



800156

COURT FILE NUMBER 2101-00810

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT 2314174 ALBERTA LTD.

RESPONDENT 1652563 ALBERTA LTD.

DOCUMENT **APPLICATION OF 2314174 ALBERTA LTD.**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West
888 3rd Street SW
Calgary, Alberta, T2P 5C5

Telephone 403-351-2922
Facsimile 403-648-1151
E-mail: dmarechal@cassels.com / kdavis@cassels.com
File No. 55397-1

\$50.00
Justice Ho
COM
Aug. 11, 2021

Attention: Danielle Marechal / Kara N. Davis

NOTICE TO RESPONDENT:

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:

Date: Wednesday, August 11, 2021

Time: 2:00 PM

Where: Calgary Courts Centre – Via Webex

Before Whom: The Honourable Madam Justice L.B. Ho

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

Remedy claimed or sought:

1. 2314174 Alberta Ltd. ("**231 Ltd**") seeks:
 - (a) an order substantially in the form attached hereto as Schedule "A":
 - (i) if necessary, abridging the time for service of this Application and supporting materials, to the time actually given and deeming service of notice of this Application and supporting materials good and sufficient;

- (ii) amending the Receivership Order pronounced by the Honourable Justice D.B. Nixon on February 11, 2021 (the “**Receivership Order**”) filed in the within proceedings to grant the Receiver (defined herein) the power to assign 1652563 Alberta Ltd. (the “**Debtor**”) into bankruptcy (the “**Amending Order**”); and
 - (iii) authorizing BDO Canada Limited (“**BDO**”) to act as trustee in bankruptcy of the Debtor (in such capacity, the “**Trustee**”);
 - (b) such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.
2. Terms not other defined herein shall have the meaning ascribed to them in the Second Report of the Receiver dated August 3, 2021 (the “**Second Report**”).

Grounds for making this application:

Background

1. On February 11, 2021, upon application by 231 Ltd, this Honourable Court granted the Receivership Order appointing BDO as a receiver and manager (in such capacity, the “**Receiver**”) of all of the current and future assets, undertakings and properties of the Debtor.
2. On April 13, 2021, upon application by the Receiver, this Honourable Court granted an order, *inter alia*, approving a sales process (the “**Sales Process**”) with respect to the Debtor’s real property located in Carstairs, Alberta (the “**Lands**”).
3. Following the Sales Process, 231 Ltd was selected as the successful bidder and the Receiver and 231 Ltd ultimately entered into a purchase and sale agreement dated July 29, 2021 for the Lands (the “**PSA**”), which PSA remains subject to Court approval.
4. On June 9, 2021 Canada Revenue Agency (the “**CRA**”) issued correspondence (the “**CRA Letter**”) indicating that the Debtor’s GST for the period from February 12, 2021 to February 28, 2021 had been selected for examination. Based solely on the CRA Letter, there is a potential GST liability owing by the Debtor up to the amount of approximately \$130,000 (the “**GST Claim**”).
5. While management of the Debtor believes that the CRA has made an error and that no GST liability exists, due to the quantum and the potential priority of the GST Claim, the completion of the PSA is conditional on the Debtor having been assigned into bankruptcy prior to closing of the transaction subject to the PSA.

Assignment into Bankruptcy

6. The Receivership Order currently does not empower the Receiver to assign the Debtor into bankruptcy. As such, 231 Ltd seeks to amend the Receivership Order to empower the Receiver to assign the Debtor into bankruptcy.
7. Among other things, the Receivership Order states:
 - (a) any interested party may apply to this Court to vary or amend this Order on not less than 7 days’ notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order; and

- (b) nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
8. This Honourable Court has the authority to empower the Receiver to assign the Debtor into bankruptcy.
9. BDO has consented to act as trustee in bankruptcy and is supportive of the proposed Amending Order. 231 Ltd is aware of any conflict that would prohibit BDO from acting as both Receiver and trustee in bankruptcy.

Material or evidence to be relied on:

10. Receivership Order granted by the Honourable Justice D.B. Nixon and filed February 11, 2021;
11. First Report of the Receiver, dated and filed April 6, 2021;
12. Order Approving the Sales Process granted by the Honourable Justice B.E.C. Romaine on April 13, 2021, filed April 14, 2021;
13. Order Approving the Activities and Fees granted by the Honourable Justice B.E.C. Romaine on April 13, 2021, filed April 14, 2021;
14. Second Report of the Receiver, dated August 3, 2021; and
15. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

16. The *Alberta Rules of Court*, including Rules 1.2, 1.3, 1.4, 6.1, 6.2, 6.3, 6.47 and 9.15;
17. Rules 3 and 11 of the Bankruptcy and Insolvency General Rules; and
18. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

19. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended;
20. *Judicature Act*, RSA 2000, c J-2; and
21. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

22. None.

How the application is proposed to be heard or considered:

23. Via WebEx.

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 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(s) a reasonable time before the application is to be heard or considered.

SCHEDULE "A"

COURT FILE NUMBER	2101-00810	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
APPLICANT	2314174 ALBERTA LTD.	
RESPONDENT	1652563 ALBERTA LTD	
DOCUMENT	ORDER AMENDING RECEIVERSHIP ORDER	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Cassels Brock & Blackwell LLP Suite 3810, Bankers Hall West 888 3 rd Street SW Calgary, Alberta, T2P 5C5 Telephone 403-351-2922 Facsimile 403-648-1151 E-mail: dmarechal@cassels.com / kdavis@cassels.com File No. 55397-1	

Attention: Danielle Marechal / Kara N. Davis

DATE ON WHICH ORDER WAS PRONOUNCED: Wednesday, August 11, 2021

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice L.B. Ho

UPON THE APPLICATION of counsel for 2314174 Alberta Ltd. ("**231 Ltd**"), the primary secured creditor of 1652563 Alberta Ltd. (the "**Debtor**"); **AND UPON** having read Receivership Order pronounced by the Honourable Justice D.B. Nixon on February 11, 2021 (the "**Receivership Order**") and filed in the within proceedings, the First Report of BDO Canada Limited ("**BDO**"), in its capacity as court-appointed the receiver and manager (in such capacity, the "**Receiver**") of all of the current and future assets, undertakings and properties of the Debtor, dated April 6, 2021 and the Second Report of the Receiver dated August 3, 2021; **AND UPON** hearing from counsel for the Applicant, counsel for the Receiver and any other interested parties in attendance at the hearing of this Application, which occurred via WebEx video conference having regard for the Court's COVID-19 protocols;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The Receivership Order is amended by:
 - (a) deleting the word "and" from paragraph 3(s);

- (b) inserting the word “and” at the end of paragraph 3(t); and
 - (c) inserting the following paragraph after paragraph 3(t):
 - (u) to assign the Debtor into bankruptcy without further order of this Honourable Court or obtain a bankruptcy order in respect of the Debtor, if the Receiver determines that is appropriate and in the best interests of the estate;
2. In all other respect, the terms of the Receivership Order remain unaltered and in full force and effect.
3. BDO is hereby authorized to act as trustee in bankruptcy of the Debtor.

Service

4. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
 - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order; and
 - (b) posting a copy of this Order on the Receiver’s website
- and service on any other person is hereby dispensed with.

Justice of the Court of Queen’s Bench of Alberta