



No. S217202  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**THE BANK OF NOVA SCOTIA**

**PETITIONER**

**AND:**

**COMMUNITY MARINE CONCEPTS LTD., VICTORIA INTERNATIONAL MARINA LTD.,  
ETERNALAND YUHENG INVESTMENT HOLDING LTD., AND 0736657 B.C. LTD.**

**RESPONDENTS**

**RESPONSE TO PETITION**

**Filed by:** Community Marine Concepts Ltd. ("CMC"), Victoria International Marina Ltd. ("Victoria International"), Eternaland Yuheng Investment Holding Ltd. ("Eternaland"), AND 0736657 B.C. Ltd. ("073," and together with CMC, Victoria International, and Eternaland, the "Petition Respondents")

THIS IS A RESPONSE TO the petition filed August 6, 2021

**Part 1: ORDERS CONSENTED TO**

The petition respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the petition: NONE

**Part 2: ORDERS OPPOSED**

The petition respondent opposes the granting of the orders set out in ALL of the paragraphs of Part 1 of the petition.

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The petition respondent takes no position on the granting of the orders set out in NONE of the paragraphs of Part 1 of the petition.

**Part 4: FACTUAL BASIS**

1. The Petitioner, the Bank of Nova Scotia (the "Petitioner" or the "Bank"), provided the Respondent CMC with a non-revolving term loan in the principal amount of \$17,080,000 pursuant to the terms of a Commitment Letter dated October 2, 2018 (the "Loan") to provide bridge financing for CMC's construction of the Victoria International Marina in Victoria, BC

(the “Marina”). The Respondents Victoria International, Eternaland, and 073 were guarantors of the Loan.

2. To date, the Respondents have made partial payment of the Loan. As of October 28, 2021, the loan balance is \$15,330,161.74. Previous payment was made on October 1, 2021 in the amount of \$100,000 since September 30, 2021 was a federal holiday. The Respondents made an additional \$100,000 payment toward the Loan on October 28, 2021.
3. Furthermore, the Respondents have made diligent efforts in securing a lender to refinance the Marina in order to discharge the Bank’s mortgage.
4. The Respondents, with 073 as the borrower, have been able to obtain a loan in the amount of \$16,000,000 from a private lender (the “New Loan”), which will discharge their obligation to the Bank. The New Loan is expected to be advanced in one instalment to 073 on or before December 10, 2021.
5. The non-refundable deposit for the New Loan is to be paid on Monday, November 1, 2021, and an environmental report for the refinance will also be completed next week.
6. The Respondents have a business partner in Hong Kong who has agreed to purchase the Respondents and operate the Marina in partnership with the Respondents. The final documents for this transaction have been submitted to and approved by the bank in Hong Kong. The Respondents are currently waiting to confirm the exact date(s) of the transfer of funds and have retained a Hong Kong lawyer to assist with this transaction.

## **Part 5: LEGAL BASIS**

### **Jurisdiction of the court**

1. The jurisdiction of the court to grant a receivership order is found in S. 39 of the *Law and Equity Act*, RSBC 1996, c. 253, and s. 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “BIA”). The *Law and Equity Act* allows for the appointment of a receiver where it is “just and convenient” to do so.

### **The just and convenient test**

2. Where a receivership order is sought by a secured creditor and default under the security is proven, no such presumption of appointment of a receiver should be made. Rather, the court should review the matter holistically and decide whether on the whole of the circumstance that it is just and convenient to appoint a receiver.

*Bank of Montreal v Gian's Business Centre Inc.*, 2016 BCSC 2348 at paras 21-24

3. In determining whether it is just and convenient to appoint a receiver, there are a number of factors to consider:

- a. whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- c. the nature of the property;
- d. the apprehended or actual waste of the debtor's assets;
- e. the preservation and protection of the property pending judicial resolution;
- f. the balance of convenience to the parties;
- g. the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- i. the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
- k. the effect of the order upon the parties;
- l. the conduct of the parties;
- m. the length of time that a receiver may be in place;
- n. the cost to the parties;
- o. the likelihood of maximizing return to the parties;
- p. the goal of facilitating the duties of the receiver.

