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Form 32 (Rule 8-1(4))

No. **S264225**
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, 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

NOTICE OF APPLICATION

Names of Applicants: The Petitioners and Symphony Homes Limited
("Symphony") (collectively, the "Applicants")

To: the Service List attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the applicants to the presiding judge or associate judge at the courthouse at 800 Smithe Street, Vancouver on September 9, 2026 at 9:45 AM for the orders set out in Part 1 below.

The applicants estimate that the application will take 2 hours.

☐ This matter is within the jurisdiction of an associate judge.

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

PART 1: ORDERS SOUGHT

1. An order:

- (a) Amending the restated initial order of this Court made on June 26, 2026 (the "**ARIO**") and further amended on July 29, 2026, to remove 663466 B.C. Ltd ("**466**") as petitioner in these proceedings;
- (b) Directing that the Monitor, within 5 days, pay the following:
 - (i) the Construction Management Invoices; and

(ii) the Services Invoices.

2. Such further and other relief as this Court deems just.

PART 2: FACTUAL BASIS

Background

1. The Petitioners, Symphony Homes (Moonlight Sonata) Limited, 1168386 B.C. Ltd., 1197030 B.C. Ltd., 1197062 B.C. Ltd., Symphony Homes (Wayburne) Ltd. are companies in the Symphony Homes group of companies, real estate developers focused on custom homes and multi-family communities across the Lower Mainland.
2. Gurdeep Singh Kainth is the sole director and shareholder of Symphony Homes (Moonlight Sonata) Limited ("**Moonlight**") and the managing director for the Moonlight Sonata Development (the "**Project**").
3. Symphony is the construction manager on the Project.
4. 466 is a corporate guarantor under the Loan (defined below). 466 is the personal holding company of Gurmel Singh Kainth, the father of Gurdeep Singh Kainth.
5. KingSett Mortgage Corporation (the "**Lender**") is the Petitioners' only secured lender for the Project.
6. The Petitioners entered into a construction loan with the Lender under a commitment letter (the "**Commitment Letter**") dated September 27, 2024. The total amount of the loan was \$93,800,000, which would be increased to \$95,300,000 if certain conditions were met (the "**Loan**"). The Loan was to be advanced in two tranches. Facility 1 and Facility 2.
7. The Commitment Letter was amended on April 15, 2025, in which the Petitioners pledged further security for the allocation of the Loan to be shifted (the "**Amended Commitment Letter**").
8. As part of the Amended Commitment Letter, 466 was required to provide additional security. This security consisted of a guarantee and a second mortgage over a property located at 414-416 East Columbia Street, New Westminster (the "**Additional Security**"). The Additional Security was to be discharged after conditions precedent on presales were met for Facility 2.
9. An Amended and Restated Commitment Letter was presented to Petitioners on January 8, 2026 (the "**ARCL**") after the Lender unilaterally decided to change the scope of the Loan to just Facility 1. The parties never executed the ARCL.

10. On June 1, 2026, the Lender filed a petition in the Supreme Court of British Columbia Action No. S-264089 seeking, among other things, to appoint the Monitor with enhanced powers.
11. On June 5, the Petitioners filed this proceeding seeking the appointment of the Proposed Monitor without enhanced powers.
12. After negotiations with the Lender, and on the understanding that the Monitor would work collaboratively with the Petitioners, the Petitioners agreed to the Monitor being appointed with certain enhanced powers.
13. On June 17, 2026, an initial order was granted in these proceedings (the "**Initial Order**"). The terms of the Initial Order were amended and restated in the ARIO.
14. Under the ARIO, the Petitioners were allowed to continue to operate the Project, but the Monitor had all financial control, as all disbursements or purchases over \$10,000 in any one transaction or \$25,000 in aggregate had to be approved by the Monitor.
15. On July 29, 2026, the Court made an order that granted enhanced powers to the Monitor, and the Petitioners lost all control over the Project.

Removal of 466 as Petitioner

16. As previously mentioned, 466 is a corporate guarantor and provided additional collateral for the project as part of the Amended Commitment Letter. 466 has also provided equity contribution in the Project and, by virtue of 466 being a petitioner, it's a DIP borrower.
17. The Toronto-Dominion Bank ("**TD**") was not put on notice that 466 would be a Petitioner and that the Administration Charge and DIP financing would rank in priority to TD's first mortgage over the land owned by 466.
18. 466 is not otherwise affiliated with the Project. It does not hold contracts for the project, nor does it participate in the management of or development of the Project. Moreover, project funds never flowed from the other Petitioners to 466.
19. 466 is Gurmel Singh Kainth's ("**Gurmel**") personal holding company. 466's TD bank account (the "**466 Account**"), which the Monitor has seized, is used for Gurmel's general business and day-to-day ordinary personal and property-related obligations unrelated to the Project, including mortgage payments, utilities, property taxes, water and sewer charges, and monthly interest of approximately \$2,500.
20. Gurmel is the only authorized signatory for the 466 account and has owned the 466 Account for more than 10 years, well predating the existence of the Project.

21. No longer having access to the 466 Account has considerably prejudiced Gurmel. He risks defaulting on his mortgage and utilities payments and has lost control of his finances.
22. There is no prejudice to the Lender if 466 is removed. The Additional Security remains in place as security for the Project, and there is no material impact on the Lender's position. Indeed, it is in the Lender's best interest to let 466 continue to meet its mortgage obligations under the first mortgage to preserve the equity available to the Lender on its second mortgage.
23. Moreover, the Additional Security was meant to be temporary, and the Lender itself did not regard 466 and the Additional Security as integral to the Loan. The terms of the Amended Commitment Letter allowed for the discharge of the Additional Security, along with other security, when conditions precedent for Facility 2 were met.
24. However, early in 2026, the Lender unilaterally decided that it would no longer fund Facility 2. This meant that meeting the conditions precedent for Facility 2 would be impossible as there would be no Facility 2, effectively foreclosing the Petitioners' ability to have the Additional Security discharged.
25. In discussions with the Lender regarding the ARCL, the Lender further suggested that as part of the ARCL, the Additional Security would be discharged.

Payment of Construction Management Fees and Services Invoices

26. Symphony has been the construction manager of the Project since its inception.
27. From the Initial Order to July 29, 2026, Symphony has undertaken a number of tasks at the instruction of the Monitor, which have not been paid.
28. During this period, Symphony worked closely with the Monitor and responded to numerous requests relating to budgets, schedules, cash flow forecasts, cost-to-complete analyses, consultant coordination, trade coordination and site-preservation matters. The Monitor was aware of and benefited from these efforts in administering the Project and preparing materials required during the CCAA proceedings.
29. These include:
 - (a) preparation of a number of reports, budgets and schedules;
 - (b) coordination with trades and consultants regarding potential restart;
 - (c) discussions with the Monitor regarding essential trades and consultants;
 - (d) preservation of the work site, which included

- (i) coordinating the cleaning/removing construction debris;
- (ii) maintaining fence rentals; and
- (iii) coordinating site safety measures like security cameras

(the “**Construction Management Invoices**”).

30. Symphony, in the same time period, has also incurred a number of invoices for services rendered to the Project that remain unpaid. These invoices include:

- (a) Invoices for fence rentals;
- (b) Rent for the presentation centre;
- (c) Invoices for rental of a generator to provide power to the Project and work site;
- (d) Invoices for security cameras;
- (e) Invoices for equipment rentals;
- (f) Invoices for site labour; and
- (g) Invoices for accounting services

(the “**Services Invoices**”).

31. The Services Invoices include third-party invoices that were paid in advance by Symphony in the post-filing period. Symphony then issued invoices to the Monitor for those amounts.

32. The fees outlined in the Construction Management Invoices and the Services Invoices have been incurred post-filing and before July 29, 2026, when the Monitor gained full control of the Project. The Construction Management Invoices and the Services Invoices are accounted for in the cash flow provided by the Monitor in its first report under Other Project Costs and Site Security and Maintenance headings, respectively.

33. The cash flow in the Monitor’s first report was developed in conjunction with the Petitioners; the Construction Management Invoices and the Services Invoices were among the fees discussed in this discussion. These costs were therefore not unexpected obligations raised after the fact but formed part of the ongoing project-preservation and operating-cost framework being administered during the CCAA proceedings.

