

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, September 12, 2018
Time: 2:00 p.m.
Where: Court of Queen's Bench of Alberta, Edmonton Law Courts,
1A Sir Winston Churchill Square, Edmonton, Alberta
Before Whom: The Honourable Madam Justice D.L. Shelley, 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 \$750,000.00 to \$1,250,000.00, 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. ("**121**" or the "**Company**"). 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 Second Report, the Receiver has been required to exercise its borrowing powers pursuant to paragraph 20 of the Receivership Order to fund payment of:
 - (a) \$695,000.00 to the City of Edmonton on account of pre-receivership property tax arrears and penalties related to 2015 and 2016 and on account of property taxes for 2017 and 2018;
 - (b) professional fees to legal counsel to prosecute a significant professional negligence action on behalf of the receivership estate against former real estate counsel to the Company for losses sustained by the Company as a result of a real estate transaction (the "**Action**"); and
 - (c) the professional fees and disbursements of the Receiver and its legal counsel.
6. The Receiver now requires additional funding in order to continue to carry out its duties and responsibilities pursuant to the Receivership Order. Further, and in particular, the Receiver requires additional funding in order to pay:

- (a) the costs associated with prosecuting the Action through to trial (which trial is scheduled for May of 2019);
- (b) ongoing holding costs associated with the Company's real estate;
- (c) ordinary course professional fees of the Receiver and its legal counsel; and
- (d) municipal property taxes which will become due in 2019.

Material or Evidence To Be Relied Upon:

- (e) This Notice of Application, filed;
- (f) Second Report of the Receiver;
- (g) The pleadings and proceedings herein, including the Receivership Order granted on September 23, 2016;
- (h) Draft order attached as **Schedule "A"** to this Notice of Application; and
- (i) 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 Madam Justice D.L. Shelley 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.