



This is the 4<sup>th</sup> affidavit of  
Mark W. Mounter in this case  
and was made on 21/OCT/2021

NO. S-162335  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

JASTRAM PROPERTIES LTD.

PLAINTIFF

AND:

VIRGINIA MARY TAN, PATRICK ENG TIEN TAN,  
MARCUS SOON-KEEN TAN, LETAN INVESTMENTS MANAGEMENT, LETAN 88  
ENTERPRISES INC., TLD INVESTMENTS INC., 0994439 B.C. LTD., TJ0700 HOLDINGS  
LTD., and TJ132 VENTURES LTD.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**AFFIDAVIT**

I, Mark W. Mounter, #400 – 856 Homer Street, Vancouver, British Columbia, lawyer, SWEAR  
THAT:

1. I am a Partner in the law firm of Bennett Mounter LLP, counsel for the Plaintiff  
and the Class in this matter, and as such have personal knowledge of the facts and matters to which  
I have deposed hereinafter, save and except where the same are stated to be on information and  
belief, and where so stated, I verily believe them to be true.

*The Settlement Administration Plan*

2. I have reviewed extensively the files and financial records of Virginia Mary Tan  
which we obtained from the Trustee in Bankruptcy for Consolidated Estate of Virginia Mary Tan

(the “Trustee”), which consist of over 20 boxes. From this review, I have created a database of investors in the Tan Investment Scheme and their investments.

3. Many of the investor files maintained by Ms. Tan are incomplete. It is difficult to tell from many of the files when money was actually received by Ms. Tan, as Promissory Notes were issued for investments that were “rolled-overs” and were not new investments, and in some instances, interest was accrued and added to the amount of the investment rather than being paid out.

4. In addition, as noted by James P. Blatchford in his expert report dated November 14, 2018, there appear to have been many cash transactions throughout the course of the Tan Investment Scheme, by which Ms. Tan both received funds from investors and paid funds to them.

5. For these reasons, we considered it necessary, as part of any reasonable claims process, for Class members to provide evidence of their investments, if that evidence is available, so that we can review the evidence provided by Class members in conjunction with Ms. Tan’s files and financial records, and either confirm the claim or recommend adjustment of it.

6. We also concluded that it would be appropriate, as part of any reasonable claims process, that in assessing the amount of each Class member’s claims, an assumption should be made that Class members received interest payments from Ms. Tan in accordance with the terms of the Promissory Notes issued by her to investors, unless there is evidence to the contrary. In our view as Class Counsel, this assumption is both consistent with the ongoing operation of a Ponzi scheme and is necessary in light of the cash transactions undertaken by Ms. Tan operating the scheme.

#### *The Trustee Payment*

7. In December 2019, counsel for the Trustee advised that the Trustee had outstanding actions against 19 investors in the Tan Investment Scheme who received more from the Scheme than the total amount of principal they invested. These investors are referred to “net-winners”. The Trustee estimated that the total amount received by these 19 net-winners in excess of the principal amount they invested is more than \$7.5 million.

8. As Class Counsel, we are of the view that the payment of \$250,000 to the Trustee, as proposed by the Settlement Administration Plan, is in the best interest of the Class. We have reached this conclusion based on the advice we have received from the Trustee and the Trustee's counsel that it is more likely than not that the funding of the net-winner litigation in the amount of \$250,000 will result in the recovery of more than that amount for the benefit of the Class members.

9. I have reviewed the e-mails attached to as Exhibit "B" to the Affidavit #1 of Peter Doetsch from eight Class members who, like Peter Doetsch, object to the payment of the \$250,000 to the Trustee. The investors database we have created confirms that the claims of these objecting Class members are as noted on Exhibit "B" to Mr. Doetsch's affidavit and the total the amount set out in paragraph 8 of Mr. Doetsch's affidavit.

10. Based on the investors database, the total amount of Class members' claims is estimated to be \$23 million.

#### *Class Counsel's Fees and Disbursements*

11. Attached as Exhibit "A" to this Affidavit is a copy of Class Action Retainer Agreement between JPL, Peter Doetsch and Lale Doetsch as clients and Bennett Mounteer LLP, dated September 27, 2017. The Retainer Agreement was implemented to govern both this action and in *Jastram Properties Ltd. v. HSBC Bank Canada*, BCSC Action No. S-179117 (the "HSBC Action").

12. The Retainer Agreement provides our firm's legal fees "shall be 33 $\frac{1}{3}$ % of the total amounts recovered by the Class under any judgments, orders or settlements". Our firm's standard Class Action Retainer Agreement provides for a legal fee of 35% on any amounts recovered for the Class. In negotiating our retainer, Mr. Doetsch requested and we agreed that the maximum legal fee to be charged for our services will be 33 $\frac{1}{3}$ %.

