

MAR 09 2017

FORM 66 (RULES 16-1(2) AND 21-5(14))

S - 17 2217
No. _____
Vancouver Registry



In the Supreme Court of British Columbia

Between

LISA THOMSON

Petitioner

and

AL THOMSON and A.R. THOMSON LTD.

Respondent

PETITION TO THE COURT

ON NOTICE TO:

Al Thomson

c/o Fraser Litigation Group
1100 – 570 Granville Street
Vancouver, B.C. V6C 3P1

**Attention: Andrea J. Piercy
R. Barry Fraser**

A.R. Thomson Ltd.

c/o Fraser Litigation Group
1100 – 570 Granville Street
Vancouver, B.C. V6C 3P1

**Attention: Andrea J. Piercy
R. Barry Fraser**

This proceeding is brought for the relief set out in Part 1 below, by

[Check whichever one of the following boxes is correct and complete any required information.]

the person named as petitioner in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

- a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- b) serve on the petitioner(s)
 - i) 2 copies of the filed response to petition, and
 - ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to the petition within the time for response.

Time for response to the petition

A response to petition must be filed and served on the petitioner(s),

- a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- c) if you were served with the petition anywhere else, within 49 days after that service, or
- d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: Law Courts, 800 Smithe Street, Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioner(s) is: Owen Bird Law Corporation P.O. Box 49130 Three Bentall Centre 2900-595 Burrard Street Vancouver, BC V7X 1J5 (Attention: Daniel H. Coles) Fax number address for service (if any) of the petitioner(s): (604) 688-2827 E-mail address for service (if any) of the petitioner(s): dcoles@owenbird.com

(3)	The name and office address of the petitioner's(s') lawyer is: Daniel H. Coles Owen Bird Law Corporation P.O. Box 49130 Three Bentall Centre 2900-595 Burrard Street Vancouver, BC V7X 1J5
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Part 1: ORDERS AND DECLARATIONS SOUGHT

1. A declaration that the petitioner, Lisa Thomson is the sole beneficial owner of Unit 3, 7551 Vantage Way, Delta, BC, and legally described as;

PID 001-732-609
Strata Lot 17 DL 129 GP2
New Westminster District
Strata Plan NW-1773

(the "Unit #3")

2. A declaration that the assignment of beneficial interest and declaration of trust dated December 31, 2000 is a valid and enforceable trust instrument.
3. A declaration that Al Thomson is in breach of the terms of the assignment of beneficial interest and declaration of trust.
4. An order that pursuant to section 4(3) of the assignment of beneficial interest and declaration of trust, Al Thomson shall, at Lisa Thomson's expense, convey Unit #3 to Lisa Thomson forthwith.
5. All necessary accounts, directions, and inquiries be taken.
6. In the alternative, a declaration that Unit #3 is beneficially owned by Lisa Thomson and each of her siblings in equal shares, and an order that:
 - a) Unit #3 be listed for sale with Lisa Thomson having exclusive conduct of sale;
and

- b) The proceeds of the sale be distributed equally amongst Lisa Thomson and her siblings; or
 - c) The respondents, or the petitioner's siblings or companies controlled by them, purchase from Lisa Thomson her beneficial share of Unit #3 at fair market value
7. An order that Al Thomson and A.R. Thomson Ltd. produce documents in their possession or control that relate to the ownership, income and upkeep costs of the Property.
 8. The parties are at liberty to apply as necessary for further directions to carry out the terms of this order.
 9. Such further and other relief as this Honourable Court deems just.
 10. Costs.

Part 2: FACTUAL BASIS

BACKGROUND

1. The petitioner, Lisa Thomson is a writer and the sole beneficial owner of the Property, as defined below ("**Lisa**").
2. The respondent Al Thomson, is a businessman, and the father of Lisa. ("**Al**").
3. The respondent A.R. Thomson Ltd. is a company engaged in the business of manufacturing and distributing gaskets, seals and related products ("**ART**").
4. Al is the owner and controlling mind of ART.
5. Between 1997 and 2010, ART, along with companies owned and operated by Al's five adult children including Lisa, were partners in a family business called A. R. Thomson Group ("**ARTG**").
6. ARTG was created by Al in 1997 as a form of estate planning, and carries on the gasket and seal business originally conducted by ART.

