



No. S-240493
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

FOX ISLAND DEVELOPMENT LTD. and
ADVANCED VENTURE HOLDING CO., LTD.

PETITIONERS

AND:

KENSINGTON UNION BAY PROPERTIES NOMINEE LTD. (formerly known as 34083 YUKON INC.), KENSINGTON UNION BAY PROPERTIES LIMITED PARTNERSHIP, KENSINGTON UNION BAY PROPERTIES GP LTD., INTERNATIONAL TRADE CENTER PROPERTIES LTD., SUNWINS ENTERPRISE LTD., MO YEUNG CHING also known as MICHAEL CHING, MO YEUNG PROPERTIES LTD., SFT DIGITAL HOLDINGS 30 LTD., HOTEL VERSANTE LTD., BEEM CREDIT UNION, MORTEQ LENDING CORP., CHUN YU LIU, 1307510 B.C. LTD., JEFFREY RAUCHM, RCC HOLDINGS LTD. and HEUNG KEI SUNG

RESPONDENTS

APPLICATION RESPONSE

Application Response of: Bygenteel Capital Inc. (the “Bygenteel”, or the “Application Respondent”)

THIS IS A RESPONSE TO the Notice of Application of the Petitioners filed October 17, 2025.

The Application Respondent estimates that the application will take one (1) day.

Part 1: ORDERS CONSENTED TO

The Application Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: NIL.

Part 2: ORDERS OPPOSED

The Application Respondent opposes the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: ALL.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondent takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: NIL.

Part 4: FACTUAL BASIS

Overview

1. The petitioners seek a declaration that they are entitled to the remaining proceeds of sale that were ordered to be held back as part of the Holdback Reserve under orders of this Court made July 15, 2025 and October 24, 2025 related to the Hotel Parking Stalls (defined below).
2. At the time of making the loans in question and at all times thereafter, the petitioners were aware of the Head Lease (defined below), and the intended further arrangements for partial assignments and subleases relating to the parking.
3. In the circumstances described below, the petitioners' knowledge and conduct was such that disregarding the Application Respondent's interests would be contrary to common morality. The application should be dismissed.

Background: The Petitioners' Knowledge of the Parking Leases and Conduct Contrary to Common Morality

4. International Trade Centre Properties Ltd. ("**ITC**") is owner of what is known as the "**ITC Remainder**", a single legal parcel which provides parking to each of the air space parcels in the International Trade Centre development, including Air Space Parcel 2 ("**ASP2**"), which consists of the Hotel Versante (the "**Hotel**"). 84 spaces in the parkade (the "**Hotel Parking Stalls**") are allocated to ASP2, the Hotel.

Affidavit #3 of Michael Ching made October 20, 2025 ("**Ching Affidavit #3**") at para. 7

5. In April 2019, Michael Ching showed Gavin Wang, the principal of the petitioner, Fox Island Development Ltd. ("**Fox Island**"), the proposal for the ITC project and the Union Bay project. He provided Mr. Wang with the Information Statement for the ITC Project, which included this provision (s. 3.6):

(c) The Parking Arrangements may include legal agreements that are registered against title to the Remainder, in order to ensure that the Strata Lot owners have the right to access and use the Parking Facilities.

...

(e) The Developer contemplates that the Parking Arrangements will involve the following:

(i) **The Developer plans to lease the Parking Facilities (or a portion thereof) to an entity related to the Developer**, or such other third party as the Developer may determine in its sole discretion (the “**Parking Tenant**”), pursuant to a long term lease (the “**Parking Lease**”);

(ii) The Parking Lease **may be** registered against title to the Remainder, where the Parking Facilities are located; and

(iii) **The Developer intends that the Parking Tenant will control and administer the use of the Parking Facilities pursuant to the terms of the Parking Lease, and that the Parking Tenant will grant partial assignments of the Parking Lease** to the Strata Lot owners, on the terms and for such consideration as the Parking Tenant may determine in its sole discretion, as may be necessary to grant the Strata Lot owners the right to access and use the Parking Facilities;

(f) PROVIDED THAT if the Developer deems it more appropriate, at its option, the Developer **may grant to the owners of the Strata Lots rights to access and use the Parking Facilities, which rights are substantially similar to the rights granted to them through the partial assignments of the Parking Lease as set out above, by the implementation of a different legal structure.**

[Emphasis added.]

