



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 YUENG CHING also known as MICHAEL CHING, MO YUENG 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

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. (“ITC”), 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. (“121”) (together, “the **Application Respondents**”)

THIS IS A RESPONSE TO the Notice of Application of the Petitioners, Fox Island Development Ltd. and Advanced Venture Holding Co. Ltd. (together, “**Fox Island**”) filed October 17, 2025.

The Respondents estimate that the application will take one day.

Part 1: ORDERS CONSENTED TO

The Respondents consent to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: NONE

Part 2: ORDERS OPPOSED

The Respondents oppose 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: N/A

Part 4: FACTUAL BASIS

Overview

1. Fox Island seeks a declaration of first priority security over certain proceeds of sale (the “**Holdback Reserve**”) for the P5 Parking Stalls (as defined in the Notice of Application) (the “**Hotel Parking**”), which were held back by the Order of Justice Fitzpatrick by court Order dated October 24, 2025.
2. Fox Island has failed to put forward any decisive evidence in relation to its entitlement to the Holdback Reserve or the Hotel Parking, or even to provide firsthand evidence of Fox Island’s knowledge in relation to it. The uncontested evidence shows that Fox Island was aware of the unregistered leasehold parking structure of the Hotel since at least 2019. Alternatively, the due diligence by Fox Island’s counsel would have revealed the parking structure or at least required counsel to make reasonable inquiries.

3. Despite section 29(2) of the *Land Title Act*, R.S.B.C. 1996, c. 250, long-standing precedent shows that mere knowledge of an unregistered interest on title may establish an estoppel to a mortgagee seeking to enforce its security. Other cases require dishonesty as an element. The Court of Appeal has not conclusively addressed this issue in its jurisprudence. Under any version of the law, the facts herein militate toward recognizing the leasehold interest.
4. The application should be dismissed.

Background Facts

The Loan Agreement and Fox Island

5. 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.

Affidavit#3 of M. Ching made October 20, 2025, para.2

6. Prior to the Senior B Loan Agreement, certain of the Application Respondents were parties to earlier loan agreements with Fox Island in September 2019 (the "**September 2019 Loan Agreement**") and another dated November 15, 2019 (the "**November 2019 Loan Agreement**") with Fox Island (together with the Senior B Loan Agreements, the "**Hotel Loan Agreements**").

Affidavit#3 of M. Ching, para. 6

7. The purpose of each of the Hotel Loan Agreements 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 and before, Mo Yeung (Michael) Ching ("**Michael Ching**") was in regular contact with Gavin Wang, principal of the Petitioner of Fox Island Development Ltd. ("**Fox Island**"). In 2019, Michael Ching provided Gavin Wang an Information Statement (the "**Information Statement**") which provided Fox Island the structure of the parking for the International Trade Center project (the "**ITC Project**")

Thereafter, Michael Ching and Gavin Wang shared information as to the ITC Project often. Those discussions and information would have revealed the parking structure of the ITC properties and the Hotel to Fox Island.

Affidavit#3 of M. Ching, paras. 5-7

Parking

8. The Hotel Loan Agreements recognize that ITC as the Borrower was owner of what is known as the ITC Remainder, a single legal parcel which provides parking to the ITC Project including Air Space Parcel 2 (“**ASP2**”), which consisted of the Hotel. Both agreements acknowledge that 84 spaces in the parkade (the “**Hotel Parking**”) are allocated to ASP2. Strata lot purchasers would similarly have use of parking in the ITC Remainder.

Affidavit#3 of M. Ching, para.7

9. On May 24, 2019, the air space subdivision creating the Air Space Parcels was completed. The strata subdivision of the other air space parcels, ASP 1, 3, 4 and 5, took place shortly thereafter. The ITC Remainder was not stratified, nor was ASP2.

Affidavit#3 of M. Ching, para. 8

10. On May 24, 2019, a Reciprocal Rights Agreement (the “**RR Agreement**”) was entered into among ITC and the City of Richmond and registered in the New Westminster Land Title Office as charge numbers CA7519726 to CA7519836 as a requirement for the air space subdivision. The RR Agreement was intended to deal with issues among the Air Space Parcels such as easements structural support, access, maintenance and repair and parking and to run with commercial strata lots post strata subdivision. It was not intended to replace the intended creation of a leasehold interest for the parking facilities or the partial assignment of the leasehold interest to its respective assignees including the parking stalls intended for use by the Hotel in ASP2.

Affidavit#3 of M. Ching, para. 9

11. On May 30, 2019, as part of the development for the Hotel, and as intended under 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 parking stalls in the ITC Remainder to 121. The purpose of the Parking Head Lease was to allow for individual strata lot owners and the strata lot owner associated with the Hotel’s operations to be assigned long-term parking interests within the ITC Remainder. Gavin Wang was repeatedly informed by Michael Ching as to the existence of and necessity for the Parking Head Lease.

Affidavit#3 of M. Ching, para. 10

12. Pursuant to the earlier strata subdivision, 119 strata lots were sold and the purchasers in the ITC Project took assignments of the Parking Head Lease from 121. Each purchaser would have been provided copies of the Parking Head Lease.

Affidavit#3 of M. Ching, para. 11

13. On November 5, 2019, 121 assigned the Hotel Parking to Bygenteel Capital Inc. (“**Bygenteel**”). Bygenteel is the owner of Strata Lots 13 and 14, EPS5803, pursuant to a purchase in 2019 for a price of \$4.2 million after accounting for tenant improvements.

Affidavit#3 of M. Ching, para. 12

Affidavit#4 of M. Ching made November 13, 2025, paras. 6-8

14. On July 1, 2021, Bygenteel, leased the Hotel Parking to Club Versante Management Ltd. (“**Club Versante**”) for a term of five years with an option to renew for a further five years.

Affidavit#3 of M. Ching, para. 13

15. On July 15, 2025, Justice Fitzpatrick granted a consent order (the “**Parking Settlement Order**”).whereby the Receiver would be able to sell the Hotel Parking to a purchaser free and clear of any claims of Fox Island, 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 sale proceeds would be considered after approval of a sale and on a full consideration of the parties' rights.

Receiver's Third Report, para. 10

Transcript of Proceedings, Exhibit "A" to the Affidavit #1 of C. Wilson-Cole made

October 20, 2025

16. Pursuant to the Parking Settlement 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.

Email to Dentons LLP dated August 13, 2025, Exhibit "F" to the Affidavit #4 of M. Ching

17. The Affidavit #1 of Shui-Yuen (Matthew) Choi made October 17, 2025 (the "**Choi Affidavit**") relied upon by Fox Island for their application provides an account of the solicitors for Fox Island negotiating the 2019 Loan Agreements. There is no firsthand information from Gavin Wang. The only factual point that can be determined from the Choi Affidavit is that, if his evidence is accepted, he did not receive the Parking Head Lease or any assignments in relation to it when acting for Fox Island from opposing counsel. That is a different question as to whether the Parking Head Lease existed at the time, or whether the principal of Fox Island knew about it.

Choi Affidavit, paras. 3-9

18. Although Fox Island's Notice of Application states that the Petitioners were unaware of the Parking Head Lease until 2024, the Choi Affidavit does not state that fact.

Notice of Application, paras. 15-16

19. There are ample facts before the Court to show that a minimal amount of due diligence would have revealed the leasehold nature of the parking or at least required further inquiry. First, the Information Statement was provided to Fox Island and should have been basic information for to anyone dealing with the Hotel. Second, the RR Agreement clearly states

that allocation of parking will be done by separate agreement. Thirdly, the draft September 2019 Loan Agreement (which was not included in the Choi Affidavit) specifically raises that there was to be a separate parking agreement. Finally, the common practice to allocate parking among strata owners is to assign a leasehold interest.

Information Statement, Exhibit "A" to the Affidavit#3 of M. Ching, p. 10
RR Agreement, Exhibit "C" to the Affidavit#3 of M. Ching, pp. 280-281
Loan Agreement, Exhibit "A" to the Affidavit#4 of M. Ching, p. 15
Affidavit #4 of M. Ching, para. 5

20. There is no explanation of how Matthew Choi states he became aware of the Parking Head Lease in 2024, whether from the Application Respondents or from his client. Despite years of negotiating with purchasers for the Hotel, which included offers for the parking and without parking, Fox Island has never raised the issue of priority until now.

Choi Affidavit, para. 19

21. On October 24, 2025, Justice Fitzpatrick approved the sale of the Hotel to a purchaser and ordered distribution of the proceeds to Fox Island save for the Holdback Reserve.

Order of Justice Fitzpatrick dated October 24, 2025

Part 5: LEGAL BASIS

Unregistered Interests under the *Land Title Act*

1. British Columbia has a long history of cases holding that it amounts to equitable fraud to register a transfer or charge in the face of actual notice of an unregistered interest that could be defeated by the registration.

The Hudson's Bay Co. v. Kearns and Rowling (1896), 4 B.C.R. 536 at 555 (S.C.)
Woodwest Developments Ltd. v. Met-Tec Installations Ltd., 1982 CanLII 3944 (BCSC)

2. The court has also developed a line of cases which state that a finding of equitable fraud within the context of s. 29(2) of the LTA requires more than mere notice of the unregistered interest and some finding of dishonesty and deceit.

Vancouver City Savings Credit Union v. Serving for Success Consulting Ltd., 2011 BCSC 124
Roop v. Hopmeyer, 2016 BCCA 310 at para. 57

3. The issue remains unresolved by our Court of Appeal. In *Institutional Mortgage Capital Canada Inc. v. Plaza 500 Hotels Ltd.*, Justice Goepel considered a decision of Justice Fitzpatrick and would have granted leave to appeal her finding on the legal issue as to whether mere notice of an unregistered interest triggers a finding of equitable fraud. In the result, Justice Goepel did not find that the appeal was in the interests of justice. More recently, the Court of Appeal has confirmed that the issue remains unresolved.

Institutional Mortgage Capital Canada Inc. v. Plaza 500 Hotels Ltd., 2020 BCCA 193 at para.84
Stratton v. Richter, 2022 BCCA 337 at para. 107

Knowledge of the Leasehold Interest

4. It is uncontested that knowledge of the lease structure for the Hotel and the Parking Head Lease was known to Fox Island in 2019 prior to when any security, including its mortgages, was taken for its loans. There is no direct evidence as to the state of Fox Island's knowledge other than that provided by Michael Ching.
5. Even without that critical fact, the circumstances before the Court show that in a development of this size and scope, and over such duration, that the leasehold interest could not have been a surprise to Fox Island. Reasonable due diligence or even a title search would have revealed a potential leasehold if not the Parking Head Lease. In addition, the strata subdivision was well known known to Fox Island whose purchasers took partial assignments of the Parking Head Lease commencing in 2019.

Dishonesty

6. The Application Respondents state that this is a case which tests the limits of the “equitable fraud” jurisprudence. First, the law is not so clear to introduce a requirement of dishonesty in every case before it to maintain an unregistered interest in land. Otherwise, the Court of Appeal would not have remained on the sidelines with respect to this issue.
7. If there is in fact a requirement for dishonesty in the facts, it may exist here. It is clear from the negotiations that Fox Island sought to register against the ITC Remainder at the very last moment, presumably to defeat any interest under the Head Lease. Without knowing what Gavin Wang told Matthew Choi as to the Parking Head Lease, or being able to cross-examine Gavin Wang or Matthew on those facts, there is no way of knowing if Fox Island omitted telling its counsel about the leasehold interest, or how in fact this occurred. Moreover, there exists a *Criminal Code* issue in the facts before the Court already, in which Fox Island has already been tainted with the spectre of dishonesty.
8. It would be an injustice for Fox Island to obtain the declaration it seeks on the facts before the Court.

Fraudulent Conveyance

9. The Information Statement provided to Fox Island indicates that the parking arrangements were expected to be among related parties. It was not therefore a surprise to Fox Island that the Head Lease or subsequent assignments were made to related parties. Further, market consideration was paid for strata lots 13 and 14 by Bygenteel.
10. The Application Respondents state that the facts before the Court do not show any intent to hinder, delay or defeat a creditor for the Head Lease or otherwise.

Conclusion


11. The Application Respondents accordingly state that Fox Island’s application be dismissed.

MATERIAL TO BE RELIED ON

1. Affidavit #3 of M. Ching, made October 20, 2025;
2. Affidavit #4 of M. Ching, made November 13, 2025;
3. The Receiver's Reports to date herein;
4. The pleadings and proceedings herein; and
5. Such other materials as this Honourable Court may permit.

The Application Respondents have filed in this proceeding a document that contains an address for service.

Date: November 13, 2025



Signature of lawyer for the Respondents,
Benjamin La Borie