

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

WEICHANG YANG

Applicant

- and -

BESCO INTERNATIONAL INVESTMENT CO., LTD.

Respondent

**APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3,
as amended, and section 101 of the *Courts of Justice Act*, RSO 1990, c C.43, as amended**

SUPPLEMENTARY APPLICATION RECORD

February 4, 2019

FASKEN MARTINEAU DuMOULIN LLP
Barristers and Solicitors
333 Bay Street - Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Dylan Chochla [LSO# 62137I]
Tel: 416 868 3425
Fax: 416 364 7813
Email: dchochla@fasken.com

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Fax: 416 364 7813
Email: dricher@fasken.com

Lawyers for the Applicant

TO:

RUETERS LLP
2200- 250 Yonge Street
P.O. Box 4
Toronto ON, M5B 2L7

Sara J. Erskine [LSO# 46856G]
Tel: 416 597 5408
Fax: 416 869 3411
Email: sara.erskine@ruetersllp.com

Lawyers for the Respondent, Besco International Investment Co., Ltd.

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TAB 1

Court File No. CV-18-605366-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

WEICHANG YANG

Applicant

- and -

BESCO INTERNATIONAL INVESTMENT CO., LTD.

Respondent

**AFFIDAVIT OF IRENE M. ARTUSO
(SWORN FEBRUARY 4, 2019)**


I, Irene M. Artuso, of the City of Mississauga, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am a legal assistant with the law firm of Fasken Martineau DuMoulin LLP, the solicitors for the applicant, Weichang Yang, in these proceedings, and as such have knowledge of the matters contained in this my affidavit.
2. Attached hereto and marked as Exhibit "A" is a true copy of a letter from Dylan Chochla of Fasken Martineau DuMoulin LLP to Justice Penny of the Ontario Superior Court of Justice dated October 26, 2018 requesting an adjournment of the receivership application scheduled for November 7, 2018 to December 5, 2018.
3. Attached hereto and marked as Exhibit "B" is a true copy of a Letter of Intent from Bosco Chan, Managing Director of Livesolar Capital Corp. to Hui Gang Sun of Besco International Investments Co., Ltd. dated October 29, 2018.
4. Attached hereto and marked as Exhibit "C" is a true copy of documents related to a 9:30 a.m. conference call before Justice McEwen on November 7, 2018.

5. Attached hereto and marked as Exhibit "D" is a true copy of the draft Undertaking Re: Discharge and draft Payout Statement.
6. Attached hereto and marked as Exhibit "E" is a true copy of an email from the Superior Court of Justice - Commercial List dated November 14, 2018 confirming the scheduling of an appointment at 9:30 a.m. on November 20, 2018 before Justice McEwen.
7. Attached hereto and marked as Exhibit "F" is a true copy of a letter from Peter Liston of LNL LLP to Hui Gang Sun of Besco International Investments Co., Ltd. dated November 12, 2018.
8. Attached hereto and marked as Exhibit "G" is a true copy of the Superior Court of Justice - Commercial List 9:30 A.M. Hearing Request Form dated November 20, 2018 with Justice McEwen's direction scheduling another 9:30 A.M. appointment on December 3, 2018.
9. Attached hereto and marked as Exhibit "H" is a true copy of a letter from Dylan Chochla of Fasken Martineau DuMoulin LLP to Justice Penny of the Ontario Superior Court of Justice dated November 22, 2018 requesting a further adjournment of the receivership application to February 13, 2019.
10. Attached hereto and marked as Exhibit "I" is a true copy of the Counsel Slip Sheet dated December 3, 2018 with Justice McEwen's direction scheduling another 9:30 A.M. appointment on December 21, 2018.
11. Attached hereto and marked as Exhibit "J" is a true copy of an email from Dylan Chochla of Fasken Martineau DuMoulin LLP to Sara Erskine and Malik Martin dated December 20, 2018 forwarding a revised a draft and blackline of the Undertaking Re: Discharge together with a draft Payout Statement.
12. Attached hereto and marked as Exhibit "K" is a true copy of the Counsel Slip dated December 21, 2018 with Justice McEwen's direction that no further order required.
13. Attached hereto and marked as Exhibit "L" is a true copy of Justice McEwen's Decision of January 2, 2019.

14. I make this affidavit in respect of the application by the Applicant for an order appointing a receiver over the Respondent's property.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario this 4th day of February, 2019.



Commissioner for Taking Affidavits
Dylan Chochla

)
)
)
)
)



IRENE M. ARTUSO

Tab A

THIS IS EXHIBIT "A"

*referred to in the Affidavit of
Irene Artuso sworn before me this
4th day of February, 2019*



A Commissioner for Taking Affidavits

Dylan Chacko

FASKEN

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

333 Bay Street, Suite 2400
P.O. Box 20
Toronto, Ontario M5H 2T6
Canada

T +1 416 366 8381
+1 800 258 8424
F +1 416 364 7813
fasken.com

October 26, 2018
File No.: 310739.00017/18295

Dylan Choehla
Direct +1 416 868 3425
dchoehla@fasken.com

VIA EMAIL (MAG.CSD.To.SCJCom@ontario.ca)

Ontario Superior Court of Justice
Commercial List
330 University Avenue, 7th Floor
Toronto, ON M5G 1R7

Attention: The Honourable Justice Penny

Dear Justice Penny:

Re: *Weichang Yang v. Besco International Investment Co., Ltd.*
Court File No. CV-18-605366-00CL
Hearing Scheduled for November 7, 2018

We are counsel to the Applicant, Weichang Yang ("Mr. Yang"). We are writing to request an adjournment of a receivership application that is scheduled to be heard before you on November 7, 2018. I understand from Aisou that your next available date to hear the application would be December 5, 2018. The Respondent, Besco International Investment Co., Ltd ("Besco"), has agreed to the adjournment and has confirmed it is available on December 5, 2018.

The receivership application involves a dispute between Mr. Yang and Besco regarding, among other things, the enforcement of certain mortgages held by Mr. Yang on a property owned by Besco. In a related proceeding, Besco brought an application to enjoin Mr. Yang from continuing power of sale proceedings under the *Mortgages Act* (Ontario). Besco's application was heard before Justice McEwen on October 19, 2018.

The parties were hopeful that Justice McEwen's reasons in the injunction application would be available before the receivership application hearing. There are overlapping issues in both proceedings and Justice McEwen's endorsement will assist in refining the issues for the receivership application. However, Justice McEwen has advised that it is unlikely he will release his reasons before the hearing date of November 7.

Accordingly, Mr. Yang, with the consent of Besco, is requesting that the hearing date of the receivership application be adjourned to December 5, 2018.



FASKEN

Rueters LLP is counsel to Besco and is copied on this letter.

Please do not hesitate to contact the undersigned should you have any questions or require any further information regarding this request.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP



Dylan Chochla

DC/ia

cc. *Rueters LLP (Sara Erskine/ Malik Martin)*

Tab B

THIS IS EXHIBIT "B"
referred to in the Affidavit of
Irene Artuso sworn before me this
4th day of February, 2019



A Commissioner for Taking Affidavits

Dylan Chockle



Letter of Intent

October 29th, 2018

Hui Gang Sun
Besco International Investments Co., Ltd
809-6081 No.3 Road
Richmond, BC V6Y 2B2

Re: VICEROY HOUSES REFINANCING

Dear Hui Gang Sun

We refer to our recent correspondence with Besco International Investments Co., Ltd. ("Besco") and confirm that we would be sourcing senior mortgage financing the sum of \$5 million ("Senior Mortgage") at the annual interest rate of 12% on the above property.

We intend to complete the closing within next 60 days. The specific terms and conditions of this intended Senior Mortgage facility are to be set forth and confirmed by us. Before an initial advance to replace the \$5 million currently on the subject site, Besco shall agree to register Senior Mortgage charge of \$5 million against the property as security for the financing provided.

If you have any questions or concerns, please don't hesitate to contact us.

Respectfully

By:

A handwritten signature in black ink, appearing to be "Bosco Chan", written over a horizontal line.

Bosco Chan
Managing Director
Livesolar Capital Corp

bosco.chan@livesolar.ca



Tab C

THIS IS EXHIBIT "C"

*referred to in the Affidavit of
Irene Artuso sworn before me this
4th day of February, 2019*



A Commissioner for Taking Affidavits
Dylan Chochla

Dylan Chochla

From: Rebecca Huang <rhuang@rh-law.ca>
Sent: November-01-18 9:11 AM
To: Dylan Chochla; Sara Erskine
Cc: Malik Martin
Subject: RE: Yang v. Besco International

Dylan:

Justice McEwan asked the parties to work out a commercial solution. According to his Honour's instruction, Besco has identified a lender to provide refinancing. The parties should now focus on the commercial terms of the refinancing solution. I am going to request a 9:30 appointment with Justice McEwen for next Monday or Tuesday to give him an update.

Rebecca Huang LL.B., LL.M.
Principal Lawyer
Rebecca Huang* & Associates
Barristers
Suite 311, 330 Bay Street
Toronto, ON M5H 2S8
Office: 416.306.8450
Mobile: 416.816.6456
Fax: 416.306.8451
Email: rhuang@rh-law.ca
Website: www.rh-law.ca

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From: Dylan Chochla <dchochla@fasken.com>
Sent: October 31, 2018 5:28 PM
To: Sara Erskine <Sara.Erskine@ruetersllp.com>
Cc: Malik Martin <Malik.Martin@ruetersllp.com>; Rebecca Huang <rhuang@rh-law.ca>
Subject: RE: Yang v. Besco International

Hi Sara,

We are still working on the figures and the documents. I hope to have them by the end of the week. I will need to confirm instructions, but I am not inclined to delay the release of Justice McEwen's reasons (which we will require for the receivership application if the deal falls through) in reliance on a non-binding letter of intent with a 60 day closing period.

Best regards,
Dylan

Dylan Chochla
ASSOCIATE
T. +1 416 868 3425 | F. +1 416 364 7813

From: Sara Erskine [<mailto:Sara.Erskine@ruetersllp.com>]
Sent: October-30-18 10:31 AM
To: Dylan Chochla
Cc: Malik Martin; Rebecca Huang
Subject: Yang v. Besco International

Dylan,

Further to our call this morning, attached is the letter of intent from Livesolar.

As discussed, we need to obtain a payout schedule for the lender of the amount to be repaid including accrued interest, legal fees and taxes.

We have followed up on the issue of the \$75,000.00 in legal fees that our client delivered for Faskens. There were two bank drafts of \$25,000 each and a cheque of \$25,000 delivered. The cheque for \$25,000 was cashed by Faskens. The two bank drafts were never returned and the funds have never been returned to our client's account. Can you please follow up with your Vancouver office and your client on the location of these bank drafts?

We also need an undertaking from Faskens that the two Charges of \$5 million each will be discharged immediately upon receipt of the repayment funds.

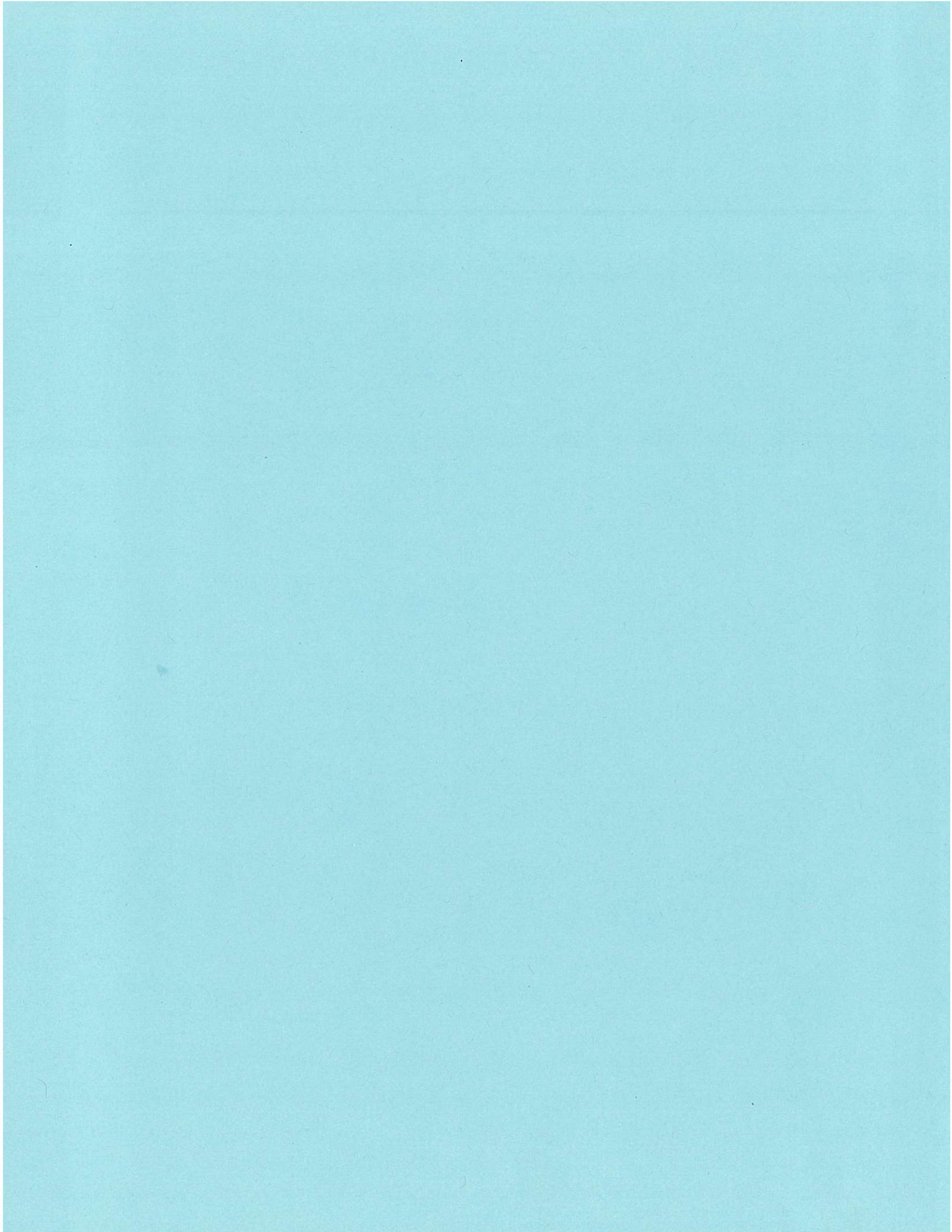
I think we may also want to schedule a 9:30 am appointment on Monday next week before Justice McEwan. I would hate for his honour to spend time preparing his decision if this matter can be resolved. I am happy to have my assistant contact the court to see if his Honour is available.

Sara

Sara J. Erskine, Partner
Rueters LLP
250 Yonge Street, Suite 2200
Toronto, ON M5B 2L7
t 416-597-5408
f 416-869-3411
sara.erskine@ruetersllp.com
www.ruetersllp.com

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<https://www.fasken.com/en/terms-of-use-email/>.

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<https://www.fasken.com/fr/terms-of-use-email/>.





Commercial List File Number:	CV-18-603559-00CL
Civil File Number:	

Date: November 1, 2018

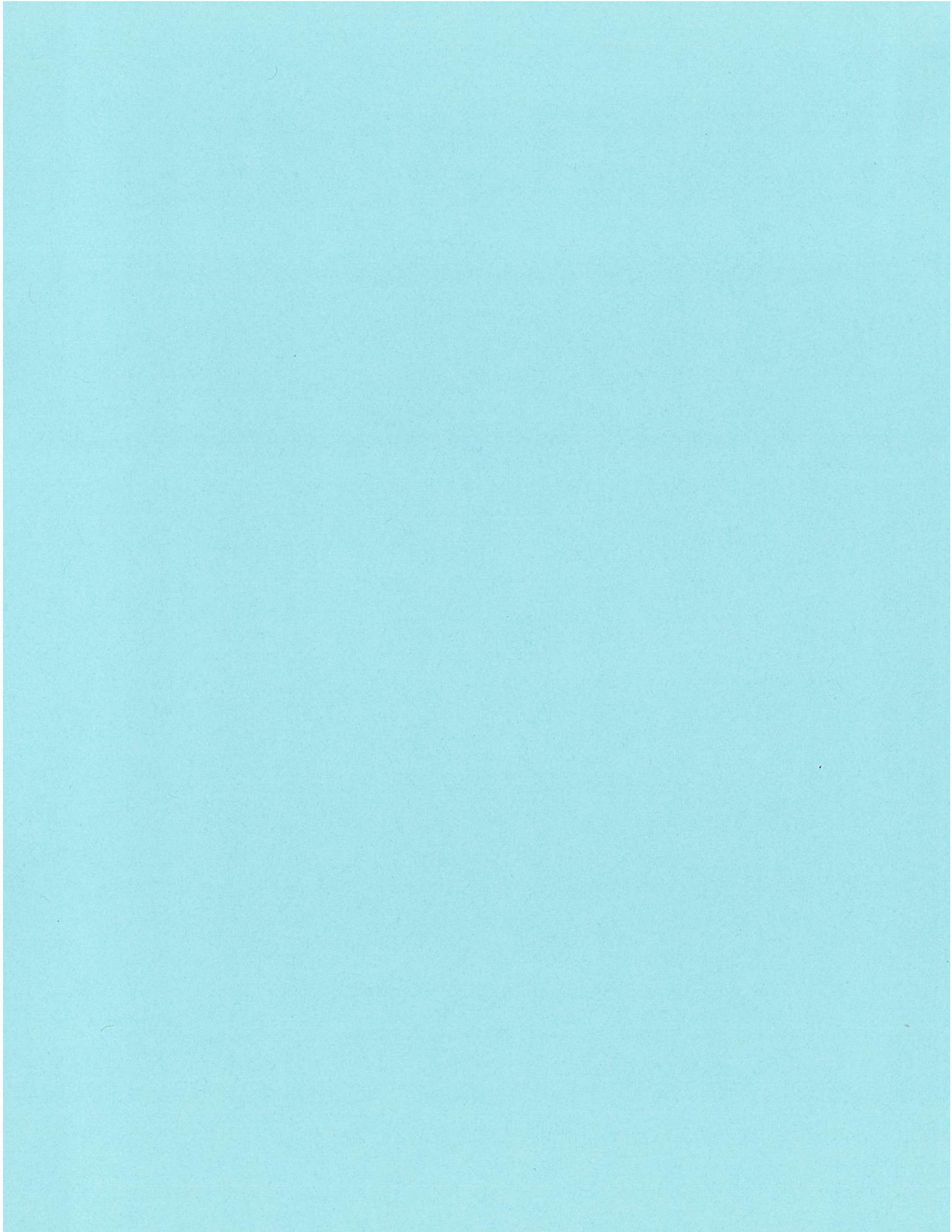
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST
9:30 A.M. HEARING REQUEST FORM

A	PLEASE NOTE: The 9:30 hearing procedure is only for "ex parte, urgent, scheduling and consent matters which take no longer than 10 minutes" (Practice Direction, (2002), 57 O.R. (3 rd) 97; paragraph 25). This restriction will be enforced. This matter is (tick one or more); [] ex parte [] urgent [] scheduling [] consent [X] other (explain) update
B	Short Title of Proceeding: <i>Besco International Investment v. Yang</i>
C	Date(s) Requested: November 7, 2018
D	The following is a brief description of the matter to be considered at the 9:30 appointment: - to provide Justice McEwan with an update
E	The following materials will be necessary for the matter to be considered. (it is the responsibility of counsel to confirm that the proper materials are available for the Court.)
F	Is any Judge seized of these matters or any judicial conflicts? <input checked="" type="checkbox"/> Yes, Justice McEwan

COUNSEL FOR APPLICANT/MOVING PARTY		COUNSEL FOR OTHER PARTY	
Party	Applicant	Party	Respondent
Counsel	 _____ Rebecca Huang PRINT AND SIGN OR INITIAL	Counsel	 _____ Dylan Chochla/Sarah Turney PRINT AND SIGN OR INITIAL
Address	Rebecca Huang Professional Corporation Barristers 330 Bay Street, Suite 311 Toronto ON	Address	Fasken Martineau DuMoulin LLP Barristers and Solicitors 333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6
Phone	416.306.8450	Phone	416.868.3425/416.865.4542
Fax	416.306.8451	Fax	416.364.7813/416.364.7813
E-Mail	rhuang@rh-law.ca	E-Mail	dchochla@faskens.com ; sturney@fasken.com

(IF MORE THAN 2 PARTIES INVOLVED, ADD ADDITIONAL SIGNATURES AND PARTICULARS ON REVERSE OR SEPARATE PAGE)

To be submitted to: Commercial List Office, 330 University Ave, 7th Floor, Toronto Ontario Fax to: (416) 327-6228You may also convert to PDF and email to Toronto.Commerciallist@jus.gov.on.caEndorsement/Disposition See attached Yellow Endorsement Form.



Dylan Chochla

From: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
Sent: November-05-18 4:12 PM
To: Rebecca Huang
Cc: Sara Erskine; Malik Martin; Dylan Chochla
Subject: RE: Commercial list request form

Scheduled Nov7/18 at 9:30am before Justice McEwen
 Counsel to be ready from 9:30am onward for call from J McEwen.
 Thank you

Alsou Anissimova

Superior Court of Justice
 Commercial & Estates Trial coordinator
 330 University Ave 7th floor
 Toronto, Ontario
 M5G 1R7
 Tel: (416) 327-5047
 Fax: (416) 326-2939
 Email: toronto.commercialist@jus.gov.on.ca

From: Rebecca Huang [<mailto:rhuang@rh-law.ca>]
Sent: November-05-18 2:50 PM
To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Cc: Sara Erskine; Malik Martin; Dylan Chochla
Subject: RE: Commercial list request form

All: please see below details for the conference call at 9:30 a.m. on November 7, 2018 with Justice McEwen:

Call in number: 437 222 7070
 Conference ID: 002645#

Rebecca Huang LL.B., LL.M.
 Principal Lawyer
Rebecca Huang* & Associates
 Barristers
 Suite 311, 330 Bay Street
 Toronto, ON M5H 2S8
 Office: 416.306.8450
 Mobile: 416.816.6456
 Fax: 416.306.8451
 Email: rhuang@rh-law.ca

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From: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
Sent: November 5, 2018 12:22 PM
To: Rebecca Huang <rhuang@rh-law.ca>
Cc: Sara Erskine <Sara.Erskine@ruetersllp.com>; Malik Martin <Malik.Martin@ruetersllp.com>; Dylan Chochla <dchochla@fasken.com>
Subject: RE: Commercial list request form

Justice McEwen directed conference call to proceed on Nov7/18 at 9:30am.
Provide dial in info via e-mail.

Thank you

Alsou Anissimova

Superior Court of Justice
Commercial & Estates Trial coordinator
330 University Ave 7th floor
Toronto, Ontario
M5G 1R7
Tel: (416) 327-5047
Fax: (416) 326-2939
Email: toronto.commerciallist@jus.gov.on.ca

From: Rebecca Huang [<mailto:rhuang@rh-law.ca>]
Sent: November-01-18 3:06 PM
To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Cc: Sara Erskine; Malik Martin; Dylan Chochla
Subject: Commercial list request form

Dear scheduling officer:

See attached a 930 request form for Justice McEwan on November 7, 2018. Many thanks.

Rebecca Huang LL.B., LL.M.
Principal Lawyer
Rebecca Huang* & Associates

Barristers

Suite 311, 330 Bay Street

Toronto, ON M5H 2S8

Office: 416.306.8450

Mobile: 416.816.6456

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Tab D

THIS IS EXHIBIT "D"
referred to in the Affidavit of
Irene Artuso sworn before me this
4th day of February, 2019


A Commissioner for Taking Affidavits
Dylan Chockla

Dylan Chochla

From: Dylan Chochla
Sent: November-06-18 11:29 AM
To: Sara Erskine (Sara.Erskine@ruetersllp.com); Malik Martin (Malik.Martin@ruetersllp.com); Rebecca Huang (rhuang@rh-law.ca)
Subject: Yang/ Besco - Draft Undertaking and Payout Statement
Attachments: 92764458_v(2)_Undertaking to Discharge Mortgages (Yang).DOC; 92764185_v(1)_Payout Statement (Nov 6, 2018).XLSX

Hi Sara, Malik and Rebecca,

Please see attached a draft undertaking and payout statement. The figures will be a moving target as we will not know the final amount of legal fees or taxes to be remitted to Port Hope until the closing date. However, this is close to the final payout amount and should give Livesolar an idea of the amount. The undertaking is in the form the client is willing to give. As the amounts continue to be a moving target, the undertaking should be signed up closer to closing.

Also, given that there is no binding commitment from Livesolar, and an extended closing period, I've received instructions to request that Justice McEwen not suspend the release of his reasons.

Please let me know if you have any questions or comments.

Thank you,
Dylan

 Dylan Chochla
ASSOCIATE

FASKEN

Fasken Martineau DuMoulin LLP
T. +1 416 868 3425 | F. +1 416 364 7813
dchochla@fasken.com | www.fasken.com/en/Dylan-Chochla
333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6

UNDERTAKING RE: DISCHARGE

TO: Besco International Investment Co., Ltd. (the "Chargor")

AND TO: Rueters LLP (Sara Erskine), solicitors for the Chargor

RE: Charge in favour of Weichang Yang (the "Mortgagee") registered as Instrument No. ND153386, together with Assignment of Rents registered as Instrument No. ND159134; and

Charge in favour of the Mortgagee registered as Instrument No. ND166861, together with Assignment of Rents registered as Instrument No. ND166862 (collectively, the "Security")

in each case registered on title to the property municipally known as 414 Croft Street, Port Hope, Ontario, Canada (the "Property")

WHEREAS the Chargor has advised that the Chargor intends to secure \$5 million in financing from Livesolar Capital Corp;

AND WHEREAS the Chargor has further advised that the Chargor will use such financing, in part, to repay all indebtedness and obligations of the Chargor to the Mortgagee;

AND WHEREAS the Mortgagee has confirmed that, provided payment in full in the amount of [\$4,685,918.10] ~~[NTD: To be updated to account for legal fees incurred to closing and costs of discharge, as well as amount of tax arrears owing to Municipality of Port Hope as of closing date.]~~ (the "Pay-Off Amount") is received and confirmed by Fasken Martineau DuMoulin LLP ("Fasken"), counsel to the Mortgagee, on or before December 28, 2018, the Mortgagee will prepare and register appropriate discharges in respect of the Security;

AND WHEREAS the particulars of the Pay-Off Amount are set out in the Mortgagee's discharge statement attached at Schedule "A";

NOW THEREFORE the Mortgagee undertakes that, effective upon a wire transfer being received by Fasken at the account set out in Schedule "B" hereto of immediately available funds in an amount equal to the Pay-Off Amount on or before December 28, 2018, the Mortgagee will:

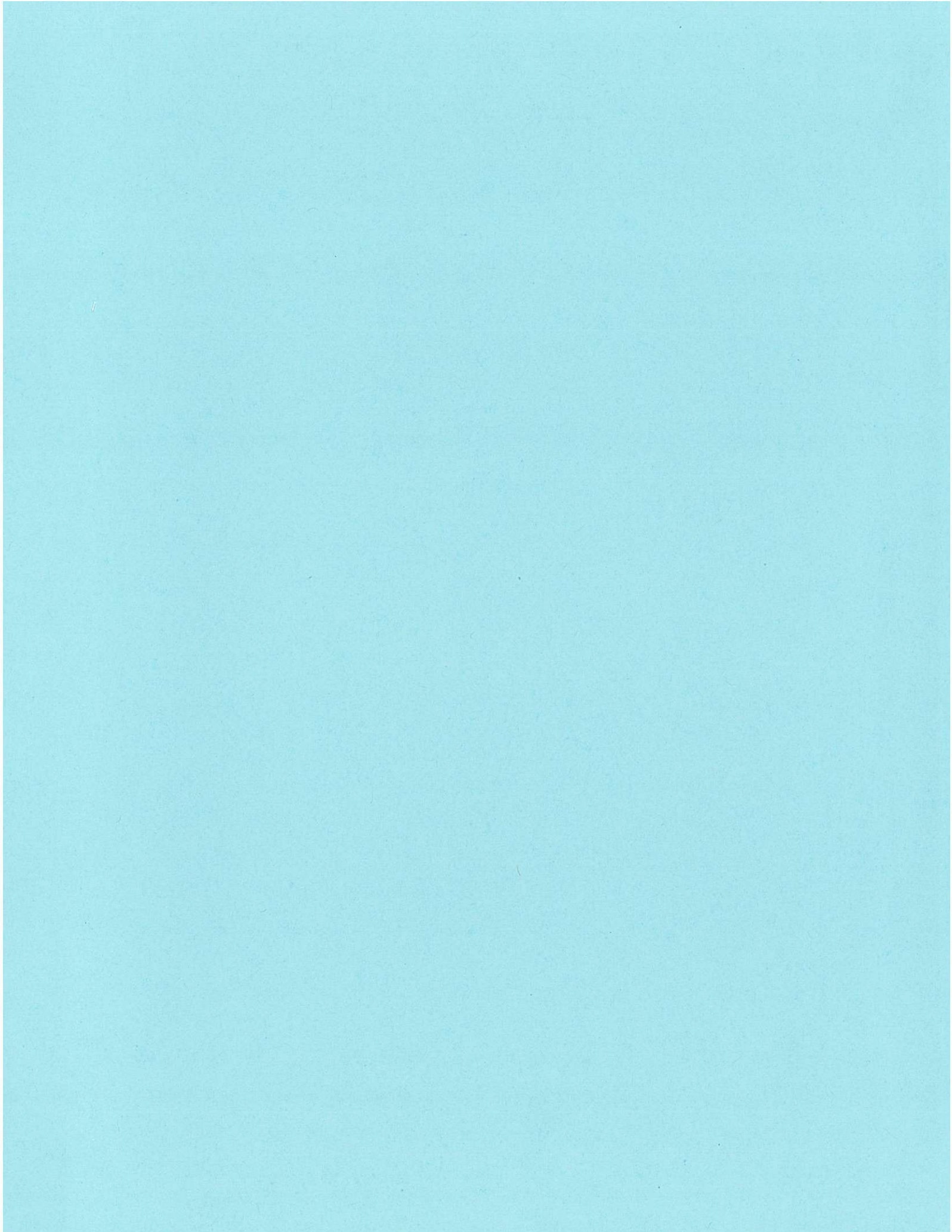
- (a) prepare and register appropriate discharges in respect of the Security; and
- (b) remit ~~[\$858,617.00] [NTD: To be updated to account for tax arrears owing to Municipality of Port Hope as of closing date.]~~ to the Municipality of Port Hope, or as it may direct in writing, on account of municipal realty tax arrears owing on the Property.

DATED as of the ____ day of _____, 2018.

WEICHANG YANG

Schedule "A"
(Mortgagee's discharge statement)

Schedule "B"
(Wire transfer information)



Loan Schedule - Mr. Huiqiang Sun Loan
As at December 28, 2018

Date	Description	Total Payment Amount Received	Principal Payment Received Amount	Interest Payment Received Amount	Principal Amount Upto Date	Interest Accrued Amount Upto Date
01-Jun-17	Loan			-	5,000,000.00	
20-Jun-17	Principal payment	1,200,000.00	1,200,000.00	-	3,800,000.00	
10-Jul-18	Principal and interest payment	300,000.00	88,700.00	211,300.00	3,711,300.00	
24-Jul-17	Principal and interest payment	502,500.00	500,000.00	2,500.00	3,211,300.00	
20-Aug-17	Interest payment	40,140.00	-	40,140.00		
20-Sep-17	Interest payment	40,140.00	-	40,140.00		
20-Oct-17	Interest payment	40,140.00	-	40,140.00		
28-Nov-17	Interest payment	40,140.00	-	40,140.00		
20-Dec-17	Interest payment	40,140.00	-	40,140.00		
19-Jan-18	Interest payment	40,140.00	-	40,140.00		
27-Feb-18	Interest payment	40,140.00	-	40,140.00		
20-Mar-18	Interest payment	40,140.00	-	40,140.00		
20-Apr-18	Interest payment	40,140.00	-	40,140.00		
18-May-18	Interest payment	40,140.00	-	40,140.00		
Until 2018-12-28	Interest accrual					304,845.23
28-Dec-18	Total	2,402,900.00	1,788,700.00	615,200.00	3,211,300.00	304,845.23

[NTD: Costs to be updated as of closing date, and to include discharge costs.]

PRINCIPAL & UNPAID INTEREST: 3,516,145.23
 COSTS OWING: 311,155.87 (includes deduction for: (i) \$25,000 payment received from Viceroy; and (ii) \$25,000 payment received from Rui Xin Ren)
 TOTAL AMOUNT OWING: 3,827,301.10

PROPERTY TAXES OWING TO PORT HOPE: 858,617.00 [NTD: Port Hope to confirm amount owing as of closing date.]
 AMOUNT TO REDEEM MORTGAGE: 4,685,918.10

Tab E

THIS IS EXHIBIT "E"
referred to in the Affidavit of
Irene Artuso sworn before me this
4th day of February, 2019



A Commissioner for Taking Affidavits
Dylan Chochla

Dylan Chochla

From: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
Sent: November-14-18 3:32 PM
To: Carolyn Best
Cc: Dylan Chochla; Rebecca Huang; Sara Erskine; Malik Martin
Subject: RE: Besco International Investment v. Yang - Commercial List File No. CV-18-603559-00CL

Scheduled nov20/18 at 9:30am

Alsou Anissimova

Superior Court of Justice
Commercial & Estates Trial coordinator
330 University Ave 7th floor
Toronto, Ontario
M5G 1R7
Tel: (416) 327-5047
Fax: (416) 326-2939
Email: toronto.commerciallist@jus.gov.on.ca

From: Carolyn Best [<mailto:cbest@rh-law.ca>]
Sent: November-14-18 2:23 PM
To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Cc: Dylan Chochla; Rebecca Huang; Sara Erskine; Malik Martin
Subject: Besco International Investment v. Yang - Commercial List File No. CV-18-603559-00CL

Good afternoon, attached please find our 9:30 a.m. hearing request form for November 20, 2018.

Regards,

Carolyn Best
Office Manager & Law Clerk
Rebecca Huang* & Associates
Barristers
Suite 311, 330 Bay Street
Toronto, ON M5H 2S8
Office: 416.306.8450
Fax: 416.306.8451
Email: cbest@rh-law.ca
Website: www.rh-law.ca

(*Services provided through a professional corporation)

Tab F

THIS IS EXHIBIT "F"
referred to in the Affidavit of
Irene Artuso sworn before me this
4th day of February, 2019



A Commissioner for Taking Affidavits
Dylan Chockla



BARRISTERS AND SOLICITORS

577 SOMERSET STREET WEST
OTTAWA, ONTARIO K1R 5K1
TEL: 613-686-1756
FAX: 613-249-7343

November 12, 2018

Hui Gang Sun
Besco International Investments Co., Ltd
809-6081 No.3 Road
Richmond, BC V6Y 2B2Re: Loan Commitment
Livesolar Capital Corporation

Dear Mr. Sun:

Livesolar Capital Corporation (the "Lender") is pleased to advise that on the basis of information provided in connection with your request for financing, the \$5,000,000.00 (Five Million Canadian Dollars) loan is approved subject to documents to be submitted for completion of the due-diligence process (the "Commitment").

This commitment target is to close within 30 days, subject to material adverse changes. As a precondition of advancing the Loan, the Loan is not to exceed 65% of the appraised value of the project.

The Loan should be funded in a single advance on the closing date. We also require receipt of:

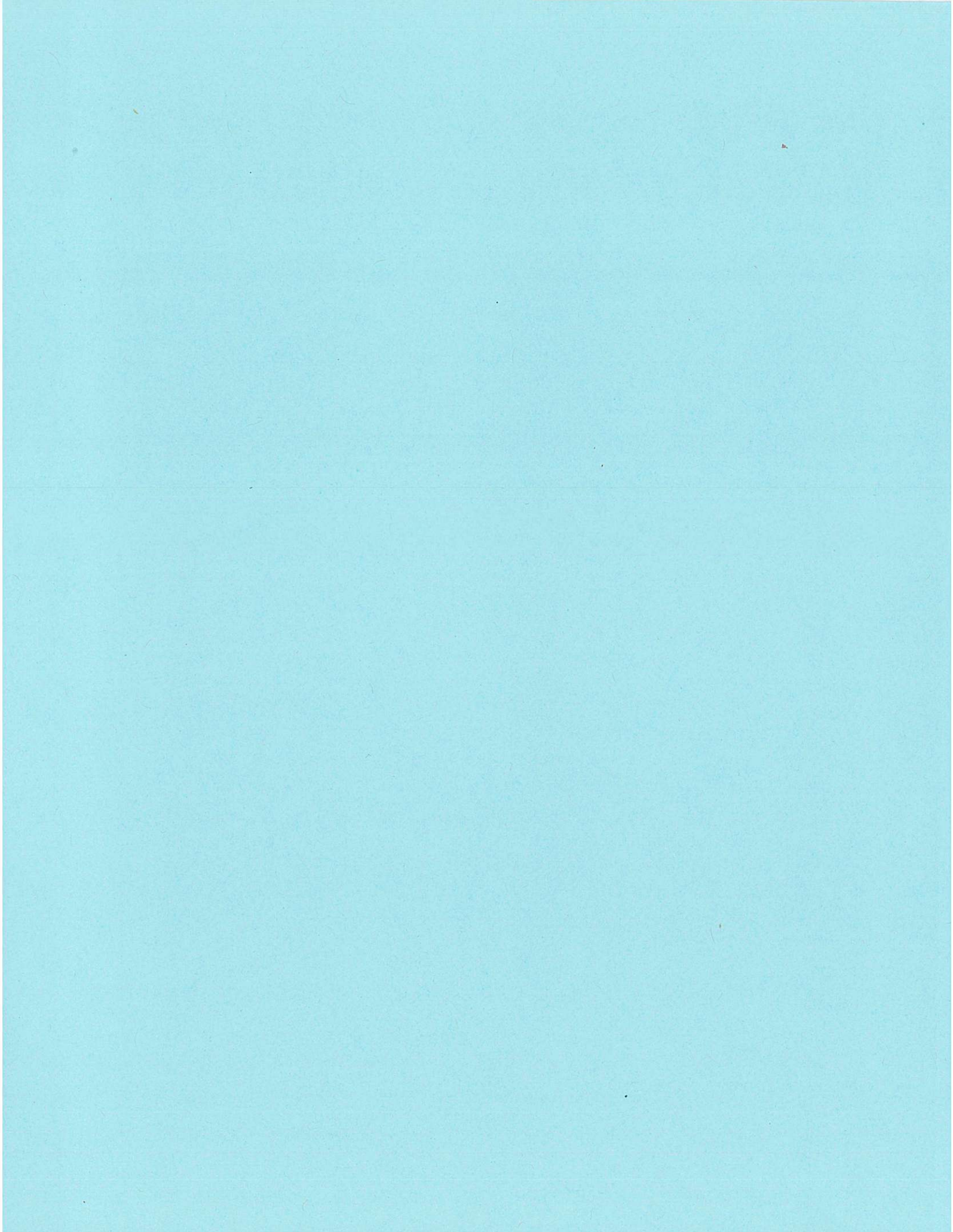
- (i) Satisfactory appraisal report for the property, no more than six(6) months old valuing the Property "as is" The report should be accompanied by a transmittal letter authorizing the Lender to rely on the report for financing purposes.
- (ii) A clear copy of the Purchase and Sales Agreement and all schedules, addendums, and revisions to the same;
- (iii) Financial Statement documenting the last 3 years EBITA since this is an owner-occupied property;
- (iv) Satisfactory insurance and evidence of the same prior to any Funding by the Lender, which has been review and approved by the Lender which shall include coverage as set out or otherwise required by the Lender.

We look forward to assisting in this matter.

Yours,

A handwritten signature in black ink, appearing to read 'P. Liston', written in a cursive style.

Peter Liston, Ph.D., J.D.
Barrister & Solicitor



Joan Xu

From: Bosco Chan <bosco.chan@livesolar.ca>
Sent: Wednesday, November 14, 2018 2:12 PM
To: Sara Erskine
Cc: huigang sun; Joan Xu; Malik Martin
Subject: Re: Besco Refinancing

Good afternoon Sara

This email confirms the appraisal is the last document we require, once received, we target to close the transaction within 30 days.

Cheers

Best regards.

Bosco Chan
Managing Director

Direct-line: 647-725-3358 ext.700
Mobile: 613-878-0060



On Wed, Nov 14, 2018 at 11:35 AM Sara Erskine <Sara.Erskine@ruetersllp.com> wrote:

Bosco,

It was a pleasure to speak to you today.

Thank you for the update on the status of the due diligence for the refinancing. I wanted to confirm that the last document that you are waiting to receive from Andrew before the refinancing can be completed is the appraisal report on the Port Hope Property.

Please confirm that the appraisal is the last document you require.

Thanks very much,

Sara

Sara J. Erskine, Partner

Rueters LLP

250 Yonge Street, Suite 2200
Toronto, ON M5B 2L7

t 416-597-5408

f 416-869-3411

sara.erskine@ruetersllp.com

www.ruetersllp.com

Tab G

THIS IS EXHIBIT "G"

*referred to in the Affidavit of
Irene Artuso sworn before me this
4th day of February, 2019*



A Commissioner for Taking Affidavits

Dyke Choella

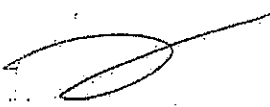

Commercial List File Number:	CV-18-603559-00CL
Civil File Number:	

Date: November 14, 2018

SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST
9:30 A.M. HEARING REQUEST FORM

Nov 20/18

A	PLEASE NOTE: The 9:30 hearing procedure is only for "ex parte, urgent, scheduling and consent matters which take no longer than 10 minutes" (Practice Direction, (2002), 57 O.R. (3 rd) 97; paragraph 25). This restriction will be enforced. This matter is (tick one or more); <input type="checkbox"/> ex parte <input type="checkbox"/> urgent <input type="checkbox"/> scheduling <input type="checkbox"/> consent <input checked="" type="checkbox"/> other (explain) update
B	Short Title of Proceeding: Besco International Investment v. Yang
C	Date(s) Requested: November 20, 2018
D	The following is a brief description of the matter to be considered at the 9:30 appointment: - to provide Justice McEwan with an update
E	The following materials will be necessary for the matter to be considered. (it is the responsibility of counsel to confirm that the proper materials are available for the Court.)
F	Is any Judge seized of these matters or any judicial conflicts? <input checked="" type="checkbox"/> Yes, Justice McEwan

COUNSEL FOR APPLICANT/MOVING PARTY		COUNSEL FOR OTHER PARTY	
Party	Applicant	Party	Respondent
Counsel	 Rebecca Huang PRINT AND SIGN OR INITIAL	Counsel	 Dylan Chochla/Sarah Turney PRINT AND SIGN OR INITIAL
Address	Rebecca Huang Professional Corporation Barristers 330 Bay Street, Suite 311 Toronto ON	Address	Fasken Martineau DuMoulin LLP Barristers and Solicitors 333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6
Phone	416.306.8450	Phone	416.868.3425/416.865.4542
Fax	416.306.8451	Fax	416.364.7813/416.364.7813
E-Mail	rhuang@rh-law.ca	E-Mail	dchochla@faskens.com; sturney@fasken.com

(IF MORE THAN 2 PARTIES INVOLVED, ADD ADDITIONAL SIGNATURES AND PARTICULARS ON REVERSE OR SEPARATE PAGE)

To be submitted to: Commercial List Office, 330 University Ave, 7th Floor, Toronto Ontario Fax to: (416) 327-6228

You may also convert to PDF and email to Toronto.Commerciallist@jus.gov.on.ca

Endorsement/Disposition <input type="checkbox"/> See attached Yellow Endorsement Form.
--

20 Nov 18

I will conduct another 9:30
on Dec 3/18.

McEwan

Tab H

THIS IS EXHIBIT "H"
referred to in the Affidavit of
Irene Artuso sworn before me this
4th day of February, 2019



A Commissioner for Taking Affidavits
Dyker Chochla

FASKEN

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

333 Bay Street, Suite 2400
P.O. Box 20
Toronto, Ontario M5H 2T6
Canada

T +1 416 366 8381
+1 800 268 8424
F +1 416 364 7813
fasken.com

November 22, 2018
File No.: 310739.00017/18295

Dylan Chochla
Direct +1 416 868 3425
dchochla@fasken.com

VIA EMAIL (MAG.CSD.To.SCJCom@ontario.ca)

Ontario Superior Court of Justice
Commercial List
330 University Avenue, 7th Floor
Toronto, ON M5G 1R7

Attention: The Honourable Justice Penny

Dear Justice Penny:

Re: *Weichang Yang v. Besco International Investment Co., Ltd.*
Court File No. CV-18-605366-00CL
Hearing Initially Scheduled for November 7, 2018, as Adjourned to December 5,
2018

I write further to my letter dated October 26, 2018 wherein we requested (and Your Honour granted) an adjournment of the above captioned hearing to December 5, 2018.

We are counsel to the Applicant, Weichang Yang ("Mr. Yang"). We are writing to request a further adjournment of the receivership application that is currently scheduled to be heard before you on December 5, 2018. I understand from Alsou that you have availability to hear the application on February 13, 2018. The Respondent, Besco International Investment Co., Ltd ("Besco"), has agreed to the adjournment and has confirmed it is also available on February 13, 2018.

As set out in my previous letter, the receivership application involves a dispute between Mr. Yang and Besco regarding, among other things, the enforcement of certain mortgages held by Mr. Yang on a property owned by Besco. In a related proceeding, Besco brought an application to enjoin Mr. Yang from continuing power of sale proceedings under the *Mortgages Act* (Ontario). Besco's application was heard before Justice McEwen on October 19, 2018.

The parties were hopeful that Justice McEwen's reasons in the injunction application would be available before the receivership application hearing. There are overlapping issues in both proceedings and Justice McEwen's endorsement will assist in refining the issues for the receivership application. However, Justice McEwen has advised that he will not be in a position to release his reasons before the hearing date of December 5.



FASKEN

Accordingly, Mr. Yang, with the consent of Besco, is requesting that the hearing date of the receivership application be adjourned to February 13, 2018. The parties expect to have Justice McEwen's reasons in advance of that date.

Rueters LLP is counsel to Besco and is copied on this letter.

Please do not hesitate to contact the undersigned should you have any questions or require any further information regarding this request.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP



Dylan Chochla


DC/ia

cc. *Rueters LLP (Sara Erskine/ Malik Martin)*



Tab I

THIS IS EXHIBIT "I"
referred to in the Affidavit of
Irene Artuso sworn before me this
4th day of February, 2019



A Commissioner for Taking Affidavits
Dylan Chochla

COUNSEL SLIP

035

Court File No. C-18-00603559-00CL

Date: 03-Dec-2018

No. On List 1

Title of Proceeding BESCO INTERNATIONAL INVESTMENT - ~~VSS~~ YANG

Counsel for:

Plaintiff(s) []
Applicant(s) []
Petitioner(s) []

Dylan Chochla
Counsel For Weichang Yang

Phone No. 416-868-3425

Fax No. 416-364-7813

e: dchochla@facter.ca

Counsel for:

Defendant(s) []
Respondent(s) []

Sara J. Erskine
Malik Martin
Counsel for Besco.

Phone No. 416-969-9192

Fax No. 416-569-3411

3 Dec 18

Matter to return for another 9:30
on Dec 21/18 to review status. If
finding obtained earlier a matter resolved
parties can write directly to me & vacate
the 9:30.

MCE

Tab J

THIS IS EXHIBIT "J"
referred to in the Affidavit of
Irene Artuso sworn before me this
4th day of February, 2019


A Commissioner for Taking Affidavits
Dylan Choche

Dylan Chochla

From: Dylan Chochla
Sent: December-20-18 4:49 PM
To: 'Sara Erskine'; Malik Martin
Subject: RE: Yang/Besco - Update
Attachments: 92885585_v(1)_Undertaking to Discharge Mortgages (Yang) (Revised).DOC; BL - Undertaking (Revised).pdf; 92764185_v(1)_Payout Statement (Dec 20, 2018).XLSX

Hi Sara,

What is the lender confirming?

Attached is a revised draft of the undertaking that removes the payment to the Municipality. I've spoken with the Municipality and they have advised that if the payment from Besco that is due tomorrow is not received, their deal with Besco is off the table and they will ask us to require that the outstanding municipal taxes be paid.

I've also attached a revised draft of the payout statement that removes the payment of the taxes. I have not updated the costs item, as it will need to be updated to reflect the fees incurred up to closing, but the figure is close to the final number.

The two bank drafts in the amount of \$25,000 each (from Viceroy dated January 19, 2018, and from Rui Xen Ren dated March 19, 2018) were deposited to our trust account. We have deducted \$50,000 from the fees claimed. I am advised that the remaining cheques that Besco provided, which were not certified, were returned to Mr. Sun.

Thanks,
Dylan

Dylan Chochla
ASSOCIATE
T. +1 416 868 3425 | F. +1 416 364 7813

From: Sara Erskine [<mailto:Sara.Erskine@ruetersllp.com>]
Sent: December-20-18 4:26 PM
To: Dylan Chochla; Malik Martin
Subject: RE: Yang/Besco - Update

Hi Dylan,

Sorry for the delay in responding. Malik and I are waiting for a confirmation letter from the lender.

In the interim, are you able to send me the revised calculation on the amount owing subtracting the amount of the property taxes and the legal fees already paid by Ms. Sun?

Sara

Sara J. Erskine, Partner
Rueters LLP

250 Yonge Street, Suite 2200
Toronto, ON M5B 2L7
t 416-597-5408
f 416-869-3411
sara.erskine@ruetersllp.com
www.ruetersllp.com

From: Dylan Chochla [<mailto:dchochla@fasken.com>]
Sent: Thursday, December 20, 2018 2:07 PM
To: Sara Erskine <Sara.Erskine@ruetersllp.com>; Malik Martin <Malik.Martin@ruetersllp.com>
Subject: Yang/Besco - Update

Hi Sara and Malik,

Just checking in to see if there have been any developments on the financing? We have our update meeting with Justice McEwen tomorrow morning. Also, I know that a significant payment is due to the Municipality of Port Hope tomorrow. Are things on track for that payment to be made?

Thanks,
Dylan

 Dylan Chochla
ASSOCIATE

FASKEN

Fasken Martineau DuMoulin LLP
T. +1 416 868 3425 | F. +1 416 364 7813
dchochla@fasken.com | www.fasken.com/en/Dylan-Chochla
333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6

This email contains privileged or confidential information and is intended only for the named recipients. If you have received this email in error or are not a named recipient, please notify the sender and destroy the email. A detailed statement of the terms of use can be found at the following address <https://www.fasken.com/en/terms-of-use-email/>.

Ce message contient des renseignements confidentiels ou privilégiés et est destiné seulement à la personne à qui il est adressé. Si vous avez reçu ce courriel par erreur, S.V.P. le retourner à l'expéditeur et le détruire. Une version détaillée des modalités et conditions d'utilisation se retrouve à l'adresse suivante <https://www.fasken.com/fr/terms-of-use-email/>.

UNDERTAKING RE: DISCHARGE

TO: Besco International Investment Co., Ltd. (the “Chargor”)

AND TO: Rueters LLP (Sara Erskine), solicitors for the Chargor

RE: Charge in favour of Weichang Yang (the “Mortgagee”) registered as Instrument No. ND153386, together with Assignment of Rents registered as Instrument No. ND159134; and

Charge in favour of the Mortgagee registered as Instrument No. ND166861, together with Assignment of Rents registered as Instrument No. ND166862 (collectively, the “Security”)

in each case registered on title to the property municipally known as 414 Croft Street, Port Hope, Ontario, Canada (the “Property”)

WHEREAS the Chargor has advised that the Chargor intends to secure \$5 million in financing from Livesolar Capital Corp;

AND WHEREAS the Chargor has further advised that the Chargor will use such financing, in part, to repay all indebtedness and obligations of the Chargor to the Mortgagee;

AND WHEREAS the Mortgagee has confirmed that, provided payment in full in the amount of ~~[\$3,827,301.10]~~ ~~[NTD: To be updated to account for legal fees incurred to closing and costs of discharge.]~~ (the “Pay-Off Amount”) is received and confirmed by Fasken Martineau DuMoulin LLP (“Fasken”), counsel to the Mortgagee, on or before December 28, 2018, the Mortgagee will prepare and register appropriate discharges in respect of the Security;

AND WHEREAS the particulars of the Pay-Off Amount are set out in the Mortgagee’s discharge statement attached at Schedule “A”;

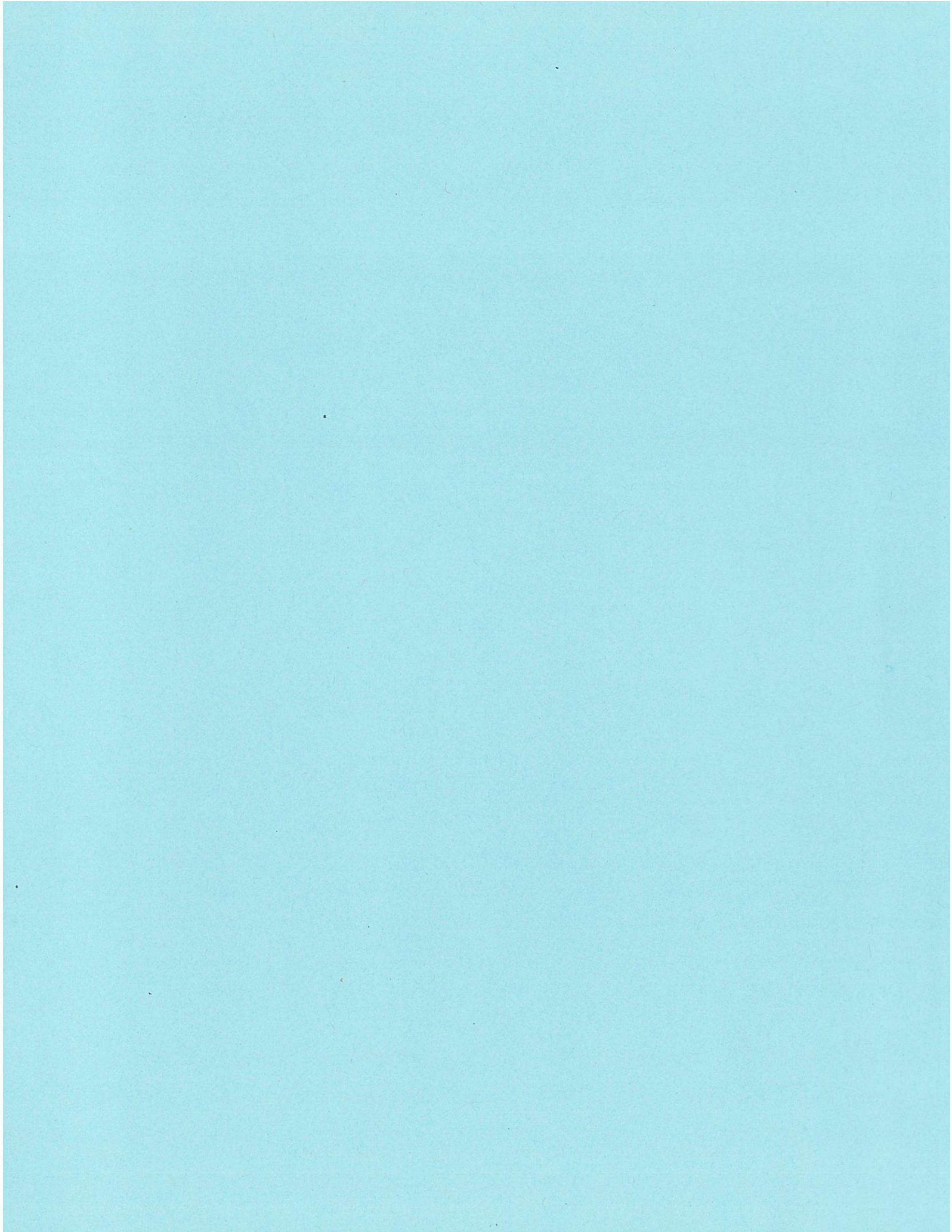
NOW THEREFORE the Mortgagee undertakes that, effective upon a wire transfer being received by Fasken at the account set out in Schedule “B” hereto of immediately available funds in an amount equal to the Pay-Off Amount on or before December 28, 2018, the Mortgagee will prepare and register appropriate discharges in respect of the Security.

DATED as of the ____ day of _____, 2018.

WEICHANG YANG

Schedule "A"
(Mortgagee's discharge statement)

Schedule "B"
(Wire transfer information)



UNDERTAKING RE: DISCHARGE

TO: Besco International Investment Co., Ltd. (the "Chargor")

AND TO: Ructers LLP (Sara Erskine), solicitors for the Chargor

RE: Charge in favour of Weichang Yang (the "Mortgagee") registered as Instrument No. ND153386, together with Assignment of Rents registered as Instrument No. ND159134; and

Charge in favour of the Mortgagee registered as Instrument No. ND166861, together with Assignment of Rents registered as Instrument No. ND166862 (collectively, the "Security")

in each case registered on title to the property municipally known as 414 Croft Street, Port Hope, Ontario, Canada (the "Property")

WHEREAS the Chargor has advised that the Chargor intends to procure \$5 million in financing from Livsolar Capital Corp;

AND WHEREAS the Chargor has further advised that the Chargor will use such financing, in part, to repay all indebtedness and obligations of the Chargor to the Mortgagee;

AND WHEREAS the Mortgagee has confirmed that it has received a payment in full in the amount of ~~[\$4,685,918.10]~~ 103,827,301.10 [NTD: To be updated to account for legal fees incurred to closing and costs of discharge, as well as amount of tax arrears owing to Municipality of Port Hope as of closing date.] (the "Paid Amount") as received and confirmed by Fasken Martineau DuMoulin LLP ("Fasken"), counsel to the Mortgagee, on or before December 28, 2018, the Mortgagee will prepare and register appropriate discharges in respect of the Security;

AND WHEREAS the parties to the Paid Off Amount are set out in the Mortgagee's discharge statement attached at Schedule "A";

NOW THEREFORE the Mortgagee undertakes that, effective upon a wire transfer being received by Fasken in the amount set out in Schedule "B" hereto of immediately available funds in an amount equal to the Paid Off Amount on or before December 28, 2018, the Mortgagee will:

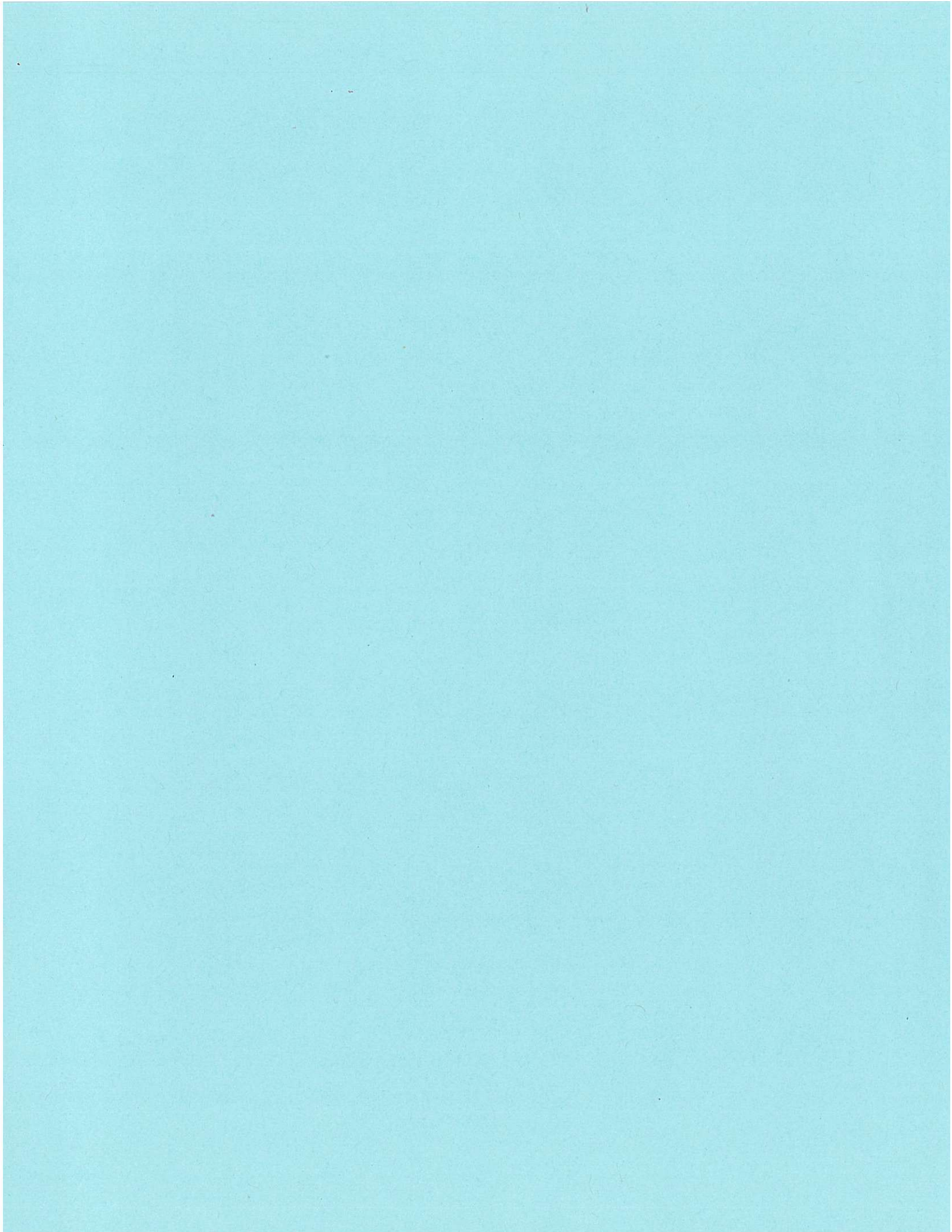
- (a) prepare and register appropriate discharges in respect of the Security; and
- (b) remit ~~\$5,147,000~~ [NTD: To be updated to account for tax arrears owing to Municipality of Port Hope as of closing date.] to the Municipality of Port Hope, or as it may direct in writing, on account of municipal realty tax arrears owing on the Property.

DATED as of the ____ day of _____, 2018.

WEICHANG YANG

Schedule "A"
(Mortgagee's discharge statement)

Schedule "B"
(Wire transfer information)



Loan Schedule - Mc. Hui gang Sun Loan
As at December 28, 2018

Date	Description	Total Payment Amount Received	Principal Payment Received Amount	Interest Payment Received Amount	Principal Amount Upto Date	Interest Accrued Amount Upto Date
01-Jun-17	Loan			-	5,000,000.00	
20-Jun-17	Principal payment	1,200,000.00	1,200,000.00	-	3,800,000.00	
10-Jul-18	Principal and interest payment	300,000.00	88,700.00	211,300.00	3,711,300.00	
24-Jul-17	Principal and interest payment	502,500.00	500,000.00	2,500.00	3,211,300.00	
20-Aug-17	Interest payment	40,140.00	-	40,140.00		
20-Sep-17	Interest payment	40,140.00	-	40,140.00		
20-Oct-17	Interest payment	40,140.00	-	40,140.00		
28-Nov-17	Interest payment	40,140.00	-	40,140.00		
20-Dec-17	Interest payment	40,140.00	-	40,140.00		
19-Jan-18	Interest payment	40,140.00	-	40,140.00		
27-Feb-18	Interest payment	40,140.00	-	40,140.00		
20-Mar-18	Interest payment	40,140.00	-	40,140.00		
20-Apr-18	Interest payment	40,140.00	-	40,140.00		
18-May-18	Interest payment	40,140.00	-	40,140.00		
Until 2018-12-28	Interest accrual					304,845.23
28-Dec-18	Total	2,403,900.00	1,788,700.00	615,200.00	3,211,300.00	304,845.23

[NTD: Costs to be updated as of closing date, and to include discharge costs.]	PRINCIPAL & UNPAID INTEREST:	3,516,145.23
	COSTS OWING:	311,155.87 (includes deduction for: (i) \$25,000 payment received from Viceroy; and (ii) \$25,000 payment received from Rui Xin Ren)
	TOTAL AMOUNT OWING:	3,827,301.10

Tab K

THIS IS EXHIBIT "K"

*referred to in the Affidavit of
Irene Artuso sworn before me this
4th day of February, 2019*

A handwritten signature in blue ink, appearing to read "Dylan Chochler", written over a horizontal line.

A Commissioner for Taking Affidavits

Dylan Chochler

① 9:30

COUNSEL SLIP

COURT FILE NO. CV-11-00603SS-CL DATE December 21, 2018

NO. COURT 1

TITLE OF PROCEEDING: BESCO INTERNATIONAL INV.YS YANG, WEICHAS

COUNSEL FOR: Wichay Yang
PLAINTIFF(S)
~~COMPLAINT~~
PETITIONER(S)
Dan Chaochi
Hustan

PHONE & FAX NOS.
T: 416-868-3425
F: 416-868-7813
E: dchaochi@faston.ca

COUNSEL FOR:
DEFENDANT(S)
RESPONDENT(S)
Sara J. Eskine
Malik Mastin
Besco International

PHONE & FAX NOS.
T: 416-597-5405
F: 416-597-3411
SARA.ESKINE@METRO
11pm.com

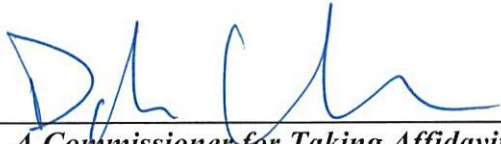
21 Dec 18.

No further order required.

M.E.S.T.

Tab L

THIS IS EXHIBIT "L"
referred to in the Affidavit of
Irene Artuso sworn before me this
4th day of February, 2019



A Commissioner for Taking Affidavits
Dylan Chochle

Court File Number: CV-18-60355-9500CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Besco International Investment Co. Ltd.
Plaintiff(s)

AND

Weichang Yang
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
<u>P. Huang / H. Biresfeldt - Applic.</u>		
<u>D. Cherkala - Resp.</u>		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows): _____

The Applicant, Besco International Investment Co. Ltd. (Besco) brings this Application seeking an injunction preventing the Resp. Weichang Yang from exercising Power of Sale proceeding brought by Mr Yang pursuant to a Notice of Sale Under Mortgage dated July 17, 2018 with respect to 414 Croft Street, Port Hope (the Property)

2 Jan 19
Date

McE...
Judge's Signature

Additional Pages 14

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

until a number of determinations take place by the Court as will be outlined below.

For the reasons that follow I dismiss the Application.

By way of background Mr. Hei Bang Sun is the principal of Beso and incorporated the company in British Columbia.

Mr Sun later entered into a loan agreement with Mr ~~Yan~~^{Mr Yang} on May 4/17 whereby to repay the loan by July 20/17. When this did not happen another loan agreement was entered into on ~~July~~^{Sept} 20/17. ~~Beso~~^{Beso} Beso, amongst others, guaranteed the loan in the amount of \$500,000. The maturity date was extended to Oct 20, 2017. Beso was represented by counsel.

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Besco also executed a separate Guarantee and Postpayment of Claim the same day.

Thereafter, a mortgage was registered against the ~~main~~ⁱⁿ Property owned by Besco in the amount of \$5,000,000.00. This was approved by Besco; and Besco authorized that the mortgage could be registered.

The first mortgage contained an error in which "Additional Provisions" were omitted.

By Oct 20/17 the loan which the parties agreed totalled \$3,211,300.00 plus some interest and expenses had not been repaid.

Messrs. Sun, Tang as well as Besco, and other companies controlled by Mr Sun, entered into a Fairbairne Agreement extending the

Court File Number. _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

repayment date to Aug 20/18. Beso executed the document which, again, confirmed its guarantee.

The Endorsement Agreement, pursuant to Article 3.3, also authorized Mr. Yang to register a Replacement Mortgage (to rectify the above issue) which it did.

The Replacement Mortgage was subsequently taken out on the Property. As a result there are two mortgages on the Property, both in the amount of \$5,000,000.00. Mr. Yang has advised Mr. Sim (Beso), through counsel, that he is prepared to discharge the first mortgage if they can confirm that no intervening claims were filed prior to the Replacement Mortgage. No response has been provided by Mr.

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

San or Besco. Mr Yang has also indicated a willingness to work with any refinancer in this regard. Besco also authorized that the Replacement Mortgage could be registered. Besco was ~~not~~ represented by counsel.

Once again the loan was not repaid and an act of default resulted leading to Mr Yang exercising the Power of Sale that Besco seeks to prevent.

This leads to a number of issues and I will deal with each in turn.

The first involves Besco's undertaking to pay damages as per Rule 40.03 as set out in Mr Sans affidavit. I agree with Mr Yang that this undertaking is a brief, bald assertion which is meaningless in the

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

circumstances of this case. Significant property taxes on the property are outstanding. BMO has commenced receivership proceedings against Mr. Sun in Vancouver and the amounts owing in this case have been long-outstanding with no payments being made.

I agree with the rationale of Justice Keshman in the very similar case of N.M. Sutherland Developments Ltd. v. Platinum Plus Products Inc. 2011 ONSC 7675 that, in these circumstances, a bald statement cannot be accepted and the request for an injunction, interim or otherwise, ought to be rejected.

Nonetheless, I will review the other arguments raised by Besco. Besco's first submission is that there is a serious issue to be

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freed as to whether the law of British Columbia governs the parties' rights. The July 20, 2017 Loan Agreement does provide that the laws of British Columbia govern and Besco was incorporated in British Columbia.

I accept Mr. Tai's submissions however that there is no serious issue here: The Property is located in Ontario and the Replacement Mortgage is governed by the laws of Ontario. Thus the Land Titles Act and the Mortgages Act apply.

This conclusion is supported by the cases of Duke v Aroder [1932] SCR 734 and 243930 Alberta Ltd v Wickham 1990 CarswellOnt 572.

While Besco has filed an expert's report setting out the different methods of mortgage enforcement in

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British Columbia, that report does not state that the enforcement of the Replacement Mortgage should actually be in British Columbia.

The second issue raised by Besco relates to the issue of consideration. Besco submits that Mr Yang gave no consideration for Besco to guarantee the pre-existing debt.

I disagree. I accept Mr Yang's submission that consideration need not pass directly from the creditor to the guarantor. It is sufficient if it flows from the creditor to the principal: CLT Financial Ltd v. Lambert 2005 BCSC 1779. I further accept that an act of forbearance constitutes consideration: Royal Bank v. Kiska 1967 CarswellOnt 125.

Last, in the Forbearance Agreement Besco

1. Or that British Columbia law applies.

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confirmed the validity and enforceability and that it had no defences.

The Third Issue involves the registration of the two aforementioned mortgages. Besco submits that these registrations "contravene the Ontario laws." I do not agree.

As noted, Mr Yang has agreed to discharge the first mortgage. Besco authorized the registration of both mortgages and Mr Yang, as noted, will discharge the first mortgage upon receiving certain reasonable guarantees about intervening changes. None of this should defeat the guarantee.

All Mr Sun and Besco have to do is provide reasonable cooperation to resolve the issue - which Besco agreed to.

The Fourth Issue involves Besco's

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Submission that the Notice of Sale contains material errors. These include a tax debt not owed to Mr Yane, unexplained costs and wrongly inflated interest.

I do not accept these submissions. There is no dispute that Mr. Yane seeks to recover only the agreed upon outstanding amount of the loan and the 15% interest.

A mortgage was registered in a higher amount ~~to~~ deal with ongoing costs and interest.

The mortgage interest sought is set out in an amortization schedule based on interest payments made and to the end of the redemption period. It is properly set out.

Regarding taxes it is clear Mr Yane is not seeking to be paid the

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taxes. Mr Yang has been in contact with the Municipality. The position taken by Bescro is overly technical and cannot be said to have caused any confusion. In an event payment of taxes is dealt with in section 5 of the Standard Change Terms. The Notice of Sale provision concerning taxes is consistent with section 5. Mr Yang's position is supported by the decision in NM Sutherland Developments Ltd v. Platinum Plus 2011 ONSC 7675.

Overall, I also accept Mr. Yang's submission, supported by the recent Ont C.A. decision in 1173928 Ontario Inc v. 1463096 Ontario Inc 2018 ONCA 669. That a notice of sale should not be held inoperative because of minor irregularities so long as it meets the purpose for which

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it is required.

In my view, the complaints raised by Besco are minor and technical in nature. It would not be commercially reasonable to accept them. Besco cannot assert that it is being misled or hooded here.

The record demonstrates that Mr. Yan has worked with Mr. Sun and Besco to attempt to resolve the outstanding debt issues. This includes legal costs and disbursements which are to be paid under the loan agreement and mortgage. All documents have been produced. In any event, costs can be dealt with at a subsequent hearing (and they are accruing with time): Hawstern v. Gordana Properties Inc 2006 CarswellOnt 4428.

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Insofar as irreparable harm is concerned, I do not believe that Besco has established the proof of the test. Besco simply leads the property to the related company Uiceroy. The evidence, which is limited, speaks to irreparable harm concerning Uiceroy - which is immaterial.

Last balance of convenience favours Mr Yang as well. He has made the loan to Mr Sun, maturity dates have been extended. Mr Sun and Besco have promised to pay and have not done so.

The Application is -- dismissed.
Overall, it bears noting that Besco takes greatest care with the fact two mortgages have been registered on title. The fact remains however that Mr Yang has not been repaid.

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despite several extensions; the two mortgages were registered with the consent of Besco; and, Mr Yang has demonstrated a legitimate willingness to work constructively with Mr Sim and Besco (and any financier) to discharge the mortgages in exchange for payment of the amount owing.

Mr Yang is entitled to his costs. The Loan Agreement and terms of the Replacement Mortgage entitle him to actual costs incurred. In the circumstances I agree that costs should be awarded on this scale.

I am reducing the amount sought however to \$100,000.00 for fees plus HST since, in my view, a reduction is reasonable given the number of lawyers who have dealt with the

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File Disbursements of \$7,156.27 are
reasonable -

[Signature]

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Judges Initials *[Signature]*

WEICHANG YANG
Applicant

-and-

BESCO INTERNATIONAL INVESTMENT CO., LTD.
Respondent

Court File No.: CV-18-605366-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

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BESCO INTERNATIONAL INVESTMENT CO., LTD.
Respondent

Court File No.: CV-18-605366-00CL

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Proceedings commenced at Toronto

SUPPLEMENTARY APPLICATION RECORD

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