



Court File No. CV-19-00624902-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE *Mr. Panny*)
)
) FRIDAY, THE 23rd
 DAY OF AUGUST, 2019

ROSEJACK INVESTMENTS LTD.

Applicant

- and -

DAVIDS FOOTWEAR LTD.

Respondent

LIQUIDATION SALE APPROVAL ORDER

THIS MOTION made by Richter Advisory Group Inc., in its capacity as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Davids Footwear Ltd. (the “**Debtor**”), acquired for, or used in relation to, a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the first report of the Receiver dated August 16, 2019 and the appendices thereto (the “**First Report**”), and on hearing the submissions of counsel for the Receiver and counsel for the Applicant, no one else appearing although duly served as appears from the affidavit of service of Czarina Reyes sworn August 16, 2019, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

FIRST REPORT OF THE RECEIVER

2. **THIS COURT ORDERS** that the First Report, and the activities of the Receiver as set out in the First Report, be and are hereby approved; provided, however, that only the Receiver, in its personal capacity only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

LIQUIDATION SALE

3. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to conduct the Liquidation Sale (as defined and described in the First Report) at the Toronto Stores (as defined in the First Report) in accordance with the sale guidelines attached hereto and marked as Schedule "A" (the "**Sale Guidelines**"), which Sale Guidelines are hereby approved.

4. **THIS COURT ORDERS**, that all of the Debtor's merchandise and furniture, fixtures and equipment purchased in the Liquidation Sale (the "**Liquidation Assets**") shall, upon completion of each sale, be acquired by the purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected,

registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Conway dated August 2, 2019 (the “**Appointment Order**”); and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Liquidation Assets sold in accordance with this Order are hereby expunged and discharged as against such assets.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Liquidation Assets shall stand in the place and stead of those assets, and that all Claims and Encumbrances shall attach to the net proceeds from the sale of the Liquidation Assets with the same priority as they had with respect to those assets immediately prior to the sale, as if the Liquidation Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the sale of the Liquidation Assets pursuant to this Order 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 creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

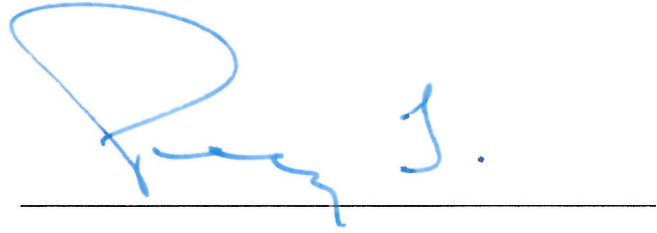
7. **THIS COURT ORDERS** that the Receiver shall provide to the applicable Landlord not less than ten (10) calendar days' prior written notice of its intention to vacate each Toronto Store which is occupied.

GIFT CARDS AND MERCHANDISE CREDITS

8. **THIS COURT ORDERS** that, from and after October 1, 2019, the Receiver be and is hereby authorized to cease honouring and accepting gift cards and merchandise credits issued by the Debtor on or before the date of the Appointment Order.

GENERAL

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



A handwritten signature in blue ink, appearing to read "R. J.", is written above a horizontal line.

SUPERIOR COURT OF JUSTICE
ENTERED

AUG 23 2019
AE
COUR SUPÉRIEURE DE JUSTICE
ENTRÉ

SCHEDULE "A"

SALE GUIDELINES

On August 2, 2019, by order (the "**Appointment Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), Richter Advisory Group Inc. was appointed as receiver (in such capacity, the "**Receiver**") of the assets, undertakings and properties of Davids Footwear Ltd. (the "**Debtor**"). Among other things, the Appointment Order authorizes the Receiver to carry on the business of the Debtor, and to engage such persons as may be necessary to assist the Receiver to carry out its duties under the Appointment Order. The Receiver has engaged certain of the Debtor's employees to continue to operate the Debtor's retail locations and to sell merchandise located at the Stores (as defined below).

The following procedures shall apply to the liquidation sale (the "**Liquidation Sale**") to be conducted by the Receiver at the Stores pursuant to the liquidation sale approval order (the "**Liquidation Order**").

1. Except as otherwise expressly set out herein, and subject to: (i) the Appointment Order, the Liquidation Order, or any further Order of the Court; or (ii) any subsequent written agreement between the Receiver and the applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**"); or (iii) as otherwise set forth herein, the Liquidation Sale shall be conducted in accordance with the terms of the applicable leases or other occupancy agreements to which the affected Landlords are privy (individually, a "**Lease**" and, collectively, the "**Leases**") for the following stores:
 - (a) 1200 Bay Street/ 66 Bloor Street West, Toronto, Ontario;
 - (b) Bayview Village Shopping Centre, 2901 Bayview Avenue, Toronto, Ontario;
 - (c) CF Sherway Gardens, 25 The West Mall, Etobicoke, Ontario; and
 - (d) Yorkdale Shopping Centre, 3401 Dufferin Street, North York, Ontario(individually, a "**Store**" and, collectively, the "**Stores**").

provided, however, that nothing contained herein shall be construed to deem the Receiver to have assumed any Lease, or any obligations thereunder, nor to create or impose upon the Receiver any restrictions in the conduct of the Liquidation Sale which are not contained in the applicable Lease.

2. The Liquidation Sale at each Store shall end at the earlier of (i) the effective time of any notice of intention to vacate a Store delivered by the Receiver to the applicable Landlord in accordance with the Liquidation Order;¹ or (ii) December 2, 2019 (the "**Liquidation Sale Termination Date**"). The Liquidation Sale shall be conducted so that each of the Stores remains open during its normal hours of operation provided for in its respective

¹ The Liquidation Order requires that the Receiver provide the Landlord with at least ten (10) days' notice of its intention to vacate a Store.

Lease until the applicable Liquidation Sale Termination Date for such Store. The Liquidation Sale at the Stores shall end by no later than the Liquidation Sale Termination Date. Occupation rent shall be paid in accordance with the terms of the Appointment Order.

3. The Liquidation Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Receiver in connection with the Liquidation Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Receiver may advertise the Liquidation Sale at the Stores as an “everything on sale”, an “everything must go”, a “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Liquidation Sale as a “bankruptcy”, a “going out of business” or a “liquidation” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request from a Landlord or the Landlord’s counsel, the Receiver shall provide the proposed signage packages along with the proposed dimensions and number of signs by e-mail or facsimile to the applicable Landlords or to their counsel of record. Where the provisions of the Lease conflict with these Sale Guidelines, these Sale Guidelines shall govern. The Receiver shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including “you pay” or “topper” signs). In addition, the Receiver shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the service list in the receivership proceeding (the “**Service List**”). Any banners used shall be located or hung so as to make clear that the Liquidation Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Debtor. If a Landlord is concerned with “store closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Receiver and the Landlord will discuss the Landlord’s concerns and work to resolve the dispute.
5. The Receiver shall not utilize any commercial trucks to advertise the Liquidation Sale on the Landlord’s property or mall ring roads. The Receiver shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Receiver shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.

7. Conspicuous signs shall be posted in the cash register and merchandise areas of each Store to the effect that all sales are “final”.
8. The Receiver shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord’s property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Receiver may solicit customers in the Stores themselves. The Receiver shall not use any giant balloons, flashing lights or amplified sound to advertise the Liquidation Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.
9. At the conclusion of the Liquidation Sale in each Store, the Receiver shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Liquidation Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Liquidation Sale. No permanent fixtures (other than FF&E (defined below) which for clarity is owned by the Debtor) may be removed without the applicable Landlord’s written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Liquidation Sale Termination Date in respect of which the applicable Store has been vacated by the Receiver shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.
10. Subject to the terms of paragraphs 9 and 11 of these Sale Guidelines, and the provisions of the Appointment Order, the Receiver may sell furniture, trade fixtures and equipment owned by the Debtor (“**FF&E**”) which is located in the Stores during the Liquidation Sale. For greater certainty, FF&E does not include any portion of the Stores’ HVAC, sprinkler, fire suppression or fire alarm systems. The Receiver may advertise the sale of FF&E consistent with these Sale Guidelines on the understanding that any applicable Landlord may require that such signs be placed in discreet locations acceptable to the applicable Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Liquidation Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the applicable Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the FF&E can fit in a shopping bag, with the applicable Landlord’s supervision as required by the applicable Landlord. The Receiver shall repair any damage to the Stores resulting from the removal of any FF&E by the Receiver or by third party purchasers of FF&E from the Receiver.
11. The Receiver hereby provides notice to the Landlords of the Receiver’s intention to sell and remove FF&E from the Stores. The Receiver will arrange with each Landlord represented by counsel on the Service List and with any other applicable Landlord that so requests, a walk through with the Receiver to identify the FF&E subject to the Liquidation Sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Receiver’s entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Applicant, the Receiver and such Landlord, or by further Order of the Court upon application by the Receiver on at

least two (2) days' notice to such Landlord and the Applicant. If the Receiver has given notice of its intention to vacate the Store in accordance with the Liquidation Order, it shall not be required to pay occupation rent under the applicable Lease pending resolution of any such dispute (other than occupation rent payable for the notice period provided for in the Liquidation Order), and the vacation of the Store shall be without prejudice to the Receiver's claim to the FF&E in dispute.

12. If a notice of intention to vacate a Store is delivered pursuant to the Liquidation Order to a Landlord while the Liquidation Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the vacation, the applicable Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Receiver 24 hours' prior written notice; and (b) at the effective time of the vacation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Debtor in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Receiver and its agents and representatives shall have the same access rights to the Stores as the Debtor under the terms of the applicable Lease, and the applicable Landlords shall have the rights of access to the Stores during the Liquidation Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Receiver shall not conduct any auctions of merchandise or FF&E at any of the Stores.
15. The Receiver shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Liquidation Sale. The initial contact person for the Receiver shall be Shane Connelly who may be reached by phone at 416-488-2345 ext. 2247 or email at SConnolly@Richter.ca. If the parties are unable to resolve the dispute between themselves, the Landlord or the Receiver shall have the right to schedule a "status hearing" before the Court on no less than two (2) days' written notice to the other party or parties, during which time the Receiver shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Receiver shall not be required to take any such banner down pending determination of the dispute.
16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between the Receiver and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines).

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED

ROSEJACK INVESTMENTS LTD.

-and- DAVIDS FOOTWEAR LTD.

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

LIQUIDATION SALE APPROVAL ORDER

FASKEN MARTINEAU DuMOULIN LLP
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Stuart Brotman (LSO# 43430D)

Tel: 416 865 5419

Fax: 416 364 7813

Email: sbrotman@fasken.com

Dylan Chochla (LSO# 62137I)

Tel: 416 868 3425

Fax: 416 364 7813

Email: dchochla@fasken.com

**Lawyers for Richter Advisory Group Inc., in its capacity
as court-appointed receiver**