Ching Affidavit #3 at para. 4, Exhibit A, p. 10

6. In other words, before making any loans, Fox Island was on notice that: (a) ITC intended to lease the Hotel Parking Stalls to a related entity, (b) it was within ITC’s discretion whether to register the parking lease, and (c) ITC intended that the parking tenant would control and administer use of the Hotel Parking Stalls and that it would grant partial assignments of the parking lease.
7. On May 30, 2019, as part of the development for the Hotel, and as contemplated by the Information Statement, ITC and 1212429 B.C. Ltd. (“**121**”) entered into a lease (the “**Parking Head Lease**”) under which ITC leased the entirety of its interest in the Hotel Parking Stalls in the ITC Remainder to 121. The Parking Head Lease was not registered. However, Mr. Ching avers that he repeatedly brought it to Mr. Wang’s attention:

Gavin was informed repeatedly by me as to the existence of, and the necessity for the Parking Head Lease.

Ching Affidavit #3 at para. 10

8. Mr. Ching’s evidence as to the information he provided to the petitioners before they made any loans is uncontradicted. There is no evidence from Mr. Wang contradicting Mr. Ching’s evidence that he repeatedly informed Mr. Wang of the existence of the Parking Head Lease.

9. The petitioners rely solely on the evidence of their solicitor advising on the transaction – Matthew Choi – who identifies that he was not provided with copies of leases, subleases or any other similar agreement related to the Hotel Parking Stalls.

Affidavit #1 of Shui-Yuen Choi made October 17, 2025 (“**Choi Affidavit**”), at para. 9

10. Mr. Choi does not identify whether he obtained a copy of the Information Statement from his client, nor what conversations he had with the petitioners about their knowledge of agreements relating to the Hotel Parking Stalls. There is no follow up in the correspondence in respect of his request for agreements relating to parking.
11. Mr. Choi also does not identify whether he conducted a title search to identify if there were agreements relating to parking that were registered on title. However, disclosed in the email correspondence appended to his affidavit is the following series of events:
 - a. August 26, 2019: Mr. Choi writes to Mr. Russell and encloses a copy of a title search for “ASP2”, which is the hotel portion of the Property.
 - b. August 27, 2019: Mr. Choi sends a number of information requests to Ray Zhao, including “all agreements related to the ownership/use of (i) the ~100 **parking stalls**, and (ii) the **patio and swimming pool** for the Hotel’s exclusive use (85 parking stalls in p5 all in hotel parcel)...Please also advise if those amenities are located within ASP 3 (if not, which ASP they are located and who are the owner(s)”. Mr. Zhao responds identifying that the hotel is in Air Space Parcel 2, not 3. **Mr. Choi now knows from the title search he performed on ASP2 that agreements related to parking, which are contemplated by the Information Statement, and which his client had been informed of, are not registered on title.**
 - c. On August 31, 2019, Mr. Choi writes to provide a draft Loan Agreement noting the Easement (CA7519750) against Lot 1 in favour of ASP2 “only provides for the exclusive use of 84 **parking stalls** (not 100, as our client was originally told).” **From reviewing the easement, Mr. Choi would know that the five levels of parking in the ITC Remainder are for the shared use of the owners and users of each air space parcel. The easement grants a right of use but no ownership interest in the parking stalls and provides that the Owner will enter into a separate written agreement in respect of the parking spaces to govern their use (see ss. 2 and 3). In other words, Mr. Choi would know that separate agreements related to the parking stalls were contemplated. Any ownership interest would have to be created by subdivision and granting a fee simple or leasehold interest. As Mr. Ching avers, it is impracticable to create a fee simple interest for individual parking stalls to sell to strata lot purchasers, and the solution was to enter into a head lease – as ITC and 121 did – and grant partial assignments to purchasers. This is spelled out in the Information Statement that Mr. Choi’s clients had in their possession.**

