

CANADA

SUPERIOR COURT
Commercial Division

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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

No: 500-11-055629-188

2964-3277 QUEBEC INC.,

Debtor

-and-

RICHTER ADVISORY GROUP INC.,

Trustee

**MOTION FOR THE ISSUANCE OF AN ORDER FOR A KEY EMPLOYEE
RETENTION PROGRAM**

1. For the reasons further described herein, Art Deco hereby seeks from this Court the issuance of an Order substantially in the form of the draft Order communicated herewith as **Exhibit R-1**, which provides for the granting and/or ratification, as the case may be, of the Key Employee Retention Program (the "**KERP**") and the KERP charge (as defined below).

A. BACKGROUND

1. 2964-3277 Quebec Inc., d.b.a. Carpet Art Deco ("**Art Deco**") is a corporation incorporated under the *Companies Act* (Québec) and continued under the *Business Corporations Act* (Québec) with its principal place of business located at 480 avenue Lafleur in the city of Montréal;
2. In business since 1995, Art Deco is a worldwide leader in the carpet and weaving industry, with manufacturing and distributing facilities located in Montréal;
3. Art Deco's activities are mainly concentrated on the distribution of carpets and rugs for Canadian and American customers.
4. On November 29, 2018, Art Deco filed a *Notice of Intention to Make a Proposal* (the "**NOI**") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (the "**BIA**") and Richter Advisory Group Inc. ("**Richter**" or the "**Trustee**") was appointed as trustee to the NOI;

5. At the date of the filing of the NOI, Art Deco had approximately one hundred and twelve (112) full time employees. On December 10, 2018 the Debtor filed a Motion for the Issuance of an Order for an Administrative Charge, a Directors and Officers Charge, a Key Employee Incentive Program and Other Remedies (the "**Charge and KEIP Motion**"). The Charge and KEIP Motion was granted by this Honourable Court on December 13, 2018, as appears from the Court records;
6. The Charge and KEIP Motion sought the approval of, amongst other remedies, a Key Employee Incentive Program (the "**KEIP**") which was put in place in order to provide the management of Art Deco with incentives to collaborate with the Debtor in order to facilitate an orderly liquidation of the Debtor's assets and to maximize their value;
7. The KEIP was only aiming Art Deco's management and the payments provided therein are correlative to the management's performance regarding the liquidation of the Debtor's assets;
8. On the other hand, the Key Employee Retention Program ("**KERP**") sought in the present motion is a program developed in collaboration with the Trustee in order to incentivize six (6) key employees (the "**KERP Eligible Employees**") to remain at Art Deco's employment during the NOI and the liquidation process;

B. THE SALE, INVESTMENT AND SOLICITATION PROCESS

9. On or about November 28, 2018, Art Deco, with the assistance of Richter, initiated a sale, investment and solicitation process by which Art Deco solicited offers from any party interested in acquiring Art Deco's business and/or assets (the "**SISP**").
10. Art Deco's objective is to proceed with a transaction with an interested party and seek the consent of its two major secured creditors, namely the Canadian Imperial Bank of Commerce ("**CIBC**") and the Business Development Bank of Canada ("**BDC**" and collectively with CIBC the "**Secured Creditors**"), as well as the authorization of this Honourable Court to proceed with an eventual transaction;
11. Following an analysis of the received offers, the Debtor, the CIBC, the BDC and the Trustee agreed that the most advantageous offer for the liquidation of short term assets (inventory and accounts receivable) and intellectual property was the offer submitted by Gordon Brothers Canada ULC (the "**GB Offer**") and on January 11, 2019, Gordon Brothers ULC ("**GB**") and the Debtor executed an agreement (the "**GB Agreement**") which sets out the terms and conditions of the services to be provided by GB;
12. The Debtor has entered into the GB Agreement, pursuant to which GB agrees to provide its expertise and assist the Debtor with respect to a liquidation sale, which is conditional to Court approval. The terms of the proposed liquidation agreement are set out in the GB Agreement and are acceptable to the CIBC;

13. As the GB Agreement is subject to this Honourable Court's approval, on January 11, 2019, the Debtor filed a motion entitled *Motion for the Approval of a Consulting Agreement* (the "**Consulting Agreement Motion**"), which was supported by the Trustee's third report. The Consulting Agreement Motion was granted by this Honourable Court on January 14, 2019 (the "**GB Consulting Agreement Order**");
14. The GB Agreement provides that the duration of the realization is expected to be a maximum of 120 days, beginning on the date of issuance of the GB Consulting Agreement Order (the "**Sale Term**");
15. As the Sale Term has not yet expired, GB is currently still assisting the Debtor in the liquidation of its inventory, the collection of its outstanding receivables and the sale of its intellectual property;
16. Moreover, the Debtor is also actively in the process of liquidating the universality of its equipment, Machinery, tools, office furniture and vehicles (the "**Equipment**"), on which BDC has first ranking security and which was expressly excluded from the GB Agreement, and is seeking purchase offers from any party interested in acquiring same;

C. REQUESTED CHARGES

17. In order to be able to continue Art Deco's operations during the above described liquidation process, Art Deco seeks the assistance of this Honourable Court in order to secure the participation of key employees who are essential and critical to the successful liquidation of Art Deco, the whole to the benefit of the Secured Creditors;

KERP

18. As mentioned above, the proposed KERP has been developed in collaboration with the Trustee in order to incentivize the KERP Eligible Employees to remain at Art Deco's employment during the NOI and the liquidation process.
19. The KERP Eligible Employees are essential to the proper continuation of the operations during the stay of proceedings under the NOI and to provide Art Deco with the greatest outcome of the liquidation process;
20. In fact, all the KERP Eligible Employees are affected to tasks aiming for the liquidation of short term assets (inventory) and the collection of accounts receivable;
21. Considering the very short delay to conduct the short term assets liquidation process, it is essential that the KERP Eligible Employees remain employed by Art Deco;
22. Therefore, Art Deco seeks from this Honourable Court the ratification of the KERP, which provides for bonus payments determined by the Debtor in collaboration with

the Trustee and with the agreement of the BDC and the CIBC (the "**Bonus Payments**"), the whole as more fully appears from a copy of the KERP template letter, communicated herewith as **Exhibit R-2**;

23. The Bonus Payments amount to an approximate maximum payment of \$60,000 in aggregate and would be payable to the KERP Eligible Employees upon the termination of their employment by Art Deco, the whole as more fully appears from a copy of Bonus Payments allocation, communicated herewith **UNDER SEAL** as **Exhibit R-3**;
24. In addition and in order to secure the full and complete payment of Art Deco's obligations under the KERP, Art Deco also seeks a charge in the amount of \$60,000 over all the property of Art Deco of every nature and land whatsoever, wherever situated and regardless of whose possession it may be in (the "**Property**") (the "**KERP Charge**"), which charge would rank after the NOI Charges as defined in the Order rendered in the present file by this Honourable Court on December 13, 2018 and after and after any and all potential claim of BDC on all movable assets other than Art Deco's accounts receivable, bank accounts, intellectual property rights and inventory and all accessories thereto, including all proceeds, insurance indemnities, resulting rights or revenues related thereto, as well as all insurance indemnities related thereto and all claims, proceeds or sums relating to the lease, sale or other disposition therefrom;
25. The Trustee supports the KERP;
26. Art Deco and the Trustee believe that the KERP provides appropriate and reasonable incentives for the commitment and retention of the KERP Eligible Employees;
27. Therefore, Art Deco is well founded to seek this Honourable Court's approval of the KERP, as well as the granting of the KERP Charge in order to assist Art Deco in its efforts to complete its liquidation process on a going-concern basis for the benefit of all stakeholders;
28. Considering the foregoing, it is in Art Deco's interest and the interest of all secured and unsecured creditors that the present motion be granted by this Honourable Court.
29. The present motion is well founded in facts and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

- A. **GRANT** the Motion for the Issuance of an Order for a Key Employee Retention Program (the "**Motion**");
- B. **ORDER** that the time for service of the Motion be abridged and that the Motion is properly presentable and **DECLARE** that the service of the Motion constitutes good and sufficient service on all persons and **DECLARE** that all parties are relieved of any further requirement for service of the Motion;
- C. **ISSUE** an Order substantially in the form of the draft Order communicated as Exhibit R-1 in support of the Motion;
- D. **THE WHOLE** without costs, save and except in the case of contestation.

