

**SUPERIOR COURT  
(COMMERCIAL DIVISION)**

**CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL**

**NO: 500-11-022700-047**

**DATE: June 15, 2004**

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**IN THE PRESENCE OF FRANÇOIS ROLLAND S.C.J.**

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**IN THE MATTER OF THE ARRANGEMENT OF :**

**EAUX VIVES HARRICANA INC.**, legal person, duly constituted under the laws of Québec, having its head office at 11 Chemin des Sablières, St-Mathieu-d'Harricana, Province of Québec, District of Abitibi, JOY 1M0;

-and-

**EVH U.S.A. INC.**, legal person, duly constituted under the laws of Delaware, U.S.A., having a place of business at 17821 East 17<sup>th</sup> Street, suite 193, Tustin, California, 92780, U.S.A.

-and-

**LES SOURCES PÉRIGNY INC.**, legal person, duly constituted under the laws of Quebec, having a place of business at 11 Chemin des Sablières, St- Mathieu-D'Harricana, Province of Quebec, District of Abitibi, JOY 1M0

Petitioners

-and-

**RSM RICHTER INC.**, a body politic and corporate, duly incorporated according to law, having a place of business at 2 Place Alexis-Nihon, 3500 de Maisonneuve Blvd. West, 22<sup>nd</sup> Floor, in the City of Montréal, Province of Québec, H3Z 3C2

Monitor

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**ORDER**

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- [1] I, the undersigned, Judge of the Superior Court, in and for the District of Montréal, after having examined the Motion to Obtain an Order Approving a DIP Financing Agreement (the "**Motion**");
- [2] **GIVEN** the reasons alleged in said Motion duly supported by an affidavit;
- [3] **GIVEN** the service of the Motion upon all interested parties or parties having sought to be notified;
- [4] **GIVEN** that Robbie Manufacturing Inc. asked for a postponement, which was refused by the Court;
- [5] **GIVEN** that Robbie Manufacturing Inc. does not oppose to the conclusions of the Motion, as drafted;
- [6] **GIVEN** the evidence adduced at the hearing;
- [7] **GIVEN** the fact that 2975483 Canada Inc. and Parmalat Canada Limited consent to the Motion;
- [8] **GIVEN** the fact that said Motion is well founded;
- [9] **FOR THESE REASONS:**
- [10] **GRANT** the "Motion to Obtain an Order Approving a DIP Financing Agreement" (the "**Motion**");
- [11] **GRANT** the remedies and relief sought by Petitioners, Eaux Vives Harricana Inc. ("**EVH INC.**"), EVH U.S.A., Inc. ("**EVH U.S.A.**") and Les Sources Périgny Inc. ("**Sources Périgny**") (sometimes, collectively, "**EVH**" which may from time to time refer to EVH INC. and/or EVH U.S.A. and/or Sources Périgny);
- [12] **EXEMPT** EVH from the service of the Motion and of any notice or delay of presentation;

#### **TEMPORARY DEBTOR IN POSSESSION FINANCING**

- [13] **AUTHORIZE** EVH to reimburse all amounts owed to Parmalat Canada Limited in relation with the Temporary DIP Financing Agreement concluded on June 9, 2004 (the "**Temporary DIP Financing Agreement**");
- [14] **DECLARE** that the Temporary DIP Charge (as created in the Order rendered by Mr. Justice François Rolland on June 10, 2004) shall be extinguished upon the filing in this Court's record of a certificate by EVH or the Monitor stating that all amounts owed to Parmalat Canada Limited in

relation with the Temporary DIP Financing Agreement have been reimbursed;

### **DEBTOR IN POSSESSION FINANCING**

- [15] **DECLARE** that EVH Inc. and Sources Périgny (the “**DIP Borrowers**”) are authorized and empowered to borrow from Royal Bank Asset Based Finance, a division of Royal Bank of Canada (the “**DIP Lender**”), such monies from time to time as the DIP Borrowers may consider necessary or desirable, up to an aggregate principal amount of \$5,000,000 or such lesser amount as calculated in accordance with the Commitment Letter entered into between the DIP Lender over the DIP Borrowers dated June 10, 2004 (the “**DIP Financing Agreement**”), to fund the ongoing costs and expenses, the restructuring, and/or the sale process (the “**DIP Loan**” or the “**DIP Financing**”) on terms to be agreed upon between the DIP Lender and EVH, as per the terms of the DIP Financing Agreement, Exhibit R-1;
- [16] **DECLARE** that all of the DIP Borrowers present and future property, assets, immovable or movable, tangible and intangible, is hereby charged (hypothecated) in favour of the DIP Lender (the “**DIP Charge**”) as security of the repayment of the DIP Loan and all other obligations of the DIP Borrowers under the DIP Financing Agreement, together with interest, fees, charges and other amounts payable in respect thereof without the necessity of executing or registering any further documents and that neither the DIP Borrowers nor the DIP Lender shall be required to file, register, publish, record or perfect the DIP Charge. However, this Court orders that EVH, is hereby authorized and directed to execute and deliver in favour of the DIP Lender all such security, subordination and other documentation as may be contemplated or required by the DIP Lender, charging all of the existing and after-acquired property, assets and undertaking of the DIP Borrowers, (such security documents collectively referred to herein as the “**DIP Security**”) and the DIP Lender is hereby authorized, but not obliged, to take such steps as it deems necessary or appropriate to register, publish, record or perfect the DIP Security;
- [17] **DECLARE** that the DIP Charge and the DIP Security shall have first priority over the universality of all of the present and future undertaking, property, rights and assets of the DIP Borrowers (the “**Property**”) ranking in priority to all other charges, encumbrances, hypothecs or security but subject to the Administration Charge and the Directors’ Charge created in the Initial Order rendered by Mr. Justice François Rolland on March 19, 2004 (as extended, amended and renewed);

- [18] **DECLARE** that the DIP Charge shall be deemed valid for all intents and purposes and does not have to be published or registered to be valid and opposable to any third parties;
- [19] **DECLARE** that notwithstanding the pendency of these proceedings and the declarations of insolvency made herein, the pendency of any petitions for receiving orders hereafter issued pursuant to the *Bankruptcy and Insolvency Act* in respect of EVH and any receiving orders pursuant to any petitions, and the provisions of any federal or provincial statute:
- a) the obligations of the DIP Borrowers pursuant to the DIP Loan, DIP Charge and DIP Security and all documents delivered pursuant thereto constitute legal, valid and binding obligations of the DIP Borrowers enforceable against them in accordance with the terms thereof; and
  - b) the payments made by the DIP Borrowers pursuant to such documents, whether made before, on or after the date of this Order and the granting or assignment of the security constituted by the DIP Charge and DIP Security do not constitute fraudulent preferences, reviewable transactions and cannot be challenged or attacked under any other applicable law;
- [20] **DECLARE** that neither the DIP Financing Agreement nor any payment nor any transaction made by Sources Périgny in consequence thereof constitutes prohibited financial assistance by Sources Périgny in favour of EVH Inc. pursuant to Division III of the *Companies Act (Quebec)*;
- [21] **DECLARE** that the DIP Loan, DIP Charge and DIP Security shall be deemed to be valid and effective notwithstanding any negative covenants, prohibitions or other similar provisions with respect to incurring debt or the creation of liens, hypothecs or security contained in any existing agreement between EVH and any lender, and that, notwithstanding any provision to the contrary in such agreements;
- [22] **DECLARE** that the DIP Lender and the directors and officers of EVH shall have no liability to any person whatsoever as a result of any breach of any agreement caused by or resulting from the DIP Borrowers entering into the DIP Loan, the creation of the DIP Charge or the execution, assignment and delivery of the DIP Security;
- [23] **DECLARE** that the DIP Lender shall be treated as an unaffected creditor in these proceedings with regard to the DIP Loan, DIP Charge and DIP Security;
- [24] **ORDER** that the DIP Financing Agreement be kept under seal in this Court's record;

- [25] **ORDER** the provisional execution of the Order to be rendered herein notwithstanding appeal;
- [26] **THE WHOLE** without costs.

(S) François Rolland

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FRANÇOIS ROLLAND S.C.J.

