

This is the 1st Affidavit of M. Goddard
in this case and was made on March 29, 2022

No. 18 4015
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WESTSEA CONSTRUCTION LTD.

Petitioner

AND:

**ANDREW SCOTT TAYLOR, DOUGLAS GEORGE ROUTLEY, LEANNE FINLAYSON,
EDITH WOOD, GABRIELLA EVA SCOFIELD, GERALD JOHN ROTERING,
HELEN ELISABETH VERWEY, HUGH ALEXANDER TRENCHARD, IRIS IRENE
HAYS, JACALYN GAIL HAYS, JAMES SCOT WALKER, JUDITH McNEIL SIM,
MARTINE GODDARD, MICHAEL GORDON CLARK, CHANTELE MARIE CLARK,
NIGEL JOHN JOSLIN, PATRICIA ANNE SMITH, PETER JAMES ROURKE,
REINER JOACHIN PIEHL, DOREEN GREETA PIEHL, ROBERT JOHN CALDER,
SANDRA SCOTT JONSSON also known as SANDRA SOCTT GROVER-SAGER,
GORDON WILLIAM GROVE, SEE-LIN SHUM, STEPHEN JAMES MATTHEW,
ANNE UDALE, WENDY ELIZABETH DUVAL**

Respondents

AFFIDAVIT

I, Martine Goddard, retired, of 1702-647 Michigan Street, Victoria, British Columbia, V8V 1S9 MAKE OATH AND SAY that:

1. I am one of the lessees of the Petitioner herein and as such have knowledge of the matters hereinafter deposed to, except where the same are stated to be made on information and belief, and as to such matters, I do believe them to be true.
2. I first came to know of the legal charges included as operating expenses in the annual operating statement issued to leaseholders in June 2017. Since becoming a leaseholder in 2014, there were no legal charges until June 2016 when \$6,980 was included in the operating expenses. Gerald Rotering advises me and I do believe that he has been a leaseholder since 2007 and reviewed operating expense statements from 2005 onwards, none of which disclosed any legal expenses until the one delivered in June 2016.

3. I requested from the petitioner clarification of the basis for the legal charges set out in the June 2017 statement and why they were included as operating expenses. By that time I was aware of the decision of Justice Mackenzie in *Trenchard v. Westsea Construction Ltd.* that directed that the respondent (petitioner in this proceeding) bear its own costs, and the court of appeal decision also noting that both appellant and respondent (petitioner in this proceeding) bear their own costs. Attached hereto and marked Exhibit A to this my affidavit are letters dated November 9 2017 and July 8 2018.
4. The petitioner never responded to my enquiries as set out in the letters I sent, leading me to believe that legal expenses claimed as operating expenses in 2016 and 2017 arose from the entirety of the Trenchard petition proceeding started in 2014.
5. We received no response from the petitioner concerning the basis of these legal charges until after Justice Power ordered the petitioner to provide a summary for the basis of these charges. Attached hereto and marked Exhibit B to this my affidavit is a true copy of the letters from Singleton Urquhart, with enclosures, dated May 21 2021 and September 9 2021.
6. To this date I have not received information to assess whether these legal charges are reasonable and prudent.

SWORN BEFORE ME at)
 Victoria, British Columbia,)
 on March 29, 2022)



A Commissioner for taking
 Affidavits for British Columbia



MARTINE GODDARD

RAJAN BASI
Barrister & Solicitor
 200-931 Fort Street
 Victoria, BC V8V 3K3

Martine Goddard
1702, 647 Michigan Street
Victoria, BC
V8V 1S9

"This is Exhibit "A" referred to in the
affidavit of Martine Goddard
sworn before me at Victoria
this 29 day of August, 2018.

November 9, 2017

Westsea Construction Ltd.
Suite 2108 – 1330 Harwood Street
Vancouver, BC
V6E 1S8

Attention: Brian Slater

Dear Mr. Slater,

RAJAN BASI
Barrister & Solicitor
200-931 Fort Street
Victoria, BC V8V 3K3

A Commissioner for taking Affidavits
for British Columbia
This is Exhibit A referred to in the Affidavit of
M. Goddard sworn before
me at the City of Victoria, in the Province of British
Columbia, this 29 day of MARCH, 2018.

Rajan Basi
Commissioner for taking Affidavits in and for
British Columbia

Enclosed are post-dated cheques to cover the 2018 monthly fees. However, the reference to "legal fees" prompts me to enquire as to whether legal expenses incurred in relation to Mr. Trenchard's lawsuits are included.

I'd like to remind you that, although Westsea's appeal was allowed in part, the Court of Appeal on October 6, 2017, clearly stated (I was there in person) that the procedure should be for Westsea to identify such amount and for the leaseholder to decide whether or not to pay it.

I find it hard to believe that Westsea would defy the direction given by the Court of Appeal, but the question does need to be asked.

Can you please confirm in writing that the operating budgets for 2017 and 2018 do not include legal expenses relating to Mr. Trenchard's lawsuit. If they do, please provide me with a calculation of my share of these expenses. I reserve the right to refuse to pay such sum, in accordance with the ruling of the Court of Appeal, and my paying the fees for 2018 and having paid those for 2017 do not constitute my acquiescence with such charges.

