

OCT 28 2019



S1912177

No.  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**AURA VENTURES CORP.**

**PLAINTIFF**

**AND:**

**CITY OF VANCOUVER**

**DEFENDANT**

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff(s) for the relief set out in Part 2 below.**

**If you intend to respond to this action, you or your lawyer must**

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and**
- (b) serve a copy of the filed response to civil claim on the plaintiff.**

**If you intend to make a counterclaim, you or your lawyer must**

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and**
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.**

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

### **Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff(s),

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

## **CLAIMS OF THE PLAINTIFF**

### **Part 1: STATEMENT OF FACTS**

#### **The Parties and the Class**

1. The Plaintiff, Aura Ventures Corp., is a company incorporated pursuant to the laws of British Columbia with an address for service for this proceeding at c/o Evolink Law Group, 4388 Still Creek Drive, Suite 237, Burnaby, British Columbia.
2. The City of Vancouver is a municipality under the *Vancouver Charter*, SBC 1953, ch. 55 and is named as the registered owner of the lands known as Hastings Sunrise Parking Lot (as defined and legally described in paragraph 4 below).
3. The Plaintiff brings this claim on its own behalf and on behalf of all persons who are the current owners of the Benefitted Properties (defined in paragraph 5 below) (hereinafter the "Class" or "Class Member(s)").

#### **The Hastings Sunrise Parking Lot**

4. The Hastings Sunrise Parking Lot is a collective parking project formally created, on or about October 1965, pursuant to section 506A of the *Vancouver Charter* bearing the civic address 2502 Franklin Street, Vancouver, BC, consisting of fifteen lots with current legal descriptions and PIDs as follows:

1. Lot 1 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-124
2. Lot 2 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-141
3. Lot 3 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-159
4. Lot 4 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-167
5. Lot 5 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-175
6. Lot 6 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-191
7. Lot 7 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-027-023
8. Lot 8 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-205
9. Lot 9 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-221
10. Lot 10 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-230
11. Lot 11 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-248
12. Lot 12 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-027-040
13. Lot 13 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-264
14. Lot A Plan VAP7703 District Lot THSL Land District 36 OF LOT 53  
PID: 010-353-631
15. Lot B Plan VAP7703 District Lot THSL Land District 36 OF LOT 53  
PID: 010-353-658

(collectively the "Hastings Sunrise Parking Lot").

5. The Hastings Sunrise Parking Lot, at its inception, was created for the benefit of the owners of the Benefitted Properties.

6. The Hastings Sunrise Parking Lot concept was initiated via a petition under Local Improvement Procedure By-Law No. 3614, on or about 1964, and was for the special benefit of the real properties located at: (1) both sides of Hastings Street between Nanaimo Street and Slocan Street and (2) the east side of Kamloops Street between Hastings Street and the lane immediately to the north of Hastings Street (individually a "Benefitted Property" and collectively the "Benefitted Properties").

7. The Hastings Sunrise Parking Lot consists of approximately 180 parking spots that are intended for the use of owners, tenants, and/or customers of the Benefitted Properties, and each Benefitted Property is allocated a certain number of parking spots in the Hastings Sunrise Parking Lot.

8. The allocation of parking spots to a Benefitted Property, and the general availability of the Hastings Sunrise Parking Lot for the use of the tenants and customers of all Benefitted Properties, increases the value of the Benefitted Property.

9. At or about the time of acquisition or construction of the Hastings Sunrise Parking Lot, the Benefitted Properties were legally described as:

Lots 17 to 25 inclusive, Lot 26 Amend., and Lots 27 to 32 inclusive, Block 52, T.H.S.L.

Lots 17 to 30 inclusive, and Lots A and B of 31 and 32, Block 53, T.H.S.L.

Lot 13 Amend., Lot 15 Amend., and Lots 16 to 24 inclusive, Block 54, T.H.S.L.

Lots 1 to 6 inclusive, and Lots 20 to 26 inclusive, Block 55, T.H.S.L.

Lots 1 to 16 inclusive, Block 56, T.H.S.L.

Lots 1 to 11 inclusive, Block 57, T.H.S.L.

But excluding:

Lot 27, Block 52, T.H.S.L.

27 feet of Lot A of 31 and 32, Block 53, T.H.S.L.

