



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

FORJAY MANAGEMENT LTD.

PETITIONER

AND:

0981478 B.C. LTD.,
MARK CHANDLER,
CANADIAN WESTERN TRUST COMPANY in trust,
HMF HOME MORTGAGE FUND CORPORATION,
625536 B.C. LTD.,
JAMES MERCIER,
MORRIS KADYLO,
URSZULA PIASECZNA,
U.S. BANK NATIONAL ASSOCIATION,
BARAMUNDI INVESTMENTS LTD.,
CHARANJIT KAUR, SIMRAT VIRDI,
MUKHTIAR SINGH NIJJAR, MOHAN VILKHU,
JASPREET SINGH KHATRA, AMANDEEP SINGH DHALIWAL,
NIRMAL SINGH CHOCHAN, SAJAL JAIN, SUPARNA JAIN,
BABAL RANI BANSAL, SATPAL BANSAL, PARMINDER K. MANN,
LEENA JAIN, VASANT PATEL, 1074936 B.C. LTD.,
1084165 B.C. LTD., 1084164 B.C. LTD., 1084322 B.C. LTD.,
SURJIT KAUR PARMAR, HARBHAJAN SINGH PARMAR,
DALJEET KAUR GILL, BHASHAM KAUR GILL,
812 CAPITAL HOLDINGS LTD., CATALYST ASSETS CORP.,
0951019 B.C. LTD., WONDER MARBLE & STONE INC.,
INTECH PAY LTD., 1086286 B.C. LTD.,
1085537 B.C. LTD., 1083516 B.C. LTD.

RESPONDENTS

RESPONSE TO AMENDED PETITION

FILED BY: The Respondent, BARAMUNDI INVESTMENTS LTD.

THIS IS A RESPONSE TO the Petition to the Court filed August 25, 2017.

Part 1: ORDERS CONSENTED TO

The Respondent, BARAMUNDI INVESTMENTS LTD., consents to the granting of the orders set out in the following paragraphs of Part 1 of the Petition to the Court:

The Respondent, BARAMUNDI INVESTMENTS LTD., does not generally oppose the relief sought by the Petitioner, subject to the said Respondent, BARAMUNDI INVESTMENTS LTD., having a reasonable period of time to obtain conduct of sale and thereafter attempt sale of the specific Properties to realize upon its security.

Part 2: ORDERS OPPOSED

The Respondent, BARAMUNDI INVESTMENTS LTD., conditionally opposes the granting of the orders set out in Part 1 of the Amended Petition, including paragraphs 1, 5, 6 and 8, subject to the Respondent, BARAMUNDI INVESTMENTS LTD., having a reasonable period of time to obtain conduct of sale and thereafter attempt sale of the specific Properties to realize upon its security.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Respondent, BARAMUNDI INVESTMENTS LTD., takes no position on the granting of the orders set out in the remaining paragraphs of the Petition to the Court.

Part 4: FACTUAL BASIS

1. The Respondent, BARAMUNDI INVESTMENTS LTD. (“BARAMUNDI”), is a company incorporated under the laws of British Columbia and has its registered office at #225 – 20316 – 56th Avenue, in the City of Langley, in the Province of British Columbia.
2. By way of Property Presale Agreements, the following properties were purchased by Robert Brian Payne on May 5, 2014:

Civic: Suite 216 – 5020 – 221A Street, Langley, BC
PID: 029-991-111
Strata Lot 24 Section 6 Township 11
New Westminster District Strata Plan EPS3408
Together with an interest in the common property
In proportion to the unit entitlement of the strata lot as shown on Form V

(“Suite 216”);

Civic: Suite 208 – 5020 – 221A Street, Langley, BC
PID: 029-991-277
Strata Lot 40 Section 6 Township 11

New Westminster District Strata Plan EPS3408
Together with an interest in the common property
In proportion to the unit entitlement of the strata lot as shown on Form V

(“Suite 208”); and

Civic: Suite 207 – 5020 – 221A Street, Langley, BC
PID: 029-991-269
Strata Lot 39 Section 6 Township 11
New Westminster District Strata Plan EPS3408
Together with an interest in the common property
In proportion to the unit entitlement of the strata lot as shown on Form V

(“Suite 207”).

3. By way of Property Presale Agreement, the following property was purchased by Robert Brian Payne on September 19, 2014:

Civic: Suite 115 – 5020 – 221A Street, Langley, BC
PID: 029-991-111
Strata Lot 24 Section 6 Township 11
New Westminster District Strata Plan EPS3408
Together with an interest in the common property
In proportion to the unit entitlement of the strata lot as shown on Form V

(“Suite 115”)

(collectively referred to as the “Properties”).

4. Each of the four Property Presale Agreements described in paragraphs 2 and 3 herein regarding the Properties (hereinafter referred to as the “Property Presale Agreements”) included the following terms and conditions:
 - (a) The quality and condition of the Purchased Property will be in the same standard as other residential units which will be marketed in the Development.
 - (b) The Buyer is aware of this agreement is for a bulk presale of completed units in the Development at a discounted price in consideration of agreeing to the terms herein.
 - (c) The transfer of title for the Purchased Property shall occur on completion of construction and within Fifteen (15) business days of title being raised by the Land Title Office.
 - (d) Title will be transferred to the Buyer free and clear of all financial encumbrances. Title will be encumbered in accordance with a Disclosure Statement required to sell the individual units to purchases.

- (e) Time shall be of the essence of this Agreement.
5. Pursuant to the Property Presale Agreements the following payments were made by Robert Brian Payne to the Respondent 0981478 B.C. LTD.:
 - (a) Suite 207: full purchase price of \$100,000.00 on or about May 7, 2014;
 - (b) Suite 208: full purchase price of \$100,000.00 on or about May 7, 2014;
 - (c) Suite 216: full purchase price of \$150,000.00 on or about May 7, 2014; and
 - (d) Suite 115: full purchase price of \$92,000.00 on or about September 19, 2014.
 6. Since about May 7, 2014, the Respondent 0981478 B.C. LTD. has held all right, title and interest in Suite 207, Suite 208 and Suite 216 as trustee for the benefit of Robert Brian Payne, as beneficiary.
 7. Since about September 19, 2014 the Respondent 0981478 B.C. LTD. has held all right, title and interest in Suite 115 as trustee for the benefit of Robert Brian Payne, as beneficiary.
 8. On or about January 2, 2017, Robert Brian Payne assigned all his rights, title, benefit interest and entitlement to the properties to BARAMUNDI. The following properties are still registered in the name of the Respondent 0981478 B.C. LTD. ("098CO") whose sole Director is the Respondent, MARK CHANDLER ("CHANDLER").
 9. At all material times, 098CO and/or CHANDLER owed BARAMUNDI and/or Robert Brian Payne a common law duty of utmost good faith regarding their handling of the Properties.
 10. In or about mid-April 2017, BARAMUNDI became aware that 098CO had completed its development of the Properties and that the Land Title Office had issued individual titles for the Properties.
 11. Further, or in about the middle of April 2017, BARAMUNDI became aware that 098CO had entered into Agreements of Purchase and Sale with third parties for the Properties. These Agreements were entered into without the knowledge and/or consent of the Respondent BARAMUNDI who as a result of the Property Presale Agreements is the beneficial owner of the Properties.
 12. On June 28, 2017, the Respondent, BARAMUNDI, filed a Notice of Civil Claim with the New Westminster Registry of the Supreme Court of British Columbia under action no. 192425 against the Respondents 0981478 B.C. LTD. and MARK CHANDLER seeking, among other things, specific performance of the Property Presale Agreements.

13. The Respondents 0981478 B.C. LTD. and MARK CHANDLER have breached the terms of the Property Presale Agreements.
14. The Respondent BARAMUNDI claims a trust representing the purchase monies paid to and received by the respondents, 0981478 B.C. Ltd. and/or MARK CHANDLER, that ranks in priority to the Petitioner and all other Respondents over any sale proceeds.
15. The Respondent BARAMUNDI seeks an opportunity to list the subject Properties for sale, and if a reasonable offer is received for the purchase of the Properties, to present the offer to this Honourable Court for approval.

Part 5: LEGAL BASIS

1. The *Supreme Court Civil Rules* including Rule 21-7;
2. Breach of Contract;
3. Specific Performance;
4. Breach of fiduciary duty;
5. Unjust enrichment; and
6. Such other basis as counsel may advise.

Part 6: MATERIAL TO BE RELIED ON

1. Such material as counsel for the Respondent, BARAMUNDI INVESTMENTS LTD., may advise.

The Respondent, BARAMUNDI INVESTMENTS LTD., estimates that the application will take approximately 30 minutes.

DATED: September 28, 2017



Signature of Sanjeev K. Patro
Lawyer for BARAMUNDI INVESTMENTS LTD.

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