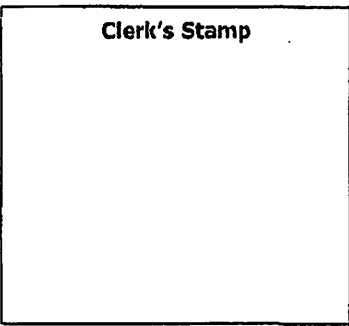


COURT FILE NO. 1003 13366
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
APPLICANT FIC REAL ESTATE FUND LTD.
RESPONDENT PHOENIX LAND VENTURES LTD.
DOCUMENT **ORDER**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McLENNAN ROSS LLP #600 McLennan Ross Building 12220 Stony Plain Road Edmonton, AB T5N 3Y4	Lawyer: Telephone: Fax: Email: File No.:	Ken Fitz (780) 482-9231 (780) 733-9713 kfitz@mross.com 101775
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DATE ON WHICH ORDER WAS PRONOUNCED: AUGUST 22, 2018

LOCATION OF HEARING OR TRIAL: EDMONTON, ALBERTA

NAME OF JUDGE WHO MADE THIS ORDER: JUSTICE S.D. HILLIER

WHEREAS Phoenix Land Ventures was directed to provide a full accounting of all income generated by and from the Golfdome property, expenses incurred and disbursements made to other shareholders of the Golfdome operations (the "**Accounting**") in accordance with the Judgment Roll of the Honourable Justice Hillier filed June 19, 2015 a true copy of which is appended as Schedule 'A' to this Order.

AND WHEREAS the report of Justin Thoman dated February 25, 2018 (the "**Thoman Report**"), a true copy of which is attached hereto as Schedule 'B' to this Order, identified certain omissions in the records produced by Phoenix Land Ventures to date.

AND UPON THE APPLICATION of the Applicant, FIC Real Estate Fund. Ltd. ("FIC") to have the Respondent, Phoenix Land Ventures Ltd. ("**Phoenix Land Ventures**") held in contempt or alternatively for a further production Order; AND UPON having reviewed the materials filed on behalf of the respective parties; AND UPON having heard from counsel for the Applicant and counsel for the Respondent; IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Application by FIC to have Phoenix Land Ventures held in contempt is dismissed.

2. The alternative Application by FIC to have Phoenix Land Ventures provide a more complete financial disclosure is granted.
3. The Application by FIC to have the Court determine FIC's share of the profits generated from the Golfdome facility between September 1, 2007 and May 31, 2017 is adjourned pending receipt of the Independent Accountant Report as described and defined herein.
4. By Friday, August 24, 2018, the parties will exchange the names of a proposed accountant to act as an independent accountant (the "**Independent Accountant**") who will be responsible to report to the Court of Queen's Bench of Alberta with respect to the required Accounting.
5. If the parties cannot agree on the appointment of the Independent Accountant, then the parties will provide the names and qualifications of the two proposed appointees to Justice Hillier and Justice Hillier will appoint one of the two proposed appointees to act as the Independent Accountant.
6. The parties will then determine whether the Independent Accountant accepts the appointment.
7. The cost of the Independent Accountant and the work described herein shall be paid for by Phoenix Land Ventures.
8. The Independent Accountant shall immediately be provided with the following documentation:
 - (a) This Order;
 - (b) The documentation identified at Exhibits B, D2-D9, E, F, G, and H2-H36 of Justin Thoman's Affidavit filed May 17, 2018;
 - (c) Exhibits "B" through "K" to the Affidavit of Denis O'Dowd filed August 2, 2018;
 - (d) All of the missing or incomplete documentation identified in the Thoman Report, to the extent they are presenting in existence; and
 - (e) Such further and other material that the Independent Accountant deems necessary to complete the Independent Accountant Report and requests from Phoenix Land Ventures.(collectively the "**Financial Disclosure**").
9. It is the responsibility of the Independent Accountant to review the Financial Disclosure and to prepare a written report to the Court (the "**Independent Accountant Report**") with the purpose of preparing the Accounting for the purpose identifying the revenue and expenses attributable to the Golfdome operation as distinct from the other operations of Phoenix Land Ventures which Phoenix Land Ventures has caused to be comingled with the Golfdome operations.
10. The Independent Accountant Report shall be submitted by the Independent Accountant to the Court not later than November 30, 2018.
11. In the case of any ambiguity or uncertainty with respect to the categorization of any revenue or expense item, if any, including whether it is wholly or partially generated by or from the Golfdome Operation, then the Independent Accountant shall identify in the Independent Accountant Report any item individually in excess of \$10,000 or any items collectively that exceed \$30,000 in value (the "**Ambiguous Expense(s)**") along with whatever supporting documentation the Independent Accountant considers necessary to allow the Court and the parties to understand the ambiguity or uncertainty and to then assess the appropriate characterization of the Ambiguous Expense.

12. In the event that the parties are not able to reach agreement on a Consent Order with respect to FIC's entitlement to income generated from or by the Golfdome property after receipt of the Independent Accountant Report, then FIC is to give notice to the Court and counsel for Phoenix Land Ventures of its intention to bring its Application back before the Court on a date convenient to the Court and the parties.
13. In the event that the Application cannot be resolved by way of consent and is reinstated after receipt of the Independent Accountant Report, the parties will:
 - (a) Contact Justice Hillier's office and the Trial Coordinators office to arrange scheduling; and
 - (b) Exchange Written Briefs in accordance with the timelines for Special Chamber's Applications.
14. Costs of FIC's Application are reserved and will be addressed by the Court at a later date.
15. This Order may be consented to in counterpart and by electronic transmission.

JUSTICE S. D. HILLIER OF THE COURT OF QUEEN'S
BENCH OF ALBERTA

APPROVED AS TO THE ORDER GRANTED
MCLENNAN ROSS LLP

Per:

KEN KITZ
Solicitors for the Applicant

APPROVED AS TO THE ORDER GRANTED
ENGELKING LAW

Per:

MURRAY ENGELKING
Solicitors for the Respondent

Schedule "A"

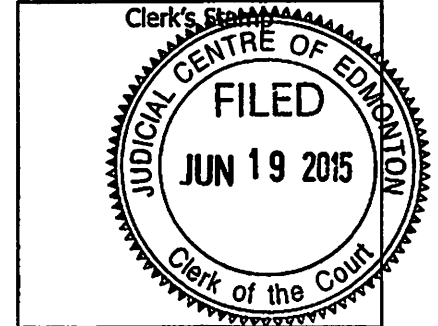
COURT FILE NO. 1003 13366

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF FIC REAL ESTATE FUND LTD.

DEFENDANT PHOENIX LAND VENTURES LTD.



DOCUMENT JUDGMENT ROLL

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McLENNAN ROSS LLP 600 McLennan Ross Building 12220 Stony Plain Road Edmonton, AB T5N 3Y4	Lawyer: Telephone: Fax: Email: File No.:	Kenneth W. Fitz (780) 482-9200 (780) 482-9100 kfitz@mross.com 101775
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DATE/LOCATION DECISION WAS PRONOUNCED: MAY 20, 2015 – EDMONTON, ALBERTA


NAME OF JUSTICE WHO MADE THIS DECISION: THE HONOURABLE MR. JUSTICE S.D. HILLIER

UPON this matter coming before this Honourable Court on February 9 through 13, 2015; AND UPON having heard the evidence and submissions presented by counsel for the parties; AND UPON providing written Reasons for Judgment filed May 20, 2015; IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. FIC is the beneficial owner of an undivided 20% interest in:

Lot 37, Plan Reference 8021961, Block 2; and
Lot 49, Plan Reference 0222058, Block 2
Municipally Identified as 10104 32 Avenue, Edmonton, Alberta
(the "Golfdome Property").
2. Phoenix holds FIC's interest in the Golfdome Property in trust, and was required to conduct itself as a reasonably prudent owner;
3. Phoenix shall provide to FIC, no later than June 30, 2015, a full accounting of all income generated by and from the Golfdome property, expenses incurred, and disbursements made to other shareholders for the period September 2007 to May 2015, and shall provide further updated monthly accounts until FIC's application for distribution of sale is determined;

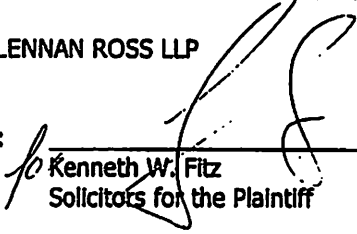
4. Within 15 days of this Decision, the parties shall agree to an independent listing agent who shall determine the current value of the Golfdome property, failing which each party shall forthwith submit the name of two agents with their range of recommended list price and confirmation of their independence from the parties and the Court shall assign the listing agent by June 16, 2015, who will determine the value of the property;
5. If the parties are unable to agree to a sale of FIC's interest to the other beneficial owners within 15 days of receipt of the valuation, and in any event not later than July 31, 2015, the Golfdome property shall be listed for sale on the market;
6. Proceeds of the sale, net of reasonable realtors' commissions shall be paid into Court;
7. FIC shall apply to the Court within 14 days of payment in of net sale proceeds for distribution of funds;
8. All encumbrances, as well as Borealis and Prima, shall be provided 10 days' notice of FIC's application for distribution of sale proceeds paid into court as required under s. 25 of the *Law of Property Act*.
9. FIC shall be entitled to its costs on a solicitor client basis.


