

This is the 1<sup>st</sup> Affidavit  
of Anita Grujic in this case  
and was made on December 22<sup>nd</sup>, 2023

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.,  
1115830 B.C. LTD.,  
TERRAPOINT DEVELOPMENTS LTD.,  
KANG YU ZOU,  
WEI DONG,  
WEI ZOU,  
XIA YU and  
TREASURE BAY HK LIMITED

RESPONDENTS

**AFFIDAVIT OF ANITA GRUJIC**

I, Anita Grujic, Legal Administrative Assistant, of 1500 – 1055 West Georgia Street,  
Vancouver, British Columbia, SWEAR THAT:

1. I am a legal administrative assistant with McMillan LLP, lawyers for the Respondent, Treasure Bay HK Limited ("**Treasure Bay**"), and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where they are stated to be on information and belief in which I verily believe them to be true.



1

This is Exhibit "A" referred to in the  
Affidavit of Anita Grujic  
sworn (or affirmed) before me  
this 2nd day of December 2023

  
A Commissioner for Taking Affidavits  
within British Columbia



Land Title Act

Charge, Notation or Filing

NEW WESTMINSTER LAND TITLE OFFICE

NOV 15 2021 09:57:01.001

CA9504577

1. Application

Daniel Shouldice, McMillan LLP  
1500 - 1055 West Georgia Street  
PO Box 11117  
Vancouver BC V6E 4N7  
604-689-9111

2. Description of Land

PID/Plan Number      Legal Description

030-552-265      LOT 1 BLOCK 5 DISTRICT LOT 185 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP85244

STC Ordered

3. Nature of Charge, Notation, or Filing

Type

Affected Number

Additional Information

CERTIFICATE OF PENDING LITIGATION

4. Person Entitled to be Registered as Charge Owner

TREASURE BAY HK LIMITED  
1500 - 1055 WEST GEORGIA STREET  
VANCOUVER BC V6E 4N7

Electronic Signature

Your electronic signature is a representation that  
(a) you are a subscriber under section 168.6 of the *Land Title Act*, RSBC 1996 c.250,  
and that you are authorized to electronically sign this application by an e-filing  
direction made under section 168.22(2) of the act, and

(b) if this application requires a supporting document, that you are a designate authorized to certify this application under section 168.4 of the *Land Title Act*,  
RSBC 1996 c.250, that you certify this application under section 168.43(3) of the act, and that the supporting document or a true copy of the supporting  
document, if a true copy is allowed under an e-filing direction, is in your possession.

Blair George  
McRadu I4LW2C

Digitally signed by  
Blair George McRadu I4LW2C  
Date: 2021-11-15  
09:04:05 -08:00

**LAND TITLE ACT**  
Form 31 (Section 215 (1))

Nature of Charge: Certificate of pending litigation  
Legal Description:

City of Vancouver Parcel Identifier: 030-552-265 Lot 1  
Block 5 District Lot 185 Group 1 New Westminster  
District Plan EPP85244

Address of person entitled to register  
this certificate of pending litigation:

Treasure Bay HK Limited  
1500 – 1055 West Georgia Street  
Vancouver, BC V6E 4N7

Full name, address, telephone  
number of person presenting application:

Daniel Shouldice  
**McMILLAN LLP**  
Barristers and Solicitors  
Suite 1500, 1055 West Georgia Street  
Vancouver, BC V6E 4N7  
Telephone: (604) 689-9111

Fee: \$30.05

  
\_\_\_\_\_  
Signature of Solicitor for  
Treasure Bay HK Limited

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

No. S219889  
Vancouver Registry

**In the Supreme Court of British Columbia**

Between **NOV 12 2021**



**TREASURE BAY HK LIMITED**

**PLAINTIFF**

AND

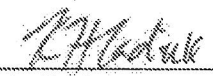
**1115830 B.C. LTD., et al**

**DEFENDANTS**

**CERTIFICATE OF PENDING LITIGATION**

I certify that in a proceeding commenced in this Court a claim is made for an estate or interest in land or a right of action in respect of land is given by an enactment other than the *Land Title Act*. The particulars are set out in the attached copy of the document by which the claim is made.

