

COURT FILE NUMBER 1201-06934
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36**

**AND IN THE MATTER OF THE BUSINESS CORPORATIONS
ACT, R.S.A. 2000, c. B-9**

**AND IN THE MATTER OF 1252064 ALBERTA LTD., 1330075
ALBERTA LTD. and HARVEST CAPITAL MANAGEMENT INC.**

DOCUMENT APPLICATION
**(1330075 Alberta Ltd. - UDI Mortgage Advice and Directions
Protocol)**

**ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT**
NORTON ROSE FULBRIGHT CANADA LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2

Phone: +1 403.267.8196
Fax: +1 403.264.5973

Attention: Howard A. Gorman/Randal S. Van de Mosselaer

File No. 01135439-0007

NOTICE TO 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: September 6, 2013
Time: 2:00 p.m.
Where: Calgary Courts Centre, 601 - 5th Street S.W., Calgary, Alberta
Before Whom: The Honourable Madam Justice B.E.C. Romaine

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, if necessary, the time for service of this Application and supporting materials, and declaring service of same to be good and sufficient.
2. An Order substantially in the form attached hereto as Appendix "A" approving the protocol set out therein for an application for advice and directions concerning the validity of the UDI Mortgages (as that term is defined in the Eighth Report of the Monitor), including directions:
 - 2.1 for service of the holders of the UDI Mortgages with notice of such application;
 - 2.2 for representation of the holders of the UDI Mortgages by counsel appointed for that purpose, and for payment of such counsel out of the proceeds of sale of Calmar Lot 2; and
 - 2.3 for the creation of a priority charge against Calmar Lot 2 [as that term is defined in the Affidavit of Ronald Aitkens sworn on June 5, 2012 in the within action (the "June 5 Aitkens Affidavit")] to secure the reasonable fees and disbursements of such counsel, to a maximum of \$25,000;
3. Such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

Grounds for making this application:

4. 1330075 Alberta Ltd. (along with the other Applicants) applied for and obtained an Initial Order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**") by Order of this Court, June 7, 2012, (the "**Initial Order**").
5. Among the assets owned by 1330075 Alberta Ltd. are two parcels of land referred to in the June 5 Aitkens Affidavit as "The Calmar Lands",
6. The Monitor, 1330075 Alberta Ltd., and the parties with a primary financial interest in the Calmar Lands are of the view that the Calmar Lands ought to be sold and thereby monetized, and the Calmar Lands have therefore been listed for sale;
7. Calmar Lot 2 (as that term is defined in the June 5 Aitkens Affidavit) is comprised of 49 separate certificates of title, each representing a fractional undivided interest in Calmar

Lot 2, and each of which is mortgaged in favour of a mortgage holder against that particular undivided interest. All of the mortgages against the undivided interests in Calmar Lot 2 shall, taken together, be referred to as the "UDI Mortgages";

8. For the reasons set out in the Eighth Monitor's Report, an issue has arisen with respect to the enforceability of the UDI Mortgages given the passage of time. 1330075 Alberta Ltd. and the Monitor require the advice and direction of this Court with respect to the enforceability of the UDI Mortgages in order to determine the appropriate distribution of sale proceeds from the Calmar Lands;
9. In order to ensuring that the UDI Mortgage holders' interests are represented before this Honourable Court in the application for advice and directions with respect to the enforceability of the UDI Mortgages, 1330075 Alberta Ltd. and the Monitor wish to ensure that counsel has been appointed to represent these interests;
10. The relief requested by the Applicants is fair, reasonable, and in the best interests of the 1330075 Alberta Ltd., its stakeholders, and the within CCAA restructuring proceedings.
11. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

12. The Affidavit of Ronald Aitkens sworn June 5, 2012;
13. The Eighth Report of the Monitor;
14. All pleadings and proceedings filed in the within action.
15. The Initial Order and subsequent Orders in this action.
16. The inherent jurisdiction of this Honourable Court to control its own process.
17. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

Applicable Acts, Regulations and Rules:

The provisions of the CCAA and the inherent jurisdiction of this Honourable Court.

