

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

THE HONOURABLE

)

TUESDAY, THE 5th

JUSTICE *CONWAY*

)

DAY OF NOVEMBER, 2019

)



BETWEEN:

ROSEJACK INVESTMENTS LTD.

Applicant

- and -

DAVIDS FOOTWEAR LTD.

Respondent

**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**

APPROVAL AND VESTING ORDER

THIS MOTION, made by Richter Advisory Group Inc., in its capacity as the Court-appointed 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, for an order approving the sale transaction (the "**Transaction**") contemplated by a trademark purchase agreement (the "**Sale**

Agreement") between the Receiver and Rosejack Investments Ltd. (the "**Purchaser**") dated October 25, 2019 and appended to the second report of the Receiver dated October 25, 2019 (the "**Second Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and the Appendices thereto, and on hearing the submissions of counsel for the Receiver and counsel for the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Irene Artuso sworn October 28, 2019, filed:

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule "B" hereto shall vest absolutely in 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; 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 Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased 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.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

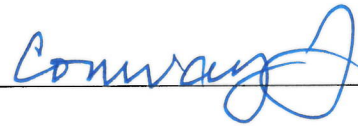
6. THIS COURT ORDERS that, notwithstanding:

- (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 vesting of the Purchased Assets in the Purchaser 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 Appendix "E" of the Second Report, filed separately with the Court, shall be sealed in the Court File pending closing of the Transaction.

8. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States 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.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

NOV 05 2019

PER / PAR:



Schedule A – Form of Receiver’s Certificate

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

B E T W E E N:

ROSEJACK INVESTMENTS LTD.

Applicant

- and -

DAVIDS FOOTWEAR LTD.

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,
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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Conway of the Ontario Superior Court of Justice (the "**Court**") dated August 2, 2019, Richter Advisory Group Inc. was appointed as the 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.

B. Pursuant to an Order of the Court dated November 5, 2019, the Court approved the trademark purchase agreement made as of October 25, 2019 (the "**Sale Agreement**") between the Receiver and Rosejack Investments Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver

to the Purchaser of a certificate confirming (i) that the conditions to Closing as set out in section 1.8 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (ii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The conditions to Closing as set out in section 1.8 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
2. The Transaction has been completed to the satisfaction of the Receiver.
3. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**Richter Advisory Group Inc., in its capacity
as Court-appointed receiver and manager of
the undertaking, property and assets of
Davids Footwear Ltd., and not in its personal
or corporate capacity**

Per: _____
Name:
Title:

Schedule B – Purchased Assets

TRADEMARKS

DAVIDS

DAVIDS FOOTWEAR

Country	Trademark	Application Number	Filing Date	Registration Number	Registration Date
Canada	DAVIDS	1402513	July 8, 2008	TMA773416	July 30, 2010

DOMAIN NAMES

www.davidsfootwear.com

TRADENAMES / BUSINES NAMES

Davids

Davids Footwear

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

APPROVAL AND VESTING ORDER

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