Given under my hand and seal of the Court at Vancouver, British Columbia, this 12<sup>th</sup> day of November, 2021.

  
\_\_\_\_\_  
District Registrar

**K. HLADJUK**  
DEPUTY DISTRICT REGISTRAR

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SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

NOV 18 2021



0 2 19 88 00

No.  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

TREASURE BAY HK LIMITED

PLAINTIFF

AND

1115830 B.C. LTD.  
1104227 B.C. LTD.  
KANG YU CANNING ZOU aka KENNY ZOU  
HARLOW HOLDINGS LTD. and  
GM INTERNATIONAL HOLDING LIMITED

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.**

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**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**Overview

1. This is a common law derivative action to recover approximately \$25 million owed by the British Columbia numbered company defendants to GM International Holding Limited ("GMIH"). The action is brought for and on behalf of GMIH by its sole minority shareholder, Treasure Bay HK Limited ("Treasure Bay").
2. The defendant, Kang Yu Canning Zou aka Kenny Zou ("Mr. Zou"), wholly owns and controls the defendants 1104227 BC Ltd. ("110 Limited") and 1115830 BC Ltd. ("111 Limited", together with 110 Limited, the "Zou BC Debtors"). He also beneficially owns and controls the majority shareholder of GMIH and acts as the de facto director of GMIH.
3. In breach of his fiduciary duties to GMIH, Mr. Zou had GMIH advance \$30 million to the Zou BC Debtors (the "Haro Loans") without adequate security. After the Haro Loans were in default, Mr. Zou then committed further breaches of his fiduciary duties by preventing GMIH from acting to recover the indebtedness owed to it.
4. In light of Mr. Zou's misconduct, Treasure Bay may act for and on behalf of GMIH to recover the indebtedness owed to it under the Haro Loans and to obtain damages against Mr. Zou for the breaches of his fiduciary duties to GMIH. This action is in the best interests of GMIH and is brought by Treasure Bay in good faith.

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The Parties

5. The plaintiff, Treasure Bay, is a Hong Kong company and the 40% minority shareholder of GMIH, another Hong Kong company.
6. GMIH is named as a defendant herein solely for the purposes of providing it with notice of the proceeding and joining it as a party.
7. The defendant, Mr. Zou, is an individual resident in British Columbia. His address is 1690 Roxburgh Crescent, Vancouver, British Columbia.
8. Mr. Zou is the sole officer, director and beneficial owner of each of the Zou BC Debtors, which are incorporated under the laws of British Columbia.
9. The defendant, Harlow Holdings Ltd. ("**Harlow**"), is the registered owner of the Haro Property (as defined below). Mr. Zou is the President and a director of Harlow.
10. The registered and records office for each of the Zou BC Debtors and Harlow is located at 2900 – 550 Burrard Street, Vancouver, British Columbia.

Mr. Zou Leveraged Family Relationships To Obtain the Haro Loans

11. Mr. Zou is the son-in-law of Wenbiao Dong ("**Mr. Dong**"). Until his resignation in October 2018, Mr. Dong was the Chairman of China Minsheng Investment Group Corp. Ltd. ("**CMIG**"), a Chinese investment group. Mr. Dong was also the Chairman of CMIG's Singapore subsidiary, CMIG International Holding Pte. Ltd. ("**CMIH**"), until his resignation in July 2019.
12. In 2016, Mr. Zou approached his father-in-law with an opportunity for CMIH to participate in the acquisition of the Grouse Mountain Resort in North Vancouver (the "**Resort**"). Prior to the acquisition of the Resort, CMIH, which handled CMIG's international investments, did not focus on Canadian investments and did not have any representatives in Canada.
13. As part of the plans to acquire the Resort, an affiliate of CMIH incorporated GMIH under the laws of Hong Kong on May 4, 2017. This affiliate of CMIH was a shareholder of GMIH until December 2018 when Treasure Bay, another affiliate of CMIH, succeeded to



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its interests. Since that time, Treasure Bay has held 40% of the outstanding shares of GMIH.