Any irregularity complained of or objection relied on:

18. None.

How the application is proposed to be heard or considered:

19. In person.

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 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.

APPENDIX "A"

Form 49
[Rule 13.19]

COURT FILE NUMBER 1201-06934
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

Clerk's Stamp

APPLICANTS **IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended
AND IN THE MATTER OF THE BUSINESS CORPORATIONS
ACT, R.S.A. 2000, c. B-9
AND IN THE MATTER OF 1252064 ALBERTA LTD., 1330075
ALBERTA LTD. and HARVEST CAPITAL MANAGEMENT INC.**

DOCUMENT **ORDER
(1330075 Alberta Ltd. - UDI Mortgage Advice and Directions
Protocol)**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

NORTON ROSE CANADA LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2

Phone: +1 403.267.8222
Fax: +1 403.264.5973

Attention: Howard A. Gorman/Randal S. Van de Mosselaer

File No. 284891

DATE ON WHICH ORDER WAS PRONOUNCED **September 6, 2013**

NAME OF JUSTICE WHO MADE THIS ORDER **The Honourable Madam Justice B.E.C. Romaine**

UPON THE APPLICATION of 1330075 Alberta Ltd. (the "**Applicant**"); **AND UPON** having read the Affidavit of Ronald Aitkens sworn June 5, 2012, and the pleadings and proceedings filed herein; **AND UPON** having read the Eighth Report of the Monitor; **AND UPON** having read the June 7, 2012 Initial Order (the "**Initial Order**") in the within Action; **AND UPON** hearing from counsel for the Applicants, the Monitor, and from any other affected parties that may be present;

IT IS HEREBY ORDERED AND DECLARED THAT:

Service

1. The time for service of this notice of this Application for this Order is hereby abridged and deemed good and sufficient and this Application is properly returnable today.

Definitions

2. In this Order the following terms shall have the following meanings:
 - a) "**Blakes**" shall mean the law firm of Blake, Cassels & Graydon LLP;
 - b) "**Calmar Lot 2**" shall mean those lands legally described as Plan 0522859, Block 1, Lot 2, Excepting thereout all mines and minerals, area: 30.9 hectares (76.36 acres) more or less;
 - c) "**UDI Mortgage Advice and Directions Application**" shall mean an application to be brought by the Applicant at a time and date and subject to a schedule to be agreed between counsel and as approved by this Court seeking the advice and directions of this Honourable Court with respect to the enforceability of the UDI Mortgages as a result of the passage of time, and the UDI Mortgage Holders shall be the Respondents in the UDI Mortgage Advice and Directions Application;
 - d) "**UDI Mortgages**" shall mean those various first mortgages registered against various undivided interests in Calmar Lot 2 with the various registration numbers as set out in Schedule "A" to this Order;
 - e) "**UDI Mortgage Holders**" shall mean those various mortgagees who hold the various UDI Mortgages as more specifically described in Schedule "A" to this Order.

