



Action No. 1001-11456

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

Between:

ALBERTA TREASURY BRANCHES

Plaintiff

-and-

CHOCOLATERIE BERNARD CALLEBAUT PARTNERSHIP, BY ITS MANAGING PARTNER,
CHOCOLATERIE BERNARD CALLEBAUT LTD., 1013988 ALBERTA LTD., CHOCOLATERIE
BERNARD CALLEBAUT LTD., 1054796 ALBERTA LTD., BERNARD CALLEBAUT AND
FRANCESCA CALLEBAUT

Defendants

FIRST REPORT OF THE COURT- APPOINTED RECEIVER AND MANAGER OF
CHOCOLATERIE BERNARD CALLEBAUT PARTNERSHIP, BY ITS MANAGING PARTNER,
CHOCOLATERIE BERNARD CALLEBAUT LTD., 1013988 ALBERTA LTD., CHOCOLATERIE
BERNARD CALLEBAUT LTD. AND 1054796 ALBERTA LTD.

DELOITTE & TOUCHE INC.

October 14, 2010

TABLE OF CONTENTS

INTRODUCTION AND BACKGROUND..... 1
 Notice to Reader..... 1
 Background..... 2
RECEIVER’S APPOINTMENT..... 2
 Powers of the Receiver 2
 Possession and Control..... 2
SALE OF THE HWY 1 LANDS 3
RECOMMENDATION AND CONCLUSION 5

INTRODUCTION AND BACKGROUND

1. Pursuant to a Consent Order of the Court of Queen's Bench of Alberta (the "Court") granted on August 3, 2010 (the "Receivership Order"), Deloitte & Touche Inc. ("Deloitte") was appointed as receiver and manager (the "Receiver") of Chocolaterie Bernard Callebaut Partnership ("Callebaut Partnership"), 1013988 Alberta Ltd. ("101"), Chocolaterie Bernard Callebaut Ltd. ("CBCL") and 1054796 Alberta Ltd. ("105") (collectively "Callebaut" or the "Company"). Subsequently, on August 18, 2010, the Callebaut Partnership, CBCL and 105 made assignments in bankruptcy and Deloitte was appointed as Trustee of the estates of the bankrupts. The receivership and bankruptcy proceedings are operating concurrently. Information on these proceedings can be accessed on Deloitte's website at www.deloitte.ca under the Insolvency and Restructuring link.
2. The Receivership Order was the result of an application by Alberta Treasury Branches ("ATB"), which holds registered security over all of the Company's present and after acquired property as well as a mortgage (the "Mortgage") registered against titles to the Hwy 1 Lands (as defined below) (the "ATB Security"). The Receiver's legal counsel, Blake, Cassels & Graydon LLP, has completed an independent review of the ATB Security and determined that the ATB security, including the Mortgage, is valid and enforceable.
3. Capitalized terms, not otherwise defined in this report, are as defined in the Receivership Order.

Notice to Reader

4. In preparing this report, Deloitte has relied on unaudited financial information, the Company's records and discussions with Callebaut management, interested parties and the Company's stakeholders. The Receiver has not performed an independent review or audit of the information provided.
5. This report constitutes the first report of the Receiver (the "First Report"). The First Report is being filed in support of the Receiver's application to the Honourable Court on October 19, 2010 (the "October 19 Application") seeking approval of the sale of 105's right, title and interest in the following two parcels of land, located in the vicinity of Highway 1 in Rocky View County, Alberta:
 - a. Parcel 1 - West of 5, Range 4, Township 24, Section 34 SW totaling 34.16 acres excepting thereout weigh scale site number 1799IX 1.055 hectares (2.58 acres) more or less and excepting thereout all mines and minerals; and
 - b. Parcel 2 - West of 5, Range 4, Township 24, Section 34, Part NW totaling 160 acres more or less excepting thereout all mines and minerals (collectively, the "Hwy 1 Lands").
6. The Receiver's confidential supplement to the First Report (the "First Confidential Report") will be provided to the Court in advance of the October 19 Application. The First Confidential Report provides more detailed information as to the offered purchase price, deposit and conditions advanced

by the various parties who submitted bids on the Hwy 1 Lands, as described below. The Receiver will be requesting that the First Confidential Report be sealed by the Court in order to avoid tainting any future sale process, which may be required should the sale of the Hwy 1 Lands, recommended herein, fail to close.

