

**SUPERIOR COURT
(COMMERCIAL DIVISION)**

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

NO: 500-11-022700-047

DATE: June 10, 2004

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

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 17th Street, suite 193, Tustin, California, 92780, U.S.A.

-and-

LES SOURCES PERIGNY 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, 22nd Floor, in the City of Montréal, Province of Québec, H3Z 3C2

Monitor

ORDER

- [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 Temporary DIP Financing (the "**Motion**");
- [2] **GIVEN** the reasons alleged in said Motion;
- [3] **GIVEN** the service (by telecopier and by e-mail) of the Motion upon all interested parties or parties having sought to be notified and **GIVEN** the absence of contestation;
- [4] **GIVEN** the fact that said Motion is well founded;
- [5] **FOR THESE REASONS:**
- [6] **GRANT** the present Motion;
- [7] **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. ("**Source Périgny**") (collectively, "**EVH**" which may from time to time refer to EVH INC. and/or EVH U.S.A. and/or Sources Périgny);
- [8] **EXEMPT** EVH from the service of this Motion and of any notice or delay of presentation;

DEBTOR IN POSSESSION FINANCING

- [9] **DECLARE** that EVH is authorized and empowered to borrow from Parmalat Canada Limited (the "**Temporary DIP Lender**"), such monies from time to time as EVH may consider necessary or desirable, up to an aggregate principal amount of \$100,000, to fund the ongoing costs and expenses, the restructuring, and/or the sale process (the "**Temporary DIP Loan**" or the "**Temporary DIP Financing**") on terms to be agreed upon between the Temporary DIP Lender and EVH, as per the terms of the Term Sheet, Exhibit R-1;
- [10] **DECLARE** that all of EVH present and future property, assets, immovable or movable, tangible and intangible, is hereby charged (hypothecated) in favour of the Temporary DIP Lender (the "**Temporary DIP Charge**") as security of the repayment of the Temporary 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 Temporary DIP Lender all such security as may be contemplated or required by the Temporary DIP

Lender, charging all of the existing and after-acquired property, assets and undertaking of EVH (such security documents collectively referred to herein as the "**Temporary DIP Security**") and the Temporary DIP Lender is hereby authorized, but not obliged, to take such steps as it deems necessary or appropriate to register, record or perfect the Temporary DIP Security;

- [11] **DECLARE** that the Temporary DIP Charge and the Temporary DIP Security shall have first priority over the universality of all of the present and future undertaking, personal property and assets of EVH (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);
- [12] **DECLARE** that the Temporary 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;
- [13] **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 EVH pursuant to the Temporary DIP Loan, Temporary DIP Charge and Temporary DIP Security and all documents delivered pursuant thereto constitute legal, valid and binding obligations of EVH enforceable against them in accordance with the terms thereof; and
 - b) the payments made by EVH 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 Temporary DIP Charge and Temporary DIP Security do not constitute fraudulent preferences, reviewable transactions and cannot be challenged or attacked under any other applicable law;
- [14] **DECLARE** that neither the Temporary DIP Financing Agreement nor any payments made by Sources Périgny in consequence thereof constitutes prohibited financial assistance by Les Sources Périgny in favour of Eaux Vives Harricana Inc. pursuant to Division III of the *Quebec Companies Act*;

- [15] **DECLARE** that the Temporary DIP Loan, Temporary DIP Charge and Temporary 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 or security contained in any existing agreement between EVH and any lender, and that, notwithstanding any provision to the contrary in such agreements;
- [16] **DECLARE** that the Temporary DIP Lender and the directors of EVH shall have no liability to any person whatsoever as a result of any breach of any agreement caused by or resulting from EVH entering into the Temporary DIP Loan, the creation of the Temporary DIP Charge or the execution, assignment and delivery of the Temporary DIP Security;
- [17] **DECLARE** that the Temporary DIP Lender shall be treated as an unaffected creditor in these proceedings with regard to the Temporary DIP Loan, Temporary DIP Charge and Temporary DIP Security;
- [18] **ORDER** the provisional execution of the Order to be rendered herein notwithstanding appeal;
- [19] **THE WHOLE** without costs.

(s) François Rolland

FRANÇOIS ROLLAND S.C.J.

