

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
N°: 500-11-043787-122

SUPERIOR COURT
COMMERCIAL DIVISION

Date: December 11, 2012

In the presence of: Honourable Chantal Corriveau, j.s.c.

IN THE MATTER OF THE NOTICE OF INTENTION OF:

SIXTY CANADA RETAIL INC.

Debtor/Petitioner

and

RSM RICHTER INC. (Mr. Benoit Gingues)

Trustee

ORDER

WHEREAS the court has taken knowledge of the Motion for an order granting an administrative charge and a D&O charge under The *Bankruptcy And Insolvency Act* (R.S.C. 1985, C. B-3) (the "**Motion**"), the affidavit of Ms. Arpi Belouzian, the exhibits and the submissions of counsel for the Petitioner;

FOR THESE REASONS, THE COURT:

- [1] **DECLARES** valid and sufficient the notices given for the presentation of the present Motion;
- [2] **ORDERS** that, in addition to any existing indemnities, the Debtor shall indemnify each of their directors and officers (the "**Directors**") from and against the following (collectively, the "**D&O Claims**") :
 - (a) All cost (including, without limitation, full defense costs), charges, expenses, claims, liabilities and obligations, of any nature whatsoever, which may arise on or after the date of the notice of intention to file a proposal (including, without limitation, an amount paid to settle an action or a judgment in a civil, criminal, administrative or investigative action or proceeding to which a Director may be made a party), provided that any such liability relates to such Director in that capacity, and , provided that such Director (i) acted honestly and in good faith in the best interests of

the Debtor and (ii) in the case of a criminal or administrative action or proceeding in which such Director would be liable to a monetary penalty, such Director had reasonable grounds for believing his or her conduct was lawful, except if such Director has actively breached any fiduciary duties or has been grossly negligent or guilty of wilful misconduct; and

- (b) All costs, charges, expenses, claims, liabilities and obligations relating to the failure of the Debtor to make any payments or to pay amounts in respect of employee or former employee entitlements to wages, vacations pay, termination pay, severance pay, pension or other benefits, or any other amount for services performed prior to or after the date of the notice of intention and that such Directors sustain, by reason of their association with the Debtor as a Director, except to the extent that they have actively breached any fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

The foregoing shall not constitute a contract of insurance or other valid and collectible insurance, as such term may be used in any existing policy of insurance issued in favor of the Debtor or any of the Directors.

- [3] **DECLARES** that, as security for the obligation of the Debtor to indemnify the Directors of the Debtor with respect to D&O Claims, the Directors of the Debtor are hereby granted a hypothec on, mortgage of, lien on and security interest in all the assets of the Debtor to the extent of the aggregate amount of \$120,000 (the "**D&O Charges**"), having the priority established below. Such D&O Charges shall not constitute or form a trust. Such D&O Charge, notwithstanding any language in any applicable policy of insurance to the contrary, shall only apply to the extent that the Directors of the Debtor do not have coverage under any directors' and officers' insurance, which shall not be excess insurance to the D&O Charge. In respect of the D&O Claim against any of the Directors of the Debtor (collectively, the "**Respondent Directors**"), if such Respondent Directors do not receive confirmation from the applicable insurer within 21 days of delivery of notice of the D&O Claim to the applicable insurer, confirming that the applicable insurer will provide coverage for and indemnify the Respondent Directors, then, without prejudice to the subrogation rights, the Debtor shall pay the amount of the D&O Claim upon expiry. Failing such payment, the Respondent Directors may enforce the D&O Charge provided that the Respondent Directors shall reimburse the Debtor to the extent that they subsequently receive insurance benefits for the D&O Claim paid by the Debtor, and provided further that the Debtor shall, upon payment, be subrogated to the rights of the Respondent Directors to recover payment from the applicable insurer as if no such payment had been made.

- [4] **DECLARES** that the Trustee, the Trustee's legal counsel, the Debtor's legal counsel and other advisers, as security for the professional fees and disbursements incurred both before and after the filing of the notice of intention to file a proposal by the Debtor in respect of these proceedings, the proposal to be filed and the restructuring be entitled to the benefit of and are hereby granted a hypothec on, mortgage of, lien on, and security interest in all the assets of the Debtor to the extent of the aggregate amount of \$225,000 (the "**Administration Charge**"), having the priority established below.
- [5] **DECLARES** that the priorities of the Administrative Charge and the D&O Charge, as between them with respect to any asset of the Debtor to which they apply, shall be as follows :
- (a) first, the Administrative Charge; and
 - (b) second, the D&O Charge;
- [6] **DECLARES** that the Administrative Charge and the D&O Charge shall rank in priority to any and all other hypothecs, mortgages, liens, trusts, security, priorities, conditional sale agreements, financial leases, charges, encumbrances or security of whatever nature of kind, affecting the assets of the Debtor.
- [7] **THE WHOLE** without costs.



Honourable Chantal Corriveau, j.s.c.