

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 sealing the Confidential Supplemental Report to the Third Report of the Receiver dated June 4, 2023 (the "**Confidential Supplemental Report**") in the Court file.

Part 2: FACTUAL BASIS

1. Capitalized terms shall have the meanings ascribed to them in the Third Report of the Receiver dated June 4, 2023 (the "**Third Report**").
2. 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**”), including the vacant lots located at 4883 Belmont, Vancouver B.C. (“**4883 Belmont**”), 4889 Belmont Avenue, Vancouver B.C. (“**4889 Belmont**”) and 4899 Belmont Avenue, Vancouver, B.C. (“**4899 Belmont**” and together, the “**Belmont Properties**”).

3. As noted in the Third Report, the Receiver received two offers to purchase 4883 Belmont and/or the Belmont Properties:
 - (a) on June 8, 2023, the Receiver received a subject-free offer on 4883 Belmont from 1419788 B.C. Ltd. (the “**Purchaser**”) for a purchase price of \$22.8 million; and
 - (b) on June 12, 2023 the Receiver received a subject-free offer for all three of the Belmont Properties from 1365361 B.C. Ltd. for a purchase price of \$28 million.
4. The Receiver is seeking an order approving the sale of 4883 Belmont to the Purchaser pursuant to a Notice of Application filed June 29, 2023.
5. In connection with seeking this Court’s approval of the sale of 4883 Belmont to the Purchaser, the Receiver obtained appraisals of each of the Belmont Properties, which are attached to the Confidential Supplemental Report.
6. The Receiver plans to rely on this appraisal evidence in connection with the approval of the sale of 4883 Belmont to the Purchaser, but the Receiver anticipates competing bids may be placed at the time of hearing the application to approve the sale. The Confidential Supplemental Report contains sensitive commercial information regarding the appraised value of the Belmont Properties that could be harmful to the marketing of the Belmont Properties, and potential offers to purchase the Belmont Properties, if disclosed publicly. The Receiver submits that such disclosure could harm the free and open negotiation for the sale of the Belmont Properties.
7. Therefore, the Receiver is seeking an order sealing the Confidential Supplemental Report in the Court file.

Part 3: LEGAL BASIS

1. In *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court of Canada set out the following two-part confidentiality test (the “**Sierra Test**”) to be applied when determining whether public access to a court document should be restricted:
 - (a) is the order necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk?

- (b) do the salutary effects of the sealing order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings?

***Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at paras. 543, 544.**

- 2. The *Sierra Test* was recently reviewed in *Sherman Estate v. Donovan*, where the Supreme Court of Canada held that the *Sierra Test*, which “continues to be an appropriate guide for judicial discretion”, was predicated “upon three core prerequisites” around which the test should be recast. The Supreme Court in *Sherman Estate* found that a confidentiality order is appropriate where:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

***Sherman Estate v. Donovan*, 2021 SCC 25 (“*Sherman Estate*”) at paras. 38, 43.**

- 3. Accordingly, where “all three of these prerequisites have been met”, this Court has discretion to limit court openness by, among other things, granting a sealing order.

***Sherman Estate*, at para. 38**

- 4. In this case, the Receiver submits that the important public interest is the commercial interest of the Receiver, creditors of the Respondents, the Purchaser, any potential Purchasers, and all interested stakeholders, that the Receiver has the ability to market the Belmont Properties fairly and to keep the appraisals received confidential, so as to encourage negotiation from potential purchasers to receive the highest and best possible prices for the Belmont Properties.
- 5. To present the appraisal evidence to the Court, there is no reasonable alternative other than sealing the Confidential Supplemental Report.
- 6. There are no negative effects to sealing the Confidential Supplemental Report and no party is prejudiced by such an order. The Receiver proposes that the Confidential Supplement Report be unsealed at the time that a sale has completed for each of the Belmont Properties.

Part 4: MATERIAL TO BE RELIED ON

1. Receiver's Third Report to the Court, dated June 4, 2023.

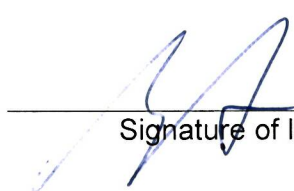
The applicant(s) estimate(s) that the application will take 5 minutes.

- ☐ 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: 4/JULY/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

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