Montreal, March 12, 2019

Borden Ladner Gervais

Borden Ladner Gervais LLP

Lawyers for the Debtor
2964-3277 Quebec Inc.

AFFIDAVIT

I, the undersigned, **FADI MELKI**, president, having its principal place of business located at 480 avenue Lafleur, Montréal, Québec, H8R 3H9, solemnly declare:

1. I am the President and Secretary of 2964-3277 Quebec Inc., the Debtor in the present case;
2. I have read the attached *Motion for the Issuance of an Order for a Key Employee Retention Program* and all the facts set forth in the present Motion are true.

AND I HAVE SIGNED:

FADI MELKI

Solemnly declared before me in
Montreal, this ____ day of March, 2019

Commissioner for oaths for Québec

CANADA

SUPERIOR COURT
Commercial Division

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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

No: 500-11-055629-188

**2964-3277 QUEBEC INC. (aka CARPET
ART DECO INC.)**

Debtor

-and-

RICHTER ADVISORY GROUP INC.

Trustee

NOTICE OF PRESENTATION

TO :

Stikeman Elliott s.e.n.c.r.l., s.r.l.
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Mtre Joseph Reynaud
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Inc.**

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Attorneys for Synergie Canada Inc.

TAKE NOTICE that the *Motion for the Issuance of an Order for a Key Employee Retention Program* will be presented for hearing and adjudication before the Superior Court of Quebec, sitting in the Commercial Division for the District of Montréal, **on March 13, 2018 at 9:30 a.m. in a room to be determined** at the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal, Québec, H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, March 12, 2019

Borden Ladner Gervais

Borden Ladner Gervais LLP

Lawyers for the Debtor
2964-3277 Quebec Inc.

CANADA

SUPERIOR COURT
Commercial Division

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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

No: 500-11-055629-188

2964-3277 QUEBEC INC.

Debtor

-and-

RICHTER ADVISORY GROUP INC.

Trustee

LIST OF EXHIBITS

- EXHIBIT R-1: Copy of draft Order granting the KERP;
EXHIBIT R-2: KERP template letter;
EXHIBIT R-3: **UNDER SEAL** Bonus Payment allocation

Montreal, March 12, 2019

Borden Ladner Gervais

Borden Ladner Gervais LLP
Lawyers for the Debtor
2964-3277 Quebec Inc.



**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-11-055629-188

DATE : March 13, 2019

PRESIDING : CHANTAL TREMBLAY, J.S.C.

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

2964-3277 QUEBEC INC.

Debtor

-and-

RICHTER ADVISORY GROUP INC.

Trustee

ORDER

- [1] **THE COURT**, upon reading the Debtor's *Motion for the Issuance of an Order for a Key Employee Retention Program* (the "**Motion**"), having examined the proceeding, the affidavit and the exhibits;
- [2] **CONSIDERING** the representations of the parties;
- [3] **GIVEN** the provisions of the *Bankruptcy and Insolvency Act* (the "**BIA**");

FOR THESE REASONS, THE COURT HEREBY:

- [4] **GRANTS** the present Motion;
- [5] **ORDERS** that the time for service of the Motion be abridged and that the Motion is properly presentable and **DECLARES** that the service of the Motion constitutes good and sufficient service on all persons and **DECLARES** that all parties are relieved of any further requirement for service of the Motion;

