



No H230802  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

BANK OF MONTREAL

PETITIONER

AND

HARO-THURLOW STREET PROJECT LIMITED PARTNERSHIP,  
HARO AND THURLOW GP LTD., HARLOW HOLDINGS LTD.,  
1104227 B.C. LTD., CLOUDBREAK HOLDINGS LTD.,  
CM (CANADA) ASSET MANAGEMENT CO. LTD.,  
FORSEED HARO HOLDINGS LTD., 1115830 B.C. LTD.,  
TERRAPOINT DEVELOPMENTS LTD., KANG YU ZOU,  
WEI DONG, WEI ZOU, XIA YU and  
TREASURE BAY HK LIMITED

RESPONDENTS

**RESPONSE TO PETITION**

**Filed by:** 1104227 B.C. LTD., Cloudbreak Holdings Ltd., CM (Canada) Asset Management Co. Ltd., 1115830 B.C. Ltd. and Kang Yu Zou (the "petition respondents")

THIS IS A RESPONSE TO the petition filed on October 23, 2023

**Part 1: ORDERS CONSENTED TO**

1. The petition respondents 1104227 B.C. LTD., Cloudbreak Holdings Ltd., CM (Canada) Asset Management Co. Ltd. and 1115830 B.C. Ltd. consent to the Orders sought in paragraphs 9, 11 and 12 of Part 1 of the Petition, except that they seek a stay of execution of such orders.
2. The petition respondent Kang Yu Zou consents to the Order sought against him personally in paragraph 10 of Part 1 of the Petition, but says that it should be stayed pending expiry of any redemption period granted by the court.

**Part 2: ORDERS OPPOSED**

The petition respondents oppose the orders sought in paragraphs 14 and 20.

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

All those not consented to or opposed.

**Part 4: FACTUAL BASIS**

1. The petition respondents are referred to hereafter, collectively, as the “**CM Guarantors**”.
2. Capitalized terms used in this Response to Petition have the same meaning as ascribed to them in the Response to Petition of the respondents Haro and Thurlow GP Ltd. (“**HT GP**”), Haro-Thurlow Street Project Limited Partnership (“**HT LP**”) and Harlow Holdings Ltd. (“**Harlow Holdings**” and, collectively with HT LP and HT GP the “**Borrowers**”) filed concurrently herewith.
3. The CM Guarantors adopt and repeat the facts set out in Part 4 of the Borrowers’ Response to Petition, as though set out herein.
4. The corporate CM Guarantors (1104, 1115, Cloudbreak and CM) do not, at present, have any significant assets, other than the Respondent 1104’s 45% equity interest in the Partnership and any cash collateral on deposit with the petitioner to the credit of 1104.
5. Until January 2020, CM owned the Grouse Mountain Resort in North Vancouver (“Grouse Mountain”). As of January 2, 2020, CM sold Grouse Mountain to a company called Northland Properties Corporation, which has owned and operated the resort since that time. Proceeds from the sale of Grouse Mountain, to the extent were paid to any of the CM Guarantors, have been dispersed.
6. The individual respondent, Kang Yu Canning Zou, also known as Kenny Zou, does have personal assets. He and his father, the Respondent Wei Zou, jointly own a property in Vancouver on Drummond Drive, on which they are building a home in which Mr. Zou and his wife, the respondent Wei Dong, intend to reside when construction is completed.
7. Mr. Zou and his wife currently reside in a home on Roxburgh Crescent in Vancouver with a 2023 BC Assessment value of \$8,382,000. Ms. Dong owns that property. It is not presently encumbered by any financial charges.
8. The Drummond Drive property has a 2023 BC Assessment value of \$10,681,000. The petitioner has a mortgage against title to the property securing a construction loan in the amount of \$7,500,000.
9. The respondent Wei Zou and his wife, the respondent Xia Yu, who is Mr. Zou’s mother, own a home in Vancouver. The petitioner has a mortgage in the amount of \$7,000,000 against title to that home, which has a tax assessed value of about the same amount.
10. Neither Mr. Zou, nor his wife or parents, have significant liquid cash assets in British Columbia, and in any event none that would even come close to satisfying the petitioner’s debt claim, whether that claim is valued at \$95,000,000, as set out in the petition, or somewhere closer to \$72,00,000, after application of the petitioner’s cash collateral.

11. In order to make any significant contributions to the repayment of the Loan, the personal respondents would have to sell one or more or all of their residential properties in Vancouver.
12. It is unlikely, in the circumstances of this case, that the petitioner will suffer any shortfall. The primary asset against which it holds security, the Harlow Lands is worth well in excess of the amount owed to the petitioner in respect of the Loan, net of cash collateral the petitioner has already appropriated and further cash collateral that it is holding. Even if interest were to remain unpaid and accruing for the next two years, the petitioner would still not be "under water".
13. In the circumstances, the CM Guarantors request a stay of proceedings against them, commensurate with the length of any redemption period afforded to the Borrowers, so as to relieve them of the hardship and inconvenience of having to sell their homes in order to pay down the Borrower's debt.

