

FORCE FILED



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, 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. (collectively, the "Petitioners").

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

TAKE NOTICE that an application will be made by the applicants to Honourable Justice Milman at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on July 29, 2026, at 9:00 a.m. for the Orders set out in Part 1 below (the "**Application**"). Mr. Justice Milman has been assigned to hear this matter.

The applicants estimate that the application will take ~~one (1) day~~. 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: ORDER(S) SOUGHT

1. The following orders:

- (a) Abridging, if necessary, the time for service of the Application and dispensing with service on any person other than those served;
- (b) Extending the stay of proceedings (the "**Stay**") granted in the amended and restated initial order of this Court on June 26, 2026 (the "**ARIO**") up to and including September 11, 2026;
- (c) Directing the Monitor to immediately pay essential trades necessary to begin work on the Project as identified in the 5th affidavit of Gurdeep Singh Kainth;
- (d) Directing the Monitor to immediately pay certain critical supplier pre-filing obligations of the Petitioners necessary to begin work on the Project as identified in the 5th affidavit of Gurdeep Singh Kainth;
- (e) Increasing the Administration Charge to \$100,000 for the Petitioners' counsel; and
- (f) ~~Removing the monitor, AlixPartners Restructuring Inc. (in such capacity, the "**Monitor**") and replacing them with Doane Grant Thornton LLP (the "**Proposed Monitor**")~~;

And in the alternative

- (g) Deleting paragraph 24 of the Amended and Restated Initial Order of this Court made on June 26, 2026 (the "**ARIO**") in its entirety;

And in the further alternative

- (h) That the powers granted to the Monitor in paragraph 24 of the ARIO be vested in the Proposed Monitor as the Financial Control Officer;
- (i) That 663466 B.C. Ltd. not be subject to the disbursement approval threshold set out in section 24 of the ARIO (the "**Approval Threshold**") and
- (j) Increasing the Approval Threshold from \$10,000 to \$150,000 and removing the aggregate limit.

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

PART 2: FACTUAL BASIS

Parties

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, an award-winning,

family-run, real estate developer 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. The Petitioner 663466 B.C. ("**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.
4. KingSett Mortgage Corporation (the "**Lender**") is the Petitioners' only secured lender for the Project.

Loan

5. The Project is currently a 130-townhome development in Burnaby to be constructed in three phases

 - (a) Phase 1A: 51 for-sale townhomes;
 - (b) Phase 1B: 40 purpose-built rental townhomes; and
 - (c) Phase 2: a further 39 townhomes to be sold on the market.
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 further broken down into the following facilities:
 - (a) Facility 1 comprised a loan up to \$71,900,000 to complete Phase 1A and 1B, further broken down as follows:
 - (i) \$55,300,000, increased to \$56,800,000 if certain conditions were met to service the entire site and construct 50 for sale townhomes under Phase 1A;
 - (ii) \$11,400,000 for the construction of 40 rental townhomes under Phase 1B; and
 - (iii) Cash in Lieu of a Letter of Credit Facility of \$3,700,000;
 - (b) Facility 2 comprised of a loan of \$23,400,000 for the construction of Phase 2.
7. The terms of the Commitment Letter also required, among other things, that BTY be appointed as project monitor.

8. The Commitment Letter was amended on April 15, 2025, where the Petitioners pledged further security for the allocation of the Loan to be shifted (the “**Amended Commitment Letter**”). The total amount of the Loan remained a maximum of \$95,300,000. The updated allocation is as follows:
 - (a) \$73,150,000, increased to \$75,100,000 to complete Phase 1A and 1B, further broken down as follows:
 - (i) \$58,050,000, increased to \$60,000,000 if certain conditions were met to service the entire site and construct 50 for sale townhomes under Phase 1A;
 - (ii) \$11,400,000 for the construction of 40 rental townhomes under Phase 1B; and
 - (iii) Cash in Lieu of a Letter of Credit Facility of \$3,700,000;
 - (b) \$20,200,000 for the construction of Phase 2.

