

Order
Rule 9.1

COURT FILE NO.: 1201-15430

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE Calgary

PLAINTIFFS STANLEY EISENBERG, LYNN EISENBERG, JACK
EISENBERG, BRENDA EISENBERG and EISENBERG'S
PROPERTIES LTD.

DEFENDANTS 910234 ALBERTA LTD., RANDY CALMUSKY, THERESA
CALMUSKY, KYLE CALMUSKY, CALE HUMENIUK and
JORDAN RINTOUL

DOCUMENT RECEIVERSHIP ORDER

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION
OF PARTY
FILING THIS
DOCUMENT

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File No. A129590

Attention: Jeffrey Oliver

I hereby certify this to be a true copy of
the original Order

Dated this 12 day of Dec 2012

[Signature]
for Clerk of the Court

DATE ON WHICH ORDER WAS
PRONOUNCED: December 12, 2012

NAME OF JUDGE WHO MADE
THIS ORDER: The Honourable Mr. Justice LoVecchio

UPON the application of the Plaintiffs in respect of the Defendant 910234 Alberta Ltd.
(the "Debtor"); AND UPON having read the Application, the Affidavits of Stanley Eisenberg,
sworn December 4, 2012 and the Affidavit of Jack Eisenberg, sworn December 4, 2012, the

Affidavit of Richard Comstock sworn December 6, 2012, and the Affidavit of Service of Richard Comstock, sworn December 10, 2012, filed; AND UPON reading the consent of Grant Thornton Limited to act as receiver and manager ("Receiver") of the Debtor, filed; AND UPON hearing counsel for the Plaintiffs; IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order is hereby abridged and service thereof is deemed good and sufficient on all parties except the Defendant Cale Humeniuk.

APPOINTMENT

2. Pursuant to section 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2, and subject to the terms and conditions of this Order, Grant Thornton Limited is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to investigate the business affairs of the Debtor and any and all transactions between the Debtor and the Defendants or any other person, including but not limited to the acquisition by one or more of the Defendants of any interest in the following real properties:
 - (i) Plan 0715416
Block 1
Lot 20
Excepting thereout all mines and minerals
and municipally described as 27 Elveden Place SW, Calgary, Alberta;
 - (ii) Plan 0613282
Block 26
Lot 10
Excepting thereout all mines and minerals
and municipally described as 41 Everglen Crescent SW, Calgary, Alberta;
 - (iii) Plan 0613282
Block 26
Lot 6
Excepting thereout all mines and minerals
and municipally described as 57 Everglen Crescent SW, Calgary, Alberta;

- (b) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order, provided that the costs of which shall be paid in accordance with paragraphs 12 and 13 below;
- (c) to receive and collect any monies payable to the Debtor, including but not limited to payments payable under the terms of any mortgages under which the Debtor is a mortgagee and any monies arising out of any sale of the properties with the legal description of Plan 1014173, Block 10, Lot 51, excepting thereout all mines and minerals, municipally described as 28 Rockcliffe Grove NW, Calgary, Alberta and Plan 1210765, Block 2, Lot 23, excepting thereout all mines and minerals, municipally described as 300 Spyglass Way, Rocky View County, Alberta (collectively, the "Proceeds");
- (d) to execute, assign, issue and endorse documents of whatever nature, whether in the Receiver's name or in the name and on behalf of the Debtor, for the purpose of being able to collect the Proceeds and discharge any security or related matters of the Debtor;
- (e) to apply to extend, amend, or vacate the December 6, 2012 attachment order granted in favour of the Plaintiffs (the "Attachment Order") in this proceeding;
- (f) to undertake any actions the Receiver is required or permitted to undertake pursuant to the terms of the Attachment Order;
- (g) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (h) to serve a copy of this Order on any person whom the Receiver determines may have invested or advanced monies to the Debtor;
- (i) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property; and
- (j) to take any steps reasonably incidental to the exercise of these powers;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

- 4. (i) The Debtor, (ii) all of its current and former directors (including but not limited to Randy Calmusky), officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other

individuals (including but not limited to Theresa Calmusky, Kyle Calmusky, Cale Humeniuk and Jordan Rintoul), firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver.

5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure. No paper or electronic records of the Debtor shall be destroyed or altered by any Person.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage (excluding any records stored on a computer or other electronic system of counsel to the Debtor, which are not subject to this paragraph), whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver (notwithstanding whether records of other parties may be stored on the same computer or electronic system) for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

RECEIVER TO HOLD FUNDS

8. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, shall be held by the Receiver in trust, and shall not be used to pay any expenses of the Debtor or costs or disbursements of any kind, including but not limited to the fees and disbursements of the Receiver and its counsel, pending further Order of this Court.

EMPLOYEES

9. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, or any successor, employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction in respect of its obligations under section 81.4(5) or 81.6(3) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3 ("BIA") under the *Wage Earner Protection Program Act*, S.C. 2005, c.47 ("WEPPA").

LIMITATION ON ENVIRONMENTAL LIABILITIES

10. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - (i) before the Receiver's appointment; or
 - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
 - (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the

appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:

- A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
- (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
- A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

Nothing in this Order shall derogate from the protection afforded to the Receiver by Section 14.06 of the BIA or any other applicable legislation.

LIMITATION ON RECEIVER'S LIABILITY

11. The Receiver shall incur no liability or obligation as a result of its appointment or carrying out the provision of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under section 81.41(5) or 81.6(3) of the BIA or under the WEPPA.

RECEIVER'S ACCOUNTS

12. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges, which fees and disbursements shall, subject to paragraph 13, be paid by the Plaintiffs.
13. The Plaintiffs are entitled to apply, at any time and on notice to all interested parties, for an Order that the following sums be paid by the Receiver from the Post Receivership Accounts or other monies, properties or other assets in the possession or control of the Receiver, and that the sums be allocated as amongst those assets in any fashion that the Court deems appropriate:

- (a) any fees and disbursements paid or incurred by the Plaintiffs pursuant to paragraph 12 of this Order; and
 - (b) the costs of this motion and the costs in relation to the Plaintiffs' motion to obtain the Attachment Order, at a scale to be determined, up to and including entry and service of this Order, with such priority and payable at such time as this Court may determine.
14. The Receiver and its legal counsel shall pass their accounts from time to time.
15. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of monies advanced by the Plaintiffs as a retainer and not from any Post Receivership Accounts, against the Receiver's fees and disbursements, including its legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

GENERAL

16. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
17. The Registrar of Land Titles for the Province of Alberta is hereby directed to provide a list of documents currently registered in the name of the Defendants.
18. The Debtor is hereby relieved of the obligation to file a Statement of Defence in the within proceeding, without further Order of the Court.
19. The Receiver shall report to the Court with respect to its initial findings of its investigation pursuant to the terms of this Order through a written report, which report shall be considered at a hearing to occur by no later than December 21, 2012.
20. The costs and expenses of the Debtor incurred in the usual and ordinary course of business shall remain the sole responsibility of the Debtor, and shall be paid by the Debtor to the extent that it has the funds on hand to do so. If the Debtor refuses or is unable to continue to pay its costs and expenses pursuant to this paragraph, the Receiver may, but is not obliged, pay any cost or expense of the Debtor on the Debtor's behalf provided that the Receiver has determined, in its sole discretion, that the payment of that sum is required in order to preserve or protect the Property.
21. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
22. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an

officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

23. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
24. Any interested party may apply to this Court to vary or amend this Order, including but not limited to expanding the powers of the Receiver granted hereunder, on not less than 5 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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