



FORCE FILED

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.

and

LUMINA ECLIPSE GP LTD.

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: KingSett Mortgage Corporation (the "Petitioner" or "KingSett")

To: The Service List

TAKE NOTICE that an application will be made by the applicant to Justice Masuhara at the courthouse at 800 Smithe Street, Vancouver, BC on December 19, 2025 at 10:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 20 minutes.

- This matter is within the jurisdiction of an associate judge.
- This matter is not within the jurisdiction of an associate judge.

Part 1: ORDER(S) SOUGHT

1. The Petitioner seeks the following Declarations and Orders, substantially in the form attached as **Schedule “A”**:

First Mortgage Loan

- (a) A declaration that the mortgage and assignment of rents registered in the New Westminster Land Title Office (the “**LTO**”) as CA9151198 and CA9151199 on June 30, 2021, as supplemented by the mortgages registered in the LTO as CB685881 on June 14, 2023 and CB1229026 on March 26, 2024 (collectively, the “**First Mortgage Package**”) granted by Beta View Homes Ltd. (the “**Nominee**”) in favour of KingSett, are valid charges against the Property (as defined below).
- (b) A declaration that the general security agreement dated June 30, 2021 (the “**First GSA**”) granted by the Nominee in favour of KingSett in respect of which a financing statement was filed in the British Columbia Personal Property Registry (the “**PPR**”) under base registration number 065925N on June 24, 2021, constitutes a charge in favour of KingSett.
- (c) A declaration that the beneficial direction, acknowledgement, and security agreement dated June 30, 2021 (the “**First BSA**”) granted by Nominee and Lumina Eclipse Limited Partnership by its general partner Lumina Eclipse GP Ltd. (the “**Limited Partnership**” and the “**General Partner**”, and collectively with the Nominee, the “**Borrowers**”) in favour of KingSett in respect of which a financing statement was filed in the PPR under base registration number 065925N on June 24, 2021, constitutes a charge in favour of KingSett.
- (d) A declaration that the first mortgage loan in the amount of \$124,000,000 (the “**First Mortgage Loan**”), provided for in the First Mortgage Commitment Letter (as defined below) to the Borrowers by KingSett is in default.

Second Mortgage Loan

- (e) A declaration that the mortgage and assignment of rents registered in the LTO as CA9151200 and CA9151201 on June 30, 2021 as supplemented by the mortgage registered in the LTO as CB1524901 on August 16, 2024 (collectively, the **“Second Mortgage Package”**) granted by the Nominee in favour of KingSett, are valid charges against the Property.
- (f) A declaration that the general security agreement dated June 30, 2021 (the **“Second GSA”**) granted by the Nominee in favour of KingSett in respect of which a financing statement was filed in the PPR under base registration number 065937N on June 24, 2021 constitutes a charge in favour of KingSett.
- (g) A declaration that the beneficial direction, acknowledgement, and security Agreement dated June 30, 2021 (the **“Second BSA”**) granted by the Borrowers in favour of KingSett in respect of which a financing statement was filed in the PPR under base registration number 065937N on June 24, 2021, constitutes a charge in favour of KingSett.
- (h) A declaration that the second mortgage loan in the amount of \$65,400,000 (the **“Second Mortgage Loan”**), composed of facility 1 in the amount of \$50,000,000 (“**Facility 1**”) and facility 2 in the amount of \$15,400,000 (“**Facility 2**”) provided for in the Second Mortgage Commitment Letter (as defined below) to the Borrowers by KingSett is in default.

Collateral Obligations

- (i) A declaration that the mortgage and assignment of rents registered in the LTO as CA9469147 and CA9469148 on October 19, 2021, as supplemented by the mortgage registered in the LTO as CA9774693 on March 10, 2022 (collectively, the **“Minoru Collateral Mortgage Package”**) granted by the Nominee in favour of KingSett as collateral security for loan obligations and loan indebtedness of Minoru Square Development Limited Partnership and Minoru View Homes Ltd. to KingSett, are valid charges against the Property.

(j) A declaration that the mortgage and assignment of rents registered in the LTO as CB1229020 and CB1229021 on March 26, 2024 (collectively, the “**Highline Collateral Mortgage Package**”) granted by the Nominee in favour of KingSett as collateral security for loan obligations and loan indebtedness of 6511 Sussex Heights Development Ltd. to KingSett, are valid charges against the Property.