Ching Affidavit #3, Exhibit C at pp. 280-281 (which is the Reciprocal Easements, Section 219 Covenants, and Statutory Right of Way under Registration No. CA7519726, but the same provisions appear in the easement under Registration No. CA7519750, which is the one referred to by Mr. Choi in his August 31, 2019 email)

Ching Affidavit #4 at para. 5

- d. On September 5, 2019, Mr. Russell confirms there are 84 parking stalls for the exclusive use of the Hotel and stated they would review the Easement and, if necessary, prepare an agreement to confirm the location of parking stalls.
- e. Mr. Choi then responds: “given the critical role of Remainder Lot 1 to the hotel’s operation and the fact that Broadway Camera’s 2nd mortgage also charges that parcel, I think it would be fair to include that parcel as part of the “Property” so that it is charged by our client’s 1st mortgages”. Mr. Choi follows up on this request five days later, just days before the loan would fund. **At this stage, the petitioners know of the existence of, at minimum, the Parking Head Lease and the likelihood of future assignments to enable use of the parking stalls. They know that these interests could be (but had not yet been) registered. At the eleventh hour, immediately prior to funding the loan, they insist the mortgage capture the ITC Remainder, knowing their mortgage could supersede these unregistered interests in a foreclosure scenario.**

Choi Affidavit, Exhibit A

12. The loan security for the petitioners did not involve the ITC Remainder prior to the early September 2019 request by the petitioners. In Mr. Ching’s initial conversations with Mr. Wang, the ITC Remainder was not offered as collateral. Mr. Ching informed Mr. Wang that the ITC Remainder had no value to ITC given it has been leased to various parties.

Affidavit #4 of Michael Ching made November 13, 2025 (“**Ching Affidavit #4**”) at para. 4

13. The inference to be drawn from the above is that the petitioners deliberately insisted on the ITC Remainder (which contained the Hotel Parking Stalls) forming part of the mortgaged property at the last minute to undermine the leasehold interest held by 121 (and subsequently Bygenteel and Club Versante). This was then followed by a series of events over the coming years of the petitioners charging exorbitant fees and insisting on interest rates that amounted to a criminal rate of interest (see para. 15 below and the October 17, 2025 notice of application of Kensington Union Bay Properties Nominee Ltd., Kensington Union Bay Properties Limited Partnership, Kensington Union Bay Properties GP Ltd., International Trade Centre Properties Ltd., Sunwins Enterprise Ltd., Mo Yeung Ching, Mo Yeung Properties Ltd., SFT Digital Holdings 30 Ltd., and Hotel Versante Ltd.).

Affidavit #1 of Mo Yeung (Michael) Ching made October 15, 2025 (body only)

Affidavit #1 of Van Bui made October 16, 2025

14. On or around September 16, 2019, Fox Island arranged with two other lenders, the petitioner Advanced Venture Holding Co. Ltd (“**Advanced Venture**”) and Canada Power Industry Group Inc. to enter into a Loan Agreement with ITC and three guarantors for a \$16M loan.

Ching Affidavit #4, Exhibit A

15. The \$16M loan agreement was then terminated by a Termination Agreement dated for reference November 7, 2019 purportedly because ITC was unable to satisfy all the conditions

in the loan agreement. ITC was charged a \$480,000 “Commitment Termination Fee” plus an additional fee of \$267,397.27, which was an amount described by the lenders as the interest that would have accrued from September 16, 2019 up to and including November 15, 2019 at 10% per annum, as well as \$45,000 in payment of the lenders’ legal fees.

Choi Affidavit at para. 10, Exhibit “B” at pp. 15-16

16. On November 7, 2019, Bygenteel completed its purchase of proposed strata lots 13 and 14 of the proposed development for a purchase price of \$5.2M (\$1M of which was comprised of a tenant improvements allowance). The Contract of Purchase and Sale for the lots was entered into on August 26, 2019, and included an addendum that the purchase included 127 parking stalls being made available to Bygenteel.

