



FORM 32 (RULE 8-1 (4))

No. S-2111109  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

PROSPERA CREDIT UNION

PETITIONER

AND

1143924 B.C. Ltd., BUFFALO-GENTAI (ST. JOHNS) INVESTMENTS LIMITED  
PARTNERSHIP, BUFFALO-GENTAI DEVELOPMENT LTD., HONGYU TINA MU, YU YANG,  
GENTAI DEVELOPMENT CORP., BUFFALO HOLDINGS INC., WJY 2015 TRUST and  
CANADIAN WESTERN BANK, XUEMEI HUANG

RESPONDENTS

**NOTICE OF APPLICATION**

**Name of applicant:** Xuemei Huang

**To:** 1143924 B.C. Ltd., Buffalo-Gentai (St. Johns) Investment Limited  
Partnership, Buffalo-Gentai Development Ltd., Buffalo Holdings  
Inc., Buffalo Megan Holdings Ltd.

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at **800 Smithe St, Vancouver, BC V6Z 2E1** on April 3, 2023 at 9:45 am for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT:**

1. That \$ 731,352.00 of the proceeds from the sale of the Development Property that would otherwise be payable to Buffalo-Gentai (St. Johns) Investment Limited Partnership and Buffalo Megan Holdings Ltd. be paid into Court pending further order of this Court or the written agreement of the parties.
2. That Buffalo Megan Holdings Ltd. be restrained from transferring or encumbering its shares pending further order of this Court.

3. That this Order may be varied or discharged on at least 8 business days' notice to the applicant's solicitor, but this Order will remain in force even if such an application is pending.
4. Costs of this application in the cause.

## Part 2: FACTUAL BASIS

1. On the application of the Petitioner, the assets, undertakings and property of 1143924 B.C. Ltd., Buffalo-Gentai (St. Johns) Investment Limited Partnership and Buffalo Gentai Development Ltd. was placed under receivership (the "Companies").
2. The Companies were engaged in developing nine parcels of land in Port Moody, British Columbia:

- a. 123 Buller Street, Port Moody BC, legally described as, legally described as,

Parcel Identifier: 028-989-627  
STRATA LOT 1 DISTRICT LOT 190 GROUP 1 NEW WESTMINSTER  
DISTRICT STRATA PLAN EPS669  
TOGETHER WITHIN AN INTEREST IN THE COMMON PROPERTY IN  
PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS  
SHOWN ON FORM V

- b. 125 Buller Street, Port Moody BC, legally described as,

Parcel Identifier: 028-989-635  
STRATA LOT 2 DISTRICT LOT 190 GROUP 1 NEW WESTMINSTER  
DISTRICT STRATA PLAN EPS669  
TOGETHER WITH AN INTERST IN THE COMMON PROPERTY IN  
PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS  
SHOWN ON FORM V

- c. 127 Buller Street, Port Moody BC, legally described as,

Parcel Identifier: 028-989-643  
STRATA LOT 3 DISTRICT LOT 190 GROUP 1 NEW WESTMINSTER  
DISTRICT STRATA PLAN EPS669  
TOGETHER WITH AN INTERST IN THE COMMON PROPERTY IN  
PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS  
SHOWN ON FORM V

- d. 129 Buller Street, Port Moody BC, legally described as

Parcel Identifier: 028-989-651  
STRATA LOT 4 DISTRICT LOT 190 GROUP 1 NEW WESTMINSTER  
DISTRICT STRATA PLAN EPS669  
TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN  
PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS  
SHOWN ON FORM V

e. 3101 St. Johns Street, Port Moody BC, legally described as,

Parcel Identifier: 009-610-812  
LOT 1 DISTRICT LOT 190 GROUP 1 NEW WESTMINSTER DISTRICT  
PLAN 11618 EXCEPT PLAN 12019

Parcel Identifier: 003-597-393

f. 3103 St. Johns Street, Port Moody BC, legally described as,  
LOT 2 DISTRICT LOT 190 GROUP 1 NEW WESTMINSTER DISTRICT  
PLAN 11618 EXCEPT PLAN 12019

g. 3104 St. George Street, Port Moody BC, legally described as,

Parcel Identifier: 009-553-843  
LOT 5 DISTRICT LOT 190 GROUP 1 NEW WESTMINSTER DISTRICT  
PLAN 11618

h. 3108 St. George Street, Port Moody BC, legally described as,

Parcel Identifier: 009-553-860  
LOT 6 DISTRICT LOT 190 GROUP 1 NEW WESTMINSTER DISTRICT  
PLAN 11618

g. 3112 St. George Street, Port Moody BC, legally described as,

Parcel Identifier: 002-389-886  
LOT 7 DISTRICT LOT 190 GROUP 1 NEW WESTMINSTER DISTRICT  
PLAN 11618

(the "Development Property")

3. Buffalo-Gentai (St. Johns) Investment Limited Partnership (the "LP") is the beneficial owner of the Development Property. Buffalo Megan Holdings Ltd. ("Buffalo Megan") holds a 40% interest in the LP.

4. The Development Property has been sold. Buffalo Megan says it is entitled to the sum of \$3,256,445.42 of the sale proceeds.
5. On or around May 12, 2019, Buffalo Megan agreed to transfer 3.95% of its shares in the LP to the petition respondent Xuemei Huang in satisfaction of 45% of a previous \$500,000.00 loan, and the remaining 55% would bear interest at an annual rate of 7.5%, secured by the Development Property (the "Security Agreement").
6. Buffalo Megan has refused to honour its obligations to Ms. Huang under the Security Agreement.
7. The petition respondent has commenced proceedings against Buffalo Megan to enforce the Security Agreement. Buffalo Megan disputes the validity agreement by claiming, *inter alia*, that the Security Agreement was signed under duress.
8. The LP and Buffalo Megan did not provide the receiver appointed in these proceedings with the name and address of the petition respondent as required by s. 245(3) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c B-3.
9. Buffalo Megan and its related entities are financially distressed.
10. The director and sole shareholder of Buffalo Megan is Changxia Lv ("Ms. Lv"). Mr. Wang, the controlling mind and representative of Buffalo Megan who induced Ms. Huang to make the Security Agreement, transferred his shares in Buffalo Megan to Ms. Lv and has relocated to China, where he claims to be focusing on real estate developments there.
11. Ms. Lv and her husband, Ji Yao Wang also known as Jianyu Wang ("Mr. Wang") are financially distressed. They are facing multiple lawsuits from various creditors and foreclosure proceedings on their personal residence.

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

1. The legal test for a preservation order is set out in R. 10-1 of the SCCR:

*Property that is the subject matter of a proceeding*

1) *The court may make an order for the detention, custody or preservation of any property that is the subject matter of a proceeding or as to which a question may arise and, for the purpose of enabling an order under this rule to be carried out, the court may authorize a person to enter on any land or building.*

*Fund that is the subject matter of a proceeding*

2) *If the right of a party to a specific fund is in dispute in a proceeding, the court may order the fund to be paid into court or otherwise secured.*

2. The requirements of Rule 10-1 were recently summarized by the British Columbia Court of Appeal in *Kepis & Pobe Financial Group Inc. v. Timis Corporation*, 2018 BCCA 420 at para 21:
  - a) *Is there a claim on the evidence and not just the pleadings to a proprietary interest in property?*
  - b) *Is there some evidence to render reasonable the belief of the plaintiff that the property is threatened with disposition or transfer outside the jurisdiction?*
  - c) *Is there a substantial question to be decided as to the plaintiff's entitlement to the property?*
  - d) *Does the balance of convenience favour granting the order?*
3. With respect to the first part of the test, the Security Agreement expressly grants a secured interest in the Development Property. Buffalo Megan does not dispute that its authorized representative signed the Security Agreement or that Ms. Huang paid \$500,000.00. Ms. Huang has provided affidavit material confirming the amounts paid pursuant to the Security Agreement and the circumstances leading to its formation.
4. Therefore, Ms. Huang has established an evidentiary basis for the portion of the sale proceeds and shares she seeks to have preserved.
5. With respect to the second part of the test, the following circumstances provide a reasonable basis for the belief that property is threatened with disposal:
  - a. As evidenced in these proceedings, Buffalo Megan and its related entities are financially distressed.
  - b. Ms. Lv, Buffalo Megan's director and only shareholder, is suffering severe financial distress. She has the discretion to distribute the sale proceeds of the Development Property to herself to resolve these financial difficulties, putting them out of reach of Buffalo Megan's creditors.
  - c. Mr. Wang, the wife of Ms. Lv, the representative of Buffalo Megan who induced Ms. Huang to enter the Security Agreement, transferred his shares in Buffalo Megan to Ms. Lv and has left Canada for China, where he claims to be focusing on real estate development.
  - d. Buffalo Megan structured its affairs such that its beneficial interest in the Development Property could not be readily ascertained by its creditors.

- e. Buffalo Megan did not provide notice to Ms. Huang that the Development Property was going into receivership, nor did it provide notice to the receiver the names and addresses of all creditors as required by s. 245(3) of the *Bankruptcy and Insolvency Act*.
6. Persons who structure their business and personal lives to preserve assets out of sight and attach may be enjoined from dealing with those assets except under the court's supervision during litigation: *Shakeri-Saleh v. Estate of Ahmadi-Niri*, 2022 BCSC 700 at para 329, citing *Mooney v. Orr*, 1994 CanLII 1779 (BC SC).
7. Organizing one's affairs so that money can be controlled off-shore can render reasonable the applicant's belief that funds may be removed from the court's jurisdiction if a preservation order is not made: *Kabani v. 12664422 Ontario Inc.*, 2012 BCSC 1719 at para 42.
8. With respect to the third part, Ms. Huang could ultimately succeed at trial and enforce the Security Agreement. The requirement that there be a "serious question to be tried" (as opposed to a *strong prima facie case*) has been held to have a relatively low threshold for success. When considering an application for a preservation order, the court does not need to dwell too long on the evidence, nor should it measure the application by the likelihood of the applicant's eventual success at trial: *Kabani* at para 39.
9. Finally, the balance of convenience favours granting a preservation order. Damages would not be an adequate remedy given the risk of disposal and a hollow judgment. The likelihood of damages being paid if they are awarded is a relevant consideration: *Osooli-Talesh v. Emami*, 2003 BCSC 1924 at para 62, citing *Canadian Broadcasting Corporation v. CKPG Television Ltd.* (1992), 64 B.C.L.R. (2d) 96, 1992 CanLII 560 (C.A.).
10. Buffalo Megan would not be prejudiced if a portion of its share of the proceeds of the Development Property and its shares are held pending the resolution of the parties' dispute

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

The applicant estimates that the application will take: 2 hours

1. Pleadings filed in this action;
2. Pleadings filed in Vancouver registry action S221828;
3. Draft amended notice of civil claim for action S221828;
4. Affidavit of Fan Yang, filed March 3, 2023;

5. Affidavit of Xuemei Huang, made March 17, 2023;
6. Affidavit of Geral Chiang, filed January 11, 2022;
7. Affidavit of Hongyu Mu, filed November 2, 2021;
8. Affidavit of Hongyuan Ren, made October 21, 2022 in action H-210536
9. Affidavit of Honyuan Ren, filed October 24, 2022 in action S215802;
10. Affidavit of Honyuan Ren, filed February 8, 2023 in action H-210536;
11. Affidavit of Changxia Lv, filed February 8, 2023 in action H-210536;
12. Affidavit of Hongyu Mu, made March 1, 2023;
13. Reports of the receiver filed in this action; and
14. Such further materials as this Honourable Court may permit.

This matter is within the jurisdiction of the 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 the 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: March 20, 2023

  
\_\_\_\_\_  
Signature of Brent Desruisseaux, agent for Adele Sun

Applicant     Lawyer for applicant(s)

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
- other matters concerning document discovery
- 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
- none of the above