



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**

Field LLP
400 – 444 – 7 Avenue SW
Calgary AB T2P 0X8
Lawyer: Trevor Batty / Douglas S. Nishimura
Phone Number: (403) 260-8500
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Email Address: tbatty@fieldlaw.com / dnishimura@fieldlaw.com
File No. 56679-3

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

NOTICE TO RESPONDENTS: [LISTED IN SERVICE LIST ATTACHED AS SCHEDULE "B"]

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>October 3, 2018</u>
TIME	<u>10:00 a.m. – Commercial List</u>
WHERE	<u>Court House, Calgary, Alberta</u>
BEFORE WHOM	<u>Justice A.D. MacLeod</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 listing of the real property legally described as:

 PLAN 0410490
 BLOCK 4
 LOT 13
 EXCEPTING THEREOUT ALL MINES AND MINERALS

 and municipally described as 110 Hawks Landing Drive, Priddis, Alberta (the "**Property**").
- (c) The Property shall be judicially listed for sale with a licensed real estate agent (the "**Realtor**") to be selected at the sole discretion of the Receiver.
- (d) The Realtor shall be entitled to post a "FOR SALE" sign of the type customarily posted by a realtor at a conspicuous location on the Property, which sign shall remain during the period of the listing and shall not be interfered with by any person;
- (e) During the period of the listing ordered herein, Theresa Calmusky and/or any person in possession of the Property shall cooperate with the Realtor, and shall allow access to the Property to the Realtor, any representative of the Realtor, any other realtor approved by the Realtor, and any prospective purchaser, upon receiving (24) hours written notice given by the Realtor for a viewing between 8:00 A.M. and 8:00 P.M. The written notice may be posted on the front door of the premises located on the Property;
- (f) Any and all other real estate listings relative to the Property shall be cancelled during the period of the listing ordered herein;
- (g) If the Property becomes vacant or abandoned during the course of this action then the Receiver or his agent may enter the Property for the purpose of doing any and all things necessary to preserve them, and the Receiver shall not be considered a trespasser;
- (h) In the alternative, setting a date by which the Property must be sold, failing which the Receiver may re-apply for the relief set forth above;
- (i) Directing the Toronto Dominion Bank ("**TD**") provide the Receiver with a payout statement and per diem amounts for the mortgage that TD has registered against title to the Property as registration number 091 143 909 (the "**TD Mortgage**");

- (j) Such further and other relief as this Honourable Court deems necessary; and
- (k) Costs of this application.

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 12, 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. It is further authorized to settle debts owed to 910.
4. The Receiver entered into a settlement agreement with Theresa Calmusky ("**Ms. Calmusky**") and others on August 17, 2015 (the "**Settlement Agreement**"). Pursuant to the Settlement Agreement, Ms. Calmusky was to list the Property for sale. While the Property is currently listed for sale, it has not yet been sold almost three years after the execution of the Settlement Agreement. Additionally, despite the terms of the Settlement Agreement, and despite numerous requests from the Receiver, Ms. Calmusky has failed to provide fulsome information regarding the listing and attempted sale of the Property.
5. The Receiver requires a resolution to this matter so that it can conclude its administration of these receivership proceedings.
6. The Receiver has requested a payout statement from TD with respect to the TD Mortgage but TD has been unwilling to provide such information absent the consent of Ms. Calmusky. Ms. Calmusky has not provided her consent.
7. Such further and other materials as counsel may advise and this Honourable Court deem fit.

Material or evidence to be relied on:

1. The Receivership Order;
2. Receiver's Thirteenth Report dated September 25, 2018, filed concurrently with this Application;
3. Affidavit of Value, sworn on August 24, 2018, filed concurrently with this Application;

4. The pleadings filed in this proceeding; and
5. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Rules:

6. 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
7. Such further and other rules as counsel may advise.

Applicable Acts and Regulations:

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

Any irregularity complained of or objection relied on:

12. N/A

How the Application is proposed to be heard or considered:

13. 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 re JUDICIAL LISTING</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:	October 3, 2018
LOCATION WHERE ORDER WAS PRONOUNCED:	Calgary, Alberta
NAME OF JUSTICE WHO MADE THIS ORDER:	The Honourable Justice Macleod

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 September 25, 2018; AND UPON having reviewed the Order granted by The Honourable Justice G.C. Hawco on November 26, 2015; AND UPON being referred to the documents outlined in the said Application filed by the Receiver, including the Thirteenth Receiver's Report, dated September 25, 2018 (the **"Receiver's Report"**); AND UPON hearing counsel for the Receiver and all other interested parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. In this Order, the mortgaged lands to be offered for sale are the following:

PLAN 0410490
BLOCK 4
LOT 13
EXCEPTING THEREOUT ALL MINES AND MINERALS

and municipally described as 110 Hawks Landing Drive, Priddis, Alberta (the "**Property**").

