



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

**NOTICE OF APPLICATION**

**Name(s) of applicant(s):** Club Versante Management Ltd. (“Club Versante”, or the “Applicant”)

To: Deloitte Restructuring Inc., in its capacity as Court-appointed Receiver (in that capacity, the “Receiver” or the “Applicant”) of the “Hotel Property RCC Holdings Ltd., Hotel Versante Ltd., and International Trade Centre Properties Ltd. (the “Debtors”)

And to: Michael Ching

And to: Bygenteel Capital Inc.

And to: The Service List attached hereto as Schedule “A”

TAKE NOTICE that an application will be made by the Applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, B.C. on 8/APR/2026 , at 9:45 a.m. for the orders set out in Part 1 below. 10:00

The applicant estimates that the application will take 1 day.

- This matter is within the jurisdiction of the associate judge.
- This matter is not within the jurisdiction of an associate judge.

**Part 1: ORDER(S) SOUGHT**

1. An order:
  - (a) Setting aside disallowance of the Proof of Property Claim filed by Club Versante Management Ltd. (“**Club Versante**”) on February 23, 2026; and
  - (b) Allowing the Proof of Property Claim of Club Versante regarding ownership of the food and beverage assets located within the portion of the hotel property formerly subleased by Club Versante (the “**F&B Assets**”).
2. Such further orders as counsel for the Applicant may advise and this court may deem appropriate in the circumstances.

**Part 2: FACTUAL BASIS**

**OVERVIEW**

1. By order of this Honourable Court made December 17, 2025, any parties wishing to claim ownership in the F&B Assets as defined in the order were to deliver a Proof of Property Claim to the Receiver within the time provided in the order. The only party to file a Proof of Property Claim was Club Versante.
2. Through a determination made March 2, 2026, the Receiver disallowed Club Versante’s Proof of Property Claim (the “**Notice of Disallowance**”) The Receiver provided two reasons for its determination: a “lack of clarity regarding the F&B Assets being claimed” and “inconsistent and insufficient invoice and payment support. The Receiver expressly declined to decide any legal issues arising from Club Versante’s claim, including the interpretation of the Sublease (as defined below) and the application of British Columbia law respecting fixtures versus chattels.
3. The Receiver’s determination was in error. The interpretation of the Sublease is straightforward and governs Club Versante’s rights to remove its personal property from the premises on termination of the Sublease. In the face of the following three factors, there was only one conclusion available to the Receiver, allowance of Club Versante’s claim:
  - (a) Club Versante was the only party to file a claim for the F&B Assets;
  - (b) a sub-lease, which confirmed Club Versante’s right to remove all personal property, furnishings, machinery, trade fixtures, equipment and improvements it installed; and

- (c) there being no evidence before the Receiver to contradict the evidence led by Club Versante as to its installation of the F&B Assets.
4. In this *de novo* appeal, it is appropriate to allow Club Versante's appeal and find it owns the F&B Assets.

5.

## BACKGROUND

6. Hotel Versante Ltd. leases the property known as the Versante Hotel (the "**Hotel Property**") from ITCP pursuant to a lease dated August 1, 2021 (the "**Head Lease**").
7. Hotel Versante Ltd. in turn leased a portion of the Hotel Property (the "**Sublet Premises**") to Club Versante Management Ltd. ("**Club Versante**") as Subtenant pursuant to a Commercial Sublease (the "**Sublease**") made as of August 1, 2021.
8. The fine dining and catering services for the Versante Hotel have been provided by Club Versante pursuant to a 10 year Commercial Sub-Lease Agreement between Hotel Versante Ltd. (the "**Sub-Landlord**") and Club Versante (the "**Subtenant**") dated August 1, 2021 (the "**Sub-Lease**"). The Sub-Lease grants Club Versante the exclusive use of space on the ground floor of the hotel where the Bruno Restaurant (the "**Bruno Space**") is operated and on the 12<sup>th</sup> and 13<sup>th</sup> floors of the hotel as part of the Alaia event space (the "**Alaia Space**", together with the Bruno Space, the "**Sublet Premises**"). The Sub-Lease was updated through 2 separate minor amendments dated September 1, 2021 and June 1, 2023.

