FORM 32 (RULE 8-1(4))

No. S-205095
Vancouver Registry

In the Supreme Court of British Columbia

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

–AND–

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

–AND–

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

NOTICE OF APPLICATION

Name of applicant: Domain Mortgage Corp.

To: The Service List

TAKE NOTICE that an application will be made by the applicant to Madam Justice Fitzpatrick at the courthouse at the Law Courts, 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on July 13, 2022 at 10:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order terminating these proceedings under the *Companies' Creditors Arrangement Act* on such transitional terms as may be appropriate in the circumstances.

Part 2: FACTUAL BASIS

1. Port Capital Development (EV) Inc. and Evergreen House Development Limited Partnership (together, the "**Debtors**") own a high-rise luxury residential mixed-use strata development located at 1250 West Hastings Street in Vancouver, B.C. in the Coal Harbour neighbourhood (the "**Terrace House Project**").

2. This court granted an Initial Order under the *Companies' Creditors Arrangement Act* (the "**CCAA**") on May 29, 2020. Under the Initial Order, Ernst & Young Inc. (the "**Monitor**") was appointed Monitor and granted enhanced powers, including to consider restructuring opportunities and to administer a dual-track sale and investment solicitation process (the "**SISP**").

3. At the time the CCAA proceedings were commenced, the Debtors' senior secured creditor was CMLS Financial Ltd. ("**CMLS**"). CMLS had provided the construction loan for the Terrace House Project, but ceased making advances. Pursuant to a restated Initial Order made June 8, 2020, Desjardins Financial Security Life Assurance Company ("**Desjardins**") provided the Debtors with debtor-in-possession financing (the "**DIP Facility**").

4. The SISP resulted in three liquidation offers as well as an offer from 1296371 B.C. Ltd. ("**129**"), described as a "refinancing transaction." The 129 transaction, in short summary, contemplated monies being raised in sufficient amounts to repay the DIP Facility, effect a purchase and assignment of CMLS's loan and security, and provide the Debtors with working capital.

5. 129's offer was premised on the Debtors having "strong interest from lenders to provide new construction financing," but in order to secure such construction financing, the Debtors said, they required breathing room and control of the Terrace House Project. The Debtors' expectation was that, within a 6 month extension of the stay, they would be able to secure new construction financing and exit the CCAA proceeding.

6. By order made June 15, 2021, this court approved one of the liquidation offers and rejected 129's proposed transaction. By order made September 22, 2021, the Court of Appeal allowed an appeal of the June 15, 2021 order.

7. The Court of Appeal's order resulted in various amendments to the Initial Order, incorporated into a Further Amended and Restated Initial Order made in the CCAA proceeding on February 14, 2022, including:

a) removal of the Monitor's enhanced powers and reversion of operational control of the Terrace House Project back to the Debtors;

b) a direction that the Debtors obtain loans from Domain Mortgage Corp. ("**Domain**"), 1260780 B.C. Ltd. ("**126**") and 129 (126 and 129, together, the "**Junior Lenders**") in accordance with the terms of a commitment letter dated July 30, 2021 (the "**Domain Commitment Letter**") in order to finance:

   i) repayment of amounts owed to Desjardins under the DIP Facility; and

   ii) the purchase and assignment of the CMLS loans,

   (the "**Loan Facility**");

c) various orders in respect of Domain, its role in this CCAA proceeding and its rights under the Domain Commitment Letter and the Security (as defined below), including:

   i) no further step may be taken by the Debtors in the CCAA proceeding without Domain's consent while the Loan Facility remains outstanding;

   ii) no order may be made granting any security or charge priority over the Security (as defined below) without Domain's consent;

   iii) upon an occurrence of default under the Domain Commitment Letter or the Security (as defined below), on five business days' notice Domain may exercise its rights and remedies against the Debtors, including to apply to the court for the appointment of a receiver; and

   iv) Domain is to be unaffected in any plan of arrangement or proposal that may be advanced by the Debtors.

8. The refinancing transaction completed in October 2021. As a result, the DIP Facility was repaid, CMLS received payment for amounts owed to it, and CMLS's security was assigned to Domain.

9. As part of the Loan Facility, Domain funded two loan segments as follows:

    a) a first loan segment in the principal amount of $10.5 million, upon which interest currently accrues at the rate of 12% per annum, compounded monthly; and

    b) a second loan segment in the principal amount of $4.2 million, upon which interest currently accrues at the rate of 24% per annum, compounded monthly.

10. The balance of the Loan Facility, in the principal sum of $10,549,060.03, was funded by the Junior Lenders. Promissory notes dated October 22, 2021 evidence the debts owed to the Junior Lenders (the "**Promissory Notes**").

11. Pursuant to a Loan Administration, Participation and Standstill Agreement dated October 2021, Domain administers the loans on behalf of the lenders. Domain is entitled to, among other things, take such actions and exercise such rights, powers, privileges and remedies under the Domain Commitment Letter, as amended, and the Security (as defined below), including on behalf of the Junior Lenders, that it considers necessary or advisable in its sole discretion.

12. The Debtors' obligations to Domain under the Domain Commitment Letter and the Promissory Notes are secured and supplemented by, among other things:

    a) a mortgage and assignment of rents registered against the Terrace House Project under nos. CA7337616 and CA7337617, transferred under nos. CA9459739 and CA9459740, and modified under no. CA9459782 and further modified under CA9790630 (collectively, the "**Mortgage**");

    b) a general security agreement dated November 1, 2018 and registered in the Personal Property Registry under Base Registration No. 303506L, pursuant to which the Debtors have granted Domain a security interest in all present and after acquired personal property arising from, pertaining to, located on, or used in connection with the Terrace House Project (the "**GSA**");

    c) a guarantee dated November 1, 2018 signed by Macario Teodoro Reyes ("**Reyes**") and Port Capital Development Inc. (the "**Corporate Guarantor**")

(Reyes and the Corporate Guarantor, together, the "**Guarantors**") pursuant to which those parties unconditionally and irrevocably guaranteed payment of all debts and liabilities, present or future, direct or indirect, absolute or contingent, owed by the Debtors to Domain;

d) a cost overrun and completion guarantee dated November 1, 2018 signed by the Debtors and the Guarantors;

e) an Environmental Warranty and Indemnity Agreement dated November 1, 2018 signed by the Debtors and the Guarantors;

f) an Assignment of Unit Sales and Agreements and Deposits dated November 1, 2018 signed by the Debtors and the Guarantors;

g) an Assignment of Material Contracts dated November 1, 2018 signed by the Debtors;

h) an Assignment of Insurance dated November 1, 2018 signed by the Debtors;

i) an Assignment of Term Deposits and Credit Balances dated November 1, 2018 signed by the Debtors; and

j) an Assignment of Construction Contract dated November 26, 2018 signed by the Debtors,

(collectively, the "**Security**").

13. Pursuant to the Court of Appeal's September 22, 2021 order, the Security charges the Debtors' Property (as defined in the CCAA orders) in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise, other than the Administration Charge and claims contemplated by s. 11.8(8) of the CCAA.

14. The Mortgage and the GSA include provisions entitling Domain to the appointment of a receiver, upon the occurrence of an event of default, over the Terrace House Project and the Debtors' personal property.

15. On February 14, 2022 this court granted an order authorizing and empowering the Debtors to enter into a further credit facility with Domain on the terms and conditions of a commitment letter dated February 7, 2022 (the "**February 2022 Commitment Letter**"). Pursuant to the February 2022 Commitment Letter Domain advanced a third loan segment in the principal sum of $1,800,000 (hereafter included within the defined term "Loan Facility"). Interest accrues on the third loan segment at the rate of 24% per annum, compounded monthly.

16. In the course of the CCAA proceeding, the Debtors identified Enso Holdings Ltd. ("**Enso**") as a potential development partner. It was contemplated that the Debtors and Enso would co-develop the Terrace House Project, with Enso becoming the majority general partner and providing its covenant and an equity investment to support the necessary construction financing to exit the CCAA proceedings. The Debtors and Enso negotiated a commitment letter dated April 19, 2022 with Mandate Management Corporation ("**Mandate**") for a proposed $20 million mortgage loan (the "**Proposed Mandate Loan**"). The Proposed Mandate Loan was intended to repay the first, second and third loan segments funded by Domain under the Loan Facility and to provide the Debtors with working capital.

17. On or about May 12, 2022 the Monitor reported that the Proposed Mandate Loan was expected to close the week ended May 20, 2022 or soon thereafter. On the same day this court granted an order approving the Proposed Mandate Loan and extending the stay of proceedings under the CCAA to September 30, 2022.

18. The Monitor's Twelfth Report dated June 16, 2022 concluded that the failure of the Proposed Mandate Loan to close constituted a material adverse change in the Debtors' financial affairs. Now, a couple weeks later, the Proposed Mandate Loan has still not closed.

19. The Debtors have an immediate need for financing. Post-filing suppliers are not being paid. The Terrace House Project is subject to waste and in need of preservation and protection. The Debtors appear to have no reasonable prospect of implementing a plan for the reorganization of the Terrace House Project as contemplated by the orders granted in the CCAA proceeding.

20. The Loan Facility matured on July 1, 2022. The funds due thereunder have not been repaid. The Debtors are in default under the Domain Commitment Letter, the February 2022 Commitment Letter and the Security. Pursuant to the orders referred to above, Domain is entitled to exercise its rights and remedies against the Debtors, including for the appointment of a receiver, on five business days' notice.

21. As at July 4, 2022 the total sum due to Domain under the terms of the Domain Commitment Letter, the February 2022 Commitment Letter, the Promissory Notes and the Security is $29,239,192.03, exclusive of costs and expenses and interest accrued thereafter. Per diem interest accrues at the current rate of $15,808.32, before compounding. The highest and best offer obtained through the SISP for the purchase of the Terrace House Project would be insufficient to payout the indebtedness due and owing under the Loan Facility.

22. The Bowra Group Inc. ("**Bowra**") has consented to act as receiver and manager of the Debtors. Bowra has significant experience with assets of this nature. If appointed, it is expected that Bowra would undertake an expedited sales process.

Part 3: LEGAL BASIS

1. Domain makes separate but related applications to terminate the CCAA proceeding and appoint a receiver. Domain respectfully submits that, if the Proposed Mandate Loan does not fund, or an unconditional sale with a very short completion period does not materialize, then the CCAA proceeding serves no useful purpose and involves an additional layer of unnecessary costs.

The CCAA Proceeding

2. A primary purpose of the CCAA is to assist insolvent companies in developing and obtaining approval of compromises and arrangements with their creditors. By permitting insolvent companies an opportunity to avoid bankruptcy and a liquidation of assets, the hope is that jobs may be preserved and the social and economic costs associated with a liquidation of assets avoided.

Hong Kong Bank of Canada v. Chef Ready Foods Ltd., [1990] B.C.J. No. 2384 (C.A.)

3. If it becomes evident that a compromise or arrangement will not be forthcoming, or will not be approved, the debtor company's assets are typically liquidated. The Supreme Court of Canada commented on the various potential outcomes of CCAA proceedings in *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 14:

> There are three ways of exiting *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. The second most desirable outcome occurs when the debtor's compromise or arrangement is accepted by its creditors and the reorganized company emerges from the *CCAA* proceedings as a going concern. Lastly, if the compromise or arrangement fails, either the company or its creditors usually seek to have the debtor's assets liquidated under the applicable provisions of the *BIA* or to place the debtor into receivership.
>
> [emphasis added]

4. "Liquidating CCAAs" have become increasingly common. In appropriate circumstances, CCAA proceedings may be used to liquidate a debtor company's assets. However, in circumstances where the court is presented with competing options – a liquidation of assets in the context of a CCAA proceeding or through the enforcement of a creditor's security, such as a receivership – additional factors come into play. That is particularly so where, as here, the senior secured creditor is not subject to the court ordered stay and, by court order, is permitted to exercise its rights and remedies under its security on five business days' notice. This discussion will be returned to after a brief summary of the jurisdiction and general principles applicable to the appointment of a receiver.

Appointment of a Receiver

5. Pursuant to s. 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), on the application of a secured creditor, the court may appoint a receiver. Similarly, pursuant to s. 39 of the *Law and Equity Act*, the court may appoint a receiver where it is just and convenient. Under Rule 10-2 the court may appoint a receiver in any proceeding either unconditionally or on terms.

6. Factors considered by the court in assessing whether it would be just and convenient to appoint a receiver include:

   a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed;

   b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets;

   c) the nature of the property;

   d) the apprehended or actual waste of the debtor's assets;

   e) the preservation and protection of the property;

   f) the balance of convenience to the parties;

   g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;

   h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;

   i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;

   j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;

k) the effect of the order upon the parties;

l) the conduct of the parties;

m) the length of time that a receiver may be in place;

n) the cost to the parties;

o) the likelihood of maximizing return to the parties; and

p) the goal of facilitating the duties of the receiver.

Maple Trade Finance Inc. v. CY Oriental Holdings Ltd., BCSC 1527 at para 25

7. A creditor's right to appoint a receiver under its security is an important consideration. While the appointment of a receiver is generally regarded as an extraordinary equitable remedy, in circumstances where commercial parties have agreed to the appointment by contract, the remedy is not extraordinary and a number of policy considerations militate in favour of enforcement of the creditor's contractual right (e.g. certainty and security in transactions, freedom of contract, etc.).

Textron Financial Canada Ltd. v. Chetwynd Motels Ltd., 2010 BCSC 477 at paras 50 and 75

Callidus Capital Corp. v. CarGap Inc., 2012 ONSC 163 at paras 43 and 44

Bank of Montreal v. Carnival National Leasing Limited, [2011] O.J. No. 671 (SCJ) at para 27

Farallon Investments Ltd. v. Bruce Pallett Fruit Farms Ltd., [1992] O.J. No. 330 (GD) at paras 2 – 6

Ward Western Holdings Corp. v. Brosseuk, 2021 BCSC 919 at para 55

CCAA or Receivership

8. The practical question is whether the Debtors' assets ought to be liquidated in the context of the CCAA proceeding or through a receivership. Domain respectfully submits a receivership is the appropriate forum. The fundamental objectives of the CCAA are no

longer capable of being met. The CCAA proceeding also involves additional layers of unnecessary costs.

9. The Debtors' primary asset is the Terrace House Project. While single purpose land development companies may meet the criteria for creditor protection under the CCAA, when faced with competing options, courts often conclude it is appropriate to permit mortgagees to enforce their security in the conventional manner. The Court of Appeal discussed some of the relevant considerations in *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327 at para 36:

> 36 Although the *CCAA* can apply to companies whose sole business is a single land development as long as the requirements set out in the *CCAA* are met, it may be that, in view of the nature of its business and financing arrangements, such companies would have difficulty proposing an arrangement or compromise that was more advantageous than the remedies available to its creditors. The priorities of the security against the land development are often straightforward, and there may be little incentive for the creditors having senior priority to agree to an arrangement or compromise that involves money being paid to more junior creditors before the senior creditors are paid in full. If the developer is insolvent and not able to complete the development without further funding, the secured creditors may feel that they will be in a better position by exercising their remedies rather than by letting the developer remain in control of the failed development while attempting to rescue it by means of obtaining refinancing, capital injection by a new partner or DIP financing.
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> [emphasis added]

10. To similar effect are the comments made by the court in *Octagon Properties Group Ltd.*, [2009] A.J. No. 936 (QB) at para 17:

> This is not a case where it is appropriate to grant relief under the CCAA. First, I accept the position of the majority of first mortgagees who say that it is highly unlikely that any compromise or arrangement proposed by Octagon would be acceptable to them. That position makes sense given the fact that if they are permitted to proceed with foreclosure procedures and taking into account the current estimates of value, for most mortgagees on most of their properties they will emerge reasonably unscathed. There is no incentive for them to agree to a compromise. On the other hand if I granted CCAA relief, it would be these same mortgagees who would be paying the cost to permit Octagon to buy some time. Second, there is no other reason for CCAA relief such as the existence of a large number of employees or significant unsecured debt in relation to the secured debt. I balance those reasons against the fact that even if the first mortgagees commence or continue in their foreclosure proceedings that process is also supervised by the court and to the extent that Octagon has reasonable arguments to obtain relief under the foreclosure process, it will likely obtain that relief.

[emphasis added]

11. A number of courts have made similar comments in reaching the same conclusion.

BCIMC Construction Fund Corp. v. Clover on Yonge Inc., 2020 ONSC 1953

Dondeb Inc., Re, 2012 ONSC 6087

Romspen Investment Corp. v. 6711162 Canada Inc., 2014 ONSC 2781

Marine Drive Properties Ltd., 2009 BCSC 1083

12. Of course, the underlying circumstances here go well beyond a mere competition between debtors wishing to enjoy the benefits of creditor protection under the CCAA and a secured creditor seeking to enforce its security. In addition to the factors discussed below, and apart from its contractual right to the appointment of a Receiver, the court expressly ordered that upon default and five business days' notice Domain could "exercise any and all of its rights and remedies against the [Debtors] or the Property…including…to apply to this Court of the appointment of a receiver…."

13. The parties' interests were balanced under the Court of Appeal's order and the Further Amended and Restated Initial Order. The Debtors were granted "breathing room" to secure a construction loan and exit the CCAA proceeding; however, as part of the *quid pro quo*, if an event of default were to occur, then that last gasp could be brought to a quick end by Domain. The Debtors have enjoyed considerably more time than they anticipated needing, including an extension of the maturity date under the Loan Facility. There is, apparently, no imminent refinancing. There is also no reasonable prospect of a plan of arrangement.

14. Factors militating in favour of terminating the CCAA proceeding and instead liquidating the Debtors' assets through a receivership include:

a) The CCAA proceeding has been extant for more than two years. Leaving aside the question of whether it is appropriate for debtors to use the extraordinary remedy of the CCAA to buy time to continue attempts to raise new funding at the expense of their creditors (*Marine Drive Properties Ltd. (Re)*, 2009 BCSC 145 at para 38), the Proposed Mandate Loan has not funded and there is no reasonable prospect of the Debtors achieving a plan of arrangement. Also, the Debtors may continue their refinancing efforts during the course of a receivership – but they would do so while an officer of the court takes steps to protect the stakeholders' interests.

b) The Debtors have suffered a material adverse change in their financial affairs – they do not have access to funds and post-filing suppliers are going unpaid.

c) The development of the Terrace House Project ceased long ago. The asset is subject to waste and requires preservation and protection.

d) There is no operating business and no jobs to preserve.

e) The Debtors cannot take a step in the CCAA proceeding without Domain's consent.

f) The Loan Facility has matured. The indebtedness has not been repaid. An event of default has thus occurred. The Debtors also failed to provide a current appraisal report, contrary to a post-renewal condition, representing a separate default.

g) Domain is not subject to the court ordered stay of proceedings, has the contractual right to the appointment of a receiver and, by court order, Domain is entitled to exercise all of its rights and remedies on five business days' notice.

h) The outcome of the SISP represents the best available evidence regarding the value of the Terrace House Project. The secured debt exceeds the project's apparent value. There is no equity for the Debtors or any subordinate creditor.

i) Bowra has significant experience with assets of this nature. It has the experience and expertise to run an expedited sales process and maximize realizations.

j) The receivership order sought includes a stay provision and a receivership would continue to provide a single forum for resolution of matters pertaining to the Debtors.

15. For the foregoing reasons, it is appropriate in the circumstances to terminate the CCAA proceeding and appoint Bowra as receiver and manager of all of the undertakings, property and assets of the Debtors.

Priority of Receiver's Borrowings and Fees and Disbursements

16. There is usually no question that the court may grant a receiver's charge in priority to all creditors in circumstances where, as here, the receiver is sought to be appointed in order to preserve and realize assets for the benefit of interested parties, including secured creditors. However, in the present case, claims of builders liens are registered against title. Section 21 of the *Builders Lien Act* provides:

> 21 A claim of lien filed under this Act takes effect from the time work began or the time the first material was supplied for which the lien is claimed, and it has priority over all judgments, executions, attachments and <u>receiving orders</u> recovered, issued or made after that date.
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> [emphasis added]

17. Subsections 32(1), (2), (5) and (6) of the *Builders Lien Act* state:

> 32(1) Subject to subsection (2), the amount secured in good faith by a registered mortgage as either a direct or contingent liability of the mortgagor has priority over the amount secured by a claim of lien.
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> (2) Despite subsection (1), an advance by a mortgagee that results in an increase in the direct or contingent liability of a mortgagor, or both, under a registered mortgage occurring after the time a claim of lien is filed ranks in priority after the amount secured by that claim of lien.
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> ...
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> (5) Despite subsections (1) and (2) or any other enactment, if one or more claims of lien are filed in a land title office in relation to an improvement, a mortgagee may apply to the court for an order that one or more further advances under the mortgage are to have priority over the claims of lien.
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> (6) On an application by a mortgagee under subsection (5), the court must make the order if it is satisfied that
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> > (a) the advances will be applied to complete the improvement, and
> >
> > (b) the advances will result in an increased value of the land and the improvement at least equal to the amount of the proposed advances.

18. In *Bank of Montreal v. Peri Formwork Systems Inc.*, 2012 BCCA 4 a lien claimant successfully argued on appeal that the receiver's charge had wrongfully been granted priority over its lien. The Court of Appeal held that the Bank's loan to the receiver was not a "further advance" within s. 32(5) of the *Builders Lien Act* because it was a new loan and, therefore, subordinate in priority to the lien in accordance with s. 32(2).

19. *Peri Formwork* does not apply on the facts here. Domain is prepared to fund the receivership under the existing Mortgage. This would not be a "new loan". Further advances under the existing mortgage would fall squarely within s. 32(5).

20. Furthermore, and in any event, for reasons that are not made apparent on the face of the decision, the Court of Appeal in *Peri Formwork* did not consider ss. 31(1) or 243(6) of the BIA (the provisions were also not considered in *Yorkshire Trust Co. v. Canusa Construction Ltd.*, [1984] B.C.J. No. 1689 (C.A.), where the receiver was appointed under the *Law and Equity Act*). Those sections clothe the court with jurisdiction to order that receiver's borrowings be repaid in priority to creditors' claims and to grant a receiver's charge for fees and disbursements in priority to any or all secured creditors:

> 31(1) With the permission of the court, an interim receiver, a receiver within the meaning of subsection 243(2) or a trustee may make necessary or advisable advances, incur obligations, borrow money and give security on the debtor's property in any amount, on any terms and on any property that may be authorized by the court and those advances, obligations and money borrowed must be repaid out of the debtor's property in priority to the creditors' claims.
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> ...
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> 243(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

21. It is respectfully submitted that, to the extent either s. 21 or s. 32(5) and/or (6) of the *Builders Lien Act* purport to circumscribe the court's power to grant priority to receiver's borrowings and/or fees and disbursements, those sections directly conflict with the above

provisions of the BIA and, thus, are rendered inoperative in accordance with the paramountcy doctrine. That was the conclusion reached in *Royal Bank of Canada v. Reid-Built Homes Ltd.*, 2018 ABQB 124 at para 134; rev'd in part 2019 ABCA 109 (the chambers judge refused to subordinate the City's claim for unpaid property taxes to the receiver's charge and was overturned on that issue on appeal – the Court of Appeal commented favourably on the chambers judge's analysis with respect to the relevant issue).

General

22. Domain will rely on Rules 1-3, 2-1, 10-2, 13-5, 14-1 and 16-1 and the law of contract, the *Law and Equity Act*, R.S.B.C. 1996, c. 253 including s. 39, the BIA including ss. 31(1), 243(1) and 243(6), the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 including s. 66, the *Builders Lien Act* including ss. 21 and 32, the CCAA including s. 11 and the inherent jurisdiction of the court.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Lisa Ward made July 5, 2022 (filed in petition proceeding).
2. Affidavit #1 of E. Halliday made July 5, 2022 (filed in petition proceeding).
3. Eleventh Report of the Monitor dated May 12, 2022.
4. Twelfth Report of the Monitor dated June 16, 2022.
5. Initial Order made May 29, 2020.
6. Court of Appeal Order made September 22, 2021.
7. Further Amended and Restated Initial Order made February 14, 2022.
8. Order Increasing Domain Facility made February 14, 2022.

The applicant estimates that the application will take 1 hour.

☐ This matter is within the jurisdiction of a master.

☒ This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

a) file an application response in Form 33,

b) file the original of every affidavit, and of every other document, that

i) you intend to refer to at the hearing of this application, and

ii) has not already been filed in the proceedings, and

c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

i) a copy of the filed application response;

ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: July 5, 2022

Signature of lawyer for Domain Mortgage Corp.,
Scott H. Stephens

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs ______________ of Part 1 of this notice of application

☐ with the following variations and additional terms:

____

____

____

Date: ______________________

____
Signature of [ ] Judge [ ] Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

☐ discovery: comply with demand for documents
☐ discovery: production of additional documents
☐ other matters concerning document discovery
☐ extend oral discovery
☐ other matter concerning oral discovery
☐ amend pleadings

- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☐ none of the above