



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

**NOTICE OF APPLICATION**

**Name of applicant: Alvarez & Marsal Canada Inc., in its capacity as court appointed receiver and manager (the "Receiver")**

To: the Service List

TAKE NOTICE that an application will be made by the Petitioner to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia on 13/JULY/2023 at 9:45 a.m. for the order set out in Part 1 below.

**Part 1: ORDER SOUGHT**

1. an Order substantially in the form attached hereto as **Schedule "A"**:
  - (a) approving the sale of certain lands and premises which are the subject of this receivership proceeding; and
  - (b) authorizing the Receiver to pay the existing Strata Arrears in respect of the strata lots that are subject to the Receivership Order in the Cambie Street Development.

## Part 2: FACTUAL BASIS

1. On or about October 27, 2022, on application of PLW Investment Ltd. (the “**Secured Creditor**”), the Receiver was appointed as court-appointed receiver over twenty-one (21) parcels of land, and certain related personal property, of the Respondents pursuant to an order of this Court (as subsequently amended on November 7, 2022, the “**Receivership Order**”).
2. The Receivership Order was subsequently stayed in its entirety by consent of all parties, which stay expired on April 7, 2023. The Receiver’s appointment resumed on April 8, 2023. However, the stay in respect of two parcels of land was subsequently re-instated by a consent order made April 26, 2023.
3. In addition, since the stay of the Receivership Order expired, this Court has approved the sale of two parcels of land which were subject to the Receivership Order, one of which has completed and the other of which is scheduled to complete July 6, 2023.
4. As a result of the foregoing, and upon completion of the above noted sales, there are seventeen (17) parcels which remain subject to the Receivership Order. A consolidated list of the remaining lands which are subject to the Receivership Order is attached hereto as **Schedule “B”**.
5. The Secured Creditor advanced two loans to certain of the respondents, which were secured by various mortgages registered against the subject lands. The Secured Creditor holds the first priority mortgage on all but two of those lands.
6. Pursuant to the Receivership Order, the Secured Creditor was granted judgment against certain respondents, including judgments in excess of \$73,000,000 against the respondents Amy Washington, 1025332 B.C. Ltd., 1025334 B.C. Ltd., 1025336 B.C. Ltd., Chongye Developments Ltd., Washington Properties (Point Grey) Inc., and Edison Washington.
7. The Receiver brings this application to address various matters that have recently arisen in the course of the Receivership proceeding.

**A. Sale of 4883 Belmont Avenue, Vancouver**

8. The Receiver is seeking an order approving the sale of vacant land located at the civic address 4883 Belmont Avenue, Vancouver, and legally described as

PID: 010-858-300

Lot 3 Block 1 District Lot 140 Plan 6583

(the "**Lands**").

9. 1025332 B.C. Ltd ("**5332**") is the registered owner of the Lands and is a Respondent in these receivership proceedings. 5332 holds title to the Lands in trust for Washington Properties (Point Grey) Inc. ("**Properties (PG)**").
10. On or about June 8, 2023, 1419788 B.C. Ltd. (the "**Purchaser**") and the Receiver entered into an contract of Purchase and Sale (the "**Purchase Agreement**") to purchase the Lands for \$22,800,000 (the "**Purchase Price**"). The sale is set to close on August 31, 2023, subject to this Court's approval and delivery of a statutory declaration confirming that the Buyer is not a "non-Canadian".
11. The Secured Creditor holds various charges registered against title to the Lands:
- (a) a first ranking mortgage and assignment of rents under charge numbers CA7267442 and CA7267443;
  - (b) second ranking mortgage and assignment of rents under charge numbers CA7651499 and CACA7651500;
  - (c) a certificate of pending litigation under charge number CB224804.
12. The Secured Creditor also holds a beneficial mortgage and charge from Properties (PG).
13. The Lands have been listed for sale, on and off, since 2012. The sales agent retained by the Receiver, Angell Hasman & Associates (Malcolm Hasman) Realty Ltd. and Angell Hasman & Associates Realty (the "**Listing Agent**") was initially retained by the registered owner on January 23, 2023, and received no offers over the three and a half months during that listing period.
14. The Listing Agent was retained by the Receiver on May 29, 2023, listed the Lands at the same price, and has received two offers:
- (a) the above noted offer; and

