

JUN 15 2011



H-110777

Form 66 (Rules 16-1(2) and 21-5(14))

NO. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE TORONTO-DOMINION BANK

PETITIONER

AND:

GINA LEE SHIN
RON SYDOR, JOHN DOE (tenant), JANE DOE (tenant)
THE OWNERS, STRATA PLAN LMS4155

RESPONDENTS

PETITION TO THE COURT

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

This proceeding has been started by the Petitioner(s) for the relief set out in Part 1 below.

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(s)
 - (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 petition within the time for response.

TIME FOR RESPONSE TO PETITION

A Response to Petition must be filed and served on the Petitioner(s),

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed Petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed Petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed Petition was served on you, or
- (d) if the time for Response has been set by Order of the Court, within that time.

	<p>The address of the registry is:</p> <p>800 Smithe Street Vancouver, BC V6Z 2E1</p>
	<p>The ADDRESS FOR SERVICE of the petitioner is:</p> <p>Farris Vaughan Wills & Murphy LLP Barristers and Solicitors 2500-700 W. Georgia Street Vancouver BC V7Y 1B3</p> <p>Fax number address for service (if any) of the petitioner: 604-661-9349</p> <p>E-mail address for service (if any) of the petitioner: rsloman@farris.com</p>
	<p>The name and office address of the petitioner's lawyer is:</p> <p>Robert P. Sloman Farris Vaughan Wills & Murphy LLP Barristers and Solicitors 2500-700 W. Georgia Street Vancouver BC V7Y 1B3</p>

Form 11

(Rule 4-5(2))

**ENDORSEMENT ON ORIGINATING PROCESS
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms]

The petitioner(s), claims the right to serve this Petition on the Respondent(s), or any of them, outside British Columbia on the ground that the proceeding is brought to enforce, assert, declare, or determine proprietary or possessory rights or a security interest in property in British Columbia, pursuant to Rule 4-5(1) and s.10(a) of the Court Jurisdiction and Proceedings Transfer Act.

CLAIM OF THE PETITIONER(S)

PART 1: ORDER(S) SOUGHT

[Using numbered paragraphs, set out the order(s) that will be sought at the hearing of the petition and indicate against which respondent(s) the order(s) is(are) sought.]

1. a declaration that a Mortgage (the "Mortgage") dated June 28, 2005, which was registered in the Vancouver Land Title Office on June 29, 2005 under number CA86162, is a charge on the following lands and premises;

Parcel Identifier No. 024-771-091

Strata Lot 187 District Lot 541 Group 1 New Westminster District Strata Plan LMS4155
Together with an Interest in the Common Property in Proportion to the Unit Entitlement
of the Strata Lot as Shown on Form 1

(the "Lands"),

ranking in priority to the interests in the Lands of the Respondents and the heirs, executors, administrators, trustees, successors, and assigns of the Respondents and all persons claiming by, through, or under them; except the interests in the Lands of the Respondent The Owners, Strata Plan LMS4155 which rank in priority to the Mortgage under s. 116 of the *Strata Property Act*, SBC 1998, c. 43;

2. a declaration that the Mortgage is in default;
3. a summary accounting of the amount of money due and owing to the Petitioner pursuant to the Mortgage, and a declaration of the amount of money required to redeem the Lands,

including legal costs, and other costs reasonable pursuant to the Mortgage ("the Amount Required to Redeem");

4. an order that the redemption period be set at a period to be determined by this Honourable Court upon application by the Petitioner;
5. an order that, on the Respondents or any of them paying into court or to the solicitors for the Petitioner prior to the pronouncement of an order absolute or an order approving a sale of the Lands the Amount Required to Redeem, then the Petitioner shall reconvey the Lands free and clear of encumbrances in favour of it or by any person claiming by, through, or under it, and shall deliver up all documents in the Petitioner's custody relating to the Lands to the Respondents who made payment;
6. an order that, if the Lands are not redeemed, the Petitioner shall be at liberty to apply for an order absolute, and on pronouncement of an order absolute, then the Respondents and the heirs, executors, trustees, administrators, successors, and assigns of the Respondents and all persons claiming by, through, or under them, other than the Respondent, The Owners, Strata Plan LMS4155 shall be foreclosed of all right, title, interest, estate, and equity of redemption in and to the Lands, and shall immediately deliver to the Petitioner vacant possession of the Lands;
7. an order that the Petitioner be at liberty to apply for a further summary accounting of any amounts of money that may become due to the Petitioner pursuant to the Mortgage;
8. upon application, an order that the Lands be listed for sale, and that the Petitioner have exclusive conduct of sale;
9. judgment in favour of the Petitioner against the Respondent, Gina Lee Shin, in the Amount Required to Redeem;
10. an order that the Petitioner be granted its costs of and in connection with this proceeding together with liberty to make application to increase the legal costs to be received by the Petitioner;
11. an Order that, in the event that the Lands are vacant or become vacant at any time during the course of this proceeding, the Petitioner or any duly authorized agent of the Petitioner be entitled to enter onto the Lands and into the buildings on the Lands, and to change the locks in order to preserve and secure the Lands and to do all things reasonably incidental thereto, and that the Petitioner not be deemed to be a mortgagee in possession by virtue thereof;
12. a Certificate of Pending Litigation;
13. an order for any further relief that to this Honourable Court may seem just;

