

Action No.: 1101-03137
E-File No.: CVQ11717723201
Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

BANK OF MONTREAL and CIBC MORTGAGES INC.

Plaintiffs

and

7177232 CANADA INCORPORATED, KHAWAJA MOHL-UDDIN,
MIRELA LEOPOLD MURESAN, SAEED BHATTI,
NATHAN AMOR, ALEXIS VICTORIA HADERER, ISAAC AMOR,
FANNY LAM, MCAP SERVICE CORPORATION,
EUROPEAN CONDOS INC., MOSAN AMSHYAH, NASEEM AMNA
MOHIUDDIN, TOMMASINA SARRACINI, NIXIOUS
INVESTMENTS INC., FIRST NATIONAL FINANCIAL GP
CORPORATION, GENWORTH FINANCIAL MORTGAGE INSURANCE
COMPANY CANADA, RIZWANA MAHMOOD, ALLAN KEUNG,
CLIFF N. SHIN, ADIL KHAN, CIBC MORTGAGES INC.,
ISMAT ZAHID, ATROPOS HOLDINGS INC., MONTENEGRO
PROPERTIES INC., AIMEN BASHIR OMRANI and FIVE
STAR REALTY LTD.

Defendants

Action No.: 0901-01663

AND BETWEEN:

BANK OF MONTREAL

Plaintiff

and

ATROPOS HOLDINGS INC., KENNETH BLATZ and ALEX KARMIS

Defendants

Action No.: 0901-01120

AND BETWEEN:

BANK OF MONTREAL

Plaintiff

and

EUROPEAN CONDOS INC., KENNETH BLATZ and ALEX KARMIS

Defendants

Action No.: 0901-00345

AND BETWEEN:

BANK OF MONTREAL

Plaintiff

and

ALECTO DEVELOPMENT INC., EUROPEAN CONDOS,
KENNETH BLATZ and ALEX KARMIS

Defendants

Action No.: 1001-14291

AND BETWEEN:

CIBC MORTGAGES INC.

Plaintiff

and

MONTENEGRO PROPERTIES INC. and KENNETH BLATZ

Defendants

Action No.: 1001-14290

AND BETWEEN:

CIBC MORTGAGES INC.

Plaintiff

and

NIXIOUS INVESTMENTS INC. and KENNETH BLATZ

Defendants

Action No.: 1001-14288

AND BETWEEN:

CIBC MORTGAGES INC.

Plaintiff

and

NIXIOUS INVESTMENTS INC. and KENNETH BLATZ

Defendants

Action No.: 1001-14287

AND BETWEEN:

CIBC MORTGAGES INC.

Plaintiff

and

NIXIOUS INVESTMENTS INC. and KENNETH BLATZ

Defendants

Action No.: 1001-07662

AND BETWEEN:

CIBC MORTGAGES INC.

Plaintiff

and

MOHSAN AMSHYAH

Defendant

Action No.: 1001-07634

AND BETWEEN:

CIBC MORTGAGES INC.

Plaintiff

and

AIMEN BASHIR OMRANI

Defendant

PROCEEDING
EXCERPT

Calgary, Alberta
April 15, 2011

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TABLE OF CONTENTS

Description		Page
April 15, 2011	Morning Session	1
Reasons for Judgment		1
Certificate of Record		17
Certificate of Transcript		18

1 Proceedings taken in the Court of Queen’s Bench of Alberta, Courthouse, Calgary, Alberta

2 _____

3 April 15, 2011 Morning Session

4
5 Master Hanebury, Q.C. Court of Queen’s Bench of Alberta

6
7 R.J. Cotter, Q.C. For the Plaintiff/Applicant Bank of Montreal

8 F.L. Schutz, Q.C. For the Plaintiff/Applicant CIBC Mortgages Inc.

9 D.M. Hendrix For the Plaintiff/Applicant CIBC Mortgages Inc.

10 D.A. Whitely For Royal Bank of Canada

11 D.J. Esch For Toronto-Dominion Bank

12 C.J. Lintott For London Life Insurance Company

13 R.N. Avery For the Defendants/Respondents HSBC, First

14 National Financial GP Corporation and MCAP

15 Service Corporation

16 R.R. Jadusingh For the Defendants/Respondents Nathan Amor

17 and Isaac Amor

18 C.O. Llewellyn For the Defendant/Respondent Cliff N. Shin

19 M.J. Bondar For Janstar Homes Ltd.

20 (No Counsel) For Five Star Realty

21 (No Counsel) For 1102157 Alberta Ltd.

22 (No Counsel) For A Better Roofing Ltd.

23 C. Laing Court Clerk

24 _____

25 (PORTION OF PROCEEDINGS OMITTED BY REQUEST)

26
27 THE MASTER: So, I’ll preface my remarks this morning by

28 saying that I reserve my right, should anyone order a transcript of these reasons, to review

29 it and correct any grammatical errors or ‘ums’ or ‘ahs’ written in haste and repent at

30 leisure. All right.

31

32 **Reasons for Judgment**

33

34 THE MASTER: This is my decision in Action Number

35 1101-03137.

36

37 This is a unique application. A condominium building in Calgary has been declared

38 uninhabitable by the Province of Alberta and, for almost two years, it has sat empty. It

39 has been without heat and is now subject to mold and other issues. The heating pipes are

40 frozen and, in some cases burst, and there are ongoing problems with water leakage.

41

1 The units are owned by different parties and registered against them are mortgages owned
2 by a variety of different lenders. One of the lenders is the Bank of Montreal, another is
3 the Canadian Imperial Bank of Commerce, and they are the applicants. The two banks
4 have made an application to terminate the condominium status of the building on behalf
5 of themselves and other mortgagees of various units of the building.
6

7 The applicants also seek to dissolve the condominium association and they rely on the
8 partition and sale provisions of the *Law of Property Act*, certain rules of the *Rules of*
9 *Court*, and section 63 of the *Condominium Property Act*, and asks this Court to direct the
10 sale.
11

12 This is the third time the matter has been in front of the Court. An adjournment was
13 sought initially so parties could be better prepared for this application. The second time
14 the matter was before the Court, not all interested parties, including the alleged insurer,
15 had been adequately served with notice of the application, and the matter was therefore
16 adjourned to ensure notice was given to all interested parties.
17

18 Nature of the Application

19

20 Section 61 of the *Condominium Property Act* R.S.A. 2000, c. C-22 states:
21

22 61(1) An application to terminate the condominium status of a
23 building or parcel may be made to the Court by the corporation,
24 an owner, a registered mortgagee of a unit or a vendor under an
25 agreement for sale of a unit.
26

27 (2) On an application under this section, if the Court is satisfied
28 that, having regard to the rights and interests of the owners as a
29 whole, it is just and equitable that the condominium status of the
30 building or parcel should be terminated, the Court may make a
31 declaration to that effect.
32

33 (3) When a declaration has been made pursuant to subsection (2),
34 the Court may by order impose any conditions and give any
35 directions, including directions for the payment of money, that it
36 thinks fit for the purpose of adjusting as between the corporation
37 and the owners and as among the owners themselves the effect of
38 the declaration.
39

40 The obligation is on the applicants to convince this Court that, having regard to the rights
41 and interests of the owners as a whole, it is just and equitable that the condominium status

1 of the building or parcel be terminated.

2
3 In this case, the building houses 44 units. The Toronto-Dominion Bank is the mortgagee
4 of ten units; the Royal Bank is the mortgagee of seven units; the Canadian Imperial Bank
5 of Commerce is the mortgagee of seven units and the registered owner of two units; the
6 Bank of Montreal is the mortgagee of three units; the HSBC is the mortgagee of two
7 units; London Life Insurance is the mortgagee of one unit; First National is the owner of
8 one unit; Genworth Financial is the owner of one unit; and MCAP Mortgage is the
9 mortgagee of eight units and the registered owner of two units.

10
11 The foreclosure actions are in various stages. In the case of four units, the mortgages are
12 in default, but the mortgagee has not yet commenced an action. In others, the mortgagee
13 is in a position to take title. Only one unit, that owned by Rizwana Mahmood, has a
14 current mortgage. The first mortgages against the units range from \$64,000 to \$228,000.

15
16 On December 18th, 2009, Alberta Health Services declared the condominiums unfit for
17 human habitation. In March of 2010, it registered a Notice of Health Hazard against the
18 title to each unit.

19
20 On July 30th, 2010, lawyers representing mortgagees holding mortgages against 30 of the
21 44 units in the building held a telephone meeting to discuss how they could deal with
22 property in a cooperative and coordinated way. They decided to retain Anast Demitt, a
23 civil engineer, to review the condition of the building and provide a report as to the
24 structure and the issues related to the Health Services notice.