Affidavit # 2 of Chung-Lin (Linda) Ching made March 15, 2026 (**L. Ching #2**), para. 3

9. The hotel opened as a luxury boutique hotel in 2021. The fine dining and catering services for the hotel have been provided by Club Versante since the hotel opened.

L. Ching #2, para 4

10. By a Project Construction Management Agreement ("**PCMA**") dated as of February 18, 2020, Bygenteel Capital Inc. ("**Bygenteel**"), the parent of Club Versante, and Club Versante retained International Trade Centre Properties Ltd. ("**ITCP**") to construct the Bruno Space and the Alaia Space so that the restaurant premises could open concurrently with the hotel operations.

L. Ching #2, para 5

11. Pursuant to the PCMA, ITCP constructed the Bruno Space and the Alaia Space on behalf of Bygenteel and Club Versante. Bygenteel and Club Versante agreed to separately fund the interior improvements and assume full financial responsibility and to provide all improvements, equipment and furnishings for the restaurant/bar with funding to be provided by Bygenteel and Club Versante and/or related entities.

L. Ching, para. 6

12. To ensure that the restaurant premises would open concurrently with the hotel operations, all municipal building permits were issued under the name of ITCP. Consequently, Bygenteel and Club Versante agreed to engage ITCP to administer and coordinate the restaurant's interior improvement/tenant related work. Further, pursuant to the PCMA, ITCP agreed that it was the limited agent for the purposes of procurement and payment administration and would not be deemed the owner of the furniture, fixtures and equipment or interior improvements.

L. Ching, para.7

13. The Sub-Lease provides that all personal property, furnishings, machinery, trade fixtures, equipment and improvements which Club Versante installs, on termination of the Sub-Lease may be removed by Club Versante.

14. The Sublease further provides;

6.5.1. Initial improvements. Subtenant, at Subtenant's cost, may install such fixtures and finishes and communications and internet services infrastructure and other initial Subtenant improvements in or about the Sublet Premises as Subtenant deems necessary or desirable for the conduct of Subtenant's business therein (the "Initial Improvements").

6.6.1. The term "Subtenant's Personal Property" shall mean all personal property, furnishings, machinery, trade fixtures, equipment and improvements (trade or otherwise) which Subtenant installs in the Sublet Premises including without limitation the following: partitions, screens, art, plant walls along with the irrigation and suspended plants, specialized lighting fixtures, moveable boulders, menu boards, signage and other non-structural design elements. Until or upon the termination or expiration of the Term, Subtenant may, from time to time, remove Subtenant's Personal Property from the Sublet Premises no later than the termination or expiration date of the Term. In addition, Subtenant may remove from the Sublet Premises, all items installed by Subtenant that are indicative of Subtenant's business and may otherwise "de-identify" the Sublet Premises and/or the Building as Subtenant reasonably believes necessary or appropriate for the protection of Subtenant's interest in Subtenant's trademarks, trade names or copyrights. Subtenant shall repair any damage to the Sublet Premises or the Building caused by such removal, including patching and filling holes. Notwithstanding the foregoing, in no event shall Subtenant be entitled pursuant to this Section 6.6.1 to remove, nor shall Subtenant be required to remove, any restroom fixtures, flooring, ceilings, walls or utility or electrical components located inside the walls nor any portions of the HVAC system(s). Sublandlord shall not have the right to place or permit liens, charges or other encumbrances on any of Subtenant's Personal Property and Sublandlord waives and release any and all liens or charges, whether statutory or under common law, on Subtenant's Personal Property which may be located from time to time in or about the Sublet Premises.

