

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N° : 500-11-045951-148

DATE : 20 février 2014

SOUS LA PRÉSIDENTE DE : L'HONORABLE DENIS JACQUES, j.c.s.

DANS L'AFFAIRE DE L'AVIS D'INTENTION DE :

SOCIÉTÉ DE VÉLO EN LIBRE-SERVICE
Débitrice

et

**RICHTER GROUPE CONSEIL INC. ET
VILLE DE MONTRÉAL ET
BANQUE NATIONALE DU CANADA ET
DOMINIC DEVEAUX ET
FRÉDÉRIC BESSETTE ET
MICHEL HÉBERT**
Mis en cause

JUGEMENT

rendu séance tenante le 19 février 2014
transcrit et révisé le 20 février 2014

[1] Vu la requête pour proroger le délai imparti à la débitrice en vue de soumettre une proposition à ses créanciers et l'octroi de pouvoirs additionnels au chef de la restructuration financière « CRO » déposée par la débitrice SVLS;

- [2] CONSIDÉRANT que cette requête a été signifiée aux parties intéressées;
- [3] CONSIDÉRANT que le 15 janvier 2014 la ville de Montréal « la Ville » a transmis un préavis à SVLS, conformément à l'article 244 de la *Loi sur la faillite et l'insolvabilité*;
- [4] CONSIDÉRANT que le 20 janvier 2014, face aux difficultés financières établies, la débitrice n'a eu d'autre alternative que de recourir à la protection de la *Loi sur la faillite* et elle a produit un avis d'intention de soumettre une proposition à ses créanciers;
- [5] CONSIDÉRANT que selon le témoignage rendu par le syndic, monsieur Raymond Massi, l'objectif du processus entamé sous l'égide de la *Loi sur la faillite* est de permettre à SVLS, avec l'accord de la Ville, de mettre en place un processus de sollicitation relativement à ses actifs liés à ses opérations internationales et de conclure une transaction rapidement, le tout dans un contexte lui permettant de maximiser la valeur de réalisation de ses actifs;
- [6] CONSIDÉRANT que le délai imparti à la débitrice pour soumettre une proposition à ses créanciers vient à échéance le 20 février 2014;
- [7] CONSIDÉRANT que compte tenu du processus de sollicitation en cours la débitrice demande à la Cour de proroger le délai lui étant imparti en vue de soumettre une proposition à ses créanciers pour la période additionnelle, menant le tout au 7 avril 2014;
- [8] CONSIDÉRANT que la prorogation demandée au terme de la présente requête est la première demande à cet effet;
- [9] CONSIDÉRANT que la Ville de Montréal, seule créancière garantie, est en accord avec la requête;
- [10] CONSIDÉRANT que la seule contestation à la requête provient d'Alta Bicycle Share, qui ne détient aucune créance liquide actuelle contre la débitrice et de 8D Tech qui, selon les chiffres fournis, aurait une créance ordinaire de 1 % de l'ensemble des créances contre la débitrice;
- [11] CONSIDÉRANT que les contestataires soulèvent l'absence de bonne foi de la débitrice pour s'opposer à la prorogation demandée, mais sans qu'aucune preuve ne l'établisse à l'audience;
- [12] CONSIDÉRANT de façon plus particulière que le seul fait que 8D Tech ait des comptes impayés depuis l'avis d'intention par SVLS dans un contexte où il existe un litige commercial entre elles, ne saurait affecter la bonne foi de SVLS alors que l'ensemble des autres fournisseurs sont payés;

[13] CONSIDÉRANT le rapport du syndic qui appuie sans équivoque la requête de la débitrice, étant d'avis qu'il est avantageux pour l'ensemble des créanciers que cette requête soit accordée, conformément au projet d'ordonnance (R-1)¹;

[14] CONSIDÉRANT l'article 50.4 de la *Loi sur la faillite et l'insolvabilité*;

[15] CONSIDÉRANT qu'il est dans l'intérêt manifeste de l'ensemble des créanciers d'accorder le délai additionnel requis;

[16] CONSIDÉRANT qu'il y a aussi lieu de donner suite à la demande de pouvoirs accrus à être accordés au CRO, ainsi que pour la création d'une fiducie de 300 000 \$ pour protéger la responsabilité du CRO face à diverses obligations, tel le salaire des employés, *T.P.S.* et *T.V.Q.*;

[17] CONSIDÉRANT que la débitrice, la Ville de Montréal et la Banque Nationale du Canada soutiennent que les contestations en l'espèce d'Alta et de 8D Tech qui ont formé une association pour concurrencer SVLS sont abusives et qu'elles réclament, en conséquence, les dépens sur la base avocat-client, qu'elles évaluent à 15 000 \$;