25
26 On September 14th, 2010, Mr. Demitt rendered his opinion as to the probable costs
27 associated with the completion of the required repairs or, alternatively, the demolition and
28 reconstruction of the building. He retained the services of Rocky Cross Construction, a
29 certified mold remediation contractor, to provide budgets for mold remediation, the
30 demolition necessary to access the mold within the building, and other issues. He also
31 retained Costplan Management Limited to provide quantity survey services and
32 replacement and repair budgets. He himself undertook the costing of and the analysis of
33 the structural repairs, including the underpinning of the building.

34
35 Mr. Demitt came to the conclusion that the probable magnitude of cost to repair the
36 building was \$6,250,000, or approximately \$142,000 per unit, while the probable cost for
37 demolition and rebuilding the condominium was \$6,150,000, or approximately \$139,775
38 per unit. Both estimates excluded professional fees, permit costs and GST. Mr. Demitt
39 was examined on his affidavit.

40
41 A company, Janstar, represented by counsel, approached counsel for the Bank of Montreal

1 to advise that it was interested in acquiring the building. It submitted an offer in the sum
2 of \$1,760,000, which has subsequently increased to \$1,782,000. That offer was
3 subsequently revised to exclude the four units and the common property related to the
4 four units of the registered owners who were originally opposing this application.

5
6 Subsequently, a further offer was received from 1102157 Alberta Ltd. to acquire the
7 condominium for the sum of \$1,760,000, which offer was revised to the sum of
8 \$1,860,000.

9
10 On March 17th, 2011, a further offer was received from 1084104 Alberta Ltd., which was
11 replaced by an offer of an Brian Ryder (phonetic) for the sum of \$1,584,000. At this
12 time, to my knowledge, this offer had not put into writing.

13
14 All parties have agreed to acquire the condominium on an as-is/where-is basis. The
15 building was also appraised at the request of the lenders on an as-if vacant basis, i.e., as if
16 the land were undeveloped, without taking into consideration the cost of remediation or
17 the cost of demolition, and it valued at \$1,460,000, or approximately \$33,200 per unit.

18
19 The condominium corporation is allegedly 7177232 Canada Inc. and was incorporated on
20 June 1st, 2009. The director is Akber Hashmi. No annual return for the corporation has
21 ever been filed and the shareholders have not been disclosed. 717 owns Units 1, 8, 12
22 and 21. The Bank of Montreal also obtained court orders selling Units 11, 19 and 30 to
23 717, but the sales were not completed by the company.

24
25 Five Star Realty Ltd. purports to represent the condominium corporation pursuant to a
26 management agreement allegedly entered into between the corporation and Five Star
27 Realty on June 1st, 2010. Five Star Realty also hired an engineer to provide an estimate
28 as to the cost of repair. Their engineer estimated it would cost \$681,500 to repair the
29 building.

30
31 Both 717 and Janstar were represented by the same counsel. He advised the Court on
32 March 18th, 2011, that 717 retained Five Star as the property manager in anticipation that
33 717 would acquire the condominium building and would revive the dormant condominium
34 corporation, and he confirmed that the condominium corporation was not active.

35
36 Either 717 or Five Star had the roof repaired, and there is an outstanding invoice in the
37 sum of approximately \$65,000. In light of the effect the order sought might have on
38 creditors of 717, counsel for the lenders was asked to ensure that service of notice of this
39 application was given to those creditors owed more than \$5,000.

40
41 The Test

1
2 Is it just and equitable, having regard to the rights and interests of the owners as a whole,
3 that the condominium status of the building be terminated? There is no case law on point
4 with the present situation. The Nova Scotia Court of Appeal in *2475813 Nova Scotia Ltd.*
5 *and Ali*, 2002 CarswellNS 174, said at paragraph 7 that: (as read)

6
7 . . . it is clear that the equitable jurisdiction which the court is
8 called upon to exercise on the application to approve the sale and
9 terminate the governance of the property must be understood
10 within the context of the scheme and purpose of the *Condominium*
11 *Act*.

12
13 The Court found that: (as read)

14
15 . . . the key issue . . . is to determine whether there are sound
16 reasons supporting the view that the proposed transaction is in the
17 interest of the unit holders and the corporation collectively.

