agreement") and registered in the Personal Property Security Registry on October 14, 2003 under base registration number 325819B, Khalsa Developments Ltd. granted to the Petitioner a security interest in all of its presently owned and after acquired property save and except consumer goods as security for payment of its liabilities pursuant to the Guarantee.

[6] There is no dispute that from September 19, 2003 until the end of the trial a total of \$1,681,526.33 in legal expenses and costs were incurred and certified. The sum of \$72,123.94 was repaid by R.S. Malik, leaving a balance of \$1,609,027.52.

[7] The trial ended with reasons for Judgment issued March 16, 2005.

[8] On December 13, 2005 the Province demanded payment of the reimbursement amount pursuant to the payment agreement and on January 3, 2006 it demanded payment of the reimbursement amount from Khalsa, pursuant to the guarantee.

[9] The Province takes the position that on the face of the material it is entitled to an Order Nisi. It further submits that a one month redemption period is justified because of the length of time no payment has been made, and because the Malik family has always had the ability to pay the amount due and owing. The Province submits that the evidence shows that R.S. Malik has paid out two other mortgages, on his own evidence, and submits that the inference that he has the ability to pay is obvious. Submissions in this matter, and a related action No. S077088, have been made to the effect that there is sufficient equity to cover the Province's claims, although this has never been satisfactorily demonstrated.

[10] Khalsa raises a number of issues opposing the relief sought and submits, in addition to its substantive position, that:

- i. there is no foundation for a shortened redemption period;
- ii. the interest claimed is excessive and there ought to be a reference to the Registrar to determine the amount owing;

- iii. there are no grounds for an immediate order for conduct of sale; and
- iv. costs should be denied.

[11] Khalsa submits that R.S. Malik was the owner of half the issued shares in Khalsa, along with his wife Raminder Malik who owned the other half, and was Khalsa's sole director and officer. It says that the Hotel property "and related personalty" constituted all the assets of Khalsa.

[12] The mortgage given by Khalsa is collateral to a guarantee that reads as follows:

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the undersigned KHALSA DEVELOPMENTS LTD. (The "Guarantor") HEREBY IRREVOCABLY GUARANTEES payment by RIPUDAMAN SINGH MALIK (Malik) of all obligations present or future, at any time owing by Malik to Her Majesty the Queen in Right of the Province of British Columbia represented by the Attorney General, Parliament Buildings, Victoria, B.C. V8V 1X4 (the Attorney General) in respect of the Reimbursement Amount ("the Reimbursement Amount") as set forth in a Payment Agreement dated for reference the 17 day of October, 2003, made between, *inter alia*, the Attorney General and Malik (the "Payment Agreement"), a copy of which is hereby acknowledged by the Guarantor, it being understood that the obligation of the Guarantor and recourse under this Guarantee hereunder shall be limited to the lesser of \$1.8 million or the amount of the Malik Net Sale Proceeds, and shall be payable only from the proceeds of sale of the Hotel Property as defined below.

[13] Khalsa further submits:

9. The Guarantee is limited in amount to the lesser of \$1.8 million or half of the net sale proceeds of the Hotel Property (this is not the exact wording of the Guarantee but is a sufficient description of the limitation for present purposes).

10. The Guarantee mirrors the anticipation, apparent in the Payment Agreement's requirement that Malik use his best efforts to sell his assets, that the Hotel Property will be sold, be expressly contemplating such a sale occurring either before or after completion of the Proceeding, and providing for how the proceeds of sale are to be dealt with in either event.

11. The Guarantee also provides that the amount due under it shall be payable only from the proceeds of sale of the Hotel Property and that unless payment has been made under the Guarantee before the expiry of 45 days following conclusion of the Proceeding, the Crown may demand payment from Khalsa, whereupon the amount owing under the Guarantee becomes immediately due and payable.

12. Finally, the Guarantee provides that it and the Payment Agreement "contain the entire agreement between [the Crown and Khalsa] relating to [its] subject matter".

13. The Mortgage is expressed to be collateral security for Khalsa's obligations under the Guarantee. In addition, the Mortgage contains the following "Additional or Modified Terms":

10(c) Notwithstanding anything contained herein (including the Prescribed Standard Mortgage Terms forming Part 2 of this Mortgage), the only obligations the Mortgagor has to the Mortgagee are pursuant to the Guarantee, and recourse of the Mortgagee hereunder shall be limited in accordance with the terms of the Guarantee.

[from Khalsa's written submission]

[14] Khalsa submits that this is not a conventional foreclosure proceeding, and that there is no liability under the mortgage because no proper demand was, or could be, made under the guarantee.

[15] The argument proceeds as follows:

21. The Mortgage is expressed to be collateral security for the Guarantee. Unless and until liability

arises under the Guarantee, there can be no liability under the Mortgage and the Crown is not entitled to take steps to enforce it. Khalsa says this is the situation at bar, for the reasons which follow.

22. The amount due under the Guarantee can only be determined following a sale of the Hotel Property, since the obligation of Khalsa under it is limited to the lesser of

- a. \$1.8 million;
- b. the "Malik Net Proceeds" (as defined in the Guarantee, that amount being roughly equivalent to half the net sale proceeds of the Hotel Property); and
- c. the amount actually owing by Malik to the Crown under the Payment Agreement.

23. Demand could only be made under the Guarantee when the Guarantor's liability under it was known, that is, once the Hotel Property had been sold and the amount of the Malik Net Sale Proceeds was known. This is made clear by the words of the Guarantee:

Unless the Guarantor has made payment to the Attorney General as contemplated above, the Guarantor shall make payment to the Attorney General of the amount payable hereunder forthwith upon receipt of a written demand for payment...(my emphasis)

Khalsa's obligation under the Guarantee, following a demand, is to pay "the amount payable hereunder", but until the Hotel Property is sold, that amount is unknown.

24. In other words, Khalsa says that the sale of the Hotel Property is a condition precedent to liability under the Guarantee and, therefore, under the Mortgage.

25. In summary, Khalsa says:

- a. there can be no foreclosure until there is liability under the Mortgage;
- b. there is no liability under the Mortgage until there is liability under the Guarantee;
- c. there is no liability under the Guarantee until a proper demand is made;
- d. no proper demand is possible until Khalsa's liability under the Guarantee is known or capable of determination;
- e. Khalsa's liability under the Guarantee is not capable of determination until the Hotel Property is sold;
- f. the Hotel Property is not sold;
- g. therefore there can be no proper demand made and no liability can arise under either the Guarantee or the Mortgage.

[from Khalsa's written submission]

[16] If that fails, that is, if Khalsa is wrong in suggesting that the sale of the Hotel property is a condition precedent to liability under the mortgage, it says that there is nevertheless a triable issue that ought to be referred to the trial list, applying the principles set out in ***Douglas Lake Cattle Company v. Smith (B.C.C.A.)***, [1991] B.C.J. No. 484.

[17] The argument on this aspect of the submission goes as follows:

27. If Khalsa is wrong that sale of the Hotel Property is a condition precedent to liability under the Mortgage, then it says that the materials before the Court on this application raise triable issues and the matter ought to be referred to the trial list.

28. The test to be applied when determining whether a triable issue is raised has been stated in *Douglas Lake Cattle Company v. Smith* (1991), 54 BCLR (2d) 52 (CA) (copy attached), per Cummings J.A. (at 59):

It is common ground that the learned chambers judge had a discretion as to whether to refer the matter to trial pursuant to Rule 52(11)(d), a discretion to be exercised in accordance with recognized principles.

The approach to be taken by a chambers judge in exercising his discretion whether to make a final determination in a proceeding brought by petition under Rule 10(1)(b) is expressed clearly by Mr. Justice Taggart in *Bank of British Columbia v. Pickering* (1983), 62 B.C.L.R. 136 (B.C.C.A.) at 138 where he applied to a proceeding, in that case an application for an order nisi of foreclosure, in which the respondent sought that a trial be ordered under Rule 52(11) the Rule 18 summary judgment test enunciated by Mr. Justice Seaton in *Memphis Rogues Ltd. v. Skalbania* (1982), 38 B.C.L.R. 193 (B.C.C.A.) AT 202:

“The question has been stated in a number of ways: is there no real substantial question to be tried? Is there no dispute as to facts or law which raises a reasonable doubt? Is it manifestly clear that the appellants are without a defence that deserves to be tried? Although case in different terms, all point to the same inquiry, namely, is there a bona fide triable issue?”

It can be seen that the question is not whether there is any dispute as to facts or law, but rather whether there is a dispute as to facts or law which raises a reasonable doubt, or which suggests there is a defence that deserves to be tried.

29. Khalsa notes that the Payment Agreement compels Malik to use his “best efforts” to sell (among other assets) the Hotel Property, and it is in the context of the anticipation that he will do so that the Guarantee, and limited recourse Mortgage, are granted.

30. In this connection, it is worth noting, parenthetically, that Malik’s obligation in this regard is an empty one. Since Malik is only a one half owner of Khalsa, and since the Hotel Property is the sole substantial asset of Khalsa, he has no power to compel a sale of the Hotel Property without the cooperation and agreement of Raminder Malik.

31. Khalsa says that the express terms of these instruments, in this actual context, support a conclusion that the purpose of the Mortgage was not to secure Khalsa’s real property, but to secure only the Crown’s claim to the proceeds of its sale.

32. In other words, the sole purpose of the Mortgage was to ensure that a sale of the Hotel Property could not complete without the Crown recovering the amount due under the Guarantee from the proceeds of sale. It was never anticipated that the Crown would become the vendor.

33. If the intent of the parties to the Mortgage was simply to secure Khalsa’s real property collateral to the Guarantee, the limited recourse wording of the Mortgage would be unnecessary.

34. It cannot credibly be argued that the limited recourse wording is intended to confirm that the mortgagee cannot recover, under the Mortgage, a sum greater than that due under the Guarantee. The Mortgage already makes that clear in 10(a), where express reference is made to the fact that it secures only that amount which remains unpaid by Khalsa to the Crown under the Guarantee.

35. Further, the right of the Crown to take judgment arises under the standard mortgage terms (and it is noted that this is a mortgage governed by the statutory standard terms scheduled to the Land Title Act), but the Mortgage expressly limits the Crown’s recourse to its rights under the Guarantee and thereby, in Khalsa’s submission, eliminates the right of the Crown to take judgment under it.

Although the Crown has a right to take judgment under the Guarantee, it seeks no such relief on this application.

[from Khalsa’s written submission]

[18] Khalsa submits that there are issues of law which cannot be decided summarily but will require extrinsic evidence respecting the negotiations that went into the drafting of the security documents.

[19] The Province submits that Khalsa's position conflates liability under the guarantee with the right of the Province to collect. It says that there is no question what Khalsa is guaranteeing: it is the Payment amount, as established by the Payment Agreement. It submits that the amount Khalsa is liable for is the entire amount established by the formula set out in the payment agreement and that recourse is only limited, if and when steps are taken to collect.

[20] The Province submits that the effect of Khalsa's submission is that realization is entirely dependant upon R.S. Malik's efforts to sell Khalsa's assets.

[21] The effect of R.S. Malik's position is that while he undertook an obligation to repay under the "Payment Agreement", his failure to make any apparent attempts to sell the property or to liquidate any assets has no consequence because nothing can be realized until the Khalsa's property is sold and the price received for it is known.

[22] I do not accept that this is a proper reading of the guarantee and the Khalsa mortgage. The Province has alleged a breach of the Payment Agreement, a demand for the amount secured under the guarantee, and non-payment, in breach of the terms of the guarantee. It has now moved to realize on its security under the mortgages. There is no substantive defence offered. There are no suggestions that any efforts have been made by R.S. Malik to perform in accordance with his part of the bargain he made.

[23] The guarantee secures the whole amount of the indebtedness, which is the amount that was demanded less the sum accounted for as paid. The fact that there is a calculable upper limit of the exposure under the guarantee does not render the liability uncertain. The submission that the Hotel must be sold in order to establish liability is not a tenable reading of the guarantee. Khalsa was obliged to pay the amount demanded. When it failed to do so, the Province was entitled to move on its security to ensure payment. When it does so, it may collect up to the limit set out in the guarantee.

[24] Given the clear meaning of the guarantee, I do not see any triable issue that would require an enquiry into the parties' negotiations or their intentions. The agreements speak for itself. It does not bear the interpretation placed on it by the respondent Khalsa, and no other substantive defence or qualifying submission has been advanced.

[25] Khalsa also takes issue with the date from which interest is claimed. The Province claims it commences May 1, 2005, which is when it calculates the 45-day period following the end of trial (within which R.S. Malik was to repay the sums advanced) expired. Khalsa submits that the proper date is from the time demand was made. I take it counsel for R.S. Malik adopts this submission although he did not make it himself. As the Province indicates, this is not really Khalsa's issue, but R.S. Malik's. I am of the view that interest runs from the date of the default which I take to be May 1, 2005. If the parties wish to make further submissions on that subject they may seek leave to do so. I fix the amount due as of default at \$1,609,027.92 with the necessary court order interest adjustments to the date of judgment. On the basis of the materials tendered, the Province is entitled to the relief it seeks, subject only to the following qualifications:

(a) Redemption period:

The Province seeks a one month redemption period on the grounds that the matter has gone on for too long already, and on the grounds that R.S. Malik or the Malik family has always been in a position to pay off the mortgages but has refused or neglected to do so. Given the larger context of this case, I am reluctant to make an order that appears to accept on affidavit evidence matters that will be put to the test in a trial. The fact that, in this, and in related proceedings, representations have been made on behalf of R.S. Malik that they have the ability to pay satisfies me, however, that a somewhat shortened redemption period is called for. I fix the redemption period at three months.

(b) Matters previously addressed:

For reasons outlined elsewhere (2008 BCSC 1027), certain parts of this petition respecting 0772735 B.C. (e.g. para. 26) will be held in abeyance, while other matters arguably relevant, were the Petition not issued within a larger context, have been struck (2008 BCSC 1027), on the basis that they will be

dealt with in the tort proceeding (No. S077088).

(c) Costs

The Province is entitled to its costs on scale B, given that the Petition was opposed and the Province was largely successful. For reasons similar to those expressed above I do not consider it appropriate at this point, to impose a level of costs beyond the ordinary scale for contested matters.

“McEwan J.”

The Honourable Mr. Justice McEwan