

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)
« In Bankruptcy and Insolvency »

1

Court No. : 500-11-042467-122
File No.: 41-1610492

IN THE MATTER OF THE PROPOSAL AND OF THE
APPOINTMENT OF A RECEIVER TO:

*Vu les allégés, affi-
dout, représentés
entendus et pièces
produits.*

4021568 CANADA INC., a company duly
incorporated under the *Canada Business
Corporations Act* having its head office at 925-
9600 Meilleur Street, Montreal, Province of
Québec, H2N 2E3

Debtor

Accorde la présente -and-

**CANADIAN IMPERIAL BANK OF
COMMERCE**, a bank governed by the *Bank
Act (Canada)*, having a place of business at
1155 René Lévesque Blvd. West, Montreal,
Province of Québec, H3B 3Z4

Petitioner

*rejetée suivant
ses conclusions.*

*R S M Richter Inc.
(Gilles Robillard CA,
administrateur dési-
gné). est nommé
seigneur avec pou-
voirs de recueillir*

**RSM RICHTER INC. (Gilles Robillard, CA,
CIRP, designated administrator)**, a legal
person duly constituted, having a place of
business at 2 Place Alexis Nihon, Suite 2200,
Montreal, Province of Québec, H3Z 3C2

Proposed Receiver

*aux conclusions des
présents. MRC le 5 avril 2012*

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[Signature]

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Greffier adjoint

**MOTION FOR THE APPOINTMENT OF A RECEIVER, FOR THE
AUTHORIZATION OF A SALE OF THE DEBTOR'S ASSETS
AND FOR A VESTING ORDER**

(Section 243 of the *Bankruptcy and Insolvency Act*)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING
IN BANKRUPTCY AND INSOLVENCY MATTERS, IN AND FOR THE DISTRICT OF
MONTREAL, OR TO THE REGISTRAR THEREOF, THE PETITIONER
RESPECTFULLY SUBMITS AS FOLLOWS:

I. INTRODUCTION

1. The Petitioner, Canadian Imperial Bank of Commerce (the "Bank"), hereby requests that this honourable Court (i) appoint RSM Richter Inc. (Gilles Robillard, CA, CIRP, designated administrator) (the "Receiver" or "Richter")

Enregistré et
Gouvernement
Québec
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SUPERIOR COURT

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No: 500-11-042467-122

DATE: April 5, 2012

PRESIDING: ME CHANTAL FLAMAND

IN THE MATTER OF THE PROPOSAL AND OF THE APPOINTMENT OF A RECEIVER TO:

4021568 CANADA INC.

Debtor

-and-

CANADIAN IMPERIAL BANK OF COMMERCE

Petitioner

-and-

**RSM RICHTER INC. (Gilles Robillard, CA, CIRP,
designated administrator)**

Proposed Receiver

JUDGMENT

- [1] **THE COURT**, seized of Motion for the appointment of a receiver, for the authorization of a sale of the debtor's assets and for a vesting order;
- [2] **CONSIDERING** representations of counsel for the Petitioner, the affidavit, the Exhibits and the Proposed Receiver's report;

[3] **CONSIDERING** the consent of the Debtor;

[4] **FOR THESE REASONS, THE COURT:**

[5] **GRANTS** the Motion for the appointment of a receiver, for the authorization of a sale of the debtor's assets and for a vesting order (the "**Motion**");

I. **SERVICE**

[6] **EXEMPTS** the Petitioner, Canadian Imperial Bank of Commerce (the "**Petitioner**"), from having to serve the Motion and from any notice of presentation and **ABRIDGE** any delay of service, production or presentation;

II. **APPOINTMENT**

[7] **APPOINTS** RSM Richter Inc. (Gilles Robillard, CA, CIRP, designated administrator) as Receiver to the property of the Debtor (also carrying on business under the trade name Foxy) ("**Foxy**" or the "**Debtor**"), pursuant to section 243 of the *Bankruptcy and Insolvency Act*;

III. **RECEIVER'S POWERS**

[8] **AUTHORIZES** the Receiver to take possession of the "**Purchased Assets**", namely the Closing Date Accounts Receivable", the "Closing Date Inventory", all "Intellectual Property" and the "Contractual Rights" (as these terms are defined in the offer presented by the Purchaser (as defined hereunder) for purchase of same filed as Exhibit R-7 in support of the Motion (the "**Offer**")) for the purpose of completing the Proposed Transaction (as defined hereunder) and to exercise the following powers listed hereinafter:

[9] **AUTHORIZES** the Receiver to retain the services of any lawyer, or of any person or business in order to appropriately fulfil its functions;

[10] **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.

IV. **AUTHORIZATION OF THE SALE OF THE PURCHASED ASSETS**

[11] **ORDERS AND DECLARES** that the sale of the Purchased Assets to an entity or entities (the "**Purchaser**") to be designated by Alen Brandman, president of Fame Jeans Inc., and all other transactions contemplated by the Offer (R-7) (collectively, the "**Proposed Transaction**") are hereby approved, and that the execution of an Asset Purchase Agreement under the terms of the Offer by the Receiver is hereby authorized and approved subject to such non material amendments and modifications as the parties may agree, and 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 Proposed Transaction and for the conveyance of the Purchased Assets to the Purchaser;

[12] **ORDERS AND DECLARES** that upon the filing of a Receiver's certificate in this Court record, which delivery shall take place upon payment of the full purchase price contemplated by the Proposed Transaction, substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's rights, title and interests in and to the Purchased Assets 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 (including without limitation the "Administration Charge", as defined hereunder), or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to the *Civil Code of Québec* or any other personal property registry system (all of which are collectively referred to as "**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. Notwithstanding the generality of the foregoing, this Court further orders that the term "Encumbrances" shall not include any claims and rights in respect of the "Warehouse Lien" as defined in the Offer (R-7).

