

FORCE FILED



Province of British Columbia  
Bankruptcy Division  
Vancouver Registry  
Court No. B-23057 *Q30537*  
Estate No. 11-254573

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY  
IN THE MATTER OF THE BANKRUPTCY OF  
WASHINGTON PROPERTIES (QEP) INC.**

**NOTICE OF APPLICATION**

**Name of applicant: Washington Properties (QEP) Inc.**

To: PLW Investment Ltd. and its counsel

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC V6Z 2E1 on Monday, December 18, 2023 at 9:00 a.m. for the orders set out in Part 1 below.

**Part 1: ORDER(S) SOUGHT**

1. That the application for a Bankruptcy Order filed on December 5, 2023 in respect of Washington Properties (QEP) Inc. ("**Washington QEP**") be adjourned generally.
2. Costs of this application.

**Part 2: FACTUAL BASIS**

**The Parties**

1. The Respondent Washington QEP was the beneficial owner of project comprising 183 residential strata lots near Cambie Street in Vancouver, Cambie (the "**Project**"). Washington QEP is a member of the Washington group of entities ("**Washington Group**").
2. Amy Washington is the principal of Washington QEP.
3. At various times, PLW Investment Ltd. ("**PLW**") provided financing to Washington QEP and others for certain real estate deals and projects.

### Other Proceedings

4. On or about October 27, 2022, on application of PLW, Alvarez & Marsal Canada Inc. (“**Receiver**”) was appointed as court-appointed receiver over twenty-one (21) parcels of land, and certain related personal property, owned by a number of the Washington Group members, one of whom is the respondent Washington QEP (“**Receivership Order**”). The Receivership Order was subsequently amended on November 7, 2022.
5. The Receivership Order was subsequently stayed in its entirety by consent of all parties, which stay expired on April 7, 2023.
6. The Receiver’s appointment resumed on April 8, 2023. However, the stay in respect of two parcels of land at the Project of which Ms Washington is registered owner (the “**Amy Strata Lots**”) was subsequently re-instated by a consent order made April 26, 2023. The Washington Group had challenged PLW’s claimed security interest in two strata lots.
7. On or about September 27, 2023, the parties consented to an Order (“**Consent Order**”) referring certain issues involving the Amy Strata Lots to the trial list, including, but not limited to, whether PLW is entitled to assert any claims in and to the Amy Strata Lots or in and to any present or after acquired goods derived from or relating to the Amy Strata Lots (the “**Action**”).
8. In accordance with the Consent Order, the Washington Group filed and served their Response to Civil Claim in the Action.

### The Bankruptcy Application

9. On December 5, 2023, PLW commenced this bankruptcy application (“**Bankruptcy Application**”). The Receiver is also the proposed bankruptcy trustee.
10. A bankruptcy order may have QEP serious consequences in the Action. In particular, and without limiting any other issue that Ms Washington may identify, if QEP is adjudged bankrupt, the Trustee/Receiver and PLW, and potentially other creditors, may attempt to

utilize the bankruptcy to remove QEP's and Ms Washington's opportunity to challenge the validity of the PLW security over the Amy Strata Lots.

### **Service of the Bankruptcy Application**

11. On December 8, 2023, PLW served Washington QEP's registered and records office with an unfiled copy of the Notice of Hearing, a certified copy of the application and of the supporting affidavit. The hearing date for the Bankruptcy Application was scheduled unilaterally by counsel for PLW for December 18, 2023.
12. On December, 11, 2023, counsel for PLW emailed counsel for Washington QEP attaching copies of the Bankruptcy Application materials and requesting Washington QEP's position on the upcoming application.

### **Inability to Obtain Instructions**

13. The principal of QEP, Ms Washington, has been in China for several months. Counsel for QEP has been informed by Ms Washington's daughter, Lucy Washington, that Ms Washington's return to Canada had been unexpectedly delayed.
14. For some weeks, counsel for QEP has not had any contact with Ms Washington or her husband, Edison Washington, who is also in China.
15. For complex matters, counsel for QEP requires a Mandarin-English interpreter to communicate with Amy and Edison Washington.
16. Counsel for QEP have not had any opportunity to discuss with Ms Washington the proposed bankruptcy or its implications. Counsel for QEP cannot confirm whether Ms Washington has even seen the pleadings or evidence in this case.

### **Requests to Adjourn the Hearing**

17. Given the serious consequences of a bankruptcy order and their inability to obstructions from their client, counsel for Washington QEP requested that PLW adjourn generally the

Bankruptcy Application by consent so that they may have sufficient time to investigate the matter and obtain instructions from their client.

18. Counsel for PLW refused to consent to an adjournment and advised that he intended to proceed with the application.
19. There is no evidence of urgency to PLW in bringing this matter to court.

### **Part 3: LEGAL BASIS**

#### **Insufficient Notice under BIA**

20. Rule 70(1) of the *Bankruptcy and Insolvency General Rules* provides that a notice of hearing, bankruptcy application and a supporting affidavit must be served “at least 10 days” before the hearing on the debtor.
21. Subsection 27(1) of *The Interpretation Act* states:
  27. (1) Where there is a reference to a number of clear days or “at least” a number of days between two events, in calculating that number of days the days on which the events happen are excluded.
22. PLW did not comply with the requirement of Rule 70(1) to provide 10 clear days’ notice and, as a result, the bankruptcy application should be adjourned generally and proper notice ought to be given.

#### **Inability to Obtain Instructions**

23. Furthermore, as noted above, counsel for QEP have been unable to obtain instructions from Ms Washington with respect to this matter, which counsel only first learned about on December 11, 2023.
24. Given the lack of any urgency and the potential prejudice to Washington QEP, it is submitted the balance of convenience weighs in favour of an adjournment.

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

1. Bankruptcy Application filed December 8, 2023;
2. Affidavit #1 of E. Neil Kornfeld made December 14, 2023;
3. Affidavit #1 of D. Lucas made December 14, 2023; and
4. The pleadings and proceedings filed herein.

The applicant estimates that the application will take 20 minutes.

*[Check the correct box]*

- ☐ 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 the 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: December 15, 2023



Signature of Lawyer for Applicants  
Kornfeld LLP

*Devin Lucas*

**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:

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Date \_\_\_\_\_

Signature of ☐ Judge ☐ Master

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**APPENDIX**

*[The following information is provided for data collection purposes only and is of no legal effect.]*

**THIS APPLICATION INVOLVES THE FOLLOWING:**

*[Check the box(es) below for the application type(s) included in this application.]*

- ☐ 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