IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pacifica Mortgage Investment Corporation v 2490 Marine Drive Ltd.,* 2026 BCSC 1928

Date: 20261007
Docket: H251461
Registry: Vancouver

Between:

Pacifica Mortgage Investment Corporation

Petitioner

And:

2490 Marine Drive Ltd., Dundarave Beachside GP Ltd., Dundarave Beachside Limited Partnership, 1165886 B.C. Ltd., 1165877 B.C. Ltd., 1165857 B.C. Ltd., Evan Mont Wang, Hongpeng Yang, 1548341 B.C. Ltd., and All Tenants or Occupiers of the Subject Lands and Premises

Respondents

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

In Chambers

Counsel for the Petitioner:	S. Stephens L. Zhang
Counsel for the Receiver, MNP Ltd.:	W. Roberts B. Hunt
Counsel for C&WHB Construction Ltd.:	R. Nagra
Counsel for RTR Terra Contracting Ltd.:	M. Robinson
Counsel for the District of West Vancouver:	E. Anderson
Counsel for Basel Capital Limited:	J. Sandrelli
Place and Date of Hearing:	Vancouver, B.C. August 12 and 25, 2026

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Place and Date of Judgment with Written Reasons to Follow:	Vancouver, B.C. August 25, 2026
Place and Date of Written Reasons:	Vancouver, B.C. October 7, 2026

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[1] **THE COURT:** This application concerns the proposed sale of a development property in West Vancouver—which was to be named the “Pierwell”—at the behest of the court-appointed receiver, MNP Ltd. (the “Development”).

[2] Sale approval of the Development itself is not controversial, except for one issue. That issue relates to who has the rights to certain monies that the original developer (the “Debtors”) deposited with the District of West Vancouver (the “District”) to secure approval for certain public works to be completed for the Development. That issue is relevant to the proposed sale because the purchaser requires that transaction include whatever rights of the Debtors exist with respect to those monies.

[3] The Receiver seeks a declaration that the monies on deposit are “Property” of the Debtors within the meaning of the receivership order and can be included within the proposed sale. This relief is contested by two persons who provided services to the Debtors in respect of certain preliminary work done on the Development.

[4] At the conclusion of the hearing, I was satisfied that the proposed sale was appropriate and that the rights to the deposit monies were held by the Debtors and could be included in the assets transferred to the purchaser. These reasons explain why I came to that conclusion.

A. Background

[5] In mid-December 2025, the petitioner Pacifica Mortgage Investment Corporation (“Pacifica”) filed this foreclosure petition.

[6] As above, the subject of this foreclosure is as-yet undeveloped land assembly in the Dundarave Village area on Marine Drive in West Vancouver (the “Lands”). The intention of the overall Development was to construct a mixed-use strata property consisting of 36 residential units and two levels of commercial space.

[7] The persons who undertook the development were organized in a limited partnership. The respondent, Dundarave Beachside Limited Partnership (the “LP”),

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owns the Development. The respondent, 1165886 B.C. Ltd., is the parent of the respondent, Dundarave Beachside GP Ltd., the general partner of the LP (the "GP"). The LP and GP's nominee company, the respondent 2490 Marine Drive Ltd. (the "Nominee"), holds title to the Lands. Again, they are collectively described as the "Debtors" in these reasons.

[8] When the petition was filed, Pacifica's loan to the Debtors was outstanding at approximately $37.4 million arising from a loan advanced in late 2021. Pacifica's security package included a mortgage against the Lands. In addition, as will be particularly relevant to the issues here, Pacifica also held personal property security from each of the Debtors, as will be set out in more detail below.

[9] On March 3, 2026, the hearing of the petition took place. The Debtors did not attend that hearing and, indeed, to this day, they have not participated in this proceeding.

[10] The petition was contested by the second mortgagee on title to the Lands, 1548341 B.C. Ltd. ("341"). 341's evidence at the hearing included an Affidavit #1 of Yun Zhang, who says she is a director of C&WHB Construction Ltd., described then as "Createworld", a consulting firm engaged by the Debtors to provide services with respect to the Development (the "Project Manager").

[11] At the conclusion of the hearing, I granted a Receivership Order appointing MNP Ltd. as the Receiver of "all the assets, undertakings and property of the Debtors," which included the Lands, all of which was defined by my order as the "Property": *Pacifica Mortgage Investment Corporation v 2490 Marine Drive Ltd.*, 2026 BCSC 506 [*Receivership RFJ*].

[12] At the time of the receivership, the Development was in its early stages. In 2022, the District issued a development permit ("DP") which was renewed in 2024. In 2025, the District also issued building permits. The tenants in the building had vacated the premises. The Debtors had entered into some pre-sale agreements. Certain sewer and water main work had been completed by RTR Terra Contracting

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Ltd. (“RTR”), a contractor engaged not by the Debtors, but by the Project Manager. At the earlier hearing, RTR claimed it had completed work on the Development, but had not been paid and that it was owed approximately $1 million. RTR was also in the process of filing a lien action under the *Builders Lien Act*, SBC 1997, c 45 [*BLA*].

[13] The evidence established at the hearing was that, by early 2026, by all accounts, the Development site had essentially been abandoned and no activity at all was taking place by anyone.

B. The Receiver’s Sale Efforts

[14] As above, the proposed sale of the Development is not opposed. I will therefore briefly outline the relevant facts.

[15] Paragraph 2 of the Receivership Order empowered the Receiver to market the Development and apply for a vesting order to transfer the “Property” to a proposed purchaser.

[16] The Receiver filed its First Report to the Court dated July 29, 2026, and later, a Supplement to the First Report dated August 21, 2026.

[17] The Development has been actively marketed by Colliers since April 2026. The Development was listed at $42 million and marketing was specifically targeted to qualified developers and investors. A significant number of those potential buyers (44) considered the opportunity.

[18] The sales process yielded two offers: one very low, and another at $37.2 million (the “Original Bid”).

[19] The Original Bid was structured as a reverse vesting order (“RVO”). The purchaser would acquire all shares in the Nominee and all beneficial title, right and interest to the Lands, the buildings, all “Development Assets” and the deposits with the District (i.e. the “Property” as defined in the Receivership Order).

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[20] On August 12, 2026, a hearing was convened to consider the Receiver's application to approve the higher offer received as a result of the marketing process (i.e. the Original Bid). However, at that hearing, the Receiver advised the Court that two further competing bids for the Property had since been received. At the request of the Receiver, I adjourned the application and directed that any offers superior to the Original Bid were to be delivered to the Receiver by 4:00 p.m. that day.

[21] The person presenting the Original Bid did not submit a further offer. A new, higher offer was received from Basel Capital Limited ("Basel") for $37.5 million, which was then presented on this application for approval (the "Basel Offer").

[22] The Basel Offer is structured substantively the same as the Original Bid, namely as a RVO. In addition, the Basel Offer also included the purchase of whatever rights the Debtors had with respect to the deposits held by the District.

C. The Deposit in Issue

[23] The central issue on this application concerns a deposit held by the District, which was earlier funded by the Debtors.

[24] On February 26, 2025, the Nominee (defined as the "Developer") entered into an Engineering Services Agreement with the District (the "ESA"). By the terms of the ESA, the Nominee agreed to complete certain works and services on and adjacent to the Lands (defined as the "Works").

[25] As security for its performance obligations under the ESA, the Nominee deposited approximately $2.61 million with the District (the "Deposit"). On March 6, 2025, these funds were wired to the District under the Depositor's Name, being the LP.

[26] The deposit form was signed by Rui Ping Deng as a director of the GP. Ms. Deng's spouse is the respondent, Hongpeng Yang, who is a guarantor of Pacifica's loan and a former director of the GP.

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[27] The Nominee also paid other deposits to the District which related to permits, although those are not in issue. The only issues raised on this application relate to the Deposit.

[28] The ESA provided that, if the Nominee failed to complete the required Works, the District was entitled to undertake that work and satisfy the costs from the Deposit.

[29] Section 3.2(c) of the ESA provided that any return of the Deposit would be made to the Developer.

[30] Section 8.1 of the ESA addresses the insolvency of the Developer and provided that the District could complete the Works or any defects in the event of a receivership. Further, that Section provided:

> … and the Developer agrees that the Deposit, … [is] not an asset of the Developer and are not subject to any trust or other right or claim of the Developer other than a contract claim expressly contemplated by this Agreement.

[31] The District takes the view that Section 8.1 simply confirms that it will have full and unencumbered access to the funds and that no other claims will compete with the District's rights to the Deposit, save for contractual rights (i.e., rights to any refund which is now in issue).

[32] On December 18, 2025, the District received a Change of Depositor Information Form by email, requesting that the depositor on record for the Deposit be changed from the LP to the Project Manager (the "Change Form"). The Change Form stated that the LP authorized the District to reimburse the Deposit to the "amended payee name", being the Project Manager.

[33] The Change Form was signed by Ms. Deng on behalf of the LP.

[34] The District's representative states that, following receipt of the Change Form and supporting documentation to confirm Ms. Deng's authority to sign it, the District

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amended its internal records to name the Project Manager as the "depositor" of the Deposit effective January 4, 2026.

[35] On January 5, 2026, the District sent an email to the Project Manager that stated:

> Confirming that we have changed the depositor in our system for permit BP118939 from DUNDARAVE BEACHSIDE LIMITED PARTNERSHIP to C&WHB CONSTRUCTIONS LTD.

[36] The Receiver describes that, as of its appointment in early March 2026, only "limited development activities" had been undertaken on the Lands. Since its appointment, the Receiver held discussions with the District and understood from those discussions that the Nominee had paid the Deposit to the District to secure its obligations under the ESA.

[37] The Receiver stated in its First Report (July 2026), that the District had advised of certain deficiencies in respect of the required Works under the ESA. The deficiencies were estimated to cost approximately $900,000. The District further advised it intended to remediate these deficiencies and complete the Works and it requested that the Receiver provide its position with respect to the District's plan to draw down on the Deposit to fund some of the Works.

[38] At no time did the District advise the Receiver that any changes to the name for the Deposit had been made, and the District does not explain why in its evidence.

D. Competing Claims to the Deposit

[39] The parties claiming rights to the Deposit include RTR, the Project Manager and Pacifica.

a) What is RTR's Claim to the Deposit?

[40] RTR's evidence is found in the Affidavit #1 of its representative, Hao Wen Liang, affirmed February 2, 2026 (to oppose the receivership), and the recently filed Affidavit #2 of Mr. Liang affirmed August 5, 2026.

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[41] In his Affidavits, Mr. Liang states:

a) in 2025, RTR entered into a subcontract with the Project Manager to perform site servicing work for the Development. No copy of the contract has been produced, but it is said to be the "industry standard" (the "RTR Contract");

b) RTR performed the work as required by the RTR Contract, except for "very minor deficiencies and completion of certain paperwork". RTR did not remedy these deficiencies as they were awaiting payment. Mr. Liang says that the total value of the "deficiencies" is less than $15,000. Mr. Liang says that he is not aware of any deficiencies asserted by the District, as was referred to in the Receiver's First Report; and

c) the Project Manager did not pay RTR for the work and there is $1,042,590.42 owing. No invoices have been produced.

[42] Mr. Liang's Affidavit #2 states that, in mid-December 2025, he contacted the Project Manager regarding payment. A meeting was subsequently held at which time, Andy Liu, a representative of the Project Manager, advised Mr. Liang of the ESA and the Deposit and told him that the Deposit would be available to pay RTR. Mr. Liu further advised Mr. Liang that the Deposit was solely to cover the site servicing work performed by RTR and that 85% of the Deposit would be available for release upon delivery of the as-built drawings, which RTR acknowledges remains outstanding as a deficiency. Mr. Liang was provided with an unsigned copy of the ESA.

[43] Mr. Liu also advised Mr. Liang that the Project Manager was in the process of arranging for a transfer of the Deposit to the Project Manager, rather than a transfer directly to RTR. Mr. Liu advised that the Project Manager was being paid via the transfer of the Deposit by the Debtors to the Project Manager, which would transfer the right, title and interest in the Deposit to the Project Manager. Mr. Liu told him that the Project Manager would use those funds from the Deposit to pay RTR.

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[44] On December 18, 2025, the Project Manager confirmed that the paperwork had been submitted to the District to transfer the Deposit in the name of the Project Manager. On January 5, 2026, the Project Manager confirmed to Mr. Liang that they had received the District's confirmation of the change of "Depositor" in respect of the Deposit, as quoted above in the District's email.

[45] At the earlier hearing, when Mr. Liang's Affidavit #1 was before the Court, RTR was opposing the receivership. However, in that Affidavit, Mr. Liang did not disclose any of the above information and documentation regarding RTR's discussions with the Project Manager and the efforts to change the name on the Deposit with the District, which would have alerted Pacifica and upon its appointment, the Receiver of those facts.

[46] In early February 2026, RTR commenced a lien action in this Court to recover the debt and enforce its lien under the *BLA*. In that lien action, RTR caused a garnishing order dated February 4, 2026, to be served on the District, claiming that the Deposit was accruing due to the Project Manager and that the funds were trust funds for the benefit of RTR.

[47] On February 23, 2026, the District filed a Notice of Dispute Payment into Court setting out its position:

> The funds held by the District are in the nature of a deposit. The conditions for repayment of any portion of the security deposit to any party have not been satisfied. As such, the funds which make up the security deposit are not accruing due to any of the Defendants [which includes the Debtors and the Project Manager] and are not presently attachable by way of garnishing order.

[48] As I will discuss below, RTR advances a number of arguments in support of its claim to entitlement to the Deposit, although most are derivative of the Project Manager's claims.

b) What is the Project Manager's Claim to the Deposit?

[49] In her Affidavit #1 affirmed March 2, 2026, Ms. Zhang stated that, in March 2025, the Debtors had engaged the Project Manager to provide certain management

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and consulting services for the Project. She referred to a "management services agreement", although no such document was produced (and still has not been produced by her).

[50] At the time, Ms. Zhang asserted that the Project Manager was committed to working with 341 to advance a sales process through the foreclosure process.

[51] At the time of the receivership hearing on March 3, 2026, Ms. Zhang's evidence on behalf of the Project Manager and 341 was decidedly silent as to significant events relating to the Development, the Deposit and financial matters relating to both. Her evidence was filed in support of the Project Manager and 341's opposition to the receivership.

[52] In her Affidavit #1, Ms. Zhang made no mention of the Project Manager's contractual obligations to RTR (which were generally disclosed by Mr. Liang in his earlier Affidavit). By that time, RTR's lien action had been commenced against the Project Manager. She also made no mention of the Project Manager's discussions with RTR in December 2025 or having arranged to change the depositor information at the District in relation to the Deposit so as to obtain those monies and then pay RTR (Mr. Liang also made no mention of these events in his Affidavit #1).

[53] In advance of this hearing, Ms. Zhang now purports to provide further evidence regarding these matters. She states that:

a) in fact, the Project Manager is not known as "Createworld", despite her previous evidence (*Receivership RFJ* at para. 34). Rather, there is a separate corporation, being a lender based out of Hong Kong called "Create World International Coal Chemical Investment & Development Ltd." (who I will describe as "Create World");

b) while the Project was underway, she was contacted by Ms. Deng, a director of the Debtors, that they did not have funds to pay to the District and that, as a result, the Debtors could not then proceed with the Development;

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c) Ms. Deng is also a director of the Project Manager; and

d) Ms. Zhang then arranged to borrow the necessary funds from Create World to allow the Debtors to pay funds to the District for the Deposit.

[54] Ms. Zhang's efforts gave rise to an agreement that she prepared, the "Tripartite Agreement" dated February 2025 between Create World, the Project Manager and the LP/GP. Ms. Deng signed on behalf of the LP/GP and Ms. Zhang signed on behalf of the Project Manager. The relevant terms include:

a) Section 1.1 (Loan Amount and Disbursement): Create World agreed to loan the Project Manager the sum of US$2.2 million;

b) Section 2.2 (Background): the parties acknowledge that the loan is to enable the Project owned by the LP to proceed, given that the LP lacked sufficient funds to satisfy what are described as the District's requirements, namely payment of deposits and fees. The funds were to be used solely to satisfy the "Municipal Requirements" (which was not defined in the Agreement);

c) Section 3 (Direct Disbursement): Create World would advance funds directly to the LP for the sole purpose of paying the "Municipal Requirements". Notwithstanding this direct transfer of funds from Create World to the LP, and the fact that the funds would not pass through the Project Manager's account, the funds were deemed to be advanced to the Project Manager. In effect, the Project Manager would be fully liable to repay those funds to Create World;

d) Section 4 (Use of Funds): the LP was to use the funds solely to satisfy the "Municipal Requirements" and the LP agreed not to divert, pledge, assign or otherwise encumber the funds; and

e) Section 6 (Municipal Refund Mechanism): the District was required to direct any refunded amounts to the LP or Project Manager as required by

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law (despite the District not being a party to this Agreement). Any amounts received by the LP were required to be immediately transferred to the Project Manager, who, upon receipt, was required to remit such amounts to Create World within five business days.

[55] Consistent with the above arrangements, Ms. Zhang confirms that the funds were wired by Create World to the LP's bank account, and the LP then wired the required funds to the District on March 6, 2026, which resulted in the creation of the Deposit.

[56] Ms. Zhang also confirms she was well aware of the change of the name on the Deposit with the District in December 2025 arising from the Change Form.

[57] The Project Manager's claims are centered on allegations of a *Quistclose* trust and a purported transfer to it of rights with respect to the Deposit.

c) **What is Pacifica's Claim to the Deposit?**

[58] Pacifica's claim to the Deposit is based on its first-ranking security interests granted by the Debtors in respect of the outstanding advances pursuant to the *Personal Property Security Act*, RSBC 1996, c 359 [*PPSA*].

[59] Pacifica's security is all-encompassing arising from various documentation executed by the Debtors and includes:

a) a General Security Agreement ("GSA") dated October 26, 2021, by which the Debtors granted Pacifica a security interest charging all of their respective:

> ... right, title and interest, present and future, in and to all Goods, Chattel Paper, Instruments, Documents of Title, Money, Securities and Intangibles located at, on, or about [the Lands] or used or acquired in connection with or related exclusively to the business of the Debtors conducted on or with respect to the Lands...

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The GSA specifically refers to these assets or collateral as including "book accounts and book debts … debts … claims, choses in action, and demands of every nature and kind" and "contractual rights";

b) an Assignment of Material Contracts dated October 26, 2021, by which the Debtors granted Pacifica a security interest in and assigned, transferred, and set over to Pacifica:

> ... all monies, claims, rights and demands whatsoever due or become due to the [Debtors] or to which [the Debtors] may otherwise now, or at any time hereafter be entitled (collectively, the "Rights") in connection with … Contracts …;

"Contracts" are referred to as "materials contracts", which include those for the provision of services relating to the development of the Lands and specifically, "labour and material bonds and performance bonds" and "deposits".

c) an Assignment of Rights Under Contracts dated October 26, 2021, by which the Debtors assigned, transferred, and set over to Pacifica and granted Pacifica a security interest in:

> … all moneys, claims, rights and demands whatsoever ("the Rights") which the [Debtors] may now, or at any time hereafter have or be entitled to under or by virtue of or in respect of or incidental to any and all plans and specifications ..., contracts, including but not limited to, any building permits, development permits, other municipal approvals, construction contracts and contracts for the provision of services relating to the development of the Lands ...

As with the previous security, this document referred to rights arising under "Contracts", which added "now or hereafter relating to the [Debtors'] acquisition, ownership, development or operation of [the Lands]". This security document also gave Pacifica the right to collect, demand, sue for and enforce the "Plans" and "Contracts" and exercise all of the Rights thereunder.

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Finally, in paragraph 10 of this security agreement, the Debtors agreed not to assign, pledge or encumber the Rights, Plans or the Contracts without the written consent of Pacifica.

d) an Assignment of Letters of Credit dated October 21, 2021, by which the Debtors assigned, set over and transferred to Pacifica:

> … all its rights, benefits, title and interest in and to, and all claims of whatsoever nature or kind which the [Debtors] has or may hereafter have under or pursuant to the Letters of Credit, including without limitation, the collateral or security, whether it be in the form of cash, deposits, negotiable instruments or securities, that may be returned or released to the [Debtors] upon the expiration or earlier termination of any of the Letters of Credit.

"Letters of Credit" specifically refer to monies held by the District as where the Debtors have paid those monies as collateral and are defined as:

> … all of its rights, benefits, title and interest in, to and under any cash collateral and any or all letters of credit or letters of guarantee that may be issued by any financial institution, lender or creditor or secured by cash in favour of [the District] … as bonding or security, or cash collateral for the [Debtors'] servicing obligations in connection with the construction of the Project.
>
> [Emphasis added.]

[60] On November 4, 2021, Pacifica registered financing statement documents in the personal property registry (the "PPR") against each of the Debtors in connection with all of the foregoing security agreements.

[61] Pacifica's affidavit evidence filed by Sidney Rubin in late January 2026 in support of the receivership appointment stated that Pacifica was unaware of the status of any deposits paid or owed to the District. Specifically, Mr. Rubin's latest affidavit states that Pacifica was not aware of the name change on the Deposit to the Project Manager that was arranged in December 2025 and completed at the District in early January 2026.

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[62] At the receivership hearing on March 3, 2026, Mr. Liang on behalf of RTR made no mention in his Affidavit #1 of his arrangements with the Project Manager to secure the Deposit and then pay RTR the amount claimed under the RTR Contract.

[63] Similarly, Ms. Zhang in her Affidavit #1 affirmed March 2, 2026, on behalf of the Project Manager and 341, did not disclose any information or documentation regarding this purported transfer of the Deposit to the Project Manager to either Pacifica or the Court at the time of the receivership hearing. In response to Mr. Rubin's statement in his Affidavit about not knowing of the status of any deposits with the District, Ms. Zhang only cryptically stated in her Affidavit #1 that the Project Manager was "not aware of any outstanding municipal obligations".

[64] Pacifica only learned of the name change on the Deposit to the Project Manager on August 7, 2026, when RTR's representative, Mr. Liang, filed and served his Affidavit #2, as detailed above. This was the also the first time that the Receiver learned of these arrangements.

E. The Issues

[65] In addition to approval of the Basel Offer, the Receiver also seeks specific relief relating to the Deposit, being:

a) a declaration that any interest of the Debtors in the Deposit constitutes "Property" within the meaning of the Receivership Order;

b) a declaration that any interest of the Debtors in the Deposit constitutes "Purchased Assets" and "Retained Assets" under the Basel Offer (defined terms that are relevant to the RVO structure);

c) a declaration that Pacifica holds a first-ranking security interest in the Debtors' interest in the Deposit; and

d) an order directing the District to register and record the Nominee as the "depositor" with respect to the Deposit.

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[66] The District takes no position on the application, particularly with respect to (d) above. Both Pacifica and the Receiver have confirmed to the District that nothing in the relief sought, including arising from the sale to Basel, is intended to alter or affect the District's rights with respect to the Deposit under the ESA. This is consistent with section 8.1 of the ESA which preserves the District's rights to the Deposit, subject to the exercise of contractual rights of the Debtors, later as exercised by the Receiver and now proposed by Basel if the Basel Offer is approved.

[67] Both the Project Manager and RTR submit that the Debtors have no interest in the Deposit, and accordingly, that Pacifica has no security interest in it. On that basis, they contend that rights to the Deposit cannot be included in any sale of the Development to Basel.

[68] The issues raised by the Project Manager and RTR in relation to the Deposit are discussed under the following headings:

a) What rights did Pacifica acquire under its security agreements?

b) Are the funds comprising the Deposit subject to a *Quistclose* trust in favour of the Project Manager under the Tripartite Agreement?

c) Did the signing of the Change Form amount to an assignment or transfer of the Deposit to the Project Manager?

d) If there was a transfer or assignment of the Deposit pursuant to the Change Form, was it effective against Pacifica? and

e) Does RTR have any trust claims to the Deposit under the *BLA*?

F. What rights did Pacifica acquire under its security agreements?

[69] Pacifica argues its security agreements created a validly enforceable security interest which attached to the Deposit. I agree.

[70] First, Pacifica's security interests meet the requirements under the *PPSA*:

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a) Enforceability: The security interests are enforceable against third parties (such as the Project Manager and RTR). The collateral description contained in the signed security documentation, includes “monies, cash”, which adequately captures the essence of the Deposit—specifically, cash deposited with the District and also includes the contractual right to claim a refund of the Deposit under the ESA: *PPSA*, ss 10(1)(d).

b) Attachment: The security interests “attached” under the *PPSA* the moment the Debtors received Pacifica’s funds in March 2025. At that point in time, the requirements in *PPSA*, ss 12(1) for attachment were met: Pacifica had given value to the Debtors, the Debtors had rights in the collateral and the power to transfer rights in the collateral, and the security interest was enforceable under s 10 (as concluded above in the immediately preceding subparagraph). Notably for the purpose of “attachment” of the Deposit, under the terms of the security agreements, Pacifica’s security interest also applied to “after acquired property”: *PPSA*, s 13. As such, Pacifica’s security interest attached to the Deposit the moment it was created (when Create World wired funds to the LP who then further re-routed those funds to the District).

c) Perfection: The security interests were “perfected”: attachment had occurred and all steps for perfection under the *PPSA* had been completed (i.e. the registration). It does not matter that perfection occurred prior to attachment (i.e. October 2021 versus March 2025): *PPSA*, ss 19 and 25.

[71] In sum, Pacifica possessed a perfected security interest, which had attached to the Deposit and was enforceable against third parties.

[72] But before moving on to discuss the “priority” of Pacifica’s security interest, I will briefly touch on RTR’s argument that Pacifica’s security did not attach to the Deposit since s 4(e) of the *PPSA* provides that the *PPSA* does not apply to:

> (e) the transfer of an interest in an unearned right to payment under a contract to a transferee who is to perform the transferor’s obligations under the contract.

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[73] I have no difficulty concluding that this *PPSA* provision does not apply here. As was discussed in *BTA Real Estate Group Inc. v Family Fitness Inc.*, 2021 SKQB 107 at paras 62-67, this provision is intended to apply where there is essentially a contractual novation or substitution of another party who will perform the work and therefore be entitled to the amount owing and obtain the applicable payment after performance. Those facts do not exist here.

[74] Now, I will turn to discussing the "priority" of Pacifica's security interest in the deposit, which is governed by s 35 of the *PPSA*.

[75] As stated, Pacifica possessed a perfected and enforceable security interest in the Deposit. However, what kind of interest, if any, the Project Manager has in the Deposit is unclear.

[76] The Project Manager does not assert it holds a perfected security interest in the Deposit, either under the Tripartite Agreement or otherwise. This is certainly correct given that the Project Manager did not complete any registration at the PPR in respect of any claimed interest.

[77] The Tripartite Agreement does not require repayment by the Debtors to the Project Manager (or Create World), save for any refund that might be received from the District. The Project Manager remains the sole person obliged to repay the funds under that Agreement. No other agreement between the Debtors and the Project Manager has been produced to indicate any other payment obligation on the part of the Debtors.

[78] Arguably, the rights of the Project Manager against the Debtors in respect of the Deposit were, in substance "security interests" to which the *PPSA* applied and should have been registered. This same result was found to be the case in similar circumstances in *Grosvenor Park Media Fund L.P. v Arc Productions Ltd. et al.*, 2020 ONSC 5651 at paras 7-8 [*Grosvenor*].

[79] In any event, even if the Project Manager has an unsecured claim against the Debtors for return of the funds under the Tripartite Agreement, that claim would still

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be subordinate to Pacifica's security interests. Subparagraph 35(1)(b) of the *PPSA* provides that Pacifica's perfected security interest has priority over an unperfected security interest.

[80] In sum, the above circumstances support the conclusion that Pacifica, under its security agreements with the Debtors, acquired a security interest in the Debtors' rights in the Deposit, and that this security has priority against any debt, contractual or security claims of the Project Manager.

G. Are the funds comprising the Deposit subject to a *Quistclose* trust in favour of the Project Manager under the Tripartite Agreement?

[81] Notwithstanding the above, the Project Manager asserts that the funds paid directly by Create World to the LP (but which were contractually advanced to the Project Manager), which were then placed with the District to create the Deposit, were impressed with a "*Quistclose* trust" in its favour under the terms of the Tripartite Agreement. Their argument then follows that the Debtors only held bare legal title to those funds and that those funds are not an asset of the Debtors to which Pacifica's security attached.

[82] The *PPSA* does not contain any express priority rule relating to security interests competing with existing trust relationships. However, s 68(1) of the *PPSA* provides that the principles of common law and equity supplement the *PPSA* and continue to apply, save to the extent that they are inconsistent with the *PPSA*. An example of the application of these principles in a contest between a trust claimant and a registrant under the *PPSA* is found in *i Trade Finance Inc. v. Bank of Montreal*, 2011 SCC 26 at paras 44, 58-67.

[83] The concept of a *Quistclose* trust, whereby monies are lent for a specific purpose, was helpfully reviewed in *Cliffs Over Maple Bay (Re)*, 2011 BCCA 180 [*Cliffs*]. In that decision, Justice Newbury stated:

> [57] A *Quistclose* trust is a purpose trust of a very special kind. Waters, Gillen and Smith in *Waters' Law of Trusts in Canada* (3rd ed., 2005) write that such trusts arise "when moneys are loaned by a lending institution expressly

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for the purpose for which the borrower intends to use the loan." (At 565.) The authors continue:

> These trusts occur when moneys are loaned by a lending institution expressly for the purpose for which the borrower intends to use the loan. The lender advances the moneys on the condition that they are to be held "on trust" by the borrower until the time for expenditure upon the purpose takes place. At that point in time, having the authority of the loan agreement, the borrower applies the moneys to the purpose and becomes a debtor vis-à-vis the lender. If the contemplated expenditure upon the purpose does not occur, the moneys are held in trust by the borrower for the lender – that is, ahead of all the unsecured creditors of the borrower. [At 565.]

[58] A somewhat narrower description was given in a Canadian case, *Niedner Ltd. v. Lloyds Bank of Canada* (1990) 72 D.L.R. (4th) 147 (Ont. H.C.J.):

> A Quistclose trust is created when A lends money to B for the specific purpose of enabling B to pay its creditors or a specific class of them ["C"]. The money is then impressed with a trust and may not be reached by third parties other than the beneficiaries of the trust. Assuming the purpose of the trust should fail, the money reverts back to the settlor of the trust. ... [At 151; emphasis added.]

[59] In fact, *Quistclose* trusts have had a broader application, at least in the U.K. In *The Quistclose Trust in a World of Secured Transactions* (1992) 12 Oxf. U. Leg. Stud. 333, Professor M. Bridge observes that they have arisen in three main situations**:**

> These cases are, for the most part, centred on three fact patterns, though the authorities relied upon in the *Quistclose* decision itself are confined to the first of these categories. First, A puts in funds B, a debtor, for the purpose of paying C, one of B's creditors. The practical issue here is whether the funds may be retained or recovered by B's trustee-in-bankruptcy. …. [At 347.]

The author also notes certain characteristics common to the decided cases:

> A characteristic of these cases is the immediacy of the debtor's need for outside sources of funding. The debtor may already be faced with a bankruptcy petition by one of his creditors, who may be a judgment creditor, or he may be poised to abscond to evade his creditors, or already by lying in a debtors' prison. In one case, the money is paid over to the debtor to obtain the release of the payer's property from a sheriff executing on behalf of a judgment creditor of the debtor. It does no harm to the payer's case if the money advanced is still capable of being returned *in specie*. This was so in one case where it was a surety who was seeking the return of the money to the payer, who unlike the surety was unaware that the money was being advanced conditionally to save a bank from bankruptcy. In all of these cases, the party paying the money does so on an emergency, rescue basis and the debtor is merely a conduit through whom money is channelled to the outside creditor. In the circumstances, the

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> debtor's possession of the money is far removed from misleading anyone entering into further dealings with him and any benefit accruing to the unsecured general creditors would be of a windfall nature. Nor is the payer, it seems, receiving anything in the nature of a premium or reward for the very high degree of risk attendant upon the transaction being a mere loan. It is therefore difficult to see that the payer receives an unfair advantage over the payee's other creditors, in the period leading up to the bankruptcy, making it unfair to allow him to retain or recover the money as the case may be. [At 348.]

….

[64] The chambers judge quoted by way of overview a passage from the reasons of Lord Millett in *Twinsectra*, part of which I will also reproduce:

> Money advanced by way of loan normally becomes the property of the borrower. He is free to apply the money as he chooses, and save to the extent to which he may have taken security for repayment the lender takes the risk of the borrower's insolvency. But it is well established that a loan to a borrower for a specific purpose where the borrower is not free to apply the money for any other purpose gives rise to fiduciary obligations on the part of the borrower which a court of equity will enforce. In the earlier cases the purpose was to enable the borrower to pay his creditors or some of them, but the principle is not limited to such cases. [At para. 68.]

At the same time, his Lordship observed:

> A *Quistclose* trust does not necessarily arise merely because money is paid for a particular purpose. A lender will often inquire into the purpose for which a loan is sought in order to decide whether he would be justified in making it. He may be said to lend the money for the purpose in question, but this is not enough to create a trust; once lent the money is at the free disposal of the borrower. Similarly payments in advance for goods or services are paid for a particular purpose, but such payments do not ordinarily create a trust. The money is intended to be at the free disposal of the supplier and may be used as part of his cashflow. Commercial life would be impossible if this were not the case.
>
> The question in every case is whether the parties intended the money to be at the free disposal of the recipient: *In re Goldcorp Exchange Ltd* [1995] 1 AC 74, 100 *per* Lord Mustill. ... [Paras. 73-4.]

[Emphasis added, save for para. 58 emphasized in original]

[84] Pacifica and the Receiver do not dispute that Create World advanced funds to the Project Manager and that the Project Manager directed those funds to be paid directly to the Debtors for the express purpose of allowing the Debtors to pay those

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funds to the District for the Deposit. However, they dispute that any *Quistclose* trust arose.

[85] In any event, Pacifica and the Receiver argue that, if any Quistclose trust arose, that *Quistclose* trust is no longer effective, since the funds were used by the Debtors for the very purpose for which they were intended.

[86] As discussed in *Cliffs* at para 57, the Project Manager advanced monies to the Debtors on the condition that they be held “on trust” by the Debtors until they were expended for the designated purpose. Pursuant to Section 2(e) of the Tripartite Agreement, that purpose was to satisfy the District’s “Municipal Requirements”.

[87] As noted, the Debtors did in fact use the funds advanced by Create World for that designated purpose, which created the Deposit.

[88] There is further authority for the conclusion that any equitable interest of a lender under a *Quistclose* trust is extinguished or discharged upon satisfaction of the express purpose for which the funds were advanced. In *Anderson v Curtis*, [2025] EWHC 3290 (Ch) at para 23, citing *Twinsectra Ltd. v Yardley* [2002] 2 AC 164, the Court stated:

> … If the power is properly exercised, in the sense that the funds are used for their specified and intended purpose, then the exercise of the power extinguishes, or discharges, the beneficial interest, previously retained by the lender, such that, thereafter, the lender retains no interest in the funds that he has advanced and is left with his normal remedies in debt. As explained by Lord Millett, in *Twinsectra*, at paragraph 72, trusts of this type are not intended to provide security for repayment of the loan. Their purpose is to prevent the lender’s monies being applied otherwise than in accordance with the lender’s wishes.

[89] Accordingly, I agree that if any *Quistclose* trust arose, it ceased to exist when the Debtors directed the funds to the District, thereby fulfilling the express purpose of the loan. *Cliffs* at para 57 confirms this result: “at that point in time, having the authority of the loan agreement, the borrower applies the moneys to the purpose and becomes a debtor *vis-à-vis* the lender” (however, the Tripartite Agreement does

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not impose any residual requirement for the Debtors to repay the funds to the Project Manager, except to the extent of any refunds subsequently received).

[90] In the face of Pacifica and the Receiver's argument, the Project Manager now argues that Section 2(e) of the Tripartite Agreement (payment of the funds to the District), was only "one branch" of the purpose of advancing the funds. The Project Manager asserts that the overall purpose of the advance was to "ensure that the Project continued and was not at a standstill" and that this purpose remained in place and was unfulfilled. The Project Manager asserts that the *Quistclose* trust remains in place to repay the amounts owing to it, including under the Tripartite Agreement.

[91] With respect, the Project Manager's argument is without merit. No such "overall purpose" can be discerned from a plain reading of the Tripartite Agreement. Even Ms. Zhang's evidence on behalf of the Project Manager refutes such a contention where she states in her Affidavit #2 that the loan was to "allow the Municipal Requirements to be paid so the Project can continue". The continuation of the Development was the *result* of paying the funds to the District; the continuation of the Development was not a *purpose* intended by the payment of the funds. As the Receiver argues, to accept the Project Manager's argument would mean that the District had no rights to use the Deposit save subject to the *Quistclose* trust, which is contrary to the Debtor's agreement under the express terms of the ESA.

[92] It is not necessary to decide whether any *Quistclose* trust arose here. Even if that was the case, I have no difficulty concluding that, upon the Debtors' transfer of the funds received from Create World to the District, the terms of any *Quistclose* trust were satisfied and extinguished or discharged any beneficial interest to which the Project Manager may have earlier had. At that point, all that remained was the Project Manager's contractual right to require the Debtors to pay any amounts refunded by the District. See also *Grosvenor* at para 90 where the suggestion of a *Quistclose* trust in similar circumstances was rejected because the funds advanced were used for their intended purpose.

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[93] The Project Manager's contractual claims are subordinate to Pacifica's perfected security interests.

H. Did the signing of the Change Form amount to an assignment or transfer of the Deposit to the Project Manager?

[94] RTR argues that, in December 2025, the Debtors "unconditionally and absolutely assigned and transferred" their rights in respect to the Deposit to the Project Manager by the change in the depositor's name noted on the Change Form.

[95] However, the Change Form contains no language that would be consistent with any "absolute assignment" of the rights to the Deposit (including ownership of the funds subject to the District's rights under the ESA). The Change Form simply states that the Debtors authorize the District to "reimburse … the Deposit … to the amended payee".

[96] No change to the underlying and central agreement between the Debtors and the District (i.e. the ESA) was made, including altering the rights of the Debtors to be repaid from any residual amounts refundable from the Deposit under Section 3.2(c).

[97] In my view, the Change Form amounts to nothing more than a direction by the Debtors to have the District pay any refunded amounts to someone else, a direction which could conceivably have been altered by the Debtors at will.

[98] The District itself confirms that the governing ESA provision is Section 3.2(c), which provides that any refund of monies from the Deposit are to be returned to the Developer.

[99] The District confirms that they simply acted on the request of the Developer to change the name on the Deposit by altering their internal records.

[100] I agree with Pacifica and the Receiver that this did not result in any assignment or transfer of the Debtors' rights to the Deposit to the Project Manager, as RTR alleges.

[101] The Debtors' rights to the Deposit remained unaffected by the Change Form.

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I. If there was a transfer or assignment of the Deposit pursuant to the Change Form, was it effective against Pacifica?

[102] Alternatively, if the change of name under the Change Form did result in a transfer of the Debtors' rights to the Deposit to the Project Manager, other issues arise.

[103] Firstly, s 33(2) of the *PPSA* provides that:

> … the rights of a debtor in collateral may be transferred consensually or by operation of law but a transfer by the debtor does not prejudice the rights of the secured party under the agreement or otherwise …

[104] Pursuant to s 28(1) of the *PPSA*, subject to certain inapplicable exceptions, if collateral is dealt with, the security interest continues in the collateral unless the secured party expressly or impliedly authorized the dealing.

[105] Pacifica's evidence clearly demonstrates that it did not consent, whether expressly or otherwise, to any such dealings. Pacifica's was unaware of any purported dealing in connection with the Deposit, either in advance of this event or in its immediate aftermath. It did not learn of the change of name under the Deposit until early August 2026, when it received Mr. Liang's Affidavit #2.

[106] Accordingly, Pacifica's first-priority perfected security interest, which arose in March 2025, continued in the Deposit notwithstanding any purported transfer, assignment or other form of dealing between the Debtors and the Project Manager in December 2025.

[107] Secondly, even if the Project Manager acquired the Debtors' rights in the Deposit through the Change Form, Pacifica argues that any purported transfer or assignment by the Debtors of their rights in respect of the Deposit was void pursuant to the *Fraudulent Conveyance Act*, RSBC 1996, c 163 [*FCA*] which provides:

> **Fraudulent conveyance to avoid debt or duty of others**
>
> 1 If made to delay, hinder or defraud creditors and others of their just and lawful remedies
>
> (a) a disposition of property, by writing or otherwise,

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> (b) a bond,
>
> (c) a proceeding, or
>
> (d) an order
>
> is void and of no effect against a person or the person's assignee or personal representative whose rights and obligations are or might be disturbed, hindered, delayed or defrauded, despite a pretence or other matter to the contrary.
>
> **Application of Act**
>
> 2 This Act does not apply to a disposition of property for good consideration and in good faith lawfully transferred to a person who, at the time of the transfer, has no notice or knowledge of collusion or fraud.

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[108] Before I begin this discussion, I would note that no person attending this application disputed the appropriateness of this Court assessing the applicability of the *FCA* based on the evidence before the Court, as opposed to another court proceeding. I agree that the necessary findings of fact and, as appropriate, reasonable inferences from those factual findings, are satisfactory to resolve this issue, including with respect to the determination of the requisite intention.

[109] The *FCA* requires only that the applicant prove that the disposition was made by the transferor with intent to delay, hinder or defraud creditors or others: *Ocean Construction Supplies Ltd. v Creative Prosperity Capital Corp.,* 1995 CanLII 740 at para 26, 34 CBR (3d) 241 (BCSC) [*Ocean Construction*].

[110] No evidence of dishonest intent is required. An honest intention is caught by the *FCA*: *Royal Bank of Canada v Clarke,* 2009 BCSC 481 at para 17, citing the trial decision *Abakhan & Associates Inc. v Braydon Investments Ltd,* 2008 BCSC 1547, aff'd 2009 BCCA 521 [*Abakhan* BCCA].

[111] The intent of the transferor is to be determined based on all of the circumstances known at the time of the transaction, together with any circumstances in the reasonable contemplation of the parties. It is rare that a defendant transferor will admit the requisite intent and the same arises here given that the Debtors, through Ms. Deng or otherwise, have not provided any evidence.

[112] Accordingly, in the usual case, intention must be inferred from the surrounding circumstances: *Abakhan* BCCA at paras 74-80.

[113] The cases have identified certain "badges of fraud", which can be considered in assessing whether the requisite fraudulent intent existed. In *Mawdsley v Meshen*, 2012 BCCA 91 at para 41 [*Mawdsley*], the Court referred to certain hallmarks that may support an inference of intent:

> (1) The state of the debtor's financial affairs at the time of the transaction, including his income, assets and debts;
>
> (2) The relationship between the parties to the transfer;
>
> (3) The effect of the disposition on the assets of the debtor, i.e. whether the transfer effectively divests the debtor of a substantial portion or all of his assets;
>
> (4) Evidence of haste in making the disposition;
>
> (5) The timing of the transfer relative to notice of the debts or claims against the debtor;
>
> (6) Whether the transferee gave valuable consideration for the transfer.
>
> There are other *indicia* or badges of fraud that include continuing to remain in possession following a conveyance and secrecy respecting the transactions.

[114] Pacifica argues that the presence of some of these "badges of fraud" is sufficiently strong to establish a *prima facie* case, requiring the defendant to adduce convincing and corroborative evidence to rebut the inference. They include:

a) where the impugned transfer took place between related parties in suspicious circumstances, a special evidentiary requirement is imposed in the form of a burden of explanation: *Canadian Imperial Bank of Commerce v Graat*, 1992 OJ No 1112, 5 BLR (2d) 271 (Ont CJ (Gen Div)) at para 46, citing *Koop v Smith*, [1915] SCJ No 34 (QL) , 51 SCR 554 at p 559 (SCC); O*cean Construction* at para 28; *Hawkeye Power Corporation v Sigma Engineering Ltd.,* 2014 BCSC 1444 at para 110 *[Hawkeye Power]*;

b) in circumstances where a disposition occurs in the face of a creditor's pending claim, an inference arises that the transfer was intended to

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defraud, delay or hinder the subject creditor's claim: *Turfquip Inc. v 033478 N.B. Ltd. et al.*, 1997 CanLII 23352, 193 NBR (2d) 165 (NBQB) at para 10; *Hawkeye Power* at para 110; and

c) a transaction done in secret and/or in circumstances where the transferor was experiencing financial difficulties will constitute a strong indication of fraudulent intent. A transfer at undervalue may give rise to an adverse inference: *Niemyt v Commertec Capital Corp.,* 1999 CanLII 6584 at paras 14-17, 11 CBR (4th) 66 (BCSC); *Hawkeye Power* at para 112*; Ocean Construction* at paras 27-28; *Krumm v McKay,* 2003 ABQB 437 at para 25.

[115] In my view, the following *Mawdsley* "badges of fraud" clearly support a finding of the requisite intent on the part of the Debtors under s 1 of the *FCA* in relation to any purported disposition of their rights with respect to the Deposit:

a) State of Finances: I agree with RTR that the state of the Debtors' finances in December 2025 is not entirely clear; however, certain facts are uncontroversial.

In March 2025, the Debtors did not have sufficient money to pay the Deposit to the District. Hence the need for the loan from Create World discussed above.

RTR's invoices were outstanding from April 2025, and its work was suspended in August 2025 for failure to be paid. It was the Project Manager who was obliged to pay that amount under the RTR Contract, although it is not clear who paid earlier amounts to RTR. Ms. Zhang has failed to provide a copy of the management services contract that she says was in place between the Project Manager and the Debtors, so it is not possible to determine the true contractual arrangements between then; however, the inference that arises is certainly that the Debtors would ultimately pay the costs incurred.

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Ms. Zhang herself states that, by summer 2025, she was told by the Debtors' representatives that the Debtors had run out of money and the Development could not proceed. This was the reason why 341 put in place a $16 million loan and mortgage, although there is no evidence that the funds were advanced.

On November 6, 2025, Pacifica issued a demand, citing default in payment of the mortgage and failure to pay $1 million in principal repayment.

On December 16, 2025, Pacifica filed its petition. The day before, Ms. Deng had signed the Change Form. It was sent to the District on December 18, 2025, and the supporting materials were sent to the District quickly on December 19, 2025, after being requested by the District. It was around this same time when RTR was pressing for payment and making arrangements with the Project Manager for the name change on the Deposit (accompanied by the Project Manager making those arrangements directly with Ms. Deng).

It is not necessary under the *FCA* that the Debtors were insolvent at the time of the disposition or that the disposition caused them to become insolvent. However, one definition of insolvency arises under s 2 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 which defines an "insolvent person" as including someone who is unable to meet its obligations as they generally become due or who has ceased paying its current obligations in the ordinary course of business as they generally become due. The Debtors default under the Pacifica loans clearly support that they met these definitions.

b) Timing of Transfer Relative to Claims: Unquestionably, any disposition of the rights in the Deposit took place in the face of these creditor claims. The circumstances here support the finding that Ms. Deng, on behalf of the Debtors, intended to effect the name change in the face of Pacifica's

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existing claims and demands, the pursuit of which would no doubt involve acting with respect to the Deposit. The inference that Ms. Deng did so to defeat Pacifica's looming action on its security is inescapable.

c) Relationship between the Parties: Ms. Deng is a director of both the Debtors (GP) and the Project Manager.

Ms. Deng personally executed the original depositor form on behalf of the Debtors in March 2025, as well as the Change Form amending the depositor's name to the Project Manager in December 2025. As a director of the GP, Ms. Deng had knowledge of Pacifica's perfected security interest in the Deposit. That knowledge is imputed to the Project Manager: *Abakhan* BCCA at para 90; *Axion Ventures Inc. v Bonner,* 2023 BCSC 313 at para 172.

Ms. Deng signed the Change Form in the face of a clear conflict between the Debtors and the Project Manager. Ms. Deng has declined to provide any evidence to explain why this name change occurred.

Under these circumstances, it is not difficult to infer that Ms. Deng, on behalf of the Project Manager, was anxious to secure the funds under the Deposit to repay RTR so as to lessen any liability to pay RTR under the RTR Contract.

d) Effect of the Disposition: At the very least, at the time Ms. Deng signed the Change Form, the Debtors' financial difficulties were dire. The only somewhat readily available asset held by the Debtors was the Deposit since the Lands could not be transferred. As such, securing this Deposit was therefore no doubt attractive to the Project Manager and RTR to extract at least some monies for their benefit in the near future.

Notwithstanding RTR's allegations, there is no evidence that, at the time the Change Form was signed, the Debtors or the Project Manager had any expectation of the Development continuing.

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e) Evidence of Haste/Secrecy: RTR clearly pressed the Project Manager to change the depositor's name. Given the circumstances, this was RTR's most viable prospect of getting paid. The haste with which RTR pursued it is apparent from the fact that, on December 17, 2025, RTR itself prepared the name change form for the Debtors' signature, apparently unaware that this effort was needless given that Ms. Deng had already signed the form two days earlier on December 15, 2025.

No evidence explaining why Ms. Deng signed the Change Form on December 15, 2025 has been provided, whether from Ms. Deng herself or anyone else on behalf of the Debtors, or from Ms. Zhang or anyone else on behalf of the Project Manager. Ms. Zhang only provides very general and vague statements that there was "correspondence" between them to "take steps to effect the terms of the Tripartite Agreement".

These arrangements were done by these parties in secret, notwithstanding Ms. Deng's knowledge of Pacifica's first-priority perfected security interest. As I noted above, both RTR and Ms. Zhang did not disclose these arrangements even while actively opposing Pacifica's efforts to appoint a receiver to take control of the Project. These overall circumstances cry out for an explanation, which was not forthcoming.

The overall circumstances can hardly be described as having taking place in good faith in the ordinary course of business and without knowledge of prior interests, so as to stand as a defence under s 2 of the *FCA*.

f) Valuable Consideration: There is no evidence of any "good consideration" being paid by the Project Manager to the Debtors in respect of the name change under the Deposit, as might also have stood as a defence under s 2 of the *FCA*. The Project Manager does not assert any consideration, let alone good consideration.

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> Despite not even being a party to the arrangements giving rise to the name change, RTR alleges its "performance of the Works" in December 2025 amounts to valid and sufficient consideration to support the name change on the Deposit. However, Mr. Liang's evidence clearly shows that all performance by RTR under the RTR Contract took place before the name change occurred. As such, this can only be described as "past" consideration, which is no consideration at all, subject to certain exceptions not applicable here: *Wilburn Properties Inc. v Silver Peak Resources Ltd.*, 2001 BCSC 1084 (In Chambers) at para 80; *Hawkeye Power* at para 88.

[116] For all of the foregoing reasons, I find that any transfer, assignment or other disposition of the Debtors' right to the Deposit to the Project Manager is void and of no effect under the *FCA*.

[117] Under either analysis, as above, the rights previously held by the Debtors remain with the Debtors notwithstanding the Change Form and the District subsequently changing the depositor's name from the Debtors to the Project Manager.

[118] I agree with Pacifica's request that it is appropriate to order that the District change the name on the Deposit back to the Nominee's name.

J. Does RTR have any trust claims to the Deposit under the *BLA*?

[119] RTR also alleges that the Project Manager holds its interest in the Deposit in trust for RTR and perhaps others under the *BLA*.

[120] As discussed above, RTR does not claim a direct interest in the Deposit. Rather, RTR's main argument is that the Debtors' interest in the Deposit was transferred to the Project Manager, who owes RTR a contractual debt for payment of services performed by RTR under the RTR Contract.

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[121] As such, RTR's claim against the Deposit is essentially derivative of the Project Manager's claim.

[122] Yet, as concluded above, the Project Manager has no claim to the Deposit, and therefore, RTR cannot indirectly claim an interest through the Project Manager's non-existent interest.

[123] In its Application Responses, RTR also relies on s 10 of the *BLA* to claim that the monies comprising the Deposit are trust funds held for RTR's benefit.

[124] Subsection 10(1) of the *BLA* provides as follows:

> **Contract money received constitutes trust fund**
>
> 10 (1) Money received by a contractor or subcontractor on account of the price of the contract or subcontract constitutes a trust fund for the benefit of persons engaged in connection with the improvement by that contractor or subcontractor and the contractor or subcontractor is the trustee of the fund.
>
> [Emphasis Added]

[125] I agree with the Receiver that s 10 of the *BLA* has no application in the circumstances. The monies from the Deposit have not been "received by" either a contractor or subcontractor, nor were they paid on account of the price under the RTR Contract. Accordingly, the s 10(1) *BLA* trust provisions do not apply: *Preferred Steel Construction Inc. v College of New Caledonia*, 2014 BCSC 1137 at paras 13-14.

[126] Rather, the Deposit remains in the hands of the District, who is not a contractor or subcontractor, to secure performance of the Debtors' obligations to the District pursuant to the ESA. It is unrelated to the Debtors' obligations to pay the Project Manager or any of its subcontractors (such as RTR) for work they might have performed.

[127] In the alternative, RTR also argues that, if the Debtors retain their interest in the Deposit, an appropriate remedy would be to direct the District to pay RTR's outstanding debt before paying any residual funds to the Receiver or any purchaser. RTR's argument in support of this remedy is somewhat convoluted, but appears to

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center on the allegation that the Project Manager's failure to pay RTR constitutes a breach of the ESA.

[128] RTR's further argument is without merit and there is no basis upon which such a direction would be made.

[129] Firstly, while the ESA requires that the Debtors pay all costs imposed or incurred *by the District*, the Debtors' contractual obligations to pay their own trades are independent of the ESA and not secured by the Deposit. RTR's rights arise under the RTR Contract and are entirely separate from the obligations of the Debtors and the District under the ESA. The right of the District to use the Deposit under Section 4.5 of the ESA relate to the failure of the Debtors to perform their obligations under the ESA, not the obligations of another party (i.e. the Project Manager) to pay its obligations under the RTR Contract.

[130] Secondly, I agree with the Receiver that, since RTR was subcontracted by the Project Manager, not the Debtors, directing the District to hold back funds from the Deposit to pay RTR would improperly allow RTR to recover from the Debtors' assets a contractual debt owing to RTR by the Project Manager, in priority to debts owing by the Debtors to their own creditors, including Pacifica who has a secured interest in the Deposit under the *PPSA*.

[131] Thirdly, the District understandably objects to any such direction in terms of potentially, if not likely, harming its rights to the Deposit under the ESA, which would include using those funds to remedy any deficiency. This no doubt will be a point of discussion between the District and Basel in the future but in any event, any refund arising will be paid to Basel under the Basel Offer.

[132] Fourthly and finally, despite RTR's argument, it is anything but clear that RTR is owed any monies under the RTR Contract and, if so, in what amount.

[133] There are differing views in the evidence as to the issue of deficiencies under the RTR Contract and the value of correcting those deficiencies, as between RTR, the Receiver and the District. Also, there are issues in the lien action concerning any

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payment owing under the RTR Contract, as between the parties to that Contract—being RTR and the Project Manager. In March 2026, the Project Manager filed a Response to Civil Claim specifically denying RTR's claim in its lien action, including that RTR is owed the amounts claimed under the RTR Contract.

[134] Certainly, this Court is not in a position to make any such determination on amounts owed to RTR under the RTR Contract given the state of the pleadings and claims in not only this proceeding, but in RTR's lien action.

K. The Sale / RVO

[135] As I alluded to above, I have concluded that the sale of the Lands and Development to Basel is appropriate. No other offer has emerged after reasonable efforts were made to arrange a sale, consistent with meeting the *Soundair* principles: *Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727, 4 OR (3d) 1 (ONCA).

[136] No party objected to the sale *per se*. The sale is supported by Pacifica despite the substantial shortfall that will arise (its debt is now in excess of $42.5 million). 341 has not appeared on this application to contest the proposed sale.

[137] I am satisfied that the RVO structure for the sale is appropriate and consistent with the *Harte Gold* factors which have been adopted in BC and applied a number of times: *Harte Gold Corp. (Re)*, 2022 ONSC 653 at para 38; *British Columbia v Peakhill Capital Inc*., 2024 BCCA 246; and as recently applied in *0989705 B.C. Ltd. (Re),* 2026 BCSC 761 at paras 269-273.

[138] I find that the RVO structure is necessary, provides an economic result as favourable as a normal asset sale structure, and that the consideration reflects the value of the intangible assets. No stakeholder is worse off under this structure.

[139] The specific circumstances supporting my conclusion that a RVO is appropriate include:

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a) Tax Savings: this sale structure will avoid triggering approximately $1.1 million in property transfer tax that would otherwise be payable if the Purchaser were to acquire the Lands through a traditional asset sale;

b) Avoids potential consent complications: if the Lands were transferred from the Nominee to a new registered owner, certain of the "Permitted Encumbrances" could only be assigned to that new owner with the District's consent to the assignment. This would result in delay and could result in the District withholding its consent;

c) Continuity of existing permits: the RVO will allow the Purchaser to continue the Pierwell Development under the existing Building Permits and DP (subject to any applicable restrictions in those document), and to retain the benefit of all monies on deposit with the District, including the Deposit; and

[140] In addition, while it is not a definitive factor, Basel is not prepared to purchase the Property and Lands pursuant to a traditional asset sale (as was also the case under the Original Bid).

L. Conclusion

[141] I grant the orders sought by the Receiver, which were contested by RTR and the Project Manager, being approval of the Basel Offer and the declarations and orders relating to the Deposit.

"Fitzpatrick J."

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