



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: Westmount Services Inc. ("Westmount")

This is a response to: the notice of application of Chung Hei Wong, Liping Ding and Wai Thing Nicole (collectively, the "ATAC Applicants") filed April 22, 2026 (the "ATAC Application"), and the notice of application of Nazila Ghorbani, Arash Emadghaderi-Sepideh Motallebi, Mohammad Pourkarimi Shirayeh, Pegah Pourkarimi Shirayeh, Maryam Javadinia, Hossain Jabbari, Shaya Shahrezaee, Malihe Ghamarsourat, Mooein Fadaei, Farhoud Etemadol Sadati, Laila Dahaghin, Seyed Reza Deravian, Maryam Abdipour, Masaki Matsumoto (Sammy Rastkar), Ali Manavi, Naghmeh Heshamati, Nousheen Pourjahani, Kayvon Ameeri, Shirin Vosough Gerayeli, Kaveh Vosough Gerayeli, Mohsen Bagherpour, Amirhossein Marjaee, Amir Osooly, Hossein Nazapour, Roya Herischian-Heris, Hamid Riahi, Mohammad Nayebhashem, Alireza Sedghi Taromi, Shiva Olyaei, Nasim Rahmani, Mohammadjavad Nadali, Ramtin Parvin, Pooneh Taheri, Paniz Parvin, Mahnaz Taheri, Nima Hazar and Mohammad Medhi Basefat Nazari (collectively, the "HG Applicants" and together with the ATAC Applicants, the "Applicants") filed on April 28, 2026 (the "HG Application" and together with the ATAC Application, the "Applications").

Westmount estimates that the application will take 3 days.

**Part 1: ORDERS CONSENTED TO**

Westmount does not consent to the granting of any of the orders set out in Part 1 of the ATAC Application or any of the orders set out in Part 1 of the HG Application.

**Part 2: ORDERS OPPOSED**

Westmount opposes the granting of all of the orders set out in Part 1 of the ATAC Application and all of the orders set out in Part 1 of the HG Application.

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

Westmount takes no position on none of the orders set out in Part 1 of the ATAC Application and none of the orders set out in Part 1 of the HG Applications.

**Part 4: FACTUAL BASIS**

**A. Overview**

1. On these Applications, the Applicants seek a declaration that the pre-sale condominium purchase agreements (the “**Presale Agreements**”) between themselves and the Developer (as defined below) of the “Eclipse” project, a 34-storey concrete high-rise building located at 2381 Beta Avenue, Burnaby, British Columbia (the “**Eclipse Project**” or the “**Development**”), are not enforceable against the Applicants by the developer.
2. The Applicants rely on section 23 of the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41, as amended (“**REDMA**”) to support the relief sought. They take the position that the Developer breached its statutory obligation under REDMA to file an amended disclosure statement immediately once the Developer became aware that – according to the Applicants – there were misrepresentations contained in its REDMA disclosure.
3. The declaration sought by the Applicants is unavailable in the circumstances for three reasons: (1) the Applicants have failed to act in good faith and with due diligence in bringing the Applications; (2) the alleged non-disclosed events primarily occurred after the Applicants entered

into their respective purchase agreements, which is not a basis to render a contract unenforceable under section 23 of REDMA; and (3) to the extent section 23 of REDMA applies, federal paramountcy renders this section inoperative.

4. First, sections 11.02(3) and 18.6(1) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") provides that an interested person shall act in good faith with respect to those proceedings. The Applicants have known the facts giving rise to their Applications shortly after these proceedings were commenced. Despite this, they have waited more than a year to bring the Applications, which suggests that they were "lying in the weeds: to see whether the real estate market would have an upturn before taking steps to avoid their obligations under their respective purchase agreements: see *Taber Water Disposal Inc. (Re)*, 2024 ABKB 680 ("*Taber*"). This alone is a basis to dismiss the Applications.

5. Secondly, section 23(2) of REDMA provides that a purchase agreement in relation to a development unit is enforceable even if there is a technical breach of Part 2 of REDMA (which includes the disclosure statement obligations) if 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. "Material fact" means something that would affect the value, price, or use of the Applicants' units. None of the 'misrepresentations' that the Applicants allege would affect the value, price or use of the units. And in any event the alleged misrepresentations could not have been reasonably relevant to the Applicants in entering into the Presale Agreements because the events they allege did not occur until after the Applicants had entered into the Presale Agreements:

- (a) the first alleged misrepresentation is the failure to disclose a Canada Revenue Agency judgment dated June 30, 2023 (the "**CRA Judgment**"). Most of the Applicants had executed their Presale Agreements prior to this date. Accordingly, even if this was a material fact that should have been disclosed, which is disputed, it would not render most of the Applicants purchase contracts unenforceable since they entered into the Presale Agreements prior to this date.
- (b) the balance of the alleged misrepresentations occurred on or after September 2024, which is subsequent to all the Applicants entering into their purchase agreements.

