

IN THE MATTER OF THE REAL ESTATE DEVELOPMENT MARKETING ACT
SBC 2004, Chapter 41

732433 BC LTD.

-AND-

BINDER SINGH LALLI

ORDER UNDER SECTIONS 30(1)(a) and 32(1)
REAL ESTATE DEVELOPMENT MARKETING ACT

Upon reviewing the submissions and the supporting documents submitted by staff,
I am of the opinion that:

1. The *Real Estate Development Marketing Act* ("the Act") requires a developer who markets or intends to market a development to file with the Superintendent of Real Estate ("the Superintendent") a disclosure statement in the required form and with the required contents before the developer commences marketing the development. The disclosure statement must, without misrepresentation, plainly disclose all material facts. The developer must not enter into a purchase agreement with a purchaser unless a copy of the disclosure statement has been provided to the purchaser. If a developer becomes aware that a disclosure statement contains a misrepresentation, the developer must immediately file with the Superintendent a new disclosure statement or an amendment that clearly identifies and corrects the misrepresentation.

Applicable Legislation

2. Applicable sections of the *Act* are reproduced below:

Definitions

"1 In this Act:

"developer" means a person who, directly or indirectly, owns, leases or has a right to acquire or dispose of development property;

"development property" means any of the following:

...

- (c) 5 or more strata lots in a stratified building;...

"development unit" means any of the following in a development property:

...

- (c) a strata lot;

...

"market" means

- (a) to sell or lease,
- (b) to offer to sell or lease, and
- (c) to engage in any transaction or other activity that will or is likely to lead to a sale or lease;

...

Marketing of development property

- 3(1) A developer who markets or intends to market a development unit must
 - (a) meet the applicable requirements of Division 2 [Preliminary Requirements or Approvals],
 - (b) ensure that arrangements have been made in accordance with Division 3 [Title Assurance and Utility Payments]
 - (i) to assure the purchaser's title or other interest for which the purchaser has contracted, and
 - (ii) to pay the cost of utilities and other services, and
 - (c) file and provide a disclosure statement in accordance with Division 4 [Disclosure Statements].
- (2) A developer who receives a deposit must deal with the deposit in accordance with Division 5 [Deposits].

...

Strata lots and leasehold units

- 5(1) A developer must not market a strata lot or a leasehold unit unless, in relation to the strata lot or leasehold unit
 - (a) a strata plan or sketch plan, as applicable, has been deposited in a land title office, or

- (b) the appropriate municipal or other government authority has issued a building permit in relation to the strata lot or leasehold unit.

...

Early marketing with permission

10 (1) Despite sections 4 to 9 [subdivision lots and bare land strata lots to shared interests in land outside B.C.], a developer may market a development unit if the developer has obtained both

- (a) approval in principle to construct or otherwise create the development unit from the appropriate municipal or other government authority, and
- (b) the superintendent's permission to begin marketing.

(2) In relation to a permission given under subsection (1) (b), the superintendent may

- (a) attach conditions to the permission, and
- (b) at any time, revoke the permission.

(3) The superintendent may publish, in accordance with the regulations, a policy statement setting out circumstances in which permission will be deemed to be granted under subsection (1) (b) to developers who are described by the circumstances set out in the notice.

(4) If the superintendent publishes a policy statement under subsection (3), a developer who is described by the circumstances set out in the policy statement

- (a) is deemed to have the superintendent's permission under subsection (1) (b), and
- (b) must comply with the terms and conditions, if any, that are stated in the policy statement.

...

Filing disclosure statements

14 (1) A developer must not market a development unit unless the developer has

- (a) prepared a disclosure statement respecting the development property in which the development unit is located, and
- (b) filed with the superintendent
 - (i) the disclosure statement described under paragraph (a), and
 - (ii) any records required by the superintendent under subsection (3).

(2) A disclosure statement must

- (a) be in the form and include the content required by the superintendent,
- (b) without misrepresentation, plainly disclose all material facts,
- (c) set out the substance of a purchaser's rights to rescission as provided under section 21 [rights of rescission], and
- (d) be signed as required by the regulations.

Providing disclosure statements to purchasers

15 (1) A developer must not enter into a purchase agreement with a purchaser for the sale or lease of a development unit unless

- (a) a copy of the disclosure statement prepared in respect of the development property in which the development unit is located has been provided to the purchaser,
- (b) the purchaser has been afforded reasonable opportunity to read the disclosure statement, and
- (c) the developer has obtained a written statement from the purchaser acknowledging that the purchaser had an opportunity to read the disclosure statement.

(2) A developer must

- (a) retain a written statement obtained under subsection (1)(c) for a period of 3 years or a longer period prescribed by regulation, and
- (b) produce the written statement for inspection by the superintendent on the superintendent's request.

Non-compliant disclosure statements

16 (1) If a developer becomes aware that a disclosure statement does not comply with the Act or regulations, or contains a misrepresentation, the developer must immediately

(a) file with the superintendent, as applicable under subsection (2) or (3),

(i) a new disclosure statement, or

(ii) an amendment to the disclosure statement that clearly identifies and corrects the failure to comply or the misrepresentation, and

(b) within a reasonable time after filing a new disclosure statement or an amendment under paragraph (a), provide a copy of the disclosure statement or amendment to each purchaser

(i) who is entitled, at any time, under section 15 [providing disclosure statements to purchasers] to receive the disclosure statement, and

(ii) who has not yet received title, or the other interest for which the purchaser has contracted, to the development unit in the development property that is the subject of the disclosure statement.

...

(4) A developer who is required to file a new disclosure statement or an amendment under subsection (1) must not market a development unit in the development property that is the subject of the new disclosure statement or amendment

(a) until the developer has complied with subsection (1) (a), or

(b) unless permitted by the superintendent.

...

Handling deposits

18(1) A developer who receives a deposit from a purchase in relation to a development unit must promptly place the deposit with a brokerage, lawyer, notary public or prescribed person who must hold the deposit as trustee in a trust account in a savings institution in British Columbia.

..."

3. The Superintendent's Policy Statement 1 sets out the form and content required by the Superintendent for disclosure statements filed in respect of development property consisting of five or more strata lots contained in a strata plan. Policy Statement 1 requires, inter alia, that developers do the following:
- (a) "Disclose, to the best of the developer's knowledge, the nature and extent of the experience that the developer and its officers and directors have in the development industry. This disclosure should include the number of years of experience of the developer and its officers and directors, and the types of previous development properties" (This is the subject of the Superintendent's Policy Statement 15, which is discussed below.)
 - (b) "List and describe briefly all encumbrances and legal notations registered against title to the development property or a development unit. Explain the arrangements by which financial charges will be removed from title. Attach a copy of any encumbrance that significantly restricts use or occupation of any strata lot as an Exhibit."
 - (c) "List and describe all encumbrances that the developer proposes to register against title to the development property or a development unit. Attach a copy of any encumbrance that will significantly restrict use or occupation of any strata lot as an Exhibit."
 - (d) "Describe any outstanding or contingent litigation or liabilities in respect of the development property or against the developer that may affect the strata corporation or strata lot owners."
 - (e) "State the actual or estimated dates of commencement and completion of construction."
 - (f) "State the facts which establish that the developer has met the preliminary requirements or approvals in Division 2 of Part 2 of the Act"

- (g) "State the name of the trustee who will be holding purchasers' deposits and that all money received from a purchaser will be held in trust by that person in the manner required by the *Real Estate Development Marketing Act...*"
4. The Superintendent's Policy Statements 5 and 6 allow a developer, who has not yet obtained a building permit or a satisfactory financing commitment for its development, to market the proposed development for a period of no more than nine months from the date the disclosure statement was filed with the Superintendent, unless an amendment to the disclosure statement that sets out particulars of the issued building permit and satisfactory financing commitment is filed with the Superintendent during that period.
 5. The Superintendent's Policy Statement 14, which came into effect on November 1, 2007, sets out the disclosure statement requirements for development property that is not yet completed, where pre-sale units are being offered. Policy Statement 14 requires, inter alia, that a copy of the contract of purchase and sale to be attached to the disclosure statement.
 6. The Superintendent's Policy Statement 15, which came into effect on November 1, 2007, sets out the disclosure statement requirements to explain the developer's background and any conflicts of interest the developer might have.

The Development

7. 732433 BC Ltd. was incorporated in British Columbia on August 15, 2005 ("732433"). The registered and records office for 732433 is 6660 - #6 Road, Richmond, British Columbia. Binder Singh Lalli ("Lalli") is the sole director and officer of 732433. Lalli and 732433 shall be referred to collectively as the "Developer."
8. Lalli was a licensed realtor with Royal Pacific Realty ("Royal Pacific") until September 16, 2008, when his license was surrendered by Ed Fung ("Fung"), the managing broker for Royal Pacific.
9. 732433 is the named developer of a development located at 2745 East Hastings Street in Vancouver, British Columbia (the "Development").
10. 732433 filed a disclosure statement for the Development with the Superintendent on January 26, 2006, which was then amended on

