COURT FILE NUMBER	1801-07295
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	1305402 Alberta Inc.
RESPONDENTS	0774238 B.C. Ltd., DYMI Investments Ltd., D & C Atlantic Investment Inc., A & C Pacific Enterprises Inc., The United Teeming Development Co. Ltd., Innet Enterprises Inc., Hung Yip International Development Co Ltd., Augustan Enterprises Ltd., Fireland Development Ltd., Canapoint Development Inc., 0792065 B.C. Ltd., DNP Enterprises Ltd., Sam Myung Enterprises Ltd., Soon Enterprises Ltd., Sanmei Enterprises Ltd., Canada and America Enterprises Ltd., Ye Zhan Enterprises Corp., 0752868 B.C. Ltd. and Zhanada Investment Ltd.
DOCUMENT	**AFFIDAVIT OF CATHERINE PALMER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	LAWSON LUNDELL LLP Barristers and Solicitors 3700, 205 – 5th Avenue S.W. CALGARY, Alberta T2P 2V7 Tel: (403) 269-6900 Fax: (403) 269-9494 **Attention: Kelly Hannan**

AFFIDAVIT OF CATHERINE PALMER

Sworn on June 26, 2018

I, Catherine Palmer, Senior Enforcement Officer, of 1200-701 West Georgia Street, of the City of Vancouver, in the Province of British Columbia, AFFIRM THAT:

1. I am a senior enforcement officer for the Applicant, the British Columbia Securities Commission (the "**Commission**"), and as such have personal knowledge of the facts

hereinafter deposed to, save and except where the same are stated to be made based upon information and belief and, as to such facts, I verily believe the same to be true.

2. On various dates from February 2015 to August 2015, the Commission held a 25 day hearing in relation to the alleged contraventions of the BC *Securities Act* RSBC 1996, c. 418 (the "**BC *Securities Act***") Siu Mui "Debbie" Wong and Siu Kon "Bonnie" Soo and others (the "**Liability Hearing**").

3. On June 16, 2016, the Commission released its decision (the "**Liability Findings**") arising from the Liability Hearing. The Commission found, among other things, that: (1) Ms. Wong and Ms. Soo illegally distributed securities, contrary to s. 61 of the BC *Securities Act*; and (2) Ms. Wong and Ms. Soo had committed fraud. Attached hereto and marked as ***Exhibit "A"*** is a copy of the Liability Findings.

4. On November 28, 2016, the Commission held a hearing to determine the sanctions to be imposed on the Respondents (the "**Sanctions Hearing**"). On February 20, 2017, the Commission released its decision arising from the Sanctions Hearing (the "**Sanctions Decision**"). Attached hereto and marked as ***Exhibit "B"*** is a copy of the Sanctions Decision, which was filed in the Supreme Court of British Columbia on March 3, 2017.

5. In the Sanctions Decision, the Commission ordered, among other things, that the respondents, including Ms. Wong and Ms. Soo were to pay the following amounts to the Commission:

   (a) $2,785,000.00 to be paid by 1300302 Alberta Inc, Siu Mui "Debbie" Wong, and Siu Kon "Bonnie" Soo on a joint and several basis, pursuant to s. 161(1)(g) of the BC *Securities Act*;

   (b) $1,105,000 to be paid by D & E Artic Investments Inc., Siu Mui "Debbie" Wong, and Siu Kon "Bonnie" Soo on a joint and several basis, pursuant to s. 161(1)(g) of the BC *Securities Act*;

   (c) $5,967,850 to be paid by Siu Mui "Debbie" Wong and Siu Kon "Bonnie" Soo on a joint and several basis, pursuant to s. 161(1)(g) of the BC *Securities Act*; and

   (d) $6,000,000.00 to be paid by Siu Mui "Debbie" Wong as an administrative penalty under s. 162 of the BC *Securities Act*; and

   (e) $6,000,000 to be paid by Siu Kon "Bonnie" Soo as an administrative penalty under s. 162 of the BC *Securities Act*.

6. On December 21, 2017, the British Columbia Securities Commission issued a Demand on Third Party under section 162.1 of the BC *Securities Act*. Attached hereto and marked as ***Exhibit "C"*** is a copy of a letter dated December 21, 2017 from counsel for the BC

Securities Commission to Brad J. Findlater at Machida James McCall, enclosing the Demand on Third Party, without attachments.

7. Attached hereto and marked as ***Exhibit "D"*** is a copy of an Affidavit sworn by Siu Mui Wong, on March 23, 2018, in the matter styled *British Columbia Securities Commission v. Sui Mui "Debbie" Wong et al*; S.C.B.C. Action No. L-170072 (Vancouver Registry) (the "**BCSC Action**").

8. Attached hereto and marked as ***Exhibit "E"*** is a copy of an Affidavit sworn by Siu Kon Soo on March 23, 2018, in the BCSC Action.

9. Attached hereto and marked as ***Exhibit "F"*** is a copy of an Affidavit sworn by Siu Mui Wong, on January 7, 2016, in the matter styled *0805652 B.C. Ltd. et al v. Siu Mui Wong (also known as Debbie Wong) et al*; S.C.B.C. Action No,. S-149050 (Vancouver Registry) (the "**0805652 B.C. Ltd. Action**").

10. Attached hereto and marked as ***Exhibit "G"*** is a copy of an Affidavit sworn by Siu Mui Wong, on February 3, 2015, in the 0805652 B.C. Ltd. Action.

11. Attached hereto and marked as ***Exhibit "H"*** is a copy of an Affidavit sworn by Siu Kon Soo, on February 3, 2015, in the 0805652 B.C. Ltd. Action.

SWORN BEFORE ME at the City of Vancouver in the province of British Columbia, this 26 day of June, 2018.

A. M. N.

A Commissioner for Oaths in and for the Province of British Columbia.

AMY M. NATHANSON
Barrister & Solicitor
1600 - 925 WEST GEORGIA ST.
VANCOUVER, B.C. V6C 3L2
(604) 685-3456

Catherine Palmer.

CATHERINE PALMER

This is **Exhibit "** A **"** referred to in the Affidavit of C. Palmer made before me on June 26 2018.

A COMMISSIONER FOR TAKING AFFIDAVITS FOR BRITISH COLUMBIA

BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re Wong, 2016 BCSECCOM 208 Date: 20160616

**Siu Mui "Debbie" Wong, Siu Kon "Bonnie" Soo,
Wheatland Industrial Park Inc.,
1300302 Alberta Inc. and D & E Arctic Investments Inc.**

Panel[1]	Audrey T. Ho	Commissioner
	Judith Downes	Commissioner
Hearing Dates	February 23 – 27, 2015 March 2-4, 6, 9-13, 24-27, 2015 July 13 – 17, 2015 August 4 and 7, 2015	
Submissions Completed	December 16, 2015	
Date of Findings	June 16, 2016	
Appearing		
James Torrance Anthony Abato	For the Executive Director	
Kenneth H. Jang, agent for Lorne W. Scott, QC	For Wheatland Industrial Park Inc.	
H. Roderick Anderson Owais Ahmed	For Siu Mui "Debbie" Wong, Siu Kon "Bonnie" Soo, 1300302 Alberta Inc., D & E Artic Investments Inc.	

Table of Contents

[1] Commissioner Farber was an original member of the panel but left the Commission before the hearing was completed and deliberations began. He took no part in these Findings.

Findings

I. INTRODUCTION

[1] This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.

[2] On May 22, 2013, the executive director issued a notice of hearing (2013 BCSECCOM 140) against Wheatland Industrial Park Inc., Siu Mui "Debbie" Wong and Siu Kon "Bonnie" Soo.

[3] On September 25, 2013, the executive director amended the notice of hearing (2013 BCSECCOM 404) and added 1300302 Alberta Inc. and D & E Artic Investments Inc. as respondents.

[4] On May 21, 2014, the Commission issued a temporary order (2014 BCSECCOM 102) against Wong and Soo.

[5] On January 26, 2015, the executive director issued a further amended notice of hearing (2015 BCSECCOM 36) against the respondents. The executive director alleges that:

1. With respect to the Wheatland Joint Venture (described below):

    a) Wheatland, Wong and Soo contravened section 61 of the Act by distributing securities totalling $2 million to 25 investors, without filing a prospectus;

    b) Wong and Soo, as directors and officers of Wheatland, authorized, permitted or acquiesced in Wheatland's contravention of section 61, and therefore are liable for those contraventions under section 168.2; and

    c) Wong and Soo contravened section 57(b) and committed fraud when they misappropriated funds from the Wheatland Joint Venture, transferred Wheatland Joint Venture units without consideration to the benefit of related companies, and inflated the purchase price of the Wheatland lands and lied about it to investors;

2. With respect to the Rocky View Joint Venture (described below):

    a) Wong, Soo, 1300302 and D & E Arctic contravened section 61 of the Act by distributing securities totalling $3.9 million to 63 investors, without filing a prospectus;

    b) Wong, as a director and officer of D & E Arctic, authorized, permitted or acquiesced in D & E Arctic's contraventions of section 61, and therefore is liable for those contraventions under section 168.2;

    c) Soo, as a director and officer of 1300302, authorized, permitted or acquiesced in 1300302's contraventions of section 61, and therefore is liable for those contraventions under section 168.2; and

    d) Wong and Soo contravened section 57(b) and committed fraud when they inflated the purchase price of the Rocky View lands and lied about it to investors, obtained an unauthorized mortgage on the Rocky View lands, used the mortgage proceeds for purposes other than the development of the Rocky View lands, and withheld information about potential delays in Rocky View's development from investors; and

3. the respondents all acted contrary to the public interest.

[6] During oral submissions, the executive director advised that he would not pursue the allegation that the respondents' conduct was contrary to the public interest. Consequently, we ignored this allegation.

[7] During the hearing, the executive director called as witnesses two Commission investigators, nine investors, Wong's sister-in-law, one of Soo's daughters, and the vendor of the Rocky View lands. The executive director also tendered documentary evidence including affidavits of Wheatland investors filed in 2012 court proceedings. Wong testified at the hearing. The respondents tendered documentary evidence.

[8] The agent for Wheatland's counsel tendered into evidence an agreed statement of facts between Wheatland and the executive director at the start of the hearing, and then left the hearing.

[9] In the agreed statement of facts, Wheatland admitted to selling units in the Wheatland Joint Venture to at least 78 purchasers for approximately $85,000 per unit without filing a prospectus, that no prospectus exemption was available for approximately 25 of those purchasers who invested a total of $2 million, and that by doing so, Wheatland had distributed securities in contravention of section 61 of the Act.

II. BACKGROUND

A. The people involved

1. The Respondents

[10] Wong and Soo (the sisters) are sisters. They are residents of British Columbia.

[11] Wong immigrated to Canada from Hong Kong in 1973. For many years, Wong and her husband ran his family's farm in Surrey, B.C.

[12] Soo immigrated to Canada from China in 1975. She owned a flower shop in Surrey for 28 years.

[13] Wheatland is an Alberta corporation and the registered owner of over 306 acres of land in Wheatland, Alberta (the Wheatland lands). It has never filed a prospectus under the Act.

[14] The sisters were the directors of Wheatland at all relevant times.

[15] 1300302 Alberta Inc. and D & E Arctic Investments Inc. are Alberta corporations. They are the registered owners of approximately 158.2 acres of land in Rocky View, Alberta (the Rocky View lands). They have never filed a prospectus under the Act.

[16] At all relevant times referred to in this decision, Soo and one of Wong's sons were the directors of 1300302, while Wong and one of Soo's daughters were the directors of D&E Arctic.

2. Wong and Soo family members

[17] Companies of members of Wong and Soo's families were involved in some of the transactions referred to in the Further Amended Notice of Hearing.

[18] LC is Wong's sister-in-law. At all relevant times, LC was the sole director of 1276420 Alberta Ltd. (LCco). LC has a Caucasian surname even though she is ethnic Chinese.

[19] Wong has two sons whose companies were involved in some of the events alleged in the Further Amended Notice of Hearing.

[20] Soo has six children including three daughters whose companies were involved in some of the events alleged in the Further Amended Notice of Hearing.

[21] In 2007, Wong's two sons and Soo's three daughters were young adults in their twenties and either in school or working.

3. Isle of Mann group

[22] Isle of Mann group of companies is in the business of real estate development and construction. They were active in real estate development in Alberta at the same time as the sisters.

[23] HY and DM are principals of Isle of Mann.

[24] Wong met HY in 1994. Through HY, she subsequently met DM.

[25] Wong communicated with HY from time to time to discuss real estate developments.

B. Pre-2007 real estate activities

[26] The sisters began to develop an interest in real estate investment in 1988.

[27] Typically, they would buy relatively undeveloped land in an area with rezoning/up-zoning potential, and hold it (sometimes for many years) until it appreciated in value before selling. They were quite successful.

[28] Wong is more fluent in English than Soo. Wong frequently attended municipal planning meetings and city council meetings, and spoke with city planners, to identify and research lands with growth potential. It is apparent that Wong, if not also Soo, became very knowledgeable about the processes and stages in rezoning and developing real estate.

[29] In 2006, the sisters became interested in investing in Alberta lands. They partnered with Isle of Mann on several Alberta real estate projects, including a joint venture to buy and develop more than 500 acres of farmland near Calgary.

C. Wheatland Joint Venture

1. Offer to purchase Wheatland lands

[30] According to Wong, HY called her in early 2007 to introduce her to the Wheatland lands. HY told Wong that Wheatland was "good and quick" – meaning that it was already rezoned for commercial and light industrial use, and would have a quick turn-around time for development, subdivision and resale.

[31] Wong testified that she understood HY to be the middleman. According to Wong, the sisters trusted and relied on HY because of their prior business relationship. Wong testified that she and Soo did not ask HY about who owned the Wheatland lands, HY's role, how HY would be compensated, or why he or Isle of Mann did not want to buy the lands themselves if they had such good potential.

[32] The lands in question consisted of about 900 acres. Only the Wheatland lands (i.e., the 306 acres) had been rezoned; the rest was farmland.

[33] Wong testified that the sisters told HY they were interested only in the 306 acres and asked about price. HY said the price was $68,000 per acre. The sisters countered. HY told Wong "he would ask some people and then come back" to them on the price. They learned from HY that someone else would buy the remaining portion that was farmland.

[34] The sisters eventually agreed to pay $63,000 per acre, for a total of $19,278,000. The sisters did not have enough money to pay the purchase price. They intended to partner with Soo's friends who were keen to invest with them.

[35] The offer to purchase was dated May 1, 2007 and accepted on May 1. The closing date was June 29, 2007. It was an all-cash no-subject offer. The vendor named in the offer was "Bob Cavendish Holdings Ltd." and the purchaser was "Wheatland Industrial Park".

[36] Wong testified that HY had the offer prepared. The sisters did not use a lawyer. They did not conduct a land title search nor verify the legal description or the owner's name on the offer to make sure they were correct. Wong testified that she looked at the price and the layout of the lands attached to the offer as "the most important thing is to check that the price is correct". She may have asked her husband to read the offer terms to confirm they were similar to offers they had signed in the past.

[37] Three deposits were required under the offer. The third deposit, payable by May 30, was the largest at $7.5 million. These deposits would be forfeited to the seller if the buyer failed to complete the purchase for any reason other than the seller's default.

[38] On May 15, 2007, the parties entered into an addendum to the offer which eliminated the payment of the $7.5 million third deposit. Wong testified that this change was made at her request and HY negotiated with the seller on her behalf. HY had the addendum prepared. According to Wong, there was no back-and-forth negotiation and the seller did not request any consideration for making this change even though the offer stipulated that the seller could keep the entire deposit as liquidated damages if Wheatland failed to complete the purchase.

[39] Wong testified that she also asked HY to negotiate a vendor-take-back mortgage in as large an amount as possible, because she was concerned about cash flow. Again, HY simply replied to her that he had negotiated a $2.8 million mortgage. Again, there was no back-and-forth in negotiating this change, and there was nothing in writing to document this change.

2. Parties to the Wheatland land deal

[40] The sisters formed Wheatland Industrial Park Inc. to buy and hold the Wheatland lands.

[41] Bob Cavendish Holdings Ltd., the vendor named in the offer to purchase, was an Alberta corporation. Its sole director was JG.

[42] Although the offer was made and accepted on May 1, 2007, Wheatland Industrial Park Inc. was not incorporated until May 7 and Bob Cavendish Holdings was not incorporated until May 9.

[43] We conclude that JG and Bob Cavendish Holdings were in some way associated with the Isle of Mann group, based on the following evidence:

1. A photograph from JG's Facebook page that shows JG posing under an Isle of Mann sign.

2. In an affidavit filed in British Columbia Supreme Court proceedings initiated in or about 2012 by certain Wheatland investors seeking appointment of a judicial trustee for Wheatland (BC court proceedings), HY said:

> "1264065 then assigned the right to purchase the Cavendish Lands to another Alberta company called Bob Cavendish Holdings Ltd. ("Holdings"). **We** used the name of the vendor for ease of reference." (Emphasis added)

3. Actual owner of the Wheatland lands

[44] In reality, Bob Cavendish Holdings was not the owner of the Wheatland lands. The owner was Cavendish Investing Ltd., an unrelated third party.

[45] According to closing documents, Cavendish Investing entered into an agreement with 1264065 Alberta Ltd. on May 1, 2007 to sell the 900-acre parcel for $23,895,000 payable in part by a vendor-take-back mortgage of $17,495,000. The agreement allocated $6 million of the purchase price to the 306 acres that formed the Wheatland lands.

[46] The right to purchase the Wheatland lands was then assigned by 1264065, either directly or through Bob Cavendish Holdings, to Wheatland. The right to purchase the remaining farmland was similarly assigned to 1323947 Alberta Inc.

[47] 1264065 and 1323947 were both companies of HY and DM. HY and DM were the directors of 1264065 and they incorporated 1323947.

[48] Ultimately, Wheatland purchased slightly more land and the purchase price was adjusted accordingly. On closing, Cavendish Investing transferred title directly to Wheatland and received a consideration of $9,140,617. Wheatland and 1323947 granted a joint and several mortgage over all of their lands to Cavendish Investing for $17,495,000.

[49] The sisters both signed various closing documents that referenced the purchase agreement between Cavendish Investing and 1264065, the assignment of the offer to purchase, and the $17.5 million vendor-take-back mortgage.

[50] Nevertheless, Wong testified that she and Soo did not know anything about these dealings at the time nor did they know then that they had agreed to buy the Wheatland lands at more than double the price accepted by the actual owner.

[51] Wong testified that the sisters thought they were buying from the actual owner or a related party, that the lands were worth at least $63,000 per acre, and that they paid $19.278 million to the owner or a related party. Wong testified that the sisters did not pay attention to the details of what they signed.

[52] Wong testified that she did not know who JG was, that she did not know about 1264065 or that HY and DM were behind that company. She testified that she knew from HY that someone else was buying the portion that was farmland, but did not know anything about 1323947 and did not ask HY. She testified that HY told her Wheatland had to share the mortgage with the other purchaser. She and Soo signed the $17.5 million joint and several mortgage on behalf of Wheatland although Wheatland only borrowed $2.87 million.

[53] In the BC court proceedings, both HY and DM swore affidavits attesting to the existence of the offer between Bob Cavendish Holdings and Wheatland. DM also deposed in his affidavit that Wheatland paid the purchase price of $19,278,000 to 1323947.

4. Promotion and sale of Wheatland joint venture units

[54] The sisters created Wheatland to buy and develop the Wheatland lands into saleable subdivided lots, which could be sold at a profit. Wheatland Industrial Park Inc. held the legal title to the lands as bare trustee for the joint venture investors. A joint venture unit entitled an investor to an undivided interest in the Wheatland lands. A total of 306 units were available for sale, corresponding to 306 acres.

[55] From about May 2007, the sisters promoted and sold units in the Wheatland Joint Venture, through referrals from friends and word-of-mouth. The investors were primarily British Columbia residents in the Chinese community. In total, the sisters raised approximately $22 million from investors (excluding the 33.5 units allocated to family companies and the 10 units purchased by the sisters).

[56] Most investors paid $85,000 per joint venture unit, comprising $63,000 per acre plus an estimated development cost of $22,000 per acre. Some later investors paid $86,000 or $88,000 per unit.

5. What investors were told

[57] Five Wheatland investors testified at the hearing. Some of them invested in both Wheatland and Rocky View. They gave generally consistent testimony about the respondents' promotional activities. Typically, the investors were introduced to Wong or Soo by friends who had invested or were interested in investing with the sisters. The witnesses were invited to a Soo family home in west side Vancouver owned by one of Soo's children, where one or both of the sisters would explain the real estate investment.

[58] Wong and/or Soo would show investors a map of the lands and describe the opportunity. Most were told that they would make a profit after one or two years. The sisters talked about their past successes in other real estate projects. Some investors said they were impressed by the large house, particularly the fish pond filled with expensive carp, and took it as confirmation of the sisters' business success.

[59] One investor (IL) testified that Wong told her that the sisters were contributing the Wheatland lands "at cost" to the joint venture - the sisters would not take any profit up front and would only take a profit (5% of net profit) when the investors made a profit. IL was shown Wheatland's offer to Bob Cavendish Holdings, and a pro forma statement showing the cost of the lands at $19.278 million, the projected development costs, and the projected profit.

[60] IL testified that Soo told her that no more money was needed beyond the $85,000, and if subsequently additional funds were needed, an investor vote would be required.

[61] IL decided to invest in part because she believed she was investing at the cost the sisters paid for the lands and because of the quick two-year turn-around time to make a profit. She thought the sisters were generous.

[62] Wong admitted that she told investor IL that the price the investors were paying for the lands was the same price that the sisters paid for the lands, and that they were not taking a profit upfront but would take a 5% management fee.

[63] Wong admitted that the sisters showed to prospective Wheatland investors Wheatland's offer to Bob Cavendish Holdings which showed a purchase price of $19.278 million, and that they told investors that the price paid for the Wheatland lands was $63,000 per acre.

[64] Another investor (CK) testified that Soo did not tell her she had to do anything after making the investment. Soo did not tell CK that she would have any say in the development of the lands, or that there would be mortgages taken out on the lands.

[65] Some of the Wheatland investor witnesses testified that the sisters required them to form a company with other investors in order to keep the maximum number of investors to not more than 50. They were unclear on the reason for doing so; some thought it was because their individual investments were too small; some thought it was for tax reasons.

[66] Wong admitted to suggesting that investors group together in companies to invest. She also could not clearly explain the purpose, and thought it had something to do with getting tax benefits or it was more convenient to make contracts if they limited the number of investors to 50. Whatever the reason, many investors grouped together in companies to invest in Wheatland, and the total number of joint venturers was kept to 50.

6. Joint venture documentation

[67] The sisters prepared and arranged for investors to sign a joint venture agreement and a bare trust agreement to record the parties' respective rights and interests.

[68] Under the bare trust, the investors authorized Wheatland to manage and deal with the lands and execute documents as their agent, at the direction of the investors. Wheatland could not deal with the lands without the prior written consent or direction of the investors.

[69] Under the joint venture agreement, all decisions, except major decisions as defined in the agreement, were to be made by the Wheatland directors (the sisters, at all relevant times). Major decisions are decisions relating to the sale, mortgage or final use of the lands. Major decisions require a majority vote of the investors holding at least 65% of the total interests in the joint venture.

[70] The joint venture agreement also provided for the following:

1. investors were responsible for obtaining financing;
2. the Wheatland directors were authorized to hire a manager to develop and resell the subdivided lands, and to accept offers from end users that exceeded certain stipulated prices per acre;

3. the sisters would be paid 5% of the net profits as remuneration for their work and efforts.

7. Joint venture units allocated to Wong and Soo family companies

[71] Twenty Wheatland joint venture units were allocated to four family companies owned by Wong and Soo's adult children, and 13.5 units were allocated to a company owned by the sisters' husbands.

[72] Wheatland's unaudited financial statements for the years 2008 to 2010 show these 33.5 units as fully paid equity and Wheatland having fully paid equity contributions of over $26 million since 2007.

[73] But the court in the BC court proceedings stated that Wong and Soo admitted to transferring 20 units to the benefit of their adult children without consideration.

[74] At our hearing, Wong testified that the children's companies fully paid for the 20 joint venture units (at $85,000 per unit). The sisters claimed the payments were made on June 26, 2007 and deposited with the law firm that represented Wheatland on the land purchase. That law firm's client ledger for this time does not reflect any such deposits, and there is no corroborating evidence of these payments.

[75] The sisters also claimed that the children later asked for refunds because they needed money for other investments. Wong said that in October 2008, Wheatland refunded to each of the children's companies $425,000 ($85,000 per unit), plus another $3,000 per unit to reflect the appreciated value in the lands. Wong testified that it was always intended that the children's companies would pay back eventually the money that was refunded.

[76] Although there is evidence that Wheatland paid $425,000 each to several of the children's companies in late 2008, Wheatland's unaudited financial statements for the years 2008 to 2010 show these four companies holding their respective joint venture interests notwithstanding the purported refunds in 2008.

[77] Wong's explanation was contradicted by Soo's daughter who testified at the hearing. Wong had testified that this witness owned one of the children's companies that bought five of the 20 unpaid Wheatland joint venture units. But the witness testified that she was not familiar with the company, and did not know she was a director of that company. She had not heard of Wheatland Industrial Park in 2007. The investor form whereby the company subscribed for the five units was not in her handwriting. She did not have $425,000 in 2007 to invest and she did not pay $425,000 for Wheatland joint venture units.

[78] With respect to the husbands' interests, Wong does not dispute that the 13.5 units were allocated without consideration. Wong testified that they had Wheatland issue the 13.5 units to their husbands' company at their accountant's suggestion. She said these units remained unsold and the accountant told the sisters that in order to complete the joint venture's financial statements, they should issue these units to a dummy company.

[79] According to Wong, the sisters chose a numbered company held by their husbands because it was available. Wong said the sisters never hid from investors that some units remained unsold, and they never intended that these units would be given without consideration to the husbands' company.

[80] There was no note in the financial statements to indicate these were unsold units. There was no corroborating evidence on this issue and no explanation as to how having unallocated unsold units could prevent the completion of the joint venture's financial statements.

[81] The sisters did not inform investors nor obtain their prior approval to allocate 33.5 units to the Wong and Soo family companies without consideration. Investors invested believing that payment of at least $63,000 would be required for each allocated joint venture unit.

[82] One investor filed an affidavit in the BC court proceedings in 2012, attesting that it was not until recently that she found out about the unpaid units, that she had always understood that all 306 acres were assigned and therefore paid for and the proceeds used to pay Wheatland's obligations.

[83] In August 2012, while the BC court proceedings were ongoing, the sisters agreed with investors to pay Wheatland for the 33.5 units (the children's and the husbands' units) at $85,000 each, by July 2013. The money was fully paid after that date.

8. Personal use of joint venture funds

[84] Wong admitted that, between August 2007 and February 2010, the sisters caused Wheatland to make loans totalling $5,389,500 to themselves and various family companies, using joint venture funds. The money from these loans was used for Wong and Soo families' business endeavours unrelated to Wheatland. The loans were all repaid with interest by the end of December 2010.

[85] Wheatland engaged Grant Thronton Limited in December 2012 to conduct independent accounting procedures. According to Grant Thornton's report, Wheatland made loans to Wong and 10 related companies from August 2007 to February 2010 for a total amount of $5,389,500. The maximum outstanding loan balance was $3,912,000 excluding accrued interest.

[86] Grant Thornton concluded that Wheatland incurred additional costs because of its loans to the sisters' or their family companies. Grant Thornton estimated that Wheatland incurred incremental interest costs in the range of $260,000 to $289,000, and approximately $205,299 or less for additional mortgage fees.

[87] We find that two related company loans totalling $1,208,000 were funded, directly or indirectly, by investors' subscription proceeds, based on Grant Thornton's report. According to Grant Thornton, Wheatland investors had issued cheques related to their investments directly to the related companies rather than to Wheatland. We therefore conclude that these two loans were funded by investors' subscription proceeds.