6. Lastly, even if section 23 of REDMA did apply to render the Presale Agreements unenforceable, the relief the Applicants seek would not be available because it would frustrate the purpose of the CCAA. The primary purpose of the CCAA is to preserve and maximize the value of a debtor's assets. Section 11 of the CCAA provides the court with general power and flexibility to achieve such purpose.

7. The CCAA is paramount over rights under provincial law to the extent of any operational inconsistency. The relief that the Applicants request would negate the purpose of the CCAA process. The Presale Agreements and other contracts of similarly situated purchasers are essentially the Developer's only source of funds. In similar circumstances, this Court has previously held that the CCAA overrode condominium buyers' rights under REDMA where it would frustrate the fundamental purpose of the CCAA: *Jameson House Properties Ltd. (Re)*, 2009 BCSC 964 ("*Jameson*").

8. The Applications should be dismissed.

## **B. Background**

### **KingSett Loans**

9. Lumina Eclipse Limited Partnership ("**Lumina LP**") and Beta View Homes Ltd. ("**Beta View**") (together, the "**Initial Debtors**") are the beneficial and registered owners, respectively, of a 34-story development the Eclipse Project located at 2381 Beta Ave, Burnaby, BC (the "**Lands**"), comprising 329 units (collectively, the "**Eclipse Units**").

10. At the commencement of these proceedings on January 7, 2025, the Eclipse Units had been sold pursuant to pre-sale contracts (collectively, the "**Presale Agreements**") with third-party purchasers (collectively, the "**Presale Purchasers**"), including the Applicants, and the Eclipse Project was approximately 95% complete.

11. Pursuant to commitment letters between the Initial Debtors and KingSett Mortgage Corporation ("**KingSett**"), Kingsett loaned funds to the Initial Debtors with respect to the Development, including:

- (a) a commitment letter dated April 28, 2021, as amended, pursuant to which KingSett provided a first mortgage loan in the principal amount of \$124,000,000 (the “**First KingSett Loan**”); and
- (b) a commitment letter dated April 28, 2021, as amended, pursuant to which KingSett provided a second mortgage loan comprising two facilities in the aggregate principal amount of \$65,400,000 (the “**Second KingSett Loan**”).

12. As at December 8, 2025, the total indebtedness to KingSett was approximately \$225,737,348, plus interest and costs, which continue to accrue.

13. The Initial Debtors’ obligations in respect of the First KingSett Loan are secured by, among other things:

- (a) a site-specific general security agreement dated June 30, 2021, granted by Beta View over its personal property in connection with the Eclipse Project;
- (b) a mortgage and assignment of rents dated March 14, 2024, in the principal amount of \$124,000,000, registered against the Lands (as defined below) (the “**KingSett First Mortgage**”); and
- (c) a beneficial owner’s direction, acknowledgment, and security agreement dated March 2024, granted by the Initial Debtors in favour of KingSett.

14. The Initial Debtors’ obligations in respect of the Second KingSett Loan are secured by, among other things:

- (a) a general security agreement dated June 30, 2021, granted by Beta View over its personal property in connection with the Eclipse Project;
- (b) a mortgage dated August 7, 2024, in the principal amount of \$70,000,000, registered against the Lands (the “**KingSett Second Mortgage**”); and
- (c) a beneficial owner’s direction, acknowledgment, and security agreement dated August 16, 2024, granted by the Initial Debtors in favour of KingSett.

**Deposit Protection Contract Facility**

15. Westmount, as agent for and on behalf of Aviva Insurance Company of Canada and Liberty Mutual Insurance Company (the “**Surety**”), made available a \$50,000,000 deposit protection contract facility (the “**Deposit Protection Facility**”) to the Initial Debtors and Lumina Eclipse GP Ltd. (“**Lumina GP**”, together with the Initial Debtors, the “**Developer**”).

16. The Deposit Protection Facility allows the Debtors to request, after certain conditions are satisfied, the use of purchaser deposits to a maximum of \$50,000,000 to be made available to fund project costs for the Development.

17. The payment and performance of the Developer’s obligations under the Deposit Protection Facility are secured by, among other things:

- (a) an indemnity agreement dated May 20, 2022, granted by the Developer, among others, in favour of Westmount and the Surety;
- (b) a mortgage and assignment of rents dated June 16, 2022, in the principal amount of \$50,000,000, registered against the Lands (the “**Westmount Mortgage**”), which also secures the indebtedness, liabilities and obligations arising under or in connection with the New Home Warranty (as defined below);
- (c) an equitable mortgage and estoppel agreement dated May 20, 2022, granted by the Initial Debtors in favour of Westmount; and
- (d) a location specific security agreement dated May 20, 2022, executed by the Initial Debtors in favour of Westmount.

18. The priority among the KingSett First Mortgage, the Westmount Mortgage and the KingSett Second Mortgage is governed by a third amended and restated subordination and standstill agreement dated March 19, 2024 (the “**Subordination Agreement**”), among, *inter alios*, KingSett and Westmount, and an acknowledgment and agreement dated March 28, 2025 (the “**Acknowledgement Agreement**”), among KingSett, the Initial Debtors, Aviva and Westmount. The Westmount Mortgage is subordinate to the KingSett First Mortgage, but in priority to the

KingSett Second Mortgage and multiple collateral mortgages granted by Beta View in favour of KingSett (collectively, the “**Collateral Mortgages**”).

