



COURT FILE NUMBER 1501-00955
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, as amended

AND IN THE MATTER OF LUTHERAN
CHURCH – CANADA, THE ALBERTA –
BRITISH COLUMBIA DISTRICT, ENCHARIS
COMMUNITY HOUSING AND SERVICES,
ENCHARIS MANAGEMENT AND SUPPORT
SERVICES, AND LUTHERAN CHURCH –
CANADA, THE ALBERTA – BRITISH
COLUMBIA DISTRICT INVESTMENTS LTD.

APPLICANT SHEPHERD OF THE VALLEY LUTHERAN
CHURCH

DOCUMENT APPLICATION

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS DOCUMENT
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Attention: Stephen G. Raby, Q.C. / John Cassell
File No. 80000305-0001

NOTICE TO RESPONDENT(S): The Lutheran Church – Canada, Alberta-British Columbia District

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date: October 27, 2016
Time: 2:00 p.m.
Where: Calgary Courts Centre – 601 – 5th Street SW, Calgary
Before Whom: The Honourable Justice B.E.C. Romaine of the Commercial List

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. Abridging, if necessary, the time for service of this Application and deeming service good and sufficient;
2. An Order:
 - a. Prohibiting the Lutheran Church – Canada, Alberta-British Columbia District (the “**District**”) from selling or marketing the lands municipally described as 1209 – 1 Avenue, Canmore, Alberta, and legally described as:

PLAN 1095F
BLOCK 92
LOTS 18, 20, 22 AND 24
EXCEPTING THEREOUT ALL MINES AND MINERALS (the “**SVLC Lands**”);
 - b. Declaring that the loan agreement between the District and the Shepherd of the Valley Lutheran Church (the “**SVLC**”) is a valid Agreement for Sale and that the SVLC is entitled to the right to redeem title to the SVLC Lands;
 - c. In the alternative, declaring that the SVLC holds a valid mortgage at common law against the SVLC Lands and that the SVLC is entitled to a right to redeem title to the SVLC Lands;
 - d. Declaring that the outstanding balance of the loan, including interest, is \$247,613.17 or such further and other amount as determined by the Court (the “**Outstanding Loan**”);
 - e. Declaring that upon payment of the Outstanding Loan by the SVLC to the District, the Monitor shall immediately take such steps and execute all such deeds, documents, and instruments as may be reasonably necessary to effect the transfer of the title of the Lands from the District to SVLC, provided such payment is made within three months of the date the SVLC is entitled to register the within Order against the SVLC Lands; and
 - f. In the alternative, declaring that the District is estopped from denying that the SVLC is entitled to redeem the title to the SVLC Lands upon payment of the Outstanding Loan.
 - g. Declaring that the District holds title to the SVLC Lands on the basis of a constructive trust in favour of the SVLC.
3. Such further and other relief as counsel may advise and this Honourable Court may deem just and appropriate.

Grounds for making this application:

4. In or around August 1984, the Applicant, the SVLC, purchased the SVLC Lands for the sum of \$128,000.
5. In or around June 1993, SVLC purchased a triangular lot adjacent to the SVLC Lands for approximately \$6,200, which was subsequently consolidated with the SVLC Lands.
6. Throughout 1994, the District advanced various funds to SVLC pursuant to an Agreement for Sale (the “**Loan**”) to allow the SVLC to pay for the construction of a church building on the SVLC Lands.

7. In the alternative, the District advanced various funds to SVLC pursuant to a mortgage at common law (the "Loan") to allow the SVLC to pay for the construction of a church building on the SVLC Lands.
8. The SLVC transferred title of the SVLC Lands to the District as security for the Loan.
9. Pursuant to the Agreement for Sale, it was the intention of the parties that title to the SVLC Lands would be transferred back to the SLVC upon repayment of the Loan in full, plus interest.
10. Payment was made on the outstanding balance of the Loan at various times by SVLC or other parties on behalf of SVLC;
11. On January 23, 2015, an Initial Order was granted under the *Companies' Creditors Arrangement Act*, which, among other things, appointed Deloitte Restructuring Inc. as the Monitor over the District the District.
12. As of May 6, 2015, there was approximately \$247,613.17 outstanding on the Loan.
13. SVLC has offered to pay the outstanding balance of the loan in full, but the District has indicated that even if such payment was made, it would nevertheless refuse to transfer title to the SVLC Lands back to SVLC.
14. Accordingly, the District has been enriched without juristic reason and the SVLC has suffered a corresponding deprivation.

Material or evidence to be relied on:

15. The Affidavit of Mark Lobitz, filed;
16. The Affidavit of Dan Stuehrenberg, filed;
17. The Affidavit of Philip Jorgensen; and
18. Such further and other materials and evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

19. Rule 6.3 of the *Alberta Rules of Court*

Applicable Acts and regulations:

20. *Judicature Act*, RSA 2000, c J-2;
21. *Law of Property Act*, RSA 2000, c L-7; and
22. *Land Titles Act*, RSA 2000, c L-4.

Any irregularity complained of or objection relied on:

23. None.

How the application is proposed to be heard or considered:

24. Oral submissions by counsel at an Application as agreed and scheduled by counsel, before the Honourable Justice B. E. C. Romaine of the Commercial List, at the Calgary Courts Centre, 601 - 5th Street SW, at Calgary, Alberta, on October 27, 2016, at 2:00 p.m. or as soon thereafter as counsel may be hear.

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.