



Clerk's Stamp



\$50.00  
Justice Eidsvik  
COM  
Nov 18, 2021

COURT FILE NO. 2101-10083

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF PANTERRA MORTGAGE & FINANCIAL CORPORATION LTD.

DEFENDANT COCOCO CHOCOLATIERS INC.

IN THE MATTER OF THE RECEIVERSHIP OF COCOCO CHOCOLATIERS INC.

APPLICANT DELOITTE RESTRUCTURING INC., in its capacity as Court-appointed Receiver and Manager of the assets, undertakings and properties of COCOCO CHOCOLATIERS INC.

DOCUMENT **APPLICATION  
(Order for Final Distribution, Approval of Receiver's Fees and Disbursements, Approval of Receiver's Activities and Discharge of Receiver)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Torys LLP  
4600 Eighth Avenue Place East  
525 - Eighth Ave SW  
Calgary, AB T2P 1G1  
Attention: Kyle Kashuba  
Telephone: +1 403.776.3744  
Fax: +1 403.776.3800  
Email: [kkashuba@torys.com](mailto:kkashuba@torys.com)  
File No. 39279-2004

**NOTICE TO RESPONDENT(S):**

This Application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the Application is heard as shown below:

Date: November 18, 2021

Time: 10:00 a.m.

Where: Calgary Courts Centre, via WebEx videoconference

Before Whom: The Honourable Justice K.M. Horner, of the Commercial List

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. An Order in substantially the form of the proposed Order attached as Schedule **“A”** to this Application, granting the following relief and directions:
  - 1.1 abridging, if necessary, the time for service of this Application and deeming service good and sufficient;
  - 1.2 approving the previously undertaken and proposed go-forward actions and conduct of Deloitte Restructuring Inc. (**“Deloitte”**) in its capacity as the Court-appointed receiver and manager (the **“Receiver”**) of the assets, undertakings and properties (the **“Property”**) of Cococo Chocolatiers Inc. (the **“Debtor”**) and those of its legal counsel to date, as set out in the Receiver’s First and Final Report, filed November 8, 2021 (the **“Final Report”**);
  - 1.3 the review and approval of the professional fees of the Receiver, and those of the Receiver’s legal counsel, along with their respective estimated forecast fees and costs, and the final receipts and disbursements, all as set out in the Final Report;
  - 1.4 authorizing the Receiver to release or destroy any books and records (the **“Records”**) of the Debtor that the Receiver may have in their possession;
  - 1.5 discharging Deloitte as Receiver of the Debtor’s Property, upon the conclusion of the remaining specified and administrative duties as described in the Final Report; and
  - 1.6 granting leave to the Receiver to apply or reapply to this or any court or administrative body in any province of Canada for advice, assistance and directions as may be necessary to carry out the terms of the Order sought.
2. Such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

**Grounds for making this Application:**

3. On August 18, 2021, following the Application of Panterra Mortgage & Financial Corporation Ltd. (**“Panterra”**), Deloitte was appointed Receiver over the Property of the Debtor, by Order of the Honourable Madam Justice B.E.C. Romaine (the **“Receivership Order”**).
4. The Receiver has duly marketed and attempted to arrange for the sale of the Debtor’s Property. The Receiver has sold substantially all of the Debtor’s Property to Panterra, in compliance with the Sales Process and Stalking Horse Order granted by the Honourable Madam Justice B.E.C. Romaine dated August 18, 2021 (the **“Sales Process and Stalking Horse Order”**).
5. The sales process has been fair, with the interests of all parties being considered, and the Receiver has made significant efforts to obtain the best price for the Property in the circumstances; however, no offers were received.
6. The Receiver has now completed, or is about to complete, all aspects concerning the administration of the within receivership proceedings.

7. All of the actions and conduct in respect of the fees and disbursements incurred by the Receiver and its legal counsel during the course of the administration of the within proceedings are reasonable, have been validly and duly incurred in connection with the conduct of the Receiver's obligations herein, and have now been or are about to be completed.
8. The Receiver is not aware of any reason that it should be required for any further purposes herein, and should be discharged as Receiver of the Property of the Debtor upon the conclusion of the remaining specified and other administrative duties as described in the Final Report.
9. The discharge of the Receiver as proposed is just, appropriate and in the best interest of the administration of the receivership estate and the stakeholders affected thereby.
10. Certain of the Records contain confidential information and should the discharge of the Receiver be approved, it would be unfair and unreasonable to require the Receiver to maintain the Records indefinitely, at its cost and expense, as the Records are of no use to the Receiver. The Debtor's former directors and officers will be provided 30 days notice of the Receiver's intention to destroy the Records. At such time, the former directors and officers shall then have 30 days to make appropriate arrangements with the Receiver to physically take possession of the Records, at their sole cost and expense. The Receiver has already provided or agreed to provide certain Records requested by certain stakeholders. The Receiver is not aware of any other Records that may be required by other stakeholders and therefore, the proposed steps to destroy the Records is fair and reasonable under the circumstances.
11. The terms as set out in the proposed form of Order attached hereto as Schedule "A" are necessary to effect the discharge of the Receiver as contemplated herein.
12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