[88] Although there is some evidence that the remaining related company loans were funded to some extent by investors' proceeds and/or unauthorized mortgage proceeds, we do not have sufficient evidence to accurately identify and make a finding on the source of funds for these loans. The executive director did not trace the source of funds used to make these loans.

[89] At her compelled interview with Commission investigators, Wong said she did not ask investors for permission to lend joint venture money to her family. At the hearing, Wong testified that she could not remember asking for permission from any investor. Wong claimed that she or Soo told some investors about these loans but she could not give any details about who was told, and there was no corroborating evidence.

[90] We find that the sisters did not obtain investors' consent to make personal loans nor did they inform investors before investors made their investments.

[91] Wong testified that the loans were needed and not inappropriate because the sisters or their families had guaranteed Wheatland's debt, which eroded their ability to fund their other investments. She said it was especially difficult to obtain financing at the time as it was during the 2008 financial crisis.

[92] In an August 2012 affidavit filed in the BC court proceedings, Soo deposed that the sisters had lent substantial funds to the Wheatland project at various times over the course of the project, often without charging interest. Soo did not specify when the sisters made those loans relative to when Wheatland loaned money to the sisters or their family companies.

[93] Although the respondents submitted evidence at our hearing purporting to be payments of Wheatland expenses from personal funds, these payments were all in 2012. We have no other evidence of any family loans made to Wheatland in or before February 2010.

[94] We find that the sisters used approximately $5.4 million of Wheatland joint venture funds for their personal benefits.

9. Wheatland's financial situation and subsequent events

[95] After the Wheatland distributions, Wheatland started work to develop the lands. It needed money for the development work and to refinance the vendor-take-back mortgage. Wheatland borrowed money from various lenders while it made the loans described above to the sisters or their family companies.

[96] According to Grant Thronton's report, Wheatland obtained six mortgage loans ranging from $3 to $11 million between February 28, 2008 and August 9, 2011. One of them, a $5 million mortgage loan from First Calgary (referred to below), was obtained on October 3, 2008, in the same month that Wong claimed Wheatland refunded the subscription payments to the children's companies.

[97] None of these mortgages were obtained with investors' consent as required by the Wheatland joint venture agreement.

[98] At some point, Wheatland fell into financial difficulty. The 2008 financial crisis also made financing difficult.

[99] By August 2011, First Calgary started foreclosure proceedings against the Wheatland lands.

[100] In November 2011, Wong and Soo held a meeting with some investors. They advised these investors that First Calgary had started foreclosure proceedings and that Wheatland was experiencing financial difficulties. They also advised that their family companies controlled but had not paid for 33.5 joint venture units. They asked for (but did not get) additional monies from the investors.

[101] Ultimately, in July 2012, a subset of investors petitioned the courts (in the BC court proceedings) to appoint a judicial trustee over the project. Some investors filed affidavits in that proceeding indicating that they were not told of any financing needs or difficulties and had no access to financial information. They were unaware that the project required additional financing, that the sisters would solicit financing on their behalf without consultation, that financing was obtained, or that the sisters both borrowed and loaned money to the joint venture.

[102] Although the petition was ultimately unsuccessful, the court found that Wong and Soo had:

1. transferred units to the benefit of their adult children without consideration,
2. placed mortgages on the property that were not authorized by at least 65% of the joint venturers,
3. allowed the First Calgary mortgage to go into default,
4. caused the joint venture to become short on cash so that it could not meet its obligations, and

5. generally mismanaged the joint venture without accounting to the joint venturers until pressed to do so, and then, only after the petition was issued.

[103] At the time of the B.C. court proceedings, the west side of the lands had been serviced and around 57 acres had been sold, with another 58 acres remaining to be sold on the west side.

[104] The sisters resigned as directors of Wheatland at some point.

[105] Investors subsequently repaid the First Calgary mortgage and the foreclosure proceedings were discontinued.

D. Rocky View Joint Venture

1. Purchase of the Rocky View lands

[106] Wong testified that, in the fall of 2006, the sisters set up LCco (an Alberta numbered company) for the purpose of buying Alberta lands. Wong asked her sister-in-law LC to be the director of this company.

[107] A Calgary realtor introduced the sisters to the Rocky View lands. These were farmland not yet rezoned for a higher use.

[108] On February 19, 2007, LCco made an offer to the owner of the Rocky View lands, an unrelated third party, to buy the lands for $5.54 million. $2.77 million of the purchase price was payable by way of a vendor-take-back mortgage and the closing date was June 15, 2007.

[109] LCco made the offer as bare trustee for Wong and Soo family companies. Wong does not dispute that her family acquired the right to buy the Rocky View lands for $5.54 million through LCco. Wong acknowledged that the sisters controlled LCco and were in charge of this purchase and of LCco. LC's only role was to sign documents and cheques when asked to do so by Wong. This was consistent with LC's testimony.

[110] One day after LCco's offer was accepted by the Rocky View owner, 1300302 offered to buy the Rocky View Lands from LCco for $10,271,300, almost twice the price payable by LCco, closing on June 15, 2007.

2. Transfer of Rocky View lands from LCco to 1300302 and D&E Arctic

[111] LCco transferred title of the Rocky View lands to 1300302 and D & E Arctic (the Rocky View nominees) in August 2007.

[112] No documentary evidence was produced before us as to the payment of the purchase price by the Rocky View nominees to LCco prior to the transfer of the Rocky View lands. The law firm used by the sisters to document the land transfer from LCco to the Rocky View nominees told Commission staff that the financial side of the transaction was handled by the parties themselves, but there was no evidence of payment going through LCco's only bank account at the time.

[113] Wong insisted that LCco was paid over time for the purchase of the Rocky View lands, but she could not say how much was paid and when.

3. Promotion and sale of joint venture units

[114] Soo set up the 1300302 joint venture and Wong set up the D&E Arctic joint venture. 1300302 and D&E Arctic held the legal title to the Rocky View lands as bare trustees for their respective investors.

[115] Between June 2007 and January 2008, the sisters promoted and sold units in the 1300302 and D & E Arctic joint ventures through referrals from friends and word-of-month. The investors were mostly British Columbia residents in the Chinese community. Some of them also invested in the Wheatland joint venture.

[116] A total of 158 units were available for sale, corresponding to the 158 acres in the Rocky View lands. 28.1 acres remained unsold. Most investors paid $65,000 per unit.

[117] With respect to the 1300302 joint venture units, at least one investor paid for its subscription by a bank draft on September 27, 2007. The other 1300302 distributions were made before September 25, 2007.

[118] Wong testified that, as at September 25, 2007, D&E Arctic did not have any investors. Based on that and evidence of subscription payments, we are satisfied that all the D&E Arctic distributions were made after September 25, 2007.

[119] In October 2007, the sisters asked investors to pay an additional $2,000 (later increased to $3,000) per unit to help pay for miscellaneous costs and fees for IBI, an engineering firm that worked on the Rocky View lands rezoning.

4. What the investors were told

[120] Six Rocky View investors testified at the hearing. They gave generally consistent testimony about the respondents' promotional activities. Typically, and similar to the Wheatland fund-raising, the Rocky View investors were introduced to Wong or Soo by friends who had invested or were interested in investing with the sisters. The witnesses were invited to the Soo family home in west side Vancouver where one or both of the sisters would explain the real estate investment.

[121] Wong and/or Soo would show them a map of the lands and certain documentation, and describe the opportunity. Most were told that the development would take place in phases over an approximate five-year timeline, with the value of the lands increasing as development progressed, and investors would stand to make a significant profit. They were told a $65,000 investment could eventually be worth over $1.5 million. The sisters talked about their successes in other real estate projects. Some investors said they were impressed by the west side house and took it as confirmation of the sisters' business success.

[122] We have the testimony and affidavit evidence of three Rocky View investors, whose evidence was consistent. They say that either Wong or Soo told them that the sisters were transferring the Rocky View lands to investors at the original price that the sisters acquired the lands, meaning $10,271,300, and that the sisters would not make any profit from the investors but would take a 5% commission at the last stage of the joint ventures when the investors receive a profit. Some investors said they were motivated to invest in part because of that.

[123] Wong admitted at the hearing that she showed to prospective D&E Arctic investors a statement of adjustments for the transaction between LCco and 1300302 showing a purchase price of $10.27 million. She could not recall if she also showed it to 1300302 investors. Wong acknowledged that they told at least some investors that they were purchasing the Rocky View units at cost. She said this statement was true because the Rocky View nominees had made a contract to pay that price to LCco.

[124] Wong denied that she made any representations to investors about how long the rezoning or the project would take, or that the sisters would not profit from the land transfer from LCco to the Rocky View nominees.

[125] Several investors testified they were told that once they paid the subscription amount, they did not have to do anything further.

[126] One individual who invested in the 1300302 joint venture through a BC company indicated to the Commission on her investor questionnaire that 15 individuals co-invested in Rocky View using that BC company.

5. Joint venture documentation

[127] The following agreements documented the respective rights and interests of the Rocky View nominees and investors:

1. a bare trust agreement dated September 21, 2007 between 1300302 and investors in the 1300302 joint venture,

2. a substantially similar bare trust agreement dated September 21, 2007 between D&E Arctic and investors in the D&E Arctic joint venture, and

3. a joint venture agreement dated September 21, 2007 between 1300302 and D&E Arctic. The stated purpose of the joint venture was to hold, develop and market the Rocky View lands.

[128] Each bare trust agreement provides that the bare trustee could not deal with the lands other than in the ordinary course of business, without the express written instructions of the investors.

[129] Under the joint venture agreement, the Rocky View nominees retained the sisters to manage the project. All management decisions other than major decisions were to be made by the sisters. Major decisions are defined in the agreement to be decisions of the two joint venturers regarding the sale in whole or in part, mortgage of or application to develop the lands. Major decisions require the majority vote of joint venturers holding at least 55% of the total ownership interest. That means an unanimous vote of both Rocky View nominees is required. The sisters would be paid 5% of the net profit as compensation for their management services.

6. Unauthorized mortgage and use of mortgage proceeds

[130] The vendor-take-back mortgage came due in 2008. The balance then outstanding was approximately $1.7 million.

[131] Although the total investor proceeds for the joint venture units were sufficient to pay off the vendor-take-back mortgage, Wong testified that these proceeds were used to first pay LCco for the purchase of Rocky View lands. She said they had to do so because there was a contractual obligation to pay LCco.

[132] In September 2008, the vendor-take-back mortgage was repaid and discharged. The funds to repay the mortgage came from several Wong and Soo family companies.

[133] In February 2009, 1300302 and D&E Arctic obtained a $1.65 million mortgage loan from Farm Credit Canada.

[134] The sisters used the Farm Credit Canada mortgage proceeds to pay various Soo and Wong family members and family companies, but not the same ones that funded the repayment of the vendor-take-back mortgage.

[135] Wong testified that the payments of the Farm Credit Canada mortgage proceeds to Soo and Wong family members and family companies were not misappropriations because the total of their family loans to Rocky View (to repay the vendor-take-back mortgage and other Rocky View expenses), exceeded the $1.65 million Farm Credit Canada mortgage proceeds. Wong did not provide corroborating evidence. The amounts she did identify as family loans to Rocky View from bank account statements indicate that the amount advanced under the $1.65 million mortgage exceeded the outstanding loans owed to the Wong and Soo families by the Rocky View joint ventures at any one time.

[136] The Rocky View bare trust agreements prohibit any mortgaging of the Rocky View lands other than in the ordinary course of business, without the investors' prior written approval.

[137] The investor witnesses testified that the sisters did not seek or obtain approval from the investors. Three investor witnesses testified that they first learned of the Farm Credit Canada mortgage loan in 2010 from Rocky View's accountant. The accountant told these investors that the Farm Credit Canada loan was the sisters' "own matter" and the sisters "would deal with that themselves".

[138] When asked if she obtained investors' consent for the $1.65 million Farm Credit Canada mortgage, Wong testified that investors knew from the outset there was a $2.77 million vendor-take-back mortgage, and they should not have been surprised by the $1.65 million Farm Credit Canada mortgage since it was to repay family funds used to pay back the vendor-take-back mortgage.

[139] Wong testified that she did not specifically tell investors she would apply for the $1.65 million Farm Credit Canada mortgage but when investors called, she and Soo told investors that they were trying to get a mortgage from someone. She could not recall which investors she or Soo spoke with and there was no corroborating evidence.

[140] As at October 30, 2014, the Farm Credit Canada mortgage had an outstanding balance of $1.5 million.

7. Selling units while rezoning was speculative

[141] The sisters retained the engineering firm IBI to work on the Rocky View rezoning. Wong dealt with IBI but kept Soo apprised of her dealings with IBI.

[142] Periodically in 2007, IBI sent memos to Wong regarding the development of Rocky View. From late June 2007, four IBI memos referenced potential delays in the rezoning of Rocky View lands.

June 27 memo

IBI said there could be delays in the development of the Rocky View lands due to the lack of a definitive growth management strategy with the Municipal District of Rocky View. The memo states, in part:

> **Summary**
> In the absence of a definitive growth management strategy which is slated to be completed between late 2008 and 2009, there needs to be a consistent position with respect to ongoing growth within the MD.
>
> Consequently, we are seeking appropriate direction to assist developers in rationalizing both acquisition and development aspirations in the MD of Rocky View.

July 10 memo
IBI told Wong of potential delays due to land development issues currently being addressed by MDRV. The second last paragraph of the memo, which relates to Rocky View lands, states:

> … a functional studies for the Glenmore and Highway 791 corridors may cause significant changes to the context in which this subdivision is reviewed. Access may be required from alternate locations, and the timing of development may also require access to change in phases overtime. We suggest we give the MD some time to resolve some of the transportation issues, and that we check with them from time to time every 4 months or so to determine the status of their reviews.

December 12 memo
This memo states:

> Debbie,
> Until we have a clear direction from the MD of Rockview on possible planning entitlements, we would prefer not to meet with groups of investors where we are seen to be promoting development. Our job is to produce plans and to secure land use approvals. Currently, there is no clear planning framework in place in this area of the MD and water servicing has still not been determined. Consequently, at this time, land acquisition and development in the MD is purely speculative. We have stated this fact on a number of occasions. (Emphasis added)
>
> We are awaiting a response from the MD on the conceptual scheme applications we have recently submitted. Once these are in hand, we will be in a better position to advise on planning matters and the possible timing of future developments. While we value our current relationship with your organization, and will attempt to assist you in any way possible, we appreciate your consideration in this matter.

December 21 memo
Enclosing a December 17 letter from the Municipal District, IBI told Wong:

> Essentially, the M.D. wishes to put a hold on the application until the completion of a number of initiatives which will provide a framework for evaluation of the Conceptual Scheme. The M.D. has not provided a potential timeframe for this, only that they will endeavor to work collaboratively with IBI Group to integrate the evolving Municipal strategic initiatives.

[143] The lands remain undeveloped at the time of the hearing before us.

[144] The sisters continued to sell Rocky View units without informing investors of the content of these memos. Wong claimed that she told some investors but she could not name any one in particular. Investor witnesses denied they were told about any delays in rezoning.

[145] In any event, Wong testified it was not necessary to inform investors because she had told investors from the outset that this would be a very long term investment, that rezoning inevitably came with delays, and that she made no representation to investors about how long it would take to rezone these lands. In other words, she said the delays in these memos were consistent with what she had told investors before they invested.

[146] All but one distribution was fully paid for before the December 12 memo. One investor (JZ) made two payments for her subscription after the December 21 memo.

[147] We find that JZ was not informed of the potential delays in rezoning before she made her investment. JZ testified that she met with Soo after December 27 but Soo did not tell her about the development being delayed. JZ testified that she would not have paid the balance of her subscription price if she had been advised of the delay.

II. ANALYSIS AND FINDINGS

A. Law

1. Standard of proof

[148] The standard of proof is proof on a balance of probabilities. In *F.H. v. McDougall* 2008 SCC 53, the Supreme Court of Canada held (at paragraph 49):

> In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[149] The Court also held (at paragraph 46) that the evidence must be "sufficiently clear, convincing and cogent" to satisfy the balance of probabilities test.

[150] This is the standard that the Commission applies to allegations: see *David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group*, 2014 BCSECCOM 327, para. 35.

2. Prospectus requirements

[151] The relevant provisions of the Act are as follows:

a) Section 1(1) defines "security" to include "(b) a document evidencing title to, or an interest in, the capital, assets, property, profits, earnings or royalties of a person ...", and "(l) an investment contract".

b) Section 1(1) defines "trade" to include "(a) a disposition of a security for valuable consideration" and "(f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e)".

c) Section 61(1) says "Unless exempted under this Act, a person must not distribute a security unless…a preliminary prospectus and a prospectus respecting the security have been filed with the executive director" and the executive director has issued receipts for them.

d) Section 1(1) defines "distribution" as "a trade in a security of an issuer that has not been previously issued".

3. Exemptions from prospectus requirements

[152] National Instrument 45-106 *Prospectus and Registration Exemptions* sets out a number of specific prospectus exemptions.

[153] Section 2.3 removes the prospectus requirement where the purchaser purchases as principal and is an "accredited investor". This exemption does not apply if the purchaser is a company created or used solely to take advantage of this exemption.

[154] An accredited investor is a defined term. For an individual, that individual must satisfy one of a number of income or asset tests. For a company, that company must have net assets of at least $5 million as shown on its most recently prepared financial statements. Alternatively, all of the owners of interests in that company, with minor exceptions, must be persons that are accredited investors.

[155] Section 2.5 of NI 45-106 removes the prospectus requirement if the investor is a family member (from a specified list), close personal friend or close business associate of a director, executive officer or control person of the issuer.

[156] Section 2.10 of NI 45-106 removes the prospectus requirement if the purchaser is not an individual, purchases as principal and the security purchased has an acquisition cost to the purchaser of not less than $150,000 paid in cash at the time of the distribution. This exemption does not apply if the purchaser was created or used solely to take advantage of this exemption.

[157] Section 1.8 of the companion policy to NI 45-106 referring to the "accredited investor" and the "minimum amount invested" exemptions and the prohibition on syndicates, gives the following illustration:

> [Sections 2.3(5) and 2.10(2)] of NI 45-106 specifically prohibit syndications. A distribution or a trade of securities to a person that had no pre-existing purpose and is created or used solely to purchase or hold securities under exemptions (a "syndicate") may be considered a distribution of, or trade in, securities to the persons beneficially owning or controlling the syndicate.
>
> For example, a newly formed company with 15 shareholders is set up with the intention of purchasing $150 000 worth of securities under the minimum amount investment exemption. Each shareholder of the newly formed company contributes $10 000. In this situation the shareholders of the newly formed company are indirectly investing $10 000 when the exemption requires that they each invest $150 000. Consequently, both the newly formed company and its shareholders may need to comply with the requirements of the minimum amount investment exemption, or find an alternative exemption to rely on.
>
> Syndication related concerns should not ordinarily arise if the purchaser under the exemption is a corporation, syndicate, partnership or other form of entity that is pre-existing and has a bona fide purpose other than investing in the securities being sold. However, it is an inappropriate use of these exemptions to indirectly distribute or trade securities when the exemption is not available to directly distribute or trade securities to each person in the syndicate.

[158] Section 1.10 of the companion policy to NI 45-106 states that the person distributing securities is responsible for determining, given the facts available, whether an exemption is available.

[159] In *Solara*, the Commission confirmed that it is the responsibility of a person trading in securities to ensure that the trade complies with the Act. The Commission also said that a person relying on an exemption has the onus of proving that the exemption is available. The Commission said:

> 37 The determination of whether an exemption applies is a mixed question of law and fact. Many exemptions are not available unless certain facts exist, often known only to the investor. To rely on those facts to ensure the exemption is available, the issuer must have a reasonable belief the facts are true.

> 38 To form that reasonable belief, the issuer must have evidence. For example, if the issuer wishes to rely on the friends exemption, it will need representations from the investor about the nature of the relationship... If the issuer wishes to rely on the accredited investor exemption, it will need evidence about the details of the investor's financial circumstances that make the investor an "accredited investor".
>
> 39 Accordingly, a representation that merely asserts, with nothing else, that the investor is a close personal friend, or an accredited investor, is not sufficient to determine whether the exemption is available.

4. Liability under section 168.2(1)

[160] Section 168.2(1) of the Act states that if a corporate respondent contravenes a provision of the Act, an individual who is an employee, officer, director or agent of the company also contravenes the same provision of the Act if the individual "authorizes, permits or acquiesces in the contravention".

5. Fraud

[161] Section 57(b) says:

> A person must not, directly or indirectly, engage in or participate in conduct relating to securities . . . if the person knows, or reasonably should know, that the conduct . . . (b) perpetrates a fraud on any person.

[162] In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the British Columbia Court of Appeal cited the elements of fraud from *R. v. Theroux,* [1993] 2 SCR 5 (at page 20)

> ... the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

[163] The court also said, in *Theroux* (at page 19):

> The fact that the accused may have hoped the deprivation would not take place, or may have felt there was nothing wrong with what he or she was doing, provides no defence. ...
>
> The personal feeling of the accused about the morality or honesty of the act or its consequences is no more relevant to the analysis than is the accused's awareness that the particular acts undertaken constitute a criminal offence.

[164] In *R. v. Currier,* [1998] 2 SCR 318, the court stated (at paragraph 116), that the element of dishonesty in fraud "can include non-disclosure of important facts".

B. Analysis

1. Prospectus requirements – violations of section 61

[165] The executive director alleges that the respondents distributed securities in the form of Wheatland and Rocky View joint venture units to non-exempt investors without filing a prospectus, in contravention of section 61 of the Act.

[166] The respondents (other than Wheatland) argue, firstly, that the Wheatland and Rocky View joint venture units are not "securities".

[167] In the alternative, if we find that joint venture units are securities, they say that many of the alleged Rocky View illegal distributions are statute-barred. They also purport to rely on the "minimum amount invested" and "accredited investor" prospectus exemptions for some of the Wheatland and Rocky View distributions.

a) Are Wheatland and Rocky View joint venture units "securities"?

(1) The parties' positions

[168] The executive director argues that an investment in joint venture units is an "investment contract" and therefore a "security" under the Act.

[169] "Investment contract" is not defined in the Act. The leading case on its definition is *Pacific Coast Coin Exchange of Canada* v. *Ontario Securities Commission,* [1978] 2 S.C.R. 112; 1977 CanLII 37 (SCC). There, the Supreme Court held that an investment contract is:

> ... an investment of money in a common enterprise with profits to come solely from the efforts of others.

In doing so, the court adopted the reasoning from *S.E.C.* v. *W.J. Howey Co.*, (1946), 328 U.S. 293 (U.S.S.C.).

> In *Pacific Coast Coin Exchange*, the Court recognized that "common enterprise" means "one in which the fortunes of the investor are interwoven with and dependent upon the efforts of and success of those seeking the investment or of third parties", and "solely" means "whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise."

[170] The *Howey* test is broken into three elements:

1. Investment of money and intention to earn a profit,
2. Common enterprise, and
3. Expectation of profit produced by the effort of others.

[171] The only element disputed by the respondents is the third element. The respondents say that the efforts of the respondents are not the "undeniably significant" efforts in the Wheatland and Rocky View joint ventures.

[172] The respondents referred us to the decision of the Fifth Circuit Court of the United States in *Williamson v. Tucker,* 645 F. 2d. 404 (5th Cir. 1981), where that court developed another three-prong test when the investment is structured as a joint venture. The court held (at page 424):

> A general partnership or joint venture interest can be designated a security if the investor can establish, for example, that:
> (a) An agreement among the parties leaves so little power in the hands of the partner or venture that the arrangement in fact distributes power as would a limited partnership; or
> (b) The partner or venture is so inexperienced and unknowledgeable in business affairs that he is incapable of intelligently exercising his partnership or venture powers; or
> (c) The partner or venture is so dependent on some unique entrepreneurial or managerial ability of the promoter or manager that he cannot replace the manager of the enterprise or otherwise exercise meaningful partnership or venture powers.

[173] The respondents say that applying the *Williamson* test, the third prong of the *Howey* test is not satisfied on the facts of the Wheatland and Rocky View bare trust and joint venture agreements.

[174] The executive director says that we must focus on the economic reality and on substance over form. He says the respondents' reasoning is based on form over substance and ignores the totality of the evidence.

[175] To that, the respondents argue we need to respect the different natures of legal structures, and that *Pacific Coast Coin Exchange* does not dislodge the legal framework that is created by the legal documentations.

(2) Our analysis

[176] In *Pacific Coast Coin Exchange*, the court had this to say about interpreting the meaning and scope of the definition of "security" in the Ontario Securities Act, at page 127:

> Such remedial legislation must be construed broadly, and it must be read in the context of the economic realities to which it is addressed. Substance, not form, is the governing factor.

[177] The following comments (at page 132) from the court are instructive:

> At the invitation of the parties, I have examined the facts in the sole light of the *Howey* and *Hawaii* tests. Like the Divisional Court, however, I would be inclined to take a broader approach. It is clearly legislative policy to replace the harshness of *caveat emptor* in security related transactions and courts should seek to attain that goal even if tests carefully formulated in prior cases prove ineffective and must continually be broadened in scope. It is the policy and not the subsequently formulated judicial test that is decisive.

[178] The executive director cites *(Re) Land Development Co.*, 2002 LNABASC2008, where the Alberta Securities Commission adopted the same approach:

> In searching for the meaning and scope of the word "security" in the Act, form should be disregarded for the substance and the emphasis should be on economic reality.

(3) The form over substance argument

[179] The respondents say that the investors retained significant legal powers under the bare trust and joint venture agreements, such that their expectation of profits was not dependent on the undeniably significant efforts of the respondents.

[180] In the circumstances of this case, we agree with the executive director that focusing on the rights set out in these agreements, over economic reality and the investors' understanding of their rights and entitlement, would give priority to form over substance.

[181] The reality is that there was no serious dialogue or deliberation among the parties on the legal structure of their investment and the allocation of rights and roles between the respondents and the investors as set out in the documentation. Wong could not adequately explain why the respondents used a bare trust. The sisters used templates for the bare trust and joint venture agreements but Wong could not recall specifically where they came from. The sisters inserted the pertinent investor and land information into the templates without changes. Investors signed these agreements, in many cases without any meaningful opportunity to review or understand them prior to signature.

[182] We find the discussions between the sisters and the investors during the capital raising efforts to be more reflective of economic reality and the parties' understanding of their rights and efforts than the words in the legal documents, and those discussions support our finding of the economic reality set out in the paragraphs that follow.

[183] Some of these investors were very unsophisticated while some had general business and real estate experience, but none stood out as particularly powerful investors. They expected to play no part in the management or development of the lands other than following its progress. Their expectation was that once they paid their subscription amounts, they would wait passively for the respondents to develop the lands and collect their share of the profits.

[184] Some investor witnesses testified that they had specific conversations with the respondents that they need not do anything or pay anything once they paid their subscription amounts.

[185] We find that the economic reality is that people invested in the Wheatland and Rocky View joint ventures because they were led to expect profits from the efforts of the respondents (in particular, the sisters) and the people that they would hire on behalf of the joint ventures such as IBI.

[186] The respondents asked us to apply the *Williamson* test. That decision is not binding on us, it is not the law in Canada and we do not find it necessary to adopt it.

[187] Accordingly, for the reasons indicated, we conclude that investments in the Wheatland and Rocky View joint venture units are "investment contracts" and therefore "securities" within the meaning of the Act.

b) Wheatland distributions - availability of exemptions

[188] Given our finding that Wheatland joint venture units are securities, Wong and Soo do not dispute that Wheatland had sold the units to investors, that the sales were distributions under the Act, and that no prospectus was filed in connection with the distributions. The only issue is whether exemptions from the prospectus requirements were available for all the distributions.

[189] The executive director alleges that distributions totalling approximately $2,000,000 to 25 investors did not qualify for exemptions.

[190] As noted earlier, Wheatland conceded that it made approximately $2,000,000 in illegal distributions to 25 investors, in contravention of section 61 of the Act.

[191] Wong and Soo do not dispute the executive director's contention that the investments did not quality for exemptions, except for distributions to two corporate investors.

[192] It is well established that the person who trades in securities has the onus of proving that an exemption is available. That person must demonstrate a reasonable basis for believing that an exemption is available. See: *Solara.*

[193] In this instance, Wong testified that she and Soo did not even know that the Act applied to the Wheatland distributions. There is no evidence that they, or Wheatland, took any effort or conducted any due diligence at the time of the distributions to comply with the prospectus requirements or verify that prospectus exemptions were available. On the contrary, there is evidence that the respondents encouraged smaller investors to form syndicates to make their investments.

[194] With respect to the two distributions that the respondents say qualify for exemptions:

1. One was to a corporate investor who purchased one unit for $85,000. The respondents relied on the "accredited investor" exemption.

   Although the executive director conceded that the principal in this corporate investor was an accredited investor, we have no evidence that the corporate investor itself was an "accredited investor" as defined in NI 45-106. We have no evidence as to the net assets of this corporate investor or whether the accredited investor was the only owner of this company.

   Accordingly, the respondents have not met the burden of establishing on a balance of probabilities that an exemption is available for the distribution to this corporate investor.

2. The other was to a corporate investor who purchased 4.5 joint venture units for $382,500. The respondents relied on the "minimum amount invested" exemption.

   Wong testified that all of the respondents' dealings with this corporate investor at the time of distribution indicated that only two individuals were involved in this company. Wong said she did not discover there were more individuals in this company until two years later.

> Evidence provided by the executive director indicates that there were several more individuals involved in this investor company and each had invested less than $150,000.
>
> We do not have evidence that this distribution met the requirements for the minimum amount invested exemption. Specifically, we have no evidence to indicate that the $382,500 corporate investor invested as principal. We have no evidence that it was not created or used for the purpose of taking advantage of the minimum amount invested exemption. Therefore, the respondents have not met the burden of establishing on a balance of probabilities that an exemption is available for the distribution to this corporate investor.

[195] We find that Wheatland distributed securities and raised $2,000,000 from 25 investors in contravention of section 61.

c) Wheatland distributions - direct contraventions of section 61 by Wong and Soo

[196] Wong and Soo were in charge of Wheatland and its capital-raising activities. They set up, promoted and brought in the Wheatland investments. Both Wong and Soo introduced investors to Wheatland, set the investment terms, arranged to have prepared the joint venture agreement, signed investor forms and accepted investments by investors, received and handled the investors' subscription payments. Each kept the other informed on key events relating to joint venture sales and land development. We find they were equally involved and responsible for Wheatland's capital raising efforts and they acted jointly in these activities.

[197] By doing so, Wong and Soo each acted in furtherance of all the Wheatland distributions.

[198] Therefore, we find that Wong and Soo also breached section 61 with respect to distributions of Wheatland securities totalling $2,000,000 to 25 investors.

d) Wheatland distributions - contraventions attributable to the sisters under section 168.2(1)

[199] The executive director alleges that, as directors and officers of Wheatland, each of Wong and Soo is indirectly liable for the breaches of section 61 by Wheatland, under section 168.2(1).

[200] As we have found them to be directly liable under section 61, we do not need to make further findings under section 168.2(1) with respect to these distributions. Had we not been satisfied that the sisters directly contravened section 61 with respect to all the Wheatland distributions, we would have found that they, as directors and officers of Wheatland, authorized, permitted and acquiesced in Wheatland's contraventions of section 61 and are each liable under section 168.2(1).

e) Rocky View illegal distributions

[201] The executive director alleges that distributions totalling $2,785,000 to 44 investors in 1300302 and $1,105,000 to 19 investors in D&E Arctic did not qualify for exemptions.

[202] Giving our finding that the 1300302 and D&E Arctic joint venture units (collectively, the Rocky View joint venture units) are securities, the respondents do not dispute that they had sold those units to investors, that the sales were distributions under the Act, or that no prospectus was filed in connection with the distributions.

[203] However, the respondents say some of the illegal distributions are statute-barred pursuant to section 159. The respondents also say that prospectus exemptions were available for some of the alleged illegal distributions.

(1) Are allegations of Rocky View illegal distributions statute-barred?

[204] Section 159 of the Act states that "proceedings under this Act ... must not be commenced more than six years *after the date of the events that give rise to the proceedings*." (emphasis added)

[205] The executive director first made allegations with respect to the Rocky View distributions in the Amended Notice of Hearing issued September 25, 2013. That was the date on which the proceedings relating to Rocky View distributions began. Six years before that date would be September 25, 2007 (the limitation date).

[206] We have already found that all of the D&E Arctic distributions were made after September 25, 2007 and clearly are not statute-barred. We also found that only one 1300302 distribution took place within the limitation period, on September 27, 2007.

[207] Therefore, the only issue before us is whether the 1300302 distributions made before September 25, 2007 are statute-barred.

Parties' positions

[208] The respondents say that all illegal distributions that took place before the limitation date are statute-barred. They cite the dissent in *Re Wireless Wizard*, 2015 BCSECCOM 100.

[209] The executive director says these distributions are not statute-barred, on the basis that they were a series of separate distributions that constituted a continuing course of conduct which extended the limitation period. He relies on the majority decision in *Re Wireless Wizard*.

[210] In *Re Wireless Wizard*, the panel applied the common law concept of "continuing course of conduct", also known as "continuous contraventions", to interpret section 159. The majority of the panel set out its views on when a series of separate distributions could constitute a continuing course of conduct, as follows:

> 70. We are of the view that a series of separate distributions, whether legal and/or illegal, could constitute a continuing course of conduct that would span a limitation period if the evidence established that there were continuing elements of the offence within the limitation period. For instance, evidence of acts in furtherance of the distributions throughout the period in issue, such as advertisements of the offering, marketing

> presentations to potential investors or other ongoing efforts to solicit investors could form the basis of a finding of a continuing course of conduct that would include distributions that took place outside the limitation period.

[211] In his dissent, the Vice Chair concluded that it is difficult to conceive how contraventions of section 61(1) could be alleged as continuing contraventions. His reasoning is summarized in paragraph 98 of the decision:

> The purpose of section 61(1) is to ensure that investors receive a prospectus at the time of the purchase of securities in order to assist them in making an informed investment decision. It is critical that the information be provided at the time of the purchase. The breach is the failure to provide an investor with information, before he or she invests. A respondent can do nothing after a contravention of section 61(1) to rectify the failure to provide the require prospectus at the time of the trade. It is a past event. Failure to provide a prospectus at the time of a trade is, in the words of *Sadolims*, a "single, discrete event". It does not give rise to a continuous breach of the law.

"Continuing course of conduct" concept

[212] The "continuing course of conduct" concept originated in common law, and has been applied to interpret limitation periods in a securities regulatory regime. As explained by the British Columbia Supreme Court in *British Columbia (Securities Commission) v. Bapty* 2006 BCSC 638:

> [36] … A "continuing contravention", a "continuing violation", a "continuing offence", or a "continuing course of conduct" results in the commission of such an offence not being complete until the conduct has run its course. These terms are most often used to describe a succession of separate illegal acts of the same character which, in their entirety, make up a single, continuing transaction …Where there is a finding that there is a continuing contravention, the limitation period does not begin until the entire "transaction" is complete and discrete activities that occur outside of the limitation period are not statute-barred if they form part of the same transaction as events falling within the limitation period: *Re Dennis*, 2005 BCSECCOM 65 at paras. 23 and 30.

[213] In our view, that concept is a helpful tool for the analysis in cases such as fraud where the nature of the contravention often involves conduct that continues over a period of time and easily fits within the common law concept. The Commission had consistently applied the concept of "continuing course of conduct" to interpret section 159, in cases involving fraud or misrepresentations. See: *Re Dennis* 2005 BCSECCOM 65, *Re Maudsley* 2005 BCSECCOM 463, *Re Barker* 2005 BCSECCOM 146, and *Re Nelson* 2016 BCSECCOM 50.

[214] However, starting with *Saafnet Canada Inc.* 2013 BCSECCOM 442, the Commission applied the concept to interpret section 159 in an illegal distribution case, and held that a series of contraventions of section 61(1) in connection with ongoing financing could well constitute a "continuing contravention" and a "continuing course of conduct".

[215] The majority decision in *Re Wireless Wizard* followed *Saafnet Canada Inc.*

[216] As illustrated by the different views of the panel in *Wireless Wizard*, in cases of illegal distributions, we find the "continuing course of conduct" concept a less helpful tool for the analysis, as each section 61(1) contravention is assessed on a trade-by-trade basis and does not easily fit within the common law concept. In our view, assessing the contraventions on a trade-by-trade basis for the purpose of section 159, as the dissent did in *Wireless Wizard*, is overly limiting and does not adequately reflect the economic reality of capital financing and advance the objective of investor protection.

[217] In illegal distribution cases, we find it more helpful to focus on interpreting section 159, and specifically the phrase "events that give rise to the proceedings", by applying the general principles of statutory interpretation, in the specific context of our securities regulatory regime and with regard to the purpose of limitation periods.

Statutory interpretation and interpretation of limitation periods

[218] Section 8 of the *Interpretation Act*, RSBC 1996, c. 238 states:

> Enactment remedial
>
> 8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[219] Regarding the principles of statutory interpretation, the Supreme Court of Canada has stated the following:

> It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see 65302 British Columbia Ltd. v. Canada, 1999 CanLII 639 (SCC), [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in

> all cases the court must seek to read the provisions of an Act as a harmonious whole.
>
> *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, ¶10

[220] Regarding interpretation of limitation periods specifically, the Supreme Court of Canada stated, in *McLean* [2013] SCC 67:

> 68. While it is true that the application of s. 159 to the secondary proceeding provisions such as s. 161(6)(d) will have the effect, as a practical matter, of extending the period under which the cloud of potential regulatory action hangs over a person, that, of itself, is not offensive to the legislative purpose of limitation provisions. Limitations periods are always "driven by specific policy choices of the legislatures" (*Manitoba Metis Federation Inc.* v. *Canada (Attorney General)*, 2013 SCC 14, [2013] 1 S.C.R. 623, at para. 230, per Rothstein J., dissenting), as they attempt to "balance the interests of both sides" (*Murphy* v. *Welsh*, [1993] 2 S.C.R. 1069, at p. 1080).

Purpose of limitation periods

[221] In *McLean*, the Supreme Court of Canada said the following regarding limitation periods:

> 63. ..... Limitations periods exist for good reasons, two of which deserve mention here. First, "[t]here comes a time ... when a potential defendant should be secure in his reasonable expectation that he will not be held to account for ancient obligations" (*M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6, at p. 29). Second, at some point "[i]t is better that the negligent [plaintiff], who has omitted to assert his right within the prescribed period, should lose his right, than that an opening should be given to interminable litigation" (*Cholmondeley v. Clinton* (1820), 2 Jac. & W. 1, 37 E.R. 527, at p. 577; see also *M. (K.)*, at p. 30).

[222] In *Re Dennis*, the Commission stated (in paragraph 41) that:

> The purpose of the limitation period is to provide some certainty and finality to respondents while nevertheless allowing the regulator to pursue a course of conduct which may extend over a considerable period of time. That purpose is not achieved (and certainty and finality is not prejudiced) by cutting a continuing course of conduct in two so that events falling before the six year period are not caught.

Purpose of securities legislation and section 61 of the Act

[223] The Securities Act is a regulatory statute with a public interest mandate. Its over-arching purpose is to ensure investor protection, capital market efficiency and public confidence in the system. See: *Fairtide Capital Corp. (Re)* 2002 BCSECCOM 993 (paragraph 17),

referring to: *Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at 589; *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3 at 26; *Global Securities Corp. v. British Columbia (Securities Commission)*, [2000] 1 S.C.R. 494.

[224] The Commission has consistently held that section 61 is one of the Act's foundational requirements for protecting investors and preserving the integrity of the capital markets. It requires those who wish to distribute securities to file a prospectus with the Commission. This is intended to ensure that investors receive the information necessary to make an informed investment decision. Hence, contraventions of section 61 are inherently serious. See: *Re HRG Healthcare* 2016 BCSECCOM 5 (paragraph 14).

Interpretation and analysis

[225] Section 159 of the Act states:

> Limitation period
> 159 Proceedings under this Act, other than an action referred to in section 140, must not be commenced more than 6 years after the date of the events that give rise to the proceedings.

[226] We interpret "proceedings", in the context of enforcement proceedings, to mean a matter brought in a notice of hearing (or amended or further amended notice of hearing). Proceedings are commenced when the executive director issues that document.

[227] The next issue is: what are the events that give rise to a proceeding?

[228] The ordinary meaning of the word "event" is very broad. The Canadian Oxford English Dictionary defines "event" to include "a thing that happens or takes place, especially one of importance". Nothing in the ordinary meaning or the Oxford definition imports any element of illegality in the "thing that happens or takes place".

[229] In our view, use of the broad term "events" in section 159 shows a legislative intent that the limitation period is not restricted to specific acts or conduct. In contrast, section 140(a) and (b)(ii) of the Act refer to a limitation period relating to the date of a specific "transaction".

[230] The term "events" would include a series of events, and the phrase "6 years after the date of the events" means the date when the events end.

[231] Although it was in the context of interpreting the scope and meaning of the term "security" in the *Ontario Securities Act*, the statement of the Supreme Court in *Pacific Coast Coin Exchange* quoted in paragraph 176 above applies equally here:

> Such remedial legislation must be construed broadly, and it must be read in the context of economic reality to which it is addressed.

[232] In the capital markets, a common event is the raising of capital through a course of financing over a period of time. Issuers typically have a targeted amount of capital they plan to raise within a specified time, and specific purpose(s) for which the capital will be used. They typically engage in promotional and sales activities continuously to raise the capital. They consider the entire financing as a single activity, and each distribution of security is one step taken within that activity to achieve their capital raising objective.

[233] Reflecting that reality, we conclude that a financing may be an "event" for the purpose of section 159, and that the distributions made in the course of the financing are part of a series of events that constitute the financing. Because the term "event" does not connote any element of illegality, we conclude that the distributions that make up "the event" can include both legal and illegal distributions. This means it is possible to extend the limitation period to catch illegal distributions preceding the limitation date even if all the distributions after the limitation date were compliant with section 61(1), provided that the distributions were all part of the same course of financing.

[234] This interpretation is "fair, large and liberal", as required by section 8 of the *Interpretation Act*, and best ensures the attainment of the objects of the *Securities Act*, which are investor protection, capital market efficiency and public confidence in the system. It holds issuers accountable for all misconduct during the entirety of the course of a financing, consistent with the market reality of how financing is typically conducted.

[235] This interpretation is also consistent with the Commission's past decisions, including specifically, *Saafnet Canada Inc.* and *Wireless Wizard.*

Application to the facts

[236] Turning to the facts of this case, what were the events that gave rise to the proceeding on the alleged illegal distributions of 1300302 units?

[237] To answer that question, we start with the Further Amended Notice of Hearing where the allegations were first made. Paragraphs 23, 27 and 28 of the Further Amended Notice of Hearing described the allegations:

> 23. Between June 2007 and January 2008, Wong and Soo promoted and sold shares, primarily to B.C. residents, in the Rocky View Land. These shares entitled investors to an ownership interest in the Rocky View Land based on one share per acre of land.
>
> 27. At least 76 individuals and corporate entities purchased shares in the Rocky View Land at $65,000 per share. For approximately 63 investors who purchased 58 shares for $3.9 million, there was no exemption to the prospectus requirement in the Act.

28. By distributing securities to non-exempt investors without filing a prospectus, Wong, Soo, 1300302 Alberta, and D&E Arctic contravened section 61 of the Act.

[238] The evidence established that the 1300302 distributions were made between June 2007 and September 27, 2007. The September 27 distribution was in contravention of section 61 (see paragraph 244 below). All the 1300302 distributions were made in the course of one continuous financing over a number of months to raise money for one purpose.

[239] Taken together, we conclude that the events that gave rise to the proceeding with respect to the 1300302 distributions were the sale of 1300302 units in the course of a financing to raise capital for the 1300302 joint venture, without filing a prospectus, between June 2007 and September 27, 2007, and the events ended on the date of the last distribution in the financing, September 27, 2007.

[240] Certainty and finality to the respondents are not prejudiced in this case. The financing by 1300302 took place over a short time period of several months. 1300302, Wong and Soo continuously promoted and sold 1300302 joint venture units within that period. The last illegal distribution was within the limitation period. All the other illegal distributions took place not more than four months before the last illegal distribution. They are not "ancient obligations" relative to the last illegal distribution, and the respondents should not have any reasonable expectation that they would not be held accountable for the earlier distributions.

[241] In our view, this interpretation is consistent with the ordinary meaning of the phrase "events that give rise to the proceeding", and balances the interests of both sides, as noted in *McLean, supra*. It holds the respondents accountable for all misconduct during the entire financing at a time before the respondents should have any reasonable expectation of finality. By doing so, we achieve the purpose of investor protection without prejudice to the purpose of limitation periods.

[242] On that basis, a proceeding with respect to all the 1300302 illegal distributions in the financing can be brought until September 27, 2013. Since the proceeding commenced on September 25, 2013, the date of the Further Amended Notice of Hearing, we find that the 1300302 distributions made before September 27, 2007 are not statute-barred.

(2) Availability of exemptions for Rocky View distributions

[243] The respondents do not dispute the executive director's contention that the Rocky View investments did not quality for exemptions, except for the following distributions to five corporate investors and two individual investors, totalling $1,170,000:

1. With respect to two corporate investors in 1300302 joint venture units who each invested $65,000, Wong testified that one of them is owned by an individual that the executive director accepts was an accredited investor, and the other is owned by that individual's wife. Based on the investor questionnaire completed by the husband, we are satisfied that both he and his wife were accredited investors. But we have no

evidence that their companies, who were the actual investors in the joint venture, met the test for being "accredited investors" as defined in NI 45-106. Specifically, we have no evidence that either company had a net worth of at least $5 million or did not have other owners who were not accredited investors.

For that reason, we are not satisfied that an exemption applies to either distribution.

2. With respect to a third corporate investor in 1300302 joint venture units totalling $520,000, the respondents relied on the "minimum amount invested" exemption. Wong said all of her dealings with this investor at the time of distribution indicated that only two individuals were involved in this company. Wong said she did not know there were more individuals in this company.

   Evidence entered by the executive director indicates that there were several more individuals involved in this investor company and each had invested less than $150,000.

   We therefore find that this exemption was not available for this distribution.

3. With respect to two other corporate investors in 1300302 joint venture units, the respondents say an exemption is available as they each invested more than $150,000. Each corporate investor signed one subscription form for the entire 2.5 units and each payment it made for the subscription covered all 2.5 units.

   Similar to Wheatland, we have evidence that some investors grouped together in a corporation to invest in Rocky View. We do not have any evidence that either corporate investor in question invested as principal and was not created or used for the purpose of taking advantage of the "minimum amount invested" exemption.

   The respondents have not met the burden of establishing, on a balance of probabilities, that the minimum amount invested exemption was available for the distributions to the two corporate investors described in this subparagraph. We therefore find that this exemption was not available for those distributions.

4. Finally, Wong said that two individual purchasers of D&E Arctic joint venture units had initially agreed to acquire sufficient units exceeding $150,000 each, but ultimately invested amounts that fell below that threshold. The respondents argue that these investors' failure to subscribe for the initial agreed amounts should not be visited upon the respondents.

   It is the issuer's responsibility to ensure that exemptions are available for the actual distribution made to an investor. The "minimum amount invested" exemption is clearly worded, and the relevant time is the time of the distribution.

If an investor changes their mind and actually invests at a level below the "minimum amount" threshold, "the acquisition paid in cash at the time of distribution" is no longer $150,000 or more, and the issuer must again comply with prospectus requirements or find another available exemption.

To hold otherwise could offer an easy way to avoid the prospectus requirements and compromise the protection of investors and the market that is the purpose of those requirements.

We therefore find that this exemption was not available for this distribution.

[244] We find that 1300302 distributed securities and raised $2,785,000 from 44 investors in contravention of section 61. We also find that D&E Arctic distributed securities and raised $1,105,000 from 19 investors in contravention of section 61.

f) Rocky View distributions - direct contraventions of section 61 by Wong and Soo

[245] Wong and Soo were the ones who set up, promoted and brought in the Rocky View investments. Wong and Soo both found and introduced investors to Rocky View, and promoted and negotiated the terms of the investment with investors. They were equally involved and responsible for Rocky View's capital raising efforts and they acted jointly in these activities.

[246] For instance, an investor in 1300302 testified that the two sisters were present and explained to her the Rocky View investment at Soo's Vancouver home. An investor in D&E Arctic testified that it was primarily Soo who spoke about the Rocky View investment during her visit to Soo's family home.

[247] In doing so, Wong and Soo each acted in furtherance of all the 1300302 distributions and D&E Arctic distributions.

[248] Therefore, we find that Wong and Soo also breached section 61 with respect to distributions of 1300302 and D&E Arctic securities totalling $3,890,000 to 63 investors.

g) Rocky View distributions - contraventions attributable to the sisters under section 168.2(1)

[249] The executive director alleges that Wong, as a director and officer of D&E Arctic, is liable under section 168.2(1) for the contraventions of section 61 by D&E Arctic. Similarly, he alleges that Soo, as a director and officer of 1300302, is liable under section 168.2(1) for the contraventions of section 61 by 1300302.

[250] As we have found Wong and Soo to be directly liable under section 61 with respect to all the Rocky View distributions, we do not need to make further findings under section 168.2(1) with respect to these distributions.

[251] Had we not been satisfied that the sisters directly contravened section 61 with respect to all the Rocky View distributions, we would have made findings under section 168.2(1) against Wong and Soo as requested by the executive director.

C. Fraud – general findings

[252] We are persuaded that Wong genuinely believed that there was nothing wrong with the respondents' actions even when they were objectively dishonest. But, as stated in *Theroux*, that is not a defence to fraud.

[253] Based on Wong's testimony and admission in this regard, we are satisfied that each sister informed the other of key events relating to the purchase of the Wheatland and Rocky View lands, the financing and development of these lands, the sale and distributions of joint venture units, and payments involving the Wong and Soo families. We find that the sisters acted jointly in the activities that are the subject of the Further Amended Notice of Hearing and we can attribute the knowledge that one sister had to the other sister.

[254] We find that Wong and Soo routinely treated family money as a single pool that could be used for any family purpose, without any regard to the fact that the family companies had different businesses or beneficial owners. They moved money around according to who needed it at the time. They did the same with the Wheatland and Rocky View joint venture funds and assets. This is best illustrated by the following exchange between counsel for the executive director and Wong during her cross examination:

> Q: There was a company that was looking for funding for you in the fall of 2008, right?
> A: I don't remember the dates, because there was quite a few financing applications.
>
> Q: Right. You had quite a few financing applications because you needed money?
> A: Of course, for the development of Wheatland, it required more than $10 million.
>
> Q: But you just paid out 4 times 440,000 to the four companies owned by your children.
> A: Yes. Because sometimes when our companies needed money, Bonnie and I can guarantee it. However, after we got involved in the Wheatland project, we lost the power to guarantee.
>
> Q: And that was -- was that because, Mrs. Wong, that you signed a personal guarantee with respect to Wheatland financing?
> A: Yes.
>
> Q: And which financing was that?
> A: We guarantee every financing.

Q: And because of those guarantees, it's your evidence that you couldn't obtain financings on other projects?
A: Correct. It's difficult.

Q: Difficult. And so, in other words, because you were unable to obtain financing on other projects, you thought it was okay to just use Wheatland's money to sort of substitute for that?
A: I used Wheatland's money. However, when Wheatland needed help, I also helped Wheatland.

Q: Is it the case, Mrs. Wong, where it's like I asked you yesterday, where there is a number of companies in the Wong and Soo families --
A: Yes.

Q: -- and money is moved from one company to the other depending on who needs the money and who has money?
A: Yes.

Q: Is it sort of like one big pot of money that gets moved around from here to there, depending on who needs it?
A: When money is needed urgently, we will try our best to help.

Q: And so money is just sort of moved around?
A: What do you mean "moved around"?

Q: Well, for example, with the four children, they needed money and so Wheatland just gave them the $440,000 each?
A: No. Not give money to them, they requested to back out. Not gave money to them.

Q: Well, they requested to back out, but their shares -- their names remain on the shares.
A: It was my mistake. So when the calculation was being done, I'm not sure what to do, so I said that, whenever they have money, they have to return it.

[*Commission hearing transcript July 17, 2015,* pp. 94-96]

D. Fraud – respondents' general arguments

[255] The respondents made several arguments that apply generally to all the allegations of fraud respecting Wheatland and Rocky View. We address them first before dealing with the specific fraud allegations.

1. Allegation of a single fraud versus multiple frauds

[256] The respondents argue that, with respect to Wheatland, the executive director has only alleged one fraud allegation consisting of three separate parts. Therefore, to prove this allegation, the executive director is required to prove all three parts. If the panel finds that any one part is not proven, then the entire fraud allegation respecting Wheatland activities must fail.

[257] Similarly, they argue that the executive director has only alleged one fraud allegation consisting of four separate parts with respect to Rocky View.

[258] The sisters rely on paragraphs 18 and 42 of the Further Amended Notice of Hearing, which state:

> *Summary of Wheatland fraud allegations*
> 18. By:
> - Misappropriating funds from the Joint Venture,
> - Transferring Joint Venture shares without consideration to the benefit of their adult children, and
> - Inflating the purchase price and lying about this to investors

> Wong and Soo perpetrated a fraud contrary to section 57(b) of the Act.

> *Summary of Ricky View Land fraud allegations*
> 42. By:
> - Inflating the purchase price and lying about this fact to investors,
> - Obtaining an unauthorized mortgage contrary to the Bare Trust,
> - Using the mortgage proceeds for purposes other than the development of the Rocky View Lands, and
> - Withholding information about potential delays in the development from investors.

> Wong and Soo perpetrated a fraud contrary to section 57(b) of the Act.

[259] In reply, the executive director argues that a notice of hearing is not a criminal indictment or a civil statement of claim, and the strict technical rules of drafting that apply to those pleadings do not apply in an administrative law context. He says the purpose of the notice of hearing is to give notice to the respondents of the nature of the allegations against them; it does not contain "elements" of an office.

[260] The executive director cites three cases in support of these submissions: *Re YBM Magnex International Inc.*, 2000 LNONOSC 830; *Re Ironside*, 2003 LNABASC 685; and *Histed v. Law Society of Manitoba*, 2006 MBCA 89.

[261] We do not find these cases on point. They deal with the issue of particulars, and what degree of particularity must be provided a respondent. That is not the issue before us.

[262] However, we do agree with the principles set out in these cases, that a notice of hearing should not be treated as a pleading in a criminal or civil proceeding, and is not required to follow strict or technical rules of drafting.

[263] The test a notice of hearing must meet is whether it provides sufficient notice to respondents to know the case they have to meet. This Commission has stated that principle in previous cases. In *Blackmont Capital Inc.*, 2011 BCSECCOM 490, the Commission stated (at paragraph 24):

> A notice of hearing is the foundation of hearings before … this Commission. It identifies the alleged misconduct that the respondent has to meet. It establishes the issues to be determined at the hearing. It follows that a panel does not have jurisdiction to determine matters not alleged in the notice of hearing. (Particulars need not be in the notice of hearing, but must relate to an allegation that is in the notice.)

[264] In this case, the respondents argue for an overly strict or technical interpretation of the Further Amended Notice of Hearing. Although the Further Notice Amended Notice of Hearing should have been drafted more clearly, we find the respondents received sufficient notice of the case they had to meet.

[265] First, it is clear from their headings that paragraphs 18 and 42 are summaries of the fraud allegations set out in the Further Amended Notice of Hearing. Details of the individual fraud allegations are set out, under corresponding headings, in paragraphs 9 to 17 in the case of Wheatland, and paragraphs 31 to 41 in the case of Rocky View.

[266] Second, in their opening statements, counsels for the executive director made it clear that they were alleging multiple frauds, not two frauds consisting of multiple parts.

[267] Regarding the allegations relating to Wheatland, in his opening statement counsel stated the following:

> The executive director alleges that by concealing the fact that they transferred these shares for no consideration, Ms. Wong and Soo perpetrated a fraud on investors contrary to section 57(b) of the Act.
>
> By using joint venture funds for their own business endeavors, the executive director alleges that Ms. Wong and Soo perpetrated a fraud on investors in the Wheatland project.
>
> When they were promoting the joint venture to investors, Ms. Wong and Soo made several representations to investors about the cost of the land. They told investors that they calculated the price of a share to investors, $85,000, based on the cost to them, $65,000, plus an additional 23 or so thousand dollars per share for the development.

> The executive director says this was a lie, that Ms. Wong and Soo both knew that it was a lie and the actual consideration for the land was $9.1 million. As a result, they sold shares in the Wheatland project to investors at an inflated price. The executive director alleges *the final count of fraud* against Ms. Wong and Ms. Soo based on these facts. (Emphasis added)
>
> [*Commission hearing transcript February 23, 2015*, pp. 17 and 18]

[268] Regarding the fraud allegations relating to Rocky View, in his opening statement counsel stated the following:

> In addition to that, there's an -- there are allegations of fraud. First of all, there's the allegation of fraud in relation to an inflation of the purchase price of the Rocky View land...
>
> The executive director says that by inflating the purchase price and lying about this fact to investors, the respondents perpetrated fraud contrary to section 57(b) of the Act.
>
> Moving now to the unauthorized mortgage. As mentioned above, the bare trust agreements required that Mrs. Wong and Mrs. Soo obtain written approval of the beneficial owners prior to mortgaging the property.
>
> The executive director alleges that by obtaining an unauthorized mortgage contrary to the bare trust agreements and by using the mortgage proceeds for purposes other than the development of the Rocky View land, they perpetrated fraud contrary to section 57(b).
>
> Further, with respect to the actual development of the land, when promoting the investment, Mrs. Wong and Mrs. Soo withheld key information from investors about potential delays in the development of the Rocky View land.
>
> We say that by withholding information about potential delays from investors, Mrs. Wong and Mrs. Soo perpetrated a fraud contrary to section 57(b).
>
> [*Commission hearing transcript February 23, 2015*, pp. 9, 11-13]

[269] Immediately following the executive director's opening statement, the respondents did not raise an issue with the fraud allegations in the Further Amended Notice of Hearing. Notably, they have not alleged any prejudice flowing from their understanding of the fraud allegations.

[270] We are satisfied that the executive director has made allegations of multiple frauds and is not required to prove each alleged fraud before we can make any finding of fraud.

2. Conduct relating to securities

[271] A finding of fraud under section 57(b) of the Act can only be made if a respondent has engaged in conduct that is "conduct relating to securities".

[272] The sisters argue that even if we conclude that they had misappropriated Wheatland joint venture funds, transferred Wheatland joint venture interests without consideration to their family's benefit, or inflated the Wheatland purchase price and lied about it to investors, we still cannot find a contravention of section 57(b) as those acts are not "conduct relating to securities".

[273] They make a similar argument with respect to the fraud allegations involving Rocky View.

[274] They cited the Commission's recent decision in *Re Inverlake*, 2015 BCSECCOM 348, where the Commission said:

> [90] Further, a contravention of section 57(b) of the Act requires that the conduct in question is "conduct relating to securities".
>
> [91] The executive director says that the deceit relates to the securities of Inverlake in that a share in Inverlake entitled the investor to a beneficial interest in the Inverlake Land and the foreclosure took away that interest.
>
> [92] We do not agree that the meaning of "conduct relating to securities" can be stretched as broadly as the executive director suggest. This deceit occurred years after the involvement in securities by Inverlake investors and it relates to the conduct of Inverlake's business, not to the distribution or other aspects of its securities. We therefore find that it is not conduct relating to securities for the purpose of the Act.

[275] In reply, the executive director argues that section 57 is broadly worded and there is no reference to any temporal aspect. He says we must take a broad, purposive approach to our interpretation, taking into account that one of the primary purposes of the Act is to protect investors.

[276] Whether any conduct is "conduct relating to securities" is a fact-driven determination. We have made this determination as we considered the merits of each fraud allegation.

[277] Having addressed the general arguments raised by the respondents, we now deal with each fraud allegation made by the executive director.

E. Fraud with respect to Wheatland

[278] The executive director alleges that Wong and Soo perpetrated three frauds on the Wheatland investors, as set out in paragraph 5(1)(c) above, contrary to section 57(b) of the Act.

1. First fraud allegation – sale of Wheatland units at inflated price

a) Prohibited act

[279] The executive director alleges that the offer to sell the Wheatland lands by Bob Cavendish Holdings to Wheatland was a sham and the sisters did not pay $19.278 million for the lands. He alleges that the sisters acquired the lands for $9.1 million, lied to investors about the true cost of the lands used to calculate the joint venture subscription price, and sold the joint venture units at an inflated price.

[280] A finding of fraud requires that the executive director prove, as one element of the contravention, that Wong and Soo had committed a deceitful or other prohibited act.

[281] The evidence is clear that one or both of the sisters told at least some investors that they were selling the joint venture units at the sisters' cost of buying these lands.

[282] But to prove deceit or a prohibited act, the executive director must also prove that it was a lie, namely, that the transaction between Bob Cavendish Holdings and Wheatland was a sham, that the sisters did not pay the $19.278 million or that they received some of the $19.278 million.

[283] We do not find credible the following aspects of Wong's testimony if the sisters really believed that they were buying lands from an arms-length third party owner they did not know:

1. Wong did not ask HY why he did not want to buy the Wheatland lands himself when it was "so fast and good".

2. She did not ask HY about his role in helping her procure these lands or what benefits he would get out of it.

3. She made no enquiries about the owner with whom she was negotiating this purchase, albeit indirectly through HY.

4. She made a binding no-subject offer involving a significant sum of money to an arms-length third party with minimal due diligence on the accuracy of the offer, including verification of the legal description of the lands being purchased.

5. Although the sisters did not have enough money for the purchase, they made a binding no-subject all-cash offer to an arms-length third party with minimal assurance on funding. She said that Soo had many friends wanting to invest but they did not discuss actual amounts and Wong did not have a list of potential investors and potential amounts to come up with the $19.2 million purchase price.

6. An arms-length owner agreed to drop a $7.5 million non-refundable deposit and change an all-cash deal to one with a take-back mortgage, all without much negotiations or any consideration paid.

7. Even though she was worried about having enough investor funds to close the purchase, and the elimination of the third deposit was documented, she did not ask to document the change to a vendor-take-back mortgage.

8. She accepted a $17.5 million joint and several vendor-take-back mortgage registered against the entire Wheatland lands when Wheatland was only responsible for less than $3 million.

9. She did not know about the flip even though she and Wong signed various closing documents referencing it.

[284] In this instance, we conclude that it is more likely than not that Wong and Soo were aware of:

(a) the 1264065 offer to Cavendish Investing and the lower purchase price in that offer
(b) the flip, and
(c) that the people behind Bob Cavendish Holdings were associated with the Isle of Mann principals.

That would explain the casual way the sisters dealt with Wheatland's purchase of these lands.

[285] However, we do not have sufficient evidence to conclude that Wheatland's purchase from Bob Cavendish Holdings was a sham or that Wheatland did not pay $19.278 million for the lands.

[286] On the contrary, the executive director entered into evidence the affidavits of the two Isle of Mann principals, filed in BC court proceedings, attesting to the existence of that transaction. One of the principals swore in his affidavit that Wheatland paid the purchase price under that transaction, although his and Wong's testimony differed on which Isle of Mann company received that money.

[287] In addition, the law firm's client ledger for Wheatland during this time shows that $19.278 million in purchase proceeds, less various adjustments and the vendor-take-back mortgage, were deposited into their trust account and held by them "in trust for Bob Cavendish" upon closing.

[288] There is no evidence on who ultimately received the Bob Cavendish Holdings funds from the law firm's trust account. There is no evidence that the sisters received any of this money. There is no evidence that the sisters were principals in Bob Cavendish Holdings.

[289] The fact that the sisters and the Isle of Mann principals were business associates at the time does not necessarily mean that the sisters were involved in Bob Cavendish Holdings or that the transaction was a sham.

[290] The fact that the agreement between Bob Cavendish Holdings and Wheatland was a pre-incorporation contract does not necessarily mean that it was fraudulent and a sham. It is not unheard of for sophisticated business people to enter into contracts using legal entities that were not yet set up.

[291] The fact that Bob Cavendish Holdings never held title to the Wheatland lands or any other real estate in Alberta is irrelevant. The nature of a flip is that the "flipper" does not take title to the flipped lands.

[292] The executive director bears the burden of proof. Although the circumstances are suspicious, we simply do not have sufficient evidence to conclude that it is more likely than not that the transaction between Bob Cavendish Holdings and Wheatland was a sham, or that Wheatland did not pay Bob Cavendish $19.278 million for the lands, or that the sisters received any of the $19.278 million.

[293] Accordingly, we find that the executive director has not established, on a balance of probabilities, that there was a prohibited act with respect to this fraud allegation, and we dismiss this allegation.

2. Second fraud allegation – transfer of joint venture units without consideration

a) Prohibited act

[294] The executive director alleges that the sisters transferred 33.5 Wheatland joint venture units to related companies (owned by their husbands and adult children), worth approximately $2.8 million, without consideration and without the knowledge and permission of investors.

[295] The sisters denied the executive director's allegation.

[296] With respect to the 20 units allocated to the children's companies, we do not find credible Wong's evidence that the children's companies had paid in full for their 20 joint venture units, but later received a refund when they needed money.

[297] Firstly, the respondents did not provide any evidence of the initial payments.

[298] Secondly, Wong portrayed her and Soo's children as adults making independent decisions to invest in Wheatland and other projects, and testified that the children were the ones who asked for refunds to finance their other investments. But the Wong and Soo children were young adults in 2007 and either full-time college students or working. We are not persuaded that they had such independent roles.

[299] Furthermore, Wheatland's financial statements for 2008 to 2010 continued to reflect these family companies holding their joint venture interests without any reference to a repayment.

[300] More significantly, Wong's explanation was contradicted by Soo's daughter who testified at the hearing. We find Soo's daughter to be credible and we prefer her testimony over Wong's.

[301] Thirdly, the court in the BC proceedings stated that the sisters admitted to transferring joint venture units to the benefit of their adult children without consideration.

[302] We also do not find credible Wong's evidence that the husbands' company was shown as the owner of 13.5 units at the suggestion of their accountant so that he could finalize the financial statements. There was no corroborating evidence and we do not see how having unsold units could prevent the completion of the joint venture's financial statements.

[303] We have only Wong's evidence that she never intended to give the 13.5 units to the husbands' company without consideration. We do not find her credible on these points.

[304] We conclude that the sisters allocated 33.5 joint venture units to family companies without consideration.

[305] As stated in *R. v. Currier*, the element of dishonesty in fraud can include the non-disclosure of an important fact.

[306] The fact that joint venture units would be allocated without consideration to related parties to the sisters (who were effectively the promotors of these distributions) was, in our view, an important fact for any reasonable investor to know before they make their decision to invest. The sisters did not disclose to potential investors that important fact before they invested.

[307] That, in our view, was deceitful and a prohibited act for the purpose of fraud.

b) Deprivation

[308] The respondents say the investors were not exposed to any risk of economic loss, since no securities (i.e. certificates) were transferred to the family companies so they were in no position to have transferred the interest, whatever it was, to a third party. The respondents say the fact that the husbands' company never advanced any funds to Wheatland nor received anything in return from Wheatland establishes there was never a risk of economic loss to either Wheatland or the investors.

[309] We disagree. We find that the evidence establishes deprivation. Investors invested with the belief that a payment of at least $63,000 was required to obtain one joint venture unit, and that funds from all unit holders were available to develop the property. Wheatland did not have the use of the $2.8 million that should have been paid by the family companies for their units.

[310] In *R v. Abramson* [1983] B.C.J. No. 1305, which was followed in *Re Streamline Properties* 2014 BCSECCOM 263, the British Columbia Court of Appeal confirmed that the payment of money as part of an investment upon deceit was sufficient to establish deprivation, regardless of any subsequent repayment. Similarly, in this case, we find that investors were deprived, for the purpose of fraud, when they made their investments.

[311] In addition, there was a risk of deprivation to the investors. By allocating joint venture units to the family companies without consideration, the family companies became entitled to a share of the joint venture assets and income and the investors' proportionate interests were diluted. The risk of deprivation arose as soon as the family companies were allocated the joint venture units. When the time comes to distribute the Wheatland assets or profits, the investors would be entitled to receive less than their true proportionate entitlement based on the equity paid.

[312] The fact that the subscription price for the related company units was paid later with interest does not mitigate the deprivation or risk of deprivation at the time of the prohibited act. See: *Re Streamline Properties.*

c) Sisters' subjective knowledge

[313] The sisters had subjective knowledge of the prohibited act. The sisters prepared the joint venture agreement and allocated the 33.5 joint venture units to their family companies. They knew their families had not paid for the 33.5 joint venture units. They knew they did not tell investors their family companies were given or would be given units without any consideration.

[314] The sisters had subjective knowledge that the prohibited act could have as a consequence the risk of deprivation. The sisters knew that the joint venture did not have the use of the $2.8 million that was the subscription price for the 33.5 units. They applied for mortgage financing. They directed the use of joint venture funds and mortgage proceeds. They knew better than anyone the funding needs for Wheatland's development and the

additional money Wheatland had to borrow without the $2.8 million their family should have paid for their units.

[315] The sisters would have known that by allocating joint venture units to their family without consideration, the investors would be entitled to less than their true proportionate share.

[316] As stated in *Theroux*, the fact that the sisters may have hoped the deprivation would not take place, or may even have felt there was nothing wrong with what they were doing, provides no defence.

d) Conclusion

[317] By transferring Wheatland joint venture units to related companies without consideration, without the knowledge and permission of investors, we find the sisters perpetrated fraud, contrary to section 57(b) of the Act.

3. Third fraud allegation – using investors' money for own benefits

a) Prohibited act

[318] The executive director alleges that the sisters took joint venture money to make at least $5.2 million in loans to themselves and related companies, for purposes unrelated to the Wheatland joint venture, without the prior knowledge or permission of investors.

[319] The sisters admit that they took loans in excess of $5.3 million from Wheatland to fund their non-Wheatland investments. They did not have investors' approval to make these loans.

[320] The purpose of an investment and the use of funds obtained in a financing are important facts for any reasonable investor to know before making their decision to invest. When the sisters marketed the Wheatland joint venture units, they told investors that the purpose of the joint venture and their investments was to buy and develop the Wheatland lands. Wheatland investors bought joint venture units on that basis. To then use the investors' money or joint venture assets for the sisters' personal benefit fell outside of that purpose and was deceitful.

[321] The sisters say that those loans made before the September 2008 credit market meltdown were not objectively dishonest because they were at interest rates higher than bank rates and Wheatland did not need the cash at that time. Therefore, the sisters cannot be said to have the requisite dishonest intention as required by *Theroux* when they believed that they were making the loans to advance the interest of Wheatland.

[322] We do not accept that reasoning. It is not appropriate to compare the related company loans' interest rates to bank rates since the related company loans would have been more risky than bank deposits. Furthermore, Wheatland obtained a $5 million mortgage loan in February 2008 while $2.3 million in related company loans were outstanding. That mortgage loan could have been reduced if the related loans were repaid.

[323] That the sisters could not finance other projects because they had personally guaranteed Wheatland's financing, even if true, is not relevant to fraud under section 57(b).

[324] As we have concluded, to use investors' money or joint venture assets for the personal benefit of the sisters, without investors' permission, was deceitful. But was it "conduct relating to securities" as required by section 57(b)?

[325] The respondents say that the loans made "years after the joint venture units were distributed" do not amount to "conduct relating to securities". They cited the Commission's decision in *Re Inverlake* 2015 BCSECCOM 348.

[326] The respondent Inverlake held certain lands as bare trustee for investors. Inverlake stopped making mortgage payments at some point in the years following its acquisition of the lands and the mortgagee foreclosed on the lands. Inverlake did not tell investors about the foreclosure of the lands, which was a breach of Inverlake's obligation under the bare trust agreement.

[327] The executive director alleged that such failure was fraud by Inverlake's director under section 57(b). He said the deceit related to the securities in Inverlake in that a share in Inverlake entitled the investor to a beneficial interest in the lands and the foreclosure took away that interest. The panel found that the deceit was not "conduct relating to securities" for the purpose of section 57(b). The panel said the deceit occurred years after the investment in securities by investors and it "relates to the conduct of Inverlake's business, not to the distribution *or other aspects of its securities*". (emphasis added)

[328] The ordinary meaning of the words "relating to" in section 57(b) is very broad. These words do not refer to any moment in time or to any transaction (such as a trade) in relation to securities. In contrast, other sections of the Act (such as section 151(1)(c)) refer to matters "relating to *trading* in securities" (emphasis added).

[329] We conclude that "conduct relating to securities" is not limited to conduct relating to the distribution of securities and could refer to conduct relating to other aspects of securities. This interpretation is consistent with the *Inverlake* decision.

[330] In this case, we have concluded that the source of funds for two of the related company loans was investors' subscription proceeds.

[331] Using investors' subscription proceeds from the purchase of Wheatland joint venture units for a different purpose than represented to investors was clearly conduct that directly related to those joint venture units. Therefore, it was conduct relating to securities.

[332] We find the making of the two related company loans totalling $1,208,000 to be a prohibited act for the purpose of fraud.

[333] We do not have sufficient evidence to make a finding on the source of funds for the remaining related company loans. As a result, we do not have sufficient evidence to determine if the making of those loans was conduct relating to the Wheatland joint venture units. We find the source of funding is relevant, in the circumstances of this case, to making a determination of whether the misappropriation was conduct relating to any aspect of the Wheatland joint venture units. We do not agree with the executive director that "conduct relating to securities" is so broad such that the misappropriation of any joint venture money would be automatically "conduct relating to securities". For example, if the source of the misappropriated funds had been a loan to Wheatland unsecured by the Wheatland lands, we have difficulty seeing how that is conduct relating to the Wheatland joint venture units.

[334] We therefore dismiss the allegation of fraud with respect to those remaining related company loans.

b) Deprivation

[335] As stated earlier, the payment of money as part of an investment upon deceit is sufficient to establish deprivation. See: *Re Streamline Properties Inc.*, 2014 BCSECCOM 263, paragraph 41.

[336] There was also a risk of deprivation with respect to the two related company loans. Wheatland investors would suffer a loss if these loans were not repaid. The fact that these loans were interest bearing did not reduce the risk of deprivation. The fact that these loans were subsequently repaid with interest did not reduce the risk of deprivation when the loans were made.

[337] There was actual deprivation. Wheatland itself needed financing while these loans were outstanding. Wheatland's mortgage loans could have been reduced if these loans were not made. Wheatland had to pay higher interest costs and incremental mortgage fees, as estimated by Grant Thornton. The investors' pecuniary interests were directly tied to the financial fortunes of Wheatland.

c) Sisters' subjective knowledge

[338] The sisters had knowledge of the prohibited act and that a consequence was the risk of deprivation. They made the related company loans for their other projects and they obtained mortgage financing for Wheatland. They told investors that the purpose of their investment was to buy and develop the Wheatland lands. The sisters knew they used investors' proceeds for an unrelated purpose. They knew that if these loans were not repaid, Wheatland would lose money and its investors would be deprived since the investors' pecuniary interests were directly tied to the financial fortunes of Wheatland.

d) Conclusion

[339] By using investors' subscription proceeds for personal benefits, we find the sisters perpetrated fraud, contrary to section 57(b) of the Act.

F. Fraud with respect to Rocky View

[340] The executive director alleges that, contrary to section 57(b) of the Act, Wong and Soo committed fraud in four instances on the Rocky View investors as set out in paragraph 5(2)(d) above.

1. First fraud allegation – sale of 1300302 and D&E Arctic joint venture units at inflated price

a) Prohibited act

[341] The executive director alleges that Wong and Soo sold 1300302 and D&E Arctic joint venture units to investors at an inflated price.

> In particular, he alleges that Wong and Soo, using LCco as their nominee, acquired the right to purchase the Rocky View lands at $5,540,000 from an unrelated third party owner. They then caused LCco to sell the Rocky View lands to 1300302 and D&E Arctic at an "inflated" price of $10,271,300 in an artificial transaction. The executive director alleges that Wong and Soo promoted the 1300302 and D&E investments based on the higher price and lied to investors that it was the true cost of the lands when the actual cost was $5,540,000.

[342] We find the evidence from investors in this regard to be consistent and credible, and we prefer their testimony over that of Wong's. We find that the sisters led investors to believe that the sisters had acquired the Rocky View lands for $10,271,300 and they were transferring the lands to the Rocky View joint ventures at their cost.

[343] Firstly, Wong claimed that the sale from LCco to the Rocky View nominees was a real transaction and LCco was paid the $10,271,300. However, we do not have any corroborating evidence of such payment.

[344] Secondly, in buying and then selling the Rocky View lands, LCco at all times acted as a nominee for the sisters and their families. Therefore, it was the sisters and their families who bought the Rocky View lands from the third party owner for $5,540,000 and sold the lands to the Rocky View nominees for $10,271,000. We find that the true cost to the sisters of the Rocky View lands was $5,540,000 and not $10,271,000.

[345] By directing LCco and the Rocky View lands to enter into a sale and purchase of the lands at $10,271,300, the sisters created a "notional price" that they then used to support the sale of joint venture units at the higher price. In doing so, the sisters inflated the purchase price and lied to investors.

[346] That was deceitful and a prohibited act for the purpose of fraud.

b) Deprivation

[347] The respondents say there was no evidence of deprivation because they say the Rocky View lands were worth $65,000 per unit at the time.

[348] We disagree. As stated earlier, the payment of money as part of an investment upon deceit is sufficient to establish deprivation. See: *Re Streamline Properties Inc.*, 2014 BCSECCOM 263, paragraph 41. In this case, investors' payments to 1300302 and D&E Arctic for their investments, based in part on the sisters' statement that the actual cost for the Rocky View lands was $10,271,300, constitute deprivation for the purpose of fraud.

c) Sisters' subjective knowledge

[349] The sisters had subjective knowledge of the prohibited act and that it could have, as a consequence, a risk of deprivation to investors.

[350] They were in charge of all the real estate transactions, of LCco and the promotion and sale of Rocky View joint venture units. They knew what was paid for each transaction and what was said to investors. They knew the actual cost to them of the Rocky View lands was not $10,271,300 and investors were thereby deprived of their money.

d) Conclusion

[351] By selling 1300302 and D&E Arctic joint venture units at an inflated price and lying about it to investors, we find the sisters perpetrated fraud, contrary to section 57(b) of the Act.

2. Second and third fraud allegations – obtaining an unauthorized mortgage and using it for purposes other than Rocky View development

a) Prohibited act

[352] The executive director alleges that the sisters obtained a $1.65 million mortgage on the Rocky View lands, without obtaining investors' approval, and used the proceeds for personal purposes.

[354] Without question, the sisters obtained a $1.65 million mortgage without authorization and in contravention of the Rocky View bare trust agreements. The evidence is also clear that the sisters used the proceeds of that mortgage for purposes unrelated to the Rocky View lands.

[355] As noted above, the sisters argue that what they did was not inappropriate, since the amount of the mortgage proceeds was less than the vendor-take-back mortgage and Rocky View expenses paid by their family companies.

[356] But the amount advanced under the $1.65 million mortgage and used by the family exceeded the outstanding loans owed by Rocky View to the family at any one time. That means a portion of the Rocky View joint venture funds was used for the benefit of the sisters' family.

[357] The purpose of an investment and the use of funds obtained in a financing are important facts for any reasonable investor to know before making a decision to invest. When the sisters marketed the 1300302 and D&E Arctic joint venture units, they told investors that the purpose of the joint ventures and their investments was to buy and develop the Rocky

View lands. Investors bought joint venture units on that basis. Using the joint ventures' funds for a different purpose is therefore deceitful. But is it "conduct relating to securities" as required by section 57(b)?

[358] The Rocky View lands were the key (if not the sole) asset of the 1300302 and D&E Arctic joint ventures. It was what investors invested in when they bought joint venture units. The development of those lands was the joint ventures' only purpose. The respondents took the asset that was the very thing that investors invested in and used it (by mortgaging it and using some of the proceeds) for a completely different purpose. In our view, that conduct was directly related to the very purpose of the 1300302 and D&E Arctic joint venture units. It was conduct related to those securities.

[359] We therefore conclude that using mortgaged proceeds for the benefit of the sisters' family was a prohibited act for the purpose of section 57(b).

[360] To be clear, the amount of the fraud is the amount of mortgage proceeds that exceeded the amounts owed by Rocky View joint ventures to the sisters and their family at the time. Although it was unauthorized and a breach of the bare trust agreements to mortgage the lands, in our view, it was not a prohibited act under section 57(b) to do so and use the proceeds to repay the sisters and their family for money they had spent on Rocky View's development. That is because the sisters' and their family money repaid from those mortgage proceeds were used to pay expenses to develop the Rocky View lands, which was the purpose of the Rocky View joint ventures.

b) Deprivation

[361] As stated earlier, the payment of money as part of an investment upon deceit is sufficient to establish deprivation. See: *Re Streamline Properties Inc.*, 2014 BCSECCOM 263, paragraph 41.

[362] There was also a risk of deprivation. Rocky View investors would suffer a loss if the family loans were not repaid, since the joint ventures remained obligated to pay back the mortgage loan to the mortgagee. The investors' pecuniary interests were directly tied to the financial fortunes of the joint ventures.

c) Sisters' subjective knowledge

[363] The sisters had knowledge of the prohibited act. They were in control of the land development, the payment of joint venture expenses, the mortgaging and the use of joint venture funds and mortgage proceeds. They made all the decisions. They would have known the outstanding amounts owed by Rocky View to their family at any one time. They told investors that the purpose of their investments was to buy and develop Rocky View lands. The sisters knew they did not have investors' permission to mortgage the Rocky View lands and use the mortgage proceeds for their personal benefit.

[364] The sisters had subjective knowledge that a consequence of the prohibited act is the risk of deprivation to investors, since the sisters were the ones who made the family loans and obtained the mortgage financing. They knew that the joint ventures remain obligated to repay the mortgage loan even if the family loans were not repaid.

d) Conclusion

[365] By using mortgage proceeds for purposes other than the Rocky View development, we find the sisters perpetrated fraud, contrary to section 57(b) of the Act.

3. Fourth fraud allegation – withholding information about potential delays in development

a) Prohibited act

[366] The executive director argues that the sisters should have told investors of the potential delays alluded to in the IBI memos from June 27 onward.

[367] This was a longer term development that required rezoning. The projections given by the sisters to investors suggested that Rocky View was a five-year project. We expect an investor, even one who is unsophisticated, could reasonably anticipate some measure of delays associated with rezoning and timing cannot be guaranteed.

[368] In reviewing the IBI memos of June 27 and July 10, we are not persuaded that the potential delays referenced in them were so certain and significant that it required the sisters to inform investors.

[369] The December 12 memo, on the other hand, made clear that rezoning was speculative by that time. Not only did that call into question the timing of the project and how long an investor would have to commit funds before seeing a return, it called into question the entire viability of the development and the prospect of receiving a return on investment based on a rezoning envisaged by the respondents. The December 21 memo gave notice that applications were being put on hold. These were important facts that a reasonable investor would need to know before making an informed investment decision.

[370] As stated in *R. v. Currier*, non-disclosure of an important fact can satisfy the dishonest element of a fraud allegation.

[371] The December 12 memo indicates that IBI had told Wong of the speculative nature before December 12, but we have no evidence as to when they first told Wong of this. Therefore, we have only considered distributions made after December 12 for the purpose of this fraud allegation.

[372] JZ was the only investor who completed her subscription after the December 12 memo. She invested $65,000 in the D&E Artic joint venture after December 21. We therefore find that the sisters were dishonest to JZ with respect to her investment by failing to disclose the December 12 and 21 memos before JZ made the investment, which is a prohibited act for the purpose of fraud.

b) Deprivation

[373] JZ suffered deprivation when she paid money to invest in the D&E Artic joint venture. See *Re Streamline*, paragraph 41. There was also a risk of deprivation to JZ's investment, since an inability to rezone and develop the lands in the time frame or manner described to her could significantly affect the value of the lands and the value of JZ's investment.

c) Sisters' subjective knowledge

[374] Wong testified that she kept Soo apprised of important events in both the rezoning and sale of joint venture units. We therefore attribute Wong's knowledge to Soo. We find that Wong and Soo had subjective knowledge that the December 12 and 21 memos were not disclosed to JZ. They were the recipients of the IBI memos and were aware of its content. They sold the joint venture units to JZ and described the project to her, without informing her of the potential significant delays or speculative rezoning suggested by the two December memos.

[375] Wong and Soo had subjective knowledge that a consequence of the prohibited act was to put JZ's pecuniary interest at risk. Wong acknowledged that the IBI correspondence about potential delays was important, which is consistent with her testimony about the importance of rezoning potential when deciding to invest in land.

[376] The sisters explained to investors how the lands would appreciate as rezoning and development progress, and they would know that the inability to rezone and develop these lands as they described could significantly affect the value of the lands and the value of JZ's investment.

d) Conclusion

[377] By withholding information about potential delays in development, we find the sisters perpetrated fraud on investor JZ, contrary to section 57(b) of the Act.

III. SUMMARY OF FINDINGS

[378] We have found that:

1. with respect to contraventions of section 61,

    a) Wheatland, Wong and Soo breached section 61 with respect to distributions totalling $2,000,000 in Wheatland securities;
    b) 1300302, Wong and Soo breached section 61 with respect to distributions totalling $2,785,000 in 1300302 securities; and
    c) D&E Arctic, Wong and Soo breached section 61 with respect to distributions totalling $1,105,000 in D&E Arctic securities;

2. with respect to contraventions of section 57(b), Wong and Soo each breached section 57(b) and committed fraud when they:

a) with respect to Wheatland:
   - transferred Wheatland Joint Venture units without consideration to the benefit of their adult children and their husbands; and
   - misappropriated $1,208,000 from the Wheatland Joint Venture; and

b) with respect to Rocky View:
   - inflated the purchase price of the Rocky View lands and lied about it to investors;
   - used mortgage proceeds for purposes other than the development of the Rocky View lands without the consent of investors; and
   - withheld information about potential delays in Rocky View's development from one investor.

[379] We dismiss the executive director's allegations that Wong and Soo sold Wheatland joint venture units at an inflated price.

[380] Given our findings of direct contraventions of section 61 by Wong and Soo, we find it is not necessary to make further findings against them for the same contraventions of section 61 under section 168.2(1).

IV. SUBMISSIONS ON SANCTIONS

[381] We direct the parties to make their submissions on sanction as follows:

By July 21, 2016	The executive director delivers submissions to the respondents and to the secretary to the Commission.
By August 18, 2016	The respondents deliver response submissions to one another, the executive director and to the secretary to the Commission. Any party seeking an oral hearing on the issue of sanctions so advises the secretary to the Commission. The secretary to the Commission will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).

By Sept. 1, 2016	The executive director delivers reply submissions (if any) to the respondents and to the secretary to the Commission.

June 16, 2016

For the Commission

Audrey T. Ho
Commissioner

Judith Downes
Commissioner

This is **Exhibit "** B **"** referred to in the Affidavit of C. Palmer made before me on June 26 2018.

A. N

A COMMISSIONER FOR TAKING ~~AFFIDAVITS~~ FOR BRITISH COLUMBIA

APPENDIX A

L-170072

BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re Wong, 2017 BCSECCOM 57 Date: 20170220

Siu Mui "Debbie" Wong, Siu Kon "Bonnie" Soo, Wheatland Industrial Park Inc., 1300302 Alberta Inc. and D & E Arctic Investments Inc.

Hearing

Panel	Audrey T. Ho	Commissioner
	Judith Downes	Commissioner
Hearing Date	November 28, 2016	
Date of Decision	February 20, 2017	
Appearing		
James Torrance	For the Executive Director	
H. Roderick Anderson Owais Ahmed	For Sui Mui "Debbie" Wong and Siu Kon "Bonnie" Soo	
Kenneth Jang, for Lorne W. Scott, QC	For Wheatland Industrial Park Inc.	
Harveen Thauli	For 1300302 Alberta Inc. and D & E Arctic Investments Inc.	

Decision

I. Introduction

[1] This is the sanctions portion of a hearing pursuant to sections 161(1) and 162 of the *Securities Act*, RSBC, 1996, c. 418. The Findings on liability, made on June 16, 2016 (2016 BCSECCOM 208), are part of this decision.

[2] Sui Mui "Debbie" Wong and Siu Kon "Bonnie" Soo (the sisters) also made an application to vary paragraphs 356 and 360 of the Findings on liability, pursuant to section 171 of the Act. We heard that application at the same time as the oral submissions on sanction. Our decision on that application is contained herein.

[3] The panel found that:

1. The sisters perpetrated fraud, contrary to section 57(b) of the Act, when they:

a) transferred Wheatland Joint Venture units without consideration to the benefit of their husbands and adult children;
b) misappropriated $1,208,000 from the Wheatland joint venture;
c) inflated the purchase price of the Rocky View lands and lied about it to investors;
d) used mortgage proceeds for purposes other than the development of the Rocky View lands without investors' consent; and
e) withheld information about potential delays in Rocky View's development from one investor.

2. The respondents made illegal distributions, contrary to section 61 of the Act, as follows:

a) Wong, Soo and Wheatland Industrial Park Inc. – $2,000,000 in Wheatland securities to 25 investors;
b) Wong, Soo and 1300302 Alberta Ltd. - $2,785,000 in 1300302 securities to 44 investors, and
c) Wong, Soo and D & E Arctic Investments Ltd. - $1,105,000 in D & E Arctic securities to 19 investors.

II. Position of the Parties on Sanctions

[4] The executive director seeks:

a) permanent market bans against all the respondents, under sections 161(1)(b), (c) and (d) of the Act;

b) disgorgement orders totaling $9,857,850 against the respondents other than Wheatland, under section 161(1)(g), as follows:

- Wong and Soo on a joint and several basis - $9,857,850
- 1300302 (on a joint and several basis with Wong and Soo) - $2,785,000
- D & E Arctic (on a joint and several basis with Wong and Soo) - $1,105,000; and

c) administrative penalties of $10 million against each of Wong and Soo, under section 162.

[5] The sisters submit that the sanctions sought by the executive director are excessive and punitive, and that the disgorgement amounts exceed the Commission's jurisdiction under section 161(1)(g). They say the appropriate sanctions against them should be as follows:

a) permanent market bans, under sections 161(1)(b) and (d), subject to the carve-outs that each of them may:

- trade for her own account through a registered dealer, and

- act as a director and officer of an issuer if all of the issuer's securities are beneficially owned by her or members of her immediate family;

b) no order under section 161(1)(g); and

c) administrative penalties against each of the sisters in the range of $250,000 to $450,000.

[6] 1300302 and D & E Arctic (the Rocky View respondents) did not object to the market bans sought by the executive director, but submitted that the section 161(1)(g) orders sought against them do not serve the public interest and are punitive. They say that no section 161(1)(g) order should be made against them.

[7] The executive director had initially sought a section 161(1)(g) order against Wheatland. He withdrew that request after Wheatland submitted documentary evidence to show that the sisters and their families are no longer directors or officers of Wheatland, and have transferred the shares they held in Wheatland to third parties who appear to be unrelated to the Wong and Soo families.

[8] Wheatland did not object to the market bans sought by the executive director.

III. Additional Evidence

[9] The parties entered various affidavit and documentary evidence at the hearing for the purpose of sanctions.

[10] The evidence indicates that:

a) individuals who appear unrelated to Wong and Soo have replaced the sisters as directors and shareholders of Wheatland;
b) Soo's husband is the sole director and shareholder of 1300302; and
c) Wong remains the sole director and shareholder of D & E Arctic.

[11] Wong deposed that, among other things, the Wong and Soo families have funded all of the Farms Credit Canada mortgage payments, totaling approximately $562,000, on behalf of the Rocky View joint venture.

IV. Section 171 Application

A. The application and the parties' positions

[12] In the Findings, the panel found that the amount advanced under a $1.65 million mortgage from Farms Credit Canada and used by the sisters for purposes unrelated to the Rocky View lands exceeded the total amount of the outstanding loans owed by the Rocky View joint venture to the Wong and Soo families at any one time. The panel concluded that the sisters' use of those mortgage proceeds constituted a fraud, but only to the extent that the mortgage proceeds exceeded the outstanding loans owed by the Rocky View joint venture to the Wong and Soo families.

[13] In the section 171 application, the sisters asked the panel to vary those findings and to find, instead, that the outstanding loans from the Wong and Soo families did exceed $1.65 million and therefore, the executive director had not made out a contravention of section 57(b) in relation to the FCC mortgage.

[14] Based on evidence from the liability hearing, the executive director says the total amount of Wong and Soo family loans to the Rocky View joint venture was $1,370,000. In support of the section 171 application, the sisters now seek to rely on additional banking documents to show another $300,000 in family loans made to the Rocky View joint venture. That amount, when added to the $1,370,000, would exceed the FCC mortgage proceeds.

[15] The section 171 evidence consists of an affidavit from Wong, a cancelled cheque and a bank statement from 2008.

[16] The executive director asks the panel to dismiss the section 171 application, on the basis that the sisters have not met the threshold for a variation in the Findings. He says the threshold requires either new evidence (namely, evidence that was not reasonably available for use at the hearing), or a significant change in circumstance.

[17] The executive director says that the outstanding family loan amounts, movement of funds in and out of D & E Arctic's bank account, and FCC mortgage proceeds usage were extensively canvassed in direct and cross-examinations of Wong at the liability hearing, and the sisters had plenty of opportunity to introduce the section 171 evidence during the liability phase of the hearing.

[18] The executive director submits that there must be finality to litigation, and to allow the sisters to re-litigate the issue in these circumstances could lead to an interminable cycle of liability rulings, further evidence and further section 171 applications to re-litigate liability.

[19] However, the executive director says it is fair to consider the section 171 evidence in the sanctions phase. The executive director initially took the position that the FCC mortgage proceeds exceeded the outstanding family loans by $280,000. In light of the section 171 evidence, the executive director reduced the section 161(1)(g) order sought against the sisters by $280,000. The amounts referred to in paragraph 4(b) and elsewhere in this decision are the reduced amounts.

[20] The sisters do not dispute that the section 171 evidence was readily available at the time of the liability hearing. They say it was not withheld as part of their litigation strategy. Rather, it was over-looked in the course of a lengthy and complex liability hearing with a large volume of documentation. They say that given the broad wording of section 171, there is no limit on the panel's authority to vary its Findings provided it is not prejudicial to the public interest. They further say that, regardless of section 171, the panel has the authority to vary its Findings because the enforcement hearing is ongoing and the panel is not *functus* until it has issued a sanctions order, and in any event, the panel is the master of its own procedures. They also rely on section 173(b) of the Act, which requires the person presiding at a hearing to receive all relevant evidence submitted by a respondent.

B. The law on section 171 applications

[21] Section 171 of the Act states:

> If the commission ... considers that to do so would not be prejudicial to the public interest, the commission ... may make an order revoking in whole or in part or varying a decision the commission ... has made under this Act, ... whether or not the decision has been filed under section 163.

[22] *BC Policy 15-601 - Hearings* sets out procedures for hearings under the Act. Section 8.10(a) provides guidance on revoking or varying a decision. It states, in part:

> ... Before the Commission changes a decision, it must consider that it would not be prejudicial to the public interest. This usually means that the party must show the Commission new evidence or a significant change in the circumstances.

[23] The Commission has consistently applied the thresholds described in *BC Policy 15-601*.

[24] In *Re Pyper* 2004 BCSECCOM 238, the respondent applied under section 171 to vary the sanctions imposed on him. The Commission panel stated:

> For an application under section 171 to succeed, the applicant must show us new and compelling evidence or a significant change in circumstances, such that, had we known them when we issued our sanctions decision, we would have made a different decision.

[25] In *Re Steinhoff* 2014 BCSECCOM 211, the panel followed *Re Pyper* and adopted the two-prong test used in *Foresight Capital Corporation* 2006 BCSECCOM 529 and 2006 BCSECCOM 531 to determine whether evidence is new evidence:

d) First, the evidence must be relevant to the allegations in the notice of hearing.
e) Second, the applicant must explain why the evidence was not reasonably available for use at the hearing.

[26] In *Re McIntosh* 2015 BCSECCOM 162, at paragraph 12, the panel said:

> Section 171 of the Act does not provide an unfettered opportunity for a respondent to re-litigate the liability or sanctions portion of an enforcement hearing. A party seeking a variation must meet the threshold outlined in s. 8.10(a) of BC Policy 15-601, and identify new evidence, or a significant change in circumstances, before the Commission will change a decision.

C. Application of the facts to the law

[27] The executive director does not dispute that the section 171 evidence is relevant to the allegation of fraud with respect to the FCC mortgage proceeds in the notice of hearing.

[28] The sisters do not dispute that the section 171 evidence was reasonably available for use at the liability hearing, and there has not been any significant change in circumstances since the liability hearing. The sisters were represented by experienced and capable counsel. The issues to which the section 171 evidence relates were extensively canvassed by both the sisters and the executive director during the liability hearing.

[29] However, if we had the section 171 evidence before us at the time of the liability hearing, we would have reached the opposite conclusion on the FCC mortgage proceeds fraud allegation. We would have found that the total amount of the outstanding loans owed by the Rocky View joint venture to the Wong and Soo families exceeded the FCC mortgage proceeds, and concluded that the use of the FCC mortgage proceeds by the sisters did not constitute fraud under section 57(b).

[30] It is in the public interest to ensure finality to litigation, and to avoid re-litigation. That is why an application to vary a decision is not unfettered.

[31] In this instance, there would be no prejudice to that aspect of the public interest if we were to vary the Findings, since the enforcement proceeding is ongoing, and the section 171 application was made before the sanction hearing such that the section 171 evidence can be taken into account by the parties in their submissions on sanctions.

[32] We do not see any other prejudice to the public interest by granting the sisters' application. The executive director already concedes that to be fair to the sisters, this new evidence should be taken into account in the sanctions phase. Having done so, we do not see any purpose in allowing the finding of liability to stand. Indeed, to do so would lead to an odd outcome of disregarding that fraud for the purpose of sanctions but not putting it aside for the purpose of liability.

[33] The prior Commission decisions cited by the executive director suggest that for a section 171 application to succeed, an applicant must show that the proposed new evidence was not readily available at the time of the hearing or that there has been a significant change in circumstance.

[34] However, what *BC Policy15-601* actually says is that before the Commission will change a decision under section 171, a party must ***usually*** show the Commission new evidence or a significant change in circumstances. This means that there may be circumstances where it would not be prejudicial to the public interest to vary or revoke a decision even if those tests are not met. Such is the case here, for the reasons stated.

[35] Accordingly, we allow the section 171 application, and we vary the Findings with respect to the fraud allegation of obtaining an unauthorized mortgage and using it for purposes other than the Rocky View development, as follows:

1. with respect to paragraphs 356, 359 and 360, we find that the amount advanced under the $1.65 million FCC mortgage and used by the Wong and Soo families did not exceed the outstanding loans owed by Rocky View to the Wong and Soo families, and a prohibited act has not been established with respect to this fraud allegation; and

2. with respect to paragraph 378(2)(b), we revoke the finding that Wong and Soo breached section 57(b) and committed fraud with respect to the Rocky View joint venture, by using mortgage proceeds for purposes other than the development of the Rocky View lands without the consent of investors.

V. Analysis on Sanctions Submissions

A. Factors

[36] Orders under sections 161(1) and 162 are protective and preventative, intended to be exercised to prevent future harm. See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* 2001 SCC 37.

[37] In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission identified factors relevant to sanction as follows (at page 24):

> In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:
>
> - the seriousness of respondent's conduct,
> - the harm suffered by investors as a result of the respondent's conduct,
> - the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
> - the extent to which the respondent was enriched,
> - factors that mitigate the respondent's conduct,
> - the respondent's past conduct,
> - the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,

- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- orders made by the Commission in similar circumstances in the past.

B. Application of the Factors

Seriousness of the conduct

[38] The Commission has consistently held that fraud is the most serious misconduct prohibited by the Act. In *Manna Trading Corp Ltd.*, 2009 BCSECCOM 595, the Commission, at paragraph 18, said, "Nothing strikes more viciously at the integrity of our capital markets than fraud."

[39] The sisters committed multiple acts of fraud totaling around $12 million against a large number of investors. Their misconduct is very serious. We view as most significant, their inflating the purchase price of the Rocky View lands, through the use of a nominee company, and lying about it to investors.

[40] Contraventions of section 61 of the Act are also inherently serious. It is one of the Act's foundational requirements for protecting investors and preserving the integrity of the capital markets. It is intended to ensure that investors receive the information necessary to make an informed investment decision.

[41] Exemptions from section 61 are available if the issuer and those who trade in securities meet certain specified requirements. These requirements are also designed to protect investors and markets, so persons who intend to rely on the exemptions must ensure that they are met.

[42] Here, the sisters raised $5.9 million from 88 investors in contravention of section 61.

Harm to investors; damage to capital markets

[43] Investor witnesses testified that they have suffered financially and emotionally. Some borrowed money to finance their joint venture investments and had to reduce living expenses to support those loans. One investor testified that "it's mental torture and a financial loss."

[44] To date, investors have not received any returns on their investments. Both properties are held by the respective joint ventures, and it remains to be seen if there is any value left in them.

[45] The sisters acknowledge that fraud necessarily damages the integrity of the capital markets. We agree.

[46] The sisters also acknowledge that the investors that were part of the illegal distributions suffered harm in that they were denied the protection afforded by the Act. They further acknowledge that the one investor from whom they withheld information about potential delays in the Rocky View development may not have invested if she were aware of the potential delays.

[47] However, the sisters deny that the investors have otherwise suffered any harm as a result of their misconduct. They say that the outcome of the Wheatland and Rocky View joint ventures is still to be determined and it is not yet known if investors will suffer any losses. Even if they do suffer losses, the sisters say it is as a result of the 2008 economic crisis and not as a result of their misconduct.

[48] We do not agree. Investors testified as to their mental anguish and increased financial burdens. They have suffered those harms even if they later recoup their investments (for which there is no evidence to suggest that it is a possibility).

[49] We find there has been significant harm to Wheatland and Rocky View investors.

Enrichment

[50] The sisters were personally enriched when they inflated the purchase price of the Rocky View lands and lied about it to investors. The executive director quantified the amount of this enrichment at $2,317,850 (the difference between the total amount raised from arms-length investors in Rocky View and the amount actually paid to the third party vendor to purchase the Rocky View lands).

[51] The sisters deny that the executive director has proven that they were enriched as a result of that fraud, on two bases.

[52] Firstly, they rely on *Re Zhong* 2015 BCSECCOM 383 to say that the executive director has not met the burden of proving a reasonable approximation of the amount obtained by the sisters as a result of this misconduct.

[53] *Re Zhong* is distinguishable. In that case, the executive director provided a global number for the commissions earned by Zhong during a specified time period, but could not quantify the portion of the commissions that pertained to the misconduct.

[54] Here, we find $2,317,850 as calculated by the executive director to be a reasonable approximation of the amount of enrichment.

[55] Secondly, the sisters argue that the executive director did not tender any evidence that reflects how much, if anything, the sisters individually received from the sale of the Rocky View lands to the Rocky View joint venture.

[56] We have found that 1276420 Alberta Ltd. (LCco) acted at all times as a nominee for the sisters and their families in buying the Rocky View lands from an arms-length vendor and then selling the lands to the joint venture. Wong insisted at the liability hearing that LCco was paid the inflated purchase price. That would mean that LCco received $2,317,850 as a nominee for the sisters and their families.

[57] Accordingly, we are satisfied that the sisters were enriched by $2,317,850. We had found the sisters acted jointly in their misconduct; it is not necessary to apportion the enrichment between the sisters.

Mitigating or aggravating factors

[58] The sisters say that the following factors are relevant in considering the seriousness of their misconduct:

a) They are relatively uneducated and unsophisticated, and had no prior experience distributing securities or any knowledge of securities laws. They thought they were only dealing with land and did not realize they were also dealing with securities.

b) They have now paid for the 33.5 Wheatland joint venture units allocated without consideration to their families.

c) They repaid the related company loans borrowed from Wheatland well before the executive director's investigation started.

d) They voluntarily disclosed the existence of the Wheatland related company loans to investors, partially paid for the Grant Thornton report, and cooperated with Grant Thornton in the preparation of that report.

e) The sisters did their best to support the two joint ventures and prevent losses by investors, by using their own money and family money to cover various Wheatland and Rocky View mortgage payments and expenses, and by giving personal guarantees to secure Wheatland and Rocky View mortgages.

f) The Rocky View lands had a value of $65,000 per acre at the time of the distribution, the inflated amount represented by the sisters.

[59] The executive director says there are no mitigating factors. He says it is an aggravating factor that the sisters deliberately set out to enrich themselves by inflating the purchase price of the Rocky View lands.

[60] We find there are no mitigating factors. The factors cited by the sisters are not mitigating factors, for the following reasons:

a) Prior to setting up the Wheatland and Rocky View joint ventures, the sisters were participants in a significant Alberta joint venture to purchase and develop land. In that Alberta joint venture, they were more than passive investors. For example, Wong signed one agreement on behalf of a managing venturer, and the sisters approved certain financial statements. They (or companies in which they had an interest) were parties to voluminous joint venture documentation that referenced the Act, the fact that no prospectus was filed, and prospectus exemptions under the Act including an attached form of accredited investors' questionnaire.

   Their ignorance is not a mitigating factor because their active involvement in the prior Alberta joint venture should have alerted them to the application of securities law and prompted them to seek professional advice.

b) The sisters advised Wheatland investors of the units issued to their families, the unauthorized mortgages and related company loans only when they needed investors to inject more money into the joint venture and had to account to investors for the funds raised.

c) Although the sisters subsequently paid for the Wheatland joint venture units, that was only after investors started court proceedings to protect their interests. Similarly, the sisters co-operated with Grant Thornton and paid part of its audit fees only after investors found out about the sisters' unauthorized activities and pressed for payment.

d) That the sisters voluntarily repaid the unauthorized related company loans does not mitigate the fact that they improperly took that money in the first place for personal use and at the joint venture's expense.

e) That the sisters and their families used their own money to cover Wheatland and Rocky View mortgage payments and expenses, and to provide personal guarantees to secure mortgages, also are not mitigating factors.

   Their misconduct was due in part to their using family money and joint venture money interchangeably and moving money around to where they felt it was needed most. So the fact that they used family resources to support the joint ventures when money was needed most there does not mitigate their illegal acts.

f) With respect to their bridge loan to the Rocky View joint venture and their guarantees and payments on the FCC mortgage, we agree with the executive director that the bridge loan (used to pay off the Rocky View vendor-take-back mortgage) and the FCC mortgage would not have been necessary if the sisters had used investors' subscription proceeds to pay off the vendor-take-back mortgage. The sisters raised $7,857,850 from third party investors, which was more than sufficient to pay the purchase price of the Rocky View lands to the arms-length vendor (cash and vendor-take-back mortgage totaling $5.54 million), as well as

the FCC mortgage payments ($562,000). It is not a mitigating factor to guarantee or make payments on unnecessary loans.

g) With respect to their personal guarantees and payments on Wheatland's mortgages, the sisters obtained the mortgages without investors' consent in contravention of the Wheatland joint venture agreement. Further, Wheatland had to pay increased interest costs and mortgage fees associated with these mortgages because the sisters diverted Wheatland's funds for personal use. Guaranteeing and making payments on unauthorized mortgages in these circumstances do not mitigate the illegal acts.

h) With respect to the fraud of inflating the Rocky View purchase price, the prohibited act was never about misrepresenting the value of the lands. It was about misrepresenting the sisters' cost and deceiving investors into believing that they were buying units at cost without having to pay a mark-up to the sisters. Even if those lands were worth $65,000 per acre at the time and the investors did not overpay for their units, that is not relevant to the prohibited act and is not a mitigating factor.

[61] We find there are no aggravating factors. Although we have found that the sisters knowingly misled Rocky View investors about the actual cost of acquiring the Rocky View lands, that subjective knowledge of the deceit was one of the elements necessary for a finding of fraud. As such, it is not an aggravating factor to the fraud.

Past conduct

[62] There is no evidence that the respondents have any history of regulatory misconduct.

Risk to investors and markets

[63] Those who commit fraud represent the most serious risk to our capital markets. Here, the fraud is significant.

[64] The sisters are not fit to participate in the capital markets. They took joint venture money for personal use. They ignored legal obligations in the joint venture and bare trust agreements. They did not exercise any due diligence to ascertain legal requirements before issuing joint venture units. They seriously mismanaged the Wheatland joint venture without accounting to investors until pressed to do so.

[65] Significantly, Wong does not believe that the sisters did anything wrong even though their actions were objectively dishonest. There is no evidence that Soo now appreciates that their actions were wrong. We find the sisters to be a serious ongoing risk to the capital markets and permanent market bans are warranted.

[66] We do not find a similar risk with respect to Wheatland. Wheatland's only contravention was illegal distributions, and it acted at all times under the control and direction of the sisters. It took no action independently from the sisters.

[67] The executive director's request for a market ban on Wheatland is not based on any specific concerns, but out of an abundance of caution given Wheatland's fund-raising history.

[68] Now that Wheatland is no longer directed or controlled by the sisters, we have no evidence that Wheatland poses any risk to the capital markets. Accordingly, we decline to order any market ban against Wheatland.

[69] We reach the opposite conclusion with respect to D & E Arctic and 1300302.

[70] Wong is the sole director and shareholder of D & E Arctic. As long as it remains under the control and direction of Wong, D & E Arctic poses an on-going risk to the capital markets and a market ban is necessary.

[71] Soo's husband is now the sole director and shareholder of 1300302. Given the sisters' history of using family members (including Mr. Soo) to facilitate their activities, we are not persuaded that 1300302 under Mr. Soo's stewardship would act independently from the sisters. We find that 1300302 poses an on-going risk to the capital markets and a market ban is necessary.

Specific and general deterrence

[72] The sanctions we impose must be sufficient to ensure that the respondents and others will be deterred from engaging in similar misconduct.

Previous orders

[73] The executive director referred us to two recent decisions of this Commission that dealt with fraud: *Re Lathigee* 2015 BCSECCOM 78, and *Re Zhu* 2015 BCSECCOM 264.

[74] In *Lathigee*, the respondents raised $21.7 million from 698 investors without telling them of a severe cash flow problem. There was no finding that the individual respondents were personally enriched. The panel ordered permanent market bans, an administrative penalty of $15 million against each individual respondent, plus a section 161(1)(g) order against all the respondents for the money that was raised illegally.

[75] In *Zhu*, the respondents raised more than $14 million from hundreds of investors in a well-organized fraud. The respondents took steps to disguise their activities and avoid detection. Two individuals were enriched, by at least $52,646 and US$118,266 respectively. The panel ordered permanent market bans, an administrative penalty of $14 million against each of the two individual respondents, plus a section 161(1)(g) order for not less than $14 million against all the respondents for the money that was raised illegally.

[76] The sisters say *Lathigee* and *Zhu* are distinguishable and not useful precedents.

C Appropriate Orders

a) Market prohibitions

[77] Fraud is the most serious misconduct prohibited by the Act. Permanent market bans are common for those found to have committed fraud.

[78] For the reasons already stated, we conclude that it is not in the public interest to allow the sisters to participate in the capital markets. We find that a permanent market ban against each of them is necessary to protect the markets and the investing public, subject to two carve-outs:

a) We are prepared to allow each of them to trade for her own accounts through a registered dealer or advisor. We do not see any risk to the investing public by doing so.

b) We are also prepared to allow each of them to act as a director and officer of an issuer if all of its securities are owned by her or her immediate family. Subject to our comments in the next paragraph about possible risks to the Rocky View investors, we do not see any risk to the investing public by doing so.

[79] We recognize that the sisters or members of their immediate families are the directors, officers and shareholders of 1300302 and D & E Arctic. We were advised by their counsel that it had been difficult to find arms-length individuals to take over the control and management of these companies given their regulatory problems. We were advised at the hearing that two Rocky View investors unrelated to the Wong and Soo families may be willing to take over from Wong as directors and shareholders of D & E Arctic, but it is not yet certain that would happen.

[80] It is not in anyone's interest to have these two companies exist without directors or shareholders when they hold legal ownership of the Rocky View lands. Nor are we satisfied that the Rocky View investors would be better protected if Wong and Soo family members take over as directors in place of the sisters. We are prepared to grant the carve-outs so that the sisters may continue to act as directors of these companies if necessary. We believe the Rocky View investors' interests can be protected by the section 161(1)(g) orders that we issue, for the reasons set out in the next section.

b) Orders under section 161(1)(g)

[81] Section 161(1)(g) states that the Commission may order:

> "(g) if a person has not complied with this Act, ... that the person pay to the commission <u>any amount obtained</u>, or payment or loss avoided, <u>directly or indirectly, as a result of the failure to comply or the contravention</u>;"
> (emphasis added)

Scope of section 161(1)(g)

[82] The sisters challenge our authority to make a section 161(1)(g) order (sometimes referred to as a "disgorgement order") against them. They argued that, for section 161(1)(g) to apply, the respondent against whom the order is issued must have obtained a payment or avoided a loss, directly or indirectly, as a result of the contravention of the Act. They say there is no evidence that either sister obtained any payment or avoided any loss as a result of her contraventions of the Act.

[83] The sisters argued that to order disgorgement against a respondent who has not obtained any money as a result of that person's misconduct would go beyond the underlying puprose of section 161(1)(g) and constitute a penalty. They rely on *Manna Trading*, which stated (in paragraph 36) that the purpose behind section 161(1)(g) orders is to remove "the incentive of profiting from illegal misconduct" and to return money obtained by contravening the Act. They also rely on the dissent in *Re Streamline Properties* 2015 BCSECCOM 66.

[84] The executive director disagreed. He relies on the majority decision in *Re Streamline Properties,* which was followed by the majority in *Re SPYru* 2015 BCSECCOM 452.

Our analysis on section 161(1)(g)

[85] This Commission, in a number of recent decisions, considered the breadth of the orders that may be made under section 161(1)(g).

[86] In *Oriens Travel & Hotel Management Ltd.* 2014 BCSECCOM 91, at paragraph 63, the panel held that section 161(1)(g) is clearly worded and there is no limitation on the Commission to only order a respondent to pay an amount that is obtained *by that respondent.*

[87] In *Re Michaels* 2014 BCSECCOM 457, paragraph 42, the Commission concluded that section 161(1)(g) should be read broadly to achieve the purposes of:

a) compelling a respondent to pay any amounts obtained from contraventions of the Act, and

b) not focus on compensation or restitution or act as a punitive or deterrent measure over and above compelling the respondent to pay any amounts obtained from the contraventions of the Act, and

section 161(1)(g) should not be read narrowly to either limit orders:

c) to amounts obtained, directly or indirectly, *by that respondent*, or

d) to a narrower concept of "benefits" or "profits",

although that may be the nature of the order in individual circumstances.

[88] In *Re Streamline Properties*, the majority concurred with the analysis in *Oriens Travel*, and held that an order under section 161(1)(g) is not limited to personal gains enjoyed by a respondent or to some notion of profits. An order may be made against a respondent with respect to all the money raised as a result of that respondent's misconduct even if all or some of the money raised was not kept by that respondent for personal gain. Section 161(1)(g) orders need not be limited to amounts obtained by a particular respondent or equate to a respondent's enrichment in the circumstances. The majority began with the general principle that the full amount raised in an illegal distribution should be disgorged. It then considered if it is equitable, in the public interest and not punitive in the circumstances of that case, to order payment of the full amount, as opposed to an order to pay a lesser amount or no order at all.

[89] We do not propose to reiterate the extensive legal analysis undertaken in the above cases. We concur with them, and with the interpretation and approach set out in them.

[90] The purpose of section 161(1)(g) is to remove from a respondent any amounts obtained through a violation of the Act. Notably, section 161(1)(g) does not limit an order to any amount *obtained by a respondent*. In our view, this omission is intentional and makes clear that we can make an order against a respondent with respect to all the money illegally obtained from investors as a result of that respondent's misconduct, and we are not limited to the ill-gotten gains obtained by that specific respondent. The plain wording of section 161(1)(g) supports our interpretation. To hold otherwise would be tantamount to importing into section 161(1)(g) a requirement that payment be limited to benefits, personal gains or some notion of profits enjoyed by a respondent.

[91] Whether the money obtained was used for the stated purpose or not, the end result is the same – the investors have been denied the protections required by our securities laws and were harmed as a result of the misconduct. In light of the critical importance of investor protection, the fact that capital was obtained and used for the stated purpose of the investments and not used for personal gains, should not limit the scope of section 161(1)(g), nor should it automatically reduce the size of an order under section161(1)(g). Similarly, we should not read section 161(1)(g) narrowly to shelter individuals where the amounts were obtained by the entities that they directed and controlled.

[92] We note that *Re Streamline Properties* primarily involved illegal distributions. The reasoning expressed by the majority there is even more compelling in cases where a respondent obtained investors' funds through fraud or used them for personal gain.

[93] We do not read *Manna Trading* as supporting the sisters' interpretation of section 161(1)(g). The panel there found four sisters to have perpetrated a fraud and ordered each of them to pay to the Commission under section 161(1)(g) the full amount obtained by the fraud without regard to the finding that they were personally enriched by different amounts. That panel concluded it was not necessary, in making orders under section 161(1)(g), to trace investor funds into the hands of the respondents. It said (at paragraph 44) that each respondent's individual contraventions, directly or indirectly, resulted in the investment of US$16 million in the Manna Ponzi scheme and ordered each of them to pay that amount under section 161(1)(g), as it was "the amount obtained, directly or indirectly, as a result of their individual contraventions of the Act."

[94] This issue was recently considered by the Ontario court. In *David Charles Phillips and John Russell Wilson v. Ontario Securities Commission* 2016 ONSC 7901, the Ontario Superior Court of Justice, Divisional Court, considered *Re Streamline Properties*, as well as a series of OSC decisions under a provision of the Ontario *Securities Act* that is substantially similar to section 161(1)(g). The OSC had ordered the two respondents to jointly and severally disgorge the amount obtained as a result of their non-compliance with Ontario securities law. The Commission also ordered one of the respondents to disgorge a further amount obtained as a result of his non-compliance. The entities that obtained the funds were not named as respondents. On appeal, the respondents argued that it was unreasonable for the Commission to have ordered them to disgorge amounts that were not obtained by them personally and were obtained by entities that were not named as respondents in the proceeding.

[95] At paragraph 78, the Court held that the OSC's decision that it had authority to order disgorgement against the two respondents in these circumstances was consistent with the plain wording of the legislation, the purpose of the legislation and prior case law. At paragraph 80, it held that the disgorgement orders, including the provision that they be joint and several, fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law".

[96] Accordingly, we find that we have the authority to order the sisters to pay the full amounts obtained by fraud or in illegal distributions, on a joint and several basis. Next, we consider if we should do so in the circumstances of this case.

[97] Adopting the approach taken in *Re Streamline Properties*, we begin with the general principle that the full amount obtained from misconduct should be paid to the Commission. We then consider if it is in the public interest and not punitive to order payment of the full amount, as opposed to a lesser amount or no payment at all.

Orders against Wong and Soo

[98] The executive director seeks a section 161(1)(g) order against the sisters in the amount of $9,857,850, calculated as follows:

Misconduct	Calculation, if necessary	Amount Obtained	Section 161(1)(g) Amount
Wheatland - illegal distributions	--	$2 million	$2 million
Wheatland - allocated units to family without consideration	33.5 units @ $85,000 per unit	$2,847,500 (repaid)	None (amount was repaid)
Wheatland - $1,208,000 misappropriated	--	$1,208,000 (repaid)	None (amount was repaid)
Rocky View - inflated purchase price of lands	120.89 units sold to arms-length investors @ $65,000 per unit	$7,857,850	$7,857,850
Rocky View - illegal distributions	$2,785,000 - 1300302, $1,105,000 - D & E Arctic	$3,890,000 (part of $7,857,850)	None (to avoid double counting)
Rocky View – withheld information about potential delays from one investor	One unit @ $65,000	$65,000 (part of $7,857,850)	None (to avoid double counting)

[99] We agree with the executive director that in determining the amount of any order against the sisters, we should reduce it by the amount the sisters have paid back to Wheatland for the 33.5 joint venture units and for the related company loans. It would not be equitable for the sisters to have to pay the same amount twice for the same misconduct. That is consistent with the approach taken in prior Commission decisions. See *Re Nelson* 2016 BCSECCOM 50 para. 127; *and Re Cho* 2013 BCSECCOM 454.

[100] The sisters submitted the following:

a) With respect to the $2 million in Wheatland illegal distributions, an order is not appropriate because the money was used to purchase the Wheatland lands, there was no personal enrichment or fraud relating to the receipt and use of this money.

b) With respect to the $7,857,850 raised in the Rocky View joint venture, at most, the panel should only make an order for $2,317,850 (the amount of personal enrichment alleged by the executive director) less $562,000 in FCC mortgage payments that Wong deposed the sisters had made for the benefit of the Rocky View joint venture.

[101] The sisters cited the following Commission decisions where the Commission did not make a section 161(1)(g) order: *Re Pacific Ocean Resources Corporation* 2012 BCSECCOM 104; *Re Saafnet Canada Inc.* 2014 BCSECCOM 96; *Re Photo Violation Technologies Corp.* 2013 BCSECCOM 276; *Re Solara Technologies Inc.* 2010 BCSECCOM 357; *and Re John Arthur Roche McLoughlin* 2011 BCSECCOM 299.

[102] These cases are either distinguishable or not helpful. In *Re Pacific Ocean*, all of the illegal distribution proceeds went to an entity that the respondents did not control. In *Re Photo Violation*, the respondents took considerable steps to obtain legal advice to ensure compliance with the Act, and one respondent admitted to the misconduct at the start of the proceedings. In *Re Saafnet*, the respondents were diligent and personally involved in taking steps to ensure compliance; they had consulted three sets of lawyers in their repeated attempts to comply with the Act. In *Re Solara*, the executive director did not seek a section 161(1)(g) order and the panel did not discuss that section. In *Re McLoughlin*, the panel did not discuss why it ordered the respondent Collins to pay the amount he personally received but not the entire amount raised in the illegal distributions.

[103] With respect to the $2 million in Wheatland illegal distributions, there is no question that Wheatland obtained the money. The sisters were the directing and controlling minds of Wheatland and the joint venture at all relevant times. They should not be protected or sheltered from sanctions by the fact that the illegal distributions were carried out through corporate vehicles.

[104] As a general principle, we do not find payment of the full amount obtained to be inequitable or punitive in circumstances where the proceeds were used for the purpose of the investments and not kept for personal gain by the respondents. We find no factors present to justify ordering the sisters to pay less than the full $2 million.

[105] With respect to the $7,857,850 raised in the Rocky View joint venture, there is no question that 1300302 and D & E Arctic obtained the money. The sisters were the directing and controlling minds of those companies and the Rocky View joint venture at all relevant times. They should not be protected or sheltered from sanctions by the fact that the illegal distributions were carried out through corporate vehicles. In addition, the sisters raised that amount through fraud on more than 60 investors. The sisters hid behind LCco and deceived investors. All the investments were premised on a lie. The principles articulated in the cited cases are even more compelling in the case of fraud. It is not inequitable or punitive to require them to pay the entire amount raised through fraud.

[106] Similarly, it is not appropriate or equitable to reduce the order against the sisters by the $562,000 FCC mortgage payments.

[107] First, these payments were in relation to an unauthorized and unnecessary mortgage.

[108] Second, a section 161(1)(g) order is focused on "the amount obtained" as a result of a respondent's misconduct. On their plain reading, these words do not suggest any concept of "netting out" a respondent's business expenses or outflows. To do so would inappropriately limit the sanction to a narrower concept of "benefit" received by a respondent and would be inappropriate. See *Re Michaels* (paragraph 46).

[109] We therefore find it is in the public interest to order Wong and Soo to pay to the Commission under section 161(1)(g), jointly and severally, the sum of $9,857,850.

Order against Wheatland

[110] The executive director does not seek a section 161(1)(g) order against Wheatland.

[111] At all relevant times, Wheatland only acted under the control and direction of the sisters. The sisters and their families no longer direct or control Wheatland. Its issued shares are held in trust now for the benefit of the Wheatland investors. To require Wheatland to pay any money under section 161(1)(g) would only punish the investors. We find it is not in the public interest to make a section 161(1)(g) order against Wheatland.

Orders against D & E Arctic and 1300302

[112] These respondents argue that any section 161(1)(g) order against them would be inequitable, contrary to the public interest and punitive to the investors, for the following reasons:

a) It is possible that the Rocky View lands have some value, and that money should go to the investors.

b) The sisters directed and controlled all the Rocky View activities.

c) Wong and Soo are no longer shareholders of 1300302. There is no risk that they would receive any proceeds from 1300302 as shareholders.

d) The 1300302 bare trust agreement mitigates any risks that Soo would receive any profits or proceeds from the Rocky View lands, because it stipulates that 1300302 has no beneficial interest in the Rocky View lands, and that profits and proceeds from the lands do not belong to 1300302 but are subject to the order and control of investors.

e) Although Wong remains a shareholder of D & E Arctic, the D & E Arctic bare trust agreement similarly mitigates any risks that Wong would receive any profits or proceeds from that company.

[113] There is no question that the Rocky View corporate defendants obtained the amounts raised in the illegal distributions.

[114] But they acted, at all relevant times, only under the control and direction of the sisters.

[115] However, we are not satisfied that the Rocky View investors' interests are adequately protected based on the current ownership structure and the sisters' past conduct.

[116] Unlike Wheatland, the sisters or members of their immediate families continue to control 1300302 and D & E Arctic.

[117] These two companies hold legal title to the Rocky View lands. As such, they have apparent ownership and authority to deal with and receive money generated from these lands.

[118] When the sisters obtained the FCC mortgage, they did not tell FCC the fact that these companies did not own the beneficial interest in the lands.

[119] The bare trust agreements had not effectively protected the investors. The sisters previously mortgaged these lands without investors' consent, in direct contravention of those agreements.

[120] For these reasons, we find a section 161(1)(g) order is appropriate, in order to protect the Rocky View investors and provide them with the mechanism intended by the Act to facilitate recovery of their investments.

[121] Accordingly, we find it is in the public interest to order these two respondents to pay the full amounts of the illegal distributions made by them, as follows:

a) D & E Arctic - $1,105,000; and

b) 1300302 - $2,875,000.

[122] D & E Arctic and 1300302 are free to make a section 171 application to vary this order in the event they can demonstrate that the sisters and the Wong and Soo families have ceased to direct or control them or hold shares in them.

c) Administrative Penalty

[123] Under section 162 of the Act, where the Commission has determined that a person has contravened a provision of the Act, it "may order the person to pay the commission an administrative penalty of not more than $1 million for each contravention".

[124] In *Lathigee*, all of the $21.7 million was raised fraudulently. The respondents solicited investors without telling them that the business had a severe cash flow problem and a small number of potential events could trigger its insolvency in a very short time frame. The respondents used $9.9 million from the amount raised for a purpose other than what investors were told. The individual respondents had a regulatory history and one of them remained active in the capital markets but was not forthcoming about his regulatory history.

[125] The panel in *Zhu* found the respondents' business to be not legitimate; it appears that the business was conducted for the purpose of committing a fraud on investors. The individual respondents attempted to conceal information by giving false information to a Commission investigator. The respondents took steps to disguise their activities and avoid detection.

[126] In this case, the sisters committed multiple frauds totaling close to $12 million, and were personally enriched by over $2 million.

[127] While they are not mitigating factors, we also find the following relevant in assessing the seriousness of the sisters' misconduct in the spectrum of frauds:

a) there was a real business behind each joint venture;

b) the co-mingling of personal and joint venture funds was not part of a deliberate plan to defraud investors (Wong genuinely thought there was nothing wrong with what they did; they did not just take money out but they also put in their own money to pay joint venture expenses);

c) they did not abandon the Wheatland joint venture when it ran short on funds; and

d) they did repay the related company loans before investors found out about them.

We also took into account the fact that the investors have beneficial ownership of the lands and both sets of lands may have some residual value.

[128] The amounts and the number of investors involved in this case are less than those in *Lathigee* and *Zhu*. Notwithstanding the multiple findings of fraud against the sisters and the significant personal enrichment, taken as a whole, we find the seriousness of their misconduct to be materially less egregious than that in *Lathigee* and *Zhu*.

[129] We considered each sister's misconduct globally in arriving at a single administrative penalty. In our view, an administrative penalty of $6 million against each of them is proportionate to the harm done, making it appropriate for them personally and sufficient to serve as a meaningful and substantial general deterrence to others.

[130] We have found that the sisters acted jointly in all their activities. There is no material distinction between their individual responsibilities for the misconduct. The administrative penalty should be the same with respect to both of them.

[131] We do not find it serves the public interest or any useful purpose to impose an administrative penalty against any of the corporate respondents. They were controlled by the sisters and did not act independently from their directions. There is no need for specific deterrence against the corporate respondents. In our opinion, general deterrence can be achieved through administrative penalties against the sisters.

VI. Orders

[132] Considering that it would not be prejudicial to the public interest, pursuant to section 171 of the Act, we vary our Findings of June 16, 2016 (BCSECCOM 208) and revoke the finding at paragraph 378(2)(b) that Wong and Soo each breached section 57(b) of the Act and committed fraud with respect to Rocky View when they used mortgage proceeds for purposes other than the development of the Rocky View lands without the consent of investors.

[133] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:

1. ***Wong***
   a) subject to the exception in subparagraph (b)(ii) below, under section 161(1)(d)(i), Wong resigns any position she holds as a director or officer of an issuer or registrant;

   b) Wong be permanently prohibited:
      i. under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts, except that she may trade and purchase them for her own account through one registered dealer or advisor if she gives that dealer or advisor a copy of this decision;
      ii. under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant, except that she may act as a director or officer of an issuer whose securities are solely owned by her or by her and her immediate family members (being: Wong's spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law, or brother or sister-in-law);
      iii. under section 161(1)(d)(iii), from becoming or acting as a promoter;
      iv. under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and
      v. under section 161(1)(d)(v), from engaging in investor relations activities;

   c) under section 161(1)(c), except for those exemptions necessary to allow Wong to trade or purchase securities and exchange contracts for her own account, none of the exemptions set out in the Act, the regulations or decisions (as those terms are defined by the Act), will apply to Wong, on a permanent basis;

   d) subject to subparagraph 5 below, under section 161(1)(g), Wong pays to the Commission $9,857,850; and

   e) under section 162, Wong pays an administrative penalty of $6 million;

2. ***Soo***
   a) subject to the exception in subparagraph (b)(ii) below, under section 161(1)(d)(i), Soo resigns any position she holds as a director or officer of an issuer or registrant;

b) Soo be permanently prohibited:
   i. under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts, except that she may trade and purchase them for her own account through one registered dealer or advisor if she gives that dealer or advisor a copy of this decision;
   ii. under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant, except that she may act as a director or officer of an issuer whose securities are solely owned by her or by her and her immediate family members (being: Soo's spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law, or brother or sister-in-law);
   iii. under section 161(1)(d)(iii), from becoming or acting as a promoter;
   iv. under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and
   v. under section 161(1)(d)(v), from engaging in investor relations activities;

c) under section 161(1)(c), except for those exemptions necessary to allow Soo to trade or purchase securities and exchange contracts for her own account, none of the exemptions set out in the Act, the regulations or decisions (as those terms are defined by the Act), will apply to Soo, on a permanent basis;

d) subject to subparagraph 5 below, under section 161(1)(g), Soo pays to the Commission $9,857,850; and

e) under section 162, Soo pays an administrative penalty of $6 million;

3. ***1300302***
   a) under section 161(1)(b)(ii), 1300302 permanently cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts;

   b) under section 161(1)(c), on a permanent basis, none of the exemptions set out in the Act, the regulations or decisions (as those terms are defined by the Act), will apply to 1300302;

   c) under section 161(1)(d)(v), 1300302 is permanently prohibited from engaging in investor relations activities; and

   d) subject to subparagraph 5 below, under section 161(1)(g), 1300302 pays to the Commission $2,785,000;

4. ***D & E Arctic***
   a) under section 161(1)(b)(ii), D & E Arctic permanently cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts;

b) under section 161(1)(c), on a permanent basis, none of the exemptions set out in the Act, the regulations or decisions (as those terms are defined by the Act), will apply to D & E Arctic;

c) under section 161(1)(d)(v), D & E Arctic is permanently prohibited from engaging in investor relations activities; and

d) subject to subparagraph 5 below, under section 161(1)(g), D & E Arctic pays to the Commission $1,105,000.

5. ***Section 161(1)(g) payments***
The total of the amounts payable by the respondents under subparagraphs (1)(d), (2)(d), (3)(d) and (4)(d) above shall not exceed $9,857,850, and the respondents' obligations to pay under those subparagraphs shall be as follows:

a) $2,785,000 - 1300302, Wong and Soo on a joint and several basis;

b) $1,105,000 - D & E Arctic, Wong and Soo, on a joint and several basis; and

c) $5,967,850 - Wong and Soo, on a joint and several basis.

[134] We make no orders against Wheatland.

February 20, 2017

For the Commission

Audrey T. Ho
Commissioner

Judith Downes
Commissioner

APPENDIX B

Extracts from the Securities Act, RSBC 1996, c. 418

Demand on third party

162.1 (1) If a person owes money to the commission under section 160, 162 or 174 and the commission receives information that a third party is, or is about to become, indebted to the person, the commission may demand of the third party that the money be paid to the commission on account of the person's liability to the commission.

(2) The third party must pay the money demanded under subsection (1) to the commission as soon as practicable after the later of

(a) the receipt of the demand, and

(b) the date the money is due to be paid to the person named in the demand.

(3) Money paid to the commission under this section discharges the indebtedness of the third party to the person named in the demand to the extent of the amount of money paid to the commission.

(4) If, after receipt of a demand under this section, a third party

(a) fails to pay the money to the commission as required under subsection (2), or

(b) makes a payment to the person named in the demand,

the third party is liable to the commission for the lesser of

(c) the third party's indebtedness to the person plus the amount of the indebtedness paid by the third party to the person, and

(d) the amount owed to the commission by the person, including any interest and penalty.

(5) If a demand is made on a third party under this section, the commission must, in the same manner and at the same time, notify the person of the demand and give the person the particulars of it.

This is **Exhibit "C"** referred to in the Affidavit of C. Palmer made before me on June 26 2018.

A. N

A COMMISSIONER FOR TAKING AFFIDAVITS FOR BRITISH COLUMBIA

LAWSON LUNDELL LLP

Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC
Canada V6C 3L2

December 21, 2017

William L. Roberts
D: 604.631.9163
F: 604.641.4401
wroberts@lawsonlundell.com

VIA EMAIL: bfindlater@mjmbarristers.ca

Machida James McCall
300, 444-5th Avenue SW
Calgary, Alberta T2P 2T8

Attention: Brad J. Findlater

Dear Sirs and Mesdames:

Re: British Columbia Securities Commission v. Sui Mui "Debbie" Wong, Siu Kon "Bonnie" Soo, Wheatland Industrial Park Inc. 1300302 Alberta Inc. and D&E Arctic Investments Inc. 2016 BCSECCOM 208 (the "Liability Decision") and 2017 BCSECCOM 57 (the "Sanction Decision")
DYMI Investments Ltd.* v. *1305402 Alberta Inc. et al
Court of Queen's Bench Action Number 1401-10536 (the "Action")

We are solicitors for the British Columbia Securities Commission (the "Commission") in relation to the above-captioned matter.

On June 16, 2016, the Commission issued the Liability Decision and found, among other things, that the respondents, including Ms. Wong and Ms. Soo, committed multiple acts of fraud against a large number of investors in relation to two development projects in Alberta called Wheatland and Rocky View. On February 20, 2017, the Commission issued the Sanction Decision imposing, among other things, an administrative penalty of $6 million against both Ms. Wong and Ms. Soo. The Commission intends to take steps to have the Sanction Decision registered in Alberta and to commence enforcement proceedings to recover Ms. Wong and Ms. Soo's administrative penalties.

We understand that you act for Ms. Wong and Ms. Soo and 1305402 Alberta Inc. (the "Company") in the Action. We are aware that you filed an Application to Strike Claim for Long Delay (the "Application") that is set to be heard on January 10, 2018. Part of the relief you are seeking in your Application is an order that the funds in the amount of $292,575.22 (the "Funds") currently held in trust by Machida James McCall be released to the Company.

Based on Ms. Soo's affidavit sworn in support of the Application, we understand that the Funds are the proceeds of the sale of property for which the Company was the previous registered owner and had acted as bare trustee of the property for the benefit of a number of joint venture participants. However, the identities of the joint venture participants are not set out in the Application materials. The Commission intends to take steps to obtain an order that the Funds be held pending a judicial determination of what parties are entitled to the Funds. Accordingly, we hereby demand that you do not disburse the Funds until the court has made this determination.

We also enclose a letter from the Commission containing a demand under s. 162.1 of the *Securities Act*, RSBC 1996, c. 418.

Yours very truly,

LAWSON LUNDELL LLP

for William L. Roberts*

WLR/czc
Enc.
*Law Corporation

BCSC

British Columbia Securities Commission

Demand on Third Party under section 162.1 of the *Securities Act*, RSBC 1996, c. 418

December 21, 2017

Brad J. Findlater at Machida James McCall
300,444-5th Avenue SW, Calgary Alberta T2P 2T8
Email: bfindlater@mjmbarristers.ca
Fax: (403) 221-8339

Dear Mr. Findlater:

Re: **In the Matter of Sui Mui "Debbie" Wong, Siu Kon "Bonnie" Soo, Wheatland Industrial Park Inc., 1300302 Alberta Inc. and D&E Arctic Investments Inc.**
2017 BCSECCOM 57 (the Commission's Decision)

Pursuant to the Commission's Decision, Ms. Wong and Ms. Soo (the Respondents) each owe $6 million to the British Columbia Securities Commission (the "Commission") under section 162 of the *Securities Act*. Attached as **Appendix A** to this letter is a copy of the Commission's Decision.

The Commission has received information that your firm is, or is about to become, indebted to the Respondents.

Pursuant to section 162.1 of the *Securities Act*, the Commission hereby demands that you pay to the Commission any monies that you owe, or are about to owe, to either of the Respondents, up to the amount owing pursuant to the Commission's Decision. Attached as **Appendix B** to this letter is a copy of section 162.1 of the *Securities Act*.

You must pay this money to the Commission as soon as practicable after the later of

(a) the receipt of this Demand, and

(b) the date the money is due to be paid to the Respondents.

Please note that payment to the Commission will discharge your indebtedness to the Respondents to the extent of the amount of money you pay to the Commission.

As set out in section 162.1(4) of the *Securities Act*, if after having received this demand, you

(a) fail to pay the money to the Commission as required by this Demand,or

(b) make a payment to the Respondents,

you are liable to the Commission for the lesser of

(c) your indebtedness to the Respondents plus the amount of the indebtedness you paid to the Respondents, and

(d) the amount owed to the Commission by the Respondents, including any interest and penalty.

