

COURT FILE NUMBER 1801-04745

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF **HILLSBORO VENTURES INC.**

DEFENDANT **CEANA DEVELOPMENT SUNRIDGE INC.**

DOCUMENT **CROSS-APPLICATION BY CEANA DEVELOPMENT SUNRIDGE INC.**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **GLENN & CARD LAW LLP**
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NOTICE TO RESPONDENTS:

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	November 2, 2020
Time	2:00 pm
Where	Calgary Court Centre, Calgary, Alberta Via Webex, Virtual Courtroom 60
Before Whom	The Honourable Justice K.M. Horner

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 time for service;
2. Adjourning the Application of Hillsboro Ventures Inc. scheduled for November 2, 2020 at 2pm;
3. Requiring Hillsboro Ventures Inc., the Plaintiff herein, to provide accounting of all monies due and owing under mortgage security claimed by the Plaintiff, pursuant to *Law of Property Act* sections 38 (2) and 38 (3);
4. An order for summary judgment against the Plaintiff pursuant to the Defendant's Counterclaim, filed herein;
5. Setting forth terms upon which the various applications and various cross applications might proceed; and
6. Such further and other relief as this Honourable court shall deem just.

Grounds for making this application:

7. Bahadur (Bob) Gaidhar, although not named specifically as a Defendant in these proceedings, is an interested party, as Guarantor of the mortgages registered against those lands described as:

PLAN 9811891

BLOCK 8

LOT 1

EXCEPTING THEREOUT ALL MINES AND MINERALS

8. Bahadur (Bob) Gaidhar will be adversely and significantly affected if this matter proceeds without a reasonable hearing which accommodates the needs of all parties.
9. Historically, the Plaintiff registered three mortgages against the property which are characterized as "1", \$3,000,000.00 registered on January 26, 2017; "2" the sum of \$2,000,000.00 registered on August 18, 2017; and "3" in the amount of \$1,500,000.00 registered on November 22, 2017.
10. Subsequently, after the intervention of other interests, including builder's lien claimants, the Plaintiff without notice to the Defendant or Bahadur (Bob) Gaidhar postponed its "1" mortgage to its mortgages "2" and "3".
11. Although the parties were working cooperatively, on the 5th day of April, 2018 the Plaintiff began his foreclosure action by filing a Statement of Claim.
12. Throughout this entire matter from the date of the partial advanced of mortgage "1" and through partial advances of "2" and "3" mortgages, the Defendant the Bahadur (Bob) Gaidhar have made demands upon the Plaintiff to show evidence that in fact the monies claimed in the foreclosure action were actually advanced to the Defendant.
13. Essentially, the claim by the Defendant and Bahadur (Bob) Gaidhar is that the amounts of money represented by the various mortgages were not fully advanced and the Plaintiff is not entitled to the foreclosure orders or actions that it is claiming.
14. The Defendant has provided a full accounting of all monies had and received from the Plaintiff, which was previously attached in previous Affidavits, but is now attached to Bahadur (Bob) Gaidhar's Affidavit and shows a significant deficiency in the advance of monies, and challenges the foreclosure on the basis that the Plaintiff is not entitled to those monies claimed in the Statement of Claim.
15. The Defendant, and Bahadur (Bob) Gaidhar have made numerous demands upon the Plaintiff to provide an accounting of the monies advanced but the Plaintiff has simply refused to provide a proper accounting notwithstanding that the Defendant and Bahadur (Bob) Gaidhar have provided the Defendant's accounting.
16. In July 2019, the project lands became subject to a Receiving Order in which Alvarez and Marsal Canada Inc. was appointed, and I attach hereto as Schedule "A" to this application a copy of the Receiving Order.
17. Since that time, the Defendant has sought to cooperate with the Receiver but has also made demands upon the Receiver to make demands upon the Plaintiff for a proper accounting, which accounting has never been provided.
18. *The Law of Property Act*, sections 38 (2) and 38 (3) are very clear that upon the demand of the mortgagor (the Defendant) upon the Plaintiff, the Plaintiff is under very strict requirement to provide such accounting, in default of which, the application for foreclosure cannot proceed.
19. The application of the Plaintiff herein seeks to remove the Receiver and other remedies to which it is presently not entitled.

Material or evidence to be relied on:

20. Affidavit of Bahadur (Bob) Gaidhar, sworn October 30, 2020.
21. Pleadings filed in Action No. 1801- receiving order and orders made therein.

Applicable Rules:

22. *Alberta Rules of Court*, Alta Reg 124/2010.
23. Such other rules as counsel may advise and as this Honourable Court may permit.

Applicable Acts and Regulations:

24. *Law of Property Act*, and especially Section 38.
25. *Land Titles Act*, RSA 2000 c L-4.
26. Such further Acts, Authorities and Regulations as counsel may advise and this Honourable Court may permit.

How the Application is proposed to be heard or considered:

27. Via Web-Ex before Justice in Chambers as directed by the Clerk of the Court.

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 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 a reasonable time before the application is to be heard or considered.