

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.)
JUSTICE WILTON-SIEGEL)
)
)

MONDAY, THE 30TH)
DAY OF JANUARY, 2017)



IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF GRAFTON-FRASER INC. (the "Applicant")

APPROVAL ORDER — CONSULTING AGREEMENT

THIS MOTION made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "CCA") for an order, inter alia, approving: (i) the transactions contemplated under the Consulting Agreement entered into between the Applicant and a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together the "Consultant") on January 24, 2017 (the "Consulting Agreement") and certain related relief; was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicant, the Affidavit of Mark Sun sworn on January 25, 2017 including the exhibits thereto (the "Sun Affidavit"), and the Pre-Filing Report and the first report (the "Monitor's First Report") of Richter Advisory Group Inc., in its capacity as Monitor (the "Monitor"), filed, and on hearing the submissions of respective counsel for the Applicant, the Monitor, the Consultant, Canadian Imperial Bank of Commerce, GSO Capital Partners LP, The Cadillac Fairview Corporation Limited, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order (the "**Initial Order**") and the Consulting Agreement, as applicable.

APPROVAL OF THE CONSULTING AGREEMENT

3. **THIS COURT ORDERS** that the Consulting Agreement, including the Sales Guidelines attached hereto as Schedule "A" hereto (the "**Sales Guidelines**"), and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Consulting Agreement by Applicant is hereby approved, authorized, and ratified with such minor amendments as Applicant (with the consent of the Monitor) and the Consultant may agree to in writing. Subject to the provisions of this Order, and the Initial Order, the Applicant is hereby authorized and directed to take any and all actions, including, without limitation, execute and deliver such additional documents, as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein.

THE SALE

4. **THIS COURT ORDERS** that the Applicant with the assistance of the Consultant is authorized to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sales Guidelines and to advertise and promote the Sale within the Closing Stores in accordance with the Sales Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sales Guidelines, the order of priority of documents to resolve such conflicts is as follows: (1) the Order; (2) the Sales Guidelines; and (3) the Consulting Agreement.
5. **THIS COURT ORDERS** that subject to paragraph 12 of the Initial Order, the Applicant with the assistance of the Consultant, is authorized to market and sell the Merchandise and the FF&E free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been

perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order, (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "**Claims**"), including, without limitation the Directors' Charge, the Administration Charge, the Term Lenders' DIP Charge, the ABL Lender's DIP Charge or the KERP Charge, and any other charges hereafter granted by this Court in these proceedings (collectively, the "**CCAA Charges**"), and all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as "**Encumbrances**"), which Encumbrances will attach instead to the proceeds of sale of the Merchandise and FF&E other than amounts due and payable to the Consultant by the Applicant under the Consulting Agreement, in the same order and priority as they existed on the Sale Commencement Date and, subject to paragraph 17 of this Order, such proceeds shall be dealt with in accordance with paragraph 48 of the Initial Order.

6. **THIS COURT ORDERS** that subject to the terms of this Order and the Initial Order, the Sales Guidelines and the Consulting Agreement, the Consultant shall have the right to enter and use the Closing Stores and all related Closing Store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Closing Stores, and other assets of Applicant as designated under the Consulting Agreement, for the purpose of conducting the Sale and for such purposes, the Consultant shall be entitled to the benefit of the Applicant's stay of proceedings provided under the Initial Order as such stay of proceedings may be extended by further Order of the Court.
7. **THIS COURT ORDERS** that until the applicable Sale Termination Date for each Closing Store (which shall in no event be later than April 30, 2017), the Consultant shall have access to the Closing Stores in accordance with the applicable leases and the Sales Guidelines on the basis that the Consultant is assisting the Applicant and the Applicant has granted the right of access to the applicable Closing Store to the Consultant. To the extent that the terms of the applicable leases are in conflict with

any term of this Order or the Sales Guidelines, the terms of this Order and the Sales Guidelines shall govern.

8. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the leases for Applicant's leased Closing Stores. Nothing contained in this Order or the Sales Guidelines shall be construed to create or impose upon Applicant or the Consultant any additional restrictions not contained in the applicable lease or other occupancy agreement.
9. **THIS COURT ORDERS** that except as provided for in Section 4 hereof in respect of the advertising and promotion of the Sale within the Closing Stores, subject to, and in accordance with this Order, the Consulting Agreement and the Sales Guidelines, the Consultant is authorized to advertise and promote the Sale, without further consent of any Person other than the Applicant and the Monitor as provided under the Consulting Agreement or a Landlord as provided under the Sales Guidelines.
10. **THIS COURT ORDERS** that the Consultant shall have the right to use, without interference by any intellectual property licensor, the Applicant's trademarks and logos, as well as all licenses and rights granted to the Applicant to use the trade names, trademarks, and logos of third parties, relating to and used in connection with the operation of the Closing Stores solely for the purpose of advertising and conducting the Sale of the Merchandise or FF&E in accordance with the terms of the Consulting Agreement, the Sales Guidelines, and this Order, provided that the Consultant provides the Applicant with a copy of any advertising prior to its use in the Sale.

CONSULTANT LIABILITY

11. **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to Applicant and that it shall not be liable for any claims against Applicant other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sales Guidelines. More specifically:
 - (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Closing Stores, of the assets located therein or

associated therewith or of Applicant's employees (including the Closing Store Employees) located at the Closing Stores or any other property of Applicant;

- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) Applicant shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Closing Stores during and after the Sale Term in connection with the Sale, except to the extent such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

12. **THIS COURT ORDERS** to the extent the Landlords (or any of them) may have a claim against Applicant arising solely out of the conduct of the Consultant in conducting the Sale for which Applicant has claims against the Consultant under the Consulting Agreement, Applicant shall be deemed to have assigned free and clear such claims to the applicable Landlord (the "**Assigned Landlord Rights**").

CONSULTANT AN UNAFFECTED CREDITOR

13. **THIS COURT ORDERS** that the Consulting Agreement shall not be repudiated, resiliated or disclaimed by Applicant nor shall the claims of the Consultant pursuant to the Consulting Agreement be compromised or arranged pursuant to any plan of arrangement or compromise among Applicant and its creditors (a "**Plan**"). The Consultant shall be treated as an unaffected creditor in these proceedings and under any Plan.
14. **THIS COURT ORDERS** that Applicant is hereby authorized to remit, in accordance with the Consulting Agreement, all amounts that become due to the Consultant thereunder.

15. **THIS COURT ORDERS** that, no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant to the Consulting Agreement and, at all times, the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Consulting Agreement.
16. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("BIA") in respect of Applicant or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of Applicant; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (collectively "**Agreement**") which binds Applicant:
- (i) the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Consultant, and
 - (ii) the Assigned Landlord Rights,
- shall be binding on any trustee in bankruptcy that may be appointed in respect to Applicant and shall not be void or voidable by any Person, including any creditor of Applicant, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

FF&E PROCEEDS

17. **THIS COURT ORDERS** that the Applicant is hereby authorized to transfer on a regular basis, as determined is appropriate in consultation with the Monitor, to an account of the Monitor the sale proceeds, on a motion supported by the Borrower, from the disposition of the FF&E and the Monitor is hereby authorized to hold such

funds in trust for the Applicant in an account opened at a Canadian chartered bank for this purpose, subject to further Order of the Court authorizing and directing the distribution of such proceeds. Any distribution of the sale proceeds generated from the sale of the FF&E shall be net of the fees and the out of pocket expenses related to the disposition of such FF&E reimbursed by the Applicant in accordance with the Consulting Agreement and approved by the Monitor.

BULK SALES ACT AND OTHER LEGISLATION

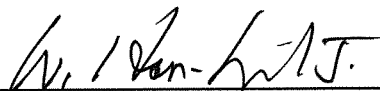
18. **THIS COURT ORDERS AND DECLARES** that the transactions contemplated under the Consulting Agreement shall be exempt from the application of the *Bulk Sales Act* (Ontario) and any other equivalent federal or provincial legislation.
19. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.
20. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effects to this Order and to assist Applicant, the Monitor and their respective 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

SEALING ORDER

21. **THIS COURT ORDERS** that Confidential Appendix "1" of the Monitor's First Report, filed separately with the Court, shall be sealed in the Court File pending further Order of the Court.

ENTERED AT / INSCRIT À TORONTO
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JAN 30 2017



SCHEDULE A

SALES GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Closing Stores of Grafton-Fraser Inc. (the "**Merchant**"). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together the "**Consultant**") and the Merchant dated as of January 24, 2017 (the "**Consulting Agreement**").

1. Except as otherwise expressly set out herein, and subject to: (i) the Approval Order or any further Order of the Court; or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a "Landlord" and, collectively, the "Landlords") and approved by Consultant, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected landlords are privy for each of the affected Closing Stores (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Closing Stores remain open during their normal hours of operation provided for in the respective Leases for the Closing Stores until the respective Sale Termination Date of each Closing Store. The Sale at the Closing Stores shall end by no later than April 30, 2017. Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The 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 Consultant in connection with the 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 Consultant may advertise the Sale at the Closing Stores as a "everything on sale", "everything must go", "store closing" or similar theme sale at the Closing Stores (provided however that no signs shall advertise the 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, the Landlord's counsel, the Merchant or the Monitor, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. Where the provisions of the Lease conflict with these Sales Guidelines, these Sales Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (save that handwritten "you pay" and "topper" signs may be used). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Closing Stores or enclosed mall Closing Stores with a

separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not explicitly 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. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Closing Store and shall not be wider than the premises occupied by the affected Closing Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Closing Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with "store closing" signs being placed in the front window of a Closing Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Consultant 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. Conspicuous signs shall be posted in the cash register areas of each Closing Store to the effect that all sales are "final".
7. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Closing Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Closing Store is located. Otherwise, the Consultant may solicit customers in the Closing Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.
8. At the conclusion of the Sale in each Closing Store, the Merchant shall arrange that the premises for each Closing Store are in "broom-swept" and clean condition, and shall arrange that the Closing Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Closing Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Applicant) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Closing Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant 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.
9. Subject to the terms of paragraph 8 above and the Consulting Agreement, the Consultant may sell FF&E which is located in the Closing Stores during the Sale. The Merchant and the Consultant may advertise the sale of FF&E consistent with these guidelines on the understanding that any Landlord may require that such signs be placed in discreet locations within the Closing Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord, or through other areas after regular store business hours, or through the front door of the Closing Store during store business hours if the

FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord. The Consultant shall repair any damage to the Closing Stores resulting from the removal of any FF&E by Consultant or by third party purchasers of FF&E from Consultant.

10. The Consultant shall not make any alterations to interior or exterior Closing 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 guidelines, shall not constitute an alteration to a Closing Store.
11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove FF&E from the Closing Stores. The Consultant will arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Consultant to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Closing Store to observe such removal. If the Landlord disputes the Consultant'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 Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Closing Store in accordance with the CCAA and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA and the Initial Order to a Landlord while the Sale is ongoing and the Closing Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Closing Store without waiver of or prejudice to any claims or rights such landlord may have against the Merchant in respect of such Lease or Closing Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Closing Stores as the Merchant under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Closing Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Closing Stores.
15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Sandra Abitan who may be reached by phone at 514-904-5648 or

email at sabitan@osler.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant 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 Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, subject to para. 4 of these Sales Guidelines, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Consultant 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 Merchant, the Consultant 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 Sales Guidelines

Court File No.: CV-17-11677-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRAFTON-FRASER INC.

(the "Applicant")

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceedings commenced in Toronto

**ORDER
(Liquidation Consulting Agreement)
(Returnable January 30, 2017)**

FASKEN MARTINEAU DuMOULIN LLP

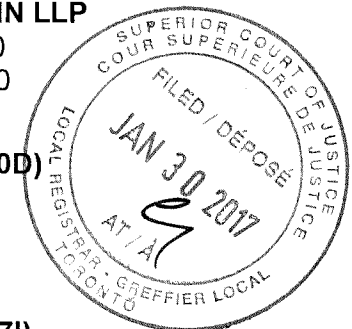
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