

C A N A D A

PROVINCE OF QUEBEC
District of Montreal

S U P E R I O R C O U R T
(Commercial Division)

No: 500-11-041238-110

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED and:

HART STORES INC./MAGASINS HART
INC.,

Petitioner

- and -

RSM RICHTER INC.,

Monitor

**MOTION FOR AN ORDER FOR A SECOND EXTENSION OF THE STAY
PERIOD**

(Section 11.02 of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, C-36, as amended)

TO THE HONOURABLE JUSTICE JEAN-YVES LALONDE OR TO ONE OF
THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE
COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF
MONTREAL, THE PETITIONER SUBMITS THE FOLLOWING:

1. On August 30, 2011 (the "**Filing Date**"), an initial order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was rendered with respect to the Petitioner, and RSM Richter Inc. was appointed Monitor, as more fully appears from the Court Record;
2. Pursuant to the Initial Order, a stay of proceedings and other relief was ordered with effect from the Filing Date until September 29, 2011 (the

“Stay Period”);

3. Furthermore, the Initial Order authorized the Petitioner’s entering into interim financing arrangements (the **“DIP Facility”**) with Wells Fargo Capital Finance Corporation Canada (**“Wells Fargo”** or the **“DIP Lender”**), the Petitioner’s senior secured lender, pursuant to the DIP Commitment Letter filed in support of the Petition for an Initial Order, and the creation of a charge in favour of the DIP Lender over the Petitioner’s property to secure the repayment of the DIP Facility (the **“DIP Lender Charge”**), the whole as more fully set out in the Initial Order;
4. On September 28, 2011, an order (the **“Renewal Order”**) was rendered:
 - a) extending the Stay Period to and including November 4, 2011;
 - b) creating a charge in favour of those creditors who have provided the Petitioner with goods or services subsequent to the Filing Date, and accepted to provide said goods or services on credit or delayed payment terms (the **“Post-Filing Suppliers Charge”**);
 - c) authorizing the payment of quasi-insurance premiums, and creating a charge in favour of the insurance premium financier over the Petitioner’s unearned insurance premiums (the **“Insurance Charge”**);
5. By this Motion, the Petitioner seeks an order:
 - a) extending the Stay Period to January 18, 2012;
 - b) authorizing an extension of the DIP Facility’s maturity date to January 18, 2012, and certain other consequential amendments to the DIP Commitment Letter, as such term is defined in the Initial Order (the **“DIP Commitment Letter”**);

I. GROUNDS FOR AN EXTENSION OF THE STAY PERIOD

6. The Monitor has advised the Petitioner that it will be filing its second report to the court at the hearing on the present Motion, which shall contain the Monitor’s recommendation that the relief sought by the Petitioner be granted by this Honourable Court, its report on the Petitioner’s weekly cash flow projections for the period ending on January 29, 2012, and its report on the Petitioner’s operation of its affairs and conduct of its business since September 28, 2011. A copy of the Petitioner’s cash flow projections for the period ending on January 29, 2012 (the **“Cash-Flow Forecast”**), will be filed at the hearing of the Motion and an unredacted copy will be provided to the Court under seal;

7. Since the Renewal Order was rendered, the Petitioner has acted, and continues to act, in good faith and with all due diligence in order to put forward a viable plan of compromise or arrangement to its creditors. In particular, since September 28, 2011, the Petitioner has done the following to restructure its affairs:
- a) refined its analysis of store-by-store earnings and profitability, and with the Monitor's assistance, identified 32 stores in various locations which are underperforming and will be closed (the "**Closing Stores**"). The Closing Stores represent an additional 9 stores over the 23 stores originally targeted for closing by the Petitioner;
 - b) with the assistance of the Monitor, the Petitioner completed a process for the liquidation of its inventory located in its Closing Stores, and on October 19, 2011, obtained the Court's approval of, and entered into, an agency agreement with Tiger Capital Group, LLC ("**Tiger**"), pursuant to which Tiger will liquidate the Closing Stores inventory in consideration of which a significant up-front payment was received by Wells Fargo, considerably reducing the amounts owed to it;
 - c) on October 21, 2011, pursuant to a tender process set up by the Petitioner and supervised by the Monitor, a number of offers were received for certain of the leases, furniture and equipment associated with the Closing Stores (the "**Closing Store Leases**"), and negotiations for the definitive terms of the assignment of those leases have been on-going;
 - d) while the sale process relating to the Closing Stores was ongoing, the Petitioner continued discussions with several potential refinanciers, comprised of chartered banks and asset based lenders, with a view to refinancing the Petitioner's affairs;
 - e) to that end, the Petitioner prepared, with the assistance of the Monitor detailed financial projections up to January 2014;
 - f) these financial projections, and other due diligence materials requested by the prospective replacement lenders were remitted to them on November 3, 2011, and are currently under review;
 - g) the Petitioner negotiated an extension to the DIP Facility with Wells Fargo, as more fully set out below;
8. The Petitioner strongly believes that the negotiations with the prospective replacement lenders will lead to one or more refinancing offers being

