



This is Affidavit #2
of Kibben Jackson in this case
and was made on April 14, 2023

No. H220369
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PLW INVESTMENT LTD.

PETITIONER

AND:

1025332 B.C. LTD. and others


RESPONDENTS

AFFIDAVIT

I, Kibben Jackson, of 2900 - 550 Burrard Street, Vancouver British Columbia, lawyer,
AFFIRM THAT:

1. I am a Partner at Fasken Martineau DuMoulin LLP ("**Fasken**"), counsel for the Petitioner, PLW Investment Ltd. ("**PLW**"), and as such have personal knowledge of the facts hereinafter deposed to except where stated to be on information and belief, in which case I verily believe them to be true.
2. I am the lawyer who has had primary carriage of this matter at Fasken and I am authorized to make this affidavit on behalf of Fasken.
3. On October 25, 2022, I received an unfiled Response to Petition from Daniel Parlow, counsel for the Respondents. Attached hereto and marked as **Exhibit "A"** to my affidavit is a true copy of this email and the attached Response to Petition.

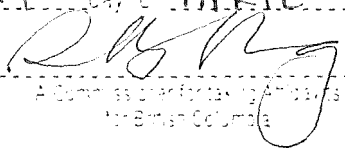
AFFIRMED BEFORE ME at Vancouver,
British Columbia, on April 14, 2023


A Commissioner for taking Affidavits for
British Columbia


KIBBEN JACKSON

REBECCA BARCLAY NGUINAMBAYE
Barrister & Solicitor
Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, BC V6C 0A3
604 631 3245

This is Exhibit "A" referred to in the af-
fidavit of KIBBEN JACKSON
sworn before me at VANCOUVER
this 14 day of APRIL 2023.


A Commissioner of the Court of Justice
for British Columbia

No. H220369
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PLW INVESTMENT LTD.

PETITIONER

AND:

1025332 B.C. LTD., 1025334 B.C. LTD., 1025336 B.C. LTD.,
CHONGYE DEVELOPMENTS LTD., WASHINGTON
PROPERTIES (POINT GREY) INC., WASHINGTON
PROPERTIES (QEP) INC., LUCKY FIVE INVESTMENTS
LTD., 1094321 B.C. LTD., PRARDA DEVELOPMENTS
CORPORATION, 1256306 B.C. LTD., 1256319 B.C. LTD.,
AMY BARSHA WASHINGTON (a.k.a. FENGYUN SHAO),
EDISON WASHINGTON (a.k.a. QIANG WANG), LINDA
WASHINGTON, 35 PARK PARKING INC. and EARLSTON
MORTGAGE CORP.

RESPONDENTS

RESPONSE TO PETITION

Filed by: 1025332 B.C. LTD., 1025334 B.C. LTD., 1025336 B.C. LTD., CHONGYE
DEVELOPMENTS LTD., WASHINGTON PROPERTIES (POINT GREY)
INC., WASHINGTON PROPERTIES (QEP) INC., LUCKY FIVE
INVESTMENTS LTD., 1094321 B.C. LTD., PRARDA DEVELOPMENTS
CORPORATION, 1256306 B.C. LTD., 1256319 B.C. LTD., AMY BARSHA
WASHINGTON (a.k.a. FENGYUN SHAO), EDISON WASHINGTON (a.k.a.
QIANG WANG), LINDA WASHINGTON, 35 PARK PARKING INC. and
EARLSTON MORTGAGE CORP. (the "Petition Respondent(s)")

THIS IS A RESPONSE TO the petition filed September 15, 2022.

PART 1: ORDERS CONSENTED TO

The Petition Respondents consent to the granting of the orders set out in the following paragraphs of Part 1 of the petition:

1. NONE

PART 2: ORDERS OPPOSED

The Petition Respondents oppose the granting of the orders set out in paragraphs 1 – 34 of Part 1 of the petition.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Petition Respondents take no position on the granting of the orders set out in paragraphs N/A of Part 1 of the petition.

PART 4: FACTUAL BASIS

1. The Petition Respondents do not accept the breadth of the declaratory relief sought in the Petition.
2. In particular, and without limiting the generality of the foregoing, the scope of security claimed by the Petitioner under the General Security Agreements referenced in Part 1, paragraphs 17 to 20, of the Petition exceeds the scope of the security agreed to by the parties in the 2018 Loan Agreement and the 2020 Loan Agreement as defined therein.
3. The Petitioner cannot now claim that it holds security over property not agreed by the parties to be charged pursuant to the said Loan Agreements.
4. The amounts claimed by the Petitioner are overstated.

Affidavit of Edison Washington

Receiver not warranted at this time

5. Although the appointment of a Receiver may be available to secured creditors where provided in their security documents, it is a discretionary tool having regard to all the circumstances of this case.
6. The Petitioner has put in place a number of effective mechanisms to ensure its security interests are respected and that the Respondents' properties are sold in an effective and professional manner, with full information and approval being provided to the Petitioner throughout, and its consent secured before any of the properties are sold.

Affidavit of Edison Washington

7. In the case at bar, the appointment of a Receiver at this time is without any valid rationale, and is being urged by the Petitioner as a means of exerting leverage upon and/or punishing the Petitioner, without having established that there would be a genuine benefit to recovery.
8. On the contrary there is substantial equity in the Petition Respondents' properties. The appointment of a Receiver will undoubtedly cause an enormous unnecessary expense and the Petition Respondents' equity will thereby be unnecessarily eroded.

Order for sale premature

9. The Petitioners seek to use the appointment of a Receiver to leapfrog the standard six-month redemption period provided by law.
10. There is not evidence to establish, on a balance of probabilities or at all, that the usual six-month redemption period ought not to be applied in this case.
11. The Petitioner, in its facts, overstates the history of the matter. The original Kingsett mortgage to which the Petitioner refers was refinanced by the Petitioner who advanced substantial additional funds, receiving an assignment of the Kingsett security in the process. This is an entirely new loan facility and there is no basis for the Petitioner to use the former loan, at a lesser amount, as a basis for leapfrogging the redemption period in respect of the loans made by it pursuant to the 2020 Loan Agreement.
12. The Petitioner has not shown that its position is in jeopardy so that something less than a six-month redemption period is appropriate.

PART 5: LEGAL BASIS

1. The appointment by the Court of a Receiver may be made where it is just or convenient to do so. There is competing authority whether the Court should exercise its discretion not to make such an appointment only where a mortgagor or subsequent charge holder can show compelling commercial or other reason why such an order ought not to be made; or whether the appointment must be established by the Petitioner on the facts.

United Savings Credit Union v. F & R Brokers Inc. et al, 2003 BCSC 640, at paras. 17, 19; *Korion Investments Corp. v. Vancouver Trade Mart Inc.*, [1993] B.C.J. No. 2352 (S.C.) per Huddart J.; *Textron Financial Canada Limited v. Chetwynd Motels Ltd.*, 2010 BCSC 477

2. If the established procedures for foreclosure and judicial sale are accepted as serving the ends of justice, it follows that it would be unjust to allow mortgagees to revive the contractual remedy without it being tempered by the power of the court to allow time to the mortgagor and puisne encumbrancers. The original power of sale was a harsh and summary one. It was a remedy violently at odds with the expectation, now generally held by those having an interest in property, that they cannot lose that interest without notice.

South West Marine Estates Ltd. v. Bank of B. C. (1985), 65 B.C.L.R. 328 (C.A.) per Esson J.A., cited with approval in *IMOR Capital Corp. v. Bullet Enterprises Ltd.*, 2012 BCSC 899 at para. 17 per Burnyeat J.

3. It is the policy of the law, wherever possible, to treat similar problems in the same way and to avoid technical procedural differences in such matters. This conclusion is supported by the addition to the Law and Equity Act which requires realization on Agreements for Sale

to be treated the same way as the foreclosure of a mortgage. If the exercise of a power of sale in a conventional mortgage is subject to the control of the Court's conscience by the imposition of principles analogous to foreclosure proceedings, then the same principle applies to the exercise of a power of sale in a debenture.

Royal Bank of Canada v. Camex Canada Corp. (1985), 63 B.C.L.R. 125 (S.C.), per McEachern C.J.S.C., as he then was, cited with approval in IMOR, supra, at para. 18.

4. In order that there can be commercial certainty and in order that the procedures relating to the enforcement of agreements for sale, mortgages and debentures can be dealt with in a consistent manner, the Court will be called upon in all of these enforcement proceedings to set a redemption period in accordance with the equities existing relating to the value of the property and to the debt owing under the security that is being enforced. If the position of the party enforcing the security is secured by the value of the property charged, then the usual redemption period of six months will apply. If not, a shorter redemption period will be ordered rather than the "usual" six months... The question is whether the lender has shown that its position is in jeopardy so that something less than a six-month redemption period is appropriate.

Imor, supra, at paras. 23-24.

5. No special circumstances exist that the petitioner should have an order for sale without regard to an appropriate redemption period.

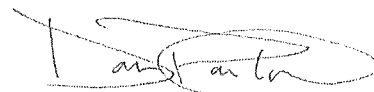
Textron Financial Canada Limited v. Chetwynd Motels Ltd., 2010 BCSC 477

PART 6: MATERIAL TO BE RELIED ON

1. Affidavit of Edison Washington, to be filed.

The Petition Respondents estimate that the application will take **2 hours**.

Dated October 25, 2022



Signature of Lawyer for Petition Respondent(s)
Kornfeld LLP

Dan S. Parlow

Lawyer's address for service:

Dan S. Parlow
Kornfeld LLP
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505 Burrard Street, Box 11

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Canada V7X 1M5

Fax number address for service (if any): 604-683-0570

E-mail address for service (if any): dparlow@kornfeldllp.com