

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:

HART STORES INC. / MAGASINS HART  
INC.,

Petitioner

- and -

RSM RICHTER INC.,

Monitor

---

**AMENDED MOTION FOR AN ORDER EXTENDING 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**");

Heenan Blaikie

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**"), 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. By this Motion, the Petitioner seeks an Order:
  - 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**");

#### I. **GROUNDS FOR AN EXTENTION OF THE STAY PERIOD**

5. The Monitor has advised the Petitioner that it will be filing its first 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 observations on the Petitioner's weekly cash flow projections for the period ending on November 6, 2011, and its report on the Petitioner's operation of its affairs and conduct of its business since the Filing Date. A redacted copy of the Petitioner's cash flow projections for the period ending on November 6, 2011 (the "**Cash-Flow Projections**"), will be filed at tomorrow's hearing and an unredacted copy will be provided to the Court under seal;
6. Since the Filing Date, the Petitioner has acted, and continues to act, in good faith and with all due diligence. In particular, the Petitioner has done the following to restructure its affairs:
  - a) has performed a full analysis of its store-by-store earnings and profitability, and with the Monitor's assistance, identified 23 stores in various locations which are underperforming and will be closed (the "**Closing Stores**"). The Closing Stores represent approximately 25 % of the Petitioner's current stores, and their closure will favourably impact the Petitioner's results;

- b) with the assistance of the Monitor, the Petitioner has established a process to solicit tenders from liquidators for the liquidation of its excess inventory, located at the Closing Stores and elsewhere in the chain, and its furniture, fixtures and equipment located in the Closing Stores, which assets (the "**Closing Stores Assets**") have a current cost value of approximately \$ 17,000,000 (the "**Inventory Sale Process**");
  - c) with the assistance of the Monitor, the Petitioner has established a process to solicit offers for the assignment of the leases relating to the Closing Stores (the "**Lease Sale Process**");
  - d) it has set up a data room so that prospective bidders for the liquidation of the excess inventory, or the assignment of the Closing Stores leases, as well as potential replacement financiers who have executed a non-disclosure agreement have access to the information necessary to allow them to conduct due diligence and present informed bids or offers within a very short period of time, namely by October 5, 2011 with respect to the liquidators;
  - e) it has reduced its purchases and implemented various cost-saving measures and continues to assess further potential reductions;
  - f) it has resolved issues with certain of its suppliers, and a constant flow of inventory and other goods to the Petitioner's stores has been secured;
7. To date, 10 prospective liquidators have executed non-disclosure agreements and been granted access to the data room set up for the Inventory Sale Process, while some five prospective bidders have executed non-disclosure agreements and been granted access to the data room set up for the Lease Sale Process;
8. It is expected that the Inventory Sale Process and the Lease Sale Process will lead to acceptable offers for the excess inventory, furniture, fixtures, equipment and the Closing Store leases within the next two weeks, and that the accepted offers for the Closing Stores Assets could be presented to the Court for approval before October 21, 2011, that date being the contemplated date of delivery of the Closing Stores Assets;
9. In addition to the sales relating to the Closing Stores, the Petitioner has had discussions in parallel with a number of chartered banks and asset-based lenders with a view to refinancing the Petitioner's affairs. Discussions with several such lenders have been initiated;

10. The steps taken to date by the Petitioner have already led to renewed optimism and greatly improved morale within the ranks of its employees, and the Petitioner has received numerous expressions of support from its suppliers who believe in the its future success and are willing to work with it through these trying times;
11. The Petitioner respectfully submits that an extension of the Stay Period to November 4, 2011, is required in order to allow it to complete the stabilization of its business, to complete the solicitation of offers and negotiation of appropriate definitive agreements under the Inventory Sale Process and the Lease Sale Process, to further its negotiations with 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;
12. As appears from the Cash-Flow Forecast, no creditor will be materially affected by the extension sought;
13. The extension of the Stay Period is supported by Wells Fargo and recommended by the Monitor;

