DUPLICATE
ORIGINAL

CANADA PROVINCE OF SASKATCHEWAN	))	Q.B. No. 721 of 2012

IN THE COURT OF QUEEN'S BENCH OF SASKATCHEWAN
JUDICIAL CENTRE OF SASKATOON

BETWEEN:

THE TORONTO-DOMINION BANK

Plaintiff
(Applicant)

- and –

101142701 SASKATCHEWAN LTD. and
CAVA SECRETA WINES AND SPIRITS LIMITED

Defendants
(Respondents)

BEFORE THE HONOURABLE	)	ON TUESDAY,
	)	
MADAM JUSTICE A.R. ROTHERY	)	THE 8th DAY OF
	)	
IN CHAMBERS	)	MAY, 2012

ORDER

UPON the application of The Toronto-Dominion Bank ("**TD Bank**") in respect of 101142701 Saskatchewan Ltd. and Cava Secreta Wines and Spirits Limited (collectively, the "**Debtor**"); AND UPON having read the Notice of Motion on behalf of TD Bank (the "**TD Bank Notice of Motion**"), the Affidavit of Craig Stannard and the Draft Order; AND UPON reading the Consent of PricewaterhouseCoopers Inc. to act as Interim Receiver (the "**Interim Receiver**") of the Debtor, filed; AND UPON hearing counsel for TD Bank; IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the TD Bank Notice of Motion and the materials filed in support thereof (collectively, the "**Application Materials**") shall be and is hereby abridged and service thereof shall be and is hereby deemed good, valid, timely and sufficient.

APPOINTMENT

2. Pursuant to section 47 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("***BIA***"), section 65(1) of *The Queen's Bench Act, 1998*, S.S. 1998, c. Q-1.01 (the "***QB Act***") and section 64(8) of *The Personal Property Security Act, 1993*, S.S. 1993, c. P-6.2

(the "PPSA"), PricewaterhouseCoopers Inc. shall be and is hereby appointed Interim Receiver, without security, of all of assets, undertakings and properties of the Debtor acquired for, or used in relation to the business carried on by the Debtor, including all proceeds thereof (the "**Property**").

INTERIM RECEIVER'S POWERS

3. The Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property, and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties including, without limitation, those conferred by this Order;

(d) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;

(e) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Debtor;

(f) to close the retail business operations of the Debtor to the general public (on such terms and at and for such periods of time as the Interim Receiver, in its sole discretion, deems necessary and appropriate) for the purpose of conducting a count and valuation of the Debtor's beverage alcohol inventory;

(g) to inquire into, value, gather information regarding, and to report to the Court on, the alleged purchase by the Debtor of wine futures;

(h) to the extent deemed necessary or appropriate by the Interim Receiver (in its sole discretion), to permit and authorize representatives of agencies of the Government of Saskatchewan and the Government of Canada to attend at the business premises of the

Debtor and to have access to the books, records, files and correspondence of the Debtor, in order for such agencies to conduct such audits of the business and financial affairs as may reasonably be required; and

(i) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Interim Receiver upon the Interim Receiver's request.

5. All Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and

copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement, if such proceeding is not commenced before the expiration of the stay provided by this paragraph 8.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Interim Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a mortgage, floating charge, or security interest, or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect a lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further steps shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Debtor and the Interim Receiver.

NO INTERFERENCE WITH THE INTERIM RECEIVER

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

EMPLOYEES

12. Subject to the employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the BIA or the *Wage Earner Protection Program Act*.

13. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Interim Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Interim Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

14. (a) Notwithstanding anything in any federal or provincial law, the Interim Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:

(i) before the Interim Receiver's appointment; or

(ii) after the Interim Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Interim Receiver's gross negligence or wilful misconduct.

(b) Nothing in sub-paragraph (a) exempts the Interim Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.

(c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Interim Receiver to remedy any environmental condition or environmental damage affecting the Property, the Interim Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

(i) if, within such time as is specified in the order, within ten (10) days after the order is made if no time is so specified, within ten (10) days after the appointment of the Interim Receiver, if the order is in effect when the Interim Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Interim Receiver:

A. complies with the order, or

B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;

(ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within ten (10) days after the order is made or within ten (10) days after the appointment of the Interim Receiver, if the order is in effect when the Interim Receiver is appointed, by,

A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Interim Receiver to contest the order; or

B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

(iii) if the Interim Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

Nothing in this Order shall derogate from the protection afforded to the Interim Receiver by s. 14.06 of the *BIA* or any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

15. Subject to paragraph 21A hereof, the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements and the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property as security for such fees and disbursements both before and after the making of this Order in respect of these proceedings, and the Receivers' Charge, shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

16. The Interim Receiver and its legal counsel shall pass their accounts from time to time.

17. Prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE INTERIM RECEIVERSHIP

18. The Receiver shall be at liberty and is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditure. Subject to paragraph 21A hereof, the whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge, and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

19. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

20. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

21. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

21A. The issue of the priority and ranking between the Receiver's Charge and the Receiver's Borrowings Charge (on the one hand) and Canada Revenue Agency's payroll source deductions claims under subsection 227(4) and (4.1) of the *Income Tax Act*, subsection 23(3) and (4) of the *Canada Pension Plan* and subsection 86(2) and (2.1) of the *Employment Insurance Act* (on the other hand) shall be adjourned to be decided at a later date.

