

COURT FILE NUMBER: 2403 00813

COURT: COURT OF KING'S BENCH OF ALBERTA

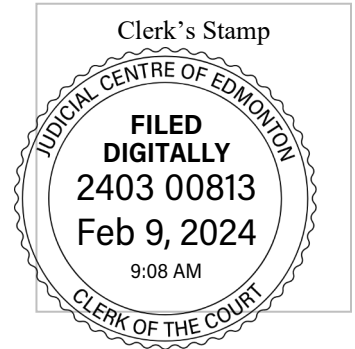
JUDICIAL CENTRE: EDMONTON

PLAINTIFF: JASPER SUMMERLEA SHOPPING CENTER LTD., by its Court-appointed Receiver and Manager, MNP LTD.

DEFENDANTS: JUDY PING CHEN, also known as JUDY CHEN, KIN MIN LEE, JOHN DOE, JANE DOE, ABC CORPORATION, BANK OF MONTREAL, and ROYAL BANK OF CANADA

DOCUMENT: **APPLICATION BY THE PLAINTIFF**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: **PARLEE McLAWS LLP**
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File No: 839-64/SRO



NOTICE TO THE RESPONDENT – KIN MIN LEE

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: February 9, 2024
Time: 2:00 p.m.
Where: Virtual Courtroom 86
<https://albertacourts.webex.com/meet/virtual.courtroom86>
Before Whom: Justice J.T. Neilson, sitting on the Commercial List, via Webex

Remedy claimed or sought:

1. An Order directing Kin Min Lee (“**Lee**”) to forthwith pay or cause to be paid the below-defined Money Mart Funds, or such amount thereof as is under his possession or control, to the solicitors for the Plaintiff to be held in an interest-bearing account pending further Order of this Honourable Court declaring right and entitlement therein and thereto.
2. An Order enjoining Lee from use of the Money Mart Funds pending compliance with the foregoing.
3. An Order that, if the Money Mart Funds or any portion thereof are not in Lee’s possession or control, he forthwith file an Affidavit in this Action providing a full accounting of the Money Mart Funds.
4. Costs of this Application.
5. Such further and other relief as this Honourable Court may direct.

Grounds for making this application:

6. MNP Ltd. (the “**Receiver**”) was appointed as the Receiver of all of the current and future assets, undertakings, and properties of every nature and kind whatsoever (the “**Property**”) of Jasper Summerlea Shopping Center Ltd. (“**Summerlea**”) pursuant to a Receivership Order pronounced by this Honourable Court on August 17, 2023 (the “**Receivership Date**”).
7. Pursuant to the terms of the Receivership Order, the Receiver is empowered and authorized to, *inter alia*:
 - a) Manage, operate, and carry on the business of Summerlea;
 - b) Take possession of and exercise control over the Property;
 - c) Receive, preserve, and protect the Property;

- d) Receive and collect all monies and accounts then owed or thereafter owing to Summerlea, and to exercise all remedies of Summerlea in collecting those amounts; and
 - e) Initiate, prosecute, and continue the prosecution of any and all legal proceedings then pending or thereafter instituted with respect of Summerlea or the Property.
8. The Receivership Order further compels all Persons, as defined therein, to provide to the Receiver copies of or access to all Records, also as defined therein, related to the business or affairs of Summerlea (the “**Disclosure Provisions**”).
 9. Judy Chen, also known as Judy Ping Chen (“**Chen**”), was and remains the sole registered Director and shareholder of Summerlea at all time material hereto. A search performed upon Summerlea at the Alberta Corporate Registry reveals her address to be in the City of Edmonton (the “**Edmonton Address**”).
 10. Chen received notice of the Receivership Order through legal counsel, who had opposed the appointment of a Receiver on Summerlea’s behalf. Immediately following its pronouncement, the Receiver requested, through her legal counsel, the delivery of various financial information and items concerning the Property from Chen. Amongst the items requested were any undeposited cheques made payable to Summerlea.
 11. The Receiver notified the Canada Revenue Agency (the “**CRA**”) of the Receivership on August 24, 2023.
 12. On December 21, 2023, the CRA advised the Receiver that a GST/HST refund in the amount of \$587,667.21 was issued to Summerlea by way of a cheque dated August 23, 2023 (the “**Refund Cheque**”). The CRA further advised that the Refund Cheque was mailed to the Edmonton Address and had been negotiated for deposit.
 13. The Refund Cheque was not deposited to any account known by the Receiver to be held by Summerlea.
 14. By correspondence dated December 21, 2023, the Receiver demanded that Chen forthwith:

- (a) Provide full account particulars, if the Refund Cheque was deposited into an account held by Summerlea, but as yet undisclosed to the Receiver;
 - (b) If the Refund Cheque was endorsed to a third party, disclose the identity of that third party; or
 - (c) Pay the sum of \$587,667.21, plus any interest or profits earned thereon, to the Receiver if the cheque was endorsed personally to Chen.
- 15. Chen has failed or refused to comply with or acknowledge the demand.
- 16. Upon obtaining and examining a copy of the cancelled Refund Cheque, the Receiver determined that it had been deposited to an account (the “**Summerlea Account**”) held at RBC on August 28, 2023, eleven days following the Receivership Date.
- 17. The Summerlea Account, as well as all funds on deposit within it, form a part of the Property. Certain books and records relating thereto and in respect of the numerous transactions that occurred thereon since the date of its opening (the “**Account Records**”) were therefore provided to the Receiver by RBC in accordance with its obligations under the Disclosure Provisions.
- 18. The Account Records reveal that the Summerlea Account was opened under and pursuant to a Master Client Agreement for Business Clients dated August 26, 2023, executed by and naming Chen and Kin Min Lee (“**Lee**”) as authorized signing officers.
- 2. Various transactions occurred on the Summerlea Account (the “**Transactions**”), including but not limited to the following:
 - (a) Numerous point of sale transactions relating to day to day consumer purchases, including several that followed the date of the Demand;
 - (b) A \$2,000.00 online transfer sent to Chen;
 - (c) Various cash withdrawals;
 - (d) Two withdrawals, one in the amount of \$500,000.00 and the other in the amount of \$40,000.00, concurrently deposited into RBC Account Nos. 5051032 and

5413760 (“**Account 032**” and “**Account 760**”, but collectively, the “**Transfer Accounts**”);

- (e) The issuance of several bank drafts made payable to third parties;
 - (f) The issuance of two bank drafts totalling \$11,600.00 and made payable to Chen.
19. By Order pronounced in this Action on January 15, 2024, this Honourable Court pronounced a *Norwich Pharmacal* directing RBC to disclose information relating to the Transfer Accounts of the nature described therein to the Receiver.
20. The information disclosed pursuant to that Order reveals, *inter alia*, that:
- a) Account 032 received the \$500,000.00 withdrawal from the Summerlea Account and is held in the name of Lee. On November 6, 2023, a branch-to-branch transaction resulted in a \$460,000.00 debit to the account;
 - b) Account 760 received the \$40,000.00 withdrawal from the Summerlea Account and is jointly held by Chen and Michelle Ming Lee. Several email transfers followed the deposit. The balance of Account 760 was cleared by a \$19,804.11 cash withdrawal on October 24, 2023.
- (the “**Transfer Account Transactions**”)
21. This Honourable Court further granted a *Norwich* Order directing RBC to disclose information pertaining to the Transfer Account Transactions on January 19, 2024. The information disclosed by RBC in compliance with that Order reveals that the \$460k Transaction involved a Bank Draft made payable to Lee and negotiated for deposit to an account held at the Bank of Montreal (“**BMO**” and the “**BMO Account**”).
22. On January 24, 2024, this Honourable Court granted a further *Norwich* Order directing BMO to disclose information pertaining to the BMO Account and the details of transactions occurring thereon following the \$460k Transaction. The information disclosed by BMO in compliance with that Order reveals that a Bank Draft made payable to Lee in the amount of \$372,000.00 was issued from the funds held in the BMO Account

on January 16, 2024, and negotiated with National Money Mart Company (“**Money Mart**”) on January 18, 2024 (the “**\$372k Draft**”).

23. On January 31, 2024, this Honourable Court granted a further *Norwich* Order directing Money Mart to disclose information pertaining to the Money Mart Transaction. The information disclosed pursuant to that Order reveals, *inter alia*, that:
 - a) Lee negotiated the \$372k Draft at Money Mart;
 - b) Lee represented to Money Mart in the course of that transaction that he was moving to China, and was withdrawing his funds to purchase a home there; and
 - c) Following the deduction of its transaction fee, cash in the amount of \$353,432.50 was released to Lee on January 25, 2024 (the “**Money Mart Funds**”).
24. Lee was personally served with the Amended Amended Amended Statement of Claim filed in this Action at a residence located in Edmonton on the afternoon of February 7, 2024.
25. Pursuant to Rule 6.25, this Honourable Court may make an order for the preservation or custody of property that is in dispute.
26. The Plaintiff states that:
 - a) There is a serious issue to be tried respecting entitlement to the Money Mart Funds;
 - b) It will suffer irreparable harm in the absence of the relief sought; and
 - c) The balance of convenience favours granting the relief.

Material or evidence to be relied on:

27. The Amended Amended Amended Statement of Claim, filed;
28. The Receiver’s First, Second, and Fifth through Seventh Reports to the Court, filed in Court File No. 2303 12261;

29. Such further and other evidence as Counsel may advise.

Applicable rules:

30. Parts 1 and 6 of the *Alberta Rules of Court*, AR 124/2010; and

31. Such further and other Rules as Counsel may advise.

Applicable Acts and regulations:

32. None.

Any irregularity complained of or objection relied on:

33. None.

How the application is proposed to be heard or considered:

34. Before the Honourable Justice J.T. Neilson, via Webex.

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 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.