

VIA EMAIL

April 9, 2025

To the Former Owners of Joyce Place, Strata Plan LMS 992
3362-3376, 3378, 3380, 3382 & 3384 Vanness Avenue
Vancouver, BC

Dear Sir/Madam:

**RE: STRATA WINDUP – STRATA PLAN LMS 992 (“Joyce Place”)
UPDATE FROM LIQUIDATOR**

The Liquidator wishes to provide you with a brief update on the ongoing litigation with Intracorp Acquisition Co Ltd. (“**Intracorp**”) and the status of the counterclaim regarding the Purchase Price Adjustment (“**PPA**”) since our last letter dated March 20, 2025, attached hereto for your reference.

As you may recall, the Liquidator’s legal counsel, Lawson Lundell LLP (“**Lawsons**”), filed a Notice of Application on March 11, 2025 (“**NOA**”) seeking the dismissal of Intracorp’s claim against Joyce Place. The NOA and supporting affidavits are available on the website: www.joyceplacestrata.com.

The NOA was initially set for a hearing in regular chambers on April 24, 2025; however, Intracorp’s lawyers took the position that the hearing would take longer than two hours. The April 24 hearing date was therefore adjourned. Lawsons attempted to book a one day hearing with the Supreme Court trial registry for June 2025; however, they were not assigned a hearing date. Accordingly, Lawsons will call in to the Supreme Court trial registry at the next scheduling date (May 13, 2025) seeking to be assigned a one day hearing for the NOA in July or August 2025.

The NOA pertains solely to the dismissal of Intracorp’s claim against the Liquidator and Joyce Place. It does not address the counterclaim regarding the Purchase Price Adjustment, which will be resolved at a later date. If the NOA is successful, Lawsons will be able to distribute the \$525,000 held in trust to the former owners.

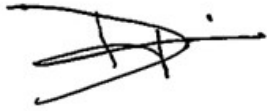
Should you have any questions or concerns with respect to any of the above, please contact the Liquidator’s office at joyceplace@crowemackay.ca. You can also get updates with respect to this matter on the Liquidator’s website at www.joyceplacestrata.com.

Yours very truly,

CROWE MACKAY & COMPANY LTD.

in its capacity as Court Appointed Liquidator of
The Owners, Strata Plan LMS 992 and not in its personal capacity

per:

A handwritten signature in black ink, appearing to be 'Derek Lai', written over a horizontal line.

Mr. Derek Lai, CPA, CMA, CIRP, LIT, CFE

Encl.

VIA EMAIL

March 20, 2025

To the Former Owners of Joyce Place, Strata Plan LMS 992
3362-3376, 3378, 3380, 3382 & 3384 Vanness Avenue
Vancouver, BC

Dear Sir/Madam:

**RE: STRATA WINDUP – STRATA PLAN LMS 992 (“Joyce Place”)
UPDATE FROM LIQUIDATOR**

The Liquidator wishes to provide you with a brief update on the ongoing litigation with Intracorp Acquisition Co Ltd. (“**Intracorp**”) and the status of the counterclaim regarding the Purchase Price Adjustment (“**PPA**”) since our last letter dated February 14, 2025 (the “**Letter**”). A copy of the Letter is attached hereto for your reference.

On March 11, 2025, the Liquidator’s legal counsel, Lawson Lundell LLP (“**Lawson Lundell**”), filed a Notice of Application (“**NOA**”) seeking the full dismissal of Intracorp’s claim against Joyce Place. A copy of the NOA is attached for your reference.

As you may recall, Intracorp filed a claim against the Liquidator and Joyce Place, alleging breaches of the Purchase and Sale Agreement (“**PSA**”) due to failure to:

- 1) maintain the fire alarm system at Joyce Place in working order;
- 2) keep the Townhouses in the same condition as they were on January 11, 2021; and
- 3) comply with provincial court orders related to Joyce Place and the bylaw prosecution by the City of Vancouver.

Intracorp also applied for and was granted an order requiring the Liquidator to hold at least \$525,000 of Joyce Place’s special levy funds in trust as an estimate of potential losses resulting from these claims. These funds remain in trust with Lawson Lundell.

