Form 10 (Rules 22(1)(a) and 36(4))

Court of Appeal File No. CA-47585

COURT OF APPEAL

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF PORT CAPITAL DEVELOPMENT (EV) INC. and EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP

BETWEEN:

PORT CAPITAL DEVELOPMENT (EV) INC. and
EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP

Respondents
(Petitioners/Applicants)

AND:

1296371 B.C. LTD.

Appellant
(Respondent/Applicant)

AND:

CENTURA BUILDING SYSTEMS (2013) LTD. and
SOLTERRA ACQUISITIONS CORP.

Respondents
(Respondents)

APPELLANT'S FACTUM

1296371 B.C. LTD.

Counsel for the Appellant:

JORDAN SCHULTZ
EAMONN WATSON

Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

CENTURA BUILDING SYSTEMS (2013) LTD. and SOLTERRA ACQUISITIONS CORP.

Counsel for the Respondents:

KIBBEN JACKSON
THOMAS POSYNIAK
GLEN NESBITT

Fasken Martineau DuMoulin LLP
550 Burrard Street, Suite 2900
Vancouver, BC V6C 0A3

PORT CAPITAL DEVELOPMENT (EV) INC. and EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP

Counsel for the Petitioners:

DAVID GRUBER
KEELY CAMERON

Bennett Jones LLP
Suite 2500 – 666 Burrard Street
Vancouver, BC V6C 2X8

ERNST & YOUNG INC.

Counsel for the Monitor:

PETER L. RUBIN
PETER BYCHAWSKI
CLAIRE HILDEBRAND

Blake, Cassels & Graydon LLP
Suite 2600, Three Bentall Centre
595 Burrard Street, P.O. Box 49314
Vancouver, BC V7X 1L3

CMLS FINANCIAL LTD. and DESJARDINS FINANCIAL SECURITY LIFE ASSURANCE COMPANY

Counsel for the Respondents:

COLIN D. BROUSSON
ALEXANDRA McCAWLEY

DLA Piper (Canada) LLP
Suite 2800, Park Place
666 Burrard Street
Vancouver, BC V6C 2Z7

AVIVA INSURANCE COMPANY OF CANADA

Counsel for the Respondent:

WILLIAM ROBERTS

Lawson Lundell LLP
Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC V6C 3L2

INDEX

CHRONOLOGY

Date	Event
September 2017	Pre-sales of units in a residential and commercial strata development located at 1250 West Hastings Street, Vancouver, British Columbia, called “**Terrace House**” begin.
October 17, 2017	By commitment letter, Aviva Insurance Company of Canada (“**Aviva**”) agrees to provide a deposit protection insurance facility to permit the Petitioners to have access to certain pre-sale purchasers’ deposits for the payment of project costs. This facility is secured by, among other things, a second ranking mortgage against the Terrace House property.
2017	Abatement and demolition of a pre-existing structure at the Terrace House site.
2018	Excavation and shoring at the Terrace House site.
Late 2018	Construction of Terrace House begins with the underground parkade.
July 4, 2019	By commitment letter, CMLS Financial Ltd. (“**CMLS**”) agrees to finance the construction of Terrace House. This loan facility is secured by, among other things, a first ranking mortgage against the Terrace House property.
March 11, 2020	World Health Organization declares global pandemic.
May 12, 2020	CMLS makes demand and issues a notice of intentions to enforce security in respect of the indebtedness owning on its loan.
May 19, 2020	Port Capital Development (EV) Inc. (the “**General Partner**”) and Evergreen House Development Limited Partnership (“**Evergreen LP**”, and together with the General Partner, the

	"**Petitioners**") file a petition seeking an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "***CCAA***").
May 21, 2020	The Petitioners, CMLS and Aviva consent to adjourning the hearing on the initial order to May 29, 2020, in an effort to work towards a consensual *CCAA* proceeding that balances the interests of the Petitioners, CMLS and Aviva.
May 29, 2020	With the support of CMLS and Aviva, the supervising chambers judge, Madam Justice Fitzpatrick (the "**Chambers Judge**"), grants the initial order (the "**Initial Order**"), which, among other things, appoints Ernst & Young Inc. as monitor (the "**Monitor**"), directs the Monitor to implement a "dual track" sales and investment solicitation plan (the "**SISP**") and includes a stay of proceedings (the "**Stay of Proceedings**") that was effective until June 8, 2020.
June 8, 2020	The Chambers Judge grants an order amending and restating the Initial Order (the "**ARIO**"), which, among other things, extends the Stay of Proceedings to September 3, 2020, grants a charge in favour of the Monitor, its counsel, and counsel to the Petitioners for fees and disbursements (the "**Administration Change**"), not to exceed $250,000, and approves a commitment letter from Desjardins Financial Security Life Assurance Company (the "**Interim Lender**") to provide the Petitioners access to an interim financing facility (the "**Interim Facility**") and grants a related interim lender's charge (the "**Interim Lender's Charge**"), not to exceed $1,250,000.
June 29, 2020	In accordance with the SISP, the Monitor begins to market Terrace House and circulates a summary of the opportunity, among other documents.

July 24, 2020	Deadline to submit non-binding letters of intent. The Monitor receives a number of non-binding letters of intent, prepares a side-by-side analysis, provides analysis to CMLS and Aviva and consults with the Petitioners, CMLS and Aviva to determine the best offer or offers.
August 31, 2020	The Chambers Judge grants an order extending the Stay of Proceedings to December 4, 2020.
September 18, 2020	Following consultation with CMLS and Aviva, the Monitor qualifies six bidders to participate in the second phase of the SISP. The Monitor advises each bidder that, among other things, the deadline for submissions of offers is October 16, 2020.
October 16, 2020	Deadline to submit binding offers. The Monitor receives six offers, prepares a side-by-side analysis and provides analysis to CMLS and Aviva.
November 10, 2020	Following a review of the offers in consultation with CMLS and Aviva, the Monitor determines the offer submitted by Bosa Properties (OC) Inc. ("**Bosa**") is the best offer. The Monitor on behalf of the Petitioners executes the agreement with Bosa.
December 1, 2020	The Chambers Judge grants an order that, among other things, extends the Stay of Proceedings to February 26, 2021, and approves the Monitor's execution of the agreement with Bosa.
February 16, 2021	Bosa provides the Monitor with a feasibility study on Terrace House and puts forward a proposal to vary its offer.
February 17, 2021	The Monitor convenes a videoconference with Bosa, CMLS and Aviva to discuss Bosa's feasibility study and proposal to vary its offer. The revised offer is not acceptable to CMLS and Bosa's offer collapses.

February 24, 2021	The Chambers Judge grants an order extending the Stay of Proceedings to May 4, 2021 and increasing the Interim Lender's Charge to $1,500,000.
March 1, 2021	Landa Global Acquisition Inc. ("**Landa**"), one of the six parties that submitted an offer under the SISP, after learning that Bosa's offer collapsed, sends the Monitor of letter of intent to acquire Terrace House (the "**Landa Offer #1**").
March 25, 2021	After reviewing the Landa Offer #1 with CMLS and following a series of discussions, the Monitor, on behalf of the Petitioners and subject to court approval, and Landa execute a purchase and sale agreement. This agreement includes a provision that allows the Petitioners and the Monitor to engage in further marketing of Terrace House (the "**Final Sale Process**").
April 16, 2021	The Chambers Judge grants an order extending the Stay of Proceedings to June 11, 2021, approves the execution of the agreement with Landa and sets the deadline for alternative proposals under the Final Sale Process as May 7, 2021.
April 19, 2021	The Monitor distributes a letter that describes the Final Sale Process to eight parties that expressed interest in an acquisition of or investment in Terrace House during the SISP.
May 7, 2021	The Monitor receives two offers: (1) an offer from Solterra Acquisitions Corp. ("**Solterra**") to purchase Terrace House (the "**Solterra Offer #1**"); and (2) an offer from 1296371 B.C. Ltd. ("**129**") to refinance Terrace House.
May 7 – 14, 2021	The Monitor reviews the two offers received in the Final Sales Process with CMLS and Aviva. The Monitor selects the Solterra Offer #1 as a superior offer over the Landa Offer #1.

May 14, 2021	The Monitor, on behalf of the Petitioner and subject to court approval, and Solterra execute a purchase and sale agreement for the acquisition of Terrace House.
May 20, 2021	The Petitioners file a notice of application, for hearing on May 25, 2021, seeking court approval of the transaction with respect to the Solterra Offer #1.
May 24, 2021	Landa submits a revised offer to purchase Terrace House (the "**Landa Offer #2**").
May 25, 2021	129 files a notice of application seeking court approval of a refinancing transaction.
May 25, 2021	The Chambers Judge adjourns the matter to June 8, 2021. The Chambers Judge sets June 4, 2021 at 12:00 p.m. as the final deadline for any further offers, but does not order a further bidding process.
June 4, 2021	The Monitor receives three offers: (1) a revised offer from Landa (the "**Landa Offer #3**"); (2) a "without prejudice" revised offer from Solterra (the "**Solterra Backup Offer**"); and (3) a revised offer from 129 to refinancing Terrace House (the "**129 Refinancing**").
June 8, 2021	Solterra and Centura Building Systems (2013) Ltd. ("**Centura**") file an application response to 129's notice of application filed May 25, 2021.
June 8 and 11, 2021	The Chambers Judge hears the applications of the Petitioners, filed May 20, 2021, and 129, filed May 25, 2021, and reserves judgment.

