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: Julie Taylorson the (the "application respondent")

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

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

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

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

4. FACTUAL BASIS

(a) As set out at para. 6 (c) of Part 2 of Dentons' Notice of Application, on September 22, 2017 Aleem Thaver entered into a contract of purchase and sale with Evergreen House

Development Limited Partnership (the "**Developer**") of proposed Strata Lot 13 (Unit # 603) (the "**Pre-Sale Contract**") in the Terrace House Development (the "**Development**").

(b) The Pre-Sale Contract was subsequently assigned to the respondent applicant, Julie Taylorson, on August 16, 2020 (the "**Assignment**");

(c) As required under the Pre-Sale Contract the sum of $750,000.00, was paid to Dentons as a Deposit.

(d) The subject deposit monies have remained in Dentons' trust account, accruing interest.

(e) 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.

(f) Despite this, the application respondent has not yet received the deposit monies paid in relation to the Pre-Sale Contract.

(g) There can be no issue that the application respondent is the only party entitled to receive the subject deposit monies.

(h) 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 respondent does 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.

(i) Once that information is received the application respondent will be making an application for payment to her of interest accruing on her deposit while held in trust by Dentons.

(j) Given that there is no issue that the subject deposit monies are payable to the application respondent 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 applicant respondent.

5. **LEGAL BASIS**

(a) Per s. 1 of REDMA, there is no issue that the respondent applicant falls within the definition of a "purchaser" who paid a "deposit".

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

(c) 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 applicant respondent under s.18(1) and (2) of REDMA.

(d) On that basis the applicant respondent is entitled to the return of her deposit, in addition to any interest that has accrued with respect to the same (which will be the subject of a further application)

6. **MATERIAL TO BE RELIED ON**

(a) Amended and Restated Approval and Vesting Order, pronounced September 16, 2022;

(b) Affidavit #1 of Jordan Schulz, made 08/Dec/2022; and

(c) 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 respondent

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.