



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

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

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**

**NOTICE OF APPLICATION
(Returnable August 2, 2019)**

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List on Friday, August 2, 2019 at 10:00 a.m. or so soon thereafter at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS - EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than two (2) days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date August 2, 2019

Issued by



Local Registrar
Alexandra Medeiros Cardoso
Registrar, Superior Court of Justice

Address of court office:
330 University Avenue
7th Floor
Toronto, ON M5G 1R7

TO: ATTACHED SERVICE LIST

Service List

TO:	<p>BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West Toronto, ON M5H 4E3 Tel: (416) 367-6000 Fax: (416) 367-6749</p> <p>Roger Jaipargas Tel: (416) 367-6266 rjaipargas@blg.com</p> <p>Lawyers for Rosejack Investments Ltd.</p>
AND TO:	<p>RICHTER ADVISORY GROUP INC. 181 Bay Street Suite 3320 Bay Wellington Tower Toronto, ON M5J 2T3</p> <p>Adam Sherman Tel: (416) 642-4836 asherman@richter.ca</p> <p>Pritesh Patel Tel: (416) 642-9421 ppatel@richter.ca</p> <p>Proposed Receiver</p>
AND TO:	<p>FASKEN MARTINEAU DUMOULIN LLP 333 Bay Street, Suite 2400 Toronto, ON M5H 2T6</p> <p>Stuart Brotman Tel: (416) 865-5419 sbrotman@fasken.com</p> <p>Lawyers for Richter Advisory Group Inc., Proposed Receiver</p>

AND TO:	DEPARTMENT OF JUSTICE (CANADA) Ontario Regional Office 120 Adelaide Street West Suite 400 Toronto, ON M5H 1T1 Diane Winters Tel: (416) 973-3172 diane.winters@justice.gc.ca
AND TO:	MINISTRY OF FINANCE Legal Services Branch College Park 777 Bay Street 11th Floor Toronto, ON M5G 2C8 Kevin O'Hara, Counsel Tel: (416) 327-8463 kevin.ohara@ontario.ca

APPLICATION

1. The Applicant, Rosejack Investments Ltd. ("**Rosejack**" or the "**Lender**"), makes an application for an Order substantially in the form filed herewith. The Order to be requested on August 2, 2019, the return date of this Application, seeks an Order, *inter alia*:

- (a) abridging the time for service of the Notice of Application and the Application Record and dispensing with further service thereof;
- (b) appointing Richter Advisory Group Inc. ("**Richter**") as receiver (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings and properties (the "**Property**") of Davids Footwear Ltd. (the "**Debtor**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**");
- (c) granting a charge over the Property in favour of the Receiver and the Receiver's counsel to secure their fees and disbursements in respect of these proceedings on the terms as set out in the draft order filed (the "**Receiver's Charge**"); and
- (d) such further and other relief as counsel may request and this Honourable Court may permit.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

- (a) The Debtor is currently indebted to Rosejack pursuant to a Secured Demand Grid Promissory Note dated November 6, 2017;
- (b) The obligations of the Debtor to Rosejack are secured by a General Security Agreement dated November 6, 2017;
- (c) The obligations of the Debtor are repayable on demand;
- (d) On July 31, 2019, the Lender issued a demand for payment and a Notice of Intention to Enforce Security ("**NITES**") to the Debtor and pursuant to the BIA, and the 10 day notice period under the NITES has now expired;

- (e) the Lender seeks to appoint the Receiver to secure the Property and review the alternatives with a view to maximizing value for all stakeholders;
- (f) Richter is a licensed trustee in bankruptcy;
- (g) the appointment of Richter as receiver is just and convenient in the circumstances;
- (h) section 243(1) of the BIA;
- (i) section 101 of the CJA;
- (j) rules 1.04, 2.03, 3.02, 16 and 38 of the Rules of Civil Procedure, R.R.O. 1990. Reg. 194, as amended; and
- (k) such further and other grounds as counsel may advise and this Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- (a) the Affidavit of Larry Rosen sworn July 31, 2019 and the exhibits referred to therein; and
- (b) such further and documentary evidence as counsel may advise and this Court may permit.

August 2, 2019

BORDEN LADNER GERVAIS LLP

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PROCEEDINGS COMMENCED AT TORONTO

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