

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

JAN 24 2024

Between



In the Supreme Court of British Columbia

No. **S E 2 4 0 4 9 3**  
Vancouver Registry

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., GULF AND FRASER FISHERMEN'S  
CREDIT UNION, GULF AND FRASER FISHERMEN'S CREDIT  
UNION (RICHMOND CENTRE BRANCH), MORTEQ LENDING  
CORP., CHUN YU LIU, 1307510 B.C. LTD., JEFFREY RAUCH,  
RCC HOLDINGS LTD., and HEUNG KEI SUNG

Respondents

### PETITION TO THE COURT

#### ON NOTICE TO:

Kensington Union Bay Properties Nominee Ltd. (formerly known as 34083 Yukon Inc.) 1205 – 8400 West Road Richmond, BC V6X 0S7	Kensington Union Bay Properties Limited Partnership 1205 – 8400 West Road Richmond, BC V6X 0S7
Kensington Union Bay Properties GP Ltd 1205 – 8400 West Road Richmond, BC V6X 0S7	International Trade Center Properties Ltd. 1205 – 8400 West Road Richmond, BC V6X 0S7
Sunwins Enterprise Ltd. 1205 – 8400 West Road Richmond, BC V6X 0S7	Mo Yeung Ching also known as Michael Ching 1083 West 51 <sup>st</sup> Avenue Vancouver, BC V6P 1C2
SFT Digital Holdings 30 Ltd. 1205 – 8400 West Road	Mo Yeung Properties Ltd. 1205 – 8400 West Road

Richmond, BC V6X 0S7	Richmond, BC V6X 0S7
Hotel Versante Ltd. 1205 – 8400 West Road Richmond, BC V6X 0S7	Gulf and Fraser Fishermen's Credit Union 300 – 678 Bernard Ave Kelowna, B.C. V1Y 6P3
Morteq Lending Corp. 1600-925 West Georgia Street Vancouver, BC V6C 3L2	Gulf and Fraser Fisherman's Credit Union (Richmond Centre Branch) 130 – 797 Westminster Highway Richmond, B.C. V6X 1A4
RCC Holdings Ltd. 2900 – 550 Burrard Street Vancouver, B.C. V6C 0A3	Jeffrey Rauch 6735 Bradner Road Abbotsford, BC V4X 2C6
Heung Kei Sung 3401-838 West Hastings Street Vancouver, BC V6C 0A6	Chun Yu Liu 5528 Clearwater Drive Richmond, BC V7C 3B5
1307510 B.C. Ltd. 5911 Cooney Road Richmond, BC V6X 4H3	

The address of the registry is:

The Law Courts  
800 Smithe Street  
Vancouver, BC V6Z 2E1

The Petitioners estimate that the hearing of the petition will take 10 minutes.

- ☐ This matter is an application for judicial review.
- ☒ This matter is not an application for judicial review.

**This proceeding has been brought for the relief set out in Part 1 below by the persons named as petitioners in the style of proceedings above.**

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioners
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

### Time for response to petition

A response to petition must be filed and served on the petitioners,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	<p>The ADDRESS FOR SERVICE of the petitioners is:</p> <p>Norton Rose Fulbright Canada LLP  1800 – 510 West Georgia Street  Vancouver, British Columbia  V6B 0M3</p> <p>Fax number address for service (if any) of the petitioners: N/A</p> <p>E-mail address for service of the petitioners: <a href="mailto:scott.boucher@nortonrosefulbright.com">scott.boucher@nortonrosefulbright.com</a></p>
(2)	<p>The name and office address of the petitioners' lawyer is:</p> <p>Norton Rose Fulbright Canada LLP  1800 – 510 West Georgia Street  Vancouver, British Columbia  V6B 0M3  Attention: Scott C. Boucher</p>

### Claim of the Petitioners

#### Part 1: ORDERS SOUGHT

1. A declaration that the respondents, Kensington Union Bay Properties Nominee Ltd. (formerly known as 34083 Yukon Inc.) ("**UB Nominee**"), Kensington Union Bay Properties Limited Partnership ("**UB LP**"), Kensington Union Bay Properties GP Ltd. ("**UB GP**"), and International Trade Center Properties Ltd. ("**ITC**", collectively the "**Loan B Borrowers**"), as mortgagors, have made default and that all monies are now due and owing to the petitioners, Fox Island Development Ltd. ("**Fox Island**"), Advanced Venture Holding Co., Ltd. ("**Advanced Venture**", together with Fox Island, the "**Lenders**" or the "**Petitioners**"), as mortgagees under a mortgage and assignment of rents registered in the Victoria Land Title Office on September 28, 2021 under numbers CA9394748 and CA9394749 respectively (the "**Original Loan B Mortgage**") as extended and modified by the extension of mortgage and assignment of rents and modification of mortgage granted by the mortgagors dated March 7, 2022 registered under Land Title Office

