

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

**MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,  
MASSMUTUAL CORPORATE INVESTORS, MASSMUTUAL  
PARTICIPATION INVESTORS, MASSMUTUAL CORPORATE  
VALUE PARTNERS LIMITED, and CM EQUITY PARTNERS, L.P.**

Plaintiffs

- and -

**EVANS CONSOLES INC.**

Defendant

**RECEIVERSHIP ORDER**

BEFORE THE HONOURABLE )  
MADAME JUSTICE B.E.C. ROMAINE ) ON TUESDAY, THE 27<sup>th</sup> DAY OF  
IN CHAMBERS, ) APRIL, 2004  
CALGARY, ALBERTA )

**UPON THE APPLICATION** of Massachusetts Mutual Life Insurance Company, MassMutual Corporate Investors, MassMutual Participation Investors, and MassMutual Corporate Value Partners Limited (collectively "MassMutual") and CM Equity Partners, L.P. ("CM Equity") for an Order, pursuant to section 13 of the *Judicature Act*, R.S.A. 2000, c. J-2, *inter alia*, appointing BDO Dunwoody Limited as receiver and manager of the assets and undertaking of Evans Consoles Inc. (hereinafter the "Debtor");

**AND UPON READING** the Statement of Claim, filed; **AND UPON READING** the Affidavit of Robert Hopkins sworn on April 23, 2004 and the Affidavit of Michael Klofas sworn April 23, 2004; **AND UPON NOTING** the consent of BDO Dunwoody Limited to act as court-

appointed receiver and manager; **AND UPON HEARING** the submissions of counsel for MassMutual, CM Equity and the Debtor; **AND UPON IT APPEARING** just and convenient that a receiver and manager be appointed;

**IT IS HEREBY ORDERED, DECLARED, AND ADJUDGED THAT:**

1. Pursuant to Rule 548 of the Alberta *Rules of Court*, the time for service of the motion material with respect to this matter (including the Statement of Claim, the Notice of Motion setting down this application, the Affidavit of Robert Hopkins sworn April 23, 2004 and the Affidavit of Michael Klofas sworn April 23, 2004) is hereby abridged such that this application is properly before the Court today and that further service is hereby dispensed with.
2. Pursuant to Rule 392 of the Alberta *Rules of Court*, leave is hereby granted to permit the within Notice of Motion to be served with the Statement of Claim.
3. Pursuant to section 13 of the Alberta *Judicature Act*, R.S.A. 2000, c. J-2, BDO Dunwoody Limited is hereby appointed receiver with authority to manage and carry on the business of the Debtor (the "Receiver"), without posting a bond or giving security, over all of the assets and undertaking of the Debtor including, without limitation, the leasehold interest of the Debtor in respect of 1616 – 27 Avenue S.E., Calgary, Alberta (the "Leased Premises") (collectively, the "Property"), with authority to receive, preserve, protect, dispose of, deal with and, in accordance with the terms of this Order, sell the Property or any part thereof as it sees fit.
4. The Debtor, its present and former officers, directors, solicitors, agents, custodians, managers, employees, servants, limited partners, shareholders, members, contractors, any persons acting on their instructions or behalf including, without limitation, any accountants thereof or legal counsel thereto, and all other persons having notice of this Order (collectively, the "Affected Persons"), shall forthwith grant access to and deliver possession of the Property of every nature and kind whatsoever, wheresoever situate to the Receiver including, without limitation: (a) all monies, cash on hand, cheques, post-dated cheques and remittances of any kind relating to the Property; (b) all books,

securities, documents, contracts, tenancy agreements, deeds, engineering drawings, papers, records, computer records (including computer facilities and access codes) and accounts of every kind relating thereto; and (c) any other records and information of every kind and nature relating to the Property or the business carried on by the Debtor and to provide or permit the Receiver to make, retain and take away copies thereof, and to allow the Receiver immediate, continued and unrestricted access to the Property; and all of the aforesaid persons are hereby restrained and enjoined from disturbing or interfering with the Property or the Receiver and with the exercise by the Receiver of its powers and the performance by the Receiver of its duties hereunder. All persons having notice of this Order shall permit the Receiver to have access to any premises where any books and records are held or maintained by or on behalf of the Debtor relating to or touching upon the Property or the affairs of the Debtor.

