

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: 500-11-047847-146

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

MEXX CANADA COMPANY

Debtor/Petitioner

-and-

RICHTER ADVISORY GROUP INC.

Trustee

**MOTION SEEKING AUTHORIZATION TO ENTER INTO AN AGREEMENT FOR
THE LIQUIDATION OF THE DEBTOR'S INVENTORY**

(Section 183(1.1) of the *Bankruptcy and Insolvency Act*, R.C.S. 1985 c. B-3 and sections 2,
20 and 46 of the *Code of Civil Procedure*, R.S.Q., c. C-25)

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR THE
REGISTRAR, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL
DISTRICT OF MONTREAL, MEXX CANADA COMPANY RESPECTFULLY
SUBMITS THE FOLLOWING:**

I. INTRODUCTION

1. By the present Motion, the Petitioner MEXX Canada Company ("MCC" or the "Debtor") seeks an order authorizing it to enter into the Consulting Agreement (as defined below) between MCC and Merchant Retail Solutions ULC and Gordon Brothers Canada ULC (collectively, the "Consultant") for the liquidation of its inventory and of the furniture, fixtures and equipment ("FF&E") located in its retail stores and distribution center.

II. FACTUAL BACKGROUND

2. MCC is part of the Mexx Group. The Mexx Group is an international fashion group that designs clothes and accessories for men, women and children.
3. On December 3, 2014, MCC filed a notice of intention to make a proposal with the Official Receiver and Richter Advisory Group Inc. (the “**Trustee**”) was appointed trustee thereunder, the whole as appears from the Court record.
4. MCC currently operates in 95 stores in 8 provinces, namely Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. MCC’s operations are being conducted from its head office and distribution centre located in Montréal.
5. The causes of MCC’s financial difficulties, the circumstances leading to the filing of the NOI and MCC’s main creditors are described in MCC’s *First Motion for an extension of time to file a proposal*, which is being filed concurrently with this Motion.

III. THE PROPOSED INVENTORY LIQUIDATION AND THE SOLICITATION PROCESS

6. As part of its restructuring efforts prior to the filing of the NOI, MCC with the help of the Trustee opened a virtual data room at the beginning of the month of November, 2014. The plan was then to solicit offers to liquidate the contents of certain store locations identified for closure. Confidentiality agreements were then signed with eight liquidators (in both Canada and the United States) who were then given access to the data room (the “**Initial Process**”). Multiple offers were received from the various liquidators during the month of November, 2014.
7. Unfortunately, given (i) MCC’s difficulties to secure new financing arrangements (ii) MCC’s liquidity issues and (iii) the financial difficulties being experienced by MCC’s related entities in Europe, (on which it relied upon for various critical functions), it was determined to commence formal restructuring proceedings under the BIA.
8. MCC, with the assistance of the Trustee and in consultation with its secured lenders, has determined that the liquidation of the inventory and FF&E located in its 95 retail stores and distribution center (the “**Proposed Sale**”) is the best alternative available for the benefit of all MCC’s stakeholders.
9. MCC and the Trustee consider that there is a prospect that the Proposed Sale, together with the other restructuring measures being implemented by the Debtor including particularly, the disposition of certain leasehold interests, may yield sufficient proceeds to enable the development of a proposal that will provide for some recovery for MCC’s unsecured creditors.

10. Given the foregoing and the filing of the NOI, MCC, with the assistance of the Trustee, conducted a second solicitation process for the purpose of selecting an agent or a consultant to assist in the Proposed Sale.
11. In the context of the second solicitation process, MCC and the Trustee have notably:
 - a) prepared and sent a request for proposal document (the “**RFP**”) to various businesses and individuals that the Trustee and MCC have determined might have an interest in submitting an offer; and
 - b) set up a virtual data room containing certain financial information concerning the MCC’s stores and the inventory located therein and other financial information to each potential bidder who has executed a confidentiality agreement.

A copy of the RFP is communicated herewith as **Exhibit R-1**.

12. MCC requested that each potential bidder provide offers based on two alternative compensation models:
 - a) an equity proposal, whereby the bidder offers to act as agent for MCC and to be compensated by way of a percentage of the proceeds of the inventory and FF&E sold; and
 - b) a fee proposal, whereby the bidder offers to act as consultant for MCC and to be compensated by way of a fee based on achieving certain gross recovery thresholds and meeting certain expense budget levels.
13. All of the liquidators who had previously participated in the Initial Process were invited to participate. Ultimately, five (5) offers were received before the deadline set out in the RFP, namely December 11, 2014, as appears from the Trustee’s Report.
14. Details of MCC’s restructuring efforts and the solicitation process are included in the report to be filed by the Trustee at the hearing of the present Motion as Exhibit R-2 (the “**Trustee’s Report**”)

IV. THE ACCEPTED OFFER

15. MCC, with the assistance of the Trustee and after consultation with its secured lenders, namely GE Canada Finance Holding Company (“**GE**”) and Crystal Financial LLC (“**Crystal**”), determined that the offer submitted by the Consultant (the “**Accepted Offer**”) was the best offer, as it provided the most benefits and was the least costly to MCC.
16. While the time frame to submit proposals was expedited, it was deemed necessary and achievable for the following reasons:

- a) As a result of the Initial Process, all of the liquidators participating were already very familiar with the inventory, operations of the company and the store locations having performed various due diligence including store visits in November 2014;
 - b) Based on communications with the liquidators, the ability to commence the liquidation on or about December 20, 2014 will greatly enhance the results as the holiday season is traditionally the busiest time of the year for MCC; and
 - c) The expedited process will allow for an enhanced realization to the benefit of MCC and all stakeholders which may permit the filing of a proposal to MCC's unsecured creditors.
17. Upon receipt of the Accepted Offer, MCC and the Consultant negotiated the terms of a Consulting Agreement, which is based on the terms of the Accepted Offer. A copy of the Consulting Agreement agreed upon will be filed under seal at the hearing of the present Motion as **Exhibit R-3** (the "**Consulting Agreement**").
18. While the Consulting Agreement has been filed under seal, the key elements can be summarized as follows:
- a) The Consultant will be advising MCC with respect to the sale of inventory and furniture and equipment in all existing store locations;
 - b) The sale by the Consultant should be completed by February 28, 2015; and
 - c) The Consultant will be paid a consulting fee based on achieving various realization thresholds and will be reimbursed for various out of pocket expenses including supervisory personnel and advertising costs.

V. GROUNDS TO GRANT THIS MOTION

19. As indicated above, MCC and the Trustee consider that there is a prospect that the Proposed Sale, together with the other restructuring measures being implemented by MCC, may yield sufficient proceeds to enable it to develop a proposal that will provide for some recovery for MCC's unsecured creditors.
20. MCC and the Trustee believes that the Consulting Agreement will allow for the maximization of the value of MCC's inventory and FF&E.
21. MCC and the Trustee consider that the Consulting Agreement represents the best offer that could possibly be obtained in the circumstances. It will also allow for an expedited process which will reduce the realization costs.
22. The Consulting Agreement has been communicated to GE and Crystal, MCC's main secured creditors, who have approved it. Crystal is supportive of this Motion whereas GE consents to it given that it is expected to be fully repaid in the coming days..

23. Time is of the essence to appoint the Consultant so as to maximize the value of the MCC's inventory, FF&E and assets especially given the upcoming holiday season, which has historically been the busiest season for MCC.
24. Given the circumstances, MCC seeks that the order to be rendered be executory notwithstanding appeal. The failure to grant such conclusion would be very detrimental to MCC and its stakeholders.

VI. CONCLUSION

25. For these reasons, it is respectfully submitted that this Motion should be granted in accordance with its conclusions.
26. As appears from the Trustee's Report, the Trustee supports the orders sought by the present motion.
27. The present motion is urgent given that the Consultant need to start its mandate before the week-end to be able to capitalize on the holidays sales and maximize the return to the stakeholder.
28. The present Motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Motion Seeking Authorization to Enter into an Agreement for the Liquidation of the Debtor's Inventory*;

AUTHORIZE the Debtor MEXX Canada Company ("MCC") to accept and execute the Consulting Agreement with Merchant Retail Solutions ULC and Gordon Brothers Canada ULC (collectively, the "**Consultant**") filed under seal as Exhibit R-3 (the "**Consulting Agreement**"), subject to any modifications agreed upon between the parties which do not substantially alter the terms of said agreement and **DECLARE** that MCC and the Consultant are bound by the Consulting Agreement;

DECLARE that the Consultant and MCC are entitled, allowed and hereby authorized to carry the sales, the business and other matters described in Exhibit R-3;

ORDER AND DECLARE that (i) MCC and the Consultant, pursuant to the terms of the Consulting Agreement, are authorized to sell the Merchandise and FF&E (as such terms are defined in the Consulting Agreement and collectively the "**Assets**") in accordance with the terms and conditions of the Consulting Agreement and the Order sought herein, and, once sold, shall be deemed free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**").

ORDER that for the purposes of determining the nature and priority of the Encumbrances, the sale proceeds from the sale of the Assets shall stand in the place and stead of the Assets, and that all Encumbrances shall attach to the proceeds with the same priority as they had with respect to the Assets immediately prior to the sale, as if the 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.

ORDER that nothing in the Order sought herein or the Consulting Agreement shall deem the Consultant to be an employer, or joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or any other statute, regulation, or rule of law or equity for any purpose whatsoever, and, further, that the Consultant shall be deemed not to be an owner or in possession, care, control or management of MCC or its property whether pursuant to any legislation enacted for the protection of the environment, the regulations thereunder or any other statute, regulation or rule of law or equity under any federal, provincial or other jurisdiction for any purpose whatsoever.

