

Clerk's Stamp



COURT FILE NUMBER

1603 20704

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFF

ROYAL BANK OF CANADA

DEFENDANTS

ELEMENTS WEST INC., DAMEN TRUCKING LTD.,
PETER DAMEN, DAVID DAMEN, ANDREW DAMEN
and KAREN DAMEN

DOCUMENT

APPLICATION FOR AN ORDER APPROVING AN
INTERIM DISTRIBUTION OF FUNDS

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

Katherine J. Fisher
Dentons Canada LLP
2900 Manulife Place
10180 – 101 Street
Edmonton, Alberta T5J 3V5
Phone: 780.423.7262 Fax: 780.423.7276
File No.: 131048-86/RCR

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 master/judge.

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

Date	Tuesday, May 16, 2017
Time	10:00 a.m.
Where	Edmonton, Law Courts Building
Before Whom	The Honourable Madam Justice J.E. Topolniski

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

Remedy claimed or sought:

1. An Order:
 - a. abridging the time for service of notice of this Application to the time actually given and an Order deeming service upon the parties served as good and sufficient service;
 - b. approving the steps and activities of the Receiver, including but not limited to, the Receiver's activities as described in the Second Report of the Receiver;
 - c. approving the distribution of funds as set out in Appendix "B" to the Second Report of the Receiver, substantially in the form attached as Schedule "A" hereto, or on such further and other terms as this Honourable Court may direct;
 - d. permitting the Receiver to make further distributions to Royal Bank of Canada ("RBC") as the Receiver deems appropriate in the circumstances, provided that the total distributions made to RBC shall not exceed \$1,971,318.00 without further Order of this Honourable Court; and
 - e. such further or other relief as may be requested of the Court by the Receiver.

Grounds for making this application:

2. The Receiver has completed the sale of certain chattels of Elements West Inc. ("Element") and Damen Trucking Ltd. ("Damen") to EW Transport Inc. as described in the First Supplemental Report and substantially all of the chattels of the Companies have now been sold. Any chattels not sold by the Receiver have been released to secured creditors.
3. The Receiver has realized funds from the collection of some outstanding accounts receivable of Elements and Damen.
4. Canada Revenue Agency has completed an audit of employment payroll source deductions and GST for Elements. The Receiver is in receipt of a letter from CRA advising of a deemed trust claim in the amount of \$36,633.21 for payroll source deductions and \$5,451.94 for GST.
5. All employees owed unpaid wages were employed by Elements and have filed proofs of claims with the Receiver. The priority afforded to the employees by section 81.4(1) of the *Bankruptcy and Insolvency Act* totals \$15,153.01.
6. The Workers' Compensation Board of Alberta has advised of a secured interest in the property of Elements in the amount of \$7,393.92 by virtue of sections 129 and 130 of the *Workers' Compensation Act*.
7. The Receiver has obtained an independent legal opinion confirming that Royal Bank of Canada has a perfected security interest in the amount of \$1,971,318, plus accruing interest and costs, that ranks ahead of subsequent security registrations by Canadian Western Bank and Trailer Wizards Ltd.

8. The estate balances for Elements and Damen are \$636,963.66 and \$81,289.82, respectively, and the Receiver proposes to make an interim distribution to the priority creditors and RBC in respect of its secured claim.

Material or evidence to be relied on:

9. The Second Report of the Receiver, filed May 8, 2017; and
10. Such further and other material as legal counsel for the Receiver may advise and this Honourable Court may permit.

Applicable rules:

11. Rules 6.3 and 13.5(2) of the *Rules of Court*.
12. Such further and other authority as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

13. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s. 81.4(1); and
14. *Workers' Compensation Act*, RSA 2000, c W-15, ss. 129 and 130.

Any irregularity complained of or objection relied on:

15. N/A

How the application is proposed to be heard or considered:

16. In person in open Chambers.

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 reply 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.

Schedule "A"

Clerk's Stamp:

COURT FILE NUMBER	1603 20704
COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	EDMONTON
PLAINTIFF	ROYAL BANK OF CANADA
DEFENDANTS	ELEMENTS WEST INC., DAMEN TRUCKING LTD., PETER DAMEN, DAVID DAMEN, ANDREW DAMEN and KAREN DAMEN
DOCUMENT	INTERIM DISTRIBUTION ORDER
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Katherine J. Fisher Dentons Canada LLP 2900 Manulife Place 10180 – 101 Street Edmonton, Alberta T5J 3V5 Phone: 780.423.7262 Fax: 780.423.7276 File No.: 131048-86/RCR
DATE ON WHICH ORDER WAS PRONOUNCED:	May 16, 2017
LOCATION WHERE ORDER WAS PRONOUNCED:	Edmonton, Alberta
NAME OF JUSTICE WHO MADE THIS ORDER:	The Honourable Madam Justice J.E. Topolniski

UPON THE APPLICATION of Deloitte Restructuring Inc. in its capacity as receiver of the property of Elements West Inc. ("Elements") and Damen Trucking Ltd. ("Damen") (the "Receiver"); AND UPON READING the Receivership Order granted by the Honourable Mr. Justice B.R. Burrows in these proceedings on December 2, 2016; AND UPON READING the Second Report of the Receiver dated May 3, 2017 (the "Second Report"), filed and the Application filed herein and proof of service thereof and the pleadings and proceedings had and taken herein; AND UPON HEARING from counsel for the Receiver and any other interest parties who may be present;

IT IS HEREBY ORDERED THAT:

1. The time for service of notice of the amended application for this Order and all materials in support of such notice is deemed good and sufficient upon all interested persons and the time for such service is abridged to the time actually given and all further service is dispensed with.

2. All steps and activities taken by the Receiver, including but not limited to the Receiver's activities as described in the Second Report, are hereby approved.
3. The Receiver is hereby authorized and directed to make the following distribution:
 - (a) an interim distribution to pay:
 - (i) the priority claims, plus interest, of Canada Revenue Agency, the Workers' Compensation Board of Alberta and Service Canada with respect to employee claims; and
 - (ii) Royal Bank of Canada ("RBC") in partial payment of the secured claim of RBC with respect to the indebtedness of Elements and Damen to RBC,

pursuant to the proposed distribution scheduled attached as Schedule "B" to the Second Report; and
 - (b) further distributions to RBC in respect of RBC's secured claim as the Receiver deems appropriate in the circumstances and when funds are available, provided that the total distributions made to RBC shall not exceed \$1,971,318.00 without further Order.
4. The Receiver is authorized and empowered to do such things, and execute and deliver such additional, related and ancillary documents and assurances governing or giving effect to the distribution, which, in the Receiver's discretion, are reasonably necessary or advisable to properly give effect to the distribution or to this Order.
5. The distribution shall not be void or voidable at the instance of creditors and claimants and shall not constitute nor shall be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, oppressive conduct, or other reviewable transaction under the *Bankruptcy and Insolvency Act*, or any other applicable federal or provincial legislation.
6. Service of this Order may be effected upon those persons (directly or through legal counsel) who were served with a copy of the Application for this Order by facsimile or electronic mail, and such service shall constitute good and sufficient service. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
7. Service on any other person is hereby dispensed with.
8. The Receiver is at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.

J.C.C.Q.B.A.