



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

NOTICE OF APPLICATION

FORM 32 (RULE 8-1(4))

Names of applicants: 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 Ameer, 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 "Applicants")

TO: the Service List, attached hereto as Schedule "A".

TAKE NOTICE that an application will be made by the applicants to the Honourable Justice Masuhara at the courthouse at 800 Smithe Street, Vancouver, British Columbia on Monday, the 11th day of May 2026 at ~~9:45~~ a.m. for the orders set out in Part 1 below.

10:00

The applicants estimate that the application will take 3 days.

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

PART 1: ORDERS SOUGHT

1. A declaration that the purchase agreements entered into by the Applicants are not enforceable against the Applicants by the developer; and
2. Costs.

PART 2: FACTUAL BASIS

Introduction

1. Real estate developers must abide by the *Real Estate Development Marketing Act*, [SBC 2004] c. 41 (the “REDMA”) when selling proposed development units in British Columbia. The REDMA is consumer protection legislation and one of its central objectives is to ensure that material facts are provided to purchasers.
2. In this case, well before the CCAA, the developer breached its statutory obligation to ensure that material facts were provided to purchasers. The developer was in dire financial circumstances dating back to at least June 2023, when Canada Revenue Agency (“CRA”) obtained a judgment against it for approximately \$12 million. By the fall of 2024, the situation had further deteriorated. In October 2024, warranty coverage for the development was suspended. In November 2024, the City of Burnaby suspended the building permit and construction ceased.
3. Those facts were not disclosed by the Developer in clear breach of the REDMA. The REDMA requires a developer to disclose a misrepresentation in a disclosure statement *immediately* after it becomes aware of it. The Developer failed to do so.

4. The REDMA creates a powerful incentive for developers to correct misrepresentations to preserve binding purchase agreements. Under s. 23 of the REDMA, if a developer has breached its obligation under Part 2 of the REDMA to provide an amended disclosure statement, the contract between the consumer and the developer becomes unenforceable by the developer.

5. In this application, the applicants seek to hold the developer to its obligation to comply with the statute. It seeks declaratory relief to prevent the developer from enforcing contracts made unenforceable by the REDMA.

The REDMA

6. The REDMA regulates the marketing of pre-sale development properties (defined as “development units”) within the province of British Columbia. The Court of Appeal has described the REDMA as having twin goals: to afford consumers protection while also enabling efficient and profitable operation of the real estate development sector, a key driver of business.

7. Key features of the REDMA include:

- (a) Mandatory disclosure – Developers must file a disclosure statement that plainly and accurately represents all material facts about the development.
- (b) Deposit Protection – Developers must promptly place any deposits with licensed professionals who must hold those deposit in trust in accordance with the REDMA. Developers cannot use deposits to construct or market the development units unless authorized deposit insurance has been obtained.
- (c) Purchaser Remedies – The REDMA grants rights to rescind the contract in certain circumstances, provides that a developer may be liable for misrepresentation without the need to prove reliance, and provides that if a breach of Part 2 of the REDMA occurs, the purchase contract may become unenforceable by the developer.

Disclosure Statements

8. Before a developer can market a development unit, it must file a disclosure statement with the BC Financial Services Authority (the “BCFSA”) in accordance with s. 14 of the REDMA. Section 14(2) of the REDMA provides that 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 [*rights of rescission*], and (d) be signed as required by the regulations.

9. The required form and content of a disclosure statement for strata lots is set out in BCFSA Policy Statement 1. Policy Statement 1 notes “The onus is strictly on the developer to disclose plainly all material facts, including a fact or proposal that could reasonably be expected to affect the value, price, or use of the development property or a development unit.”

10. Policy Statement 1 requires a developer to include, *inter alia*, the following information:

4.5 Outstanding or Contingent Litigation or Liabilities

Describe any outstanding or contingent litigation or liabilities in respect of the development property or against the developer that may affect the strata corporation or strata lot owners.

5.1 Construction Dates

State either the actual date of completion of construction if it has already occurred or an estimated date range of completion of construction if it has not already occurred.

5.2 Warranties

Describe any construction or equipment warranties.

6.1 Development Approval

State the facts which establish that the developer has met the preliminary requirements or approvals in Division 2 of Part 2 of the Act.

11. Section 16 of the REDMA requires developers to update a disclosures statement in certain circumstances. The REDMA distinguishes between two types of updates. Those are referred to as a “new disclosure statement” or an “updated disclosure statement”.

12. The circumstances in which a new disclosure statement are required to be filed are limited. Pursuant to s. 16(1)(a)(i) and (2) of the REDMA, a developer must immediately file a new

disclosure statement if the developer's identity changes, or if a receiver, bankruptcy trustee or similar person is appointed for the developer.

13. Pursuant to s. 16(1)(a)(ii) and (3) of the REDMA, a developer must immediately file an amended disclosure statement if it becomes aware that the disclosure statement does not comply with the REDMA or the regulations, or contains a misrepresentation. An amendment is required if a developer becomes aware that a material fact in a disclosures statement has been omitted, changed, or misrepresented.

14. In s. 1 of the REDMA "misrepresentation" is defined as a "false or misleading statement of a material fact" or an "omission to state a material fact". A "material fact" includes "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."

15. The key difference between a new disclosure statement and an amended disclosure statement is that the filing of a new disclosure statement gives purchasers rescission rights while the filing of an amended disclosure statement does not.

16. Pursuant to s. 21(1)(2)(ii) of the REDMA, a purchaser may rescind a purchase agreement by serving written notice of that rescission on the developer within seven days after a developer has obtained a receipt from the purchaser for a new disclosure statement.

17. Pursuant to s. 23 of the REDMA, the protection provided to purchasers if a developer breaches the obligation to provide an amended disclosure statement is that the contract may become unenforceable by the developer.

