



NO. S-217956
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE STRATA PROPERTY ACT, S.B.C. 1998, C.43

and

IN THE MATTER OF THE APPLICATION FOR THE WIND-UP OF THE OWNERS,
STRATA PLAN LMS 992

NOTICE OF APPLICATION

Name of Applicant: Crowe MacKay & Company Ltd., in its capacity as liquidator of the Owners, Strata Plan LMS992, and not in its personal capacity (the "**Liquidator**")

To: Former members of The Owners, Strata Plan LMS992

TAKE NOTICE that an application will be made by the Applicant to the presiding justice or associate judge at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on Thursday, the 12th day of September, 2024 at 9:45am for the orders set out in Part 1 below.

The Applicant estimates that the application will take 5 minutes.

- 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. An Order, without notice, that the Liquidator be granted leave to serve:
 - i. this Notice of Application filed on September 12, 2024;
 - ii. Affidavit #3 of Derek Lai, sworn September 12, 2024; and
 - iii. the order authorizing such service;(the "**Application Materials**")

by an alternative method of service upon the former strata owners listed in Schedule "A" to the Petition (the "**Respondents**") by:

- a. sending the Application Materials to the Respondents by email, or regular mail where an email address is not provided, according to the current contact information provided by the former strata members to the Liquidator;
- b. posting copies of the Application Materials on the website www.joyceplacestrata.com (the "**Website**");

and that such service shall be deemed good and sufficient service of the Application Materials upon each of the Respondents seven (7) days after the date on which all of the alternative methods of service in paragraphs 1(a) and (b) have been performed.

2. An Order confirming that the Liquidator has authority to defend, on behalf of itself and the former strata corporation The Owners, Strata Plan LMS 992 and its members (the "**Joyce Place Strata**") the claim commenced by Intracorp Vanness Limited Partnership ("**Intracorp**"), Vancouver Reg. Action No. S-246230 (the "**Intracorp Claim**").

3. An Order that the Liquidator be granted leave and authority to commence and prosecute a claim (the "**Strata Claim**") against Intracorp to enforce the purchase price adjustment provisions contained in Schedule G of the Purchase and Sale Agreement dated January 11, 2021, as amended, between the Joyce Place Strata, as vendor, and Intracorp, as purchaser.

4. An Order confirming the authority of the Liquidator to retain, at its discretion, funds held to the credit of the Joyce Place Strata and its former members, including monies in the contingency reserve fund, operating fund and special levy funds of the Joyce Place Strata (collectively, the "**Strata Funds**").

5. An order that the Liquidator shall be entitled to the benefit of and is hereby granted a charge (the "**Liquidator's Charge**") on all of the Strata Funds, as security for their professional fees and disbursements incurred at the standard rates and charges for the Liquidator, both before and after the making of this Order, in respect of these proceedings, the Intracorp Claim and the Strata Claim. The Liquidator's Charge shall constitute a first charge on the Strata

Funds and shall rank in priority to all other claims, statutory or otherwise, in favour of any person.

6. The Liquidator and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Liquidator and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.

7. Prior to the passing of its accounts, the Liquidator shall be at liberty from time to time to apply reasonable amounts, out of the Strata Funds, against its fees and disbursements, including legal fees, disbursements and taxes, incurred at the standard rates and charges of the Liquidator or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court

8. The Liquidator be awarded costs of this application on a solicitor and client basis, and such costs shall be paid from the Strata Funds.

9. The parties to this proceeding be at liberty to apply to Court for such further and other directions and orders as may be necessary to carry out and complete the liquidation of the Joyce Place Strata.

10. An Order that the endorsement as to form of this order may be done electronically and in counterpart and that the endorsement as to form of this order by any party appearing in person be dispensed with.

11. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

12. This proceeding is a strata wind-up pursuant to Part 16, Division 2 of the *Strata Property Act*.

13. The Owners, Strata Plan LMS-992 (the “**Joyce Place Strata**”) was a strata corporation for a strata development commonly referred to as “Joyce Place” which is located at 3380 Vanness Avenue, Vancouver, BC (“**Joyce Place**”). Joyce Place was a mixed-used strata development and is comprised of 52 apartment style units, eight townhouses (the “**Townhouses**”), and three non-residential units.

14. By order granted October 19, 2022 (the “**Confirmation Order**”), Justice Marzari confirmed the wind-up resolution of the Strata Corporation and confirmed the appointment of Crowe MacKay & Company Ltd. as the liquidator of the Joyce Place Strata (the “**Liquidator**”).

