



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 Bygenteel Capital Inc. ("**Bygenteel**") filed  
December 4, 2025 AND the notice of application of 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 Centre Properties Ltd., Sunwins  
Enterprise Ltd., Mo Yueng Ching also known as Michael Ching, Mo Yeung Properties Ltd., SFT

Digital Holdings 30 Ltd., Hotel Versante Ltd., and 1212429 B.C. Ltd. (collectively, the "**Ching Respondents**" and together with Bygenteel, the "**Adjournment Applicants**", and such applications being the "**Bygenteel Adjournment Application**" and the "**Ching Respondents Adjournment Application**", respectively)

The application respondents estimates that the application will take 120 minutes.

#### **PART 1 ORDERS CONSENTED TO**

The Petitioners consents to the granting of the orders set out in Part 1 of the notice of application:  
**NONE**

#### **PART 2 ORDERS OPPOSED**

The Petitioners opposes the granting of the orders set out in Part 1 of the notice of application:  
**ALL**

#### **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 Bygenteel Adjournment Application or the Ching Respondents Adjournment Application.
2. The Adjournment Applicants seek to adjourn the December 9, 2025, hearing once again and to compel cross-examination of affiants under Rule 22-1(4)(a).
3. The Petitioners oppose and take the position that the Petitioners' application should be heard in its entirety on December 9, 2025, which is the hearing date that has been booked for this matter since October 24, 2025.
4. The Court can decide after hearing the Petitioners' application whether adjournment and the other relief sought by the Adjournment Applicants are necessary to make a determination or whether this last minute application is actually just another attempt to delay these proceedings.

5. According to the Adjournment Applicants the core dispute relates to: what was communicated between Mr. Wang and Mr. Ching; when were those communications made; and what did the Petitioners know about any agreements affecting the P5 Parking Stalls before advancing funds and registering the Mortgage.
6. If the Petitioners or Mr. Wang were to have ever become aware of the parking agreements between ITC, 121 and Bygenteel affecting the P5 Parking Stalls, that information would have come from any of Mr. Ching, the Ching Respondents' legal counsel or from some representative within Bygenteel (such as Linda Ching, who is Mr. Ching's daughter).
7. The Adjournment Applicants should have possession or control over any written or documentary records demonstrating that any of Mr. Ching, the Ching Respondents' legal counsel or a Bygenteel representative communicated the existence of any agreements affecting the P5 Parking Stalls to Mr. Wang or the Petitioners or their legal counsel. The fact that they have produced none in this proceeding is indicia that no such written records exist.
8. The Adjournment Applicants also erroneously state that the third affidavit of Wen Yong Wang, dated November 25, 2025 (the "**Wang #3 Affidavit**") refers to documents that are in Mr. Wang's possession that are not available to Mr. Ching.
  - (a) With respect to the WeChat message, Mr. Ching is the recipient of those messages. He should have access through his WeChat account on his phone. Mr. Ching has provided no evidence setting out why he is not able to access historical messages in which he was a participant.
  - (b) With respect to the Petitioners' legal counsel's due diligence materials, any information received by Mr. Choi in its due diligence process would have been provided by ITC's legal counsel. As a result, Mr. Ching should be able access to that information without cross-examining Mr. Choi or Mr. Wang.
  - (c) The email correspondence between Mr. Wang and Ms. Zhang copies Mr. Ching (michael@sunwins.ca). As a result, Mr. Ching should have access to any other relevant correspondence relating to this document.
9. There is no need to adjourn in order to allow the parties to exchange any records. The records that are referred to or produced in the Choi Affidavit and the Wang #3 Affidavit

already are or ought to be in the possession or control of the Adjournment Applicants. Their request for an adjournment is simply an attempt to delay these proceedings.

The Ching Respondents have no interest in this dispute

10. Irrespective of the outcome of the underlying dispute relating to the proceeds of sale from the P5 Parking Stalls (the "**Parking Proceeds**"), the Ching Respondents should have nothing to gain. They do not assert any claim to the Parking Proceeds, and in any event, they each remain significantly indebted to the Petitioners as a result of the large deficiency that will remain following the sale of the Hotel.
11. Inexplicably, however, the Ching Respondents oppose the relief sought by the Petitioners, and in fact, on December 2, 2025, the Ching Respondents' counsel, not Bygenteel's counsel, requested an adjournment of this Application in order to permit the parties to exchange documents and conduct cross-examinations.

Affidavit #1 of Nadia Walnicki, dated December 4, 2025 at Exhibit B.

