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FD

NO. 55004

COURTENAY REGISTRY



SUPREME COURT IN THE SUPREME COURT OF BRITISH COLUMBIA

CANADIAN WESTERN BANK

PETITIONER

DAVID EDGAR LOVE  
CHRISTINE MARY LOVE  
WENDY ANNE PRENTY

RESPONDENTS

PETITION TO THE COURT

THIS IS THE PETITION OF:

CANADIAN WESTERN BANK  
200 - 470 PUNTLIDGE ROAD  
COURTENAY, B.C. V9N 3R1

ON NOTICE TO:

DAVID EDGAR LOVE and  
CHRISTINE MARY LOVE  
190 URQUHART AVENUE  
COURTENAY, B.C. V9N 3K1

WENDY ANNE PRENTY  
2923 VANIER DRIVE  
COURTENAY, B.C.  
V9N 6L8

Let all persons whose interests may be affected by the order sought TAKE NOTICE that the petitioner applies to court for the relief set out in this petition.

IF YOU WISH TO BE HEARD at the hearing of the petition or wish to be notified of any further proceedings, YOU MUST GIVE NOTICE of your intention by filing a form entitled "appearance" in the above registry of this court within the Time for Appearance and YOU MUST ALSO DELIVER a copy of the "Appearance" to the petitioner's address for delivery, which is set out in this petition.

YOU OR YOUR SOLICITOR may file the "Appearance". You may obtain a form of "Appearance" at the registry.

IF YOU FAIL to file the "Appearance" within the proper Time for Appearance, the petitioner may continue this application without further notice.

## TIME FOR APPEARANCE

Where this Petition is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

Where this petition is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

(1) The address of the registry is  
420 Cumberland Road  
Courtenay, BC V9N 2C4

(2) The ADDRESS FOR DELIVERY is:

MUIR SINCLARE BUSH & COMPANY  
Barristers & Solicitors  
200 575 10th Street  
Courtenay, BC V9N 1P9

Fax number for delivery: (250) 334-3325

(3) The name and office address of the petitioner's solicitor is:

CHRISTOPHER R. SINCLARE  
MUIR SINCLARE BUSH & COMPANY  
Barristers & Solicitors  
200 575 10th Street  
Courtenay, B.C. V9N 1P9

The Petitioner applies to this Court pursuant to Rules 10 and 50 of the Rules of Court for:

(a) a declaration that the Mortgage dated April 25, 1997, (the "Mortgage"), between the Respondents, David Edgar Love and Christine Mary Love, as mortgagors, and the Petitioner as mortgagee, and registered in the Land Title Office, Victoria, British Columbia, on May 1, 1997, under no. EL051871, is a Mortgage charging all and singular that certain parcel or tract of land and premises situate in the City of Courtenay, British Columbia, and being more particularly known and described as:

Parcel Identifier: PID 000-342-416  
Strata Lot 8, District Lot 96, Comox District, Strata Plan 215  
together with an interest in the common property in proportion  
to the unit entitlement of the Strata Lot as shown on Form 1  
(the "Mortgaged Property")

- (b) a declaration that the Respondents, David Edgar Love and Christine Mary Love, have made default under the Mortgage and that all money secured by the Mortgage is charged upon the Mortgaged Property in priority to the interests of the Respondents and is due and owing to the Petitioner.
- (c) a declaration of the amount of money required to redeem the Mortgaged Property;
- (d) an Order that the Petitioner do recover its costs of this proceeding and that such costs form a part of the amount of money required to redeem the Mortgaged Property;
- (e) an Order that the last date for the redemption of the Mortgaged property shall be one day after the date of pronouncement of the Order Nisi in this proceeding, or such other date as the court may deem appropriate;
- (f) an Order that the Petitioner do recover judgment, jointly and severally, against the Respondents, David Edgar Love and Christine Mary Love, for the amount declared to be due and owing to the Petitioner as at the date of the Order Nisi in this proceeding plus post-judgment interest and the Petitioner's costs of this proceeding;
- (g) 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 after the date of pronouncement of the Order Nisi in this proceeding;
- (h) an Order for the sale of the Mortgaged Property, with vacant possession, subject to the approval of this Court, and for the Petitioner to have exclusive conduct of such sale;
- (i) an Order that upon the Respondents, or any of them, paying into Court to the credit of this proceeding at the Courtenay Court Registry, 420 Cumberland Road, Courtenay, B.C., or paying to the solicitor of record for the Petitioner, or paying to the Petitioner, if no such solicitor exists, the amount owing to the Petitioner as aforesaid, interest and the costs of this proceeding, on or before pronouncement of either Order Absolute of Foreclosure or an Order confirming the sale of the Mortgaged Property, the Petitioner shall reconvey the Mortgaged Property free and clear of the Mortgage 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;
- (j) an Order that if the Mortgaged Property is not redeemed the Petitioner may apply for an Order Absolute of Foreclosure and upon pronouncement of Order Absolute of Foreclosure the Respondents and all persons claiming by, through or under them shall then stand absolutely debarred and foreclosed of and from all right, title d, interest and equity of redemption in and to the Mortgaged Property and the Petitioner shall then recover vacant possession of the Mortgaged Property;

- (k) an Order for a Certificate of Pending Litigation;
- (l) an Order for all necessary accounts, directions and inquiries together with such further or corollary relief as this Honourable Court deems just.

At the hearing of this Petition will be read the Affidavit of Al Dafoe, a copy of which is served herewith.

The facts upon which this Petition is based are as follows:

1. The Petitioner, Canadian Western Bank, is a company duly incorporated under the laws of Canada and having a place of business at 200 - 470 Puntledge Road, Courtenay, British Columbia.

2. By a Deed of Mortgage dated April 25, 1997, (the "Mortgage") between David Edgar Love and Christine Mary Love mortgagors, and the Petitioner as mortgagee, the Respondents, David Edgar Love and Christine Mary Love, did grant and mortgage to the Petitioner all and singular that parcel or tract of land situate in the City of Courtenay, British Columbia, and more particularly known and described as:

Parcel Identifier: 000-342-416  
Strata Lot 8, District Lot 96, Comox District, Strata Plan 215  
Together with the an interest in the common property in proportion to  
the unit entitlement of the Strata Lot as shown on Form 1

(the "Mortgaged Property")

to secure the repayment of the sum of \$48,750.00 with interest as set out in the Mortgage.

3. The Mortgage was registered in the Land Title Office, Victoria, British Columbia, on May 1, 1997, under No. EL051871.

4. The Respondents, David Edgar Love and Christine Mary Love, have made default in the payments due under the Mortgage since August, 1998.

5. The Mortgage provides that in default of payment of principal or interest under the Mortgage, at the option of the Petitioner, all money thereby secured shall become due and payable to the Petitioner.

6. The Petitioner has demanded payment from the Respondents, David Edgar Love and Christine Mary Love, of the amount due and owing pursuant to the Mortgage but those Respondents have refused, failed or neglected to repay the amount.

7. The Mortgage matures on May 1, 2000.


8. The principal sum advanced under the Mortgage was \$48,750.00, and the sum due and owing under the Mortgage as at January 14, 1999, was \$47,959.44. The amount claimed does not include any penalty or bonus.

9. Interest accrues on all amounts currently due and all amounts which may become due under the Mortgage at the rate of 6.50% per annum, which is presently equal to the rate of \$8.41 per day from and including January 14, 1999, and is compounded half yearly not in advance.

10. The following sets out the holders of charges, nature of the charges, and registration numbers of the charges registered in the Victoria Land Title Office against the title to the Mortgaged Property, all of which charges rank in priority after the interest of the Petitioner:

<u>Respondents</u>	<u>Nature of Charge</u>	<u>Registration No.</u>
(a) Canadian Western Bank	Assignment of Rents	EL51872
(b) Wendy Anne Prenty	Mortgage	EM48298

Dated: January 20, 1999

  
 CHRISTOPHER R. SINCLARE  
 Solicitor for the Petitioner

THIS Petition is filed by Christopher R. Sinclair, Esq., of the law firm of MUIR SINCLARE BUSH & COMPANY, whose place of business & address for delivery is 200 - 575 10th Street, Courtenay, British Columbia V9N 1P9 TEL: (250) 338-6744 FAX: (250) 334-3325