

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**PANORAMA RESORT INTERVAL OWNERS' ASSOCIATION and  
PANORAMA RESORT TIMESHARE INC.**

**PETITIONERS**

**AND:**

**SHIRLEY TAPSCOTT, CHARLES MAXWELL, MARY BEACH,  
ELEANOR MACKIE, SHIRLEY ROW, CHANDRANKANT GAJJAR,  
INTERNATIONAL TIMESHARE RESELLERS LTD., WILLIAM BEALES and  
EDITH BEALES, THOMAS WOODS**

**RESPONDENTS**

**PETITION TO THE COURT**

**ON NOTICE TO:**

**NAME AND ADDRESS OF THE PETITIONERS**

**Panorama Resort Interval Owners' Association  
c/o 202 - 1007 Fort Street  
Victoria, B.C., V8V 3K5**

**Panorama Resort Timeshare Inc.  
c/o 202 – 1007 Fort Street  
Victoria, B.C., V8V 3K5**

**NAME AND ADDRESS OF PETITION RESPONDENTS**

**See Schedule "A"**

**This proceeding is brought for the relief set out in Part 1 below, by**

**[ X ] Panorama Resort Interval Owners' Association and Panorama Resort Timeshare Inc. (the petitioners)**

**IF YOU INTEND TO RESPOND to this petition, you or your lawyer must**

- (a) file a Response to Petition in Form 67 in the above-named registry of this Court within the time for response to petition described below, and**
- (b) serve on the petitioners**
  - (i) 2 copies of the filed Response to Petition, and**
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.**

**Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.**

**TIME FOR RESPONSE TO PETITION**

**A Response to Petition must be filed and served on the petitioners**

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

|                                     |  |
|-------------------------------------|--|
| (1) The address of the registry is: | Victoria Law Courts<br>Supreme Court Registry<br>PO Box 9248 Stn Prov Govt<br>850 Burdett Avenue<br>2 <sup>nd</sup> Floor<br>Victoria, British Columbia<br>V8W 9J2 |
|-------------------------------------|--|

|   |   |
|---|---|
| <p>(2) The ADDRESS FOR SERVICE of the Petitioner is:</p> <p style="text-align: center;">Fax number for service is:<br/>E-mail address for service is:</p> | <p>202 – 1007 Fort Street<br/>Victoria, BC V8V 3K5</p> <p>(250) 385-4324<br/>Nil</p>  |
| <p>(3) The name and office address of the Petitioners' lawyer is:</p>   | <p>Reed Pope Law Corporation<br/>202 – 1007 Fort Street<br/>Victoria, BC V8V 3K5<br/>Tel: 250-383-3838<br/>Attention: James A. Hall</p> |

### CLAIM OF THE PETITIONERS

#### Part 1: ORDERS SOUGHT

1. The fee simple interests of the Respondents in the Strata Lots be sold along with assignment of the corresponding Sublease(s) pursuant to the terms of the *Partition of Property Act* or, in the alternative, the *Property Law Act*.
2. The fee simple interests of the Respondents in the Strata Lots be sold and where the purchaser is the Petitioner, termination of the corresponding Sublease(s) pursuant to the terms of the *Partition of Property Act* or, in the alternative, the *Property Law Act*.
3. The Petitioners be granted exclusive conduct of the sale of the Strata Lots subject to final Court approval.
4. Costs.
5. Such relief as this Honourable Court may deem just.

#### Part 2: FACTUAL BASIS

1. The Petitioner, Panorama Resort Interval Owners' Association ("PRIOA") is a British Columbia Society incorporated on August 8, 1984, having a business address at Bag Service 7000, Panorama Resort, British Columbia. PRIOA, is a Society, that was established to facilitate the operation of the fractional ownership framework for a 53 strata lot condominium development known as Horsethief Lodge at the Panorama Ski Resort, west of Invermere, in the East Kootenay region of British Columbia.

2. The Petitioner, PRIOA, facilitates the fractional ownership framework partly through contracting with its wholly owned subsidiary, the Petitioner, Panorama Resort Timeshare Inc. ("PRTI"), to, *inter alia*, coordinate the maintenance, operation, and use of the strata lots included in Horsethief Lodge (the "Timeshare Framework").
3. PRTI is an Alberta company registered as an extraprovincial company in British Columbia on May 20, 1980, with a head office at Prestwick Estate Way SE, Calgary, Alberta. PRTI is a wholly owned subsidiary of the Petitioner, PRIOA. PRTI was initially incorporated as Panorama Central Reservations Limited but changed its name to its present name on February 17, 1984.
4. The history of the Timeshare Framework began in 1981. PRIOA's members are owners of property interests within Horsethief Lodge, comprised of 53 residential strata lots at the Panorama Ski Resort.
5. Horsethief Lodge is part of Strata Corporation N83 encompassing approximately 260 strata lots, the majority of which are residential strata lots. Horsethief Lodge was initially developed by Mayfair Place Ltd. ("Mayfair") in the early 1980s. Mayfair experienced financial difficulty and development of Panorama Ski Resort was then assumed by Intrawest Corporation. The Intrawest Corporation sold the resort to the current owner, Panorama Mountain Village Inc.
6. The structure of the Timeshare Framework was created by Mayfair, as developer. The 53 residential strata lots were marketed as fractional interests. That is, each strata lot was divided into fractional interests, with a purchaser typically obtaining a 1/51 undivided fee-simple interest in the strata lot and a sublease entitling each owner to a particular week of occupancy. Each sublease provided for occupation for the week and for the payment by each owner/subtenant of the overall cost of maintaining the strata lot.
7. PRIOA and PRTI were created by the developer to administer the Timeshare Framework. Control of the PRIOA changed upon the sale of timeshare interests. PRIOA is now an association of property interests within Horsethief Lodge. Its wholly owned subsidiary, PRTI, is the leasee of headleases for the strata lots in Horsethief Lodge, and in turn is the sublessor of subleases that provide each fractional owner with their one-week annual right of occupancy. In addition, PRIOA coordinates the collection and expenditure of funds to maintain the strata lots for the benefit of all owners through a subcontracted timeshare management company.
8. These proceedings concern fractional interests spread out over 15 residential strata lots in the Horsethief Lodge (the "Strata Lots"). The overall Timeshare Framework consists of 53 strata lots. Each Strata Lot is divided into 1/51 fee simple interests (the "Fractional Interests"). In other words, each Strata Lot typically has 51 owners, each of which is entitled to one week's occupancy of a

particular Strata Lot each year. Some owners hold more than one Fractional Interest.

9. Each Fractional Interest is encumbered by a headlease granted to PRTI (the "Headlease") and the owner of each Fractional Interest holds a registered sublease (the "Sublease") from PRTI that grants the owner the exclusive right to use the Property for one particular week in each calendar year (collectively, the "Leases"). The Leases also govern the maintenance and payment for common expenses of the Property, including utilities, property taxes, strata fees and maintenance costs.
10. The Respondents are registered owners of the Strata Lots who have failed to make payment of the Maintenance Fees (as defined in paragraph 12 herein) and have failed to maintain contact with the Petitioners.
11. The Respondents are the owners of Fractional Interests spread throughout the Strata Lots.
12. Pursuant to the Subleases, each owner of a Fractional Interest in the Strata Lots is required to pay an annual maintenance fee per Fractional Interest owned (the "Maintenance Fees") as provided for each owner's Sublease along with the Bylaws of PRIOA.
13. While the majority of the owners of Fractional Interests in the Strata Lots have paid their Maintenance Fees, the Respondents have not. Each of the Respondents' Maintenance Fees for the Strata Lots are in arrears and in most cases have been for many years.
14. PRIOA has caused repeated attempts to be made by their manager and by collection agencies to contact each of the Respondents by mail at their address on record with PRIOA in order to address their outstanding Maintenance Fees on the Property. Each of the Respondents has failed to respond to PRIOA's communications.
15. Pursuant to the Subleases, PRIOA has the right to, and has, rented out the Respondents' Fractional Interest weeks and applied the net rental revenue (the "Rental Revenue") thereby generated to arrears in Maintenance Fees for the Property. The Rental Revenue has not fully satisfied the Maintenance Fees, thereby generating a growing shortfall.
16. The Respondents' failure to satisfy their Maintenance Fees has resulted in a financial burden on PRIOA and those owners of the Property who are participating in the Timeshare Framework by paying their Maintenance Fees. A financial burden exists because the Maintenance Fees are used for the upkeep, repair, and management of the Strata Lots and Horsethief Lodge as a whole. As a result, PRIOA has been required to pay the Respondents' share of the Maintenance Fees that are required to pay for maintenance, repairs, and upkeep of

the Property and Horsethief Lodge. The total Maintenance Fees arrears in respect of Property is \$130,339.40 as of August 1, 2017.

17. In this proceeding, PRIOA represents the interests of the owners of the Property who are participating in the Timeshare Framework by paying their Maintenance Fees and responding to PRIOA's communications.
18. The Respondents have failed to pay their Maintenance Fees and have failed to maintain communications with PRIOA.
19. Due to the unique nature of the Strata Lots and the number of owners, the co-operation of all the owners is necessary for the preservation of the Property's value and the continued use and enjoyment of the Property. Co-operation among the owners of the Strata Lots is embodied by communication with PRIOA, and the payment of Maintenance Fees. The Respondents have failed to do either.
20. The Subleases provide that they may be terminated in the event of default of the obligation of the subtenants to pay Rent.

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

1. The *Partition of Property Act*, R.S.B.C. 1996, c. 347, ss. 2 and 7.
2. The *Property Law Act*, R.S.B.C. 1996, c 377, ss. 13 and 14.
3. Supreme Court Civil Rules 2-1(2)(g).
4. This Petition is brought for alternative relief under two statutory remedies, the *Partition of Property Act* and the *Property Law Act*.
5. Pursuant to section 2 of the *Partition of Property Act*, the Respondents may be compelled to sell or partition their interest in the Property.
6. Pursuant to section 6 of the *Partition of Property Act*, provides that if one-half or more of the owners of a property request it, the court must order a sale of the property unless it "sees good reason to the contrary.
7. Pursuant to section 7 of the *Partition of Property Act*, the Court has broad discretion to determine that it would be beneficial to the interested parties to order the sale of the Respondents' interest in the Property rather than a partition by looking to the nature of the property, the parties involved, and the circumstances at hand.
8. Pursuant to sections 13 and 14 of the *Property Law Act*, the court can order the sale of an interest in land where an owner has been required to pay a disproportionate share of expenses due to the default of another co-owner.

9. The Petitioner, PRTI, has an interest in the Strata Lots, as it is the Headlease lessee and the Sublease lessor. In addition, the Petitioner, PRIOA, acts in a representative capacity for those owners of the majority of the Fractional Interests who participate in paying Maintenance Fees. As a long term lessee PRTI has standing under the *Partition of Property Act* to bring these proceedings as “owner”. It is certain that section 2 of the *Partition of Property Act* is engaged, and given the representative status of the Petitioner, PRIOA, section 6 is likely applicable.
10. In either event, the *Partition of Property Act* does provide the remedy of a party with an interest in the Strata Lots to seek an order for sale.
11. The *Partition of Property Act* provides the court with a broad and unfettered discretion to order the sale of property upon the application of an interested party. Under section 6, there is a statutory presumption in favour of an order for sale. The facts and circumstances of each case must be examined in each case to determine if there is a good reason for refusing the order.

*Bradwell v Scott*, 2000 BCCA 576

*Sahlin v The Nature Trust of British Columbia*, 2011 BCCA 157

*McRae v Seymour Management*, 2014 BCSC 714

*Deines v Chappell*, 2014 BCSC 846

*Smith v De Santi*, 2005 BCSC 750

12. If section 7 of the *Partition of Property Act* applies, the Petitioner has the onus to show why a sale and distribution of proceeds should be made rather than division of the lands.

*Hoggard v Hoggard*, 1996 CanLII 2361 (BCSC)

13. In 2014, the Petitioner commenced an action (Court File No. 14 4590) for the sale of Fractional Interests within one strata lot within Horsethief Lodge. This was a “test” case and analogous to the matter at bar. In that action, the court ordered the sale of the Fractional Interests of one specific strata lot. The current action applies to consolidate a number of interests spread out amongst 15 strata lots.
14. In this case, there are good reasons for granting an order for sale. The Respondents all have a contractual obligation to pay their share of Maintenance Fees. The Respondents have not paid their share of Maintenance Fees and the remaining participating owners, through their Association, are obliged to pay a disproportionate share of expenses. Indeed, by all indications, the Respondents have simply abandoned their interest and obligations toward the Property. The Respondents do not pay expenses, they do not use the Strata Lots and they do not participate or remain in contact with the organizing body, the Petitioner, PRIOA; and have not for several years.

15. If section 7 of the *Partition of Property Act* applies, because the property interests at bar are fractional interests in strata property, the court is physically unable to divide the lands and as such the sale and a distribution should be ordered.
16. The evidence demonstrates that not only do the participating owners and their Association bear a disproportionate share of the cost of ownership of the Property, the failure of non-participating owners to pay Maintenance Fees drives down the value of Strata Lots and restricts the ability of owners to incur expense for maintenance or refurbishing.
17. The *Property Law Act* at sections 13 and 14, provide that an owner of property who, by virtue of the default of another owner, is required to pay a disproportional share of costs, may apply to the court for an order for sale of the property under section 14.
18. Several case authorities involve applications made in the alternative under the *Partition of Property Act* and the *Property Law Act*, as in this Petition.

*Hedrick v Graham*, 2014 BCSC 1760

19. While the *Property Law Act* is less frequently utilized than the *Partition of Property Act*, sections 13 and 14 of the *Property Law Act* provide a procedural code for the sale of co-owned property when one co-owner is not contributing to the cost of ownership.

*Bernard v Bernard*, 1987 CanLII 2721 (BCSC)

*Medley v Medley*, 1997 CanLII 3845 (BCSC)

20. Due to the nature of the Property involved, the number of interested parties, and the absence of those parties, the Petitioner, PRIOA, seeks a court ordered sale of the Respondents' interest in the Property in order to address the outstanding and accruing Maintenance Fees.
21. This case is an example of the challenges involved in the various co-ownership structures utilized in this province for property ownership, particularly as structures age and time passes. In the pure strata property context, the *Strata Property Act* provides remedies. However, where other circumstances apply, other remedies must be utilized. One example is the *McRae* case (*supra*), a "common law strata", in which the *Partition of Property Act* was utilized to impose the sale of condominium units on all owners despite the opposition of about 8% of owners, all for understandable personal reasons.




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

- 1. Affidavit #1 of Rick Williams, made \_\_\_\_\_, 2018, a copy of which is served with this Petition.
- 2. Such other material as counsel may advise.

The Petitioners estimate that the hearing of the petition will take **60 minutes**.

Date: June 20, 2018

  
 \_\_\_\_\_  
 Signature of  
 lawyer for Petitioners  
**W. CRAIG VAUGHAN**

*To be completed by the court only:*

Order made  
 in the terms requested in paragraphs .....of Part 1 of this petition  
 with the following variations and additional terms:  
 .....  
 .....  
 .....

Dated: [dd/mmm/yyyy] \_\_\_\_\_  
 Signature of  Judge  Master

**ENDORSEMENT ON ORIGINATING PROCESS  
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Petitioner claims the right to serve this Petition on the respondents, or any of them, outside British Columbia on the ground that the proceeding is brought to enforce, assert, declare, or determine proprietary or possessory rights or a security interest in property in British Columbia, pursuant to Rule 4-5(1) of the Supreme Court Civil Rules and s. 10(a) of the *Court Jurisdiction and Proceedings Transfer Act*.

## Schedule "A"

| <b>Non Performing Owners</b>          | <b>Title No</b>         | <b>Lease No</b> | <b>Last Known Address</b>                                   | <b>Address Registered to Title</b>                |
|---------------------------------------|-------------------------|-----------------|---|---|
| International Timeshare Resellers Ltd | LA27022<br>(302/16)     | KN12081         | #26, 2098 Boucherie Road, Westbank, B.C., V4T 2A4           | 260-2300 Carrington Road, Westbank, B.C., V4T 2N6 |
| Thomas Woods                          | CA1855239<br>(302/17)   | KM82738         | 610 East Orchard #60, Odessa, MO, 64076, USA                | 610 East Orchard #60, Odessa, MO, 64076, USA      |
| Thomas Woods                          | CA1786912<br>(510/33)   | XC27515         | 610 East Orchard #60, Odessa, MO, 64076, USA                | 610 East Orchard #60, Odessa, MO, 64076, USA      |
| International Timeshare Resellers Ltd | KV143039<br>(525/48)    | XD38616         | #26, 2098 Boucherie Road, Westbank, B.C., V4T 2A4           | 260-2300 Carrington Road, Westbank, B.C., V4T 2N6 |
| Chandrakant Gajjar                    | XE15199<br>(602/19)     | T2008           | Station 5409, 5500 Somervale Court, SW, Calgary, AB, T2Y4L9 | Station M, Calgary, AB, T2P 2H6                   |
| International Timeshare Resellers Ltd | CA62505<br>(604/44)     | W20541          | #26, 2098 Boucherie Road, Westbank, B.C., V4T 2A4           | 260-2300 Carrington Road, Westbank, B.C., V4T 2N6 |
| Shirley Tapscott                      | XB24299<br>(605/32)     | V13990          | West 3516 Lyons, Spokane, WA 99208, USA                     | West 3516 Lyons, Spokane, WA 99208, USA           |
| Charles Maxwell and Mary Beach        | U4031<br>(615/25)       | U4033           | 5702 Shawnee Ave., Spokane, WA, 99208 USA                   | 5702 Shawnee Ave., Spokane, WA, 99208 USA         |
| Thomas Woods                          | CA1786833<br>(620/7-10) | R715            | 610 East Orchard #60, Odessa, MO, 64076, USA                | 610 East Orchard #60, Odessa, MO, 64076, USA      |
| Thomas Woods                          | CA1817135<br>(809/39)   | XC27362         | 610 East Orchard #60, Odessa, MO, 64076, USA                | 610 East Orchard #60, Odessa, MO, 64076, USA      |

## Schedule "A" cont'd

| <b>Non Performing Owners</b>          | <b>Title No</b>       | <b>Lease No</b> | <b>Last Known Address</b>   | <b>Address Registered to Title</b>                                |
|---------------------------------------|-----------------------|-----------------|---|---|
| Thomas Woods                          | CA1817298<br>(810/12) | W12800          | 610 East Orchard #60,<br>Odessa, MO,<br>64076, USA                | 610 East Orchard #60,<br>Odessa, MO,<br>64076, USA                |
| International Timeshare Resellers Ltd | CA174406<br>(902/15)  | W13241          | #26, 2098 Boucherie Road,<br>Westbank, B.C.,<br>V4T 2A4           | 260-2300 Carrington Road,<br>Westbank, B.C., V4T 2N6              |
| Terry Lane                            | KW9993<br>(1001/35)   | KW9994          | Box 17, Site 12,<br>RR#5, LCD 1,<br>S.E., Calgary,<br>AB, T2P 2G6 | Box 17, Site 12,<br>RR#5, LCD 1,<br>S.E., Calgary,<br>AB, T2P 2G6 |
| Eleanor Mackie                        | T20600<br>(1010/22)   | T20602          | 221 - 37 <sup>TH</sup> St.<br>NW, Calgary,<br>AB, T2N 4N6         | 221 - 37 <sup>TH</sup> St.<br>NW, Calgary,<br>AB, T2N 4N6         |
| Eleanor Mackie                        | T21063<br>(1010/23)   | T21064          | 221 - 37 <sup>TH</sup> St.<br>NW, Calgary,<br>AB, T2N 4N6         | 221 - 37 <sup>TH</sup> St.<br>NW, Calgary,<br>AB, T2N 4N6         |
| Eleanor Mackie                        | U4047<br>(1010/24)    | U4049           | 221 - 37 <sup>TH</sup> St.<br>NW, Calgary,<br>AB, T2N 4N6         | 221 - 37 <sup>TH</sup> St.<br>NW, Calgary,<br>AB, T2N 4N6         |
| Shirley Row                           | U19393<br>(1020/2)    | U19395          | Box 357,<br>Nobleford, AB,<br>V0L 1S0                             | Box 42, Barons,<br>AB, T0L 0G0                                    |
| William and Edith Beales              | XB28493<br>(1023/20)  | XB28495         | 8002-189 Street,<br>Edmonton, AB,<br>T5T 5B9                      | 15818-94A Ave.,<br>Edmonton AB, T5R 5L8                           |