

IN THE MATTER OF THE REAL ESTATE DEVELOPMENT MARKETING ACT
SBC 2004, Chapter 41

WESTCOASTLIVING DEVELOPMENTS LTD.

-AND-

MUNJINDER GILL

-AND-

BALJIT GILL

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

Upon reviewing the submissions and the supporting documents submitted by staff, I am of the opinion that:

1. 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.

Applicable Legislation

2. 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;

...

Marketing of development property

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

(a) meet the applicable requirements of Division 2 [Preliminary Requirements or Approvals],

(b) ensure that arrangements have been made in accordance with Division 3 [Title Assurance and Utility Payments]

(i) to assure the purchaser's title or other interest for which the purchaser has contracted, and

(ii) to pay the cost of utilities and other services, and

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

(2) A developer who receives a deposit must deal with the deposit in accordance with Division 5 [Deposits].

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.

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.

Handling deposits

- 18(1) A developer who receives a deposit from a purchase in relation to a development unit must promptly place the deposit with a brokerage, lawyer, notary public or prescribed person who must hold the deposit as trustee in a trust account in a savings institution in British Columbia.

..."

The Development

3. Westcoastliving Developments Ltd. ("Westcoast") was incorporated in British Columbia on November 10, 2005. The registered and records office for Westcoast is [REDACTED], Vancouver, British Columbia. Munjinder Gill ("M. Gill") is the sole director of Westcoast. His wife, Baljit Gill ("B. Gill") is the sole officer, and is Westcoast's president. B. Gill was a director of Westcoast from April 12, 2007 until July 27, 2008.
4. M. Gill has been a licensed realtor since June 4, 2008, and is currently licensed with Amex-Fraseridge Realty.
5. On November 13, 2008, staff of the Superintendent (the "Staff") received a complaint from an individual who advised as follows:
 - (a) On December 18, 2007, she had signed a contract of purchase and sale with Westcoast for the purchase of unit 401 in a development located at 4997 Joyce Street in Vancouver, British Columbia;
 - (b) The contract of purchase and sale was prepared by M. Gill, who had been a friend of her family's since 1995. B. Gill signed the contract on behalf of Westcoast;
 - (c) The purchase price of her unit was \$324,710, and she had paid a 10% deposit (in the amount of \$32,471) by way of a personal cheque issued to B. Gill;
 - (d) She did not at any time see, review or receive a disclosure statement from Westcoast and/or M. Gill;
 - (e) She had made inquiries of the City of Vancouver and been advised that Westcoast had made an application for construction of a multi-unit dwelling at 4997 Joyce Street, but no approval had been granted; and

- (f) She had made numerous attempts to recover her deposit from Gill, but the money has not yet been returned to her.
6. On November 14, 2008, Staff spoke with ██████████ of the City of Vancouver who advised that a single development application, dated February 27, 2008, had been submitted by Westcoast's design professional for development of four separate properties with civic addresses at 4975, 4983, 4993 and 4997 Joyce Street (the "Development"). The lobby entrance of the Development would be located at 4997 Joyce St.
 7. Staff has confirmed that no disclosure statement has been filed in respect of the Development.
 8. On November 20, 2008, Staff met with M. Gill who advised as follows:
 - (a) Westcoast does not own the property at 4997 Joyce Street, Vancouver;
 - (b) In January and February 2008, Westcoast attempted to purchase the Joyce Street property from ██████████ and ██████████ with a view to building a 27-unit apartment building;
 - (c) The deal with the ██████████ fell through, and the purchase of the Joyce Street property never completed;
 - (d) He had sold 7-8 units in the Development between late 2007 and early 2008, for which he collected a 10% deposit from each purchaser;
 - (e) The deposits were initially placed in Westcoast's business account at CIBC;
 - (f) Approximately \$15,000 of the deposit money was paid to the City of Vancouver with the development permit application and \$350,000 of the deposit money was paid to the ██████████ either directly by Westcoast or through the ██████████ realtor at Royal LePage Coronation West, as a down payment on the property;
 - (g) He knew that the marketing of the Development was not legal;
 - (h) He knew that the contracts for purchase and sale of development units he had entered into with purchasers were "not legal", and that he had intended to issue "real contracts" once the property was purchased and the development permit issued; and
 - (i) He has advised purchasers that he will return their deposits, but will need to sell property he owns before he can do so.

9. Staff obtained contracts of purchase and sale between M. Gill and [REDACTED] and [REDACTED] as follows:
 - (a) On November 8, 2007, M. Gill signed a contract of purchase and sale with [REDACTED] for the purchase of 4975, 4983 and 4993 Joyce Street, Vancouver, in the amount of \$2,092,500, with a closing date of February 4, 2008, and an initial deposit of \$75,000. There are four addenda to this contract which show that the closing date was extended four times. The final closing date was set for May 15, 2008. With each extension, M. Gill was required to pay additional sums towards the purchase price; as compensation for the seller's financing costs; and/or as consideration for the extension being given.
 - (b) On November 8, 2007, M. Gill signed a contract of purchase and sale with [REDACTED] for the purchase of 4997 Joyce Street, Vancouver, in the amount of \$697,500, with a closing date of February 28, 2008 and an initial deposit of \$25,000.
10. On November 25, 2008, the [REDACTED] realtor at Royal LePage Coronation West provided Staff with a summary of the non-refundable funds paid by Westcoast to the [REDACTED] in respect of the four properties which comprised the Development. According to the realtor's records, these totalled \$218,750.
11. Westcoast, M. Gill and B. Gill marketed development units in the Development without any disclosure statement, contrary to sections 3 and 14 of the *Act*.
12. Westcoast, M. Gill and B. Gill entered contracts of purchase and sale for development units in the Development without providing purchasers with a disclosure statement, contrary to section 15 of the *Act*.
13. Westcoast, M. Gill and B. Gill took deposits totalling some \$365,000, by M. Gill's calculations, from purchasers, without owning the property being developed, without providing disclosure and without placing the deposit monies in trust, contrary to section 18 of the *Act*.
14. The deposit monies taken by M. Gill and B. Gill from purchasers of units at the Development were used for the purchase of the property located at 4975, 4983, 4992 and 4997 Joyce Street, deals which never completed. However, the deposit monies were forfeited when the sale of the four lots did not complete, and as such, have not been returned to purchasers of the development units.

15. While M. Gill says that he is no longer marketing units in the Development, his own acknowledgement that he knew he was doing so "illegally" in the first place casts doubt upon his assurances that he is not continuing to do so now. Further, he received a substantial amount of money in the form of deposits, knowing that the funds were not secure. He cannot refund the deposit money unless and until he sells property of his own in order to do so.
16. I agree with Staff that scheduling of witnesses, counsel and the hearing officer would likely result in a delay of at least three months in the ability to hold a hearing into this matter.
17. The length of time required to hold a hearing will likely result in the continued non-compliance of the *Act* by Westcoast, M. Gill and B. Gill, which I find to be detrimental to the public interest.
18. I find that it is in the public interest to issue a summary cease marketing order under section 32 of the *Act* so that the public is protected against further non-compliance with the *Act*.

AND WHEREAS I am satisfied that WESTCOASTLIVING DEVELOPMENTS LTD. and its director MUNJINDER SINGH GILL, and its officer BALJIT GILL have marketed development units in the Development, without filing a disclosure statement as required under sections 3 and 14 of the *Act*.

AND WHEREAS WESTCOASTLIVING DEVELOPMENTS LTD. and its director MUNJINDER SINGH GILL, and officer BALJIT GILL have entered into contracts of purchase and sale with purchasers of units in the Development without providing them with a disclosure statement as required under section 15 of the *Act*.

AND WHEREAS WESTCOASTLIVING DEVELOPMENTS LTD. and its director MUNJINDER SINGH GILL and its officer BALJIT GILL have taken deposits from purchasers of development units in the Development without placing the deposits in trust, contrary to section 15 of the *Act*.

AND WHEREAS WESTCOASTLIVING DEVELOPMENTS LTD. and its director MUNJINDER SINGH GILL knew that the marketing and sale of units in the Development was wrong and contrary to the law.

I AM THEREFORE of the opinion that WESTCOASTLIVING DEVELOPMENTS LTD. and its director MUNJINDER SINGH GILL and its officer BALJIT GILL have been non-compliant with the *Act*.

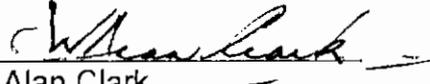
I AM FURTHER of the opinion that the length of time that would be required to complete an investigation or hold a hearing, or both, would be detrimental to the public interest. It is in the public interest to make a summary cease marketing order under section 32 of the *Act* so that the public is protected against further non-compliance with the *Act*.

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

I THEREFORE MAKE the following Order:

1. That WESTCOASTLIVING DEVELOPMENTS LTD., MUNJINDER SINGH GILL and BALJIT GILL shall cease and refrain from marketing any and all development units in the Development located at 4975, 4983, 4993 and 4997 Joyce Street in Vancouver, BC.

Dated at the City of Surrey, in the
Province of British Columbia
this *8th* day of December, 2008.


W. Alan Clark
Superintendent of Real Estate
Province of British Columbia

TO: Westcoastliving Developments Ltd.

[REDACTED]
[REDACTED]
[REDACTED]

Munjinder Gill

[REDACTED]
[REDACTED]
[REDACTED]

Baljit Gill

[REDACTED]
[REDACTED]
[REDACTED]