B.C. presale contracts declared unenforceable due to REDMA disclosure failures

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Developers marketing presale units in British Columbia must continue to disclose material developments throughout the life of a project or risk losing the ability to enforce their purchase agreements.

In *KingSett Mortgage Corporation v. Lumina Eclipse Limited Partnership*, 2026 BCSC 1598 (Lumina Eclipse), the British Columbia Supreme Court held that a developer's failure to disclose material developments affecting a condominium project rendered 39 presale agreements unenforceable against the purchasers, notwithstanding that the project was subsequently completed over the course of a *Companies' Creditors Arrangement Act* (CCAA) proceeding.

The decision provides important guidance on the scope of a developer's continuing disclosure obligations under the *Real Estate Development Marketing Act* (REDMA), the circumstances in which post-contract disclosure failures can engage s. 23 of REDMA and the interaction between REDMA and the CCAA. It also confirms that subsequent project completion or an insolvency proceeding will not necessarily cure earlier disclosure failures or protect pre-sale agreements from being rendered unenforceable.

What developers and purchasers need to know

- REDMA is consumer protection legislation which regulates the marketing of presale development properties.
- REDMA is built around a straightforward concept: purchasers are entitled to receive accurate and up-to-date information about the material facts of a development before and during the period in which they remain contractually committed to purchasing a unit. Material facts may include, among other things, construction stoppages and significant delays.
- A developer's obligation to disclose material facts under REDMA continues after a presale agreement is signed.
- A failure to disclose later-arising material facts can render a presale agreement unenforceable against the purchaser.
- CCAA is a federal insolvency statute that grants courts broad discretion to stay proceedings and creditor rights while a debtor undertakes a restructuring or concludes strategic sales for the benefit of stakeholders. The objective of the

CCAA is to facilitate an efficient and fair restructuring process, preserve and maximize asset value, protect the public interest and balance the competing interests of debtors, creditors and other stakeholders.

Background: The Lumina Eclipse presale development

This case arose from the 329-condominium unit development called Lumina Eclipse in Burnaby, B.C. After purchasers entered into presale agreements between 2021 and 2023, the project began experiencing serious financial and construction difficulties.

During construction, the project encountered significant financial and operational challenges, including a $12 million CRA judgment, suspension of warranty coverage, suspension of the building permit, cessation of construction activity, substantial delays and eventual CCAA proceedings. Throughout this period, the disclosure statement was not amended to disclose these changes to purchasers.

In January 2025, the project was petitioned into a proceeding under the CCAA by its primary secured creditor, Kingsett Mortgage Corporation. In the initial order granted in the CCAA proceeding a stay of proceedings was granted (among other things) to allow construction of the development to restart. The initial order stayed all proceedings and the exercise of rights against the respondents and relieved the respondents from any obligation to file or deliver new disclosure statements or amendments under REDMA while the stay remained in effect. By March 2025 the building was deemed substantially complete, and the purchasers were asked to close on their presale agreements.

The purchasers sought a declaration that certain presale condominium agreements are unenforceable due to alleged breaches of s. 23 of REDMA. The purchasers argued that the developer's failure to disclose material developments affecting the project, including its financial difficulties and construction setbacks, constituted breaches of REDMA that rendered the presale agreements unenforceable under s. 23. The respondents argued that the presale agreements remained enforceable notwithstanding the project's financial and construction difficulties. They contended that the alleged disclosure deficiencies did not fall within the circumstances that would render the agreements unenforceable under s. 23 of REDMA and that the relief sought was inconsistent with the remedial purpose of the CCAA and the initial order under the CCAA.

What is a material fact under REDMA?

In Lumina Eclipse, the Court adopted the three-part framework for assessing materiality from *Bosa Properties (Esprit 2) Inc. v. Kim*, 2012 BCSC 1013, which is based on: (i) common sense; (ii) the statutory and regulatory disclosure framework; and (iii) whether a fact or proposal affects or could reasonably be expected to affect the value, price or use of the unit or development property. The Court did not reference the leading British Columbia Court of Appeal case regarding "material facts", being *Woo v. Onni Ioco Road Five Development Limited Partnership*, 2014 BCCA 76, in its reasoning. Applying the three-part framework, the Court found that all three factors established that the following events all constituted material facts:

- a $12 million CRA judgment;
- suspension of new-home warranty coverage;
- suspension of the building permit;
- cessation of construction;
- significant changes to completion timing; and
- other developments affecting the project's financial and operational condition.

When must a developer amend a disclosure statement?

A central issue was whether the undisclosed developments constituted "material facts" for the purpose of REDMA. The Court concluded that they did.

The Court emphasized that the materiality analysis is objective. The question is whether the information could reasonably be expected to affect the value, price or use of the development property or unit.

Applying that test, the Court found that the CRA judgment, suspension of warranty coverage, suspension of the building permit, cessation of construction activity, significant delays and other financial developments all constituted material facts. In these circumstances, the project was objectively different from the project purchasers thought they were buying into and the Superintendent's own disclosure requirements specifically call for disclosure of exactly this kind of information. These events affected project viability, financial stability, anticipated completion and the developer's ability to perform its obligations.

The Court rejected arguments that materiality should be assessed with hindsight. The fact that the project was eventually completed did not alter whether the information was material when disclosure should have occurred. Materiality was assessed at the time disclosure was required, not after the project's outcome became known.

Having determined that the relevant events were material facts, the Court turned to the disclosure obligations imposed by s. 16.

Section 16 requires a developer to immediately file an amendment to a disclosure statement when it becomes aware that the disclosure statement contains a misrepresentation or otherwise fails to comply with REDMA.

