

Clerk's stamp:



COURT FILE NUMBER 2203-13202

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF MOSKOWITZ CAPITAL MORTGAGE FUND II INC.

DEFENDANTS 1631807 ALBERTA LTD., RADIANT TECHNOLOGIES INC., and RADIANT TECHNOLOGIES (CANNABIS) INC.

DOCUMENT **APPLICATION TO AMEND RECEIVERSHIP ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

DLA PIPER (CANADA) LLP
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 File No.: 013875-00002

NOTICE TO RESPONDENT(S) : 1631807 ALBERTA LTD. and RADIANT TECHNOLOGIES INC.

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:	July 19, 2023
Time:	10:00 a.m.
Where:	Edmonton Law Courts, Edmonton, Alberta, by Webex hearing https://albertacourts.webex.com/meet/virtual.courtroom86
Before Whom:	The Honourable Justice K. Feth

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. The Applicant, Moskowitz Capital Mortgage Fund II Inc. ("**MCMF**"), seeks an Order, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"), section 65(1) of the *Personal Property Security Act*, RSA 2000 (the "**PPSA**"), c P-7, and section 13(2) of the *Judicature Act*, RSA 2000, c J-2 (the "**JA**") and paragraph 34 of the Limited Receivership Order of this Honourable Court dated March 21, 2023 (the "**Limited Receivership Order**"), in substantially the form of the draft Amending Order (the "**Amending Order**") attached hereto as Schedule "A":
 - a. abridging the time for service of this Application, if required;
 - b. amending paragraph 2 of the Limited Receivership Order to include in the definition of "Property" certain additional equipment of the Respondents, 1631807 Alberta Ltd. ("**1631807**") and Radiant Technologies Inc. ("**Radiant Technologies**" and collectively with 1631807, the "**Debtors**"), identified in the schedule appended as Exhibit "A" to the July 10, 2023, Affidavit of Brian Moskowitz (the "**Third Moskowitz Affidavit**");
 - c. granting such further and other relief as this Honourable Court deems just in the circumstances.

Grounds for making this application:

2. The Limited Receivership Order was granted by this Honourable Court on March 21, 2023, in these proceedings. Pursuant to the Limited Receivership Order, MNP Ltd. (the "**Receiver**") was appointed Receiver of the Debtors for the narrow purpose of disposing of certain chattel property of the Debtors subject to MCMF's security.
3. MCMF deliberately excluded certain pieces of the Debtors' equipment (the "**Additional Equipment**") subject to MCMF's security from the scope of the Limited receivership so as to enable the Debtors to continue to carry on operation during the pendency of MCMF's real and personal property enforcement proceedings against the Debtors.
4. Since the granting of the Limited Receivership Order, the Debtors have failed to secure necessary additional financing, have ceased making payments to utility providers, and have laid off substantially all of their employees. As such, the Debtors are no longer able to carry on business and have no use for the Additional Equipment.
5. MCMF now seeks to extend the scope of the Limited Receivership Order to include the Additional Equipment, so as that the same may be disposed of by the Receiver in an orderly sales process that is already underway.

6. MCMF respectfully submits that the inclusion of the Additional Equipment to the Property described in the Limited Receivership Order is just and convenient.

Material or evidence to be relied on:

7. Affidavit of Default of Brian Moskowitz, dated December 12, 2022.
8. Affidavit of Brian Moskowitz, dated March 12, 2023.
9. Affidavit of Brian Moskowitz, dated July 10, 2023.
10. Bench Brief, dated March 13, 2023.
11. A copy of an Amending Order.
12. Such further and other material as counsel may advise and this Honourable Court may allow.

Applicable rules:

13. *Alberta Rules of Court*, Rules 1.2, 1.4, 6.3, 6.5, 6.11(f) and 6.47.

Applicable Acts and regulations:

14. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
15. *Personal Property Security Act*, RSA 2000, c P-7.
16. *Judicature Act*, R.S.A. 2000, c. J-2.

Any irregularity complained of or objection relied on:

17. Not applicable to this Application.

How the application is proposed to be heard or considered:

18. By Webex hearing, before the Honourable Mr. Justice K. Feth.

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 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"

[Draft Amending Order]

Clerk's stamp:

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DEFENDANTS 1631807 ALBERTA LTD., RADIANT TECHNOLOGIES INC., and RADIANT TECHNOLOGIES (CANNABIS) INC.
DOCUMENT **AMENDING ORDER**

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File No.: 013875-00002

DATE ON WHICH ORDER WAS PRONOUNCED: **July 19, 2023**
LOCATION OF HEARING: **Edmonton Law Courts, Edmonton, Alberta**
NAME OF JUSTICE WHO GRANTED THIS ORDER: **The Honourable Justice D.R. Mah**

UPON the application of Moskowitz Capital Mortgage Fund II Inc. ("**MCMF**") in respect of 1631807 Alberta Ltd. and Radiant Technologies Inc. (collectively, the "**Debtor**"); **AND UPON** having read the Application, the Affidavits of Brian Moskowitz, dated December 12, 2022, March 12, 2023, and July 10, 2023; and the Affidavit of Service of Cassandra Anderson, all filed; **AND UPON** hearing counsel for MCMF, counsel for MNP Ltd. (the "**Receiver**") and any other counsel or other interested parties present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

Service

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

Amendment to Limited Receivership Order

2. Terms expressly defined in the March 31, 2023, Limited Receivership Order of the Honourable Justice D.R. Mah in these proceedings (the “**Limited Receivership Order**”) shall have the same meaning in this Order, except where otherwise defined.
3. Paragraph 2 of the Limited Receivership Order shall be amended to include in the personal property of the Debtor identified in schedule set out in Exhibit “A” to the Affidavit of Brian Moskowitz dated July 10, 2023, (the “**Third Moskowitz Affidavit**”) including all proceeds thereof.
4. Nothing in this Order shall require the Receiver to serve or act as receiver manager of the Debtors or otherwise extend the duties, obligations, and responsibilities of the Receiver as is set out in the Limited Receivership Order, save and except to the extent that this Order requires the Receiver to deal with the Property identified in Exhibit “A” to the Third Moskowitz Affidavit.
5. 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 Websiteand service on any other person is hereby dispensed with.
6. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of King’s Bench of Alberta