

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the
Bankruptcy and Insolvency Act (the "BIA"),
R.S.C. 1985, c. B-3)

No.: 500-11-057804-201
No.: 500-11-057805-208

**IN THE MATTER OF THE NOTICES OF
INTENTION TO MAKE A PROPOSAL OF:**

**FREEMARK APPAREL BRANDS RETAIL BE
INC.**

- and -

**FREEMARK APPAREL BRANDS GROUP
INC.**

Debtors/Petitioners

- and -

RICHTER ADVISORY GROUP INC.

Trustee

**MOTION FOR A THIRD EXTENSION OF TIME TO FILE A PROPOSAL
(Section 50.4(9) of the *Bankruptcy and Insolvency Act* (the "BIA"))**

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR THE REGISTRAR, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE DEBTOR RESPECTFULLY SUBMITS THE FOLLOWING:

Introduction

1. On January 21, 2020, Freemark Apparel Brands Retail BE Inc. ("**FAB Retail**") and Freemark Apparel Brands Group Inc. ("**FAB Wholesale**") and, together with FAB Retail, the "**Debtors**") each filed a notice of intention to make a proposal and Richter Advisory Group Inc. ("**Richter**") was designated as trustee, as appears from the court record.

2. On February 20, 2020, this court extended the delay for the Debtors to file a proposal to April 3, 2020, as appears from the court record.
3. On March 27, 2020, this court issued an *Order Approving a Transaction and Ordering the Assignment of Agreements*, thereby approving a transaction between FAB Wholesale and 11951432 Canada Inc. regarding certain assets of FAB Wholesale, as appears from the record of this court.
4. On April 3, 2020, this court further extended the delay for the Debtors to file a proposal to May 15, 2020, as appears from the court record.
5. By the present motion, the Debtors seek a third extension of time for the filing of a proposal until June 29, 2020, for the reasons more fully explained below.

The Debtors' Business and Creditors

(i) Business and Corporate Structure

6. The Debtors are companies governed by the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, incorporated in 2017. Their registered office is located in Montreal.
7. At the time of the filing of the NOIs, FAB Retail operated a clothing retail business from a total of 25 retail locations throughout Canada under the Bench brand (the "**Stores**") and online.
8. At the time of the filing of the NOIs, FAB Wholesale operated the wholesale business of the FAB Group.
9. Immediately prior to the filing of the NOI, the FAB Group had approximately 338 full-time and part-time employees. As a result of the closure of all of FAB Retail's Stores on March 19, 2020 due to the impact of the coronavirus and the Transaction (as defined below), most of the remaining employees, which were Store employees as well as distribution centre and head office employees, have been terminated.

(ii) Indebtedness and Obligations

10. The Debtors' only secured creditors are Accord Financial Inc. ("**Accord**") and Freemark Apparel Holdings Inc. ("**FAHI**"). Until the closing of the Transaction (as defined below), which led to its complete repayment, Gordon Brothers Brands, LLC ("**GBB**") was also a secured creditor of the Debtors.
11. Accord, the Debtors and other related entities are party to a Loan Agreement dated as at May 12, 2017, as amended (the "**Loan Agreement**").
12. The Debtors' obligations under the Loan Agreement are secured by first ranking security and liens on substantially all of the Debtors' assets.

13. As a result of the Debtors' insolvency and the imminent filing of the NOIs, on January 21, 2020, Accord, the Debtors and other related entities entered into a forbearance agreement (the "**Forbearance Agreement**").
14. The Forbearance Agreement was necessary to ensure that the Debtors would have access to financing during the NOI proceedings.
15. As at the date of the filing of the NOIs, the Debtors owed approximately CA \$15.1 million to Accord. Since the filing of the NOIs, the Debtors' indebtedness to Accord has been substantially reduced to approximately CA \$5.7 million as of May 4, 2020, as a result of the Liquidation Sale (as defined below) and of the Transaction (as defined below).
16. As at the date of the filing of the NOIs, the Debtors owed approximately CA \$14,686,335 to FAHI in respect of shareholder loans.
17. As at the date of the filing of the NOIs, the Debtors owed approximately US \$4,534,000 to GBB in respect of a balance of sale for the purchase of Bench Americas IP (as defined below). As a result of the Transaction (as defined below), the Debtors' indebtedness to GBB has been repaid in full.
18. As at the date of the filing of the NOIs, FAB Retail owed an aggregate amount of approximately \$738,000 to various unsecured creditors, including trade creditors such as suppliers and Landlords. As at the date of the filing of the NOIs, FAB Wholesale owed an aggregate amount of approximately \$5.2 million to various unsecured creditors. It is expected that the actual amounts owing to the Debtors' unsecured creditors may vary once a claims process has been put in place and as a result of the disclaimer, on March 20, 2020, of all of FAB Retail's leases for the Stores.

Debtors' Activities Since the Filing of the NOIs

(i) Liquidation Sale

19. On January 31, 2020, this Court rendered an order authorizing FAB Retail to conduct a liquidation sale (the "**Liquidation Sale**") of all of the retail inventory located in the Stores and of all of the furnishings, fixtures and equipment located therein.
20. Following the issuance of the Liquidation Order, FAB Retail commenced the Liquidation Sale. FAB Retail and Richter expected that the Liquidation Sale would continue until at least the end of April, 2020.
21. However, as a result of the impact of the coronavirus, and similar to many other retailers, FAB Retail has had no choice but to close all of its Stores effective March 19, 2020.

22. On March 20, 2020, FAB Retail issued notices to its lessors to disclaim or resiliate the leases in respect of each of its Stores pursuant to subsection 65.2 of the *BIA*. The disclaimer or resiliation of the Stores leases has not been contested by any of the landlords.
23. On March 23, 2020, FAB Wholesale issued a notice to its lessor to resiliate the lease in respect of its warehouse space pursuant to subsection 65.2 of the *BIA*. FAB Wholesale vacated the warehouse on April 23, 2020 with all remaining inventory moved to a temporary warehouse in the greater Montreal area (the “**Temporary Warehouse**”).
24. On March 30, 2020, FAB Wholesale issued a notice to its lessor to resiliate the lease in respect of its head office located in Montreal. The Purchaser (as defined below) is occupying the head office premises on a temporary basis pursuant to an agreement with the landlord.
25. Following the closure of the Stores, FAB Retail has returned all remaining retail inventory (the “**Remaining Retail Inventory**”) to the Temporary Warehouse and intends to liquidate the said inventory at a later date to be determined once the Covid-19 pandemic is over. No efficient and appropriate liquidation can be pursued for the time being.
26. Given the unexpected impact of the Covid-19 pandemic and its economic consequences, even before the closure of the Stores and the termination of the retail operations and of the related Liquidation Sale, the cash-flow did not allow for the payment of the rent for the disclaimer or resiliation period (i.e. the period of thirty days following the issuance of the disclaimer or resiliation notices). Although such rent payments have not been made, the extension sought in the present Motion will not cause the landlords to suffer a greater prejudice than if a bankruptcy was to occur on May 15, 2020.

(ii) The Sale and Investment Solicitation Process and the Transaction

27. On February 7, 2020, the Debtors, with the assistance of Richter, launched a sale and investment solicitation process (the “**SISP**”) in respect of:
 - (i) certain intellectual property and other rights relating to the “Bench” brand in respect to Canada, the United States and certain other jurisdictions in the Americas (the “**Bench Americas IP**”) owned by FAB Wholesale through its wholly owned affiliate FAB IP CO LP (“**FAB IP**”);
 - (ii) the right to acquire the certain intellectual property and other rights and licenses relating to the “Bench” brand for those territories not included within the Bench Americas IP (the “**Bench ROW IP**”). The Bench ROW IP is owned by an affiliate of GBB. FAB Wholesale has the exclusive option to purchase same; and
 - (iii) the order book owned by FAB Wholesale.

28. On March 13, 2020, the deadline to submit bids, Richter received only one offer in accordance with the SISP, from 11951432 Canada Inc. (the “**Purchaser**”), an entity related to the Debtors. Richter, in consultation with Accord, and without the involvement of the Debtors or their counsel, concluded that the transaction contemplated in the offer submitted by the Purchaser (the “**Transaction**”) was in the best interest of the Debtors’ stakeholders.
29. On March 27, 2020, this court issued an order approving the Transaction, as appears from the record of this court.
30. The Transaction closed on March 30, 2020.

Extension of Time

31. Since the filing of the NOIs, the Debtors, with the assistance of Richter, have been diligently working to assess their options and alternatives to maximize the value of their assets for the benefit of their creditors.
32. Following the filing of the NOIs, the Debtors concentrated their efforts and resources on organizing and supporting the Liquidation Sale and on launching the SISP and, subsequently, on negotiating and closing the Transaction.
33. Since the closing of the Transaction and the forced interruption of the Liquidation Sale, the Debtors have focused their efforts on exploring possible options to fund a proposal and, among other things, have taken steps with a view to initiate discussions with their directors and officers liability insurer, although this exercise has been delayed as a result of the disruption caused by the Covid-19 pandemic.
34. The extension of time sought herein will allow the Debtors to complete their determination as to whether or not a viable proposal can be formulated for the benefit of their creditors and to assess their options with respect to the Remaining Retail Inventory.
35. Richter supports the issuance of the order sought herein.
36. Accord Financial Inc. and FAHI, the Debtors’ only remaining secured creditors, have been notified of the presentation of the present motion and have confirmed that they support the issuance of the order sought herein.
37. A copy of the Debtors’ cash-flow statement and a copy of Richter’s fifth report on the state of the Debtors’ business and financial affairs, are communicated herewith, *en liasse*, as **Exhibit R-1**.
38. If the extension sought is granted, the Debtors as well as Richter are not aware that any creditor will be materially prejudiced. On the contrary, if the extension is not granted and the Debtors become bankrupt, a significant prejudice will be suffered by all of the Debtors’ stakeholders, including its creditors.

39. The Debtors have acted and are acting in good faith and with due diligence.
40. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

- [1] **GRANT** the present *Motion for a Third Extension of Time to File a Proposal*;
- [2] **EXTEND** to June 29, 2020, the time granted to the Debtors, Freemark Apparel Brands Group Inc. and Freemark Apparel Brands Retail BE Inc., to file a proposal with the Official Receiver;
- [3] **ORDER** the provisional execution of the order to be rendered notwithstanding any appeal.
- [4] **THE WHOLE** without costs, save in case of contestation.

MONTREAL, May 8, 2020

Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP
Counsel for Freemark Apparel Brands Group Inc.
and Freemark Apparel Brands Retail BE Inc.

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
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- and -

**FREEMARK APPAREL BRANDS GROUP
INC.**

Debtors/Petitioners

- and -

RICHTER ADVISORY GROUP INC.

Trustee

LIST OF EXHIBITS

EXHIBIT R-1 *En liasse*, copy of the Debtors' cash-flow statement and copy of Richter Advisory Group Inc.'s fifth report on the state of the Debtors' business and financial affairs

MONTREAL, May 8, 2020

Davies Ward Phillips & Vineberg LLP

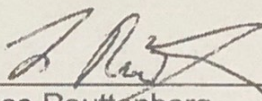
DAVIES WARD PHILLIPS & VINEBERG LLP
Counsel for Freemark Apparel Brands Group Inc.
and Freemark Apparel Brands Retail BE Inc.

AFFIDAVIT

I, the undersigned, Lawrence Routtenberg, co-president of Freemark Apparel Brands Retail BE Inc. and Freemark Apparel Brands Group Inc., having a place of business at 5640, Paré Street, in the City of Mont-Royal, Quebec, solemnly declare the following:

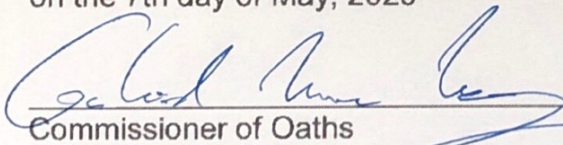
1. I am the co-president of the Debtors/Petitioners herein and I am duly authorized for the purposes hereof;
2. I have taken cognizance of the attached *Motion for a Third Extension of Time to File a Proposal*; and
3. All the facts alleged in the said motion are true.

AND I HAVE SIGNED



Lawrence Routtenberg

Solemnly affirmed before me in Montréal
on the 7th day of May, 2020



Commissioner of Oaths

Member of the Barreau du Québec

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Trustee

NOTICE OF PRESENTATION

TO: the Service List

TAKE NOTICE that the attached *Motion for a Third Extension of Time to File a Proposal* will be presented for hearing and allowance on May 14, 2020, at a time to be determined by the Court, and by conference call or video-conference in accordance with further instructions from the Court, which time and instructions shall be communicated to the Service List.

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, May 8, 2020

Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP
Counsel for Freemark Apparel Brands Retail BE
Inc. and Freemark Apparel Brands Group Inc.

SUPERIOR COURT

(Commercial Division)

District of Montréal

In the Matter of the Notices of Intention to Make a
Proposal of:

Freemark Apparel Brands Retail BE Inc
Freemark Apparel Brands Group Inc.

Debtors/Petitioners

-and-

Richter Advisory Group Inc.

Trustee

Motion for a Third Extension of Time to File a
Proposal, Affidavit, List of Exhibits and Notice of
Presentation

ORIGINAL

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