The Court found that timely amendments were not made despite the occurrence of multiple material developments. Some matters remained undisclosed for many months and were not included in a formal amendment until the monitor filed a further amendment in November 2025.

The Court found that the failure to file timely amendments to reflect the material facts constitutes a misrepresentation and the developer breached its continuing disclosure obligations as subsequent events had presented an outdated picture of the development that no longer reflected the actual circumstances known to the developer.

Can a post-contract disclosure breach make a presale contract unenforceable?

The most significant aspect of the judgment concerns the Court’s interpretation of s. 23.

The respondents argued that s. 23 should apply only where a disclosure defect existed when the original purchase agreement was executed.

The Court focused on the language of s. 23, which applies where a developer has breached “any provision of Part 2.” Because s. 16 forms part of Part 2, the Court concluded that continuing disclosure breaches may engage s. 23.

The Court also relied on the wording of s. 23(2)(a), which refers to material facts that “were or would have been” reasonably relevant to purchasers. According to the Court, that language supports the conclusion that later-arising material facts may also engage the statutory provision where disclosure obligations are not satisfied.

The Court held that s. 23 applies broadly to any breach of Part 2 of REDMA, including a developer's continuing obligation to amend disclosure statements and after purchase agreements have been executed. In this regard, the Court held that REDMA’s ongoing disclosure regime would be substantially weakened if post-contract disclosure failures carried no meaningful consequence.

The Court held that neither of the statutory exceptions in s. 23(2) applied. The undisclosed project developments constituted a misrepresentation of material facts that were reasonably relevant to a purchaser's decision to enter into the purchase agreement, preventing the respondents from relying on s. 23(2)(a). The respondents were also unable to rely on s. 23(2)(b) because it was highly unlikely the developer was not aware of the material facts and the misrepresentations were never corrected through an amended disclosure statement within the timeframe required by REDMA.

Due to the developer’s breach of its continuing disclosure obligations, and failure to establish any of the exceptions contained in s. 23(2) of REDMA, the purchasers’ presale agreements were found unenforceable against them by the developers.

Can CCAA proceedings override REDMA unenforceability?

The decision is particularly significant because the project was subsequently placed under creditor protection under the CCAA, with construction of the project substantially completed over the course of that CCAA proceeding. Despite this positive outcome, the Court nevertheless held that neither the CCAA proceeding generally nor relief set out in the initial order granted therein can cure or override the consequences of the earlier REDMA breaches.

The relevant disclosure failures occurred before the CCAA proceeding commenced, and therefore the applicable pre-sale agreements were already rendered unenforceable from the outset. The Court clarified that although CCAA courts have broad discretion to stay proceedings, suspend remedies and restrain the exercise of contractual rights, they do not go as far to make a contract already rendered unenforceable by operation of another statue to be treated as enforceable against the purchasers under the CCAA. The Court also commented that there is no conflict or frustration between CCAA and REDMA as REDMA determines whether the developer possessed an enforceable right against the purchasers, while the CCAA governs the administration of the ensuing insolvency proceeding and treatment of rights and claims within that proceeding.

The Court declared the purchase agreements unenforceable, but did not declare them void, cancelled or rescinded. It also did not determine the purchasers' entitlement to recover approximately $3.6 million in deposits. Those issues were left for a later hearing.

Immediate implications: Why this decision matters for developers and lenders

The decision immediately affects 39 purchasers whose deposits total approximately $3.6 million and whose purchase contracts total approximately $30.5 million.

The Court's reasoning is not unique to those purchasers. The disclosure failures identified by the Court were project-wide disclosure issues. The development consists of 329 units. As a result, the potential financial implications for the project extend well beyond the 39 contracts directly before the Court.

More broadly, the decision significantly highlights the legal and financial consequences of failing to promptly amend disclosure statements when material developments arise during construction. Developers, lenders, monitors and insolvency professionals involved in distressed presale projects should examine this decision closely.

Potential appeal issues

Given the significance of the ruling, the decision may be appealed. Potential appellate issues include whether s. 23 applies to post-contract disclosure breaches, the interpretation of the phrase "was or would have been reasonably relevant" in s. 23(2)(a) and the interaction between REDMA and the CCAA. Appellate guidance may further clarify how REDMA provisions operate where a development project is subject to insolvency proceedings.

Key takeaways: What the decision means for B.C. development projects

Developers should treat REDMA disclosure as a continuing compliance obligation throughout the marketing and construction of an event or other matter. Events that occur after a purchaser signs an agreement may require an amendment to the disclosure statement if they constitute a material fact or material change. Importantly, legal consequences under REDMA do not arise merely because a material fact exists. Rather, they can flow from a developer's failure to disclose that material fact in accordance with REDMA's continuing disclosure requirements. Where there is uncertainty as to whether a particular development constitutes a material fact, developers should generally err on the side of disclosure and promptly assess whether an amendment to the disclosure statement is required.

Particular attention should be given to:

- significant construction delays or work stoppages;
- material financing difficulties;
- suspension or loss of warranty coverage;
- suspension, cancellation or material alteration of building permits;
- other developments that could reasonably affect a purchaser’s decision to complete the purchase.

A contractual right to extend completion dates will not necessarily address a separate failure to comply with REDMA. Nor should a developer assume that completing the project, obtaining occupancy or entering an insolvency restructuring will cure an earlier disclosure breach.

Developers and insolvency professionals should therefore consider establishing a documented process for regularly reviewing project developments against their REDMA disclosure obligations. Material events should be promptly assessed with legal counsel, and any required disclosure amendment should be prepared and filed without delay.

If you have questions about REDMA or presale disclosure obligations in British Columbia, please reach out to any of the key contacts below.

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