

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER IF THE *CANADA BUSINESS CORPORATIONS ACT*,  
R.S.C. 1985, c. C-44, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
COROMANDEL PROPERTIES LTD.

AND THOSE PARTIES LISTED ON SCHEDULE "A"

**PETITIONERS**

**RESPONSE TO PETITION**

**Filed by:** Peakhill Capital Inc. ("**Peakhill**")

THIS IS A RESPONSE TO the petition filed on February 6, 2023 (the "**Petition**")

**PART 1: ORDERS CONSENTED TO**

Peakhill consents to the granting of the orders set out in the following paragraphs of Part 1 of the  
Petition: NONE

**PART 2: ORDERS OPPOSED**

Peakhill opposes the granting of the orders set out in paragraphs ALL of Part 1 of the Petition.

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

Peakhill takes no position on the granting of the orders set out in paragraphs NONE of Part 1 of  
the Petition.

## **PART 4: FACTUAL BASIS**

### **The Parties**

1. The petition respondent, Peakhill, is a company duly incorporated under the laws of the Province of Ontario and extra-provincially registered in British Columbia. Peakhill is a commercial real estate lender and provides custom financing solutions for developers and real estate investors.

### **The Loan and the Land**

2. Peakhill provided three of the Petitioners, Southview Gardens BT LTD., Southview Gardens Limited Partnership, and Southview Gardens Properties Ltd. (collectively, the “**Borrowers**”), with a demand facility mortgage loan in the amount of \$50,000,000 (the “**Loan**”) pursuant to the terms of a commitment letter dated October 30, 2020 (the “**Commitment Letter**”).

First Affidavit of Bridget Berner, made February 10, 2023  
(“**Berner Affidavit #1**”), Exhibit A, para 3

3. The Loan was provided in relation to a property located at 3240 East 58th Avenue, Vancouver, British Columbia, legally described as Lot 14, District Lot 334, Plan 13993, PID 007-982-160 (the “**Land**” or the “**Southview Gardens**”). Southview Gardens is a rental property with 140 townhouses and apartment units. It is managed by a third party, BentallGreenOak. Southview Gardens is listed as an asset that is subject to the Petition.

First Affidavit of Zhen Yu Zhong, made February 5, 2023  
(“**Zhong Affidavit #1**”) at para 2(1) and 169.

### **Peakhill’s Security**

4. Peakhill’s security for the Loan includes, among other things:
  - (a) a first ranking charge over the Land through a mortgage and an assignment of rents, registered on November 24, 2020 (the “**Mortgage**”);
  - (b) a first ranking charge over the personal property of the Borrowers related to the Land (the “**Property**”) through a project specific security agreement (the “**Project**”).

**Specific Security Agreement**”), registered against the Property on November 16, 2020; and

- (c) guarantees provided by Zhen Yu Zhong, Jun Chao Mo, and three of the other Petitioners, Coromandel Properties (2016) Ltd., Baystone Properties (2016) Ltd., and Coromandel Holdings Ltd. (collectively, the “**Guarantors**”).

Berner Affidavit #1, Exhibit A, paras 5-7.

### **Peakhill Security has First Priority**

- 5. There are two other mortgages registered against the Land. However, Peakhill’s mortgage has first priority pursuant to the dates of its registration and a “Subordination and Standstill Agreement” registered on November 30, 2020 (the “**Priority Agreement**”). There are also other registrations against the Property in the British Columbia Personal Property Registry. However, Peakhill’s security has first priority.

Berner Affidavit #1, Exhibit A, paras 16-18 and 21-24

- 6. All security granted to Peakhill in relation to the Loan directly relates to the Borrowers, the Guarantors, the Land, and the Property. Peakhill does not hold any cross-guarantees or security with respect to other properties or secured lenders.

Berner Affidavit #1, Exhibit A, para 10

### **The Borrowers’ Defaults**

- 7. The Borrowers are in default of their obligations under the Commitment Letter and related security agreements, including the Mortgage and the Project Specific Security Agreement. The defaults include:
  - (a) on March 28, 2022, an additional mortgage was registered against the Land, without the consent or knowledge of Peakhill;
  - (b) the Borrowers failed to make a monthly interest installment payment to Peakhill as required on January 1, 2023; and
  - (c) the Borrowers failed to repay the Loan in full at the end of its term on January 1, 2023.

Berner Affidavit #1, Exhibit A, paras 8, 27-31

**Peakhill's Enforcement**

8. On January 13, 2023, Peakhill issued a notice of default to the Borrowers. On January 24, 2023, Peakhill issued a demand for payment and a notice of intention to enforce security as required by section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA"). Neither the Borrowers nor the Guarantors responded.

Berner Affidavit #1, Exhibit A, paras 29 and 32

9. Peakhill is filing a petition to appoint a receiver and manager over the Land and the Property.

**The CCAA Petition**

10. The Petition seeks to bundle approximately \$700 million dollars of secured debt for approximately 16 completely unrelated properties. There are approximately 82 Petitioners. Peakhill's Loan involves only 8 of the 82 Petitioners. The Petition materials:
  - (a) contain no evidence about how the Petitioners have serviced its debt to date;
  - (b) do not illustrate a consolidated business; and
  - (c) contain scant information about the Petitioners' proposed plan beyond "seek[ing] further contributions of equity".

Petition at paras 2 and 16 and Schedule "A"

**Part 5: LEGAL BASIS**

11. Peakhill opposes the relief sought in the CCAA petition. The Court must not grant an initial CCAA order where, in the circumstances, such an order is not appropriate.

*Companies' Creditor Arrangement Act*, RSC 1985, c C-36 (the "CCAA"), ss. 11, 11.02(3)

12. A CCAA initial order is designed to "facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors to enable the company to stay in business or to complete the business that it was undertaking".

*Marine Drive Properties Ltd, Re*, 2009 BCSC 145 at para 31; *Schendel Management Ltd*, 2019 ABQB 545 at para 21; *Cliffs Over Maple Bay Investments Ltd v Fisgard Capital Corp*, 2008 BCCA 327 at para 29; *Octagon Properties Group Ltd.*, 2009 ABQB 500 at para 9

13. It is inappropriate to grant relief under the CCAA where it is highly unlikely a compromise or arrangement will be reached. This is particularly so where the priorities over debtor assets are straightforward and there is no incentive for secured creditors to agree to any arrangement or compromise that involves money being paid to an interim lender, unsecured creditors, and professionals ahead of the secured creditors.

*Cliffs Over Maple Bay Investments Ltd v Fisgard Capital Corp*, 2008 BCCA 327 at para 36; *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 1953 at paras 98-100; *Marine Drive Properties Ltd, Re*, 2009 BCSC 145 at paras 32, 41; *Octagon Properties Group Ltd.*, 2009 ABQB 500 at para 17

14. Further, an applicant may not meet the test for granting an initial order under the CCAA where:
- (a) the applicant is not conducting development work on the subject properties;
  - (b) secured creditors have sufficient protection through other court proceedings; and
  - (c) employees will not be affected by the failure to grant an initial order.

*Marine Drive Properties Ltd, Re*, 2009 BCSC 145 at paras 36-42, 46

15. There is no principled basis for putting in place or maintaining a stay that would prevent real estate lenders from enforcing their security in the conventional manner should they so choose.

*Encore Developments Ltd, Re*, 2009 BCSC 13 at para 25

16. A CCAA initial order is not appropriate in this case for the following reasons, among others:
- (a) Peakhill has clear and straightforward priority over the Land and the Property;

- (c) there is no incentive for Peakhill to reach an alternative arrangement or compromise;
- (d) all security granted to Peakhill pursuant to the Loan directly relates solely to the Borrowers, the Guarantors, the Land, and the Property. There are no cross-guarantees or security with the properties as set out in the Petition;
- (e) there is no active development work being conducted on the Land; and
- (f) the Land is property managed by a third party. There is no evidence of business of the Petitioners conducted on the Land, or that employees of the Petitioners are involved.

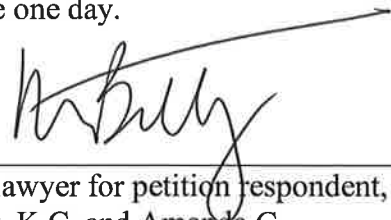
17. In the circumstances, a CCAA initial order is not appropriate. The Petition should be dismissed.

**Part 6: MATERIAL TO BE RELIED ON**

- 1. Affidavit #1 of Bridget Berner made on February 10, 2023.
- 2. Affidavit #1 of Zhen Yu Zhong made on February 5, 2023.
- 3. Such further and other materials as counsel may advise and this Honourable Court permits.

The petition respondent estimates that the application will take one day.

