



This is the 1st affidavit of Michelle Hsieh in this case and was made September 9, 2024
No. S E 2 4 6 2 3 0
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

AFFIDAVIT

I, Michelle Hsieh, Legal Assistant, of 2200 - 885 West Georgia St., Vancouver, British Columbia, SWEAR THAT:

- 1. I am a legal assistant employed by Cassels Brock & Blackwell LLP, counsel for the Plaintiff Intracorp Vanness Limited Partnership., and as such, have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based on information and belief and where so stated I verily believe them to be true.
- 2. Attached as **Exhibit "A"** to this my Affidavit, is a true copy of the letter sent by Jordanna Cytrynbaum of Cassels Brock & Blackwell LLP to Lawson Lundell LLP, counsel for the Defendants, dated September 4, 2024.
- 3. Attached as **Exhibit "B"** to this my Affidavit, is a true copy of the response letter sent by Peter J. Roberts, K.C. of Lawson Lundell LLP to Jordanna Cytrynbaum, dated September 5, 2024 and redacted for settlement privilege.


SWORN BEFORE ME at Vancouver, British Columbia, this 6th day of September, 2024


A Commissioner for taking Affidavits within British Columbia
RAJIT MITTAL
Barrister & Solicitor

Cassels Brock and Blackwell LLP
#2200 - 885 West Georgia Street
Vancouver, B.C. V6C 3E8
Phone: (778) 309-7940


MICHELLE HSIEH

This is Exhibit " A " referred to in the
affidavit of Michelle Hsieh
sworn before me at Vancouver ,
this 9th day of September , 20 24



A Commissioner for taking Affidavits
in British Columbia

Cassels

September 4, 2024

**By Email (proberts@lawsonlundell.com)
(ewilson@lawsonlundell.com)**
Lawson Lundell LLP
Suite 1600 - 925 West Georgia Street
Vancouver, BC V6C 3L2

jcytrynbaum@cassels.com
tel: +1 778 372 7666

**Attention: Peter J. Roberts, K.C.
and Edward L. Wilson**

Dear Sirs:

Re: Purchase and Sale Agreement dated January 11, 2021, as amended from time to time (collectively, the "PSA") between Intracorp Acquisition Co. Ltd. (the "Assignor"), as purchaser, and The Owners, Strata Plan LMS992 (the "Vendor"), as vendor, and assigned by the Assignor to Intracorp Vanness Limited Partnership (the "Purchaser")

We are litigation counsel for the Purchaser. Unless otherwise defined herein, we use the defined terms of the PSA.

We write to give formal notice of the Vendor's breaches of covenants under the PSA, specifically, section 2(a) of Schedule C of the PSA, as follows:

- Failing to keep both boilers in working order. We understand that one of the Property's boilers is decommissioned;
- Failing to keep the fire alarm system in working order. We understand that the Property's annunciator panel is no longer working; and
- Failing to comply with remediation orders and allowing the townhomes to fall into further disrepair such that they may pose health and safety risks to their occupants.

We understand that many of the building's systems have not been tested in some time and would not meet health and safety requirements.

Please confirm by no later than **end of business on Thursday, September 5, 2024**, that the Vendor will remedy the above-noted breaches of the PSA by or before closing on September 9th, 2024, or will make satisfactory arrangements to remedy the breaches as soon as possible after closing, which obligation will survive closing.

604 691 6100
604 691 6120

Cassels Brock & Blackwell LLP
Suite 2200, RBC Place, 885 West Georgia Street
Vancouver, BC V6C 3E8 Canada

We also give formal notice of the Vendor's breach of section 1(e) of Schedule C of the PSA. Contrary to the representations and warranties given by the Vendor in section 1(e), which representations and warranties were supposed to be true as at the date of the PSA, are supposed to remain true at the time of completion, and which the Purchaser reasonably relied upon:

1. On December 11, 2020, further to a guilty plea by the Vendor, the Provincial Court of British Columbia issued an order in respect of the Property requiring the Vendor to complete remediation work to correct unsafe building conditions by or before January 31, 2021 (the "**December 2020 Order**");
2. On April 5, 2023, further to a guilty plea by the Vendor for breach of the December 2020 Order, the Provincial Court of British Columbia issued another order in respect of the Property requiring the Vendor to take certain steps towards remediating the unsafe building conditions by or before December 31, 2023 (the "**April 2023 Order**");
3. On November 30, 2023, the Vendor sought and obtained an order from the Provincial Court of British Columbia extending the deadline for compliance with the April 2023 Order to September 30, 2024 (the "**November 2023 Order**").

To the best of our client's knowledge and understanding, the Vendor has not complied with the November 2023 Order and does not intend to comply with it prior to closing.

Notwithstanding the foregoing breaches of the PSA by the Vendor, the Purchaser intends to close on September 9, 2024. However, the Purchaser reserves all rights and remedies, including without limitation, a claim in damages, for the Vendor's breaches of the PSA.

We intend to file a claim on behalf of the Purchaser by or before closing for, *inter alia*, damages. To ensure that the Vendor is able to satisfy a successful damages claim by the Purchaser, we request that Lawson Lundell LLP hold in trust and not disburse to the strata lot owners \$1,000,000 from the sales proceeds after closing:

1. Until final disposition of the Purchaser's claim; or
2. Until September 30, 2024, to allow the Purchaser time to seek an order from the Court requiring the liquidator hold back \$1,000,000 from the sales proceeds for the Purchaser's claim.

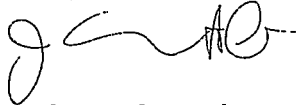
Please confirm your agreement by no later than **end of business on Thursday, September 5, 2024.**

September 4, 2024
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We look forward to your prompt response.

Yours truly,

Cassels Brock & Blackwell LLP



Jordanna Cytrynbaum*

Partner

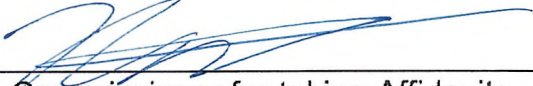
**Denotes Law Corporation*

JC/mh

cc: Cassels - Rajit Mittal (RMittal@cassels.com)

LEGAL*65928279.1

This is Exhibit “ B ” referred to in the
affidavit of Michelle Hsieh
sworn before me at Vancouver ,
this 9th day of September , 20 24



A Commissioner for taking Affidavits
in British Columbia

Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC
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September 5, 2024

BY EMAIL (jcytrynbaum@cassels.com)

Cassels Brock & Blackwell LLP
Suite 2200, RBC Place, 885 West Georgia Street
Vancouver, BC V6C 3E8

Attention: Jordanna Cytrynbaum

Dear Ms. Cytrynbaum:

Re: Purchase and Sale Agreement dated January 11, 2021, as amended from time to time (collectively, the “PSA”) between Intracorp Acquisition Co. Ltd. (the “Assignor”), as purchaser, and The Owners, Strata Plan LMS992 (the “Vendor”), as vendor, and assigned by the Assignor to Intracorp Vanness Limited Partnership (the “Purchaser”)

I write in further reply to your letter of September 4, 2024. If, as your letter infers may be the case, the Purchaser intends to seek any without notice relief from the courts relating to the completion of the PSA, then we ask that copies of this letter and our recent email exchanges be put before the court (including those with Terra Law, the Purchaser’s conveyancing solicitors).

In answer to your question whether the Liquidator will agree to have Lawson Lundell LLP hold in trust the sum of \$1 million from the anticipated sale proceeds to be paid by the Purchaser on closing, the answer is “no”. The Liquidator cannot agree to do that given the representations given and obligations owed to the individual owners of the 63 strata units of Joyce Place. Each of those owners have now signed closing documents, including statements of adjustment, which set out their individual shares of those proceeds. Many of those owners are relying on these funds to purchase new properties to move to when they leave Joyce Place over the next few months. Some of these owners are presently under contract for the purchase of new properties.

In any event, the “damages” asserted in your letter are compensable in money and are not any form of irreparable harm to the Purchaser. The Purchaser can recover those damages from the owners rateably if it is successful in any claim.

More substantively, the asserted claims in your letter are both without merit and of a nature that would not support any without notice injunctive relief. Among other reasons, the “damages” claimed are not irreparable.

In any event, the Vendor is not in breach of the PSA for any of the reasons asserted. Pursuant to Schedule C, clause 2(a) of the PSA, the Vendor covenanted to “cause the Property to be kept,

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repaired, and maintained to substantially the same condition and state of repair as of the date of this Agreement . . .”. The Liquidator has kept Joyce Place in the condition it was in on January 11, 2021, the date of the PSA. Specifically:

1. The boilers are in working order. The 13th floor boiler was serviced on July 29, 2024 at which time the attending plumber noted it “was working properly” but that “[a]t this point replacement of boilers is recommended.”
2. The Joyce Place tower has two elevators. Only one of those elevators has been operational since prior to the date of the PSA. The status and condition of the elevators, with only one functioning, is therefore unchanged since the date of the PSA.
3. The fire alarm system is functional and operating. The only issue is that the fire annunciator panel lines need to be upgraded from analog to fibre optic so that they connect automatically on an alarm to the fire department. The property manager is currently working with Telus to upgrade that line. An inspection of the fire panel by Community Fire is to take place this weekend. This was an issue that first arose only in August 2024.
4. The condition of the Joyce Place townhouses is better now than they were at the date of the PSA. The Liquidator has had numerous repairs made since its appointment to ensure the townhouses are safe. The Purchaser has been provided with copies of all the relevant reports obtained by the Liquidator regarding these townhouse repairs.

As you will doubtless concede, the Purchaser has left it very late in the sale process to raise the concerns discussed above. The Purchaser has had Joyce Place under contract since January 2021, and has had a right of access and inspection since that date pursuant to clause 5(d) of the PSA. Had the Purchaser conducted inspections or raised these issues earlier, it would have better understood the condition of Joyce Place, including the existence of only one operating elevator and the condition of the boilers.

Your letter also raises the existence of the Provincial Court proceedings as a breach of Schedule C, clause 1(e) of the PSA. The existence of this prosecution by the City of Vancouver (the “COV”) against the Joyce Place strata is not a subject that is new to the Purchaser. It was the subject of comment in Justice Marzari’s judgment (2022 BCSC 1829) issued October 19, 2022, a proceeding in which your client took part. Copies of the Provincial Court orders and filed affidavits have been in the Purchaser’s possession for some considerable time.

In any event, the prosecution does not affect the Purchaser’s ability to take title to Joyce Place or impose on the Purchaser any obligations to do anything with the townhouses that were the underlying reason for the COV prosecution. The state of the eight townhouses is the same now as they were in January 2021 (and may actually be better given the Liquidator’s work).

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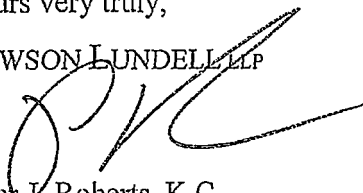
The November 2023 Order (as defined in your letter) was granted on the basis that the Liquidator would be transferring title to the Property to the Purchaser before September 30, 2024, obviating the need for the Liquidator to apply “for any required permits to repair the failed structural framing at the north elevation of the Premises [the townhouses]” or to “complete all work authorized by said permits within 90 days of their issuance by the City.”

Further, the COV prosecuted the Joyce Place strata. The jeopardy of that prosecution does not flow to the Purchaser upon the transfer of the Property. In the event the COV inspects the Property and issues new work orders to the Purchaser after completion, that is a new and different matter. The point is that the Purchaser is taking title to the Property, including the townhouses, in at least the condition they were in at the date of the PSA (and arguably better).

For these reasons, the Liquidator disagrees with the assertions made against it in your letter. The Liquidator is ready, willing and able to complete the PSA on September 9, 2024.

Yours very truly,

LAWSON LUNDELL LLP

A handwritten signature in black ink, appearing to read 'PJR', is written over the typed name 'LAWSON LUNDELL LLP'.

Peter J. Roberts, K.C.

PJR/acc2

cc. D. Lai, Crowe MacKay & Company Ltd.