No. S-250121
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

LUMINA ECLIPSE LIMITED PARTNERSHIP
BETA VIEW HOMES LTD.
LUMINA ECLIPSE GP LTD.
and
D-THING DEVELOPMENT BETA LTD.

RESPONDENTS

APPLICATION RESPONSE

Application response of: The Attorney General of British Columbia ("AGBC" or the "Attorney General")

THIS IS A RESPONSE TO the notice of application of Chung Hei Wong, Liping Ding, and Wai Thing Nicole Wong filed April 22, 2026, and the notice of application of Nazila Ghorbani, et al., filed April 28, 2026 (collectively, the "Applicants").

The Attorney General of British Columbia estimates that the application will take three days.

[ ] This matter is within the jurisdiction of an associate judge.

[X] This matter is not within the jurisdiction of an associate judge.

Part 1: ORDERS CONSENTED TO

The Attorney General of British Columbia does not consent to the granting of any of the orders sought in Part 1 of the Notices of Application

Part 2: ORDERS OPPOSED

The Attorney General of British Columbia does not oppose the granting of any of the orders sought in Part 1 of the Notices of Application.

Part 3: ORDERS ON WHICH NO POSITION IN TAKEN

The Attorney General of British Columbia takes no position on the granting of all of the orders sought in Part 1 of the Notices of Application.

Part 4: FACTUAL BASIS

Overview

1. The Applicants seek a declaration that the pre-sale condominium purchase agreements entered in relation to development units in the Eclipse Project are unenforceable against the Applicants by the developer, pursuant to section 23 of the *Real Estate Development Marketing Act*, SBC 2004, c. 41 and some of the Applicants seek an order requiring the developers to return deposits made in relation to the Eclipse Project.

2. Westmount Services Inc., KingSett Mortgage Corporation, and KSV Restructuring Inc. (the "Monitor") (collectively, the "Respondents") oppose the relief sought by the Applicants on the following bases: (i) the Applicants have failed to act in good faith and with due diligence in bringing the application; (ii) the alleged non-disclosure primarily occurred after the Applicants entered their respective purchase agreements and is therefore not a basis to render a contract unenforceable under section 23 of *REDMA*; and (iii) if this Court finds that section 23 of *REDMA* applies, it is rendered inoperative by virtue of section 11 of the *Companies' Creditors Arrangement Act,* RSC 1985, c. C-36 (the "*CCAA*"), the Third Amended Restated and Initial Order made on December 19, 2025 (the "TARIO"), and the doctrine of paramountcy.

3. The Attorney General provides this response to application and will participate in this proceeding for the limited purpose of addressing the paramountcy doctrine issue. The Attorney

General takes no position on the ultimate question of whether the relief sought by the Applicants ought to be granted.

Attorney General's role in this proceeding

4. The Attorney General did not receive a Notice of Constitutional Question as required by section 8 of the *Constitutional Question Act*, RSBC 1996, c. 68 and did not participate in the earlier proceedings that resulted in the initial stay granted on January 8, 2025 (the "*REDMA* stay"), the Amended and Restated Initial Order made on January 16, 2025 (the "ARIO"), the Second Amended and Restated Initial Order made on April 16, 2025 (the "SARIO"), or the TARIO. The Attorney General, however, received a Notice of Constitutional Question in relation to this application and the express reliance, by the Respondents, on the paramountcy doctrine.

5. The Attorney General provides these submissions for the narrow purpose of addressing the paramountcy doctrine, which is relevant to *both* the interpretation of the existing orders made pursuant to the *CCAA* and, to the extent that some of the Applicants may seek such relief, deciding whether to vary or otherwise lift any existing stay to permit the Applicants to rely on section 23 of *REDMA*.

Part 5: LEGAL BASIS

6. Understanding the purpose, scope, and effect of the applicable statutory frameworks lies at the heart of the paramountcy analysis as such factors determine whether a conflict exists between otherwise validly enacted provincial and federal legislation that would require the federal legislation to prevail.