6.6.2 Except for items installed by Subtenant that are indicative of Subtenant's business and/or that Subtenant reasonably believes necessary or appropriate for the protection of Subtenant's interest in Subtenant's trademarks, trade names or copyrights, all of Subtenant's Personal Property not removed from the Sublet Premises on the date this

Sublease terminates or expires shall be deemed abandoned and shall thereupon become the property of Sublandlord.

[Emphasis added]

L. Ching #2, Exhibit "A"

15. The provisions of the Sub-lease are clear: the Subtenant was to install the Subtenant's Personal Property, at the Subtenant's cost, and such Subtenant's Personal Property is not the property of the Sub-Landlord unless and until the Subtenant fails to remove the property on termination of the Sub-lease.
16. The Subtenant did install the Subtenant's Personal Property which remains on the Sublet Premises.

L. Ching #2, para. 8

#### **INSTALLATION OF SUBTENANT'S PERSONAL PROPERTY**

17. The estimated construction budget for the restaurant project was \$4M. ITCP would be required to monitor and control costs within the Project Budget and provide monthly cost reports.

L. Ching #2, para. 9

18. ITCP's request for payments were included in the monthly progress draws of its main construction contractor, Scott Construction, designated as "Project - Out of Scope". The Out of Scope work was shown on Scott Construction project claims as Project 1834. The hotel construction contract by Scott Construction was shown as Project 1793.

L. Ching #2, para. 10

19. Out of Scope Project 1834 invoices from Scott Construction for draws 16 through 41 each contain items relating to the Club Versante restaurant/bar. Those items show on the Scott Construction Job Cost Reports under the heading "Level 12 Bar". Those items include the Bruno Space and the Alaia Space.

L. Ching #2, para. 11 & 12

20. The Tenant Improvements include "restroom fixtures, flooring, ceilings, walls or utility or electrical components located inside the walls nor any portions of the HVAC system(s)" which, pursuant to Section 6.6.1 of the Sublease, may not be removed by the Subtenant. Also included are Tenant Improvements that are "personal property, furnishings, machinery, trade fixtures, equipment and improvements (trade or otherwise) which Subtenant installs in the Sublet Premises" as described in Section 6.6.1, which may be removed by the Subtenant on termination of the Sublease.

21. The total cost of Out of Scope Project 1834 was \$3,796,105.13 as shown on Exhibit “C” to L. Ching #2. That amount was paid by ITCP which in turn was paid by Club Versante, Bygenteel and/or related entities as provided in the PCMA. Approximately \$8.7M was deposited into ITCP’s account at Gulf & Fraser Fishermen’s Credit Union (“**Gulf \$ Fraser C.U.**”) by entities related to Bygenteel and Club Versante from which approximately \$3.9M was used to pay Scott Construction’s Progress Draws for Out of Scope Project 1834.

L. Ching #2, paras. 14 & 15, Exhibits “CC”, “DD” and “EE”

22. The Financial Statements of Club Versante for the year ended December 31, 2024 show Loans Payable of \$5,407,406. The vast majority of that amount is payable to Bygenteel, \$5,294,671, shown on Bygenteel’s Financial Statements for the same period as a Loan Receivable from a subsidiary. The subsidiary is Club Versante.

L. Ching #2, para. 16, Exhibits “FF” and “GG”

23. The Out of Scope work does not include the purchase of furniture and equipment used in the Sublet Premises. That personal property was acquired by or on behalf of Club Versante.
24. Advances made by Fox Island were applied to construction costs incurred by Scott Construction in relation to Project 1793 – the hotel construction – only and not to the restaurant/bar improvements or furniture and equipment. The full amount advanced by Fox Island after payment of the balances owed to prior lenders, Romspen and Broadway Camera, was \$3,005,713.32. This amount was advanced in two draws, \$2,102,311.43 on November 29, 2019 and \$903,401.89 on June 12, 2020. Those funds were used entirely to pay Scott Construction’s invoices for Project 1793, the hotel project. None of those funds were used to pay invoices for Project 1834 – the Out of Scope Project nor for furniture and equipment for the restaurant/bar. No other advances were made by Fox Island.

