

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *KingSett Mortgage Corporation v. Lumina
Eclipse Limited Partnership*,
2026 BCSC 1598

Date: 20260825
Docket: S250121
Registry: Vancouver

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-Third Development Beta Ltd.**

Respondents

Before: The Honourable Justice D.M. Masuhara

Reasons for Judgment

Counsel for the Petitioner, KingSett
Mortgage Corporation:

M. Buttery, K.C.
E. Newbery

Counsel for the Monitor, AlixPartners
Restructuring Inc.:

S. Zweig
A. Froh
J. Foster

Counsel 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 Ameer, i,
Shirin Vosough Gerayeli, Kaveh Vosough
Gerayeli, Mohsen Bagherpour, Amirhossein
Marjaee, Amir Osooly, Hossein Nazarpour,
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, Aryan Motedayeni,
Farzaneh Firouzi, Shing Hong Sean Wu,
Behzad Zakeri, Haniyeh Bagheri
Mohagheghi, Indhair Sing Gill (Sean Gill),
Farhood Rastegarrazi, and Marjan Sahand:

D. Yaverbaum
B. Baynham, K.C.
R. Wu

Counsel for the Applicants, Chung Hei
Wong, Liping Ding and Wai Thing Nicole
Wong:

J. Un

Counsel for Westmount Services:

B. Gibbons
C. Formosa

Counsel for the Attorney General of British
Columbia:

K. Chewka

Place and Date of Hearing:

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June 15-18, 2026

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Introduction

[1] This ruling deals with applications for a declaration that certain presale condominium agreements are unenforceable in relation to a 329-unit development project called Lumina Eclipse in Burnaby B.C. (the “Development”) under s. 23 of the *Real Estate Development Marketing Act*, SBC 2004 c. 41 [*REDMA*] due to alleged breaches of the disclosure-amendment obligations in Part 2 of the *Act*.

[2] The applications are brought within this liquidating *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 [*CCAA*] proceeding.

[3] The Monitor, AlixPartners Restructuring (formerly KSV Restructuring); KingSett Mortgage Corporation (“KingSett”) the senior secured creditor and interim lender; and Westmount West Services Inc. (“Westmount”) the deposit insurer and second position secured creditor, (collectively the “respondents”) assert that the relief is not available because the stay orders issued in these proceedings preclude the applicants from relying upon s. 23 of *REDMA* and as a consequence the purchasers are required to complete their obligations including payment under their presale agreements.

[4] These reasons deal with the intersection of s. 23 of *REDMA*, a provincial statute and the *CCAA*, a federal act, and the stay orders issued under it.

[5] For the reasons that follow the applications are allowed.

The Applicants

[6] There are two sets of applicants. Thirty-six are represented by the law firm of Harper Grey; and the remaining three are represented by the law firm of ATAC Law.

[7] Each of the applicants entered into a contract to purchase a unit from the Developer (“Presale Agreement”). The dates of the Presale Agreements range from 2021 to 2023.

[8] Affidavits from several of the applicants were presented. Those individual applicants include a barber, a massage therapist, and the owner of a small office

ergonomics start-up. They each deposed that their intention in purchasing their unit was to live in it, as well as about the materiality of the undisclosed facts to them.

[9] The applicants made purchase deposits ranging from approximately \$35,000 to \$205,000, with the majority being over \$100,000. These deposits total approximately \$3.6 million. The purchase prices under the Presale Agreements total approximately \$30.5 million.

[10] The applicants were prompted to seek relief from this Court by the issuance of Notices of Completion Date by the Monitor in April 2026 (the “Completion Notices”). Regarding the applicants’ respective units, the Completion Notices principally advise:

- a) that the City of Burnaby has issued an Occupancy Permit, the Pre-Sale Unit is “Ready to be Occupied”, and the title to the Strata Lot has been issued by the LTO;
- b) of the Completion Date pursuant to the Pre-Sale Contract; and
- c) of the steps required by the Pre-Sale Purchaser to complete the Unit Transaction, including the delivery of closing funds and execution of closing documents.

Background

[11] The applications arise against a backdrop of significant changes in the Greater Vancouver residential condominium market and financial stress in the real estate development sector. There have been many insolvency related proceedings commenced in our courts.

[12] At the time the applicants entered into their Presale Agreements, pre-sale demand in the Greater Vancouver Area was materially stronger; interest rates were materially lower than current levels; purchaser financing conditions were more favourable; and investor and end-user demand for pre-sale condominium units was more robust.

[13] The Monitor, in its latest report, states that based on market analysis obtained, it does not believe:

that the market in Burnaby can absorb a substantial number of additional units at pricing equivalent to the Pre-Sale Contracts without meaningful delay, purchaser incentives, and/or price reductions. If the Pre-Sale Units subject to the Purchasers' Applications were to be marketed and listed for sale, the Monitor expects that the aggregate proceeds ultimately realized from those Pre-Sale Units would be materially lower than the aggregate purchase prices under the applicable Pre-Sale Contracts. The resulting losses would be exacerbated by the additional costs and interest expense incurred while such Unsold Pre-Sale Units are remarketed and sold.

[14] Turning to the specifics of this case.

[15] The Development is a residential strata lot development contained within a 34 storey multi-residential building located at 2381 Beta Avenue in Burnaby BC. It includes 329 residential strata lots (the "Units").

[16] In April 2021, KingSett provided to the Developers a first mortgage loan in the principal amount of \$124 million, and a second mortgage loan in the principal amount of \$65.4 million. On September 8, 2021, the first disclosure statement was filed by the Developer with the BC Financial Services Authority (the "BCFSA") under *REDMA*.

[17] The disclosure statement indicated that construction commenced June 1, 2021. Completion of construction was estimated to occur between December 1, 2024, and March 1, 2025. It also stated that the Development had new home warranty insurance coverage from WBI Home Warranty Ltd. The disclosure statement was amended several times, as described later below.

[18] On September 22, 2021, a building permit was issued by the City of Burnaby for the Development.

