Form 23 (Rule 47(3)(a))

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)

ORDER

BEFORE:

The Honourable Madam Justice Newbury
The Honourable Mr. Justice Willcock
The Honourable Mr. Justice Goepel
The Honourable Madam Justice Dickson
The Honourable Mr. Justice Voith

Vancouver, British Columbia, this 22nd day of September, 2021.

THE APPEAL from the orders of Madam Justice Fitzpatrick of the Supreme Court of British Columbia pronounced the 15th day of June, 2021, at Vancouver, British Columbia, coming on for hearing the 21st day of September, 2021; AND ON HEARING Jordan Schultz and Eamonn Watson, counsel for the

Appellant 1296371 B.C. Ltd. ("**129**"); Kibben Jackson and Tom Posyniak, counsel for Centura Building Systems (2013) Ltd. and Solterra Acquisitions Corp.; David Gruber, counsel for Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership (collectively the "**Petitioners**"); Peter Bychawski, counsel for Ernst & Young (in its capacity as the "**Monitor**"); Colin D. Brousson and Alexandra McCawley, counsel for CMLS Financial Ltd. and Desjardins Financial Security Life Assurance Company; and William Roberts, counsel for Aviva Insurance Company of Canada; AND ON READING the materials filed herein; AND ON JUDGMENT BEING PRONOUNCED ON THIS DATE;

THIS COURT ORDERS that the appeal is allowed.

AND THIS COURT FURTHER ORDERS that leave is granted to adduce the new evidence tendered at the hearing of the appeal.

AND THIS COURT FURTHER ORDERS that the chambers judge's orders dismissing the application of 129, and approving the application of the Petitioners to, *inter alia*, approve the sale of certain assets to Solterra Acquisitions Corp., are set aside.

AND THIS COURT FURTHER ORDERS that:

Release of Deposits

1. Dentons Canada LLP ("**Dentons**") is hereby authorized and directed to pay the following amounts, each of which are deposits (collectively the "**Deposits**") held in trust by Dentons pursuant to various pre-sale purchase agreements (the "**Pre-Sale Purchase Agreements**") among the Petitioners, as vendors, and the following persons (the "**Pre-Sale Purchasers**"), as purchasers, each in respect the following units in the Terrace House development project:

   (a) $2,800,000, representing the deposit paid by Luz Consuelo Reyes in respect of her agreement to purchase unit 801;

   (b) $1,155,000, representing the deposit paid by 1192706 B.C. Ltd., in respect of its agreement to purchase unit 1001;

   (c) $975,000, representing the deposit paid by 1208596 B.C. Ltd., in respect of its agreements to purchase units CRU#1 and CRU#2;

   (d) $1,162,500, representing the deposit paid by 1301981 B.C. Ltd. (as assignee from Hudani Investment Corp.), in respect of its agreement to purchase unit 901;

(e) $645,000, representing the deposit paid by 1207867 B.C. Ltd., in respect of its agreement to purchase unit 403;

(f) $592,500, representing the deposit paid by Robert Davis in respect of his agreement to purchase unit 503; and

(g) $675,000, representing the deposit paid by Simon Wang in respect of his agreement to purchase unit 401,

to 129 on the following terms:

(h) the Deposits shall be paid by 129 directly to CMLS Financial Ltd. ("**CMLS**") for the purposes of purchasing and taking an assignment of all loans (the "**CMLS Facility**") and security (the "**CMLS Security**") held by CMLS against the Petitioners, and such payment shall constitute an advance of a loan by 129 to the Petitioners (the "**Junior Loan**"), to be secured by the CMLS Security; and

(i) upon repayment of the Junior Loan, or any part thereof, the amount repaid shall be immediately paid by 129 to Dentons, in trust, which amounts shall be held pro rata as a Deposit pursuant to each Pre-Sale Purchase Agreement.

2. The Pre-Sale Purchase Agreements shall be unaffected by this Order, except as expressly provided for herein.

Refinancing Transaction

3. The Petitioners are hereby authorized, empowered and directed to obtain and borrow under a credit facility from Domain Mortgage Corp. ("**Domain**"), 1260780 B.C. Ltd. ("**NumberCo**") and 129 (collectively, the "**New Lenders**") in order to finance:

(a) repayment in full of all amounts owing to the "**Interim Lender**" (as defined in the Amended and Restated Initial Order made June 8, 2020, herein the "**ARIO**") pursuant to the commitment letter between the Petitioners and the Interim Lender dated as of June 5, 2020, as amended (the "**Interim Lending Facility**");

(b) the purchase and assignment of the CMLS Facility and the CMLS Security by the New Lenders,

provided that principal amount borrowed under such credit facility shall not exceed $25,900,000 (the "**New Loan Facility**") unless permitted by further Order of the supervising chambers judge.

4. Such credit facility shall be:

(a) in the case of the loan by Domain, on the terms and subject to the conditions set forth in the commitment letter between the Petitioners and Domain dated July 30, 2021 (the "**Domain Commitment Letter**"); and

(b) in the case of the loans by NumberCo and 129, on an interest free basis, payable on demand, but subject to repayment of the Petitioners' obligations to Domain

(collectively, the "**Finance Terms**").

5. The Petitioners are hereby authorized, empowered and directed to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**New Definitive Documents**"), as are contemplated by the Finance Terms or as may be reasonably required by the New Lenders pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the New Lenders under and pursuant to the Finance Terms and the New Definitive Documents as and when the same become due and are to be performed.