27 feet of Lot B of 31 and 32, Block 53, T.H.S.L.

Lots 8 and 9, Block 57, T.H.S.L.

10. From 1964 to the present, some of the Benefitted Properties have changed ownership and/or undergone stratification, and continues to be Benefitted Properties that benefits from, and has enjoyment and use of, the Hastings Sunrise Parking Lot.

11. The Plaintiff, Aura Ventures Corp., is currently the registered owner of eight lots of land that were stratified from one or more of the Benefitted Properties, and bear the following civic addresses and PIDs, and continues to be benefitted by the Hastings Sunrise Parking Lot as Benefitted Properties:

2642 East Hastings

PID: 027-854-299

PID: 027-854-302

PID: 027-854-311

2638 East Hastings

PID: 027-854-329

2632 East Hastings

PID: 027-854-337

2630 East Hastings

PID: 027-854-345

2626 East Hastings

PID: 027-854-353

PID: 027-854-361

**Annual Payments to the City of Vancouver by Owners of The Benefitted Properties**

12. Each Benefitted Property's proportionate share of the Acquisition and Construction Cost (defined in paragraph 14 below) and/or the Annual Maintenance Costs (defined in

paragraph 18 below) was determined by the City of Vancouver based on factors such as frontage and the size of a particular Benefitted Property.

*The Acquisition and Construction Cost for the Hastings Sunrise Parking Lot*

13. At the time of constructing the Hastings Sunrise Parking Lot on or around 1964, the City of Vancouver was tasked, amongst other things, to acquire the fifteen lots that make up the Hastings Sunrise Parking Lot, to demolish any buildings on such lots, and constructing the facilities for a parking lot.

14. The total cost for constructing the Hastings Sunrise Parking Lot (including the acquisition of the fifteen lots) was \$255,360.68, of which the City of Vancouver contributed no monies (the "Acquisition and Construction Cost").

15. To pay for the Acquisition and Construction Cost, the City of Vancouver issued debentures in such amount, payable within twenty-five years, and assessed the following annual amounts against the Benefitted Properties as follows (for each year from 1966 to 1990):

- a. \$14,683.24, for annual payment of interest on the debentures at the rate of 5.75%; and
- b. \$6,131.70, to be retained and invested by the City of Vancouver, the total of which was estimated to be sufficient to discharge the payment of said debentures when it becomes due and payable.

16. The total annual amount of \$20,814.94 (\$14,683.24 + \$6,131.70) was assessed against the Benefitted Properties and were paid by the owners of those Benefitted Properties at the time of said assessments.

17. By 1990, the Acquisition and Construction Cost was paid in full (with interest) by the owners of the Benefitted Properties and those owners' ownership and/or beneficial rights and interests to the Hastings Sunrise Parking Lot has vested as of their first payment of the Acquisition and Construction Cost, on or around 1966, or alternatively in 1990 (the final payment of the Acquisition and Construction Cost).

Annual Maintenance Costs of the Hastings Sunrise Parking Lot

18. In addition to the annual payments for the Acquisition and Construction Cost, from 1966 to the present, each of the Benefitted Properties were also assessed annually for payment of various maintenance costs, including the following:

- a. The City of Vancouver's estimated costs and expenses for maintaining the Hastings Sunrise Parking Lot;
- b. Costs for insurance, if any; and
- c. An amount equivalent to the property taxes that would have been assessed for the Hastings Sunrise Parking Lot, if it were not legally registered in the name of the City of Vancouver.

(the "Annual Maintenance Costs").

19. The Annual Maintenance Costs has been and continues to be assessed by the City of Vancouver against all the Benefitted Properties and the owners of those Benefitted Properties are liable to pay said assessments, and have paid said assessments.

20. The Plaintiff, Aura Ventures Corp., whose properties are described in paragraph 11 above are assessed these Annual Maintenance Costs, and the Plaintiff was liable to pay these Annual Maintenance Costs, and have paid such Annual Maintenance Costs.

The City of Vancouver as a Trustee for the Hastings Sunrise Parking Lot

21. In implementing the petition to construct the Hastings Sunrise Parking Lot and thereafter managing the Hastings Sunrise Parking Lot was acting on behalf of, and for the benefit of, the owners of the Benefitted Properties, and hold the legal title of the Hastings Sunrise Parking Lot for the collective benefit of the owners of the Benefitted Properties.

