

District of Ontario
Division No. 9 - Toronto
Court File No: 31-2010608
Estate File No. 31-2010608

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE) THURSDAY, THE 20TH DAY
JUSTICE MEW) OF AUGUST, 2015



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
SHERSON GROUP INC.

APPROVAL AND VESTING ORDER

THIS MOTION, made by Sherson Group Inc. (“**Sherson**”) for orders, among other things: (i) approving the First Report to the Court of Richter Advisory Group Inc., in its capacity as proposal trustee (the “**Proposal Trustee**”) in Sherson’s *Bankruptcy and Insolvency Act* proposal proceedings (the “**Proposal Proceedings**”), dated July 27, 2015 (the “**First Report**”), and the Proposal Trustee’s activities set out therein; (ii) approving the Proposal Trustee’s Second Report to the Court dated August 12, 2015 (the “**Second Report**”), and the Proposal Trustee’s activities set out therein; (iii) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between Sherson and Nine West Canada LP, by its general partner Jones Canada, Inc. on behalf of Nine West Canada LP, (the “**Purchaser**”) dated August 6, 2015 and appended in redacted form to the Second Report and filed in unredacted form as confidential Appendix “B” to the Second Report (together with Confidential Appendix “A” to the Report, the “**Confidential Appendices**”); (iv) vesting in the Purchaser Sherson’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”); (v) approving payment of the balance of the purchase price for the Purchased Assets (the “**Purchase Price**”) to the Proposal Trustee, the Bank of Montreal (“**BMO**”), BDC Capital Inc. (“**BDCC**”) and Stephen Applebaum Inc. (“**SAI**”) in accordance

with the Sale Agreement; (v) assigning to the Purchaser, the rights and obligations of Sherson under certain contracts (collectively, the “Assigned Contracts”) and leases (collectively, the “Assigned Leases”); (vi) sealing the Confidential Appendices; and (vii) extending the time for Sherson to make a proposal to its creditors up to and including October 4, 2015, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and the Affidavit of Stephen Applebaum sworn August 12, 2015 (the “Applebaum Affidavit”) and on hearing the submissions of counsel for the Sherson, the Proposal Trustee, the Purchaser, BMO, BDCC, Cadillac Fairview Corporation, Ivanhoe Cambridge ^{Brookfield} and Morguard Investments Limited, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of service, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the First Report and the Second Report be and are hereby approved and the activities of the Proposal Trustee described therein be and are hereby approved.
3. **THIS COURT ORDERS** that all capitalized terms used and not defined herein shall have the meaning attributed to them in the Sale Agreement.
4. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by Sherson is hereby authorized and approved, with such minor amendments as Sherson and the Purchaser may, with the Proposal Trustee’s consent, deem necessary or desirable. Sherson is hereby authorized and directed to take, with the Proposal Trustee’s consent, such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

5. **THIS COURT ORDERS AND DECLARES** that:

- (a) with respect to the Purchased Assets described in the Sale Agreement, including, subject to paragraph 6 hereof, the Assigned Contracts, and other than the Assigned Leases, upon the delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Proposal Trustee's Certificate**"), all of Sherson's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, or such party as designated by the Purchaser, and
- (b) with respect of the Assigned Leases forming part of the Purchased Assets, upon delivery in writing by the Purchaser to the Proposal Trustee of the assignment of such Assigned Leases to the Purchaser either (i) in accordance with the terms of such Leases or as may otherwise be agreed between the Purchaser and the relevant landlord, or (ii) by order of the Court pursuant to sections 66.(1) and 84.1 (1) of the *Bankruptcy and Insolvency Act*, (Canada), all of Sherson's right, title and interest in and to such Leases shall be absolutely assigned to and vested in the Purchaser,

in each case free and clear of and from any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), easement, license, right of first refusal or first offer, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant, execution, levies, or other financial or monetary claims or encumbrances of any nature (whether at law or equity), and any contract, option, right or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, 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, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or moveable property registry system, (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the security or ownership interests, if any, registered by the registrations listed on Schedule 2 hereto),

conditional on the underlying assets related thereto being Purchased Assets as defined the Sale Agreement, 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 and the Purchaser, provided however that nothing in this paragraph 5 shall affect the rights and remedies of the applicable landlords against the Purchaser that may exist or arise under or in respect of Assigned Leases except as may otherwise be agreed to by the landlord and the Purchaser, or by further court of the Court.