L. Ching #2, paras, 17 & at, Exhibit “FF”

25. The evidence before this Court establishes that Club Versante, or its agents, installed and paid for the F&B Assets. .

### **LIST OF F&B ASSETS**

26. In the Notice of Disallowance, the Receiver finds that no consolidated asset list had been provided specifying the specific F&B Assets being claimed. That is not so.

L. Ching #2, para. 19

27. The 1<sup>st</sup> Affidavit of Linda Ching sworn October 31, 2025 was included in the Supplement to the 4<sup>th</sup> Report as Schedule “B”. The affidavit contained as Exhibit “B” is a Letter of Intent dated September 19, 2025 (the “**Citation LOI**”) from Citation Property Holdings Ltd. (“**Citation**”) to Bygenteel whereby Citation agreed to purchase from Bygenteel 53

parking stalls and all fixtures, furniture and equipment used in the Bruno Restaurant and Alaia Bar as set out in Schedule "B" to the LOI.

Supplement to the Fourth Report of the Receiver dated December 15, 2025, para. 22  
("Supplement to 4<sup>th</sup> Report")

28. The list of fixtures, furniture and equipment attached to the Citation LOI is a reasonably complete list of the F&B Assets as at September 2025. That list does not include tenant improvements made by or on behalf of Club Versante to the Sublet Premises.

L. Ching #2, para. 21, Exhibit "II"

29. Substantial evidence of payment by or on behalf of Club Versante for the F&B Assets has been produced, including payments for purchases of furniture and equipment from Liv and Company Investments Ltd., Canadian Restaurant Supply Ltd., Yugen Gaishya Ichifuji, Designform Furnishings, Suite 22 Contract Inc., Beijing Hundred Hutch of Kitchen Equipment Sales Centre, Uline Canada Corporation, Costco and others.

L. Ching #2, para. 22

30. Furniture belonging to Club Versante for use periodically in the Alaia Space, Level 3 conference and ITC north tower level 6 is stored in Hotel storage when not in use. There is currently such furniture stored in Hotel storage.

L. Ching #2, para. 23

### **Part 3: LEGAL BASIS**

#### **The Claims Process operated by the Receiver should have resulted in an allowance of Club Versante's claim to the F&B Assets**

31. The order of December 17, 2025 established the claims process whereby the Receiver was directed and authorized to determine ownership of the F&B Assets as defined in the Order. Any party wishing to claim ownership was to deliver a Proof of Property Claim within the time provided in the order.
32. The record before the Receiver established the following:
- (a) only Club Versante delivered a Proof of Property Claim to the Receiver;
  - (b) only Club Versante has operated the food and beverage business at Hotel Versante since it opened; and
  - (c) only Club Versante has used the food and beverage assets in question.
33. The Sublease allows Club Versante to install fixtures and improvements as it thinks are necessary to conduct its business (Section 6.5.1).

34. Other parties related to Club Versante may have advanced funds directly to suppliers of the food and beverage assets to Club Versante. Club Versante may continue to owe money to those parties, including Bygenteel. However, none of those parties have claimed any interest in the F&B Assets.
35. The Sublease between Club Versante and Hotel Versante is clear. The Subtenant's Personal Property is defined in Section 6.6.1 of the Sublease. The Sublease allows the Subtenant, Club Versante, to remove those assets prior to or on termination of the Sublease. The Subtenant is not permitted to remove "any restroom fixtures, flooring, ceilings, walls or utility or electrical components located inside the walls nor any portions of the HVAC system(s)" but is permitted to remove the F&B Assets in issue here. It is only if Club Versante fails to remove the Subtenant's Personal Property on termination of the Sublease that the Subtenant's Personal Property is deemed to be abandoned by Club Versante and becomes the property of the Sublandlord, Hotel Versante.
36. Paragraph 16(f) of the December 17, 2025 order provides that, if and only if the Subtenant's Personal Property is not removed by Club Versante will 1483610 B.C. Ltd., the Purchaser, have any right to the F&B Assets.

#### **The principles governing tenant fixtures**

37. The general test to determine whether an item is a fixture or a chattel may not apply to all items in the context of a commercial lease. Rather, there is a presumption that the tenant did not intend for its items to be permanently affixed to the realty, where those items are used for the tenant's trade ("trade fixtures"). A lease may address a tenant's right to remove trade fixtures in a manner different from the common law, but any terms limiting that right will be construed narrowly against the landlord..

*2105582 Ontario Ltd. (Performance Plus Golf Academy) v. 375445 Ontario Limited (Hydeaway Golf Club)*, [2017 ONCA 980](#) at paras. 33-38 [*Performance Plus*]

*Homestar Hldg. Ltd. v. Old Country Inn Ltd.*, [1986 CanLII 813 at paras. 22-23 \(BC SC\)](#)

38. As a starting point, courts have applied the well-established test for distinguishing between chattels and fixtures is set out in *Stack v. T. Eaton Co.* (1902), 4 O.L.R. 335 at 338 (Div. Ct.), and affirmed in *La Salle Recreations Ltd. v. Canadian Camdex Investments Ltd.* (1969), [1969 CanLII 740 \(BC CA\)](#). The test was more recently affirmed in *Zellstoff Celgar Limited v. British Columbia*, [2014 BCCA 279](#) and was reproduced at para. 9 as follows:

(1) That articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as shew that they were intended to be part of the land.

(2) That articles affixed to the land even slightly are to be considered part of the land unless the circumstances are such as to shew that they were intended to continue chattels.

(3) That the circumstances necessary to be shewn to alter the prima facie character of the articles are circumstances which shew the degree of annexation and object of such annexation, which are patent to all to see.

(4) That the intention of the person affixing the article to the soil is material only so far as it can be presumed from the degree and object of the annexation.

(5) That, even in the case of tenants' fixtures put in for the purposes of trade, they form part of the freehold, with the right, however, to the tenant, as between him and his landlord, to bring them back to the state of chattels again by severing them from the soil, and that they pass by a conveyance of the land as part of it, subject to this right of the tenant.

39. In the context of commercial leases, the B.C. Court of Appeal in *Sawridge Manor Ltd. v. Selkirk Springs International Corp.*, [1995 CanLII 8906 \(BC CA\)](#) described the distinction between tenant's fixtures and landlord's fixtures as follows:

[41] As Lord Denning put it in *New Zealand Government Property Corp. v. H.M. & S. Ltd.*, [1982] 1 All E.R. 624 at 627 (C.A.), a case concerning Her Majesty's Theatre in the Haymarket:

Before I go any further, I would describe the distinction between "tenant's fixtures" and "landlord's fixtures". The term "tenant's fixtures", for present purposes, mean those fixtures which the tenant himself fixed into the premises for the purpose of his trade, that is for the business of the theatre, but which do not become part of the structure itself. Instances are the seats for the stalls, or auditorium, which are fixed by screws or bolts to the floor, wall brackets for lights which are screwed on to the wall, electric transformers fixed on to the floor, and so forth. All these the tenant is entitled to remove when his term comes to an end. Whereas "landlord's fixtures" for present purposes means those fixtures which the tenant himself fixes into the premises so that they become part of the structure itself: see *Boswell v Crucible Steel Co* [1925] 1 KB 119, [1924] All ER Rep 298. Instances are improvements made by the tenant by putting in new doors or windows in place of those that were there before, or a new frontage or a new safety curtain. These improvements become part of the structure itself. The tenant cannot remove them when his term comes to an end. All this goes back to the time of Holt CJ.

