



Form 27

[Rules 6.3 and 10.52(1)]

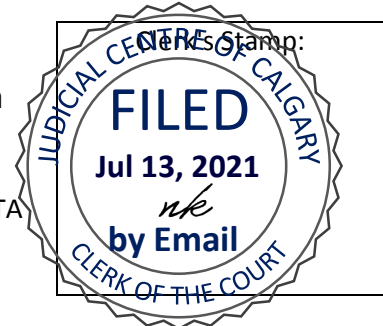
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\$50.00

Justice D.B. Nixon

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July 19, 2021



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: Douglas S. Nishimura
Phone Number: (403) 260-8500
Fax Number: (403) 264-7084
Email Address: dnishimura@fieldlaw.com
File No. 56679-3

NOTICE TO RESPONDENT(S): [Listed in the Service List attached as Schedule "A"]

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

You have the right to state your side of the matter before a master/judge.

The application will be heard as shown below:

DATE	Monday, July 19, 2021
TIME	4:00 p.m. – Commercial List
WHERE	Calgary Courts Centre – Via WebEx, Virtual Courtroom 60
BEFORE WHOM	The Honourable Justice D. B. Nixon

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. Grant Thornton Limited, in its capacity as the Court-appointed Receiver and Manager (the "**Receiver**") of the current and future assets and undertakings (the "**Property**") of **910234 Alberta Ltd. ("910")**, seeks an Order, substantially in the form attached hereto as **Schedule "B"**:
 - (a) abridging the time for, and validating service of, this Application on the parties set out in the Service List and the materials filed in support of this Application, if necessary, and dispensing with service on any party not served;
 - (b) approving the actions, conduct and activities of the Receiver as outlined in the Receiver's Eighteenth Report, dated July 12, 2021, (the "**Receiver's Eighteenth Report**") and all of its other reports filed herein;
 - (c) approving the assignment of a judgment in favour of the Receiver as against Randy Calmusky to the Trustee in Bankruptcy of 910;
 - (d) approving the distribution of the funds in the Receiver's possession in accordance with the recommendation of the Receiver in the Receiver's Eighteenth Report, free and clear of all claims, liens and encumbrances;
 - (e) approving the Receiver's Statement of Receipts and Disbursements as set out in the Receiver's Eighteenth Report;
 - (f) approving the Receiver's accounts and the accounts of its independent legal counsel, inclusive of all accruals for the fees and disbursements of the Receiver and those of its legal counsel in connection with the completion of these proceedings, including costs of this Application, without the need for a formal assessment of its accounts;
 - (g) declaring that the Receiver has duly properly discharged its duties, responsibilities and obligations as Receiver;
 - (h) discharging and releasing the Receiver from any and all further obligations as Receiver and any and all liability in respect of any act done by the Receiver in these receivership

proceedings, and its conduct as Receiver pursuant to its appointment in accordance with the Receivership Order (as defined below), or otherwise; and

- (i) such further and other relief and directions as counsel may request and this Honourable Court may deem appropriate;

Grounds for making this 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. Grant Thornton Limited has performed its mandate as Receiver under the Receivership Order and it is now appropriate that Grant Thornton Limited be discharged as Receiver of 910;
- 4. The reasons described in the Receiver's Eighteenth Report; and
- 5. Such further and other grounds as counsel may advise and this Honourable Court may deem just.

Material or evidence to be relied on:

- 6. Receivership Order granted by the Honourable Justice S. J. LoVecchio on December 12, 2012;
- 7. Amended and Restated Receivership Order granted the Honourable Justice K. M. Horner on January 14, 2013;
- 8. The Eighteenth Report of the Receiver dated July 12, 2021;
- 9. The pleadings filed in this Action; and
- 10. Such further and other materials as this Honourable Court may permit.

Applicable Rules:

- 11. *Alberta Rules of Court.*

Applicable Acts and Regulations:

12. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (as amended).

How the application is proposed to be heard or considered:

13. This application is proposed to be heard via Web-Ex in Commercial Chambers Virtual Courtroom
60. The Webex Information/Instructions are attached hereto as **Schedule "C"**.

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"
Service List
See attached.

