

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)
(*Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3*)

NO: 500-11-054804-188
NO: 41-2388971

IN THE MATTER OF THE BANKRUPTCY OF:

GREATEX MILLS INC. / LES MOULINS GREATEX
INC.

Debtor

-and-

RICHTER ADVISORY GROUP INC.
RICHTER GROUPE CONSEIL INC.

Trustee/ Petitioner

-and-

THE REGISTRAR OF PERSONAL AND MOVABLE
REAL RIGHTS

-and-

THE PARTIES LISTED IN THE SERVICE LIST

Mises-en-cause

**MOTION FOR AUTHORIZATION TO SELL CERTAIN ASSETS OF THE DEBTOR,
DIRECTIONS AND OTHER RELATED ORDERS**

(Sections 18a), 19, 30 and 34(1) of the *Bankruptcy and Insolvency Act*)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT SITTING IN
COMMERCIAL DIVISION AND FOR THE DISTRICT OF MONTREAL, AND/OR THE
REGISTRAR, THE PETITIONER RESPECTFULLY SUBMITS AS FOLLOW:

I- INTRODUCTION

1. With this Motion, the Petitioner, Richter Advisory Group inc. ("**Richter**" or the "**Trustee**") seeks the issuance of an Order, substantially in the form of the draft Approval and Vesting Order filed as **Exhibit R-1** (the "**Draft Order**"), authorizing and approving the sale of various fixed assets of the Debtor, Greatex Mills inc. (the "**Debtor**") to C3 – Crescent Commercial Corporation ("**Crescent**") prior to the first meeting of creditors and the appointment of inspectors, pursuant to the terms and conditions set out in the offers to purchase more fully described hereinafter;

II- FACTUAL BACKGROUND

2. As appears from the court record, the Debtor conducted a business of import and sale of high quality fabrics for application in the furniture industry and operated its business from premises located at 1625 Chabanel West, suite 201, Montreal, Québec (the "**Premises**");
3. On **June 13, 2018**, the Debtor filed a Notice of intention to Make a Proposal (the "**NOI**"), pursuant to the relevant provisions of the *Bankruptcy and Insolvency Act* (the "**BIA**") and appointed Richter as the trustee;

4. On **July 4, 2018**, the Debtor sought, and this honorable Court issued, an order authorizing a sale and solicitation process ("**SSP**") to market and sell the Debtor's assets and extending the delay under the NOI for the Debtor to make a proposal until August 20, 2018;
5. On **August 20, 2018**, the Debtor sought, and this honorable Court issued, an order extending the delay under the NOI for the Debtor to make a proposal until October 4, 2018;
6. We refer the Court to the Trustee's reports dated July 4, 2018 (the "**First Report**") and August 20, 2018 (the "**Second Report**") for a summary of the operations of the Debtor and the events which led to the filing of the NOI, the said reports having already been filed in the Court record;
7. In the course of the NOI and as part of its formal restructuring process, a SSP was put in place by the Debtor, which process was supervised by the Trustee, in order to sell all of the Debtor's property and as more fully detailed in the Trustee's Second Report;
8. Richter conducted a meticulous and orderly process to find one or many purchasers, acquirers or business partners interested in the Debtor's assets and business, the whole as more fully detailed in the Trustee's report dated August 21, 2018 (the "**Third Report**") and already filed in the Court record;
9. The Debtor's assets consisted primarily of inventory and accounts receivable as well as various fixed assets consisting essentially of furniture, fixtures and warehouse machinery and equipment;
10. On **August 22, 2018**, the Debtor sought, and this honorable Court issued, an approval and vesting order authorizing the sale to Crescent of all of the Debtor's inventory as well as shares, units, equity interests or any other rights or interests owned by the Debtor in Greatex Mills Inc. Niederlassung Deutschland (the "**First Approval and Vesting Order**"), the whole as more fully appears from the court record;
11. The Debtor also proceeded to wind down its operations including the collection of its accounts receivable, which process was supervised by the Trustee and The Toronto-Dominion Bank ("**TD**"), the first ranking secured lender on said receivables, the whole as more fully detailed in the Trustee's Third report;
12. On **October 5, 2018**, the Debtor was deemed to have made an assignment in bankruptcy pursuant to the BIA, having failed to file a proposal to its creditors by October 4th ;
13. Richter was appointed Trustee of the estate of the bankrupt by the Official Receiver, subject to confirmation by the creditors at the first meeting of creditors to be held on October 25, 2018 ("**First Meeting of creditors**");

III- OFFERS TO PURCHASE THE ASSETS

14. At the date of bankruptcy, there remained three principal assets of the Debtor:
 - a) Outstanding accounts receivable, the collection of which is still ongoing;
 - b) Various fixed assets for which the Trustee is seeking authorization to sell to Crescent pursuant to the terms and conditions set out in the First Offer as defined hereinafter; and

- c) Specific machinery and/or equipment that is subject to a lease registered in favor of TD and TD Equipment Finance Canada, a division of The Toronto-Dominion Bank ("**TD Equipment**"), more fully described hereinafter and for which the Trustee is also seeking authorization to sell to Crescent pursuant to the terms and conditions set out in the Second Offer as defined hereinafter;

the whole as appears more fully from the Report of the Trustee dated October 12, 2018 and its Exhibits (collectively, the "**Report of the Trustee**") and filed as **Exhibit R-2 en liasse**;

15. As more fully detailed in the Second Report and Third Report, the court approved SSP put in place did not yield any acceptable offers for the fixed assets of the Debtor;
16. Since then, the Trustee's ongoing efforts to locate a purchaser for the fixed assets yielded four offers which are more fully detailed in the Report of the Trustee (R-2);
17. On October 5, 2018, Crescent submitted to the Trustee a first offer dated October 1st, 2018 and which may be summarized as follows:

- a) Crescent offers to purchase the following assets, without any legal or conventional warranty whatsoever and on an "*as is/ where is*" basis:

All assets and all contents thereof located at the Debtor's facilities at 1625 Chabanel West, suite 201, Montreal, Québec, floor to ceiling, wall to wall, including but not limited to the assets identified as all furniture, fixtures, warehouse equipment and any and all assets remaining, but excluding any assets labelled as belonging to third parties, and excluding more particularly the "Seam Tester" that is subject to a TD lien and more fully described hereinafter."

*(collectively, the "**Fixed Assets**")*

- b) Crescent shall pay a purchase price of \$27,500, plus applicable taxes;
- c) an initial deposit of \$12,500 payable by certified check was remitted to Richter;
- d) the balance of the said purchase price shall be payable in full at the closing;
- e) Crescent requires exclusive use of the Debtor's Premises and shall occupy the Premises for a period up to 45 days (or longer if an agreement is reached between Crescent and the landlord), but Crescent has agreed to pay occupation rent estimated at \$20 000 monthly as well as all fees related to any and all utility services;
- f) Crescent has also agreed to assume the costs associated with the preparation of of this Motion and the Report of the Trustee (R-2);
- g) The closing is to occur following the issuance of an order by the Court approving and ratifying the offer and the sale of the Fixed Assets, free and clear of any and all liens and encumbrances, before the First Meeting of creditors and as quickly as possible, since an excessive delay in concluding the sale may materially harm Crescent's ability to sell the Fixed Assets;

the whole as appears more fully from Crescent's Offer to Purchase dated October 1, 2018 and attached as **Exhibit F** to the Report of the Trustee (R-2) (hereinafter the "**First Offer**");

18. On October 10, 2018, the Trustee also received a second offer from Crescent dated October 1st, 2018 and for the total amount of \$7 000, to purchase the following machinery and/or equipment that is subject to a lease in favor of TD and TD Equipment:

“one 2016 New Pillgrade Automated 3D pilling and fuzzing grading system – serial #V630 and model #M227G

One new 2016 Lloyd Machine 1kn model #LS1H-115V serial number 201449

One new 2016 YLC-1000-A1 model #01/3878 serial #1KN1042

One ST101 set of pneumatic grip”

*(collectively, the “**Purchased Equipment**”)*

The whole as appears more fully from Crescent’s Offer to Purchase dated October 1st, 2018 and attached as **Exhibit G** to the Report of the Trustee (R-2) (hereinafter the “**Second Offer**”)

19. The Fixed Assets and the Purchased Equipment are hereinafter collectively described as the “**Purchased Assets**”;
20. Crescent’s First and Second Offers are the best offers in the circumstances of the present bankruptcy file since they result in the highest net realization for the following reasons and as more fully explained in the Report of the Trustee (R-2);
21. Consequently, the Trustee accepted Crescent’s First and Second Offers by letters dated October 10, 2018, subject however to the Court’s approval as well as additional terms and conditions outlined therein and accepted by Crescent; the said acceptance letter is attached as **Exhibits H and I** to the Report of the Trustee (R-2);
22. As mentioned above, seeing that Crescent has already purchased the Debtor’s inventory and is liquidating same in the Debtor’s Premises, it is in the best position to realize upon the Purchased Assets which it can do at the same time;
23. The granting of the present Motion by this honourable Court will ensure the smoothest liquidation process of all of the Debtor’s remaining assets, significantly reduce the costs and expenses of the liquidation process to the benefit of all the parties and also maximize the realization value for the Debtor’s secured lenders, TD and the Business Development Bank of Canada (the “**BDC**”);
24. The approval of the First and Second Offers by this honourable Court and the sale of the Purchased Assets prior to the First Meeting of creditors will also enable the Trustee to abandon the Premises and avoid incurring any additional costs such as rent and operating costs, which would further reduce the realization for the secured creditors;
25. The other offers received by the Trustee did not provide for the payment of the occupation rent nor the assumption of the costs associated with the preparation of this Motion and the Report of the Trustee (R-2);
26. TD and BDC were kept apprised of the offers received by the Trustee and have advised the Trustee that they support the sale of the Purchased Assets and the distribution of the net proceeds of sale as proposed by the Trustee hereinafter;

