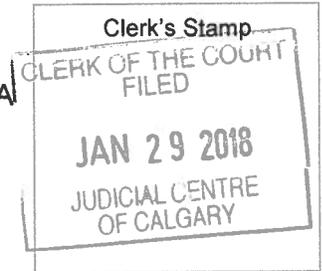


COURT FILE NUMBER 1601-04493  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF PILLAR CAPITAL CORP.  
DEFENDANTS ACTION RESTORATION LTD., ACTION RESTORATION RD LTD., ACTION ASSET CORPORATION and STEP ABOVE EXTERIORS LTD.



DOCUMENT APPLICATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
McCARTHY TÉTRAULT LLP  
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**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        | February 5, 2018      |
| Time        | 2:00 p.m.             |
| Where       | Calgary Courts Center |
| Before Whom | Justice A.D. Macleod  |

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:** Hardie & Kelly Inc. (the "**Receiver**"), in its capacity as the receiver and manager of the current and future undertakings, property, and assets (collectively, the "**Property**") of Action Restoration Ltd. ("**Action Restoration**"), Action Restoration RD Ltd. ("**Action Restoration Red Deer**"), Step Above Exteriors Ltd. ("**Step Above**", Step Above, Action Restoration, and Action Restoration Red Deer, are collectively referred to as, the "**Remaining Debtors**"), and Action Asset Corporation ("**Action Asset**", Action Asset and the Remaining

Debtors, are collectively referred to as, the “**Debtors**”), pursuant to the Consent Receivership Order issued on April 15, 2016 (the “**Receivership Order**”) applies for an Order substantially in the form attached as Schedule “**A**” hereto:

1. If necessary, declaring, that the time for service of this application (the “**Application**”) and the Fourth Report of the Receiver, dated January 29, 2018 (the “**Fourth Receiver’s Report**”), is abridged, that the Application is properly returnable on February 5, 2018, that service of the Application and the Fourth Receiver’s Report on the service list is good and sufficient, and that no persons other than those on the service list are entitled to service of the Fourth Receiver’s Report, the Application, or any orders arising therefrom.

2. Approving the proceeds and costs allocation (the “**Proceeds and Costs Allocation**”) as between and among the Remaining Debtors, as proposed by the Receiver and set out in Appendix “**D**” of the Fourth Receiver’s Report.

3. Declaring that the security granted by:

(a) Step Above, to and in favour of The Bank of Nova Scotia (“**BNS**”); and,

(b) Action Restoration, to and in favour of Pillar Capital Corp. (“**Pillar**”),

is valid and enforceable against the assets, properties, and undertakings of Step Above and Action Restoration, respectively.

4. Approving, authorizing, and empowering the Receiver to make a distribution from the proceeds held by the Receiver, in connection with:

(a) Action Restoration, to: (i) FundThrough Inc. (“**FundThrough**”), (ii) Pillar; and, (iii) certain priority payables thereto, all in the amounts and priority as set out in the Fourth Receiver’s Report;

(b) Action Restoration Red Deer, to: (i) FundThrough; and, (ii) certain priority payables thereto, all in the amounts and priority as set out in the Fourth Receiver’s Report; and,

(c) Step Above, to: (i) BNS; and, (ii) certain priority payables thereto, all in the amounts and priority as set out in the Fourth Receiver’s Report.

5. Approving the Receiver's final statement of receipts and disbursements with respect to each of the Remaining Debtors, as set out in Appendices "A", "B", and "C" of the Fourth Receiver's Report.

6. Approving the interim and final accounts of the Receiver and its legal counsel with respect to each of the Remaining Debtors, as summarized in Appendices "E", "F", and "G" of the Fourth Receiver's Report.

7. Declaring that, as of the date of the Fourth Receiver's Report and based on the evidence that is currently before the Court:

- (a) the Receiver has acted honestly and in good faith, and has dealt with the Property in a commercially reasonable manner;
- (b) the actions and conduct of the Receiver are approved;
- (c) the Receiver has satisfied all of its duties and obligations as receiver and manager of each of the Remaining Debtors and the Remaining Debtors' Property;
- (d) the Receiver shall not be liable for any act or omission including, without limitation, any act or omission pertaining to the discharge of the Receiver's duties as receiver and manager of the Remaining Debtors and the Remaining Debtors' Property, save and except for any liability arising out of fraud or wilful misconduct on the part of the Receiver; and,
- (e) any and all claims against the Receiver arising from, relating to, or in connection with, the performance of the Receiver's duties and obligations as receiver and manager of the Remaining Debtors and the Remaining Debtors' Property, save and except for any claims based on fraud or wilful misconduct, on the part of the Receiver, shall be forever barred and extinguished.