[13] **ORDERS** that 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 Encumbrances, except for the "Warehouse Lien" as defined in the Offer (R-7), 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;

[14] **ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof;

V. DISTRIBUTION OF THE PROCEEDS FROM THE PROPOSED TRANSACTION

[15] **ORDERS** that (i) the amount of \$100,000 allocated to the Intellectual Property in the Proposed Transaction be kept *in trust* by the Receiver in order to, in the event the Proposal (R-1) of the Debtor is accepted by the Debtor's affected creditors and approved by the Court, finance the obligations of the Debtor under said Proposal (R-1) or, in the negative, be remitted to the trustee to the bankruptcy; and (ii) the balance of the proceeds from the Proposed Transaction shall be distributed by the Receiver pursuant to the distribution order of the *Bankruptcy and Insolvency Act*;

VI. DEBTOR'S DUTIES

[16] **ORDERS** the Debtor, its directors, officers, employees, agents and representatives to forthwith provide the Receiver with access to the Purchased Assets;

- [17] **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;
- [18] **ORDERS** the Debtor not to dispose, alienate, encumber or otherwise transact, in any manner whatsoever, with regard to the Purchased Assets, other than as contemplated by the Proposed Transaction or with the authorization of the Receiver;

VII. LIMITATION OF LIABILITY

- [19] **DECLARES** that subject to the powers granted to the Receiver pursuant to the terms of paragraph [8] of the Order, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. 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*;
- [20] **DECLARES** that the powers of the Receiver shall be exercised pursuant to its sole discretion and judgment;
- [21] **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;

VIII. FEES

- [22] **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 Purchased Assets other than the "Intellectual Property" and the "Contractual Rights" (the "**Secured Assets**") is hereby constituted in favour of the Receiver, of the Receiver's attorneys and other advisors, to the extent of the aggregate amount of \$ 100,000 (the "**Administration Charge**");
- [23] **DECLARES** that the Administration Charge shall rank in priority to any and all other Encumbrances affecting the Secured Assets charged by such Encumbrances;
- [24] **DECLARES** that the Administration Charge is effective and shall charge, as of 12:01 a.m. (Montreal time) the day of this Order (the "**Effective Time**"), all the Secured Assets present and future;
- [25] **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;

IX. GENERAL

[26] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the *BIA* in respect of the Debtor and any receiving order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of the Debtor and (iii) the provisions of any federal or provincial statute, the sale of the Purchased Assets under the Proposed Transaction and the granting of the Administration Charges do not and will not constitute transactions at undervalue, settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under any applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy;

[27] **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;

[28] **ORDERS** that Exhibits R-7 and R-10 be kept under seal until further order of this Court;

[29] **DISPENSES** the parties from service of the present judgment;

[30] **THE WHOLE** without costs.

[31] *ORDERS The provisional execution of the present Order notwithstanding appeal.*

[Signature]

register

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[Signature]
Greffier adjoint

C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SCHEDULE A

SUPERIOR COURT
(Commercial Division)
« In Bankruptcy and Insolvency »

Court No. : 500-11-
File No.:

**IN THE MATTER OF THE PROPOSAL AND OF THE
APPOINTMENT OF A RECEIVER TO:**

4021568 CANADA INC., a company duly
incorporated under the *Canada Business
Corporations Act* having its head office at 925-9600
Meilleur Street, Montreal, Province of Québec,
H2N 2E3

Debtor

-and-

CANADIAN IMPERIAL BANK OF COMMERCE, a
bank governed by the *Bank Act* (Canada), having a
place of business at 1155 René Lévesque Blvd.
West, Montreal, Province of Québec, H3B 3Z4

Petitioner

-and-

**RSM RICHTER INC. (Gilles Robillard, CA, CIRP,
designated administrator)**, a legal person duly
constituted, having a place of business at 2 Place
Alexis Nihon, Suite 2200, Montreal, Province of
Québec, H3Z 3C2

Proposed Receiver

RECEIVER'S CERTIFICATE

RECITAL

Pursuant to an order dated April __, 2012 (the "**Order**"), this Court approved a transaction to be made by RSM Richter Inc., in its capacity as Receiver to the property of Debtor 4021568 Canada Inc. (the "**Receiver**"), and an entity or entities (the "**Purchaser**") to be designated by Alen Brandman, president of Fame Jeans Inc., pursuant to the terms and conditions of the offer filed as Exhibit R-7 in support of the *Motion for the appointment of a receiver, for the authorization of a sale of the debtor's assets and for a vesting order* (the "**Offer**") and provided for, *inter alia*, the vesting in the Purchaser of the Debtor's right, title and interest in and to the "**Purchased Assets**" (as defined in the Offer), which vesting is to be effective upon the filing with the office of this Court of a certificate duly signed by the Receiver confirming (i) the full payment

by the Purchaser of the "Purchase Price" (as defined in the Offer), (ii) that the conditions to Closing have been satisfied or waived by the Receiver or the Purchaser as the case may be, and (iii) that the transaction contemplated by the Offer have been completed to the satisfaction of the Receiver (this "Certificate").

THE RECEIVER CERTIFIES the following:

- 1. The Purchaser paid the Purchase Price in full;
- 2. The conditions to Closing have been satisfied or waived by the Receiver and/or the Purchaser, as the case may be, and the transaction contemplated by the Offer has been satisfactorily completed.
- 3. This Certificate is delivered by the Receiver on April ____, 2012

RSM RICHTER INC., in its capacity as Receiver to the property of 4021568 Canada Inc.

Per: _____
Name:
Title: