



No. S205095
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 1379305 B.C. LTD. and EVERGREEN
HOUSE DEVELOPMENT LIMITED PARTNERSHIP

APPLICATION RESPONSE

Application response of: Solterra Acquisitions Corp. (“**Solterra**”)

THIS IS A RESPONSE TO the Notice of Application of Domain Mortgage Corp. (“**Domain**”), dated October 4, 2022.

Part 1: ORDERS CONSENTED TO

Subparagraphs 1(a)-(d) and paragraph 2 of the draft form of order.

Part 2: ORDERS OPPOSED

Subparagraph 1(e) of the draft form of order.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

None.

Part 4: FACTUAL BASIS

1. 1296371 B.C. Ltd. (“**129**”) unsuccessfully sought to appeal the July 22, 2022 decision of Justice Fitzpatrick to approve the sale transaction between the petitioners and Solterra, as assigned to Solterra Development (Terrace House) Corp. and Solterra (Terrace House) Limited Partnership in action number CA48485 (the “**Sale Approval Appeal**”).
2. 129 filed to perfect the Sale Approval Appeal in a timely manner, requiring it to bring an application before Justice Fitzpatrick seeking an extension of time to perfect its appeal. That application (the “**Extension Application**”) was dismissed by order of Justice Fitzpatrick made August 29, 2022 (the “**Dismissal Order**”).

3. 129 initiated appeal proceedings in the Court of Appeal in respect of the Dismissal Order (the “**Extension Appeal**”), and sought leave to appeal that order, and stay the Sale Approval Order, by way of an urgent application to the Court of Appeal heard on September 16, 2022. Those applications were dismissed by orders of Justice DeWitt-Van Oosten made the same day.
4. Solterra has claims for costs against 129 arising from the Dismissal Order and from the Sale Approval Appeal and the Extension Appeal (the “**129 Appeal Proceedings**”). Solterra claims costs of Extension Application and the appeal proceedings totalling \$9,547.44.
5. On September 29, 2022, counsel for Solterra a draft Bill of Costs in respect of the Extension Application.
6. On October 6, 2022, counsel for Solterra emailed to counsel for 129 draft Bills of Costs in respect of the 129 Appeal Proceedings.
7. 129 has not agreed to the amount of Solterra’s costs claims and has not agreed to pay them.
8. Solterra seeks that any distribution to 129, pursuant to the order sought by Domain, be withheld until such time as 129 has satisfied any costs awards sought against it by any party to the 129 Appeals.

Part 5: LEGAL BASIS

9. Rule 14-1 of the *Supreme Court Civil Rules*, BC Reg 168/2009.
10. An order authorizing the distribution of funds in the context of a *CCAA* proceeding is an exercise of discretion.
11. 129 has sought at every turn to frustrate the sale of the subject development to Solterra, including by the initiation of misguided, and ultimately unsuccessful, appeals. Solterra and other parties have been put to considerable cost in responding to 129’s various applications and are entitled to awards of costs in doing so, however unsatisfactory those awards might be in relation to the actual costs incurred.
12. 129 has given no indication that it intends to pay any costs awards in favour of Solterra (or any other party), and if funds are distributed to 129 without provision for payment of any costs awards it is doubtful that such funds would be available later to satisfy those costs awards. There is also no indication as to any other assets of 129 that might be available to pay any costs awards.
13. The funds proposed to be distributed to 129 were paid by Solterra pursuant to the sale transaction approved and completed in the petitioners’ *CCAA* proceedings, i.e. the very transaction 129 sought to scupper. It would, in the circumstances, be inequitable to distribute those funds to 129 without provision for payment of costs awards payable by 129 in the context of the *CCAA* proceedings and appeals proceedings initiated in respect of orders made therein.

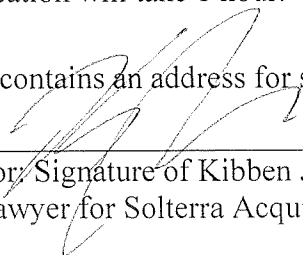
Part 6: MATERIALS TO BE RELIED ON

1. Affidavit #1 of Kibben Jackson, made October 12, 2022; and
2. Such further and other materials as counsel for Solterra may advise and this Honourable Court shall permit.

The Application Respondent estimates that the application will take 1 hour.

Solterra has filed in this proceeding a document that contains an address for service.

Dated: 12-Oct-2022



For: Signature of Kibben Jackson
Lawyer for Solterra Acquisitions Corp.

The Solicitors for the Application Respondent are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3
Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Kibben Jackson/326726.00001)