

**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

STATEMENT OF CLAIM

I. PARTIES

1. The Plaintiff, Alberta Treasury Branches ("ATB") is a corporation incorporated under the *Treasury Branches Act* (Alberta) with branch offices in the City of Calgary, in the Province of Alberta.
2. The Defendant, Chocolaterie Bernard Callebaut Partnership ("CBCP") is, so far as is known to ATB, a partnership pursuant to the laws of Alberta. CBCP is a partnership between Chocolaterie Bernard Callebaut Ltd. and 1054796 Alberta Ltd.
3. The Defendant, 1013988 Alberta Ltd. ("101") is, so far as is known to ATB, a body corporate incorporated pursuant to the laws of Alberta, with a registered office in the City of Calgary, in the Province of Alberta.

4. The Defendant, Chocolaterie Bernard Callebaut Ltd. ("CBCL") is, so far as is known to ATB, a body corporate incorporated pursuant to the laws of Alberta, with a registered office in the City of Calgary, in the Province of Alberta. CBCL is a wholly owned subsidiary of 101.
5. The Defendant, 1054796 Alberta Ltd. ("105") is, so far as is known to ATB, a body corporate incorporated pursuant to the laws of Alberta, with a registered office in the City of Calgary, in the Province of Alberta. 105 is a wholly owned subsidiary of 101.
6. The Defendant, Bernard Callebaut ("Bernard") is, so far as is known to ATB, an individual resident in the Province of Alberta, and is the president of CBCL.
7. The Defendant, Francesca Callebaut ("Francesca") is, so far as is known to ATB, an individual resident in the Province of Alberta.

II. THE LOANS

8. ATB prepared a commitment letter dated and accepted June 29, 2006 by CBCL as managing partner on behalf of CBCP (the "2006 Commitment Letter"), and a commitment letter dated November 20, 2007 and accepted by CBCL as managing partner on behalf of CBCP (the "2007 Commitment Letter").
9. The 2006 Commitment Letter and 2007 Commitment Letter were renewed, revised, amended or restated by the August 28, 2009 Forbearance Agreement (the "Forbearance Agreement") and March 4, 2010 Amended and Restated Forbearance Agreement (the "Amended and Restated Forbearance Agreement").
10. The Amended and Restated Forbearance Agreement was first amended by April 26, 2010 letter amending agreement (the "First Letter Amending Agreement") and second amended by July 12, 2010 letter amending agreement (the "Second Letter Amending Agreement").
11. The renewals, revisions, amendments and restatements created additional security requirements to those under the 2006 Commitment Letter and the 2007 Commitment

Letter (the 2006 Commitment Letter, 2007 Commitment Letter, Forbearance Agreement, Amended and Restated Forbearance Agreement, First Letter Amending Agreement and Second Letter Amending Agreement collectively referred to herein as the "Credit Facilities Agreement").

12. Pursuant to the 2006 Commitment Letter, ATB agreed to provide and CBCP by its managing partner, CBCL, agreed to accept various loans all on the terms set out in the Credit Facilities Agreement and all related and amending documents.
13. In accordance with the terms of the Credit Facilities Agreement, ATB advanced loans to CBCP, by its managing partner, CBCL, from time to time. The amounts due and owing under the Credit Facilities Agreement from CBCP to ATB, as of July 30, 2010, are as follows:
 - (a) Non-Revolver Reducing Loan Facility: \$1,448,965.48 outstanding, increasing *per diem* by \$305.75;
 - (b) Revolver Operating Loan Facility: \$1,508,390.96 outstanding, increasing *per diem* by \$318.49;
 - (c) Corporate MasterCard: \$33,113.58 outstanding; and
 - (d) Letter of Guarantee: Principal of \$925,000.
14. Including the Letter of Guarantee, the total indebtedness outstanding is in excess of \$3,915,000, with additional interest, costs and other charges accruing thereon at the rates and on the terms established by the Credit Facilities Agreement.
15. CBCP agreed to repay principal and interest advanced to it from time to time by ATB at such times and on such terms with such interest and costs as set out under the terms of the Credit Facilities Agreement and related security.

III. ATB'S SECURITY

16. As security for repayment of the amounts owing under the Credit Facilities Agreement, CBCP, by its managing partner, CBCL, and 101, 105, CBCL, Bernard and Francesca granted to ATB certain security including:

- (a) general security agreement dated as of June 29, 2006 granted by CBCP, by its managing partner, CBCL to ATB;
- (b) unlimited continuing guarantee dated as of June 29, 2006 granted by CBCL to ATB;
- (c) general security agreement dated as of June 29, 2006 granted by CBCL to ATB;
- (d) unlimited continuing guarantee dated as of June 29, 2006 granted by 105 to ATB;
- (e) unlimited continuing guarantee dated as of June 29, 2006 granted by 101 to ATB;
- (f) general security agreement dated as of June 29, 2006 granted by 101 to ATB;
- (g) postponement and assignment of claims dated as of June 29, 2006 granted by Bernard to ATB;
- (h) postponement and assignment of claims dated as of June 29, 2006 granted by The Bernard Callebaut Family Trust to ATB;
- (i) acknowledgement of security dated as of November 28, 2007 granted by CBCP, by its managing partner, CBCL, to ATB;
- (j) acknowledgement of security dated as of November 28, 2007 granted by CBCL to ATB;
- (k) acknowledgement of security dated as of November 28, 2007 granted by 101 to ATB;
- (l) acknowledgement of security dated as of November 28, 2007 granted by 105 to ATB;
- (m) \$5,500,000 mortgage (the "Mortgage") dated as of November 28, 2007 granted by 105 to ATB as against lands owned by 105 (the "105 Lands");

- (n) irrevocable assignment of sale proceeds dated as of November 28, 2007 granted by 105 to ATB;
 - (o) \$5,000,000 limited liability guarantee dated as of November 28, 2007 granted by Bernard and Francesca;
 - (p) agreement respecting assignment of life insurance policy/annuity contract granted by Bernard, as contract owner, and Francesca, as beneficiary, to ATB on the life of Bernard issued by Transamerica Life Canada as policy no. 080245876;
 - (q) agreement respecting assignment of life insurance policy/annuity contract granted by CBCL, as contract owner, and CBCL, as beneficiary, to ATB on the life of Francesca issued by Transamerica Life Canada as policy no. 080320986;
 - (r) assignment of life insurance policy/annuity contract by Bernard, as contract owner, and Francesca, as beneficiary, in favour of ATB on the life of Bernard issued by Transamerica Life Canada as policy no. 080245876;
 - (s) assignment of life insurance policy/annuity contract by CBCL, as contract owner, and CBCL, as beneficiary, in favour of ATB on the life of Francesca issued by Transamerica Life Canada as policy no. 080320986; and
 - (t) notices to life insurance company regarding (r) and (s) above;
- (collectively, the "Security").

17. It was an express term of the Credit Facilities Agreement and Security that CBCP, by its managing partner, CBCL, would reimburse ATB for all costs and expenses, including legal fees on a full indemnity, solicitor and his own client basis, incurred by ATB in taking any proceedings taken for the purpose of protecting or enforcing the remedies provided to ATB in the Credit Facilities Agreement, Security or otherwise in relation to the collateral secured by the Security.

18. It was an express term of the Credit Facilities Agreement that the CBCL indebtedness owing to ATB was repayable on demand.

IV. DEMAND FOR REPAYMENT

19. CBCP is in default of its obligations owing to ATB, and has committed an Event of Default under the Credit Facilities Agreement and the Security, including a failure to maintain various financial tests and failing to pay the amounts outstanding when due.
20. As a result of CBCP's default under the terms of the Credit Facilities Agreement and related Security as set out herein, on or about June 12, 2009, ATB sent a letter to CBCP (the "Default Letter") describing the defaults under the Credit Facilities Agreement and the Security.
21. In response to the Default Letter, on or about August 28, 2009, ATB and CBCP, by its managing partner, CBCL, entered into the Forbearance Agreement to provide CBCP a further opportunity to sell assets or enter into a business arrangement to repay ATB.
22. On March 4, 2010, ATB and CBCP, by its managing partner, CBCL, entered into the Amended and Restated Forbearance Agreement.
23. On April 26, 2010, ATB and CBCP, by its managing partner, CBCL, entered into the First Letter Amending Agreement, amending certain terms of the Amended and Restated Forbearance Agreement. Among other things, CBCP agreed to the appointment by ATB of a receiver in the event of default, in accordance with its Security, and executed a consent receivership order (the "Consent Receivership Order"), upon which ATB is entitled to rely immediately in the event of a default by CBCP.
24. On July 12, 2010, ATB and CBCP, by its managing partner, CBCL, entered into the Second Letter Amending Agreement, amending certain terms of the Amended and Restated Forbearance Agreement.
25. CBCP has failed to meet its obligations and make payment or payout in accordance with the Amended and Restated Forbearance Agreement. On July 30, 2010, counsel for ATB