Number CB334946 respectively, and the extension of mortgage and assignment of rents and modification of mortgage granted by the Mortgagors dated September 7, 2022 registered under Land Title Office number CB379003 respectively, (the "**Loan B Mortgage Modifications**", together with the Original Loan B Mortgage, the "**Loan B Mortgage**"), and a declaration that the Loan B Mortgage charges the following lands and premises located in the cities of Richmond, B.C. and Union Bay, B.C.:

PID: 030-795-851

Air Space Parcel 2 Section 21 Block 5 North Range 6 West New Westminster District Air Space Plan EPP73985 ("**ITC ASP2**")

PID: 029-611-598

Lot 1 Section 21 Block 5 North Range 6 West New Westminster District Plan EPP37734 Except Air Space Plan EPP73985 ("**ITC Remainder**"; together with ITC ASP2, the "**ITC Property**")

PID: 028-731-492

Lot 1, District Lot 154, Nanaimo District, Sections 31 and 32 Township 1 and District Lot 28 Nelson District Plan EPP15507 Except Plans EPP 56910 and EPP95931 ("**UB Lot 1**")

PID: 028-731-549

Lot 4, Sections 31 and 32 Township 1 and District Lot 28 Nelson District Plan EPP15507 Except Plan EPP78068 ("**UB Lot 4**"; together with UB Lot 1, the "**UB Lands**")

(collectively, the "**Lands**")

in priority to the claims, interests and charges of the respondents.

2. A declaration that the Loan B Borrowers and Hotel Versante Ltd. (the "**Hotel Operator**"), Sunwins Enterprise Ltd. ("**Sunwins**"), Mo Yeung Ching also known as Michael Ching ("**Mr. Ching**"), and Mo Yeung Properties Ltd. ("**MYPCo**"; together with Hotel Operator, Sunwins, and Mr. Ching, collectively the "**Loan B Guarantors**", and together with the Loan B Borrowers, the "**Loan B Debtors**") have made default and all monies are due and owing under the General Security Agreement granted by the Loan B Debtors in favour of the Petitioners, and registered in the BC Personal Property Registry on November 22, 2019 under Base Registration No. 909783L and on June 18, 2021 under Base Registration No. 052177N (the "**Loan B GSAs**"), and that the Loan B GSAs constitute a first charge on all of the present and after-acquired personal property of the Loan B Debtors (the "**Personal Property**"), in priority to any other claims or charges in respect of the Personal Property, subject only to the claims and charges of any valid and

subsisting registered purchase money security interest holder in respect of their priority interest in the specific property set forth in their BC Personal Property Registry registration.

3. A declaration that the Loan B Borrowers have made default under the assignment of material contracts dated June 14, 2021 granted by the Loan B Borrowers in favour of the Petitioners (the "**Loan B Assignment of Material Contracts**"), and that the Loan B Assignment of Material Contracts constitutes a first charge on the Material Contracts and the Material Contract Rights, as defined in the Assignment of Material Contracts.
4. A declaration that the Loan B Guarantors have made default under an unlimited joint and several guarantee dated June 14, 2021 granted by the Loan B Guarantors in favour of the Petitioners (the "**Loan B Guarantee**").
5. A declaration that the Loan B Debtors have made default under an indemnity agreement for all environmental losses and liabilities dated June 14, 2021 granted by the Loan B Debtors in favour of the Petitioners (the "**Loan B Environmental Indemnity Agreement**").
6. A declaration that the Loan B Debtors have made default under a debt service, completion and cost overrun agreement dated June 14, 2021 granted by the Loan B Debtors in favour of the Petitioners (the "**Loan B Debt Service Deficiency Agreement**").
7. A declaration that ITC, as mortgagor, has made default and that all monies are now due and owing to the Petitioners, as mortgagees, under a mortgage and assignment of rents registered in the New Westminster Land Title Office on October 11, 2023 under numbers CB940712 and CA940713 respectively (the "**Hotel Property – 5.3 MM Mortgage**") and a declaration that the Hotel Property – 5.3 MM Mortgage charges the Hotel Property in priority to the claims, interests, and charges of the respondents.
8. A declaration that the Loan B Mortgage, Loan B GSAs, the Loan B Authorization and Charge Agreement, Loan B Assignment of Material Contracts, Loan B Environmental Indemnity Agreement, Loan B Guarantee, Loan B Debt Service Deficiency Agreement, Hotel Property – 5.3 MM Mortgage (collectively, the "**Loan B Security**") are in default and that all monies secured by the Loan B Security are due and owing.

