

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-041238-110

DATE: October 19, 2011

PRESENT: THE HONOURABLE MR. JUSTICE JEAN-YVES LALONDE,
J.S.C.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED AND:

HART STORES INC. / MAGASINS HART INC.

Petitioner

- and -

RSM RICHTER INC.

Monitor

ORDER

ON READING the Petitioner's motion for an order authorizing an agency agreement for the sale of excess inventory pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the "CCAA") and the exhibits, and the affidavit of Robert Harritt filed in support thereof (the "**Motion**");

CONSIDERING the terms of the Initial Order rendered in these proceedings on August 30, 2011 (the "**Filing Date**") with respect to the Petitioner, pursuant to the CCAA;

CONSIDERING the order rendered on September 28, 2011 extending the Stay Period, as such term is defined in the Initial Order, until November 4, 2011, and granting other relief (the "**Renewal Order**");

CONSIDERING the representations of the parties;

ON READING the Monitor's report on the liquidation solicitation process filed in support of the Motion (the "**Monitor's Report**");

GIVEN the provisions of the CCAA;

WHEREFORE, THE COURT:

- 1 **GRANTS** the Motion;
- 2 **DECLARES** that sufficient prior notice of the presentation of this Motion has been given by the Petitioner to interested parties, including to the secured creditors who are likely to be affected by the charges created herein;
- 3 **DECLARES** that the Agency Agreement from Tiger Capital Group, LLC ("**Tiger**"), as accepted by the Petitioner on October 17, 2011 (the "**Agency Agreement**"), communicated as Exhibit R-1, providing for Tiger to conduct a sale (the "**Sale**") of the Petitioner's merchandise (the "**Closing Store Merchandise**") located in the 32 stores identified in Exhibit 1A to the Agency Agreement (the "**Closing Stores**"), subject to payment of the Guaranteed Amount, as such term is defined therein, and performance of Petitioner's other obligations provided for therein, is fair and reasonable and in the best interest of the Petitioner's stakeholders;
- 4 **AUTHORIZES** the Petitioner to enter into the Agency Agreement and **DECLARES** that same is valid and enforceable;
- 5 **AUTHORIZES** the Sale of the Closing Store Merchandise by Tiger in accordance with the terms of the Agency Agreement;
- 6 **AUTHORIZES** the Petitioner to execute any other agreement, contract, deed or any other document ~~ancillary or related to the Agency Agreement~~, or take any other action, which ~~could be required or useful to give full and complete effect thereto;~~ *to the Agency Agreement. ↳ is necessary to*
- 7 **ORDERS** that Exhibit R-1, and a full unredacted copy of the Monitor's Report, be kept confidential in a sealed envelope, such that the content of those documents will not be made available to the public in order to safeguard the possibility of soliciting and obtaining other offers in the event that the Sale is not consummated;
- 8 **DECLARES** that Tiger in its capacity as agent of the Petitioner is authorized to sell the Closing Store Merchandise, absolutely and forever free and clear of and from any and all encumbrances, liens, claims, rights, title, interests, security interests, charges, pledges, mortgages, hypothecations, hypothecs, judgments, executions, writs of seizure and sale, options, adverse claims, levies, charges, priorities, remedies from facts which exist as of the date of the judgment to be rendered hereon whether known or unknown, or any other rights, rights of use,

disputes and debts of all persons or entities of any kind whatsoever and howsoever arising, whether contractual, statutory, by operation of law or otherwise, whether perfected, attached, registered or filed, whether secured, unsecured or otherwise and whether created by or pursuant to the orders made in these proceedings, including all charges created by order of this Court in the Initial Order, the Renewal Order; and/or further orders (the "**Liens**"), which Liens shall instead attach to the Guaranteed Amount and the other amounts to be paid by Tiger to the Petitioner in furtherance of the Agency Agreement;

- 9 **DECLARES** that the communication of a redacted copy of the Monitor's Report, as Exhibit R-2, is proper and sufficient;
- 10 **DECLARES** that no Liens shall attach to the proceeds of the sale and any other amounts which are, or may become payable by the Petitioner to Tiger, or which may be retained by Tiger, under the Agency Agreement, or to any amounts that must be reimbursed by the Petitioner to Tiger in the event that Tiger over-funds any amounts due to the Petitioner, and the Petitioner will pay such amounts to Tiger, or Tiger will retain them, free and clear of all Liens;
- 11 **ORDERS** and **DECLARES** that Tiger shall have the right to use the Closing Stores and all related store services, furniture, fixtures, equipment and other assets of the Petitioner as designated under the Agency Agreement for the purpose of conducting the Sale, free of any interference from any entity or person, including landlords;
- 12 **ORDERS** and **DECLARES** that Tiger, as agent for the Petitioner, is authorized to conduct, advertise, post signs (including exterior signs and banners and sign-walkers) and otherwise promote the Sale without further consent of any person (other than the Petitioner as provided for in the Agency Agreement), in accordance with the terms and conditions of the Agency Agreement, and without further compliance with applicable federal, provincial or local laws governing, inter alia, the conduct of store closing sales, other than those designed to protect public health and safety;
- 13 **DECLARES** that until January 31, 2012, or such other date on which the Petitioner and Tiger agree that the Sale is completed (the "**Sale Termination Date**"), Tiger is granted a limited license and right to use the trade names and logos relating to and used in connection with the operation of the Closing Stores, solely for the purpose of advertising the Sale in accordance with the terms of the Agency Agreement and this Order;
- 14 **ORDERS** and **DECLARES** that Tiger shall not be liable for any claims against the Petitioner other than as provided for in the Agency Agreement, and Tiger shall not be deemed to be a successor employer, and shall have no successorship liabilities whatsoever, it being understood that Tiger is acting solely as an agent of the Petitioner, and to that end:

- a) Tiger shall not be deemed to be in possession or control of the Closing Stores or the assets located therein or associated therewith, or of the Petitioner's employees located at the Closing Stores;
- b) Tiger does not assume any of the Petitioner's obligations or liabilities with respect to any of the foregoing;
- c) Except as specifically provided for in the Agency Agreement, Tiger will not be liable for wages, salaries and employment obligations, as well as for any indemnity, severance pay, amounts in lieu of prior notice or other obligations (however and whenever arising) relating to the termination of employees of the Petitioner and its direct and indirect subsidiaries; and
- d) The Petitioner shall bear all responsibility for liability claims of customers, employees and other persons arising from events occurring at the Closing Stores between the Sale Commencement Date and the Sale Termination Date, and thereafter, save and except where any such claim arises directly from the acts or omissions of Tiger, its supervisors, agents, independent contractors or employees located at the Closing Stores;

15 **DECLARES** that the claims of Tiger pursuant to the Agency Agreement shall not be compromised or arranged pursuant to a plan to the Petitioner's creditors (a "**Plan**") or the present proceedings and Tiger shall be treated as an unaffected creditor in these proceedings and in any Plan;

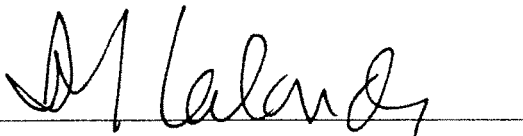
16 **DECLARES** that notwithstanding the CCAA, the Initial Order or any order rendered under the present proceedings, the Petitioner shall not have the right to disclaim or resiliate the Agency Agreement or any of its agreements, contracts or arrangements in relation to the Agency Agreement, except as permitted under the Agency Agreement;

17 **DECLARES** that the Agency Agreement and any related agreements or documents to be entered into or signed further thereto, the transactions contemplated thereby (including, without limitation, Tiger's entitlement to a portion of the proceeds of the Sale and any other amounts which are, or may become, payable or repayable by the Petitioner to Tiger, or which may be retained by Tiger, under the Agency Agreement, free and clear of any Liens) and the vesting of any remaining Closing Store Merchandise at the Sale Termination Date in Tiger's possession, will survive any proposal, plan of arrangements or bankruptcy of the Petitioner and will bind any successor in interest, including any trustee, monitor, interim receiver, receiver or other administrator of the property of others that may be appointed under any applicable federal or provincial legislation, and further **DECLARES** that the Sale shall not be attacked or voided as a reviewable transaction nor as a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction or constitute oppressive or unfairly prejudicial conduct under the *Companies' Creditors Arrangement Act*

or the Bankruptcy and Insolvency Act or any other applicable provincial or federal legislation;


- 18 **DECLARES** that this Order shall have full force and effect in all of the provinces and territories of Canada;
- 19 **DECLARES** that all of the Property, as such term is defined in the Initial Order, of the Petitioner is hereby subject to a charge and security for an aggregate amount of \$ 18,000,000 (such charge and security is referred to herein as the “**Agent’s Charge**”) in favour of Tiger as security for all of the obligations and other amounts that may become owing or repayable to Tiger under or in relation to the Agency Agreement;
- 20 **DECLARES** that the Agent’s Charge shall rank in priority to any unsecured claims, but immediately after any and all hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting the Property charged by such Encumbrances, including the Administration Charge and the DIP Lender Charge, as such terms are defined in the Initial Order, and the Insurance Charge, and the Post-Filing Suppliers Charge, as such terms are defined in the Renewal Order;
- 21 **DECLARES** that the Agent’s Charge shall attach, as of the Effective Time, as such term is defined in the Initial Order, without the necessity of registration, to all present and future Property of the Petitioner, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent;
- 22 **DECLARES** that for the purposes of paragraphs 47, 48, 50, 51 and 52 of the Initial Order, the Agent’s Charge shall be deemed to be a “**CCAA Charge**”, and shall have the benefit of those provisions, *mutatis mutandis*;
- 23 **ORDERS** the provisional execution of this Order, notwithstanding appeal;
- 24 **THE WHOLE** without costs.

_____, October 19, 2011



Honourable Jean-Yves Lalonde, J.S.C.

COPIE CONFORME



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