The NOA relies on a variety of evidence filed by Lawson Lundell, including various professional inspection reports confirming that, as of the closing date, the Joyce Place fire alarm system was fully operational and the Townhouses remained in substantially the same condition as they were on January 11, 2021, the date the PSA was signed. The evidence also establishes that the transfer of the Joyce Place property to Intracorp effectively concluded the bylaw prosecution against the Joyce Place Strata by the City of Vancouver. The supporting affidavits are available on the website: www.joyceplacestrata.com.

Lawson Lundell has set this application for a hearing in regular chambers on for April 24, 2025. However, this date may need to be adjourned if Intracorp’s lawyers require scheduling

Vancouver Resident Office
1400 - 1185 West Georgia Street
Vancouver, BC V6E 4E6

Surrey Non-Resident Office
200, 5455 152 Street
Surrey, BC V3S 5A5

accommodations or if they argue that the hearing will take longer than two hours. The Liquidator will keep former owners informed of any changes to the hearing date.

If the application is successful, Lawson Lundell will be able to distribute the \$525,000 held in trust to the former owners.

Please note that this application pertains solely to the dismissal of Intracorp's claim against the Liquidator and Joyce Place. It does not address the counterclaim regarding the Purchase Price Adjustment, which will be resolved at a later date. The Liquidator and Lawson Lundell continue to do the work need to advance this counterclaim.

Should you have any questions or concerns with respect to any of the above, please contact the Liquidator's office at joyceplace@crowemackay.ca. You can also get updates with respect to this matter on the Liquidator's website at www.joyceplacestrata.com.

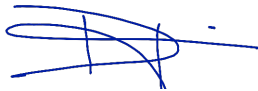
Yours very truly,

CROWE MACKAY & COMPANY LTD.

in its capacity as Court Appointed Liquidator of

The Owners, Strata Plan LMS 992 and not in its personal capacity

per:

A handwritten signature in blue ink, appearing to be 'Derek Lai', with a horizontal line extending to the right.

Mr. Derek Lai, CPA, CMA, CIRP, LIT, CFE

Encl.

VIA EMAIL & MAIL

February 14, 2025

To the Former Owners of Joyce Place, Strata Plan LMS 992
3362-3376, 3378, 3380, 3382 & 3384 Vanness Avenue
Vancouver, BC

Dear Sir/Madam:

**RE: STRATA WINDUP – STRATA PLAN LMS 992 (“Joyce Place”)
UPDATE FROM LIQUIDATOR**

The Liquidator wishes to provide you with a brief update on the ongoing litigation with Intracorp Acquisition Co Ltd. (“**Intracorp**”) and the status of the counterclaim regarding the Purchase Price Adjustment (“**PPA**”) since our last letter dated January 24, 2025 (the “**Letter**”). A copy of the Letter is attached hereto for your reference.

The Liquidator and it’s legal counsel, Lawson Lundell LLP (“**Lawson Lundell**”) continues to work towards expediting a summary trial application to, among other things, dismiss Intracorp’s claim and, if possible, obtain a Court ruling on the counterclaim for the PPA owed to Joyce Place. At this time, details of the steps being taken by the Liquidator and Lawson Lundell cannot be shared to preserve litigation privilege. However, the Liquidator wishes to advise the owners that steps are being taken and a more fulsome update will be provided as soon as it is appropriate to do so.

Should you have any questions or concerns with respect to any of the above, please contact the Liquidator’s office at joyceplace@crowemackay.ca. You can also get updates with respect to this matter on the Liquidator’s website at www.joyceplacestrata.com.

Yours very truly,

CROWE MACKAY & COMPANY LTD.

in its capacity as Court Appointed Liquidator of

The Owners, Strata Plan LMS 992 and not in its personal capacity

per:



Mr. Derek Lai, CPA, CMA, CIRP, LIT, CFE

Encl.