22. The payments of the Acquisition and Construction Cost and Annual Maintenance Costs were made to the City of Vancouver for the specific purpose of acquiring,

constructing, and/or maintaining the Hastings Sunrise Parking Lot only, and are funds for which the City of Vancouver holds in trust for those purposes only.

23. Upon application of the above noted trust funds to the Hastings Sunrise Parking Lot, the Hastings Sunrise Parking Lot also became trust property that is held for the collective benefit of the owners of the Benefitted Properties.

24. Furthermore, it was always the expressed intention and understanding of all the relevant parties (including the City of Vancouver and the owners of the Benefitted Properties at the time) that:

- a. The City of Vancouver hold the Hastings Sunrise Parking Lot in trust for the collective benefit of the Benefitted Properties and the owners of the Benefitted Properties;
- b. The Hastings Sunrise Parking Lot shall indefinitely continue as a parking lot for the use and enjoyment of the owners, tenants, and/or customers of the Benefitted Properties;
- c. The City of Vancouver shall maintain the Hastings Sunrise Parking Lot in good repair, and be reimbursed for any such costs or expenses on an annual basis;
- d. Any annual property tax that could have been levied against the Hastings Sunrise Parking Lot would be assessed against the Benefitted Properties and paid proportionally by each owner of a Benefitted Properties;
- e. The Hastings Sunrise Parking Lot shall not be applied for any other usage except with unanimous consent of the current owners of the Benefitted Properties.



25. The City of Vancouver has further declared that the Benefitted Properties are those that are specially benefitted by the Hastings Sunrise Parking Lot and held in trust for the collective benefit of the owners of the Benefitted Properties.

26. The City of Vancouver has also further declared that it is in the position of a trustee in holding the legal title to the Hastings Sunrise Parking Lot.

27. Some of the Class Members have owned their Benefitted Property since 1966.

28. Some of the Class Members acquired their Benefitted Property from a previous owner anytime between 1966 to the present, and received assignment of any and all rights, interest, and benefits vested in the previous owner in respect of the Hastings Sunrise Parking Lot, and said Class Member would also have acquired any obligation to pay the Acquisition and Construction Cost and/or the Annual Maintenance Costs.

29. Any Class Member who acquired a Benefitted Property from a previous owner would have acquired their Benefitted Property at a market value and/or price that already factored in the past and/or future payments of the Acquisition and Construction Cost and/or Annual Maintenance Costs.

30. From on or about 1966 to the present, the Hastings Sunrise Parking Lot was used as a parking lot, and was continuously used as a parking lot.

31. From on or about 1966 to the present, the Hastings Sunrise Parking Lot continues to be held by the City of Vancouver, in trust, for the benefit of the Class Members.

32. The City of Vancouver has not been released from its trust obligations in respect of the Hastings Sunrise Parking Lot.

**The City of Vancouver's Taking of the Hastings Sunrise Parking Lot**

33. On or about June 2019, without consent of the Class Members, the City of Vancouver announced that it would:

- a. terminate the use of the Hastings Sunrise Parking Lot as a parking lot; and
- b. convey, donate, and/or transfer the Hastings Sunrise Parking Lot to a third-party for the construction of various housing and other projects.  
(the "Housing Project").

34. The City of Vancouver, in addition to failing to obtain consent from the Class Members, also denied the existence of any trust and/or understandings detailed in paragraphs 21-26 above.

35. Despite the City of Vancouver being reminded of the trust and/or understandings detailed in paragraphs 21-26 above, the City of Vancouver continued to take steps for the Housing Project without regard to the rights of the Class Members.

36. The Housing Project, both during its construction and thereafter, will cause each of the Benefitted Properties to lose value and damage to each of the Class Members.

## **Part 2: RELIEF SOUGHT**

1. The Plaintiff claim on its own behalf and on behalf of the Class Members against the Defendant, the City of Vancouver for:

- a. a certification order pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the "CPA") that this proceeding be certified as a class proceeding and that no Class Members may opt-out;
- b. a certification of pending litigation over the fifteen lots, known as the Hastings Sunrise Parking Lot, and legally described as:

1. Lot 1 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-124
2. Lot 2 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53

- PID: 015-026-141**
- 3. Lot 3 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-159**
  - 4. Lot 4 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-167**
  - 5. Lot 5 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-175**
  - 6. Lot 6 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-191**
  - 7. Lot 7 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-027-023**
  - 8. Lot 8 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-205**
  - 9. Lot 9 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-221**
  - 10. Lot 10 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-230**
  - 11. Lot 11 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-248**
  - 12. Lot 12 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-027-040**
  - 13. Lot 13 Plan VAP1019 District Lot THSL Land District 36 OF LOT 53  
PID: 015-026-264**
  - 14. Lot A Plan VAP7703 District Lot THSL Land District 36 OF LOT 53  
PID: 010-353-631**
  - 15. Lot B Plan VAP7703 District Lot THSL Land District 36 OF LOT 53  
PID: 010-353-658**

- c. a declaration that the owners of the Benefitted Properties are collectively the beneficial owners of the Hastings Sunrise Parking Lot, and such beneficial rights running with the Benefitted Properties;**

- d. an order that the land title register be rectified with an “in trust” endorsement on the registrations for the fifteen lots that constitute the Hastings Sunrise Parking Lot;**
  
- e. further, or in the alternative:**

  - i. a declaration that the City of Vancouver held the Hastings Sunrise Parking Lot on an express and/or implied trust for the benefit of the Class Members collectively, running with the Benefitted Properties;**
  
  - ii. an order that said trust is collapsed; and**
  
  - iii. an order designating a new trustee, to be appointed by the Court, and that the City of Vancouver transfer legal title of the Hastings Sunrise Parking Lot to said trustee;**
  
- f. further, or in the alternative:**

  - i. a declaration that the City of Vancouver holds the Hastings Sunrise Parking Lot for the benefit of the Class Members collectively, in a resulting trust and/or constructive trust;**
  
  - ii. an order that the City of Vancouver transfer legal title of the Hastings Sunrise Parking Lot to a trustee to be designated by the Court;**
  
- g. further, or in the alternative:**

  - i. a declaration that the Hastings Sunrise Parking Lot is for the benefit of the Benefitted Properties, and its owners; and**

- ii. an order that the Registrar of Land Titles register a restrictive covenant against the title of the Hastings Sunrise Parking Lot for the benefit of the Benefitted Properties, providing that the Hastings Sunrise Parking Lot may not be used for any other purpose except as a parking lot;

**h. further, or in the alternative:**

- i. a declaration that the Hastings Sunrise Parking Lot is for the benefit of the Benefitted Properties, and its owners; and
- ii. an order that the Registrar of Land Titles cause a caution, caveat, claim, encumbrance, or charge be registered against the title of the Hastings Sunrise Parking Lot for the benefit of the Benefitted Properties, prohibiting transfer of the Hastings Sunrise Parking Lot without the consent of the owners of the Benefitted Properties;

**i. further, or in the alternative:**

- i. a declaration that the Hastings Sunrise Parking Lot is held in trust for the benefit of the Benefitted Properties and its owners;
- ii. a permanent injunction enjoining the City of Vancouver from transferring the ownership of the Hastings Sunrise Parking Lot; and
- iii. a permanent injunction enjoining the City of Vancouver from dealing with the Hastings Sunrise Parking Lot in a manner inconsistent with its usage as a parking lot, unless by consent of the Class Members.

**j. an interim, or interlocutory, injunction enjoining the City of Vancouver from:**

- i. transferring the ownership of the Hastings Sunrise Parking Lot; or

- ii. dealing with the Hastings Sunrise Parking Lot in a manner inconsistent with its usage as a parking lot, unless by consent of the Class Members;
- k. further, or in the alternative, an order that the City of Vancouver pay damages and/or compensation to the Class Members in an amount equivalent to the market value of the Hastings Sunrise Parking Lot;
- l. alternatively, damages for injurious affection;
- m. general, special and punitive damages;
- n. interest pursuant to the *Court Order Interest Act*;
- o. costs; and
- p. such further and other relief that, as to this Honourable Court, seems meet and just.

### **Part 3: LEGAL BASIS**

1. The Plaintiff pleads and relies on the *Class Proceedings Act*, RSBC 1996, c 34, *Trustee Act*, RSBC 1996, c 464, *Land Title Act*, RSBC 1996, c 250, *Property Law Act*, RSBC 1996, c 377, *Law and Equity Act*, RSBC 1996, c 253, *Vancouver Charter*, SBC 1953, c 55, and related enactment, and the law of trusts, the law of restitution, and the law of unjust enrichment.

2. While some of the Class Members acquired their Benefitted Property from a previous owner anytime between 1966 to the present, those Class Members have received an assignment of any and all rights, interests, and benefits that vested in the previous owner in respect of the Hastings Sunrise Parking Lot, and also acquired any

obligations to pay the Acquisition and Construction Cost and/or Annual Maintenance Costs.

**The City of Vancouver is a Trustee in Relation to the Hastings Sunrise Parking Lot**

3. From the outset, the City of Vancouver has contributed no monies towards the construction or maintenance of the Hastings Sunrise Parking Lot, all monies were contributed by the Class Members or the previous owners of the Benefitted Properties.

4. By operation of law, the City of Vancouver's acquisition, construction and/or management of the Hastings Sunrise Parking Lot was in the role of an agent and/or a trustee for the owners of the Benefitted Properties.

5. The City of Vancouver acquired no beneficial interest in the Hastings Sunrise Parking Lot, and is merely holding the legal title of the Hastings Sunrise Parking Lot in trust for the collective benefit of the Class Members.

6. The City of Vancouver has also, by conduct and/or words, declared itself as a trustee holding legal title of the Hastings Sunrise Parking Lot for the benefit of the Class Members, further reinforcing its trust obligations that arise by operation of law.

7. The City of Vancouver's use or intended use of the Hastings Sunrise Parking Lot for the Housing Project, without permission from the Class Members, exceeds their role as agent and/or trustee and is a breach of its obligations to the Class Members.

8. As a trustee, the City of Vancouver owes the beneficiaries (i.e. the Class Members) a duty of loyalty, and use of the Hastings Sunrise Parking Lot contrary to the original intended usage constitutes a breach of trust.

9. The Court may order the Land Title Registrar to rectify the land title registry to recognize this trust estate, in accordance with s. 180 of the *Land Title Act*.

10. The Class Members may also seek to collapse said trust and/or appoint a new trustee.

**Unjust Enrichment and Constructive Trust**

11. The City of Vancouver has taken the Hastings Sunrise Parking Lot for their own use on the Housing Project.

12. The City of Vancouver has received the benefit of the Hastings Sunrise Parking Lot at the expense of the Class Members.

13. The City of Vancouver has been enriched by their taking of the Hastings Sunrise Parking Lot, without any juridical reason.

14. The Court may impose a constructive trust as a remedy for the unjust enrichment, or alternatively order that damages be paid to the Class Members.

**Damages for Injurious Affection**

15. In the alternative, if the City of Vancouver had legal and statutory authority to undertake the Housing Project, which is not admitted but specifically denied, then the Housing Project injuriously affected the Benefitted Properties, by reducing the market value of those Benefitted Properties during the construction of the Housing Project and also thereafter.

16. The City of Vancouver is an expropriating authority under the *Expropriation Act*, RSBC 1996, c 125.

17. Accordingly, the Plaintiff and the Class are entitled to compensation pursuant to s. 41 of the *Expropriation Act* for the injurious affection they suffer.

18. Alternatively, the Plaintiff and the Class are entitled to compensation pursuant to s. 541 of the *Vancouver Charter*.



Plaintiff's address for service: Evolink Law Group  
4388 Still Creek Drive, Suite 237  
Burnaby, BC V5C6C6

E-mail address for service: [service@evolinklaw.com](mailto:service@evolinklaw.com)

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street, Vancouver, BC

Date: October 28, 2019



Signature of solicitor for the Plaintiff  
Simon Lin

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

**APPENDIX**

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is a class action claiming for rights to a property and breach of trust

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A dispute concerning real property (real estate);

**Part 3: THIS CLAIM INVOLVES:**

- a class action

**Part 4:**

*Class Proceedings Act*, RSBC 1996, c 34

*Trustee Act*, RSBC 1996, c 464

*Land Title Act*, RSBC 1996, c 250

*Property Law Act*, RSBC 1996, c 377

*Law and Equity Act*, RSBC 1996, c 253

*Vancouver Charter*, SBC 1953, c 55