



COURT FILE NUMBER 25-1395703

COURT COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

PROCEEDING **IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED**

**AND IN THE MATTER OF THE CHOCOLATERIE
BERNARD CALLEBAUT PARTNERSHIP**

DOCUMENT **AMENDED APPLICATION BY INVESCO
MORTGAGE INC. IN ITS CAPACITY AS
UNSECURED CREDITOR IN THE ESTATE OF
CHOCOLATERIE BERNARD CALLEBAUT
PARTNERSHIP IN BANKRUPTCY**

ADDRESS FOR SERVICE
AND CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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File No. 85616-00001/PSJ

NOTICE TO RESPONDENT(S)

This Application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:

- Date:** Tuesday, March 5, 2013 (commercial list)
- Time:** 10:00 a.m.
- Where:** Calgary Courts Centre, 601 - 5th Street SW, Calgary, Alberta
- Before whom :** The Honourable Justice Stevens

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, if necessary, the time for service of the Application and supporting materials and declaring service of same to be good and sufficient.
2. Granting an order approving the proposal of Invesco Mortgage Inc. ("**Invesco**") that the balance of the Estate of the Chocolaterie Bernard Callebaut Partnership (the "**Estate**") be distributed by Deloitte & Touche Inc., Trustee of the Estate (the "**Trustee**") on the basis that the claims of those unsecured creditors who elected to participate in the Section 38 proceedings identified in Exhibit I to the Affidavit of Bill Hagel dated January 7, 2013 (the "**Participating Creditors**") are paid in full, and that the claims of those Creditors that did not elect to participate in the Section 38 proceedings (the "**Non-Participating Creditors**") will be paid the same dividend as would have been paid if all of the ordinary unsecured creditors (participating and non participating) were being paid *pro rata*; the particulars of which are as follows:
 - (a) The Participating Creditors, whose claims total \$273,784.76 shall be paid the full amount of their claims less the levy payable to the Office of the Superintendent in Bankruptcy.
 - (b) The BC Claim of \$3,894,441.00, as defined below, which has been assigned to Invesco shall remain as admitted by the Trustee.
 - (c) Invesco will agree to forfeit a portion of its dividend such that all other Non-Participating Creditors will receive the same dividend as they would have received if all of the ordinary unsecured creditors (Participating and Non-Participating) were being paid *pro rata*, and if there were no further disallowance of the BC Claim.
 - (d) Upon approval of the Proposal, Invesco. or Bernard Callebaut shall pay or cause to be paid the sum of \$50,000.00 ("**Damages**") to the Trustee in partial payment of the fines imposed by the Order of Justice Romaine dated March 24, 2011 (the "**March Order**").
 - (e) The Damages shall be distributed *pro rata* among the Non-Participating Creditors of the Estate excluding the BC Claim.
 - (f) The remaining fines (the "**Fines**") imposed by the March Order shall be set off against any dividends payable in respect of the BC Claim until satisfied in full. The Fines, less those amounts payable in respect of Solicitor-Client costs of 1563181 Alberta Ltd. (now Cococo, as defined below) shall be distributed *pro rata* to all Non-Participating Creditors, including Invesco.
3. Such further and other relief as this Honourable Court deems appropriate in the circumstances.

Grounds for making this Application:

4. Invesco filed a Proof of Claim in the Estate in the amount of \$3,894,441.00 based on the assignment granted by Bernard Callebaut and Francesca Callebaut under a General Security Agreement in favour of Invesco.
5. The Trustee of the Estate has reviewed the Proof of Claim filed by Bernard Callebaut on February 8, 2011 and has admitted the claim in the amount of \$3,894,441.00 (the "**BC Claim**").
6. By Order of this Court dated March 8, 2012 it was directed that Invesco would be paid the dividend due under the BC Claim.
7. By Order dated April 13, 2012, Cococo Chocolatiers Inc. ("**Cococo**") and any creditors who wished to participate were authorized at their own risk and expense to be substituted for Deloitte & Touche Inc. as Trustee to disallow wholly or in part the BC Claim pursuant to Section 38 of the *Bankruptcy and Insolvency Act* (Canada).
8. The Order provided that any other creditor that has filed a Proof of Claim in the Bankruptcy can participate in the creditor disallowance process, provided they register an Intention to Participate within thirty (30) days of the filing of the Order, which occurred on April 30, 2012, otherwise they would be forever barred from participating in any creditor disallowance process.
9. The total amount of claims by those creditors (the "**Participating Creditors**") that have participated in the creditor disallowance process (the "**Claims Disallowance Process**") is \$273,784.76.
10. The Trustee of the Estate has admitted unsecured claims (excluding the BC Claim) in the amount of \$1,243,283.90, and previously paid dividends of \$198,091.71 to those unsecured creditors leaving remaining claims of \$1,045,192.19.
11. The Non-Participating Creditors would receive the same dividend as they would have received if all of the ordinary unsecured creditors (Participating and Non-Participating) were being paid *pro rata* and there was no further disallowance of the BC Claim.
12. No steps have been taken by either Cococo or any other of the Participating Creditors in the Creditor Disallowance Process since the Application heard on April 13, 2012.
13. In order to avoid further delays and the expense of litigation to determine the validity of the BC Claim and without acknowledging that the BC Claim should be disallowed, Invesco has proposed that dividends be paid to creditors as set out in paragraph 2.
14. The Proposal provides a mechanism for payment of the Fines and Damages imposed by the March Order without the Estate incurring additional enforcement costs and resolves the issues of distribution of the Estate amongst both the Participating Creditors and the

Non-Participating Creditors on a cost effective basis without incurring further costs and delays in concluding the Estate.

15. Such further and other grounds as counsel may advise and this Court permit.

Material or evidence to be relied on:

16. The Affidavits of Bill Hagel sworn January 8, 2013 and February 20, 2013.
17. The Trustee's First Report dated January 30, 2012.
18. The Proofs of Claim filed by Bernard Callebaut and Invesco.
19. The Orders of this Court in these proceedings dated March 24, 2011, March 8, 2012 and April 13, 2012.
20. The pleadings and proceedings in this Action and in the receivership proceedings.

Applicable Acts and regulations:

21. *Bankruptcy and Insolvency Act (Canada).*

How the Application is proposed to be heard or considered:

22. In person.

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 this form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.