Judgment

(k) A declaration that the amount of money secured by the First Mortgage Security (as defined below) and the Second Mortgage Security (as defined below) is the sum of \$225,737,348.09 as of December 8, 2025, (plus interest and fees that continue to accrue) and is justly due and owing.

(l) Judgment against the Borrowers, jointly and severally, in the amount of \$225,737,348.09 as of December 8, 2025, plus interest from and after the date of this Notice of Application at the respective contractual interest rates or in the alternative, pursuant to the *Court Order Interest Act*, RSBC 1996, c 79.

(m) Such further and other relief as counsel may advise and this Court deems to be just and convenient in the circumstances.

Part 2: FACTUAL BASIS

A. Loan Agreement and Loan Documents

The First Mortgage Loan

2. Pursuant to a commitment letter dated April 28, 2021, as amended by a first amending agreement dated June 22, 2021, a second amending agreement dated July 5, 2022, a third amending agreement dated May 23, 2023, a fourth amending agreement dated June 22, 2023, and a fifth amending agreement dated March 5, 2024 (as may be further amended, restated, or supplemented from time to time, the “**First Mortgage Commitment Letter**”), KingSett provided the First Mortgage Loan to the Borrowers.
3. Pursuant to the First Mortgage Commitment Letter, the Borrowers agreed:

- (a) to make monthly interest payments and missing an interest payment constitutes an "Event of Default" under the First Mortgage Commitment Letter;
- (b) to pay KingSett accrued interest at a rate of the Royal Bank of Canada's Prime Rate plus 2.25% (with a floor rate of 4.70%), per annum, calculated on the daily outstanding balance, compounded and payable monthly;
- (c) to pay KingSett all costs and expenses incurred by KingSett in connection with the Loan; and
- (d) that if an Event of Default occurs, KingSett may demand repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs incurred by KingSett and may declare the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs be forthwith due and payable.

4. As security for the First Mortgage Loan, the Borrowers provided the following, among other things, in favour of KingSett:

- (a) the First Mortgage Package;
- (b) the First GSA executed by the Nominee; and
- (c) the First BSA executed by the Borrowers.

(collectively, the "**First Mortgage Security**").

5. The First Mortgage Package is composed of the following charges registered against the lands owned by the Nominee legally described as LOT 2 DISTRICT LOT 124 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP67029, PID 030-169-747 (the "Property"), each securing the same indebtedness connected with the First Mortgage Loan:

- (a) a mortgage in the principal amount of \$95,000,000 registered in the LTO as CA9151198, together with an assignment of rents registered in the LTO as CA9151199;

- (b) a mortgage in the principal amount of \$110,000,000 registered in the LTO as CB685881; and
- (c) a mortgage in the principal amount of \$124,000,000 registered in the LTO as CB1229026.

6. In connection with the First Mortgage Loan and pursuant to the First GSA, KingSett has a security interest registered against, *inter alia*, the Borrowers at the PPR under base registration number 065925N against all of the Borrowers' present and after acquired personal property located at, relating to, arising from, or used in connection with the Property (the "**Site Specific Personal Property**").

The Second Mortgage Loan

- 7. Pursuant to a commitment letter dated April 28, 2021, as amended by a first amending agreement dated June 22, 2021, a second amending agreement dated July 5, 2022, a third amending agreement dated May 23, 2023, a fourth amending agreement dated June 22, 2023, a fifth amending agreement dated March 5, 2024, and a sixth amending agreement dated July 5, 2024 (as may be further amended, restated, or supplemented from time to time, the "**Second Mortgage Commitment Letter**"), KingSett provided the Second Mortgage Loan to the Borrowers.
- 8. Pursuant to the Second Mortgage Commitment Letter, the Borrowers agreed:
 - (a) to make monthly interest payments and missing an interest payment constitutes an "Event of Default" under the Second Mortgage Commitment Letter;
 - (b) to pay KingSett accrued interest at a rate of the Royal Bank of Canada's Prime Rate plus 8.55% (with a floor rate of 11.00%), per annum, calculated on the daily outstanding balance, compounded and payable monthly for Facility 1;
 - (c) to pay KingSett accrued interest at a rate of the Royal Bank of Canada's Prime Rate plus 13.05% (floor rate of 20.00%), per annum, calculated on the daily outstanding balance, compounded and payable monthly for Facility 2;

- (d) to pay KingSett all costs and expenses incurred by KingSett in connection with the Loan; and
- (e) that if an Event of Default occurs, KingSett may demand repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs incurred by KingSett and may declare the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs be forthwith due and payable.

