



This is the 1<sup>st</sup> Affidavit  
of Amanda Schneider in this case  
and was made on August 16, 2024

No. H230802  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

PETITIONER

AND:

HARO-THURLOW STREET PROJECT LIMITED  
PARTNERSHIP, HARO AND THURLOW GP LTD., HARLOW  
HOLDINGS LTD., 1104227 B.C. LTD., CLOUDBREAK  
HOLDINGS LTD., CM (CANADA) ASSET MANAGEMENT  
CO. LTD., FORSEED HARO HOLDINGS LTD., 115830 B.C.  
LTD., TERRAPOINT DEVELOPMENTS LTD., KANG YU  
ZOU, WEI DONG, WEI ZOU, XIA YU, and TREASURE BAY  
HK LIMITED

RESPONDENTS

**AFFIDAVIT**

I, Amanda Schneider, of 2900-550 Burrard Street, in the City of Vancouver, Province of British Columbia, Legal Assistant, SWEAR, THAT:

1. I am a legal assistant at the law firm Fasken Martineau DuMoulin LLP, solicitors for the petitioner the Bank of Montreal and as such have personal knowledge of the facts hereinafter deposed to except where stated to be on information and belief, in which case I verily believe them to be true.
2. Now produced and shown to me and marked as **Exhibit "A"** to my affidavit is a true copy of a Notice of Civil Claim filed by Forseed Haro Holdings Ltd. on July 26, 2024, in Supreme Court

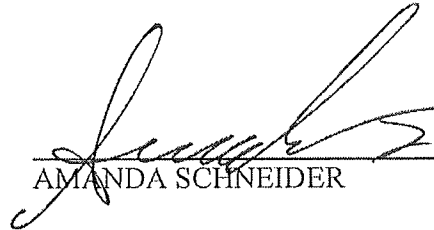
of British Columbia Action No. S245023, styled as *Forseed Haro Holdings Ltd. v. Bank of Montreal et al.*.

SWORN BEFORE ME at Vancouver,  
British Columbia, on August 16, 2024



A Commissioner for taking Affidavits for  
British Columbia

**ROY COTTON-O'BRIEN**  
Barrister & Solicitor  
Fasken Martineau DuMoulin LLP  
2900 - 550 Burrard Street  
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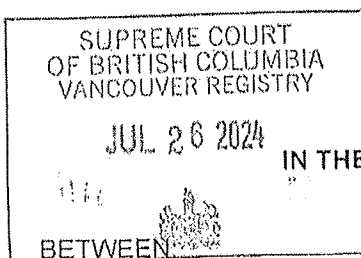
  
AMANDA SCHNEIDER

This is **Exhibit "A"** referred to in the affidavit of Amanda Schneider made before me on this 16<sup>th</sup> day of August, 2024.

A handwritten signature in black ink, appearing to read 'R. K. Co.', is written over a horizontal line.

A Commissioner for taking Affidavits in  
British Columbia

S E 2 4 5 0 2 3

No. \_\_\_\_\_  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

FORSEED HARO HOLDINGS LTD.

Plaintiff

AND:

BANK OF MONTREAL,  
1104227 B.C. LTD.,  
CM (CANADA) ASSET MANAGEMENT CO. LTD.,  
CLOUDBREAK HOLDINGS LTD.,  
TERRAPOINT DEVELOPMENTS LTD.

Defendants

**NOTICE OF CIVIL CLAIM**

This action has been started by the plaintiff for the relief set out in Part 2 below.

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

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

### CLAIM OF THE PLAINTIFF

#### PART 1: STATEMENT OF FACTS

##### A. Parties

1. The plaintiff, Forseed Haro Holdings Ltd. ("**Forseed**"), is a company incorporated pursuant to the laws of British Columbia and has an address for service in this proceeding of 800 – 543 Granville Street, Vancouver, British Columbia.
2. The defendant, Bank of Montreal ("**BMO**"), is a Chartered Bank having an address for service at 595 Burrard Street, Vancouver, British Columbia.
3. The defendant, 1104227 BC Ltd. ("**110**"), is a company incorporated pursuant to the laws of British Columbia with a registered and records office at 2900 – 550 Burrard Street, Vancouver, British Columbia.
4. The defendant, CM (Canada) Asset Management Co. Ltd. ("**CM**"), is a company incorporated pursuant to the laws of British Columbia with a registered and records office at 2900 – 550 Burrard Street, Vancouver, British Columbia.
5. The defendant, Cloudbreak Holdings Ltd. ("**Cloudbreak**"), is a company incorporated pursuant to the laws of British Columbia with a registered and records office at 2900 – 550 Burrard Street, Vancouver, British Columbia.
6. The defendant, Terrapoint Developments Ltd. ("**Terrapoint**"), is a company incorporated pursuant to the laws of British Columbia with a registered and records office at 2400 – 745 Thurlow Street, Vancouver, British Columbia.