8. Ordering and declaring that, effective immediately upon the Receiver filing a certificate with this Honourable Court confirming that all funds and Property have been distributed in accordance with the proposed distribution sought as part of this Application, the Receiver shall be discharged as receiver and manager of the Remaining Debtors and the Remaining Debtors' Property and relieved

of all further duties and obligations in respect of the Remaining Debtors and the Remaining Debtors' Property.

9. Declaring that, notwithstanding the discharge of the Receiver, the Receiver remains empowered with residual jurisdiction to perform any act necessary or incidental to the conclusion of the receivership of the Remaining Debtors or the Remaining Debtors' Property.

10. Declaring that no action or proceeding arising from, relating to, or in connection with, the performance of the Receiver's duties and obligations as receiver and manager of the Remaining Debtors or the Remaining Debtors' Property may be commenced or continued, without the prior leave of this Honourable Court, on notice to the Receiver, and on such terms as this Honourable Court may direct.

11. Ordering and declaring that service of any order arising from this Application by email, facsimile, registered mail, courier, regular mail or personal delivery to the persons listed on the service list shall constitute good and sufficient service of such order, and that no persons other than those on the service list are entitled to be served with a copy of such order.

12. Such further and other relief as counsel for the Receiver may advise.

**Grounds for making this application:** The grounds for the Application are as follows:

13. Prior to the granting of the Receivership Order, the Debtors and Pillar solicited bids in connection with the marketing and sale of the Debtors' Property. As a result of such solicitation process, the Debtors received two proposals of which the Debtors and Pillar accepted the proposal put forward by Century Services Corp. (the "**Century Services Agreement**") with respect to the liquidation of the Action Asset's and Action Restoration's Property.

14. The Receiver was appointed as receiver and manager over all of the Debtors' Property pursuant to the Receivership Order.

15. Pursuant to the Receivership Order, the Receiver is authorized to sell, convey, transfer, lease, or assign the Debtors' Property or any parts thereof: (i) pursuant to the Century Services Agreement; (ii) without the approval of this Honourable Court in respect of any transaction not exceeding \$150,000, provided that the aggregate consideration for all such transactions does not

exceed \$300,000; and (iii) with the approval of this Honourable Court in respect of any transaction in excess of such amounts.

16. The primary assets of the Debtors were liquidated pursuant to: (i) the Pattison arrangement referred to in paragraph 3(a) of the Receivership Order; (b) the Century Service Agreement; or (iii) the sale of a residential property owned by Action Asset, as approved pursuant to the Templeton Sale Approval Order, granted by the Honourable Madam Justice B.E.C. Romaine on July 7, 2016. Following such sales, the Debtors' remaining property consisted of certain accounts receivable due and owing to the Debtors.

17. The Receiver developed a costs and proceeds allocation with respect to the costs and proceeds associated with the liquidation of Action Restoration's and Action Asset's Property under the Century Services Agreement, based on the nature and ownership of such Property, which was approved pursuant to the Order granted by the Honourable Justice A.D. Macleod on September 27, 2016 (the "**Action Asset Discharge Order**").

18. Additionally, pursuant to the Action Asset Discharge Order, *inter alia*: (i) the security granted by Action Asset to Pillar was declared to be valid and enforceable as against Action Asset; (ii) the Receiver was authorized and empowered to distribute any and all funds held by the Receiver on behalf of Action Asset to Pillar; and, (iii) the Receiver was discharged as receiver and manager of Action Asset and Action Asset's Property.

19. Subsequently, pursuant to the Order granted by the Honourable Justice C.M. Jones on March 22, 2017, the security granted by Action Restoration and Action Restoration Red Deer to FundThrough was declared to be valid and enforceable and the Receiver was furthermore authorized and empowered to distributed any and all funds realized from the collection of accounts receivables and held by the received on behalf of Action Restoration and Action Restoration Red Deer to FundThrough.

20. All accounts receivable due and owing to the Debtors capable of being settled and/or recovered, have been settled and/or recovered by the Receiver.

21. BNS, as lender, advanced various loans secured by Step Above.

22. FundThrough, as lender, advanced various loans to certain of the Remaining Debtors or their affiliates. The obligations due and owing to FundThrough are secured by a priority security interest in various accounts receivable due and owing to Action Restoration, Action Restoration Red Deer, Action Asset, and Step Above (collectively, the “**FundThrough AR Security**”).

23. Pillar, as lender, advanced various loans secured to certain of the Remaining Debtors or their affiliates. The obligations due and owing to Pillar are secured by a priority interests in all of the Remaining Debtors’ Property, other than the FundThrough AR Security.