Ching Affidavit #4 at paras. 5-7, Exhibits “B” to “D”

17. Prior to closing of Bygenteel’s purchase, on or about November 5, 2019, 121 assigned its interest in various parking stalls in the ITC Remainder to Bygenteel (stalls 4-5, 9-10, 11, 17-18, 21-41, 74-76, 168-170, 171-179 and 254-337). As noted above, it was expressly contemplated by the Information Statement that assignees of an interest in the parking lease would be entities related to ITC.

Ching Affidavit #3 at para. 12

Affidavit #1 of Chung Lin Ching made October 20, 2025 at para. 2

Ching Affidavit #4 at para. 6

18. On the closing of Bygenteel’s purchase, after accounting for approximately \$1.8M in deposits paid directly and other adjustments, Bygenteel paid approximately \$2.4M to ITC’s solicitor. The funds were used by ITC, in part, to pay a prior lender, Romspen Investment Corporation.

Ching Affidavit #4 at para. 8

19. On November 15, 2019, ITC entered into a loan agreement with Fox Island (the “**November 2019 Loan Agreement**”) for \$12M to help refinance existing loan facilities associated with the development and construction of the Hotel Versante in the ITC project.

Ching Affidavit #3 at para. 6

20. On Or about June 14, 2021, the petitioners entered into a Loan Agreement with ITC, 34083 Yukon Inc., Kensington Union Bay Properties Limited Partnership and Kensington Union Bay Properties GP Ltd., as borrowers, and Hotel Verante Ltd., Sunwins Enterprise Ltd., Mo Yeung Properties Ltd. and Mr. Ching, as guarantors (the “**Loan B Agreement**”).

Choi Affidavit at para. 13

21. Both the November 2019 Loan Agreement and the Loan B Agreement acknowledge that 84 spaces in the parkade are allocated to ASP2.

Ching Affidavit #3 at para. 7

22. Neither the petitioners nor Mr. Choi provide any evidence as to the due diligence steps taken by them prior to the Loan B Agreement. There is no evidence that they made inquiries into the status of the Parking Head Leases, or other agreements related to parking. That is so despite Mr. Choi's evidence as to it being "critical to the Petitioners" that Loan B was secured against the Hotel Parking Stalls. (It is unclear how Mr. Choi can have personal knowledge of what was "critical to the Petitioners" absent identifying the source of that information and belief, which must be his communications with his clients.)

Choi Affidavit at para. 14

23. On or about July 1, 2021, Bygenteel, as landlord, leased the 84 parking stalls to Club Versante Management Ltd. ("**Club Versante**"), as tenant.

Ching Affidavit #3 at para. 13

24. Bygenteel is the owner of Strata Lots 13 and 14, EPS5803.

Ching Affidavit #3 at para. 12

25. On August 15, 2021, Bygenteel entered into a purchase agreement with ITC to revert the Hotel Parking back to ITC for a purchase price of \$6,000,000. The purpose of the transaction was to sell the Hotel along with related assets, such as the Hotel Parking, to a purchaser, RCC Holdings Ltd. This transaction did not close.

Ching Affidavit #3 at para. 14

26. Since the principals of Citation began seeking to purchase the Hotel in 2024, they have (in the name of their affiliate Pacific Aegis Capital Management) engaged in discussions with Mr. Ching and Bygenteel with respect to acquiring the Hotel Parking as well as the Hotel. The baseline price for those discussions has remained at \$6 million.

Ching Affidavit #3 at paras. 19-20

27. The petitioners appear to rely on the following evidence from their solicitor as the basis for their position that they learned for the first time in 2024 of the Parking Head Lease, the November 5, 2019 assignment from 121 to Bygenteel, and the July 1, 2021 Parking Stall Lease Agreement between Bygenteel and Club Versante:

I first became aware in or around 2024 that ITCP claims to have leased the P5 Parking Stalls prior to entering into the Initial Loan Agreement.

Choi Affidavit at para. 18

28. The petitioners have given no direct evidence as to their knowledge or conduct in respect of the parking agreements. As noted above, Mr. Ching avers to repeatedly informing Mr. Wang of the existence of and necessity for the Parking Head Lease, as well as discussing the lack of value of the ITC Remainder to ITC because of the parking leases. His evidence is uncontradicted.

29. Armed with knowledge of the parking arrangements, the petitioners proceeded to make the loans in question – earning nearly \$750,000 in “fees” on the initial \$16M loan, which was terminated – and registered their mortgage on title on October 10, 2019 (cancelled December 3, 2019), November 29, 2019 (cancelled October 28, 2021), June 22, 2021 (cancelled October 28, 2021) and September 29, 2021. They did so to take advantage of registration under the land title system to seek to disregard the interests of Bygenteel and Club Versante

Choi Affidavit, Exhibit “D”

Procedural Background Relevant to this Application

30. On July 15, 2025, Justice Fitzpatrick granted a consent order (the “**Parking Settlement Approval Order**”) whereby the Receiver would be able to sell the Hotel Parking to a purchaser free and clear of any claims of ITC, 121, Bygenteel or Club Versante. The Parking Settlement Approval Order is described in detail in the Receiver’s Third Report. At all times, the parties agreed that the consent order was necessary to expedite the sale of the Hotel and that entitlement to the Hotel Parking would be considered after approval of a sale.
31. Pursuant to that Parking Settlement Approval Order, ITC and 121 delivered an assignment of the Hotel Parking under the Head Lease to the Receiver to be delivered to the successful purchaser of the Hotel. Fox Island has not contested that assignment.

Ching Affidavit #4 at para. 10

32. Also pursuant to the Parking Settlement Approval Order, Bygenteel delivered to the Receiver an agreement terminating the assignment of the Hotel Parking Stalls by 121 to Bygenteel to be held in escrow and to be used in completing the sale of the Hotel and the Hotel Parking Stalls. Club Versante delivered an agreement terminating the lease of the Hotel Parking Stalls by Bygenteel to Club Versante also to be held in escrow to be used in completing the sale of the Hotel and the Hotel Parking Stalls.

Ching Affidavit #4 at para. 10

33. On October 17, 2025, the petitioners, for the first time, took the position that their security over the Hotel Parking Stalls took priority over the lease agreements outlined above under ss. 20(1) and 29(2) of the *Land Title Act*, R.S.B.C. 1996, c. 250 (“*LTA*”).

Part 5: LEGAL BASIS

The petitioners’ knowledge and conduct fits amounts to equitable fraud under s. 29(2) of the *LTA*

1. The petitioners deny any knowledge of the “Unregistered Instruments” at the time they advanced Loan B and obtained the Loan B Mortgage in June 2021. There is no evidentiary foundation for that position.
2. The petitioners have given no affidavit evidence as to the state of their knowledge at any time. Instead, they advance an affidavit from their solicitor at Norton Rose Fulbright Canada LLP (“*NRF*”), which recounts his due diligence steps and ultimately provides:

I first became aware in or around 2024 that ITCP claims to have leased the P5 Parking Stalls prior to entering into the Initial Loan Agreement.

Choi Affidavit at para. 18

3. This evidence from Mr. Choi is not believable given the series of events outlined above at paragraphs 11 and 12.
4. In any event, the status of Mr. Choi's knowledge is irrelevant. What matters is the petitioners' knowledge, and they have led no evidence to contradict Mr. Ching's evidence that, in April 2019, he provided the Information Statement identifying the leases and assignments that would be entered into, he repeatedly informed Mr. Wang of the Parking Head Lease, and discussed with Mr. Wang the absence of value of the ITC Remainder to ITC because it had been leased out.
5. In the alternative, to the extent Mr. Choi's knowledge is relied upon as a proxy for the petitioners' knowledge, then the petitioners have impliedly waived privilege over NRF's file in respect of all communications between the petitioners and NRF on: (a) agreements relating to parking; (b) due diligence steps taken by the petitioners/NRF in respect of the parking arrangements; (c) the Information Statement, and (d) discussions with ITC about the parking stalls.

