



No. S-264225
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

AND

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 : KingSett Mortgage Corporation (the "**Application Respondent**" or "**KingSett**").

THIS IS A RESPONSE TO the Notice of Application of the Petitioners and Symphony Homes Limited filed August 27, 2026.

The Application Respondent agrees to the applicant's hearing date of October 5, 2026.

The Application Respondent estimates that the application will take 2 hours.

Part 1 ORDERS CONSENTED TO

The Application Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application on the following terms: **NONE**

Part 2 ORDERS OPPOSED

The Application Respondent opposes the granting of the orders set out in **ALL** of the paragraphs of Part 1 of the Notice of Application.

Part 3 ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondent takes no position on the granting of the orders set out in **NONE** of the paragraphs of Part 1 of the Notice of Application.

Part 4 FACTUAL BASIS

Overview¹

1. KingSett is the Petitioners' senior secured creditor and the interim lender in these proceedings.
2. KingSett opposes the Petitioners' application to remove 663466 B.C. Ltd. ("**466**") as a petitioner. 466 is a guarantor under the Amended Commitment Letter, is a borrower under the interim financing facility approved in these proceedings, and has granted security in favour of KingSett over its assets. 466 is indebted to KingSett for more than \$59 million.
3. 466, along with the Borrowers (as defined below), voluntarily commenced these proceedings seeking relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"). Having invoked the benefits and protections of the restructuring process—which were sought in the face of 466's indebtedness to KingSett—466 cannot now characterize itself as entirely divorced from the restructuring.
4. Not unrelated to this application are KingSett and the Monitor's well-founded concerns regarding 466's conduct as a result of unauthorized transactions undertaken in breach of a prior order of this Court. In such circumstances, the continued oversight of 466 by the Monitor remains particularly important to preserve transparency, ensure compliance with court orders, and prevent any further erosion of KingSett's security position.

The Commitment Letter

5. The Petitioners are part of a group of companies developing a 130 unit residential townhome project in Burnaby, British Columbia (the "**Project**").
6. Pursuant to a commitment letter dated September 27, 2024 (the "**Commitment Letter**"), as amended by an amending letter dated April 15, 2025 (the "**Amended Commitment Letter**"), KingSett agreed to provide 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.
7. Given the risks associated with construction financing, the Commitment Letter was structured to limit KingSett's exposure by requiring, among other things, guarantees and security from the Borrowers and their principals, Gurmeh Kainth and Gurdeep Kainth.
8. Following the initial advance under the Commitment Letter, the Borrowers failed to achieve key construction milestones within the anticipated timelines. As delays continued and the Project's risk profile increased, KingSett became concerned that the value of its existing security would be insufficient to protect its advances in the event of further delays or non-completion.

¹ 1. Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Affidavit #3 of Daniel Pollack made October 1, 2026.

9. In response to those concerns, the parties entered into the Amended Commitment Letter. As a condition of KingSett's continued financing, 466 was added as a guarantor of the Borrowers' obligations and granted additional security to KingSett, including an unlimited guarantee, a mortgage of its property located at 416 East Columbia Street, New Westminster (the "**Collateral**"), a general assignment of leases and rents, a postponement of creditor and shareholder claims, and a general security agreement.
10. The addition of 466 and its provision of additional security were (and remain) of material importance to KingSett as it provided KingSett with: (i) additional protection to mitigate the heightened risk arising from the Project's delays and (ii) further sources of recovery in the event the Borrowers were unable to satisfy their obligations under the Credit Facilities. The additional guarantee and security were also intended to incentivize the Borrowers to advance the Project expeditiously.
11. The Amended Commitment Letter provides that the security interest in the Collateral granted by 466 would only be discharged upon satisfaction of specified conditions precedent, including the achievement of minimum qualified presale thresholds and gross sale proceeds.
12. Those conditions precedent have never been satisfied.
13. As a result, 466 continues to be liable as guarantor of the Borrowers' obligations and KingSett has a continuing security interest in the Collateral.
14. Although the parties subsequently discussed a potential further amendment whereby 466's guarantee and security might be discharged in exchange for a substantial repayment of the credit facilities, no agreement was reached, no such repayments was made and no amendment was ever executed. The Amended Commitment Letter therefore remains the operative agreement governing the circumstances in which 466 may be released from its obligations.
15. As of May 2026, 466 remained indebted to KingSett in an amount exceeding \$59 million. On July 24, 2026, KingSett demanded payment from 466 arising from its obligations under its guarantee. Those obligations remain outstanding and in default.

Interim Financing

16. On June 5, 2026, 466 together with the Borrowers (the "**Initial Petitioners**") commenced these proceedings and sought protection under the CCAA. The materials filed in support of the initial order represented, among other things, that 466, as a petitioner, was indebted to KingSett and needed protection under the CCAA as a result of KingSett's enforcement efforts.²
17. To facilitate the restructuring, pursuant to the interim financing term sheet dated May 29, 2026 (the "**Interim Financing Agreement**") KingSett agreed to provide interim financing

² Petition filed June 5, 2026 in these proceedings, at para. 31; Affidavit #1 of Gurdeep Singh Kainth made June 5, 2026, at paras. 73-74.

to the Initial Petitioners, including 466. Pursuant to an amended and restated initial order granted on June 26, 2026 (the “**ARIO**”), KingSett was granted a court-ordered charge over the Petitioners’ assets, including the assets of 466, as security for advances made under the interim financing facility.

18. KingSett agreed to provide interim financing in reliance upon the court-ordered security and on the understanding that 466 would remain a petitioner and borrower throughout these proceedings. The assets of 466 formed a material component of the collateral supporting the interim financing facility and reduced KingSett’s lending risk. 466 executed the Interim Financing Agreement as a borrower and remains a party under the Amending Agreement.

Prejudice to KingSett

19. The relief sought by the Petitioners would remove 466 and its assets from the oversight and protections of these CCAA proceedings despite the fact that KingSett continues to rely upon 466’s obligations and assets as material credit support for the ongoing interim financing facility.
20. The timing of the application is particularly significant because KingSett is being asked to support a substantial increase to the interim financing facility to facilitate a restart of construction of the Project, something which the Petitioners have always said was necessary. KingSett has agreed to do so in part on the basis that 466 remains a Petitioner and borrower under the Interim Lending Agreement, as amended by the Amending Agreement.
21. KingSett is concerned about the risk to its security. During these proceedings, 466 made disbursements that exceeded thresholds established by the Initial Order without the Monitor’s approval, which is an event of default under the interim financing facility. Continued oversight of 466 by the Monitor is necessary to prevent further erosion of KingSett’s security.

Part 5 LEGAL BASIS

22. KingSett relies on:
 - (a) the CCAA;
 - (b) the inherent and equitable jurisdiction of this Court; and
 - (c) such further and other legal basis as counsel may advise and this Court may allow.
23. When considering 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.

24. That reasoning applies with particular force in the present case, where 466's continued participation as a petitioner is inextricably linked to the credit arrangements upon which KingSett agreed to finance the Project, both under the Amended Commitment Letter and the Amended Interim Financing Facility. Removing 466 from these proceedings would not be in the interests of justice for several reasons:
- (a) 466 is not a stranger to the Project. It remains a guarantor and has provided security in favour of KingSett under the Credit Facilities used to fund the Project. Its guarantee and security were negotiated as a condition of KingSett's continued financing in response to increasing Project risk, and the contractual conditions for their release have not been satisfied;
 - (b) 466 has benefited from the protection of the CCAA stay since the commencement of these proceedings, while KingSett has continued to extend credit in reliance on 466 remaining subject to this Court's supervision;
 - (c) the Petitioners themselves included 466 as a petitioner and borrower in these proceedings, a structure upon which KingSett relied in agreeing to provide interim financing. Having done so, they cannot now characterize 466 as unrelated to the restructuring;
 - (d) 466 is subject to the Initial Order and ARIO, under which KingSett holds a charge over 466's assets that forms a material part of the collateral securing the interim financing facility provided under the Amending Agreement; and
 - (e) the application arises against a backdrop of concerns regarding unauthorized transactions and compliance with Court orders, making continued Court supervision of 466 particularly important.
25. Based on the foregoing, KingSett submits the relief sought by the Petitioners should not be granted, and 466 should remain a petitioner in these proceedings and a borrower under the Amending Interim Financing Facility.

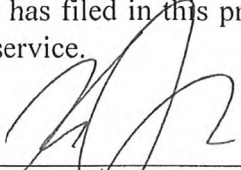
Part 6 MATERIAL TO BE RELIED ON

- 1. Affidavit #3 of Daniel Pollack made October 1, 2026.
- 2. Fourth Report of the Monitor dated September 29, 2026.
- 3. Order Made After Application dated July 29, 2026.
- 4. Second Report of the Monitor dated July 21, 2026.
- 5. Amended and Restated Initial Order dated June 26, 2026.
- 6. Affidavit #1 of Jordan Beaulieu made June 17, 2026.
- 7. Affidavit #1 of Gurdeep Singh Kainth filed June 5, 2026.

8. Petition dated June 5, 2026.

☒ The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.

Dated: 01-Oct-2026



Signature of Kibben Jackson
Lawyer for Application Respondent,
KingSett Mortgage Corporation

The Solicitors for KingSett Mortgage Corporation are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232 E-mail: hesslinger@fasken.com (Reference: Heidi Esslinger/311780.00068)