



COURT FILE NUMBER BK01-094419  
COURT 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

APPLICANTS BURNET, DUCKWORTH & PALMER LLP AND PEACOCK  
LINDER HALT & MACK LLP

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

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **PEACOCK LINDER & HALT LLP**  
Suite 850, 400 – 3<sup>rd</sup> Avenue SW  
Calgary, Alberta, T2P 4H2  
J. Patrick Peacock, Q.C./Edward W. Halt, Q.C.  
Telephone (403) 296-2280  
Fax (403) 296-2299  
FILE: 5819

**NOTICE TO RESPONDENT(S)**

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

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

To do so, you must be in Court when the application is heard as shown below:

**Date** Thursday, December 11, 2014  
**Time** 1:00 p.m.  
**Where** Calgary Courts Centre,  
601 – 5<sup>th</sup> Street S.W., Calgary, Alberta  
**Before Whom** Madam 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. An Order setting the terms of a search protocol in relation to records located on computers belonging to Assistive Financial Corp. ("Assistive"), including setting search terms and a timeline for the review and delivery of the records to Hardie & Kelly Inc. ("H&K"), the Trustee in Bankruptcy of Assistive.
2. Alternatively, the Applicants are seeking advice and direction from this Honourable Court for a protocol setting out a procedure and timing for the retrieval, review, and delivery of Assistive's computer records to H&K.

**Grounds for making this application:**

3. On August 18, 2014, the Honourable Eidsvik J. granted a Consent Order setting out the terms by which Burnet, Duckworth & Palmer LLP ("BD&P") was to deliver to H&K certain records belonging to Assistive, within 30 days of the granting of that Order, or such additional time as the parties agreed upon or the Court ordered.
4. Under the terms of the Consent Order, BD&P was not obliged to deliver records pertaining to specific matters in which BD&P provided legal services to any of the individual Defendants in the action by the Trustee against Randy Schiffner, Slade Schiffner, Brandon Schiffner, Elayne Schiffner, Cameron Schiffner and Brandi Schiffner (the "Schiffner Action").
5. It was a further term of the Consent Order that all records over which privilege was asserted would be sent to Peacock Linder Halt & Mack LLP ("PLHM") for further review before they were delivered to counsel for H&K.
6. BD&P and PLHM have taken numerous steps to comply with the Consent Order. However, the production and review of Assistive's records has resulted in a massive exercise that has taken much longer than initially anticipated.
7. To date over 14,000 electronic records have been retrieved, reviewed, and sorted pursuant to the terms of the Consent Order and provided to counsel for H&K.
8. The remaining records of Assistive that need to be retrieved, sorted, and reviewed pursuant to the terms of the Consent Order are records that are stored on computers that belong to Assistive. The computers are in the custody of BD&P.
9. Over 77,000 records have been identified on those computers that may relate to Assistive.
10. In order to expedite the process of sorting and reviewing these records, a proposed list of search terms was created and circulated to counsel for H&K. A dry run of those search terms resulted in 18,529 records being retrieved.
11. All proposals to create an agreed upon search term protocol have been rejected by counsel for H&K.

12. It is estimated it will take approximately 2 months for both BDP and PLHM to conduct the review necessary to comply with the Consent Order as it relates to the remaining records stored on Assistive's computers.
13. The limited resources that the Schiffners have to defend this Action and to satisfy any claims by H&K are being steadily depleted by the massive document retrieval issues.

**Material or evidence to be relied on:**

14. Affidavit of Paul G. Chiswell, sworn on November 27, 2014.
15. Pleadings filed in this Action, and also Action No. 1401-04781.

**Applicable rules:**

16. *Alberta Rules of Court*, AR 124/2010, 1.2, 1.3, 1.4, 6.3, 11.27 and 13.5
17. Such further and other Rules as counsel may advise and to this Honourable Court may permit.

**Applicable Acts and regulations:**

18. None.

**Any irregularity complained of or objection relied on:**

19. None.

**How the application is proposed to be heard or considered:**

20. In person before the Honourable Eidsvik J., with some or all of the parties present.

**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 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.