#### **Part 5: LEGAL BASIS**

1. The CM Guarantors do not dispute that they guaranteed repayment of the Loan, subject to the monetary limits of their guarantees.
2. Rule 13-2(31) of the Supreme Court Civil Rules [B.C. Reg. 168/2009, as amended] (the "Rules") provides:

##### **Stay of execution**

(31) The court may, at or after the time of making an order,

- (a) stay the execution of the order until such time as it thinks fit, or
- (b) provide that an order for the payment of money be payable by instalments.

3. There is no one test to determine when a stay of execution should be ordered.

*Canada (Attorney General) v. Lau*, 2002 BCSC 1155, at para. 27

4. In *Humberstone v. Trelle*, Beck, J. described the power available to the Court under rules such as Rule 13-2(31) as follows:

"The power of Courts temporarily to stay the issuing or execution is exercised in an almost infinite variety of circumstances in order that the ends of justice may be accomplished; in many cases this power operates almost as a substitute for proceedings in equity and enables the defendant to prevent inequitable use of the judgment or writ".

*Humberstone v. Trelle*, (1910), W.L.R. 145 (Alta. Q.B.), at p. 147

5. In *Concord Pacific Acquisitions Inc. v. Oei*, 2020 BCSC 832, the court conducted a thorough review of the case law on stays of execution in different contexts, and summarized the different approaches as follows:

[48] ... The jurisdiction to grant a stay of execution is broad: [*Greenside Properties Inc. v. 8458429 Holdings Ltd.*, 2001 BCSC 983] at para. 13 and [*Paramount Drilling & Blasting Ltd. v. TNL Paving Ltd.*, 2001 BCSC 1617] at para. 17. The question is where the balance of convenience lies: [*Coolbreeze Ranch Ltd. v. Morgan Creek Tropicals*, 2009 BCSC 151] at para. 65; [*Natco International Inc. v. Photo Violation Technologies Corp.*, 2009 BCSC 1504] at paras. 39 and 44. Differently expressed, the question is where the “interests of justice” or the “ends of justice” lie; [*F.A. Bernard v. Western Floral Craft Supplies (1994) Ltd.*, 1999 BCCA 635] at para. 11 and *Litynsky v. Litynsky*, 2012 BCSC 1160 at paras. 62 and 64 or whether the “circumstances raise such circumstances as would warrant the exercise”: [*Barclays Bank of Canada v. N.B. Cook Corp.*, [1983] 48 B.C.L.R. 364 (B.C.S.C.)] at para. 5. A stay is “conditioned by the extant facts of a given case”: *F.A. Bernard* at para. 11.

[49] Each of these various formulations is consistent with a court having a broad discretion, having regard to the various factors that are present in a given case, to do what it considers appropriate or just. ...

6. The power of the court to stay execution has often been applied in foreclosure matters.

See, e.g., *Zonailo v. Cypco Holdings Ltd.*, 1983 CarswellBC 2165 (SC)  
*Citadel Life Assurance Company v. Abacus Cities Ltd.* (1983), 45 B.C.L.R. 138  
*Sun Life Assurance Co. of Canada v. 535401 B.C. Ltd.*, 2001 BCSC 605

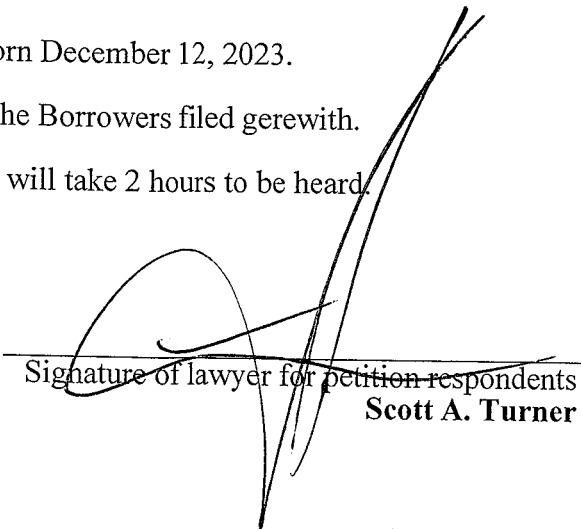
7. Where, as here, (i) there is no evidence put forward by the petitioner to suggest that it may suffer a shortfall on its loan; (ii) the evidence adduced by the respondents shows that there is substantial equity in the Harlow Lands, such that it is highly unlikely that the petitioner will suffer a shortfall; and (iii) the personal guarantors would suffer hardship and inconvenience if they were obliged to sell their residential properties in order to pay down the petitioner’s Loan before the expiry of any redemption period, the court should exercise its Rules-based or inherent jurisdiction to grant the CM Guarantors a stay of proceedings in respect of the petitioner’s judgements against them, pending the expiry of any redemption period granted to the Borrowers by the court.

**Part 6: MATERIAL TO BE RELIED ON**

1. Affidavit #2 of Kang Yu Canning Zou sworn December 12, 2023.
2. The pleadings, including the Response of the Borrowers filed herewith.

The petition respondents estimate that the Petition will take 2 hours to be heard.

Date: December 12, 2023



Signature of lawyer for petition respondents  
**Scott A. Turner**

Petition respondents' address for service:

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**Attention: Ding Han**

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