

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF AN APPLICATION BY WASANDA ENTERPRISES INC.
UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED AND BUSINESS CORPORATIONS ACT,
R.S.O. 1990, c.B-16, AS AMENDED**

**AND IN THE MATTER OF A PLAN OR PLANS OF COMPROMISE
OR ARRANGEMENT TO BE PROPOSED IN RESPECT OF
D'ANGELO BRANDS LTD. AND 1540633 ONTARIO INC.
O/A STEELBACK BREWERIES**

MOTION RECORD

April 10, 2008

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Solicitors for Wasanda Enterprises Inc.

TO: **SERVICE LIST ATTACHED**

D'ANGELO BRANDS INC. SERVICE LIST
as at April 9, 2008

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Solicitors for Greenfield Ethanol Inc.

INDEX

TAB DOCUMENT

1. Notice of Motion
2. Affidavit of Glen A. Huber sworn April 10, 2008
- A. Exhibit "A" Corporate Diagram
- B. Exhibit "B" Danbury Appraisal Report
- C. Exhibit "C" Appraisal Report received from the Appraiser's Network Inc.
- D. Exhibit "D" Agreement
- E. Exhibit "E" Summary of the credentials and experience of the Consultants
- F. Exhibit "F" Prospective Purchasers
- G. Exhibit "G" PPSA search report with respect to D'Angelo Brands Ltd.
- H. Exhibit "H" PPSA search report with respect to Steelback
- I. Exhibit "I" Bill of Sale
- 3.
- A. Draft Approval and Vesting Order
- B. Draft Approval and Vesting Order Blacklined to Model
- 4.
- A. Draft Approval and Vesting Order (Cooling Tower)
- B. Draft Approval and Vesting Order (Cooling Tower) Blacklined to Model
5. Initial Order dated November 15, 2007

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF AN APPLICATION BY WASANDA ENTERPRISES INC.
UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED AND BUSINESS CORPORATIONS ACT,
R.S.O. 1990, c.B-16, AS AMENDED**

**AND IN THE MATTER OF A PLAN OR PLANS OF COMPROMISE
OR ARRANGEMENT TO BE PROPOSED IN RESPECT OF
D'ANGELO BRANDS LTD. AND 1540633 ONTARIO INC.
O/A STEELBACK BREWERIES**

Applicants

**NOTICE OF MOTION
(Approval of Sale and Marketing Process)
(Returnable April 15, 2008)**

The Applicant, Wasanda Enterprises Inc., ("Wasanda") will make a Motion to a Judge presiding over the Commercial List on Tuesday, April 15, 2008, at 10:00 a.m., or as soon after that time as the motion can be heard at the courthouse, 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) An Order abridging the time for service of the Notice of Motion and Motion Record herein, if necessary, and dispensing with any further service thereof, such that this motion is properly returnable on April 15, 2008;
- (b) An Order approving the Purchase and Sale Agreement (the "Agreement") dated April 10, between Steelback Brewery Inc. (the "Purchaser"), and D'Angelo Brands Ltd. and 1540633 Ontario Inc. o/a Steelback Breweries ("Steelback")

(collectively, the “Debtors”) with respect to certain of the Debtors’ assets used in relation to the brewery business operated by Steelback (the “Brewery Assets”), subject to a further marketing process to be conducted by the Monitor in accordance with the bidding procedures attached to and forming part of the Agreement (the “Bidding Procedures”);

- (c) An Order authorizing and directing the Monitor to assist the Debtors in marketing the Brewery Assets and conduct the Auction, if appropriate, in accordance with the Bidding Procedures;
- (d) Upon the issuance of a Monitor’s Certificate, in the form attached to the draft Approval and Vesting Order, confirming that no Qualified Bid (as defined in the Bidding Procedures) other than the Agreement has been received prior to the Bid Deadline (as defined in the Bidding Procedures), an Order vesting in the Purchaser all of the Debtors’ rights, title and interests, if any, in and to the Brewery Assets, free and clear of all encumbrances, which shall attach instead to the net proceeds from the sale of the Brewery Assets;
- (e) An Order approving the sale by Steelback to Greenfield Ethanol Inc. (“Greenfield”) of a redundant piece of equipment known as a cooling tower, and vesting in Greenfield, all of Steelback’s rights, title and interests, if any, therein, free and clear of all encumbrances, which shall attach instead to the net proceeds of the sale of the cooling tower; and
- (f) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) On November 15, 2007, Wasanda applied for and was granted an Order under the *Companies' Creditors Arrangement Act* ("CCAA") in respect of the Debtors;
- (b) The Initial Order included a general stay of proceedings against the Debtors which has been extended by subsequent Court Orders until May 16, 2008;
- (c) The Debtors have proceeded in good faith and with due diligence;
- (d) Wasanda and the Debtors believe that the Agreement is fair and reasonable and believe that it is in the best interests of the Debtors and their stakeholders to complete a sale as soon as possible, prior to the May long weekend and commencement of the summer peak selling season for the brewery business;
- (e) The marketing process proposed is fair and reasonable and will maximize recovery upon the Brewery Assets;
- (f) The Monitor has reviewed the Agreement, the Bidding Procedures, and the proposed marketing process and recommends approval thereof;
- (g) Wasanda, the DIP Lender and the Debtors' largest secured creditor, has the primary and most significant interest in the sale of the Debtors' assets and supports the sales to the Purchaser and to Greenfield;
- (h) The Monitor has obtained opinions from its independent legal counsel confirming the validity and enforceability of the security held by Wasanda over the assets of the Debtors;

- (i) Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*; and
- (j) Such further and other grounds as counsel may advise and this Honourable Court may deem just.

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

- (a) The Affidavit of Glen A. Huber sworn April 10, 2008;
- (b) The Fourth Report of the Monitor, to be filed; and
- (c) Such further and other material as counsel may advise and this Honourable Court may permit.

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Solicitors for the Applicants

TO: **SERVICE LIST ATTACHED**

TO: SERVICE LIST ATTACHED

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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF AN APPLICATION BY WASANDA ENTERPRISES INC.
UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
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O/A STEELBACK BREWERIES**

Applicants

AFFIDAVIT OF GLEN A. HUBER

I, Glen A. Huber, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Operating Officer of both D'Angelo Brands Ltd. ("D'Angelo Brands") and 1540633 Ontario Inc., operating as Steelback Breweries ("Steelback"), the Debtors in this proceeding (collectively, the "Debtors"). As such, I have knowledge of the matters to which I hereinafter depose, save and except those matters stated to be based on information provided to me by others, in which case I believe such information to be true.

2. On November 15, 2007, on the Application of Wasanda Enterprises Inc. ("Wasanda"), the Honourable Madam Justice Pepall granted an Order pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA") granting relief in respect of the Debtors (the "Initial Order").

3. The Initial Order includes a stay of proceedings against the Debtors, their assets, property and undertakings, that remained in effect until December 15, 2007, or such later date as the court may order (the "Stay Period"). The Stay Period was extended until February 13, 2008, by Order of the Honourable Mr. Justice Siegel dated December 10, 2007 and further extended to May 16, 2008 by Order of the Honourable Madam Justice Hoy dated February 13, 2008.

4. This Affidavit is sworn in support of the motion by Wasanda for an Order:
- a) approving the sale transaction contemplated by a Purchase and Sale Agreement dated April 10, 2008 (the "Agreement") between Steelback Brewery Inc. (the "Purchaser") and the Debtors, subject to a further marketing process to be conducted by Mintz & Partners Limited as court-appointed Monitor (the "Monitor), in accordance with the bidding procedures attached to the Agreement (the "Bidding Procedures");
 - b) authorizing and directing the Monitor to conduct the sale and marketing process, in accordance with the Bidding Procedures;
 - c) Upon the issuance of a Monitor's Certificate confirming that no other qualified bid has been received prior to the bid deadline, vesting in the Purchaser all of the Debtors' rights, title and interests in and to the Purchased Assets (as hereinafter defined); and
 - d) approving a sale by Steelback of a redundant piece of equipment known as a cooling tower to Greenfield Ethanol Inc. ("Greenfield"), and vesting in Greenfield all of Steelback's rights, title and interests therein and thereto.

