

FORCE FILED

NO. H220369
VANCOUVER REGISTRY



IN THE SUPREME COURT OF BRITISH COLUMBIA

PLW INVESTMENT LTD.

PETITIONER

AND:

1025332 B.C. LTD., 1025334 B.C. LTD., 1025336 B.C. LTD., CHONGYE DEVELOPMENTS LTD., WASHINGTON PROPERTIES (POINT GREY) INC., WASHINGTON PROPERTIES (QEP) INC., LUCKY FIVE INVESTMENTS LTD., 1094321 B.C. LTD., PRARDA DEVELOPMENTS CORPORATION, 1256306 B.C. LTD., 1256319 B.C. LTD., AMY BARSHA WASHINGTON (A.K.A. FENGYUN SHAO), EDISON WASHINGTON (A.K.A. QIANG WANG), LINDA WASHINGTON, 35 PARK PARKING INC. AND EARLSTON MORTGAGE CORP.

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: Alvarez & Marsal Canada Inc., in its capacity as court appointed receiver and manager (the “Receiver”)

To: the Service List

TAKE NOTICE that an application will be made by the Petitioner to Justice Blake at the courthouse at 800 Smithe Street, Vancouver, British Columbia on 18/DEC/2023 at 9:00 a.m. for the order set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An Order approving the sale of certain lands and premises which are the subject of this receivership proceeding, substantially in the form attached hereto as **Schedule “A”**.

Part 2: FACTUAL BASIS

A. The Receivership

1. On or about October 27, 2022, on application of PLW Investment Ltd. (the "**Secured Creditor**"), the Receiver was appointed as court-appointed receiver over twenty-one (21) parcels of land, and certain related personal property, of the Respondents pursuant to an order of this Court (as subsequently amended on November 7, 2022, the "**Receivership Order**").
2. The Receivership Order was subsequently stayed in its entirety by consent of all parties, which stay expired on April 7, 2023. The Receiver's appointment resumed on April 8, 2023. However, the stay in respect of two parcels of land was subsequently re-instated by a consent order made April 26, 2023.
3. In addition, since the stay of the Receivership Order expired, this Court has approved the sale of several parcels of land which were subject to the Receivership Order, and has ordered removal of certain parcels from time to time.
4. As a result of the foregoing, subject to completion of certain sales, there are ten (10) parcels which remain subject to the Receivership Order. A consolidated list of the remaining lands which are subject to the Receivership Order is attached hereto as **Schedule "B"**.
5. The Secured Creditor advanced two loans to certain of the respondents, which are secured by various mortgages registered against the subject lands. The Secured Creditor holds the first priority mortgage on all but two of those lands.
6. Pursuant to the Receivership Order, the Secured Creditor was granted judgment against certain respondents, including judgments in excess of \$73,000,000 against the respondents Amy Washington, 1025332 B.C. Ltd., 1025334 B.C. Ltd., 1025336 B.C. Ltd., Chongye Developments Ltd., Washington Properties (Point Grey) Inc., and Edison Washington.
7. The Receiver brings this application to approve the sale of certain property subject to the Receivership.

B. Sale of 4408 West 3rd Avenue

8. The Receiver is seeking an order approving the sale of a residence located at the civic address 4408 West 3rd Avenue, Vancouver, and legally described as

PID: 013-255-495

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

(the "**Lands**").

9. Amy Barsha Washington ("**Ms. Washington**") is the registered owner of the Lands and is a Respondent in these receivership proceedings. Chongye Developments Ltd. ("**Chongye**") is the beneficial owner.
10. On or about November 7, 2023, Li Na Lu (the "**Purchaser**") and the Receiver entered into an contract of Purchase and Sale (the "**Purchase Agreement**") to purchase the Lands for \$5,550,00.00 (the "**Purchase Price**"). The sale is set to close on January 9, 2024.
11. The following entities hold registered secured charges against the Lands:
 - (a) Earlston Mortgage Corp ("**Earlston Mortgage**") holds a first ranking mortgage and assignment of rents under charge numbers CA8829657 and CA8829658;
 - (b) the Secured Creditor holds a second ranking mortgage under charge number CB140141;
 - (c) the Secured Creditor holds a subsequently registered certificate of pending litigation under charge number CB2224804; and
 - (d) the Earlston Mortgage holds a subsequently registered certificate of pending litigation under charge number CB365432.
12. The Receiver understands that both Earlston Mortgage and the Secured Creditor is satisfied with the transaction contemplated by the Purchase Agreement. The sale will result in a shortfall to Earlston Mortgage.
13. In addition to the foregoing, Canada Revenue Agency ("**CRA**") asserts a deemed trust in the amount of \$511,039.41 against Chongye, which it claims holds priority over Earlston Mortgage and Secured Creditor. Earlston Mortgage disputes this claim.
14. The Receiver has engaged Angell Hasman & Associates (Malcolm Hasman) Realty Ltd. and Angell Hasman & Associates Realty Ltd. (the "**Sales Agent**") in respect of the Lands.

