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COURT FILE NUMBER 1901-01772

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS AMX REAL ESTATE INC. and JOSEPH SATHER

DEFENDANTS MICHAEL STREET, 0882126 B.C. LTD., BOUNDARY MACHINE LTD., MARIELLE BRULE, PROPECTUS FINANCIAL INC. and SATHER RANCH LTD.

DOCUMENT **APPLICATION OF C. CHEVELDAVE & ASSOCIATES LTD., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF SATHER RANCH LTD.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Lawson Lundell LLP**  
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**NOTICE TO THE RESPONDENTS, AMX REAL ESTATE INC., JOSEPH SATHER, MICHAEL STREET, 0882126 B.C. LTD., BOUNDARY MACHINE LTD., MARIELLE BRULE, and PROPECTUS FINANCIAL INC.**

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:

<b>Date</b>	March 18, 2021
<b>Time</b>	10:00 am
<b>Location</b>	Virtual Commercial List Chambers, via WebEx: <a href="https://albertacourts.webex.com/meet/virtual.courtroom60">https://albertacourts.webex.com/meet/virtual.courtroom60</a>
<b>Before Whom</b>	The Honourable Mr. Justice P.R. Jeffrey

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

## Introduction

1. This Notice of Application is filed on behalf of C. Cheveldave & Associates Ltd. in its capacity as Court-appointed receiver (in such capacity, the **Receiver**) of Sather Ranch Ltd. (**Sather Ranch**).
2. Sather Ranch is an Alberta corporation. It is extra-provincially registered in British Columbia and carries on business in both Alberta and British Columbia.
3. The Receiver was appointed as receiver and manager of all of the assets, undertakings and property (collectively, the **Property**) of Sather Ranch pursuant to an Order (the **Receivership Order**) pronounced in British Columbia Supreme Court Action No. S 1913131 (the **Receivership Proceedings**) by the Honourable Mr. Justice Walker.
4. The Receivership Order was made pursuant to section 243(1) of the federal *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (**BIA**) and s. 39 of the *Law and Equity Act*, RSBC 1996, c 253 (**LEA**).
5. The Receivership Order was preceded by an order of the British Columbia Supreme Court (the **BC Court**) pronounced on July 17, 2018 (the **First Receivership Order**), by which G. Moroso & Associates Inc. (**Moroso**) was appointed as receiver and manager of Sather Ranch. Following the pronouncement of the Receivership Order, Moroso was discharged as receiver and manager of Sather Ranch by Order of the BC Court.
6. After the First Receivership Order was pronounced, but before the Receivership Order was granted, AMX Real Estate Inc. (**AMX**) and Joseph Sather (**Joe**), commenced the within action (**this Action**), against Michael Street, 0882126 B.C. Ltd., Boundary Machine Ltd., Marielle Brule, and Profectus Financial Ltd. (the **Street Defendants**). Sather Ranch was named as a Defendant for the purposes of the Plaintiffs commencing a derivative action in its name.
7. This Action was filed without notice to or consent of Moroso, and in breach of the stay of proceedings under the First Receivership Order. The Receiver understands that this Action was commenced to preserve the rights of the Plaintiffs and Sather Ranch in the face of a limitation period. The Plaintiffs have agreed no defences are required, in light of the receivership stay in place.
8. On January 14, 2021, the Honourable Justice Walker pronounced a further Order in the Receivership Proceedings, which approved a claims process for dealing with claims against Sather Ranch (the **Claims Process Order**), including claims of certain Defendants in this Action against Sather Ranch.
9. All capitalized terms not otherwise defined in this Notice of Application have the meaning given to them in the Receivership Order or the Claims Process Order, as applicable.

