

FORM 109 (RULE 22-2 (2) AND (7))



This is the 1st affidavit
of Lisa Thomson in this case
and was made on March 7, 2017
No. S-172217
Vancouver Registry

In the Supreme Court of British Columbia

Between

LISA THOMSON

Petitioner

and

AL THOMSON and A.R. THOMSON LTD.

Respondent

AFFIDAVIT

I, LISA THOMSON, of 2900-595 Burrard Street, Vancouver, British Columbia, writer, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Petitioner in this action and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based upon information and belief, and where so stated I verily believe the same to be true.
2. I make this affidavit in support of the petition seeking, *inter alia*, a declaration that the assignment of beneficial interest and declaration of trust dated December 31, 2000 made between myself and my father Al Thomson is a valid and enforceable trust instrument.
3. I have read the contents of the petition and swear them to be true to the best of my knowledge, information and belief.

BACKGROUND

4. Al Thomson, my father and a respondent in this proceeding, is the owner and controlling mind of A.R. Thomson Ltd. ("ART"). ART is a federally registered company, extra-provincially

registered in British Columbia on November 20, 1991. Attached as Exhibit "A" to this affidavit is a copy of an extra-provincial company summary for ART.

5. ART is in the business of manufacturing and distributing gaskets, seals and related products. ART, or its predecessor, have been operating since approximately 1967.

6. In 1997, as a form of estate planning, Al Thomson elected to divide the ownership of his gasket and seal business, then primarily conducted through ART, evenly amongst his children through a complex partnership arrangement that involved the use of a variety of numbered companies. Al Thomson's business moving forward would be owned and operated by a new partnership called A. R. Thomson Group ("ARTG").

7. At the time ARTG was formed the partners of ARTG and the ownership of those "partner companies" was as follows:

- a) 15% ownership interests were held by each of:
 - i) 550934 B.C. Ltd ("934"), a BC Company beneficially owned and controlled by me and my then husband Gordon Taylor, through a holding company controlled by us, LLT Holdings Inc. ("LLT"). 934 and LLT were the corporate vessels through which I participated in the management of, and received a share of the profits of ARTG;
 - ii) 550926 B.C. Ltd., a BC Company beneficially owned and controlled by my brother James "Jim" Thomson, through a holding company controlled by him, G.J.T. Holdings Inc. Jim is the President of ARTG and responsible for its day-to-day operations;
 - iii) 550929 B.C. Ltd., a BC Company beneficially owned and controlled by my sister Debra Thomson-Knight; through a holding company controlled by her, 730780 Alberta Ltd.;
 - iv) 550931 B.C. Ltd., a BC Company beneficially owned and controlled by my brother Gordon Thomson, through a holding company controlled by him, G.P.T. Holdings Inc.; and

- v) 550936 B.C. Ltd., a BC Company beneficially owned and controlled by my brother Todd Thomson, through a holding company controlled by him, T.N.R.T. Holdings Inc.
- b) 5% ownership interest was held by:
 - i) 477481 B.C. Ltd., a BC Company owned by 550920 B.C. Ltd., which is jointly owned and controlled by James, Debra, Gordon, Todd, and I, through our respective holding companies.
- c) 20% ownership interest was retained by ART.

Attached as Exhibit "B" to this my affidavit is a copy of the ARTG corporate structure diagram as it existed at October, 2005. The companies set out in Exhibit "B" collectively form the "Family Business".

8. Although Al Thomson, through ART, only owns 20% of ARTG he remains the family patriarch and in my experience he continues to control every aspect of ARTG's business and the business of related holding companies, including those holding companies owned by his five children.

9. I am the sole director and majority shareholder of both LLT, an Alberta company, and its subsidiary 934. Attached as Exhibits "C" and "D" to this my affidavit are true copies of the company searches for LLT and 934.

10. On February 18, 2010 ARTG terminated 934's partnership interest in ARTG.

11. 934's re-admittance into ARTG is currently the subject of litigation.

12. The last copy of financial statements for ARTG that are in my possession or control are for the year ended July 31, 2007. In that year ARTG did \$52,392,303 in sales. Attached as Exhibit "E" to my affidavit is a copy of the ARTG 2007 financial statements.

13. In 2013 my brother Todd, the principal of T.N.R.T. Holdings Inc., advised me, and I verily believe it to be true, that he expected ARTG that year to do \$80 million in sales.

THE TRUST AGREEMENT

14. Previously Al Thomson, through ART, owned two small office/warehouse properties in a strata complex in Delta, B.C. civically described as units #3 and #4 located at 7551 Vantage Way (collectively the “Delta Properties” or individually “Unit #3” and “Unit #4” respectively). Attached as Exhibit “F” is a title search and assessment role report for Unit #3.

15. I am not privy to the details of how or when Al Thomson or ART purchased the Delta Properties.

16. The Delta Properties were formally the ARTG head office from approximately 1986 – 1998.

17. In late 2000 my father decided that he wanted to transfer ownership in the Delta Properties to me as a form of estate planning.

18. My father advised me that residents of Alberta who owned income properties were treated for tax purposes more favourably than British Columbia residents. At that time in late 2000 I was his only, and partner company principal, living in Alberta and my father decided that I should personally purchase the Delta Properties. I agreed.

19. My father’s decision to transfer ownership of the Delta Properties to me was consistent with other estate planning steps my father had taken years earlier in establishing ARTG.

20. For my entire adult life I have participated in the family business. More recently I have participated in ownership and management of ARTG, as set out above, through my companies 934 and LLT. However I have also performed clerical and administrative tasks, and acted as assistant to the managing partner.

21. As a mother of two children there have been periods in my life when I was unable to participate in the family business in a traditional sense, and in those years I have contributed by hosting business events at my home, or made other informal contributions to the welfare of the family business.

22. Although I cannot recall the exact details or date of discussing the purchase of the Delta Properties, my father advised me that the transaction would be in my best interest personally, and the best interest of ARTG generally. As my father, and the managing partner of ARTG, I accepted his advice and recommendation to enter into the property transaction.

23. On or about December 31, 2000 my then husband Gordon Taylor presented me with a document that Al Thomson had provided to him for my execution. The document was titled "Assignment of Beneficial Interest and Declaration of Trust Agreement" (the "**Trust Agreement**"). Attached as Exhibit "G" to this my affidavit is a true copy of the Trust Agreement.

24. I understood that the Trust Agreement was an instrument that would facilitate my purchase, ownership and control of the Delta Properties, and I executed the document on that understanding.

25. Although there are certain legal concepts in the Trust Agreement that I did not fully understand at the time, it was apparent to me when I executed the Trust Agreement, that on executing the same I was receiving from my father all of his beneficial right, title and interest in the Delta Properties, which included an ability to profit from my ownership of the Delta Properties.

26. It was also apparent to me that this transaction, like most of the transactions that occurred between members of my family, was a business decision. It was duly documented and required that I pay my father for the Delta Properties and incur significant responsibilities and liabilities as a result of my ownership of the same.

27. The purchase price was based on fair market value, being \$240,000. Attached as Exhibit "H" are British Columbia property assessment values for the Delta Properties for the years 2001. The total assessed value for 2001 for the Delta Properties was \$257,100.

28. I believed at or around the time of entering into the Trust Agreement that 934 or LLT on my behalf, paid the \$240,000 for the Delta Properties as set out on the face of the Trust Agreement, the receipt of which is stated to be acknowledged by the parties.

29. It was my understanding at the time I signed the Trust Agreement that my purchase of the Delta Properties would be funded by a partnership allocation of funds from ARTG to LLT.

30. The principals of the "partnership companies" do not receive a salary for the services they provided to ARTG and instead receive allocation payments from time-to-time. Al Thomson, as the managing partner of ARTG and pursuant to the terms of the partnership agreement, determines the timing and amounts to be paid by ARTG to the partnership company principals.

31. To the best of my knowledge and belief the individual allocations by ARTG to each of the principals of the partnership companies has never been disclosed by my father to any other partnership company principals.

32. At the time of entering into Trust Agreement, I relied heavily on my then husband Gordon Taylor, who was at that time a senior employee of ARTG, to handle my financial transactions. Although I understood from my discussions with my father and my husband at the time that the Trust Agreement would be documented and paid for like any other property transaction, I did not take steps at the time to personally verify those transactions.

33. I now believe that I did not pay for the Delta Properties until June 27, 2002 when, without my knowledge, my then husband Mr. Taylor transferred from our personal joint bank account, \$256,800 to my parents to complete the transaction of the Delta Properties. \$256,800 is the purchase price for the Delta Properties, being \$240,000, plus 7% GST. Attached as **Exhibit "I"** to this my affidavit is proof of payment of the \$256,800 to my parents.

34. The partnership allocation to LLT to pay for the Delta Properties was made by ARTG on or around June 27, 2002. Through a series of transfers beginning with ARTGs partnership allocation the \$256,800 flowed as follows:

- a) ARTG transferred \$256,800 to L.L.T. Holdings Inc.;
- b) L.L.T. Holdings Inc. transferred \$256,800 to me and Gordon Taylor;
- c) Gordon Taylor and I transferred \$256,800 to Al Thomson and his wife Patricia Thomson;

- d) Al Thomson and Patricia Thomson transferred \$256,800 to Murrayville Holdings Ltd.; and
- e) Murrayville Holdings Ltd. transferred \$256,800 to ARTG.

Attached as Exhibit "J" are various CIBC transfer instruction forms and certain corresponding bank documents related to the June 27, 2002 money transfers.

35. I do not know why the payment for the Delta Properties was made by my then husband approximately 1.5 years after I executed the Trust Agreement. I also do not know with any certainty that I, 934 or LLT, did not pay for the Delta Properties earlier. I believe that my father or ART would have a complete record of the financial transaction related to my purchase of the Delta Properties.

36. Although I now believe that I did not pay for the Delta Properties until 2002, I claimed the income and expenses from the Delta Properties on my income taxes the following year.

37. From the years 2001 until 2013 I personally claimed and paid the taxes owing on the income from the Delta Properties and was never reimbursed by ARTG during this time.

38. In 2014 ARTG for the first time reimbursed me for certain of the taxes I paid on the Delta Properties between 2001 and 2013 in the sum amount of \$41,131.42. This payment did not include any reimbursement for interest incurred by me for paying the taxes owing on the Delta Properties for those years. Attached as **Exhibit "K"** is a June 5, 2014 email from Monique Brown to me confirming a reimbursement for taxes paid on rental income.

EVENTS SUBSEQUENT TO EXECUTION OF TRUST AGREEMENT

39. On or about November 30, 2004 my father, on behalf of ART, sold Unit #4 for \$180,000 to a close friend of my brother Todd's, Michael Canaday. Attached as **Exhibit "L"** is a copy of the vendor's statement of adjustments for the purchase and sale of Unit #4.

40. I have no memory of my father discussing the potential sale of Unit #4 with me nor do I recall ever signing any documents authorizing this transaction, despite the terms of the Trust Agreement.

41. Although I did not participate in the sale of Unit #4 or personally receive the revenue from the sale at the time, I did claim the proceeds of the sale on my 2005 income taxes and duly paid the taxes on the gain and paid the taxes on the transaction to Canada Revenue Agency the following year. Attached as **Exhibit "M"** to this my affidavit is the relevant excerpt from my 2005 tax return.

Divorce Proceedings Shed Light on Trust Agreement Transaction

42. In 2005 Gordon Taylor and I began divorce proceedings. During the divorce negotiations Gordon took the position that because the Delta Properties were beneficially owned by me pursuant to the terms of the Trust Agreement, and that the funds to purchase it came from our joint personal bank account, the Delta Property was a marital asset.

43. Having not seen any paper work on the Delta Property since signing the Trust Agreement, and still unaware of the June 27, 2002 transfer of funds to pay for the property, I asked my father in December, 2006 if Gordon was correct in his position

44. My father's explanation was that:

- a) I did not in fact pay for the Delta Properties; and
- b) I was holding them in trust for my siblings.

45. Although these statements by my father directly contradict the terms of the Trust Agreement that he and I both signed, at the time I had no reason to doubt my father's statements to me on this or any other subject relating to the family business. Attached as **Exhibit "N"** is a December 10, 2006 email from my father to me confirming the same.

46. On or about May 24, 2007, my father instructed me to sign a form authorizing ARTG, which had always managed the Delta Properties, to distribute the net profits from the 2004 sale of Unit #4, as well as the rental income from 2001 to 2006 for the Delta Properties to my siblings. He advised me that it was necessary that I sign the document because I was the beneficial owner of the Delta Properties.

47. Sometime in August of 2007 my share of the above-captioned distribution was transferred to me.

48. I questioned this course of action, and directed my father's attention to the terms of the Trust Agreement that set out that I was to have control over the Delta Properties and the related profits.

49. My father's instructions were that the distribution of the funds was to be treated as a gift by me to my siblings. Because ARTG controlled the funds related to the Delta Properties and my father was not in the habit of anyone questioning his business decisions I capitulated and signed the form. Attached as **Exhibit "O"** to this my affidavit is the May 24, 2007 document signed by me authorizing the distribution of funds from the rental and sale of the Delta Properties.

50. On or about September 15, 2008 during negotiations related to the settlement of my divorce it became apparent to me that despite my father's protestations to the contrary, I was the sole beneficial owner of Unit #3 and there was no collateral trust agreement between myself and my siblings.

51. On that basis I conceded to Gordon's claim that Unit #3 was a matrimonial asset.

FURTHER FINANCIAL TRANSACTIONS

52. In July of 2008 my father contacted me with instructions that I needed to go to my bank immediately and sign a phone fax agreement that would allow him to transfer funds through LLT's account then back out again to ARTG's account.

53. My father did not explain to me what the transaction was for, or why it was urgent that I take these steps. Although I did as my father instructed, I felt uncomfortable moving large amounts of money through my company's bank account without a proper explanation. Attached as **Exhibit "P"** to this my affidavit are two July, 2008 emails from Al Thomson and ARTG controller Monique Rivard providing me with instructions regarding the proposed transfer. These are the only documents in my possession or control that relate to this transaction.

54. In or about September 15, 2008, I learned the reason why my father had instructed me to allow funds to flow through LLT's account to his. At this time I was preparing for the

approaching trial of my divorce proceeding, and I had various conversations with my father and Mr. Neil Bronsch, an accountant retained by me for the purpose of valuing the assets then owned by Gordon and I, relating to my assets and my interests in the Family Business.

55. I expected at the time that my beneficial ownership of Unit #3 would be an issue at trial and in response to this concern raised by me, Al advised me that the \$256,000 payment for the Delta Properties made by Gordon and I in 2002 was just a loan made by us to he and my mother, and he had repaid it months earlier by way of the July, 2008 transfers set out above.

PROPERTY EQUILIZATION PAYMENT TO GORDON

56. The trial of my divorce proceeding was scheduled to commence on September 24, 2008 in Alberta, but the day before trial Gordon and I entered into a settlement agreement relating to our matrimonial property (the "**Gordon Settlement**").

57. It was a term of the Gordon Settlement that I was required to pay Gordon an equalization payment of \$125,000 on account of me retaining ownership of certain matrimonial properties namely Unit #3. Gordon waived all interest in Unit #3 so the entire beneficial interest became mine alone on September 23, 2008. Attached as **Exhibit "Q"** to this my affidavit is a true copy of the Gordon Settlement.

58. Although all the matrimonial property issues were settled in the Gordon Settlement, spousal and child support required a three day trial.

59. On January 8, 2009 the Honourable Mr. Justice K.D. Yamauchi of the Court of Queen's Bench released the court's decision with respect to spousal and child support payments. Gordon's income was imputed at \$124,000 and he was ordered to pay \$1,261 in child support and \$2,300 in spousal support each month for the next six years. Attached as **Exhibit "R"** to this my affidavit is a true copy of the Yamauchi decision.

60. Gordon appealed the Yamauchi decision and on October 29, 2009 the Alberta Court of Appeal released their decision. Gordon's imputed income was reduced to \$75,000 per year as was my spousal support which was then set at \$1,000 per month. One of the reasons for the reduction in spousal support referenced by the Court at paragraph 48 was that I owned "an

income-earning condominium located in the lower mainland of British Columbia". This was a reference to Unit #3. Attached as **Exhibit "S"** to this my affidavit is a true copy of Alberta Court of Appeal decision.

61. Owning Unit #3 has cost me a significant amount of money. Not only did I pay for it, and pay taxes on it which were not reimbursed until years later, but as a result of my ownership of it I had to pay a \$125,000 equalization payment to Gordon and my spousal support was reduced by \$93,600 as a collateral result of owning Unit #3 (\$1,300 monthly reduction x 72 months = \$93,600).

62. In 2010 I filed an inter-jurisdictional support order application to vary spousal support as I was now living in B.C. I anticipated that part of Gordon's response to my application would include my ownership of an "income producing warehouse property" and therefore I was not entitled to an increase in support.

63. The reality however, was that I had only received a one-time payment in 2007 in the net amount of approximately \$34,000 from ARTG on account of my ownership of the Delta Properties.

64. To support my inter-jurisdictional support application in February, 2011 I asked ARTG's Controller, Monique Rivard, to swear an affidavit setting out certain information related to the profitability of Unit #3. Attached as **Exhibit "T"** to this my affidavit is a sworn but unfiled copy of Monique Rivard's February 9, 2011 affidavit.

65. The Rivard Affidavit also confirms that Unit #3 had been vacant at the time for a period of at least two years.

UNIT #3 POST 934'S REMOVAL FROM ARTG.

66. On February 18, 2010 ARTG removed 934 from the partnership. Although I refrained from challenging this course of action, from that point forward my access to ARTG records and documents, partnership income, and the cooperation of my siblings slowly started to diminish.

67. By the end of 2010 I was frustrated by my father's inconsistent treatment of my interest in Unit #3. Though I remained willing to participate and cooperate in the Family Business I no

longer wanted Unit #3 "in my name" if my father was not going to let me deal with it as I saw fit, while simultaneously I was being penalized for owning it beneficially in the eyes of the court system. On that basis I wrote to my father on December 31, 2010 asking that he transfer the beneficial ownership into another one of my siblings names. Attached as **Exhibit "U"** is my email to Al Thomson of December 31, 2010 and his response to me of January 2, 2011.

68. On January 2, 2011 my father responded to my earlier email and confirmed that I had beneficial interest in Unit #3 per the Trust Agreement. Once again my father was confirming the existence and enforceability of the Trust agreement, and my beneficial ownership of Unit #3 according to the same. My father's January 2, 2011 response is contained in **Exhibit "U"**.

DEMAND FOR TRANSFER OF TITLE

69. In an attempt to generate cash flow from my assets I contacted my brother Jim on June 30, 2015, who manages Unit #3, and requested a distribution of profits. He informed me that there had been very little profits over the past decade and offered me \$3,000 as my proportionate share. I found this news concerning given that the Delta Properties were paid for by me in cash in 2000 and the monthly expenses are not excessive. Despite my request, I have still not received the \$3,000. Attached as **Exhibit "V"** to this my affidavit is a true copy of Jim's June 30, 2015 with attached accounting spreadsheet related to Unit #3.

70. In Jim's June 30, 2015 email he confirms that should Unit #3 be sold, I would be responsible as the property's owner for the tax on the capital gains.

71. Unit #3 has gone unrented for extended periods creating a loss for the years 2009, 2010, 2011 and 2012.

72. The fact that unit #3 is frequently untenanted, and generates little profit leads me to believe that it is not being managed to its potential. It would be in my best interested if I assumed management of unit #3 and transferred title into my name.

73. On or about April 11, 2016 I requested through counsel that my father transfer title to me of Unit #3. Attached as **Exhibit "W"** to this my affidavit is a copy of the April 11, 2016 letter from my lawyer Mr. Haberl to my father's lawyer Mr. Fraser.

74. On April 26, 2016 Mr. Fraser, counsel for the respondents, replied to Mr. Haberl's letter refusing the requesting transfer and denying the enforceability of the Trust Agreement. Attached as **Exhibit "X"** to this affidavit is a copy of Mr. Fraser's April 26, 2016 letter to Mr. Haberl.

75. Shortly after my request to my father to put my name on title to Unit #3, and after I made my usual tax claim for the income from Unit #3 on my personal income tax return for 2015, I received an email from the Controller of ARTG, Monique Brown. She informed me that my father's company ART would now be remitting the taxes on Unit #3 and that I should no longer claim the income and expenses for Unit #3 on my personal income tax return. Attached as **Exhibit "Y"** to this my affidavit is a true copy of Monique Brown's email. Attached **Exhibit "Z"** is my 2015 income tax return confirming I paid taxes on the rental income from Unit #3.

76. Because my siblings have never reimbursed me, or contributed to my purchase of the Delta Properties and the subsequent tax and matrimonial implications that purchase entailed, I emailed them on January 5, 2017 advising that if they wanted an interest in Unit #3 they must reimburse me for their share of my original investment of \$256,800 plus interest on the principle since 2001 and a percentage of the losses I incurred from the divorce proceedings as a result of being the owner of Unit #3. Attached as **Exhibit "AA"** to this my affidavit is a true copy of my email.

77. My brother Jim responded the next day taking my father's position that I did not own the property and therefore they would not be paying me anything for it.

CONCLUSION

78. My father and my siblings have never denied the existence of the Trust Agreement, or that I have some form of ownership interest in Unit #3.

79. Over the years my father and Jim have taken different positions on the meaning and effect of the Trust Agreement whenever it suited their interest.

80. To date my father and his financial and legal advisors have taken advantage of my cooperation and loyalty to the family business. Although I have not always adequately informed myself of my personal financial dealings, or those of 934 and LLT, I have always conducted my

affairs, and the affairs of my companies, on a good faith basis and in accordance with the best interests of the family business.

81. I have never waived, relinquished or transferred my rights under the Trust Agreement.

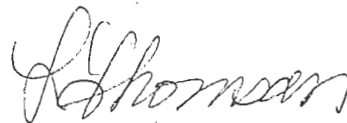
82. To the extent that my words or actions can be construed as an acknowledgment on my behalf that the Trust Agreement is in anyway unenforceable or deficient, which I deny, such statements were made by me gratuitously and based on incorrect information provided to me by my father or my siblings to induce me to say those words or take those steps.

83. My only significant source of income throughout my adult life has been my ownership interest in ARTG and 550920 B.C. Ltd and its highly profitable subsidiaries.

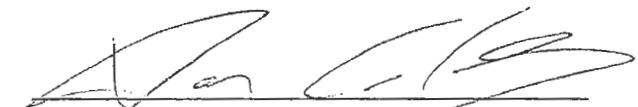
84. I believe my family is attempting to restrict my ability to pursue my civil claim against ARTG by making it difficult for me to receive income from Unit #3 as well as other family businesses in which I am an owner.

85. It is important that title to Unit #3 is transferred to my name so I can begin the process of renting it effectively, or selling it, to generate income for the purposes of funding my litigation.

SWORN (OR AFFIRMED) BEFORE ME at)
the City of Vancouver, in the Province of)
British Columbia, this 7th day of March, 2017.)



LISA THOMSON



A Commissioner for taking Affidavits for
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