

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-055622-183

DATE: November 30, 2018

BEFORE Me Chantal Flamand, registraire, REGISTRAR

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

C & E CANADA INC.

Debtor / Petitioner

and

RICHTER ADVISORY GROUP INC.

Trustee

**ORDER APPROVING A CONSULTING AGREEMENT AND SALE GUIDELINES,
APPROVING A RETENTION PAYMENT FUND, EXTENDING THE TIME TO FILE A
PROPOSAL AND GRANTING ANCILLARY RELIEF**

- [1] **CONSIDERING** the Application for an order approving a Consulting Agreement and Sale Guidelines, for an extension of time to file a proposal and for ancillary relief pursuant to sections 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, ("**BIA**"), as well as the exhibits and the affidavit of Ms. Maral Bal, filed in support thereof (the "**Application**") by the Debtor / Petitioner C & E Canada Inc. (the "**Petitioner**");

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- [2] **CONSIDERING** the Notice of intention to make a proposal filed by the Petitioner on November 28, 2018 in accordance with the BIA (the "**NOI**");
- [3] **CONSIDERING** the representations of counsel;
- [4] **CONSIDERING** the provisions of the BIA;

THE COURT HEREBY:

- [5] **GRANTS** the Application.

Definitions

- [6] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Application.

Service

- [7] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly presentable and **DISPENSES** with further service thereof.

Consulting Agreement and Sale of Inventory

- [8] **APPROVES** and **RATIFIES** the Letter Agreement Governing Inventory Disposition dated as of November 26, 2018 between Gordon Brothers Canada ULC (the "**Consultant**") and the Petitioner (with such minor amendments to the Consulting Agreement (but not the Sale Guidelines) as the Petitioner (with the consent of the Trustee) and the Consultant may agree to in writing, the "**Consulting Agreement**"), including the Sale Guidelines attached hereto as Schedule I (the "**Sale Guidelines**"), and **APPROVES** the transactions contemplated thereunder.
- [9] **AUTHORIZES** and **DIRECTS** the Petitioner to take any and all actions, including, without limitation, execute and deliver such additional documents, as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated thereunder.
- [10] **DECLARES** that the Petitioner, with the assistance of the Consultant, is authorized to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Sale within the Stores in accordance with the Sale Guidelines.

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- [11] **DECLARES** that if there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority of documents to resolve such conflicts is as follows:
- (a) First, this Order;
 - (b) Second, the Sale Guidelines; and
 - (c) Third, the Consulting Agreement.
- [12] **ORDERS** and **DECLARES** that the Petitioner, with the assistance of the Consultant, is authorized to market and sell the Merchandise and the FF&E (as both defined in the Consulting Agreement) free and clear of all security, hypothecs, liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been registered, perfected or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law or otherwise), including any other charges hereafter granted by the Court in these proceedings (all of the foregoing, collectively "**Encumbrances**"), which Encumbrances will attach instead to the proceeds of sale of the Merchandise and FF&E other than amounts specified at paragraph [23] of this Order, in the same order and priority as they existed on the Sale Commencement Date (as defined in the Consulting Agreement).
- [13] **ORDERS** and **DECLARES** that subject to the terms of this Order, the Sale Guidelines and the Consulting Agreement, the Consultant shall have the right to enter and use the Stores and all related Store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of the Petitioner as designated under the Consulting Agreement, for the purpose of conducting the Sale and for such purposes, the Consultant shall be entitled to the benefit of the stay of proceedings in place in the present proceedings, as such stay of proceedings may be extended by further order of the Court.
- [14] **ORDERS** and **DECLARES** that until the applicable Sale Termination Date (as defined in the Consulting Agreement) for each Store (which shall in no event be later than December 31, 2018), the Consultant shall have access to the Stores in accordance with the applicable leases and the Sale Guidelines on the basis that the Consultant is assisting the Petitioner and the Petitioner has granted the right of access to the applicable Store to the Consultant.