9. As security for the Second Mortgage Loan, the Borrowers provided the following, among other things, in favour of KingSett:

- (a) the Second Mortgage Package;
- (b) the Second GSA; and
- (c) the Second BSA.

(collectively, the “**Second Mortgage Security**”).

10. The Second Mortgage Package is composed of the following charges registered against the Property, both securing the same indebtedness connected with the Second Mortgage Loan:

- (a) a mortgage in the principal amount of \$62,500,000 registered in the LTO as CA9151200, together with an assignment of rents registered as CA9151201 registered in the LTO; and
- (b) a mortgage in the principal amount of \$70,000,000 registered in the LTO as CB1524901.

11. In connection with the Second Mortgage Loan and pursuant to the Second GSA, KingSett has a security interest registered against, *inter alia*, the Borrowers at the PPR under base registration number 065937N against the Site Specific Personal Property.

The fieu of Letter of Credit Facility

12. In addition to the First Mortgage Loan and the Second Mortgage Loan, in connection with the Property, the Borrowers obtained cash in lieu of certain letter of credit (the “**Cash in Lieu of Letter of Credit**”) commitments from the City of Burnaby in and around September 2024. These funds released from the City of Burnaby should have been used to pay down the indebtedness owed to KingSett at the time. However, these funds were used by the Respondents to fund additional costs that were not disclosed to or approved by KingSett, increasing KingSett’s exposure.

B. The Collateral Obligations

13. As detailed in the first affidavit of Daniel Pollack made January 6, 2025, the Borrowers provided certain guarantees to KingSett in connection with the obligations of associated entities due and owing to KingSett:
 - (a) a guarantee in connection with the obligations of 6511 Sussex Heights Development Ltd. (the “**Highline Guarantee**”); and
 - (b) a guarantee in connection with the obligations of Minoru Square Development Ltd and Minoru View Homes Ltd. (the “**Minoru Guarantee**”).
14. As security for the Highline Guarantee, the Nominee provided the Highline Collateral Mortgage Package. The charges comprising the Highline Collateral Mortgage Package are CB1229020, a mortgage in the principal amount of \$176,500,000 and CB1229021, an assignment of rents. Both are registered against the Property in the LTO. In addition to the Property, the Highline Collateral Mortgage Package is also registered against thirteen other parcels of land legally described as having the following parcel identifiers: 031-256-449; 031-256-457; 031-256-503; 031-256-538; 031-256-546; 031-256-562; 031-256-597; 031-258-662; 031-258-689; 031-258-697; 031-258-719; 031-258-727; 031-258-735 (the “**Exempt Lots**”).
15. As security for the Minoru Guarantee, the Nominee provided the Minoru Collateral Mortgage Package. The mortgages comprising the Minoru Collateral Mortgage Package, CA9469147 and CA9774693, are in the principal amount of \$61,000,000 and \$80,000,000 respectively and are registered against the Property in the LTO.

C. The CCAA Proceedings

16. On December 27, 2024, KingSett delivered a demand to the Borrowers, taking the position that the Borrowers were in default of their obligations under the First Mortgage Commitment Letter and the Second Mortgage Commitment Letter, for reasons including but not limited to:
 - (a) a Canada Revenue Agency judgment registered against the Property on December 9, 2024 in the amount of \$11,996,763.09 plus accruing interest (the “**CRA Judgment**”); and
 - (b) the City of Burnaby suspended building permits for the tower on the Property on November 14, 2024 following WBI Home Warranty Ltd., the new home warranty insurer, no longer agreeing to provide the mandatory home warranty insurance on the common property and single dwelling units.
17. On January 8, 2025, as amended and restated on January 16, 2025 and April 16, 2025, this Court granted an order (the “**ARIO**”) to appoint KSV Restructuring Inc. (the “**Monitor**”) as monitor of the business and financial affairs of the Borrowers with the powers and obligations set out in the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36.
18. Pursuant to the ARIO, the Monitor was granted an Administration Charge (as defined in the ARIO) for its reasonable fees and disbursements, ranking ahead of all other security and charges on the Property. Pursuant to the ARIO, KingSett was granted an Interim Lender’s Charge (as defined in the ARIO) as security for its interim financing obligations during the proceedings. As of December 8, 2025, the Borrowers are indebted to KingSett in the amount of \$9,076,188.14 in relation to the Interim Lender’s Charge. Interest continues to accrue at a rate of \$2,729.53 per day.
19. The Monitor’s powers do not attach to the Exempt Lots, nor does the Interim Lender’s Charge or the Administration Charge apply to the Exempt Lots.
20. KingSett understands that the Monitor has obtained an Order of this Court to market and sell the Property.