7. ART is the legal owner of #3 – 7551 Vantage Way, Delta B.C. legally described as:

PID 001-732-609

Strata Lot 17 DL 129 GP2

New Westminster District

Strata Plan NW-1773

(the “Unit #3”).

8. Unit #3 is a commercial warehouse occupied from time-to-time by tenants, and managed by ARTG.
9. From ARTG’s creation in 1997 until 2010, Lisa participated in the family’s gasket and seal business through her company 550934 B.C. Ltd. (“934”) which was owned and controlled by her through LLT Holdings Inc. (“LLT”).
10. In 2010 ARTG removed 934 from the partnership.
11. ARTG’s decision to remove 934 from the partnership, and its subsequent refusal to readmit 934, is currently subject to litigation with the style of proceeding *Lisa Thomson v. A.R. Thomson Group*, Vancouver Registry Action No. S158569.

THE TRUST AGREEMENT

12. On December 31, 2000 Al, as assignor, and Lisa, as assignee, entered into a written assignment of beneficial interest and declaration of trust (the “Trust Agreement”) with respect to Unit #3 as well as a similar unit, Unit #4 (collectively the “Delta Properties”).
13. In the Trust Agreement Al, as assignor, is described as the legal and beneficial assignee of the Delta Properties. Lisa does not have knowledge of the timing or circumstances of this earlier assignment.
14. The material terms of the Trust Agreement include, but are not limited to, as follows:

- a) Al will hold the legal title to the Delta Properties as nominee, agent, and bare trustee for the sole benefit and account of Lisa;
 - b) Al will have no equitable or beneficial interest in the Delta Properties, and the equitable and beneficial interest in the Delta Properties will be vested solely and exclusively in Lisa;
 - c) Any benefit, interest, profit or advantage arising out of or accruing from the Delta Properties is and will be a benefit, interest, profit or advantage of Lisa and if received by Al will be received and held by him for Lisa;
 - d) At the direction of Lisa, Al will at Lisa's expense, assign, transfer, convey, lease, mortgage, pledge, charge or otherwise deal with the Delta Properties as determined and directed by Lisa;
 - e) At Lisa's direction Al will act as the agent for Lisa in respect of any matter related to the Delta Properties;
 - f) Al will not deal with the Delta Properties in any way or execute any instrument, document or encumbrance in respect of the Property without the prior consent or direction of Lisa;
 - g) Al will notify Lisa forthwith of any matter or thing in respect of the Delta Properties, including without limitation, in respect of any tax, lien, charge or incumbrance in respect of the Property; and
 - h) Al acknowledged receipt of payment of \$240,000 paid by Lisa as consideration for the assignment of the equitable interest in the Property.
15. Lisa paid \$240,000 to Al as consideration for the assignment set out in the Trust Document on or about June 27, 2002. Lisa obtained the monies to pay Al through a partnership allocation from ARTG.
16. On or about November 30, 2004 Al, on behalf of ART, sold Unit #4 for \$180,000.

17. Between 2001 and 2015 Lisa paid the income tax owing on the revenues generated by the Delta Properties, and in 2005 paid the tax on the capital gains generated by the sale of Unit #4 in 2004.
18. Although ARTG has reimbursed Lisa for some of the taxes paid by her, the reimbursement did not include interest incurred by Lisa as a result of her paying the tax liabilities on the Delta Properties for 14 years.