7. The Receiver intends to file its second report on October 15, 2010 in support of the Receiver's application to the Honourable Court to be heard on October 20, 2010 seeking approval of the sale of Callebaut's right, title and interest in all of the assets of Callebaut (the "Assets").

Background

8. CBCL and 105 are partners in the Callebaut Partnership, a manufacturer and retailer of high quality confectionaries. Neither CBCL nor 105 have independent operations outside of their respective interests in the Callebaut Partnership; however, 105 holds certain assets on behalf of the Callebaut Partnership and also owns the Hwy 1 Lands.
9. Callebaut operates out of leased premises, located at 1313-1 Street SE in Calgary, Alberta. These premises house its manufacturing facility and a retail store (the "Head Office"). In addition to the Head Office, Callebaut has seven other retail locations in Calgary and Banff, Alberta. There are also 17 independent distributors across North America. The Receiver is continuing to operate the business of Callebaut pending the sale of the Assets.

RECEIVER'S APPOINTMENT

Powers of the Receiver

10. The Receiver's powers are detailed in Paragraph 3 of the Receivership Order. They include the power to take and maintain possession and control of Callebaut's Assets, the power to manage operate and carry on the business of Callebaut and the power to market and sell the Company's Assets, subject to Court approval as required by the Receivership Order.

Possession and Control

11. Immediately following the Receiver's appointment on August 3, 2010, the Receiver attended the Head Office and Callebaut's seven other retail locations to take possession of the Assets. The Receiver participated in inventory counts of the Assets and all external locks and selected internal locks were changed. Shortly thereafter, digital imaging and backup was done on all of the Company's computer systems.
12. Callebaut has insurance coverage through Rogers Insurance Ltd., which policy has been paid in full by the Receiver for the period ended October 31, 2010 (the "Policy"). The Policy includes property, general liability, boiler and machinery, cargo coverage and business interruption insurance.

-
13. The Notice of Receiver and Receiver's Statement was issued to all of Callebaut's known creditors on August 13, 2010 and is posted on Deloitte's website.
 14. At the date of Receivership, Callebaut had approximately 110 employees (the "Employees"). The Employees were terminated in accordance with the Receivership Order. Approximately 55 employees were re-hired by the Receiver on a contract basis. The Employees were paid in full for all pre-Receivership wages and vacation pay. At the date of Receivership, severance obligations were estimated at \$183,042. Employees were invited to submit claims pursuant to the *Wage Earner's Protection Program Act* (the "WEPPA Claims") and the Receiver has provided all required information to Service Canada in respect of the WEPPA Claims.