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- [15] **DECLARES** that, to the extent that the terms of the applicable leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.
- [16] **DECLARES** that nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon the Petitioner or the Consultant any additional restrictions not contained in the applicable lease or other occupancy agreement.
- [17] **ORDERS** and **DECLARES** that except as provided for in section [10] of this Order in respect of the advertising and promotion of the Sale within the Stores, subject to, and in accordance with this Order, the Consulting Agreement and the Sale Guidelines, the Consultant is authorized to advertise and promote the Sale, without further consent of any person other than the Petitioner and the Trustee as provided under the Consulting Agreement or a Landlord (as defined in the Consulting Agreement) as provided under the Sale Guidelines.
- [18] **ORDERS** and **DECLARES** that the Consultant shall have the right to use, without interference by any intellectual property licensor, the Petitioner's trademarks and logos, as well as all licenses and rights granted to the Petitioner to use the trade names, trademarks, and logos of third parties, relating to and used in connection with the operation of the Stores solely for the purpose of advertising and conducting the Sale of the Merchandise and FF&E in accordance with the terms of the Consulting Agreement, the Sale Guidelines and this Order, provided that the Consultant provides the Petitioner with a copy of any advertising prior to its use in the Sale.
- [19] **DECLARES** that the Consultant shall act solely as an independent consultant to the Petitioner and that it shall not be liable for any claims against the Petitioner other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sale Guidelines and, for greater certainty:
- (a) The Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of the Petitioner's employees located at the Stores or any other property of Petitioner;
 - (b) The Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payer within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law for any purpose whatsoever, and shall not incur any successor liabilities whatsoever; and

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- (c) The Petitioner shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the Sale Term (as defined in the Consulting Agreement) in connection with the Sale, except to the extent such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement;

(sub-paragraphs (a), (b) and (c) above collectively, the “**Liability Limitations**”).

- [20] **DECLARES** that to the extent the Landlords (or any of them) may have a claim against the Petitioner arising solely out of the conduct of the Consultant in conducting the Sale for which the Petitioner has claims against the Consultant under the Consulting Agreement, the Petitioner shall be deemed to have assigned such claims free and clear to the applicable Landlord (the “**Assigned Landlord Rights**”); provided that each such Landlord shall only be permitted to advance each such claims against the Consultant if written notice, including the reasonable details of such claims, is provided by such Landlord to the Consultant, the Petitioner and the Trustee during the period from the Sale Commencement Date to the date that is thirty (30) days following the Sale Termination Date.
- [21] **ORDERS** and **DECLARES** that the Consulting Agreement shall not be repudiated, resiliated or disclaimed by the Petitioner, nor shall the claims of the Consultant pursuant to the Consulting Agreement be compromised or arranged pursuant to a Proposal and, for greater certainty, that the Consultant shall be treated as an unaffected creditor in these proceedings and under any Proposal.
- [22] **AUTHORIZES** the Petitioner to remit, in accordance with the Consulting Agreement, all amounts that become due to the Consultant thereunder.
- [23] **DECLARES** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant to the Consulting Agreement and, at all times, the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process, all in accordance with the Consulting Agreement.
- [24] **ORDERS** and **DECLARES** that notwithstanding:
 - (a) The pendency of these proceedings, including any bankruptcy that may result from these proceedings;
 - (b) Any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;

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- (c) The filing of any assignment for the general benefit of creditors made pursuant to the BIA;
- (d) The provisions of any federal or provincial statute; or
- (e) Any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which the Petitioner is a party;

the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Consultant and the Assigned Landlord Rights, shall be binding on any trustee in bankruptcy that may be appointed in respect to the Petitioner and shall not be void or voidable by any person, including any creditor of the Petitioner, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

[25] **DECLARES** that the transactions contemplated under the Consulting Agreement shall be exempt from the application of the *Bulk Sales Act* (Ontario) and any other equivalent federal or provincial legislation.

Extension of Time to File a Proposal

[26] **EXTENDS** the period for the Petitioner to file a Proposal to and including January 15, 2019, in accordance with subsection 50.4(9) of the BIA.

Retention Payment Fund

[27] **AUTHORIZES** the Petitioner to make, with the Trustee's approval, retention payments to such of its employees as it deems appropriate, in an aggregate amount not exceeding \$25,000.