21. In connection with the sale of the Property, KingSett is seeking a declaration that:

- (a) each of the charges comprising the First Mortgage Package is a valid charge against the Property;
- (b) each of the charges comprising the Second Mortgage Package is a valid charge against the Property;
- (c) each of the charges comprising the Minoru Collateral Mortgage Package is a valid charge against the Property;
- (d) each of the charges comprising the Highline Collateral Mortgage Package is a valid charge against the Property;
- (e) each of the First GSA, the First BSA, the Second GSA, and the Second BSA constitute a security interest perfected with respect to the Borrowers' Site Specific Personal Property; and
- (f) the Borrowers are liable to KingSett for the Indebtedness (as defined below).

D. Borrowers' Indebtedness

22. To date, the Borrowers have failed to make payment in response to KingSett's demands. The Borrowers remain indebted to KingSett in the amount of \$225,737,348.09 as of December 8, 2025, comprising:

- (a) \$136,787,820.60 due and owing with respect to the principal amount due and owing with respect to the First Mortgage Loan, including accrued interest, late interest charges, and discharge fees;
- (b) \$60,503,538.83 due and owing with respect to the principal amount due and owing with respect to Facility 1 of the Second Mortgage Loan, including accrued interest, late interest charges, discharge fees, and site visit expenses;

- (c) \$18,617,243.54 due and owing with respect to the principal amount due and owing with respect to Facility 2 of the Second Mortgage Loan, including accrued interest, late interest charges, discharge fees, and site visit expenses;
- (d) \$9,661,580.30 due and owing with respect to the principal amount due and owing with respect to the Cash in Lieu of Letter of Credit, including accrued interest and late interest charges; and
- (e) \$167,164.82 in legal fees incurred, with these fees continuing to accrue.
(the “**Indebtedness**”)

23. Interest and costs, including legal fees, continue to accrue on the Indebtedness. Interest is accruing at a rate of \$25,076.59 per day with respect to the First Mortgage Loan, \$25,076.59 per day with respect to the Second Mortgage Loan, Facility 1, and \$10,160.01 per day with respect to the Second Mortgage Loan, Facility 2, and \$2,275.32 per day with respect to the Cash in Lieu Letter of Credit for a total of \$59,004.51 per day for all of the Indebtedness.

24. The Indebtedness is fully due and owing and payable to KingSett and the Borrowers have failed or neglected, and continue to fail or neglect, to pay.

E. Additional Charges on the Property

Priority of Charges

25. The Property has the following additional financial charges and liens registered against it as of December 9, 2025:

- (a) mortgage and assignment of rents under charge numbers CB9317 and CB9318, respectively (the “**Westmount Charges**”), registered in the LTO on June 16, 2022 in favour of Westmount West Services Inc. (“**Westmount**”);
- (b) mortgage and assignment of rents under charge numbers CB1652776 and CB1652777, respectively, registered in the LTO on October 15, 2024 in favour of Coast Capital Savings Federal Credit Union;

- (c) claim of builders lien under charge number HB9235 registered in the LTO on October 22, 2024 in favour of Shezmin Kurshid Alam Khan;
- (d) claim of builders lien under charge number CB1690183 registered in the LTO on November 1, 2024 in favour of Clearbrook Iron Works Ltd.;
- (e) claim of builders lien under charge number BB1552360 registered in the LTO on November 8, 2024 in favour of Mega Cranes Ltd.;
- (f) claim of builders lien under charge number CB1730467 registered in the LTO on November 26, 2024 in favour of Super Save Fence Rentals Inc.;
- (g) the CRA Judgment;
- (h) claim of builders lien under charge number CB1796781 registered in the LTO on January 3, 2025 in favour of Boxx Modular LP;
- (i) claim of builders lien under charge number CB1824318 registered in the LTO on January 17, 2025 in favour of Avi Masonry Ltd.;
- (j) claim of builders lien under charge number HBC10643 registered in the LTO on January 20, 2025 in favour of Ram Geotechnical Engineering Ltd.;
- (k) mortgage and assignment of rents under charge numbers CB1831532 and CB1831533, respectively, registered in the LTO on January 22, 2025 in favour of 1076737 B.C. Ltd.;
- (l) claim of builders lien under charge number CB1884086 registered in the LTO on February 20, 2025 in favour of Group Security Services Ltd.;
- (m) claim of builders lien under charge number CB1884087 registered in the LTO on February 20, 2025 in favour of Group Security Services Ltd.;
- (n) claim of builders lien under charge number CB2056681 registered in the LTO on May 22, 2025 in favour of Han Appliances & Refrigeration Ltd.;