SALE OF THE HWY 1 LANDS

15. Prior to the commencement of the Receivership proceedings, Callebaut had retained Barry Commercial Real Estate ("Barry") to market the Hwy 1 Lands. Attached as "Schedule 1" to the First Confidential Report is a marketing update prepared by Barry on September 15, 2010. As noted therein, Barry began marketing the Hwy 1 Lands in August 2009 using the methods summarized below:
 - a. Signage – Five large 4 x 8 signs were installed on the back side of the Hwy 1 Lands in October 2009. At the date of Receivership, at least three of these signs remained, which provided exposure to both easterly and westerly traffic.
 - b. Monthly email campaign – On a monthly basis, Barry issued a multi property brochure to approximately 5,400 active investors. The same information was forwarded to Barry's cooperating broker database, which included over 2,100 active real estate agents across Western Canada.
 - c. ICX Listing – The Hwy 1 Lands were listed on the MLS website for approximately seven months.
 - d. Direct Contact/ Cold Calling – Barry has indicated that, as part of their marketing efforts to sell the Hwy 1 Lands, they spoke to between 170 and 200 investors and brokers.
 - e. Unpriced bid submission process – In April 2010, we are advised that 105 decided to pursue an unpriced bid submission process, pursuant to which the Hwy 1 Lands were advertised in the Calgary Herald Business to Business section from April 2 to May 17, 2010. The unpriced bid submission process resulted in one unconditional offer (the "Initial Marri Offer") from Marri Properties Ltd. ("Marri"). The Initial Marri Offer was rejected; however, Marri indicated that they may consider increasing the purchase price upon the satisfaction of additional due diligence, including the review of an environmental assessment, real property report, easements and access agreements. We are advised by Barry that the Initial Marri Offer collapsed when 105 was unable to provide the requested documentation.

-
16. The listing agreement between 105 and Barry expired in June 2010. Following the Receiver's appointment, Barry approached the Receiver with the Initial Marri Offer, which we understand that Marri had requested be revived. Also, following the appointment of the Receiver, and as a result of the surrounding media coverage, Barry received a second offer for the Hwy 1 Lands (the "Initial Finnegan Offer") through a cooperating agent from Finnegan & Associates Ltd. ("Finnegan"). The Initial Finnegan Offer was conditional on obtaining an environmental report at the vendor's expense and on financing and due diligence, which was to be completed within one year (this period was later shortened to nine months). Based on the lengthy condition period and the inclusion of only a nominal deposit, it was determined that, in the Receiver's opinion, the closing risk associated with the Initial Finnegan Offer was too significant for it to warrant serious consideration.
 17. A Confidential Information Memorandum dated September 1, 2010 was prepared as part of the sale process completed by the Receiver in respect of the Assets. The CIM excluded the Hwy 1 Lands; however, Barry's contact information was included therein for those parties who wished to seek additional information on the Hwy 1 Lands.
 18. The Receiver requested that Cushman & Wakefield Ltd. complete an appraisal on the Hwy 1 Lands (the "Appraisal"). The Appraisal was prepared as of August 26, 2010 and is attached as "Schedule 2" to the First Confidential Report.
 19. Following receipt of the Appraisal, the Receiver determined that, based on the appraised value of the Hwy 1 Lands and the length of time that the Hwy 1 Lands had been exposed to the market, the Receiver would enter into negotiations with Marri. Prior to finalizing an Offer to Purchase and Agreement of Purchase and Sale with Marri, the Receiver received a second offer from Mr. Murray Atkins ("Atkins"). The Atkins and the Marri offers were very similar. As a result, the Receiver determined that Marri, Finnegan and Atkins would have the opportunity to re-submit sealed offers, which offers were opened on September 29, 2010 (the "September 29 Opening").
 20. Marri, Finnegan and Atkins all submitted offers at the September 29 Opening, however, only the offers submitted by Marri and Atkins were unconditional. The highest unconditional offer at the September 29 Opening was presented by Atkins; however, as a result of a procedural error, both Marri and Atkins were asked to resubmit sealed offers by 10:30 am on October 1, 2010 (the "October 1 Opening").
 21. Atkins submitted the highest unconditional offer at the October 1 Opening, which offer was accompanied by a 10% deposit (the "Atkins Offer"). The Atkins Offer was accepted by the Receiver, conditional on Court approval. The purchaser listed on the Atkins Offer was originally 1170341 Alberta Ltd. ("117"), a company which we understand to be owned by a related party to Atkins. The Atkins Offer was later assigned to Mr. Murray Atkins in his personal capacity. A copy of the Offer to Purchase and Agreement of Purchase and Sale entered into between the Receiver and 117 is

attached as "Exhibit 1" to the First Confidential Report. A copy of the assignment agreement between 117 and Mr. Murray Atkins is attached as "Exhibit 2" to the First Confidential Report.

