



NO. S-090401
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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*
R.S.B.C. 2002, c. 57

AND

IN THE MATTER OF 0706033 BC LTD.

PETITIONER

CONFIRMATION ORDER

BEFORE THE HONOURABLE) MONDAY, THE 2ND DAY
MR. JUSTICE BURNYEAT) OF MARCH, 2009

THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia, on Monday the 2nd day of March, 2009; AND ON HEARING Michael B. Morgan, counsel for the Petitioner and Marcel Peerson, counsel for Royal Bank of Canada; AND UPON READING the material filed, including the Affidavit #1 of Nirmaljit (Norm) Rakhra sworn January 17, 2009, Affidavit #1 of Perdip Moore sworn the 17th day of February, 2009, the Initial Order of the Honourable Mr. Justice Burnyeat dated the 19th day of January, 2009 (as amended January 20, 2009), the Order of the Honourable Mr. Justice Burnyeat dated the 19th day of February, 2009; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the "CCAA"), and Rules 3, 10, 12, 13(1), 13(6), 14 and 44 of the Rules of Court and the inherent jurisdiction of this Honourable Court; AND UPON SERVICE to all parties of record;

THIS COURT ORDERS THAT:

1. The Initial Order Pronounced January 19, 2009 (as amended January 20, 2009) and extended to March 2, 2009, shall be further extended to Monday, July 20, 2009, and that all provisions and terms of the Initial Order shall remain in full force and effect and terms defined in the Initial Order where used in this Order shall have the meaning given to them in the Initial Order.
2. The stay of proceedings in the Initial Order shall be extended and remain in full force and effect until Monday, July 20, 2009 at 11:59 pm.

MONITOR'S POWERS

3. In addition to the powers of the Monitor as outlined in paragraph 26 of the Initial Order, the Monitor is further empowered and is at liberty to retain sufficient trades and suppliers and to take all steps necessary to complete construction of the Building, the stratification of the Building, obtain occupancy permits for the Building and the strata lots within it, and take such other steps as may be necessary to bring the Building to a stage at which the strata lots in the Building can be marketed to the public and is further at liberty to make such arrangements, including posting security, as the Monitor deems appropriate in order to ensure that new home warranty coverage for the units in the Building remain in place.

DIP FINANCING

4. THIS COURT ORDERS that the Petitioner is hereby authorized and empowered, with the consent of the Monitor, to obtain and borrow under a credit facility (the "DIP Facility") from Royal Bank of Canada (the "DIP Lender") on terms as approved by the Monitor, in order to finance the completion, stratification and possible marketing and sales of the strata units in the Building, provided that borrowings under such credit facility shall not exceed the principal amount of \$1.350 million (plus accruing interest and costs) unless permitted by further Order of this Court, on condition that the funds under the DIP Facility shall be advanced to the Monitor and shall be disbursed only by it and with its consent.

5. THIS COURT ORDERS that the Petitioner is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "DIP Documents"), as may be reasonably required by the DIP Lender and the Petitioner is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

6. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefits of, and is hereby granted, a charge (the "DIP Lender's Charge") on the Property, which shall stand as security for the payment to the DIP Lender of the aggregate amount owed to the DIP Lender in relation to the DIP Facility and under the DIP Documents. The DIP Lender's Charge shall have the priority set out in paragraphs 8 and ~~10~~ hereof.

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7. THIS COURT ORDERS that, notwithstanding any other provision of this Order:
- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge and/or the charges created pursuant to the DIP Documents;
 - (b) upon the occurrence of an event of default under the DIP Documents or the DIP Lender's Charge, the DIP Lender, upon 5 days' notice to the Petitioner and the Monitor, may exercise any and all of its rights and remedies against the Petitioner or the Property under or pursuant to the DIP Documents and the DIP Lender's Charge, and without limitation may make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioner and for the appointment of a trustee in bankruptcy of the Petitioner and, for greater certainty, upon the occurrence of an event of default under the

terms of the DIP Documents, the DIP Lender shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Petitioner to repay amounts owing to the DIP Lender in accordance with the DIP Documents and the DIP Lender's Charge, but subject to the priorities as set out in paragraphs 9 and 11 of this Order; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioner or the Property.

8. THIS COURT ORDERS AND DECLARES that the DIP Lender to the extent of the DIP Facility and any monies owed to it in relation to that facility and/or the DIP Documents and any of the DIP Lender's rights in relation to the DIP Facility and/or the DIP Documents and/or the DIP Lender's Charge, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioner under the CCAA, or any proposal filed by the Petitioner under the *Bankruptcy and Insolvency Act* (the "BIA").

9. THIS COURT ORDERS that the priorities of the Administration Charge, the Directors' Charge and the DIP Lenders Charge, shall be as follows:

First – Administration Charge (to the maximum amount of \$150,000);

Second – Directors' Charge (to the maximum amount of \$5,000); and

Third – DIP Lenders Charge (to a maximum amount of \$1.350 million principal) plus accruing interest and costs and charges contemplated by the DIP Documents.

10. THIS COURT ORDERS that the filing, recording, registration or perfection of the Administration Charge, the Directors' Charge, and the DIP Lender's Charge (collectively, the "Charges") shall not be required, and the Charges shall, notwithstanding any lack of filing, recording, registering or perfection, be valid and enforceable for all purposes, including as

against any right, title or interest filed, recorded, registered or perfected before or after the Charges come into existence.

11. THIS COURT ORDERS that each of the Charges (as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances"), in favour of any Person.

12. THIS COURT ORDERS that except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioner obtain the prior written consent of the Monitor and the beneficiaries of the Charges (collectively, the "Chargees").

13. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) any negative covenants, prohibitions or other similar provisions or lack of consent with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "Agreement") which bind the Petitioner; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents relating thereto shall create or be deemed to constitute a breach by the Petitioner of any Agreement to which it is a party; and

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges.


BURNYEAT, J.

BY THE COURT


DISTRICT REGISTRAR

APPROVED AS TO FORM:


COUNSEL FOR THE PETITIONER


COUNSEL FOR ROYAL BANK OF CANADA

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