15. As part of the Confirmation Order, Justice Marzari also approved the sale of the Joyce Place lands to Intracorp Vanness Limited Partnership (“**Intracorp**”) pursuant to the terms of a Purchase and Sale Agreement dated January 11, 2021 (the “**PSA**”).

16. The sale of the Joyce Place lands to Intracorp completed on September 9, 2024 though Intracorp did not pay any of the purchase price adjustment (the “**PPA**”) owing under Schedule G of the PSA.

D. Lai #3, paras. 4 to 10.

17. The Liquidator brings this application seeking approval and confirmation of the authority to defend a claim brought by Intracorp relating to alleged breaches of the PSA, make a claim against Intracorp for the payment of the PPA to the former members of the Joyce Place Strata and ancillary orders regarding the Liquidator’s authority to retain and use funds held to the credit of the Joyce Place Strata and its former members, including monies in the contingency reserve fund, operating fund and special levy funds of the Joyce Place Strata (collectively, the “**Strata Funds**”).

D. Lai #3, para. 20.

The Intracorp Claim

18. On September 9, 2024, Intracorp commenced a proceeding against the Joyce Place Strata and the Liquidator (the “**Intracorp Claim**”). The Intracorp Claim alleges the PSA was breached when the vendor failed to:

- i. “keep the fire alarm system in working order”;
- ii. “maintain and repair the Townhouses, such that they have fallen into further disrepair and may pose health and safety risks to their Occupants”; and
- iii. comply with certain orders granted in the Provincial Court of British Columbia relating to the Townhouses.

D. Lai #3, Ex. F.

19. Intracorp claims unspecified damages in the Intracorp Claim.
20. On September 9, 2024, Intracorp obtained a court order requiring the Liquidator to “retain in trust at Lawson Lundell LLP the sum of at least \$525,000 from the special levy funds of the [Joyce Place Strata] until: (a) Agreement between parties in writing; or (b) Further order of this court.”

D. Lai #3, Ex. I.

The Claim for Payment of the PPA

21. Schedule G of the PSA contains a mechanism for calculating the PPA payable by Intracorp as part of the purchase price under the PSA. The Liquidator calculates the value of the PPA to be at least \$3.31 million based on preliminary information provided by its listing brokers. Intracorp denies any obligation to pay the PPA.

D. Lai #3, para. 6, Ex. C.

The Strata Funds

22. As part of the wind-up of a strata corporation and the transfer of its lands, the strata corporation ceases to exist as a legal entity because the strata plan is collapsed into a single legal title and the corporation dissolved as part of the transfer of the real property to the purchaser of the strata lands. This occurred for the Joyce Place Strata on September 9, 2024.
23. Just prior to the completion of the PSA, the Joyce Place Strata property manager paid to Lawson Lundell LLP in trust certain funds belonging to the Joyce Place Strata. At present, Lawson Lundell LLP retains in trust the sum of \$1 million of those funds. The strata property manager currently retains additional funds of the Joyce Place Strata, such as the operating fund and contingency reserve fund, which will also be paid to Lawson Lundell LLP in trust once current liabilities are satisfied.

D. Lai #3, para. 17.

24. The Liquidator seeks express authority to use those funds to defend the Intracorp Claim and prosecute the claim for the payment of the PPA. The Liquidator seeks priority and a charge over these funds to secure its anticipated fees and disbursements, including legal fees and disbursements.

Part 3 LEGAL BASIS

25. The Liquidator relies on:

- i. Rules 4-3, 4-4, 8-1 and 10-2 of the *Supreme Court Civil Rules*, BC Reg. 168/2009 (the “*Rules*”);
- ii. the Confirmation Order;
- iii. the *Strata Property Act*, SBC 1998, c. 43 (the “*SPA*”), including section 171; and
- iv. the *Business Corporations Act*, S.B.C. 2002, c. 57 (“*BCA*”), including section 325.

Substituted Service

26. Pursuant to Rule 4-3(1)(j), a notice of application that is to be served on a person who is not a party of record to the proceeding or who has not provided an address for service in the proceeding must be served by personal service.

27. Pursuant to Rule 4-4, where it is “impracticable” to serve a document by personal service the court may, on an application without notice, order terms of substituted service.

