



Form 32 (Rule 8-1(4))

COURT NO. B-160364
ESTATE NO. 11-253977
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF VIRGINIA MARY TAN

NOTICE OF APPLICATION

Name of Applicant: McEown & Associates Ltd. in its capacity as Bankruptcy Trustee of Virginia Mary Tan and Patrick Eng Tien Tan (the "**Trustee**" or the "**Applicant**")

To: Office of the Superintendent of Bankruptcy

AND TO: The Bankrupts, Virginia Mary Tan and Patrick Eng Tien Tan

AND TO: The parties listed on **Schedule "A"** attached hereto

TAKE NOTICE that an application will be made by the Trustee to Mr. Justice Gomery by telephone on February 24, 2021 at 9:00 am for the Order set out in Part 1 below.

PART 1: ORDER SOUGHT

1. An order substantially in the form attached hereto as **Schedule "B"** adjourning generally the application for discharge from bankruptcy of Virginia Mary Tan and Patrick Eng Tien Tan (together, the "**Tans**" or the "**Bankrupts**").
2. Such further and other relief as this Honourable Court deems just.

PART 2: FACTUAL BASIS

Background

1. On April 29, 2016, the Bankrupts were each adjudged bankrupt by Order of the Supreme Court of British Columbia (the "**Court**") pursuant to a Petition filed by

RSC Enterprise Canada Inc. Boale, Wood & Company Ltd. (“**BWC**”) was appointed as Trustee of the estates of each of the Bankrupts.

2. By Order of the Court made March 12, 2019, the estates were procedurally and substantively consolidated into the estate of Virginia Tan (together, the “**Estate**”).
3. On September 10, 2020, the Court granted an Order substituting McEown and Associates Ltd. in place of BWC as Trustee of the Estate.
4. From approximately 1997 to 2016 (the “**Time Period**”), the Bankrupts operated a fraudulent Ponzi scheme (the “**Fraudulent Scheme**”) that involved raising funds from investors (“**Investors**”).
5. At all material times, the Tans were the operating minds of the Fraudulent Scheme.
6. During the Time Period, the Tans represented to the Investors that the funds placed by the Investors into the Fraudulent Scheme (the “**Investor Funds**”) would earn interest and/or fees at rates that far exceeded normal conventional lending returns.
7. At all materials times, the Tans operated the Fraudulent Scheme knowing full well that the Fraudulent Scheme had no legitimate business and consisted of raising money from new Investors that would then be paid to other Investors.
8. In furtherance of the Fraudulent Scheme, the Tans, *inter alia*:
 - (a) made payment to the Investors, or paid “principal”, “interest”, “returns” or “commissions” to Investors from funds belonging to other Investors;
 - (b) made payments to others on behalf of and for the benefit of Investors from funds belonging to other Investors;
 - (c) used Investor Funds for their own benefit; and
 - (d) used Investor Funds for the benefit of others, including for their son, Marcus Tan.
9. As a result of the Tans’ fraudulent conduct:
 - (a) certain Investors suffered loss and damage because they lost all or a portion of their principal investment;
 - (b) certain Investors profited from the Fraudulent Scheme as they received amounts which exceeded their principal investment; and
 - (c) certain other persons received money or distributions from the Fraudulent Scheme despite having invested nothing in the Fraudulent Scheme.

10. Since the time the Bankrupts' were adjudged bankrupt, the Trustee has administrated the Estate and pursued recovery of funds from those who received money or distributions from the Fraudulent Scheme.
11. The Trustee continues with its recovery efforts for the benefit of the Estates and the stakeholders.

Adjournment of the Bankrupts' Discharge from Bankruptcy

12. On or about December 30, 2016, the Trustee gave notice to the Office of the Superintendent of Bankruptcy (the "OSB") of the Trustee's opposition to the Bankrupts' automatic discharge from bankruptcy.
13. On or about January 18, 2017, the Trustee gave notice to each of the Bankrupts of the Trustee's opposition to the Bankrupts' automatic discharge from bankruptcy.
14. The Trustee objects to the Bankrupts' discharge on the following grounds:
 - (a) the assets of each of the Bankrupts are not of a value equal to fifty cents on the dollar on the amount of their unsecured liabilities;
 - (b) the Bankrupts have failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet their liabilities;
 - (c) the Bankrupts have brought on, or contributed to, the bankruptcy by culpable neglect of their business affairs; and
 - (d) The Trustee has not completed its investigation of the Bankrupts' transfer of assets prior to their bankruptcy.
15. Accordingly, the Trustee recommends that the Bankrupts' discharge be adjourned generally until such time as the Trustee has exhausted its efforts.
16. The Bankrupts have not advised of any opposition to the adjournment generally of their discharge from bankruptcy.
17. The Superintendent of Bankruptcy supports the Trustee's recommendation that the discharge be adjourned generally.

PART 3: LEGAL BASIS

Adjourning Bankrupt Individual's Discharge Generally

1. An individual bankrupt who has never before been bankrupt under the laws of Canada may be automatically discharged on the expiry of 9 months after the date of bankruptcy unless an opposition to the discharge has been filed.

