



FORCE FILED

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

NOTICE OF APPLICATION

Name of applicants: Fox Island Development Ltd., and Advanced Venture Holding Co.,
Ltd.

To: Service List

TAKE NOTICE that an application will be made by the applicants to the Honourable Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on October 23, 2025 at 10:00 a.m. for the order set out in Part 1 below.

The applicants estimates that the application will take one day.

- ☐ This matter is within the jurisdiction of an Associate Judge.
- ☒ This matter is not within the jurisdiction of an Associate Judge.

Part 1: ORDER(S) SOUGHT

1. The Applicants, Fox Island Development Ltd., and Advanced Venture Holding Co., Ltd. (collectively, the “**Petitioners**” or the “**Lenders**”) seek an order:
 - (a) Declaring that the Lenders have valid and enforceable first priority security over the P5 Parking Stalls (defined below) and all proceeds derived from the sale thereof; and
 - (b) Such other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

Background

1. Capitalized terms used herein have the same meaning as in the Petition filed in these proceedings.
2. Beginning in August of 2019, the Petitioners, through their then legal counsel, Norton Rose Fulbright LLP (“**NRF**”), commenced their due diligence in respect of providing a \$16,000,000 bridge loan (the “**Initial Loan**”) to the Respondent, International Trade Centre Properties Ltd. (“**ITCP**”) in respect of the Hotel Versante (the “**Hotel**”).

Affidavit #1 of Matthew Choi at para 2.

3. As part of the due diligence process, NRF made multiple requests of ITCP’s counsel for any agreements associated with the parking stalls that had been allocated to the Hotel (the “**P5 Parking Stalls**”) which are located on a separate parcel of land from the Hotel (the “**ITC Remainder**”).

Affidavit #1 of Matthew Choi at paras 3-6.

4. NRF did not receive any notice of any agreements relating to P5 Parking Stalls, other than notice of an encumbrance that had been registered relating to easement rights granted by ITCP to the City of Richmond.

Affidavit #1 of Matthew Choi at paras 8-9.

5. Ultimately, the Initial Loan was terminated on November 7, 2019, at the request of ITCP. Immediately following the termination of the Initial Loan, ITCP and Fox Island Development Ltd. entered into another loan agreement, but for a lesser amount, being \$12,000,000 (the “**ITC2 Loan**”).

Affidavit #1 of Matthew Choi at paras 10-11.

6. The ITC2 Loan was secured by a mortgage against certain of ITCP’s property, which included the ITC Remainder.

Affidavit #1 of Matthew Choi at para 12.

7. Subsequently, the Petitioners entered into several other loan agreements with companies owned by ITCP’s principal, Michael Ching, including the loans that are the subject of this proceeding (“**Loan B Agreement**” and such loan being “**Loan B**”). Loan B is for the original principal amount of \$35,849,266.69, and the Loan B Agreement has been amended pursuant to a Loan Agreement dated from reference June 14, 2021 as amended on March 7, 2022 and September 7, 2022.

Affidavit #1 of Matthew Choi at para 13.

Affidavit #1 of Wen Yong Wang at para 5, Exhibit A

8. Loan B was secured by the Loan B Mortgage against, among others lands, the ITC Remainder.

Affidavit #1 of Wen Yong Wang at paras 6-7.

9. The Loan B Mortgage and was registered with the Victoria Land Titles Office on September 28, 2021.

Affidavit #1 of Wen Yong Wang at paras 6-7.

10. At the time the Loan B Agreement was being negotiated and executed, the Petitioners were unaware that ITCP, or any other party, claimed that the P5 Parking Stalls were subject to a lease, sublease or assignment.

Affidavit #1 of Matthew Choi at para 17.

11. The Respondents defaulted on the terms under the loan agreement, and as a result, the Petitioners commenced foreclosure proceedings in respect of the ITC Property. The Petitioners obtained Order Nisi on February 29, 2024, which also awarded judgment in the amount of \$79,658,326.01 in favour of the Petitioners against the “Loan B Debtors” (as defined in the Order Nisi), which includes ITCP.

Affidavit #1 of Matthew Choi at para 17.

12. The Petitioners were unable to sell the ITC Property through the foreclosure proceeding. As a result, upon the application of the Petitioners, Deloitte Restructuring Inc. was appointed as receiver (the “**Receiver**”) of the Respondents, ITCP, Hotel Versante Ltd. and RCC Holdings Ltd.

The Receivership & the P5 Parking Stalls

13. Following a sales process in these receivership proceedings, the Receiver now seeks this Honourable Court’s approval of a sale of the ITC Property.
14. The ITC Property includes (i) a hotel, and (ii) a separate structure in which the hotel has the exclusive use of 84 parking stalls (the “**P5 Parking Stalls**”).
15. At the time that the Petitioners advanced the Loan and obtained the Loan B Mortgage, they understood that the P5 Parking Stalls belonged to ITCP, and that the P5 Parking Stalls were not subject to any lease, sublease, or assignment other than to the extent that the hotel enjoyed exclusive use of them.

Affidavit #1 of Matthew Choi at para 17.

16. In or around 2024, the Petitioners learned, for the first time, that ITCP claims that the P5 Parking Stalls are subject to several unregistered instruments (collectively, the “**Unregistered Instruments**”, namely:
 - (a) A Parking Lease Agreement dated May 30, 2019, between ITCP as landlord, and 1212429 BC Ltd. (“**121**”) as tenant (the “**121 Lease**”), wherein ITCP purported to lease certain parking stalls, including the P5 Parking Stalls, to 121 for a 99 year term in exchange for a one-time payment of \$10;

- (b) A Parking Stall Assignment dated November 5, 2019 between 121 as assignor and Byganteel Capital Inc. (“**Byganteel**”) as assignee (the “**Byganteel Assignment**”), wherein 121 purported to assign parking stalls 254 – 337 (i.e. the P5 Parking Stalls) to Byganteel for the remainder of the term under the 121 Lease. No consideration appears to have been given by Byganteel in exchange for the assignment; and
- (c) A Parking Stall Lease Agreement effective July 1, 2021 between Byganteel as lessor and Club Versante Management Ltd. (“**Club Versante**”) as lessee (the “**Club Versante Sublease**”), wherein Byganteel purported to lease the P5 Parking Stalls to Club Versante for an initial term of five years, with an option to renew for an additional five years, in exchange for a one-time payment of \$10 for the initial five year term.

Affidavit #1 of Matthew Choi at para 17.

Second Report of the Receiver, dated July 11, 2025 at Appendices D-F.

- 17. Each of the Unregistered Instruments are between non-arm’s length parties.
- 18. None of the Unregistered Instruments have ever been registered at the Land Titles Office against the Remaining Parcel.

Affidavit #1 of Matthew Choi at para 18, Exhibit “D”.

- 19. The Receiver’s independent legal counsel has reviewed the Petitioners’ security and concluded that, subject to customary qualifications and assumptions and without commenting upon the Notice of Civil Claim issued by the Debtors regarding the potential application of the criminal interest rate provisions of the *Criminal Code*, the Petitioners’ security is valid and enforceable and that the Lenders have taken the necessary steps to perfect their security interests as against third parties.

Third Report of the Receiver, dated October 10, 2025 at para 5.

Part 3: LEGAL BASIS

The Unregistered Instruments are ineffective against the Petitioners

- 1. The Petitioners rely upon Part 3 of the *Land Title Act*, RSBC 1996, c 250 (the “**LTA**”).

2. Section 20(1) of the LTA provides as follows:

Unregistered instrument does not pass estate

20(1) Except as against the person making it, an instrument purporting to transfer, charge, deal with or affect land or an estate or interest in land does not operate to pass an estate or interest, either at law or in equity, in the land unless the instrument is registered in compliance with this Act.

3. None of the Unregistered Instruments were registered in accordance with the LTA. As a result, no interest in the P5 Parking Stalls ever passed to 121, Byganteel or Club Versante. The entire interest in the P5 Parking Stalls remains with ITCP, subject to the Petitioners' security.

Affidavit #1 of Matthew Choi at para 18, Exhibit "D".

4. The Petitioners were unaware of the existence of any of the Unregistered Instruments at the time they advanced Loan B and obtained the Loan B Mortgage.

Affidavit #1 of Matthew Choi at para 17.

5. In any event, even if the Petitioners were aware of the Unregistered Instruments (which is expressly denied), such awareness would be irrelevant by operation of section 29(2) of the LTA, which provides as follows:

Effect of notice of unregistered interest

29 (2) Except in the case of fraud in which the person has participated, a person contracting or dealing with or taking or proposing to take from a registered owner

(a) a transfer of land, or

(b) a charge on land, or a transfer or assignment or subcharge of the charge,

is not, despite a rule of law or equity to the contrary, affected by a notice, express, implied, or constructive, of an unregistered interest affecting the land or charge other than

(c) an interest, the registration of which is pending,

(d) a lease or agreement for lease for a period not exceeding 3 years if there is actual occupation under the lease or agreement, or

(e) the title of a person against which the indefeasible title is void under section 23 (4)

6. The Petitioners have not, and are not alleged to have, participated in a fraud, and the exceptions provided at LTA s. 29(2)(c)-(e) do not apply to the present circumstances. As a result, any notice that the Petitioners may have had of the Unregistered Instruments (which is expressly denied) does not affect the validity or priority of the Petitioners' security with respect to the P5 Parking Stalls.
7. The Loan B Mortgage is valid and enforceable and has been validly perfected to secure the Petitioners' security interests as against third parties. No other mortgages or leases have been registered against the Remaining Parcel earlier in time than the Loan B Mortgage. As a result, the Loan B Mortgage is first ranking security secured against the Remaining Parcel, including the P5 Parking Stalls, and all proceeds derived from the sale of the P5 Parking Stalls ought to be distributed to the Petitioners.

Fraudulent Conveyances

8. Section 1 of the *Fraudulent Conveyance Act*, RSCB 1996, c 163 ("**FCA**") provides as follows:

1 If made to delay, hinder or defraud creditors and others of their just and lawful remedies

(a) a disposition of property, by writing or otherwise,

(b) a bond,

(c) a proceeding, or

(d) an order

is void and of no effect against a person or the person's assignee or personal representative whose rights and obligations are or might be disturbed, hindered, delayed or defrauded, despite a pretence or other matter to the contrary.

9. The FCA applies not only to creditors but also to "others" which can include future creditors.

Botham Holdings Ltd. (Trustee of) v. Braydon Investments Ltd.,
2009 BCCA 521 at para 78 [**Botham**].

10. In order to establish that a transfer is a fraudulent conveyance as contemplated by the FCA, the person seeking relief need not show that the transferor was insolvent at the time the transfer was made. Rather, all that the applicant must show is that the transferor, in making the gift or transfer, did so with intent to delay, hinder or defraud creditors or others.

Ocean Construction Supplies Ltd. v. Creative Prosperity Capital Corp.
1995 CanLII 740 BCSC at paras 25-26.

11. The only intent necessary to avoid a transaction under the FCA is the intent to put one's assets out of the reach of one's creditors. No further dishonest or morally blameworthy intent is required.

Botham at para 73.

12. Intent is a state of mind that can be inferred by "badges of fraud", which include the relationship between the parties to transfer, the effect of the disposition of the assets of the debtor, and whether the transferee gave valuable consideration.

Kelly Estate v. Gonzalez, 2014 BCSC 1269 at para 42.

13. Once "badges of fraud" are shown to be present, a presumption of fraud exists and the burden of explaining the circumstantial evidence of fraud falls on the parties to the conveyance.

Ibid.

14. Here, several badges of fraud exist:

- (a) The Unregistered Instruments were all entered into for no or nominal consideration;
- (b) The Unregistered Instruments were all executed by non arm's length parties; and
- (c) The effect of the Unregistered Instruments is to put a critical asset for the hotel's operations (i.e. the P5 Parking Stalls) beyond the reach of ITC's creditors, particularly since the existence of the Unregistered Instruments was not disclosed the Petitioners until well after the Loan had been advanced.

15. As a result of these badges of fraud, ITC 121, Bygenteel and Club Versante bear the burden of explaining how each of the transactions under the Unregistered Instruments are not a fraudulent conveyance.

Kelly Estate v. Gonzalez, 2014 BCSC 1269 at para 42.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Wen Yong Wang, made January 22, 2024;
2. Affidavit #1 of Matthew Choi, made October ____, 2025;
3. Second Report of the Receiver, dated July 11, 2025; and
4. Third Report of the Receiver, dated October 10, 2025.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of 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 Rule 9-7(9).

October 17, 2025

Date



Signature of ☒ lawyer for filing parties
DLA Piper (Canada) LLP (Colin Brousson)
Lawyer for the Petitioners

CONTACT DETAILS FOR HEARING BY TELEPHONE

Name of Lawyer attending: Colin Brousson
Telephone: 604.643.6400
Email: colin.brousson@ca.dlapiper.com

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:

Date: _____

Signature of ☐ Judge ☐ Associate

Judge

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

COMMENT: *Check the box(es) below for the application type(s) included in this application.*

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ oral matters concerning document discovery
- ☐ 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"

IN THE SUPREME COURT OF BRITISH COLUMBIA

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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

ORDER MADE AFTER APPLICATION

	)		)
	)		)
BEFORE	)	ASSOCIATE JUDGE	)
	)		)
	)		)

Date

ON THE APPLICATION of the Petitioners, Fox Island Development Ltd. and Advanced Venture Holding Co., Ltd. coming on for hearing at 800 Smithe Street, Vancouver, BC V6Z 2E1 on Date and on hearing Colin Brousson, counsel for the Petitioners, and those other counsel listed on

Schedule “B” hereto, and no one else appearing although duly served; AND UPON READING, the material filed, including Affidavit #1 of Shui-Yuen Choi, dated October 17, 2025, (the “**Choi Affidavit**”) Affidavit #1 of Wen Yong Wang, dated January 22, 2024 and the Second Report of the Receiver dated July 11, 2025; and UPON NOTING the Order granted by Justice Fitzpatrick in these proceedings on July 15, 2025 (the “**Parking Order**”).

THIS COURT ORDERS that:

1. the Petitioners, have valid and enforceable first priority security over the P5 Parking Stalls and the Parking Stall Net Proceeds, as defined in the Parking Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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

BY THE COURT

REGISTRAR

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
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LTD., JEFFRET RAUCH, RCC HOLDINGS LTD., AND HEUNG KEI SUNG

RESPONDENTS

ORDER MADE AFTER APPLICATION

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File No.: 117708-00001

AM/ak

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

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RESPONDENTS

NOTICE OF APPLICATION

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