

COURT FILE NUMBER	1703-21274	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	EDMONTON	
PLAINTIFF	ROYAL BANK OF CANADA	
DEFENDANTS	REID-BUILT HOMES LTD., 1679775 ALBERTA LTD., REID WORLDWIDE CORPORATION, BUILDER'S DIRECT SUPPLY LTD., REID BUILT HOMES CALGARY LTD, REID INVESTMENTS LTD., REID CAPITAL CORP., and EMILIE REID	
APPLICANT	ALVAREZ & MARSAL CANADA INC. in its capacity as Court-appointed Receiver of the current and future assets, undertakings and properties of REID-BUILT HOMES LTD., 1679775 ALBERTA LTD., REID WORLDWIDE CORPORATION, BUILDER'S DIRECT SUPPLY LTD., REID BUILT HOMES CALGARY LTD, REID INVESTMENTS LTD., and REID CAPITAL CORP.	
DOCUMENT	BENCH BRIEF of the COURT-APPOINTED RECEIVER (Application to Create Property Powers Charge) November 29, 2017 Honourable Mr. Justice R. A. Graesser	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Norton Rose Fulbright Canada LLP 3700, 400 Third Ave SW Calgary, Alberta T2P 4H2 Phone: 403.267.8222 Fax: 403.264.5973 Howard A. Gorman Q.C. / Aditya M. Badami File No. 1001004429 <i>Counsel for the Respondent, Alvarez & Marsal Canada Inc.</i>	

I. INTRODUCTION

1. This Brief is submitted on behalf of Alvarez & Marsal Canada Inc. in its capacity as Court-appointed receiver and manager (**Receiver**) of Reid-Built Homes Ltd., 1679775 Alberta Ltd., Reid Worldwide Corporation, Builder's Direct Supply Ltd., Reid Built Homes Calgary Ltd, Reid Investments Ltd., and Reid Capital Corp. (collectively, **Reid Built**).
2. This Brief is submitted in respect of the Receiver's application for approval of certain Property Powers and the creation of a Property Powers Charge (as both terms are defined in the Receiver's Application dated November 24, 2017).
3. The purpose of this Brief is to identify the rationale for the Property Powers and Property Powers Charge.

II. SUBMISSIONS

Rationale for Property Powers Charge

4. As noted in the Receiver's First Report, the Receiver anticipates from time-to-time undertaking works to repair, upkeep, enhance, complete or partially complete improvements to various properties (or any one of them) comprising the receivership estate. These works are intended to preserve or increase the value of the properties for the benefit of Reid Built's stakeholders.
5. The Receiver is requesting from this Honourable Court a first-ranking super priority charge as against the specific properties so improved by the Receiver by virtue of the above-noted works.
6. The Receiver's view is that such a charge would ensure that steps taken and moneys expended by the Receiver to enhance or preserve the properties comprising the Reid Built estate would be shielded from being subordinated by third-party claims asserted against those same properties so improved.
7. The exercise of the Property Powers will be necessary for the preservation and enhancement of the Reid Built estate for the benefit of all Reid Built stakeholders. No other entity is in a position to undertake the works contemplated by the Property Powers. Completing a partially constructed property could increase the realizable value by an amount in excess of the proposed expenditure.

8. If the works are not undertaken, the properties may fall into disrepair, or their value may otherwise be impaired.
9. Accordingly, the Receiver submits that it would be rational and appropriate in the circumstances to approve such Property Powers.
10. Likewise the creation of the Property Powers Charge is rationally connected to the exercise of the Receiver's powers generally, and in particular with respect to the Receiver's preservation of the estate and maximizing realization prospects.
11. Therefore, the Receiver respectfully requests that the Property Powers Charge be authorized by this Honourable Court pursuant to the Court's inherent, equitable jurisdiction to grant what is just and reasonable in the circumstances.

Section 54, Builders' Lien Act

12. While the Receiver has not identified any insolvency proceedings in which a similar charge has been created, the *Builders' Lien Act* creates a priority charge similar to the charge sought by the Receiver.
13. Indeed, aspects of the following section of the *Builders' Lien Act* are the basis upon which the Property Powers Charge rests:

54 (1) At any time after a statement of claim has been issued to enforce a lien, any person interested in the property to which the lien attaches or that is otherwise affected by the lien may apply to the court for the appointment of a receiver of the rents and profits from the property against which the claim of lien is registered, and the court may order the appointment of a receiver on any terms and on the giving of any security or without security, as the court considers appropriate.

(2) At any time after a statement of claim has been issued to enforce a lien, any person interested in the property to which the lien attaches or that is otherwise affected by the lien may apply to the court for the appointment of a trustee and the court may, on the giving of any security or without security, as the court considers appropriate, appoint a trustee

(a) with power to manage, sell, mortgage or lease the property subject to the supervision, direction and approbation of the court, and

(b) with power, on approval of the court, to complete or partially complete the improvement.

(3) Mortgage money advanced to the trustee as the result of any of the powers conferred on the trustee under this section takes priority over all liens existing at the date of the appointment of the trustee.

[...] [emphasis added]¹

14. The Property Powers Charge is necessarily broader than the charge created by section 54 of the *Builders' Lien Act* because the Receiver's proposed charge is prior in ranking to *all other claims* as against specific property improved by the Receiver, not only lien claims.
15. Nevertheless, the structure and apparent rationale for the *Builders' Lien Act* charge is similar to the Property Powers Charge requested by the Receiver.
16. Accordingly, even in the absence of identified precedent, the Receiver submits that the *Builders' Lien Act* serves as lawful justification for the existence of such a charge as the Property Powers Charge.

III. CONCLUSION AND RELIEF SOUGHT

17. For the reasons stated herein, the Receiver respectfully requests the Court's approval of the Property Powers and the creation of the Property Powers Charge.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24th DAY OF NOVEMBER, 2017.



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¹ *Builders' Lien Act*, RSA 2000, c B-7, section 54 [Tab 1].

TAB 1

- (iii) direct that at the trial of the action any particular issue or issues arising on the application be determined,
- (d) the court may make any further order or direction that it considers necessary or desirable including, among other things, an order that the property be sold pursuant to this Act and an order that the action be entered for trial,
- (e) the court may order that any lienholder or other party be given the carriage of the proceedings, and
- (f) the court may order that questioning under Part 5 of the *Alberta Rules of Court* be conducted in the action, but no questioning may be conducted without an order of the court.

RSA 2000 cB-7 s53;2009 c53 s28

Appointment of receiver and trustee

54(1) At any time after a statement of claim has been issued to enforce a lien, any person interested in the property to which the lien attaches or that is otherwise affected by the lien may apply to the court for the appointment of a receiver of the rents and profits from the property against which the claim of lien is registered, and the court may order the appointment of a receiver on any terms and on the giving of any security or without security, as the court considers appropriate.

(2) At any time after a statement of claim has been issued to enforce a lien, any person interested in the property to which the lien attaches or that is otherwise affected by the lien may apply to the court for the appointment of a trustee and the court may, on the giving of any security or without security, as the court considers appropriate, appoint a trustee

- (a) with power to manage, sell, mortgage or lease the property subject to the supervision, direction and approbation of the court, and
- (b) with power, on approval of the court, to complete or partially complete the improvement.

(3) Mortgage money advanced to the trustee as the result of any of the powers conferred on the trustee under this section takes priority over all liens existing at the date of the appointment of the trustee.

(4) Any property directed to be sold under this section may be offered for sale subject to any mortgage or other charge or encumbrance if the court so directs.

(5) The net proceeds of any receivership and the proceeds of any sale made by a trustee under this section shall be paid into court and are subject to the claims of all lienholders, mortgagees and other parties interested in the property sold as their respective rights may be determined.

(6) The court shall make all necessary orders for the completion of the sale, for the vesting of the property in the purchaser and for possession.

(7) A vesting order under subsection (6) vests the title of the property free from all liens, encumbrances and interests of any kind including dower, except in cases where the sale is made subject to any mortgage, charge, encumbrance or interest.

RSA 1980 cB-12 s40;1985 c14 s24

Uncompleted or abandoned contract

55(1) Subject to subsection (2), a lienholder may enforce the lienholder's lien notwithstanding the non-completion or abandonment of any contract under which that lien arises.

(2) Subsection (1) does not apply in favour of a contractor or subcontractor whose contract provides that nothing is to be paid until completion of the contract.

RSA 1980 cB-12 s41

Consolidation of actions

56 If more than one action is commenced to enforce liens in respect of the same land, the court

- (a) may, on the application of any person interested, consolidate the actions into one action, and
- (b) may give the conduct of the consolidated action to any plaintiff as it considers fit.

RSA 1980 cB-12 s42

Entering action for trial

57 When a defence has been filed and no order is made on the pre-trial application for the holding of a trial, the plaintiff or any other party may enter the action for trial.

RSA 1980 cB-12 s43