Bankruptcy and Insolvency Act, RSC 1985, c B-3 (the “**BIA**”), s 168.1

2. If the trustee opposes the automatic discharge of an individual bankrupt, the trustee must give notice of the opposition, together with the grounds of opposition, to the bankrupt and the Superintendent before the automatic discharge would otherwise take effect.

BIA, s 168.2(1)

3. The Tans were adjudged bankrupt on April 29, 2016 and would have been eligible for automatic discharge on or about January 30, 2017.

4. On or about December 30, 2016, the Trustee gave notice to the Superintendent of Bankruptcy of the Trustee’s opposition to the Tans’ automatic discharge.

5. On or about January 18, 2017, the Trustee gave notice of each of the Bankrupts of the Trustee’s opposition to their automatic discharge.

6. The Trustee has brought this application to the Court for a hearing of the opposition of the Tans’ automatic discharge pursuant to section 168.2(2) of the BIA.

7. The Court shall, on proof of any of the facts referred to in section 173 of the BIA, which proof may be given orally under oath, by affidavit or otherwise,

- (a) refuse the discharge of a bankrupt;
- (b) suspend the discharge for such period as the Court thinks proper; or
- (c) require the bankrupt to perform certain acts as a condition to his discharge.

BIA, s. 172(2)

8. Pursuant to section 173 of the BIA, facts referred to in section 172 for which discharge may be refused, suspended or granted conditionally include:

- (a) the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt’s unsecured liabilities, unless the bankrupt satisfies the court that the fact that the assets are not of a value equal to fifty cents on the dollar on the amount of the bankrupt’s unsecured liabilities has arisen from circumstances for which the bankrupt cannot justly be held responsible; [s. 173(1)(a)]

- (b) the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities; [s. 173(1)(d)]
- (c) the bankrupt has brought on, or contributed to, the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the bankrupt's business affairs; [s. 173(1)(e)] and
- (d) the bankrupt has failed to perform the duties imposed on the bankrupt under this Act or to comply with any order of the court. [s. 173(1)(o)]

9. Pursuant to the Trustee's Section 170 Report filed August 19, 2020, the Trustee believes that the Tans can be justly held responsible for the facts pursuant to section 173 of the BIA as outlined in the preceding paragraph.

10. Accordingly, the Trustee recommends that the Tans' discharge be adjourned generally until such time as the Trustee has exhausted its efforts in recovering funds for the benefit of the Estate's stakeholders.

11. Notice of the hearing for this application for adjournment of the Tans' discharge will be sent to the OSB and to the Bankrupts.

PART 4: MATERIAL TO BE RELIED ON

1. Trustee's First Report to the Court filed March 7, 2019.
2. Filed Form 81 Notice of Hearing.
3. OSB's Section 170(3) Report for Patrick Eng Tien Tan filed May 9, 2019.
4. OSB's Section 170(3) Report for Virginia Mary Tan filed May 9, 2019.
5. Trustee's Section 170(1) Report filed August 19, 2020.
6. Statement of Affairs for Virginia Mary Tan.
7. Statement of Affairs for Patrick Eng Tien Tan.
8. Claims Register.
9. Examination Transcripts of Official Receiver for Patrick Tan dated April 27, 2017.
10. Examination Transcripts of Official Receiver for Virginia Tan dated April 27, 2017 and May 5, 2017.

11. Spreadsheet showing no surplus income calculation.
12. Bankrupts' three (3) most recent income and expense statements.
13. Affidavit #1 of John McEown, made February 4, 2021.
14. Any other materials in support of Trustee Opposed Discharge Hearing as required by Supreme Court of British Columbia Administrative Notice 12.

The Applicant estimates that the application will take 15 minutes.

- This matter is within the jurisdiction of a Master.
- This 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 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: February 9, 2020

Signature of Lawyer for Applicant
Lawyer: Katie G. Mak

This NOTICE OF APPLICATION is prepared by Katie G. Mak of the firm of **Clark Wilson LLP** whose place of business is 900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1 (Direct #: 604.643.3105, Fax #: 604.687.6314, Email: KMak@cwilson.com) (File #: 41777-0036).

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: _____
[dd/mmm/yyyy]

Signature of Judge Master

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

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 matters 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"

<p>Kowarsky Ritson LLP Box 12102, Suite 1008, 808 Nelson Street Vancouver, BC V6Z 2H2</p> <p>Attention: Richard Ritson</p> <p>Fax: 604-683-2737 Email: Richard@kowarsky.ca</p> <p><i>Counsel for the Lohn Foundation</i></p>	<p>Clark Wilson LLP 900 – 885 West Georgia Street Vancouver, BC V6C3H1</p> <p>Attention: Christopher J. Ramsay/Katie G. Mak</p> <p>Fax: 604-687-6314 Email: CRamsay@cwilson.com / KMak@cwilson.com</p> <p><i>Counsel for the Trustee</i></p>
<p>Alexander Holburn LLP 2700 – 700 West Georgia Street Vancouver, BC V7Y 1B8</p> <p>Attention: R. Hoops Harrison</p> <p>Fax: 604-484-9700 Email: hharrison@AHBL.CA</p> <p><i>Counsel for Marcus Tan</i></p>	<p>Gehlen Dabbs Lawyers 1201 – 1030 W Georgia Street Vancouver, BC V6E 2Y3</p> <p>Attention: Gregory J. Gehlen</p> <p>Fax: 604-642-6433 Email: gg@gdlaw.ca</p> <p><i>Counsel for TLD Investments Inc. and 0994439 B.C. Ltd.</i></p>
<p>Bennett Mounteer LLP 400 -856 Homer Street Vancouver, BC V6B 2W5</p> <p>Attention: Paul R. Bennett</p> <p>Fax: 604-639-3681 Email: pb@hbmlaw.com</p> <p><i>Counsel for Jastram Properties Ltd.</i></p>	<p>Singleton Urquhart LLP 1200 - 925 W Georgia Street Vancouver, BC V6C 3L2</p> <p>Attention: Michael J. Hewitt</p> <p>Fax: 604-682-1283 Email: jmorgan@singleton.com</p> <p><i>Counsel for RSC Enterprise Canada Inc., Wong Chui Hand and Laurence Lau</i></p>
<p>Owen Bird Law Corporation 2900 – 595 Burrard Street Vancouver, BC V7X 1J5</p> <p>Attention: Terence W. T. Yu</p> <p>Fax: 604-632-4448 Email: tyu@owenbird.com</p> <p><i>Counsel for the Plaintiff, Valerie Lek Soo Noi (No.23)</i></p>	<p>Lakes, Whyte LLP 200 – 879 Marine Drive North Vancouver, BC V7P 1R7</p> <p>Attention: John D. Whyte</p> <p>Fax: 604-984-8573 Email: jdwhyte@lakeswhyte.com</p> <p><i>Counsel for Marcus Tan (in all actions named as defendant except for foreclosure petitions and actions involving Randall Lang and Ran-Am Holdings)</i></p>

<p>Irene Richards #19 – 870 West 7th Avenue Vancouver, BC V5Z 4C1</p> <p>Email: irene-richards@hotmail.com</p>	<p>Lynne Block</p> <p>Email: lynneblock1@gmail.com</p>
<p>Lenka Pelikan and Bruce Brophy Plaintiffs in <i>VLC-S-S-162876 (No. 8)</i></p> <p>Email: lpelikan@dccnet.com</p>	

Schedule “B”

COURT NO. B-160364
ESTATE NO. 11-253977
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF VIRGINIA MARY TAN
ORDINARY ADMINISTRATION**

BEFORE) THE HONOURABLE JUSTICE)
) GOMERY) February 24, 2021

**ORDER ADJOURNING BANKRUPTS’
APPLICATION FOR DISCHARGE**

ON THE APPLICATION OF McEown and Associates Ltd. in its capacity as trustee in bankruptcy of Virginia Mary Tan and Patrick Eng Tien Tan (the “**Bankrupts**”), who each were adjudged bankrupt by Order of this Honourable Court made April 29, 2016 (together, the “**Bankrupts**”);

AND UPON reading the report of Boale, Wood & Company Ltd., in its capacity as trustee in bankruptcy of the Bankrupts as to the Bankrupts’ conduct and affairs;

AND UPON reading the Notice of Opposition from the trustee and the Affidavit No. 1 of John McEown made February 4, 2021;

AND UPON HEARING Katie G. Mak, counsel for the McEown and Associates Ltd. in its capacity as trustee in bankruptcy of the Bankrupts;

AND WITH CONSENT of the McEown and Associates Ltd. in its capacity as trustee in bankruptcy of the Bankrupts and the Office of the Superintendent of Bankruptcy;

AND WHEREAS proof has been made of the following facts under section 173 of the *Bankruptcy & Insolvency Act*.

Section 173(1)(a) the assets of the Bankrupts are not of a value equal to fifty cents on the dollar on the amount of the Bankrupts' unsecured liabilities, unless the Bankrupts satisfy the court that the fact that the assets are not of a value equal to fifty cents on the dollar on the amount of the Bankrupts' unsecured liabilities has arisen from circumstances for which the Bankrupts cannot justly be held responsible;

Section 173(1)(d) the Bankrupts have failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the Bankrupts' liabilities;

Section 173(1)(e) the Bankrupts have brought on, or contributed to, the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the Bankrupts business affairs; and

Section 173(1)(o) the Trustee has not completed its investigation of the Bankrupts' transfer of assets prior to their bankruptcy.

IT IS ORDERED THAT the application of the Bankrupts for discharge be Adjourned Generally.

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 Lawyer for the McEown and Associates Ltd. in its capacity as trustee in bankruptcy
Lawyer: Katie G. Mak

BY THE COURT

Registrar

COURT NO. B-160364
ESTATE NO. 11-253977
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE BANKRUPTCY OF
VIRGINIA MARY TAN**

Ordinary Administration

ORDER ADJOURNING BANKRUPT'S DISCHARGE

File No.: 41777-0036

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LAWYER: Katie G. Mak
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