## II. THE POST-FILING SUPPLIERS CHARGE

14. Since the Filing Date, the Petitioner has continued to purchase goods and services in the ordinary course, in most cases paying for them on a COD-basis or other equivalent arrangement;
15. However, given the Petitioner's history in the marketplace, its long-standing relationships with many of its suppliers, and the suppliers' confidence in the Petitioner's ability to successfully restructure the company's affairs, some suppliers have begun offering the Petitioner credit terms similar to those which it enjoyed prior to the Filing Date for goods and services sold or provided subsequent to that date (the "**Post-Filing Suppliers**");
16. Such credit terms are advantageous to both the Petitioner and its stakeholders, as it allows the Petitioner to better manage its receipts and disbursements, and gives it greater flexibility to deal with unforeseen circumstances in the ordinary course of its business, avoiding a detrimental interruption or slowing of its affairs;
17. While the Petitioner is confident that it will emerge from the CCAA proceedings as a rejuvenated and profitable business, there is nonetheless a risk that the restructuring might fail, in which case the

claims for any outstanding balance owing to the Post-Filing Suppliers would rank *pari passu* with the Petitioner's pre-filing unsecured claims. At the Filing Date, it had been assumed that all post-filing claims would have to be settled on a COD basis;

18. The Petitioner believes it unfair that the Post-Filing Suppliers be prejudiced, in the event the restructuring fails, for their support of its restructuring efforts. Therefore, the Petitioner seeks an order creating a charge in favour of the Post-Filing Suppliers in the amount of \$ 2,000,000 over all of the Petitioner's Property, as such term is defined in the Initial Order, in order to secure the ultimate balance owing to the Post-Filing Suppliers (the "**Post-Filing Suppliers Charge**") for goods sold or services rendered to the Petitioner between the Filing Date and the date on which the plan of compromise or arrangement to be presented under the CCAA by the Petitioner is sanctioned by the Court, or the date on which the Stay Period is terminated, whichever is later (the "**Post-Filing Claims**");
19. The Post-Filing Suppliers Charge would rank immediately after the hypothecs, security interests and other encumbrances charging the Petitioner's property;
20. Creditors holding pre-filing claims will not be prejudiced by the creation of the Post-Filing Suppliers Charge, since the Post-Filing Suppliers could otherwise insist upon payment of their Post-Filing Claims on a COD basis, and the funds used to pay such claims would not, in any event, be available for distribution to the pre-filing creditors;
21. In these circumstances, and so long as the Petitioner continues to pay the Post-Filing Claims in accordance with the credit terms offered to it, the Monitor believes the creation of the Post-Filing Suppliers Charge is reasonable, and the amount of the charge reasonable, given the Petitioner's purchasing patterns;
22. Wells Fargo, though unaffected by the Post-Filing Suppliers Charge, nonetheless consents to its creation;

### III. THE INSURANCE CHARGE

23. In the ordinary course of its operations, the Petitioner is required to subscribe for insurance to cover a variety of risks, including loss or damage of property, civil liability, crime, loss or damage to cargo, and to provide insurance coverage for its directors and officers;
24. On July 31, 2011, the Petitioner renewed its policies for the next twelve months, with premiums becoming due on September 30, 2011;