Description of the Debtors and Their Businesses

5. The Debtors are both Ontario corporations, all of the shares of which are owned, directly or indirectly, by D'Angelo Brands, Inc., a corporation incorporated and existing under the laws of the State of Nevada, and controlled by Wasanda. Attached hereto as Exhibit "A" is a corporate diagram in respect of the Debtors.

6. D'Angelo Brands maintains its head office and a warehouse in Brampton, Ontario at premises which it owns located at 14 Brewster Road, Brampton. D'Angelo Brands also owns a greenhouse located at 148 Farrell Drive in Tiverton, Ontario. This greenhouse is used as storage space by Steelback. In addition, D'Angelo Brands has an interest in a restaurant located on King Street in Toronto, and known as "Forget About It".

7. At the date of the Initial Order, D'Angelo Brands operated several businesses including:

- (a) The manufacture, packaging and marketing of its propriety line of non-alcoholic beverages such as fruit juices, colas, energy drinks, and flavoured bottled water drinks;
- (b) Contract packaging of certain other non D'Angelo branded products;
- (c) The bottling and packaging of all beers produced by Steelback;
- (d) An Italian-themed restaurant in Mississauga known as Mamma D's Restaurant; and
- (e) Produce Sales, under the D'Angelo brand, including frozen fruits and canned tomatoes.

8. Steelback operates a single brewery which produces a number of different brands of beer at its owned premises located at 88 Farrell Drive in Tiverton, Ontario. Several of Steelback's brands of beer have recently won awards at the Ontario and Canadian Brewing Awards.

Wasanda Enterprises Inc.

9. Wasanda is a company owned and controlled by Dr. Barry Sherman or members of the Sherman family. Dr. Sherman's son, Mr. Jonathan Sherman, became president of D'Angelo Brands and chief executive officer of Steelback in or about October, 2007.

10. The Debtors are indebted to Wasanda in an amount in excess of \$100 million in principal, plus accrued and unpaid interest thereon. As security for the payment of the Debtor's obligations to it, Wasanda holds first charge security over all of the assets, property and undertakings of the Debtors. The Monitor has obtained opinions from its independent legal counsel confirming the validity and enforceability of the security held by Wasanda.

11. In addition, Wasanda has agreed to support the restructuring proceedings by the Debtors by extending Debtor in Possession ("DIP") financing to the Debtors, up to a maximum amount of \$10 million in the aggregate. Pursuant to the Initial Order, all advances by Wasanda as DIP Lender are secured by a charge having priority over all other charges, security interests and

encumbrances against the property of the Debtors, with the exception only of the Administration Charge (as defined in the Initial Order).

Operational Review and Restructuring

12. Prior to the granting of the Initial Order, the principal causes of the financial problems and losses experienced by the Debtors included the following:

- (a) Sales revenues did not reach projected levels;
- (b) Media and sponsorship commitments did not reflect sales revenues; and
- (c) Production costs were higher than projected, due to plant inefficiencies.

13. Following the commencement of the CCAA proceedings, the Debtors have been involved in discussions with their professional consultants and advisors to review their operations and assess the viability of their business operations and restructuring options.

14. The Debtors, together with their advisors, reviewed their advertising and promotional commitments and sponsorship contracts and determined that their sales levels could not support the level of their advertising and promotional commitments. Accordingly, the Debtors have disclaimed a large number of their advertising and promotional contracts.

Discontinuance and Sale of Packing Operations

15. The operations of D'Angelo Brands were primarily focused on its contract packaging work. Following a viability analysis conducted by D'Angelo Brands, and its advisors, D'Angelo Brands concluded that its bottling and co-packing operations could no longer be supported. In December, 2007, D'Angelo Brands commenced a marketing process in respect of that business and pursuant to an Order of the Honourable Madam Justice Hoy dated February 13, 2008, the Court approved a sale by D'Angelo Brands of the assets used in its co-packing and bottling business.

