

This is the 4th affidavit
of Wen-Shih Yang in this case
and was made on April 14, 2022

No. S1813807
Vancouver Registry



**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,
AS AMENDED**

AND

**IN THE MATTER OF MASAHIKO NISHIYAMA
BANKRUPT UNDER THE LAWS OF JAPAN**

AFFIDAVIT

I, Wen-Shih Yang, Legal Administrative Assistant of 2800 Park Place, 666 Burrard Street, Vancouver, British Columbia, SWEAR THAT:

1. I am a legal administrative assistant employed by DLA Piper (Canada) LLP, solicitors for the Receiver and Trustee in this action, and therefore have personal knowledge of the matters herein after deposed, except where stated to be based on information and believe, and where so stated I do verily believe the same to be true.
2. Unless otherwise indicated, in this Affidavit I have used the same definitions as used in the Notice of Application of the Trustee and the Receiver, to be filed with this Affidavit.
3. Attached hereto and marked as **Exhibit "A"** is a true copy of the Notice of Application filed on October 9, 2019 (the "**October Application**").
4. Attached hereto and marked as **Exhibit "B"** is a true copy of the Application Response received from Masahiko Nishiyama and Hatsumi Kinoshita.

5. Attached hereto and marked as **Exhibit "C"** is a true copy of a letter dated April 13, 2022 addressed to Mr. Nishiyama and Ms. Kinoshita.

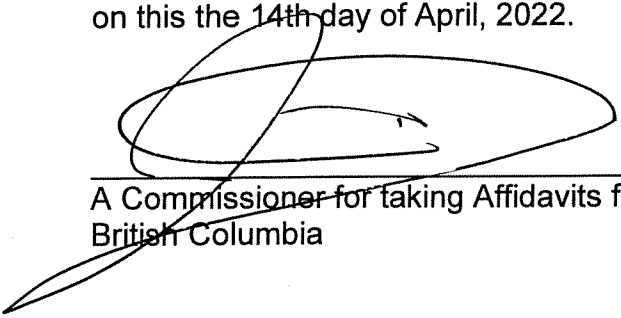
SWORN BEFORE ME at Vancouver, British Columbia, on April 14, 2022.

A Commissioner for taking Affidavits for British Columbia.

WEN-SHIH YANG

JEFFREY BRADSHAW
Barrister & Solicitor
DLA Piper (Canada) LLP
666 Burrard Street, Suite 2800
Vancouver, BC V6C 2Z7
604.643.2941

This is **Exhibit "A"** referred to in the Affidavit of Wen-Shih Yang sworn before me at Vancouver, British Columbia on this the 14th day of April, 2022.



A Commissioner for taking Affidavits for
British Columbia



S1813807
No. S-1810067
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-6
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BANKRUPT UNDER THE LAWS OF JAPAN

NOTICE OF APPLICATION

Name of Applicants: Masahiko Nishiyama ("Nishiyama") and Hatsumi Kinoshita ("Kinoshita")

To: Colin Brousson, counsel for the Petitioner, Hiroshi Morimoto ("Morimoto") and the receiver, Alvarez and Marshal ("A&M", collectively, the "Trustee")

Robert Richardson, counsel for The Resolution and Collection Corporation ("RCC")

TAKE NOTICE that an application will be made by the Applicants at the courthouse at 800 Smithe Street, Vancouver, British Columbia on October 24, 2019 at ~~10:00~~ 9:45 AM for the orders set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. Stay of execution in this proceeding and *Resolution and Collection Corporation v Nishiyama*, Vancouver Supreme Court No. S-162298 (the "RCC Proceeding") until such time as an application the Applicants will be filing before Justice Voith, who is seized of this matter, can be adjudicated (the "Intended Application"). In particular:
 - a. the order made July 19, 2019 shall be stayed, the Trustee will not market for sale or sell the real estate with a civic description of 4102-1028 Barclay Street, Vancouver, BC (the "Barclay Condo") and all sale listings shall be cancelled;

- b. Any personal property and vehicles contained or stored at or around the Barclay Condo shall not be disposed of, sold or removed from the Barclay Condo; and
 - c. The deadline for filing an application and supporting evidence respecting the Trustee's disallowance of the proof of claim filed by Kinoshita shall be extended to the day of the filing of the Intended Application as well as any and all other deadlines respecting the filing of documents, if any, pursuant to any statute, shall be extended to the date of the hearing of the Intended Application. In the alternative, review of the disallowance of the proof of claim filed by Kinoshita and an order confirming that Kinoshita is the owner of all of the personal property contained in Barclay Condo, and the deadline to pick up such property shall be extended to December 31, 2019;
2. A certificate of pending litigation shall be registered on title for the Barclay Condo in favour of Kinoshita;
3. Morimoto shall forthwith lift the travel ban he has imposed on Nishiyama that is presently preventing Nishiyama from traveling to Canada;
4. Morimoto shall forthwith take all steps required to remove all seals or barriers put in place due to any action on his part from the bankruptcy file in Japan such that Nishiyama can access this file. In the alternative, Morimoto shall within 14 days provide copies of all documents filed in the bankruptcy proceedings in Japan;
5. Morimoto and RCC shall, within 14 days, provide all documents in their possession or control comprising the court files that gave rise to the 2001 judgment, the 2012 judgment that was a renewal of the 2001 judgment upon which RCC filed a claim in Canada in 2016 seeking to enforce such judgment;
6. The contents of the safety deposit box owned by Nishiyama that was opened by a court order made in Nishiyama's absence shall be returned to Nishiyama by way of delivery to his counsel in Canada; and
7. Costs.

PART 2: FACTUAL BASIS

1. Nishiyama and Kinoshita are residents of Japan. They are both businesspeople. Neither are fluent in English.
2. RCC is a corporation owned and operated by the Deposit Insurance Corporation of Japan.
3. Morimoto is the trustee in bankruptcy for Nishiyama in Japan. He is the petitioner in the Bankruptcy Proceeding.

4. A&M was appointed receiver in this matter by way of order made February 14, 2019.
5. In 2001 RCC obtained a default judgment against Nishiyama in which Nishiyama was not given effective notice. Apparently, service was accomplished through alternative means. Nishiyama was not in Japan at the time.
6. In 2012 RCC obtained default judgment on the default judgment against Nishiyama in a proceeding in which Nishiyama was not given effective notice. Apparently, service was accomplished by some sort of substitutional method. Based on materials located in the court file, the judgment in Japan was served by "public notice". Nishiyama was in Canada at the time.
7. In 2016 RCC filed a notice of civil claim in Canada to enforce the 2012 judgment in Japan. Nishiyama was not present in Canada at the time, a fact RCC knew as he was incarcerated due to other proceedings in another matter involving RCC. Nishiyama was not given effective notice of the proceedings in Canada.
8. In 2018 Nishiyama became aware of some proceedings ongoing in Canada. He could not travel outside of Japan without Morimoto's consent. Morimoto refuses to permit Nishiyama to travel outside of Japan.
9. Nishiyama attempted to seek a stay on his own from the supreme court, but a letter asking for a stay was rejected by the registry. The response to the second letter went to an old address for Nishiyama.
10. The order made on July 19, 2019, which was not served on Nishiyama or made on notice to Kinoshita, permits A&M to sell 4102-1028 Barclay Street, Vancouver, BC (the "**Barclay Condo**"). Kinoshita was assigned Nishiyama's beneficial interest in the Barclay Condo in January 2015.
11. In September 2019, Nishiyama and Kinoshita retained counsel. RCC did not agree to provide copies of affidavits and other materials filed in the RCC Proceeding. After some trips to the Supreme Court to obtain copies of the many documents filed in the RCC Proceeding it became clear that proceedings had been ongoing in Canada since 2016, including orders made in the Applicants' absence including a default judgment for some \$470 million in favour of RCC.
12. Notice was given to A&M, Morimoto and RCC that an application would be filed to set aside orders made in the Applicants' absence. There was discussion in September 2019 respecting scheduling of a matter that appears to be a lengthy chambers matter.
13. On September 30, 2019, a request was made to appear before Justice Voith.

14. Nishiyama wishes to appeal the 2001 and 2012 judgments and an order made in or around 2016 involuntarily assigning Nishiyama into bankruptcy. He cannot access the court files for the 2001 and 2012 judgments by effect the passage of time. The Japanese courthouse appears to have destroyed the files. Without the files he cannot file an application to set aside those judgments. Nishiyama has attempted to obtain documents from the involuntary bankruptcy proceedings in Japan but has been told that some portion of the file is sealed at the request of Morimoto.
15. On October 8, 2019, the Applicants attempted to file the main application in which the Applicants seek to set aside the orders made in their absence and various heads of relief. The Registry refused to accept an application indicating that it will be set down at a day and time to be set by the Registrar (the “**Intended Application**”), as such applications appear to be accepted only if a judge is seized. It was not known on October 8, 2019 that Justice Voith was seized.
16. Scheduling indicated to the Applicants by way of e-mail on October 9, 2019 that Justice Voith was seized of this matter. Because the Trustee has given a deadline of October 9, 2019 to file an application disputing the disallowance of the proof of claim, has not agreed to any extensions of time or to voluntarily stay execution and has now listed the Barclay Condo for sale this application is filed on the regular chambers list in case it is not possible that Justice Voith can hear this application within the next few weeks, while accommodating notification from counsel for the Trustee that, it seems, the Trustee does not agree to short leave.

Proof of Claim

17. In August 2019 Kinoshita filed a proof of claim with the Trustee respecting her ownership of the Barclay Condo and the personal property contained in the Barclay Condo. The Trustee partially disallowed the claim. Kinoshita is the owner of the Barclay Condo and all the personal property in it and does not wish to see either sold or disposed of.

Stay of Execution

18. Millions of dollars have already been received by RCC by through execution.
19. The Trustee has not agreed to voluntarily stay execution, including execution pursuant to the July 19, 2019, despite notification that applications will be brought to set aside the orders that permit this execution. It seems that after a request was made to appear before Justice Voith, the Barclay Condo was, on around October 7, 2019, listed for sale with a realtor.
20. Kinoshita has a significant concern that the Barclay Condo will be sold before the application to set the order made on July 19, 2019 is adjudicated.

21. There is no urgency on the part of RCC, which, ultimately, is an entity associated with the government of Japan. RCC is the sole creditor.
22. There would be clear irreparable harm if execution continues as its beneficial owner stands to lose a very valuable asset.

Morimoto Travel Ban

23. Morimoto has taken steps to prevent Nishiyama from traveling to Canada, preventing Nishiyama from defending the claims made in this proceeding. This is apparently a power possessed by trustees in bankruptcy in Japan.
24. Nishiyama wishes to travel to Canada to defend the claims made against him.

Japanese Court Files

25. Nishiyama wishes to file an appeal of the underlying judgments in Japan, including the involuntary bankruptcy, but cannot do so because he was informed that the bankruptcy file in Japan was sealed or had sealed portions and that the court file from 2011 and 2012 forming the basis for the 2012 judgment was destroyed by the Japanese courthouse due to the passage of time.
26. It would be unfair for Nishiyama to be unable to file an appeal only because he cannot obtain copies of various documents from the Japanese courthouse.

Safety Deposit Box

27. An order was made opening Nishiyama's safety deposit box in these matters. Significant documents have been put into evidence in these proceedings. Nishiyama wishes return of his papers.

PART 3: LEGAL BASIS

1. The Supreme Court has broad powers to order that execution be stayed: Rule 13-2(31) of the *Rules of Court*; LLS America LLC (Trustee of) v Dill, 2018 BCSC 2316 at 68 – 69; and s.48(2) of the *Court Order Enforcement Act*.
2. There is a live issue as to who beneficially owns the Barclay Condo. Kinoshita is the beneficial owner of the Barclay Condo. It would be an injustice to not permit her to have her day in court before her property is sold pursuant to orders that were not made on notice to her respecting Nishiyama's alleged bankruptcy.
3. The balance of convenience clearly favours Kinoshita. There is no urgency on the part of RCC, which is ultimately an arm of the government of Japan, or the Trustee.

4. There has been a lengthy chain of alternate service orders made in these proceedings going back in the 1990s against Nishiyama in which he was not given effective notice of lawsuits against him. It would be unfair and against natural justice to permit Nishiyama to have his day in court before any further orders are made against him.
5. A&M and Morimoto have not agreed to voluntarily stay proceedings pending the hearing of any application by Kinoshita and Nishiyama. Approximately one week after a request was submitted to appear before Justice Voith A&M and Morimoto began marketing the Barclay Condo for sale. There is a clear danger of the Barclay Condo being sold to a third party before the Intended Application is adjudicated. In addition, the Applicants understand that the personal property contained in the Barclay Condo is in danger of being disposed of.
6. The Applicants cannot file the Intended Application until the Court provides a date and time at which all counsel can attend a long chambers application.
7. A stay of execution is appropriate in the circumstances.
8. Respecting the partial disallowance, Kinoshita is the owner of all the personal property that is or was contained in the Barclay Condo. Partial disallowance of the proof of claim is unwarranted. While it is preferable for this to be adjudicated together with the balance of the Intended Application, if there is no option other than this application, Kinoshita confirms that she is the owner of all of the personal property contained in the Barclay Condo and does not agree that A&M and Morimoto can sell or dispose of this property.
9. Morimoto is taking continuing steps and has been for the past year to prevent Nishiyama from traveling to Canada to attend court. The Court has inherent jurisdiction and the control over its own processes to require Morimoto to permit Nishiyama to travel to Canada if he wishes to defend these claims, if the alternative would cause grave injustice. An adverse party should not be permitted to hold the doors of the courthouse closed against the other party particularly when that party is insisting on strict compliance with deadlines against a party who is not fluent in English and who resides in East Asia.
10. It would be manifestly unfair for Nishiyama to be unable to file appeals of the underlying judgments only because of steps taken by Morimoto to seal the file and the fact that the claim filed by RCC cannot be obtained from the Japanese courthouse.
11. Nishiyama is the owner of the documents that were previously in the safety deposit box. There is no reason why they cannot be provided to him.

PART 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Kwee Lee.
2. Such additional material as the Applicants will advise.

Time Estimate:

45 Minutes

Jurisdiction:

Judge

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
 - i. you intend to refer to at the hearing of this application, and
 - ii. has not already been filed in the proceeding, 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: October 9, 2019



Todd Brayer
Counsel for the Applicants

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: _____

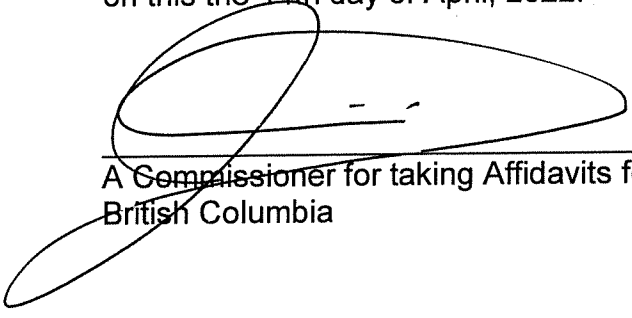
Signature of ☐ Judge ☐ Master

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
- ☒ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts

This is **Exhibit "B"** referred to in the Affidavit of Wen-Shih Yang sworn before me at Vancouver, British Columbia on this the 14th day of April, 2022.



A Commissioner for taking Affidavits for
British Columbia

NO. S1813807
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,
AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN

APPLICATION RESPONSE

Application response of Masahiko Nishiyama ("Nishiyama")
13-36 Showa-cho, Otsu-shi, Shiga-ken, JAPAN 520-0817
And Hatsumi Kinoshita ("Kinoshita")
13-2 Showa-cho, Otsu-shi, Shiga-ken, JAPAN 520-0817

To: The Resolution and Collection Corporation ("RCC")

This is my response to the hearing of April 6, 2022.

1. I do not accept all of the testimony by Mr. Bradshaw and Mr. Richardson. I did not lie in all of the petition I filed. So I will not withdraw and will fight in the court to the end.
2. I was bankrupted in Japan by RCC's false charges and cannot do business. I live on pension now. Mr. Todd Brayer and Mr. Cody Reedman used to be my counselors but I don't have enough income and cannot afford to hire them. So it is not possible for me to submit my response by the 14th of April. I'd appreciate if you'd consider my situation and I'd like to make testimony in the hearing of April 21 and 22 through a interpreter you are going to provide.

3. I'm going to attach here a list of 24 RCC lawyers. Of these 24, 3 of them are top executives of the Japan District Public Prosecutors Office. It is the most difficult thing to do for Japan's lower court to indict these 3 but it is possible at the Supreme Court. These 24 lawyers never attended as witness in the trials in Japan, US and Canada.

I requested witness cross-examinations in more than 5 times but all rejected and could not do the witness cross-examinations in Japan. Truth will prevail if defendant counselor attend the BC Court. This is going to be a big case.

Why didn't they attend the trials? Please investigate the reason why they did not attend.

There were 4 lawyers at Chicago trial. The trustee in Japan did not attend the first hearing and did attend in the second hearing by hiding his face as a trustee team. Why they can't attend the trial and testify if their claim is correct? Court cases in Hong Kong and Singapore were finished but every information was not publicly available and I could not see them. Please also ask Mr. Morimoto about this.

4. Did you know my bankruptcy judgement in Japan was a fake forged by unlawful procedures.

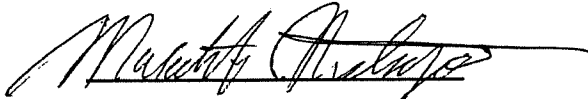
I will have these judgements reversed and bring the result to Canada to revoke all the decisions in Canada. Please bring someone from these 24 lawyers to attend the hearings on the 21st and 22nd so that I could question the responsibility of the Canadian Judiciary later. All 24 lawyers are criminals. They represented RCC knowing that they obtained judgement unlawfully by public notice. Please ask Mr. Bradshaw and Mr. Richardson who represent RCC and Mr. Morimoto, trustee in Japan, if the public notice procedure was lawful and there were no illegal public notice procedures as I am suspicious of them in the same way as those 24 lawyers. I will investigate in Canada, Hong Kong and Singapore after retrial judgement in Japan. I'd like to recommend Canadian counselors to check with their Japanese counterpart. They will eventually find out why this kind of criminal act happened to me in Japan, a country of G7 member.

5. The judgement of the Kyoto District Court case 3538 of February 9, 2012 obtained by fraud and the bankruptcy judgement was made based on this. I will prove this judgement was unlawful on April 21 and 22 if you ask me. If you choose not to ask, I consider Mr. Bradshaw, Mr. Richardson including you are accomplices. They continue to represent RCC and Trustee knowing the unlawfulness. My address at the time of unlawful judgement was the Condominium in Vancouver, Canada and prior to this, 59th Floor, Shangri-La Hotel in Vancouver. I wasn't aware of the key change of the Condo until I gave the key to my friend on March 20, 2019 in Japan who went back to Canada to find out the change a few days later. I didn't know about the fraudulent lawsuit by RCC and made the agreement with

Hatsumi Kinoshita on January 16, 2015 and even planned to have a child with her. (Affidavit No. S-1813807 October 19, 2019). A medical certificate by the hospital was attached.

6. My life changed because of this fraudulent judgement. I will fight in the court not accepting RCC's claim. I can win this if I go to the Supreme Court although RCC is a government organization and tough to fight. I don't think RCC would accept the summon of Canada Court because they are afraid that the participation will be RCC's disadvantage in the trials. I can make claim against the court decision but accepting without understanding the content will have fatal consequences. Please ask any questions in order to clarify this case was originated from the fraudulent judgement. I will answer anything. I'm hoping to receive searching questions like American trial movies. Please arrange an official translator in the trial. If my chance of participating testimonies in this prolonged trials increase, everything will become clear. Please do not stop this trial. Truth and Justice will prevail if counselors of RCC and Trustee participate in the trial.

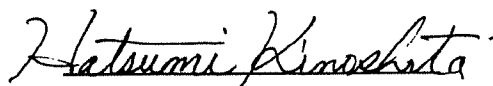
Dated: April 13, 2002



MASAHIKO NISHIYAMA

13-36 Showa-cho, Otsu-shi

Shiga-ken, Japan 520-0817



HATSUMI KINOSHITA

13-2 Showa-cho, Otsu-shi

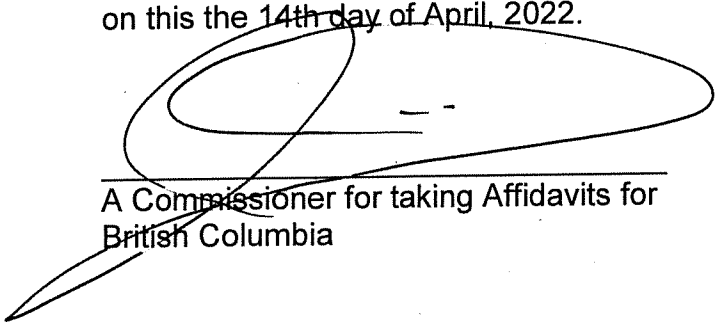
Shiga-ken, Japan 520-0817

Attachment:

List of RCC Presidents and Lawyers

1	Koichi Ueda	RCC President	2009.3.1~2012.6.20
2	Shozo Fujita	RCC President	2012 .6.20~2015.10.5
3	Toichi Fujiwara	RCC President	2015.10.5~2020.6.7
4	Morihiro Honda	Current RCC President	2020.6.7~
5	Noriaki Takahashi	RCC lawyer	
6	Kenji Moriguchi	RCC lawyer	
7	Shinpei Yamamoto	RCC lawyer	
8	Toshiaki Morishita	RCC lawyer	
9	Tetsuya Nakanishi	RCC lawyer	
10	Masakazu Hara	RCC lawyer	
11	Seiitsu Shimabara	RCC lawyer	
12	Hiroshi Irie	RCC lawyer	
13	Tomoyuki Ito	RCC lawyer	
14	Naoya Kawaguchi	RCC lawyer	
15	Yasuhisa Ishikawa	RCC lawyer	
16	Jyuta Wada	RCC lawyer	
17	Akinori Tani	RCC lawyer	
18	Kenichi Onishi	RCC lawyer	
19	Masaaki Yamada	RCC lawyer	
20	Hiroshi Morimoto	Kitahama Law Office Trustee Lawyer	
21	Miyako Ikuta	Kitahama Law Office Trustee Lawyer	
22	Toshiaki Nakanishi	Kitahama Law Office Trustee Lawyer	
23	Yasumasa Sakamoto	Kitahama Law Office Trustee Lawyer	
24	Masataka Shimonishi	Kitahama Law Office Trustee Lawyer	

This is **Exhibit "C"** referred to in the
Affidavit of Wen-Shih Yang sworn
before me at Vancouver, British Columbia
on this the 14th day of April, 2022.



A Commissioner for taking Affidavits for
British Columbia



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F +1 604.605.3714

April 13, 2022

FILE NUMBER: 105288-00001

DELIVERED BY EMAIL

Masahiko Nishiyama and Hatsumi Kinoshita
520-0817 Showa-Cho 13-36
Otsu City, Shiga
Japan

Dear Sir/Madam:

**Re: In the Matter of Masahiko Nishiyama, Bankrupt under the Laws of Japan; SCBC No. S1813807 Vancouver Registry
The Resolution and Collection Corporation v Masahiko Nishiyama; SCBC No. S162298
Vancouver Registry**

We are in receipt of your response to the hearing of April 6, 2022.

We can advise that you will be provided a court-certified interpreter for the hearing on April 21-22, 2022.

We note your application response is not filed. We will attach your application response and this letter to an affidavit and file it with the court and serve it on the service list in these proceedings.

Sincerely,
DLA Piper (Canada) LLP
Per:

Jeffrey Bradshaw

Jeffrey D. Bradshaw

JDB:day
Enclosure

No. S1813807
Vancouver Registry

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BANKRUPT UNDER THE LAWS OF JAPAN

AFFIDAVIT

DLA Piper (Canada) LLP
Barristers & Solicitors
2800 Park Place
666 Burrard Street
Vancouver, BC V6C 2Z7

Tel. No. 604.687.9444
Fax No. 604.687.1612

File No.: 105288-00001

AGM/day