NO. S246230
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INTRACORP VANNESS LIMITED PARTNERSHIP

PLAINTIFF

AND

THE OWNERS, STRATA PLAN LMS992, and CROWE MACKAY &
COMPANY LTD., AS LIQUIDATOR OF THE OWNERS, STRATA PLAN
LMS992

DEFENDANTS

AND:

INTRACORP VANNESS LIMITED PARTNERSHIP

DEFENDANT BY WAY OF COUNTERCLAIM

NOTICE OF APPLICATION

Name of Applicant: Crowe MacKay & Company Ltd. as Liquidator of the
Owners, Strata Plan LMS992

To: The Plaintiff, Intracorp Vanness Limited Partnership

TAKE NOTICE that an application will be made by the Applicant to the presiding judge at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on Thursday, the 24th day of April, 2025 at 9:45 am for the orders set out in Part 1 below.

The Applicant estimates that the application will take two (2) hours.

☐ This matter is within the jurisdiction of an Associate Judge.

☒ This matter is not within the jurisdiction of an Associate Judge.

Part 1: ORDERS SOUGHT

1. Pursuant to Rule 9-6, or in the alternative Rule 9-7, an order that the plaintiff's claim be dismissed and the defendants be awarded costs.
2. Such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

A. Overview

3. This summary trial application arises out of a dispute following the completion of the sale to the Plaintiff, Intracorp Vanness Limited Partnership as purchaser, ("**Intracorp**"),¹ of a strata complex of The Owners, Strata Plan LMS992 (the "**Joyce Place Strata**").

4. The Joyce Place Strata was a strata development referred to as "Joyce Place" ("**Joyce Place**"), located at 3380 Vanness Avenue, Vancouver, BC. Joyce Place was a mixed-use strata comprised of 52 apartment-style units (strata lots 12 to 63), eight townhouses (strata lots 1 to 8) (the "**Townhouses**"), and three commercial units (strata lots 9 to 11).

5. Joyce Place was constructed in or around 1993. By the late 2010s, the Joyce Place buildings were suffering from numerous deficiencies including, among other things, water ingress and structural issues in the Townhouses.

6. By agreement dated January 11, 2021, Intracorp Acquisition Co Ltd. and the Joyce Place Strata entered into a conditional Purchase and Sale Agreement (the "**PSA**") for the sale to Intracorp of the Joyce Place Strata lands and buildings (the "**Joyce Place Property**").

7. On July 7, 2021, the Joyce Place Strata members resolved at a special general meeting (the "**SGM**") to wind-up the strata and appoint Crowe MacKay &

¹ By Notice of Assignment dated August 25, 2021, Intracorp Acquisition Co Ltd. assigned the PSA to the Plaintiff, Intracorp Vanness Limited Partnership, as purchaser. For the purposes of this application, they will be collectively referred to as "Intracorp".

Company Ltd. as the liquidator (the “**Liquidator**”) pursuant to Part 16, Division 2 of the *Strata Property Act*, S.B.C. 1998 c. 43 (the “**SPA**”). At the SGM, the Joyce Place Strata members also approved the PSA.

Cheng #1, Ex. D (paras. 24 to 27).

8. As mandated by the SPA, the Joyce Place Strata commenced a petition (the “**Strata Wind-Up**”) seeking confirmation of the wind-up resolution and the appointment of the Liquidator. The Strata Wind-Up was contested and heard by Justice Marzari. Intracorp was a party to the Strata Wind-Up.

9. By order granted October 19, 2022, Justice Marzari confirmed the wind-up of the Joyce Place Strata, approved the appointment of the Liquidator and approved the PSA. In the course of the Reasons for Judgment, Justice Marzari made repeated reference to:

- (a) The need for “comprehensive repairs” and the “serious and immediate issues regarding the unsafe condition of the Townhouses” at Joyce Place; and
- (b) The issuance by the City of two “Unsafe Order” requiring “shoring for the Townhouses”.

The Owners, Strata Plan LMS 992 (Re), 2022 BCSC 1829, paras. 4, 18, 19, 26-28, 32, 35, 36, 40, 44, 48, and 127-129,

10. On September 9, 2024 (the “**Closing Date**”), the PSA completed and the Joyce Place Property was transferred by the Liquidator to Intracorp.

Affidavit #1 of T. Takagaki (“**Takagaki #1**”), para. 4.

11. On the Closing Date, Intracorp also filed a claim against the Liquidator and the Joyce Place Strata alleging that they had breached the PSA by failing to:

- (a) keep the fire alarm system at Joyce Place in working order;
- (b) keep the Townhouses in the same condition as they had been on January 11, 2021; and
- (c) comply with provincial court orders made in relation to Joyce Place.

12. The Liquidator applies to dismiss Intracorp's claims that the PSA was breached. Various professional inspection reports confirm that, on the Closing Date, the Joyce Place fire alarm system was fully operational and the Townhouses were in substantially the same condition as they had been on January 11, 2021. Further, the transfer of the Joyce Place Property to Intracorp effectively ended the bylaw prosecution brought against the Joyce Place Strata by the City of Vancouver (the "City").

13. Because Intracorp's allegations are discrete factual issues, this matter is well-suited for summary disposition. The issues of fact are not complex, there are no credibility issues, and there is no meaningful dispute on the law.

14. A summary resolution will save the parties and the former owners significant time and expense associated with a full trial.

C. The Purchase and Sale Agreement and Strata Wind-up

15. In 2017, the Joyce Place Strata engaged engineers to prepare a building envelope assessment report of Joyce Place. The engineer recommended significant repairs to Joyce Place at an estimated cost of \$2.4 to 4.1 million.

Affidavit #1 of A. Cheng ("Cheng #1"), Ex. D

16. Rather than proceeding with the repairs, the Joyce Place Strata began exploring options to wind-up and sell the Joyce Place Property. This led to the PSA with Intracorp, the terms of which included:

- (a) a purchase price of \$41,400,000 (the "**Purchase Price**"), plus a purchase price adjustment yet to be calculated (and which is the subject of the counterclaim);
- (b) the delivery to Intracorp of "true copies of all studies, tests, audits, surveys, investigations, reports (including depreciation reports and environmental, structural and mechanical reports), plans and service or maintenance records prepared or obtained since February 25, 2014";

- (c) permitting Intracorp to enter the Joyce Place Property to carry out inspections, tests, studies, surveys, and investigations; and
- (d) a condition for the benefit of Intracorp of:

the Purchaser being satisfied, in its sole and unfettered discretion, with the results of whatever searches, reviews and investigations the Purchaser, in its sole discretion, deems advisable with respect to the Property including, without limitation, the feasibility of the Purchaser purchasing and financing the purchaser of the Property, state of title to the Property, the zoning for the property, physical and engineering inspections of the Property, compliance with all applicable laws and regulations, any agreements with third parties affecting the Property or any improvements thereon, environmental audits, soil tests, any permitted encumbrances, all of the due diligence materials, the potential feasibility of successfully redeveloping the Property in a manner desired by the Purchaser, the potential assembly of neighbouring properties and any other matters of interest to the Purchaser with respect to the Property

(the “**Purchaser’s Condition**”).

17. In addition, the Strata Corporation covenanted that:

- (a) to the best of its knowledge as of the Agreement Date, there is no claim, litigation or proceeding, pending or threatened, by or before any court, government agency, commission, department, board, officer or other authority having jurisdiction that pertains in any manner to the Property or the right of the purchaser to own the Property or to receive benefits therefrom (s.1(e) of Schedule C of the PSA); and
- (b) it would keep, repair and maintain the Property in the same condition and state of repair as of the Agreement Date until the Completion Date, subject to reasonable wear and tear (s.2(a) of Schedule C of the PSA).

18. In entering the PSA, Intracorp represented to the Joyce Place Strata and the Liquidator that it intended to purchase the Joyce Place Property for the purpose of redevelopment.

Cheng #1, Ex. C (para. 36).

19. On February 18, 2021, Intracorp waived the Purchaser's Condition.

Cheng #1, Ex. D (para. 23).

D. Intracorp's Claim

20. On the Closing Date (September 9, 2024), Intracorp filed its Notice of Civil Claim alleging three discrete breaches of the PSA. Intracorp pleads that the Joyce Place Strata and the Liquidator breached the PSA by failing to:

- (a) keep the fire alarm system in working order, to the point that the Property's annunciator panel is no longer working and/or no is no longer connected to local fire services, posing a health and safety risk for residents of the Tower, pursuant to s. 2(a) of Schedule C of the PSA;

Notice of Civil Claim, para. 24(a).