Steelback

16. Steelback, in consultation with its advisors, has recently completed an analysis of the viability of its brewery operations. Unfortunately, in light of significant operational and

financial challenges (described below), Steelback, in consultation with its advisors, has concluded that a sale of the assets used in its brewery operations is its only viable option.

17. Steelback's largest customer and key distribution outlet in Ontario is Brewers Retail Inc. ("BRI") operating as The Beer Store ("TBS"). Pursuant to the arrangements existing between Steelback and TBS, TBS is permitted to return product to Steelback for full credit in the event that the product has not been sold within six months following the date of its manufacture. Steelback's records indicate that there is a large quantity of such product in the TBS inventory which Steelback expects to be returned.

18. Unfortunately, Steelback has concluded that it can no longer ship product to TBS and accept returns of product for credit. Steelback is also facing the imminent delisting by TBS of various stock keeping units manufactured by Steelback, which have not achieved the sales levels required by TBS.

19. Steelback has notified TBS that it cannot continue operating under the existing arrangements and that it has commenced efforts to sell its brewery operations.

Sales Process

20. Time is of the essence in maintaining the going concern value of the brewery business and assets. Summer is the peak selling season in the brewery business and unless the sale is concluded in advance of the May long weekend, a purchaser will not be in a position to achieve the benefit of operating throughout the 2008 peak selling season. That, in turn, would negatively impact upon the purchase price to be obtained for the brewery. Accordingly, the Debtors are of the view that the completion of a sale prior to the May long weekend is critical in maximizing the value of the brewery for the benefit of all stakeholders.

21. Steelback has consulted with both real estate and equipment appraisal firms in an effort to assess the value of the brewery assets on a liquidation basis. Steelback has obtained an appraisal of its machinery and equipment used in the brewery operation from Danbury Appraisal. Danbury Appraisal has estimated the liquidation value of Steelback's equipment and machinery used in the brewery operation to be \$1,047,550. A true copy of the Danbury Appraisal report is attached hereto and marked as Exhibit "B".

22. Steelback has also obtained an appraisal from Douglas E. Farmer, B.A., AACI, P. App., a real estate appraiser and consultant with the Appraiser's Network Inc., with respect to the market value of the real estate owned by Steelback at 88 Farrell Drive, in Tiverton, Ontario, on which the brewery operations are located. The Appraiser's Network Inc. has appraised the current market value of the land and buildings used in the brewery operation to be \$1.5 million. A true copy of the appraisal report received from the Appraiser's Network Inc., dated April 1, 2008 is attached hereto and marked as Exhibit "C".

23. As the CCAA restructuring proceeding in respect of D'Angelo Brands and Steelback received significant coverage in the press, it is my view that the marketplace is aware of the Debtors' insolvency, and the potential for a sale transaction.

Offer from Steelback Brewery Inc.

24. In April, 2008, a formal offer to purchase the assets of Steelback and D'Angelo Brands used in the brewery operations was submitted by Steelback Brewery Inc. pursuant to an Agreement of Purchase and Sale dated April 10, 2008 between the Purchaser and the Debtors. A true copy of the Agreement is attached hereto and marked as Exhibit "D".

25. The Purchaser is a company owned by Jonathan Sherman, who is its chief executive officer. Accordingly, Jonathan Sherman will not have any contact with third party prospective purchasers in connection with any due diligence or otherwise participate in the sale and marketing process, except as a prospective purchaser.

26. Management of the Debtors, and Wasanda, are of the view that the Agreement is fair and reasonable, and has the added benefit of avoiding a liquidation. Wasanda and the Debtors also believe that a further marketing process to be conducted under the direction of the Monitor, in accordance with the Bidding Procedures incorporated in the Agreement, is appropriate in order to canvass the market and maximize the value of the brewery assets for all stakeholders.

