

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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")

**NOTICE OF APPLICATION
(Initial CCAA Order)**

TO THE RESPONDENTS:

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

THIS APPLICATION will come on for a hearing on January 25, 2017, at 3:30 p.m. at the Court House at 361 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 at least four 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: January 25, 2017

Issued by:



**C. Irwin
Registrar**

Local Registrar
330 University Ave
7th Floor
Toronto, Ontario
M5G 1R7

TO:	The Service List
-----	------------------

APPLICATION

1. THE APPLICANT MAKES AN APPLICATION FOR:

- (a) an Order substantially in the form attached hereto as Schedule “A” (the “**Initial Order**”)¹, *inter alia*:
 - (i) abridging the time for service of the Notice of Application and the Application Record herein, if necessary, and validating service thereof;
 - (ii) declaring that Grafton-Fraser Inc. (the “**Company**”) is a company to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) applies;
 - (iii) granting a stay of proceedings in favour of the Company and its directors and officers;
 - (iv) approving the Second Lease Consulting Agreement (as defined below);
 - (v) authorizing payments to critical vendors;
 - (vi) approving the DIP Agreement and granting the Term Lenders’ DIP Charge (each as defined below);
 - (vii) approving the ABL DIP Forbearance Agreement and granting the ABL Lender’s DIP Charge (each as defined below);
 - (viii) approving the Term Forbearance Agreement (as defined below);

¹ A blackline of the Initial Order against the Commercial List User’s Committee Model Order is attached at Schedule “B”

- (ix) granting the Administration Charge (as defined below);
 - (x) declaring that the directors and officers of the Company shall be indemnified against obligations and liabilities that they may incur in their capacity as directors or officers of the Company after the commencement of these proceedings, and granting the D&O Charge (as defined below) as security for such indemnity;
 - (xi) authorizing the KERPs and granting the KERP Charge (each as defined below) as security for the Company's obligations in respect of the KERPs;
 - (xii) appointing Richter Advisory Group Inc. ("**Richter**" or the "**Proposed Monitor**") to act as the monitor (the "**Monitor**") of the Company in these CCAA proceedings; and
- (b) such further and other relief as counsel may advise and this Honourable Court may deem just.

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

Background

- (a) the Company is a leading Canadian retailer of men's clothing that operates 158 stores in Canada under the "Tip Top Tailors", "George Richards Big and Tall", "Mr. Big and Tall" and "Kingsport Big and Tall Clothier" banners;
- (b) the Company is facing a liquidity crisis as a result of, among other things, financial consequences arising from the insolvency of its wholly-owned subsidiary 2473304

Ontario Inc. (“247”), lower than expected retail sales, increased overhead costs, delays in receipt of seasonal inventory and turnover of key personnel;

Secured Creditors

- (c) the Company is a party (as co-borrower with 247) to a credit agreement dated as of February 12, 2016 with Canadian Imperial Bank of Commerce (“CIBC”), as agent and as lender, as amended, pursuant to which CIBC agreed to provide the Company and 247 with revolving credit facilities (the “CIBC Credit Facility”) in the maximum aggregate principal amount of \$35 million (the “CIBC Credit Agreement”);
- (d) as of January 21, 2017, the Company has borrowed \$12.8 million under the CIBC Credit Agreement. Pursuant to the terms of the CIBC Credit Agreement, the Company is jointly and severally liable with 247 for all indebtedness outstanding under the CIBC Credit Facility, accordingly, the Company is liable for approximately \$1.6 million of 247’s indebtedness under the CIBC Credit Agreement as a result of 247’s insolvency;
- (e) the Company is also indebted to lenders affiliated with GSO Capital Partners LP (“GSO”) under an amended and restated credit agreement dated as of June 16, 2009, as amended from time to time, (the “GSO Credit Agreement”). The outstanding indebtedness under the GSO Credit Agreement (including accrued interest) as of January 21, 2017 was approximately \$39.4 million;
- (f) CIBC and GSO are parties to an intercreditor agreement dated as of February 12, 2016 (the “Intercreditor Agreement”) pursuant to which CIBC and GSO agreed to, among other things, the relative priority of their security interests in the property of the Company. The Intercreditor Agreement provides that CIBC will have a first priority