Dated: February 10, 2023



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Signature of lawyer for petition respondent,  
Mary Buttery, K.C. and Amanda G.  
Manasterski

Petition respondent's address for service:

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Name of the petition respondent's lawyers:

Mary BATTERY, K.C.  
Amanda G. Manasterski  
Christian Garton

## **SCHEDULE A**

### **Alberta 40**

1. 5576 Alberta Development Holding Ltd.
2. 5576 Alberta Development GP Ltd.
3. 5576 Alberta Development Limited Partnership
4. Coromandel Alberta Street 40 Development BT Ltd.
5. Coromandel Alberta Street 40 Development Ltd.
6. Coromandel Alberta Street 40 Limited Partnership

### **Ash & Manson**

7. Coromandel Manson Development Ltd.
8. Coromandel Manson Limited Partnership
9. 5392 Manson St. Development Ltd.
10. 5392 Manson St. Limited Partnership

### **Cambie 43**

11. Coromandel 43 Developments Ltd.
12. Coromandel 43 Developments Limited Partnership

### **Cambie 45**

13. Cambie & 45th Development Holding Ltd.
14. Cambie & 45th Development GP Ltd.
15. Cambie & 45th Development Limited Partnership

### **Cambie 59**

16. Coromandel Cambie 59 BT Ltd.
17. Coromandel Cambie 59 Developments Ltd.
18. Coromandel Cambie 59 Limited Partnership

### **Coromandel Ash**

19. Coromandel Ash 37 Development Ltd.



20. Coromandel Ash 37 Limited Partnership

**Georgia Court**

21. Georgia Court BT Ltd.

22. Georgia Court Properties Ltd.

23. Georgia Court Limited Partnership

**Kingsway Frame**

24. Coromandel Kingsway Development Ltd.

25. Coromandel Kingsway Limited Partnership

**Laurel 57**

26. 7235 Laurel Holdings Ltd.

27. Coromandel Laurel 57 Development Ltd.

28. Coromandel Laurel 57 Limited Partnership

**Oak West 52**

29. Coromandel West 52nd Avenue Development (BT) Ltd.

30. Coromandel West 52nd Avenue Development Ltd.

31. Coromandel West 52nd Avenue Limited Partnership

**Pacific Burrard**

32. 1380 Burrard Street GP Inc.

33. Pacific Burrard Holdings Limited

34. Pacific Burrard Holdings Limited Partnership

**Southview Gardens**

35. Southview Gardens BT Ltd.

36. Southview Gardens Properties Ltd.

37. Southview Gardens Limited Partnership

**Transit - Nanaimo 22**

38. Coromandel Nanaimo 22 BT Ltd.

- 39. Coromandel Nanaimo 22 Limited Partnership
- 40. Coromandel Nanaimo 22 Development Ltd.
- 41. Nanaimo 22 Development (BT) Ltd.

**Transit - Slocan 29**

- 42. Coromandel Slocan 29 Development BT Ltd.
- 43. Coromandel Slocan 29 Development Ltd.
- 44. Coromandel Slocan 29 Limited Partnership

**Wilmar**

- 45. Coromandel Wilmar Development BT Ltd.
- 46. Coromandel Wilmar Development Ltd.
- 47. Coromandel Wilmar Limited Partnership

**Alberta lands**

- 48. Coromandel Badlands Holdings Ltd.
- 49. Coromandel Badlands Holdings Limited Partnership

**Northwest Territories lands**

- 50. Coromandel Aurora Lodge Ltd.
- 51. Coromandel Aurora Lodge Limited Partnership
- 52. Coromandel Aurora BT Ltd.

**Guarantors**

- 53. Birney Holdings Ltd.
- 54. Carnarvon Capital Ltd.
- 55. Thurlow Holdings Ltd.
- 56. ZHM Holdings Ltd.
- 57. ZMM Holdings Ltd.
- 58. Cedarhurst Holdings Ltd.
- 59. Silverstone Investment Corp

60. Bayberry Holdings (II) Ltd.
61. Baystone Properties (2016) Ltd.
62. CM Bay Holdings Ltd.
63. Coromandel Holdings (II) Ltd.
64. Coromandel Holdings Ltd.
65. Coromandel Properties (2016) Ltd.
66. Coromandel Properties (II) Ltd.
67. Coromandel Properties Ltd.
68. Lauan Capital Ltd.
69. Lauan Capital (II) Ltd.
70. Ceetu Holdings Ltd.
71. Ceetu Homes Ltd.
72. Sky Team Capital Limited

**Other Interest Holders**

73. Coromandel Capital Ltd.
74. Mulberry Capital Ltd.
75. CM Bay Investments Ltd.
76. Baystone Properties Ltd.
77. Coromandel Oakridge Limited Partnership
78. Coromandel Oakridge (GP) Ltd.
79. CM Bay Alberta St. Developments Ltd.
80. Bayberry Holdings Ltd.
81. Ceetu Financial Ltd.
82. Ceetu Investment Ltd.