

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
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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, April 10, 2019
Time: 11:00 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 approving a proposed settlement agreement (the "**Settlement Agreement**") between Hardie & Kelly Inc., court-appointed receiver of the property, assets and undertakings of 1219358 Alberta Ltd. (the "**Receiver**") and other parties to a legal action commenced in the Court of Queen's Bench of Alberta under Court File Number 1203 15088, Judicial Centre of Edmonton between 1219358 Alberta Ltd. and Capital Steel Inc. (Plaintiffs) and Kevin James Anderson, Hustwick Hodgson & Payne, Douglas C. Hodgson, Roderick C. Payne, Laurier Law Office and Masuch Albert LLP (Defendants) (the "**Action**") and authorizing and directing the Receiver to enter into the Settlement Agreement and to perform all actions reasonably necessary to implement the Settlement Agreement.
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 an order (the "**Receivership Order**") appointing Hardie & Kelly Inc. (the "**Receiver**") as receiver of the property, assets and undertakings of 1219358 Alberta Ltd.
5. Prior to the grant of the Receivership Order, 1219358 Alberta Ltd. had prosecuted the Action through close of pleadings, document discovery and questioning. Subsequent to the Receivership Order, the Receiver continued to prosecute the Action through to a pre-trial conference and the scheduling of the Action for trial in May of 2019.
6. On March 19, 2019, the Defendants in the Action, by their counsel, delivered to litigation counsel for the Receiver an offer to settle the Action on terms more particularly described in the Settlement Agreement comprising an exhibit to the Third Report of the Receiver (the "**Settlement Offer**").
7. The Receiver has accepted the Settlement Offer, conditional upon the Receiver obtaining an Order of this Court within these receivership proceedings approving of the Settlement Agreement and authorizing the Receiver to enter into the Settlement Agreement.

8. If approved by this Honourable Court, the Settlement Agreement will allow the Receiver to achieve a significant financial contribution to the receivership estate in a meaningful amount that is fair and reasonable in the circumstances. Further, the Receiver will thereby be able to achieve the certainty of a positive outcome in the Action and will be able to avoid the risk, uncertainty, delay and significant cost required to prosecute a trial of the Action.

Material or Evidence To Be Relied Upon:

- (a) This Notice of Application, filed;
- (b) Third Report of the Receiver (to which will be exhibited the proposed Settlement Agreement and the Draft Order of this Court approving the Settlement Agreement);
- (c) The pleadings and proceedings herein, including the Receivership Order granted on September 23, 2016; and
- (d) 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.