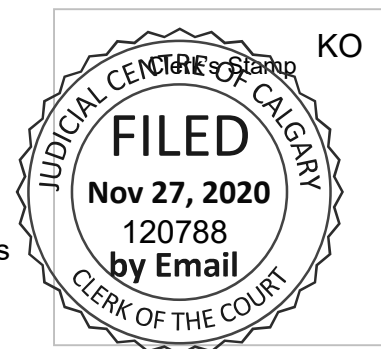


Court File No 2001-14881
Court Court of Queen's Bench of Alberta
Judicial Centre Calgary
Applicants 0774238 BC Ltd., 0792065 BC Ltd., A&C Pacific Enterprises Inc., Augustan Enterprises Ltd., D&C Atlantic Investments Inc., DYMI Investments Ltd., DNP Enterprises Ltd., Fireland Developments Ltd., Hung Yip International Development Co. Ltd., Innet Enterprises Inc., Ye Zhan Enterprises Corp., Zhanda Investment Ltd.



Respondents 0752868 BC Ltd., Canada and America Enterprises Ltd., Canapoint Development Inc., The United Teeming Development Co. Ltd., Sam Myung Enterprises Ltd., Sanmei Enterprises Ltd., Soon Enterprises Ltd.

Document **Originating Application**

Address for service and contact information of party filing this document **Wilson Laycraft**
Barristers and Solicitors
1601, 333 – 11 Avenue SW
Calgary, AB T2R 1L9

Attention: Brad Findlater
Phone: 403.441.2135
Fax: 403.290.0828
Email: bfindlater@wilcraft.com
File No.: 14-9099

NOTICE TO THE RESPONDENTS: 0752868 BC Ltd., 0792065 BC Ltd., Canada and America Enterprises Ltd., Canapoint Development Inc., The United Teeming Development Co. Ltd., Sam Myung Enterprises Ltd., Sanmei Enterprises Ltd., Soon Enterprises Ltd.

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

Date:	January 26, 2021	To appear by video: https://www.albertacourts.ca/qb/court-operations-schedules/scheduling
Time:	10:00 a.m.	Calgary Masters Chambers (MC1) - Virtual Courtroom 55 (CCC QB)
Where:	Calgary Courts Centre	To appear by telephone:
Before Whom:	Master in Motions Court	Dial in Number: 780-851-3573 Access code: 962 778 718

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. Pursuant to rule 13.53, an Order for Money to be Paid Out of Court to directly to the Applicants as follows:

- a. 0774238 BC LTD., is entitled to 10/153.48th share (10 x \$1835.40) = \$18,354.00 plus accrued proportionate interest;
 - b. 0792065 BC LTD., is entitled to 5/153.48th share (5 x \$1835.40) = \$9,177.00 plus accrued proportionate interest;
 - c. A & C Pacific Enterprises Inc. is entitled to 10/153.48th share (10 x \$1835.40) = \$18,354.00 plus accrued proportionate interest;
 - d. Augustan Enterprises Ltd. is entitled to 10/153.48th share (10 x \$1835.40) = \$18,354.00 plus accrued proportionate interest;
 - e. D & C Investments Ltd. is entitled to 7.48/153.48th share (7.48 x \$1835.40) = \$13,728.79 plus accrued proportionate interest;
 - f. DNP Enterprises Ltd. is entitled to 5/153.48th share (5 x \$1835.40) = \$9,177.00 plus accrued proportionate interest;
 - g. DYMI Investments Ltd. is entitled to 20/153.48th share (20 x \$1835.40) = \$36,708.00 plus accrued proportionate interest;
 - h. Fireland Development Ltd. is entitled to 6/153.48th share (6 x \$1835.40) = \$11,012.40 plus accrued proportionate interest;
 - i. Hung Yip International Development Co. Ltd. is entitled to 10/153.48th share (10 x \$1835.40) = \$18,354.00 plus accrued proportionate interest;
 - j. Innet Enterprises Inc. is entitled to 10/153.48th share (10 x \$1835.40) = \$18,354.90 plus accrued proportionate interest;
 - k. Ye Zhan Enterprises Corp. is entitled to 5/153.48th share (5 x \$1835.40) = \$9,177.00 plus accrued proportionate interest; and
 - l. Zhanda Investment Ltd. is entitled to 5/153.48th share (5 x \$1835.40) = \$9,177.00 plus accrued proportionate interest.
2. Interest to be calculated by the Clerk of the Court from the total amount of the Money Paid Out of Court sought by the Applicants, \$189,935.97, and distributed to each of the Applicants as a percentage of the 103.48 entitled shares as follows:
- a. 0774238 BC LTD. is entitled to 9.66% of accrued interest;
 - b. 0792065 BC LTD. is entitled to 4.83% of accrued interest;
 - c. A & C Pacific Enterprises Inc. is entitled to 9.66% of accrued interest;
 - d. Augustan Enterprises Ltd. is entitled to 9.66% of accrued interest;
 - e. D & C Investments Ltd. is entitled to 7.22% of accrued interest;
 - f. DNP Enterprises Ltd. is entitled to 4.83% of accrued interest;
 - g. DYMI Investments Ltd. is entitled to 19.33% of accrued interest;
 - h. Fireland Development Ltd. is entitled to 5.80% of accrued interest;

- i. Hung Yip International Development Co. Ltd. is entitled to 9.66% of accrued interest;
 - j. Innet Enterprises Inc. is entitled to 9.66% of accrued interest;
 - k. Ye Zhan Enterprises Corp. is entitled to 4.83% of accrued interest; and
 - l. Zhanda Investment Ltd. is entitled to 4.83% of accrued interest.
3. Costs of this application, as against any party who opposes the relief sought.

Grounds for making this application:

Background

4. In 2014, the Applicants and the Respondents were involved in an investment to develop and market certain lands in Rockyview, Alberta legally described as:

MERIDIAN 4 RANGE 27 TOWNSHIP 23
SECTION 32 QUARTER SW
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THEREOUT:
HECTARES (ACRES) MORE OR LESS
A) PLAN 9211808 DESCRIPTIVE 2.64 (6.52)
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the “**Property**”)

5. The Property was held in trust by the nominee company 1305402 Alberta Inc. (“**130**”) for the investors, which included all of the Applicants and the Respondents. 130 was incorporated by Siu Kon “Bonnie” Soo (“**Soo**”) and Siu Mui “Debbie” Wong (“**Wong**”). 130, Soo, and Wong had no interest in the Property.
6. The investment was governed by a Joint Venture Agreement and Trust Agreement entered into around May 2007 by all of the Applicants and Respondents, with 130 as the nominee corporation and base trustee of the Property.
7. Pursuant to the Joint Venture Agreement, each of the Respondents was deemed to have an interest in the Property based on the capital contributions made at the time the Joint Venture Agreement was entered into. The proportionate interests in the Property as set out in the Joint Venture Agreement are as follows:
- a. 0774238 BC LTD., is entitled to 10/153.48th share in the lands;
 - b. DYMI Investments Ltd. as to 20/153.48th share in the lands;
 - c. D & C Investments Ltd. as to 7.48/153.48th share in the lands;
 - d. A & C Pacific Enterprises Inc. as to 10/153.48th share in the lands;
 - e. The United Teeming Development Co. Ltd. as to a 10/153.48th share in the lands;
 - f. Innet Enterprises Inc. as to a 10/153.48th share in the lands;
 - g. Hung Yip International Development Co. Ltd. as to a 10/153.48th share in the lands;
 - h. Augustan Enterprises Ltd. as to a 10/153.48th share in the lands;
 - i. Fireland Development Ltd. as to a 6/153.48th share in the lands;

- j. Canapoint Development Inc. as to a 5/153.48th share in the lands;
- k. 0792065 BC LTD., as to a 5/153.48 share in the lands;
- l. Zhanda Investment Ltd. as to a 5/153.48th share in the lands;
- m. DNP Enterprises Ltd. as to a 5/153.48th share in the lands;
- n. Sam Myung Enterprises Ltd. as to a 5/153.48th share in the lands;
- o. Soon Enterprises Ltd. as to a 5/153.48th share in the lands;
- p. Sanmei Enterprises Ltd. as to a 5/153.48th share in the lands;
- q. Canada and America Enterprises Ltd. as to a 10/153.48th share in the lands;
- r. Ye Zhan Enterprises Corp. as to a 5/153.48th share in the lands;
- s. DYMI Investments Ltd. is entitled to 20/153.48th share; and
- t. 0752868 BC Ltd as to a 10/153.48th share in the lands.

(referred to individually as the “**Joint Venture Participant**” and collectively as “**Joint Venture Participants**”).

Sale of the Property

- 8. Title to the Property changed from 130 pursuant to a Consent Order for Foreclosure, filed 16 September 2014 in Court of Queen’s Bench Action 1301-11183.
- 9. The balance of the proceeds from the sale of the Property were were ordered to be paid into Court, to be held in an interest-bearing account, pursuant to the Order of Master Hanebury pronounced 3 July 2018 (filed 5 July 2018) in Queen’s Bench Action No. 1801-07295 (the “**Hanebury Order**”).
- 10. In accordance with the Hanebury Order, on 4 October 2018 the remaining sale proceeds of \$281,711.11 were paid into Court pursuant to a Money Paid Into Court filed 4 October 2018 (the “**Sale Proceeds**”).

The Application of MNP Ltd.

- 11. On 21 November 2019 MNP Ltd. (“**MNP**”) brought an application in Queen’s Bench Action 1801-07295 seeking to have the Sale Proceeds released and paid to MNP, in its capacity as Receiver over certain debtors, those being Wong, Soo, 130, Wheatland Industrial Park Inc., and D&E Arctic Investment Inc. (the “**Debtors**”). The application was opposed by some of the Joint Venture Participants.
- 12. On 19 December 2019 Master Farrington dismissed the application of MNP, with his reasons for decision found at 2019 ABQB 982 (the “**Farrington Decision**”).
- 13. Although MNP is not a named Respondent in this Originating Application, its counsel has been provided notice of the application.

Distribution of the Sale Proceeds

- 14. The Trust Agreement states that 130 shall act as Trustee and hold the Property in a beneficial trust on behalf of the beneficial owners, the beneficial owners being the 19 Joint Venture Participants in the JVA. The Applicants make up 12 of the 19 JV

Participants and pursuant to the terms of the Trust Agreement, the Applicants are entitled to be returned each of its proportionate share of the Sale Proceeds.

15. As 130 held the Rockyview #2 lands in trust for the JV Participants, pursuant to the JVA and Trust Agreement, each JV Participant is entitled to a corresponding share of the Sale Proceeds.
16. The Trust Agreement and JV apportionment divided the Property into 153.48 shares. The Sale Proceeds total \$281,711.11. Thus, \$281,711.11/153.48 (shares) is equal to \$1,835.49 per share.
17. The JVA and Trust Agreement sets out the Applicants' entitlement to Money Paid Out of Court in an amount calculated in accordance with the Applicants' rightful apportionment of the Sale Proceeds as follows:

Company	Share	\$/Share	Total
0774238 BC Ltd.	10	\$1,835.49	\$18,354.90
0792065 BC Ltd.	5	\$1,835.49	\$9,177.45
A & C Pacific Enterprises Inc.	10	\$1,835.49	\$18,354.90
Augustan Enterprises Ltd.	10	\$1,835.49	\$18,354.90
D & C Investments Ltd.	7.48	\$1,835.49	\$13,729.47
DNP Enterprises Ltd.	5	\$1,835.49	\$9,177.45
DYMI Investments Ltd.	20	\$1,835.49	\$36,709.80
Fireland Development Ltd.	6	\$1,835.49	\$11,012.40
Hung Yip International Development Co. Ltd	10	\$1,835.49	\$18,354.90
Innet Enterprises Inc.	10	\$1,835.49	\$18,354.90
Ye Zhan Enterprises Corp.	5	\$1,835.49	\$9,177.45
Zhanda Investment Ltd.	5	\$1,835.49	\$9,177.45

18. The total amount of the value of the Applicants apportioned shares, based on the above, is \$189,935.97. The total number of shares held by the Applicants is 103.48 shares.
19. Interest accruing on the total amount sought by the Applicants is to be calculated as a percentage based upon the number of shares the individual Applicant is entitled to, divided by 103.48 shares, representing the total number of shares of the Applicants.
20. The Respondents who are made up of the 7 remaining Joint Venture Participants not seeking to have Money Paid Out of Court in this Application, arguably have a residual entitlement to the remaining Sale Proceeds as follows:

Company	Share	\$/Share	Total
0752868 BC Ltd.	10	\$1,835.49	\$18,354.90
Canada and America Enterprises Ltd.	10	\$1,835.49	\$18,354.90
Canapoint Development Inc.	5	\$1,835.49	\$9,177.45
Sam Myung Enterprises Ltd.	5	\$1,835.49	\$9,177.45
Sanmei Enterprises Ltd.	5	\$1,835.49	\$9,177.45
Soon Enterprises Ltd.	5	\$1,835.49	\$9,177.45
The United Teeming Development Co. Ltd.	10	\$1,835.49	\$18,354.90

21. The total amount of the value of the Respondents apportioned shares, based on the above, is \$91,774.50, plus any interest accrued on that amount. The total number of shares held by the Applicants is 50 shares.
22. The Applicants seek Money Paid Out of Court in the total amount of \$189,935.97 plus interest, to be paid directly by the Clerk of the Court to each of the Applicants in accordance with the apportionment provided for by the JVA and Trust Agreement and pursuant to this Application.

Material or evidence to be used in support of this application:

23. Affidavit of Thomas Lee, filed and served herewith.
24. Pleadings and evidence filed in Court of Queen's Bench Action No. 1801 07295.
25. Such further and other material as counsel may advise.

Applicable rules:

26. Rule 13.49, Rule 13.53.

Applicable Acts and regulations:

27. None

Any irregularity complained of or objection relied on:

28. None

How the application is proposed to be heard or considered:

29. In person or via Webex, with one, some or all of the parties present.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicants and against all persons claiming under the applicants. You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicants is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicants a reasonable time before the application is to be heard or considered.