



COURT FILE NUMBER **1701-10806**

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF **ILAN HANDELSMAN**

DEFENDANTS **ALI GHANI, ABDUL GHANI, BROADMOOR COMMERCIAL PLAZA DEVELOPMENT CORP., HORIZON COMMERCIAL DEVELOPMENT CORP., HERITAGE PLAZA DEVELOPMENTS INC., PRISM PLACE DEVELOPMENT LTD., PRISM REAL ESTATE INVESTMENT CORPORATION, SUMMERSIDE DEVELOPMENT TRUST, SUMMERSIDE COMMERCIAL TRUST, PRISM SUMMERSIDE LIMITED PARTNERSHIP, PRISM SUMMERSIDE DEVELOPMENT CORP., JANE DOE, JOHN DOE, AND ABC CORP.**

DOCUMENT **APPLICATION BY PLAINTIFF, re:  
LITIGATION FUNDING APPROVAL**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Matthew J. Epp / Robyn Gurofsky / Jack R. Maslen**  
Borden Ladner Gervais LLP  
1900, 520-3<sup>rd</sup> Avenue SW  
Calgary, Alberta T2P 0R3  
Telephone: (403)232-9712 / (403) 232-9774 / (403)232-9790  
Facsimile: (403) 266-1395  
Email: [mepp@blg.com](mailto:mepp@blg.com) / [rgurofsky@blg.com](mailto:rgurofsky@blg.com) / [jmaslen@blg.com](mailto:jmaslen@blg.com)  
File No. 444097/000001

**NOTICE TO RESPONDENT(S): N/A**

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	<b>TBD</b>
Time	<b>TBD</b>
Where	<b>Calgary Court Centre</b>
Before Whom	<b>The Honourable Associate Chief Justice J.D. Rooke</b>

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

**DEFINITIONS:**

1. In this Application, in addition to terms defined elsewhere or in the Amended Statement of Claim, which definitions are incorporated herein, the following terms shall mean:
  - (a) “**227**” means 2052227 Alberta Ltd.;
  - (b) “**Amended Statement of Claim**” means the Amended Statement of Claim in the Action, filed on April 30, 2019;
  - (c) “**Application**” means this application for approval of litigation funding;
  - (d) “**CPA**” means the *Class Proceedings Act*, SA 2003, c C-16.5;
  - (e) “**Criterion**” means Criterion Group, a Calgary-based consulting firm;
  - (f) “**Prism Investment**” means the original investment amount made by each Shareholder of 227 in one or more of the Prism Entities; and
  - (g) “**Shareholder**” means a shareholder in 227, who acquired shares pursuant to offering memoranda and subscription agreements.

**REMEDY CLAIMED OR SOUGHT:**

2. The Plaintiff (Applicant), Ilan Handelsman, seeks an Order:
  - (a) approving, if necessary, 227 as a litigation funding vehicle for within proposed class proceeding;
  - (b) directing that any recoveries, including from judgment or settlement, from the within proposed class proceeding be paid in the following order (the “**Proposed Distribution Scheme**”):
    - (i) payment of 227’s outstanding liabilities (including legal and accounting fees), if any;
    - (ii) payment of the principal investment made by the Shareholders in 227;
    - (iii) payment to the Shareholders a per annum return of ten percent (10%) on their respective principal investments in 227;
    - (iv) payment of ten percent (10%) of total recoveries, remaining after (i), (ii) and (iii) above, to Criterion, as compensation for financial consulting services provided to 227;

- (v) payment of remaining recoveries to each Shareholder in an amount determined by their contribution to 227, calculated as follows:
  - (1) for those Shareholders who contributed an amount equal to or greater than ten percent (10%) of their Prism Investment, the value of their recovery shall be the full amount of their Prism Investment; and,
  - (2) for those Shareholders who contributed an amount equal to less than ten percent (10%) of their total Prism Investment, the value of their recovery shall be an amount determined by the ratio of their contribution to 227 to their original Prism Investment;

(collectively, the “**Tier 1 Payment(s)**”); and
- (vi) payment to the Proposed Class Members as a whole, on a pro rata basis, or such other basis or manner as may be directed by the Court (the “**Tier 2 Payment(s)**”);
- (c) providing directions and advice, if necessary, regarding:
  - (i) a deadline for Proposed Class Members to invest in 227, having regard to opt-out deadlines arising from any Certification Order;
  - (ii) form of any notices in respect of the Proposed Distribution Scheme and/or 227; and
- (d) such further and other relief as this Honourable Court may deem just.