received, but additional time is needed to allow due diligence and these negotiations to conclude;

9. The Petitioner respectfully submits that an extension of the Stay Period to January 18, 2012, is required in order to allow it to continue the stabilization of its business, to continue the liquidation of inventory located in Closing Stores, to complete the negotiation of appropriate definitive agreements with respect to the Closing Store Leases, to complete its negotiations with the prospective replacement lenders, and to commence negotiations with its stakeholders with a view to preparing a plan of compromise or arrangement under the CCAA. It is submitted that the extension sought will allow the Petitioner to make significant progress towards those goals, and that the duration of the extension is reasonable in the circumstances;
10. As appears from the Cash-Flow Forecast, no creditor will be materially affected by the extension sought;
11. The extension of the Stay Period is supported by Wells Fargo and recommended by the Monitor;

II. EXTENSION OF THE DIP FACILITY

12. As authorized under the Initial Order, the DIP Facility matures on November 4, 2011, and an extension of the DIP Facility is therefore required so as to ensure the Petitioner's continued financing during the requested extension of the Stay Period;
13. The Petitioner and Wells Fargo have negotiated, and come to an agreement regarding, the terms under which the DIP Facility's maturity date would be extended to January 18, 2012, the whole as more fully appears from the First Amending Agreement to the DIP Commitment Letter (the "**First Amending Agreement**"), a redacted copy of which is filed herewith as **Exhibit R-1**. An unredacted copy will be provided to the Court under seal;
14. As can be seen from the First Amending Agreement, the amount of the DIP Facility remains the same, its financial terms are not materially different from the current terms, subject to the payment of an extension fee and an adjustment of the availability reserve;
15. As a result, no creditor will be adversely affected by an extension of the DIP Facility's maturity date, or by the changes made to the terms and conditions of that facility under the First Amending Agreement;

16. For these reasons, it is submitted that it is in the interest of the Petitioner, and all of its stakeholders, that the DIP Facility be extended and the Petitioner respectfully submits that an order be rendered:
- a) authorizing the extension of the DIP Facility's maturity date to January 18, 2012, and authorizing the Petitioner to continue to borrow funds under the DIP Facility in accordance with the terms of the DIP Commitment Letter, as amended by the First Amending Agreement;
 - b) declaring that the borrowings made under the DIP Facility, as extended and amended by the First Amending Agreement, shall be secured by the DIP Lender Charge;

The whole as more fully set out in the conclusions to this Motion;

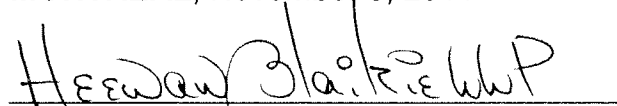
17. The Monitor has determined that the extension of the DIP Facility and the terms of the First Amending Agreement are appropriate in the context of the Petitioner's restructuring process;
18. For the reasons set forth above, the Petitioner believes that circumstances exist which make it appropriate to extend the Stay Period to January 18, 2012, the whole subject to all the other terms of the Initial Order and the Renewal Order, and that the other relief sought by this Motion be granted;
19. The Petitioner respectfully submits that the notice given for the presentation of this Motion is proper and sufficient;
20. This Motion is well-founded in fact and law;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

- [1] **GRANT** the Motion;
- [2] **DECLARE** that sufficient prior notice of the presentation of this Motion has been given by the Petitioner to interested parties;
- [3] **EXTEND** the Stay Period (as such term is defined in the Initial Order) until and including January 18, 2012, the whole subject to all other terms of the Initial Order and the Renewal Order;
- [4] **ORDER** that the First Amending Agreement entered into between Petitioner and the DIP Lender, and dated as of November 3, 2011 (the "**First Amending Agreement**") is hereby approved and any reference in the Initial Order, or any other Order rendered in these proceedings to the DIP Commitment Letter shall refer to the "DIP Commitment Letter as amended by the First Amending Agreement";