June 11, 2021	The Chambers Judge grants an order extending the Stay of Proceedings to September 30, 2021, and increasing the Interim Lender's Charge to $1,800,000.
June 15, 2021	The Chambers Judge dismisses 129's application and approves the Solterra Backup Offer with reasons to follow.
June 30, 2021	The Chambers Judge releases her Reasons for Judgment.
July 7, 2021	129 files a notice of application for leave to appeal in the Court of Appeal.
August 17, 2021	The Court of Appeal hears 129's application for leave and reserves judgment.
August 20, 2021	The Court of Appeal grants 129 leave to appeal the orders of the Chambers Judge dismissing 129 application and approving the Solterra Backup Offer.

OPENING STATEMENT

This appeal arises from proceedings under the *Companies' Creditors Arrangement Act*[1] (as amended, the "***CCAA***"). The appellant sought court approval of a refinancing transaction in the face of competing sale transactions. Despite being supported by the two senior secured creditors and providing a "materially better" outcome for the stakeholders,[2] the chambers judge dismissed the appellant's application. Instead the chambers judge approved a sale transaction, for less consideration, which crystalizes losses for all creditors.

At it is core, this appeal turns on the issue of "appropriateness", as that term has been defined in the context of s. 11 of the *CCAA* by the Supreme Court of Canada.[3]

Whether a court should grant relief under the *CCAA* is guided by three baseline principles: (1) appropriateness, (2) good faith, and (3) due diligence.[4] "Appropriateness" is assessed by inquiring whether the relief sought will usefully further the remedial purpose of the *CCAA*: avoiding the social and economic losses resulting from liquidation.[5]

In the court below, the chambers judge erred by focusing her appropriateness analysis on a single factor. The "crucial", and deciding, factor for the chambers judge was that the appellant had not provided evidence of its intention to put a plan of arrangement or compromise to creditors.[6]

Viewed through the primary remedial objective of the *CCAA* to avoid the "social and economic losses resulting from liquidation of an insolvent company",[7] the result below is unsupportable. The chambers judge's error is highlighted by her conclusion that no one

---

[1] R.S.C. 1985, c. C-36 [***CCAA***].
[2] *Port Capital Development (EV) Inc. (Re)*, 2021 BCSC 1272 at para. 40 [***Chambers Reasons***], Appeal Record, Tab 14, pg. 250.
[3] *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at paras. 50, 70 [*Callidus*]; *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 70.
[4] *Century Services*, *supra* note 3 at para. 70; *Callidus*, *supra* note 3 at paras. 49, 70.
[5] *Century Services*, *supra* note 3 at para. 70.
[6] *Chambers Reasons*, *supra* note 2 at para. 77, Appeal Record, Tab 14, pg. 258.
[7] *Century Services*, *supra* note 3, at para. 70.

would have quarreled with the transaction proposed by the appellant if it had structured the proposed refinancing as a sale.[8] The chambers judge erred in law by concluding the refinancing was not appropriate in the circumstances.[9]

However, in reaching her decision the chambers judge was bound by *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327. The case at bar highlights why *Cliffs Over Maple Bay* is no longer good law and should be overturned by this Court. The *CCAA* has evolved since *Cliffs Over Maple Bay* was rendered, both judicially and as a result of amendments to the *CCAA*. The Supreme Court of Canada has since set the proper context for a case like the present one and that judicial guidance supports allowing the within appeal.

[8] *Chambers Reasons*, *supra* note 2 at para. 76, Appeal Record, Tab 14, pg. 262.
[9] *Ibid* at para. 92, Appeal Record, Tab 14, pg. 266.

PART 1 - STATEMENT OF FACTS

A. Parties

1. These *CCAA* proceedings were commenced by Port Capital Development (EV) Inc. (the "**General Partner**") and Evergreen House Development Limited Partnership ("**Evergreen LP**", and together with the General Partner, the "**Petitioners**"). The Petitioners own a real estate development project called "**Terrace House**".[10]

2. Terrace House is an ongoing development project located at 1250 West Hastings Street, Vancouver, BC (PID: 006-721-397, the "**Lands**").[11]

3. The Petitioners are subsidiaries of Port Capital Group Inc. ("**Port Capital**"), which is in the business of real estate development.[12]

4. 1296371 B.C. Ltd. ("**129**") was incorporated to implement a refinancing of Terrace House.[13]

5. Macario Teodoro Reyes ("**Mr. Reyes**") is the sole director of Port Capital, the Petitioners and 129.[14]

6. Ernst & Young, Inc. was appointed as monitor (in that capacity, the "**Monitor**") in these *CCAA* proceedings.[15]

7. CMLS Financial Ltd. ("**CMLS**") provided construction financing for Terrace House (the "**CMLS Facility**") and holds security over all property and assets of the Petitioners for payment thereof (the "**CMLS Security**"), including a mortgage of the Lands (the "**CMLS Mortgage**").[16] Desjardins Financial Security Life Assurance Company

---

[10] Sixth Report of the Monitor dated May 20, 2021 ("**Sixth Report**"), para. 1, Appellant's Appeal Book ("**Appeal Book**"), Tab 06, pg. 151; *Chambers Reasons*, *supra* note 2 at para. 1, Appeal Record, Tab 14, pg. 243.
[11] *Chambers Reasons*, *supra* note 2 at para. 6, Appeal Record, Tab 14, pg. 243; Sixth Report, para. 2, Appeal Book, Tab 06, pg. 151.
[12] *Chambers Reasons*, *supra* note 2 at para. 5, Appeal Record, Tab 14, pg. 243; Sixth Report, para. 3, Appeal Book, Tab 06, pg. 151.
[13] *Chambers Reasons*, *supra* note 2 at para. 28(b), Appeal Record, Tab 14, pg. 247.
[14] *Ibid* at paras. 10, 28(b); Affidavit #2 of Macario Teodoro Reyes filed May 25, 2021 ("**Reyes Affidavit #2**"), para. 1, Appeal Book, Tab 01, pg. 4.
[15] *Chambers Reasons*, *supra* note 2 at para. 12, Appeal Record, Tab 14, pg. 244.
[16] Sixth Report, para. 4, Appeal Book, Tab 06, pg. 151.

(the "**Interim Lender**") provided an interim financing facility (the "**Interim Lender Facility**") to the Petitioners, as approved by the chambers judge, in these *CCAA* proceedings.[17]

8. Aviva Insurance Company of Canada ("**Aviva**") provided a deposit protection insurance facility to permit the Petitioners to have access to certain pre-sale purchasers' deposit monies for the payment of project costs. Aviva has second ranked security against the assets of the Petitioners (the "**Aviva Security**"), also including a mortgage of the Lands (the "**Aviva Mortgage**"), subject to the CMLS Security.[18]

9. Solterra Acquisitions Corp. ("**Solterra**") executed an asset purchase agreement with the Monitor, on behalf of the Petitioners, which was approved by the chambers judge and is a subject of this appeal.[19] Centura Building Systems (2013) Ltd. ("**Centura**") is related to Solterra. Centura has a claim of lien registered against the Lands in the amount of $473,277.00.[20]

B. Terrace House

10. Terrace House is a 19-storey high-rise luxury residential and commercial strata development located on the Lands. It is designed to provide 20 residential units and two commercial units above a 3-level underground parkade. The project is unique because its primary structural material is timber.[21]

11. Unit pre-sales began in September 2017 and construction began in late 2018.[22]

12. As of mid-2020, the parkade and the structure for the first level of the building were substantially complete. By that time, 17 of the residential units and both commercial units were pre-sold.[23]

---

[17] *Chambers Reasons*, *supra* note 2 at para. 13, Appeal Record, Tab 14, pg. 245.
[18] *Ibid* at para. 7; Sixth Report, para. 6, Appeal Book, Tab 06, pg. 151.
[19] *Chambers Reasons*, *supra* note 2 at para. 4, Appeal Record, Tab 14, pg. 243.
[20] *Ibid* at para. 10; Affidavit #1 of Suzanne Volkow filed June 8, 2021 ("**Volkow Affidavit #1**"), Exhibit A, Appeal Book, Tab 04, pg. 96.
[21] *Chambers Reasons*, *supra* note 2 at para. 6, Appeal Record, Tab 14, pg. 243.
[22] *Ibid* at para. 7.
[23] *Ibid* at para. 8.

13. However, in May 2020, CMLS stopped funding the project and demanded repayment of the CMLS Facility.[24]

C. *CCAA* Proceedings

14. On May 29, 2020, the Petitioners obtained an order in these proceedings (the “**Initial Order**”) granting them various relief pursuant to the *CCAA*.[25] The Initial Order was amended and restated by order dated June 8, 2020 (the “**ARIO**”),[26] and thereafter further amended at various times throughout the proceedings.

