



**FORM 33  
( RULE 8-1 (10) )**

Court File No: S253365  
Court Registry: Vancouver

*In the Supreme Court of British Columbia*

**Between**

**PEOPLES TRUST COMPANY/COMPAGNIE DE FIDUCIE PEOPLES**

**Petitioner**

**and**

**PEAK DEVELOPMENTS CORP., PEAK DEVELOPMENTS  
LIMITED PARTNERSHIP. WESTCASTLE HOLDINGS LTD.,  
WESTCASTLE LAND DEVELOPMENTS CORP.,  
BOULEVARD CONSTRUCTION CORPORATION,  
RIVERVIEW CUSTOM HOMES LTD., PHIL SALGADO, also  
known as PHILIP SALGADO, CHRIS YORK, also known as  
CHRISTOPHER YORK, MACKAY CONTRACTING LTD.,  
KULKON CONSTRUCTION CORP., 1111053 B.C. LTD.  
DOING BUSINESS AS JJ MECHANICAL. GAUER POWER  
LTD., IKA BUILDERS INC., 689048 ALBERTA LIMITED,  
DOUGLAS HOWG doing business as STP PAINTING,  
JOHN DOE AND ALL TENANTS OR OCCUPIERS OF THE  
SUBJECT LANDS AND PREMISES**

**Respondents**

**APPLICATION RESPONSE**

*[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]*

**Application response of: IKA BUILDERS INC. (the "application respondent"). THIS  
IS A RESPONSE TO the notice of application of PEOPLES TRUST COMPANY,**

**Filed January 28, 2026.**

**The application respondent estimate that the application will take 10 minutes.**

**Part 1: ORDERS CONSENTED TO**

1. The Application Respondent consents to the granting of the Orders set out in the following paragraphs of Part 1 of the Notice of Application on the following terms:  
**NIL.**



## **Part 2: ORDERS OPPOSED**

2. The Application Respondent opposes the granting of the Orders set out in paragraphs 1 of Part 1 of the Notice of Application.
3. The Respondent opposes any order authorizing further advances under the Petitioner's loan, including the proposed additional \$400,000, and opposes any order granting or confirming priority for any advances over builders' lien claims, including the \$4,300,000 previously advanced.

## **Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

4. The Application Respondent takes no position on the granting of the Orders set out in paragraphs NONE of Part 1 of the Notice of Application.

## **Part 4: FACTUAL BASIS**

### **Role of the Respondent**

5. Peoples Trust Company ("PTC") is a trust company which provides services as a commercial real estate lender. Peoples loaned monies to Peak Developments Corp. and Peak Developments Limited Partnership for the purposes of a real estate construction project (the "Project").
6. The Respondent is a registered builders' lien claimant in respect of the Project and is a secured creditor by operation of the *Builders Lien Act*, S.B.C. 1997, c. 45 (the "BLA").
7. The Respondent has an economic and legal interest in the Lands and the Project and is directly affected by any order granting super-priority to further mortgage advances.

### **Change in Project Direction**

8. PTC and the Receiver previously represented, expressly or by conduct, that the Project would be built out to completion and sold as a completed development.
9. Based on that representation, lien claimants reasonably understood that further advances would: (a) be applied to complete the improvement; and (b) enhance the value of the Lands.
10. On December 5, 2025, PTC advised the Receiver that it would not extend financing to complete the Project and instead directed that the Project be marketed and sold on an "as is/where is" basis.
11. This represents a fundamental change in the purpose of the receivership financing and materially alters the risk and priority landscape for lien claimants.

### **Nature of the Proposed Advances**

12. The proposed additional \$400,000 is not directed toward completing the improvement.



13. Instead, the Receiver's materials demonstrate that the funds are intended primarily for: site preservation; winterization; demobilization; professional and receivership fees; and administrative costs.

14. While such expenditures may preserve value for the mortgagee, they do not constitute completion of the improvement within the meaning of s. 32 of the BLA.