[19] In May 2022, the Developer obtained a Deposit Protection Credit Facility from Westmount, agent for Aviva Insurance Company of Canada and Liberty Mutual Insurance Company, which enabled it to use purchaser deposits up to a maximum of

\$50 million for the Development. Security for the facility included a mortgage, assignment of rents, and indemnity agreements.

[20] Priority for the KingSett first mortgage, the Westmount mortgage, and the KingSett second mortgage is governed by an agreement between KingSett, the Developers, and Westmount, under which Westmount 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.

[21] As of January 8, 2025, purchase deposits totalled approximately \$24.4 million, of which approximately \$21 million was funded into the development. Approximately \$3.5 million remains in trust with a law firm.

[22] Presale Agreements for the purchase and sale of Units were entered into from 2021 through 2023.

[23] Between 2023 and March 2024, the Development fell significantly behind schedule and required additional funding to complete construction, however, the Developers were unable to finance the completion. The new home warranty insurance policy was suspended in October 2024; the municipal building permit was suspended in November 2024, and construction ceased from that point. It did not recommence until after these proceedings were initiated.

[24] In January 2025, KingSett, the largest and senior secured lender, owed in excess of \$225 million, petitioned for protection of the Developer under the CCAA as opposed to a receivership. The application came before me as the supervising judge and the initial order was granted on January 8, 2025. KSV Restructuring was appointed Monitor. There were subsequent amended orders, including the Amended and Restated Initial Order dated January 16, 2025 (the “ARIO”); a second order dated April 16, 2025 (the “SARIO”) and a third order dated December 19, 2025 (the “TARIO”). I will refer to these collectively as the “Orders”.

[25] On January 9, 2025, the BCFSA notified the Developer that the disclosure statement may not comply with the requirements of *REDMA* and amended

disclosure may be required. The BCFSA further requested that the Developer deliver a cease marketing undertaking by January 16, 2025, confirming that all marketing had ceased and would not resume until after a disclosure statement amendment was filed.

[26] On January 23, 2025, the Monitor provided an undertaking to the BCFSA as requested. This remained in place until November 25, 2025.

[27] The applicants through their respective firms began communications with the Monitor by way of letters dated December 25, 2025, and February 3, 2026, respectively. Both sets of applicants asserted the Presale Agreements were unenforceable and sought return of their deposits. As Mr. Baynham of Harper Grey wrote:

This letter will serve as notice that our clients intend to exercise their right under s. 23 of the *Real Estate Development Marketing Act*, S.B.C., 2004, c. 41 ("*REDMA*") to seek a declaration that each of their respective Contracts of Purchase and Sale are unenforceable by the Developer for multiple misrepresentations of material facts, in breach of Part 2 of the *REDMA*.

The Developer Failed to Immediately File an Amended Disclosure Statement to Correct Known Misrepresentations

[bold in the original]

[28] That letter set out in detail the alleged disclosure failings, which are outlined later in these reasons. It also clarified that the right to rescission under s. 21(2) of *REDMA* was not being exercised, but rather, the applicants relied on s. 23 in saying that the contracts are not enforceable against the purchasers. The letter posits that the stay provisions in the Initial Order did not affect the declaration that would be sought.

[29] The Monitor's counsel responded to the letters. By letter sent February 9, 2026, the applicants' position was said to be without merit, and the obligations under the purchase agreements remained in effect. This letter advised:

- a) the Monitor was concerned that the 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.

[30] Counsel continued exchanging communications regarding their opposing views, including the applicants' assertion of further breaches under s. 16; requests for further documentation regarding communications between the Monitor and the BCFSa in respect of "a cease marketing undertaking" by the debtor; and the procedure for securing the declaration sought before this Court. Counsel for the Monitor communicated his view that the stay provisions did not allow the subject applications to proceed without leave of the Court.

[31] At the commencement of these proceedings, 232 of the Units had been sold pursuant to contracts with third party purchasers, including the Presale Agreements with the applicants. The project was approximately 95% complete.

[32] As of the time of this hearing, I was advised approximately 70% of these contracts had closed. The Development was deemed substantially complete on about March 17, 2026. Occupancy permits for the Units were issued on April 10, 2026.

[33] As of April 11, 2026, the Monitor issued the Completion Notices to certain Presale Purchasers.

[34] As of May 1, 2026, the Monitor reported that a total of 66 pre-sale units had closed and a further 123 were scheduled to close by the start of the hearing.

[35] The Developer did not respond to the within applications and did not participate in this hearing. The absence of evidence from the Developer touching the key issues should not prejudice the consumer applicants.

Disclosure Statements

[36] There were five amendments to the initial disclosure statement.

[37] On June 17, 2022, the Developer executed and filed with the BCFSa the first amendment to the Disclosure Statement (the "First Amendment"). It disclosed, among other things, 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 initial Disclosure Statement, namely, that the statements disclose without misrepresentation all material facts relating to the development as required by the *REDMA*.

[38] 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, among other things, changed the completion of construction date from between December 1, 2021, and March 1, 2025, 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 statements disclose without misrepresentation all material facts relating to the development as required by the *REDMA*.

[39] On September 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 statements disclose without misrepresentation all material facts relating to the development as required by the *REDMA*.

[40] 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 statements disclose without misrepresentation all material facts relating to the development as required by the *REDMA*.

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 proceedings.

[41] On November 25, 2025, the Monitor executed and filed with the BCFSA on behalf of the Developer, the fifth amendment to the Disclosure Statement (the "Fifth Amendment"). It stated, among other things, the following:

- a) that the Developer was subject to a CCAA order;

- b) that 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) that the completion of construction date was extended to be between January 15, 2026, and April 14, 2026;
- d) that the warranty insurer to Aviva Insurance Company of Canada was in place in lieu of WBI Home Warranty Ltd; and
- e) 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*.

Orders in this Proceeding

[42] The provisions relevant to the present matter, found in the Orders state:

[...] 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.

