



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., 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**

*[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]*

**Filed by:** Wei Dong, Wei Zou and Xia Yu (the "petition respondent(s)")

THIS IS A RESPONSE TO the petition filed 23/OCT/2023 :

**Part 1: ORDERS CONSENTED TO**

The petition respondent(s) consent(s) to the granting of the orders set out in the following paragraphs of Part 1 of the petition: 1, 3 and 4

**Part 2: ORDERS OPPOSED**

The petition respondent(s) oppose(s) the granting of the orders set out in paragraphs 2, 8, 10, 14 and 15 to 17 of Part 1 of the petition.

The petition respondents Wei Dong, Wei Zou and Xia Yu say the orders in paragraphs 2, 8, 10 and 15 to 18 which are for judgment and enforcement of the mortgage over the Zou-Yu Lands should be stayed until the Harlow Lands are sold.

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

The petition respondent(s) take(s) no position on the granting of the orders set out in paragraphs 5, 6 to 9, 11 to 13 and 18 to 23 of Part 1 of the petition.

### **Part 4: FACTUAL BASIS**

1. Wei Zou and Xia Yu are the parents of Kang Zou, they have substantial equity in their residence defined as the Zou-Yu Lands at 1833 West 17<sup>th</sup> Avenue, Vancouver, owned by them jointly.
2. Wei Dong is the wife of Kang Yu Zou. She has substantial equity in property at 1690 Roxburgh Crescent, Vancouver, owned by her solely, and at 4770 Drummond Drive, Vancouver, owned by her jointly with Kang Yu Zou.
3. Wei Zou and Xia Yu executed a form of guarantee limited to \$7 million.
4. Wei Dong has executed a form of guarantee limited to \$50 million.
5. Wei Dong, Kang Yu Zou and Xia Yu have provided undertakings not to further encumber the three properties.
6. the guarantee executed by Wei Zou and Xia Yu is secured by a mortgage on the Zou-Yu Lands limited to enforcement against the Zou-Yu Lands and limited to \$7 million.

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

#### **Receiver**

1. This is a foreclosure proceeding. We adopt the argument of other respondents that this proceeding is governed by the principles in (i) *Royal Bank of Canada v Astor Hotel*, 1986 BCLR (2d) 252; and (ii) *South West Marine Estates Ltd. v Bank of British Columbia*, 1985 65 BCLR 628, that there should not be a receivership with a power of sale before the end of the redemption period.
2. A plain application of the test in section 39 of the *LEA* means that it is neither just nor convenient to appoint a receiver if the result is to truncate the redemption period. Both are equitable remedies and the redemption period is favoured.
3. We are of the view that no receiver is required given (i) the substantial equity where, based on the current values, the property is worth more than two times the revised debt; (ii) the provisions of the draft order create powers of the receiver which are inconsistent with redemption; and (iii) these guarantors will be liable for any shortfall and ought not be subject to pay the costs of a receiver when the debtor may sell or refinance the land.

### **Stay of Proceedings**

4. Circumstances where a stay of proceedings may be granted are set out in *Canada (Attorney General) v Lau* cited by CM Canada. Paragraphs 28(b), (c) and (d) apply here.
5. Here, the guarantors have substantial properties described in the fifth amendment to the credit agreement and as set out in the affidavits #1 and #2 of Kang Yu Zou and they have undertaken not to further encumber them.
6. The guarantees are limited as to amount. The terms require a determination of what is recovered from the Harlow Lands by sale before enforcement and the evidence is clear that there should not be a shortfall on the sale of the Harlow Lands.
7. Kang Yu Zou swears that there could be a refinancing on or before the expiry of the redemption period.
8. The guarantee is limited. On its face, BMO contemplates that it will be payable for a portion of the debt if the primary security over the lands is not adequate to pay the debt.
9. We adopt the reasoning of the CM Canada guarantors and their reliance on *Zonailo v Cypco Holdings Ltd.*, 1983 CarswellBC 2165 (SC), *Citadel Life Assurance Company v Abacus Cities Ltd.* (1983), 45 BCLR 138 and *Sun Life Assurance Co. of Canada v 535401 B.C. Ltd.*, 2001 BCSC 605.
10. 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 sale of the Harlow Lands. The court should exercise its jurisdiction to grant them a stay of proceedings in respect of (i) the petitioner's judgments against them; and (ii) enforcement of the mortgage over the Zou-Yu Lands until the Harlow Lands are sold.

### **Enforcement of Zou-Yu Lands**

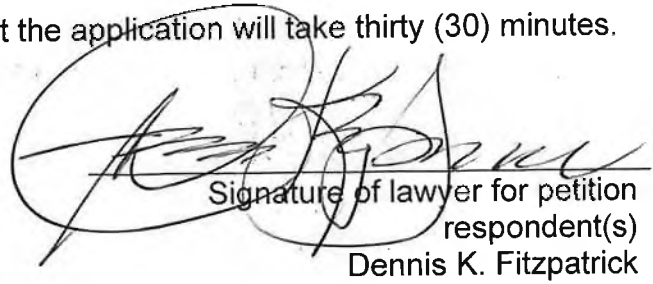
11. In response to paragraphs 16 to 17 of the petition, there cannot be an order for possession or sale until after the expiry of the redemption period.

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

1. Affidavit #1 of Kang Yu Zou, sworn 12/Dec/2023
2. Affidavit #2 of Kang Yu Zou, sworn 12/Dec/2023

The petition respondent(s) estimate(s) that the application will take thirty (30) minutes.

Date: 21/Dec/2023



Signature of lawyer for petition  
respondent(s)  
Dennis K. Fitzpatrick

Petition respondent(s)' address for service: Burns Fitzpatrick LLP  
Barristers and Solicitors  
400 – 570 Granville Street  
Vancouver, BC V6C 3P1

Fax number address for service (if any): 604-685-2104

E-mail address for service (if any): [dfitzpatrick@burnsfitz.com](mailto:dfitzpatrick@burnsfitz.com)

Name of the petition respondent(s)' lawyer: Dennis K. Fitzpatrick