

2003 BCSECCOM 649

Headnote

Registration and prospectus relief granted for subsequent trades in securities - sellers could rely on exemptions in BCI 45-512, but for the fact that the property is not located in a ski resort area, and the restrictive covenant against title is not in favour of a government authority.

Exemption Order

Osoyoos Resort Development Corp.

Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Osoyoos Resort applied for exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements) for certain intended trades.

Representations

- ¶ 2 Osoyoos Resort represents that:
1. it was incorporated in British Columbia on November 7, 2002;
 2. it is not and has no intention of becoming a reporting issuer under the Act;
 3. it is the developer of a proposed condominium and townhouse strata lot project known as Osoyoos Lake Resort and Conference Centre, located on Osoyoos Lake in British Columbia;
 4. it intends to distribute securities in the form of investment contracts comprised of:
 - (a) a one-quarter fee simple interest in a strata lot with the right to occupy the unit for at least 84 days per year; and
 - (b) a rental pool arrangement that pools revenues, expenses and profits among owners of the units in accordance with proportionate interests;
 5. the rental pool arrangement does not include or purport to include any rental or cash flow guarantee, or other financial commitment on the part of any person connected with the offering;
 6. it will offer to sell the investment contracts to purchasers in British Columbia under a disclosure statement prepared in accordance with Part 2 of the *Real*

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Estate Act, and a copy of the disclosure statement will be delivered to each purchaser before an agreement of purchase and sale is entered into;

7. the investment contracts would qualify as Type B Resort Security under BC Instrument 45-512 *Real Estate Securities* (BCI 45-512), except that:
 - (a) the real property is not located in a ski resort area; and
 - (b) the restrictive covenant registered against the title of the property limiting the owner's right to occupy to not less than 30 days per year is not in favour of the Province, a municipality or other government authority;
8. it will distribute the investment contracts under the offering memorandum exemption in Multilateral Instrument 45-103 *Capital Raising Exemptions*;
9. holders of the investment contracts would be able to rely on the registration and prospectus exemptions in BCI 45-512 for subsequent trades, except that the investment contracts are not Type B Resort Securities under BCI 45-512;
10. the rental pool arrangement will impose irrevocable obligations to provide financial information and notice, as required in BCI 45-512, as if the investment contracts were a Type B Resort Security, on:
 - (a) the manager of the rental pool, any successor manager and an association of the holders of the investment contracts, and
 - (b) a holder of an investment contract; and
11. there may not be exemptions available from the registration and prospectus requirements for resale by holders of investment contracts.

Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders that under sections 48 and 76 of the Act, a subsequent trade in an investment contract is exempt from the registration and prospectus requirements, provided that:
- (a) the seller is not Osoyoos Resort or a developer as defined in the *Real Estate Act*; and
 - (b) the seller, or an agent acting on the seller's behalf, does not advertise the expected economic benefits of the rental management agreement to a prospective purchaser.

¶ 4 September 23, 2003

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