

BIG LITTLE MISREPRESENTATIONS – DEVELOPER DISCLOSURES TO PURCHASERS UNDER BC’S REAL ESTATE DEVELOPMENT AND MARKETING ACT

Under the *Real Estate Development and Marketing Act*, S.B.C. 2004, c. 41 (“**REDMA**”), developers are subject to disclosure requirements before marketing a development unit and must correct misrepresentations within their disclosure statements.¹ A disclosure statement generally contains information for the benefit of the purchasers, and depending on the type of development, can include information about the developer, the development property, servicing information, construction dates, and development approvals and financing.

But what are the consequences when a developer fails to correct a misrepresentation and subsequently enters restructuring proceedings under the *Companies’ Creditors Arrangement Act*?² This question was recently considered by the British Columbia Supreme Court in *Kingsett Mortgage Corporation v. Lumina Eclipse Limited Partnership*,³ which held that pre-sale contracts were unenforceable against the purchasers as a result of misrepresentations contained in the developer's

disclosure statements under REDMA. In this article, we breakdown disclosure obligations under REDMA and the implications of *Kingsett* for developers.

Disclosure Obligations under REDMA

REDMA regulates the marketing of pre-sale development properties. Particularly, its disclosure regime “addresses the significant information imbalance” between developers with up-to-date information regarding a development project and purchasers dependent on disclosure statements for such information.⁴ Specifically, under Part 2, Division 4 – Disclosure Statements of REDMA:

1. A developer must file a “disclosure statement” before marketing a development unit “that discloses material facts about a development property”.⁵ In this context, a “material fact” includes “a fact, or a proposal to do something, that affects, or could reasonably be expected to affect, the value, price, or use of the development unit or development

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property” and “the appointment, in respect of the developer, of a receiver, liquidator or trustee in bankruptcy, or other similar person acting under the authority of a court.”⁶

2. The disclosure statement must meet the requirements under s. 14(2), including that it be without misrepresentation (defined as “a false or misleading statement of a material fact” or “an omission to state a material fact”).⁷
3. If a developer discovers that its disclosure statement (i) does not comply with the REDMA or the regulations, or (ii) contains misrepresentations, it must immediately file a new disclosure statement or an amendment and provide such copy to each purchaser, pursuant to s. 16 of REDMA.⁸

The consequences of non-compliance with the disclosure statement requirements under Division 4 are significant: under s. 23, a purchase agreement is not enforceable against the purchaser if the developer has breached “any provision of Part 2”⁹, except where the breach involves:

1. a non-compliant disclosure statement, but there is no misrepresentation concerning a material fact that was or would have been relevant to the purchaser in deciding to enter into the purchase agreement; or
2. a disclosure statement that includes a misrepresentation concerning a material fact, but the developer was not aware of the misrepresentation at the time of contract, and the misrepresentation is corrected in an amendment (i) no later than 30 days after the developer becomes aware of the misrepresentation and provided to the purchaser as required by s. 16(1)(b); and (ii)

filed and provided to the purchaser no later than 14 days before the date on which the purchase agreement requires title or some other interest to be transferred to the purchaser.¹⁰

Background to *Kingsett*

In *Kingsett*, the applicant pre-sale purchasers sought a declaration that their purchase agreements (the “**Agreements**”) are unenforceable under REDMA. The impugned development was a 34-storey multi-residential building with 329 residential strata lots in Burnaby (the “**Development**”).¹¹ According to the first disclosure statement (the “**Disclosure Statement**”), construction was originally estimated to complete by March 1, 2025.¹²

By late-2024, serious issues arose that prevented the completion of construction, including a lack of additional funding, the suspension of the new home insurance policy, suspension of the municipal building permit, and the cessation of construction.¹³ These issues were not disclosed in the developers’ fourth amendment to their Disclosure Statement, which was also the final disclosure statement filed before the commencement of the CCAA proceedings.¹⁴

In January 2025, Kingsett Mortgage Corporation (“**Kingsett**”), the largest secured lender of the developers, petitioned for protection of the developers under the CCAA.¹⁵ Generally, the CCAA allows developers to remain in business while they restructure their business and financial affairs under the oversight of an independent monitor with broad powers over the developers. Here, the CCAA proceeding allowed construction to continue.¹⁶

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In November 2025, the monitor filed a fifth amendment, which revealed that there was outstanding corporate income tax liability to the CRA and the developers were subject to a CCAA order.¹⁷

By late December 2025, counsel for the applicants claimed the Agreements were unenforceable and sought the return of their deposits.¹⁸ The monitor maintained that the Agreements were enforceable, and the orders made in the proceedings (the “**Orders**”) prohibited the commencement of any court action and suspended the applicants’ rights against the developers without its prior written consent or leave of the court.¹⁹ In April 2026, the monitor issued Notice of Completion Date, which prompted the applicants to bring the matter before the court. The developers did not participate in the hearing of the application.²⁰

It is reasonably assumed that the purchasers wanted to escape the Agreements given the changing real estate landscape in BC, while the Monitor wanted the Agreements enforced to maximize the value of the units (approximately \$30.5 million),²¹ which is almost certainly higher than current market prices.

Key Findings in *Kingsett*

The court’s key findings are below:

1. **Section 23 applies to breaches of continuing disclosure obligations after the parties enter into a purchase agreement:** the court held that a purchase agreement can be found unenforceable because a developer has failed to amend its disclosure statements as required by s. 16 of REDMA. This is supported by the text, context, and purpose of the provision.²²

The court went on to find that the developers failed to disclose material facts, including the CRA tax liability, and the suspension of warranty coverage, building permit, and construction activity.²³ Although the developers did not participating in the hearing, the court found it highly unlikely that they were not aware of these material facts. As such, the exceptions under s. 23 did not apply²⁴ and the Agreements became unenforceable before the start of the CCAA proceeding.²⁵

2. **Orders made in this CCAA proceeding did not bar a REDMA s. 23 application:** the court rejected arguments that the Orders prevented the pre-sale purchasers’ application and the court had authority under the CCAA to preserve the enforceability of the Agreements. The court noted that (i) there was no authority that established that CCAA orders can transform or restore an unenforceable agreement into an enforceable one,²⁶ (ii) the Orders referred to staying the right to rescission but did not reference s. 23;²⁷ (iii) s. 23 did not confer any rights or remedies upon purchasers that could be stayed by the Orders, it is rather a defence to enforcement of the agreement;²⁸ and (iv) the court’s broad discretion under the CCAA did not extend to making contracts enforceable.²⁹
3. **The doctrine of federal paramountcy did not apply to make s. 23 inoperative:** the court rejected the argument that the objectives of the CCAA (a federal legislation) would be frustrated if the purchasers could rely on s. 23 of REDMA (a provincial legislation) such that the doctrine of federal

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paramountcy applied to make s. 23 inoperative to the extent that it conflicts with federal legislation.

Instead, the court held that both statutes can operate concurrently. Although the applicants' position may adversely affect the value available to the stakeholders in the restructuring, this did not constitute a conflict or frustration because the CCAA "provides a framework for administering the rights and obligations that exist when insolvency proceedings commence".³⁰ Because the developer made the misrepresentations before CCAA proceedings commenced, the Agreements were already unenforceable at the time the CCAA proceedings began.

Practical Takeaways

This decision emphasizes the importance of developer compliance with disclosure requirements under REDMA, particularly with the amendment requirements for material facts (such as construction stoppage, financing, and warranty coverage issues) throughout the life of a development. The Monitor had successfully addressed some of the issues and construction continued, but the developers' breach of their disclosure obligations was the cause of the Agreements becoming unenforceable.

Notably, Kingsett has filed an appeal intending to challenge the decision, including on the basis that the judge misinterpreted and misapplied s. 23 of REDMA. We will provide an update once the appeal decision is released.

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Diana Wang

1 See, *Real Estate Development and Marketing Act*, S.B.C. 2004, c. 41 at ss. 14, 16 [REDMA].

2 R.S.C. 1985, c. C-36 [CCAA].

3 2026 BCSC 1598 [Kingsett].

4 Kingsett at para. 57.

5 REDMA at s. 14(1).

6 REDMA at s. 1.

7 REDMA at ss. 1, 14(2)(b).

8 REDMA at s. 16.

9 REDMA at s. 23(1).

10 REDMA at s. 23(2).

11 Kingsett at para. 15.

12 Kingsett at para. 16-17.

13 Kingsett at para. 23.

14 Kingsett at para. 40.

15 Kingsett at para. 24.

16 Kingsett at para. 23.

17 Kingsett at para. 41.

18 Kingsett at para. 27.

19 Kingsett at para. 29.

20 Kingsett at para. 35.

21 Kingsett at para. 9.

22 Kingsett at paras. 65-80.

23 Kingsett at paras. 81-97.

24 Kingsett at paras. 104-109.

25 Kingsett at paras. 110-112.

26 Kingsett at para. 122.

27 Kingsett at para. 124.

28 Kingsett at paras. 126-129.

29 Kingsett at para. 132.

30 Kingsett at paras. 135-140.



DIANA WANG

604.358.1663

DIANA@CIVICLEGAL.CA

Diana is an associate lawyer with the firm and maintains a general municipal law practice. She has experience advising clients on a range of matters, including construction and procurement disputes, freedom of information and privacy requests, and infrastructure and commercial real estate development projects.

Prior to joining Civic Legal, Diana practiced as a commercial litigator at a national law firm in Vancouver, where she appeared before the Provincial Court and the Supreme Court of British Columbia. Her litigation background informs her strategic, solutions-oriented approach to advising clients.

Diana earned her Juris Doctor degree from the UBC Peter A. Allard School of Law and a Bachelor of Commerce from the UBC Sauder School of Business, where she specialized in accounting with a minor in English language. Throughout her studies, she volunteered for non-profit organizations and legal advice clinics, where she provided legal advice and information to the public. She also worked with the law and business faculty and the Appeals Division of LegalAid BC. Diana's commitment to excellence is reflected in her academic achievements, including the Allard Scholar Renewable Entrance Scholarship for exceptional aptitude and academic excellence.

In addition to her legal work, Diana has been involved in the broader community, including serving on the board of the Federation of Asian Canadian Lawyers (BC) and running her own music studio.

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700 - 900 West Hastings Street, Vancouver, BC V6C 1E5

604.639.3639 | www.civiclegal.ca |  [Civic Legal LLP](#)