For information on how to make your payment to the Commission, or if you have any questions regarding this Demand, please contact Catherine Palmer, Senior Enforcement Officer at 604-899-6552, email: cpalmer@bcsc.bc.ca.

Yours truly,

Peter J. Brady
Executive Director

PJB/ag
Attachments

This is **Exhibit "D"** referred to in the Affidavit of C. Palmer made before me on June 26 2018.

A COMMISSIONER FOR TAKING AFFIDAVITS FOR BRITISH COLUMBIA

This is the 1st affidavit
of Siu Mui Wong in this proceeding
and was made on March 23, 2018

COURT FILE NO. L-170072
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BRITISH COLUMBIA SECURITIES COMMISSION

PLAINTIFF
JUDGMENT CREDITOR

AND:

SUI MUI "DEBBIE" WONG, SIU KON "BONNIE" SOO, WHEATLAND INDUSTRIAL PARK INC., 1300302 ALBERTA INC. AND D & E ARCTIC INVESTMENTS INC.

DEFENDANTS
JUDGMENT DEBTORS

AFFIDAVIT OF SIU MUI WONG

I, Siu Mui Wong, c/o 3200 – 650 Burrard Street, in the City of Vancouver, in the Province of British Columbia, SWEAR THAT:

1. I have personal knowledge of the matters deposed to in this affidavit, except where I depose to matters based on information from an informant I identify, in which case I believe that both the information from the informant and the resulting statement are true.

2. In the action 0805652 B.C. Ltd. et al. v. Siu Mui Wong (also known as Debbie Wong) and Siu Kon Soo (also known as Bonnie Soo), Vancouver Registry No. S-149050 before the British Columbia Supreme Court (the "0805652 Action"), I previously swore two affidavits setting out my list of assets in response to a *Mareva* order made by the British Columbia Supreme Court:

   (a) Affidavit #1 of Siu Mui Wong (also known as Debbie Wong), sworn February 3, 2015; and

   (b) Affidavit #2 of Siu Mui Wong (also known as Debbie Wong), sworn January 7, 2016.

3. I make this affidavit to update the list of assets appended as Exhibit "A" to my Affidavit #2, sworn January 7, 2016 (my "Prior List of Assets").

4. Item number #1 on my Prior List of Assets makes note of a property located in Mission, British Columbia with the civic address 33136 Dewdney Trunk Road. The property was inadvertently described as being located in Maple Ridge rather than Mission. The property has now been sold, and the lawyer representing me in the 0805652 Action, Mr. Terence Yu of Owen Bird, is currently holding then entire proceeds from the sale of the property in trust. I have been advised by Mr. Yu's office and I verily believe that a total of $204,014.69 is currently being held in trust by Mr. Yu's office.

5. Items #11 – 13 on my Prior List of Assets describe three HSBC accounts, two of which I held jointly with my husband Gilbert Wong. On or about December 2016, HSBC advised Gilbert and I that it had decided to close all three accounts. Consequently, Gilbert and I received bank drafts from HSBC for the full amount of the balances in the accounts at the time. The bank drafts were subsequently deposited into a bank account held solely by Gilbert at another bank, and Gilbert has informed me and I verily believe that the funds have been used towards our family's basic living expenses, including mortgage payments towards our family home.

6. Item #20 on my Prior List of Assets describes a property that was sold with the civic address of 11456 Jasper Avenue, Edmonton, Alberta. The Prior List of Assets states that Colin Wong, a lawyer in Alberta, holds the proceeds from the sale of the property, being $558,680.94, in trust. The proceeds from the sale of the property were subsequently applied towards mortgage payments related to the Rocky View lands and my and Ms. Soo's legal fees. Mr. Yu's office recently advised me and I verily believe that a balance of $38,543.10 is currently held in trust by Colin Wong.

7. Item #22 on my Prior List of Assets describes 79.01 units held by D&E Arctic Investments Inc. in the Rocky View lands. The Rocky View lands have now been sold by way of a foreclosure, for a price less than the amount of the outstanding mortgage balance. Consequently, D&E Arctic Investments Inc. did not receive any proceeds from the foreclosure sale.

8. The 4.51 units in the Rocky View lands held by D&C Atlantic Investments Inc. were sold as part of the same foreclosure process, and similarly D&C Atlantic Investments Inc. did not receive any proceeds from the foreclosure sale.

9. The Prior List of Assets inadvertently did not list an interest in another property in Alberta previously held by D&C Atlantic Investments Inc. That is because at the time I swore my prior affidavits, I was under the mistaken belief that the property in question had already been sold by way of foreclosure with no equity remaining. I now know that the property was in fact sold by way of foreclosure with a small amount of equity returned to the registered owners of the property, and the law firm that acted on the conveyance is currently holding $20,585.40 in that respect in trust for D&C Atlantic Investments Inc. I understand that the law firm has not yet deducted its fees and expenses from that sum.

10. Item #26 on the Prior List of Assets mistakenly identifies the company 0879931 B.C. Ltd. That was a mistake and the company is in fact 0879932 B.C. Ltd.

11. Finally, as explained in my Affidavit #2, sworn January 7, 2016, the Wong Family Trust was wound up on or about November 30, 2014 and I did not receive anything on the windup. Therefore, Item #27 on my Prior List of Assets is not accurate and should be deleted from the list.

SWORN (OR AFFIRMED) BEFORE ME at Vancouver, in British Columbia, on 23 March, 2018

A Commissioner for taking Affidavits within British Columbia

(Print name or affix stamp of commissioner)

Owais Ahmed
Barrister and Solicitor
3200 - 650 West Ge[illegible] Street
Vancouver, BC [illegible]

Siu Mui Wong

SIU MUI WONG

/.1

This is **Exhibit "E"** referred to in the Affidavit of C. Palmer made before me on June 26 2018.

A. W

A COMMISSIONER FOR TAKING AFFIDAVITS FOR BRITISH COLUMBIA

This is the 1st affidavit
of Siu Kon Soo in this proceeding
and was made on March 23, 2018

COURT FILE NO. L-170072
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BRITISH COLUMBIA SECURITIES COMMISSION

PLAINTIFF
JUDGMENT CREDITOR

AND:

SUI MUI "DEBBIE" WONG, SIU KON "BONNIE" SOO,
WHEATLAND INDUSTRIAL PARK INC., 1300302 ALBERTA
INC. AND D & E ARCTIC INVESTMENTS INC.

DEFENDANTS
JUDGMENT DEBTORS

AFFIDAVIT OF SIU KON SOO

I, Siu Kon Soo, c/o 3200 – 650 Burrard Street, in the City of Vancouver, in the Province of British Columbia, SWEAR THAT:

1. I have personal knowledge of the matters deposed to in this affidavit, except where I depose to matters based on information from an informant I identify, in which case I believe that both the information from the informant and the resulting statement are true.

2. In the action 0805652 B.C. Ltd. et al. v. Siu Mui Wong (also known as Debbie Wong) and Siu Kon Soo (also known as Bonnie Soo), Vancouver Registry No. S-149050 before the British Columbia Supreme Court (the "0805652 Action"), I previously swore an affidavit setting out my list of assets in response to a *Mareva* order made by the British Columbia Supreme Court:

   (a) Affidavit #1 of Siu Kon Soo (also known as Bonnie Soo), sworn February 4, 2015.

3. I make this affidavit to update the list of assets appended as Exhibit "A" to my Affidavit #1, sworn February 4, 2015 (my "Prior List of Assets").

4. Item number #1 on my Prior List of Assets makes note of a property located in Mission, British Columbia with the civic address 33136 Dewdney Trunk Road. The property has now been sold, and the lawyer representing me in the 0805652 Action, Mr. Terence Yu of Owen Bird, is currently holding the entire proceeds from the sale of the property in trust. I have been advised by Mr. Yu's office and I verily believe that a total of $204,014.69 is currently being held in trust by Mr. Yu's office.

5. Item number #13 on my Prior List of Assets describes a TD bank account with two separate registered owners. That was a mistake. There are in fact three separate registered owners on that bank account.

6. Item #15 on my Prior List of Assets describes a 50% interest in the Rocky View lands held by 1330302 Alberta Inc. The Rocky View lands have now been sold by way of a foreclosure, for a price less than the amount of the outstanding mortgage balance. Consequently, 1330302 Alberta Inc. did not receive any proceeds from the foreclosure sale.

7. The Prior List of Assets inadvertently did not list an interest in another property in Alberta previously held by 0774238 B.C. Ltd. (Item #18). That is because at the time I swore my prior affidavit, I was under the mistaken belief that the property in question had already been sold by way of foreclosure with no equity remaining. I now know that the property was in fact sold by way of foreclosure with a small amount of equity returned to the registered owners of the property, and the law firm that acted on the conveyance is holding $27,520.00 in that respect in trust on behalf of 0774238 B.C. Ltd. I understand that the law firm has not yet deducted its fees and expenses from that sum.

8. Item #21 on my Prior List of Assets describes a property that was sold with the civic address of 11456 Jasper Avenue, Edmonton, Alberta. The Prior List of Assets states that Colin Wong, a lawyer in Alberta, holds the proceeds from the sale of the property, being $558,680.94, in trust. The proceeds from the sale of the property were subsequently applied towards mortgage payments related to the Rocky View lands and my and Ms. Wong's legal fees. Mr. Yu's office recently advised me and I verily believe that a balance of $38,543.10 is currently held in trust by Colin Wong.

SWORN (OR AFFIRMED) BEFORE ME at Vancouver, in British Columbia, on 23 March, 2018

A Commissioner for taking Affidavits within British Columbia

Siu Kon Soo

SIU KON SOO

(Print name or affix stamp of commissioner)

Owais Ahmed
Barrister and Solicitor
3200 - 650 West Georgia Street
Vancouver, BC V6B 4P7

This is **Exhibit "F"** referred to in the Affidavit of C. Palmer made before me on June 26 2018.

A COMMISSIONER FOR TAKING AFFIDAVITS FOR BRITISH COLUMBIA

105

FORM 109 (RULE 22-2 (2) AND (7))

This is the 2nd affidavit
of Siu Mui Wong (also known as Debbie Wong) in this case
and was made on January 7, 2016

No. S-149050
Vancouver Registry

In the Supreme Court of British Columbia

Between

0805652 B.C. Ltd., 0805663 B.C. Ltd., 0805658 B.C. Ltd., 0801660 B.C. Ltd., 0795671 B.C. Ltd., Bill Fong Investments Ltd., Chang Wei Tile Ltd., Super Tile & Construction Ltd. and Shun Chi Company Ltd.

Plaintiffs

and

Siu Mui Wong (also known as Debbie Wong), Siu Kon Soo (also known as Bonnie Soo),

Defendants

AFFIDAVIT

I, Siu Mui Wong, c/o 2900 – 595 Burrard St., Vancouver, British Columbia, Businesswoman, SWEAR THAT:

1. I am a personal defendant in this action, and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based upon information and belief, and where so stated I verily believe the same to be true.

2. I have previously sworn an Affidavit #1 on February 3, 2015 setting out my list of assets. I have noticed that in the asset list, there was some errors. For example, my company that holds an interest in Wheatland (#23 on the list) was described as 0793751 B.C. Ltd. It should be 0753751 B.C. Ltd. Also for #26 on my asset list, the company should be 0879932 B.C. Ltd. and not 0879931 B.C. Ltd. For #27 I described Pacific Era Ventures Ltd. as a family trust. It is more properly described as The Wong Family Trust which holds Pacific Era Ventures Ltd. as the asset.

However, the Wong Family Trust was wound up in or about November 30, 2014 and I did not receive anything on the windup.

3. I swear this affidavit in opposition to the Notice of Motion filed October 28, 2015 seeking to increase the cap of the current Mareva Order from $1,650,000 to $3,928,000.

4. At the time the Mareva Order was obtained *ex parte*, I had limited funds available to defend myself from various allegations raised by the Plaintiffs in this Action. I am also involved as a defendant in another separate action known as Wheatland Industrial Park Inc. et a. v. Bonnie Soo et al. S.C.B.C. Action No. S139102 which was commenced in early December 2013 and dealing with an earlier Petition proceeding, regarding Wheatland Industrial Park Joint Venture S.C.B.C. No. S124985 (the "Wheatland Action") which was consuming most of my time, energy and funds for legal fees to defend. In addition, I was dealing with complaints made to the B.C. Securities Commission regarding both Wheatland Industrial Park and the property which is the subject matter of this action, Rocky View, which proceeding was initiated in 2013.

5. Suffice it to say with all of these legal proceedings going on, I have simply not been able to properly respond to the matters in this within action because of a lack of funding resulting from the imposition of the Mareva Order which has effectively frozen all of my funding.

6. The current Mareva Order which has been extended since the order was first granted has caused me significant personal hardship. The Mareva Order, pronounced by the Honourable Chief Justice Hinkson on December 2, 2014, provided among other things, that:

a) Para. 2: "If the total value of Debbie, Bonnie, D&E and 302's assets in British Columbia, net of all secured interests, exceed $1,650,000, they may remove any of those assets from British Columbia and Alberta or may dispose of or deal with them so long as the total net value of their assets still in British Columbia and Alberta remain at least $1,650,000. Either the plaintiffs or the defendants may apply to vary the foregoing amount.

b) Para. 3: "This Order does not prohibit Debbie, Bonnie, D&E and 302 from spending reasonable amounts on ordinary living expenses and reasonable amounts on ordinary and proper business expenses, legal advice and legal representation. Before spending any money on living, business, or legal expenses, Debbie, Bonnie, D&E and 302 must advice the plaintiff's solicitors in writing of the intended source of the funds to be expended.

c) Para.4: This order does not prohibit Debbie or Bonnie or D&E or 302 from dealing with or disposing of any of their assets in the ordinary course and proper course of business.

7. Despite the wording provided for in Paragraphs 2, 3 and 4 of the Mareva Order, the reality is that all of my bank accounts and that of my sister Siu Kon Soo, also known as Bonnie Soo, are not accessible as the banks have refused to permit me (and Bonnie) to make any withdrawals at all in light of the Mareva Order. This has caused a significant hardship to me and to Bonnie.

8. In my Affidavit #1, I set out my assets which when calculated is approximately $1.64 million. I am unable to access my real property assets because of the CPL's that have been placed on the properties by the Plaintiffs. So I have not been able to access any of my assets directly because of the Mareva Order.

9. Bonnie has also sworn an affidavit on February 3, 2015 and attached her list of assets. I am advised by Bonnie that she has listed assets totaling approximately $845,000. Between the two of us, when we swore our affidavits we had approximately $2,485,000 of all of our assets frozen and inaccessible.

10. My husband is suffering from cancer and is not working. I am not currently working because of all of the legal proceedings. In order that I can support myself, I have had to make extensive borrowings from my children, family, friends and third party financiers who charge me high interest on their loans.

11. I instructed my counsel Mr. Yu to try to get me relief from the Mareva Order so that I could have living expenses paid. Now shown and produced to me and marked as Exhibit "A" is the correspondence from Mr. Yu to Mr. Forrester regarding Mr. Yu's efforts to provide me with monies so that I could live and to pay for legal fees

12. As you can see, it was a difficult process to get agreement from the Plaintiffs. The original inquiries were made in February 2015 for the legal fees and by agreement the legal fees were paid. However, the living expense portion was not agreed to until July 2015 and by then the plaintiffs agreed that Bonnie and I would be permitted to draw $5,000/month for a period of 6

months for living expenses up to a maximum of $30,000 each. Now shown and produced to me and marked as Exhibit "B" is a copy of the July 16, 2015 Consent Order.

13. Since the Consent Order was made, I have already expended the $30,000 to repay monies I had borrowed since January 2015 to July 2015 for living expenses. I have again relied on borrowings from my family, friends and third parties to continue to live and pay my everyday expenses.

14. Both Bonnie and I have expended significant legal fees particularly to defend the B.C. Securities Commission hearings. I estimate that combined, Bonnie and I have expended over $280,000 in legal fees alone to defend these hearings. The money for these legal fees has by agreement been drawn out from the proceeds of sale of another property we had, located at 11456 Jasper Avenue, Edmonton, Alberta, which is a property listed in my Affidavit #1.

15. Bonnie and I have a 25% interest each in property civically described as 33136 Dewdney Trunk Road, Mission, B.C. (the "Mission Property"). Our spouses each own 25% of the Mission Property as well. At the time I swore my Affidavit #1, the value of the Mission Property was approximately $1.2 million with a mortgage of approximately $738,000. Because of the Mareva Order, it was difficult for Bonnie and I to make payments on the mortgage and ultimately, we all decided to sell the Mission Property rather than to try to keep making the mortgage payments. The property was recently sold this December 2015 by agreement of Bonnie, me our spouses and the BC Securities Commission and the plaintiffs in this action and in the Wheatland action.

16. The agreement made with the BC Securities Commission and the plaintiffs in this action and in the Wheatland Action required among other things, that the net proceeds from the sale be placed into trust with my counsel's law firm and that the net proceeds cannot be dealt with other than by agreement with the BC Securities Commission, the plaintiffs in this action and in the Wheatland Action or by Court Order. Accordingly, the net proceeds of sale to which Bonnie and I are entitled to 50% of, remain held in trust with my counsel. The property was sold for $1.0 million in an arms-length sale and the net proceeds after payment of the mortgage, commission and usual adjustments was $204,014.69. Each of Bonnie and I and our spouses are entitled to

25% interest or $51,003.67. Now shown and produced to me and marked as Exhibits "C" and "D" are copies of:

a) Exhibit "C": The letter from Lim & Company dated December 18, 2015 enclosing the Statutory declaration of arm's length sale; Seller's the Statement of Adjustments and order to pay; and

b) Exhibit "D": the letter agreement dated December 21, 2015 to hold the net proceeds of sale.

17. I have read the Affidavits filed by various of the plaintiffs in this proceeding. I deny that Bonnie or I made any of the representations as alleged by the plaintiffs in their affidavits or any representations at all. I deny that Bonnie or I have conspired and/or committed any fraud on the plaintiffs as alleged or at all.

18. In general and in response to the matters as they relate to the motion to increase the cap on the Mareva Order, the plaintiffs and each of them knew exactly what the price was that they were buying their proportionate share in the Rocky View property, being approximately $10,000,000. At all times, each of the plaintiffs were shown among other things, the statement of adjustments of the sale (see Exhibit 5 p.15 to the affidavit of Hsiao Chu Huang sworn Sept. 5, 2014 [Tab 4]), and a copy of the title search (p.17) which showed the mortgage registered on title. Cindy Yip and Mr. Hsiao Huang her husband both specifically admit to seeing these documents prior to investing. [Tab 3 para. 4 and Tab 4 para. 11]

19. While these plaintiffs on the one hand deny knowledge of the vendor take back financing of $2,770,000 ("VTB"), some if not all at the same time admit to receiving the statement of adjustments. To be clear, Bonnie and I showed each of the plaintiffs the Statement of Adjustments and a copy of the title search showing the mortgage as part of the information regarding the Rocky View property, along with concept plans among other documents. These documents clearly disclosed the VTB. Further, both Bonnie and I specifically explained to each plaintiff and all the investors the reason for the VTB. I deny that I ever represented to any investor that the VTB was unnecessary and that it was cheap money or words to that effect. The VTB was absolutely essential to the completion of the purchase of the Rocky View property.

20. When the Rocky View property was being purchased for the joint venture between the company I set up D&E Arctic Investments Inc. ("D&E") and the company Bonnie set up 1300302 Alberta Inc. ("302"), in order to complete the sale for the purchase price of $10,271,300, we needed to assume the VTB mortgage as there was a shortfall in funding (as a result of investors not paying in their money right away) and a shortfall in selling all of the units.

21. The total Rocky View property had 158.02 acres and D&E and 302 each owned exactly ½ interest or 79.01 acres each. To proceed with the joint venture between D&E and 302, we prepared a joint venture agreement between the two companies. In order to fund the joint venture, we needed to sell 158.02 units at $65,000/unit for a total of $10,271,300 to individual investors.

22. We did not go out and seek investors as alleged, rather, many of the investors were friends or close family who had invested in some of the projects that Bonnie and I developed in British Columbia or in the Wheatland project. Many of those investors spread the word about the Rocky View development opportunity and those individuals contacted others including some of the plaintiffs and the plaintiffs then sought out more information from Bonnie and I.

23. Bonnie and I had numerous meetings with the plaintiffs, individually and collectively. At all times, each of the plaintiffs were told that to invest in the Rocky View project, they had to purchase units at $65,000 per acre undivided. This was calculated based on the purchase price of $10,271,300 divided by the total acreage of 158.02 acres. If all 158.02 acres were sold, the joint venture would have $10,271,300, which would complete the purchase price as set out in the Statement of Adjustments and would have been sufficient to pay out the VTB. However, as explained below, not all of the 158.02 units could be sold.

24. At no time, did Bonnie or I ever have any conversation with any of the investors about the acquisition cost from the original vendor (not 1276420 Alberta Ltd.) nor did any investor ever ask. Bonnie and I had discovered the Rocky View property initially in early 2007 through a realtor Mr. Fournet and we saw the potential for a development opportunity. Bonnie and I did set out to acquire the Rocky View property because we believed at the time that the Rocky View property was selling below market value in comparison to many other development opportunities

in the area. We believed that the true value of the Rocky View property was at least $60,000 to $65,000/acre but it was being sold by the original vendor at an under value for around $34,000 to $35,000/acre.

25. When the joint venture was assembled, we marketed the Rocky View property at what we believed to be its true value being $65,000/acre. All of the plaintiffs had the opportunity to do their own due diligence. In fact, many of the plaintiffs flew out to Calgary to view this opportunity. At the time, these plaintiffs saw other land which was being marketed and advertised in the same or similar area for more than what we were asking at $65,000/acre. For example, they saw advertisements for the Accolade Lands which were selling between $47,500 to $74,500 per acre. In addition, also being marketed at that time was the Everich Lands which was selling at starting price of $160,000 per acre. Now shown and produced to me and marked as Exhibit "E" are copies of newspaper advertisements that some of the investors including some of the plaintiffs had seen along with a map or where the Rocky View property was in relation to these other parcels.

26. Each of the plaintiffs satisfied themselves that the investment at $65,000/acre was a good price to invest. Each of the plaintiffs had their own opportunity to do their own due diligence. We did not object to any of the investors making their own inquiries. In fact we encouraged them to go and satisfy themselves.

27. In the end, when the joint venture agreements were made, we were unable to sell approximately 28.01 units or $1,820,650. That left a shortfall in being able to repay the VTB. In addition, not all of the investors provided their money right away. While their allocation of units was reflected in the Bare Trust agreement, not all investors had put up their money at that time.

28. In essence, the VTB of $2,770,000 represented the 28.01 units unsubscribed ($1.82 million) and an additional $950,000 for purchased units that some of the other investors had not given the money for. Bonnie and I had to cover these shortfalls. As and when the investors did pay their share of the investment, we repaid the borrowings for the $950,000. However, the shortfall of $1.82 million was still going to be required and was part of the VTB, and we explained this to all investors including the plaintiffs. We tried to see if any of the investors

including the plaintiffs were willing to take on any more units. None of the investors including the plaintiffs were willing to subscribe for more. As a result, Bonnie and I agreed that we would pay for the shortfall in the subscription rate until new investors could be found.

29. Mr. Su one of the investors, in fact offered to help to market the balance of the 28.01 units to his associates in Asia. Mr. Su (also known as Mingjay or "Jay") was specifically aware that the burden of the financing being paid for by Bonnie and I was difficult for us, and that is why he offered to see if he could find new investors for those units. Now shown and produced to me and marked as Exhibit "F" is a copy of an e-mail from Sophie (also an investor) dated January 3, 2012 where she and Jay confirm that Jay was going to go back to Taiwan and look for buyers of Rocky View. Both Sophie and Jay were also specifically aware of the FCC mortgage. Unfortunately Jay was not able to find any new investors.

30. Each of the investors including the plaintiffs knew that Bonnie and I would be responsible for the repayment of the VTB and Bonnie and I did repay the VTB and interest payments using borrowings from our other companies, from our family, banks and third party lenders. None of the other investors including the plaintiffs had to pay any of the interest on the VTB financing.

31. The initial VTB was made on 6/15/2007 in the amount of $2,770,000. A number of payments were made towards the interest and principal of the VTB. Noteably the following were paid towards the principal:

a) $700,000 on 2/12/08 [Cheq. Dated 2/4/2008] paid by 1276420 Alberta Ltd. signed by Lena Colbern;

b) $200,000 on 3/12/2008 [Cheq 3/5/2008] paid by 1276420 Alberta Ltd. signed by Lena Colborn;

c) $200,000 on 5/28/2008 [Cheq 5/22/2008] paid by 1276420 Alberta Ltd. signed by Lena Colborn; and

d) $1,735,000 [Cheq. Dated 9/12,2008] from 1276420 Alberta Ltd. for amount of $1,732,958.57 in principal owing leaving a balance of ($4414.99). This was paid out to German Fong Albus.

32. The VTB mortgage was required to be paid off on or about September 2008. I believe we were a little late in making the payment. In order to come up with the final payment, of $1,735,000, we borrowed the money from other companies, third party lenders and/or our family.

33. The borrowings are reflected in the HSBC Bank statement of D&E dated September 30, 2008, which shows that the following deposits were made into D&E's account:

a) Sept. 10, 2008 Credit $500,000 from 1342558 Alberta Inc. (Chq#26);

b) Sept. 10, 2008 credit $100,000 from Bonnie Soo RBC;

c) Sept. 11, 2008 credit $500,000 from 1342565 Alberta Inc. (chq #18);

d) Sept. 11, 2008 credit $60,000 from 0785207 BC Ltd. (chq #14);

e) Sept. 11, 2008 credit $340,000 from 0745188 BC Ltd. (chq.#15);

f) Sept. 11, 2008 credit $270,000 from G&E Northwestern Ent Inc. (chq #7);

34. The total amount deposited from above (a-f) is $1,770,000.

35. The amount of $1,770,000 was then withdrawn by draft on Sept. 12, 2008 made payable to 1276420 Alberta Ltd. Then on Sept. 12, as noted above, a cheque was issued to for $1,735,000, which paid off the VTB. Now shown and produced to me and marked as Exhibit "G" is a copy of the HSBC statement of D&E dated September 30, 2008 with attachments.

36. Bonnie and I had to pay the interest on the borrowings of the $1,770,000 and none of the other investors were responsible. However, because the mortgage amount reflected the shortfall in the unsubscribed units, it was still a debt related to the joint venture which all the investors were aware of, and which Bonnie and I agreed to be responsible for until new investors could be found. In order to repay the borrowings we took from lenders, Bonnie and I through D&E took

out the FCC mortgage in or about January 2010. The FCC mortgage was paid to a HSBC account in the name of Bonnie's daughter Eileen Soo ("Eileen"). According to Eileen's HSBC statement of February 22, 2010, the two payments are:

a) $443,490.89 on Jan. 28, 2010 from Siebenga & King Law in trust; and

b) $1,199,000 Cr memo on Feb. 4, 2010.

37. The total deposited above is $1,642,490.89. Then from Eileen's HSBC account a cheque was issued for $1,643,492.89 on Feb. 16, 2010 and paid to D&E.

38. In the D& E bank statement at HSBC dated Feb 26, 2010, you can see the deposit on Feb. 16, 2010 of $1,643,492.89 . So the funds from the FCC went initially into Eileen's account at HSBC and then went out to D&E. Eileen did not take any of the funding for herself personally as alleged by the plaintiffs or at all. Now shown and produced to me and marked as Exhibit "H" are copies of the HSBC Statement of Eileen Soo dated February 22, 2010 and D& E's HSBC Statement dated February 26, 2010 and cancelled cheques.

39. D&E then repaid the money to the original lenders who put up the $1,770,000 to pay off the VTB at Sept. 2008 to preserve the property. In effect, the FCC mortgage was a continuation of the VTB financing that was required to cover the portion of the shortfall of the 28.01 units until new investors could be found. This was all known to the investors including the plaintiffs.

