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 CONSTITUTIONAL QUESTION

Brought under section 8(2)(a) of the *Constitutional Question Act*, R.S.B.C. 1996, c. 68

Party serving this Notice: KSV Restructuring Inc., in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of Beta View Homes Ltd., Lumina Eclipse GP Ltd., Lumina Eclipse Limited Partnership and D-Thind Development Beta Ltd.

TO: Ministry of Attorney General
Legal Services Branch
PO Box 9290 Stn Prov Govt
Victoria, BC V8W 9J7
Attention: Duty Counsel

AND TO: Attorney General of Canada
British Columbia Regional Office
Department of Justice Canada
900 - 840 Howe Street
Vancouver, BC V6Z 2S9

TAKE NOTICE THAT the Applicants have filed the Applications (each as defined below) attached to this Notice of Constitutional Question as **Schedules "A"** and **"B"**, respectively, in these proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "**CCAA**") seeking declaratory relief from the Court pursuant to section 23 of the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 ("**REDMA**"). The Applicants have done so notwithstanding the terms of the Third Amended and Restated Initial Order granted in

these proceedings pursuant to the CCAA on December 19, 2025 (the "**TARIO**"), and without seeking to lift the stay of proceedings under, or to vary the terms of, the TARIO or challenging the jurisdiction of the Court to grant the TARIO. The Applicants assert that the stay of proceedings and terms of the TARIO do not apply in the circumstances. The Monitor opposes the Applications for the reasons set out in the Application Response of the Monitor filed May 4, 2026, attached to this Notice of Constitutional Question as **Schedule "C"** (the "**Monitor's Application Response**").

AND TAKE FURTHER NOTICE THAT, in accordance with subsection 8(2)(a) of the *Constitutional Question Act*, R.S.B.C. 1996, c. 68 (the "**CQA**"), the Monitor provides the within Notice of Constitution Question in respect of the constitutional applicability of section 23 of REDMA. The Monitor's primary position is that the constitutional applicability of section 23 of REDMA is not at issue in determining whether the stay of proceedings and applicable terms of the TARIO preclude the relief sought by the Applicants, as such stay and each relevant term of the TARIO are effective only during the Stay Period (as defined in the TARIO) and are subject to the Applicants' ability to seek the written consent of the Monitor or leave of the Court. If the Court determines that either: (i) the stay of proceedings and applicable terms of the TARIO effect a permanent stay, override or extinguishment of the Applicants' rights or remedies conferred by section 23 of REDMA in the circumstances, or (ii) the terms of the TARIO are not engaged by the Applicants' reliance on, or invocation of, section 23 of REDMA, then the Monitor intends to challenge the constitutional applicability of section 23 of REDMA on the basis that, pursuant to the doctrine of federal paramountcy: (A) section 11 of the CCAA authorizes the Court to grant an order that interferes with, and overrides, section 23 of REDMA; and (B) section 23 of REDMA is rendered inoperative to the extent it conflicts with sections 11 and 11.02 of the CCAA and the terms of the TARIO granted pursuant thereto, including the purposes thereof.

AND TAKE FURTHER NOTICE THAT the challenge will be argued before the Honourable Justice Masuhara between June 15 to June 18, 2026, at the courthouse at 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1.

AND FURTHER TAKE NOTICE THAT the material facts giving rise to this challenge are as set out in the Notice of Application of Chung Hei Wong, Liping Ding and Wai Thing Nicole (collectively, the "**ATAC Applicants**") filed April 22, 2026 attached to this Notice of Constitutional Question as **Schedule "A"** (the "**ATAC Application**"), the Notice of Application of Nazila Ghorbani, Arash Emadghaderi-Sepideh Motallebi, Mohammad Pourkarimi Shirayeh, Pegah Pourkarimi Shirayeh, Maryam Javadinia, Hossain Jabbari, Shaya Shahrezaee, Malihe Ghamarsourat, Mooein Fadaei, Farhoud Etemadol Sadati, Laila Dahaghin, Seyed Reza Deravian, Maryam Abdipour, Masaki Matsumoto (Sammy Rastkar), Ali Manavi, Naghmeh Heshamati, Nousheen Pourjahani, Kayvon Ameeri, Shirin Vosough Gerayeli, Kaveh Vosough Gerayeli, Mohsen Bagherpour, Amirhossein Marjaee, Amir Osooly, Hossein Nazapour, Roya Herischian-Heris, Hamid Riahi, Mohammad Nayebhashem, Alireza Sedghi Taromi, Shiva Olyaei, Nasim Rahmani, Mohammadjdavad Nadali, Ramtin Parvin, Pooneh Taheri, Paniz Parvin, Mahnaz Taheri, Nima Hazar and Mohammad Medhi Basefat Nazari (collectively with the ATAC Applicants, the "**Applicants**") filed April 28, 2026 attached to this Notice of Constitutional Question as **Schedule "B"** (together with the ATAC Application, the "**Applications**"), the Monitor's Application Response attached to this Notice of Constitutional Question as **Schedule "C"**, the Application Response of KingSett Mortgage Corporation filed May 4, 2026 attached to this Notice of

Constitutional Question as **Schedule "D"**, and the Application Response of Westmount Services Inc. filed May 6, 2026 attached to this Notice of Constitutional Question as **Schedule "E"**.

AND FURTHER TAKE NOTICE THAT at the hearing of this challenge the Monitor will make argument on the legal basis as set out in the Monitor's Application Response attached to this Notice of Constitutional Question as **Schedule "C"** and such further and other legal basis as counsel may advise and the Court may allow.

Dated: May 15, 2026

Signature of lawyer for the Monitor
Andrew Froh

THIS NOTICE OF CONSTITUTIONAL QUESTION is prepared and delivered by Sean Zweig, Andrew Froh, and Joshua Foster of the firm Bennett Jones LLP, Barristers & Solicitors, counsel for the Monitor, File No. 074735.58, whose place of business and address for delivery is 2500 – 666 Burrard Street, Vancouver, British Columbia, V6C 2X8. Telephone: (604) 891-7500. Facsimile: (604) 891-5100. [zweigs@bennettjones.com; froha@bennettjones.com; fosterj@bennettjones.com]

Schedule "A"

No. S-250121
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IN THE SUPREME COURT OF BRITISH COLUMBIA

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

BETWEEN:

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LUMINA ECLIPSE GP LTD.
and
D-THIND DEVELOPMENT BETA LTD.

RESPONDENTS

NOTICE OF APPLICATION

Name(s) of applicant(s): CHUNG HEI WONG, LIPING DING and WAI THING NICOLE WONG (the "Three Purchasers" or the "Applicants")

To: the Service List, attached hereto as Schedule "A"

TAKE NOTICE that an application will be made by the applicant(s) to the Honourable Justice Masuhara at the courthouse at 800 Smithe Street, Vancouver, British Columbia on May 11, 2026 at 10:00 a.m. for the order(s) set out in Part 1 below.

The applicant(s) estimate(s) that the application will take 3 days.

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

Part 1: ORDER(S) SOUGHT

1. Pursuant to Rule 9-7(2) of the *Supreme Court Civil Rules*:
   (a) a declaration that the Purchase Agreements, as defined below, are unenforceable against the Three Purchasers pursuant to section 23 of the *Real Estate Development Marketing Act* (the "*REDMA*"); and
   (b) an order requiring the Developers, as defined below, to return the deposits to the Three Purchasers;

2. Costs; and

3. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

Overview

1. The Three Purchasers are purchasers of development units in the real-estate development which is defined as the "Eclipse Project" in these court proceedings (the "Development").

2. The developers of the Development are the respondents, Lumina Eclipse Limited Partnership, Beta View Homes Ltd., and Lumina Eclipse GP Ltd. (the "Developers").

3. On January 8, 2025, KSV Restructuring Inc. (the "Monitor") was appointed as monitor of the Developers through these court proceedings and was granted control of the Development.

4. The relevant purchase agreements are unenforceable against the Three Purchasers on the grounds of:

   (a) section 23 of the *Real Estate Development Marketing Act* (the "*REDMA*"); and

   (b) in the alternative, misrepresentation.

5. The issue of unenforceability was adjourned from the court hearing on April 8, 2026 to May 11, 2026.

Disclosure Statement and Purchase Agreements

6. The disclosure statement of the Development was signed by the Defendant and is dated September 23, 2021 (the "Disclosure Statement").

7. The developer, Lumina Eclipse Limited Partnership, as vendor and the Three Purchasers entered into three separate purchase agreements as follows:

   (a) purchaser: Liping Ding
   development unit: "Strata Lot 111"
   purchase price: $597,900.00
   date of purchase agreement: October 12, 2021

   (b) purchaser: Wai Thing Nicole Wong
   development unit: "Strata Lot 74"
   purchase price: $589,900.00
   date of purchase agreement: April 9, 2022

   (c) purchaser: Chung Hei Wong
   development unit: "Strata Lot 246"
   purchase price: $1,033,900.00
   date of purchase agreement: April 3, 2023

8. The purchase agreements consistently refer to the disclosure statement of the Development (the "Disclosure Statement") throughout.

9. The Three Purchasers had paid deposit funds to the Developers, to be held in trust pursuant to the *REDMA*, as shown below:

   (a) Liping Ding: $89,790.00.

   (b) Wai Thing Nicole Wong: $88,485.00.

   (c) Chung Hei Wong: $51,696.00.

Completion Date: False acceleration

10. The Disclosure Statement contains an estimated date range of completion of construction (the "Completion Date") to be in 2024, as shown in the second amendment of the Disclosure Statement dated May 2024.

11. In 2025, the Three Purchasers were surprised to hear about this court proceeding commenced by the Developers' creditor KingSett Mortgage Corporation against the Developers.

12. As shown in the Petition to the Court filed on January 7, 2025 (the "Petition"), specifically paragraphs 7, 21, 23 and 41 of Part 2 of the document, the Developers had allowed critical insurance and building permits to be suspended, and the Canada Revenue Agency obtained a judgment against them in a significant amount of $11,996,763.09 on June 30, 2023, demonstrating that the Developers have been experiencing significant cash flow problems since **at least 2023**.

13. Also, as shown in the Petition, specifically paragraph 14 of Part 2 of the document, the Developers failed to pay their creditor as demanded on or about December 27, 2024.

14. Even though the Developers have been experiencing significant cash flow problems since at least 2023, they made representations to the Three Purchasers in 2024, via an amendment to the Disclosure Statement, that construction was progressing well because the Completion Date would be accelerated ahead of the original schedule.

15. The Developers purported to accelerate the Completion Date for several months, from "December 1, 2024 and March 1, 2025" to "July 1, 2024 and October 1, 2024".

16. In 2025, after learning about this court proceeding, it became clear to the Three Purchasers that the Developers' representations to them were false.

The suspension of building permits

17. As shown in the Petition, specifically paragraphs 7 and 40 of Part 2 of the document, the Developers had allowed building permits for the Development to be suspended. The City of Burnaby suspended the building permits on or about November 14, 2024.

18. The Developers **did not immediately** file an amendment to the Disclosure Statement with the Superintendent of Real Estate to disclose the suspension of building permits.

19. Also, the Developers did not provide the Three Purchasers with such an amendment within a reasonable time.

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

20. On December 3, 2024, the Developers signed an amendment to the Disclosure Statement.

21. The amendment purported to change the Completion Date to the range of "January 15, 2025 and April 15, 2025".

22. The Developers **did not immediately file** an amendment to the Disclosure Statement with the Superintendent of Real Estate to reflect that the new Completion Date was false. Instead, the Developers waited **7 months** before doing so on November 25, 2025.

23. Also, the Developers did not provide the Three Purchasers with such an amendment until **more than 7 months** after April 15, 2025.

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

Completion Date: Representations prior to the Purchase Agreements

25. Before the Three Purchasers entered into the purchase agreements, the Developers represented to them a construction window of 3.5 years based on the commencement date and the completion date as set out in the Disclosure Statement, as shown below:

    (a) commencement of construction: June 1, 2021

    (b) completion of construction: between December 1, 2024 and March 1, 2025.

26. The Developers had even represented that the construction window would be shorter, with the Completion Date to be "July 1, 2024 and October 1, 2024".

27. There has now been a significant delay of **more than 18 months** to the Completion Date.

28. The Developers' representations to the Three Purchasers before they entered into the purchase agreements were false.

Amendment to Disclosure Statement dated May 24, 2024

29. On May 24, 2024, the Developers signed an amendment to the Disclosure Statement which relates to the Completion Date, among other material facts.

30. However, the Developers did not provide the Three Purchasers with such an amendment until 4 months after May 2024 (provided on or about September 20, 2024), and not within a reasonable time.

Change of control of the Development

31. On January 8, 2025, KSV Restructuring Inc. (the "Monitor") was appointed as monitor of the Developers through these court proceedings and was granted control of the Development.

32. The Developers are respondents to these court proceedings.

33. Both the Developers and the Monitor **did not immediately file** an amendment to the Disclosure Statement with the Superintendent of Real Estate to reflect that the Monitor was granted control of the Development. Instead, they waited **10 months** before doing so on November 25, 2025.

34. Also, the Developers and the Monitor did not provide the Three Purchasers with such an amendment until **more than 10 months** after January 8, 2025.

Increase in monthly strata fees

35. On June 17, 2022, the Developers signed an amendment to the Disclosure Statement.

36. The amendment purported to increase the monthly strata fee of the Development Unit from the original amount as set out in Exhibit G of the Disclosure Statement.

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

37. Before Chung Hei Wong entered into a purchase agreement: The Developers represented to him and his family that the development unit, which is one of the more expensive development units within the Development, would have a large balcony for personal use as one of its main features. However, shortly after the signing of the purchase agreement, Mr. Wong discovered that it was false and that strata planter would occupy space within the balcony without the owner's permission.

38. The Developers subsequently provided their apology to Mr. Wong and his family on several occasions. The Developers proposed to change a different development unit for him within the same Development. Mr. Wong acted promptly after learning of the misrepresentation to disaffirm the purchase agreement in June 2023.

Financing

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

Part 3: LEGAL BASIS

Real Estate Development Marketing Act (the "*REDMA*")

40. Section 23 [of the *REDMA*] provides that a purchase agreement is not enforceable against a purchaser by a developer who has breached [provisions of the *REDMA*], including those relating to disclosure statements.

Pinto v. Revelstoke Mountain Resort Limited Partnership, 2011 BCCA 210 at para. 24;
Chameleon Talent Inc. v. Sandcastle Holdings Ltd., 2010 BCCA 300 at para. 6

41. The *REDMA* is consumer protection legislation. … Consumer protection legislation is to be interpreted generously in favour of the consumer.

Riegel v. Paraskevopoulos, 2013 BCSC 335 ("*Paraskevopoulos*") at para. 23;
Mazarei v. Icon Omega Developments Ltd., 2012 BCSC 673 ("*Mazarei*") at paras. 42, 72, 83 and 90;
Riegel v. Revelstoke Mountain Resort Limited Partnership et al., 2012 BCSC 3 ("*Riegel*") at para. 21;
Pinto v. Revelstoke Mountain Resort Limited Partnership, 2010 BCSC 422 ("*Pinto*") at paras. 11, 29 and 32, aff'd 2011 BCCA 210 at paras. 17, 36 and 37

42. The onus is placed on the developer who markets real estate developments in British Columbia to strictly comply with *REDMA* or bear the burden and consequences from the failure to comply with the legislation.

Mazarei at para. 92;
Paraskevopoulos at para. 20;
299 Burrard Residential Limited Partnership v. Essalat, 2012 BCCA 271 ("*299 Burrard*") at paras. 25 and 27

43. A developer who does not want to be subject to *REDMA* simply does not have to enter the British Columbia marketplace. Consumer protection legislation like *REDMA* is not rendered inoperable because of a developer's lack of foresight. … The statutory obligations of *REDMA* impacted [the developer] because it chose to market its development in British Columbia.

Mazarei at paras. 83, 90 and 91

44. The form and content required in a disclosure statement under *REDMA* is provided in the Superintendent's Policy Statement 1 ("Policy Statement 1").

Ulansky v. Waterscape Homes Limited Partnership, 2011 BCSC 83 at para. 47;
Section 14(2)(a) of the *REDMA*;
299 Burrard at para. 16

45. In 2012, the Court of Appeal recommended that the Superintendent give guidance on the word "estimate" in Policy Statement 1. Subsequently, the Superintendent revised Policy Statement 1 by changing the requirement of "State the actual or estimated dates of commencement and completion of construction" to limit the estimated date ranges to not exceeding 3 months.

299 Burrard at paras. 16 and 27;
Policy Statement 1;
Chameleon Talent Inc. v. Sandcastle Holdings Ltd., 2009 BCSC 1670 at para. 17, aff'd 2010 BCCA 300 at para. 5

46. Section 16(1) of the *REDMA*: If a developer becomes aware that a disclosure statement does not comply with the Act or regulations, or contains a misrepresentation, the developer must **immediately**,:

(a) file with the superintendent, as applicable under subsection (2) or (3),:

(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 [it] to each purchaser ....

47. *REDMA* provides that the developer has a continuing obligation, even after the presale of the unit, to ensure that the information in the current disclosure statement is accurate. ... The remedies in *REDMA* include a right of rescission ... if a purchaser does not receive the amended disclosure statement that he or she is entitled to receive.

Riegel at para. 22;
Pinto at paras. 30 and 31, aff'd 2011 BCCA 210 at paras. 4 and 37;
Watson v. Havaday Developments Inc., 2011 BCSC 505 at para. 24

48. The [amendment to the disclosure statement] may or may not have been significant to the purchasers, but as the law stands, a developer is not excused from strict compliance with the statutory disclosure requirements simply because the amendments appear to be insignificant to the developer.

Paraskevopoulos at para. 20

49. Informal updates and newsletters [to purchasers] do not satisfy the [*REDMA*].

299 Burrard at paras. 24 and 25;
Chameleon Talent Inc. v. Sandcastle Holdings Ltd., 2010 BCCA 300 at paras. 11 and 12

50. Nothing in the [*REDMA*] requires a purchaser who does not receive an amendment [to the disclosure statement] to demonstrate that the receipt of the amendment would have led to a different course of action. The right of rescission or the right to resist enforcement of the purchase agreement arises automatically on the developer's non-compliance with the *Act*. That, too, is consistent with the purpose of such consumer protection legislation.

Pinto at paras. 32, 34 and 35, aff'd 2011 BCCA 210 at paras. 4, 17, 36 and 37;
299 Burrard at para. 25

51. Also, a purchaser's motive is irrelevant. If the purchaser was entitled in law to refuse to complete, it matters not why it decided to do so.

Jaspaul S. Sandhu Enterprises Ltd. v. Penner, 2012 BCSC 856 at paras. 1, 4, 16 and 29;
Pinto at paras. 32, 34 and 35, aff'd 2011 BCCA 210 at paras. 4, 17, 36 and 37

52. The purchaser is entitled to return of the deposit.

299 Burrard at paras. 6, 24 and 26;
Paraskevopoulos at para. 23;
Mazarei at paras. 41 and 93

Innocent misrepresentation

53. The remedy for innocent misrepresentation is rescission. Damages are not available for innocent misrepresentation.

Meslin v. Lee, 2011 BCSC 1208 at para. 109;
Palcic v. Sadek, 2012 BCSC 1651 at para. 106

54. Section 22(3)(a) of the *REDMA*: If a developer files a disclosure statement respecting a development property and the disclosure statement contains a misrepresentation, a purchaser of a development unit in the development property, whether the purchaser received the disclosure statement or not, is deemed to have relied on the misrepresentation.