security interest in, among other things, the accounts receivable and inventory of the Company (the “**ABL Priority Collateral**”) to the extent of the ABL Obligations (as defined in the Intercreditor Agreement), with GSO having a second priority security interest in such collateral, and GSO will have a first priority security interest in, among other things, the furniture, fixtures, equipment, intellectual property and securities of the Company (the “**Term Priority Collateral**”) to the extent of the Term Obligations (as defined in the Intercreditor Agreement), with CIBC having a second priority security interest in such collateral. The relative priorities set out in the Intercreditor Agreement are intended to continue in these CCAA proceedings with respect to advances made by CIBC or the Term DIP Lenders (as defined below), as applicable, to the Company, pursuant to the ABL DIP Forbearance Agreement and the DIP Agreement;

Restructuring Plan

- (g) the Company, with the assistance of the retail consulting group at Richter Consulting Canada Inc. (the “**Retail Consultant**”) has reviewed its present and projected financial performance and considered the strategic alternatives available to the Company;
- (h) as part of its review and planning process, the Company engaged Oberfeld Snowcap Inc. (the “**Lease Consultant**”) pursuant to the terms of a letter agreement dated November 30, 2016 (the “**First Lease Consulting Agreement**”) to act as its exclusive real estate consultant to provide lease administration services to the Company, including, without limitation, assessing the Company’s lease portfolio for profitable and non-profitable leases. The term of the First Lease Consulting Agreement expires on January 31, 2017;

- (i) following its internal review, the Company discussed with CIBC and GSO the various strategic alternatives identified with the Retail Consultant. Based upon those discussions, GSO made a non-binding restructuring proposal to the Company to implement a sale and investment solicitation process involving a going concern “stalking horse credit bid” to be completed through an insolvency proceeding coupled with the liquidation of assets located at underperforming store locations;

- (j) the Company determined, with the assistance of the Retail Consultant, that negotiating such a transaction was the best course of action to maximize value for its stakeholders. As part of that process, the Company has:
 - (i) developed a process of soliciting offers for a sale of, or investment in the Company, its business and assets (the “**SISP**”);

 - (ii) entered into an asset purchase agreement (the “**Stalking Horse Agreement**”) for the sale of all or substantially all of its assets to 1104307 B.C. Ltd. (an entity related to GSO) (the “**Stalking Horse Purchaser**”) by way of a “credit bid”, which will serve as the “stalking horse credit bid” under the proposed SISP, subject to approval of the Court; and

 - (iii) entered into a liquidation consulting agreement with a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together, the “**Liquidation Consultant**”) dated January 24, 2017 (the “**Liquidation Consulting Agreement**”) pursuant to which the Company proposes to engage the Liquidation Consultant as its exclusive consultant to

advise the Company with respect to the liquidation of certain stores (the “**Closing Stores**”), subject to approval of the Court;

- (k) the Stalking Horse Agreement and Liquidation Consulting Agreement are subject to the Company obtaining further Orders of the Court approving those agreements and the proposed SISP;
- (l) subject to the Initial Order being granted by the Court, the Company will serve its Application Record and the Initial Order, along with materials in support of a motion returnable January 30, 2017, seeking, *inter alia*, approval of the execution of the Stalking Horse Agreement, the proposed SISP and the Liquidation Consulting Agreement, on the Company’s landlords, among other interested parties;

Interim Financing & Forbearance Agreements

- (m) the Company entered into forbearance agreements, as amended from time to time, with CIBC and with GSO, respectively, in connection with 247’s CCAA proceedings. CIBC and GSO have agreed, in the context of the CCAA proceedings in respect of the Company, to amend and restate the existing forbearance agreements;
- (n) the Company, 247 and CIBC entered into an amended and restated forbearance agreement dated as of January 24, 2017 (the “**ABL DIP Forbearance Agreement**”) pursuant to which CIBC agreed to, *inter alia* (a) continue to forbear from enforcing its rights under the CIBC Credit Agreement and the other loan documents under certain conditions, and (b) allow the Company to continue to borrow under the revolving facility in an amount not to exceed the lesser of \$25,000,000 million and the Company’s

borrowing base formula, subject to a number of terms and conditions, including that CIBC be granted the ABL Lender's DIP Charge;

- (o) the Company and 247 also entered into an amended and restated forbearance agreement with GSO, among others, dated as of January 24, 2017 (the "**Term Forbearance Agreement**") pursuant which GSO agreed to continue to forbear from exercising its rights and remedies under the GSO Credit Agreement under certain conditions and to continue to capitalize material interest payments until June 2017;
- (p) to supplement the interim financing provided by CIBC under the ABL DIP Forbearance Agreement, the Company entered into a DIP facility term sheet with GSO, as administrative agent (in such capacity, the "**Term DIP Agent**") for itself and for certain other entities related to it (the "**Term DIP Lenders**"), and Wilmington Trust, National Association, as servicing agent (the "**Term DIP Servicing Agent**"), dated as of January 24, 2017 (the "**DIP Agreement**"), pursuant to which the Term DIP Lenders have agreed to advance to the Company interim financing in the amount of up to \$5.5 million to provide additional funding for the Company's operations during the CCAA proceeding, subject to a number of terms and conditions, including that the Court grant the Term Lenders' DIP Charge;
- (q) among other terms, it is a condition of each of the ABL DIP Forbearance Agreement, the Term Forbearance Agreement and any advance under the DIP Agreement that:
 - (i) the Company obtain the Initial Order; and

- (ii) the Company obtain further Orders approving the execution of the Stalking Horse Agreement, the Liquidation Consulting Agreement and authorizing the Company to pursue the proposed SISP in the context of CCAA proceedings;

Relief Sought in the Initial Order

- (r) the Company is in default under the CIBC Credit Agreement and the Company does not have sufficient liquidity to repay the outstanding indebtedness to CIBC in full if CIBC should make a demand for repayment;
- (s) the Company is also indebted to GSO, and others, under the GSO Credit Agreement and the Company is unable to satisfy these obligation in full if required by GSO;
- (t) the Company is insolvent. It cannot meet its liabilities as they come due and, without the protection of the CCAA and the benefit of the DIP Agreement, the ABL DIP Forbearance Agreement and the Term Forbearance Agreement, the ability of the Company to undertake the proposed SISP for the benefit of its stakeholders may be seriously impaired;
- (u) the Company requires a broad stay of proceedings to allow it to continue to operate and maintain the status quo while it pursues its restructuring with a view to maximizing benefits to its creditors and other stakeholders;
- (v) the Company is seeking Court approval of an expanded engagement for the Lease Consultant and authorization to comply with its obligations under a new lease consulting agreement (the “**Second Lease Consulting Agreement**”) that it has entered into with the Lease Consultant. It is contemplated that the Lease Consultant will be retained to

assist the Company with renegotiating lease terms in respect of certain of the Closing Stores in an effort to make those leases attractive to the Stalking Horse Purchaser or to another bidder under the proposed SISP, as applicable, so that those leases may be removed from the liquidation process and the stores kept open following completion of a sale or other transaction entered into pursuant to the proposed SISP;

