



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

NOTICE OF APPLICATION

Name of applicants: Kenneth Kwok Ying Chan, Yuen Mei Lin Chan, Che Wing Chan, Yat Sin Wong, Ardeshir Soltani Razagh Sarab, 0837963 B.C. Ltd. (the "Applicants")

To: The Owners, Strata Plan LMS992
 To: First National Financial GP Corporation
 To: Crowe MacKay & Company
 To: The Toronto-Dominion Bank
 And to: Their counsel.

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge at the hearing of this matter at courthouse at the Law Courts, 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on April 19, 2022 at 9:45 a.m concurrently with the 2-day hearing set in Matter No. S217956 for the order(s) set out in Part 1 below

10:00am

Part 1: Orders Sought

1. The Affidavit of Philip Law sworn on March 29, 2022 be admitted into evidence at the hearing for this matter.
2. Costs.

Part 2: Factual Basis

1. The Owners, Strata Plan LMS 992 (the "Strata") consists of 63 units, 52 apartments, 8 townhouses and 3 commercial units.

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2. The commercial units occupy strata lot 9 ("SL9"), strata lot 10 ("SL10") and strata lot 11 ("SL11").
3. The Applicants are the respective owners of the commercial units.
4. On or about July 7, 2021 the Strata passed a resolution at a special general meeting to:
 - a. wind up LMS 992; and
 - b. sell it to Intracorp Acquisition Co Ltd. pursuant to a January 11, 2021 purchase and sale agreement

(collectively, the "Strata Wind-Up and Sale")

5. Under the Strata Wind-Up and Sale the Applicants will receive less than the assessed value for their units as follows:

Unit	July 1, 2020 Assessed Value	July 1, 2021 Assessed Value	Proceeds under Strata Wind-Up and Sale	Loss based on Assessed Values
SL9	\$605,000	\$659,900	\$489,863.68	\$115,736.32 - \$170,036
SL10	\$818,000	\$892,000	\$675,192.33	\$142,807.67 - \$216,807.67
SL11	\$814,000	\$887,000	\$691,955.73	\$122,044.27 - \$195,044.27

6. The Applicants are opposing the Strata Wind-Up and Sale, in part, because of the losses they will incur if it is approved.
7. To support their position in this respect, on December 17, 2021 the Applicants retained Philip Law, an expert in commercial real estate appraisals to provide an opinion on the market value of SL9, SL10 and SL11.
8. In the instruction letter, Mr. Law was requested to provide the appraisal report by January 17, 2022.
9. Despite requesting that Mr. Law's report be completed by January 17, 2022, the Applicants did not obtain Mr. Law's final report until March 29, 2022 (the "Report").
10. On March 31, 2022 the Report was served on counsel for the Strata.
11. On April 4, 2022 it was sent to the other parties of record.
12. The Report opines that the true market value for the commercial units is as follows:

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- a. SL9 - \$910,000
- b. SL10 - \$1,210,000
- c. SL11 - \$1,200,000

13. Despite requests that Counsel for the Strata confirm the Report will be included in the Petition Record, counsel for the Applicants has not received a response.

14. A hearing is currently scheduled for 2 days commencing on April 19, 2022 where the Court will be asked to approve or dismiss the Strata Wind-Up and Sale.

Part 3: Legal Basis

1. The Applicants rely on Rules 16-1 and 14-1.

2. Rule 16-1 (7) states as follows:

“Unless all parties of record consent or the court otherwise orders, a party must not serve any affidavits additional to those served under subrules (3)(4) and (6).”

3. Under Rule 16-1(7) the Court has broad discretion to order that an affidavit be served after the deadline and on an such an application must consider the object of the Supreme Court Civil Rules as set out in Rule 1-3(1):

“The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.”

The Owners, Strata Plan VR29 v. Kranz, 2021 BCCA 32 at para 14

4. On an application seeking to serve an affidavit under Rule 16-1(7), the Court must further consider issues of fairness, public interest and prejudice.

The Owners, Strata Plan VR29 v. Kranz, 2021 BCCA 32 at para 14

5. Where it is determined that an affidavit is “essential or otherwise necessary for success” and where it could not have been served at an earlier date” the Court should exercise its discretion in favour of allowing late service of same.

Tietz v. Cryptobloc Technologies Corp., 2021 BCSC 190 at para 32

6. In this case, permitting the Applicants to serve Mr. Law’s report will serve the objects of the rules by allowing the matter to be heard on its merits at the upcoming hearing without causing undue delay or inordinate expense.

7. The Applicants face the prospect of being involuntarily dispossessed of their property for under assessed and under appraised value. As such, the Applicants

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submit that permitting the Report to be served and relied on at the upcoming hearing will promote fairness and serve the public interest.

8. Furthermore, they submit the Petitioners will not be prejudiced if the within order is granted as the Applicants have repeatedly put the Petitioners on notice of their intention to obtain an expert appraisal in their Petition Response and their Amended Petition Response.
9. In any event, the Petitioners arguably should have obtained an expert appraisal report before the Strata Wind-Up Resolution and Sale was voted on and approved. This would have insured the owners were making the right decision when they voted in favour of the Strata Wind-Up and Sale. Accordingly, permitting the Report to be served and relied on may in fact serve the best interests of the Petitioners as it will be the only reliable and objective evidence of market value at the hearing.
10. Finally, the Report is necessary and essential for the Applicants to prove their position that the Strata Wind-Up and Sale is significantly unfair. It is well-established that BC assessments are not necessarily reflective of true market values of real estate in BC. As such, the Applicants seek to rely on an expert appraisal that does reflect the true market value for their units.
11. Finally, the Applicants provided the Report to Counsel for the Strata within a reasonable time after receiving it themselves. The Applicants took prudent steps to obtain an appraisal by January 17, 2022 and should not be penalized because, through no fault of their own, the Report was not finalized until March 29, 2022.
12. In these circumstances, the Applicants should be permitted to serve Mr. Law's Affidavit and its enclosed Report.

Part 4: Material to be Relied on

1. Affidavit #1 of Philip Law, made on March 29, 2022
2. Affidavit #1 of Kenneth Chan, made on November 29, 2021.
3. Pleadings.

The applicant estimates that the application will take 60 minutes.

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

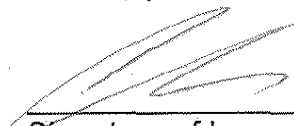
TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- a) file an application response in Form 33,
- b) file the original of every affidavit, and of every other document, that

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- i) you intend to refer to at the hearing of this application, and
- ii) has not already been filed in the proceedings, 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).

Date: April 4, 2022



Signature of lawyer for applicant(s)
Claire Armstrong

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

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
- servpice
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above