**Remedy claimed or sought:**

10. An Order, substantially in the form attached hereto as **Schedule “A”**, recognizing the Receivership Order and the Claims Process Order for the purposes of this Action.
11. An Order, substantially in the form attached hereto as **Schedule “B”**:
  - (a) pursuant to rules 1.2, 1.3, and 1.4 of the *Alberta Rules of Court*, Alta Reg 124/2010 (the **Rules**) and s. 8 of the *Judicature Act*, RSA 2000, c J-2, directing that Sather Ranch be named as a plaintiff rather than as a defendant in this Action; and
  - (b) pursuant to rules 1.2 and 1.4 of the *Rules*, directing the Plaintiffs, AMX and Joseph Sather, to provide particulars of their individual and independent causes of action against the Street Defendants, and the relief sought by them in their individual capacities, within 30 days of the date of this Order.
12. In the alternative to the Order set out in **Schedule “B”** hereto, an Order substantially in the form attached hereto as **Schedule “C”**, declaring the Receiver to be a complainant within the meaning of section 239(b)(iv) of the *Alberta Business Corporations Act*, RSA 2000, c B-9 (the **ABCA**) for the purpose of allowing the Receiver to apply for relief under sections 240 and 241 of the ABCA, if deemed necessary and appropriate by the Receiver.
13. Such further and other relief as may be requested and as this Honourable Court considers appropriate.

**Grounds for making this application:**Related Party Claims and Overlap with Claims in this Action

14. The Claims Process Order provides for two separate processes, one for claims of “Arm’s Length Creditors,” and one for claims of “Related Party Creditors,” the latter category being defined to include the Plaintiffs and the Street Defendants.<sup>1</sup>
15. Related Party Creditors must prove their claims through an application to the BC Court, on notice to all other Related Party Creditors. Such applications must be made before the Claims Bar Date of March 31, 2021 and respondents must file their response materials within 21 days after the Claims Bar Date.<sup>2</sup> Reply affidavits are due 30 days after the Claims Bar Date.<sup>3</sup> The Claims Process Order then provides for procedural and substantive hearings at which disputed Related Party Claims will be determined.<sup>4</sup>

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<sup>1</sup> Claims Process Order, para 1(u).

<sup>2</sup> Claims Process Order, paras 9 and 15.

<sup>3</sup> Claims Process Order, para 16.

<sup>4</sup> Claims Process Order, paras 18-21.

16. The Plaintiffs' allegations in this Action include that the Street Defendants created over \$800,000 of bogus indebtedness of Sather Ranch in their favour, by ramping up spending, purportedly retaining the services of their related companies, and otherwise incurring inflated costs and debts, for which they created false financial statements and other corporate records.<sup>5</sup>
17. The Street Defendants are expected to prove Claims for debt against Sather Ranch as Related Party Creditors under the Claims Process Order. The Receiver expects that the Street Defendants' Claims in the claims process will overlap with the debt claims underlying the Plaintiffs' allegations of false indebtedness in this Action.
18. Therefore, to the extent the BC Court makes findings in the claims process regarding the Street Defendants' debt claims against Sather Ranch, these findings will be determinative of the Plaintiffs' allegations regarding the validity of the Street Defendants' debt claims.

#### Recognition of the Receivership Order and Claims Process Order

19. During the hearing of the Receiver's application for the Claims Process Order, the BC Court expressed concern about the potential for inconsistent factual findings between the claims process and this Action, and the possibility that the facts underlying the Street Defendants' Claims against Sather Ranch would be litigated more than once. For these reasons, the BC Court made the Claims Process Order subject to recognition by this Honourable Court.
20. Specifically, paragraph 22 of the Claims Process Order contemplates the recognition of the Claims Process Order and the Receivership Order by this Honourable Court, and provides that:
  - (a) subject to this Honourable Court's recognition of the Receivership Order and the Claims Process Order, the Claims Process does not affect any claims which may be advanced by any Related Party against another Related Party Creditor, except to the extent any damages, compensation, indemnity or contribution is sought against Sather Ranch; and
  - (b) all Claims brought against Sather Ranch are subject to and governed by the Claims Process Order, and must be proved in the Claims Process established by the Claims Process Order, failing which they will be barred.
21. Each of the Receivership Order and the Claims Process Order includes the following provision:

[The BC Court] requests the aid, recognition and assistance of any court...having jurisdiction, wherever located, to give effect to [the Receivership Order and the Claims Process Order] and to assist the Receiver and its agents in carrying out the terms of [the Receivership

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<sup>5</sup> Statement of Claim, paras 26-28, 30.

Order and the Claims Process Order]. All such courts...are respectfully requested to make such orders and provide such assistance to the Receiver, as an officer of [the BC Court], as may be necessary or desirable to give effect to [the Receivership Order and the Claims Process Order] or to assist the Receiver and its agents in carrying out the terms of [the Receivership Order and the Claims Process Order].

22. The Receivership Order further provides that the Receiver is authorized and empowered to apply to any court, wherever located, for recognition of the Receivership Order and for assistance in carrying out the terms of the Receivership Order.
23. This Honourable Court has jurisdiction pursuant to the Receivership Order and the Claims Process Order, section 243 of the *BIA*, and its inherent jurisdiction, to grant an order recognizing the Receivership Order and the Claims Process Order.
24. Further, section 8 of the *Judicature Act* directs that the court has a general jurisdiction to grant any remedy so as to avoid, if at all possible, multiple proceedings and to ensure that all matters between the parties are completely determined, and rule 1.3 states that the Court may grant any relief contemplated by the *Judicature Act*.

#### Application to Change Sather Ranch's Status in this Action

25. The Receiver was appointed pursuant to section 243 of the *BIA*, which authorizes the Receiver to act nationally. The Receiver's appointment therefore extends over Sather Ranch's assets in Alberta, including this Action insofar as it includes claims made on behalf of Sather Ranch.
26. Pursuant to section 2(j) of the Receivership Order, the Receiver is authorized and empowered to initiate, manage, and direct all legal proceedings pending as at the date of the Receivership Order in respect of Sather Ranch and its Property.
27. Thus, to the extent the claims pleaded in the Statement of Claim in this Action are claims of Sather Ranch, the Receiver is authorized and empowered to prosecute them. It is therefore unnecessary for those claims to be pursued by way of a derivative action, and Sather Ranch (by the Receiver) is more appropriately named as a Plaintiff.

#### The Rules Support the Relief Sought

28. This Honourable Court has jurisdiction to grant the relief sought pursuant to rules 1.2 and 1.4 of the *Rules*.
29. Rule 1.2 states that the purpose of the *Rules* is to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective way, and the intention of the *Rules* is to facilitate the quickest means of resolving a claim at the least expense.<sup>6</sup>

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<sup>6</sup> Rules 1.2(1) and 1.2(2).

30. Rules 1.4(1) and 1.4(2)(c) of the *Rules* confer jurisdiction on this Honourable Court to make any order with respect to procedure in an action before the Court, and to give orders or directions with respect to an action to implement and advance the purpose and intention of the *Rules*.
31. The orders sought by the Receiver to recognize the Receivership Order and the Claims Process Order, to name Sather Ranch as a Plaintiff, and to direct the Plaintiffs in this Action to identify the relief they seek in their individual capacities, will implement and advance the purpose and intention of the *Rules*, by allowing the fair and just resolution of the claims made in this Action.
32. The orders sought by the Receiver will also result in a more efficient and cost-effective use of resources than requiring the Receiver to commence a separate action on behalf of Sather Ranch as:
  - (a) the Receiver is empowered to manage and direct this Action on behalf of Sather Ranch without the need for the Plaintiffs to do so by way of a derivative action;
  - (b) the validity of the alleged debts owed by Sather Ranch to the Street Defendants is a central issue in both the claims process and this Action;
  - (c) any debt Claims by the Street Defendants made against Sather Ranch in the claims process are very likely to arise out of the same series of occurrences as the allegations made against the Street Defendants in this Action;
  - (d) the Street Defendants' Claims in the Receivership Action and the Plaintiffs' allegations regarding the Street Defendants' debt claims in this Action engage common questions of law and fact; and
  - (e) the orders sought will avoid having multiple proceedings involving common issues of fact and law, and the associated risk of judicial inconsistency.

