

COURT FILE NUMBER **BK01-094419**
COURT COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE Calgary



IN THE MATTER OF THE BANKRUPTCY OF
ASSISTIVE FINANCIAL CORP. AND THE
BANKRUPTCY AND INSOLVENCY ACT, RSC
1985, C B-3, AS AMENDED

APPLICANT **HARDIE & KELLY INC., IN ITS
CAPACITY AS TRUSTEE IN
BANKRUPTCY OF ASSISTIVE
FINANCIAL CORP.**

RESPONDENTS **BURNET, DUCKWORTH & PALMER LLP
and PEACOCK, LINDER, HALT & MACK
LLP**

DOCUMENT **APPLICATION BY THE
TRUSTEE**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT
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NOTICE TO RESPONDENTS

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 Thursday, December 11th, 2014
 Time 1:00 p.m.
 Where The Calgary Courts Centre, 601-5th Street S.W., Calgary AB
 Before Whom The Honourable Justice Eidsvik

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. Hardie & Kelly Inc., in its capacity as the Court-appointed trustee in bankruptcy (the “**Trustee**”) of Assistive Financial Corp. (“**Assistive**”), seeks an Order directing the Respondents Burnet, Duckworth & Palmer LLP (“**BDP**”) and Peacock, Linder, Halt & Mack LLP (previously Peacock, Linder & Halt LLP) (“**PLH**”) to comply with the terms of the Order granted by the Honourable Madam Justice Eidsvik on August 18, 2014 (the “**August 18th Order**”) no later than 4:00 p.m. (MST) on Friday January 16th, 2015 (the “**Deadline**”).
2. Specifically, the Trustee seeks an Order:
 - (a) Directing BDP and PLH to review all records located on Assistive’s computers, currently in the possession of BDP in accordance with the Court Order granted on February 13, 2014, and deliver to the Trustee all records producible in accordance with the terms of the August 18th Order on or before the Deadline.
 - (b) Directing PLH to deliver to the Trustee, concurrently with the delivery of the producible records, a list of all records not delivered to the Trustee over which privilege is claimed, in accordance with paragraph 4 of the August 18th Order. Specifically, each record over which privilege is claimed must be individually numbered and must be described in sufficient detail for the Trustee to make an assessment of whether privilege is properly claimed.
3. Costs of the within Application on a solicitor and his own client basis.
4. Such further and other relief as this Honourable Court may deem just in the circumstances.

Grounds for making this application:

5. On August 18, 2014, The Honourable Eidsvik J. granted an Order (the “**August 18th Order**”), requiring BDP to deliver to the Trustee certain records belonging to Assistive (the “**Records**”), within 30 days of the granting of that Order, or such additional time as the parties agreed upon or the Court ordered.
6. The August 18th Order required PLH to review the Records to ascertain whether privilege claims were properly asserted by BDP, and deliver to the Trustee contemporaneously with the delivery

of the records to the Trustee by BDP, a list detailing the asserted privilege claims (the “**Privilege List**”).

7. Through its counsel PLH, BDP consented to the Eidsvik Order as granted.
8. The time period for delivery of the Records as prescribed by the Eidsvik Order expired on September 18, 2014.
9. PLH requested an extension of the Eidsvik Order and delivery of the Records to September 26, 2014. This request was agreed to by the Trustee.
10. Neither the Trustee nor its counsel received delivery of the Records by September 26, 2014, or at all.
11. Subsequently, the Trustee made several requests that the deadline in the August 18th Order and delivery of the Records be complied with.
12. Following the Trustee’s requests, the Respondents delivered to the Trustee certain of the Records but have refused to deliver to the Trustee the Records located on Assistive’s computers without the use of certain search terms in their review of such records.
13. The Privilege List delivered to the Trustee by PLH is inadequate in that it fails to comply with the terms of the August 18th Order and does not allow the Trustee to ascertain whether privilege has been properly asserted.
14. The Records on the computers are the property of the Bankrupt and should therefore be delivered to the Trustee in accordance with the terms of the August 18th Order and without the use of search terms.
15. The Trustee is an Officer of the Court who is diligently administering the Estate of the Bankrupt and attempting to ensure compliance with an Order of this Honourable Court.

Material or evidence to be relied on:

16. The Affidavit of Marc E. Kelly, sworn on November 6th, 2014.
17. The Affidavit of Marc E. Kelly, sworn on July 17, 2014.
18. The pleadings filed in the Action.

Applicable rules:

19. *Alberta Rules of Court*, AR 124/2010, 1.2, 11.27, and 13.5.
20. Such further and other Rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

21. None.

Any irregularity complained of or objection relied on:

22. None.

How the application is proposed to be heard or considered:

23. In person before the Honourable Justice Eidsvik, with some or all of the parties present, upon affidavit evidence.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) 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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.