- [5] **DECLARE** that the communication of a redacted version of the First Amending Agreement as Exhibit R-1 to the Petition is proper and sufficient;
- [6] **ORDER** that the unredacted version of the First Amending Agreement filed with this Court be kept confidential and under seal in the Court Record;
- [7] **DECLARE** that the First Amending Agreement is a DIP Financing Document and that all provisions of the Initial Order relating to the DIP Financing Documents shall apply *mutatis mutandis*, to the First Amending Agreement;
- [8] **ORDER** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs 4 to 7 hereof unless either (a) notice of a motion for such order is served on the DIP Lender and the Petitioner by the moving party within seven (7) days after that party was served with or otherwise notified of the Order or (b) the DIP Lender applies for or consents to such order;
- [9] **REQUEST** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [10] **ORDER** provisional execution notwithstanding appeal;
- [11] **THE WHOLE** without costs, save in case of contestation.

MONTREAL, November 3, 2011

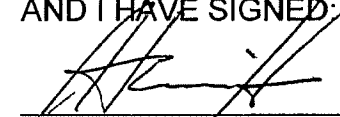

HEENAN BLAIKIE LLP
Attorneys for the Petitioner

AFFIDAVIT

I, the undersigned, Robert Harritt, businessman, domiciled and residing for the purpose hereof at 900 Place Paul-Kane, in the City and District of Laval, Province of Québec, H7C 2T2, solemnly declares as follows:

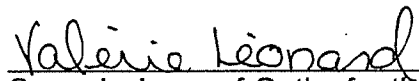
1. That I am the Chief Financial Officer and duly authorized representative of the Petitioner;
2. That all the facts contained in the present Motion for an Order Extending the Stay Period are true;
3. That all the facts contained in this affidavit are true.

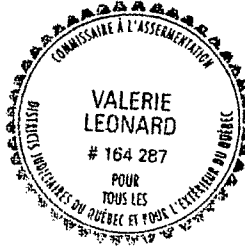
AND I HAVE SIGNED:



ROBERT HARRITT

Solemnly affirmed to before me, in the City of Montreal, this 3RD day of November, 2011


Commissioner of Oaths for the Province of Quebec



NOTICE OF PRESENTATION

TO : Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Attorneys for Wells Fargo

TO : Lavery deBilly LLP
Suite 4000
1 Place Ville Marie
Montreal QC H3B 4M4

Attorneys for Wells Fargo

AND: RSM Richter Inc.
2 Place Alexis Nihon,
Montréal (Québec) H3Z 3C2

AND: Norton Rose OR LLP
1 Place Ville-Marie
Suite 2500
Montreal (Quebec) H3B 1R1

Attorneys for Ameco-Paradisio

AND: Poliquin, Avocats
500 boulevard St-Martin Ouest
Bureau 550
Laval (Quebec) H7M 3Y2

Attorneys for Quality Draft
Home Deco Ltd.

**AND: Deveau, Bourgeois, Gagné,
Hébert & Associés, s.e.n.c.r.l.**
2540 boul. Daniel-Johnson
Bureau 400
Laval (Quebec) H7T 2S3

Attorneys for Les Immeubles
Plaisance Inc.

AND: McCarthy Tétrault LLP
1000 rue de la Gauchetière
Ouest
Suite 2500
Montreal (Quebec) H3B 0A2

Attorneys for Monitor

AND : Minden Gross LLP
145 King Street West – Suite
2200
Toronto, Ontario M5H 4G2

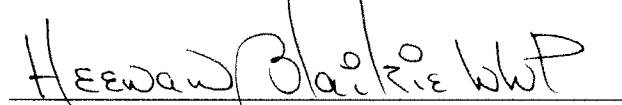
Attorneys for 375 Daniel Street
Holdings Ltd.

TAKE NOTICE that the present Motion for an Order for a Second Extension of the Stay Period will be presented for adjudication before one of the judges of the Superior Court, sitting in the Commercial Division, in and for the judicial district of Montreal, on November 4, 2011, at 9:15 o'clock, in room 15.02 of the Courthouse

of Montreal, located at 1 Notre-Dame Street, in the City of Montreal, Province of Quebec, or as soon thereafter as counsel may be heard.

