

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF SYMPHONY HOMES (MOONLIGHT SONATA) LIMITED,
1168386 B.C. LTD., 1197030 B.C. LTD., 1197062 B.C. LTD., SYMPHONY HOMES
(WAYBURNE) LTD., and 663466 B.C. LTD.

PETITIONERS

APPLICATION RESPONSE

Application Response of: AlixPartners Restructuring, Inc. in its capacity as court-appointed monitor of the Petitioners (the “**Monitor**”)

THIS IS A RESPONSE TO the notice of application of the Petitioners and Symphony Homes Limited (“**SHL**”) filed August 27, 2026 (the “**Symphony Application**”).

The application respondent estimates that the application will take 75 minutes.

Part 1: ORDERS CONSENTED TO

The Monitor consents to the granting of the orders set out in NONE of the paragraphs of Part 1 of the Symphony Application.

Part 2: ORDERS OPPOSED

The Monitor opposes the granting of the orders set out in ALL of the paragraphs of Part 1 of the Symphony Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Monitor takes no position on the granting of the orders set out in NONE of the paragraphs of Part 1 of the Symphony Application.

Part 4: FACTUAL BASIS

Background

1. The Petitioners are a group of companies involved in the ownership and construction of the “Moonlight Sonata” townhouse development project in Burnaby, British Columbia (the “**Project**”).
2. Pursuant to commitment letters dated September 27, 2024, and April 15, 2025, KingSett Mortgage Corporation (“**KingSett**”) agreed to provide the Petitioner entities Symphony Homes (Moonlight Sonata) Limited, 1168386 B.C. Ltd., 1197030 B.C. Ltd., and 1197062 B.C. Ltd. (collectively, the “**Borrowers**”), with two credit facilities in the aggregate principal amount of \$95,300,000 to fund the Project (the “**Credit Facilities**”).
3. The Credit Facilities are guaranteed by the Petitioner entity 663466 B.C. Ltd. (the “**Corporate Guarantor**”), and the principals of the Petitioners, Gurdeep Singh Kainth (“**Gurdeep**”) and his father, Gurmel Kainth (“**Gurmel**”).
4. KingSett is the Debtors’ principal secured creditor, and holds a first-ranking mortgage on the Project (as well as general and other security, including security over lands owned by the Corporate Guarantor).
5. On May 4, 2026, KingSett formally demanded payment of its debt owed under the Credit Facilities, which was and remains in default. As at May 31, 2026, the total indebtedness owed to KingSett under the Credit Facilities was approximately \$59.6 million.

The CCAA Initial Order and the ARIO

6. On June 17, 2026, upon application by all of the Petitioners, including the Corporate Guarantor (except for Symphony Homes (Wayburne) Ltd. as described below), this Court granted an initial order (the “**Initial Order**”), under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCAA**”) among other things:
 - (a) granting a stay of proceedings in respect of the Petitioners until June 26, 2026 (the “**Stay Period**”);
 - (b) authorizing the Petitioners to borrow under an interim financing credit facility made available by KingSett up to the maximum principal amount of \$27,900,000 (the “**Interim Financing Facility**”), provided that borrowings shall not exceed \$500,000 unless permitted by further order of the Court;
 - (c) granting an “Administration Charge” and an “Interim Lender’s Charge” against the property of the Petitioners; and

- (d) authorizing the Monitor to operate and control the bank accounts of the Petitioners, and requiring Monitor approval for disbursements over \$10,000 in any one transaction, or \$25,000 in the aggregate (the “**Disbursement Threshold**”).
7. On June 26, 2026, this Court granted an amended and restated initial order (the “**ARIO**”), among other things:
- (a) extending the Stay Period to July 31, 2026;
 - (b) increasing authorized borrowing under the Interim Financing Facility to \$1,000,000; and
 - (c) adding Symphony Homes (Wayburne) Ltd. (a contracting entity used for the Project) as a Petitioner in these proceedings.

Monitor discoveries and the Enhanced Powers Order

8. In the Second Report of the Monitor filed on July 22, 2026 (the “**Second Report**”), the Monitor reported several concerning discoveries made since its appointment, including:
- (a) false bank statements provided by the Petitioners to the Monitor;
 - (b) breach of the Disbursement Threshold by the Corporate Guarantor;
 - (c) material deficiencies in deposit amounts collected from presale purchasers on the Project, including deposits from non-arm’s-length parties; and
 - (d) the sudden resignation of the Petitioners’ counsel when confronted with the Monitor’s concerns.
9. On July 24, 2026, KingSett delivered a letter to the Petitioners, noting several defaults under the Interim Financing Facility, making reference to the Petitioners’ conduct detailed in the Second Report. KingSett also brought an application for the Monitor to be given enhanced powers over the Petitioners and the Project.
10. On July 29, 2026, this Court granted an order (the “**Enhanced Powers Order**”), among other things:
- (a) extending the Stay Period to September 11, 2026; and
 - (b) granting exclusive enhanced powers to the Monitor, including any powers the Monitor deems appropriate which may be properly exercised by the board of directors or any officers of the Petitioners, on behalf of and in the name of the Petitioners (the “**Enhanced Powers**”).
11. On July 31, 2026, the Monitor (on behalf of the Petitioners) and KingSett executed an amendment to the Interim Financing Facility to add Symphony Wayburne as a borrower entity (the “**Amended Interim Financing Facility**”). The Amended Interim Financing

Facility was later corrected to fix inadvertent errors describing the borrower parties, before seeking this Court's approval of the amendment.

12. On August 18, 2026, the Petitioners filed a notice of appeal seeking leave to appeal the Enhanced Powers Order. The leave to appeal application is scheduled for October 27, 2026. The Petitioners have not applied for a stay.

Recent developments and further Monitor discoveries

13. Following the granting of the Enhanced Powers Order, the Monitor worked to review the status of the Project, its contracting relationships, budgets, and funding. This review led to the Monitor disclaiming the CCDC 5B Construction Management Contract between the Petitioners and SHL, a related non-Petitioner entity (the "**SHL CM Agreement**"). This disclaimer was undisputed and became effective on September 3, 2026.
14. The Monitor is currently working to advance the Project for the benefit of all stakeholders by seeking this Court's approval of a new construction manager and development manager following a competitive RFP process, securing Project budgeting and funding, and completing required regulatory and other steps to restart construction work on the Project.
15. In the Fourth Report of the Monitor filed on September 29, 2026 (the "**Fourth Report**"), the Monitor reports on several additional discoveries and developments regarding the Petitioners, including:
 - (a) the Petitioners' failure to return an \$86,185.66 GST/HST refund (the "**HST Refund**") to the Monitor, despite the Petitioners receiving the funds during these CCAA proceedings, and repeated requests from the Monitor and its counsel;
 - (b) new facts leading KingSett to believe the Petitioners recorded below-market presale purchases with non-arm's-length parties in order to falsely satisfy conditions under the Credit Facilities; and
 - (c) the expiry or suspension of various required licenses, permits, and insurance for the Project dating as far back as July of 2025.

The Symphony Application

16. In the Symphony Application, the Petitioners and SHL are seeking:
 - (a) removal of the Corporate Guarantor as a Petitioner in these CCAA Proceedings;
 - (b) payment of three post-filing SHL invoices charging a \$13,750 "semi-monthly" fee to the Petitioners for various purported services rendered under the SHL CM Agreement (the "**CM Invoices**"); and

- (c) payment of \$23,343.89 in post-filing services invoices the Petitioners claim to have paid out of pocket in relation to the Project (the “**Services Invoices**”).

Part 5: LEGAL BASIS

17. The Symphony Application should be dismissed. The Monitor relies upon:
- (a) the ARIO;
 - (b) the Enhanced Powers Order;
 - (c) the CCAA;
 - (d) the inherent and equitable jurisdiction of this Court; and
 - (e) such further and other legal basis as counsel may advise and this Court may allow.

The Corporate Guarantor should remain a Petitioner

18. When considering the issue of claims involving guarantor entities in CCAA proceedings, this Court has found that guarantors should not be permitted to “distance themselves” from the proceedings, particularly where they are economic stakeholders of the debtors, their controlling minds, or otherwise involved in the debtors’ business.

Alderbridge Way GP Ltd. (Re), 2023 BCSC 1718 at paras 58-73

19. Similar considerations should apply in this case, where removing the Corporate Guarantor from the CCAA proceedings is inappropriate because:
- (a) the Corporate Guarantor is a guarantor party and pledgor of security to the defaulted Credit Facilities underlying the proceedings;
 - (b) the Corporate Guarantor has enjoyed the benefit of the CCAA stay of proceedings since June 17, 2026;
 - (c) the Corporate Guarantor signed the Interim Financing Facility as a borrower party, representing that it would be a Petitioner in these CCAA Proceedings;
 - (d) the Corporate Guarantor is bound by the terms of the Initial Order and the ARIO in respect of the Interim Financing Facility;
 - (e) it was the Debtors’ own counsel and petition that included the Corporate Guarantor as a Petitioner in the CCAA proceedings and as a borrower under the Interim Financing Facility; and
 - (f) the Corporate guarantor continues to be a borrower party under the Amended Interim Financing Facility.

20. Further, given that KingSett has noted the Petitioners (including the Corporate Guarantor) in default under the Interim Financing Facility, as amended, there is risk that if the Corporate Guarantor is released from the CCAA Proceedings, KingSett could pursue these defaults and immediately seek to enforce its security against the Corporate Guarantor, leaving the Project without interim financing to finish construction.
21. The Symphony Application alleges that Gurmel is prejudiced from the inclusion of the Corporate Guarantor's bank account in these CCAA proceedings because Gurmel is unable to pay his personal debts as they come due. Notwithstanding that the Corporate Guarantor put itself into these proceedings in the first place, this argument only further demonstrates the need for the Corporate Guarantor to remain a Petitioner. There have already been unauthorized withdrawals from the Corporate Guarantor bank account during these proceedings, and releasing the Corporate Guarantor is likely to result in a further erosion of value.

There is no basis for the CM Invoices

22. The three CM Invoices each charge a "semi-monthly" construction management fee of \$13,750 for purported post-filing services performed by SHL on the Project.
23. Article A-5 of the SHL CM Agreement provides that SHL is only paid construction management fees as a fixed percentage of actual construction costs. The SHL CM Agreement does not provide for SHL to charge any semi-monthly flat fee, or fees for any of its purported services listed on the CM Invoices. In any event, the Fourth Report confirms that nearly all construction work on the Project (and therefore expenditure of construction costs triggering SHL fees) has been stalled since Q4 2025.
24. As such, SHL has no basis to issue the CM Invoices and the Monitor has no obligation to pay them.

The Services Invoices should be set off against the missing HST Refund

25. The Services Invoices claim post-filing amounts owed to various trade suppliers of the Petitioners, for a total of \$23,343.89.
26. Without admitting or determining the validity of the Services Invoices, the Monitor considers it reasonable and efficient to resolve this issue by setting off \$23,343.89 against the HST Refund taken and currently held by the Petitioners instead of having been paid to the Monitor, in full satisfaction of the Services Invoices, resulting in a net HST Refund amount owing from the Petitioners to the Monitor of \$62,841.77.

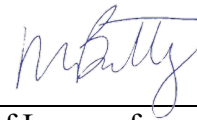
Part 6: MATERIAL RELIED ON

1. Amended and Restated Initial Order dated June 26, 2026;
2. Order Made After Application dated July 29, 2026;

3. First Report of the Monitor dated June 26, 2026;
4. Second Report of the Monitor dated July 21, 2026;
5. Supplement to the Second Report of the Monitor dated July 29, 2026;
6. Third Report of the Monitor dated September 4, 2026;
7. Fourth Report of the Monitor dated September 29, 2026;
8. First Affidavit of Pamela Ang made on September 29, 2026; and
9. such further materials as counsel may advise and this Honourable Court may permit.

The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

Dated: September 29, 2026



Signature of Lawyer for application
respondent, Mary Buttery, K.C.