



No. S-S-127397
Kelowna Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

ALBERT WEISSTOCK

Petitioner

And

WALTER WEISSTOCK, ANTONY WEISSTOCK,
SILVIA RITA GERARD, WITMAR HOLDINGS LTD., DONALD JAMES RAMSAY,
ADMINISTRATOR OF THE ESTATE OF MARIA WEISSTOCK AND 1100748 B.C.
LTD., ANTONY WEISSTOCK, TRUSTEE WILLY AND MARIA WEISSTOCK TRUST
and ISLANDVIEW COUNTRY ESTATES LTD.

Respondents

APPLICATION RESPONSE

Application response of: **Albert Weisstock**

THIS IS A RESPONSE TO the notice of application (the "**Application**") of C.
Cheveldave & Associates Ltd., Liquidator, filed 22/SEP/26, seeking the approval of the
sale of Land Assembly Cluster A.

The application respondent estimates that the Application will take 1 hour.

Part 1: ORDERS CONSENTED TO

The application respondent consents to the granting of the orders set out in the
following paragraphs of Part 1 of the notice of application on the following terms: NONE.

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in paragraphs 1
through 8 of Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of NONE of the orders set
out in Part 1 of the notice of application.

Part 4: FACTUAL BASIS

1. The Order appointing the Liquidator provides that the Liquidator may apply to the court for approval of a sales process in connection with the assets (the “**Assets**”) of Witmar Holdings Ltd. (“**WHL**”) (Liquidation Order pronounced January 26, 2024, paragraph 22).
2. By Notice of Application filed June 3, 2025, the Liquidator sought approval of a sales process.
3. In support of that Application, the Liquidator filed the Second Report to Court, dated June 2, 2025 (the “**Second Report**”).
4. In the Second Report, the Liquidator advised the court that “...the most appropriate realization method would be to offer the [Assets] for sale via listing agreements with a real estate brokerage or multiple brokerages...” (Second Report, paragraph 30).
5. By an order pronounced on June 18, 2025, (the “**Sales Process Order**”) the court granted the Liquidator authority to proceed with a sales process for the Assets.
6. The Sales Process Order authorizes the Liquidator to offer the Assets for sale through a “general, exclusive, or multiple listing” arrangement. Any proposed sale is subject to court approval.
7. In connection with the properties at issue in this Application [“**Cluster A**”, which consists of 2 adjacent lots (370 and 3082 Meikle Avenue) and a stand-alone lot, 3068 Meikle Avenue)], the Liquidator elected to proceed via an exclusive listing arrangement with William Wright Commercial Real Estate Services (the “**Realtor**”).
8. The marketing approach adopted by the Liquidator is described in Exhibit “A” to the Third Affidavit of Jeff Hancock. Through this process, Cluster A was “deliberately” not exposed to the market through the multiple listing service (“**MLS**”), and instead was exposed only through an offer made directly to parties

whom the listing realtor determined might be interested and qualified (the “**Selected Group**”).

9. Mr. Hancock has expressly acknowledged in Exhibit “A” (page 9) that the decision not to list Cluster A on the MLS resulted in less market exposure – his apparent concern to ensure that interest would only come from “qualified” buyers.
10. Notably, the Realtor observes (page 9) that “...broad MLS exposure *does not necessarily produce a superior result.*” Implicit in this is a recognition that it *may* produce a superior result.
11. In addition to limiting exposure to the Selected Group, the Realtor proceeded on the incorrect assumption that the “development potential is significantly more limited” for Cluster A, owing to the OCP designation of “future park”, and concluded that the “obvious buyer for this particular cluster is the City of Kelowna.”
12. This is a fundamentally flawed analysis, and fatally undermines Mr. Hancock’s opinion that the proposed sale represents fair value for the “highest and best use” of Cluster A. It ignores both the current zoning (UC5 – Pandosy Urban Centre pursuant to City of Kelowna Bylaw No. 12375, updated March 31, 2026 – this permits a 6-storey development) and the effect of the “lawful non-conforming” provisions of the *Local Government Act*. In the result, should the City of Kelowna ultimately decide to deny a development permit and expropriate Cluster A, the valuation would be based upon UC5 zoning (see Exhibit “B” to the Fourth Affidavit of N. Pelcher (the “**Appraisal**”), at p. 46).
13. Further, the evidence filed in support of the proposed sale of Cluster A does not indicate:
 - a. who formed the Selected Group, and how inclusion was determined;
 - b. what material was prepared in connection with the presentation of Cluster A to the Selected Group;
 - c. what negotiations were pursued in connection with the offer from the City of Kelowna; and

- d. whether the Liquidator recommends acceptance of the offer, and if so, the basis for that conclusion.
14. Further, the evidence does not include any explanation as to why Cluster A was not exposed to the MLS after the Realtor's recommended approach yielded an offer that was significantly below the recent appraised value of \$4,450,000 (see Exhibit "B" to the Fourth Affidavit of N. Pelcher, at p. 6).

Part 5: LEGAL BASIS

1. While the *Re Soundair* principles generally guide the court in this Application, one unique factor is that there are no creditors to consider; the net sale proceeds will all be paid to the shareholders of WHL. Therefore the shareholders' interest merits higher consideration, and time considerations are secondary to achieving maximum recovery.¹
2. The process adopted by the Realtor was fundamentally flawed, based upon a misapprehension as to the highest and best use of the property, and conducted without the benefit of a valuation opinion from a professional appraiser.²
3. The Realtor was also focussed on offering the 3 lots comprising Cluster A collectively, based upon the unsubstantiated assumption that this would generate a higher offer. In fact, this merely led to the Realtor's expected result: that only the City of Kelowna (which owns the lot between the properties forming Cluster A) was interested.
4. In the result, the Realtor focussed on a single potential buyer and did not adequately expose Cluster A to the broader market. There was a set market of one; the process was destined to yield this unsatisfactory result.

¹ *RBC Investor Services Trust v. Asfars Holdings Ltd.*, 2024 BCSC 2412, para. 48.

² The City's Offer is dated August 6, 2026, and the Appraisal is effective August 20, 2026.

5. The offer before the court is \$1 Million lower than the recent appraised value. If the property had been exposed to the entire market, and not merely to the Selected Group, that discrepancy might be acceptable. But given the legitimate concerns over the Realtor's approach, and the Realtor's flawed analysis as to the impact of the OCP designation, the court should consider this value discrepancy to be a material factor in declining to approve the proposed sale.³
6. The City of Kelowna is interested in Cluster A, and exposing it to the broader market via MLS will not alter that. The Liquidator should be directed to re-engage with the City on the basis of the Appraisal, establish a competitive process through a listing on MLS, and seek to achieve full value for Cluster A.
7. Given the value shown in the Liquidator's own evidence, and concerns over the Realtor's misapprehension of the effect of the OCP, this additional effort is required to provide confidence that the process has likely elicited as good an offer as can be realistically expected.
8. The time required to undertake this process will not materially affect the shareholders, and since there is no debt and no significant holding costs related to Cluster A, no party will be prejudiced.

Part 6: MATERIAL TO BE RELIED ON

1. The Liquidator's Second Report to Court.
2. The Fourth Affidavit of N. Pelcher.
3. Such further and other material as counsel for the Application Respondent may advise in advance of the hearing of the Application.

³ *QRD (Willoughby) Holdings Inc. v. MCAP Financial Corporation*, 2024 BCCA 318, paras. 50 and 77. See also *Farm Credit Canada v. Gidda* 2015 BCSC 2188 and *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.* 2014 BCSC 1855.

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

Date: October 1, 2026



Steven D. Dvorak
Lawyer for the Application Respondent
Albert Weisstock