15. The Lands, in particular, have been listed with the Sales Agent since June 22, 2023. During that time, the Sales Agent has coordinated 21 open houses and 41 private showings, for a total of 62 showings and private appointments.
16. The sales agent retained by the Receiver has confirmed that the Purchase Price is aligned with market rates for a property similar to the Lands. Since the execution of the Purchase Agreement, the sales agent has continue to market the property and seek competing bids pursuant to Practice Direction #62.
17. The Receiver therefore seeks approval of the sale of the Lands for \$5,550,000.00.

Part 3: LEGAL BASIS

1. The Petitioner will rely on:
 - (a) Receivership Order,
 - (b) Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (as may be amended from time to time, the “BIA”);
 - (c) Rule 13-5 of the *Supreme Court Civil Rules*; and
 - (d) Section 15 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253.
2. Pursuant to paragraphs 2(l)(ii) and 2(m) of the Receivership Order, the Receiver was granted the power to sell the Lands, subject to approval of this Court, and to apply for a vesting order in connection with the same.
3. *Royal Bank v. Soundair Corp.* is the leading authority on the factors a court may consider when approving a sale proposed by a receiver, which are:
 - (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - (b) the interests of all parties;
 - (c) the efficacy and integrity of the process by which offers are obtained; and
 - (d) whether there has been unfairness in the working out of the process.

***Royal Bank v. Soundair Corp.*, 1991
CarswellOnt 205 (Ont. C.A.) (“Soundair”)
at para. 16.**

4. In this case the Receiver submits all of the *Soundair* factors have been met and the Court should approve the sales proposed herein. The Receiver submits that an order approving the sale of the Lands to the relevant purchasers is appropriate for the following reasons:
 - (a) the Receiver and the Sales Agent have made a sufficient effort to get the best price for the Lands and have not acted improvidently, and the purchase price reflects the fair market value for the Lands;
 - (b) the sale is supported by the Secured Creditor;
 - (c) the process used to market and sell the land has efficacy and integrity; the Receiver and Sales Agent subjected the Lands to a reasonable exposure to market, as part of an overall strategy to market and sell multiple units in the same building; and
 - (d) the process used to market and sell the Lands was fair and reasonable.
5. Given the dispute between CRA and Earlston Mortgage regarding CRA's GST claim, the Receiver proposes to hold \$511,039.41 in trust pending agreement of parties or further order of the court.

Part 4: MATERIAL TO BE RELIED ON

1. Receivership Order made October 27, 2022;
2. Order (Slip Rule) Amending Receivership Order, made November 7, 2022;
3. Orders made November 7, 2022, December 7, 2022, February 7, 2023, and April 26, 2023;
4. Order made after application dated October 30, 2023;
5. Affidavit #6 of Avic Arenas, made 11/DEC/2023; and
6. Receiver's Sixth Report to the Court, to be filed.

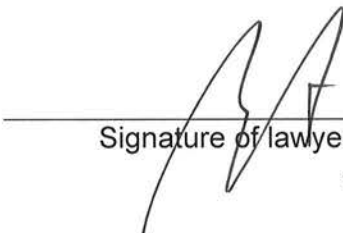
The applicant(s) estimate(s) that the application will take 1 hour.

- ☐ This matter is within the jurisdiction of a master.
- ☒ This matter is not within the jurisdiction of a master, scheduled through trial scheduling.

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 of 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: 11/DEC/2023



Signature of lawyer for filing party
Jordan Schultz

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
- ☒ none of the above

Schedule "A"

Draft Order

(See Attached)

Schedule "A"

NO. H220369
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PLW INVESTMENT LTD.

PETITIONER

AND:

1025332 B.C. LTD., 1025334 B.C. LTD., 1025336 B.C. LTD., CHONGYE DEVELOPMENTS LTD., WASHINGTON PROPERTIES (POINT GREY) INC., WASHINGTON PROPERTIES (QEP) INC., LUCKY FIVE INVESTMENTS LTD., 1094321 B.C. LTD., PRARDA DEVELOPMENTS CORPORATION, 1256306 B.C. LTD., 1256319 B.C. LTD., AMY BARSHA WASHINGTON (A.K.A. FENGYUN SHAO), EDISON WASHINGTON (A.K.A. QIANG WANG), LINDA WASHINGTON, 35 PARK PARKING INC. AND EARLSTON MORTGAGE CORP.

RESPONDENTS

ORDER MADE AFTER APPLICATION

))	
BEFORE)	JUSTICE BLAKE)	18/DEC /2023
))	

ON THE APPLICATION of the Alvarez & Marsal Canada Inc., in its capacity as court appointed receiver and manager (the "**Receiver**"), coming on for hearing at Vancouver, British Columbia on this day, and on hearing Jordan Schultz, counsel for the Receiver, and those other counsel listed on Schedule "A" hereto, and no one else appearing, although duly served;

THIS COURT ORDERS AND DECLARES THAT:

1. The sale of the lands at 4408 West 3rd Avenue, Vancouver, British Columbia, legally known and described as:

Parcel Identifier: 013-255-495
Lot 9 of Lot 3 Block 138 District Lot 540 Plan 2992

(the "**Lands**")

to Li Na Lu, (the "**Purchaser**"), for the purchase price of \$5,550,000.00 and on the other terms and conditions set out in the contract of purchase and sale dated November 7, 2023, as subsequently amended from time to time (collectively, the "**Contract**"), is hereby approved.

2. The sale transaction (the "**Transaction**") contemplated by the Contract is hereby approved, and the Contract is commercially reasonable. The execution of the Contract by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Contract (the "**Purchased Assets**").

3. Upon delivery by the Receiver to the Purchaser of a certificate confirming the Transaction has completed to the satisfaction of the Receiver (the "**Receiver's Certificate**"), all of the right, title and interest of the Respondents, in and to the Purchased Assets described in the Contract shall vest absolutely in the 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 dated October 27, 2022; and (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 (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. On filing a certified copy of this Order in the Vancouver Land Title Office together with a letter from the Receiver's solicitor authorizing the filing, the Lands be conveyed to and vest in the Purchaser as registered owners in fee simple, free and clear of any estate, right, title, interest, equity of redemption and other claims of the parties, together with any other charges, liens, encumbrances caveats, or certificates of pending litigation registered against the Lands subsequent to the Petitioner's Certificate of Pending Litigation, but subject to the reservations, provisos, exceptions, and conditions express in the original grants thereof from the Crown.

5. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased

Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

6. All persons claiming possession of the Lands, or any portion thereof, shall deliver vacant possession of the Lands to the Purchaser, or their agents, successors or assigns, on the Possession Date, as defined in the Contract (herein, the "**Possession Date**").

7. If any person fails to deliver vacant possession of the Lands to the Purchaser at the Possession Date, then the Receiver shall be at liberty to apply to the Registrar for a Writ of Possession, under Rule 13-2(13) and without further Order of the Court.

8. The net sale proceeds after adjustments shall be paid to Dentons Canada LLP, in trust, or otherwise in accordance with the written direction of Dentons Canada LLP, and then disbursed in accordance with the following priorities without further Order:

- (a) first, payment of water and sewer rates, property taxes, arrears of property taxes, interest and penalties on arrears of property taxes, owing in respect of the Lands;
- (b) second, in payment of real estate commission in an amount not exceeding 7% of the first \$100,000 of the gross selling price and 2.5% of the remainder, plus applicable taxes thereon;
- (c) third, to the Receiver to held in trust pending written agreement of the Receiver, Earlston Mortgage Corp. and Canada Revenue Agency, or further Order of this Honourable Court;
- (d) fourth, \$100,000 to the Receiver to be held pending further Order of this Honourable Court;
- (e) fifth, to Earlston Mortgage Corp., or its solicitors, the total amounts owing under its mortgage registered against title to the Lands under Nos. CA8829657 and CA8829658; and
- (f) sixth the balance to the Receiver to be held pending further Order of this Honourable Court.