12. This position is curious, since, not only do the Ching Respondents have no claim to the Parking Proceeds, but by supporting Bygenteel's position, Mr. Ching is harming his own interests, since (if Bygenteel succeeds) the Parking Proceeds will be diverted away from paying the indebtedness that is owed to the Petitioners, which Mr. Ching has personally guaranteed.
13. The clear inference from these facts is that any apparent separation between Bygenteel and Mr. Ching is illusory. Mr. Ching is, in all likelihood, the controlling mind of Bygenteel, and he is using Bygenteel as a vehicle to attempt to capture the Parking Proceeds for himself in a manner that circumvents the guarantees he has provided to the Petitioners.
14. In further support of the position there is no separation between Mr. Ching and Bygenteel, the Petitioners note that Linda Ching has not provided any evidence to support the opposition of the Petitioners' application or in support of the adjournment which both the Adjournment Applicants now seek.

## **PART 5 LEGAL BASIS**

Legal Framework: Rule 22-1(4)(a)

1. Rule 22-1(4)(a) provides that evidence in chambers is by affidavit, but the court may order cross-examination at its discretion. The governing test considers:
  - (a) whether there are material facts in issue;
  - (b) whether cross-examination is relevant to an issue that may affect the outcome; and
  - (c) whether cross examination will serve a useful purpose in eliciting evidence that assists in determining the issue.

*Stephens v. Altria Group, Inc.*, 2021 BCCA 396 [**Altria**];  
*Cowichan Valley (Regional District) v. Cobble Hill Holdings Ltd.*, 2015 BCSC  
1995 [**Cowichan Valley**].

2. Additional factors include the availability of information through other means and whether cross-examination would cause unreasonable delay or expense.

*Altria*, at para. 5;  
*Cowichan Valley*, at paras. 27–29.

#### No Useful Purpose Served Other than Delay and Prejudice

3. The law in the Province of British Columbia is clear with respect to the Petitioners' underlying application: the holder of an interest registered against particular lands is unaffected by any unregistered interest in those lands, absent notice of the unregistered interest and some form of dishonest or deceitful conduct which constitutes fraud.
4. Therefore, in order for the Adjournment Applicants to succeed in the opposition of the Petitioners' application which they now seek to adjourn, they must not only prove that the Petitioners had knowledge of Unregistered Parking Agreements, but also that the Petitioners participated in some form of fraud by registering the Mortgage.
5. Further, the onus of establishing fraud in the context of LTA s. 29(2) is on the holder of the unregistered interest.
6. Here, the evidence adduced by Mr. Ching falls well short of proving either notice of the Unregistered Parking Agreements or any fraudulent conduct by the Petitioners.
7. As such, the Petitioners firmly assert that even if all of the Respondent's facts are taken as true, their position in the underlying Entitlement Hearing is bound to fail, based on the

proper interpretation of the Land Title Act s. 29(2). Cross-examination only serves to delay and further prejudice the Petitioners.

8. The Petitioners further note that Mr. Choi's affidavit, which has been in the hands of the Adjournment Applicants for almost two months now, remains uncontradicted.

Material Facts in Issue are Resolved by Documents

9. In the alternative that the Court wishes to make determination on the facts disputed as between Mr. Ching and Mr. Wang, this can be done quite easily. Courts routinely decline cross-examination where documentary evidence resolves conflicts.

"Minor discrepancies in the evidence or conflicts that may be resolved by reference to documentary evidence will not warrant the exercise of the court's discretion."

*Cowichan Valley*, at para. 29 [*emphasis added*].

10. For example, in *Ibrahim v. Hashemi*, the British Columbia Court of Appeal recently stated as follows:

34 The appellant next argues that the chambers judge erred in considering irrelevant factors, and failing to consider relevant factors, when he declined to order cross-examination on the affidavits filed on Ms. Hashemi's application, as permitted by R. 22-1(4)(a) of the Rules. Specifically, the appellant argues that the judge did not explicitly engage with the cross-examination factors set out in *Equustek Solutions Inc. v. Jack* 2013 BCSC 882, and instead inappropriately focussed on the merits of the case. The appellant notes that there were conflicts in the evidence as to whether Ms. Hashemi was served with the amended notice of civil claim and the application to assess damages. The appellant argues that the question of service was material to Ms. Hashemi's application and, therefore, cross-examination would have served a useful purpose in eliciting evidence that would assist in determining the application.

.....

38 Finally, I note that there was documentary evidence that corroborated Ms. Hashemi's assertion that she had not been served with the amended notice of civil claim or the application to assess damages. The judge's determination that the record was sufficient to permit him to fairly resolve the evidentiary conflict in this case without cross-examination is entitled to deference on appeal.

*Ibrahim v. Hashemi*, 2024 BCCA 383 at paras 34, 38.

11. The determinative evidence in this application is documentary; namely the August 2019 WeChat Message and the Petitioners' legal counsel's due diligence requests, and subsequent disclosure of RCC agreements. These are the very records that address the alleged conflicts—what was said, when it was said, and what was disclosed. More importantly, these written records reveal what was not disclosed, despite the Petitioners' multiple requests.
12. The documents speak for themselves. If the Adjournment Applicants contend otherwise, they should produce contradictory documents rather than rely on speculative assertions. Where the best evidence is already before the Court in documentary form, cross-examination adds no clarity.

Relevance and Utility

13. Relevance is assessed based on whether the cross-examination may yield evidence pertinent to an arguable issue raised by the parties. This is the key question, and not simply whether there is a conflict in affidavit evidence.

*Beigi v. Sabaghchian*, 2024 BCSC 812, para. 36;  
*Szeto v. Shon Yee Benevolent Association of Canada*, 2019 BCSC 2015.

14. Cross-examination will not change the documentary evidence. Competing interpretations are for submissions. To the extent that any evidence in the Wang #3 Affidavit is not documentary, forcing cross-examinations on commentary adds little to adjudication and risks devolving into argumentative context.

*Cowichan Valley*, para 29.

15. Further, the utility of cross-examinations is marginal in these circumstances. Cross-examinations seldom yield corroboration on binary assertions such as claims that Mr. Wang did not receive a USB or printed documents and was unaware of the leases.

*Cowichan Valley*, para 31;  
*B & L Holdings Inc. v. SNFW Fitness BC Ltd.*, 2018 BCSC 1374, at para. 31.

16. The knowledge of Mr. Wang and Mr. Choi is reflected in the document trail: namely, the August 2019 WeChat Message and Mr. Choi's request for agreements relating to the P5 Parking Stalls during the due diligence process, and ITC's counsel's subsequent

disclosure. The documents themselves, not subjective recollections (which are informed by the documentary evidence), are the best evidence of what was said, requested, and disclosed.

17. In any event, the Petitioners firmly reiterate that even if all of the Respondent's facts are taken as true, they will not succeed on the Entitlement Hearing--cross-examination serves no utility.

Delay, expense, and proportionality: decisive

18. Adjournment, exchanging lists of documents, cross-examination, and rescheduling alone will defer resolution months and multiply costs—indeed the Adjournment Applicants propose cross-examinations be completed by February 27, 2026. The application has already been adjourned once. The proceeds remain tied up and further delay prejudices the Petitioners and undermines efficient receivership administration.
19. Further, the Petitioners are already going to suffer a shortfall on their security in the order of tens of millions of dollars. The additional delay caused by an adjournment will give rise to further unrecoverable interest accrual, since the Ching Respondents (who are the borrowers and guarantors under the loan agreements with the Petitioners) are all hopelessly insolvent.
20. Mr. Choi's affidavit was provided to the Adjournment Applicants in mid-October. His recollection of events contradicts the evidence provided by Mr. Ching, and yet the Adjournment Applicants waited until December 4, 2025 – two business days before the Entitlement Hearing – to request leave to cross-examine Mr. Choi. No explanation has been provided for this delay.
21. In the circumstances, the bald assertion that the Wang #3 Affidavit evidence is contradicted should not, on its own, be sufficient grounds for an adjournment of the Entitlement Hearing, simply for the Adjournment Applicants to be permitted to conduct cross-examinations which are unlikely to be revelatory and would proceed at a disproportionate expense.
22. Rule 22-1(4)(a) is discretionary. The court should decline cross-examination where documentary evidence resolves conflicts and where utility is minimal. Here, the



documentary evidence before the Court provides the necessary evidentiary foundation. Cross-examination would add delay and cost without advancing the issues.

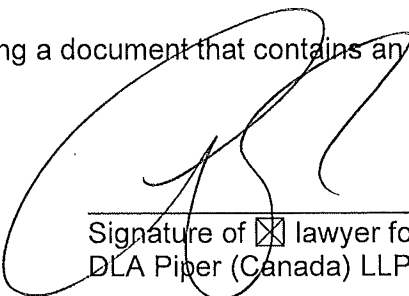
**PART 6 MATERIAL TO BE RELIED ON**

1. Affidavit of Shui-Yen Choi, dated October 17, 2025.
2. Affidavit #3 of Wen Yong Wang, dated November 25, 2025.
3. Affidavit #1 of Nadia Walnicki, dated December 4, 2025.

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

December 8, 2025

Dated



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

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RESPONDENTS

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**APPLICATION RESPONSE**

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