



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)

NOTICE OF MOTION

TO: The Appellant, 1296371 B.C. Ltd.

AND TO: The Respondents, Centura Building Systems (2013) Ltd., Solterra Acquisitions Corp., Port Capital Development (EV) Inc., and Evergreen House Development Limited Partnership

AND TO: The Service List

TAKE NOTICE THAT AN APPLICATION will be made by Ernst & Young Inc., in its capacity as the Court-appointed Monitor of Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership (the “**Monitor**”) to a division of the Court of Appeal at The Law Courts at 800 Smithe Street, Vancouver, British Columbia, at 10:00 a.m. on Tuesday, the 21st day of September 2021, for an order pursuant to Rule 31(1) of the *Court of Appeal Rules*, B.C. Reg. 297/2001, that the Monitor be granted leave to introduce evidence, specifically the Affidavit of Yiota Petrakis, sworn September 13, 2021 (the “**Petrakis Affidavit**”).

AND TAKE NOTICE THAT the grounds for the Monitor’s motion are that the Petrakis Affidavit (a) constitutes new evidence that was not in existence at the time the Order of Madam Justice Fitzpatrick under appeal was granted on June 15, 2021 but rather has arisen as a result of events or matters that transpired subsequent to the granting of the Order; (b) the new evidence is relevant as the conditionality of the 129 Refinancing (as defined in the Appellant’s Factum dated September 1, 2021) has been an ongoing question for stakeholders in this proceeding; (c) the new evidence goes to the appropriateness of the relief the relevant stakeholders are seeking from this Court and may affect the outcome of this Court’s decision to grant or deny such relief; and (d) it is in the interests of justice to allow the new evidence to be adduced: *Barendregt v. Grebliunas*, 2021 BCCA 11.

AND TAKE NOTICE THAT in support of the Monitor’s motion will be read the Petrakis Affidavit.

The Monitor does not anticipate this motion to be contested.

DATED September 13, 2021



Peter Bychawski
Solicitor for Ernst & Young Inc., in its
capacity as the Court appointed Monitor of
Port Capital Development (EV) Inc. and
Evergreen House Development Limited
Partnership

The application will take no more than 5 minutes to be heard.

This NOTICE OF MOTION is filed by Peter Bychawski, of the firm, Blake, Cassels & Graydon LLP whose address for service is Suite 2600, Three Bentall Centre, 595 Burrard Street, P.O. Box 49314, Vancouver, British Columbia, V7X 1L3. Telephone: 604.631.3300. Facsimile: 604.631.3309.