

This is the 1st affidavit
of Wen-Shih Yang in this case
and was made on March 22, 2022

No. S1813807
Vancouver Registry



**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,
AS AMENDED

AND

IN THE MATTER OF THE MASAHIKO NISHIYAMA
BANKRUPT UNDER THE LAWS OF JAPAN

AFFIDAVIT

I, Wen-Shih Yang, Legal Administrative Assistant of 2800 Park Place, 666 Burrard Street, Vancouver, British Columbia, SWEAR THAT:

1. I am a legal administrative assistant employed by DLA Piper (Canada) LLP, solicitors for the Receiver and Trustee in this action, and therefore have personal knowledge of the matters herein after deposed, except where stated to be based on information and believe, and where so stated I do verily believe the same to be true.
2. Unless otherwise indicated, in this Affidavit I have used the same definitions as used in the Notice of Application of the Trustee and the Receiver, to be filed with this Affidavit.
3. Attached hereto and marked as **Exhibit "A"** is a true copy of the Canadian Bankruptcy Order, dated December 21, 2018, recognizing the Japanese Bankruptcy Proceedings as the foreign main proceedings, and Hiroshi Morimoto (the "**Trustee**") as the trustee over the bankruptcy estate of Masahiko Nishiyama ("**Nishiyama**") in Japan.
4. Attached hereto and marked as **Exhibit "B"** is a true copy of the order appointing the Receiver, dated February 14, 2019.

5. Attached hereto and marked as **Exhibit "C"** is a true copy of the Corporate Veil Order, dated July 19, 2019, ordering that the assets and property of Sun Moon Management Ltd. represent property of Nishiyama.
6. Attached hereto and marked as **Exhibit "D"** is a true copy of the Notice of Application filed by Nishiyama and Hatsumi Kinoshita ("**Kinoshita**") on October 9, 2019 (the "**October Application**").
7. Attached hereto and marked as **Exhibit "E"** is a true copy of the Application Response filed by the Trustee and the Receiver on November 1, 2019.
8. Attached hereto and marked as **Exhibit "F"** is a true copy of the Notice of Application filed by Nishiyama and Kinoshita on November 5, 2019 (the "**November Application**").
9. Attached hereto and marked as **Exhibit "G"** is a true copy of the transcript of proceedings before the Honourable Justice Voith on January 13, 2020.
10. Attached hereto and marked as **Exhibit "H"** is a true copy of the Notice of Application filed by the Alvarez & Marsal Canada Inc. (the "**Receiver**") and the Trustee on February 12, 2020, and set for hearing on February 24, 2020.
11. Attached hereto and marked as **Exhibit "I"** is a true copy of the Application Response of Kinoshita dated February 18, 2020.
12. Attached hereto and marked as **Exhibit "J"** is a true copy of the Application Response filed by Nishiyama on February 19, 2020.
13. Attached hereto and marked as **Exhibit "K"** is a true copy of the Sale Order, approving the sale of the Condo dated February 24, 2020.
14. Attached hereto and marked as **Exhibit "L"** is a true copy of the transcript of the proceedings before the Honourable Justice Voith, dated March 10, 2020.
15. Attached hereto and marked as **Exhibit "M"** is a true copy of the Reasons for Judgment of Justice Voith, dated March 27, 2020.
16. Attached hereto and marked as **Exhibit "N"** is a true copy of the Notice of Appeal, filed by Nishiyama on March 27, 2020.

17. Attached hereto and marked as **Exhibit "O"** is a true copy of the Notice of Abandonment of Appeal or Settlement, filed by Nishiyama on July 7, 2020.
18. Attached hereto and marked as **Exhibit "P"** is a true copy of the decision of the 4th Civil Division of the Kyoto District Court, dated April 13, 2021.
19. Attached hereto and marked as **Exhibit "Q"** is a true copy of the decision of the 4th Civil Division of the Kyoto District Court, dated April 13, 2021, translated into English.

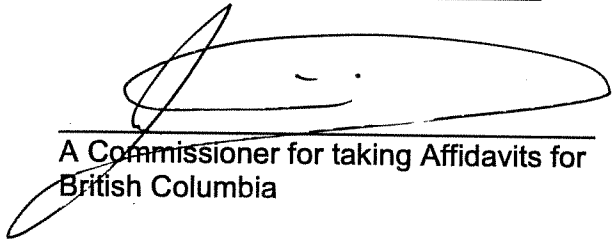
SWORN BEFORE ME at Vancouver, British
Columbia, on March 22, 2022.

A Commissioner for taking Affidavits for
British Columbia.


WEN-SHIH YANG

JEFFREY BRADSHAW
Barrister & Solicitor
DLA Piper (Canada) LLP
666 Burrard Street, Suite 2800
Vancouver, BC V6C 2Z7
604.643.2941

This is **Exhibit "A"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia

DEC 21 2018

ENTERED



IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

005

S1813807

No. _____
Vancouver Registry

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,
AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
JUSTICE MASONVILLE) FRIDAY, THE 21ST DAY
OF DECEMBER, 2018

ON THE WITHOUT NOTICE APPLICATION of Hiroshi Morimoto (the "Trustee"), coming on for hearing before me at 800 Smithe Street, Vancouver, BC on December 21, 2018; AND ON HEARING Colin D. Brousson, counsel for the Trustee; AND UPON READING the Pleadings filed to date;

THIS COURT ORDERS AND DECLARES that:

Recognition of the Japan Proceeding

1. those certain proceedings pursuant the *Bankruptcy Act* of Japan, undertaken in the Kyoto District Court against Masahiko Nishiyama, under case number 2016 (*fu*) 104, filing date February 10, 2016 (the "**Foreign Proceedings**"), are hereby recognized by this Court as a foreign main proceeding pursuant to sections 269 and 270 the *Bankruptcy and Insolvency Act* ("BIA");

Application

2. Hiroshi Morimoto is hereby recognized by this Court as the foreign representative in respect of the Foreign Proceedings;

3. Hiroshi Morimoto is at liberty to commence legal proceedings in Canada on behalf of the estate of Mashiko Nishiyama;

Stay of Proceedings

4. Pursuant to BIA s. 271, no person shall commence or continue any action, execution, or other proceedings concerning the property, debts, liabilities or obligations of Masahiko Nishiyama, save and except:
- (a) the Resolution and Collection Corporation in Supreme Court of British Columbia Action No. S162298, Vancouver Registry; and
 - (b) The Owners, Strata Plan BCS4016 in Supreme Court of British Columbia Action No. S1810083, Vancouver Registry;

Liberty to Apply


5. Hiroshi Morimoto is at liberty to apply for such further relief or assistance from the Court as may be required, including but not limited to relief under Part XIII of the BIA; and

Service

6. Service on the debtor Masahiko Nishiyama shall be deemed effective through compliance with BIA s. 276(b), containing the information set out in BIA Rule 138, and by mailing a copy of this Order to the attention of Masahiko Nishiyama at the address, of Ohaza-Zengi 1038-1, Shimoichi-cho Yoshino-gun, Nara-

THE COURT
EAT

NOT TO
CONSENT:


Counsel for Hiroshi Morimoto, Trustee
Colin D. Brousson


BY THE COURT

No. _____
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985,
C. B-6, AS AMENDED**

AND

**IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN**

ORDER

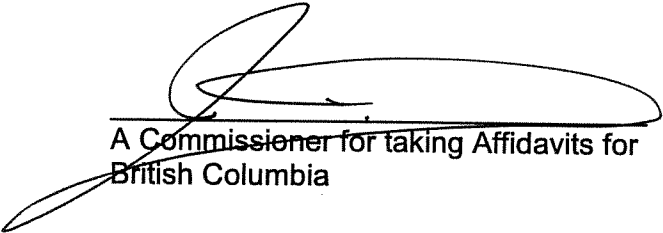
GOWLING WLG (Canada) LLP
Barristers & Solicitors
Suite 2300, 550 Burrard Street
Vancouver, BC V6C 2B5

Tel. No. 604.683.6498
Fax No. 604.683.3558

File No. V49403

JDB/msh

This is **Exhibit "B"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia



No. S1813807
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,
AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)	THURSDAY, THE 14 TH DAY
)	
MR. JUSTICE VOITH)	OF FEBRUARY, 2019

ON THE APPLICATION of Hiroshi Morimoto, Foreign Representative in these proceedings (the "Trustee") for an Order pursuant to Section 272(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") appointing Alvarez & Marsal Canada Inc. as Receiver (in such capacity, the "Receiver") without security, of all or any of the assets, undertakings and property in Canada of Masahiko Nishiyama (the "Debtor"), coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavits #1 and #2 of Hiroshi Morimoto sworn December 20, 2018 and February 6, 2019 respectively and the consent of Alvarez & Marsal Canada Inc. to act as the Receiver; AND ON HEARING Colin D. Brousson, Counsel for the Applicant and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

APPOINTMENT

1. Pursuant to Section 272(1) of the BIA Alvarez & Marsal Canada Inc. is appointed Receiver, without security, of all or any of the assets, undertakings and property legally or beneficially owned by the Debtor in Canada, including all proceeds (the "Property").
2. The term of this appointment shall continue until further order of this Court.

RECEIVER'S POWERS

3. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, to do any of the following where the Receiver and the Trustee consider it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property, including, but not limited to the contents of the safety deposit box of the Debtor located at the Royal Bank of Canada, Transit 10, Royal Centre, 1025 West Georgia Street, Vancouver, BC, V6E 3N9 (the "SDB") notwithstanding an order made November 30, 2018 in connection with the SDB in an action commenced by The Resolution and Collection Corporation ("RCC") against the Debtor in the Vancouver Registry of this Court, Action No. S162298 (the "RCC Action");
 - (b) to protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
 - (c) to appoint agents, experts, auditors, accountants, in time to in whatever capacity or on whatever basis, to assist in the exercise of the Receiver's powers and duties (including but not limited to the engagement of independent legal counsel to review all Records (as defined below) for solicitor client privilege), including, without limitation, those conferred by this Order;

- (d) to purchase or lease such any equipment, supplies, premises or other assets to receive, preserve and protect the Property, or any part or parts thereof;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting these amounts, including, without limitation, enforcement of any security held by the Debtor;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (g) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (h) to sell, convey, transfer, lease or assign the Property or any part or parts thereof and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (i) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
- (j) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate and as permitted by law;
- (k) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (l) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

- (m) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, but excluding the Trustee, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. Each of (i) the Debtor; (ii) all of the Debtor's current and former agents, accountants, legal counsel, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "Persons" and each a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, or any other papers, records and information of any kind related to the Property or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "Records") in that Person's possession or control. The Records shall include any such information in the possession or control of governmental authorities shall be provided to the Receiver in its possession or control.
6. Upon request, all Persons shall provide to the Receiver and permit the Receiver to make, retain and take away copies of the Records and shall provide the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver without the consent of the Person providing such disclosure.

7. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.
8. The Receiver shall take reasonable steps to protect any solicitor client privilege claimed or claimable by the Debtor with respect to any Records and, in particular, the contents of the SDB.
9. The Receiver is authorized to provide RCC with access to any Records and to the contents of the SDB that are requested by RCC, and any implied undertaking of confidentiality of the part of the Receiver is waived in respect of the Records and to the contents of the SDB, provided that the Receiver shall not provide any records or other documents that are or may be subject to solicitor client privilege without further order of the Court.

NO PROCEEDINGS AGAINST THE RECEIVER

10. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

RECEIVER TO HOLD FUNDS

11. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the SDB, the sale of all or any of the Property

and the collection of any accounts receivable, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post-Receivership Accounts") and the monies standing to the credit of such Post-Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

PERSONAL INFORMATION

12. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its participation in the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it and disclosed to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor. The Debtor shall return all other personal information to the Receiver. The Receiver shall destroy all personal information if it is not required for the Receiver's use.

ENVIRONMENTAL

13. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively "Possession") of any of the Property that might be a source of a pollutant or a source of a discharge, or a deposit of a substance, or subject to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination. The Receiver shall not be liable for environmental damage or contamination.

Legislation”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

14. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.
15. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
 - (a) before the Receiver’s appointment; or,
 - (b) after the Receiver’s appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver’s gross negligence or wilful misconduct.
16. Notwithstanding anything in federal or provincial law, but subject to paragraph 13 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

LIMITATION ON THE RECEIVER’S LIABILITY

17. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
 - (a) any gross negligence or wilful misconduct on its part; or
 - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. The Receiver will be paid by the Trustee in respect of these proceedings based upon its standard rates for fees and disbursements, whether incurred before or after the making of this Order. The Receiver will be at liberty to apply for a charge as security for payment of its fees and disbursements as against the Property if it sees fit to do so in the future.
19. The Receiver may pass its accounts from time to time, and for this purpose the accounts of the Receiver are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis, however the Receiver will not be obligated to pass their accounts if they have been approved by the Trustee.
20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of any monies in its hands, against its fees and disbursements if these accounts are not already paid directly by the Trustee.

SERVICE AND NOTICE OF MATERIALS

21. An order that the time for service of this Notice of Application and the materials referred to herein pertaining to this Order and the service thereof is deemed to be good and sufficient.
22. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as Schedule B (the "Demand for Notice"). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any obligation to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
23. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "Service List").

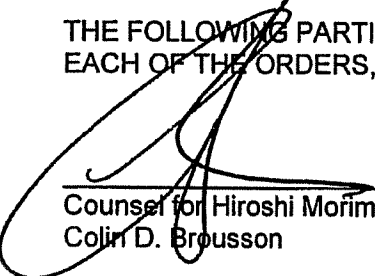
24. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.

GENERAL

25. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
26. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
27. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
28. The requirements for the Receiver to file accounts pursuant to Supreme Court Rule 10-2(4) is hereby waived.
29. Nothing in this Order affects the ability of The Owners, Strata Plan BCS4016 to continue its proceedings in this Court, Vancouver Registry Action No.S1810083.

30. Nothing in this Order affects the ability of RCC to continue its proceedings in the RCC Action.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

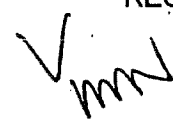
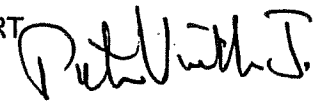


Counsel for Hiroshi Morimoto, Trustee
Colin D. Brousson

BY THE COURT



REGISTRAR



Schedule "A"
COUNSEL LIST

Name of Counsel	Representing:
Robert W. Richardson	Resolution and Collection Corporation Tokyo

Schedule "B"

Demand for Notice

TO: **Hiroshi Morimoto, Trustee and Foreign Representative**
c/o Gowling WLG (Canada) LLP
Attention: Colin D. Brousson
Email: colin.brousson@gowlingwlg.com

AND TO: **Alvarez & Marsal Canada Inc.**
c/o Alvarez & Marsal Canada Inc.
Attention: Anthony Tillman
Email: atillman@alvarezandmarsal.com

Re: In the matter of the Receivership of Masahiko Nishiyama in Supreme Court of British Columbia Action No. S1813807, Vancouver Registry

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

OR

2. By facsimile, at the following facsimile number (or numbers):

OR

3. By mail, at the following address:

Name of Creditor: _____

Name of Counsel (if any): _____

Creditor's Contact Address: _____

Creditor's Contact Phone Number: _____

No. S1813807
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
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AND

**IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN**

RECEIVERSHIP ORDER

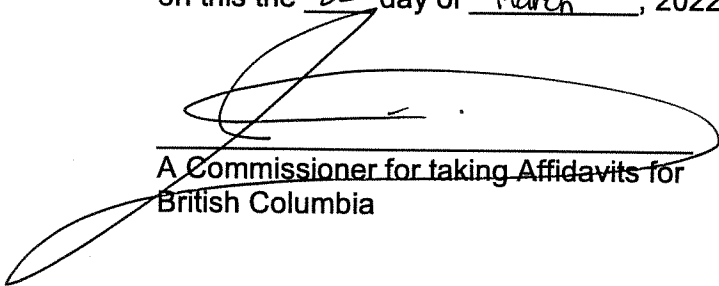
GOWLING WLG (Canada) LLP
Barristers & Solicitors
Suite 2300, 550 Burrard Street
Vancouver, BC V6C 2B5

Tel. No. 604.683.6498
Fax No. 604.683.3558

File No. V49403

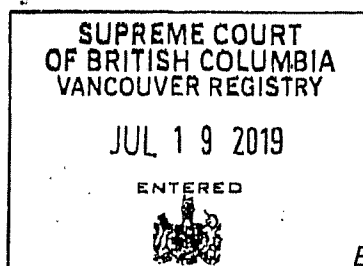
JDB/msh

This is **Exhibit "C"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia

No. S-1813807
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA
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BANKRUPT UNDER THE LAWS OF JAPAN

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)	FRIDAY, THE 19 TH DAY
)	
MR. JUSTICE VOITH)	OF JULY, 2019

ON THE APPLICATION of Hiroshi Morimoto (the "Trustee"), coming on for hearing before me this day, at 800 Smith Street, Vancouver, BC; AND ON HEARING Colin D. Brousson, counsel for the Trustee; and those other counsel listed on Schedule "A" hereto; and no one else appearing although duly served; AND UPON READING the Pleadings filed to date;

THIS COURT DECLARES THAT:

1. All assets and property of Sun Moon Management Ltd. represent Property, as defined in the Order of this Court, made on December 21, 2018, in these proceedings (the "Receivership Order"), of Masahiko Nishiyama;
2. A Mercedes S550 vehicle, VIN. WDDNG8GB0AA343089, registered to Hatsumi Nakajima (the "Mercedes") is the Property of Masahiko Nishiyama;
3. Under the terms of the Receivership Order, Alvarez & Marsal Canada Inc., in its capacity as the Court appointed receiver over all of the assets, undertakings and property owned or beneficially owned by Masahiko Nishiyama in Canada (the "Receiver") is empowered to:

- (a) take possession of the Condo and the Mercedes and will become the custodian of the keys to the Condo and the Mercedes; and
 - (b) market and sell the Condo and the Mercedes under the terms of the Receivership Order;
- 4. The Receiver is a proper applicant for the purposes of s. 284 of the *Land Title Act*, R.S.B.C. 1996, c. 250.

AND THIS COURT ORDERS THAT:

- 5. The Land Title Office be directed to register this Order pursuant to s. 284 of the *Land Title Act*, R.S.B.C. 1996, c. 250, against title to the lands legally described as:

Parcel Identifier: 028-447-263
Strata Lot 254 District Lot 185 Group 1 New Westminster District
Strata Plan BCS4016
Together with an interest in the Common Property in Proportion to
the Unit Entitlement of the Strata Lot as Shown on Form V.

located at civic address #4102 - 1028 Barclay Street, Vancouver,
British Columbia (the "Condo");
- 6. Upon payment to the Strata of its pay-out amount, the Strata's lien registered against title to the Condo, bearing #CA6608683 will be discharged;
- 7. The Receiver, on notice to the Application Respondents, and by posting on the Receiver's website <https://www.alvarezandmarsal.com/nishiyama> within three (3) days of this Order being made, shall conduct a claim process for personal property located in the Condo or the Mercedes (the "**Personal Belongings**"), whereby:
 - (a) any person may file a proof of claim (property) with the Receiver concerning ownership of their Personal Belongings within 30 days of the making of this Order.
 - (b) subject to approval of the Receiver of such claims, these parties will have 30 days to recover these Personal Belongings;
 - (c) in the event of a dispute over ownership as between the claimants or the Receiver of any claimed Personal Belongings then that matter should be referred to Court; and
 - (d) in the event there are no claims made, or no collection of the Personal Belongings within the 30 days following a claim being accepted, then the

Receiver can sell, dispose, or donate, all remaining personal property located in the Condo without recourse.

Conflict Between Orders

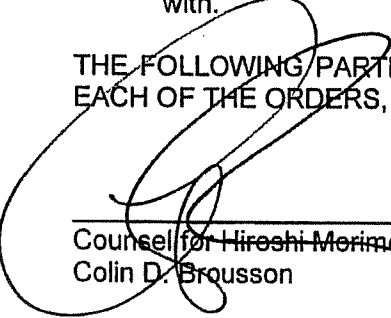
8. To the extent there is conflict between the terms of this Order and any orders made previously in either the proceeding initiated by The Owners, Strata Plan BCS4016 (the "**Strata**") in Supreme Court of British Columbia, bearing Action No. S1810083, Vancouver Registry (the "**Strata Foreclosure Action**") or proceedings initiated by the Resolution and Collection Corporation ("**RCC**") in Supreme Court of British Columbia bearing Action No. S162298, Vancouver Registry; (the "**RCC Action**"), the terms of this Order shall govern, however, for clarity:
- (a) where there is no such conflict, all orders made in the Strata Foreclosure Action or the RCC Action will remain in full force and effect;
 - (b) the order made in the RCC Action and dated September 18, 2018, and registered on title to the Condo on September 19, 2018, bearing #CA7073370 (the "**Injunction Order**"), will continue to be registered on title to the Condo until further order of this Court or RCC's consent to discharge the Injunction Order; and
 - (c) the Certificate of Pending Litigation, bearing #CA7071734 (the "**CPL**") will continue to be registered on title to the Condo until further order of this Court or such time as the Strata Foreclosure Action is discontinued by agreement of the Strata, RCC and the Receiver.


Service

9. Service of this Order on Masahiko Nishiyama shall be deemed effective by mailing a copy of this Order to the attention of Masahiko Nishiyama at the address, of 13-36 Showa-cho, Otsu city, Shiga; and 1038-1 Oaza Zengi, Shimoichi-cho, Yoshino-gun, Nara.

10. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:


Counsel for Hiroshi Morimoto, Trustee
Colin D. Brousson

BY THE COURT

REGISTRAR



SCHEDULE "A"

NAME OF COUNSEL	REPRESENTING
Gordon P. H. H. H.	RCC
Robert Richardson	RCC

No. S1813807
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985,
C. B-6, AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN

ORDER

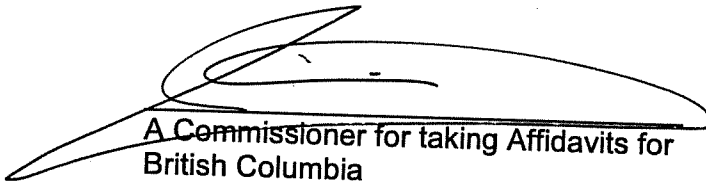
GOWLING WLG (Canada) LLP
Barristers & Solicitors
Suite 2300, 550 Burrard Street
Vancouver, BC V6C 2B5

Tel. No. 604.683.6498
Fax No. 604.683.3558

File No. V49403

JDB/msh

This is **Exhibit "D"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia



S-181380 7
 No. S-1810067
 Vancouver Registry

*IN THE SUPREME COURT OF BRITISH COLUMBIA
 IN BANKRUPTCY AND INSOLVENCY*

IN THE MATTER OF THE PART XIII OF THE
 BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-6
 AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA
 BANKRUPT UNDER THE LAWS OF JAPAN

NOTICE OF APPLICATION

Name of Applicants: Masahiko Nishiyama ("**Nishiyama**") and Hatsumi Kinoshita ("**Kinoshita**")

To: Colin Brousson, counsel for the Petitioner, Hiroshi Morimoto ("**Morimoto**") and the receiver, Alvarez and Marshal ("**A&M**", collectively, the "**Trustee**")

Robert Richardson, counsel for The Resolution and Collection Corporation ("**RCC**")

TAKE NOTICE that an application will be made by the Applicants at the courthouse at 800 Smithe Street, Vancouver, British Columbia on October 24, 2019 at ~~10:00~~ 9:45 AM for the orders set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. Stay of execution in this proceeding and *Resolution and Collection Corporation v Nishiyama*, Vancouver Supreme Court No. S-162298 (the "**RCC Proceeding**") until such time as an application the Applicants will be filing before Justice Voith, who is seized of this matter, can be adjudicated (the "**Intended Application**"). In particular:
 - a. the order made July 19, 2019 shall be stayed, the Trustee will not market for sale or sell the real estate with a civic description of 4102-1028 Barclay Street, Vancouver, BC (the "**Barclay Condo**") and all sale listings shall be cancelled;

4. A&M was appointed receiver in this matter by way of order made February 14, 2019.
5. In 2001 RCC obtained a default judgment against Nishiyama in which Nishiyama was not given effective notice. Apparently, service was accomplished through alternative means. Nishiyama was not in Japan at the time.
6. In 2012 RCC obtained default judgment on the default judgment against Nishiyama in a proceeding in which Nishiyama was not given effective notice. Apparently, service was accomplished by some sort of substitutional method. Based on materials located in the court file, the judgment in Japan was served by "public notice". Nishiyama was in Canada at the time.
7. In 2016 RCC filed a notice of civil claim in Canada to enforce the 2012 judgment in Japan. Nishiyama was not present in Canada at the time, a fact RCC knew as he was incarcerated due to other proceedings in another matter involving RCC. Nishiyama was not given effective notice of the proceedings in Canada.
8. In 2018 Nishiyama became aware of some proceedings ongoing in Canada. He could not travel outside of Japan without Morimoto's consent. Morimoto refuses to permit Nishiyama to travel outside of Japan.
9. Nishiyama attempted to seek a stay on his own from the supreme court, but a letter asking for a stay was rejected by the registry. The response to the second letter went to an old address for Nishiyama.
10. The order made on July 19, 2019, which was not served on Nishiyama or made on notice to Kinoshita, permits A&M to sell 4102-1028 Barclay Street, Vancouver, BC (the "**Barclay Condo**"). Kinoshita was assigned Nishiyama's beneficial interest in the Barclay Condo in January 2015.
11. In September 2019, Nishiyama and Kinoshita retained counsel. RCC did not agree to provide copies of affidavits and other materials filed in the RCC Proceeding. After some trips to the Supreme Court to obtain copies of the many documents filed in the RCC Proceeding it became clear that proceedings had been ongoing in Canada since 2016, including orders made in the Applicants' absence including a default judgment for some \$470 million in favour of RCC.
12. Notice was given to A&M, Morimoto and RCC that an application would be filed to set aside orders made in the Applicants' absence. There was discussion in September 2019 respecting scheduling of a matter that appears to be a lengthy chambers matter.
13. On September 30, 2019, a request was made to appear before Justice Voith.

21. There is no urgency on the part of RCC, which, ultimately, is an entity associated with the government of Japan. RCC is the sole creditor.
22. There would be clear irreparable harm if execution continues as its beneficial owner stands to lose a very valuable asset.

Morimoto Travel Ban

23. Morimoto has taken steps to prevent Nishiyama from traveling to Canada, preventing Nishiyama from defending the claims made in this proceeding. This is apparently a power possessed by trustees in bankruptcy in Japan.
24. Nishiyama wishes to travel to Canada to defend the claims made against him.

Japanese Court Files

25. Nishiyama wishes to file an appeal of the underlying judgments in Japan, including the involuntary bankruptcy, but cannot do so because he was informed that the bankruptcy file in Japan was sealed or had sealed portions and that the court file from 2011 and 2012 forming the basis for the 2012 judgment was destroyed by the Japanese courthouse due to the passage of time.
26. It would be unfair for Nishiyama to be unable to file an appeal only because he cannot obtain copies of various documents from the Japanese courthouse.

Safety Deposit Box

27. An order was made opening Nishiyama's safety deposit box in these matters. Significant documents have been put into evidence in these proceedings. Nishiyama wishes return of his papers.

PART 3: LEGAL BASIS

1. The Supreme Court has broad powers to order that execution be stayed: Rule 13-2(31) of the *Rules of Court*; LLS America LLC (Trustee of) v Dill, 2018 BCSC 2316 at 68 – 69; and s.48(2) of the *Court Order Enforcement Act*.
2. There is a live issue as to who beneficially owns the Barclay Condo. Kinoshita is the beneficial owner of the Barclay Condo. It would be an injustice to not permit her to have her day in court before her property is sold pursuant to orders that were not made on notice to her respecting Nishiyama's alleged bankruptcy.
3. The balance of convenience clearly favours Kinoshita. There is no urgency on the part of RCC, which is ultimately an arm of the government of Japan, or the Trustee.

PART 4: MATERIAL TO BE RELIED ON


1. Affidavit #1 of Kwee Lee.
2. Such additional material as the Applicants will advise.

Time Estimate: **45 Minutes**
 Jurisdiction: **Judge**

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- a. file an application response in Form 33,
- b. file the original of every affidavit, and of every other document, that
 - i. you intend to refer to at the hearing of this application, and
 - ii. has not already been filed in the proceeding, and
- c. serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - i. a copy of the filed application response;
 - ii. a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - iii. if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: October 9, 2019


 Todd Brayer
 Counsel for the Applicants

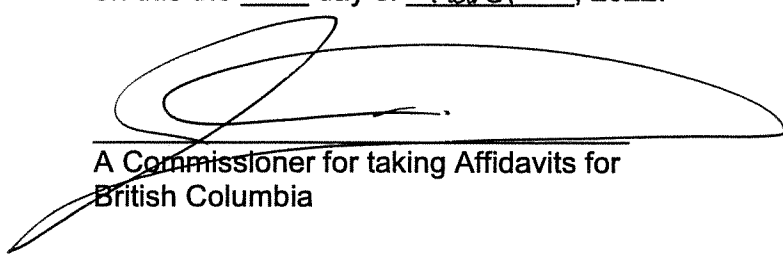
To be completed by the court only:

Order made
☐ in the terms requested in paragraphs _____ of Part 1 of this notice of application
☐ with the following variations and additional terms:

Date: _____

Signature of ☐ Judge ☐ Master

This is **Exhibit "E"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia



IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,
AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN

APPLICATION RESPONSE

Application response of: Hiroshi Morimoto, Foreign Representative in these proceedings (the "Trustee") and Alvarez and Marsal Canada Inc., in its capacity as Receiver of all or any of the Assets of Masahiko Nishiyama, and not in its personal capacity (the "Receiver", and collectively with the Trustee, the "Application Respondents")

THIS IS A RESPONSE TO the Notice of Application of Masahiko Nishiyama ("Nishiyama") and Hatsumi Kinoshita ("Kinoshita", and, collectively with Nishiyama, the "Applicants"), filed October 9, 2019.

Part 1: ORDERS CONSENTED TO

The application respondents consent to the granting of the orders set out in NONE of the paragraphs of Part 1 of the notice of application.

Part 2: ORDERS OPPOSED

The application respondents oppose the granting of the orders set out in ALL of the paragraphs of Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent(s) take(s) no position on the granting of the orders set out in NONE of the paragraphs of Part 1 of the notice of application.

Part 4: FACTUAL BASIS

Background of the Bankruptcy of Nishiyama

1. Over a number of years, The Resolution and Collection Corporation ("**RCC**") made loans to Nishiyama and a number of related parties and companies. Nishiyama and the related parties and companies failed to repay those loans to RCC.
2. RCC commenced legal action against Nishiyama and was granted judgment by the Kyoto District Court on February 9, 2012, in the amount of Yen 40,740,539,251 plus interest and costs (the "**2012 Judgment**").
3. RCC then commenced legal action again against Nishiyama and a number of related parties for concealing and hiding assets in corporations and with family members and other parties. RCC was granted judgment by the Kyoto District Court on October 29, 2013, in the amount of Yen 3,960,000,000 plus interest (the "**2013 Judgment**").
4. Following the 2013 Judgment, criminal charges were brought against Nishiyama for dissipating and concealing assets using foreign sham or alter-ego corporations in order to evade the anticipated enforcement of the Japanese judgments.
5. On February 10, 2016, RCC filed a petition for bankruptcy against Nishiyama based on his inability or failure to repay debts and, by order of the Kyoto District Court in Japan on March 15, 2016, the Trustee was appointed the trustee over the bankruptcy estate of Nishiyama.
6. There was another creditor, except RCC, in the bankruptcy proceeding and the other creditor was paid out. The only remaining creditor in the bankruptcy proceeding is RCC, largely due to the size of Nishiyama's liability to RCC.
7. On June 17, 2016, the Courts in Japan found Nishiyama guilty of certain acts which fall under Article 60 and Article 96-2 (i) of the *Penal Code* in Japan, related to purposely concealed assets, conspiring with others to move assets out of Japan and into other jurisdictions and in so doing he obstructed compulsory execution against these assets in Japan.
8. The Japanese bankruptcy proceedings have also been recognized in Hong Kong and Singapore.
9. As a result of being found guilty in Japan, the Japanese Court sentenced Nishiyama to three (3) years in prison in Japan and under Article 21 of the *Penal Code* applied 140 days spent in pre-sentencing detention into the sentence imposed.
10. On July 26, 2018, Nishiyama was granted parole from Japanese prison.
11. In addition to his criminal conviction, Nishiyama has refused to cooperate with the Trustee in his bankruptcy, in contravention of the *Bankruptcy Act* in Japan. He has failed to provide such basic information as his address, or provide a list of assets to the Trustee.

Recognition Order

12. By order of Madam Justice Maisonneville of the Supreme Court of British Columbia, made on December 21, 2018 (the "**Recognition Order**"), the Trustee was recognized by this Honourable Court as the foreign representative in these proceedings.
13. The Recognition Order was made without notice, in accordance with the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") and the *Bankruptcy and Insolvency General Rules*.
14. The Recognition Order once made, was served on Nishiyama according to the terms set out in the Recognition Order.

The Receivership Order

15. By Order of Mr. Justice Voith of the Supreme Court of British Columbia, made on February 14, 2019 (the "**Receivership Order**"), Alvarez & Marsal Canada Inc. was appointed the receiver over all of the assets, undertakings and property of Nishiyama under s.272(1) of the BIA.
16. The Receivership Order was made on notice to Nishiyama. Mr. Nishiyama made it known that he was aware of the:
 - (a) Canadian proceedings by writing a letter to the British Columbia Supreme Court Registry on December 6, 2018; and
 - (b) Receivership application by writing a letter to the Trustee on February 12, 2019 indicating such awareness.
17. Both of these Nishiyama letters were brought to the attention of the Court before the Receivership Order was made.
18. The Receivership Order once made, was served on Nishiyama according to the terms set out in the Receivership Order.
19. Pursuant to the *Bankruptcy and Insolvency General Rule* 31, an appeal of a bankruptcy order must be brought within 10 days of the order being made. The appeal period for the Receivership Order expired on February 25, 2019.
20. On March 13, 2019, for the first time after several previous absences, Nishiyama attended a creditor's meeting held in his bankruptcy proceedings in Japan. At this meeting Nishiyama made various claims about rights he hoped to assert in the future and indicated to the Trustee that he would retain legal counsel in Japan to assist him to do so.
21. On March 26, 2019, Nishiyama submitted to the bankruptcy court in Japan a Power of Attorney which appointed Mr. Murao as Nishiyama's attorney in his bankruptcy proceedings. Copies of the British Columbia pleadings were sent to Mr. Murao following his appointment until Mr. Murao resigned on June 13, 2019.

22. To the Trustee's knowledge, Nishiyama has not taken any steps to appeal or set aside the Japanese judgments and, under Japanese law, an appeal is no longer available for the underlying judgments.

Property Declaration Order

23. On July 19, 2019, Mr. Justice Voith of the Supreme Court of British Columbia pronounced an order that *inter alia*, declared all of the assets of Sun Moon Management Ltd. (including a condominium on Barclay Street in Vancouver (the "**Condo**")) and a vehicle registered to Hatsumi Nakajima, to be the property of Nishiyama and subject to the Receivership Order (the "**Property Declaration Order**").
24. The Property Declaration Order was made following ample notice to Nishiyama at his residential address in Shiga and through his legal counsel, Mr. Murao, in Japan. Notice to both was made on June 7, 2019.
25. The Order, once made, was served on Nishiyama according to the terms set out in the Property Declaration Order. It was also served on Atsuma Nishiyama, Masako Nishiyama and Hatsumi Nakajima and it was posted on the Receiver's website under the terms set out in the Property Declaration Order.
26. The appeal period for the Property Declaration Order expired on July 29, 2019.

The Personal Property Claims Process

27. The Property Declaration Order included a claims process whereby any third party could claim any personal property belonging to them that may be located in the Condo or the vehicle (the "**Personal Property Claims Process**").
28. On August 12, 2019, Kinoshita filed a proof of claim with the Receiver for a number of items that were located in the Condo (the "**Kinoshita Claim**"). No other claims were filed with the Receiver in the Personal Property Claims Process. The deadline to submit a proof of claim was August 29, 2019.
29. Receipt of the Kinoshita Claim was the first time that the Application Respondents were made aware of Kinoshita potentially having an interest in the Canadian proceedings or even in Nishiyama's affairs generally.
30. The Receiver reviewed the Kinoshita Claim and on September 9, 2019, advised Kinoshita that the Kinoshita Claim was revised and accepted in part.

Mr. Brayer's Involvement

31. On September 5, 2019, counsel for the Trustee was contacted by Mr. Brayer, stating that he was counsel for Nishiyama and Sun Moon Management Ltd. ("**Sun Moon**") indicating he intended to bring some applications in the Canadian proceedings, although it was unclear exactly what relief would be sought at that time. Eventually, Mr. Brayer indicated he also acted for Kinoshita.
32. Both the Receiver and the Receiver's Counsel have corresponded with Mr. Brayer beginning on September 6, 2019 and advised him *inter alia* about:

- (a) the urgent need for removal of items by Kinoshita from the Condo on or before October 9, 2019;
 - (b) if the accepted items in the Kinoshita Claim were not collected by that date, the Receiver was at liberty to sell, dispose or donate the Personal Belongings without recourse under the Property Declaration Order;
 - (c) the Condo being listed for sale by the Receiver in accordance with the Receivership Order; and
 - (d) despite Kinoshita's failure to pick up the items from the Condo or bring any applications to Court prior to the deadline, the Receiver making arrangements to incur the costs of storage of the personal property.
33. On October 18, 2019, Mr. Brayer made arrangements with the Receiver to pick up from storage the personal property accepted in the Kinoshita Claim.

The Condo Listing

34. The Receiver has staged and is currently listing the Condo for sale with Oakwyn Realty Downtown Inc.
35. There has been interest in the Condo since the listing, but given the state of the real estate market for luxury condominiums in Vancouver, it is possible that a sale will not be completed before February 11, and 12, 2020, the dates set for the longer hearing in these proceedings.
36. Any sale of the Condo will be subject to Court approval. It is the Receiver's intention that, in the event that there is an offer to purchase the Condo to be put before the Court prior to February 12, 2020, the Receiver will serve Mr. Brayer as well as Nishiyama and Kinoshita at the addresses that each of them provides to the Receiver.
37. It is the Receiver's view that continual marketing is important for the sale of the Condo. Disjointed marketing can raise issues with potential purchasers as to the lack of urgency and/or legitimacy to the asset sales process. In the Receiver's experience, this can cause buyers to shy away from assessing the opportunity and making offers. Additionally, as noted above, the real estate market in Vancouver is uncertain with a fairly large supply of high-end condos and any further delay in marketing could risk further price erosion and reduce the recovery for the creditors.

Part 5: LEGAL BASIS

No Jurisdiction to Overturn Japanese Decisions

38. This Application seeks relief that this Honourable Court simply cannot grant. The proper forum to address the majority of the Applicants' issues are the Courts of Japan. The Application is a collateral attack on the Japanese proceeding and should not be entertained.
39. The Canadian courts should not look past the foreign judgment recognized in these proceedings, save in the narrowest of circumstances, none of which are applicable or

even argued. This Honourable Court should not delay enforcement because Nishiyama "wishes to appeal" Japanese judgments recognized in Canada.

