

COURT FILE NUMBER **1901-03879**

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE Calgary

Clerk's Stamp

PLAINTIFF **HSBC BANK CANADA**

DEFENDANTS **GENCO HOLDINGS LTD.**

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 **Fasken Martineau DuMoulin LLP**
Barristers and Solicitors
3400 First Canadian Centre
350 – 7 Avenue SW
Calgary, Alberta T2P 3N9

Attention: Travis Lysak / Mihai Tomos
Tel: (403) 261 5350 / (403) 261 7386
Facsimile: (403) 261 5351
File No.: 301368.00007

NOTICE TO RESPONDENT(S):

This application is made against you. You are the 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: January 22, 2021

Time: 10:00 a.m.

Where: Via WebEx, Virtual Courtroom 60

Virtual Courtroom Link: <https://albertacourts.webex.com/meet/virtual.courtroom60>

Before Whom: The Honourable Justice K.M. Eidsvik

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 for Final Distribution, Approval of Receiver's Fees and Disbursements, Approval of Receiver's Activities, and Discharge of Receiver, substantially in the form attached as **Schedule "A"**, providing for, among other things:
 - a. the discharge of the Receiver as receiver of Genco Holdings Ltd. and Genco (Walden) Ltd. (together, "**Genco**");
 - b. the approval of the Receiver's activities, including the fees and expenses of the Receiver and the fees and disbursements of the Receiver's Counsel, as set forth in the eighth report of the Receiver dated January 12, 2020 (the "**Eighth Report**");
 - c. the authorization to remit any remaining funds in the Receivership of the 634 Units to HSBC as partial settlement of the Receiver's Borrowings; and
 - d. such further and other relief as may be sought by the Receiver and this Honourable Court may permit.

Grounds for making this application:

The grounds for making this application are set out more fully in the Eighth Report, but can be summarized as follows:

(A) Background

2. Any capitalized term not defined in the Application shall take the meaning ascribed to it in the Eighth Report.
3. Pursuant to an Order of the Honourable Justice B.E.C. Romaine granted in these proceedings on April 5, 2019 and an Order of the Honourable Justice P.R. Jeffrey in Court of Queen's Bench of Alberta Action No. 1901-03879 (collectively, the "**Receivership Order**"), Ernst & Young Inc. was appointed receiver (the "**Receiver**"), without security, of certain of Genco Holdings Ltd. and Genco (Walden) Ltd.'s (collectively, the "**Debtor**") current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof, as described in those Orders (the "**Property**").

4. The Receivership Order empowers and authorizes, but does not obligate, the Receiver to, among other things, manage, operate and carry on the business of the Debtor and to take possession and control of the Debtor's Property and any and all proceeds, receipts and disbursements arising out of or from the Debtor's Property, and to sell, convey, transfer, lease or assign the Debtor's Property or any part or parts thereof out of the ordinary course of business.

(B) The Eighth Report

5. The Receiver's actions and activities and the statement of receipts and disbursements, as described in the Eighth Report, are lawful, proper, and consistent with its powers under the Receivership Order.

(C) Professional Fees

6. All of the actions in respect of the professional 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 incurred in connection with the discharge of the Receiver's obligations, which have been dutifully performed, and now have been completed or are about to be completed.

(D) Discharge

7. Subject to the Receiver (i) closing the sale of the remaining eight 634 Units, (ii) remitting any remaining funds in the Receivership of the 634 Units to HSBC as partial settlement of the Receiver's Borrowings, and (iii) completing certain final administrative tasks, the Receiver will have completed its duties and obligations under the Receivership Order and it should be released from any and all claims and obligations arising as a result of the Receiver acting in its capacity as Receiver of Genco, excepting those claims and obligations that arise as a result of gross negligence or willful misconduct.

(E) Remittance of Funds

8. The security held by HSBC as against Genco is valid and enforceable and ranks in priority to all other unsecured creditors and the indebtedness owed to HSBC by Genco exceeds the recovering made by the Receiver in the HSBC Receivership. Further, HSBC advanced

borrowings of \$1.725 million to the Receiver (the “**Receiver’s Borrowings**”) to settle outstanding property taxes owed to the City of Calgary as at the HSBC Receivership Date and fund property taxes and condominium fees that accrued on the 634 Units during the receivership proceedings. The net sales proceeds recovered from the sale of the 634 Units will be insufficient to repay the Receiver’s Borrowings and there will be no funds available to distribute to HSBC to settle the principal debt outstanding from Genco Holdings.

Material or evidence to be relied on:

9. The Eighth Report of the Receiver dated January 12, 2020.
10. Affidavit of Service.
11. The other pleadings and materials filed in this Action and such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

12. Rules 1.3, 1.4, 6.3, and 13.5(2) of the *Rules of Court*; and
13. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

14. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
15. *Judicature Act*, R.S.A. c. J-2; and
16. Such further and other Acts and Regulations as counsel for the Receiver may advise or this Honourable Court may permit.

Any irregularity complained of or objection relied on:

16. Not applicable.

How the application is proposed to be heard or considered:

17. Before the Honourable Justice K.M. Eidsvik in Chambers.

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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

**Schedule “A”
Discharge Order**

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COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE Calgary

Clerk's Stamp

PLAINTIFF **HSBC BANK CANADA**

DEFENDANTS **GENCO HOLDINGS LTD.**

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

ADDRESS FOR SERVICE
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INFORMATION OF
PARTY FILING THIS
DOCUMENT **Fasken Martineau DuMoulin LLP**
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3400 First Canadian Centre
350 – 7 Avenue SW
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Attention: Travis Lysak / Mihai Tomos
Tel: (403) 261 5350 / (403) 261 7386
Facsimile: (403) 261 5351
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Date on which Order was pronounced: January 22, 2021

Location where Order was pronounced: Calgary, Alberta

Name of Justice who made this Order: The Honourable Justice K.M. Eidsvik

UPON the application of Ernst & Young Inc., in its capacity as the Court appointed receiver (the “**Receiver**”) of certain of the undertaking, property and assets of Genco Holdings Ltd. and Genco (Walden) Ltd. (together, 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 eighth report of the Receiver dated January 12, 2020 (the “**Eighth Report**”) and such other materials in the pleadings and proceedings as deemed necessary; **AND UPON HEARING** the submissions of counsel for the Receiver and any other interested parties appearing at the within application; **IT IS ORDERED THAT:**

GENERAL

1. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Eighth Report.
2. 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.

ACCOUNTS AND ACTIVITIES

3. The Receiver's accounts for fees and disbursements, as set out in the Eighth Report, are hereby approved without the necessity of a formal passing of its accounts.
4. The accounts of the Receiver's legal counsel, Fasken Martineau DuMoulin LLP, for its fees and disbursements, as set out in the Eighth Report, are hereby approved without the necessity of a formal assessment of its accounts.
5. The Receiver's conduct, actions, and activities throughout the within proceedings, including its activities as set out in the Eighth Report and in all of its other reports filed herein, the Statements of Receipts and Disbursements included in the Eighth Report, are hereby ratified and approved.

CLOSING OF TRANSACTIONS AND REMITTANCE OF FUNDS

6. The Receiver is authorized and directed to:
 - (a) close the sale of the remaining 634 Units;
 - (b) remit any remaining funds in the Receivership of the 634 Units to HSBC as partial settlement of the Receiver's Borrowings; and
 - (c) complete any final administrative tasks required to finalize the administration of the Receiverships.

DISCHARGE

7. 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 in fraud, gross negligence or willful 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.

8. 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.
9. Upon the Receiver filing with the Clerk of the Court a Receiver's Certificate confirming that: (a) all matters set out in paragraph 6 of this Order have been completed; and (b) the Receiver's remaining administrative tasks have been completed, the Receiver shall be unconditionally and absolutely discharged as Receiver of the Debtor and the Receiver shall have no further duty, liability or obligation with respect to the Property, 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.
10. As soon as possible after the granting of this Order, the directors and shareholders of the Debtor shall be provided with a notice (the "**Books and Records Notice**") by the Receiver to collect the books and records of the Debtor ("**Books and Records**"). If the directors do not collect the Books and Records within 30 days of the Receiver providing them with the Books and Records Notice, the Receiver is hereby authorized to destroy immediately thereafter any Books and Records that are no longer required by the Receiver.

SERVICE

11. 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.

12. Service of this Order on any party not attending this application is hereby dispensed with.

Justice of the Court of Queen's Bench of Alberta