Form 27
[Rules 6.3 and 10.52(1)]

Clerk's Stamp:
CLERK OF THE COURT
FILED
OCT 18 2013
JUDICIAL CENTRE
OF CALGARY

COURT FILE NUMBER	1201 15430
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	STANLEY EISENBERG, BRENDA EISENBERG, JACK EISENBERG, LYNN EISENBERG and EISENBERG'S PROPERTIES LTD.
DEFENDANT	910234 ALBERTA LTD., RANDY CALMUSKY, THERESA CALMUSKY, KYLE CALMUSKY, CALE HUMENIUK and JORDAN RINTOUL
DOCUMENT	**APPLICATION**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Field LLP 400 - 604 1 ST SW Calgary AB T2P 1M7 Lawyer: Douglas S. Nishimura Phone Number: (403) 260-8548 Fax Number: (403) 264-7084 Email Address: dnishimura@fieldlaw.com File No. 56679-3

NOTICE TO RESPONDENT

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	Monday, October 28, 2013
TIME	3:00 p.m. – Commercial List
WHERE	Court House, Calgary, Alberta
BEFORE WHOM	Madam Justice K. M. Horner

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. An Order abridging the time for service of this Application and the supporting materials, as necessary, and deeming service thereof to be good and sufficient.

2. An Order declaring that Randy Calmusky is liable to repay funds representing the value of cash and other assets, taken by him from the accounts and estate of 910234 Alberta Ltd. ("**910**"), as outlined in Exhibit 22 of the Sixth Report of the Receiver dated August 27, 2013 and the Supplemental Sixth Report dated September 26, 2013 and directing Randy Calmusky to make such repayment to the Receiver.

3. An Order setting the amount of costs previously granted as against Theresa Calmusky on July 11, 2013;

4. An Order awarding costs of the Application to the Receiver;

5. Such further and other relief as counsel may advise and this Honourable Court deem fit.

Grounds of the Application:

6. 910 was in the business of raising monies from investors and using those funds to lend to various borrowers in the construction industry. The relationship between 910 and the investors was governed by standard form mortgage service agreements drafted by 910 and executed by 910 and the investors (the "**Agreements**").

7. Pursuant to the Agreements, the funds raised from the investors and the proceeds from the loans into which those funds were invested were to be held as trust property by 910 as trustee for the benefit of the various investors.

8. There was no provision in the Agreements for any compensation or remuneration in favour of 910. 910 planned to derive its revenue from the differential between the interest rate payable to investors under the Agreements and the interest paid by borrowers to 910. 910 was entitled to be repaid from loan proceeds for any legal or other expenses it incurred in enforcing the specific loans in question.

9. Randy Calmusky was the sole owner, director, officer and employee of 910. At all relevant times, there was no written employment agreement between 910 and Randy Calmusky. Randy Calmusky has admitted that he simply caused 910 to pay whatever he felt was appropriate from time to time as his compensation.

10. Randy Calmusky also caused 910 to pay various "expense" items which benefited Randy Calmusky, including meals, entertainment, golf club memberships, travel and vehicle expenses.

This expenses did not relate to any particular loans. They were for personal benefits to Randy Calmusky or used in marketing 910's business generally.

11. From 2001 through 2012, Randy Calmusky caused 910 to pay him the sum of $1,410,349 as wages and expenses (not including legal expenses which may properly be attributed to the loans of 910).

12. As 910 did not enjoy a profit, due to a lack of a positive differential between the interest paid to investors and the interest paid by borrowers, 910 had no income of its own with which to pay any wages to Randy Calmusky. Accordingly, the funds paid to Randy Calmusky were taken from the investors' trust funds and/or the Toronto Dominion Bank line of credit (**"Line of Credit"**) in the name of Randy and Theresa Calmusky, which were the only sources of funds available to 910.

13. Randy Calmusky further caused 910 to transfer real property obtained by 910 (through foreclosure actions under various 910 loans) to Randy Calmusky and relatives of Randy Calmusky. Randy Calmusky subsequently obtained mortgages against those properties and sold the properties to third parties. At no time did Randy Calmusky return any excess proceeds of the mortgages or profit on the sale of the properties to 910. The Receiver has calculated the value of mortgage surplus and profits at $415,627.

14. Randy Calmusky caused the sum of $210,806, arising from the collection of a judgment obtained by 910 to be paid to himself personally. He did not remit those amounts to 910.

15. Based on the analysis of cash and other property received by Randy Calmusky, and after deducting the net amount of funds used from the Line of Credit and funds deposited personally by Randy Calmsuky to 910's account, Randy Calmusky removed a total of $966,421 from the estate of 910, which funds were the property of the investors..

16. The payments and removal of assets from 910 by Randy Calmusky was a breach of trust and conversion of trust property. It was also oppressive and therefore a breach of, *inter alia*, the *Business Corporations Act* (Alberta). The transactions are also void or voidable under, *inter alia*, the *Bankruptcy and Insolvency Act* (Canada), *Fraudulent Preferences Act* (Alberta) and *Statute of Elizabeth*.

17. Randy Calmusky breached his fiduciary duty to the investors or 910 and should account for and repay the value of the assets removed from 910.

18. The Receiver shall also rely on such further and other grounds as counsel may advise and this Honourable Court deem fit.

Material or evidence to be relied on:

19. The Receivership Order granted on December 12, 2012;

20. The Amended and Restated Receivership Order granted on January 14, 2013;

21. The Attachment Order;

22. The December 21, 2012 Order;

23. The January 14, 2013 Order;

24. The February 19, 2013 Order;

25. The April 5, 2013 Order;

26. The Affidavit of Stanley Eisenberg sworn December 4, 2012, filed;

27. The Affidavit of Jack Eisenberg sworn December 4, 2012, filed;

28. The Affidavit of Richard Cormstock sworn December 6, 2012, filed;

29. The Transcripts from the Questioning of Theresa Calmusky held April 3rd, 2013, including Exhibits and Responses to Undertakings;

30. The Transcripts from the Questioning of Randy Calmusky held on May 3rd, 2013 and May 10th, 2013, including Exhibits and Responses to Undertakings;

31. The Receiver's Second Report – January 9, 2013, the Receiver's Third Report – February 13, 2013, Receiver's Fourth Report – March 26, 2013, the Receiver's Sixth Report – August 27, 2013 and the Receiver's Supplemental Sixth Report – September 26, 2013;

32. The pleadings filed in this proceeding; and

33. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Rules:

34. Rules 1.3, 6.2, 6.3, 6.4(b), 10.55 and 13.5(2) of the *Alberta Rules of Court*; and

35. Such further and other rules as counsel may advise.

Applicable Acts and Regulations:

36. *Bankruptcy and Insolvency Act* (Canada);

37. *Statute of Elizabeth*;

38. *Fraudulent Preferences Act;*

39. *Business Corporations Act* (Alberta);

40. The inherent jurisdiction of this Honourable Court; and

41. Such further and other Acts and regulations as counsel may advise.

Any irregularity complained of or objection relied on:

42. N/A

How the Application is proposed to be heard or considered:

43. This Application is proposed to be heard in Justice Chambers.

WARNING
If you do not come to Court either in person or by your lawyer, the Court may give the Applicant 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.