

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the
Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3)

No.: 500-11-028119-069
Estate No.: 41-336505

**IN THE MATTER OF THE NOTICE OF
INTENT TO FILE A PROPOSAL OF:**

D. & F. FURNITURE LTD., a legal person duly constituted according to law, having a place of business at 8965 Pascal Gagnon Street, in the City and District of Montréal, Province of Québec, H1P 1Z4;

Debtor-Petitioner

- and -

RSM RICHTER INC., a legal person duly constituted according to law, having its principal place of business located at 2 Place Alexis-Nihon, 3500 de Maisonneuve Blvd. West, 22nd Floor, in the City and District of Montréal, Province of Québec, H3Z 3C2;

Interim Receiver

- and -

CENTURY SERVICES INC., a legal person duly constituted according to law, having a place of business located at 7575 Route Transcanadienne, in the City and District of Montréal, Province of Québec, H4T 1V6;

Mise en cause

**MOTION FOR THE APPOINTMENT OF AN INTERIM RECEIVER AND
FOR AUTHORIZATION TO ENTER INTO AN AGENCY AGREEMENT**

(Section 47.1 of the Bankruptcy and Insolvency Act)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, OR

TO ONE OF THE REGISTRARS THEREOF, PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

1. On May 17, 2006, Debtor-Petitioner D. & F. Furniture Ltd. ("**Debtor**") filed a Notice of Intent to File a Proposal pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act* and RSM Richter Inc. ("**Richter**") was named Trustee thereunder, the whole as appears from the Court record;

I. BACKGROUND

2. The Debtor is a high end baby and junior furniture manufacturer, in business for over thirty (30) years;
3. The Debtor's products are mostly sold on the U.S. market, through specialized furniture stores;
4. The Debtor has encountered operational losses and its financial situation subsequently gradually deteriorated, in the context, *inter alia*, of a globalized manufacturing market place and the variation of the Canada/U.S. currency exchange rates, the whole despite efforts made by the Debtor to counter the situation;
5. The assets of the Debtor currently consist of accounts receivable ("**Accounts Receivable**") and inventory ("**Inventory**"), as well as furniture, fixtures, machinery and equipment (collectively the "**Equipment**");

II. DEBTOR'S INDEBTEDNESS AND SECURITY

6. HSBC Bank Canada ("**HSBC**"), as a result of its acquisition of Banca Commerciale Italiana of Canada, is the Debtor's primary lender and, as of May 12, 2006, was owed approximately \$4,432,000.00, the whole subject to adjustment (the "**Secured Indebtedness**") pursuant to various financing arrangements entered into between the Debtor and HSBC;
7. In order to secure the repayment of the Secured Indebtedness, the Debtor granted security in favour of HSBC on the universality of its assets (the "**Security**");
8. In addition to HSBC (and Banca Commerciale Italiana of Canada), searches performed under the Debtor's name at the Register of Personal and Movable Real Rights (Quebec) and at the registry maintained pursuant to the *Bank Act*, disclose that the following creditors have registered security interests against the Debtor (excluding leases, leaseings and conditional sales):

- a) Royal Bank of Canada;
- b) Les Plastiques Navaho Inc.;
- c) Giuseppina Gava; and
- d) Gestion Piel Ltée;

the whole as appears from excerpts of the search results, filed *en liasse*, as **Exhibit M-1**;

- 9. The registrations in favour of the Royal Bank of Canada relate to a proposed financing which never took place and for which no indebtedness is therefore owing;
- 10. Registrations in favour of Les Plastiques Navaho Inc. and Giuseppina Gava relate, to the best of the Debtor's knowledge, to hypothecs on moveables situated in premises and granted pursuant to leases of real property, which moveables are evaluated at no more than \$10,000.00 at present;
- 11. To the best of the Debtor's knowledge, all amounts owing to Gestion Piel Ltée have been repaid;
- 12. The Debtor is also indebted to various ordinary creditors in the approximate aggregate amount of \$3,500,000.00 ("**Unsecured Debt**") including an approximate amount of \$130,000.00 owed to 122753 Canada Inc., its majority shareholder, most of the balance of the Unsecured Debt being owed to various suppliers;

III. RESTRUCTURING PROCESS

- 13. In view of its current financial difficulties, the Debtor has been exploring its business and financial alternatives, with a view to finding the best possible solution to the benefit of its stakeholders, including first and foremost its creditors;
- 14. Without limiting the foregoing, the Debtor explored solutions which would result in the continuation of its current business on a going concern basis. Unfortunately, such a solution has not revealed itself as being a viable or realistic outcome in the circumstances;
- 15. After careful consideration, analysis and consultation, including with Richter, an orderly liquidation of the Debtor's assets appeared to be the most beneficial solution and the one that would yield the most profitable outcome;
- 16. Through Richter acting in a consulting capacity, the Debtor invited five (5) selected auctioneer firms, identified as the most likely to submit acceptable bids, to submit offers for the purchase of the Equipment. The Debtor then intended to sell the Inventory itself;
- 17. At the end of this process, the Debtor negotiated an agency agreement (the "**Agency Agreement**") with the Mise en cause Century Services Inc. ("**Century**") which deals not only with the Equipment, but also with the Inventory, giving rise to economies of scale. A copy of the Agency Agreement will be filed under seal at the hearing of the present Motion as **Exhibit M-2**;