9. For the purpose of issuing title and in respect of the Lands, the following charges, liens, encumbrances, caveats, mortgages, and certificates of pending litigation be cancelled insofar as they apply to the Lands:

	Party		Nature of Charge	Registration No.
(a)	Earlston Mortgage Corp.	Mortgage	Mortgage	CA8829657
(b)	Earlston Mortgage Corp.	Mortgage	Assignment of Rents	CA8829658
(c)	PLW Ltd.	Investment	Mortgage	CB140141
(d)	PLW Ltd.	Investment	Certificate of Pending Litigation	CB224804
(e)	Earlston Mortgage Corp.	Mortgage	Certificate of Pending Litigation	CB365432

together with any other charges, liens, encumbrances, caveats, or certificates of pending litigation registered against the Lands subsequent to the Petitioner's Certificate of Pending Litigation.

10. The Parties hereto and the Purchaser be at liberty to apply for such further and other direction as may be necessary to carry out the full purport and effect of this Order.

11. Endorsement of this Order by counsel appearing on this application other than counsel for the Receiver is 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:

Signature of Jordan Schultz
Lawyer for the Receiver

By the Court.

Registrar

SCHEDULE "A"

LIST OF COUNSEL

Name	Appearing for
Mishaal Gill and Kibben Jackson	PLW Investments Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PLW INVESTMENT LTD.

PETITIONER

AND:

1025332 B.C. LTD., 1025334 B.C. LTD., 1025336 B.C. LTD., CHONGYE DEVELOPMENTS LTD., WASHINGTON PROPERTIES (POINT GREY) INC., WASHINGTON PROPERTIES (QEP) INC., LUCKY FIVE INVESTMENTS LTD., 1094321 B.C. LTD., PRARDA DEVELOPMENTS CORPORATION, 1256306 B.C. LTD., 1256319 B.C. LTD., AMY BARSHA WASHINGTON (A.K.A. FENGYUN SHAO), EDISON WASHINGTON (A.K.A. QIANG WANG), LINDA WASHINGTON, 35 PARK PARKING INC. AND EARLSTON MORTGAGE CORP.

RESPONDENTS

**ORDER MADE AFTER APPLICATION
[APPROVAL OF SALE AND VESTING OF TITLE ORDER]
[W. 3RD AVENUE, VANCOUVER]**

DENTONS CANADA LLP
BARRISTERS & SOLICITORS
250 Howe Street, 20th Floor
Vancouver, BC V6C 3R8
Phone No.: (604) 687-4460
Attention: Jordan Schultz

Schedule "B"

Remaining Lands which are subject to the Receivership Order

	<u>CIVIC ADDRESS</u>	<u>PID</u>	<u>REGISTERED OWNER</u>
1.	4215 Cambie Street, Vancouver	009-467-904 (Lot 8)	Edison Washington
2.	4491 Cambie Street, Vancouver	008-116-059 (Lot 11)	Amy Barsha Washington
3.	4403 W 3 rd Avenue, Vancouver	013-255-495 (Lot 9)	Amy Barsha Washington
4.	505 – 4963 Cambie Street, Vancouver	030-879-469 (Lot 55)	1256306 B.C. Ltd.
5.	501 – 5033 Cambie Street, Vancouver	030-880-033 (Lot 112)	1256306 B.C. Ltd.
6.	601 – 5033 Cambie Street, Vancouver	030-880-084 (Lot 117)	1256306 B.C. Ltd.
7.	604 – 5033 Cambie Street, Vancouver	030-880-114 (Lot 120)	1256306 B.C. Ltd.
8.	501 – 5077 Cambie Street, Vancouver	030-880-696 (Lot 178)	1256306 B.C. Ltd.
9.	502 – 5077 Cambie Street, Vancouver	030-880-645 (Lot 173)	1256306 B.C. Ltd.
10.	602 – 5077 Cambie Street, Vancouver	030-880-700 (Lot 179)	1256306 B.C. Ltd.