6. Upon repayment in full of the Interim Lending Facility, as contemplated in paragraph 3(a) hereof, all security held by the Interim Lender as security for the Petitioners' obligations under the Interim Lending Facility (including, without limitation, the Interim Lender's Charge (as defined in the ARIO)) shall be discharged and released in full, for all purposes.

7. The purchase and assignment of the CMLS Loan and the CMLS Security by Domain, for and on behalf of the New Lenders (the "**Security Assignment**"), is hereby authorized and approved, and following completion of the Security Assignment, the Petitioners are authorized, empowered and directed to execute and deliver such amending agreements or other documents as may be reasonably required by the New Lenders (collectively the "**Amending Agreements**") to provide that the CMLS Security secures all indebtedness and obligations of the Petitioners to the New Lenders.

8. The CMLS Security, as amended by the Amending Agreements, shall constitute a mortgage, security interest, assignment by way of security and charge on the "**Property**" (as defined in the ARIO) and such charge shall rank in priority to all other security interests, trust, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise, other than the Administration Charge (as defined in the ARIO) and those claims contemplated by Section 11.8(8) of the CCAA.

9. Upon receipt of funding from the New Loan Facility, repayment in full of the Interim Lending Facility and completion of the purchase and assignment of

the CMLS Facility and the Security Assignment, the Petitioners are hereby authorized and directed to pay $200,000 to Landa Global Acquisitions Ltd. ("**Landa**"), representing the Break Fee payable pursuant to the Purchase and Sale Agreement dated March 25, 2021, among the Petitioners and Landa.

Amendments to Initial Order

10. Notwithstanding any other provision of the ARIO, including without limitation the stay of proceedings ordered pursuant to paragraphs 16 and 17 thereof:

(a) upon the occurrence of a default under the Domain Commitment Letter, any of the New Definitive Documents, or the CMLS Security (as amended), Domain, upon five business days' notice to the Petitioners and the Monitor, may exercise any and all of its rights and remedies against the Petitioners or the Property under or pursuant to the Domain Commitment Letter, the New Definitive Documents and the CMLS Security (as amended), including without limitation, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and

(b) the foregoing rights and remedies of Domain shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioners or the Property.

11. Domain, in its capacity as lender pursuant to the Domain Commitment Letter, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), or any proposal filed by the Petitioners under the *Bankruptcy and Insolvency Act* of Canada, with respect to any advances made under the Domain Commitment Letter.

12. No order shall be made, including pursuant to section 11.2 of the CCAA, granting any security or charge priority over the CMLS Security (as amended) without the consent of Domain.

13. Upon receipt of funding from the New Loan Facility, repayment in full of the Interim Lending Facility and completion of the purchase and assignment of the CMLS Facility and the Security Assignment, the ARIO shall be amended by deleting paragraphs 24(a) and (b), and paragraphs 29 to 33 thereof, and by deleting all other references to the "Enhanced Monitor Powers" in the ARIO.

14. Upon receipt of funding from the New Loan Facility, repayment in full of the Interim Lending Facility and completion of the purchase and assignment of the CMLS Facility and the Security Assignment, payment of the outstanding amounts owing to the Monitor, counsel to the Monitor and counsel to the Petitioner, paragraphs 36 and 43 of the ARIO shall be amended as follows:

> 36. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of <u>$100,000.00</u>, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners' restructuring. The Administration Charge shall have the priority set out in paragraph 45 hereof.
>
> 43. *[Intentionally Deleted]*

15. While the New Loan Facility remains outstanding, no further step shall be taken by the Petitioners in these proceedings without the consent of Domain.

Extension of Stay

16. The stay of proceedings provided for in the ARIO is hereby continued and extended to and including April 30, 2022.

17. The Petitioners are hereby authorized, empowered and directed to obtain and borrow under a credit facility from NumberCo in order to finance repayment of the CMLS Facility and working capital requirements following funding of the New Loan Facility and completion of the Security Assignment, provided that principal amount borrowed under such credit facility shall not exceed $750,000 (the "**Working Capital Facility**") unless permitted by further Order of this Court.

18. Such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Petitioners and NumberCo attached as Exhibit "A" to the Affidavit #4 of Macario Reyes (the "**NumberCo Commitment Letter**").

19. The Petitioners are hereby authorized, empowered and directed to execute and deliver such credit agreements and other definitive documents (collectively, the "**WC Definitive Documents**"), as are contemplated by the NumberCo Commitment Letter or as may be reasonably required by NumberCo pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to NumberCo under and pursuant to the NumberCo Commitment Letter and the WC Definitive Documents as and when the same become due and are to be performed.

APPROVED AS TO FORM:

Signature of Jordan Schultz
Counsel for 1296371 B.C. Ltd.

BY THE COURT: Newbury JA

Deputy Registrar

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VANCOUVER REGISTRY
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CHECKED
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Signature of Kibben Jackson
Counsel for Centura Building
Systems (2013) Ltd. and
Solterra Acquisitions Corp.

Signature of David Gruber
Counsel for Port Capital Development
(EV) Inc. and Evergreen House
Development Limited Partnership

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Counsel for Ernst & Young Inc.
(in its capacity at the Monitor)

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ORDER

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