



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 – 444 – 7 Avenue SW Calgary AB T2P 0X8 Lawyer: Trevor Batty / Douglas S. Nishimura Phone Number: (403) 260-8500 Fax Number: (403) 264-7084 Email Address: tbatty@fieldlaw.com / dnishimura@fieldlaw.com File No. 56679-3

NOTICE TO RESPONDENT: THERESA CALMUSKY

This Application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Judge.

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

DATE	<u>Tuesday, December 17, 2019</u>
TIME	<u>10:00 a.m. – Commercial List</u>
WHERE	<u>Court House, Calgary, Alberta</u>
BEFORE WHOM	<u>Justice Neufeld</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 as Schedule "A", for the following relief:

- (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) Directing the Respondent to pay the sum of \$150,000 to the Receiver forthwith;
- (c) Such further and other relief as this Honourable Court deems necessary; and
- (d) Costs of this application.

Grounds of the Application:

2. The Plaintiff, Grant Thornton Limited. is the Receiver/Manager of 910234 Alberta Ltd. (the "**Receiver**") pursuant to an Order of the Court of Queen's Bench of Alberta, granted December 12, 2012, as amended.
3. Pursuant to proceedings in the Court of Queen's Bench Action No. 1201 15430, the Respondent was found to have made claims against assets of the Estate of 910234 Alberta Ltd. ("**910**") which were not valid and was further found to have received funds which were properly the property of 910. The Respondent was ordered to return such funds. The Respondent appealed the Order and the Appeal was dismissed, with costs on January 13, 2014.
4. The Receiver also maintained at the time, other claims against the Respondent regarding potential transfers of 910 and its principal, Randy Calmusky, who himself owes the Receiver \$933,000 pursuant to Orders of this Honourable Court.
5. Pursuant to a settlement agreement signed by Theresa Calmusky ("**Ms. Calmusky**"), on August 17, 2015 (the "**Settlement Agreement**"), Ms. Calmusky, agreed, *inter alia*:
 - (a) To pay the sum of \$150,000 (the "**Settlement Payment**") to the Receiver in satisfaction of the Receiver's claims against the Respondent;
 - (b) To grant a second Collateral Mortgage against real property owned by Theresa Calmusky municipally described as 110 Hawks Landing, Priddis, Alberta and legally described as Plan 0410490, Block 4, Lot 133 (the "**Property**") as security for the Settlement Payment and to list the Property immediately for sale;

- (c) Upon sale of the Property, to pay the net proceeds of the sale, after payment of realtor fees, commissions and prior encumbrances, to the Receiver, up to the amount of the Settlement Payment; and
 - (d) The Respondent would be indebted to the Receiver for any deficiency following the sale of the Property.
6. As described in the Receiver's Application and the Receiver's Thirteenth Report, both filed September 25, 2018, the Respondent listed the Property for sale shortly following the Settlement Agreement, however, despite numerous requests from the Receiver, the Respondent failed to provide fulsome information regarding the listing, offers or interest received on the Property, and information regarding the first collateral mortgage with the Toronto Dominion Bank ("TD"). Furthermore, the Respondent refused to provide consent to the Receiver to obtain any of this information directly from the realtor and TD.
 7. Due to the foregoing, the Receiver obtained a Court Order dated October 3, 2018, directing the Respondent to cooperate with the Receiver, and directing TD to provide a payout statement and loan history regarding its collateral mortgage. Notwithstanding that Order, no offers have been received. Furthermore, given the current market conditions in Alberta, and the payout statement obtained from TD regarding the first collateral mortgage on the Property, it is uncertain whether a sale of the Property at this time will result in payment in full of the Settlement Payment.
 8. The Receiver requires a resolution to this matter so that it can conclude the administration of these receivership proceedings.
 9. On August 23, 2019, the Receiver demanded payment from the Respondent. Despite the demand for payment, Ms. Calmusky, has not made payment of the Settlement Payment.
 10. Such further and other grounds as counsel may advise.

Material or evidence to be relied on:

1. Receivership Order granted December 12, 2012;
2. Amended and Restated Receivership Order granted January 14, 2013;

3. The Orders of this Honourable Court granted July 11, 2013, October 3, 2013 and October 28, 2013 and October 3, 2018;
4. The Receiver's Thirteenth Report dated September 24, 2018, filed;
5. The Receiver's Fourteenth Report dated December 9, 2019, filed concurrently with this Application;
6. The pleadings filed in this proceeding; and
7. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Rules:

8. Such rules as counsel may advise.

Applicable Acts and Regulations:

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

Any irregularity complained of or objection relied on:

13. N/A

How the Application is proposed to be heard or considered:

14. 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"

Clerk's Stamp:

COURT FILE NUMBER	1201-15430
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	STANLEY EISENBERG, BRENDA EISENBERG, JACK EISENBERG, LYNN EISENBERG and EISENBERG'S PROPERTIES LTD.
DEFENDANTS	910234 ALBERTA LTD., RANDY CALMUSKY, THERESA CALMUSKY, KYLE CALMUSKY, CALE HUMENIUK and JORDAN RINTOUL
DOCUMENT	<u>ORDER</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Field LLP 400 – 444 – 7 Avenue SW Calgary AB T2P 0X8 Lawyer: Douglas S. Nishimura 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:	December 17, 2019
LOCATION WHERE ORDER WAS PRONOUNCED:	Calgary, Alberta
NAME OF JUSTICE WHO MADE THIS ORDER:	The Honourable Justice Neufeld

ORDER

UPON THE APPLICATION of the Grant Thornton Limited, Receiver of 910234 Alberta Ltd. (the "**Receiver**"); AND UPON HAVING read the Application filed by the Receiver on December 9, 2019, the Fourteenth Report of the Receiver dated December 9, 2019 (the "**Receiver's Report**"); AND UPON hearing counsel for the Receiver and all other interested parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of the Application and all materials in support is hereby deemed good and sufficient.

2. The Respondent, Theresa Calmusky, is hereby order to pay to the Receiver \$150,000 forthwith.
3. The Plaintiff shall have costs of the within Application on a solicitor and client basis.

J.C.C.Q.B.A.