5. If any of the Debtor's records relating to the Property are stored in a computer (which term shall include any electronic data processing system whether in the possession of the Debtor or a third party including, without limitation, internet service providers ("ISP")) accessible to any of the persons referred to in paragraph 4 of this Order, such persons shall, at the request of the Receiver, give the Receiver access to and assistance in retrieving such information in such manner as the Receiver, in its discretion, considers reasonable and expedient.
6. Without limiting the generality of paragraphs 3, 4 and 5 above, the Receiver shall be at liberty and is hereby authorized and empowered, but is not obligated, to take such steps on behalf of and in the name of the Debtor as it deems appropriate in respect of the Property. Such steps may include, without limitation, any or all of the following, without the necessity for any further Order of the Court except in respect of applicable transactions referred to in subparagraph (p) hereof:
  - (a) take possession of all or any part or parts of the Property, including the books and records of the Debtor;
  - (b) make arrangements with such agents, consultants, assistants and employees as the Receiver may consider necessary or desirable to secure their assistance in the

exercise of the Receiver's powers and the performance of the Receiver's duties hereunder;

- (c) take steps for the preservation and protection of the Property, including, without restricting the generality of the foregoing, to pay any debts, claims, obligations, liabilities of the Debtor which have priority over the claims of secured creditors and to pay such other debts, claims, obligations, liabilities of the Debtor as the Receiver deems necessary or advisable to protect or properly realize on the Property, provided that all of the aforementioned payments are to be allowed to the Receiver in passing its accounts and shall, form a part of the Receiver's First Charge (as defined below) on the Property;
- (d) employ and retain such agents, assistants, experts, auditors, advisors, consultants, employees, solicitors and counsel, including legal counsel, as the Receiver may consider necessary or desirable (to the extent that the Receiver employs any of the former employees of the Debtor, paragraph 16 shall apply);
- (e) receive, attorn and collect all monies and deposits now or hereafter owing to the Debtor pertaining to the Property;
- (f) extend the time for payment of any monies now or hereafter due or owing to the Debtor pertaining to the Property, with or without security, and to settle or compromise any such indebtedness;
- (g) apply for any permits, licences, approvals or permissions as may be required by any governmental authority with respect to the Property;
- (h) assume any contracts, licences or permits to which the Debtor is a party or refrain from assuming same;
- (i) execute, sign, issue, endorse or negotiate in the name of and on behalf of the Debtor, cheques, leases, bills of sale, transfers of land, conveyances, deeds, contracts, bills of lading and documents of whatever nature necessary or incidental to the exercise of the powers granted herein;

- (j) purchase or lease such machinery, equipment, premises or other assets or supplies as may be necessary or desirable in the opinion of the Receiver to receive, preserve, protect or realize upon the Property or any part or parts thereof;
  - (k) take such steps as in the opinion of the Receiver are necessary or appropriate to establish and maintain control over the Property or any part or parts thereof, including, but not limited to, the changing of locks and security codes, (including but not limited to computer access and security codes) the engaging of independent security personnel, the taking of physical inventories, and the placement of adequate insurance coverage as required;
  - (l) pay ongoing costs or expenses incurred prior to, on or after the date of this Order which arise out of or in connection with the day to day use of the Property;
  - (m) take any steps, enter into any agreements or incur any obligations necessary or incidental to the exercise of the aforesaid powers and to disclaim, terminate or otherwise refuse to carry out any agreement of the Debtor in connection therewith;
  - (n) make an assignment of all of the property of the Debtor for the general benefit of its creditors pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA"), or to consent to a Receiving Order against the Debtor and to act as Trustee in Bankruptcy of the estate of the Debtor;
  - (o) enter into, abandon or surrender all or any part of the Property, including all or any part of the Leased Premises, in which case, only the pro-rated portion of the occupation costs shall apply; and
  - (p) subject to Court approval, sell all or substantially all of the Property of the Debtor.
7. The Receiver may apply, from time to time, upon 2 days' notice to persons affected, for directions and guidance in the exercise of the Receiver's powers and the performance of its duties hereunder.

