



No. H-230802  
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

**NOTICE OF APPLICATION**



**Name of applicant:** Terrapoint Developments Ltd.

To: the Petitioner and Respondents

TAKE NOTICE that an application will be made by the applicant to Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on December 22, 2023 at 10:00 a.m. for the order set out in Part 1 below.

The applicant estimates that the application will take 5 minutes.

This matter is not within the jurisdiction of a master.

**Part 1: ORDER(S) SOUGHT**

- 1. An Order, substantially in the form attached hereto as Schedule "A" (the "Sealing Order"), authorizing that Affidavit #1 of Evan Allegretto be filed under seal pending further order of this Court.

**Part 2: FACTUAL BASIS**

- 1. Terrapoint Developments Ltd. ("Terrapoint") is a company amalgamated pursuant to the laws of Canada and extra-provincially registered in British Columbia with an address at 2400-745 Thurlow Street, Vancouver, BC.

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2. Capitalized terms used and not defined in this Notice of Application shall have the meaning ascribed to them in the Petition filed herein.

### **Appointment of a Receiver with Conditions**

3. Terrapoint submits that the only clear path out of the partnership's situation is via a sale of the Harlow Lands with a vesting order provided to a purchaser to allow for the closing of a transaction.
4. Terrapoint is supportive of the appointment of a receiver with certain conditions, including:
  - (a) the receiver will be given access to the property and the books and records of the borrower, but it would not take possession of the property or assets;
  - (b) the receiver would have limited powers, except it would obtain exclusive conduct of sale of the Harlow Lands commencing January 10, 2024 (the "**Marketing Period**");
5. In Terrapoint's view, the Harlow Lands must be marketed for sale immediately, however, it also does not want the evidence sworn in support of this position to poison the market place in any way. As such, it seeks a sealing order over Affidavit #1 of Evan Allegretto.
6. Affidavit #1 Evan Allegretto contains confidential information related to the value of the assets which will be subject to sale, and the Applicant is of the view that the information should be sealed on the basis that such information could jeopardize the sale process and market. The Applicant are also of the view that no parties will be prejudiced if this information is subject to the Sealing Order.

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

1. The Applicant relies on:
  - (a) The Supreme Court Civil Rules;
  - (b) The inherent and equitable jurisdiction of this Honourable Court; and
  - (c) Such further and other legal bases and authorities as counsel may advise and this Honourable Court may permit.

### **Sealing Order**

3. Affidavit #1 of Evan Allegretto includes information that the Applicant believes should be sealed.
4. The Applicant does not believe any party will be prejudiced if this information is subject to the Sealing Order.

5. The Court has jurisdiction to order that certain materials filed with the Court be sealed in the Court file. The Supreme Court of Canada has stated that such order can be granted where:

- (a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

*Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para. 53  
("Sierra Club")

6. In *Sherman Estate*, the Supreme Court found that the Sierra Club test rests upon three core prerequisites that a person seeking such a limit must show:

- (a) court openness poses a serious risk to an important public interest;
- (b) the sealing order sought is necessary to prevent the serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the sealing order outweigh its negative effects.

*Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38

7. The information sought to be sealed fit squarely within the test established by *Sierra Club* and meets the core prerequisites as set out in *Sherman Estate*.

8. Affidavit #1 of Evan Allegretto contains information and particulars which are confidential and contain details related to the value of the assets subject for sale in this proceeding, which could jeopardize the sale process and market. The Applicant would have a reasonable expectation of privacy over this information and the release of this information may prejudice the Applicant.

9. The Applicant submits that the deleterious effects are minimal and outweighed by the benefits of the proposed Sealing Order.

10. The procedure to be followed in British Columbia for seeking a sealing order is set out in the Supreme Court of British Columbia PD-58, *Sealing Orders in Civil and Family Proceedings* (effective February 10, 2020), which the Applicant intends to comply with.

**Part 4: MATERIAL TO BE RELIED ON**

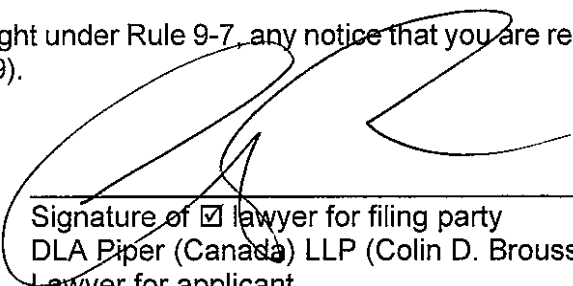
1. Affidavit #1 of Evan Allegretto, made December 19, 2023; and
2. Such further materials permitted by this Honourable court.

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 of 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).

December 20, 2023

Date

  
\_\_\_\_\_  
Signature of  lawyer for filing party  
DLA Piper (Canada) LLP (Colin D. Brousson)  
Lawyer for applicant

**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  Master

**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
- oral 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"

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RESPONDENTS

## ORDER MADE AFTER APPLICATION (Sealing Order)

BEFORE THE HONOURABLE JUSTICE )  
FITZPATRICK ) December 20, 2023  
)  
)

ON THE APPLICATION OF: Terrapoint Developments Ltd.

coming on for hearing at 800 Smithe Street, Vancouver, BC on December 20, 2023 and on hearing Colin D. Brousson, counsel for the applicant;

THIS COURT ORDERS that:

1. The Affidavit #1 of Evan Allegretto be sealed by the Registrar of this Honourable Court for the duration noted:

Description	Date filed, if applicable	Numbers of copies filed, including any extra copies for the judge	Duration of sealing order <i>[until further order of the Court; until the first day of trial; or until a specific date]</i>	Sought	Granted	
					YES	NO
1a) Specific documents Affidavit #1 of Evan Allegretto	December 20, 2023	1	Until further order of the Court	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
1b) Entire court file				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) Other court records stored by the court <i>[clerk's log notes, court audio recording]</i> .				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3) Orders <i>[please specify]</i>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) Reasons for Judgment				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. The applicant must file redacted versions of Affidavit #1 of Evan Allegretto by \_\_\_\_\_, 202\_\_.
3. Access to the sealed items is restricted to the following persons:
  - (a)  Parties
  - (b)  Counsel for a party
  - (c)  Others
4. The time for service and filing of the Notice of Application is hereby abridged and validated so that this Notice of Application is properly returnable today and the need for further service thereof is hereby dispensed with.



5. Endorsement of this Order by counsel appearing on this application other than counsel for the applicant, Terrapoint Developments Ltd. is hereby dispensed with.

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Signature of  lawyer for the applicant  
DLA Piper (Canada) LLP (Colin D. Brousson)

BY THE COURT

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REGISTRAR

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HARO-THURLOW STREET PROJECT  
LIMITED PARTNERSHIP, HARO AND  
THURLOW GP LTD., HARLOW HOLDINGS  
LTD., AND OTHERS

RESPONDENTS

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**SEALING ORDER**

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DLA Piper (Canada) LLP  
Barristers & Solicitors  
Suite 2700  
1133 Melville Street  
Vancouver, BC V6E 4E5

Tel. No. 604.687.9444  
Fax No. 604.687.1612

File No. 111310-00001

CDB/day