Protocol - UDI Mortgages Advice and Directions

3. The Applicant shall bring the UDI Mortgage Advice and Direction Application by filing an Application seeking the appropriate advice and direction of this Court together with such supporting materials as the Applicant may consider appropriate. The return date for the UDI Mortgage Advice and Direction Application and the timing for all steps to be taken in advance of the return date shall be as agreed between counsel or shall be as directed by this Honourable Court as may be necessary.
4. Subject to the terms of this Order, Blakes is hereby appointed as counsel to represent the interests of the UDI Mortgage Holders in the UDI Mortgage Advice and Directions Application.
5. Blakes' reasonable fees and expenses in connection with their representation of the UDI Mortgage Holders in connection with the UDI Mortgage Advice and Directions Application shall, to a maximum of \$25,000 (which amount shall be inclusive of all fees, expenses, other charges, and taxes), be paid out of the sales proceeds of Calmar Lot 2 and shall be secured by a first charge (the "**UDI Mortgage Application Charge**") against Calmar Lot 2 and its sale proceeds.
6. The UDI Mortgage Application Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise in favour of any person, including any charges created by the Initial Order, and the provisions of paragraphs 39 to 42 of the Initial Order shall apply to the UDI Mortgage Application Charge with such changes as may be necessary in the circumstances.
7. The appointment of Blakes to represent the UDI Mortgage Holders in the UDI Mortgage Advice and Directions Application shall not preclude any of the UDI Mortgage Holders from retaining counsel of their own choosing to represent their interests in the UDI Mortgage Advice and Directions Application, provided that:
 - a) such UDI Mortgage Holder shall make such retainer arrangements as they may consider appropriate with such other counsel,
 - b) such counsel will not have recourse either to the sale proceeds of Calmar Lot 2 or to the UDI Mortgage Application Charge in connection with satisfaction of their fees or other charges, and

- c) such UDI Mortgage Holder shall advise Blakes that they have engaged other counsel to represent their interests in the UDI Mortgage Advice and Directions Application and that Blakes is therefore not representing such UDI Mortgage Holder's interests.
8. A copy of this Order shall be served on each of the UDI Mortgage Holders by the Monitor mailing same by ordinary mail to the last known address of each of the UDI Mortgage Holders as reflected in the Applicant's records, and service shall be deemed to be good and sufficient seven (7) days from the date of such mailing.

The Honourable Madam Justice B.E.C. Romaine
Of the Court of Queen's Bench of Alberta

