

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

Estate Number: 33-2618511
Court File No.: 33-2618511

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
EUREKA 93 INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO
AND IN THE MATTER OF THREE RELATED INTENDED PROPOSALS (LIVEWELL
FOODS CANADA INC., ARTIVA INC., AND VITALITY CBD NATURAL HEALTH
PRODUCTS INC.)**

NOTICE OF MOTION

DELOITTE RESTRUCTURING INC. (“**Deloitte**” or the “**Trustee**”), in its capacity as Proposal Trustee in connection with the Notices of Intention to Make a Proposal (individually, an “**NOI**”, and collectively, the “**NOIs**”) filed by each of Eureka 93 Inc. (“**Eureka 93**”), LiveWell Foods Canada Inc. (“**LiveWell**”), Artiva Inc. (“**Artiva**”) and Vitality CBD Natural Health Products Inc. (“**Vitality**” and, together with Eureka 93, LiveWell and Artiva, the “**Companies**”), will make a motion to Regional Senior Justice MacLeod on Monday, September 14, 2020, at 10:00 a.m., or as soon after that time as the motion can be heard, at 161 Elgin Street, Ottawa, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard by judicial video conference via Zoom at Ottawa, Ontario, in accordance with the Notice to the Profession updated April 2, 2020, issued by Chief Justice Morawetz. The Zoom conference call-in details are attached as **Schedule “A”** hereto.

THE MOTION IS FOR an Order:

1. if necessary, abridging the time for service of the Trustee’s Motion Record and related Notice of Motion, validating service of the Motion Record and related Notice of Motion, and dispensing with further service thereof;

2. that Dominion Capital LLC (“**DC**”) pay into Court by September 14, 2020, the sum of \$112,937.85 as security for the Trustee’s anticipated costs (including the costs of its counsel) on a substantial indemnity basis (the “**Security**”), of the appeals of the Trustee’s (a) Notices of Disallowance of the Amended Proofs of Claim filed by DC, Nomis Bay Ltd., BPY Limited and MMCAP International Inc. SPC (collectively, the “**Noteholders**”), filed with respect to Artiva, Livewell and Vitality (the “**Noteholders Amended POCs**”), and (b) partial Notice of Disallowance with respect to Eureka 93 (collectively, the “**Appeal**”);
3. that, if by 5:00 pm (eastern standard time) on September 14, 2020, the Security is not posted and proof of posting is not provided to the Trustee’s counsel, the Appeal be deemed automatically dismissed without the requirement of further Order of the Court;
4. varying the Case Conference Order and Direction of Justice MacLeod made September 3, 2020, to re-schedule the Appeal from September 18, 2020, to a day during the week of September 21, 2020, or the nearest possible day thereafter;
5. that in accordance with the Practice Direction governing proceedings in the Superior Court of Justice, DC’s factums on each of (a) the motion for security for costs, and (b) the Appeal, be limited to 20 pages (excluding the cover page and Schedules “A” and “B” to the factum i.e. caselaw citations and statutes citations), unless leave of the Court is granted in advance of service of the factums;
6. costs of this motion on a substantial indemnity basis;
7. if the Security is not posted as required, costs of the Appeal on a substantial indemnity basis; and
8. such further relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. by way of Notice of Motion dated August 26, 2020, DC moved to appeal the Notices of Disallowance and Notice of Partial Disallowance in respect of the Noteholders' Amended POCs;
2. DC is a foreign corporation that is not resident in Ontario, and there is good reason to believe that it has insufficient assets in Ontario to pay the costs of the Trustee on the Appeals;
3. the Appeals are littered with frivolous and vexatious allegations against the Trustee and its counsel, put forward for collateral purposes, including as an attack on prior Orders of the Court without the required motions having been brought, and to attempt to leverage the Trustee's compliance with the Noteholders' positions;
4. by way of Case Conference Order and Direction made September 3, 2020, Justice Macleod held that "it may be necessary to hear a motion on [the issue of security for costs] if the Noteholders wish to resist the motion but it will not be necessary if the noteholders voluntarily post security in the amount of \$50,000.00 or alternatively provide proof that the Noteholders have adequate eligible assets in Ontario to satisfy a costs award if such an order is made";
5. DC has not posted the required Security, and has not provided any proof of exigible assets in Ontario;
6. the Appeals are scheduled to be heard on September 18, 2020;
7. if the Security is not posted forthwith, the Trustee will be required to incur further substantial costs for the Appeals, without reasonable cause, without security for its costs and the costs of its counsel, and these costs should not be borne by the Companies or their creditors;
8. Rules 1.04, 2.01, 2.03, 3.02(1), 56.01(1), and 61.06 of the *Rules of Civil Procedure*;
9. Section 197(1) and Rule 3 of the *Bankruptcy and Insolvency Act*; and
10. such further grounds as counsel may advise and this Honourable Court deems just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. the Ninth Report of the Trustee dated September 9, 2020;
2. the Proposal Trustee's Bill of Costs in respect of this motion and the Appeal;
3. the DC Motion Record dated August 31, 2020; and
4. such further and other material as counsel may advise and this Honourable Court may permit.

September 9, 2020

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TO: SERVICE LIST

SCHEDULE "A"

Conference Details to join Motion via Zoom

Meeting URL: <https://ca01web.zoom.us/j/62194552388?pwd=REwwb1U5WWlzTkFyU2dMSzdHU0RGUT09>

Meeting ID: 621 9455 2388

Passcode: 437042

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF EUREKA 93 INC. OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO

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Proceeding commenced at Ottawa

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