



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

Burnet, Duckworth & Palmer LLP
2400, 525 – 8th Avenue SW
Calgary, Alberta T2P 1G1
Lawyer: Douglas Nishimura
Phone Number: (403) 260-0269
Fax Number: (403) 260-0332
Email Address: dsn@bdplaw.com
File No. 62616-8

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>Friday, April 5, 2013</u>
TIME	<u>2:00 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 directing Randy Calmusky, Theresa Calmusky, Gary Calmusky, Mary Calmusky, or any individual holding a Power of Attorney for Mary Calmusky, and Canadian Western Trust to provide documents and information as previously requested by the Receiver.
3. An Order authorizing the Receiver to conduct questioning of Randy Calmusky, Theresa Calmusky, Gary Calmusky, Mary Calmsuky, or any individual holding a Power of Attorney for Mary Calmusky, and Canadian Western Trust, with respect to the Estate.
4. An Order allowing the discharge of the mortgage between Trickle Creek Homes Ltd. and Theresa Calmusky (the "**Trickle Creek Mortgage**"), notwithstanding the requirements of Subsection 191(1) of the *Land Titles Act* and directing that payout funds in respect of the Trickle Creek Mortgage be held in trust by the Receiver pending determination of entitlement to those funds.
5. An Order extending the Ex-Parte Attachment Order, granted by the Honourable Justice K.D. Yamauchi on December 6, 2012, as amended, to a date to be determined by this Honourable Court, on the same terms and conditions set out therein.
6. An Order directing Canada Revenue Agency to provide T5 tax return information to the Receiver.
7. Such further and other relief as counsel may advise and this Honourable Court deem fit.

Grounds of the Application:

8. The Receiver has received funds in respect of the Trickle Creek Mortgage and wishes to discharge that mortgage notwithstanding that it has not received a complete accounting for that mortgage.
9. Based on the Receiver's review of 910234's trust ledger, funds of 910234 appear to have been advanced to Trickle Creek Custom Homes Ltd. ("**Trickle Creek**"), however the Trickle Creek Mortgage in respect of such advances is presently in the name of Theresa Calmusky. Counsel for Trickle Creek now remitted a full payout of the Trickle Creek Mortgage to counsel for the Receiver and has asked the Receiver to accept payment of the interest amounts and discharge the Trickle Creek Mortgage. The Receiver requires the direction of the Court in respect of these payments.

10. The Receiver has requested information from the individuals described above, but has not received a satisfactory response.
11. The Receiver requires T5 information in the course of its investigations.
12. The Attachment Order should continue in place until the litigation is resolved between the Plaintiffs and Defendants.
13. Such further and other grounds as counsel may advise and this Honourable Court deem fit.

Material or evidence to be relied on:

14. The Receivership Order granted on December 12, 2012.
15. The Amended and Restated Receivership Order granted on January 14, 2013.
16. The Order granted on December 21, 2012;
17. The Order granted on January 14, 2012;
18. The Order granted on February 19, 2013;
19. The Affidavit of Stanley Eisenberg sworn December 4, 2012, filed.
20. The Affidavit of Jack Eisenberg sworn December 4, 2012, filed.
21. The Affidavit of Richard Comstock sworn December 6, 2012, filed.
22. The Receiver's First Report dated December 20, 2012, filed.
23. The Receiver's Second Report dated January 9, 2013, filed.
24. The Receiver's Third Report dated February 13, 2013, filed.
25. The Receiver's Fourth Report dated March 26, 2013, filed.
26. The pleadings filed in this proceeding.
27. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- 28. Rules 1.3, 6.2, 6.3, 6.4(b), 10.55 and 13.5(2) of the *Alberta Rules of Court*; and
- 29. Such further and other rules as counsel may advise.

Applicable Acts and Regulations:

- 30. Sections 17 and 22 of the *Civil Enforcement Act*, R.S.A. 2000, c. C-15;
- 31. The inherent jurisdiction of this Honourable Court; and
- 32. Such further and other Acts and regulations as counsel may advise.

Any irregularity complained of or objection relied on:

- 33. N/A

How the Application is proposed to be heard or considered:

- 34. 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.