delivered to the CBCP, by its managing partner, CBCL, 101, CBCL, and 105, and their counsel, a Notice of Intention to Enforce Security pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* ("BIA").

26. ATB proposes that the place for the trial of this action be at Calgary, Alberta, and estimates that the time for trial of the action will be less than 25 days.


WHEREFORE THE PLAINTIFF, ATB, CLAIMS AS AGAINST THE DEFENDANTS:

- (a) a declaration as to the amounts owing to ATB by CBCP, and judgment in the amount found to be owing;
- (b) a declaration that the Security held by ATB is valid and enforceable as against CBCP;
- (c) a declaration that the Guarantees held by ATB are valid and enforceable as against CBCL, 105, 101, Bernard and Francesca;
- (d) a declaration as to the amount owing under the Mortgage by 105, with interest and costs on a solicitor and his own client basis, according to the terms of the Mortgage and, in default of payment, sale or foreclosure and possession of the 105 Lands;
- (e) an Order directing the sale of the 105 Lands;
- (f) an Order for foreclosure in respect of the 105 Lands;
- (g) an Order providing no redemption period or as the Court may direct in respect of the 105 Lands;
- (h) an Order for possession of the 105 Lands in favour of ATB;
- (i) an Order for the preservation of the 105 Lands pending further Order of this Honourable Court;

- (j) the appointment of a receiver over all of the assets of CBCP, CBCL, 105, 101, or such assets as ATB may direct and deem appropriate from time to time;
- (k) interest in accordance with the terms of the Credit Facilities Agreement, related Security, the guarantees, and the Mortgage, or alternatively, pursuant to the provisions of the *Judgment Interest Act*, R.S.A. 2000, c. J-1;
- (l) costs on a full indemnity, solicitor and his own client basis in accordance with the terms of the Credit Facilities Agreement, related Security, the guarantees, and the Mortgage; and
- (m) such further and other relief as this Honourable Court may allow.

DATED at the City of Calgary, in the Province of Alberta this 30th day of July, 2010 and DELIVERED by Larry B. Robinson, Q.C., of Davis LLP, Barristers and Solicitors, 1000, 250 - 2nd Street SW, Calgary, AB T2P 0C1, solicitors for the Plaintiff whose address for service is in care of the said solicitors.

ISSUED out of the office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Calgary this 30th day of July, 2010.

K. MCAUSLAND 

CLERK OF THE COURT

TO: THE DEFENDANTS

Action No. 1001- 11456

**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**

**IN THE COURT OF QUEEN'S BENCH
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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

You have been sued. You are the Defendant. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Calgary, Alberta. You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiff named in this Statement of Claim.

WARNING: If you do not do both things within 15 days, you may automatically lose the law suit. The Plaintiff may get a Court judgment against you if you do not file, or do not give a copy to the Plaintiff, or do either thing late.

This Statement of Claim is issued by the Solicitors for the Plaintiff, whose name and address for service is:

**DAVIS LLP
Barristers and Solicitors
1000, 250 - 2nd Street SW
Calgary, AB T2P 0C1
Attn: Larry B. Robinson, Q.C.
Fax: 403.697.6609**

The Defendant's address for service, so far as is known to the Plaintiff is:

Calgary, Alberta

STATEMENT OF CLAIM

**DAVIS LLP
Barristers and Solicitors
1000, 250 - 2nd Street SW
Calgary, AB T2P 0C1**

Larry B. Robinson, Q.C./Brian D. West
Phone: 403.698.8715
Fax: 403.697.6609

File No.: 80034-00001