9. A declaration that the amount due and owing by the Loan B Debtors, to the Petitioners pursuant to the Loan B Security is \$75,867,149.52 inclusive of interest as of December 31, 2023 (the "**Loan B Indebtedness**").

#### **General**

10. Judgment in favour of the Petitioners against the Loan B Debtors in the amount of the Loan B Indebtedness found to be due and owing to the Petitioners as at the date of the granting of the Order Nisi, together with interest thereon to the date of judgment and the Petitioners' costs of and related to this proceeding.
11. An order that the last day for redemption of the Lands be 10 days after the date of pronouncement of Order Nisi herein or such other day that this Honourable Court may prescribe.
12. An order that upon any of the Loan B Debtors paying into Court to the credit of this proceeding at the Court Registry, 800 Smithe Street, Vancouver, British Columbia or paying to the lawyer of record for the Petitioners the amount required to redeem the Loan B Security before pronouncement of either an Order Absolute of foreclosure or an Order confirming the sale of any of the Lands or the Personal Property, the Petitioners shall re-convey the Lands and the Personal Property free and clear of all encumbrances in favour of it or any person claiming by through or under it, and shall deliver up all documents in its custody, possession, or power relating thereto to the respondent or respondents who make payment.
13. An order that if the Lands and the Personal Property are not redeemed, the Petitioners may apply for an Order Absolute of foreclosure in respect of same and upon pronouncement of an Order Absolute of foreclosure, the respondents and all persons claiming by, through or under them, shall thereafter stand absolutely debarred and foreclosed from all right, title, interest and equity of redemption in and to the Lands and Personal Property, and shall immediately deliver vacant possession of the Lands and the Personal Property.
14. An order pursuant to Rule 21-7 that the Petitioners do have exclusive conduct of sale and be entitled to list for sale the Lands and Personal Property for a period to expire on the earlier of the date that the Petitioners obtain Order Absolute of foreclosure in this proceeding or the date on which a sale of the Lands and the Personal Property

completes, by offering the Lands and the Personal Property for private sale by general, exclusive or multiple listing through any licenced real estate agent, agents or firms, and be entitled to pay to any such licensed real estate agent, or firm a commission plus GST in an amount or amounts to be specified at the time of the granting of the Order for Sale herein, payable from the proceeds of the sale, the commission to be paid from the proceeds of the gross selling price, and that the price and terms of the sale and the distribution of the proceeds thereof be subject to the prior approval of this Court.

15. An order that any person or persons in possession on their behalf, including any tenant or tenants, shall permit any duly authorized officer or agents of the Petitioners to show any of the Lands as defined above and the interior thereof to any prospective purchaser or purchasers between the hours of 9:00 o'clock in the forenoon and 7:00 o'clock in the afternoon on any day of the week, and to post signs on the Lands indicating that these lands are offered for sale.
16. An order for possession of the Lands and the Personal Property.
17. An order for all necessary accounts, directions and enquiries.
18. An order for the appointment of a receiver or a receiver-manager.
19. A Certificate of Pending Litigation to be registered against the title to the Lands.
20. An order for costs.
21. An order that the Petitioners be granted liberty to apply to this Honourable Court for a further summary accounting of any amounts which become due to the Petitioners for interest, taxes, arrears of taxes, insurance premiums, costs, charges, expenses or otherwise after the pronouncement of the Order Nisi or any other order made herein.
22. An order for all other necessary accounts, directions, and inquiries.

## **Part 2: FACTUAL BASIS**

### **The Parties**

1. The Petitioners are companies organized and existing pursuant to the laws of British Columbia, with an address for service in this proceeding of 1800 – 510 West Georgia Street, Vancouver, British Columbia.