#### **GROUND FOR MAKING THIS APPLICATION:**

##### ***Background***

3. In June 2017, the Plaintiff, together with two other investors in the Prism Entities, Owen Jackson (“**Jackson**”) and Clifford McAuley (“**McAuley**”), caused 227 to be incorporated as a funding vehicle for litigation in respect of the Prism Entities.
4. By an Order of the Honourable Justice K.D. Nixon dated October 2, 2017 (the “**Initial Approval Order**”), this Court ordered, among other things, that:
  - (a) 227 was approved as a litigation funding vehicle for investors in certain of the Prism Entities; and
  - (b) any recoveries generated in the within action, or as a result of the within action, would be distributed first, to 227 for its reasonable fees and disbursements (plus interest at 10%), and secondly, to investors in certain of the Prism Entities, depending on the source of the recoveries, among other things.

5. After the Initial Approval Order, Handelsman commenced the within proposed class proceeding, by filing the Statement of Claim on August 24, 2018, which was amended by the Amended Statement of Claim filed on April 30, 2019.
6. Handelsman's legal expenses for the within proposed class proceeding have been paid by 227.
7. All of the Shareholders in 227 are members of the Proposed Class. Handelsman is a director and the President of 227.

***Approval of 227 as a Litigation Funding Vehicle***

8. The CPA grants this Court the power to make any order it considers appropriate respecting the conduct of a class proceeding. The CPA further provides that representative parties may seek funding of their costs and disbursements from other persons or organizations.
9. In the instant case, it is appropriate for this Court to, if necessary, reapprove 227 as a litigation funding vehicle for this proposed class proceeding, and approve a 10% return on investments made by Shareholders in 227, since, *inter alia*:
  - (a) the funding provided by 227 is necessary for Handelsman to fully and fairly prosecute this action on behalf of the Proposed Class Members;
  - (b) the funding provided by 227 promotes the objectives of the CPA; and
  - (c) this Court has already approved 227 as a litigation funding vehicle, before the proposed class proceeding, pursuant to the Initial Approval Order.
10. Without the funding provided by 227, Handelsman would be unable to pursue this litigation on behalf of the Proposed Class Members, and consequently, the Proposed Class Members would be prevented from pursuing their claims against the Defendants and be denied access to justice.
11. This Court has previously approved third-party financing and/or indemnity agreements in the class action context.

***Approval of the Proposed Distribution Scheme***

12. The CPA grants this Court the power to direct that aggregate recoveries from class proceedings be distributed by any means.
13. In the instant case, it is appropriate for this Court to approve (before a final judgement) the Proposed Distribution Scheme, since, *inter alia*:
  - (a) the proposed scheme ensures that Shareholders who have contributed to Handelsman's legal costs are fairly compensated for the financial risk they have assumed;

- (b) the proposed scheme incentivizes Shareholders and Proposed Class Members to continue contributing to 227, to ensure that this proposed class proceeding is fully and fairly prosecuted;
- (c) the proposed scheme promotes the objectives of the *CPA*; and
- (d) other Alberta class actions employ “tiered” funding and distribution structures.

***Other Grounds***

- 14. The Ghanis have no interest in this Application.
- 15. Such other or further grounds as counsel may advise and this Honourable Court may permit.

**MATERIAL OR EVIDENCE TO BE RELIED ON:**

- 16. The pleadings and other materials filed in this Action.
- 17. The Affidavit of Ilan Handelsman for Litigation Funding Approval, sworn February 27, 2020 (to be filed).
- 18. The Affidavit of Ilan Handelsman for Certification Application, sworn June 27, 2019, filed.
- 19. The Order pronounced by the Honourable Madam Justice K.D. Nixon on October 2, filed on October 6, 2017.
- 20. Such further material and evidence as counsel may advise and this Honourable Court may permit.

**APPLICABLE RULES:**

- 21. The *Alberta Rules of Court*, AR 124/2010, including the Foundational Rules.

**APPLICABLE ACTS AND REGULATIONS:**

- 22. The *Class Proceedings Act*, SA 2003, c C-16.5.
- 23. The *Judicature Act*, RSA 2000, c J-2.

**ANY IRREGULARITY COMPLAINED OF OR OBJECTION RELIED ON:**

- 24. N/A.

**HOW THE APPLICATION IS PROPOSED TO BE HEARD OR CONSIDERED:**

- 25. This Application will be heard as directed by the Case Management Judge, the Honourable Associate Chief Justice J.D. Rooke.

**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.