



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 FACCIO, 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

AND:

1038573 B.C. LTD.

DEFENDANT BY WAY OF COUNTERCLAIM

NOTICE OF APPLICATION

Name of Applicant: The Owners, Strata Plan NW289 as represented by the liquidator, Crowe Mackay & Company Ltd. (the “**Liquidator**”)

To: The plaintiff/defendant by counterclaim

TAKE NOTICE that an application will be made by the Applicant to the presiding judge at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on ~~Friday~~, the 21st day of February, 2024 at 9:45 a.m for the orders set out in Part 1 below.

Wednesday,

The Applicant estimates that the application will take one (1) hour.

This matter is not within the jurisdiction of an Associate Judge.

Part 1: ORDERS SOUGHT

1. The Owners, Strata Plan NW289, as represented by the liquidator Crowe MacKay & Company Ltd. (the “**Liquidator**”), seek the following relief pursuant to Rule 9-7:
 - (a) a declaration that the plaintiff/defendant by counterclaim 1038573 B.C. Ltd. (the “**Purchaser**”) repudiated the conditional purchase and sale agreement dated December 7, 2022 (the “**PSA**”) with the Liquidator and that the PSA is at an end;
 - (b) an order that the Purchaser’s deposit of \$3 million be released immediately to the Liquidator, together with all interest earned thereon, pursuant to s. 2.5(a)(ii) of the PSA;
 - (c) an order that the Purchaser’s claims be dismissed;
 - (d) an order that the certificate of pending litigation filed in the Land Title Office on December 18, 2023 under instrument no. CB1083710 (the “**CPL**”) be cancelled as against title to the strata lots located at 3925 Kingsway and 5715 Jersey Avenue, Burnaby, British Columbia and legally described as outlined in the attached Schedule “A” (collectively, the “**Strata Lands**”);
 - (e) an order that the Registrar of Land Titles at the New Westminster Land Title Office cause the CPL to be cancelled and discharged from title to the Strata Lands forthwith;
 - (f) costs; and
 - (g) such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

A. Overview

1. This is a straightforward summary trial application arising from the plaintiff's repudiation of a contract of purchase and sale for 101 strata lots and the associated common property on Strata Plan NWS289 (the "**Strata Lands**").
2. By court order granted June 17, 2022, the appointment of Crowe MacKay & Company Ltd. as liquidator (the "**Liquidator**") of the defendant The Owners, Strata Plan NW289 ("**Cameray Gardens**") was confirmed pursuant to the provisions of the *Strata Property Act*, S.B.C. 1998, c. 48 (the "**SPA**").
3. By way of a written conditional purchase and sale agreement dated December 7, 2022 (the "**PSA**"), the Liquidator, as vendor, and the plaintiff/defendant by counterclaim, 1038573 B.C. Ltd., as purchaser, (the "**Purchaser**") agreed to the conditional sale of the Strata Lands for a price of \$61 million (the "**Purchase Price**").
4. On the completion date of December 15, 2023 (the "**Completion Date**"), the Liquidator was ready, willing, and able to close the sale of the Strata Lands pursuant to the PSA. However, the Purchaser was not ready, willing, and able to close the sale. The Purchaser failed to tender the Purchase Price and did not provide the Liquidator with any closing documents (as required by the PSA). As a result, the PSA did not complete.
5. The Liquidator accepted the Purchaser's repudiation, and now seeks this Court's confirmation that the PSA is at an end and the forfeiture of the \$3 million deposit (the "**Deposit**") that the parties agreed would be released to the Liquidator in precisely these circumstances.
6. The Liquidator also seeks dismissal of the Purchaser's claim. The Purchaser's excuses for not completing the PSA do not amount to a breach on the part of the Liquidator, let alone a repudiation of the PSA. The Purchaser's filing of a meritless claim and reckless registration of a CPL against all 101 strata units comprising Cameray Gardens are tactical maneuvers designed to provide the Purchaser with more time to complete the PSA, and should be recognized as such—and rejected—by this Court.
7. It is telling that, after indicating that the Purchaser would need an extension to *March 15, 2024* to secure financing in the weeks leading up to the Completion Date, the Purchaser now seeks an order that the Liquidator specifically perform the PSA on *March 15, 2024*. The Purchaser's claim is a transparent attempt to obtain an extension the parties had not agreed to. This is obvious from the Purchaser's election not to simply close on the Completion Date and sue for damages in relation to its complaints.