Alternative Relief Pursuant to Sections 240 and 241 of the ABCA

33. In the event this Honourable Court is not prepared to grant the primary relief sought by the Receiver, the Receiver seeks as a alternative relief a declaration that it is a "complainant" pursuant to s. 239 of the ABCA, for the purposes of bringing a future application pursuant to s. 240 and 241 of the ABCA.
34. Under section 240(1) of the ABCA, a "complainant" may apply to the Court for permission to commence a derivative action or to intervene in an action to which a corporation is a party, for the purpose of prosecuting the action on behalf of the corporation. A "complainant" is defined in section 239 of the ABCA to include "any other person who, in the discretion of the Court, is a proper person to make an application under [Part 19 of the ABCA]."
35. The Receiver is a proper person to make an application under Part 19, and specifically s. 240, for the purpose of prosecuting the claims of Sather Ranch herein.

36. If an Order pursuant to section 240(1) is granted, this Honourable Court has jurisdiction under section 241(a) of the ABCA to authorize the Receiver to control the conduct of any action intervened in under section 240 of the ABCA, which this Action is.
37. As the Receiver is authorized and empowered under section 2(j) of the Receivership Order to manage and direct all legal proceedings pending as at the date of the Receivership Order, it is an appropriate person to control the conduct of this Action.

**Material or evidence to be relied on:**

38. Affidavit of C. Cheveldave sworn March 8, 2021.
39. Secretarial Affidavit attaching transcripts of proceedings in British Columbia Supreme Court Action No. S1913131, to be delivered and filed.

**Applicable Rules:**

40. *Alberta Rules of Court*, Alta Reg. 124/2010, rules 1.2, 1.3, and 1.4.

**Applicable Acts and Regulations:**

41. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.
42. *Alberta Business Corporations Act*, RSA 2000, c B-9, ss 239, 240, and 241.
43. *Judicature Act*, RSA 2000, c J-2, s. 8.

**How the application is proposed to be heard or considered:**

44. In person (virtually) before the Honourable Mr. Justice P.R. Jeffrey on the Commercial List.

**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 this 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.

SCHEDULE "A"

Clerk's Stamp:

COURT FILE NUMBER 1901-01772  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFFS AMX REAL ESTATE INC. and JOSEPH SATHER  
DEFENDANTS MICHAEL STREET, 0882126 B.C. LTD., BOUNDARY MACHINE LTD., MARIELLE BRULE, PROPECTUS FINANCIAL INC. and SATHER RANCH LTD.  
DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**Lawson Lundell LLP**  
1100, 225 – 6<sup>th</sup> Avenue SW  
Calgary, AB T2P 1N2  
Lawyer: Alexis Teasdale  
Phone Number: (403) 218-7564  
Fax Number: (403) 269-9494  
E-mail Address: ateasdale@lawsonlundell.com

**DATE ON WHICH ORDER WAS PRONOUNCED:**

**LOCATION OF HEARING OR TRIAL:**

**NAME OF JUSTICE WHO MADE THIS ORDER:**

\_\_\_\_\_

Calgary

The Honourable Mr. Justice  
P.R. Jeffrey

UPON THE APPLICATION of C. Cheveldave & Associates Ltd., in its capacity as Court-appointed Receiver of Sather Ranch Ltd. (the **Receiver**), filed March 8, 2021; AND UPON READING the Affidavit of Cecil Cheveldave, sworn on March 8, 2021; AND UPON HEARING from counsel for the Receiver, and from counsel present for any other interested parties,

IT IS HEREBY ORDERED THAT:

1. The following orders granted in Action No. S1913131 of the Supreme Court of British Columbia by the Honourable Mr. Justice Walker are hereby recognized and affirmed for the purposes of this Action:

- (a) Receivership Order dated November 21, 2019, attached as Schedule “A” to this Order; and
- (b) Claims Process Order dated January 14, 2021, attached as Schedule “B” to this Order.

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**Justice of the Court of Queen's Bench of Alberta**

SCHEDULE "B"

Clerk's Stamp:

COURT FILE NUMBER 1901-01772  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFFS AMX REAL ESTATE INC. and JOSEPH SATHER  
DEFENDANTS MICHAEL STREET, 0882126 B.C. LTD., BOUNDARY MACHINE LTD., MARIELLE BRULE, PROPECTUS FINANCIAL INC. and SATHER RANCH LTD.  
DOCUMENT **ORDER**

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Calgary, AB T2P 1N2  
Lawyer: Alexis Teasdale  
Phone Number: (403) 218-7564  
Fax Number: (403) 269-9494  
E-mail Address: ateasdale@lawsonlundell.com

**DATE ON WHICH ORDER WAS PRONOUNCED:** \_\_\_\_\_  
**LOCATION OF HEARING OR TRIAL:** Calgary  
**NAME OF JUSTICE WHO MADE THIS ORDER:** The Honourable Mr. Justice P.R. Jeffrey

UPON THE APPLICATION of C. Cheveldave & Associates Ltd., in its capacity as Court-appointed Receiver of Sather Ranch Ltd. (the **Receiver**), filed March 8, 2021; AND UPON READING the Affidavit of Cecil Cheveldave, sworn on March 8, 2021; AND UPON HEARING from counsel for the Receiver, and from counsel present for any other interested parties,

IT IS HEREBY ORDERED THAT:

1. Pursuant to rules 1.2, 1.3, and 1.4 of the *Alberta Rules of Court*, Alta Reg 124/2010 (the **Rules**) and s. 8 of the *Judicature Act*, RSA 2000, c J-2, Sather Ranch shall be made a plaintiff and removed as a defendant in this Action; and

2. Pursuant to rules 1.2 and 1.4 of the *Rules*, the Plaintiffs, AMX Real Estate Inc. and Joseph Sather, are directed to provide particulars of their individual and independent causes of action against the Street Defendants, and the relief sought by them in their individual capacities, within 30 days of the date of this Order.

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**Justice of the Court of Queen's Bench of Alberta**

SCHEDULE "C"

Clerk's Stamp:

COURT FILE NUMBER 1901-01772  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFFS AMX REAL ESTATE INC. and JOSEPH SATHER  
DEFENDANTS MICHAEL STREET, 0882126 B.C. LTD., BOUNDARY MACHINE LTD., MARIELLE BRULE, PROPECTUS FINANCIAL INC. and SATHER RANCH LTD.  
DOCUMENT **ORDER**

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**DATE ON WHICH ORDER WAS PRONOUNCED:**

**LOCATION OF HEARING OR TRIAL:**

**NAME OF JUSTICE WHO MADE THIS ORDER:**

\_\_\_\_\_

Calgary

The Honourable Mr. Justice  
P.R. Jeffrey

UPON THE APPLICATION of C. Cheveldave & Associates Ltd., in its capacity as Court-appointed Receiver of Sather Ranch Ltd. (the **Receiver**), filed March 8, 2021; AND UPON READING the Affidavit of Cecil Cheveldave, sworn on March 8, 2021; AND UPON HEARING from counsel for the Receiver, and from counsel present for any other interested parties,

IT IS HEREBY ORDERED THAT:

1. The Receiver is hereby declared to be a complainant within the meaning of section 239(b)(iv) of the Alberta *Business Corporations Act*, RSA 2000, c B-9 for the purposes of this Action.

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**Justice of the Court of Queen's Bench of Alberta**