

Court File No: CV-16-11419-00CL

2473304 ONTARIO INC.

**FIFTH REPORT OF RICHTER ADVISORY GROUP INC.,
IN ITS CAPACITY AS MONITOR OF
2473304 ONTARIO INC.**

March 29, 2019

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
2473304 ONTARIO INC.

FIFTH REPORT OF RICHTER ADVISORY GROUP INC.
In its capacity as Monitor of the Applicant

March 29, 2019

Introduction

1. On June 7, 2016 (the "**Filing Date**"), the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an order (the "**Initial Order**") granting 2473304 Ontario Inc. ("**247**") which carried on business under the licensed trade name "Jones New York" in Canada, protection pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Richter Advisory Group Inc. ("**Richter**") was appointed as monitor (the "**Monitor**"). The proceedings commenced by 247 under the CCAA are herein referred to as the "**247 CCAA Proceedings**". A copy of the Initial Order is attached hereto as **Appendix "A"**.
2. 247 is a wholly owned subsidiary of 1735825 Ontario Inc. (formerly known as Grafton- Fraser Inc.) ("**GFI**"). On January 25, 2017, GFI filed for protection under the CCAA (the "**GFI CCAA Proceedings**") and Richter was appointed as monitor of GFI (the "**GFI Monitor**").
3. The Initial Order provided 247 with, *inter alia*, a stay of proceedings until July 7, 2016 (the "**Stay Period**"). The Initial Order also granted 247 the authority to enter into forbearance agreements (the "**Forbearance Agreements**") with GFI as co-obligor, and their two primary secured creditors, being Canadian Imperial Bank of Commerce ("**CIBC**" or the "**ABL Lender**") and GSO Capital Partners, LP ("**GSO**"). Under the terms of the forbearance agreement with CIBC, as amended (the "**ABL Forbearance Agreement**") amendments were made to the existing operating facility (the "**ABL**

Facility) to provide 247 with interim financing on a priority basis as secured by the ABL DIP Lender's Charge (as defined in Initial Order).

4. The principal purpose of the 247 CCAA Proceedings was to create a stabilized environment to enable 247 to implement a transaction resulting from the sale and investment solicitation process, being an orderly liquidation of 247's merchandise and furniture, fixtures and equipment (the furniture, fixtures and equipment collectively referred to as the "**FF&E**").
5. On June 13, 2016, the Court issued an order (the "**June 13 Order**") which, among other things, authorized 247 to enter into an agency agreement (the "**Agency Agreement**") with GA Retail Canada, ULC (the "**Agent**") under which the Agent undertook, on behalf of 247, a liquidation of the merchandise and FF&E at the 37 Jones New York stores and the distribution centre ("**DC**") operated by 247. A copy of the June 13 Order is attached hereto as **Appendix "B"**.
6. On June 23, 2016, the Court issued an order (the "**June 23 Order**") which, among other things:
 - (i) authorized the Monitor to distribute the amount of \$7,486,600 to CIBC (representing a portion of the Initial Guaranty Payment under the Agency Agreement); and
 - (ii) extended the Stay Period to and including September 30, 2016.A copy of the June 23 Order is attached hereto as **Appendix "C"**.
7. On September 27, 2016, the Court issued an order (the "**September 27 Order**") which:
 - (i) approved certain fees and disbursements of the Monitor and its counsel, Cassels Brock and Blackwell LLP ("**Cassels**"); and
 - (ii) extended the Stay Period to and including November 30, 2016.A copy of the September 27 Order is attached hereto as **Appendix "D"**.
8. On November 28, 2016, the Court issued an order (the "**November 28 Order**") which:
 - (i) authorized and directed 247 to remit certain funds to GSO and to remit other funds which it may have available (including funds held in trust by the Monitor) to CIBC;
 - (ii) approved certain fees and disbursements of the Monitor and Cassels including anticipated further fees and disbursements of the Monitor and Cassels to complete their remaining duties and administration of these 247 CCAA proceedings; and

- (iii) provided that upon the filing of the Monitor's Discharge Certificate (as defined in the November 28 Order), the 247 CCAA Proceedings, the Administration Charge, and the Agent's Charge and Security Interest would be terminated and the Monitor would be discharged; and
 - (iv) authorized but did not obligate 247 to file an assignment in bankruptcy.
- A copy of the November 28 Order is attached hereto as **Appendix "E"**.