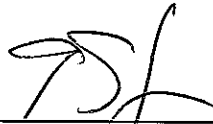
22. As noted above, ATB holds a general security agreement over all of Callebaut's present and after acquired property and a registered mortgage on the Hwy 1 Lands. As of September 23, 2010, ATB advised that the outstanding amount due from Callebaut was approximately \$3,243,466. In addition, ATB is obligated under a letter of guarantee in favour of MDC Properties, the landlord for the Head Office, pursuant to which there is a potential liability of \$838,235, which is secured by the ATB Security. ATB has indicated that they are supportive of the Atkins Offer.
23. A subsequent second mortgage on the Hwy 1 Lands is held by Invesco Mortgage Inc. ("Invesco"). Invesco has filed a proof of claim in the bankruptcy of 105, which listed an outstanding balance of \$4,465,303 as at August 18, 2010. We understand that the mortgage held by Invesco is a collateral mortgage, supporting another mortgage on a house owned by Bernard and Francesca Callebaut personally. The Receiver's legal counsel, Blake, Cassels & Graydon LLP, has not completed an independent review of the security held by Invesco. Invesco has indicated that it does not have any general security over the Assets of Callebaut.
24. Outside of ATB and Invesco, the only known creditors of 105 are the related companies 101 and CBCL.

RECOMMENDATION AND CONCLUSION

25. The Receiver is recommending proceeding with closing the Atkins Offer based on the following:
- a. The Receiver believes that there has been sufficient market exposure to ensure that interested parties have been made aware of the opportunity to submit offers on the Hwy 1 Lands;
 - b. ATB, Callebaut's principal secured creditor, is supportive of the Atkins Offer; and
 - c. The Receiver believes that the purchase price contained in the Atkins Offer represents the best realizable value that could reasonably be obtained for the Hwy 1 Lands in the present circumstances.

26. On October 19, 2010, the Receiver will be making an application to the Court of Queen's Bench of Alberta seeking the approval of the Atkins Offer. The Receiver's First Supplemental Confidential Report will be provided to the Court in advance of the October 19 Application in support of that application.

DELOITTE & TOUCHE INC.,
in its capacity as Receiver and Manager of Chocolaterie
Bernard Callebaut Partnership, by its Managing Partner,
Chocolaterie Bernard Callebaut Ltd., 1013988 Alberta
Ltd., Chocolaterie Bernard Callebaut Ltd. and 1054796
Alberta Ltd. and not in its personal capacity.



Victor P. Kroeger CA•CIRP, CFE
Senior Vice President

Action No.: 1001-11456

**IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

ALBERTA TREASURY BRANCHES

- and -

**CHOCOLATERIE BERNARD CALLEBAUT
PARTNERSHIP, by its Managing Partner,
CHOCOLATERIE BERNARD CALLEBAUT
LTD., 1013988 ALBERTA LETS.,
CHOCOLATERIE BERNARD CALLEBAUT
LTD., 1054796 ALBERTA LTD., BERNARD
CALLEBAUT and FRANCESCA CALLEBAUT**

**FIRST REPORT OF THE COURT- APPOINTED
RECEIVER AND MANAGER OF
CHOCOLATERIE BERNARD CALLEBAUT
PARTNERSHIP, BY ITS MANAGING PARTNER,
CHOCOLATERIE BERNARD CALLEBAUT
LTD., 1013988 ALBERTA LTD.,
CHOCOLATERIE BERNARD CALLEBAUT LTD.
AND 1054796 ALBERTA LTD.**

October 14, 2010

**BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
3500 Bankers Hall East
855 - 2nd Street S.W.
Calgary, Alberta T2P 4K7**

Kelly J. Bourassa/
Ryan Zahara
Phone: (403) 260-9697/260-9628
Fax: (403) 260-9700

Our File No: 38358/10013