

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE

NEUBOURG

)
)
)

THURSDAY, THE 6TH
DAY OF OCTOBER, 2016



SALUS CAPITAL PARTNERS, LLC

Applicant

and

**J.S.N. JEWELLERY INC., J.S.N. JEWELLERY UK LIMITED, GMJ
CORP., 2373138 ONTARIO INC., ALWAYS & FOREVER FAMILY
COLLECTION INCORPORATED AND P.M.R. INC.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**ORDER
(AUCTION AGREEMENT AND INTERIM DISTRIBUTION)**

THIS MOTION, made by Richter Advisory Group Inc., in its capacity as the Court-appointed receiver (the "Receiver") of all of the assets, undertakings and properties of J.S.N. Jewellery Inc., J.S.N. Jewellery UK Limited, GMJ Corp., 2373138 Ontario Inc., Always & Forever Family Collection Incorporated and P.M.R. Inc. (collectively, the "Debtor"), acquired for or used in relation to a business carried on by the Debtor, for an order, *inter alia*, authorizing and directing the Receiver to engage Infinity Asset Solutions Inc. (the "Auctioneer") as its agent to conduct an auction of certain Canadian furniture, fixtures and equipment of the Debtor (the "Auction") and, for that purpose, to enter into and carry out the terms of the Auction Agreement between the Receiver and the Auctioneer dated as of September 27, 2016 (the "Auction Agreement") and appended to the Report of the Receiver dated September 29, 2016 (the "Report"), and authorizing and directing the Receiver to make an interim distribution from the net proceeds of realization to the Applicant was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and the schedules thereto, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, and such other counsel who were present, no

one else appearing for any other person on the service list, although duly served as appears from the affidavits of Irene Artuso and Diane Lima sworn September 29 and October 1, 2016, respectively, filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein be and is hereby abridged and the service thereof validated so that the Motion is properly returnable today.

AUCTION APPROVAL

2. THIS COURT ORDERS AND DECLARES that the Auction is hereby approved, and the execution of the Agency Agreement by the Receiver be and is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps (including payment to the Auctioneer of the Expense Amount and Commission) and execute such additional documents as may be necessary or desirable for the completion of the Auction and for the conveyance of the Assets to one or more Purchasers. Capitalized terms used in paragraphs 2 through 6 of this Order but not defined herein shall have the meanings given to them in the Auction Agreement.

3. THIS COURT ORDERS AND DECLARES that upon the completion of each sale of Assets to a Purchaser pursuant to the Auction Agreement, all of the Debtor's right, title and interest in such Assets shall vest absolutely in such 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, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Newbould dated August 16, 2016; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) any ownership or other interest that has or may be asserted by Utopia Jewellery Ltd. or any related entity (all of which are collectively referred to as the "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.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of Assets pursuant to the Auction Agreement shall stand in the place and stead of such Assets, and that from and after any sale of Assets in the Auction all Claims and Encumbrances shall attach to the net proceeds from the sale of such Assets with the same priority as they had with respect to such Assets immediately prior to the sale, as if such 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.

5. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of Assets sold in the Auction to a Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. THIS COURT ORDERS AND DECLARES that the Auction is exempt from the application of the *Bulk Sales Act* (Ontario).

INTERIM DISTRIBUTION

7. THIS COURT ORDERS that the Receiver be and is hereby authorized and directed to make interim distributions of the net proceeds of realization to the Applicant in the aggregate

amount of C\$7,100,000, in partial satisfaction of the indebtedness owing by the Debtor to the Applicant, as follows:

- (a) following the making of this Order, C\$2,800,000; and
- (b) upon and subject to closing of the Sundry Asset Sale Transactions, C\$4,300,000.

SEALING ORDER

8. THIS COURT ORDERS that Confidential Appendices “1”, “2” and “3” of the Report, filed separately with the Court, shall be sealed in the Court file pending closing of the transactions (the “Sundry Asset Sale Transactions”) contemplated in the Sundry Assets Sale Agreements (as defined in the Report), or further order of this Court.

GENERAL

9. THIS COURT ORDERS that the Report and the activities of the Receiver referred to therein be and are hereby approved.

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or the United Kingdom to give effect to this Order and to assist the Receiver and its 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 the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 06 2016

PER / PAR: 

SALUS CAPITAL PARTNERS, LLC

Applicant

- and -

J.S.N. JEWELLERY INC., *et al.*

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced in Toronto

**ORDER
(Re: AUCTION AGREEMENT, INTERIM
DISTRIBUTION)**

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
sbrotman@fasken.com

Dylan Chochla (LSUC# 62137I)

Tel: 416 868 3425
Fax: 416 364 7813
dchochla@fasken.com

Lawyers for Richter Advisory Group Inc., in its capacity as the
Court-appointed Receiver