9. An Amended and Restated Commitment Letter was presented to Petitioners on January 8, 2026 (the “**ARCL**”), which aimed to change the Loan to just Phase 1A. The ARCL was never fully executed between the Lender and the Petitioners.
10. The Lender suspended future draws in January 2026, and the Petitioners have not received any funds from the Lender since.
11. 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 which would be tantamount to a receivership wearing CCAA garb.
12. On June 5, the Petitioners filed this proceeding seeking the appointment of the Proposed Monitor without enhanced powers.
13. 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.
14. On June 17, 2026, this court granted an initial order which was amended and restated by the ARIO. The enhanced powers effectively gave all financial controls to the Monitor.
15. On July 22, 2026, the Lender filed another application seeking enhanced powers which would in effect make the Monitor a receiver.

Lender's Conduct Throughout the Loan

16. The Petitioners do not bring up the Lender's past conduct to set out the basis of a claim but rather to provide the history and context of the Lender's conduct.
17. The Lender has engaged in both aggressive and at times dilatory conduct throughout the Loan to the detriment of the Petitioners.

Scope of Construction and Seeking Additional Security

18. The Loan initially progressed normally, but a few months into the relationship concerns began to arise. The first of these concerns was the Lender and BTY's difficulties with fully grasping the scope of what was to be included in Facility 1.
19. In initially apportioning the Loan, the Lender and BTY, through their internal processes, had apportioned certain hard costs like foundation costs proportionally based on units across phase 1A, 1B and 2. For instance, in BTY's report 1.2 dated October 1, 2024, the budget summary apportioned about 30 percent (just over \$3.5 million) of all concrete costs under phase 2.
- ~~20. This was not the correct approach. The foundation of the Project is a 4-storey concrete parkade that would cover the foundation for phases 1A, 1B and 2. This foundation had to be completed first before the wood structures for the various phases could be erected. It would have been impossible to isolate and build any phase without constructing the whole foundation.~~
21. This naturally front-loaded the costs of the Project to Facility 1, as in effect the entire budget for concrete needed to be expended in Facility 1. The Lender chose to understand the construction of the foundation as a significant cost overrun on Facility 1 and believed the Petitioners were improperly using Facility 1 funds to complete work that was meant to be completed under Facility 2.
22. The Petitioners attempted to further clarify this issue, but the Lender was not receptive to these communications.
23. As a result of the Lender's concerns, the Petitioners were required to pledge additional security and execute the Amended Commitment Letter, which did not provide additional funds but only reallocated about \$3.2 million from Facility 2 to Facility 1.

DPI

24. As part of its financing efforts, the Petitioner sought a DPI mortgage which would be funded at a 2:1 ratio based on the amount of pre-sale deposits the Petitioners had. This was an allowed encumbrance in the Commitment Letter. The amount of this DPI mortgage would be approximately \$5.5 million at much lower interest rates than the Loan.

25. The Petitioners completed all paperwork for the DPI mortgage and provided it to the Lender by December 2024, but these amounts were never funded. Despite a number of follow-ups from the Petitioners.
26. It was only in March 2025 that the Petitioners were advised that DPI had not been funded because the Lender had yet to agree with the insurer on the terms of a subordination agreement.
27. To date, because of the Lender's actions, the Petitioners have not been able to access the DPI mortgage due to the actions of the Lender.

Interest Reserve

28. The interest charged on any amount of the Loan was funded through an interest reserve. At the inception of the Loan, the interest reserved reflected by the Commitment Letter and the Lender's own mortgage statements was \$9,025,701.
29. However, the first BTY report dated October 1, 2024 indicated an interest reserve of only \$6,145,400.

30. There were further divergences on interest reserve as in BTY's report 3.3 dated December 12, 2024, further records a \$725,000 reduction in the interest reserve that was approved by the Lender, but the same reduction does not appear in the Lender's mortgage statement for the same period.
31. The Petitioners asked for an explanation of the difference in interest reserve calculation, but none was ever provided.
32. On or around August 31, 2025, the Lender unilaterally decided to pull the entirety of the interest reserve without explanation or warning. The mortgage statement from the Lender on July 31, 2025, indicated that there was \$6,572,991.04 in interest reserve, and the mortgage statement from the Lender on August 31, 2025, indicated there was \$0 in interest reserve and all interest going forward would have to be paid directly from the Petitioners.
33. No discussions were held with the Petitioners prior to this decision. Only after a prolonged inquiry did the Lender state that the interest reserve was also separated by Facility 1 and Facility 2 and that the interest reserve on Facility 1 had been exhausted. This separation was never reflected in the Commitment Letter.
34. From August 31, 2025, the Petitioners had to pay interest amounts out of their own financial resources.
35. By the Petitioners' calculation, the interest reserve on July 31, 2025, would have been sufficient to complete Phase 1A with amounts to spare, upon which the Loan would have been substantially paid down.

Loan Outstanding Discrepancy

36. The Petitioner's calculation of the amount outstanding is \$52,500,000.
37. The Lender's calculation of the amount outstanding as at May 4, 2026 is \$59,121,710.51
38. I have asked for a full accounting of the amount outstanding, but none has been provided.

No Steps Taken by the Monitor

39. Since the Monitor has been appointed on June 17, they have effectively taken no steps to advance the Project. Instead, it seems that the Monitor has spent this period compiling a dossier against the Petitioners to support the Lender's application filed July 22, 2026.
40. Initially, the Monitor seemed receptive to advancing the project. On June 19, 2026, ~~Gurdeep met Murtaza Tallat, a managing director of the Monitor, at Moonlight's~~ offices in Burnaby. Mr. Tallat suggested in this meeting that the Monitor would like to see a preservation model and a cost-to-complete budget for Phase 1A. These were delivered to the Monitor in the following days with no response from the Monitor.
41. Indeed, the Petitioners delivered the following materials to the Monitor in the weeks following its appointment and have received no satisfactory response:
 - (a) Project Continuity Memorandum;
 - (b) Value-Preservation Supplement;
 - (c) Lien Register Cover Memo;
 - (d) Lien & Charge Register;
 - (e) Phase 1A cost-to-complete Budget;
 - (f) Budget Memo;
 - (g) Phased occupancy materials;
 - (h) Fire safety materials;
 - (i) A master schedule;
 - (j) A master schedule memo; and
 - (k) Separate SharePoint/datarooms for the Monitor and BTY with supporting materials.

42. At the same meeting, Gurdeep offered Mr. Tallat the opportunity to visit the work site. However, he turned this down, citing that he wanted to return earlier to Toronto to spend time with his family.
43. The Monitor has still yet to visit the work site.

Lack of Consultant Engagement

44. As there was urgency in getting the Project started again, the Petitioners prepared and provided a Project Continuity Memorandum to the Monitor on June 23, 2026 and a Value Preservation Supplement on June 29, 2026.
45. The Project Continuity Memorandum and Value Preservation Supplement explained that consultant continuity was necessary to preserve the project, maintain progress toward occupancy and support completion of the remaining work.
46. The Petitioners raised concerns regarding the Monitor's lack of communication and ~~engagement with consultants in view of a restart date. To this concern, Mr. Tallat~~ advised that this was a debtor-led CCAA proceeding and that the Monitor would assist in facilitating the restructuring process. He also indicated he would be prepared to participate in discussions with consultants in a virtual call.
47. As such, on July 13, 2026, Gurdeep organized a virtual call with the consultants and the Monitor for July 15, 2026. Despite Mr. Tallat indicating he would attend he did not attend this meeting.
48. Following the meeting, Mr. Tallat advised the consultant group that the Monitor would be reaching out to consultants individually.
49. To date, the Monitor has only contacted the architect and the building code consultant. Discussions with both did not resolve concerns, and no plan was put in action for a restart date.
50. Towards the end of June 2026, Gurdeep sent emails to remind the Monitor that property taxes would be payable at the beginning of July and received no response. In early July, Gurdeep sent another follow-up email to the Monitor to remind them of unpaid property taxes and was ignored again. Property taxes remain unpaid, and a late penalty has been added to the amount owing.
51. Moreover, as part of the Commitment Letter, the Lender funded cash to preserve Letters of Credit ("LOCs") that were issued by National Bank to the City of Burnaby.
52. Gurdeep and his father were able to negotiate the release of around \$900,000 in LOCs with the City of Burnaby. This amount has not been accounted for by the Monitor in any of their reports.

Invoicing

53. After the Monitor's appointment, we asked the Monitor for the invoicing process, but no response was provided.
54. The Petitioners have also invoiced the Monitor since its appointment multiple times, and the Monitor has yet to respond.

Monitor's Second Report

Bank Account Discrepancy

55. The Monitor's second report dated July 21, 2026 (the "**Second Report**") raises a number of concerns that are all explainable. The Second Report is also remarkably succinct on the Monitor's effort to remobilize the work site.
56. The discrepancy in bank statements is a result of a regrettable situation where a previous employee provided inaccurate bank statements by changing the names of the account holders on bank statements. This was part of the TD internal investigation that led to a slight delay in the Monitor receiving the funds in the lien holdback account.
57. During a period of time when Gurdeep was away, certain day-to-day banking functions had been delegated to a trusted family member. That individual provided a bank statement that did not accurately reflect the original records maintained by TD. Gurdeep neither authorized nor was aware of that conduct at the time. Once Gurdeep became aware of this issue, that individual was removed from all banking responsibilities and no longer has any authority over project accounts for financial matters.
58. To the best of the Petitioner's knowledge, the funds had been transferred between accounts but remained under the control of related entities and were ultimately delivered to the Monitor in full. The holdback account was never deficient.
59. Ultimately, the lien holdback accounts were always over-funded, and the Monitor currently has lien holdback funds about \$13,000 in excess of what they should be.

Disbursement Threshold Exceeded

60. Regarding disbursement thresholds, the account held by 466, which the Monitor alleges had a number of transactions that exceeded the disbursement threshold, is used for Gurmel's day-to-day business and personal expenses.
61. 466 was added as a guarantor and pledged collateral as part of the Amended Commitment Letter. This was 466's only connection to the Project. 466 is Gurmel's personal holding company and was never part of the Project. The 466 account should have never been included in the disbursement threshold. Indeed, Gurmel had no knowledge that the 466 account was subject to the disbursement restriction and continued to operate it normally. This is why there were expenditures beyond the disbursement threshold.

Presales

62. The Lender has been aware of pre-sale deficiencies since the Project began. In every BTY report, the pre-sale deficiencies have been noted and approved by the Lender. BTY continued to recommend draws throughout this period, and the Lender approved them.
63. Given the delays in construction, the Petitioners decided to peg certain deposit amounts based on level of completion as opposed to time. Accordingly, it is expected further deposits to arrive as those benchmarks are hit.
64. Of the presale units, only 2 are with non-arms-length parties.

Ignored Requests and Delayed Responses

65. As mentioned previously, the Petitioners have presented a number of documents and plenty of information to the Monitor, and it has been the Monitor who has failed to meaningfully engage and provide feedback on the information.
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66. With regard to the Open Ask Register, the original Open Asks Register was created by Symphony as a working project-management tool in response to the significant volume of requests being directed to the project by the Monitor, BTY and KingSett. It was intended to track requests, ownership, timing, dependencies, status updates and completed items in a transparent manner.
 67. The original register not only tracked requests being made of Symphony. It also tracked items that Symphony was awaiting from the Monitor and other parties. These included information requests, approvals, funding-related matters, BTY deliverables and other dependencies necessary to advance the project. The original tracker also had an entire sheet dedicated to completed tasks.
 68. The Monitor on or around July 8 advised that they did not believe the register was current. As such, I sent the Monitor the July 8 email inviting the Monitor to revise and reprioritize the register so that everyone would be working from a common document and aligned on priorities.
 69. The Monitor subsequently revised the document and circulated a new version through its counsel. In the revised version, those Monitor deliverables were largely removed from meaningful tracking or no longer presented with the same prominence.
 70. The revised version contained a tab entitled "From Symphony >>". However, that tab was left blank. The Monitor did not populate that section with Symphony's outstanding questions, requests, dependencies, information requests or other matters that Symphony was awaiting from the Monitor.

71. The excerpts of the revised register provided in the Monitor's second report conveniently omit the sheet for open items in progress and a sheet for items and tasks completed by the Petitioner.

BTY Review Letter

72. The Second Report relies extensively on the findings set out in a project review letter provided by the project monitor BTY to the Lender on July 21, 2026 (the "**Project Review Letter**"). BTY, from the inception of the Loan until December 2025, provided 14 reports. The Project Review Letter outlines a number of concerns that are also readily explainable.
73. The Petitioners do not deny there were some cost overruns and schedule delays, but these were always communicated with BTY and the Lender and not caused by the Petitioners' mismanagement. These cost increases and delays were always approved by the Lender. The cost overruns were remedied through additional equity, deferred equity, contingency, interest-reserve adjustments or approved reallocations.
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74. BTY and the Lender were provided with updated schedules as required, and BTY in its last report stated that Phase 1A appeared approximately aligned with the updated schedule.
75. Further delays and increases in costs from events after BTY's last report need to also be characterized differently because in January 2026, the Lender began to alter the scope of the Loan to focus on just Phase 1A.
76. This change in scope materially changed how trade schedules of values, cost-to-complete, civil works, parkade costs, underground servicing and common-area costs were presented. Trade contracts and schedules of value had been structured for the broader development. When costs are recast over only Buildings 1 to 5, upfront and common costs are naturally concentrated across a smaller scope.
77. BTY also expresses concerns regarding the sufficiency of the Petitioners' lien holdback accounts without compiling a reconciliation of the lienable trades. Curiously, the sufficiency of the Petitioners' lien holdback accounts was never raised in any BTY reports where they simply note the amount the Petitioners have in their lien holdback account and that BTY was not monitoring the Petitioners' administration of lien holdback funds.
78. The Petitioners have maintained an overfunded lien holdback account that is currently with the Monitor.

Sufficient Equity and the Proposed Monitor's Familiarity

79. The Proposed Monitor is currently preparing a third pre-filing report which aims to deal with the sealed affidavit no.2 of Daniel Pollack, which has yet to be provided in full to the Petitioners.
 80. From the Proposed Monitor's second pre-filing report, it is clear that there remains ample equity at the completion of the Project. The same report also shows that there is significant paydown of the Lender's liabilities after the completion of Phase 1A.
 81. The Proposed Monitor has consented to act should this Honourable Court direct so. The Proposed Monitor has spent considerable time at the work site and arguably has greater familiarity with the Project than the Monitor.
 82. The objectives of the Petitioners in this proceeding have always been as follows:
 - (a) Complete the subdivision process;
 - (b) Refinance Phase 1B through CMHC financing;
 - (c) Provide meaningful paydown to the Lender; and
 - (d) Pursue refinancing alternatives for Phase 2.
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DIP Default

83. On July 27, 2026, the Lender's counsel sent a letter to Gurdeep indicating that by allegedly violating the ARIO, he was in default of the Lender's interim financing. This leaves Gurdeep unsure as to whether the Lender would continue to fund interim financing.
84. The Petitioners have already contacted previous DIP lenders in case the Lender chooses to pull out of its DIP financing.

GST Inquiry

85. On July 27, 2026, the Monitor's counsel made an inquiry of my counsel regarding CRA GST/HST refund in the amount of \$86,185.66. This refund relates to input tax credits arising from GST paid on pre-filing invoices during the January 1, 2026 to March 31, 2026 reporting period.
86. The Lender did not fund the GST amounts that generated this refund. The GST was paid through the Wayburne account because that was the account used to process payments to trades, consultants, and suppliers. However, the funds used to make those payments originated from Symphony, related entities, Gurmeh Kainth, Gurdeep Kainth and other non-Lender sources. Wayburne did not receive advances from the Lender to fund these GST payments.

87. Accordingly, the GST that gave rise to the CRA refund was never submitted to, funded by, or reimbursed through the Lender's draw process. Rather, those GST amounts were funded independently by Symphony and other non-Lender sources
88. If there is a concern regarding entitlement to these funds, the Petitioners are prepared to have the refund amount placed into our counsel's trust account pending agreement between the parties or further direction from the Court.

Rezoning and Wrongful Interference

89. The Petitioners were encouraged by the City of Burnaby to apply to rezone Phase 1B. The rezoned Phase 1B will be a 6-storey condominium up to 103 units with a day care facility. When Phase 1B is rezoned, there will be further equity in the Project.
 90. By July 2025, the proposed rental use for Phase 1B was already being discussed with the Lender.
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91. On March 12, 2026, Gurdeep provided the Lender with subdivision materials, air-space parcel drawings and site plans identifying the new rental parcel, rental building, CMHC rental units, below-market rental units and daycare component.
 92. The Monitor was also provided with a phased occupancy and fire protection report in its data room.
 93. However, despite this, both the Monitor and the Lender have stated that they had no idea the rezoning was occurring.
 94. The rezoning is at an early phase. The first reading of this rezoning is expected to go before council sometime this autumn.
 95. On July 24, 2026, Gurdeep received an email from the Monitor asking whether he intended to attend a council meeting on July 28, 2026 on rezoning. Mr. Goldstein also stated that this was news to the Monitor. Gurdeep responded that he would be.
 96. On July 25, 2026, Gurdeep received a letter from the Monitor stating that they were shocked that the Petitioners were seeking rezoning and requiring the Petitioners to confirm that they will not attend the council meeting on July 28, 2026. The letter also insinuated that the Petitioners were in violation of a court order if they chose to proceed and threatened legal action, including an injunction.
 97. Later, on July 27, 2026, Lender's counsel sent a letter to the City of Burnaby setting out its position that the Lender never advised the Petitioner that any rezoning of the Project would result in more funds from the Lender. The contents of this letter could have the impact of negatively affecting the approval of the

rezoning as it is directed at a municipal approval process that could materially affect the value of the lands and the restructuring options available to the Project. There is nothing in the ARIO that prohibits the Petitioners from proceeding with this rezoning application, yet the Lender has chosen to interfere in the approval process.

Good Faith of the Lender

98. As part of the Lender's application for enhanced Monitor's power, the Lender relies on a sealed Affidavit No. 2 of Daniel Pollack, which is supposed to set out the fact that the Lender is suffering a shortfall. The Petitioners were only provided with a redacted copy to review. In this affidavit, the waterfall analysis relies on a Letter of Opinion from MLA Canada dated June 12, 2026 and an Opinion of Value prepared by Jones Lang LaSalle Real Estate Services Inc. dated June 11, 2026.
99. These documents were in the Lender's possession before the initial order was granted but were never disclosed to the Petitioners. This suggests to the Petitioners that the Lender never had any intention to allow the Petitioners to complete the Project, and the Lender's goal was to eventually bring an application for enhanced monitor's powers and to sell this Project.
100. If the Petitioners had known this was the Lender's position all along, the Petitioners would have never agreed to a Monitor of the Lender's choosing and relinquishing financial control. The Petitioners would have pushed for a true debtor-led CCAA.

Restart Construction

101. The Petitioners have kept regular contact with consultants and trades required to restart construction, and they remain ready to proceed.
102. A number of trades and consultants have expressed a willingness to work with the Petitioners on pre-filing amounts if they can be confident they will be paid when construction restarts again.
103. The Petitioner intends to present an arrangement to its unsecured pre-filing obligations as part of the project restart process.
104. Currently, there are also a number of trades that owe no amounts on pre-filing obligations that can begin work immediately. The pressing work that needs to be done includes:
 - (a) Waterproofing;
 - (b) Forming; and
 - (c) Preparation work for BC Hydro.

105. These works will be crucial to maintain the Project's ability to have phased occupancy by the outside closing in the presales of May 31, 2027.

PART 3: LEGAL BASIS

106. 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.

The Monitor Should be Substituted

- ~~107. Section 11 of the CCAA grants this Court broad discretion to grant any order that it considers appropriate in the circumstances subject to the restriction set out in the CCAA.~~

108. The replacement of a Monitor is within the discretion set out in section 11 of the CCAA

109. In *8640025 Canada Inc. (Re)*, 2019 BCSC 1739 at para. 37 it states,

[37] The replacement of Ernst & Young Inc. with a new monitor would require an exercise of discretion keeping in mind the purposes of the CCAA which are *inter alia*:

- a) to permit an insolvent company to avoid bankruptcy;
- b) to preserve the insolvent company as a viable operation and to reorganize its affairs to the benefit not only of the debtor but of creditors;
- c) to maintain the status quo for a period of time to provide a structured environment in which an insolvent company can continue to carry on business;
- d) to protect an insolvent company from proceedings by creditors that would prevent it from carrying out the terms of a compromise or arrangement; and

- e) in appropriate circumstances to affect a sale, winding up or liquidation of the debtor company and its assets.

- 110. The Monitor has shown a blatant inability to oversee the Project. It has taken no substantive steps to advance the Project or to assist the Petitioners to do the same. It has not met with or had substantive conversations with the people necessary to restart the project
 - 111. Instead, the Monitor has compiled a dossier on alleged misconduct of the Petitioners in its time since being appointed. Not only that, the Monitor has thrown up roadblocks at every opportunity to stall the Petitioners' attempt to move the Project forward because they have been granted the enhanced powers in the ARIO.
 - 112. The Petitioners' goal was always to work together with the Lender and the Monitor to achieve the best result for all parties involved.
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- 113. However, the Monitor has decided otherwise, and the relationship between the Monitor and the Petitioners is bordering on untenable. The Monitor has taken a directly adversarial approach to the Petitioners and is an approach that solely attempts to benefit the Lender and has no regard for the other stakeholders in this proceeding.
 - 114. There also are logistical constraints. The Monitor is based on Toronto and Calgary and has to expend considerable costs to visit and attend to the Project. This is clearly shown by the Monitor's failure to attend the work site even once since being appointed.
 - 115. This is still quite early on in the proceedings. There is no prejudice to the Monitor as they have effectively sat on their hands since being appointed.
 - 116. All in all, the Monitor has failed in its role and should be removed.

Good Faith

- 117. The duty of good faith is enshrined in section 18.6 of the CCAA where it states, "Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings."
- 118. The Lender has not acted in good faith by failing to provide a Letter of Opinion from MLA Canada dated June 12, 2026 and an Opinion of Value prepared by Jones Lang LaSalle Real Estate Services Inc. dated June 1, 2026 until they were appended to the second affidavit of Daniel Pollack.
- 119. The Lender had these reports prior to the initial hearing and when the ARIO was granted. The Lender relies on these reports for the position that they will suffer a

shortfall. The Lender never had any intention to allow the Petitioners to complete the Project, and the Lender's goal was to eventually bring an application for enhanced monitor's powers and to sell this Project.

- 120. Despite this, the Lender let the Petitioners believe that they were willing to help fund the Project to completion, which induced the Petitioners to agree to a Monitor of the Lender's choosing and relinquishing financial control.
- 121. If the Petitioners had known this was the Lender's intention all along, the Petitioners would have pushed for a true debtor-led CCAA.

A Lender's Loss of Confidence is Not Determinative

- 122. The Lender has argued that as the Lender has lost confidence in the Petitioners they should be allowed to seek additional powers for the Monitor which would turn this proceeding into a receivership *qua* CCAA.
- 123. The case law is clear that the Lender's loss of confidence is not determinative.
- 124. In *Otso Gold Corp. (Re)*, 2021 BCSC 2531, Justice Gomery states

[19] The court will not continue a stay if it is clear that any attempt at restructuring is doomed to fail. Conversely, the court will not allow itself to be gamed by a secured creditor's simple assertion that it is intent on rejecting whatever restructuring proposal may emerge in order that it may immediately foreclose on its security, a policy summarized in the aphorism that secured creditors do not possess a veto; *Pacific Shores Resort & Spa Ltd. (Re)*, 2011 BCSC 1775 at paras. 40 to 44.

- 125. The Petitioners' restructuring is not doomed to fail. The Petitioners and the Proposed Trustee have provided a number of solutions in which the Lender is significantly repaid after the completion of the 1A.

Restructuring Effort

- 126. One of the purposes of CCAA proceedings is for the debtor to present a plan of arrangement to its creditors.
- 127. The Petitioner intends to present a plan of arrangement to its unsecured creditors regarding their pre-filing obligations and should be afforded the chance to do so.

Significant Equity in the Project

- 128. Indeed, there remains significant equity in this Project.
- 129. The Appraisal provided by the Petitioner shows the "as-is" value on Phase 1B and 2 as \$39 million.

130. Grant Thornton's waterfall shows \$44 million in equity after the completion of the Project.

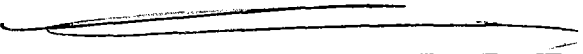
PART 4: MATERIAL TO BE RELIED ON

1. Affidavit #5 of Gurdeep Singh Kainth, dated July 28, 2026.
2. Affidavit #3 of Jatinder Singh Hothi, dated July 28, 2026.
3. Affidavit #1 of Gurmel Singh Kainth, dated July 28, 2026.
4. Grant Thornton's Second Pre-filing Report
5. Grant Thornton's Third Report on the Project, to be filed.

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: July 28, 2026


Signature of Lawyer for Applicants
Lawyer: Christopher Ramsay

This NOTICE OF APPLICATION is prepared by Christopher Ramsay of the firm of **Clark Wilson LLP** whose place of business is 900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1 (Direct #: 604.643.3176, Fax #: 604.687.6314, Email: CRamsay@cwilson.com) (File #: 58878-0001).

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"

**No. S-264225
Vancouver Registry**

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATIER 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.,
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
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<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: kjackson@fasken.com hesslinger@fasken.com jbeau lieu@fasken.com <i>Counsel for Kingsett Mortgage Corporation</i>
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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>

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