2. There is outstanding, due and owing to the Receiver under the mortgage granted by the Defendant, Theresa Calmusky ("**Calmusky**"), to the Receiver appended to the Receiver's Report (the "**Mortgage**") the sum of \$150,000.00 as at the 24th day of September, 2018, plus costs on a solicitor and client basis, as worded in the Mortgage, plus other amounts chargeable under the Mortgage (the "**Indebtedness**").
3. If Calmusky repays the Indebtedness in full prior to the Property being sold then the Receiver shall provide Calmusky with a registrable discharge of the Mortgage.
4. The Property shall be judicially listed for sale with a licensed real estate agent (the "**Realtor**") to be selected at the sole discretion of the Receiver, upon the terms and conditions mentioned in the directions to the realtor attached to this Order.
5. The Realtor shall be entitled to post a "FOR SALE" sign of the type customarily posted by a realtor at a conspicuous location on the Property, which sign shall remain during the period of the judicial listing and shall not be interfered with by any person.
6. During the period of the judicial listing, the Defendant, Theresa Calmusky ("**Calmusky**") and/or any person in possession of the Property shall cooperate with the Realtor, and shall allow access to the Property to the Realtor, any representative of the Realtor, any other realtor approved by the Realtor, and any prospective purchaser, upon receiving (24) hours written notice given by the Realtor for a viewing between 8:00 A.M. and 8:00 P.M. The written notice may be posted on the front door of the premises located on the Property.
7. Any and all other real estate listings relative to the Property shall be cancelled during the period of the judicial listing ordered herein.
8. If the Property becomes vacant or abandoned during the course of this action then the Receiver or his agent may enter the Property for the purpose of doing any and all things necessary to preserve them, and the Receiver shall not be considered a trespasser.

9. The Toronto Dominion Bank ("**TD**") is hereby authorized and directed to provide the Receiver with a payout statement and per diem amounts in relation to TD's mortgage registered against the Property as Instrument No. 091 143 909 (the "**TD Mortgage**").
10. Service of this order and all subsequent documents in this action may be effected upon Calmusky by email at the address tcalmusky@hotmail.com and by delivering a copy by courier to the Property.

J.C.Q.B.A.

JUDICIAL LISTING AGREEMENT

TO: The Realtor

1. You are hereby given authority as an officer of the Court to list for sale the Property with the Multiple Listing Service, if any, in effect in the area in which the property is located.
2. The Property shall be offered for sale subject to registered encumbrances, liens and interests prior to the TD Mortgage but free and clear of the TD Mortgage and all registered encumbrances, liens and interests subsequent to the TD Mortgage.
3. The listing price shall be \$1,099,000.00 or such higher price as you may recommend after a comparative market analysis is conducted by you prior to the commencement of this judicial listing.
4. The listing shall take effect immediately or on the date the listing is accepted in writing by the realtor, and shall continue for a period of ninety (90) days thereafter.
5. Within a reasonable time of receiving any offer, you shall forward a true copy of the said offer to counsel for the Receiver. If the offer is insufficient to allow the Receiver to satisfy the Indebtedness, it may be rejected by the Receiver at the Receiver's sole discretion. Otherwise counsel for the Receiver shall either apply without notice to reject an offer or apply on notice for the court to consider that offer. Where the Receiver rejects an offer, or obtains an order without notice rejecting an offer, it shall forthwith serve the defendants, TD and subsequent encumbrancers with a copy of such offer.
6. If no offers are received during the listing period, you shall so advise counsel for the Receiver in writing, immediately following the expiry of the judicial listing.
7. In the event that, as a result of the listing, a purchaser is introduced whose offer is accepted by the Court, and the transaction is completed by the purchaser paying the full purchase price and title is registered in the name of the purchaser or its nominee, then, in such event, you will receive a commission as follows:

7% of the first \$100,000 – 3% of the balance – or such lesser amount as may agreed by you – plus applicable taxes thereon
8. You shall have a first charge against the sale proceeds in the amount of any commission payable hereunder. If the Court accepts an offer to purchase and the purchaser fails to complete the purchase, and the Court does not order relief from forfeiture of the deposit, you will retain, as compensation for services rendered, fifty per cent (50%) of the said deposit (provided such amount does not exceed the commission payable had

the sale been fully completed) and you will pay the balance of the deposit to counsel for the Receiver to be applied against Calmusky's indebtedness to the Receiver.

9. All offers submitted pursuant to the judicial listing shall, subject to further order of the Court:
 - (a) be in writing and shall be signed by the offeror; and
 - (b) be subject to the approval and acceptance by the Court on such terms as the Court considers appropriate; and
 - (c) provide for a possession date to be determined by the Court; and
 - (d) contain and be subject to the terms and conditions as are contained in Schedule "A" which is attached to this Judicial Listing Agreement; and
 - (e) be accompanied by a certified cheque or money order payable to your real estate company for the deposit amount referred to in the offer.
10. Nothing in the listing shall:
 - (a) affect the right of Calmusky to pay all amounts owing to the Receiver under the Receiver's mortgage and thereby terminate this listing; or
 - (b) create or impose any liability on the Receiver or the Court for the payment of any real estate commission or other compensation arising out of this listing.
11. The terms of the listing may be modified by the Court on application of any interested party on five days' notice.

ACCEPTED THIS _____ DAY OF
_____, 2018.

By: _____
An Agent licensed pursuant to the
Real Estate Act, R.S.A. 2000, c. R-5

APPROVED this 3rd day of October, 2018.

J.C.Q.B.A.

SCHEDULE "A" TO THE REAL ESTATE PURCHASE CONTRACT entered into between

THE COURT OF QUEEN'S BENCH OF ALBERTA
(the "Seller")

and

(the "Buyer")

The terms of this schedule replace, modify or add to the terms of the agreement of purchase and sale (the "Real Estate Purchase Contract") to which this schedule is attached. Where there is any inconsistency between the terms of this Schedule and the Real Estate Purchase Contract, the provisions of this Schedule shall prevail.

AS IS - WHERE IS

1. The Buyer acknowledges and agrees to purchase the Property , all buildings and improvements located on the Property (the "Property"), and any and all fixtures ("Attached Goods") and chattels ("Unattached Goods") included in the Real Estate Purchase Contract or included in the sale of the property, "as is" and agrees with the Seller that neither the Seller, nor its agents or representatives have made any representations or warranties with respect to the Property or any Attached Goods or Unattached Goods included in the sale of the Property. Without limiting the generality of the foregoing, the Buyer agrees that neither the Seller nor its agents have made any representations or warranties with respect to:
 - (a) the condition of any buildings or improvements located on the Property;
 - (b) the condition of any Attached Goods or Unattached Goods included in the Real Estate Purchase Contract or otherwise sold with the Property;
 - (c) whether the Property complies with any existing land use or zoning bylaws or regulations, or municipal development agreements or plans;
 - (d) the location of any buildings and other improvements on the Property and whether such location complies with any applicable municipal bylaws or regulations;
 - (e) whether or not any buildings or improvements located on the Property encroach onto any neighbouring lands or any easements or rights of way;
 - (f) whether or not any buildings or improvements located on any neighbouring lands encroach onto the Property;

- (g) the size and dimensions of the Property or any building or improvements located thereon;
- (h) whether or not the Property is contaminated with any hazardous substance; and
- (i) whether or not any of the buildings or other improvements located on the Property have been insulated with urea formaldehyde insulation.

OWNERSHIP OF UNATTACHED GOODS

2. The Buyer agrees that the Seller is selling only such interest as it may have in any Attached goods or Unattached Goods referred to in the Real Estate Purchase Contract, or which may be located on the Property, and the Seller does not warrant that it has title to such Attached Goods or Unattached Goods. Further, the Buyer agrees that the Seller will not be liable for the removal of any chattels found on the Property prior to or on the date of closing. On closing, the Buyer may have possession of the Attached Goods and Unattached Goods which are then on or about the Property on an "as is" basis, and the Seller will not provide a Bill of Sale, Warranty, or other title document to the Buyer. Further, there will be no adjustment or abatement of any kind to the Purchase Price with respect to any Attached Goods or Unattached Goods.

REAL PROPERTY REPORT & COMPLIANCE

3. The Seller is not required to provide the Buyer with a real property report or compliance certificate. Should the Seller provide the Buyer with a copy of a survey or real property report, the Buyer agrees that any use of or reliance upon such document shall be at the Buyer's own risk. The Buyer must satisfy itself that the survey or real property report which the Seller might provide accurately reflects the Property and the buildings and improvements located thereon as they currently exist and the Seller shall not be responsible for any errors or omissions which might exist on such document. The Seller does not represent or warrant the accuracy or validity of the said survey or real property report or compliance certificate.