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 Email: dnishimura@fieldlaw.com	Phone: 403-260-8500 Fax: 403-264-7084	Receiver
Grant Thornton Limited 1100, 332 – 6 Avenue SW Calgary, AB T2P 0B2 Attention: Andrew Basi Email: Andrew.Basi@ca.gt.com / Breanne.Barker@ca.gt.com		The Receiver
Office of the Superintendent of Bankruptcy 400, 220 – 4th Avenue S.E. Calgary, AB Attention: Murray Schmidt	Fax: 403-292-5188	
Stanley Eisenberg et al 77 Edmonton Trail N.E. Calgary, AB T2E 8M8 Email: s2814222704@shaw.ca		Plaintiffs
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

PARTIES	TELEPHONE AND FAX	PARTY/COUNSEL FOR
Bishop & McKenzie LLP 2200, 555 – 4 Avenue S.W. Calgary, AB T2P 3E7 Attention: Anthony Dekens Email: adekens@bmllp.ca		Theresa Calmusky
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		
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
HMC Lawyers LLP 320, 903 – 8 Avenue S.W. Calgary, Alberta, T2P 0P7 Attention: Erin A. Viala eviala@hmclawyers.com		Alberta Securities Commission

Schedule "B"
Form of Discharge Order

See attached.

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	ORDER FOR FINAL DISTRIBUTION, APPROVAL OF RECEIVER'S FEES AND DISBURSEMENTS, APPROVAL OF RECEIVER'S ACTIVITIES AND DISCHARGE OF RECEIVER
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:	<u>Monday, July 19, 2021</u>
LOCATION WHERE ORDER WAS PRONOUNCED:	<u>Calgary, Alberta</u>
NAME OF JUSTICE WHO MADE THIS ORDER:	<u>Justice D. B. Nixon</u>

ORDER

UPON THE APPLICATION of GRANT THORNTON LIMITED in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of 910234 Alberta Ltd. ("**910**" or the "**Debtor**") for an Order for the approval of the Receiver's fees and disbursements, approval of the Receiver's activities and discharge of the Receiver; AND UPON hearing read the Receiver's Eighteenth Report dated

July 12, 2021 (the "**Receiver's Final Report**"); AND UPON hearing counsel for the Receiver and counsel for other interested parties; AND UPON being satisfied that it is appropriate to do so, IT IS ORDERED THAT:

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given;
2. The Receiver's accounts for fees and disbursements, as set out in the Receiver's Final Report are hereby approved without the necessity of a formal passing of its accounts.
3. The accounts of the Receiver's legal counsel, Field LLP, for their fees and disbursements, as set out in the Receiver's Final Report are hereby approved without the necessity of a formal assessment of its accounts.
4. The Receiver's activities as set out in the Receiver's Final Report and in all of its other reports filed herein, and the Statement of Receipts and Disbursements as attached to the Receiver's Final Report, are hereby ratified and approved.
5. The Receiver is authorized to assign the Judgment in favour of the Receiver against Randy Calmusky in the amount of \$966,319 to the Trustee in Bankruptcy of 910.
6. The Receiver is authorized and directed to make the distributions set out in the Receiver's Eighteenth Report. Should any of the Final Distribution funds (as defined in the Receiver's Eighteenth Report) remain uncollected by creditors 60 days after the Final Distribution is issued (the "**Uncollected Distributions**"), the Receiver will transfer the Uncollected Distributions to the Trustee for the benefit of the specific creditors to whom the Uncollected Distributions were issued. If the Uncollected Distributions remain uncollected at the conclusion of the bankruptcy proceedings, the Trustee will deal with them in accordance with Directive No. 18 of the Office of the Superintendent of Bankruptcy.
7. On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings,

save and except for any liability arising out of any in fraud, gross negligence or willful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.

8. No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on Notice to the Receiver, and upon such terms as this Court may direct.
9. Upon the Receiver filing with the Clerk of the Court a Receiver's Certificate, substantially in the form as attached to the Receiver's Eighteenth Report as Appendix 7, confirming that:
 - (a) All matters set out in paragraph 5 of this Order have been completed; and
 - (b) All other administrative matters set out in the Receiver's Eighteenth Report have been completed;

then the Receiver shall be discharged as Receiver of the Debtor, provided however, that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.

10. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
11. Service of this Order on any party not attending this application is hereby dispensed with.

J.C.Q.B.A.

Schedule "C"
WebEx Information for Application
scheduled for July 19, 2021

See attached.

WEBEX INFORMATION

Counsel: Please ensure that all relevant parties have received Webex information.

Virtual Courtroom 60 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
- 4. Note: Recording or rebroadcasting of the video is prohibited.**
- 5. Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

If you are a non-lawyer attending this hearing remotely, **you must** complete the undertaking located here: <https://www.albertacourts.ca/qb/resources/announcements/undertaking-and-agreement-for-non-lawyers>

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.