

# SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-11-055629-188

DATE: January 14, 2019

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BY THE HONOURABLE CHANTAL TREMBLAY, J.S.C.

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**IN THE MATTER OF THE INTENTION TO MAKE A PROPOSAL OF  
2964-3277 QUÉBEC INC.**

Debtor

and

**RICHTER ADVISORY GROUP INC.**

Proposal Trustee

and

**GORDON BROTHERS CANADA ULC**

Mise-en-cause

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## ORDER

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[1] The Court is being asked to authorize a *Letter Agreement Governing Assets Disposition (Consulting Agreement)* for the sale of assets outside the ordinary course of business by the debtor under a Notice of Intention to Make a Proposal in Bankruptcy.

[2] The Court has the power to issue such an order under Section 65.13(1) of the *Bankruptcy and Insolvency Act (BIA)*.

[3] According to Section 65.13(4) BIA, the factors to be considered by the Court include the following:

- a) Whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

- b) Whether the trustee approved the process leading to the proposed sale or disposition;
- c) Whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- d) The extent to which the creditors were consulted;
- e) The effects of the proposed sale or disposition on the creditors and other interested parties; and
- f) Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[4] In accordance with Section 65.13(3) BIA, the Debtor gave notice of the Motion for the Approval of the Consulting Agreement to its secured creditors and to the principal unsecured creditors.

[5] The Consulting Agreement deals with the liquidation of all of the Debtor's inventory, the collection of outstanding receivables and the sale of intellectual property.

[6] The CIBC is the principal secured creditor who has a first ranking security on the receivables, inventory and intellectual property of the Debtor. CIBC was kept informed of the negotiations and supports the motion.

[7] BDC is also a secured creditor who has a first-ranking security interest on the Debtor's equipment. BDC advised that it would evaluate its options and maintain all of its existing rights with respects to its realization options.

[8] BDC also supports the motion as the Consulting Agreement does not contemplate nor deal with the liquidation of the Debtor's equipment.

[9] The Proposal Trustee obtained a legal opinion from its independent legal counsel confirming the respective validity and opposability of the security interests registered by CIBC and BDC with respect of the assets of the Debtor.

[10] The Court considers that the consultation of creditors was sufficient.

[11] The process leading to the Consulting Agreement before the Court started by a Sale Solicitation Process launched on November 29, 2018, with the issuance of a teaser to approximately 120 potential interested parties consisting of strategic buyers, financial investors and liquidators. The bid deadline was December 19, 2018, at noon eastern time.

[12] The Proposal Trustee created a virtual data room with the necessary information to enable interested parties to evaluate all aspects of the Debtor's business. Fifteen interested parties, consisting of strategic and financial investors as well as liquidators, signed a confidentiality agreement and were granted access to the digital data room. Four of the fifteen interested parties visited the Debtor's premises to meet with the Debtor and the Proposal Trustee and to tour the Debtor's warehouses.

[13] Throughout the Sale Solicitation Process, the Debtor and the Proposal Trustee responded to information requests and posted additional information to the data room.

[14] Three offers were submitted to the Proposal Trustee by the noon deadline on December 19, 2018. A fourth offer was received on that day shortly after the noon deadline and was marked late but was open nonetheless.

[15] In view of the above, the Court concludes that the sale process was approved by the Proposal Trustee and that it was reasonable in the circumstances.

[16] The offers were opened at the offices of the Proposal Trustee in the presence of representatives of the secured creditors and the Debtor.

[17] The Debtor, the Proposal Trustee and the secured creditors reached a consensus that the most advantageous offer was the one filed by Gordon Brothers Canada ULC (GB). All of the offers contemplated a liquidation of the assets of the Debtor. None of them were going-concern offers. The Proposal Trustee is satisfied that there was no collusion between the bidders.

[18] On January 11, 2019, the Debtor and GB executed the Consulting Agreement which sets out the terms and conditions of the services to be rendered by GB for the liquidation of all inventory, the collection of outstanding receivables and the sale of intellectual property. It is a best effort "fee based deal" and there is no guarantee as to the amounts that will be realized.

[19] The duration of the realization is expected to be a maximum of 120 days, beginning on the date of issuance of the present order. GB can extend the Sale Term with regard to the collection of accounts receivable, for up to 8 months and it can be extended indefinitely by agreement of the parties, with the approval of the Proposal Trustee, with regard to the assets of the Debtor other than accounts receivable.

[20] The Consulting Agreement contains standard provisions governing the management of the liquidation process, indemnification, insurance and representations and warranties.

[21] As for the effects of the Consulting Agreement on the creditors and other interested parties, this must be considered at two levels.

[22] GB will assist the Debtor in implementing strategies to liquidate its assets at the best possible prices and for the duration of the process, the Debtor will continue to employ its employees, collect sales taxes and otherwise continue operating at its various locations for so long as these locations are required.

[23] The final factor listed in Section 65.13(4) BIA is whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[24] The Court is satisfied that the consideration to be received for the assets will be reasonable and fair as the Proposal Trustee has worked in the past with GB and in its opinion, the Consulting Agreement is the best course of action to realize a maximum value for the creditors of the Debtor.

**FOR THESE REASONS, THE COURT HEREBY:**

[25] **GRANTS** the present Motion;

1. **SERVICE:**

[26] **ORDERS** that the time for service of the Motion be abridged and that the Motion is properly presentable and **DECLARES** that the service of the Motion constitutes good and sufficient service on all persons and **DECLARES** that all parties are relieved of any further requirement for service of the Motion;

[27] **ORDERS** that capitalized terms used and not defined herein have the same meaning ascribed to them in the GB Agreement (as defined hereinafter);

2. **APPROVAL OF THE GB AGREEMENT:**

[28] **ORDERS** that the Letter Agreement Governing Asset Disposition attached hereto as Schedule "A" (the "**GB Agreement**"), and the transactions contemplated under it, are hereby approved with such minor amendments as the Debtor, with the consent of the Proposal Trustee, and the Mise-en-cause, Gordon Brothers Canada ULC (the "**Consultant**") may deem necessary and agree to in writing. Subject to the provisions of this Order, the Debtor and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to implement the GB Agreement and each of the transactions contemplated therein.

3. **THE SALE:**

[29] **ORDERS** that the Debtor, with the assistance of the Consultant, is authorized and directed to conduct the Sale in accordance with this Order and the GB Agreement, and to advertise and promote the Sale in accordance with the GB Agreement. If there is a conflict between this Order and the GB Agreement, the order of priority of documents to resolve each conflict is as follows: (1) this Order; (2) the GB Agreement.

[30] **ORDERS** that the Debtor, with the assistance of the Consultant, is authorized to market and sell the Assets, and all rights, title and interest in and to these Assets shall vest absolutely and exclusively in and with their respective purchaser(s), free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges (including the Administration Charge, the D&O Charge and the KEIP Charge), hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favor of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**" ), including without limiting the generality of the foregoing all charges, security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, or any other applicable legislation providing for a security interest in personal or movable property, and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Assets, be expunged and discharged as against the Assets, in each case effective as of the Sale of the Assets, which Encumbrances will attach instead to the proceeds

received from the Sale of the Assets, other than amounts due and payable to the Consultant by the Debtor under the GB Agreement, in the same order and priority as the Encumbrances existed as at the date hereof.

[31] **ORDERS** that, to the exception of a provision equivalent to the Administration Charge and the D&O Charge (as both defined in the Order rendered in this file by this Honourable Court on December 13, 2018), which the Proposal Trustee shall keep in trust, as well as the amounts due and payable to the Consultant by the Debtor under the GB Agreement, which shall be paid weekly in accordance with the GB Agreement, the Debtor shall distribute the proceeds of the Sale of the Assets in the same order and priority as the Encumbrances that exist as at the date hereof.

[32] **ORDERS** that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any intellectual property licensor, the Debtor's trademarks, trade names and logos, customer/marketing lists, website and social media accounts as well as all licenses and rights granted to the Debtor to use the trade names, and logos of third parties, relating to and used in connection with the Debtor's operations solely for the purpose of advertising and conducting the Sale in accordance with the terms of the GB Agreement and this Order, provided that the Consultant provides the Debtor with a copy of any proposed advertising two days prior to its use in the Sale.

#### **4. CONSULTANT LIMITED LIABILITY:**

[33] **ORDERS** that the Consultant shall act solely as an independent consultant to the Debtor and that it shall not be liable for any claims against the Debtor other than as expressly provided in the GB Agreement. More specifically:

- a. The Consultant shall not be deemed to be an owner or in possession, care, control or management of the Assets or of the Debtor's employees or any other property of the Debtor;
- b. The Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- c. The Debtor shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events occurring during and after the Sale Term, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the GB Agreement.

**5. CONSULTANT AS UNAFFECTED CREDITOR:**

[34] **ORDERS** that the GB Agreement shall not be repudiated, resiliated or disclaimed by the Debtor and that in accordance with section 69.4 of the BIA, the Consultant shall not be affected by the stay of proceedings in respect of the Debtor and shall be entitled to exercise its remedies under the GB Agreement in respect of claims of the Consultant pursuant to the GB Agreement (collectively, the "**Consultant's Claims**"), the Consultant shall be treated as an unaffected creditor in the context of the present proceedings and in any proposal, arrangement, receivership or bankruptcy.

[35] **ORDERS** that the Debtor is hereby authorized to remit, in accordance with the GB Agreement, all amounts that become due to the Consultant thereunder.

[36] **ORDERS** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed by the Debtor to the Consultant pursuant to the GB Agreement, including any amounts that must be reimbursed by the Debtor to the Consultant, and the Debtor shall pay any such amounts to the Consultant free and clear of all Encumbrances, notwithstanding any enforcement or other process, all in accordance with the GB Agreement.

[37] **ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of Debtor or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Debtor; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement which binds the Debtor the GB Agreement and the transactions and actions provided for and contemplated therein, including, without limitation, the payment of amounts due to the Consultant shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of the Debtor, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

**6. GENERAL:**

[38] **ORDERS** that the unredacted GB Agreement (Exhibit R4A to the Motion) be kept confidential and under seal until further order of this Court.

[39] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.

[40] **DECLARES** that the Debtor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order. All courts and administrative bodies of all such jurisdictions are

hereby respectfully requested to make such orders and to provide such assistance to the Debtor as may be deemed necessary or appropriate for that purpose.

[41] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;

[42] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

[43] **THE WHOLE** without costs.

  
CHANTAL TREMBLAY, J.S.C.

Me Marc Duchesne  
Me Ouassim Tadlaoui  
BORDEN LADNER GERVAIS LLP  
Attorneys for the Debtor

Me Joseph Reynaud  
STIKEMAN ELLIOTT S.E.N.C.R.L., S.R.L.  
Attorney for the Trustee

Me Gerry Apostolatos  
LANGLOIS LAWYERS LLP  
Attorney for the Petitioner

Me Noah Zucker  
MCCARTHY TÉTRAULT S.E.N.C.R.L., S.R.L.  
Attorney for the Secured Creditor/Impleaded Party

Me Julien Morissette  
OSLER, HOSKIN & HARCOURT L.L.P.  
Attorney for Gordon Brothers Canada ULC

Me Stéphane G. Hébert  
MILLER THOMSON S.E.N.C.R.L., LLP  
Attorney for the Banque de développement du Canada

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