- (b) an offer for the Lands, together with two adjoining parcels located at 4889 Belmont Avenue and 4899 Belmont Avenue, for a total price of \$28,000,000.
- 15. In the Receiver's view the additional two parcels are worth more than the additional \$5,200,000 reflected in the second offer, and given the foregoing, the Receiver seeks approval of the sale of the Lands for \$22,800,000.
- 16. The Listing Agent is of the view that market conditions for high value luxury properties in Vancouver has been declining, and that in light of these market conditions and the period of time that the Lands have been listed on MLS, the offer represents fair market value for the Lands.

**B. Payment of Strata Arrears**

- 17. On June 21, 2023, this Court approved the sale of lands located at 605 – 5033 Cambie Street ("**Unit 605**") for total consideration of \$1,728,000 (the "**Sale Proceeds**").
- 18. Unit 605 is part of three-tower strata development located at 4963 Cambie Street, 5033 Cambie Street, and 5077 Cambie Street (the "**Cambie Street Development**"). Ten of the remaining parcels of land which are subject to the Receivership Order are located in the Cambie Street Development (the "**Cambie Street Strata Lots**").
- 19. At the time that the stay of the Receivership Order expired, the registered owner was in arrears for payment of strata fees and special levies on each of Unit 605 and the remaining Cambie Street Strata Lots. The Receiver is advised that the total arrears in respect of Unit 605 and the Cambie Street Strata Lots is \$275,794.33 (the "**Strata Arrears**").
- 20. The Strata Arrears have priority over the Secured Creditor's mortgage. In order to avoid further interest accrual and bring strata fees into good standing, the Receiver seeks the authority to pay the Strata Arrears from the Sale Proceeds.

**Part 3: LEGAL BASIS**

- 1. The Petitioner will rely on:
  - (a) Receivership Order,
  - (b) Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (as may be amended from time to time, the "**BIA**");
  - (c) Rule 13-5 of the *Supreme Court Civil Rules*; and
  - (d) Section 15 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253.

### **Sale of 4883 Belmont Avenue**

2. Pursuant to paragraphs 2(l)(ii) and 2(m) of the Receivership Order, the Receiver was granted the power to sell, *inter alia*, the Lands subject to approval of this Court, and to apply for a vesting order in connection with the same.
3. *Royal Bank v. Soundair Corp.* is the leading authority on the factors a court may consider when approving a sale proposed by a receiver, which are:
  - (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
  - (b) the interests of all parties;
  - (c) the efficacy and integrity of the process by which offers are obtained; and
  - (d) whether there has been unfairness in the working out of the process.

***Royal Bank v. Soundair Corp.*, 1991 CarswellOnt  
205 (Ont. C.A.) ("*Soundair*") at para. 16.**

4. In this case the Receiver submits all of the *Soundair* factors have been met and the Court should approve the sale proposed herein. The Receiver submits that an order approving the sale of the Lands to the Purchaser is appropriate for the following reasons:
  - (a) the Receiver and the Listing Agent have made a sufficient effort to get the best price for the Land and have not acted improvidently, as Receiver engaged realtor with a specialty in luxury real estate and the purchase price reflects the fair market value for the Lands;
  - (b) the Lands are a vacant lot that is not generating any revenue, and the sale proceeds will be used to significantly pay down the Respondents indebtedness to the Secured Creditor;
  - (c) the process used to market and sell the land has efficacy and integrity; the Receiver and Listing Agent subjected the Land to extensive exposure to market, accounting for marketing prior to the expiry of the stay of the Receivership Order; and
  - (d) the process used to market and sell the Lands was fair and reasonable.

### **Discretion to Pay Strata Arrears**

5. Pursuant to Section 116 of the *Strata Property Act*, the Strata Arrears have priority over the Secured Creditor's mortgage, and will have to be paid eventually.
6. In the Receiver's view, it is appropriate to pay the Strata Arrears now, to avoid accrual of further interest and costs.

### **Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Peter Pu, made September 14, 2022, Exhibits "F", "G", and "H";
2. Petition to the Court, dated September 15, 2022;
3. Orders made October 27, 2022; November 7, 2022; December 7, 2022; February 7, 2023, and April 26, 2023;
4. Affidavit #3 of Avic Arenas, made 29/JUNE/2023;
5. Receiver's Third Report to the Court, to be filed.


The applicant(s) estimate(s) that the application will take 20 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 of 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: 29/JUNE/2023

  
\_\_\_\_\_  
Signature of lawyer for filing party  
Jordan Schultz

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

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## 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



**Schedule “A”**

Draft Order

*(See attached)*

**SCHEDULE "A"**

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

**ORDER MADE AFTER APPLICATION**

BEFORE ) JUSTICE \_\_\_\_\_ ) \_\_\_\_/\_\_\_\_/2023  
) )

ON THE APPLICATION of the Alvarez & Marsal Canada Inc., in its capacity as court appointed receiver and manager (the "**Receiver**"), coming on for hearing at Vancouver, British Columbia on this day, and on hearing Jordan Schultz, counsel for the Receiver, and those other counsel listed on Schedule "A" hereto, and no one else appearing, although duly served;

THIS COURT ORDERS AND DECLARES THAT:

**Approving Sale**

1. The sale of the lands at 4883 Belmont Avenue, Vancouver, British Columbia, legally known and described as:

Parcel Identifier: 010-858-300  
Lot 3 Block 1 District Lot 140 Plan 6583

(the "**Lands**")

to 1419788 B.C. Ltd., (the "**Purchaser**"), for the purchase price of \$22,800,000 and on the other terms and conditions set out in the contract of purchase and sale dated June 8, 2023, as subsequently amended from time to time (collectively, the "**Contract**"), is hereby approved.

2. The sale transaction (the "**Transaction**") contemplated by the Contract is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the "**Purchased Assets**").

3. Upon delivery by the Receiver to the Purchaser of a certificate confirming the Transaction has completed to the satisfaction of the Receiver (the "**Receiver's Certificate**"), all of the right, title and interest of 1025332 B.C. Ltd. and Washington Properties (Point Grey) Inc. (the "**Debtors**") in and to the Purchased Assets shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated October 27, 2022; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. On filing a certified copy of this Order in the Vancouver Land Title Office together with a letter from the Receiver's solicitor authorizing the filing, the Lands be conveyed to and vest in the Purchasers as registered owners in fee simple, free and clear of any estate, right, title, interest, equity of redemption and other claims of the parties, together with any other charges, liens, encumbrances caveats, or certificates of pending litigation registered against the Lands subsequent to the Petitioner's Certificate of Pending Litigation, but subject to the reservations, provisos, exceptions, and conditions express in the original grants thereof from the Crown.

5. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

6. All persons claiming possession of the Lands, or any portion thereof, shall deliver vacant possession of the Lands to the Purchasers, or their agents, successors or assigns, on the Possession Date, as defined in the Contract (herein, the "**Possession Date**").

7. If any person fails to deliver vacant possession of the Lands to the Purchaser at the Possession Date, then the Receiver shall be at liberty to apply to the Registrar for a Writ of Possession, under Rule 13-2(13) and without further Order of the Court.

8. The net sale proceeds after adjustments shall be paid to Dentons Canada LLP, in trust, or otherwise in accordance with the written direction of Dentons Canada LLP, and then disbursed in accordance with the following priorities without further Order:

- (a) first, payment of water and sewer rates, property taxes, arrears of property taxes, interest and penalties on arrears of property taxes, owing in respect of the Lands;
- (b) second, in payment of real estate commission in an amount not exceeding 7% of the first \$100,000 of the gross selling price and 2.5% of the remainder, plus applicable taxes thereon; and
- (c) third, the balance to PLW Investment Ltd., or its solicitors, in partial payment of the outstanding balance of its mortgage No. CA7267442 and its assignment of rents No. CA7267443 and its mortgage No. CA7651449, and its assignment of rents No. CA7651500.

9. For the purpose of issuing title and in respect of the Lands, the following charges, liens, encumbrances, caveats, mortgages, and certificates of pending litigation be cancelled insofar as they apply to the Lands:

	Party	Nature of Charge	Registration No.
(a)	PLW Investment Ltd.	Mortgage	CA7267442
(b)	PLW Investment Ltd.	Assignment of Rents	CA7267443

- |     |                     |                                      |           |
|-----|---------------------|--------------------------------------|-----------|
| (c) | PLW Investment Ltd. | Mortgage                             | CA7651499 |
| (d) | PLW Investment Ltd. | Assignment of Rents                  | CA7651500 |
| (e) | PLW Investment Ltd. | Certificate of Pending<br>Litigation | CB224804  |

together with any other charges, liens, encumbrances, caveats, or certificates of pending litigation registered against the Lands subsequent to the Petitioner's Certificate of Pending Litigation.

**Payment of Strata Liens and General Matters**

10. The Receiver may and is hereby authorized, but not required, to pay from the remaining proceeds of sale resulting from the sale of the lands at 605 – 5033 Cambie Street, Vancouver, British Columbia, to The Owners, Strata Plan EPS4950, or its solicitors, the amounts required to pay the outstanding balance in respect of any lien registered on title to the lands enumerated in Schedule "B" of the Receivership Order made October 27, 2022 (as amended November 7, 2022), but excluding:

- (a) PID: 030-879-515  
Strata Lot 60, Block 839, Plan EPS4950, District Lot 526, Group 1 New Westminster Land District; and
- (b) PID: 030-880-548  
Strata Lot 163, Block 839, Plan EPS4950, District Lot 526, Group 1, New Westminster Land District.

11. The Parties hereto and the Purchasers be at liberty to apply for such further and other direction as may be necessary to carry out the full purport and effect of this Order.

12. Endorsement of this Order by counsel appearing on this application other than counsel for the Receiver is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of Jordan Schultz  
Lawyer for the Receiver

By the Court.

\_\_\_\_\_  
Registrar

**SCHEDULE "A"**  
**LIST OF COUNSEL**

Name	Appearing for

## Schedule "B"

Remaining Lands which are subject to the Receivership Order

<u>CIVIC ADDRESS</u>	<u>PID</u>	<u>REGISTERED OWNER</u>
4215 Cambie Street, Vancouver	009-467-904	Edison Washington
4491 Cambie Street, Vancouver	008-116-059	Amy Barsha Washington
4403 W 3 <sup>rd</sup> Avenue, Vancouver	013-255-495	Amy Barsha Washington
4883 Belmont Avenue, Vancouver	010-858-300	1025332 B.C. Ltd.
4889 Belmont Avenue, Vancouver	010-858-296	1025334 B.C. Ltd.
4899 Belmont Avenue, Vancouver	010-858-288	1025336 B.C. Ltd.
504 – 4963 Cambie Street, Vancouver	030-879-451	1256306 B.C. Ltd.
505 – 4963 Cambie Street, Vancouver	030-879-469	1256306 B.C. Ltd.
501 – 5033 Cambie Street, Vancouver	030-880-033	1256306 B.C. Ltd.
504 – 5033 Cambie Street, Vancouver	030-880-068	1256306 B.C. Ltd.
505 – 5033 Cambie Street, Vancouver	030-880-076	1256306 B.C. Ltd.
601 – 5033 Cambie Street, Vancouver	030-880-084	1256306 B.C. Ltd.
604 – 5033 Cambie Street, Vancouver	030-880-114	1256306 B.C. Ltd.
501 – 5077 Cambie Street, Vancouver	030-880-696	1256306 B.C. Ltd.
502 – 5077 Cambie Street, Vancouver	030-880-645	1256306 B.C. Ltd.
602 – 5077 Cambie Street, Vancouver	030-880-700	1256306 B.C. Ltd.
1203 – 535 Nicola Street, Vancouver	024-010-499	Linda Gi Washington