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COURT FILE NUMBER

1901-03879

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COURT

Court of Queen's Bench of Alberta

JUDICIAL CENTRE

Calgary

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
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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File No.: 301368.00007

~~COURT FILE NUMBER~~

~~COURT OF QUEEN'S BENCH OF ALBERTA~~

~~JUDICIAL CENTRE~~

~~PLAINTIFF~~

~~DEFENDANT~~

~~TS~~

~~DOCUMENT~~

~~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~~

~~DATE ON WHICH ORDER WAS PRONOUNCED:~~

Phone: _____ Fax: _____

Lawyer's Name: Lawyer's Email: File No.: _____

~~LOCATION WHERE ORDER WAS PRONOUNCED: _____~~

~~NAME OF MASTER/JUDGE WHO MADE THIS ORDER: _____~~

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 [Receiver's Name]~~ 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 ~~[Name of Debtor]~~ (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 Receiver¹; AND UPON ~~hearing~~ having read the eighth report of the Receiver's ~~[Number of the Report] Report~~ dated ~~[Date of January 12, 2020 (the "Eighth Report"]~~ (the

"Receiver's Report") and such other materials in the pleadings and proceedings as deemed necessary,² AND UPON ~~hearing~~ HEARING the submissions of counsel for the Receiver, ~~counsel for the Debtor~~ and

¹ ~~It may be appropriate to also seek the direction of the Court in dealing with the preservation of financial statements and other business records. See section 21 *Alberta Business Corporations Act* R.S.A. 2000 c.B-9 as amended and sections 68 (2), (3) and 34 (1) and Directive 17 of the *Bankruptcy & Insolvency Act* R.S.C. 1985 c. B-3 as amended.~~

² ~~As a result of the case of *Re Winalta Inc.*, 2011 ABQB 399, 2011 Carswell Alta 2237 (Alta Q.B.), some judges require, in addition to the Receiver's Report, an Affidavit from a representative of the~~

~~Receiver deposing to certain issues discussed in , 2011 ABQB 399, 2011 Carswell Alta 2237 (Alta Q. B.), an Affidavit from a representative of the Receiver deposing to certain issues discussed in Re Winalta~~

~~counsel for various creditors; AND UPON being satisfied that it is appropriate to do so, 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. ~~4.~~ 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; ~~2.~~

ACCOUNTS AND ACTIVITIES

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

CLOSING OF TRANSACTIONS AND REMITTANCE OF FUNDS

6. ~~5.~~

The Receiver is authorized and directed to ~~make the following distributions:~~

- (a) ~~[SET OUT SPECIFIC DISTRIBUTIONS IF ANY];~~³ 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. ~~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 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.⁴

~~and confirming that the Receiver's accounts are fair and reasonable. This may be required in order to obtain the relief set out in paragraph 2 of the model Order.~~

³~~This model Template Order assumes that the material filed supports the proposed distribution(s) to a specific secured creditor or other party.~~

⁴~~The model Template Order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The form of conditional release language set out in paragraphs 6 and 7 is the standard form generally accepted by the Alberta Courts at this time. If an applicant requires a more specific or general release, then she should present material to the Court which justifies a broader release. An example of a broader release is:~~

~~"The Receiver is hereby 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 willful misconduct on the part of the Receiver."~~

8. ~~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.

9. ~~8.~~ Upon the Receiver filing with the Clerk of the Court a ~~sworn Affidavit of a licensed Trustee employed by the~~ Receiver's Certificate confirming that:

~~(a) All (a) all~~ matters set out in paragraph 56 of this Order have been completed; and ~~(b)~~
~~(LIST OTHER OUTSTANDING MATTERS, IF ANY, THAT HAVE BEEN COMPLETED)⁵~~

~~then~~ (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. ~~9.~~

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. ~~10.~~ 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

⁵ ~~Any additional outstanding matters should be set out in a schedule attached to the model Order.~~

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Document 2 ID	file:///C:/Fasken/tomosm/OneDrive - FASKEN MARTINEAU DUMOULIN LLP/Music/Discharge Order (Genco).docx
Description	Discharge Order (Genco)
Rendering set	Standard

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Deletion	
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Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
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