



No. S240493
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 ENTERPRISES 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., JEFFRET
RAUCH, RCC HOLDINGS LTD., AND HEUNG KEI SUNG

RESPONDENTS

APPLICATION RESPONSE

Application response of: Fox Island Development Ltd., and Advanced Venture Holding Co.,
Ltd., (the "**Petitioners**")

THIS IS A RESPONSE TO the notice of application of Deloitte Restructuring Inc., in its capacity
as Court-appointed Receiver, (the "**Receiver**") filed October 10, 2025.

The application respondents estimates that the application will take 1 day.

PART 1 ORDERS CONSENTED TO

The Petitioners consents to the granting of the orders set out in Part 1 of the notice of application:
ALL

PART 2 ORDERS OPPOSED

The Petitioners opposes the granting of the orders set out in Part 1 of the notice of application:
NONE

PART 3 ORDERS ON WHICH NO POSITION IS TAKEN

The Petitioners takes no position on the granting of the orders set out in Part 1 of the notice of application: **NONE**

PART 4 FACTUAL BASIS

1. Capitalized terms used herein have the same meaning as in the third report of the receiver, dated October 10, 2025.

Sales Process

2. The Sales Process and the receiver's marketing has been conducted in an entirely professional manner and it has brought a sale for which the Petitioners support Court approval.
3. However, the Petitioners take issue with the comments made in some of the other Respondents response material, implying the receiver and the Petitioners could have somehow done better in terms of a transaction to approve. This is particularly so given it is Mr. Michael Ching, who has been a hindrance to the marketing.
4. Mr. Ching has undoubtedly created uncertainty surrounding the scope of the Hotel's assets that were available for purchase by his actions before the foreclosure and throughout both the Petitioners marketing of the Hotel when it had conduct of sale and the receiver's marketing of the Hotel.

5. In particular, Mr. Ching created uncertainty regarding assets that are primarily situated in the restaurant at the Hotel. These restaurant assets are allegedly owned by Club Versante, a company owned and run by Mr. Ching's daughter, however, that ownership is subject to dispute by the Petitioners.
6. Mr. Ching has inserted himself into negotiations with any buyer of these assets and stymied some altogether. He has not made it clear to buyers exactly which assets are owned by Club Versante or what will happen if the potential purchaser does not transact with him and Club Versante over these assets. The restaurant is an important part of the Hotel and potential buyers need some certainty over these assets or it results in a grind on the marketing and purchase price.
7. In addition, the dispute surrounding the P5 Parking Stalls caused significant uncertainty and complicated the Receiver's marketing of the Hotel, leading to increased costs and expense in administering the receivership proceeding.
8. Each of the claimants in respect of the P5 Parking Stalls other than the Petitioners (being, 121, Bygenteel and Club Versante) are owned by either Mr. Ching or his daughters.

Second Report of the Receiver, dated July 11, 2025 at Exhibits D-F.

Distribution of Sale Proceeds

9. The Petitioners have advised each of 121, Bygenteel, Club Versante (the "**Other Parking Claimants**") (through counsel), that the Petitioners' view is that since none of the Other Parking Claimants' interests in the P5 Parking Stalls were registered with the Land Title Office, Part 3 of the Land Title Act, *RSBC 1996, c 250* (the "**LTA**") is dispositive of each of their claims.
10. Mere knowledge of the Other Parking Claimants interest at the time the mortgage was registered (which knowledge is denied by the Petitioners in any event) under *LTA* s. 29 is not enough. Evidence of actual notice, coupled with some sort of act of dishonesty or deceit is required.

Roop v. Hofmeyr - 2016 BCCA 310, 2016 CarswellBC 1979, [2016] 12 W.W.R. 83, [2016] B.C.W.L.D. 5208, [2016] B.C.W.L.D. 5209, 268 A.C.W.S. (3d) 677, 70 R.P.R. (5th) 56, 88 B.C.L.R. (5th) 223

11. There has been no allegation made about some sort of fraud or deceit on the part of Fox Island. Indeed it is impossible to imagine how there could be such a fraud given that would have required Fox Island at the outset of registering the mortgage to have a plan to take advantage of the LTA provisions down the road. Further, in order for this type of deceitful plan of Fox Island to work, there would have to be a future default and follow on foreclosure since absent those two taking place, an alleged plan to take advantage of Byganteel and Club Versante using the LTA could never transpire.
12. As such, the Petitioners have been asking the Other Parking Claimants about the nature of any meritorious defence to the Petitioners' claim the net sale proceeds regarding the P5 Parking Stalls to avoid any further delay and expense incurred regarding the Parking Stalls dispute.
13. No clear defence has been provided to date and instead the Other Parking Claimants simply seem to rely on the Parking Settlement Approval Order as grounds for its opposition. If a short adjournment (as in a few days and well before the Citation transaction closes) is absolutely necessary, then the Petitioner will consent to same, but there simply doesn't seem to be any point in further delay and there is Court time available this week.
14. The application brought by the Petition Respondents regarding an allegation that the Loan Agreement provides for "interest" that contravenes section 347 of the *Criminal Code* should be adjourned generally. Even if the Petition Respondents' arguments are accepted, there is no realistic scenario where the indebtedness owing the Petitioners would be less than the net sale proceeds from the Hotel.
15. As a result, the Court should approve a distribution of all of the net sale proceeds from the sale of the Hotel to the Petitioners.

PART 5 LEGAL BASIS

3. The Petitioners rely on the principles of equity, and Rule 1-3(1) of the *Supreme Court Civil Rules* in respect of its request that the Court approve a distribution of all of the net sale proceeds from the sale of the Hotel to the Petitioners.

PART 6 MATERIAL TO BE RELIED ON

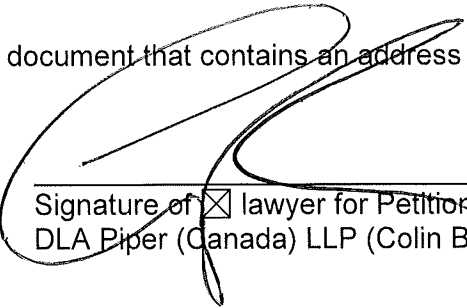
1. Affidavit #1 of Ashley Kumar, made October 10, 2025;

2. Second Report of the Receiver, dated July 11, 2025
3. Third Report of the Receiver, dated October 10, 2025.
4. Such other materials as this Honourable Court may permit.

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

October 21, 2025

Dated



Signature of ☒ lawyer for Petitioners
DLA Piper (Canada) LLP (Colin Brousson)

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RESPONDENTS

APPLICATION RESPONSE

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