18
19 See as well *York Condominium Corporation No. 59 v. York Condominium Corporation*
20 *No. 87* (1983), 42 O.R. (2d) 337 (Ont. C.A.), and *Winnipeg Condominium Corporation*
21 *No. 12 v. Edwardian Estates Ltd.* 1995 CarswellMB (MB C.A.)

22
23 What this case law makes clear is that each decision is based on its own facts and the
24 facts must be carefully scrutinized. Counsel for the Messrs. Amor, brothers, who own
25 two units and the only parties who opposed the application to collapse the condominium
26 status of the building and sell it, argue that the evidence of Mr. Demitt should not be
27 considered as the application is in the nature of a final order disposing of the property and
28 all evidence should be based on personal knowledge. He pointed to the information relied
29 upon by Mr. Demitt to come to his conclusions as to the costs related to the remediation
30 of the building.

31
32 There is conflicting evidence before this Court on the cost to remediate the building.
33 Mr. Demitt himself made it clear in his report that it was preliminary in nature and
34 significant further work needed to be done. Mr. Demitt's affidavit, while useful to the
35 Court, is not determinative. It is, itself, contradicted by the report of the consultant
36 retained by Five Star. Taking into consideration the use to be made of Mr. Demitt's
37 report in this proceeding, his evidence is allowed to stand, despite his reliance on the
38 advice of others as to the potential costs for remediating aspects of the building. What is
39 crucial is that there is no evidence before this Court that the units are individually worth
40 more than the mortgages registered against them. The evidence of the lenders is that the
41 units are worthless. Even if the value were increased to \$2,000,000, each unit would only

1 be worth approximately \$45,500. It is obvious that every lender and every owner in this
2 complex is under water. The building has been vacant for almost two years and its
3 situation continues to deteriorate.

4
5 Another crucial fact is that no one has stepped forward to remediate the situation. The
6 owners, except for the Amor brothers, have made no submissions. The Amors make no
7 suggestion to deal with the situation, other than sending it to case management. That will
8 only further delay this matter and result is possibly even greater damage to the building.

9
10 Looking at the interests of the owners overall, selling the building as a whole is much
11 more likely to be successful and maximize the sale price, rather than individual sales by
12 each lender. It is highly unlikely that anyone would be interested in buying a single unit
13 in light of the damaged state of the building, and the cost of repairs, and the difficulty a
14 buyer would have in ensuring that the repairs were carried out by the condominium
15 association. Any new owner would be dealing with all, or virtually all, of the other
16 owners who, it would appear, will refuse to put good money after bad. The lack of
17 control a single unit holder would have would discourage even the most assiduous bargain
18 hunter from purchasing one or even several units in the building.

19
20 The facts clearly indicate that it is in the best interest of the owners to have the building
21 marketed as one parcel. The Court recognizes that this result does not align with the
22 wishes of two owners. The Court also acknowledges the long-standing principle found in
23 our judicial system and in our decisions that the rights to property of owners are to be
24 protected. However, when buying a condominium, an owner must recognize that his or
25 her wishes or desires may ultimately be subjugated to the interest of the majority. This is
26 just an extreme and unusual example of that principle of condominium ownership.

27
28 Each of the opposing unit holders owes in excess of \$225,000 to the mortgagee. They
29 have done nothing themselves to remediate the issues that resulted in the registration of
30 the health notice by Alberta Health Services. In the facts of this situation, I have come to
31 the conclusion that it is just and equitable that the condominium status of the property be
32 terminated in order to permit the property to be dealt with as one parcel and be sold. I
33 am not determining at this time whether the condominium corporation will be dissolved.
34 I am reserving that decision.

35
36 The next question raised is the authority for the sale of the property. Counsel for the
37 lenders point to three different provisions which, he argues, permit the property to be sold.
38 The first is under section 63 of the *Condominium Property Act*. A review of that section
39 reveals that it may be insufficient to support the remedy requested in light of the
40 requirements in section 63(2).

1 Counsel for the lenders has also relied upon rule 9.38. This rule provides that, when land
2 is to be sold as a result of an action, the Court may make the order and specify the time,
3 and place, and other details associated with the transaction that the Court considers
4 appropriate. It applies to sales other than by way of a foreclosure action. This rule is
5 similar to rule 495 in the prior *Rules of Court*. Relying on the Alberta Court of Appeal
6 decision in *Canada Permanent Trust v. King Art Developments*, (1984), 50 A.R. 172,
7 counsel for the lenders states that rule 9.38 stands on its own and does not need to be and
8 is not an adjunct to specific legislation in order to be effective.

9
10 I do not need to decide this point, as counsel for the lenders also relies on the authority of
11 the partition and sale provisions of the *Law of Property Act*. Those provisions are
12 applicable as with the granting of a declaration that the condominium status of the
13 property is terminated, the Registrar of the Land Titles Office will issue a new title
14 showing each of the owners of the units in the condominium project as a co-owner in the
15 single title that will be issued. Under section 15 of the *Law of Property Act*, the Court
16 may terminate the co-ownership of the interest in lands, and make an order directing the
17 sale of part or all of the interest in the lands and the distribution of the proceeds of the
18 sale, which sale and distribution are to be under the direction of the Court. I am satisfied
19 that this Court has the jurisdiction to direct the sale of the lands as one of the joint
20 applicants is presently an owner of two of the units.

21
22 Therefore, counsel, I am prepared to hear argument on the method of sale. Now, I don't
23 know if this is an appropriate time to take a lunch break and, if you want to come back
24 and argue that after lunch, or how you wish to proceed. I am in your hands.

25
26 MR. COTTER: Frankly, I am in your hands, Master Hanebury.
27 If the Court would prefer a break now, we could deal with it after lunch. I am prepared
28 to deal with it now and --

29
30 THE MASTER: Well --

31
32 MR. COTTER: -- and (INDISCERNIBLE).

33
34 THE MASTER: Why don't we find out who's planning to argue
35 and how long they think to take? That might be the first step.

36
37 Who is going to be raising arguments on this point other than Mr. Cotter?

38
39 MR. BONDAR: I think --

40
41 THE MASTER: Mr. Bondar, you're not -- there are -- none of

1 the -- I know there are the -- the tenders - although I'll use that word loosely, since it's
2 not a court-ordered process at this point --

3
4 MR. BONDAR: The only point I would make is that I'm not
5 entirely certain which offer Mr. Cotter is going to put forward to the Court to be accepted.
6 But I would like to point out, when hearing your reasons, my client's offer was for 44
7 units. Only in court, when it appeared that there was some interested holders, did my
8 client say, 'Well, you can excluded those,' but that --

9
10 THE MASTER: Is not in the --

11
12 MR. BONDAR: -- never materialized.

13
14 THE MASTER: -- formal offer?

15
16 MR. BONDAR: Yeah, the formal offer --

17
18 THE MASTER: All right.

19
20 MR. BONDAR: -- stands as it was submitted on February 28th,
21 and the deposit is with Mr. Cotter, and we'll hear what he has to say, and then I may be
22 making some submissions at that time.

23
24 MR. COTTER: I think - if I might - what I'm hearing from
25 Mr. Bondar is I think we need to ask some clarification from the Court which might assist
26 us. The point is this - is that the Court has directed that the property may be sold
27 pursuant to section 15 of the *Law of Property Act* under the provisions of the Court to sell
28 under a partition and sale.

29
30 THE MASTER: M-hm.

31
32 MR. COTTER: And so, what I believe is implicit in this is that
33 the Court is telling us that the Court is not prepared to order a sale to one of the offerors
34 that has come forward and has been presented to the Court as part of our originating
35 application, and that the Court is saying that, under the discretion of the Court pursuant to
36 rule 9.38(2) that the Court is now inviting us to say, I am now putting the property up for
37 sale, but I'm not prepared to sell it to the offerors that are before the Court today and, that
38 being the case, that we can talk about process. If the Court's saying the latter, as opposed
39 to the former, then I think Mr. Bondar would speak to the matter.

40
41 THE MASTER: Mr. Cotter, I haven't made a determination.

1 Sometimes when we have partition and sale applications in front of us, it doesn't actually
2 go out to a tender process. It depends on the nature of the application, the nature of the
3 interested parties, and so on. Sometimes it does. The first question is the process - so,
4 are these offers going to be considered, or is there going to be some other process that's
5 going to be used? I think that's the first question.

6
7 MR. COTTER: Well --

8
9 THE MASTER: So, I --

10
11 MR. COTTER: Can I answer that - and which will guide us a
12 little bit?

13
14 THE MASTER: Well, I think I need to hear argument on that
15 because we have offerors, we have someone raising their hand --

16
17 MR. COTTER: Right.

18
19 THE MASTER: -- who may want to say, No, there shouldn't be
20 a public process, here's what's happened, there is however many offers - and I've -- I've
21 lost track now - before the Court, we think those offers should be considered. I think
22 that's the first stage that I have to go through.

23
24 MR. COTTER: And -- and so, perhaps what I could do is I'd
25 like to lay out the facts on this point. What we have before the Court is a process by
26 which offers coalesced with Cotter, and lenders referred potential parties to Cotter; CMHC
27 referred parties to Cotter; and I have prepared up a diagram that I think might be useful
28 by way of summary, and I've circulated it to my friends this morning, and I'd like to put
29 it to the Court because it might assist the Court.

30
31 THE MASTER: Mr. Cotter, can I just stop you for a minute? I
32 am also wondering if it might be useful for you to just meet with the parties who are
33 interested in the sale or the sale process and tell them what you're planning to seek from
34 the Court today, so that they can think about their position. Would that -- because we
35 have some unrepresented parties --

36
37 MR. COTTER: Right.

38
39 THE MASTER: -- that's --

40
41 MR. COTTER: But I think I should do that in open court --

1
2 THE MASTER: If you wish, you can also --
3
4 MR. COTTER: -- because --
5
6 THE MASTER: -- do it in open court, but then maybe I'll take
7 the lunch break so that they can think about their position. My concern is I'm not
8 comfortable calling on --
9
10 MR. COTTER: Yeah.
11
12 THE MASTER: -- parties when they haven't had a chance to
13 think.
14
15 MR. COTTER: (INDISCERNIBLE) --
16
17 THE MASTER: And we also have Mr. Llewellyn standing up.
18
19 MR. LLEWELLYN: No, no, I didn't get a chance to look at it, so I
20 had to come forward.
21
22 THE MASTER: All right.
23
24 MR. COTTER: Thank you.
25
26 MR. LLEWELLYN: I'm only standing because I couldn't do that
27 sitting.
28
29 MR. COTTER: Master, it's not my intent to steamroll an offer
30 to be accepted before lunch; that's not my intent. What my intent is I'm just trying to lay
31 out the facts so that the Court can say, 'Listen, we want to give some time to parties --'
32
33 THE MASTER: Okay.
34
35 MR. COTTER: '-- to consider their position, and we'll do that
36 over the break and come back this afternoon.'
37
38 THE MASTER: That's fine, go ahead.
39
40 MR. COTTER: So, what we have is our originating application
41 brought forward we sought to approve the Janstar offer and that's what our originating

1 application asked for. And in the written submissions of BMO, what had happened is is
2 that we have my friend here, who I acknowledge we were talking with about offers,
3 which is Mr. McKenzie, who represents 1102157, the first offer that I actually received
4 was from Mr. McKenzie, but I had been in discussions with Mr. Bondar in advance.
5 Mr. Bondar's client had provided a letter of intent and discussions resulted in the letter of
6 intent being formulated in the offer. The first interest I got was Janstar. The first offer I
7 received was McKenzie. And, as I indicated -- I'm sorry, the 110, which is number 2 on
8 the list, Master. There was then some subsequent variations made to the 110 offer.

9
10 We then received the 1084104 Alberta Ltd. offer, which is the Ryder offer, but I believe
11 the Ryder offer has gone by the wayside because it's never been culminated in writing
12 before me.

13
14 We then received the Main (phonetic) Street offer. They submitted it and that's been
15 filed with the Court.

16
17 And yesterday afternoon, at 4:15, I received the offer of 1247137 Alberta Ltd. of
18 \$2,420,000.

19
20 So, as an officer of the court, I have to say to the Court that I indicated I would present
21 the Janstar offer for consideration by the Court. I'm not in a position to bind the Court,
22 and I'm not suggesting that I am binding the Court, but what I am saying is is that's who
23 I said I would present and that's the offer being presented.

24
25 In the brief that we put forward to the Court, we put forward two competing philosophies
26 that have been put forward. The (INDISCERNIBLE) decision is, the Court says, we must
27 be very careful to protect the sanctity of the process to ensure that it is not flawed. We
28 also have the comments of *Canada Permanent Trust*, and *Manulife*, and cases that
29 Ms. Schutz had referred to at the last application which speak to -- and the numbered
30 company case I referred to this morning, which speak to the corresponding obligation of
31 the Court to get the highest and best price in this circumstance, not only for the creditors,
32 but for all concerned.

33
34 So, in light of that, I have seen Courts go either way, accepting the offer presented by
35 Janstar, but I've also seen many Courts, including this Court, Master Hanebury, where
36 you have said, in circumstances like this where there is a multiple-bid process, that the
37 Court would direct a sealed bid process. So, I've seen it go either way. I believe that, in
38 the circumstances, that there is no need to get realtor involved because this property has
39 been obviously known in the market to be available, and the result of it has culminated in
40 five offers being received, an expression of interest from Market Vision Real Estate
41 Strategies, which has not culminated in an offer.

1
2 And so, with respect, it's the Court's decision as to which path the Court is going to
3 follow and, having heard from me, maybe the parties want to consider their position and
4 come back at 2 and speak to the matter.
5

6 THE MASTER: Let me just understand what's been done to
7 market the property. There are no realtor fees to be paid, is that correct, in relation to any
8 of these offers?
9

10 MR. COTTER: There may be with respect to the last offer last
11 night that was received because it is John Torode and, as his offer indicates, it does come
12 from a licensed realtor. He's made the disclosure in the offer, Master. I do have that
13 offer here to present to the Court, and I can give you a copy of it, if you'd like to see.
14 It's unclear to me whether or not a commission is payable in respect to that offer.
15

16 THE MASTER: I don't need to see it right now. That's -- I'll --
17 I'll look at that later, if we get down that road. I am just trying to understand what's
18 been done to market the property. That was the purpose of my question.
19

20 MR. COTTER: Okay. So, let me answer it a little more
21 fulsome. What has happened is -- is that -- we'll go back to March 18th and I'll speak
22 to -- Mr. Bondar, who represented 717, indicated -- had knowledge of the property and
23 717 didn't proceed with completing the building -- or, its acquisition of the building
24 because of the intervention of the Alberta Health Services order. Mr. Bondar indicated
25 that his client -- if we could solve that problem, that his client would come forward.
26 Now, with the passage of time, that client hasn't come forward, but Mr. Bondar had
27 knowledge of the building and another client expressed interest in making the offer, and
28 that's the Janstar offer that's come forward.
29

30 In the meantime, we have had seven or eight lenders who have been trying to deal with
31 this problem for a long time and, in the course of conversations between themselves and
32 Genworth and CMHC, who are insuring most, if not all, of the loans are insured either
33 through Genworth or CMHC, parties came forward to the insurers, and the insurers
34 referred them to Ms. Schutz and, in turn, Ms. Schutz referred some of them to me, and so
35 it got known throughout the City of Calgary that there was this property available. And I
36 frankly can't speak to how widely known it was, but there was some information out
37 there because we have received these offers. Mr. Torode, became aware of it, submitted
38 an offer yesterday. As indicated in the footnote -- or, paragraph 6 to my chart, a realtor,
39 Sutton Realty, who's also with -- affiliated with this other prospective party, became
40 aware of it, and they have indicated some interest, but haven't -- it hasn't been culminated
41 in an offer.

1
2 Every party that contacted me, I informed them that the property had to be presented to
3 the Court for the Court's consideration, that it was the Court that accepted the offer, it
4 was not any lender. Secondly, I told them that we would only recommend acceptance of
5 offers that were submitted on an as-is/where-is basis without representation. I explained
6 to them that there was the Anast Demitt affidavit, and summarized what the affidavit said
7 and, in some instances, they asked for copies of the affidavit; copies were provided where
8 asked for. And so, there has been some marketing but, to repeat, to the extent it's not
9 been a formalized process.

10

11 THE MASTER: Thank you.

12

13 UNIDENTIFIED SPEAKER: Mr. Cotter may not know this, but 717 was
14 introduced to the building by a real estate agent - excuse me - by a real estate agent. So,
15 there was another realtor involved in presenting the building to 717.