SCHEDULE A

1330075 AB
Calmar Project
UDI Mortgages

Investor	CWT Acct #	Registration no#	Amount	increase admended	total	%	Owing Principal . Plus Acc. Int. 31-Mar-11	Annual Interest Paid Quarterly
RRSP Accounts								
Barber, Lucille	10007861	052 271 385	6,600.00					
Bastura, Matthew	10008598	052 271 386	15,000.00		6,600.00	12%	\$ 11,835.47	2%
Bastura, Nicole	10009770	052 271 387	12,600.00		15,000.00	12%	26,993.08	2%
Begin, Germain	10009210	052 271 388	20,000.00		12,600.00	12%	22,601.09	2%
Bougie, Karin	10007765	052 271 390	10,400.00		20,000.00	12%	36,039.12	2%
Bougie, Robert	10007764	052 271 389	11,800.00		10,400.00	12%	18,685.03	2%
Cadieu, Estelle	24215	051 271 392	20,000.00		11,800.00	12%	21,200.33	2%
Chang, Jeff	27961	052 271 393	20,000.00		20,000.00	12%	35,932.76	2%
Drok, Ian	10011196	052 271 395	69,600.00		20,000.00	12%	36,039.12	2%
Drok, Lena	10011197	052 271 396	75,600.00		69,600.00	12%	124,810.44	2%
Ellis, James G.	10011053	052 271 397	130,000.00		75,600.00	12%	135,569.96	2%
Evans, Cecile	10011668	052 271 398	31,400.00		130,000.00	12%	236,139.90	2%
Evans, Stanley	10011683	052 271 399	9,400.00		31,400.00	10%	31,400.00	10%
Fulton, Kathy	10011651	052 271 401	20,000.00		9,400.00	10%	9,400.00	10%
Hamilton, Joe	10011777	052 271 402	36,000.00		20,000.00	12%	36,039.12	2%
Hamilton, Marie 1	10011930	052 271 433	21,600.00		36,000.00	10%	36,000.00	10%
Hamilton, Marie 2	10011781	052 271 403	11,800.00		21,600.00	10%	21,600.00	10%
Hamilton, Marie 3	10011783	052 271 404	35,800.00		11,800.00	10%	11,800.00	10%
Hearn, Bradley	10006918	052 271 434	50,000.00		35,800.00	10%	35,800.00	10%
Hearn, Shelley	10006910	052 271 435	30,000.00		50,000.00	12%	90,677.99	2%
Hofer, Mike	10009501	052 271 436	80,000.00		30,000.00	12%	54,406.80	2%
Hryciuk, Allan	10009856	052 271 437	20,000.00		80,000.00	12%	147,096.10	2%
Inaba, Toseko	21107	052 271 438	20,000.00		20,000.00	12%	36,590.30	2%
Kerns, Thomas	10008441	052 271 439	27,000.00		20,000.00	12%	35,913.42	2%
		052 271 441 & 082			27,000.00	12%	49,785.60	2%
Krabsen, Dale	10010391	125 533	60,000.00	20,000.00	80,000.00	12%	136,657.79	2%
Kress, David	17539	052 271 442	15,000.00		15,000.00	12%	27,384.71	2%
Kress, Eva	17869	052 271 443	15,000.00		15,000.00	12%	27,384.71	2%
Larson, Theresa	10012148	052 271 444	99,400.00		15,000.00	12%	177,480.45	2%
Loutitt, Charles	10005847	052 271 450	12,600.00		99,400.00	12%	22,497.52	2%
Lowie, John	10011671	052 271 445	41,000.00		12,600.00	12%	41,000.00	10%
Lowie, Louise 1	10012054	052 271 447	46,000.00		41,000.00	10%	41,000.00	10%
Lowie, Louise 2	10011687	052 271 446	23,800.00		46,000.00	12%	82,511.90	2%
Lowie, Louise 3	10011765	052 271 448	21,000.00		23,800.00	12%	42,690.94	2%
Quigley, Joanne	10012146	052 271 452	40,600.00		21,000.00	12%	37,668.48	2%
Rogers, James	10007916	052 271 453	79,600.00		40,600.00	12%	72,943.50	2%
Roy, Brenda	10010830	052 271 454	50,000.00		79,600.00	12%	142,127.20	2%
Shirley, Vaughn	10008411	052 271 459	20,000.00		50,000.00	12%	89,783.54	2%
Tensen, Francis	10011780	052 271 456	9,800.00		20,000.00	12%	35,865.07	2%
Tensen, John	10011776	052 271 457	21,000.00		9,800.00	10%	9,800.00	10%
Tonks, Gary	10011774	052 271 458	20,000.00		21,000.00	10%	21,000.00	10%
Von Ahn, Mechtild	10012067	052 271 460	20,000.00		20,000.00	12%	36,039.12	2%
Wagner, Fritz	10011684	052 271 461	20,000.00		20,000.00	12%	35,778.04	2%
					20,000.00	12%	35,778.04	2%
31-Mar-11								
Estimated interest to July 31, 2013			31-Jul-13	1,399,400.00	20,000.00	1,419,400.00	2,376,746.63	
Balance, July 31, 2013						11.57%	642,726.24	
							3,019,472.88	

Investor	CWT Acct #	Registration no#	Amount	increase admended	total	%	Owing Principal . Plus Acc. Int. 31-Mar-11	Annual Interest Paid Quarterly
Non-registered accounts								
Bragg, Elmer et al		052 271 391	20,000.00					
Coderre, Sheldon		052 271 394	20,000.00		20,000.00	12%	40,383.31	0%
Evin, Juanita		052 271 400	34,000.00		20,000.00	12%	36,580.63	2%
Kinder, Violet		052 271 440	15,000.00		34,000.00	12%	69,423.83	0%
Lund, J. & D.		052 271 449	10,000.00		15,000.00	10%	15,000.00	10%
Marzoitko, Mechtilde		052 271 451	20,000.00		10,000.00	12%	17,855.18	2%
Smith, R. & R.		052 271 455	10,000.00		20,000.00	12%	36,367.90	2%
					10,000.00	10%	10,000.00	10%
			129,000.00		129,000.00		225,610.84	
Estimated interest to July 31, 2013								
Balance, July 31, 2013	31-Mar-11	31-Jul-13				11.43%	60,257.08	
							285,867.92	
Total, all mortgages							\$ 3,305,340.80	