13. All pleadings and proceedings filed in the within action, including the Receivership Order and the Sales Process and Stalking Horse Order.
14. The Final Report of the Receiver, filed November 8, 2021.
15. The proposed form of Order attached as Schedule "A" to this Application.
16. The inherent jurisdiction of this Honourable Court to control its own process.
17. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

18. Rules 1.3, 6.3(1), 6.47(e) and (f), 6.9(1)(b), 6.10, 11.27, 11.29, and 13.5, and such further and other Rules as counsel may advise and that this Honourable Court may permit.

**Applicable Acts and regulations:**

19. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, the *Judicature Act*, RSA 2000, c J-2, as amended, and such other Rules, Acts and Regulations as counsel may advise and that this Honourable Court may permit.

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

20. None.

**How the Application is proposed to be heard or considered:**

21. Oral submissions by counsel at an Application in Commercial List Chambers as agreed and scheduled by counsel, before The Honourable Madam Justice K.M. Horner of the Commercial List, at the Calgary Courts Centre, 601 - 5<sup>th</sup> Street SW, at Calgary, Alberta, via WebEx videoconference, on Thursday, November 18, 2021 at 10:00 a.m. or as soon thereafter as counsel may be heard.

**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(s) 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 materials to the Applicant.

**SCHEDULE "A"**

**Form of Order**

**(Final Distribution, the Approval of the Receiver's Activities, Fees and Disbursements, and the Receiver's Discharge)**

(See attached)

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JUDICIAL CENTRE CALGARY

PLAINTIFF PANTERRA MORTGAGE & FINANCIAL CORPORATION LTD.

DEFENDANT COCOCO CHOCOLATIERS INC.

IN THE MATTER OF THE RECEIVERSHIP OF COCOCO CHOCOLATIERS INC.

APPLICANT DELOITTE RESTRUCTURING INC., in its capacity as Court-appointed Receiver and Manager of the assets, undertakings and properties of COCOCO CHOCOLATIERS INC.

DOCUMENT **ORDER FOR FINAL DISTRIBUTION, APPROVAL OF RECEIVER'S FEES AND DISBURSEMENTS, and APPROVAL OF RECEIVER'S ACTIVITIES and DISCHARGE OF RECEIVER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Torys LLP  
4600 Eighth Avenue Place East  
525 - Eighth Ave SW  
Calgary, AB T2P 1G1

Attention: Kyle Kashuba  
Telephone: +1 403.776.3744  
Fax: +1 403.776.3800  
Email: [kkashuba@torys.com](mailto:kkashuba@torys.com)  
File No. 39279-2004

Clerk's Stamp

DATE UPON WHICH ORDER WAS PRONOUNCED: November 18, 2021

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice K.M. Horner

LOCATION OF HEARING: Calgary, Alberta

**UPON THE APPLICATION** by Deloitte Restructuring Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Cococo Chocolatiers Inc. (the “**Debtor**”) for an Order for the final distribution of proceeds, approval of the Receiver’s fees and disbursements, approval of the Receiver’s activities and discharge of the Receiver; **AND UPON** having read

the Receiver's First and Final Report dated November 8, 2021 (the "**Final Report**"); **AND UPON** hearing counsel for the Receiver, counsel for the Debtor, counsel for Panterra Mortgage & Financial Corporation Ltd. ("**Panterra**"), and counsel for various stakeholders, creditors, and from any other interested parties who may be present; **AND UPON** being satisfied that it is appropriate to do so;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.

**ACTIVITIES, FEES AND DISBURSEMENTS OF THE RECEIVER**

2. The Receiver's actual and estimated accounts for fees and disbursements, as set out in the Final Report, are hereby approved without the necessity of a formal passing of its accounts.
3. The actual and estimated accounts of the Receiver's legal counsel, Torys LLP, for its fees and disbursements, as set out in the Final Report, are hereby approved without the necessity of a formal assessment of its accounts.
4. The Receiver's previously undertaken and proposed go-forward activities as set out in the Final Report and in all of its other reports filed herein, are hereby ratified and approved.

**DISBTRIBUTION OF FUNDS**

5. Subject to confirmation of the actual costs, fees, expenses and disbursements incurred, the Receiver is authorized and directed to make the distributions set forth in the Final Report. For certainty, should the "actual" costs, fees, expenses and disbursements noted in the Final Report differ from those noted therein, then the distribution of such amounts are hereby approved and ratified.

**LIABILITY & RELEASE**

6. On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any fraud, gross negligence or wilful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.
7. No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on Notice to the Receiver, and upon such terms as this Court may direct.
8. The Receiver is hereby fully and irrevocably forever released and discharged from any and all liability that the Receiver now has or may hereafter have, by reason of, or in any way arising out of, the acts or

omissions of the Receiver while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the part of the Receiver.

## **DISCHARGE OF THE RECEIVER**

9. Upon the Receiver filing with the Clerk of the Court a sworn Affidavit of a licensed insolvency Trustee, substantially in the form attached hereto as **Schedule "A"**, employed by the Receiver confirming that:
  - a. all matters set out in paragraph 5 of this Order have been completed; and
  - b. all matters set out in the Final Report have been completed,

then the Receiver shall be discharged as Receiver of the Debtor, provided however, that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.

## **MISCELLANEOUS**

10. This Order must be served only upon those interested parties attending or represented at the within Application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
11. Prior to the Receiver's destruction of any of the Debtor's remaining books and records (the "**Records**") due to the Receiver not specifically requiring same for its purposes, the Receiver shall give 30 days' notice to the Debtor's former directors and officers of its intention to destroy the Records. The Debtor's former directors and officers shall then have 30 days to make appropriate arrangements with the Receiver to physically take possession of the Records, at their sole cost and expense. In the event that the Debtor's former directors and officers do not exercise their option to obtain the Records, the Receiver is hereby authorized to have all of the Records destroyed 60 days after giving notice as set out and described above.
12. This Order shall have full force and effect in all Provinces and Territories in Canada, outside Canada and against all Persons against whom it may be enforceable.
13. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
14. Notwithstanding the discharge of the Receiver, the Receiver is hereby granted leave to apply to this Court for such further advice, direction or assistance as may be necessary to give effect to the terms of this Order.

15. Service of this Order on any party not attending this Application is hereby dispensed with.

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Justice of the Court of Queen's Bench of Alberta

**Schedule "A"**

**AFFIDAVIT**

**(Confirming Discharge of Receiver)**

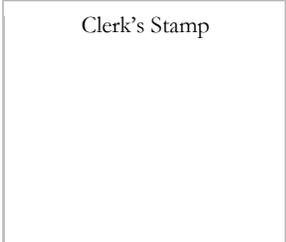
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APPLICANT DELOITTE RESTRUCTURING INC., in its capacity as Court-appointed Receiver and Manager of the assets, undertakings and properties of COCOCO CHOCOLATIERS INC.

DOCUMENT **AFFIDAVIT**  
**(Confirming Discharge of Receiver)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Torys LLP  
4600 Eighth Avenue Place East  
525 - Eighth Ave SW  
Calgary, AB T2P 1G1

Attention: Kyle Kashuba  
Telephone: +1 403.776.3744  
Fax: +1 403.776.3800  
Email: [kkashuba@torys.com](mailto:kkashuba@torys.com)  
File No. 39279-2004

**AFFIDAVIT OF RYAN ADLINGTON**  
Sworn on ■, 2021

I, Ryan Adlington, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Licenced Insolvency Trustee, and a Senior Vice President with Deloitte Restructuring Inc., which is the Court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Cococo Chocolatiers Inc. (the “**Debtor**”).
2. Pursuant to the Order granted by the Honourable Madam Justice B.E.C. Romaine of the Court of Queen’s Bench of Alberta (the “**Court**”) dated August 18, 2021, Deloitte Restructuring Inc. was appointed as the Receiver over the assets, undertakings and properties of the Debtor.
3. Pursuant to an Order (Final Distribution, the Approval of the Receiver’s Activities, Fees and Disbursements, and the Receiver’s Discharge) granted by Madam Justice K.M. Eidsvik dated November 18, 2021 (the “**Discharge Order**”), the Court approved the discharge of the Receiver, subject to the filing an Affidavit in the within form confirming that the Receiver had completed certain other administrative activities required to complete its administration of the Debtors’ receivership proceedings.
4. This will confirm that the Receiver has completed all other activities required to complete its administration of the Debtors’ receivership proceedings, including, without limitation, all matters set out in paragraph 5 of the Discharge Order and the Final Report.
5. I make this Affidavit further to the requirements of the Discharge Order, and understand that upon the filing of this Affidavit, Deloitte Restructuring Inc. will be fully and finally discharged from its capacity as the Receiver of the Debtor.
6. Due to the circumstances of the COVID-19 pandemic, I am unable to be physically present to swear in this affidavit. I, however, was linked by way of video technology to the Commissioner for Oaths (“**Commissioner**”) notarizing this document. The following steps have been or will be taken by the Commissioner or me:

