



No. S-250121
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36**

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

LUMINA ECLIPSE LIMITED PARTNERSHIP
BETA VIEW HOMES LTD.
LUMINA ECLIPSE GP LTD.

and

D-THIND DEVELOPMENT BETA LTD.

RESPONDENTS

APPLICATION RESPONSE

Application response of: purchasers, CHUNG HEI WONG, LIPING DING and WAI
THING NICOLE WONG (the "Application Respondents" or the
"Purchasers")

THIS IS A RESPONSE TO the notice of application of KSV Restructuring Inc. filed March 30,
2026.

The Application Respondents estimate that the application will take 120 minutes.

Part 1: ORDERS CONSENTED TO

The Application Respondents consent to the granting of the orders set out in the following
paragraphs of Part 1 of the notice of application on the following terms: NIL.

Part 2: ORDERS OPPOSED

The Application Respondents oppose the granting of the orders set out in paragraphs 1(a), (b),
(c) and 3 of Part 1 of the notice of application, except for orders that would only affect other
purchasers and not the Application Respondents.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondents take no position on the granting of the orders set out in paragraphs 1(d), (e) and 2 of Part 1 of the notice of application.

Part 4: FACTUAL BASIS

Overview

1. The Application Respondents are individuals who would be affected by the vesting order sought by the applicant in the Notice of Application filed March 30, 2026.
2. The Application Respondents oppose a vesting order that would affect them. They do not oppose a vesting order that would affect other purchasers.
3. The relevant purchase agreements are unenforceable against the Application Respondents on the grounds of:
 - (a) section 23 of the *Real Estate Development Marketing Act* (the “REDMA”); and
 - (b) in the alternative, misrepresentation.

Disclosure Statement and Purchase Agreements

4. The Application Respondents are certain purchasers of development units in the real-estate development which is defined as the “Eclipse Project” by the applicant (the “Development”).
5. The developers of the Development are the respondents, Lumina Eclipse Limited Partnership, Beta View Homes Ltd., and Lumina Eclipse GP Ltd. (the “Developers”).
6. The developer, Lumina Eclipse Limited Partnership, as vendor and the Application Respondents entered into three separate purchase agreements as follows:
 - (a) purchaser: Liping Ding
development unit: “Strata Lot 111”
purchase price: \$597,900.00
date of purchase agreement: October 12, 2021

- (b) purchaser: Wai Thing Nicole Wong
development unit: “Strata Lot 74”
purchase price: \$589,900.00
date of purchase agreement: April 9, 2022
 - (c) purchaser: Chung Hei Wong
development unit: “Strata Lot 246”
purchase price: \$1,033,900.00
date of purchase agreement: April 3, 2023
7. The purchase agreements consistently refer to the disclosure statement of the Development (the “Disclosure Statement”) throughout.
8. The Application Respondents had paid deposit funds to the Developers, to be held in trust pursuant to the *REDMA*, as shown below:
- (a) Liping Ding: \$89,790.00.
 - (b) Wai Thing Nicole Wong: \$88,485.00.
 - (c) Chung Hei Wong: \$51,696.00.

Completion Date: False acceleration

9. The Disclosure Statement contains an estimated date range of completion of construction (the “Completion Date”) to be in 2024, as shown in the second amendment of the Disclosure Statement dated May 2024.
10. In 2025, the Application Respondents were surprised to hear about this court proceeding commenced by the Developers’ creditor KingSett Mortgage Corporation against the Developers.
11. As shown in the Petition to the Court filed on January 7, 2025 (the “Petition”), specifically paragraphs 7, 21, 23 and 41 of Part 2 of the document, the Developers had allowed critical insurance and building permits to be suspended, and the Canada Revenue Agency obtained a judgment against them in a significant amount of \$11,996,763.09 on June 30, 2023, demonstrating that the Developers have been experiencing significant cash flow problems since at least 2023.

12. Also, as shown in the Petition, specifically paragraph 14 of Part 2 of the document, the Developers had failed to pay their creditor as demanded on or about December 27, 2024.
13. Even though the Developers have been experiencing significant cash flow problems since at least 2023, they made representations to the Application Respondents in 2024, via an amendment to the Disclosure Statement, that construction was progressing well because the Completion Date would be accelerated ahead of the original schedule.
14. The Developers purported to accelerate the Completion Date for several months, from “December 1, 2024 and March 1, 2025” to “July 1, 2024 and October 1, 2024”.
15. In 2025, after learning about this court proceeding, it became clear to the Application Respondents that the Developers’ representations to them were false.

The suspension of building permits

16. As shown in the Petition, specifically paragraphs 7 and 40 of Part 2 of the document, the Developers had allowed building permits for the Development to be suspended. The City of Burnaby suspended the building permits on or about November 14, 2024.
17. The Developers did not immediately file an amendment to the Disclosure Statement with the Superintendent of Real Estate to disclose the suspension of building permits.
18. Also, the Developers did not provide the Application Respondents with such an amendment within a reasonable time.