15. The Initial Order included a stay of proceedings (the “**Stay of Proceedings**”) effective until June 8, 2020 and appointed the Monitor.[27] The Stay of Proceedings has since been extended six times, most recently to September 30, 2021.

16. Under the Initial Order, and continued under the ARIO, the Monitor was granted “enhanced powers to assume control of the Petitioners and [Terrace House].”[28]

17. The ARIO also approved the Interim Lender Facility from the Interim Lender and granted a related interim lender’s charge (the “**Interim Lender’s Charge**”).[29]

18. Under the Initial Order, as amended by the ARIO, the Monitor, among others, was granted a first priority charge against the Lands (the “**Administration Charge**”).[30]

19. The Interim Lender’s Charge and the Administration Charge rank above the CMLS Security and the Aviva Security.

---

[24] *Ibid* at para. 9.
[25] *Ibid* at para. 12.
[26] *Ibid* at para. 13.
[27] *Ibid* at para. 12; Initial Order dated May 29, 2020 (“**Initial Order**”), para. 15, Appeal Record, Tab 07, pg. 159.
[28] *Chambers Reasons*, *supra* note 2 at para. 12, Appeal Record, Tab 14, pg. 244.
[29] *Ibid* at para. 13.
[30] *Ibid* at para. 12; Initial Order, paras. 33-35, Appeal Record, Tab 07, pg. 169.

20. In addition, the Petitioners have lien claimants that are estimated to total $4.0 million,[31] including Centura's lien claim of $473,277.00,[32] and unsecured creditors that are estimated to total $2.3 million (the "**Other Creditors**").[33]

I. Initial Sales Process

21. Under the Initial Order and the ARIO, the Monitor, with input from CMLS and Aviva, was directed to implement a sales and investment solicitation plan (the "**SISP**"):

> The SISP sought a "dual track" process to either produce bids or offers for a sale of [Terrace House] or an investment in the Petitioners on a going concern basis, such as in the form of a restructuring, reorganization or refinancing of [Terrace House].[34]

22. The SISP began in June 2020. By late 2020, the Monitor had received proposed asset purchases from Solterra, Landa Global Acquisitions Inc. ("**Landa**") and Bosa Properties (OC) Inc. ("**Bosa**").[35]

23. On December 1, 2020, on the recommendation of the Monitor, the chambers judge approved an offer from Bosa. However, the transaction ultimately collapsed because it was not acceptable to CMLS.[36]

II. Final Sales Process

24. On March 25, 2021, Landa and the Monitor, on behalf of the Petitioners, executed a purchase and sale agreement (the "**Landa Offer #1**").[37]

25. The chambers judge approved the execution of the Landa Offer #1 on April 16, 2021. As part of the order in this regard, the chambers judge approved "a short period of time (15 days) to re-activate the SISP and obtain any other superior offers that

[31] Sixth Report, para. 7, Appeal Book, Tab 06, pg. 152.
[32] *Chambers Reasons*, *supra* note 2 at para. 10, Appeal Record, Tab 14, pg. 244.
[33] Sixth Report, para. 7, Appeal Book, Tab 06, pg. 152.
[34] *Chambers Reasons*, *supra* note 2 at para. 12, Appeal Record, Tab 14, pg. 244.
[35] *Ibid* at paras. 14-15.
[36] *Ibid* at paras. 16-17.
[37] *Ibid* at para. 19.

might be available from a party other than Landa."[38] Under this "**Final Sales Process**", there was a new bid deadline of May 7, 2021.[39]

26. The Monitor received two offers that were both higher than the Landa Offer #1: an offer to purchase from Solterra (the "**Solterra Offer #1**"), and an offer to refinance Terrace House from 129, discussed below.[40]

27. The Monitor determined that the Solterra Offer #1 was the superior offer and entered, on behalf of the Petitioners, a purchase and sale agreement with Solterra on May 14, 2021, subject to court approval.[41]

28. On May 20, 2021, the Petitioners, at the direction of the Monitor, served a notice of application and supporting materials seeking approval of the Solterra Offer #1 on the "**Service List**" (as defined in the Initial Order).[42] The hearing to approve the Solterra Offer #1 was scheduled for May 25, 2021.[43]

29. On May 24, 2021, the Monitor provided a report that outlined that Landa had submitted a revised purchase offer (the "**Landa Offer #2**").[44]

30. At the May 25, 2021 hearing, the chambers judge adjourned the matter until June 8, 2021. The chambers judge "indicated to the array of bidders that [she] was not directing any further process to allow for new bids; however, if any party wished to submit further offers, those offers should be received by the Monitor by noon June 4, 2021."[45]

---

[38] *Ibid* at paras. 22-23.
[39] *Ibid* at para. 28.
[40] *Ibid* at para. 28.
[41] *Ibid* at paras. 29-30.
[42] Notice of Application of Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership dated and filed May 20, 2021, Appeal Record, Tab 01, pg. 5.
[43] *Chambers Reasons*, *supra* note 2 at para. 30, Appeal Record, Tab 14, pg. 248.
[44] *Ibid* at para. 34.
[45] *Ibid* at para. 37.

31. By June 4, 2021, the Monitor had received (a) a revised offer from Landa (the "**Landa Offer #3**"), (b) a "without prejudice" backup offer from Solterra (the "**Solterra Backup Offer**"), and (c) a revised offer from 129, discussed below.[46]

32. Under any of the Landa or Solterra offers: (a) CMLS would suffer a shortfall; (b) the Petitioners would disclaim $16 million of pre-sale agreements; (c) Aviva would immediately crystalize its exposure, which was estimated to be $8.6 million; and (d) the Other Creditors would be left "out of the money".[47]

D. 129 Refinancing Transaction

33. As noted above, 129 initially submitted its proposed offer to refinance Terrace House to the Monitor by the bid deadline in the Final Sales Process. 129 served its notice of application (the "**129 Application**") seeking approval of its refinancing offer on the Service List.[48] However, 129's offer continued to improve. On June 4, 2021, in accordance with process described above, 129 provided the Monitor with a revised refinancing offer (the "**129 Refinancing**").

34. Although the overarching structure of the proposed transaction was unchanged, by June 4, 2021, 129 was able to remove all of the substantive conditions to its proposed transaction, and increase the funds available under the 129 Refinancing.

35. As of the hearing on June 8, 2021, the 129 Refinancing would:

(a) Repay the Interim Lender Facility and the fees secured by the Administration Charge in full;

(b) Repay the CMLS Facility in full, and assign the CLMS Security, including the CMLS Mortgage, to a company incorporated by Domain Mortgage Company ("**Domain**"), the primary source of funds for the 129 Refinancing;

---

[46] *Ibid* at paras. 39-40.
[47] *Ibid* at paras. 42, 73.
[48] Notice of Application of 1296371 B.C. Ltd. dated May 21, 2021 and filed May 25, 2021 ("**129 Application**"), Appeal Record, Tab 02, pg. 40.

(c) Provide Aviva with improved security, by granting Aviva priority over certain parts of the loan facility contemplated by the 129 Refinancing (with Aviva's consent and support);

(d) Pay break fees owed to Landa and Solterra; and

(e) Provide working capital for the Petitioners.[49]

36. Further, as of June 8, 2021, the Monitor confirmed that most of the conditions relating to the 129 Refinancing were satisfied, save for customary funding conditions. The Monitor also reported that the 129 Refinancing would result in a "materially better" outcome for the stakeholders over any of the Solterra or Landa offers.[50]

37. On June 8, 2021, Centura and Solterra served an application response to the 129 Application on the Service List.[51] The only evidence in support of this application response was Centura's registered claim of lien against the Lands in the amount of $473,277.00.[52]

E. Decision of the Chambers Judge and Reasons for Judgment

38. On June 15, 2021, the chambers judge delivered a decision on the competing applications with reasons to follow. The chambers judge dismissed the 129 Application and approved the Solterra Backup Offer.

39. The chambers judge delivered written reasons for judgment on June 30, 2021 (the "***Chambers Reasons***"). In deciding that the 129 Refinancing was not appropriate the chambers judge concluded, among other things:

(a) The 129 Refinancing was not a redemption of the CMLS Mortgage.[53]

---

[49] *Chambers Reasons*, *supra* note 2 at paras. 45(b), 47(c), Appeal Record, Tab 14, pg. 252.
[50] *Ibid* at paras. 40, 42(c), 46.
[51] Application Response of Centura Building Systems (2013) Ltd. and Solterra Acquisitions Corp. dated and filed June 8, 2021, Appeal Record, Tab 04, pg. 91.
[52] Volkow Affidavit #1, Exhibit A, Appeal Book, Tab 04, pg. 96.
[53] *Chambers Reasons, supra* note 2 at para. 57, Appeal Record, Tab 14, pg. 257.

