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

APPLICATION RESPONSE

Application response of: Robert Quon and Sarah Quon (the "application respondents")

THIS IS A RESPONSE TO the notice of application of the Dentons Canada LLP filed December 8, 2022.

Part 1: ORDERS CONSENTED TO

The application respondent(s) consent(s) to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms: ALL

Part 2: ORDERS OPPOSED

The application respondent(s) oppose(s) the granting of the orders set out in paragraphs of Part 1 of the notice of application: NONE

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent(s) take(s) no position on the granting of the orders set out in paragraphs of Part 1 of the notice of application: NONE

Part 4: FACTUAL BASIS

1. As set out at para. 6 (a) of Part 2 of Dentons' Notice of Application, on August 29, 2017 1131622 B.C. Ltd entered into a contract of purchase and sale with Evergreen House

Development Limited Partnership (the "**Developer**") of proposed Strata Lot 6 (Unit # 402) (the "**Pre-Sale Contract**") in the Terrace House Development (the "**Development**").

2. The Pre-Sale Contract was subsequently assigned to Robert Quon and Sarah Quon on December 20, 2018 (the "**Assignment**");

3. As required under the Pre-Sale Contract the sum of $437,100.00, representing part of the deposit payable, was paid to Dentons as counsel for the Developer.

4. The subject deposit monies have remained in Dentons' trust account, accruing interest.

5. As set out in Part 1, paragraphs 9-14 of Denton's application, because of the sale of the Development in the CCAA proceedings, the Developer is no longer capable of completing the Pre-Sale Contract.

6. Despite this, the application respondents have not yet received the Deposit monies paid in relation to the Pre-Sale Contract.

7. There can be no issue that the application respondents are the only parties entitled to receive the subject deposit monies.

8. Given the complexities of determining the allocation of pooled deposit monies held by Dentons amongst the parties who paid deposits to them under pre-sale contracts, the application respondents do not oppose Dentons application to pay interest accruing on the subject deposit monies into Court. It is understood that a further affidavit will be filed by a representative of Dentons' accounting department to provide greater detail on the allocation of accrued interest in the pooled accounts maintained by Dentons to each of the pooled deposits.

9. Once that information is received the respondent applicants will be making an application for payment to them of interest accruing on their deposit while held in trust by Dentons.

10. Given that there is no issue that the subject deposit monies are payable to the application respondents under the Pre-Sale Contract, the Assignment and the applicable provisions of REDMA, there can be no dispute that any interest accruing on the same also belongs to the application respondents.

Part 5: LEGAL BASIS

1. Per s. 1 of REDMA, there is no issue that the respondent applicants fall within the definition of a "purchaser" who paid a "deposit".

2. Dentons held the deposit, in trust, pursuant to the terms of the Pre-Sale Contract and s.s. 18(1) and 18(2) of REDMA.

3. As a result of the Court Ordered sale of the Project, the Developer cannot complete the Pre-Sale Contract. The Developer has no further interest in the deposit, while the deposit remains impressed with a trust in favor of the respondent applications under s. 18(1) and 18(2) of REDMA.

4. On that basis the application respondents are entitled to a return of their deposit, in addition to any interest that has accrued with respect to the same (which will be the subject of a further application)

Part 6: MATERIAL TO BE RELIED ON

1. Amended and Restated Approval and Vesting Order, pronounced September 16, 2022;
2. Affidavit #1 of Jordan Schulz, made 08/Dec/2022; and
3. Such further materials as counsel may advised and this Honourable Court may permit.

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

☐ The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

☑ The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is: 700 - 401 West Georgia Street, Vancouver, B.C. V6B 5A1

Date: 09/DEC/2022

Signature of Daniel D. Nugent, lawyer for application respondents

THIS APPLICATION RESPONSE is filed by Daniel D. Nugent of the firm of Richards Buell Sutton LLP, whose place of business and address for service is 700 - 401 West Georgia Street, Vancouver, BC V6B 5A1, Telephone 604.682.3664.