

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-055629-188

DATE: May 28, 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

CANADIAN IMPERIAL BANK OF COMMERCE

Petitioner

and

RICHTER ADVISORY GROUP INC.

Trustee

ORDER APPOINTING A RECEIVER

- [1] **ON READING** the *Application to Appoint a Receiver* (the "**Application**"), of the Petitioner, Canadian Imperial Bank of Commerce, as well as the affidavit and the exhibits in support thereof;
- [2] **SEEING** the service of the Application;
- [3] **SEEING** the submissions of the attorneys present at the hearing of the Application and the testimony of the witness heard;

- [4] **SEEING** the provisions of the *Bankruptcy Insolvency Act* (“**BIA**”);
- [5] **SEEING** that the Petitioner sent the Debtor a notice pursuant to section 244 of the BIA;
- [6] **SEEING** that it is appropriate to appoint a receiver to the Property (as defined below in paragraph 12.1(a)) of the Debtor, 2964-3277 Québec Inc.

WHEREFORE THE COURT:

- [7] **GRANTS** the Application;

SERVICE

- [8] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with further service thereof.
- [9] **PERMITS** service of the present Order (this “**Order**”) at any time and place and by any means whatsoever.

APPOINTMENT

- [10] **APPOINTS** Richter Advisory Group Inc, trustee, to act as receiver to the Property of the Debtor until the issuance of any order by the Court terminating the mandate of the Receiver;
- [11] **DECLARES** that this Order and its effects shall survive the issuance of an initial order in regard of the Debtor pursuant to the terms of the *Companies Creditors Arrangements Act* or the bankruptcy of the Debtor.

RECEIVER’S POWERS

- [12] **AUTHORIZES** but does not require the Receiver to exercise the following powers:

12.1. Powers related to the possession of the Property

- (a) to take possession of the following property of the Debtor (the “**Property**”):

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;

Whereas:

“Accounts Receivable” means all of the Debtor’s now existing and future: (a) receivables (whether or not specifically listed on schedules furnished to the Lenders), including all

receivables created by, or arising from, all of the Debtor's sales, leases, loans, rentals of goods or renditions of services to its customers, including those receivables arising under any of the Debtor's trade names or styles, or through any of the Debtor's divisions; (b) any and all instruments, documents, bills of exchange, notes or any other writing that evidences a monetary obligation and documents; (c) unpaid seller's or lessor's rights (including rescission, resiliation, reclamation, repossession and stoppage in transit) relating to the foregoing or arising therefrom; (d) rights to any goods represented by any of the foregoing, including rights to returned, reclaimed or repossessed goods; (e) reserves and credit balances arising in connection with or pursuant hereto; (f) guarantees, indemnification rights, supporting obligations, payment incorporeal, tax refunds and letter of credit rights; (g) insurance policies or rights relating to any of the foregoing; (h) incorporeal pertaining to any and all of the foregoing (including all rights to payment, including those arising in connection with bank and non-bank credit cards), and including books and records and any electronic media and software relating thereto; (i) notes, deposits or property of borrowers or other account debtors securing the obligations of any such borrowers or other account debtors to the Debtor; (j) cash and non-cash proceeds of any and all of the foregoing; and (k) all monies and claims for monies now or hereafter due and payable in connection with any and all of the foregoing or otherwise;

"Bank Accounts" means all bank accounts maintained by the Debtor with any bank or other financial institution, including but not limited to those accounts listed in Schedule "A" hereto, and all cash deposited therein;

"Intellectual Property Rights" means the material patents, trade marks, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, and other similar rights owned or licensed by the Debtor, and all rights of the Debtor to the use of any patents, trade marks, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, or other similar rights;

"Inventory" means, in respect of the Debtor, all of the Debtor's present and hereafter acquired inventory and property in stock and including all raw materials, merchandise, inventory and goods, and all additions, substitutions and replacements thereof, wherever located, together with all goods and materials used or usable in manufacturing, processing, packaging or shipping same in all stages of production from raw materials through work in process to finished goods, and all "stores" inventory or "operating and maintenance supplies" inventory, and all proceeds of any thereof (of whatever sort)"

and to exercise the following powers listed hereinafter in the place and stead of the Debtor in respect of the Property;

12.2. Powers related to the preservation of the Property

- (b) all the powers necessary for the preservation and for the protection of the Property;
- (c) all the powers necessary to control the Property, the place of business and the premises occupied by the Debtor;
- (d) all the powers necessary to grant the Receiver access, at all times, to the place of business and to the premises of the Debtor, to the Property, and

to change the locks granting access to such premises and places of business of the Debtor;

- (e) all the powers necessary to grant the Receiver access to all the accounting records of the Debtor, as well as to any document, contract, register of any nature or kind whatsoever, wherever they may be situated and regardless of the medium on which they may be recorded (the "**Records**"), as well as the powers necessary to make copies of all the Records necessary or useful to the execution of the Receiver's functions;
- (f) all the powers necessary to undertake an analysis of the Debtor's Records;

12.3. Powers related to the Debtor's contractual rights and obligations

- (g) all powers necessary to exercise any of the Debtor's rights and/or perform any of the Debtor's obligations any agreements to which it is a party, including under:
 - (i) the agreement between the Debtor and Gordon Brothers Canada ULC approved pursuant to the Order of the Court dated January 14, 2019 (the "**GB Agreement**"); and
 - (ii) the agreement between the Debtor and Ohio Racks Inc. approved pursuant to the order of the Court dated March 13, 2019 (the "**Ohio Agreement**");

for and in the name of the Debtor, and to take any other action that is necessary or appropriate to exercise the Debtor's rights and/or perform its obligations under any such agreements.

