



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:	<u>Tuesday, November 3, 2020</u>
LOCATION WHERE ORDER WAS PRONOUNCED:	<u>Calgary, Alberta</u>
NAME OF JUSTICE WHO MADE THIS ORDER:	<u>Madam Justice K. M. Horner</u>

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 October 26, 2020; AND UPON being referred to the documents outlined in the said Application filed by the Receiver, including the Sixteenth Receiver's Report, dated October 26, 2020 (the "Receiver's Report"); AND UPON hearing counsel for the Receiver and all other interested parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of this application and supporting materials in the manner described in the Affidavit of Service 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. 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**").

3. 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**"). A further cost award was granted pursuant to the December 17, 2019 Order in the amount of \$1,000, for a total amount of \$151,000.00.
4. 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.
5. 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.
6. 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.
7. 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 (48) hours' notice given by the Realtor for a viewing between 8:00 A.M. and 8:00 P.M. The notice may be delivered via email to Calmusky at tcalmusky@hotmail.com and rcalmusky@telus.net, confirming that:

- (a) they have not, nor has anyone in their household, travelled internationally within the past 2 weeks;
 - (b) they have not been in contact with anyone in the past 2 weeks that has tested positive for Covid-19;
 - (c) they do not currently have any symptoms of Covid-19, including, but not limited to a fever, dry cough, or flu like symptoms;
 - (d) they have not, nor has anyone in their household, tested positive for Covid-19;
 - (e) they are not, nor is anyone in their household, awaiting test results for Covid-19;
 - (f) they will wear a mask while viewing the premises; and
 - (g) they will not touch any items or surfaces while viewing the premises other than door knobs necessary to open doors within the premises.
8. Any and all other real estate listings relative to the Property shall be cancelled during the period of the judicial listing ordered herein.
9. 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.
10. 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").
11. Upon receipt of an offer which the Receiver wishes to accept, the Receiver shall apply to this Court, on notice to those parties in attendance at the within application, for an Order Approving the Sale, Vesting Title in the Purchaser(s) name and settling costs of the relevant proceedings.

12. 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 rcalmusky@telus.net; and by delivering a copy by courier to the Property.



J.C.Q.B.A.

APPROVED AS TO FORM AND CONTENT:

FIELD LLP



Per: _____
Douglas S. Nishimura, counsel for
Grant Thornton Limited Receiver of 910234
Alberta Ltd.

BISHOP & MCKENZIE LLP



Per: _____
Anthony L. Dekens, counsel for Theresa Calmusky

HMC LAWYERS LLP



Per: _____
Erin A. Viala, Counsel for Alberta Securities
Commission

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 **\$1,200,000.00** 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 _____,
2020.

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

APPROVED this 3rd day of November, 2020.



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