



This is the 1st Affidavit
of Ricci Cheung in this case
and was made on 10th of November, 2023

COURT OF APPEAL FILE NO.
CA49441

COURT OF APPEAL

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA

APPELLANT
(RESPONDENT)

AND:

1351486 B.C. LTD.

RESPONDENT
(PETITIONER/APPLICANT)

AND:

MNP LTD., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND
MANAGER, LIVING BEACHSIDE DEVELOPMENT LIMITED PARTNERSHIP
SUNNY BEACH MOTEL INC., PORT CAPITAL FARMS (BEACH) INC.
PORTLIVING FARMS (3624 PARKVIEW) INVESTMENTS INC.
PORTLIVING FARMS (3688 PARKVIEW) INVESTMENTS INC.
PORTLIVING FARMS (3648 PARKVIEW) INVESTMENTS INC.
PORT CAPITAL GROUP INC., PORTLIVING PROPERTIES INC.
MACARIO TEODORO REYES, PORT CAPITAL DEVELOPMENT (FARMS)
INC., and 1341550 B.C. LTD.

RESPONDENTS
(RESPONDENTS)


AFFIDAVIT


I, Ricci Cheung, legal assistant of 2900 – 550 Burrard Street, Vancouver, British
Columbia, SWEAR THAT:

1. I am a legal assistant in the law firm of Fasken Martineau DuMoulin LLP
("Fasken"), solicitors for the Petitioner, 1351486 BC Ltd. (the "Applicant"), 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. Capitalized terms used and not defined herein have the meanings ascribed to them in the Applicant's Memorandum of Argument to be filed herein
3. Now shown to me and attached hereto as **Exhibit "A"** is a true copy of a mortgage showing registration in the Kamloops Land Title Office on March 15, 2022 under charge numbers CA9786244 and CA9786245.
4. Attached hereto as **Exhibit "B"** is an email dated November 10, 2023 from Tilan Kiriwaththuduwa, Director of Finance for Dynamic Global to Rebecca Nguinambaye, a lawyer with Fasken, and me with a screenshot embedded.
5. Now shown to me and attached hereto as **Exhibit "C"** is a copy of an email exchange dated between November 8 and November 10, 2023 between Ms. Nguinambaye and Owen James, counsel for the Appellant.

SWORN BEFORE ME at Vancouver,)
 British Columbia, Canada on this day)
 10th of November, 2023.)

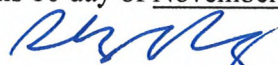

 _____)
 REBECCA NGUINAMBAYE)


 _____)
 RICCI CHEUNG)

A Commissioner for taking Affidavits
 for The Province of British Columbia

REBECCA BARCLAY NGUINAMBAYE
 Barrister & Solicitor
 Fasken Martineau DuMoulin LLP
 2900 - 550 Burrard Street
 Vancouver, BC V6C 0A3
 604 631 3245

This is Exhibit "A" referred to in the
Affidavit of Ricci Cheung sworn
before me at Vancouver
this 10 day of November 27, 2023



A Commissioner for taking Affidavits
for British Columbia



KAMLOOPS LAND TITLE OFFICE
 MAR 15 2022 13:06:55.001
CA9786244-CA9786245

1. Application

Digby Leigh & Co.
 201 - 3053 Edgemont Boulevard
 North Vancouver BC V7R 2N5
 604-984-3394

Folio: 12391.001

2. Description of Land

PID/Plan Number	Legal Description
012-474-983	LOT 1 BLOCK 212 DISTRICT LOT 189 SIMILKAMEEN DIVISION YALE DISTRICT PLAN 397 EXCEPT PLAN 40551 OWNER: PORTLIVING FARMS (3624 PARKVIEW) INVESTMENTS INC.
011-610-263	LOT A DISTRICT LOT 189 SIMILKAMEEN DIVISION YALE DISTRICT PLAN 1389 OWNER: PORTLIVING FARMS (3648 PARKVIEW) INVESTMENTS INC.
008-974-462	LOT 1 DISTRICT LOT 189 SIMILKAMEEN DIVISION YALE DISTRICT PLAN 14620 OWNER: PORTLIVING FARMS (3688 PARKVIEW) INVESTMENTS INC.

3. Borrower(s) (Mortgagor(s))

PORTLIVING FARMS (3624 PARKVIEW) INVESTMENTS INC. AS TO PID: 012-474-983 325 WEST 4TH AVENUE VANCOUVER BC V5Y 1H3	BC0394886
PORTLIVING FARMS (3648 PARKVIEW) INVESTMENTS INC. AS TO PID: 011-610-263 325 WEST 4TH AVENUE VANCOUVER BC V5Y 1H3	BC1180902
PORTLIVING FARMS (3688 PARKVIEW) INVESTMENTS INC. AS TO PID: 008-974-462 325 WEST 4TH AVENUE VANCOUVER BC V5Y 1H3	BC1186761

4. Lender(s) (Mortgagee(s))

1341550 B.C. LTD. 102, 13226 KELLY AVENUE SUMMERLAND BC V0H 1Z0	BC1341550
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5. Payment Provisions		
Principal Amount \$6,000,000.00	Interest Rate 13% per annum compounded and calculated monthly until December 31, 2022 and thereafter 18% compounded and calculated monthly	Interest Adjustment Date March 3, 2022
Interest Calculation Period Monthly	Payment Dates 1st day of each and every month	First Payment Date April 1, 2022
Amount of each periodic payment Interest only	Interest Act (Canada) Statement. The equivalent rate of interest calculated half yearly not in advance is N/A% per annum	Last Payment Date March 31, 2023
Assignment of Rents which the applicant wants registered? Yes If yes, page and paragraph number: Pages 25-27, Paragraph 10	Place of payment Postal Address in Item 4	Balance Due Date March 31, 2023

6. Mortgage contains floating charge on land? No	7. Mortgage secures a current or running account? No
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8. Interest Mortgaged Fee Simple
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9. Mortgage Terms Part 2 of this mortgage consists of: (c) Express Mortgage Terms (annexed to this mortgage as Part 2)

10. Additional or Modified Terms

11. Prior Encumbrances Permitted by Lender Statutory Right of Way - KP11588 (as to PID: 012-474-983) Statutory Right of Way - KP7123 (as to PID: 011-610-263) Statutory Right of Way - KP16167 (as to PID: 008-974-462)



12. Execution(s)

This mortgage charges the Borrower's interest in the land mortgaged as security for payment of all money due and performance of all obligations in accordance with the mortgage terms referred to in item 9 and the Borrower(s) and every other signatory agree(s) to be bound by, and acknowledge(s) receipt of a true copy of, those terms.

Witnessing Officer Signature

Execution Date

Borrower Signature(s)

KEAN SILVERTHORN
Barrister & Solicitor
 McCarthy Tetrault LLP
 SUITE 2400 - 745 THURLOW STREET
 VANCOUVER BC V6E 0C5

 YYYY-MM-DD

2022-03-10

**PORTLIVING FARMS (3624
 PARKVIEW) INVESTMENTS INC.**
 By their Authorized Signatory

Name: Macario Teodoro Reyes

DIRECT 604-643-5966

**PORTLIVING FARMS (3648
 PARKVIEW) INVESTMENTS INC.**
 By their Authorized Signatory

Name: Macario Teodoro Reyes

**PORTLIVING FARMS (3688
 PARKVIEW) INVESTMENTS INC.**
 By their Authorized Signatory

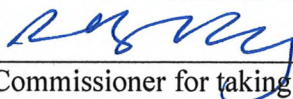
Name: Macario Teodoro Reyes

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

<p>Electronic Signature Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the <i>Land Title Act</i>, RSBC 1996 c.250, that you certify this document under section 168.41 (4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.</p>	<p>Madeline Elizabeth Benn 1765QL Digitally signed by Madeline Elizabeth Benn 1765QL Date: 2022-03-14 12:14:54 -07:00</p>
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This is Exhibit “B” referred to in the
Affidavit of Ricci Cheung sworn
before me at Vancouver
this 10 day of November 27, 2023



A Commissioner for taking Affidavits
for British Columbia

From: Tilan <tilan@dynamic.global>
Sent: Friday, November 10, 2023 11:40 AM
To: Rebecca Barclay Nguinambaye <rnguinambaye@fasken.com>; Ricci Cheung <richeung@fasken.com>
Subject: [EXT] 1351486 B.C. Ltd. v Living Beachside Development Limited Partnership and others; SCBC No. S-229506 Vancouver Registry

{CAUTION: This email originated from outside of Fasken. Exercise care before clicking links or opening attachments.}

Please see confirmation of the wire transfer sent on September 14, 2023 to the Receiver's counsel.

Wire Payments - Reports - Wire Activity

Printer Friendly Version

Export Data

Back

Wire Activity - Summary Report

Tilan Kiri, DYNAMIC INSTALLATION
 Report Creation Date: Nov 10, 2023 02:32:13 PM ET

Value Date Range: From To
 Debit Account(s): All
 Amount Range: All
 Payment Currency: All

Status: All

Payment Currency: CAD

Template Name:

Template Description:

Value Date: Sep 14, 2023 Payment Amount: 500,000.00 CAD

Debit Account: ██████████-CAD-DYNAMIC INSTALLATION

Credit Information: 00003-00010-1266006-CAD-DLA PIPER (CANADA) LLP in Trust

Beneficiary: DLA PIPER (CANADA) LLP in Trust

Status: Completed

Approved by: Bookkeeper

Created by: Bookkeeper, Sep 14, 2023 at 01:10 PM ET

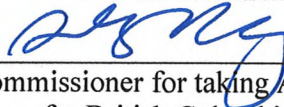
Last Modified by:

Released by: Bookkeeper, Sep 14, 2023 at 01:10 PM ET

Regards,

Tilan Kiriwaththuduwa
 Dynamic - Director of Finance

This is Exhibit "C" referred to in the
Affidavit of Ricci Cheung sworn
before me at Vancouver
this 10 day of November 27, 2023



A Commissioner for taking Affidavits
for British Columbia

From: [Owen James](#)
To: [Rebecca Barclay Nguinambaye](#)
Cc: [Tom Posyniak](#); [Kibben Jackson](#)
Subject: RE: [EXT] HMTK in Right of the Province of British Columbia v. Living Beachside Development Limited Partnership et al., BCCA Vancouver Registry, Court File No. CA49441 [Our File No. 20116-022]
Date: November-10-23 12:45:25 PM
Attachments: [image001.png](#)

{CAUTION: This email originated from outside of Fasken. Exercise care before clicking links or opening attachments.}

Thank you. I confirm that is the Province's position.

Owen James*
 (he/him)
 Partner

D: 604-659-9485

E: ojames@djacounsel.com
*practicing through a law corporation

DENNIS | JAMES | AITKEN

COUNSEL

800 – 543 Granville Street, Vancouver, BC V6C 1X8 | T: 604-659-9479 | www.djacounsel.com

This email and any accompanying attachments contain confidential information that may be subject to solicitor-client privilege and are intended only for the named recipients. If you have received this email in error, please notify the sender and destroy the email.

From: Rebecca Barclay Nguinambaye <rnguinambaye@fasken.com>
Sent: Friday, November 10, 2023 12:40 PM
To: Owen James <ojames@djacounsel.com>
Cc: Tom Posyniak <tposyniak@fasken.com>; Kibben Jackson <kjackson@fasken.com>
Subject: RE: [EXT] HMTK in Right of the Province of British Columbia v. Living Beachside Development Limited Partnership et al., BCCA Vancouver Registry, Court File No. CA49441 [Our File No. 20116-022]

Hi Owen,

Further to our conversations this morning, please see the updated draft form of order removing reference to Justice Masuhara or further agreement of the parties as a basis for paying out the money in trust. Please confirm that the Province will not object to an application to lift the stay on this basis.

Thank you,

Rebecca Barclay Nguinambaye (she/her)
 Associate

T +1 604 631 3245 | rnguinambaye@fasken.com

Fasken Martineau DuMoulin LLP

From: Rebecca Barclay Nguinambaye <rnguinambaye@fasken.com>

Sent: Wednesday, November 8, 2023 2:59 PM

To: Owen James <ojames@djacounsel.com>

Cc: Tom Posyniak <tposyniak@fasken.com>; Kibben Jackson <kjackson@fasken.com>

Subject: RE: [EXT] HMTK in Right of the Province of British Columbia v. Living Beachside Development Limited Partnership et al., BCCA Vancouver Registry, Court File No. CA49441 [Our File No. 20116-022]

Owen,

Attached is our proposed form of order which sets out the terms we previously discussed (an amount equal to PTT paid into trust by the purchaser to be paid out by further order of the court or agreement of the parties; no party can argue mootness of the appeal by virtue of the transaction closing, and remedies on appeal are limited to the disputed amount, the transaction will stand in any event). Please confirm that the Province, while not explicitly consenting to these terms, will not oppose the purchaser's application to lift the stay on those terms.

Thank you,

Rebecca Barclay Nguinambaye (she/her)

Associate

T +1 604 631 3245 | rnguinambaye@fasken.com

Fasken Martineau DuMoulin LLP