(b) She was not aware that proper notice had been given to all of the secured creditors who might be affected by the 129 Refinancing.[54]

(c) That comparing the 129 Refinancing with the outcome if one of the Solterra or Landa offers were approved would be a “very unprincipled basis” upon which to argue the 129 Refinancing was appropriate.[55]

(d) The 129 Refinancing would not have been objectionable if it had been structured as a sale, whether via an outright sale or a reverse vesting order.[56]

(e) The circumstances of this case are similar to those in *Cliffs Over Maple Bay*.[57] Since there was no evidence of an intention to propose a plan of arrangement or compromise to creditors, the 129 Refinancing was not appropriate.[58]

PART 2 - ERRORS IN JUDGMENT

40. The chambers judge erred in law and fact by:

(a) concluding the 129 Refinancing was not a redemption of the CMLS Mortgage, and in turn by failing to balance the equity of redemption in her appropriateness analysis under s. 11 of the *CCAA*;

(b) determining that it was not appropriate to grant the 129 Application because there was no evidence of an intention to propose a plan of arrangement or compromise to creditors; and

(c) approving the Solterra Backup Offer in the face of the 129 Refinancing, which results in a materially better outcome for the stakeholders and is more consistent with the remedial purpose of the *CCAA*.

---

[54] *Ibid* at para. 71.
[55] *Ibid* at para. 73.
[56] *Ibid* at para. 75.
[57] *Ibid* at para. 82.
[58] *Ibid* at paras. 91-92.

PART 3 - ARGUMENT

A. Standard of Review

41. The standard of review on an appeal of a question of law is correctness. The "primary role of appellate courts is to delineate and refine legal rules and ensure their universal application."[59]

42. Questions of mixed fact and law "lie on a spectrum." When the error "can be attributed to the application of an incorrect standard, a failure to consider a required element of a legal test, or similar error in principle, such an error can be characterized as an error of law, subject to a standard of correctness." On the other end of the spectrum, "where the issue on appeal involves the trial judge's interpretation of the evidence as a whole, it should not be overturned absent palpable and overriding error."[60]

43. Discretionary decisions made by supervising *CCAA* judges are afforded a high degree of deference. However, an appellate court should intervene "if the supervising judge erred in principle or exercised their discretion unreasonably".[61]

44. If "the appellate tribunal reaches the clear conclusion that there has been a wrongful exercise of discretion in that no weight, or no sufficient weight, has been given to relevant considerations … then the reversal of the order on appeal may be justified."[62]

45. In other words, the "degree of importance to be given to particular factors" may attract a deferential standard of review, whereas "a failure to consider such factors" will attract a correctness review.[63]

---

[59] *Housen v. Nikolaisen*, 2002 SCC 33 at paras. 8-9.
[60] *Ibid* at para. 36.
[61] *Callidus*, *supra* note 3 at para. 53.
[62] *New Skeena Forest Products Inc., Re*, 2005 BCCA 192 at para. 20, citing *Friends of the Old Man River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 at 138.
[63] *New Skeena*, *supra* note 62 at para. 26.

B. Relief Pursuant to Section 11 of the *CCAA*

46. Section 11 of the *CCAA* grants a supervising judge broad discretion to "make any order that it considers appropriate in the circumstances."[64]

47. However, a supervising judge's discretion is "not boundless." The court must exercise this authority "in furtherance of the remedial objectives of the *CCAA*".[65] The *CCAA* is remedial in the purest sense; "it provides a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made."[66]

48. The *CCAA* prioritizes "avoiding the social and economic losses resulting from liquidation of an insolvent company".[67] In *CCAA* proceedings, the "best outcome is achieved when the stay of proceedings provides the debtor with some breathing space during which solvency is restored and the *CCAA* process terminates without reorganization being needed."[68]

49. In granting relief under s. 11 of the *CCAA*, the court must keep in mind the baseline considerations of appropriateness, good faith, and due diligence.[69] This appeal only raises the question of appropriateness:

> Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* — avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve

---

[64] *CCAA*, *supra* note 1, s. 11; *Callidus*, *supra* note 3 at paras. 48-49.
[65] *Callidus*, *supra* note 3 at para. 49.
[66] *Century Services, supra* note 3 at para. 59, citing *Elan Corp. v. Comiskey* (1990), 41 O.A.C. 282 at para. 57, Doherty J.A., dissenting.
[67] *Callidus*, *supra* note 3 at para. 41, citing *Century Services*, *supra* note 3 at para. 70.
[68] *Century Services*, *supra* note 3 at para. 14.
[69] *Callidus*, *supra* note 3 at para. 49.

> common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.[70]

50. Novelty does not constrain a court's discretion under s. 11 of the *CCAA*. Supervising judges are often called upon to innovate in exercising their jurisdiction and sanction measures for which there is no explicit authority in the *CCAA*.[71] The history of *CCAA* jurisprudence is "littered with court approval of innovative solutions."[72] It is this flexibility and broad discretion that distinguishes the *CCAA*.[73]

51. Jurisdiction to grant relief under s. 11 of the *CCAA* is subject to certain restrictions. For instance, a plan of compromise or arrangement must be put to a vote among affected creditors before receiving court approval, as that is an express statutory requirement.[74] As a result, s. 11 could not provide jurisdiction to approve a plan of compromise or arrangement that had not been voted on by creditors. In this case, subordination of creditor claims is not a "plan of arrangement" because it does not compromise creditors' rights, so those restrictions are not present here.[75] As noted by the chambers judge, there was no issue with her jurisdiction to grant the orders sought by 129, the question was only whether it was "appropriate" to do so.[76]

52. These restrictions are also narrowly interpreted. While there are sections in the *CCAA* authorizing specific relief, such as s. 11.2 which permits interim financing when sought by the debtor company, the general language of s. 11 "should not be read as being restricted by the availability of more specific orders."[77]

---

[70] *Century Services*, *supra* note 3 at para. 70.
[71] *Ibid* at para. 61; *Quest University Canada (Re)*, 2020 BCSC 1883 at paras. 153-154, leave to appeal ref'd 2020 BCCA 364.
[72] *Port Capital Development (EV) Inc. v. 1296371 B.C. Ltd.*, 2021 BCCA 319 at para. 49, Appeal Record, Tab 17, pg. 295.
[73] *Callidus*, *supra* note 3 at para. 73, citing *Century Services*, *supra* note 3 at para. 14.
[74] *Callidus*, *supra* note 3 at para. 99.
[75] *Ibid* at paras. 111, 114.
[76] *Chambers Reasons*, *supra* note 2 at paras. 51, 54, Appeal Record, Tab 14, pg. 255.
[77] *Century Services*, *supra* note 3 at para. 70.

53. The chambers judge had the discretion to approve the 129 Refinancing. She erred in principle in her appropriateness analysis by:

(a) failing to consider the equity of redemption;

(b) determining that the "crucial" issue was the lack of evidence of an intention to propose a plan of arrangement or compromise to creditors; and

(c) concluding it was "unprincipled" to compare the outcome under the 129 Refinancing to that under the varying sale transactions.

C. The 129 Refinancing was a Redemption

54. The chambers judge erred in concluding the 129 Refinancing was not a redemption of the CMLS Mortgage.[78] The equity of redemption was engaged on the facts of this case irrespective of which party it favoured (the Petitioners or Aviva), as that principle clearly applies to the CMLS Mortgage.

55. Aviva provided its consent to the 129 Refinancing. The 129 Refinancing was paying the entire indebtedness to CMLS and assigning the CMLS Mortgage to Domain. It should not have mattered whether the funds were coming from Aviva or the Petitioners directly, or from another party, such as 129. The source of the funds should not have impacted the chambers judge's analysis.[79] It is clear the chambers judge was overly focused on the source of the funds,[80] rather than the overarching nature of the 129 Refinancing and the parties who supported it.

56. As a result, the chambers judge did not consider the equity of redemption broadly. Instead, she narrowly focused her analysis on the Petitioners, stating the Petitioners could not redeem the CMLS Mortgage because a second mortgage had been granted to Aviva.[81]

---

[78] *Chambers Reasons*, supra note 2, at para. 57, Appeal Record, Tab 14, pg. 257.
[79] *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc*., 2020 ONSC 3659 at para. 19.
[80] *Chambers Reasons*, *supra* note 2 at para. 57, Appeal Record, Tab 14, pg. 257.
[81] *Ibid* at para. 56.

57. The right to redeem and the equity of redemption are related, but not identical. A mortgagor may always pay out a mortgagee in full, which is the fundamental component of redemption. Upon making full payment to a mortgagee, the mortgagor may either:

(a) compel a discharge of the mortgage, which "operates as a conveyance of the estate to the person best entitled" (whoever holds the "equity of redemption");[82] or

(b) seek an assignment of the mortgage, either (1) pursuant to a contract with the mortgagee, or (2) by virtue of a statutory right to compel an assignment.[83]

58. In British Columbia, the statutory right to compel an assignment is contained in s. 14 of the *Law and Equity Act*,[84] which states:

> Despite any stipulation to the contrary, if a mortgagor is entitled to redeem, the mortgagor may require the mortgagee, or the mortgagee's personal representatives or assigns, instead of giving a certificate of payment or reconveying, and on the terms on which the mortgagee would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person as the mortgagor directs and the mortgagee is bound to assign and convey accordingly.

