



No. S-247764
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

6511 SUSSEX HEIGHTS DEVELOPMENT LTD.
and
MINORU SQUARE DEVELOPMENT LIMITED PARTNERSHIP
and
MINORU VIEW HOMES LTD.

RESPONDENTS

APPLICATION RESPONSE

Application response of the Attorney General of Canada on behalf of His Majesty the King in right of Canada as represented by the Minister of National Revenue (“His Majesty”).

THIS IS A RESPONSE TO the notice of application of the Petitioner (“KingSett”) filed January 8, 2025.

The application respondent estimates that the application will take 20 minutes.

Part 1: ORDERS CONSENTED TO

His Majesty consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: Nil.

Part 2: ORDERS OPPOSED

His Majesty opposes the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: 1(a) and 1(b) (with respect to the claim of priority over His Majesty).

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

His Majesty takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: 1(c) to 1(f).

Part 4: FACTUAL BASIS

1. The Respondent, 6511 Sussex Heights Development Ltd. (“6511 Sussex”) is indebted to His Majesty for unremitted goods and services tax (“GST”) amounts for the reporting periods ending December 31, 2023, January 31, 2024, April 30, 2024, May 31, 2024, June 30, 2024, July 31, 2024, August 31, 2024, and October 31, 2024.
2. His Majesty is the beneficiary of a statutory deemed trust for unremitted GST in the amount of \$7,551,095.38, which is the amount collected by 6511 Sussex but not yet remitted to His Majesty.
3. The statutory deemed trust for GST is comprised only of the tax collected; it does not include penalties or interest.
4. KingSett’s loan was granted and the corresponding mortgage registered in March 2024.

Part 5: LEGAL BASIS

5. Pursuant to the *Excise Tax Act*, RSC 1985, c E-15 (“*ETA*”), section 222(1), tax amounts collected are deemed to be held in trust by the tax debtor for His Majesty.
6. Pursuant to the *ETA* sections 222(3) and 222(4), where an amount deemed to be held in trust by the tax debtor for His Majesty is not paid to His Majesty, property of the tax debtor equal in value to the amount deemed to be held in trust is deemed to be held separate and apart from the property of the tax debtor, in trust for His Majesty and payable to the Receiver General in priority to all creditors, including secured creditors, other than those holding a prescribed security interest (“PSI”): *Toronto-Dominion Bank v Canada*, 2020 FCA 80, paragraphs 21-47.
7. As KingSett has a PSI pursuant to the *ETA* relating to its registered mortgage, the following term should be added to the order sought by KingSett: Notwithstanding the remainder of this order, the priority provided to KingSett by its prescribed security interest pursuant to the *Excise Tax Act* is to be determined by agreement of KingSett and His Majesty or by a further court order.
8. There is no PSI provided by the *ETA* for KingSett’s general security agreement (“GSA”). Therefore, the order declaring priorities for the GSA should exempt His Majesty or otherwise delay determining the priority of the GSA as compared to GST deemed trust.
9. *Security Interest (GST/HST) Regulations*, (SOR/2011-55), s 2.
10. *Supreme Court Civil Rules*, BC Reg 168/2009, Rule 8-1.
11. *Excise Tax Act*, RSC 1985, c E-15 (“*ETA*”), ss 222.
12. *Crown Liability and Proceedings (Provincial Court) Regulations*, (SOR/91-604), s 10.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of A. Wong-de Leon, sworn January 15, 2025.
 2. The pleadings and proceedings herein and such further materials as counsel may advise and this Honourable Court may permit.
- The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is:

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Dated: January 24, 2025



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