[18] CONSIDÉRANT que les procureurs d'Alta et de 8D Tech font valoir le droit de leur client de questionner le plan, sans que leur bonne foi ne soit mise en cause et ajoutent que la requête de la débitrice devait, de toute façon, être avalisée par la Cour;

[19] CONSIDÉRANT que malgré les apparences d'abus soulevées et la faiblesse de la contestation en l'espèce, le Tribunal donne le bénéfice du doute aux contestataires Alta et 8D Tech et limite, en conséquence, les dépens contre eux, à ceux du tarif judiciaire;

[20] CONSIDÉRANT que la débitrice a proposé un projet d'ordonnance qui, par souci d'efficacité, est en langue anglaise et qu'elle demande au Tribunal de prononcer;

[21] CONSIDÉRANT que la débitrice, bien qu'elle soutienne que cet amendement n'est pas nécessaire, accepte de modifier le paragraphe 17 de l'ordonnance, tel que requis par le procureur de 8D Tech pour y ajouter à la fin du paragraphe : *to the extend that such obligations or liabilities are of a nature described in article 64.1 of the Bankruptcy and Insolvency Act*;

[22] CONSIDÉRANT qu'il y a lieu pour le Tribunal de prononcer l'ordonnance recherchée, telle qu'amendée et de la rendre exécutoire.

¹ Voir à cet égard le rapport du syndic qui est déposé sous la pièce R-7, p. 8.

POUR CES MOTIFS, LE TRIBUNAL :

[23] **PRONONCE** l'ordonnance R-1, telle qu'annexée, avec la seule modification à son paragraphe 17, tel que mentionné ci-haut et **ORDONNE** aux parties de s'y conformer;

[24] **AVEC DÉPENS**, limités à ceux du tarif judiciaire contre Alta Bicycle Share et 8D Tech inc.


DENIS JACQUES, j.c.s.

Me Alain Riendeau
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Me Patrice Benoît
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Procureurs de la Ville de Montréal

Me Nicolas Deslandres
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Me Louis Dumont
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Procureurs d'Alta Bicycle Share

*Me Michael John Hanlon
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Procureurs de 8D Tech inc.*

Date d'audience : 19 février 2014

ANNEXE (R-1)

ORDER

[1] ON READING the « Motion to (i) extend the delay to submit a proposal to its creditors and to (ii) grant additional powers to the Chief restructuring Officer (hereinafter the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the report of Richter Groupe Conseil Inc. (hereinafter the "**Trustee**"), dated February 12, 2014;

[2] CONSIDERING the service of the Motion on all interested parties;

[3] CONSIDERING the representations of the parties and the consent of the sole secured creditor of the Debtor, the City of Montreal, to the conclusions sought pursuant to the Motion;

[4] CONSIDERING the provisions of the *Bankruptcy and Insolvency Act* (hereinafter the "**BIA**").

FOR THESE REASONS, THE COURT:

GENERAL

[5] **GRANTS** the Motion;

[6] **DECLARES** that sufficient prior notice of the presentation of the Motion has been given by the Debtor to interested parties, including the secured creditors who are likely to be affected by the charges created herein;

EXTENSION OF THE DELAY TO SUBMIT A PROPOSAL

[7] **EXTENDS** the delay for the Debtor *Société de vélo en libre-service / Public Bike System Company* (hereinafter the "**Debtor**") to submit a proposal to its creditors to **April 7, 2014**;

ADDITIONAL POWERS TO THE CRO

[8] **ORDERS** that the Mise en cause Dominic Deveaux in its capacity of Chief restructuring Officer (hereinafter the "**CRO**") shall have and may exercise and perform the powers, responsibilities and duties traditionally reserved to the directors, officers and members of the Debtor, and without limiting the generality of the foregoing, the CRO shall have the following powers, responsibilities and duties (hereinafter the "**CRO Powers and Duties**");

- a) To manage the business, affairs and restructuring process of the Debtor, in the name of and on behalf of the Debtors;
- b) Take such steps as in the opinion of the CRO are necessary or appropriate to maintain control over all receipts and disbursements of the Debtor, including, without limitation, take such steps as necessary or desirable to control and use all bank accounts of the Debtor;
- c) Ensure that Dominic Deveaux or such other persons as he designates in writing (each, a "**CRO Signing Officer**") shall become signing officers of all bank accounts of the Debtor and the Debtor's banks are hereby directed, when notified in writing by the CRO, to revoke any existing signing authorities and act on the instructions only of such CRO signing officers;
- d) Retain and terminate the employment or remaining services contracts of employees, agents or consultants and otherwise deal with human resources and other organizational issues on behalf of the Debtor;
- e) Represent the Debtor in any negotiations with any party;
- f) Retain such agents and advisors that the CRO considers necessary or appropriate on whatever basis, including temporary, to assist the CRO in exercising the CRO Powers and Duties;
- g) Communicate with and provide information to the Trustee regarding the business and affairs of the Debtor;
- h) Such other duties or powers that the CRO may agree to and which are approved by the Trustee or by order of this Court; and
- i) Take all such steps and actions, enter into and execute all such agreements and documents and incur such expenses and obligations necessary or incidental to the exercise of the CRO Powers and Duties, as are reasonably required to carry out the provisions of this Order, including in the name and on behalf of the Debtor, as applicable;

provided that in each case such actions, agreements, expenses and obligations, shall be construed to be those of the Debtor and not of the CRO or any of its shareholders, directors, officers, employees, or advisors, the CRO acting for and in the name of the Debtor;

[9] **ORDERS** that the Debtor and its members, officers, directors, employees, servants, agents and representatives (hereinafter the "**Company Persons**") shall cooperate fully with the CRO in the exercise and performance of its Powers and Duties. Without limiting the generality of the foregoing, the Company Persons shall provide the CRO with such access to the Debtor's books, records, assets and premises as the CRO may require to exercise its Powers and Duties;

[10] **ORDERS** that the CRO shall incur no liability or obligation as a result of its engagement or the fulfillment of its duties in the carrying out of the provisions of its engagement or as may be ordered by this Court, save and except for gross negligence or wilful misconduct on its part, and no action or other proceeding shall be commenced against the CRO as a result of or relating in any way to its engagement as CRO, the fulfillment of its duties as CRO or the carrying out of any of the orders of this Court, except with prior leave of this Court;

[11] **ORDERS** that the CRO may resign or may be removed by order of this Court;

[12] **ORDERS** that the appointment of the CRO and the granting of the Powers and Duties hereunder shall not constitute a sale or disposition of the business or the sale or disposition of any of the Property (as defined hereinafter);

[13] **ORDERS** that the CRO shall be subject to the supervisory jurisdiction of the Court;

[14] **ORDERS** that the CRO may apply to this Court from time to time for advice and directions concerning its Powers and Duties or any other relevant matter;

[15] **ORDERS** that none of the CRO or any of the employees or consultants of the CRO shall be deemed to be a director or an officer of the Debtor;

[16] **DECLARES** that the CRO in the exercise of its Powers and Duties shall not be considered as a successor employer;

CRO TRUST

[17] **ORDERS** that the Debtor shall indemnify the CRO from all claims relating to any obligations or liabilities it may incur in connection with the performance and execution of its Powers and Duties, except where such obligations or liabilities were incurred as a result of the CRO's gross negligence, wilful misconduct or gross or intentional;

[18] **AUTHORIZES** the Debtor, as settlor, to constitute a trust for the benefit of the CRO, by transferring **\$300 000** to Richter Groupe Conseil Inc., acting as trustee, the whole with a view to secure the indemnity provided at paragraph 17 of this Order (hereinafter the "***CRO Trust***");

[19] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (i) no insurer shall be entitled to be subrogated to or claim the benefit of the CRO Trust, and (ii) the CRO shall only be entitled to the benefit of the CRO Trust to the extent that it does not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the CRO is entitled to be indemnified in accordance with paragraph 17 of this Order;

GENERAL PROVISIONS RELATING TO THE TRUST

[20] **DECLARES** that the CRO Trust (hereinafter collectively the "**Trust**") shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) the Motion and the declaration of insolvency made therein; (ii) any petition for a receivership order filed pursuant to the BIA in respect of the Debtor or any receivership order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Debtor; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Debtor (each a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

- a) The creation of any of the Trust shall not create or be deemed to constitute a breach by the Debtor of any Third Party Agreement to which it is a party; and
- b) Any of the beneficiaries of the Trust shall not have liability to any person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the Trust;

[21] **DECLARES** that notwithstanding: (i) the Motion and any declaration of insolvency made therein, (ii) any petition for a receivership order filed pursuant to the BIA in respect of the Debtor and any receivership order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Debtor, and (iii) the provisions of any federal or provincial statute, the payments or disposition of property made by the Debtor pursuant to this Order and the granting of the Trust, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law;

[22] **DECLARES** that the Trust shall be valid and enforceable as against all persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Debtor, for all purposes;

MISCELLANEOUS

[23] **DECLARES** that the Order, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by the Debtor under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;

[24] **DECLARES** that the Trustee, with the prior consent of the Debtor, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15

of the *U.S. Bankruptcy Code*, for which the Trustee shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Trustee as may be deemed necessary or appropriate for that purpose;

[25] **REQUESTS** 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 this Order;

[26] **ORDERS** the provisional execution of this Order notwithstanding appeal and without the requirement to provide any security or provision for costs.