25. Given the size of the Petitioner's business, the premiums are significant, totalling \$ 945,799.65 for the current year;
26. The Petitioner therefore financed the payment of a portion of the premiums with Macquarie Premium Funding Inc ("**Macquarie**"), pursuant to the terms of a Premium Installment Contract between the Petitioner and KRG Insurance Brokers, a division of RRJ Insurance Group Limited, dated August 10, 2011, and assigned to Macquarie that same day (the "**Instalment Contract**"), a copy of which is relied upon, and provided under seal to the Court, as **Exhibit R-1**;
27. Under the terms of the Instalment Contract, a loan is made by Macquarie to the Petitioner in the amount of the balance premiums to be paid, and Macquarie effectively pays the premiums to the insurance broker on behalf of the Petitioner, while the Petitioner reimburses the cost of the premiums to Macquarie, plus the stipulated interest, over the period provided for in the contract;
28. In order to secure repayment of the amounts owed to it, Macquarie is granted a security interest by the Petitioner over any and all unearned premiums and dividends which may become due and refunded to the Petitioner under the financed policies (the "**Financed Policies**") in the event of the cancellation or termination of the policies and, subject to any mortgage or loss payee interest, loss payments under the Financed Policies which reduce the unearned premiums, (the "**Unearned Premiums**"), and is given the right to terminate the policies in the event of a default by the Petitioner under the Instalment Contract, as more fully appears from the Instalment Contract;
29. Prior to the Filing Date, the Petitioner had settled a down payment in the amount of \$ 273,826.04 directly to KRG Insurance brokers, leaving an unpaid balance of \$ 671,973.61 which is to be funded by Macquarie, and repaid by the Petitioner. On September 23, 2011, the Monitor was advised that unless a court order was obtained by the Petitioner (a) recognizing the Petitioner's ability to make the payments under the Instalment Contract, (b) declaring the validity of its security interest over the Unearned Premiums, or creating an equivalent charge in its favour over same, and (c) authorizing Macquarie to exercise its remedies under the Instalment Contract, despite the terms of the Initial Order, in the event of a default by the Petitioner under the terms of the Instalment Contract, it would not make any advances under the Instalment Contract;
30. In the event the premiums are not financed by Macquarie, the Petitioner's cash-flow makes it difficult to settle the premiums in full prior to their due date, and the policies may be cancelled;

31. Given the Petitioner's current circumstances, should the policies be cancelled, the Petitioner may be unable to obtain replacement insurance prior to their cancellation, and if obtained, the premiums will likely be much higher;
32. For these reasons, it is critical that the policies be maintained and the Petitioner respectfully submits that an order be rendered:
  - a) authorizing the payment of the instalments under the Instalment Contract by the Petitioner when due;
  - b) creating a charge over the Unearned Premiums in favour of Macquarie, which charge shall be in an amount of \$ 686,446, being the total amount of the balance of the premiums plus 4.75 % (the "**Insurance Charge**")
  - c) declaring that the Insurance Charge shall rank ahead of all other charges and encumbrances, including the Post-Filing Suppliers Charge, and the Administration Charge and the DIP Charge, but only on the Unearned Premiums, as those terms are defined in the Initial Order;
  - d) declaring that Macquarie may, in the event of a default by the Petitioner under the Instalment Contract which occurs after the Filing Date, exercise its remedies under the Instalment Contract;

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

33. No creditor will be materially prejudiced by the granting of this relief, as the Petitioner's cash flow projections, both the initial five-week projection filed in support of the Petition for the Issuance of an Initial order, and the Cash Flow Projections filed in support of this Motion, already provide for the monthly payments due under the Instalment Contract;
34. Wells Fargo consents to the creation of the Insurance Charge, and no secured creditor is likely to be affected by its creation;
35. The Monitor has determined that the creation of the Insurance Charge is appropriate and its amount is reasonable;
36. For the reasons set forth above, the Petitioner believes it is both reasonable and necessary that the Stay Period be extended to November 4, 2011, the whole subject to all the other terms of the Initial Order, and that the other relief sought by this Motion be granted;
37. The Petitioner respectfully submits that the notice given for the presentation of this Motion is proper and sufficient;

38. 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, including to the secured creditors who are likely to be affected by the charges created herein;
- [3] **EXTEND** the Stay Period (as such term is defined in the Initial Order) until and including November 4, 2011, the whole subject to all other terms of the Initial Order;
- [4] **DECLARE** that all of the Property, as such term is defined in the Initial Order, of the Petitioner is hereby subject to a charge and security for an aggregate amount of \$ 2,000,000 (such charge and security is referred to herein as the "**Post-Filing Suppliers Charge**") in favour of the suppliers who have sold goods or provided services to the Petitioner after the Filing Date where the cost of those goods or services were not paid by the Petitioner on a COD or other equivalent basis, or not settled prior to the date on which the Plan of Compromise or Arrangement to be presented under the CCAA is sanctioned by the Court, or the date on which the Stay Period is terminated, whichever is later (the "**Post-Filing Suppliers**"), as security for the ultimate balance that may be owing to them for goods sold, or services provided, to the Petitioner from the Filing Date to the date on which the Plan of Compromise or Arrangement to be presented under the CCAA is sanctioned by the Court, or the date on which the Stay Period is terminated, whichever is later (the "**Post-Filing Claims**");
- [5] **DECLARE** that the Post-Filing Suppliers Charge shall rank in priority to any unsecured claims, but immediately after any and all hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances, including the Administration Charge and the DIP Lender Charge, as such terms are defined in the Initial Order, and the Insurance Charge, as such term is hereafter defined;
- [6] **DECLARE** that the Post-Filing Suppliers Charge shall attach, as of the Effective Time, without the necessity of registration, to all present and future Property of the Petitioner, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent;



- [7] **ORDER** that in the event the total amount of Post Filing Claims exceeds \$ 2,000,000, the Post-Filing Suppliers shall be entitled to the benefit of the Post-Filing Suppliers Charge on a *pro rata* basis;
- [8] **AUTHORIZE** the Petitioner to make the payments provided for under the Premium Instalment Contract, Exhibit R-1, (the "**Instalment Contract**") entered into between KRG Insurance Brokers, a division of RRJ Insurance Group Inc., and the Petitioner on August 10, 2011, and assigned to Macquarie Premium Funding Inc. ("**Macquarie**"), to Macquarie, and **DECLARE** that the payments made pursuant thereto do not and will not be deemed to constitute fraudulent preferences or other challengeable or reviewable transactions under any applicable law;
- [9] **DECLARE** that the Instalment Contract, Exhibit R-1, constitutes a valid and binding obligation of the Petitioner enforceable against it and any trustee in bankruptcy or other successor in interest to the Petitioner in accordance with the terms thereof;
- [10] **ORDER** that the copy of the Instalment Contract filed with this Court as Exhibit R-1 be kept confidential and under seal in the Court Record;
- [11] **DECLARE** that all of the unearned premiums and dividends which may become payable and refunded to the Petitioner or as otherwise directed by Macquarie under the insurance policies described in the Instalment Contract (the "**Financed Policies**") upon cancellation or termination of the Financed Policies and, subject to any mortgage or loss payee interest, loss payments under the Financed Policies which reduce the unearned premiums (the "**Unearned Premiums**") are hereby subject to a charge and security for an aggregate amount of \$ 686,446 (such charge and security is referred to herein as the "**Insurance Charge**") in favour of Macquarie as security for the outstanding balance due under the Instalment Contract;
- [12] **DECLARE** that the Insurance Charge shall rank in priority to any and all other Encumbrances affecting the Unearned Premiums charged by such Encumbrances, including without limitation the Administration Charge, the DIP Lender Charge, and the Post-Filing Suppliers Charge;
- [13] **DECLARE** that the Insurance Charge shall attach, as of the Effective Time, to all present and future Unearned Premiums, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent;
- [14] **ORDER** that notwithstanding the stay of proceedings pronounced by the Initial Order, if the Petitioner defaults under the terms of the Instalment Contract, Macquarie be and is hereby authorized to, upon 5-days notice

to the Monitor, the Petitioner and the DIP Lender, as such term is defined in the Initial Order, to:

- a) cancel the Financed Policies; and
- b) apply for and receive all Unearned Premiums which may become payable under the Financed Policies and subject to any mortgagee or loss payee interest, loss payments under the Financed Policies which reduce the Unearned Premiums;

