



Clerk's stamp:

COURT FILE NUMBER 1001-11456

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ALBERTA TREASURY BRANCHES

DEFENDANTS 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

DOCUMENT INTERIM DISTRIBUTION APPLICATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT BLAKE, CASSELS & GRAYDON LLP 3500, 855 - 2nd Street S.W. Calgary, AB T2P 4J8 Attn: Kelly J. Bourassa/Ryan Zahara Telephone/Facsimile: 403-260-9697/9628/ 403-260-9700 File: 18558/10035 Email: kelly.bourassa@blakes.com ryan.zahara@blakes.com

NOTICE TO DEFENDANT

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: February 10, 2011

Time: 1:15 p.m.

Where: Calgary Courts Centre

Before Whom: Madam Justice B.E.C. Romaine

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. Deloitte & Touche Inc., in its capacity as receiver and manager (the “**Receiver**”) of Chocolaterie Bernard Callebaut Partnership (the “**Partnership**”), Chocolaterie Bernard Callebaut Ltd., 1013988 Alberta Ltd. and 1054796 Alberta Ltd. (“**105**”) (collectively, “**Callebaut**”), is seeking an Order:
 - (a) abridging the time for service of this application and declaring that this motion is properly returnable today, if necessary, and further service of the Application, other than to those listed on the Service List attached hereto as Schedule “A” is hereby dispensed with;
 - (b) permitting the Receiver to make an interim distribution of funds substantially as described in the Third Report of the Receiver dated February 3, 2011 (the “**Third Report**”);
 - (c) approving the fees and disbursements of the Receiver (including the legal fees and disbursements of the Receiver’s legal counsel) as set forth in the Third Report;
 - (d) approving the actions of the Receiver to date in respect of administering these receivership proceedings;
 - (e) approving the proposed allocation of the sale proceeds (the “**Asset Proceeds**”) from the sale of the business assets of the Partnership (the “**Assets**”) and the sale proceeds (the “**Land Proceeds**”) from the sale of the lands owned by 105 (the “**Lands**”) between Alberta Treasury Branches and Invesco Mortgage Inc., the only secured creditors of the Partnership or 105 and as more particularly described in the Third Report (collectively, the Asset Proceeds and the Land Proceeds are referred to as the “**Sale Proceeds**”);
 - (f) approving the allocation of the Receiver’s fees and disbursements and those of its legal counsel as between the Asset Proceeds and the Land Proceeds;

- (g) seeking advice and directions in respect of certain assets (the “**Removed Assets**”) which are more particularly described in the Affidavit of Veronica Amaya sworn on January 31, 2011 (the “**Amaya Affidavit**”);
- (h) declaring Bernard Callebaut and Francesca Callebaut (the “**B&F Callebaut**”) in contempt of the Consent Receivership Order granted by this Honourable Court on August 3, 2010 (the “**Receivership Order**”);
- (i) directing that B&F Callebaut purge their contempt by delivering up any property of Callebaut that was taken from Callebaut prior to or after the date of the receivership and providing a full accounting with respect to any conversion of the property of Callebaut on or before February 24, 2011; and
- (j) providing advice and directions to the Receiver with respect to any Removed Assets that are not delivered up by B&F Callebaut.

Grounds for making this application:

Allocation of Sale Proceeds

2. Pursuant to the Receivership Order, Deloitte was appointed as receiver and manager over all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof of Callebaut.
3. On October 21 and 22, 2010, this Honourable Court approved the sale of the Lands and the Assets of Callebaut. The Receiver, upon the closing of these transactions and receipt of the Sale Proceeds, paid the Alberta Treasury Branches (“**ATB**”) the entire amount outstanding under its security.
4. At this time, the Receiver is seeking to disburse additional amounts from the Sale Proceeds to Invesco Mortgage Inc. (“**Invesco**”) pursuant to its security against the Lands which, pursuant to paragraph 12 of the Sale Approval and Vesting Order dated October 21, 2010 of this Honourable Court attached in the same priority as against the Lands to the Land Proceeds.

5. ATB has first priority to all of the Sale Proceeds. As a result, prior to the distribution to Invesco, the Receiver must allocate the amount of Sale Proceeds to be received by ATB and Invesco from the two pools of funds available to the creditors of Callebaut.
6. The Receiver proposes to pay the entire amount of the Land Proceeds, net of allocated fees and disbursements of the Receiver and its legal counsel, to Invesco which will have the result that ATB's security has been satisfied entirely from the Asset Proceeds.
7. The Receiver believes the proposed allocation is fair and reasonable.

Removal of Assets and Contempt

8. The Receivership Order provides at paragraphs 4 and 5 that all Persons (as defined in the Receivership Order) shall forthwith advise the Receiver of any Property or Records (both as defined in the Receivership Order) in that Person's possession or control, shall deliver to the Receiver all such Property on the Receiver's request and shall grant unfettered access to the Receiver to any Records, except to the extent that solicitor-client privilege may attach to those records or other statutory prohibitions on such disclosure.
9. It has come to the Receiver's attention that the Removed Assets may be the property of Callebaut that were removed from the premises of Callebaut by B&F Callebaut prior to and after the date of the Receivership in direct contravention of the Receivership Order and particularly paragraphs 4 and 5.

Material or evidence to be relied on:

10. The materials upon which the Receiver intends to rely include the following:
 - (a) the Consent Receivership Order granted August 3, 2010;
 - (b) the First Report of the Receiver dated October 14, 2010, filed;
 - (c) the Second Report of the Receiver dated October 15, 2010, filed;
 - (d) the Third Report of the Receiver dated February 3, 2011, filed;

- (e) the Amaya Affidavit, filed; and
- (f) such further and other material as counsel for the Receiver may advise and this Honourable Court may permit.

Applicable rules:

- 11. The Receiver will rely upon and refer to the Alberta *Rules of Court* during the making of the Application.

Applicable Acts and regulations:

- 12. The Receiver will rely upon and refer to the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 as amended, during the making of the Application.

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 the 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.