40. In *Caledonia Service Station Inc. v. Cango Inc.*, [2011 ONCA 184](#) at para. 14, the Court of Appeal for Ontario held that the test for whether an asset is a leasehold improvement is the same as the test for whether an asset is a fixture; that is, there must be a sufficient degree and object of annexation such that the assets become part of the land. The Court described the distinction between improvements and trade fixtures in this way:

[14] This distinction accords with the ordinary meaning of improvements and trade fixtures in the law of real property: **improvements refer to things constructed on and attached to the realty that are intended to become part of it; trade fixtures refer to things placed on and connected to the realty but in a**

**way that the connection can be severed, restoring their character as chattels.** See *Stack v. T. Eaton Co.* (1902), 4 O.L.R. 335 (Div. Ct.); *Fas Gas Oil Ltd. v. J. H. Automotive Ltd.* (2004), 2004 ABCA 120 (CanLII), 31 Alta. L.R. (4th) 197 (C.A.); *Beloit Sorel Walmsley, Ltd. v. New Brunswick* (1976), 1976 CanLII 1216 (NB CA), 71 D.L.R. (3d) 240 (N.B.C.A.).

[Emphasis added.]

41. This Court in *Nextgear Capital Corporation v Corsa Auto Gallery Ltd.*, [2019 BCSC 1667](#) at para. 37 applied the principles from *Caledonia* and held that “[i]mprovements are things constructed on and attached to land that are intended to become part of it”.
42. In *Zellstoff* (cited above), the Court of Appeal for B.C. confirmed that it is appropriate to consider the use of the land when considering the object of annexation, as held in *Haggert v. Town of Brampton* (1897), [1897 CanLII 14 \(SCC\)](#).
43. In *Performance Plus*, the Court of Appeal of Ontario stated that the general rule that fixtures remain with the land following the end of a tenancy does not apply to all fixtures. The Court went on to summarize the case law regarding trade fixtures as follows:

[33] Trade fixtures are assets that are affixed to leased premises by a tenant for trade or commercial purposes. **Courts have consistently held that tenants are presumptively allowed to remove trade fixtures at the end of a tenancy so long as the removal does not materially damage the premises:** *859587 Ontario Ltd. v. Starmark Property Management Ltd.* (1997), 1997 CanLII 12153 (ON SC), 34 O.R. (3d) 43, [1997] O.J. No. 2474, 1997 CarswellOnt 2308 (Gen. Div.), at p. 54 O.R., at para. 31, affd (1998), 1998 CanLII 7138 (ON CA), 40 O.R. (3d) 481, [1998] O.J. No. 3022, 1998 CarswellOnt 2937 (C.A.); *Caledonia Service Station Inc. v. Cango Inc.*, [2011] O.J. No. 1045, 2011 ONCA 184, at para. 14; *Newfoundland and Labrador Housing Corp. v. Humby*, [2013] N.J. No. 20, 2013 NLCA 7, per Rowe J.A. (as he then was), at paras. 22-27. **This exception -- that trade fixtures do not remain with the land post-tenancy -- has a long history in the common law:** *Warner v. Don* (1896), 1896 CanLII 67 (SCC), 26 S.C.R. 388, [1896] S.C.J. No. 44, 1896 CarswellNS 102, at pp. 391-92 S.C.R., at para. 8; *Stack*, at p. 338 O.L.R.; and [page570] *Richardson v. Equitable Fire Insurance Co.*, 1953 CanLII 159 (ON CA), [1953] O.R. 493, [1953] O.J. No. 668, [1953] 3 D.L.R. 583, 1953 CarswellOnt 67 (C.A.), at p. 586 D.L.R. (C.A.), at para. 8.

