



No. 12 436 2
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LANYARD ENTERPRISES INC.

PETITIONER

AND:

**0830123 B.C. LTD., COLWOOD CITY CENTRE LIMITED
PARTNERSHIP, COLWOOD CITY CENTRE GP INC., NOBHILL
DEVELOPMENT CORPORATION, LESLIE BJOLA, ADAM GANT,
EMANUEL ARRUDA, CLG INVESTMENTS LTD., CASCADIA HEALTH
CORPORATION, DIANE ELIZABETH BJOLA, ROMSPEN
INVESTMENT CORPORATION**

RESPONDENTS

PETITION TO THE COURT

This proceeding has been started by the Petitioner for the relief set out in Part 1 below.

If you intend to respond to this Petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

TIME FOR RESPONSE TO PETITION

A response to petition must be filed and served on the petitioner:

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,
 - (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,
 - (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or
 - (d) if the time for response has been set by order of the court, within that time.
- (1) The address of the Registry is:
Ministry of Attorney General
Court Registry
2nd Floor, 850 Burdett Avenue
Victoria, B.C. V8W 1B4
 - (2) The ADDRESS FOR SERVICE of the petitioner is:
#1212 - 1175 Douglas Street
Victoria, B.C. V8W 2E1
Fax number for service (if any) of the petitioner:
(250)382-5436
 - (3) The name and office address of the petitioner's lawyer is:
Peter Vaartnou
JONES EMERY HARGREAVES SWAN
Barristers & Solicitors
#1212 - 1175 Douglas Street
Victoria, B.C. V8W 2E1

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

The Petitioner, Lanyard Enterprises Inc., claims the right to serve this Petition on the Respondents, or any of them, outside British Columbia on the grounds that the proceeding:

- (a) is brought to enforce, assert, declare, or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property
- (b) is brought to interpret, rectify, or enforce a deed, contract, or other instrument in relation to property in British Columbia that is immovable or movable property
- (c) concerns contractual obligations, and the contractual obligations, to a substantial extent, were to be performed in British Columbia
- (d) concerns contractual obligations, and by its express terms, the contract is governed by the law of British Columbia
- (e) concerns a business carried on in British Columbia.

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. A declaration that a Mortgage and Assignment of Rents registered in the Victoria Land Title Office as Instrument Nos. CA1490974 and CA1490975, respectively, on March 17, 2010 (together, the “Primary Mortgage”) made on behalf of the Petitioner as Mortgagee, and by the Respondent 0830123 B.C. Ltd. (“0830123”) as Mortgagor, which Mortgage charges the lands and premises in the City of Colwood, Province of British Columbia described as:

| <i>PID</i> | <i>Legal Description</i> |
|-------------|---|
| 023-747-285 | Lot A, Section 1, Esquimalt District, Plan VIP65224 |
| 000-448-923 | Amended Lot B (DD 115310I), Section 1, Esquimalt District, Plan 4646, except parts in Plans 13301 and 41107 |
| 001-154-184 | Lot B, Section 1, Esquimalt District, Plan 31551 |

(the “Primary Property”)

is in default, that all monies secured by the Primary Mortgage are now due and owing, and that the charge in favour of the Petitioner as Mortgagee ranks in priority to any interest of the Respondents in the Primary Property.

2. A declaration that a Mortgage and Assignment of Rents registered in the Victoria Land Title Office as Instrument Nos. CA1490972 and CA1490973, respectively, on March 17, 2010 (together, the “Adjacent Mortgage”) made on behalf of the Petitioner as Mortgagee, and by 0830123 as Mortgagor, which Mortgage charges the lands and premises in the City of Colwood, Province of British Columbia described as:

| <i>PID</i> | <i>Legal Description</i> |
|-------------|--|
| 000-495-689 | Lot 1, Section 1, Esquimalt District, Plan 41107 |

(the “Adjacent Property”)

is in default, that all monies secured by the Adjacent Mortgage are now due and owing, and that the charge in favour of the Petitioner as Mortgagee ranks in priority to any interest of the Respondents in the Adjacent Property, except as to the interest of the Respondent Cascadia Health Corporation under Mortgage No. CA372735 and the interest of the Respondent CLG Investments Ltd. under Mortgage No. CA421162.

3. A declaration that a Security Agreement dated February 22, 2010 (the “Security Agreement”) and registered by a financing statement at Personal Property Registry under Base

Registration No. 430972F, granting to the Petitioner a security interest in all present and after acquired personal property of 0830123 and the Respondent Colwood City Centre Limited Partnership, by its general partner Colwood City Centre GP Inc. (“Colwood City Centre”) located at, pertaining to, or used in connection with the Primary Property (the “Personal Property”) is in default, that all monies secured by the Security Agreement are now due and owing, and that the security interest of the Petitioner ranks in priority to any interest of the Respondents in the Personal Property.

4. A declaration that pursuant to an Equitable Mortgage dated March 3, 2010 (the “Equitable Mortgage”), Colwood City Centre as beneficial owner, authorized 0830123 to mortgage the Primary Property and the Adjacent Property in favour of the Petitioner, and to provide the Security Agreement with respect to the Personal Property, and further agreed that its beneficial interest in the property would be bound by and subject to all of the terms and conditions of the Primary Mortgage, the Adjacent Mortgage and the Security Agreement, and charged and granted a mortgage in favour of the Petitioner of all of the beneficial interest which it has in the Primary Property, the Adjacent Property or the Personal Property.

5. A declaration that the performance of the obligations of 0830123 and Colwood City Centre to the Petitioner was guaranteed by the Respondents Nobhill Development Corporation (“Nobhill”), Leslie Bjola (“Bjola”), Adam Gant (“Gant”) and Emanuel Arruda (“Arruda”) pursuant to guarantees made in writing and dated as follows:

| | |
|----------------|------------------|
| March 8, 2010: | Nobhill Bjola |
| March 3, 2010: | Gant |
| March 1, 2010: | Arruda |

(together, the “Guarantors”)

6. A declaration that the Primary Mortgage, Adjacent Mortgage, Security Agreement and Equitable Mortgage secure in favour of the Petitioner all indebtedness owed to it by 0830123 and Colwood City Centre with respect to a Facility Letter dated February 15, 2010, as amended, being the amount of \$1,459,363.01 as at December 7, 2012, calculated as follows:

| | |
|---|-----------------|
| Principal | \$1,448,997.79 |
| Accrued interest Dec. 1 to 7, 2012 | 4,446.24 |
| Unpaid late charges | 250.00 |
| Koffman Kalef legal costs | 1,383.92 |
| Jones Emery Hargreaves Swan legal costs | <u>4,285.06</u> |
| Total: | \$1,459,363.01 |

and that interest has continued to accrue thereafter at the rate of 16% per annum, compounded monthly, together with all costs incurred by the Petitioner and properly chargeable under the terms of the Primary Mortgage, Adjacent Mortgage, Equitable Mortgage and Security Agreement, including the Petitioner's legal costs on a party and party basis.

7. An Order requiring that the redemption of the Primary Mortgage, Adjacent Mortgage, Equitable Mortgage and Security Agreement be within six (6) months after the pronouncement of the Order Nisi, or such other period as this Honourable Court deems appropriate.

8. An Order that unless the Respondents pay into Court on or before the date set for redemption, the amount required to redeem the Primary Property, Adjacent Property and Personal Property, that the Respondents shall be foreclosed of all right, title, interest and equity of redemption in the Primary Property, Adjacent Property and Personal Property.

9. Judgment against 0830123 and Colwood City Centre pursuant to their covenant to pay the amount owed by them and secured under the Primary Mortgage, Adjacent Mortgage, Equitable Mortgage and Security Agreement for the amount found to be due and owing as at the date of the granting of the Order Nisi, plus the assessed costs of the Petitioner.

10. Judgment against the Guarantors for the amount found to be due and owing as at the date of the granting of the Order Nisi, plus the assessed costs of the Petitioner.

11. An Order for possession of the Primary Property, Adjacent Property and Personal Property.

12. An Order for the appointment of a Receiver, and for the fixing of an occupational rent.

13. An Order for all necessary accounts, directions and inquiries.

14. A Certificate of Pending Litigation.

15. An Order for the sale of the Primary Property, Adjacent Property and Personal Property, with the Petitioner having conduct of such sale.

16. An Order for costs in favour of the Petitioner.

Part 2: FACTUAL BASIS

1. The Petitioner is a company incorporated pursuant to the laws of Canada and extra-provincially registered in British Columbia, having an office at 210 – 2112 West Broadway, in the City of Vancouver, in the Province of British Columbia.

2. By a Mortgage and Assignment of Rents registered in the Victoria Land Title Office as Instrument Nos. CA1490974 and CA1490975, respectively, on March 17, 2010, 0830123 mortgaged to the Petitioner that property in the City of Colwood, Province of British Columbia described as:

| <i>PID</i> | <i>Legal Description</i> |
|-------------|---|
| 023-747-285 | Lot A, Section 1, Esquimalt District, Plan VIP65224 |
| 000-448-923 | Amended Lot B (DD 115310I), Section 1, Esquimalt District, Plan 4646, except parts in Plans 13301 and 41107 |
| 001-154-184 | Lot B, Section 1, Esquimalt District, Plan 31551 |

(the “Primary Property”)

3. By a Mortgage and Assignment of Rents registered in the Victoria Land Title Office as Instrument Nos. CA1490972 and CA1490973, respectively, on March 17, 2010, 0830123 mortgaged to the Petitioner that property in the City of Colwood, Province of British Columbia described as:

| <i>PID</i> | <i>Legal Description</i> |
|-------------|--|
| 000-495-689 | Lot 1, Section 1, Esquimalt District, Plan 41107 |

(the “Adjacent Property”)

4. By a Security Agreement dated February 22, 2010, of which notice was registered in favour of the Petitioner at Personal Property Registry under Base Registration No. 430972F, 0830123 and Colwood City Centre granted to the Petitioner a security interest in the Personal Property.

5. By an Equitable Mortgage dated March 3, 2010, Colwood City Centre, as beneficial owner, authorized 0830123 to mortgage the Primary Property and the Adjacent Property in favour of the Petitioner, and to provide the Security Agreement with respect to the Personal Property, and further agreed that its beneficial interest in the property would be bound by and subject to all of the terms and conditions of the Primary Mortgage, Adjacent Mortgage and the Security Agreement and charged and granted a mortgage in favour of the Petitioner of all of the beneficial interest which it has in the Primary Property, the Adjacent Property or the Personal Property.

6. The Primary Mortgage, Adjacent Mortgage, Security Agreement and Equitable Mortgage were granted to the Petitioner as collateral security for all indebtedness owed to the Petitioner by 0830123 and Colwood City Centre pursuant to a Facility Letter dated February 15, 2010, as amended.

7. 0830123 and Colwood City Centre have defaulted in payment of the loan owed to the Petitioner and secured by the Primary Mortgage, Adjacent Mortgage, Security Agreement and Equitable Mortgage.

8. The total amount owed to the Petitioner as at December 7, 2012 was \$1,459,363.01.
9. Interest continues to accrue at the rate of 16% per annum, compounded monthly.
10. The Guarantors executed guarantees of the debts owed by 0830123 and Colwood City Centre, dated as follows:

| | |
|----------------|------------------|
| March 8, 2010: | Nobhill Bjola |
| March 3, 2010: | Gant |
| March 1, 2010: | Arruda |

11. By letters dated December 11, 2012, demand for payment was made from 0830123, Colwood City Centre and the Guarantors but they have failed to make payment.
12. The Respondents named below are the holders of charges registered against the Primary Property, which charges rank in priority subsequent to the interest of the Petitioner in the Primary Property:

| NAME | CHARGE | DATE | REGISTRATION NUMBER |
|--|----------|------------------|---------------------|
| CLG Investments Ltd. | Mortgage | March 17, 2010 | CA1490998 |
| Cascadia Health Corporation | Mortgage | March 17, 2010 | CA1490999 |
| Cascadia Health Corporation and CLG Investments Ltd. | Mortgage | March 17, 2010 | CA1491000 |
| Diane Elizabeth Bjola | Mortgage | March 17, 2010 | CA1491001 |
| CLG Investments Ltd. | Mortgage | January 28, 2011 | FB397678 |
| Romspen Investment Corporation | Mortgage | May 13, 2011 | FB414040 |

13. The Respondents named below are the holders of charges registered against the Adjacent Property, which charges rank in priority subsequent to the interest of the Petitioner in the Adjacent Primary Property:

| NAME | CHARGE | DATE | REGISTRATION NUMBER |
|--|----------|------------------|---------------------|
| Cascadia Health Corporation and CLG Investments Ltd. | Mortgage | March 17, 2010 | CA1491000 |
| Diane Elizabeth Bjola | Mortgage | March 17, 2010 | CA1491001 |
| CLG Investments Ltd. | Mortgage | January 28, 2011 | FB397678 |
| Romspen Investment Corporation | Mortgage | May 13, 2011 | FB414040 |

14. The Petitioner elects to proceed with the Personal Property as if the personal property were land.

Part 3: LEGAL BASIS

1. Rules 2-1, 9-6, 10-1, 10-2, 13-5 and 21-7 of the Supreme Court Civil Rules
2. Sections 37 and 39 of the Law and Equity Act
3. Section 28 of the Land Title Act
4. Sections 55, 63, 66, and 70 of the Personal Property Security Act.

Part 4: MATERIAL TO BE RELIED ON:

1. Affidavit #1 of Brian Chelin made December 21, 2012

The Petitioner estimates that the application will take 5 minutes.

DATED: December 27, 2012



Peter Vaartnou
Lawyer for the Petitioner

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LANYARD ENTERPRISES INC.

PETITIONER

AND:

**0830123 B.C. LTD.
and others**

RESPONDENTS

PETITION

Peter Vaartnou

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Court Box 49

File No. 12-0994/mls