Deposits

18. Section 18 of the REDMA provides that a developer who receives a deposit from a purchaser must place the deposit with a real estate brokerage, lawyer, or notary public, who must hold the deposit in a trust account in British Columbia.

19. Section 19 of the REDMA provides that the trustee may release a deposit to the developer for the developer's own purposes (including for the construction and marketing of the development property) only if they have entered into a deposit protection contract and provided notice of the deposit protection contract in accordance with the regulations.

Purchaser Remedies

20. Section 21 of the REDMA provides that a purchaser may rescind a purchase agreement by serving written notice of that rescission on the developer within seven days after the later of: the date that the purchase agreement was made; and the date that the developer obtained a receipt from the purchaser for the disclosure statement, including new disclosure statements. Section 21(1)(b) provides that a purchaser does not have a right of rescission as a result of receiving an amendment to a disclosure statement including an amendment described in section 16(1)(a)(ii) [*non-compliant disclosure statements*], unless the purchaser has not previously received any disclosure statement in respect of that development property.

21. Section 22 of the REDMA provides that purchaser may seek compensation from a developer and its directors for any false or misleading statement of a material fact, or any omission of a material fact. Section 22 provides that the purchaser is deemed to have relied on the disclosure statement.

22. Section 23 of the REDMA (which is provision relied upon by the Applicants) provides that a purchase agreement is not enforceable by a developer who has breached any provision of Part 2 of the REDMA, unless one or two exceptions apply.

The Developer

23. Lumina LP, Lumina GP, and Beta View (collectively, the "**Developer**") are the developer of a residential strata lot development contained within a 34 storey multi-residential building located at 2381 Beta Avenue, Burnaby BC known as the "Lumina Eclipse" (the "**Development**").

Affidavit No. 1 of Karen Buquet made April 28, 2026 ("**Buquet Affidavit**"), Ex "A",
Agreed Statement of Facts, para. 2.

24. The Development includes 329 residential strata lots (collectively, the “Eclipse Units” and each, an “Eclipse Unit”).

Agreed Statement of Facts, para 3.

The Applicants

25. Each of the Applicants entered into a contract of purchase and sale (a “Presale Agreement”) with the Developer. The table below sets out certain particulars of the Applicants’ Presale Agreements:

Date	Assignment Date	Purchaser(s)	Unit No.	Purchase Price	Purchaser Credit	Aggregate Deposit(s)
October 1, 2021	August 14, 2024	Alireza Sedghi Taromi Shiva Olyaei	1108	\$862,900.00	\$17,500.00	\$129,435.00
October 1, 2021	September 11, 2024	Shiva Olyaei Alireza Sedghi Taromi	1707	\$687,900.00	\$15,000.00	\$103,185.00
October 1, 2021		Amir Osooly	2506	\$703,900.00	\$15,000.00	\$105,585.00
October 2, 2021		Maryam Javadinia Hossain Jabbari	1806	\$689,900.00	\$15,000.00	\$103,485.00
October 2, 2021	September 11, 2024	Malihe Ghamarsourat Moein Fadaei Yekta Kaldehi	2206	\$697,900.00		\$104,685.00
October 2, 2021	September 11, 2024	Hosseini Nazarpour Roya Herischian-Heris	2606	\$705,900.00	\$15,000.00	\$105,885.00

Date	Assignment Date	Purchaser(s)	Unit No.	Purchase Price	Purchaser Credit	Aggregate Deposit(s)
October 2, 2021		Mohammad Nayebhashem	2806	\$714,000.00	\$15,000.00	\$107,160.00
October 2, 2021		Mohammad Medhi Basefat Nazari	2906	\$711,900.00	\$15,000.00	\$106,785.00
October 2, 2021	August 14, 2024	Masaki Matsumoto	3006	\$713,900.00	\$15,000.00	\$107,085.00
October 2, 2021		Hamid Riahi	3206	\$717,900.00	\$15,000.00	\$107,685.00
October 2, 2021		Mohsen Bagherpour	3306	\$719,900.00	\$15,000.00	\$107,985.00
October 2, 2021		Kaveh Vosough Gerayeli Shirin Vosough Gerayeli	1407	\$684,400.00	\$15,000.00	\$102,660.00
October 5, 2021	August 20, 2024	Mohammad Pourkarimi Shirayeh Pegah Pourkarimi Shirayeh	1507	\$683,900.00	\$15,000.00	\$102,585.00
October 5, 2021		Amirhossein Marjaee	2306	\$699,900.00	\$15,000.00	\$104,985.00
October 14, 2021		Kayvon Ameeri Nousheen Pourjahani	1207	\$689,900.00	\$15,000.00	\$103,485.00
September 3, 2022		Seyed Reza Deravian	1904	\$1,064,900.00		\$159,735.00

Date	Assignment Date	Purchaser(s)	Unit No.	Purchase Price	Purchaser Credit	Aggregate Deposit(s)
February 23, 2023		Shaya Shahrezaee	1408	\$959,900.00	\$100,000.00	\$95,990.00
March 31, 2023		Nima Hazar	1908	\$721,900.00	\$78,687.10	\$72,190.00
April 1, 2023		Ali Manavi Naghmeh Heshmati	1406	\$965,900.00		\$96,590.00
April 4, 2023		Maryam Abdipour	2108	\$731,900.00	\$73,190.00	\$73,190.00
April 6, 2023		Nazila Ghorbani	2205	\$1,029,900.00	\$100,000.00	\$102,990.00
April 18, 2023		Arash Emadghaderi Sepideh Motallebi	128	\$774,900.00	\$25,000.00	\$77,490.00
April 20, 2023	September 13, 2024	Nasim Rahmani	1508	\$963,900.00		\$96,390.00
May 29, 2023		Farhoud Etemadol Sadati Laila Dahaghin	3305	\$2,049,900.00	\$100,000.00	\$204,990.00
July 27, 2023		Mohammadjad Nadali	2908	\$765,900.00	\$83,483.10	\$38,295.00
September 26, 2023		Pooneh Taheri	1501	\$1,017,900.00	\$101,790.00	\$50,895.50
September 26, 2023		Paniz Parvin	1704	\$699,900.00	\$69,990.00	\$34,995.50
September 26, 2023		Mahnaz Taheri	2605	\$1,065,900.00	\$106,590.00	\$53,295.50
February 25, 2023		Ramtin Parvin	2905	\$1,077,900.00	\$107,790.00	\$53,895.50