**C. The Initial Order and the Stay of Proceedings**

19. On January 7, 2025, KingSett filed a petition seeking relief in respect of the Initial Debtors under the CCAA. The relief was sought to “stabilize the Debtors’ operations and management, secure necessary interim financing, complete construction of Brentwood Tower C, and ensure presale homebuyer agreements can be closed as intended.” Pursuant to the first affidavit of Daniel Pollack made on January 6, 2025, relief under the CCAA was sought to “allow all the presales sold in connection with Brentwood Tower C to continue, which may not be possible in a receivership.”

20. An initial order was granted in this proceeding on January 8, 2025 (the “**Initial Order**”). Among other things, the Initial Order:

- (a) appointed the Monitor;
- (b) granted a broad stay of proceedings (the “**Stay of Proceedings**”) in favour of the Monitor, and the Initial Debtors and their business and property to and including January 18, 2025;
- (c) approved the Interim Financing Term Sheet dated as of January 6, 2025 (as amended, the “**Interim Financing Term Sheet**”), between the Monitor, for and on behalf of the Initial Debtors, and KingSett, and granted a charge over the Initial Debtors’ property up to the maximum amount of \$700,000, plus interest, fees and expenses, to secure all amounts advanced under the Interim Financing Term Sheet (the “**Interim Lender’s Charge**”);
- (d) granted a charge over the Initial Debtors’ property up to the maximum amount of \$250,000, to secure the fees and disbursements of the Monitor and its counsel (the “**Administration Charge**” and together with the Interim Lender’s Charge, the “**Charges**”); and
- (e) granted the Monitor certain enhanced powers (the “**Initial Enhanced Powers**”).

21. Subsequent to the Initial Order, the Monitor issued a notice dated January 11, 2025 (the “**January 11<sup>th</sup> Notice**”) to all Presale Purchasers advising, among other things, the Monitor’s view that all Presale Agreements remained valid and enforceable, and the hearing date scheduled for the ARIO.

22. On January 16, 2025, KingSett obtained an amended and restated Initial Order (the “**ARIO**”) that, among other things, expanded the Monitor’s Initial Enhanced Powers (the “**Expanded Powers**”), including to authorize the Monitor to cause the Developer to take such steps as the Monitor determines may be reasonably necessary or appropriate to comply with REDMA, subject to paragraph 11 of the ARIO.

23. The ARIO was subsequently amended and restated pursuant to an order granted on April 16, 2025 (the “**SARIO**”) and an order granted on December 19, 2025 (the “**TARIO**”).

24. No party or stakeholder in these proceedings, including the Applicants, has opposed any of the Initial Order, the ARIO, the SARIO or the TARIO, or sought to vary, amend, appeal or lift any such order or the Stay of Proceedings. All Presale Purchasers, including the Applicants, have been aware of the Initial Order and the Monitor’s intention to close the Presale Agreements since receiving the January 11<sup>th</sup> Notice.

#### **D. Marketing Efforts of Units**

25. On April 16, 2025, the Monitor obtained orders (the “**Sales Order**”) that, among other things, approved a sales process that was subject to the filing of a disclosure statement amendment in accordance with REDMA.

26. On October 17, 2025, the Monitor obtained an order (the “**Amended Sale Process Order**”) that, among other things, approved an amended sales process that was subject to the filing of a disclosure statement amendment in accordance with REDMA.

27. Neither the Sale Process Order nor the Amended Sale Process Order was opposed by any party or stakeholder in these proceedings, and no party has sought to vary, amend or appeal either order.

**E. Completion of the Eclipse Project**

28. Construction of the Eclipse Project was deemed substantially complete on or about March 17, 2026, and an occupancy permit was issued on April 10, 2026 (the “**Occupancy Permit**”).

29. Throughout these proceedings, the Monitor provided various updates to Presale Purchasers regarding the status of construction and completion of the Eclipse Project, including:

- (a) advising by a notice dated June 9, 2025, that substantial completion of the Development was expected within five to six months, subject to typical construction variables, and the Presale Agreements remained valid and enforceable and could not be terminated or rescinded absent the prior written consent of the Monitor or the Court;
- (b) advising by a notice dated September 18, 2025, that the Eclipse Project remained on track for substantial completion in December 2025, subject to typical construction variables and the Presale Agreements could not be terminated or rescinded absent the prior written consent of the Monitor or the Court;
- (c) advising by notice dated November 24, 2025, that construction of the Development remained active and was progressing well, the Monitor had engaged MLA Canada Realty and MLA Fraser Valley Realty to manage completion support for all Presale Purchasers, and the Monitor, for and on behalf of the vendor, was exercising the option to extend the outside date of all Presale Agreements to August 24, 2026; and
- (d) advising by notice dated March 31, 2026, that, subject to some terms and conditions, Purchased Unit completions were expected to begin on or around April 24, 2026, and the Monitor intended to seek the Approval and Vesting Order (as defined below) on April 8, 2026.

**F. Closing the Purchased Units**

30. The Monitor obtained the following orders on April 8, 2026:

- (a) an order (the “**Approval and Vesting Order**”), among other things:

- (i) authorizing the Monitor to sell, pursuant to any Presale Agreements or any sale agreements (each, a “**New Sale Agreement**”) arising from the Amended Sale Process that satisfy the Sale Conditions (each such New Sale Agreement or Presale Agreement being a “**Sale Agreement**”), any and all of the strata lots that comprise the lands described in Schedule “B” to the Approval and Vesting Order, including all fixtures and chattels, in each case, as designated and described in the applicable Sale Agreement (each, a “**Purchased Unit**”), and to partially assign the parking and storage lease with respect to any parking stalls and/or storage lockers in connection therewith;
  - (ii) upon delivery by the Monitor to the applicable purchaser(s) (each, a “**Purchaser**”) of a certificate substantially in the form attached as Schedule “C” to the Approval and Vesting Order (in each case, the “**Monitor’s Certificate**”), vesting the Purchased Unit described in such Monitor’s Certificate in such Purchaser(s) free and clear of any and all claims and encumbrances; and
  - (iii) authorizing and directing Richards Buell Sutton LLP to release and transfer all deposits and interest thereon currently held in trust by it, as trustee or stakeholder, in connection with the Presale Agreements to Bennett Jones LLP, in trust; and
- (b) an order (the “**Distribution Order**”), among other things, authorizing and directing the Monitor and its counsel and other agents to make or cause to be made, for and on behalf of the applicable Debtors, one or more distributions, payments or adjustments, as applicable from the purchase price paid for each Purchased Unit approved pursuant to the Approval and Vesting Order, any interest earned on the deposits paid by the applicable Purchaser(s) of each Purchased Unit, and any deposit forfeited by any Purchaser(s) party to a Sale Agreement, free and clear of all claims and encumbrances, subject to such holdbacks as the Monitor considers necessary or appropriate to satisfy the Debtors’ incurred and estimated post-filing

obligations and any claims that rank in priority to the Charges, and to fund these proceedings.

31. Following the issuance of the Approval and Vesting Order and the occupancy permit, the Monitor caused completion notices to be delivered to certain Presale Purchasers beginning April 11, 2026, in accordance with the Presale Agreements.

**G. The Applications**

32. Counsel to the ATAC Applicants and the HG Applicants first contacted the Monitor by letters dated December 29, 2025, and February 3, 2026 (the “Initial Letters”), respectively – approximately 12 and 13 months after the commencement of these proceedings. The Initial Letters principally asserted that the Applicants’ Presale Agreements were unenforceable and demanded the return of their deposits.

33. Counsel to the Monitor responded to each of the Initial Letters and advised, among other things, that the TARIO prevented the Applicants from avoiding their obligations under their respective Presale Agreements.

34. The Applicants entered into the Presale Agreements between October 1, 2021, and September 2023. Only four of the Applicants’ Presale Agreements were executed after June 30, 2023.

35. The outside date for completion of the Presale Agreements was December 17, 2025, which could be extended up to 250 days (August 24, 2026) in the sole discretion of the vendor.

**Part 4: LEGAL BASIS**

36. In addition to the below, Westmount repeats and relies on the application response of the Monitor dated May 4, 2026.

**A. Good Faith and Due Diligence**

37. Section 11.02(3)(b) of the CCAA provides that the Court shall not make an order in an application other than an initial application unless the applicant satisfies the court that it “has acted, and is acting, in good faith and with due diligence.” The Applicants cannot meet that burden; they

have waited until the eleventh hour and argued supposedly concealed facts that they should have been aware of months ago.

38. Further, section 18.6(1) of the CCAA provide that any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

39. Justice Colin C.J. Feasby recently commented on the requirements of applicants to conduct themselves in good faith and with due diligence in *Taber*, finding that insolvency and restructuring proceedings demands forthright participation of interested parties. It is not open to the Applicants to “lie in the weeds.”

*Taber* at paras. 14 and 28-35.

40. In this case, the Applicants waited for over a year to advise the Monitor that they took the position their Presale Agreements were unenforceable. This is despite the fact that the materials filed in support of the petition and the Monitor’s reports to the Court expressly stated that the that the Presale Agreements were enforceable, thereby putting them on notice since the commencement of these proceedings. It suggests that the real reason for the delay in bringing this application was so that the Applicants could wait and see if the real estate market improved.

41. The Applicants have not met their burden of showing that they have acted, and are acting, in good faith, or with due diligence. Therefore, under section 11.2(3) of the CCAA this Court has no discretion to grant the Applications. Their failure to act in good faith and with due diligence is fatal in itself to the Applications.

#### **B. Purpose of Section 23 of REDMA**

42. REDMA must be interpreted in light of its twin goals: (a) consumer protection, and (b) enabling efficient and profitable operation of the real estate development sector, which is a key economic driver in British Columbia. These goals necessarily involve a balancing of the interests of developers and purchasers. While the legislation does provide consumer protection, the developer is also entitled to have a degree of certainty in terms of knowing that contracts of purchase and sale are in place. The Applicants’ submissions on REDMA interpret the statute incorrectly, because they focus exclusively on one of the twin goals, consumer protection, and

ignore the balance between REDMA's dual purposes. Numerous cases have reiterated that "statutory interpretation of disclosure obligations must also take into account the statutory purpose of enabling the efficient and productive operation of this sector of real estate development."

*Woo v. Onni Ioco Road Five Development Limited Partnership*, 2014 BCCA 76 ("*Woo*") at para 48 (citing to *Drake v. North Ellis Developments Ltd.*, 2012 BCCA 256 at paras 37-38), para 50, paras 71-72.

43. Section 23 of REDMA must be interpreted in light of both goals: achieving consumer protection and reasonable certainty for developers.

44. The defences in Section 23(2)(a) and (b) were added to REDMA by legislative amendment in 2014 so as to ensure a better balance between the twin goals. Much of the case law cited by the Applicants pre-dates this amendment.

45. Section 23 provides in material part:

**Agreements void for non-compliance**

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: [...]

[Emphasis added].

46. The underlined portion of section 23(a) is key. If a breach involves a disclosure statement, a purchase agreement will only be unenforceable if that breach would have been relevant to the purchaser deciding to enter into the purchase agreement. In other words, the breach must relate to

a misrepresentation of a material fact that was contained in the disclosure statement relied on by the purchaser at the time they were deciding to enter into the contract.

47. A “misrepresentation” is defined under section 1 of REDMA as meaning either a “false or misleading statement of a material fact” or an “omission to state a material fact”.

48. Under section 1 of REDMA, a “material fact” means, 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.

49. For the court to draw a common-sense conclusion about the magnitude or “materiality” of any potential effect the disclosure of the facts in issue would have on the price, value, or use of the unit, it requires a threshold component of objective significance. A purchaser is entitled to information of a sufficiently substantial nature that objectively affects their interests so that they can assess their rights under REDMA and avail themselves of their remedies. There is, however, a difference between consumer protection and a windfall that allows purchasers to rescind purchase agreements that delivered to them precisely what they contracted for.

*Woo* at paras. 67 and 70.

50. Further, the party alleging a misrepresentation under REDMA bears the burden of demonstrating that there is a misrepresentation as defined in the statute. If they are unable to do so, there is no dispute that the contracts are enforceable.

*Bosa Properties (Esprit 2) Inc. v. Kim*, 2012 BCSC 1013 (“*Bosa*”) at para. 65.

### C. Analysis

51. The Applicants assert that the Developer failed to comply with section 16 of REDMA, thereby rendering their Presale Agreements unenforceable pursuant to section 23 of REDMA. In particular, the Applicants, say that the Developer should have disclosed a variety of events, including a change to monthly strata fees prior to the first amendment to the Disclosure Statement dated June 17, 2022, and the CRA Judgment.

52. Neither of these events, nor the additional matters they list in the Applications, are material facts that would render the Presale Agreements unenforceable under section 23 of REDMA for the following four reasons.

53. First, with respect to the increase to monthly strata fees, this change is neither a material fact as defined under REDMA, nor have the Applicants demonstrated that the Developer misrepresented this information at the time the Applicants entered into their respective Presale Agreements. In the circumstances, the defence in section 23(2)(a) of REDMA applies and the Presale Agreements remain enforceable.

54. Second, the balance of the purported non-compliance with section 16 of REDMA relates to events that occurred after the majority of the Presale Agreements were executed (i.e., after June 2023). In these circumstances, the Applicants have failed to show that the alleged material facts are or would have been reasonably relevant to the Applicants in deciding to enter into the Presale Agreements.

55. With respect to the four Applicants that executed their Presale Agreements after June 2023, being Mohammadjavad Nadali, Pooneh Taheri, Paniz Parvin, and Mahnaz Taheri, only Mr. Nadali has affirmed an affidavit in this proceeding. Mr. Nadali alleges that had he known about the CRA judgment, he would not have entered into the Presale Agreement as it would be “very risky” and he would think that the “developer would not complete the development on time.” The affidavit is evidence of Mr. Nadali’s subjective view. The test for what constitutes a material fact is objective. A party’s subjective view of what is material is not admissible evidence.

*Bosa, at paras. 72-73*

56. The Applicants have not met their burden of establishing that the existence of the CRA judgment was a material fact:

- (a) the Development completed within the time allowed under the Presale Agreement;
- (b) Mr. Nadali will be provided with the unit he purchased; and
- (c) there is no evidence that shows a change in terms of the value, price or use of the unit as a result of the CRA judgment.

*Bosa* at para. 98;  
Affidavit #1 of Mahammedjavad Nadali made April 24, 2026 at para. 8.

57. Third, with respect to the delay in the construction completion date, the construction was delayed as a result of the insolvency of the developer and these CCAA proceedings, among other things. The Monitor also sought and obtained relief from complying with REDMA during the Stay Period, which was granted as a term of the TARIO. The Applicants were put on notice and did not raise an issue with this relief at the time it was sought. In any event, the Development completed within the outside date of the Presale Agreements and therefore cannot be considered material in the circumstances.

58. Fourth, regarding the appointment of the Monitor and the allegation that this constituted a change of control, section 11 of the TARIO provides a complete response. During the Stay Period, the Monitor is not required to file a new disclosure statement under subsection 16(2) of REDMA nor take any steps that would otherwise trigger a purchaser's right of rescission under REDMA, which in ordinary circumstances might include "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" per subparagraph (c) of the definition of "material fact" under section 1 of REDMA.

**D. Section 11 of the CCAA Authorizes the Court to Grant Relief From, and Override, Other Statutes and to Permanently Interfere with the Rights of Third Parties**

59. The CCAA vests Courts with jurisdiction to temporarily or permanently interfere with, and override, the rights of third parties, whether statutory, contractual or otherwise, where doing so furthers the CCAA's remedial purposes. This is routinely done when imposing a stay or granting a release pursuant to section 11 of the CCAA.

*Norcen Energy Resources v Oakwood Petroleum Limited*,  
1988 CanLII 3560 (AB KB) at para. 52 (“*Norcen*”);  
*Luscar Ltd. v Smoky River Coal Ltd.*, 1999 ABCA 179 at para. 60 (“*Luscar*”).

60. Section 11 of the CCAA is “the most important feature of”, and “the engine that drives”, the CCAA’s “broad and flexible statutory regime”. The “broad discretionary power” in section 11 of the CCAA “is vast” – enabling Courts to “make a variety of orders that respond to the circumstances of each case”, adapt the CCAA “readily to each reorganization”, and fashion creative solutions, for which there is no express authority”.

*9354-9186 Québec inc. v Callidus Capital Corp.*, 2020 SCC 10 (“*Callidus*”) at paras. 47-50;  
*Canada v Canada North Group Inc.*, 2021 SCC 30 (“*North Group*”) at para. 21.

61. The vast discretionary power provided under section 11 of the CCAA is not constrained by the “availability of more specific orders.” Rather, it is “constrained only by the restrictions set out in the CCAA itself” and the “baseline requirements of appropriateness, good faith and due diligence”.

*Callidus* at paras. 40-44 and 48-51.  
*Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 at para. 70.  
*North Group* at paras. 21 and 24.

62. Appropriateness is assessed by inquiring whether the proposed relief advances the policy and remedial objectives of the CCAA. These objectives include the maximization of the value of a debtor company’s assets, ensuring the fair and equitable treatment of claims against such debtor company, and the timely, efficient and impartial resolution of its insolvency.

*Callidus* at paras. 40-44, and 48-51.  
*North Group* at para 21.

63. In furtherance of the CCAA’s remedial objectives and doctrine of federal paramountcy, Courts have previously exercised their discretion under present and former section 11 of the CCAA to grant relief from, and override, the provisions of REDMA and other provincial and federal statutes. In so doing, Courts have “ensured that the CCAA is given a liberal construction to fulfill its broad purpose and to prevent this purpose from being neutralized by other statutes”.

*North Group* at paras. 4, 21, 24, 27-28, 31;  
*Sun Indalex Finance, LLC v United Steelworkers*, 2013 SCC 6 at para. 60 (“*Indalex*”);

*Re Hayes Forest Services Limited*, 2009 BCSC 1169 at para. 22 (“*Hayes Forest*”);  
*Skeena Cellulose Inc. v. Clear Creek Contracting Ltd.*, 2003 BCCA 344 at para. 50 (“*Skeena*”).

64. The Ontario Court of Appeal in *Sproule v Nortel Networks Corporation*, 2009 ONCA 833 (“*Nortel*”), held that former employees of the debtor company could not enforce payment obligations under the *Employment Standards Act, 2000*, S.O. 2000, c. 41, and that a stay under the CCAA is a “clear example” of a situation where Courts can freeze contractual and statutory obligations.

*Nortel* at paras. 39, 41-42, and 44-45.

65. In *Skeena*, this Court and the Court of Appeal both considered whether the CCAA and the doctrine of paramountcy could operate to resolve conflicts with the *Forest Act*, R.S.B.C. 1996, c. 157 and in both decisions concluded that the CCAA provides the court with jurisdiction to decide a contractual dispute despite any provincial statutory authority and/or the terms of that contract.

*Hayes Forest* at para. 22;  
*Skeena* at para. 50.

66. In *Norcen*, the Alberta Court of Queen’s Bench (as it then was) considered an application from a non-creditor third party to enforce an agreement that would replace the debtor company as the operator of 20 oil and gas wells. The Court dismissed the application and favoured a broad interpretation of section 11 of the CCAA that stayed the non-creditor applicant from enforcing contracts against the debtor company:

[52] ... if promoting the continuance of insolvent companies is constitutionally valid as insolvency legislation, it follows that a stay which happens to affect some non-creditors in pursuit of that end is valid. Surely a necessary part of promoting the continuance of a company is to give that company some time to stop and gather its faculties without interference from affected parties for a brief period of time. In my opinion, the distinction between creditors’ contractual rights and the contractual rights of non-creditor third parties that Norcen asks me to draw is not a helpful one in these circumstances. Continuance of a company involves more than consideration of creditor claims. For that reason, I am of the opinion that s. 11 of the C.C.A.A. can validly be used to interfere with some other contractual relationships in circumstances which threaten a company’s existence. I add, however, that in my judgment, such interference in the interest of fairness to all parties should be effective only for a relatively short period of time. [*Emphasis added*]

*Norcen* at para. 52.

67. Here, the stated purpose of these proceedings since inception was to stabilize the Debtors' operations and management, secure necessary interim financing, complete the Development's construction, and ensure the Presale Agreements can be closed as intended; for the benefit of the Debtors and their stakeholders, including the Applicants. If the Applicants were able to avoid their obligations under the Presale Agreements, it would hinder the very purpose for which these proceedings were commenced as the Monitor would be unable to close on the Presale Agreements.

68. Notably, in *Norcen*, much like this case, while the application was only in respect of 20 oil and gas wells, the Court considered whether the relief sought by the applicants could have a detrimental future impact on the approximately 800 oil and gas wells that the debtor company operated. Here too, the outcome of the Applications extends to all other Presale Purchasers that have not yet closed their Presale Agreements.

*Norcen* at para. 44.

69. The foregoing authorities demonstrate that this Court's vast jurisdiction under section 11 of the CCAA can, whether independently or together with section 11.02, override a provincial statute such as REDMA and permanently stay the rights and remedies of third parties such as the Applicants thereunder. Indeed, in *Jameson*, the only case on which the HG Applicants rely to assert that the Stay of Proceedings does not apply, this Court held that it had jurisdiction to override the rights and afforded to non-creditor purchasers under REDMA and in doing so relied upon *Norcen*, *Skeena*, and *Luscar*, among other authorities.

*Jameson* at paras. 22 and 33-34.

70. Having regard to the foregoing, this Court undoubtedly had, when granting the Initial Order, the ARIO, the SARIO and TARIO, and maintains, the jurisdiction under sections 11 and 11.02 of the CCAA, from preventing all persons from failing to honour, repudiate, terminate, rescind or cease to perform any contract or agreement held by any of the Debtors, regardless of whether such relief interferes with or overrides section 23 of REDMA.

**E. Federal Paramountcy Renders Section 23 of REDMA Inoperative**

71. To the extent that section 23(1) of REDMA is applicable to the Presale Agreements, which is denied, it is inoperative as a result of federal paramountcy.

72. The doctrine of federal paramountcy “resolves conflicts in the application of overlapping valid provincial and federal legislation”. It dictates that when “the operational effects of provincial legislation are incompatible with federal legislation, the federal legislation must prevail and the provincial legislation is rendered inoperative to the extent of the incompatibility.”

*Indalex* at para. 55;  
*Saskatchewan (Attorney General) v Lemare Lake Logging Ltd.*, 2015 SCC 53 at para 15  
 (“*Lemare Lake*”);

73. Paramountcy operates in two situations: (i) “where a provincial and a federal statutory provision are in conflict and cannot both be complied with” (or operational conflict), or (ii) “where complying with the provincial law will have the effect of frustrating the purpose of the federal law”. As noted by the Supreme Court of Canada in *Indalex*, federal paramountcy also applies to conflicts arising between Court orders made pursuant to federal law and the provisions of provincial law. In either case, the focus of the analysis is on the “effect” or “substance” of the provincial law.

*Indalex* at paras. 56 and 60;  
*Nortel* at para. 38.

74. The onus to demonstrate that “federal and provincial laws are in fact incompatible by establishing either that it is impossible to comply with both laws or that to apply the provincial law would frustrate the purpose of the federal law” rests on the party alleging the conflict. While paramountcy is to be construed narrowly, Courts must not “refrain from applying the doctrine where the two laws are genuinely inconsistent.”

*Lemare Lake* at para. 21;

75. Here, paramountcy is engaged because section 23 of REDMA, if it applied, would frustrate the purpose of the CCAA. Therefore, the CCAA prevails over section 23 of REDMA.

*North Group* at para. 31;  
*Jameson* at para. 25.

76. In *Indalex*, the Supreme Court of Canada considered the operational conflict branch of federal paramountcy in the context of proceedings under the CCAA. The issue was whether statutory trust under Ontario provincial law applied to assets that were subject to an order under section 11.2 of the CCAA that gave priority to the debtor-in-possession. Applying federal paramountcy, Justice Deschamps resolved the conflict in favour of the CCAA.

77. *Indalex* establishes that the CCAA prevails over provincial law in the case of direct operational conflict. It also prevails where, as here, provincial law would frustrate the purpose of the CCAA and applying the provincial law would defeat the intention of Parliament.

*Lemare Lake* at para. 19;  
*Nortel* at paras. 37-38.

78. The CCAA is “remedial legislation in the purest sense.” Its remedial purposes include, as noted previously, providing for the “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” and “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”.

*Callidus* at paras. 40-42.

79. In *Jameson*, this Court considered whether the Court had authority under former section 11 of the CCAA to preclude purchasers from exercising rights of rescission or asserting their respective presale contracts were unenforceable. This Court concluded that it could override the rights of non-creditor purchasers, stating that the relief from *REDMA* being sought was directed squarely towards the successful restructuring of this enterprise, which is a fundamental purpose of the CCAA.

*Jameson* at paras. 24-33.

80. The Court went on to cite various principles related to the language of section 11 of the CCAA:

Section 11 was interpreted by the *Alberta Court of Appeal in Luscar Limited v. Smoky River Coal Limited*, 1999 ABCA 179, 175 D.L.R. (4th) 703. [...] Madam

Justice Hunt observed that the language of s. 11 is very broad, allowing the court to make an order “on such terms as it may impose” and empowering the court to stay “all proceedings taken or that might be taken”, restraining “further proceedings in any action, suit or proceeding” and prohibiting “the commencement of or proceeding with any other action, suit or proceeding.” [...] Madam Justice Hunt held that these words were sufficient to give the CCAA judge in the case the authority to permanently affect the contractual rates of a non-creditor.

*Jameson* at para. 27.

81. If the Applicants were permitted to avoid their contractual obligations pursuant to section 23 of REDMA, it would create unfairness amongst the stakeholders and otherwise dramatically reduce the value of the Debtors' assets that are left for realization among creditors. The result being that Westmount may have to pay out deposit claims of Presale Purchasers while those Presale Purchasers do not have to meet their obligations and while all other stakeholders remain subject to the CCAA process. It, in effect, allows the Presale Purchasers to jump ahead of other stakeholders as Westmount would then be entitled to be paid in priority to others after the KingSett First Mortgage is paid out.

82. To take a step back and look at the ultimate effect of what the Applicants seek, it would essentially upend and potentially result in these types of development projects from being able to achieve restructuring for the benefit of all stakeholders.

83. This outcome would disrupt the CCAA process and erode recoveries. By frustrating the purpose of the CCAA, section 23 of REDMA necessarily becomes inoperative pursuant to the doctrine of federal paramountcy.

*Callidus* at paras. 40-42.

**F. It is not Appropriate to Grant a Summary Trial**

84. The ATAC Applicants seek an order pursuant to Rule 9-7(2) of the Rules for an order: (i) declaring that the Presale Agreements are unenforceable against the ATAC Applicants pursuant to section 23 of REDMA; and (ii) requiring the Developer to return the deposits to the ATAC Applicants. The relief sought by the ATAC Applicants is not available to them.

85. Leaving aside the question of whether a summary trial application can even be brought in this proceeding, the relief goes beyond a declaration and requires the payment of deposits currently

held. In the circumstances, the ATAC Applications would be required to lift the Stay of Proceedings, which they have not sought to do.

**G. Conclusion**

86. In this case, there is no basis for the application of section 23(1) of REDMA based on the factual circumstances and the doctrine of federal paramountcy.

87. It is clear that the Applicants were aware of these proceedings upon their commencement and chose to wait in the weeds, presumably to see whether the real estate market would have an upturn. Now, as closing approaches, the Applicants seek to avoid their obligations under the Presale Agreements presumably because the real estate market remains depressed. This is not a basis for the application of section 23 of REDMA. It is also directly contrary to the good faith obligations stakeholders have under the CCAA to participate in the proceedings forthright.

88. The application should be dismissed.

**Part 5: MATERIAL TO BE RELIED ON**

89. The Pre-Filing Report of the Proposed Monitor dated January 7, 2025.

90. The First Report of the Monitor dated January 14, 2025.

91. The Second Report of the Monitor dated April 8, 2025.

92. The Confidential Supplement to the Second Report of the Monitor dated April 8, 2025.

93. The Third Report of the Monitor dated July 9, 2025.

94. The Fourth Report of the Monitor dated September 30, 2025.

95. The Fifth Report of the Monitor dated December 8, 2025.

96. The Sixth Report of the Monitor dated March 30, 2026.

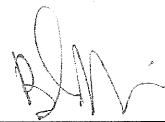
97. The Seventh Report of the Monitor dated May 4, 2026.

98. Affidavit #1 of Daniel Pollack made on January 6, 2025.

99. Affidavit #1 of Tom Reeves made on January 15, 2025.
100. Affidavit #2 of Daniel Pollack made on December 9, 2025.
101. Affidavit #1 of Karen Buquet made on April 28, 2026.
102. Such further and other material as counsel may advise and this Court may permit.

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

Dated: May 4, 2026



\_\_\_\_\_  
Signature of Bryan Gibbons

Application respondent

Lawyer for Westmount

THIS APPLICATION RESPONSE is filed by Bryan Gibbons and Candace Formosa of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2, e-mail address: bgibbons@lawsonlundell.com/cformosa@lawsonlundell.com; telephone number: 604-685-3456.