



No. S217956
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**

RESPONSE TO PETITION

Filed by: Intracorp Vanness Limited Partnership (“**Intracorp**”)

THIS IS A RESPONSE TO the Petition of The Owners, Strata Plan LMS 992 (the “**Strata Corporation**”), filed September 2, 2021

Part 1: ORDERS CONSENTED TO

Intracorp consents to the granting of the orders set out in paragraphs 5 and 10 of Part 1 of the Petition.

Part 2: ORDERS OPPOSED

Intracorp opposes the granting of the orders set out in paragraphs NIL of Part 1 of the Petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

Intracorp takes no position on the granting of the orders set out in paragraphs 1-4, 6-9, and 11-15 of Part 1 of the Petition.

Part 4: FACTUAL BASIS

1. This Petition proceeding is brought on notice to Intracorp as purchaser of the strata lands defined in the Petition of the Strata Corporation as the “Lands” and more commonly referred to as “Joyce Place”.
2. Intracorp is the purchaser of the Lands pursuant to an assignment by Intracorp Acquisition Co. Ltd. of the Purchase and Sale Agreement dated January 11, 2021 between the Strata Corporation, as vendor, and Intracorp Acquisition Co. Ltd., as purchaser (the “**PSA**”).

3. A copy of the PSA can be found at Exhibit “J” to the 1st affidavit of Brian Yan Muk, Strata Council President for the Strata Corporation, made September 1, 2021 (“**Muk Affidavit #1**”).
4. A copy of the Notice of Assignment provided to the Strata Corporation of the assignment of the PSA to Intracorp can be found at Exhibit “O” to the Muk Affidavit #1.
5. Intracorp has reviewed the Strata Corporation’s Petition, as well as the Response to Petition filed by the Petition Respondents Kenneth Kwok Ying Chan, Yuen Mei Lin Chan, Che Wing Chan, Yat Sin Wong, Ardeshir Soltani Razagh Sarab, and 0837963 B.C. Ltd. (collectively, the “**Petition Respondents**”), as amended.
6. Intracorp supports the Petitioner’s request for approval of the sale of the Lands to Intracorp and other ancillary orders necessary to effect the sale of the Lands to Intracorp.
7. In that context, Intracorp wishes to address three matters arising from the Petitioner’s and Petition Respondent’s materials, which may assist this Court in making the appropriate orders in this proceeding:
 - (a) The issue of the existing leases over strata lot 9 and strata lot 10;
 - (b) The issue of the existing use of strata lot 11 by the strata lot 11 owner; and,
 - (c) The Petition Respondents’ stated “reasonable expectations” that they would receive at least the assessed value for their units on a strata wind-up sale.
8. The ensuing paragraphs first address the three issues outlined out above, and then in brief address the issue of Intracorp’s standing in this proceeding which is not a matter of dispute between the parties.
9. The submissions below are not an express or tacit acknowledgment by Intracorp that the Petition Respondents’ reasonable expectations are relevant to this Court’s inquiry in the within proceeding, or to what extent they are relevant. Intracorp is merely noting provisions in the PSA which address some of the concerns raised by the Petition Respondents, and additional efforts it has made to address those concerns.

Part 5: LEGAL BASIS

Intracorp is Required to, and Will Take, the Lands Subject to the Existing Leases

10. The Petition Respondents point to possible termination of the existing leases granted over strata lots 9 and 10 on a wind-up as being contrary to their reasonable expectations that they would not be forced to breach their existing leases by terminating them.

Amended Response to Petition, para. 96.

11. Intracorp wishes to make clear that the PSA requires Intracorp to assume the existing leases by way of a lease assignment. The PSA does not require termination of the existing leases.
12. Rather, section 14(c) of the PSA states:

If a Commercial Strata Lot is subject to a Commercial Lease and such Commercial Lease does not terminate prior to the Completion Date, then the Purchaser will, upon the completion of the purchase and sale of the Property, become the landlord under such Commercial Lease pursuant to a the Commercial Lease Assignment (as defined in subsection 15(a)).

Muk Affidavit #1, Exhibit “J”, p. 400.

13. As part of the due diligence process, section 5(b)(iii) of the PSA required the Strata Corporation to make best efforts to obtain and disclose true copies of all tenancy agreements, leases, offers to lease, and other agreements in the nature of a tenancy or a right to occupy premises, including all amendments, renewals, extensions, and the like, over the commercial strata lots. Further, section 5(b)(v) of the PSA required the Strata Corporation to make best efforts to obtain and disclose a rent roll for each commercial lease over the commercial strata lots, with the rent rolls being certified correct by the owner of the commercial strata lot.

Muk Affidavit #1, Exhibit “J”, pp. 391-392.

14. Early disclosure of the leases and rent rolls would allow Intracorp to better assess the obligations that it was assuming as landlord under the leases pursuant to section 14(c).
15. The commercial leases over strata lots 9 and 10 have now been disclosed by the Petition Respondents and form part of the record in this proceeding.
16. Having reviewed the leases, Intracorp confirms that it remains committed to assuming the existing leases over strata lots 9 and 10, as disclosed by the Petition Respondents within this proceeding, without further amendments. This was confirmed by Intracorp by way of letter from its counsel to counsel for the Petition Respondents on February 8, 2022.

1st Affidavit of Tasha Sandhu, made April 4, 2022 (“Sandhu Affidavit #1”), Exhibit “A”, p. 3.

17. Intracorp’s obligation and commitment to assume the existing leases over commercial strata lots 9 and 10 directly addresses the Petition Respondents’ concerns in this regard, and further serves as an example of the PSA accounting for the commercial strata lot owners’ interests.

The Strata Lot 11 Owner Can Enter Into a 1-Year Lease with Intracorp

18. In the Amended Response to Petition, the Petition Respondents state that, in addition to leasing strata lot 10 for a grocery business, the owner of strata lot 11 operates a restaurant out of his strata lot, which he says is jeopardized by the sale of the Lands to Intracorp.

Amended Response to Petition, para. 11.

19. The Petition Respondents suggest that this is contrary to their best interests and could have been remedied by allowing for favourable lease terms in the PSA effective after the completion date of the sale.

Amended Response to Petition, para. 97.

20. Intracorp notes that section 14(d) of the PSA does in fact provide a right to commercial strata lot owners occupying their own commercial strata lots (like the strata lot 11 owner) to enter into a standard form lease with Intracorp expiring twelve (12) months after the Completion Date, as defined in the PSA. Section 14(d) of the PSA goes on to set-out some of the materials terms of the prospective commercial lease, including the monthly rent, which is equal to the area in square feet of the commercial strata lot multiplied by \$2.00. The commercial strata lot owner must enter into the lease with Intracorp prior to the Completion Date.

Muk Affidavit #1, Exhibit "J", pp. 400-401.

21. With respect to whether the monthly rental amount of \$2.00 per square foot per month is favourable, the strata lot 11 owner states that he leases strata lot 10 for \$4,440 per month. BC Assessment notes strata lot 10 as being 967 square feet, meaning that the strata lot 11 owner is currently paying approximately \$4.55 per square foot per month to lease strata lot 10. He can lease his own strata lot back from Intracorp for less than half of what he is currently paying to run another business out of the adjacent strata lot.

**Muk Affidavit #1, Exhibit J, p. 401.
1st Affidavit of Janet Yngson, made March 7, 2022, Exhibit "B".**

22. The ability of the strata lot 11 owner to lease back his strata lot for twelve months after the Completion Date on favourable terms is a further example of the PSA accounting for the interests of the commercial strata lot owners.

Intracorp Has Offered to Pay the Petition Respondents the Assessed Value of Their Strata Lots

23. The Petition Respondents state that one of their reasonable expectations is that they would receive at least the assessed value for their units under a strata wind-up sale.

Amended Response to Petition, para. 96.

24. Without commenting on whether that is an objectively "reasonable expectation", Intracorp has offered the Petition Respondents top-up payments to see that they receive at least the 2021 assessed value for their strata lots. That offer was made to the Petition Respondents by way of letter dated February 8, 2022.

Sandhu Affidavit #1, Exhibit "A", p. 3.

25. The 2021 assessed value is calculated as of July 1, 2020 and was published by BC Assessment in early January 2021, shortly before the PSA was concluded on January 11, 2021. Attached as Exhibit "B" to the Sandhu Affidavit #1 is a printout from the BC Assessment website explaining that BC Assessment estimates the assessed value of properties as of July 1st each year and publishes those values in the next January of each year.

Sandhu Affidavit #1, Exhibit "B", p. 6.

26. In other words, Intracorp has offered the Petition Respondents a top-up payment to the assessed values of their strata lots as at the date of the PSA.
27. The Petition Respondents have to date not responded to Intracorp's offer, which remains open for acceptance.

28. Furthermore, Schedule G to the PSA sets out a purchase price adjustment mechanism which increases the total consideration paid by Intracorp to the Strata Corporation for the Lands pursuant to a prescribed formula if the preconditions set out in Schedule G are met.
29. Effectively, if between January 1, 2021 and a predetermined point later in time, there is a sufficient increase in the assessed values of residential strata lots that are deemed comparable under Schedule G to the residential strata lots in Joyce Place, the PSA calls for the Strata Corporation to substantially share in that increase via a purchase price adjustment payment from Intracorp to the Strata Corporation.