40. The principal of comity, specifically codified in ss. 267 and 275 of the *BIA* in relation to cross-border insolvency proceedings such as these, requires that this Honourable Court recognize and enforce the legitimate exercise of judicial authority exercised by the Japanese courts in this matter "to the maximum extent possible" and decline to make any orders interfering with, or defeating the purpose of, their rulings.

Relief Sought is Not Possible for Trustee to Comply with

41. The Trustee cannot overturn court judgments, produce or unseal court documents, grant permission to travel abroad to Nishiyama, nor can it impose travel bans upon Nishiyama preventing him from coming to Canada. This relief can only be granted by the Japanese Courts.
42. Any allegation to the contrary is without foundation and the relief sought by Nishiyama in this Application would be impossible for the Trustee to comply with even if so ordered.

Nishiyama Travel Permission Already Litigated in Japan

43. Nishiyama has made application to the Bankruptcy Court in Japan for permission to travel abroad and was rejected twice by the Japanese Bankruptcy Court on December 28, 2018, and June 25, 2019.
44. Nishiyama appealed these decisions to the Osaka High Court and the appeals were dismissed on January 4, 2019, and July 19, 2019.
45. Nishiyama has twice appealed the decisions of the Osaka High Court to the Japanese Supreme Court. The first appeal was dismissed on May 24, 2019 and the second appeal is currently pending.
46. Nishiyama is aware that the Japanese Courts are the proper forum, was unsuccessful twice, and is seeking to re-litigate the Japanese proceedings in Canada.

Nishiyama's Refusal to Disclose Information

47. Nishiyama has failed to provide even the basic required information to the Trustee as required by the Japanese bankruptcy regime. This is reflected in the decision issued by the Kyoto District Court on December 28, 2018, in dismissing a petition for permission to travel filed by Nishiyama, where the court notes:

2. The bankrupt shall not leave his/her residence without obtaining permission of the bankruptcy court (Paragraph 1, Article 37 of the Bankruptcy Act). This provision aims to prevent the bankrupt from fleeing or concealing his/her property, and allow the bankrupt to fulfill the obligation to provide explanations in an appropriate manner; however, by taking into consideration the rights to have freedom of living location guaranteed by the Constitution, it is construed that the bankruptcy court may reject the petition only when there is a special circumstance in which it is deemed likely that the bankruptcy proceeding will be seriously undermined by the above permit in light of the securement of the

bankrupt's cooperation towards the bankruptcy proceeding, and prevention of concealment of property and fleeing.

3. Upon request from a bankruptcy trustee or request based on a resolution at a creditors meeting, the bankrupt shall give a necessary explanation concerning bankruptcy (Paragraph 1, Article 40 of the Bankruptcy Act). When the bankrupt is in breach of this obligation to provide explanations by refusing to give an explanation or by giving a false explanation, he/she shall be punished by imprisonment with work for not more than three years or a fine of not more than three million yen, or both (Paragraph 1, Article 268 of the Bankruptcy Act.) However, according to the relevant judicial record, the Bankrupt went against the request of the Bankruptcy Trustee, and failed to notify the Bankruptcy Trustee of the fact that he was released on parole from the Shiga Prison and moved to the current address. Furthermore, it is found that the Bankrupt went against the request of the Bankruptcy Trustee, and failed to participate and provide explanation at the creditors meetings held on September 5, 2018 and December 19, 2018. Even after such dates, the Bankrupt still has not provided explanations which comply with the above request nor disclosed his property.

Furthermore, according to the relevant judicial record, the Bankrupt was sentenced to three years of imprisonment with work for concealing the property by transferring the money from his domestic corporation to his company outside of Japan which he actually owns and controls, for the purpose of obstructing compulsory execution, and this judgment has become final. According to the research conducted by the Bankruptcy Trustee, it has been found that the Bankrupt's property exists in Hong Kong, Singapore, etc., and such property was converted into cash by the Bankruptcy Trustee, and currently, the Bankrupt's property has been investigated and collected in Canada.

As seen above, in light of the fact that the Bankrupt has been violating the prescribed obligation to provide explanations under Article 40 of the Bankruptcy Act, if the Bankruptcy Court were to approve the Petition, there is a tremendous risk that the Bankrupt will violate the obligation to provide explanations, for the permitted term and even thereafter, by not being able to reach by the Bankruptcy Trustee, and that the progress of bankruptcy proceedings will be impeded. Moreover, in light of the fact that the Bankrupt has actually concealed his property for the purpose of obstructing compulsory execution, if the court were to approve the Bankrupt to travel to Canada where the Bankruptcy Trustee has been investigating and collecting the property, it is highly likely that the Bankrupt will conceal his property located in the country.

Therefore, in this case, we have a special circumstance as mentioned in 2 above.

48. Until Nishiyama properly complies with and provides information to the Trustee as required by the Japanese bankruptcy regime, he should not be afforded any relief in the Canadian courts.

No Urgency

49. There is no urgency for this application that should require the Court to be moved to grant the stay of execution sought. Specifically:
- (a) the personal property that has been claimed by Kinoshita, and accepted by the Receiver, has now been picked up from storage by Kinoshita;
 - (b) the balance of the personal property in the Condo (consisting mainly of furniture purchased with the Condo) remains in the Condo, is not subject to a claim by anyone other than Kinoshita, and will not be sold before the Condo is sold;
 - (c) the sale of the Condo is subject to Court approval and, while marketing efforts are ongoing, the Condo may not sell for a number of months, given the price and limited market for luxury real property; and
 - (d) any Condo sale will be subject to Court approval and will be made on notice to the Applicants.

Prejudice to Creditors

50. It is the Receiver's view that continual marketing is important for the sale of the Condo. Disjointed marketing can raise issues with potential purchasers as to the ultimate availability of the asset. In the Receiver's experience, this can cause buyers to shy away from assessing the opportunity and making offers because they fear it will all be fruitless. Additionally, as noted above, the real estate market in Vancouver is currently uncertain and any further delay in marketing could risk further price erosion and reduce the recovery for the creditors.
51. The Trustee is also incurring additional and exceptional costs for the Receiver, legal fees, and the costs of carrying the Condo. Delay will increase these additional costs which will directly affect the recovery for the creditor, RCC.
52. The Trustee and RCC should not bear the burden of Nishiyama's failure to perform his obligations to the Trustee or participate in these proceedings until now. The Trustee and the Receiver should not be delayed in the performance of their duties.

Relief in the Intended Application is Bound to Fail

53. Included in the Affidavit of Kwee Lee at Exhibit "K" is a copy of a Notice of Application that the Applicants "wish to file" if the stay is granted, yet, the ultimate relief that the Applicants are seeking in that Notice of Application (the "**Intended Application**") is doomed to fail for the following reasons:
- (a) the legal basis for the relief in the Intended Application is stated to be Rule 21-3, which is a rule governing Mandamus, Prohibition and *Habeas Corpus* - none of which are related to the relief in the Intended Application;

- (b) the Applicants want to rely on *Miracle Feeds*, but that case has no application here or to Bankruptcy proceedings generally;
- (c) the only legal position advanced that is relevant to these proceedings, is an attack on the underlying Japanese judgment, and this court is not the proper forum for such a claim;
- (d) the document Nishiyama relies upon for the alleged gift from Nishiyama personally to Kinoshita is not credible, and even if it was authentic it is dated in 2015, (i) after the RCC judgments were granted, (ii) after having committed criminal acts of dissipating and concealing assets to evade the enforcement of judgments (for which a Japanese Criminal Court ultimately convicted him), and (iii) after the time when Nishiyama was insolvent, and as such, it would be invalid at law;
- (e) the Applicants cannot now, after the expiry of the appeal period, revisit the terms of orders previously made;
- (f) contrary to the assertions about service and notice of these proceedings made in Nishiyama's materials, the:
 - (i) initiating Petition was brought *ex parte*, and service and notice was perfected, all as prescribed in the BIA General Rules;
 - (ii) the Receivership Order and the Property Declaration Order applications, have all been accompanied by evidence of service of Nishiyama;
 - (iii) this Honourable Court has made Orders setting service requirements and those have all been followed; and
 - (iv) Nishiyama has:
 - (A) admitted that he received the pleadings in these proceedings (in fact once the Trustee actually handed a set of pleadings to him, and a second time he requested the pleadings be sent to him, and the Trustee obliged),
 - (B) wrote three letters to the British Columbia Supreme Court Registry confirming he was aware of the proceedings, and
 - (C) within just weeks of being served with the Property Declaration Order, sworn a statement before a Notary in the Personal Property Claims Process concerning the ownership of the personal property, even enumerating the items in the Condo in English.

Procedural Problems

54. The Notice of Application seeks a stay in a related proceeding bearing Vancouver Supreme Court No. S-162298, between RCC and Nishiyama, yet does not bring an application in those proceedings. Seeking relief against RCC in the Bankruptcy proceedings is inappropriate and should not be granted.
55. These are bankruptcy proceedings under the BIA and governed by the BIA General Rules. The jurisdiction of this Court sitting in bankruptcy is a statutory grant of authority, supplemented by civil rules of the province and inherent jurisdiction when the BIA and BIA General Rules are silent. The Applicants have failed to advance any legal basis grounded in the BIA and the BIA General Rules for the relief that they are seeking.
56. Rule 13-2 does not have application in bankruptcy proceedings, and the limited legal basis advanced by the Applicants related to these proceedings are challenges to the underlying Japanese judgments, which this Honourable Court does not have the jurisdiction to review.
57. The time estimate of 45 minutes provided in the Notice of Application is woefully insufficient to address all of these issues.

Security For Costs

58. If this Honourable Court is so moved to grant any of the relief that the Applicants are seeking, and delay these proceedings, the Trustee respectfully submits that security for costs should be posted before any order becomes effective.

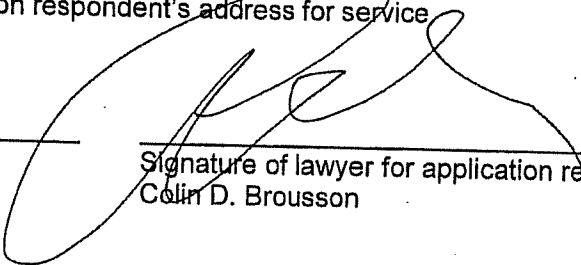
Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Hiroshi Morimoto, sworn on December 20, 2018.
2. Affidavit #2 of Hiroshi Morimoto, sworn on February 6, 2019.
3. Affidavit #1 of Michele Hay, sworn February 14, 2019.
4. Affidavit #2 of Michele Hay, sworn July 17, 2019.
5. Affidavit #1 of Anthony Tillman, sworn May 23, 2019.
6. Affidavit #2 of Anthony Tillman, sworn November 1, 2019.
7. The pleadings filed, and the Orders made in these proceedings.
8. Such further and other material as counsel may advise and this Honourable Court may consider.

The application respondents estimate that the application will take 2 hours.

- ☒ The application respondents have filed in this proceeding a document that contains the application respondent's address for service.

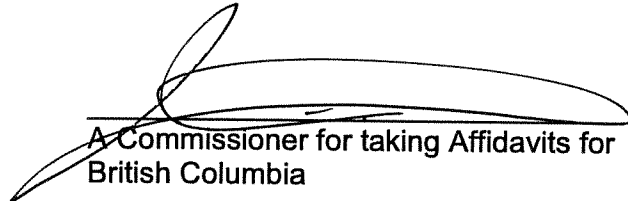
Date: November 1, 2019



Signature of lawyer for application respondents
Colin D. Brousson

THIS APPLICATION RESPONSE was prepared by Colin D. Brousson, of the firm of Gowling WLG (Canada) LLP, Barristers & Solicitors, whose place of business and address for delivery is 2300 - 550 Burrard Street, Vancouver, BC V6C 2B5, Tel: 604-683-6498; Fax: 604-683-3558.

This is **Exhibit "F"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia



No. S-1813807
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-6
AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA
BANKRUPT UNDER THE LAWS OF JAPAN

NOTICE OF APPLICATION



Name of Applicants: Masahiko Nishiyama ("**Nishiyama**") and Hatsumi Kinoshita ("**Kinoshita**", collectively, the "**Applicants**")

To: Colin Brousson, counsel for the Petitioner, Hiroshi Morimoto ("**Morimoto**") and the receiver, Alvarez and Marshal ("**A&M**").

Robert Richardson, counsel for The Resolution and Collection Corporation.

TAKE NOTICE that an application will be made by the Applicants at the courthouse at 800 Smithe Street, Vancouver, British Columbia on **February 11, 2020 BEFORE JUSTICE VOITH** for the orders set out in Part 1 below.

PART 1: ORDERS SOUGHT

Interim Relief

1. An order staying any and all execution or other process of collecting, liquidating or otherwise taking possession of assets owned, or allegedly owned, by Masahiko Nishiyama ("**Nishiyama**") until adjudication of this application, either in *Re Nishiyama*, Vancouver Supreme Court No. S-1810067 (the "**Bankruptcy Proceeding**"), *The Resolution and Collection Corporation v Nishiyama*, Vancouver Supreme Court No. S-162298 (the "**RCC Proceeding**") or any other proceeding whether filed or unfiled.
2. An order that, on an interim basis, the Applicants are not required to collect any personal property from 4102-1028 Barclay Street, Vancouver, British Columbia

(the "Barclay Condo") until two weeks after final adjudication of this application.

3. An order that Hiroshi Morimoto ("Morimoto") shall forthwith take all steps required to lift the travel ban he has imposed on Nishiyama that is presently preventing him from traveling to Canada;
4. An order that Morimoto or the Resolution and Collection Corporation ("RCC") shall forthwith take all steps required to remove any blocks, seals, barriers or other measures taken with respect to any of the court files forming the basis for the judgments in 2012 and 2001 granted in favour of RCC in Nishiyama's absence, and provide all pleadings, affidavits, documents, orders of any kind and anything else that would have formed the court file in those proceedings so that for the purpose of permitting Nishiyama to commence process to set aside these judgments.
5. The contents of the safety deposit box owned by Nishiyama shall be returned to Nishiyama.

Relief Respecting Orders Made in Absence of Applicants

6. All orders made in the Bankruptcy Proceeding, including those made on December 21, 2018, February 14, 2019 and July 19, 2019 shall be set aside. Nishiyama shall have 30 days to file a Petition Response and accompanying affidavit and the application to register the bankruptcy shall be set for no less than one day on notice to the Applicants in accordance with the *Rules of Court*.
7. Possession of the Barclay Condo shall be given to Kinoshita and any charges on title registered by any of the Respondents shall be removed.
8. The default judgment granted in the RCC Proceeding on September 29, 2016 shall be set aside and all orders made in the RCC Proceeding, including those made on March 11, 2016; April 1, 2016; August 30, 2016; September 29, 2016; March 13, 2017; October 27, 2017; September 18, 2018; November 30, 2018; March 5, 2019; and April 9, 2019 shall be set aside.
9. Nishiyama shall have 49 days to file a Response to Civil Claim to the claim filed by RCC and a Petition Response to the Petition seeking to register the bankruptcy in Canada.
10. Should RCC seek orders against any property owned by Kinoshita, such orders shall be on notice to Kinoshita in accordance with the *Rules of Court*.
11. Possession of all property of any kind whatever executed upon, taken by, seized by or transferred to RCC, Morimoto or A&M by any means whatever shall be returned to the possession of Nishiyama and Kinoshita pending final adjudication

of all claims, including currency, real estate, vehicles, the proceeds of the sale of any assets, personal property, the contents of all safety deposit boxes, including cash, documents, papers, records and any other documents or records of any kind whatever. In addition, possession of the Barclay Condo shall be returned to Kinoshita.

12. For any notice of application already filed in either the RCC Proceeding or the Bankruptcy Proceeding, that party that wishes to proceed with such application shall serve a filed copy of the Notice of Application along with all filed affidavits that party intends on relying on no later than at least eight business days before the hearing.
13. A declaration that all property taken under execution by either of RCC, Morimoto or the receiver is owned by Kinoshita, including all money, real estate including the Barclay Condo and personal property.
14. Possession of all property taken under execution by either of RCC, Morimoto or the receiver shall be returned to Kinoshita, including the contents of Nishiyama's safety deposit box, both documents and all cash that had been contained in it.
15. Costs.

PART 2: FACTUAL BASIS

The Parties

1. Nishiyama and Kinoshita are residents of Japan. They are both businesspeople. Neither are fluent in English.
2. RCC is a corporation owned and operated by the Deposit Insurance Corporation of Japan.
3. Hiroshi Morimoto ("Morimoto") is the trustee in bankruptcy for Nishiyama in Japan. He is the petitioner in the Bankruptcy Proceeding.
4. Alvarez and Marshal ("A&M") was appointed receiver in this matter by way of order made February 14, 2019.

Timeline of Events

5. Nishiyama was formerly involved in a real estate corporation in Japan, Pexim Company Ltd ("Pexim").
6. In the mid or late 1990s, RCC purported to take assignation of loans allegedly owed by Pexim to another financial institution, Jutaku Loan Service, known as "Jusen". These loans were guaranteed by Nishiyama. The guarantees were

provided on the promise by Jusen that the loans would not be assigned. Jusen was required to obtain Nishiyama's consent prior to the assignation of the loan if they wished for the guarantee to remain valid. They did not do so. The guarantees were not valid when RCC purported to commence legal proceedings respecting them.

7. Further, in the 1990s, Jusen promised not to assign the loans to RCC in exchange for favourable payment terms including pre-payment of ¥1 billion of interest on a loan. Jusen accepted the pre-payment of ¥1 billion but in breach of its promise purported to assign the loan to RCC.
8. In around 1997, it seems that RCC commenced legal proceedings to enforce the alleged debt (the "**First Japan Lawsuit**"). RCC did not serve Nishiyama personally with any process in these proceedings. Nishiyama did not reside in Japan at this time. It is not clear what efforts, if any, RCC made to attempt to serve Nishiyama or how it may have, if it ever did, purport to serve Nishiyama. In around 2001 judgment was apparently rendered in favour of RCC in the First Japan Lawsuit.
9. It seems that in or around October 16, 2001, RCC obtained judgment against Nishiyama in the First Japan Lawsuit. It is not known to Nishiyama what occurred in the First Japan Lawsuit due to the want of service on Nishiyama during the four years it apparently took for the matter to be brought to trial (the "**2001 Judgment**").
10. RCC did not take any steps to enforce the 2001 Judgment against Nishiyama between October 2001 and October 2011. Nishiyama did not reside in Canada during these years, but took regular, lengthy holidays to Japan.
11. The 2001 Judgment expired on October 16, 2011.
12. On October 19, 2011, RCC apparently commenced a claim to renew the expired 2001 Judgment (the "**Second Japan Lawsuit**"). Documents filed in the RCC Proceeding appear to indicate that Nishiyama was served by "public notice". It is unclear what "public notice" entailed, though it appears to have been the bulletin board at the Kyoto District Court. Nishiyama was not present in Japan in 2011 and spent most of his time in Canada. The "public notice" was not effective in bringing to Nishiyama's attention that he was the defendant in a lawsuit. Judgment was rendered against Nishiyama in his absence on or around February 9, 2012 (the "**2012 Judgment**").
13. Nishiyama intends on commencing process to set aside the 2001 Judgment and the 2012 Judgment, however, when he inquired with the Kyoto District Court, the court files have apparently been destroyed other than the judgement. It seems likely that RCC has copies of these documents.

14. It is unclear if the Japanese court was made aware of the fact that Nishiyama was not present in Japan. RCC, as a government-controlled corporation, can check immigration records held by the Japanese government and should have been able to obtain records confirming that Nishiyama was not present in Japan. It is likewise unclear if the Japanese court had been made aware of the fact that the 2001 Judgment had expired, or that Nishiyama had not been made aware of the First Japan Lawsuit or the Second Japan Lawsuit.
15. In around 2013 judgment was, apparently, granted in favour of RCC on a separate civil matter, however, in its Notice of Civil Claim, RCC did not seek to enforce the judgment made in 2013. In the RCC Proceeding, enforcement of the 2012 Judgment is the relief that was sought.
16. In 2015 Nishiyama, not aware of either the 2001 Judgment or the 2012 Judgment, assigned significant assets he beneficially owned in Canada to Kinoshita.
17. In around October 2015 Nishiyama was arrested in Japan and incarcerated. It seems that searches were subsequently conducted of Nishiyama's properties in Japan and various documents and records were seized. These records were apparently provided to RCC and some seem to have been appended to affidavit material filed in these proceedings.
18. In around March 2016, when RCC was aware that Nishiyama was incarcerated, RCC commenced process to involuntarily put Nishiyama into bankruptcy. Nishiyama was not given effective notice of this application. It is unclear what the basis for the involuntary bankruptcy is or by what means service was allegedly effected. Morimoto, the trustee in bankruptcy, appears to have applied in 2017 to seal portions of the bankruptcy file, preventing Nishiyama from having access to the full court file for the purpose of filing process to set aside this order.
19. Around the same time, on around March 11, 2016, RCC commenced the RCC Proceedings in Canada and obtained a without notice *Mareva* injunction. Even though RCC appears to have been aware of where Nishiyama was, there is no evidence that RCC attempted to personally serve Nishiyama. Rather, RCC obtained an order for alternate service on four lawyers, none of whom were retained by Nishiyama for civil matters or authorized to accept personal service on behalf of Nishiyama of any civil process and none of whom made Nishiyama aware that he was being sued in Canada.
20. These lawyers did not provide a copy of the order or the notice of civil claim to Nishiyama, did not inform Nishiyama that he was being sued in British Columbia for approximately \$470 million and did not forward any documentation relating to a lawsuit in British Columbia that may have been delivered to their offices.
21. Nishiyama ultimately became aware that something had been commenced in British Columbia in late 2016. He agrees he wrote the letter attached to the 5th

- affidavit of Helen Chang. Nishiyama is not fluent in English and did not understand what was going on, or even who counsel for RCC was representing. Nishiyama did not receive any subsequent response from RCC in this matter and he was not made aware that RCC had proceeded in default.
22. In or around 2016 the application for involuntary bankruptcy was apparently successful and Nishiyama was put into bankruptcy with Morimoto appointed as the trustee in bankruptcy.
 23. Morimoto was apparently tasked with ensuring that Nishiyama be served with court documents, even though he is an opposing party acting adverse to Nishiyama's interests. Morimoto's efforts, which appear to have been to delegate delivery of documents to RCC's counsel, who then delegated delivery of documents to the prison guards at the prison in Japan. This did not result in Nishiyama receiving documents filed in these proceedings.
 24. In 2018 Nishiyama was released from prison.
 25. Morimoto appears to have used his powers as trustee in bankruptcy to intercept and review all mail sent to Nishiyama both while he was incarcerated and after he was released. For this reason, mail sent to Nishiyama is not delivered to Nishiyama and effective service is not accomplished. Any letters from a lawyer mailed to Nishiyama would be received and read by Morimoto.
 26. In Japan a trustee in bankruptcy apparently also has the power to prevent a bankrupt from traveling abroad. Morimoto has done this. This has prevented Nishiyama from being able to travel to Canada to defend the claims made in these proceedings. The Japanese Ministry of Justice has informed Nishiyama that it does not oppose him travelling to Canada to defend these claims. Nishiyama has filed an application to override Morimoto's refusal to permit him to travel outside of Japan, however, such permission is not yet forthcoming. Morimoto has opposed this application. Nishiyama, to his knowledge, has not yet received a decision overruling Morimoto from the Japanese court.
 27. Nishiyama has permanent residence status in Canada. There is no reason why he cannot travel to Canada other than Morimoto's actions.
 28. When Nishiyama became aware of the process was ongoing in Canada in late 2018 he sought the assistance of the Supreme Court of British Columbia asking that the matter be permitted to travel to Canada.
 29. By way of letter dated January 16, 2019, a Civil Registry Clerk wrote a letter back to Nishiyama declining to file Nishiyama's letter as it was not a court document that could be filed. The letter ended up going to Morimoto because Nishiyama is being intercepted by him. Nishiyama in February 2019.

30. In the meantime, Nishiyama re-sent the letter to the Supreme Court in February 2019. A second response to this letter also declining to accept the letter for filing dated February 12, 2018 (apparently intended to be 2019) was located in the court file indicating that the letter had been returned to the Supreme Court as "incomplete address" on around May 8, 2019. The address that the letter was sent to was the address indicated on the Notice of Civil Claim filed by RCC, an address that Nishiyama had not resided at since the 1960s.
31. Nishiyama subsequently attempted to file an application to stay the processes going on in Canada but the application was rejected by the registry. The application was mailed back to Nishiyama and such application was ultimately delivered to Morimoto, who appears to have the power to require all mail destined for Nishiyama to be instead delivered to him. Morimoto reviews all of Nishiyama's mail and must have known about Nishiyama's attempts to stay proceedings in Canada.
32. The bankruptcy in Japan was recognized in Canada by way of an order obtained on a without notice basis in December 2018.
33. Nishiyama has defenses to an application to register the bankruptcy in Canada, including the fact that the bankruptcy order was made without notice in Japan, Nishiyama is not insolvent because he does not owe money to RCC and the orders in Japan are not final orders and a debt that is denied is not sufficient grounds to allege a party is insolvent.
34. Nishiyama has told Morimoto and the bankruptcy court in Japan that he wished to travel to Canada to defend the claims. This is apparent from evidence already filed in these proceedings. Despite this, Morimoto has continued to deny Nishiyama the ability to travel to Canada.
35. In around June or July 2019 Nishiyama became aware that an application had been filed in the bankruptcy action, though he was not personally served with any documentation. He attempted to discuss the matter with Morimoto because he did not understand what was going on, but Morimoto refused to discuss the matter or agree that Nishiyama could travel to Canada. Nishiyama was unable to find and retain counsel in Canada to act on his behalf.
36. In late July 2019 Nishiyama became aware that an order had been made in the Bankruptcy Proceedings on July 19, 2019 respecting the Barclay Condo and a vehicle.
37. Kinoshita became aware of the order being made when Nishiyama told her about the order. With the assistance of an English-Speaking friend Kinoshita filed a proof of claim with A&M confirming that she was the owner of the Barclay Condo and the personal property contained in it.

38. A&M subsequently revised/partially disallowed the proof of claim, permitting Kinoshita only part of the personal property contained in the Barclay Condo. The disallowance notes that an application must be filed by October 9, 2019 and the personal property must be picked up no later than October 9, 2019. Requests for extension of these deadlines have gone without response.
39. Kinoshita owns the Barclay Condo as well as all property contained in the Barclay Condo.
40. In September 2019 Nishiyama retained Canadian counsel. When it was determined that much had occurred in British Columbia since 2016, a request was made to RCC for all filed affidavits and other materials. RCC refused to provide them, requiring a lengthy and expensive process of repeated trips to the Records desk of the Vancouver Supreme Court to obtain copies of various applications, requisitions, orders, affidavits and other. RCC has not provided any documents not available in the court file, including submissions made to the court as noted in orders including the order dated March 11, 2016.
41. In Japan, Nishiyama has made repeated requests to Morimoto to provide him copies of various court documents, including those from these proceedings in Canada and those in Japan. Morimoto has refused to provide these documents.
42. Nishiyama intends on commencing process to set aside or appeal the 2012 Judgment but requires documents presently held by RCC in order to commence such appeal.

LEGAL BASIS

Orders Made in these Proceedings

1. Many orders have been made in these two proceedings. None of them were ever made on personal service even though RCC and its agent, Morimoto, were aware of where Nishiyama was. None of the orders made were with notice to Kinoshita. Based on a review of the court file, the following orders have been made:
2. March 11, 2016: Order made without notice. It is agreed that this order was made without notice.
3. April 1, 2016: Order indicates that Nishiyama was served. There does not appear to be any evidence that the application for this order was served on Nishiyama. He was not served. This appears to be a clerical error.
4. August 30, 2016: Order made without notice. It is agreed that this order was made without notice.

5. September 29, 2016: Default Judgment against Nishiyama, indicating that Nishiyama was served. Nishiyama says that he did not know he as being sued on September 29, 2016 as the service that was effected was alternate service, apparently made pursuant to the alternate service order granted on April 1, 2016.
6. March 13, 2017: The order indicates Nishiyama was served. It is unclear whether or not Mr. Nishiyama was or was not served. He says he was not made aware of this application.
7. October 27, 2017: Order does not indicate Nishiyama was served. It should be assumed that Nishiyama was not served.
8. September 18, 2018: Order made without notice. It should be assumed that Nishiyama was not served.
9. November 30, 2018: Order made without notice. It should be assumed that Nishiyama was not served.
10. December 21, 2018: Order made without notice.
11. February 13, 2019: Order appears to indicate notice only given to counsel for RCC, not to Nishiyama. It should be assumed that Nishiyama was not served.
12. March 7, 2019: Order does not indicate Nishiyama was served. It should be assumed that Nishiyama was not served.
13. April 9, 2019: Order does not indicate Nishiyama was served, as Nishiyama was not a party of record on this date.
14. July 19, 2019: Order indicates Nishiyama was served. Apparently, this served was effected by mail, possibly to the Mr. Morimoto, an adverse party.
15. In other words, the only orders in which the court was informed that Nishiyama was served was the September 29, 2016 default order, the march 13, 2017 order and the July 19, 2019 order, assuming the April 1, 2016 order was made in error.
16. A party cannot delay or default to attend court when they were not served.
17. Of further note is the fact that the freezing order granted specifically permits Nishiyama to apply to vary or vacate it. Many of the above orders granted are modifications of the freezing order that do not serve to vacate this portion of the freezing order.

Injustice, Procedural Fairness

18. The Court has the inherent jurisdiction to grant orders to correct injustices or potential injustices. This includes the ability to order that justice be seen, not awarded behind closed doors or without notice to parties. In this case, RCC and A&M have obtained orders on insufficient notice orders against a party who they are restraining from participating in the litigation process and whose mail they are intercepting and reading.
19. Nishiyama received no procedural fairness or adequate notice in Japan. It cannot stand that Nishiyama not be permitted to have his day in court in any jurisdiction.
20. The Court has the power to make orders to avoid injustices, which includes refusing to put into effect bankruptcy orders obtained under questionable circumstances and judgements obtained through "publication".
21. There is no prejudice in requiring RCC and Morimoto to prove their case on the merits.

Service

22. The purpose of service is to make somebody aware that they are being sued and enable that person to attend court in order to defend him or herself.
23. The orders for alternative service were not effective on ensuring that Nishiyama had any idea about what was going on in Canada. The order, which was to deliver packages to lawyers not retained to represent Nishiyama in these proceedings, did not have the desired effect: Nishiyama did not know he was being sued.
24. Had the court been informed that the lawyers in Japan were not going to inform Nishiyama that he was subject to a lawsuit in Canada for millions upon millions of dollars, doubtless some other method of alternative service would have been ordered, if the Court did not first order personal service on Nishiyama be attempted.
25. There is no evidence that any attempt at personal service was attempted even though RCC was aware where Nishiyama was in 2016, having been involved in getting Nishiyama incarcerated.
26. When a party, whether personally or through an agent, takes steps to restrain the other party from participating in litigation that should vitiate service. Mr. Morimoto, acting as trustee and agent for RCC, has acted in a high-handed and unfair manner is preventing Nishiyama from traveling to Canada to defend this action even though Nishiyama has made it clear he wishes to defend these actions.

27. In an analysis of setting aside orders made in default, a lack of effective service is a breach of natural justice that does not require a party to engage in the usual *Miracle Feeds* and associated tests. A failure of there to be effective service in accordance with the *Rules of Court* or orders of the Court is an irregularity and injustice cured by setting aside the orders made in the party's absence.

Paolucci Holdings Ltd v Girard Insurance & Financial Service Inc, 2018 BCSC 1810

28. Many of the orders granted, including opening Nishiyama's safety deposit box, greatly exceed orders that are traditionally granted in steps in execution. Such applications should have been served on Nishiyama. In at least one instance, orders for costs were made against Nishiyama, though it is unclear whether these costs are against Nishiyama's post-bankruptcy estate or not, on an application to which he was given no notice.
29. In some cases, service was apparently effected by way of service on Morimoto. Morimoto is an adverse party and delivery to him is not appropriate.

Application to Set Aside Orders Made in Chambers; Miracle Feeds Test

30. Rule 22-1(3) respects applications to set aside orders made by a party who does not attend a hearing and orders were made in that person's absence. Rule 3-8(11) addresses applications when default judgment was granted.

31. The legal tests under each rule are very similar.

Wilful Delay or Default (Rule 22-1(3), First Prong of Miracle Feeds)

32. Respecting delay, Nishiyama became fully aware of the orders made in the 2001 Judgment, the 2012 Judgment and the matters in British Columbia in September 2019. RCC refused to provide copies of any documentation filed with the Supreme Court, requiring repeated trips to the Supreme Court's Records desk to fully determine what has occurred in both these files.
33. Nishiyama was aware something was happening in Canada earlier and previously requested information from counsel for RCC and, subsequently, a stay of proceedings from the Registry, but he is not fluent in English and did not know just what was going on.
34. This application is filed as soon as practicable once counsel has been retained, copies all the documents in the court file are obtained and significant research has been done into the extremely large judgments obtained in Japan without personal service on Nishiyama.

35. Respecting default, most of the orders obtained in these proceedings were without notice. Nishiyama would have opposed them had he known that such orders had been sought.
36. There was no effective notice on Nishiyama of the Notice of Civil Claim. He did not have access to legal advice and reads English very poorly. He did not understand that there was a lawsuit, or a subsequent judgment, in Canada. Nobody had served him with anything.
37. Nishiyama became aware of some sort of proceedings in Canada in the end of 2018 and requested the stay of proceedings, which was returned to him by mail, the second letter going to an address that Nishiyama had not lived at in decades, this being the address indicated on the Notice of Civil Claim even though Nishiyama was in jail at the time.
38. The evidence of the other side confirms that Nishiyama indicated he wanted to defend the claims in Canada, but Morimoto refused to permit Nishiyama to travel to Canada.
39. When Nishiyama became aware of some kind of order made in July 2019 he informed Kinoshita and an English-speaking layperson assisted them in filing a proof of claim. Only after obtaining legal advice in September 2019 did Nishiyama and Kinoshita understand what had transpired including various orders from 2016 to 2019.
40. RCC and its agent Morimoto should not be permitted to argue delay in the filing of this application when RCC refused to provide Nishiyama with any document from the court file.
41. RCC and its agent Morimoto should not also be permitted to take advantage of the fact that the court file in Japan appears to have been destroyed. Nishiyama wishes to file an appeal but cannot without those documents, which are clearly in the possession of RCC and its agent Morimoto.
42. Orders affecting a party should not be made on a without notice basis absent extraordinary circumstances. Proceeding against a party is a breach of natural justice that permits the court to set aside an order prior to the *Miracle Feeds* analysis for setting aside a default judgment or the related Rule 21-3 analysis.

Meritorious Defense

43. Nishiyama has meritorious defenses to the claims advanced in the Notice of Civil Claim as follows:
 - a. The decision is not final. Both the 2001 Judgment and the 2012 Judgments are default judgments obtained by way of substitutional service.

Nishiyama wishes to file appeals of these decisions but is stymied by the fact that the court file in Japan appears to have been destroyed due to the lack of activity, that, apparently, some or all of the court files are sealed. However, it seems that RCC and/or Morimoto have the documents that would have been in the Japanese court file;

- b. The decisions were rendered without jurisdiction over Nishiyama. Nishiyama was not present in Japan when process was filed for these applications. There is no personal jurisdiction over Nishiyama when he is outside the jurisdiction of the Japanese courts. RCC could, and should, have sued Nishiyama in America when he lived there, and Canada when he lived here;
- c. The decisions were reached in breach of natural justice. Nishiyama was served, apparently, by posting to the bulletin board of the Kyoto courthouse. Nishiyama was not present in Japan at the time and quite clearly the court proceedings did not come to his attention. Posting to the bulletin board of a courthouse when a party is not present in the jurisdiction is not an order for alternate service that would have been granted in British Columbia;
- d. Further, the underlying debts were repaid, such that there is no debt against which execution can be exercised;
- e. The circumstances of the case support a finding that the judgements were arrived at with a lack of natural justice and, for that reason, the Canadian court should refuse to register the judgment in Canada. This includes ineffective service, a lack of any effort to collect on the judgment for 15 years and a flurry of activity at a time when RCC knew that Nishiyama could not defend himself through RCC taking direct action to incarcerate Nishiyama; and
- f. The underlying merits of the claims are highly questionable in that the guarantees provided are invalid, the 2001 Judgment expired before the claim respecting the 2012 Judgment was filed, facts that do not appear to have been brought to the attention of the Japanese court, and

44. With respect to the Petition to register the bankruptcy:

- a. The bankruptcy in Japan is little more than a vehicle for RCC to collect against an alleged debtor. In British Columbia, involuntary bankruptcies have been denied on the basis that involuntary bankruptcy is not an appropriate way for a single creditor to collect debts;
- b. The order was made without notice;

- c. The Japanese order was made without notice; and
- d. Nishiyama does not owe money to RCC, so he is not insolvent;

45. With respect to various orders made, including the order made in July 2019:

- a. Nishiyama does not beneficially own the assets, Kinoshita does;
- b. There was no service of this application on Kinoshita; and
- c. There was no effective service of this application on Nishiyama.

Inherent Jurisdiction to Prevent Miscarriage of Justice

46. Even if the court finds that the Miracle feeds and related Rule 21-3 test is not for any reason satisfied, the Court has the power to set aside orders made in default if it is to prevent a miscarriage of justice.

National Home Warranty Group Inc v Red Rose Appliances & Plumbing Ltd, 2018
BCSC 234 at 40-43

47. In the unusual circumstances of this case, which includes assignation of assets without notice to the recipient of the property that orders had been made against that person's property, repeated orders made in a jurisdiction without effective notice to the alleged debtor, the extreme amount of money at issue and the fact that an adverse party is actively preventing the other party from traveling to Canada to defend these claims, the Court should exercise its inherent jurisdiction to permit these parties their day in court.

Proof of Claim

48. As of the filing of this notice of application the receiver has not responded to requests that the deadlines the receiver has provided be extended to allow for the time it will take to have this application be argued.

49. In the specific context of this case, in which Kinoshita says that she is the real owner of real estate subject to an order obtained by the receiver and all of the personal property, deadlines to pick up property and oppose a proof of claim should be extended to permit Kinoshita to have confirmation by the Court that she is the true owner of some \$13 million already taken by RCC and any assets remaining in Canada.

PART 4: MATERIAL TO BE RELIED ON

- 1. Affidavit #1 of Masahiko Nishiyama
- 2. Affidavit #1 of Hatsumi Kinoshita

3. Affidavit #1 of Kwee Lee
4. Such additional material as the Applicants will advise.

Time Estimate: **2 Days**

Jurisdiction: **Judge**

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- a. file an application response in Form 33,
- b. file the original of every affidavit, and of every other document, that
 - i. you intend to refer to at the hearing of this application, and
 - ii. has not already been filed in the proceeding, and
- c. serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - i. a copy of the filed application response;
 - ii. a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - iii. if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: November 1, 2019



Todd Brayer
Counsel for the Applicants

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:

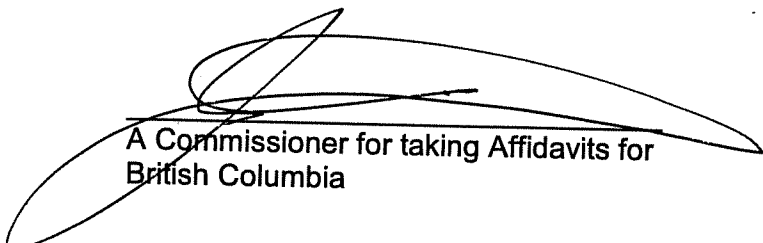
Date: _____

Signature of ☐ Judge ☐ Master

Appendix**THIS APPLICATION INVOLVES THE FOLLOWING:**

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter 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: other
- ☐ experts

This is **Exhibit "G"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia

1
Discussion re prior order

January 13, 2020
Vancouver, BC

(CHAMBERS COMMENCED AT 9:05 A.M.)

THE CLERK: Calling the matter of Nishiyama, My Lord.

(REASONS FOR JUDGMENT NOT INCLUDED)

MR. BROUSSON: Yes, My Lord. Thank you for that. One further point before my friend speaks, and it's really just a clarification that Mr. Plottel quite rightly raised, was we originally had brought an application with respect to Mr. -- to my friends for Mr. Kinoshita [phonetic] -- the lawyers in this instance -- and my recollection was -- and I've tried to quickly look at the transcript -- was that I kind of backed off on that and said listen, we have an order already in the context of the receivership order, and I'm -- I was happy to live with -- the receivership order says current and former counsel need to disclose the records, and we're happy to leave it at that, and I remain happy to leave it at that. I just wanted to be clear that -- because you didn't address it, I don't think --

THE COURT: I consciously didn't because I understood you to have abandoned that aspect of the application --

MR. BROUSSON: And just --

THE COURT: -- because it was dealt with.

MR. BROUSSON: I've just left -- there's an order that's already -- okay.

THE COURT: You and I are *ad idem*.

MR. BROUSSON: Okay. Thank you.

THE COURT: You know, I --

MR. BROUSSON: That's all I wanted to be clear on that, that we haven't -- there's no order dismissing it or anything like that. It's just --

THE COURT: There's nothing of the sort.

MR. BROUSSON: Yeah. Yeah, yeah.

THE COURT: Again, the position you took -- and I think one of your friends said this at the time -- is look, it's there.

MR. BROUSSON: It's there.

THE COURT: And you accepted that, and you said you're not pushing that, and I accepted that in a sense

2
Discussion re document confidentiality

1 and so I didn't deal with that expressly because I
2 understood that subset of your application to have
3 been abandoned.
4 MR. BROUSSON: Abandoned in the sense that I'm asking
5 for a secondary order. The order is in place, and
6 I think my friends accepted it, yes.
7 THE COURT: Right. There's no -- yeah.
8 MR. BROUSSON: Thank you, My Lord. That's all I have.
9 THE COURT: Okay.
10 MR. RICHARDSON: My Lord, recalling, of course, what
11 was before you is only the matters arising in the
12 bankruptcy matter to which my client is not even
13 the true respondent, but we're front and centre of
14 everything as well.
15 So we have facing us in a little over five
16 weeks or six weeks the applications filed by my
17 friend and his -- and Mr. Brayer [phonetic]
18 previously. They are what I call "clone
19 applications." They're one each action. Now,
20 those were filed, and the content, now, is some
21 months ago, and already much has changed. I need
22 to file a response; it's my obligation. This is
23 not my practice or preference to file pro forma
24 responses or on ancillary matters only. I'd
25 prefer to if I have to at all respond
26 substantively.
27 I am struggling to see how that can all be
28 achieved given your orders today in the bankruptcy
29 matter. No doubt my client will want to hear that
30 evidence. Although they're two different matters
31 technically speaking there's undertakings of
32 confidentiality and so forth, but I think -- as
33 counsel I think -- I hope my friend would agree
34 that that evidence may be shared with my client.
35 Otherwise that's a technicality, but I would pay
36 close attention to these things because they are
37 two different matters.
38 THE COURT: So there's a case of mine called
39 *Branconnier* -- something like that -- you know, I
40 actually have it on my desk because I had a memory
41 of it, and I wanted to look at it because it dealt
42 with ordering the examinations and how the rules
43 were. But it deals with the implied undertaking
44 and whether that implied undertaking extends to
45 examinations under the rules, and I concluded it
46 did. And so, you know, we've talked about this,
47 you and I, in the past because in the context of

3
Discussion re document confidentiality

1 obtaining documents I had raised with you how was
2 this going to work with proceedings in Singapore
3 and Hong Kong; right? So these documents in the
4 normal case would be tied to this action --
5 MR. RICHARDSON: Yes.
6 THE COURT: -- and I think -- actually I don't -- I
7 ought not to say what my memory of that
8 conversation is, but I remember having the
9 conversation with you. So that issue of sharing
10 the documents or sharing the transcripts is a
11 conversation that you're going to have to have
12 with your friends. I don't know that it is a
13 self-evident proposition; it's a common-sense
14 proposition.
15 MR. RICHARDSON: And it depends on the nature of the
16 document. I always try to be fastidious with
17 these things because, for example, the receiver
18 may have received documents that are -- over which
19 privilege, perhaps, properly is claimed by
20 Mr. Nishiyama or someone else. I don't want to
21 see those documents. So we've approached this as
22 counsel so far piecemeal. And with respect to
23 what you just mentioned, My Lord, I can recall --
24 it's not in front of me, but either yourself or
25 Justice Schultes made a document production
26 order --
27 THE COURT: He did.
28 MR. RICHARDSON: -- where it was explicitly dealt with,
29 and it -- I was allowed to share with Singapore
30 the specific documents. So I just raise this -- I
31 like to approach this piecemeal so that --
32 THE COURT: Yeah, I think it came up with --
33 MR. RICHARDSON: -- it's all above board.
34 THE COURT: -- the woman who worked for RBC as well. I
35 think it came up.
36 MR. RICHARDSON: It did, My Lord. Ms. Sanchez.
37 THE COURT: Yeah.
38 MR. RICHARDSON: Yes.
39 THE COURT: Yes.
40 MR. RICHARDSON: Yeah. So we approached it on an
41 ad hoc basis because the curiosity is that my
42 client under 13-4 as a judgment creditor could
43 take equal steps, and we don't want an artifice
44 where we're really trying to achieve the same
45 goal, and I'm sure we'll have an opportunity to
46 review those materials or if not participate, then
47 I'll discuss it with counsel.

4
Discussion re document confidentiality

1 THE COURT: Yeah. I mean, I've not said anything, and
2 I've not directed anything, but you almost need
3 some case management here because, you know, what
4 the trustee may do in the upcoming examinations --
5 I don't know as a substantive matter whether that
6 can extend to the issues that Mr. Nishiyama is
7 raising in connection with his challenges.

8 But it would be open -- it seems to me and
9 not having heard from counsel -- to cross-examine
10 Mr. Nishiyama on the affidavits he's filed which
11 purport to know nothing about that. I mean,
12 it's -- you know, if those applications are going
13 to be heard at some point in time, Mr. Nishiyama
14 saying, you know, the four counsel that we served
15 were criminal counsel and I didn't know anything
16 about that -- you know, those are all decisions
17 for you.

18 But I didn't know whether those were things
19 that counsel wanted to test in advance of the
20 application or not. I mean, there's so many of
21 them; right? There's a story being told -- and by
22 "story" I'm not being deprecating; it may be
23 true -- of a gentleman who's criminally convicted
24 dissipating assets who purports to know nothing
25 about the underlying judgments; right? So that --
26 on its face it seems curious, but if your friends
27 are going to be bringing applications in this
28 court to set aside judgments on the basis of the
29 applications being *ex parte*, Mr. Nishiyama not
30 having been apprised of anything and so on, I
31 didn't know whether those assertions were going to
32 be tested or not prior to the substantive
33 determination.

34 MR. RICHARDSON: Yes. Thank you, My Lord. And I --

35 THE COURT: So all I'm saying is when you look at it,
36 you've got a fair bit of work to do, I would have
37 thought, and five or six weeks is not a very long
38 time. Let's stand down for a moment. Let's stand
39 down for a moment, and I'll get that decision I
40 was referring to for you, and then we'll continue
41 that conversation.
42

43 (CHAMBERS ADJOURNED AT 9:58 A.M.)

44 (CHAMBERS RECONVENED AT 10:02 A.M.)
45

46 (AUDIO STARTS)
47

5
Discussion re document confidentiality
Discussion re injunctions

1 MR. RICHARDSON: -- too much time on that, but I'd just
2 like to flag these issues. I feel it's very
3 important as counsel, as we try to parse and
4 nuance evidence in one action or the other. But I
5 think I've had a nice chat with my friends to my
6 left, and I think there is an understanding that
7 under the BIA Mr. Reedman was able to share these
8 transcripts with me and -- for my review. That's
9 the result.
10 MR. REEDMAN: Yes. It's my understanding that there
11 was a recent decision -- I don't have it in front
12 of me -- where there was an examination in the
13 bankruptcy. Those transcripts under the BIA are
14 actually filed with the court registry, and so
15 therefore they -- there's no implied undertaking
16 that attaches to those.
17 MR. RICHARDSON: Different from the civil procedure.
18 Thank you, Mr. Reedman.
19 THE COURT: Okay.
20 MR. RICHARDSON: Moving on quickly, My Lord, I'm of
21 course as the -- representing the creditor itself
22 I'm pleased to hear that Mr. Brousson with his
23 colleagues has a deal in the works. Just to try
24 to assist and hearing your own schedule, My Lord,
25 getting technical again, my client has both Mareva
26 and an injunction that have to be released. I
27 believe the practice is that typically any Mareva
28 amendment is by the judge originally making the
29 order, but I would think that we're all in
30 agreement that you could -- if you were to say
31 today that another judge could release that Mareva
32 if there's an order to approve, then you wouldn't
33 have to hear that yourself if that's assistful.
34 I'm just offering that to facilitate.
35 MR. BROUSSON: I would -- I don't know the answer --
36 that's an interesting point. I would have thought
37 that a vesting order, as long as it's served upon
38 you, should do the trick to clear the -- or
39 alternatively you could even just discharge the
40 order, and ...
41 MR. RICHARDSON: We can attend to that, My Lord, but
42 just, again, hearing your schedule, and my
43 understanding is that otherwise we might have a
44 hiccup where the Mareva has to be dealt with, and
45 the practice typically is the judge making the
46 original Mareva hears it without saying, one of my
47 colleagues can hear that application. So we'll

6
Discussion re injunctions
Discussion re outstanding applications

1 cross that bridge as we come to it.

2 The last thing I was just going to ask my
3 friend Mr. Reedman through Your Lordship was when
4 we were last here on December 16th, we heard at
5 that time that there may be appeals filed in
6 Japan. I'm just going to -- asking through you --
7 my friend could let me know if anything has in
8 fact happened on that front. And it's sort of a
9 binary question; I've heard nothing yet in that
10 regard.

11 MR. REEDMAN: My Lord, I can advise that so far nothing
12 has been filed. The challenge is -- and this is
13 something that I need to follow with; I only
14 returned to the office this week -- is that
15 there's been some issues with obtaining disclosure
16 from the Japanese courts. I don't know to the
17 extent that's involved this is something that I'm
18 going to have to follow up with.

19 My Lord, one other comment I should make as
20 well is that when the trustee made its application,
21 there was an application filed by Mr. Brayer, who
22 was then counsel for both application respondents --

23 THE COURT: Sorry. When the trustee made which
24 application?

25 MR. REEDMAN: The one that's before you.

26 THE COURT: Okay.

27 MR. REEDMAN: The one that you're ruling on.

28 THE COURT: Yeah.

29 MR. REEDMAN: And it was never dealt with at that
30 hearing.

31 THE COURT: Which application are you talking about
32 now? Are you -- start again. The trustee made an
33 application, and then -- and what was not dealt
34 with, please.

35 MR. REEDMAN: Mr. Brayer had filed, in fact, one other
36 application prior to that seeking various relief,
37 including the certificate of pending litigation.
38 Now, I appreciate I'm not counsel for
39 Mr. Kinoshita, but I just raise that there might
40 be an issue. I recall that part of the relief
41 sought was seeking a certificate of pending
42 litigation against the property.

43 THE COURT: In this application?

44 MR. REEDMAN: Not in this application.

45 MR. BROUSSON: I think my friend might -- just if I
46 could assist -- I hate popping up and down -- but
47 I think my friend is -- there was two applications

7
Discussion re outstanding applications

1 brought originally by Mr. Brayer --
2 THE COURT: Right.
3 MR. BROUSSON: -- before the involvement of my friend,
4 and one of them was essentially for an interim
5 stay --
6 THE COURT: Right.
7 MR. BROUSSON: -- and then it had a whole bunch of
8 other relief, and one of those pieces that my
9 friend was referring to was registering a CPL.
10 THE COURT: Right.
11 MR. BROUSSON: We, throughout a series of applications,
12 responded to that and said, you know, that doesn't
13 make any sense from our perspective. That
14 application I thought was abandoned. I don't know
15 what happened.
16 THE COURT: What you've got to remember is when we were
17 all together, the application record that was
18 filed contained various applications, including
19 the applications that your friend is speaking to,
20 and when counsel got up, there was a reference to
21 one of those applications. And I said, those
22 applications aren't before me; they're not being
23 argued. Counsel responded and said, but they're
24 in the record. And I said well, that may well be;
25 you know, this was set down for an hour; we're now
26 in our second hour, and I haven't heard a word --
27 not a single word -- about either application.
28 And so I don't understand -- I mean, the mere
29 fact that they're in the record doesn't mean
30 they're before me if no one's made any submissions
31 in relation to them. So that's my memory of that
32 exchange. I clearly did not deal with either
33 application brought by Mr. Nishiyama; I didn't do
34 that for the reasons I've described, and, you
35 know, it's open to others to try and bring those
36 applications if they think it's appropriate.
37 MR. REEDMAN: So, My Lord, perhaps one way we could
38 deal with this is just through counsel and see if
39 we can work out some of this relief ourselves, and
40 then if there's still a dispute with respect to
41 some of the relief sought, then we can deal with
42 it then.
43 THE COURT: I agree because I think collectively you
44 have to get together, what we've talked about for
45 the last 15, 20 minutes -- is a number of discrete
46 applications that one or the other party are
47 contemplating discussing what order they should

8
Reporter's certification

1 take place in, what makes sense -- you may not
2 agree on everything -- and some sort of timeline,
3 I mean, to ascertain whether the applications now
4 set for the latter part of February are realistic.

5 And really on balance -- you know, we had set
6 aside two days. That party who was appealing --
7 because you can break the back of things. I don't
8 want to be dealing with slivers of relief in
9 distinct applications over an extended period of
10 time. But if you need me to assist with case
11 management, if you can't work that out, well,
12 that's something we can do at 9 o'clock one
13 morning if necessary.

14 All right. Anything else? Okay. Thank you,
15 then.

16 THE CLERK: Order in court. Chambers is adjourned.
17

18 (CHAMBERS ADJOURNED AT 10:09 A.M.)
19
20

21 Reporter's Certification:
22

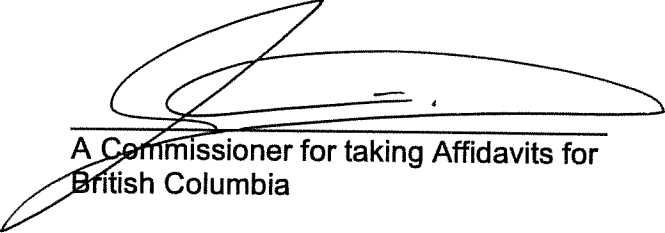
23 I, Christy L. Pratt, RCR, RPR, CLR, Official
24 Reporter in the Province of British Columbia,
25 Canada, BCSRA No. 535, do hereby certify:
26

27 That the proceedings were transcribed by me
28 from an audio recording provided of recorded
29 proceedings, and the same is a true and accurate
30 and complete transcript of said recording to the
31 best of my skill and ability.
32

33 IN WITNESS WHEREOF, I have hereunto subscribed
34 my name and seal this 21st day of January, 2020.
35
36
37
38

39 Christy L. Pratt, RCR, RPR, CLR
40 Official Reporter
41
42
43
44
45
46
47

This is **Exhibit "H"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia



Form 32 (Rule 8-1(4))

No. S-1813807
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,
AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN

NOTICE OF APPLICATION

Name of applicant: Alvarez & Marsal Canada Inc. ("A&M" or the "Receiver"), in its capacity as the Court-appointed receiver over all of the assets, undertakings and property owned or beneficially owned by Masahiko Nishiyama ("Nishiyama" or the "Debtor") in Canada (the "Receiver") and Hiroshi Morimoto, Trustee over the bankruptcy estate of Masahiko Nishiyama (the "Trustee")

To: All Parties of Record

TAKE NOTICE that an application will be made by the Receiver to the presiding Judge at the courthouse at 800 Smith Street, Vancouver, BC V6Z 2E1 on February 24, 2020, at 10:00 a.m. for the order(s) set out in Part 1 below, and in substantially the same form as set out in Schedule "A" attached hereto.

Part 1: ORDER(S) SOUGHT

Service

1. An Order that service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.

Approval of Activities to Date

2. An Order that the actions, conduct and activities of the Receiver set out in the First Report of the Receiver dated February 12, 2020, (the "Receiver's First Report") are approved and confirmed.

Approval of the Sale of the Condo, Mercedes and Residual Personal Property

3. An Order:

(a) approving the sale of:

- (i) 4102 – 1028 Barclay Street, Vancouver, BC, more particularly known and described as:

Parcel Identifier: 028-447-263
Strata Lot 254, District Lot 185
Group 1, New Westminster District,
Plan BCS4016

(the "**Condo**"); and

- (ii) certain contents of the Condo, at set out Section 7 of the Contract of Purchase and Sale, a copy of which is attached to the Receiver's First Report as Appendix "F" (the "**Included Personal Property**")

to Yongling Duan (the "**Condo Purchaser**"), for a purchase price of \$4,330,000 (the "**Purchase Price**"); and

- (b) vesting all of the Debtor's and Sun Moon Management Ltd.'s ("**Sun Moon**") right, title and interest in the Condo and the Included Personal Property to the Condo Purchaser, free and clear from any and all security interests, hypothecs, mortgages, trusts or deemed trusts, liens, executions, levies, charges or other financial or monetary claims;
- (c) that the proceeds of the Condo shall stand in place of the Condo and, after the usual adjustments between seller and buyer, the proceeds shall be paid to the Receiver, in trust, and shall be paid out in accordance with the following priorities without further Order:
- (i) first, any arrears of taxes, fees and levies, utilities and services, interest and penalties thereon;
- (ii) second, the real estate commission due on this sale of 7% of the first \$100,000.00 and 2 ½% on the remainder of the gross selling price, plus GST thereon, or such lesser amount as maybe agreed to between the Receiver and the listing realtor;
- (iii) third, to the Receiver for all disbursements related to the possession, preservation, maintenance, upkeep and sale of the Condo; and
- (iv) the balance then remaining of the proceeds of the sale of the Condo, and Included Personal Property to be paid to the Trustee to the credit of the Japanese bankruptcy proceedings and to be held by the Trustee pending further order, authorization, or approval of the Japanese Court or agreement of the Trustee and Kinoshita;

- (d) authorizing and directing the Receiver to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the conveyance to the Condo Purchaser.
- (e) authorizing and directing the Receiver to sell or dispose of the remaining contents of the Condo that are not Included Personal Property (the "**Residual Personal Property**") in its possession; and
- (f) authorizing and directing the Receiver to sell the Mercedes S550 vehicle, VIN WDDNG8GB0AA343089, registered to Hatsumi Nakajima, (the "**Mercedes**") , to Maynards Industries Canada Ltd. ("**Maynards**") on the terms as set out in the Draft Bill of Sale (Absolute) attached to the First Receiver's Report as Appendix "G".

Part 2: FACTUAL BASIS

Background

1. On December 21, 2018, the Supreme Court of British Columbia (the "**Court**"), granted an order (the "**Recognition Order**") pursuant to sections 269 and 270 of the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3*, as amended (the "**BIA**") recognizing in British Columbia the following:
 - (a) the bankruptcy proceedings of Nishiyama commenced in the Kyoto District Court in Japan on February 10, 2016, (the "**Foreign Proceedings**") as the foreign main proceedings; and
 - (b) Hiroshi Morimoto, the trustee over the bankruptcy estate of Nishiyama in Japan (the "**Trustee**"), as the foreign representative in respect of the Foreign Proceedings.
2. Pursuant to an Order pronounced on February 14, 2019, (the "**Receivership Order**") by the Honorable Mr. Justice Voith of the Court, and upon application of the Trustee, Alvarez & Marsal Canada Inc. was appointed as the Receiver of the assets, undertakings and property legally or beneficially owned by Nishiyama in Canada, including all proceeds (the "**Property**") pursuant to subsection 272(1) of the BIA. These proceedings are hereinafter referred to more generally as the "**Receivership Proceedings**".
3. An Order pronounced on July 19, 2019, provides for, among other things:
 - (a) the assets and property of Sun Moon represent Property of the Debtor, including the Condo; and
 - (b) the Mercedes is Property of the Debtor.
4. Nishiyama is a bankrupt citizen of Japan who carried on business both in his own name and through a number of corporations. On June 22, 2016, the Courts in Japan found Nishiyama guilty of certain acts pursuant to the *Penal Code* in Japan, such as purposely concealing assets and conspiring with others to move assets out of Japan and into

foreign jurisdictions, and in doing so, Nishiyama obstructed compulsory execution against these assets in Japan.

5. The Receivership Order authorizes the Receiver to solicit offers in respect of the Debtor's property, to sell any parts thereof with approval of this Honourable Court, and to apply for any vesting orders or other orders necessary to convey the Property or any part or parts thereof.

Outline of Receiver's Activities to Date

6. Beginning on February 14, 2019, the Receiver:
 - (a) secured and took possession of the contents of a safety deposit box (the "SDB") bearing number 8876 located at the Royal Bank of Canada ("RBC") branch 00010 in Vancouver, British Columbia;
 - (b) held various discussions and meetings with RBC and its legal counsel regarding the SDB;
 - (c) received and collected all monies recovered from the SDB;
 - (d) opened trust accounts;
 - (e) secured the premises of the Condo, all of its contents, and the Mercedes, over which it was appointed, undertook various conservatory and protective measures including various correspondence and meetings with the property manager, strata and the strata's legal counsel;
 - (f) arranged for the locks to be changed for the Condo;
 - (g) opened new utility accounts for the Condo;
 - (h) obtained secured off-site storage unit for contents of the Condo in preparation for the sales process;
 - (i) obtained insurance coverage for the Condo and its contents stored on- and off-site;
 - (j) took inventory of the Property, as well as retained, reviewed, indexed and digitized books and records, and other information recovered from the SDB, Condo and Mercedes, took photos and videos of the Property, and created a data room for information to be shared with the Trustee, Trustee's legal counsel, and/or the unsecured creditor and its legal counsel;
 - (k) issued notices to third parties who may hold property, documents, records or other information relating to the Property or affairs of the Debtor including financial institutions, service providers and other parties;
 - (l) conducted a claims process for personal property located at the Condo and Mercedes and held various discussions with a claimant's legal counsel;

- (m) facilitated the retrieval of personal possessions claimed by an associate of the Debtor, Hatsumi Kinoshita;
- (n) contacted various potential interested parties for the Mercedes and arranged site visits;
- (o) reviewed invoices; made necessary payments including strata fee arrears and maintained a ledger of cash receipts and disbursements;
- (p) set up the Receiver's Website and Service List at www.alvarezandmarsal.com/nishiyama and updated it with pertinent information relating to the Receivership Proceedings;
- (q) reviewed and considered property tax matters including speculation and vacancy taxes under provincial and municipal regulations;
- (r) held discussions and attended meetings with the Trustee and its agents to assist with various matters; and
- (s) attended to various statutory notices pursuant to the BIA, including mailing a Notice and Statement of Receiver and posting a copy on the Receiver's Website.

Real Property

- 7. Pursuant to a Court order granted on July 19, 2019, the Debtor owns the assets and property held in the name of Sun Moon, including the Condo located at #4102 – 1028 Barclay Street, Vancouver, British Columbia.
- 8. The Receiver had the real property appraised and obtained a market valuation report completed by Niemi Laporte & Dowle Appraisals Ltd. (the "**Condo Appraisal**") dated July 29, 2019, which suggested a market value of \$4,750,000. A copy of the Condo Appraisal is attached to the Receiver's First Report as Appendix "B".
- 9. The 2020 property tax assessment valued the Condo at \$4,524,000 as at July 1, 2019, (the "**Property Tax Assessment**"), a copy of which is attached to the Receiver's First Report as Appendix "C".

Condo Sales Process Undertaken

- 10. The Receiver requested proposals from five listing brokerages and/or agents and upon review and with consultation with the Trustee, retained Oakwyn Realty Downtown Ltd. (the "**Listing Agent**") to market the Condo through the Multiple Listing Service ("**MLS**") and the Listing Agent's own website, which included property features, photos and video of the unit. A copy of the Listing Agent's proposal is attached to the Receiver's First Report as Appendix "A".
- 11. On the advice of the Listing Agent, and based on the Condo Appraisal and the Property Tax Assessment, the Condo was listed for sale at a starting price of \$4,999,000 on October 7, 2019.

12. The Listing Agent, on behalf of the Receiver, undertook the following marketing activities which is further detailed in their sales report dated January 17, 2020, and attached to the Receiver's First Report as Appendix "D":
- (a) arranged for the unit to be professionally staged, cleaned and photographed;
 - (b) through MLS, the listing was automatically emailed out to 489 parties and made publicly available online resulting in over 1,300 views, of which there were almost 900 unique views by prospective purchasers;
 - (c) sent an email of the sales listing to a database of contacts, which comprised of approximately 4,000 parties;
 - (d) advertised the sales listing on various social media platforms;
 - (e) hosted an exclusive open house to introduce the Condo to top luxury realtors in Vancouver which resulted in 50 realtors, along with some of their clients, attending and viewing the property; and
 - (f) coordinated multiple site visits with 10 private showings to date, including three second viewings.

Proposed Sale of the Condo and the Included Personal Property

13. After being on the market for 73 days, on December 19, 2019, the Receiver received an offer from the Condo Purchaser, who is originally from China and currently residing in Maple Ridge, British Columbia, with an initial purchase price of \$4,200,000. After some negotiation, consultation with the Trustee, and multiple counteroffers, the Receiver accepted the offer at a purchase price of \$4,330,000 on December 31, 2019. A copy of the Accepted Offer is attached to the Receiver's First Report as Appendix "E".
14. The material terms of the Accepted Offer are as follows:
- (a) the purchase price is \$4,330,000;
 - (b) the Condo Purchaser offers to purchase all of the Receiver's interest in the Condo free and clear of any encumbrances with certain exceptions including subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way in favour of utilities and public authorities;
 - (c) the transaction includes all contents of the Condo including furnishings, appliances, fixtures and décor;
 - (d) the completion date for the sale will be March 9, 2020, subject to approval by this Honourable Court;
 - (e) a deposit of \$250,000 (5.8% of the purchase price) has been remitted to the Listing Agent to be held in trust pending completion of the transaction; and

- (f) the sale is "as is, where is" with no representations and warranties provided by the Receiver.
15. The Receiver's review of the Accepted Offer included consideration of the following:
- (a) the results of the marketing efforts undertaken by an established and market leading real estate listing broker;
 - (b) third party valuations and other indications of value such as the Condo Appraisal and Property Tax Assessment which suggested market values in July 2019, of \$4,750,000 and \$4,500,000, respectively;
 - (c) the continued gradual decline in current market conditions in the Vancouver residential real estate market;
 - (d) the construction of several new high-rise residential buildings in the surrounding neighbourhoods resulting in increased noise and traffic and obstructed views from the Condo;
 - (e) the potential for the Receiver to incur additional holding costs in respect of the Condo if the transaction was not concluded in a timely manner including preservation costs and professional fees; and
 - (f) the proposed timing to complete the sale transaction.
16. Based on the considerations above, the Receiver is of the view that the Condo was marketed comprehensively and in a manner which was fair and reasonable, that the market had been adequately canvassed for potential purchasers and that the transaction contemplated by the Accepted Offer is in the best interest of the estate.
17. The Receiver recommends that the Court approve the Accepted Offer such that Condo Purchaser can purchase the Condo in accordance with its terms.
18. It is the Receiver's understanding that the Trustee also recommends approval of the Accepted Offer.

Personal Property

19. The Debtor's personal property includes the Included Personal Property and the Residual Personal Property. The Included Personal Property is included in the Accepted Offer, and the Residual Personal Property is stored off-site.
20. The Receiver obtained an appraisal of the Residual Personal Property that suggests the Residual Personal Property has a nominal value. The storage cost of the Residual Personal Property is approximately \$200 per month.
21. The Receiver is seeking authorization and direction to sell or dispose of the Residual Personal Property.

Mercedes

22. Pursuant to an Order pronounced on July 19, 2019, the Debtor's Property includes the Mercedes.
23. The Receiver obtained the Black Book value of the Mercedes which indicated a fair market value of \$23,000 and an appraisal prepared by Maynards Appraisals Ltd. dated August 15, 2019 (the "**Maynards Appraisal**") which suggested a forced liquidation value of \$15,000. The Receiver requested offers from select auto dealers and received offers ranging from \$12,000 to \$16,000. The Receiver has received an offer from Maynards to purchase the Mercedes for a price of \$16,000 on the terms set out in the Draft Bill of Sale (Absolute).
24. The Mercedes is currently stored at a parking space assigned to the Condo. When the Condo is sold, the Receiver will have to move the vehicle to other secure storage and will incur the associated costs of vehicle storage.
25. The registered owner of the vehicle has disclaimed their interest in the Mercedes, legal or otherwise, and at the date of the Receiver's First Report, there are no liens or encumbrances registered on title. The Personal Property Registry Search dated January 23, 2020 is attached to the Receiver's First Report as Appendix "F".
26. The Receiver recommends that the Court approve the sale of the Mercedes to Maynards on the terms set out in the Bill of Sale (Absolute).

Receiver's Interim Statement of Cash Receipts and Disbursements

27. The Receiver's interim statement of cash receipts and disbursements for the period of February 14, 2019, to January 15, 2020, is summarized in the Receiver's First Report. The Receiver held a closing cash balance at approximately \$76,748 and includes approximately USD \$16,800 translated into CAD at the foreign exchange rate of 1.305.

Part 3: LEGAL BASIS

1. The Receivership Order and all other Orders made in these proceedings;
2. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
3. *Law and Equity Act*, R.S.B.C. 1996, c. 250;
4. *Romspen Mortgage Corp. v. Lantzville Foothills Estates Inc.*, 2013 BCSC 2222;
5. *Bancorp Income Mortgage Fund Ltd. v. Central Manor Holdings Ltd.*, 2011 BCSC 126;
6. *Supreme Court Civil Rules*; and
7. The inherent jurisdiction of this Court.

Part 4: MATERIAL TO BE RELIED ON

1. The Receiver's First Report dated February 12, 2020.

2. Such further and other materials as counsel may advise and this Honourable Court may permit

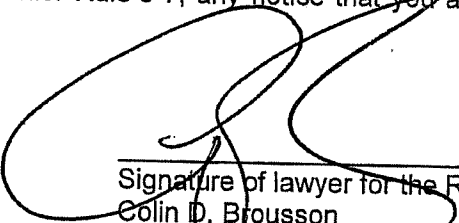
The Receiver estimates that this application will take 2 Hours.

- ☐ 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 this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: February 12, 2020



Signature of lawyer for the Receiver
Colin D. Brousson
Gowling WLG (Canada) LLP

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:

Date: _____ Signature of ☐ Judge ☐ Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter 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: other
- ☐ experts

No. S-1813807
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,
AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)	MONDAY, THE 24 TH DAY
)	
MR. JUSTICE VOITH)	OF FEBRUARY, 2020

ON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as the Court-appointed Receiver over all of the assets, undertakings and property owned or beneficially owned by Masahiko Nishiyama in Canada (the "**Receiver**"), and Hiroshi Morimoto, Trustee over the bankruptcy estate of Masahiko Nishiyama (the "**Trustee**"), coming on for hearing before me this day, at 800 Smithe Street, Vancouver, British Columbia; AND ON HEARING Colin D. Brousson, counsel for the Receiver and Trustee, Todd Brayer, counsel for Hatsumi Kinoshita ("**Kinoshita**"); Cody Reedman, counsel for Masahiko Nishiyama and Robert Richardson, counsel for The Resolution and Collection Corporation ("**RCC**"); AND UPON READING the Pleadings filed to date;

THIS COURT ORDERS that:

1. service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given;

2. the actions, conduct and activities of the Receiver set out in the Receiver's First Report are approved and confirmed.
3. the execution and completion of the Contract of Purchase and Sale, dated December 19, 2019, between Alvarez & Marsal Canada Inc. and Yongling Duan (the "**Purchaser**"), attached as Appendix "**A**" hereto (the "**Condo Agreement**"), concerning the sale of:

- (a) certain personal property, including household furnishings, decorations, and appliances, and other as set out in the Condo Agreement, (the "**Included Personal Property**"); and
- (b) the lands and premises legally described as:

Parcel Identifier: 028-447-263
Strata Lot 254, District Lot 185
Group 1, New Westminster District,
Plan BCS4016

(the "**Condo**")

to the Purchaser is hereby approved;

4. upon
 - (a) completion of the Condo Agreement,
 - (b) presentation of a certified copy of this Order for registration in the New Westminster Land Title Office, and
 - (c) delivery by the Receiver to the Purchaser of a bill of sale for the Included Personal Property,

all of the right, title and interest of Nishiyama, Sun Moon Management Ltd. in and to the Included Personal Property and the Condo shall vest absolutely in Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including,

without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on Appendix "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Appendix "C" hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Included Personal Property and the Condo are hereby expunged and discharged as against the Included Personal Property and the Condo;

5. upon presentation for registration in the New Westminster Land Title Office of a certified copy of this Order, together with a letter from Gowling WLG (Canada) LLP the solicitors for the Trustee, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
 - (a) enter the Purchaser as the owner of the Condo, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Condo; and
 - (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Condo all of the registered Encumbrances except for those listed in Appendix "C";
6. the proceeds of the Condo shall stand in place and stead of the Condo and, after the usual adjustments between seller and buyer, the proceeds shall be paid to the Receiver, in trust, and shall be paid out in accordance with the following priorities without further Order:
 - (a) first, any arrears of taxes, fees and levies, utilities and services, interest and penalties thereon;

- (b) second, the real estate commission due on this sale of 7% of the first \$100,000.00 and 2 ½% on the remainder of the gross selling price, plus GST thereon, or such lesser amount as maybe agreed to between the Receiver and the listing realtor;
 - (c) third, to the Receiver for all disbursements related to the possession, preservation, maintenance, upkeep and sale of the Condo;
 - (d) fourth, the balance then remaining of the proceeds of the sale of the Condo and Included Personal Property to be paid to the Trustee to the credit of the Japanese bankruptcy proceedings and to be held by the Trustee pending further order of the Japanese Court or agreement of the Trustee and Kinoshita.
- 7. an Order authorizing and directing the Receiver to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the conveyance to the Condo Purchaser.
- 8. vacant possession of the Included Personal Property and the Condo shall be delivered by the Receiver to the Purchaser at 11:00 a.m. on the Possession Date (as defined in the Condo Agreement), subject to the permitted encumbrances as set out in the Condo Agreement and listed on Appendix "C";
- 9. the Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court;
- 10. the execution and completion of the Bill of Sale (Absolute), attached as Appendix "D" hereto, relating to the sale of the Mercedes S550 vehicle, VIN WDDNG8GB0AA343089, to Maynards Industry Canada Ltd. is hereby approved; and
- 11. the Receiver shall be at liberty to liquidate or dispose of the remaining personal property from the Condo that is not Included Personal Property (the "**Residual Personal Property**").
- 12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to

assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order; and

13. the Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Counsel for Alvarez & Marsal Canada Inc,
Receiver, and Hiroshi Morimoto, Trustee
Colin D. Brousson

BY THE COURT

REGISTRAR

Counsel for Hatsumi Kinoshita
Todd Brayer

Counsel for Masahiko Nishiyama
Cody Reedman

Counsel for The Resolution and Collection
Corporation
Robert Richardson

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CONTRACT OF PURCHASE AND SALE INFORMATION ABOUT THIS CONTRACT

THIS INFORMATION IS INCLUDED FOR THE ASSISTANCE OF THE PARTIES ONLY. IT DOES NOT FORM PART OF THE CONTRACT AND SHOULD NOT AFFECT THE PROPER INTERPRETATION OF ANY OF ITS TERMS.

- CONTRACT:** This document, when signed by both parties, is a legally binding contract. READ IT CAREFULLY. The parties should ensure that everything that is agreed to is in writing.
- DEPOSIT(S):** Section 28 of the *Real Estate Services Act* requires that money held by a brokerage in respect of a real estate transaction for which there is an agreement between the parties for the acquisition and disposition of the real estate be held by the brokerage as a stakeholder. The money is held for the real estate transaction and not on behalf of one of the parties. If a party does not remove a subject clause, the brokerage requires the written agreement of both parties in order to release the deposit. If both parties do not sign the agreement to release the deposit, then the parties will have to apply to court for a determination of the deposit issue.
- COMPLETION:** (Section 4) Unless the parties are prepared to actually meet at the Land Title Office and exchange title documents for the Purchase Price, it is, in every case, advisable for the completion of the sale to take place in the following sequence:
 - The Buyer pays the Purchase Price or down payment in trust to the Buyer's Lawyer or Notary (who should advise the Buyer of the exact amount required) several days before the Completion Date and the Buyer signs the documents.
 - The Buyer's Lawyer or Notary prepares the documents and forwards them for signature to the Seller's Lawyer or Notary who returns the documents to the Buyer's Lawyer or Notary.
 - The Buyer's Lawyer or Notary then attends to the deposit of the signed title documents (and any mortgages) in the appropriate Land Title Office.
 - The Buyer's Lawyer or Notary releases the sale proceeds at the Buyer's Lawyer's or Notary's office.

Since the Seller is entitled to the Seller's proceeds on the Completion Date, and since the sequence described above takes a day or more, it is strongly recommended that the Buyer deposits the money and the signed documents AT LEAST TWO DAYS before the Completion Date, or at the request of the Conveyancer, and that the Seller delivers the signed transfer documents no later than the morning of the day before the Completion Date.

While it is possible to have a Saturday Completion Date using the Land Title Office's Electronic Filing System, parties are strongly encouraged NOT to schedule a Saturday Completion Date as it will restrict their access to fewer lawyers or notaries who operate on Saturdays; lenders will generally not fund new mortgages on Saturdays; lenders with existing mortgages may not accept payouts on Saturdays; and other offices necessary as part of the closing process may not be open.

- POSSESSION:** (Section 5) the Buyer should make arrangements through the real estate licensee for obtaining possession. The Seller will not generally let the Buyer move in before the Seller has actually received the sale proceeds. Where residential tenants are involved, Buyers and Sellers should consult the *Residential Tenancy Act*.
- TITLE:** (Section 9) It is up to the Buyer to satisfy the Buyer on matters of zoning or building or use restrictions, toxic or environmental hazards, encroachments on or by the Property and any encumbrances which are staying on title before becoming legally bound. It is up to the Seller to specify in the Contract if there are any encumbrances, other than those listed in Section 9, which are staying on title before becoming legally bound. If you as the Buyer are taking out a mortgage, make sure that title, zoning and building restrictions are all acceptable to your mortgage company. In certain circumstances, the mortgage company could refuse to advance funds. If you as the seller are allowing the Buyer to assume your mortgage, you may still be responsible for payment of the mortgage, unless arrangements are made with your mortgage company.
- CUSTOMARY COSTS:** (Section 15) In particular circumstances there may be additional costs, but the following costs are applicable in most circumstances:

Costs to be Borne by the Seller

Lawyer or Notary Fees and Expenses:

- attending to execution documents.

Costs of clearing title, including:

- investigating title,

- discharge fees charged by

encumbrance holders,

- prepayment penalties.

Real Estate Commission (plus GST).

Goods and Services Tax (if applicable).

Costs to be Borne by the Buyer

Lawyer or Notary Fees and Expenses:

- searching title,

- drafting documents.

Land Title Registration fees.

Survey Certificate (if required).

Costs of Mortgage, including:

- mortgage company's Lawyer/Notary.

- appraisal (if applicable)

- Land Title Registration fees.

Fire Insurance Premium.

Sales Tax (if applicable).

Property Transfer Tax.

Goods and Services Tax (if applicable).

In addition to the above costs there may be financial adjustments between the Seller and the Buyer pursuant to Section 6 and additional taxes payable by one or more of the parties in respect of the Property or the transaction contemplated hereby (eg. empty home tax and speculation tax).

- CLOSING MATTERS:** The closing documents referred to in Sections 11, 11A and 11B of this Contract will, in most cases, be prepared by the Buyer's Lawyer or Notary and provided to the Seller's Lawyer or Notary for review and approval. Once settled, the lawyers/notaries will arrange for execution by the parties and delivery on or prior to the Completion Date. The matters addressed in the closing documents referred to in Sections 11A and 11B will assist the lawyers/notaries as they finalize and attend to various closing matters arising in connection with the purchase and sale contemplated by this Contract.
- RISK:** (Section 18) The Buyer should arrange for insurance to be effective as of 12:01 am the Completion Date.
- FORM OF CONTRACT:** This Contract of Purchase and Sale is designed primarily for the purchase and sale of freehold residences. If your transaction involves: a house or other building under construction, a lease, a business, an assignment, other special circumstances (including the acquisition of land situated on a First Nations reserve). Additional provisions, not contained in this form, may be needed, and professional advice should be obtained. A Property Disclosure Statement completed by the Seller may be available.
- REALTOR® Code, Article 11:** A REALTOR® shall not buy or sell, or attempt to buy or sell an interest in property either directly or indirectly for himself or herself, any member of his or her immediate family, or any entity in which the REALTOR® has a financial interest, without making the REALTOR®'s position known to the buyer or seller in writing. Real Estate Council Rules 5-9: If a licensee acquires, directly or indirectly, or disposes of real estate, or if the licensee assists an associate in acquiring, directly or indirectly, or disposing of real estate, the licensee must make a disclosure in writing to the opposite party before entering into any agreement for the acquisition or disposition of the real estate.
- RESIDENCY:** When completing their residency and citizenship status, the Buyer and the Seller should confirm their residency and citizenship status and the tax implications thereof with their Lawyer/Accountant.
- AGENCY DISCLOSURE:** (Section 21) all Designated Agents/Licensees with whom the Seller or the Buyer has an agency relationship should be listed. If additional space is required, list the additional Designated Agents/Licensees on an addendum to the Contract of Purchase and Sale.

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BCREA



THE CANADIAN
BAR ASSOCIATION
British Columbia Branch

PAGE 1 of 8 PAGES

CONTRACT OF PURCHASE AND SALE

BROKERAGE: Oakwyn Realty Ltd. DATE: 12/19/2019
ADDRESS: 3195 Oak Street Vancouver PC: V6H2L2 PHONE: (604) 620-6788
PREPARED BY: Jason Shang MLS® NO: R2411678

SELLER: <u>Alvarez & Marsal Canada Inc.</u>	BUYER: <u>YONGLING DUAN</u>
SELLER: <u>4102 1028 BARCLAY</u>	BUYER: <u>C/O Agency</u>
<u>Vancouver</u> <u>BC</u>	<u>PC: V6H 0B1</u>
PHONE: <u></u>	PHONE: <u>V6H2L2</u>
	OCCUPATION: <u></u>

PROPERTY:

UNIT NO. 4102 ADDRESS OF PROPERTY 1028 BARCLAY STREET
Vancouver BC
CITY/TOWN/MUNICIPALITY Vancouver POSTAL CODE V6H 0B1
PID 028-447-263 OTHER PID(S)

STRATA LOT 254, PLAN BCS4016, DISTRICT LOT 185, GROUP 1, NEW WESTMINSTER
LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN
PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V

LEGAL DESCRIPTION

The Buyer agrees to purchase the Property from the Seller on the following terms and subject to the following conditions: 4,330,000.00

- PURCHASE PRICE:** The purchase price of the Property will be Four Million Three Hundred Thirty Thousand 4,330,000.00 DOLLARS \$ 4,330,000.00 (Final Price) AT AT AT AT
- DEPOSIT:** A deposit of \$ 250,000.00 which will form part of the Purchase Price, will be paid within 24 hours of acceptance unless agreed as follows: within 24 hours upon subject removal in the form of a bank draft

All monies paid pursuant to this section (Deposit) will be paid in accordance with section 10 or by uncertified cheque except as otherwise set out in this section 2 and will be delivered in trust to Oakwyn Realty Ltd in Trust and held in trust in accordance with the provisions of the Real Estate Services Act. In the event the Buyer fails to pay the Deposit as required by this Contract, the Seller may, at the Seller's option, terminate this Contract. The party who receives the Deposit is authorized to pay all or any portion of the Deposit to the Buyer's or Seller's conveyancer (the "Conveyancer") without further written direction of the Buyer or Seller, provided that: (a) the Conveyancer is a Lawyer or Notary; (b) such money is to be held in trust by the Conveyancer as stakeholder pursuant to the provisions of the Real Estate Services Act pending the completion of the transaction and not on behalf of any of the principals to the transaction; and (c) if the sale does not complete, the money should be returned to such party as stakeholder or paid into Court.

INITIALS UD AT

3. **TERMS AND CONDITIONS:** The purchase and sale of the Property includes the following terms and is subject to the following conditions:

Subject to a new first mortgage being made available to the buyer on or before SUBJECT REMOVAL
DATE in the amount of \$ HOW MUCH THE CLIENT IS MORTGAGING at an interest rate not to
exceed % per annum.

INSPECTION

Subject to the Buyer, on or before Jan 9, 2020 at the Buyer's expense, obtaining and approving an inspection report against any defects whose cumulative cost of repairs exceeds \$ 500.00 and which reasonably may adversely affect the Property's use or value. The Seller will allow access to the Property for this purpose on reasonable notice.

INSURANCE

This offer is subject to the Buyer obtaining approval for fire/property insurance, on terms and at rates, satisfactory to the Buyer, on or before Jan 9, 2020 .

DOCUMENTS

Subject to the Buyer, on or before Jan 9, 2020 receiving and being satisfied with the following documents with respect to information that reasonably may adversely affect the use or value of the Strata Lot, including any bylaw, item for repair or maintenance, special levy, judgment or other liability, whether actual or potential:

1. a Form "B" Information Certificate, issued within the last 30 days, attaching the Strata Corporation rules, current budget, the developer's Rental Disclosure Statement, and Depreciation Report if any;
2. a copy of the registered Strata Plan, any amendments to the Strata Plan, and any resolutions dealing with changes to common property;
3. the current bylaws, rules, financial statements of the Strata Corporation, and any section to which the Strata Lot belongs;
4. the minutes of any meeting held between the period from NOV 2017 to NOV 2019 by the Strata Council, and by the members in annual, extraordinary or special general meetings, and by the members or the executive of any section to which the Strata Lot belongs;
5. all copies of any engineers', depreciation reports or other consultants' reports concerning the Strata Corporation;
6. a copy of the title search and with any charge or other feature, whether registered or not, that reasonably may affect the Property's use or value; and
7. a copy of the Property Disclosure Statement (PDS), issued within the last 30 days, dated which is incorporated into and forms part of this Contract.

Immediately upon acceptance of this offer or counter-offer the Seller will authorize the Seller's Designated Agent/Licensee, to request, at the Seller's expense, complete copies of the documents listed above from the Strata Corporation or other sources and to immediately, upon receipt, or within 3 days of the acceptance of this offer or counter-offer, deliver the documents to the Buyer's Designated Agent/Licensee. In the event the Seller provides the documentation listed above after the date specified, but before the subject removal date, then the original date for subject removal will be extended to 3 business days after receipt of the documents.

The above conditions are for the sole benefit of the Buyer. All subjects written above will be satisfied or waived on or before the dates indicated above and failing which this Contract will be terminated, the parties will have no further obligations toward each other, and the Deposit, if any, will be immediately returned to the Buyer.

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~~SECRET~~

The Buyer acknowledges and accepts that on the Completion Date, the Buyer will receive title containing, in addition to any encumbrance referred to in Clause 9 (TITLE) of this contract:

1. any non-financial charge, and
2. any financial charge payable by a utility on its right-of-way restrictive covenant, easement or other interest
set out in the copy of the title search results that is attached to and forms part of this

Each condition, if so indicated is for the sole benefit of the party indicated. Unless each condition is waived or declared fulfilled by written notice given by the benefitting party to the other party on or before the date specified for each condition, this Contract will be terminated thereupon and the Deposit returnable in accordance with the *Real Estate Services Act*.

INITIALS

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PROPERTY ADDRESS

3. **TERMS AND CONDITIONS:** The purchase and sale of the Property includes the following terms and is subject to the following conditions:
SPECIAL LEVIES
If a special levy is approved before the Completion Date, the Seller will credit the Buyer with 100% of the special levy that the Buyer is obligated to pay under the Strata Property Act, regardless of whether the special levy is due or payable by lump sum or installments over time. The Seller hereby directs the Buyer to hold back such credit from the sale proceeds and to remit it to the Strata Corporation. If a special assessment has been proposed by way of Notice of Special General Meeting or by way of Notice of Annual General Meeting, but not passed by the Strata Corporation before the Completion Date, the Buyer may hold back the amount of the proposed assessment and either pay the amount to the Strata Corporation or, if the proposed special assessment is defeated, pay the amount to the Seller.

AMENDMENT OF BYLAWS OR RULES

If prior to the Completion Date the Seller becomes aware of any notice of a resolution to amend the bylaws or rules of the Strata Corporation, or the bylaws or rules of a section to which the Strata Lot belongs, or any amendment to such bylaws or rules, that the Seller has not previously disclosed to the Buyer, the Seller will promptly deliver a copy of the relevant resolution or notice of resolution to the Buyer.

ALTERATIONS AND MODIFICATIONS

The Seller represents and warrants that during the time the Seller has owned the Property, there have been no unauthorized alterations or modifications to the Property and to the best of the Seller's knowledge and belief, there have never previously been any unauthorized alterations or modifications to the Property.

PROPERTY TRANSFER TAX

The Buyer acknowledges that at the time of this agreement Property Transfer Tax is applicable on the Purchase Price of the Property at a rate of 1% on the first \$200,000 and 2% on the portion of the fair market value greater than \$200,000 and up to and including \$2,000,000 and 3% on the portion of the fair market value greater than \$2,000,000, and if the property is residential, a further 2% on the portion of the fair market value greater than \$3,000,000 as required by the Property Transfer Tax Act.

GST

In the event GST is payable on the purchase of the Property, the GST is included in the Purchase Price. The Seller agrees to remit GST to the CRA. The Seller will indemnify and hold the Buyer harmless for the payment of GST.

OTHER TAXES

The Buyer is aware that the Provincial and Federal Government may implement or change tax regulations from time to time. At the time of this agreement, the Buyer is made aware of the BC Speculation and Vacancy Tax and of the City of Vancouver Empty Home Tax. The Buyer has been advised to seek independent accounting advice on the application of these taxes.

ILLEGAL SUBSTANCES

The Seller represents and warrants that, during the time the Seller has owned the Strata lot, neither the strata lot nor any limited common property associated with the strata lot has been used for the illegal growth of any substances or for the growth or manufacture of any illegal substances. This warranty shall survive and not merge on the completion of this transaction. Further, the Seller represents that, to the best of the Seller's knowledge and belief, neither the strata lot nor any limited common property associated with the strata lot has ever been used for the illegal growth of any substances, or growth or manufacture of illegal substances.

MEASUREMENTS

The Buyer is aware that the square footage as advertised is approximate and not guaranteed and the Buyer is satisfied with size of the Property as viewed.

Each condition, if so indicated is for the sole benefit of the party indicated. Unless each condition is waived or declared fulfilled by written notice given by the benefiting party to the other party on or before the date specified for each condition, this Contract will be terminated thereupon and the Deposit returnable in accordance with the Real Estate Services Act.

INITIALS

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PROPERTY ADDRESS

3. TERMS AND CONDITIONS: The purchase and sale of the Property includes the following terms and is subject to the following conditions:

PARKING

The Purchase Price includes the exclusive use of parking stall # 50, 51, 52 (the "Parking Stall"). The Seller represents and warrants the Parking Stall is designated under the following arrangement (select one):

- ☐ as limited common property of the Strata Lot;
☒ as common property of the Strata Corporation ~~under a long term lease which expires on~~
☐ as common property of the Strata Corporation under a short term exclusive use agreement or special privilege;
☐ as a separate Strata Lot; or
☐ as part of the Strata Lot.

CLEAN CONDITION

The Seller will remove all personal possessions that are not included in the sale of the Property and leave the Property in a clean condition free of garbage or debris. The Seller will professionally clean the Property including the insides of all cabinets and appliances and will steam clean carpets (if any) in the Property. The Seller covenants and agrees that all appliances will be in good working order on the Completion Date.

KEYS

On the Possession Date the Seller will provide the Buyer with at least two sets of keys and/or fobs, for the unit including, but not limited to, the strata lot, the building, parking areas, ~~storage areas, storage lockers, mailboxes~~, building amenities and if the building features a garage door, all remote controls for the garage door.

STRATA FEES

The Seller ~~represents and warrants~~ *confirms* the monthly strata fees are ~~\$1072.80~~ *currently* ~~and subject to change~~.

RESTRICTIONS

The Seller ~~represents and warrants~~ the following restrictions apply:
~~Pets Allowed w/Rest., Rentals Allowed w/Restrictions~~

ACCESS

The Seller shall allow the Buyer to access the property on 2 occasions after subject removal (if any) and prior to the Completion Date. The Buyer shall provide to the Seller or Seller's representative at least 24 hours notice to access the Property. The Buyer agrees to indemnify and save harmless the Seller from any claims, actions, damages or costs that result from the Seller's access of the Property under this clause.

LEGAL & OTHER PROFESSIONAL ADVICE

The Buyer and Seller acknowledge that the Brokerage and Designated Agents do not provide legal or other expert advice in matters beyond the common standard of care in the Real Estate Industry. The parties have been advised to seek independent legal advice prior to executing this Contract of Purchase and Sale.

CONFIDENTIALITY OF TERMS

The Buyer and Seller agree that the terms and conditions of any offer or counter-offer with respect to this Property shall not be disclosed to any other potential Buyer of the property without the prior written consent of the Buyer.

Each condition, if so indicated is for the sole benefit of the party indicated. Unless each condition is waived or declared fulfilled by written notice given by the benefiting party to the other party on or before the date specified for each condition, this Contract will be terminated thereupon and the Deposit returnable in accordance with the Real Estate Services Act.

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4. **COMPLETION:** The sale will be completed on March 9th, yr. 2020
(Completion Date) at the appropriate Land Title Office.
5. **POSSESSION:** The Buyer will have vacant possession of the Property at 11 a.m. on March 10, yr. 2020 (Possession Date) OR, subject to the following existing tenancies, if any:
6. **ADJUSTMENTS:** The Buyer will assume and pay all taxes, rates, local improvement assessments, fuel utilities and other charges from, and including, the date set for adjustments, and all adjustments both incoming and outgoing of whatsoever nature will be made as of March 10th, yr. 2020 (Adjustment Date).
7. **INCLUDED ITEMS:** The Purchase Price includes any buildings, improvements, fixtures, appurtenances and attachments thereto, and all blinds, awnings, screen doors and windows, curtain rods, tracks and valances, fixed mirrors, fixed carpeting, electric, plumbing, heating and air conditioning fixtures and all appurtenances and attachments thereto as viewed by the Buyer at the date of inspection. INCLUDING:
Air Conditioning, Clothes Washer/Dryer, Dishwasher, Drapes/Window Coverings, Microwave, Oven - Built In, Range Top, Refrigerator, Sprinkler - Fire, Wine Cooler, all light fixtures.
All indoor and outdoor furnitures, home decoration (pots, paintings, mirrors, clocks, etc.), rugs, lamps, TVs.
All items in the property.
8. **BUT EXCLUDING:**
Furniture, books, computer.
8. **VIEWED:** The Property and all Included Items will be in substantially the same condition at the Possession Date as when viewed by the Buyer on December 18th yr. 2019
9. **TITLE:** Free and clear of all encumbrances except subsisting conditions, provisos, restrictions exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way in favour of utilities and public authorities, existing tenancies set out in Section 5, if any, and except as otherwise set out herein.
10. **TENDER:** Tender or payment of monies by the Buyer to the Seller will be by certified cheque, bank draft, cash or Lawyer's/Notary's or real estate brokerage's trust cheque.
11. **DOCUMENTS:** All documents required to give effect to this Contract will be delivered in registrable form where necessary and will be lodged for registration in the appropriate Land Title Office by 4 pm on the Completion Date.
- 11A. **SELLER'S PARTICULARS AND RESIDENCY:** The Seller shall deliver to the Buyer on or before the Completion Date a statutory declaration of the Seller containing: (1) particulars regarding the Seller that are required to be included in the Buyer's Property Transfer Tax Return to be filed in connection with the completion of the transaction contemplated by this Contract (and the Seller hereby consents to the Buyer inserting such particulars on such return); (2) declarations regarding the Speculation and Vacancy Tax for residential properties located in jurisdictions where such tax is imposed and the Vancouver Vacancy By-Law for residential properties located in the City of Vancouver; and (3) if the Seller is not a non-resident of Canada as described in the non-residency provisions of the *Income Tax Act*, confirmation that the Seller is not then, and on the Completion Date will not be, a non-resident of Canada. If on the Completion Date the Seller is a non-resident of Canada as described in the residency provisions of the *Income Tax Act*, the Buyer shall be entitled to hold back from the Purchase Price the amount provided for under section 116 of the *Income Tax Act*.

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PROPERTY ADDRESS

- 11B. GST CERTIFICATE:** If the transaction contemplated by this Contract is exempt from the payment of Goods and Services Tax ("GST"), the Seller shall execute and deliver to the Buyer on or before the Completion Date, an appropriate GST exemption certificate to relieve the parties of their obligations to pay, collect and remit GST in respect of the transaction. If the transaction contemplated by this Contract is not exempt from the payment of GST, the Seller and the Buyer shall execute and deliver to the other party on or before the Completion Date an appropriate GST certificate in respect of the transaction.
- 12. TIME:** Time will be of the essence hereof, and unless the balance of the cash payment is paid and such formal agreements to pay the balance as may be necessary is entered into on or before the Completion Date, the Seller may, at the Seller's option, terminate this Contract, and, in such event, the amount paid by the Buyer will be non-refundable and absolutely forfeited to the Seller, subject to the provisions of Section 28 of the *Real Estate Services Act*, on account of damages, without prejudice to the Seller's other remedies.
- 13. BUYER FINANCING:** If the Buyer is relying upon a new mortgage to finance the Purchase Price, the Buyer, while still required to pay the Purchase Price on the Completion Date, may wait to pay the Purchase Price to the Seller until after the transfer and new mortgage documents have been lodged for registration in the appropriate Land Title Office, but only if, before such lodging, the Buyer has: (a) made available for tender to the Seller that portion of the Purchase Price not secured by the new mortgage, and (b) fulfilled all the new mortgagee's conditions for funding except lodging the mortgage for registration, and (c) made available to the Seller, a Lawyer's or Notary's undertaking to pay the Purchase Price upon the lodging of the transfer and new mortgage documents and the advance by the mortgagee of the mortgage proceeds pursuant to the Canadian Bar Association (BC Branch) (Real Property Section) standard undertakings (the "CBA Standard Undertakings").
- 14. CLEARING TITLE:** If the Seller has existing financial charges to be cleared from title, the Seller, while still required to clear such charges, may wait to pay and discharge existing financial charges until immediately after receipt of the Purchase Price, but in this event, the Seller agrees that payment of the Purchase Price shall be made by the Buyer's Lawyer or Notary to the Seller's Lawyer or Notary, on the CBA Standard Undertakings to pay out and discharge the financial charges, and remit the balance, if any, to the Seller.
- 15. COSTS:** The Buyer will bear all costs of the conveyance and, if applicable, any costs related to arranging a mortgage and the Seller will bear all costs of clearing title.
- 16. RISK:** All buildings on the Property and all other items included in the purchase and sale will be, and remain, at the risk of the Seller until 12:01 am on the Completion Date. After that time, the Property and all included items will be at the risk of the Buyer.
- 17. PLURAL:** In this Contract, any reference to a party includes that party's heirs, executors, administrators, successors and assigns; singular includes plural and masculine includes feminine.
- 18. REPRESENTATIONS AND WARRANTIES:** There are no representations, warranties, guarantees, promises or agreements other than those set out in this Contract and the representations contained in the Property Disclosure Statement if incorporated into and forming part of this Contract, all of which will survive the completion of the sale.
- 19. PERSONAL INFORMATION:** The Buyer and the Seller hereby consent to the collection, use and disclosure by the Brokerages and by the managing broker(s), associate broker(s) and representative(s) of those Brokerages (collectively the "Licensee(s)") described in Section 21, the real estate boards of which those Brokerages and Licensees are members and, if the Property is listed on a Multiple Listing Service®, the real estate board that operates the Multiple Listing Service®, of personal information about the Buyer and the Seller:
- A. for all purposes consistent with the transaction contemplated herein;
 - B. If the Property is listed on a Multiple Listing Service®, for the purpose of the compilation, retention and publication by the real estate board that operates the Multiple Listing Service® and other real estate boards of any statistics including historical Multiple Listing Service® data for use by persons authorized to use the Multiple Listing Service® of that real estate board and other real estate boards;

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- C. for enforcing codes of professional conduct and ethics for members of real estate boards; and
D. for the purposes (and to the recipients) described in the brochure published by the British Columbia Real Estate Association entitled *Privacy Notice and Consent*.

The personal information provided by the Buyer and Seller may be stored on databases outside Canada, in which case it would be subject to the laws of the jurisdiction in which it is located.

20. ASSIGNMENT OF REMUNERATION: The Buyer and the Seller agree that the Seller's authorization and instruction set out in section 25(c) below is a confirmation of the equitable assignment by the Seller in the Listing Contract and is notice of the equitable assignment to anyone acting on behalf of the Buyer or Seller.

20A. RESTRICTION ON ASSIGNMENT OF CONTRACT: The Buyer and the Seller agree that this Contract: (a) must not be assigned without the written consent of the Seller; and (b) the Seller is entitled to any profit resulting from an assignment of the Contract by the Buyer or any subsequent assignee.

21. AGENCY DISCLOSURE: The Seller and the Buyer acknowledge and confirm as follows (initial appropriate box(es) and complete details as applicable):

AS	
INITIALS	

A. The Seller acknowledges having received, read and understood Real Estate Council of British Columbia (RECBC) form entitled "*Disclosure of Representation in Trading Services*" and hereby confirms that the Seller has an agency relationship with

Ken Leong, PREC* (Designated Agent(s)/Licensee(s))

who is/are licensed in relation to Oakwyn Realty Downtown Ltd. (Brokerage).

BS	
INITIALS	

B. The Buyer acknowledges having received, read and understood RECBC form entitled "*Disclosure of Representation in Trading Services*" and hereby confirms that the Buyer has an agency relationship with

Jason Shang (Designated Agent(s)/Licensee(s))

who is/are licensed in relation to OAKWYN REALTY LTD (Brokerage).

INITIALS	

C. The Seller and the Buyer each acknowledge having received, read and understood RECBC form entitled "*Disclosure of Risks Associated with Dual Agency*" and hereby confirm that they each consent to a dual agency relationship with

_____ (Designated Agent(s)/Licensee(s))

who is/are licensed in relation to _____ (Brokerage),

having signed a dual agency agreement with such Designated Agent(s)/Licensee(s) dated _____.

INITIALS	

D. If only (A) has been completed, the Buyer acknowledges having received, read and understood RECBC form "*Disclosure of Risks to Unrepresented Parties*" from the Seller's agent listed in (A) and hereby confirms that the Buyer has no agency relationship.

INITIALS	

E. If only (B) has been completed, the Seller acknowledges having received, read and understood RECBC form "*Disclosure of Risks to Unrepresented Parties*" from the Buyer's agent listed in (B) and hereby confirms that the Seller has no agency relationship.

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 PROPERTY ADDRESS

22. **ACCEPTANCE IRREVOCABLE** (Buyer and Seller): The Seller and the Buyer specifically confirm that this Contract of Purchase and Sale is executed under seal. It is agreed and understood that the Seller's acceptance is irrevocable, including without limitation, during the period prior to the date specified for the Buyer to either:

A. fulfill or waive the terms and conditions herein contained; and/or

B. exercise any option(s) herein contained.

23. **THIS IS A LEGAL DOCUMENT. READ THIS ENTIRE DOCUMENT AND INFORMATION PAGE BEFORE YOU SIGN** 40 AT

24. **OFFER:** This offer, or counter-offer, will be open for acceptance until 8 o'clock P. m. on Jan 02, yr 2020 ~~December 31 2019~~ yr. ~~2019~~ (unless withdrawn in writing with notification to the other party of such revocation prior to notification of its acceptance), and upon acceptance of the offer, or counter-offer, by accepting in writing and notifying the other party of such acceptance, there will be a binding Contract of Purchase and Sale on the terms and conditions set forth.

X
 WITNESS

Yongling Duan
 2020 JAN 02 11:11

SEAL YONGLING DUAN
 PRINT NAME

X
 WITNESS

BUYER

SEAL
 PRINT NAME

If the Buyer is an individual, the Buyer declares that they are a Canadian citizen or a permanent resident as defined in the *Immigration and Refugee Protection Act*:

Yes 40
 INITIALS

No
 INITIALS

25. **ACCEPTANCE:** The Seller (a) hereby accepts the above offer and agrees to complete the sale upon the terms and conditions set out above, (b) agrees to pay a commission as per the Listing Contract, and (c) authorizes and instructs the Buyer and anyone acting on behalf of the Buyer or Seller to pay the commission out of the proceeds of sale and forward copies of the Seller's Statement of Adjustments to the Cooperating/Listing Brokerage, as requested forthwith after completion.

Seller's acceptance is dated _____, yr. _____

The Seller declares their residency:

RESIDENT OF CANADA AT

INITIALS

NON-RESIDENT OF CANADA

INITIALS

as defined under the *Income Tax Act*.

X
 WITNESS

SELLER

SEAL Alvarez & Marsal Canada Inc.
 PRINT NAME

X
 WITNESS

SELLER

SEAL
 PRINT NAME

*FREC represents Personal Real Estate Corporations

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Feb/2019
 CREA WCD Form®

**SCHEDULE "A" TO CONTRACT OF PURCHASE AND SALE
FOR THE PROPERTY DESCRIBED IN THE ATTACHED CONTRACT OF
PURCHASE AND SALE (THE "PROPERTY")**

The following terms and conditions replace, modify, and where applicable override, the terms of the attached contract of purchase and sale, and any modifications, additions or addenda thereto (collectively, the "Contract"). Where any conflict arises between the terms of this Schedule "A" and the Contract, the terms of this Schedule "A" will apply.

The following terms and conditions shall not merge, but shall survive, the completion of any sale of the Property to the Buyer.

The references in Schedule "A" to specific clauses in the Contract are references to the clause numbers in the contract of purchase and sale used by the Real Estate Board of Greater Vancouver (the "Real Estate Board Contract"). If the Contract attached hereto has different clause numbers than the Real Estate Board Contract the terms of Schedule "A" will apply with the necessary changes and with equal effect to the equivalent clauses of the Contract, notwithstanding the different clause numbers.

All references to the "Seller" in the Contract and in this Schedule "A" will be read as references to Alvarez & Marsal Canada Inc., in its capacity as the Court appointed receiver over all of the assets, undertakings and property owned or beneficially owned by Masahiko Nishiyama in Canada, and not in its personal capacity (the "Receiver").

1. Clause 22 of the Contract is deleted, and replaced by the following:

The acceptance of this offer by the Seller is pursuant to a Court Order made in a receivership proceeding in the Supreme Court of British Columbia (the "Court") in Action No. S-1813807 (Vancouver Registry) (the "Proceedings") and not as seller or owner of the Property. The acceptance of this offer by the Seller is subject to the approval of the Supreme Court of British Columbia (the "Court") and will become effective from the time an Order is made by the Court approving this offer. The Buyer acknowledges and agrees that the date of the application for that Order will be at the sole discretion of the Seller. The Buyer also acknowledges and agrees that the Seller's obligations in connection with this offer, until it is approved by the Court, are limited to putting this offer before the Court. Thereafter, the Seller is subject to the jurisdiction and discretion of the Court to entertain other offers and to any further Orders the Court may make regarding the Property. Given the Seller's position and the Seller's relationship to other parties in the Receivership, the Seller may be compelled to advocate that the Court consider other offers in order to obtain the highest price for the Property. Seller gives no undertaking to advocate the acceptance of this offer. In that regard, the Buyer must make its own arrangements to support this offer in Court.

The Buyer acknowledges and agrees that the Seller can disclose the amount of this offer, once accepted, to any person.

If the Court vacates, sets aside or varies an Order approving this offer for any reason whatsoever (except any willful misconduct of the Seller), then the Seller shall not be liable to the Buyer or any other person in any way whatsoever, in connection therewith.

2. Clause 9 of the Contract is deleted, and replaced by the following:

"Free and clear of all encumbrances of the parties with notice of the Proceedings, in accordance with an Order of the Court (the "Vesting Order") except: subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way in favour of utilities and public authorities, and except as otherwise set out herein."

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3. This offer (and any contract formed by its acceptance) may be terminated by the Seller at any time prior to the completion date in the Contract if any Order of the Court or other court of competent jurisdiction renders the completion impossible or inadvisable, and in that event the Seller will have no further obligations or liability to the Buyer.
4. If the Vesting Order is made, and if the Seller does not terminate this offer or any contract formed by its acceptance, then the Buyer must complete the sale on the completion date in the Contract (or such other date as might be in the Vesting Order), time being of the essence, regardless of any appeal or application for leave to appeal, vary or set aside the Vesting Order, by any person.
5. The Canadian Bar Association (BC Branch) (Real Property Section) standard undertakings (the "CBA Standard Undertakings") are of no application whatsoever, to the Contract or a sale of the Property by the Seller.
6. Clause 10 of the Contract is deleted, and replaced by the following:

"Tender or payment of monies by the Buyer to the Seller, and all deposits paid by the Buyer, will be by certified cheque, bank draft, or lawyer's or notary's trust cheque, only."
7. The Buyer acknowledges and agrees the Property includes real property only, and no personal, intangible or other property, unless otherwise addressed by further addendum.
8. Clauses 7 and 8 of the Contract are deleted, and replaced by the following:

"The Buyer acknowledges and agrees that the Seller is selling the Property and the Buyer is buying the Property on a strictly "as is, where is" basis as of the time of actual possession. Without limiting the generality of the foregoing, the Buyer acknowledges and agrees that the Seller has not made and will not make any warranty or representation whatsoever with respect to the Property, and no such warranty or representation is expressed or can be implied including, without limitation, any warranty or representation as to environmental condition, size, dimensions, fitness, design or condition for any particular purposes, quality, or the existence of any defect, whether latent or patent. The Buyer acknowledges and agrees that it has conducted any inspections with respect to the condition of the Property, including in relation to environmental issues, that the Buyer deems appropriate, and has satisfied itself with regard to such matters.

If the Seller has provided the Buyer with any reports or information regarding the Property (the "Information"), the Buyer acknowledges and agrees that the Seller has not made and will not make any warranty or representation whatsoever regarding the Information, including the accuracy or completeness of the Information, and any use that the Buyer or others may make of the Information is strictly at the Buyer's own risk".
10. Clause 12 of the Contract is deleted, and replaced by the following:

"Time will be of the essence hereof, and unless the balance of the cash payment is paid on or before the Completion Date, the Seller may at the Seller's option, either terminate or reaffirm the Contract, and the deposit will be non-refundable and absolutely forfeited to the Seller, without prejudice to the Seller's other rights and remedies. These terms and conditions are for the sole benefit of the Seller".
11. No property condition disclosure statement concerning the Property forms part of the Contract, whether or not such a statement is attached to the Contract.
12. Clause 18 of the Contract is deleted and replaced by the following:

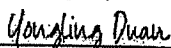
"There are no representations, warranties, guarantees, promises or agreements other than those set out in this Contract."

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13. The Seller will not be responsible for removing any personal property left on or about the Property, by any occupant of the Property or otherwise.
14. Clause 5 of the Contract is modified, by adding the following:
- a) Possession will be by operation of and pursuant to the terms of the Order.
 - b) No adjustments, including but not limited to adjustments for rents or security deposits, will be made to the purchase price on account of any tenancies.
 - c) If any occupant of the Property does not vacate the Property by the possession date, then the Seller will apply for a Writ of Possession and instruct a Court Bailiff to deliver possession to the Buyer. This is the Seller's only obligation as regards possession. The Seller will not be liable to the Buyer or any other person in any way whatsoever (apart from the Seller's obligation to apply for a Writ of Possession and instruct a Court Bailiff), if possession cannot be delivered to the Buyer on the possession date. The Buyer acknowledges that considerable time is often required, to obtain Writs of Possession. The Seller will not be responsible for removing any personal property left on or about the Property, by any occupant of the Property or otherwise.
15. The Vesting Order will describe the Buyer exactly as the Buyer appears at the upper right on the first page of the Contract, so the Buyer as described at the upper right on the first page of the Contract will appear as the owner of the Property after completion of a sale of the Property. Seller will not be bound by any term in the Contract describing the Buyer otherwise, or allowing the Buyer to complete the sale with a different name.
16. The Buyer is responsible, immediately on completion of the sale of the Property to the Buyer, for paying any and all taxes arising from or in connection with the sale (including Property Transfer Tax and GST). The Seller can, at its option, require the Buyer to pay if any such GST immediately on completion of the sale (and in that event the Seller will then remit such tax to Canada Revenue Agency).
17. The Buyer authorizes the Seller and its agents and insurers to disclose to third parties any personal and/or other information arising from or in any way connected with the Property, or the sale of the Property to the Buyer.

BUYER(S)

DocuSigned by:

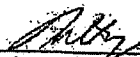


603A2F956C22161

Dec 19, 2019

Date: _____

SELLER



Alvarez & Marsal Canada Inc.,
in its capacity as the Court appointed
receiver over all of the assets,
undertakings and property owned
or beneficially owned by Masahiko
Nishiyama in Canada, and not in its
personal capacity

Date: _____

Dec. 23, 2019

APPENDIX "B"**CLAIMS TO BE DISCHARGED FROM TITLE TO THE CONDO**

Party	Nature of Charge	Registration No.
	Injunction	CA7073370
	Injunction	CA7640699
	Crown Lien	WX2141048

APPENDIX "C"

PERMITTED ENCUMBRANCES, EASEMENTS, AND RESTRICTIVE COVENANTS

1. The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown.
2. The following:

Party	Nature of Charge	Registration No.
City of Vancouver	Easement and Indemnity Agreement	BB655983
	Equitable Charge	BB655985
	Covenant	BB762515
	Covenant	BB762542
Shaw Cablesystems Limited	Statutory Right of Way	BB89948
Appurtenant to Parcel A Plan BCP20086 Except: Air Space Plan BCP40279	Easement	BB762491
	Easement	BB762492
	Easement	BB762493
	Easement	BB762494
	Easement	BB762496
	Easement	BB762497
	Easement	BB762498
	Easement	BB762499
	Easement	BB762500
Telus Communications Inc.	Statutory Right of Way	BB1077958

BILL OF SALE (ABSOLUTE)

THIS BILL OF SALE made effective the ____ day of ____, 2020.

BETWEEN:

ALVAREZ & MARSAL CANADA INC., in its capacity as the Court-appointed Receiver over all of the assets, undertakings and property owned or beneficially owned by Masahiko Nishiyama in Canada, and having an office located at 1680 – 400 Burrard Street, Vancouver, British Columbia, V6C 3A6

(the "Vendor")

AND:

MAYNARDS INDUSTRIES CANADA LTD., a company duly incorporated under the laws of the Province of British Columbia and having its registered and records offices located at _____

(the "Purchaser")

WHEREAS:

A. The Vendor is authorized by court orders made February 14, 2019, and July 19, 2019, in proceedings in the Supreme Court of British Columbia action number S-1813807 (Vancouver Registry) to market and sell any and all of the assets, undertakings and property owned or beneficially owned by Masahiko Nishiyama in Canada; and

B. The Vendor has agreed with the Purchaser for the absolute sale to the Purchaser of the Assets described in the attached Schedule "A" (the "Purchased Assets").

NOW IN CONSIDERATION of the sum of \$16,000.00 (the "Purchase Price") and other good and valuable consideration now paid by the Vendor to the Purchaser, the receipt and sufficiency of which is acknowledged, the parties covenant and agree as follows:

1. Transfer. The Vendor does hereby sell, assign, transfer and set over to the Purchaser the Purchased Assets and the appurtenances thereto free and clear of all liens, charges and encumbrances of every nature and kind whatsoever, all of which are in possession of the Vendor, and all right, title, interest, property claim and demand of the Vendor therein, to and for the Purchaser's sole and only use forever.

2. As is, with no warranty. Purchaser agrees to accept the Purchased Assets on a strictly "as is where is" basis as they exist on the date of this Bill of Sale. The Purchaser agrees that the Vendor has not made and is not making any representations and/or warranties express or implied to the Purchaser as to description, value, fitness for any purpose (including intended purpose), merchantability, quantity, quality, state, condition, location, or any other matter concerning the Purchased Assets, or any part of them, or the completeness, accuracy or currency of any

material or documentation provided by or on behalf of the Vendor in relation to the Purchased Assets. The Purchaser agrees that no representation or warranty of any kind can be implied at law or in equity, by statute or otherwise, with respect to the Purchased Assets. The Purchaser acknowledges that it has inspected the Purchased Assets and has relied entirely on its own inspections and investigations. The description of the Purchased Assets contained in all schedules to this bill of sale is for the purpose of identification only and no representation or warranty is being given by the Seller concerning the accuracy of those descriptions. The Seller will not be liable, nor will the Purchaser have a remedy for recovery of any damages, including but not limited to economic loss of any kind, arising out of any claim that the Purchased Assets infringe the rights of any other person.

3. Responsibility for taxes. The Vendor and the Purchaser agree that the Purchaser will be liable for and will pay all taxes, including all retail sales and commodity taxes, properly payable by the Purchaser in connection with the sale and transfer of the Purchased Assets, unless a certificate of exemption is provided to the Vendor prior to, or upon, the Purchaser taking possession of the Purchased Assets.

4. Entire Agreement. This Bill of Sale constitutes the entire agreement between the Vendor and Purchaser pertaining to the purchase and sale of the Purchased Assets and supersedes all prior agreements, undertakings, negotiations and discussions, whether written or oral, of the Vendor and the Purchaser, and there are no warranties, representations, covenants, obligations or agreements between the Vendor and the Purchaser except as set forth in this Bill of Sale.

5. Enurement. It is expressly agreed between the parties hereto that all grants, covenants, provisos and agreements, rights, powers, privileges, conditions and liabilities contained in this Bill of Sale shall be read and held as made by and with, and granted to and imposed upon the respective parties hereto, and their respective successors and assigns, the same as if the words successors and assigns had been inscribed in all proper and necessary places.

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- 3 -

6. Counterparts. This Bill of Sale may be signed by the parties in as many counterparts as may be necessary, each of which so signed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and, notwithstanding the date of execution, shall be deemed to bear the effective date as set out below.

IN WITNESS WHEREOF the parties hereto have executed this Bill of Sale as of the date first written above.

ALVAREZ & MARSAL CANADA INC.

in its capacity as court-appointed Receiver of
Masahiko Nishiyama and not in its personal capacity

Per: _____

Anthony Tillman
Senior Vice President

MAYNARDS INDUSTRIES LTD.

Per: _____

Authorized Signatory

Schedule A**Assets**

1. Mercedes S550 vehicle, VIN WDDNG8GB0AA343089

DRAFT

No. S1813807
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985,
C. B-6, AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN

ORDER

GOWLING WLG (Canada) LLP
Barristers & Solicitors
Suite 2300, 550 Burrard Street
Vancouver, BC V6C 2B5

Tel. No. 604.683.6498
Fax No. 604.683.3558

File No. V49403

JDB/azk

No. S-1813807
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,
AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN

NOTICE OF APPLICATION

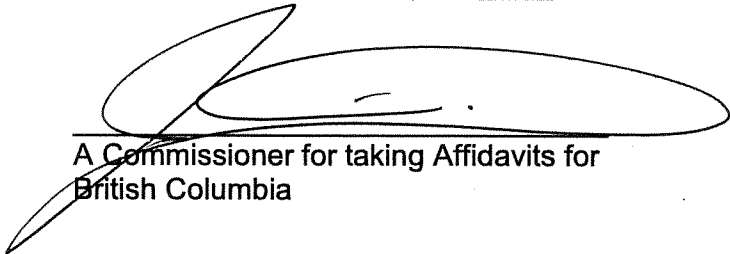
GOWLING WLG (Canada) LLP
Barristers & Solicitors
Suite 2300, 550 Burrard Street
Vancouver, BC V6C 2B5

Tel. No. 604.683.6498
Fax No. 604.683.3558

File No. V49403

JB/msh

This is **Exhibit "I"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia

No. S-1813807
Vancouver Registry

***IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY***

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-6
AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA
BANKRUPT UNDER THE LAWS OF JAPAN

APPLICATION RESPONSE

Application Response of: Hatsumi Kinoshita ("Kinoshita")

THIS IS A RESPONSE TO the application of Alvarez & Marsal Canada Inc and Hiroshi Morimoto (collectively, the "Trustee"), filed February 12, 2020 (the "Application").

Part 1: ORDERS CONSENTED TO

1. Kinoshita does not consent to any of the orders sought in the Application.

Part 2: ORDERS OPPOSED

1. Kinoshita opposes the orders sought at Paragraph 3 of Part 1 of the Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

1. Kinoshita takes no position with respect to the orders sought at Paragraphs 1 and 2 of the Application.

Part 4: FACTUAL BASIS

1. Prior to August 2019, orders were made respecting the "Condo", as defined in the Application, as well as other assets in Canada. These orders were not made on notice to Kinoshita and she is applying to set these orders aside.

2. Kinoshita was assigned full beneficial title to the Condo and other properties pursuant to a family law agreement made in 2015 with the Condo's previous owner, Masahiko Nishiyama ("Mr. Nishiyama").
3. Kinoshita made the Applicant aware that she claimed full beneficial title to the Condo in around August 2019. The Applicant partially disallowed Kinoshita's claim for personal property located in the Condo.
4. On October 9, 2019, Kinoshita filed an application seeking to review disallowance by the Applicant of her claim to ownership of the personal property in the Condo and a stay of execution.
5. On November 1, 2019, the Applicant filed an application for various forms of discovery.
6. On November 5, 2019, Kinoshita filed an application seeking to set aside various orders that were not made on notice to her, including the order for sale of the Condo with a hearing date of February 7 and February 8, 2020 (later moved to February 24, 2019 and February 25, 2019). The filing of this application was delayed due to difficulties in obtaining a hearing date from the Registry and having to obtain copies of various documents filed in this matter and related matters from the Registry.
7. This matter came before the Court on November 7, 2019, November 20, 2019, November 27, 2019 and December 16, 2019. The Court chose to hear the Applicant's application first. It was argued on December 16, 2019. Oral reasons for judgment were given on January 13, 2020. There is yet no entered order. The Court ordered that the Applicant be permitted to examine Kinoshita in Canada pursuant to the *Bankruptcy and Insolvency Act* and the *Civil Rules of Court*.
8. Thus far the Applicants have not sought to examine Kinoshita.
9. Despite apparently concluding that the personal property in the Condo is worthless, the Applicant has refused to provide it to Kinoshita despite her appeal of disallowance. It seems, based on the Applicant's position, that the Applicant intends on disposing of this property before such appeal is adjudicated.
10. The sole creditor in this proceeding is the Resolution and Collection Corporation ("RCC"), a Japanese corporation that does no business in Canada and has no assets in Canada. Hiroshi Morimoto resides in Japan, does no business in Canada and has no assets in Canada.
11. Provided that the proceeds of sale of the Condo are not removed from the jurisdiction of this Court until Kinoshita's claims, including beneficial interest in the Condo and other assets already taken under execution, are adjudicated by this Court, Kinoshita is prepared to agree to the sale proceeding. The proposal by the Applicant would prejudice Kinoshita's claim in this Court by forcing her to start all over again in Japan. She does not wish to do so.

Part 5: LEGAL BASIS

1. Kinoshita agrees to the Condo being converted into cash provided that in doing so she is not prejudiced. The order sought by the Applicant in Part 1 of Paragraph 3(c)(iv) of the Application would prejudice Kinoshita. The money would be removed from the jurisdiction of this Court and, effectively, move adjudication of Kinoshita's claims to the courts of Japan. Neither RCC nor Mr. Morimoto have any assets, business or presence in Canada. There is no guarantee that they would return the money if it is moved to Japan.
2. If the Applicant wished an order moving everything to Japan such order should be clearly set out in Part 1 of the Application and both factual and legal basis should be provided specifically setting out why everything should be moved to Japan after the Applicant already obtained orders for discovery in this proceeding and, in doing so, pre-empted Kinoshita's application for a stay of execution and, possibly, her application for a declaration as to ownership of the Condo, funds already taken by RCC and presumably transmitted to Japan and orders setting aside orders not made in her presence.
3. The onus lies on the Applicant to try to establish that all proceedings should be effectively moved to Japan. They have not done so. The BC Supreme Court clearly has jurisdiction over land and money in British Columbia, and moving a claim respecting the proceeds of sale of the Condo to Japan would not stop proceedings in Canada respecting the millions already taken by RCC in the related matter without notice to Kinoshita that is owned by her.

180 University Residential LP v Yours Asia Corporation, 2019 BCSC 289 at 18

4. The Application provides insufficient legal basis. This is not permitted under the present *Rules of Court*: *Dupre v Patterson*, 2013 BCSC 1561 at 51 onwards. The fact of an insolvency does not relieve a party of its obligation to provide fulsome factual and legal basis and clearly set out the orders it seeks.
5. The proceeds of sale should be paid into court pending adjudication of Kinoshita's claims.
6. In the alternative to the above, if the Applicant does not agree to the proceeds of sale being paid into court pending adjudication of Kinoshita's claims, the sale of the property should not proceed on the basis that the order for sale was made without notice to Kinoshita, Kinoshita claims full beneficial title and the Applicant was made aware of these claims before it decided to list the property for sale.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavits #1 and #2 of Hatsumi Kinoshita.
2. Affidavit #1 of Masahiko Nishiyama.
3. Such additional materials as Kinoshita will advise.

Jurisdiction: Justice Voith is seized of this matter

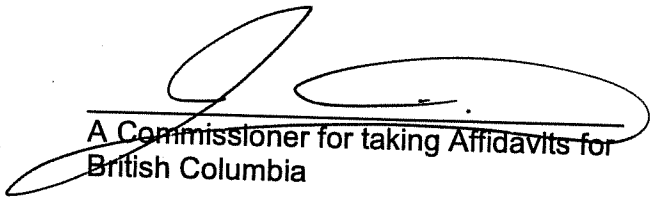
Time Estimate: Two Days.

The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.

Date: February 18, 2020

Todd Brayer
Counsel for Kinoshita

This is **Exhibit "J"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia



No. S-1813807
Vancouver Registry

***IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY***

**IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-6
AS AMENDED**

AND

**IN THE MATTER OF MASAHIKO NISHIYAMA
BANKRUPT UNDER THE LAWS OF JAPAN**

APPLICATION RESPONSE

Application Response of: Masahiko Nishiyama ("Nishiyama")

THIS IS A RESPONSE TO the application of Alvarez & Marsal Canada Inc. in its capacity as the Court-appointed receiver over all of the assets, undertakings and property owed or beneficially owed by Masahiko Nishiyama in Canada and Hiroshi Morimoto (collectively, the "Trustee"), filed February 12, 2020.

Part 1: ORDERS CONSENTED TO

1. The Respondent does not consent to any of the orders sought.

Part 2: ORDERS OPPOSED

2. The Respondent opposes 3(iv)

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

1. The Respondent takes no position on the orders sought at paragraph 1, 2, and 3, except opposes 3(iv)

Part 4: FACTUAL BASIS

1. An application has been filed seeking these orders be set aside by way of a Notice of Application filed by Kinoshita and Mr. Nishiyama on October 9, 2019 seek various orders, amongst others, to set aside the registration of the default judgement of RCC and the Receivership Order.

2. A further Notice of Application was filed by Kinoshita and Mr. Nishiyama on November 5, 2019.
3. A Notice of Application was filed by the Trustee and heard on December 16, 2019. The reasons for judgement have not yet been transcribed.
4. Mr. Nishiyama intends to proceed with filing an appeal in Japan of the RCC order giving rise to the judgement, and subsequent registration in British Columbia. It is estimated that the appeal will be filed the week of February 17, 2020 or February 24, 2020.
5. Mr. Nishiyama agrees to the sale, without prejudice to his position on the above applications to set aside, subject to the provision dealing with the remaining proceeds be subject to either approval of Kinoshita and Trustee and that any further order of the BC Supreme Court.

Part 5: LEGAL BASIS

1. Mr. Nishiyama agrees to the Condo being realized without prejudice pending the application to set aside the registration of the RCC judgement and receivership order.
2. Mr. Nishiyama seeks that the realization proceeds be paid into the British Columbia Supreme Court pending further approval of the British Columbia Supreme Court.
3. The order sought by the Applicant in Part 1 of Paragraph 3(c)(iv) of the Applicant would prejudice Mr. Nishiyama.
4. The money would be removed from the jurisdiction of this Court and, effectively, move adjudication of Mr. Nishiyama claims to the courts of Japan. Neither RCC nor Mr. Morimoto have any assets, business or presence in Canada.
5. There is no guarantee that they would return the money if it is moved to Japan.
6. Kinoshita has made a claim for the beneficial interest of the property.
7. Given the scope of prejudice to Kinoshita and Mr. Nishiyama, it is submitted that the funds should be paid into court in British Columbia and subject to further order of the BC Supreme Court.
8. The legal authorities relied on by the Trustee and Kinoshita.
9. The inherent jurisdiction of this Court.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavits #1 and #2 of Hatsumi Kinoshita.

2. Affidavit #1 of Masahiko Nishiyama.
3. First Report of the Receiver made on February 12, 2020
4. Such additional materials as Kinoshita will advise.

Jurisdiction: Justice Voith is seized of this matter

Time Estimate: Two days

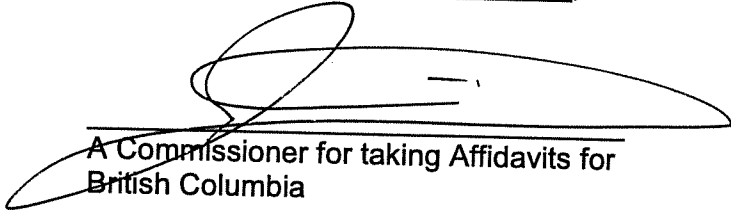
The Application Respondent Mr. Nishiyama has filed in this proceeding a document that contains the Application Respondents' address for service.

Date: February 18, 2020

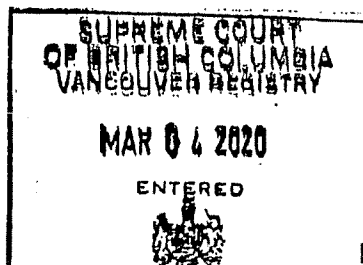


Cody G. Reedman
Counsel for Masahiko Nishiyama, the bankrupt

This is **Exhibit "K"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia



No. S-1813807
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,
AS AMENDED**

AND

**IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN**

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)	MONDAY, THE 24 TH DAY
)	
MR. JUSTICE VOITH)	OF FEBRUARY, 2020

ON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as the Court-appointed Receiver over all of the assets, undertakings and property owned or beneficially owned by Masahiko Nishiyama in Canada (the "**Receiver**"), and Hiroshi Morimoto, Trustee over the bankruptcy estate of Masahiko Nishiyama (the "**Trustee**"), coming on for hearing before me this day, at 800 Smithe Street, Vancouver, British Columbia; AND ON HEARING Colin D. Brousson and Alexandra McCawley, Articled Student, counsel for the Receiver and Trustee, Todd Brayer, counsel for Hatsumi Kinoshita ("**Kinoshita**"), Cody Reedman, counsel for Masahiko Nishiyama, Robert Richardson and Gordon Plottel, counsel for The Resolution and Collection Corporation ("**RCC**"); AND UPON READING the Pleadings filed to date;

THIS COURT ORDERS that:

1. service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application;

2. the actions, conduct and activities of the Receiver set out in the Receiver's First Report are approved and confirmed.
3. the execution and completion of the Contract of Purchase and Sale, dated December 19, 2019, between Alvarez & Marsal Canada Inc. and Yongling Duan (the "**Purchaser**"), attached as Appendix "A" hereto (the "**Condo Agreement**"), concerning the sale of:
 - (a) certain personal property, including household furnishings, decorations, and appliances, and other as set out in the Condo Agreement, (the "**Included Personal Property**"); and
 - (b) the lands and premises legally described as:

Parcel Identifier: 028-447-263
Strata Lot 254, District Lot 185
Group 1, New Westminster District,
Plan BCS4016

(the "**Condo**")

to the Purchaser is hereby approved;

4. upon
 - (a) completion of the Condo Agreement,
 - (b) presentation of a certified copy of this Order for registration in the New Westminster Land Title Office, and
 - (c) delivery by the Receiver to the Purchaser of a bill of sale for the Included Personal Property,

all of the right, title and interest of Nishiyama, Sun Moon Management Ltd. in and to the Included Personal Property and the Condo shall vest absolutely in Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including,

without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on Appendix "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Appendix "C" hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Included Personal Property and the Condo are hereby expunged and discharged as against the Included Personal Property and the Condo;

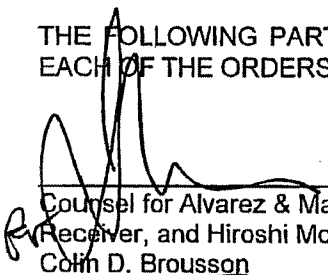
5. upon presentation for registration in the New Westminster Land Title Office of a certified copy of this Order, together with a letter from Gowling WLG (Canada) LLP the solicitors for the Trustee, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
 - (a) enter the Purchaser as the owner of the Condo, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Condo; and
 - (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Condo all of the registered Encumbrances except for those listed in Appendix "C";
6. the proceeds of the Condo shall stand in place and stead of the Condo and, after the usual adjustments between seller and buyer, the proceeds shall be paid to the Receiver, in trust, and shall be paid out in accordance with the following priorities without further Order:
 - (a) first, any arrears of taxes, fees and levies, utilities and services, interest and penalties thereon;

- (b) second, the real estate commission due on this sale of 7% of the first \$100,000.00 and 2 ½% on the remainder of the gross selling price, plus GST thereon, or such lesser amount as maybe agreed to between the Receiver and the listing realtor;
 - (c) third, to the Receiver for all disbursements related to the possession, preservation, maintenance, upkeep and sale of the Condo;
 - (d) fourth, to the Receiver, in trust, in the amount of \$119,469.84 in respect of claims of the Province of British Columbia (the "**Province**"), under the *Speculation and Vacancy Tax* S.B.C 2018, Chapter 46, Section 114, until written agreement between the Province and the Receiver or by further order of this Court; and
 - (e) fifth, the balance then remaining of the proceeds of the sale of the Condo, and Included Personal Property (the "**Net Proceeds**") shall be held by the Receiver until March 12, 2020, pending Oral Reasons from this Honourable Court on whether the Net Proceeds will be distributed to the Trustee to the credit of the Japanese bankruptcy proceedings and to be held by the Trustee pending further order, authorization, or approval of the Japanese Court or agreement of the Trustee and Hatsumi Kinoshita, OR if the Net Proceeds will continue to be held by the Receiver pending further Court Order or agreement between the Receiver and Kinoshita in the proceedings herein.
7. an Order authorizing and directing the Receiver to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the conveyance to the Condo Purchaser.
8. vacant possession of the Included Personal Property and the Condo shall be delivered by the Receiver to the Purchaser at 11:00 a.m. on the Possession Date (as defined in the Condo Agreement), subject to the permitted encumbrances as set out in the Condo Agreement and listed on Appendix "C";
9. the Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court;

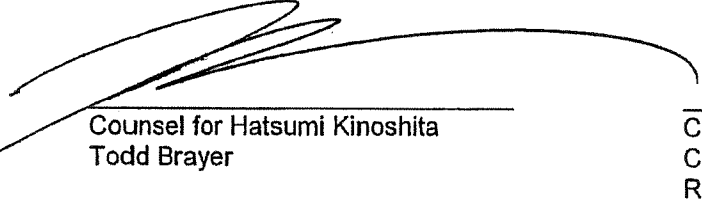
- 5 -

10. the execution and completion of the Bill of Sale (Absolute), attached as Appendix "D" hereto, relating to the sale of the Mercedes S550 vehicle, VIN WDDNG8GB0AA343089, to Maynards Industry Canada Ltd. is hereby approved; and
11. the Receiver shall be at liberty to liquidate or dispose of the remaining personal property from the Condo that is not Included Personal Property (the "Residual Personal Property").
12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order; and
13. the Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

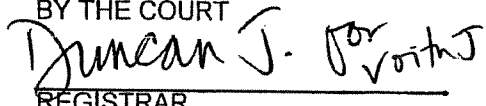

 Counsel for Alvarez & Marsal Canada Inc.
 Receiver, and Hiroshi Morimoto, Trustee
 Colin D. Brousson

 Counsel for Masahiko Nishiyama
 Cody Reedman


 Counsel for Hatsumi Kinoshita
 Todd Brayer

 Counsel for The Resolution and Collection
 Corporation
 Robert Richardson

 Counsel for The Resolution and Collection
 Corporation
 Gordon Plottel

BY THE COURT

 REGISTRAR


V49403\VAN_LAW\3308768\6

ENDORSEMENTS ATTACHED

10. the execution and completion of the Bill of Sale (Absolute), attached as Appendix "D" hereto, relating to the sale of the Mercedes S550 vehicle, VIN WDDNG8GB0AA343089, to Maynards Industry Canada Ltd. is hereby approved; and
11. the Receiver shall be at liberty to liquidate or dispose of the remaining personal property from the Condo that is not Included Personal Property (the "Residual Personal Property").
12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order; and
13. the Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Counsel for Alvarez & Marsal Canada Inc.
Receiver, and Hiroshi Morimoto, Trustee
Colin D. Brousson



Counsel for Masahiko Nishiyama
Cody Reedman

Counsel for Hatsumi Kinoshita
Todd Brayer

Counsel for The Resolution and Collection
Corporation
Robert Richardson

Counsel for The Resolution and Collection
Corporation
Gordon Plottel

BY THE COURT

REGISTRAR

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ENDORSEMENTS ATTACHED

- 5 -

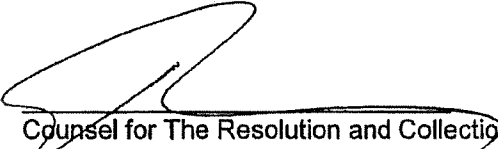
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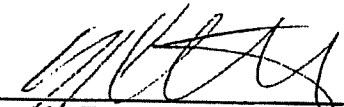
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 Counsel for The Resolution and Collection
 Corporation
 Robert Richardson



 Counsel for The Resolution and Collection
 Corporation
 Gordon Plottel

BY THE COURT

REGISTRAR

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CONTRACT OF PURCHASE AND SALE INFORMATION ABOUT THIS CONTRACT

THIS INFORMATION IS INCLUDED FOR THE ASSISTANCE OF THE PARTIES ONLY. IT DOES NOT FORM PART OF THE CONTRACT AND SHOULD NOT AFFECT THE PROPER INTERPRETATION OF ANY OF ITS TERMS.

- CONTRACT:** This document, when signed by both parties, is a legally binding contract. READ IT CAREFULLY. The parties should ensure that everything that is agreed to is in writing.
- DEPOSIT(S):** Section 28 of the *Real Estate Services Act* requires that money held by a brokerage in respect of a real estate transaction for which there is an agreement between the parties for the acquisition and disposition of the real estate be held by the brokerage as a stakeholder. The money is held for the real estate transaction and not on behalf of one of the parties. If a party does not remove a subject clause, the brokerage requires the written agreement of both parties in order to release the deposit. If both parties do not sign the agreement to release the deposit, then the parties will have to apply to court for a determination of the deposit issue.
- COMPLETION:** (Section 4) Unless the parties are prepared to actually meet at the Land Title Office and exchange title documents for the Purchase Price, it is, in every case, advisable for the completion of the sale to take place in the following sequence:
 - The Buyer pays the Purchase Price or down payment in trust to the Buyer's Lawyer or Notary (who should advise the Buyer of the exact amount required) several days before the Completion Date and the Buyer signs the documents.
 - The Buyer's Lawyer or Notary prepares the documents and forwards them for signature to the Seller's Lawyer or Notary who returns the documents to the Buyer's Lawyer or Notary.
 - The Buyer's Lawyer or Notary then attends to the deposit of the signed title documents (and any mortgages) in the appropriate Land Title Office.
 - The Buyer's Lawyer or Notary releases the sale proceeds at the Buyer's Lawyer's or Notary's office.

Since the Seller is entitled to the Seller's proceeds on the Completion Date, and since the sequence described above takes a day or more, it is strongly recommended that the Buyer deposits the money and the signed documents AT LEAST TWO DAYS before the Completion Date, or at the request of the Conveyancer, and that the Seller delivers the signed transfer documents no later than the morning of the day before the Completion Date.

While it is possible to have a Saturday Completion Date using the Land Title Office's Electronic Filing System, parties are strongly encouraged NOT to schedule a Saturday Completion Date as it will restrict their access to fewer lawyers or notaries who operate on Saturdays; lenders will generally not fund new mortgages on Saturdays; lenders with existing mortgages may not accept payouts on Saturdays; and other offices necessary as part of the closing process may not be open.

- POSSESSION:** (Section 5) the Buyer should make arrangements through the real estate licensee for obtaining possession. The Seller will not generally let the Buyer move in before the Seller has actually received the sale proceeds. Where residential tenants are involved, Buyers and Sellers should consult the *Residential Tenancy Act*.
- TITLE:** (Section 9) It is up to the Buyer to satisfy the Buyer on matters of zoning or building or use restrictions, toxic or environmental hazards, encroachments on or by the Property and any encumbrances which are staying on title before becoming legally bound. It is up to the Seller to specify in the Contract if there are any encumbrances, other than those listed in Section 9, which are staying on title before becoming legally bound. If you as the Buyer are taking out a mortgage, make sure that title, zoning and building restrictions are all acceptable to your mortgage company. In certain circumstances, the mortgage company could refuse to advance funds. If you as the seller are allowing the Buyer to assume your mortgage, you may still be responsible for payment of the mortgage, unless arrangements are made with your mortgage company.
- CUSTOMARY COSTS:** (Section 15) In particular circumstances there may be additional costs, but the following costs are applicable in most circumstances:

Costs to be Borne by the Seller
Lawyer or Notary Fees and Expenses:
- attending to execution documents;
Costs of clearing title, including:- Investigating title,
- discharge fees charged by
encumbrance holders,
- prepayment penalties.
Real Estate Commission (plus GST).
Goods and Services Tax (if applicable).

Costs to be Borne by the Buyer
Lawyer or Notary Fees and Expenses:
- searching title,
- drafting documents,
Land Title Registration fees,
Survey Certificate (if required).
Costs of Mortgage, including:
- mortgage company's Lawyer/Notary.

- appraisal (if applicable)
- Land Title Registration fees.
Fire Insurance Premium.
Sales Tax (if applicable).
Property Transfer Tax.
Goods and Services Tax (if applicable).

In addition to the above costs there may be financial adjustments between the Seller and the Buyer pursuant to Section 6 and additional taxes payable by one or more of the parties in respect of the Property or the transaction contemplated hereby (eg. empty home tax and speculation tax).

- CLOSING MATTERS:** The closing documents referred to in Sections 11, 11A and 11B of this Contract will, in most cases, be prepared by the Buyer's Lawyer or Notary and provided to the Seller's Lawyer or Notary for review and approval. Once settled, the lawyers/notaries will arrange for execution by the parties and delivery on or prior to the Completion Date. The matters addressed in the closing documents referred to in Sections 11A and 11B will assist the lawyers/notaries as they finalize and attend to various closing matters arising in connection with the purchase and sale contemplated by this Contract.
- RISK:** (Section 16) The Buyer should arrange for insurance to be effective as of 12:01 am the Completion Date.
- FORM OF CONTRACT:** This Contract of Purchase and Sale is designed primarily for the purchase and sale of freehold residences. If your transaction involves: a house or other building under construction, a lease, a business, an assignment, other special circumstances (including the acquisition of land situated on a First Nations reserve).
Additional provisions, not contained in this form, may be needed, and professional advice should be obtained. A Property Disclosure Statement completed by the Seller, may be available.
- REALTOR® Code, Article 11:** A REALTOR® shall not buy or sell, or attempt to buy or sell an interest in property either directly or indirectly for himself or herself, any member of his or her immediate family, or any entity in which the REALTOR® has a financial interest, without making the REALTOR®'s position known to the buyer or seller in writing. Real Estate Council Rules 5-9: If a licensee acquires, directly or indirectly, or disposes of real estate, or if the licensee assists an associate in acquiring, directly or indirectly, or disposing of real estate, the licensee must make a disclosure in writing to the opposite party before entering into any agreement for the acquisition or disposition of the real estate.
- RESIDENCY:** When completing their residency and citizenship status, the Buyer and the Seller should confirm their residency and citizenship status and the tax implications thereof with their Lawyer/Accountant.
- AGENCY DISCLOSURE:** (Section 21) all Designated Agents/Licensees with whom the Seller or the Buyer has an agency relationship should be listed. If additional space is required, list the additional Designated Agents/Licensees on an addendum to the Contract of Purchase and Sale.



BCREA



THE CANADIAN
BAR ASSOCIATION
British Columbia Branch

PAGE 1 of 8 PAGES

CONTRACT OF PURCHASE AND SALE

BROKERAGE: Oakwyn Realty Ltd. DATE: 12/19/2019
 ADDRESS: 3195 Oak Street Vancouver PC: V6H2L2 PHONE: (604) 620-6788
 PREPARED BY: Jason Shang MLS® NO: R2411678

SELLER: <u>Alvarez & Marsal Canada Inc.</u>	BUYER: <u>YONGLING DUAN</u>
SELLER: _____	BUYER: _____
ADDRESS: <u>4102 1028 BARCLAY</u>	ADDRESS: <u>C/O Agency</u>
<u>Vancouver</u> <u>BC</u>	
PC: <u>V6H 0B1</u>	PC: <u>V6H2L2</u>
PHONE: _____	PHONE: _____
	OCCUPATION: _____

PROPERTY:

UNIT NO. 4102 ADDRESS OF PROPERTY 1028 BARCLAY STREET
Vancouver BC
 CITY/TOWN/MUNICIPALITY Vancouver POSTAL CODE V6H 0B1
 PID 028-447-263 OTHER PID(S) _____

STRATA LOT 254, PLAN BCS4016, DISTRICT LOT 185, GROUP 1, NEW WESTMINSTER
 LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN
 PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V

LEGAL DESCRIPTION

The Buyer agrees to purchase the Property from the Seller on the following terms and subject to the following conditions: 4,330,000.00

- PURCHASE PRICE:** The purchase price of the Property will be Four Million Three Hundred Thirty Thousand DOLLARS \$ 4,330,000.00 (Purchase Price)
Four Million Three Hundred Thirty Thousand DOLLARS \$ 4,330,000.00 (Purchase Price)
- DEPOSIT:** A deposit of \$ 250,000.00 which will form part of the Purchase Price, will be paid within 24 hours of acceptance unless agreed as follows:
 within 24 hours upon subject removal in the form of a bank draft

All monies paid pursuant to this section (Deposit) will be paid in accordance with section 10 or by uncertified cheque except as otherwise set out in this section 2 and will be delivered in trust to Oakwyn Realty Ltd in Trust and held in trust in accordance with the provisions of the Real Estate Services Act. In the event the Buyer fails to pay the Deposit as required by this Contract, the Seller may, at the Seller's option, terminate this Contract. The party who receives the Deposit is authorized to pay all or any portion of the Deposit to the Buyer's or Seller's conveyancer (the "Conveyancer") without further written direction of the Buyer or Seller, provided that: (a) the Conveyancer is a Lawyer or Notary; (b) such money is to be held in trust by the Conveyancer as stakeholder pursuant to the provisions of the Real Estate Services Act pending the completion of the transaction and not on behalf of any of the principals to the transaction; and (c) if the sale does not complete, the money should be returned to such party as stakeholder or paid into Court.

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1028 BARCLAY STREET 4102 Vancouver BC V6E 0B1 PAGE 2 of 8 PAGES
PROPERTY ADDRESS

3. TERMS AND CONDITIONS: The purchase and sale of the Property includes the following terms and is subject to the following conditions:

~~Subject to a new first mortgage being made available to the Buyer on or before SUBJECT REMOVAL DATE , in the amount of \$ HOW MUCH THE CLIENT IS REPAYING at an interest rate not to exceed % per annum.~~

INSPECTION
Subject to the Buyer, on or before Jan 9, 2020 at the Buyer's expense, obtaining and approving an inspection report against any defects whose cumulative cost of repairs exceeds \$ 500.00 and which reasonably may adversely affect the Property's use or value. The Seller will allow access to the Property for this purpose on reasonable notice.

INSURANCE
This offer is subject to the Buyer obtaining approval for fire/property insurance, on terms and at rates, satisfactory to the Buyer, on or before Jan 9, 2020.

DOCUMENTS
Subject to the Buyer, on or before Jan 9, 2020 receiving and being satisfied with the following documents with respect to information that reasonably may adversely affect the use or value of the Strata Lot, including any bylaw, item for repair or maintenance, special levy, judgment or other liability, whether actual or potential:
1. a Form "B" Information Certificate, issued within the last 30 days, attaching the Strata Corporation rules, current budget, the developer's Rental Disclosure Statement, and Depreciation Report if any;
2. a copy of the registered Strata Plan, any amendments to the Strata Plan, and any resolutions dealing with changes to common property;
3. the current bylaws, rules, financial statements of the Strata Corporation, and any section to which the Strata Lot belongs;
4. the minutes of any meeting held between the period from NOV 2017 to NOV 2019 by the Strata Council, and by the members in annual, extraordinary or special general meetings, and by the members or the executive of any section to which the Strata Lot belongs;
5. all copies of any engineers', depreciation reports or other consultants' reports concerning the Strata Corporation;
6. a copy of the title search and with any charge or other feature, whether registered or not, that reasonably may affect the Property's use or value; and
7. a copy of the Property Disclosure Statement (PDS), issued within the last 30 days, dated which is incorporated into and forms part of this Contract.

Immediately upon acceptance of this offer or counter-offer the Seller will authorize the Seller's Designated Agent/Licensee, to request, at the Seller's expense, complete copies of the documents listed above from the Strata Corporation or other sources and to immediately, upon receipt, or within 3 days of the acceptance of this offer or counter-offer, deliver the documents to the Buyer's Designated Agent/Licensee. In the event the Seller provides the documentation listed above after the date specified, but before the subject removal date, then the original date for subject removal will be extended to 3 business days after receipt of the documents.

The above conditions are for the sole benefit of the Buyer. All subjects written above will be satisfied or waived on or before the dates indicated above and failing which this Contract will be terminated, the parties will have no further obligations toward each other, and the Deposit, if any, will be immediately returned to the Buyer.

~~The Buyer acknowledges and accepts that on the Completion Date, the Buyer will receive back containing, in addition to any encumbrance referred to in Clause 9 (TITLE) of this contract:
1. any non-financial charge, and
2. any financial charge payable by a utility or its right-of-way restrictive covenant, easement or other interest
set out in the copy of the title search results that is attached to and forms part of this contract.~~

Each condition, if so indicated is for the sole benefit of the party indicated. Unless each condition is waived or declared fulfilled by written notice given by the benefitting party to the other party on or before the date specified for each condition, this Contract will be terminated thereupon and the Deposit returnable in accordance with the Real Estate Services Act.

INITIALS
[Signature Box with initials UP and AT]

1028 BARCLAY STREET 4102 Vancouver BC V6E 0B1 PAGE 3 of 8 PAGES
PROPERTY ADDRESS

3. TERMS AND CONDITIONS: The purchase and sale of the Property includes the following terms and is subject to the following conditions:

SPECIAL LEVIES
If a special levy is approved before the Completion Date, the Seller will credit the Buyer in the amount lesser of the actual amount levied or \$50,000.00 of the special levy that the Buyer is obligated to pay under the Strata Property Act, regardless of whether the special levy is due or payable by lump sum or installments over time. The Seller hereby directs the Buyer to hold back such credit from the sale proceeds and to remit it to the Strata Corporation. If a special assessment has been proposed by way of Notice of Special General Meeting or by way of Notice of Annual General Meeting, but not passed by the Strata Corporation before the Completion Date, the Buyer may hold back the amount of the proposed assessment and either pay the amount to the Strata Corporation or, if the proposed special assessment is defeated, pay the amount to the Seller. *as limited above*

AMENDMENT OF BYLAWS OR RULES

If prior to the Completion Date the Seller becomes aware of any notice of a resolution to amend the bylaws or rules of the Strata Corporation, or the bylaws or rules of a section to which the Strata lot belongs, or any amendment to such bylaws or rules, that the Seller has not previously disclosed to the Buyer, the Seller will promptly deliver a copy of the relevant resolution or notice of resolution to the Buyer.

ALTERATIONS AND MODIFICATIONS

The Seller represents and warrants that during the time the Seller has owned the Property, there have been no unauthorized alterations or modifications to the Property and to the best of the Seller's knowledge and belief, there have never previously been any unauthorized alterations or modifications to the Property.

PROPERTY TRANSFER TAX

The Buyer acknowledges that at the time of this agreement Property Transfer Tax is applicable on the Purchase Price of the Property at a rate of 1% on the first \$200,000 and 2% on the portion of the fair market value greater than \$200,000 and up to and including \$2,000,000 and 3% on the portion of the fair market value greater than \$2,000,000, and if the property is residential, a further 2% on the portion of the fair market value greater than \$3,000,000 as required by the Property Transfer Tax Act.

In the event GST is payable on the purchase of the Property, the GST is included in the Purchase Price. The Seller agrees to remit GST to the CRA. The Seller will indemnify and hold the Buyer harmless for the payment of GST.

OTHER TAXES

The Buyer is aware that the Provincial and Federal Government may implement or change tax regulations from time to time. At the time of this agreement, the Buyer is made aware of the BC Speculation and Vacancy Tax and of the City of Vancouver Empty Home Tax. The Buyer has been advised to seek independent accounting advice on the application of these taxes.

ILLEGAL SUBSTANCES

The Seller represents and warrants that, during the time the Seller has owned the strata lot, neither the strata lot nor any limited common property associated with the strata lot has been used for the illegal growth of any substances, or for the growth or manufacture of any illegal substances. This warranty shall survive and not merge on the completion of this transaction. Further, the Seller represents that, to the best of the Seller's knowledge and belief, neither the strata lot nor any limited common property associated with the strata lot has ever been used for the illegal growth of any substances, or growth or manufacture of illegal substances.

MEASUREMENTS

The Buyer is aware that the square footage as advertised is approximate and not guaranteed and the Buyer is satisfied with size of the Property as viewed.

Each condition, if so indicated is for the sole benefit of the party indicated. Unless each condition is waived or declared fulfilled by written notice given by the benefitting party to the other party on or before the date specified for each condition, this Contract will be terminated thereupon and the Deposit returnable in accordance with the Real Estate Services Act.

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1028 BARCLAY STREET 4102 Vancouver BC V6E 0B1 PAGE 4 of 8 PAGES
PROPERTY ADDRESS

3. TERMS AND CONDITIONS: The purchase and sale of the Property includes the following terms and is subject to the following conditions:

PARKING

The Purchase Price includes the exclusive use of parking stall # 50, 51, 52 (the "Parking Stall"). The Seller represents and warrants the Parking Stall is designated under the following arrangement (select one);

- ☐ as limited common property of the Strata Lot;
☒ as common property of the Strata Corporation under a long term lease which expires on _____
☐ as common property of the Strata Corporation under a short term exclusive use agreement or special privileges;
☐ as a separate Strata Lot; or
☐ as part of the Strata Lot.

CLEAN COMPLETION

The Seller will remove all personal possessions that are not included in the sale of the Property and leave the Property in a clean condition free of garbage or debris. The Seller will professionally clean the Property including the insides of all cabinets and appliances and will steam clean carpets (if any) in the Property. The Seller covenants and agrees that all appliances will be in good working order on the Completion Date.

KEYS

On the Possession Date the Seller will provide the Buyer with at least two sets of keys and/or fobs, for the unit including, but not limited to, the strata lot, the building, parking areas, storage areas, storage lockers, mailbox, building amenities and if the building features a garage door, all remote controls for the garage door.

STRATA FEES

The Seller represents and warrants the monthly strata fees are \$1072.80

RESTRICTIONS

The Seller represents and warrants the following restrictions apply:
~~Pets Allowed w/Rest., Rentals Allowed w/Restrictions~~

ACCESS

The Seller shall allow the Buyer to access the property on 2 occasions after subject removal (if any) and prior to the Completion Date. The Buyer shall provide to the Seller or Seller's representative at least 24 hours notice to access the Property. The Buyer agrees to indemnify and save harmless the Seller from any claims, actions, damages or costs that result from the Seller's access of the Property under this clause.

LEGAL & OTHER PROFESSIONAL ADVICE

The Buyer and Seller acknowledge that the Brokerage and Designated Agents do not provide legal or other expert advice in matters beyond the common standard of care in the Real Estate Industry. The parties have been advised to seek independent legal advice prior to executing this Contract of Purchase and Sale.

CONTRACTING OFFER OR COUNTER-OFFER

The Buyer and Seller agree that the terms and conditions of any offer or counter-offer with respect to the Property shall not be disclosed to any other potential Buyer of the property without the prior written consent of the Buyer.

Each condition, if so indicated is for the sole benefit of the party indicated. Unless each condition is waived or declared fulfilled by written notice given by the benefiting party to the other party on or before the date specified for each condition, this Contract will be terminated thereupon and the Deposit returnable in accordance with the Real Estate Services Act.

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 PROPERTY ADDRESS

4. **COMPLETION:** The sale will be completed on March 9th yr. 2020
 (Completion Date) at the appropriate Land Title Office.
5. **POSSESSION:** The Buyer will have vacant possession of the Property at 11 a. m. on
March 10 yr. 2020 (Possession Date) OR, subject to the following existing tenancies, if any:
6. **ADJUSTMENTS:** The Buyer will assume and pay all taxes, rates, local improvement assessments, fuel utilities and other charges from, and including, the date set for adjustments, and all adjustments both incoming and outgoing of whatsoever nature will be made as of March 10th yr. 2020 (Adjustment Date).
7. **INCLUDED ITEMS:** The Purchase Price includes any buildings, improvements, fixtures, appurtenances and attachments thereto, and all blinds, awnings, screen doors and windows, curtain rods, tracks and valances, fixed mirrors, fixed carpeting, electric, plumbing, heating and air conditioning fixtures and all appurtenances and attachments thereto as viewed by the Buyer at the date of inspection. INCLUDING:
 Air Conditioning, Clothes Washer/Dryer, Dishwasher, Drapes/Window Coverings, Microwave, Oven - Built In, Range Top, Refrigerator, Sprinkler - Fire, Wine Cooler, all light fixtures.
 All indoor and outdoor furnitures, home decoration (pots, paintings, mirrors, clocks, etc.), rugs, lamps, TVs.
 All items in the property.
8. **BUT EXCLUDING:**
 Fertilizer, books, computer.
8. **VIEWED:** The Property and all Included Items will be in substantially the same condition at the Possession Date as when viewed by the Buyer on December 18th yr. 2019
9. **TITLE:** Free and clear of all encumbrances except subsisting conditions, provisos, restrictions exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way in favour of utilities and public authorities, existing tenancies set out in Section 5, if any, and except as otherwise set out herein.
10. **TENDER:** Tender or payment of monies by the Buyer to the Seller will be by certified cheque, bank draft, cash or Lawyer's/Notary's or real estate brokerage's trust cheque.
11. **DOCUMENTS:** All documents required to give effect to this Contract will be delivered in registrable form where necessary and will be lodged for registration in the appropriate Land Title Office by 4 pm on the Completion Date.
- 11A. **SELLER'S PARTICULARS AND RESIDENCY:** The Seller shall deliver to the Buyer on or before the Completion Date a statutory declaration of the Seller containing: (1) particulars regarding the Seller that are required to be included in the Buyer's Property Transfer Tax Return to be filed in connection with the completion of the transaction contemplated by this Contract (and the Seller hereby consents to the Buyer inserting such particulars on such return); (2) declarations regarding the Speculation and Vacancy Tax for residential properties located in jurisdictions where such tax is imposed and the Vancouver Vacancy By-Law for residential properties located in the City of Vancouver; and (3) if the Seller is not a non-resident of Canada as described in the non-residency provisions of the *Income Tax Act*, confirmation that the Seller is not then, and on the Completion Date will not be, a non-resident of Canada. If on the Completion Date the Seller is a non-resident of Canada as described in the residency provisions of the *Income Tax Act*, the Buyer shall be entitled to hold back from the Purchase Price the amount provided for under section 116 of the *Income Tax Act*.

INITIALS

1028 BARCLAY STREET 4102 Vancouver BC V6Z 0X1 PAGE 6 of 8 PAGES
PROPERTY ADDRESS

- 11B. GST CERTIFICATE:** If the transaction contemplated by this Contract is exempt from the payment of Goods and Services Tax ("GST"), the Seller shall execute and deliver to the Buyer on or before the Completion Date, an appropriate GST exemption certificate to relieve the parties of their obligations to pay, collect and remit GST in respect of the transaction. If the transaction contemplated by this Contract is not exempt from the payment of GST, the Seller and the Buyer shall execute and deliver to the other party on or before the Completion Date an appropriate GST certificate in respect of the transaction.
- 12. TIME:** Time will be of the essence hereof, and unless the balance of the cash payment is paid and such formal agreements to pay the balance as may be necessary is entered into on or before the Completion Date, the Seller may, at the Seller's option, terminate this Contract, and, in such event, the amount paid by the Buyer will be non-refundable and absolutely forfeited to the Seller, subject to the provisions of Section 28 of the *Real Estate Services Act*, on account of damages, without prejudice to the Seller's other remedies.
- 13. BUYER FINANCING:** If the Buyer is relying upon a new mortgage to finance the Purchase Price, the Buyer, while still required to pay the Purchase Price on the Completion Date, may wait to pay the Purchase Price to the Seller until after the transfer and new mortgage documents have been lodged for registration in the appropriate Land Title Office, but only if, before such lodging, the Buyer has: (a) made available for tender to the Seller that portion of the Purchase Price not secured by the new mortgage, and (b) fulfilled all the new mortgagee's conditions for funding except lodging the mortgage for registration, and (c) made available to the Seller, a Lawyer's or Notary's undertaking to pay the Purchase Price upon the lodging of the transfer and new mortgage documents and the advance by the mortgagee of the mortgage proceeds pursuant to the Canadian Bar Association (BC Branch) (Real Property Section) standard undertakings (the "CBA Standard Undertakings").
- 14. CLEARING TITLE:** If the Seller has existing financial charges to be cleared from title, the Seller, while still required to clear such charges, may wait to pay and discharge existing financial charges until immediately after receipt of the Purchase Price, but in this event, the Seller agrees that payment of the Purchase Price shall be made by the Buyer's Lawyer or Notary to the Seller's Lawyer or Notary, on the CBA Standard Undertakings to pay out and discharge the financial charges, and remit the balance, if any, to the Seller.
- 15. COSTS:** The Buyer will bear all costs of the conveyance and, if applicable, any costs related to arranging a mortgage and the Seller will bear all costs of clearing title.
- 16. RISK:** All buildings on the Property and all other items included in the purchase and sale will be, and remain, at the risk of the Seller until 12:01 am on the Completion Date. After that time, the Property and all included items will be at the risk of the Buyer.
- 17. PLURAL:** In this Contract, any reference to a party includes that party's heirs, executors, administrators, successors and assigns; singular includes plural and masculine includes feminine.
- 18. REPRESENTATIONS AND WARRANTIES:** There are no representations, warranties, guarantees, promises or agreements other than those set out in this Contract and the representations contained in the Property Disclosure Statement if incorporated into and forming part of this Contract, all of which will survive the completion of the sale.
- 19. PERSONAL INFORMATION:** The Buyer and the Seller hereby consent to the collection, use and disclosure by the Brokerages and by the managing broker(s), associate broker(s) and representative(s) of those Brokerages (collectively the "Licensee(s)") described in Section 21, the real estate boards of which those Brokerages and Licensees are members and, if the Property is listed on a Multiple Listing Service®, the real estate board that operates the Multiple Listing Service®, of personal information about the Buyer and the Seller:
- A. for all purposes consistent with the transaction contemplated herein;
 - B. if the Property is listed on a Multiple Listing Service®, for the purpose of the compilation, retention and publication by the real estate board that operates the Multiple Listing Service® and other real estate boards of any statistics including historical Multiple Listing Service® data for use by persons authorized to use the Multiple Listing Service® of that real estate board and other real estate boards;

4D INITIALS (AT)

1028 BARCLAY STREET 4102 Vancouver BC V6X 0B1 PAGE 7 of 8 PAGES
PROPERTY ADDRESS

- C. for enforcing codes of professional conduct and ethics for members of real estate boards; and
D. for the purposes (and to the recipients) described in the brochure published by the British Columbia Real Estate Association entitled *Privacy Notice and Consent*.

The personal information provided by the Buyer and Seller may be stored on databases outside Canada, in which case it would be subject to the laws of the jurisdiction in which it is located.

20. **ASSIGNMENT OF REMUNERATION:** The Buyer and the Seller agree that the Seller's authorization and instruction set out in section 25(c) below is a confirmation of the equitable assignment by the Seller in the Listing Contract and is notice of the equitable assignment to anyone acting on behalf of the Buyer or Seller.

20A. **RESTRICTION ON ASSIGNMENT OF CONTRACT:** The Buyer and the Seller agree that this Contract: (a) must not be assigned without the written consent of the Seller; and (b) the Seller is entitled to any profit resulting from an assignment of the Contract by the Buyer or any subsequent assignee.

21. **AGENCY DISCLOSURE:** The Seller and the Buyer acknowledge and confirm as follows (initial appropriate box(es) and complete details as applicable):

AT	
INITIALS	

A. The Seller acknowledges having received, read and understood Real Estate Council of British Columbia (RECBC) form entitled "Disclosure of Representation in Trading Services" and hereby confirms that the Seller has an agency relationship with

Ken Leong, PREC*

(Designated Agent(s)/Licensee(s))

who is/are licensed in relation to Oakwyn Realty Downtown Ltd. (Brokerage).

UD	
INITIALS	

B. The Buyer acknowledges having received, read and understood RECBC form entitled "Disclosure of Representation in Trading Services" and hereby confirms that the Buyer has an agency relationship with

Jason Shang

(Designated Agent(s)/Licensee(s))

who is/are licensed in relation to OAKWYN REALTY LTD (Brokerage).

INITIALS	

C. The Seller and the Buyer each acknowledge having received, read and understood RECBC form entitled "Disclosure of Risks Associated with Dual Agency" and hereby confirm that they each consent to a dual agency relationship with

(Designated Agent(s)/Licensee(s))

who is/are licensed in relation to (Brokerage),

having signed a dual agency agreement with such Designated Agent(s)/Licensee(s) dated

INITIALS	

D. If only (A) has been completed, the Buyer acknowledges having received, read and understood RECBC form "Disclosure of Risks to Unrepresented Parties" from the Seller's agent listed in (A) and hereby confirms that the Buyer has no agency relationship.

INITIALS	

E. If only (B) has been completed, the Seller acknowledges having received, read and understood RECBC form "Disclosure of Risks to Unrepresented Parties" from the Buyer's agent listed in (B) and hereby confirms that the Seller has no agency relationship.

UD			AT
INITIALS			

CREATED FOR

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 DocuSign Envelope ID: 61518AAF-E91C-4C49-A943-8380A7930272

DocuSign Envelope ID: 1027EFB2-9054-4AEC-9C80-F2B6F59877E8

1028 BAYCLAY STREET 4102 Vancouver BC V6E 0B1 PAGE 8 of 8 PAGES
 PROPERTY ADDRESS

22. **ACCEPTANCE IRREVOCABLE** (Buyer and Seller): The Seller and the Buyer specifically confirm that this Contract of Purchase and Sale is executed under seal. It is agreed and understood that the Seller's acceptance is irrevocable, including without limitation, during the period prior to the date specified for the Buyer to either:

- A. fulfill or waive the terms and conditions herein contained; and/or
 B. exercise any option(s) herein contained.

23. **THIS IS A LEGAL DOCUMENT. READ THIS ENTIRE DOCUMENT AND INFORMATION PAGE BEFORE YOU SIGN.**

24. **OFFER:** This offer, or counter-offer, will be open for acceptance until 9 o'clock p.m. on Jan 02, yr 2020
 December 31, 2019 yr. 2019 (unless withdrawn in writing with notification to the other party of such revocation prior to notification of its acceptance), and upon acceptance of the offer, or counter-offer, by accepting in writing and notifying the other party of such acceptance, there will be a binding Contract of Purchase and Sale on the terms and conditions set forth.

X
 WITNESS

Yongling Duan
 SELLER

SEAL YONGLING DUAN
 PRINT NAME

X
 WITNESS

BUYER

SEAL
 PRINT NAME

If the Buyer is an individual, the Buyer declares that they are a Canadian citizen or a permanent resident as defined in the Immigration and Refugee Protection Act:

Yes ☒ INITIALS

No ☐ INITIALS

25. **ACCEPTANCE:** The Seller (a) hereby accepts the above offer and agrees to complete the sale upon the terms and conditions set out above, (b) agrees to pay a commission as per the Listing Contract, and (c) authorizes and instructs the Buyer and anyone acting on behalf of the Buyer or Seller to pay the commission out of the proceeds of sale and forward copies of the Seller's Statement of Adjustments to the Cooperating/Listing Brokerage, as requested forthwith after completion.

Seller's acceptance is dated _____, yr. _____

The Seller declares their residency:

RESIDENT OF CANADA ☒ INITIALS

NON-RESIDENT OF CANADA ☐ INITIALS

as defined under the Income Tax Act.

X
 WITNESS

SELLER

SEAL Alvarez & Marsal Canada Inc.
 PRINT NAME

X
 WITNESS

SELLER

SEAL
 PRINT NAME

*FREC represents Personal Real Estate Corporation

Trademarks are owned or controlled by The Canadian Real Estate Association (CREA) and identify real estate professionals who are members of CREA (REALTOR®) and the quality of services they provide (MLS®).

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Feb/2019
 CREA WEDForm®

**SCHEDULE "A" TO CONTRACT OF PURCHASE AND SALE
FOR THE PROPERTY DESCRIBED IN THE ATTACHED CONTRACT OF
PURCHASE AND SALE (THE "PROPERTY")**

The following terms and conditions replace, modify, and where applicable override, the terms of the attached contract of purchase and sale, and any modifications, additions or addenda thereto (collectively, the "Contract"). Where any conflict arises between the terms of this Schedule "A" and the Contract, the terms of this Schedule "A" will apply.

The following terms and conditions shall not merge, but shall survive, the completion of any sale of the Property to the Buyer.

The references in Schedule "A" to specific clauses in the Contract are references to the clause numbers in the contract of purchase and sale used by the Real Estate Board of Greater Vancouver (the "Real Estate Board Contract"). If the Contract attached hereto has different clause numbers than the Real Estate Board Contract the terms of Schedule "A" will apply with the necessary changes and with equal effect to the equivalent clauses of the Contract, notwithstanding the different clause numbers.

All references to the "Seller" in the Contract and in this Schedule "A" will be read as references to Alvarez & Marsal Canada Inc., in its capacity as the Court appointed receiver over all of the assets, undertakings and property owned or beneficially owned by Masahiko Nishiyama in Canada, and not in its personal capacity (the "Receiver").

1. Clause 22 of the Contract is deleted, and replaced by the following:

The acceptance of this offer by the Seller is pursuant to a Court Order made in a receivership proceeding in the Supreme Court of British Columbia (the "Court") in Action No. S-1813807 (Vancouver Registry) (the "Proceedings") and not as seller or owner of the Property. The acceptance of this offer by the Seller is subject to the approval of the Supreme Court of British Columbia (the "Court") and will become effective from the time an Order is made by the Court approving this offer. The Buyer acknowledges and agrees that the date of the application for that Order will be at the sole discretion of the Seller. The Buyer also acknowledges and agrees that the Seller's obligations in connection with this offer, until it is approved by the Court, are limited to putting this offer before the Court. Thereafter, the Seller is subject to the jurisdiction and discretion of the Court to entertain other offers and to any further Orders the Court may make regarding the Property. Given the Seller's position and the Seller's relationship to other parties in the Receivership, the Seller may be compelled to advocate that the Court consider other offers in order to obtain the highest price for the Property. Seller gives no undertaking to advocate the acceptance of this offer. In that regard, the Buyer must make its own arrangements to support this offer in Court.

The Buyer acknowledges and agrees that the Seller can disclose the amount of this offer, once accepted, to any person.

If the Court vacates, sets aside or varies an Order approving this offer for any reason whatsoever (except any willful misconduct of the Seller), then the Seller shall not be liable to the Buyer or any other person in any way whatsoever, in connection therewith.

2. Clause 9 of the Contract is deleted, and replaced by the following:

"Free and clear of all encumbrances of the parties with notice of the Proceedings, in accordance with an Order of the Court (the "Vesting Order") except: subsisting conditions, provisions, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way in favour of utilities and public authorities, and except as otherwise set out herein."

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- 2 -

3. This offer (and any contract formed by its acceptance) may be terminated by the Seller at any time prior to the completion date in the Contract if any Order of the Court or other court of competent jurisdiction renders the completion impossible or inadvisable, and in that event the Seller will have no further obligations or liability to the Buyer.
4. If the Vesting Order is made, and if the Seller does not terminate this offer or any contract formed by its acceptance, then the Buyer must complete the sale on the completion date in the Contract (or such other date as might be in the Vesting Order), time being of the essence, regardless of any appeal or application for leave to appeal, vary or set aside the Vesting Order, by any person.
5. The Canadian Bar Association (BC Branch) (Real Property Section) standard undertakings (the "CBA Standard Undertakings") are of no application whatsoever, to the Contract or a sale of the Property by the Seller.
6. Clause 10 of the Contract is deleted, and replaced by the following:

"Tender or payment of monies by the Buyer to the Seller, and all deposits paid by the Buyer, will be by certified cheque, bank draft, or lawyer's or notary's trust cheque, only."
7. The Buyer acknowledges and agrees the Property includes real property only, and no personal, intangible or other property, unless otherwise addressed by further addendum.
8. Clauses 7 and 8 of the Contract are deleted, and replaced by the following:

"The Buyer acknowledges and agrees that the Seller is selling the Property and the Buyer is buying the Property on a strictly "as is, where is" basis as of the time of actual possession. Without limiting the generality of the foregoing, the Buyer acknowledges and agrees that the Seller has not made and will not make any warranty or representation whatsoever with respect to the Property, and no such warranty or representation is expressed or can be implied including, without limitation, any warranty or representation as to environmental condition, size, dimensions, fitness, design or condition for any particular purposes, quality, or the existence of any defect, whether latent or patent. The Buyer acknowledges and agrees that it has conducted any inspections with respect to the condition of the Property, including in relation to environmental issues, that the Buyer deems appropriate, and has satisfied itself with regard to such matters.

If the Seller has provided the Buyer with any reports or information regarding the Property (the "Information"), the Buyer acknowledges and agrees that the Seller has not made and will not make any warranty or representation whatsoever regarding the Information, including the accuracy or completeness of the Information, and any use that the Buyer or others may make of the Information is strictly at the Buyer's own risk".
10. Clause 12 of the Contract is deleted, and replaced by the following:

"Time will be of the essence hereof, and unless the balance of the cash payment is paid on or before the Completion Date, the Seller may at the Seller's option, either terminate or reaffirm the Contract, and the deposit will be non-refundable and absolutely forfeited to the Seller, without prejudice to the Seller's other rights and remedies. These terms and conditions are for the sole benefit of the Seller".
11. No property condition disclosure statement concerning the Property forms part of the Contract, whether or not such a statement is attached to the Contract.
12. Clause 18 of the Contract is deleted and replaced by the following:

"There are no representations, warranties, guarantees, promises or agreements other than those set out in this Contract."

- 3 -

13. The Seller will not be responsible for removing any personal property left on or about the Property, by any occupant of the Property or otherwise.
14. Clause 5 of the Contract is modified, by adding the following:
 - a) Possession will be by operation of and pursuant to the terms of the Order.
 - b) No adjustments, including but not limited to adjustments for rents or security deposits, will be made to the purchase price on account of any tenancies.
 - c) If any occupant of the Property does not vacate the Property by the possession date, then the Seller will apply for a Writ of Possession and instruct a Court Bailiff to deliver possession to the Buyer. This is the Seller's only obligation as regards possession. The Seller will not be liable to the Buyer or any other person in any way whatsoever (apart from the Seller's obligation to apply for a Writ of Possession and instruct a Court Bailiff), if possession cannot be delivered to the Buyer on the possession date. The Buyer acknowledges that considerable time is often required, to obtain Writs of Possession. The Seller will not be responsible for removing any personal property left on or about the Property, by any occupant of the Property or otherwise.
15. The Vesting Order will describe the Buyer exactly as the Buyer appears at the upper right on the first page of the Contract, so the Buyer as described at the upper right on the first page of the Contract will appear as the owner of the Property after completion of a sale of the Property. Seller will not be bound by any term in the Contract describing the Buyer otherwise, or allowing the Buyer to complete the sale with a different name.
16. The Buyer is responsible, immediately on completion of the sale of the Property to the Buyer, for paying any and all taxes arising from or in connection with the sale (including Property Transfer Tax and GST). The Seller can, at its option, require the Buyer to pay it any such GST immediately on completion of the sale (and in that event the Seller will then remit such tax to Canada Revenue Agency).
17. The Buyer authorizes the Seller and its agents and insurers to disclose to third parties any personal and/or other information arising from or in any way connected with the Property, or the sale of the Property to the Buyer.

BUYER(S)

DocuSigned by:

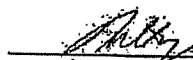
Gongjing Quan

509A2F956C22461

Dec 19, 2019

Date: _____

SELLER


 Alvarez & Marsal Canada Inc.,
 in its capacity as the Court appointed
 receiver over all of the assets,
 undertakings and property owned
 or beneficially owned by Masahiko
 Nishiyama in Canada, and not in its
 personal capacity

Date: Dec. 23, 2019

APPENDIX "B"**CLAIMS TO BE DISCHARGED FROM TITLE TO THE CONDO**

Party	Nature of Charge	Registration No.
	Injunction	CA7073370
	Injunction	CA7640699
	Crown Lien	WX2141048
	Crown Lien	WX2142122

APPENDIX "C"

PERMITTED ENCUMBRANCES, EASEMENTS, AND RESTRICTIVE COVENANTS

1. The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown.
2. The following:

Party	Nature of Charge	Registration No.
City of Vancouver	Easement and Indemnity Agreement	BB655983
	Equitable Charge	BB655985
	Covenant	BB762515
	Covenant	BB762542
Shaw Cablesystems Limited	Statutory Right of Way	BB89948
Appurtenant to Parcel A Plan BCP20086 Except: Air Space Plan BCP40279	Easement	BB762491
	Easement	BB762492
	Easement	BB762493
	Easement	BB762494
	Easement	BB762496
	Easement	BB762497
	Easement	BB762498
	Easement	BB762499
	Easement	BB762500
Telus Communications Inc.	Statutory Right of Way	BB1077958

APPENDIX "D"

BILL OF SALE (ABSOLUTE)

THIS BILL OF SALE made effective the ____ day of ____, 2020.

BETWEEN:

ALVAREZ & MARSAL CANADA INC., in its capacity as the Court-appointed Receiver over all of the assets, undertakings and property owned or beneficially owned by Masahiko Nishiyama in Canada, and having an office located at 1680 – 400 Burrard Street, Vancouver, British Columbia, V6C 3A6

(the "Vendor")

AND:

MAYNARDS INDUSTRIES CANADA LTD., a company duly incorporated under the laws of the Province of British Columbia and having its registered and records offices located at _____.

(the "Purchaser")

WHEREAS:

A. The Vendor is authorized by court orders made February 14, 2019, and July 19, 2019, in proceedings in the Supreme Court of British Columbia action number S-1813807 (Vancouver Registry) to market and sell any and all of the assets, undertakings and property owned or beneficially owned by Masahiko Nishiyama in Canada; and

B. The Vendor has agreed with the Purchaser for the absolute sale to the Purchaser of the Assets described in the attached Schedule "A" (the "Purchased Assets").

NOW IN CONSIDERATION of the sum of \$16,000.00 (the "Purchase Price") and other good and valuable consideration now paid by the Vendor to the Purchaser, the receipt and sufficiency of which is acknowledged, the parties covenant and agree as follows:

1. Transfer. The Vendor does hereby sell, assign, transfer and set over to the Purchaser the Purchased Assets and the appurtenances thereto free and clear of all liens, charges and encumbrances of every nature and kind whatsoever, all of which are in possession of the Vendor, and all right, title, interest, property claim and demand of the Vendor therein, to and for the Purchaser's sole and only use forever.

2. As is, with no warranty. Purchaser agrees to accept the Purchased Assets on a strictly "as is where is" basis as they exist on the date of this Bill of Sale. The Purchaser agrees that the Vendor has not made and is not making any representations and/or warranties express or implied to the Purchaser as to description, value, fitness for any purpose (including intended purpose), merchantability, quantity, quality, state, condition, location, or any other matter concerning the Purchased Assets, or any part of them, or the completeness, accuracy or currency of any

material or documentation provided by or on behalf of the Vendor in relation to the Purchased Assets. The Purchaser agrees that no representation or warranty of any kind can be implied at law or in equity, by statute or otherwise, with respect to the Purchased Assets. The Purchaser acknowledges that it has inspected the Purchased Assets and has relied entirely on its own inspections and investigations. The description of the Purchased Assets contained in all schedules to this bill of sale is for the purpose of identification only and no representation or warranty is being given by the Seller concerning the accuracy of those descriptions. The Seller will not be liable, nor will the Purchaser have a remedy for recovery of any damages, including but not limited to economic loss of any kind, arising out of any claim that the Purchased Assets infringe the rights of any other person.

3. Responsibility for taxes. The Vendor and the Purchaser agree that the Purchaser will be liable for and will pay all taxes, including all retail sales and commodity taxes, properly payable by the Purchaser in connection with the sale and transfer of the Purchased Assets, unless a certificate of exemption is provided to the Vendor prior to, or upon, the Purchaser taking possession of the Purchased Assets.

4. Entire Agreement. This Bill of Sale constitutes the entire agreement between the Vendor and Purchaser pertaining to the purchase and sale of the Purchased Assets and supersedes all prior agreements, undertakings, negotiations and discussions, whether written or oral, of the Vendor and the Purchaser, and there are no warranties, representations, covenants, obligations or agreements between the Vendor and the Purchaser except as set forth in this Bill of Sale.

5. Enurement. It is expressly agreed between the parties hereto that all grants, covenants, provisos and agreements, rights, powers, privileges, conditions and liabilities contained in this Bill of Sale shall be read and held as made by and with, and granted to and imposed upon the respective parties hereto, and their respective successors and assigns, the same as if the words successors and assigns had been inscribed in all proper and necessary places.

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- 3 -

6. Counterparts. This Bill of Sale may be signed by the parties in as many counterparts as may be necessary, each of which so signed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and, notwithstanding the date of execution, shall be deemed to bear the effective date as set out below.

IN WITNESS WHEREOF the parties hereto have executed this Bill of Sale as of the date first written above.

ALVAREZ & MARSAL CANADA INC.
in its capacity as court-appointed Receiver of
Masahiko Nishiyama and not in its personal capacity

Per: _____

Anthony Tillman
Senior Vice President

MAYNARDS INDUSTRIES LTD.

Per: _____

Authorized Signatory

Schedule A**Assets**

1. Mercedes S550 vehicle, VIN WDDNG8GB0AA343089

DRAFT

No. S1813807
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985,
C. B-6, AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN

ORDER

① Enter

RUSH!

② Certify

RUSH!



GOWLING WLG (Canada) LLP
Barristers & Solicitors
Suite 2300, 550 Burrard Street
Vancouver, BC V6C 2B5



Tel. No. 604.683.6498
Fax No. 604.683.3558

File No. V49403

JDB/azk

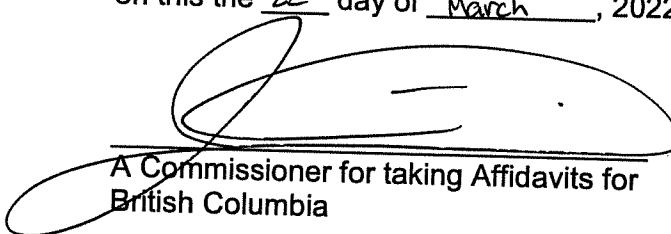
8821814-4

Mar 04 / 20

IC

RL

This is **Exhibit "L"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia

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Discussion re application of February 24, 2020

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March 10, 2020
Vancouver, BC

(CHAMBERS COMMENCED AT 9:03 A.M.)

THE CLERK: In the Supreme Court of British Columbia at
Vancouver on this 10th day of March, 2020, in the
matter of Nishiyama, My Lord.

MR. BRAYER: My Lord, it's Brayer, B-r-a-y-e-r,
initial T., appearing for Ms. Kinoshita.

MR. REEDMAN: My Lord, last name Reedman,
R-e-e-d-m-a-n, first initial C., appearing on
behalf of Mr. Nishiyama.

MR. RICHARDSON: Robert Richardson, My Lord, Resolution
and Collection Corporation.

MR. BRADSHAW: Bradshaw, B-r-a-d-s-h-a-w, first
initial J., appearing on behalf of the trustee and
the receiver. And Mr. Brousson is on the phone.

MR. PLOTTEL: My Lord, I'm in the cheap seats. Plottel
for RCC.

THE COURT: Yes, thank you. Mr. Brousson, you can hear
us?

MR. BROUSSON: I can. Thank you, My Lord.

THE COURT: All right. So you collectively know that I
heard an application on February 24th. I was
meant to give reasons today. I was out of town
last week, returned on the weekend and reviewed a
letter that was awaiting me in my chambers, a
letter dated March 6th, 2020, from Mr. Brayer.
And in it he indicates that Ms. Kinoshita requires
some time in order to obtain an opinion and a
translation of that opinion, and, to be specific,
he says that he requires six weeks to do that.

So what I wanted to do today was canvass that
issue and come to understand it better. You know,
again, it isn't quite clear that there's an
application for an adjournment here. I'm the one
that raised this with the registry yesterday and
wanted you all to be present so that we could
address that issue. And so with that background,
Mr. Brayer, what is it that you are looking for?

SUBMISSIONS FOR HATSUMI KINOSHITA BY MR. BRAYER:

Yes. So this -- well, I guess the letter
sets it out in bite-size form -- is Ms. Kinoshita
has received advice that there is some sort of

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Submissions for Hatsumi Kinoshita by Mr. Brayer

1 requirement -- and I don't know any specifics --
2 some kind of deposit that may be required that
3 would essentially bar her from being able to
4 litigate her claim. She hasn't had the ability to
5 get a written opinion in Japanese and I've
6 checked -- because we were getting the appeal
7 translated -- it seems the minimum to get these
8 sort of things translated would be two weeks.

9 So Ms. Kinoshita would like to have that
10 evidence before you before the -- I guess your
11 decision on where the money should go. I should
12 also point out that the trustee should -- the
13 affidavit they provided is not really in a form
14 that should be given much weight. So it might be
15 on -- my consideration in preparing for today that
16 what should happen perhaps is the somewhat even
17 longer timelines, and then the trustee is given
18 the opportunity to provide evidence in admissible
19 form.

20 And what I say for that is that the affidavit
21 that we received filed February 25th -- it's a
22 lawyer in Japan giving hearsay evidence of
23 Mr. Morimoto, who is the trustee so -- or receiver
24 trustee; he's got a couple of hats. So
25 Mr. Morimoto's not a -- he's certainly an
26 interested party. So I don't think his opinion
27 should be given particular weight. Usually an
28 expert is not supposed to be anyone who has an
29 interest in the outcome.

30 And in addition it doesn't seem to touch on
31 other potential issues that may impact
32 Ms. Kinoshita's ability to proceed in Japan; for
33 example, he doesn't mention that there might be
34 some requirement of payment of security, he
35 doesn't mention anything like a limitation and
36 that sort of thing or deadlines for filing a proof
37 of claim, which it seems to be what he's
38 suggesting Ms. Kinoshita could do.

39 So I think, you know, Your Lordship's concern
40 about whether, you know, transferring the money
41 over would bar Ms. Kinoshita from any claim
42 anywhere is something that we should address, but
43 we should do it on timelines where the parties are
44 able to get the evidence and not just rushing in,
45 especially when we certainly can't necessarily
46 undo things if it turns out later that there
47 actually is no claim in Japan for some reason.

3
Submissions for Hatsumi Kinoshita by Mr. Brayer

1 The other issue is that Mr. Nishiyama has now
2 brought his appeal. I have a more --
3 THE COURT: I don't see why that's an issue at all.
4 MR. BRAYER: Well --
5 THE COURT: Why is that an issue?
6 MR. BRAYER: So this is a single-creditor bankruptcy.
7 It's essentially the Resolution and Collection
8 Corporation is using the bankruptcy as a way to
9 collect money from Mr. Nishiyama or money that it
10 says Mr. Nishiyama owns. And so it's more or less
11 an extension of civil collection procedures that
12 were being done since 2016.
13 THE COURT: It's not his apartment.
14 MR. BRAYER: Well, I understand that, but the basis of
15 the application to move the money to Japan is the
16 allegation that it's his apartment. So it's still
17 a collection action in a sense even though it's
18 money that's being -- you know, it's moneys being
19 moved over. So it's still a collection action,
20 and when a decision is no longer final, it's a
21 decision that, you know, the court should hold on
22 until the decision is actually final or not.
23 Generally registering a judgment, you have to
24 establish it's final. But then when you seek to
25 enforce it and it no longer is final --
26 THE COURT: So what -- you know, again, you don't act
27 for him, so I'm not quite sure what you're telling
28 me but why -- what are you proposing? I mean,
29 this may take years to work its way through the
30 Japanese courts. What are you saying I should do?
31 MR. BRAYER: Well, I propose for the expert evidence is
32 that it -- I mean, I'm told that we can get
33 something in --
34 THE COURT: No, no. I mean -- I'm talking about the
35 second issue, which --
36 MR. BRAYER: The second issue, yes.
37 THE COURT: -- didn't matter to me or didn't appear --
38 it wasn't clear to me why that would matter.
39 MR. BRAYER: Well, what I propose is that, you know,
40 the money is already in the possession of the RCC.
41 THE COURT: Yeah.
42 MR. BRAYER: It's simply in the possession of RCC in
43 the sense that it would be in a trust account in
44 Canada. So there's not really any prejudice to
45 them to have to wait until the appeal is resolved.
46 It may be that this is something that should be --
47 I mean, we can argue this on a --

4

Submissions for Hatsumi Kinoshita by Mr. Brayer

1 THE COURT: The appeal is in Japan?

2 MR. BRAYER: The appeal's in Japan, yes.

3 THE COURT: Yeah. You know, again, I have a strong
4 sense that a lot of this is on the never never
5 plan. That's not going to happen. I mean, I've
6 told you in various sets of reasons that it's
7 taken -- and I don't want to misstate the evidence
8 or overstate it -- but a year, more than a year
9 for Mr. Nishiyama to move his appeal forward. So
10 too in this instance I can speak bluntly -- and
11 I'll hear from Mr. Brousson in a moment, or perhaps
12 his colleague will address me; I'm not sure.

13 But the application I heard on the 24th was
14 to move the money to Japan. It is you on behalf
15 of Ms. Kinoshita who has to provide me with either
16 evidence or law that suggests that's inappropriate.
17 And the gist of what I heard -- and I'm not being
18 harsh here -- was that it was unfair for various
19 reasons. And it was in that context that I'm the
20 one that raised -- not you; you didn't come to
21 court with an opinion or say, I need an opinion --
22 it's I who raised the issue of what did this mean
23 for Ms. Kinoshita. And in that context I'm the
24 one that asked Mr. Brousson if he could provide me
25 with some sense of it.

26 Again, I think I said pretty clearly I don't
27 know that it would matter if the remedies were
28 nuanced, but what was the essence of it, was there
29 some remedy? And I got something from him within
30 a day or two. Your proposition again is -- have
31 you commissioned someone to do an opinion?

32 MR. BRAYER: I understand Ms. Kinoshita has spoken with
33 a lawyer.

34 THE COURT: Yeah. No, that's in the affidavit. Have
35 you commissioned someone? I mean, today is, I
36 think, the 10th. I heard this on the 24th. You
37 ought, I think, to have had something in advance.
38 A further two or three weeks has gone by. I
39 imagine you're now saying you require a further
40 six weeks. Is that the essence of it?

41 MR. BRAYER: Yes.

42 THE COURT: Okay. And as I say to you, this is your
43 client in your hands to advance her interests, not
44 for me to safeguard her interests and not on a
45 never never plan. I'm the one that came here
46 today saying look, are you looking for an
47 adjournment; is that what you're asking for? So

5
Submissions for Hatsumi Kinoshita by Mr. Brayer

1 I'm not -- I don't understand why it would take
2 six weeks, to be honest. It may take two weeks to
3 translate something; I don't know that. I'm not
4 quite clear why it would take a further month to
5 get an opinion.

6 The whole of this, again, without being too
7 harsh, appears to lack any sense of urgency.
8 Indeed the whole of this has the air about it of
9 something that has a lot of friction attached to
10 it, and by that I mean it's just dragging along
11 without it being moved forward. So I still have
12 no sense from you -- again, respectfully -- I
13 haven't a single case which says that this
14 evidence would matter.

15 So when I asked for it, it was in the context
16 of a chambers application; I hadn't yet received
17 the cases; I hadn't reviewed the cases.
18 Mr. Brousson gave me a book of authorities. I
19 asked for that information in advance of receipt
20 of the book of authorities. My review of those
21 authorities since calls into question whether the
22 evidence I asked Mr. Brousson for was relevant and
23 whether the evidence that you now propose to get
24 is relevant, all right.

25 So all of this -- all of this was
26 precipitated by me based on your assertion that
27 this was not fair and my expression of a concern
28 if Ms. Kinoshita's rights were somehow being
29 foreclosed to make sure that I can make a
30 measured, principled decision.

31 So with that what can you tell me? Why does
32 it matter on the law? Because, again,
33 Mr. Brousson gave me authorities that said, in the
34 context of bankruptcies that are being managed
35 with a home jurisdiction and that are taking place
36 in multiple transnational jurisdictions, there's a
37 set of procedures that are normally followed. As
38 I've said, I reviewed those authorities; that
39 seems to be correct. And if that's the case, then
40 it's not clear to me that any of this matters.

