



NO. S-238586  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

1038573 B.C. LTD.

PLAINTIFF

AND:

THE OWNERS, STRATA PLAN NW289, JENNY DONNA DICKISON, FERNANDO MARCELINO DUTRA DE SOUSA, 1276331 B.C. LTD., CARMELIA MARIA DA SILVA, HON-CHING RUDOLPH CHENG, 1161359 B.C. LTD., RICKY HEE MENG LAI, PIA FACCIIO, 1184416 B.C. LTD., MARK WILLIAM LOUTTIT and SARAH KINUKO LOUTTIT, BARRY DOUGLAS WATSON, AS ADMINISTRATOR OF THE ESTATE OF KENNETH JOHN WATSON, LI PING DUAN, NORMAN VICTOR LEECH, ROLANDO VINAS DIZON and NARCISA DIZON, NICHOLAS GEORGE KARAMOUZOS and MARIA KARAMOUZOS, CUI MING CHEN, YANKUI WANG and XIN TIAN, MARIA DA NATIVIDADE ALMEIDA, 1237765 B.C. LTD., JU-SHAN CHIANG and FLORA FU, 1184414 B.C. LTD., AMARSINGH BHATIA and NARANJAN KAUR BHATIA, PHUNG KIM VUONG and TUONG LAM, MONICA PAOLA ALIAGA, MARCELINO LOPES DE SOUSA and OLGA MARIA DUTRA DE SOUSA, 1184413 B.C. LTD., LUALHATI ONGKEKO CRISOSTOMO, RICHARD RAYMOND RAVENSBERGEN and DAWN MARIE RAVENSBERGEN, YUK FAR CHEUNG and YIN ON CHEUNG, GARY LUCIEN DREES, THOMAS PATRICK FLEMING, 1352962 B.C. LTD., WAN CHEN and HONG YANG, SU JUAN SITU, VAN DAO NGUYEN and THI BICH HANG NGUYEN, JULIAN BOZSIK, CHRISTIAN HERBERT JOSON-LIM and IRIS JUNE CALIBUGAN ADIONG, ANGELA JOY EYKELBOSH, NGUYEN THANH VUONG and TUYET NGOC DU, OM PARKASH LOOMBA and MERRAN LOOMBA, SUZANNE JUANITA KUDELSKI, YAN QIONG LU, PING HE, EDWARD LAWRENCE THUE, RICHARD CHARLES PATRICK SPENCER and DIANE MARIE SPENCER, ARTHUR SUMMERS WILLIAMSON, GARY DALE CHARTER and CRISTINA RIMANDO GAPAL, JU TAI ZHOU and YU QING LI, ZHI HAO YANG, DAISY CUETO EVANGELISTA and MARIA CHERRY EVANGELISTA, MEGAN MARY BURGHALL, NASIM BHALOO, HUI LIN DONG and LI WANG, MANSOUR MESHKI, HSIANG CHIAO HUANG, GORDON WILLIAM PATERSON, YVONNE JO-ANNE ENGLAND, GRACE JOANNA LEVSEN, PING CHOR CHAN, SO FAN LEE and TAK TAI LUI

DEFENDANTS

**RESPONSE TO CIVIL CLAIM**

**Filed by:** The Owners, Strata Plan NW289 as represented by the liquidator, Crowe MacKay & Company Ltd. (the "**Liquidator**").

## **Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**

### **Division 1 – Defendant’s Response to Facts**

1. The facts alleged in paragraphs 2 and 4 to 7 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 8, 9, 10, 11 and 12 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in paragraphs 1 and 3 of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendant.

### **Division 2 – Defendant’s Version of Facts**

4. The defendant strata corporation, The Owners, Strata Plan NWS289 (“**Cameray Gardens**”) is comprised of 101 residential strata lots and the associated common property shown on Strata Plan NWS289 (the “**Cameray Gardens Lands**”). The Cameray Gardens Lands have municipal addresses at 3925 Kingsway and 5715 Jersey Avenue, Burnaby, British Columbia.
5. The remaining defendants are the registered owners of the 100 individual strata lots of Cameray Gardens. Cameray Gardens owns strata lot 66.
6. On February 15, 2022, Cameray Gardens held a special general meeting (the “**SGM**”) at which its members passed resolutions to wind-up the strata corporation, appoint a liquidator and authorize the marketing and sale of the Cameray Gardens Lands, subject to the requirements of section 282 of the *Strata Property Act*, S.B.C. 1998, c. 43 (the “**SPA**”).
7. At the SGM, Crowe MacKay & Company Ltd. was appointed as the liquidator of Cameray Gardens (the “**Liquidator**”).
8. On June 17, 2022, pursuant to Part 16, Division 2 of the SPA, the wind-up of Cameray Gardens and the appointment of the Liquidator were confirmed by the court (the “**Wind-Up Confirmation Order**”).
9. It is a term of the Wind-Up Confirmation Order that title to the individual strata lots of Cameray Gardens only vests in the Liquidator upon the filing in the Land Title Office of a

certified copy of the Wind-Up Confirmation Order. To date, a certified copy of the Wind-Up Confirmation Order has not been filed with the LTO.

10. Upon the confirmation of its appointment, the Liquidator embarked on an effort to market and sell the Cameray Gardens Lands. As a result of that process, the Liquidator entered into a conditional purchase and sale agreement dated December 7, 2022 (the “**PSA**”) with the plaintiff, 1038573 B.C. Ltd (the “**Purchaser**”).

11. The terms of the PSA included:

- (a) The Purchase Price is \$61 million (s. 2.2);
- (b) The Purchaser is to pay a deposit of \$3 million (s. 2.3(a)) (the “**Deposit**”);
- (c) The sale is conditional on the Liquidator obtain a vote of the Cameray Gardens members by April 24, 2023 approving the PSA and the sale of the Cameray Gardens Lands pursuant to section 282 of the SPA (s. 6.1(b)) (the “**Section 282 Vote**”);
- (d) Upon obtaining the Section 282 Vote, the sum of \$100,000 is to be released from the Deposit to the Liquidator (s. 2.5);
- (e) Time is of the essence (s. 10.4); and
- (f) Once the PSA conditions were satisfied or waived, the completion date is to be October 25, 2023 (the “**Completion Date**”) (s. 3.1) .

12. In the event the Purchaser failed to complete the PSA, section 2.5(a)(ii) provided that the remainder of the Deposit, after deduction of the \$100,000, is to be:

- (a) paid to the Liquidator on behalf of the Purchaser:

...

- (ii) together with interest earned on the Deposit, upon the default of the Purchaser, if the Purchaser is in default of its obligation to complete the purchase of the Property hereunder, unless such default is waived in writing by the Liquidator, and the Deposit so paid to the Liquidator will be absolutely forfeited to the Liquidator on behalf of the Vendor as liquidated damages as the Liquidator ' s and Vendor's sole and exclusive remedy and this Agreement will terminate forthwith upon such payment being made;

13. By addendum dated January 27, 2023, the Purchaser and the Liquidator agreed in writing to extend the Completion Date to December 15, 2023.
14. By addendum dated February 24, 2023, the Purchaser and the Liquidator agreed in writing to extend the date by which the Section 282 Vote was to occur to May 24, 2023.
15. On May 20, 2023, the Liquidator held a special general meeting of the members of Cameray Gardens for the purposes of the Section 282 Vote at which the resolution to approve and ratify the PSA was passed by the requisite a  $\frac{3}{4}$  vote of the members.
16. By way of a Mutual Notice of Second Condition Satisfaction and/or Waiver dated and signed May 24, 2023, the Purchaser and the Liquidator agreed that the conditions precedent in Section 6.1(b) of the PSA were satisfied and waived.
17. On June 6, 2023, the Liquidator demanded from the Purchaser's counsel payment of \$100,000 from the Deposit pursuant to section 2.5 of the PSA. To date, the Purchaser has refused or neglected to pay that \$100,000 and, as a result, is in breach of the PSA.
18. At all material times thereafter, the Liquidator was ready, willing and able to complete the PSA and the sale of the Cameray Gardens Lands to the Purchaser.

### **Additional Facts**

#### **Permitted Encumbrances**

19. As at the date the PSA was signed on December 7, 2022, a number of the strata lots of Cameray Gardens were rented to residential tenants by individual strata lot owners (the "**Existing Residential Tenancies**").
20. Between December 7, 2022 and the Completion Date, as amended, a number of individual strata owners entered into additional month to month residential tenancy agreements with tenants for their individual units (the "**Additional Residential Tenancies**").
21. At all material times, the Liquidator, to the knowledge of the Purchaser, was not aware of all the residential tenancy agreements at Cameray Gardens and had no legal authority to

govern the rental of individual strata lots pursuant to the *Residential Tenancy Act*, the SPA or otherwise.

22. The PSA contemplated that the Purchaser would take title to the Cameray Gardens Lands subject to both the Existing Residential Tenancies and any Additional Residential Tenancies.

23. Section 4.1(d)(iv) of the PSA provides that the vendor covenants and agrees it will:

(d) from the Execution Date until the Completion Date, conduct or cause to be conducted all business in respect of the Property in accordance with prudent business practices given the nature of the Property, and without limiting the generality of the foregoing:

(iv) if any Strata Lot Owner enters into, modifies, terminates or accepts a surrender of any Lease, or enters into a replacement Lease on similar terms, the Vendor will provide or cause to be provided a copy of same, and of any new Strata Property Act Form K received, to the Purchaser as soon as reasonably possible. The Vendor shall not be in breach of this Agreement, if any of the Strata Lot Owners enters into a month-to-month lease of their Strata Lot and fails to provide the same to the Vendor;  
(emphasis added)

24. Section 4.2(a) of the PSA provides that the vendor represents and warrants that:

the Liquidator will have good and marketable legal and beneficial title to the Property on the Completion Date, free and clear of all liens, claims, charges, encumbrances and legal notations other than the Permitted Encumbrances;  
(emphasis added)

(the “**Title Representation**”).

25. “Permitted Encumbrances” are defined in Schedule A to the PSA to include:

Leases (existing) and replacement Leases entered into by Strata Lot Owners on similar terms, between the Execution Date and the Completion Date.

26. The PSA defines the term “Leases” as follows:

“**Leases**” means every agreement, whether written or oral, partly written and partly oral, pursuant to which any person has any interest in the Property in the

nature of a tenancy or a right to occupy premises, including any modification or extension thereof, and "Lease" means any of such Leases;

27. The PSA defines "Strata Lot Owners" to mean "all of the owners of the Strata Lots, and "Strata Lot Owner" means the owner of any Strata Lot".

28. The PSA defines "Strata Lot" to mean "all of strata lots in the Strata Plan, and "Strata Lot" means any of the Strata Lots".

29. The Existing Residential Tenancies and the Additional Residential Tenancies are both Permitted Encumbrances under the PSA.

### **Vendor Covenants**

30. Pursuant to section 4.2(c) of the PSA, the vendor covenants that:

there is no action, suit, claim, litigation or proceeding pending . . . in respect of the Property or the use or occupancy thereof before any court, arbiter, arbitration panel or administrative tribunal or agency which, if decided adversely to the Vendor, might materially affect the Vendor's ability to perform any of the Vendor's obligations hereunder and no state of facts exists which could constitute the basis of any such action, suit, claim, litigation or proceeding;

31. Cameray Gardens was named as a defendant in a claim commenced by Community Fire Prevention Ltd. ("**Community Fire**") on April 17, 2020 in the Supreme Court of British Columbia, Vancouver Reg. Action No. S-204200 (the "**Community Fire Claim**"). The Community Fire Claim sought judgment in the amount of \$223,930.28 relating to the installation of fire prevention equipment by Community Fire at Cameray Gardens. The Community Fire Claim also sought a declaration of entitlement to a builders' lien and a certificate of pending litigation against the Cameray Gardens Lands.

32. Community Fire did not registered any builders' liens against or file a CPL on title to any of the strata lots of Cameray Gardens.

### **Purchaser's Asserted Breaches of the PSA**

33. By letter dated December 7, 2023 from the Purchaser's counsel, the Purchaser confirmed the "PSA is scheduled to close on December 15, 2023" and sought confirmation that the Liquidator would be able on closing to deliver title "free and clear of all liens, claims,

charges, encumbrances and legal notations other than the Permitted Encumbrances”. Specifically, the Purchaser sought confirmation and documentary evidence relating to the Community Fire Claim and the Additional Residential Tenancies.

34. Despite not being contractually obliged to do so, on December 12, 2023 the Liquidator provided assurances that it was ready, willing and able to complete the PSA and that on the Completion Date the Liquidator would be able to transfer clear title to the Cameray Gardens Land to the Purchaser in accordance with the PSA.

35. By letter dated December 13, 2023 from the Purchaser’s counsel, the Purchaser took the position that the fact of the Community Fire Claim and the Additional Residential Tenancies were breaches of the PSA by the vendor amounting to a repudiation of the PSA. The Purchaser did not accept that repudiation and demanded the vendor specifically perform the PSA.

36. On December 15, 2023, the Liquidator, as vendor, was ready, willing and able to complete the PSA. However, in breach of the PSA the Purchaser did not provide any of the documents required of it under the PSA and did not tender the purchase price. As a result, the PSA did not complete.

37. On December 18, 2023, the Liquidator, as vendor, demanded the release of the Deposit but, to date, the Purchaser has refused or neglected to release those funds, instead claiming the Deposit for itself.

38. By letter dated December 19, 2023, the Liquidator, as vendor, notified the Purchaser that its breaches of the PSA and failure to complete the purchase of the Cameray Gardens Lands amounted to a repudiation of the PSA. The Liquidator accepted the Purchaser’s repudiation of the PSA and demanded the release of the Deposit.

## **Part 2: RESPONSE TO RELIEF SOUGHT**

39. The Defendant consents to the granting of the relief sought in paragraphs NIL of Part 2 of the Notice of Civil Claim.

40. The Defendant opposes the granting of the relief sought in paragraphs 13(a) to (h) of Part 2 of the Notice of Civil Claim.

41. The Defendant takes no position on the granting of the relief sought in paragraphs NIL of Part 2 of the Notice of Civil Claim.

### **Part 3: LEGAL BASIS**

42. At all material times up to December 15, 2023, the PSA was an enforceable agreement between the Purchaser and the Liquidator, as vendor. Time was of the essence.

43. The Liquidator was not in breach of any term of the PSA as allege in the Notice of Civil Claim or at all. The existence of the Community Fire Claim and the Additional Residential Tenancies do not constitute breaches of the PSA. Even if they do, which is not admitted, their existence is not a fundamental breach of the PSA amounting to a repudiation.

44. At all material times, the Liquidator was ready, willing and able to complete the PSA and, in particular, was able to transfer clear title to the Cameray Gardens Lands in accordance with the PSA.

45. The remedy of specific performance is not available to a purchaser where the fault for failing to meet the closing deadline is attributable to them, including the failure to deliver closing documents on a timely basis.

*Toor v. Dhillon*, 2020 BCCA 137;  
*Walker v. Jones*, 2008 CanLII 47725 (Ont. S.C.J.).

46. By failing and neglecting to complete the purchase the Cameray Gardens Lands, the Purchaser repudiated the PSA. On December 19, 2023, the Liquidator accepted the Purchaser's repudiation of the PSA.

47. As a result, the PSA is no longer an enforceable agreement between the Purchaser and the Liquidator and is, therefore, incapable of specific performance.

48. The Purchaser is liable to the Liquidator for damages for breach of the PSA.



49. In addition, the Purchaser is obliged pursuant to the terms of the PSA to release to the Liquidator the entirety of the Deposit.

Defendant's address for service is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Peter J. Roberts, K.C.).

Fax number address for service is: n/a

E-mail address for service is: [proberts@lawsonlundell.com](mailto:proberts@lawsonlundell.com)

Dated at the City of Vancouver, in the Province of British Columbia, this 22<sup>nd</sup> day of December, 2023.




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Lawson Lundell LLP  
Solicitors for the Defendant, The Owners,  
Strata Plan NW289 as represented by the  
liquidator, Crowe MacKay & Company Ltd.

This Response to Civil Claim is filed by Peter J. Roberts, K.C., of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

NO. S-238586  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

1038573 B.C. LTD.

PLAINTIFF

**AND:**

The Owners, Strata Plan NW289 and others

DEFENDANTS

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**RESPONSE TO CIVIL CLAIM**

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Phone: (604) 685-3456  
Attention: Peter J. Roberts, K.C.

PJR/accs