

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MADAM

JUSTICE HOY

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)  
)

WEDNESDAY, THE 13<sup>TH</sup>

DAY OF FEBRUARY, 2008



**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 AS STEELBACK BREWERIES**

Applicants

**ORDER**

**(Second Stay Extension and Approval of Agreement of Purchase and Sale)**

**THIS MOTION**, made by Wasanda Enterprises Inc. ("Wasanda"), for an Order, *inter alia*, extending the Stay Period as provided for and defined in the Order of the Honourable Madam Justice Pepall dated November 15, 2007 (the "Initial Order"), approving an Agreement of Purchase and Sale between D'Angelo Brands Ltd., as Vendor and 2156775 Ontario Inc., as Purchaser, vesting title to the Purchased Assets in the Purchaser, and approving a settlement with respect to lien claims asserted by certain warehousemen, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of Wasanda, the affidavit of Glen A. Huber sworn February 7, 2008 (the "Huber Affidavit") and the Second Report of the Monitor, Mintz & Partners Limited (the "Monitor"), and on hearing the submissions of counsel for Wasanda, the

Monitor, D'Angelo Brands Ltd. and 1540633 Ontario Inc. o/a Steelback Breweries (collectively the "Debtors"),

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this Motion is properly returnable today and requirement for service of the Notice of Motion and of the Motion Record upon any party not served is dispensed with.

#### **Stay Extension**

2. **THIS COURT ORDERS** that the Stay Period provided for in the Initial Order, and as previously extended by Order dated December 10, 2007, is hereby extended until and including May 16, 2008.

3. **THIS COURT ORDERS** that the Second Report of the Monitor and the activities of the Monitor as set out therein are hereby approved.

#### **Sale of the Assets**

4. **THIS COURT ORDERS AND DECLARES** that the Agreement of Purchase and Sale dated as of January 31, 2008, between D'Angelo Brands Ltd. and 2156775 Ontario Inc. (the "Purchaser") as more particularly described in the Huber Affidavit (the "Purchase Agreement") is hereby approved, ~~and that the Purchase Agreement is commercially reasonable and in the best interests of D'Angelo Brands Ltd. and its stakeholders.~~ The execution of the Purchase Agreement by D'Angelo Brands Ltd. is hereby authorized and approved, and D'Angelo Brands Ltd. is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Purchase Agreement and all transactions contemplated therein, including without limitation, the Equipment Lease, the trade-marks license agreement, and the sale of the Inventory, and other Purchased Assets (all as defined in the Purchase Agreement).

5. **THIS COURT ORDERS AND DECLARES** that, subject to paragraph 14 of this Order, effective immediately upon delivery to the Purchaser of a Monitor's certificate in the form attached hereto as Schedule "A", confirming the closing of the sale of the Purchased Assets

pursuant to the Purchase Agreement to the Purchaser, and payment in full for the Purchased Assets, all of the right, title and interest of D'Angelo Brands Ltd. in and to such Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order; and (ii) all charges, security interests or claims against D'Angelo Brands Ltd. evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system. (all of which are collectively referred to as the "Encumbrances"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. **THIS COURT ORDERS** that the Monitor shall file a copy of the Monitor's Certificate with the Court forthwith after delivery thereof.

7. **THIS COURT ORDERS** that the Purchase Agreement shall remain sealed and not form part of the record, pending the ~~filing of the Monitor's Certificate.~~ *by the Purchase Agreement. closing contemplated*

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the amounts payable to D'Angelo Brands Ltd. pursuant to the terms of the Purchase Agreement and the Equipment Lease (the "Proceeds"), shall stand in the place and stead of the Purchased Assets, and all Claims and Encumbrances shall attach to the Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale, and having regard to the value of the specific Purchased Assets over which a secured creditor had a validly perfected security interest immediately prior to the sale.

9. **THIS COURT ORDERS** that on the Date of Closing (as defined in the Purchase Agreement) the Monitor is hereby authorized and directed to release any Proceeds held by it to D'Angelo Brands Ltd.

10. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors.

the vesting of the Purchased Assets in the Purchaser pursuant to this Order, as and when contemplated by and on the terms and conditions set out in the Purchase Agreement, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. **THIS COURT ORDERS AND DECLARES** that the Purchase Agreement and Transactions pursuant thereto are exempt from the application of the *Bulk Sales Act* (Ontario), ~~and may be completed without compliance with:~~

- (a) The provisions of Part V of the Personal Property Security Act, R.S.O. 1990, c. P40, as amended; and
- (b) Section 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B 3, as amended.

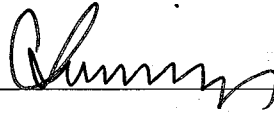
#### Settlement

12. **THIS COURT ORDERS** that the Monitor is hereby authorized to pay to D'Angelo Brands Ltd., all proceeds in its hands realized from the sale of the property of D'Angelo Brands Ltd. previously stored or held in the possession of York Warehouse & Distribution Worldwide

Inc., York Transportation Inc., SJM Logistics and Confederation Freezers (collectively, the "Warehousers").

