



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 21<sup>st</sup> 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.



