9. On July 18, 2017, the Court issued an order (the "**July 18 Order**") which among other things, expanded the Monitor's powers as all the directors of 247 had resigned and:

- (i) authorized the Monitor to operate on behalf of 247 any of 247's existing accounts at any financial institution;
- (ii) authorized 247 or the Monitor (on behalf of 247) to take any actions necessary in respect of tax refunds, tax returns, or other tax related documents; and
- (iii) confirmed certain previous authorizations provided to 247 including authorizing but not obligating the Monitor on behalf of 247 to file an assignment in bankruptcy including the payment of retainer funds to the trustee in bankruptcy.

A copy of the July 18 Order is attached hereto as **Appendix "F"**.

Purpose of this Report

10. The purpose of this report, the Monitor's fifth report (the "**Fifth Report**") is to provide information to the Court in respect of the following:

- (i) The status of and termination of the 247 CCAA proceedings;
- (ii) the receipt of and treatment of various tax assessments by Canada Revenue Agency ("**CRA**") subsequent to the July 18 Order;
- (iii) the activities of 247 and the Monitor since July 12, 2017 (the date of the fourth report of the Monitor (the "**Fourth Report**")) to the date of this Fifth Report;
- (iv) the motion by the Monitor seeking an order, among other things approving this Fifth Report (and the activities, actions, and conduct of the Monitor), confirming the provisions of the November 28 Order and July 18 Order and authorizing the Monitor on behalf of 247:
 - a) to file an assignment in bankruptcy (the "**Bankruptcy Assignment**");
 - b) to name Richter as trustee of the bankruptcy estate (the "**Trustee**");

- c) to pay certain funds to the bankruptcy estate in order to provide funding for the professional costs incurred by the Trustee for the bankruptcy estate;
- d) to remit, after the payment of any fees and expenses of the Monitor and its counsel including the estimated costs to complete the administration of the CCAA, the balance of funds to GSO GF Acquisition B.C. Ltd. (the “**Purchaser**”) in accordance with the July 18 Order; and
- e) Following the Bankruptcy Assignment to file the Monitor’s Discharge Certificate as defined in the November 28 Order and terminate the CCAA Proceedings;

Terms of Reference

- 11. In preparing this Fifth Report, the Monitor has relied on unaudited financial information prepared by the representatives of 247 and discussions with 247’s advisors. The Monitor has not conducted an audit or other verification of such information.
- 12. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

247’s Activities

- 13. As detailed in the Fourth Report, 247 no longer has any employees or officers, all having resigned or been terminated subsequent to the liquidation of 247’s assets (which was completed in September 2016).

The Monitor’s Activities

- 14. The activities of the Monitor since the commencement of the 247 CCAA Proceedings to July 12, 2017 are detailed in the previous reports of the Monitor filed in the 247 CCAA Proceeding. Subsequent to the filing of the Fourth Report, the Monitor’s activities have included:

- (i) dealing with 247’s tax matters and assessments in conjunction with 247’s professionals including corresponding with CRA regarding the Post-Filing Assessment and the Post-Filing Objection (each as defined and discussed below);
- (ii) attending at Court with respect to the July 18 Order;
- (iii) corresponding and communicating with 247’s legal counsel;
- (iv) closure of 247’s bank accounts and transfer of funds to the Monitor’s trust account;
- (v) reporting receipts and disbursements;

- (vi) corresponding and communicating with CIBC, GSO and their advisors;
- (vii) responding to calls and enquiries from creditors and other stakeholders regarding the 247 CCAA Proceedings; and
- (viii) preparing this Fifth Report.