41 MR. BRAYER: Well --

42 THE COURT: So with that what can you tell me, please?

43 MR. BRAYER: Well, there's a concern I think that

44 Ms. Kinoshita doesn't lose the right to assert
45 her --

46 THE COURT: Okay. Why does it matter? Where's the
47 authority for me that that matters in the context

6

Submissions for Hatsumi Kinoshita by Mr. Brayer

1 of the proceedings that we're in?

2 MR. BRAYER: Well, it's -- it matters because there's a
3 claimant to the beneficial interest of property
4 that I think is imminently going to be sold.

5 THE COURT: Right.

6 MR. BRAYER: The money is going to be taken to a
7 foreign jurisdiction where it seems there is a
8 possibility that the person who is now claiming
9 beneficial interest against property still is in
10 British Columbia will be foreclosed from any
11 ability to say, that's my money. And in which
12 case the RCC -- the creditor who has gone through
13 this process would be receiving money that it
14 doesn't rightfully own on the basis of the
15 bankruptcy.

16 THE COURT: Right. But, you know, I'm not -- I'm
17 drawing a parallel -- and not a -- necessarily an
18 apt parallel; I know they're different
19 processes -- but I think you know, for example, in
20 the CCAA context that it's not uncommon for
21 individual creditors to have their rights limited
22 in a sense for the greater good. I mean, there is
23 an element of rough justice to some of these
24 proceedings. They move forward in a way that
25 doesn't fully recognize the rights of each party
26 in the way that they might be recognized or the
27 claims or each party as against a debtor in the
28 way that they otherwise might be.

29 So too as I understand it in this bankruptcy
30 context with what we have going on here, there is
31 some element of that. All of these -- all of the
32 funds -- and this is another question I asked
33 Mr. Brousson -- from Hong Kong, from Singapore,
34 from everywhere are being pulled into Japan and
35 are being dealt with by the home jurisdiction and
36 distributed there under that central authority.
37 And so that appears to be the proper regime;
38 that's what Mr. Brousson gave me; those are the
39 authorities he's given me; that's my present
40 inclination.

41 And I've asked you whether you're aware of
42 any authority that says that's not right or that
43 that ought not to pertain. Not some -- again, I
44 don't mean to be harsh here -- but not some
45 assertion of it's not fair but some principled
46 description for my purposes of why it's not open
47 to me to do what Mr. Brousson is advocating or

7
Submissions for Hatsumi Kinoshita by Mr. Brayer

1 proposing.
2 MR. BRAYER: Well, I think there's two things: so
3 Ms. Kinoshita's not a creditor, she's actually
4 just saying, I own this. So it's different than,
5 you know, a lender or a supplier. And these
6 procedures are somewhat skeletal because they're
7 designed for flexibility. So I don't think that
8 you should feel you're bound by what was done in a
9 different setting. This is a rather unique
10 situation. You know, a lot of money --
11 THE COURT: I'm looking for law.
12 MR. BRAYER: Yes.
13 THE COURT: Do you have any law which assists me?
14 MR. BRAYER: No, My Lord.
15 THE COURT: Okay. All right. And so without that what
16 legal principle do you say pertains which makes
17 clear that the evidence you're asking me to wait
18 for is probative? Because, again, I just want to
19 make clear I'm the one that asked for it. No one
20 suggested this was relevant. You didn't come to
21 court with any material suggesting that
22 Ms. Kinoshita's rights would be impaired. I asked
23 Mr. Brousson whether there was such an issue
24 because I said that might be a concern to me on
25 the face of it; right? I hadn't read the book of
26 authorities, I had just heard an application, and
27 in the context of that application I wanted
28 further information that would guide or assist me.
29 So with all of that backdrop why do you say
30 on a principled basis that this will matter having
31 regard to the authorities that Mr. Brousson has
32 already given me?
33 MR. BRAYER: Well, because, as we discussed last time,
34 it was -- moving the money to Japan and moving the
35 dispute to Japan -- if it has the effect of
36 extinguishing Ms. Kinoshita's claim while she
37 clearly has one here, you know, that would be a
38 windfall or an unjust enrichment or something of
39 that nature to the trustee and the sole creditor.
40 And so the evidence -- if there is evidence --
41 that can show that there is no claim in Japan or
42 that litigating such a claim would be -- have
43 insurmountable barriers, then, you know,
44 Ms. Kinoshita should have her day in court.
45 THE COURT: Yeah. Okay. Let me just hear from -- is
46 it Mr. Brousson, or will you --
47 MR. BRADSHAW: It will be Mr. Brousson.

8

Submissions for the trustee and the receiver by Mr. Brousson

1 MR. BROUSSON: I am in -- pardon me, My Lord.
2 THE COURT: All right, Mr. Brousson. Sorry, I just
3 wasn't sure because you're on the phone.
4

5 **SUBMISSIONS FOR THE TRUSTEE AND THE RECEIVER BY MR. BROUSSON:**
6

7 Yeah. I apologize, sorry. I'm suffering an
8 illness, which in today's day and age, you know,
9 requires I not be in public places. Although I --
10 to be clear, I do not have the dreaded disease.

11 But, My Lord, I have three quick points, I
12 think. One will be procedural very quickly; the
13 second will be a comment on the letter, not the
14 evidence since there isn't any; and the third will
15 be quickly on the substance of this matter.

16 So starting with the first -- the procedural
17 piece -- I just want to quickly remind the
18 court -- and I think Your Lordship is aware -- you
19 know, we brought an application. The primary
20 basis it was opposed was that money moving to
21 Japan would be prejudicial or unfair in some way
22 to Kinoshita. No affidavit evidence filed to
23 support that by my friends. That's heard on the
24 24th. Your Lordship asked for evidence about the
25 money moving to Japan: would it prohibit, you
26 know, any legal steps?

27 The following day we provide that in
28 affidavit form. I heard my friend mention somehow
29 that's inadmissible. I didn't understand that
30 argument, to be frank. It's not intended to be
31 expert evidence, it's intended to be just what it
32 is, which is evidence that says as far as we're
33 concerned -- and I think it's actually telling
34 that it's gone to the party that would need it
35 first -- saying yeah, we think there is something
36 you could do. We're not saying it actually makes
37 sense in either jurisdiction; we don't think
38 there's merit in either jurisdiction for the
39 claim, but, nonetheless, you can do something.

40 We filed that the next day by affidavit. The
41 next day Your Lordship -- or I'm sorry. On the
42 25th Your Lordship has a question by memorandum;
43 we answered that by letter on the following day of
44 the 26th. It's March 6th; we get a letter from
45 counsel. Not evidence. No affidavit evidence is
46 still filed notwithstanding Your Lordship or
47 somebody asked through the registry yesterday if

9
Submissions for the trustee and the receiver by Mr. Brousson

1 an application for an adjournment which will be
2 supported one would think with affidavit evidence
3 would be forthcoming. There is no clear
4 application, and there certainly is no evidence.
5 It's a letter before the court. That's the
6 procedural piece.

7 And then -- so the second part was just a
8 comment on what is before the court from my
9 friends, and that appears to be a letter which in
10 my submission is odd in that it's basically pure
11 speculation: maybe this, maybe that, could be
12 four to six weeks for an opinion, which I find
13 curious. And that is really all it says.

14 And I heard my friend's words were it may be;
15 there's a possibility that this could happen and
16 that maybe that Ms. Kinoshita, if she was to do
17 something in Japan, might be required to issue a
18 security deposit. Well, in my submission -- and
19 that would just be in order for her to litigate in
20 Japan. That's the same that could be said here.

21 I appreciate we have not formally brought an
22 application for security for costs as against
23 Ms. Kinoshita, but it certainly has been alluded
24 to in submissions and in the response material.
25 We've indicated at different times that's
26 something we would likely do. Harder to do as
27 I've submitted before with respect to Nishiyama
28 because of the obvious reason he's an insolvent
29 party but Kinoshita -- she wants to take steps
30 which we think are meritless in either
31 jurisdiction. Sure, we could ask for security for
32 costs for her to commence her claim here.

33 So I don't see any difference in terms of
34 what this pure speculation she might be -- and
35 again, it's not evidence, but whatever it is it's
36 a letter. That would be my submission on that
37 aspect.

38 I appreciate Your Lordship's comment about
39 the appeal -- so this is a different part of the
40 letter part. The appeal material I don't think is
41 relevant here, but to be clear in any event it's
42 not an appeal. It's not an appeal at all from
43 Nishiyama, and I get that it's submitted as such.
44 It's -- and I find it curious that it's Kinoshita
45 who submits it, not Nishiyama. You know, it's his
46 action. It's a civil action from what I can see
47 basically suing RCC in a different jurisdiction

10

Submissions for the trustee and the receiver by Mr. Brousson

1 than the original RCC action of debt. It really
2 just says, I wasn't served and now there's a
3 limitation. It doesn't say much and that's again
4 curious. We're dealing with a criminal trial on
5 the same debts, et cetera.

6 My submission is all it really is is a civil
7 action started in the wrong jurisdiction in Japan
8 basically in my view to optically look like some
9 step has been taken before Your Lordship, and
10 that's my submission, cynical as it may be.

11 The third point was just on the substance,
12 which I think is probably the most important
13 submission. And that is if, as was submitted in
14 the hearing, it's not for us in our position as
15 trustee or in my submission this court to say
16 which path is better for Kinoshita in Japan or
17 which one may or may not get better results for
18 her. It's in our submission actually bad for her
19 in both.

20 But the test isn't that. It's not which
21 jurisdiction is -- so which jurisdiction has a
22 real sense of connection to this matter on all
23 fronts; that is Japan. I've submitted that in the
24 hearing, I've submitted the case law to support
25 that. That's where this should be. So in our
26 submission there should be no further delay
27 whatsoever; right? I don't see why there should
28 be.

29 If there is -- you know, and I guess
30 sometimes -- I mean, if there was an adjournment
31 application, I was prepared for maybe a prejudice
32 type of argument, but -- and this is my last
33 submission, My Lord. We -- you know, the
34 prejudice to Kinoshita is not made out by
35 anything. There's no evidence. My friend has
36 essentially tried to give some evidence, but even
37 that doesn't set out any prejudice, really. It
38 just says -- it's total speculation, doesn't show
39 any real prejudice. The security deposit aspect
40 is actually the same here.

41 So I don't see anything that supports a
42 prejudicial argument needing an adjournment in
43 these circumstances if there was actually an
44 application. And then in our case, I mean, the
45 prejudice -- well, I can see there's not super
46 substantial risk -- the cost of delay and all of
47 the games that -- strategically waiting until the

11
Submissions for the Resolution Collection Corporation
of Japan by Mr. Richardson

1 last minute for a letter to go to the registry,
2 et cetera -- it just goes on and on and on.
3 There's just no end to this. And so that would be
4 my submission with respect to an adjournment
5 application should there have been one. Those are
6 my submissions subject to questions, My Lord.

7 THE COURT: No, I think I'm okay, Mr. Brousson.

8 Mr. Richardson, not really much for you to say,
9 but do you want to --

10 MR. RICHARDSON: If I might briefly --

11 THE COURT: -- flesh that out.

12
13 **SUBMISSIONS FOR THE RESOLUTION COLLECTION CORPORATION**
14 **OF JAPAN BY MR. RICHARDSON:**
15

16 Thank you. My Lord, as you would anticipate,
17 I stay in close touch with Mr. Brousson and his
18 colleagues, so we've had ongoing communications.
19 So I have the benefit of Mr. Brousson explaining
20 and reflecting my very thoughts and observations.

21 But for the record on behalf of RCC, which at
22 the end of the day is the creditor, there is -- I
23 don't like to stand on mere procedure, but it
24 troubles me to be speaking about this matter this
25 morning. There's no application before the court.

26 THE COURT: I understand that, yeah.

27 MR. RICHARDSON: And I'll stop there because I do
28 appreciate Your Lordship made a decision to hear
29 from us this morning, and I won't beat that dead
30 horse.

31 But what that does mean, though, is that
32 before -- or rather we're here this morning to
33 hear your reasons; that's what we're here for.
34 There being no application -- I appreciate you
35 invited us to speak to you -- there's no further
36 evidence of record since the last hearing, and
37 there's no further law put before you today. So
38 we simply say yes, you may give your reasons
39 precisely as Mr. Brousson gave the -- argued and
40 sought.

41 I am never comfortable, My Lord, giving
42 evidence as counsel or explaining things, but here
43 we are. To underscore something that Mr. Brousson
44 said, I've seen the same documents provided by
45 Mr. Brayer. Two things are notable: one, he
46 represents Ms. Kinoshita, and Mr. Nishiyama's
47 counsel's here with us. And it -- I'm still

12

Submissions for the Resolution Collection Corporation
of Japan by Mr. Richardson

Submissions for Masahiko Nishiyama by Mr. Reedman

1 trying to sort out why it is that we haven't heard
2 from Mr. Nishiyama's counsel. He appears to be
3 bringing some type of procedure in Japan.
4 Curiously, it's Mr. Brayer who advises us of that
5 on behalf of his client, but it's Mr. Nishiyama
6 who is instituting some procedures over there.

7 My own analysis of the translation given by
8 Mr. Brayer is precisely as Mr. Brousson's: it's
9 not an appeal at all in any sense of what we think
10 of as an appeal. It's not seeking a court of
11 higher jurisdiction to review or order a retrial
12 of the matters in Japan. It is a civil action of
13 first instance. It is Nishiyama versus RCC -- I'm
14 calling it that, but that's the nature of it.
15 Again, Mr. Brousson points out it's a civil action
16 afresh. I'm not going to go into the arguments --
17 the pleadings, but it's not an appeal in any sense
18 that I've ever heard of one. It's a new action of
19 first instance.

20 That is utterly insufficient, I say, to
21 persuade Your Lordship to withhold granting the
22 judgment that we were attending for this morning.
23 It's too distant on several fronts. And of course
24 for the record we support the decision should you
25 make it to have the money remitted to the trustee
26 in Japan where it will sit along with the funds
27 mustered from other jurisdictions, including BC
28 previously. I'll leave -- those would be my
29 comments on behalf of RCC this morning.

30 THE COURT: All right. Mr. Brayer, anything --
31 Mr. Reedman.

32
33 **SUBMISSIONS FOR MASAHIKO NISHIYAMA BY MR. REEDMAN:**
34

35 Just some very brief comments. I don't have
36 too much more to add. Just with respect to this
37 matter I should just note that I'm not aware of
38 the procedural requirements in Japan. We have
39 been referring to this -- Mr. Nishiyama is
40 bringing some sort of proceeding in Japan. It has
41 been referred to as an appeal. I do appreciate
42 that there's no evidence before Your Honour
43 whether this is the proper course or not. This is
44 what I've been, you know, advised which has been
45 filed. And there may be -- this might be the
46 proper procedure in Japan to overcome this. That
47 evidence isn't before Your, Lordship, and we

13

Submissions for Masahiko Nishiyama by Mr. Reedman
Reply for Hatsumi Kinoshita by Mr. Brayer

1 haven't put that forward today. However, all we
2 have is what has been supplied by my client which
3 was then passed on to Mr. Brayer.

4 With respect to this -- just with respect to
5 the adjournment I would submit that we --
6 Mr. Nishiyama would consent to an adjournment of
7 the reasons to allow additional time. I recognize
8 that I'm not counsel for Ms. Kinoshita. The
9 concern is -- without getting into it too much --
10 is that there are barriers, especially going
11 between Japan and Canada. There are issues with
12 translations that have taken a frustrating amount
13 of time in order to try to obtain.

14 The translation of the petition as well -- I
15 notice that there's even grammatical errors
16 throughout, and the issue with that is to get it
17 professionally translated even on a rush basis
18 would have taken at least two weeks. And so there
19 were barriers with that -- and so there are
20 barriers in mustering the evidence before the
21 court. And I know that's not a substitution for
22 the formal rules of court. I just wish to draw
23 that to Your Lordship's attention.

24 With respect to the reasons we would just --
25 I would just submit that Mr. Nishiyama has in fact
26 filed something in Japan. There needs to be
27 additional evidence as to what the substance and
28 the nature of that is, and that needs to come
29 quite properly from a Japanese attorney, someone
30 who is well-versed in Japanese law, and I can't
31 explain much more than what's provided to the
32 court.

33 So with respect to this I don't have any
34 further submissions on the matter unless Your
35 Lordship has any questions.

36 THE COURT: I don't. Thank you. Mr. Brayer.

37
38 **REPLY FOR HATSUMI KINOSHITA BY MR. BRAYER:**

39 Just responding to my friend Mr. Brousson.
40 So the -- you know, I suppose it is true that you
41 could apply for security for costs in Canada, but
42 it's certainly something difficult to get against
43 an individual regardless of where they live. The
44 criminal trial was not for the same debt, in my
45 understanding. My understanding was that it was a
46 different debt that had arisen out of a different
47

14

Reply for Hatsumi Kinoshita by Mr. Brayer

1 judgment and --

2 THE COURT: I don't know -- what does that mean? There
3 were two judgments, were there not, and didn't the
4 criminal trial pertain to both? I mean, my memory
5 may be faulty, but that's what I recall.

6 MR. BRAYER: Well --

7 THE COURT: So I'm not sure what you're telling me.

8 MR. BRAYER: So my reading of the criminal trial was
9 that there was a judgment in 2013 by RCC against a
10 number of parties, and that's the one that they
11 prosecuted Mr. Nishiyama for. But what's being
12 enforced in Canada is the judgment from 2012 for a
13 different sum of money.

14 THE COURT: Isn't it both? That's what I'm asking you.
15 Am I mistaken? Again, this is some years ago now.
16 I think it's, you know, three or four years ago,
17 but my memory is that it was both. Was it not?

18 MR. BRAYER: Both ...

19 THE COURT: The 2012 and the 2013 judgment. I thought
20 the cumulative sum was being ...

21 MR. BRAYER: Well, I'm sure --

22 THE COURT: I may be wrong, though.

23 MR. BRAYER: I'm sure my friends can correct me on
24 this --

25 THE COURT: Okay.

26 MR. BRAYER: -- but my understanding was there's a
27 judgment in 1997 or thereabouts -- or actually a
28 lawsuit filed in 1997 or thereabouts. I think
29 around 2001 or 2002 was when that initial was
30 made. That was renewed in 2012. Then there was a
31 different judgment in 2013 and then the one that
32 was registered in British Columbia was the 2012
33 one, which was then -- you know, various
34 collection action was taken. But the 2013 one is
35 the one that Mr. Nishiyama was prosecuted for.

36 So -- and it's been argued a number of times
37 that he must have known about it because he was
38 arrested, but the reading of the documentation
39 that I've located in the court file has been to
40 the effect that it's a different judgment that
41 Mr. Nishiyama was prosecuted for. And so I don't
42 think the argument that he must have known because
43 he was arrested is necessarily conclusive here.
44 They're different judgments, and as far as I can
45 tell, there was two different judgments in favour
46 of RCC and against a number of parties, including
47 Mr. Nishiyama.

15

Reply for Hatsumi Kinoshita by Mr. Brayer

1 So I just need to -- you know, I think that's
2 important is I don't -- but the other thing I can
3 point out is that there -- in terms of an appeal
4 being filed, you know, the default is not to
5 enforce an order that isn't final, and there are a
6 few cases on this. I have one from Quebec to the
7 effect of, you know, an appeal being filed means
8 that, you know, we should hold on a sec, you know,
9 not rush too much. So I can pass that up if you
10 like.

11 THE COURT: Which appeal are you speaking of?

12 MR. BRAYER: Well, now this is the one filed by
13 Mr. Nishiyama. Now, I think we get to Mr. Reedman's
14 submissions is that, again, it's -- you know, just
15 because something doesn't say, you know, court of
16 appeal, notice of appeal, that sort of thing, it's
17 still an attempt to unseat a previous judgment,
18 and that's what an appeal is. So we're dealing
19 with a completely different system that works over
20 there, but it doesn't use the same terminology as
21 we do.

22 You know, it still should be considered an
23 appeal. It's still an attempt to undo what's been
24 done. It's the same sort of sense as a default
25 judgment in this court; you apply to set it aside,
26 you usually don't appeal it to the court of
27 appeal. But it's still attempting to move aside a
28 judgment that's been made.

29 So the appeal is what Mr. Nishiyama has filed
30 but it -- the fact that an appeal was filed does
31 affect Ms. Kinoshita's interest to the effect of
32 she does not wish to have this money sent to Japan
33 via collection action against Mr. Nishiyama.

34 THE COURT: Sorry. And your authorities speak to what
35 point, please?

36 MR. BRAYER: The fact that if an appeal is filed, the
37 judgment is not final and therefore the court
38 should take pause at continuing enforcement
39 action. And that includes the context of a
40 single-creditor bankruptcy.

41 THE COURT: So -- yeah. Well, let me see this, but I
42 will express some distress, again -- this is the
43 point I made at the outset -- there was an
44 application in front of me, and your obligation is
45 to give me what I require in order to make a
46 decision. It's not for me to ask for it, and it's
47 not for you to come back weeks later and say, I've

16

Reply for Hatsumi Kinoshita by Mr. Brayer

1 thought of something else or I have something
2 else. So with that in mind let me at least see
3 what you have. Have you provided this to your
4 friend?

5 MR. BRAYER: I just have. And the operative is -- it
6 was page 17. And it's a fairly lengthy
7 discussion. It starts at paragraph 79. At the
8 outset it notes that the judgment is not final
9 because an appeal is pending. And then
10 paragraph 88 is a discussion of -- the *Bankruptcy*
11 *and Insolvency Act* does set out that you could --
12 it's not completely forbidden -- a foreign
13 representative is not prevented from making an
14 application to the court under this -- under the
15 bankruptcy -- the foreign judgment provisions.

16 THE COURT: Where are you, please?

17 MR. BRAYER: 88. Essentially this part of the
18 *Bankruptcy and Insolvency Act* comes out as an
19 exception to the civil default, which is not to
20 enforce an order that's not final. But it
21 doesn't -- it doesn't give carte blanche to always
22 enforce a decision that's not final. It simply
23 permits some consideration of that.

24 And then at paragraph 91 -- and in this case
25 there's also a scenario of a single creditor. It
26 says the bankruptcy judgment in this case is in
27 the nature of seeking to execute on civil judgments
28 and having recognition of the Canadian -- and in
29 Canada is that -- is furtherance of that goal,
30 which is to seize property and to satisfy the
31 judgments. So a foreign bankruptcy judgment
32 should not be recognized or enforced before it's
33 final and this applies where the civil judgments
34 are subject to appeals. And if we go to -- look
35 at paragraph 93.

36 ... the foreign judgments whose recognition
37 and enforcement were sought under the three
38 motions before Justice Corriveau were not and
39 are not final and as such cannot be
40 enforced here either directly or through the
41 Canadian bankruptcy proces. Moreover it is
42 not permissible in the circumstances to rely
43 on the foreign bankruptcy order as a foreign
44 main proceeding because it is not final ...
45
46

47 And 97 is a quotation from an earlier House of

17

Reply for Hatsumi Kinoshita by Mr. Brayer

Surreply for the trustee and the receiver by Mr. Brousson

1 Lords case:

2
3 This principle has been applied to a
4 situation where a foreign trustee has sought
5 recognition of a bankruptcy whose sole
6 creditor was the foreign taxation authority.
7 The House of Lords refused to recognize a
8 liquidation whose sole creditor was the tax
9 authority even where the debtor's assets had
10 been fraudulently removed from the
11 jurisdiction ...

12
13 So I'd note that there -- it doesn't seem that
14 even us counsel agree on what exactly has been
15 filed and it might be helpful in the context if we
16 have -- we also have some kind of evidence of
17 what's been filed if we don't agree that it's an
18 appeal. And all of this would speak to whether or
19 not it's a final order or now it is no longer
20 final because someone's seeking to set aside this
21 judgment that's been filed.

22 THE COURT: Mr. Brousson, I don't know if you're in a
23 position to address this case. You haven't seen
24 it, and I don't quite know how to proceed. I
25 haven't read it through either. It's a nearly
26 40-page judgment, but only a portion of it,
27 apparently from pages 17 to 21, pertains.

28
29 **SURREPLY FOR THE TRUSTEE AND THE RECEIVER BY MR. BROUSSON:**

30
31 Yes. Unfortunately, my friend has waited to
32 apply in a non-application to submit some law,
33 which I can't review. All I can -- I can make two
34 submissions: one, before it is final -- this has
35 been final for a long time. But I would assume
36 that the factual -- the facts in that case are not
37 going to be a decision granted many, many, many
38 years ago in the other jurisdiction; rather, that
39 they're still pending and there's a proper appeal,
40 et cetera. I can't say that with absolute
41 certainty -- I apologize, My Lord -- without
42 reviewing the case and reading the facts. But I
43 would imagine that would be a distinguishable
44 piece, one.

45 Two, the other thing I will just make as a
46 general comment listening to all the submissions
47 following mine in terms of, you know, we don't

18
 Surreply for the trustee and the receiver by Mr. Brousson
 Surreply for the Resolution Collection Corporation
 of Japan by Mr. Richardson

1 have this translation; we have to get information
 2 on what's been filed because we had to rush a
 3 translation on this Japanese piece; we need to get
 4 opinions on this Japanese part of the law; we
 5 need -- all that does in my view is just emphasize
 6 where we are.

7 We're in Canada trying to deal with what
 8 should be in Japan, in my submission. It just --
 9 it seems nonsensical for me at this -- listening
 10 to those type of submissions that we should be
 11 trying to figure out a way to address this in this
 12 jurisdiction when it should go back to the
 13 appropriate jurisdiction in Japan, in my view.
 14 That's my submissions on this that I can do right
 15 now, My Lord.
 16

17 **SURREPLY FOR THE RESOLUTION COLLECTION CORPORATION**
 18 **OF JAPAN BY MR. RICHARDSON:**
 19

20 My Lord, might I offer a short gloss on what
 21 Mr. Brousson said that's immediately on a factual
 22 issue if I might. Thanks. Let's get down to
 23 brass tacks. So, My Lord, Mr. Brayer has passed
 24 to us as counsel what is -- it is a translation of
 25 what we're led to understand is a draft pleading
 26 of some kind. So it's a translation of some type
 27 of pleading in Japan.

28 Now, let's get on to basics. In every
 29 jurisdiction I'm aware of there's some -- there
 30 comes some point in time when you turn your piece
 31 of paper into a court document. Here we call it
 32 filing; some jurisdictions have a stamp tax; they
 33 put a little seal on it, but at some point you now
 34 are before the court, you have a document in your
 35 hand, okay. And it's going to be in Japanese.
 36 Now, I have the luxury that my client and
 37 Mr. Brousson's client both read and write
 38 Japanese, so we don't need their translations.

39 So I'll be blunt, My Lord. Through you I'm
 40 asking my friends, when are we going to see an
 41 actual active court document, a filed pleading,
 42 something that is in the court system on record as
 43 opposed to a draft of translations? Because other
 44 than that, My Lord, I don't think you can turn
 45 your mind to anything else, respectfully. So I
 46 invite my friends to tell us when -- how many
 47 hours, weeks, days -- will any pleading

19

Surreply for the Resolution Collection Corporation
of Japan by Mr. Richardson

1 Mr. Nishiyama may have in draft form become a
2 document of record in whatever sealed or entered
3 or stamped process there is in Japan. And I say
4 that that simply, then we go from there.
5 THE COURT: So what I was given -- I got two letters,
6 both dated the 6th: one from Mr. Brayer, which
7 he's spoken to; one from Mr. Reedman. And the
8 letter from Mr. Reedman -- which on its face came
9 to you and I'm certain it did -- says:

10
11 On the week of March 2nd I received a filed
12 copy of a petition to set aside the resolution
13 judgment filed with the Japanese court.
14

15 So it's the translations that haven't been
16 certified, but the letter asserts that a filed
17 copy was in fact delivered and filed with the
18 Japanese court.

19 MR. REEDMAN: Well, My Lord -- sorry. If I may -- and
20 I do apologize to interrupt my friend -- I would
21 submit that that letter due to an oversight as I
22 was travelling did not come to the attention of
23 other counsel. I do -- I would like Your Lordship
24 to know that there are copies of that filed
25 document with us today in Japan with the Japanese
26 seal on it.

27 THE COURT: All right. So -- no, and the reason I
28 interrupted Mr. Richardson is his assertion or his
29 submission was inconsistent with the letter that I
30 had received. I understand you haven't seen it
31 now.

32 MR. RICHARDSON: All right. So if I understand
33 correctly, then, the document Mr. Reedman has
34 before him is a properly filed document of record
35 that I can now have my client review themselves
36 and satisfy themselves of its nature.

37 THE COURT: Yeah. What I'll ask is now when we break
38 Mr. Reedman give you a copy of that letter. The
39 document that I got from Mr. Brayer -- and I
40 obviously can't read this -- but it has some sort
41 of file stamp on the top of it, but I don't know
42 what that means either. And I'm not saying that
43 that's a Japanese court stamp; like, I'm not in a
44 position to interpret that. What I can say is
45 that when I read this correspondence in
46 combination, I understood that a document had
47 formally been filed with the Japanese courts.

20

Surreply for the Resolution Collection Corporation
of Japan by Mr. Richardson
Discussion re response to new case law

1 MR. RICHARDSON: For Mr. Nishiyama. So since we're
2 doing this, I'll ask my friends through you,
3 My Lord, is Ms. Kinoshita -- has she filed, or
4 will she be filing any proper document of record?
5 I'll put it that way. Something that's of record
6 in Japan, not a draft, not a --
7 THE COURT: I don't think she's done -- I don't think
8 she's done anything.
9 MR. RICHARDSON: I'm just asking my friend through you,
10 My Lord --
11 THE COURT: Yeah. No, I mean --
12 MR. RICHARDSON: So we know it's what --
13 THE COURT: -- you can help me, Mr. Brayer, but I don't
14 understand -- I've not understood from you that
15 she's done anything in Japan.
16 MR. BRAYER: I don't understand that she's done
17 anything. I mean, I haven't -- I don't have any
18 information on that.
19 THE COURT: Right. Well, you've not suggested that she
20 has. What you've done is you've suggested that
21 she's tentatively approached someone -- a lawyer
22 to get a sense of what her rights in Japan might
23 be.
24 MR. BRAYER: Well, she approached someone to get --
25 respecting the, you know -- yes, you're right.
26 Yes.
27 THE COURT: Right. Okay. What we'll do is --
28 Mr. Brousson, you're under the weather, but
29 perhaps your colleague who's here can assist. I'd
30 like some review of the authority that Mr. Brayer
31 gave me. I wonder if I can have that by the end
32 of the week, and then through the registry I'll
33 let you know what I'm going to do. I'll either
34 give you a set of reasons or I'll adjourn or I'll
35 make some decision.
36 But I'd like to have your response, to be
37 fair to you. You should be in a position to read
38 this authority and indeed to consider whether --
39 and this is a Quebec decision -- whether there's
40 decisions in this jurisdiction that speak to this
41 matter. Would Friday be reasonable? Today's
42 Tuesday. I mean -- or you can have a week. You
43 know, just tell me what you think you reasonably
44 need.
45 MR. BROUSSON: So, My Lord, I don't think we need a lot
46 of time. I just read it online just now. I don't
47 know I would need any time. It appears to me that

21

Discussion re response to new case law

1 my inclination and instincts of what that case was
2 about is right that there was an actual appeal
3 filed, not the circumstances we have here at all.
4 Yeah.

5 THE COURT: Right. But some of that's conclusory
6 because what your friends say to me is that
7 perhaps the way you appeal in Japan is by way of
8 filing a petition to challenge a decision. I have
9 no knowledge of that. I do think, you know, I'm
10 in a position to address this substantively
11 subject to certain issues. I'd like those
12 canvassed so that I can track properly for the
13 record what I heard at what time, what I asked
14 for, what I was given and what my conclusions are.
15 And so in order to do that fairly -- I mean, if
16 you think you can do that tomorrow, Mr. Brousson,
17 then more power to you and flip it to me. But I
18 just wanted something, again, a bit more
19 thoughtful.

20 MR. BROUSSON: All right. Well, if we could have one
21 more day than that perhaps, My Lord, then --
22 today's Tuesday so if we could have to close of
23 business on Thursday to submit something. And if
24 I could just understand clearly exactly what we're
25 addressing. We're addressing this new case --

26 THE COURT: Well, it's this decision. I mean, I have
27 not read it again so, you know, there's multiple
28 pages, and I don't want to misspeak to what the
29 authority suggests. But your friend is
30 suggesting, I think, that this case suggests that
31 where the foreign judgment is not final -- and in
32 that he means an appeal is pending -- the
33 authority of the domestic court is circumscribed.
34 I think that's what's being suggested.
35 I don't know if that's right, I don't know if
36 that case says this. That's what I understand
37 Mr. Brayer to be telling me. I will read it. All
38 I'm saying is I would like to provide you with an
39 opportunity to respond, and if you feel you don't
40 have to and what you've said to me is enough for
41 your purposes, then that's fine too.

42 MR. BROUSSON: Yeah. So thank you, My Lord. I think
43 we would like just until Thursday close of
44 business to respond to that one argument that my
45 friend, I think, has put forward, then we can
46 submit that through the registry.

47 THE COURT: All right. Let's do that if we can,

22
Reporter's certification

1 please. All right. All right. Thank you, all.
2 THE CLERK: Order in chambers.
3

4 (CHAMBERS ADJOURNED AT 9:53 A.M.)
5
6

7 Reporter's Certification:
8

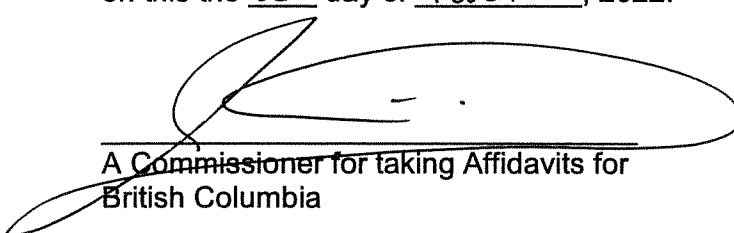
9 I, Christy L. Pratt, RCR, RPR, CLR, Official
10 Reporter in the Province of British Columbia,
11 Canada, BCSRA No. 535, do hereby certify:
12

13 That the proceedings were transcribed by me
14 from an audio recording provided of recorded
15 proceedings, and the same is a true and accurate
16 and complete transcript of said recording to the
17 best of my skill and ability.
18

19 IN WITNESS WHEREOF, I have hereunto subscribed
20 my name and seal this 24th day of March, 2020.
21
22

23
24
25 Christy L. Pratt, RCR, RPR, CLR
26 Official Reporter
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This is **Exhibit "M"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Nishiyama (Re)*,
2020 BCSC 551

Date: 20200327
Docket: S1813807
Registry: Vancouver

**In the Matter of the Part XIII of the
Bankruptcy and Insolvency Act, R.S.C. 1985, C. B-6,
As Amended**

And

**In the Matter of Masahiko Nishiyama,
Bankrupt Under the Laws of Japan**

Before: The Honourable Mr. Justice Voith

Oral Reasons for Judgment

Counsel for the Bankrupt, Masahiko
Nishiyama:

C.G. Reedman

Counsel for the Attendee, Hatsumi
Kinoshita:

T.S. Brayer

Counsel for the Trustee, Hiroshi Miromoto,
and Receiver, Alvarez & Marsal Canada
Inc.:

C.D. Brousson
J.D. Bradshaw

Counsel for the Resolution and Collection
Corporation:

R. Richardson
G.G. Plottel

Place and Date of Hearing:

Vancouver, B.C.
February 24 and March 10, 2020

Place and Date of Judgment:

Vancouver, B.C.
March 27, 2020

[1] **THE COURT:** The applicant, Alvarez & Marsal Canada Inc. (the “Receiver”), is the court-appointed receiver over all of the assets, undertakings, and property that is owned or beneficially owned by Masahiko Nishiyama in Canada. The Receiver seeks multiple forms of relief on this application, including the approval of a sale of a luxury condominium located at 4102-1028 Barclay Street, Vancouver, British Columbia (the “Barclay Condominium”). The respondents on the application are Mr. Nishiyama and Ms. Hatsumi Kinoshita (the “Respondents”). Ms. Kinoshita is apparently the common law wife of Mr. Nishiyama.

[2] The Respondents argue that Ms. Kinoshita owns the beneficial interest in the Barclay Condominium as a result of an undated agreement, that they assert was signed in January 2015 and that was described as the “Family Law Agreement” in the application materials.

[3] The Respondents do not oppose many of the forms of relief being sought by the Receiver, including the intended sale of the Barclay Condominium. They do, however, oppose the Receiver transferring the balance of the proceeds of sale of the Barclay Condominium to Hiroshi Miromoto, who is the Trustee in Japan over the bankruptcy estate of Mr. Nishiyama (the “Trustee”). The question of whether the proceeds from the sale of the Barclay Condominium should be transferred to the Trustee was initially the only issue that arose. Thereafter, counsel for Ms. Kinoshita applied for an adjournment to obtain further evidence.

BACKGROUND AND HISTORY

[4] The background and history of this matter is important because it identifies the various parties and the roles they play and because it provides context to the submissions that were made on this application. I have described the general history of this matter in various earlier judgments. Most recently, I did so in an application brought by the Receiver in which the Receiver sought the disclosure of documents and the right to examine the Respondents. Those reasons for judgment are indexed at 2020 BCSC 224 (the “Disclosure and Examination Reasons”).

[5] The history that follows mirrors the description that I provided in the Disclosure and Examination Reasons:

[3] Two separate chronologies provide context and backdrop for this application. The first chronology is longer and broader in scope and it involves an entity known as The Resolution and Collection Corporation ("RCC"). RCC was established in Japan in July 1996. It was formerly known as the Housing Loan Administration Corporation. RCC is a wholly owned subsidiary of the Deposit Insurance Corporation of Japan.

[4] Commencing in the early 2000s, RCC obtained various judgments against Mr. Nishiyama and other associated individuals and companies. Those judgments, which total approximately \$475 million CAD, remained unpaid. A subsequent investigation indicated that Mr. Nishiyama had dissipated his assets on a massive global scale through numerous persons and corporations.

[5] Criminal proceedings were commenced against Mr. Nishiyama in Japan in November 2015. That prosecution was based on various charges that alleged Mr. Nishiyama had dissipated and concealed assets to prevent execution on two earlier civil judgments.

[6] On June 26, 2016, Mr. Nishiyama was found guilty on the charges he faced. Specifically, it was determined that he had purposefully concealed assets and that he had conspired with others to move assets out of Japan and into other jurisdictions, including Canada. He was sentenced to three years in prison. On July 26, 2018, he was granted parole.

[7] The matter first made its way to British Columbia in March 2016 when RCC applied for, and I granted, a *Mareva* injunction on an interim basis preventing Mr. Nishiyama from dealing with or further dissipating any assets he might have in British Columbia. That order was made in an action between RCC and Mr. Nishiyama that bears Action Number S162298 in the Vancouver Registry (the "RCC Action"). The *Mareva* injunction was then confirmed in a separate *ex parte* hearing in April 2016.

