

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, and RCC HOLDINGS LTD.

RESPONDENTS

APPLICATION RESPONSE

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

Application Response 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 Center Properties Ltd., Sunwins Enterprise Ltd., Mo Yeung Ching also known as Michael Ching, Mo Yeung Properties Ltd., SFT Digital Holdings 30 Ltd., and Hotel Versante Ltd.(together, “the **Application Respondents**”)

THIS IS A RESPONSE TO the Notice of Application of the Receiver, Deloitte Restructuring Inc. (the “**Receiver**”), filed April 1, 2025.

The application respondents’ estimate that the application will take one hour.

Club Versante Management Ltd. (“**Club Versante**”)

Part 1: ORDERS CONSENTED TO

The application respondent consent(s) to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: 1(i),(iii),(iv)

Part 2: ORDERS OPPOSED

The application respondent oppose(s) the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: 2

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: NONE

Part 4: FACTUAL BASIS

Overview

1. The Application Respondents have supplied the information sought by the Receiver by way of a list it provided of requested information following the adjournment of this s application. They have done so in an attempt to cooperate with the Receiver and facilitate a sale of the assets of the Hotel for the benefit of all stakeholders. They remain prepared to cooperate .
2. The Receiver seeks an Order appointing it as an “investigator with investigatory powers over [Club Versante]”, along with dispensing with the need to amend the Petition and other Rules of Court. The powers include entering into Club Versante’s business premises and accessing the entirety of its business records.
3. Although Club Versante has the same management as certain of the Application Respondents, the secured creditor Fox Island holds no security over it.
4. Club Versante operates three other restaurant facilities. The Receiver has ample powers under the Receivership order to compel co-operation from third parties, including Club Versante.
5. Fox Island has been aware of Club Versante’s role within the Hotel operations for years without issue or security. Efforts continue to be made to satisfy the Receiver’s demands for more information on a timely basis.

6. Quite simply, the Order sought is far too broad and based upon insufficient evidence. It is unnecessary.

Background Facts

The Loan Agreement

7. Certain of the Application Respondents are co-borrowers under a loan agreement, dated June 14, 2021 (the "**Senior B Loan Agreement**"), with the Petitioners, as lenders, as modified by certain amending agreements, and various forbearance agreements.
8. The Senior B Loan Agreement is guaranteed by the Application Respondents Hotel Versante Ltd. ("**Hotel Versante**"), Sunwins Enterprise Ltd, Mo Yeung Properties, SFT Digital Holdings 30 Ltd. and Mo Yeung (Michael) Ching.
9. The purpose of the Senior B Loan Agreement was to finance the development and construction of the Hotel Versante hotel (the "**Hotel**"). During the course of negotiations of the Senior B Loan Agreement, Mo Yeung (Michael) Ching ("**Michael Ching**") was in regular contact with Gavin Wang, principal of the Petitioner of Fox Island Development Ltd. ("**Fox Island**"). During the negotiation of an amendment or extension of the Senior B Loan Agreement, financial information was shared among counsel for Fox Island and Hotel Versante.

Club Versante

10. From the outset of the Hotel operations, restaurant and bar service to the Hotel was to be furnished by Club Versante Management Ltd. ("**Club Versante**"). Michael Ching is a director of Club Versante.
11. Club Versante is a luxury food and beverage company offering exclusive restaurant and bar services across multiple different establishments. At present, Club Versante operates the Bruno restaurant and Alaia event space in the Hotel. However, Club Versante also operates three other separate and different restaurants in separate and different locations.
12. Club Versante leases the 1st, 12th and 13th floors of the Hotel pursuant to a lease agreement. The Hotel pays rent to Club Versante and expenses are reconciled monthly among the parties to account for various costs, commissions, and otherwise.
13. At all times Fox Island was aware of the relationship among the Application Respondents and Club Versante. Financial statements for various of the Respondents would have been

provided to Fox Island from time to time. It should be no surprise to the Receiver or to Fox Island that Club Versante was and is providing services to the Hotel.

Requests for Information

14. Since the Receivership Order was granted, the Application Respondents have been providing the Receiver information directly and through its online portal system. The Respondents have met with the Receiver initially daily, then twice per week to discuss information, along with uploading various documents and materials to them.
15. With respect to Club Versante, the Receiver has asked various questions of Ms. Rita Zhang and Michael Ching. The Application Respondents and Club Versante have provided the information requested of them.
16. Michael Ching is concerned that an Order authorizing investigatory powers over Club Versante would allow the Receiver to have confidential Club Versante business information that has nothing to do with the Respondents or the Hotel.

Part 5: LEGAL BASIS

Investigatory Powers

1. As cited by the Receiver in their Notice of Application, in *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368 ("*Akagi*"), the Ontario Court of Appeal explored the "investigative receiver" concept, and identified the following common factors in the cases appointing such a receiver (at para. 90):

Some consistent themes emerge from these authorities:

- The appointment of the investigative receiver is **necessary to alleviate a risk posed to the plaintiff's right to recovery**: *Loblaw Brands*, at paras. 10, 14 and 16.
- The primary objective of investigative receivers is to gather information and "ascertain the true state of affairs" concerning the financial dealings and assets of a debtor, or of a debtor and a related network of individuals or corporations: *General Electric* (Div. Ct.), at para. 15. One authority characterized the investigative receiver as a tool to equalize the "informational imbalance" between debtors and creditors with respect to the debtor's financial dealings: *East Guardian SPC v. Mazur*, *supra*, at para. 75
- Generally, the investigative receiver does not control the debtor's assets or operate its business, leaving the debtor to continue to carry on its business in a

manner consistent with the preservation of its business and property: see, e.g., *Loblaw Brands*, at para. 17; *Century Services*.

- Finally, in all cases the investigative receivership **must be carefully tailored to what is required to assist in the recovery of the claimant's judgment while at the same time protecting the defendant's interests, and to go no further than necessary to achieve these ends.** [emphasis added].
2. Akagi was recently cited by the Alberta Court of King's Bench in *National Bank of Canada v Precision Livestock Diagnostics Ltd.*, 2025 ABKB 175, where Justice Lema declined to order an investigative receiver on the basis that the secured creditor had not proven risk to its ability to recover against the assets of the defendant. Similarly, Justice Morawetz, in a helpful decision pointed out that there **must be** an immediate danger of dissipation of assets in order to appoint an investigative receiver: *PricewaterhouseCoopers Inc. v. Northern Citadel Capital Inc.*, 2023 ONSC 37 at para. 98.

Evidence to Support the Order Sought

3. A single page in the Receiver's First Report is the sole evidence the Receiver has provided the court with respect to its request for this order. In that report at page 8, the Receiver cites information provided to it by the Application Respondents as to the Sublease of the Bruno restaurant space and Alaia event space, along with its request of various parties for the Food and Beverage Licences. The Receiver states it has made certain requests which have not yet been answered.
4. There is no evidence before the Court that the Application Respondents have failed to respond to these requests or will not provide the information sought. In fact, the Application Respondents have provided the information sought and will continue to co-operate with the Receiver. There is no evidence of a risk of dissipation of assets, which is fatal to the application.
5. The Receiver appears to be surprised by what it has "discovered" in relation to the business of the Hotel. The evidence reveals a long standing relationship between Fox Island and the Application Respondents. Presumably due diligence and reporting took place prior to and during the continued extension of credit which would show the relationship between Hotel Versante and Club Versante. The Sublease between the Hotel and Club Versante goes back as far as 2021. Fox Island's knowledge is material to the alleged "informational imbalance" referred to in *Akagi* and ought to be taken into account in whether an extraordinary order should be made.
6. The Receiver may only sell those assets that are subject to the Receivership Order. If no security over Club Versante was taken after years of various extensions to the loan

agreement, this court should not intervene over a third-party business in case it *might* prove to be of some value within the receivership.

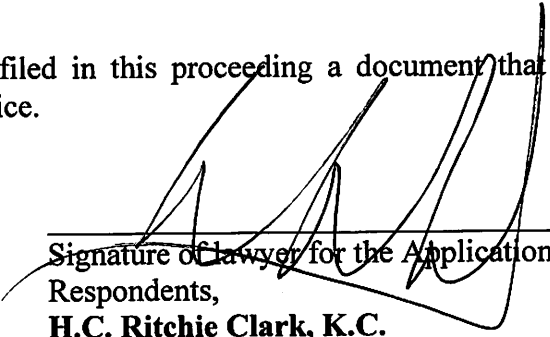
7. The Receivership Order contains the standard direction to third parties to co-operate with the Receiver in relation to the “business and operations” of the Hotel. In other words, the Receiver already has an Order in case Club Versante or any other party fails to co-operate or produce such information. At the very least, the Receiver should show that the Receivership Order is being ignored.
8. Following *Akagi* and other authorities, to obtain an investigative Order, it is also the Receiver’s burden to show that there exists a risk posed to Fox Island’s recovery. With no security over Club Versante, and multiple parcels of land as Fox Island’s security outside the Hotel property, the Receiver has not done so.
9. Finally, the Order sought is far too broad even if it were to be granted. It provides that the Receiver is able to enter Club Versante’s business and copy *any* document or record on the premises, and to review all financial records, regardless whether they are limited to the Hotel or not. It further states that the Receiver may “investigate,” and engage consultants etc. in furtherance of its goals, whatever they are. Again, pursuant to *Akagi*, the order sought is not “carefully tailored” and goes much further than is necessary.
10. This Honourable Court should dismiss the application.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit # 1 of Mo Yeung Ching, to be filed.

☒ The application respondent has filed in this proceeding a document that contains the application respondents’ address for service.

Date: April 10, 2025



Signature of lawyer for the Application
Respondents,
H.C. Ritchie Clark, K.C.