59. However, a mortgagor may "not compel an assignment when the equity of redemption [rests] with a subsequent mortgagee, although the mortgagee may consent to a different outcome". When a mortgagor grants a second mortgage, it conveys the equity of redemption to the second mortgagee. As a result, the mortgagor is no longer "'entitled to redeem' in the sense of permitting him to require a mortgagee to assign the mortgage to a third party when the equity of redemption is in a subsequent mortgagee."[85]

60. However, it does not follow from the above that, where a mortgagor grants a second mortgage, it has lost the ability to redeem, i.e. payout, the mortgage. A

---

[82] *Classic Mortgage Corporation v. 0768723 B.C. Ltd*., 2017 BCSC 1100 at para. 16, aff'd 2017 BCSC 1225; *Gulf Estates Ltd. v. Rix* (1985), 61 B.C.L.R. 205 (S.C.), 1985 CanLII 392 at paras. 13-14.
[83] *Classic Mortgage*, *supra* note 82 at para. 27.
[84] *Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 14(1).
[85] *Classic Mortgage*, *supra* note 82 at para. 16, citing *Gulf Estates*, *supra* note 82 at para. 14.

mortgagor “in that position” still has the right to compel a discharge upon full payment, which is a redemption of the mortgage. This right is consistent with standard foreclosure practice in British Columbia.[86]

61. The chambers judge erred in determining the 129 Refinancing was not a redemption. As a result, she failed to consider the equity of redemption and the Petitioners right to compel a discharge upon redemption in her analysis of appropriateness under s. 11 of the *CCAA*.

62. The Petitioners clearly had the right to payout the mortgage and seek a discharge. With the consent of Aviva (who held the equity of redemption), the Petitioners were also “entitled to redeem” and had the right to compel an assignment under s. 14(1) of the *Law and Equity Act*. However, it was not necessary to rely on s. 14(1) of the *Law and Equity Act* because CMLS consented to the assignment.

63. As discussed above, the primary purpose of the *CCAA* is to “avoid the social and economic losses resulting from liquidation of an insolvent company”.[87] Facilitating the redemption of a mortgage held by a mortgagee who is driving a liquidation process, in this case CMLS, directly aligns with that purpose, and should have been an important factor in assessing appropriateness under s. 11 of the *CCAA*.

64. In the receivership context, as in foreclosure, “the right to redeem must be given due weight. It must be weighed in the balance, and the extent of the possible prejudice on all sides must be taken into account”.[88]

65. As a core principle of real estate law, the chambers judge should have considered the Petitioners’ ability to redeem the CMLS Mortgage and compel an assignment under s. 14(1) of the *Law and Equity Act*. The equity of redemption is more

---

[86] *Classic Mortgage*, *supra* note 82 at paras. 29, 33.
[87] *Century Services*, *supra* note 3 at paras. 15, 70; *Callidus*, *supra* note 3 at para. 41.
[88] *Kruger v. Wild Goose Vintners Inc*., 2021 BCSC 1406 at para. 74, citing *BCIMC Construction*, *supra* note 79 at paras. 36-41, 47, 49-52, 66-69.

than a mere equity. It is “an interest in the mortgaged land which is not lightly to be put aside” and courts have jealously guarded the equity of redemption.[89]

66. The chambers judge erred in law and fact in her conclusion that the 129 Refinancing was not a redemption. This led to a further error on the appropriateness analysis as the chambers judge failed to weigh the Petitioners’ ability redeem the CMLS Mortgage, its right to compel an assignment of the CMLS Mortgage with Aviva’s consent and the equity of redemption generally. This was not a matter of how this principle was weighed. The chambers judge failed to consider these legal principles in her appropriateness analysis. Given that was a relevant consideration, the reversal of the chambers judge’s order is justified on this basis.[90]

D. Evidence of Intention to Propose a Plan was not Crucial

67. The chambers judge concluded that the “crucial” issue on her appropriateness analysis was 129’s failure to indicate “that it will put forward a plan of arrangement or compromise on which the Petitioners’ creditors may vote.”[91]

68. In this regard, the chambers judge concluded the case at bar was similar to the facts in *Cliffs Over Maple Bay*.[92]

69. In *Cliffs Over Maple Bay*, Tysoe J.A. stated the purpose of the *CCAA* was narrowly focused on facilitating “compromises and arrangements between companies and their creditors” as expressed in the statute’s long title.[93] This narrow view of the purpose of the *CCAA* led to the conclusion that it was not appropriate to grant relief under s. 11 in the absence of an intention to propose a plan of arrangement or compromise to creditors.[94]

---

[89] *BCIMC Construction*, *supra* note 79 at paras. 38-40, citing *Petranik v. Dale*, [1977] 2 S.C.R. 959.
[90] *New Skeena*, *supra* note 62 at paras. 20, 26.
[91] *Chambers Reasons*, *supra* note 2 at para. 77, Appeal Record, Tab 14, pg. 262.
[92] *Ibid* at para. 82.
[93] *Ibid* at para. 83; *Cliffs Over Maple Bay Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327 at para. 27.
[94] *Cliffs Over Maple Bay*, *supra* note 93 at para. 35.

70. It is clear from the *Chambers Reasons* that the chambers judge was bound by this interpretation of *Cliffs Over Maple Bay* and the narrow purpose of the *CCAA* articulated therein.

71. *Cliffs Over Maple Bay* should be overruled on this appeal. In the alternative, if this Court concludes *Cliffs Over Maple Bay* stands for a narrower proposition, the chambers judge erred in her interpretation of *Cliffs Over Maple Bay* as binding her to a single outcome: dismissing the 129 Application because of a lack of evidence with respect to 129's or the Petitioners' intention to proposed a plan of arrangement or compromise to creditors.

I. Cliffs Over Maple Bay should be overruled

72. A five-justice division may overrule *Cliffs Over Maple Bay* if the decision is wrong or, "for any other reason" the decision ought to be overruled.[95]

73. The case at bar presents a perfect example of why *Cliffs Over Maple Bay* is problematic and should be overruled. The chambers judge concluded that the 129 Refinancing could have been approved if it was a sale, even though a sale would result in immediate losses to all creditors. However, she concluded she could not approve the 129 Refinancing in its current form, despite the fact that the 129 Refinancing provided the greatest consideration and preserved at least the prospect of further recovery by creditors, while also paying CMLS in full, which was a better outcome for CMLS than under any of the sale transactions.

74. The chambers judge suggests that had the 129 Refinancing been a sale, no one would have quarreled with the structure of the transaction, even if a reverse vesting order was necessary.[96] These statements make it clear the chambers judge believed she was bound by the outcome in *Cliffs Over Maple Bay*, and also demonstrates the unreasonableness of the chambers judge's analysis. In short, she determined that a sale transaction, which results in loss for all creditors, was a more appropriate outcome

[95] *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201 (C.A.), 1995 CanLII 1537 at para. 12, citing *B.C. (Govt.) v. Worthington (Can.) Inc.* (1988), 29 B.C.L.R. (2d) 145 at 159 (C.A.), 1988 CanLII 175.
[96] *Chambers Reasons*, *supra* note 2 at paras. 75-76, Appeal Record, Tab 14, pg. 262.

than a transaction, of greater value, that pays out the primary creditors in full, and preserves the prospect for some recovery for other creditors at a later date – merely because there was a lack of evidence with respect to an intention to propose a plan of arrangement or compromise to creditors.

75. *Cliffs Over Maple Bay* should be overruled for four principled reasons.

a. <u>The purpose of the *CCAA* is broader than articulated in *Cliffs Over Maple Bay*</u>

76. *Cliffs Over Maple Bay* is premised on the conclusion that the fundamental purpose of the *CCAA* is as expressed in the act's long title: "to facilitate compromises and arrangements between companies and their creditors".[97]

77. However, more recent authority of the Supreme Court of Canada has articulated a broader purpose of the *CCAA*, which is consistent with the expanded authority introduced by Parliament in 2009.

78. The purpose of the *CCAA* "is to permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets."[98]

79. *Cliffs Over Maple Bay* creates a mandatory precondition in *CCAA* proceedings that is inconsistent with subsequent authority of this Court which points out that if it is possible in *CCAA* proceeding, "to arrange a refinancing in respect of which creditors need not compromise their rights, so much the better."[99] The application of *Cliffs Over Maple Bay* by the chambers judge prevented this potential outcome.

80. The Supreme Court of Canada made a similar observation in *Century Services*:

> The best outcome is achieved when the stay of proceedings provides the debtor with some breathing space during which solvency is restored and the *CCAA* process terminates without reorganization being needed.[100]

---

[97] *Cliffs Over Maple Bay*, *supra* note 93 at para. 27.
[98] *Century Services*, *supra* note 3 at para. 15.
[99] *Asset Engineering LP v. Forest & Marine Financial Limited Partnership*, 2009 BCCA 319 at para. 26.
[100] *Century Services*, *supra* note 3 at para. 14.

