

SUPERIOR COURT
(Commercial Division)

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-11-044334-130

DATE: April 5, 2013

PRESIDING: THE HONOURABLE MARK SCHRAGER, J.S.C.

IN THE MATTER OF THE RECEIVERSHIP OF:

EFFIGI INC.

Debtor

-and-

RICHTER ADVISORY GROUP INC., in its capacity as Receiver in respect of Effigi Inc.

-and-

RICHTER ADVISORY GROUP INC., in its capacity as Trustee to the bankruptcy of Effigi Inc.

Petitioners

JUDGMENT

- [1] **THE COURT**, after having examined the *Motion for Authorization to Sell Certain Assets of the Debtor, Enter Into Agency Agreement and Other Related Orders* (the "**Motion**") pursuant to section 243 of the *Bankruptcy and Insolvency Act* ("**BIA**") presented by Petitioner Richter Advisory Group Inc., in

its capacity as Receiver in respect of Effigi Inc. and Petitioner Richter Advisory Group Inc., in its capacity as Trustee to the bankruptcy of Effigi Inc.;

- [2] **CONSIDERING** the allegations of the Motion, the affidavit and exhibits filed in support thereof;
- [3] **CONSIDERING** the representations made by counsel;
- [4] **CONSIDERING** that the Motion is well founded in fact and in law;

FOR THESE REASONS, THE COURT:

- [5] **GRANTS** the Motion;
- [6] **SHORTENS** the delays of service and presentation of the Motion;
- [7] **DECLARES** that the service of the Motion constitutes good and sufficient service on all persons and further **DECLARES** that Petitioners are relieved of any other requirements for service of the Motion;
- [8] **AUTHORIZES** the transaction as outlined in paragraph 31 of the Motion (the "**Transaction**"), the defined terms having the meanings set forth in the "Agency and Sale Agreement" dated April 2, 2013 (Exhibit P-6) (the "**Agreement**"), to wit:
- a) the Agent will act as the Receiver's agent in conducting the Sale of the Inventory and the FF&E located in the Stores, the Distribution Center and the Corporate Office;
 - b) the Agent will acquire all of the Debtor's right, title and interest in and to the Receivables;
 - c) in consideration, the Agent will pay the Guaranteed Amount for the Inventory, Receivables and FF&E subject to adjustment as set forth in the Agreement;

- d) the Agent will advance the First Installment, being 80% of the Guaranteed Amount, to the Receiver on the first business day immediately following the date of the present judgment;
- e) the Second Installment, being the difference between the Guaranteed Amount and the First Installment, will be paid upon the completion of an inventory reconciliation, which amount will be secured by the Second Installment Guaranty L/C, issued in favour of the Receiver;
- f) during the Sale, the Agent, as the Receiver's agent, will assume substantially all of the Receiver's expenses related to the operation of the Stores and the Distribution Center, including payment of salaries, insurance and all other occupancy costs, as set forth on the Agreement;
- g) the Agent will also contribute to certain occupancy and operation costs related to the Corporate Office, as set forth on the Agreement;
- h) the Agent will also pay to the Receiver the following additional amounts, subject to the terms and conditions set forth in the Agreement:
 - (i) 90% of the net receipts of collections of the Receivables greater than 62% of the book value of such purchased Receivables as set forth in the Agreement;
 - (ii) 50% of the Net FF&E Proceeds above a certain threshold set forth in the Agreement;
 - (iii) 80% of gross proceeds from the sale of Excluded Defective Merchandise and Samples; and
 - (iv) 5% of the gross sales of any Supplemental Merchandise sold in the Stores during the Sale Term;