CONDUCT SUBSEQUENT TO EXECUTION OF TRUST AGREEMENT

19. Beginning in 2005 Lisa and her husband began protracted divorce proceedings that culminated in a 2009 decision of the Alberta Court of Appeal.
20. At the outset of Lisa's divorce litigation her husband took the position that the Delta Properties were purchased with funds from their personal bank account, as opposed to funds from 934 or LLT, and were therefore matrimonial assets.
21. In 2006 Lisa asked her father to clarify how the Delta Properties were purchased by her and on what terms. Al advised Lisa at that time that she did not pay for the Delta Properties, but that she was holding them in trust for her siblings.
22. In 2007 Lisa in her capacity as beneficial owner of the Delta Properties, executed an agreement to distribute to her siblings the net profits from the 2004 sales of Unit #4 as well as the rental income that had accrued from the properties since 2001.
23. In 2010 ARTG removed Lisa's company 934 from the partnership.
24. In January, 2011 Al confirmed that Lisa had a beneficial interest in Unit #3.

AL HAS BREACH OF TERMS OF THE TRUST AGREEMENT

25. On April 11, 2016 Lisa, through counsel, demand that Al, in accordance with the terms of the Trust Agreement, transfer legal title of Unit #3 to her.
26. On April 26, 2016 Al, through counsel, responded to Lisa's letter of April 11, 2016 denying her request and taking the position that the Trust Agreement is not enforceable.

27. Al is in breach of the Trust Agreement.

Part 3: LEGAL BASIS

1. The petitioner relies on the law of trusts.
2. Al, on behalf of ART, holds legal title to Unit #3 as nominee, agent, and bare trustee for the sole benefit and account of Lisa.
3. Pursuant to the terms of the Trust Agreement, Al is and was required to deal with the Delta Properties as directed by Lisa.
4. Al is in breach of the Trust Agreement by refusing to convey Unit #3 to Lisa, despite written demand.

TRUST AGREEMENT CONFIRMS A BARGAIN NOT A GIFT

5. The Trust Agreement reflects the terms of a bargain made between Lisa and her father:
 - a) Al, for estate and tax planning reasons wished to transfer the beneficial ownership of the Delta Properties to his daughter Lisa;
 - b) Lisa agreed to purchase beneficial ownership of the Delta Properties from her father for fair market value, and pay the related tax liability.
6. Consideration has flowed from Lisa to her father to secure her rights under the Trust Agreement.
7. Lisa and Al's signatures on the Trust Agreement confirm the terms of the express trust agreement.

AL HAS CONFIRMED LISA BENEFICIAL OWNERSHIP

8. The existence and legitimacy of the Trust Agreement has never been disputed by Al or ART.
9. Al's words and actions in the years following the execution of the Trust Agreement have confirmed its enforceability, including:

- a) Al's 2006 email
 - b) Requiring that Lisa execute the 2007 transfer
 - c) Al's 2011 email.
10. What has changed over time is Al's characterization of the effect, purpose and intent of the Trust Agreement.
11. Though Al has from time-to-time changed his characterization of the Trust Agreement, for the purposes of enforcing the Trust Agreement all that is relevant is his intention at the time he executed the same.
12. Al's express intention is readily ascertainable from the terms of the Trust Agreement.

PARTITION OF PROPERTY ACT

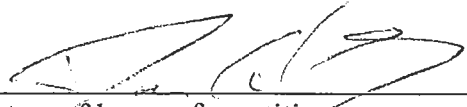
13. The petitioner seeks, as alternative relief, a sale of the Untie #3 and a distribution of the proceeds pursuant to the *Partition of Property Act*.
14. Ownership of an equitable interest in land is an interest in land for purposes of a partition application.
15. No good reason exists not to order partition and sale.
16. *Law and Equity Act*, RSBC 1996, c 253

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Lisa Thomson, made March 7, 2017.

The petitioner estimates that the hearing of the petition will take 1 day..

Date: March 9, 2017



Signature of lawyer for petitioner
Daniel H. Coles

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this petition

with the following variations and additional terms:

Date: _____

Signature of Judge Master