

**SUPERIOR COURT
(COMMERCIAL DIVISION)**

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

NO: 500-11-022700-047

DATE: March 19, 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.

Petitioners

-and-

RICHTER & ASSOCIÉS 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 for the issuance of an initial

order (the "**Motion**"), after having read the affidavit submitted in support thereof:

- [2] **GIVEN** the reasons alleged in said Motion duly supported by an affidavit;
- [3] **GIVEN** the fact that said Motion is well founded;
- [4] **FOR THESE REASONS:**
- [5] **GRANT** the present "Motion for the Issuance of an Initial Order" (the "**Motion**");
- [6] **GRANT** the remedies and relief sought by Petitioners, Eaux Vives Harricana Inc. ("**EVH INC.**") and EVH U.S.A., INC. ("**EVH U.S.A.**") (collectively, "**EVH**" which may from time to time refer to EVH INC. or EVH U.S.A.);
- [7] **EXEMPT** EVH from the service of this Motion and of any notice or delay of presentation;

APPLICATION OF CCAA

- [8] **DECLARE** that EVH INC. and EVH U.S.A. are debtor companies within the meaning of Section 2 of the *Companies Creditors Arrangement Act* ("**CCAA**") and that said Act applies to them, as affiliated debtor companies in accordance with Section 3 of the CCAA;
- [9] **DECLARE** that EVH INC. and EVH U.S.A. have acted and are acting in good faith and with due diligence and that, as appears from the Motion, the circumstances are such this Order should be rendered;
- [10] **GRANT** EVH's request to submit a formal plan of arrangement with its creditors, in accordance with the CCAA;
- [11] **DECLARE** that EVH may, if EVH and the Monitor believe it is appropriate, file a joint plan of arrangement;
- [12] **DECLARE** that the allegations of EVH, and the affidavit support thereof, are sufficient at this stage to grant the reliefs sought by EVH;

MEETING OF CREDITORS

- [13] **ORDER** the convocation of a meeting of all the EVH's creditors concerned with the proposed plan of arrangement at a date to be determined by EVH and the Monitor, with the consent of 2975483 Canada Inc. and at a place that the Monitor will judge appropriate;
- [14] **ORDER** that a meeting of creditors be convened for the purpose of voting on the plan of arrangement, unless the creditors decide by ordinary

resolution (in accordance with the definition of said expression under the Bankruptcy and Insolvency Act) to postpone said meeting;

- [15] **ORDER** that, further to the filing of the plan of arrangement, a notice of convocation of the meeting of creditors be sent, accompanied by a copy of the proposed plan of arrangement and related information, if any, the appropriate proof of claim forms and a voting form, to all of the known creditors of EVH;

DEBTOR IN POSSESSION FINANCING

- [16] **ALLOW** EVH INC. to enter into, at a later date, a DIP financing agreement with any party ready to advance such funds, on such terms and conditions as this Court may later approve;

APPOINTMENT OF MONITOR

- [17] **APPOINT** Richter & Associés Inc., (Mr. Yves Vincent, CA, CIRP, being the officer responsible for the administration) (the "Monitor" or "Richter"), as monitor with, in addition to any power or obligation provided for by the CCAA, the following powers and obligations, namely, to:
- a. Notify, by regular mail, all of the creditors of EVH having a claim of more than CAD.\$250 of the rendering of this Order within ten (10) days;
 - b. Prepare a form for the filing of any claim, as defined per Section 12 of the CCAA;
 - c. Send, by regular mail, to all of the known creditors of EVH, a copy of the plan of arrangement to be submitted to the creditors, together with a notice of convocation, a form of proof of claim, a proxy, a letter of votation for the purpose of the creditors' meeting which will be held with respect to the plan of arrangement to be filed, the whole at least fifteen (15) days prior to said meeting of creditors;
 - d. Receive any proof of claim to be submitted by any of the creditors of EVH;
 - e. Administer and adjudicate, in collaboration with EVH, any proof of claim submitted by any of the creditors of EVH or any alleged creditors of EVH;
 - f. Dismiss, in collaboration with EVH, any proof of claim filed by any creditor or alleged creditor of EVH, under reserve of the right of the creditor to appeal to this Court to determine same in the plan of arrangement within ten (10) days of such notice of disallowance, each creditor having the burden of establishing his claim;

