

**Form 27**

[Rules 6.3 and 10.52(1)]

COURT FILE NUMBER	1801-04745
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	HILLSBORO VENTURES INC.
DEFENDANT	CEANA DEVELOPMENT SUNRIDGE INC.
	IN THE MATTER OF THE RECEIVERSHIP OF CEANA DEVELOPMENT SUNRIDGE INC.
DOCUMENT	<b><u>APPLICATION</u></b>
APPLICANT	MOUNIR ALEIN
RESPONDENTS	HILLSBORO VENTURES INC. and CEANA DEVELOPMENT SUNRIDGE INC.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>JENSEN SHAWA SOLOMON DUGUID HAWKES LLP</b> 800, 304 - 8 Avenue SW Calgary, AB T2P 1C2  William Katz Tel: 403 571 1520 Fax: 403 571 1528 File: 15040.001



**NOTICE TO RESPONDENTS: HILLSBORO VENTURES INC. and CEANA DEVELOPMENT SUNRIDGE INC.**

This Application is made against you. You are a 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:

<b>Date:</b>	Thursday, December 10, 2020
<b>Time:</b>	10:00 a.m. for ½ day - Commercial List
<b>Where:</b>	Calgary Courts Centre, 601 - 5 Street SW Calgary, AB T2P 5P7

**Before Whom:** Justice Eidsvik

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. The Applicant respectfully seeks an Order, substantially in the form attached as Schedule "A" for the following relief:
  - (a) A declaration that the commercial condominium unit ("**Unit**") located at 2255 - 32 Street NE, Calgary, Alberta (the "**Project**"), as further described in the Affidavit of Mounir Alein ("**Mr. Alein**"), is impressed with a trust in favour of the Applicant, to the extent of his deposit in the amount of \$76,000.00 paid to KH Dunkley Law Group ("**Dunkley**") on December 14, 2015 (the "**Deposit Funds**");
  - (b) Directing that the Deposit Funds currently held by Torys LLP on behalf of the Receiver, Alvarez & Marsal Canada Inc. ("**Receiver**") be returned to Mr. Alein forthwith;
  - (c) Directing that no further marketing shall take place in connection with the Unit of the Project purchased by the Applicant without further Order of the Court;
  - (d) Such further and other relief as this Honourable Court deems necessary; and
  - (e) Costs of this application.

**Grounds for making this Application:**

2. The Receiver was appointed as receiver and manager of the assets, properties and undertakings of Ceana Development Sunridge Inc. ("**Ceana**") pursuant to the Receivership Order granted on July 3, 2019, by the Honourable Justice B.E.C. Romaine, as amended and restated on June 17, 2020, by the Honourable Justice C.M. Jones (collectively referred to as the "**Receivership Order**").
3. The Receiver is empowered and authorized to sell Ceana's current and future assets, properties and undertakings of every nature and kind whatsoever pursuant to the Receivership Order. It is further authorized to settle debts owed by Ceana.
4. The Project is subject to several purchase and sale agreements specifying that the Deposit Funds are to be held in trust in accordance with section 14 of the *Condominium Property Act*, R.S.A. 2000, c-C-22, as amended ("**Act**").
5. Dunkley and Ceana failed to comply with the of the *Act* and do not have an enforceable agreement to justify the retention of the Deposit Funds.

6. Pursuant to the *Condominium Property Act*, R.S.A. 2000, c-C-22, the Deposit Funds are returnable to the Applicant.
7. Such further and other grounds as counsel may advise.

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

8. The Consent Order granted on November 13, 2020 by the Honorable Justice K. Eidsvik
9. Receivership Order granted on July 3, 2019, by the Honourable Justice B.E.C. Romaine;
10. Amended and Restated Receivership Order granted on June 17, 2020, by the Honourable Justice C.M. Jones;
11. Affidavit of Mounir Alein sworn November 23, 2020, submitted for filing along with this Application;
12. The pleadings filed in this proceeding; and
13. Such further and other material as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

14. Such rules as counsel may advise.

**Applicable Acts and regulations:**

15. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3;
16. Sections 17 and 22 of the *Civil Enforcement Act*, RSA 2000, c C-15;
17. *Condominium Property Act*, RSA 2000, c-C-22;
18. The inherent jurisdiction of this Honourable Court; and
19. Such further and other Acts and regulations as counsel may advise.

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

20. N/A

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

21. This Application is proposed to be heard in Justice Chambers.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

**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 time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.



**IT IS HEREBY DECLARED THAT:**

1. Service of notice of this Application and supporting materials is deemed to be good and sufficient.
2. The commercial condominium unit ("**Unit**") located at 2255 - 32 Street NE, Calgary, Alberta (the "**Project**"), as further described in the Affidavit of Mounir Alein, is impressed with a trust in favour of the Applicant, to the extent of his deposit (the "**Deposit Funds**").
3. Torys LLP on behalf of the Receiver, Alvarez & Marsal Canada Inc. is directed to pay the Deposit Funds to the Applicant forthwith.
4. No further marketing shall take place in accordance with the Unit of the Project purchased by the Applicant without further Order of this Court.
5. Costs of this Application are payable forthwith by the Respondents Hillsboro Ventures Inc. and Ceana Development Sunridge Inc. in the amount of \$\_\_\_\_\_.

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Justice of the Court of Queen's Bench of Alberta