

COURT FILE NUMBER 1501 11817

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF EASY LOAN CORPORATION and MIKE TERRIGNO

DEFENDANTS BASE MORTGAGE & INVESTMENTS LTD., BASE FINANCE LTD., ARNOLD BREITKREUTZ, SUSAN BREITKREUTZ, SUSAN WAY and GP ENERGY INC.

DOCUMENT **ORDER**  
(Clawback Advice and Directions)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File No.: 1191705

I hereby certify this to be a true and correct copy of the original Order  
Dated this 5 day of April 19  
[Signature]  
for Clerk of the Court



**DATE ON WHICH ORDER WAS PRONOUNCED:** April 2, 2019

**NAME OF JUSTICE WHO MADE THIS ORDER:** The Honourable Madam Justice B.E.C. Romaine

**LOCATION OF HEARING:** Calgary Courts Centre  
601 – 5<sup>th</sup> Street SW  
Calgary, AB

UPON THE APPLICATION OF BDO Canada Ltd., in its role as Receiver (the “Receiver”) without security of all the current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate, of Base Mortgage & Investments Ltd. and Base Finance Ltd. (the “Debtors”) pursuant to the Order of the Honourable Mr. Justice Yamauchi, granted October 15, 2015 (as amended, the “Receivership Order”); AND UPON reviewing the Seventh Report of the Receiver, dated January 14, 2019 (the “Seventh Report”), and the Eighth Report of the Receiver, dated March 7, 2019, including the First Supplemental Report to the Receiver’s Eighth Report, dated March 27, 2019 (together, the “Eighth Report”); AND UPON hearing from counsel for the Receiver and any other interest party; AND UPON

reviewing the Affidavit of Service of Maureen Pohl, sworn April 1, 2019; **IT HEREBY ORDERED AND DECLARED THAT:**

1. The time for service of this application is abridged and deemed good and sufficient and the application is properly returnable today.

2. Service by electronic mail or ordinary post of this application on those who are presently on the service list established in these proceedings and on all investors by regular mail sent to the last known address of each investor according to the books and records of the Receiver constitutes good and sufficient service for all purposes.

3. In the event the Receiver does not have sufficient funds in the estate to pay the costs and expenses (including the fees and costs of the Receiver and Receiver's counsel) associated with doing so, and provided the Receiver has not been able to make arrangements satisfactory to it to allow the Receiver to pay such costs and expenses, the Receiver has no obligation to:

(a) perform a "Net Winner/Net Loser" or "clawback calculation" (sometime known as a "Titan" calculation) for the estate, similar to that used in *Re Titan Investments Limited Partnership*, 2005 ABQB 637 (the "**Clawback Calculation**"), as more fully described in the Seventh Report and the Eighth Report, with a view to identifying those investors who have received payments from Base Finance in excess of their initial investment (the "**Net Winners**"); or

(b) bring one or more further applications to establish a process to obtain judgment ("**Titan Order Application**") or, in the alternative, commence one or more actions for judgment ("**Enforcement Action**"), against some or all of the Net Winners disclosed by the Clawback Calculation for the amount of the gains realized by the Net Winners over and above their initial investments.

4. Subject to further Order of this Court, any actions against any Net Winners in the within receivership pursuant to the *Fraudulent Preferences Act*, RSA 2000 c F-24 (the "**FPA**"), or otherwise, are actions which belong exclusively to the Receiver and accordingly neither a Titan Order Application nor any Enforcement Actions may be commenced by any person other than the Receiver except with leave of the Court obtained on notice to such person or persons as this Honourable Court may direct.

5. The Receiver's actions, conduct and activities to date as set out in the Eighth Report are hereby approved and ratified.

6. The Statement of Claim filed by Mike Terrigno, Easy Loan Corporation, Barile Investments Inc., and Darrel Winch against BDO Canada LLP in Alberta Court of Queen's Bench Action No. 1901-01990 is hereby stayed pursuant to section 8 of the Receivership Order, pending further order of this Honourable Court.

7. Mike Terrigno shall give the Receiver at least 30 days' notice prior to setting down for hearing the Amended Application or the Application filed by Mr. Terrigno and Easy Loan Corporation in this Action on January 21, 2019 and March 25, 2019, respectively, in order to permit the Receiver sufficient time to bring an application for security for costs against Mr. Terrigno or to have Mr. Terrigno declared a vexatious litigant.

  
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J.C.Q.B.A.