



NO. S-106101  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

JHHL WHISTLER HOLDINGS LTD.

PETITIONER

AND:

TUMULURI ASSET MANAGEMENT INC., T & V  
HOSPITALITY INC., RAM TUMULURI and  
PRAVEEN VARSHNEY

RESPONDENTS

**RESPONSE TO PETITION**

*[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]*

Filed by: The Respondents Ram Tumuluri and Praveen Varshney (the "petition respondent(s)")

THIS IS A RESPONSE TO the petition filed September 8, 2010.

**Part 1: ORDERS CONSENTED TO**

The petition respondent(s) consent(s) to the granting of the orders set out in the following paragraphs of Part 1 of the petition:

NONE

**Part 2: ORDERS OPPOSED**

The petition respondent(s) oppose(s) the granting of the orders set out in paragraphs of Part 1 of the petition:

PARAGRAPHS 1, 2, 3, 4, 5, 6 and 7

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The petition respondent(s) take(s) no position on the granting of the orders set out in paragraphs of Part 1 of the petition:

NONE

**Part 4: FACTUAL BASIS**

1. Praveen Varshney and Ram Tumuluri are each 40% shareholders of 08755534 B.C. Ltd. 08755534 B.C. Ltd. is a 50% shareholder of Tumuluri Asset Management Inc. ("Assets"), T & V Hospitality Inc. ("T & V") and Tumuluri and Varshney Holdings Inc.

("Holdings") (collectively the "Companies"). The other 50% shareholder is JHHL Whistler Holdings Ltd. Assets owns 51 out of 77 hotel strata lots, 5 commercial lots, 2 employee housing units and the contents of all of these locations. T & V operates a 77 unit hotel business on the 51 strata lots owned by Assets and the other 26 strata lots that are owned by individuals who are not parties to this proceeding pursuant to rental pool management agreements with them. Some of the assets used in T & V's day to day activities are owned jointly by Assets and T & V.

2. Holdings is the owner of five bare land strata lots that it acquired as part of the purchase of the hotel strata lots and other property by Assets. The Holdings' five bare land strata lots have a \$6,000,000 mortgage in favour of HSBC Bank Canada registered against them and Assets and T & V have granted a \$2,000,000 guarantee to HSBC Bank Canada with respect thereto.
3. There is an ongoing dispute between JHHL Whistler Holdings Ltd., Azim Jamal and Joe Moosa (the "JHHL Group") and 0875534 B.C. Ltd., Ram Tumuluri and Praveen Varshney (the "Varshney Group") with regard to the management and operation of the Nika Lake Lodge (the "Hotel") in Whistler, British Columbia. This dispute has resulted in a deadlock on the board of the Companies and the inability of the Companies to borrow or raise further funds to meet its ongoing obligations.
4. The Varshney Group loaned \$2,000,000, \$1,000,000 of which was used as a deposit for the acquisition of the Hotel and paid a further \$200,000 towards the purchase price. The JHHL Group loaned \$1,750,000 to the Companies of which \$1,000,000 was used as a deposit on the acquisition of the Hotel.
5. Notwithstanding that the JHHL Group agreed to a further preference loan of up to \$2,000,000 under the Memorandum of Understanding (the "MOU"), which was amended by agreement that JHHL Group would loan \$1,130,000, it has failed and refused to advance the final \$130,000 in breach of its agreement.
6. Further, the JHHL Group holds a \$1,000,000 second mortgage registered against the assets of the Companies with interest running at 10%. The Varshney Group has found a lender willing to pay out the 10% interest second mortgage and replace it with a new second mortgage with interest running at 6%, however, the JHHL Group has refused to allow this to happen
7. The Varshney Group put \$450,000 more into the initial transaction than the JHHL Group, without reference to the second mortgage which is fully secured and the Varshney Group wants paid out.

#### **Part 5: LEGAL BASIS**

1. In its Petition, JHHL Group complains about wrongs allegedly done to the Companies, all of which are derivative to the Petitioner.
2. The complaints regarding misuse of corporate funds, namely:
  - (i) the Boughton Law Corporation legal fees;

- (ii) the payment of a fee of \$25,000 directly to Mr. Tumuluri; and
- (iii) the payment of \$1703 towards Mr. Tumuluri's cellular phone bills

are complaints that only the company can make and is derivative to JHHL Whistler Holdings Ltd.

3. These complaints are with little merit. The complaint regarding legal fees relates to bills rendered by Boughton Law Corporation to the Companies in relation to the acquisition of the Hotel. On occasions where Boughton did legal work for the individuals, they were billed separately.
4. Mr. Tumuluri has indicated that the \$25,000 payment to him related to spa equipment owned by him. When the JHHL Group complained about the fee paid to him, he agreed to pay them \$12,500.
5. The cell phone bills amount to \$1,703 which related to work done by Ram Tumuluri for the Hotel and as such are a legitimate reimbursement.
6. In contrast, the Varshney Group complains of the following:
  - (i) the failure of the JHHL Group to pay \$130,000 in breach of their agreement;
  - (ii) the JHHL Group directing the TD Bank to freeze all of the Companies' accounts causing irreparable damage to the Companies as the Hotel has been unable to pay its suppliers, has defaulted on the first mortgage with approximately \$130,000 outstanding and has breached the rental pool agreement with the other strata owners.
7. In an attempt to resolve this matter, the Varshney Group agreed to meet many of the JHHL Group's demands on the condition that each group make an offer to pay the other out, with a sealed bid process with the group that makes the higher offer becoming the purchaser.
8. Given the circumstances, the business relationship between the parties is damaged as they have irreconcilable differences relating to the business operations.
9. The only way to resolve this conflict is to have only one owner for the Hotel by either the JHHL Group buying out the Varshney Group or the Varshney Group buying out the JHHL Group.

#### **Part 6: MATERIAL TO BE RELIED ON**


1. Sections 227, 232, 233, 324 and 325 of the *Business Corporations Act*, S.B.C. 2002, C. 57;
2. Rules 10-2, 14-1 and 16-1 of the *Rules of Court*;
3. The Rule in *Foss & Harbottle*;
4. Affidavit #1 of Ram Tumuluri sworn September 28, 2010 in Action No. S-106101;

5. Affidavit #1 of Praveen Varshney sworn September 29, 2010 in Action No. S-106101;
6. Affidavit #1 of James Loughton sworn September 28, 2010 in Action No. S-106101.

The petition respondent estimates that the application will take one day.

Dated: September 29

, 2010

  
\_\_\_\_\_  
Signature  
 petition respondent  
 lawyer for petition respondent(s)

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Judy A. Rost

Petition respondent's address for service: Judy A. Rost of the law firm of Alexander Holburn Beaudin & Lang LLP, Barristers and Solicitors, P.O. Box 10057, 2700 – 700 West Georgia Street, Vancouver, B.C. V7Y 1B8

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