27. For all these reasons, the Trustee is satisfied that the transactions contemplated in the First and the Second Offers represent the best solution in the circumstances and recommends that the said offers be approved and the acceptance thereof ratified by this Court;
28. While Crescent and the Debtor are not related *per se*, the Trustee is aware of financial arrangements between Crescent and Benton Lewis, the father of the Debtor's main shareholder; the Trustee has already reported this fact in his Third Report filed in connection with the First Approval and Vesting Order regarding the sale of the Debtor's inventory (Exhibit C of the Report of the Trustee, R-2);

IV- SECURED LENDERS AND DISTRIBUTION OF THE PROCEEDS OF SALE

29. As appears from printouts of the Register of Personal and Movable Real Rights ("RPMRR") filed as **Exhibit R-3 en liasse**, and an opinion rendered by independent legal counsel engaged by the Trustee and mentioned in the Report of the Trustee (R-2), the Debtor's secured lenders on the Purchased Assets are TD, TD Equipment and the BDC;
30. More particularly, the Fixed Assets are subject to the following hypothecs:
- A conventional hypothec without delivery granted by the Debtor in favor of BDC on the universality of all Debtor's present and future equipment, machinery, tools, vehicles and intellectual property, registered on February 9, 2011 under number 11-0084675-0001;
 - A conventional hypothec without delivery granted by the Debtor in favor of BDC on the universality of all Debtor's present and future equipment, machinery, tools, vehicles and intellectual property, registered on November 7, 2012, under number 12-0916767-0001;
 - A conventional hypothec without delivery granted by the Debtor in favor of TD on the universality of all Debtor's present and movable property, registered on September 17, 2014 under number 14-0866564-0002;
 - A conventional hypothec without delivery granted by the Debtor in favor of BDC on the universality of all Debtor's present and movable property, registered on March 6, 2018 under number 18-0209413-0001;
31. As for the Purchased Equipment, it is subject to an ownership retention right of the lessors registered at the RPMRR by TD and TD Equipment on August 30, 2016 under number 16-0848583-0007;
32. Although third parties have financed or leased specific equipment and/or vehicles to the Debtor and registered a lease or ownership retention rights thereon, as appears from the RPMRR printouts (R-3), said assets are not part of the Purchased Assets;

33. The current indebtedness of the Debtor towards BDC and TD is approximately \$670,000.00 and \$130,000.00 respectively;
34. Accordingly and based on the foregoing, the Trustee intends to distribute the net proceeds of sale as follows:
 - a) The net proceeds of sale from the Fixed Assets shall be remitted to BDC, subject to payment of the Superintendent's levy, if applicable;
 - b) The net proceeds of sale from the Purchased Equipment shall be remitted to TD and TD Equipment, subject to payment of the Superintendent's levy, if applicable;

V- URGENCY AND CONCLUSIONS SOUGHT

35. As appears from the the First and the Second Offers and the Trustee's acceptance letter, the sale of the Purchased Assets is subject to the approval of this honourable Court and a vesting order allowing the Trustee to convey the Purchased Assets, free and clear of all hypothecs, security interests, encumbrances and other charges;
36. Also, Crescent has made it a condition that the sale transactions be completed as soon as possible and prior the First Meeting of the creditors since an excessive delay in concluding the transactions may materially harm its ability to sell the Purchased Assets;
37. Concluding the sale transactions of the Puchased Assets with Crescent prior to the Meeting of Creditors will also enable the Trustee to abandon the Premises at that time, since no other assets of the Debtor will remain;
38. Accordingly, it is urgent that this honourable Court grant the conclusions sought in the draft Approval and Vesting Order (R-1) and grant provisional execution of the conclusions sought notwithstanding appeal;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

- [1] GRANT** the present *Motion for approval to sell certain assets of the Debtor, directions and other related orders*;
- [2] ISSUE** the order substantially in the form of the draft Order produced as Exhibit R-1 in support of the present Motion;
- [3] ORDER** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof;

Motion for authorization to sell certain assets of the debtor, directions and other related orders

[4] **ISSUE** any other orders the Court deems appropriate;

THE WHOLE, with costs, save in case of contestation.

