



No. S229506
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1351486 B.C. LTD.

PETITIONER

AND:

LIVING BEACHSIDE DEVELOPMENT LIMITED
PARTNERSHIP and others

RESPONDENTS

APPLICATION RESPONSE

Application response of : 1351486 B.C. LTD., (the “Application Respondent”)

THIS IS A RESPONSE TO the Notice of Application of MNP Ltd. filed 04/OCT/2023.

Part 1 ORDERS CONSENTED TO

The Application Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application: ALL

Part 2 ORDERS OPPOSED

The Application Respondent opposes the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application: NIL

Part 3 ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondent takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application: NIL

Part 4 FACTUAL BASIS

1. Capitalized terms used herein and not defined have the meanings ascribed to them in the Notice of Application.

2. The Application Respondent holds the Second Mortgage over the Properties and is the Purchaser named in the PSA.
3. Pursuant to the PSA, the Application Respondent is liable for the Receiver's costs from the date of the Receivership Order to the closing of the Transaction.
4. Between March 1 and September 15, 2023, the Receiver incurred over \$1 million in costs. The Receiver is also seeking an increase to the Receiver's Borrowing Charge from \$500,000 to \$780,000.
5. The Application Respondent is also responsible for all other obligations ranking ahead of the Second Mortgage including the First Mortgage in the approximate amount of \$7.1 million with interest accruing at 18% per annum compounded and calculated monthly.

PART 5 LEGAL BASIS

6. The question of whether a reverse vesting order ("RVO") can be used to avoid a tax liability was answered in the affirmative by this court in *Peakhill Capital Inc. v Southview Gardens Limited Partnership*, 2023 BCSC 1476 ("*Peakhill*").
7. In *Peakhill*, Justice Loo determined that the legal authorities allow for RVOs where the primary purpose is to avoid property transfer tax (para. 61).
8. The Transaction is comparable to that in *Peakhill* for the following reasons:
 - (a) both purchasers held second priority mortgages over the real property (*Peakhill* at para. 7);
 - (b) both purchasers submitted the highest offer (*Peakhill* at para. 13); and
 - (c) in both cases, there was unlikely to be recovery for unsecured creditors (*Peakhill* at para. 50).
9. In addition to the Receiver's submissions at paragraph 9 of the Notice of Application, the factors in *Harte Gold Corp. (Re)*, 2022 ONSC 653 to determine whether an RVO is appropriate favour the granting of the Transaction for the following reasons:
 - (a) the RVO is necessary to preserve approximately \$350,000 in value for the creditors; and
 - (b) the RVO structure is more favourable than any other viable alternative because it includes the highest offer price (by over \$4 million) for the Properties.
10. As a major secured creditor, the Application Respondent will benefit from the avoidance of property transfer tax, serving to maximize returns for creditors.
11. There will be prejudice to the parties if the Transaction does not complete or closing is delayed as interest continues to accrue under the First Mortgage at more than \$25,000 monthly and the Receiver's costs continue to grow.

12. For the above reasons, the Application Respondent respectfully submits that the RVO should be granted.

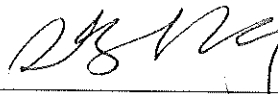
Part 5 MATERIAL TO BE RELIED ON

1. Such material as counsel may advise and this court deems admissible.

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

The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.

Dated: 24-Oct-2023



Signature of lawyer for filing party, 1354186
B.C. Ltd.
Rebecca Ngunjiri

The Solicitors for 1351486 B.C. LTD. 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 E-mail: kjackson@fasken.com (Reference: Kibben Jackson/319671.00005)