



No. S-235348
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**MCEOWN AND ASSOCIATES LTD. in its capacity as
RECEIVER OF 8655 GRANVILLE LIMITED PARTNERSHIP**

PETITIONER

AND:

RED BUFFALO 8655 HOLDINGS LTD.

RESPONDENT

APPLICATION RESPONSE

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

Application Response of: Red Buffalo 8655 Holdings Ltd. ("the Respondent")

THIS IS A RESPONSE TO the Notice of Application of the Petitioner, filed December 8, 2023.

Part 1: ORDERS CONSENTED TO

The application respondent consent(s) to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: 1 a., c.,

Part 2: ORDERS OPPOSED

The application respondent oppose(s) the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: 1 b, depending on the directions.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: 2.

Part 4: FACTUAL BASIS

1. The Receiver seeks directions. Included in those directions, are calculations leading to the amount of \$2,951,428.00 being due to “related parties”, principally Ms. Xu, Sunshine, and other companies controlled by Ms. Xu. The calculation of that amount is set forth in the Receiver’s second report to the court, filed December 8, 2023, particularly from page 2 to page 109.
2. Interest is included in those calculations, but the calculation of interest is not set forth in that report.
3. These Respondents have the following comments with respect to the various loans:
 - a. **Loan number 1, pages 2-11;**

Interest is claimed at 12% in the amount of \$36,234.16. The various loan agreements attached provide:

 - i. 6 months interest was deducted from an advance of \$200,000.00;
 - ii. One year of interest was deducted from an advance of \$100,000.00;
 - iii. Loan Agreement number 3 provides for 3 months interest to be deducted from advance and the receipt of 3 months post dated cheques in payment of interest;
 - iv. The bank statements do not show a deposit of \$306,162.00, but only \$295,915.52;
 - b. **Loan number 2, pages 12-18;**

Interest is claimed in the amount of 12%, and there is no Loan Agreement providing for 12% interest, which is calculated to be \$23,342.47. In addition, \$153,000.00 is described as petty cash, being, supposedly, cash advanced to the partnership. No source records of the actual advance of that amount of cash have been produced;
 - c. **Loan number 5, pages 26-32;**

Interest claimed is \$29,194.52. The Promissory Note found at page 29, provides, in paragraph 4, for an increase interest rate from 8% to 10% , after default. It is not clear what interest rate the Receiver has employed, being the note rate of 8%, or the post default rate of 10%.

- d. Loan number 9, page 45;**
Interest is claimed at 8%, there is no Loan Agreement or Promissory Note provided containing an Agreement to pay that interest;
- e. Loan number 11, pages 50-52;**
Interest claimed at 10%, in the amount of \$4,959.90. There is no Loan Agreement or Promissory Note provided agreeing to pay that interest.
- f. Loan number 12, pages 53-65;**
Interest is claimed at 10%, in the amount of \$1,961.64. There is no Promissory Note or Loan Agreement provided agreeing to pay that interest;
- g. Loan number 13, pages 56-59;**
Interest is claimed at 10% in the amount of \$758.36. There is no Promissory Note or Loan Agreement providing for that interest.
- h. Loan number 14, pages 60-63;**
Interest is claimed at 15% in the amount of \$91.23. There is no Promissory Note or Loan Agreement providing for the payment of that interest.
- i. Loan number 15, pages 64-67;**
Interest is claimed at 15% in the amount of \$920.22. There is no Loan Agreement or Promissory Note providing for the payment of that interest.
- j. Loan number 16, pages 68-72;**
Interest is claimed at 10% in the amount of \$827.40 There is no Promissory Note or Loan Agreement providing for the payment of that interest.
- k. Loan number 17, pages 73-78;**
Interest is claimed at 10% in the amount of \$655.89. There is no Loan Agreement or Promissory Note providing for the payment of that interest.
- l. Loan number 18, pages 80-86;**
Interest is claimed at 10% in the amount of \$704.11. There is no Loan Agreement or Promissory Note providing for the payment of that interest.
- m. Loan number 19, pages 87-93;**
Interest is claimed at 10% in the amount of \$3,315.07. There is no Loan Agreement or Promissory Note providing for the payment of that interest.

- n. **Loan number 20, pages 94-97;**
Interest is claimed in the amount of \$124.93. There is no Loan Agreement or Promissory Note providing for the payment of that interest.
 - o. **Loan number 21, pages 98-101;**
Interest is claimed at 10% in the amount of \$465.96. There is no Loan Agreement or Promissory Note providing for the payment of that interest.
 - p. **Loan number 22, pages 102-105;**
Interest is claimed at 10% in the amount of \$2,712.33. There is no Loan Agreement or Promissory Note providing for the payment of that interest.
 - q. **Loan number 23, pages 106-109;**
Interest is claimed at 10% in the amount of \$465.79. There is no Loan Agreement or Promissory Note providing for the payment of that interest.
- 4. The directions to the Receiver should be to take into account the above issues with respect to the accounting.
 - 5. As set forth in the Receivers Application, Sunshine claims to be owed, by 114, the sum of \$490,000.00.
 - 6. These Respondents have no objection to that sum being paid to Sunshine, without prejudice to its rights to assert the claims set forth in the Notice of Civil Claim attached as schedule "A" to this Response.

Part 5: LEGAL BASIS

- 1. If a contract does not provide for interest, interest entitlement is limited to pre-judgement interest.

Part 6: MATERIAL TO BE RELIED ON

- 1. Affidavit # 1 of Hong Yuan (Andy) Ren, filed August 1, 2023, in action # S-233478

The application respondents' estimate that the application will take 30 minutes.

Date: December 15, 2023


Signature of lawyer for the Respondents,
H.C. Ritchie Clark, K.C.

SCHEDULE "A"

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1146503 B.C. LTD. and HONJU (WILLIAM) WANG

PLAINTIFFS

AND:

SUNSHINE TREASURE HUNT DEVELOPMENT LTD.,
HONG XU, DAVID SUI, and
8655 K CUBE PROJECT LIMITED PARTNERSHIP,

DEFENDANTS

NOTICE OF CIVIL CLAIM

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

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Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF(S)

PART 1: STATEMENT OF FACTS

1. The Plaintiff, 1146503 B.C. Ltd. ("114") is a body corporate, duly incorporated pursuant to the laws of the Province of British Columbia, having an office address at 1510 – 800 West Pender Street, Vancouver, British Columbia.
2. The Plaintiff Honyu Wang is a real estate developer with an address for service c/o 900-900 West Hastings Street, Vancouver, BC V6C 1E5.
3. The Defendant Sunshine Treasure Hunt Development Ltd. ("Sunshine") is a body corporate, duly incorporated pursuant to the laws of the Province of British Columbia, having a registered and records office address at 1600 – 925 West Georgia Street, Vancouver, British Columbia and its place of business at 486 Keith Road, West Vancouver, British Columbia.
4. The Defendants Hong Xu ("Ms. Xu") and David Sui are mother and son, and are both businesspeople, and reside at 486 Keith Road, in West Vancouver, British Columbia.
5. The Defendant 8655 K Cube Project Limited Partnership ("8655 K Cube") is a limited partnership, duly constituted pursuant to the provisions of the *Partnership Act of British*

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- Columbia*, having its place of business at 486 Keith Road, West Vancouver, British Columbia.
6. Through an entity known as the WJY 2015 Family Trust, William Wang is the principal behind and the controlling mind of the Plaintiff 114.
 7. Ms. Xu is the Director and principal shareholder of Sunshine. She is an extremely wealthy Chinese business woman, and conducts all of Sunshine's affairs.
 8. David Sui is the son of Ms. Xu.
 9. 114 and Sunshine both own units in a limited partnership known as the 8655 Granville Limited Partnership (the "LP"). 114 currently owns 15.1% of the units and Sunshine and 6812 together own 59.9% of the units.
 10. The General Partner ("GP") of the LP is Red Buffalo 8655 Management Corp. The shares of the GP are owned by Canadian Red Bull Group Investment Management Ltd., whose shares in turn are held 50% by the Plaintiff Wang and 50% by Sunshine. 114's shares are owned by the WJY 2015 Family Trust and, as alleged above, Mr. Wang is its directing mind.
 11. Red Buffalo 8655 Holdings Ltd. is a body corporate, with an address at 7985 Granville Street. It is referred to as the "Nominee".
 12. On February 15th, 2018, on behalf of the LP, the Nominee acquired certain lands in the City of Vancouver, Province of British Columbia, with a civic address of 8655 Granville Street, Vancouver, British Columbia, legally known and described as: Lot D Block F Plan VAP21521 District Lot 318 Land District 36 PID 009-430-105 (the "Property").
 13. The Nominee acquired the Property on behalf of the LP, as represented by the GP, and holds the Property in Trust for the GP on behalf of the LP.
 14. The Property was acquired as development property, to be developed into a residential and commercial development. The Property is in a prime location in the City of Vancouver.
 15. The GP, the LP and the Nominee were all incorporated for purposes of acquiring the Property and conducting that development.

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16. Prior to its acquisition by the Nominee, Mr. Wang had numerous discussions with Ms. Xu, and they agreed, between them as to how the development on the Property would be conducted by them.
17. In particular it was agreed between them that they would form a partnership to jointly conduct and have joint responsibility for the development on the Property, with an equal voice on all decisions, which development would be done for their mutual benefit and profit (the "Development Partnership Agreement"). It was agreed that they would implement the Development Partnership Agreement through various corporate and partnership vehicles.
18. As a result of the Development Partnership Agreement, Wang and Ms. Xu formed a Limited Partnership named the 8655 Granville Limited Partnership (the LP) and became the only two directors of the General Partnership, (the GP), the Nominee, and Canadian Red Bull Group Investment Management Ltd. Pursuant to the Development Partnership Agreement, all business was to be transacted by both Wang and Xu, and they were both signing authorities on the bank account of the LP. Mr. Wang returned to China in early 2020, and the signing authority on the bank account then was changed to Ms. Xu, and one Andy Ren, the cousin of Mr. Wang.
19. At the time, again in furtherance of the Development Partnership Agreement, both Sunshine and the Plaintiff 114 held 40 units in the LP, so that not only were their holdings equal, they held 5 more units than required for an extraordinary resolution pursuant to the provisions of the 8655 Granville Limited Partnership Agreement, such that by operating jointly pursuant to the provisions of the Development Partnership Agreement, they could conduct, and control jointly, all and any business of the LP, the GP, or the Nominee.
20. Pursuant to the Development Partnership Agreement, the Plaintiff Wang, and Sunshine and Ms. Xu owed both a fiduciary duty and a duty of care to each other. The incidents of such duty included duties of good faith, total honesty and fair dealing in conducting the development, through the corporate/partnership structure (the "Duty").
21. As directors of the GP, both Wang and Ms. Xu also owed a fiduciary duty to the LP and its limited partners, including the Plaintiff 114.

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22. The development progressed slowly. Mr. Wang returned to China on April 20, 2020, and was stuck there for a considerable period of time, due to COVID.
23. In his absence, Mr. Wang appointed Andy Ren as his representative to fulfill his obligations under the Development Partnership Agreement. Ms. Xu did not want to work with Mr. Ren. She viewed him as less important and as insignificant and she did not involve him in the affairs of the development unless she absolutely had to.
24. Ms. Xu changed the signing authority with the bank so that Mr. Ren's signature was no longer required on cheques.
25. Ms. Xu began to take over the decision making with respect to the development, discussing her decisions with Mr. Ren and others, but insisting that she had the right to make all final decisions.
26. Ms. Xu had no development expertise.
27. Despite that lack of knowledge, the development progressed, albeit slowly.
28. Rezoning was obtained on May 21, 2021, and the submission for a development permit was submitted on September 10, 2021.
29. The City's staff comments, referred to as the "Prior To Letter" were received on December 15, 2021.
30. In 2022, a sales marketing team and a quantity surveyor were engaged. A sales centre was constructed and completed and plans for the development permit were being prepared. The projected profit of the project was \$12,000,000.
31. However, further funds of approximately \$1,500,000 were required.
32. In April, 2020, the Plaintiff 114 had transferred 24.9% of the units in the development to Ms. Xu as repayment of a debt owed to her of approximately \$3,000,000, so the Plaintiff 114 presently owns 15.1% of the partnership units.
33. The Plaintiff 114 also had incurred two loans from Sunshine to further contribute in accordance with 114's funding obligations, one on April 6, 2020 in the amount of

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- \$270,089.13 and one on July 26, 2021, in the amount of \$116,100. It secured those indebtedness with a pledge of its remaining units.
34. Mr. Wang and Mr. Ren suggested obtaining financing, as only \$1,500,000 was needed for the project to get underway, and there was substantial equity, over and above bank financing of approximately \$10,000,000.
 35. The other unit holders also indicated that they did not wish to inject further capital.
 36. At some time unknown to the Plaintiffs, Ms. Xu decided to breach her duty of care to Wang and her fiduciary duty owed to the Plaintiffs and to acquire the assets and the project of the LP and to do the development all for herself.
 37. In particular, she and Wang had had a falling out, and were angry and quarrelling. She was very angry with Wang, and, motivated by malice, also decided to try to take away the Plaintiffs' entire interest in the project.
 38. Ms. Xu, Sunshine, and David Sui thereupon entered into an agreement amongst themselves, to injure the Plaintiffs (the "Conspiracy").
 39. In breach of Article 14.1 of the Limited Partnership Agreement, Ms. Xu and David Sui disclosed all of the Partnership's financial, development, planning and other confidential information to other developers in the City of Vancouver. In further breach of the duties owed to Mr. Wang pursuant to the Development Partnership Agreement, and her fiduciary duty owed to the LP and the limited partners, including 114 and in furtherance of the conspiracy, Ms. Xu incorporated, with others, 8655 K Cube to acquire the assets of the LP, or all the units in the LP.
 40. Ms. Xu's first step in that scheme was to try and persuade the other unit holders and 114 to sell their units to K Cube Project Limited Partnership, which efforts began in November of 2022.
 41. Ms. Xu was aware that both the Plaintiff 114 and Wang and the other unit holders were unable or unwilling to contribute further capital. She refused to consider arranging any financing, as a result of which standoff, the project could not be progressed, and the

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development permit could not be issued. She continued to pressure 114 and the other unit holders to sell their units.

42. Ms. Xu was involved in a car accident on August 21, 2022 and David Sui, without any authorization to do so, took over her responsibilities in connection with the development.
43. Ms. Xu, Sunshine, and David Sui, excluded Ren and others employed by Buffalo from the project and its affairs. As indicated, she had already altered the signing authority at the bank.
44. Still unknown to the Plaintiffs Ms. Xu continued to ignore the partnerships needs and its obligation to address the concerns of the city in the "Prior to Letter" and did not progress the development at all.
45. Up until June, 2022, Wang, and Ren after him, had held weekly meetings of the unit holders to discuss matters and obtain the unit holders input to decisions. Ms. Xu and David Sui discontinued that practice. They continued to hold meetings of the unit holders but did not invite 114, Ren or Wang to such meetings. Finally, at one of those meetings held without Mr. Wang or Mr. Ren in attendance, probably in December 2022, Ms. Xu persuaded the other unit holders to sell their units to 8655 K Cube.
46. Realizing she could not force 114 to sell its units, in order to implement the Conspiracy, and to create a situation which would discourage any other potential buyers from dealing with the project, she decided to place the Limited Partnership in Receivership, making its project unattractive to the general market.
47. Without disclosing to the other unit holders that her intention was to deprive 114 and Mr. Wang of any and all interest in the project, she persuaded the other unit holders to execute Consent Resolutions of the Partnership purporting to wind up the partnership and appoint McEown & Associates as a Receiver (the "Consent Resolution").
48. The Consent Resolution was ineffective, and not in accordance with the Limited Partnership Agreement, which requires all unit holders to sign written Consent Resolutions. The Resolutions were of no force and effect.

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49. Consent Resolutions, without the necessity of a meeting, are required by Clause 10.16 of the Limited Partnership Agreement to be signed by all partners in order to be effective. The Resolution was not so signed.
50. The Limited Partnership Agreement further provides in Article 10.1 that the GP may call a meeting of the unit holders on not less than 14 days notice which can be waived by consent in writing.
51. No such notice was given of a meeting to consider the winding up resolution to the Plaintiff 114. In fact, no notice of any meetings since Ms. Xu and Sui took over management of the project have been given to the Plaintiff 114 or Wang and they were unaware of any meeting taking place.
52. The appointment of McEown & Associates was, therefore, invalid and not effective. It has since been court appointed without prejudice to the claims advanced in this Notice of Civil Claim
53. Following that appointment, it came to light in September 2023, that as a result of the decision taken by Ms. Xu as set forth in paragraph 36 hereof, no steps had been taken to further the application for the development permit and the City was threatening to cancel the application.
54. In the final steps to implement the Conspiracy, 8655 K Cube and Ms. Xu made an offer to purchase the Property for \$20,800,000 being less than its appraised value. 8655 K Cube requested the Receiver to seek court approval of that offer, but Ms. Xu notified the Receiver that if it marketed the Property generally, or if the court application led to parties being offered the opportunity to make sealed bids, she would withdraw her financial support for the offer.
55. To further implement the conspiracy, on the 8th day of May, 2023, Sunshine commenced Vancouver Registry Action No. S-233478, seeking to enforce the pledge of 114's units executed several years ago, and seek all 114's units, which are expected to be entitled to approximately \$1,000,000 on sale. If the Conspiracy is successful, Ms. Xu and 8655 K Cube will obtain all the profit from the development, anticipated to be no less than \$12,000,000 and obtain \$1,000,000 in satisfaction of a debt of approximately \$500,000.

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56. The other investors, including the Plaintiffs, based on the offer then made by 8655 K Cube, will lose 45% of their investment.
57. The Receiver did list the property for sale, and 8655 K Cube made a new offer, this time for \$18,000,000.00, resulting in even lower recovery.

PART 2: RELIEF SOUGHT

1. Damages for breach of fiduciary duty;
2. Damages for breach of duty of care;
3. Damages for breach of the Partnership Agreement;
4. Disgorgement of any profit earned by means of the breach of fiduciary duty;
5. Punitive damages;
6. Costs; and
7. Such further and other relief as counsel may advise.

PART 3: LEGAL BASIS

1. The relationship between the GP and the LP gives rise to a fiduciary duty owed to all limited partners, including 114, by the GP and its directors, including Ms. Xu.
2. The Development Partnership Agreement gives rise to a duty of care on the part of Sunshine and Ms. Xu. to Wang and 114.
3. The incidents of that duty are a matter of the context and facts surrounding the entering into of the Development Partnership Agreement.
4. In this case, the incidents are a duty of good faith, honesty, and fair dealing in dealing with the development on the Property and the affairs of the LP.
5. Ms. Xu and Sunshine, therefore, owe both a fiduciary duty and a duty of care.
6. They acted in breach of both in attempting to acquire the partnership assets all for themselves and to the exclusion of the Plaintiffs.
7. They entered into an agreement to injure, which, whether implemented by lawful or unlawful means, is an actionable conspiracy.

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Plaintiffs address for service: **Attention:**
H.C. Ritchie Clark, K.C.
BRIDGEHOUSE LAW
900-900 West Hastings Street
Vancouver, BC, V6C 1E5

Fax number address for service: N/A

E-mail address for service: rclark@bridgehouselaw.ca

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street, Vancouver, BC, V6Z 2E1

Date: December 15, 2023

Signature of lawyer for the Plaintiffs,
H.C. Ritchie Clark, K.C.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record

SCHEDULE "A"

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

a motor vehicle accident

medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

Part 3: THIS CLAIM INVOLVES:

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]