- g. File and present to the Court any proceeding, motion or petition, or any other demand, required or appropriate, or that it may feel to be appropriate or required with respect to:
 - i. the affairs of EVH;
 - ii. the plan of arrangement;
 - iii. the determination of any right of EVH or any of its creditors or co-contractants;
 - iv. any advice or instructions it may require or to seek the help of this Court;
 - v. any other matter it feels is required or appropriate;
- h. Preside over the first meeting of creditors and decide any question or dispute arising at the meeting, from which such decision any creditor may appeal to the Court, within ten (10) days of the rendering of same;
- i. Obtain, at the meeting of creditors, the vote of the creditors and admit or reject a proof of claim for the purpose of voting, subject to the right of said creditor to appeal the Monitor's decision to the Court within ten (10) days of said decision;
- j. Send a notice to any creditor, and publish a notice to the said creditors in a Montreal French and English newspapers, seeking the filing of proof of claims before time limit set forth for the filing of proof of claims (the "**Bar Date**"), failing which any creditor will be barred from doing so and EVH will be discharged of any said claims;
- k. Allow the Monitor, in conjunction with EVH, to determine the Bar Date, which shall be at least 30 days after the sending of the notices hereinabove referred to;
- l. Proceed to the payment of monies which must be paid to the creditors of EVH in the manner provided for in the plan of arrangement from the amounts which shall be remitted to it by EVH for the purpose of such payments;
- m. Provide 2975483 Canada Inc. with any information, report or document it may require;
- n. Exercise, with the consent of EVH and 2975483 Canada Inc., such control over the properties and assets of EVH that may be required or necessary for the protection of such properties and assets;

- o. Hire and retain, with the consent of EVH and 2975483 Canada Inc., any employees and/or consultants required or desired in order to carry on its duties;
- p. Hire and retain, with the consent of EVH and 2975483 Canada Inc., the services of any professional required or desired, including, without limiting the generality of the foregoing, any accountant, lawyer, notary, etc.;
- q. Collaborate with Scotia Capital Inc. in the fulfillment of their mandate and duties;
- r. Delegate, if required or necessary, to any person duly qualified in the sole opinion of the Monitor, and with the consent of EVH and 2975483 Canada Inc., the powers enumerated herein or any thereof;
- s. Obtain from EVH the information which it shall judge useful regarding the evolution of its financial situation and the progress of its restructuring plan;
- t. Execute any deed, contract or agreement or do anything necessary or required in order to give full effect to the plan of arrangement;
- u. Assist and help EVH in its restructuring and its discussions with any of its creditors, co-contractants or any other party;
- v. Assist EVH in negotiating and settling creditors' claims;
- w. File or oppose any claim or proceeding filed with respect to any of the assets of EVH, the whole with the consent of EVH and 2975483 Canada Inc.;
- x. Certify as a true copy, any copy of this Order;
- y. Send notices of stay of proceedings, as if it were a trustee in bankruptcy, with respect to any proceedings or claim whether judicial, administrative or otherwise;
- z. With the authorization of the Court, do anything or enter into any agreement whatsoever with a view to protecting EVH, its assets, its creditors, or for the best interests of EVH or the plan of arrangement;
- aa. With the authorization of the Court, and with the consent of EVH and 2975483 Canada Inc., enter into any agreement whatsoever in order to sell all or parts of the assets of EVH;
- bb. Exercise any and all powers of a trustee acting pursuant to a Notice of Intention or a Proposal under the *Bankruptcy and Insolvency Act*

with a view to helping and assisting EVH in the filing of a plan of arrangement;

- [18] **ALLOW** EVH and/or the Monitor and/or 2975483 Canada Inc. to file any motion or petition to this Court, in order to expand, modify or clarify the powers and obligations of the Monitor;
- [19] **ALLOW** EVH to file any petition or motion which may be required or useful for the pursuit of the process;

STAY OF PROCEEDINGS

- [20] **ORDER** a stay of any and all proceedings, including without limitation, suits, actions, application, motion, petition, judgments, orders, injunctions, extra-judicial proceedings, notice, prior notice or other remedies, for a period of thirty (30) days starting at 12:01 a.m. on the day of this Order which will have the effect of:
- a. staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of EVH or its assets;
 - b. restraining, until otherwise ordered by the court, further proceedings in any action, application, motion, petition, suit, judgment, order, instruction, extra-judicial proceeding against EVH;
 - c. prohibiting, until otherwise ordered by the court, the commencement or continuation of any other action, application, motion, petition, suit or any other proceeding against EVH or the sending of any notice or prior notice of any nature;
 - d. prohibiting the parties with which EVH would have entered into any agreement to cancel any contract or agreement of any nature whatsoever, including, without limiting the generality of the foregoing, any contract entered into by EVH and any of its supplier or co-contractants or other, providing the services rendered or the goods supplied after the rendering of the order are paid for under normal terms and except for eligible financial contracts as defined under Section 11.1 CCAA;
- [21] **ORDER**, for the same period, that, in accordance with section 11.4 CCAA, the right of Her Majesty in right of Canada may not be exercised under subsection 224(1.2) of the income Tax Act in respect of EVH nor by Her Majesty in right of a Province under provincial legislation substantially similar to that subsection in respect of EVH, but as per the terms of said section 11.4;
- [22] **ORDER**, for the same period, a stay of all proceedings taken or that might be taken against the EVH in accordance with the Bankruptcy and Insolvency Act and/or the Winding-Up Act;

- [23] **ORDER**, for the same period, a stay of proceedings of all suits, actions, applications, motions, petitions, judgments, orders injunctions, extra-judicial proceedings or other remedies instituted against EVH or its assets, for any reason whatsoever, or the sending of any notice or prior notice save with the permission of this Court upon application served upon EVH, EVH's undersigned attorneys, the Monitor and 2975483 Canada Inc. of four (4) clear days and according to the conditions that this Honourable Court may impose, the whole until a new ruling is made by this Honourable Court;
- [24] **ORDER**, for the same period, that no proceeding, including without limitation, suits, actions, application, judgments, orders, injunctions, extra-judicial proceedings or other remedies instituted against EVH or its assets for any reason whatsoever, or the sending of any notice or prior notice shall be continued or commenced against EVH or its assets, save with the permission of this Court upon application served upon EVH and EVH's undersigned attorneys, the Monitor and 2975483 Canada Inc. four (4) clear days in advance and according to the conditions that this Honourable Court may impose, until a new ruling of this Court is made in this matter;
- [25] **ORDER**, for the same period, that no persons, firms or corporations shall exercise any lien, privilege, legal hypothec, seizure or right of retention on assets, property or goods belonging to EVH or realize on or otherwise deal with any right or property of EVH or any security, charge, lien, right or power of sale, seizure or attachment held by that person, including any right of revendication or repossession of any goods supplied to EVH or any right to take possession of its property or goods placed on consignment or pursuant to concession arrangements with EVH;

LIMITATION OF CERTAIN RIGHTS

- [26] **DECLARE** that until the meeting of creditors is held, no persons, firms or corporations having done business with EVH shall exercise any right of compensation or set off or application of inventory in reduction of accounts with respect to any amounts which may be owing and due by EVH;
- [27] **ORDER** that all persons, firms or corporations, including all utilities, having supplied goods or services to EVH in the normal course of business by virtue of written or oral agreements, distributorship or agency agreements or otherwise, are prohibited from terminating same without the written consent of EVH or an order from this Honourable Court;
- [28] **ORDER** all persons, firms or corporations having supplied goods or services to EVH in the normal course of business to continue such delivery and supply in the normal course of business provided satisfactory arrangements are made to secure payment of the normal prices or charges of such goods and services incurred from the date of filing of this Motion;

- [29] **ORDER** that any person, firms or corporations, who provided letters of credit, standby letters of credit, performance bonds, payment bonds or guarantees (the "Issuing Party") at the request of EVH shall be required to continue honouring any and all such letters of credit, standby letters of credit, performance bonds, payment bonds and/or guarantees, issued on or before the date of this Order subject to the Issuing Party being entitled to retain the bills of lading and/or shipping documents relating thereto until paid therefore. For greater certainty, the Issuing Party shall be prohibited from terminating, suspending, modifying, determining, refusing to honour or canceling any such letters of credit, standby letters of credit, performance bonds, payment bonds or guarantees, and the beneficiaries of such letters of credit, standby letters of credit, performance bonds, payment bonds or guarantees for the supply and delivery of goods shall be entitled to draw on such letters of credit, standby letters of credit, performance bonds, payment bonds, guarantees or shipping guarantees, as the case may be, in accordance with their respective terms and conditions, without the prior written consent of EVH or without the leave of this Court;
- [30] **ORDER** that all persons, corporations or firms are restrained until further order from this Honourable Court or the written consent of EVH from terminating, canceling or otherwise withdrawing any licenses, franchises, dealerships, permits, contracts, leases, approvals or consents or otherwise interfering in any way with the present or future business of EVH;
- [31] **ORDER**, for the same period, that the right of any persons, corporations or firms (including, without limitation, any authority with jurisdiction to levy realty taxes) to commence or continue enforcement, realization or collection proceedings in respect of any encumbrance, tax, lien, security interest, charge, hypothec, legal hypothec, mortgage, guarantee, attornment of rents, hypothecation, pledge or other security held in relation to, or any trust attaching to or deemed to attach to or comprise any of, the property of EVH, including, without limitation, the right of any creditor to take any step in asserting, perfection or registering any right or interest (including, without limitation, any legal hypothec, any right to revendication, rescission, resiliation or any right to repossession or stoppage in transit of any goods supplied or shipped to EVH, whether taken in the Province of Québec or elsewhere, and whether pursuant to the *Bankruptcy and Insolvency Act* or otherwise), is hereby stayed, restrained and suspended;
- [32] **ORDER**, for the same period, that the right of any persons, corporations or firms, to assert, enforce or exercise any right, option or remedy available to it, including without limitation, any right of dilution, buy-out, divestiture, pre-emptive right of purchase, option to purchase on default, forced sale, acceleration, termination, suspension, modification, cancellation or right to revoke or terminate any agreement, including, subject to Sections 11.1

and 11.3(b) CCAA, lending arrangements (collectively, "Rights"), where such Rights arise out of, relate to or are triggered by the occurrence of any default or non-performing by EVH thereunder, the making of this Order or filing of these proceedings, or any allegation contained in these proceedings, including, without limitation, the right to make any demand, to sent any notice, to crystallize any security interest, to exercise any pre-emptive first right, to accelerate any obligation is hereby stayed, restrained and suspended;

- [33] **ORDER** that all persons, corporations or firms are restrained from exercising any extra-judicial remedy against EVH or its assets, including, without limitation, any right of distress, revendication or repossession, set-off or consolidation of accounts in relation to any amount due or accruing due in respect of or arising from any indebtedness or obligation of EVH, or from retaining any check and/or money owing to EVH or to which EVH are otherwise entitled, or from retaining any goods, in relation to or by reason of amounts past due to any such person, or customs duties and charges, taxes, freight, insurance, storage or other charges paid on behalf of or owed by EVH prior to the date hereof for which EVH have not reimbursed or paid such person;

RESTRUCTURING

- [34] **DECLARE** that EVH may terminate, repudiate, resiliate, cancel, amend or withdraw any agreement and contract of any nature whatsoever, whether verbal or written, upon the sending of a written notice to that effect, subject to the right of said co-contractant to file a proof of claim for damages (should it be entitled to any) under the plan of arrangement to be filed;
- [35] **DECLARE** that, subject to the next paragraph and to obtaining 2975483 Canada Inc.'s approval, EVH may sell any and all of its assets;
- [36] **DECLARE** that any such sale of assets exceeding \$100,000 shall be conditional upon this Court approval;
- [37] **DECLARE** that, with respect to those secured creditors holding conventional hypothecs or security, EVH shall be at liberty, but not obliged, to make the interests payment which, in the sole opinion of EVH, it could afford;
- [38] **DECLARE** that, with respect to those secured creditors holding conventional hypothecs or security, EVH shall be at liberty, but not obliged, to remit part of the proceeds which will come from the sale of the assets charged in favor of said secured creditors, which, in the sole opinion of EVH, it could afford;
- [39] **ALLOW** for the paying of the salaries accrued and accruing as of the date of this Order, to the employees of EVH in the normal course of business, together with any amount owing in relation to said salary earned, the

whole notwithstanding the order to be rendered. However, this should not include any payment in lieu of salary or any other like payment;

- [40] **DECLARE** that EVH INC. and/or EVH USA may start again, cease, downsize or shut down any of its operations;

DIRECTORS' CHARGE

- [41] **ORDER** that any amount that EVH should pay, as a consequence of a directors' liability, constitute a charge ranking immediately after the Administration Charge (as hereinafter defined) over any and all assets of EVH INC. (the "Directors' Charge") and that neither EVH nor the directors of EVH INC. or EVH U.S.A. shall be required to file, register, record or perfect the Directors' Charge. Such Directors' Charge shall be limited to an aggregate amount of \$1,000,000;

