



FORCE FILED

No. S-250121
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

**LUMINA ECLIPSE LIMITED PARTNERSHIP,
BETA VIEW HOMES LTD.,
LUMINA ECLIPSE GP LTD.,**

and

D-THIND DEVELOPMENT BETA LTD.

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: KingSett Mortgage Corporation (the “Petitioner” or “KingSett”)

To: The Service List and the Pre-Filing Agents

TAKE NOTICE that an application will be made by the Petitioner to the Honourable Justice Masuhara at the courthouse at 800 Smithe Street, Vancouver, BC on August 20, 2026 at 10:00am for the order set out in Part 1 below.

The Petitioner estimates that the application will take 1 hour.

- ☐ This matter is within the jurisdiction of an associate judge.
☒ This matter is not within the jurisdiction of an associate judge.

Part 1: ORDER SOUGHT

1. The Petitioner seeks an order varying paragraph 3(d) of the Distribution Order of this Court dated April 8, 2026 (the “**Distribution Order**”) such that, in respect of each Purchased

Unit sold pursuant to a Pre-Sale Contract (each, a “**Presale Unit**”), the Monitor is authorized and directed to make a Distribution to the Former Sales Agents (as defined below) and/or any cooperating brokerage only in respect of that portion of the commission that is payable on or following the completion of the sale of that Presale Unit, and not in respect of any portion of the commission or any other fee, bonus, charge or other amount that accrued or was earned and was owing or payable prior to the commencement of these proceedings.

2. Additionally, the Petitioner seeks such further and other relief as counsel may advise and this Court may permit.

Part 2: FACTUAL BASIS

3. Capitalized terms used but not otherwise defined in this Notice of Application have the meanings given to them in the Distribution Order or the Sixth Report of the Monitor dated March 30, 2026 (the “**Sixth Report**”), as applicable.
4. KingSett is the principal secured creditor in these proceedings, holding two mortgages against a 34-storey development known as “Lumina Eclipse” located at 2381 Beta Avenue, Burnaby, BC (the “**Eclipse Project**”). KingSett is also the interim lender and the fulcrum creditor in these proceedings, whose recovery is directly reduced by payments out of the sale proceeds of the Eclipse Project units, including each Presale Unit. KingSett will to suffer a shortfall on its secured claim, and every payment out of those sale proceeds increases that shortfall. Therefore, KingSett bears the economic burden of the payments made under the Distribution Order.
5. Prior to the commencement of these proceedings by way of KingSett’s petition on January 7, 2025, construction of the Eclipse Project was approximately 95% complete, with approximately 232 of 329 strata units subject to Pre-Sale Contracts, being the Presale Units.
6. The Respondents’ former marketing agents, McNeill, Lalonde and Associates Inc. and Rennie Marketing Systems (together, the “**Former Sales Agents**”), together with Hong Win International Group Limited (“**Hong Win**”), which acted as the Respondents’ exclusive marketing agent in Hong Kong, and various cooperating brokerages (collectively

with the Former Sales Agents and Hong Win, the “**Pre-Filing Agents**”) facilitated the sale of the Presale Units. Each of the Presale Units was sold prior to the commencement of these proceedings, and Paragraph 3(d) of the Distribution Order authorizes payment of the commissions in connection with those Presale Units, subject to the Monitor being satisfied as to the commission payable.

7. Commission on each Presale Unit is generally payable in a portion that accrued and was owing or payable when the Pre-Sale Contract was entered into or shortly thereafter (the “**Execution Commissions**”), before these proceedings commenced, and a balance payable on the completion of the sale (the “**Closing Commissions**”). For these purposes, Execution Commissions includes any bonus or other commission amount that accrued or became payable on or shortly after the entry into the Pre-Sale Contract, and Closing Commissions includes the corresponding balance payable on completion.
8. The commission arrangements with the Pre-Filing Agents were governed by written agreements, the material terms of which, for present purposes, are as follows:
 - (a) McNeill, Lalonde and Associates Inc. acted under a marketing and sales agreement (originally with MAC Marketing Solutions Inc. and assigned to McNeill, Lalonde and Associates Inc.), as amended from time to time, under which commission was earned in stages and payable as to a portion following the sale becoming firm and as to the balance upon completion of the sale;
 - (b) Rennie Marketing Systems acted under a marketing agreement dated February 19, 2022, under which commission was payable as to 50% following the firm sale and as to the balance upon completion of the sale;
 - (c) Hong Win International Group Limited acted under a service agreement dated October 11, 2021 (as extended), under which a referral fee was payable as to 50% following the entry into a firm contract and receipt of the specified deposit and as to the balance within 30 days of completion of the sale, together with a separate advertising bonus payable on a similar basis; and
 - (d) the cooperating brokerages acted under registration or commission agreements under which commission was payable as to a portion following the firm sale and as

to the balance upon completion of the sale, with the commission generally repayable in the event the sale did not complete.

9. Before these proceedings commenced, KingSett advanced certain funds under its construction financing on account of the Execution Commissions that had accrued when the Pre-Sale Contracts were entered into. That advance is reflected in a project monitoring claim report prepared by BTY Group dated August 24, 2024. KingSett only recently became aware that, notwithstanding those advances, the Execution Commissions had not been paid to the Pre-Filing Agents from the funds so advanced.
10. At the time KingSett consented to the Distribution Order, KingSett understood that the commissions to be funded from the proceeds of the Presale Units pursuant to the Distribution Order were the Closing Commissions, being the portion of the commissions that became payable upon completion of each sale. KingSett did not understand or intend that the Distribution Order would require it to effectively fund the Execution Commissions a second time. Those amounts had already been advanced by KingSett before these proceedings commenced for the purpose of paying the Pre-Filing Agents.
11. KingSett has only recently learned that the Pre-Filing Agents assert that the Execution Commissions remain outstanding and are payable pursuant to paragraph 3(d) of the Distribution Order. If paragraph 3(d) is interpreted to require payment of those amounts from the Available Proceeds of the Presale Units, KingSett would bear the economic burden of paying commissions that it had already funded once before these proceedings commenced.

Part 3: LEGAL BASIS

12. This Court has jurisdiction to grant the relief sought under section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"), which empowers the Court, on the application of any interested person, to make any order it considers appropriate in the circumstances.
13. Paragraph 10 of the Distribution Order expressly permits an application to this Court to amend, vary or supplement that order, or for advice and directions with respect to its

interpretation or application, at any time. The Distribution Order is therefore, by its own terms, subject to variation, and the Monitor has consented to, and supports, KingSett bringing the within application.

14. The Execution Commissions in respect of each Presale Unit arose prior to the commencement of these proceedings. These amounts are accordingly pre-filing obligations of the Debtors. A distribution order authorizes payments out of realizations that would otherwise flow to secured creditors in accordance with their priorities, and it is not a mechanism for satisfying pre-filing obligations that rank with the claims of the Debtors' ordinary unsecured creditors. The Available Proceeds, in the waterfall established by the Distribution Order, are applied for the benefit of KingSett as fulcrum creditor. KingSett will suffer a shortfall on its secured claim, such that the Available Proceeds are not expected to be sufficient to satisfy KingSett's secured indebtedness in full.
15. To pay the Execution Commissions out of those proceeds would advance an unsecured pre-filing claim ahead of KingSett's secured position, would increase the shortfall borne by KingSett, and would confer on the Pre-Filing Agents a recovery on their pre-filing claims that other unsecured creditors will not receive – an outcome that is neither required to close the Unit Transactions nor consistent with the priorities the Distribution Order was designed to give effect to.
16. In addition, the Execution Commissions were advanced by KingSett under its construction financing prior to the commencement of these proceedings, on account of, and with the intention that they be applied to, the commissions owing to the Pre-Filing Agents. That those funds were diverted or otherwise exhausted rather than paid to the Pre-Filing Agents does not entitle the Pre-Filing Agents to have KingSett pay the same commission a second time out of the Available Proceeds. The Pre-Filing Agents' recourse in respect of the diverted or otherwise exhausted funds, if any, is not against the sale proceeds in which KingSett holds its secured interest.
17. The relief sought is consistent with the remedial objectives of the CCAA and meets the baseline considerations of appropriateness, good faith, and due diligence that govern the exercise of the Court's discretion under section 11. An order is appropriate where it advances the policy objectives underlying the CCAA. It is not appropriate for the sale

proceeds to be applied such that KingSett must pay a second time a commission that it already funded before these proceedings commenced. Requiring such double payment would not further any remedial objective of the CCAA.

Century Services Inc. v. Canada (Attorney General), 2010 SCC 60 at paras. 69-70.

18. The variation sought is prospective only and does not affect any Distribution already made in reliance on the Distribution Order.

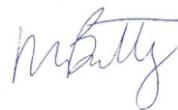
Part 4: MATERIAL TO BE RELIED ON

19. The Sixth Report of the Monitor dated March 30, 2026;
20. The Ninth Report of the Monitor, to be filed;
21. The 3rd affidavit of Daniel Pollack, dated August 17, 2026;
22. The Distribution Order dated April 8, 2026;
23. The Third Amended and Restated Initial Order dated December 19, 2025; and
24. The pleadings and other materials filed in these proceedings.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated: August 17, 2026



Signature of ☐ Applicant(s)
☒ Lawyer for applicant(s)
Mary Buttery, K.C.

To be completed by the court only:

Order made

[] in the terms requested in paragraphs of Part 1 of this notice of application

[] with the following variations and additional terms:

.....
.....
.....

Date:[dd/mmm/yyyy].....

.....
Signature of [] Judge [] Associate Judge

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☐ none of the above

SCHEDULE "A"
VARYING DISTRIBUTION ORDER

See attached.

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and

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RESPONDENTS

ORDER MADE AFTER APPLICATION

ORDER VARYING DISTRIBUTION ORDER

BEFORE THE HONOURABLE JUSTICE)
MASUHARA) _____, 2026
)

THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia, on August 17, 2026; AND ON HEARING Mary Buttery, K.C., counsel for the Petitioner and those other counsel listed on **Schedule “A”** hereto; AND UPON READING the material filed, including the Notice of Application of the Petitioner and the affidavit(s) filed in support, and the distribution order of this Court dated April 8, 2026 (the “**Distribution Order**”); AND pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended, the British Columbia Supreme Court Civil Rules, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. Capitalized terms used but not otherwise defined in this Order have the meanings given to them in the Distribution Order.

2. Paragraph 3(d) of the Distribution Order is hereby deleted in its entirety and replaced with the following:

“(d) to either Former Sales Agent, if and as applicable, and/or any cooperating brokerage in respect of the commission payable in connection with each Purchased Unit and any GST thereon, provided that (i) in each case, the Monitor has received such information, documentation or declaration as the Monitor considers necessary or appropriate to confirm the commission payable in connection with such Purchased Unit, and (ii) in respect of each Purchased Unit sold pursuant to a Pre-Sale Contract, the Monitor shall pay only that portion of the commission that is payable on or following the completion of the sale of that Purchased Unit, and shall not pay any portion of the commission or any other fee, bonus, charge or other amount that accrued or was earned and was owing or payable prior to the commencement of these proceedings; and”.

3. Except as varied by this Order, the Distribution Order remains in full force and effect, unamended.

4. This Order does not affect any Distribution made under the Distribution Order prior to the date of this Order.

5. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioner, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Mary Buttery, K.C.

☐ Party ☒ Lawyer for the Petitioner

BY THE COURT

REGISTRAR

Schedule “A”

Appearance List

[illegible]