Suitable for summary trial

55. Rule 16-1(18) of the *Supreme Court Civil Rules*: Without limiting the court's right under Rule 22-1(7)(d) to transfer the proceeding referred to in this rule to the trial list, the court may, whether or not on the application of a party, apply any other of these Supreme Court Civil Rules to a proceeding referred to in this rule.

56. Rule 9-7(2)(a) of the *Supreme Court Civil Rules*: A party may apply to the court for judgment under this rule, either on an issue or generally, in an action in which a response to civil claim has been filed.

57. There is growing support for alternative adjudication of disputes and a developing consensus that the traditional balance struck by extensive pre-trial processes and the conventional trial no longer reflects the modern reality and needs to be re-adjusted. A proper balance requires simplified and proportionate procedures for adjudication, and impacts the role of counsel and judges. This balance must recognize that a process can be fair and just, without the expense and delay of a trial, and that alternative models of adjudication are no less legitimate than the conventional trial.

Ferrer v. 589557 B.C. Ltd., 2020 BCCA 83 at para. 26;
Kolny (Litigation Guardian of) v. Moghaddam, 2021 BCSC 1243 ("*Kolny*") at para. 42, aff'd 2021 BCCA 309 at paras. 23, 75 and 80;
Archibald (Ivy League Developments) v. Wojtarowicz, 2020 BCSC 421 ("*Archibald*") at para. 26

58. The onus is on the party who asserts that the matter is not suitable for a determination by a summary trial to demonstrate unsuitability.

iFortune Homes Inc. v. 1011066 B.C. Ltd., 2024 BCSC 1974 ("*iFortune*") at para. 7;
Garcha v. Grewal, 2024 BCSC 746 ("*Garcha*") at para. 35;
Kolny at para. 48, aff'd 2021 BCCA 309 at paras. 23, 75 and 80

59. Cases will be decided summarily if the court is able to find the facts necessary for that purpose, even though there may be disputed issues of fact and law.

Gichuru v. Pallai, 2013 BCCA 60 at para. 30;
Kolny at para. 47, aff'd 2021 BCCA 309 at paras. 23, 75 and 80;
A.A.A. Aluminum Products Ltd. v. Grafos, 2015 BCSC 2128 ("*A.A.A.*") at para. 7;
Tassone v. Cardinal, 2014 BCCA 149 ("*Tassone*") at para. 39

60. Even if there is no direct evidence addressing the issue of the matter, the court can still refer to indirect evidence to find the facts necessary to decide the matter summarily.

Lee v. Chau, 2021 BCSC 70 ("*Lee*") at paras. 12, 26, 27, 65 and 67, aff'd 2021 BCCA 474 at paras. 14 – 17;
McRae Management Ltd. v. Breezy Properties Ltd., 2008 BCSC 870 at paras. 1, 9, 10 and 68 – 80

61. There does not need to be an assessment of credibility on facts that are not in dispute.

Schuler v. Melo-Saville Holdings Inc., 2023 BCSC 623 ("*Schuler*") at paras. 19, 24 and 25

62. Even if the party who asserts the matter is not suitable for a determination by a summary trial has argued that evidentiary conflicts demand an assessment of the parties' credibility, other admissible evidence may make it possible to find the facts necessary to grant judgment such that credibility is not a critical factor.

Lee at paras. 10, 22, 23 and 27, aff'd 2021 BCCA 474 at paras. 14 – 17;
A.A.A. at para. 7;
Mathieson v. Aiken, 2023 BCSC 535 ("*Mathieson*") at paras. 1 – 3, 22, 23, 31, 37 and 38;

Kim v. Best, 2022 BCSC 1128 ("*Kim*") at paras. 1, 2, 9 – 13, 16, 17, 39, 54 – 58, 60 and 73;
Spiering v. Trevor, 2012 BCSC 1653 at paras. 37 and 40 – 50

63. There is a difference between circumstances where the court cannot find the facts … and a case where there are gaps in the evidence because a party who bears the onus has not put forward evidence to discharge that party's burden of proof. In the latter circumstances, the answer is not to refuse to determine the case summarily because the evidence is insufficient and instead order a conventional trial, the answer is to determine the matter taking into account that the party who has an onus on an issue has not discharged it.

Garcha at paras. 42, 44, 45, 54, 55 and 58;
Tassone at paras. 1, 27, 40 and 44

64. If the disputes on certain issues are how to apply the law to mostly undisputed facts, instead of disputes of facts, then those disputes do not preclude summary trial determination.

iFortune at paras. 32, 35, 36 and 47

65. There is no rule that discovery must always take place before a matter can be dealt with by way of summary trial, and arguing with the aid of the discovery process that something might turn up is insufficient to defeat a summary trial application.

Khonsari at para. 30;
Tassone at para. 38
Mathieson at para. 34

66. Even if the amounts in issue are such that the matter could bare the cost of a conventional trial, large amounts in issue do not preclude a summary trial or make a conventional trial the only appropriate means of proceeding. Such a conclusion is contrary to Rule 1-3(1) of the *Supreme Court Civil Rules* that provides that every matter is to be determined on its merits in the manner that is most speedy, inexpensive and just in the circumstances.

iFortune at paras. 44, 45 and 47;
University of British Columbia v. Kapelus, 2012 BCSC 486 at para. 25,
aff'd 2014 BCCA 42 at para. 28

67. A multi-day summary trial does not make summary trial unsuitable for the matter.

Schuler at paras. 9, 24 and 25

68. Not all of the listed factors for assessing suitability for summary trial will be relevant in every case. They are not to be used in a checklist approach.

Kolny at paras. 44 and 45, aff'd 2021 BCCA 309 at paras. 23, 75 and 80;
Ferrer v. Janik, 2020 BCCA 83 at paras. 27 and 28

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Chung Hei Wong, made and filed April 7, 2026;
2. Affidavit #1 of Liping Ding, made and filed April 7, 2026;
3. Affidavit #1 of Wai Thing Nicole Wong, made and filed April 7, 2026;
4. Petition to the Court, filed January 7, 2025; and
5. Such further and other material as counsel may advise and this Honourable Court may accept.

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 this 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 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).

The applicants' ADDRESS FOR SERVICE is:
ATAC Law Corporation
Barristers & Solicitors
308-8988 Fraserton Court
Burnaby, British Columbia, V5J 5H8
E-mail address for service: Service by e-mail will only be accepted if sent **to both** james@ataclaw.ca and service@ataclaw.ca

Date: April 22, 2026

Signature of JAMES UN
[ ] applicant [X] lawyer for applicant(s)

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
[ ] extend oral discovery
[ ] other matter concerning oral discovery
[ ] amend pleadings
[ ] add/change parties
[ ] summary judgment
[x] 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

See attached.

No. S-250121
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

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

RESPONDENTS

SERVICE LIST
(As of March 30, 2026)

Counsel for the Petitioner, KingSett Mortgage Corporation	**Counsel for the Monitor, KSV Restructuring Inc.**
Osler, Hoskin & Harcourt LLP Suite 3000, Bentall 4 1055 Dunsmuir Street Vancouver, BC V7X 1K8 **Mary Buttery, K.C.** Direct: 604.692.2752 Email: mbuttery@osler.com **Emma Newbery** Direct: 778.785.2738 Email: enewbery@osler.com **Lucas Hodgson** Direct: 236.466.2843 Email: lhodgson@osler.com	**Bennett Jones LLP** Suite 2500, 666 Burrard Street Vancouver, BC V6C 2X8 **Sean Zweig** Direct: 416.777.6254 Email: zweigs@bennettjones.com **Andrew Froh** Direct: 604.891.5166 Email: froha@bennettjones.com **Joshua Foster** Direct: 416.777.7906 Email: fosterj@bennettjones.com

Counsel for the Respondents **Richards Buell Sutton LLP** Suite 700, 401 West Georgia Street Vancouver, BC V6B 5A1 **Aneez Devji** Direct: 604.909.9301 Email: adevji@rbs.ca **Dan Nugent** Direct: 604.595.9917 Email: dnugent@rbs.ca **Ryan Shaw** Direct: 604.909.9312 Email: rshaw@rbs.ca **Dolu Aluko** Direct: 604.909.9306 Email: daluko@rbs.ca **Diana Manuel** Direct: 604.595.9918 Email: dmanuel@rbs.ca	**KSV Restructuring Inc.** 220 Bay Street, 13th Floor, PO Box 20 Toronto, Ontario M5J 2W4 **Noah Goldstein** Direct: 416.932.6207 Email: ngoldstein@ksvadvisory.com **Jason Knight** Direct: 587.287.2605 Email: jknight@ksvadvisory.com **Maha Shah** Direct: 587.287.9958 Email: mshah@ksvadvisory.com
Coast Capital Savings Federal Credit Union 2515 – 1075 West Georgia Street Vancouver, BC V6E 3C9 **Sal Toor, Managing Director, Loan Syndications and Mezzanine Financing** Email: sal.toor@coastcapitalsavings.com **John Muth** Email: john.muth@coastcapitalsavings.com	**Counsel for Coast Capital Savings Federal Credit Union** Owen Bird Law Corporation 2900 – 733 Seymour Street Vancouver, BC V6B 0S6 **Alan A. Frydenlund** Direct: 604.691.7511 Email: afrydenlund@owenbird.com

The Owners of Strata Plan EPS6882 400 – 11950 80th Avenue Delta, BC V4C 1Y2 With a copy to: **Dwell Property Management** Suite 170, 4311 Viking Way Richmond, BC V6V 2K9	**Counsel for The Owners, Strata Plan EPS6882** **Bleay Both Uppal LLP** 700 – 1155 West Pender Street Vancouver, BC V6E 2P4 **Jamie A. Bleay** Direct: 604.801.6029 Email: jbleay@bbulaw.ca
Shezmin Kurshid Alam Khan 3508 – 1372 Seymour Street Vancouver, BC V6B 0L1	**Counsel for Clearbrook Iron Works Ltd.** **Baker Newby LLP** 200 – 2955 Gladwin Road Abbotsford, BC V2T 5T4 **Adnan N. Habib** Email: ahabib@bakernewby.com
Mega Cranes Ltd. 6330 148 Street Surrey, BC V3S 3C4 Attn: Arthur Thornhill Email: paralegal@megacranes.com	**Super Save Fence Rentals Inc.** 19395 Langley Bypass Surrey, BC V3S 6K1
Counsel for the Superintendent of Real Estate **BC Financial Services Authority** 600 – 750 West Pender Street Vancouver, BC V6C 2T8 **Kyle Ferguson** Direct: 778.725.0755 Email: kyle.ferguson@bcfsa.ca	**Federal Crown** Department of Justice Canada British Columbia Regional Office 900 – 840 Howe Street Vancouver, BC V6Z 2S9 **Aminollah Sabzevari** Direct: 587.930.5282 Email: aminollah.sabzevari@justice.gc.ca **Nikhil Pandey** Email: nikhil.pandey@justice.gc.ca **Khanh Gonzalez** Email: khanh.gonzalez@justice.gc.ca

Provincial Crown **Ministry of the Attorney General (British Columbia)** Legal Services Branch, Ministry of Attorney General PO Box 9280 Stn Prov Govt Victoria, BC V8W 9J7 Email: AGLSBRevTaxInsolvency@gov.bc.ca	**Bank of Montreal** 2nd Floor, 234 Simcoe Street Toronto Ontario M5T 1T4
Counsel to Westmount Guarantee Services Inc. **Lawson Lundell LLP** 1600 – 925 West Georgia Street Vancouver, BC V6C 3L2 **Bryan Gibbons** Email: bgibbons@lawsonlundell.com **Mandeep Dhaliwal** Email: mdhaliwal@lawsonlundell.com **Candace Formosa** Email: cformosa@lawsonlundell.com	**Counsel to A & B Tool Rentals Ltd.** **Sportschuetz & Company Law Corporation** 315 – 63 West 6th Avenue Vancouver, BC V5Y 1K2 **Adrian D. Greer** Direct: 604.262.3791 Email: adrian@sportschuetz.ca
Counsel to D-Thind Development Beta Ltd. and **D-Thind Development Ltd.** **McQuarrie Hunter LLP** Suite 1500, 13450 102 Avenue Surrey, BC V3T 5X3 **Dan A. T. Moseley** Direct: 604.580.7022 Email: dmoseley@mcquarrie.com	**BOXX Modular LP** 21690 Smith Crescent Langley, BC V2Y 0W6 **Nancy Jarman** Email: njarman@blackdiamondgroup.com

Counsel to Kone Inc. **Whitelaw Twining** 2400 – 200 Granville Street Vancouver, BC V6C 1S4 **Alexandre Maltas** Direct: 604.891.7235 Email: amaltas@wt.ca	**Counsel to AVI Masonry Ltd.** **Raj Dhillon Law Corporation** 203 – 8078 128 Street Surrey, BC V3W 4E9 **Rajwinder Dhillon** Tel: 604.593.3930 Email: raj@rajdhillonlaw.ca
RAM Geotechnical Engineering Ltd. 220 – 18 Gostick Place North Vancouver, BC V7M 3G3 **Ting You Koh** Email: tingyou.koh@ramconsulting.com	**Counsel to Group Security Services Ltd.** **McKechnie & Company** 300 – 1122 Mainland Street Vancouver, BC V6B 5L1 **Philip Di Tomaso** Tel: 604.800.2690 Email: phil@mckechnie.bc.ca
Counsel to Han Appliances & Refrigeration Ltd. **Whitelaw Twining** 2400 – 200 Granville Street Vancouver, BC V6C 1S4 **May Mehrabi** Direct: 604.891.7280 Email: mmehrabi@wt.ca	**Counsel to Midland Appliance Ltd.** **Borden Ladner Gervais LLP** 1200 – 200 Burrard Street Vancouver, BC V7X 1T2 **Blair Rebane** Direct: 604.640.4130 Email: brebane@blg.com
Government of British Columbia – Ministry of Finance Receivables Management Office 1802 Douglas Street, 6th Floor Victoria, BC V8T 4K6 **Heather Kurbatoff** Email: heather.kurbatoff@gov.bc.ca	**Counsel to Bank of Montreal** **Lawson Lundell LLP** Suite 1600, Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2 **William L. Roberts** Direct: 604.631.9163 Email: wroberts@lawsonlundell.com

Right Touch Construction Ltd. PO Box 2569 STN A Abbotsford, BC V2T 6R3 **Attention: Kewal Singh Gill**	**Daljit Thind** Tel. No.: 604.451.7780 Email: daljit@thind.ca *A Director of the Respondents*
Mingkang Hu Airport Square Unit 1530 - 1200 West 73rd Ave. Vancouver, BC V6P 6G5 *A Former Director of Beta View Homes Ltd. and Current Director of Lumina Eclipse GP Ltd.*	**Counsel to Certain Purchasers** **ATAC Law Corporation** 308 – 8988 Fraserton Court Burnaby, BC V5J 5H8 **James Un** Tel: 604.519.0660 Email: james@ataclaw.ca service@ataclaw.ca
Counsel to Certain Purchasers **Harper Grey LLP** 3200 – 650 West Georgia Street Vancouver, British Columbia V6B 4P7 **Bryan G. Baynham, K.C.** Direct: 604.895.2802 Email: bbaynham@harpergrey.com **Daniel L. R. Yaverbaum** Direct: 604.895.2933 Email: dyaverbaum@harpergrey.com	

EMAIL SERVICE LIST

mbuttery@osler.com; enewbery@osler.com; lhodgson@osler.com; zweigs@bennettjones.com; froha@bennettjones.com; fosterj@bennettjones.com; morenoe@bennettjones.com; adevji@rbs.ca; dnugent@rbs.ca; rshaw@rbs.ca; daluko@rbs.ca; dmanuel@rbs.ca; ngoldstein@ksvadvisory.com; jknight@ksvadvisory.com; mshah@ksvadvisory.com; sal.toor@coastcapitalsavings.com; john.muth@coastcapitalsavings.com; afrydenlund@owenbird.com; paralegal@megacranes.com; kyle.ferguson@bcfsa.ca; jbleay@bbulaw.ca; ahabib@bakernewby.com; aminollah.sabzevari@justice.gc.ca; nikhil.pandey@justice.gc.ca; khanh.gonzalez@justice.gc.ca; bgibbons@lawsonlundell.com; mdhaliwal@lawsonlundell.com; cformosa@lawsonlundell.com; AGLSBRevTaxInsolvency@gov.bc.ca; adrian@sportschuetz.ca; dmoseley@mcquarrie.com; njarman@blackdiamondgroup.com; amaltas@wt.ca; raj@rajdhillonlaw.ca; tingyou.koh@ramconsulting.com; phil@mckechnie.bc.ca; mmehrabi@wt.ca; brebane@blg.com; heather.kurbatoff@gov.bc.ca; wroberts@lawsonlundell.com; daljit@thind.ca; james@ataclaw.ca; service@ataclaw.ca; bbaynham@harpergrey.com; dyaverbaum@harpergrey.com

Schedule "B"

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 Ameeri, Shirin Vosough Gerayeli, Kaveh Vosough Gerayeli, Mohsen Bagherpour, Amirhossein Marjaee, Amir Osooly, Hossein Nazapour, Roya Herischian-Heris, Hamid Riahi, Mohammad Nayebhashem, Alireza Sedghi Taromi, Shiva Olyaei, Nasim Rahmani, Mohammadjdavad 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~~ 10:00 a.m. for the orders set out in Part 1 below.

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 recission 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 recission 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	Hossein 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		Mohammadja vad 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-Thind 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 recission 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 proceedigns 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 discourse 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 recission. It provides that any rights of recission 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 recission rights do not apply to section 23 of the REDMA. While some cases have loosely described s. 23 as a right of recission, 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 "recission" 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 recission 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

HARPER GREY LLP
(Per Bryan Baynham and Daniel Yaverbaum)
Lawyers for the 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 Ameeri, Shirin Vosough Gerayeli, Kaveh Vosough Gerayeli, Mohsen Bagherpour, Amirhossein Marjaee, Amir Osooly, Hossein Nazapour, Roya Herischian-Heris, Hamid Riahi, Mohammad Nayebhashem, Alireza Sedghi Taromi, Shiva Olyaei, Nasim Rahmani, Mohammadjdavad Nadali, Ramtin Parvin, Pooneh Taheri, Paniz Parvin, Mahnaz Taheri, Nima Hazar, and Mohammad Medhi Basefat Nazari

Name and address of lawyer:
HARPER GREY LLP
Barristers & Solicitors
3200 – 650 West Georgia Street
Vancouver, BC V6B 4P7
Telephone: 604 687 0411
Email: dyaverbaum@harpergrey.com and bbaynham@harpergrey.com
Attn: Daniel Yaverbaum/kb/165539

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
D-THIND DEVELOPMENT BETA LTD.