- (o) claim of builders lien under charge number CB2186190 registered in the LTO on July 18, 2025 in favour of Midland Appliance Ltd.; and
- (p) claim of builders lien under charge number CB2489992 registered in the LTO on December 1, 2025 by Right Touch Construction Ltd.

(collectively, the “**Additional Charges**”).

26. Each of the charges comprising the First Mortgage Package, the Second Mortgage Package, the Minoru Collateral Mortgage Package, and the Highline Collateral Mortgage Package is registered in priority to the Additional Charges, except for the Westmount Charges.

The Westmount Charges

- 27. KingSett has acknowledged the subordination of certain of its mortgages to the Westmount Charges as a condition required by Aviva Insurance Company of Canada (“**Aviva**”) in connection with its issuance of home warranty insurance for the Property.
- 28. Pursuant to several priority agreements registered against the Property by Westmount, the Westmount Charges rank ahead of all charges comprising the Second Mortgage Package, the Minoru Collateral Mortgage Package, and the Highline Collateral Mortgage Package.
- 29. With respect to the First Mortgage Package, KingSett and Westmount entered into three subordination and standstill agreements setting out the priority of these mortgages vis-à-vis the Westmount Charges, as detailed in the first affidavit of Tom Reeves made January 15, 2025. Each of the three priority agreements superseded the previous one, with the Third Priority Agreement (as defined in the Tom Reeves affidavit), executed on March 19, 2024, being the final agreement.
- 30. On March 28, 2025, KingSett, the Borrowers, Westmount, and Aviva entered into an Acknowledgement and Agreement to confirm the priorities between KingSett and Westmount (the “**Acknowledgement**”).

31. Together, the Acknowledgement and the Third Priority Agreement confirm that all KingSett mortgages, save and except for CB1229026 (with the exception of certain Deposit Moneys, as defined below, in which CB1229026 is subordinate to Westmount in a limited scope), are subordinate to the Westmount Charges.
32. Accordingly, the priority of KingSett's charges on the Property vis-à-vis Westmount's charges on the Property is summarized as follows:
 - (a) CB1229026 ranks ahead of the Westmount Charges in the amount of \$124,000,000, plus interest and expenses, provided that, as an exception and solely with respect to all deposit monies received from time to time from purchasers of residential units and accrued interest thereon (the "**Deposit Moneys**"), the Westmount Charges shall have priority for so long as, and only to the extent that, such Deposit Moneys are required to be retained in a designated trust account in the name of Richards Buell Sutton LLP, in which case CB1229026 shall constitute a second charge and security interest in and to the Deposit Moneys only. At such time any Deposit Moneys (or a portion thereof) are no longer required to be so retained (the "**Releasable Deposits**"), then unless such funds (i) are released to the Borrowers to pay Project (as defined in the Third Priority Agreement) costs as permitted by Westmount, or (ii) are repaid to purchasers whose agreements of purchase and sale have been released or terminated, the Releasable Deposits shall be applied to the First Mortgage; and
 - (b) insofar as Westmount can prove to this Court that the Westmount Charges are valid charges on the Property, the Westmount Charges rank ahead of CA9151198, CA9151199, CA9151200, CA9151201, CA9469147, CA9469148, CA9774693, CB685881, CB1229020, CB1229021 and CB1524901. For clarity, these charges represent the First Mortgage Package (with the exception of CB1229026), the Second Mortgage Package, and the Minoru Collateral Mortgage Package, the Highline Collateral Mortgage Package.

Part 3: LEGAL BASIS

1. KingSett pleads and relies on the common law principle and applicable related statutes related to the laws of contract.
2. The Borrowers are indebted to KingSett in the amount of the Indebtedness, with interest continuing to accrue with respect to the Indebtedness.
3. The First Mortgage Commitment Letter and the Second Mortgage Commitment Letter each constitute a binding contract
4. The documents comprising the First Mortgage Security, the Second Mortgage Security, the Minoru Collateral Mortgage Package and the Highline Collateral Mortgage Package each constitutes a binding contract.
5. The charges comprising the First Mortgage Package, the Second Mortgage Package, the Minoru Collateral Mortgage Package, and the Highline Collateral Mortgage Package have been properly registered in the LTO, and provide security interests in the Property in favour of KingSett.
6. The financing statements associated with the First GSA, the First BSA, the Second GSA, and the Second BSA have been properly registered with the PPR, and provide security interests in the Borrowers' personal property in favour of KingSett.
7. In breach of the First Mortgage Commitment Letter and the Second Mortgage Commitment Letter, the Borrowers have refused or neglected to pay the Indebtedness and the interest that continues to accrue.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Daniel Pollack, made on January 6, 2025;
2. Affidavit #1 of Tom Reeves, made on January 15, 2025;
3. Affidavit #2 of Daniel Pollack, made on December 9, 2025; and
4. Such other materials as counsel may advise and this Court allows.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated:

December 9, 2025



Signature of Applicant(s)

Lawyer for applicant(s)

Mary Butterly, K.C. / Lucas Hodgson

To be completed by the court only:

Order made

- [] in the terms requested in paragraphs of Part 1 of this notice of application
- [] with the following variations and additional terms:

.....
.....
.....

Date:[dd/mmm/yyyy].....

.....
.....
.....
Signature of [] Judge [] Associate Judge

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

Schedule “A”

Draft Order

(See attached)

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.

and

LUMINA ECLIPSE GP LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

APPLICATION FOR JUDGMENT

BEFORE } THE HONOURABLE JUSTICE MASUHARA) 2025/12/19

ON THE APPLICATION of the Petitioner, coming on for hearing at 800 Smithe Street, Vancouver, BC V6Z 2E1 on December 19, 2025.

AND ON READING Affidavit #1 of Daniel Pollack made on January 6, 2025 and Affidavit #2 of Daniel Pollack made on December 9, 2025 (the “**Second Pollack Affidavit**”); AND ON HEARING Mary Buttery, K.C. and Lucas Hodgson, counsel for KingSett Mortgage Corporation and those other counsel as set out in Schedule “A”.

THIS COURT ORDERS AND DECLARES that:

1. The mortgage registered in the New Westminster Land Title Office (the “**LTO**”) as CB1229026 on March 26, 2024 (the “**First Mortgage**”) granted by Beta View Homes Ltd. (the “**Nominee**”) in favour of KingSett Mortgage Corporation (“**KingSett**”), constitutes a valid charge in favour of KingSett in priority to the interest therein or claims thereto of all Respondents and all persons claiming by, through, or under them, against the following lands legally described as LOT 2 DISTRICT LOT 124 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP67029, PID 030-169-747 and municipally described as 2381 Beta Avenue, Burnaby, BC (the “**Property**”), subject only to the Administration Charge, as defined and granted in the Initial Order granted in these proceedings on January 8, 2025, as amended and restated on January 16, 2025 and April 16, 2025 (the “**ARIO**”), the Interim Lender’s Charge, as defined and granted in the ARIO.
2. Notwithstanding paragraph 1 of this Order, the First Mortgage shall rank in priority to the mortgage and assignment of rents registered in the LTO as CB9317 and CB9318 against the Property on June 16, 2022 in favour of Westmount West Services Inc. (the “**Westmount Charges**”), with the exception, solely with respect to all deposit monies received from time to time from purchasers of residential units and accrued interest thereon (the “**Deposit Moneys**”), the Westmount Charges shall have priority for so long as, and only to the extent that, such Deposit Moneys are required to be retained in a designated trust account in the name of Richards Buell Sutton LLP, in which case the First Mortgage shall constitute a second charge and security interest in and to the Deposit Moneys only. At such time that any Deposit Moneys (or a portion thereof) are no longer required to be retained (the “**Releasable Deposits**”), then unless such funds (i) are released to the Nominee, Lumina Eclipse Limited Partnership and Lumina Eclipse GP Ltd. (collectively, the “**Borrowers**”) to pay project costs as permitted by Westmount West Services Inc. pursuant to the its deposit contract protection facility, or (ii) are repaid to purchasers whose

agreements of purchase and sale have been released or terminated, the Releasable Deposits shall be applied to the First Mortgage.

3. The mortgage and assignment of rents registered in the LTO as CA9151198 and CA9151199 on June 30, 2021, as supplemented by the mortgage registered in the LTO as CB685881 on June 14, 2023 (the “**First Mortgage Package (2021-2023)**”) granted by the Nominee in favour of KingSett constitutes a valid charge in favour of KingSett in priority to the interest therein or claims thereto of all Respondents and all persons claiming by, through, or under them, against the Property, subject only to:
 - (a) the Administration Charge;
 - (b) the Interim Lender’s Charge;
 - (c) the First Mortgage; and
 - (d) the Westmount Charges, in so far as the Westmount Charges are found by this Court to be valid charges against the Property.
4. The mortgage and assignment of rents registered in the LTO as CA9151200 and CA9151201 on June 30, 2021, as supplemented by the mortgage registered in the LTO as CB1524901 on August 16, 2024 (collectively, the “**Second Mortgage Package**”) each constitute a valid charge in favour of KingSett in priority to the interest therein or claims thereto of all Respondents and all persons claiming by, through, or under them, against the Property, subject only to the Administration Charge, the Interim Lender’s Charge, the First Mortgage, the Westmount Charges in so far as the Westmount Charges are found by this Court to be valid charges against the Property and the First Mortgage Package (2021-2023).
5. The mortgage and assignment of rents registered in the LTO as CA9469147 and CA9469148 on October 19, 2021, as supplemented by the mortgage registered in the LTO as CA9774693 on March 10, 2022 (collectively, the “**Minoru Collateral Mortgage Package**”) each constitute a valid charge in favour of KingSett in priority to the interest therein or claims thereto of all Respondents and all persons claiming by, through, or under them, against the Property, subject only to the Administration Charge, the Interim Lender’s Charge, the First Mortgage, the Westmount Charges in so far as the Westmount Charges

are found by this Court to be valid charges against the Property, the First Mortgage Package (2021-2023) and the Second Mortgage Package.

6. The mortgage and assignment of rents registered in the LTO as CB1229020 and CB1229021 on March 26, 2024 (collectively, the "**Highline Collateral Mortgage Package**") each constitute a valid charge in favour of KingSett in priority to the interest therein or claims thereto of all Respondents and all persons claiming by, through, or under them, against the Property, subject only to the Administration Charge, the Interim Lender's Charge, the First Mortgage, the Westmount Charges in so far as the Westmount Charges are found by this Court to be valid charges against the Property, the First Mortgage Package (2021-2023), the Second Mortgage Package and the Minoru Collateral Mortgage Package.
7. The general security agreement, dated June 30, 2021 (the "**First GSA**") granted by the Nominee in favour of KingSett in respect of which a financing statement was filed in the British Columbia Personal Property Registry (the "**PPR**") against the Nominee under base registration number 065925N on June 24, 2021, constitutes a valid charge in favour of KingSett on all present and after acquired personal property of the Nominee located at, relating to, arising from, or used in connection with or which is necessary to the use and operation of the Property in priority to the interest therein or claims thereto of all Respondents and all persons claiming by, through, or under them, subject only to the Administration Charge and the Interim Lender's Charge.
8. The beneficial direction, acknowledgement, and security agreement, dated June 30, 2021 (the "**First BSA**") granted by the Borrowers in favour of KingSett in respect of which a financing statement was filed in the PPR against the Borrowers under base registration number 065925N on June 24, 2021, constitutes a valid charge in favour of KingSett on all present and after acquired personal property of the Borrowers located at, relating to, arising from, or used in connection with, or which is necessary to the use and operation of the Property in priority to the interest therein or claims thereto of all Respondents and all persons claiming by, through, or under them, subject only to the Administration Charge and the Interim Lender's Charge.
9. The general security agreement, dated June 30, 2021 granted by the Nominee in favour of KingSett in respect of which a financing statement was filed in the PPR against the

Nominee under base registration number 065937N on June 24, 2021, constitutes a valid charge in favour of KingSett on all present and after acquired personal property of the Nominee located at, relating to, arising from, or used in connection with or which is necessary to the use and operation of the Property in priority to the interest therein or claims thereto of all Respondents and all persons claiming by, through, or under them, subject only to the Administration Charge and the Interim Lender's Charge, the First GSA and the First BSA.

10. The beneficial direction, acknowledgement, and security agreement, dated June 30, 2021 granted by the Nominee and the Limited Partnership in favour of KingSett in respect of which a financing statement was filed in the PPR against the Borrowers under base registration number 065937N on June 24, 2021, constitutes a valid charge in favour of KingSett on all present and after acquired personal property of the Borrowers located at, relating to, arising from, or used in connection with, or which is necessary to the use and operation of the Property in priority to the interest therein or claims thereto of all Respondents and all persons claiming by, through, or under them, subject only to the Administration Charge and the Interim Lender's Charge, the First GSA and the First BSA.
11. The first mortgage loan advanced by KingSett to the Borrowers in the amount of \$124,000,000 (the "**First Mortgage Loan**"), pursuant to a commitment letter dated April 28, 2021, as amended by a first amending agreement dated June 22, 2021, a second amending agreement dated July 5, 2022, a third amending agreement dated May 23, 2023, a fourth amending agreement dated June 22, 2023, a fifth amending agreement dated March 5, 2024, and a sixth amending agreement dated July 5, 2024, is in default.
12. The Borrowers are indebted to KingSett for their default of the Loan in the amount of \$136,787,820.60 as of December 8, 2025 (plus interest and fees that continue to accrue), and this amount is justly due and owing.
13. The second mortgage loan (the "**Second Mortgage Loan**") advanced by KingSett to the Borrowers in the amount of \$65,400,000, composed of a first facility in the amount \$50,000,000 ("**Facility 1**") and a second facility in the amount \$50,000,000 ("**Facility 2**"), pursuant to a commitment letter dated April 28, 2021, as amended by a first amending agreement dated June 22, 2021, a second amending agreement dated July 5, 2022, a third

amending agreement dated May 23, 2023, a fourth amending agreement dated June 22, 2023, and a fifth amending agreement dated March 5, 2024, is in default.

14. The Borrowers are indebted to KingSett for their default of the Second Mortgage Loan in the amount of:
 - (a) \$60,503,538.83 as of December 8, 2025 with respect to the Second Mortgage Loan Facility 1 (plus interest and fees that continue to accrue) and this amount is justly due and owing; and
 - (b) \$18,617,243.54 as of December 8, 2025 with respect to the Second Mortgage Loan Facility 2 (plus interest and fees that continue to accrue) and this amount is justly due and owing.
15. KingSett is hereby granted judgment against the Borrowers, jointly and severally, in the amount of \$225,737,348.09, composed of:
 - (a) \$136,787,820.60 as of December 8, 2025 with respect to the First Mortgage Loan, plus interest on the principal amount from and after the date of this Order at the rate of the Royal Bank of Canada's Prime Rate plus 2.25% (with a floor rate of 4.70%) per annum, calculated on the daily outstanding balance, compounded and payable monthly, or in the alternative, pursuant to the *Court Order Interest Act*, RSBC 1996, c 79;
 - (b) \$60,503,538.83 as of December 8, 2025 with respect to the Second Mortgage Loan Facility 1, plus interest on the principal amount from and after the date of this Order at the rate of the Royal Bank of Canada's Prime Rate plus 8.55% (with a floor rate of 11.00%) per annum, calculated on the daily outstanding balance, compounded and payable monthly, or in the alternative, pursuant to the *Court Order Interest Act*, RSBC 1996, c 79;
 - (c) \$18,617,243.54 as of December 8, 2025 with respect to the Second Mortgage Loan Facility 2, plus interest on the principal amount from and after the date of this Order at the rate of the Royal Bank of Canada's Prime Rate plus 13.05% (floor rate of 20.00%) per annum, calculated on the daily outstanding balance, compounded and

payable monthly, or in the alternative, pursuant to the *Court Order Interest Act*, RSBC 1996, c 79; and

- (d) \$9,661,580.30 as of December 8, 2025, with respect to the cash in lieu of letter of credit commitments owed by the Borrowers, plus interest on the principal amount from and after the date of this Order at the rate of the Royal Bank of Canada's Prime Rate plus 4.16% (floor rate of 7.36%) per annum, calculated on the daily outstanding balance, compounded and payable monthly, or in the alternative, pursuant to the *Court Order Interest Act*, RSBC 1996, c 79; and
- (e) \$167,164.82 in legal fees incurred, with these fees continuing to accrue.

16. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.

17. Endorsement of this Order by counsel appearing on this application, other than counsel for the Applicant is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:

Signature of Mary Buttery, K.C. / Lucas
Hodgson, lawyers for the Applicant

BY THE COURT REGISTRAR

Schedule "A"

Counsel Appearing

Counsel	Party Represented