

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT AND SECTION 101
OF THE COURTS OF JUSTICE ACT**

B E T W E E N:

NATIONAL BANK OF CANADA

Applicant

- and -

EVERGREEN CONSUMER BRANDS INC.

Respondent

**NOTICE OF MOTION
(Approval of Distribution, Activities, Accounts and other Relief)
(Returnable May 6, 2020)**

Deloitte Restructuring Inc. (“**Deloitte**”) in its capacity as court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Evergreen Consumer Brands Inc. (the “**Debtor**”) will make a motion to a judge of the Commercial List subject to the procedures then effect for the hearing of matters, on May 6, 2020 at 11:00 a.m. or as soon thereafter as the motion can be heard.

THE PROPOSED METHOD OF HEARING: orally.

THE MOTION IS FOR ORDERS (i) abridging or confirming where necessary the time and manner for service of the motion record and dispensing with further service thereof, (ii) approving the distribution of \$6,200,000 to the senior secured creditor, National Bank of Canada

(“NBC”) and such further amounts from time to time as the Receiver may determine up to the maximum amount of \$18,000,000 without further order of this Court, (iii) approving the activities of the Receiver to date, (iv) approving the fees, costs and expenses of the Receiver and its counsel as set out in the materials filed, (v) and such further relief as may be requested and as the Court may permit (collectively, the “**Relief Sought**”).

THE GROUNDS FOR THE MOTION ARE:

DISTRIBUTION

- a) The Debtor is insolvent. As at February 10, 2020, it was indebted to National Bank of Canada (“NBC”) (i) under an operating line of credit for CAD\$4,383,276, (ii) under a non-revolving term loan facility for USD\$10,168,269, (iii) under a MasterCard facility for CAD\$158,330, (iv) for interest, costs and fees, including legal fees and disbursements, incurred by NBC, (v) for an overdraft under the Debtor’s Canadian dollar current account with NBC for approximately CAD\$441,000, (vi) under an interest rate swap contract for CAD\$355,000, and (vii) under a forward foreign exchange contract for CAD\$14,000.
- b) Pursuant to a June 1, 2018 general security agreement, the Debtor granted NBC a security interest in all its real and personal property as security for its obligations to NBC which has been validly registered in various public registries, including under the *Personal Property Security Act* (Ontario) (the ”PPSA”)(the “**Security**”).
- c) In early 2019, with the Debtor’s consent, NBC retained Deloitte as consultant to the Debtor.
- d) Despite attempts to locate recapitalization opportunities, the Debtor defaulted under an August 30, 2019 second forbearance agreement with NBC, leading to a further agreement wherein NBC forbore from enforcing its rights provided that, among other conditions, the Debtor continue to seek recapitalization prospects and commence a sale and investment solicitation process (the “**SISP**”) for its assets and business satisfactory to NBC.
- e) On terms agreed on October 30, 2019 and supplemented on December 19, 2019, the Debtor retained Alvarez & Marsal Canada Securities ULC to assist with pursuing recapitalization and conducting the SISP.

- f) The recapitalization efforts were unsuccessful but the SISP produced numerous binding purchase offers, all conditional on a vesting order.
- g) While negotiations were ongoing, NBC sought the appointment of the Receiver to, among other things, participate in the SISP, identify the best offer and allow an application for a vesting order.
- h) The Receiver was appointed as receiver and manager of the Debtor on February 13, 2020 by order of the Ontario Superior Court of Justice pursuant to the *Bankruptcy and Insolvency Act* and the *Courts of Justice Act* (the “**Order**”).
- i) The Order authorized and empowered the Receiver to, among other things, market and sell the Purchased Assets and apply for a vesting order, and to the extent it deems advisable, adopt and continue the SISP.
- j) As further explained in the First Report, the Receiver (i) was consultant to the Debtor during the SISP, (ii) endorsed the SISP as fair and commercially reasonable, (iii) identified the offer from LEC Custom Products, Inc. (the “Purchaser”) to be the best one obtained, and (iv) recommended that this Court grant the Approval and Vesting Order sought.
- k) Pursuant to the order Mr. Justice McEwen made March 10, 2020, the Asset Purchase Agreement between the Purchaser and the Receiver dated March 2, 2013, as amended (the “APA”) was approved and a vesting order made to enable the completion of the transaction contemplated in the APA (the “Transaction”).
- l) The Transaction closed on March 13, 2020.
- m) Since the closing of the Transaction, the Receiver has been in possession of the sale proceeds in the approximate amount of \$7,867,000, and there being no other assets to be liquidated, the Receiver now wishes to make a distribution to NBC on account of the indebtedness owing by the Debtor to NBC.
- n) Based on the Receiver’s estimate of the remaining obligations of the Receiver and its estimated professional fees and those of its counsel to complete the remaining

administration of the receivership, the Receiver has determined that a distribution of \$6,200,000 would be appropriate in the circumstances.

- o) The Receiver has received a favourable opinion from its counsel which, subject to its terms (which terms are usual for opinions of this nature) confirms the validity and perfection of the Security.
- p) The Second Report contains a summary of the position of those parties who have registered security interests pursuant to the PPSA and the relation of those interests to the proceeds which are the subject matter of the contemplated distribution.
- q) No party claims to have a prior entitlement to the proceeds sought to be distributed herein over that of NBC.

APPROVAL OF ACTIVITIES AND ACCOUNTS

- r) Since its appointment, the Receiver has been engaged in various activities which are more particularly described in the Second Report.
- s) The Second Report contains the fee affidavits of representatives of the Receiver and its counsel, respectively, setting forth the quantum of the reasonable and proper professional fees incurred in respect of the receivership to the dates specified therein.
- t) Rules 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
- u) Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.
- v) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- a) The Second Report of the Receiver dated April 24, 2020, the First Report (without appendices)
- b) The affidavit of Mario J. Forte sworn March 23, 2020,

- c) The fee affidavit of Hartley Bricks sworn via zoom on April 23, 2020, and
- d) such further and other evidence as counsel may advise and this Honourable Court may permit.

April 27 , 2020

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Lawyers for the Receiver

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE ACT* BETWEEN NATIONAL BANK OF CANADA, APPLICANT, AND EVERGREEN CONSUMER BRANDS INC., RESPONDENT

Court File No. CV-20-00636080-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

NOTICE OF MOTION
(Approval of Distribution, Activities, Accounts
and other Relief)
(Returnable on a date to be determined)

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Lawyers for Deloitte Restructuring Inc. in its capacity as receiver and manager of the assets, undertakings and properties of Evergreen Consumer Brands Inc.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	TUESDAY, THE 6 TH
)	
JUSTICE HAINEY)	DAY OF MAY , 2020

B E T W E E N:

NATIONAL BANK OF CANADA

Applicant

- and -

EVERGREEN CONSUMER BRANDS INC.

Respondent

ORDER
(Distribution and Approval of Activities, etc.)

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Evergreen Consumer Brands Inc. (the "**Debtor**") for an order (i) abridging or confirming where necessary the time and manner for service of the motion record and dispensing with further service thereof, (ii) approving the distribution of \$6,200,000 to the senior secured creditor, National Bank of Canada ("**NBC**"), and such further distributions to NBC from time to time as the Receiver may determine up to the maximum amount of \$18,000,000 without further order of this Court, (iii) approving the activities of the Receiver to date, (iv) approving the fees, costs and expenses of the Receiver and its counsel as set out in the materials filed, (v) and such further relief as may be

requested and the Court may permit was heard this day by means of teleconference in accordance with the then directions pertaining to the hearing of matters on the Commercial List.

ON READING the Second Report of the Receiver dated March 27, 2020 (the “Second Report”), the affidavits of Mario J. Forte and Hartley Bricks, filed and on hearing the submissions of counsel for the Receiver, as well as such other counsel who identified themselves as being in attendance by teleconference, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [] sworn • , 2020 filed:

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS** subject to the paragraph 3 of this Order, the Receiver be and is hereby authorized to distribute to NBC the sum of \$6,200,000, and such further amounts from time to time in respect of the realization of the assets of Debtor subject to the security held by NBC, subject to such reserves as the Receiver may deem prudent, up to the amount of \$18,000,000 without further Order of this Court.

3. **THIS COURT ORDERS** that, notwithstanding paragraph 2 hereof, any future distributions by the Receiver hereunder of proceeds of realization or collection where the Receiver has notice of the interest of a party or parties other than NBC claiming ownership, security interests, or both in priority to NBC, shall only be made upon further Order of the Court on notice to NBC and to such other party or parties.

RECEIVER’S ACTIVITIES AND PROFESSIONAL FEES

4. **THIS COURT ORDERS** that the activities of the Receiver to April 24, as outlined in of the First Report of the Receiver dated March 6, 2020 (attached as Appendix “C” to the Second Report) and the Second Report, and the Receiver’s Statement of Receipts and Disbursement for the period February 13 to April 20, 2020 are hereby approved.

5. **THIS COURT ORDERS** that the professional fees and disbursements of the Receiver in the amount of \$381,309.52 (including HST) are hereby approved.

6. **THIS COURT ORDERS** that the professional fees and disbursements of the Goldman Sloan Nash & Haber LLP, as independent counsel of the Receiver, in the amount of \$95,241.00 (including HST)• are hereby approved.

7. **THIS COURT ORDERS** that the Receiver is authorized to pay all such fees and disbursements from the available funds.

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS OF JUSTICE
ACT* BETWEEN NATIONAL BANK OF CANADA, APPLICANT, AND
EVERGREEN CONSUMER BRANDS INC., RESPONDENT

Court File No. CV-20-00636080-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced in TORONTO

ORDER
(Distribution and Approval of Activities, etc.)

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