ADMINISTRATION CHARGE

- [42] **ORDER** that the fees and expenses of the Monitor and of any of the professionals or advisors hired or retained by the Monitor or by EVH be paid in priority to any debt and be paid immediately upon presentation of the relevant invoice and documents;
- [43] **ORDER** that the fees and expenses of the Monitor and of any of the professional or advisors hired or retained by the Monitor or by EVH constitute a charge ranking ahead of any of all secured creditors over any or all of the assets of EVH (the "Administration Charge"), and that neither EVH nor the Monitor shall be required to file, register, record or perfect the Administration Charge. Said Administration Charge shall be limited to an aggregate amount of \$1,000,000;

MISCELLANEOUS

- [44] **DECLARE** that the Monitor will not be considered or deemed to be an employer for any purpose whatsoever nor will it have any liability whatsoever in respect to any environmental condition or that arose of environmental damage;
- [45] **DECLARE** that the Monitor will not be deemed nor will be considered as being in a position of constructive control, or in actual control, of any of the assets of EVH;
- [46] **DECLARE** that the Monitor will have no liability whatsoever towards any third party with respect to any of its powers and obligations as Monitor under this order;
- [47] **ORDER** that either EVH, the Monitor or 2975483 Canada Inc., may, from time to time, apply to this Court for advice or instructions, seek the help of this Court or present any motion or petition which is required or appropriate with respect to the present proceedings, the plan of

arrangement, the powers of the company, the dispositions of the CCAA or the rendering of any order that would be useful or appropriate in the circumstances;

- [48] **DECLARE** that the fees and expenses owed to Scotia Capital Inc. for the fulfillment of their mandate and duties pursuant to the Agreement R-4, shall be paid to it in the normal course of business, whether any amount may be accruing or owing prior to or after this Order;
- [49] **ORDER** that EVH be permitted to indemnify each of its directors and officers with respect to any personal liability they might incur as directors or officers of EVH under all applicable provincial and federal legislation, including taxing statutes and employee legislation and for employee salaries, benefits, vacation pay, etc.;
- [50] **ORDER** that, as per section 11.5(1) CCAA, and for a period of thirty (30) days from the rendering of the order, no person may commence or continue any action against a director of EVH or any claim against directors that arose prior to the rendering of this order and that relates to obligations of EVH where said directors could be liable in their capacity as director for the payment of said obligation, until a plan of arrangement is filed, sanctioned by the Court or refused by the creditors or the Court, subject to the exception provided for in section 11.5(2) CCAA;
- [51] **CONFIRM** that any document or information in any form whatsoever communicated by EVH to the Monitor, in its capacity as financial advisor to EVH, is confidential and shall not be disclosed or communicated;
- [52] **ORDER** that any interested party who wishes to apply to this Court shall give four (4) clear days notice thereof to EVH, EVH's undersigned attorneys, 2975483 Canada Inc., the Monitor and to this Court;
- [53] **RECONVENES**, under reserve of the rights of EVH and any other interested party as set forth in this Order, EVH in front of this Court on April 15, 2004, at 9:15 a.m., in room 16.12, to assess the situation and determine if this Initial Order is to be renewed or extended. Any other demand of any other interested party could be presented at the same time.
- [54] **ORDER** that EVH or the Monitor, as the case may be, except as otherwise prescribed by this order, may serve this order, the Motion, the notice of the hearing of motion or petition, the plan of arrangement, any notice of meetings of creditors and any other proceeding or document whatsoever, of any nature, on any creditor of EVH or any other interested party, by transmitting a photocopy of the document in question by prepaid mail addressed to the last known address communicated by such creditors or party to EVH, and that such service shall be deemed to be effective on the fourth business day following such mailing;

- [55] **ORDER** that these proceedings shall have full force and effect in all of the provinces and territories in Canada;
- [56] **DECLARE** that this Court seeks and requests the aid and recognition of any Court or administrative body in any province of Canada, and any Canadian Federal Court or administrative body as well as any Court or administrative body in any of the States of the United States of America and any Federal Court or administrative body of the United States of America, to assist EVH and the Monitor to carry out the terms of this Order;
- [57] **ORDER** provisional execution of this Order, notwithstanding any appeal and without the necessity of furnishing any security;
- [58] **THE WHOLE**, without costs.

M. HON. FRANÇOIS ROLLAND, J.C.
FRANÇOIS ROLLAND S.C.J.

