



**Form 27**  
[Rule 6.3 and 10.52(1)]

Clerk's stamp:

COURT FILE NUMBER 25-1395703  
COURT COURT OF QUEEN'S BENCH OF ALBERTA,  
IN BANKRUPTCY  
JUDICIAL CENTRE CALGARY  
  
IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED  
  
AND IN THE MATTER OF CHOCOLATERIE  
BERNARD CALLEBAUT PARTNERSHIP

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT BLAKE, CASSELS & GRAYDON LLP  
3500, 855 – 2<sup>nd</sup> Street S.W.  
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File: 38358/10013

**NOTICE TO RESPONDENTS**

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 6, 2012  
Time 9:00 a.m.  
Where Calgary Courts Centre  
Before Whom The Honourable Madam Justice B. 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. The Applicant, Deloitte & Touche Inc. (“**Deloitte**”), in its capacity as trustee (the “**Trustee**”) of the bankrupt estate of Chocolaterie Bernard Callebaut Partnership (the “**Callebaut Partnership**”) seeks an Order:
  - (a) abridging the time for, and validating service of, this Application and the materials filed in support of this Application, if necessary, and dispensing with service on any party not served;
  - (b) seeking the advice and direction of this Honourable Court with respect to the failure of Bernard and Francesca Callebaut (“**B & F Callebaut**”) to pay certain fines (the “**Fines**”), including \$50,000 for the benefit of unsecured creditors (the “**Damages**”) as directed by the Order granted by the Honourable Justice B.E.C. Romaine on March 24, 2011 (the “**Contempt Order**”) within the time period provided therein, and the ability of Trustee to set-off the amount of the Fines from the interim distribution proposed to be made by the Trustee to Mr. Callebaut as an unsecured creditor of the Callebaut Partnership;
  - (c) approving the Trustee’s proposal that the funds remaining in the bankrupt estate of the Callebaut Partnership on account of the Damages be made available for the benefit of the unsecured creditors of the bankrupt estate of the Callebaut Partnership, excluding Mr. Callebaut;
  - (d) approving the payment of final dividends to the unsecured creditors of the bankrupt estate of the Callebaut Partnership, including Mr. Callebaut, 30 days following the hearing of the within application; and
  - (e) such further and other relief and directions as counsel may request and this Honourable Court may deem appropriate.

**Grounds for making this application:**

2. The grounds upon which the Applicant relies in making the within application are as follows:
  - (a) Deloitte was appointed as receiver and manager (the “**Receiver**”) of, amongst others, the Callebaut Partnership, pursuant to an Order of the Honourable Madam Justice E.A. Hughes dated August 3, 2010 (the “**Receivership Order**”);
  - (b) the Callebaut Partnership was adjudged bankrupt on August 18, 2010 and Deloitte was appointed as Trustee;
  - (c) pursuant to the Contempt Order, B & F Callebaut were directed to pay the Fines within 6 months of the date of the Contempt Order;
  - (d) to date, B & F Callebaut have not paid the Fines;
  - (e) Mr. Callebaut filed a proof of claim with the Trustee as part of the within proceedings in the amount of \$4,068,101 (the “**Claim**”);
  - (f) the Trustee has disallowed the Claim in part;
  - (g) upon receiving the approval of this Honourable Court, the Trustee intends to make an interim distribution of funds, as further described in paragraph 16 of the first report of the Trustee (the “**Trustee’s Report**”) dated January 30, 2012, within 30 days of the hearing of the within application; and
  - (h) such further and other relief as counsel may request and this Honourable Court may deem just.

**Material or evidence to be relied on:**

3. The Applicant intends to rely upon the following materials:
  - (a) the Trustee's Report;
  - (b) all reports filed by Deloitte in its capacity as Receiver in Action No. 1001-11456;  
and
  - (c) such further and other materials as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

4. The Trustee will rely upon and refer to the *Alberta Rules of Court* during the making of the Application.

**Applicable Acts and regulations:**

5. The Trustee will rely upon and refer to the provisions of the *Bankruptcy & Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

**Any irregularity complained of or objection relied on:**

6. None.

**How application is proposed to be heard or considered:**

7. Oral submission by counsel at an application in chambers.

**AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.**

**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.