The Honourable Mr. Justice S.D. Hillier

APPROVED AS TO THE ORDER MADE:

MCLENNAN ROSS LLP

Per:


Kenneth W. Fitz
Solicitors for the Plaintiff

ENGELKING WOOD

Per:


Murray L. Engelking
Solicitors for the Defendant

Schedule "B"



February 25, 2018

McLennan Ross LLP
600 McLennan Ross Building
12220 Stony Plain Road
Edmonton, Alberta
T5N 3Y4

Attn.: Kenneth Fitz

Dear Sir;

Re.: FIC Real Estate Fund Ltd. v. Phoenix Land Ventures Ltd.

You have requested that I review the information provided by Phoenix Land Ventures Ltd. ("Phoenix") in response to a Judgment made by Justice S.D. Hillier in the above-named matter. Specifically, in his Reasons for Judgment, Justice Hillier required the following:

"Phoenix shall provide to FIC, no later than June 30, 2015, a full accounting of all income generated by and from the Golfdome property, expenses incurred, and disbursements made to other shareholders for the period September 2007 to May 2015, and shall provide further updated monthly accounts until FIC's application for distribution of sale is determined..."

I have reviewed the information provided by Phoenix (summarized in Attachment #1 to this letter) in response to the above requirement in the context of the records which would typically be expected of a business enterprise and whether these records have been provided as part of the "full accounting". In my opinion, numerous records have not been produced and those which have been produced are insufficient to make an evaluation of the "full accounting" of income, expenses and disbursements.

In summary, the information that would be required to assess the "full accounting" of funds would include complete year-end financial statements, a general ledger (or other form of a transaction-by-transaction listing), complete bank records (statements, cheque images, deposit information), supplier invoices for all expense transactions and/or disbursements attributed to the Golfdome property and documents related to the purchase of the property.

I have included a detailed listing of the deficiencies in the documents in Attachment #2 to this letter but have summarized the main issues below:

- No year-end financial statements have been provided. Instead, various summary reports were provided. All of these documents are internally prepared, exclude balance sheets (which would list all assets, liabilities and owners' equity) and lack explanatory notes that typically

accompany financial statements. None of the documents have been reported on by an external accountant or auditor.

- The summaries do not show the individual transactions included in the amounts. A general ledger, which would provide this information, has not been produced. The summaries appear to have been produced from an off-the-shelf accounting software program; therefore, a general ledger would be available. Without a general ledger or transaction-by-transaction detail, there is no reasonable way to match an expense total on the summary to specific invoices and/or cheques.
- The bank documents (which typically include monthly statement, images of cashed cheques, cheque stubs, deposit slips) are incomplete and redacted to the point that not even the account balance is shown in many circumstances. The redactions appear to have been done based on a representation that transactions related to other business ventures are comingled in the account.
- If transactions related to the Golfdome property have been comingled with other business ventures, additional information, such as vendor invoices showing the nature and purpose of a cheque that has been issued, is required to determine if cheques attributed to the Golfdome property actually relate to it or to another business venture.
- Some supplier invoices were provided to support the amounts shown on the summaries; however, the total of the invoices provided is less than the amounts shown on the summaries so that only a portion of the expenses shown would be supported by the invoices provided. Also, it is not possible to match invoices to the summaries since there was no transaction-by-transaction detail provided and it is also not possible to determine what transactions make up the remainder of the expense.
- Similarly, there is little documentation provided with respect to bank deposits (typically redacted) which would be expected to tie into the revenue shown on the summaries. It is possible that the revenue on the summary is not complete.
- In the disclosure that I reviewed, there were no documents supporting the actual purchase of the Golfdome property itself, which typically would include at least a Statement of Adjustments showing the use of funds as well as various legal and title documents.

Despite the deficiencies in the information noted above, I was able to review the information which was provided and have several concerns with respect to specific amounts or transactions which appear to have been included in the summary of the Golfdome property's operations.

- Loan interest of approximately \$13,000 per month is recorded on the summaries. This appears to relate to a \$1.53 million mortgage at 10.5%. The first interest charges appeared in March 2010 (\$13,125 on the bank statement of 1229068 Alberta Ltd.).

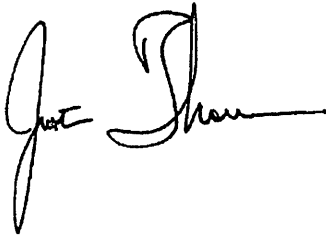
- I could see no entry showing the receipt of the funds into the bank account and therefore there was no indication that the funds were received by the Golfdome property.
- No information was provided to show how the funds were disbursed for the benefit of the Golfdome property. While it was represented that various improvements were made to the property, any building additions or improvements would typically be recorded as assets on a balance sheet. No balance sheets were provided to assess what, if any, additions or improvements were recorded.
- There were amounts recorded as “Capital Repairs and Maintenance” on the summaries, but these amounts totaled only approximately \$74,000 prior to March 2010, and only approximately \$103,000 for the two years after March 2010. Given that the loan proceeds were \$1.53 million, the use of the majority of the proceeds is not evident.
- Additional interest totaling over \$35,000 is recorded on the summaries between 2012 and May 2015. This appears to relate to \$267,000 apparently advanced by Mr. Dennis O’Dowd (at 4%). In reviewing the bank statements, I did note transfers into the 1229068 bank account from another account; however, no information was provided to show how the funds were disbursed for the benefit of the Golfdome property.
- The requirements of Justice Hillier require that “...disbursements made to other shareholders...” also be included in the full accounting of funds. There has been limited disclosure and the summaries do include a category of expense “Management fees to SSHG” which typically appear to be a total of \$3,000 per month starting in 2012 paid to Valco Ventures, Crown Capital and/or Denis O’Dowd. However, there are other payments which are not explicitly shown on the summaries as payments to shareholders and to other parties which may be related to shareholders. These amounts may be reflected in another expense category (such as professional fees) but without reviewing each cheque image and/or stub, it would not be apparent that these disbursements were made to non-arm’s length parties. These include payments to Valco Ventures, Crown Capital, Denis O’Dowd, John Tansowny, Real Estate Ventures Inc. and Borealis Ventures.
- The cheque images and/or stubs include various payments to Engelking Wood LLP. The amounts appear significant (for example, cheques of \$20,269.49 in June 2012, \$15,569.31 in March 2015, \$15,656.31 in July 2015, \$10,641.36 in September 2015, \$12,880.00 also in September 2015). I did not locate the invoices supporting these payments, without which it is not possible to determine the matter to which these payments relate; however, these may be Phoenix’s legal costs related to the above matter and would therefore appear to be costs that should be borne by Phoenix rather than the Golfdome property. Several of the cheque stubs located make reference to FIC. Total professional fees recorded in the summaries were approximately \$304,000.

In summary, I am unable to properly assess the accuracy of the information provided and, in my opinion, the information will not provide a 'full accounting' of funds until the deficiencies above are corrected.

Please do not hesitate to contact me if you have any questions or concerns.

Yours truly,

THOMAN FORENSIC ACCOUNTING

A handwritten signature in black ink, appearing to read "Justin Thoman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Justin Thoman, CA, CFF

/jt

Attachment #1: Documents Relied On

The listing below summarizes the information relied on in preparing the analysis outlined in the attached letter:

- Correspondence from Engelking Wood Barristers & Solicitors addressed to McLennan Ross LLP, many of which included attachments, as follows:
 - June 29, 2015 letter – with a multi-year “South Side Hotel Group Revenue and Expense Report” (January 2007 through May 2015) attached.
 - October 1, 2015 letter – no attachments.
 - November 13, 2015 letter – June through October 2015 summary attached.
 - January 22, 2016 letter – December 2015 summary attached.
 - February 9, 2016 letter – January 2016 summary attached.
 - May 16, 2016 letter – March and April 2016 summaries attached.
 - June 24, 2016 letter – May 2016 summary attached.
 - December 22, 2015 letter – with several attachments:
 - Phoenix Land Ventures Statement of Deficit for May 31, 2015 (page 4 of Financial Statements, none of the other pages were included);
 - Information regarding a line of credit obtained by Mr. O’Dowd; and,
 - Monthly summaries for June, July, August, September, October and November 2015 with supporting documents (bank statements and cheque images – many redacted).
 - December 20, 2017 letter – two summaries attached: June through December 2016, January through May 2017.
- One binder (Volume 1) – containing the “List of Agreed Exhibits” and Tabs #1 to #36.
- Three binders (Volumes 1, 2, 3) containing various documents supporting the Revenue and Expense report which I understand was provided by Engelking Wood in 2015.
 - Volumes 1 and 2 contained the various documents supporting costs (mainly supplier invoices).
 - Volume 3 contained bank statements:
 - L J O Holdings Inc. – Royal Bank Account 100-007-4 for 2008 and 2009, plus cheque stubs (incomplete) from 2007.
 - 1229068 Alberta Ltd. – CIBC Account 53-08917 from January 2010 to July 31, 2015 with cheque stubs.

Attachment #2: Analysis of accounting records produced

The listing below includes what would be expected to be part of a business's accounting and financial records (letters A through D), with the actual documents that have been produced listed below each category.

- A. **Full financial Statements:** include a Balance Sheet (listing assets, liabilities and owner's equity), an Income Statement (showing results from operations during a period) and a Cash-Flow Statement (showing cash flow during a period) as well as explanatory notes accompanying the Financial Statements. Often Financial Statements are accompanied by a report of an external accountant.
- No financial statements were provided by Phoenix. Instead, a 1-page internally-prepared "Revenue and Expense Report" was provided covering January 2007 through May 2015. This report is a spreadsheet summarizing revenue and expenses, apparently on a cash-basis, on an annual basis. There are no explanatory notes which would be required under Generally Accepted Accounting Principles, no balance sheet and no external accountant has reported on the statement. The only notes show each members' share of operating losses and the parties to whom the external long-term debt is owed.
 - From June 2015 through May 2016, there have been periodic internally-prepared "Profit & Loss" statements provided (typically on a monthly basis), again without explanatory notes or a balance sheet.
 - From June 2016 through May 2017, a one-page document has been produced with two columns (June to December 2016, January through May 2017) which is similar in format to the report provided for the period prior to May 2015 and therefore has the same deficiencies as noted above.
- B. **Detailed accounting records:** which would typically include a General Ledger (showing all transactions during the year, by transaction type/category/account), various sub-ledgers (for example, showing all transactions with vendors or customers) and journals (showing specific journal entries of the transactions).
- No general ledger was provided. Without the transaction details, the summary documents provided (under (A) above) are simply amounts recorded on a spreadsheet with no ability for a reader to determine what transactions made up those amounts and whether the amounts are appropriately recorded as belonging to the Golfdome property.
 - The monthly "Profit & Loss" Statements provided starting June 2015 appear to be in the form of a standard report from an off-the-shelf accounting program (for example, Quickbooks). Given that it appears that an accounting program is being used to track the operations of the Golfdome property, there would not appear to be any reason why a full general ledger could not be provided or a full copy of the electronic accounting records which would allow any detailed information to be extracted.

C. **Supporting Documents:** includes records supporting each transaction, the most common of which typically include bank records (bank statements, deposit slips, cheques), purchase records (invoices from vendors, contracts), sales records (invoices to customers, receipts, contracts), payroll records (showing employee hours, rates, deductions, government remittances, T4 slips).

- The banks statements are for two different entities (LJO Holdings Inc. statements for the January 2008 to December 2009 and 1229068 Alberta Ltd. from January 2010 to May 2016) and are redacted in terms of both deposit amounts and disbursements (cheques, payments, etc.).
- No bank statements were provided for the 2007 calendar year.
- The LJO Holdings bank statements, for the most part, appear only to show transfers to or from other accounts, and therefore do not actually support the transactions recorded on the summary.
- There were no documents supporting the actual purchase of the Golfdome property itself, which typically would include at least a Statement of Adjustments showing the use of funds as well as various legal and title documents.
- The banks statements also redact deposit information. Without supporting documents, it is impossible to determine whether the amounts recorded on the summaries reflect all revenue from the Golfdome property. In some periods, no revenue is reflected on the summary statements while the bank statements do show deposits (although the amounts have been redacted).
- The bank statements appear to have been redacted based on the representation that these bank accounts included transactions related to other business activities of these companies, and not just the Golfdome property. It appears to have been the case that the finances of several ventures were comingled.
- Cheque images and stubs have been provided for some of the transactions which cleared the accounts. Without actual supporting documents such as vendor invoices showing the nature and purpose of the payment, it is not possible to determine if the cheques which were attributed to the Golfdome property actually relate to it or to another business venture.
- Some invoices have been provided; the total of the vendor invoices provided are significantly less than and therefore do not support the totals shown on the summaries.

D. **Government filings,** the most common of which are corporate tax returns and GST returns.

- No corporate tax returns or GST returns were provided.