[15] **ORDER** that in the event of a refund of the Unearned Premiums as a result of the cancellation or termination of any or all of the Financed Policies for any reason, Macquarie will have absolute first-ranking priority to such Unearned Premiums until all amounts owing to Macquarie pursuant to the Instalment Contract have been paid in full;

[16] **ORDER** that Macquarie's sole recourse under the Insurance Charge shall be limited to the Unearned Premiums as security for the outstanding balance due under the Instalment Contract and Macquarie shall have no rights or remedies in connection with the Insurance Charge to any other Property of the Petitioner;

[17] **DECLARE** that for the purposes of paragraphs 47, 48, 50, 51 and 52 of the Initial Order, the Post-Filing Suppliers Charge and the Insurance Charge shall be deemed to be "CCAA Charges", and shall have the benefit of those provisions;

[18] **THE WHOLE** without costs, save in case of contestation.

**MONTREAL**, September 27, 2011

**(S) HEENAN BLAIKIE S.E.N.C.R.L., SRL/LLP**

**HEENAN BLAIKIE LLP**  
Attorneys for the Petitioner

**COPIE CONFORME/TRUE COPY**

  
**HEENAN BLAIKIE S.E.N.C.R.L., SRL/LLP**

---

**AFFIDAVIT**

---

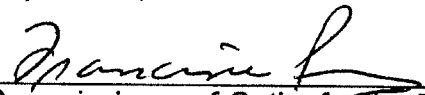
I, the undersigned, Robert Harritt, businessman, domiciled and residing for the purpose hereof at 900 Place Paul-Kane, in the City and District of Laval, Province of Québec, H7C 2T2, solemnly declares as follows:

1. That I am the Chief Financial Officer and duly authorized representative of the Petitioner;
2. That all the facts contained in the present Amended 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 27<sup>TH</sup> day of September, 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.

**TAKE NOTICE** that the present Amended Motion for an Order Extending 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 September 28, 2011, at 9:00 o'clock, in room 16.12 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.**

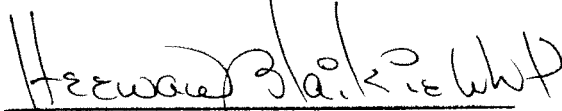
**MONTREAL, September 27, 2011**

**(S) HEENAN BLAIKIE S.E.N.C.R.L., SRL/LLP**

---

**HEENAN BLAIKIE LLP**  
Attorneys for the Petitioner

**COPIE CONFORME/TRUE COPY**

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

**HEENAN BLAIKIE S.E.N.C.R.L., SRL/LLP**

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:

HART STORES INC./MAGASINS HART  
INC.

Petitioner

- and -

RSM RICHTER LLP

Monitor

---

**LIST OF EXHIBITS**

(In support of the *Amended Motion for an Order  
Extending the Stay Period*)

---

**EXHIBIT R-1** Premium Instalment Contract (under seal);

MONTREAL, September 27, 2011

**(S) HEENAN BLAIKIE S.E.N.C.R.L., SRL/LLP**

---

HEENAN BLAIKIE LLP  
Attorneys for the Petitioner

COPIE CONFORME/TRUE COPY

*Heenan Blaikie LLP*  
HEENAN BLAIKIE S.E.N.C.R.L., SRL/LLP

**EXHIBIT R-1**

**UNDER SEAL**

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

---

**AMENDED MOTION FOR AN ORDER  
EXTENDING THE STAY PERIOD**

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

---

**COPY**

---

Code: BJ-0039

Notre réf. : 043054.0112

**M<sup>o</sup> Michael J. Hanlon**

Téléphone : 514 846-2376

Télécopieur : 514-921-1376

**Heenan Blaikie** LLP

A V O C A T S / L A W Y E R S

1250, boul. René-Lévesque Ouest, bureau 2500  
Montréal (Québec) H3B 4Y1