

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. 500-11-059566-212
Estate No. 41-2716886

DATE: March 10, 2021

PRESIDING : M^e PATRICK GOSSELIN, REGISTRAR

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

CHANGE DE SCANDINAVIE CANADA DETAIL INC./
CHANGE OF SCANDINAVIA CANADA RETAIL INC.

Debtor/Petitioner

-and-

RICHTER ADVISORY GROUP INC.

Trustee

-and-

THE PARTIES IN THE SERVICE LIST

Impleaded Parties

**ORDER APPROVING INTERIM FINANCING, ADMINISTRATIVE CHARGE AND
OTHER RELIEF**

- [1] **ON READING** the *Motion for Approval of Interim Financing, Administrative Charge and Other Relief* (the "**Motion**") filed by Change of Scandinavia Canada Retail Inc. (the "**Debtor**") and the affidavit in support thereof.
- [2] **SEEING** the service/notification of the Motion.
- [3] **SEEING** the submissions of counsel and the report filed by the trustee, Richter Advisory Group Inc.

- [4] **CONSIDERING** Sections 50.6 and 64.2 of the *Bankruptcy and Insolvency Act*, Canada (the "**BIA**") and that all secured creditors likely to be affected by the charges resulting from the orders herein have been notified of the Motion.

WHEREFORE THE COURT:

- [5] **GRANTS** the Motion.
- [6] **ORDERS** that capitalized terms not otherwise defined herein shall have the same meaning ascribed thereto in the Motion.

SERVICE/NOTIFICATION

- [7] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service/notification thereof.
- [8] **PERMITS** service of this Order at any time and place and by any means whatsoever.

MEASURES RELATING TO RENT PAYMENTS IN RESPECT OF LEASES

- [9] **ORDERS** that, until a real property or immovable lease is disclaimed or resiliated in accordance with the *BIA*, the Debtor shall pay amounts constituting rent or payable as rent under real property or immovable leases (including, for greater certainty, common area maintenance charges, utilities and taxes and any other amounts payable to the landlord under the leases) or as otherwise may be negotiated between the Debtor and the landlord from time to time (the "**Rent**") as follows:
- (a) with respect to Fixed Rent:
 - i. for the Rent due for the remainder of the month of March 2021, the Rent shall be paid on March 15, 2021; and
 - ii. for the Rent due thereafter, the Rent shall be paid twice monthly in equal payments on the first and fifteenth day of each month, or the immediately following business day if such day is not a business day.
 - (b) with respect to Percentage Rent, the Rent shall be paid in arrears on the tenth day of each month, with the first of such payments due on April 10, 2021, or the following business day if such day is not a business day.
- [10] **ORDERS** that in the event that a Debtor disclaims or resiliates a lease in respect of any leased premises in accordance with the *BIA*:
- (a) the Debtor shall not be required to pay Rent under such lease pending resolution of any dispute concerning furnishings, fixtures, equipment or a combination thereof located in the premises under the lease (other than Rent payable for the notice period provided for in 65.2(1) *BIA*); and

(b) the disclaimer of the lease shall be without prejudice to the Debtor's claim to the fixtures in dispute.

[11] **ORDERS** that, in the event that any landlord for the said leased premises for which a notice of disclaimer has been sent contests the disclaimer or resiliation, Rent shall not be payable upon the expiry of the notice period provided for in Section 65.2(1) *BIA* until the matter is determined by this Court.

[12] **ORDERS** that, subject to paragraphs [9] and [10] hereof, nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of the leases or other occupancy agreements related to the Stores.

INTERIM FINANCING FACILITY AND INTERIM FINANCING CHARGE

[13] **ORDERS** that the Debtor be and is hereby authorized to enter into, execute and deliver and ratifies the Debtor's entering into, signing, delivery and execution of the Credit Agreement in or substantially in the form of the Credit Agreement produced as Exhibit P-3 to the Motion (as well as all future amendments thereto and replacements, restatements and renewals thereof) and such agreements, security documents and other definitive documents (collectively, the "**Interim Financing Documents**") as may be required by the Interim Lenders in connection with the Interim Financing Facility and the Credit Agreement, and that the Debtor is hereby authorized to perform all of its obligations under the Interim Financing Documents.

[14] **ORDERS** that the Debtor be and is hereby authorized to borrow, repay and reborrow from the Interim Lenders such amounts from the Interim Financing Facility from time to time as the Debtor may consider necessary or desirable in order to fund the ongoing expenditures and restructuring costs of the Debtor, and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents.

[15] **ORDERS** that the Debtor shall pay to the Interim Lenders, when due, all amounts owing or to become owing (including principal, interest, fees, closing fees, monitoring fees, prepayment amounts, charges and expenses, all reasonable fees and disbursements of counsel and all other reasonably required advisors to or agents of the Interim Lenders) under the Interim Financing Documents or any other document or agreement relating thereto or envisaged thereby (collectively the "**Interim Financing Indebtedness**") and shall perform all of its other obligations to the Interim Lenders pursuant to the Interim Financing Documents and this Order.

[16] **DECLARES** that the Debtor's present and future assets, rights, undertakings and property, movable, personal, corporeal or incorporeal, tangible or intangible and wherever situate, including all proceeds thereof (collectively the "**Property**") are hereby charged by and subject to a security and charge to the extent of the aggregate principal amount of \$2,400,000 plus interest at the rate of 15% *per annum* as well as all of the hypothecs and security interests created or to be created pursuant to the Interim Financing Documents (collectively the "**Interim Financing**

Charge") in favour of the Interim Lenders, as continuing and collateral security for the Interim Financing Indebtedness and all obligations of the Debtor with respect to all amounts owing and all obligations required to be performed under or in connection with the Interim Financing Documents, which Interim Financing Charge shall have the priority established by paragraph [18] hereof.