24. FundThrough and Pillar have competing security interests which have priority over different categories of the Remaining Debtors’ Property. As a result, the Receiver’s proposed Proceeds and Costs Allocation allocates the Remaining Debtors’ realized proceeds depending on whether or not such proceeds are subject to, on a priority charge basis, the FundThrough AR Security or Pillar’s security. The proposed Proceeds and Cost Allocation seeks to ensure that the costs associated with the realization of the various types of Property are borne by the beneficiary of such realizations.

25. The Receiver has obtained a legal opinion from its counsel that the security granted by Action Restoration to Pillar and the security granted by Step Above to BNS are both valid and enforceable and rank in priority to any subsequently appointed trustee in bankruptcy.

26. The Receiver presently holds funds that are available for distribution to Pillar, FundThrough, BNS, and on account of the various other priority payables, as set out in the Fourth Receiver’s Report.

27. All assets of the Remaining Debtors have been liquidated or otherwise dealt with and any and all funds belonging or owing to the Remaining Debtors have been gathered or otherwise dealt with. Upon the Receiver’s distribution to the creditors of the Debtors, as set out in the Fourth Receiver’s Report, any and all Property remaining and all of the funds gathered, on account of the Debtors, will have been distributed or otherwise dealt with. As such, the administration of the estates of the Debtors is complete and it is appropriate for the Receiver to be discharged.

28. Such further and other grounds as counsel for the Receiver may advise.

**Material or Evidence to be relied On:** The Receiver will rely on the following material:

29. The Fourth Receiver’s Report.

30. Such further and other material as counsel for the Receiver may advise.

**Applicable rules:**

31. Rule 6.3, 6.9, and 11.27 of the *Alberta Rules Of Court*, Alta. Reg. 124/2010.

32. Such further and other rules as counsel for the Receiver may advise.

**Applicable Acts and regulations:**

33. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

34. Such further and other acts and regulations as counsel for the Receiver may advise.

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

35. There are no irregularities complained of or objections relied on.

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

36. The Receiver proposes that the Application be heard in person with one, 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.

**SCHEDULE "A"**

COURT 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 **ORDER (Allocation, Distribution, and Discharge)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
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Email: scollins@mccarthy.ca  
wmacleod@mccarthy.ca



DATE ON WHICH ORDER WAS PRONOUNCED: February 5, 2016

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Justice A.D. Macleod

**ORDER**

**UPON** the application (the "**Application**") of Hardie & Kelly Inc., in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the undertakings, property, and assets (collectively, the "**Property**") of Action Restoration Ltd. ("**Action Restoration**"), Action Restoration RD Ltd. ("**Action Restoration Red Deer**") Step Above Exteriors Ltd. ("**Step Above**" Step Above, Action Restoration Red Deer, and Action Restoration, are collectively referred to as, the "**Remaining Debtors**") and Action Asset Corporation ("**Action Asset**", Action Asset and the

Remaining Debtors, are collectively referred to as, the “**Debtors**”) pursuant to the Consent Receivership Order, dated April 15, 2016 (the “**Receivership Order**”); **AND UPON** reading the Fourth Report of the Receiver, dated January 29, 2018 (the “**Fourth Receiver’s Report**”), filed; **AND UPON** reading the Affidavit of Service of Katie Doran, sworn ●, 2018 (the “**Service Affidavit**”), filed; **AND UPON HEARING** the submissions of counsel for the Receiver, and for any other parties who may be present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the Application and the Fourth Receiver’s Report is abridged, the Application is properly returnable today, service of the Application and the Fourth Receiver’s Report on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the service list (the “**Service List**”) attached as an exhibit to the Service Affidavit, are entitled to service of the Application or the Fourth Receiver’s Report.

**PROCEEDS AND COSTS ALLOCATION**

2. The Receiver’s proposed allocations and holdbacks as between the Remaining Debtors and such Remaining Debtors’ Property, as set forth in Appendix “D” of the Fourth Receiver’s Report, be and is hereby approved.

**DISTRIBUTION**

3. The security granted by Action Restoration to Pillar Capital Corp. (“**Pillar**”) represents a valid and enforceable charge against the assets, properties, and undertakings of Action Restoration.

4. The security granted by Step Above to The Bank of Nova Scotia (“**BNS**”) represents a valid and enforceable charge against the assets, properties, and undertakings of Step Above.

5. The Receiver be and is hereby expressly authorized and empowered to distribute any and all funds held by the Receiver on behalf of:

- (a) Action Restoration, to: (i) FundThrough Inc. (“**FundThrough**”), (ii) Pillar; and, (iii) certain priority payables thereto, all in the amounts and priority as set out in paragraph ● of the Fourth Receiver;
- (b) Action Restoration Red Deer, to: (i) FundThrough; and, (ii) certain priority payables thereto, all in the amounts and priority as set out in paragraph ● of the Fourth Receiver; and,
- (c) Step Above, to: (i) BNS; and, (iii) certain priority payables thereto, all in the amounts and priority as set out in paragraph ● of the Fourth Receiver.