RESPONDENTS

SERVICE LIST
(As of March 30, 2026)

Counsel for the Petitioner, KingSett Mortgage Corporation

Osler, Hoskin & Harcourt LLP
Suite 3000, Bentall 4
1055 Dunsmuir Street
Vancouver, BC V7X 1K8

Mary Buttery, K.C.
Direct: 604.692.2752
Email: mbuttery@osler.com

Emma Newbery
Direct: 778.785.2738
Email: enewbery@osler.com

Lucas Hodgson
Direct: 236.466.2843
Email: lhodgson@osler.com

Counsel for the Monitor, KSV Restructuring Inc.

Bennett Jones LLP
Suite 2500, 666 Burrard Street
Vancouver, BC V6C 2X8

Sean Zweig
Direct: 416.777.6254
Email: zweigs@bennettjones.com

Andrew Froh
Direct: 604.891.5166
Email: froha@bennettjones.com

Joshua Foster
Direct: 416.777.7906
Email: fosterj@bennettjones.com

Counsel for the Respondents

Richards Buell Sutton LLP
Suite 700, 401 West Georgia Street
Vancouver, BC V6B 5A1

Aneez Devji
Direct: 604.909.9301
Email: adevji@rbs.ca

Dan Nugent
Direct: 604.595.9917
Email: dnugent@rbs.ca

Ryan Shaw
Direct: 604.909.9312
Email: rshaw@rbs.ca

Dolu Aluko
Direct: 604.909.9306
Email: daluko@rbs.ca

Diana Manuel
Direct: 604.595.9918
Email: dmanuel@rbs.ca

KSV Restructuring Inc.

220 Bay Street, 13th Floor, PO Box 20
Toronto, Ontario M5J 2W4

Noah Goldstein
Direct: 416.932.6207
Email: ngoldstein@ksvadvisory.com

Jason Knight
Direct: 587.287.2605
Email: jknight@ksvadvisory.com

Maha Shah
Direct: 587.287.9958
Email: mshah@ksvadvisory.com

Coast Capital Savings Federal Credit Union

2515 – 1075 West Georgia Street
Vancouver, BC V6E 3C9

Sal Toor, Managing Director,
Loan Syndications and Mezzanine Financing
Email: sal.toor@coastcapitalsavings.com

John Muth
Email: john.muth@coastcapitalsavings.com

Counsel for Coast Capital Savings Federal Credit Union

Owen Bird Law Corporation
2900 – 733 Seymour Street
Vancouver, BC V6B 0S6

Alan A. Frydenlund
Direct: 604.691.7511
Email: afrydenlund@owenbird.com

The Owners of Strata Plan EPS6882

400 – 11950 80th Avenue
Delta, BC V4C 1Y2

With a copy to:

Dwell Property Management
Suite 170, 4311 Viking Way
Richmond, BC V6V 2K9

Counsel for The Owners, Strata Plan EPS6882

Bleay Both Uppal LLP
700 – 1155 West Pender Street
Vancouver, BC V6E 2P4

Jamie A. Bleay
Direct: 604.801.6029
Email: jbleay@bbulaw.ca

Shezmin Kurshid Alam Khan

3508 – 1372 Seymour Street
Vancouver, BC V6B 0L1

Counsel for Clearbrook Iron Works Ltd.

Baker Newby LLP
200 – 2955 Gladwin Road
Abbotsford, BC V2T 5T4

Adnan N. Habib
Email: ahabib@bakernewby.com

Mega Cranes Ltd.

6330 148 Street
Surrey, BC V3S 3C4
Attn: Arthur Thornhill

Email: paralegal@megacranes.com

Super Save Fence Rentals Inc.

19395 Langley Bypass
Surrey, BC V3S 6K1

Counsel for the Superintendent of Real Estate

BC Financial Services Authority
600 – 750 West Pender Street
Vancouver, BC V6C 2T8

Kyle Ferguson
Direct: 778.725.0755
Email: kyle.ferguson@bcfsa.ca

Federal Crown

Department of Justice Canada
British Columbia Regional Office
900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Aminollah Sabzevari
Direct: 587.930.5282
Email: aminollah.sabzevari@justice.gc.ca

Nikhil Pandey
Email: nikhil.pandey@justice.gc.ca

Khanh Gonzalez
Email: khanh.gonzalez@justice.gc.ca

Provincial Crown

Ministry of the Attorney General (British Columbia)
Legal Services Branch, Ministry of Attorney General
PO Box 9280 Stn Prov Govt
Victoria, BC V8W 9J7

Email: AGLSBRevTaxInsolvency@gov.bc.ca

Bank of Montreal

2nd Floor, 234 Simcoe Street
Toronto Ontario M5T 1T4

Counsel to Westmount Guarantee Services Inc.

Lawson Lundell LLP
1600 – 925 West Georgia Street
Vancouver, BC V6C 3L2

Bryan Gibbons
Email: bgibbons@lawsonlundell.com

Mandeep Dhaliwal
Email: mdhaliwal@lawsonlundell.com

Candace Formosa
Email: cformosa@lawsonlundell.com

Counsel to A & B Tool Rentals Ltd.

Sportschuetz & Company Law Corporation
315 – 63 West 6th Avenue
Vancouver, BC V5Y 1K2

Adrian D. Greer
Direct: 604.262.3791
Email: adrian@sportschuetz.ca

Counsel to D-Thind Development Beta Ltd. and D-Thind Development Ltd.

McQuarrie Hunter LLP
Suite 1500, 13450 102 Avenue
Surrey, BC V3T 5X3

Dan A. T. Moseley
Direct: 604.580.7022
Email: dmoseley@mcquarrie.com

BOXX Modular LP

21690 Smith Crescent
Langley, BC V2Y 0W6

Nancy Jarman
Email: njarman@blackdiamondgroup.com

Counsel to Kone Inc.

Whitelaw Twining
2400 – 200 Granville Street
Vancouver, BC V6C 1S4

Alexandre Maltas
Direct: 604.891.7235
Email: amaltas@wt.ca

Counsel to AVI Masonry Ltd.

Raj Dhillon Law Corporation
203 – 8078 128 Street
Surrey, BC V3W 4E9

Rajwinder Dhillon
Tel: 604.593.3930
Email: raj@rajdhillonlaw.ca

RAM Geotechnical Engineering Ltd.

220 – 18 Gostick Place
North Vancouver, BC V7M 3G3

Ting You Koh
Email: tingyou.koh@ramconsulting.com

Counsel to Group Security Services Ltd.

McKechnie & Company
300 – 1122 Mainland Street
Vancouver, BC V6B 5L1

Philip Di Tomaso
Tel: 604.800.2690
Email: phil@mckechnie.bc.ca

Counsel to Han Appliances & Refrigeration Ltd.

Whitelaw Twining
2400 – 200 Granville Street
Vancouver, BC V6C 1S4

May Mehrabi
Direct: 604.891.7280
Email: mmehrabi@wt.ca

Counsel to Midland Appliance Ltd.

Borden Ladner Gervais LLP
1200 – 200 Burrard Street
Vancouver, BC V7X 1T2

Blair Rebane
Direct: 604.640.4130
Email: brebane@blg.com

Government of British Columbia – Ministry of Finance

Receivables Management Office
1802 Douglas Street, 6th Floor
Victoria, BC V8T 4K6

Heather Kurbatoff
Email: heather.kurbatoff@gov.bc.ca

Counsel to Bank of Montreal

Lawson Lundell LLP
Suite 1600, Cathedral Place
925 West Georgia Street
Vancouver, BC V6C 3L2

William L. Roberts
Direct: 604.631.9163
Email: wroberts@lawsonlundell.com

Right Touch Construction Ltd.

PO Box 2569 STN A
Abbotsford, BC V2T 6R3

Attention: Kewal Singh Gill

Daljit Thind

Tel. No.: 604.451.7780
Email: daljit@thind.ca

A Director of the Respondents

Mingkang Hu

Airport Square
Unit 1530 - 1200 West 73rd Ave.
Vancouver, BC V6P 6G5

A Former Director of Beta View Homes Ltd. and Current Director of Lumina Eclipse GP Ltd.

Counsel to Certain Purchasers

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

James Un
Tel: 604.519.0660
Email: james@ataclaw.ca
service@ataclaw.ca

Counsel to Certain Purchasers

Harper Grey LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia
V6B 4P7

Bryan G. Baynham, K.C.
Direct: 604.895.2802
Email: bbaynham@harpergrey.com

Daniel L. R. Yaverbaum
Direct: 604.895.2933
Email: dyaverbaum@harpergrey.com

EMAIL SERVICE LIST

mbuttery@osler.com;

enewbery@osler.com;

lhodgson@osler.com;

zweigs@bennettjones.com;

froha@bennettjones.com;

fosterj@bennettjones.com;

morenoe@bennettjones.com;

adevji@rbs.ca;

dnugent@rbs.ca;

rshaw@rbs.ca;

daluko@rbs.ca;

dmanuel@rbs.ca;

ngoldstein@ksvadvisory.com;

jknight@ksvadvisory.com;

mshah@ksvadvisory.com;

sal.toor@coastcapitalsavings.com;

john.muth@coastcapitalsavings.com;

afrydenlund@owenbird.com;

paralegal@megacranes.com;

kyle.ferguson@bcfsa.ca;

jbleay@bbulaw.ca;

ahabib@bakernewby.com;

aminollah.sabzevari@justice.gc.ca;

nikhil.pandey@justice.gc.ca;

khanh.gonzalez@justice.gc.ca;

bgibbons@lawsonlundell.com;

mdhaliwal@lawsonlundell.com;

cformosa@lawsonlundell.com;

AGLSBRevTaxInsolvency@gov.bc.ca;

adrian@sportschuetz.ca;

dmoseley@mcquarrie.com;

njarman@blackdiamondgroup.com;

amaltas@wt.ca;

raj@rajdhillonlaw.ca;

tingyou.koh@ramconsulting.com;

phil@mckechnie.bc.ca;

mmehrabi@wt.ca;

brebane@blg.com;

heather.kurbatoff@gov.bc.ca;

wroberts@lawsonlundell.com;

daljit@thind.ca;

james@ataclaw.ca;

service@ataclaw.ca;

bbaynham@harpergrey.com;

dyaverbaum@harpergrey.com

Schedule "C"

No. S-250121
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

LUMINA ECLIPSE LIMITED PARTNERSHIP,
BETA VIEW HOMES LTD.,
LUMINA ECLIPSE GP LTD., AND
D-THIND DEVELOPMENT BETA LTD.

RESPONDENTS

APPLICATION RESPONSE

APPLICATION RESPONSE OF: KSV Restructuring Inc., in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**" or the "**Respondent**") of Beta View Homes Ltd. ("**Beta View**"), Lumina Eclipse GP Ltd. ("**Lumina GP**"), Lumina Eclipse Limited Partnership ("**Lumina LP**" and collectively with Beta View and Lumina GP, the "**Developer**") and D-Thind Development Beta Ltd. ("**D-Thind Beta**" and together with the Developer, the "**Debtors**").

THIS IS A RESPONSE TO the notice of application of Chung Hei Wong, Liping Ding and Wai Thing Nicole (collectively, the "**ATAC Applicants**") filed April 22, 2026 (the "**ATAC Application**"), and the notice of application of Nazila Ghorbani, Arash Emadghaderi-Sepideh Motallebi, Mohammad Pourkarimi Shirayeh, Pegah Pourkarimi Shirayeh, Maryam Javadinia, Hossain Jabbari, Shaya Shahrezaee, Malihe Ghamarsourat, Mooein Fadaei, Farhoud Etemadol Sadati, Laila Dahaghin, Seyed Reza Deravian, Maryam Abdipour, Masaki Matsumoto (Sammy Rastkar), Ali Manavi, Naghmeh Heshamati, Nousheen Pourjahani, Kayvon Ameeri, Shirin Vosough Gerayeli, Kaveh Vosough Gerayeli, Mohsen Bagherpour, Amirhossein Marjaee, Amir Osooly, Hossein Nazapour, Roya Herischian-Heris, Hamid Riahi, Mohammad Nayebhashem, Alireza Sedghi Taromi, Shiva Olyaei, Nasim Rahmani, Mohammadjdavad Nadali, Ramtin Parvin,

Pooneh Taheri, Paniz Parvin, Mahnaz Taheri, Nima Hazar and Mohammad Medhi Basefat Nazari (collectively, the "**HG Applicants**" and together with the ATAC Applicants, the "**Applicants**") filed on April 28, 2026 (the "**HG Application**" and together with the ATAC Application, the "**Applications**").

The Respondent estimates that the application will take 3 days.

Part 1: ORDERS CONSENTED TO

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

Part 2: ORDERS OPPOSED

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

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

Nil.

Part 4: FACTUAL BASIS

A. Overview

1. In the face of a broad stay of proceedings (the "**Stay of Proceedings**") granted by this Court pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), the Applicants seek (without first or contemporaneously seeking to lift the Stay of Proceedings) declarations under section 23 of the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41, as amended ("**REDMA**") that their Presale Agreements (as defined below) are unenforceable. In so doing, the Applicants seek to avoid their obligations under the Presale Agreements, breach the Stay of Proceedings, and subvert the purposes of these proceedings and the CCAA, to the significant detriment of the Debtors and their creditors.

2. The Applicants' asserted entitlement to the right or remedy afforded by section 23 of REDMA, the exercise of which is plainly stayed, is predicated on several alleged breaches of

REDMA. Substantially all such alleged breaches pre-date the commencement of these now well-advanced proceedings and were apparent by no later than January 6, 2025. Despite being aware of such alleged breaches and the Monitor's view on the enforceability of the Presale Agreements and intention to close them, the ATAC Applicants and the HG Applicants waited at least 12 and 13 months, respectively, to take any step in these proceedings and to seek to invoke section 23 of REDMA.

3. The relief sought by the Applicants is unavailable absent lifting the Stay of Proceedings, conflicts with the purposes of these proceedings and the CCAA and is inappropriate in the circumstances. The Monitor therefore opposes the Applications. It does so for three reasons.

4. *First*, even if the Applicants could establish breaches of Part 2 of REDMA sufficient to engage section 23 (which is not admitted, but expressly denied), they are prohibited by the Stay of Proceedings and the terms of the Third Amended and Restated Initial Order of this Court granted on December 19, 2025 (the "**TARIO**"), from exercising any rights and remedies against or in respect of the Debtors or affecting their business and property, and enjoined from failing to honour, repudiating, terminating, rescinding or ceasing to perform any contract or agreement held by any of the Debtors.

5. By rendering a purchase agreement unenforceable "against the purchaser by a developer who has breached any provision of Part 2", section 23 unequivocally provides a "right" or "remedy" in favour of purchasers to prevent or redress a developer's breach of Part 2 of REDMA, the practical effect of which is clear. It permits Presale Purchasers (as defined below) to fail to honour, cease to perform or repudiate their obligations under the Presale Agreements and jeopardizes the success of these proceedings to the detriment of the Debtors and their creditors, contrary to the CCAA, the Stay of Proceedings and the terms of the TARIO. The Presale Purchasers' ability to invoke section 23 of REDMA and establish the requisite breach are thus squarely within the ambit of the Stay of Proceedings and prohibited by the TARIO.

6. *Second*, despite the undeniably broad scope and unambiguous terms of the TARIO, the Applicants have not sought to lift the Stay of Proceedings. Had the Applicants done so, as required, they could not establish sound reasons for lifting the Stay of Proceedings. Lifting the Stay of Proceedings would detract from (rather than further) the CCAA's purposes. It would protract these

proceedings, erode creditor recoveries, and reward the Applicants' remarkable lack of diligence despite having ample notice of these proceedings and the Monitor's views on the enforceability of the Presale Agreements, exacerbating the losses that will be borne by the Debtors' creditors. Moreover, the relative prejudice to the parties overwhelmingly favours the Debtors and their creditors.

7. If this Court declines to grant the Applicants' proposed relief, the Applicants will receive what they bargained for – completed units in the Development (as defined below) – while retaining their rights to pursue damages under section 22 of REDMA (subject to the Stay of Proceedings). If, however, this Court exercises its discretion and lifts the Stay of Proceedings (an order the Applicants failed to seek), the Debtors will almost certainly face indemnification claims from Westmount West Services Inc. ("**Westmount**"), as agent for and on behalf of Aviva Insurance Company of Canada ("**Aviva**") and Liberty Mutual Insurance Company (together, the "**Surety**"), and an event of default under the Interim Financing Term Sheet. And, the Monitor will be forced to relist the applicable Purchased Units in a deteriorating market during an insolvency proceeding in which interest exceeding $59,000 per day accrues. The resulting erosion in asset value and increase in cost and expense will materially prejudice the Debtors, and their creditors, who will already suffer a substantial shortfall.

8. *Third*, and in any event, section 23 of REDMA is rendered inoperative by the doctrine of federal paramountcy. As Presale Purchasers cannot rely on section 23 of REDMA without contravening the TARIO, and frustrating the purposes of the CCAA, including preserving and maximizing the value of the Debtors' assets, federal paramountcy dictates that sections 11 and 11.02 of the CCAA and the provisions of the TARIO granted thereunder, must prevail.

B. Background

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

10. At the commencement of these proceedings, 232 of the Eclipse Units had been sold pursuant to pre-sale contracts (collectively, the "**Presale Agreements**") with third-party

purchasers (collectively, the "**Presale Purchasers**"), including the Applicants, and the Eclipse Project was approximately 95% complete.

11. In connection with the Eclipse Project, the Initial Debtors entered into the following commitment letters (together, the "**Commitment Letters**"):

(a) a commitment letter dated April 28, 2021 (as amended by a first amending agreement dated June 22, 2021, second amending agreement dated July 5, 2022, third amending agreement dated May 23, 2023, fourth amending agreement dated June 22, 2023, and a fifth amending agreement dated March 5, 2024) among, *inter alios*, Lumina GP, in its capacity as the general partner for and on behalf of Lumina LP, as borrower, Beta View, as nominee, and KingSett Mortgage Corporation ("**KingSett**"), as lender, pursuant to which KingSett provided a first mortgage loan in the principal amount of $124,000,000 (the "**First KingSett Loan**"); and

(b) a commitment letter dated April 28, 2021 (as amended by a first amending agreement dated June 22, 2021, second amending agreement dated July 5, 2022, third amending agreement dated May 23, 2023, fourth amending agreement dated June 22, 2023, fifth amending agreement dated March 5, 2024, and a sixth amending agreement dated July 5, 2024) among, *inter alios*, Lumina GP, in its capacity as the general partner for and on behalf of Lumina LP, as borrower, Beta View, as nominee, and KingSett, as lender, pursuant to which KingSett provided a second mortgage loan comprising two facilities in the aggregate principal amount of $65,400,000 (the "**Second KingSett Loan**").

12. As at December 8, 2025, the total indebtedness to KingSett was approximately $225,737,348, plus interest (then accruing at more than $59,000 per day) and costs, which continue to accrue.

