

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**

**APPLICATION RESPONSE**

**Application response of:** The Owners, Strata Plan EPS 5801, The Owners, Strata Plan EPS 5802, The Owners, Strata Plan EPS 5803, and The Owners, Strata Plan EPS 5804 (the “Application Respondents”)

THIS IS A RESPONSE TO the Notice of Application of Deloitte Restructuring Inc., in its capacity as Court-appointed Receiver, filed December 31, 2025.

The Application Respondents estimate that the application will take 1 day.

**Part 1: ORDERS CONSENTED TO**

The Application Respondents consent to the granting of the orders set out in Part 1 of the Notice of Application: none.

**Part 2: ORDERS OPPOSED**

The Application Respondents oppose the granting of the orders set out in Part 1 of the Notice of Application: all.

### **Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The Application Respondents take no position on the granting of the orders set out in Part 1 of the notice of application: none.

### **Part 4: 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”.
7. The owners and occupants of the Strata Corporations use the Vehicular Access Routes to enter and exit the parkade.

#### *Parking on the Vehicular Access Routes*

8. 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.
9. Between 2021 and 2022, the Strata Corporations’ agent reminded the Hotel that no parking was allowed in front of the building.
10. 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.
11. 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***

12. 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”).
13. 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.
14. The Valet Parking was constructed on the Vehicular Access Routes, which modified the Reciprocal Easement.
15. The Valet Parking interferes with the reasonable use of the Vehicular Access Routes, and may interfere with fire-safety or emergency service bylaws for the City.
16. 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.
17. 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.
18. 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.

***Events Post-Order***

19. On December 17, 2025, Mr. John Sandrelli, counsel for the Receiver, sent an email to Mr. Stephen Hamilton, counsel for the Strata Corporations, that the Receiver would bring an application (the “Amendment Application”) in January for an order amending the order of October 24, 2025 which *inter alia*, approved the purchase agreement between the Receiver and Citation Property Holdings Limited.
20. On December 17, 2025, Mr. Sandrelli further advised Mr. Hamilton of the following:  
“The judge advised she is available for such application on January 8 or 9, 2026. In doing so, it was also suggested that if your clients wish to bring their own application to set aside the October 23, 2025 Order approving the Valet Easement, they ought to do so at the same time.”

21. On December 17, 2025, Mr. Sandrelli confirmed that the application(s) were set to be heard on January 9, 2026.
22. Since December 17, 2025, the Strata Corporations are actively trying to engage third party consultants to provide expert advice regarding the Valet Parking Easement Agreement.
23. On December 18, 2025, the Strata Corporations contacted Thinkspace Architecture Planning Interior Design Ltd. (“Thinkspace”) to request an opinion regarding whether the Valet Parking is permitted under applicable municipal bylaws, development permits and/or planning policies.
24. On December 19, 2025, the Strata Corporations contacted Watson & Barnard Land Surveying (“W&B”) to request survey documents regarding the location, boundaries and configuration of the Valet Parking and its surrounding areas.
25. Since December 22, 2025, the Strata Corporations have continued to correspond with W&B and are expecting to receive survey documents shortly.
26. On December 22, 2025, Thinkspace advised the Strata Corporations that its team was out of the office for the remainder of the year and that they would contact the Strata Corporations in the New Year.
27. On December 31, 2025, the Receiver served by email the Amendment Application on the Strata Corporations.
28. On January 5, 2026, the Strata Corporations requested an adjournment of the Amendment Application. On January 5, 2026, Mr. Sandrelli advised that the Receiver was not agreeable to an adjournment.
29. On January 6, 2026, Thinkspace advised the Strata Corporations that the contact person for the work requested by the Strata Corporations was out of the office and would reach out the next day.
30. On January 7, 2026, W&B provided a sketch survey plan of the Valet Easement to the Strata Corporations.

#### **Part 5: LEGAL BASIS**

1. The Strata Corporation relies upon:
  - a. Rules 8-1, 13-1(17) and 22-7 of the *Supreme Court Civil Rules* (the “Rules”); and
  - b. The inherent jurisdiction of this Court.
2. The Strata Corporations were served with the Amendment Application on December 31, 2025.

3. The Receiver breached Rule 8-1(8) of the Rules by failing to serve the Strata Corporations with the Amendment Application “at least 8 business days before the date set for the hearing of the application”.
4. The Strata Corporations are not parties to these proceedings and have not participated until recently. Given the complexity of these proceedings and the volume of materials, including the 21-page Amendment Application, the Strata Corporations have been unable to respond to the Amendment Application in a fulsome manner.
5. The Strata Corporations submit that the Amendment Application should be adjourned.
6. Alternatively, the Strata Corporations submit that the Amendment Application should be dismissed because the Order should be set aside as a nullity.
7. 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”.
8. The Receiver failed to comply with Rule 8-1(7) by failing to serve the Strata Corporations with the October 23 Application. The Strata Corporations were affected by the Order because 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.
9. The Strata Corporations had a direct interest in the outcome of the October 23 Application.
10. 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.
11. An order made in a proceeding by way of application without service of the application as required by Rule 8-1(7) of the Rules, 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. At 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 service 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)

12. 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).

#### **Part 6: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Denglin Liu made January 7, 2026.

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| [x] | The Application Respondents have filed in this proceeding a document that contains the application respondents' address for service. |
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Date: January 7, 2026

  
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Signature of G. Stephen Hamilton  
Lawyer for Application Respondents