VANCOUVER
MAY 07 2026
REGISTRY

No. H-250800
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PETITIONER

AND:

1075 NELSON DEVELOPMENT LIMITED PARTNERSHIP
1075 NELSON DEVELOPMENT GP INC.
1075 NELSON DEVELOPMENT HOLDINGS INC.
BRIVIA FAMILY INVESTMENTS INC.
KHENG LY, 1409658 B.C. LTD. and
TRAVELERS INSURANCE COMPANY OF CANADA

RESPONDENTS

RESPONSE TO PETITION

FORM 67 (RULE 16-1(5))

Filed by: the respondent, KHENG LY (the "petition respondent" or "Ly")

THIS IS A RESPONSE TO the petition filed July 11, 2025.

The petition respondent estimates that the application will take two (2) days.

PART 1: ORDERS CONSENTED TO

The petition respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the petition: NONE.

PART 2: ORDERS OPPOSED

The petition respondent opposes the granting of the orders set out in paragraphs 9, 10, 13, 17 and 18 of Part 1 of the petition.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The petition respondent takes no position on the granting of the orders set out in paragraphs 1 – 8, 11, 12, and 14 - 16 of Part 1 of the petition.

PART 4: FACTUAL BASIS

1. Ly is the president and CEO of the Brivia Group, a real estate and development conglomerate. Since Ly founded Brivia Group ("Brivia") in Montreal in 2000, it has gone through significant growth and success featuring projects developed or under development in Quebec, the greater Toronto area, and the greater Vancouver area, including the CURV development in Vancouver.

2. Ly is a business leader and noted philanthropist in the Province of Quebec, having received, among other things, the Queen Elizabeth Platinum Jubilee medallion in December 2022, and the King Charles III Coronation medallion in February 2025 for his community engagement.

3. The CURV project is located at 1075 Nelson Street, Vancouver, B.C. (the "CURV Property"). The vision for CURV was that it would set a new standard for eco-friendly construction. At 60 stories, it was intended to be the world's tallest passive house (i.e. a highly energy-efficient building).

4. Ly signed a guarantee dated for reference May 11, 2023 (the "Guarantee") in which he guaranteed amounts owing by 1075 Nelson Development Limited Partnership (the "Borrower") to HSBC Bank Canada as administrative agent for itself and a syndicate of lenders. HSBC was acquired by Royal Bank of Canada ("RBC") in 2024. RBC thereafter took over the position of administrative agent for the syndicate of lenders.

5. The Guarantee states in part as follows:

> 5 Impairment of Security
>
> Any loss or impairment of any security received by the Agent or the Lenders from the Borrower or any other person pursuant to the provisions of the Loan Documents or otherwise shall not discharge pro tanto or limit or lessen the liability of the Guarantor under this guarantee.

6. The CURV Property was appraised at February 22, 2024 at $169 million, and appraised at December 17, 2024 at $183 million.

7. In or about early February 2025, Brivia informed RBC that a potential investor, Northlink Capital, was interested in investing in the CURV project. Brivia had received a Letter of Intent from Northlink (the "Northlink LOI #1"), relating to an equity investment by Northlink in the CURV project. RBC asked some questions with respect to Northlink, and the Northlink LOI #1, to which Brivia responded.

8. Market conditions were difficult in Spring 2025. The Borrower was not able to keep up with payments to RBC.

9. In April 2025, Brivia raised with RBC the option of a potential orderly sale of the CURV project by Brivia. This was the first of multiple occasions in which this concept was communicated by Brivia to RBC.

10. In May, 2025, RBC advised Brivia that it had obtained a preliminary valuation of the CURV Property from its broker, CBRE, in the mid-$50 million range.

11. On June 5, 2025, Sylvia Kovesdi of RBC Special Loans & Advisory Services informed Brivia that the management of the 1075 Nelson account, and the relationship with Brivia Group generally, had been transferred to RBC's Special Loans department.

12. Ly made it clear to RBC that Brivia was prepared to sell the CURV Property and project, with the proceeds going first to RBC to pay down its syndicated loan. Ly also advised RBC that a receivership would damage their collective ability to obtain the best price for CURV. He was concerned then, and remains concerned today, that the stigma of a receivership is contrary to an attempt to obtain the best price for a property.