General

[28] **ORDERS** that until an immovable lease is disclaimed or resiliated in accordance with the BIA, the Petitioner shall pay amounts constituting rent or payable as rent under immovable leases (including for greater certainty, common area maintenance charges, utilities, and realty taxes and any other amounts payable to the Landlord under the lease) (collectively, "**Rent**") or as otherwise may be negotiated between the Petitioner and the Landlord from time to time in accordance with the terms of the applicable immovable lease, on the first business day of each month, in advance (but not in arrears). Upon delivery of a notice of

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disclaimer or resiliation, the Petitioner shall pay all Rent owing by the Petitioner to the applicable Landlord in respect of such lease due for the notice period stipulated in the BIA to the extent that Rent for such period has not already been paid.

- [29] **DECLARES** that, except as otherwise specified herein or in the BIA, the Petitioner and the Trustee are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioner and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.
- [30] **DECLARES** that the Petitioner and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Petitioner shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
- [31] **DECLARES** that, except as otherwise specified herein or in the BIA, or ordered by this Court, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a response on the Petitioner's counsel and the Trustee and has filed such response with this Court, or appears on the service list prepared by the Petitioner, the Trustee or their counsel, save and except when an order is sought against a person not previously involved in these proceedings.
- [32] **DECLARES** that the Petitioner and the Trustee shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.
- [33] **ORDERS** and **DECLARES** that any interested Person may apply to this Court to vary or rescind this Order or seek other relief upon five (5) business days' notice to the Petitioner, the Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
- [34] **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [35] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or elsewhere, to give effect to this Order and to assist, the Petitioner, the Trustee and their respective agents in carrying out the terms of this Order.

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- [36] **ORDERS** provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security.
- [37] **THE WHOLE** without costs.

(S)

Me Chantal Flamand, registraire

, Registrar

MTRE. JULIEN MORISSETTE
MTRE. JULIEN HYNES-GAGNÉ
(OSLER HOSKIN & HARCOURT LLP)
COUNSEL TO THE PETITIONER

Hearing date: November 30, 2018

COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR

30 NOV. 2018


Personne désignée par le greffier
Julio Berrios

GREFFIER ADJOINT C.S.M.

SCHEDULE I
SALE GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Stores of C&E Canada Inc. (the "Merchant"). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between Gordon Brothers Canada ULC, an affiliate of Gordon Brothers Retail Partners, LLC (the "Consultant") and the Merchant dated as of November 26, 2018 (the "Consulting Agreement").

1. Except as otherwise expressly set out herein, and subject to: (i) the Order dated November 30, 2018 approving the Consulting Agreement (the "Approval Order") or any further Order of the Superior Court of Quebec (the "Court"); or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a "Landlord" and, collectively, the "Landlords") and approved by the Consultant, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected Landlords are privy for each of the affected Stores (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remains open during its normal hours of operation provided for in its respective Lease until the respective Sale Termination Date for such Store. The Sale at the Stores shall end by no later than December 31, 2018. Rent payable under the respective Leases shall be paid in accordance with the terms of the Approval Order. The Merchant shall not purchase any additional inventory for Sale at the Stores as and from November 28, 2018.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as an "everything on sale", an "everything must go", a "store closing" or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Merchant or the

Proposal Trustee, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. Where the provisions of the Lease conflict with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including "you pay" or "topper" signs). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the service list in the NOI proceedings (the "Service List"). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with "store closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Store.
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final".
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.

9. At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.
10. Subject to the terms of paragraph 9 above, the Consultant may sell FF&E which is located in the Stores during the Sale. The Merchant and the Consultant may advertise the sale of FF&E consistent with these guidelines on the understanding that any applicable Landlord may require that such signs be placed in discreet locations acceptable to the applicable Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the applicable Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the FF&E can fit in a shopping bag, with applicable Landlord's supervision as required by the applicable Landlord. The Consultant shall repair any damage to the Stores resulting from the removal of any FF&E by Consultant or by third party purchasers of FF&E from Consultant.
11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove FF&E from the Stores. The Consultant will arrange with each Landlord represented by counsel on the Service List and with any other applicable Landlord that so requests, a walk through with the Consultant to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the applicable Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable Lease, and the applicable Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Mackenzie Shea who may be reached by phone at 1-617-422-6519 or email at mshea@gordonbrothers.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.
16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines).