

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
(IN BANKRUPTCY AND INSOLVENCY)**

**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  
COTTON GINNY INC., CG OPERATIONS (H/O) LIMITED, CG OPERATIONS I  
LIMITED, CG OPERATIONS II LIMITED**

**NOTICE OF MOTION**

**MINTZ & PARTNERS LIMITED** (the "Monitor"), the Monitor for **COTTON GINNY INC. ("CGI")**, **CG OPERATIONS (H/O) LIMITED ("H/O")**, **CG OPERATIONS I LIMITED**, **CG OPERATIONS II LIMITED** (collectively referred to as the "Companies") will make a motion to the Honourable Justice Morawetz at 2:15 p.m. on May 5, 2008, or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** the Motion will be heard orally.

**THE MOTION IS FOR:**

1. An Order approving the activities of the Monitor during the period March 1, 2008 to April 23, 2008, as described in the Second Report, the Third Report, the Fourth Report the Fifth Report, the Sixth Report, and the Seventh Report of the Monitor;
2. an Order varying or amending paragraphs 33 and 40 of the Initial Order of Justice Morawetz, dated February 21, 2008 (the "Initial Order") to remove any specific references to

Cotton Ginny Inc. or CGI, and thus extend the Administration Charge (the “Administration Charge”), as defined therein, to cover all of the assets of the Companies, including those funds currently being held by the Sheriff in Brampton in the name of H/O that were garnished by Effigi Inc. (the “Garnished Funds”); and,

3. such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. On February 21, 2008, the Initial Order was granted pursuant to the provisions of the *Companies Creditors Arrangement Act* (“CCAA”) providing, among other things, a stay of proceedings, such that the Companies’ creditors were prevented from taking any steps to enforce any rights or remedies any of them may have had against the Companies. Mintz & Partners Limited was appointed as the Monitor for the Companies during the CCAA process;

2. The Monitor has complied with its obligations to the creditors and to the Court. In that regard, since the Initial Order, the Monitor has prepared and delivered eight reports to the creditors and the Court;

3. Pursuant to the terms of the Initial Order, the Court ordered that, with respect to professional fees:

- (a) The Companies shall pay the Monitor, counsel to the Monitor and counsel to the Companies their reasonable fees and disbursements on a weekly basis as part of the costs of the CCAA proceedings;
- (b) The Monitor and its legal counsel shall pass their accounts from time to time and refer those accounts to a judge of the Commercial List;

- (c) the Administration Charge granted in favour of the Monitor, counsel for the Monitor, counsel to the Companies, the Receiver and counsel to the Receiver, in the sum of \$750,000.00 against the assets of Cotton Ginny Inc. ("CGI"), and in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise in favour of any person, including the other charges granted by the Initial Order; and,
- (d) payments by the Companies pursuant to the Administration Charge will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

4. There remains a significant amount of work to be done in the CCAA process by certain of the professionals whose fees are covered by the Administration Charge, including the completion of the Claims Procedure, the formulation and presentation of a plan of compromise or arrangement (the "Plan") to creditors, the report to the creditors, the holding of the creditors meeting, if approved by the creditors, the sanction motion and the implementation of the Plan and the eventual emergence of the Companies from the CCAA process

5. The Monitor has reported that:

- (a) as of April 20, 2008, sales, merchandise payments, and sales tax payments were significantly below the Companies' projections;
- (b) the Companies have had difficulty, due to cash flow problems, paying storage and demurrage costs to deliver new inventory to its retail stores on a timely basis;

- (c) the Extension Cash Flow provides for professional fee payments of \$164,000.00 for the period April 21, 2008 to May 18, 2008. The Monitor estimates actual professional fees for this same period will be significantly higher, and therefore outstanding professional fees owed by the Companies will continue to increase going forward;
- (d) as at April 22, 2008, the Companies already owed \$341,890.59 to the Monitor, counsel for the Monitor and counsel for the Companies for professional fees incurred, representing nearly half of the \$750,000.00 Administration Charge; and,
- (e) the Monitor has been advised by the Receiver that it may need to have recourse to \$15,000.00 of the Administration Charge for professional fees.

6. Thus, the current cash flows of CGI have not been sufficient to pay the professional fees as initially ordered in the Initial Order and the outstanding fees have mounted rapidly, such that they now account for almost half of the Administration Charge;

7. The assets of CGI alone may not be sufficient to satisfy the Administration Charge in its entirety, as originally envisioned;

8. The Administration Charge therefore ought to be extended to include additional assets of the Companies to ensure that the Monitor, counsel for the Monitor, counsel for the Companies, the Receiver and counsel for the Receiver have appropriate security for their professional fees. In the case of the Monitor, counsel for the Monitor and counsel for the Companies, an extended Administration Charge is necessary to ensure they are secured for their professional fees while they continue to act in their respective roles in the Companies' CCAA process;

9. At the request of Effigi Inc. ("Effigi"), a creditor of H/O, the Monitor performed various investigations and has reported to the creditors and the Court that it appears that the operations of H/O were not "stand alone" operations, but were at least mixed with the operations of Cotton Ginny Inc. and the other Cotton Ginny entities;

10. In particular, in the Fourth Report and the Fifth Report, the Monitor advised that:

- (a) Pursuant to an Accounting and Services Agreement dated April 21, 2003, H/O agreed to open and manage bank accounts in trust for Continental Saxon (CG) Limited Partnership ("Continental"), the operating company for the business of the Companies at that time;
- (b) The parties agreed that all receipts from the business would be deposited to the bank accounts opened and managed by H/O and held in trust for Continental;
- (c) H/O did open bank accounts which continue to be used today by the Companies' retail stores to make their daily deposits;
- (d) Pursuant to an Asset Purchase Agreement dated May 21, 2004, Continental sold its assets to CGI; and,
- (e) Effigi has garnished the sum of approximately \$2.1 million from the bank accounts opened and managed by H/O in trust for CGI.

11. As disclosed in the Monitor's reports, it appears to the Monitor that the operations of H/O are part of the entire Cotton Ginny operation, and thus all of the assets of the Companies should stand to support the Administration Charge of \$750,000.00;

12. The Sherriff at Brampton is currently holding \$2.1 million in Garnished funds from H/O's bank account. The Garnished Funds appear, pursuant to the Accounting and Services

Agreement, to be held in trust by H/O for CGI, or at the very least are assets of the Cotton Ginny operations that should be subject to the Administration Charge;

13. The provisions of the CCAA, including section 11.7(3);
14. Rule 59.06(2) of the *Rules of Civil Procedure*; and,
15. such further and other grounds as counsel may advise and this Honourable Court deem just.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Fourth Report, the Fifth Report, and the Seventh Report of the Monitor to the Court, and the appendices attached thereto; and,
2. Such further and other evidence as this Honourable Court may permit.

DATE: April 24, 2008

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Court File No.: 08-CL-7415

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
(IN BANKRUPTCY AND INSOLVENCY)**

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(returnable May 5, 2008)**

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