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: Dentons Canada LLP (the "Applicant" or "Dentons")

To: The Service List

TAKE NOTICE that an application will be made by the Applicant to Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC V6Z 2E1 on December 13, 2022 at 9:30 a.m., by MS Teams, for the orders set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An Order authorizing and directing Dentons to pay deposits it holds in trust, in the total amount of $2,703,434, as follows:

    (a) $437,100.00, to Robert Quon and Sarah Quon;

    (b) $346,056.00, to Carina Marie Ong;

    (c) $750,000.00, to Julie Taylorson;

    (d) $795,100.00, to Man Hin Lo and Ching Yu; and

    (e) $375,178.00, to Jing Chen.

2. An order authorizing and directing Dentons to pay $327,545.58 it holds in trust, being interest accrued on deposits it received pursuant to contracts of purchase and sale for proposed strata lots in the development known as "Terrace House", located at 1250 West Hastings Street, Vancouver, BC (the "**Development**"), into Court to the credit of this action to be held pending further Order of this Honourable Court.

Part 2: FACTUAL BASIS

Deposits and Accrued Interest

1. Port Capital Development (EV) Inc. (the "**GP**") and Evergreen House Development Limited Partnership (the "**Developer**", and collectively, the "**Petitioners**") owned a real estate development project called "Terrace House" (herein, the "**Development**").

3. The Development was located at 1250 West Hastings Street, Vancouver, BC, on lands legally described as:

> PID: 006-721-397
>
> Lot 18, Except that part of the Canadian Pacific Railway Right-Of-Way as described in Absolute Fee Parcels Book, Volume 9, Folio 317, No. 1154C, and Except the South 7 Feet now Road, Block 29 District Lot 185 Plan 92
>
> (the "**Lands**").

4. Between 2017 and 2019, the Developer, acting as vendor, entered into various contracts of purchase and sale in respect of proposed strata lots in the Development (the "**Contracts**") with various purchasers (collectively the "**Pre-Sale Purchasers**").

5. Under the terms of the Contracts, the Pre-Sale Purchasers were required to pay deposits (collectively, the "**Deposits**") from time to time. Dentons held the Deposits in various interest earning trust accounts, in accordance with the Contracts and the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 ("**REDMA**").

6. From time to time, Dentons has released certain Deposits, in accordance with the provisions of REDMA. As at the date of this application, Dentons continues to hold the following Deposits in trust:

   (a) $437,100.00, representing part of the deposit paid pursuant to the contract of purchase and sale dated August 29, 2017 (and accepted by the Developer on August 30, 2017) (the "**SL6 Contract**"), made between the Developer, as vendor, and 1131622 B.C. Ltd., as purchasers, for the purchase and sale of proposed Strata Lot 6 (Unit No. 402) in the Development;

(b) $346,056.00, representing part of the deposit paid pursuant to the contract of purchase and sale dated September 28, 2017 (and accepted by the Developer on September 29, 2017) (the "**SL11 Contract**"), made between the Developer, as vendor, and Carina Marie Ong and Tanya Lind Tan, as purchasers, for the purchase and sale of proposed Strata Lot 11 (Unit No. 501) in the Development;

(c) $750,000.00, representing the deposit paid pursuant to the contract of purchase and sale dated September 22, 2017 (and accepted by the Developer on the same date) (the "**SL13 Contract**"), made between the Developer, as vendor, and Aleem Thaver, as purchaser, for the purchase and sale of proposed Strata Lot 13 (Unit No. 603) in the Development;

(d) $795,100.00, representing part of the deposit paid pursuant to the contract of purchase and sale dated October 12, 2017 (and accepted by the Developer on October 13, 2017), made between the Developer, as vendor, and Man Hin Lo and Ching Yu, as purchaser, for the purchase and sale of proposed Strata Lot 14 (Unit No. 601) in the Development; and

(e) $375,178.00, representing part of the deposit paid pursuant to the contract of purchase and sale dated December 19, 2017 (and accepted by the Developer on December 20, 2017), made between the Developer, as vendor, and Jing Chen, as purchaser, for the purchase and sale of proposed Strata Lot 21 (Unit No. 1401) in the Development.

7. Certain of the above noted Contracts were assigned from time to time, in particular:

(a) the SL6 Contract was assigned to Robert Quon and Sarah Quon on December 20, 2018;

(b) the SL11 Contract was amended on October 31, 2018 to make Carina Marie Ong the sole purchaser; and

(c) the SL13 Contract was assigned to Julie Taylorson on August 16, 2020.

8. In addition, Dentons currently holds interest accrued on the Deposits (the "**Accrued Interest**") in the amount of $327,545.58.

CCAA Proceedings

9. On May 29, 2020, the Petitioners sought and obtained creditor protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"), pursuant to an order (the "**Initial Order**"), which also appointed Ernst & Young Inc. as monitor of the Petitioners (the "**Monitor**") in these CCAA proceedings (the "**CCAA Proceedings**").

10. On July 22, 2022, this Honourable Court granted a "reverse vesting order" (as amended and restated on September 16, 2022, the "**Amended and Restated Approval and Vesting Order**") which authorized the sale and transfer of certain assets to Solterra Acquisitions Corp. ("**Solterra**").

11. The transactions contemplated by the Amended and Restated Approval and Vesting Order effectively transferred ownership of most assets of the Petitioners to Solterra, including the Lands, other than expressly excluded assets and liabilities (the "**Excluded Assets and Liabilities**").

12. The Excluded Assets and Liabilities included the Pre-Sale Contracts, all deposits provided pursuant to the Pre-Sale Contracts and all claims, causes of action or rights in relation to such deposits.

13. Pursuant to the Amended and Restated Approval and Vesting Order, the Excluded Assets were transferred to 1379305 B.C. Ltd. ("**ResidualCo**"). On September 28, 2022, ResidualCo filed an assignment into bankruptcy, and Ernst & Young Inc. was appointed as the licensed insolvency trustee in the estate (the "**Trustee**").

14. As a result of the foregoing, the Contracts are now between ResidualCo, as vendor, and the various Pre-Sale Purchasers, as purchasers. However, the Lands are held (indirectly) by Solterra, and ResidualCo has no ability to deliver the units in the Development as contemplated by the Contracts.

Part 3: LEGAL BASIS

1. The Applicant relies on section 18(2) of REDMA, and the inherent jurisdiction of the Honourable Court.

2. The Deposits paid by the Pre-Sale Purchasers are held in trust by Dentons pursuant to the Contracts and REDMA.

3. A trustee that holds deposits under REDMA must not release the deposits, unless the exceptions stipulated in section 18(2) are met. The only applicable exception in these unique circumstances is under section 18(2)(h), which provides deposits may be released in accordance with a court order.

REDMA, s. 18(2)

4. It is clear the Pre-Sale Purchasers will not receive the units they contracted to buy pursuant to the Contracts, and accordingly it is appropriate for the remaining deposits to be returned to the applicable Pre-Sale Purchasers.

5. With Respect to the Accrued Interest, there may be some dispute as to who is entitled to receive those funds. Accordingly, Dentons seeks an order directing payment of the Accrued Interest into Court.

Part 4: MATERIAL TO BE RELIED ON

1. Amended and Restated Approval and Vesting Order, made September 16, 2022.

2. Affidavit #1 of Jordan Schultz, made 08/DEC/2022.

3. Such further material as counsel may advise and this Honourable Court may permit.

The applicant(s) estimate(s) that the application will take 30 minutes.

☐ This matter is within the jurisdiction of a master.

☒ This matter is not within the jurisdiction of a master. The Honourable Madam Justice Fitzpatrick is seized of these proceedings.

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 of 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 proceeding, 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: 08/DEC/2022

Signature of lawyer for filing party
Jordan Schultz

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