The Asserted Breaches

[43] The applicants submit that there were many breaches of s. 16(1)(a)(ii) and (3) of *REDMA* Part 2 which rendered their agreement unenforceable. They arise from the failure of the Developer to have immediately filed an amendment to a disclosure statement when it became aware that a disclosure statement did not comply with *REDMA* or regulations or contained a misrepresentation. An amendment is required

under the *Act* if a developer becomes aware that a material fact in a disclosure statement has been omitted, changed, or misrepresented.

[44] The applicants submit that the Developer failed to immediately disclose the following:

- a) A \$12 million judgment obtained by the Canada Revenue Agency against the Developer on June 30, 2023, and registered against title (the “CRA Judgment”).
- b) The misappropriation of approximately \$9.7 million received by the Developer from the City of Burnaby in or around September 2024 in respect of cash in lieu of certain letters of credit commitments from the City of Burnaby. These funds were not used to paydown the indebtedness to KingSett as required; but rather, used by the Developer in breach of the loan agreement to fund additional costs that were not disclosed or approved by KingSett. The term “misappropriation” is the descriptive used by KingSett in the affidavit it provided in these proceedings.
- c) The suspension of the Developer’s new home warranty coverage on October 31, 2024, due to non-payment to the insurer.
- d) The suspension of the building permit for the Development by the City of Burnaby on November 14, 2024.
- e) The cessation of construction of the Development due to the suspension of the building permit on November 14, 2024.
- f) The failure to amend the disclosure statement in April 2025 to reflect that the construction completion in the previous disclosure statement that indicated the outside date as April 2025 (it took seven months to amend this on November 25, 2025).
- g) The change in control of the Development to the Monitor on January 8, 2025.

[45] The fact of these events having occurred was not disputed. Issues regarding the lack of awareness of the Developer of these events was not seriously contested. The Developer did not participate in this hearing. I find it highly unlikely it was not aware of these events close to when they occurred. No contrary evidence was tendered. I find that there was such awareness given the nature and significance of the events.

Positions of the Parties

[46] The respondents oppose the applications. They contend that the applicants are relying on a “loophole” to back out of their contracts and have lain in the weeds waiting for this opportunity, as shown by their delay in bringing the applications only after the injection of funds by KingSett and the Monitor’s efforts towards the project being proved successful. The respondents argue that the applicants will receive exactly what they bargained for – their respective units – and question whether the applicants are acting in good faith. They further argue that if the applicants are successful, the Monitor will be forced to relist the 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 suffer a substantial shortfall. Moreover, they submit that the stay orders issued in this proceeding preclude the applicants from arguing their contracts are not enforceable, and that the applicants are subverting this court’s process to the detriment of the debtors and their creditors. In this regard, they argue the CCAA, and the orders issued under it override the operation of *REDMA* as a result of the constitutional principle of paramountcy.

[47] There is also the argument that there is no basis for the declaration the applicants seek as there have been no misrepresentations and the Presale Agreements are enforceable. The respondents rely upon the “fair and reasonable” test under the CCAA to deny the applications.

[48] The applicants object to the assertion that they lack good faith. They note that they are not sophisticated business entities, acted in a timely fashion and raised the within issues before these proceedings were commenced. They point to the optimistic updates from the Developer as to the status of the project in 2024, and importantly, the Monitor's more recent communications as follows:

- a) January 11, 2025 – “Your Purchase Agreement remains valid and enforceable, and we aim to close it as quickly as possible”;
- b) June 9, 2025 – “Purchase Agreements: the Purchase Agreements remain valid and enforceable, and, at this time, no action is required on the part of the Purchasers. Please be advised that no person may terminate or rescind a Purchase Agreement without the prior written consent of the Monitor or with leave of the Supreme Court of British Columbia (the “Court”);” and
- c) September 18, 2025 – Key Points for Purchasers 1) Purchase Agreements remain in force. No action is required from you at this time. No one may terminate or rescind a Purchase Agreement without the prior written consent of the Monitor or leave of the Supreme Court of British Columbia (the “Court”). The Monitor is not authorizing assignments of Purchase Agreements at this time.

[49] The applicants submit that the information provided was inaccurate and incomplete and that the nuanced legal position of the Monitor advanced in this hearing was not reflected in the communications. Rather, the applicants were flatly told that their contracts remained enforceable. The purchasers were not encouraged to seek independent legal advice and were told that no action was required on their part.

[50] In respect of the asserted “bargain”, the applicants point out that this included not just the delivery of a physical condominium unit, but importantly, the various obligations of the Developer and the applicants' rights and entitlements in the period leading up to completion, as set out under *REDMA*. Pre-sale purchasers make

contractual commitments long before construction is completed and as such, the regulatory scheme provides consumers protections over this period, including a right to accurate and up-to-date disclosure statements.

[51] I do not accept the respondents' negative characterization of the applicants. The applicants have raised a specific, lawful defence based on asserted breaches of statutory transparency obligations.

[52] The applicants and the Attorney General for British Columbia acknowledge the broad discretionary powers of a supervising court under the CCAA; however, they note that it is well established that this authority is not unconstrained or boundless and must be exercised in furtherance of the CCAA's objectives, which include the public interest.

[53] It is also observed that the division of powers conflict alleged by the respondents is not between provincial and federal statutory provisions. Rather, it is between a provincial statutory provision (s. 23 of *REDMA*) and a broad, permissive grant of discretion to issue an order (under ss. 11 and 11.02 of the CCAA). The Attorney General and the applicants submit that when *REDMA* and the CCAA are viewed purposively through the lens of cooperative federalism, the asserted conflict or frustration does not arise. As the doctrine of paramountcy is not triggered, the fact that these bankruptcy and insolvency proceedings are federally regulated cannot be used to subvert provincially regulated property and civil rights: *Giffen (Re)*, [1998] 1 S.C.R. 91.

Relevant Statutes

Companies Creditor Arrangement Act

[54] The CCAA provides supervising courts broad discretion to stay rights held by creditors if the exercise of those rights could jeopardize the restructuring process. The primary tool for achieving a restructuring is through a stay of proceedings and of creditors' rights. The stay provides a level of stability by preserving the status quo for

a period during which the debtor is shielded from its creditors while restructuring efforts are undertaken. The objectives of CCAA proceedings include:

- a. timely, efficient and impartial resolution of a debtor's insolvency;
- b. preserving and maximizing a debtor's assets;
- c. ensuring fair and equitable treatment of the claims against a debtor;
- d. protecting the public interest; and
- e. in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company.

See: 9354-9186 *Quebec Inc. v. Callidus Capital Corp.*, 2020 SCC 10 at para. 40.

[55] While there is broad discretion, it has been held that the discretion is not without limits. In *Montreal (City) v. Deloitte Restructuring Inc.*, 2021 SCC 53, the Court stated at para. 58:

It must be borne in mind that a supervising judge's discretion, although broad, is not boundless. It must be exercised in furtherance of the CCAA's remedial objectives (*Callidus*, at para. 49).

[56] I note here that the applicants are not creditors, that *REDMA* is concerned with the public interest of consumer protection, and that the applicants are facing demand from the Monitor to complete the Presale Agreements.

Real Estate Development and Marketing Act

[57] *REDMA* regulates the marketing of pre-sale development properties (defined as "development units"). The *Act* is primarily focussed on consumer protection: *Pinto v. Revelstoke Mountain Resort Limited Partnership*, 2011 BCCA 210 [*Pinto*] at para. 17. The disclosure regime addresses the significant information imbalance between developers, who possess ongoing information regarding construction progress, financing, liabilities, regulatory approvals, and project risks, and purchasers, who are largely dependent upon disclosure statements and amendments for such information.

[58] It also enables the efficient and profitable operation of the real estate development sector. The *Act* affords the development industry the benefit of greater certainty and flexibility through a more structured and predictable business

environment; including the ability to access buyer deposits for financing; a standardized seven-day right of rescission for buyers; codification of a material fact and a disclosure statement; and rules for the marketing and selling of development units before obtaining municipal building permits or financing approvals. Developers have enjoyed a financially rewarding environment under this regime. The more recent difficulties in the industry are unrelated to the regulatory regime.

[59] Key features of *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 deposits in trust in accordance with *REDMA*. Developers cannot use deposits to construct or market the development units unless authorized deposit insurance has been obtained.
- c. Purchaser Consumer Protection — *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 *REDMA* occurs, the purchase contract may become unenforceable by the developer.

[60] Key provisions of *REDMA* are as follows:

Definitions

"disclosure statement" means a statement that discloses material facts about a development property, prepared in accordance with section 14 (2) [filing disclosure statements], and includes a consolidated disclosure statement, a phase disclosure statement and an amendment made to a disclosure statement;

"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;

"misrepresentation" means

- a) a false or misleading statement of a material fact, or
- b) an omission to state a material fact.

[61] The following provisions fall under Part 2.

Filing disclosure statements

- 14 (1) A developer must not market a development unit unless the developer has
- (a) prepared a disclosure statement respecting the development property in which the development unit is located, and
 - (b) filed with the superintendent
 - (i) the disclosure statement described under paragraph (a), and
 - (ii) any records required by the superintendent under subsection (3).
- (2) 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.

...

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.

(2) A developer must file a new disclosure statement under subsection (1)

(a)(i) if the failure to comply or misrepresentation referred to in that subsection

(a) is respecting a matter set out in paragraph (b) or (c) of the definition of "material fact" in section 1 [definitions],

(b) is respecting a matter set out in paragraph (d) of the definition of "material fact" in section 1, and the regulation prescribing the matter specifies that a new disclosure statement must be filed if subsection (1) of this section applies, or

(c) is of such a substantial nature that the superintendent gives notice to the developer that a new disclosure statement must be filed.

(3) A developer must file an amendment to the disclosure statement under subsection (1) (a) (ii) in any case to which subsection (2) does not apply.

(4) A developer who is required to file a new disclosure statement or an amendment under subsection (1) must not market a development unit in the development property that is the subject of the new disclosure statement or amendment

(a) until the developer has complied with subsection (1) (a), or

(b) unless permitted by the superintendent.

[62] Section 23 falls under Part 3 - Remedies and Enforcement.

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.

The Issues

[63] The issues that arise are as follows:

- a) Does s. 23 apply to breaches of disclosure obligations occurring after contract formation?
- b) If so, were the asserted undisclosed matters “material facts”?
- c) If so, did the failures to disclose constitute breaches of Part 2?
- d) If so, do the exceptions under s. 23(2) apply?
- e) What is the effect of this ruling on the deposits paid by the applicants?
- f) Do the stays of proceedings previously issued in these proceedings bar the applicants from seeking the declaration sought under s. 23 of *REDMA*?
- g) Does the doctrine of federal paramountcy apply?

Discussion

[64] I will deal first with questions regarding *REDMA* and then whether the Orders impact those findings.

Does s. 23 Apply to Continuing Disclosure Breaches Post-Formation?

[65] Before turning to the alleged undisclosed facts, it is necessary to determine whether a failure to amend a disclosure statement after contract formation is, as a matter of law, capable of engaging s. 23.

[66] Westmount argues that unenforceability under s. 23 can arise only from a misrepresentation in existence when the purchaser and developer entered into the purchase agreement. The applicants submit that this interpretation cannot be reconciled with the language of s. 23, which applies to breaches of "any provision of Part 2", or with the continuing disclosure regime established by s. 16.

[67] I do not accept the Westmount interpretation.

[68] In my view, the text, context and purpose of the provision support the conclusion that a breach of the continuing amendment obligations imposed by s. 16 engages s. 23. I am assisted further by the interpretive guide to give effect to consumer protection when it comes to consumer protection legislation with a remedial purpose. See for example: *Pinto and Seidel v. Telus Communications*, 2011 SCC 15. REDMA is such legislation. In this regard, I recognize that under the *Act*, there are several mechanisms that advance consumer protection, including rescission, damages, deposit protection, and not just the consequence of unenforceability.

[69] Section 23 does not restrict its operation to breaches existing when a purchaser first entered into a purchase agreement. Rather, it speaks broadly of a developer who has breached "any provision of Part 2".

[70] Part 2 includes s. 16, which imposes continuing disclosure obligations after a disclosure statement has been filed and after purchase agreements have been executed.

