

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-055629-188

DATE: March 13, 2019

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

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

Debtor

and

RICHTER ADVISORY GROUP INC.

Trustee

**AMENDED ORDER FOR AN ADMINISTRATIVE CHARGE, A DIRECTORS AND
OFFICERS CHARGE, A KEY EMPLOYEE INCENTIVE PROGRAM**

A. CONSIDERING that the judgment rendered on December 13, 2018, contains clerical errors with regard to the paragraphs referred to in paragraphs 14, 15 and 17;

B. CONSIDERING the provisions of Article 338 of the Code of Civil Procedure;

[1] **CONSIDERING** the Debtor's *Motion for the Issuance of an Order for an Administrative Charge, a Directors and Officers Charge, a Key Employee Incentive Program and Other Remedies (Motion)*, affidavit and exhibits filed in support thereof;

- [2] **CONSIDERING** that on November 29, 2018, the Debtor filed a Notice of Intention to Make a Proposal (**NOI**) pursuant to section 50.4 of *Bankruptcy and Insolvency Act* (**BIA**);
- [3] **CONSIDERING** that on or about November 29, 2018, the Debtor and the Trustee initiated a sale and solicitation process;
- [4] **CONSIDERING** that counsel for the Debtor, the Trustee and counsel for the Trustee are essential to the restructuring and the sale efforts ;
- [5] **CONSIDERING** that the implication of the management employees of the Debtor is critical to the continuation of the operations during the stay of proceedings under the NOI and to the restructuring and sale efforts;
- [6] **CONSIDERING** the testimony of Mr. Olivier Benchaya, trustee and Mr. Karam Melki, General Manager of the Debtor;
- [7] **CONSIDERING** that the Director and Officers of the Debtor were not covered by a D&O insurance policy prior to the filing of the NOI and are now unable to contract one;
- [8] **CONSIDERING** that the payments provided for in the proposed Key Employee Incentive Program (**KEIP**) are payable upon completion of the restructuring process and are reasonable in the circumstances;
- [9] **CONSIDERING** that the suggested amounts for the Administrative Charge and the D&O Charge are fair and reasonable in the circumstances;
- [10] **CONSIDERING** that the secured creditors who are likely to be affected by these securities or charges do not oppose the Motion;

FOR THESE REASONS, THE COURT HEREBY:

- [11] **GRANTS** the present Motion;
- [12] **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;
- [13] **DECLARES** that the present order (the "**Order**") and its effects shall survive the filing by 2964-3277 Quebec Inc., d.b.a. Carpet Art Deco ("**Art Deco**") of a proposal pursuant to the terms of the BIA, the issuance of an initial order with regards to Art Deco pursuant to the terms of the *Companies Creditors Arrangements Act* or the bankruptcy of Art Deco;
- [14] **DECLARES** that as security for the professional fees and disbursements incurred in the context of these proceedings, both before and after the date of the Order, a

charge and security over all the property of Art Deco of every nature and land whatsoever, wherever situated and regardless of whose possession it may be in (the "**Property**") is hereby constituted in favour of Art Deco's counsel, Borden Ladner Gervais LLP, the Trustee, Richter Advisory Group Inc. ("**Richter**"), and the Trustee's counsel, Stikeman Elliott LLP, to the extent of the aggregate amount of \$75,000 (the "**Administration Charge**"). The Administration Charge shall have the priority set out in paragraphs 19, 20 and 21 of this Order;

[15] **DECLARES** that as security for the potential liability of Art Deco's directors a charge and security over the Property is hereby constituted in favour of all directors of Art Deco, to the extent of the aggregate amount of \$250,000 (the "**D&O Charge**"). The D&O Charge shall have the priority set out in paragraphs 19, 20 and 21 of this Order;

[16] **ORDERS** that the Key Employee Incentive Program (the "**KEIP**") filed with the Court as Exhibit P-6 (under seal) is hereby ratified and that Art Deco is hereby authorized and empowered to perform its obligation thereunder and to make the payments in accordance with the terms set out in the KEIP;

[17] **DECLARES** that as security for payment of the obligations set forth under the KEIP a charge and security over the Property is hereby constituted in favour of Art Deco's management employees designated in the KEIP, to the extent of the aggregate amount of \$900,000 (the "**KEIP Charge**"). The KEIP Charge shall have the priority set out in paragraphs 19, 20 and 21 of this Order;

[18] **ORDERS** that the the KEIP (Exhibit P-6) be kept confidential and under seal until earlier of a) end of the BIA process b) further order of this Court;

[19] **DECLARES** that the priorities of the Administration Charge, the D&O Charge and the KEIP Charge (collectively, the "**NOI Charges**"), as between them with respect to any Property to which they apply, shall be as follows:


- a) first, the Administration Charge;
- b) second, the D&O Charge; and
- c) third, the KEIP Charge.

[20] **DECLARES** that the Administration Charge and the D&O Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances, but after the claim of Business Development Bank of Canada ("**BDC**") on all movable assets other than Art Deco's accounts receivable, bank accounts, intellectual property rights and inventory and all accessories thereto, including all proceeds, insurance indemnities, resulting rights or revenues related thereto, as well as all insurance indemnities related thereto and all claims, proceeds or sums relating to the lease, sale or other disposition therefrom;

- [21] **DECLARES** that the KEIP Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting the Property charged by such Encumbrances, but after the Encumbrances granted by Art Deco in favour of Canadian Imperial Bank of Commerce and BDC;
- [22] **DECLARES** that the NOI Charges are effective and shall charge, as of 12:01 a.m. (Montreal time) the day of the Order (the “**Effective Time**”), all Art Deco’s Property present and future notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent;
- [23] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiver order filed pursuant to the BIA in respect of Art Deco and any receiving order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of Art Deco and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by Art Deco pursuant to the Order and the granting of the NOI Charges do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under an applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy, and any receiver to the Property of Art Deco;
- [24] **DECLARES** that the Order, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by Art Deco under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;
- [25] **DECLARES** that Richter and/or Art Deco are at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail;
- [26] **DECLARES** that Richter and/or Art Deco may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels’ email addresses, provided that Richter and/or Art Deco shall deliver “hard copies” of such materials upon request to any party as soon as practicable thereafter;
- [27] **DECLARES** that any party interested in these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsel’s email address, provided that such party shall deliver a “hard

copy" on paper of such PDF or electronic materials to Art Deco's and Richter's counsel and to any other party who may request such delivery;

- [28] **ORDERS** that, subject to further Order of this Court, all motions in these BIA proceedings are to be brought on not less than five (5) calendar days' notice to all Persons on the service list. Each Motion shall specify a date (the "**Initial Return Date**") and time for the hearing;
- [29] **ORDERS** that any person wishing to object to the relief sought on a motion in these BIA proceedings must serve responding motion materials or a notice stating the objection to the motion and the grounds for such objection in writing to the moving party, Art Deco and Richter, with a copy to all persons on the service list, no later than 5 p.m. Montreal Time on the date that is three (3) calendar days prior the Initial Return Date;
- [30] **DECLARES** that, unless otherwise provided herein, ordered by this Court, or provided by the BIA, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a notice of appearance on the solicitors for Art Deco and Richter and has filed such notice with the Court;
- [31] **DECLARES** that the present Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [32] **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;
- [33] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
- [34] **THE WHOLE** without costs.


CHANTAL TREMBLAY, J.S.C.

Me Marc Duchesne
Me Frédérique Drainville
BORDEN LADNER GERVAIS LLP
Attorney for the Debtor

Me Joseph Reynaud
STIKEMAN ELLIOTT S.E.N.C.R.L., S.R.L.
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Hearing date: December 13, 2018