

Amended pursuant to *Original filed on Nov 1/2024*
Rule 6-1(1)(a)



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

AMENDED COUNTERCLAIM

Filed by: Crowe MacKay & Company Ltd., as Liquidator of The Owners, Strata Plan LMS992 (the "Liquidator")

TO: Intracorp Vanness Limited Partnership ("Intracorp")

This action has been brought by the Plaintiff against the Defendants for the relief set out in the Notice of Civil Claim filed in this action.

TAKE NOTICE that the Defendant claims against you for the relief set out in Part 2 below.

IF YOU INTEND TO RESPOND to the claim made against you in this Counterclaim, or if you have a set-off or counterclaim that you wish to have taken into account at trial, YOU MUST FILE a Response to Counterclaim in Form 4 in the above-named registry of this court within the time for Response to Counterclaim described below and SERVE a copy of the filed Response to Counterclaim on the address for service of the Defendant bringing this Counterclaim.

YOU OR YOUR LAWYER may file the Response to Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Counterclaim within the time for Response to Counterclaim described below.

Time for Response to Counterclaim

A Response to Counterclaim must be filed and served on the Defendant bringing this Counterclaim,

- (a) if you were served with the Counterclaim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Counterclaim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Counterclaim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Counterclaim has been set by order of the court, within that time.

CLAIM OF THE DEFENDANT BRINGING THE COUNTERCLAIM

Part 1: STATEMENT OF FACTS

1. Unless otherwise defined herein, Crowe MacKay & Company Ltd., as Liquidator of The Owners, Strata Plan LMS992 (the “**Liquidator**”) adopts and shall use the defined terms set out in the Response to Civil Claim of the Liquidator.

2. ~~The Liquidator repeats and relies on the allegations of fact set out in Part 1 of the Response to Civil Claim.~~ By agreement dated January 11, 2021, Intracorp Acquisition Co. Ltd. and The Owners, Strata Plan LMS992 (the “**Joyce Place Strata**”), entered into a conditional Purchase and Sale Agreement (the “**PSA**”) for the sale to Intracorp Acquisition Co. Ltd. of the Joyce Place Strata lands and buildings (the “**Property**”).

3. ~~As a result of the breach of the PSA by Intracorp, the Liquidator and the Joyce Place Strata have suffered loss and expense.~~ The PSA contained terms and a mechanism set out in Schedule “G” to the PSA (“**Schedule G**”) for calculating an adjustment to the Purchase Price (the “**PPA**”) to be payable by the purchaser to the Joyce Place Strata. In entering the PSA, the parties agreed that a PPA would be determined and calculated as follows:

- (a) Six strata developments in Vancouver (Regent Court, Nexus, Wall Central Park, Skyway Tower, Centro, and Circa) would be “Comparable Developments” for the purposes of calculating the PPA (with the individual strata lots therein being “Comparable Strata Lots”) (schedule G, ss. 3(c), (d)).
- (b) The aggregate assessed value of all of the Comparable Strata Lots as set out in BC Assessment’s 2021 property assessment notices would be the “Reference Date Aggregate Value” (schedule G, s. 3(f));

- (c) The aggregate assessed value of all of the Comparable Strata Lots as set out in BC Assessment's most recent property assessment notices issued prior to the Value Adjustment Date (i.e., January 7, 2023) would be the "Adjustment Date Aggregate Value" (schedule G, s. 3(a));
 - (d) The percentage by which the Adjustment Date Aggregate Value exceeded the Reference Date Aggregate Value would be the "Aggregate Value Increase" (schedule G, s. 3(b));
 - (e) The "Purchase Price Increase" would be an amount equal to (A) the Purchase Price, multiplied by (B) the Aggregate Value Increase, multiplied by (C) sixty-five percent (65%) (schedule G, s. 3(3)); and
 - (f) If the Adjustment Date Aggregate Value was greater than the Reference Date Aggregate Value and the Aggregate Value Increase was greater than four percent (4%), then the Purchase Price would increase by the amount of the Purchase Price Increase.
4. The parties further agreed that any Comparable Developments that underwent a "Comparable Development Change" would not be used as a Comparable Development for the purpose of determining the PPA. A Comparable Development Change was defined in section 7 of Schedule G to include the occurrence of any of the following:
- (a) Any change or proposed change to the permitted use or redevelopment of any land within any Comparable Development (including, without limitation, any change or proposed change to the official community plan, zoning, or any other City bylaw which affects the redevelopment potential of such land);
 - ...
 - (g) There is any other change, event, fact, or condition which causes the assessed value of Comparable Strata Lots with any Comparable Development to increase for reasons other than normal market conditions.
5. Since January 2021, no Comparable Development Change has occurred as that term is defined in the PPA.
6. By Notice of Assignment dated August 25, 2021, the PSA was assigned by Intracorp Acquisition Co. Ltd. to the Defendant by Counterclaim, Intracorp Vanness Limited Partnership as purchaser ("Intracorp").
7. On October 19, 2022, the B.C. Supreme Court (Vancouver Reg. No. S217956) granted an order confirming the voluntary wind-up of the Joyce Place Strata pursuant to Division 2 of Part 16 of the *Strata Property Act*, confirmed the appointment of the Liquidator and approved the PSA.
8. By agreement between the parties and the exercise of extension rights by Intracorp, the completion of the PSA and the transfer of the Property to Intracorp occurred on September 9, 2024

(the “**Completion Date**”).

