

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

BETWEEN:

THE TORONTO-DOMINION BANK

Plaintiff

- and -

**101142701 SASKATCHEWAN LTD. and
CAVA SECRETA WINES AND SPIRITS LIMITED**

Defendants

**NOTICE OF MOTION
("MOTION FOR APPROVAL OF SALE OF WINE CONTRACTS AND VESTING
ORDER, ADVICE AND DIRECTIONS AND APPROVAL OF RECEIVER'S
ACCOUNTS")**

TAKE NOTICE THAT an application will be made before the presiding Judge in Chambers at the Court House, 520 Spadina Crescent East, Saskatoon, Saskatchewan, in the City of Saskatoon, Saskatchewan on Monday, **the 4th day of February, 2013**, at the hour of 1:30 in the afternoon or so soon thereafter as Counsel may be heard for the following relief:

1. AN ORDER, to the extent necessary, that the time for service of this Notice of Motion, the Fifth Report of the Receiver and the draft Order For Approval of Sale of Wine Contracts and Vesting Order, the draft Order Directing Receiver, the draft Order Approving Receiver's Accounts shall be and is hereby abridged, and service thereof shall be and is hereby deemed good, valid, timely and sufficient.
2. AN ORDER approving the sale of certain assets of the Defendant, 101142701 Saskatchewan Ltd. to 1725452 Alberta Ltd. on the terms as set out in the draft Order For Approval of Sale of Wine Contracts and Vesting Order;
3. AN ORDER vesting title to such assets in the name of 1725452 Alberta Ltd. on the terms as set out in the draft Order for Approval of Sale of Wine Contracts and Vesting Order;

4. AN ORDER directing the Receiver to execute the documentation necessary to assign 101142701 Saskatchewan Ltd. into bankruptcy and to act as trustee in that bankruptcy;
5. AN ORDER passing the accounts of the Receiver and its counsel as set out in the draft Order Approving Receiver's Accounts;
6. Such other relief as counsel may advise and this Honourable Court may allow.

AND FURTHER TAKE NOTICE that the grounds upon which this application is made are the following:

1. PricewaterhouseCoopers Inc. (the "**Receiver**") was appointed Receiver of the Defendants, 101142701 Saskatchewan Ltd. and Cava Secreta Wines and Spirits Limited pursuant to the Order of this Honourable Court dated May 8, 2012 ("**Receivership Order**") which Order was amended and restated by Order of this Honourable Court dated June 14, 2012 ("**Restated Receivership Order**");
2. The Receiver has received from 1725452 Alberta Ltd. a *bona fide* offer to purchase all right, title and interest of 101142701 Saskatchewan Ltd. in certain contracts and agreements ("**Wine Contracts**") which are more particularly described in the schedules to the Asset Purchase Agreement appended to the Fifth Report of the Receiver;
3. The Receiver recommends that the sale of the Wine Contracts to 1725452 Alberta Ltd. be approved and a vesting order be granted for the following reasons:
 - a) Prior to the Receivership Order, 101142701 Saskatchewan Ltd. had entered into the Wine Contracts which provided for the delivery of wine at future dates and made partial payment to the vendors under the Wine Contracts, particulars of which are contained in the Fifth Report of the Receiver;
 - b) In order to secure delivery of all wine purchased under the Wine Contracts the Receiver would need to borrow the funds to complete the purchase, take delivery of the wine when available and then engage a sales process to sell the

bottled wine which could include incurring the cost and risk of having the wine delivered to Saskatchewan or elsewhere and then stored pending sale;

- c) Depending on the nature of the sale process, the Receiver may need to obtain licensing from the jurisdiction where the sale would take place to sell this beverage alcohol;
- d) Cellar Master Enterprises Inc. and Ren Holdings Ltd. have claimed pursuant to the Order - Property Claims Procedure made by this Court May 18, 2012 that they own the Wine Contracts. While their claim to the Wine Contracts has been rejected by the Receiver and that determination has been appealed to this Court pursuant to the Order-Property Claims Procedure (“**Appeals**”);
- e) The Receiver has obtained an appraisal of the wine purchased pursuant to the Wine Contracts and considering that the Receiver:
 - i. would have to borrow funds to complete the Wine Contracts,
 - ii. would need to take delivery at future dates and then store and conduct a sale process to sell those wines,
 - iii. may require licensing to sell the wines,
 - iv. would have to incur the litigation risks (“success, cost and delay”) of the Appeals,
 - v. The Receiver risks losing certain wine assets located in Europe and the values that could be obtained by securing those assets, as certain European vendors have advised they may immediately commence the sale of certain assets unless they are fully paid for and otherwise secured,
 - vi. that the proposed sale of the Wine Contracts is “as is where is”, and
 - vii. that the Plaintiff and other creditors alleging secured claims support the sale;

the Receiver believes that the price being offered is reasonable and in the best interests of all stakeholders of 101142701 Saskatchewan Ltd.

- f) the Vesting Order is required by 1725452 Alberta Ltd. so that it will acquire all right, title and interest of 101142701 Saskatchewan Ltd. in and to the Wine Contracts.
- 4. The Receiver requests the advise and direction of this Honourable Court on whether it is appropriate to execute the necessary documentation to assign 101142701 Saskatchewan Ltd. into bankruptcy and to act as trustee in that bankruptcy having regard to the following:
 - a) Pursuant to paragraph 23 of the Restated Receivership Order the Receiver is permitted to apply to this Honourable Court for advice and directions;
 - b) Pursuant to paragraph 3(u) of the Restated Receivership Order the Receiver is empowered but not obliged to assign the 101142701 Saskatchewan Ltd. into bankruptcy;
 - c) Pursuant to paragraph 24 of the Restated Receivership Order the Receiver is not prevented from acting as trustee in bankruptcy of 101142701 Saskatchewan Ltd.;
 - d) The Receiver has been advised that certain of the secured creditors of 101142701 Saskatchewan Ltd. intend to bring application for an order to place 101142701 Saskatchewan Ltd. into bankruptcy;
 - e) The cost, expense and delay of seeking a bankruptcy order placing 101142701 Saskatchewan Ltd. into bankruptcy will be avoided if documentation assigning 101142701 Saskatchewan Ltd. into bankruptcy is executed by the Receiver;
 - f) The Receiver is not aware of any opposition to placing 101142701 Saskatchewan Ltd. into bankruptcy but would not want prevent such opposition from being considered by this Court if such opposition exist.
- 5. The Receiver requests that its fees and disbursements and those of its counsel be passed and approved as:
 - a) Paragraph 15 of the Restated Receivership Order provides that the Receiver and counsel to the Receiver are to be paid their reasonable fees and disbursements at their standard rates and charges.

- b) Paragraph 16 of the Restated Receivership Order provides that the Receiver and its legal counsel are to pass their accounts from time to time.
- c) The Fifth Report of the Receiver details the reasonable fees and disbursements of the Receiver and its counsel.

AND FURTHER TAKE NOTICE that in support of this application will be read the following:

- 1. this Notice of Motion with proof of service thereof;
- 2. the Fifth Report of the Receiver;
- 3. Draft Order For Approval of Sale of Wine Contracts and Vesting Order;
- 4. Draft Order Directing Receiver;
- 5. Draft Order Approving Receiver's Accounts; and
- 6. Such further and other material as counsel may be advised and this Honourable Court may allow.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 31 day of January, 2013.

WMCZ Lawyers

Per: 

for

Gary A. Meschishnick, Q.C., Counsel to the Receiver, PricewaterhouseCoopers Inc.

TO: Those Parties on the Service List attached as Schedule "A"

This document was prepared by:

WMCZ Lawyers

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