

NOV 30 2022

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

EARLSTON MORTGAGE CORP.

PETITIONER

AND:

AMY BARSHA WASHINGTON,
CHONGYE DEVELOPMENTS LTD., and
PLW INVESTMENT LTD.

RESPONDENTS

PETITION TO THE COURT

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

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

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

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

Time for Response to Petition

A Response to Petition must be filed and served on the petitioner,

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

(1)	<p>The address of the registry is:</p> <p>800 Smithe Street Vancouver, BC V6Z 2E1</p>
(2)	<p>The ADDRESS FOR SERVICE of the petitioner is:</p> <p>20th Floor, 250 Howe Street Vancouver, BC V6C 3R8</p> <p>Fax number address for service (if any) of the petitioner:</p> <p>604-683-5214</p> <p>E-mail address for service (if any) of the petitioner:</p> <p><u>john.sandrelli@dentons.com</u> <u>eamonn.watson@dentons.com</u></p>
(3)	<p>The name and office address of the petitioner's lawyer is:</p> <p>Dentons Canada LLP 20th Floor, 250 Howe Street Vancouver, BC V6C 3R8</p>

CLAIM OF THE PETITIONER

Part 1: ORDER(S) SOUGHT

1. A declaration that the mortgage and assignment of rents (as amended, the "**Mortgage**") made March 2, 2021, between Amy Barsha Washington, as mortgagor, and the Petitioner, as mortgagee, and registered in the New Westminster Land Title Office on March 9, 2021, under registration numbers CA8829657 and CA8829658, as modified by modification agreement made June 9, 2022, and registered in the New Westminster Land

Title Office on June 14, 2022, under registration numbers CB1177 and CB1178, is a mortgage charging those lands and premises more particularly described as:

Parcel Identifier: 013-255-495

Lot 9 of Lot 3 Block 138 District Lot 540 Plan 2992

(herein referred to as the "**Lands**"),

in priority to any legal or beneficial right, title or interest of any of the Respondents in the Lands.

2. A Declaration that the Mortgage is in default and of the amount of money due and owing under the Mortgage and of the amount of money required to redeem the Lands.
3. An Order setting the redemption period.
4. An Order that if the Lands not be redeemed, the Petitioner shall be at liberty to apply for an Order Absolute and on pronouncement of Order Absolute then the Respondents and their respective heirs, executors, administrators, successors and assigns and all persons claiming by, through or under them shall be foreclosed of all legal and beneficial right, title, interest, estate and equity of redemption in and to the Lands, and shall immediately deliver to the Petitioner vacant possession of the Lands.
5. Judgment against the Respondents, Amy Barsha Washington and Chongye Developments Ltd., pursuant to their covenant to pay the Mortgage.
6. An Order that the Petitioner's costs of this proceeding, to the date of the hearing of the petition, assessed on a party and party basis plus such further costs as may be awarded thereafter, form a part of the amount of money required to redeem the Lands.
7. An Order that upon the Respondents, or any of them, paying to the solicitor of record for the Petitioner or, if no such solicitor exists then either to the Petitioner or into Court to the credit of this proceeding at the Registry at Vancouver Law Courts, in British Columbia, the amount required to redeem the Lands, as aforesaid, together with the costs of this proceeding to the date of the hearing of the petition assessed on a party and party basis plus such further costs as may be awarded thereafter, on or before pronouncement of either Order Absolute of Foreclosure or an Order confirming the sale of the Lands, the Petitioner shall reconvey the Lands free and clear of all encumbrances in favour of it or by any person claiming by, through or under it to the Respondent or Respondents that made payment.

8. An Order that the Petitioner be granted liberty to apply to this Court for a further summary accounting of any amounts which become due to the Petitioner for interest, taxes, arrears of taxes, insurance premiums, costs, charges, expenses or otherwise since the date of pronouncement of this Order.
9. An Order that the Petitioner's entitlement to costs in this proceeding awarded after the date of the hearing of the petition, including any award for future costs to be assessed at a rate in excess of that allowed at the hearing of the petition, be reserved.
10. A Certificate of Pending Litigation.
11. An Order for possession of the Lands.
12. An Order for Sale of the Lands, subject to the approval of this Honourable Court, with the Petitioner having exclusive conduct of sale.
13. An Order for the appointment of a Receiver.
14. Such further and other relief as this Honourable Court may seem meet.

Part 2: FACTUAL BASIS

1. The Petitioner, Earlston Mortgage Corp., is a private merchant bank incorporated pursuant to the Laws of the Province of British Columbia having an address for business at Suite 1703, 595 Burrard Street, Box 49131, Vancouver, British Columbia, V7X 1J1, and an address for service in this proceeding care of its solicitors, Dentons Canada LLP, 20th Floor, 250 Howe Street, Vancouver, British Columbia, V6C 3R8.
2. The Respondent, Amy Barsha Washington (the "**Registered Owner**"), is the registered owner of the Lands.
3. The Respondent, Chongye Developments Ltd. ("**Chongye**", and collectively with the Registered Owner, the "**Debtors**"), a corporation incorporated under the Laws of the Province of British Columbia, is the beneficial owner of the Lands.

THE MORTGAGE

4. On or about March 2, 2021, the Petitioner, as trustee and servicing agent for a group of inventors, as lender, and the Debtors, as borrowers, entered a loan agreement under which the Petitioner would advance a loan to the Debtors (as amended, the "**Loan Agreement**").

5. The Loan Agreement was amended by an amending agreement dated June 9, 2022.
6. The Mortgage was modified by modification agreement also made on June 9, 2022, and registered in the New Westminster Land Title Office on June 14, 2022.
7. By promissory note also dated June 9, 2022, the Debtors promised to pay the Petitioner the principal amount of \$4,935,721.49, plus interest.
8. The Mortgage was granted as security for the obligations of the Debtors to the Petitioner, including (without limitation) the obligations under the Loan Agreement.
9. Pursuant to the Mortgage made between the Registered Owner, as mortgagor, and the Petitioner, as mortgagee, the legal and beneficial interest of the Debtors in and to the Lands were granted and mortgaged to the Petitioner.
10. The particulars of the Mortgage include, among other things:
 - (a) the principal sum secured is \$5,000,000.00, with interest thereon calculated daily and compounded monthly as follows:

until and including March 30, 2023, the greater of (i) 8.50% per annum, and (ii) The Toronto-Dominion Bank prime rate plus 6.05% per annum, and

after March 30, 2023, the greater of (i) 12.5% per annum, and (ii) The Toronto-Dominion Bank prime rate plus 10.05%;
 - (b) interest payments are due on the last business day of each and every month and on repayment of the principal;
 - (c) the balance due date is September 1, 2023; and
 - (d) upon the occurrence of a default under the Mortgage, at the option of the Petitioner, the entire amount owing under the Mortgage will become immediately due and payable in full.
11. The Debtors have defaulted under the terms of the Loan Agreement and the Mortgage and the Petitioner has exercised its option for the entire amount owing under the Loan Agreement and the Mortgage to become immediately due and payable in full.

THE MORTGAGE DEBT

12. The amount due under the Mortgage as at November 28, 2022, was \$5,077,971.67, with interest thereon at the then-current rate of \$1,653.92 per day (the "**Mortgage Debt**").

13. The Debtors are indebted to the Petitioner for the Mortgage Debt pursuant to their covenants under the Loan Agreement and the Mortgage, which amount is secured by the Mortgage.

14. By letter dated October 31, 2022, demand was made upon each of the Debtors but in breach of the Mortgage, the Debtors failed to pay.

OTHER INTERESTS IN THE LANDS

15. The following charges are registered in the New Westminster Land Title Office against title to the Lands, which charges rank in priority behind the interest of the Petitioner:

Nature of Charge	Registration Number	Registered Owner of Charge	Registered Against:
Mortgage	CB140141	PLW Investment Ltd.	The Registered Owner
Certificate of Pending Litigation	CB224804	PLW Investment Ltd.	The Registered Owner

Part 3: LEGAL BASIS

1. The Petitioner will rely on:
 - (a) Rules 13-5, 14-1, 16-1, 21-7, and 22-5 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009;
 - (b) Section 30 of the *Land Title Act*, R.S.B.C. 1996, c. 250; and
 - (c) Sections 10, 15, 37 and 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253.

Part 4: MATERIALS TO BE RELIED ON

1. Affidavit #1 of Michael Atkinson, to be sworn.

The Petitioner estimates that the hearing of the Petition will take 5 minutes.

Date: 30/NOV/2022



Signature of Eamonn Watson
Lawyer for petitioner

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs _____ of
Part 1 of this Petition
- ☐ with the following variations and additional terms:

Date:

Signature of ☐ Judge ☐ Master

Form 11 (Rule 4-5 (2))

**ENDORSEMENT ON ORIGINATING PLEADING
OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Petitioner, Earlston Mortgage Corp., claims the right to serve this petition on the Respondents, Amy Barsha Washington, Chongye Developments Ltd., and PLW Investment Ltd., outside British Columbia on the ground that the proceeding is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property, in accordance with subsection 10(a) of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28.

INFORMATIONAL NOTICE FOR FORECLOSURE PROCEEDINGS

This is a foreclosure proceeding. You have been served with the enclosed materials because you appear to have an interest in the property described in the petition to the court.

Within this proceeding, the court may make orders concerning distribution of sale proceeds that impact you.

To ensure that you are informed of any court orders concerning distribution of funds, you must make the court and the petitioner aware of your contact information. This can be done by filing a response to petition or notifying the petitioner in writing of your current contact information.

If at any stage of this proceeding you wish to take a position on the relief sought in this proceeding, a response to petition and supporting affidavit must be filed and served on the petitioner within the timelines set out in the *Supreme Court Civil Rules*.