

Clerk of Court
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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
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Calgary AB T2P 1M7
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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	<u>Thursday, November 21, 2013</u>
TIME	<u>11:00 a.m. – Commercial List</u>
WHERE	<u>Court House, Calgary, Alberta</u>
BEFORE WHOM	<u>Madam Justice K. M. Horner</u>

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. The Applicant, Grant Thornton Limited, Receiver of 910234 Alberta Ltd. (the "Receiver"), respectfully seeks an Order substantially in the form attached hereto as Schedule "A":
 - (a) Abridging the time for service of this Application and the supporting materials, as necessary, and deeming service thereof to be good and sufficient;

- (b) Approving the residential purchase contract dated November 8, 2013, (the "RPC") between the Receiver, as seller and 641295 Alberta Ltd. as buyer, attached as Appendix 2 to the Receiver's Seventh Report dated November 15, 2013 and approving the sale and transfer of the property (as defined in the RPC) and the vesting of title in the property into the name of the Purchaser, free and clear of all encumbrances other than the permitted encumbrances in the RPC, upon the Receiver delivering a certificate certifying the closing of the RPC, and directing and authorizing the Receiver, to execute and deliver the RPC to the Purchaser and to take such steps as the Receiver determines necessary or advisable to close the transaction for the purchase and sale of the property as contemplated in the RPC.
- (c) An Order extending the Ex-Parte Attachment Order granted by the Honourable Justice K. D. Yamauchi on December 6, 2012 (the "**Attachment Order**"), for an additional six months from the date of this Order, on the same terms and conditions set out therein, as amended by the Order granted by the Honourable Mr. Justice Stevens on December 21, 2012 (the "**December 21, 2012 Order**"), the Orders granted by the Honourable Madam Justice Horner on January 14, 2013, (the "**January 15, 2013 Order**"), February 19, 2013 (the "**February 19, 2013 Order**") and April 5, 2013 (the "**April 5, 2013 Order**"), and the Order granted by the Honourable Madam Justice B. E. C. Romaine on September 4, 2013 (the "**September 4, 2013 Order**").
- (d) Such further and other relief as counsel may advise and this Honourable Court deem fit.

Grounds of the Application:

- 2. The Receiver was appointed as receiver and manager of the assets, properties and undertakings of 910 pursuant to the Receivership Order granted on December 10, 2012, by the Honourable Mr. Justice S. J. LoVecchio, as amended and restated on January 14, 2013, by the Honourable Madam Justice K. M. Horner (collectively referred to as the "**Receivership Order**").
- 3. The Receiver is empowered and authorized to sell 910's current and future assets, undertakings and properties of every nature and kind whatsoever pursuant to the Receivership Order.
- 4. The Receiver and the Purchaser have entered into the RPC.
- 5. The property was sufficiently exposed to the relevant market in a commercially reasonable and fair marketing process. The price to be paid by the Purchaser represents the best price that can be obtained for the property. The Receiver has provided information on the sales and marketing process for the assets in the Seventh Report of the Receiver.

6. The sale of the property, as proposed, is in the best interests of the estate of the stakeholders of 910.
7. The Attachment Order expires on December 4, 2013.
8. There has been no change in circumstances or evidence justifying any alterations of the Attachment Order.
9. It is just and convenient for the Attachment Order to be extended;
10. Such further and other materials as counsel may advise and this Honourable Court deem fit.

Material or evidence to be relied on:

11. The Receivership Order;
12. The Attachment Order;
13. The December 21, 2012 Order;
14. The January 14, 2013 Order;
15. The February 19, 2013 Order;
16. The April 5, 2013 Order;
17. The September 4, 2013 Order;
18. The Affidavit of Stanley Eisenberg sworn December 4, 2012, filed;
19. The Affidavit of Jack Eisenberg sworn December 4, 2012, filed;
20. The Affidavit of Richard Cornstock sworn December 6, 2012, filed;
21. The Receiver's Second Report – January 9, 2013, the Receiver's Third Report – February 13, 2013, the Receiver's Fourth Report – March 26, 2013, the Receiver's Sixth Report – August 27, 2013 and the Receiver's Supplemental Report – September 26, 2013;
22. The Receiver's Seventh Report dated November 15, 2013, filed concurrently with this Application;
23. The pleadings filed in this proceeding; and

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

Applicable Rules:

25. Rules 1.3, 6.2, 6.3, 6.4(b), 6.9(1), 6.28, 10.55 and 13.5(2) of the *Alberta Rules of Court*; and
26. Such further and other rules as counsel may advise.