2. Kensington Union Bay Properties Nominee Ltd. (described herein as UB Nominee), is a corporation organized and existing under the laws of the Province of British Columbia, with a registered and records office at 1205 – 8400 West Road, Richmond, BC V6X 0S7.
3. Kensington Union Bay Properties GP Ltd. (described herein as UB GP), is a corporation organized and existing under the laws of the Province of British Columbia, with a registered and records office at 1205 – 8400 West Road, Richmond, BC V6X 0S7.
4. Kensington Union Bay Properties Limited Partnership (described herein as UB LP), is a limited partnership organized and existing under the laws of the Province of British Columbia, with a registered and records office at 1205 – 8400 West Road, Richmond, BC V6X 0S7.
5. Hotel Versante Ltd. (described herein as the Hotel Operator) is a corporation organized and existing under the laws of the Province of British Columbia, with a registered and records office at 1205 – 8400 West Road, Richmond, BC V6X 0S7.
6. International Trade Center Properties Ltd. (described herein as ITC), Sunwins Enterprise Ltd. (described herein as Sunwins), and Mo Yeung Properties Ltd. (described herein as MYPCo), are companies organized and existing pursuant to the laws of British Columbia, with a registered and records office at 1205 – 8400 West Road, Richmond, BC V6X 0S7.
7. Mo Yeung Ching (also known as Michael Ching) is a businessman who resides at 1083 West 51<sup>st</sup> Avenue, Vancouver, BC V6P 1C2.
8. SFT Digital Holdings 30 Ltd. ("**SFT30**") is a company organized and existing pursuant to the laws of British Columbia, with a registered and records office at 1205 – 8400 West Road, Richmond, BC V6X 0S7.
9. RCC Holdings Ltd. is a company organized and existing pursuant to the laws of British Columbia, with a registered and records office of 2900 – 550 Burrard Street, Vancouver, B.C. V6C 0A3. The Petitioners understand RCC Holdings Ltd. may have acquired an interest in one or more of the Loan B Borrowers or the ITC Property subsequent to the Loan B Agreement (defined below) and the Loan B Security.



## **Loan B**

10. The Loan B Borrowers borrowed funds in the original principal amount of \$35,849,266.69 from the Petitioners pursuant to a Loan Agreement dated from reference June 14, 2021 as amended on March 7, 2022 and September 7, 2022 (the “**Loan B Agreement**”).

## **The Lands**

11. The ITC Property has a civic address of 8499 Bridgeport Road, Richmond, BC V6X 1R7. It was built in 2018 and presently consists of a 14-storey hotel and five-storey parking structure. The hotel on the ITC Property is operated by the Hotel Operator.
12. The UB Lands consist of two parcels of land located in Union Bay on the east coast of Vancouver Island, within the Comox Valley. The UB Lands, or a portion of such lands, along with several other adjoining and/or nearby parcels of land, are in the process of being developed by some of the Loan B Debtors and other related entities.

## **Security for Loan B**

13. As security for the obligations of the Loan B Borrowers pursuant to the Loan B Agreement, the Loan B Borrowers provided various security to the Petitioners, including that described above as the Loan B Security.

## **Default**

14. The Loan B Debtors defaulted under the terms of the Loan B Agreement and the Loan B Security by, *inter alia*, failing to make payments under the Loan B Agreement and the Loan B Security when due.

## **Forbearance Agreements**

15. On or about February 28, 2023, the Petitioners, the Loan B Debtors and SFT30 entered into a forbearance and third amending agreement dated February 28, 2023 (the “**First Loan B Forbearance Agreement**”), pursuant to which some loan repayments were made to the Petitioners. However, the Loan B Debtors and SFT30 defaulted under the terms of the Loan B Forbearance Agreement by, *inter alia*, failing to make payments thereunder when due.

16. The Petitioners, the Loan B Debtors and SFT30 subsequently entered into forbearance extension agreements dated July 30, 2023 and September 30, 2023 respectively (the “**Subsequent Loan B Forbearance Extension Agreements**”, together with the Loan B Forbearance Agreement, the “**Forbearance Agreements**”), pursuant to which some further loan repayments were made to the Petitioners. However, the Loan B Debtors and SFT30 again defaulted under the terms of the Loan B Forbearance Extension Agreement by, *inter alia*, failing to make payments thereunder when due.
17. Each of the Forbearance Agreements provide, among other things, that the Loan B Debtors will consent to Order Nisi and a redemption period of 10 days in any foreclosure proceedings brought by the Petitioners.

### **Demands and Debt Owning**

18. The amounts owing under the Loan B Agreement and secured by, *inter alia*, the Loan B Security, are due and payable and have not been paid.
19. On December 7, 2023, the Petitioners, through counsel, made written demand to the Loan B Debtors for repayment of the Loan B Indebtedness (the “**Demand**”), which included a notice of intention to enforce security.
20. Pursuant to confirmations in the Forbearance Agreements, as well as the Demand, the balance of principal, interest, and other charges owed by the Loan B Debtors and secured by the Loan B Security is currently due and payable.
21. As of December 31, 2023, the total amount due and owing to the Petitioners pursuant to the Loan B Agreement, the Loan B Security, and the Forbearance Agreements, was \$78,867,149.52, plus interest at the rate of 30% per annum, compounded monthly.
22. The Loan B Borrowers, as borrowers, and the Loan B Guarantors, as guarantors, have either failed or neglected to pay the monies due and owing to the Petitioners and the whole amount claimed remains due and owing.

### **Subsequent Ranking Chargeholders**

23. The respondent, Gulf and Fraser Fishermen's Credit Union, is joined in this proceeding as, among other things, the holder of a mortgage and assignment of rents registered,

*inter alia*, against the title to UB Lot 4 on December 12, 2023 under numbers CB1073768 and CB1073769, an extension of CA8962721 and CA8962722 respectively.

24. The respondent, Heung Kei Sung, is joined in this proceeding as the holder of a mortgage registered, *inter alia*, against title to the ITC Property on December 29, 2023 under number CB1097592.
25. The following respondents are joined in this proceeding as the holder of a registered security interest:

Secured Party	Date of Registration	Base Registration Number	Debtor(s)	Nature of Charge
Gulf and Fraser Fishermen's Credit Union	October 7, 2015	885958I	International Trade Center Properties Ltd.	All present and after-acquired personal property ("All PAAP") PAAP
	April 29, 2021	934079M	Kensington Union Bay Properties Limited Partnership, Kensington Union Bay Properties GP Ltd., Ching, Mo Yeung,	RE: Lot 1 – PID 028-731-492 and Lot 3 – PID 028-731-532  1. All present and after acquired goods...arising from or out of the real property...  2. Security interest in monies in the principal sum of \$1,431,000.00 plus interest  3. Assignment of all rights under all contracts...of the real property
	June 27, 2022	824078N	Hotel Versante Ltd., International Trade Center Properties. Ltd., 34083 Yukon Inc., Kensington Union Bay Properties Limited Partnership	All funds and deposits held with Gulf and Fraser's Fishermen's Credit Union

	March 30, 2022	631778N	Ching, Mo Yeung	All present and after acquired accounts, monies
<b>Gulf and Fraser Fishermen's Credit Union (Richmond Centre Branch)</b>	October 21, 2019	840715L	International Trade Center Properties	All funds and deposits held with Gulf and Fraser's Fishermen's Credit Union
<b>Morteq Lending Corp.</b>	May 13, 2021	967243M	International Trade Center Properties	All PAAP
<b>Chun Yu Liu</b>	May 14, 2021	970824M	International Trade Center Properties	All PAAP
<b>1307510 B.C. Ltd.</b>	November 2, 2021	346083N	Ching, Mo Yeung, Ching, Michael, International Trade Center Properties Ltd.	All PAAP
<b>Jeff Rauch</b>	December 1, 2020	628533M	Ching, Mo Yeung	All PAAP

### Part 3: LEGAL BASIS

1. Rules 16-1, 13-5, 21-7 and 14-1 of the *Supreme Court Civil Rules*;
2. Sections 10, 15, 20 and 21(4) of the *Law & Equity Act*, R.S.B.C. 1996, c. 359; and
3. *Personal Property Security Act*, R.S.B.C. 1996 c. 359.

### Part 4: MATERIALS TO BE RELIED ON

1. Affidavit #1 of Wen Yong Wang, made on 22/Jan/2024;
2. Affidavit #1 of Ivy Cheng, made on 23/Jan/2024;
3. The pleadings and proceedings filed herein; and

4. Such further and other materials as this Honourable Court may accept.

Norton Rose Fulbright Canada LLP

Date: 24/Jan/2024

per:

Candice Formosa For:

Signature of

☐ petitioner ☒ lawyer for petitioners

Scott M. Boucher

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

Order made

☐ in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this petition

☐ with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Signature of ☐ Judge ☐ Associate Judge

No.  
Vancouver Registry

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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.) et al.

Respondents

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**PETITION**

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**NORTON ROSE FULBRIGHT CANADA LLP**

Barristers & Solicitors  
1800 – 510 West Georgia Street  
Vancouver, B.C. V6B 0M3  
Telephone: (604) 687-6575  
Facsimile: (604) 641-4949  
Attention: Scott M. Boucher

SCB/ic

Matter# 1001088724