

OCT 29 2019

NO.  
VANCOUVER REGISTRY



**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

AUSTIN WONG and DEREK WONG in their capacities as  
joint executors of the ESTATE OF WAI HUNG WONG

**PETITIONERS**

**AND:**

SIU MUI WONG  
THE TORONTO-DOMINION BANK  
0801660 B.C. LTD.  
0795671 B.C. LTD.  
0805652 B.C. LTD.  
0805658 B.C. LTD.  
0805663 B.C. LTD.  
SHUN CHI COMPANY LTD.  
SUPER TILE & CONSTRUCTION LTD.  
CHANG WEI TILE LTD.  
BILL FONG INVESTMENT LTD.  
FARM CREDIT CANADA  
BRITISH COLUMBIA SECURITIES COMMISSION

**RESPONDENTS**

**PETITION TO THE COURT**

**ON NOTICE TO:**

Siu Mui Wong 16863 – 58A Ave. Surrey, BC V4P 2R2	The Toronto-Dominion Bank c/o Farris Vaughan Wills & Murphy LLP Attn: Robert P. Sloman 2500 – 700 West Georgia St. Vancouver, BC V7Y 1B3
0801660 B.C. Ltd. 10822 Finlayson Drive Richmond, BC V6X 1W9	0795671 B.C. Ltd. 10822 Finlayson Drive Richmond, BC V6X 1W9
0805652 B.C. Ltd. 93 West 28 <sup>th</sup> Ave. Vancouver, BC V5Y 2K7	0805658 B.C. Ltd. 93 West 28th Ave. Vancouver, BC V5Y 2K7

0805663 B.C. Ltd. 93 West 28th Ave. Vancouver, BC V5Y 2K7	Shun Chi Company Ltd 93 West 28th Ave. Vancouver, BC V5Y 2K7
Super Tile & Construction Ltd. 75 E. 56 <sup>th</sup> Ave. Vancouver, BC V5X 1P7	Chang Wei Tile Ltd. 75 E. 56 <sup>th</sup> Ave. Vancouver, BC V5X 1P7
Bill Fong Investment Ltd. 432 – 56 Ave. East Vancouver, BC V5X 1R4	Farm Credit Canada c/o Baker Newby LLP Attn: Adnan Habib 200 – 2955 Gladwin Rd. Abbotsford, BC V2T 5T4
British Columbia Securities Commission c/o Lawson Lundell LLP Attn: William Roberts Suite 1600 Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2	Forrester & Company Barristers Suite 300, Randall Building 555 West Georgia Street Vancouver, BC V6B 1Z6

This proceeding is brought for the relief set out in Part 1 below, by

- the persons named as Petitioners in the style of proceedings above

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

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for Response to Petition described below, and
- (b) serve on the Petitioners
  - (i) 2 copies of the filed Response to Petition; and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.**

#### **Time for Response to Petition**

A Response to Petition must be filed and served on the Petitioners,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,

- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for Response has been set by order of the court, within that time.

The address of the Registry is 800 Smithe Street, Vancouver, British Columbia.

The ADDRESS FOR SERVICE of the Petitioners is c/o Lindsay Kenney LLP, 1800 – 401 West Georgia Street, Vancouver, British Columbia V6B 5A1.

Fax number for delivery is: (604) 687-2347.

The name and office address of the Petitioners' solicitors is: Lindsay Kenney LLP, 1800 – 401 West Georgia Street, Vancouver, British Columbia, V6B 5A1 (Attention: J. Reilly Pollard).

## **CLAIM OF PETITIONERS**

### **Part 1: ORDERS SOUGHT**

1. A declaration that the joint tenancy in the Property (defined below) was severed by Wai Hung Wong prior to his death.
2. On order:
  - (a) directing the New Westminster Land Title Office to record the Petitioners as registered owners of ½ interest in the Property as tenants in common with Siu Mui Wong; and
  - (b) declaring that the Petitioners have proved to the satisfaction of the Court on investigation that the title of the Petitioners in the Property is good safe holding and marketable title.
3. Costs payable to the Estate of Wai Hung Wong.

### **Part 2: FACTUAL BASIS**

#### **The Parties and the Property**

4. The Petitioners, Austin Wong and Derek Wong, are the adult sons of Wai Hung "Gilbert" Wong (hereinafter referred to as "Gilbert Wong") and Siu Mui "Debbie" Wong (hereinafter referred to as "Debbie Wong"). Gilbert Wong and Debbie Wong were married in Vancouver in 1979 and remained married until Gilbert Wong's death.

Affidavit of Derek Wong sworn October 28, 2019 ("D. Wong Affidavit"), para. 2

5. In or around December 1994, Gilbert Wong and Debbie Wong purchased the property located at 16863 – 58A Avenue, Surrey, BC and legally described as

PID: 018-997-554

LOT 4 SECTION 7 TOWNSHIP 8 NEW WESTMINSTER DISTRICT PLAN  
LMP19441

(the "Property")

Title to the Property was registered in the names of Gilbert Wong and Debbie Wong as joint tenants. The Property was the family home of Gilbert Wong and Debbie Wong and their children (the Petitioners) from 1996 until Gilbert Wong passed away in 2018. Debbie Wong continues to reside in at the Property.