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

(a) a site-specific general security agreement dated June 30, 2021, granted by Beta View over its personal property in connection with the Eclipse Project;

(b) a mortgage and assignment of rents dated March 14, 2024, in the principal amount of $124,000,000, registered against the Lands (as defined below) (the "**KingSett First Mortgage**"); and

(c) a beneficial owner's direction, acknowledgment, and security agreement dated March 2024, granted by the Initial Debtors in favour of KingSett.

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

(a) a general security agreement dated June 30, 2021, granted by Beta View over its personal property in connection with the Eclipse Project;

(b) a mortgage dated August 7, 2024, in the principal amount of $70,000,000, registered against the Lands (the "**KingSett Second Mortgage**"); and

(c) a beneficial owner's direction, acknowledgment, and security agreement dated August 16, 2024, granted by the Initial Debtors in favour of KingSett.

15. In connection with the Eclipse Project and the Presale Agreements, the Initial Debtors and Lumina GP (collectively, the "**Developer**") also obtained a $50,000,000 deposit protection contract facility (the "**Deposit Protection Facility**") from Westmount, as agent for and on behalf of the Surety.

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

(a) an indemnity agreement dated May 20, 2022, granted by the Developer, among others, in favour of Westmount and the Surety;

(b) a mortgage and assignment of rents dated June 16, 2022, in the principal amount of $50,000,000, registered against the Lands (the "**Westmount Mortgage**"), which also secures the indebtedness, liabilities and obligations arising under or in connection with the New Home Warranty (as defined below);

(c) an equitable mortgage and estoppel agreement dated May 20, 2022, granted by the Initial Debtors in favour of Westmount; and

(d) a location specific security agreement dated May 20, 2022, executed by the Initial Debtors in favour of Westmount.

17. The priority among the KingSett First Mortgage, the Westmount Mortgage and the KingSett Second Mortgage is governed by a third amended and restated subordination and standstill agreement dated March 19, 2024 (the "**Subordination Agreement**"), among, *inter alios*, KingSett and Westmount, and an acknowledgment and agreement dated March 28, 2025 (the "**Acknowledgement Agreement**"), among KingSett, the Initial Debtors, Aviva and Westmount. Subject to the terms of the Subordination Agreement and the Acknowledgment Agreement, the Westmount Mortgage is subordinate to the KingSett First Mortgage, and the KingSett Second Mortgage and multiple collateral mortgages granted by the Initial Debtors as security for guarantees granted in favour of KingSett and registered against the Lands (collectively, the "**Collateral Mortgages**"), are subordinate to the Westmount Mortgage.

C. KingSett's Petition for an Initial Order Under the CCAA

18. On January 7, 2025, KingSett filed a petition (the "**Petition**") seeking relief in respect of the Initial Debtors under the CCAA. The relief was sought to "stabilize the Debtors' operations and management, secure necessary interim financing, complete construction of Brentwood Tower C, and ensure presale homebuyer agreements can be closed as intended."

19. KingSett's decision to pursue relief under the CCAA, rather than the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, was deliberate. As described in Affidavit No. 1 of Daniel Pollack made on January 6, 2025 (the "**First Pollack Affidavit**"), pursuing relief under the CCAA was intended to "allow all the presales sold in connection with Brentwood Tower C to continue, which may not be possible in a receivership."

D. The Monitor's Appointment, the Initial Order and the Stay of Proceedings

20. The Petition was heard on January 8, 2025. On that date, the Supreme Court of British Columbia (the "**Court**") granted an initial order (the "**Initial Order**") in respect of the Initial Debtors pursuant to the CCAA.

21. Among other things, the Initial Order:

(a) granted a broad stay of proceedings (the "**Stay of Proceedings**") in favour of the Monitor and the Initial Debtors and their business and property to and including January 18, 2025;

(b) approved the Interim Financing Term Sheet dated as of January 6, 2025 (as amended, the "**Interim Financing Term Sheet**"), between the Monitor, for and on behalf of the Initial Debtors, and KingSett, and granted a charge over the Initial Debtors' property up to the maximum amount of $700,000, plus interest, fees and expenses, to secure all amounts advanced under the Interim Financing Term Sheet (the "**Interim Lender's Charge**");

(c) granted a charge over the Initial Debtors' property up to the maximum amount of $250,000, to secure the fees and disbursements of the Monitor and its counsel (the "**Administration Charge**" and together with the Interim Lender's Charge, the "**Charges**"); and

(d) granted the Monitor certain enhanced powers (the "**Initial Enhanced Powers**").

22. Following the granting of the Initial Order:

(a) the Monitor issued a notice dated January 11, 2025 to all Presale Purchasers advising of: (i) the granting of the Initial Order and the Stay of Proceedings; (ii) the primary purposes of these proceedings, being to stabilize the Initial Debtors, and provide the necessary funding to complete the Eclipse Project and deliver the Eclipse Units pursuant to the Presale Agreements; (iii) KingSett's commitment to provide the Interim Financing Facility; (iv) the Monitor's view that all Presale

Agreements remained valid and enforceable; and (v) the hearing scheduled for the ARIO (as defined below); and

(b) the BC Financial Services Authority (the "**BCFSA**") provided a letter to the Developer requesting that it deliver a cease marketing undertaking, confirming that all marketing had ceased and would not resume until after a disclosure statement amendment was filed (the "**Cease Marketing Undertaking**"), in response to which the Monitor's counsel confirmed that, subject to the granting of the ARIO, the Monitor had no issue in principle with exercising its enhanced powers to cause the Developer to provide the Cease Marketing Undertaking.

23. On January 16, 2025, KingSett obtained an amended and restated Initial Order (the "**ARIO**"), among other things:

(a) extending the Stay Period (as defined in the ARIO) to and including April 16, 2025;

(b) adding Lumina GP as a "Respondent" in these proceedings;

(c) increasing the maximum amount of the Administration Charge to $500,000;

(d) increasing the maximum principal amount that could be borrowed under the Interim Financing Facility to $18 million; and

(e) expanding the Monitor's Initial Enhanced Powers (the "**Expanded Powers**"), including to authorize the Monitor to cause the Developer to take such steps as the Monitor determines may be reasonably necessary or appropriate to comply with REDMA, subject to paragraph 11 of the ARIO.

24. Exercising the Expanded Powers under the ARIO, the Monitor provided the Cease Marketing Undertaking to the BCFSA on January 23, 2025.

25. The ARIO was subsequently amended and restated pursuant to an order granted on April 16, 2025 (the "**SARIO**") and the TARIO to, among other things:

(a) extend the Stay of Proceedings to and including July 31, 2026;

(b) add D-Thind Beta as a "Respondent" in these proceedings;

(c) approve amendments to the Interim Financing Term Sheet, which extended the Maturity Date (as defined in the Interim Financing Term Sheet) to July 31, 2026, and increased the maximum permitted borrowings under the Interim Financing Term Sheet to $25,750,000, plus interest, fees and expenses; and

(d) increase the Interim Lender's Charge to the maximum aggregate amount of $25,750,000, plus interest, fees and expenses.

26. Subject to certain variations, each of the Initial Order, the ARIO, the SARIO and the TARIO include the following broad Stay of Proceedings in favour of the Monitor and the Debtors and their business and property:

> [...] no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of the Respondents (or any of them) or the Monitor, or their respective employees, advisors, counsel and other representatives acting in such capacities, or affecting the Business or the Property, shall be commenced or continued except with the prior written consent of the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Respondents (or any of them) or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the prior written consent of the Monitor.
>
> During the Stay Period, the Superintendent of Real Estate shall not require the Respondents (or any of them) to file a new disclosure statement under subsection 16(2) of the *Real Estate Development Marketing Act*, S.B.C. 2004, 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 purchasers to rescind pre-sale contracts with the Respondents (or any of them) are stayed and suspended save and except for the exercise of purchasers' rights of rescission under subsections 21(2)(a) and 21(2)(b)(i) of REDMA in connection with the Sale Agreements.
>
> During the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Respondents (or any of them) or the Monitor, or their respective employees, advisors, counsel and other representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Monitor or leave of this Court.

[...]

> During the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate, rescind or cease to perform any right, renewal right, contract, agreement, licence, authorization or permit in favour of or held by the Respondents (or any of them), except with the prior written consent of the Monitor or leave of this Court.

27. No party or stakeholder in these proceedings, including the Applicants, has opposed any of the Initial Order, the ARIO, the SARIO or the TARIO, or sought to vary, amend, appeal or lift any such order or the Stay of Proceedings. All Presale Purchasers, including the Applicants, have been aware of the Initial Order and the Monitor's intention to close the Presale Agreements since receiving the January 11, 2025 notice referred to above.

E. The Monitor's Marketing Efforts

28. On April 16, 2025, the Monitor obtained the following orders:

(a) an order (the "**Sale Process Order**"), among other things:

(i) authorizing and empowering the Monitor to enter into the Letter Agreement dated as of April 16, 2025, among the Monitor, Rennie Marketing Systems, by its partners Rennie Project Marketing Corporation and 541823 B.C. Ltd. (collectively, "**RMS**"), and Rennie & Associates Realty Ltd. (together with RMS, "**Rennie**") in the form attached as Appendix "B" (the "**Rennie Agreement**") to the Second Report of the Monitor dated April 8, 2025 (the "**Second Report**");

(ii) approving the sale process, substantially as described in the Second Report (the "**Sale Process**"); and

(iii) subject to the filing of a disclosure statement amendment pursuant to REDMA, authorizing the Monitor and Rennie to carry out the Sale Process in accordance with its terms and the terms of the Sale Process Order; and

(b) an order, among other things, sealing the Confidential Supplement to the Second Report dated April 8, 2025 (the "**Confidential Supplement**"), pending the filing

of a Monitor's certificate evidencing the closing of the unit transaction for the last Eclipse Unit.

29. Following the Monitor's termination of the Rennie Agreement effective July 26, 2025, and the implementation of a request for proposal process, the Monitor sought and, on October 17, 2025, obtained an order (the "**Amended Sale Process Order**"), among other things:

(a) authorizing and empowering the Monitor, *nunc pro tunc*, to enter into the Service Agreement dated as of September 26, 2025 (the "**Marketing Agreement**"), between the Monitor and McNeill, Lalonde and Associates Inc. (the "**Sales Agent**") in the form attached as Appendix "D" to the Fourth Report of the Monitor dated September 30, 2025 (the "**Fourth Report**");

(b) approving the amended sale process, substantially as described in the Fourth Report (the "**Amended Sale Process**"); and

(c) subject to the filing of a disclosure statement amendment pursuant to REDMA, authorizing the Monitor and the Sales Agent to carry out the Amended Sale Process in accordance with its terms and the terms of the Amended Sale Process Order, and to take such steps as they consider necessary or desirable in carrying out each of their obligations thereunder, including, without limitation, to enter into sale agreements arising from the Amended Sale Process that satisfy the sale conditions enumerated in the Fourth Report (collectively, the "**Sale Conditions**"), including that the purchase price for the applicable Eclipse Unit be not less than that outlined in the pricing schedule included in the report prepared by Rennie and attached to the Confidential Supplement (the "**Minimum Prices**").

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

31. As contemplated by the Amended Sale Process Order, the Monitor executed and filed a fifth amendment to the disclosure statement with the BCFSA, for and on behalf of the Developer, on November 25, 2025.

32. Consistent with the Cease Marketing Undertaking, the Monitor caused the Developer to refrain from marketing the Eclipse Project between January 23, 2025, and November 25, 2025. In that time, the BCFSA did not request any further undertakings nor the earlier filing of a disclosure statement amendment.

F. The Monitor's Efforts to Complete the Eclipse Project

33. Throughout these proceedings, the Monitor has taken extensive steps, and drawn approximately $18,661,750 pursuant to the Interim Financing Term Sheet as of May 1, 2026, to advance the construction and completion of the Eclipse Project. Such steps have included, among other things, reinstating both the 1-2-5-10 home warranty insurance on the common property and Eclipse Units (the "**New Home Warranty**") and the building permit for the Eclipse Project (the "**Building Permit**"), retaining various critical trades and vendors and filing a strata plan for the Eclipse Project (the "**Strata Plan**").

34. As a result of the Monitor's substantial efforts and Brasfield Builders Limited's assistance, construction of the Eclipse Project was deemed substantially complete on or about March 17, 2026, and an occupancy permit was issued on April 10, 2026 (the "**Occupancy Permit**").

35. In addition to the first notice issued by the Monitor on January 11, 2025, the Monitor has also provided various updates to Presale Purchasers regarding the status of construction and completion of the Eclipse Project throughout these proceedings, including:

(a) advising by a notice dated June 9, 2025, that: (i) the New Home Warranty and the Building Permit had been reinstated; (ii) substantial completion of the Development was expected within five to six months, subject to typical construction variables; and (iii) the Presale Agreements remained valid and enforceable and could not be terminated or rescinded absent the prior written consent of the Monitor or leave of the Court;

(b) advising by a notice dated September 18, 2025, that: (i) the Eclipse Project remained on track for substantial completion in December 2025, subject to typical construction variables; (ii) the Presale Agreements could not be terminated or rescinded absent the prior written consent of the Monitor or the Court; and (iii) the

Monitor intended to seek an order authorizing the Monitor, on behalf of the Developer, to transfer each Purchased Unit (as defined below) free and clear of claims and encumbrances;

(c) advising by notice dated November 24, 2025, that: (i) construction of the Development remained active and was progressing well; (ii) the Monitor had engaged the Sales Agent to manage completion support for all Presale Purchasers; and (iii) the Monitor, for and on behalf of the Vendor, was exercising the option to extend the outside date of all Presale Agreements to August 24, 2026; and

(d) advising by notice dated March 31, 2026, that: (i) subject to the full registration of the Strata Plan and the issuance of the Occupancy Permit, Purchased Unit completions were expected to begin on or around April 24, 2026; and (ii) the Monitor intended to seek the Approval and Vesting Order (as defined below) on April 8, 2026.

G. The Monitor's Efforts to Close the Purchased Units

36. In anticipation of the issuance of the Occupancy Permit and to facilitate the closing of the Eclipse Units and the distribution of the proceeds thereof, the Monitor obtained the following orders on April 8, 2026:

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

(i) authorizing the Monitor to sell, pursuant to any Presale Agreements or any sale agreements (each, a "**New Sale Agreement**") arising from the Amended Sale Process that satisfy the Sale Conditions (each such New Sale Agreement or Presale Agreement being a "**Sale Agreement**"), any and all of the strata lots that comprise the lands described in Schedule "B" to the Approval and Vesting Order, including all fixtures and chattels, in each case, as designated and described in the applicable Sale Agreement (each, a "**Purchased Unit**"), and to partially assign the parking and storage lease with respect to any parking stalls and/or storage lockers in connection therewith;

(ii) upon delivery by the Monitor to the applicable purchaser(s) (each, a "**Purchaser**") of a certificate substantially in the form attached as Schedule "C" to the Approval and Vesting Order (in each case, the "**Monitor's Certificate**"), vesting the Purchased Unit described in such Monitor's Certificate in such Purchaser(s) free and clear of any and all claims and encumbrances; and

(iii) authorizing and directing Richards Buell Sutton LLP to release and transfer all deposits and interest thereon currently held in trust by it, as trustee or stakeholder, in connection with the Presale Agreements to Bennett Jones LLP, in trust; and

(b) an order (the "**Distribution Order**"), among other things, authorizing and directing the Monitor and its counsel and other agents to make or cause to be made, for and on behalf of the applicable Debtors, one or more distributions, payments or adjustments, as applicable from the purchase price paid for each Purchased Unit approved pursuant to the Approval and Vesting Order, any interest earned on the deposits paid by the applicable Purchaser(s) of each Purchased Unit, and any deposit forfeited by any Purchaser(s) party to a Sale Agreement, free and clear of all claims and encumbrances, subject to such holdbacks as the Monitor considers necessary or appropriate to satisfy the Debtors' incurred and estimated post-filing obligations and any claims that rank in priority to the Charges, and to fund these proceedings.

37. Following the issuance of the Approval and Vesting Order and the Occupancy Permit, the Monitor caused completion notices to be delivered to certain Presale Purchasers beginning April 11, 2026, in accordance with the Presale Agreements. As of May 1, 2026, sixty-six (66) Purchased Units have closed.

38. Provided the Purchased Units close as and when intended, the proceeds are anticipated to be sufficient to satisfy the obligations under the Interim Financing Term Sheet, the First KingSett Loan and the Deposit Protection Facility. The Second KingSett Loan, however, is anticipated to

suffer a shortfall. No recovery is anticipated for subordinate claims, including claims secured by the Collateral Mortgages and lien claims.

39. Having regard to the deterioration in the real estate market in Burnaby, BC since the execution of the Presale Agreements, the Court-approved Minimum Sale Prices, the Developer's contingent liability under the Westmount Mortgage, and the interest expense and costs associated with protracting these proceedings, the failure to close Purchased Units is expected to materially exacerbate the losses suffered by the Debtors' creditors.

H. The Applicants and Their Applications

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

41. Counsel to the Monitor responded to each of the Initial Letters and advised, among other things, that:

(a) the Monitor was concerned that such Initial Letter and the allegations raised therein were veiled attempts to avoid the applicable Applicants' obligations under their respective Presale Agreements;

(b) the TARIO prohibits the commencement or continuation of any action, suit or proceeding in any court or tribunal against or in respect of the Debtors or affecting their business or property absent the prior written consent of the Monitor or leave of the Court;

(c) the TARIO stays and suspends the exercise of all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entity, against or in respect of the Debtors or the Monitor, or affecting the Debtors' business or property absent the prior written consent of the Monitor or leave of the Court; and

(d) the TARIO precludes all persons from accelerating, suspending, discontinuing, failing to honour, altering, interfering with, repudiating, terminating, rescinding or ceasing to perform any right, renewal right, contract, agreement, licence, authorization or permit in favour of or held by the Debtors, absent the prior written consent of the Monitor or leave of the Court.

42. The Monitor's counsel subsequently corresponded with counsel to the ATAC Applicants and the HG Applicants in advance of the Monitor's application for the Approval and Vesting Order. In the case of the HG Applicants, the Monitor's counsel delivered a letter dated March 27, 2026, among other things:

(a) reiterating the Monitor's view that the HG Applicants' ability to obtain a declaration under section 23 of REDMA that their respective Presale Agreements are unenforceable or to otherwise rely on section 23 of REDMA to avoid their respective obligations under such Presale Agreements is subject to the Stay of Proceedings and other protections granted under the TARIO;

(b) confirming that the Monitor had not consented, and did not intend to consent, to the exercise of any right or remedy that the HG Applicants may have under REDMA or the commencement of any proceeding to enforce any such right or remedy;

(c) advising that should the HG Applicants wish to rely on section 23 of REDMA, they must first seek leave of the Court to lift the Stay of Proceedings, which application for leave could be brought contemporaneously with an application for a declaration under section 23 of REDMA as to the enforceability of the HG Applicants' respective Presale Agreements; and

(d) noting that the Monitor would vigorously oppose any application that imperils the success of these proceedings to the detriment of the Debtors and their creditors.

43. Following the hearing of the Monitor's application for the Approval and Vesting Order, and the parties' agreement as to the appropriate time, forum and means of resolving the Applicants' asserted issues, the Applicants filed the within Applications.

44. The Applications refer to alleged breaches of REDMA that purportedly render the Applicants' Presale Agreements unenforceable. Substantially all such alleged breaches are based on events that preceded the commencement of these proceedings and were apparent by no later than January 6, 2025.

45. None of the Applicants seek to lift the Stay of Proceedings, despite being apprised of the Monitor's position as to its clear application to the relief sought.

46. As set out in the Seventh Report of the Monitor dated May 4, 2026 (the "**Seventh Report**"), the Monitor opposes the relief sought in the Applications for the following reasons, among others:

(a) in granting the Initial Order, this Court recognized the importance of providing parties, including the Debtors, the Monitor and KingSett (in its capacity as Interim Lender), with further certainty (in addition to the already broad Stay of Proceedings) as to the value destructive risk of the exercise of certain rights or remedies or the imposition of certain obligations under REDMA;

(b) the practical effect of the Applications is, notwithstanding the broad Stay of Proceedings granted by the Court, to permit the Applicants to terminate, repudiate, avoid, cease to perform or fail to honour their respective obligations under the Presale Agreements to the detriment of the Debtors and their creditors;

(c) the Presale Agreements represent a significant component of the value of the Eclipse Project and are expected to generate proceeds substantially above what could be achieved for the same units in the current market, which the HG Applicants agree has deteriorated;

(d) the marketing of unsold Eclipse Units will be, at best, challenging given current market conditions, existing inventory, purchaser financing constraints and the need to preserve market confidence in the Eclipse Project;

(e) KingSett is already expected to suffer a shortfall before accounting for any exposure under the Deposit Protection Facility, which will be exacerbated by reductions in the sale proceeds, delays in closings, and the increased interest,

professional, administrative and other costs that will invariably attend re-marketing any unsold Eclipse Units;

(f) the potential engagement of the Deposit Protection Facility would not create value for the Debtors' estates and would instead add claims, including indemnity claims against the Debtors, complexity, and delay;

(g) Presale Purchasers are expected to receive completed Eclipse Units in accordance with their respective Presale Agreements, with title conveyed through the Court-approved Approval and Vesting Order free and clear of claims and encumbrances (save and except for permitted encumbrances);

(h) notwithstanding that substantially all of the alleged breaches of REDMA were apparent by no later than January 2025, and despite being apprised of the Monitor's views as to the enforceability of the Presale Agreements as early as January 11, 2025, the ATAC Applicants and HG Applicants waited approximately 12 and 13 months, respectively, to assert that their Pre-Sale Contracts were unenforceable by the Developer and in that time, had the benefit of determining whether the real estate market would improve prior to electing to rely on section 23 of REDMA;

(i) completing the existing Presale Agreements is the best means of maximizing the value of the Debtors' property, while minimizing additional interest expense, professional fees, and carrying costs for Eclipse Units owned by the Debtors;

(j) the Monitor is not aware of any principled reason why the Applicants should receive different treatment from the Debtors' other stakeholders, who have and continue to be precluded from exercising rights and remedies (whether statutory, contractual or otherwise) against, or terminating, repudiating, ceasing to performing or failing to honour contracts with, the Debtors, pursuant to the Stay of Proceedings;

(k) as of May 1, 2026, the Monitor, for and on behalf of the Developer, had closed sixty-six (66) Presale Agreements; and

(l) granting the relief sought by the Applicants will undermine the Court-approved realization strategy, encourage further challenges to closings by other Presale Purchasers, resulting in additional value erosion, disrupt and destabilize these proceedings at a critical juncture, result in an event of default under the Interim Financing Term Sheet, and introduce uncertainty for the Debtors and their creditors, which have relied upon the numerous steps taken, and orders obtained in, these proceedings to date.

47. For these reasons and in considering the legal basis set out below in Part 5, the Monitor respectfully recommends that this Court dismiss the Applications and award the Monitor, for the benefit of the Debtors and their creditors, its costs of having to respond to the Applications.

Part 5: LEGAL BASIS

48. The Monitor relies on:

(a) the CCAA, REDMA, the *Interpretation Act,* R.S.C. 1985, c. I-21, as amended (the "**Interpretation Act**") and the *Supreme Court Civil Rules*, BC Reg. 241/2010 (the "**Rules**");

(b) the inherent and equitable jurisdiction of this Court; and

(c) such further and other legal basis as counsel may advise and this Court may allow.

A. Purpose and Application of Section 23 of REDMA

49. REDMA has two purposes. It (i) protects consumers by providing them with material information on a development and affords them certain remedies where a developer fails to provide full and plain disclosure and (ii) reduces the regulatory burden on developers by providing clear and consistent marketing rules while safeguarding the use of deposit monies.

Woo v Onni Ioco Road Five Development Limited Partnership, 2014 BCCA 76 at para 48 [*Woo*] citing to *Drake v North Ellis Developments Ltd.*, 2012 BCCA 256 at paras 37-38.

50. Section 23 of REDMA, being the provision relied upon by the Applicants, provides that "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]*". Section 23 goes on to provide two exceptions to this rule, being:

(a) where 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 the purchase agreement; or

(b) there was 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 filed in accordance with the timelines contemplated under subsections 23(2)(b)(i) and 23(2)(b)(ii).

REDMA, s 23.

51. Section 16 of REDMA, which falls under Part 2 *[Marketing and Holding Deposits]*, creates an obligation on developers to either file a new disclosure statement or an amendment that clearly identifies the failure to comply or the misrepresentation in one of two circumstances: (i) where a disclosure statement does not comply with REDMA or its regulations; or (ii) where the filed disclosure statement contains a misrepresentation.

REDMA, s 16;
Woo at paras 55-56.

52. A "misrepresentation" is defined under section 1 of REDMA as meaning either a "false or misleading statement of a material fact" or an "omission to state a material fact". An amendment to a disclosure statement is required if the failure to comply or the misrepresentation is in respect of a matter set out in subparagraph (a) of the definition of "material fact" under section 1 of REDMA, which states:

> "**material fact**" means, in relation to a development unit or development property, any of the following:
>
> (a) a fact, or a proposal to do something, that affects, or could reasonably be expected to affect, the value, price, or use of the development unit or development property;

REDMA, s 1;
Woo at para 57.

53. The Applicants complain that the Developer failed to comply with section 16 of REDMA by failing to immediately file an amendment to the disclosure statement with the superintendent after learning of, what they allege are, misrepresentations of material facts related to the Development. In particular, the Applicants assert that the following are material facts that ought to have been disclosed by the Developer through an amendment to the disclosure statement:

(a) on June 30, 2023, the Canada Revenue Agency obtained a judgment against Beta View for $11,996,763;[1]

(b) by October 31, 2024, WBI Home Warranty Ltd. suspended the Developer's new home warranty coverage due to arrears owing in connection with the warranty insurance and, as a result, on or about November 14, 2024, the City of Burnaby suspended the building permit for the Development thereby halting construction;[2] and

(c) by April 15, 2025, the last construction completion date range between January 15, 2025 and April 15, 2025, as stated in the fourth amendment to the disclosure statement dated December 3, 2024, had passed.[3]

54. The HG Applicants also allege that in or around September 2024, the Developer misappropriated funds by obtaining cash in lieu of certain letters of credit commitments from the City of Burnaby which ought to have been used to paydown the indebtedness to KingSett.[4] The HG Applicants rely on the allegations contained in the First Pollack Affidavit to assert that this

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[1] See HG Application, Part 2, at paras 48-54; ATAC Application, Part 2, at para 12.
[2] See HG Application, Part 2, at paras 58-65; ATAC Application, Part 2, at para 12, 17-19.
[3] See HG Application, Part 2, at para 75; ATAC Application, Part 2, at paras 20-23.
[4] See HG Application, Part 2, at paras 55-57.

was a material fact, which would have been relevant to them in deciding to enter into a Presale Agreement.

55. The ATAC Applicants allege that the following are material facts related to the Development that would have been relevant to their respective decisions to enter into the Presale Agreements:

(a) the Developer made false representations to the ATAC Applicants prior to entering into the Presale Agreements that the Development would have a construction window of 3.5 years with an estimated completion date between December 1, 2024 and March 1, 2025;[5]

(b) the first amendment to the disclosure statement dated June 17, 2022, increased monthly strata fees for the Eclipse Unit from the original amount;[6]

(c) the Developer altered the physical plans for a balcony on the development unit being purchased by one of the ATAC Applicants, Mr. Chung Hei Wong, which prompted Mr. Wong to try and rescind his Presale Agreement in June 2023;[7]

(d) the Developer did not provide the second amendment to the disclosure statement dated May 24, 2024 to the ATAC Applicants within a reasonable time until on or about September 20, 2024;[8] and

(e) the Monitor was appointed as monitor of the Developer in these proceedings on January 8, 2025, and was granted control of the Development, but did not file an amendment to the disclosure statement until November 25, 2025.[9]

56. The Monitor's position with respect to these alleged breaches of REDMA is as follows:

(a) regarding the alleged delay to the construction completion date, the Monitor gave an undertaking to the Superintendent on January 23, 2025, that it would cease all

[5] See ATAC Application, Part 2, paras 25-28.
[6] See ATAC Application, Part 2, paras 35-36.
[7] See ATAC Application, Part 2, paras 37-38; see also Affidavit No. 1 of Chung Hei Wong, made April 7, 2026, at paras 8-11, Exhibit "C".
[8] See ATAC Application, Part 2, paras 29-30.
[9] See ATAC Application, Part 2, paras 31-34.

marketing of the development and would not resume marketing until after a disclosure statement amendment was filed (which it did on November 25, 2025), the TARIO expressly granted the Monitor certain relief from complying with REDMA during the Stay Period, and the BCFSA requested nothing further from the Monitor despite the breadth of its powers under section 36 of REDMA;

(b) regarding the appointment of the Monitor and the allegation that this constituted a change of control, paragraph 11 of the TARIO provides a complete response. Pursuant to the TARIO, during the Stay Period, the Monitor is not required to file a new disclosure statement under subsection 16(2) of REDMA nor take any steps that would otherwise trigger a purchaser's right of recission under REDMA, which in ordinary circumstances might include "the appointment, in respect of the developer, of a receiver, liquidator or trustee in bankruptcy, or other similar person acting under the authority of a court" per subparagraph (c) of the definition of "material fact" under section 1 of REDMA;

(c) the additional ground raised by the ATAC Applicants with respect to the increased monthly strata fees is not a material fact that would afford purchasers any remedies under Division 1 of Part 3 of REDMA, as the ATAC Applicants readily admit that the Developer filed an amendment to the disclosure statement on June 17, 2022, which disclosed the estimated interim budget for the Strata Corporation, as required by REDMA, and provide no evidence that the Developer failed to disclose the estimated strata fees in a timely manner;

(d) the additional ground raised by the ATAC Applicants with respect to the alterations of the physical plan of a development unit purchased by Mr. Wong is not a material fact that would afford purchasers any remedies under Division 1 of Part 3 of REDMA and, in any event, the Developer's disclosure statement of September 24, 2021, expressly stipulated at Section 2.1(e) that "the proposed layout, dimensions, areas, lot lines, configuration and location of the Development and its components shown on the Preliminary Strata Plan, and in any sales brochures, drawings, renderings, plans, presentation centre, or other materials regarding the

Development are provided for information purposes only, are subject to revision by the Developer in its sole discretion, and are not represented as being the actual final layout, areas, lot lines, dimensions, configuration or location of the Development and its components"; and

(e) in further response to those alleged misrepresentations above, and in response to all other alleged misrepresentations of a material fact, even if the Debtors were aware of those misrepresentations, which the Monitor does not admit but recognizes that this Court may find:

(i) section 11.02 of the CCAA authorizes this Court to stay the exercise of rights, remedies or conduct impairing a restructuring of the Debtors and it is not appropriate to lift the Stay of Proceedings in the circumstances;

(ii) section 11 of the CCAA specifically authorizes this Court to grant relief from, and override, other statutes such as REDMA, which it has already done in these proceedings; and

(iii) section 23 of REDMA conflicts with section 11.02 of the CCAA and the TARIO such that the doctrine of federal paramountcy must apply thereby rendering section 23 of REDMA inoperative to the extent of its incompatibility.

TARIO, at paras 10-12, 16.
CCAA, s 11, s 11.02.
REDMA, s 1, s 16, s 23, s 36.
Seventh Report, s 5.1 at paras 3-6, s 6.0 at para 5.
Affidavit No. 1 of Karen Buquet made April 28, 2026, Exhibit "A" at para 58 [Buquet Affidavit].

57. The Monitor's position with respect to paragraph 56(e) above is set out in further detail below.

B. The Exercise of Rights or Remedies Under REDMA is Stayed

58. In granting the TARIO, this Court exercised its jurisdiction under sections 11 and 11.02 of the CCAA to, among other things, prohibit the commencement or continuation of any "action, suit

or proceeding", and the exercise of "all rights and remedies" against or in respect of Debtors or affecting their business or property and "any rights and remedies of purchasers to rescind pre-sale contracts", and enjoin all persons from failing to honour, repudiating, terminating, rescinding or ceasing to perform any contract or agreement held by any of the Debtors.

TARIO, at paras 10-12, 16.
CCAA, s 11, s 11.02.

59. Sections 11 and 11.02 squarely authorize this Court to stay and enjoin any right or remedy, whether statutory, contractual or otherwise, against a debtor company or affecting its business or property, held by any creditor or third party, and prohibit conduct that could imperil a restructuring.

(i) Section 11.02 of the CCAA Authorizes Courts to Stay the Exercise of Rights and Remedies and Conduct Impairing the Restructuring

60. The stay of proceedings under section 11.02 of the CCAA is the primary tool that "allows the *CCAA* to achieve its restructuring objective". It is therefore interpreted purposively, having regard to the CCAA's remedial objectives. Namely, to provide "for timely, efficient and impartial resolution of a debtor's insolvency", afford a debtor "breathing room during which to negotiate with its creditors", preserve and maximize "the value of a debtor's assets", prevent "any creditors from gaining an advantage" or maneuvering "for positioning", and ensure the "fair and equitable treatment of the claims against a debtor".

Interpretation Act, s 12.
Montréal (City) v Deloitte Restructuring Inc., 2021 SCC 53 at paras 54-55 [*Montréal City*].
Century Services Inc. v Canada (Attorney General), 2010 SCC 60 at para 15 [*Century Services*].
9354-9186 Québec inc. v Callidus Capital Corp., 2020 SCC 10 at para 40 [*Callidus*].
Canwest Global Communications Corp. (Re), 2009 CanLII 70508 (ON SC) at para 28 [*Canwest*].
Canadian Airlines Corp. (Re), [2000] A.J. No. 1692 at paras 17-19 [*Canadian Airlines*].
Canwest Global Communications Corp., 2010 ONSC 3530 at para 30.
Re Xinergy Ltd., 2015 ONSC 3699 at para 32.

61. As the Supreme Court of Canada recognized in *Montréal (City) v Deloitte Restructuring Inc.*, Courts have taken a "large and liberal approach in interpreting the scope of the rights and remedies that can be included in a stay order". The term "remedy" covers "any kind of attempt at recovery, judicial or extrajudicial", "any remedial right" and the "means by which a right is

enforced or the violation of a right is prevented, redressed or compensated". The term "proceeding" captures any step to "be taken vis-à-vis the insolvent company for a creditor to enforce its rights", which may include "judicial and extrajudicial debt-collection steps."

Montréal City at para 55.
Re Blade Energy Services Corp, 2024 ABKB 100 at para 14 [*Blade*].
Re Nortel Networks Corporation, 2010 ONSC 1304 at paras 37-42 [*Nortel Networks*].
Re Air Canada, [2003] 28 CBR (5th) 52 at para 12 [*Air Canada*].

62. By rendering a purchase agreement unenforceable "against the purchaser by a developer who has breached any provision of Part 2", section 23 unequivocally provides a "right" or "remedy" in favour of purchasers to prevent or redress a developer's breach of Part 2 of REDMA. Whether characterized as a "statutory shield" or "sword", the practical effect of section 23 of REDMA, if invoked, is clear: it renders executory Presale Agreements unenforceable (and not void), thereby permitting Presale Purchasers to elect to either perform, or to fail to honour, cease to perform or repudiate, their obligations thereunder. All Pre-Sale Purchasers, including the Applicants, are therefore precluded from relying on section 23 of REDMA.

REDMA, s 23.
Blade at para 14.
Nortel Networks at paras 37-42.
Woo at para 36.

63. The narrow interpretation of the terms of the TARIO advanced by the Applicants (which should be rejected), does not, in any event, address that stays of proceedings granted under section 11.02 of the CCAA also extend to "conduct which could seriously impair" a debtor company's ability to effectuate a restructuring.

Montréal City at para 54.
Campeau v Olympia & York Developments Ltd., [1992] O.J. No. 1946 at para 20.
Chef Ready Foods Ltd. v Hongkong Bank of Canada, [1990] B.C.J. No. 2384 (C.A.) at paras 10-11.
Stelco Inc. (Re), [2005] O.J. No. 4733 (C.A.) at para 18.
Re Timminco Limited, 2012 ONSC 2515 at para 15 [*Timminco*].
Air Canada, Re, [2004] 47 CBR (4th) 177 at para 6.

64. As explained in the Seventh Report and herein, the effect of permitting Presale Purchasers, including the Applicants, to rely on section 23 of REDMA in the circumstances are profound.

Value-maximizing Presale Agreements will be converted into unsold Eclipse Units that must be remarketed in the context of a challenging market and insolvency – exacerbating the costs and length of, and losses to be incurred in, these proceedings to the significant detriment of the Debtors and their creditors. At the same time, the Debtors will be required to face indemnification claims from the Surety, an event of default under the Interim Financing Term Sheet, and further attempts by Presale Purchasers to avoid their obligations under the Presale Agreements.

Seventh Report, s 6.0 at paras 7-8, s 6.1 at paras 1-5, 6.2 at paras 1-2, s 6.4 at paras 1-2.
Buquet Affidavit, Exhibit "A" at para 16.

65. Exceptions to the stay of proceedings under section 11.02 of the CCAA "must be read restrictively in order to achieve its remedial purpose." The Applicants have identified no such exception. Rather, the HG Applicants baldly contend that closing the Presale Agreements is unlawful and "there is no enforceable Pre-Sale Agreement for the Applicants to terminate, perform, or fail to honour".[10] The former assumes the conclusion it seeks to establish and, like the latter, conflates contracts that are void or void *ab initio* with contracts that are unenforceable, which are "valid in all respects except that one or both parties cannot be sued on the contract."

Chambers v Pennyfarthing Dev. Corp., [1985] 20 DLR (4th) 488 at para 127.
Re Teal-Jones Group, 2025 BCSC 919 at para 23 [*Teal-Jones*].

66. Section 23 of REDMA does not prohibit purchasers from electing to affirm purchase contracts to which they are party. It protects purchasers by providing a means of redress and avoiding their contractual obligations where a breach by a developer of Part 2 of REDMA is established. Both the election to avoid such obligations and the steps required to establish the requisite breach are, for the reasons set above, subject to the Stay of Proceedings.

(ii) Section 11 of the CCAA Authorizes Courts to Grant Relief From, and Override, Other Statutes and to Permanently Interfere with the Rights of Third Parties

67. The CCAA vests Courts with jurisdiction to temporarily or permanently interfere with, and override, the rights of third parties, whether statutory, contractual or otherwise, where doing so

[10] See HG Application, Part 3, at para 98.

furthers the CCAA's remedial purposes. This is routinely done when imposing a stay or granting a release pursuant to section 11 of the CCAA.

CCAA, s 11.
Norcen Energy Resources v Oakwood Petroleum Limited, 1988 CanLII 3560 (AB KB) at para 52 [*Norcen*].
Pacific National Lease Holding Corporation, 1992 CanLII 427 (BC CA) at para 28 [*Pacific National*].
Re Collins & Aikman Automotive Canada Inc., [2007] O.J. No. 4186 at para 42 [*Collins*].
Re Nortel Networks Corp., 2009 ONCA 833 at para 44 [*Nortel*].
Luscar Ltd. v Smoky River Coal Ltd., 1999 ABCA 179 at para 60 [*Luscar*].

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

CCAA, s 11.
Callidus, at paras 47-50.
Canada v Canada North Group Inc., 2021 SCC 30 at para 21 [*North Group*].
Re San Industries, 2025 BCSC 645 at para 34.

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

Callidus at paras 40-44, 48-51.
Century Services at para 70.
North Group at paras 21, 24.

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

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

71. In furtherance of the CCAA's remedial objectives and the doctrine of federal paramountcy (which is discussed in detail below), Courts, including this Court, have previously exercised their discretion under present and former section 11 of the CCAA to grant relief from, and override, the provisions of REDMA and other provincial and federal statutes. In so doing, Courts have "ensured that the *CCAA* is given a liberal construction to fulfill its broad purpose and to prevent this purpose from being neutralized by other statutes".

CCAA, s 11.
North Group at paras 4, 21, 24, 27-28, 31.
Pacific National at para 28.
Collins at paras 42, 87.
Nortel at para 47.
TARIO, at para 11
Pacific National Lease Holding Corp. v Sun Life Trust Co., 1995 CanLII 2575 (BC CA) at paras 26-29, 41 [*Pacific National 2*].
Re Sulphur Corp. of Canada, 2002 ABQB 682 at paras 37-38.
Re Jameson House Properties Ltd., 2009 BCSC 964 at paras 22, 33-34 [*Jameson*].
Sun Indalex Finance, LLC v United Steelworkers, 2013 SCC 6 at para 60 [*Indalex*].
Bank of Montreal v No. 249 Seabright Holdings Ltd., 2014 BCSC 1094 at para 35.
Re Freedom Cannabis Inc., 2025 ABKB 272 at paras 15-17, 22, 24, 26.
SR Telecom & Co. v Apex - Micro Manufacturing Corporation, 2008 BCSC 1768 at paras 33, 38, 43-44 [*SR Telecom*].
Re Hayes Forest Services Limited, 2009 BCSC 1169 at paras 22-30 [*Hayes Forest*].
Skeena Cellulose Inc. v Clear Creek Contracting Ltd., 2003 BCCA 344 at para 50 [*Skeena*].
KingSett Mortgage Corporation v 6511 Sussex Heights Development Ltd. (April 17, 2026), Vancouver, S-261991 (Order), BCSC at para 11.

72. In *Pacific National Lease Holding Corporation*, for instance, the British Columbia Court of Appeal heard an appeal from an order of a CCAA judge that, among other things, stayed any proceedings that could be brought by the debtor companies' employees to compel payment of statutory severance payments. The employees sought leave to appeal the order to require the debtor companies to comply with their statutory obligations, including under the *Employment Standards Act*, S.B.C. 1979, c.10. The Court of Appeal dismissed the leave application and, noting that the CCAA is meant to serve a broad constituency of investors, creditors and employees, concluded that recognizing a stay of proceedings "may inevitably conflict with provincial legislation, but the broad purpose of the CCAA must be served."

Pacific National at paras 19-22, 26-28.

73. The Ontario Court of Appeal in *Sproule v Nortel Networks Corporation* ("***Nortel***"), similarly held that former employees of a group of debtor companies could not enforce payment obligations under the *Employment Standards Act, 2000*, S.O. 2000, c. 41 ("**ESA**"), and that a stay under the CCAA is a "clear example" of a situation where Courts can freeze contractual and statutory obligations.

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

74. *In SR Telecom & Co. v Apex – Micro Manufacturing Corporation*, this Court considered an application from a CCAA debtor company for an order requiring the defendant to return certain telecommunications equipment to it. The defendant claimed that it had acquired a security interest in the subject property and had a right to follow its security under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 (the "**PPSA**"). This Court concluded that the CCAA gives broad latitude to intrude on the affairs of companies under its protection, in priority over other legislation, operational or otherwise, including provincial legislation such as the PPSA, particularly where the debtor company would otherwise face irreparable harm.

SR Telecom, supra at paras 33, 38, 43-44.

75. Finally, in *Re Hayes Forest Services Limited* and *Skeena Cellulose Inc. v Clear Creek Contracting Ltd.* ("***Skeena***"), this Court and the Court of Appeal, respectively, considered whether the CCAA and the doctrine of paramountcy could operate to resolve conflicts with the *Forest Act,* R.S.B.C. 1996, c. 157, and in both decisions concluded that the CCAA provides the court with jurisdiction to decide a contractual dispute despite any provincial statutory authority and/or the terms of that contract.

Hayes Forest, supra at paras 22-30.
Skeena, supra at para 50.

76. In addition to interfering with and overriding the provisions of provincial statutes, it is settled law that CCAA courts can interfere with the contractual rights of non-creditor third parties where doing so promotes the purposes of the CCAA. In this regard, *Norcen Energy Resources v Oakwood Petroleum Limited* ("***Norcen***") and *Luscar Limited v Smoky River Coal Limited* "***Luscar***") are illustrative.

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

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

Norcen at para 52.
See also *Re T. Eaton Co.*, [1997], 46 C.B.R. (3d) 293 at para 6.

78. Here, the stated purpose of these proceedings at inception was to stabilize the Debtors' operations and management, secure necessary interim financing, complete the Development's construction, and ensure the Presale Agreements can be closed as intended, for the benefit of the Debtors and their stakeholders, including the Applicants. To allow the Applicants to avoid their Presale Agreements in breach of the TARIO would cause irreparable harm and prevent these purposes from being realized, imperiling the success of these proceedings. The "relatively short period of time" referred to in *Norcen* is the amount of time the Stay of Proceedings must remain in place to realize the objectives of these proceedings, which are now well-advanced.

Seventh Report, s 1.0 at para 2, s 6.0 at paras 7-8, s 6.1 at paras 1-5, 6.2 at paras 1-2, s 6.4 at paras 1-2.
Pollack Affidavit, at paras 9, 56.
Pre-Filing Report of the Proposed Monitor dated January 7, 2025, s 1.0 at para 3.

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

Norcen at para 44.

80. In *Luscar*, the Alberta Court of Appeal, affirming *Norcen*, considered whether to stay a dispute resolution provision in favour of arbitration under a shareholders agreement, and whether in doing so the Court would alter permanently the contractual rights of a non-creditor. The Court of Appeal concluded that the language of former section 11 of the CCAA permitted such an order, observing, in relevant part, as follows:

> the language of s. 11(4), considered in the context of the *CCAA's* purpose, authorizes the order made by the chambers judge.
>
> [...]
>
> The language of s. 11(4) is very broad. It allows the court to make an order "on such terms as it may impose". Paragraphs (a), (b) and (c) empower the court order to stay "all proceedings taken or that might be taken" against the debtor company; restrain further proceedings "in any action, suit or proceeding" against the debtor company; and prohibit "the commencement of or proceeding with any other action, suit or proceeding" (emphasis added). These words are sufficiently expansive to support the kind of discretion exercised by the chambers judge.
>
> This interpretation is supported by the legislative objectives underlying the *CCAA*.

Luscar at paras 47, 49-52, 54, 72.
See also *Re Playdium Entertainment Corp.*, 2001 CanLII 28282 (ON SC) at paras 19-24, 26-34.

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

CCAA, s 11, 11.02.
Jameson at paras 22, 33-34.

82. Having regard to the foregoing, this Court undoubtedly had, when granting the Initial Order, the ARIO, the SARIO and the TARIO, and maintains, the jurisdiction under sections 11 and 11.02 of the CCAA, to grant the Stay of Proceedings and enjoin all persons from failing to honour, repudiating, terminating, rescinding or ceasing to perform any contract or agreement held by any of the Debtors, regardless of whether such relief interferes with or overrides section 23 of REDMA.

C. The Applicants Have Failed to Seek to Lift the Stay of Proceedings

83. Despite the undeniably broad scope and unambiguous terms of the TARIO, the Applicants do not seek to lift the Stay of Proceedings. Instead, they assert that section 23 of REDMA operates as a "shield" exempt from the Stay of Proceedings and the TARIO, and rely on specific terms of the TARIO to restrict the breadth of its general (and model order) provisions.[11]

Model *Companies' Creditors Arrangement Act* Initial Order issued August 1, 2015.

84. The Applicants' unduly narrow interpretation of the Stay of Proceedings and the TARIO is untenable and contrary to the "large and liberal approach in interpreting the scope of the rights and remedies that can be included in a stay order" endorsed by the Supreme Court of Canada. Whether framed as a "shield" or a "sword", the step of invoking section 23 of REDMA and its practical consequences – permitting Presale Purchasers to fail to honour, cease to perform or repudiate their obligations under the Presale Agreements, crystalizing indemnification claims against the Debtors and jeopardizing the success of these proceedings – are squarely within the ambit of the Stay of Proceedings and prohibited by the TARIO. Leave of this Court to invoke section 23 of REDMA is required.

Interpretation Act, s 12.
Montréal City at para 54-55.
Teal-Jones at paras 21-23.
TARIO, at paras 10-12, 16.

[11] See HG Application, Part 3, at paras 96-97.

D. It is not Appropriate to Lift the Stay of Proceedings

85. It is neither appropriate nor in the interests of justice to lift the Stay of Proceedings.

86. As noted above and held by both the Supreme Court of Canada and this Court, the "stay of proceedings is, at the very core of protections, offered by the *CCAA*" – it is the "primary tool that allows the *CCAA* to achieve its restructuring objectives". Accordingly, lifting the stay of proceedings is far from routine.

Montréal (City) at para 46.
Teal-Jones at para 22.
Nortel at para 16.
Re Bellatrix Exploration Ltd, 2020 ABQB 809 at para 67 [*Bellatrix*].

87. There is a "very heavy onus" on the moving party to establish that there are "sound reasons" for lifting the stay of proceedings consistent with the CCAA's objectives, having regard to the relative prejudice to the parties, the balance of convenience and, where relevant, the merits of the moving party's claim.

Bellatrix at para 65.
Canadian Airlines at paras 15-19.
Canwest at paras 28, 32.
Timminco at paras 15-17.
Re Azure Dynamis Corp., 2012 BCSC 781 at para 5 [*Azure*].
Re Wallace & Carey Inc., 2025 ABKB 750 at paras 55-56 [*Wallace*].

88. The circumstances in which the relative prejudice experienced by the parties and the balance of convenience may militate in favour of lifting the stay of proceedings include where:

(a) the plan is likely to fail;

(b) the moving party establishes hardship caused by the stay;

(c) the moving party demonstrates necessity for payment;

(d) the moving party would be significantly prejudiced by the refusal to lift the stay and there would be no resulting prejudice to the debtor company or the positions of creditors;

(e) it is necessary to permit the moving party to take steps to protect a right that could be lost by the passage of time;

(f) after the lapse of a significant period, the debtor is no closer to a proposal than at the commencement of the stay period;

(g) there is a real risk that the moving party will become unsecured during the stay period;

(h) it is necessary to allow the moving party to perfect a right that existed prior to the commencement of the stay period; and

(i) it is in the interests of justice to do so.

Azure at para 6.
Wallace at para 56.
Canwest at para 33.
Canadian Airlines at para 20.

89. Courts, including this Court, have determined that the CCAA's remedial objectives would not be served, and have thus declined to exercise their discretion to lift the stay of proceedings, where:

(a) lifting the stay of proceedings is prejudicial to the debtor's ongoing restructuring efforts;

(b) lifting the stay of proceedings is prejudicial to creditors and other stakeholders;

(c) the debtor's restructuring efforts are progressing; and

(d) the moving party is not prejudiced by the continued operation of the stay, or any prejudice experienced by the moving party is shared by other stakeholders.

Azure at paras 7-30.
Canadian Airlines at paras 21-32.
Bellatrix at paras 69-75.
Wallace at paras 59-124.
Re 505396 B.C. Ltd., 2013 BCSC 1580 at para 22.

Hazelton Development Corporation (February 22, 2024), Toronto, CV-22-00679931-00CL (Endorsement) (ONSC) at paras 15-22.

90. The Applicants have not, and cannot, establish sound reasons for lifting the Stay of Proceedings. There are numerous compelling reasons for declining to do so.

91. First, as a discretionary decision, an order to lift the Stay of Proceedings must further the purposes of the CCAA and be informed by the baseline considerations of good faith and due diligence. Here, lifting the Stay of Proceedings would detract from (rather than further) the CCAA's purposes and countenance a remarkable lack of diligence.

Callidus at paras 40, 46, 49.
Montréal (City) at paras 48, 50.
Seventh Report, s 5.2 at para 1, s 6.0 at paras 7-8, s 6.1 at paras 1-5, 6.2 at paras 1-2, s 6.4 at paras 1-2.
Buquet Affidavit, Exhibit "A" at paras 62-63, 65, 68, 70, 77, 82.

92. As discussed previously, the exercise of the right or remedy conferred under section 23 of REDMA, will subvert, rather than advance, the CCAA's remedial purposes. Indeed, if such right or remedy is permitted to be exercised, the Debtors' insolvency will be protracted, the breathing room afforded to the Debtors will be significantly disrupted, and creditor recoveries will be eroded. Each such result is inconsistent with the CCAA's purposes of providing "for [the] timely, efficient and impartial resolution of a debtor's insolvency", affording a debtor "breathing room during which to negotiate with its creditors", and preserving and maximizing "the value of a debtor's assets".

Callidus at paras 40-42.
Canadian Airlines at paras 17-19.
Air Canada at para 12.
Seventh Report, s 6.0 at paras 7-8, s 6.1 at paras 1-5, 6.2 at paras 1-2, s 6.4 at paras 1-2.

93. The baseline consideration of due diligence further militates against lifting the Stay of Proceedings. As the Supreme Court of Canada explained in *9354-9186 Québec inc. v Callidus Capital Corp.* ("***Callidus***"), the "due diligence consideration discourages parties from sitting on their rights" and recognizes that a "party's failure to participate in *CCAA* proceedings in a diligent and timely fashion can undermine these procedures and, more generally, the effective functioning

of the *CCAA* regime". CCAA proceedings "move quickly and require diligent engagement by the Court and all stakeholders", who should be discouraged from "lying in the weeds" or waiting to see how they unfold.

Callidus at para 51.
Wallace at paras 102-103.
Enron Canada Corp. v National Oil-Well Canada Ltd., 2000 ABCA 285 at para 18.
Re Delta 9 Cannabis Inc., 2025 ABKB 52 at paras 88, 138-140.
See also *Taber Water Disposal Inc. (Re)*, 2024 ABKB 680 at paras 29-34.
CCAA, s 18.6.

94. Despite having been apprised since January 2025 of these proceedings, the Monitor's intention to complete the Development and close the Presale Agreements, and the Monitor's consistent position on their enforceability, the Applicants took no steps in these proceedings and did not seek directions from this Court or to vary or appeal the Initial Order, the ARIO, the SARIO or the TARIO. Rather, the Applicants waited approximately one year, after the Interim Financing Facility was substantially funded and these proceedings were well-advanced, to assert any rights or remedies. Given that section 23 of REDMA renders purchase agreements unenforceable (and not void), the only rational explanation for the Applicants' lack of diligence is that they wished to see whether the real estate market would rebound before resiling from their Presale Agreements. This strategic delay should not be condoned.

Seventh Report, s 5.2 at para 1, s 6.1 at paras 1-5, s 6.4 at paras 1.
Buquet Affidavit, Exhibit "A" at paras 62-63, 65, 68, 70, 77, 82.

95. Second, the relative prejudice to the parties overwhelmingly favours the Debtors and their creditors. If this Court declines to lift the Stay of Proceedings, the Applicants will receive what they bargained for – completed units in the Development – while retaining their rights to pursue damages under section 22 of REDMA (subject to the Stay of Proceedings). If, however, this Court lifts the Stay of Proceedings, the Debtors will face indemnification claims from the Surety and an event of default under the Interim Financing Term Sheet, and will be forced to relist the applicable Purchased Units in a deteriorating market during an insolvency proceeding in which interest exceeding $59,000 per day accrues. The resulting erosion in asset value and increase in cost and expense will materially prejudice the Debtors, and their creditors, who will already suffer a substantial shortfall.

REDMA, s 22.
Seventh Report, s 6.0 at paras 7-8, s 6.1 at paras 1-5, 6.2 at paras 1-2, s 6.3 at paras 1-3, s 6.4 at paras 1-2.

96. Third, the Applicants have provided no cogent evidence of the magnitude of the harm or loss they will suffer from the continuance of the Stay of Proceedings, or any explanation as to how such harm differs from that suffered by the Debtors' numerous other creditors and contractual counterparties – all of whom are equally prohibited from exercising their respective rights or remedies (whether contractual, statutory or otherwise) against, and enjoined from terminating, rescinding, repudiating or failing to honour their agreements with, the Debtors. The Applicants are positioned to receive exactly what they contracted for in the Presale Agreements.

Seventh Report, s 6.3 at paras 1-3, s 6.4 at para 1.

97. Fourth, lifting the Stay of Proceedings in the circumstances of this case would set a deeply concerning precedent for real estate insolvencies. Existing creditors and prospective interim lenders will have little certainty as to the enforceability of a debtor's existing presale agreements, while purchasers party to such agreements will be incentivized to lie in the weeds until the applicable completion date to determine the then-applicable value of their purchased units, and thereafter elect to complete or assign their presale agreement if the market has risen or assert that it has been rendered unenforceable if the market has declined. Such a result undermines the building block approach to Canadian insolvency proceedings and the predictability on which debtors, creditors and interim lenders rely.

Grant Forest Products Inc. v GE Canada Leasing Services Co., 2013 ONSC 5933 at para 124 [*Grant Forest*].
Re Target Canada Co., 2016 ONSC 316 at para 81.
In the Matter of a Plan of Compromise or Arrangement of Forme Development Group Inc. et al. (February 20, 2020), Toronto, CV-18-608313-00CL (Endorsement) (ONSC) at para 3(vi)(b).
The Vancor Group Inc v 2744364 Ontario Limited et al, 2025 ONSC 5925 at paras 57-59
2668602 Ontario Inc. v GWL Realty Advisors Inc., 2026 ONCA 96 at para 81.

E. Federal Paramountcy Renders Section 23 of REDMA Inoperative

98. The doctrine of federal paramountcy "resolves conflicts in the application of overlapping valid provincial and federal legislation". It dictates that when "the operational effects of provincial

legislation are incompatible with federal legislation, the federal legislation must prevail and the provincial legislation is rendered inoperative to the extent of the incompatibility."

Indalex at para 55.
Saskatchewan (Attorney General) v Lemare Lake Logging Ltd., 2015 SCC 53 at para 15 [*Lemare Lake*].
Alberta (Attorney General) v Moloney, 2015 SCC 51 at paras 16, 18 [*Moloney*].
Canadian Western Bank v Alberta, 2007 SCC 22 at para 69 [*Western*].

99. Federal paramountcy applies "either where a provincial and a federal statutory provision are in conflict and cannot both be complied with, or where complying with the provincial law will have the effect of frustrating the purpose of the federal law". As the Supreme Court of Canada made clear in *Sun Indalex Finance, LLC v United Steelworkers* ("***Indalex***"), federal paramountcy also applies to such conflicts arising between Court orders made pursuant to federal law and the provisions of provincial law. In either case, the focus of the analysis is on the "effect" or "substance" of the provincial law.

Indalex at paras 56, 60.
Lemare Lake at para 18.
Moloney at paras 18, 28.
Nortel at para 38.
Grant Forest at para 95.
Re Urbancorp Cumberland 2 GP Inc., 2020 ONCA 197 at para 45 [*Urbancorp*].

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

Moloney at paras 27-28.
Western at para 75.

101. Here, section 23 of REDMA conflicts with sections 11 and 11.02 of the CCAA and the TARIO granted thereunder and frustrates the purposes of the CCAA. The broad scope of the CCAA and the TARIO thus prevail and section 23 of REDMA is rendered inoperative.

REDMA, s 23.

CCAA, s 11, s 11.02.
TARIO, at paras 10-12, 16.
North Group at para 31.
Grant Forest at para 95.
Jameson at para 25.
Pacific National 2 at paras 26-27.

(i) Section 23 of REDMA Conflicts with Sections 11 and 11.02 of the CCAA and the TARIO

102. An operational conflict between a provincial and a federal statutory provision or an order granted pursuant thereto will exist where "compliance with both the federal and provincial law is impossible". Put differently, the operational conflict branch of the doctrine of federal paramountcy "requires that there be 'actual conflict' between the federal and provincial legislation", which "conflict arises 'where one enactment says 'yes' and the other says 'no', such that 'compliance with one is defiance of the other'".

Lemare Lake at paras 17-18.
Moloney at para 19.
Nortel at para 36.
M & D Farm Ltd. v Manitoba Agricultural Credit Corp., [1999] 2 SCR 961 at para 40.
407 ETR Concession Co. v Canada (Superintendent of Bankruptcy), 2015 SCC 52 at paras 24-25 [*407*].

103. In *Indalex*, the Supreme Court of Canada considered the operational conflict branch of federal paramountcy in the context of proceedings under the CCAA. Namely, whether an amended and restated initial order granting a charge under section 11.2 of the CCAA securing debtor-in-possession financing in priority to "all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise" was in direct conflict with, and therefore prevailed over, the deemed trust established under subsections 57(4) of the *Pension Benefits Act,* R.S.O. 1990, c. P.8 and 30(7) of the *Personal Property Security Act*, R.S.O. 1990. c. P.10. Applying federal paramountcy, Justice Deschamps resolved the conflict in favour of the terms of the amended and restated initial order, holding, in relevant part, that:

> compliance with the provincial law necessarily entails defiance of the order made under federal law. On the one hand, s. 30(7) of the *PPSA* required a part of the proceeds from the sale related to assets described in the provincial statute to be paid to the plan's administrator before other secured creditors were paid. On the other hand, the Amended Initial Order provided that the DIP charge ranked in priority to "all other security interests, trusts, liens, charges and encumbrances, statutory or

> otherwise" (para. 45). Granting priority to the DIP lenders subordinates the claims of other stakeholders, including the Plan Members. This court-ordered priority based on the *CCAA* has the same effect as a statutory priority. The federal and provincial laws are inconsistent, as they give rise to different, and conflicting, orders of priority. As a result of the application of the doctrine of federal paramountcy, the DIP charge supersedes the deemed trust. [*Emphases added*]

Indalex at para 60.
North Group at para 27.
Urbancorp at para 44.
Re Comstock Canada Ltd., 2013 ONSC 4756 at paras 126-127.

104. The Ontario Superior Court of Justice (Commercial List) was similarly required to consider the operational conflict branch of federal paramountcy in the context of proceedings under the CCAA in *Re Essar Steel Algoma Inc.* ("***Algoma***"). Specifically, whether the exclusive jurisdiction conferred on arbitrators to resolve grievances under collective agreements under sections 48 and 49 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Schedule A (the "**LRA**"), conflicted with an order to stay proceedings against a debtor company granted pursuant to sections 11 and 11.02 of the CCAA. Applying federal paramountcy, Justice Newbould resolved the conflict in favour of the provisions of the CCAA, holding, in pertinent part, that:

> Section 48 mandates a grievance arbitration procedure in collective agreements and provides that a decision is binding on the parties. Section 49 permits a request to the Minister to appoint an arbitrator whose decision will be binding on the parties. Sections 11 and 11.02 of the *CCAA* provide for an order to be made staying proceedings against the debtor company. These provisions permit the staying of grievance claims under a collective agreement. The two statutes are thus in conflict as one cannot comply with the one without violating the other. Thus under the doctrine of paramountcy, the *CCAA* provisions must prevail over sections 48 and 49 of the *Labour Relations Act*. [*Emphasis added*]

Re Essar Steel Algoma Inc., 2016 ONSC 1802 at para 33 [*Algoma*].

105. Here, as in *Indalex* and *Algoma,* the Stay of Proceedings granted pursuant to sections 11 and 11.02 of the CCAA, directly conflicts with section 23 of REDMA. Whether characterized as a "statutory shield" or "sword", section 23 of REDMA plainly confers a "right" or "remedy" the practical effect of which, if invoked, is clear. It permits Presale Purchasers to fail to honour, cease to perform or repudiate their obligations under the Presale Agreements and assert claims for the

return of their deposits as against the Surety, which claims are indemnified by the Debtors. The CCAA and the TARIO say "no" where REDMA says "yes".

CCAA, s 11, s 11.02.
REDMA, s 23.
TARIO, at paras 10-12, 16.

106. As Presale Purchasers cannot rely on section 23 of REDMA without contravening the TARIO, federal paramountcy dictates that sections 11 and 11.02 of the CCAA and the provisions of the TARIO granted thereunder, prevail.

(ii) Compliance with Section 23 of REDMA Frustrates the Purposes of the CCAA

107. Where there is no direct conflict between valid provincial and federal statutory provisions, the doctrine of paramountcy may still apply where complying with the provincial law has the effect of frustrating the purpose of the federal law and therefore, the intent of Parliament.

Moloney at para 25.
Lemare Lake at para 19.
Nortel at paras 37-38.

108. The CCAA is "remedial legislation in the purest sense." Its remedial purposes include, as noted previously, providing for the "timely, efficient and impartial resolution of a debtor's insolvency", affording a debtor "breathing room", preserving and maximizing "the value of a debtor's assets" and "maximizing creditor recovery", preventing "any creditors from gaining an advantage" or maneuvering "for positioning", and ensuring the "fair and equitable treatment of the claims against a debtor".

Interpretation Act, s 12.
Callidus at paras 40-42.
Canadian Airlines at paras 17-19.
Air Canada at para 12.

109. As the Supreme Court of Canada held in *Callidus*, the relative weight that the CCAA's different objectives "take on in a particular case may vary based on the factual circumstances, the stage of the proceedings, or the proposed solutions that are presented to the court for approval." Where, as in this case, a CCAA proceeding involves some form of liquidation or sale of a debtor's

assets or inventory, the "objective of maximizing creditor recovery from those assets may take centre stage".

Callidus at para 46.

110. Courts, including this Court in analogous circumstances, have previously applied the second branch of federal paramountcy in the context of stays of proceedings to prevent valid provincial legislation from subverting the CCAA's remedial purposes. Certain of these cases merit review.

111. In *Jameson*, this Court was asked to determine whether the Court had authority under former section 11 of the CCAA to preclude purchasers from exercising rights of rescission or asserting their respective presale contracts were unenforceable. While this Court was "not convinced" that REDMA conferred a right of rescission to such purchasers in the circumstances, it proceeded to consider whether the Court could "override the rights that the non-creditors purchasers may have under [REDMA]" pursuant to "the paramountcy doctrine". This Court concluded that it could.

Jameson at paras 21-22, 33.
Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, as in force from 2007-11-17 to 2009-09-17, s 11.

112. In determining that federal paramountcy permitted the Court to override the rights of presale purchasers under REDMA in *Jameson,* this Court reasoned, in pertinent part, as follows:

> It is clear that the relief from *REDMA* that is sought is directed squarely towards the successful restructuring of this enterprise. This is a fundamental purpose of the *CCAA*. Without the relief the arrangement proposed by the Petitioners and voted in favour of by close to 100% of the Creditors, in number and value, will fail. All of the unsecured Creditors and all but one of the secured Creditors will recover nothing. Set against that is, if this plan is approved, the purchasers will receive precisely what they bargained for.
>
> [...]
>
> > The jurisprudence which deals with the *C.C.A.A.* establishes two propositions: (a) first, this legislation is to be broadly interpreted so as to give a Supreme Court justice exercising jurisdiction a good deal of power

> and flexibility; and, (b) the *C.C.A.A.* will prevail should a conflict arise between this statute and another federal or provincial statute.

[...]

The next question is whether the *CCAA* enables the Court to grant the *REDMA* relief. That relief, if it is to be found, is contained in s. 11 of the statute. It provides as follows:

> 11. (1) Notwithstanding anything in the *Bankruptcy and Insolvency Act* or the *Winding-up Act*, where an application is made under this Act in respect of a company, the court, on the application of any person interested in the matter, may, subject to this Act, on notice to any other person or without notice as it may see fit, make an order under this section.

Subsection 4 provides:

> A court may, on an application in respect of a company other than an initial application, make an order on such terms as it may impose.

The section then goes on to outline the powers of the court to stay, restrain and prohibit either the continuation or the initiation of proceedings against the debtor filing company.

Section 11 was interpreted by the *Alberta Court of Appeal in Luscar Limited v. Smoky River Coal Limited*, 1999 ABCA 179, 175 D.L.R. (4th) 703. [...] Madam Justice Hunt observed that the language of s. 11 is very broad, allowing the court to make an order "on such terms as it may impose" and empowering the court to stay "all proceedings taken or that might be taken", restraining "further proceedings in any action, suit or proceeding" and prohibiting "the commencement of or proceeding with any other action, suit or proceeding." [...] Madam Justice Hunt held that these words were sufficient to give the CCAA judge in the case the authority to permanently affect the contractual rates of a non-creditor.

[...]

This was also recognized in *Clear Creek* by Madam Justice Newbury at para. 37 where she stated at para. 37:

> In the exercise of their "broad discretion" under the *CCAA*, it has now become common for courts to sanction the indefinite, or even permanent, affecting of contractual rights.

In *Re. Doman Industries Ltd.* (2003) BCSC 376 at paragraph 15, Mr. Justice Tysoe was quoted with approval the Reasons of Mr. Justice Spence in *Re Playdium Enterprises Corp.* (2001), 2001 CanLII 28282 (ON SC), 31 CBR (4th) 309. In that decision, Mr. Justice Spence observed that in interpreting s. 11(4) the court is to

take into account the remedial nature of the *CCAA*. Mr. Justice Tysoe agreed with his statement. He also expressed the view in para. 15 that:

> (T)he court has similar jurisdiction to grant a permanent stay surviving the restructuring of the debtor company in respect of events of default or breaches occurring prior to the restructuring.

[...]

In this case I conclude that if *REDMA* relief is required, the Court should exercise its discretion and grant it. [*Emphases added*]

Jameson, supra at paras 24-33.

113. In *Nortel*, the Ontario Court of Appeal affirmed the decision of Justice Morawetz (as he then was) to stay the payment of mandatory amounts owing by a debtor company under the ESA pursuant to the second branch of federal paramountcy, notwithstanding that the general stay provision did not explicitly extend to such payments. Specifically, the Ontario Court of Appeal held that:

> it would thwart the intent of Parliament for the successful conduct of the *CCAA* restructuring if the initial order and the amended order could not include a stay provision that allowed Nortel to suspend the payment of statutory obligations for termination and severance under the *ESA*.
>
> [...]
>
> [The paramountcy] analysis is driven by the need to preserve the ability of the *CCAA* court to ensure, through the scope of the stay order, that Parliament's intent for the operation of the *CCAA* regime is not thwarted by the operation of provincial legislation. The court issuing the stay order considers all of the circumstances and can impose an order that has the effect of overriding a provincial enactment where it is necessary to do so.
>
> Morawetz J. was satisfied that such a stay was necessary in the circumstances of this case. We see no error in that conclusion on the record before him and before this court. [*Emphasis added*]

Nortel, supra at paras 42, 44-45.

114. After concluding in *Algoma* that an order to stay proceedings against a debtor company granted under sections 11 and 11.02 of the CCAA prevailed over the exclusive jurisdiction to resolve grievances under collective agreements prescribed by sections 48 and 49 of the LRA

pursuant to the first branch of federal paramountcy, Justice Newbould proceeded to consider the second branch's application. Ultimately, Justice Newbould was satisfied that "the doctrine of paramountcy on this ground leads to the paramountcy of sections 11 and 11.02 of the CCAA over sections 48 and 49 of the [LRA]" as "it would be very detrimental to the attempt at a successful restructuring in this case if the stay of the approximately 3000 grievance claims and a process for their speedy resolution were not granted."

Algoma, supra at paras 34-35.

115. *Jameson, Nortel* and *Algoma* are instructive. Consistent with the Supreme Court of Canada's observations in *Canada v Canada North Group Inc.*, each makes clear that the second branch of federal paramountcy ensures the purposes of the "CCAA and orders made under it" are neither "affected" nor "neutralized by other statutes". Section 23 of REDMA should not be permitted to frustrate those purposes here.

Canada North at para 31.

116. If permitted to exercise the right or remedy conferred under section 23 of REDMA, the Applicants and similarly situated Presale Purchasers will avoid their obligations under the Presale Agreements and assert claims for the return of their deposits. The Debtors, in turn, will face indemnification claims from the Surety and an event of default under the Interim Financing Term Sheet, and be forced to relist the applicable Purchased Units in a deteriorating market during an insolvency proceeding in which interest exceeding $59,000 per day accrues. The value realized from the Debtors' assets will diminish while their substantial indebtedness increases, with no certainty as to the time, cost and purchase price reductions required to resell the Eclipse Units.

Seventh Report, s 6.0 at paras 7-8, s 6.1 at paras 1-5, 6.2 at paras 1-2, s 6.4 at paras 1-2.

117. The impact on the Debtors and their creditors – the "Court's primary concerns under the CCAA" – will be severe. Contrary to the purposes of the CCAA, the Debtors' insolvency will be protracted, the breathing room afforded to the Debtors will be significantly disrupted, and creditor recoveries will be eroded. The second branch of federal paramountcy precludes section 23 of REDMA from undermining the purposes of the CCAA in this manner and renders it inoperative.

Callidus at paras 40-42.
Canadian Airlines at paras 17-19.
Air Canada at para 12.
Re Canwest Global Communcations Corp., 2011 ONSC 2215 at para 25.
Seventh Report, s 6.0 at paras 7-8, s 6.1 at paras 1-5, 6.2 at paras 1-2, s 6.4 at paras 1-2.

F. It is not Appropriate to Grant a Summary Trial

118. The ATAC Applicants seek an order pursuant to Rule 9-7(2) of the Rules for an order: (i) declaring that the Presale Agreements are unenforceable against the ATAC Applicants pursuant to section 23 of REDMA; and (ii) requiring the Developer to return the deposits to the ATAC Applicants. The relief sought by the ATAC Applicants under Rule 9-7(2) is misguided for two reasons.

119. First, this Court advised counsel for the ATAC Applicants at a hearing on April 8, 2026 in these proceedings that there was no need to seek an order for summary trial. The ATAC Applicants filed an application seeking an order under Rule 9-7 notwithstanding those clear directions and the Monitor's agreement that any Purchaser wishing to challenge the enforceability of their pre-sale contracts under REDMA could, subject to the Stay of Proceedings, bring an application within these proceedings.

120. Second, while the Monitor acknowledges that Rule 16-1(18) permits the Court to apply the summary trial rule to petition proceedings in addition to actions, it is unclear which petition or pleading the ATAC Applicants seek to resolve on a summary basis. The ATAC Applicants filed a notice of application. There is no underlying petition proceeding or action on which this Court could grant summary relief and none of the circumstances listed in Rule 9-7(2) apply at hand. The ATAC Applicants list the Petition filed January 7, 2025 – being the Petition filed by KingSett that sought the Initial Order in these proceedings – in the material to be relied on. The only other petition that the Monitor is aware of is the petition that the ATAC Applicants improperly filed against Richards Buell Sutton LLP on March 18, 2026 (after the Monitor advised them on January 7, 2026 of the Stay of Proceedings) in which the ATAC Applicants sought a return of their deposits, and which the ATAC Applicants advised this Court on April 8, 2026 was no longer being pursued.

Rule 9-7(2).
Rochette v Bradburn, 2021 BCSC 1752 at para 54,
citing to *J&A Properties Ltd. v De Angelis*, 2019 BCSC 750 at para 32.

121. More importantly, and as noted above, the ATAC Applicants have not cited to any factual or legal basis on which this Court should lift the Stay of Proceedings in the circumstances, which would be a necessary first step prior to this Court granting any summary relief.

Part 6: MATERIAL TO BE RELIED ON

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

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

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

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

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

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

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

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

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

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

132. Affidavit #1 of Tom Reeves made on January 15, 2025.

133. Affidavit #2 of Daniel Pollack made on December 9, 2025.

134. Affidavit #1 of Karen Buquet made on April 28, 2026.

135. Such further and other material as counsel may advise and this Court may permit.

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

Dated: May 4, 2026

Signature of Andrew Froh
☐ Application respondent
☒ Lawyer for the Monitor

THIS APPLICATION RESPONSE is prepared and delivered by Sean Zweig, Joshua Foster, and Andrew Froh of the firm Bennett Jones LLP, Barristers & Solicitors, counsel for the Monitor, File No. 074735.58, whose place of business and address for delivery is 2500 – 666 Burrard Street, Vancouver, British Columbia, V6C 2X8. Telephone: (604) 891-7500. Facsimile: (604) 891-5100. [zweigs@bennettjones.com; fosterj@bennettjones.com; froha@bennettjones.com]

Schedule "D"

No. S-250121
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

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

RESPONDENTS

APPLICATION RESPONSE

Application Response of: KingSett Mortgage Corporation

THIS IS A RESPONSE TO the (i) notice of application of Chung Hei Wong, Liping Ding and Wai Thing Nicole and (ii) notice of application of Nazila Ghorbani, Arash Emadghaderi-Sepideh Motallebi, Mohammad Pourkarimi Shirayeh, Pegah Pourkarimi Shirayeh, Maryam Javadinia, Hossain Jabbari, Shaya Shahrezaee, Malihe Ghamarsourat, Mooein Fadaei, Farhoud Etemadol Sadati, Laila Dahaghin, Seyed Reza Deravian, Maryam Abdipour, Masaki Matsumoto (Sammy Rastkar), Ali Manavi, Naghmeh Heshamati, Nousheen Pourjahani, Kayvon Ameeri, Shirin Vosough Gerayeli, Kaveh Vosough Gerayeli, Mohsen Bagherpour, Amirhossein Marjaee, Amir Osooly, Hossein Nazapour, Roya Herischian-Heris, Hamid Riahi, Mohammad Nayebhashem, Alireza Sedghi Taromi, Shiva Olyaei, Nasim Rahmani, Mohammadjdavad Nadali, Ramtin Parvin, Pooneh Taheri, Paniz Parvin, Mahnaz Taheri, Nima Hazar, and Mohammad Medhi Basefat Nazari (collectively, the "**Applicants**").

The application respondent estimates that the application will take 3 days.

Part 1: ORDERS CONSENTED TO

The application respondent consents to the granting of NONE of the orders set out in Part 1 of each notice of application.

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of ALL of the orders set out in Part 1 of each notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of NONE of the orders set out in Part 1 of each notice of application.

Part 4: FACTUAL BASIS

1. KingSett Mortgage Corporation ("**KingSett**") is the largest, senior secured and fulcrum creditor of the Beta View Homes Ltd., Lumina Eclipse GP Ltd., Lumina Eclipse Limited Partnership (collectively, the "**Debtors**") in respect of the development property known as the "**Eclipse Project**".

   Affidavit of Daniel Pollack, sworn January 6, 2025 (the "Pollack Affidavit"), at para. 17.

2. As at December 8, 2025, the Debtors were indebted to KingSett in the approximate amount of $225,737,348.09 (excluding their obligations as guarantors of certain of their affiliates' material indebtedness to KingSett), with interest accruing at a combined rate of $59,004.51 per day across a first mortgage loan and two second mortgage loan facilities (the "**KingSett Indebtedness**").

   Affidavit of Daniel Pollack, sworn December 9, 2025 at para. 2.

3. KingSett's security over the Eclipse Project includes registered first and second mortgages with assignments of rents, site-specific general security agreements, beneficial owner's direction and security agreements, and six additional collateral mortgage charges.

   Pollack Affidavit, at paras. 20–25.

4. At the date of the Initial Order, approximately 224 of the 329 units in the Eclipse Project were subject to "**Presale Agreements**". The proceeds from those Presale Agreements constitute a reliable and significant source from which the KingSett Indebtedness is

expected to be repaid. Those agreements are not incidental to KingSett's security, they are foundational collateral in an inventory style development loan.

Pollack Affidavit, at para. 48.

5. KingSett's choice of enforcement proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was deliberate and made with the Presale Agreements squarely in mind. KingSett elected to proceed under the CCAA, rather than by way of receivership, specifically to preserve the Presale Agreements and provide the flexibility necessary to complete the Eclipse Project and deliver units to the "**Presale Purchasers**".

Pollack Affidavit, at paras. 49, 56.

6. The explicitly and repeatedly stated purpose of these insolvency proceedings was to safeguard the Eclipse Project from the Debtors' mismanagement and to place it in the capable oversight of the Monitor for orderly completion. The objective was twofold: to maximize recoveries for the Debtors' stakeholders and to complete the Eclipse Project. If the project is completed, the Presale Purchasers receive the units for which they have contracted and paid deposits.

Pollack Affidavit, at paras. 10, 53, 65.

7. The unenforceability of the Presale Agreements would require the remarketing of the units, diminishing both the certainty and speed of realization. The unenforceability of the Presale Agreements would cause immediate financial prejudice to KingSett.

Pollack Affidavit, at paras. 15, 48.

8. KingSett agreed to provide the financing to fund these proceedings (the "**Interim Financing**") and complete the construction of the Eclipse Project based on a security package, which included the Presale Agreements. It is an event of default under the Interim Financing term sheet if "any order is issued by the Court (or any other court of competent jurisdiction) that materially adversely affects the Interim Lender". KingSett considers an

order that declares the unenforceability of the Presale Agreements to be materially adverse to KingSett's position.

Pollack Affidavit, at Schedule "U", s. D. 1(g).

9. In all its dealings with the Debtors, KingSett has acted in good faith. KingSett had no knowledge of, and bears no responsibility for, any misrepresentations that may have been made by the Debtors to the Presale Purchasers. To the contrary, upon becoming aware of the Debtors' indebtedness to CRA, the suspected misappropriation of funds, and the suspension of home warranty insurance and building permits, KingSett promptly commenced these proceedings and sought the appointment of a Monitor with enhanced powers to assume oversight of the Debtors' business and protect the interests of all stakeholders, including the Applicants.

Pollack Affidavit, at paras. 53, 55, 61, 63.

10. In KingSett's submission, at the conclusion of these CCAA proceedings, the Presale Purchasers will be delivered exactly what they expected: completed units in the Eclipse Project. This outcome will be achieved notwithstanding the previous actions of the Debtors and it will be achieved precisely because of KingSett's initiative to commence and fund these CCAA proceedings. KingSett, on the other hand, will suffer a shortfall on the KingSett Indebtedness, which will be worsened by the cancellation of the Presale Agreements. The equities in this matter are clear: the party that has acted to rescue the project and protect all stakeholders should not be made to bear additional losses and further delays in its recovery as a result of the Applicants' belated attempts to avoid their contractual obligations.

11. Therefore, KingSett submits that the Presale Agreements ought to be honoured and remain enforceable. The preservation is not just in KingSett's interest, as the senior secured and fulcrum creditor, but it is essential to the orderly completion of the Eclipse Project, to the maximization of recoveries for all stakeholders, and to fulfil the remedial objectives of these CCAA proceedings.

Part 5: LEGAL BASIS

1. KingSett relies and adopts the legal basis in the Monitor's application.

2. For the foregoing reasons, and for the reasons set out in the application response of the Monitor, which KingSett adopts and relies upon, the application should be dismissed.

Part 6: MATERIAL RELIED ON

1. Affidavit #1 of Karen Buquet made on April 28, 2026.

2. Affidavit #1 of Daniel Pollack, sworn January 6, 2025.

3. Affidavit #2 of Daniel Pollack, sworn December 9, 2025.

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

5. Such further and other material as counsel may advise and this Court may permit.

[x] The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

Dated: May 4, 2026

Signature of Lawyer for application respondent, Mary Buttery, K.C. and Emma Newbery

Schedule "E"

No. S-250121
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

LUMINA ECLIPSE LIMITED PARTNERSHIP,
BETA VIEW HOMES LTD.,
LUMINA ECLIPSE GP LTD., AND
D-THIND DEVELOPMENT BETA LTD.

RESPONDENTS

APPLICATION RESPONSE

Application Response of: Westmount Services Inc. ("**Westmount**")

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

Westmount estimates that the application will take 3 days.

Part 1: ORDERS CONSENTED TO

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

Part 2: ORDERS OPPOSED

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

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

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

Part 4:FACTUAL BASIS

A. Overview

1. On these Applications, the Applicants seek a declaration that the pre-sale condominium purchase agreements (the "**Presale Agreements**") between themselves and the Developer (as defined below) of the "Eclipse" project, a 34-storey concrete high-rise building located at 2381 Beta Avenue, Burnaby, British Columbia (the "**Eclipse Project**" or the "**Development**"), are not enforceable against the Applicants by the developer.

2. The Applicants rely on section 23 of the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41, as amended ("**REDMA**") to support the relief sought. They take the position that the Developer breached its statutory obligation under REDMA to file an amended disclosure statement immediately once the Developer became aware that – according to the Applicants – there were misrepresentations contained in its REDMA disclosure.

3. The declaration sought by the Applicants is unavailable in the circumstances for three reasons: (1) the Applicants have failed to act in good faith and with due diligence in bringing the Applications; (2) the alleged non-disclosed events primarily occurred after the Applicants entered

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

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

5. Secondly, section 23(2) of REDMA provides that a purchase agreement in relation to a development unit is enforceable even if there is a technical breach of Part 2 of REDMA (which includes the disclosure statement obligations) if there is no misrepresentation in the disclosure statement concerning a material fact that was or would have been reasonably relevant to the purchaser in deciding to enter into the purchase agreement. "Material fact" means something that would affect the value, price, or use of the Applicants' units. None of the 'misrepresentations' that the Applicants allege would affect the value, price or use of the units. And in any event the alleged misrepresentations could not have been reasonably relevant to the Applicants in entering into the Presale Agreements because the events they allege did not occur until after the Applicants had entered into the Presale Agreements:

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

(b) the balance of the alleged misrepresentations occurred on or after September 2024, which is subsequent to all the Applicants entering into their purchase agreements.

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

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

8. The Applications should be dismissed.

B. Background

KingSett Loans

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

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

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

(a) a commitment letter dated April 28, 2021, as amended, pursuant to which KingSett provided a first mortgage loan in the principal amount of $124,000,000 (the "**First KingSett Loan**"); and

(b) a commitment letter dated April 28, 2021, as amended, pursuant to which KingSett provided a second mortgage loan comprising two facilities in the aggregate principal amount of $65,400,000 (the "**Second KingSett Loan**").

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

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

(a) a site-specific general security agreement dated June 30, 2021, granted by Beta View over its personal property in connection with the Eclipse Project;

(b) a mortgage and assignment of rents dated March 14, 2024, in the principal amount of $124,000,000, registered against the Lands (as defined below) (the "**KingSett First Mortgage**"); and

(c) a beneficial owner's direction, acknowledgment, and security agreement dated March 2024, granted by the Initial Debtors in favour of KingSett.

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

(a) a general security agreement dated June 30, 2021, granted by Beta View over its personal property in connection with the Eclipse Project;

(b) a mortgage dated August 7, 2024, in the principal amount of $70,000,000, registered against the Lands (the "**KingSett Second Mortgage**"); and

(c) a beneficial owner's direction, acknowledgment, and security agreement dated August 16, 2024, granted by the Initial Debtors in favour of KingSett.

Deposit Protection Contract Facility

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

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

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

(a) an indemnity agreement dated May 20, 2022, granted by the Developer, among others, in favour of Westmount and the Surety;

(b) a mortgage and assignment of rents dated June 16, 2022, in the principal amount of $50,000,000, registered against the Lands (the "**Westmount Mortgage**"), which also secures the indebtedness, liabilities and obligations arising under or in connection with the New Home Warranty (as defined below);

(c) an equitable mortgage and estoppel agreement dated May 20, 2022, granted by the Initial Debtors in favour of Westmount; and

(d) a location specific security agreement dated May 20, 2022, executed by the Initial Debtors in favour of Westmount.

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

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

C. The Initial Order and the Stay of Proceedings

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

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

(a) appointed the Monitor;

(b) granted a broad stay of proceedings (the "**Stay of Proceedings**") in favour of the Monitor, and the Initial Debtors and their business and property to and including January 18, 2025;

(c) approved the Interim Financing Term Sheet dated as of January 6, 2025 (as amended, the "**Interim Financing Term Sheet**"), between the Monitor, for and on behalf of the Initial Debtors, and KingSett, and granted a charge over the Initial Debtors' property up to the maximum amount of $700,000, plus interest, fees and expenses, to secure all amounts advanced under the Interim Financing Term Sheet (the "**Interim Lender's Charge**");

(d) granted a charge over the Initial Debtors' property up to the maximum amount of $250,000, to secure the fees and disbursements of the Monitor and its counsel (the "**Administration Charge**" and together with the Interim Lender's Charge, the "**Charges**"); and

(e) granted the Monitor certain enhanced powers (the "**Initial Enhanced Powers**").

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

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

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

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

D. Marketing Efforts of Units

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

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

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

E. Completion of the Eclipse Project

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

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

(a) advising by a notice dated June 9, 2025, that substantial completion of the Development was expected within five to six months, subject to typical construction variables, and the Presale Agreements remained valid and enforceable and could not be terminated or rescinded absent the prior written consent of the Monitor or the Court;

(b) advising by a notice dated September 18, 2025, that the Eclipse Project remained on track for substantial completion in December 2025, subject to typical construction variables and the Presale Agreements could not be terminated or rescinded absent the prior written consent of the Monitor or the Court;

(c) advising by notice dated November 24, 2025, that construction of the Development remained active and was progressing well, the Monitor had engaged MLA Canada Realty and MLA Fraser Valley Realty to manage completion support for all Presale Purchasers, and the Monitor, for and on behalf of the vendor, was exercising the option to extend the outside date of all Presale Agreements to August 24, 2026; and

(d) advising by notice dated March 31, 2026, that, subject to some terms and conditions, Purchased Unit completions were expected to begin on or around April 24, 2026, and the Monitor intended to seek the Approval and Vesting Order (as defined below) on April 8, 2026.

F. Closing the Purchased Units

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

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

(i) authorizing the Monitor to sell, pursuant to any Presale Agreements or any sale agreements (each, a "**New Sale Agreement**") arising from the Amended Sale Process that satisfy the Sale Conditions (each such New Sale Agreement or Presale Agreement being a "**Sale Agreement**"), any and all of the strata lots that comprise the lands described in Schedule "B" to the Approval and Vesting Order, including all fixtures and chattels, in each case, as designated and described in the applicable Sale Agreement (each, a "**Purchased Unit**"), and to partially assign the parking and storage lease with respect to any parking stalls and/or storage lockers in connection therewith;

(ii) upon delivery by the Monitor to the applicable purchaser(s) (each, a "**Purchaser**") of a certificate substantially in the form attached as Schedule "C" to the Approval and Vesting Order (in each case, the "**Monitor's Certificate**"), vesting the Purchased Unit described in such Monitor's Certificate in such Purchaser(s) free and clear of any and all claims and encumbrances; and

(iii) authorizing and directing Richards Buell Sutton LLP to release and transfer all deposits and interest thereon currently held in trust by it, as trustee or stakeholder, in connection with the Presale Agreements to Bennett Jones LLP, in trust; and

(b) an order (the "**Distribution Order**"), among other things, authorizing and directing the Monitor and its counsel and other agents to make or cause to be made, for and on behalf of the applicable Debtors, one or more distributions, payments or adjustments, as applicable from the purchase price paid for each Purchased Unit approved pursuant to the Approval and Vesting Order, any interest earned on the deposits paid by the applicable Purchaser(s) of each Purchased Unit, and any deposit forfeited by any Purchaser(s) party to a Sale Agreement, free and clear of all claims and encumbrances, subject to such holdbacks as the Monitor considers necessary or appropriate to satisfy the Debtors' incurred and estimated post-filing

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

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

G. The Applications

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

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

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

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

Part 4: LEGAL BASIS

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

A. Good Faith and Due Diligence

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

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

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

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

Taber at paras. 14 and 28-35.

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

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

B. Purpose of Section 23 of REDMA

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

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

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

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

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

45. Section 23 provides in material part:

> **Agreements void for non-compliance**
>
> 23(1) Subject to subsection (2), a purchase agreement in relation to a development unit is not enforceable against the purchaser by a developer who has breached any provision of Part 2 *[Marketing and Holding Deposits]*.
>
> (2) A purchase agreement in relation to a development unit is enforceable against the purchaser if either of the following applies to each of the developer's breaches of Part 2:
>
> > (a) the breach involves a disclosure statement that does not comply with the Act or the regulations, but there is no misrepresentation in the disclosure statement concerning a material fact that was or would have been reasonably relevant to the purchaser in deciding to enter into the purchase agreement;
> >
> > (b) the breach involves a disclosure statement that includes a misrepresentation concerning a material fact, but the developer was not aware of the misrepresentation at the time the purchaser and the developer entered into the purchase agreement and the misrepresentation is corrected in an amendment to the disclosure statement to which both of the following apply: [...]
>
> [Emphasis added].

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

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

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

48. Under section 1 of REDMA, a "material fact" means, in relation to a development unit or development property, any of the following:

(a) a fact, or a proposal to do something, that affects, or could reasonably be expected to affect, the value, price, or use of the development unit or development property;

(b) the identity of the developer;

(c) the appointment, in respect of the developer, of a receiver, liquidator or trustee in bankruptcy, or other similar person acting under the authority of a court;

(d) any other prescribed matter.

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

Woo at paras. 67 and 70.

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

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

C. Analysis

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

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

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

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

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

Bosa, at paras. 72-73

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

(a) the Development completed within the time allowed under the Presale Agreement;

(b) Mr. Nadali will be provided with the unit he purchased; and

(c) there is no evidence that shows a change in terms of the value, price or use of the unit as a result of the CRA judgment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Norcen at para. 52.

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

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

Norcen at para. 44.

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

Jameson at paras. 22 and 33-34.

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

E. Federal Paramountcy Renders Section 23 of REDMA Inoperative

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

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

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

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

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

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

Lemare Lake at para. 21;

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

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

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

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

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

78. The CCAA is "remedial legislation in the purest sense." Its remedial purposes include, as noted previously, providing for the "timely, efficient and impartial resolution of a debtor's insolvency", affording a debtor "breathing room", preserving and maximizing "the value of a debtor's assets" and "maximizing creditor recovery", preventing "any creditors from gaining an advantage" or maneuvering "for positioning", and ensuring the "fair and equitable treatment of the claims against a debtor".

Callidus at paras. 40-42.

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

Jameson at paras. 24-33.

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

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

> Justice Hunt observed that the language of s. 11 is very broad, allowing the court to make an order "on such terms as it may impose" and empowering the court to stay "all proceedings taken or that might be taken", restraining "further proceedings in any action, suit or proceeding" and prohibiting "the commencement of or proceeding with any other action, suit or proceeding." [...] Madam Justice Hunt held that these words were sufficient to give the CCAA judge in the case the authority to permanently affect the contractual rates of a non-creditor.
>
> *Jameson* at para. 27.

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

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

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

Callidus at paras. 40-42.

F. It is not Appropriate to Grant a Summary Trial

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

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

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

G. Conclusion

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

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

88. The application should be dismissed.

Part 5: MATERIAL TO BE RELIED ON

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

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

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

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

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

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

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

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

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

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

99. Affidavit #1 of Tom Reeves made on January 15, 2025.

100. Affidavit #2 of Daniel Pollack made on December 9, 2025.

101. Affidavit #1 of Karen Buquet made on April 28, 2026.

102. Such further and other material as counsel may advise and this Court may permit.

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

Dated: May 4, 2026

Signature of Bryan Gibbons
☐ Application respondent
☒ Lawyer for Westmount

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