AND DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, November 3, 2011

A handwritten signature in black ink, appearing to read "Heenan Blaikie LLP", written over a horizontal line.

HEENAN BLAIKIE LLP

Attorneys for the Petitioner

C A N A D A

PROVINCE OF QUEBEC
District of Montreal

S U P E R I O R C O U R T
(Commercial Division)

No: 500-11-041238-110

IN THE MATTER OF THE *COMPANIES'*
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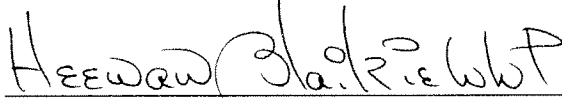
LIST OF EXHIBITS

(In support of the *Motion for an Order for a Second
Extension of the Stay Period*)

EXHIBIT R-1

First Amending Agreement, redacted

MONTREAL, November 3, 2011



HEENAN BLAIKIE LLP

Attorneys for the Petitioner

FIRST AMENDING AGREEMENT

THIS AGREEMENT is made as of the ____ day of November, 2011.

B E T W E E N:

HART STORES INC. / MAGASINS HART INC. (the
“**Borrower**”)

- and -

WELLS FARGO CAPITAL FINANCE CORPORATION
CANADA (the “**DIP Lender**”)

WHEREAS the Borrower has filed for protection under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA Proceedings**”) and the Quebec Superior Court of Justice, Commercial Division, for the Judicial District of Montreal, Quebec (the “**Court**”) granted an initial order in the CCAA Proceedings on August 30, 2011;

AND WHEREAS in connection with the CCAA Proceedings, the Borrower and the DIP Lender entered into a DIP Commitment Letter dated as of August 30, 2011 (as amended, modified, restated and/or supplemented from time to time, the “**DIP Commitment Letter**”) in which the DIP Lender agreed to provide for the short term liquidity needs of the Borrower while under CCAA protection;

AND WHEREAS the parties to the DIP Commitment Letter have agreed to amend the DIP Commitment Letter in accordance with the terms of this First Amending Agreement;

NOW THEREFORE in consideration of the respective covenants of the parties hereto herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Defined Terms

All capitalized terms used (including in the recitals) and not otherwise defined herein shall have the meanings specified in the DIP Commitment Letter.

ARTICLE 2 **AMENDMENTS TO THE DIP COMMITMENT LETTER**

2.1 Amendment to the Maturity Date

The paragraph in the DIP Commitment Letter entitled “Repayment” is hereby amended by deleting the date “November 4, 2011” and replacing it with the date “January 18, 2012”.

2.2 Amendment to Cash Flow Projections

The paragraph in the DIP Commitment Letter entitled “Cash Flow Projections” is hereby amended and restated in its entirety by replacing it with the following:

“The Borrower has provided to the DIP Lender cash flow projections, attached as Schedule “C” hereto, reflecting the projected cash requirements of the Borrower for the period commencing on October 31, 2011 and ending on January 29, 2012, presented on a weekly basis (the “Cash Flow Projections”).

The Borrower, with the assistance of the Monitor, shall provide the DIP Lender on the Tuesday of each week with a comparison of the previous week’s actual cash flow to the projections for that week.”

Schedule “C” to the DIP Commitment Letter, shall be Schedule “C” attached to this First Amending Agreement.

2.3 Amendment to the DIP Lender Fees

The paragraph in the DIP Commitment Letter entitled “DIP Lender Fees” is hereby amended by inserting the following at the end of this paragraph:

“The Borrower shall pay the DIP Lender an extension fee of Cdn\$ [REDACTED], which fee shall be payable immediately after the granting of a stay extension order of the Court extending the stay of proceedings in the CCAA Proceedings past November 4, 2011.”

2.4 Amendment to the DIP Security

The paragraph in the DIP Commitment Letter entitled “DIP Security” is hereby amended by inserting the following at the end of this paragraph:

“The Borrower acknowledges and agrees that all cash receipts relating the guaranty and expense letters of credit that were issued in connection with the Agency Agreement dated October 17, 2011 between Tiger Capital Group, LLC and the Borrower are subject to the DIP Priority Charge and any cash receipts received by the Borrower in connection with such letters of credit shall be forthwith applied to reduce the outstanding obligations under the DIP Facility.”

