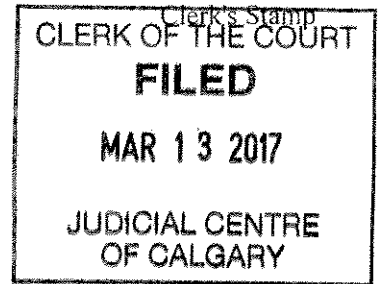


Estate FILE NUMBER 1601-04493  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF PILLAR CAPITAL CORP.  
DEFENDANTS ACTION RESTORATION LTD., ACTION RESTORATION RD LTD., ACTION ASSET CORPORATION and STEP ABOVE EXTERIORS LTD.

DOCUMENT **THIRD REPORT OF THE RECEIVER  
HARDIE & KELLY INC.  
MARCH 13, 2017**

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**THIRD REPORT OF THE RECEIVER  
HARDIE & KELLY INC.  
MARCH 13, 2017**

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## INTRODUCTION

1. On April 15, 2016, Pillar Capital Corp. (“Pillar”) sought and obtained an Order (the “Receivership Order”) of this Honourable Court appointing Hardie & Kelly Inc. (the “Receiver”) as Receiver of the assets, undertakings and properties (“Property” or the “Properties”) of Action Restoration Ltd. (“Action Restoration”), Action Restoration RD Ltd. (“Action Restoration Red Deer”), Step Above Exteriors Ltd. (“Step Above”) and Action Asset Corporation (“Action Asset”), collectively, (the “Action Group” or the “Debtors”).
2. On June 29, 2016, the Receiver filed its First Report (the “First Report”) with this Honourable Court for the sole purpose of seeking approval for the sale of a residential real estate property (the “Templemont Property”) with such approval being granted on July 7, 2016.
3. On September 19, 2016, the Receiver filed its Second Report (the “Second Report”) with this Honourable Court seeking and obtaining, *inter alia*, this Honourable Court’s approval of a distribution of the Available Action Asset Realizations to the senior secured lender of Action Asset Corporation, together with the Receiver’s discharge as it relates to that specific entity.
4. Capitalized terms not defined in this Third Report are as defined in the previous reports of the Receiver filed in these proceedings, the Receivership Order, the Affidavit of Steve Dizep (the “Initial Dizep Affidavit”) sworn on April 4, 2016 and filed in these proceedings or the Affidavit of Mike Goudreau (the “Initial Goudreau Affidavit”) sworn on April 4, 2016 and filed in these proceedings.
5. All references to currency are in Canadian dollars unless otherwise noted.

## TERMS OF REFERENCE

6. In preparing this Third Report, the Receiver has relied upon unaudited financial information contained in the books and records of the Action Group and discussions with former management of the Action Group (“Management”). The Receiver has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of such information and accordingly, the Receiver expresses no opinion or other form of assurance in respect of such information contained in this report.

## **BACKGROUND**

### *Operations*

7. A brief overview of the Debtors, as provided in the Initial Goudreau Affidavit is as follows:
  - (a) Action Restoration and Action Restoration Red Deer were corporations that carried on the business of disaster restoration services primarily in the cities of Calgary, Red Deer and Lethbridge;
  - (b) Step Above was a corporation that carried out disaster restoration services involving the exterior of buildings, such as removing and installing siding and cladding; and
  - (c) Action Asset was a corporation that was formed to hold various assets required for Action Restoration and Action Restoration Red Deer to carry on business.
8. The Receiver has not continued the business operations of any member of the Action Group.

### *Common Creditors*

9. Pillar, FundThrough Inc. ("FT") and Business Development Bank of Canada ("BDC") (collectively, the "Common Creditors") have each registered security interests against each member of the Action Group.
10. A brief description of each of the Common Creditors and their respective security against each member of the Action Group is contained in the Second Report.

## **ACTIVITIES OF THE RECEIVER**

### *Correspondence and discussions with creditors*

11. The Receiver has provided updates to stakeholders as required, including employees, trade creditors, Management and Common Creditors.

### *Correspondence with insurers*

12. Given the nature of the Action Group's operations, the Receiver has held numerous discussions with its insurers with respect to facilitating information where readily available and/or settling insurance claims as appropriate, whilst attempting to minimize the professional costs to the receivership estate of attending to such claims.