Agreed Statement of Facts, para 10

26. The Applicant's Presale Agreements include the following terms:

2. **Deposit** The Purchaser will pay a deposit(s) by bank draft or certified cheque (collectively, the "Deposit") to Richards Buell Sutton LLP (the "Vendor's Solicitors") in trust as stakeholder and the Deposit will be held in accordance with the Real Estate Development Marketing Act . . .

. . .

4. **Completion, Possession and Adjustment Dates.** It is currently estimated that the completion of the Strata Lot will occur between December 1, 2024 and March 1, 2025. For more information about the Completion, Possession and Adjustment Dates, see the Disclosure Statement and Addendum "A" attached hereto

Agreed Statement of Facts, Document 7

27. Schedule "A" to the Presale Agreements contained the following terms:

4.5 Deposit Protection Agreement Under REDMA. Under Section 19 of the *Real Estate Development Marketing Act*, a developer who desires to use for the developer's own purposes a deposit the developer has placed with a trustee under Section 18 of the *Real Estate Development Marketing Act* may, by entering into a deposit protection agreement in relation to that deposit, obtain the deposit from that trustee and use that deposit only for the developer's own purposes. Section 10 of the *Real Estate Development Marketing Regulation* provides that if a developer enters into a deposit protection agreement, the developer must provide notice of the deposit protection agreement to a purchaser by including the following information in the disclosure statement:

(a) the name and business address of the insurer;

(b) the name of the developer who entered into the deposit protection agreement;
and

(c) the date on which the insurance takes effect.

The Purchaser acknowledges and agrees that the Vendor may enter into such a deposit protection agreement with respect to the Deposit. The Vendor agrees that if it enters into such a deposit protection agreement with respect to the Deposit, it will comply with Section

10 of the *Real Estate Development Marketing Regulation* regarding that deposit protection agreement. For further terms regarding deposit insurance please see Section 8.3 hereof and Section 7.1 of the Disclosure Statement.

Agreed Statement of Facts, Document 7

Disclosure Statements filed by the Developer

28. On September 8, 2021, the Developer executed and filed with the BCFSA a disclosure statement for the Development (the “**Disclosure Statement**”).

Agreed Statement of Facts, Document 1.

29. The Disclosure Statement included the following information regarding outstanding or contingent litigation or liabilities:

4.5 Outstanding or Contingent Litigation or Liabilities

To the best of the Developer's knowledge, there are no outstanding or contingent litigation or liabilities in respect of the Development, the Lands or against the Developer that may affect the Strata Corporation or the Strata Lot owners except for outstanding liabilities in respect of the Development incurred in the ordinary course of construction of the Development, which liabilities will be paid or satisfied by the Developer in due course.

Agreed Statement of Facts, Document 1.

30. The Disclosure Statement included the following information regarding completion of construction:

5.1 Construction Dates.

For the purposes of this section:

(a) "commencement of construction" means the date of commencement of excavation in respect of construction of an improvement that will become part of a Strata Lot; and

(b) "completion of construction" means the first date that a Strata Lot may be lawfully occupied, even if such occupancy has been authorized on a provisional or conditional basis.

Commencement of construction occurred on or about June 1, 2021.

Completion of construction is estimated to occur between December 1, 2024 and March 1, 2025.

The above dates are estimates of the Developer, and the Developer reserves the right to change these dates. The dates should not be relied upon by purchasers of the Strata Lots in any way. It is anticipated that the owners of some Strata Lots will take possession and occupy Strata Lots while construction continues on the remaining Strata Lots. Residents of the Strata Lots should expect noise, dust, disruption of services, and other such inconveniences normally associated with construction during construction working hours until the completion of the Development.

The Developer may revise the completion date range when construction commences and will advise purchasers of such amended anticipated completion date range in an amendment to this Disclosure Statement.

Depending on market conditions and other factors, the Developer may advance or defer the dates for the commencement of construction and completion of the Development.

Purchasers should also review Section 7.2 and the Purchase Agreement for more information on the anticipated completion date, and extensions thereof, and related terms set out in the Purchase Agreement.

Agreed Statement of Facts, Document 1

31. The Disclosure Statement including the following information regarding warranties:

5.2 Warranties

The Developer's builder is registered under new home warranty builder number D-Third Development Ltd. 170147 and the Development has new home warranty insurance coverage from WBI Home Warranty Ltd.

Agreed Statement of Facts, Document 1

32. The Disclosure Statement contained the following information with respect to development approval.

6.1 Development Approval

Under Part 2, Division 2 of the Real Estate Development and Marketing Act, a developer must not market a development unit unless in relation to the development units the developer has met certain preliminary requirements or approvals, including the issuance of a building permit.

A building permit was issued by the City on September 22, 2021 under BLD21-00980 (the "Building Permit") as part of the City's staged building permit process. A copy of the Building Permit is attached hereto as EXHIBIT K.

