



No. H220369
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PLW INVESTMENT LTD.

PETITIONER

AND:

1025332 B.C. LTD. and others

RESPONDENTS

APPLICATION RESPONSE

Application response of : PLW Investment Ltd. (the “**Petitioner**” or “**PLW**”)

THIS IS A RESPONSE TO the Notice of Application of: 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. (“**306**”), 1256319 B.C. Ltd. (“**319**”), Amy Barsha Washington (a.k.a. Fengyun Shao), Edison Washington (a.k.a. Qiang Wang), Linda Washington and 35 Park Parking Inc. (together, with the exception of 306 and 319, the “**Washington Group**”).

Part 1 ORDERS CONSENTED TO

The Petitioner consents to the granting of NONE of the orders set out in Part 1 of the Notices of Application.

Part 2 ORDERS OPPOSED

The Petitioner opposes the granting of ALL of the orders set out in Part 1 of the Notices of Application.

Part 3 ORDERS ON WHICH NO POSITION IS TAKEN

The Petitioner takes no position on the granting of NONE of the orders set out in Part 1 of the Notices of Application.

Part 4 FACTUAL BASIS

Preliminary Issue

1. Kornfeld LLP purports to act for, and bring this application on behalf of, the Respondents 1256306 B.C. Ltd., 1256319 B.C. Ltd. The sole principal of those companies is Peter Pu. Mr. Pu confirms in his 4th Affidavit (“**Pu Affidavit #4**”) that he has never retained Kornfeld LLP to act for those companies and that Kornfeld LLP has no authority to do so.¹
2. In the circumstances, the Response to Petition and the Notice of Application filed by Kornfeld LLP should not be considered to have been filed on behalf of those companies, each of which opposes the relief sought by the Washington Group.

Overview

3. Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in Affidavit #1 of Amy Washington sworn herein on April 10, 2023 (the “**Amy Affidavit**”).
4. The Washington Group applies for an order that Alvarez & Marsal Canada Inc. (the “**Receiver**”) be discharged as receiver of certain lands (the “**Lands**”) and related personal property of the Washington Group, or, alternatively, for an order that the receivership order of Justice Giaschi made herein on October 27, 2022 (the “**Receivership Order**”) be stayed until October 31, 2023.²
5. The application is opposed by the Petitioner.

¹ Pu Affidavit #4, at para. 5.

² Notice of Application, Part 1, at paras. 1 and 2.

6. In its Notice of Application, the Washington Group argues that the appointment of a receiver is not warranted, and that it would be inequitable to allow the re-appointment of the Receiver.³ With respect, the Washington Group fails to apprehend the current status of this matter and the nature of relief that it is entitled to seek in this court.
7. The Receivership Order was granted on October 27, 2022 without opposition. Subsequently, by consent, that order was stayed on three occasions, most recently until April 7, 2023.⁴ To be clear: the Receivership Order was not set aside; it was stayed. The Receiver's appointment was never revoked.
8. The Washington Group cannot now oppose the appointment of the Receiver or any of the other relief included in the Receivership Order. To the extent it wished to do so, it would have had to oppose the original application. If the Washington Group now seeks to challenge that order, it is in the wrong court; it would have to appeal the Receivership Order to the Court of Appeal (and seek an order extending the time for them to do so).
9. The remainder of the Washington Group's application is for an order once again staying the Receivership Order, this time until October 31, 2023. The Washington Group argues that such an order is equitable on the basis that they are entitled to a redemption period in which to satisfy their obligations to PLW.⁵
10. The Washington Group fails to address the fact that since the date of default they have had over 14 months to pay out PLW.⁶ Even after the Receivership Order was granted—just shy of nine months after default—the order was stayed for just under six more months in order to afford the Washington Group the same opportunity. In that time, the Washington Group has been unable or unwilling to sell sufficient Lands or otherwise source new financing in order to pay out PLW.⁷

³ Notice of Application, Part 2, at paras. 21 and 23.

⁴ Order made on November 7, 2022; Order made on December 7, 2022; and Order made on February 7, 2023.