16

17 THE MASTER: This was some years ago now, we're talking?

18

19 UNIDENTIFIED SPEAKER: Well, that was --

20

21 THE MASTER: Correct.

22

23 UNIDENTIFIED SPEAKER: -- yes, when they initially --

24

25 THE MASTER: All right.

26

27 UNIDENTIFIED SPEAKER: And I've spoken to 717 - actually, I received an
28 e-mail from him - he doesn't have the money to --

29

30 THE MASTER: Complete the deal.

31

32 UNIDENTIFIED SPEAKER: -- put in a tender.

33

34 THE MASTER: Okay. All right, thank you.

35

36 Well, let's take the lunch break and -- 2:00? Oh --

37

38 UNIDENTIFIED SPEAKER: Master, if I may? I -- I don't have submissions
39 in respect of matters going forward here, so I propose to not be present for this afternoon
40 session unless the Court has some reason for wanting me to be here.

41

1 THE MASTER: No, that's fine, Mr. --
2
3 UNIDENTIFIED SPEAKER: So, I just thought I would run that by the Court,
4 but I might ask if -- if any order or direction be given in this afternoon session, that I
5 simply be kept in the loop or served with any order resulting. I take it --
6
7 THE MASTER: Mr. Cotter's nodding.
8
9 UNIDENTIFIED SPEAKER: -- that wouldn't be a --
10
11 THE MASTER: I don't think that's a problem.
12
13 UNIDENTIFIED SPEAKER: Thank you.
14
15 THE MASTER: Though, before you leave, perhaps we should
16 decide who, if anyone, is going to see the order, Mr. Cotter, that I assume you were
17 drafting based on what -- the reasons I have already given. Are you asking to see a copy
18 of that order before it's filed with the Court?
19
20 UNIDENTIFIED SPEAKER: If I might be able to see that, yeah -- or, I
21 will -- I -- I prefer to see that, please?
22
23 MR. COTTER: That's fine.
24
25 THE MASTER: All right.
26
27 MR. COTTER: What I would do is have a representative
28 sample - let's pick two counsel - and what I did last time, just so the Court knows the
29 process, I sent it to everyone in advance that was present, every lawyer, so they could
30 have their input - I think one or two - but we only direct that two lawyers actually
31 approve the form of the order.
32
33 THE MASTER: Does anybody else want to step up to the plate?
34
35 MR. AVERY: We can approve the form, that will be fine.
36
37 THE MASTER: All right. That's fine.
38
39 MR. COTTER: Thank you.
40
41 THE MASTER: I assume you're staying 'til the very end?

1
2 MR. AVERY: I will, yes.
3
4 THE MASTER: All right.
5
6 Mr. Llewellyn, did you wish to --
7
8 MR. LLEWELLYN: I may not -- no, I may not be staying to the
9 very end, but I -- I would like a copy of the transcript of the decision. I will be ordering
10 it for another file actually, so I --
11
12 THE MASTER: Well, you are free to order it. I am not
13 ordering it.
14
15 MR. LLEWELLYN: Well, I just -- I just wanted you to know that I
16 will be ordering it, so you -- you probably (INDISCERNIBLE) --
17
18 THE MASTER: Oh, and so, I'll get it on my desk to review.
19 Thank you for the heads-up. I'll keep my notes.
20
21 Mr. Cotter, if I could ask you, before we start again at 2, if you could canvass who plans
22 to speak on this issue and, if some of the self-represented parties are going to speak, if
23 you could bring them to the front -- front and get some of the counsel who aren't going to
24 speak move to the back, I would be grateful; so then, we've got a -- we've got the people
25 we need in front of the Court.
26
27 MR. COTTER: Thank you, I will.
28
29 THE MASTER: All right?
30
31 MR. COTTER: Thank you.
32
33 THE MASTER: So, 2:00, everyone - we will see you then.
34
35 THE COURT CLERK: Order --
36
37 THE MASTER: Are you going to lock up the courtroom? We'll
38 just leave our -- we can all leave our materials?
39
40 THE COURT CLERK: (INDISCERNIBLE).
41

1 THE MASTER:

Thank you.

2

3 THE COURT CLERK:

Court is adjourned.

4

5

6 PROCEEDINGS ADJOURNED UNTIL 2:00 PM

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1 **Certificate of Record**

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I, Carol-Leah Laing, certify that this recording is a record of the evidence heard in the proceedings Court of Queen's Bench held in Courtroom Number 902 at Calgary, Alberta on the 15th day of April, 2011, and I was the court official in charge of the sound-recording during the proceedings today.

1 Certificate of Transcript

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I, Marilyn Bergmann, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

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