Applicable Acts and Regulations:

27. *The Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3;
28. Sections 17 and 22 of the *Civil Enforcement Act*, R.S.A. 2000, c. C-15;
29. The inherent jurisdiction of this Honourable Court; and
30. Such further and other Acts and regulations as counsel may advise.

Any irregularity complained of or objection relied on:

31. N/A

How the Application is proposed to be heard or considered:

32. 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.

SCHEDULE "A"

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DOCUMENT **ORDER**

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Phone Number: (403) 260-8548
Fax Number: (403) 264-7084
Email Address: dnishimura@fieldlaw.com
File No. 56679-3

DATE ON WHICH ORDER WAS PRONOUNCED: November 21, 2013
NAME OF JUSTICE WHO MADE THIS ORDER: Madam Justice K. M. Horner

ORDER

UPON THE APPLICATION of Grant Thornton Limited, Receiver of 910234 Alberta Ltd. (the "Receiver"); AND UPON HAVING read the Application filed by the Receiver, the Receivership Order granted by the Honourable Justice S. J. LoVecchio on December 12, 2012, as amended and restated on January 14, 2013, by the Honourable Madam Justice K. M. Horner (collectively referred to as the "Receivership Order") the Sixth Report of the Receiver dated August 27, 2013 (the "Sixth Report"), the Supplemental Sixth Report of the Receiver dated September 26, 2013 (the "Supplemental Sixth Report") and the Seventh Report of the Receiver dated November 15, 2013 (the "Seventh Report") AND UPON HEARING counsel for the Receiver and all other interested parties present;

IT IS HEREBY ORDERED THAT:

SERVICE

1. The time for service of the Application and all materials in support is hereby abridged to the date of actual service and service is hereby deemed good and sufficient on all required parties.

DEFINED TERMS

2. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to in the residential purchase contract dated November 8, 2013, (the "**RPC**") between the Receiver as seller and 641295 Alberta Ltd. as buyer, attached as Appendix 2 to the Receiver's Seventh Report dated November 15, 2013.

APPROVAL OF THE RPC AND VESTING TITLE OF PROPERTY

3. The Receiver, for and on behalf of the Vendor, is authorized and directed to execute and deliver the RPC to the Purchaser, conclude the transaction contemplated by the RPC (the "**Transaction**") and to take all such steps and execute all such deeds, documents and instruments as may reasonably be necessary to consummate the Transaction contemplated herein substantially in accordance with its terms. Following execution and delivery of the RPC, the parties may agree to any amendments to the RPC which do not materially and adversely alter the Transaction or the RPC.
4. The Transaction is hereby approved and ratified and it is hereby declared that the Transaction is reasonable.
5. Upon the Receiver filing a certificate (the "**Closing Certificate**") certifying that the Transaction has closed substantially in accordance with the terms of the RPC and the Purchase price due and owing in respect of such have been tendered to the Receiver, then:
 - (a) The Property shall be vested in the name of the Purchaser or their permitted nominee, free and clear of and from any and all estate, right, title, interest, royalty, rental and equity of redemption of 910 and all Persons who claim by, through or under 910 and subject only to the permitted encumbrances identified in the RPC (the "**Permitted Encumbrances**");
 - (b) 910 and all Persons who claim by, through or under 910 in respect of the Property, save and except the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Property and, to the extent that any such Person remains in possession or control of the Property, they shall forthwith deliver possession of same to the Purchaser or their permitted nominee; and
 - (c) The Purchaser or their nominee, shall be entitled to enter into, hold and enjoy the Property for their own use and benefit without any interference of or by 910, or any Person claiming by, through or under the Debtor.

