

IN THE MATTER OF THE REAL ESTATE DEVELOPMENT MARKETING ACT

- AND -

CRAIG WILLIAM LOCHHEAD
-And-
GRAYDEN ROLAND HAYWARD
-And-
MAURICE R. HOGUE
-And-
CARRERA VENTURES LTD.
-And-
MARDON DEVELOPMENTS LTD.

ORDER UNDER SECTIONS 30(1) (a) and 32(1)
REAL ESTATE DEVELOPMENT MARKETING ACT

Upon reviewing the results of Corporate Registry company searches for CB Development 2000 Ltd. ("CB Development"), Carrera Ventures Ltd. ("Carrera") and Mardon Developments Ltd. ("Mardon"); the results of Land Title Office searches of the registered titles of the properties being developed by Carrera, Mardon and Hayward; excerpts of the disclosure statement filed by or on behalf of Carrera and Mardon; the Petition filed in the Supreme Court of British Columbia by CareVest Capital Inc. ("Carevest"); and the supporting documents submitted by staff, I am of the opinion that:

1. CB Development was registered as a company in the Province of British Columbia on May 23, 2000. The registered and records office is 1000 - 840 Howe Street, Vancouver, British Columbia. The directors are Craig William Lochhead ("Lochhead") of [REDACTED], British Columbia and Grayden Roland Hayward ("Hayward") of [REDACTED] Avenue, Vancouver, British Columbia. The president is Hayward and the secretary is Stanley Greenfield of [REDACTED], Vancouver, British Columbia.
2. Carrera was registered as a company in the Province of British Columbia on October 12, 1988. The registered and records office is 410 - 1333 West Broadway, Vancouver, British Columbia. The sole director is Hayward. The president is Hayward and the secretary is Lochhead.

3. Mardon was registered as a company in the Province of British Columbia on September 21, 1972. The registered and records office is 2262 Sorrento Drive, Coquitlam, British Columbia. The sole director and officer is Maurice Hogue ("Hogue") of the same address.
4. The *Real Estate Development Marketing Act* ("the Act") requires a developer who markets or intends to market a development to file with the Superintendent of Real Estate ("the Superintendent") a disclosure statement in the required form and with the required contents before the developer commences marketing the development. The disclosure statement must, without misrepresentation, plainly disclose all material facts. The developer must not enter into a purchase agreement with a purchaser unless a copy of the disclosure statement has been provided to the purchaser. If a developer becomes aware that a disclosure statement contains a misrepresentation, the developer must immediately file with the Superintendent a new disclosure statement or an amendment that clearly identifies and corrects the misrepresentation.
5. The applicable sections of the *Act* are reproduced below:

Definitions

1 In this Act:

"developer" means a person who, directly or indirectly, owns, leases or has a right to acquire or dispose of development property;

"development property" means any of the following:

...

(c) 5 or more strata lots in a stratified building;

...

"development unit" means any of the following in a development property:

...

(c) a strata lot;

...

"market" means

(a) to sell or lease,

(b) to offer to sell or lease, and

(c) to engage in any transaction or other activity that will or is likely to lead to a sale or lease;

"material fact" means, in relation to a development unit or development property, any of the following:

- (a) a fact, or a proposal to do something, that affects, or could reasonably be expected to affect, the value, price, or use of the development unit or development property;
- (b) the identity of the developer;
- (c) the appointment, in respect of the developer, of a receiver, liquidator or trustee in bankruptcy, or other similar person acting under the authority of a court;
- (d) any other prescribed matter;

"misrepresentation" means

- (a) a false or misleading statement of a material fact, or
- (b) an omission to state a material fact;

"purchase agreement" means a contract of purchase and sale or a contract to lease;

"purchaser" means

- (a) a purchaser, from a developer, of a development unit,
- (b) a lessee, from a developer, of a development unit, and
- (c) a prospective purchaser or lessee, from a developer, of a development unit;

Marketing of development property

3 (1) A developer who markets or intends to market a development unit must

...

(c) file and provide a disclosure statement in accordance with Division 4 *[Disclosure Statements]*.

Assurance of title

11 (1) A developer must not market a development unit unless the developer has made adequate arrangements to ensure that a purchaser of the development unit will have assurance of title or of the other interest for which the purchaser has contracted.

(2) For the purpose of subsection (1), a developer has made adequate arrangements to ensure that a purchaser of a development unit will have assurance of title or of the other interest for which the purchaser has contracted if

(a) arrangements have been made for title to the development unit to be held in trust by a lawyer, notary public or another person, or class of persons, specified by the superintendent until title or the other interest for which the purchaser has contracted is assured,

(b) the developer provides a bond to the superintendent or other person specified by the superintendent for the benefit and protection of purchasers, with surety in the amount and subject to the terms required by the superintendent, or

(c) the developer has made other arrangements that are satisfactory to the superintendent.

(3) Without limiting subsection (1) or (2), if a development unit may be affected by a mortgage, lien or other encumbrance that secures or evidences the payment of money,

(a) the mortgage, lien or other encumbrance must provide, without condition, that a purchaser who complies with the terms and conditions of the purchaser's purchase agreement obtains title, or the other interest for which the purchaser has contracted, free and clear of the mortgage, lien or other encumbrance, or

(b) the developer must make other arrangements, satisfactory to the superintendent, to assure title or the other interest for which the purchaser has contracted.

Filing disclosure statements

14 (1) A developer must not market a development unit unless the developer has

(a) prepared a disclosure statement respecting the development property in which the development unit is located, and

(b) filed with the superintendent

(i) the disclosure statement described under paragraph (a), and

(ii) any records required by the superintendent under subsection (3).

(2) A disclosure statement must

(a) be in the form and include the content required by the superintendent,

(b) without misrepresentation, plainly disclose all material facts,

(c) set out the substance of a purchaser's rights to rescission as provided under section 21 [*rights of rescission*], and

(d) be signed as required by the regulations.

(3) A developer must provide to the superintendent any records the superintendent requires to support any statement contained in the disclosure statement filed under subsection (1).

(4) Without limiting section 16 [*non-compliant disclosure statements*], if a developer markets development units in phases, the developer, before marketing each successive phase, must file with the superintendent an amendment to a disclosure statement submitted in respect of the previous phase.

(5) On a person's payment of the prescribed fee, the superintendent must

(a) permit the person to inspect, at the superintendent's office and during regular business hours, a disclosure statement filed under this section, and

(b) provide a copy of a disclosure statement filed under this section, or a copy of part of it, to a person who requests it.

Providing disclosure statements to purchasers

15 (1) A developer must not enter into a purchase agreement with a purchaser for the sale or lease of a development unit unless

(a) a copy of the disclosure statement prepared in respect of the development property in which the development unit is located has been provided to the purchaser,

(b) the purchaser has been afforded reasonable opportunity to read the disclosure statement, and

(c) the developer has obtained a written statement from the purchaser acknowledging that the purchaser had an opportunity to read the disclosure statement.

(2) A developer must

(a) retain a written statement obtained under subsection (1) (c) for a period of 3 years or a longer period prescribed by regulation, and

(b) produce the written statement for inspection by the superintendent on the superintendent's request.

Non-compliant disclosure statements

16 (1) If a developer becomes aware that a disclosure statement does not comply with the Act or regulations, or contains a misrepresentation, the developer must immediately

(a) file with the superintendent, as applicable under subsection (2) or (3),

(i) a new disclosure statement, or

(ii) an amendment to the disclosure statement that clearly identifies and corrects the failure to comply or the misrepresentation, and

(b) within a reasonable time after filing a new disclosure statement or an amendment under paragraph (a), provide a copy of the disclosure statement or amendment to each purchaser

(i) who is entitled, at any time, under section 15 *[providing disclosure statements to purchasers]* to receive the disclosure statement, and

(ii) who has not yet received title, or the other interest for which the purchaser has contracted, to the development unit in the development property that is the subject of the disclosure statement.

(2) A developer must file a new disclosure statement under subsection (1) (a) (i) if the failure to comply or misrepresentation referred to in that subsection

(a) is respecting a matter set out in paragraph (b) or (c) of the definition of "material fact" in section 1 *[definitions]*,

(b) is respecting a matter set out in paragraph (d) of the definition of "material fact" in section 1, and the regulation prescribing the matter specifies that a new disclosure statement must be filed if subsection (1) of this section applies, or

(c) is of such a substantial nature that the superintendent gives notice to the developer that a new disclosure statement must be filed.

(3) A developer must file an amendment to the disclosure statement under subsection (1) (a) (ii) in any case to which subsection (2) does not apply.

(4) A developer who is required to file a new disclosure statement or an amendment under subsection (1) must not market a development unit in the development property that is the subject of the new disclosure statement or amendment

(a) until the developer has complied with subsection (1) (a), or

(b) unless permitted by the superintendent.

6. Carrera and Mardon are the named developers of a development property marketed under the name Centre Gate located at 1145 Heffley Crescent, Coquitlam, British Columbia (“the Heffley Property”). A disclosure statement was filed with the Superintendent by Carrera and Mardon on November 25, 1996 (“the Disclosure Statement”). No new disclosure statements or amendments to the Disclosure Statement have been filed with the Superintendent subsequent to that date.
7. The Disclosure Statement states that the registered owners of the Heffley Property are Carrera and Mardon. The legal description of the Heffley Property as disclosed in the Disclosure Statement is as follows:

PID: 018-033-636 Lot 5 District Lot 384A Group 1
New Westminster District Plan LMP7709

8. A search of the Land Titles Registry has revealed that the legal description of the Heffley Property is now as follows:

| PID | Legal Description |
|-------------|---|
| 023-776-021 | Strata Lot 7 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 (transfer pending) |
| 023-776-048 | Strata Lot 9 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-056 | Strata Lot 10 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-072 | Strata Lot 12 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-129 | Strata Lot 17 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-145 | Strata Lot 19 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-170 | Strata Lot 22 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-196 | Strata Lot 24 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-226 | Strata Lot 27 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-242 | Strata Lot 29 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-251 | Strata Lot 30 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-277 | Strata Lot 32 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-285 | Strata Lot 33 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |

9. Carrera and Mardon are required to file an amendment to the Disclosure Statement to advise the Superintendent of the change in the legal description of the Heffley Property pursuant to Section 16 of the *Act* and the Superintendent's Policy Statement #1. No such amendment has been filed.
10. The Disclosure Statement states that the directors of Carrera are Lochhead and Hayward. A search of the British Columbia Corporate Registry discloses that the current director for Carrera is Hayward. Carrera and Mardon are required to file an amendment to the Disclosure Statement to advise the Superintendent of the change in the directorship of Carrera pursuant to Section 16 of the *Act* and the Superintendent's Policy Statement #1. No such amendment has been filed.
11. The Disclosure Statement indicates that the Heffley Property is being marketed under the name "Centre Gate". The Disclosure Statement includes a proposed budget for the Centre Gate Strata Corporation (LMS 2817). The Strata Plan for the Strata Corporation was registered in 1997. The Strata Corporation is required to approve an annual budget thereafter. Annual budgets have been approved by the Strata Corporation since that time. Pursuant to Section 16 of the *Act* and the Superintendent's Policy Statement #1, Carrera and Mardon are required to file an amendment to the Disclosure Statement to disclose the most recent budget approved by the Strata Corporation. No such amendment has been filed.
12. Hayward is the developer of a development property consisting of five or more strata lots in a stratified building ("the Begin Property"). The legal description of the Begin Property is as follows:

| PID | Legal Description |
|-------------|---|
| 024-051-799 | Strata Lot 2 District Lot 46 Group 1 New Westminster District Strata Plan LMS 3120 |
| 024-051-802 | Strata Lot 3 District Lot 46 Group 1 New Westminster District Strata Plan LMS 3120 |
| 024-051-845 | Strata Lot 7 District Lot 46 Group 1 New Westminster District Strata Plan LMS 3120 |
| 024-051-888 | Strata Lot 11 District Lot 46 Group 1 New Westminster District Strata Plan LMS 3120 |
| 024-051-951 | Strata Lot 18 District Lot 46 Group 1 New Westminster District Strata Plan LMS 3120 |
| 024-051-969 | Strata Lot 19 District Lot 46 Group 1 New Westminster District Strata Plan LMS 3120 |
| 024-051-977 | Strata Lot 20 District Lot 46 Group 1 New Westminster District Strata Plan LMS 3120 |
| 024-051-985 | Strata Lot 21 District Lot 46 Group 1 New Westminster District Strata Plan LMS 3120 |

| PID | Legal Description |
|-------------|---|
| 024-051-993 | Strata Lot 22 District Lot 46 Group 1 New Westminster District Strata Plan LMS 3120 |
| 024-051-060 | Strata Lot 29 District Lot 46 Group 1 New Westminster District Strata Plan LMS 3120 |

13. CB Development is the named developer and registered owner of a development property marketed under the name Riverbend (“the Riverbend Property”). The civic address of the Riverbend Property is 3000 Riverbend Drive, Coquitlam, British Columbia.
14. On or about May 7, 2007, the office of the Superintendent was made aware of reports that CB Development was refusing to fulfill its contractual obligations to purchasers of development units in the Riverbend Property. On May 14, 2007, the Superintendent issued a cease marketing order against CB Development, Hayward and Lochhead in relation to the Riverbend Property. In making that Order, the Superintendent made the following findings:

AND WHEREAS I am satisfied based on a review of the Disclosure Statement as amended and land title search documents and other documents provided by my staff that CB Development failed to file an amendment to the Disclosure Statement to explain changes in the ownership and legal description of the Development Property as required.

AND WHEREAS I am satisfied based on a review of the Disclosure Statement as amended, Corporate Registry search documents and other documents provided by my staff that CB Development failed to file an amendment to the Disclosure Statement to explain changes in the directorship of CB Development as required.

AND WHEREAS I am satisfied based on a review of the Disclosure Statement as amended, the above-noted Certificates of Pending Litigation and other documents provided by my staff that CB Development is subject to a number of lawsuits filed by existing purchasers and that CB Development has not filed a new or amended disclosure statement disclosing that fact.

AND WHEREAS I am satisfied based on a review of the above-noted Certificates of Pending Litigation that even if the Development Property was remarketed and sold at current market prices, the claims of existing purchasers would impair the ability of CB Development to provide clear title to any new purchasers.

AND WHEREAS I am satisfied based on a review of the Disclosure Statement as amended, the title search documents and other documents

provided by my staff that the property being developed by CB Development has been encumbered by various mortgages which were not disclosed in the Disclosure Statement as amended and that CB Development has not filed a new or amended disclosure statement disclosing those encumbrances.

AND WHEREAS the information contained in the evidence of Bulat and MacDonald along with the materials provided to me by my staff raises a serious concern and a likelihood that CB Development will attempt to remarket development units for which there are already purchase and sale agreements.

I AM THEREFORE OF THE OPINION that CB Development, Lochhead and Hayward are, or have been, non-compliant with the *Act*.

I AM FURTHER OF THE OPINION that the length of time that would be required to complete an investigation or hold a hearing, or both, would be detrimental to the public interest. There is a substantial likelihood that CB Development intends to remarket development units in the Development Property to potential purchasers without providing accurate disclosure which the purchasers are entitled to receive and which CB Development is required to provide. The fact that lawsuits have been filed against CB Development could very well impact on the value or price of the development units and on the decision by the potential purchaser on whether to purchase the unit.

IN ADDITION, I am of the opinion that CB Development has not made adequate arrangements to ensure that any new purchaser of a development unit will receive clear title. If CB Development is successful in remarketing development units which are subject to an existing purchase and sale agreement, any new purchasers will likely become embroiled in litigation and ultimately may not receive title to the units they have purportedly purchased. The deposits of any new purchasers may ultimately be held until the litigation is resolved.

15. On May 28, 2007, a Petition was filed in the Supreme Court of British Columbia by Carevest seeking an Order Nisi of Foreclosure and an Order for a Certificate of Pending Litigation on various properties, including the Riverbend Property, the Heffley Property and the Begin Property ("the Petition"). CB Development, Hayward, Lochhead and Carrera are named respondents in the action.
16. It is alleged in the Petition that CB Development has defaulted on its loan obligations to Carevest. The loan by Carevest was partially secured by the personal guarantees of Hayward and Lochhead and mortgages on the Heffley Property and the Begin Property. On May 29, 2007, Certificates of Pending Litigation were registered against both the Heffley Property and the Begin

Property. Certificates of Pending Litigation were registered against the individual development units making up the Heffley Property and the Begin Property.

17. The Disclosure Statement states that “there is no outstanding or anticipated litigation or contingent liability in respect of the Development or against the Developer which may affect the Development.” Pursuant to Section 16 of the *Act* and the Superintendent’s Policy Statement #1, Carrera and Mardon are required to file an amendment to the Disclosure Statement to disclose the outstanding or contingent litigation or liabilities. No such amendment has been filed.
18. Section 11 of the *Act* requires a developer to make adequate arrangements to ensure that a purchaser of a development unit will have assurance of title. Carrera and Mardon have not made adequate arrangements to deal with the Certificates of Pending Litigation to ensure that a purchaser of a development unit in the Heffley Property will have assurance of title, as evinced by the foreclosure action.
19. Marion Lochhead (“Marion”) is a licensed real estate agent with Sutton Group 1st West Realty. Marion is the wife of Lochhead.
20. On or about June 4, 2007, Marion advertised the property located at #209 – 1145 Heffley Crescent, a development unit in the Heffley Property, for sale on her website. A search of the Multiple Listing Services website on the same date confirmed that Marion was offering that particular property for sale. This development unit is subject to a Certificate of Pending Litigation filed by Carevest.
21. The property located at #107 – 1145 Heffley Crescent, a development unit in the Heffley Property, was recently sold and as of June 4, 2007 the transfer was pending. This property is also subject to a Certificate of Pending Litigation filed by Carevest.

AND WHEREAS I am satisfied that Hayward, Lochhead and Hogue are directors, officers and/or the directing minds of CB Development, Carrera and Mardon and that Carrera and Mardon are the developers of the Heffley Property.

AND WHEREAS I am satisfied based on a review of the Disclosure Statement and land title search documents and other documents provided by my staff that Carrera and Mardon failed to file an amendment to the Disclosure Statement to explain changes in the legal description of the Heffley Property as required.

AND WHEREAS I am satisfied based on a review of the Disclosure Statement, Corporate Registry search documents and other documents provided by my staff that Carrera and Mardon failed to file an amendment to the Disclosure Statement to explain changes in the directorship of Carrera as required.

AND WHEREAS I am satisfied based on a review of the Disclosure Statement and other documents provided by my staff that Carrera and Mardon failed to file an amendment to the Disclosure Statement to disclose the most recent budget approved by the Heffley Property Strata Corporation as required.

AND WHEREAS I am satisfied based on a review of the above-noted Certificates of Pending Litigation and other documents provided by my staff that the Heffley Property is subject to foreclosure proceedings initiated by Carevest and that Carrera and Mardon have not filed a new or amended disclosure statement disclosing that fact.

AND WHEREAS I am satisfied based on a review of the Disclosure Statement and a review of the above-noted Certificates of Pending Litigation that Carrera and Mardon have not made adequate arrangements to deal with the Certificates of Pending Litigation to ensure that a purchaser of a development unit in the Heffley Property will have assurance of title.

AND WHEREAS I am satisfied based on a review of Marion's website and a review of the Multiple Listings Service website that Carrera and Mardon are continuing to market development units in the Heffley Property.

I AM THEREFORE OF THE OPINION that Carrera, Mardon, Lochhead, Hayward and Hogue are, or have been, non-compliant with the *Act*.

I AM FURTHER OF THE OPINION that the length of time that would be required to complete an investigation or hold a hearing, or both, would be detrimental to the public interest. Carrera and Mardon are continuing to market development units in the Heffley Property to potential purchasers without providing accurate disclosure which the purchasers are entitled to receive and which Carrera and Mardon are required to provide. The fact that a foreclosure proceeding has been filed against the Heffley Property could very well have an impact on the value or price of the development units and on the decision by the potential purchaser on whether to purchase the unit.

IN ADDITION, I am of the opinion that Carrera and Mardon have not made adequate arrangements to ensure that any new purchaser of a development unit will receive clear title. If Carrera and Mardon are successful in marketing development units which are subject to the foreclosure proceeding, any new purchasers will likely become embroiled in litigation and ultimately may not receive title to the units they have purportedly purchased. The deposits of any new purchasers may ultimately be held until the litigation is resolved.

I CONSIDER IT in the public interest to make the following Orders pursuant to sections 30(1) (a) and 32(1) of the *Act*.

I THEREFORE MAKE the following Orders:

1. Carrera Ventures Ltd. and Mardon Development Ltd. shall cease and refrain from marketing any and all development units in the Heffley Property, and more particularly any development units in the Heffley Property legally described as follows:

| PID | Legal Description |
|-------------|---|
| 023-776-021 | Strata Lot 7 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-048 | Strata Lot 9 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-056 | Strata Lot 10 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-072 | Strata Lot 12 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-129 | Strata Lot 17 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-145 | Strata Lot 19 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-170 | Strata Lot 22 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-196 | Strata Lot 24 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-226 | Strata Lot 27 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-242 | Strata Lot 29 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-251 | Strata Lot 30 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-277 | Strata Lot 32 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |
| 023-776-285 | Strata Lot 33 District Lot 384A Group 1 New Westminster District Strata Plan LMS 2817 |

2. Craig Lochhead, Grayden Hayward and Maurice Hogue shall cease and refrain from marketing any and all development units in the development property defined as the Heffley Property being developed by Carrera Ventures Ltd. and Mardon Development Ltd.