6. **THIS COURT ORDERS** that in respect of the Assigned Contracts that do not require the counterparties' consent, the vesting of such Assigned Contract(s) as a Purchased Asset in the Purchaser, in accordance with the terms of this Order, shall be completed by and upon the Purchaser filing with the Proposal Trustee and serving, by courier or electronic notice to their counsel, if applicable, on the counterparties to the subject agreements a Notice of Assumption and Assignment (the "**Notice**"). In respect of agreements requiring the consent of the counterparty, the terms of the Assignment Order granted in these proceedings on August 20, 2015 (the "**Assignment Order**") will determine the timing of the proposed assignment. At the conclusion of the Designation Period, the Proposal Trustee shall file with the Court a Proposal Trustee's Assignment Certificate, in substantially in the form scheduled to the Assignment Order, identifying all agreements vested in the Purchaser pursuant to this paragraph 5.
7. **THIS COURT ORDERS** that: (a) nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of any real property lease (whether an Assigned Lease or otherwise); (b) where any real property lease is not, in accordance with its terms, transferrable or assignable to the Purchaser without first obtaining the consent of the applicable landlord, such real property lease shall not be transferred, conveyed, assigned or vested in the Purchaser by operation of this Order, save and except to the extent that the requisite consent has been, or is in the future, obtained from such landlord, or upon further order of the Court.
8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place

and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased 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.

9. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Proposal Trustee's Certificate, forthwith after delivery thereof.
10. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, Sherson and the Proposal Trustee are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Sherson's records pertaining to the its past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Sherson and/or the Proposal Trustee.
11. **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 Sherson and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made or deemed to be made in respect of Sherson;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Sherson and shall not be void or voidable by creditors of Sherson, 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.

12. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).
13. **THIS COURT ORDERS** that Sherson and the Purchaser are deemed to have obtained clearance certificates as required under the *Tax Administration and Miscellaneous Taxes Act* (Manitoba), the *Revenue and Financial Services Act* (Saskatchewan), and the *Provincial Sales Tax Act* (BC), and the Purchaser shall not be liable for any taxes or penalties based on or in respect of any of the Sherson's unpaid taxes.
14. **THIS COURT ORDERS AND DECLARES** that the payments of the balance of the Purchase Price due on closing of the Transaction ("**Closing**") or thereafter, under the direction of Sherson, to BMO, BDCC, the Proposal Trustee and SAI, in accordance with and in the amounts specified in subsection 5.1(2) and section 5.2 of the Sale Agreement and, as applicable, in accordance with the Payout Letters, as that terms is defined in the Applebaum Affidavit, are hereby approved, and the Purchaser is hereby authorized to make the same and Sherson is hereby ordered and directed to execute the acknowledgment and release forming part of each Payout Letter, in favour of BMO or BDCC, as the case may be.
15. **THIS COURT DIRECTS** that the stay of proceedings provided for in the BIA shall continue to apply to Sherson, and for greater certainty until on or before the Designation Deadline, or such earlier date as permitted pursuant to the Sale Agreement, for the purposes of implementing the Sale Agreement and its obligations thereunder, Sherson shall remain the tenant under the applicable leases and shall remain in possession of the Leased Premises (as such term is defined in the Sale Agreement) and avail itself of any and all services related to the Leased Premises, including, but not limited to, all occupancy rights, utilities, water, cleaning services, garbage removal, in each case to the extent required and provided for under the applicable lease and in each case provided that the terms of such lease are being observed by Sherson (excluding, for greater certainty,

any defaults arising in respect of the within proceedings or insolvency of Sherson); and take any and all actions as may be necessary or desirable to operate the Leased Premises and to otherwise implement the Sale Agreement, free of any interference from any entity or person, subject to compliance with this Order, the applicable leases (excluding, for greater certainty, any defaults arising in respect of the within proceedings or insolvency of Sherson) and the Sale Agreement.