February 10, 2006 (collectively the "Disclosure Statement"). The Disclosure Statement includes the following information:

- (a) The Development will consist of 21 strata lots;
 - (b) The existing encumbrances are described as follows:
 - (i) an easement and indemnity agreement in favour of the City of Vancouver, which had been submitted to the Land Title Office on July 18, 1957;
 - (ii) a mortgage in favour of [REDACTED] and [REDACTED] which would be discharged; and
 - (iii) a mortgage in favour of [REDACTED] BC Ltd.
 - (c) The financial charges with [REDACTED] and [REDACTED] BC Ltd. will be discharged;
 - (d) There is no outstanding or anticipated litigation with respect to the Development, or against the developer, which might affect the Development;
 - (e) Construction of the Development began on December 20, 2005 and will be completed on December 20, 2007;
 - (f) The City of Vancouver issued a development permit on May 20, 2005; and
 - (g) All deposits and other monies received from a purchaser of a strata lot will be held in the trust account of a selling agent, the conveyance solicitor or a notary public.
11. No further amendments to the Disclosure Statement were ever filed with the Superintendent.
12. On October 3, 2008, the Superintendent received a complaint from the Real Estate Council of British Columbia (the "Council") regarding possible breaches of the Act by the Developer. In support of that complaint, the Council forwarded a letter and contract of purchase and sale sent to the Council by Mr. [REDACTED] a purchaser of a unit at the Development, who advised as follows:
- (a) He and his wife purchased unit #301 in the Development on July 27, 2005 for \$192,000;

- (b) He paid Lalli a \$5,350 deposit;
 - (c) When he purchased the unit, he was told that the expected completion date for the Development was mid-2006;
 - (d) Between 2005 and 2008, he had difficulty reaching Lalli, and had heard nothing further about the Development;
 - (e) In June 2008 he travelled to Vancouver and met with Lalli;
 - (f) Work on the Development did not actually commence until 2008;
 - (g) Lalli requested an additional \$30,000 of Mr. [REDACTED];
 - (h) [REDACTED] and Lalli agreed to renegotiate the purchase of the unit, provided Lalli returned [REDACTED] original deposit, plus an additional \$650; and
 - (i) [REDACTED] has not heard from Lalli since, and his deposit has yet to be returned to him.
13. The Developer sold the unit to [REDACTED] in July 2005, some six months before the Disclosure Statement was filed with the Superintendent, thereby breaching sections 3, 14 and 15 of the *Act*.
14. On October 6, 2008, staff of the Superintendent (the "Staff") conducted a land title search of the Development, and discovered the following charges which either had been, or currently are registered against title, which were not disclosed by the Developer on the Disclosure Statement or in any amendments thereto:

Current charges and encumbrances

- (a) Mortgage registered July 18, 2007 in favour of John Michael Le Comte, bearing registration number BX366635;
- (b) Certificate of Pending Litigation registered January 1, 2007 by Awara Ventures Ltd., bearing registration number BB353806;

- (c) Judgment in the amount of \$3,495.71, registered March 1, 2007 by The Owners, BCS 160 Riviera, bearing registration number BB367595;
- (d) Judgment in the amount of \$17,321.00, registered November 23, 2007 by Jasbir Singh Padda, bearing registration number BB14626;
- (e) Claim of Builders Lien in the amount of \$66,780.00 registered on December 13, 2007 by West Coast Shoring Inc., bearing registration number BB144863;
- (f) Claim of Builders Lien in the amount of \$7,673.96, registered on February 5, 2008 by Kelmor Enterprises Chilliwack Ltd., bearing registration number CA694455;
- (g) Claim of Builders Lien in the amount of \$41,445.66, registered on March 20, 2008 by Beesla Trucking 2003 Ltd., bearing registration number CA730029;
- (h) Mortgage registered on March 28, 2008 in favour of Nirmal Singh Sandhu, bearing registration number CA735399;
- (i) Claim of Builders Lien in the amount of \$4,069.80, registered on April 30, 2008 by Catmandu Excavating & Bobcat Service Ltd., bearing registration number BB22206;
- (j) Claim of Builders Lien in the amount of \$26,000, registered on May 26, 2008, by S. Pahal Trucking Ltd., bearing registration number BB861374;

- (k) Claim of Builders Lien in the amount of \$41,366.24, registered on July 4, 2008 by Alara Environmental Health & Safety Ltd., bearing registration number BB875872;
- (l) Claim of Builders Lien in the amount of \$18,490.99, registered on August 6, 2008 by Rempel Bros. Concrete Ltd., bearing registration number BB694590;
- (m) Claim of Builders Lien in the amount of \$2,406.34, registered on August 6, 2008 by Challenge Concrete Pumping Ltd., bearing registration number BB694591; and
- (n) Claim of Builders Lien in the amount of \$1442.70, registered on August 21, 2008 by Super Save Fence Rentals Inc., bearing registration number BB997605.

Encumbrances which had been registered after the Disclosure Statement was filed, but which have since been discharged

- (a) Mortgage registered on March 29, 2006 in favour of Reliable Mortgages Investment Corp., bearing registration number CA192042, which was discharged on July 13, 2006;
- (b) Mortgage registered on June 22, 2006 in favour of Reliable Mortgages Investment Corp., which was discharged on August 8, 2007; and
- (c) Certificate of Pending Litigation registered by Reliable Mortgages Investment Corp. on February 1, 2007, and discharged on August 8, 2007.

15. By failing to amend the Disclosure Statement to disclose the various charges and encumbrances set out above, including information about the litigation which resulted in the two Certificates of Pending Litigation filed on title, the Developer has breached sections 3, 14 and 16 of the *Act*, and the requirements of the Superintendent's Policy Statement 1.
16. On October 6, 2008, Staff attended at the Development and noted that construction has begun, but is far from being completed.
17. On October 6 and 27, 2008 Staff spoke with representatives of the City of Vancouver and were advised as follows:
 - (a) A demolition permit had been issued for the Development in 2004;
 - (b) The demolition work underwent a final inspection, and was approved by the City, on March 28, 2006;
 - (c) The Developer applied for both a development permit and a building permit, neither of which was ever issued because of outstanding fees in excess of \$130,000 owed by the Developer to the City;
 - (d) Stop work orders had been issued in respect of the Development which the Developer had contravened, such that the City would likely be pursuing the matter in court.
18. The Disclosure Statement contained false information in that no development permit had been issued. By failing to provide an accurate disclosure statement, the Developer breached sections 3 and 14 of the *Act*, and the Superintendent's Policy Statement 1.
19. The Developer never amended the Disclosure Statement to include information about the stop work orders issued in respect of the Development, or the fact that the construction was not going to be completed by December 2007, thereby breaching sections 3, 14 and 16 of the *Act*, and the Superintendent's Policy Statement 1.
20. In addition, the Developer marketed the Development without a building permit, without complying with the Superintendent's Policy Statement 5, thereby breaching sections 5 and 10 of the *Act*, as well as the Superintendent's Policy Statement 5.
21. On October 6, 2008 Staff spoke with Lalli and were advised as follows:
 - (a) He had received deposits for two or three units he believed he had sold in 2005;

- (b) One of the deposits was with a lawyer, Winfred van der Sande ("van der Sande"); and
 - (c) He confirmed that he had no building permit for the Development.
22. On October 6, 2008, Staff spoke with Fung of Royal Pacific who confirmed that Royal Pacific held two contracts of purchase and sale in respect of units 201 and 301 at the Development (dated February 21, 2006 and May 16, 2006 respectively), and that deposits had been provided by each purchaser. Fung further confirmed that one of the deposits was being held in trust by van der Sande, and the other with notary Peter Woo. Neither of these two contracts of purchase and sale related to Mr. [REDACTED], although one of them was for unit 301, the unit which Mr. [REDACTED] had purchased in July 2005.
23. On October 22, 2008, Staff spoke with Lalli again, at which time he advised as follows:
- (a) The deal he completed with Mr. [REDACTED] was contingent upon Lalli purchasing the property;
 - (b) The contract was written on a piece of paper, and Mr. [REDACTED] provided a cheque for the deposit;
 - (c) Lalli cannot remember what he did with the cheque;
 - (d) Some time later Mr. [REDACTED] returned and Lalli suggested that they create a new contract;
 - (e) Mr. [REDACTED] was not interested in renegotiating, and so cancelled the deal; and
 - (g) Lalli's wife mailed the deposit back to Mr. [REDACTED]
24. Staff has not been able to determine, and Lalli states that he does not know, where Mr. [REDACTED] deposit was held, and/or whether it was held in a trust account as required under the *Act*.
25. On October 7, 2008 Staff obtained a copy of the compliance order issued by the Homeowner Protection Office ("HPO") in respect of Lalli on June 18, 2008 which reads as follows:

"Binder Singh Lalli (Lalli), contrary to sections 14(1) and 22(1) of the *Homeowner Protection Act (Act)*, conducted the business of a residential builder without being an HPO Licensed Residential Builder between the dates December 31, 2006 and June 18,

2008, regarding a multi-unit building in Vancouver, BC (the Project). Lalli contrary to section 22 of the *Act*, built and offered for sale new homes contained within the Project, between the dates of November 10, 2005 and June 18, 2008 without those new homes being covering [sic] by home warranty insurance or without a restrictive covenant being registered on the title to the Property restricting the sale of [sic] other disposition of any dwelling unit in the Project for 10 years from the date of first occupancy of a dwelling unit in the Project. On June 18, 2008, a Compliance Order was issued by the HPO to Lalli and 0732433 BC Ltd. directing that they cease carrying on the business of a residential builder as defined in the *Act*, that they become an HPO Licensed Residential Builder and obtain home warranty insurance for the Project and for each new home located in the Project or register a restrictive covenant on the title to the Project ensuring that the Project may only be used for rental purposes and restricting the sale, or other disposition of any dwelling unit within the Project for 10 years from the date of first occupancy of a dwelling unit in the Project."

26. It is the Staff's understanding that the Development is the "Project" which is referred to in the HPO's June 18, 2008 compliance order.
27. The Developer failed to amend the Disclosure Statement to include information about the compliance order issued by the HPO on June 18, 2008, thereby breaching sections 3, 14 and 16 of the *Act*, and the Superintendent's Policy Statement 1.
28. The Developer failed to amend the Disclosure Statement after November 1, 2007 to include required disclosure for an offering of pre-sale units thereby breaching sections 3, 14 and 16 of the *Act*, and the Superintendent's Policy Statement 14.
29. The Developer failed to amend the Disclosure Statement after November 1, 2007 to include required disclosure explaining the developer's background and any conflicts of interest which may exist, thereby breaching sections 3, 14 and 16 of the *Act* and the Superintendent's Policy Statement 15.
30. No new or amended disclosure statements have been filed in respect of the Development since February 10, 2006.
31. I agree with Staff that scheduling of witnesses, counsel and the hearing officer would likely result in a 6 months delay in the ability to hold a hearing into this matter.
32. The length of time required to hold a hearing will likely result in the continued non-compliance of the *Act* by 732433 and Lalli, which I find to be detrimental to the public interest.
33. I find that it is in the public interest to issue a summary cease marketing order under s.32 of the *Act* so that the public is protected against further non-compliance with the *Act*.

34. AND WHEREAS I am satisfied that 732433 BC LTD. and its director BINDER SINGH LALLI marketed units before filing the Disclosure Statement with the Superintendent;
35. AND WHEREAS I am satisfied that 732433 BC LTD. and its director BINDER SINGH LALLI have marketed units in the Development after the expiry of the nine month period allowed under section 10 of the *Act* and the Superintendent's Policy Statement 5 without filing the required amendment to the disclose receipt of a building permit.
36. AND WHEREAS 732433 BC LTD. and its director BINDER SINGH LALLI have marketed development units in the Development without filing an amendment to the Disclosure Statement as required under section 16 of the *Act* to correct the non-compliance or misrepresentations contained therein.
37. AND WHEREAS 732433 BC LTD and its director BINDER SINGH LALLI received a deposit from a purchaser in relation to the Development which was not likely placed in a trust account, as required under section 18 of the *Act*.

I AM THEREFORE OF THE OPINION that 732433 BC LTD. and BINDER SINGH LALLI have been non-compliant with the *Act*.

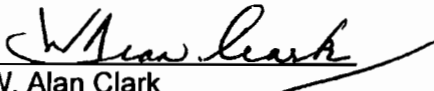
I AM FURTHER OF THE OPINION that the length of time that would be required to complete an investigation or hold a hearing, or both, would be detrimental to the public interest. It is in the public interest to make a summary cease marketing order under section 32 of the *Act* so that the public is protected against further non-compliance with the *Act*.

I CONSIDER it in the public interest to make the following Order pursuant to sections 30(1)(a) and 32(1) of the *Act*.

I THEREFORE MAKE the following Order:

1. That 732433 BC LTD. and BINDER SINGH LALLI shall cease and refrain from marketing any and all development units in the development located at 2745 East Hastings Street in Vancouver, British Columbia.

Dated at the City of Surrey, in the
Province of British Columbia
this ^{28th} day of October, 2008.


W. Alan Clark
Superintendent of Real Estate
Province of British Columbia

TO: 732433 BC Ltd.



Binder Singh Lalli

