



No. S-238586  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1038573 B.C. LTD.

Plaintiff

AND:

THE OWNERS, STRATA PLAN NW289, JENNY DONNA DICKISON, FERNANDO MARCELINO DUTRA DE SOUSA, 1276331 B.C. LTD., CARMELIA MARIA DA SILVA, HON-CHING RUDOLPH CHENG, 1161359 B.C. LTD., RICKY HEE MENG LAI, PIA FACCIO, 1184416 B.C. LTD., MARK WILLIAM LOUTTIT and SARAH KINUKO LOUTTIT, BARRY DOUGLAS WATSON, AS ADMINISTRATOR OF THE ESTATE OF KENNETH JOHN WATSON, LI PING DUAN, NORMAN VICTOR LEECH, ROLANDO VINAS DIZON and NARCISA DIZON, NICHOLAS GEORGE KARAMOUZOS and MARIA KARAMOUZOS, CUI MING CHEN, YANKUI WANG and XIN TIAN, MARIA DA NATIVIDADE ALMEIDA, 1237765 B.C. LTD., JU-SHAN CHIANG and FLORA FU, 1184414 B.C. LTD., AMARSINGH BHATIA and NARANJAN KAUR BHATIA, PHUNG KIM VUONG and TUONG LAM, MONICA PAOLA ALIAGA, MARCELINO LOPES DE SOUSA and OLGA MARIA DUTRA DE SOUSA, 1184413 B.C. LTD., LUALHATI ONGKEKO CRISOSTOMO, RICHARD RAYMOND RAVENSBERGEN and DAWN MARIE RAVENSBERGEN, YUK FAR CHEUNG and YIN ON CHEUNG, GARY LUCIEN DREES, THOMAS PATRICK FLEMING, 1352962 B.C. LTD., WAN CHEN and HONG YANG, SU JUAN SITU, VAN DAO NGUYEN and THI BICH HANG NGUYEN, JULIAN BOZSIK, CHRISTIAN HERBERT JOSON-LIM and IRIS JUNE CALIBUGAN ADIONG, ANGELA JOY EYKELBOSH, NGUYEN THANH VUONG and TUYET NGOC DU, OM PARKASH LOOMBA and MERRAN LOOMBA, SUZANNE JUANITA KUDELSKI, YAN QIONG LU, PING HE, EDWARD LAWRENCE THUE, RICHARD CHARLES PATRICK SPENCER and DIANE MARIE SPENCER, ARTHUR SUMMERS WILLIAMSON, GARY DALE CHARTER and CRISTINA RIMANDO GAPAL, JU TAI ZHOU and YU QING LI, ZHI HAO YANG, DAISY CUETO EVANGELISTA and MARIA CHERRY EVANGELISTA, MEGAN MARY BURGHALL, NASIM BHALOO, HUI LIN DONG and LI WANG, MANSOUR MESHKI, HSIANG CHIAO HUANG, GORDON WILLIAM PATERSON, YVONNE JO-ANNE ENGLAND, GRACE JOANNA LEVSEN, PING CHOR CHAN, SO FAN LEE and TAK TAI LUI

Defendants

1038573 B.C. LTD.

Defendant by way of Counterclaim

**RESPONSE TO COUNTERCLAIM**

Filed by: 1038573 B.C. Ltd. ("573")

**PART 1: RESPONSE TO COUNTERCLAIM FACTS**

**Division 1 – Response to Facts**

1. The facts alleged in none of the paragraphs of Part 1 of the counterclaim are admitted.
2. The facts alleged in paragraphs 2 and 3 of Part 1 of the counterclaim are denied.
3. Paragraph 1 of Part 1 of the counterclaim is not a material fact and as such is not admitted.
4. The facts alleged in none of the paragraphs of Part 1 of the counterclaim are outside of the knowledge of 573.
5. The counterclaim fails to comply in numerous respects with Rules 3-1, 3-4 and 3-7 of the *Supreme Court Civil Rules*, including by failing to set out the material facts to support the relief sought. In filing this response, 573 reserves all rights to seek particulars, apply to strike, or otherwise dispute the counterclaim.

**Division 2 – Responding Party's Version of Facts**

6. 573 denies that it has breached or repudiated the Purchase Contract, as alleged or at all.
7. 573 denies that the Strata Corporation has suffered any loss, damage or expense arising from any breach or repudiation by 573.

**Division 3 – Additional Facts**

8. 573 adopts the defined terms from its notice of civil claim filed on December 18, 2023.
9. On or about December 7, 2022, 573 (as purchaser) and the Strata Corporation, as vendor (on its own behalf and behalf of the Strata Lot Owners), entered into a contract for purchase and sale of the lands and premises within Strata Land NW289 (*i.e.*, the Property), for the price of \$61,000,000 (*i.e.*, the Purchase Contract).
10. 573 wanted to purchase the Property, and entered into the Purchase Contract, due to the following unique features of the Property (among others):
  - (a) its zoning designation, which lends to considerable development potential;
  - (b) the size of the Property's lands;

- (c) the age of the building on the Property;
- (d) the location of the Property – proximity to Central Park, major roads, and convenient transit access; and
- (e) because of the proximity of the Property to Central Park, it is less likely that the City of Burnaby would impose height restrictions on any buildings on the Property.

