



NO. S-162335  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

JASTRAM PROPERTIES LTD.

PLAINTIFF

AND:

VIRGINIA MARY TAN, PATRICK ENG TIEN TAN,  
MARCUS SOON-KEEN TAN, LETAN INVESTMENTS MANAGEMENT, LETAN 88  
ENTERPRISES INC., TLD INVESTMENTS INC., 0994439 B.C. LTD., TJ0700 HOLDINGS  
LTD., and TJ132 VENTURES LTD.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**NOTICE OF APPLICATION**

**Names of Applicant:** The Plaintiff, Jastram Properties Ltd.

**To:** The Defendants

**And to:** McEown + Associates Ltd., Trustee in Bankruptcy for the  
Consolidated Estate of Virginia Mary Tan

TAKE NOTICE that an application will be made by the applicant, Jastram Properties Ltd., to the Case Management Judge, the Honourable Mr. Justice Gomery, at the courthouse at 800 Smithe Street, Vancouver, B.C., on 12/NOV/2021 at 10:00 a.m. for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. The Settlement Administration Plan, attached as Schedule "A" to this Notice of Application (the "Plan"), and the Schedules attached to the Settlement Administration Plan, are approved.

2. The payment of \$1,157,165 in legal expenses, consisting of \$978,802 in legal fees, \$58,006 in disbursements and \$120,537 in taxes, to Bennett Mounter LLP (“Class Counsel”), from the settlement funds which or and will be held in trust by Class Counsel in the amount of approximately \$3.512 million (the “Settlement Fund”), pursuant to the Orders of the Court made in this proceeding on October 1, 2020 and February 25, 2021, is approved.
3. Class Counsel is authorized to pay \$250,000 from the Settlement Fund to the Trustee to fund the ongoing administration of the consolidated bankruptcy estate of Virginia Mary Tan, on the terms set out in the Settlement Administration Plan.
4. Class Counsel is authorized to distribute the remainder of the Settlement Fund to Class Members in accordance with the terms of the Settlement Administration Plan.
5. Class Members must file a Proof of Claim in accordance with the Claims Process Order made this day *In the Matter of the Bankruptcy of Virginia Tan*, BCSC Action No. B-16034, Estate No. 11-253977, by the Claims Deadline set out in that Claims Process Order, in order to be eligible to receive a distribution from the Settlement Fund, as required by the Settlement Administration Plan.

## **Part 2: FACTUAL BASIS**

### **Settlement Administration Plan**

6. The Settlement Administration Plan provides that the Settlement Fund available for distribution to Class Members be distributed on a pro-rata basis, with each claiming Class Member receiving a percentage share of the Settlement Fund calculated by dividing the amount of their claim by the total amount of the claims made against the Settlement Fund.
7. The amount of each claiming Class Member’s claim will be determined in a claims process to be established and conducted *In the Matter of the Bankruptcy of Virginia Mary Tan* in BCSC Action No. B-160364 (the “Bankruptcy Proceeding”). The Trustee in Bankruptcy for the Consolidated Estate of Virginia Mary Tan (the “Trustee”) will apply for approval of a Claims Process Order in conjunction with this Application for approval of the proposed Settlement Administration Plan.

8. The Plan provides that a Class Member must deliver a Proof of Claim in the Bankruptcy Proceeding to the Trustee to claim a settlement benefit, with documents supporting the amount of their investment in the Tan Investment Scheme.
9. Class Counsel will assist Class Members with their Proof of Claims submitted to the Trustee, and shall deliver a Confirmation of Claim to the Trustee, as provided for by the proposed Claim Process Order, if Class Counsel concludes that the Class Member's Proof of Claim is consistent with the documents and records in possession of Class Counsel or delivered by the claiming Class Member.
10. The Plan provides that Class Members must file a Proof of Claim to the Trustee before the Claims Deadline set by the Claims Process Order, which will be a date that is approximately five and a half months after the Claims Process Order is made by this Court. Class Counsel will issue repeated and direct notice to Class Members throughout this claims period.
11. Within 60 days of the Claims Deadline, the Trustee will issue notice to each claiming Class Member either allowing or disallowing, either in whole or in part, each Class Member's Proof of Claim. Class Members will have thirty days from delivery of this notice to appeal any disallowance by the Trustee of their Proof of Claim by filing a Notice of Application in the Bankruptcy Proceeding.
12. Within 20 days of the final determination off all Proofs of Claims, Class Counsel will distribute the Settlement Fund to claiming Class Members on a pro-rata basis, based on the amounts of their claims as determined in the Bankruptcy Proceeding.

#### **The Trustee Payment**

13. The Plan also provides for a \$250,000 payment to the Trustee to fund the ongoing administration of the Consolidated Estate of Virginia Mary Tan.
14. The Trustee has commenced actions against 19 investors in the Tan Investment Scheme who received more from the Scheme than the total amount of the principal they invested. The total amount received by these 19 net-winners in excess of the principal amount they invested is more than \$7.5 million.

- Affidavit #4 of Mark W. Munteer sworn October 21, 2021 (the "Munteer Affidavit #4,) para. 7.
15. The Plan provides for payment to the Trustee of \$250,000 on the basis that this funding of the estate will likely result in additional recoveries for the benefit of Class Members from the net-winner litigation. The Plan provides that any recoveries from the net-winners in excess of those monies reasonably necessary for the administration of the estate, be paid to Class Members until the amount of the Trustee payment has been distributed to them.
- Munteer Affidavit #4, para. 8
16. The representative Plaintiff and at least 8 other Class Members, whose estimated claims together with the representative Plaintiff's claim amount to approximately \$8.5 million, object to the Trustee payment on the basis that they would prefer to have the \$250,000 distributed now to Class Members rather than take the risk of expending those funds on Trustee and counsel fees without obtaining additional recovery.
- Affidavit #1 of Peter Doetsch sworn October 20, 2021 (the "P. Doetsch Affidavit #1")

#### **Legal Fees and Disbursements**

17. Class Counsel's retainer agreement provides for a legal fee of 33% of all funds recovered for the Class through settlement or judgment. The proposed legal fee of \$978,802 represents 30% of the settlement proceeds, after deduction of the proposed payment of \$250,000 to the Trustee.
- Munteer Affidavit #4, Exhibit "A"
18. Class Counsel has incurred and recorded time to date in the conduct of this class proceeding with a value of approximately \$970,000, based on the hourly rates that Class Counsel would otherwise have charged for the services provided.
- Munteer Affidavit #4, para. 14
19. Class Counsel anticipates that Class Counsel will incur significant time in providing services in connection with the administration of the settlement. Under the terms of the Plan, no further fee will be charged by Class Counsel for these services.
- Munteer Affidavit #4, para. 16

20. The representative Plaintiff approves the proposed legal fees.
  - P. Doetsch Affidavit #1, para. 2
21. The disbursements of the \$58,006, for which Class Counsel seeks approval, include \$23,257.12 in disbursements incurred by Class Counsel, in relation to court filing fees, Mr. Blatchford's expert report, transcript cost, courier fees and other such expenses.
  - Mounteer Affidavit #4, para. 17
22. The remaining \$34,749.36 in disbursements is a proposed disbursement to the representative Plaintiff, to reimburse the representative Plaintiff for legal fees and disbursements (exclusive of GST) it paid to its former counsel, prior to Class Counsel assuming the conduct of this action and converting into a class proceeding, concerning the Mareva injunction obtained in March 2016 against the assets of all of the Defendants.
  - P. Doetsch Affidavit #1, para 11, Exhibit "C".

### **Part 3: LEGAL BASIS**

#### **Settlement Administration Plan**

23. The proposed Plan is fair and reasonable, and in the best interest of Class because:
  - (a) the pro-rata distribution of the available settlement proceeds to Class Members based on the amounts of their claims in the most equitable manner of distributing the settlement proceeds;
  - (b) the claims process established by the proposed Claims Process Order provides that Class Members' claims will be determined based upon the records of Virginia Mary Tan in the possession of Class Counsel and the Trustee and other records provided by the claiming Class Members;
  - (c) Class Counsel shall assist claiming Class Members with their Proof of Claims and shall provide confirmation of the Claim where Class Counsel concludes that the claim is consistent either with the documents and records in the possession of Class Counsel concerning the Tan Investment Scheme or the documents delivered by the claiming Class Members;

- (d) the claiming Class Members will have a right of appeal to the Court under the Claims Process Order if they disagree with the Trustee's determination of their claim; and
- (e) repeated direct notice will be given to Class Members throughout the claims period in order to ensure that all Class Members have a reasonable opportunity to make a claim for payment of a settlement benefit.

### **The Trustee Payment**

- 24. The Trustee Payment of \$250,000 is fair and reasonable, and in the best interest of the Class, notwithstanding the objections of the representative Plaintiff and other Class Members, because it is likely that this payment to the Trustee to fund the ongoing net-winner litigation will result in the recovery of additional monies for the benefit of the Class Members in excess of the amount of the Trustee payment.

### **Legal Fees and Disbursements**

- 25. Under s. 38(2) of the *Class Proceedings Act*, a fee agreement between a solicitor and the representative plaintiff is not enforceable unless approved by the Court.
- 26. Part 8 of the *Law Society Rules* sets up a standard of fairness and reasonableness for contingency fees agreements. Rule 8-1(1) provides that lawyer who enters into a contingency fee agreement must ensure that the agreement is fair under the circumstances when the agreement is entered into and the lawyers' remuneration provided for in the agreement is reasonable. Rule 8-1(2) provides that a bill prepared under a contingent fee agreement must be reasonable under the circumstances existing at the time the bill is prepared.
- 27. It has long been recognized that for class proceeding legislation to achieve its policy goals, counsel must be well rewarded for their efforts and the contingency agreements they negotiate with clients should be respected.
  - *Wilson v. Depuy International Ltd.*, 2018 BCSC 1192 at para. 122
- 28. Contingency fees in the range of 33% have been recognized by Canadian courts as reasonable and presumably valid.

- *Wilson v. Depuy International Ltd.*, 2018 BCSC 1192 at para. 123
29. The factors considered in assessing whether a fee is fair and reasonable are:
- a. the results achieved;
  - b. the risks undertaken;
  - c. the time expended;
  - d. the complexity of the matter;
  - e. the degree of responsibility assumed by counsel;
  - f. the importance of the matter to the client;
  - g. the quality and skill of counsel;
  - h. the ability of the class to pay;
  - i. the client and the class's expectation; and
  - j. fees in similar cases.
- *Green v. Tecumseh Products of Canada Limited*, 2016 BCSC 217 at para. 57
  - *Pearce v. 4 Pillars Consulting Inc.*, 2021 BCSC 136 at para. 56
30. The proposed legal fee of \$978,802, reflecting 30% of the settlement proceeds after deduction of the proposed \$250,000 payment to the Trustee, is fair and reasonable having regard the terms of Class Counsel's retainer agreement, the amount and value of the time expended by Class Counsel in the conduct of class proceeding, the additional time which will be expended by Class Counsel in administering the Plan, and the other factors set out above.
31. The \$23,257.12 in disbursements incurred by Class Counsel were reasonable and necessary for the conduct of the action.
- Mounteer Affidavit #4, para. 17
32. The proposed disbursement of \$34,749.36 to the representative Plaintiff, for the reimbursement of the legal fees and disbursements it paid in connection with the Mareva injunction, prior to Class Counsel assuming conduct of this action and converting into a class proceeding, is fair and reasonable because the Mareva injunction operated for the benefit of the Class as a whole. It is unfair and inequitable that the representative Plaintiff should be left to bear this expense.

**Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Peter Doetsch sworn October 20, 2021.
2. Affidavit #4 of Mark W. Mountheer sworn on October 21, 2021.
3. Affidavit #2 of Lale Doetsch sworn October 10, 2018 and filed November 15, 2018
4. Affidavit #1 of James P. Blatchford sworn November 14, 2018 and filed Nov. 15, 2018
5. The pleadings and materials filed herein.
6. Such further and other material as counsel may advise and this Court may permit.

The applicants estimate that the application will take 2 hours.

The 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:

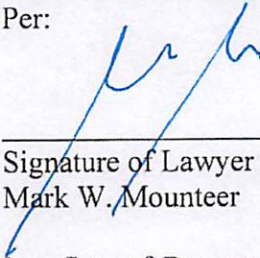
- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - i. you intend to refer to at the hearing of this application, and
  - ii. has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - i. a copy of the filed application response;
  - ii. a copy 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: 21/OCT/2021



BENNETT MOUNTEER LLP

Per:

  
\_\_\_\_\_  
Signature of Lawyer for Applicant  
Mark W. Munteer

THIS NOTICE OF APPLICATION was prepared by the law firm of Bennett Munteer LLP, whose place of business and address for service is #400 – 856 Homer Street, Vancouver, British Columbia, V6B 2W5. Telephone: (604) 639-3680. Fax: (604) 639-3681. Counsel Reference: Paul R. Bennett and Mark W. Munteer

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
- 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