

FORMS 27
[RULES 6.3 AND 10.52(1)]

CLERK'S STAMP

COURT FILE NUMBER 1903-08169

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF FORTIS LGS STRUCTURES INC.

DEFENDANTS STATION POINT DEVELOPMENTS LTD. and
BCM DEVELOPMENTS LTD.

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BENNETT JONES LLP
Barristers and Solicitors
3200 Telus House
South Tower, 10020 – 100th Street
Edmonton, Alberta T5J 0N3

Attention: Katherine J. Fisher and Sean Zweig
Telephone No.: (780) 917-4268/ (416) 777-6254
Fax No.: (780) 421-7591
Email: fisherka@bennettjones.com
zweigs@bennettjones.com

NOTICE TO THE RESPONDENTS:

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: May 17, 2022
Time: 11:30 a.m.
Where: Alberta Court of Queen's Bench Edmonton
Before Whom: The Honourable Justice G.S. Dunlop

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant, KSV Restructuring Inc. (formerly KSV Kofman Inc.), as trustee and receiver and manager of certain property of Station Point Developments Ltd. (in all such capacities, the "**Receiver**") pursuant to an Order (Appointing Builders' Lien Trustee and Receiver and Manager) of the Court of Queen's Bench of Alberta dated June 18, 2019, seeks an Order substantially in the form attached hereto as Schedule "A":
 - (a) declaring service of the Application and all supporting materials to be good and sufficient, and abridging the time for service of the Application to the time actually given, if necessary;
 - (b) directing the Registrar of Land Titles to register a strata subdivision plan (the "**Plan**") in respect of the Lands, as defined herein, notwithstanding that one or more of the Interest Holders, as defined herein, has not provided a written consent to register the Plan;
 - (c) dispensing with the requirements of sections 64(2), 85(1) and 85(3) of the *Land Titles Act*;
 - (d) directing the Registrar of Land Titles to register any Order granted herein notwithstanding the requirements of subsection 191(1) of the *Land Titles Act*; and
 - (e) such further and other relief as counsel may advise and this Honourable Court may permit.

Grounds for making this application:

2. In or around 2012, BCM Developments Ltd. ("**BCM**") entered into negotiations and subsequently an agreement of purchase and sale (the "**Agreement**") to purchase the real property municipally described as 403 Belvedere Gate NW Edmonton (the "**Lands**") from the City of Edmonton. Prior to closing, the Agreement was assigned by BCM to Station Point Developments Ltd. (the "**Company**"). The City provided a vendor-take-back mortgage to the Company.
3. In 2016, the Company obtained a construction loan from KingSett Mortgage Corporation ("**KingSett**") to develop and construct on the Lands a 112 unit residential apartment building, together with a ground floor commercial space (the "**Project**"). Construction of the Project commenced in 2016 and was expected to be completed by the Company in 2018.
4. The issues that gave rise to the receivership proceedings included significant cost overruns on the construction of the Project, the registration of builders' liens against title to the Lands, and a dispute between the Company and Fortis LGS Structures Inc., the

Project's prior general contractor. The principal purpose of the receivership proceedings is to complete the Project in order to maximize recovery for the Company's stakeholders. The Project was completed in March 2021.

5. The Company originally intended to build five apartment buildings on the Lands; however, only two buildings have been constructed and the balance of the Lands remains undeveloped (the "**Vacant Lands**"). In an effort to increase the value of the Vacant Lands, the Receiver sought, and has received approval from the City, to subdivide and rezone the Vacant Lands.
6. In June 2020, the Receiver engaged Jones Lang LaSalle ("**JLL**") to list the Lands for sale and launched a sale process (the "**Sale Process**"). JLL marketed the Project extensively across Canada over approximately 18 months.
7. As a result of the Sale Process, two parties submitted offers. After consultation with KingSett, the Receiver rejected one offer, as the consideration offered was inadequate. The second offer, submitted by the proposed purchaser (the "**Proposed Purchaser**"), was accepted by the Receiver and the Receiver and the proposed Purchaser entered into the Offer to Purchase dated September 24, 2021 (as amended from time to time) (the "**Sale Agreement**").
8. The Sale Agreement was subject to three conditions:
 - (a) the Court issuing an Approval and Vesting Order;
 - (b) the Potential Purchaser arranging financing to purchase the Purchased Assets by December 31, 2021, subject to the Receiver's unilateral option to extend such date in accordance with the Sale Agreement;
 - (c) the Transaction closing on or before December 31, 2021, subject to the Receiver's unilateral option to extend such date in accordance with the Sale Agreement.
9. The Transaction was approved by the Court by an Approval and Vesting Order granted December 14, 2021:
10. On March 8, 2022, the Receiver sent a notice to the Potential Purchaser that it would provide no further extensions and would not waive the Financing Condition. Accordingly, the Transaction terminated on its terms.
11. As a result of the termination of the Transaction, the Receiver re-engaged JLL on March 27, 2022 to conduct a further sale process for the Project, which sale process is underway (the "**Renewed Sales Process**").

12. The Receiver believes that registration of the Plan may increase the value of the Lands and therefore be beneficial to the Renewed Sales Process and the interests of the stakeholders of the Company.
13. On or about April 20, 2022, the Receiver, through its legal counsel, sent correspondence to all parties with a registered interest against title to the Lands (the "**Interest Holders**"), advising of the Receiver's intention to register the Plan and requesting the written consent of the Interest Holders to the same.
14. To date, the Receiver has not received the consent of all Interest Holders to register the Plan.
15. The Receiver seeks to register the Plan, notwithstanding that one or more of the Interest Holders has not provided a written consent to register the Plan.
16. Registration of the Plan will not prejudice any of the Interest Holders or other stakeholders of the Company.
17. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

18. The pleadings and proceedings in this action;
19. The Affidavit of Shelly Bilinsky, sworn May 9, 2022, filed; and
20. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

21. The *Alberta Rules of Court*, Alta Reg 124/2010.

Applicable Acts and regulations:

22. *Land Titles Act*, RSA 2000, c L-4, ss 64, 85, 190, 191(1) and 191(3)(b); and
23. Such further another Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

24. None.

How the application is proposed to be heard or considered:

25. In person before the Honourable Mr. Justice G.S. Dunlop on the Commercial List.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

SCHEDULE "A"
PROPOSED FORM OF ORDER

COURT FILE NUMBER 1903-08169
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF(S) FORTIS LGS STRUCTURES INC.
DEFENDANT(S) STATION POINT DEVELOPMENTS LTD. and
BCM DEVELOPMENTS LTD.

DOCUMENT

ORDER

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Fax No.: (780) 421-7591
Email: fisherka@bennettjones.com
zweigs@bennettjones.com

DATE ON WHICH ORDER WAS PRONOUNCED: May 17, 2022
NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice G.S. Dunlop
LOCATION OF HEARING: Edmonton, Alberta

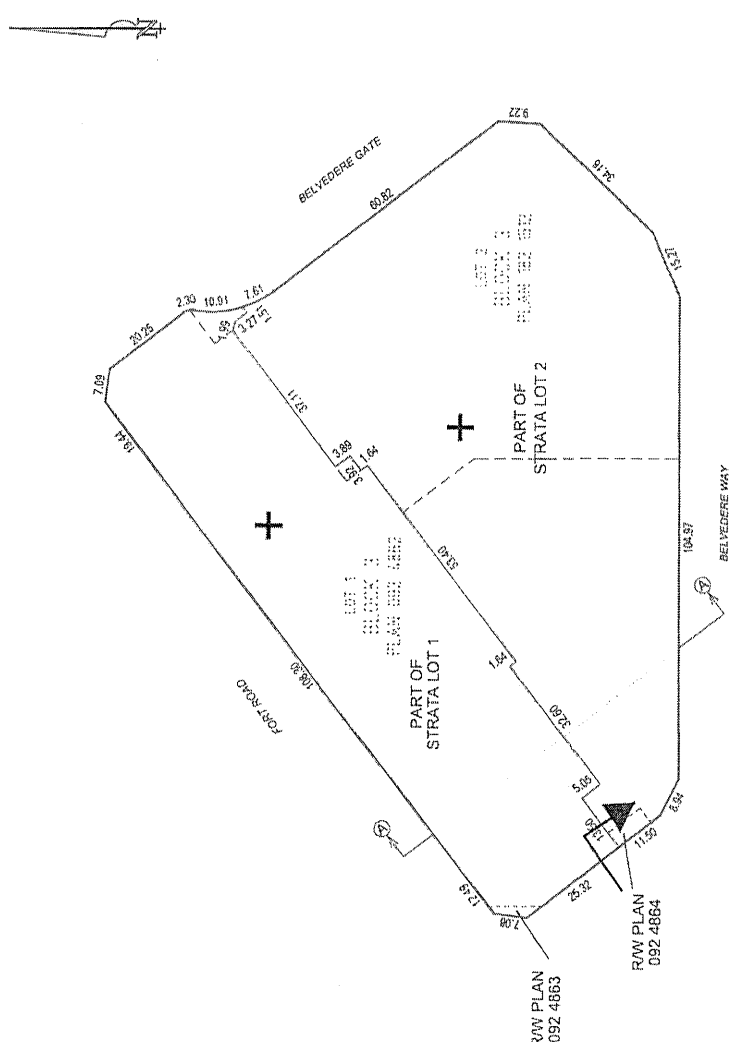
UPON THE APPLICATION by KSV Restructuring Inc. (previously KSV Kofman Inc.) in its capacity as the Court-appointed trustee and receiver and manager (the "**Receiver**") of certain undertakings, property and assets of Station Point Developments Ltd.; **AND UPON HAVING READ** the Affidavit of Shelly Bilinsky, sworn May 9, 2022, and the Affidavit of Service; **AND UPON HEARING** the submissions of counsel for the Receiver and of other interested parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

Schedule "A"

PLAN OF SUBDIVISION

Enclosure I: Strata Subdivision elevations at 659.00 and above



ELEVATIONS AT 659.00 AND ABOVE

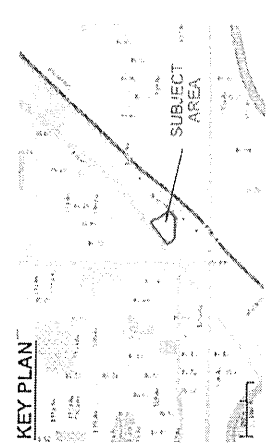
+ Restrictive covenant re: Disturbed soil
 → Access easement

ISL Engineering and Land Services Ltd.

NOTES:
 - ALL DISTANCES AND ELEVATIONS ARE SHOWN IN METRES AND DECIMALS THEREOF.
 - ALL DISTANCES ON THIS PLAN ARE TO BE TAKEN AS SHOWN.
 - ALL INFORMATION SHOWN ON THIS PLAN IS BASED ON THE SURVEY AND PRELIMINARY, AND SUBJECT TO CHANGE BY THE PLAN OF SURVEY.
 - ELEVATIONS ARE GEOMETRIC AND ARE DERIVED FROM A.S.C.M. (ELEV. =)
 - THE BOUNDARY SHOWN, EVEN IF ANNOTATED, IS SUBJECT TO CHANGE BY THE PLAN OF SURVEY.
 - PLAN TO BE SUBDIVIDED SHOWN OUTLINED THIS.

SHEET 1 OF 2 SHEETS

KEY PLAN



REV. NO.	DATE	ITEM	BY
2	Sept 20 21	UPDATED ELEVATIONS	RH
1	Nov 20 20	OVERLAY SITE PLAN DWTG TENTATIVE PLAN	RH
0	Nov 13 20	ORIGINAL PLAN COMPLETED	RH

REVISIONS

STATION POINTE
 TENTATIVE PLAN SHOWING
STRATA SPACE SUBDIVISION

OF
 LOT 1, BLOCK 3, PLAN 092 4862
 AND
 LOT 2, BLOCK 3, PLAN 182 1512
 WITHIN THE

S.W. 1/4 SEC. 23 - TWP. 53 - RGE. 24 - W. 4TH MER.
EDMONTON - ALBERTA

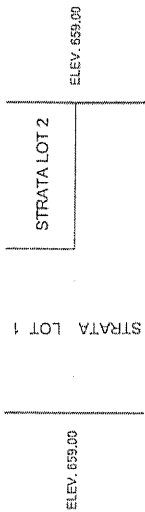
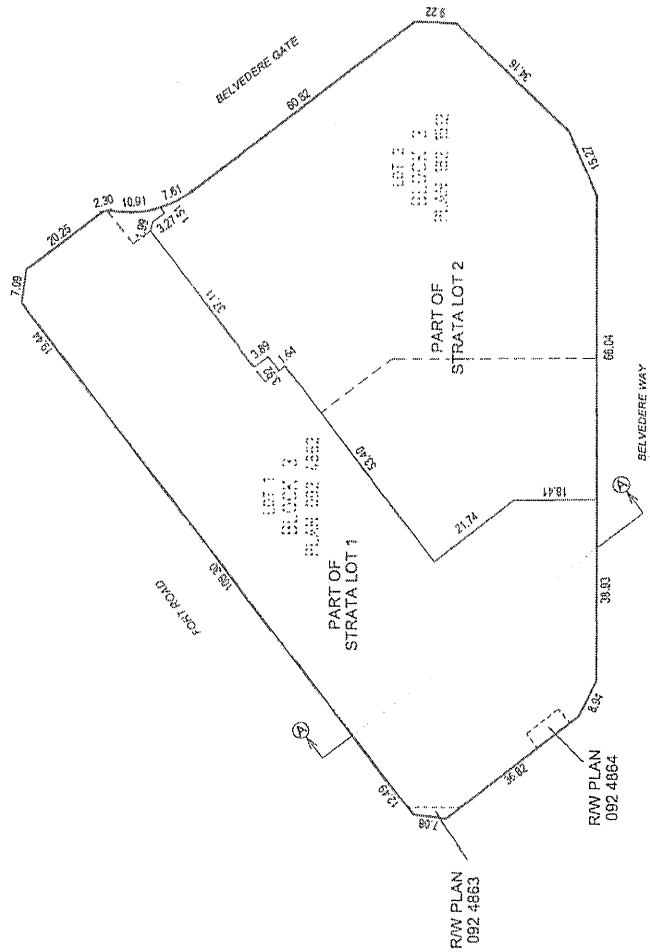


Pals Geomatics

Phone: (780) 455-3177 Fax: (780) 451-2047
 Email: edmonton@palsgeomatics.com
 (780) 175 Street NW, Edmonton, Alberta T5V 1G7

FILE NO. 120027855-1 DRAFTED BY: RH CHECKED BY:

Enclosure II: Strata Subdivision elevations below 659.00



CROSS SECTION 'A-A'
NOT TO SCALE

ELEVATIONS BELOW 659.00

Pais Geomatics
Phone: (706) 455-3177 Fax: (706) 531-3457
Email: info@paisgeomatics.com
1004-178 Street NW, Marietta, Alabama 31753-1074

FILE NO. 120022795E-1 DRAFTED BY: RH CHECKED BY: --

Schedule "B"

INTEREST HOLDERS

1. HMT Holdings Inc.
#500, 36 Toronto Street
Toronto, ON M5C 2C5
Registered Instrument: Mortgage; Instrument No. 162 208 926
2. Fortis L.G.S. Structures Inc.
9515 – 28 Avenue NW
Edmonton, AB T6N 0A3
Registered Instrument: Builders' Lien; Instrument No. 192 026 961
3. Fenceline Rentals Ltd.
24835 – 117 Avenue
Acheson, AB T7X 6C2
Registered Instrument: Builders' Lien; Instrument No. 192 075 558
4. Vipond Inc.
13056 Yellowhead Trail
Edmonton, AB T5T 3C1
Registered Instrument: Builders' Lien; Instrument No. 192 091 695
5. Met-Ex Construction Ltd.
c/o Murray L. Engelking, Engleking Law
4311 Savaryn Drive SW
Edmonton, AB T6X 2E8
Registered Instrument: Builders' Lien; Instrument No. 192 162 407
6. Hagen Surveys (1982) Ltd.
8929 – 20 Street
Edmonton, AB T6P 1K8
Registered Instrument: Builders' Lien; Instrument No. 192 143 618
7. Durabuild Windows & Doors Inc.
16404 – 100 Avenue NW
Edmonton, AB T5P 4Y2
Registered Instrument: Builders' Lien; Instrument No. 192 160 519
8. City Disposal Containers Inc.

17706 – 102 Avenue
Edmonton, AB T5S 1H5
Registered Instrument: Builders' Lien; Instrument No. 192 174 394

9. Live Wire Electric Inc.
5405 – 76 Avenue NW
Edmonton, AB T6B 0A7
Registered Instrument: Builders' Lien; Instrument No. 192 179 654
10. Fancy Doors & Mouldings Ltd.
4421 Roper Road
Edmonton, AB T6B 3S5
Registered Instrument: Builders' Lien; Instrument No. 192 179 833
11. Bradcan Caulking & Restoration Ltd.
c/o Finlay Maxton Law
13815 – 127 Street NW
Edmonton, AB T6V 1A8
Registered Instrument: Builders' Lien; Instrument No. 192 217 694
12. Met-Ex Construction Ltd.
Met Exteriors
10350 – 72 Avenue
Edmonton, AB T6E 0Z4
Registered Instrument: Builders' Lien; Instrument No. 202 040 548

Edmonton Alberta, T5J 0G9, within 14 days from the date of the receipt of this decision. The date of receipt of the decision is deemed to be seven (7) days from the date the decision is mailed.

If you have further questions, please contact subdivisions@edmonton.ca.

Regards,

A handwritten signature in black ink, appearing to read "Blair McDowell". The signature is fluid and cursive, with the first name being the most prominent.

Blair McDowell
Subdivision Authority

BM/sm/Posse #379654845-004

Enclosure(s)