PART 3: LEGAL BASIS

34. The Applicant relies on:

- (a) The CCAA;
- (b) The *Supreme Court Civil Rules*;
- (c) The inherent and equitable jurisdiction of this Court; and
- (d) Such further and other legal basis as counsel may advise and this Honourable Court may allow.

Removal of 466 as Petitioner

- 35. Section 11 of the CCAA grants broad powers to the court to, subject to the restrictions set out in the CCAA, "make any order that it considers appropriate in the circumstances."
- 36. 466 is not a related entity to the other Petitioners in this proceeding, nor is it integrated into the operations of the Project or the other Petitioners. It holds no project contracts, and its involvement in the Project is limited to its guarantee and pledge of collateral.
- 37. There is no restructuring purpose to the inclusion of 466 as a Petitioner. 466 is not an entity that needs restructuring or CCAA protection. Indeed, 466 should never have been included as a Petitioner in these proceedings in the first place. The Additional Security remains in place regardless of whether 466 is a Petitioner.
- 38. There is severe prejudice to Gurmel as a result of 466's inclusion. By virtue of the enhanced powers granted to the Monitor on July 29, 2026, Gurmel no longer has access to the 466 Account, which he has used to pay his general business and day-to-day ordinary personal and property-related obligations unrelated to the Project, including mortgage payments, utilities, property taxes, water and sewer charges, and monthly interest of approximately \$2,500.
- 39. Gurmel's inability to access the 466 Account effectively means he no longer has control over his finances and may be put into a situation where the Additional Security is compromised by Gurmel's inability to pay his first mortgage.
- 40. Conversely, there is no prejudice to the Lender. The scope of the Lender's security does not change if 466 is no longer a Petitioner. The fact that 466 is a borrower under the DIP does not render it inextricably tied to the other Petitioners such that 466 should remain a Petitioner. Once 466 is removed as a Petitioner it will also cease to be a DIP borrower. In any event, the DIP financing has priority over the Loan and will be paid from the proceeds of the Project. 466's obligations to the Lender flow from the guarantee and mortgage security it provided to the Lender and that will not change regardless of whether 466 is a Petitioner or not.

Construction Management Fees and Services Invoices

ARIO Provisions

41. Paragraph 6 of the ARIO allows the Petitioners to pay expenses in the ordinary course of business. Specifically,
- (a) paragraph 6(a) allows the payment of all expenses and capital expenditures necessary to preserve the project, subject to the Monitor's approval for capital expenditures;
 - (b) paragraph 6(b) allows for the payment of all obligations with respect to goods and services supplied to the Petitioners; and
 - (c) paragraph 6(c) allows for the payment of fees of any employees, consultants, agents, experts, accountants, counsel and such other persons related to the Petitioners' restructuring.
42. Paragraph 8 requires the Petitioners to pay rent for real property on existing lease arrangements.
43. Paragraph 24(b) of the ARIO gives the Monitor powers to "approve all disbursements and purchase commitments over \$10,000 in any one transaction or \$25,000 in the aggregate."
44. Paragraph 51 of the ARIO allows the Petitioners and the Monitor to apply to seek directions in the discharge of its powers and duties under the ARIO.

Analysis

45. All expenses claimed by the Petitioners are post-filing expenses that occurred between the granting of the Initial Order and the July 29, 2026 order.
46. Most of the expenses incurred by the Petitioners in the time period when they still had control over the project were operating expenses to preserve the Project and not capital expenditure and therefore were not subject to the Monitor's review under paragraph 6(a). This included the fencing rental, labour to clean up the site, security system rental, generator rental and equipment rental. These costs did not improve the Project; they merely preserved it. The accounting fees incurred by the Petitioner are payable under paragraph 6(c), and rent for the presentation centre is payable under paragraph 8, neither of which require Monitor review.
47. The fees incurred to preserve the property also do not trigger the Monitor's power to approve disbursements over \$10,000 in one transaction and \$25,000 in aggregate. Below is a table of these invoices and the total they amount to:

Invoice	Total
Fence rental	\$2,310.00
Site Labour	\$8,400.00

Equipment Rentals	\$2,622.38
Generator Rental	\$4,620.00
PC Alarm June 17 to June 30, 2026	\$46.53
PC Alarm July 01 to July 31, 2026	\$94.98
Hothi Commerce Ltd. (Accounting)	\$5,250.00
Grand Total	\$23,343.89

48. The grand total of these amounts is \$23,343.89, below the \$25,000 threshold, and no individual transaction exceeds \$10,000. The Petitioner submits that these payments are not subject to the Monitor's approval and are payable directly.
49. These preservation costs also include third-party invoices that the Petitioners have paid with the understanding that they would be repaid once DIP financing was approved. The Petitioners should not be expected to carry these costs indefinitely.
50. Even if these preservation costs are subject to the Monitor's approval, they ought to be approved as they were undertaken at the Monitor's direction and in communication with the Monitor. Indeed, the Monitor's cash flow in its first report provides for site security and maintenance as a separate heading, and these costs were communicated to the Monitor when the cash flow was prepared. The amounts the Petitioners seek to be paid on that basis are well within the \$67,000 set out for this heading in the Monitor's first report.
51. The only fees that should have been subject to the Monitor's approval under paragraph 24 of the ARIO were the rent for the presentation centre and the construction management fees.
52. As previously mentioned, the Petitioner is required to remit rent under paragraph 8 of the ARIO. During the period that the Petitioners still had control over the Project, the lease for the presentation centre was not disclaimed and, as a post-filing expense specified in the ARIO, it ought to be approved and paid. Although the Monitor's first report has no specific heading for rent, this expense should fall into other project costs.
53. The construction management fees are similar. As stated in the Construction Management Invoices, the services provided include "preservation of the site and preparation for remobilization: site preservation and security oversight, consultant and trade coordination, construction scheduling, cost-to-complete budgeting and cost control, and related project administration." All of these services were completed at the Monitor's request or with the Monitor's consultation. Indeed, much of Symphony's work involved preparing reports and budgets for the Monitor's use.

54. The Monitor has suggested that this work was undertaken by the Petitioners and not by Symphony as construction manager. Symphony is not a Petitioner; it is a distinct entity that provides construction management services to the Project. The fact that the director of both Symphony and the project-related Petitioners is the same does not allow the Monitor to pick and choose when certain services are provided by the project-related Petitioners versus Symphony to avoid paying construction management costs that are due and owing in the ordinary course of business. This should be especially true when the Monitor itself requested these services.
55. The Construction Management Invoices ought to be approved and should be payable under either the site security and maintenance or the other project costs heading of the cash flow. Symphony was integral to organizing site security and preservation of the Project while the Petitioners remained in control of the Project. The reports and various discussions that Symphony had with the Monitor were in its role as construction manager for the Project and related to the restart of construction and cost-to-complete budgets. This should surely be captured by other project costs.
56. The nature of the ARIO put the Petitioners' management of the project post-filing in a precarious state at the outset. While the Petitioners had *de jure* control over the Project, the Monitor held the purse strings and accordingly had *de facto* control over whether the Project would advance. This is materially different from a typical debtor-in-possession CCAA proceeding, where the Petitioners would be in a position to draw from the DIP Financing and advance the Project.
57. This precarious state existed until enhanced powers were granted to the Monitor, and in the interim has resulted in a situation where valid post-filing expenses have not been paid.
58. It is the Petitioners' submission that this court direct the payment of the Construction Management Invoices and Services Invoices promptly.

PART 4: MATERIAL TO BE RELIED ON

1. Affidavit #6 of Gurdeep Singh Kainth, made August 26, 2026.
2. Affidavit #2 of Gurmel Singh Kainth, made August 26, 2026.
3. The First Report of the Monitor.
4. Any such additional material that counsel may advise and this Honourable Court may allow.

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).

Date: August 27, 2026

Simon Wu
for



Signature of Lawyer for Applicants
Lawyer: Christopher Ramsay

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: _____

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 matters 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"

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and 663466 B.C. LTD.