- [6] **DECLARES** that the present order (the "**Order**") and its effects shall survive the filing by 2964-3277 Quebec Inc., d.b.a. Carpet Art Deco ("**Art Deco**") of a proposal pursuant to the terms of the BIA, the issuance of an initial order with regards to Art Deco pursuant to the terms of the *Companies Creditors Arrangements Act* or the bankruptcy of Art Deco;
- [7] **ORDERS** that the Key Employee Retention Program (the "**KERP**") filed with the Court as Exhibit R-2 and Exhibit R-3 is hereby ratified and that Art Deco is hereby authorized and empowered to perform its obligation thereunder and to make the payments in accordance with the terms set out in the KERP;
- [8] **DECLARES** that as security for payment of the obligations set forth under the KERP a charge and security over all the property of Art Deco of every nature and land whatsoever, wherever situated and regardless of whose possession it may be in (the "**Property**") is hereby constituted in favour of Art Deco's KERP Eligible Employees as defined in the Motion, to the extent of the aggregate amount of \$60,000 (the "**KERP Charge**"). The KERP Charge shall have the priority set out in paragraphs 10 and 11 of this Order;
- [9] **ORDERS** that the the KERP Bonus Payments allocation (Exhibit R-3) be kept confidential and under seal until earlier of a) end of the BIA process b) further order of this Court;
- [10] **DECLARES** that the KERP Charge shall rank in priority to any and all other 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, but after the NOI Charges as defined in the Order rendered in the present file by this Court on December 13, 2018 and after any and all potential claim of BDC on all movable assets other than Art Deco's accounts receivable, bank accounts, intellectual property rights and inventory and all accessories thereto, including all proceeds, insurance indemnities, resulting rights or revenues related thereto, as well as all insurance indemnities related thereto and all claims, proceeds or sums relating to the lease, sale or other disposition therefrom;
- [11] **DECLARES** that the KERP Charge is effective and shall charge, as of 12:01 a.m. (Montreal time) the day of the Order (the "**Effective Time**"), all of Art Deco's Property present and future notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent;
- [12] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiver order filed pursuant to the BIA in respect of Art Deco and any receiver order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of Art Deco and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by Art Deco pursuant to the Order and the granting of the KERP Charge do not and will not constitute settlements, fraudulent preferences,

fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under an applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy, and any receiver to the Property of Art Deco;

- [13] **DECLARES** that the Order, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by Art Deco under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;
- [14] **DECLARES** that the present Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [15] **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [16] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
- [17] **THE WHOLE** without costs.

CHANTAL TREMBLAY, J.S.C.

SUPERIOR COURT
Commercial Division
District of Montréal
File No.: 500-11-055629-188

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

2964-3277 QUEBEC INC.

Debtor

-and-

RICHTER ADVISORY GROUP INC.

Trustee

EXHIBITS R-1

ORIGINAL

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Borden Ladner Gervais

B.M. 2945

Mtre Marc Duchesne
File: 296368-000004

[CARPET ART DECO LETTERHEAD]

Personal and Confidential

February 18, 2019

Mr. ●

2964-3277 QUÉBEC INC.,
d.b.a. Carpet Art Deco
480 Avenue Lafleur
Montréal (Québec) H8R 3H9

Re : In the matter of the *Notice of Intention to make a proposal of 2964-3277 Québec Inc. d.b.a. Carpet Art Deco* (hereinafter "*Art Deco*") – Incentive Retention Plan (the "*IRP*")

Mr. ●,

As you are aware, on November 29, 2018, Art Deco filed a *Notice of Intention to Make a Proposal* ("*NOI*") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, and Richter Advisory Group Inc. ("**Richter**") was appointed as trustee to the NOI. On or about November 29, 2018, Art Deco, with the assistance of Richter, initiated a sale, investment and solicitation process by which Art Deco solicited offers from any party interested in acquiring its business and/or assets (the "*SISP*"), the whole in view of its liquidation.

With the assistance of Richter, Art Deco and its main secured lender, namely the *Canadian Imperial Bank of Commerce* ("**CIBC**") recognize that the orderly conduct of the *SISP* and the *NOI* liquidation process requires the assistance of some of Art Deco's key employees and representatives.

