

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. 500-11-047847-146

DATE: January 6, 2015

PRESIDING : THE HONOURABLE JUSTICE LOUIS J. GOUIN, J.S.C.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:

MEXX CANADA COMPANY

Debtor/Petitioner

and-

RICHTER ADVISORY GROUP INC.

Trustee

and-

LF CENTENNIAL PTE. LTD.

Respondent

SAFEGUARD ORDER

ON READING the Debtor's *Motion to Declare a Seizure Unenforceable and to Enforce the Stay of Proceedings or Alternatively to Grant a Safeguard Order* (the "**Motion**") pursuant to Section 69 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), the affidavit and the exhibits in support thereof;

JG 2270

CONSIDERING the representations and consent of the parties;

WHEREFORE THE COURT:

- [1] **GRANTS** the Motion in part;
- [2] **ORDERS** LF Centennial PTE. LTD. ("LF") to cause the goods arrested (the "**Seized Inventory**") pursuant to the Warrant of Arrest issued in the Federal Court action T-2602-14 (the "**FC Proceedings**") to be released from arrest by no later than January 7, 2015 at noon;
- [3] **ORDERS** Richter Advisory Group Inc., in its capacity as Trustee to the Notice of Intention ("**Richter**"), to keep in a segregated escrow account the proceeds of the sale of the Seized Inventory less (i) applicable taxes, (ii) any amounts on accounts of custom duties and freight and brokerage charges in respect thereof, (iii) any amount owed to Merchant Retail Solutions ULC and Gordon Brothers Canada ULC (as per the Consulting Agreement approved by this Court on December 18, 2014) and (iv) any costs to distribute the Seized Inventory to the stores, including distribution center labour and transport from the distribution center to the stores (the "**Net Proceeds**");
- [4] **ORDERS** that for the purposes of determining the rights of Mexx Canada Company ("**Mexx**") and LF over the Seized Inventory, the Net Proceeds up to an amount of CDN\$1,100,000 shall stand in the place and stead of the Seized Inventory as bail in FC Proceedings, and that any rights that Mexx or LF had on or over the Seized Inventory shall attach to the Net Proceeds with the same rights and priority (if any) as they had with respect to the Seized Inventory immediately prior to the release of said Seized Inventory, as if the Seized Inventory had not been released from arrest pursuant to the Federal Court Warrant of Arrest issued under the FC Proceedings and sold, but remained in the possession or control of the person having that possession or control in accordance with the Federal Court Warrant of Arrest immediately prior to the release of the Seized Inventory. Directions for the further payment out of the Net Proceeds from the said segregated escrow account are reserved until further Order, with liberty of any interested person to apply upon proper three clear business days' notice to Mexx, LF, Richter and any other interested person. Nothing herein shall be construed as an admission by Mexx that LF had any rights, *in rem* or otherwise, over the Seized Inventory nor any priority with respect thereto. For greater clarity, **DECLARES** that the foregoing shall be without admission by Mexx that the Federal Court had jurisdiction over the matter or that LF was entitled to arrest the Seized Inventory and Mexx reserves the right to quash the arrest and strike the FC Proceedings.
- [5] **ORDERS** Richter to deposit the Net Proceeds in the said segregated escrow account, and to provide LF with an accounting of the Net Proceeds, on a weekly basis.
- [6] **ORDERS** the provisional execution of this Order notwithstanding appeal;

[7] THE WHOLE, without costs.



LOUIS J. GOUIN, J.S.C.

COPIE CERTIFIÉE CONFORME AU
DOCUMENT DÉTENU PAR LA COUR



PERSONNE DÉSIGNÉE PAR LE GREFFIER
EN VERTU DE 44 C.P.C