IV. THE AGENCY AGREEMENT AND THE LIQUIDATION PROCESS

18. The main features of the Agency Agreement provide, *inter alia*, as follows, the whole subject to the specific terms and conditions of the Agency Agreement:
- a) Century will act as the Debtor's agent in conducting the sale ("Sale") of its Equipment and Inventory;
 - b) In consideration for the Sale, Century will pay a minimum guarantee amount for the Equipment and for the Inventory (collectively, the "**Minimum Guarantee Amount**"), the whole as set forth in the Agency Agreement;
 - c) As a guarantee of Century's performance under the Agency Agreement, the Minimum Guarantee Amount will be paid by Century to Richter in trust contemporaneously with the execution of the Agency Agreement;
 - d) Richter will, in turn, pay the Minimum Guarantee Amount to HSBC in reduction of the Secured Debt, subject to any prior claims, the whole in accordance with the timelines set forth in the Agency Agreement;
 - e) The Agency Agreement also provides for the payment of a surplus by Century, inasmuch as the Sale yields amounts in excess of the Minimum Guarantee Amount, the whole as set forth in the Agency Agreement;
19. It is the view of the Debtor and Richter that the Agency Agreement represents the best possible solution in the circumstances and is beneficial to the creditors of the Debtor;
20. The Debtor also intends to proceed as follows, concurrently with the Sale:
- a) fill orders on hand; and
 - b) collect the Accounts Receivable, which are estimated to be in the approximate realizable amount of in excess of \$2,000,000;
21. It is anticipated that the conduct of the Sale, together with the collection of the accounts receivable, will allow the Debtor to:
- a) reimburse the Secured Indebtedness to HSBC on a short term basis, thereby also reducing and eliminating the interest payable in relation thereto, the whole to the benefit of the ordinary creditors;
 - b) realize amounts, over and above the Secured Indebtedness, sufficient to make a viable proposal to its creditors; and
 - c) reduce expenditures of the Company as operations will be wound down;
22. It is urgent that the Agency Agreement be entered into since:

- a) inactive summer months are fast approaching, such that the months of May and early June are crucial to obtaining the best possible offers for the sale of the Inventory and of the Equipment;
 - b) the Agency Agreement provides, in part, for the sale of Inventory based on “tagged orders” (i.e. orders for which the Debtor’s retailers have already sold furniture to clients and are ready to pay on a COD basis), which must be shipped immediately; and
 - c) the delivery of these “tagged orders” to retailers should allow the Debtor to collect an important amount of outstanding Accounts Receivable as delivery of the “tagged orders” are also conditional on the payment of outstanding arrears by the retailers;
23. In view of the above, the Debtor hereby seeks that this Court authorizes the Debtor to enter, and the Interim Receiver to intervene, into the Agency Agreement and orders that the sale of any of the property of the Debtor pursuant to the Agency Agreement by Century Services Inc. be made free and clear of any security, hypothec, charge or right, subject to the right of any secured creditor to be ranked according to its rights on distributions provided under the Agency Agreement;

VI. NOMINATION OF RICHTER AS INTERIM RECEIVER

24. As a result of the above, and in the context of the liquidation of its assets and execution of the Agency Agreement, the Debtor submits that it is necessary for the protection of its creditors generally that Richter be appointed Interim Receiver to the Debtor’s property and that it be granted the right to exercise the following powers, namely:
- a) monitor the affairs of the Debtor;
 - b) act in accordance with the terms and conditions of the Agency Agreement;
 - c) control the receipts and disbursements of the Debtor;
 - d) to have full access to premises, assets, books and records, personnel, analysis, computers, data storage media, software or other information, compilations and documentation related to or completed by the Debtor and/or its representatives and to make, retain and take away copies thereof;
 - e) place such insurance coverage as the Interim Receiver may deem necessary or desirable;
 - f) engage consultants, appraisers, agents, experts, auditors, accountants, managers, solicitors and counsel and such other advisors or professionals from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this order;
25. Richter, a licensed trustee, has agreed to act as Interim Receiver;

26. The present request is urgent given the facts above and given the financial position of the Debtor;
27. The present motion is well founded in fact and in law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present motion;

ABRIDGE and **SHORTEN** any delay for service and/or the presentation of this motion;

AUTHORIZE D & F Furniture Ltd. (the “**Debtor**”) to enter into the agency agreement with Century Services Inc., **Exhibit M-2** (the “**Agency Agreement**”);

ORDER that the Agency Agreement be kept under seal, subject to any further order of the Court made on prior notice to the Debtor, Century Services Inc., RSM Richter Inc. and HSBC Bank Canada;

APPOINT RSM Richter Inc. (the “**Interim Receiver**”), licensed trustee, as Interim Receiver to the Debtor’s property;

AUTHORIZE the Interim Receiver to intervene into the Agency Agreement;

GRANT to the Interim Receiver the following rights and powers:

- a) monitor the affairs of the Debtor;
- b) act in accordance with the terms and conditions of the Agency Agreement;
- c) control the receipts and disbursements of the Debtor;
- d) to have full access to premises, assets, books and records, personnel, analysis, computers, data storage media, software or other information, compilations and documentation related to or completed by the Debtor and/or its representatives and to make, retain and take away copies thereof;
- e) place such insurance coverage as the Interim Receiver may deem necessary or desirable;
- f) engage consultants, appraisers, agents, experts, auditors, accountants, managers, solicitors and counsel and such other advisors or professionals from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this order;

DECLARE that the Debtor shall remain the employer of - and that the Interim Receiver shall not, as a result of this order or anything done in pursuance of the Interim Receiver’s duties and powers under this Order, be deemed the employer of - any employee of the Debtor;

ORDER that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the property of the Debtor and that the Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be in Possession of any of the property of the Debtor within the meaning of the *Canadian Environmental Protection Act*, the *Environment Quality Act* or any similar environmental legislation;

ORDER that the sale of any of the property of the Debtor pursuant to the Agency Agreement by Century Services Inc. be made free and clear of any security, hypothec, charge or right, subject to the right of any secured creditor to be ranked according to its rights on distributions provided under the Agency Agreement;

ORDER provisional execution of the judgment to be rendered pursuant hereto notwithstanding any appeal therefrom;

THE WHOLE WITHOUT COSTS, save and except in case of contestation.

Montréal, May 19, 2006

(s) *CUCCINIELLO CALANDRIELLO*

CUCCINIELLO CALANDRIELLO
Attorneys for D. & F. Furniture Ltd.

TRUE COPY


CUCCINIELLO CALANDRIELLO

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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INTENT TO FILE A PROPOSAL OF:**

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Debtor-Petitioner

- and -

RSM RICHTER INC.,

Interim Receiver

- and -

CENTURY SERVICES INC.,

Mise en cause

LIST OF EXHIBITS

(Motion For The Appointment Of An Interim Receiver
And For Authorization To Enter Into An Agency Agreement)

- EXHIBIT M-1:** *En liasse*, excerpts of search results performed at the Register of Personal and Movable Real Rights (Québec);
- EXHIBIT M-2:** Agency Agreement between Century Services Inc. and D. & F. Furniture Ltd. (under seal).

Montréal, May 19, 2006

(s) CUCCINIELLO CALANDRIELLO

CUCCINIELLO CALANDRIELLO
Attorneys for D. & F. Furniture Ltd.

TRUE COPY


CUCCINIELLO CALANDRIELLO

NOTICE OF PRESENTATION

TO: RSM RICHTER INC.
2 Place Alexis-Nihon
3500 de Maisonneuve Blvd. West, 22nd Floor
Montréal, QC H3Z 3C2

and

HSBC BANK CANADA
2001 McGill College, suite 150
Montréal, QC H3A 1G1

c/o

Me Alain Gaul

DAVIES WARD PHILLIPS & VINEBERG LLP
1501 McGill College Avenue
26th Floor
Montreal Canada H3A 3N9

and

CENTURY SERVICES INC.
7575 Route Transcanadienne
Montréal, QC H4T 1V6

and

ROYAL BANK OF CANADA
630 René-Lévesque Blvd. West, 1st Floor
Montréal, QC H3B 1S6

and

LES PLASTIQUES NAVAHO INC.
8335 Champ d'Eau
Montréal, QC H1P 1Y1

and

GIUSEPPINA GAVA
11958 Bois-de-Boulogne
Montréal, QC H3H 2X6

and

GESTION PIEL LTÉE
524 Murano Crescent
Laval, QC H7M 5R6

TAKE NOTICE that the attached motion will be presented for hearing and allowance in room 16.10 at 4 p.m. (Montreal Time) at the Montreal Courthouse, 1 Notre-Dame Street East, Montreal, on Tuesday, May 23rd, 2006, or so soon thereafter as Counsel may be heard.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, May 19, 2006

(s) CUCCINIELLO CALANDRIELLO

CUCCINIELLO CALANDRIELLO
Attorneys for D. & F. Furniture Ltd.

TRUE COPY


CUCCINIELLO CALANDRIELLO

AFFIDAVIT

I, the undersigned, Armando Dinucci, businessman, residing and domiciled at 1380 Fiset Street, H7G 4E5, in the city and district of Laval, Province of Québec, solemnly declare the following:

- I am the President of Petitioner and I am duly authorized for purposes hereof;
- I have taken cognizance of the present *Motion for the Appointment of an Interim Receiver and for Authorization to Enter Into an Agency Agreement*;
- All the facts alleged in the said motion are true.

AND I HAVE SIGNED

(s) Armando Dinucci

Armando Dinucci

SOLEMNLY AFFIRMED BEFORE ME IN MONTRÉAL
on the 19th day of May 2006

(s) Nathalie Angers, #140.961.

COMMISSIONER OF OATHS
FOR THE JUDICIAL DISTRICT OF MONTRÉAL

TRUE COPY

Cucciniello Calandriello
CUCCINIELLO CALANDRIELLO