

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

**Estate Number: 33-2618511  
Court File No.: 33-2618511**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
EUREKA 93 INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO**

**AND IN THE MATTER OF THREE RELATED INTENDED PROPOSALS  
(LIVEWELL FOODS CANADA INC., ARTIVA INC., AND VITALITY CBD  
NATURAL HEALTH PRODUCTS INC.)**

**AND IN THE MATTER OF SECTION 192 OF THE *CANADA BUSINESS  
CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED, AND IN THE MATTER OF  
A PROPOSED ARRANGEMENT OF 12112744 CANADA LIMITED AND INVOLVING  
LIVEWELL FOODS CANADA INC. AND ARTIVA INC.**

**NOTICE OF MOTION  
(Appeal of Disallowances)**

Dominion Capital LLC (“**Dominion**”) will make a Motion to the Bankruptcy Court on a date to be scheduled at the Case Conference on September 2, 2020 or as soon after that time as the Motion can be heard at the court house, 161 Elgin Street, Ottawa, Ontario, K2P 2K1.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard:

- in writing under subrule 37.12.1(1) because it is;
- in writing as an opposed motion under subrule 37.12.1(4);
- verbally.**

**THE MOTION IS FOR:**

- (a) An Order:

- (i) Setting aside the Proposal Trustee’s disallowance of the claim of Dominion as Collateral Agent on behalf of itself, Nomis Bay Ltd. (“**Nomis**”), BPY Limited (“**BPY**”) and MMCAP International Inc. SPC (“**MMCAP**”, and collectively with Dominion, Nomis, and BPY, the “**Noteholders**”) in the Proposals of:
  - A. Artiva Inc. (“**Artiva**”);
  - B. LiveWell Foods Canada Inc. (“**Livewell**”);
  - C. Vitality CBD Natural Health Products Inc. (“**Vitality**”);
- (ii) Setting aside the Proposal Trustee’s disallowance of the secured claim and revaluation of Dominion’s claim as Collateral Agent on behalf of the Noteholders in the Proposal of Eureka 93 Inc. (“**Eureka**”);
- (b) Allowing the Dominion’s claims in the Proposals of Artiva, Livewell, Vitality and Eureka;
- (c) The costs of this Motion; and
- (d) Such further and other Relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) The Noteholders lent USD\$15million to the Debtors in two tranches evidenced by 10% Senior Secured Convertible Notes issued in February and March 2019;
- (b) The Trustee disallowed the Noteholders’ claims against Artiva, Livewell and Vitality in their entirety purportedly because the Trustee found that Guaranty of

Obligations signed by Artiva, Livewell and Vitality only guaranteed the February Notes and because the Trustee found that the February Notes were paid off by the transfer of the New Mexico facility to the Noteholders pursuant to the Partial Payment Agreement dated December 18, 2019;

- (c) The Guaranty of Obligations signed by Artiva, Livewell and Vitality guarantees future obligations of Eureka;
- (d) The release of USD\$3mil of debt pursuant to the New Mexico transaction was to be applied at the Noteholders' discretion and did not apply exclusively to the February Notes;
- (e) The Trustee's failure to allow any interest in the Eureka Proposal ignores both the underlying interest amounts, penalty rate and Mandatory Default amount stipulated in the Notes;
- (f) The Trustee's misreading of the commercial documents, acknowledged failure to consider extrinsic evidence of the parties' intention, decision-making process in breach of the Directions of this Honourable Court, communications with Dominion's counsel and unexplainable support for the Proposals create a reasonable apprehension of bias or partiality on the Trustee's part;
- (g) Section 135 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3;
- (h) Rules 37 and 57.03 of the *Rules of Civil Procedure*, and,
- (i) Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The Affidavit of Mikhail Gurevich to be sworn; and,
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court permit.

August 26, 2020

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