



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 CENTRE 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, RCC HOLDINGS LTD. AND
HEUNG KEI SUNG

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: The Owners, Strata Plan EPS 5801, The Owners, Strata Plan EPS 5802,
The Owners, Strata Plan EPS 5803, The Owners, Strata Plan EPS 5804, (the “**Strata
Corporations**”)

To: The Service List attached hereto as **Schedule “A”**

TAKE NOTICE that an application will be made by the applicant to the Honourable Madam
Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC, on 24/FEB/2026 at
10:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 1 day.

[] This matter is within the jurisdiction of an associate judge.

[x] This matter is not within the jurisdiction of an associate judge.

Part 1: ORDERS SOUGHT

1. To vacate or set aside the Order Made After Application pronounced in this proceeding on October 23, 2025 (the “Order”), which authorized Deloitte Restructuring Inc., in its capacity as court appointed receiver (the “Receiver”), to execute a valet parking easement agreement in the form attached to the Order;
2. An Order that the Receiver prepare and submit all necessary documents to the land title office to discharge the valet parking easement registered under CB2495606 (the “Valet Parking Easement”);
3. Further, or in the alternative, an Order cancelling the Valet Parking Easement; and
4. Special costs, or alternatively, ordinary costs payable by the Receiver to the Applicants at Scale B.

Part 2: FACTUAL BASIS

Section 219 Covenant/Reciprocal Easement

1. In or around May 2019, the developer of the Strata Corporations entered into a reciprocal easement with the City of Richmond (the “City”), which granted easements among parcels of land, including the Strata Corporations’ lands.
2. On May 24, 2019, the reciprocal easement was registered in the Land Title Office as charge numbers CA7519726 to CA7519836 (the “Reciprocal Easement”).
3. The Reciprocal Easement contains, *inter alia*, the following definitions:

1.1.1 “Access” has the following meanings:

(b) with respect to Access to Vehicular Access Routes, “Access” means to enter, go, pass and repass in, over and upon all or any part of the Vehicular Access Routes as the respective Dominant Owner may reasonably require, on foot and with

respect to parts thereof designated for use by vehicles, with vehicles (including bicycles), for the purpose of obtaining access to and egress from the Parkade;

1.1.67 "Modification to this Agreement" means any change, addition to or reduction of the easements, covenants and Section 219 covenants granted herein and includes all new and subsequently granted easements, covenants and Section 219 covenants granted by the Servient Owners from time to time to and for the benefit of the respective Dominant Tenements and the Dominant Owners thereof, or to and for the benefit of the City, as the case may be;

1.1.107 "Vehicular Access Routes" mean those parts of the Parcels at, above or below street level which are from time to time designated by the Owners of the Parcels, respectively, for, or are used or intended to be used for ramps and circulation lanes for vehicular entrance, movement and exit to and from the Parkade, provided however that the Loading Bays and any other truck parking areas and loading bays shall not be part of a Vehicular Access Route;

4. Clause 3.1.3 of the Reciprocal Easement provides as follows:

3.1.3 No Parking on Vehicular Access Routes – The Project Easements that are granted herein for Access to Vehicular Access Routes do not include the right to park and have not been granted for the purpose of parking vehicles on the Vehicular Access Routes; and

5. Clause 4.3 of the Reciprocal Easement provides as follows:

4.3 Additional Easements

Each Servient Owner agrees with the Other Owners to execute and deliver any Modifications of this Agreement as may be necessary to grant such additional easements over their respective Servient Tenements as one or more of the Other Owners may reasonably require, by a written request to the respective Servient Owners, in order to permit the use and enjoyment of the Developments within the Parcels as an integrated development as contemplated hereby, provided that:

- (a) no compensation or valuable consideration shall be paid to the Servient Owners that grant such additional easements;*
 - (b) the Modifications of this Agreement required to grant and register such additional easements shall be in a form and on such terms as the respective Servient Owners and Dominant Owners shall agree, each acting reasonably; and*
 - (c) the additional easements granted pursuant to such Modifications to this Agreement shall interfere as little as possible with the use and enjoyment of the respective Servient Tenements by the respective Servient Owners and shall be consistent with the general scheme of the easements, covenants and allocation of Shared Costs contemplated pursuant to this Agreement.*
6. Schedule A attached to the Reciprocal Easement describes the easement area of the Vehicular Access Routes as “Blanket”, which is defined to mean “an easement over all of the Servient Tenement”.
7. The owners and occupants of the Strata Corporations use the Vehicular Access Routes to enter and exit the parkade.
8. The Reciprocal Easement establishes three loading bays on the north side of the access road in front of the building, as shown on the plan attached as Schedule B to the Reciprocal Easement.

Parking on the Vehicular Access Routes

9. In or around July 2021, Hotel Versante located on ASP2 (the “Hotel”) made an inquiry regarding the Hotel’s ability to operate temporary valet parking in front of the building. This request was denied by the Strata Corporations’ agent.
10. Between 2021 and 2022, the Strata Corporations’ agent reminded the Hotel that no parking was allowed in front of the building.

11. In or around mid/late 2022, the Hotel painted solid blue lines in front of the building to create several valet parking spaces (the “Valet Parking”), without consulting the Strata Corporations. Prior to this, there were no valet parking spaces in front of the building.
12. Between 2023 and 2025, owners and/or occupants of the Strata Corporations complained to the Strata Corporations’ agent regarding the Hotel’s operation of the Valet Parking, causing access issues to and from the parkade.

The October 23, 2025 Application

13. By court application of the Receiver on October 23, 2025 (the “October 23 Application”), this Court authorized the Receiver to execute an easement for valet parking in front of the Hotel (the “Order”).
14. In the Valet Parking Easement Agreement (as defined in the Order), an easement was granted to Air Space Parcel 2 (i.e. the Hotel) to operate the Valet Parking.
15. Pursuant to the Order, the Receiver executed the Valet Parking Easement Agreement and submitted documents to the land title office to register the Valet Parking Easement.
16. The Valet Parking was constructed on the Vehicular Access Routes, which modified the Reciprocal Easement.
17. Despite the Strata Corporations having an interest in the Valet Parking Easement Agreement and its impact on the Vehicular Access Routes, the Strata Corporations were not served with the October 23 Application and did not have the opportunity to advise this Court of the effects of the Valet Parking Easement Agreement on the Strata Corporations.
18. The Strata Corporations learned of the Order on the evening of October 23, 2025, and attended a court hearing in this proceeding on October 24, 2025. At the court hearing, the Strata Corporations expressed their concern about the Valet Parking Easement Agreement to this Court and was advised by this Court to seek legal advice.
19. Following the October 24, 2025 court hearing, the Strata Corporations tried to search out lawyers to give the Strata Corporations advice, however, some of the lawyers the Strata

Corporations contacted did not have the necessary time or were in conflicts of interest. It took several weeks before the Strata Corporations located appropriate legal assistance. The Strata Corporations eventually retained the Strata Corporations' current lawyer on or around November 26, 2025.

20. The Valet Parking interferes with fire department access and is non-compliant with provincial and municipal fire safety requirements.
21. The Strata Corporations contend that the Valet Parking monopolizes the Vehicular Access Routes and restricts access for other users.
22. The Strata Corporations contend that using the Vehicular Access Routes for the Valet Parking exceeds and contradicts the Reciprocal Easement's original intended purpose.

Part 3: LEGAL BASIS

1. The Strata Corporations rely upon:
 - (a) Rules 8-1, 13-1(17) and 22-7 of the *Supreme Court Civil Rules* (the "Rules");
 - (b) The provisions of the *Bankruptcy and Insolvency Act*, including section 243;
 - (c) Section 35 of the *Property Law Act*; and
 - (d) The inherent jurisdiction of this Court.

Order as Nullity

2. The Strata Corporations submit that the Order should be set aside as a nullity.
3. The Strata Corporations were entitled to receive notice of the October 23 Application under Rule 8-1(7) of the Rules as they "may be affected by the orders sought". The Receiver breached Rule 8-1(7) by failing to serve the Strata Corporations with the October 23 Application.
4. The Strata Corporations had a direct interest in the outcome of the October 23 Application. The Valet Parking Easement Agreement modified the Reciprocal Easement by allowing

the Valet Parking to be constructed on the Vehicular Access Routes, thus interfering with the Strata Corporations' reasonable use of the Vehicular Access Routes.

5. In *446697 B.C. Ltd. (Re)*, 2023 BCSC 2146 (“446697”), this Court confirmed that an order becomes a nullity if it was made in circumstances where a person (who may be affected by the orders sought) was deprived of the right to be heard, contrary to the rules of natural justice: see *446697* at paras. 48-49.
6. An order made in a proceeding by way of application without service of the application as required by Rule 8-1(7), is a nullity. This is consistent with the foundational principle that the failure to serve proceedings results in any consequent order being a nullity, which entitles a party to have it set aside as of right. As this Court has repeatedly held:
 - (a) “[R]equirements for service must be strictly adhered to; service improperly effected is no service;
 - (b) [E]vidence that the proceedings have come to the attention of the other party is not a substitute for proper service;
 - (c) [F]ailure to serve proceedings results in any consequent order being nullity; and
 - (d) [T]he opposing party is entitled to have such an order set aside as of right”(See: *Wright v. Czinege*, 2008 BCSC 1292 at para. 44; *Thatcher v. Lowe*, 2019 BCSC 1874 at para. 7; *William v. Lake Babine Indian Band*, 1999 CanLII 6121 (BCSC) at paras. 26 and 37-42; and *McLachlin & Taylor, British Columbia Practice* (“*McLachlin & Taylor*”), Rule 22-7).
7. As confirmed by this Court and the leading practice authority in British Columbia, the law is clear that “[a] nullity cannot be waived by acquiescence, delay or the lapse of time, and therefore, delay in applying for a declaration of nullity is not a bar to that relief.” This follows from the general principle that courts cannot breathe life into nullities: see *McLachlin & Taylor*, Rule 22-7 and *Skrastins v. Kelowna (City of)*, 1992 CanLII 1301 (BCSC) at p. 8.

Unreasonable and Unlawful Interference with Vehicular Access Routes

8. In addition, the Strata Corporations submit that the Receiver should not have requested or been granted authority to execute the Valet Parking Easement Agreement because the Valet Parking unreasonably interferes with the Strata Corporation's use of the Vehicular Access Routes under the Reciprocal Easement, and violates the British Columbia Building Code and municipal bylaws.
9. Receivers are officers of the court whose "sole authority is derived from...Court appointment and from the directions given [to them] by the Court". Given the breadth of powers under section 243(1) of the *Bankruptcy and Insolvency Act*, court-appointed receivers are necessarily subject to close judicial oversight and have a fiduciary duty to act honestly and in the best interests of all interested parties: see *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 at paras. 56-58.
10. In *Redcorp Ventures Ltd. (Re)*, 2016 BCSC 188 [*Redcorp*], this Court considered requirements under provincial and federal legislation and the interest of other parties in declining to grant authority to the receiver to destroy company records: see *Redcorp* at para. 38.
11. Similarly, this Court should have considered the impact of the Valet Parking Easement Agreement on the Vehicular Access Routes and declined to grant the Order. The Strata Corporations submit that the Valet Parking is contrary to the Reciprocal Easement's original intended purpose, and does not comply with provincial and municipal fire safety requirements.
12. The Strata Corporations submit that, under section 243(1)(c) of the *Bankruptcy and Insolvency Act*, this Court has authority to order the Receiver to take any action that this Court considers just and advisable to do so. Therefore, in consideration of the Valet Parking's unreasonable and unlawful interference with the Vehicular Access Routes, this Court should order the Receiver to discharge the Valet Parking Easement.

Cancellation of Valet Parking Easement

13. Section 35 of the *Property Law Act* provides as follows:

35 (1) *A person interested in land may apply to the Supreme Court for an order to modify or cancel any of the following charges or interests against the land, whether registered before or after this section comes into force:*

(a) an easement;

(2) The court may make an order under subsection (1) on being satisfied that the application is not premature in the circumstances, and that

(a) ...

(b) the reasonable use of the land will be impeded, without practical benefit to others, if the registered charge or interest is not modified or cancelled,

...

14. This Court only needs to find that one of the five grounds set out in section 35(2) is met in order to grant the relief sought: see *BC Transportation Financing Authority v. Rastad Construction Ltd.*, 2020 BCSC 2064 [*BC Transportation*] at para. 19.

15. In order to succeed on an application under s. 35, the Strata Corporations must demonstrate the following:

- 1) the application is not premature;
- 2) the application fulfils one of the five criteria set out in subsections (a)–(e) of section 35(2); and
- 3) considering all of the circumstances, this Court should exercise its discretion in favour of granting the application

(See: *Watermark Developments Ltd. v Kelowna (City)*, 2024 BCSC 2188 at para. 71, citing *676604 B.C. Ltd. (Re)*, 2010 BCSC 1624 at para. 22).

16. The Strata Corporations submit that it is not premature for this Court to consider this application under section 35(2) because considerations material to the determination of whether any ground exists under subsections (a) to (e) have materialized and are not pending on future events. There is no reason to defer to a later date for this Court to determine the issues raised by this application: see *BC Transportation* at para. 21.
17. The Strata Corporations submit that the Valet Parking Easement should be cancelled under subsection (b) of section 35(2) because the Valet Parking impedes the reasonable use of the Vehicular Access Routes under the Reciprocal Easement. There is no practical benefit of the Valet Parking because it interferes with fire department access and violates provincial and municipal fire safety requirements.
18. The Strata Corporations further submit that the Valet Parking Easement is invalid because it violates provincial and municipal fire safety requirements.
19. The Strata Corporations submit that this Court should exercise its discretion to cancel the Valet Parking Easement, considering the Valet Parking's unreasonable and unlawful interference with the Vehicular Access Routes.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Denglin Liu, filed January 7, 2026;
2. Affidavit #1 of Katherine Hadzipetros, made January 21, 2026; and
3. Expert Report of Katherine Hadzipetros dated January 20, 2026.

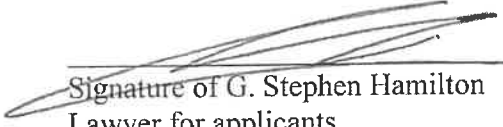
TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must

- (a) file an application response in Form 33 within 5 days after the date of service of this notice of application or, if the application is brought under Rule 9-7 of the

Supreme Court Civil Rules, within 11 days after the date of service of this notice of application, and

- (b) at least 2 days before the date set for the hearing of the application, serve on the applicant 2 copies, and on every other party one copy, of a filed copy of the application response and the other documents referred to in Rule 9-7 (12) of the Supreme Court Civil Rules.

Date: January 22, 2026



Signature of G. Stephen Hamilton
Lawyer for applicants

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 December 09, 2025

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

DLA Piper (Canada) LLP Barristers & Solicitors Suite 2700 - 1133 Melville Street Vancouver, BC V6E 4E5 Tel. No. 604-687-9444 Attention: Colin Brousson Anthony Mersich Email: colin.brousson@ca.dlapiper.com anthony.mersich@ca.dlapiper.com ashley.kumar@ca.dlapiper.com <i>Counsel for Petitioners, Fox Island Development Ltd. and Advanced Venture Holding CO., Ltd.</i>	Deloitte Restructuring Inc. 410 West Georgia Street, Vancouver, British Columbia, V6B 0S7, Canada Tel. No. 604-235-4197 Attention: Jeff Keeble Aveshin Govender Sally Bao E-mail: jkeeble@deloitte.ca avegovender@deloitte.ca sbao@deloitte.ca <i>Court Appointed Receiver and Manager</i>
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<p>Lawrence Wong & Associates 210 – 2695 Granville Street, Vancouver, BC V6H 3H4</p> <p>Tel. No.: (604) 739-0118</p> <p>Attention: Lawrence Wong</p> <p>Email: lwong@lwacorp.com</p> <p><i>Counsel for Ms. Heung Kei Sung (Second Mortgagee)</i></p>	<p>Blakes Cassels and Grayden LLP 1133 Melville Street, Suite 3500, The Stack Vancouver, BC V6E 4E5</p> <p>Tel. No.: 604-631-3300</p> <p>Attention: Peter Bychawski</p> <p>Email: peter.bychawski@blakes.com</p> <p><i>Counsel to Citation Property Holdings Limited</i></p>
<p>CAMPBELL FROH MAY & RICE LLP 200-5611 Cooney Road, Richmond, BC V6X 3J6</p> <p>Tel: (604) 273-8481</p> <p>Attention: Katherine E. Ducey and Mark Standerwick</p> <p>Email: Kducey@cfmrlaw.com mstanderwick@cfmrlaw.com</p> <p><i>Counsel for Fortis BC</i></p>	<p>Hamilton & Company 4th Floor, 500 Sixth Avenue New Westminster, BC V3L 1V3</p> <p>Tel: (604) 630-7472</p> <p>Attention: G. Stephen Hamilton / Mahbuba Nazaryar</p> <p>Email: SHamilton@hamiltonco.ca MNazaryar@hamiltonco.ca</p> <p><i>Counsel for The Owners, Strata Plan EPS 5801, The Owners, Strata Plan EPS 5802, The Owners, Strata Plan EPS 5803, The Owners, Strata Plan EPS 5804</i></p>

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