[8] It is relevant that in RCC's application for a *Mareva* injunction, it argued, and I accepted, that Mr. Nishiyama owned or controlled two entities known as Rainbow One Investments Ltd. and Sun Moon Management, respectively. The orders I made on that application extended to these two entities.

[9] It is also relevant that RCC pursued parallel proceedings in each of Hong Kong and Singapore, where, as of March 2016, various accounts and assets of Mr. Nishiyama, worth approximately \$90 million US, were affected by the orders that were made in those jurisdictions. Since March 2016, I have overseen most, but not all, of the proceedings in both the RCC Action and in this proceeding bearing Action Number S1813807 in the Vancouver Registry (the "Bankruptcy Action").

[10] On September 29, 2016, RCC applied in British Columbia to enforce various judgments of the Japanese courts in the amounts of \$477,071,714.63 CAD plus interest and costs. I granted various orders that were sought on that application (the "Recognition Order"). Thereafter, RCC undertook

extensive efforts to locate various assets that Mr. Nishiyama owned or held either directly or indirectly in British Columbia.

[11] The second chronology that I have referred to is more focussed in nature. By order of the Kyoto District Court in Japan on March 15, 2016, the Trustee was appointed the trustee over the bankruptcy estate of Mr. Nishiyama. By order of Madam Justice Maisonneville, of this Court, made on December 21, 2018, the Trustee was recognized by this Court as the foreign representative in these proceedings.

[12] By virtue of an order I made on February 14, 2019 in the Bankruptcy Action (the "Receivership Order"), Alvarez & Marsal Canada Inc. was appointed Receiver over all of the assets, undertakings, and properties of Mr. Nishiyama under s. 272(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [BIA]. Portions of the Receivership Order provided:

4. Each of (i) the Debtor; (ii) all of the Debtor's current and former agents, accountants, legal counsel, and other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, government bodies or agencies, or other entities having notice of this Order, (collectively "Persons" and each "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property of the Receiver, and should deliver all such Property (excluding Property subject to liens the validity of which has been dependent on maintaining possession) to the Receiver upon the Receiver's request.

5. All Persons, other than government authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, corporate and accounting records, and any other papers, records or information of any kind related to the Property or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "Records") in that Person's possession or control. The Records shall include all of the contents of the SDB [which for present purposes is not important]. Upon request, government authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.

[13] On application for directions by the Receiver, I granted a further order on July 19, 2019, that, *inter alia*, declared all of the assets of Sun Moon Management Ltd., including a condominium on Barclay Street in Vancouver (the "Barclay Condominium") and a vehicle were the property of Mr. Nishiyama, and therefore subject to the Receivership Order (the "Property Declaration Order").

[14] The Property Declaration Order set out terms for a property claims process for personal property located at the Barclay Condominium. On August 13, 2019, Ms. Kinoshita filed a proof of claim with the Receiver relating to personal property located in the Barclay Condominium.

[15] On September 9, 2019, the Receiver issued and delivered a notice of revision or disallowance that both accepted and rejected parts of Ms. Kinoshita's claim.

[16] The Receiver was then contacted by counsel for Mr. Nishiyama and Ms. Kinoshita and advised that Ms. Kinoshita was asserting a claim over the Barclay Condominium and that she would be bringing an application to court to, *inter alia*, assert that the Barclay Condominium was the property of Ms. Kinoshita under the terms of a family law agreement between Mr. Nishiyama and Ms. Kinoshita (the "Family Law Agreement"). In support of her application, Ms. Kinoshita swore an affidavit on October 3, 2019, and she disclosed a redacted copy of the Family Law Agreement.

[17] Counsel for Mr. Nishiyama also gave notice that Mr. Nishiyama would be applying to set aside both the civil judgments that were originally made in Japan as well as the subsequent appointment of the Trustee. It is noteworthy that as early as March 2019, Mr. Nishiyama indicated an intention to advance these and other claims in Japan. I was advised by British Columbia counsel for Mr. Nishiyama, at this application, that no such appeals, claims, or challenges, had yet been filed by Mr. Nishiyama in Japan.

[18] Still further, counsel for Mr. Nishiyama indicated an intention to set aside the various orders that had been made in this Court in both the RCC Action and in the Bankruptcy Action. I understand those applications have been set down for the end of February 2020.

[19] Two further facts are relevant. First, as noted earlier in these reasons, Ms. Kinoshita is apparently the common-law wife of Mr. Nishiyama. Though this matter has an extended history, Ms. Kinoshita's existence and her involvement in some of the events I have described was apparently unknown to RCC, the Trustee or the Receiver until she filed her proof of claim with the Receiver. Second, the legal positions and status of Ms. Kinoshita and Mr. Nishiyama are, for various reasons, at times different, and each was separately represented in the application before me.

THE VARIOUS FORMS OF RELIEF BEING SOUGHT ON THIS APPLICATION

[6] The Notice of Application filed by the Receiver seeks multiple forms of relief. This includes:

- a) Approval of the actions, conduct and activities of the Receiver that are set out in the first report of the Receiver dated February 12, 2020.
- b) Approval of the sale of the Barclay Condominium together with certain contents of that condominium for the purchase price of \$4,330,000 (the "Purchase Price"). The contents of the Barclay Condominium that are included in the Purchase Price are described in the materials before me as the "Included Personal Property".

- c) A vesting order.
- d) A description of how the proceeds from the Purchase Price are to be distributed. This deals with taxes, fees, utilities and services, interest and penalties. It also deals with real estate commissions and amounts that have been disbursed by the Receiver on account of the preservation, maintenance and upkeep of the Barclay Condominium. Still further, it authorizes the Receiver to take such additional steps as may be required to give effect to the conveyance of the Barclay Condominium. Finally, it authorizes the Receiver to sell or dispose of the contents of the Barclay Condominium that were not included in the Purchase Price, as well as the sale of a Mercedes S550, on the terms and conditions described in the application materials.

[7] None of this, as I have said, is in dispute. I have reviewed the materials in the Application Record, including the materials that pertain to the efforts undertaken by the Receiver, and listing agent on behalf of the Receiver, to sell the Barclay Condominium. I am satisfied, based on these materials, that the Purchase Price is appropriate and represents the market value of the Barclay Condominium.

[8] I also observe the question of whether various taxes are owed to the Canada Revenue Agency, to provincial taxation authorities, and/or to municipal taxation authorities is presently being addressed by the Receiver. The Receiver proposes to hold back sufficient funds to ensure that these various taxes are properly addressed and then to remit the balance of the Purchase Price to the Trustee.

[9] The relief that is opposed by the Respondents is found at para. 3(c)(iv) of the Notice of Application, and it states:

The balance then remaining of the proceeds of sale of the Condo and Included Personal Property to be paid to the Trustee to the credit of the Japanese bankruptcy proceedings and to be held by the Trustee pending further order, authorization or approval of the Japanese Court or agreement of the Trustee and Kinoshita.

THE HISTORY OF THIS APPLICATION AND THE POSITION OF THE RESPONDENTS

[10] The background to this particular application is also relevant in several ways. That history underlies the primary submissions made by the Respondents, and in particular by Ms. Kinoshita. Ms. Kinoshita argued, when the parties first appeared on February 24, 2020, that moving the funds that were obtained from the sale of the Barclay Condominium back to the Trustee in Japan would effectively remove adjudication of her claims from the courts of this province. It was submitted that this would be inappropriate, at least in part, because Ms. Kinoshita first filed an application to set aside various orders of this Court on November 5, 2019, and that her application had thereafter been delayed on several occasions. Accordingly, the present application was said to be “unfair” in various respects.

[11] Apart from arguing that the courts of British Columbia had jurisdiction over her claim, she filed no material to indicate that she could not advance any claims or interest in the Barclay Condominium before the Trustee in Japan. Nevertheless, at the application on February 24, 2020 and because I had not yet reviewed the various authorities that were presented by the Receiver at the application, I raised the question of whether Ms. Kinoshita had any means of asserting her purported interest in the Barclay Condominium under the Family Law Agreement within the bankruptcy proceedings in Japan. I did not yet know whether that information was relevant on a principled basis to the issue before me, but I, nevertheless, considered that it might be pertinent to the “fairness” argument being advanced on behalf of Ms. Kinoshita. I asked counsel for the Receiver to provide me with that information, in affidavit form, within the next few days, and I told counsel that I would provide them with oral reasons on March 10, 2020. I had also told counsel for Ms. Kinoshita that he could file responsive materials if he considered that that was necessary or appropriate.

[12] On February 26, 2020, I received an affidavit from the Receiver. In it, Mr. Ikuta, a lawyer and agent for the Trustee, deposed:

[4] I have been advised by the Trustee and verily believe it to be true that:

(a) As a third party to the Japanese bankruptcy, it would be open to Kinoshita to bring a legal action for unjust enrichment or an applicable tort essentially taking the position that the condo proceeds did not belong to the bankruptcy estate and instead belong to Kinoshita (the "Kinoshita Claim").

(b) As long as the Kinoshita Claim remained outstanding and no Japanese order, authorization or approval was made by the Japanese court for distribution of the net proceeds prior to the Kinoshita Claim being commenced or dismissing or addressing the Kinoshita Claim after it was commenced, the net proceeds would:

(i) continue to be held by the Trustee;

(ii) the Japanese bankruptcy file would remain open;

(iii) no final dividend would be made to the creditors of the bankruptcy estate.

[5] I make this affidavit to assist this Honourable Court with the answer to the question it raised concerning potential legal avenues which might be available to Kinoshita to pursue in Japan, but it should remain clear that the Trustee does not agree that there is any validity whatsoever to Kinoshita's Claim to the net condo proceeds either in Canada or in Japan.

[13] On Friday, March 6, 2020, I received a letter from counsel for Mr. Nishiyama indicating that Mr. Nishiyama had recently filed a petition to "set aside" the judgment(s) in Japan that the Resolution and Collection Corporation ("RCC") had obtained against him years earlier. On that same day, I received a letter from counsel for Ms. Kinoshita in which counsel wrote:

Further, Ms. Kinoshita requires additional time to provide a response to the opinion letter provided by the Trustee. She has been unable to do so in the time remaining. She has received advice that there could be significant, potentially insurmountable barriers to litigating her claim as to beneficial ownership of the property. It seems that in Japan a security deposit that is a significant percentage of the amount at issue could be ordered payable by a party before they can have their day in court. An order that Ms. Kinoshita pay millions of dollars into court before she can proceed with her claim would have the effect of preventing her from being able to proceed with her claim.

Ms. Kinoshita will be requesting six weeks to obtain a written opinion from a Japanese lawyer and translated it into English. It seems that the minimum time a translator can translate Japanese legal documents is in two weeks, which is why we will be asking for six instead of four.

[14] Counsel's correspondence did not include or make reference to a formal application for an adjournment. Nevertheless, I contacted the Registry asking that when the parties appeared on March 10, 2020, the day we had scheduled for me to deliver my oral Reasons for Judgment, they be prepared to address the issue of an adjournment.

[15] On March 10, 2020, counsel for Ms. Kinoshita confirmed that he now sought a six-week adjournment to obtain a legal opinion. That adjournment was opposed by the Receiver. Counsel for Ms. Kinoshita again provided me with no authority which indicated that any impediment or difficulty on the part of Ms. Kinoshita, with advancing her interest in the Barclay Condominium before the Trustee in Japan, was relevant to the application that had been brought by the Receiver.

[16] Counsel for Ms. Kinoshita did argue on the basis of *Marciano (Séquestre de)*, 2011 QCCS 7086 ("*Marciano SC*"), that because Mr. Nishiyama was now challenging one or more of RCC's earlier judgments, which grounded a part of the Japanese bankruptcy proceedings, it was not appropriate for this Court to recognize the foreign insolvency. Because counsel for the Receiver participated in the application by phone and because he had not earlier seen the *Marciano SC* decision, I asked him to provide me with his comments, in writing, in the next day or two. On that same day, counsel for the Receiver provided me, through the Registry, with his written submissions. In those submissions, I was advised that *Marciano SC* had been reversed by the Quebec Court of Appeal in *Marciano (Séquestre de)*, 2012 QCCA 1881 ("*Marciano CA*").

[17] I was also directed to an article authored by G. Levine and entitled "The Interplay between Comity, Public Policy and Paramountcy in Recognition of Foreign Judgments and Insolvency Matters," (2014) *Ann Rev Insol* 27, in which the author addresses the *Marciano* cases and the central facts and issues in those decisions. The article also reveals how different the underlying facts in the *Marciano* cases are from the circumstances in the present case. Mr. Levine wrote:

Mr. Marciano had been condemned by a California jury to pay tens of millions of dollars to several parties as damages for defamation. Although he

appealed the civil judgments, Marciano did not post the significant bond necessary to stay execution and, as a result, the judgments being executory. These judgments led to an involuntarily bankruptcy petition being granted in California, which Marciano also appealed. Because a significant portion of Marciano's assets were located in Quebec, Marciano's bankruptcy trustee applied for recognition under s. 267 and following of the *BIA*.

Judge Schrager, then of the Quebec Superior Court, analyzed the relationship between the foreign recognition proceedings of the *Civil Code of Quebec* ("CCQ") and those set forth in the *BIA*. Pursuant to Articles 3155(2) of the CCQ, a Quebec Court is precluded from recognizing a foreign judgment that is not final. However, s. 281 of the *BIA* provides that a foreign representative is "not prevented" from seeking recognition of a foreign proceeding that is under appeal and the "court ... may grant leave" notwithstanding the appeal. Judge Schrager made the following comments in [*R. v. Marciano*, 2011 QCCS 7086]:

[90] ... section 281 *BIA* is permissive by way of exception to the Common Law (and Civil Law) rule. This is not an appropriate case to recognize a foreign insolvency which is subject to an appeal. It might make some sense to recognize a foreign main proceeding that was under appeal where the foreign insolvency proceeding in question relates to a business reorganization. If a Canadian subsidiary or a Canadian place of business were involved and intimately linked to the US business, the recognition of a US stay order pending appeal might be appropriate. It might well be necessary to maintain the status quo of the Canadian enterprise in such example.

[91] The Bankruptcy Judgment in this case is in the nature of the compulsory execution of the Civil Judgments. The Canadian recognition is in furtherance of that goal, i.e. the confiscation and liquidation of property to ultimately satisfy the Civil Judgments. Such a foreign bankruptcy judgment should not be recognized or enforced before it is final. This applies even more strongly where the Civil Judgments which give rise to the debt upon which the Bankruptcy Judgment is based are not themselves final.

The Quebec Court of Appeal took a different approach, emphasizing paramountcy and comity. Judge Dalphond writing for the Court noted that one of the principal purposes of the adoption of the Model Law in the foreign recognition sections of the *BIA* is to promote "cooperation between authorities" and further held:

Under s. 269, a foreign representative such as Gottlieb was entitled to petition the Superior Court of Quebec, a Canadian province where Marciano owns directly or indirectly substantial assets, for a recognition of the US bankruptcy judgment even if not final since s. 281 of the *BIA* provides that foreign proceedings does not have to be final.

The fact that under *Quebec Rules of Civil Procedure* a foreign civil judgment cannot be enforceable if it is not final is not relevant since 281 of the *BIA* prevails over the *Quebec Rules* when there is a conflict.

[18] A review of the *Marciano* SC decision reveals that Schrager J. had been concerned with the fact that both the bankruptcy orders and the civil judgments were under appeal and subject to a stay of proceedings in the United States, making them executory in the foreign main jurisdiction. However, this concern was not shared by the Quebec Court of Appeal in *Marciano* CA, which said:

[101] To sum up, Schrager J. erred regarding the application of s. 189 BIA in the context of a cross-border bankruptcy. Moreover, his decision to rescind and quash was based on the erroneous conclusion that a foreign bankruptcy judgment, which is not final and itself based on civil judgments that are not final, is not enforceable under the BIA. ...

[19] Apart from the fact that *Marciano* SC has been overturned, the following matters are also relevant:

- a) the application sought by the Trustee in this instance does not seek foreign recognition of the Japanese bankruptcy as that recognition order was made by this Court in December 2018; and
- b) all orders are in fact final in the foreign main proceeding in Japan.

[20] Thus, the proceeding that Mr. Nishiyama has commenced in Japan apparently seeks to set aside three separate judgments that RCC obtained a number of years ago. In this jurisdiction, a proceeding to set aside a trial judgment is fundamentally different, in multiple respects, from an appeal of that judgment. Mr. Nishiyama's intended proceeding against RCC does not, at this time, affect the status of the foreign main proceeding in Japan in any way.

ANALYSIS OF THE APPLICATION BEFORE ME

[21] At the outset, it is relevant that counsel for Mr. Nishiyama recognized that his client had limited standing on this application. If the Family Law Agreement is valid, and notwithstanding various apparent difficulties with that agreement I have assumed it is, the beneficial interest in the Barclay Condominium and in other assets that Mr. Nishiyama owned through Sun Moon Management and Rainbow One Investments would now rest with Ms. Kinoshita.

[22] It is also relevant and important that virtually every connection to this matter is found in Japan. RCC is a Japanese company and its various judgments were obtained in Japan. The Trustee is in Japan. Mr. Nishiyama's criminal proceedings took place in Japan. The documents that are relevant to these various legal proceedings are in Japan and will all be in Japanese. The Family Law Agreement was prepared in Japan and is in Japanese. Both Mr. Nishiyama and Ms. Kinoshita live in Japan and both speak Japanese. Indeed, as I noted in the Disclosure and Examination Reasons, Mr. Nishiyama is not permitted to leave Japan, under court order.

[23] In addition, the relevant authorities do not support Ms. Kinoshita. The decision in the matter of *MtGox Co. Ltd. (Re)*, 2014 ONSC 5811 ["MtGox"], is of assistance. In *MtGox*, the Japanese trustee in bankruptcy of MtGox Co. Ltd. applied for:

- 1) an initial recognition order under Part XIII of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 ("*BIA*");
- 2) for a declaration that the trustee was a foreign representative pursuant to s. 268(1) of the *BIA* and was thereby entitled to bring the application under s. 269 of the *BIA*; and
- 3) an order under s. 271(1) of the *BIA* staying and enjoining any claims, rights or proceedings against MtGox and its property in Ontario.

[24] MtGox was a Japanese company that had always been located in Japan. It had operated an online exchange for the purchase and sale of bitcoins. MtGox suspended trading after discovering a theft or disappearance of bitcoins that it held. The Japanese courts had entered a bankruptcy order and appointed the applicant as bankruptcy trustee. At paras. 13 to 18, Justice Newbould explained the provisions of the *BIA* that pertain to the recognition of foreign bankruptcy proceedings. At paras. 19 to 23, he addressed what constituted a "foreign main proceeding". He then applied these considerations to *MtGox*, at para. 22, and based on those considerations, he concluded, at para. 23, that the Japanese proceedings were a

foreign main proceeding. He also granted the stay being sought, that being at paras. 25 to 28.

[25] Thus, the Court's decision in *MtGox* mirrors, in some respects, the status of the bankruptcy proceedings in this Court. Justice Newbould also addressed the competing theories that underlies multinational bankruptcies and then said:

[11] There is increasingly a move towards what has been called modified universalism. The notion of modified universalism is court recognition of main proceedings in one jurisdiction and non-main proceedings in other jurisdictions, representing some compromise of state sovereignty under domestic proceedings to advance international comity and cooperation. It has been advanced by the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross Border Insolvency, which Canada largely adopted by 2009 amendments to the CCAA and the BIA. Before this amendment, Canada had gone far down the road in acting on comity principles in international insolvency. See *Babcock & Wilcox Canada Ltd, Re* (2000), 18 C.B.R. (4th) 157 and *Lear Canada, Re* (2009), 55 C.B.R. (5th) 57.

[12] In the BIA, the Model Law was introduced by the enactment of Part XIII. Section 267 sets out the policy objectives of Part XIII as follows:

The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtors;
- (d) the protection and the maximization of the value of debtors' property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

[26] The foregoing considerations and principles are directly relevant. The Japanese bankruptcy proceeding in this case is a foreign main proceeding and virtually all of the factors which underlie and relate to that bankruptcy are found in Japan. It is important, in the interest of comity, that Canadian courts cooperate with competent authorities and with courts in foreign jurisdictions in cross-border

insolvencies. This is likely to enhance the fair, consistent and efficient administration of such insolvencies.

[27] The practical manifestation of these salutary objectives is already apparent in this case. Thus, it is relevant that considerable funds and/or assets, that were formerly owned by Mr. Nishiyama, and that RCC uncovered through the proceedings it commenced in Hong Kong and in Singapore, have already been remitted by RCC to the Trustee in Japan.

[28] In similar fashion, it is relevant that the funds and securities Mr. Nishiyama formerly held through Sun Moon Management and Rainbow One Investments at the Royal Bank of Canada and/or RBC Dominion Securities, and that were uncovered by RCC through its investigations in British Columbia, have also been remitted to the Trustee in Japan.

[29] Indeed, this is particularly relevant because those assets are, under the Family Law Agreement, also purportedly beneficially owned by Ms. Kinoshita. Thus, one significant component of the assets that Ms. Kinoshita asserts an interest in are already held by the Trustee in Japan. If Ms. Kinoshita were to advance her interest in those assets in Japan, it would be both inefficient and inconsistent with the cross-border insolvency regime that exists under the *BIA* and the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross Border Insolvency, that both Canada and Japan have adopted, to have similar parallel proceedings in British Columbia.

[30] Accordingly, I do not consider that there is any basis to grant Ms. Kinoshita the further adjournment she seeks. She has not explained on a principled basis how the legal opinion she hopes to obtain would prevent the Receiver from obtaining the relief he seeks on this application. Conversely, I am satisfied, both as a matter of principle and on the basis of the pragmatic considerations that I have described, that the Receiver is entitled to remit the balance of the proceeds from the sale of the Barclay Condominium to the Trustee in Japan. To be precise, I make the order that is described in para. 3(c)(iv) of the Receiver's Notice of Application.

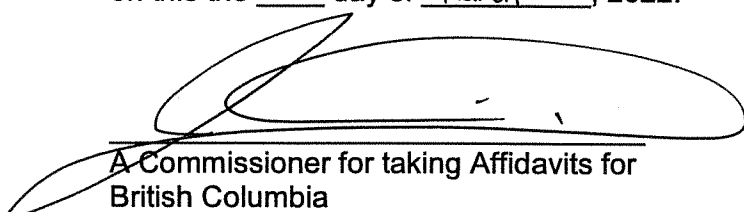
[31] Does anything arise from that, counsel?

[DISCUSSION BETWEEN COUNSEL AND THE COURT]

[32] THE COURT: I will include a term, then, that the funds not be remitted to the Trustee in Japan until 4 p.m. on Monday, March 30.

"Voith J."

This is **Exhibit "N"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia

Case File No. **CA46784**

FORM 7 (RULE 11 (A))

Court of Appeal File No.
 Supreme Court File No. S-1813807
 Supreme Court Registry Vancouver

**COURT OF APPEAL
 IN BANKRUPTCY AND INSOLVENCY**

BETWEEN:

IN THE MATTER OF THE PART XIII OF THE
 BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,
 AS AMENDED

AND:

IN THE MATTER OF THE BANKRUPTCY OF MASHIKO NISHIYAMA,
 BANKRUPT UNDER THE LAWS OF JAPAN

AND:

ALVAREZ & MARSAL CANADA INC., IN ITS CAPACITY AS THE COURT-
 APPOINTED RECEIVER OVER ALL OF THE ASSETS, UNDERTAKINGS AND
 PROPERTY OWNED OR BENEFICIALLY OWNED BY MASAHIKO
 NISHIYAMA IN CANADA AND HIROSHI MORIMOTO, TRUSTEE OVER THE
 BANKRUPTCY ESTATE OF MASHIKO NISHIYAMA

(PETITIONERS)
 RESPONDENTS

AND:

MASHIKO NISHIYAMA

(APPLICATION
 RESPONDENT)

APPELLANT

AND:

HATSUMI KINOSHITA
 RESOLUTION AND COLLECTION CORPORATION
 (APPLICATION RESPONDENTS)
 RESPONDENTS

NOTICE OF APPEAL

Take notice that Masahiko Nishiyama hereby appeals to the Court of Appeal for British Columbia from the order of the Honourable Mr. Justice Voith of the British Columbia Supreme Court pronounced on the 27th day of March, 2020, at Vancouver, British Columbia ordering that:

1. Pursuant to Paragraph 3(c)(iv) of the Notice of Application that the balance of net proceeds from the sale of 4102 – 1028 Barclay Street, Vancouver, BC and sale of

personal property be distributed to the Trustee to the credit of the Japanese Bankruptcy proceedings and to be held by the Trustee pending further order, authorization, or approval of the Japanese Court or agreement by the Trustee and Ms. Kinoshita.

2. The application to adjourn the oral reasons for judgement be denied.

1. The appeal is from a:

- ☐ Trial Judgment ☐ Summary Trial Judgment
☐ Order of a Statutory Body ☒ Chambers Judgment

2. If the appeal is from an appeal under Rule 18-3 or 23-6 (8) of the Supreme Court Civil Rules or Rule 18-3 or 22-7 (8) of the Supreme Court Family Rules, name the maker of the original decision, direction or order:

3. Please identify which of the following is involved in the appeal:

- ☐ Constitutional/Administrative ☒ Civil Procedure ☒ Commercial
Family – ☐ Divorce ☐ *Family Law Act* ☐ Corollary Relief in a Divorce
 Proceeding ☐ Other Family
- ☐ Motor Vehicle Accidents ☐ Municipal Law ☐ Real Property
☐ Torts ☐ Equity ☐ Wills and Estates

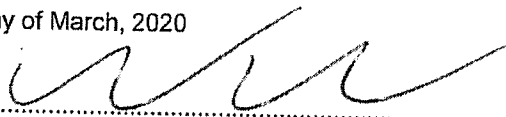
(The Divorce Registry will, as applicable, be notified by the Court of Appeal Registry on filing if the appeal involves divorce, corollary relief in divorce proceeding or matters under the *Family Law Act*)

And further take notice that the Court of Appeal will be moved at the hearing of this appeal for an order that:

1. The appeal is allowed;
2. To set aside the order of the Honourable Mr. Justice Voith of the Supreme Court of British Columbia pronounced on the 27th day of March, 2020, at Vancouver Law Courts, 800 Smithe Street, Vancouver, BC ordering that that the balance of net proceeds from the sale of 4102 – 1028 Barclay Street, Vancouver, BC and sale of personal property be distributed to the Trustee to the credit of the Japanese Bankruptcy proceedings and to be held by the Trustee pending further order, authorization, or approval of the Japanese Court or agreement by the Trustee and Ms. Kinoshita.
3. An order that the net proceeds from the sale of 4102 – 1028 Barclay Street, Vancouver, BC and the sale of personal property be paid into court in the BC Supreme Court pending further order, authorization or approval of the BC Supreme Court or agreement by the Trustee and Ms. Kinoshita, and Mr. Nishiyama.

The hearing of this proceeding occupied 3 days.

Dated at Vancouver, British Columbia, this 30th day of March, 2020



Appellant/Solicitor for the Appellant
Cody G. Reedman

To the respondents: See Schedule A

And to its solicitor: See Schedule A

This Notice of Appeal is given by Reedman Law ,
whose address for service is 1212-1030 West Georgia Street, Vancouver, BC, V6E
2Y3
Fax: 604-688-1619
Email: n/a

To the respondent(s):

IF YOU INTEND TO PARTICIPATE in this appeal, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Notice of Appearance" (Form 2 of the Court of Appeal Rules) in a Court of Appeal registry and serve the notice of appearance on the appellant WITHIN 10 DAYS of receiving this Notice of Appeal.

IF YOU FAIL TO FILE A NOTICE OF APPEARANCE

- (a) you are deemed to take no position on the appeal, and
- (b) the parties are not obliged to serve any further documents on you.

The filing registries for the British Columbia Court of Appeal are as follows:

Central Registry:

B.C. Court of Appeal
Suite 400, 800 Hornby Street
Vancouver BC V6Z 2C5

Other Registries:

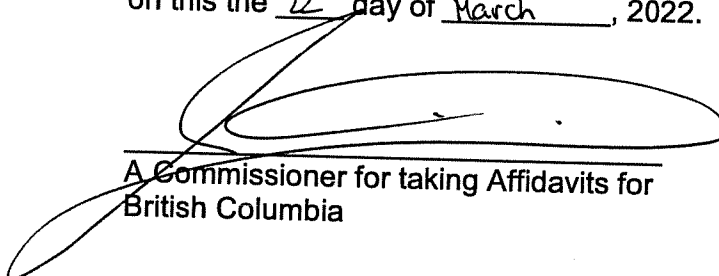
B.C. Court of Appeal	B.C. Court of Appeal
The Law Courts	223 – 455 Columbia Street
P.O. Box 9248 STN PROV GOVT	Kamloops BC V2C 6K4
850 Burdett Ave	
Victoria BC V8W 1B4	

Inquiries should be addressed to (604)
660-2468 Fax filings: (604) 660-1951

SCHEDULE "A"

<p>Gowlings WLG LLP 550 Burrard Street, Suite 2300, Bentall 5, Vancouver, British Columbia, V6C 2B5</p> <p>Attention: Colin Brousson and Jeffrey Bradshaw</p> <p><i>Counsel for Alvarez & Marsal Canada Inc., in its capacity as the Court- appointed receiver over all of the assets, undertakings and property owned or beneficially owned by Masahiko Nishiyama in Canada and Hiroshi Morimoto, Trustee over the bankruptcy estate of Mashiko Nishiyama</i></p>	<p>Law Offices of Robert W. Richardson 506-815 Hornby Street Vancouver, British Columbia, V67 2E6</p> <p>Attention: Robert W. Richardson</p> <p><i>Co-counsel for Resolution and Collection Corporation</i></p>
<p>Miller Thomson LLP 725 Granville Street Suite 400 Vancouver, BC V7Y 1G5</p> <p>Attention: Gordon G. Plottel</p> <p><i>Co-counsel for Resolution and Collection Corporation</i></p>	<p><i>Alvarez & Marsal Canada Inc</i> 400 Burrard Street Suite 1680, Commerce Place Vancouver, BC, V6C 3A6</p> <p><i>Court-appointed receiver over all of the assets, undertakings and property owned or beneficially owned by Masahiko Nishiyama in Canada</i></p>
<p>Lundrie & Company 500 - 4211 Kingsway Burnaby, BC V5H 1Z6</p> <p>Attention: Todd. Brayer</p> <p><i>Counsel for Hatsumi Kinoshita</i></p>	<p>Office of the Superintendent of Bankruptcy 2000 - 300 West Georgia Street Vancouver, BC V6B 6E1</p>

This is **Exhibit "O"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia



FORM 22 (RULE 46 (A))

Court of Appeal File No. CA46784

**COURT OF APPEAL
IN BANKRUPTCY AND INSOLVENCY**

BETWEEN:

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,
AS AMENDED

AND:

IN THE MATTER OF THE BANKRUPTCY OF MASHIKO NISHIYAMA,

BANKRUPT UNDER THE LAWS OF JAPAN

AND:

ALVAREZ & MARSAL CANADA INC., IN ITS CAPACITY AS THE COURTAPPOINTED
RECEIVER OVER ALL OF THE ASSETS, UNDERTAKINGS AND
PROPERTY OWNED OR BENEFICIALLY OWNED BY MASAHIKO
NISHIYAMA IN CANADA AND HIROSHI MORIMOTO, TRUSTEE OVER THE
BANKRUPTCY ESTATE OF MASHIKO NISHIYAMA

(PETITIONERS)
RESPONDENTS

AND:

MASHIKO NISHIYAMA

(APPLICATION
RESPONDENT)
APPELLANT

NOTICE OF SETTLEMENT OR ABANDONMENT

In the matter of the appeal commenced by Notice of Appeal filed on March 30, 2020, from the order of the Honourable Mr. Justice Voith of the British Columbia Supreme Court pronounced on the 27th day of March, 2020.

Take Notice that I, Mashiko Nishiyama, appellant in the above-noted matter, hereby abandon this Appeal.

Dated at Vancouver, British Columbia, on this 15th day of June, 2020



.....
Appellant/Solicitor for the Appellant

Cody G. Reeman

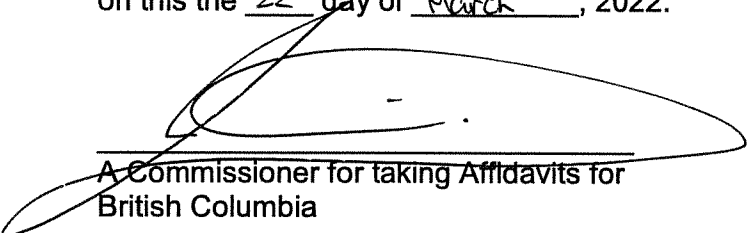
This NOTICE OF SETTLEMENT OR ABANDONMENT is filed by: Reedman Law, whose address is: 1212-1030 West Georgia Street, Vancouver, BC, V6E 2Y3.

Fax: (604) 688-1619

Email: N/A

Telephone: (604) 570-0005

This is **Exhibit "P"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia

令和3年4月13日判決言渡 同日原本領収 裁判所書記
 令和2年(ワ)第636号 債務不存在確認請求事件

判 決

大津市昭和町13-36

原 告

面 山 正 彦

東京都千代田区丸の内三丁目4番2号

被 告

株式会社整理回収機構

同代表者代表取締役

坂 本 正 喜

同代理人支配人

笹 本 泰 弘

同訴訟代理人弁護士

守 口 建 治

主 文

- 1 本件訴えを却下する。
- 2 訴訟費用は、原告の負担とする。

事 実 及 び 理 由

1 事案の概要

本件は、原告が、平成25年10月29日までに当事者間で言い渡された3つの確定判決(京都地方裁判所平成9年(ワ)第2826号、同平成23年(ワ)第3538号及び同平成21年(ワ)第3275号)で認容された、原告の被告に対する貸金債権(甲1)、連帯保証債権(甲2)及び損害賠償請求債権(甲3)について、①上記各判決が、被告において原告の住所等を知り又は知ることができたにもかかわらず、公示送達の方法により送達されたものであり、違法無効である、②そのために上記各判決で認容された各請求権に係る債権は、いずれも時効消滅したと主張して、上記各債権が存在しないことの確認を求める事案である。

証拠(甲3)によれば、原告が不存在確認を求める上記各債権のうち、損害賠償請求債権については、京都市が不法行為地であると解されるから、損害賠償請求債権及びこれと併合された貸金債権及び連帯保証債権に係る訴えについては、いずれ

も京都地方裁判所が管轄権を有するものと解される。

2 当裁判所の判断

一件記録によれば、原告は、京都地方裁判所平成28年（フ）第104号破産事件において、破産手続開始決定を受けており、同事件は現在も係属中であると認められる。そして、被告の原告に対する上記1の各債権は、いずれも破産手続開始決定前に発生しており、破産債権であるから、これらに関する本件訴えは、破産債権に関する訴えであると認められ（破産法80条）、破産管財人が当事者適格を有するものというべきである。

したがって、本件訴えにつき、原告が当事者適格を有するとは認められない。

3 結論

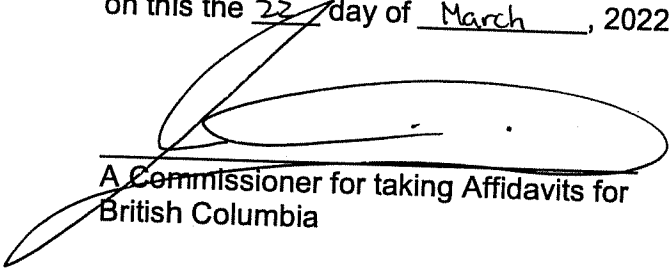
以上によれば、本件訴えは不適法であって、その不備を補正することができないと認められるから（民事訴訟法140条）、これを却下することとし、主文のとおり判決する。

京都地方裁判所第4民事部

裁判官

大久保 香織

This is **Exhibit "Q"** referred to in the Affidavit of
Wen-Shih Yang sworn before me at
Vancouver, British Columbia,
on this the 22 day of March, 2022.



A Commissioner for taking Affidavits for
British Columbia

Judgment rendered on April 13, 2021; the original copy received on the same day; Court Clerk [Seal]
Case No. Reiwa 2 (wa) – 636, Case of Request for Confirmation of Absence of Obligation

Judgment

13-36, Showa-cho, Otsu

Plaintiff:

Masahiko Nishiyama

3-4-2, Marunouchi, Chiyoda-ku, Tokyo

Defendant:

The Resolution and Collection Corporation

Representative Director of Defendant:

Masaki Sakamoto

Representing Manager of Defendant:

Yasuhiro Sasamoto

Attorney representing Defendant in the action: Kenji Moriguchi

Main Text

1. The Plaintiff's claim is dismissed.
2. The cost of litigation shall be borne by the Plaintiff.

Facts and Reasons

1. Outline of the Case

This is a case in which the Plaintiff requests to confirm that, with respect to the Plaintiff's claims on loans (item 1 of the Plaintiff's evidence), joint and several guarantee claims (item 2 of the Plaintiff's evidence) and claims for damages (item 3 of the Plaintiff's evidence) against the Defendant upheld by the three final and binding judgments (Case Nos. Heisei 9 (wa) – 2826, Heisei 23 (wa) – 3538 and Heisei 21 (wa) – 3275 of the Kyoto District Court) rendered on or before October 29, 2013, between the parties, each of the above claims do not exist, claiming that (i) although the Defendant knew or could have reasonably known the Plaintiff's domicile, etc., the delivery of the judgments was made by way of public notification, and therefore it was illegal and invalid, and (ii) as such, the claims related to each claim right upheld by the above judgments were extinguished by prescription.

According to the evidence (item 3 of the Plaintiff's evidence), it is understood that Kyoto City is the locus delicti concerning the claims for damages in the above claims of which the Plaintiff requests to confirm the absence; therefore, it is understood that the Kyoto District Court has jurisdiction over the actions pertaining to the claims for damages as well as the claims on loans and the joint and several guarantee claims consolidated therewith.

2. Court's Decision

According to the record relating to the case, the Kyoto District Court issued the order of the

commencement of bankruptcy proceedings against the Plaintiff in a bankruptcy case (Case No. Heisei 28 (fu) – 104), and such bankruptcy case is still pending. Since all of the Defendant's claims against the Plaintiff set forth in paragraph 1 above were created before the order of the commencement of bankruptcy proceedings and are bankruptcy claims, the action concerning these claims is deemed to be an action concerning bankruptcy claims (Article 80 of the Bankruptcy Act), and the trustee in the bankruptcy case should be deemed to have the standing to sue or to be sued.

Therefore, it is not recognized that the Plaintiff has the standing to sue or to be sued concerning this case.

3. Conclusion

Based on the above, it is deemed that this case is not in accordance with the law and such defect cannot be corrected (Article 140 of the Code of Civil Procedure). Therefore, it shall be dismissed, and the judgment is rendered as stated in the Main Text.

4th Civil Division, Kyoto District Court

Judge

Kaori Okubo [Seal]

No. S1813807
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C.
B-6,
AS AMENDED

AND

IN THE MATTER OF THE MASAHIKO NISHIYAMA
BANKRUPT UNDER THE LAWS OF JAPAN

AFFIDAVIT

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File No.: 105288-00001

AGM/day