

District of Ontario
Division No. 9 – Toronto
Estate/Court File No: 31-2205065
Estate/Court File No: 31-2205066

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

JUSTICE NEWBOULD

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MONDAY, THE 13TH

DAY OF MARCH, 2017



IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
MRP RETAIL INC. AND MRP FAMILY RETAIL INC.

APPROVAL AND VESTING ORDER

THIS MOTION, made by MRP Retail Inc. (“**MRPR**”) and MRP Family Retail Inc. (“**MRPFR**” and, together with MRPR, the “**Companies**”) for an order (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Companies and Pacific West Commercial Corporation (“**Pacific West**”) dated March 6, 2017, a copy of which is appended to the Second Report to the Court of Richter Advisory Group Inc., in its capacity as proposal trustee (the “**Proposal Trustee**”) in these proceedings, dated March 8, 2017 (the “**Second Report**”), (ii) vesting in Pacific West’s designee, 10119032 Canada Inc. (the “**Purchaser**”), the Companies’ right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), and (iii) sealing the confidential appendices to the Second Report (the “**Confidential Appendices**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the material filed and on hearing the submissions of counsel for the Companies, counsel for Pacific West and the Purchaser, counsel for the Proposal Trustee, counsel for Canadian Imperial Bank of Commerce, counsel for Ivanhoe Cambridge Inc., counsel for the Cadillac Fairview Group Ltd. Morguard Investments Limited and 20 Vic Management Inc. and no one appearing for any other person on the service list, although properly served as appears from the affidavit of Daphne Porter sworn March 8, 2017, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE TRANSACTION AND VESTING OF THE PURCHASED ASSETS

2. **THIS COURT ORDERS AND DECLARES** that, subject to paragraph 6 hereof, the Transaction is hereby approved, and the execution and delivery of the Sale Agreement by the Companies is hereby authorized and approved, with such minor amendments as the Companies and the Purchaser may deem necessary. The Companies are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that:

- (a) with respect to the Purchased Assets (other than the Assigned Leases, as defined in the Sale Agreement), upon the delivery of the Proposal Trustee's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the **"Proposal Trustee's Certificate"**), all of the Companies' right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, and
- (b) with respect to the Assigned Leases forming part of the Purchased Assets, upon the assignment of such Assigned Leases to the Purchaser either (i) in accordance with the terms of such Assigned Leases or as may otherwise be agreed between the Purchaser and the relevant landlords, or (ii) by order of the Court pursuant to

the *Bankruptcy and Insolvency Act* (Canada), all of the Companies' right, title and interest in and to such Assigned Leases shall be assigned absolutely to the Purchaser;

in each case free and clear of and from any and all rights, benefits, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, restrictions, adverse claims, rights of set-off, or other financial or monetary claims, assignments, judgments, options, agreements, rights of distress, legal, equitable, or contractual setoffs, claims, adverse claims, taxes disputes, debts, liabilities (direct, indirect, absolute or contingent) or claims (including, without limitation, claims provable in bankruptcy in the event that one or more of the Companies should be adjudged bankrupt), or encumbrances, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, legal, equitable, possessory or otherwise (collectively, the "**Claims**") by or of any person or entity of any kind whatsoever, including, without limitation, any individual, firm, corporation, partnership, joint venture, trust, agency, and tribunal and any other natural person or corporation whether acting in its capacity as principal or trustee, executor, administrator or other legal representative (collectively, "**Persons**") including, without limiting the generality of the foregoing: (i) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (ii) all charges, security interests or claims evidenced by recordals pursuant to the *Trade-marks Act* (Canada); and (iii) those Claims listed in **Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**"); for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets other than any registrations made at the applicable land registry of the Assigned Leases forming part of the Purchased Assets and any memorials of lease, summaries of lease, notices of lease, assignments of lease and any amendments or other registrations pertaining to the Assigned Leases forming part of the Purchased Assets. Notwithstanding anything to the contrary in the foregoing, except as may otherwise be agreed to by the applicable landlord to such an Assigned Lease (a "**Landlord**") and the Purchaser, nothing herein

shall affect the rights and remedies of such Landlord against the Purchaser that may exist or arise under or in respect of any Assigned Lease. The Purchaser is hereby authorized but not required to discharge any such registrations evidencing Encumbrances.

4. **THIS COURT ORDERS** that: (a) nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of an Assigned Lease; and (b) none of the Assigned Leases shall be transferred, conveyed, assigned or vested in the Purchaser by operation of this Order.

5. **THIS COURT ORDERS** that upon registration in the Canadian Intellectual Property Office of a certified copy of this Order, the applicable Registrar is hereby directed to transfer all of the owner's right, title and interest in and to the Purchased Assets that is Intellectual Property as described in the Sale Agreement free and clear of and from any and all Claims.

6. **THIS COURT ORDERS** that following the date of this Order and until the Designation Deadline (as defined in the Sale Agreement) the Purchaser may designate any agreement to which the Companies are a party to be assigned as an Assigned Contract or as an Assigned Lease pursuant to the Sale Agreement such that the Companies' right, title and interest in and to such Assigned Contract or Assigned Lease becomes a Purchased Asset under the Sale Agreement, provided counter-party consent has been obtained to such assignment where required. At the conclusion of the Designation Period, the Proposal Trustee shall file with the Court a supplementary Proposal Trustee's Certificate, in substantially in the form attached as **Schedule "C"** hereto (the "**Supplementary Proposal Trustee's Certificate**"), identifying all Assigned Contracts and Assigned Leases so designated by the Purchaser which Assigned Contracts and Assigned Leases shall be deemed to be Purchased Assets vested in the Purchaser pursuant to paragraph 2 in all respects, except that the effective time shall be the actual date of such assignment pursuant to this paragraph 6.

7. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Proposal Trustee's Certificate and the Supplementary Proposal Trustee's Certificate, in each case forthwith after delivery thereof.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee's Certificate

or the Supplementary Proposal Trustee's Certificate, where applicable, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased 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.

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* and any similar Provincial Legislation ("**Privacy Legislation**"), the Companies and the Proposal Trustee are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Companies' past and current employees and customers. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Companies.

10. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Companies and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Companies;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Companies and shall not be void or voidable by creditors of the Companies, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario) or any similar legislation in any other province and section 6 of the *Retail Sales Tax Act* (Ontario) or any equivalent or corresponding provision under any other applicable tax legislation.

12. **THIS COURT ORDERS** that until the earlier of further Order of this Court or the filing of the Supplementary Proposal Trustee's Certificate, the Confidential Appendices shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Companies and the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Companies and Proposal Trustee as may be necessary or desirable to give effect to this Order or to assist the Companies and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

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Schedule “A” – Form of Proposal Trustee’s Certificate

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Division No. 9 – Toronto
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ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF MRP
RETAIL INC. AND MRP FAMILY RETAIL INC.**

PROPOSAL TRUSTEE’S CERTIFICATE

RECITALS

A. MRP Retail Inc. and MRP Family Retail Inc. (the “**Vendors**”) filed notices of intention to make proposals under the *Bankruptcy and Insolvency Act* on January 9, 2017, and Richter Advisory Group Inc. was appointed as the proposal trustee (the “**Proposal Trustee**”).

B. Pursuant to an Order of the Court dated March 13, 2017, the Court approved the agreement of purchase and sale made as of March 6, 2017 (the “**Sale Agreement**”) between the Companies and Pacific West Commercial Corporation (“**Pacific West**”) and provided for the vesting Pacific West’s designee, 10119032 Canada Inc. (the “**Purchaser**”), of the Companies’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 10 of the Sale Agreement have been satisfied or waived by the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and the Companies have received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 10 of the Sale Agreement have been satisfied or waived by the Companies and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Proposal Trustee.
4. This Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ [DATE].

**Richter Advisory Group Inc., in its capacity
as Proposal Trustee of MRP Retail Inc. and
MRP Family Retail Inc., and not in its
personal capacity**

Per: _____

Name:

Title:

Schedule "B" – Encumbrances

Encumbrances registered on the Ontario Personal Property Security Registration System:

File Number:	Secured Party:
723898404	Canadian Imperial Bank of Commerce
718252974	Xerox Canada Ltd.
712478772	R. Perlman Enterprises Inc.
712478871	M. Perlman Enterprises Inc.
641288997	Sony BMG Music (Canada) Inc.
629829459	Entertainment One Limited Partnership LP
817885521	Canadian Imperial Bank of Commerce

Schedule “C” – Form of Supplementary Proposal Trustee’s Certificate

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RETAIL INC. AND MRP FAMILY RETAIL INC.**

SUPPLEMENTARY PROPOSAL TRUSTEE’S CERTIFICATE

RECITALS

A. MRP Retail Inc. and MRP Family Retail Inc. (the “**Vendors**”) filed notices of intention to make proposals under the *Bankruptcy and Insolvency Act* on January 9, 2017, and Richter Advisory Group Inc. was appointed as the proposal trustee (the “**Proposal Trustee**”).

B. Pursuant to an Order of the Court dated March 13, 2017 (the “**Order**”), the Court approved the agreement of purchase and sale made as of March 6, 2017 (the “**Sale Agreement**”) between the Companies and Pacific West Commercial Corporation (“**Pacific West**”) and provided for the vesting Pacific West’s designee, 10119032 Canada Inc. (the “**Purchaser**”), of the Companies’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to any Assigned Contracts and Assigned Leases designated as such by the Purchaser at any time following the date of the Order until the Designation Deadline upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming that: (i) the Purchaser has designated the Assigned Contracts and Assigned Leases as such; and (ii) all counter-party consents to the assignment of such Assigned Contracts and Assigned Leases has been obtained, where required.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser designated the contracts and leases detailed on **Schedule “A”** hereto as Assigned Leases and Assigned Contracts; and
2. All required counter-party consents to the assignment of such Assigned Contracts and Assigned Leases have been obtained.
4. This Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ [DATE].

**Richter Advisory Group Inc., in its capacity
as Proposal Trustee of MRP Retail Inc. and
MRP Family Retail Inc., and not in its
personal capacity**

Per: _____

Name:

Title:

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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