Agreed Statement of Facts, Document 1

33. The Disclosure Statement contained the following information with respect to construction financing:

6.2 Construction Financing

The Developer has a financing commitment from the Kingsett in an amount sufficient to construct and complete the Development, including the installation of all utilities and other services associated with the Development by way of the Existing Financial Charges outlined in Section 4.3(a), which are registered against title to the Lands as security.

The Developer also intends to obtain deposit protection insurance from the Deposit Protection Insurer, and will grant the Deposit Protection Charges against title to the Lands in favour of the Deposit Protection Insurer (all as defined and described in more detail in Section 7.1).

The Developer will ensure that no purchaser will take title to a Strata Lot unless the Existing Financial Charges, and any additional financial charges, are discharged or undertakings are in place to permit such discharge.

Agreed Statement of Facts, Document 1

34. The Disclosure Statement contained the following information regarding deposits

7.1 Deposits

Subject to the following paragraphs in this section regarding deposit protection insurance, and subject to remedies in respect of defaults under the Purchase Agreement (as defined in Section 7.2) all deposits and other money received from a purchaser of a Strata Lot will be held in trust by Richards Buell Sutton LLP or such other lawyer, real estate brokerage or notary public as the Developer may choose in its sole discretion (the "Deposit Trustee"), in the manner required by the Real Estate Development Marketing Act until such time as:

- (a) the Final Strata Plan is deposited in the Land Title Office;
- (b) the premises purchased are capable of being occupied; and
- (c) an instrument evidencing the interest of the purchaser in the Strata Lot has been accepted for registration in the Land Title Office.

Deposit Protection Insurance

The Developer may elect to enter into a master deposit protection insurance contract (the "Deposit Protection Contract") with a deposit protection insurer (the "Deposit Protection Insurer"), pursuant to which the Deposit Protection Insurer may, upon satisfaction of the terms and conditions of the Deposit Protection Contract and the related deposit protection insurance facility, the granting of security to the Deposit Protection Insurer (including but not limited to mortgages and assignments of rents registered against title to the Lands (the "Deposit Protection Charges")) by the Developer and any other parties as required by the Deposit Protection Insurer, issue additional deposit protection contracts to the Developer and the Deposit Trustee as permitted under section 19 of the Real Estate Development Marketing Act.

Upon the issuance of a deposit protection contract by the Deposit Protection Insurer for a deposit held in respect of a Strata Lot, the Deposit Trustee will pay the insured deposit directly to the Developer, to be used by the Developer for the Developer's own purposes, being purposes related to the Development including, without limitation, the construction and marketing of the Development. The insured coverage will be in an amount not less than the purchaser's deposit released from trust.

If the Developer enters into the Deposit Protection Contract in connection with the Development, the Developer will file an amendment to this Disclosure Statement setting out the required details.

Agreed Statement of Facts, Document 1

35. The Disclosure Statement was executed by the Developer and contained the following declaration in bold:

DECLARATION

The foregoing statements disclose, without misrepresentation, all material facts relating to the Development referred to above, as required by the *Real Estate Development Marketing Act* of British Columbia, as of September 24, 2021

Agreed Statement of Facts, Document 1

36. On June 17, 2022, the Developer executed and filed with the BCFSA the first amendment to the Disclosure Statement (the “**First Amendment**”). The First Amendment disclosed, *inter alia*, that the Developer had obtained deposit protection insurance, and had granted deposit protection charges against the lands in favour of that insurer. It contains the same declaration as the Disclosure Statement, namely, that the foregoing statements disclose without misrepresentation all material facts relating to the development as required by the REDMA.

Agreed Statement of Facts, Document 2

37. On May 24, 2024, the Developer executed and filed with the BCFSA the second amendment to the Disclosure Statement (the “**Second Amendment**”). The Second Amendment, *inter alia*, changed the completion of construction date to be between “July 1, 2024 and October 1, 2024”. This was earlier than the previous completion of construction date. It contains the same declaration as the Disclosure Statement, namely, that the foregoing statements disclose without misrepresentation all material facts relating to the development as required by the REDMA.

Agreed Statement of Facts, Document 3

38. On August 16, 2024, the Developer executed and filed with the BCFSA the third amendment to the Disclosure Statement (the “**Third Amendment**”). The Third Amendment, *inter alia*, changed the completion of construction date to be between “October 1, 2024 and January 1, 2025”. It contains the same declaration as the Disclosure Statement, namely, that the foregoing statements disclose without misrepresentation all material facts relating to the development as required by the REDMA.

Agreed Statement of Facts, Document 4

39. On December 3, 2024, the Developer executed and filed with the BCFSA the fourth amendment to the Disclosure Statement (the “**Fourth Amendment**”). The Fourth Amendment contained, *inter alia*, the following statements:

- (a) There were active receivership application pending against two other developments of which two directors of the Developers are also directors. It states that “The Developer does not expect those applications to impact the sale of the Strata Lots in the Development.”
- (b) Disclosed the existence of four builders’ liens;
- (c) Changed the completion of construction date to be between January 15, 2025 and April 15, 2025; and
- (d) Contains the same declaration as the Disclosure Statement, namely, that the foregoing statements disclose without misrepresentation all material facts relating to the development as required by the REDMA

Agreed Statement of Facts, Document 5

40. This was the final disclosure statement filed prior to the CCAA proceedings. An amended disclosure statement was filed around one year later - 11 months after the commencement of the CCAA proceedings. On November 25, 2025, KSV in its capacity as Monitor executed and filed with the BCFSA on behalf of the Developer, the fifth amendment to the Disclosure Statement (the “**Fifth Amendment**”). The Fifth Amended contained, *inter alia*, the following statements:

- (a) That the Developer was subject to a CCAA order;
- (b) To the Monitor’s knowledge, based on the books and records of the Developer available to it as of that date, there were no outstanding liabilities other than
 - (i) outstanding liabilities in respect of the Development incurred in the ordinary course of construction of the Development, for which the Monitor intends to apply to the Court for an Approval and Vesting Order (“**AVO**”)
 - (ii) ongoing obligations or requirements in connection with encumbrances granted to the City as set out in Section 4 that will be satisfied by the Developer in due course and/or assumed by the Strata Corporation as applicable;

- (iii) any liabilities in respect of claims of builder's liens registered on title to the Development, which liabilities are expected to be vested off titles pursuant to the AVO, if applicable, and/or paid, in due course;
 - (iv) outstanding property taxes in respect of the Development which will be paid upon closing of the sale of each Strata Lot as applicable; and
 - (v) outstanding corporate income tax owing to the Canada Revenue Agency
- (c) Changed the completion of construction date to be between January 15, 2026 and April 14, 2026.
- (d) Changed warranty insurer to Aviva Insurance Company of Canada in lieu of WBI Home Warranty Ltd.
- (e) Contains the same declaration as the Disclosure Statement, namely, that the foregoing statements disclose without misrepresentation all material facts realtering to the development as required by the REDMA

Agreed Statement of Facts, Document 21

KingSett's Pre-Filing Senior Secured Financing

41. KingSett Mortgage Corporation ("**KingSett**") is the Developer's senior secured creditor.

42. Pursuant to its agreements with the Developer, KingSett had extensive rights to information regarding the Development that far exceeds the information available to Pre-Sale Purchasers. KingSett could, *inter alia*, appoint a quantity surveyor, inspect the development at any time, and obtain annual financial statements.

Affidavit No. 1 of Daniel Pollack made January 6, 2025 (the "**Pollack Affidavit**"), Ex. E & F.

Use of Deposits and Deposit Protection Insurance

43. On or about April 27, 2022, Westmount West Services Inc. (“**Westmount**”), as agent for and on behalf of Aviva Insurance Company of Canada and Liberty Mutual Insurance Company (together, the “**Surety**”), made available to the Developer a \$50,000,000 deposit protection contract facility (the “**Deposit Protection Facility**” and the obligations thereunder, the “**Westmount Indebtedness**”) pursuant to the terms of a commitment letter dated April 27, 2022

Agreed Statement of Facts, para. 25

44. Generally, the Deposit Protection Facility provides that, if a deposit properly becomes owing by the Developer to a Presale Purchaser, and if the Developer fails to pay same to such Presale Purchaser in accordance with their respective Presale Agreement, then the Surety will provide the funds to such Presale Purchaser pursuant to the Deposit Protection Facility.

Agreed Statement of Facts, para. 29

45. The Deposit Protection Facility is a policy of insurance that is available only to purchasers of the Eclipse Units.

Agreed Statement of Facts, para. 30

46. Because the Developer had entered into the Deposit Protection Facility, section 19 of the REDMA permitted the trustee to release deposits paid by Presale Purchasers to the Developer for the developer’s own purposes.

47. As of January 8, 2025, the Presale Purchasers had paid deposits in the aggregate amount of approximately \$24,438,236.50, of which approximately \$20,947,984.50 was funded into the Development.

Agreed Statement of Facts, para. 15

The Developer’s Breaches of the REDMA

The CRA Judgment

48. On June 30, 2023, Canada Revenue Agency obtained a judgment against the Developer (specifically Beta View) for \$11,996,763 (the “**CRA Judgment**”).

Agreed Statement of Facts, para. 37

49. The exact date that the Developer became aware of the CRA Judgment is not known to the Applicants. It is inconceivable that the Developer did not know of the CRA Judgment on or shortly after June 30, 2023 – if not beforehand. The Developer was a sophisticated commercial entity.

50. In breach of the terms of its construction financing, the CRA Judgment was not disclosed to KingSett. The existence of the CRA Judgment was material to KingSett. KingSett advanced funds that it would not have, had it known of the CRA Judgment.

Pollack Affidavit, para. 28

51. KingSett’s view is that the CRA Judgment demonstrates that the Developer had significant cash flow concerns that have been ongoing over a year and a half, and put KingSett’s collateral significantly at risk.

Pollack Affidavit, paras. 29 and 30

52. The CRA Judgment was not disclosed by the Developer in an amended disclosure statement. Following the CRA Judgment, the Disclosure Statement falsely stated that “To the best knowledge of the Developer, there are no outstanding or contingent litigation or liabilities in respect of the Development, the Lands or against the Developer that may affect the Strata Corporation or the Strata Lot owners except for outstanding liabilities in respect of the Development incurred in the ordinary course of construction of the Development, which liabilities will be paid or satisfied by the Developer in due course.”

53. On November 25, 2025, the Monitor on behalf of the Developer disclosed that the Developer owed outstanding income taxes to CRA in the Fifth Amendment.

Agreed Statement of Facts, Document 21

54. Three of the applicants have given evidence that the existence of the CRA Judgment was a fact that would have been reasonably relevant to them in deciding to enter into a purchase contract. Specifically, had they known this information they would not have entered into a purchase contract.

Affidavit No. 1 of Nazila Ghorbani made April 24, 2026 (the “**Ghorbani Affidavit**”), para 7;
Affidavit No. 1 of Masaki (Kevin) Matsumoto made April 24, 2026 (the “**Matsumoto Affidavit**”). para 8; Affidavit No. 1 of Mohammed Nadali made April 24, 2026 (the “**Nadali Affidavit**”), para 8.

Misappropriation of funds

55. As described in the Pollack Affidavit, the Developer misappropriated funds in September 2024. In particular, the Developer obtained cash in lieu of certain letters of credit commitments from the City of Burnaby in or around September 2024. These funds should have been used to paydown the indebtedness to KingSett. These funds were used by the Developer to fund additional costs that were not disclosed to or approved by KingSett.

56. The Developers misappropriation of funds was not disclosed by the Developer in an amended disclosure statement.

57. Three of the applicants have given evidence that the Developer’s misappropriation of funds would have been relevant to them in deciding to enter into a purchase contract. Specifically, had they known this information they would not have entered into a purchase contract.

Ghorbani Affidavit, para 8; Matsumoto Affidavit, para 9; Nadali Affidavit, para 9

Loss of warranty coverage, building permits and cessation of construction

58. The Developer obtained new home warranty insurance coverage from WBI Home Warranty Ltd. (“**WBI**”), which was disclosed in section 5.2 of the Disclosure Statement.

Agreed Statement of Facts, para. 39

59. By October 31, 2024, WBI suspended the Developer's new home warranty coverage.

Agreed Statement of Facts, para. 41

60. On or about November 14, 2024, the City suspended the building permit for the Development thereby halting construction.

Agreed Statement of Facts, para. 44

61. As described in the Pollack Affidavit, WBI was owed arrears in connection with the warranty insurance, and had lost confidence in the Developer's ability to meet its obligations with respect to warranty insurance. This caused construction to stop effectively as the Developer's building permits had been suspended.

Pollack Affidavit, paras. 43 to 46

62. The exact date the Developer became aware of these facts is not known to the applicants. It is inconceivable that the Developer was not aware of the suspension of warranty coverage, building permits, and the cessation of construction when those events occurred.

63. These events were material to KingSett. As explained in the Pollack Affidavit, "Without this insurance in place, the Respondents' assets are in jeopardy, to the detriment of all stakeholders, as construction cannot resume."

Pollack Affidavit, para. 47

64. The Developer did not disclose the suspension of warranty coverage, suspension of building permits, or cessation of construction in an amended disclosure statement. Throughout the fall of 2024, the Disclosure Statement falsely stated that the Developer had insurance coverage from WBI. It stated that a building permit had been obtained, without disclosing the suspension of that building permit. It made no mention of cessation of construction.

65. Three of the applicants have given evidence that the suspension of warranty coverage, building permits, and cessation of construction would have been relevant to them in deciding to enter into a purchase contract. Specifically, had they known this information they would not have entered into a purchase agreement.

Ghorbani Affidavit, para 9; Matsumoto Affidavit, para 9; Nadali Affidavit, para 10.

Communications from the Developer in the fall of 2024

66. On June 19, 2024, the Developer emailed purchasers (or certain of them) stating “The anticipated completion of Eclipse Brentwood is on track for Late Summer 2024. Our dedicated construction team is hard at work putting the final touches on each home and common areas, and our purchaser care team is preparing to lead you through pre-occupancy inspections soon.”

Agreed Statement of Facts, Document 10

67. On September 9, 2024, the Developer emailed purchasers (or certain of them) stating “As a result of unforeseen supply chain delays, Eclipse Brentwood is now projected to complete late 2024. Please note all dates are estimates and subject to change.”

Agreed Statement of Facts, Document 11

68. On November 20, 2024, the Developer emailed purchasers (or certain of them) stating that a capital partner involved with the original developer was in the receivership process. The Developer stated that at that time the Development remained unaffected and that closing would proceed as scheduled in the first half of 2025.

Agreed Statement of Facts, Document 12

The CCAA

69. On January 7, 2025, KingSett filed a petition seeking an order pursuant to the *Companies' Creditors and Arrangements Act* (Canada) (the "CCAA"). On January 8, 2025, the Court granted an order (the "**Initial Order**") pursuant to the CCAA.

70. The Initial Order provide the following with respect to the REDMA:

12. During the Stay Period, the Superintendent of Real Estate shall not require the Respondents' (or either of them) to file a new disclosure statement under subsection 16(2) of the *Real Estate Development Marketing Act*, S.B.C., 1004 c. 41 ("**REDMA**") nor take any steps that would otherwise trigger a purchaser's right of rescission under REDMA, and any rights and remedies of purchaser to rescind pre-sale contracts with the Respondents (or any of them) are stayed and suspended.

71. The Initial Order was supported by a petition and supporting affidavit filed by KingSett. In those materials, KingSett stated that it was unaware of any fact necessitating the filing of a new disclosure statement or any basis on which the parties to such presale agreement would be entitled to rescind them. Those materials did not refer to the Developer's obligation to file an amended disclosure statement or that the Pre-Sale Purchase Contracts could already be unenforceable under s. 23 of the REDMA due to Developer's breaches.

Petition, para. 39; Pollack Affidavit, paras. 48 to 49.

72. On April 16, 2025, the second amended and restated initial order April 16, 2025 provided the following additional power to the Monitor:

23. In addition to the powers and duties of the Monitor set out in paragraph 22 of this Order, the CCAA and applicable law, the Monitor, for and on behalf of and in the name of the Respondents, is hereby authorized and empowered, but not required, to exercise any powers which may be properly exercised by a board of directors or any officers of the Respondents (or any of them), as the Monitor deems appropriate, including without limitation to:

(q) subject to paragraph 11, cause the Respondents (or any of them) to take such steps as the Monitor determines may be reasonably necessary or appropriate to comply with REDMA

73. On January 9, 2025, the BCFSA provided a letter to the Developer to: (a) advise that the Disclosure Statement may not comply with the requirements of the REDMA and amended disclosure may be required; and (b) request that the Developer deliver a cease marketing undertaking by January 16, 2025, confirming that all marketing has ceased and will not resume until after a disclosure statement amendment has been filed (the “**BCFSA Letter**”).

74. The BCFSA Letter was attached to the First Report of the Monitor dated January 14, 2025. By that date there can be no doubt that the Monitor knew that the existing disclosure statement contained misrepresentations. The Monitor did not immediately file an amended disclosure statement or seek any relief from its obligation to do so. The Fifth Amendment was not filed until 10 months after the CCAA proceedings were commenced.

75. In the interim period, further statements in the Disclosure Statement became misrepresentations. The Fourth Amendment changed the date of completion of construction to between January 15, 2025 and April 15, 2025. Those statements became false after April 15, 2025, when the anticipated date of completion of construction passed and was not updated.

76. On January 23, 2025, the Monitor provided an undertaking to the BCFSA confirming that all marketing of the Development had ceased and would not resume until after a Disclosure Statement amendment had been filed.

Agreed Statement of Facts, Document 15

PART 3: LEGAL BASIS

Legal Requirements for Disclosure Statements

77. In the event of a non-compliant disclosure statement, s. 16 of REDMA requires a developer to “immediately” file with the superintendent a new statement or amendment and provide a copy to each purchaser “within a reasonable time.” Section 16 of the REDMA provides:

Non-compliant disclosure statements

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.

78. Section 23 of the REDMA – titled “agreements void for non-compliance” – provides that, subject to two exceptions, a purchase agreement is not enforceable by a developer who has breached any provision of Part 2 of the REDMA, which includes s. 16:

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:

(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.

79. Not every defect in a disclosure statement will warrant a declaration that the contract for sale is non-binding. A defect must be of such substance as to render the statement defective in a material respect: *Chaisson v. Avra Development Corp.*, 2014 BCSC 925 citing *Woo v. Onni Ioco Road Five Development Limited Partnership*, 2014 BCCA 76.

80. Courts have found that the following defects in disclosure statements that were not immediately disclosed by way of amendment to be misrepresentations warranting a declaration that the contract became non-binding:

- (a) In *299 Burrard Residential Limited Partnership v. Essalat*, 2012 BCCA 271, leave to appeal ref'd [2012] S.C.C.A. No. 372, [299 Burrard], the Court of Appeal found that an erroneous statement regarding the construction completion date warranted a finding that contract was enforceable. In that case, the developer knew that construction of completion would be later than the date given in the disclosure statement and did not review the statement to amend that date.
- (b) In *Ye v. Vesta Properties (Latimer) Ltd.*, 2025 BCSC 773, the court found at a one-year acceleration of the completion date rendered the original disclosure statement materially misleading and that a six-month delay in filing an amended disclosure statement was not a reasonable one.

81. The obligation to send an amended disclosure statement must be strictly complied with. As noted by the Court of Appeal in *299 Burrard*, the REDMA obligates a developer to file an amendment immediately – and informal updates do not satisfy the REDMA. The Court of Appeal held that the strictness of the filing regime must be maintained for the protection to be meaningful to the consumer. That is balanced by the flexibility in giving the developer an open opportunity to amend the disclosure statement as often as necessary to deal with unforeseen circumstances.

See also *Mazarei v. Icon Omega Developments Ltd.*, 2012 BCSC 673 and *Riegel v. Paraskevopoulos*, 2013 BCSC 335.

Application to this Case

82. In this case, there were many and obvious breaches of the REDMA that render the Presale Agreements unenforceable by the Developer. The Development was financially imperilled from at least June 2023. The Developer fundamentally failed to plainly and accurately disclose that peril to purchasers who were going to or already had invested significant sums with the Developer.

83. In particular, the Developer breached s. 16 of the REDMA in June 2023 when it failed to immediately amend its disclosure statement to disclose the CRA Judgment. The existence of the CRA Judgment was a material fact within the meaning of the REDMA. Developers must disclose under Policy Statement 1 existing and contingent liabilities. The CRA Judgment was an existing liability. Following the CRA Judgment, the Disclosure Statement falsely stated that the Developer was not aware of liabilities that might impact the development. The defect was in a material aspect. As noted by KingSett, the CRA Judgment indicated that the Developer was experiencing significant cash flow concerns, and KingSett would not have advanced further funds had it known of the CRA Judgment. Similarly, the CRA Judgment was material to reasonable purchasers as it disclosed a significant risk that the project might not complete.

84. The Developer further breached s. 16 of the REDMA in September 2024 when it failed to immediately amend its disclosure statement to disclose its misappropriation of the letter of credit funds. The Developer's misappropriation of those funds would have been reasonably relevant to purchasers because it further indicated a significant risk that the Developer would not be able to complete the project.

85. The Developer further breached s. 16 of the REDMA on October 31, 2024 when it failed to immediately amend its disclosure statement to disclose the suspension of warranty coverage. Developers must disclose under Policy Statement 1 any warranties. The Developer disclosed the warranty from WBI in the Disclosure Statement. When that coverage was suspended, that statement in the Disclosure Statement became a false or misleading statement of material fact. The

suspension of warranty converge is material as without warranty coverage there would be no recourse for defects in construction.

86. The Developer further breached s. 16 of the REDMA on November 14, 2024 when it failed to immediately amend its disclosure statement to disclose the suspension of building permits and construction ceased. Pursuant to s. 10 of the REDMA, a developer is not legally permitted to market a development unit unless a building permit has been obtained. Under Policy Statement 1 a developer must disclose the facts which establish that the developer has met the preliminary requirements or approvals in Division 2 of Part 2 of the REDMA (which for strata units are in s. 10 of the REDMA). The existence of the building permit was disclosed in the Disclosure Statement. That statement became false or misleading when the building permit was suspended. The suspension of the building permit was material as it caused the cessation of construction. The cessation of construction by itself was a material fact that required disclosure. It is material to purchasers that construction of the project has ceased.

87. Three of the applicants have given evidence regarding the importance of the information not disclosed by the Developer

88. The Developer's breaches of the REDMA were not simply sins of omission. The Developer filed amendments to the disclosure statements on May 24, 2024, August 16, 2024, and December 3, 2024, in which it falsely certified that it had disclosed all material facts with respect to the Development.

89. Finally, the Developer breached s. 16 of the REDMA on or about April 15, 2025, when it failed to immediately amend its disclosure statement to update the construction completion date. The Fourth Amendment filed December 3, 2024 states that the construction completion date was estimated to occur between January 15, 2025 and April 15, 2025. The Developer (acting through the Monitor) knew that this statement was false at latest by April 15, 2025, when that date passed. The Developer failed to amend the disclosure statement for almost six months, until the Fifth Amendment was filed on November 25, 2025. As noted in *299 Burrard*, an erroneous statement regarding the construction completion date renders a contract unenforceable.

CCAA Considerations

90. The Applicants rely on s. 11 of the CCAA. This grants the court the jurisdiction to make any order that it considers appropriate in the circumstances, including the order sought by the Applicants.

91. The declaration sought by the Applicants is not impacted by Initial Order, as amended, or by any other order of this Court. Nothing in the Initial Order has altered the Developer's obligation to provide an amended disclosure statement under s. 16(3) of the REDMA. The Initial Order provides that the Superintendent of Real Estate shall not require the Developer to file a new disclosure statement under s. 16(2) of the REDMA or take any step that would trigger rights of rescission. It provides that any rights of rescission are stayed and suspended.

92. The Initial Order did not change the Developer's obligation to issue an amended disclosure statement, nor did it negate past breaches of that obligation. The Initial Order specifically refers to new disclosure statements, which are expressly distinguished in the REDMA from amended disclosure statements.

93. The portions of Initial Order dealing with rescission rights do not apply to section 23 of the REDMA. While some cases have loosely described s. 23 as a right of rescission, the Court of Appeal has stated expressly that s. 23 of the REDMA does not grant a right of rescission. As noted in paragraph 23 of *Woo*:

[36] Finally, s. 23, while not conferring a right to rescind a purchase agreement, does provide that an agreement to purchase a development unit is not enforceable against a purchaser if a developer has breached any provision of Part 2 of REDMA. The protection provided to purchasers by this section extends only to executory contracts, providing no potential statutory remedy once a purchase agreement has closed: see *Chambers v. Pennyfarthing Development Corp.* (1985), 1985 CanLII 498 (BC CA), 64 B.C.L.R. 145 (C.A.).

[Emphasis added]

94. The Initial Order also provides that nothing in the Initial Order empowers the Developer to carry on any business which it is not lawfully entitled to carry out. The Developer is not lawfully permitted to close contracts that are unenforceable by the developer under provincial law.

95. The Monitor's own actions acknowledge the continued application of the REDMA and the obligation to prepare an amended disclosure statement during the period of the stay in the CCAA. The Monitor provided a cease marketing undertaking to the BCFSA that it would not market development units until an amended disclosure statement had been filed, and it subsequently filed an amended disclosure statement on November 25, 2025.

96. Even if one could, on a literal interpretation, interpret the Initial Order as affecting section 23 of the REDMA (which is denied), it is submitted this was not contemplated or intended. The Court appears not to have been informed about s. 23 of the REDMA when the Initial Order was made or amended. The submission made to the Court in January 2025 was that the petitioner was not aware of any circumstance that would trigger "rescission" rights. Rights of rescission are set out in section 21 of the REDMA. Specific reference was made to subsection 16(2) of the REDMA, which sets out circumstances when a developer must file a "new disclosure statement". There does not appear to have been any mention of section 23 of the REDMA.

97. The stay of proceedings does not apply to the subject application. Section 23 of the REDMA is a defence to enforcement of the purchase agreements; it does not give a right of action for damages. It is a statutory shield, not a sword: *Jameson House Properties Ltd. (Re)*, 2009 BCSC 844 at para. 37. While the Applicants have made this application, they are effectively defending themselves against steps being taken by the Monitor to close contracts that are unenforceable under provincial law.

98. The Applicants are not failing to honour, terminating, or ceasing to perform their respective Pre-Sale Agreements with the Developer. Pursuant to s. 23 of the REDMA, there is no enforceable Pre-Sale Agreement for the Applicants to terminate, perform, or fail to honour.

99. Finally, the availability of rights of rescission and the enforceability of contracts were considered in the CCAA context in *Jameson House Properties (Re)*, 2009 BCSC 964 aff'd, 2009 BCCA 339. The existence of a stay of proceedings did not preclude the court in that case from substantive consideration of those issues.


PART 4: MATERIAL TO BE RELIED ON

1. Affidavit No. 1 of Daniel Pollack made January 6, 2025;
2. Affidavit No. 1 of Nazila Ghorbani made April 24, 2026;
3. Affidavit No. 1 of Masaki (Kevin) Matsumoto made April 24, 2026;
4. Affidavit No. 1 of Mohammed Nadali made April 24, 2026;
5. Affidavit No. 1 of Karen Buquet made April 28, 2026;
6. Initial Order dated January 8, 2025;
7. Amended and Restated Initial Order dated January 16, 2025;
8. Second Amended and Restated Initial Order Dated April 16, 2025;
9. Third Amended and Restated Initial Order dated December 19, 2025;
10. The pleadings filed herein; and
11. Such further and other material as counsel may advise and this Honourable Court may permit.

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).

Date: 28 April 2026



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(Per Bryan Baynham and Daniel
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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: _____

Signature of Judge Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matter 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"
SERVICE LIST

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
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