CONDOMINIUM

4. If the Property is a condominium:
 - (a) the Seller is not required to provide any condominium documentation to the Buyer and the Buyer shall be solely responsible to obtain any condominium documentation he may require. Without limiting the generality of the foregoing, the Buyer may obtain on his own and at his sole costs and expenses any estoppel certificate, copy of the condominium bylaws and financial statement for the Condominium Corporation that he may require;
 - (b) the Buyer must satisfy himself with the condition of the condominium unit, the common property, and the financial condition of the condominium corporation

and agrees that neither the Seller nor its agents, have made any representations or warranties pertaining to same including, without limiting the generality of the foregoing, the adequacy of any reserve fund the condominium corporation might have, any potential special assessments which might be levied by the condominium corporation or the existence of any legal actions pending against the condominium corporation;

- (c) the Seller shall be responsible for amounts payable up to the closing date on account of any condominium fees and special assessments levied by the condominium corporation.

GOODS AND SERVICES TAX (G.S.T.)

- 5. In addition to the purchase price payable thereunder, the Buyer shall pay to the Seller and indemnify the Seller against all Goods and Services Tax ("G.S.T.") payable on the purchase price as required by the Excise Tax Act. The Seller will not provide to the Buyer a Certificate of Exempt Supply, or any other certificate certifying that this purchase and sale transaction is not subject to the Goods and Services Tax. Should the Seller fail to collect G.S.T. from the Buyer, it shall not be construed by the Buyer as a certification by the Seller that no G.S.T. is payable by the Buyer hereunder, and the Buyer shall remain liable for any G.S.T. which might be payable with respect to this transaction.

ACCEPTANCE BY FACSIMILE

- 6. The Seller and Buyer agree that this contract may be signed in counterpart, and the acceptance of this offer communicated or confirmed by facsimile transmission shall be binding upon the parties. The Buyer agrees to promptly deliver an executed original Real Estate Purchase Contract to the Seller.

RECEIVERSHIP PROCEEDING

- 7. This offer is being made pursuant to or in a Court of Queen's Bench receivership proceeding and, as such, the Offer may be accepted only by Order of said Court and is subject to the terms of that Order. Any agreement arising out of the Seller's acceptance of this Offer is conditional upon the approval thereof by the said Court.

Buyer's Initial

Date

SCHEDULE "B"

Stanley Eisenberg et al v. 910234 Alberta Ltd. et al
Action No. 1201 15430

SERVICE LIST

PARTIES	TELEPHONE AND FAX	PARTY/COUNSEL FOR
Field LLP 400, 444 – 7 th Avenue S.W. Calgary, AB T2P 0X8 Attention: Doug Nishimura/Trevor Batty Email: dnishimura@fieldlaw.com tbatty@fieldlaw.com	Phone: 403-260-8500 Fax: 403-264-7084	Receiver
Grant Thornton LLP 900, 833 - 4th Ave SW Calgary, AB T2P 3T5 Attention: Andrew Basi Email: Andrew.Basi@ca.gt.com		The Receiver
Office of the Superintendent of Bankruptcy 400, 639 - 5 Avenue S.W. Calgary, AB T2P 0M9	Fax: 403-292-5188	
Cassels Brock & Blackwell LLP 1250, 440 – 2nd Avenue SW Calgary, AB, T2P 5E9 Attention: Jeffrey Oliver Email: joliver@casselsbrock.com		Plaintiffs

PARTIES	TELEPHONE AND FAX	PARTY/COUNSEL FOR
Michael A. Loberg Professional Corp. 1000, 888 - 3rd Street SW Calgary, AB T2P 5C5 Attention: Michael A. Loberg Email: mloberg@loberg-law.com	Phone: 403 668-6561 Fax : 403-668-6505	910234 Alberta Ltd. and Randy Calmusky
Theresa Calmusky 110 Hawk's Landing Drive Priddis, AB T0L 1W0 Email: tcalmusky@hotmail.com		
MacDonald Hanley 2050, 736 - 6 Avenue SW Calgary, AB, T2P 3T7 Attention: James G. Hanley Email: jhanley@macdonaldhanley.com	Phone: 403- 668-5432 Fax: 403- 233-2033	Harry Chupik and Sarah Lindquist
Masuch Albert LLP #209, 10836 - 24th Street S.E. Calgary, Alberta, T2Z 4C9 Attention: Gerald Masuch Email: Gerald.masuch@manlaw.com		
Canadian Western Trust 600 - 750 Cambie Street Vancouver, BC, V6B 0A2 Attention: Jessi Takhar Email: jaspreet.takhar@cwt.ca		

PARTIES	TELEPHONE AND FAX	PARTY/COUNSEL FOR
International Energy Counsel 2709 Centerville Drive S.W. Calgary, AB T2W 3X9 Attention: Howard R. Ward Email: hrward@shaw.ca		Len Kwasnicki, Bev Kwasnicki and Ok Tire Store
Toronto Dominion Bank 500 Edmonton City Centre East Edmonton, AB T5J 5E8		Mortgagee
Alberta Securities Commission Suite 600, 250–5th St. SW Calgary, Alberta, T2P 0R4		Encumbrancer