Key Terms of the Agreement

27. Pursuant to the Agreement, the Purchaser will purchase the brewery assets as identified in the Purchase Agreement (the "Purchased Assets") for a purchase price in the amount of \$8 million, plus applicable taxes, payable in cash. The Purchaser has provided to the Debtors

satisfactory evidence of its ability to complete the transaction, and a refundable cash deposit in the amount of \$1 million, to be held by the Monitor in escrow, pending completion of the marketing process and closing of a sale.

28. The Purchaser is also prepared to offer employment to all of Steelback's employees who provide services in relation to the brewery operations, on terms comparable to the terms of their existing employment.

29. Final acceptance of the Agreement is subject to a further marketing process, to be conducted by the Monitor in accordance with the Bidding Procedures including the conduct of an auction by the Monitor in the event that additional qualified bids are received prior to the bid deadline.

Bidding Procedures

30. The Bidding Procedures are attached as Schedule "1.1(c)" to the Agreement. The Debtors believe that the Bidding Procedures will provide a fair process, and sufficiently expose the brewery assets to the marketplace in order to obtain reasonable assurance that all interested parties have been made aware of the potential sale transaction involving the brewery assets. In addition, the Debtors believe the bidding procedures will enable any potentially interested parties which may have the ability to bring forth an offer in excess of the Agreement to do so.

31. The following is a summary of the significant terms of the Bidding Procedures:

- (a) Qualified Bidders must submit bids prior to 5:00 p.m. on Tuesday, May 6, 2008 (the "Bid Deadline");
- (b) a Qualified Bid, as defined in the Bidding Procedures includes the Agreement, and must be:
 - (i) substantially in the form of the Agreement;
 - (ii) have a purchase price equal to or greater than \$10 million, plus applicable taxes, and be accompanied by a refundable deposit of at least \$1 million,

34. In addition, the Debtors have requested the assistance of the Monitor in identifying additional parties who may have a strategic or financial interest in acquiring the business and assets used by Steelback in operating the brewery.

35. The Monitor and the Debtors propose to contact each of the prospective purchasers identified by the Monitor and the Consultants to canvass their interest in acquiring the brewery business and assets. In addition, the Debtors, in cooperation with Monitor, will provide additional information in response to due diligence inquiries from prospective purchasers. The Monitor, with assistance from the Debtors has prepared a confidential information memorandum which will be provided to prospective purchasers upon the execution and delivery of a confidentiality agreement.

36. The key dates proposed with respect to the marketing process are as follows:

<u>Activity</u>	<u>Date</u>
Distribution of Teaser Letter by Monitor to Prospective Purchasers	April 16, 2008
Receipt and review by the Monitor and the Debtors of expressions of interest and requests for information	April 16, 2008 to May 6, 2008
Submission of bids by interested parties	May 6, 2008
Auction	May 8, 2008
Sale approval hearing	May 14, 2008

37. The Monitor has advised me and I verily believe that it supports the proposed marketing process, and transaction of purchase and sale contemplated in the Agreement.

and satisfactory evidence of committed financing or other ability to perform under the terms of the bid; and

- (iii) be irrevocable until the earlier of 2 business days after the closing of a sale of the brewery assets in accordance with an Order of the Court or June 16, 2008.
- (c) In the event the Monitor receives one or more Qualified Bids, in addition to the Agreement, prior to the Bid Deadline, the Monitor will conduct an auction on May 8, 2008.
- (d) Alternatively, in the event that the Monitor does not receive a Qualified Bid, other than the Agreement, prior to the Bid Deadline, Wasanda seeks authorization and approval from the Court to enable the Debtors to complete the sale of the brewery assets as contemplated in the Agreement.

Further Marketing Process

32. The proposed marketing process has been developed by the Debtors, in consultation with the Monitor, and is subject to the approval of the Court.

33. The Debtors have retained the assistance of two consultants to advise the Debtors with respect to the identity of prospective purchasers who may have an interest in acquiring the business and assets used in the brewery operated by Steelback, either as a going concern or on a liquidation basis. One of those consultants, David Kincaid has particular knowledge of and extensive experience in the beer industry and is currently the chief executive officer and president of Level 5 Strategic Brand Advisors. The other consultant, Michael Krestell, MBA, CFA, is a research analyst with M Partners, an independent full service investment bank. A summary of the credentials and experience of Mr. Kincaid and Mr. Krestell (the "Consultants") are attached hereto and marked collectively, as Exhibit "E". The Consultants have identified 13 parties to be contacted as prospective purchasers of the brewery assets, as set out in Exhibit "F" hereto. In the Debtors' judgment, the Consultants have included as prospective purchasers, the major parties who might have a strategic interest in the brewery business.

Other Secured Creditors

38. Attached hereto and marked as Exhibit "G" is a true copy of the PPSA search report dated October 31, 2007 with respect to D'Angelo Brands Ltd., together with a summary listing of parties with registrations against the assets of D'Angelo Brands Ltd.

39. Attached hereto and marked as Exhibit "H" is a true copy of the PPSA search report dated October 31, 2007 with respect to Steelback, together with a summary listing of parties with registrations against the assets of Steelback.

40. 2048472 Ontario Limited ("204") is a company related to or affiliated with Wasanda. Although 204 has made registrations against the Debtors under the PPSA, 204 has acknowledged and confirmed to me that no amounts are owing by the Debtors to 204.

41. Other than the PPSA registrations made by Wasanda and 204, all other PPSA registrations as against the Debtors relate to charges over specific pieces of equipment financed by or leased from the secured parties. None of the financed equipment or leased assets in respect of which registrations have been made against the Debtors under the PPSA are included in the Purchased Assets under the Agreement.

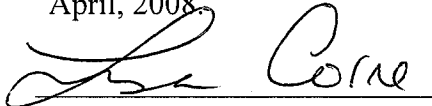
Cooling Tower

42. Steelback has concluded that a certain piece of equipment known as a cooling tower is redundant and has entered into an agreement to sell the cooling tower to Greenfield Ethanol Inc. ("Greenfield") for a purchase price of \$18,000.00, pursuant to a Bill of Sale between Steelback, as vendor and Greenfield as purchaser substantially in the form attached hereto and marked as Exhibit "I". Greenfield has requested that Steelback's rights, title and interests in the cooling tower be transferred to it, free and clear of all encumbrances, by way of a Vesting Order to be granted by the Court, and it is proposed that all encumbrances will attach instead to the net proceeds of sale from the cooling tower.

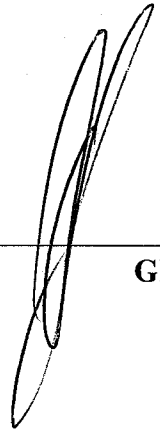
43. The net proceeds realized by the Debtors from the disposition of the Purchased Assets and the cooling tower will be used to repay amounts owing by the Debtors to Wasanda as DIP Lender in accordance with paragraph 36 of the Initial Order. The Balance of the net proceeds will be held in escrow by the Monitor pending further Order of this Court.

44. I make this Affidavit in support of the relief requested by Wasanda pursuant to the CCAA and for no other or improper purpose.

SWORN OR AFFIRMED before)
me at the City of Toronto, in the)
Province of Ontario, this 10th day of)
April, 2008.)

)

A Commissioner for taking affidavits.



GLEN A. HUBER

IN THE MATTER OF AN APPLICATION BY WASANDA ENTERPRISES INC. UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND BUSINESS CORPORATIONS ACT, R.S.O. 1990, c.B-16, AS AMENDED

AND IN THE MATTER OF A PLAN OR PLANS OF COMPROMISE OR ARRANGEMENT TO BE PROPOSED IN RESPECT OF D'ANGELO BRANDS LTD. AND 1540633 ONTARIO INC., O/A STEELBACK BREWERIES

Court File No. 07-CL-7283

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF GLEN A. HUBER
(Sworn April 10, 2008)**

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