

COURT FILE NUMBER: 1603-16670
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF BUSINESS DEVELOPMENT BANK OF CANADA
DEFENDANT 1219358 ALBERTA LTD.
DOCUMENT **APPLICATION**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
MLT Aikins LLP
2200, 10235 101 Street
Edmonton, Alberta T5J 3G1
Phone: 780.969.3500
Fax: 780.969.3549
Attention: Jeffrey M. Lee, Q.C.
Solicitors for the Receiver, Hardie & Kelly Inc.
File: 33124.6



NOTICE TO RESPONDENTS:

This application is made against you. You are the 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: Wednesday, March 15, 2017
Time: 10:00 a.m.
Where: Court of Queen's Bench of Alberta, Edmonton Law Courts,
1A Sir Winston Churchill Square, Edmonton, Alberta
Before Whom: The Honourable Mr. Justice K.G. Nielsen, In Chambers
(Booked on the Commercial List)

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. To the extent necessary, an Order abridging the time required for service of this Notice of Application and all materials filed in support thereof (collectively, the "**Application Materials**"), dispensing with further service of the Application Materials on any other persons and deeming service of the Application Materials good, valid, timely and sufficient.

2. An Order authorizing an increase of the Receiver's Borrowings Charge from \$150,000.00 to \$750,000.00, pursuant to paragraph 20 of the Receivership Order of the Honourable Mr. Justice B.R. Burrows of this Court pronounced in this Action on September 23, 2016 (the "**Receivership Order**").
3. An Order granting such other and further relief as the circumstances may require and as this Honourable Court may deem appropriate in the circumstances.

Grounds for Making this Application:

4. On September 23, 2016, the Honourable Mr. Justice B.R. Burrows of this Honourable Court granted the Receivership Order appointing Hardie & Kelly Inc. (the "**Receiver**") as receiver of the property, assets and undertakings of 1219358 Alberta Ltd. Paragraph 20 of the Receivership Order granted to the Receiver the power to borrow monies necessary to fund the exercise of the powers and duties conferred upon the Receiver, to the maximum amount of \$150,000.00.
5. As more particularly described in the Receiver's First Report, the Receiver has been required to borrow monies to fund the prosecution of litigation on behalf of the receivership estate, to fund the engagement of real estate professionals to assist in marketing the assets in the receivership estate and to fund the payment of the professional fees and disbursements of the Receiver and its legal counsel.
6. The Receiver requires additional financing in order to continue to carry out its duties and responsibilities pursuant to the Receivership Order. Further, and in particular, the Receiver requires additional financing with which to pay municipal property tax arrears owing to the City of Edmonton in regard to land and buildings in the receivership estate, so as to be in a position to preserve the value of those assets for the receivership estate.

Material or Evidence To Be Relied Upon:

- (a) This Notice of Application, filed;
- (b) First Report of the Receiver;

- (c) The pleadings and proceedings herein, including the Receivership Order granted on September 23, 2016;
- (d) Draft order attached as **Schedule "A"** to this Notice of Application; and
- (e) Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- (a) *Alberta Rules of Court*, Alta Reg 124/2010, as amended from time to time.

Applicable Acts and Regulations:

- (a) The *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, specifically, but not limited to, sections 243, 249 and 250; and
- (b) The *Judicature Act*, R.S.A. 2000, c. J-2, as amended, specifically section 13(2).

How the Application is Proposed to be Heard or Considered:

- (a) In person before the Honourable Mr. Justice K.G. Nielsen in Chambers.

WARNING TO THE RESPONDENT:

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.

Schedule "A"

Clerk's stamp:

COURT FILE NUMBER: **1603-16670**
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF BUSINESS DEVELOPMENT BANK OF CANADA
DEFENDANTS 1219358 ALBERTA LTD.

DOCUMENT **ORDER**
(Increase in Receiver's Borrowings Charge)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT MLT AIKINS LLP
2200, 10235 101 Street
Edmonton, Alberta T5J 3G1
Phone: 780.969.3500
Fax: 780.969.3549
Attention: Jeffrey M. Lee, Q.C.
Solicitors for Hardie & Kelly Inc.,
court-appointed Receiver of 1219358 Alberta Ltd.
File: 33124.6

DATE ON WHICH ORDER WAS PRONOUNCED: Wednesday, March 15, 2017
NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice K.G. Nielsen
LOCATION OF HEARING: Edmonton, Alberta

UPON THE APPLICATION of counsel to Hardie & Kelly Inc. in its capacity as Court-appointed receiver (the "**Receiver**") of the assets, undertakings and property of the Defendant, 1219358 Alberta Ltd. ("**1219358**"); **AND UPON HAVING READ** the pleadings, proceedings, orders and other materials filed in this action, including the Receivership Order of the Honourable Mr. Justice B.R. Burrows pronounced in this Action on September 23, 2016 (the "**Receivership Order**"), the First Report of the Receiver, filed March 6, 2017; **AND UPON HEARING** counsel for the Receiver and from any other interested parties who may be present; **AND UPON IT APPEARING** that all interested and affected parties have been served with notice of this application; **AND UPON IT APPEARING** that the increase in the Receiver's borrowing power as proposed is just, fair and appropriate in all the circumstances and in the best interests of the stakeholders of 1219358 and the administration of the receivership estate;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The limit on the Receiver's borrowing power established pursuant to paragraph 20 of the Receivership Order shall be and is hereby increased from the principal amount of \$150,000.00 to the principal amount of \$750,000.00.
2. The Receiver shall be at liberty to reapply for further advice, assistance and direction from this Honourable Court as may be required to enforce or to carry out the terms of this Order.

Justice of the Court of Queen's Bench of Alberta