ADMINISTRATION CHARGE

[17] **DECLARES** that the Property is hereby charged by and subject to a security and charge to the extent of the aggregate principal amount of \$100,000 in favour of the Debtor's legal counsel, the Trustee and the Trustee's legal counsel (to the extent applicable), as continuing and collateral security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings under the *BIA* and the Debtor's restructuring, having the priority established by paragraph [18] hereof (the "**Administration Charge**").

PRIORITIES AND GENERAL PROVISIONS RELATING TO THE CHARGES

[18] **ORDERS** and **DECLARES** that the ranking of the Interim Financing Charge and the Administration Charge (collectively the "**Charges**") shall be as follows:

(a) first, the Administration Charge:

- i. junior to and after: (a) all existing hypothecs, security interests and rights in favour of Royal Bank of Canada; (b) hypothecs, security interests and rights in favour of the Interim Lenders; and (c) hypothecs, security interests or finance leases securing specific indebtedness over specific machinery, equipment or vehicles (collectively the "**Senior Charges**"); and
- ii. senior to and ahead of all present and future hypothecs, prior charges, security interests, statutory deemed trusts (other than those created and recognized under the express provisions of the *BIA*), liens, charges, encumbrances or any other rights of any nature or source whatsoever (collectively the "**Encumbrances**") other than the Senior Charges,

(b) second, the Interim Financing Charge, senior to and ahead of all Encumbrances, other than the Senior Charges,

without any requirement of publication, registration, recording, filing or perfection in any jurisdiction whatsoever.

[19] **DECLARES** that the Charges shall attach, as of the date hereof, Montreal time, to the Property, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

[20] **DECLARES** that the Charges shall subsist without necessity of any publication, registration, recording, filing or perfection.

[21] **ORDERS** that the Debtor shall not grant any encumbrances in or against any of the Property which ranks in priority to or *pari passu* with the Charges unless either the Court orders same or the beneficiaries of the Charges consent in writing thereto.

[22] **DECLARES** that the Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: **(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 the Debtor or any receiving order made or deemed to be made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Debtor; 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 the Debtor (a “**Third Party Agreement**”), and notwithstanding any provision to the contrary in any Third Party Agreement:

- (a) the creation of any of the Charges shall not create or be deemed to constitute a breach by the Debtor of any Third Party Agreement to which it is a party; and
- (b) any of the beneficiaries of the Charges 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 Charges.

[23] **DECLARES** that the claims of the respective parties pursuant to the Charges shall not be compromised pursuant to these proceedings, any proposal filed pursuant to the *BIA* (a “**Proposal**”) or any plan of arrangement filed pursuant to the *Companies’ Creditors Arrangement Act, Canada* (a “**Plan**”) and the beneficiaries of the Charges, in such capacity, shall each be treated as an unaffected creditor in these proceedings and in any Proposal or Plan.

[24] **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 the Debtor and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Debtor, and **(iii)** the provisions of any federal or provincial statute, the payments or disposition of Property made by the Debtor pursuant to this Order and the granting of the Charges, 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.

[25] **DECLARES** that the Charges shall be valid and enforceable as against all Property and against all persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Debtor, for all purposes.

[26] ORDERS that the Interim Lenders may:

- (a) notwithstanding any other provision of this Order, take such steps from time to time as may be deemed necessary or appropriate to register, record or perfect the Interim Financing Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
- (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Debtor if the Debtor fails to meet the provisions of the Interim Financing Documents.

[27] ORDERS that the Interim Lenders shall not take any enforcement steps under the Interim Financing Documents or the Interim Financing Charge without providing at least 5 business days written notice (the “**Notice Period**”) of a default thereunder to the Debtor, the Trustee and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of the Notice Period, the Interim Lenders shall be entitled to take any and all steps under the Interim Financing Documents and the Interim Financing Charge and otherwise permitted at law, but without having to send any demands under section 244 of the *BIA*.

[28] ORDERS the Registrar of the Register of Personal and Movable Real Rights (the “**RDPRM**”), upon application by the beneficiaries of the Charges, to register in the RDPRM, the Charges created by this Order against the Property situated in the province of Quebec.

[29] ORDERS the Registrar of the Personal Property Registry of Ontario (the “**OPPR**”) and British Columbia (the “**BCPPR**”) upon application by the beneficiaries of the Charges, to register in the OPPR and the BCPPR, as applicable, financing statements or otherwise in respect of the Charges created by this Order against the Property situated in the province of Ontario and the province of British Columbia.

GIFT CARDS

[30] AUTHORIZES the Debtor to continue to honour or comply with any existing and future gift cards, customer deposits, pre- payments and similar programs offered by the Debtor.

GENERAL

[31] DECLARES that this Order shall have full force and effect in all provinces and territories in Canada.

[32] 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.

[33] ORDERS the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

THE WHOLE WITHOUT COSTS.

Me Jeremy Cuttler
Me Gerald F. Kandestin
KUGLER KANDESTIN LLP
Attorneys for Debtor/Petitioner

M^e PATRICK GOSSELIN
REGISTRAR