#### **Receiver's Expenditures and Relevance to Further Advances**

15. The Respondent has serious concerns regarding the scope and level of the Receiver's expenditures to date, including professional fees and administrative costs, which appear disproportionate to the preservation value achieved. The Respondent does not seek a final determination of those issues on this application, but submits that these concerns weigh against approving further advances or granting priority, and justify enhanced scrutiny and restraint going forward.

#### **Absence of Value Enhancement**

16. Selling the Project on an "as is" basis will necessarily yield a value materially lower than a completed project.

17. The Receiver's own materials do not establish that the proposed advances will result in an increase in value of the Lands and the improvement equal to or greater than the amount of the proposed advances.

### **Part 5: LEGAL BASIS**

#### **Lien Claimants Are Secured Creditors**

18. Builders' lien claimants are secured creditors under the BLA and must be treated as stakeholders whose interests are entitled to protection in insolvency and receivership proceedings.

19. A receiver is an officer of the Court and owes fiduciary duties to all stakeholders, not solely to the appointing secured lender.

#### **Section 32 of the *Builders Lien Act* Is Not Satisfied**

20. Section 32(5) - (6) of the BLA creates a narrow and mandatory exception to lien priority scheme, permitting priority for further advances only where both statutory requirements are satisfied.

21. The requirements in s. 32(6) are conjunctive and require proof that: (a) the advances will be applied to complete the improvement; and (b) the advances will increase the value of the land and improvement at least equal to the amount advanced.



22. Neither requirement is met in this case. The Project will not be completed, and the Receiver's materials confirm that the advances are directed primarily toward preservation, winterization, demobilization, and administrative and professional costs, which do not constitute completion of an improvement nor value enhancement in the manner contemplated by the statute.
23. Further, the Respondent submits that the fundamental change in project direction, from a contemplated build-out and completed sale to an "as-is / where-is" disposition, means that s. 32(5) is no longer engaged, as the advances are no longer advances toward an improvement within the meaning of the BLA.
24. In the alternative, even if s. 32(5) remains engaged, the Respondent submits that s. 32(6) has not been satisfied in respect of the \$4.3 million previously advanced, as those advances did not result in an increase in the value of the land and improvement equal to the amounts advanced, particularly in light of the decision to abandon completion and market the Project on an "as-is" basis.
25. As confirmed by the Court of Appeal in *Bank of Montreal v. Peri Formwork Systems Inc.*, 2012 BCCA 4, where the statutory conditions in s. 32(6) are not met, the Court has no jurisdiction to grant priority to further advances over builders' lien claims.

#### **Prejudice to Lien Claimants**

26. Granting priority to advances made solely to preserve collateral for an "as is" sale would: (a) subordinate lien claimants without statutory justification; and (b) shift insolvency risk entirely onto lien claimants.
27. This would be fundamentally prejudicial and inconsistent with the lien protection scheme.

#### **Receivership Principles**

28. While receivership exists to preserve and realize assets for creditors in accordance with priority, that purpose does not permit re-ordering priorities absent statutory authority.
29. The decision in *British Columbia v. Peakhill Capital Inc.*, 2024 BCCA 246 confirms the purpose of receivership, but does not authorize priority financing where statutory preconditions are unmet or where other secured creditors are prejudiced.

#### **Part 6: MATERIAL TO BE RELIED ON**

30. Materials filed by the Petitioner and the Receiver Manager.
31. *Builders Lien Act*, SBC 1997, c 45



*[Check whichever one of the following boxes is correct and complete any required information.]*

√ The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is:

*[Set out the application respondent's address(es) for service in compliance with Rule 4-1 (1) of the Supreme Court Civil Rules and any additional address (es) under Rule 4-1 (2) that the application respondent wishes to include.]*

Date: January 28, 2025



\_\_\_\_\_  
Signature of lawyer for application  
respondent(s)

\_\_\_\_\_  
Chanchan Wang  
[type or print name]