40. The first payment of the FCC mortgage was due in or about February 2015. Despite Mr. Yu writing to have the plaintiffs agree to release funding to repay the FCC mortgage so that there would be no default, the plaintiffs failed to respond to Mr. Yu. As a result, in order to keep the FCC mortgage in good standing, Bonnie and I had to borrow from other companies to pay the approximate $60,000 due. This is reflected in Exhibit "A" – the letter of February 16, 2015 showing our payment of the FCC mortgage at that time from borrowings from 0774236 B.C. Ltd, 0753751 B.C. Ltd. and 0774244 B.C. Ltd. We have not paid back the lenders for the monies borrowed to make the FCC payment and we are still paying interest on this as a result of the plaintiff's failure to cooperate despite that the payment is one in the ordinary course of business

for D&E. We are in need of funds to be released from the Mareva Order to repay our borrowings to make this payment.

41. Further, another payment was due on the FCC mortgage in or about August 2015. For this payment since the plaintiffs did not reimburse us for the earlier payment in February 2015 neither Bonnie nor I were prepared to borrow yet again to make this second payment when the first borrowings had not been repaid. As a result we instructed our counsel Mr. Yu to negotiate to permit the payment to be made out from the funds in trust with Collin Wong. Eventually an agreement was reached to make the payment due out of the funds. However, again, this was a difficult process. Now shown and produced to me and marked as Exhibit "H1" are copies of the correspondence between counsel to get this agreement.

42. The investors including the plaintiffs were aware of this. They were aware of the original VTB and shortfall in the 28.01 units and they were aware that we were not able to find new investors to make up the shortfall. Mr. Su tried but was ultimately unsuccessful. This is the same Mr. Su that has allegedly set up meetings with some of the investors. That shortfall had to be paid so Bonnie and I agreed to assume it with all of the investors knowledge and consent. All of the investors benefitted by Bonnie and I agreeing to take on the shortfall. None of the investors money was used to pay any of the interest costs. The FCC mortgage is consistent that the only guarantors were Bonnie, me and our other family members. None of the other investors were guarantors. The FCC mortgage was necessary to replace the VTB after it was paid out and represented the amount of the 28.01 shortfall. Both Bonnie and I require the permission of the plaintiffs in order to use our funds to pay the FCC mortgage because of the Mareva Order which is creating difficulties.

43. I note that again, the next FCC mortgage payment due Feb 1 2016 in the amount of $25,239.00 + $31,615.58 = 56,854.67. Also, the insurance is due on Jan 12 2016. Again we will require our money that is tied up to make this payment. We have also not been able to get D&E's accountant Sugimoto and Company to be paid. Now shown and produced to me and marked as Exhibit "H2" are copies of the FCC mortgage documents, insurance invoice and accountant invoice.

44. The plaintiffs have alleged that Bonnie and I and/or our companies were involved in a conspiracy and fraud in carrying out the joint venture and entering into the Bare Trust Agreements. We deny all of these allegations. The allegations made by the BCSC are nothing but allegations and have not been proven and we Bonnie and I have spent significant sums to defend ourselves in the BCSCV commission hearings. The plaintiffs knew the facts regarding the VTB and the subsequent FCC mortgage that replaced the VTB funding. We have not taken any monies from the joint venture or the FCC funding for any personal purposes as alleged or at all.

45. With respect to the allegations by some of the plaintiffs that we defrauded the plaintiffs by inflating the value of the Rocky View project, this is untrue. As I have already deposed, Bonnie and I discovered this opportunity and sought to purchase the Rocky View property which we believed was being marketed at an undervalue in comparison with other surrounding potentially developable properties in the similar area at that time. When the joint venture was created, we marketed the property at the cost we believed the Rocky View property ought to fetch after it was acquired it i.e. market value of at least $10 million. This was consistent with the advertisement for other similar properties being marketed at the time, as earlier noted.

46. When all of these allegations and legal proceedings came on, Bonnie and I specifically retained C.J. Griffen & Company Inc. an appraisal company to do a retrospective appraisal of the Rocky View property as at March 2007. The appraisal report prepared on November 9, 2013 determined that the value of the Rocky View property as at March 15, 2007 was estimated to be valued at $10,035,000. Now shown and produced to me and marked as Exhibit "I" is a copy of the appraisal report. You can see in the comparable section that the value per acre of similar other projects that had development potential was being marketed at the time for a similar unit value to the Rocky View project. This is also again consistent with the price to be paid per acre of other similar properties being advertised for sale at that time.

47. Whether the value of the project today is higher or lower than back in 2007 does not affect what the value was when the plaintiffs and other investors decided to invest in the Rocky View project. They purchased units based on the fair market value at that time.

48. Neither Bonnie nor I had any information from the original vendor about the value of the Rocky View property. We acted strictly through our real estate agent at the time and never met the original owner at the time of these negotiations. We do note that earlier on, the original owner through Mr. Fournet acting as dual agent, attempted to sell the Rocky View property for $9,490,000 in February 2007. We did not agree to make this offer. This was done by Mr. Fournet presumably on the original owner's instructions. This draft offer is set out at Tab 29 Exhibit 23 p. 291 of the Wu Affidavit #2 sworn October 22, 2015. This is an indication of what the original owner was attempting to get for the Rocky View Property even though he ultimately sold it for less.

49. In reply to the allegations that Bonnie and I misrepresented the development potential of the Rocky View project, we deny any representation as alleged or at all. First, the title search showed the leases that the plaintiffs complained about. It was disclosed and the lease was for a very small part of the Rocky View property that was inconsequential to the proposed concept plan for development. There was no impediment to potential development because of the lease as alleged or at all.

50. Second, we did retain an engineering company at any early stage to assist with the development potential. The engineering firm was IBI Group ("IBI"). The plaintiffs produced only some of the correspondence between the IBI group and Bonnie and myself. However, in the course of the BCSC hearings, there was a litany of documents produced by IBI in the hearings. Now shown and produced to me and marked as Exhibit "J" are copies of documents that IBI produced and which were in the possession of the BCSC.

51. I understand that the plaintiffs obtained an order to have the BCSC produce specific documents (Exhibit 7 to the affidavit #2 of Betty Wu sworn October 22, 2015, "Master Muir Order").

52. The Master Muir Order pronounced on February 10, 2015 includes under paragraph 3 that:

"The solicitor for the Plaintiffs shall promptly after receipt of same provide to the Defendants through their legal counsel copies of any and all records received pursuant to this order."

53. I am informed by Mr. Yu, that his office did not receive any copies of documents from the plaintiff's counsel other than when the motion materials for this motion were first delivered. When the plaintiff's received copies of documents from the BCSC is unknown to me. Mr. Yu advised me that the plaintiffs did send a list of documents on a CD Disk in or about September 2015 but I am advised that he had the disk returned and requested that printed documents be provided. Mr. Yu advised me that he was not aware that the CD of the List of Documents contained BCSC documents at that time.

54. As can be seen in Exhibit "J", much work was done by IBI in trying to move the Rocky View project forward. Each time I received correspondence from IBI regarding this project I would inform the investors including the plaintiffs. All of the investors were aware that this project was speculative and that there were no guarantees. All of the investors were kept appraised of the status of the project and that this was a long term investment.

55. Now shown and produced to me and marked as Exhibit "K" are other correspondence and e-mails between IBI and me and/or Bonnie.

56. At no time did Bonnie or I give any guarantees about this investment as alleged or at all. This is simply untrue. At no time did Bonnie or I give any assurances in any way about returns on investment or any timelines. The investors including the plaintiff knew the information that I knew, which information came primarily from the efforts of IBI.

57. The correspondence set out in Exhibit "J" and "K" shows all of the steps that were being taken to advance the Rocky View project. What is important to note is that all indications from IBI were positive about the development potential of the Rocky View project. After the Municipal District ("MD") of Rocky View prepared their draft Growth Management Strategy in mid-2009, we were informed by IBI that the Rocky View lands were within the Minor Business Corridor and therefore may be developable in accordance with the Growth Management Strategy. We were informed by letter from IBI dated May 7, 2009. In June 16, 2009, the MD formally approved the Growth Management Strategy.

58. Based on that information, IBI recommended that we proceed with the Conceptual Scheme plan to allow development to occur on the site. This request was made to the MD by letter dated August 5, 2009. In addition, IBI recommended to us that they propose to seek to work closely with the County staff in establishing a set of development guidelines for future development which the benefit for IBI clients would be to ensure that our interests would be fully represented and that this might potentially accelerate the development approval process. Again, all signs were positive for moving forward with a plan for development and the investors including the plaintiffs were kept informed of these steps.

59. In or about March 23, 2011, IBI wrote to the MD regarding the application status for the Rocky View project. A further letter was sent in September 2011. These letters recapped the history of correspondence over the past three years regarding the project and the substantial efforts made to advancing the land use and conceptual scheme for the land. The steps taken to date include:

a) October 2007 an application for redesignation submitted to Rocky View County for the subject lands;

b) Notice given by the county on December 17, 2007 that application would be put on hold pending completion of Growth Management Strategy;

c) The county approved in June 2009 of a Growth Management Strategy, which identified the subject lands as being within a minor business corridor;

d) Meeting on July 22, 2009 with County staff to discuss possibility of moving forward with the development of the subject lands.

e) August 2009, letter submitted by IBI Group to the County requesting to proceed with Conceptual Scheme for the subject site and offering to create the comprehensive planning framework for the business corridor as part of the submission;

f) The County replied in December 2009 that it had a resource team in place to create the planning framework and until the guidelines were approved, any discussions on development of the subject site would be premature;

g) March 2010, County sent letter stating that the project application would remain open but that the application would not be reviewed until the comprehensive planning framework was established, which was anticipated to be available in later 2010;

h) In July 6, 2010, the County created a task force on growth planning;

i) In January/February 2011, the task force provided its final report to the council;

j) In March 2011, IBI Group wrote requesting permission to proceed with land use and conceptual scheme applications for the subject lands;

k) In June 2011, a meeting was held with the Chief Administrative Officer and County staff to discuss status of the application. The administration indicated that the County was in the process of reviewing the existing development policies including the Municipal Development Plan;

l) In July and August 2011, meeting with Chief Administrative Officer Rob Coon, noting that that MD could not provide further direction on processing the application at that time because the County council was in the process of reviewing existing development policies of the Country including the County's Municipal Development Plan;

m) September 2011 – letter from IBI to Rocky View County re keeping the application open;

n) September 2012 – follow up by IBI of status of applications with the Rocky View County and update that the county has not made any firm policy direction;

o) July 2013 – IBI wrote to Rocky View County for status update on the conceptual scheme application for the Rocky View project.

60. All of the investors including the plaintiffs were told of the status of the project as and when Bonnie and I were updated by IBI and the investors were informed of the hold on the project for the MD to pursue its various studies. The plaintiff's denials that they were not kept informed is simply untrue.

61. In particular I note that in or about September 28, 2011, I wrote an e-mail to one of the plaintiffs Isabella Leung ("Isabella") who is the director of the plaintiff's 081660 B.C. Ltd and 0795671 B.C. Ltd. regarding IBI's status update in September 2011. Isabella indicated in a reply e-mail on September 29, 2011 that the IBI letter was a good account of what had been done over the last few years and she thanked me for the hard work that we had put into the project. In addition, Isabella indicated that she would e-mail our other investor friends for their reference regarding the status of the project. Now shown and produced to me and marked as Exhibit "L" is a copy of the e-mail from me to Isabella and her reply.

62. Both Bonnie and I kept all the investors including the plaintiffs informed of the progress. Despite all of our hard work and the work that IBI provided to advance the development, the MD decided to change their direction regarding development in the minor business corridor. This change of direction was completely out of our control and certainly a disappointment to all investors and ourselves.

63. By letter from IBI dated October 22, 2013, [See Exhibit "K"] we were informed that the latest county plan as adopted by the council on October 1, 2013 had removed the commercial corridors that were previously identified in the Growth Management Strategy and which included the Rocky View lands. We were informed that the county had decided to remove the growth corridors in favour of full service hamlets. We were also advised that the previous Growth Management Strategy adopted in 2009 was only a guideline and not a statutory plan and it has now been replaced by the new County Plan. Under the new County Plan the land in question is considered to be agricultural land. We advised all of the investors including the plaintiffs of this development and we were all disappointed.

64. I believe that this lawsuit is the result of certain of the plaintiffs being unhappy with the fact that the new County Plan has made the development of the Rocky View property difficult. We also note that only some of the investors are brought an action and many of the other investors are not parties to any lawsuit. As I have deposed earlier, all investors knew that the development of the lands was a potential development and long term. There were never any guarantees given by Bonnie and/or me and we worked tirelessly with IBI to try to move the project forward. In the end the county changed their development direction in October 2013 and removed the potential for development. That is no one's fault and it was certainly never planned. As IBI noted, unless the political environment changes, it will remain extremely difficult to secure development entitlements in that jurisdiction.

65. This change by the new County Plan and the unfortunate economic climate in Alberta because of the downturn in the oil and gas economy has made it difficult to continue to proceed with this project now or in anytime in the near future.

66. Regarding the Mareva Order, from the money that was released to us for our living allowance, the only payments that either Bonnie or I have made that has exceeded $1,000 are as follows:

a) I have to pay $2029.77/month for my mortgage on my residence at 16863 58A Ave, Surrey. I had to borrow money initially to make these payments until I received some of the living allowance;

b) On May 8, 2015 I paid for my house insurance of $2,100 on my Mastercard;

c) I have to pay my Property tax for last year of $3525.45 but I have not yet paid this because I have no funds;

d) Bonnie and I and our spouses share the maintenance costs of the Mission Property at 33136 Dewdney Trunk Rd., Mission. That property had 2 mortgages of $1332.55 per month and $3822.19 per month. Bonnie and I had borrowed money to make these payments;

e) The Mission house insurance was paid June 11, 2015 for $1372.00 via credit card;

f) The property tax was unpaid in the amount of approximately $8312.30, but this debt was cleared after the property was sold.

67. Other than the above payments, there are no other payments of amounts over $1,000 that either I or Bonnie have spent. Now shown and produced to me and marked as Exhibit "M" is a copy of the supporting documents showing payments required for the mortgages and insurance as noted above.

68. I swear this affidavit in opposition to the Plaintiffs motion dated October 28, 2015 and for no improper purpose.

SWORN (OR AFFIRMED) BEFORE ME)
at the City of Vancouver, in the Province of)
British Columbia, this 7 day of January,)
2016.)
)
)
)
A Commissioner for taking Affidavits for)
British Columbia)
Terence W.T. Yu)

Siu Mui Wong (also known as Debbie Wong),

TERENCE W. YU
Barrister & Solicitor
2900-595 BURRARD ST.
VANCOUVER, B.C. V7X 1J5
(604) 691-7545

This is **Exhibit "G"** referred to in the Affidavit of C. Palmer made before me on June 26 2018.

A. N

A COMMISSIONER FOR TAKING AFFIDAVITS FOR BRITISH COLUMBIA

FORM 109 (RULE 22-2 (2) AND (7))

This is the 1st affidavit
of Siu Mui Wong (also known as Debbie Wong) in this case
and was made on February 3, 2015

No. S-149050
Vancouver Registry

In the Supreme Court of British Columbia

Between

0805652 B.C. Ltd., 0805663 B.C. Ltd., 0805658 B.C. Ltd., 0801660 B.C. Ltd., 0795671 B.C. Ltd., Bill Fong Investments Ltd., Chang Wei Tile Ltd., Super Tile & Construction Ltd. and Shun Chi Company Ltd.

Plaintiffs

and

Siu Mui Wong (also known as Debbie Wong), Siu Kon Soo (also known as Bonnie Soo),

Defendants

AFFIDAVIT

I, Siu Mui Wong, c/o 2900 – 595 Burrard St., Vancouver, British Columbia, Businesswoman, SWEAR THAT:

1. I am a personal defendant in this action, and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based upon information and belief, and where so stated I verily believe the same to be true.

2. Pursuant to the Order of the Honourable Chief Justice Hinkson pronounced December 2, 2014, I have provided a complete list of my assets as attached as Exhibit "A" to my affidavit.

3. I sincerely apologize to the Court for the delay in providing the asset list.

4. To the best of my knowledge Exhibit "A" reflects the total of all assets that I own legally or beneficially within and outside of British Columbia.

5. I am a director and officer of the corporate defendant D&E Arctic Investments Inc. I have also listed the assets of the corporate defendant D&E Arctic Investments Inc. in Exhibit "A". To the best of my knowledge, Exhibit "A" reflects the total of all assets that are owned by D&E Arctic Investments Inc.

SWORN (OR AFFIRMED) BEFORE ME)
at the City of Vancouver, in the Province of)
British Columbia, this 3rd day of February,)
2015.)
)
)
)
A Commissioner for taking Affidavits for)
British Columbia)
Terence W.T. Yu

Siu Mui Wong (also known as Debbie Wong),

TERENCE W. YU
Barrister & Solicitor
2900-595 BURRARD ST.
VANCOUVER, B.C. V7X 1J5
(604) 691-7545

This is Exhibit " A " referred to in the affidavit of Siu Mui Wong sworn before me at Duncan, BC this 3 day of February, 2015

A Commissioner for taking Affidavits within British Columbia

LIST OF ASSETS OF DEBBIE WONG

Description, location and approximate value of asset (if known)

Real Property

1. **33136 Dewdney Trunk Road, Maple Ridge, B.C.**
   1/4 interest

   Approximate value $1,200,000.00 – ($738,000.00 mortgage) = $462,000.00

   $462,000.00 / 4 = $115,500.00.

2. **12008 120 th 72nd Avenue, Surrey, B.C.**
   1/4 interest

   Approximate value $2,980,000.00

   Two couples owners $2,980,000/2 = $1,490,000 – ($940,000 mortgage)=$550,000
   Debbie interest is ½ of $550,000= $275,000.

3. **25141 Dewdney Trunk Road, Maple Ridge, B.C.**
   1/16 interest

   Approximate value $610,200.00 / 16 = $38,137.50

4. **26678 100 Avenue, Maple Ridge, B.C.**
   1/8 interest

   Approximate value $1,004,000.00 – ($390,000.00 mortgage) = $614,000.00

   $614,000.00 / 8 = $76,750.00

5. **16863 58a Avenue, Surrey, B.C.**
   1/2 interest

   Approximate value $751,000.00 – ($500,000.00 mortgage) = $251,000.00

   $251,000.00 / 2 = $125,500.00

Financial Assets

6. Debbie RBC USD account No. 01110-4502514 = $0.
   Formerly $6,118.61, but Revenue Canada garnished the account.
   17931-56th Ave Surrey B,C V3S 1E2

7. Debbie RBC account No. 07120-5000914= $19,947.29 /4 = $4,986.82
   400 Main Street Vancouver B.C V6A 2T5
   Holds a ¼ interest in the account.

8. Debbie RBC account No.07120-5522321 = $35,260.63 /2 = $17,630.31
   400 Main St Vancouver B.C
   Holds a ½ interest in the account.

9. Debbie RBC account No, 07120-5522339 = $331.12 /4 = $82.80
   400 Main St Vancouver B.C V6A 2T5
   Holds a ¼ interest in the account.

10. Debbie RBC account No, 07120-5526959 =$355.41 /4 = $88.85
    400 main St Vancouver B.C V6A 2T5
    Holds a ¼ interest in the account.

11. Debbie HSBC account No, 080-061990-150 = $23,540.11 /2 = $11,770.05
    608 Main St. Vancouver B.C V6A 2V3
    Holds a ½ interest in the account.

12. Debbie HSBC account No, 080-061990-203 = $108.79 /2 = $54.40
    608 Main St. Vancouver B.C V6A 2V3
    Holds a ½ interest in the account.

13. Debbie HSBC account No, 080-148271-150 = $731.43
    608 Main St. Vancouver B.C V6A 2V3

14. Debbie HSBC RRSP account No. 5079744 = $27,625.50
    608 Main St. Vancouver B.C V6A 2V3

15. Debbie HSBC Invest Direct RRSP account No, 6Y-D6Y9-S = $9,717.71
    608 Main St. Vancouver B.C V6A 2V3

16. Debbie RBC RESP account No. 044944726 =$ 4,883.79
    400 Main St. Vancouver B.C V6A 2T5

17. Debbie RBC RESP account No. 884758822 =$1,878.48
    400 Main St. Vancouver B.C V6A 2T5

18. Debbie VanCity account No. 14233 Branch 70 = $ 19,030.62
    Unit H120-15795 Croydon Dr Surrey B.C V3S 2L6

19. Debbie CIBC account No,00720-7588836 = $171.72
    20069 64 Ave Langley B.C V2Y 1M9

20. 1342565 Alberta Inc. former owner of ½ interest in property at 11456 Jasper Avenue, Edmonton, Alberta. Property sold and net proceeds of $558,680.94, currently held in trust with Colin Wong Barrister & Solicitor & Notary Public

    Debbie is a 100% shareholder of 1342565 Alberta Inc. Value of net property is $558,680.94 x ½= $279,340

21. 1342565 Alberta Inc. corporate account at TD Account No. 91940 004 91945246385 = $ 10,165.52

D & E Arctic Investments Inc.

22. Holds 79.01 units or 50% interest in the Rocky View Property. Rocky View Property is worth approximately $10,000,000.

D & C Atlantic Investments Inc. holds 4.51 acres.

4.51 acres = $67,000.00/acre x 4.51 shares = $302,170.00

Debbie is a 50% owner of D&C Atlantic Investments Inc. so net equity is $151,085

Wheatland Industrial Park Joint Venture

23. 0793751 B.C. Ltd. holds 5 units in Wheatland Industrial Park Joint Venture.

Debbie is a 100% shareholder so holds 5 units x $75,108.93 = $375,544.65

Other shareholdings in corporations not already listed

24. 0765306 B.C Ltd.
Debbie owns 50% of shares. Value unknown.

25. 1376472 Alberta Ltd.
Debbie owns 50% of shares.
Value unknown.

26. 0879931 B.C Ltd.
Debbie owns 50% of shares. Value unknown.

27. Pacific Era Ventures Ltd. – Family trust
Company holds ½ interest in 24984 – 112 Avenue, Maple Ridge.
Debbie is a beneficiary. Value unknown.

This is **Exhibit "H"** referred to in the Affidavit of C. Palmer made before me on June 26 2018.

A COMMISSIONER FOR TAKING AFFIDAVITS FOR BRITISH COLUMBIA

FORM 109 (RULE 22-2 (2) AND (7))

This is the 1st affidavit
of Siu Kon Soo (also known as Bonnie Soo) in this case
and was made on February 3, 2015

No. S-149050
Vancouver Registry

In the Supreme Court of British Columbia

Between

0805652 B.C. Ltd., 0805663 B.C. Ltd., 0805658 B.C. Ltd., 0801660 B.C. Ltd., 0795671 B.C. Ltd., Bill Fong Investments Ltd., Chang Wei Tile Ltd., Super Tile & Construction Ltd. and Shun Chi Company Ltd.

Plaintiffs

and

Sui Mui Wong (also known as Debbie Wong), Siu Kon Soo (also known as Bonnie Soo),

Defendants

AFFIDAVIT

I, Siu Kon Soo (also known as Bonnie Soo), c/o 2900 – 595 Burrard St., Vancouver, British Columbia, Businesswoman, SWEAR THAT:

1. I am a personal defendant in this action, and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based upon information and belief, and where so stated I verily believe the same to be true.

2. Pursuant to the Order of the Honourable Chief Justice Hinkson pronounced December 2, 2014, I have provided a complete list of my assets as attached as Exhibit "A" to my affidavit.

3. I sincerely apologize to the Court for the delay in providing the asset list.

4. To the best of my knowledge Exhibit "A" reflects the total of all assets that I own legally or beneficially within and outside of British Columbia.

5. I was a former director and officer of the corporate defendant 1300302 Alberta Inc. I am no longer a director or officer. My husband Kwok Kie Soo is now a director and officer of the company. I am informed by my husband that the assets of the corporate defendant 1300302 Alberta Inc. are as set out in Exhibit "A". To the best of my knowledge, Exhibit "A" reflects the total of all assets that are owned by 1300302 Alberta Inc.

SWORN (OR AFFIRMED) BEFORE ME)
at the City of Vancouver, in the Province of)
British Columbia, this 3rd day of February,)
2015.)
)
)
)
A Commissioner for taking Affidavits for)
British Columbia)
Terence W.T. Yu

Siu Kon Soo

Siu Kon Soo (also known as Bonnie Soo)

TERENCE W. YU
Barrister & Solicitor
2900-595 BURRARD ST.
VANCOUVER, B.C. V7X 1J5
(604) 691-7545

LIST OF ASSETS OF BONNIE SIU KON SOO

This is Exhibit "A" referred to in the affidavit of Siu Kon Soo sworn before me at Vancouver, BC this 3 day of February, 2015

A Commissioner for taking Affidavits within British Columbia

Description, location and approximate value of asset

Real Property

1. 33136 Dewdney Trunk Road, Mission, B.C.
   1/4 interest

   Approximate value $1,200,000.00 – ($738,000.00 mortgage) = $462,000.00

   $462,000.00 / 4 = $115,500.00.

2. 25141 Dewdney Trunk Road, Maple Ridge, B.C.
   1/16 interest

3. Approximate value $610,200.00 / 16 = $38,137.50

Financial Assets

4. RBC account No. 07120-5524988 = $6,326.12
   400 Main St Vancouver BC V6A 2T5

5. Bonnie RBC account No. 06800-5266051 = $9,376.37
   2208 West 41st Avenue Vancouver BC V6M 1Z8

6. Bonnie Vancity account No. 191700 Branch 23 = $10,927.40
   100 – 20055 Willowbrook Drive Langley BC V2Y 2T5

7. Bonnie U.S. Personal account No. 01110 7003908 = $2,848.89 /2 = 1,424.45
   400 Main St Vancouver BC V6A 2T5

8. Bonnie RBC account No. 07120 5522339 = $331.12 /2 = $165.56
   400 Main St Vancouver BC V6A 2T5

9. Bonnie RBC account No, 07120 5526959 = $355.41 /2 = $177.71
   400 Main St Vancouver BC V6A 2T5

10. Bonnie RBC account No, 01110 5001185 = $1,254.49 /2 = $627.25
    400 Main St Vancouver BC V6A 2T5

11. Bonnie RBC account No, 02880 5164348 = $310.66
    400 Main St Vancouver BC V6A 2T5

12. Bonnie RBC account No, 07120-5039938 = $2,250.40
    400 Main St Vancouver BC V6A 2T5

13. Bonnie TD account No, 9466 6326743 = $8,619.34 /2 = $4,309.67
    900 West King Edward Avenue Vancouver BC V5Z 2E2

14. Bonnie TD account No, 9466 6332522 = $366.60
    900 West King Edward Avenue Vancouver BC V5Z 2E2

1300302 Alberta Inc. Joint Venture

15. 50% interest in the Rocky View Property. Approximately value of Rocky View Property is $10,000,000.

16. **Wheatland Industrial Park Joint Venture**

    0790333 B.C. Ltd. Holds 5 units in Wheatland JV.
    Bonnie owns 100% of the shares. Bonnie's interest is 5 shares x $75,108.93 = $375,544.65

Other Corporate assets

17. 0745188 B.C. Ltd
    Bonnie owns 50% of shares
    Value unknown

18. 0774238 B.C. Ltd
    Bonnie owns 50% of shares
    Value unknown

19. 1192657 Alberta Ltd
    Bonnie owns 50% of shares
    Value unknown

20. 1342558 Alberta Inc.
    Bonnie owns 50% of shares. Value unknown

21. New City Enterprises Ltd.
    New City Enteprises Ltd. former owner of ½ interest in property at 11456 Jasper Avenue, Edmonton, Alberta. Property sold and net proceeds of $558,680.94, currently held in trust with Colin Wong Barrister & Solicitor & Notary Public
    Bonnie holds 100% of shares. Her interest in the net proceeds is $279,340.