



No. H091522
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

COAST CAPITAL SAVINGS CREDIT UNION

PETITIONER

AND:

**THE SYMPHONY DEVELOPMENT CORPORATION, GURMEL SINGH KAINTH,
SHMINDER JOHAL, 497308 B.C. LTD., EMCO CORPORATION,
PACIFIC UTILITY CONTRACTING LTD., UNLIMITED EXCAVATING &
LANDSCAPING LTD., JACK CEWE LTD., C&C TRUCKING (1988) LTD.,
OCEAN CONSTRUCTION SUPPLIES LIMITED, NORA ROSALIE MARVIN,
BASSI BROTHERS FRAMING LTD., UNITED RENTALS OF CANADA INC.,
MCRAE'S ENVIRONMENTAL SERVICES LTD., GRAESTONE READY MIX INC.,
VALLEY GEOTECHNICAL ENGINEERING SERVICES LTD.,
D.K. BOWINS & ASSOCIATES INC., VANCOUVER CITY SAVINGS CREDIT UNION
and MALKIT SINGH JOHAL**

RESPONDENTS

NOTICE OF APPLICATION

Name(s) of applicant(s): **Brian Joseph**

To: The Respondent, **The Symphony Development Corporation**
and to **PriceWaterhouseCoopers Inc.**, the Court appointed
Receiver and Manager of The Symphony Development
Corporation

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1, on Wednesday, November 24, 2010 at 9:45 am for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. an order that the Applicant, Brian Joseph's claim for a security interest by way of a Purchaser's Lien in respect to certain property commonly referred to as 104th Avenue Subdivision, Maple Ridge, B.C. (later known as Spencer's Ridge) and legally described as:

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PID: 027-524-043
Lot 9 Section 10 Township 12
New Westminster District Plan BCP36341

(the "Lands")

owned by the Respondent, The Symphony Development Corporation, and in respect of which the Applicant, Brian Joseph, paid a deposit of \$25,500.00, pursuant to the contract to purchase that property, be approved for the full secured value of \$25,500.00, and

2. costs.

Part 2: FACTUAL BASIS

1. The Applicant paid the Respondent, the Symphony Development Corporation ("Symphony"), the sum of \$28,500.00 with respect to a proposed purchase of the Lands. The Applicant wrote to Symphony on or about August 11, 2008 and advised that Symphony was in breach of the agreement and the proposed contract and demanded repayment of the deposit.
2. In the alternative, the contract with respect to the proposed purchase of the Lands, dated November 15, 2005, created by Symphony and signed by the Applicant (the "Contract"), is not an enforceable contract as no Disclosure Statement was ever provided by Symphony to the Applicant as required by the *Real Estate Development Act* of British Columbia.
3. Of the \$28,500.00 amount owing by Symphony to the Applicant, \$25,500.00 is secured pursuant to a Purchaser's Lien with respect to the Contract.
4. On January 12, 2010, PriceWaterhouseCoopers Inc. ("PriceWaterhouseCoopers") was appointed Receiver and Manager in respect of all assets, undertakings and property of Symphony pursuant to a Court Order of this Honourable Court. The Applicant was not listed as a creditor of Symphony in the Form 87 Notice of Receiver provided by PriceWaterhouseCoopers.
5. On April 28, 2010 the Applicant provided to PriceWaterhouseCoopers, a Proof of Claim form, completed pursuant to the instructions of PriceWaterHouseCoopers.
6. On October 4, 2010, PriceWaterhouseCoopers notified the Applicant that it reviewed the Proof of Claim against Symphony in its capacity as Receiver Manager and disallowed the Applicant's claim for security and revised the claim to an unsecured claim for \$25,000.00.

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Part 3: LEGAL BASIS

1. Purchaser's Lien - a claim to an equitable mortgage of land in respect of a deposit paid under a contract of sale and purchase of land is effectively a claim of purchaser's lien and is therefore a claim to an "estate or interest in land" and is sufficient to support a lis pendens. (*Capital Plaza Developments Ltd. v. Counterpoint Enterprises Ltd.*, [1985] B.C.J. No. 321 (QL) (S.C.)).
2. Rule 14-1 of the Supreme Court Civil Rules

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Brian Joseph, sworn November 1, 2010.

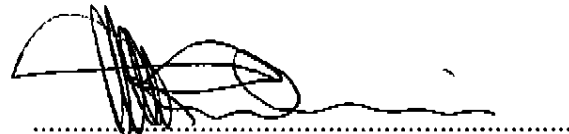
The applicant(s) estimate(s) that the application will take **20 minutes**
[Check the correct box.]

- ☐ 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

- (a) file an application response in Form 33 within 5 days after the date of service of this notice of application or, if the application is brought under Rule 9-7 of the Supreme Court Civil Rules, within 11 days after the date of service of this notice of application, and
- (b) at least 2 days before the date set for the hearing of the application, serve on the applicant 2 copies, and on every other party one copy, of a filed copy of the application response and other documents referred to in Rule 9-7(12) of the Supreme Court civil Rules.

Date: November 1, 2010



Signature of: Peter J. Goodwin

☐ applicant ☒ lawyer for applicant(s)

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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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.....
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Date: *[dd/mm/yyyy]*

.....
Signature of ☐ Judge ☐ Master

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APPENDIX**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
- ☐ extended oral discovery
- ☐ other matters 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: others
- ☐ experts