*Bankruptcy of Action Asset and Action Red Restoration Red Deer*

13. As discussed in the Second Report and below, in consultation with stakeholders, the Receiver exercised its powers under Paragraph 3(u) of the Receivership Order and assigned Action Asset into bankruptcy on September 15, 2016 and Action Restoration Red Deer on November 2, 2016 with Hardie & Kelly Inc. acting as Trustee of the bankrupt estates.
14. At this time, Hardie & Kelly Inc. continues its administration of each of the bankrupt estates of Action Asset and Action Restoration Red Deer.

*Continued accounts receivable collection efforts*

15. The Receiver, together with its legal counsel, continues to pursue and negotiate settlement arrangements with respect to outstanding accounts receivables.
16. in addition, the Receiver has assigned certain accounts receivable below a monetary threshold to a third party collection agency.

**STATEMENTS OF RECEIPTS AND DISBURSEMENTS**

17. An interim statement of receipts and disbursements for each of Action Restoration, Action Restoration Red Deer and Step Above are attached as Appendix A through C respectively, the contents of which are self-explanatory.

**PROFESSIONAL FEES**

18. The Receiver and its counsel have opened separate charge codes for each specific member of the Action Group and have recorded time incurred on each matter as appropriate. For tasks which were not identifiable as related solely to one entity, the Receiver has made an estimated allocation as appropriate, with the following illustrative example:
  - (a) Time incurred in corresponding with customers who owed more than one entity receivables, not specifically identifiable to an individual contract (i.e. accounts receivable collection correspondence, general discussion etc.) was allocated on a proportionate basis based on the approximate amount that such customer owed each entity.

19. The Receiver retained Bryan & Co. as legal counsel to assist primarily with the collection of accounts receivable given their prior knowledge obtained as legal counsel to the Action Group. McCarthy Tetrault has been retained as general independent counsel to the Receiver.
20. As the Receiver and its counsels' Bryan & Co. and McCarthy Tetrault's initial accounts were previously approved by this Honourable Court, the quantum of the respective accounts from September 17, 2016 to February 28, 2017 is provided below, with a summary attached as Appendices D through F.

| <b>Professional fees</b>                            |                     |               |                   |
|---|---------------------|---------------|-------------------|
| <b>From September 17, 2016 to February 28, 2017</b> |                     |               |                   |
|   | Hardie & Kelly Inc. | Bryan & Co.   | McCarthy Tetrault |
| Action Restoration Ltd                              | 45,700              | 13,352        | 17,165            |
| Action Restoration RD Ltd.                          | 12,175              | 2,347         | 12,415            |
| Step Above Exteriors                                | 4,760               | 7,744         | 3,370             |
|   | <u>62,635</u>       | <u>23,444</u> | <u>32,951</u>     |

21. The fees charged by the Receiver and its counsel have been duly authorized and rendered. The Receiver is of the opinion that, in light of the nature and value of the assets, the recoveries achieved and the cost of comparable services, both the Receiver and its counsel have performed work in a prudent and economic matter and that the fees charged are fair and reasonable in the circumstances.
22. The Receiver notes that notwithstanding the determination of FT's claim to ownership of certain of the accounts receivable, depending on whether the quantum of realizations is sufficient to repay each of Pillar and FT in full, it anticipates having to complete a further professional cost allocation as between the assets subject to FT's security and the assets subject to Pillar's security with an allocation of costs to each party.

**BANKRUPTCY OF ACTION RESTORATION RED DEER**

23. Paragraph 3(u) of the Receivership Order provides the Receiver with the authorization to assign any of the Debtors into bankruptcy.
24. As outlined herein, Hardie & Kelly Inc. has obtained an independent legal opinion confirming the priority, subject to the standard limitations, of the Pillar indebtedness over that of unsecured creditors of Action Restoration Red Deer.

25. On November 2, 2016, the Receiver assigned Action Restoration Red Deer into bankruptcy with Hardie & Kelly Inc. appointed as its Trustee in Bankruptcy, as affirmed by its creditors at its First Meeting of Creditors which was held on November 16, 2016.