PETITIONERS

SERVICE LIST

As of July 28, 2026

Clark Wilson LLP	Osler, Hoskin & Harcourt LLP
Attention: Christopher Ramsay Simon Wu Jaime Landa (Assistant)	Attention: Marc Wasserman Mary Buttery Christian Garton Emma Newbery
Email: CRamsay@cwilson.com SWu@cwilson.com JLanda@cwilson.com	Email: mwasserman@osler.com mbuttery@osler.com cgarton@osler.com enewbery@osler.com
<i>Counsel for the Petitioners</i>	<i>Counsel for the Monitor</i>

AlixPartners Restructuring, Inc. Attention: Noah Goldstein Murtaza Tallat Martin Kasie Email: ngoldstein@ksvadvisory.com mtallat@ksvadvisory.com mkosic@ksvadvisory.com <i>The Monitor</i>	Fasken Martineau DuMoulin LLP Attention: Kibben Jackson Heidi Esslinger Email: kiackson@fasken.com hesslinger@fasken.com ibeau lieu@fasken.com <i>Counsel for Kingsett Mortgage Corporation</i>
Department of Justice Canada British Columbia Regional Office 900 - 840 Howe Street Vancouver, BC V6Z 2S9 Attention: Aminollah Sabzevari Nikhil Pandey Email: Aminollah.Sabzevari@justice.gc.ca; Nikhil.Pandey@justice.gc.ca <i>Counsel for CRA</i>	The Government of British Columbia Deputy Attorney General Ministry of Attorney General PO Box 9290 Stn Prov Govt Victoria, BC V8W9J7 Email: AGLSBRevTaxinsolvency@gov.bc.ca
Morelli Chertkow LLP Attention: Greg Thomson Email: gthomson@morellichertkow.com <i>Counsel for Dag Masonry Ltd.</i>	Baker Newby LLP Attention: Kayla Mitchell Benjamin Lorimer Erin Stewart Email: KMitchell@bakernewby.com; BLorimer@bakernewby.com; ERStewart@bakernewby.com <i>Counsel for Standard Building Supplies Ltd., Heidelberg Materials Canada Limited., Leavitt Cranes Canada Inc. and Southridge Building Supplies Ltd.</i>

BC Financial Services Authority (BCFSA) Attention: Kyle Ferguson Jake Zhong Email: kyle.ferguson@bcfsa.ca ; jake.zhong@bcfsa.ca ;	McLean & Armstrong LLP Attention: Chris Moore Email : cmoore@mcleanarmstrong.com ; <i>Counsel for Doka Canada Ltd.</i>
Solimano Law Attention: Diego Solimano Samuel Drinovz Email: spd@solimanolaw.ca das@solimanolaw.ca <i>Counsel for Mountview Construction Ltd.</i>	Kuhn LLP 100-32160 South Fraser Way Abbotsford, B.C. V2T 1 W5 Attention: Andrew Delmonico Brandon M. Potomak Email: adelmonico@kuhnco.net bpotomak@kuhnco.net mtipton@kuhnco.net service@kuhnco.net Phone: 604.864.8877 <i>Counsel/or Haney Builders' Supplies (1971) Ltd.</i>

E-Service List

CRamsay@cwilson.com; SWu@cwilson.com; JLanda@cwilson.com; mwasserman@osler.com;
 mbuttery@osler.com; cgarton@osler.com; enewbery@osler.com; ngoldstein@ksv advisory.com;
 mtallat@ksv advisory.com; mkosic@ksv advisory.com; kjackson@fasken.com;
 hesslinger@fasken.com; jbeaulieu@fasken.com; Aminollah.Sabzevari@justice.gc.ca;
 Nikhil.Pandey@justice.gc.ca; AGLSBRevTaxinsolvency@gov.bc.ca;
 gthomson@morellichertkow.com; KMitchell@bakernewby.com; BLorimer@bakernewby.com;
 EStewart@bakernewby.com; kyle.ferguson@bcfsa.ca; jake.zhong@bcfsa.ca;
 cmoore@mcleanarmstrong.com; das@solimanolaw.ca; spd@solimanolaw.ca; adelmonico@kuhnco.net;
 bpotomak@kuhnco.net; mtipton@kuhnco.net; service@kuhnco.net