14. Upon its incorporation, GMIH's sole director was Laurence Liao ("Mr. Liao"), the then-CEO of CMIH. At that time, Mr. Liao reported to Mr. Dong, the then-chairman of CMIH and CMIG. Mr. Liao resigned from CMIH in November 2019 and Treasure Bay then nominated a successor as its nominee to the board of GMIH.
15. Mr. Zou subsequently obtained indirect control of GMIH through Best Access Global Holdings Limited ("**Best Access**"), a company incorporated in the British Virgin Islands. The sole recorded shareholder of Best Access is Lap Chuen Chan ("**Mr. Chan**"). However, at all times Mr. Zou has been the directing mind and beneficial owner of Best Access.
16. On July 12, 2017, Best Access obtained 80% of the outstanding shares of GMIH and its nominee, Mr. Chan, was appointed as a second director of GMIH, along with CMIH's nominee, Mr. Liao. However, Mr. Chan has never played any active role in GMIH's corporate governance. Mr. Chan has not attended board meetings with Treasure Bay's nominee and has not taken part in the company's decision-making. Instead, Mr. Zou has dealt with Treasure Bay and CMIH, made decisions on behalf of GMIH and has otherwise taken part in its board meetings and corporate governance.
17. Mr. Zou initially exercised his powers as a de facto director of GMIH by obtaining Mr. Chan's signature on board resolutions and other documents. Then, on or about December 15, 2020, he obtained Mr. Chan's power of attorney. Through Mr. Chan's power of attorney, Mr. Zou has signed corporate documents and continued to act as a de facto director of GMIH.
18. Following the acquisition of the Resort, Mr. Zou approached his father-in-law, Mr. Dong, to induce CMIH, through GMIH, to participate in the acquisition of a residential apartment building in downtown Vancouver now legally known and described as:

City of Vancouver Parcel Identifier: 030-552-265 Lot 1 Block 5 District Lot  
185 Group 1 New Westminster District Plan EPP85244

(the "**Haro Property**").

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19. Mr. Zou improperly leveraged his close family relationship with Mr. Dong to induce Mr. Liao into breaching his fiduciary duty to GMIH in approving the Haro Loans on terms favourable to the Zou BC Debtors, including failing to ensure the Zou BC Debtors granted adequate security for the Haro Loans. As a result, Mr. Liao approved the Haro Loans as GMIH's then-nominee to GMIH's board of directors, as did Mr. Chan (acting at Mr. Zou's direction) as the nominee of Best Access.
20. Mr. Zou further caused Mr. Liao and Mr. Chan to approve the improper use of funds by GMIH to advance the Haro Loans. Mr. Zou's interventions resulted in GMIH breaching its obligation under a third party loan agreement to use funds GMIH borrowed solely to refinance the Resort acquisition. As a result of Mr. Zou's misconduct, GMIH used these funds to advance the Haro Loans.

The Haro Loans.

21. On October 20, 2017, GMIH advanced \$10,000,000 to 110 Limited (then known as the Haro and Thurlow Acquisition Corp.) pursuant to a loan agreement dated October 16, 2017 (the "110 Loan Agreement").
22. On August 20, 2018, GMIH advanced \$20,000,000 to 111 Limited pursuant to a loan agreement dated August 17, 2018 (the "111 Loan Agreement", together with 110 Loan Agreement, the "Haro Loan Agreements").
23. The material terms of the 110 Loan Agreement include:
  - (a) an initial term of one year, which is automatically renewed unless 110 Limited provides notice to GMIH to the contrary;
  - (b) payment of the outstanding balance due under the 110 Loan Agreement, including accrued and unpaid interest, in full at the end of the term;
  - (c) accrual of interest on the outstanding balance due under the 110 Loan Agreement at a rate of 8% per annum, payable at the end of the term or upon earlier repayment in full;
  - (d) the absence of any required monthly or annual payments prior to the end of the term; and