ALLOCATION

22. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and/or the Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

23. The Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

24. Nothing in this Order shall prevent the Interim Receiver from acting as receiver, receiver-manager or as trustee in bankruptcy of the Debtor.

25. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States or in any other country to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

26. The Interim Receiver shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

27. The Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

28. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

29. The Receiver shall report to the Court from time to time, which reporting may (in the sole discretion of the Receiver) be in the form of written reports to the Court by the Receiver and need not be in the form of Affidavits.

29A. This Order shall have no effect on, prevent, hinder, stay, suspend nor delay the Saskatchewan Liquor and Gaming Authority with respect to proceedings previously commenced and continuing regarding the revoking and termination of the Specialty Wine Store Franchise granted to the Debtor.

FURTHER SERVICE

30. The Applicant shall, within ten (10) days of the date of this Order, cause a true copy of this Order to be served by prepaid ordinary mail on all persons to whom the Interim Receiver is required to send notice pursuant to s. 245(1) of the *BIA*, and any such service shall be deemed to be received on the seventh day after mailing.

31. A true copy of the Order served pursuant to paragraph 30 above shall be accompanied by a cover letter in the form attached as Schedule "B" to this Order.

32. Every person who is served with a copy of the Order pursuant to paragraph 31, and who requires notice in respect of all further proceedings in this matter, shall provide to counsel for each of the Interim Receiver and the Applicant a demand for notice of such proceedings, which demand for notice shall be in the form and sent in the manner provided in the attached Schedule "B" to this Order (the **"Demand for Notice"**) and shall contain an electronic mail address or a facsimile number to which such further notice of these proceedings shall be sent. The failure of any person to provide the Demand for Notice hereby releases the Interim Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings to any such person until such time as a properly completed Demand for Notice is received by each of the Interim Receiver and the Applicant from such person.

ISSUED at Saskatoon, Saskatchewan, this 8th day of May, 2012.

DEPUTY LOCAL REGISTRAR

(Seal)

DEPUTY LOCAL REGISTRAR

This Order was delivered by:
MacPherson Leslie & Tyerman LLP
Lawyers
1500 – 410 22nd Street East
Saskatoon, Saskatchewan
S7K 5T6
Lawyer in Charge of File: Jeffrey M. Lee
Tel: (306) 975-7100
Fax: (306) 975-7145

TO: Local Registrar, Judicial Centre of Saskatoon

TO: Those persons listed on the Service List attached as Schedule "A" to the TD Bank Notice of Motion

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO.
AMOUNT $

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the interim receiver (the "**Receiver**") of the assets, undertakings and properties of [DEBTOR'S NAME] (the "Debtor") acquired for, or used in relation to the Debtor's business, including all proceeds thereof (the "Property") appointed by Order of the Court of Queen's Bench of Saskatchewan (the "**Court**") issued the _____ day of May, 2012 (the "**Order**") made in action _____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of $_____, being part of the total principal sum of $_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of The Toronto-Dominion Bank from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the Bankruptcy and Insolvency Act (Canada) and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at *.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake any personal liability to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its personal capacity

Per:
Name:
Title:

SCHEDULE "B"
COVER LETTER OF DEMAND FOR NOTICE

[Date]

[Address]
[Address]
[Address]
Attention:

RE: IN THE MATTER OF THE RECEIVERSHIP OF 101142701 SASKATCHEWAN LTD. and CAVA SECRETA WINES AND SPIRITS LIMITED

An Interim Receiver has been appointed by Order of the Court of Queen's Bench for Saskatchewan over the property, assets and undertaking of 101142701 Saskatchewan Ltd. and Cava Secreta Wines And Spirits Limited. Enclosed is a copy of the Court Order appointing PricewaterhouseCoopers Inc. as Interim Receiver.

You are being provided with a copy of the Order because you are a creditor of 101142701 Saskatchewan Ltd. and/or Cava Secreta Wines and Spirits Limited.

If you would like to receive notice of all further proceedings in relation to the Receivership of 101142701 Saskatchewan Ltd. and Cava Secreta Wines and Spirits Limited, please complete the Demand for Notice attached to this letter and send the Demand for Notice by electronic mail (email) or facsimile to each of the following persons:

1. [Name of the Applicant]
c/o [Name and address of counsel for the Applicant]
Attention:
Email:
Fax:

2. [Name of the Interim Receiver]
c/o [Name and address of counsel for the Interim Receiver]
Attention:
Email:
Fax:

If you fail to properly complete the Demand for Notice and forward the Demand for Notice by email or facsimile to each of the above-referenced persons indicating that you would like to receive further notice of the Interim Receivership proceedings, then you will not receive, nor will you be entitled to receive, any further notice of the Interim Receivership proceedings.

Yours truly,

DEMAND FOR NOTICE

TO:

1. [Name of the Applicant]
c/o [Name and address of counsel for the Applicant]
Attention:
Email:
Fax:

2. [Name of the Receiver]
c/o [Name and address of counsel for the Receiver]
Attention:
Email:
Fax:

Re: In the Matter of the Receivership of 101142701 Saskatchewan Ltd. and Cava Secreta Wines and Spirits Limited

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

(a) by email, at the following email address:
_____, or
(b) by facsimile, at the following facsimile number:
_____.
Signature: _____
Name of Creditor: _____
Address of Creditor: _____
_____
_____

Phone Number: _____