13. We are seeking approval of a fee of \$978,802, which is 30% of the settlement proceeds of \$3,512,675.03 obtained for the benefit of the Class, after the deduction of the proposed \$250,000 payment to the Trustee ( $\$3,512,675.03 - \$250,000 = \$3,262,675.03 \times 30\% = \$978,802.50$ ). The proposed fee of 30% of the amount recovered for the Class is consistent with

our firm's practice in seeking approval of fees equal to 30% of the amounts recovered pursuant to settlements in other class proceedings.

14. Our firm has incurred and recorded time in the conduct of this class proceeding to date with a value exceeding \$970,000 based on our standard hourly rates of \$750 for Paul R. Bennett and \$650 for myself. The rates are reflective of the Vancouver market for legal services. The time does not include time which has been incurred and recorded by our firm solely in relation to HSBC Action.

15. The time has been incurred by our firm in carrying out the following tasks:
- (a) reviewing the existing pleadings and materials in this action and amending the Notice of Civil Claim to bring the action under the *Class Proceeding Act* and frame the claim in a manner suitable for certification;
  - (b) successfully resisting an application to set aside the Mareva injunction obtained in this action, brought by the Defendant, Marcus Soon-Keen Tan ("Marcus Tan"), and heard for two days in January 2018;
  - (c) monitoring the various foreclosure proceedings involving the properties held by the Defendants, which were the subject of the Mareva injunction;
  - (d) obtaining access to the files and financial records of the Tans in the possession of the Trustee, and engaging in an extensive review and analysis of those files and records;
  - (e) engaging with Mr. Blatchford in the production of his expert report;
  - (f) preparing the application to certify this class proceeding, which was heard in March 2019;
  - (g) preparing for an examination for discovery of Marcus Tan in this action;
  - (h) engaging in extended settlement negotiations with counsel for Marcus Tan, which resulted in the approval by this Court on October 1, 2020;

- (i) reviewing documents relating to the action brought by RanAm Developments Ltd. (“RanAm”) in respect of the Surrey Properties held in the name of Marcus Tan, including documents which were in the possession of the trustee and the Tans and those produced by RamAm;
- (j) preparing for the examination for discovery of Marcus Tan in the RanAm Action; and
- (k) engaging in extended settlement negotiations with counsel for RanAm, which resulted in the settlement approved by this Court on February 25, 2021;

16. Under the Settlement Administration Plan, Class Counsel will provide various services to Class members in carrying out the claims process, for which services no further fee will be charged by Class Counsel. I will be the person primarily responsible for providing these services. I have been responsible for settlement administration functions in more than a dozen class action settlements. It is difficult to estimate the time required to carry out the settlement administration functions, but based on that experience and on my review of the files and financial records of the Tans, I estimate that on average each claim will require 2 hours of my time. If every potential class member were to make a claim, then approximately 160 hours will be spent by me in providing these services under the Settlement Administration Plan, which time will have a value of \$104,000 at my standard hourly rate of \$650.

17. Our firm has incurred and seeks approval of disbursements of \$23,257.12 exclusive of taxes, which disbursements consists of the following:

Company Filing Fees	\$1,243.00
Court Filing Fees	\$700.77
Transcripts	\$640.40
Courier and Postage	\$467.04
Website	\$478.28
Agents	\$327.63
Experts	\$19,400.00

18. In my opinion as counsel, these disbursements were reasonable and necessary for the conduct of the class proceeding.

19. Class Counsel also seeks approval the proposed disbursement of \$34,749.36 to JPL to reimburse it for the fees and disbursements it incurred in relation in the Mareva injunction, prior to our firm assuming conduct of this action. It is my opinion as counsel that this is a reasonable and proper disbursement, as the Mareva injunction accrued for the benefit of the Class as a whole and was integral to our ability to conclude a settlement which resulted in the recovery for the Class of most of the value in the properties which were the subject of the Mareva injunction.

SWORN BEFORE ME  
at Vancouver, British Columbia  
on 21/OCT/2021

\_\_\_\_\_  
A commissioner for taking  
affidavits for British Columbia

)  
)  
)  
) \_\_\_\_\_  
) Mark W. Munteer  
)  
)  
)

**REIDAR M. MOGERMAN**  
BARRISTER & SOLICITOR  
856 Homer Street, 4th Floor  
Vancouver, BC, V6B 2W5  
Tel: 604-689-7555 Fax: 604-689-7554

THIS AFFIDAVIT was prepared by the law firm of Bennett Munteer LLP, whose place of business and address for service is #400 – 856 Homer Street, Vancouver, British Columbia, V6B 2W5. Telephone: (604) 639-3680. Fax: (604) 639-3681. Counsel Reference: Paul R. Bennett and Mark W. Munteer

This is Exhibit "A" as referred to in the affidavit of Mark W. Munteer

**CLASS ACTION RETAINER AGREEMENT**

sworn before me at Vancouver, B.C. this 21 day of Oct. 2021

[Signature]  
A Commissioner for taking Affidavits within British Columbia

BETWEEN:

JASTRAM PROPERTIES LTD., PETER DOETSCH, AND LALE DOETSCH

(THE "CLIENTS")

AND:

BENNETT MOUNTEER LLP

(THE "SOLICITORS")

1. The Clients hereby retain and employ the Solicitors with respect to a class action to be pursued on their behalf and on behalf of other residents of British Columbia who lent funds to Virginia Tan and/or Letan Investments Management and were not repaid in full (the "Class Action").

2. Subject to instructions from the Clients from time to time, the Solicitors shall prosecute the Class Action and take such steps as the Solicitors consider necessary and proper.

**Terms of Payment of Fees and Disbursements**

3. The provisions of this agreement regarding fees and disbursements are subject to the approval of the B.C. Supreme Court (the "Court") as provided in s. 38 of the British Columbia *Class Proceeding Act*. The Solicitors shall seek the approval of the Court at such time as the Solicitors consider it appropriate to do so and, in any event,



upon the request of the Clients. If the Court does not approve this Agreement, the Solicitors shall not be obliged to continue to act in the Class Action.

4. The Clients also have the right within three months after either this Agreement was made or the retainer of the Solicitors is terminated to apply to the District Registrar of the Court to have this Agreement examined.

5. Legal fees shall be paid only in the event that the Class Action is successful in whole or in part. The fees shall be paid by lump sum payment or payments out of the proceeds of any Judgment or Order awarding rescission, damages, interest or costs to the Class or any settlement that includes payments in favour of the Class or Class member, or as otherwise may be directed by the Court.

6. The Solicitors' legal fees shall be 33 1/3% of the total amounts recovered by the Class under any judgments, orders or settlement.

7. The Solicitors and Clients acknowledge it is difficult to estimate what the expected fee will be, as the amount of the fee will depend upon such factors as the number and value of the loans that were made. However, the following are examples:

- (a) If the Class Action results in the recovery of \$500,000 for damages and interest, then the Solicitors' fee shall be \$166,666;
- (b) If the Class Action results in the recovery of \$2 million for damages and interest, then the Solicitors' fee shall be \$666,666;
- (c) If the Class Action results in the recovery of \$5 million for damages and interest, then the Solicitors' fee shall be \$1,666,666;
- (d) If the Class Action results in the recovery of \$10 million for damages and interest, then the Solicitors' fee shall be \$3,333,333;

(e) If the Class Action results in the recovery of \$15 million for damages and interest, then the Solicitors' fee shall be \$5,000,000.

8. Disbursements will be paid firstly out of any amounts raised from members of the Class and then by the Solicitors. The Clients shall not be obliged to fund any disbursements.

9. The Solicitors will incur disbursements to an aggregate of \$25,000 without immediate reimbursement but shall not be obliged to incur disbursements beyond that amount although they may do so in their discretion.

10. Unpaid disbursements will be a first charge paid out of the proceeds of any Order, Judgment or settlement, with interest at 10% per annum not compounded, to be calculated on the amount of disbursements incurred every six months.

#### Costs

11. The Clients have been advised by the Solicitors that under the *Class Proceeding Act*, in the event the Class Action is unsuccessful, the Clients will not be responsible for the costs of the defendants.

#### Change of Solicitors

12. The Clients acknowledge that the Solicitors are incurring a significant financial risk in agreeing to be paid only in the event the action is successful and the Solicitors are doing so on the basis that they will have carriage of the Class Action. The Clients agree that any request by the Clients to terminate the retainer of the Solicitors will be referred to the Court for directions.

**Withdrawal or Conflict**

13. The Clients have the right to withdraw from the Class Action for any reason. Upon notice from the Clients, or any one of them, of an intention to withdraw, the Solicitors shall take such steps as are necessary to remove the Client as a representative plaintiff in the Class Action.

14. If the Class Action is not certified, the Solicitors will have the right to withdraw as Solicitors and will have no obligation under this Retainer Agreement to continue to pursue the Clients' individual claims.

**Substitute or Addition of Representative Plaintiffs**

15. In the event that:

- (a) the Clients, or any one of them, withdraws as a representative plaintiff pursuant to para. 13 above;
- (b) the Clients, or any one of them, chooses to settle the Client's individual claims without settling the claims of the Class;
- (c) the Court divides the Class into separate sub-classes; or
- (d) the Solicitors consider it in the best interest of the Class that one or more additional representative plaintiffs be appointed;

the Clients expressly agrees and acknowledges that the Solicitors are permitted to be retained by another representative of the Class or subclass to continue the Class Action on behalf of the Class. In such event, privileged communications between the Solicitors and the Clients made for the purpose of advancing the claims of the Class and the Solicitors' proprietary information and documentation created for the purpose of

advancing the claims of the Class, shall be disclosed to the new Class representative and may be used on behalf of the Class or subclass.

### **Negotiations and Settlement**

16. The Clients hereby authorize the Solicitors, in their discretion, to enter into negotiations with the defendant(s) or any other related persons or entities, for the purpose of reaching a settlement. The Clients understand that any settlement affecting the Class is subject to approval by the Court. The Clients agree and acknowledge that any negotiations are for the purpose of reaching a settlement of the claims of the Class Action, not simply the individual claims of the Clients.

17. In the event that:

- (a) the defendant(s) makes an offer to settle the claims of the Class;
- (b) the Solicitors consider acceptance of the proposed settlement to be in the best interest of the Class;
- (c) the Solicitors recommend acceptance of such offer to the Clients; and
- (d) the Clients, or any one of them, does not consider the proposed settlement to be acceptable;

the Clients agree and hereby authorize the Solicitors to apply to the Court pursuant to the *Class Proceedings Act* for approval of the settlement on the basis that the Solicitors shall place before the Court for its consideration of the Client's position that the Client does not consider the proposed settlement to be acceptable.

### **Clients' Fees**

18. The Clients acknowledge that under this Agreement the Clients will not be entitled to any fees for acting as the representative plaintiffs in the Class Action.

However, given that in the past representative plaintiffs have been given awards by the Court in recognition of the time and expense involved in acting as the representative plaintiff, the Solicitors will make their best efforts to seek similar compensation from the Court for the Clients.

### **Confidentiality**

19. The Clients acknowledge being advised that the communications between the Solicitors and the Clients relating to the claims of the Class are legally privileged, but that such privilege may be lost if the Clients were to disclose such information to third persons and that the interest of the Class could thereby be adversely affected. The Clients agree to protect the confidentiality of such information and to discuss the matter with the Solicitors prior to disclosing such information to any third party. The Clients also agree to refer any requests the Clients receive from the media for interviews or information to the Solicitors.

20. In the event that further representative plaintiffs are appointed to represent the Class or separate sub-classes, the Clients hereby acknowledge that no information received from any of the representative plaintiffs relating to the Class Action, including the Clients, may be kept confidential from any of the other representative plaintiffs.

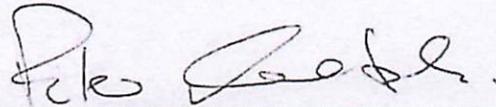
### **Clients to Act in Best Interests of the Class**

21. The Clients acknowledge the obligation to act in the best interests of the Class and that the Solicitors are not obliged to follow instructions from the Clients that are not in the best interests of the Class. In the event of a disagreement between the Clients and the Solicitors concerning whether certain instructions are in the best interests of the Class, the matter shall be submitted for arbitration to a retired judge of the British Columbia Supreme Court as a sole arbitrator in accordance with the provisions of the

*B.C. Arbitration Act.* The Arbitrator shall resolve matters summarily, within 7 days, with as little formality as possible. The costs of the Arbitration shall be paid as a disbursement in the Class Action.

22. In the event it is necessary or prudent to take steps in the action before the arbitration has resolved any dispute concerning instructions in accordance with para. 21, the Solicitors shall take such steps as the Solicitors consider to be in the best interest of the Class.

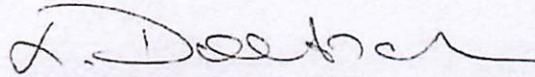
DATED at British Columbia, this 27 day of September 2017.



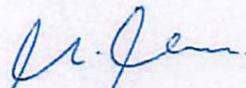
JASTRAM PROPERTIES LTD.



PETER DOETSCH



LANE DOETSCH



BENNETT MOUNTEER LLP

Per: Mark W. Munteer