[71] I also observe that while s. 23(2)(b) refers to a misrepresentation existing "at the time the purchaser and the developer entered into the purchase agreement", no comparable temporal limitation appears in s. 23(2)(a). Rather, s. 23(2)(a) asks whether there is a misrepresentation concerning a material fact that "was or would have been" reasonably relevant to the purchaser in deciding to enter into the purchase agreement" [emphasis added].

[72] The use of both the past-tense phrase "was reasonably relevant" and the conditional phrase "would have been reasonably relevant" arguably supports the view that two different circumstances were contemplated. The former naturally captures information already in existence when the purchaser contracted. The latter encompasses a later-arising material fact that rendered the disclosure statement misleading and, had it been properly disclosed by amendment as required by Part 2, would have been relevant to a reasonable purchaser's decision whether to enter into the agreement.

[73] This interpretation gives effect to the opening words of s. 23(2), which apply to "any" of the developer's breaches of Part 2. This captures post-contract disclosure breaches. By contrast, the respondents' interpretation risks confining s. 23(2)(a) to breaches existing at contract formation, notwithstanding that Part 2 imposes continuing disclosure obligations. The legislature did not employ the temporal language found in s. 23(2)(b), but did demonstrate, within the same subsection, that it was capable of imposing such a limitation when it wished to do so. Its decision not to include comparable language in s. 23(1) or s. 23(2)(a) indicates that no such limitation was intended.

[74] The respondents' interpretation also sits uneasily with the structure of Part 2 itself. If breaches following execution of the purchase agreement were incapable of engaging s. 23, the continuing amendment obligations imposed by s.16 would lack a corresponding enforcement mechanism once the purchaser signs the agreement. Developers would remain under a statutory duty to provide amended disclosure statements, yet a failure to do so would have no bearing on the enforceability of the contract. It is difficult to attribute such an intention to the legislature when s. 23 expressly applies to breaches of "any provision of Part 2". Continuing disclosure serves an important function for purchasers and developers throughout the pre-completion period, as many development projects extend over several years. Material facts affecting a project may arise long after a purchaser has executed the purchase agreement. I find support for this view in the following passage of 299

Burrard Residential Limited Partnership v. Essalat, 2012 BCCA 271 [299 *Burrard*] at para. 25:

REDMA balances the rigour of the disclosure regime as a consumer protection measure against the flexibility in giving the developer an open opportunity to amend the Statement as often as it is necessary to adjust to unforeseen circumstances. However, the strictness of the filing regime must be maintained in order for the protection to be meaningful to the consumer.

[75] I also find support in the decision of Justice Milman in *Ye v. Vesta Properties (Latimer) Ltd.*, 2025 BCSC 773 [Ye].

[76] From a consumer perspective, significant personal and financial decisions are made in reliance upon the anticipated completion of the development. They may need to arrange or renew mortgage financing, decide whether to sell an existing residence, determine whether to continue renting or secure alternative accommodation, plan retirement, employment, or family relocations, arrange school enrolment for children, coordinate moving and storage arrangements, and make other substantial commitments. Their ability to make informed decisions throughout this period depends upon receiving timely disclosure of material developments affecting the project. The utility of such information is real and not abstract.

[77] Also, the ability of the purchaser to assign its interest is another consideration. Up-to-date disclosure would be important to the value and marketability of the purchaser's assignable interest, to the extent assignment is permitted. A prospective assignee would reasonably require accurate information concerning the current status of the development.

[78] Viewed in this way, the continuing amendment obligation represents a fair and rational balance between the commercial advantages conferred upon developers and the informational protections afforded to purchasers. It enables developers to enjoy the considerable benefits of the pre-sale marketing regime while requiring them to keep purchasers informed of material developments throughout the life of the project. If ongoing non-disclosure carried no meaningful legal consequence after the purchase agreement was signed, the continuing amendment

obligation imposed by s. 16 would be substantially diminished. It disconnects the legal consequence of unenforceability from a significant set of requirements under Part 2.

[79] In my view, the legislature has made continued compliance with Part 2 throughout the life of the development a statutory condition governing a developer's ability to enforce the purchase agreement, subject to the specific exceptions enacted in s. 23(2). The legislature would not have imposed extensive ongoing disclosure obligations if it regarded them as merely incidental.

[80] I now turn to the asserted deficiencies and whether they were “material facts.”

Were the Non-disclosures Material Facts?

[81] In my view, the non-disclosures were material facts.

[82] The applicants rely upon several events which they submit constitute material facts and which were not disclosed in a timely manner.

[83] These include:

- a) the \$12 million CRA Judgment and resulting tax liability;
- b) the suspension of warranty coverage;
- c) the suspension of the building permit and cessation of construction activity;
- d) significant changes affecting the projected completion; and
- e) other developments relating to the financial and operational condition of the project.

[84] This information was not disclosed to purchasers when the events occurred or filed in amendments to the disclosure statement within a reasonable time. Certain matters did not appear in the disclosure record until the fifth amendment filed by the

Monitor on November 25, 2025, approximately ten months after the commencement of these CCAA proceedings.

[85] The respondents did not contest the assertion that the Developer did not meet the requirement to file an amended disclosure statement of the above facts “immediately” as required under s. 16(1) of *REDMA*. I have taken into account that “immediately” in the present context includes a measure of reasonableness. See: *Jameson House Properties Ltd. (Re)*, 2009 BCCA 339 at para. 42.

[86] In my view, the above events constituted material facts requiring disclosure under *REDMA*.

[87] The Monitor's submissions focused principally on whether the stay provisions and the CCAA precluded the applications and whether the CCAA displaced the operation of *REDMA*. KingSett adopted that position. Westmount submitted that the alleged non-disclosures did not constitute material facts within the meaning of *REDMA*.