REDMA

7. Courts in British Columbia have written extensively about *REDMA* and the provisions at issue in this proceeding. It is well-established that *REDMA* is consumer protection legislation with a central objective of ensuring that "material facts are provided to purchasers when developments are being marketed to them": *Dwane v. Bastion Coast Homes*, 2009 BCSC 726 at para. 69 cited with approval in *Pinto v. Revelstoke Mountain Resort Limited Partnership*, 2011 BCCA 210 ("*Pinto*") at para. 24. To that end, the disclosure regime under *REDMA* is "strict" to maintain

protection that is meaningful to the consumer but balanced by the flexibility in permitting amendments as needed to adjust for unforeseen circumstances: *299 Burrard Residential Limited Partnership v. Essalat*, 2012 BCCA 271 at para. 25. A second fundamental purpose of *REDMA* is to enable the "efficient and profitable operation of the real estate development sector, a 'key economic driver in British Columbia'": *Drake v. North Ellis Developments Ltd.*, 2012 BCCA 256.

8. Part 2, Division 4 governs the disclosure statement obligations imposed on developers under *REDMA*. Section 14 provides that 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). Pursuant to section 14(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, and

d. be signed as required by the regulations.

9. *REDMA* defines a "material fact" to mean 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.

10. Section 1 further defines "misrepresentation" to mean: (a) a false or misleading statement of a material fact; or (b) an omission to state a material fact.

11. A developer is prohibited, by virtue of section 15 of *REDMA,* from entering 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.

12. Section 16 governs what must occur if a developer becomes aware that a disclosure statement does not comply with *REDMA* or its regulations, or contains a misrepresentation:

> **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.

13. "Disclosure statement" is defined under *REDMA* as "a statement that discloses material facts about a development property, prepared in accordance with section 14(2), and includes a consolidated disclosure statement, a phase disclosure statement, and an amendment to a disclosure statement".

14. Part 3 sets out the remedies and enforcement mechanisms available under *REDMA*. Division 1 of Part 3 governs the remedies available and includes rights of rescission (section 21), liability for misrepresentation (section 22), and agreements that are unenforceable for non-compliance (section 23).

15. Section 23 is the key provision at issue in this proceeding and provides as follows:

23 (1) Subject to subsection (2), a purchase agreement in relation to a development unit is not enforceable against the purchaser by a developer who has breached any provision of Part 2 *[Marketing and Holding Deposits]*.

(2) A purchase agreement in relation to a development unit is enforceable against the purchaser if either of the following applies to each of the developer's breaches of Part 2:

(a) the breach involves a disclosure statement that does not comply with the Act or the regulations, but there is no misrepresentation in the disclosure statement concerning a material fact that was or would have been reasonably relevant to the purchaser in deciding to enter into the purchase agreement;

(b) the breach involves a disclosure statement that includes a misrepresentation concerning a material fact, but the developer was not aware of the misrepresentation

at the time the purchaser and the developer entered into the purchase agreement and the misrepresentation is corrected in an amendment to the disclosure statement to which both of the following apply:

> (i) the amendment is filed with the superintendent no later than 30 days after the developer becomes aware of the misrepresentation and the amendment is provided to the purchaser within a reasonable time after filing, as required by section 16 (1) (b) *[non-compliant disclosure statements]*;
>
> (ii) the amendment is filed with the superintendent and provided to the purchaser no later than 14 days before the date on which the purchase agreement requires the developer to transfer to the purchaser title or the other interest for which the purchaser has contracted.

16. The effect of section 23 of *REDMA* was described in *Jameson House Properties Ltd. (Re),* 2009 BCSC 844 at paras. 31 and 37 as follows:

> [31] The next issue is the question of enforceability. Section 23 of *REDMA* provides that an agreement with a purchaser is unenforceable if the petitioner has breached a provision of Part 2. The Court of Appeal in *Chambers v. Pennyfarthing Development Corp. (1985),* 1985 CanLII 498 (BC CA), 20 D.L.R. (4th) 488, 64 B.C.L.R. 145 described these these [sic] types of contracts as unenforceable as opposed to void or avoidable.
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> …
>
> [37] In my view what *REDMA* does provide in s. 23 is a defence to enforcement of the purchase agreements by the petitioners; it does not give a right of action for damages. It is a statutory shield, not a sword.