16. **THIS COURT ORDERS** that all inventory sold from the Leased Premises and all proceeds therefrom shall be the sole property of the Purchaser and constitute part of the Purchased Assets for all purposes, including under the Sale Agreement, and shall be sold free and clear of any interest which any person may assert against such inventory or proceeds, including, without limitation, any landlord distraint remedies.
17. **THIS COURT ORDERS** that until the earlier of further Order of this Court or the filing of the Proposal Trustee's Certificate, the Confidential Appendices to the ^{SECRET} Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order.
18. **THIS COURT ORDERS** that the time for the filing of a proposal by Sherson is hereby extended in accordance with section 50.4(9) of the BIA up to and including October 4, 2015.
19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist Sherson, the Proposal Trustee and their respective 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 provide such assistance to Sherson and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist Sherson and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

20. **THIS COURT ORDERS** that each of Sherson and the Proposal Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including, without limitation, the United States Bankruptcy Court, Southern District of New York, in the proceedings initiated by the Proposal Trustee (in its capacity as Foreign Representative of Sherson in the Proposal Proceedings) under Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330 (Case No. 15-11765-SHL), for the recognition of this Order and for assistance in carrying out the terms of this Order, including the enforcement of any of the Charges established hereby.



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

 AUG 20 2015

**SCHEDULE A
FORM OF PROPOSAL TRUSTEE'S CERTIFICATE**

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SHERSON GROUP INC.**

PROPOSAL TRUSTEE'S CERTIFICATE

RECITALS

- A. On June 29, 2015, Sherson Group Inc. ("**Sherson**") filed a Notice of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act* Richter Advisory Group Inc. was appointed as Sherson's proposal trustee (the "**Proposal Trustee**").
- B. Pursuant to an Order of the Court dated August 20, 2015 (the "**Approval Order**"), the Court approved the Asset purchase agreement dated of August 6, 2015 (the "**Sale Agreement**") between the Sherson and Nine West Canada LP by its general partner, Jones Canada, Inc. acting on behalf of Nine West Canada LP (the "**Purchaser**") and provided for the vesting in the Purchaser of Sherson's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by Sherson and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and the Proposal Trustee, Bank of Montreal, BDC Capital Inc. and Stephen Applebaum have received their respective portions of the Purchase Price for the Purchased Assets payable on the date of Closing pursuant to the Sale Agreement and the Approval Order;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by Sherson, with the consent of the Proposal Trustee, and the Purchaser; and
3. The Transaction has been completed to the satisfaction of Sherson and the Proposal Trustee.
4. This Certificate was delivered by the Proposal Trustee at _____ on _____, 2015.

RICHTER ADVISORY GROUP INC., in its capacity as Proposal Trustee of **SHERSON GROUP INC.**, and not in its personal capacity

Per: _____
Name:
Title:

**SCHEDULE B
PERMITTED ENCUMBRANCES**

(unaffected by the Vesting Order)

- (1) Xerox Canada Ltd. Ontario Personal Property Registration System (“PPRS”) registration number 20110401 1701 1462 2657
- (2) G.N. Johnston Equipment Co. Ltd. PPRS registrations number 20120404 1139 1097 4529 and number 20140404 0910 1097 5179
- (3) V.W. Credit Canada Inc. PPRS registration number 20120910 1948 1531 8072
- (4) Hav-a-Kar Leasing Ltd. PPRS registrations number 20121218 1007 1462 2587, number 20130129 1002 1462 0861 and number 20130129 1002 1462 0862
- (5) Mercedes-Benz Financial Services Canada Corporation PPRS registration number 20130628 1934 1531 8228
- (6) De Lage Landen Financial Services Canada Inc. PPRS registration number 20150114 1435 1530 3013

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ORDER

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