13. On July 11, 2025, RBC filed the within petition to the court. On July 22, 2025, representatives of RBC, Brivia, and their lawyers participated in an "all hands" call. During the "all hands" call, Brivia explained to RBC that it was in everyone's best interests to enter into a forbearance agreement combined with a cooperative and confidential sales process, without a receivership. Brivia advised RBC that the pre-sale purchasers who were still supporting CURV would likely be "spooked" by a receivership, which would very

likely trigger further rescission rights under the *Real Estate Development and Marketing Act*. The gist of the message from Brivia to RBC on this call was as follows: you want to realize on your security; you want a sale; we agree with you; lets proceed collaboratively with a private sale without a receivership because a receivership will impair the value of the CURV property and Project, and damage the ability to get the highest dollar for it.

14. RBC proceeded with its application for the appointment of a receiver, and received an order for the appointment of Deloitte as receiver, on July 25, 2025.

15. On August 14, 2025, Brivia received a further letter of intent from Northlink (the "Northlink LOI #2") for the purchase of CURV for $91 million. Brivia forwarded the Northlink LOI #2 to RBC and the receiver, Deloitte. RBC responded with some questions which Ly answered. Deloitte asked for contact information for the principal of Northlink Capital, Robert Rosenthal, which Ly facilitated. After that, RBC and Deloitte went quiet with respect to Northlink Capital and the Northlink LOI#2. This was surprising and concerning to Ly because he believed that Northlink was the best option to save the project, and deal with the outstanding CURV debt to RBC, which Ly had guaranteed. Ly had expected an intensive process from RBC and Deloitte to try to turn the Northlink LOI#2 into a sale of CURV but, instead, in the weeks following there appeared to be no process at all. Ly thus wrote the following email to Ms. Kovesdi of RBC and Mr. Chambers of Deloitte on September 5, 2025:

> I am writing to follow up regarding Northlink's continued interest in the Curv Project.
>
> Please advise as to what the next steps would be to engage with Northlink.
>
> Northlink is prepared to provide, on a confidential basis, evidence of its credit worthiness in support of their proposal and the senior loan that they are proposing to assume as part of a transaction (further to and as described in the Northlink LOI).
>
> I am concerned that if we do not engage with Northlink, there is a risk that we might lose them as a viable party to a transaction for the Curv Project that could provide substantial recovery for the senior lenders and save the Project.
>
> I look forward to your or Deloitte's feedback.

16. Mr. Chambers wrote back, stating that he had connected with the Northlink team the day that Ly sent through the contact details. He advised that the receiver was finalizing a listing agreement with CBRE that day and would ask them to reach out to Northlink directly the following week. No one followed up with Ly regarding obtaining evidence of Northlink Capital's credit worthiness.

17. Accordingly, several weeks passed with very limited, if any, follow-up from Deloitte and RBC with respect to the Northlink LOI#2. Rather than dealing with Northlink one-on-one, as a serious potential buyer, Deloitte proceeded to enter into a listing agreement with CBRE.

18. Deloitte lost the opportunity that the Northlink LOI#2 represented.

19. Ly's understanding is that Deloitte is continuing to try to achieve the sale of the CURV Property through some form of SISP process. Given the passage of time, it does not appear that the effort is going very well. The present real estate market is difficult, and receiverships stigmatize a property. This leads Ly to believe that it is likely that any eventual sale will be for less than $91 million, and possibly substantially less than $91 million.

PART 5: LEGAL BASIS

20. The defence of improvident realization arises where the debtor or guarantor shows a failure by the secured party to deal with the collateral in a commercially reasonable manner. This

test has been applied in the context of a court-appointed receiver. The defence of improvident realization may obviate a guarantor's liability if improvident realization is established.

Bank of Montreal v. Tolo-Pacific Consolidated Industries, 2012 BCSC 1785 (***"Tolo-Pacific"***) at paras. 26, 43, and 93 – 98;
Royal Bank v. Aquattro Estates Ltd., 2012 BCSC 262 (***"Quattro 2012"***) at paras. 14 and 36 – 41

21. Clear and unequivocal language is required in order to support a finding that a guarantor has waived the duty of commercial reasonableness.

Tolo-Pacific, at para. 93

22. Section 5 of the Guarantee, quoted above at Part 4, para. 5 herein, does not provide such clear and unequivocal language. It differs from the language that is used when the parties agree that a guarantor will not be relieved of liability in circumstances where the impairment is the fault of the lender. For example:

(a) In *HSBC Bank v. Kupritz,* 2011 BCSC 788 the clause stated: "No loss of or in respect of the securities received by the Customer or others, whether occasioned by the fault of the Bank or otherwise, shall in any way limit or lessen the liability of the undersigned under this guarantee."

(b) In *CBIC v. Highland Valley Construction*, 1986 CarswellBC 2258, [1986] B.C.J. No. 2150, the clause stated: "That any loss of or in respect of securities received by the Bank from the customer or any other person, whether occasioned through the fault of the Bank or otherwise, shall not discharge pro tanto or limit or lessen the liability of the Guarantor under this guarantee".

(c) In *CIBC v. Pittstone* (1985), 69 B.C.L.R. 292, 1985 CarswellBC 404, the clause stated: "That any loss of or in respect of securities received by the Bank from the customer or any other person, whether occasioned through the fault of the Bank of [sic] otherwise, shall not discharge pro tanto or limit or lessen the liability of the Guarantor under this guarantee."

(d) In *CIBC v. Shire*, 2000 BCCA 528, the clause stated: "My obligation to pay under this Part 1 - Guarantee will not be limited or reduced by any loss of or in respect of, or the unenforceability of, any securities held by the Bank from the customer or any other party (including other guarantors), whether resulting from the fault of the Bank or from any other reason."

23. Further, or in the alternative, the doctrine of *contra proferentum* applies to the interpretation of s. 5 of the Guarantee.

24. In this case, the improvident actions included the following:

    (a) Decision by the petitioner to put the debtors into receivership in circumstances where Ly and other representatives of the Brivia Group had made it clear that they were prepared to sell the CURV Property in a non-receivership, non-distress situation;

    (b) Decision by the petitioner to put the Debtors into receivership, which creates rescission rights on the part of pre-sale purchasers under sections 1 and 16 of the *Real Estate Development Marketing Act,* S.B.C. 2004 c. 41, as well as *Jameson House, Re,* 2009 BCSC 844 at paras. 22 – 25 and *Forjay Management Ltd. v. 0981478 B.C. Ltd.,* 2018 BCSC 527 at para. 103, as opposed to, for example, the *Companies' Creditors Arrangement Act*, R.S.C. 1985, s. C-36, where such rescission rights could be avoided; and

    (c) Decision by the petitioner and the receiver to decline to pursue, in any meaningful way, the Northlink LOI #2.

25. Further, or in the alternative, a court-appointed receiver can act, and can be found to act, as agent for the secured creditor.

    Toronto Dominion Bank v. Fortin (1977), 28 C.B.R.(N.S.) 189 (B.C.S.C.) at paras. 16 – 17; and
    RBC v. Aquattro Estates, 2014 BCSC 486 at paras. 11 – 13

26. Further, or in the alternative, the actions taken above at para. 24 have materially increased the risk to Ly on the Guarantee without his consent. In the further alternative, those actions have negatively impacted Ly's right of subrogation.

27. Ly should be discharged from his obligations under the Guarantee. Alternatively, Ly's liability under the Guarantee should be reduced.

28. Ly asks that this petition be dismissed as against him, with costs.

29. In the alternative, Ly asks that this Court make orders under Rules 16-1(18) and 22-1(4) and (7) for:

    (a) A trial of this proceeding either generally or on an issue, and order pleadings to be filed and, in that event, give directions for the conduct of the trial and of pre-trial proceedings; or

    (b) In the alternative, order some or all of:

        (i) production of documents under Rule 7-1;

(ii) examinations for discovery under Rule 7-2;

(iii) attendance of witnesses at the hearing for cross examination or examination of parties and witnesses before the court or another person as the court may direct.

Cepuran v. Carlton, 2022 BCCA 76 at paras. 140 – 168;
Phaneuf v. 0896459 B.C. Ltd., 2022 BCSC 1706 at para. 46;
Aquattro 2012 at paras. 36 – 41
Pillar Capital Corp. v. Horseshoe Valley, 2023 BCSC 82 at paras. 10 – 17, 48 – 54 and 69 – 78

PART 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Kheng Ly, made May 7, 2026;
2. Affidavit #1 of Ilias Konstantopoulos, made May 6, 2026;
3. Affidavit #1 of Sylvia Kovesdi, made July 11, 2025;
4. Affidavit of Navneet Sidhu, made July 14, 2025;
5. Other affidavits and pleadings filed herein;
6. Such further and other material as counsel may advise and this Court may allow.

Date: MAY 7, 2026

HARPER GREY LLP
(Per John P. Sullivan/Roselle Wu)
Lawyers for the Petition Respondent, Kheng Ly

The petition respondent's address for service is:

HARPER GREY LLP
Barristers & Solicitors
3200 - 650 West Georgia Street
Vancouver, BC V6B 4P7
Telephone: 604 687 0411
Email: jsullivan@harpergrey.com
Email: rwu@harpergrey.com
Attn: John P. Sullivan/bjo/166383