⁵ Notice of Application, Part 1, at para. 2 and Part 3, at paras. 4 and 5.

⁶ Pu Affidavit #4, at paras. 53-56.

⁷ Pu Affidavit #4, at paras. 58-59.

11. The Washington Group also fails to provide any indication as to how they intend to address the other issues facing them and which militate against further staying the Receivership Order. Specifically, the Washington Group offers no means by which to address the significant GST deemed trust claim of Canada Revenue Agency (“**CRA**”)⁸, the over \$200,000 in property tax arrears dating back to 2021⁹, or the other proceedings that have been initiated against them, including foreclosure proceedings by Pacifica Mortgage Investment Corporation and Earlston Mortgage Corp. as well as two proceedings commenced by a strata corporation with respect to unpaid strata fees.¹⁰
12. In short, there is no basis on which to grant an order further staying the Receivership Order. Doing so would only result in a further delay in sales of the Lands, with a corresponding increase in the interest accruing on the Washington Group’s obligations to PLW. In addition, without the benefit of a stay of proceedings, the Lands will continue to be subject to multiple proceedings by multiple creditors with no comprehensive process for their orderly realization.

Background

13. The Petitioner has advanced three separate loans to the Washington Group, the second being subsumed by the third.¹¹ As at the date of the Receivership Order, the total indebtedness owing by the Washington Group to PLW was \$73,751,804.02.¹²
14. The Washington Group did not (and still does not) deny that it is indebted to PLW. Both in its initial, unfiled Response to Petition (the “**Unfiled Response**”), which was delivered to counsel for PLW on October 25, 2023¹³ and in their Response to Petition filed on April 12, 2023 (five and a half months after the Receivership Order was granted), the Washington

⁸ Pu Affidavit #4, at paras. 32-35.

⁹ Affidavit #1 of Ashley Kumar made on April 19, 2023 (the “**Kumar Affidavit**”), at para. 4.

¹⁰ Pu Affidavit #4, at para. 60.

¹¹ Pu Affidavit #4, at para. 10.

¹² Receivership Order made on October 27, 2022

¹³ Affidavit #2 of Kibben Jackson (the “**Jackson Affidavit**”), para. 3 and Exhibit “A”.

Group pleads only that “[t]he amounts claimed by the Petitioners are overstated”,¹⁴ without any additional detail.

15. The Washington Group also did not (and still does not) deny that it is in default to PLW since at least January 31, 2022, when they failed to pay PLW what was owing to it.
16. The Petitioner made formal demand on the Washington Group for payment on February 15, 2022.¹⁵ Thereafter, the Petitioner sought, without success, to negotiate terms of a forbearance agreement with the Washington Group.¹⁶ Those efforts continued until September 15, 2022, on which date the Petitioner filed a Petition to court (the “**Petition**”) for the appointment of a receiver pursuant to Section 243(1) of the Bankruptcy and Insolvency Act (the “**BIA**”) and Section 39 of the Law and Equity Act (the “**LEA**”).
17. The Washington Group did not oppose PLW’s application for the Receivership Order. Their counsel delivered to counsel for PLW the Unfiled Response which argued only that the Washington Group should be afforded additional time by way of a six-month redemption period before a receiver was appointed.¹⁷
18. The Receivership Order was granted on October 27, 2022, without opposition by the Washington Group. At the request of the Washington Group, the Petitioner obtained three subsequent orders staying the effect of the Receivership Order:
 - (a) an order granted on November 7, 2022 staying the effect of the Receivership Order until December 7, 2022;
 - (b) an order granted on December 7, 2022 staying the effect of the Receivership Order until February 7, 2023; and
 - (c) an order granted on February 8, 2023 staying the effect of the Receivership Order until April 7, 2023.

¹⁴ Unfiled Response to Petition signed October 25, 2022, Factual Basis, para. 4 and Response to Petition of Washington Group filed April 12, 2023, Factual Basis, para. 23.

¹⁵ Pu Affidavit #1, para. 53 and Exhibit “YY”.

¹⁶ Pu Affidavit #4, para. 54.

¹⁷ Jackson Affidavit #2, Exhibit “A”.

19. On April 10, 2023, the Washington Group delivered to counsel for PLW a filed Response to Petition, the Amy Affidavit and a Notice of Application seeking an order that the Receiver be discharged, or, alternatively, that the Receivership Order be further stayed until October 31, 2023.
20. Notably, the Washington Group did not at that time raise, including in its Response to Petition, the issue of SLs 60 and 163, the strata lots which they now say: (i) have been sold to buyers in China; and (ii) were, by the agreement of PLW, to be transferred to those buyers without any encumbrances.¹⁸

Strata Lots 60 and 163

21. The Washington Group's primary bone of contention concerns SLs 60 and 163. Ms. Washington has deposed that she sold those strata lots to buyers in China and used the proceeds of sale to repay money she had borrowed in China.¹⁹ At the time of the sales, the strata lots were encumbered by mortgages in favour of Laurentian and KingSett.²⁰
22. Ms. Washington and her husband, Edison Washington, allege that when the parties were negotiating the 2020 Loan (as defined in Pu Affidavit #4), PLW agreed that those strata lots would not be security for the 2020 Loan.²¹ The Washingtons further allege that PLW also agreed to discharge the Laurentian and KingSett mortgages (which had been assigned to PLW) without being paid any of the proceeds of sale.²²
23. The Washingtons allege that these assurances were made by Mr. Pu, the President and sole director of PLW, and Shun Li Tian. Mr. Tian is related to Mr. Pu by marriage and has no authority to speak or act on behalf of PLW, nor has he ever been held out to have such authority.²³

¹⁸ Amy Affidavit, para. 25; and Notice of Application, Part 2, at para. 9.

¹⁹ Amy Affidavit, para. 21.

²⁰ Affidavit #1 of David Martin made on April 19, 2023 (the "**Martin Affidavit**"), at para. 6.

²¹ Amy Affidavit, para. 25; and Notice of Application, Part 2, at paras. 5 and 10.

²² Amy Affidavit, paras. 20 and 25.

²³ Affidavit #1 of Shun Li Tian made on April 17, 2023 (the "**Tian Affidavit**"), at paras. 4 and 6(a) and (b).

24. Mr. Pu and Mr. Tian both deny that any assurances or agreements to not encumber or discharge the existing mortgages of SLs 60 and 163 were ever made.²⁴ Mr. Pu deposes that PLW was prepared to discharge its mortgages of those strata lots only if PLW were paid the proceeds of sale of those lots, or if the Washington Group's indebtedness to PLW were otherwise paid in full.²⁵
25. PLW's evidence is that the first time the Washington Group requested that PLW discharge its mortgages against either of SLs 60 or 163 without receiving any payment was in late October 2022—two months after the 2020 Loan had been advanced.²⁶ This is verified by emails from counsel for the Washington Group to counsel for PLW.²⁷ The request was then, as it was subsequently, denied by PLW.

PLW's Purported Frustration of Sales

26. The Washington Group alleges that PLW has, "without any valid reason, refused to approve the sale" of five strata lots in the QEP Project and of the Eyremount Property (as defined in Pu Affidavit #4).²⁸
27. PLW's evidence is that it has refused to facilitate the completion of those lands due to a deemed trust claim in favour of Canada Revenue Agency ("CRA") in the amount of approximately \$7 million (the "**CRA Deemed Trust Claim**"), which PLW is concerned attaches to those lands in priority to PLW's mortgage.²⁹
28. Ms. Washington deposes that she advised PLW of the CRA Deemed Trust Claim at the time the parties were negotiating the 2020 Loan, which is denied by Mr. Pu and Mr. Tian.³⁰

²⁴ Pu Affidavit #4 at para. 31; Tian Affidavit #1 at para. 6(d).

²⁵ Pu Affidavit #4 at paras. 21-22.

²⁶ Pu Affidavit #4 at para. 21.

²⁷ Martin Affidavit, at para. 7.