- (w) the continued engagement of certain of the Company's merchandise suppliers is critical to its ongoing operations and the Company is therefore requesting that it be permitted to pay pre-filing amounts owing to certain of those suppliers that it considers critical to its business, in the maximum aggregate amount of \$1 million, subject to the express prior approval of the Monitor or Order of the Court;
- (x) the Company seeks the Court's approval of two separate but coordinated interim financing agreements, being the DIP Agreement & the ABL DIP Forbearance Agreement, which are intended to provide the Company with sufficient liquidity to (i) maintain its ongoing operations during the course of these CCAA proceedings, including payment of employees; (ii) fund the costs of these proceedings; and (iii) pursue its restructuring efforts;
- (y) it is a condition of the ABL DIP Forbearance Agreement that CIBC maintain its priority in the ABL Priority Collateral and be granted a court-ordered charge on all the assets, rights, undertakings and properties of the Company (the "**Property**") as security for amounts advanced to the Company under the ABL DIP Forbearance Agreement after the date of the Initial Order (the "**ABL Lender's DIP Charge**");

- (z) it is also a condition of the DIP Agreement that the Term DIP Agent on behalf of and for the benefit of itself, the Term DIP Lenders and the Term DIP Servicing Agent, be granted a court-ordered charge on the Property as security for amounts advanced to the Company under the DIP Agreement (the “**Term Lenders’ DIP Charge**”);
- (aa) the Company is also seeking the Court’s authorization to carry out its obligations under the Term Forbearance Agreement which will provide the Company with stability during these CCAA proceedings and allow the Company to focus its efforts on its restructuring;
- (bb) the Company is seeking a charge on the Property in the maximum amount of \$500,000 (the “**Administration Charge**”) to secure the fees and disbursements of the Monitor, counsel to the Monitor, independent counsel to the directors of the Company and counsel to the Company, in each case incurred in connection with services rendered to the Company both before and after the commencement of these CCAA proceedings;
- (cc) similarly, the Company will require the participation of its directors and officers during these CCAA proceedings and proposes to indemnify its directors and officers and to secure such indemnity by way of a charge on the Property in the amount of \$800,000 (the “**D&O Charge**”);
- (dd) the Company is also proposing to provide key employee retention payments (“**KERPs**”) to certain key management employees and executives to provide them with an incentive to remain with the Company through these CCAA proceedings. The proposed beneficiaries of the KERPs have intimate knowledge of the Company and its assets and relationships with critical vendors and other constituents. Their continued participation is essential to these CCAA proceedings. The Company seeks an Order approving the

KERPs and a charge on its property to secure the obligations of the Company in respect of the KERP entitlements (the “**KERP Charge**”); and

(ee) Richter has consented to act as Monitor of the Company, subject to court approval;

Other Grounds

(ff) those further grounds as set out in the Affidavit of Mark Sun, sworn January 25, 2017, and the Exhibits thereto (the “**Sun Affidavit**”);

(gg) those further grounds as set out in the pre-filing report of the Proposed Monitor dated January 25, 2017, and the Appendices thereto (the “**Pre-Filing Report**”), to be filed;

(hh) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

(ii) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 14.05(2), 16 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

(jj) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) the Sun Affidavit, and the Exhibits thereto;

(b) the Pre-Filing Report, to be filed;

(c) the consent of Richter to act as Monitor dated January 24, 2017; and

(d) such other material as counsel may advise and this Honourable Court may permit.

January 25, 2017

FASKEN MARTINEAU DUMOULIN LLP
Barristers and Solicitors
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Stuart Brotman (LSUC# 43430D)
Tel: 416 865 5419
Fax: 416 364 7813
Email: sbrotman@fasken.com

Dylan Chochla (LSUC# 62137I)
Tel: 416 868 3425
Fax: 416 364 7813
dchochla@fasken.com

Lawyers for Applicant, Grafton-Fraser Inc.

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

**NOTICE OF APPLICATION
(Initial CCAA Order)
(Returnable January 25, 2017)**

FASKEN MARTINEAU DuMOULIN LLP
333 Bay Street – Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Stuart Brotman (LSUC#43430D)
Tel: 416 865 5419
Fax: 416 364 7813
sbrotman@fasken.com

Dylan Chochla (LSUC#62137I)
Tel: 416 868 3425
Fax: 416 364 7813
dchochla@fasken.com

Lawyers for Applicant, Grafton-Fraser Inc.