81. It is clearly accepted that a *CCAA* proceeding may not end in an arrangement or compromise with creditors, and in fact it is recognized that such an arrangement or compromise is not even the best outcome.

b. <u>*CCAA* proceedings often do not include a plan of arrangement or compromise</u>

82. The broader purpose articulated in *Century Services*, which is not focused solely on plans of arrangement or compromise, aligns with the relief that is frequently sought and granted under the *CCAA* without a creditor vote, or even an intention to propose a plan.

83. The best example of this are proceedings commonly referred to as "liquidating *CCAA*s". These are now granted pursuant to s. 36 of the *CCAA*, although technically the practice predates the addition of that section to the act.[101]

84. Section 36(3)(d) raises, as a factor to consider, "the extent to which the creditors were consulted". However, there is no requirement for plan of arrangement or compromise be filed.[102]

85. These *CCAA* proceedings present a good example of why *Cliffs Over Maple Bay* does not comport with current *CCAA* practices. The 129 Application came almost a year after the Initial Order. During that time there had been no plan of arrangement proposed to the creditors, nor was there any evidence of an intention of the Monitor (acting on behalf of the Petitioners, under its expanded powers noted above) to do so. Despite that, the chambers judge granted three orders extending the stay to facilitate the SISP, which sought to solicit potential sale or refinancing transactions, two further orders extending the stay to facilitate the Final Sales Process and a sixth stay in aid of closing the Solterra Backup Offer. It was only when 129 sought to refinance Terrace House that *Cliffs Over Maple Bay* became an issue.

---

[101] *Fairmont Resort Properties Ltd. (Re)*, 2012 ABQB 39 at paras. 17, 20.
[102] *Ibid* at para. 26.

c. Unwarranted interference with broad discretion

86. In *Cliffs Over Maple Bay*, the Court concluded:

> It was not suggested in the petition, nor in the Monitor's report before the chambers judge at the comeback hearing, that the Debtor Company intended to propose an arrangement or compromise to its creditors before embarking on its restructuring plan. In my opinion, in the absence of such an intention, it was not appropriate for a stay to have been granted or extended under s. 11 of the *CCAA*. ...[103]
>
> [Emphasis added.]

87. Here, *Cliffs Over Maple Bay* articulates a debtor's intention to propose a plan of arrangement or compromise as a mandatory precondition to granting or extending a stay under the *CCAA*, the fundamental precursor to any *CCAA* proceeding.

88. Such a mandatory requirement interferes with the "flexible mechanism" that is the *CCAA*,[104] and stifles a court's broad discretion under s. 11 of the *CCAA*. The "exercise of this discretion must further the remedial objectives of the *CCAA* and be guided by the baseline considerations of appropriateness, good faith, and due diligence."[105] The mandatory rule in *Cliffs Over Maple Bay*, as was applied by the chambers judge, casts the question of appropriateness too narrowly.

89. In other words, *Cliffs Over Maple Bay* actually extinguishes a court's jurisdiction under s. 11 of the *CCAA* if there is no intention to propose a plan to creditors. Such a "bright line" approach is clearly inconsistent with the purpose of the *CCAA* and the history of *CCAA* jurisprudence.

90. Appropriateness is not determined by the presence or absence of an intention to propose a plan of arrangement or compromise. "The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* — avoiding the social and economic losses resulting from liquidation of an insolvent company."[106]

---

[103] *Cliffs Over Maple Bay*, *supra* note 93 at para. 35.
[104] *Callidus, supra* note 3 at para. 73, citing *Century Services*, *supra* note 3 at para. 14.
[105] *Ibid* at para. 70.
[106] *Century Services*, *supra* note 3 at para. 70.

d. *Cliffs Over Maple Bay* creates an artificial evidentiary hurdle

91. A stated in *Winnipeg Motor Express*:

> It also seems to me that a formal plan of arrangement or compromise is, at least theoretically, always a possibility, so to require a debtor company to utter some magic incantation that it intends to propose a plan of arrangement, as a prerequisite for relief under the CCAA, is overly technical and inconsistent with this remedial objective. The result of such a conclusion may simply be that applicants would make a statement in some pro forma or boiler plate language, or go through an exercise for no valid purpose.[107]

92. This statement is particularly true when considered in this context. The 129 Application was not being advanced by the Petitioners, and the Petitioners had not, to date, expressed an intention to propose a plan of arrangement or compromise to creditors. Given the circumstances, 129 was not in a position to provide the Court with admissible evidence with respect to the Petitioners' intentions. Without control of Terrace House, it was not possible for Mr. Reyes or 129 to advance all the aspects of a long-term restructuring.[108]

II. The chambers judge erred in considering only one factor

93. In the alternative, if *Cliffs Over Maple Bay* stands for a narrower proposition, the chambers judge erred in interpreting it so broadly and in her application of *Cliffs Over Maple Bay* to the case at bar.

94. *Cliffs Over Maple Bay* may stand for the narrower proposition that, when considering relief under s. 11 of the *CCAA*, an intention to propose a plan of arrangement or compromise:

(a) is a factor to consider, but not the only factor, that should be balanced against potential countervailing factors, such as secured creditor support; or

(b) is relevant to the initial order, in particular the stay of proceedings, but no longer applies at later stages of *CCAA* proceedings, particularly when the

---

[107] *Winnipeg Motor Express Inc. et al.*, 2008 MBQB 297 at para. 42.
[108] Reyes Affidavit #2, paras. 16-19, Appeal Book, Tab 01, pg. 7.

supervising judge has previously granted stay extensions to facilitate the ongoing objectives of the *CCAA* proceedings at issue.

95. Since the chambers judge determined the “crucial” issue on her appropriateness analysis was 129’s failure to indicate “that it will put forward a plan of arrangement or compromise on which the Petitioners’ creditors may vote”,[109] she erred in principle by giving no weight to the other relevant considerations, such as the equity of redemption.

96. The chambers judge’s conclusion with respect to *Cliffs Over Maple Bay* is also inconsistent with the five prior extensions to the Stay of Proceedings which she granted to further the SISP and Final Sales Process, both of which sought to solicit a potential purchase or refinancing of Terrace House, among other things.

E. The 129 Refinancing was Materially Better than a Sale

97. There were two bidders before the chambers judge that had submitted offers to purchase Terrace House on substantially the same terms. The two bidders presented the same outcome for all creditors, with the exception of CMLS, which would have recovered more depending on what purchase price was approved. All of the other creditors would be left “out of the money”, although Centura (given its affiliation with Solterra) argued it preferred that outcome.[110] Under all of the competing offers, Aviva’s and the Petitioners’ equity of redemption would be extinguished.

98. In contrast, the 129 Refinancing presented a different option. It left all the creditors with some hope of financial recovery, while providing CMLS full recovery, which was also better than any alternative. Aviva, being a sophisticated party with the largest stake behind CMLS and suffering the largest financial shortfall under any of the sale transactions, supported the 129 Refinancing.

99. However, despite this reality the chambers judge concluded comparing these alternative transactions was a “very unprincipled basis” on which to argue the

[109] *Chambers Reasons*, *supra* note 2 at para. 77, Appeal Record, Tab 14, pg. 262.
[110] *Ibid* at paras. 71, 73.

129 Refinancing was "an 'appropriate' outcome in the balancing exercise with regard to all stakeholders."[111]

100. This conclusion stemmed, in part, from her concern that she was "not aware that proper notice [had] been given to all of the secured creditors who might be affected by the proposed transaction." Because of this concern, the chambers judge concluded that it was "difficult to properly assess whether any creditor would be materially prejudiced".[112]

101. This led the chambers judge to conclude it was unprincipled to assess appropriateness based on the likely monetary value of the Other Creditors' interests under the sale transactions.[113] Viewed together, the *Chambers Reasons* demonstrate the chambers judge was of the view that the Other Creditors being "out of the money" under the sale transaction was not enough to conclude there was no prejudice, given her concern with respect to notice.

102. First, there was notice of the 129 Application to the Service List in accordance with the Initial Order. As a result, the chambers judge's underlying concern was misplaced. Second, even if notice was deficient, it remains an error to refuse to consider the reality that the alternative to the 129 Refinancing would wipe out the claims of all the Other Creditors.

103. Further, the chambers judge's conclusion that it was unprincipled to compare outcomes under the 129 Refinancing with those under the sale transactions is directly at odds with the overarching remedial objectives of the *CCAA*. In particular, her analysis failed to balance the "costs and benefits of restructuring or liquidating the company".[114] Comparing the options favours the 129 Refinancing and clearly answers the question of "whether the order will usefully further efforts to achieve the remedial purpose of the

[111] *Ibid* at para. 73.
[112] *Ibid* at para. 71.
[113] *Ibid* at para. 73.
[114] *Callidus*, *supra* note 3 at para. 40.

CCAA — avoiding the social and economic losses resulting from liquidation of an insolvent company."[115]

104. The chamber judge's analysis is also inconsistent with her analysis in *League Assets* where she noted the important and "stark contrast" between a proposed restructuring and the "result that would otherwise have applied in respect of either a sale … or the order absolute."[116]

105. Ironically, despite concluding it was unprincipled to rely on the sale transactions to support the appropriateness of the 129 Refinancing, the chambers judge was of the view that 129 could have advanced its transaction as an outright sale or reverse vesting order and no one would have quarreled with the structure of that transaction.[117]

106. The chambers judge's analysis leads to the odd conclusion that a sale transaction, for less value, which crystalize losses for all creditors (including CMLS), is a preferable outcome to a transaction, of greater value, that pays out CMLS in full, and preserves the prospect for some recovery for the remaining creditors at a later date. It cannot be that the purpose of the *CCAA* is advanced by a sale of assets and immediate loss by all creditors, when an alternative path that at least preserves the prospect of a restructuring, and has the support of all key stakeholders, is available and before the Court.

107. In the face of the Monitor reporting that the 129 Refinancing provides a "materially better" outcome for the stakeholders, the chambers judge erred in principle by not balancing the options available in determining whether the 129 Refinancing was appropriate.

[115] *Century Services*, *supra* note 3 at para. 70.
[116] *League Assets Corp (Re)*, 2014 BCSC 2589 at para. 8.
[117] *Chambers Reasons*, *supra* note 2 at paras. 75-76, Appeal Record, Tab 14, pg. 262.

F. The Court of Appeal Should Grant the Order

108. If the Court identifies reviewable errors in the *Chambers Reasons*, it may proceed in one of two way:

(a) the Court could remit the matter back to the chambers judge for a new hearing; or

(b) "if it is feasible and in the interests of justice, it can conduct a fresh assessment of the evidence".[118]

109. Feasibility is primarily an evidentiary question. In this case, the evidence is entirely documentary in nature and it is sufficiently clear to permit a fresh assessment by the Court.

110. A fresh assessment of the 129 Refinancing now is also in the interests of justice.

111. First, the entire appeal can be resolved by a fresh assessment of the "appropriateness" of the 129 Refinancing. If the Court determines the 129 Refinancing is appropriate, it should grant the order sought by 129 and there is no need to consider the sale transactions. This was the approach adopted by the chambers judge.[119] The assessment of appropriateness turns on facts that were before the chambers judge at the hearing on June 8, 2021, all of which are in the record on the appeal.

112. A redemption should be given preference over an application to sell assets. Absent truly extraordinary circumstances, a court should not prevent a party from redeeming mortgaged property upon payment in full of the amount owed to the secured creditor prior to an order approving a sale.[120]

113. Since all the other issues fall away, it is not necessary for the Court to have the same degree of understanding of all the background as the chambers judge. Nevertheless, assessing the appropriateness of the 129 Refinancing, especially in light

---

[118] *West Moberly First Nations v. British Columbia*, 2020 BCCA 138 at para. 135, citing *Hollis v. Dow Corning Corp*., [1995] 4 S.C.R. 634 at para. 33.
[119] *Chambers Reasons*, *supra* note 2 at para. 43, Appeal Record, Tab 14, pg. 251.
[120] *Bank of Montreal v. Hester Creek Estate Winery Ltd. et al*, 2004 BCSC 724 at paras. 29-30.

of the alternative being a sale, is primarily prospective. To the extent the background is necessary, those facts are in the record and uncontested.

114. Second, both the 129 Refinancing and the Solterra Backup Offer are subject to mounting time pressures. Further, interest and costs to CMLS, the Interim Lender and of the *CCAA* proceedings generally continue to accrue. These circumstances do not provide the time to refer the matter back to the chambers judge because one of the transactions needs to close imminently.

115. Finally, the Final Sale Process has been extending for some time. It is not in the interest of justice to refer the 129 Application back to the chambers judge and further extend this matter. Although 129 has been able to increase the available funds to redeem CMLS in full, despite the later closing date in October, a further extension of the closing date may prejudice 129's ability to redeem CMLS in full due to additional cost. Granting the 129 Refinancing now will avoid further delaying these time sensitive *CCAA* proceedings.[121]

G. The 129 Refinancing is Appropriate and Should be Approved

116. In summary, the 129 Refinancing is appropriate because it will "usefully further efforts to achieve the remedial purpose of the *CCAA* — avoiding the social and economic losses resulting from liquidation of an insolvent company." The 129 Refinancing achieved common ground among the senior secured creditors and treats the remaining stakeholders as "advantageously and fairly as the circumstances permit."[122]

117. The following factors demonstrate the appropriateness of the 129 Refinancing:

(a) The Petitioners had the ability to redeem the CMLS Mortgage and compel a discharge, and could further compel an assignment of the CMLS Mortgage with Aviva's consent, these were not considered by the chambers judge nor was the equity of redemption generally;

[121] *Canada v. Global Equity Fund Ltd.*, 2012 FCA 272 at para. 65.
[122] *Century Services*, *supra* note 3 at para. 70.

(b) The 129 Refinancing was a materially better outcome for the stakeholders, but the chambers judge concluded it was unprincipled to compare the outcomes under the 129 Refinancing to the those under a sale; and

(c) Aviva and CMLS, the senior secure creditors and the only two creditors financially impacted by the chambers judge's decision, supported the 129 Refinancing.

118. These factors further demonstrate that the lack of evidence with respect to 129's or the Petitioners' intention to propose a plan of arrangement or compromise to creditors was not crucial.

119. The only stakeholder that opposed the 129 Refinancing was Centura. Centura is a lien creditor with a lien claim in the amount of $473,277.00. Centura is a related entity to Solterra, and without Centura, Solterra did not have standing to contest the 129 Application. Finally, under all of the sale transactions, Centura, like the Other Creditors generally, was "out of the money". These facts do not prevent Centura from opposing the 129 Application, but do raise questions as to the weight that should be given to their position.

120. More critically, even if the chambers judge ought to have taken Centura's position at face value, despite the clear interest in the Solterra offers, which she should not have, that position could not be extended to any of the remaining Other Creditors that chose not to appear on the 129 Application. The only reasonable inference to draw from the Other Creditors not appearing was indifference. However, the chambers judge incorrectly and unfairly extended Centura's position to the "lien claimants" generally.[123]

121. As a result, of the parties appearing on the 129 Application, the 129 Refinancing had overwhelming support. The 129 Refinancing was the best option to achieve maximum recovery for creditors while also furthering the remedial purpose of the *CCAA* by avoiding the social and economic losses resulting from liquidation. This Honourable Court should approved the 129 Refinancing.

[123] *Chambers Reasons*, *supra* note 2 at para. 71, Appeal Record, Tab 14, pg. 261.

H. New Evidence on Appeal

122. 129 seeks leave to adduce evidence that was not before the chambers judge pursuant to R. 31 of the *Court of Appeal Rules*.[124]

123. The further evidence 129 seeks to adduce serves a single purpose: demonstrate to the parties and the Court that the 129 Refinancing remains a viable transaction. In other words, despite the passage of time since the chambers hearing, 129 seeks to establish that the parameters of the 129 Refinancing are substantially the same as on June 8, 2021.

124. The further evidence addresses the commercial realities that costs associated with closing the 129 Refinancing continue to accrue and the payout amounts to CMLS, the Interim Lender and with respect to the Administration Charge have increased.

125. As it relates to the further evidence, the circumstances of this appeal are particularly rare and exceptional.[125] 129 is not attempting to demonstrate a change of circumstances from what was before, or assumed by, the chambers judge.[126] To the contrary, 129 seeks to adduce further evidence to establish that the overarching facts of the 129 Refinancing are the same as those before the chambers judge, despite the passage of time.

126. The further evidence is therefore not easily assessed as either fresh or new evidence. Nevertheless, it is in the interests of justice to admit the further evidence.[127]

127. Fresh evidence "is evidence that existed at the time of the trial but was not adduced at that time". New evidence "is evidence that was not in existence at the time of trial but has arisen as a result of events or matters that transpired subsequent to trial."[128]

---

[124] *Court of Appeal Rules*, R. 31(1).
[125] *Barendregt v. Grebliunas*, [2021 BCCA 11](#) at para. 32.
[126] *Ibid* at para. 38.
[127] *Ibid* at paras. 33, 41, 48.
[128] *Ibid* at para. 29.

128. The test governing the admission of fresh evidence is set out in *R. v. Palmer*, [1980] 1. S.C.R. 759 at 775:

> This test requires the appellant to demonstrate that the evidence was not discoverable by reasonable diligence before the end of the trial; that the evidence is credible; that it would be practically conclusive of an issue before the court; and that if believed, the evidence could have affected the result of the trial.[129]

129. The *Palmer* test does not apply to new evidence.[130] New evidence will only be admitted in "rare" or "exceptional" circumstances.[131] The overarching consideration on a motion to adduce new evidence is whether it is in the interests of justice to grant leave.[132]

130. Evidence of the 129 Refinancing was before the chambers judge based on a closing date no later than June 30, 2021. It was not necessary, at the time of the chambers hearing, for the 129 Refinancing to close in October, as a result the further evidence could not have been reasonably anticipated. As a result, the further evidence is more akin to new evidence. However, it was at least possible for the further evidence to have been adduced at the chambers hearing since the 129 Refinancing could have been structured to close in October, although there was no reason to do so. To the contrary, there were a numbers of reasons to close the 129 Refinancing quickly.

131. The further evidence satisfies the first three *Palmer* criteria:

(a) 129 acted diligently in advancing evidence with respect to the 129 Refinancing, which was set to close before June 30, 2021;

(b) the further evidence is clearly relevant since the conditionality of the 129 Refinancing has been an ongoing question for stakeholders and whether CMLS is being paid in full is central to the issue of redemption; and

---

[129] *Korol (Re)*, 2014 BCCA 380 at para. 35; see also *Ascent Developments Corp. v. Stonehenge Projects Inc.*, 2016 BCCA 287 at para. 63.
[130] *Korol*, *supra* note 129 at para. 36; *Barendregt*, *supra* note 125 at para. 30.
[131] *Barendregt*, *supra* note 125 at para. 32.
[132] *Ibid* at para. 48.

(c) the further evidence is credible, it takes the same form as previous affidavits and primarily exhibits executed documents.

132. The fourth *Palmer* criteria is challenging to apply in this case. This is indicative of the rare and exceptional circumstances before the Court. The further evidence attempts to maintain the 129 Refinancing in the same state as it was before the chambers judge. Thus, it cannot be said that the further evidence "could have affected the result of the trial." 129 points to other errors by the chambers judge. However, without the further evidence the factual underpinnings of 129's argument and the *Chambers Reasons* change. The facts on appeal will not align with the facts that were before the chambers judge, and in turn the errors 129 submits she made. As a result, not admitting "the evidence could well lead to an injustice."[133]

133. If the further evidence is better characterized as new evidence, it is in the interests of justice to grant leave to adduce the further evidence on appeal. The main exception to the prohibition on new evidence cannot be applied to the further evidence in this case as it does not attempt to address a change in circumstances from the facts before the chambers judge that casts serious doubt on factual underpinnings of the *Chambers Reasons*.[134]

134. However, the further evidence will allow the Court to review matters "as they stood at the time of trial", which is a requirement of appellate review. As a result, the evidence promotes, rather than offends, "the principle of finality".[135]

135. In the circumstances of this appeal, 129 submits there are only two fair approaches:

(a) grant leave to adduce the further evidence; or

(b) hear the appeal on the facts exactly as they were on June 8, 2021 with no regard for the passage of time.

---

[133] *Ascent Developments*, *supra* note 129 at para. 64.
[134] *Barendregt*, *supra* note 125 at paras. 35, 38, 40.
[135] *Scott v. Scott*, 2006 BCCA 504 at para. 25.

136. Allowing the respondents to argue the 129 Refinancing is no longer viable due to the passage of time and increased costs while ignoring further evidence that addresses these issues would lead to an injustice.

PART 4 - NATURE OF ORDER SOUGHT

137. 129 seeks the following Orders:

(a) that the appeal be allowed;

(b) that leave be granted to adduce further evidence;

(c) that the chambers judge's orders dismissing the 129 Application and approving the Solterra Backup Offer be set aside; and

(d) the order sought by 129, approving the 129 Refinancing, be granted on the same terms as sought before the chambers judge except as follows (capitalized terms in this paragraph are defined in the draft order sought by 129,[136] except where stated otherwise):

(i) increasing the maximum amount under the New Loan Facility to $25,900,000;[137]

(ii) changing the date of the Domain Commitment Letter to July 30, 2021;[138]

(iii) adding repayment of the CMLS Facility to the permitted uses of the Working Capital Facility;[139] and

(iv) continuing and extending the Stay of Proceedings (as defined herein) to and including April 30, 2022.[140]

All of which is respectively submitted this 1st day of September, 2021.

Jordan Schultz and Eamonn Watson
Counsel for the Appellant,
1296371 B.C. Ltd.

---

[136] Draft Form of Order Sought by 1296371 B.C. Ltd. on June 8, 2021, Appeal Record, Tab 2(a), pg. 60.
[137] *Ibid*, para. 3, Appeal Record, Tab 2(a), pg. 62.
[138] *Ibid*, para. 4(a), Appeal Record, Tab 2(a), pg. 62.
[139] *Ibid*, para. 17, Appeal Record, Tab 2(a), pg. 64.
[140] *Ibid*, para. 16, Appeal Record, Tab 2(a), pg. 64.

APPENDIX: ENACTMENTS

COMPANIES' CREDITORS ARRANGEMENT ACT

R.S.C. 1985, c. C-36

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

> **(a)** the period during which the company is expected to be subject to proceedings under this Act;
>
> **(b)** how the company's business and financial affairs are to be managed during the proceedings;
>
> **(c)** whether the company's management has the confidence of its major creditors;
>
> **(d)** whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
>
> **(e)** the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor’s report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

LAW AND EQUITY ACT

R.S.B.C. 1996, c. 253

Mortgagor may require mortgagee to assign

14 (1) Despite any stipulation to the contrary, if a mortgagor is entitled to redeem, the mortgagor may require the mortgagee, or the mortgagee's personal representatives or assigns, instead of giving a certificate of payment or reconveying, and on the terms on which the mortgagee would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person as the mortgagor directs and the mortgagee is bound to assign and convey accordingly.

(2) A mortgagee in possession who is required to assign, transfer and convey under subsection (1) does not incur any legal liability that the mortgagee would not have incurred if the mortgagee had executed a release of the mortgage.

COURT OF APPEAL RULES

B.C. Reg. 297/2001

Further evidence

31 (1) With leave of the court or a justice, a party may adduce evidence that was not before the court appealed from.

LIST OF AUTHORITIES

Authorities	**Page # in factum**	**Para # in factum**
Cases		
9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10	ix, 9-11, 14, 19, 22	43, 46-51, 63, 88, 103
Ascent Developments Corp. v. Stonehenge Projects Inc., 2016 BCCA 287	28, 29	129, 133
Asset Engineering LP v. Forest & Marine Financial Limited Partnership, 2009 BCCA 319	17	79
Bank of Montreal v. Hester Creek Estate Winery Ltd. et al, 2004 BCSC 724	24	112
Barendregt v. Grebliunas, 2021 BCCA 11	27- 29	126-128, 130, 134
BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc., 2020 ONSC 3659	12, 14, 15	55, 64, 65
Canada v. Global Equity Fund Ltd., 2012 FCA 272	25	115
Century Services Inc. v. Canada (Attorney General), 2010 SCC 60	ix, 10, 11, 14, 17-19, 23, 25	47-50, 52, 63, 78, 80, 82, 88, 90, 103, 116
Classic Mortgage Corporation v. 0768723 B.C. Ltd., 2017 BCSC 1100	13, 14	57, 59, 60
Classic Mortgage Corporation v. 0768723 B.C. Ltd., 2017 BCSC 1225	13	57
Cliffs Over Maple Bay Ltd. v. Fisgard Capital Corp., 2008 BCCA 327	x, 15, 17-21	68, 69, 76, 86, 70-76, 79, 85-89, 93, 94, 96
Fairmont Resort Properties Ltd. (Re), 2012 ABQB 39	18	83, 84
Gulf Estates Ltd. v. Rix (1985), 61 B.C.L.R. 205 (S.C.), 1985 CanLII 392	13	57, 59
Housen v. Nikolaisen, 2002 SCC 33	9	41, 42

Authorities	Page # in factum	Para # in factum
Korol (Re), 2014 BCCA 380	28	129, 130
Kruger v. Wild Goose Vintners Inc., 2021 BCSC 1406	14	64
League Assets Corp (Re), 2014 BCSC 2589	23	104
New Skeena Forest Products Inc., Re, 2005 BCCA 192	9, 15	44, 45, 66
Petranik v. Dale, [1977] 2 S.C.R. 959	15	65
Port Capital Development (EV) Inc. (Re), 2021 BCSC 1272	ix, x, 1-8, 11, 12, 15, 16, 21-24, 26, 29	1-18, 20-32, 35, 36, 39, 51, 54-56, 67-69, 74, 95, 97, 99-101, 105, 108, 111, 120, 134
Port Capital Development (EV) Inc. v. 1296371 B.C. Ltd., 2021 BCCA 319	11	50
Quest University Canada (Re), 2020 BCSC 1883	11	50
Scott v. Scott, 2006 BCCA 504	29	135
Skidmore v. Blackmore, (1995), 2 B.C.L.R. (3d) 201 (C.A.), 1995 CanLII 1537	16	72
Southern Star Developments Ltd. v. Quest University Canada, 2020 BCCA 364	11	50
West Moberly First Nations v. British Columbia, 2020 BCCA 138	24	108
Winnipeg Motor Express Inc. et al., 2008 MBQB 297	20	91
Legislation		
Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36	ix, x, 1, 2, 8-11, 14, 15, 17-20, 22, 26	1, 6, 7, 40, 43, 46-52, 61, 63, 69, 70, 76-79, 81-90, 94, 103, 121

Authorities	**Page # in factum**	**Para # in factum**
Court of Appeal Rules, B.C. Reg. 297/2001, R. 31(1)	27	123
Law and Equity Act, R.S.B.C. 1996, c. 253, s. 14(1)	13, 14	58, 62, 65