- (h) all powers necessary to enter into any agreement for and in the name of the Debtor, and to take any action that may be necessary or appropriate, exercise any right or perform any obligation under any such agreement;

12.4. Powers related to the Debtor's operations

- (i) carry on, or cease to carry on, all or any part of the Debtor's operations;
- (j) all the powers necessary to control the Debtor's receipts and disbursements;
- (k) all the powers necessary to collect all the accounts receivable and all the other claims of the Debtor and to transact in respect of same, as well as to sign any document for this purpose;

- (l) all the powers necessary to open any required bank account, pursuant to the terms and conditions the Receiver may determine, with any chartered Canadian bank, or any other financial institution, the whole, in order to cash any item payable to the Debtor, and to issue any payment which, in the opinion of the Receiver, is necessary or useful to the Debtor's operations;
- (m) all powers necessary to solicit and collect information and to report to the Petitioner on the exercise of any of the Debtor's rights and/or the performance of any of the Debtor's obligations under any agreement to which it is, or was a party (including the GB Agreement and the Ohio Agreement), both prior to and after the date of this Order, as well as on any other matter related to the Debtor's past or present operations or activities and thus under reserve of the Debtor's right to submit to the Court any particular issues with respect to the execution of such powers;

12.5. Powers related to the disposition or sale of the residual Property

- (n) Subject to the terms of the GB Agreement, all the powers necessary to:
 - (i) to carry out the sale or the disposition of the Property in the ordinary course of business of the Debtor, to transact in that regard, and to sign any document or any contract required or useful for these purposes or meant to give effect to any such sale or disposition;
 - (ii) to interest or solicit one or several potential buyers of all or any part of the Property, including, without limitation, the right to carry out a public call for tenders or private solicitations in order to dispose of the Property;
 - (iii) to petition the Court for authorization to sell all or any part of the Property outside the ordinary course of business, upon finding a purchaser and pursuant to conditions it deems reasonable in the circumstances;
 - (iv) notwithstanding anything in this Order, to sell all or any part of the Property outside the ordinary course of business without authorization of the Court and with the written consent of the Petitioner, where the book value of the Property being disposed of is less than \$50,000, upon finding a purchaser and pursuant to conditions it deems reasonable in the circumstances;

[13] **GRANTS** the Receiver all the powers necessary to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate, in accordance with the terms of this Order.

- [14] **GRANTS** the Receiver all the powers necessary to apply for directions from this Court under Sections 34 and 249 of the BIA in respect of any matter related to this Order.
- [15] **AUTHORIZES** the Receiver to retain the services of any lawyer, or of any person or business in order to appropriately fulfil its functions;
- [16] **DECLARES** that the Receiver may provide creditors and other relevant stakeholders with information in response to requests made by them in writing. A copy of such requests must be sent to the Petitioner's attorney. Where the Receiver has been advised by the Petitioner that information is confidential, proprietary or competitive, the Receiver shall not provide such information to any person without the consent of the Petitioner unless otherwise directed by this Court.

SALE PROCEEDS

- [17] **AUTHORIZES** the Receiver, for greater certainty, to remit to the Petitioner any portion of the proceeds of the sale of the Property payable to the Debtor pursuant to the GB Agreement;
- [18] **ORDERS** the Receiver to conserve any proceeds from the sale of any of the Debtor's property pursuant to the Ohio Agreement (the "**Racking Proceeds**") in a distinct bank account until such time as:
- (a) a final order of the Court is rendered resolving the dispute between the Petitioner and the Business Development Bank of Canada (the "**BDC**") regarding the nature and priority of their respective claims against the Racking Proceeds (the "**Racking Dispute**"); or
 - (b) the Petitioner and the BDC confirm to the Receiver in writing that they have reached an agreement or otherwise consensually resolved the Racking Dispute.
- [19] **DIRECTS** Borden Ladner Gervais LLP to remit any Racking Proceeds currently held in trust pursuant to the directions of the Court issued on March 13, 2019 or otherwise to the Receiver to be conserved by the latter in accordance with this Order;
- [20] **DECLARES** that the description of the "CIBC Priority Property" in the Application and of the Property at paragraph 12.1(a) of this Order shall not limit the Petitioner's representations or evidence in the context of the Racking Dispute;

DEBTOR'S DUTIES

- [21] **ORDERS** the Debtor, its directors, officers, employees, agents and representatives to forthwith provide the Receiver with access to the Property, to

the places of business and to the premises of the Debtor, as well as to the Records;