Muk Affidavit #1, Exhibit "J", pp. 428-429.

30. This means that all the strata lot owners will share in the increase in the purchase price in accordance with the schedule of interest on destruction, which further increases the Petition Respondents' sales proceeds. The purchase price adjustment is independent of, and over and above, the top-up payment offered by Intracorp to the Petition Respondents.
31. Accordingly, the Petition Respondents would not only receive the 2021 assessed values for their strata lots (if they accept Intracorp's offer), but they would also share in any additional increase in the purchase price if the adjustment mechanism is triggered. This would put the Petition Respondents' sales proceeds over and above their stated reasonable expectation of receiving at least assessed values.

Intracorp's Standing

32. As this Petition is brought on notice to Intracorp in accordance with Rule 16-1(3) of the Supreme Court Civil Rules as a person whose interests may be affected by the orders sought, Intracorp is entitled to file this Response to Petition pursuant to Rule 16-1(4), thereby making it a party of record in the proceeding.
33. Further, and in any event, Intracorp is permitted to obtain full party status pursuant to Rules 16-1(18) and 6-2(7).

***Kitimat (District) v. Alcan Inc., 2006 BCCA 562 at paras. 20-22.
Louis v Civil Resolution Tribunal, 2020 BCSC 2061 at paras. 33-34.***

34. Under Rule 16-1(18), this Court has discretion to apply any other Supreme Court Civil Rule to a petition proceeding, including Rule 6-2(7), which contemplates the addition of parties to a proceeding.
35. Rule 6-2(7)(b) states that a person may be added as a party if, (i) that person ought to have been joined as a party, or (ii) that person's participation in the proceeding is necessary to ensure that all matters in the proceeding may be effectually adjudicated on.
36. Rule 6-2(7)(c) states that a person may be added as a party if there may exist, between the person and any party to the proceeding, a question or issue relating to or connected with, (i) any relief claimed in the proceeding, or (ii) the subject matter of the proceeding, that, in the opinion of the Court, it would be just and convenient to determine as between the person and that party.

37. The addition of parties under Rule 6-2(7) is a matter of discretion, which should be exercised generously to allow for effective determination of the issues, without delay, inconvenience or separate hearings.

Delta Sunshine Taxi (1972) Ltd. v. Vancouver (City), 2014 BCSC 2100 at para. 12 [Delta].

38. Intracorp meets the low threshold for the addition of parties under both Rule 6-2(7)(b) and 6-2(7)(c) for three main reasons:
- (a) Intracorp's interests are directly affected by the orders sought by the Petitioner Stata Corporation, including the order seeking approval of the sale of the Lands to Intracorp;
 - (b) Intracorp's participation is necessary to ensure that all matters in the proceeding may be effectually adjudicated on, including questions raised by the Petition Respondents around the leasing of the commercial units post-closing, as well as the amount of the sales' proceeds to be received by the Petition Respondents; and,
 - (c) It is just and convenient that Intracorp be added as a party given its interests at stake in this proceeding, as demonstrated by, *inter alia*, the \$41,000,000 purchase price.

Delta at paras. 13-21.

39. For the foregoing reasons, if required to participate in this proceeding, Intracorp requests that it be granted party status in this proceeding.

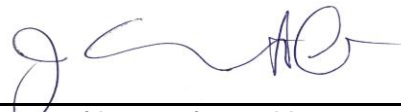
Part 6: MATERIAL TO BE RELIED ON

- 40. 1st Affidavit of Brian Yan Muk, made September 1, 2021.
- 41. 1st Affidavit of Janet Yngson, made March 7, 2022.
- 42. 1st Affidavit of Tasha Sandhu, made April 4, 2022.
- 43. Such further and other material as counsel may advise and this Honourable Court may allow.

The time estimated by Intracorp for the Application is 2 days.

April 7, 2022

Dated _____



Signature of lawyer for petition respondent
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Jordanna Cytrynbaum / Rajit Mittal

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BETWEEN:

THE OWNERS, STRATA PLAN LMS 992

PETITIONER

AND:

KENNETH KWOK YING CHAN, WEI LIN YUEN CHAN,
CHE WING CHAN, YAT SIN WONG
ARDESHIR SOLTANI RAZAGH SARAB, 0873963 B.C. LTD

RESPONDENT

RESPONSE TO PETITION

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