11. The Purchase Contract provided for a completion date which was ultimately extended by agreement to December 15, 2023 (the "**Completion Date**").

12. In the Purchase Contract, the Strata Corporation represented and warranted, *inter alia*, that it would deliver clear title to 573 on the Completion Date.

13. The Strata Corporation (acting on its own behalf and on behalf of the Strata Lot Owners) has failed to complete the sale and purchase of the Property in accordance with the Purchase Contract, including because the Strata Corporation has failed to deliver clear title to the Property (and, further, indicated to 573 in the period prior to closing that the Strata Corporation would not on closing be in a position to deliver clear title).

14. 573 has at all material times been ready, willing, and able to complete the sale and purchase of the Property in accordance with the Purchase Contract. However, the Strata Corporation's breaches of the Purchase Contract have prevented 573 from closing under the Purchase Contract.

15. Since the Property has unique and special characteristics, an alternative property that lacked such features would not be a suitable substitute, having regard to the purpose for which 573 agreed to purchase the Property.

16. On December 18, 2023, 573 wrote to the Strata Corporation setting out that (i) the Strata Corporation had repudiated the Purchase Contract, (ii) 573 did not accept that repudiation and insisted on specific performance, and (iii) as neither party was in a position on December 15, 2023 to close as a result of the Strata Corporation's breaches of the Purchase Contract, 573 designated March 15, 2024 as the new completion date under the Purchase Contract and time continued to be of the essence.

17. On March 15, 2024, 573 wrote again to the Strata Corporation, setting out that (i) the Strata Corporation had failed to take steps to remedy its breaches of the Purchase Agreement

and remained in breach of, and had repudiated, the Purchase Agreement, (ii) 573 refused to accept that repudiation and insisted on specific performance, and (iii) 573 will continue to seek specific performance on a date to be designated by the court.

18. Since the signing of the Purchase Contract on or about December 7, 2022, some of the Strata Lot Owners have entered into agreements to sell their respective units (the “Recent Sales”).

19. The details of these sales – which are not permitted under the Purchase Contract – are not within the knowledge of 573 but are within the knowledge of the Strata Lot Owners and the Strata Corporation.

## **PART 2: RESPONSE TO RELIEF SOUGHT**

20. 573 consents to the granting of the relief sought in none of the paragraphs of Part 2 of the counterclaim.

21. 573 opposes the granting of the relief sought in all of the paragraphs of Part 2 of the counterclaim.

22. 573 takes no position on the granting of the relief sought in none of the paragraphs of Part 2 of the counterclaim.

## **PART 3: LEGAL BASIS**

23. 573 relies on Rules 3-1, 3-4 and 3-7 of the *Supreme Court Civil Rules*. The counterclaim does not plead material facts which could support a cause of action against 573.

24. The Strata Corporation is not entitled to the release of 573's deposit, or to damages, including because 573 has not breached the Purchase Contract and rather the Strata Corporation and the Strata Lot Owners are in breach of the Purchase Contract.

25. On January 31, 2024, in dismissing an application by the Strata Corporation to discharge 573's certificate of pending litigation, Justice Crerar stated as follows (paras. 33-34 and 42-43):

... it is not at all clear under the Winding-Up Order and the agreement between the individual units and the liquidator that an individual strata owner, in the pendency of the marketing of the units and the closing of the sale, is entitled to sell units. Certainly, it would be contrary to the spirit and intention of the agreement to sell

any units that are already subject to an agreement entered into by all of the individual strata owners for a collective sale. ...

Indeed, [the] agreement includes specific provisions allowing owners to deal with their units in specific manners pending the sale completion. The agreement does not expressly contemplate or permit the full sale of a unit: one would expect the agreement to similarly specify terms governing such a sale, if a sale were permitted or contemplated.

...

... If, indeed, the individual owners have the ability to sell or otherwise encumber their individual units despite the existence of the purchase and sale agreement and Winding-Up Order, it could greatly imperil the anticipated sale.

If multiple individual unit owners sell their properties, it could raise the spectre of an innocent third party, without notice of the Winding-Up Order or the purchase and sale agreement, purchasing a unit and then being surprised after closing that they are obliged to sell their new unit. A single or indeed multiple single sale or encumbrance could cloud the title and work contrary to a claim in specific performance, which, of course, is founded in equity.

26. It its amended notice of civil claim, 573 seeks, in the alternative, damages in lieu of specific performance. In the further alternative, 573 seeks damages for breach of contract and breach of the duty of honest performance, or, for breach of warranty of authority only. If the Strata Corporation is entitled to release of 573's deposit, or to damages (which is denied), any such amounts payable to the Strata Corporation ought to be set-off against any damages awarded to 573. 573 pleads and relies on Rule 3-7(11) and the statutory and equitable doctrines of set-off.

Party address for service:

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**Attention: Craig Dennis, K.C.  
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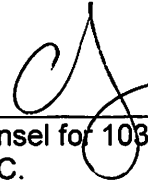
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Date: May 17, 2024



Signature of counsel for 1038573 B.C. Ltd.  
Craig Dennis, K.C.  
Dennis James Aitken LLP

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the Court otherwise orders, each party of record to an Action must, within 35 days after the end of the pleading period,
  - (a) prepare a List of Documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.