[34] Importantly, as this court held in *Bank of Nova Scotia v. Mitz* (1979), 1979 CanLII 1789 (ON CA), 27 O.R. (2d) 250, [1979] O.J. No. 4491, 106 D.L.R. (3d) 534, 1979 CarswellOnt 741 (C.A.), at p. 538 D.L.R., at para. 11, **there is a distinction in the analysis depending on whether the attempted removal of the disputed asset occurs in the context of a lease versus the sale of real property.** In the former case, there appears to be a presumption that a tenant would not have an objective intent to affix an asset on a permanent basis such that it would become part of the real property at the end of the lease: *Bank of Nova Scotia*, at pp. 538-39 D.L.R. **In other words, the object of annexation is presumptively not one of permanence.**

[35] **The jurisprudence demonstrates that the determination of whether an asset is a fixture or trade fixture upon termination of a lease is highly fact-specific.** For example, in *Webb v. Frank Bevis Ltd.*, [1940] 1 All E.R. 247 (E.W.C.A.), the English Court of Appeal held that a 6,750-square-foot shed was a trade fixture and removable by the tenant at the end of the lease. The shed in that case was covered with a corrugated iron roof that rested on wooden posts. The wooden posts, in turn, were affixed to a concrete floor -- but not embedded in the concrete. The court held that the shed could be taken apart without damage to the leased premises and was a trade fixture. By contrast, the concrete floor was not a trade fixture since it could not be removed without damage to the leased premises.

[36] *Webb* was implicitly affirmed by the United Kingdom House of Lords in *Elitestone Ltd. v. Morris*, [1997] 1 W.L.R. 687 (U.K.H.L.), at p. 691. In *Elitestone*, the House of Lords was asked to determine whether a bungalow constructed on leased real property was a chattel or fixture that was part of the land. The House of Lords affirmed the trial judge's conclusion that the bungalow was part of the land because such determinations depended on the facts of each case: *Elitestone*, per Lord Berwick, at p. 692; and per Lord Clyde, at p. 696. **It was also significant that the tenant claiming the bungalow did not construct the bungalow. It existed prior to the tenant occupying the premises.**

[37] Justice Rowe of the Newfoundland Court of Appeal (as he then was) found *Webb* and *Elitestone* to be persuasive authorities in *Humby*. *Humby* concerned a "Butler building", which was a pre-engineered 1,500-square-foot steel-frame building. It was built by the tenant and supported by metal beams that were [page571] bolted into a concrete foundation. There was also electrical wiring throughout the structure. Nevertheless, Rowe J.A. held that the building was a trade fixture that could be removed by the tenant at the end of the lease: *Humby*, at para. 31.

[38] The above cases -- as well as *Richardson* and *Starmark Property* -- demonstrate that the determination of whether an asset is a fixture versus a trade fixture or chattel is a question of mixed fact and law. **In this case, the trial judge applied the three requisite elements of the legal test for a trade fixture: (i) whether the asset is affixed to the ground by the tenant; (ii) whether the asset is used for the purpose of a trade or commerce; and (iii) whether the asset can be removed without material damage to the premises. Only element (iii) was in question at trial.**

[Emphasis added.]

#### **The Sublease and common law allow Club Versante to remove the F&B Assets**

44. In *Homestar Hldg. Ltd. v. Old Country Inn Ltd.*, [1986 CanLII 813 \(BC SC\)](#), the Court considered whether the terms of a lease limited the landlord's common law right to remove tenant's fixtures. The Court made the following comments on this point:

[22] A tenant's common law rights may be limited by the terms of the lease. This point is made in 20 C.E.D. (West. 3rd) Landlord and Tenant, p. 83-245, para. 799:

A lessor and lessee may by a special contract make a law for themselves as to fixtures, and trade fixtures may become irremovable if upon a true interpretation of

the contract between the lessor and lessee it appears that the lessee has renounced his right to take them during the term.

Authorities for this proposition are *Re Maple Leaf Coal Co.*, 1951 CanLII 526 (AB CA) [...] and *Hayward & Dodds v. Lim Bang* (1914), 1914 CanLII 742 (BC CA) [...]

[23] However (Williams and Rhodes, p. 13-30):

... to deprive the tenant of his right to remove trade fixtures the language must be clear, and the courts will construe the covenant strictly against the lessor. *Beaufort v. Bates* (1862), 3 De G.F. & J. 381, 45 F.R. 926, followed in *Argles v. McMath* [(1894), 26 O.R. 224, affirmed 23 O.A.R. 44]; and see *Gray v. Lount*, 1932 CanLII 443 (MB KB) [...]

