

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 1

NOTICE OF APPEAL (RULE 6(1))



Court of Appeal File No.
(For Registry Use Only)

Case File No. **CA48485**

Supreme Court File No.

S205095

The file number can be found on the upper right corner of the Supreme Court documents

Supreme Court Registry Location

Vancouver

To the respondent(s)

A court proceeding has been commenced against you in the Court of Appeal. See the final page of this form for details on how to respond.

1. PARTIES TO THE APPEAL

Appellant(s)

List the party(ies) appealing the Supreme Court or tribunal order. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (plaintiff, petitioner, etc.)

1296371 B.C. Ltd.

Respondent(s)

List the other party(ies) in the Supreme Court or tribunal order you are appealing who are affected by the appeal. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (defendant).

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. c-36, AS AMENDED

IN THE MATTER OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C. 1985, C. c-44 AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF PORT CAPITAL DEVELOPMENT (EV) INC. AND EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP

PORT CAPITAL DEVELOPMENT (EV) INC. (Petitioner)

AVIVA INSURANCE COMPANY OF CANADA (Respondent)
ERNST & YOUNG INC. (Court appointed Monitor)
SOLTERRA ACQUISITIONS CORP. (Respondent)
DOMAIN MORTGAGE CORP. (Respondent)
JING CHIANG (Respondent)
HYNES GROUP (Respondent)

2. THE ORDER YOU ARE APPEALING

Is leave to appeal required?

Court of Appeal Rule 12 explains when you need leave to appeal. If you are unsure, check "Yes."

☒ Yes

☐ No

Who made the order?

Name the justice or other decision maker who pronounced the order you are appealing.

Madam Justice Fitzpatrick

What court and/or tribunal pronounced the order(s)?

☒ Supreme Court

☐ Tribunal

Name of tribunal

Date the order was pronounced

Include the day, month and year that the order being appealed was pronounced (not the date the order was entered).

22/07/2022

DD/MM/YYYY

City where the order was pronounced

Vancouver

Length of lower court hearing

Indicate in days or hours the length of the hearing that led to the order you are appealing from. For example, if you are appealing a judgment from a trial that took two hours, enter "two hours."

Two days

What type of proceeding are you appealing from?
Check only one.

☐ Trial Judgment

☐ Order of a Tribunal

☐ Summary Trial Judgment

☒ Chambers Judgment

3. RELIEF SOUGHT

If leave to appeal is not required, fill out Part A. If you are seeking leave to appeal, fill out Part B.

Part of the order being appealed
If you only want to appeal one part of an order, enter the part that is being appealed.

Order(s) you are seeking on appeal
Briefly list the order(s) you will ask this Court to make on appeal. For example: "Set aside the trial judgment and order a new trial."

PART B: SEEKING LEAVE TO APPEAL

Part of the order being appealed
If you are only seeking leave to appeal one part of an order, enter the part that you are seeking leave to appeal.

Grounds for leave to appeal
Be as specific as possible. For example, if you believe the trial judge used an incorrect legal test or otherwise misapplied the law, indicate that here.

The Order of the Honourable Madam Justice Fitzpatrick, made July 22, 2022, approving an Agreement of Purchase of Sale entered into on July 22, 2022, between the Petitioner and Solterra Acquisitions Corp.

1. The Learned Chambers Judge erred in law in granting an order in breach of the rules of natural justice.
2. The Learned Chambers Judge erred in principle in failing to consider potentially higher offers, failing to direct service on the Appellant who, along with Aviva Insurance Company of Canada had the only financial interest in a higher price and failing to require production of a private agreement between Aviva and Solterra Acquisitions Corp.

4. ADDITIONAL INFORMATION

Sealing order
Is there an order sealing any part of the trial court or tribunal file? If yes, add date(s).

☐ Yes

☒ No

Date

DD/MM/YYYY

Anonymity order/publication ban
Are there orders that protect the identity of a party or parties?
If yes, add date(s).

☐ Yes

☒ No

Date

DD/MM/YYYY

Areas of law raised in the appeal
You may check more than one box if appropriate. For example, you should check "motor vehicle accidents" and "torts" for a personal injury claim involving a motor vehicle accident.

☐ Constitutional/Administrative

☒ Civil Procedure

☐ Commercial

☐ Motor Vehicle Accidents

☐ Municipal Law

☐ Real Property

☐ Torts

☐ Equity

☐ Wills and Estates

☐ Divorce Act (Canada)

☐ Family Law Act

☐ Other

Appeals involving children
Does this appeal involve the rights or interests of a child?
E.g., parenting order.

☐ Yes

☒ No

5. SERVICE

Are you representing yourself?

☐ Yes

☒ No

Name(s) and address(es) within BC for service of appellant(s) If you have a lawyer, include the law firm's address; otherwise provide your own residential address.

Bridgehouse Law LLP
Attention: H.C. Ritchie Clark, Q.C.
900 – 900 West Hastings Street
Vancouver, BC V6C 1E5

Phone number(s) of appellant(s)

604-684-2550, x214

Email address(es) for service of the appellant(s)
If you provide an email address, you consent to have documents served on you by email.

rclark@bridgehouselaw.ca AND
dpurdy@bridgehouselaw.ca

Date form completed

15/08/2022

DD/MM/YYYY

Name of lawyer or party authorizing filing of this form

H.C. Ritchie Clark, Q.C.

To the appellant(s):

You must file and serve this form on each respondent named in this document within the timelines required by the *Court of Appeal Act* and Court of Appeal Rules. You must file a Notice of Hearing **not more than one year** after filing this Form 1 or your appeal will be placed on the inactive list (Rule 50(1)(a)).

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To the respondent(s)

If you intend to participate in this proceeding, **you must give notice** of your intention by doing the following **not more than 10 days** after receiving this Notice of Appeal: (1) file a “Notice of Appearance” (Form 2 of the *Court of Appeal Rules*) in a Court of Appeal registry and; (2) serve the Notice of Appearance on the appellant.

If you fail to file and serve a Notice of Appearance:

- (a) You are presumed to take no position on the appeal, or the application for leave to appeal (if leave is required).
- (b) The parties are not obliged to serve you with any further documents related to the appeal, including an order granting leave to appeal (if leave is required).

You are presumed to take no position if you fail to file and serve a Notice of Appearance within the time described above. The filing registries for the British Columbia Court of Appeal are as follows.

Central Registry:

B.C. Court of Appeal
Suite 400, 800 Hornby St.
Vancouver BC V6Z 2C5

Other Registries:

B.C. Court of Appeal
The Law Courts
P.O. Box 9248
STN PROV GOVT
850 Burdett Ave.
Victoria BC V8W 1B4

B.C. Court of Appeal
223 - 455 Columbia St.
Kamloops BC V2C 6K4

Inquiries should be addressed to (604) 660-2468.