[88] The materiality inquiry is objective. The question is not whether a particular purchaser would have acted differently. Rather, it is whether the information could reasonably be expected to affect the value, price, or use of the development property or development unit. See: *Chameleon Talent Inc. v. Sandcastle Holdings Ltd.*, 2010 BCCA 300 at para. 12 and 299 *Burrard* at paras. 19- 21. Technical deficiencies or immaterial omissions will not render an agreement unenforceable: *Chaisson v. Avra Development Corp.*, 2014 BCSC 925 at para. 35.

[89] In *Bosa Properties (Esprit 2) Inc. v. Kim*, 2012 BCSC 1013 at para. 60, Mr. Justice J. Sigurdson observed that materiality may be established in different ways. A court may determine that a fact is material as a matter of common sense. Materiality may also be demonstrated by reference to the statutory disclosure regime and the requirements imposed by the Superintendent. Finally, evidence may be adduced establishing that the fact affected, or could reasonably be expected to

affect, the value, price, or use of the development unit. In this case, all three considerations point in the same direction.

[90] First, the statutory and regulatory framework itself supports the conclusion that the facts in issue were material. The Superintendent's disclosure requirements direct developers to disclose matters including significant liabilities and litigation affecting the development, anticipated completion dates, warranty coverage, and development approvals. The alleged non-disclosures in this case fall squarely within those categories. The fact that *REDMA* and the Superintendent's policies require disclosure of such matters strongly indicates their objective significance to purchasers.

[91] Second, the conclusion is supported by the objective conduct of several participants in the Development. KingSett relied upon concerns relating to the Developer's financial condition, liquidity, financial mismanagement, and operational failures in its commencement of these proceedings. The BCFSa raised concerns regarding the adequacy of the disclosure record and sought a cease-marketing undertaking, which was subsequently provided. The Monitor later included several of these matters now relied upon by the applicants, including the CRA indebtedness and warranty coverage issues, in the fifth amendment to the disclosure statement. While none of these actions is determinative of materiality, they further support that the events in question were objectively significant and not merely technical or administrative.

[92] Third, the conclusion follows as a matter of common sense. A development being constructed under a valid building permit and protected by warranty coverage is objectively different from a development whose warranty coverage has been suspended, whose building permit has been suspended, and whose construction has ceased. Likewise, substantial tax liabilities, significant completion delays, and insolvency-related developments materially increase the risk associated with the project. Such matters were capable of affecting purchasers' assessment of the value

of the units, the risks associated with their purchase, and the timing and ability of the Developer to perform its obligations.

[93] The purchasers' evidence is consistent with that conclusion. Several purchasers deposed that had they known of the undisclosed matters, they would not have proceeded with their purchases. While the test is objective and not subjective, that evidence illustrates that the facts were regarded as significant by those committing substantial deposits and purchase monies to the Development.

[94] I reject Westmount's submission that the events were not material because the Development ultimately completed and the purchasers may ultimately receive the units they contracted to purchase. Materiality is assessed at the time the disclosure was required, not with hindsight after completion. The question is whether the facts could reasonably be expected to affect value, price, or use when they occurred and when disclosure was required. Subsequent completion of the project does not retroactively deprive those events of their material character.

[95] Individually, several of the events plainly satisfied the statutory definition. The suspension of warranty coverage, suspension of the building permit, cessation of construction, significant completion delays, and substantial financial liabilities were each capable of affecting the value, price, or use of the development units.

[96] Collectively, these events contributed to a materially different state of the Development than that presented by the disclosure record available to the applicants. They were not technical, administrative defects, but went directly to project viability, anticipated completion, consumer protection, financial stability, and the Developer's ability to perform its obligations.

[97] Based on all of the foregoing, I conclude that the matters relied upon by the Applicants constituted material facts within the meaning of *REDMA*.

Did the Failures to Disclose Constitute Breaches of Part 2?

[98] Having concluded that the impugned events were material facts, it follows that the Developer was required to comply with the amendment obligations set out in s. 16 of *REDMA*.

[99] The evidence establishes that timely amendments to reflect the material facts as required under s. 16(1) were not filed.

[100] An omission to state a material fact constitutes a misrepresentation as defined in the *Act*.

[101] The significance of these omissions extends beyond the mere failure to file an amendment. A disclosure statement that omits a material fact or fails to be amended after a material fact arises may become misleading notwithstanding that it was accurate when originally delivered. As Milman J. observed in *Ye*, subsequent events may render an earlier disclosure statement materially misleading and thereby create a resulting misrepresentation requiring correction through the amendment process contemplated by s. 16.

[102] In the present case, the CRA Judgment, the suspension of warranty coverage, the suspension of the building permit, the cessation of construction activity, and the failure to update materially changed completion projections each rendered portions of the disclosure record materially misleading. Purchasers reviewing the disclosure statements continued to be presented with a picture of the Development that no longer reflected the actual circumstances known to the Developer. The disclosure statements therefore contained resulting misrepresentations concerning material facts.

[103] As such, the Developer breached its continuing disclosure obligations under Part 2 of *REDMA*.

Do the Exceptions in s. 23(2) Apply?

[104] The Respondents contend that the statutory exceptions preserve enforceability.

[105] I am unable to accept that submission.

[106] Paragraph (a) is unavailable. I have found that the Developer's failures to amend the disclosure statements resulted in misrepresentations concerning material facts. I have further found that those material facts were or would have been reasonably relevant to purchasers in deciding to enter into their purchase agreements. As above, they went directly to matters affecting project viability, anticipated completion, warranty protection, regulatory approval and the financial condition of the Development. The conditions necessary to invoke s. 23(2)(a) are therefore not present.

[107] Paragraph (b) is likewise unavailable. That provision requires the Developer to establish, among other things, that it was not aware of the misrepresentation at the time the Presale Agreements were made, and that the misrepresentation was subsequently corrected within the time periods prescribed by the section. There is no evidentiary foundation for the first requirement. The Developer did not participate in this hearing. No witness gave evidence that the Developer lacked awareness of the matters in question. To the contrary, I have already found that it is highly unlikely the Developer was unaware of the CRA Judgment, the suspension of warranty coverage, the suspension of the building permit, the cessation of construction, and the completion delays at or about the time those events occurred.

[108] Further, the material facts were not corrected within the time periods contemplated by s. 23(2)(b). Many remained undisclosed until the fifth amendment filed on November 25, 2025, long after the Developer became aware of them. The statutory preconditions necessary to preserve enforceability have therefore not been established.

[109] Accordingly, neither exception applies.

Are the Presale Agreements Unenforceable?

[110] I conclude that the Developer breached its continuing disclosure obligations under Part 2 of *REDMA* by failing to disclose material facts relating to the Development in a timely fashion.

[111] Those breaches occurred before the commencement of the *CCAA* proceedings. The exceptions contained in s. 23(2) have not been established.

[112] As a result, pursuant to s. 23 of *REDMA*, the applicants' Presale Agreements became unenforceable against them by the Developer at the time of its breaches which was before the start of these proceedings.

Effect of This Ruling on the Deposit Claims

[113] Having found the agreements as unenforceable, the question of whether the applicants are entitled to a return of their deposits remains. This is a separate issue as discussed with the parties at the outset of this hearing and is not determined in these reasons.

[114] Section 23 addresses enforceability but does not provide that the Presale Agreements are void, rescinded, cancelled or terminated. The estate may possess rights and interests that have been obtained under the agreements. While the applicants referred to cases where deposits were ordered to be returned upon a finding of unenforceability, those cases did not analyze this question directly.

[115] In this case, the vast majority of purchasers' deposits were not retained in trust pending completion. Pursuant to the deposit protection arrangements obtained by the Developer, deposit funds were released and utilized as part of the financing structure of the Development. Some remain in trust with a law firm. The terms and conditions governing the deposits or the eligibility or process for deposit claims, including with the insurer, Westmount, were not examined in this hearing. There may be other related issues as well. The parties are to schedule a hearing to address the matter of the deposits.

Did the Orders bar the *REDMA* s. 23 Applications?

[116] Having determined that the Presale Agreements became unenforceable against the applicants, I now turn to the respondents' submissions that the Orders nevertheless prevent the applicants from relying upon that unenforceability.

[117] The Monitor, KingSett, and Westmount submit that the applications should not be entertained by the Court. They argue that the stay provisions in the Orders are intentionally broad to preserve the status quo while efforts were undertaken to complete the Development. They submit that the relief sought by the applicants directly affects the business and property of the debtors, the value available to stakeholders, and the completion strategy approved in these proceedings. They contend that the applications are inconsistent with the CCAA process and are barred by the stay provisions. Moreover, the authority conferred upon the Court under ss. 11 and 11.02 of the CCAA is sufficiently broad to permit the court to preserve the enforceability of the agreements, notwithstanding rights that purchasers might otherwise seek to advance under *REDMA*. Permitting the applications, they say, undermines the restructuring objectives of the CCAA and jeopardizes the completion process that has been carried out under the supervision of this Court.

[118] I do not accept those submissions.

[119] The applications have not been commenced in another forum or tribunal. They have been brought before this supervising court in the very proceedings in which the Orders were issued. The applicants seek a determination concerning the legal effect of *REDMA* on the Pre-sale Agreements that form part of the restructuring process. Answering that question does not undermine the CCAA process; it is an exercise of the supervisory jurisdiction conferred upon this Court.

[120] The respondents in relying on the breadth of the Court's authority under ss. 11 and 11.02 of the CCAA point to several cases where courts have, either temporarily or permanently, interfered with or overridden the rights of third parties, whether statutory, contractual, or otherwise, where doing so furthers the CCAA's remedial purposes. Those cases include: *Norcen Energy Resources Ltd. v.*

Oakwood Petroleums Ltd., 1988 CanLII 3560 (AB KB) at para. 52; *Pacific National Lease Holding Corporation*, 1992 CanLII 427 (BCCA) at para. 28; *Collins & Aikman Automotive Canada Inc. (Re)*, [2007] O.J. No. 4186 at para. 42; *Sproule v. Nortel Networks Corp.*, 2009 ONCA 833 at para. 44; *Luscar Ltd. v. Smoky River Coal Ltd.*, 1999 ABCA 179 at para. 60.

[121] The respondents rely heavily on the *Jameson House Properties (Re)* set of cases, 2009 BCSC 964, 2009 BCSC 844 and 2009 BCCA 339 as they involve *REDMA*. However, they do not determine whether orders under the *CCAA* may in effect obligate performance of a contract declared unenforceable under s. 23 of *REDMA*. Both the chambers judge and the Court of Appeal concluded that the purchasers had failed to establish the *REDMA* rights they asserted. The Court of Appeal expressly held that, having reached that conclusion, it was unnecessary to decide whether a supervising court's discretion under the *CCAA* extends to overriding statutory rights under *REDMA*. Accordingly, the question left unresolved is what is now before this Court, whether agreements that are unenforceable pursuant to s. 23 may nevertheless be treated as enforceable as a result of the commencement of and ongoing *CCAA* proceedings.

[122] In my view, the common thread of the cases cited by the respondents is that the *CCAA* may regulate the assertion, enforcement, timing, and realization of rights for the purpose of advancing the remedial objectives of the *CCAA*. However, they do not establish that orders under the *CCAA* can, in *effect*, transform or restore an unenforceable agreement under a statute to an enforceable one. None of the cases involved a contract that had become unenforceable by operation of another statute before the commencement of the insolvency proceedings.

[123] In terms of the Orders, I start by recognizing the established approach to interpreting orders. In *Yu v. Jordan*, 2012 BCCA 367, D. Smith J.A. at para. 53 stated it this way:

the interpretation of a court order is not governed by the subjective views of one or more of the parties as to its meaning after the order is made. Rather an order, whether by consent or awarded in an adjudicated disposition, is a

decision of the court. As such, it is the court, not the parties, that determines the meaning of its order. In my view, the correct approach to interpreting the provisions of a court order is to examine the pleadings of the action in which it is made, the language of the order itself, and the circumstances in which the order was granted.

[124] I note first that the Orders make no mention of s. 23 of *REDMA*. The submissions made in obtaining the Initial Order were in respect of “rescission rights”. That order refers only to staying the right to rescission. The subsequent Orders set out no restriction of the ability to raise the defence of unenforceability, and no submissions addressed how a stay of s. 23 would further the objectives of the CCAA, particularly the public interest of consumer protection. It is well established that there is a difference between rescission rights and unenforceability under *REDMA*. See: *Jameson House Properties (Re)*, 2009 BCSC 964.

[125] The applicants also point out that the conditions precedent to the initial advance of interim funding did not include any conditions relating to s. 23 of *REDMA*.

[126] The respondents in support of their position rely upon the passage in the Orders that states, “all rights and remedies of any individual, firm, corporation...affecting the Business or Property, are hereby stayed and suspended except with the prior written consent of the Monitor or leave of this Court.”

[127] This passage does not assist them. Section 23 does not confer a right of action or remedial claim upon a purchaser. Rather, it prescribes the legal consequence following certain statutory conditions being met. The section does not provide for the enforcement of a right. Rather, it provides a defence to enforcement. It is a statutory shield, not a sword. The raising of a true defence is not an attempt to raise an independent claim that would be subject to compromise in a CCAA process. See: *Jameson House Properties Ltd. (Re)*, 2009 BCSC 844 and *Cam-Net Communications v. Vancouver Telephone Company Limited*, 1999 BCCA 751.

[128] In the latter case, the Court of Appeal held that the “true defence” of equitable set-off could proceed despite that a stay had been granted in the CCAA proceeding.

The chambers judge in this court had struck portions of the defence on the basis that the defence of equitable set-off was stayed by the CCAA order. In allowing the appeal, the Court held that equitable set-off, "operating as it does as a true defence, is really a means of denying the plaintiff's claim in whole or in part and is not an attempt to raise an independent claim of the sort which should be compromised in a CCAA reorganization": para. 47. See also the recent decision of Justice Fitzpatrick in *0989705 B.C. Ltd. (Re)*, 2026 BCSC 761 at paras. 84-94.

[129] In the instant case, we are similarly dealing with a true defence.

[130] Another passage in the Orders the respondents rely upon states:

NO INTERFERENCE WITH RIGHTS

16. 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.

[131] This provision would operate where an enforceable contract exists but does not assist where enforceability is the central issue.

[132] The authorities relied upon by the respondents establish that CCAA courts have broad discretion to stay proceedings, suspend remedies, restrain the exercise of contractual and statutory rights, centralize disputes, and otherwise control the manner in which rights are asserted. However, those authorities do not go so far as establish the broader proposition advanced by the respondents in the present case, that a contract rendered unenforceable by operation of another statute may nevertheless be treated as enforceable against the purchasers under the CCAA. I do not find such a proposition supported by the language of the CCAA.

[133] The difficulty with the respondents' position on the CCAA jurisdiction to override statutory unenforceability can also be seen by reference to other statutory defences. An example is in relation to contracts respecting land or disposition of land; and guarantees or indemnities not evidenced or reduced to writing, in ss. 59(3)

and 59(6), respectively, of the *Law and Equity Act*, RSBC 1966, c. 253. Such contracts, except for under specified conditions, are unenforceable. The respondents have not identified any authority suggesting that the broad discretion conferred by the *CCAA* permits a court to treat as enforceable an interest in land rendered unenforceable by s. 59 of the *Law and Equity Act*, or an otherwise unenforceable guarantee or indemnity. Similarly, I am not aware of an authority for the proposition that under the *CCAA*, a cause of action can be saved despite being statutorily barred by the expiry of a limitation period. These examples illustrate the distinction between regulating the exercise of rights and reviving enforceability where the governing law has already removed it.

[134] The applications are therefore properly before the Court. The stay orders do not bar the applicants from advancing their position under s. 23 of *REDMA*. Further, if a lifting of the stay were required, I would allow it for a determination on the merits.

Does the Doctrine of Federal Paramountcy apply?

[135] The Monitor, KingSett, and Westmount submit that if s. 23 of *REDMA* renders the subject Presale Agreements unenforceable, the doctrine of federal paramountcy operates to render s. 23 inoperative to the extent that it conflicts with the *CCAA*. They submit that the objectives of the restructuring, including the completion of the Development and realization of the pre-sale purchase prices, would be frustrated if purchasers are permitted to rely upon s. 23 of *REDMA* after the commencement of these proceedings.

[136] The Attorney General, supported by the applicants, submits that no such conflict arises. It argues that the present case does not involve inconsistent federal and provincial laws. Rather, *REDMA* defines the enforceability of purchase agreements, while the *CCAA* governs the administration of insolvency proceedings. The Attorney General further submits that the principle of cooperative federalism cautions against an expansive application of federal paramountcy where both statutes can operate concurrently.

[137] I agree with the Attorney General's position that there is no conflict or frustration.

[138] *REDMA* determines whether the Developer possessed an enforceable right against these applicants. The *CCAA* governs the administration of the ensuing insolvency proceeding and the treatment of rights and claims within that proceeding. The two statutory schemes address different, though related, subject matters.

[139] The respondents emphasize that recognizing the applicants' position may adversely affect the value available to stakeholders in the restructuring. I accept that practical consequences may follow. However, a reduction in value available to a debtor's estate is not, standing alone, sufficient to establish an operational conflict or frustration of purpose. The *CCAA* does not guarantee the preservation of every contractual expectation that a debtor might wish to enforce. Rather, it provides a framework for administering the rights and obligations that exist when insolvency proceedings commence. The general fairness analysis cannot alter the legal effect of s. 23. Once the Presale Agreements became unenforceable against the applicants, the estate no longer possessed an enforceable contractual right to compel their performance.

[140] In my view, the issues raised by these applications are resolved through the ordinary interpretation and application of the relevant provisions of *REDMA* and the *CCAA*. These statutes can operate concurrently in the circumstances of this case. They have both been validly enacted. Having concluded that they can operate harmoniously, it is unnecessary to undertake further constitutional analysis.

Conclusion

[141] The subject Presale Agreements are unenforceable and the sought-after declaration to that effect is allowed. The parties are to return and address the matter of deposits.

“Masuhara J.”