8. All persons, firms, or corporations, governments, governmental agencies and other entities of any kind or nature including without limitation all Affected Persons (collectively, the "Persons" and each a "Person") be and they are each hereby restrained and enjoined until further order of this Court from varying, amending, terminating, cancelling or breaching any contracts or agreements with the Debtor in existence as of the date of this Order.
9. Without limiting the generality of the provisions hereof, no Person claiming an interest in the Property or any part or parts thereof shall be at liberty to exercise any rights in respect of such interest, including without limitation a right to possession of such Property or any part or parts thereof, except with the prior written consent of the Receiver or with leave of this Court being first had and obtained on at least 2 days' notice to the Receiver.
10. No demands, actions, motions, steps, registrations, perfections, administrative proceedings, self-help remedies, or any other acts, proceedings or private remedies whatsoever in respect of the Property or the business conducted thereon by the Debtor or against the Debtor or the Receiver, including without limitation, the enforcement of security, liens or collection of any debt or liability, the exercise of any landlord's right to distrain or terminate any lease, the acceleration, amendment or termination of any permit, licence, approval, permission or contract, including, without limitation, any contract of insurance of the Debtor or in which the Debtor is named or from which the Debtor may derive a benefit, the exercise of any right of set-off, the exercise of any construction, mechanics' repair, storage or other lien, shall be taken or continued against the Debtor or the Receiver without the prior written consent of the Receiver or leave of this Court being first obtained upon not less than 2 days' notice to the Receiver, provided that any recognized public authority taking action solely to protect imminent and material danger to life, health, limb or property, shall not be so restrained.
11. Without limiting the generality of any of the provisions hereof, all Persons, including without limitation all utilities, landlords, suppliers, subcontractors, ISP's and equipment lessors, be and they are hereby restrained and enjoined from varying, amending, terminating, cancelling or breaching any agreements with the Debtor or relating to the

Property. In addition, all Persons are enjoined from disturbing, discontinuing, cutting off or interfering with utility or other services, including but not limited to the furnishing of fuel, gas, oil, heat, electricity, garbage collection, water, cable television, computers, telephones and telecopiers, computer hardware and software support, electronic, internet, electronic mail or any other utilities of like kind, furnished up to the present date to the Debtor whether in the Debtor's name or in the name of another in respect of any of the Property. All Persons are hereby restrained and enjoined from terminating, determining or cancelling agreements with, or cutting off, discontinuing or altering any such utilities or services to the Debtor or relating to the Property, subject to the obligation of the Receiver to pay for such utilities or services provided to the Receiver subsequent to the occupation by the Receiver of the Leased Premises to which the utilities or services are supplied at the normal prices other than standby fees, deposit or similar charges (and in the case of payment for use and occupation of the Leased Premises, subject to paragraph 6(o) except with the prior written consent of the Receiver or upon further order of this Court on at least 2 days' notice to the Receiver.

12. Without limiting the generality of any of the provisions hereof, all Persons be enjoined and hereby restrained from interrupting, terminating, altering, delaying or suspending performance of, withholding any progress payment, claiming any offset or deduction or diminution of liability or responsibility, or in any way interfering with the payment and performance of any contracts, leases, agreements or arrangements, whether written or oral, or with payment of any monies due or to become due to the Debtor or relating to the Property.
13. All Persons shall continue to perform and observe all terms, conditions and provisions contained in any agreement with the Debtor in respect of any of the Property, subject to the obligation of the Receiver as provided herein to pay for goods and services requested by the Receiver to be supplied to the Receiver at normal prices, for the period commencing with the date of this Order, and all Persons are restrained from disturbing or otherwise interfering with the possession, use or occupation, as the case may be, by the Receiver of any of the Property.