Completion Date: Failure to timely disclosure that the date was false

19. On December 3, 2024, the Developers signed an amendment to the Disclosure Statement.
20. The amendment purported to change the Completion Date to the range of “January 15, 2025 and April 15, 2025”.
21. The Developers did not immediately file an amendment to the Disclosure Statement with the Superintendent of Real Estate to reflect that the new Completion Date was false. Instead, the Developers waited 7 months before doing so on November 25, 2025.
22. Also, the Developers did not provide the Application Respondents with such an amendment until more than 7 months after April 15, 2025.

23. Prior to October 2014, the *REDMA* and Policy Statement 1 did not limit the estimated date range of commencement or completion of construction. Effective October 2014, the *REDMA* and Policy Statement 1 have limited the estimated date ranges to no more than 3 months.

Completion Date: Representations prior to the Purchase Agreements

24. Before the Application Respondents entered into the purchase agreements, the Developers represented to them a construction window of 3.5 years based on the commencement date and the completion date as set out in the Disclosure Statement, as shown below:
- (a) commencement of construction: June 1, 2021
 - (b) completion of construction: between December 1, 2024 and March 1, 2025.
25. The Developers had even represented that the construction window would be shorter, with the Completion Date to be “July 1, 2024 and October 1, 2024”.
26. There has now been a significant delay of more than 18 months to the Completion Date.
27. The Developers’ representations to the Application Respondents before they entered into the purchase agreements were false.

Amendment to Disclosure Statement dated May 24, 2024

28. On May 24, 2024, the Developers signed an amendment to the Disclosure Statement which relates to the Completion Date, among other material facts.
29. However, the Developers did not provide the Application Respondents with such an amendment until 4 months after May 2024 (provided on or about September 20, 2024), and not within a reasonable time.

Change of control of the Development

30. On January 8, 2025, KSV Restructuring Inc. (the “Monitor”) was appointed as monitor of the Developers through these court proceedings and was granted control of the Development.
31. The Developers are respondents to these court proceedings.

32. Both the Developers and the Monitor did not immediately file an amendment to the Disclosure Statement with the Superintendent of Real Estate to reflect that the Monitor was granted control of the Development. Instead, they waited 10 months before doing so on November 25, 2025.
33. Also, the Developers and the Monitor did not provide the Application Respondents with such an amendment until more than 10 months after January 8, 2025.

Increase in monthly strata fees

34. On June 17, 2022, the Developers signed an amendment to the Disclosure Statement.
35. The amendment purported to increase the monthly strata fee of the Development Unit from the original amount as set out in Exhibit G of the Disclosure Statement.

Features of the development unit: Representations prior to the Purchase Agreements

36. Before Chung Hei Wong entered into a purchase agreement: The Developers represented to him and his family that the development unit, which is one of the more expensive development units within the Development, would have a large balcony for personal use as one of its main features. However, shortly after the signing of the purchase agreement, Mr. Wong discovered that it was false and that strata planter would occupy space within the balcony without the owner's permission.
37. The Developers subsequently provided their apology to Mr. Wong and his family on several occasions. The Developers proposed to change a different development unit for him within the same Development. Mr. Wong acted promptly after learning of the misrepresentation to disaffirm the purchase agreement in June 2023.

Financing

38. Due to the existing court proceeding, the Royal Bank of Canada has decided to no longer provide financing to Liping Ding even if he wanted to pay the purchase price.

Part 5: LEGAL BASIS

Real Estate Development Marketing Act (the “REDMA”)

39. Section 23 [of the *REDMA*] provides that a purchase agreement is not enforceable against a purchaser by a developer who has breached [provisions of the *REDMA*], including those relating to disclosure statements.
- Pinto v. Revelstoke Mountain Resort Limited Partnership*, 2011 BCCA 210 at para. 24;
Chameleon Talent Inc. v. Sandcastle Holdings Ltd., 2010 BCCA 300 at para. 6
40. The *REDMA* is consumer protection legislation. ... Consumer protection legislation is to be interpreted generously in favour of the consumer.
- Riegel v. Paraskevopoulos*, 2013 BCSC 335 (“*Paraskevopoulos*”) at para. 23;
Mazarei v. Icon Omega Developments Ltd., 2012 BCSC 673 (“*Mazarei*”) at paras. 42, 72, 83 and 90;
Riegel v. Revelstoke Mountain Resort Limited Partnership et al., 2012 BCSC 3 (“*Riegel*”) at para. 21;
Pinto v. Revelstoke Mountain Resort Limited Partnership, 2010 BCSC 422 (“*Pinto*”) at paras. 11, 29 and 32, aff’d 2011 BCCA 210 at paras. 17, 36 and 37
41. The onus is placed on the developer who markets real estate developments in British Columbia to strictly comply with *REDMA* or bear the burden and consequences from the failure to comply with the legislation.
- Mazarei* at para. 92;
Paraskevopoulos at para. 20;
299 Burrard Residential Limited Partnership v. Essalat, 2012 BCCA 271 (“*299 Burrard*”) at paras. 25 and 27
42. A developer who does not want to be subject to *REDMA* simply does not have to enter the British Columbia marketplace. Consumer protection legislation like *REDMA* is not rendered inoperable because of a developer’s lack of foresight. ... The statutory obligations of *REDMA* impacted [the developer] because it chose to market its development in British Columbia.
- Mazarei* at paras. 83, 90 and 91
43. The form and content required in a disclosure statement under *REDMA* is provided in the Superintendent’s Policy Statement 1 (“Policy Statement 1”).
- Ulansky v. Waterscape Homes Limited Partnership*, 2011 BCSC 83 at para. 47;
Section 14(2)(a) of the *REDMA*;
299 Burrard at para. 16