13. **THIS COURT ORDERS** that D'Angelo Brands Ltd. shall distribute among the Warehousers, the proceeds realized from the property previously stored or held in the possession of the Warehousers (the "Stored Property"), in accordance with the Settlement as defined in paragraph 48 of the Huber Affidavit (the "Settlement Payments").

14. **THIS COURT ORDERS** that upon receipt by the Warehousers of the Settlement Payments, and all normal prices and charges for goods and services delivered or provided with respect to the Stored Property on or after November 15, 2007, all security interests, liens, charges, rights, claims, and interests whatsoever existing at the date of payment, which the Warehousers may have in the Stored Property and any proceeds thereof, shall be terminated and absolutely discharged.



**Christina Irwin**  
Registrar, Superior Court of Justice

DEPOSE / DANS LE REGISTRE NO.:

**FEB 13 2008**

RECEIVED 

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

Court File No. 07-CL-7283

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**ORDER**

(Second Stay Extension and  
Approval of Agreement of Purchase and Sale)

**AYLESWORTH LLP**

Barristers & Solicitors

Ernst & Young Tower

Toronto-Dominion Centre

P.O. Box 124, 18<sup>th</sup> Floor, 222 Bay Street

Toronto, ON M5K 1H1

**Richard B. Jones** (LSUC No. 11575V)

Tel: 416-777-4022

**Lisa S. Corne** (LSUC 27974M)

Tel: 416-646-4608

Fax: 416-865-1398

Solicitors for the Applicants

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.C. 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 1540533 ONTARIO INC., O/A STEELBACK BREWERIES

Applicants

Court File No. 07-CL-7283

See cover sheet. February 13, 2008.

Extension of the stay & approval of a purchase & sale agreement between D'Angelo Brands Ltd. dated as of January 31, 2008 are sought.

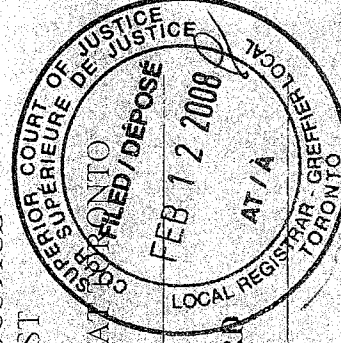
The monitor recommends the approval of the sale transaction. Management of D'Angelo Brands is of the view that the marketing process was conducted in a commercially reasonable manner & advises that the offer before me is the highest & best offer.

The purchaser is an entity controlled by the D'Angelo family. No member of the D'Angelo family was involved in the sale process on behalf of D'Angelo Brands & the monitor recommends the transaction so new to D'Angelo Brands. MS. Alexander on behalf of Boiler Inspection & Insurance Company of Canada ("BII") appeared to seek certain assurances

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PROCEEDING COMMENCED AT



MOTION RECORD

AYLESWORTH LLP

Barristers & Solicitors

Ernst & Young Tower

Toronto-Dominion Centre

P.O. Box 124, 18<sup>th</sup> Floor, 222 Bay Street

Toronto, ON M5K 1H1

The purchaser is supported by Wasanda the DIPlander and largest secured creditor who it appears has the only real economic interest in this matter.

Richard B. Jones (LSUC No. 11575V)

Tel: 416-777-4022

Lisa S. Corne (LSUC 27974M)

Tel: 416-646-4608

Fax: 416-865-1398

Solicitors for the Applicants

in relation to the sale transaction. BII has been  
sued by D'Angelo Brands. Counsel for Wasanda,  
the DIP lender's largest secured creditor, and  
for D'Angelo confirm that the cause of action  
does not form part of the purchased assets.  
Counsel for ~~Wasanda~~ <sup>D'Angelo Brands</sup> has also undertaken

to provide a list of the equipment <sup>copy</sup>  
subject to the sale transaction to BII. Finally, <sup>and BII shall be subject to</sup>  
<sup>the deemed undertaking rule in</sup> <sup>relation</sup>  
<sup>to that</sup> <sup>disclosure</sup>

D'Angelo Brands has undertaken to ~~exercise~~  
exercise whatever rights of access it has  
to the equipment that is <sup>the</sup> subject of the  
transaction (qua lessor or secured party)  
to permit BII to inspect ~~such~~ <sup>the</sup> portion of the  
subject equipment as relevant to the  
lawsuit. If D'Angelo Brands does not, in  
fact, have such rights of access,

BII shall be at liberty to bring a  
motion, <sup>on notice to the service list and the purchaser,</sup> seeking access to that equipment  
for purposes of inspection ~~in connection~~  
to permit it to defend the lawsuit.

The sale transaction is approved.

I am <sup>also</sup> satisfied that D'Angelo Brands  
has acted, and is acting, in good faith  
with due diligence, and that  
circumstances, ~~including~~ <sup>including</sup> the need for  
additional time to address  
what is to be done w/ Steelback,

extent that make the granting of  
the requested stay extension  
appropriate.

Order to issue in the  
form on which I  
have endorsed

my best - The order.

includes  
a provision

to  
for a sealing of the  
~~order~~, which

discharge he ↗  
(HO4)  
purchase and sale agreement,

I am satisfied  
is appropriate  
pending closing,  
which should

occur within  
approximately  
15 days.