

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-033234-085

S U P E R I O R C O U R T
(Commercial Division)
(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
R.S.C. 1985, c. C-36)

**IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:**

SHERMAG INC.

and

JAYMAR FURNITURE CORP.

and

SCIERIE MONTAUBAN INC.

and

MÉGABOIS (1989) INC.

and

SHERMAG CORPORATION

and

JAYMAR SALES CORPORATION

Petitioners

and

RSM RICHTER INC.

Monitor

**AMENDED MOTION FOR AN ORDER APPROVING A TRANSACTION, EXTENDING THE
STAY PERIOD AND GRANTING AN INTERIM FINANCING**

(Sections 9 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. (1985), c. C-36)

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT SITTING IN
COMMERCIAL DIVISION IN AND FOR THE DISTRICT OF MONTRÉAL, THE
PETITIONERS RESPECTFULLY SUBMIT:**

1. INTRODUCTION

1. By the present Motion for an Order Approving a Transaction, Extending the Stay Period and Granting an Interim Financing (the "Motion"), the Petitioners hereby seek :

- (a) the approval of a transaction whereby Groupe Bermex Inc. (“**Bermex**”) will acquire the control of the Petitioners in the context of its proceedings under the *Companies’ Creditors Arrangement Act* (the “**Contemplated Transaction**”);
 - (b) the extension of the Stay Period up to and including October 16, 2009; and
 - (c) the approval of an interim financing of \$3,000,000.00 granted by Bermex.
2. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Initial Order issued on May 5, 2008 (the “**Initial Order**”), as subsequently amended or extended.
3. The Petitioners will file in support of this Motion the ninth report of the Monitor RSM Richter Inc. (the “**Monitor’s Ninth Report**”), which contains a more detailed overview of the various issues mentioned in this Motion. A copy of said Monitor’s Ninth Report will be communicated as **Exhibit R-1**.

2. **HISTORICAL BACKGROUND & AUCTION PROCESS**

4. On May 5, 2008, the Initial Order was rendered by this Court pursuant to the *Companies’ Creditors Arrangement Act* in relation to the Petitioners, the whole as it appears from the Court record.
5. On June 2, 2009, the Petitioners filed a motion entitled *Motion for an Order Authorizing a Call for Tenders Process* (the “**Auction Process**”), the whole as more fully appears from the Court record.
6. The Auction Process divided the sale of the Petitioners’ property into three (3) distinct categories:
- (i) the non-core assets of the Petitioners (the “**Non-Core Assets**”), which include ten (10) land and facility lots, finished inventory, raw material, work-in-progress and machinery and equipment;

- (ii) the sale of Jaymar Furniture Corp. (“**Jaymar**”), which is a wholly-owned subsidiary of Shermag Inc. (“**Shermag**”). The Auction Process provided that Jaymar could be acquired through an asset or share deal so as to allow the sale of Jaymar “as a going concern”; and
- (iii) the sale of the Shermag’s core business of importing and distributing furniture products (the “**Shermag Business**”). The Auction Process allowed for the sale of the Shermag Business “as a going concern” through an asset deal.

7. On June 4, 2009, this Court approved the Auction Process (the “**Auction Process Order**”) and approved the following timetable (the “**Timetable**”):

<u>Steps</u>	<u>Description</u>	<u>Deadline</u>
1.	Execution of the confidentiality and the non-disclosure agreement by the interested parties	June 26, 2009
2.	End of the due diligence period and access to the virtual data room	July 10, 2009
3.	Filing of the offers	July 10, 2009
4.	Opening of the offers	July 10, 2009
5.	Clarification and improvement of the offers, if needed	July 17, 2009
6.	Approbation of the offers by the Petitioners	July 17, 2009
7.	Approval by the Court of the various offers accepted	July 24, 2009

- 8. Pursuant to the approval of the Auction Process, the Monitor and the Company have worked together to conduct the Auction Process in accordance with the above Timetable.
- 9. The Petitioners, along with the Monitor, solicited offers from a wide variety of entities which would be interested in purchasing the Non-Core Assets, Jaymar and the Shermag Business.
- 10. As of July 10, 2009 (the deadline for receipt of offers), sixteen (16) offers had been received. On the same day, the Monitor opened the offers in the presence of the

independent committee of Shermag's board of directors (the "**Independent Committee**") as well as the Petitioners' counsel.

11. On July 14, 2009, the Monitor, the Independent Committee and the Petitioners' counsel met to discuss the various offers received. Two (2) offers were considerably better than the other and were "en bloc" offers. However, none of these two (2) offers was then satisfactory to the Independent Committee, and various uncertainties remained with respect to each offer. The Monitor, the Independent Members and the Petitioners' counsel came to the conclusion that a decision could not immediately be taken as to which of these two offers was the most beneficial to the Petitioners' stakeholders.
12. Under the circumstances, the Monitor was asked by the Independent Committee to postpone the deadline to accept the offers to July 22, 2009.
13. On July 15, 2009, given the unavailability of one of the member of the Independent Committee and in accordance with paragraph 3 of the Auction Process Order and the instructions of the Independent Committee, the Petitioners and the Monitor extended the delay to approve the offers from July 17, 2009 to July 22, 2009, the whole as appears from a copy of a letter from the Monitor dated July 15, 2009 communicated as **Exhibit R-2**.
14. The Monitor and the Petitioners' counsel thus met and advised both offerors (the "**Offerors**") that clarifications and improvements were needed with respect to their respective offers, and were invited to submit revised offers if they so desire prior to the further deadline for receipt of same set for July 20, 2009.
15. On July 20, 2009, the Offerors submitted revised offers (the "**Revised Offers**").
16. On July 21, 2009, the Monitor, the Independent Members and the Petitioners' counsel met to analyze the Revised Offers. These Revised Offers were still unsatisfactory and still remained uncertain in many respect. The Monitor, the Independent Members and the Petitioners' counsel once again came to the conclusions that an decision could not immediately be taken.

17. On July 22, 2009, the Monitor and the Petitioners' counsel met with the Offerors, exposed to them the problems of their respective offer and invited them to clarify them further.
18. On July 22, 2009, in accordance with the Auction Process Order, the Petitioners and the Monitor extended the delay to approve the offers. While an extension until August 4, 2009 was initially contemplated, the Independent Committee ultimately determined that given the financial situation of the Petitioners, the Offerors who wished to make a revised offer should do so by no later than July 28, 2009, with the view to submit a transaction to this Court by July 31, 2009.
19. On July 24, 2009, this Court extended the Stay Termination Date to July 31, 2009 so as to allow, *inter alia*, the Monitor and the Petitioners sufficient time to approve an offer and come back before this Court to obtain its approval by July 31, 2009 at the latest, the whole as appears from this Court Record.
20. By July 28, 2009, both Offerors submitted revised offers.
21. On July 29, 2009, the Monitor, the Independent Committee and the Petitioners' counsel met to discuss the revised offers. After careful consideration, the Independent Committee came to the conclusion that the Contemplated Transaction was the best transaction available to the Petitioners and their creditors in the circumstances.
22. The Contemplated Transaction provides the best available contribution to the unsecured creditors and allows for the presentation of a plan of arrangement, which was uncertain with the other offer submitted.
23. On July 30, the Petitioners, upon the recommendation of the Independent Committee and the approval of Shermag's board of directors, accepted the offer from Bermex relating to the Contemplated Transaction and instructed the Petitioners' counsel and the Monitor to take the appropriate steps to finalize and enter into the Contemplated Transaction.

3. **THE CONTEMPLATED TRANSACTION**

24. Copy of the accepted offer from Bermex in connection with the Contemplated Transaction is communicated herewith *en liasse* under seal as **Exhibit R-3**.
25. The main features of the Contemplated Transaction can be summarized as follows:
- (i) on closing of the Contemplated Transaction (the “**Closing**”) new funds in an aggregate amount of \$1,250,000 (“**New Funds**”) will be injected by Bermex in consideration of new equity to be issued by Shermag;
 - (ii) the New Funds will be used by the Petitioners to fund their joint plan of arrangement (the “**Plan**”) and pay a dividend to their unsecured creditors as a compromise and settlement of their claims;
 - (iv) in consideration for the New Funds, Shermag will issue 41,666,667 common shares at a price of \$0.03 per share (for a total of \$1,250,000)
 - (v) Geosam Investments Limited (“**Geosam**”), the Petitioners' current lender, will be reimbursed in full by Bermex at Closing; and
 - (vi) all post-filing obligations will be paid by Bermex; and
 - (vii) Bermex will provide an interim financing of up to \$3,000,000. This interim financing will rank immediately after the financing already provided by Geosam, as more fully appears from paragraph 38 below.
26. The Contemplated Transaction is conditional upon Bermex reaching an agreement with Geosam pursuant to which the latter would agree to extend its financing until October 16, 2009 at the latest.
27. Geosam indicated that it is agreeable to the requested extension provided certain conditions are met. Bermex and Geosam are currently negotiating the terms and conditions of the agreement mentioned at paragraph 27 above. The Petitioners are confident that an agreement will be executed before the hearing of the present Motion.

28. The Contemplated Transaction is in the best interest of the Petitioners, their stakeholders, including their employees, suppliers, customers and creditors for the following reasons:

- (i) in view of the significant efforts expended to solicit offers, the Petitioners and the Monitor believe that it is unlikely that a transaction more favourable can be secured;
- (ii) the Independent Committee was concerned that the other offer considered might not lead to the filing of a plan of arrangement;
- (iii) the Contemplated Transaction would allow recoveries to be maximised;
- (iv) the closing of the Contemplated Transaction would preserve the employment of virtually all Petitioners' employees (approximately 225) and minimize disruptions to the Petitioners' customers;
- (v) the Monitor believes that the Contemplated Transaction is beneficial to the Petitioners from a financial point of view, the whole as appears from the Monitor's Ninth Report (R-1);
- (vi) the Monitor supports the Contemplated Transaction as being in the best interest of all of the Petitioners' stakeholders, the whole as appears from the Monitor's Ninth Report (R-1); and
- (vii) if the Contemplated Transaction is not approved by this Court, there is reason to fear that the Petitioners' businesses will deteriorate, their employees will lose their employment and their assets will be sold at liquidation value or less.

4. **PLAN OF ARRANGEMENT**

29. As part of the Contemplated Transaction, the Petitioners will file the Plan.

30. The Petitioners intend to file the Plan by the end of the month of August 2009.

31. The Plan is conditional upon, notably, the approval of the Contemplated Transaction by this Court.

32. The Petitioners are confident that the terms of the Plan are both fair and reasonable to their creditors.
33. In the event that the Plan is approved by the requisite majority of each class of creditors at the creditors' meeting to be called and held, the Petitioners will then apply to this Court to sanction the Plan.

5. **INTERIM FINANCING**

34. The Petitioners, so as to, *inter alia*, (i) consummate the Contemplated Transaction, (ii) present the Plan to their creditors and (iii) obtain the sanction of this Court of the Plan, will require financing to meet their obligations as they fall due and to maintain the stability of their operations while completing their restructuring.
35. The Petitioners have been offered up to \$3,000,000 of DIP financing from Bermex (the "**DIP Financing**"). As appears from section 3 of Exhibit R-3, such financing would be available immediately and will bear interest at a rate of 6% per annum. The amounts advanced are repayable at the earlier to occur of:
- (i) The Closing of the Contemplated Transaction;
 - (ii) October 16, 2009; or
 - (iii) Bankruptcy proceedings of the Petitioners.
36. With the DIP Financing, the Petitioners will have sufficient cash to meet their liabilities until October 16, 2009.
37. In consideration for the DIP Financing, Bermex is seeking a charge on the universality of the Petitioners' assets senior to any other charges, other than the D&O Charge, the Administrative Charge and any charge, hypothec, mortgage, lien or security interest or priority guaranteeing the obligations of the Petitioners towards Geosam.
38. Geosam will not be affected by the DIP Financing given that its charge will remain senior to the charge granted in favour of Bermex in consideration for the DIP Financing.

6. **EXTENSION**

39. The Stay Period expires on August 12, 2009.

40. In light of the elements described above and the order sought herein, the Petitioners require additional time in order to

- (a) conclude the Contemplated Transaction;
- (b) finalize and file the Plan to their Creditors;
- (c) call and hold the creditors' meeting; and
- (d) obtain the sanction of the Plan by this Court.

41. Based on the foregoing, the Petitioners respectfully request this Court to extend the Stay Period up to and including October 16, 2009, which date shall then be the new Stay Termination Date, the whole subject to all the other terms of the Initial Order.

42. In addition, discussions with Geosam are progressing with respect to the extension of the Forbearance Agreement. The Petitioners are confident that an agreement will be executed before the hearing of this Motion and that Geosam will support the request for an extension and the present Motion

43. The extension of the Stay Period sought is supported by the Monitor.

44. Therefore, Petitioners respectfully submit that the circumstances are such that extending the Stay Period is appropriate.

45. The Petitioners will file in support hereof their cash flow projections, which were prepared in conjunction with the Monitor.

7. **GENERAL**

46. The conclusions sought herein are urgent and necessary to allow completion of the Contemplated Transaction for the benefit of the Petitioners' stakeholders, notably given that the Contemplated Transaction are conditional upon the approval of this Court.

47. The order sought hereby should be subject to provisional execution notwithstanding appeal as it will allow the Petitioners to complete the Contemplated Transaction and go forward with their Plan.
48. Due to the highly confidential nature of the information contained in Exhibit R-3, the Petitioners respectfully request that this Exhibit be kept under seal.
49. Given that Bermex owns more than 10% of the outstanding shares of Shermag, the sections 5.4 and 5.6 of the *Multilateral Instrument 61-101-Protection of Minority Security Holders in Special Transactions* (“61-101”) would require an independent valuation and a minority shareholder approval to complete the Contemplated Transaction since said transaction would constitute a “related party transactions” for the purposes of 61-101. However, Petitioner are hereby requesting pursuant to sections 5.5 (f) and 5.7(d) of 61-101 to be exempted from providing such independent valuation and minority shareholder approval.
50. It is in the best interest of the Petitioners and all their stakeholders that the present Motion be granted in accordance with its conclusions.
51. The Petitioners requests that all the notices or delays of presentation be abridged.
52. The Motion is well founded both in fact and in law.

WHEREFORE, MAY IT PLEASE THIS COURT TO:

- [1] **GRANT** the present Motion for an Order Approving a Transaction, Extending the Stay Period and Granting an Interim Financing (the “**Motion**”);
- [2] **DECLARE** that all capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Initial Order issued on May 5, 2008 as subsequently amended or extended (the “**Initial Order**”);
- [3] **ORDER** that the time for service of the Motion and the ninth report of the Monitor RSM Richter Inc. (the “**Monitor’s Ninth Report**”) be and it is hereby abridged and that the Motion is property presentable today and further that the

requirement for service of the Motion and the Monitor's Ninth Report upon interested parties is dispensed with and that the service of the Motion and the Monitor's Ninth Report is validated in all respects;

- [4] **ORDER** that the Monitor's Ninth Report be and is hereby accepted and approved and the actions and activities of the Monitor described therein be and are hereby approved;
- [5] **EXTEND** the Stay Period and the Stay Termination Date up to and including October 16, 2009, the whole subject to all other terms and conditions of the Initial Order;
- [6] **RENEW**, in full but with the necessary adaptations, if need be, the Initial Order, until October 16, 2009;
- [7] **ORDER** the sealing of Exhibit R-3;
- [8] **ORDER AND DECLARE** that the offer made as of July 30, 2009 by Groupe Bermex Inc. ("**Bermex**") and filed in support of the Motion as Exhibit R-3 (the "**Transaction**") is hereby approved and ratified and that same is commercially reasonable and in the best interests of the Petitioners and their stakeholders;
- [9] **ORDER** that the Petitioners and Bermex are authorized and hereby directed to take any such additional steps and execute any such additional documents as may be necessary or desirable for the completion of the Transaction;
- [10] **AUTHORIZE** the Petitioners to file a plan of arrangement under the *CCAA*, which plan will provide, *inter alia*, for the issuance by Shermag Inc. ("**Shermag**") of new equity in favour of Bermex, as described in the Transaction;
- [11] **AUTHORIZE** the issuance of the new equity of Shermag described in the Transaction to Bermex;
- [12] **AMEND** the Initial Order by adding the following paragraphs after paragraph 22:

[22.1] ORDERS that, notwithstanding any other provision of the Order, Petitioners be and are hereby authorized to borrow, repay and reborrow from Groupe Bermex Inc. (the “**Interim Lender**”) such amounts from time to time as Petitioners may consider necessary or desirable, up to a maximum principal amount of \$3,000,000 outstanding at any time, on the terms and conditions as set forth at section 3 of Exhibit R-3 (the “**Interim Financing Term Sheet**”) and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioners and to pay such other amounts as are permitted by the terms of the Order and the Interim Financing Documents (as defined hereinafter) (the “**Interim Facility**”);

[22.2] ORDERS that, notwithstanding any other provision of the Order, Petitioners are hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the “**Interim Financing Documents**”) as may be required by the Interim Lender in connection with the Interim Facility and the Interim Financing Term Sheet, and Petitioners are hereby authorized to perform all of their obligations under the Interim Financing Documents;

[22.3] ORDERS that all of the Property of Petitioners is hereby charged by a hypothec, mortgage, lien and security interest to the extent of the aggregate amount of \$3,750,000 (such hypothec, mortgage, lien and security interest, together with any hypothec, mortgage, lien or security interest created by the Interim Financing Documents, the “**Interim Lender Charge**”) in favour of the Interim Lender as security for all obligations of Petitioners to the Interim Lender with respect to all amounts owing (including principal and interest) under or in connection with the Interim Financing Term Sheet and the Interim Financing Documents;

[22.4] ORDERS that the claims of the Interim Lender pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lender, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan;

[22.5] ORDERS that the Interim Lender may notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lender Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate;

[22.6] DECLARES that the Interim Lender Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, conditional sale agreements, financial leases, charges, encumbrances or security of whatever nature or kind affecting any of the Property, save and except the Administration Charge, the D&O Charge and any charge, hypothec, mortgage, lien or security interest or priority guaranteeing the obligations of the Petitioners towards the Lender, namely Geosam Investments Limited;

[22.7] DECLARES that the Interim Lender Charge shall attach to all present and future Property of Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent;

[22.8] DECLARES that the Interim Lender Charge and the rights and remedies of the Interim Lender shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the *BIA* in respect of Petitioners or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of Petitioners; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds Petitioners (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

(a) the creation of the Interim Lender Charge shall not create or be deemed to constitute a breach by Petitioners of any Third Party Agreement to which it is a party; and

(b) the Interim Lender shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the Interim Lender Charge;

[22.9] DECLARES that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the *BIA* in respect of Petitioners and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of Petitioners, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by Petitioners pursuant to the Order and the granting of the Interim Lender Charge, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law;

[22.10] DECLARES that the Interim Lender Charge shall be valid and enforceable as against all Property of Petitioners and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of Petitioners, for all purposes;

[22.11] ORDERS that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs 22.1 to 22.11 hereof unless either (a) notice of a motion for such order is served on the Interim Lender by the moving party within seven (7) days after that party was served with the Order or (b) the Interim Lender applies for or consents to such order;

[13] **ORDER** that, in accordance with section 5.5 (f) and 5.7(d) of Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions no independent valuation or approval by minority shareholders shall be required in connection with the Transaction;

[14] **ORDER** the provisional execution of this Order to be rendered notwithstanding any appeal and without the necessity of furnishing security;

- [15] **THE WHOLE** without costs, except in the event of contestation, and then with costs against each opposing party.

MONTREAL, August 11, 2009



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(1989) Inc., Shermag Corporation and Jaymar Sales
Corporation

No. 500-11-033234-085

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ORIGINAL

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