6. Upon closing of the Transaction, subject only to the Permitted Encumbrances, all of 910's right, title and interest in the Property shall vest in the Purchaser free and clear from all security interests, claim, estate, security, right, title interest and liens, including but not limited to, claims, hypothecs, mortgages, charges, liens (whether contractual, statutory or otherwise), security interests, assignments, actions, levies, taxes, judgments, writs of execution, trusts or deemed trusts (whether contractual, statutory or otherwise), options, agreements, disputes, debts, encumbrances, or other rights, limitations or restrictions of any nature whatsoever, against 910 including, without limitation, any rights or interests of any of the stakeholders or creditors of the Debtor, whether or not they have attached or been perfected, registered or filed, whether secured or unsecured or otherwise, whether liquidated, unliquidated or contingent (all of the foregoing being collectively referred to hereinafter as the "Claims"), whether such claims against 910 came into existence prior to, subsequent to or as a result of any previous Order of this Court, by or of all Persons or entities of a kind whatsoever, including, without limitation, all individuals, firms corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities or tribunals and all other neutral persons or corporations, whether acting in their capacity as principals or agents, trustees, executives, administrators or other legal representatives (collectively, the "Claimants"), including for greater certainty and without limiting the generality of the foregoing: (i) any Claims held by or in favor of the Persons served (either directly or through their solicitors) with the Application; and (ii) the beneficiary of any Claims created or provided for pursuant to any previous Order in these proceedings including, without limitation, the Receivership Order.

7. The Receiver is authorized to deliver to the Purchaser at the closing of the Transaction contemplated by the RPC, one or more general conveyances and/or specific conveyances signed by the Receiver and, upon the filing of this Order, together with any applicable registration fees, all appropriate government authorities are hereby directed to register all transfers or conveyances, as may be required to convey clear title to the Property to the Purchaser, except for Permitted Encumbrances. In relation to the Property situated in the Province of Alberta, and for greater certainty:
 - (a) The Registrar of the North and South Alberta Land Registration District shall, notwithstanding s. 191(1) of the *Land Titles Act* of Alberta, R.S.A. 2000, c. L-4 (Alberta), as amended, cancel and discharge all Claims registered against the interests of 910 set out in Schedule "A" in respect of the Property. For further certainty, the Registrar shall not cancel and discharge the registration of any Claims registered against the estates or interest other than the estate or interest of 910.

- (b) For greater certainty, subject only to the Permitted Encumbrances, the Purchaser shall, by virtue of the completion of the Transaction, have no liability or any kind whatsoever to any Claimants.
8. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Property shall stand in the place and stead of the Property, and that from and after the delivery of the Closing Certificate, all Claims and other Encumbrances shall attach to the net process from the sale of the Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had not been sold and remained in possession or control of the person having that possession or control immediately prior to the sale.
9. The Transaction shall not be void or voidable at the instance of the Claimants and shall not constitute nor shall be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other challengeable or reviewable transaction under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended or any other applicable federal or provincial legislation, and the Transaction or any action taken therewith, shall not constitute conduct meriting an oppression remedy.

DISTRIBUTION OF FUNDS

10. The Receiver is authorized to accept the payment of the Purchase Price from the Purchasers in the amount of \$1,420,000.00, which funds shall be released to the Receiver to be held in trust in an interest bearing account pending a further Order of the Court for distribution of the funds.

EXTENSION OF ATTACHMENT ORDER

11. The Ex-Parte Attachment Order, granted by the Honourable Justice K.D. Yamauchi on December 6, 2012, as amended by the Orders granted on December 21, 2012, January 14, 2013, February 19, 2013, April 5, 2013 and September 4, 2013, is hereby extended for an additional three (3) months from the date of this Order, on the same terms and conditions set out therein.
12. All parties affected by the Ex-Parte Attachment Order, as amended and extended, are at liberty to apply for an Order varying or vacating the Ex-Parte Attachment Order, in whole or in part, at any time prior to the expiry of the three (3) months.

Justice of the Court of Queen's Bench of Alberta