Montreal, **October 12th, 2018**



MORENCY SOCIÉTÉ D'AVOCATS LLP

Attorneys of the Petitioner

(Me Tiziana Di Donato)

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Tel : 514-845-3533

Our file: 69881 0001

Motion for authorization to sell certain assets of the debtor, directions and other related orders

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)
(Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3)

NO: 500-11-054804-188
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RICHTER GROUPE CONSEIL INC.

Trustee/ Petitioner

-and-

THE REGISTRAR OF PERSONAL AND MOVABLE
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THE PARTIES LISTED IN THE SERVICE LIST

Mises-en-cause

AFFIDAVIT

I, the undersigned, Olivier Benchaya, licensed insolvency trustee at Richter Advisory Group Inc., having a place of business at 1981 McGill College, 11th floor, Montreal, Quebec, H3A 0G6, solemnly affirm the following:

1. I am acting in my capacity as trustee of the estate of the Debtor, Greatex Mills Inc.;
2. I have knowledge of all the facts alleged in the attached *Motion for Authorization to Sell Certain Assets of the Debtor, Directions and Other Related Orders* and all the facts alleged therein are true.

And I have signed, in Montréal, Québec



Olivier Benchaya, Trustee

Sworn to and read aloud before me, in Montreal
this 12 day of October, 2018



Commissioner of Oaths for Quebec



Motion for authorization to sell certain assets of the debtor, directions and other related orders

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL**

**NO: 500-11-054804-188
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**SUPERIOR COURT
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-and-

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Trustee/ Petitioner

-and-

**THE REGISTRAR OF PERSONAL AND MOVABLE
REAL RIGHTS**

-and-

THE PARTIES LISTED IN THE SERVICE LIST

Mises-en-cause

NOTICE OF PRESENTATION AND SERVICE LIST

TO:

KAUFMAN LLP

Attorneys for The Toronto Dominion
Bank and TD Equipement Finance
Canada

Attention: Me Steven Shein
Me Martin Jutras
Email: sshein@klcanada.com
MJutras@klcanada.com

**BUSINESS DEVELOPMENT BANK OF
CANADA**

Attention: David Alexandre Sauvé
Email: davidalexandre.sauve@bdc.ca

Motion for authorization to sell certain assets of the debtor, directions and other related orders

KUGLER KANDESTIN LLP

Attorneys for Greatex Mills inc.

Attention: Me Gerald F. Kandestin
Me Jeremy Cuttler

Email: gkandestin@kklex.com
jcuttler@kklex.com

TAKE NOTICE that the Motion for Authorization to Sell Certain Assets of the Debtor, Directions and Other Related Orders will be presented for adjudication to a Judge of the Superior Court, of the Province of Québec, of the District of Montréal, or to the Registrar thereof, on **October 17th, 2018 at 8:45 a.m. in room 16.10** of the Montréal Court House, 1 Notre Dame East, Montréal, Québec or so soon thereafter as counsel may be heard

Montreal, **October 12th, 2018**



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SUPERIOR COURT
DISTRICT OF MONTREAL

GREATEX MILLS INC. / LES MOULINS GREATEX INC. Debtor

-and-

RICHTER ADVISORY GROUP INC. /
RICHTER GROUPE CONSEIL INC. Trustee/ Petitioner

-and-

THE REGISTRAR OF PERSONAL AND MOVABLE REAL
RIGHTS

-and-

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Mise-en-cause

MOTION FOR AUTHORIZATION TO SELL CERTAIN
ASSETS OF THE DEBTOR, DIRECTIONS AND OTHER
RELATED ORDERS, AFFIDAVIT, NOTICE OF
PRESENTATION, LIST OF EXHIBITS AND EXHIBITS

ORIGINAL

Nature : **Sell certain assets of the debtor**

MORENCY
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N/D 69881 0001
CASIER :
CODE JURIDIQUE BB-6258

Motion for authorization to sell certain assets of the debtor, directions and other related orders

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

NO: 500-11-054804-188
NO: 41-2388971

SUPERIOR COURT
(Commercial Division)

(Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3)

IN THE MATTER OF THE BANKRUPTCY OF:

GREATEX MILLS INC. / LES MOULINS GREATEX
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Trustee/ Petitioner

-and-

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-and-

THE PARTIES LISTED IN THE SERVICE LIST

Mises-en-cause

LIST OF EXHIBITS

- EXHIBIT R-1 Draft Approval and Vesting Order;
- EXHIBIT R-2 Report of the Trustee dated **October 12th, 2018** and its exhibits;
- EXHIBIT R-3 A certified copy of printouts of the Register of Personal and Movable Real Rights ("RPMRR") pertaining to the Debtor;

Montreal, **October 12th, 2018**


MORENCY SOCIÉTÉ D'AVOCATS LLP

Attorneys of the Petitioner

(Me Tiziana Di Donato)

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-and-

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-and-

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Mise-en-cause

list of exhibits

ORIGINAL

Nature : Sell certain assets of the debtor

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