

Our File: 3894-013

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**VIA COURIER with enclosures**  
**(copy sent via email to [katalan@hotmail.com](mailto:katalan@hotmail.com) and [stuart@stuartallen.org](mailto:stuart@stuartallen.org))**

**Pacific Shores Owner Enterprises Ltd.**  
c/o 5656 Dustin Place  
Nanaimo, BC V9T 6A5

**Attention: Kate Britton and Stuart Allen**

Dear Sirs/Mesdames:

**Re: Sale of Deeded Weekly Timeshare Interests at Pacific Shores Resort to 1025326 B.C. Ltd.**

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The purpose of this letter is to report and summarize the sale of deeded weekly timeshare interests at Pacific Shores Resort managed by Pacific Shores Owner Enterprises Ltd. ("PSOE"), which sale was approved by the court in December 2018. The transaction proceeded to registration of title and exchange of funds in February 2019.

### **Background**

Between 1992 and 2000, the first phases at Pacific Shores Resort (the "Resort") were developed by Ocean Place Holdings Ltd. The initial eleven phases of the development, constructed in the 1990s, featured 76 townhouse-style resort strata lots. Although approximately 15 of the strata lots were sold to individual owners owning them in whole, the balance of 61 strata lots were sold as fractional interests, the large majority of which were weekly deeded timeshare interests.

These initial phases of the Resort were structured such that owners of weeks or other fractional interests owned an undivided deeded interest in the particular strata lot as well as a sublease entitling each owner to occupation of a particular week or other period of time. PSOE was established as a nonprofit corporation to manage the weekly timeshare interests on behalf of the owners. In addition to their fee simple and sublease interests, owners own shares in PSOE, which entitle them as a shareholder to a voice to elect a board responsible for management of PSOE. This ownership and management structure came to be known as a deeded weekly timeshare program. Thus PSOE is the non profit corporation created to manage the ownership program on behalf of its member shareholders.

After 2000, further development of the Resort, not involving PSOE, was undertaken by the developer. A commercial centre encompassing seven strata lots was developed in the early 2000's. In or about 2007, the developer created an apartment block type resort development known as the 200 Block. This later

complex, while still part of the same strata corporation as the PSOE units, was sold in fractions of one quarter (1/4) or one eighth (1/8) and was managed by a sister organization: PS Fractional Residences Association ("PSFRA"). The 200 Block encompassed strata lots 85-116 of the strata corporation.

Until 2011, a sister corporation to the developer was engaged to manage the Resort on behalf of PSOE and, latterly, PSFRA. The developer, Ocean Place Holdings Ltd., and the resort management corporation, Pacific Shores Resort & Spa Ltd. were affiliated companies, associated with a group of resort corporations known as the Aviawest Group.

In late 2011 the Aviawest Group was suffering financial difficulty, apparently associated with ongoing development projects in Victoria and elsewhere. The Aviawest Group sought protection in November 2011 under the *Company Creditors Arrangement Act*.

These proceedings led to the demise of Pacific Shores Resort & Spa Ltd. and the assumption of management duties by a newly incorporated management company owned by the Pearson family, Pacific Shores Resort & Spa (2012) Ltd. Eventually that relationship did not work out.

PSOE subsequently engaged an arm's-length management corporation, Trading Places International ("TPI"), which managed the PSOE portion of the resort from 2013 to the present.

### Challenges

By 2016, the PSFRA program was not prospering. The owners of the PSFRA strata lots then agreed to be bought out by Transtide Investments Ltd. ("Transtide"), a company affiliated with the original developer's lender, Fisgard Capital. It is understood that the PSRFA owners were bought out for a fraction of their investments in or around 2015.

In the meantime, an effort by PSOE and PSFRA to jointly own and operate the commercial strata lots at the resort, including front desk and restaurant areas, did not succeed. This facility was eventually turned back to an affiliate of Fisgard Capital.

Accordingly, by 2016 the resort strata lots at Pacific Shores were owned roughly 50/50 by POSE owners on one hand and Fisgard/Transtide on the other.

By 2017 the weekly timeshare program managed by PSOE was encountering challenges. These challenges included competing resort product in the vicinity that was more modern, an aging PSOE ownership group and the effect of deferred maintenance resulting from the management of the Resort in the 2000's. PSOE's Board of Directors worked tirelessly to turn the fortunes of the PSOE program around.

These challenges contributed to a phenomenon whereby owners began to drop out of participation by declining to pay annual maintenance fees. These fees aggregated the costs of ownership, including strata fees, property taxes, management and maintenance. As more owners dropped out, the pool of owners sharing the fixed costs of ownership was diminishing.

In 2017, the Board of Directors of PSOE reached the conclusion that the weekly timeshare program managed by PSOE on behalf of owners was not sustainable. Reasons included a clumsy ownership structure allied in a strata corporation with Transtide, deferred maintenance and persistent fall-off of participating owners, many of whom were aging to the point of being unable to travel to the resort. There was also a very thin resale market, as the maintenance fee obligation of ownership was a disincentive to new owners acquiring interests.

### **Decision to Offer Strata Lots for Sale**

PSOE convened a Special General Meeting in July 2017. The member/owners determined by a very substantial majority (96%) that PSOE should pursue the possibility of terminating the weekly timeshare program at the Resort and selling the strata lots associated with the program. A copy of the special resolution of PSOE dated July 15, 2017 is attached as an Annexure "A".

At the same time, Transtide expressed an interest in divesting itself of its interests in the resort. Accordingly, PSOE and Transtide agreed to jointly market the resort property assets.

In furtherance of July 2017 resolution, the Board of Directors of PSOE instructed counsel to apply to the Supreme Court of British Columbia for an order pursuant to the *Partition of Property Act* for authority to sell the strata lots. This statute permits a majority of owners of property to compel the sale of the property by court order. It was utilized to avoid the need to have all 3,000 or so owners sign transfer papers and to avoid the potential for a small minority of owners to frustrate a sale process that had been approved by the substantial majority of owners. This procedure was also utilized to address the very substantial complexities associated with the multiple titles and issues associated with inconsistent transfer procedures over the prior 25 years. A copy of the court Petition by which PSOE sought conduct of sale is attached as Annexure "B."

PSOE obtained an order for alternative service of the Petition with respect to these proceedings, as personal service upon over 3000 member owners was impractical. A copy of the order for substituted service is attached as Annexure "C". This service order provided for email and mail service, along with posting on the owners' page of the Pacific Shores website.

Once alternative service of the Petition and supporting materials was accomplished, we applied to court for an order for conduct of sale. The court granted an order providing PSOE with authority to list the 61 PSOE strata lots for sale, along with two additional strata lots owned by Vacations Internationale, which had been managed under the PSOE program.

It was a term of the order for conduct of sale that any sale would be subject to subsequent court approval. A copy of this order dated November 24, 2017, is attached, along with an amending order granted December 8, 2017. (Annexures "D" and "E")

The 63 strata lots (61 PSOE and 2 VI) were then offered for sale in conjunction with Transtide, the owners of the 200 Block and the commercial strata lots in the Resort. The package marketed for sale included the

PSOE strata lots, the commercial centre, the 200 Block and some remainder lands available for further development.

In early 2018, Colliers, a prominent real estate brokerage, with particular expertise in hospitality property, was jointly engaged to list these Resort assets for sale. A copy of the Listing Agreement is attached as Annexure "F".

Colliers devoted its efforts and worked its considerable hospitality contacts list in 2018. An offering package was provided to a list of qualified contacts. Expressions of interest were received from several potential buyers.

However, by the summer of 2018, it was apparent that no purchaser of the joint Resort assets had come forward. Colliers did not renew its listing agreement.

Eventually, Transtide came forward with its own proposal to purchase the PSOE strata lots. An offer was provided by a numbered British Columbia corporation that was an affiliate of Transtide, in September 2018. This offer provided for the purchase of the 63 strata lots for the sum of \$3,631,875. This offer was accepted by the PSOE Board of Directors. The Offer was subject to court approval and the due diligence of the purchaser, including title investigation. A copy of the Offer to Purchase is attached as Annexure "G".

These sale activities and the court proceedings were communicated to the PSOE ownership group by way of email communications and the posting of updates and court documents on the owner page of the Pacific Shores website.

#### **Title Issues**

A significant challenge in marketing the PSOE strata lots for sale was the ownership structure whereby there were some 3200 individual titles to interests within the 63 strata lots.

Typically, but not exclusively, each strata lot was divided into 51 individual interests, each of which interest bore a separate title in the name of the owner(s). In some instances, owners held 1/102 interests for a weekly stay every two years. This structure presented significant challenges in verifying title. This complexity was compounded by inconsistent practises in recording sales or transfers over the preceding 25 years, along with a plethora of charges on title such as mortgages, judgments, and family law and estate claims. The titles, which had to be reviewed and verified by the purchaser, and issues addressed by the vendor, were very complex and inconsistent.

The Offer to Purchase provided that the purchaser was obliged to satisfy itself as to title. PSOE, as vendor, was obliged to underwrite the cost of obtaining state of title certificates from the Land Title Office for all titles involved and the purchaser would conduct its own review of the titles. This necessitated a cost of approximately \$60,000 to PSOE, the majority of which was paid to the Land Title Office in fees to obtain state of title certificates. It is our understanding that the purchaser expended approximately three times this amount in its cost of investigating title in the fall of 2018. PSOE was obliged to respond to title issues raised by the purchaser.

Eventually, the purchaser satisfied with its due diligence investigations, including title, and with certain exceptions agreed to proceed with the transaction in November 2018.

Accordingly, PSOE applied to court in the *Partition of Property Act* proceedings for an order approving the sale. This application was opposed by one PSOE owner, but was otherwise not opposed. The court granted approval of sale by way of a vesting order. The Vesting Order, pronounced December 19, 2018, is attached as Annexure "H".

In the meantime, PSOE had previously negotiated, with Transtide, a loan to fund the substantial cost of the transaction, the legal proceedings and title investigation. The loan facility in the amount of \$150,000 is set out in an agreement attached as Annexure "I". This loan has now been repaid in full from the proceeds of sale.

### Closing

In the course of title investigation, it became apparent that there were several hundred encumbrances on the various titles which had been registered over the prior 25 years. These encumbrances included mortgages, judgments, caveats and other encumbrances that came to be registered on title. A significant number of these encumbrances were no longer valid. In addition, approximately 60 encumbrances were in favour of PS Mortgage Investment Corporation, an entity that had become defunct and no longer made any claims.

We were obliged to identify and clear from title the PS Mortgage Investment Corporation encumbrances. We were fortunate to have the cooperation of the directors of PS Mortgage Investment Corporation in this endeavour. That removed these mortgage interests from title to the strata lots prior to the closing.

In order to differentiate between valid encumbrances and those that were no longer of validity, we engaged Abstract Registry Services ("Abstract"), a land registry agent, to conduct an analysis of valid and invalid encumbrances. They prepared a report, which is attached as Annexure "J". Abstract identified many encumbrances which were no longer valid or had been erroneously registered on some titles, thereby freeing the net sale proceeds for payment to the owners as opposed to encumbrance holders.

However, Abstract identified approximately 82 encumbrances that were still valid. On May 30, 2019, PSOE applied to court for an order that the net sale proceeds with respect to the interest(s) against which those encumbrances were filed be paid into court as opposed to the owners or encumbrance holders. That order is attached as Annexure "K". An appendix to this order is a listing of those interests and encumbrances for which funds have been secured by payment into court. The net sale proceeds attributable to each weekly interest (about \$771) has been paid into court. Owners or encumbrance holders can review the appendix to determine the amounts secured in court with respect to their interests.

Another aspect of the transaction concerns Vacations International ("VI"), a points-based resort vacation program that owned two strata lots within the PSOE program, as well as approximately 135 other weekly

interests scattered within the other strata lots, for a total of 240 interests. In return for the ability to inform PSOE owners of the opportunity to continue their involvement in VI's vacation club, VI has offered to forego the portion of the net sale proceeds attributable to its interest. The net sale proceeds with respect to its interests (approximately \$180,000) will be returned to PSOE for distribution amongst the remaining owners, with the exception of the sum of \$5,000 to reimburse VI for its out-of-pocket expenses associated with the transaction. A copy of the letter of agreement between PSOE and VI dated May 9, 2019, is attached as Annexure "L".

A further aspect of the transaction involves a purchaser's liability under the *Income Tax Act* and right to withhold an amount with respect to possible taxes payable by a non-Canadian resident vendor of property. In a typical real estate transaction in Canada the purchaser requires a Canadian resident vendor to certify its Canadian tax residence, failing which a purchaser is entitled to and invariably will make arrangements to withhold 25% of the gross sale proceeds to remit to Canada Revenue Agency. A typical real estate transaction involves a single vendor providing proof of Canadian residency. This was impractical with respect to the 3,200 or so PSOE owners.

We negotiated with the purchaser an agreement that they would accept certificates in an agreed form in lieu of other proof of residency. These certificates were distributed to owners and returned to PSOE's manager, TPI. We understand that the majority of PSOE owners returned the certificates. For those instances where the owner is not a Canadian resident, which is the case with VI, or where certificates were not obtained or incompletely filled out, the purchaser is of the view it was obliged to remit 25% of the purchase price to Canada Revenue Agency.

The purchase and sale transaction with respect to the 63 strata lots completed by way of the submission of the Vesting Order for registration on February 8, 2018. Copies of the closing documents are attached as Annexure "M". Due to the significant complexity of the titles, it took two weeks for final registration to be confirmed. At that time, the net sale proceeds, net of 25% non resident tax withholding discussed below, were remitted by the purchaser's solicitor.

#### **Distribution of Net Sale Proceeds**

The net sale proceeds with respect to each weekly interest is approximately \$770 plus a further \$260 with respect to tax withholding. PSOE has broad discretion as to how to distribute the net sale proceeds. We understand that PSOE will administer a distribution of net sale proceeds, including the proceeds of sale of the PSOE owned interest and the VI funds contributed by VI.

PSOE is, itself, the owner of approximately 345 weekly interests, acquired over the years by PSOE as a result of owners surrendering their interests, often on the basis of hardship. PSOE will be receiving approximately \$350,000 of the net sale proceeds with respect to these interests and, we understand, will include that sum in the distribution to owners.

The sum of \$62,520.66 was deducted from the net sale proceeds was paid into court by way of an interpleader order for those weekly interests where encumbrances raise issue about who is entitled to the net sale proceeds. Those owners and encumbrance holders affected will be at liberty to apply to court for

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the funds. Those owners will not receive a direct distribution from PSOE. The Order sets out the names of the interest owners and encumbrance holders. They can apply directly to the court for their proceeds, assuming that they have resolved which party is entitled to the proceeds.

In addition to the PSOE interest net sale proceeds, PSOE will be receiving the funds donated by VI for distribution amounts VI owners. A copy of the Order to Pay with respect to the transaction is attached as Annexure "N" and provides a summary of the source and destination of the net sale proceeds.

It is our understanding that, in fairness, PSOE will be deducting from the amount owing to particular owners in respect of the net sale proceeds, any amount outstanding to PSOE with respect to unpaid maintenance fees for prior years. Some owners may be receiving no or less net sale proceeds if they are not current with their payment of maintenance fees. This is provided for in the Order Approving Sale, which provides PSOE with the discretion to decide how to disburse the net sale proceeds.

It is our understanding that PSOE will be distributing, via its manager TPI, net sale proceeds to all PSOE member owners in good standing who do not have encumbrances on their interests, the sum of approximately \$770 plus an additional sum of approximately \$250 for those that have remitted Canadian tax residence forms.

Our instructions are to proceed in the coming months to the dissolution or winding up of PSOE in accordance with the British Columbia *Business Corporations Act*. That procedure may involve a court application and the holding of a Special General Meeting of PSOE. That process will also likely involve a determination of the distribution of remaining funds.

Yours truly,

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Per:



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JAH/lg  
enclosures

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