2.5 Amendment to the Restructuring Timeline

The Restructuring Timeline set out under section (p) of the paragraph in the DIP Commitment Letter entitled “Affirmative Covenants” is hereby amended and restated in its entirety by replacing it with the following:

[REDACTED]

2.7 Amendment to Certain Definitions

The paragraph of the DIP Commitment Letter entitled “Definitions” shall be modified as follows:

- (i) Part (a) of the definition of “Availability Reserves” is hereby amended by deleting the amount “Cdn\$ [REDACTED]” and replacing it with the amount “Cdn\$ [REDACTED]”.
- (ii) The following definition shall be inserted immediately before the definition of “CCAA Proceedings”:

““**CCAA Cash Flow**” means the cash flow projections remitted to the DIP Lender by the Borrower reflecting the projected cash flow requirements of the Borrower from August 30, 2011 to the period ending October 16, 2011, calculated on a weekly basis, and attached hereto as Schedule “A”.”

ARTICLE 3 GENERAL PROVISIONS

3.1 Court Approval

In accordance with the terms of the DIP Commitment Letter, the Borrower and the DIP Lender acknowledge and agree that Court approval of this First Amending Agreement shall be sought and obtained before the amendments contained herein become effective.

3.2 Other Documents

Any reference to the DIP Commitment Letter made in any documents delivered pursuant thereto or in connection therewith shall be deemed to refer to the DIP Commitment Letter as amended, extended, modified, renewed or supplemented from time to time, unless the context otherwise permits.

3.3 Ratification and Confirmation

Except for the specific amendments to the DIP Commitment Letter contained herein, the DIP Commitment Letter and all related documents are in all other respects hereby ratified and confirmed and the DIP Commitment Letter as amended and extended hereby shall be read, taken and construed as one and the same instrument.

3.4 Headings

The division of this First Amending Agreement into articles, sections and clauses, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this First Amending Agreement.

3.5 Governing Law

This First Amending Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec and the federal laws of Canada applicable therein.

3.6 Attornment

The parties hereto irrevocably submit and attorn to the non-exclusive jurisdiction of the Court for all matters arising out of or in connection with this First Amending Agreement.

3.7 Binding Effect

This Amending Agreement shall be binding upon and enure to the benefit of each of the parties hereto and their respective successors and permitted assigns.

3.8 Further Assurances

The parties hereto shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable to give effect to the provisions and purposes of this First Amending Agreement, all at the expense of the Borrower.

3.9 Execution in Counterparts

This First Amending Agreement may be executed and delivered by facsimile or other electronic transmission and in any number of counterparts, each of which when so executed and delivered is an original but all of which taken together constitute one and the same instrument.

[Remainder of page intentionally left blank.]

IN WITNESS HEREOF, the parties hereby execute this First Amending Agreement as at the date first above mentioned.

**HART STORES INC. / MAGASINS HART
INC., as Borrower**

Per: 

Name: ROBERT HARRITTI
Title: V-P FINANCE & CFO

I have authority to bind the corporation.

**WELLS FARGO CAPITAL FINANCE
CORPORATION CANADA, as DIP Lender**

Per: _____

Name:

Title:


I have authority to bind the corporation.

IN WITNESS HEREOF, the parties hereby execute this First Amending Agreement as at the date first above mentioned.

**HART STORES INC. / MAGASINS HART
INC., as Borrower**

Per: _____
Name:
Title:
I have authority to bind the corporation.

**WELLS FARGO CAPITAL FINANCE
CORPORATION CANADA, as DIP Lender**

Per:  _____
Name: Domenic Cosentino
Title: vice president
I have authority to bind the corporation.

500-11-041238-110

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED**

HART STORES INC. / MAGASINS HART INC.

Petitioner

- and -

RSM RICHTER INC.

Monitor

**MOTION FOR AN ORDER FOR A SECOND
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(Section 11.02 of the *Companies' Creditors
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amended)

ORIGINAL

Code: BJ-0039

Notre réf. : 043054.0112

M^e Michael J. Hanlon

Téléphone : 514 846-2376

Télocopieur : 514-921-1376

Heenan Blaikie LLP

AVOCATS / LAWYERS

1250, boul. René-Lévesque Ouest, bureau 2500

Montréal (Québec) H3B 4Y1