14. Except as otherwise provided in this Order, all funds, monies, cheques, instruments and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation from the sale of all or any of the Property and the collection of any accounts receivable or rents, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid by the terms of this Order or any further Order of the Court.
  
15. The Receiver be and is hereby fully authorized and empowered, but not obligated, to initiate, prosecute and continue the prosecution of any and all actions, applications, administrative hearings, arbitrations or proceedings as may in its judgment be necessary or desirable to properly receive, preserve, protect or realize upon the Property and to secure payment of rent and accounts from the Property, to defend all applications, proceedings, actions, administrative hearings or arbitrations now pending or hereafter instituted against the Debtor or the Receiver, the prosecution or defence of which will, in the judgment of the Receiver, be necessary to properly receive, protect, preserve or realize on the Property or to protect the administration by the Receiver of the Property, and to settle or compromise any such actions, applications, proceedings, administrative hearings or arbitrations which in the judgment of the Receiver should be settled or compromised. The authority hereby conveyed shall extend to such appeals or applications for judicial review as the Receiver shall deem proper and advisable in respect of any order or judgment pronounced in any such application, proceeding or action, administrative hearing or arbitration.
  
16. Notwithstanding the appointment of the Receiver or the exercise of any of its powers or the performance of any of its duties hereunder, or the use or employment by the Receiver of any person in connection with its appointment and the performance of its powers and duties hereunder, the Receiver is not and shall not be deemed or considered to be the same employer, a successor employer, related employer, common employer, new



employer, representative or successor of the employer, deemed employer, sponsor or payer with respect to any of the employees of the Debtor or any of its affiliates or any former employees thereof within the meaning of the *Labour Relations Code* (Alberta), the *Employment Standards Code* (Alberta), and the *Employment Pension Plans Act* (Alberta). Further, pursuant to s. 14.06(1.2) of the BIA, notwithstanding anything in any federal or provincial law, where the Receiver continues the employment of the Debtor's employees, the Receiver is not by reason of that fact personally liable in respect of any claim against the Debtor or related to a requirement imposed on the Debtor to pay an amount where the claim arose before or upon the Receiver's appointment.

17. The Receiver shall pass its accounts from time to time.
18. The Receiver's remuneration and any expenses which may be properly made or incurred by the Receiver in connection with the exercise of its powers and the performance of its duties hereunder (including, without limitation, any fees and disbursements of its counsel on a solicitor and its own client basis) shall be allowed to the Receiver in the passing of its accounts (collectively, the "Receiver's Remuneration and Expenses"). The Receiver's Remuneration and Expenses, shall form a first ranking charge on the Property ranking in priority to any and all other security, charges, encumbrances or claims by any other Person whatsoever (the "Receiver's First Charge").
19. The costs of MassMutal and CM Equity in the preparation of this motion, in the commencement of this action and up to and inclusive of the hearing of this motion and the entry of this Order shall be assessed as between a solicitor and his own client.
20. The Receiver shall be at liberty, from time to time, to pay costs and other expenses relating to the Property, including its own remuneration and disbursements and that of its legal counsel, from monies in its hands. Any amounts so applied against the Receiver's remuneration and expenses shall constitute advances against the amounts allowed on the passing of the Receiver's accounts and any amounts not subsequently approved by the Court on the passing of the Receiver's accounts shall be refunded by the Receiver forthwith.

21. The Receiver be and is hereby indemnified out of the Property from and against all liabilities arising out of the performance of its duties as Receiver pursuant to the terms of this Order, save and except for any commercially unreasonable actions, gross negligence or willful misconduct on the part of the Receiver with respect to such duties, and the Receiver shall have a charge on the Property for such indemnity in priority to all security, charges, encumbrances or claims by any other Person whatsoever affecting the Property excepting only the Receiver's First Charge.
22. Notwithstanding any other provision contained in this Order, the Receiver shall be protected by the terms and provisions of the BIA including without limitation, section 14.06 of the BIA, as amended.
23. Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or any environmental damage that occurred before or after the appointment of the Receiver unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct. The Receiver is not exempted from any duty imposed by law to report or make disclosure.
24. Nothing herein contained shall vest in the Receiver the care, control, charge, occupation, possession or responsibility, nor require the Receiver to take care, control, charge, occupation, possession or responsibility, of any of the Property which may be environmentally contaminated or on which any pollutant or contaminant is or may become present, or from which any spill, discharge, release or deposit of a substance emanates.
25. No person shall commence any proceedings concerning the affairs of the Debtor or the Receiver's performance or alleged failure to perform its duties under this Order without first obtaining leave of this Honourable Court by motion made on not less than 2 days' notice to the Debtor and the Receiver.
26. This court seeks the aid and recognition of any court or administrative body in Canada and any court or administrative, regulatory or governmental body and any federal or state

court or administrative, regulatory or governmental body in the United States of America to act in aid of, or to be complementary in carrying out the terms of this Order.

27. The Receiver be at liberty, and is hereby authorized and empowered to apply, upon such notice as it may consider necessary or desirable, to any other courts or tribunals in any other jurisdictions, both foreign and domestic, including any Province in Canada, the Federal Court and any foreign court, tribunal or administrative body, for orders aiding, assisting or recognizing the appointment of the Receiver and confirming the powers of the Receiver in any other jurisdiction or jurisdictions, and all courts of all such jurisdictions, both foreign and domestic, are hereby respectfully requested to make such orders and provide such other aid, assistance and recognition to the Receiver, as an officer of this Court, as they may deem necessary or appropriate in furtherance of this Order or any subsequent Order in this proceeding.
28. Any person affected by this Order may move on 2 days' notice to the Receiver, MassMutual, CM Equity or any other persons affected by the relief sought, to amend any provision of this Order provided that the moving party brings such motion promptly after the matter at issue becomes known to that moving party.

"MADAME JUSTICE B.F.C. BOUMAINE"  
J.C.C.Q.B.A.

ENTERED this 27 day of  
April, 2004.  
JIM McLAUGHLIN



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Clerk of the Court

Action No.: 0401-06628

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IN THE COURT OF QUEEN'S BENCH OF  
ALBERTA  
JUDICIAL DISTRICT OF CALGARY

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BETWEEN:

**MASSACHUSETTS MUTUAL LIFE  
INSURANCE COMPANY, MASSMUTUAL  
CORPORATE INVESTORS, MASSMUTUAL  
PARTICIPATION INVESTORS, MASSMUTUAL  
CORPORATE VALUE PARTNERS LIMITED  
and CM EQUITY PARTNERS, L.P.**

Plaintiffs

- and -

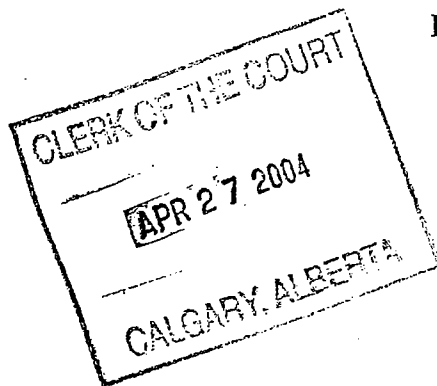
**EVANS CONSOLES INC.**

Defendant

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**RECEIVERSHIP ORDER**

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**BLAKE, CASSELS & GRAYDON LLP**

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File No: 67070/2