Tax Assessments

15. As detailed in the Fourth Report, 247 with the assistance of its professionals and the Monitor was negotiating with CRA in connection with the disallowance by CRA in respect of GST/HST owing for periods pre-filing. CRA ultimately accepted 247's position and remitted various refunds to 247 in December 2017 and March 2018.
16. As further detailed in the Fourth Report, CRA also disallowed various input tax credits in respect of CCAA related professional fees and proceeded to issue a notice of assessment for approximately \$119,000 (the "**Post-Filing Assessment**"). In June 2018, legal counsel to 247 filed formal notices of objection to the various notices of assessment ("**Post-Filing Objection**"). In August 2018, CRA advised that the notices of objection had been received and would be assigned to an appeals officer. As of the date of this report, the matter has not advanced further.
17. If the order sought is granted and 247 becomes bankrupt, it would be Richter's intention in its capacity as Trustee to treat the Post-Filing Assessment as an unsecured claim to be dealt with in the bankruptcy process.

Transfer of Funds / Cash on Hand

18. In accordance with the powers provided to the Monitor in the July 18 Order, following the receipt of the tax refunds (in December 2017 and March 2018), in June 2018, the Monitor proceeded to close 247's bank accounts and transferred the funds to the Monitor's trust account.
19. As of the date of this report, the Monitor is currently holding approximately \$177,000.

Bankruptcy and Termination of 247 CCAA Proceedings

20. In accordance with the present motion, following the order if granted, the Monitor intends to assign 247 into bankruptcy and Richter Advisory Group Inc. will act as trustee in bankruptcy. The Monitor is of the view to that an assignment into bankruptcy is the most efficient process at this point for an orderly wind-up of the 247 estate given the outstanding Post-Filing Assessment.

21. Following the bankruptcy of 247 in accordance with the July 18 Order and the November 28 Order, the Trustee would intend to proceed with the distribution of the net funds on hand (after payment of approved professional fees and the funding of the bankruptcy (to a maximum of \$30,000 plus taxes as noted below) to GSO GF Acquisition B.C. Ltd.
22. Thereafter, following the assignment into bankruptcy and the payment of the amounts described, the Monitor intends to file the Monitor's Discharge Certificate (as defined in the November 28 Order) and the 247 CCAA Proceedings shall be terminated in accordance with the November 28 Order.

Approval of the Monitor's Activities and Fee Approval Request

23. The Monitor has reported on the status of the 247 CCAA Proceedings and its actions and activities thereto, from time to time, in multiple Reports to this Court during the 247 CCAA Proceedings. Copies of the Reports are available on the Monitor's website at www.richter.ca/en/folder/insolvency-cases/0-9/2473304-ontario-inc. As detailed in the Reports, to the best of the Monitor's knowledge, the Monitor has carried out its duties, as set out in the Initial Order and in subsequent Orders.
24. The Monitor and Cassels have maintained detailed records of their professional time and costs and have sought approval of their fees and disbursements throughout the 247 CCAA Proceedings most recently as granted in the July 18 Order.
25. The estimated fees and disbursements of the Monitor for the period from July 1, 2017 to completion of the 247 CCAA Proceeding in the maximum amount of \$25,000 (excluding HST) were approved by the Court pursuant to the July 18 Order.
26. The estimated fees and disbursements of Cassels for the period from November 16, 2016 to completion of the 247 CCAA Proceeding in the maximum amount of \$50,000 (excluding HST), were approved by the Court pursuant to the November 28 Order.
27. Cassels' fees and disbursements since November 16, 2016 to complete the 247 CCAA Proceedings remains within the \$50,000 previously approved amount and Richter's fees and disbursements since July 1, 2017 to complete the 247 CCAA Proceedings remains within the \$25,000 previously approved amount and therefore no further approval is sought at this time.
28. As at the date of this Fifth Report, the Monitor estimates that, barring unforeseen circumstances, the fees and disbursements of the Monitor and its counsel up to and including the effective date of the Monitor's discharge will not exceed the previously approved limits.

Monitor's Recommendation

29. Based on the foregoing, the Monitor respectfully recommends that this Court issue an order for the relief requested and as set out in paragraph 10 above.

All of which is respectfully submitted this 29th day of March, 2019.

**Richter Advisory Group Inc.
in its capacity as Monitor of
2473304 Ontario Inc.**

Per:



Andrew Adessky, CPA, MBA, CIRP, LIT