



This is the 1st Affidavit
of Doug Chivers in this case
and was made on May 21, 2021

No. S-1711962
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SMITHE RESIDENCES LTD.
BRENDAN JAMES SCHOUW
BY WAY OF ASSIGNMENT OF CERTAIN RIGHT, and
4 CORNERS PROPERTIES LTD.

PLAINTIFFS

AND:

SMITH RESIDENCES LTD.
BRENDEN JAMES SCHOUW
HOMER STREET RESIDENCES LTD.
BOFFO INVESTMENT CORP.
BOFFO DEVELOPMENTS (SMITHE) LTD.
BOFFO DEVELOPMENTS (HORNBY) LTD., and
BOFFO DEVELOPMENTS (HOMER) LTD.

DEFENDANTS

AFFIDAVIT

I, Doug Chivers, licensed insolvency trustee, of Suite 430 – 505 Burrard Street, Vancouver, British Columbia, AFFIRM THAT:

1. I am a vice-president of The Bowra Group Inc. (“**TBG**”), and as such have personal knowledge of the facts hereinafter deposed to except where stated to be on information and belief, and in those cases I verily believe those facts to be true.
2. I make this affidavit in support of TBG’s application for an order appointing TBG as receiver and manager of Homer Street Residences Ltd. (“**Homer Ltd.**”).

Homer Ltd.

3. By order of Mr. Justice Giaschi made in this action on April 16, 2021, TBG was appointed as receiver and manager of the defendants Brendan James Schouw and Smithe Residences Ltd. (“**Smithe Ltd.**” and together with Mr. Schouw, the “**Debtors**”).
4. Following TBG’s appointment as receiver of the Debtors, I learned that Mr. Schouw is the sole shareholder of Homer Ltd. I also learned that Mr. Schouw was the sole director of Homer Ltd. from May 10, 2002 until August 17, 2017, when he was replaced by Tammy Ann Schouw, who I have been advised by Mr. Schouw is his sister.
5. I am aware of the foregoing as a result of my review of the following documents:
 - (a) a B.C. Company Summary in respect of Homer Ltd., a copy of which is attached hereto as Exhibit “A”;
 - (b) Homer Ltd.’s central securities register, a copy of which is attached hereto as Exhibit “B”; and
 - (c) Homer Ltd.’s register of directors, a copy of which is attached hereto as Exhibit “C”.

Assets and Liabilities of Homer Ltd.

(I) Assets

6. Upon learning of Mr. Schouw’s interest in Homer Ltd., I sought to determine what assets and liabilities Homer Ltd. has. I contacted Mr. and Ms. Schouw (together, the “**Schouws**”) to inquire about same and was advised that they are not aware of any assets of Homer Ltd. with one exception: Homer Ltd. is one of three named plaintiffs in Supreme Court of British Columbia Action No. S-180362, Vancouver Registry (the “**Related Action**”) in which various claims are alleged by the Debtors and Homer Ltd. against the “Boffo” defendants named in the within proceeding.

7. Attached hereto as Exhibit "D" is a copy of the Notice of Civil Claim filed January 10, 2018, in the Related Action.
8. Attached hereto as Exhibits "E" are screen captures of nil search results of the B.C. Land Title Office and Personal Property Registry in respect of Homer Ltd.

(II) Liabilities

9. I was further advised by the Schouws that, in their understanding, Homer Ltd.'s liabilities consist primarily of judgments granted against the company, but may also include a few minor creditors whose claims are most likely statute-barred.
10. A search of the court registry for actions involving Homer Ltd. shows two judgments against the company that are not statute-barred, including in Supreme Court of British Columbia Action No's: (a) VLC-S-H-11070 (Vancouver Registry): in the amount of \$593,524.07, granted August 8, 2011; and (b) S-115431 (Vancouver Registry): in the amount of \$250,000, granted August 7, 2012.
11. TBG is not aware of the status of these judgments, including whether they have been satisfied.

The Related Action

12. I am of the view that, considering Mr. Schouw owns all of the shares of Homer Ltd., and therefore any value in those shares is an asset of Mr. Schouw's receivership estate, it is important to ensure that someone is taking appropriate steps to realize on any assets of Homer Ltd. This would include pursuing any claims of Homer Ltd., including in the Related Action. I also believe it would be most efficient if one person had the authority to act on behalf of the Debtors and Homer Ltd., including in progressing the Related Action.
13. I do not know whether Ms. Schouw, the current director of Homer Ltd., has any intention or ability to cause Homer Ltd. to continue the Related Action, though I am concerned she may not do so. Based on my discussions with the Schouws, it is unlikely that Homer Ltd. has sufficient funds, or access to funds, to permit it to do so

This is Exhibit A referred to in the
affidavit of D. Chivers
made before me on this 21st
day of May 2021

.....
A Commissioner for taking
Affidavits for British Columbia



BC Company Summary For HOMER STREET RESIDENCES LTD.

Date and Time of Search: May 11, 2021 09:02 AM Pacific Time
Currency Date: October 15, 2020

ACTIVE

Incorporation Number: BC0647383
Name of Company: HOMER STREET RESIDENCES LTD.
Business Number: 866086853 BC0001
Recognition Date: Incorporated on May 10, 2002
Last Annual Report Filed: May 10, 2018
In Liquidation: No
Receiver: No

DISSOLUTION/RESTORATION INFORMATION

Filing/Event Date of Filing
Full Restoration March 05, 2015
System Dissolution - Fail to File June 10, 2013

REGISTERED OFFICE INFORMATION

Mailing Address: 252 EAST PENDER ST VANCOUVER BC V6A 1T7 CANADA
Delivery Address: 252 EAST PENDER ST VANCOUVER BC V6A 1T7 CANADA

RECORDS OFFICE INFORMATION

Mailing Address: 252 EAST PENDER ST VANCOUVER BC V6A 1T7 CANADA
Delivery Address: 252 EAST PENDER ST VANCOUVER BC V6A 1T7 CANADA

DIRECTOR INFORMATION

Last Name, First Name, Middle Name:

Schouw, Tammy Ann

Mailing Address:

23101 40 AVENUE
LANGLEY BC V2Z 2H2
CANADA

Delivery Address:

23101 40 AVENUE
LANGLEY BC V2Z 2H2
CANADA

NO OFFICER INFORMATION FILED AS AT May 10, 2018.

This is Exhibit B referred to in the
affidavit of D. Chivers
made before me on this 21st
day of May 2021

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A Commissioner for taking
Affidavits for British Columbia

CENTRAL SECURITIES REGISTER
HOMER STREET RESIDENCES LTD.

DATE OF TRANSACTION (ALLOTMENT OR TRANSFER)	DATE OF SHAREHOLDING CEASED	FULL NAME AND ADDRESS OF MEMBER	QUANTITY OF SHARES	CLASS OF SHARES	PAR VALUE	ACQUIRED BY ALLOTMENTS, CONVERSIONS, TRANSFER FROM:	TRANSFER TO: (TO)	AMOUNT PAID PER SHARE	ISSUED CERT. NUMBER
May. 10, 2002	May. 10, 2002	David Parkes Barrister & Solicitor 460 - 2609 Granville Street Vancouver, BC V6H 3H3	100	A' VOTING COMMON	NPV	ALLOTMENT	TRANSFER TO: BRENDAN JAMES SCHOUW CERT. 2-A	\$0.10	1-A
May. 10, 2002	June. 24, 2010	Brendan James Schouw 1251 Homer Street Vancouver, BC V6B2Y9	100	A' VOTING COMMON	NPV	TRANSFER FROM: DAVID PARKES CERT. 1-A	TRANSFER TO: JAMES SCHOUW DEVELOPMENTS INC. CERT. 3-A		2-A
June. 24, 2010	Nov. 25, 2011	James Schouw Developments Inc. 1251 Homer Street Vancouver, BC V6B 2Y9	100	A' VOTING COMMON	NPV	TRANSFER FROM: BRENDAN JAMES SCHOUW CERT. 2-A	TRANSFER TO: BRENDAN JAMES SCHOUW CERT. 4-A		3-A
Nov. 25, 2011		Brendan James Schouw 1251 Homer Street Vancouver, BC V6B2Y9	100	A' VOTING COMMON	NPV	TRANSFER FROM: JAMES SCHOUW DEVELOPMENTS INC. CERT. 3-A			4-A
May. 10, 2002	June. 24, 2010	Brendan James Schouw 1251 Homer Street Vancouver, BC V6B2Y9	100	B' NON- VOTING COMMON	NPV	ALLOTMENT	TRANSFER TO: JAMES SCHOUW DEVELOPMENTS INC. CERT. 2-B	\$0.10	1-B
June. 24, 2010	Nov. 25, 2011	James Schouw Developments Inc. 1251 Homer Street Vancouver, BC V6B 2Y9	100	B' NON- VOTING COMMON	NPV	TRANSFER FROM: BRENDAN JAMES SCHOUW CERT. 1-B	TRANSFER TO: BRENDAN JAMES SCHOUW CERT. 3-B		2-B
Nov. 25, 2011		Brendan James Schouw 1251 Homer Street Vancouver, BC V6B2Y9	100	B' NON- VOTING COMMON	NPV	TRANSFER FROM: JAMES SCHOUW DEVELOPMENTS INC. CERT. 2-B			3-B

5

This is Exhibit C referred to in the
affidavit of D. Chivers
made before me on this 21st
day of May 2021

.....
A Commissioner for taking
Affidavits for British Columbia

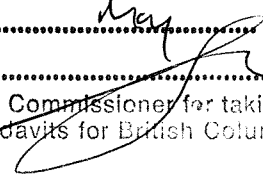
REGISTER OF DIRECTORS
HOMER STREET RESIDENCES LTD.

FULL NAME AND ADDRESS OF DIRECTOR OR OFFICER	DIRECTORS		OFFICERS		
	DATE DIRECTOR ELECTED OR APPOINTED	DATE DIRECTOR CEASED	OFFICE HELD	DATE OFFICER APPOINTED	DATED OFFICER CEASED
DAVID PARKES BARRISTER & SOLICITOR 460 - 2609 GRANVILLE STREET VANCOUVER, BC V6H 3H3	MAY 10, 2002	MAY 10, 2002	SUBSCRIBER		
BRENDAN JAMES SCHOUW 1251 HOMER STREET VANCOUVER, BC V6B 2Y9	MAY 10, 2002	Aug 10, 2017	PRESIDENT SECRETARY	MAY 10, 2002 MAY 10, 2002	Aug 10, 2017 Aug 10, 2017

Tommy Ann Schouw
23101-40 Ave
Langley, BC
V2Z 2H2
Aug 10, 2017

This is Exhibit D referred to in the
 affidavit of P. Chivers
 made before me on this 21st
 day of May 2021

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 A Commissioner for taking
 Affidavits for British Columbia



**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

S 180362

No. _____
Vancouver Registry

JAN 10 2018



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SMITHE RESIDENCES LTD.
BRENDAN JAMES SCHOUW, and
HOMER STREET RESIDENCES LTD.

PLAINTIFFS

AND:

BOFFO INVESTMENT CORP.
BOFFO DEVELOPMENTS (SMITHE) LTD.
BOFFO DEVELOPMENTS (HORNBY) LTD. and
BOFFO DEVELOPMENTS (HOMER) LTD.

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiffs for the relief set out in Part 2 below.

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

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this Court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this Court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

10 JAN 18 1800571 RISS 200.00
71472 5180362

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiffs,

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the Court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

- 1. The plaintiff, Brendan James Schouw (“**Schouw**”), is a businessman.
- 2. The plaintiff, Smithe Residences Ltd. (“**Smithe Residences**”), is a company registered under the laws of the Province of British Columbia.
- 3. The plaintiff, Homer Street Residences Ltd. (“**Homer Residences**”), is a company registered under the laws of the Province of British Columbia.
- 4. Schouw was formerly a director of Smithe Residences, Homer Residences and Hornby Residences Ltd. (“**Hornby Residences**”).
- 5. The defendants, Boffo Investment Corp., Boffo Developments (Smithe) Ltd., Boffo Developments (Hornby) Ltd. and Boffo Developments (Homer) Ltd., are all members of the Boffo group of companies (the “**Boffo Group**”).
- 6. As of 2011 each of Homer Residences, Hornby Residences and Smithe Residences owned certain lands and premises on which a development project was either underway or contemplated as follows:

- (a) Smithe Residences:
 - 891 Cambie Street
 - Parcel Identifier: 015-457-770
 - Lot 20 Block 67 District Lot 541 Plan 210

 - Parcel Identifier: 015-457-788
 - Lot 21 Block 67 District Lot 541 Plan 210

Parcel Identifier: 015-457-826
Lot 22 Block 67 District Lot 541 Plan 210

Parcel Identifier: 015-457-851
Lot 23 Block 67 District Lot 541 Plan 210

Parcel Identifier: 015-457-877
Lot 24 Block 67 District Lot 541 Plan 210

(the "**Smithe Project**")

(b) Hornby Residences:

1102 Hornby Street
Parcel Identifier: 009-005-471
Lot 39, Block 91, District Lot 541, Plan 11801

1116 Hornby Street
Parcel Identifier: 007-176-791
Lot 4, Block 91, District Lot 541, Plan 210

(the "**Hornby Project**")

(c) Homer Residences:

1251 Homer Street
Parcel Identifier: 027-619-613
Parcel A (being a consolidation of Lots 26 and 27), see BB998742
Block 105 District Lot 541 Group 1
New Westminster District Plan 210

1271 Homer Street
Parcel Identifier: 011-353-023
Lot 25, Block 105, District Lot 541, Plan 210

(the "**Homer Project**")

(collectively known as the "**Development Lands**")

7. As of 2011 the Development Lands were encumbered by a number of mortgages, some or all of which were in default and a number of foreclosure proceedings were in process against the Development Lands.
8. The Boffo Group became interested in purchasing the Smithe Project and sought to do so in the foreclosure proceedings.
9. The Boffo Group was unable to acquire the Smithe Project in the foreclosure proceedings.

10. The Boffo Group then became aware that the Homer and Hornby Projects were also subject to foreclosure proceedings as some of the mortgagees were *inter alia*.
11. The Boffo Group then agreed with Schouw and each of Smithe Residences, Homer Residences and Hornby Residences (collectively the “**Schouw Companies**”) being the owners of the Development Lands that the Boffo Group would pay off all of the existing financial charges on the Development Lands; the Development Lands would then be transferred to holding companies solely owned by the Boffo Group; the Development Lands would be developed by the Boffo Group; and the profits from such developments would then be shared between the Boffo Group and its related companies on the one hand and Schouw and the Schouw Companies on the other all based on an agreed formula.
12. This agreement was documented by way of a joint venture agreement dated August 5, 2011 between Boffo Investment Corp., Schouw, and the Schouw Companies (the “**2011 Joint Venture Agreement**”).
13. The Boffo Group paid off the encumbrances on the Development Lands and each of the Schouw Companies transferred its component of the Development Lands to Boffo Developments (Smithe) Ltd., Boffo Developments (Hornby) Ltd. and Boffo Developments (Homer) Ltd., respectively.
14. The profit sharing formula under the provisions of the 2011 Joint Venture Agreement that relate to the Smithe Project and the Hornby Project was subsequently stated in two consulting agreements each dated March 19, 2012 between:
 - (a) Boffo Developments (Hornby) Ltd. and Hornby Residences (the “**Hornby Consulting Agreement**”); and
 - (b) Boffo Developments (Smithe) Ltd. and Smithe Residences (the “**Smithe Consulting Agreement**”).
15. There was no subsequent agreement in respect of the Homer Project.
16. The Boffo Group has commenced construction of the Smithe Project. The Hornby Project has been completed and Hornby Residences is now bankrupt. As yet, no development has taken place on the Homer Project.
17. By letter dated May 6, 2016, the Boffo Group, including Boffo Developments (Smithe) Ltd., asserted that each of Smithe Residences and Schouw had breached the Smithe Consulting Agreement and the Boffo Group purported to accept that breach as being a repudiation of the Smithe Consulting Agreement and purported to terminate the Smithe Consulting Agreement.
18. There was no repudiation of the 2011 Joint Venture Agreement, the Smithe Consulting Agreement or the Hornby Consulting Agreement and any purported termination by the Boffo Group was unlawful.

- 19. Each of Schouw and the Schouw Companies have performed all obligations under the 2011 Joint Venture Agreement as it relates to the Homer Project and have performed all obligations under each of the Smithe Consulting Agreement and the Hornby Consulting Agreement.
- 20. Under the terms of the 2011 Joint Venture Agreement, the Smithe Consulting Agreement and the Hornby Consulting Agreement, the Boffo Group agreed to hold the profits allocated to each of the applicable companies under those agreements in trust for the other parties to those agreements.

Part 2: RELIEF SOUGHT

- 1. A declaration that each of the 2011 Joint Venture Agreement and the Smithe Consulting Agreement are:
 - (a) valid and enforceable according to their terms;
 - (b) have not been terminated; and
 - (c) are in force and effective.
- 2. An accounting of all of the profits or trust funds to date in respect of the Smithe Project and the Homer Project.
- 3. A declaration that all profits from the Smithe Project and the Homer Project are to be allocated between the Boffo Group on the one hand, and Homer Residences (the “**Homer Allocation**”) and Smithe Residences (the “**Smithe Allocation**”) on the other, all as provided for in the 2011 Joint Venture Agreement and the Smithe Consulting Agreement.
- 4. A declaration that the Homer Allocation and the Smithe Allocation are held in trust by the Boffo Group for the benefit of the plaintiffs.
- ~~5. An order that the Homer Allocation and the Smithe Allocation be paid to the plaintiffs.~~
- 6. Costs.
- 7. Such further and other relief as to this Honourable Court may deem just.

Part 3: LEGAL BASIS

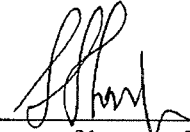
- 1. The common law and equitable principles thereof relating to contract law and trust law.
- 2. Such further basis as counsel may advise.

Plaintiffs’ address for service:

c/o Stephen R. Schachter, Q.C.
 Nathanson, Schachter & Thompson LLP
 750 – 900 Howe Street
 Vancouver BC V6Z 2M4

Fax number address for service (if any): 604-684-1598
 E-mail address for service (if any): sschachter@nst.bc.ca
 Place of trial: Vancouver, BC
 The address of the registry is: 800 Smithe Street
 Vancouver, BC V6Z 2E1

Date: Jan 10, 2018


 Signature of lawyer for Plaintiffs
 Stephen R. Schachter, Q.C.

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.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for breach of contract and breach of trust

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SMITHE RESIDENCES LTD.
BRENDAN JAMES SCHOUW,
and HOMER STREET RESIDENCES LTD.

PLAINTIFFS

AND:

BOFFO INVESTMENT CORP.
BOFFO DEVELOPMENTS (SMITHE) LTD.
BOFFO DEVELOPMENTS (HORNBY) LTD. and
BOFFO DEVELOPMENTS (HOMER) LTD.

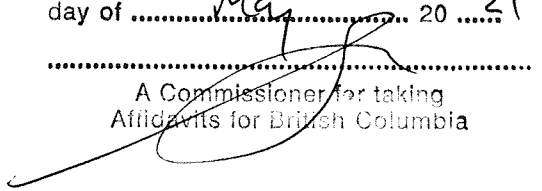
DEFENDANTS

NOTICE OF CIVIL CLAIM

NATHANSON, SCHACHTER & THOMPSON LLP
Barristers & Solicitors
Suite 750 – 900 Howe Street
Vancouver, BC V6Z 2M4

Tel. No. 604.662.8840
Fax No. 604.684.1598

This is Exhibit F referred to in the affidavit of D. Chivers made before me on this 21st day of May 2021


A Commissioner for taking Affidavits for British Columbia

Title Search

Owner Name Homer Street Residences Ltd is not found in any land title districts. [50403]

= required fields

File Reference 265884.00011

Search By Parcel Identifier (PID)
 Short Legal Description
 Owner Name
 Charge Number
 Title Number

Owner Name Homer Street Residences Ltd

Select Options for Title Searches

- Include Parcel Information and Miscellaneous Notes with Title Searches
 - Include Cancelled Charges on Titles
- Search this Land Title District
- All Land Title Districts

Personal Property Registry

Selection List

For: [PZ57536] [FASKEN MARTINEAU DUMOULIN LLP]

May 12, 2021
05:10:17 PM

Folio: 265884.00011

BC OnLine Mailbox

Business Name: HOMER
STREET RESIDENCES LTD

Local Print Limit: 200


BSR001 - NIL SEARCH

Debtor Name

Display Selection

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

 SMITHE RESIDENCES LTD.
BRENDAN JAMES SCHOUW
BY WAY OF ASSIGNMENT OF CERTAIN RIGHT, and
4 CORNERS PROPERTIES LTD.

PLAINTIFFS

AND:

SMITH RESIDENCES LTD., AND OTHERS

DEFENDANTS

AFFIDAVIT #1 OF DOUG CHIVERS

FASKEN MARTINEAU DuMOULIN LLP

Barristers and Solicitors
550 Burrard Street, Suite 2900
Vancouver, BC, V6C 0A3
+1 604 631 3131

Counsel: Kibben Jackson
Matter No: 265884.00011