8. This matter is eminently suitable for summary disposition. The central facts are not in dispute and there are no material credibility issues ~~that would~~ require evidence beyond what can be provided in affidavits. Importantly, a resolution of this proceeding by way of summary trial will save all parties significant time and expense—particularly in relation to the 100 strata lot owners the Purchaser has named as defendants, notwithstanding that they are not parties to the PSA and had virtually no involvement in its non-completion.

B. The parties

9. The Purchaser is a numbered company incorporated under the laws of British Columbia on June 3, 2015.
10. Cameray Gardens is comprised of 101 residential strata lots and the associated common property shown on Strata Plan NWS289. It has municipal addresses at 3925 Kingsway and 5715 Jersey Avenue, Burnaby, British Columbia.
11. The remaining defendants are the registered owners of the 100 individual strata lots of Cameray Gardens. Cameray Gardens owns strata lot 66.

C. The wind-up and PSA

12. At a special general meeting (“SGM”) on February 15, 2022, Cameray Gardens’ members resolved to wind-up the strata corporation, appoint the Liquidator, and authorize the marketing and sale of the Strata Lands subject to the requirements of s. 282 of the *SPA*.
13. The wind-up of Cameray Gardens and the appointment of the Liquidator were confirmed by court order on June 17, 2022 (the “**Wind-Up Confirmation Order**”). 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 (“LTO”) 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.
14. Once appointed, the Liquidator embarked on an effort to market and sell the Strata Lands, which culminated in the PSA.
15. The PSA contained the following terms, among others:
 - (a) the Purchase Price was \$61 million (s. 2.2);
 - (b) the Purchaser was to pay the Deposit (\$3 million) to its solicitors within three business days of the satisfaction of all conditions precedent (s. 2.3);

- (c) the sale was conditional on the Liquidator obtaining a vote of the Cameray Gardens members by April 24, 2023 approving the PSA and the sale of the Strata Lands pursuant to s. 282 of the SPA (the “**Section 282 Vote**”) (s. 6.1(b));
 - (d) upon obtaining the Section 282 Vote, the sum of \$100,000 would be released from the Deposit to the Liquidator (s. 2.5);
 - (e) time was of the essence (s. 10.4);
 - (f) once the PSA conditions were satisfied or waived, the Completion Date was to be October 25, 2023 (s. 3.1); and
 - (g) the closing documents were to be prepared by the Purchaser’s solicitors or land surveyor at the Purchaser’s sole cost and expense, and delivered to the Liquidator’s solicitors prior to the Completion Date (s. 7.2); and
 - (h) in the event the Purchaser failed to complete the PSA, the remainder of the Deposit would be absolutely forfeited to the Liquidator and the PSA would be terminated forthwith upon such payment being made (s. 2.5(a)(ii)).
16. The Section 282 Vote required the approval of $\frac{3}{4}$ of the strata lot owners.
 17. By addenda dated January 27 and February 24, 2023, the Purchaser and the Liquidator agreed to extend the date by which the Section 282 Vote was to occur to May 24, 2023 and the Completion Date to December 15, 2023.
 18. On May 20, 2023, the Liquidator held a SGM of the members of Cameray Gardens for the purposes the Section 282 Vote. The SGM was attended by 76 strata lot owners, either in-person or by proxy, and all 76 owners who attended voted to approve the PSA.
 19. 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 s. 6.1(b) of the PSA were satisfied and waived.
 20. On June 6, 2023, the Liquidator demanded from the Purchaser’s counsel payment of \$100,000 from the Deposit pursuant to s. 2.5 of the PSA. To date, the Purchaser has refused or neglected to pay that \$100,000.
 21. On October 31, 2023, the Purchaser and the Liquidator agreed to extend the deadline by which the Individual Strata Lot Contracts were to be assembled to November 14, 2023.
 22. On November 15, 2023, the Liquidator confirmed that it had not been able to obtain the approval of 100% of the strata lot owners of the PSA, so the sale would close via the “normal closing process”.