[24] In the present case, the key terms in the lease read as follows:

3(m) All alterations, partitions, additions and improvements made, installed, cemented or otherwise adhesively affixed upon the demised premises and attached to the floor, walls or ceiling thereof, shall ipso facto become and be the property of the Lessors and remain upon the premises and be surrendered as a part thereof without disturbance, molestation or injury, upon the termination of this Lease, but nothing herein shall be construed so as to prohibit the Lessee from removing from the said premises any dishes, cutlery, electrical appliances, decorations, tables, chairs, partitions, counters, signs, displays, cabinets, cupboards, stoves, refrigerators, (sic) and any other chattels which are not affixed to the demised premises and attached to the floor, walls, or ceiling thereof.

(n) If the Lessee shall, during the said term, affix to or erect on the demised premises any fixture other than as is hereinbefore mentioned, then such fixture shall belong to and be removable by the Lessee at any time during the said term or within Thirty (30) days after determination thereof provided that the Lessee shall make good all damages caused by such removal.

...

[31] However, cl. 3(n) must be given some meaning. Under it trade fixtures and articles or ornament are removable just as they would be at common law. This would include the built-in cabinets, cooking equipment, and sinks in a free-standing bar, as well as such decorative items as could be removed without losing their essential character (*Hughes v. Towers*, supra) and without causing damage to the realty (*Cartwright v. Herring*, supra).

45. This Court should start its analysis by considering the five-part test in *La Salle* set out in paragraph 38 above, consider whether there were any limitations set out in the terms of the lease, and determine which items were capable of being removed without causing material damage, to determine which items were chattels.
46. In *Sawridge Manor* (at paras. 48-49 & 54), the B.C. Court of Appeal accepted that parties to a lease can make an agreement stipulating which assets are to be considered removable

as tenant's fixtures and which assets are irremovable landlord's fixtures, but found there was nothing in the subject lease that modified the common law rules.

47. In the Club Versante Sub-lease, there are specific provisions dealing with what can and cannot be removed by the Subtenant. (see Section 6.6.1 in para. 13 above) and the consequences of not removing what the Subtenant is allowed to remove (see Section 6.6.2 in para. 13 above.
48. In clear terms in the Club Versante Sub-lease, it is only on the failure to remove the Subtenant's Personal Property as provided for in the Sub-lease that the Sublandlord acquires any right to keep that property.
49. The December 17, 2025 order has a similar provision, s. 16(f), which provides that the assets vest in the Purchaser if not removed.

#### **Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #2 of Chung-Lin (Linda) Ching made March 16, 2026.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under 9-7(9).

Date: March 16, 2026



Signature of counsel for applicant  
Peter J. Reardon

THIS NOTICE OF APPLICATION is prepared by Peter J. Reardon, of the firm of Nathanson, Schachter & Thompson LLP, Barristers and Solicitors, whose place of business and address for service is Suite 750 – 900 Howe Street, Vancouver, B.C. V6Z 2M4, telephone (604) 662-8840 and whose email address for service is [preardon@nst.ca](mailto:preardon@nst.ca); with a copy to [nwalnicki@nst.ca](mailto:nwalnicki@nst.ca).

***To be completed by the court only:***

Order made

- in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application
- with the following variations and additional terms:

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Dated: \_\_\_\_\_

Signature of

- Judge
- Associate Judge

**APPENDIX**

**THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial

- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE "A"

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 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 RAUCH, HEUNG KEI SUNG, RCC  
HOLDINGS LTD.

RESPONDENTS

**SERVICE LIST**

As at February 19, 2026

Receiver's Website: <https://www.insolvencies.deloitte.ca/en-ca/Pages/Hotel-Versante-Ltd.aspx>

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