- (b) maintain and repair the Townhouses, such that they have fallen into further disrepair and may pose health and safety risks to their Occupants.; and

Notice of Civil Claim, para. 24(b).

- (c) comply with Provincial Court orders issued against the Joyce Place Strata in a prosecution for failing to abide by City of Vancouver orders.

Notice of Civil Claim, para. 24(b).

(the "**Alleged Breaches**").

21. On September 9, 2024, Intracorp brought a without notice application seeking an order that the "Liquidator retain in trust . . . the sum of at least \$525,000 from the special levy funds of the [Joyce Place Strata] until: a) agreement between the parties in writing; or b) further order of the court." This application was brought because Intracorp expected "its losses to be at least \$525,000" and it was fearful that the Liquidator would "distribute the sales proceeds . . . to the strata lot owners of the [Joyce Place Strata]". Justice Kent granted an order that the Liquidator hold in trust at least \$525,000 of special levy funds held by the Liquidator.

22. The Liquidator filed a Response to Civil Claim and Counterclaim on November 1, 2024. The Counterclaim, which is not the subject of this application, seeks to enforce against Intracorp the obligation to the purchase price adjustment under the PSA. The Liquidator claims that Intracorp is required to pay a significant purchase price adjustment under the PSA. Intracorp denies any funds are owing under the purchase price adjustment.

E. The Fire Alarm System at Joyce Place

23. On the Closing Date, the Joyce Place fire alarm system was fully functional and operational and was connected to local fire dispatch services. As a result, the Liquidator, as vendor, was in compliance with s. 2(a) of Schedule C of the PSA.

24. On September 7, 2024 (the “**Inspection Date**”), the Liquidator arranged for Community Fire Prevention (“**CFD**”) to perform maintenance and an inspection of the Joyce Place fire alarm and fire monitoring system. CFD is a professional fire alarm installation, maintenance, and inspection company.

Takagaki #1, paras. 4 – 5.

25. On the Inspection Date, CFD attended at Joyce Place and completed a fire alarm system inspection in accordance with Underwriter Laboratories of Canada (“**ULC**”) inspection and testing guidelines.

Takagaki #1, para. 6

26. CFD concluded that the Joyce Place fire alarm system was fully operational and active pursuant to ULC requirements as of the Inspection Date, CFD issued a fire alarm test and inspection report to this effect dated September 7, 2024.

Takagaki #1, para. 6, Ex. A

27. On the Inspection Date, Safeco Systems Ltd. (“**Safeco**”) also attended Joyce Place to upgrade and inspect the Joyce Place fire monitoring system pursuant to ULC requirements. Safeco is a fire monitoring company that had provided monitoring services at Joyce Place since 2018.

Affidavit #1 of R. Saucier (“**Saucier #1**”), paras. 2 – 5.

28. On the Inspection Date, Safeco installed and tested an upgraded fire monitoring system at Joyce Place. After completing testing, Safeco concluded that the Joyce Place fire monitoring system was fully operational and actively communicating with a fire dispatch operator pursuant to ULC alarm monitoring requirements as of the Inspection Date.

Saucier #1, paras. 6 – 8, 10.

29. On September 9, 2024, Safeco emailed the property manager of Joyce Place advising that the Joyce Place alarm monitoring system had been upgraded, and Joyce Place was being actively monitored for fire safety.

Saucier #1, paras. 11, Ex. A.

F. The Condition of Joyce Place on the Closing Date

30. By virtue of its involvement in the Strata Wind-Up, Intracorp was well aware of the poor condition of the Townhouses.

31. On the Closing Date, the Joyce Place Property, including the Townhomes, was transferred to Intracorp in materially the same condition and state of repair as it has been on January 11, 2021, the date the PSA was signed. As a result, the Liquidator, as vendor, was in compliance with s. 2(a) of Schedule C of the PSA.

