

CANADA

SUPERIOR COURT  
(Commercial Division)

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PROVINCE OF QUEBEC

District of Montreal

No: 500-11-041238-110

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

HART STORES INC./MAGASINS HART  
INC.

Petitioner

- and -

RSM RICHTER INC.

Monitor

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**ORDER**

ON READING Hart Stores Inc./Magasins Hart Inc's (the "**Petitioner**") amended motion for an order extending the stay period 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 "**Amended Motion**");

On reading the first report of the Monitor on the State of the Debtor's financial affairs and on hearing the Monitor with respect to same;

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 representations of the parties;

GIVEN the provisions of the CCAA;

**WHEREFORE, THE COURT:**

- 1       **GRANTS** the Amended Motion;
- 2       **DECLARES** that sufficient prior notice of the presentation of this Amended 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       **EXTENDS** the Stay Period (as such term is defined in the Initial Order) until and including November 4, 2011, the whole subject to all other terms of the Initial Order;
- 4       **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 \$ 2,000,000 (such charge and security is referred to herein as the "**Post-Filing Suppliers Charge**") in favour of the suppliers who have sold goods or provided services to the Petitioner after the Filing Date where the cost of those goods or services were not paid by the Petitioner on a COD or other equivalent basis, or not settled prior to the date on which the Plan of Compromise or Arrangement to be presented under the CCAA is sanctioned by the Court, or the date on which the Stay Period is terminated, whichever is later (the "**Post-Filing Suppliers**"), as security for the ultimate balance that may be owing to them for goods sold, or services provided, to the Petitioner from the Filing Date to the date on which the Plan of Compromise or Arrangement to be presented under the CCAA is sanctioned by the Court, or the date on which the Stay Period is terminated, whichever is later (the "**Post-Filing Claims**");
- 5       **DECLARES** that the Post-Filing Suppliers 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, as such term is hereafter defined;
- 6       **DECLARES** that the Post-Filing Suppliers Charge shall attach, as of the Effective Time, 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;
- 7       **ORDERS** that in the event the total amount of Post Filing Claims exceeds \$ 2,000,000, the Post-Filing Suppliers shall be entitled to the benefit of the Post-Filing Suppliers Charge on a *pro rata* basis;
- 8       **AUTHORIZES** the Petitioner to make the payments provided for under the Premium Instalment Contract, Exhibit R-1, (the "**Instalment Contract**") entered into between KRG Insurance Brokers, a division of RRJ Insurance

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Group Inc., and the Petitioner on August 10, 2011, and assigned to Macquarie Premium Funding Inc. ("**Macquarie**"), to Macquarie, and **DECLARES** that the payments made pursuant thereto do not and will not be deemed to constitute fraudulent preferences or other challengeable or reviewable transactions under any applicable law;

- 9 **DECLARES** that the Instalment Contract, Exhibit R-1, constitutes a valid and binding obligation of the Petitioner enforceable against it and any trustee in bankruptcy or other successor in interest to the Petitioner in accordance with the terms thereof;
- 10 **ORDERS** that the copy of the Instalment Contract filed with this Court as Exhibit R-1 be kept confidential and under seal in the Court Record;
- 11 **DECLARE** that all of the unearned premiums and dividends which may become payable and refunded to the Petitioner or as otherwise directed by Macquarie under the insurance policies described in the Instalment Contract (the "**Financed Policies**") upon cancellation or termination of the Financed Policies, and subject to any mortgage or loss payee interest, loss payments under the Financed Policies which reduce the unearned premiums (the "**Unearned Premiums**") are hereby subject to a charge and security for an aggregate amount of \$ 686,446 (such charge and security is referred to herein as the "**Insurance Charge**") in favour of Macquarie as security for the outstanding balance due under the Instalment Contract;
- 12 **DECLARES** that the Insurance Charge shall rank in priority to any and all other Encumbrances affecting the Unearned Premiums charged by such Encumbrances, including without limitation the Administration Charge, the DIP Lender Charge, and the Post-Filing Suppliers Charge;
- 13 **DECLARES** that the Insurance Charge shall attach, as of the Effective Time, to all present and future Unearned Premiums, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent;
- 14 **ORDERS** that notwithstanding the stay of proceedings pronounced by the Initial Order, if the Petitioner defaults under the terms of the Instalment Contract, Macquarie be and is hereby authorized to, upon 5-days notice to the Monitor, the Petitioner and the DIP Lender, as such term is defined in the Initial Order, to:
  - a) cancel the Financed Policies; and
  - b) apply for and receive all Unearned Premiums which may become payable under the Financed Policies and subject to any mortgagee or loss payee interest, loss payments under the Financed Policies which reduce the Unearned Premiums;

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- 15 **ORDERS** that in the event of a refund of the Unearned Premiums as a result of the cancellation or termination of any or all of the Financed Policies for any reason, Macquarie will have absolute first-ranking priority to such Unearned Premiums until all amounts owing to Macquarie pursuant to the Instalment Contract have been paid in full;
- 16 **ORDERS** that Macquarie's sole recourse under the Insurance Charge shall be limited to the Unearned Premiums as security for the outstanding balance due under the Instalment Contract and Macquarie shall have no rights or remedies in connection with the Insurance Charge to any other Property of the Petitioner;
- 17 **DECLARES** that for the purposes of paragraphs 47, 48, 50, 51 and 52 of the Initial Order, the Post-Filing Suppliers Charge and the Insurance Charge shall be deemed to be "CCAA Charges", and shall have the benefit of those provisions;
- 18 **ORDERS** provisional execution notwithstanding appeal.
- 19 **THE WHOLE** without costs, save in case of contestation.

28<sup>th</sup>, september, 2011

*J. Lalonde*  
HON. JEAN-YVES LALONDE,  
Honourable JCS