- [9] **AUTHORIZES** Richter Advisory Group Inc., in its capacity as Trustee to the Debtor's bankruptcy (the "**Trustee**") to intervene into the Agreement and perform its obligations as therein set forth and **RATIFIES** such intervention;
- [10] **AUTHORIZES** the Trustee (on the Receiver's behalf), the Receiver and the Agent, subject to compliance with the present judgment and any further order of this Court and all applicable laws, and subject to the payment of the rent, to use and/or occupy the Debtor's Stores, Corporate Office and Distribution Center locations (the "**Locations**") and all Location services, furniture, fixtures, equipment and other assets of the Debtor for the purpose of conducting the Sale, and to advertise such Sale, as contemplated in the Agreement, free of any interference and interruption from any entity or person subject to compliance with the Agreement and the present judgment, the whole subject to compliance with any and all leases or other agreements regarding the Locations. Without limiting the generality of the foregoing, but subject to the landlords' rights to enforce any leases or agreements regarding the Locations in accordance with applicable law, all suppliers, utilities, landlords, creditors and all persons acting for or on their behalf shall not interfere with or otherwise impede the conduct of the Sale and shall not institute any action in any court (other than as provided for in the present judgment) or before any administrative body which in any way directly or indirectly interferes with or obstructs or impedes the conduct of the Sale;
- [11] **ORDERS** the "First Installment" (as defined in the Agreement) to be paid to the Receiver and the "Second Installment Guaranty L/C" (as defined in the Agreement) to be issued and delivered to the Receiver, all in accordance with the Agreement;
- [12] **AUTHORIZES** the Receiver, upon its receipt of the "First Installment" and "Second Installment" to pay and remit same to the Debtor's senior secured creditor, Wells Fargo Capital Finance Corporation Canada;

- [13] **ORDERS** that, upon payment of such "First Installment" and the issuance of such "Second Installment Guaranty L/C", (i) the assignment and sale of the Assigned Receivables to the Agent and (ii) the Inventory and the FF&E shall be free and clear of all rights, titles, interests, prior claims, hypothecs, security interests, leases, charges, pledges, hypothecations, mortgages, trusts, deemed trusts, right of first refusal or other pre-emptive rights, restrictions on transfer of title, levies, priorities, liens, assignments, judgments, executions, writs of seizure and sale, options, adverse claims or encumbrances, whether contractual, statutory or otherwise, by operation of law or equity or otherwise, whether or not they have been attached or been perfected, published, registered or filed and whether secured, unsecured or otherwise, including, without limitation, all hypothecs, charges, security interests or claims evidenced by registrations at the *Register of Personal and Movable Real Rights* and any other personal property registry systems (collectively, the "**Encumbrances**"), other than the Agent's Charge (as defined herein), subject to the right of any secured creditor to be paid out any and all amounts paid by the Agent to the Receiver under the Agreement, (collectively, the "**Proceeds**"), in accordance with its rank;
- [14] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Proceeds shall stand in the place and stead of the Assigned Receivables, Inventory and FF&E, as the case may be, and all Encumbrances shall attach to the Proceeds with the same priority as they had immediately prior to the Transaction;
- [15] **DECLARES** that the Inventory and the FF&E are hereby charged with a first ranking hypothec in the amount of CDN\$12,000,000 and a first ranking priority charge and security interest in favour of the Agent in order to secure all of the Receiver's obligations under the Agreement (the "**Agent's Charge**"), and **DECLARES** that the Agent's Charge is automatically perfected, published and rendered opposable against third parties without the necessity of the filing or

registration of financing statements, applications for registration or any other documents;

[16] **ORDERS** that notwithstanding :

- a) the pendency of these proceedings;
- b) the pendency of any other proceedings pursuant to the *Bankruptcy and Insolvency Act*; and
- c) the provisions of any federal or provincial statute or law,

the Agreement, Transaction and the Agent's Charge shall be binding on and opposable against the Trustee and any other trustee in bankruptcy appointed in respect of the Debtor;

[17] **ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose to the Agent all human resources and payroll information in the Debtor's records pertaining to the Debtor's employees. The Agent shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner consistent with its obligations under the Agreement;

[18] **DECLARES** that the present judgment and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;

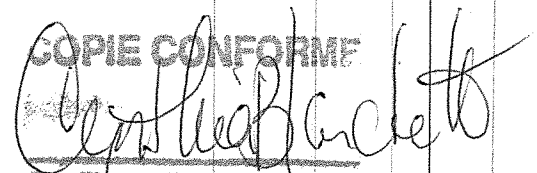
[19] **DECLARES** that Receiver or the Trustee shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the present judgment and any subsequent orders of the Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which Receiver 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 Receiver as may be deemed necessary or appropriate for that purpose;

- [20] **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court, tribunal, regulatory or administrative body and any federal or state court, tribunal, regulatory or administrative body in the United States of America and any court, tribunal, regulatory or administrative body elsewhere, to act in aid of and to be complementary to the Court in carrying out the terms of the present judgment;
- [21] **ORDERS** the sealing of Exhibit P-6, until further order of this Court;
- [22] **ORDERS** the provisional execution of the present judgment, notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
- [23] **THE WHOLE** without costs.



MARK SCHRAGER, J.S.C.

COPIE CONFORME


Greffier adjoint