##### B. The Properties and Ownership

7. In March 2017, Harlow Holdings Ltd. ("**Harlow**"), as legal owner, and 110, as beneficial owner, acquired certain properties located at 1045 Haro Street and 830, 838, 842 and 846

Thurlow Street, Vancouver, British Columbia (collectively, the "**Properties**") for the purchase price of \$164,750,000.

8. Harlow was at that time wholly owned by 110.

9. 110's stated plan in acquiring the Properties was to develop a 55-story residential condominium tower in the place of an existing seven story residential strata building and low-rise commercial building located on the Properties.

10. To advance the development of the Properties, in 2018, 110, CM and Cloudbreak (collectively, the "**CM Group**"), and their director, Kang Yu Zou, approached the plaintiff, Forseed, among others, to invest in the Properties.

#### **C. Haro-Thurlow Street Project Limited Partnership**

11. To facilitate Forseed's investment, 110 formed Haro-Thurlow Street Project Limited Partnership ("**HTLP**") on or about August 31, 2018 to acquire, from 110, the beneficial interest in the Properties.

12. Haro and Thurlow GP Ltd. ("**HTGP**") is the general partner of HTLP.

13. Forseed contributed \$50,122,506 to the purchase of the beneficial interest in the Properties held by HTLP.

14. The interests in HTLP were apportioned 45% to Forseed, 45% to 110 and 10% to a third partner, Terrapoint.

15. On or about August 27, 2018, the Properties were purchased by HTLP for a total cost of \$172,750,000, which included the purchase price of \$164,750,000.00, property transfer taxes, commissions and other related expenses.

#### **D. BMO Loan and Related Guarantees and Cash Pledges**

16. To obtain the remaining funds required to complete the purchase of the Properties, Harlow and 110 entered into a credit agreement with BMO (the "**Credit Agreement**") on August 21, 2018 under which BMO advanced a loan in the principal amount of \$94,000,000 (the "**Loan**") to Harlow and 110, as borrowers, that was to be repayable by August 31, 2020.

17. Under the Credit Agreement, in addition to the Loan being secured by a first ranking mortgage (the "**BMO Mortgage**") and assignment of rents that was registered against the Properties, and other security:

- a. Cloudbreak and CM granted a joint and several guarantee in the amount of \$50,000,000 (the "**CM Guarantee**"); and

- b. Terrapoint granted a guarantee in the amount of \$10,000,000 (the "**Terrapoint Guarantee**").

18. Under the Credit Agreement, 110 agreed to provide, further, cash collateral of not less than \$15,000,000 as security for the Loan (the "**Initial Cash Collateral Requirement**").

19. On August 24, 2018, 110 entered into a pledge of cash collateral with BMO as contemplated in the Initial Cash Collateral Requirement (the "**Initial Pledge of Cash Collateral**").

20. To meet its obligation under the Initial Cash Collateral Requirement and Initial Pledge of Cash Collateral, 110 borrowed from Forseed funds in the amount of \$15,000,000 (the "**Initial Cash Collateral**").

21. 110 subsequently transferred \$13,625,000 of the \$15,000,000 Initial Cash Collateral to accounts in the name of Forseed (such that \$1,375,000 remains).

#### **E. First Amendment to Credit Agreement**

22. On November 22, 2019, the Credit Agreement was amended (the "**First Amending Agreement**").

23. Under the First Amending Agreement:

- a. HTLP was named the borrower under the Credit Agreement, in the place of Harlow and 110;
- b. the Initial Cash Collateral Requirement was amended and replaced with a requirement that 110 provide cash collateral of not less than \$1,375,000 and Forseed provide cash collateral of not less than \$13,625,000 as security for the Loan; and
- c. Forseed granted a guarantee in the amount of \$13,625,000 (the "**Forseed Guarantee**").

#### **F. The Forseed Guarantee**

24. It was a term of the Forseed Guarantee that BMO's recourse against Forseed was limited to BMO enforcing its rights and remedies against the security granted by Forseed under the Forseed Pledge of Cash Collateral (defined below).

#### **G. The Forseed Pledge of Cash Collateral**

25. On November 22, 2019, consistent with the First Amending Agreement, Forseed entered into a pledge of cash collateral with BMO (the "**Forseed Pledge of Cash Collateral**").

26. Under the Forseed Pledge of Cash Collateral:

- a. Forseed pledged to BMO all monies in bank account 001-00040-1765480; and
- b. the said money or any part of it could, without notice to Forseed, as and when BMO thought fit, be appropriated on account of such parts of the indebtedness and liability to BMO as to BMO seemed best.

#### H. Subsequent Amendments to Credit Agreement

27. The redevelopment planned for the Properties encountered delays. Certain requirements of the City of Vancouver to proceed with the development of the Properties were not met.

28. BMO negotiated several amendments to the Credit Agreement, including amendments on August 28, 2020, September 25, 2020, October 26, 2020, December 15, 2020, June 22, 2022, and September 30, 2022 (the "**Credit Agreement Amendments**"). In September 2022, the last amendment to the Credit Agreement, BMO agreed to extend the "Outside Date" on which the Loan was repayable to August 31, 2023 (the "**Outside Date**").

29. Under the Credit Agreement Amendments, BMO also obtained additional guarantees from 110, 1115830 BC Ltd. (a company affiliated with the CM Group), Mr. Zou (the director of HTGP, Harlow, 110, CM and Cloudbreak), Mr. Zou's wife, Wei Dong, and Mr. Zou's parents, Wei Zou and Xia Yu (the "**CM Group Guarantees**"), which were secured against various lands held by them valued at approximately \$16,900,000, and additional pledges of cash collateral of \$8,600,000 pledged by CM Grouse Mountain (LP) Ltd. ("**CM Grouse**"), a company related to the CM Group, and 110 (the "**CM Group Pledge of Cash Collateral**").

30. In early 2023, BMO advised HTLP that it would not grant any further extensions of the Outside Date.

31. In July 2023, HTLP defaulted in payment of the monthly interest owing on the Loan.

#### I. Realization Steps by BMO

32. On August 29, 2023, BMO made demand for repayment of the Loan and the guarantees provided for in the Credit Agreement, as amended, including the Forseed Guarantee.

33. In October 2023, BMO commenced receivership proceedings under which it sought to enforce the BMO Mortgage, among other relief.

34. On January 11, 2024, a receiver was appointed over the Properties.



#### **J. Wrongful Taking of Forseed's Cash Collateral**

35. In late October 2023, BMO, purportedly relying on the Forseed Pledge of Cash Collateral, unilaterally seized \$13,625,000 from accounts at BMO held by Forseed.

36. Contrary to the terms of the Forseed Guarantee and the Forseed Pledge of Cash Collateral, the funds seized by BMO were held in bank accounts other than account 001-00040-1765480, the bank account specifically provided for in the Forseed Pledge of Cash Collateral.

37. In June and July 2024, Forseed alerted BMO to its breaches of the Forseed Guarantee and the Forseed Pledge of Cash Collateral and demanded the return of the \$13,625,000 wrongfully seized from its accounts; however, to date BMO has refused or neglected to remedy the matter and return the amount it seized.

#### **K. BMO's Duty to Disclose Relationship with CM Group**

38. Unknown to Forseed at all material times, BMO held an existing relationship with the CM Group and Mr. Zou and his family that had the potential to affect BMO's conduct in seeking to enforce the guarantees they granted, including the CM Group Guarantees and CM Group Pledge of Cash Collateral.

39. This relationship gave rise to a duty, on the part of BMO, to disclose to Forseed the nature and extent of BMO's relationship with the CM Group, and Zou family, at the time Forseed agreed to enter into the Forseed Guarantee and Forseed Pledge of Cash Collateral.

40. Despite being in a position to do so, and in further breach of its duty to Forseed, BMO has declined to date to seize the \$8,600,000 pledged by CM Grouse under the CM Group Pledge of Cash Collateral to pay down the Loan or otherwise enforce the CM Group Guarantees.

41. Full particulars of the BMO relationship are not known to Forseed at this time but are known to BMO.

#### **L. Forseed's Claims under the Indemnity Agreement**

42. As a result of BMO's enforcement action set out above, Forseed has contributed significantly more than its 45% share of the capital expended on behalf of HTLP.

43. On August 27, 2018, Terrapoint, Forseed and the CM Group entered into a reciprocal indemnity agreement (the "**Indemnity Agreement**").

44. The terms of the Indemnity Agreement provided that, if at any time any of Harlow, Terrapoint, the CM Group or Forseed paid any amounts to BMO or any other person pursuant to the Loan, they would each be responsible for and indemnify and forthwith compensate the other parties as necessary so that their ultimate monetary liability pursuant to the Loan was shared as follows:

Terrapoint – 10%  
 Forseed and the CM Group – 90%

45. It was subsequently agreed by Forseed and the CM Group, that, as between them, their ultimate monetary liability pursuant to the Loan and for the purposes of the Indemnity Agreement would be equal to their pro rata shares based on their beneficial ownership of HTLP, which was as follows:

Forseed – 45%  
 The CM Group – 45%

46. On January 8, 2024, following the seizure from Forseed described above, and pursuant to the Indemnity Agreement, as amended, Forseed demanded:

- a. from Terrapoint, \$1,505,591.95 owing to it under the Indemnity Agreement; and
- b. from the CM Group, \$6,775,163.77 owing to it under the Indemnity Agreement.

47. Terrapoint and the CM Group have to date refused or neglected to pay the amounts owing under the Indemnity Agreement, plus applicable interest.

## **PART 2: RELIEF SOUGHT**

48. A declaration that Forseed is released from liability under the Forseed Guarantee and Forseed Pledge of Cash Collateral;

49. A declaration that BMO is to return to Forseed the \$13,625,000 it wrongfully seized or, in the alternative, liable to Forseed to pay damages in the amount of \$13,625,000 for its wrongful seizure of the Forseed Pledge of Cash Collateral;

50. Judgment against BMO in the amount of \$13,625,000;

51. In the further alternative, judgment against Terrapoint and the CM Group for their breaches of the Indemnity Agreement;

52. Costs;

53. Interest pursuant to contract or, alternatively, the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and

54. Such further and other relief as to this Honourable Court may seem just.

### **PART 3: LEGAL BASIS**

#### **A. BMO's breach of the Forseed Guarantee and the Forseed Pledge of Cash Collateral**

55. A guarantor will be discharged from liability where a creditor material breaches the terms of a guarantee.

56. In seizing \$13,625,000 from accounts in the name of Forseed different than the bank account specifically provided for in the Forseed Pledge of Cash Collateral, and Forseed Guarantee, BMO materially breached the Forseed Guarantee.

57. Forseed is, as a result, discharged from liability under the Forseed Guarantee and the funds seized by BMO are, at law, to be returned to Forseed.

#### **B. BMO's Material Non-Disclosure in respect of the Guarantee**

58. A general duty of disclosure on the part of a creditor toward a guarantor arises where there are circumstances known by the creditor, but not known by the guarantor, that would likely impact the guarantor's decision to enter into the guarantee.

59. A failure to disclose these circumstances results in a guarantee being set aside where:

- a. the circumstances not disclosed are material (in the sense they would be likely to affect the mind of a reasonable guarantor); and
- b. they concern facts connected to the dealings between debtor and creditor which are the subject of the guarantee that a guarantor would expect not to exist.

60. BMO's existing relationship with the CM Group and Mr. Zou and his family gave rise to such a duty on the part of BMO to disclose to Forseed the nature and extent of BMO's existing relationship with the CM Group, and Zou family, as it affected BMO's decision to enforce the guarantees they granted, including the CM Group Guarantees and CM Group Pledge of Cash Collateral.

61. As a result of BMO's failure to make this disclosure to Forseed, Forseed is discharged from liability under the Forseed Guarantee and it is set aside.

#### **C. Unjust Enrichment**

62. In wrongfully seizing \$13,625,000 from accounts in the name of Forseed, BMO was enriched.

63. Contemporaneously, Forseed will suffer a corresponding deprivation in the amount of the funds seized, with no juristic reason for same.

#### D. Amounts owing under the Indemnity Agreement

64. The Indemnity Agreement is a binding contract and, to the extent the funds seized by BMO are not returned to Forseed or Forseed is not otherwise compensated for the wrongful seizure, Terrapoint and the CM Group owe amounts to Forseed under that agreement.

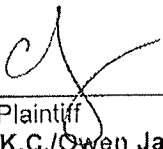
Plaintiffs' address for service: Dennis James Aitken LLP  
800 – 543 Granville Street,  
Vancouver, British Columbia, V6C 1X8  
  
Attention: Craig Dennis, K.C. and Owen James

Email address for service: [cdennis@djacounsel.com](mailto:cdennis@djacounsel.com)  
[ojames@djacounsel.com](mailto:ojames@djacounsel.com)

Place of trial: Vancouver, British Columbia

The address of the registry is: Vancouver Registry  
800 Smithe Street  
Vancouver, BC V6Z 2E1

Date: July 26, 2024

  
\_\_\_\_\_  
Lawyer for the Plaintiff  
**Craig Dennis, K.C./Owen James**

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

No. H230802  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

PETITIONER

AND:

HARO-THURLOW STREET PROJECT LIMITED  
PARTNERSHIP, HARO AND THURLOW GP LTD.,  
HARLOW HOLDINGS LTD., 1104227 B.C. LTD.,  
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RESPONDENTS

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