

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**



THE HONOURABLE  
JUSTICE NEWBOULD

) WEDNESDAY, THE 12TH  
)  
) DAY OF DECEMBER, 2016

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN  
CANADA LTD.

Applicant

**ORDER  
(Motion Returnable December 12, 2016)**

THIS MOTION, made by Ben Moss Jewellers Western Canada Ltd. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order, *inter alia*: (i) extending the Stay Period (as defined in paragraph 14 of the Amended and Restated Initial Order dated May 18, 2016 (the "**Initial Order**")) until and including February 28, 2017; (ii) declaring that the assignment of the Assigned Leases (as defined below) by the Applicant to certain assignees shall vest all of the Applicant's right, title and interest in the Assigned Leases in and to the respective assignees; (iii) authorizing the sale of certain intellectual property (the "**IP**") to 3300393 Nova Scotia Limited ("**Charm**") pursuant to an agreement substantially in the form attached as Exhibit "A" to the Affidavit of Naveed Manzoor sworn on December 5, 2016 (the "**Fifth Manzoor Affidavit**") and vesting all right, title and interest of the Applicant in the IP in Charm free and clear of all Claims and Encumbrances, including those evidenced by registrations against title records of any intellectual property right registered at any intellectual property office in any jurisdiction of the world, including, without limitation, the Canadian Intellectual Property Office; (iv) authorizing the

CRO (as defined below) to change the Applicant's name; (v) modifying the thresholds on asset sales prescribed in paragraph 11(a) of the Initial Order; (vi) approving the activities and conduct of FAAN Advisors Group Inc. ("FAAN"), in its capacity as Chief Restructuring Officer of the Applicant (the "CRO"); (vii) approving the activities and conduct of Alvarez & Marsal Canada Inc., in its capacity as monitor in respect of the Applicant (the "Monitor"); (viii) authorizing, but not directing, the CRO, acting alone, to assign the Applicant into bankruptcy proceedings under the *Bankruptcy and Insolvency Act* (the "BIA"); (ix) authorizing, but not directing, the Applicant with the consent of the Monitor, to effect further distributions, (x) authorizing the amendment to the Agency Agreement substantially in the form attached as Exhibit H to the Fifth Manzoor Affidavit (the "**Amendment to the Agency Agreement**"), and (xi) amending the Sale Guidelines attached as Schedule A to the Order of Justice Wilton-Siegel made in these proceedings on July 29, 2016 (the "**Sale Guidelines**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Naveed Manzoor sworn on December 5, 2016 and the Fourth Report of the Monitor dated December 8, 2016, and on hearing the submissions of counsel for the Applicant, Salus Capital Partners, LLC ("**Salus**"), the Monitor and such other counsel as were present and on being advised that the Service List was served with the Motion Record herein,

### **SERVICE AND DEFINITIONS**

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.

2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Agency Agreement dated July 22, 2016 between a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (collectively, the "**Agent**") and the Applicant (the "**Agency Agreement**").

### **EXTENSION OF THE STAY PERIOD**

3. THIS COURT ORDERS that the Stay Period is hereby extended until and including February 28, 2017.

## LEASE ASSIGNMENTS

4. THIS COURT ORDERS that upon the assignment of a Lease (each an “**Assigned Lease**”) by the Applicant in accordance with the terms of such Assigned Lease or as may otherwise be agreed between the proposed assignee, the Applicant and the applicable landlord to such Assigned Lease (a “**Landlord**”), all of the Applicant’s right, title and interest in and to such Assigned Lease shall be assigned absolutely to the relevant assignee, in each case free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, claims, encumbrances, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, quantified, unquantified, contingent, or otherwise (collectively, the “**Claims**”) whensoever and howsoever arising, including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the Directors’ Charge, the DIP Charge (as such terms are defined in the Initial Order) and the Agent’s Charge and Security Interest (as defined in paragraph 20 of the Approval Order – Agency Agreement dated July 29, 2016);  
and
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Alberta Personal Property Security Act*, the *British Columbia Personal Property Security Act*, the *Personal Property Security Act* (Saskatchewan), the *Personal Property Security Act* (Manitoba), the Register of Personal and Movable Rights (Quebec) or any other personal property registry system;

(all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Assigned Leases are hereby expunged and discharged as against the Assigned Leases, other than any registrations made at the applicable land registry of the Assigned Leases 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, provided however that, except as may otherwise be agreed to by the applicable Landlord and the respective assignee thereunder, nothing herein shall affect the rights and remedies of such Landlord against the

that assignee that may exist or arise under or in respect of any Assigned Lease that is ultimately assigned to the assignee.

5. 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 assignee by operation of this Order.

#### **INTELLECTUAL PROPERTY ASSIGNMENT**

6. THIS COURT ORDERS that the sale of the IP to Charm is hereby authorized and declares that all right, title and interest of the Applicant in the IP shall be transferred to Charm and vest in Charm free and clear of any and all Claims and Encumbrances whether or not evidenced by registrations against title records of any intellectual property right registered at any intellectual property office in any jurisdiction of the world, including, without limitation, the Canadian Intellectual Property Office.

7. THIS COURT ORDERS that the CRO is authorized to execute and file all necessary documentation to change the Applicant's legal name to 6752633 Manitoba Ltd.

8. 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 (the "**Privacy Legislation**"), the Applicant is authorized and permitted to disclose and transfer to Charm all customer information in the Applicant's records pertaining to the Applicant's customers. Charm shall be entitled to use the personal information provided to it in accordance with the Privacy Legislation. Charm 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 Applicant.

#### **MODIFICATION OF THRESHOLDS ON ASSET SALES**

9. THIS COURT ORDERS that paragraph 11(a) of the Initial Order is hereby replaced by the following:

- (a) "permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding

\$1,000,000 in any one transaction or \$1,500,000 in the aggregate provided that, with respect to any leased premises, the Applicant may permanently but not temporarily cease, downsize or shut down unless provided for in the applicable lease;”

#### **AMENDMENT TO AGENCY AGREEMENT**

10. THIS COURT ORDERS that the Amendment to the Agency Agreement is hereby approved and authorized and that the execution of the Amendment to the Agency Agreement by the Applicant is hereby authorized with such amendments, subject to the Sale Guidelines (as amended herein and as may be further amended by this Court), as the Applicant (with the consent of the Monitor) and the Agent may agree to in writing.

11. THIS COURT ORDERS that the amount of the Additional Merchandise Cap as defined in paragraph 15 of the Sale Guidelines be and is hereby increased by an additional amount of \$3 million;

#### **AUTHORIZATION TO FILE FOR BANKRUPTCY**

12. THIS COURT ORDERS that the CRO, acting alone, is hereby authorized but not directed to assign the Applicant into bankruptcy pursuant to the BIA, at such time as the CRO determines, in its sole discretion, that it is necessary or advisable to do so.

#### **APPROVAL OF THE CRO'S ACTIVITIES**

13. THIS COURT ORDERS that the activities and conduct of the CRO prior to the date hereof in relation to the Applicant and these CCAA proceedings are hereby ratified and approved; provided, however, that only the CRO, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

#### **APPROVAL OF THE MONITOR'S ACTIVITIES**

14. THIS COURT ORDERS that the activities and conduct of the Monitor prior to the date hereof in relation to the Applicant and these CCAA proceedings are hereby ratified and approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

**DISTRIBUTIONS**

15. THIS COURT ORDERS that the Applicant is authorized to make such further distributions to Salus, at such times and in such amounts as the Applicant and the Monitor may determine in their sole discretion, acting reasonably, in the maximum amount of Salus's secured claim, which distributions shall be free and clear of all Claims and Encumbrances and shall be applied against the indebtedness, liabilities and obligations owing by the Applicant under the Amended and Restated Credit Agreement dated July 18, 2013, as amended.

**RELEASE**

16. THIS COURT ORDERS that the CRO shall not have any liability whatsoever with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person (as defined in the Initial Order) in relation to each Assigned Lease and the sale of the IP from and after the date, respectively, that the agreement assigning the Assigned Lease or the agreement selling the IP becomes effective, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO.

**GENERAL**

17. 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 Applicant, the Monitor 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

DEC 12 2016

PER / PAR:



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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN CANADA LTD.**

**APPLICANT**

Court File No. CV-16-11397-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER  
(Motion Returnable December 12, 2016)**

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