9. On August 14, 2024, Intracorp, through its legal counsel, advised the Defendant of its position that there was no PPA payable to the Defendant under schedule G of the PSA as there were “no Comparable Developments for the purposes of calculating the Adjustment Date Aggregate Value”, and cited the following as Comparative Development Changes:

- (a) “[I]t is expected that the implementation of the Vancouver Plan [approved by City Council on July 22, 2022] will impact the nature and scale of permitted redevelopment in such areas, thereby affecting the redevelopment potential of the Comparable Developments”;
- (b) Changes to City’s bylaws that “affect the costs of development which consequently affects the redevelopment potential for all of the Comparable Developments, and, accordingly, constitute Comparable Development Changes for all of the Comparable Developments”; and
- (c) “The COVID-19 pandemic and the government’s response to the pandemic is an event which caused the assessed value of the Comparable Strata Lots within any Comparable Development to increase for reasons other than normal market conditions”;

(collectively, the “**Alleged Changes**”).

10. On the Completion Date, Intracorp paid the Purchase Price required by the PSA and the Liquidator, on behalf of the Joyce Place Strata, delivered the Property to Intracorp in accordance with the PSA.

11. In breach of the PSA, Intracorp refused to account for the PPA on the basis that, as a result of the Alleged Changes, there are no longer any Comparable Developments that can be used to calculate the PPA.

12. The Alleged Changes are not Comparable Development Changes as contemplated by the PSA. In particular, at the time of the formation of the PSA, Intracorp knew or ought to have known that there was a reasonable prospect that the events constituting the Alleged Changes would occur, and the Alleged Changes fall within the scope of normal market conditions.

13. Intracorp’s failure to account for and pay the PPA is a breach of the PSA. As a result of the that breach of the PSA by Intracorp, the Liquidator and the Joyce Place Strata Defendants have suffered loss and expense damage.

14. The existence of the COVID-19 pandemic and the nature of governmental response to it were widely and publicly known prior to January 2021.

15. In determining the assessed value of properties in British Columbia, including all the Comparable Strata Lots in the Comparable Developments, the B.C. Assessment Authority does not take into account any change or proposed change to the permitted use or redevelopment potential of properties.

Part 2: RELIEF SOUGHT

- 16. ~~4.~~-An order that Intracorp account for and pay to the Liquidator the PPA.
- 17. ~~5.~~-Damages for breach of the PSA.
- 18. ~~6.~~-Interest pursuant to the *Court Order Interest Act*.
- 19. ~~7.~~-Costs.

Part 3: LEGAL BASIS

20. Each of the definitions of Comparable Development Change in sections 7(a) to (f) of Schedule G are modified by and take meaning from the qualifying words set out in section 7(g) that any Comparable Development Change must cause “the assessed value of Comparable Strata Lots with any Comparable Development to increase for reasons other than normal market conditions.”

21. Pursuant to the terms of Schedule G, to qualify as Comparable Development Change the circumstances in each of sections 7(a) to (f) must affect the redevelopment potential of the Comparable Development such that it caused or causes an increase in the assessed value of Comparable Strata Lots for reasons other than normal market conditions in the sense that, as of July 1 in the year prior to each assessment year (the “Assessment Date”):

- (a) The market had to consider the occurrence of such change to be reasonably likely, not merely possible;
- (b) The market had to expect any such reasonably likely change to be capable of sufficiently materially increasing the redevelopment potential of the Comparable Strata Lots to materially increase their market value; and
- (c) The market had to be able to isolate and measure the amount of any such reasonably likely increase in redevelopment potential and market value attributable to the change, from other contributing influences.

22. None of the Alleged Changes caused the assessed value of any of the Comparable Strata Lots in any of the Comparable Developments to increase for reasons other than normal market conditions as set out above.

23. To the contrary, at each Assessment Date the Assessor specifically valued each of the Comparable Strata Lots in its individual actual residential use based on sales prices of other comparable single family strata properties, without regard to the redevelopment potential of the Comparable Developments as a whole, let alone the impact of any Alleged Changes to the redevelopment value, market value or assessed value of the Comparable Developments as a whole so that Intracorp could not claim a Comparable Development Changes has occurred either under paragraph 7(a) or 7(g).

24. ~~8.~~-Intracorp, by its refusal to account for and pay to the Liquidator the PPA in accordance

with the PSA, has breached the PSA.

25. ~~9.~~ Intracorp is indebted under the PSA to pay to the Liquidator and the Joyce Place Strata the amount of the PPA.

26. ~~10.~~ As a result of Intracorp's breach of the PSA, the Liquidator and the Joyce Place Strata have suffered and continue to suffer damage, loss and expense.

27. ~~11.~~ Intracorp is liable to the Liquidator and the Joyce Place Strata for damages for breach of the PSA, in addition to the amount owing for the PPA under the PSA.

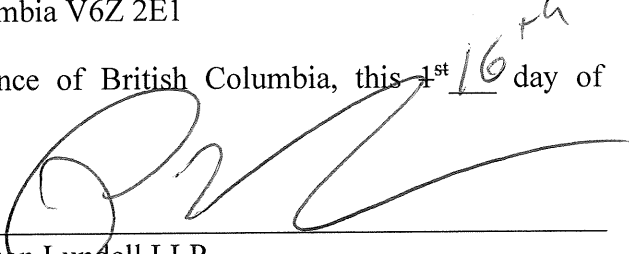
Address for service of the Defendant bringing this Counterclaim is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Peter J. Roberts, K.C. / Sarah B. Hannigan).

Fax number address for service is: (604) 669-1620.

E-mail address for service is: proberts@lawsonlundell.com / shannigan@lawsonlundell.com

The address of the Registry is: 800 Smithe Street, Vancouver,
British Columbia V6Z 2E1

Dated at the City of Vancouver, in the Province of British Columbia, this ^{16th} ~~1st~~ day of ~~November~~ May, 2024 ~~2025~~.



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

This Counterclaim is filed by Peter J. Roberts, K.C. / Sarah B. Hannigan, 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.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

- (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.