²⁸ Notice of Application, Part 2, at para. 15.

²⁹ Pu Affidavit #4, at para. 42.

³⁰ Amy Affidavit at para. 19; Pu Affidavit #4 at para. 32, Tian Affidavit at para. 6(c).

29. Mr. Pu's evidence is that he first learned of the CRA Deemed Trust Claim on or around October 11, 2022, when he was advised of it by Ms. Washington.³¹ Mr. Pu further deposes that on or around October 13, 2022, through WeChat, Jessie Hung, the accountant for QEP, sent a copy of a notice delivered to QEP by CRA.³²
30. Mr. Pu's evidence is that he is prepared to allow sales of the strata lots at the QEP Project and of the Eyremount Property to complete if they are completed by the Receiver.³³ Counsel for PLW has advised counsel for the Washington Group that PLW supports the proposed sales, one of a strata lot and the other of the Eyremount Property, if they are completed by the Receiver.³⁴

The Receiver is Necessary

31. The Washington Group argues as fact that the receivership is not warranted or that it is otherwise inequitable. They do not, however, address a number of issues which militate in favour of the receivership:
- (a) The CRA Deemed Trust Claim – No indication is given as to how the Washington Group intends to resolve this claim such that sales of the lands can complete without CRA's claim attaching to the proceeds of sale in priority to the mortgagees.
 - (b) Multiple other foreclosure proceedings – There are at least four other foreclosure proceedings commenced by other mortgagees.³⁵
 - (c) Unpaid strata fees – Ms. Washington has not been paying strata fees owing in respect of the unsold strata lots at the QEP Project. Two separate proceedings have been commenced by The Owners, Strata Plan EPS4950, seeking, among other things, orders that they be permitted to sell the strata units.³⁶

³¹ Pu Affidavit #4, at para. 34(a).

³² Pu Affidavit #4, at para. 34(b) and Exhibit "A".

³³ Pu Affidavit #4, at para. 65.

³⁴ Pu Affidavit #4, at para. 47.

³⁵ Pu Affidavit #4, at para. 60(a) and (c).

³⁶ Pu Affidavit #4, at paras. 60(b) and 64(c).

- (d) Rental income from strata lots – Despite being in default to PLW for over 14 months, Ms. Washington has been collecting rental income from the unsold strata lots at the QEP Project and not paying them to PLW (or paying strata fees).³⁷ Mr. Pu estimates that Ms. Washington has collected approximately \$700,000 in rental income since January 2021, despite not having made one payment to PLW during that time (other than from the proceeds of sale of certain lands).
- (e) Property taxes – Property taxes for the QEP Project have been in arrears since 2021. As of April 17, 2023, the amount outstanding was \$106,761.05.³⁸
- (f) Property Insurance – Neither the Washingtons nor their counsel have confirmed at any time proof of insurance over the lands and property, and specifically over the strata units at the QEP Project.³⁹ There is a real concern that the strata lots are uninsured.

Part 5 LEGAL BASIS

Opposition to the Appointment of a Receiver

1. The Washington Group seeks an order discharging the Receiver, but in the Factual Basis of its Notice of Application argues that: (i) “a Receiver is not warranted at this time”; (ii) it would be “inequitable to permit the Petitioner to cause the reinstatement of the Receiver following its initial stay period”; and (iii) the Court should not exercise its discretion to allow a Receivership”.
2. In the Legal Basis of its Notice of Application, the Washington Group cites several decisions for the proposition that “[t]he appointment by the Court of a Receiver may be made where it is just and convenient to do so.”⁴⁰
3. PLW takes no issue with the foregoing proposition, however, the Washington Group seems to misapprehend both what has occurred and the status of these receivership proceedings.

³⁷ Pu Affidavit #4, at paras. 63 and 64(a).

³⁸ Kumar Affidavit, at para. 5.

³⁹ Affidavit #1 of Anthony Tillman, made on April 20, 2023, at paras. 3-7.

⁴⁰ Notice of Application, Part 3, at para. 1.

4. The Receivership Order was made, unopposed, on October 27, 2022, on notice to the Washington Group. The decision as to whether a receiver should be appointed was made on October 27, 2022. The Receiver's appointment was never revoked so that it need now be reinstated. The Receivership Order was simply stayed for a period of time, and that stay has now expired.
5. This is not an application by PLW to re-appoint a receiver or reinstate the Receiver. There is no discretion to be exercised by this court in that regard. The Washington Group's application is nothing more than a collateral attack on the receivership order.⁴¹ If the Washington Group wants to contest the Receivership Order now, it must do so in the Court of Appeal; there is no jurisdiction for this court to make the order sought.

Forbearance and Redemption Period

6. In the Legal Basis of its Notice of Application, the Washington Group cites a number of authorities in support of the proposition that a mortgagor is, in appropriate circumstances, entitled to an appropriate redemption period even in the context of receivership proceedings.⁴² Though not spelled out explicitly, it appears the Washington Group is tying that proposition to its application for an order staying the Receivership Order until October 31, 2023.
7. Leaving aside the question of whether the Washington Group can now argue its entitlement to a redemption period, despite having failed to do so on the initial application for the Receivership Order, there is in any event no basis for the court to grant such relief in the circumstances.
8. Since defaulting in its obligations to PLW on January 31, 2022, the Washington Group had more than 14 months to satisfy its obligations to PLW. For the first eight and a half months of that time, PLW was negotiating with the Washington Group in good faith in an effort to finalize terms of a forbearance agreement, which proved unsuccessful.

⁴¹ *Millard v. North George Capital Management Ltd.*, 1999 CanLII 14931 (ON SC).

⁴² Notice of Application, Part 3, at para. 4.

9. Since the Receivership Order was granted, with the consent (and in fact on the application) of PLW, that order has been stayed three times for a total of five and a half months in order for the Washington Group to pay out PLW. In all that time, the Washington Group has failed to do so.
10. By virtue of PLW's attempts to negotiate forbearance terms and the subsequent stays of the Receivership Order, the Washington Group has already had more than twice the standard six-month redemption period it is seeking.
11. There is no reason to grant the Washington Group any further time to address their indebtedness to PLW (and the numerous other creditors). The Washington Group has historically been unwilling or unable to resolve its financial difficulties, including by simply selling lands it has borrowed significant amounts of money to acquire. There is no reason to think that will change, particularly given the number and nature of claims currently being advanced against the Washington Group.
12. From September 1, 2020 to January 1, 2022—one of the strongest real estate markets in Vancouver's history and during a time of historically low interest rates—the Washington Group managed to sell only five of their 24 properties, one being the sale of a strata lot to Ms. Washington's sister, three being sales of (new) strata lots in the QEP Project, one being another strata lot owned by Ms. Washington and the last being a residential apartment building located on East 8th Avenue in Vancouver.⁴³ The Prarda Lands were not sold until August 2022, two years after the 2020 Loan was advanced, despite assurances from Ms. Washington to Mr. Pu that she was confident those lands would sell quickly.⁴⁴
13. The Washington Group are in straitened circumstances. First and foremost, there is the matter of the \$7 million CRA Deemed Trust Claim arising from sales of strata lots in the QEP Project where GST was collected on sales and not remitted to CRA. PLW is rightly concerned that that deemed trust claim attaches to lands owned by Amy Washington and QEP *in priority to PLW's mortgages*. The Washington Group can offer no assurances that is not the case, nor has it been able to satisfy that claim.

⁴³ Pu Affidavit #4, at para. 58.

⁴⁴ Pu Affidavit #4, at para. 58.

14. Until the CRA Deemed Trust Claim is satisfied, neither PLW nor any other mortgagee of lands owned by Amy Washington or QEP can be expected to discharge their mortgages upon receipt of proceeds of sale of any of those lands.
15. There is also the matter of the ongoing collection of rental income by Ms. Washington, the non-payment of strata fees and property taxes, and the risk of uninsured strata units. The result of this is the further erosion of equity in the strata lots.
16. There are numerous outstanding proceedings involving the Washington Group and the Lands, including four foreclosure proceedings and two actions initiated by the strata corporation of the QEP Project. Those proceedings risk multiple sales processes with no orderly process for the realization of the Washington Group's lands.
17. It is patently clear on the evidence that the Washington Group, despite having been granted a significant amount of time to do so, is simply unable to do what is necessary to meet their financial obligations. Further staying the Receivership Order and delaying sales of the Lands and payments to PLW and the Washington Group's other creditors is not just impractical, but also unfair to those creditors. It is time that the Receiver simply be permitted to get on with its job.

Allegation of Bad Faith

18. The Washington Group submits that PLW "has repeatedly acted in bad faith, obtaining the Receivership Order under false pretenses".⁴⁵ That is an incredibly serious allegation, particularly given it is completely without foundation.
19. The Washington Group seems to premise its allegation of bad faith on the basis of the Washingtons' assertion that PLW had agreed to discharge its mortgages of SLs 60 and 163 *without receiving the proceeds of sale of those strata lots*. In their Notice of Application, the Washington Group asserts that PLW "gave assurances to and covenanted with the Applicants that, if the Applicants would agree *not* to oppose the appointment of a Receiver, the Petitioner would formally disclaim their Purported 60/163 Security so as to allow the

⁴⁵ Notice of Application, Part 3, para. 6.

Applicants to transfer SLs 60 and 163 to the Arm's-length buyers thereof free and clear of all encumbrances.”⁴⁶

20. That allegation is, of course, wholly refuted by PLW. Moreover, it is belied by the facts at the time the Receivership Order was granted.
21. The Petition filed in these proceedings by PLW identified, among others, SLs 60 and 163, as being lands in respect of which PLW sought to have a receiver appointed.⁴⁷ That Petition was, of course, served on the Washington Group.
22. On both October 21 and 24, 2022, counsel for PLW emailed counsel for the Washington Group attaching draft receivership orders, each of which included SLs 60 and 163 in the schedule of lands in respect of which the receiver was sought to be appointed.⁴⁸
23. Notwithstanding the foregoing:
 - (a) in their Unfiled Response to Petition, the Washington Group did not raise any concerns regarding the inclusion of SLs 60 and 163 in the receivership order; and
 - (b) despite having seen at least two drafts of the receivership order being sought in which SLs 60 and 163 were included, counsel for the Washington Group did not raise any issue with their inclusion with counsel for PLW, let alone insist that they be removed given the alleged assurance given to the Washington Group by PLW.
24. In light of the foregoing, the Washington Group's allegation of bad faith is unsustainable, and forms no basis for any relief sought by the Washington Group.

Part 6 MATERIAL TO BE RELIED ON

1. Affidavit #1 of Peter Pu made September 14, 2022;
2. Affidavit #2 of Peter Pu made October 25, 2022;
3. Affidavit #4 of Peter Pu made April 18, 2023;

⁴⁶ Notice of Application, Part 2, para. 9.

⁴⁷ Petition filed on September 15, 2022, at para. 12 and Schedule “A”.

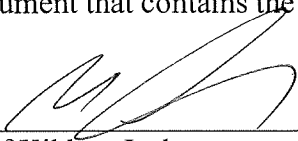
⁴⁸ Kumar Affidavit, at para. 2.

4. Affidavit #2 of Kibben Jackson made April 14, 2023;
5. Affidavit #1 of David Martin made April 19, 2023;
6. Affidavit #1 of Shun Li Tian made April 18, 2023;
7. Affidavit #1 of Anthony Tillman made April 20, 2023;
8. Affidavit #1 of Ashley Kumar made April 19, 2023; and
9. Affidavit #1 of Amy Barsha Washington sworn April 10, 2023.

The Application Respondents estimate that the application will take 90 minutes.

The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.

Dated: 19-Apr-2023

For: 

Signature of Kibben Jackson
Lawyer for Application Respondents

The Solicitors for the Application Respondents are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Kibben Jackson/313022.00006)