- [22] **ORDERS** the Debtor, its directors, officers, employees, agents and representatives to cooperate with the Receiver in the exercise of the powers that are granted pursuant to the terms of the Order;
- [23] **ORDERS** the Debtor not to dispose, alienate, encumber or otherwise transact in any manner whatsoever, with regard to the Property, other than in the ordinary course of business or with the authorization of the Receiver;

NON-INTERFERENCE WITH THE RECEIVER, THE DEBTOR AND THE PROPERTY

- [24] **ORDERS** that subject to any other order rendered by the Court, which may only be rendered after a prior notice has been duly sent to the Receiver and to the Petitioner, no proceeding, seizure, revendication, or any other enforcement process shall be commenced or enforced against the Property;
- [25] **ORDERS** that no person shall interrupt, modify, terminate or fail to execute its obligations pursuant to any contract, agreement, license or permit entered into with the Debtor without the prior consent of the Receiver or without the authorization of the Court;

CONTINUATION OF SERVICES

- [26] **ORDERS** that any person having an oral or written agreement with the Debtor, as well as any supplier of goods or services to the Debtor is hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, as may be required by the Receiver and that the Receiver shall be authorized to continue use of the Debtor's current premises, telephone numbers, facsimile numbers, internet addresses, domain names and other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver, in accordance with the normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court;

EMPLOYEES

- [27] **AUTHORIZES** but does not require the Receiver to continue to engage the services of the Debtor's employees until the Receiver, acting for and on behalf of the Debtor, terminates the employment of such employees. The Receiver shall not be liable for any employee related liabilities, including any successor-employer liabilities as provided for in sections 14.06(1.2) of the BIA other than such amounts as the Receiver may specifically agree in writing to pay, or in

respect of its obligations under sections 81.4(5) and 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*;

PROTECTION OF PERSONAL INFORMATION

[28] **DECLARES** that the Receiver may, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, disclose personal information on identifiable individuals, which information it has in its possession or under its responsibility, to interested parties or to investors, financiers, prospective purchasers or potential strategic partners, as well as to their advisors, but only to the extent desirable or required, and only upon condition that the persons to whom such personal information is disclosed shall undertake to maintain and protect the privacy of such information and limit the use of such information pursuant to confidentiality agreements entered into with the Receiver.

LIMITATION OF LIABILITY

[29] **DECLARES** that subject to the powers granted to the Receiver pursuant to the terms of paragraph [12] of this Order, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the BIA;

[30] **DECLARES** that the powers of the Receiver shall be exercised pursuant to its sole, absolute and unfettered discretion and judgment;

[31] **DECLARES** that section 215 of the BIA applies *mutatis mutandis*, and hence that no action lies against the Receiver by reason of its appointment or the execution of the powers granted by the Court, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph;

FEES

[32] **DECLARES** that as security for the professional fees and disbursements incurred in relation to these proceedings, both before and after the date of the Order, a charge and security over the Property is hereby constituted in favour of the Receiver, of the Receiver's attorneys and other advisors, to the extent of the aggregate amount of \$ 50,000 (the "**Receiver Administration Charge**");

[33] **DECLARES** that the Receiver Administration 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 "Administration Charge" as defined at paragraph 14 of the Court's Order dated December 13, 2018 as amended on March 13, 2019;

- [34] **DECLARES** that the Receiver Administration Charge is effective and shall charge, as of 12:01 a.m. (Montreal time) the day of the Order (the “**Effective Time**”), all the Debtor’s Property present and future;
- [35] **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 the Petitioner and any receiving order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Receiver pursuant to this Order and the granting of the Receiver Administration Charge does 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 the Debtor;
- [36] **AUTHORIZES** the Receiver to collect the payment of its fees and disbursements and those of its attorneys, with the consent of the Petitioner, the whole subject to taxation in conformity with the *BIA*, if applicable;


GENERAL

- [37] **DECLARES** that this Order, the Application and the affidavit filed in support thereof do not, in and of themselves, constitute a default or failure to comply by the Debtor under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;
- [38] **DECLARES** that the Receiver is 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;
- [39] **DECLARES** that the Receiver 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 the Receiver shall deliver “hard copies” of such materials upon request to any party as soon as practicable thereafter;
- [40] **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 counsels’ email addresses, provided that such party shall deliver a

“hard copy” on paper of such PDF or electronic materials to the Debtor’s and the Receiver’s counsel and to any other party who may request such delivery;

- [41] **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 the Debtor and the Receiver and has filed such notice with the Court;
- [42] **DECLARES** that any interested Person may apply to this Court to vary or rescind this Order or seek other relief upon five (5) days notice to the Receiver, the Petitioner and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;
- [43] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [44] **DECLARES** that the Receiver 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 and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Receiver shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose;
- [45] **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 this Order;
- [46] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

THE WHOLE WITHOUT LEGAL COSTS.



CHANTAL TREMBLAY, J.S.C.

500-11-055629-188

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