

JAN 23 2020



FORM 66 (RULES 16-1(2) AND 21-5(14))

No. H-2000039
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PEOPLES TRUST COMPANY

Petitioner

AND:

CENSORIO GROUP (HASTINGS & CARLETON)
HOLDINGS LTD.
PETER CENSORIO also known as PETER ANTHONY CENSORIO
and PETER ANTHONY CENSORIO
STRADA 39 TRUST
BANCORP GROWTH MORTGAGE FUND II LTD.
BANCORP BALANCED MORTGAGE FUND II LTD.
BANCORP FINANCIAL SERVICES INC.
PK CAPITAL LTD.
ALL CANADIAN INVESTMENT CORPORATION
FBM CANADA GSD, INC.
MEDINA CONCRETE SERVICES LTD.
TUCUVAN CONSTRUCTION LTD.
OMNI DRYWALL LTD.
1223293 B.C. LTD.
RAHUL GLASS LTD.
SERIN INVESTMENTS LTD.
CLARION PROPERTY CORPORATION
G. I. H. PROPERTIES LTD.
BARRY CHARLES HOLDINGS LTD.
BECISON HOLDING CORPORATION
SANDRA CHAPPELL
CREST CAPITAL CORPORATION
DURHAM CAPITAL MANAGEMENT INC.
YORK VENTURES LTD.
HI-GROVE HOLDINGS (1995) LTD.
DIANE RAUCH
JEFFREY RAUCH
GERHARD RAUCH
HELGA RAUCH
PAVILION INVESTMENTS INC.
RODNEY GRANT KENYON
ALAN LONG
MANDATE MANAGEMENT CORPORATION

Respondents

AMENDED PETITION TO THE COURT

ON NOTICE TO: THE RESPONDENTS

This proceeding is brought for the relief set out in Part 1 below by the person named as petitioner in the style of proceedings above.

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 THE PETITION WITHIN THE TIME FOR RESPONSE.

TIME FOR RESPONSE TO THE PETITION

A response to petition must be filed and served on the petitioner,

- a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- c) if you were served with the petition anywhere else, within 49 days after that service, or
- d) if the time for response has been set by order of the court, within that time.

(1)	<p>THE ADDRESS OF THE REGISTRY IS:</p> <p>The Supreme Court of British Columbia The Law Courts 800 Smithe Street Vancouver, B.C. V6Z 2E1</p>
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(2)	<p>THE ADDRESS FOR SERVICE OF THE PETITIONER IS:</p> <p>Owen Bird Law Corporation c/o P.O. Box 49130 2900 – 595 Burrard Street Vancouver B.C. V7X 1J5 (Attention: Alan A. Frydenlund, Q.C.)</p> <p>Fax number address for service (if any) of the petitioner: N/A</p> <p>E-mail address for service (if any) of the petitioner: N/A</p>
(3)	<p>THE NAME AND OFFICE ADDRESS OF THE PETITIONER’S LAWYER IS:</p> <p>Alan A. Frydenlund, Q.C. OWEN BIRD LAW CORPORATION P.O. Box 49130 2900 – 595 Burrard Street Vancouver, BC V7X 1J5</p>

PART 1: ORDERS SOUGHT

- A. A declaration that the mortgage and assignment of rents dated August 16, 2017 made between the respondent, CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD., as borrower and the respondents, PETER CENSORIO and STRADA 39 TRUST, together as covenantors and the petitioner, PEOPLES TRUST COMPANY, as lender and registered in the New Westminster Land Title Office, in the Province of British Columbia, on August 24, 2017 under Numbers CA6245585 and CA6245586, respectively, and renewed most recently by way of renewal agreement dated October 16, 2019 (collectively, the “**Mortgage**”), is a mortgage and assignment of rents charging the following lands:

City of Burnaby
Parcel Identifier: 029-877-555
Lot 1 District Lot 121 Group 1 NWD Plan EPP56644

(the “**Lands**”)

to and 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 persons claiming by, through or under them.

- B. A declaration that the covenants given by the respondents, PETER CENSORIO and STRADA 39 TRUST, contained in the Mortgage to the petitioner, PEOPLES TRUST COMPANY, are unconditional covenants, promises and agreements of the said respondents, as principal debtors and not as sureties, to pay or cause to be paid, all monies secured by the Mortgage, and to observe and perform all of the covenants, provisos, conditions and stipulations in the Mortgage (the “**Covenants**”).
- C. A declaration that general security agreement dated August 16, 2017 made between the respondent, CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD., as debtor, and petitioner, PEOPLES TRUST COMPANY, as the secured party, and registered in the Personal Property Registry, in the Province of British Columbia, on August 15, 2017, under Base Registration Number 205924K (the “**Security Agreement**”) is an agreement charging all of the said respondent’s present and after acquired goods, chattel paper, instruments, documents of title, money, investment properties, and intangibles used in connection with and pertaining to or arising out of the Lands and in and to all proceeds and renewals thereof (collectively, the “**Property**”) to and 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 persons claiming by, through or under them.
- D. A declaration that the general security agreement dated August 16, 2017 made between the respondents, PETER CENSORIO and STRADA 39 TRUST, together as debtors, and petitioner, PEOPLES TRUST COMPANY, as the secured party, and registered in the Personal Property Registry, in the Province of British Columbia, on August 15, 2017, under Base Registration Number 205924K (the “**Censorio Security Agreement**”) is an agreement charging all of the said respondents’ present and after acquired goods, chattel paper, instruments, documents of title, money, investment properties, and intangibles in and to all proceeds and renewals thereof wherever situate (collectively, the “**Censorio Property**”) to and 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 persons claiming by, through or under them.
- E. A declaration that the respondents, CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD., PETER CENSORIO and STRADA 39 TRUST, have made default

under the Mortgage, the Covenants, the Security Agreement and the Censorio Security Agreement (collectively, the “**Security**”) and that as a result, the full balance due and owing thereunder is now due and payable to the petitioner.

- F. A declaration that the rate of interest chargeable pursuant to the Security is the greater of 5.95% per annum, compounded monthly and 2.00% per annum above the Bank of Montreal’s prime lending rate declared from time to time, which said interest rate is currently 3.95% per annum, so that the rate of interest chargeable under the Security is currently 5.95% per annum, compounded monthly, not in advance.
- G. A declaration that the amount of money due and owing under the Security and the amount of money required to redeem the Lands, the Property and the Censorio Property is the sum of \$10,909,654.48 as of January 9, 2020 plus per diem interest at the rate of \$1,745.21 from and including January 10, 2020.
- H. An order that the last date for redemption be 1 (one) month after the pronouncement of any order made herein, or such other period of time as this court may order.
- I. An order that the petitioner recovers judgment against the respondents, CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD., PETER CENSORIO also known as PETER ANTHONY CENSORIO and PETER ANTHONY CENSORIO and STRADA 39 TRUST, jointly and severally, in the sum of \$10,909,654.48 as of January 9, 2020, plus per diem interest of \$1,745.21 from and including January 10, 2020 together with the petitioner’s costs of this proceeding on a special costs basis or, alternatively, a party and party costs basis pursuant to Scale B or such other scale as may be appropriate.
- J. An order that the petitioner recovers its costs of this proceeding on a special costs basis or, alternatively, a party and party costs basis pursuant to Scale B or such other scale as may be appropriate and that such costs form a part of the amount required to redeem the Lands, the Property and the Censorio Property.
- K. An order that upon the respondents, or any of them, paying into Court to the credit of this proceeding at the Court Registry, Courthouse, 800 Smithe Street, Vancouver, British Columbia, or paying to the solicitor of record for the petitioner or, if no such solicitor exists then paying to the petitioner, the amount required to redeem the Lands, the Property and

the Censorio Property as aforesaid, together with the costs of this proceeding on a special costs basis or, alternatively, a party and party costs basis pursuant to Scale B or such other scale as may be appropriate, before pronouncement of either an order absolute of foreclosure or an order confirming the sale of the Lands, the Property and the Censorio Property, the petitioner shall reconvey the Lands, the Property and the Censorio Property free and clear of all encumbrances in favour of it or any person claiming by, through or under it and shall deliver up, upon oath if required, all deeds, titles and documents in its custody, possession or power relating thereto to the respondents so paying or to whom they shall appoint.

- L. An order that if the Lands, the Property and the Censorio Property not be redeemed, the petitioner shall be at liberty to apply for an order absolute of foreclosure and upon pronouncement of the order absolute of foreclosure the respondents and all persons claiming by, through or under them shall henceforth stand absolutely debarred and foreclosed of and from all right, title, interest and equity of redemption in and to the Lands, the Property and the Censorio Property and all monies paid under the Security shall become the property of the petitioner free from any right of the respondents and that thereupon the petitioner shall recover vacant possession of the Lands, the Property and the Censorio Property.
- M. An Order appointing a receiver of the rents and mesne profits in respect of the Lands, the Property and the Censorio Property.
- N. An order for sale of the Lands, the Property and the Censorio Property subject to the approval of this honourable court and for the petitioner to have exclusive conduct of such sale.
- O. An order that the petitioner may apply to this court for a further summary accounting of any amounts which become due to the petitioner for interest, taxes, arrears of taxes, insurance premiums, costs, charges, expenses or otherwise since the date of pronouncement of this order.
- P. A certificate of pending litigation.
- Q. An order for any further relief that this honourable court may deem just.

PART 2: FACTUAL BASIS

1. The petitioner, PEOPLES TRUST COMPANHY, is a trust company extra-provincially registered in B.C. with an address for service in these proceedings c/o 2900 – 595 Burrard Street, Vancouver, B.C. V7X 1J5.
2. The respondent, CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD., is the registered owner of the Lands and the Property and the person entitled to the equity of redemption contained in the Mortgage.
3. The respondents, PETER CENSORIO and STRADA 39 TRUST, executed good and valid Covenants as principal debtors.
4. The Mortgage is a first mortgage registered against the Lands to and 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 persons claiming by, through or under them.
5. The rate of interest chargeable pursuant to the Security is the greater of 5.95% per annum, compounded monthly and 2.00% per annum above the Bank of Montreal's prime lending rate declared from time to time, which said interest rate is currently 3.95% per annum, so that the rate of interest chargeable under the Security is currently 5.95% per annum, compounded monthly, not in advance, as well after as before any or all of maturity, default and judgment until paid or, alternatively, per diem interest at the current rate of \$1,745.21 from and including January 10, 2020.
6. The Security Agreement and the Censorio Security Agreement are first charges registered against the Property and the Censorio Property to and in favour of 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 persons claiming by, through or under them.
7. The respondents, CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD., PETER CENSORIO and STRADA 39 TRUST, are in default of their obligations under the terms of the Security. The said respondents refused or neglected to pay the amount due

notwithstanding that payment was demanded, and as a result, the full balance due pursuant to the Security is due and payable.

8. The principal sum advanced under the Security was \$10,705,937.00 and the principal sum now due under the Security is \$10,909,654.48 as of January 9, 2020. The said amount claimed does not include any penalty or bonus.
9. The per diem interest currently due on the said principal sum of \$10,909,654.48 is \$1,745.21 based on the current interest rate of 5.95% per annum, compounded monthly, not in advance.
10. The following sets out the holders of charges, nature of charges and registration numbers of the charges registered in the New Westminster Land Title Office against the title of the Lands, all of which charges rank in priority behind the interest of the petitioner:

RESPONDENTS	NATURE OF INTERESTS	REGISTRATION NUMBERS
BANCORP GROWTH MORTGAGE FUND II LTD., BANCORP BALANCED MORTGAGE FUND II LTD. and BANCORP FINANCIAL SERVICES INC.	Mortgage Assignment of Rents	CA6245684 modified by CA7557828 CA6245685 modified by CA7557829
PK CAPITAL LTD.	Mortgage Assignment of Rents	CA7219414 CA7219415
ALL CANADIAN INVESTMENT CORPORATION	Certificate of Pending Litigation	CA7750158
FBM CANADA GSD, INC.	Claim of Builders Lien	CA7847746
MEDINA CONCRETE SERVICES LTD.	Claim of Builders Lien	CA7883860
TUCUVAN CONSTRUCTION LTD.	Claim of Builders Lien	CA7914853
OMNI DRYWALL LTD.	Claim of Builders Lien	CA7929493
<u>1223293 B.C. LTD.</u>	<u>Claim of Builders Lien</u>	<u>CA7992704</u>
<u>RAHUL GLASS LTD.</u>	<u>Claim of Builders Lien</u>	<u>CA7995006</u>

11. The following sets out the holders of charges, nature of charges and registration numbers of the charges registered in British Columbia Personal Property Registry against the respondents, CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD., PETER CENSORIO also known as PETER ANTHONY CENSORIO and PETER ANTHONY CENSORIO and STRADA 39 TRUST, all of which charges rank in priority behind the interest of the petitioner:

RESPONDENTS	NATURE OF INTERESTS	REGISTRATION NUMBERS
BANCORP GROWTH MORTGAGE FUND II LTD., BANCORP BALANCED MORTGAGE FUND II LTD. and BANCORP FINANCIAL SERVICES INC.	PPSA Security Agreements	227051K 227177K 227179K 848520J 921880K
PK CAPITAL LTD.	PPSA Security Agreement	182826L
SERIN INVESTMENTS LTD., CLARION PROPERTY CORPORATION, G. I. H. PROPERTIES LTD., BARRY CHARLES HOLDINGS LTD., BECISON HOLDING CORPORATION, SANDRA CHAPPELL and CREST CAPITAL CORPORATION	PPSA Security Agreement	302370K
DURHAM CAPITAL MANAGEMENT INC.	PPSA Security Agreement	356306L
PAVILION INVESTMENTS INC.	PPSA Security Agreement	439672L
G. I. H. PROPERTIES LTD., YORK VENTURES LTD., BARRY CHARLES HOLDINGS LTD. and HI-GROVE HOLDINGS (1995) LTD.	PPSA Security Agreement	867154L

DIANE RAUCH, JEFFREY RAUCH, GERHARD RAUCH and HELGA RAUCH	PPSA Security Agreement	867258L
PAVILION INVESTMENTS INC., RODNEY GRANT KENYON, ALAN LONG and MANDATE MANAGEMENT CORPORATION	PPSA Security Agreement	906167L

12. There are no other persons having a registered interest in the Lands, the Property and the Censorio Property with respect to which the Security of the petitioner has priority.
13. The petitioner has not entered into nor taken possession of the Lands, the Property and the Censorio Property.

PART 3: LEGAL BASIS

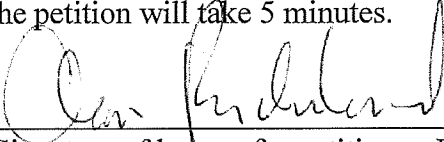
1. Rules 1-3, 10-2, 13-5, 14-1, 16-1, 21-7 and 22-1.
2. Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended.
3. Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

PART 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of JONATHAN WONG, made JANUARY 21, 2020.
2. Affidavit #1 of LIISA WILDER made JANUARY 14, 2020.

The petitioner estimates that the hearing of the petition will take 5 minutes.

Original Date: January 21, 2020
Amended Dated: January 23, 2020



Signature of lawyer for petitioner, Peoples Trust
Company, Alan A. Frydenlund, Q.C.

TO BE COMPLETED BY THE COURT ONLY:

Order made

in the terms requested in paragraphs _____ of Part 1 of this petition

with the following variations and additional terms:

Date: _____

Signature of Judge Master

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PEOPLES TRUST COMPANY

Petitioner

AND:

CENSORIO GROUP (HASTINGS & CARLETON)
HOLDINGS LTD.
PETER CENSORIO also known as PETER ANTHONY
CENSORIO and PETER ANTHONY CENSORIO
STRADA 39 TRUST
BANCORP GROWTH MORTGAGE FUND II LTD.
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SANDRA CHAPPELL
CREST CAPITAL CORPORATION
DURHAM CAPITAL MANAGEMENT INC.
YORK VENTURES LTD.
HI-GROVE HOLDINGS (1995) LTD.
DIANE RAUCH
JEFFREY RAUCH
GERHARD RAUCH
HELGA RAUCH

PAVILION INVESTMENTS INC.
RODNEY GRANT KENYON
ALAN LONG
MANDATE MANAGEMENT CORPORATION

Respondents

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

The petitioner, PEOPLES TRUST COMPANY, claims the right to serve this petition on the respondents, or any of them, outside British Columbia on the grounds, *inter alia*, that the proceeding:

- (a) 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;
- (b) is brought to interpret, rectify, or enforce any deed, contract, or other instrument in relation to property in British Columbia that is immovable or movable property;
- (c) concerns contractual obligations, and the contractual obligations, to a substantial extent, were to be performed in British Columbia;
- (d) concerns contractual obligations, and by its express terms, the contract is governed by the law of British Columbia.

**IN THE SUPREME COURT OF BRITISH
COLUMBIA**

BETWEEN:

PEOPLES TRUST COMPANY

Petitioner

AND:

CENSORIO GROUP (HASTINGS & CARLETON)
HOLDINGS LTD., PETER CENSORIO also known as PETER
ANTHONEY CENSORIO and PETER ANTHONY CENSORIO,
STRADA 39 TRUST, BANCORP GROWTH MORTGAGE
FUND II LTD., BANCORP BALANCED MORTGAGE FUND II
LTD., BANCORP FINANCIAL SERVICES INC., PK CAPITAL
LTD., ALL CANADIAN INVESTMENT CORPORATION, FBM
CANADA GSD, INC., MEDINA CONCRETE SERVICES LTD.,
TUCUVAN CONSTRUCTION LTD., OMNI DRYWALL LTD.,
1223293 B.C. LTD., RAHUL GLASS LTD., SERIN
INVESTMENTS LTD., CLARION PROPERTY
CORPORATION, G. I. H. PROPERTIES LTD., BARRY
CHARLES HOLDINGS LTD., BECISON HOLDING
CORPORATION, SANDRA CHAPPELL, CREST CAPITAL
CORPORATION, DURHAM CAPITAL MANAGEMENT INC.,
YORK VENTURES LTD., HI-GROVE HOLDINGS (1995)
LTD., DIANE RAUCH, JEFFREY RAUCH, GERHARD
RAUCH, HELGA RAUCH, PAVILION INVESTMENTS INC.,
RODNEY GRANT KENYON, ALAN LONG and MANDATE
MANAGEMENT CORPORATION

AMENDED PETITION TO THE COURT

OWEN BIRD LAW CORPORATION
P.O. Box 49130
Three Bentall Centre
2900 - 595 Burrard Street
Vancouver, BC V7X 1J5
Attention: Alan A. Frydenlund, Q.C.
File No. 22880/0112