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CLERK OF THE COURT
FILED
MAR 26 2019
JUDICIAL CENTRE
OF CALGARY

COURT FILE NUMBER 1801-14940

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS WASHINGTON MOYO and SIPHIWE MUTINDO

RESPONDENTS SATURNINO ONG JR., RUBIROSE ONG, REGISTERED OWNERS OF PLAN 0212889, BLOCKS 40, 43 and 44, BROOKFIELD RESIDENTIAL PROPERTIES INC. formerly CARMA DEVELOPERS LTD.

DOCUMENT ORIGINATING APPLICATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT KNIGHT LLP
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FILE NO: M688364

NOTICE TO THE RESPONDENTS

This application is made against you. You are a respondent.
You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: April 15, 2019
Time: 10:00 a.m.
Where: Calgary Courthouse
Before Whom: Presiding Master in Chambers

Go to the end of this document to see what you can do and when you must do it.

Remedy Sought:

1. That the Restrictive Covenant which was registered at the Land Titles Office for South Alberta Land Titles Registration District on August 30, 2002, as registration number 021 304 344 shall be modified as follows:

"To the extent this restrictive covenant registered as Instrument No. 021 304 344 relates to lands bearing the legal description of:

PLAN 0212889
BLOCK 44
LOT 15
EXCEPTING THEREOUT ALL MINES AND MINERALS

paragraph #2 shall be amended to permit the garage setback to be a minimum of 1.37 metres from the real property line which is coincident with the lane property line."

2. That the Registrar of the South Alberta Land Titles Registration District be directed to register any final order against the Property evidencing the modification, notwithstanding Section 191(1) of the *Land Titles Act*, R.S.A. 2000, c. L-4.
3. That service of the within Originating Application be validated, or abridged, if necessary;
4. That service of any final order on Respondents be dispensed with;
5. In the alternative, that service of any final order on the Respondents may be provided in the manner specified by Master J.T. Prowse, Q.C. dated October 16, 2018; and
6. Such further and other relief as this Honourable Court may permit.

Basis for this Claim:

7. The Applicants executed a Residential Purchase Contract, as Sellers, with Saturnino Ong Jr. and Rubirose Ong, as Buyers (collectively the "Buyers"), for the property municipally known as 19 Prestwick Estate Link SE, Calgary, Alberta, T2Z 4H2, and bearing the legal description

PLAN 0212889
BLOCK 44
LOT 15
(the "Property")

8. A restrictive covenant registered as Instrument No. 021304344 (the "Restrictive Covenant") applies to the following lands on Plan 0212889, including the Property:
 - i. LOTS TWENTY-NINE (29) TO FIFTY (50) INCLUSIVE IN BLOCK FORTY (40);

- ii. LOTS SEVEN (7) TO FORTY-NINE (49) INCLUSIVE IN BLOCK FORTY-THREE (43); and,
- iii. LOTS ONE (1) TO EIGHTEEN (18) INCLUSIVE IN BLOCK FORTY-FOUR (44).

- 9. Paragraph 2 of the Restrictive Covenant requires, among other things, for a garage to be set back a minimum of 1.5 metres from the rear property line. The Property's garage is currently set back 1.37 and 1.40 metres from the rear property line.
- 10. The Applicants require the modification of the Restrictive Covenant in order to bring the Property in conformity and finalize the sale of the Property to the Buyers.
- 11. Further, the modification of the Restrictive Covenant will be beneficial to those principally interested in the enforcement of the Restrictive Covenant.
- 12. Such further and other basis as counsel may advise and this Honourable Court may allow.

Affidavit or other evidence to be used in support of this application:

- 13. The Affidavit of Washington Moyo, sworn on February 12, 2019;
- 14. The pleadings and proceedings herein; and
- 15. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

- 16. *Land Titles Act*, RSA 2000, c L-4, as amended, and specifically Sections 48, 190-191

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicants and against all persons claiming under the applicants. You will be bound by any order that the Court makes, or another order might be given or other proceedings taken which the applicants are entitled to make without any further notice you. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicants a reasonable time before the application is to be heard or considered.