D. The Purchaser's failure to close

23. In the weeks leading up to the Completion Date, the Liquidator and its counsel took steps to prepare for the closing of the PSA, including:
- (a) requesting property tax certificates from the Purchaser's counsel (to ensure that any pre-authorized payments plans were cancelled before the Completion Date);
 - (b) providing input on the content of the Form A Freehold Transfer that the Purchaser was to prepare under s. 7.2 of the PSA;
 - (c) drafting and executing a generalized form of notice to effect the termination of any service contracts the Purchaser did not intend to keep (of which the Liquidator was never advised by the Purchaser);
 - (d) preparing an application to deposit the wind-up plan, to the extent it was able to be completed by the Liquidator;
 - (e) preparing and executing a Notice of Appointment of Liquidator;
 - (f) preparing and executing a property transfer tax exemption form;
 - (g) obtaining a certified copy of the Wind-Up Order;
 - (h) drafting a letter to the LTO setting out the Liquidator's request for registration of the Notice of Appointment of Liquidator;
 - (i) preparing a certified copy of the strata corporation's resolutions approving the wind-up, signed by two council members;
 - (j) communicating with numerous owners along with the strata council with respect to closing steps.
24. By letter dated December 7, 2023, the Purchaser advised the "PSA [was] 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", as represented and warranted by the Liquidator in s. 4.2(a) of the PSA. The Purchaser noted the following:
- (a) an extant proceeding filed by Community Fire Prevention Ltd. against The Owners, Strata Plan NW289 and other defendants (SCBC Action No. S-204200, Vancouver Registry) (the "**Community Fire Claim**");
 - (b) "claims by the City of Burnaby to tax arrears on several strata units"; and

- (c) “multiple strata unit owners having entered into leases of their respective strata units, beyond the limited number of leases contemplated in the PSA” (the “**Additional Residential Tenancies**”).
25. 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 would be able to transfer clear title to the Strata Lands to the Purchaser in accordance with the PSA. Specifically, the Liquidator advised:
- (a) the Community Fire Claim was a debt claim that did not materially affect the Liquidator’s ability to perform its obligations in the PSA (and was therefore permitted under s. 4.2(c) of the PSA), and the Liquidator would withhold funds from the sale proceeds to fund either (i) the ongoing defence of the claim and any judgment that may be awarded, or (ii) any settlement arising from negotiations between the Liquidator and the plaintiff, Community Fire Prevention Ltd.;
- (b) the tax sale notices were discharged in September 2023 when the tax arrears were paid, and in any event all tax arrears would be paid on closing and would not impair the Liquidator’s ability to transfer clear title; and
- (c) the Additional Residential Tenancies were “Permitted Encumbrances” (defined in the PSA to include “Leases (existing) and replacement Leases entered into by the Strata Lot Owners on similar terms, between the Execution Date and the Completion Date” [emphasis added]).
26. 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 Liquidator, amounting to a repudiation of the PSA. The Purchaser did not accept that repudiation and demanded that the Liquidator specifically perform the PSA.
27. On December 15, 2023—the Completion Date—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 closing documents required by it under the PSA and did not tender the Purchaser Price. As a result, the PSA did not complete.
28. On December 18, 2023, the Liquidator notified the Purchaser that its breaches and failure to complete the sale of the Strata Lands amounted to a repudiation of the PSA. The Liquidator accepted the Purchaser’s repudiation and demanded the release of the Deposit.

E. The Purchaser's claim and CPL

29. The Purchaser filed its claim against the Liquidator and all of the individual strata owners on December 18, 2023, seeking, *inter alia*, specific performance of the PSA. The Purchaser designated March 15, 2024 as the "new Completion Date" under the PSA.
30. Concurrent with the filing of its claim, the Purchaser caused a certificate of pending litigation under instrument no. CB1083710 (the "CPL") to be registered on title to all 101 strata lots comprising Cameray Gardens—*i.e.*, each of the 100 individually owned strata lots and strata lot 66, which is owned by the strata corporation.
31. On December 19, 2023, the Liquidator demanded removal of the CPL except as against title to strata lot 66. As of the filing of this application, the Purchaser has refused to discharge the CPL as against any of the strata lots.

Part 3: LEGAL BASIS

A. Issues are suitable for summary disposition

32. Rule 9-7(2)(a) provides that a party may apply to the court for judgment, either on an issue or generally, in an action in which a response to civil claim has been filed.
33. Rule 9-7(15) provides that, on hearing a summary trial application, the court may grant judgment in favour of any party, either on an issue or generally, unless the court is unable to find the necessary facts or is of the view that it would be unjust to do so.
34. In deciding whether a matter is appropriate for summary trial, the court may consider a number of factors including the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise from delay, proportionality, the course of proceedings, and whether the evidence is sufficient to decide the dispute.

Cepuran v. Carlton, 2022 BCCA 76 at paras. 149-50.

35. The Liquidator submits that this Court can and should determine this matter by way of summary trial. Each of the parties has attributed the non-completion of the PSA to the other's conduct, and the key facts giving rise to these allegations are not disputed. On this application, the Liquidator asks this Court to determine, based on those facts: (a) whether it was the Purchaser or the Liquidator that breached the PSA, (b) whether that breach constituted a repudiation of the PSA, and (c) the appropriate relief in the circumstances. Courts have resolved similar disputes summarily.

Panegos v. O'Byrne, 2019 BCSC 679.

36. These issues involve the application of legal principles and can be decided on the affidavit evidence before the Court. The amount of ~~damages~~ (or other relief) is easily

ascertainable. A trial would result in unnecessary delay and cost to all parties, and in particular to the individual defendants the Purchaser named in this action (*i.e.*, every strata lot owner) notwithstanding that they were not parties to the PSA to begin with.

A. The Liquidator accepted the Purchaser's repudiation and is entitled to the Deposit

37. The PSA was a valid and binding contract between the Liquidator and the Purchaser. On the Completion Date, the Liquidator was ready, willing, and able to close the sale of the Strata Lands, and had taken all steps in its control to effect the sale, but could not complete the PSA by reason of the Purchaser's repudiation.

38. Repudiation of a contract occurs where a party evinces a clear and unequivocal intention not to be bound by its terms. Such an intention may be evinced by a refusal to perform or by a fundamental breach of a primary obligation.

Ascent One Properties Ltd. v. Liao, 2020 BCCA 247 at para. 82.

39. The Purchaser unequivocally repudiated the PSA by failing to perform its fundamental obligations to prepare and deliver closing documents and tender the Purchaser Price. The Liquidator's unequivocal acceptance of this repudiation brought the PSA to an end. Under s. 2.5(a)(i) of the PSA, the parties agreed that the Deposit would be absolutely forfeited to the Liquidator in precisely these circumstances.

40. A deposit is generally forfeited by a purchaser who repudiates the contract, and is not dependent on proof of damages by the innocent party. Where the deposit is of such an amount that the vendor's retention of it would be penal or unconscionable, the court may relieve against forfeiture.

Tang v. Zhang, 2013 BCCA 52 at para. 30.

41. The PSA expressly states that the Deposit is non-refundable. The Purchaser has repudiated the PSA and, in consequence, forfeited the Deposit. The amount of the Deposit, being less than five percent of the Purchase Price, would not render the Liquidator's retention of the Deposit penal or unconscionable. Accordingly, an order that the Deposit, and interest thereon, be released to the Liquidator is appropriate.

B. The Purchaser's excuses for non-performance are without merit

42. Prior to the Completion Date, the Purchaser alleged that the Liquidator had repudiated the PSA by "refusing to provide the requested confirmation" that it would be in a position to convey good and marketable title to the Strata Lands to the Purchaser. The Purchaser identified the Community Fire Claim and the Additional Residential Tenancies as evidence that "the Vendor [would] not be in a position to fulfill its obligations on closing".

43. As recognized by s. 4.2(a) of the PSA, a vendor must show good title, meaning:

merchantable or a marketable title: one which at all times and under all circumstances can be forced upon an unwilling purchaser who is not compelled to take a title which would expose him to litigation or hazard: one which is free from litigation, palpable defects and grave doubts and couples a certainty of peaceful possession with a certainty that no flaw will appear to disturb [the] market value.

375069 Alberta Ltd. v. 400411 Alberta Ltd., 2000 ABQB 29 at paras. 23-24;
1764139 Ontario Inc. v. Stewart Title Guaranty Co., 2010 ONSC 1692 at para. 11.

44. There is no prospect that either the Community Fire Claim or the Additional Residential Tenancies posed a risk to the Purchaser's peaceful possession of the Strata Lands or disturbed their market value.

(i) The Community Fire Claim does not materially affect the Liquidator's ability to deliver good title

45. The Community Fire Claim is a debt claim naming Cameray Gardens, its individual strata lot owners, and others as defendants, wherein the plaintiff seeks, *inter alia*, judgment in the amount of \$223,930.28 for unpaid invoices arising from an (alleged) contract for the installation of a new fire panel at Cameray Gardens. The plaintiff does not plead any facts that, even if true, would give rise to an interest in Cameray Gardens.

46. The Community Fire Claim is consistent with the Liquidator's representation in s. 4.2(c) of the PSA: it does not materially affect the Liquidator's ability to complete the PSA. There is no CPL on title to any strata lots arising from the Community Fire Claim or otherwise that would have impaired the ability to convey clear title. Moreover, the Purchaser was expressly advised prior to the Completion Date that the Liquidator would withhold sufficient funds from the proceeds of the sale of the Strata Lands to fund the defence and pay any judgment arising from the Community Fire Claim.

(ii) The Additional Residential Tenancies are "Permitted Encumbrances"

47. A contract of purchase and sale for clear title of a property requires that all encumbrances registered against the property be removed by the vendor, except those specifically contemplated in the contract.

Crown Fortune International Investment Group Inc. v. Bonnefield Canada Farmland LP III,
2023 BCCA 441 at para. 66.

48. The Additional Residential Tenancies are specifically contemplated in Schedule A of the PSA, which provides that "Leases (existing) and replacement Leases entered into by Strata Lot Owners on similar terms, between the Execution Date and the Completion Date" are Permitted Encumbrances.

49. Section 4.1(d)(iv) of the PSA further provides that:

... 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. 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 Lots and fails to provide the same to the Vendor;

50. The Additional Residential Tenancies are “replacement Leases” referred to in Schedule A. This interpretation gives effect to the intention of the parties in entering the PSA—to facilitate the sale of the Strata Lands—and is consistent with the agreement as a whole. The PSA contemplated that the sale of *leased* strata units and permitted, among other things, strata lot owners to sell their units to third parties while the PSA was in effect without the Purchaser’s knowledge or approval. The parties could have, but did not, specify that “replacement Leases” were only month-to-month leases continued after the expiry of a lease term. The broad wording of Schedule A must be given effect.

(iii) No repudiation by the Liquidator in any event

51. Even if the Purchaser were able to establish a breach of the PSA on the part of the Liquidator, which is denied, such breach would not excuse the Purchaser of its failure to complete the PSA (let alone entitle the Purchaser to specific performance).

52. Where a purchaser seeks to resile from a contract of purchase and sale by alleging an impediment to title, the court will consider whether the vendor can convey substantially what the purchaser contracted to get. In this exercise, the court can have regard to the surrounding circumstances to determine if the alleged impediment to title would, in any significant way affect the purchaser’s use or enjoyment of the property.

Comet Investments Ltd. v. Northwind Logging Ltd., [1998] B.C.J. No. 1622 at para. 28, citing *Stefanovska v. Kok* (1990), 73 O.R. (2d) 368 (Ont. H.C.) at 378 (“*Stefanovska*”); *Bryson v. Egerton*, [1999] B.C.J. No. 1581 at para. 68 (“*Bryson*”).

53. The court will give no weight to the subjective views of the purchasers if it is felt that the so-called needs are capricious or arbitrary and contrived to avoid contractual obligations.

Bryson at para. 68, citing *Stefanovska* at 378.

54. The Community Fire Claim and the Additional Residential Tenancies are immaterial to the agreed-upon sale of the Strata Lands for the Purchase Price (\$61 million). Neither are significant enough defects to justify the Purchaser’s election not to complete the sale. There is no reasonable prospect of either of the Purchaser’s complaints impacting its use or enjoyment of the Strata Lands. This particularly the case because:

- (a) the Community Fire Claim is *prima facie* a debt claim for an amount that equates to less than 0.4 percent of the Purchase Price, and does not call into question the Liquidator's ability to provide clear title (particularly given the Liquidator's confirmation that it will fund the defence and potential judgment); and
- (b) as part of its re-development of the Strata Lands, the Purchaser will need to address (and terminate in accordance with the *Residential Tenancies Act*) all the existing residential tenancies it assumes under the PSA (all Permitted Encumbrances). The fact of a few more such tenancies will not change that process in any material respect.