PART 2: FACTUAL BASIS

[Using numbered paragraphs, set out the material facts on which this petition is based.]

1. The petitioner is a chartered Bank of Canada, having an address for delivery in this proceeding located at 2500 – 700 West Georgia Street, Vancouver, British Columbia.
2. By the Mortgage, the Respondent, Gina Lee Shin, mortgaged the Lands to the Petitioner.
3. The Mortgage was registered in the Vancouver Land Title Office on June 29, 2005 under number CA86162. A copy of the Mortgage is attached as Exhibit “A” to the Affidavit of Isabel Johnstone filed with this Petition.
4. A copy of the Standard Mortgage Terms for the Mortgage is attached as Exhibit “B” to the Affidavit of Isabel Johnstone filed with this Petition.
5. The Respondent, Gina Lee Shin is the registered owner of the Lands.
6. The payments required to be made pursuant to the Mortgage are in default.
7. Pursuant to the Mortgage, the principal, interest, and all other costs, charges, and expenses secured and payable thereby become due and payable on default of any payment required to be made thereby, and are now due and payable and have not been paid.
8. Demand has been made for the payment of the money owing to the Petitioner and secured by the Mortgage, but this money has not been paid, and as of May 16, 2011, there was due and owing to the Petitioner pursuant to the Mortgage the sum of \$202,993.43 plus interest thereafter at the rate of 6.70% per annum, calculated half yearly not in advance, being a daily rate that day of \$35.65 and costs.
9. The Respondent, The Owners, Strata Plan LMS4155, is the holder of the following charge registered against the Lands in the Vancouver Land Title Office on the following date under the following number.

RESPONDENT	CHARGE	REGISTRATION DATE	REGISTRATION NUMBER
The Owners, Strata Plan LMS4155	Strata Property Act Lien	November 29, 2010	BB1924521

10. The Respondents Ron Sydor, John Doe (tenant) and Jane Doe (tenant) are named as Respondents in this proceeding as the Petitioner believes that they may be residing as tenants on the property.

- 11. A copy of the B.C. Online search of the title of the Lands in the Land Title Office records is attached as Exhibit "C" to the Affidavit of Isabel Johnstone filed with this Petition.

PART 3: LEGAL BASIS

[Using numbered paragraphs, specify any rule or other enactment relied on and provide a brief summary of any other legal bases on which the petitioner(s) intend(s) to rely in support of the orders sought.]

- 1. The Petitioner(s) will rely on, inter alia, Rule 21-7 of the Supreme Court Civil Rules.

PART 4: MATERIAL TO BE RELIED ON

[Using numbered paragraphs, list the affidavits served with the petition. Each affidavit included on the list must be identified as follows: "Affidavit # [sequential number, if any, recorded in the top right hand corner of the affidavit. of [name], made [month, day, year]".]

- 1. Affidavit #1 of Isabel Johnstone made June 7, 2011.

The Petitioner(s) estimates that the hearing of the petition will take 5 minutes.

Dated: June 7, 2011

Signature

Applicant

Lawyer for petitioner(s)

Robert P. Sloman

THIS Petition is prepared and delivered by Robert P. Sloman of the firm Farris, Vaughan, Wills & Murphy LLP, Barristers & Solicitors, whose place of business and address for service is 2500 - 700 West Georgia Street, Vancouver, British Columbia, V7Y 1B3. Telephone: (604) 684-9151. Facsimile: (604) 661-9349. Attention: Robert P. Sloman (20-7847)

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:

Dated:

Signature of

[] Judge [] Master