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- (e) upon default, immediate payment of the entire outstanding balance due under the 110 Loan Agreement, including interest and charges, to GMIH.
24. The material terms of the 111 Loan Agreement include:
- (a) an initial term of one year, which is automatically renewed unless 111 Limited provides notice to GMIH to the contrary, for a maximum term of four years;
  - (b) payment of the outstanding balance due under the 111 Loan Agreement, plus interest, in full at the end of the term;
  - (c) accrual of interest on the outstanding balance due under the 111 Loan Agreement at a rate of 15% per annum, payable annually, unless otherwise approved by GMIH; and
  - (d) upon default, immediate payment of the entire outstanding balance due under the 111 Loan Agreement, including interest and charges, to GMIH.
25. The Haro Loan Agreements are each governed by British Columbia law and each provide that the courts of British Columbia shall be the non-exclusive forum for any legal proceedings thereunder.
26. The express purpose of the Haro Loans was to assist the Zou BC Debtors with the purchase of the Haro Property.
27. Consistent with this purpose, the Haro Loan Agreements expressly contemplate that the Haro Loans would be secured by a charge against the interest of the Zou BC Debtors in the Haro Property. Each of the Haro Loan Agreements provides for the Zou BC Debtors to grant such security upon the acquisition of the Haro Property and the written request of GMIH.
28. Using the funds advanced under the Haro Loan Agreements, Mr. Zou acquired an indirect interest in the Haro Property in August 2018. From the time of the acquisition, Harlow has been the registered owner of the Haro Property. The beneficial owner of the Haro Property has been the Haro & Thurlow Limited Partnership. 110 Limited is a limited partner in the Haro & Thurlow Limited Partnership.

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29. Notwithstanding the acquisition of the Haro Property, GMIH advanced the Haro Loans without any security whatsoever. Although the Haro Loan Agreements expressly contemplate security in the Haro Property being granted on demand, Mr. Zou never took any steps to cause GMIH to make such a demand. Mr. Zou also failed to take any steps to ensure that GMIH obtained the charge on the shares of 111 Limited contemplated in section 11(c) of the 111 Limited Loan Agreement.
30. Mr. Zou, in acting on both sides of the transactions, obtained the Haro Loans on terms that are overly favourable to the Zou BC Debtors and prejudicial to the interests of GMIH. Specifically, as a result of Mr. Zou's interventions, the Haro Loan Agreements:
- (a) did not provide for adequate security in favour of GMIH;
  - (b) automatically renewed, perpetually in the case of the 110 Limited Loan Agreement, unless the Zou BC Debtors elected otherwise; and
  - (c) required either no installment payments of principal or interest, or, in the case of the 111 Limited Loan Agreement, only annual interest payments.

Defaults under the Haro Loan Agreements

31. GMIH received the following payments towards the amounts due under the Haro Loan Agreements:
- (a) \$10,000,000 on June 26, 2019; and
  - (b) \$5,000,000 on November 14, 2019
- (together, the "Haro Payments").
32. The Haro Payments were allocated to the outstanding amounts due under the 110 Loan Agreement first, in accordance with the long-standing rule that the earliest payments are allocated to the earliest debts. Accordingly, the balance due under the 110 Loan Agreement was paid in full and the remaining amount of \$3,652,105.79 applied to the outstanding principal and interest under the 111 Loan Agreement.

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33. As at November 14, 2019, the total accrued interest due under the 111 Loan Agreement was \$3,715,068.49. Even after application of the payments detailed above, 111 Limited failed to make all payments of annual accrued interest.
34. 111 Limited has defaulted under the 111 Limited Loan Agreement by:
  - (a) failing to pay the annual accrued interest as required by section 5 of the 111 Limited Loan Agreement; and
  - (b) failing to make any interest payment when due on August 17, 2020, the second anniversary of the 111 Loan Agreement.
35. Notwithstanding the defaults by 111 Limited, Mr. Zou has refused to have GMIH issue any demand for payment of the outstanding balance due under the 111 Loan Agreement.
36. As at June 9, 2021, the amount of \$24,772,602.74, plus expenses (including legal fees) and interest after June 10, 2021 at the contractual rate of 15% per annum (the "Indebtedness"), remains outstanding under the 111 Loan Agreement.
37. In the alternative, if the Haro Payments are not allocated to the earliest debt, then 110 Limited has also defaulted under the 110 Loan Agreement by failing to pay the entire outstanding balance when due.
38. In the event that the Haro Payments are not allocated to the earliest debt, then the Zou BC Debtors are each indebted to GMIH for the respective outstanding amounts due under the Haro Loan Agreements.

Mr. Zou's Breaches of Fiduciary Duties

39. As a de facto director of GMIH, Mr. Zou owed fiduciary duties to GMIH to act honestly, in good faith and in the best interests of GMIH.
40. Mr. Zou breached his fiduciary duties to GMIH by arranging for GMIH to advance the Haro Loans on terms that favoured the Zou BC Debtors and without adequate security. He then further breached his duties by failing to obtain even the limited security in favour of GMIH contemplated in the Haro Loan Agreements.

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41. As the controlling mind of the Zou BC Debtors, Mr. Zou knew or ought to have known that there was a high likelihood that 111 Limited and/or 110 Limited would default under the Haro Loan Agreements. Mr. Zou also knew or ought to have known that the failure to obtain adequate security in favour of GMIH could significantly impair GMIH's ability to recover the full amount of the Indebtedness.
42. Mr. Zou further failed to act in the best interests of GMIH by arranging for the improper use of funds to advance the Haro Loans to his companies. In September 2017, GMIH borrowed \$54,000,000 (the "ADM Loan") from Eighty Eight Dragons Limited, a third party company controlled by ADM Capital, pursuant to a Facility Agreement dated September 25, 2017 (the "ADM Loan Agreement"). Section 3.1 of the ADM Loan Agreement required GMIH to use the ADM Loan to refinance the acquisition of the Resort assets, a transaction unrelated to the Haro Property. Nonetheless, GMIH used the funds from the ADM Loan to advance the Haro Loan to the Zou BC Debtors. Mr. Zou knew or ought to have known doing so was an improper use of the ADM Loan and a breach of GMIH's obligations under the ADM Loan Agreement.
43. As a result of the breaches of his fiduciary duties, Mr. Zou has caused GMIH to suffer loss, damage and expense, including, but not limited to, the amount of the Indebtedness. As a further result of such breaches, the Zou BC Debtors have wrongfully received the Haro Loans. Therefore, the Zou BC Debtors hold the Haro Loans, and any proceeds thereof, as constructive trustee for GMIH.

#### Treasure Bay's Attempts to Recover the Indebtedness

44. Treasure Bay and its nominee on GMIH's board of directors have made numerous requests that GMIH take steps to recover the Indebtedness and/or demand the Zou BC Debtors perfect the security contemplated in the Haro Loan Agreements. GMIH's President and General Counsel repeatedly asked Mr. Zou to cause GMIH to recover these funds in informal discussions with him regarding the Haro Loans and the Resort. In each case, Mr. Zou declined to take any action on behalf of GMIH.
45. By letter dated June 16, 2021 (the "June 16<sup>th</sup> Letter"), counsel for Treasure Bay wrote to GMIH and its directors requesting that GMIH demand repayment of the Indebtedness, enforce its rights under the Haro Loan Agreement and, unless the Indebtedness was repaid, commence an action against Mr. Zou for breach of fiduciary duties. If such

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actions were not taken by GMIH, Treasure Bay gave notice in the June 16<sup>th</sup> Letter that it would commence this action on behalf of GMIH.

46. By letter dated July 23, 2021, Peter Tan ("Mr. Tan"), Treasure Bay's nominee on the board of directors of GMIH, proposed to Mr. Chan that they hold a directors' meeting on July 29, 2021 to consider resolutions authorizing GMIH to pursue the actions demanded in the June 16<sup>th</sup> Letter. Mr. Zou responded, apparently on behalf of Mr. Chan, to indicate Best Access (or presumably its nominee) would not participate in the directors' meeting proposed by Mr. Tan.
47. As a result, GMIH has not pursued any of the actions demanded in the June 16<sup>th</sup> Letter from Treasure Bay. Mr. Zou has improperly blocked GMIH from pursuing such actions. In doing so, Mr. Zou has preferred his own interests over the interests of GMIH.
48. Treasure Bay has commenced this action in good faith, and in the best interests of GMIH, to pursue recovery of the indebtedness and damages for breaches of fiduciary duties against Mr. Zou.

**Part 2: RELIEF SOUGHT**

1. Judgment against 111 Limited as follows:
  - (a) \$24,772,602.74 as at June 9, 2021;
  - (b) pre-judgment interest on the sum of \$24,772,602.74 after June 10, 2021 at the rate of 15% per annum pursuant to the 111 Loan Agreement or, alternatively, pre-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79; and
  - (c) costs on a full indemnity basis pursuant to the 111 Loan Agreement or, alternatively, costs pursuant to the *Supreme Court Civil Rules*.
2. Alternatively, judgment against 110 Limited and 111 Limited for the outstanding amounts due under the 110 Limited Loan Agreement and the 111 Limited Loan Agreement, respectively, and an accounting of said outstanding amounts.
3. A declaration that Mr. Zou breached his fiduciary duties to GMIH.

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4. Judgment against Mr. Zou for damages for breach of fiduciary duty, plus pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act* and special costs or, alternatively, costs pursuant to the *Supreme Court Civil Rules*.
5. A declaration that GMIH is entitled to a constructive trust over the Haro Loans and any proceeds thereof.
6. A declaration that Treasure Bay is entitled to register an equitable mortgage charge against the Haro Property in favour of GMIH to secure the Indebtedness due under the 111 Limited Loan Agreement.
7. A Certificate of Pending Litigation against the Haro Property.
8. A full tracing and accounting of the Haro Loans and any proceeds of the Haro Loans.
9. Disgorgement of the Haro Loans and any proceeds of the Haro Loans.
10. Such further and other relief as this Honourable Court deems just.

**Part 3: LEGAL BASIS**

1. This common law derivative action is brought by Treasure Bay on behalf of GMIH to recover the Indebtedness and damages against Mr. Zou for breaches of his fiduciary duties to GMIH.
2. The laws of Hong Kong, where GMIH is incorporated, allow minority shareholders to pursue derivative actions under either statutory or common law. The statutory and common law derivative actions co-exist. While the statutory derivative action requires leave of a Hong Kong court to be granted, it only applies to actions to be brought before the Hong Kong courts. By contrast, under Hong Kong law, a shareholder may bring a common law derivative action without leave of a court.
3. Given that Mr. Zou and the Zou BC Debtors reside in British Columbia, the Haro Loan Agreements are governed by British Columbia law, and British Columbia is the choice of forum under the Haro Loan Agreements, Treasure Bay is entitled under Hong Kong law to pursue this common law derivative action in British Columbia without leave.



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4. In the alternative, if British Columbia law applies to determine Treasure Bay's standing to enforce GMIH's rights, British Columbia law recognizes that the common law derivative action continues to exist for claims brought on behalf of foreign companies.
5. Treasure Bay is entitled to commence and pursue this common law derivative action on behalf of GMIH against Mr. Zou and 111 Limited (or, in the alternative, against both Zou BC Debtors). GMIH's failure to take steps to recover the Indebtedness, enforce the Haro Loan Agreements or commence an action against Mr. Zou for breaches of his fiduciary duties constitutes a fraud on Treasure Bay as minority shareholder of GMIH. Mr. Zou and his companies are the beneficiaries of such fraud. Accordingly, the common law fraud exception to the rule that only a company may sue for a wrong done to it is applicable.
6. By reason of 111 Limited's defaults under the 111 Loan Agreement, the Indebtedness became immediately due and payable to GMIH. 111 Limited has failed to repay the Indebtedness to GMIH despite its obligation to do so.
7. Alternatively, if the Haro Payments are not allocated to the earliest debt first, then the Zou BC Debtors are each indebted to GMIH for the respective outstanding amounts due under the Haro Loan Agreements. On behalf of GMIH, Treasure Bay seeks an accounting of the respective outstanding amounts due under the Haro Loan Agreements.
8. Mr. Zou is a de facto director of GMIH. As such, he owed GMIH fiduciary duties to GMIH to act honestly, in good faith and in the best interests of GMIH. Mr. Zou breached his fiduciary duties to GMIH by, amongst other things:
  - (a) arranging for GMIH to advance the Haro Loans on terms that favoured the Zou BC Debtors and without adequate security;
  - (b) failing to obtain the limited security in favour of GMIH contemplated in the Haro Loan Agreements; and
  - (c) arranging for the improper use of ADM Loan to advance the Haro Loans to his companies, causing GMIH to breach its obligations under the ADM Loan Agreement.

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9. As a result of these breaches of his fiduciary duties, Mr. Zou has caused GMIH to suffer loss, damage and expense, including, but not limited to, the amount of the Indebtedness.
10. The Haro Loans were obtained through breaches of fiduciary duties. GMIH is therefore entitled to a remedial constructive trust over the Haro Loans and any proceeds thereof, as well as an accounting, equitable tracing and disgorgement of the Haro Loans and any proceeds thereof. The Zou BC Debtors, or any other person in receipt of the Haro Loans or proceeds thereof, holds the Haro Loans and any such proceeds as constructive trustee for GMIH.
11. GMIH is entitled to an equitable mortgage charging the Haro Property in accordance with the Haro Loan Agreements. An agreement to grant a mortgage when requested to do so, as provided for in the Haro Loan Agreements, creates an equitable mortgage. The Haro Loan Agreements contain the three essentials necessary for an equitable mortgage: the names of the parties, a description of the Haro Property and the amount owing between the parties and secured by such mortgage.
12. Treasure Bay seeks costs against the Zou BC Debtors on a full indemnity basis pursuant to the express terms of the Haro Loan Agreements. Treasure Bay also seeks special costs against Mr. Zou.

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Plaintiff's address for service: McMillan LLP  
 Suite 1500 – 1055 West Georgia Street  
 Vancouver, BC V6E 4N7  
 Attention: Robert Wisner / Daniel Shouldice

Fax number address for service (if any): n/a

E-mail address for service (if any): robert.wisner@mcmillan.ca/daniel.shouldice@mcmillan.ca

Place of trial: Vancouver, BC

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

Date: November 12, 2021



Signature of lawyer for the Plaintiff  
 Robert Wisner / Daniel Shouldice

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.

**APPENDIX**

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

Common law derivative action for unpaid debt and breach of fiduciary duty.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4: ENACTMENTS:**

*Court Order Interest Act, RSBC 1996, c. 79.*

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR  
SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims to serve this pleading on the Defendant, GM International Holding Limited ("GMIH"), outside British Columbia on the grounds that it:

- (a) concerns contractual obligations, and
  - (i) the contractual obligations, to a substantial extent, were to be performed in British Columbia,
  - (ii) by its express terms, the contract is governed by the law of British Columbia; and
  - (iii) the Defendant GMIH has consented to legal proceedings relating to the contractual obligations being brought in British Columbia,
- (b) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia, and
- (c) concerns a tort committed in British Columbia.