*Maple Trade Finance Inc. v CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para 25

- 4. It is an important consideration that a receivership is extraordinary relief which should be granted cautiously and sparingly. If the court can fashion a remedy that avoids a receivership, then that should be considered.

*Cascade Divid Enterprises, Inc. v Laliberte*, 2013 BCSC 263 at para 81

**It is not just and convenient in the circumstances**

- 5. It is not just and convenient in the circumstances for a receiver to be appointed.
- 6. The granting of a receivership is an extraordinary remedy. The Respondents have been making reasonable efforts to repay the Loan, having made an additional \$100,000 payment toward the Loan on October 1, 2021 as well as on October 28, 2021

7. As set out in the Petitioner's materials, the initial balance of the Loan was \$17,080,000. The Respondents have been making interest payments on the Loan. As of October 28, 2021, the loan balance is \$15,330,161.74.
8. The Petitioner is also well secured. It is common knowledge, even according to the Petitioner's affidavit materials proposed to be filed under seal, that the equity of the Marina substantially exceeds the amount owed to the Bank.
9. The Petitioner is further secured by additional mortgages over properties of the guarantors.
10. The Respondents have made diligent efforts to secure a lender in order to discharge the Bank's mortgage on the Marina. They have signed a term sheet for a \$16 million loan, which they anticipate will be advanced on or before December 10, 2021.
11. The requisite reports that will need to be completed for the New Loan are well underway to being obtained, and the non-refundable deposit for the New Loan will be paid on November 1, 2021.
12. Given the timing of the advance of the New Loan, the Respondents propose that a receiver be automatically appointed on the terms as sought in this Petition should the Loan not be repaid in full to the Bank on or before December 10, 2021. The Respondents submit that this would address any concerns of the Bank that the Respondents would not make good on its repayment.
13. Furthermore, the Respondents have finalized the purchase and sale of the Respondents' companies with the Hong Kong investor in order to operate the Marina. The transfer of the funds from Hong Kong is imminent, the amount of which will be more than sufficient to repay the Loan. The Respondents are awaiting confirmation of the exact date(s) of the transfer of funds.
14. As such, there is no prejudice to the Bank to wait until December 10, 2021 to be repaid when funds from the refinance will be advanced and/or a portion of the funds from the Hong Kong transaction will arrive in Canada.
15. On the contrary, the appointment of a receiver in the present circumstances may disrupt or hamper the refinancing efforts and/or the transaction with the Hong Kong investor. The appointment of a receiver may also result in the Loan being repaid to the Bank past December 10, 2021, which is when the Respondents anticipate they would obtain funds for the refinance.

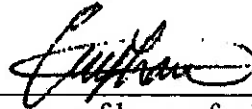
**Part 6: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Feng Beng Li, made September 21, 2021;
2. Affidavit #2 of Feng Beng Li, made October 28, 2021;
3. Affidavit #1 of Yu-Chiao (Joy) Chiang, made October 28, 2021;
4. Affidavit #1 of Xiaolu Michael Bi, made on October 28, 2021; and

5. Such further and other material as this Honourable Court deems just.

The petition respondents estimate that the petition will take 1 day.

Date: October 28, 2021



Signature of lawyer for Petition Respondents  
Glen Forrester/Crystal Law

Petition respondent's address for service:

Forrester & Company Law Corporation  
300-171 Water Street  
Vancouver, BC, V6B 1A7

Fax number address for service (if any):

None

Email address for service (if any):

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[claw@forresterbarristers.ca](mailto:claw@forresterbarristers.ca)

Name of the petition respondent's lawyer, if any:

Glen Forrester/Crystal Law

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