D. Wong Affidavit, paras. 3-4, Ex. A

6. Each of the Respondents is the holder of registered charges against the Property:
- a. The Toronto-Dominion Bank holds a mortgage registered against the interests of both Gilbert Wong and Debbie Wong;
  - b. The British Columbia Securities Commission and Farm Credit Canada hold judgments registered against the interest of Debbie Wong;
  - c. The balance of the Respondents are the plaintiffs in an action commenced in British Columbia Supreme Court under court file no. S149050, Vancouver Registry, in which they obtained an injunction by order made December 2, 2014 restraining Debbie Wong from dealing with her property in British Columbia (the "Injunction"). The Injunction was registered on title as against the interest of Debbie Wong on December 8, 2014, pursuant to section 284 of the *Land Title Act*.

### **Gilbert Wong's Estate Planning in 2016**

7. Pursuant to a will made June 14, 2016 (the "Will"), the Petitioners were appointed as Trustees of the Estate of Gilbert Wong. The Petitioners are also the residual beneficiaries under the terms of the Will.

D. Wong Affidavit, para. 6, Ex. C

8. On June 14, 2016, Gilbert Wong executed a Form A Transfer to effect the transfer of his interest as a joint tenant of the Property to himself (the "Form A"). On June 15, 2016, Gilbert Wong's solicitors attempted to register the Form A in the New Westminster Land Title Office (the "LTO") but were advised that the LTO would not register the Form A due to the presence of the Injunction registered on title to the Property.

Affidavit #1 of Kim Ming Ho sworn October 24, 2019, paras 5-8., Exs. A - D

9. Accordingly, as of June 14, 2016, Gilbert Wong had both executed and delivered a Form A Transfer sufficient to sever the joint tenancy to the Property.
10. Gilbert Wong died on June 28, 2018.

D. Wong Affidavit, para. 5, Ex. B.

**Part 3: LEGAL BASIS**

11. Section 18 of the *Property Law Act*, RSBC 1996, c 377 provides, in part:

**Rules for transfer and ownership to oneself**

18 (1) A person may transfer land to himself or herself in the same manner as to another person, and, without restricting that power, a joint tenant may transfer his or her interest in land to himself or herself.

(2) A trustee or personal representative may transfer land to himself or herself in his or her personal capacity.

(3) A transfer by a joint tenant to himself or herself of his or her interest in land, whether in fee simple or by a charge, has and is deemed always to have had the same effect of severing the joint tenancy as a transfer to a stranger.

(4) A registered owner may make a transfer directly to himself or herself jointly with another, and registered owners may make a direct transfer to one or more of their number either alone or jointly with another.

12. Section 20 of the *Land Title Act*, RSBC 1996, c 250 provides:

**Unregistered instrument does not pass estate**

20 (1) Except as against the person making it, an instrument purporting to transfer, charge, deal with or affect land or an estate or interest in land does not operate to pass an estate or interest, either at law or in equity, in the land unless the instrument is registered in compliance with this Act.

(2) An instrument referred to in subsection (1) confers on every person benefited by it and on every person claiming through or under the person benefited, whether by descent, purchase or otherwise, the right

(a) to apply to have the instrument registered, and

(b) in proceedings incidental or auxiliary to registration, to use the names of all parties to the instrument, whether or not a party has since died or become legally incapacitated.

[Emphasis added]

13. Based on the foregoing statutory provisions, the execution and delivery of the Form A Transfer by Gilbert Wong was sufficient to sever the joint tenancy to the Property as of June 14, 2016. Registration was not required to effect the severance.

*Feinstein v. Ashford*, 2005 BCSC 1379.

14. Section 34 of the *Land Title Act* provides as follows:

**Registration of indefeasible title by court order**

34 (1) Except as provided in section 180, the registrar must not register an indefeasible title in favour of a person under a direction contained in an order of a court unless the order declares that it has been proved to the satisfaction of the court on investigation that the title of the person designated in the direction is a good safe holding and marketable title.

(2) Subsection (1) applies to the registration of a charge.

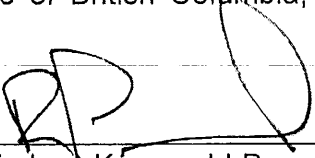
Accordingly, the Petitioners seek such a declaration as part of the relief sought on this Petition.

**Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Derek Wong sworn October 28, 2019.
2. Affidavit #1 of Kim Ming Ho sworn October 24, 2019.
3. Such further and other material as counsel for the Petitioners may provide.

The Petitioners estimate that the hearing of the Petition will take 60 minutes.

Dated at the City of Vancouver, in the Province of British Columbia, this 29<sup>th</sup> day of October, 2019.

  
 Lindsay Kenney LLP  
 Solicitors for the Petitioners

This Petition to the Court is filed by J. Reilly Pollard, of the law firm of Lindsay Kenney LLP, whose place of business and address for delivery is 1800 - 401 West Georgia Street, Vancouver, British Columbia V6B 5A1.

**To be completed by the court only:**

Order made

in the terms requested in paragraphs \_\_\_\_\_  
of Part 1 of this Petition

with the following variations and additional terms:

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Date:

\_\_\_\_\_  
Signature of  Judge  Master

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VANCOUVER REGISTRY  
IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

AUSTIN WONG and DEREK  
WONG in their capacities as joint  
executors of the ESTATE OF WAI  
HUNG WONG

PETITIONERS

AND:

SIU MUI WONG ET. AL.

RESPONDENTS

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PETITION TO THE COURT

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Lindsay Kenney LLP  
Barristers & Solicitors  
Founded in 1980

Barristers and Solicitors  
1800 - 401 West Georgia Street  
Vancouver, British Columbia V6B 5A1  
Phone: (604) 687-1323  
Attention: J. Reilly Pollard