28. Service by electronic means is appropriate where it is reasonably likely, or probable, that notice of the proceedings will come to the attention of a respondent by the proposed method.

Burke v. John Doe, 2013 BCSC 964, para. 21.

29. The Liquidator submits that it is impracticable to personally serve each of the former Joyce Place owners with the Application Materials due to the cost and time required to do so. The proposed method of substituted service are reasonably likely to bring this application to the attention of the Respondents. Alternative methods of service have been ordered in this proceeding previously and the former Joyce Place Strata members are used to the delivery of materials in this way and are aware of the existence of the Website.

Application for Directions

30. Pursuant to section 276 of the SPA, the provisions of the BCA that apply to a voluntary liquidation of a company apply to the voluntary winding up of a strata corporation with a liquidator, except for Division 10 of Part 10 and section 324 of the BCA.

The Owners, Strata Plan VR2702 (Re), 2018 BCSC 390 (“*VR2702*”), paras. 87-89.

31. A party that the court considers appropriate may bring an application under section 325 of the BCA. Section 325 of the BCA confers broad authority and discretion on the court to make orders and give directions as the court considers appropriate.

VR2702, supra, para. 88 and 90.

32. The Confirmation Order authorizes the Liquidator to seek further orders and directions from the court in relation to the wind-up of the Strata Corporation.

33. It is submitted the Liquidator is an appropriate party to bring an application for directions. It is further submitted that the court has the jurisdiction, either under the BCA, or as a matter of inherent jurisdiction, to grant the orders being sought by the Liquidator.

Authority to Sue as Representative of Owners

34. Upon the completion of the PSA and the transfer to Intracorp of the Joyce Place Strata lands, the Joyce Place Strata was dissolved and ceased to exist as a legal entity. As a result, the Liquidator is not able to call a special general meeting of the Joyce Place Strata members to obtain the $\frac{3}{4}$ vote necessary to commence legal proceedings against Intracorp for the payment of the PPA.

35. The relevant portions of section 171 of the SPA provide:

(1) The strata corporation may sue as representative of all owners, except any who are being sued, about any matter affecting the strata corporation, including any of the following matters:

...

(d) money owing, including money owing as a fine, under this Act, the bylaws or the rules.

(2) Before the strata corporation sues under this section, the suit must be authorized by a resolution passed by a 3/4 vote at an annual or special general meeting.

...

(5) All owners, except any being sued, must contribute to the expense of suing under this section.

(6) A strata lot's share of the total contribution to the expense of suing is calculated in accordance with section 99 (2) or 100 (1) except that . . .

36. In the absence of a ¾ vote by the former members of the Joyce Place Strata, the Liquidator seeks authority to commence legal proceedings against Intracorp for the payment of the PPA.

The Business Corporations Act

37. Pursuant to section 276 of the SPA, the provisions of the *BCA* that apply to a voluntary liquidation of a company apply to the voluntary winding up of a strata corporation with a liquidator, including section 325 of the *BCA*.

38. Pursuant to s. 325(3)(p) of the *BCA*, on an application made in respect of a company in liquidation, the court may, in respect of that company, an order to confirm, reverse or modify any act or decision of a liquidator.

39. Section 325 of the *BCA* provides authority and a wide discretion for the court to make any order it considers appropriate in a liquidation, including specifying the powers of a liquidator, confirming any act or decision of a liquidator, setting the remuneration for a liquidator, addressing the payment of liabilities and the retention of assets for that purpose.

Part 4: MATERIAL TO BE RELIED ON

40. Petition filed September 2, 2021.

41. Order of Master Muir, granted October 8, 2021, excluding Schedule "A".

42. Order of Justice Marzari, granted October 19, 2022 (filed February 22, 2023).


43. Order of Justice Riley, granted November 14, 2023.

44. *The Owners, Strata Plan LMS 992, 2022 BCSC 1829.*
45. Affidavit #2 of D. Lai, sworn November 8, 2023, excluding exhibits A to C and J to O.
46. Affidavit #3 of D. Lai, sworn September 12th 2024.
47. The pleadings and process filed herein.

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.

- i. file an Application Response in Form 33,
- ii. 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
- iii. 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 12 day of September, 2024.


 Lawson Lundell LLP
 Solicitors for the Applicant, Crowe MacKay
 & Company Ltd.

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 Master

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

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PLAN LMS 992

NOTICE OF APPLICATION



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Attention: Peter J. Roberts, K.C.

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