#### **DISTRIBUTION TO FUNDTHROUGH**

26. As illustrated in the statement of receipts and disbursements for Action Restoration Red Deer, the Receiver is currently holding approximately \$221,917 as at March 8, 2017.
27. The Receiver has obtained an independent legal opinion as to the validity and enforceability of the security held by FT with such opinion noting that, subject to the standard limitations, the security held by FT is valid and enforceable and ranks in priority to the Trustee in bankruptcy.
28. In addition to the above registered security interest, FT has taken the position that, not only does it possess a security interest in certain of the assets of the Action Group, but that pursuant to the terms of Master Purchase and Sale Agreement(s) between Action Restoration Ltd. and Fundthrough Capital Inc. and Action Restoration RD Ltd. and Fundthrough Capital Inc. that it claims to have purchased certain of the Action Group Receivables.
29. The Receiver anticipates that there may be receivable recoveries in one borrower that are in excess of the amounts owed by that borrower to FT. The Receiver has reviewed relevant priority agreements between FT, Pillar and BDC and is of the view that FT will have priority to all receivables until such time that it has been repaid in full by both borrowers.
30. Counsel to the Receiver has communicated the above interpretation and understanding to counsel to each of Pillar and BDC and the Receiver understands that each of Pillar and BDC concur with the Receiver's assessment on priority.
31. Following discussions with FT, Pillar and BDC, the Receiver proposes an interim distribution from Action Restoration Red Deer to FT in the amount of \$195,000 (the "Interim FT Distribution") by declaring the security of FT to be valid and enforceable and having the court authorize an interim distribution on account of the FT indebtedness without prejudicing the rights of FT to assert that it has previously acquired the entirety of ARL and ARL RD's interest in the ARL and ARL RD receivables on which FT made advances.

32. The Receiver notes that it has identified certain matters with respect to the FT indebtedness that will need to be resolved in due course, primarily related to the quantum and calculation of interest and/or fees charged on such indebtedness. Absent a resolution amongst the parties of this matter, the Receiver anticipates requiring a further court application to resolve such matters.
33. However, given the impact of the above described priority agreements and the quantum of the aggregate FT advances of \$309,161 as it relates solely to advances on accounts receivable (without the inclusion of any fees or costs) comprised of \$173,167 advanced to Action Restoration and \$135,993 advanced to Action Restoration Red Deer, the Receiver is of the opinion that Interim FT Distribution can be completed prior to the resolution of any matters with respect to the quantum and calculation of interest and/or fees.
34. In addition to the Interim FT Distribution, the Receiver is seeking a form of order that proposes that the Receiver will be further authorized to make additional distributions to FT with the consent of each of FT, Pillar and BDC.

#### **RECOMMENDATIONS**

35. The Receiver respectfully recommends that this Honourable Court:
  - (a) Approve the interim statement of receipts and disbursements of Action Restoration, Action Restoration Red Deer and Step Above;
  - (b) Approve the fees and disbursements of the Receiver and its counsel incurred to date as allocated amongst the various members of the Action Group;
  - (c) Approve the distribution of the Initial FT Distribution and future distributions to FT with the consent of each of FT, Pillar and BDC;

All of which is respectfully submitted this 13<sup>th</sup> day of March, 2017.

#### **Hardie & Kelly Inc.**

In its capacity as Receiver of Action Restoration Ltd., Action Restoration RD Ltd. and Step Above Exteriors Ltd. and not in its personal or corporate capacity.

Per:



Kevin Meyler, CA•CIRP  
Senior Vice President



# APPENDIX A

**Action Restoration Ltd.**  
**Interim Statement of Receipts and Disbursements**  
**April 15, 2016 to March 8, 2017**

**Receipts**

|                                  |         |
|----------------------------------|---------|
| Accounts Receivable (Non funded) | 372,996 |
| Accounts Receivable (Funded)     | 119,977 |
| Allocated auction proceeds       | 203,176 |
| Workers compensation             | 84,086  |
| Income tax refund                | 6,913   |
| G.S.T. refund                    | 4,371   |
| Other                            | 522     |
| Interest                         | 338     |
|                                  | <hr/>   |
|                                  | 792,378 |

**Disbursements**

|                                    |                |
|------------------------------------|----------------|
| Receiver's Fees                    | 109,660        |
| Legal fees                         | 42,231         |
| Allocated occupation rent          | 21,629         |
| Miscellaneous expenses             | 22,909         |
| Allocated auctioneer expense       | 13,618         |
| G.S.T. Paid                        | 10,119         |
| Ascend license fee                 | 275            |
| Filing fees                        | 70             |
|                                    | <hr/>          |
|                                    | 220,511        |
|                                    | <hr/>          |
| <b>Cash on hand, March 8, 2017</b> | <b>571,868</b> |

# **APPENDIX B**

**Action Restoration RD Ltd.**  
**Interim Statement of Receipts and Disbursements**  
**April 15, 2016 to March 8, 2017**

**Receipts**

|                                   |         |
|-----------------------------------|---------|
| Accounts Receivable (Non funded)  | 105,044 |
| Accounts Receivable (Funded)      | 144,736 |
| Work in process realization (net) | 27,857  |
| Interest                          | 127     |
|                                   | <hr/>   |
|                                   | 277,763 |

**Disbursements**

|                     |        |
|---------------------|--------|
| Receiver's Fees     | 32,500 |
| Legal fees          | 20,076 |
| G.S.T. Paid         | 2,676  |
| Ascend license fee  | 275    |
| Redirection of mail | 250    |
| Filing fees         | 70     |
|                     | <hr/>  |
|                     | 55,847 |

**Cash on hand, March 8, 2017**

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221,917

# APPENDIX C

**Step Above Exteriors**  
**Interim Statement of Receipts and Disbursements**  
**April 15, 2016 to March 8, 2017**

**Receipts**

|                     |         |
|---------------------|---------|
| Accounts Receivable | 106,738 |
| Misc. receipts      | 21,443  |
| Interest            | 31      |
|                     | <hr/>   |
|                     | 128,212 |

**Disbursements**

|                                    |               |
|------------------------------------|---------------|
| Payment of secured                 | 26,167        |
| Receiver's Fees                    | 15,760        |
| Legal fees                         | 16,712        |
| G.S.T. Paid                        | 1,641         |
| Ascend license fee                 | 275           |
| Redirection of mail                | 250           |
| Filing fees                        | 70            |
|                                    | <hr/>         |
|                                    | 60,875        |
|                                    | <hr/>         |
| <b>Cash on hand, March 8, 2017</b> | <b>67,337</b> |

# APPENDIX D

**Action Restoration Ltd.**  
**Summary of Professional Fees**  
**From September 17, 2016 to March 8, 2017**

**Hardie & Kelly Inc.**

| <u>Inv. Date</u> | <u>Inv. Number</u> | <u>Subtotal</u> | <u>GST</u>   | <u>Total</u>  |
|------------------|--------------------|-----------------|--------------|---------------|
| 23/11/2016       | 0112316-2          | 14,865          | 743          | 15,608        |
| 07/03/2017       | 030717-1           | 30,835          | 1,542        | 32,377        |
|                  |                    | <u>45,700</u>   | <u>2,285</u> | <u>47,985</u> |

**Bryan & Company Calgary LLP**

| <u>Inv. Date</u> | <u>Inv. Number</u> | <u>Subtotal</u> | <u>GST</u> | <u>Total</u>  |
|------------------|--------------------|-----------------|------------|---------------|
| 30/08/2016       | 14594              | 1,433           | 72         | 1,504         |
| 30/09/2016       | 14960              | 1,587           | 79         | 1,666         |
| 31/10/2016       | 15248              | 1,371           | 69         | 1,440         |
| 31/10/2016       | 15246              | 130             | 6          | 136           |
| 30/11/2016       | 15649              | 3,851           | 193        | 4,044         |
| 31/01/2017       | 16471              | 3,556           | 178        | 3,733         |
| 28/02/2017       | 16652              | 1,425           | 71         | 1,496         |
|                  |                    | <u>13,352</u>   | <u>668</u> | <u>14,020</u> |

**McCarthy Tetrault LLP**

| <u>Inv. Date</u> | <u>Inv. Number</u> | <u>Subtotal</u> | <u>GST</u> | <u>Total</u>  |
|------------------|--------------------|-----------------|------------|---------------|
| 22/11/2016       | 2879563            | 7,539           | 377        | 7,916         |
| 07/03/2017       | 2901302            | 9,626           | 481        | 10,107        |
|                  |                    | <u>17,165</u>   | <u>858</u> | <u>18,024</u> |

Note that certain allocations have been made by the Receiver as described in the Third Report.



# APPENDIX E

**Action Restoration RD Ltd.**  
**Summary of Professional Fees**  
**From September 17, 2016 to March 8, 2017**

**Hardie & Kelly Inc.**

| <u>Inv. Date</u> | <u>Inv. Number</u> | <u>Subtotal</u> | <u>GST</u> | <u>Total</u>  |
|------------------|--------------------|-----------------|------------|---------------|
| 23/11/2016       | 0112316-3          | 7,300           | 365        | 7,665         |
| 07/03/2017       | 030717-2           | 4,875           | 244        | 5,119         |
|                  |                    | <u>12,175</u>   | <u>609</u> | <u>12,784</u> |

**Bryan & Company Calgary LLP**

| <u>Inv. Date</u> | <u>Inv. Number</u> | <u>Subtotal</u> | <u>GST</u> | <u>Total</u> |
|------------------|--------------------|-----------------|------------|--------------|
| 30/08/2016       | 14594              | 251             | 13         | 263          |
| 30/09/2016       | 14960              | 647             | 32         | 680          |
| 31/10/2016       | 15248              | 754             | 38         | 792          |
| 30/11/2016       | 15649              | 473             | 24         | 497          |
| 31/01/2017       | 16471              | 222             | 11         | 233          |
|                  |                    | <u>2,347</u>    | <u>117</u> | <u>2,465</u> |

**McCarthy Tetrault LLP**

| <u>Inv. Date</u> | <u>Inv. Number</u> | <u>Subtotal</u> | <u>GST</u> | <u>Total</u>  |
|------------------|--------------------|-----------------|------------|---------------|
| 22/11/2016       | 2879564            | 7,525           | 376        | 7,901         |
| 07/03/2017       | 2901301            | 4,891           | 245        | 5,135         |
|                  |                    | <u>12,415</u>   | <u>621</u> | <u>13,036</u> |

Note that certain allocations have been made by the Receiver as described in the Third Report.

# APPENDIX F

**Step Above Exteriors  
 Summary of Professional Fees  
 From September 17, 2016 to March 8, 2017**

**Hardie & Kelly Inc.**

| <u>Inv. Date</u> | <u>Inv. Number</u> | <u>Subtotal</u> | <u>GST</u> | <u>Total</u> |
|------------------|--------------------|-----------------|------------|--------------|
| 24/11/2016       | 112316-4           | 3,875           | 194        | 4,069        |
| 07/03/2017       | 030713-3           | 885             | 44         | 929          |
|                  |                    | <u>4,760</u>    | <u>238</u> | <u>4,998</u> |

**Bryan & Company Calgary LLP**

| <u>Inv. Date</u> | <u>Inv. Number</u> | <u>Subtotal</u> | <u>GST</u> | <u>Total</u> |
|------------------|--------------------|-----------------|------------|--------------|
| 30/08/2016       | 14592              | 3,598           | 180        | 3,778        |
| 30/08/2016       | 14594              | 1,182           | 59         | 1,241        |
| 30/09/2016       | 14960              | 172             | 9          | 181          |
| 30/09/2016       | 14961              | 488             | 24         | 512          |
| 31/10/2016       | 15247              | 514             | 26         | 540          |
| 31/10/2016       | 15248              | 343             | 17         | 360          |
| 30/11/2016       | 15647              | 376             | 19         | 395          |
| 30/11/2016       | 15649              | 437             | 22         | 459          |
| 31/01/2017       | 16471              | 259             | 13         | 272          |
| 28/02/2017       | 16652              | 375             | 19         | 394          |
|                  |                    | <u>7,744</u>    | <u>387</u> | <u>8,131</u> |

**McCarthy Tetrault LLP**

| <u>Inv. Date</u> | <u>Inv. Number</u> | <u>Subtotal</u> | <u>GST</u> | <u>Total</u> |
|------------------|--------------------|-----------------|------------|--------------|
| 07/03/2017       | 2879566            | 3,370           | 169        | 3,539        |
|                  |                    | <u>3,370</u>    | <u>169</u> | <u>3,539</u> |

Note that certain allocations have been made by the Receiver as described in the Third Report.