## **DISCHARGE**

6. The Receiver’s interim and final statement of receipts and disbursements with respect to Action Restoration, Action Restoration Red Deer, and Step Above, as set out in Appendices “A”, “B”, and “C” of the Fourth Receiver’s Report, respectively, are hereby approved.

7. The interim and final accounts of the Receiver and its legal counsel with respect to Action Restoration, Action Restoration Red Deer, and Step Above, as summarized in Appendices “E”, “F”, and “G” of the Fourth Receiver’s Report, respectively, are hereby approved.

8. As of the date of the Fourth Receiver’s Report and based on the evidence that is currently before this Honourable Court:

- (a) the Receiver has acted honestly and in good faith, and has dealt with the Property in a commercially reasonable manner;
- (b) the actions and conduct of the Receiver are approved;
- (c) the Receiver has satisfied all of its duties and obligations as receiver and manager of the Remaining Debtors and the Remaining Debtors’ Property;

- (d) the Receiver shall not be liable for any act or omission including, without limitation, any act or omission pertaining to the discharge of the Receiver's duties as receiver and manager of the Remaining Debtors and the Remaining Debtors' Property, save and except for any liability arising out of fraud or wilful misconduct on the part of the Receiver; and,
- (e) any and all claims against the Receiver arising from, relating to, or in connection with, the performance of the Receiver's duties and obligations as receiver and manager of the Remaining Debtors and the Remaining Debtors' Property, save and except for claims based on fraud or wilful misconduct on the part of the Receiver, shall be forever barred and extinguished.

9. Upon the filing of a Receiver's certificate with the Clerk of the Court, substantially in the form set out in Appendix "A" hereto (the "**Discharge Certificate**"), the Receiver shall be discharged as receiver and manager of Remaining Debtors and the Remaining Debtors' Property and relieved of all further duties and obligations with respect to Remaining Debtors and the Remaining Debtors' Property.

10. Notwithstanding the discharge of the Receiver, upon the filing of the Discharge Certificate:

- (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and,
- (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections, and stays of proceedings in favour of the Receiver in its capacity as Receiver.

11. No action or proceeding arising from, relating to, or in connection with, the performance of the Receiver's duties and obligations as receiver and manager of the Debtors or the Property may be commenced or continued without the prior leave of this Honourable Court, on notice to the Receiver, and on such terms as this Honourable Court may direct.

## **DESTRUCTION OF RECORDS**

12. The Receiver is hereby authorized and empowered to destroy any and all any documents, books, accounting records, and other papers, records, and information related to the business or affairs of the Debtors, if not collected by any of the former or current directors of the Debtors by March 5, 2018.

## **MISCELLANEOUS MATTERS**

13. The Receiver and any other interested party, shall be at liberty to apply for further advice, assistance, and directions, as may be necessary, in order to give full force and effect to the terms of this Order.

14. Service of this Order on the Service List by email, facsimile, registered mail, courier, or personal delivery shall constitute good and sufficient service of this Order, and no Persons, other than those on the Service List, are entitled to be served with a copy of this Order. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

15. Service of this Order on any party not attending this application is hereby dispensed with.

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**J.C.Q.B.A.**

**APPENDIX "A" TO THE ORDER (Allocation, Distribution, and Discharge)**

COURT 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 **DISCHARGE CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
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Fax: 403-260-3501  
Email: scollins@mccarthy.ca  
wmacleod@mccarthy.ca



**RECEIVER'S DISCHARGE CERTIFICATE**

1. All capitalized terms used in this Receiver's Discharge Certificate and not otherwise defined shall have the meaning ascribed to them in the Order issued by The Honourable Justice A.D. Macleod of the Court of Queen's Bench of Alberta, in the within proceedings, granted on February 5, 2018 (the "**Discharge Order**").

2. Pursuant to the Discharge Order, the Court provided for the discharge of the Receiver, upon the filing of this certificate, by the Receiver, confirming that all distributions as contemplated in the Discharge Order have been distributed, in accordance with the provisions of the Discharge Order.

**THE RECEIVER HEREBY CONFIRMS AND CERTIFIES THE FOLLOWING:**

1. All distributions as contemplated in the Discharge Order have been distributed, in accordance with the provisions of the Discharge Order.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

**HARDIE & KELLY INC.**, in its capacity as the court appointed receiver and manager of the assets, properties, and undertaking of **ACTION RESTORATION LTD., ACTION RESTORATION RD LTD., and STEP ABOVE EXTERIORS LTD.**, and not in its personal or corporate capacity

Per: \_\_\_\_\_  
Name:  
Title: