

**DEC 21 2018**

**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**

**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 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

**THE ADDRESS OF THE REGISTRY IS:**

The Law Courts  
800 Smithe Street  
Vancouver, BC V6Z 2E1

**THE ADDRESS FOR SERVICE and NAME AND OFFICE ADDRESS OF THE PETITIONER'S LAWYER:**

**GOWLING WLG (CANADA) LLP**  
Barristers and Solicitors  
2300 - 550 Burrard Street  
Vancouver, BC V6C 2B5  
Tel: 604-683-6498  
**Attention: Colin D. Brousson**  
**email: colin.brousson@gowlingwlg.com**

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

The right to serve this Petition on the Respondents outside British Columbia on the grounds, *inter alia*, that the proceeding

- a) 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 moveable property
- b) is brought to interpret, rectify, or enforce any deed, contract or other instrument in relation to property in British Columbia that is immovable or moveable property
- c) concerns contractual obligations, and the contractual obligations, to a substantial extent, were to be performed in British Columbia
- d) concerns contractual obligations, and by its express terms, the contract is governed by the law of British Columbia

is claimed by the Petitioner

## CLAIM OF THE PETITIONER

### PART 1: ORDER(S) SOUGHT

1. An order recognizing a foreign main proceeding, recognizing a foreign representative, and granting that foreign representative certain powers, together with ancillary relief, all under Part XIII of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (the "**BIA**"), in the form attached hereto and marked as Schedule A.

### PART 2: FACTUAL BASIS

1. The Petitioner, Hiroshi Morimoto, of Kitahama Partners, is the court-appointed trustee over the bankruptcy estate of Masahiko Nishiyama. (the "**Trustee**").
2. The debtor, Masahiko Nishiyama ("**Nishiyama**"), is an individual with an unknown address.
3. Nishiyama is a citizen of Japan and has for many years carried on a business both in his own name and through a number of corporations.
4. Over a number of years, the Resolution and Collection Corporation ("**RCC**") (formerly the Housing Loan Administration Corporation) 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.
5. 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**").
6. RCC then commenced legal action again against Nishiyama for concealing and hiding assets in corporations and with family members. 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**").
7. In the 2013 Judgment, the Kyoto District Court referred the evidence from that hearing to the Japanese authorities, specifically, the determination that Nishiyama was dissipating and concealing assets beyond the reach of his creditors in order to evade the anticipated enforcement of the 2013 Judgment.
8. On February 10, 2016, RCC filed a petition for bankruptcy against Nishiyama based on his inability or failure to repay debts. Nishiyama did not file a response in those proceedings and the Kyoto District Court issued a Bankruptcy Commencement Order on March 15, 2016.
9. On June 22, 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 such as Canada and in so doing he obstructed compulsory execution against these assets in Japan.

10. 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.
11. On July 26, 2018, Nishiyama was granted parole from Japanese prison and he has indicated a desire to travel to Vancouver, Canada.
12. In addition to his criminal conviction, Nishiyama has not complied with the *Bankruptcy Act* in Japan and has failed to cooperate with the Trustee in his bankruptcy.
13. The Trustee has initiated two additional recognition proceedings in other jurisdictions related to his matter, in order to preserve assets in those jurisdictions, while also recognizing the Japanese proceedings as the foreign main proceedings. These proceedings are:
  - (a) an action brought in the High Court of the Hong Kong Special Administrative Region, Court of First Instance, under Action No. 3016 of 2017, where recognition was granted on July 18, 2018, as amended on July 26, 2018.
  - (b) an action brought in the Chambers of the High Court of the Republic of Singapore, under Action No. HC/OS 210/2017, where recognition was granted on May 17, 2017.
14. Nishiyama spent a significant amount of time in British Columbia prior to 2012. The Trustee is aware of certain assets that are located in British Columbia, and some of those known assets have been subject to a Mareva injunction issued by this Court in favour of RCC in the RCC Action (defined below).
15. The Trustee seeks recognition of the Japanese proceedings and wishes to administer and preserve the assets of the bankruptcy estate located in Canada.
16. The Trustee is aware of two actions currently before the Supreme Court of British Columbia that relate to property, both real and personal, of Nishiyama in British Columbia, namely:
  - (a) proceedings commenced by way of Notice of Civil Claim by RCC against Nishiyama under SCBC Action No. S162298, Vancouver Registry (the "**RCC Action**").
  - (b) proceedings commenced by way of Petition by The Owners, Strata Plan BCS4016 against Sun Moon Management Ltd., a company related to and controlled by Nishiyama, under SCBC Action No. S1810083, Vancouver Registry (the "**Strata Action**").
17. The Trustee consents to the continued prosecution of the RCC Action and the Strata Action and seeks an order from this Honourable Court that exempts those proceedings from the mandatory stay of proceedings granted under s. 271 of the *BIA*.

### PART 3: LEGAL BASIS

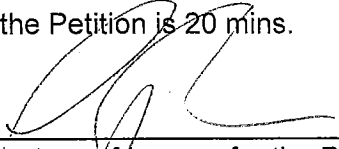
1. The Japanese Proceeding is a foreign proceeding under the *BIA* and is in the jurisdiction of the centre of the debtor's main interests. The Japanese Proceeding is therefore a foreign main proceeding under the *BIA*.
2. The order sought is necessary to ensure the protection of the debtor's property and the protection of the interest of creditors.
3. The order sought is consistent with this Court's obligation under the *BIA* to cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.
4. The Petitioner will rely on Part XIII, ss. 269 – 275 of the *BIA*.
5. Pursuant to *BIA* Rule 6(4) the Court may exempt the Trustee on an *ex parte* application from the notice provisions set out in *BIA* Rule 6(2) on any terms the Court considers appropriate.

### PART 4: MATERIAL TO BE RELIED ON

1. The Affidavit of Hiroshi Morimoto #1, sworn on December 20, 2018.
2. Any such further evidence as counsel advises and this Honourable court will allow.

The time estimated by the Petitioner for the Hearing of the Petition is 20 mins.

Dated: December 21, 2018

  
\_\_\_\_\_  
Signature of Lawyer for the Petitioner  
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 Petition

☐ with the following and additional terms

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of ☐ Judge ☐ Master

No. \_\_\_\_\_  
Vancouver Registry

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JDB/msh