44. In 2012, the Court of Appeal recommended that the Superintendent give guidance on the word “estimate” in Policy Statement 1. Subsequently, the Superintendent revised Policy Statement 1 by changing the requirement of “State the actual or estimated dates of commencement and completion of construction” to limit the estimated date ranges to not exceeding 3 months.
- 299 Burrard* at paras. 16 and 27;
Policy Statement 1;
Chameleon Talent Inc. v. Sandcastle Holdings Ltd., 2009 BCSC 1670 at para. 17,
aff’d 2010 BCCA 300 at para. 5
45. Policy Statement 1 also requires that a disclosure statement list out the names of all directors of the developer.
- Policy Statement 1
46. Section 16(1) of the *REDMA*: 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), ... 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 ... an amendment under paragraph (a), provide a copy of [it] to each purchaser
47. *REDMA* provides that the developer has a continuing obligation, even after the presale of the unit, to ensure that the information in the current disclosure statement is accurate. ... The remedies in *REDMA* include a right of rescission ... if a purchaser does not receive the amended disclosure statement that he or she is entitled to receive.
- Riegel* at para. 22;
Pinto at paras. 30 and 31, aff’d 2011 BCCA 210 at paras. 4 and 37;
Watson v. Havaday Developments Inc., 2011 BCSC 505 at para. 24
48. The [amendment to the disclosure statement] may or may not have been significant to the purchasers, but as the law stands, a developer is not excused from strict compliance with the statutory disclosure requirements simply because the amendments appear to be insignificant to the developer.
- Paraskevopoulos* at para. 20

49. Informal updates and newsletters [to purchasers] do not satisfy the [REDMA].
299 Burrard at paras. 24 and 25;
Chameleon Talent Inc. v. Sandcastle Holdings Ltd., 2010 BCCA 300 at paras. 11 and 12
50. Nothing in the [REDMA] requires a purchaser who does not receive an amendment [to the disclosure statement] to demonstrate that the receipt of the amendment would have led to a different course of action. The right of rescission or the right to resist enforcement of the purchase agreement arises automatically on the developer's non-compliance with the *Act*. That, too, is consistent with the purpose of such consumer protection legislation.
Pinto at paras. 32, 34 and 35, aff'd 2011 BCCA 210 at paras. 4, 17, 36 and 37;
299 Burrard at para. 25
51. Also, a purchaser's motive is irrelevant. If the purchaser was entitled in law to refuse to complete, it matters not why it decided to do so.
Jaspaul S. Sandhu Enterprises Ltd. v. Penner, 2012 BCSC 856 at paras. 1, 4, 16 and 29;
Pinto at paras. 32, 34 and 35, aff'd 2011 BCCA 210 at paras. 4, 17, 36 and 37
52. The purchaser is entitled to return of the deposit.
299 Burrard at paras. 6, 24 and 26;
Paraskevopoulos at para. 23;
Mazarei at paras. 41 and 93

Innocent misrepresentation

53. The remedy for innocent misrepresentation is rescission. Damages are not available for innocent misrepresentation.
Meslin v. Lee, 2011 BCSC 1208 at para. 109;
Palcic v. Sadek, 2012 BCSC 1651 at para. 106
54. Section 22(3)(a) of the *REDMA*: If a developer files a disclosure statement respecting a development property and the disclosure statement contains a misrepresentation, a purchaser of a development unit in the development property, whether the purchaser received the disclosure statement or not, is deemed to have relied on the misrepresentation.

Court order

55. Court orders should be clear, complete, and intelligible on their face so that those who are affected by them or must act on them will readily see what rights have been declared and

what directions have been given. ... Thus, they should not require resort to extrinsic sources, such as to the pleadings or the evidence or the reasons for the decision.

Halvorson v. British Columbia, 2010 BCCA 267 at para. 18

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Chung Hei Wong, made April 7, 2026;
2. Affidavit #1 of Liping Ding, made April 7, 2026;
3. Affidavit #1 of Wai Thing Nicole Wong, made April 7, 2026; and
4. Such further and other material as counsel may advise and this Honourable Court may accept.

The Application Respondents have filed in this proceeding a document that contains the Application Respondent's address for service.

The Application Respondents have not filed in this proceeding a document that contains an address for service. The Application Respondent's ADDRESS FOR SERVICE is:

ATAC Law Corporation
Barristers & Solicitors
308 – 8988 Fraserton Court
Burnaby, BC V5J 5H8

E-mail address for service: Service by e-mail will only be accepted if sent to both james@ataclaw.ca and service@ataclaw.ca



Date: April 7, 2026

Signature of JAMES UN

application respondent(s)

lawyer for application respondent(s)