55. The Liquidator has tendered evidence of the Purchaser's efforts to secure a later Completion Date (precisely March 15, 2024) for a reason unrelated to either of the Community Fire Claim or Additional Residential Tenancies: to secure financing. This Court should find that the Purchaser's complaints are immaterial, and its motive in advancing them was to secure its desired extension.

C. Conclusion

56. The Liquidator was ready, willing, and able to close the PSA on the Completion Date and the Purchaser—for purported reasons that are spurious and immaterial—was not. The Liquidator has accepted the Purchaser's repudiation and is entitled to the Deposit. The Liquidator seeks orders to this effect and its costs of this action.

Part 4: MATERIAL TO BE RELIED ON

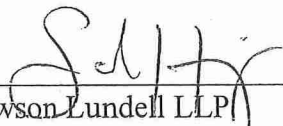
1. Affidavit #1 of Derek Lai, made January 30, 2024;
2. Affidavit #1 of Marshall MacLeod, made January 30, 2024;
3. Affidavit #1 of Jillian Sych, made January 30, 2024;
4. Affidavit #1 of Jas King, made January 12, 2024;
5. The pleadings and process filed herein; and
6. Such further and other material as counsel may advise and this Honourable Court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

- (a) file an Application Response in Form 33,

- (b) file the original of every affidavit, and every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: January 30, 2024



 Lawson Lundell LLP
 Solicitors for the Applicant

This Notice of Application is filed by Peter J. Roberts, K.C. / Sarah B. Hannigan, 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, email address: proberts@lawsonlundell.com, shannigan@lawsonlundell.com; telephone number: 604-685-3456.

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this Notice of Application

with the following variations and additional terms:

Date: _____

Signature of Judge Associate Judge

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE "A"

PID/Plan Number	Legal Description
001-262-921	STRATA LOT 1 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-262-939	STRATA LOT 2 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-262-947	STRATA LOT 3 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-262-963	STRATA LOT 4 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-262-971	STRATA LOT 5 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-262-980	STRATA LOT 6 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-262-998	STRATA LOT 7 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-005	STRATA LOT 8 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
000-938-530	STRATA LOT 9 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-013	STRATA LOT 10 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-021	STRATA LOT 11 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-030	STRATA LOT 12 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-048	STRATA LOT 13 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-056	STRATA LOT 14 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-064	STRATA LOT 15 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-081	STRATA LOT 16 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
000-859-389	STRATA LOT 17 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
000-739-979	STRATA LOT 18 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-099	STRATA LOT 19 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-102	STRATA LOT 20 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-111	STRATA LOT 21 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-137	STRATA LOT 22 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-145	STRATA LOT 23 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-153	STRATA LOT 24 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-161	STRATA LOT 25 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-170	STRATA LOT 26 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-188	STRATA LOT 27 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-196	STRATA LOT 28 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-200	STRATA LOT 29 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-218	STRATA LOT 30 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-226	STRATA LOT 31 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-234	STRATA LOT 32 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-242	STRATA LOT 33 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-251	STRATA LOT 34 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-269	STRATA LOT 35 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289

000-473-774	STRATA LOT 79 OF DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289 TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN OF FORM 1
001-263-765	STRATA LOT 80 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-773	STRATA LOT 81 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-781	STRATA LOT 82 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-790	STRATA LOT 83 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-811	STRATA LOT 84 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-820	STRATA LOT 85 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-838	STRATA LOT 86 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-846	STRATA LOT 87 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-854	STRATA LOT 88 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-862	STRATA LOT 89 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-871	STRATA LOT 90 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-889	STRATA LOT 91 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-897	STRATA LOT 92 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-919	STRATA LOT 93 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-927	STRATA LOT 94 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-935	STRATA LOT 95 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-943	STRATA LOT 96 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-951	STRATA LOT 97 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-960	STRATA LOT 98 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-978	STRATA LOT 99 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-263-994	STRATA LOT 100 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289
001-264-001	STRATA LOT 101 DISTRICT LOT 34 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW289

NO. 238586
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1038573 B.C. LTD.

PLAINTIFF

AND:

THE OWNERS, STRATA PLAN NW289 et al.

DEFENDANTS

AND:

1038573 B.C. LTD.

DEFENDANT BY WAY OF COUNTERCLAIM

NOTICE OF APPLICATION



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2

Phone: (604) 685-3456

Attention: Peter J. Roberts, K.C. / Sarah B. Hannigan