Recognizing the added value that your contribution is likely to bring, Art Deco with the assistance of Richter and CIBC are prepared to offer you the following retention incentive for your continued efforts during the implementation and conduct of the *NOI* liquidation process:

1. You will remain ● (position) of Art Deco;
2. Your annual base salary will remain at ● (the "*Annual Base Salary*"), payable by biweekly installments;
3. You will be entitled to the benefits of your employment agreement with Art Deco (the "*Existing Employment Agreement*");
4. In addition to your Annual Base Salary, you shall be entitled to a retention incentive of ● (●\$) representing your Annual Base Salary for ● weeks, which shall be paid to you as a bonus upon the termination of your employment by Art Deco (the "*Retention Incentive*");
5. Should you resign before the end of the *IRP* you shall not be entitled to the payment of any Retention Incentive payment.
6. The Retention Incentive shall be subject to all applicable withholdings and other deductions;

7. In exchange of the Retention Incentive, you hereby waive and renounce to any rights, interest and claims you have or may have had against Art Deco, Richter and the CIBC, including, without limitation, any severance claim, bonus or other claim in connection with your Existing Employment Agreement;

The Retention Incentive is conditional upon the following:

1. CIBC agreeing in writing to this IRP; and
2. Your recognition that you are not entitled to any payment from Art Deco and/or the CIBC other than your Annual Base Salary and the Retention Incentive. To the extent necessary, you hereby renounce to and waive any other claim, right and recourse you may have or have had against Art Deco, Richter and/or the CIBC.
3. Your recognition that you will devote your time and efforts to the accomplishment of the usual tasks of your employment at Art Deco. As you are employed by Art Deco, we expect you to be working in the interest of the stakeholders of Art Deco.

Art Deco with the assistance of Richter may, at its sole discretion, without prior notice and without cause, terminate your employment at Art Deco by sending a written notice (hereinafter a "**Termination Notice**"). Upon issuance of this Termination Notice, you shall be entitled to the pro-rated payment of your Annual Base Salary and to the payment of the Retention Incentive.

Should you resign before the end of the IRP you shall not be entitled to the payment of the Retention Incentive.

This IRP is effective as of the date hereof and shall terminate and be void upon your resignation.

The present IRP supersedes any and all previous plan, policies, practices, oral or written agreements, commitments and writings, or bonus program included to which you may have been entitled to. The terms of the IRP and the present letter are strictly confidential, and shall not be disclosed to any third party for any reason without Art Deco and Richter's prior approval.

To indicate your acceptance of the terms and conditions of the IRP set forth hereto please sign on the appropriate space below.

Sincerely,

2964-3277 Québec Inc. (d.b.a. Carpet Art Deco)

MTL01: 4935505: v1

.....
I understand and agree to the terms and conditions set forth herein.

Mr. ●

INTERVENTION OF THE CIBC

The CIBC hereby acknowledges and recognizes the IRP and confirms that it is in agreement with its terms and conditions. The CIBC further undertakes to cause Art Deco to pay the amounts owed pursuant to the IRP and, to the extent necessary to provide adequate funding in respect thereto.

Canadian Imperial Bank of Commerce

SUPERIOR COURT
Commercial Division
District of Montréal
File No.: 500-1-055629-188

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

2964-3277 QUEBEC INC.

Debtor

-and-

RICHTER ADVISORY GROUP INC.

Trustee

EXHIBITS R-2

ORIGINAL

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Borden Ladner Gervais

B.M. 2545

Mtre Marc Duchesne
File: 296368-000004

**EXHIBIT R-3
(UNDER SEAL)**

SUPERIOR COURT
Commercial Division
District of Montréal
File No.: 500-1-055629-188

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

2964-3277 QUEBEC INC.

Debtor

-and-

RICHTER ADVISORY GROUP INC.

Trustee

EXHIBITS R-3
(UNDER SEAL)

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B.M. 2545

Mtre Marc Duchesne
File: 296368-000004

SUPERIOR COURT
Commercial Division
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File No.: 500-11-055629-188

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

2964-3277 QUEBEC INC.

Debtor

-and-

RICHTER ADVISORY GROUP INC.

Trustee

MOTION FOR THE ISSUANCE OF AN ORDER
FOR A KEY EMPLOYEE RETENTION
PROGRAM, AFFIDAVIT, NOTICE OF
PRESENTATION, LIST OF EXHIBITS AND
EXHIBITS R-1 TO R-3

ORIGINAL

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