ORDER the provisional execution of the judgment to be rendered on the Motion notwithstanding appeal;

DECLARE that the Exhibits R-1 to R-3 are confidential and **ORDER** that they shall be kept under seal;

THE WHOLE without costs, save in case of contestation.

MONTREAL, December 16, 2014

Davies Ward Phillips & Vineberg LLP
DAVIES WARD PHILLIPS & VINEBERG LLP
Counsel for MEXX Canada Company.

NOTICE OF PRESENTATION

TO: Mr. Gilles Benchaya and Mr.
Andrew A. Adessky
Richter Advisory Group Inc.
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Montréal (Québec) H3A 0G6

Trustee

AND: Mtre. Jocelyn Perreault
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Counsel for GE Canada Finance Holding Company

AND : Mtre. Pierre-Luc Beauschene and Mtre.
François Viau
GOWLING LAFLEUR HENDERSON LLP
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Montréal (Québec) H3B 3P4

AND: Mtre. Sandra Abitan
Osler, Hoskin & Harcourt LLP
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Suite 2100
Montréal (Québec) H3B 4W5

Counsel for the Trustee

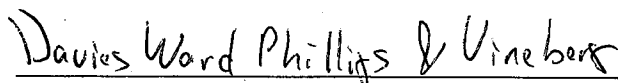
AND: Mtre. Bernard Boucher
Blake, Cassel & Graydon LLP
600 de Maisonneuve Blvd. W.
Suite 2200
Montréal (Québec) H3A 3J2

Counsel for Crystal Financial LLC

TAKE NOTICE that the *Motion Seeking Authorization to Enter into an Agreement for the Liquidation of the Debtor's Inventory* will be presented for hearing and allowance in room 2.07 at 2:15 p.m. on December 18, 2014 at the Montréal Courthouse, located at 1 Notre-Dame Street East, in the City of Montréal, Province of Québec, or so soon thereafter as Counsel may be heard.

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, December 16, 2014


DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for the Debtor
Mexx Canada Company.

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-and-

RICHTER ADVISORY GROUP INC.

Trustee

LIST OF EXHIBITS

- EXHIBIT R-1** Copy of the RFP document;
- EXHIBIT R-2** Copy of the Trustee's report;
- EXHIBIT R-3** Copy of the Consulting Agreement.

MONTREAL, December 16, 2014

Davies Ward Phillips & Vineberg LLP
DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for the Debtor
Mexx Canada Company.

No. 500-11-047847-146

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INVENTORY**

*(Section 183(1.1) of the Bankruptcy and Insolvency Act and
sections 2. 20 and 46 of the Code of Civil Procedure)*

ORIGINAL

Attorneys for Mexx Canada Company
Per: Me Christian Lachance
Dir 514 841 6576

O/F 249060



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CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° 500-11-047847-146

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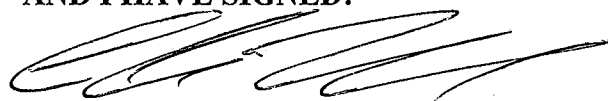
Trustee

ATTESTATION OF AUTHENTICITY

I, the undersigned, Christian Lachance, attorney, practicing my profession with the law firm of Davies Ward Phillips & Vineberg LLP, having its principal place of business at 1501 McGill College Avenue, 26th Floor, in the City of Montréal, Province of Québec, solemnly affirm that:

1. On December 16, 2014, at 12:57 p.m., Davies Ward Phillips & Vineberg LLP received by fax an Affidavit signed by Robbie Reynders dated December 16, 2014, a copy of such Affidavit is attached to this Attestation of Authenticity;
2. All the facts alleged herein are true.

AND I HAVE SIGNED:



CHRISTIAN LACHANCE

SOLEMNLY AFFIRMED BEFORE ME,
at Montréal, on December 16, 2014



Commissioner for Oaths



AFFIDAVIT

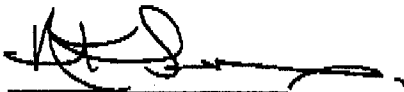
I, the undersigned, Robbie Reynders, President and director of Mexx Canada Company, having a place of business at 905 Hodge Street, in the City of Montréal, Quebec, solemnly declare the following:

1. I am the President and Director of the Debtor/Petitioner herein and I am duly authorized for the purposes hereof;
2. I have taken cognizance of the attached *Motion Seeking Authorization to Enter into an Agreement for the Liquidation of the Debtor's Inventory*;
3. All the facts alleged in the said motion are true.

AND I HAVE SIGNED


ROBBIE REYNDERS

Solemnly affirmed before me in High Wycombe, United Kingdom
on the 16th day of December, 2014



HELEN SELBY

SOLICITOR OF ENGLAND & WALES
SRA NUMBER 376348

No. 500-11-047847-146

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