



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

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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 Judge.

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

DATE	<u>Tuesday, February 19, 2013</u>
TIME	<u>3:30 p.m. – Commercial List</u>
WHERE	<u>Court House, Calgary, Alberta</u>
BEFORE WHOM	<u>Madam Justice 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. 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 permitting the Receiver to borrow funds and grant a first priority charge against the assets of 910234 Alberta Ltd. ("910324") for such borrowings.
3. An Order granting a charge against the assets of 910234 in respect of the Receiver's fees and disbursements (including the fees of counsel to the Receiver).
4. An Order directing the discharge of mortgages granted to 910234 and the release of funds in respect thereof to the Receiver.
5. An Order directing the transfer of title of property described in these proceedings as 27 Elveden Place into the name of 910234, notwithstanding the requirements of Subsection 191(1) of the *Land Titles Act*.
6. Advice and directions in respect of a mortgage to Trickle Creek Custom Homes Inc. ("Trickle Creek") and interest payments in respect thereof.
7. Such further and other relief as counsel may advise and this Honourable Court deem fit.

Grounds of the Application:

8. It is just and appropriate to permit the Receiver to borrow necessary funds and to secure the payment of the Receiver's fees and disbursements against all of 910234's assets, since the activities of the Receiver are taken for the benefit of all creditors and other stakeholders in the estate.
9. The Receiver has received funds in respect of certain mortgages and wishes to discharge those mortgages notwithstanding that it has not received complete accounting for those mortgages.
10. 27 Elveden Place appears to be property beneficially owned by 910234. The Receiver requires title to be transferred in order to take steps to possession of, preserve and sell the property.
11. Based on the Receiver's review of 910234's trust ledger, funds of 910234 appear to have been advanced to Trickle Creek, however the mortgage in respect of such advances is presently in the name of Theresa Calmusky. Counsel for Theresa Calmusky has demanded payment of interest from Trickle Creek and counsel for Trickle Creek has asked the Receiver to accept payment of the interest amounts. The Receiver requires the direction of the Court in respect of these payments.

12. Such further and other grounds as counsel may advise and this Honourable Court deem fit.

Material or evidence to be relied on:

13. The Receivership Order granted on December 12, 2012.
14. The Amended and Restated Receivership Order granted on January 14, 2013.
15. The Order granted on December 21, 2012;
16. The Order granted on January 14, 2012;
17. The Affidavit of Stanley Eisenberg sworn December 4, 2012, filed.
18. The Affidavit of Jack Eisenberg sworn December 4, 2012, filed.
19. The Affidavit of Richard Comstock sworn December 6, 2012, filed.
20. The Receiver's First Report dated December 20, 2012, filed.
21. The Receiver's Second Report dated January 9, 2013, filed.
22. The Receiver's Third Report dated February 13, 2013, filed.
23. The pleadings filed in this proceeding.
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), 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. Sections 17 and 22 of the *Civil Enforcement Act*, R.S.A. 2000, c. C-15;
28. The inherent jurisdiction of this Honourable Court; and
29. Such further and other Acts and regulations as counsel may advise.

Any irregularity complained of or objection relied on:

30. N/A

How the Application is proposed to be heard or considered:

31. 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.