

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. 500-11-052107-170
No. 500-11-052109-176

DATE: MARCH 8, 2017

PRESIDING : REGISTRAIRE: ME CHANTAL FLAMAND

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

FREEMARK APPAREL BRANDS INC.

-and-

FREEMARK APPAREL BRANDS TEC INC.

Debtors

-and-

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS
(Québec)

Mis-en-Cause

RICHTER ADVISORY GROUP INC

Trustee

APPROVAL AND VESTING ORDER

- [1] **ON READING** the Debtors' *Motion for an Authorisation to Sell Certain Assets and for the Issuance of an Approval and Vesting Order* (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the Report of the Trustee dated March 7, 2017 (the "**Report**");
- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of the Debtors' attorneys;

[4] **SEEING** that it is appropriate to issue an order approving the transactions (collectively, the "**Transaction**") contemplated by (i) the agreement entitled Asset Purchase Agreement by and between Freemark Apparel Brands Inc. (the "**Wholesale Vendor**"), as Vendor, and Scotch and Soda Export B.V. (the "**Wholesale Purchaser**"), as purchaser (the "**Wholesale APA**") and (ii) the agreement entitled Asset Purchase Agreement by and between Freemark Apparel Brands TEC Inc. (the "**Retail Vendor**" and with the Wholesale Vendor, the "**Vendor**"), as Vendor, and Scotch and Soda Retail Canada Inc. (the "**Retail Purchaser**" and with the Wholesale Purchaser, the "**Purchaser**"), as purchaser (the "**Retail APA**" and with the Wholesale APA, the "**Purchase Agreement**") , copies of which were filed as Exhibit R-10 and R-11 to the Motion, and vesting in the Purchaser the assets described in the Purchase Agreement (the "**Purchased Assets**").

WHEREFORE THE COURT:

[5] **GRANTS** the Motion;

SERVICE

[6] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

[7] **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE APPROVAL

[8] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Vendor is hereby ratified and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Trustee.

EXECUTION OF DOCUMENTATION

[9] **AUTHORIZES** the Vendor and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement (Exhibit R-10 and R-11) and any other ancillary document which could be required or useful to give full and complete effect thereto.

AUTHORIZATION

[10] **ORDERS and DECLARES** that this Order shall constitute the only authorization required by the Vendor to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED ASSETS

[11] **ORDERS and DECLARES** that upon the issuance of a Trustee's certificate substantially in the form appended as Schedule "A" hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets sold pursuant to

- (i.) the assets described in the Retail APA shall vest absolutely and exclusively in and with the Retail Purchaser (solely in the case of the Assigned Leases, subject to the consent of the applicable landlord(s)); and
- (ii.) the assets described in the Wholesale APA shall vest absolutely and exclusively in and with the Wholesale Purchaser

the whole free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other preemptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all charges, security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, the Ontario, British Columbia and Alberta Personal Property Security Act, or any other applicable legislation providing for a security interest in personal or movable property and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.

[12] **ORDERS and DECLARES** that upon the issuance of the Certificate, the rights and obligations of the Wholesale Vendor under the purchase orders more fully described as the Assigned Contracts in the Wholesale APA are assigned to the Wholesale Purchaser and the latter is authorized to fulfill same.

[13] **ORDERS and DIRECTS** the Trustee to file with the Court a copy of the Certificate, forthwith after issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

For Quebec Property:

[14] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to reduce the scope of the registrations number 12-0519494-0003, 12-0519494-0001, 11-0437573-0003, 11-0437573-0001, 10-0168511-0003, 07-0189546-0002, 10-0168511-0001 and 12-0519494-0002 in connection with the Purchased Assets in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations.

For Ontario Property:

- [15] **ORDERS** that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the Ontario Personal Property Registry ("**OPPR**") as may be necessary, from any registration filed against the Vendor in the **OPPR**, provided that the Vendor shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Vendor shall be authorized to take any further steps by way of further application to this Court.

For British-Columbia Property:

- [16] **ORDERS** that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the British Columbia Personal Property Security Registry (the "**BC PPR**") as may be necessary, from any registration filed against the Vendor in the **BC PPR**, provided that the Vendor shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Vendor shall be authorized to take any further steps by way of further application to this Court.

NET PROCEEDS

- [17] **ORDERS** that the net proceeds from the sale of the Purchased Assets (the "**Net Proceeds**") shall be remitted to the Vendor, save for an amount of \$1,300,000 which shall be remitted to HSBC Bank Canada ("**HSBC**").
- [18] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

PROTECTION OF PERSONAL INFORMATION

- [19] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable provincial legislation, the Vendor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtors' past and current employees that will be acquired in the Transaction. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor;;

VALIDITY OF THE TRANSACTION

[20] **ORDERS** that notwithstanding:

- (i) the pendency of these proceedings;
- (ii) any petition for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition; or
- (iii) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement pursuant to this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendor, the Purchaser or the Trustee.

LIMITATION OF LIABILITY

[21] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Trustee to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Trustee shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the BIA;

[22] **DECLARES** that no action lies against the Trustee by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Trustee or belonging to the same group as the Trustee shall benefit from the protection arising under the present paragraph;

GENERAL

[23] **ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

[24] **ORDERS** that the Purchaser or the Vendor shall be authorized to take all steps as may be necessary to effect the reduction of the Encumbrances.

[25] **ORDERS** that the Purchase Agreement be kept confidential and under seal until the earlier of a) the closing of the Transaction; or b) further order of this Court.

[26] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;

[27] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;

[28] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

THE WHOLE WITHOUT COSTS.

(S) CHANTAL FLAMAND

REGISTRAIRE: ME CHANTAL FLAMAND

Chantal
copie conforme

SCHEDULE "A"
DRAFT CERTIFICATE OF THE TRUSTEE

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

File: No: 500-11-052107-170
500-11-052109-176

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF::
FREEMARK APPAREL BRANDS INC.

-and-

FREEMARK APPAREL BRANDS TEC INC.

Debtor

-and-

RICHTER ADVISORY GROUP INC

Trustee

CERTIFICATE OF THE TRUSTEE

RECITALS:

WHEREAS on February 17, 2017 Freemark Apparel Brands Inc and Freemark Apparel Brands TEC Inc. (the "**Petitioners**") filed a notice of intention to make a proposal pursuant to the *Bankruptcy and Insolvency Act* (the "**Act**");

WHEREAS Richter Advisory Group Inc (the "**Trustee**") was named trustee to the notice of intention to make a proposal of the Petitioners; and

WHEREAS on March ●, 2017, the Court issued an Order (the "**Vesting Order**") thereby, *inter alia*, approving two agreements entitled *Assets Purchase Agreement* (collectively, the "**Purchase Agreements**") by and between the Petitioner Freemark Apparel Brands TEC Inc. and Scotch & Soda Retail Canada Inc., on the one hand, and the Petitioner Freemark Apparel Brands Inc. (collectively, with Freemark Apparel Brands TEC Inc., the "**Vendors**") and Scotch & Soda Export B.V. (collectively, with Scotch & Soda Retail Canada Inc., the

"Purchasers"), respectively, copies of which were filed in the Court record, and entering into all the transactions contemplated therein (collectively, the "Transaction").

WHEREAS the Vesting Order contemplates the issuance of this Certificate of the Trustee once the (a) closing conditions set out in the Purchase Agreements have been satisfied or waived, as the case may be; and (b) the Purchase Price (as defined in the Purchase Agreements) has been paid by the Purchasers.

THE TRUSTEE CERTIFIES THAT IT HAS BEEN ADVISED BY THE VENDORS AND THE PURCHASERS AS TO THE FOLLOWING:

- (a) the closing conditions set out in each of the Purchase Agreements have been satisfied or waived by the Purchasers or Vendors, as applicable;
- (b) the Purchase Price (as defined in the Purchase Agreements) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) as a result, the Trustee certifies that the Transaction has been completed to the satisfaction of the Trustee.

This Certificate was issued by the Trustee at ____ [TIME] on _____ [DATE].

Richter Advisory Group Inc in its capacity as trustee to the notice of intention to make a proposal, and not in its personal capacity.

Name: _____

Title: _____