I am looking forward to your response.

M. Y. C. Goddard

Martine Goddard

Enclosures

Martine Goddard
Suite 1702, 647 Michigan Street
Victoria, BC
V8V 1S9

July 16, 2018

Westsea Construction
2108 – 1330 Harwood Street
Vancouver, BC
V6E 1S8

Dear Sirs,

Re: 2017 Schedule of Operating Costs and Operating Costs for 2018

Enclosed is a cheque for \$571.18 representing my suite 1702 share of the deficit expense for 2017 MINUS legal expenses. The calculation is as follows:

$$(\$551,954 - \$426,337) * .004547 = \$571.18$$

It is apparent that these costs are attributable to litigation costs you have incurred in court actions *Trenchard v. Westsea Construction Ltd.* 14-2941 and *Trenchard v. Westsea Construction Ltd.* 16-3355 and related appeals.

I refuse to pay the proportionate cost of these legal expenses unless/until a Court specifically orders that all Orchard House leaseholders are responsible for these costs. However, if you can demonstrate that a portion of these legal costs are not associated with any litigation, I will pay that portion. I will require proof of the expense, such as invoices from the law firm stating the matter for which legal advice was provided.

I refuse to pay legal fees for any matter relating to litigation for the following reasons:

- In *Trenchard v. Westsea Construction Ltd.* 2016 BCSC 1752, Mr. Justice MacKenzie found that litigation costs are not operating costs under the lease. His reasons were not overturned by the Court of Appeal (I was there).
- It is contrary to B.C. Court rules to bill for costs before they are awarded by the Court.
- The matter of legal fees is currently one of the issues that may well be ruled upon by the Supreme Court of Canada.
- Westsea Construction failed in its duty "to exercise prudent and reasonable discretion in incurring operating expenses" as required under Article 7.04 of the lease, in particular in forcing Mr. Trenchard to endure four days in Court before agreeing to provide him with a copy of the engineer's report and in making an application to strike Mr. Trenchard's pleadings. This application was in fact dismissed by Mme Justice Power in a most dismissive manner!

I further refuse to pay any interest on overdue balances unless so ordered by a Court.

Turning to the operating budget for 2018, I wrote to you on November 9, 2017, and asked you to provide me with the amount budgeted for legal fees, specifically any legal fees associated with Mr. Trenchard's actions. This letter has remained unanswered and I am now obliged to guess what amount to hold back.

I will, therefore, cancel my suite fees of \$424 for August and September, a total of \$848. I calculated that the 10 payments made and still to be made for 2018 still represent an increase of 15% over the 2017 operating budget (not including legal fees) and should suffice. However, should I have overestimated the amount allocated to legal fees, I will be happy to provide you with a cheque for the difference upon receipt of a detailed breakdown of the said budget. Conversely, should I have underestimated this amount, I reserve the right to make further adjustments next year.

Your lawyer's letter of January 16, 2018, threatened to initiate legal proceeding against any defaulting leaseholder. This letter, in my opinion, constitutes intimidation. It also contradicts Mr. Justice Mackenzie's ruling that litigation costs are not operating costs under the lease. In a court proceeding against leaseholder, Westsea Construction (and its lawyers) may well find themselves in contempt.

Finally, I wish to reiterate that I will gladly continue to pay the operating expenses other than your business expense of legal costs not directly attributable to operating the building.

Yours truly,

Martine Goddard
1702 Orchard House
Victoria

Phone: 778-679-5855

Enclosed: Cheque for \$571.18



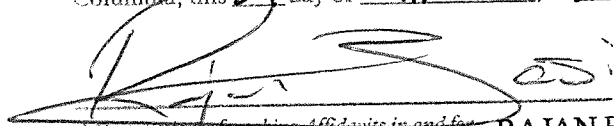
SINGLETON
REYNOLDS

By Email

M.C. (Mark) Stacey
D 604 673 7423
mstacey@singleton.com
Our File: 59666.155

May 21, 2021

This is Exhibit B referred to in the Affidavit of
M. GORDON sworn before
me at the City of Victoria, in the Province of British
Columbia, this 29 day of MAY, 2021


A Commissioner for taking Affidavits in and for
British Columbia

RAJAN BASI
Barrister & Solicitor
200-931 Fort Street
Victoria, BC V8V 3K3

VIA EMAIL (arafuse@infinity-law.com)

VIA EMAIL (h.a.trenchard@gmail.com)

Infinity Law
200 – 931 Fort Street
Victoria, BC V8V 3K3

Hugh Trenchard
805 – 647 Michigan Street
Victoria, BC V8V 1S9

Attention: Andrew M. Rafuse

Dear Sirs:

**Re: Westsea Construction Ltd. ("Westsea") v. Taylor and others
BCSC Victoria Registry No. 184015 (the "Petition")**

We write in reference to the Orders of Madam Justice Power made at the Case Planning Conference on May 3, 2021 regarding the production of a list of our firm's accounts rendered to Westsea Construction Ltd. regarding Mr. Trenchard's litigation.

As you are aware, from the Schedule of Operating Expenses legal charges expensed to the leaseholders at Orchard House were as follows:

1. 2017 - \$426,337;
2. 2018 - \$453,771; and
3. 2019 - \$659,525.

Attached is an Account Summary which lists file number, the description of the file, the invoice numbers, dates of invoices and total amount billed.

We also enclose a Chart which sets out a description of the tasks undertaken in respect to each of the accounts listed on the Account Summary.

The total amounts for the indicated years is as follows:

- (a) 2017 - \$293,541.64;
- (b) 2018 - \$345,795.06; and
- (c) 2019 - \$552,634.41.

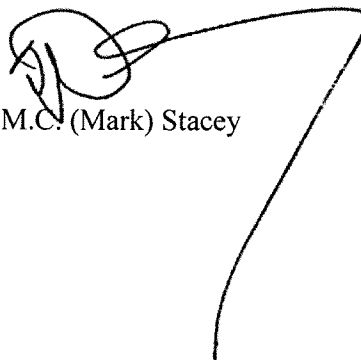
Our clients' auditors have confirmed that the accounts listed on the Account Summary have been charged as legal expenses to Orchard House for the years 2017, 2018 and 2019. We are forwarding these materials pursuant to Her Ladyship's directions at the Case Planning Conference.

As we have advised at various times in this proceeding, our firm does considerable other work for Westsea Construction relating to Orchard House, aside from Mr. Trenchard's litigation. Those accounts have not been listed on either the enclosed Account Summary nor referred to in the Chart and will not be produced.

We also understand that the audit of Orchard House Operating Expenses for 2020 has not yet been completed. We are endeavoring to confirm when it will be available so that we can address Madam Justice Power's direction to produce a similar Account Summary and Chart for our accounts rendered in 2020.

Yours truly,

Singleton Urquhart Reynolds Vogel LLP

A handwritten signature in black ink, appearing to be 'M.C. (Mark) Stacey', written over a large, thin, curved line that extends downwards and to the right.

M.C. (Mark) Stacey

MCS/cb
Enclosure

By Email

M.C. (Mark) Stacey
D 604 673 7423
mstacey@singleton.com
Our File: 59666.155

September 9, 2021

VIA EMAIL (arafuse@infinity-law.com)

Infinity Law
200 – 931 Fort Street
Victoria, BC V8V 3K3

Attention: Andrew M. Rafuse

Dear Sirs/Mesdames:

**Re: *Westsea Construction Ltd. ("Westsea") v. Taylor and others*
*BCSC Victoria Registry No. 184015 (the "Petition")***

We write in reference to the Orders of Madam Justice Power made at the Case Planning Conference on June 28, 2021 regarding the production of a list of our firm's accounts rendered to Westsea relating to litigation by Mr. Trenchard, if any, for the years 2014 to 2016, and a list of our firm's accounts rendered to Westsea not relating to or other than litigation by Mr. Trenchard for the years 2017 to 2019.

Our client's auditors have advised that no legal costs in respect to Mr. Trenchard's litigation were charged as operating expenses to leaseholders at Orchard House for the years 2014 to 2016.

In respect of our firm's accounts rendered to Westsea not relating to or other than litigation by Mr. Trenchard for the years 2017 to 2019, attached is an Account Summary which lists file number, the description of the file, the invoice numbers, dates of invoices and total amount billed.

We also enclose a Chart which sets out a description of the tasks undertaken in respect to each of the accounts listed on the Account Summary.

The total amounts for the indicated years on the Account Summary are as follows:

- (a) 2017 - \$131,079.83;
- (b) 2018 - \$107,994.74; and
- (c) 2019 - \$107,477.42.

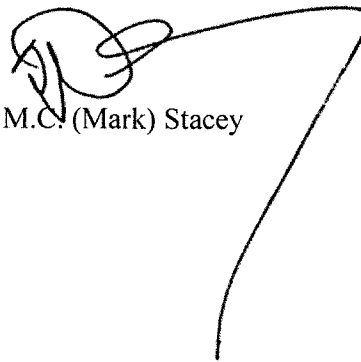
Our clients' auditors have confirmed that the accounts listed on the Account Summary have been charged as legal expenses to Orchard House for the years 2017, 2018 and 2019. We are forwarding these materials pursuant to Her Ladyship's directions at the Case Planning Conference.

As we have advised at various times in this proceeding, our firm does considerable other work for Westsea Construction relating to Orchard House aside from Mr. Trenchard's litigation. We continue to be in litigation and we assert solicitor and client privilege over all accounts we have rendered to our client.

Lastly, we enclose a copy of the Orchard House Schedule of Operating Costs for 2020.

Yours truly,

Singleton Urquhart Reynolds Vogel LLP

A handwritten signature in black ink, appearing to be 'M.C. Stacey', written over a large, thin, curved line that extends from the signature down towards the bottom right of the page.

M.C. (Mark) Stacey

MCS/tl
Enclosures