



NO. S250121
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

and

BETA VIEW HOMES LTD.

RESPONDENTS

RESPONSE TO PETITION

Filed by: Westmount West Services Inc. ("Westmount")

THIS IS A RESPONSE TO the Petition filed January 7, 2025.

The Petition Respondent estimates that the application will take 1 hour.

Part 1: ORDERS CONSENTED TO

The Petition Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Petition: None.

Part 2: ORDERS OPPOSED

The Petition Respondent does not oppose the granting of the orders set out in any of the paragraphs of Part 1 of the Petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Petition Respondent takes no position on the granting of all of the orders set out in Part 1 of the Petition.

Part 4: FACTUAL BASIS

1. Westmount is a company incorporated pursuant to the laws of British Columbia with an address for service in these proceedings of 1600 – 925 West Georgia Street, Vancouver, British Columbia.

Brentwood Tower C

2. 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 “**Facility**”) to Lumina Eclipse Limited Partners (“**LP**”), Beta View Homes Ltd. (“**Beta**”) and Lumina Eclipse GP Ltd. (collectively, the “**Debtor**”) pursuant to the terms of a commitment letter dated April 27, 2022.

Affidavit #1 of Tom Reeves made January 15, 2025 (“**Reeves Affidavit**”) at para. 3

3. The Facility allows the Debtor to request, after certain conditions are satisfied, the use of purchaser deposits to a maximum of \$50,000,000 be made available to fund project costs for the “Eclipse” project, a 34-storey concrete high-rise building located at 2381 Beta Avenue, Burnaby, British Columbia (the “**Brentwood Tower C**”).

Reeves Affidavit at para. 4

4. In general terms, a deposit protection facility allows a developer to access purchasers’ deposits for the purpose of developing the project, including the construction and marketing thereof. If a deposit becomes properly owing by the developer to the purchaser upon due termination of a purchaser agreement, and the developer fails to pay the same in accordance with such agreement, the surety of the deposit protection contract will provide the funds to the purchaser.

Reeves Affidavit at para. 5

5. To date, deposits of approximately \$21,000,000 have been released to the Debtor pursuant to the Facility.

Reeves Affidavit at para. 6

6. As Security for the Facility, the Debtor granted, among other things, the following to Westmount and/or the Surety:
- (a) an indemnity agreement dated May 20, 2022, executed by the Debtor, among others, in favour of Westmount and the Surety;
 - (b) a mortgage and assignment of rents in the amount of \$50,000,000 granted by Beta in favour of Westmount (the “**Westmount Mortgage**”) charging the lands legal described as PID: 030-169-747, Lot 2 District Lot 124 Group 1 New Westminster District Plan EPP67029 (the “**Lands**”), registered on June 16, 2022, in the New Westminster Land Title Office under registration nos. CB9317 and CB9318;
 - (c) an equitable mortgage and estoppel agreement dated May 20, 2022, executed by the LP and Beta in favour of Westmount, which attached the nominee ownership and agency agreement dated for reference June 24, 2021; and
 - (d) a location specific security agreement dated May 20, 2022, executed by Beta and the LP in favour of Westmount,
- (collectively, the “**Security**”).

Reeves Affidavit at paras. 7-8

7. Pursuant to priority agreements entered into by Westmount and the Petitioner (the “**Kingsett Priority Agreements**”), the Westmount Mortgage ranks in priority to all mortgages and assignments of rent currently charged to the Lands except for a \$124,000,000 mortgage granted by Beta in favour of the Petitioner registered on title to the Lands on March 26, 2024, under registration number CB1229026 (the “**Kingsett Construction Mortgage**”), which stands as security for a loan the Petitioner made available to the LP, as borrower, and Beta, as nominee pursuant to a commitment letter dated April 28, 2021, as amended (the “**Kingsett Construction Loan**”).

Reeves Affidavit at paras. 10-11

8. Rather than modifying the Petitioner’s original mortgage in the amount of \$95,000,000 to increase the principal amount to \$110,000,000 and finally to \$124,000,000 in priority to

the Westmount Mortgage, the Petitioner registered new mortgages on title to the Lands subject to the Kingsett Priority Agreements.

Reeves Affidavit at para. 12

9. A summary of the Kingsett Priority Agreements is as follows:

Agreement	Date	Charge Number	Current Status
First Priority Agreement	June 14, 2022	Unregistered	Superseded and replaced by Second Priority Agreement
Second Priority Agreement	June 14, 2023	CB686169	Superseded and replaced by Third Priority Agreement
Third Priority Agreement	March 26, 2024	CB1229596	Subordinates and postpones the Facility and Security in favour of the Kingsett Construction Loan to an increased principal amount of \$124,000,000.

Reeves Affidavit at para. 13

Part 5: LEGAL BASIS

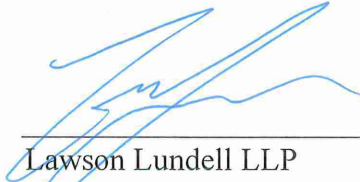
10. Westmount pleads and relies on the following:

- (a) The law of contract.
- (b) The inherent and equitable jurisdiction of this Court.
- (c) Such further and other legal basis as counsel may advise and this Court may allow.

Part 6: MATERIAL TO BE RELIED ON

11. Affidavit #1 of Tom Reeves made on January 15, 2025.
12. Such further and other material as counsel may advise and this Court may allow.

Dated at the City of Vancouver, in the Province of British Columbia, this 15th day of January, 2025.


Candace L. Formosa FOR:
Lawson Lundell LLP
Solicitors for the Petition Respondent,
Bryan Gibbons

Petition Respondent's address for service is c/o Lawson Lundell LLP, 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Fax number for delivery is: (604) 669-1620.

The name and office address of the Petition Respondent's solicitor is: Lawson Lundell LLP, 1600 - 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2 (Attention: Bryan Gibbons/Candace Formosa).

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V6C 3L2

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CF1/jlkm

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