17. Division 2 of Part 3 sets out the enforcement powers available to the Superintendent of Real Estate at the BC Financial Services Authority (the "Superintendent") under *REDMA*. The Superintendent has investigatory powers (sections 25 and 26) and may, following an investigation, issue a notice of hearing to determine whether a developer has been non-compliant within the meaning of section 24 (section 27). Upon receipt of a notice of hearing, a developer may seek to resolve the matter by way of a consent order, pursuant to section 28 of *REDMA.* If the matter does not resolve by way of consent and proceeds to a hearing, the Superintendent may, upon determining that the developer was non-compliant, make an order pursuant to section 30, including:

> (a) order the developer to cease or refrain from marketing one or more development units;
>
> (b) order the developer to carry out a specified activity related to marketing;

(b.1) order the developer to comply, or to carry out a specified activity for the purpose of complying, with a prohibition or requirement of

(i) Part 2.1 *[Assignment Reporting Requirements]*, or

(ii) a regulation made for the purpose of Part 2.1;

(c) order the developer to pay amounts in accordance with section 31 *[recovery of enforcement expenses]*;

(d) order the developer to pay an administrative penalty in an amount of

(i) not more than $500 000, in the case of a corporation, or

(ii) not more than $250 000, in the case of an individual.

18. A decision made by the Superintendent may be appealed to the BC Financial Services Tribunal (sections 37 and 38).

19. In addition to the enforcement mechanisms available to the Superintendent, *REDMA* establishes offences and penalties for contraventions of the Act (sections 39 and 40).

CCAA

20. Like *REDMA,* there is no shortage of jurisprudence regarding the scope, effect, and purpose of the *CCAA*.

21. The *CCAA* forms part of Canada's system of insolvency law and has been described as "Canada's first reorganization statute" as it permits "the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets": *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 ("*Century Services*") at paras. 12 to 15.

22. Like other insolvency legislation, the *CCAA'*s objectives are multifaceted and include "providing for timely, efficient and impartial resolution of a debtor's insolvency; preserving and maximizing the value of a debtor's assets; ensuring fair and equitable treatment of the claims against a debtor; protecting the public interest; and, in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company": *9354-9186 Québec inc. v. Callidus Capital Corp.,* 2020 SCC 10 ("*Callidus Capital*") at para. 40; see also, *Callidus Capital* at para. 42. In pursuit of these other objectives, *CCAA* proceedings have evolved to permit

"some form of liquidation of the debtor's assets under the auspices of the [*CCAA*]": *Callidus Capital* at paras. 42 to 45.

23. Regardless of whether a *CCAA* proceeding is aimed at reorganization or liquidation, the defining characteristic or the "engine" driving the *CCAA* is the broad discretionary power it vests in the supervising court, pursuant to section 11: *Callidus Capital* at paras. 47 to 48; *Canada v. Canada North Group Inc.,* 2021 SCC 30 at para. 21; *Stelco Inc. (Re),* 253 D.L.R. (4th) 109 (ONCA) at para. 36.

24. Sections 11 and 11.02 provide as follows:

> **11** Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.
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> …
>
> **11.02** (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,
>
> (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
>
> (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
>
> (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.
>
> (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,
>
> (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[Emphasis added.]

25. The authority granted by section 11 is not unconstrained or boundless: *Callidus Capital* at para. 49. The Court must exercise its discretion in accordance with the requirement that the order made be "appropriate in the circumstance", the other restrictions found in the *CCAA*, and, in doing so, must account for constitutional considerations, such as the paramountcy doctrine.

26. "Appropriateness" in the context of a section 11 order must be "assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*": *Century Services* at para. 70. However, the relative weight that the different objectives of the *CCAA* take on in a particular case can vary; it is dependent on the factual circumstances, the stage of the proceedings, and the proposed solutions presented to the Court for approval: *Callidus Capital* at para. 46.

27. Further, in exercising its discretion under either section 11 or 11.02, the Court must ensure it complies with the restrictions found in sections 11.001 (relief reasonably necessary during the initial application period under 11.02), 11.01 (rights of suppliers), 11.02(2)(3) (staying, restraining, or prohibiting actions where the applicant satisfies the Court that circumstances exist that make the order "appropriate" and that the applicant "has acted, and is acting, in good faith and with due diligence"), among others. The *CCAA* also limits the effect of any order made pursuant to section 11.02, including its ability to affect a regulatory body's investigation (section 11.1(2)), subject to the exceptions contemplated by section 11.1(3).

28. Where an order, made pursuant to the *CCAA*, would have the effect of overriding otherwise valid provincial legislation, and the protections afforded by it, the supervising Court must consider whether it is appropriate to exercise their discretion in the proposed manner, including whether the doctrine of paramountcy is triggered or not: *Sproule v. Nortel Networks Corporation,* 2009 ONCA 833 at paras. 35 and 47; *Crystalline Investments Ltd. v. Domgroup Ltd.,* 2004 SCC 3 at para. 43.

Doctrine of paramountcy

29. The "guiding mantra" of the paramountcy analysis was described by the Supreme Court of Canada in *Rothmans, Benson & Hedges Inc. v. Saskatchewan,* 2005 SCC 13 at para. 11 as follows:

> The doctrine of federal legislative paramountcy dictates that where there is an inconsistency between validly enacted but overlapping provincial and federal legislation, the provincial legislation is inoperative to the extent of the inconsistency.

30. The first step of the analysis requires determining whether the federal and provincial laws are validly enacted, which "requires looking at the pith and substance of the legislation to determine whether the matter comes within the jurisdiction of the enacting legislature": *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53 at para. 16. If both laws are validly enacted, the second step requires "consideration of whether any overlap between the two laws constitutes a conflict sufficient to render the provincial law inoperative.

31. A provincial law will be deemed inoperative to the extent that it conflicts with or is inconsistent with the federal law": *Lemare Lake* at para. 16. "Inconsistency" in this context is a high threshold which requires either: (a) an operational conflict where compliance with both is impossible; in other words, an operational conflict will arise where one law says 'yes' and the other 'no'; or (b) a frustration of purpose where the provincial law thwarts the purpose of the federal law: *Lemare Lake* at paras. 17 to 19. Under both branches of paramountcy, the burden of proof rests on the party alleging the conflict and it is not an easy burden to satisfy: *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5 ("*Orphan Well Association*") at para. 66

32. Although the paramountcy analysis described in *Lemare Lake* is facially simple, it must be applied with restraint and in a manner that respects the constitutional balance of federal-provincial powers and the principle of cooperative federalism. As the Supreme Court of Canada explained in *Canadian Western Bank v. Alberta,* 2007 SCC 22 ("*Western Bank*"):

> The constitutional doctrines permit an appropriate balance to be struck in the recognition and management of the inevitable overlaps in rules made at the two levels of legislative power, while recognizing the need to preserve sufficient predictability in the operation of the division of powers. The doctrines must also be designed to reconcile the legitimate diversity of regional experimentation with the need for national unity. Finally, they must include a recognition that the task of maintaining the balance of powers in practice falls primarily to governments, and constitutional doctrine must facilitate, not undermine what

this Court has called "co-operative federalism" (*Husky Oil Operations Ltd. v. Minister of National Revenue*, 1995 CanLII 69 (SCC), [1995] 3 S.C.R. 453, at para. 162; *Reference re Employment Insurance Act (Can.), ss. 22 and 23*, [2005] 2 S.C.R. 669, 2005 SCC 56, at para. 10).

33. The rationale for the restrictive use of paramountcy is self-evident – government regulation in Canada operates through a complex and interconnected web of federal and provincial legislation: *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 SCR 453 ("*Husky Oil*"). Attempts must be made to give effect to both provincial and federal legislation in a complementary manner. To do otherwise, risks the evisceration of provincially regulated property and civil rights: *Reference re Securities Act*, 2011 SCC 66 at paras. 7, 71 to 72, and 85; *Desgagnés Transport Inc. v. Wärtsilä Canada Inc*., 2019 SCC 58 at para. 48.

Application of the doctrine of paramountcy in the context of the *CCAA* and *REDMA*

34. The Respondents oppose the relief sought by the Applicants and in doing so, rely on the doctrine of paramountcy to argue that section 23 of *REDMA*, which grounds the Applicants' request for relief, is rendered inoperative by virtue of section 11 of the *CCAA* and the order made pursuant to that authority. The onus is therefore on the Respondents to establish a conflict that renders section 23 inoperative.

35. Unlike other statutory schemes, the alleged conflict in this case does not arise between provincial and federal statutory provisions; rather, the alleged conflict arises between a provincial statutory provision (section 23 of *REDMA*) and a broad, permissive grant of discretion to issue an order pursuant to a federal statutory provision (sections 11 and 11.02 of the *CCAA*).

36. Where a Court, pursuant to the *CCAA*, issues an order that would stay or otherwise subvert valid provincial legislation, it does so pursuant to the paramountcy doctrine and must exercise its discretion in a manner consistent with the *Lemare Lake* legal framework and the importance of facilitating, not undermining, cooperative federalism.

37. The *Lemare Lake* framework involves two steps: (i) determining whether the federal and provincial laws are validly enacted; and (ii) considering whether any overlap between the two laws constitutes a conflict sufficient to render the provincial law inoperative. Here, there is no dispute

concerning the first stage of the *Lemare Lake* analysis – the independent validity of the provincial and federal laws by their respective governments.

38. Accordingly, in the context of the paramountcy issue, the only questions before the Court are whether the concurrent operation of *REDMA* and the *CCAA* orders results in a conflict (either as a result of an operational conflict or a frustration of federal purpose), and in the alternative, to the extent that some of the Applicants may seek such relief, whether the existing orders should be varied to account for the restraint required by the paramountcy doctrine.

39. When considering these questions, the following jurisprudential guidance applies:

a. Courts must favour an interpretation of the federal legislation that allows the concurrent operation of both laws: *Western Bank* at paras. 74-75 citing *Attorney General of Canada v. Law Society of British Columbia,* [1982] 2 SCR 307 at p. 356;

b. Conflict must be defined narrowly so that each level of government may act as freely as possible within its respective sphere of authority: *Orphan Well Association* at para. 66;

c. Under the second branch of the paramountcy analysis, the party relying on the frustration of federal purpose argument must first establish the purpose of the relevant federal statute and then prove that the provincial legislation is incompatible with this purpose: *Quebec (Attorney General) v. Canadian Owners and Pilots Association,* 2010 SCC 39 at para. 66; *Orphan Well Association* at para. 65;

d. To avoid giving an artificially broad purpose to federal legislation for the purposes of the paramountcy analysis, "it is… always essential to ascertain the exact purpose of the specific provision of the federal law that is at issue" as this avoids "eroding the importance attached to provincial autonomy": *Alberta (Attorney General) v. Moloney*, 2015 SCC 51 at para. 86 and *Murray Hall v. Quebec (Attorney General)*, 2023 SCC 10 at para. 85;

e. The relative weight that the different objectives of the *CCAA* take on in a particular case will vary depending on the factual circumstances: *Callidus Capital* at para. 46; and

f. While the focus on the paramountcy analysis is on the *effect* of the provincial law, "its purpose cannot be ignored" as it "forms part of the interpretative exercise that allows the substantive effect of the provincial law to be ascertained": *407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy)*, 2015 SCC 52 ("*407 ETR Concession*") at para. 20.

Is there an operational conflict between section 23 and the TARIO

40. When considering the parties' arguments regarding the terms of the TARIO and whether it gives rise to an operational conflict with section 23 of *REDMA*, it is imperative to heed the guidance of the Supreme Court of Canada and not lose sight of the following fundamental rule of constitutional interpretation:

> When a federal statute can be properly interpreted so as not to interfere with a provincial statute, such an interpretation is to be applied in preference to another applicable construction which would bring about a conflict between the two statutes.
>
> *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 SCR 307 at p. 356, cited with approval in *Western Bank* at para. 75 and *Sun Indalex Finance, LLC v. United Steelworkers,* 2013 SCC 6 at para. 57.

41. Accordingly, if the terms of the TARIO and the scope of protection afforded by section 23 can be properly read in a manner that avoids an operational conflict, such an interpretation ought to be adopted.

42. If this Court finds, as a matter of fact, that there was non-compliance with regulatory requirements imposed by *REDMA* such that section 23 was engaged, the contract was rendered unenforceable by the developer. Section 23 requires no positive action on the part of the purchaser. The contract is unenforceable from the point in time of the act or omission that triggered section 23. Where a contract is rendered unenforceable pursuant to section 23 of the *REDMA*, it falls outside the debtor's asset pool and therefore outside the scope of the *CCAA* proceeding. Such an

interpretation avoids any potential operational conflict between *REDMA* and the terms of the TARIO.

43. In the alternative, where the *CCAA*, or an order made pursuant to that legislation, comes into play *after* the provincial legislation has been violated and gives rise to an alleged operational conflict, any such conflict only exists because of the decision not to comply with validly enacted provincial legislation. In such a circumstance, this Court should decline to find the provincial legislation inoperative as the situation was created by the non-compliance of the developers: *R v. Canadian Pacific Ltd*, [1994] OJ No 2573 (Ont Ct J). To find otherwise, would deny consumers access to a defence to enforcement that would otherwise be available to them simply because they contracted with a developer that became insolvent. Such an outcome is contrary to the public interest as it immunizes developers from the consequences of their non-compliance with the regulatory scheme and would not constitute an appropriate, fair or reasonable outcome under the *CCAA.*

Does section 23 of *REDMA* frustrate the purpose of the *CCAA?*

44. Alternatively, the Respondents argue that compliance with section 23 of *REDMA* frustrates the purposes of the *CCAA*, which they describe as including, "timely, efficient and impartial resolution of a debtor's insolvency", affording a debtor "breathing room", preserving and maximizing "the value of a debtor's assets", "maximizing creditor recovery", preventing "any creditors from gaining an advantage" or maneuvering "for positioning" and ensuring the "fair and equitable treatment of the claims against a debtor", citing *Callidus Capital, inter alia*.

45. The Respondents, however, overlook the other recognized policy objectives of the *CCAA*, including the protection of the public interest: *Montréal (City) v. Deloitte Restructuring Inc.*, 2021 SCC 53. The Respondents also fail to address how the weight of the recognized policy objectives may vary depending on the factual circumstances, including whether a *CCAA* proceeding is aimed at reorganization or liquidation.

46. In doing so, the Respondents invite the Court to interpret and apply the *CCAA* and the order made pursuant to the *CCAA* in a manner that maximizes creditor recovery to the detriment of the validly enacted provincial legislation. Such an approach runs contrary to the repeated caution from

the Supreme Court of Canada against giving "too broad a scope to paramountcy on the basis of frustration of federal purpose": *Moloney* at para. 86, citing *Lemare Lake* at para. 23, *Western Bank* at para. 74, *inter alia*.

47. For the purposes of this paramountcy analysis, the multifaceted nature of the *CCAA* objectives must be accounted for. The purposes of the *CCAA* include the maximization of creditor recovery and the protection of the public interest. Consumer protection legislation, such as *REDMA,* has, at its core, a public protection mandate.

48. The effect of the protections afforded by *REDMA*, including section 23, can only be understood with reference to the purpose of that legislation: *407 ETR Concession* at para. 20. Although courts in British Columbia have recognized the "twin objectives" discussed above, the consumer protection purpose is central to this proceeding. The provisions at issue directly relate to *REDMA*'s disclosure regime and the importance of providing meaningful protection to consumers in the event of a breach of that regime.

49. When considered through this lens and in accordance with the principles of cooperative federalism, section 23 of *REDMA* does not frustrate the purposes of the *CCAA* and the orders made pursuant to the federal legislation. The Respondents cannot rely on the paramountcy doctrine to seek exemptions from compliance with regulatory regimes that are consistent with the purpose of the *CCAA*: *Richtree Inc. (Bankruptcy), Re,* 2005 CanLII 55905 at paras. 17 to 18. Where the doctrine of paramountcy is not triggered, federally regulated bankruptcy and insolvency proceedings cannot be used to subvert provincially regulated property and civil rights: *Husky Oil*; *Giffen (Re)*, [1998] 1 S.C.R. 91.

Part 6: MATERIAL TO BE RELIED ON

1. Other pleadings filed in this proceeding; and

2. Such further material as counsel may advise and this Honourable Court may allow.

The Attorney General has not filed in this proceeding a document that contains an address for service. The Attorney General's ADDRESS FOR SERVICE is:

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Date: June 5, 2026

Signature of Kaitlyn Chewka
Counsel for the Attorney General of British Columbia