

COURT FILE NO. 1303 15731 ✓

COURT COURT OF QUEEN'S BENCH  
OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF RIDGE DEVELOPMENT CORPORATION

DEFENDANTS 1324206 ALBERTA LTD.

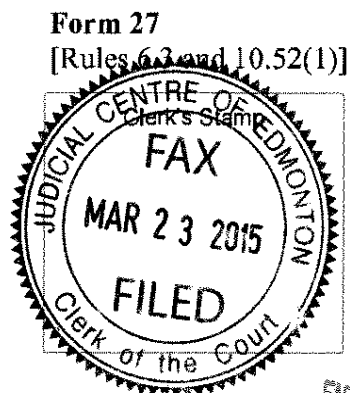
PARTY FILING THIS DOCUMENT ALVAREZ & MARSAL CANADA INC. IN ITS  
CAPACITY AS THE COURT APPOINTED  
RECEIVER AND MANAGER OF 1324206  
ALBERTA LTD.

DOCUMENT APPLICATION FOR ADVICE AND DIRECTION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**McMILLAN LLP**  
1700, 421 – 7<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 4K9  
Attention: Adam C. Maerov / Marc-Elie Scott

Telephone: (403) 215-2752  
Facsimile: (403) 531-4720  
Email: adam.maerov@mcmillan.ca  
File No. 222630



#### NOTICE TO RESPONDENT

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: March 26, 2015  
Time: 2:00 p.m.  
Where: Edmonton Law Courts  
Before Whom: The Honourable Mr. Justice D.R.G. Thomas

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. An Order abridging the time for service and deeming service good and sufficient upon all interested parties;
2. An Order for advice and directions regarding the distribution of the Sale Proceeds;
3. An Order approving the activities of the Receiver and the Statement of Receipts and Disbursements, each as set out in the Second Report of the Receiver dated March 20, 2015; and,
4. Such further and other relief as this Honourable Court may grant.

**Grounds for making this application:**

5. 132 was established in May 2007 primarily to finance, develop, construct, operate and sell units in the Whitemud Heights Project ("**Whitemud Heights**" or "**Project**"), a one hundred and twenty-three unit residential housing project on a portion of lands comprising the Stony Plain Indian Reserve No. 135 (being the lands occupied by the Enoch Cree Nation 440) (the "**Lands**").
6. On January 16, 2008, 1324206 Alberta Ltd. ("**132**") granted RBC security by way of a collateral mortgage in the amount of \$20,000,000 constituting a charge on 132's interest in the Lands (the "**Mortgage**") along with a general security agreement (the "**GSA**") and a general assignment of sale proceeds (the "**Sale Proceeds Assignment**", together with the Mortgage and the GSA are collectively referred to as the "**RBC Security Documents**").
7. On February 21, 2008, Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development, entered into a lease (the "**Lease**") as lessor with 132 as lessee for the Lands.
8. On April 8, 2008, the Mortgage was registered in the Indian Lands Registry. The Mortgage was the first interest registered against the Lands in the Indian Lands Registry (the "**ILR**").
9. The Project was substantially completed in late 2009, however, it could not be occupied as sewer and water services were not available.
10. Alvarez & Marsal Canada Inc. was appointed Receiver and Manager, without security (the "**Receiver**"), of all current and future assets, undertakings, and properties (collectively, the "**Property**") of 132 pursuant to the receivership order granted by Justice D.R.G. Thomas of this Honourable Court dated November 13, 2013 (the "**Receivership Order**").

11. On application by the Receiver, this Honourable Court approved the sale of the Project (the "**Sale Agreement**") between the Receiver and 1845315 Alberta Ltd. ("**184**") and on November 28, 2014 this Honourable Court granted a Sale Approval and Vesting Order.
12. The Receiver completed all closing matters and on December 12, 2014 the sale approved by the Sale Approval and Vesting Order closed and the Receiver received the outstanding balance of the purchase price of \$15,400,000.
13. Pursuant to the Sale Approval and Vesting Order the Receiver was authorized to repay the Receiver's borrowings and hold the balance of funds pending further order of this Honourable Court. Paragraph 5 of the Approval and Vesting Order states:

For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Assets, and from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

14. Counsel to the Receiver ("**Counsel**") has provided a confidential reasoned independent opinion to the Receiver indicating that, at the time of closing of the sale of the Project, RBC had valid security over the Property and that was enforceable as against 132.
15. 132's indebtedness to RBC exceeds \$28,000,000, plus legal fees and costs.
16. The Receiver continues to hold a portion of the proceeds of the sale paid to the Receiver by 184 in accordance with the Sale Agreement (the "**Sale Proceeds**").
17. Prior to the Receivership and prior to the Lease being in place, Skyriders Developments Inc. ("**Skyriders Developments**") entered into reservation agreements ("**Reservation Agreements**") with potential purchasers in respect of units in the Project.
18. Also prior to the Receivership and prior to the Lease being in place, purchase agreements (the "**Purchase Agreements**") were entered into with various parties ("**Purchasers**") by either 132 or Skyriders Holdings Ltd. ("**Skyriders Holdings**", and together with Skyriders Developments, collectively "**Skyriders**"), as developer of the Project.
19. Subsequently and also prior to the Receivership and prior to the Lease being in place, 132 entered into agreements ("**Sublease Interest Agreements**") with all but eleven of the Purchasers.
20. In connection with the Reservation Agreements, the Purchase Agreements and the Sublease Interest Agreements, deposits were lodged by some of the Purchasers (the "**Depositors**") with Skyriders and Kennedy Agrios LLP, counsel to Skyriders and Prairie Western Development Corp.

21. There is no evidence available to the Receiver to indicate whether deposit monies were remitted to 132. At the date of the Receivership there were no deposit funds held by 132. The Receiver has not conducted a tracing analysis of the deposits.
22. At the date of the Receivership, the financial statements of 132 disclose \$1,892,379.38 payable as "Purchaser Deposits".
23. The Purchase Agreements provided that 132 would hold deposits in a trust account and that some or all of those funds could be removed from trust when they became guaranteed by a government-approved warranty program. The Receiver is not aware of any deposits having been guaranteed by such a program.
24. The Sublease Interest Agreements did not require that deposits be held in trust.
25. Under the terms of the Sublease Interest Agreements the deposits were non-refundable except in certain limited circumstances.
26. By their terms, the Sublease Interest Agreements supersede any other agreements between the parties or any related parties.
27. A number of Depositors commenced court actions for the recovery of their deposits and 132 was defending those actions when the Receiver was appointed. Some parties obtained judgments. Some of those parties have registered their claims at ILR. All of those registrations were made with ILR after the Mortgage was registered.
28. Based on the information in the records of 132, other information and findings discussed in the Second Report of the Receiver (the "**Second Report**"), the Receiver is of the view that RBC has valid and enforceable security over the Property of 132, including the proceeds of sale.
29. Based on the information available to the Receiver, and for the reasons set out in the Second Report, the Receiver is of the view that, with the exception of the possible PMSI of Trail Appliances Ltd., RBC had a first priority lien in and a priority over all other creditors to the Property at the time the Property was sold and a first priority lien on the Sale Proceeds.
30. Such further and other grounds as counsel for the Receiver may advise and this Honourable Court may permit.

**Material or evidence to be relied on:**

31. The Second Report of the Receiver dated March 20, 2015;
32. The pleadings and proceedings taken in this Action; and,
33. Such further and other evidence as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

- 34. Rules 1.3, 1.4, 6.3, and 13.5(2) of the *Alberta Rules of Court*; and
- 35. Such further and other material as counsel may advise and this Honourable Court may permit.

**Applicable Acts and Regulations:**

- 36. *Indian Act*, RSC 1985, c I-5; and,
- 37. Such further and other authority as counsel may advise and this Honourable Court may permit.

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

- 38. None.

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

- 39. In person in Open Chambers.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicants 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.