



Clerk's stamp:

COURT FILE NUMBER 1601-02201

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT **BANK OF MONTREAL**

RESPONDENTS **BUMPER DEVELOPMENT CORPORATION LTD.  
and BUMPER DEVELOPMENT CORPORATION**

DOCUMENT **APPLICATION RE: FUNDS HELD BY THE  
RECEIVER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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**NOTICE TO THE RESPONDENT(S)**

This application is made against you. You are a respondent.  
You have the right to state your side of this matter before the Court.  
To do so, you must be in Court when the application is heard as shown below:

|        |  |
|--------|--|
| Date   | July 6, 2016   |
| Time   | 2 pm   |
| Where  | Calgary Courts Centre, 601 - 5 <sup>th</sup> Street S.W., Calgary, Alberta |
| Before | Justice B. Romaine, in Commercial Court Chambers                           |

Go to the end of this document to see what you can do and when you must do it.

**Remedy claimed or sought:**

1. Canstone Energy Ltd. ("Canstone") seeks an order:
  - (a) Declaring that the sum of \$121,401 ("the Canstone funds") held by Alvarez and Marsal Canada Inc. ("the Receiver") are imposed with a trust, or otherwise the property of Canstone, and are not subject to the security interest of the plaintiff Bank of Montreal ("the Bank");

- (b) An order that the Receiver remit the Canstone funds directly to Canstone or its counsel;
  - (c) Costs of this application;
  - (d) any further and other relief that this Honourable Court may advise or find appropriate.
2. An Order declaring service of this Application good and sufficient, and abridging time for notice of this Application to the time actually given, if necessary.

**Grounds for making this Application:**

- 3. By agreement in writing dated August 26, 2015 ("the Purchase and Sale Agreement") Canstone purchased from Bumper Development Corporation Ltd. ("Bumper") certain oil and gas assets ("the Purchased Assets") for a purchase price of \$35 million;
- 4. Upon closing of the Purchase and Sale Agreement on September 30, 2015, the Bank delivered a No Interest Letter ("the No Interest Letter") and released any further security interest they may have in the Purchased Assets;
- 5. The Effective Date of the Purchase and Sale Agreement was June 1, 2015, which meant that there was a four month adjustment period with respect to production revenue from the Purchased Assets;
- 6. At no time before or at closing was Canstone made aware that Bumper was in default with the Bank, had been operating under a forbearance agreement with the Bank, and had signed a consent receivership order in favour of the Bank;
- 7. On or about February 16, 2016, Bumper delivered to Canstone a final statement of adjustments in relation to the Purchase and Sale Agreement, showing a net amount owing to Canstone of \$121,401.
- 8. On February 16, 2016, Bumper was placed into receivership by the Bank;
- 9. It was a term of the Purchase and Sale Agreement that the Canstone funds were to be held by Bumper as agent, for the benefit of Canstone;
- 10. The Canstone funds arose as a result of oil and gas production revenue from the Purchased Assets during the adjustment period;
- 11. The Canstone funds were in the possession of and being held by Bumper for the benefit of Canstone on the date of the Receivership;

12. The Bank is estopped from claiming a security interest in the Canstone funds as a result of the No Interest Letter;
13. The Canstone funds are being held by the Receiver pending the result of this application; and
14. Such further and other grounds as counsel may advise and the Court may permit.

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

15. The affidavit of Phil Peterson, to be filed;
16. Such further and other materials as counsel may advise and this Honourable Court may permit.

**Applicable Rules:**

17. The *Alberta Rules of Court*, AR 124/2010

**Applicable Acts and Regulations**

18. *Bankruptcy and Insolvency Act*, RSC 1985, sec. 267
19. *Judicature Act* RSA 2000, c. J-2

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

20. None

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

21. In person, before the Honourable Justice in Commercial Court, on evidence with some or all of the parties present.

**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 what they want in your absence. You will be bound by any order the Court makes. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this 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 a reasonable time before the application is to be heard or considered.