

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE )

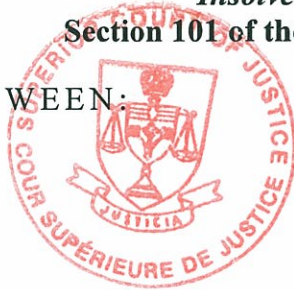
MONDAY, THE 2<sup>ND</sup>

JUSTICE WILTON-SIEGEL )

DAY OF MARCH, 2015

IN THE MATTER OF Section 243(1) of the *Bankruptcy and  
Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and  
Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C-43, as amended

BETWEEN:



HSBC BANK CANADA

Applicant

– and –

CANADIAN DAIRY MANUFACTURING INC. and  
MAPLE DAIRY INC.

Respondents

**ORDER**  
(Appointing Interim Receiver)

**THIS MOTION** made by HSBC Bank Canada (the “**Applicant**”) without notice for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) appointing BDO Canada Limited (“**BDO**”) as Interim Receiver (in such capacity, the “**Interim Receiver**”) without security, of all of the assets, undertaking and properties of Canadian Dairy Manufacturing Inc. and Maple Dairy Inc. (collectively, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, wherever

located, whether leased or owned, including but not limited to, the premises located at the address municipally known as 633-645 Coronation Drive, Toronto, Ontario, M1E 2K4, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Stephen Wayland sworn February 23, 2015 and the Exhibits thereto, the Supplemental Affidavit of Stephen Wayland sworn March 2, 2015 (the “**Second Wayland Affidavit**”) and the exhibits thereto, and on hearing the submissions of counsel for the Applicant, and on reading the Consent of BDO to act as the Interim Receiver,

**SERVICE**

1. **THIS COURT ORDERS** that this motion insofar as it relates to the appointment of an Interim Receiver may proceed without notice and that the time for service of the Notice of Motion and the related motion materials is hereby abridged such that this motion is properly returnable today.

**FACTUM**

2. **THIS COURT ORDERS** that any requirement for the filing of a factum on this motion is hereby dispensed with.

**APPOINTMENT**

3. **THIS COURT ORDERS** that, pursuant to section 47(1) of the BIA, BDO is hereby appointed as Interim Receiver, without security, of ~~all of the assets, undertaking and properties~~ <sup>the property at 633-645 Coronation Drive</sup> ~~Toronto~~ <sup>HTP-5</sup> of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the “**Property**”) until the earlier of:

- (a) the taking of possession by a receiver or a trustee in bankruptcy of the Property;
- and

(b) <sup>March 6</sup>  
~~April 2~~, 2015.

*Adus*

**INTERIM RECEIVER'S POWERS**

4. **THIS COURT ORDERS** that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and 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 solely for the purpose of preserving and protecting the Property, including arranging for the provision of utilities and insurance in respect of the Property;
- (b) to meet and discuss with Persons (as defined below) solely for the purpose of collecting information regarding Building Code Notice (as defined in the Second Wayland Affidavit);
- (c) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters ~~relating to the Property~~ <sup>pertaining to (a) and (b)</sup> <sub>above</sub> and the Interim Receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (d) to attend at the business premises of the Debtors as the Interim Receiver deems appropriate or necessary to carry out its duties and powers hereunder; and
- (e) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

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 Debtors, and without interference from any other Person.

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

5. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their 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 Persons’ possession or control, shall grant to the Interim Receiver immediate and continued access to the Property, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver’s request.

6. **THIS COURT ORDERS** that 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~~ <sup>Property</sup> ~~affairs of the Debtors~~, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “Records”) in such Persons’ 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 6 or in paragraph 7 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 due to statutory provisions prohibiting such disclosure. *that*

7. **THIS COURT ORDERS** that, 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**

8. **THIS COURT ORDERS** that 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.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

9. **THIS COURT ORDERS** that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE INTERIM RECEIVER’S LIABILITY**

10. **THIS COURT ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **INTERIM RECEIVER’S ACCOUNTS**

11. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge

(the “**Interim 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 that the Interim Receiver’s 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.

12. **THIS COURT ORDERS** that the Interim Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

13. **THIS COURT ORDERS** that 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 legal fees and disbursements, incurred at the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE INTERIM RECEIVERSHIP**

14. **THIS COURT ORDERS** that the Interim Receiver be at liberty and it 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 ~~\$500,000~~ <sup>\$50,000</sup> (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

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upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Interim 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 Interim Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

15. **THIS COURT ORDERS** that neither the Interim Receiver’s Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

16. **THIS COURT ORDERS** that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Interim Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

17. **THIS COURT ORDERS** that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim 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 Interim Receiver’s Certificates.

#### **GENERAL**

18. **THIS COURT ORDERS** that 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.



19. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a receiver and manager or trustee in bankruptcy of the Debtors.

20. **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 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.

21. **THIS COURT ORDERS** that the Interim Receiver 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 that 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.

22. **THIS COURT ORDERS** that 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.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:



MAR - 2. 2015



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**SCHEDULE "A"**

**INTERIM RECEIVER'S CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that BDO Canada Limited, the Interim Receiver (the "**Interim Receiver**") of the assets, undertaking and properties of Canadian Dairy Manufacturing Inc. and Maple Dairy Inc. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 2015 (the "**Order**") made in an application having Court file number CV-15-10891-00CL, has received as such Interim Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Interim 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 Bank of \_\_\_\_\_ 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 Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, 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*, and the right of the

Interim 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 Toronto, Ontario.

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 Interim 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 Interim 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 Interim Receiver does not undertake, and it is not under 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\_\_.

BDO CANADA LIMITED, solely in its capacity  
as Court-appointed Interim Receiver of the  
Property, and not in its personal or corporate  
capacity

Per: \_\_\_\_\_

Name:

Title:

IN THE MATTER OF Section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C-43, as amended

HSBC BANK CANADA

- and -

CANADIAN DAIRY MANUFACTURING INC. AND  
MAPLE DAIRY INC.

Applicant

Respondents

Court File No. CV-15-10891-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER APPOINTING INTERIM RECEIVER

**Thornton Grout Finnigan LLP**  
TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, ON M5K 1K7  
Fax: (416) 304-1313

**D.J. Miller** (LSUC# 34393P)  
Email: [djmiller@tgf.ca](mailto:djmiller@tgf.ca)  
Tel: (416) 304-0559

**Asim Iqbal** (LSUC # 61884B)  
Email: [aiqbal@tgf.ca](mailto:aiqbal@tgf.ca)  
Tel: (416) 304-0595

Lawyers for the Applicant, HSBC Bank Canada