Peak Products Manufacturing Inc. v. Gross, 2023 BCCA 214 at paras. 38-41

6. Fairness and consistency require that the Application Respondent be permitted to test Mr. Choi's evidence with the benefit of relevant portions of his file.
7. On the record before the court – particularly the uncontradicted evidence of Mr. Ching on having provided Mr. Wang with the Information Statement and repeatedly informing him of the Parking Head Lease – it is appropriate to find the petitioners had knowledge of, at minimum, the Parking Head Lease and the probability of lease/assignment agreements involving related entities from at least May 2019 onward.
8. The petitioners' knowledge and conduct amounts to equitable fraud within the meaning of s. 29(2) of the *LTA* (emphasis added):

(2) **Except in the case of fraud in which the person has participated**, a person contracting or dealing with or taking or proposing to take from a registered owner

(a) a transfer of land, or

(b) a charge on land, or a transfer or assignment or subcharge of the charge,

is not, despite a rule of law or equity to the contrary, affected by a notice, express, implied, or constructive, of an unregistered interest affecting the land or charge other than

(c) an interest, the registration of which is pending,

(d) a lease or agreement for lease for a period not exceeding 3 years if there is actual occupation under the lease or agreement, or

(e) the title of a person against which the indefeasible title is void under section 23 (4).

[Emphasis added.]

9. The petitioners' knowledge of the Parking Head Lease and the anticipated parking arrangements outlined in the Information Statement is such that it falls within the category of cases where a reasonable person should have made inquiries, and where disregarding the application respondents' interests would be contrary to common morality.

Visionlink Corp. v Patterson, 2023 BCSC 1341 at para. 43

Stratton v. Richter, 2022 BCCA 337 at paras. 104-107

10. The leading authority from the BC Supreme Court on the requirements to prove equitable fraud under s. 29(2) is *Vancouver City Savings Credit Union v. Serving for Success Consulting Ltd.*, 2011 BCSC 124 ("*VanCity*"):
 - [89] To prove equitable fraud it must be established that **the party acquiring a registered interest in land had sufficient actual knowledge of the conflicting interest in the property to cause a reasonable person to make inquiries as to the terms and legal implications of the prior instrument. In addition, there must be some other circumstance to take the matter out of the ordinary course of business or to show some clear intention to use the statute to defeat the respondents' interests in circumstances contrary to common morality such that it would be inequitable for the court to allow reliance upon the statute as protection.** Something more than simple knowledge is required. This interpretation seems consistent with the clear words of ss. 20, 29 and 30 of the *Land Title Act*.
 - [90] The passage, referred to above at para. 42 of *Kearns*, clearly contemplates something outside the normal course of business and, as was stated in *Stiles*, involves issues of "common morality".

[Emphasis added.]

11. The BC Court of Appeal has found the issue of whether mere notice of an unregistered interest triggers a finding of equitable fraud warrants scrutiny by a division of the Court:
 - a. In *Institutional Mortgage Capital Canada Inc. v. Plaza 500 Hotels Ltd.*, 2020 BCCA 193 at para. 84, Goepel J.A. stated:

Given this Court's comments in *Roop*, I accept Firefly's submission that the question as to whether mere notice of an unregistered interest triggers a finding of equitable fraud raises an arguable case of sufficient merit to warrant scrutiny by a division of this Court. That said, given the authorities, the language of s. 29 and the factual findings of Justice Fitzpatrick, I cannot say the appeal is a strong one. As a stand alone proposition, however, the point would warrant the granting of leave."

In the result, Goepel J.A. denied leave after consideration of a pending sale failing to complete if a stay was granted, and the likely irreparable harm to be suffered by lenders in the form of additional shortfalls resulting from delay. These factors are not at play in the present case, as the sale will complete with a holdback to be held by the Receiver pending determination of the parties' entitlement to the proceeds attributable to parking.

- b. In *Roop v. Hofmeyr*, 2016 BCCA 310 at para. 69, D. Smith J.A. concluded:

This is subject only to the fraud exception in s. 29 of the *Land Title Act*. The content of this exception must be left to another day, as in any case, it is not a basis here upon which to avoid the effect of the land registration system.

- c. Most recently, in *Stratton*, Groberman J.A. stated (at para. 107):

Given the apparent reluctance of this Court to settle the issue entirely in *Roop*, and the fact that the British Columbia Supreme Court appears to have now reached a consensus on what constitutes fraud for the purposes of s. 29(2), it is not necessary to comment further on that matter. However, nothing done in this case by Mr. Stratton or Ms. Perez can be characterized as fraudulent.

12. Proceeding on the basis that *VanCity* remains the leading authority, the petitioners' conduct here rises to the level of equitable fraud. Knowing of: (a) the Parking Head Lease and the anticipated further leases and assignments from the Information Statement and Mr. Ching's conversations with Mr. Wang, and (b) that those agreements had not yet been registered (but could be registered), the petitioners chose to insist on inclusion of the ITC Remainder lot in their mortgage at the eleventh hour, proceed with registration of their mortgages and charge exorbitant "cancellation" fees (and later interest rates) to ITC. The petitioners are effectively using the notice they had of the parking arrangements and their unregistered status to defeat Bygenteel's and Club Versante's interests.

The Owners Strata Plan NES33 v. Westshore Developments Limited, 2015 BCSC 1280 at para. 64

There has been no fraudulent conveyance

13. As a further basis on which to ignore Bygenteel's and Club Versante's interests in the Hotel Parking Stalls, the petitioners assert the Parking Head Lease, assignment to Bygenteel, and lease to Club Versante constituted fraudulent conveyances. This argument lacks any foundation.
14. The parking arrangements implemented by ITC were contemplated by the Information Statement that Mr. Ching provided to Mr. Wang months before the petitioners advanced a loan. That Information Statement identified that the parking arrangements would be between entities "related to the Developer". It left it to the discretion of the Developer as to whether those agreements would be registered on title.
15. Further, the consideration paid under the assignment and leases must be considered in the context of the other transactions in which they occurred. Bygenteel paid ITC a net sale price

of \$4.2M for strata lots 13 and 14. The Parking Stall Assignment Agreements with 121 are expressly made in the context of Bygenteel becoming the owner of strata lots 13 and 14 under the terms of the Contract of Purchase and Sale.

Ching Affidavit #4 at paras. 6-8

16. This wholly undermines the presence of any “badges of fraud”. There is no basis on which to infer an intent to hinder or delay or defeat a creditor.

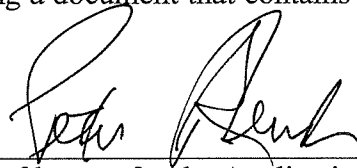
Kelly v. Gonzalez, 2014 BCSC 1269 at paras. 41-42

MATERIAL TO BE RELIED ON

1. Affidavit #1 of Chun Lin Ching made October 20, 2025;
2. Affidavit #1 of Shui-Yuen Choi made October 17, 2025;
3. Affidavit #1 of Van Bui made October 16, 2025;
4. Affidavit #1 of Michael Ching made October 15, 2025;
5. Affidavit #3 of Michael Ching made October 20, 2025;
6. Affidavit #4 of Michael Ching made November 13, 2025;
7. The Receiver’s Reports to date herein; and,
8. Such other materials as this Honourable Court may permit.

The Application Respondent has filed in this proceeding a document that contains an address for service.

Date: November 13, 2025



Signature of lawyer for the Application Respondent,
Peter J. Reardon

THIS APPLICATION RESPONSE is prepared by Peter J. Reardon, of the firm of Nathanson, Schachter & Thompson LLP whose place of business and address for service is 750 – 900 Howe Street, Vancouver, B.C. V6Z 2M4, telephone (604) 662-8840 and whose email address for service is preardon@nst.ca.