



COURT FILE NUMBER 1201-05843
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c-36, AS AMENDED AND IN THE MATTER OF UBG BUILDERS INC., ALBERTA BUILDERS CAPITAL INC., ALPINE HOMES (2006) INC., AMERICAN BUILDERS CAPITAL (US) INC., EDGEWATER AT GRIESBACH INC., ELITE HOMES (2006) LTD., EVOLUTION BY GREENBORO INC., GREENBORO COMMUNITIES (2006) INC., GREENBORO ESTATE HOMES (2006) LTD., GREENBORO HOMES (2006) LTD., GREENBORO LUXURY HOMES INC., HIGH POINTE INC., MOUNTAINEERS VILLAGE (2006) INC., MOUNTAINEERS VILLAGE II INC., ORIGINS AT CRANSTON INC., SOUTH TERWILLEGAR VILLAGE INC., THE BRIDGES MANAGEMENT INC., THE LEDGES INC., TIMBERLINE LODGES (2006) INC., TODAY'S COMMUNITIES (2006) INC., TODAY'S HOMES (2006) INC., TUSCANY DEVELOPMENTS (2006) INC., UBG ALBERTA BUILDERS (2006) INC., UBG ALPINE HOMES (2006) LTD., UBG BRIDGES INC., UBG BUILDERS (USA) INC., UBG COMMERCIAL INC., UBG LAND INC., UBG LOT DEPOSIT CORP., UBG 4500 CALGARY INC., UBG 75 CANMORE INC., UBG 808 CALGARY INC., UNITY INVESTMENTS (2012) INC., VALMONT AT ASPEN STONE INC., VALOUR PARK AT CURRIE INC., VILLAGE AT THE HAMPTONS INC., VILLAGE ON THE PARK INC., WILDERNESS HOMES BY RIVERDALE INC., WILDERNESS RIDGE AT STEWART CREEK INC. (COLLECTIVELY, THE "UBG GROUP OF COMPANIES")

DOCUMENT: APPLICATION (PREFERENCE)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: **BENNETT JONES LLP**
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NOTICE TO RESPONDENTS:

This application is made against you. You are a respondent.
You have the right to state your side of this matter before the Master/Judge.

To do so, you must be in Court when the application is heard as shown below:

Date:	Wednesday, December 16, 2015
Time:	2:00 p.m. on the Commercial List
Where:	Calgary Courts Centre, 601 – 5 th Street SW, Calgary, AB
Before Whom:	The Honourable Mr. Justice C. M. Jones, presiding Commercial Court Justice

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. A declaration that the payments made by Valmont at Aspenstone Inc. ("Valmont") to Square Foot Real Estate Corporation ("Square Foot") on March 14, 2012 and March 26, 2012, in the total amount of \$111,991.28 (collectively, the "Payments") are void as against Ernst & Young Inc., the Court-appointed Monitor of Valmont (the "Monitor").
2. An Order requiring Square Foot to pay to the Monitor, on account of Valmont, the amount of \$111,991.28.
3. Alternatively, if this Honourable Court determines that Square Foot has a valid claim as against Valmont with respect to Square Foot's "back-end commissions", an Order reducing the amount of such claim by \$111,991.28.
4. Such further and other relief as counsel may advise and this Honourable Court deems just.

Grounds for making this application:

5. In the Affidavit of Tim Taylor filed on April 8, 2015 on behalf of Square Foot (the "Taylor Affidavit") and the questioning thereon, on May 7, 2015 (the "Taylor Questioning"), Mr. Taylor admitted that:

- (a) Valmont made the Payments to Square Foot on March 14, 2012 and March 26, 2012, less than three months prior to the commencement of these CCAA proceedings on May 9, 2012; and
 - (b) Square Foot provided no consideration to Valmont for the Payments, but rather the Payments were made by Valmont in consideration for goods and/or services provided by Square Foot to The Bridges Management Inc., an affiliate of Valmont.
- 6. The Payments were made to Square Foot, a creditor of Valmont, and had the effect of giving Square Foot a preference over Valmont's other creditors.
 - 7. Pursuant to s. 95(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, the Payments are presumed to have been made with a view to giving Square Foot a preference over Valmont's other creditors.
 - 8. Such further and other grounds as counsel may advise.

Material or evidence to be relied on:

- 9. The Taylor Affidavit, filed.
- 10. The Taylor Questioning, filed.
- 11. The Third Report of the Monitor with respect to the Valmont Project, filed May 28, 2015 (the "Third Report").
- 12. Such further and other materials as counsel may advise and this Honourable Court permits.

Applicable rules:

- 13. None.

Applicable Acts and regulations:

14. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, including s. 36.1.
15. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, including s. 95.

Any irregularity complained of or objection relied on:

16. Not applicable.

How the application is proposed to be heard or considered:

17. The Applicants propose that the application be heard in Commercial Chambers by the presiding Justice.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes.

If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.