32. Prior to January 11, 2021, the Joyce Place Strata had obtained various inspections and reports relating to the condition of the buildings at Joyce Place, including:

- (a) a Building Envelope Condition Assessment prepared by MGH Consulting Inc., dated January 3, 2017;

- (b) a report outlining the projected cost to repair, prepared by Axiom Builders, dated January 24, 2020;
 - (c) a Structural Opinion Review prepared by Apex Building Science Inc., dated April 2019; and
 - (d) a Targeted Structural Assessment prepared by RDH Building Science Inc (“RDH”), dated June 25, 2020;
- (the “**Condition Reports**”).

33. The Condition Reports reported, *inter alia*, that the structural framing of the buildings at Joyce Place had been compromised due to water ingress and major repairs were required to mitigate life-safety issues posed by the water damage. The Joyce Place Strata delivered the Condition Reports to Intracorp pursuant to the PSA, a fact confirmed by Intracorp’s waiver of the Purchaser’s Conditions.

34. Prior to waiving the Purchaser’s Conditions, Intracorp inspected, or had the opportunity to inspect, the Joyce Place Property and was in possession of all relevant documents from the Joyce Place Strata, including the Condition Reports.

35. Intracorp acknowledged its satisfaction with the condition of Joyce Place by waiving the Purchaser’s Condition on February 18, 2021.

Cheng #1, Ex. D.

36. The Liquidator, on behalf of the Strata Corporation, engaged professionals to perform remediation work on Joyce Place based on the Condition Reports and the recommendations therein. The remediation work arranged for by the Liquidator included:

- (a) installing plywood sheathing in the Townhomes;
- (b) repairing structural shoring;
- (c) assessing structural framing; and
- (d) conducting a hazardous material analysis.

Cheng #1, Ex. C, Ex. D.

37. In or about 2020, the Joyce Place Strata, and later the Liquidator, engaged RDH to provide enclosure and structural condition assessments of the Townhouses. Between June 2020 and December 2024, Paul Good, a senior project engineer employed by RDH, performed a number of inspections and structural assessments of the Townhouses.

Affidavit #1 of P. Good (“**Good #1**”), paras. 2, 4.

38. In the fall of 2024, the Liquidator engaged Mr. Good to conduct an inspection of the Townhouses and provide an opinion on whether the Townhomes were in materially the same condition and state of repair, subject to reasonable wear and tear, as they had been on January 11, 2021.

39. On January 17, 2025, Mr. Good issued an inspection report comparing his previous assessments of the Townhouses to his findings during his site visit on December 4, 2024 (the “**January Report**”).

40. In the January Report, Mr. Good stated that:

“... with the exception of the localized interior structural damage noted in 3376, and the apparent shrinkage of temporary wood shoring, we are of the opinion that the building has been kept, repaired, and maintained to substantially the same condition and state of repair as of March 16, 2021. Furthermore, the advanced extent of moisture related damage that was observed on March 16, 2021, suggest that significant water ingress through exterior walls and third floor decks had been occurring for dozens of months prior to March 16, 2021.”

Good #1, para. 15, Ex. H.

41. Comparing his previous inspections of the Townhouses to his inspection and findings on December 4, 2024, Mr. Good concluded in the January Report that the Townhouses had been kept, repaired, and maintained in substantially the same condition and repair as they had been on March 16, 2021.

42. Mr. Good used March 16, 2021 inspection as the comparison date because his March 16, 2021 was the closest inspection in time to January 11, 2021. Mr. Good noted that the damage he saw on March 16, 2021 “had been occurring for dozens of months prior to March 16, 2021.” Therefore, Mr. Good’s observations on March 16, 2021 most accurately reflect the condition and state of repair of the Townhouses on January 11, 2021.

Good #1, para 16.

G. Provincial Court Orders

43. In 2019, the City issued two “Unsafe Orders” to the Joyce Place Strata concerning structural deficiencies in the Townhouses. The Joyce Place Strata did not complete the work required to remedy the unsafe orders. As a result, the City charged the Joyce Place Strata with a bylaw contravention in December 2020.

Cheng #1, Ex. C (paras. 9 to 11),
Ex. D (paras 35 to 39).

44. On December 1, 2020, the Provincial Court of British Columbia ordered the Joyce Place Strata to install shoring in the Townhomes at the direction of a professional engineer and obtain the required permits to correct the unsafe building conditions pursuant to the City’s bylaws by January 31, 2021 (the “**Schwartz Order**”).

45. The Joyce Place Strata installed the shoring between April 2021 and July 2021.

Cheng #1, Ex. D (para. 40),
Cheng #2, Ex. C, Ex. E.

46. By virtue of its involvement in the Strata Wind-Up, Intracorp was well aware that the Joyce Place Strata had not complied with the City’s “Unsafe Orders” regarding the Townhouses.

47. In July 2021, the Joyce Place Strata was charged by the City with failing to comply with the Schwartz Order.

48. On March 9, 2023, the Joyce Place Strata pled guilty to failing to comply with the Schwartz Order. The Provincial Court ordered that the Liquidator:

“...must submit a complete application for any required permits to repair the failed structural framing at the north elevation of the [Joyce Place Property], or have the premises at the [Joyce Place Property] demolished, or dispose of the land and building at the Property, on or before December 31, 2023.”

(the “**Jamieson Order**”)

49. The deadline imposed by the Jamieson Order was extended to September 30, 2024 by order of Judge Stark dated November 30, 2024.

Cheng #2, Ex. D.

50. The Liquidator transferred Joyce Place to Intracorp on the Completion Date. In doing so, the Liquidator discharged the Jamieson Order, bringing the City prosecution to an end. As a result, the Liquidator, as vendor, is in compliance with s. 1(e) of Schedule C of the PSA.

Part 3: LEGAL BASIS

51. The Liquidator relies on Rules 9-6 and 9-7 of the *Supreme Court Civil Rules* and on the inherent jurisdiction of the Court.

A. The Issues Are Suitable for Summary Disposition

52. A claim may be dismissed under Rule 9-6 where the court is satisfied, on reviewing evidence that provides a complete answer to a plaintiff’s case, that it is manifestly clear (or beyond doubt) that the plaintiff is bound to lose.

Sakwi Creek Hydro Limited Partnership v. Dickin,
2023 BCCA 188, para. 25.

53. Alternatively, Rule 9-7 provides that, on hearing a summary trial application, the court may consider and weigh conflicting evidence and grant judgment in favour of any party, either on an issue or generally, unless the court is unable to find the necessary facts or is of the view that it would be unjust to do so.

Cepuran v. Carlton, 2022 BCCA 76 at paras. 149 – 150.

54. In deciding whether a matter is suitable for summary trial, the court may consider a number of factors including the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise from delay, proportionality, the course of proceedings, and whether the evidence is sufficient to decide the dispute.

Cepuran, supra.

55. Judgment may be granted on a summary trial application despite conflicting affidavits or conflicting evidence where the court is able to make the necessary findings of fact and it is not unjust to do so. The court must be satisfied that it can deliver a just and fair result by proceeding summarily.

Fillingham v Big White Ski Resort Limited, 2017 BCSC 1702, para. 31;
Jamieson v. Whistler Mountain Resort Limited Partnership,
 2017 BCSC 1001, paras. 65, 68.

56. The Liquidator submits that this Court can and should determine this matter by way of summary judgment or summary trial. The Liquidator has adduced evidence sufficient to allow the Court to determine that, as of the Closing Date and pursuant to the PSA:

- (a) the fire alarm system at the Property was in working order;
- (b) Joyce Place was transferred to Intracorp in substantially the same condition and state of repair as of the Agreement Date; and
- (c) there was no extant claim, litigation or proceeding relating to Joyce Place following the Closing Date.

57. These issues are factually simple, do not engage contested legal principles and can be decided summarily on the affidavit evidence before the Court.

58. The issues raised on this application are suitable for summary trial. If the Liquidator is successful, that will dispose of this matter before either party incurs further litigation costs.

59. A full trial to resolve this matter would result in unnecessary delay and costs to all parties. In particular, it prejudices the former owners of Joyce Place who have been denied their full share of the Purchase Price. The prejudice to the former owners is exacerbated by the fact that they are not parties to this action.

B. The Liquidator did not Breach the PSA

60. The Liquidator did not breach any term of the PSA as alleged by Intracorp. The Liquidator's compliance with the PSA is confirmed by the inspections of CFD and Safeco and by the January Report. Further, the City bylaw prosecutions of the Joyce Place Strata are at an end, do not encumber the Joyce Place Property and are not charges that Intracorp must now face.

61. In assessing whether an actionable breach of contract has occurred, the court will consider the breach in light of the known purposes for which the contract was entered into by the party not at fault.

Baker v. Warshawski, 2010 ABQB 219, para. 73.

62. In any event, where a property is to be transferred in substantially the same condition as on an initial inspection date, there must be "a substantial change in the condition of the property" by the time the purchaser takes possession in order to amount to a breach of contract.

Chaston v. Este, 2014 BCSC 20, paras. 85 – 86;
Morrison v. Mar Lado Enterprises Inc., 2001 BCSC 1032, paras. 42 – 43.

63. At all material times, Intracorp represented to the Joyce Place Strata owners and the Liquidator that it intended to demolish the Joyce Place Strata and re-develop the Joyce Place Property.

Cheng #1, Ex. C (para. 36),
Ex. D (paras. 18, 26 to 29).

64. Lastly, where the condition of a property exists but was not detected by a purchaser at the time that property was inspected, it cannot be said that the property is substantially different when the purchaser ultimately took possession and found the issue they initially failed to detect.

Woods v. Lillies, 2017 BCPC 331, para. 59.

65. Intracorp, as entitled under the PSA, inspected or had the opportunity to inspect the Joyce Place Property and was given all relevant documents in the possession of the Joyce Place Strata, including the Condition Reports. By waiving the Purchaser's Condition, Intracorp acknowledged its satisfaction with, *inter alia*, its own investigations of the Joyce Place Property and its understanding of the Condition Reports as of February 18, 2021.

C. Conclusion

66. As outlined above, the Liquidator, as vendor, satisfied and discharged its obligations under the PSA by:

- (a) keeping the Property's fire alarm system and fire monitoring system in working order as of the Closing Date;
- (b) delivering the Joyce Place Property, including the Townhomes, to Intracorp in substantially the same condition and state of repair as they had been on January 11, 2021; and
- (c) complying with and bring to an end the City prosecution of the Joyce Place Strata relating to the Townhouses.

67. If Intracorp failed to identify issues regarding the condition of the Joyce Place Property prior to the Closing Date, they cannot now claim that the Joyce Place Property is in substantially worse condition than it was when Intracorp signed the PSA or when it waived the Purchaser's Condition.

68. The Liquidator seek the dismissal of Intracorp's claims and costs.

Part 4: MATERIAL TO BE RELIED ON


69. Affidavit #1 of Ashley Cheng, made September 9, 2024.

- 70. Affidavit #2 of Ashley Cheng, made March 5, 2025.
- 71. Affidavit #1 of Paul Good, made February 5, 2025.
- 72. Affidavit #1 of Tetsu Takagaki, made February 18, 2025.
- 73. Affidavit #1 of Rene Saucier, made February 19, 2025.
- 74. Order of Justice Kent, granted September 9, 2024.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 11th day of March, 2025.



 Lawson Lundell LLP
 Solicitors for the Applicant, Crowe
 MacKay & Company Ltd. as
 Liquidator of the Owners, Strata
 Plan LMS992

This Notice of Application is filed by Peter J. Roberts, K.C., of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2, e-mail address: proberts@lawsonlundell.com; telephone number: 604-685-3456.

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs _____
of Part 1 of this Notice of Application

☐ with the following variations and additional terms:

Date:

Signature of ☐ Judge ☐ Associate Judge

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☒ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☐ none of the above

NO. S246230
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INTRACORP VANNESS LIMITED
PARTNERSHIP

PLAINTIFF

AND:

THE OWNERS, STRATA PLAN LMS992 ET AL.

DEFENDANTS

NOTICE OF APPLICATION



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
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V6C 3L2

Phone: (604) 685-3456
Attention: Peter J. Roberts, K.C.

PJR/acc2