



Court File No. 05-CL-5695

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

THE HONOURABLE MR.)

FRIDAY, THE 28TH

JUSTICE MORAWETZ)

DAY OF DECEMBER 2007

**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 AND ARRANGEMENT
OF SAAN STORES LTD - LES MAGASINS SAAN LTÉE**

Applicant

ORDER

THIS MOTION, made by the Applicant, SAAN Stores Ltd. – Les Magasins SAAN Ltee (“SAAN”), for an Order granting the relief claimed in the Notice of Motion by SAAN returnable December 28, 2007, *inter alia*, amending certain provisions of the Initial Order of the Honourable Mr. Justice Farley dated January 6, 2005 (the “Initial Order”) and reinstating and extending the Stay Period (as defined in the Initial Order) until February 29, 2008, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the Affidavit of Julie Rulli sworn December 21, 2007 and on reading the report of Mintz & Partners Limited, as Proposed Monitor, and on hearing submissions from counsel for SAAN, Mintz & Partners Limited, GMAC Commercial Finance Corporation-Canada (the "DIP Lender"), RSM Richters Inc. as proposal trustee and counsel for other interested parties, and on being advised that all persons listed on the service list attached to the Motion Record were served with the Motion Record herein:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein be and is hereby abridged and that this Motion is properly returnable today and further that service thereof upon any interested party not served is hereby dispensed with.
2. **THIS COURT ORDERS** that unless otherwise defined in this Order, capitalized terms used herein shall have the meaning ascribed to them in the Initial Order.
3. **THIS COURT ORDERS** that Mintz & Partners Limited be and is hereby appointed pursuant to the CCAA as the Monitor, as an officer of this Court, to monitor the Property and Business and the Applicant's conduct of the Business and affairs of the Applicant, with the powers and obligations hereinafter set forth and as set forth in the Initial Order and CCAA.
4. **THIS COURT ORDERS** that Applicant is hereby authorized to pay to the Monitor, the Monitor's counsel, and Applicant's counsel, on a weekly basis, their reasonable fees and disbursements, based on their standard rates and charges, in respect of these proceedings, whether incurred before or after the date of this Order.
5. **THIS COURT ORDERS** that the Stay Period as defined in the Initial Order be and is hereby reinstated and extended until February 29, 2008.
6. **THIS COURT ORDERS** that the Initial Order be and is hereby amended as follows:
 - (a) All references to Borden Ladner Gervais LLP or the Applicant's counsel shall henceforth be read so as to refer and apply to Aylesworth LLP;
 - (b) All references to RSM Richter Inc. or the Monitor shall henceforth refer and apply to Mintz & Partners Limited (the "Monitor");
 - (c) The reference in paragraph 17(g) to "Congress" shall henceforth refer to the DIP Lender (as defined herein); and
 - (d) The reference in paragraph 26(a) to the "website" shall henceforth refer and apply to the website maintained by Mintz & Partners Limited at www.mintzca.com.

7. **THIS COURT ORDERS** that the Monitor shall review and report to this Court with respect to the impact upon the Applicant's creditors of performance by the Applicant of its obligations to creditors pursuant to the Second Amended Proposal dated April 20, 2005 as approved by the Order of the Honourable Mr. Justice Farley dated May 2, 2005 (the "2005 Proposal") filed by SAAN pursuant to the *Bankruptcy and Insolvency Act (the "BIA")*, with RSM Richter Inc. as proposal trustee (the "Proposal Trustee"), such report to be filed on or before January 18, 2008, subject to further order of this Court.

8. **THIS COURT ORDERS** that, except with leave of the Court, no proceeding or enforcement process shall be commenced or continued in respect of the non-performance by SAAN of its obligations under the 2005 Proposal, and all rights and remedies of any person, including the Proposal Trustee and all creditors and inspectors appointed in respect of the 2005 Proposal, are hereby stayed and suspended pending delivery by the Monitor of its report with respect to the 2005 Proposal and leave of this Court.

9. **THIS COURT ORDERS** that the Applicant shall exclude all claims of creditors under the 2005 Proposal from any plan of arrangement or compromise to be filed by the Applicant and all claims of creditors under the 2005 Proposal shall be unaffected claims in any such plan of arrangement or compromise.

10. **THIS COURT ORDERS** that, notwithstanding any provisions of the Initial Order, the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) all outstanding and future fees and disbursements of the Monitor and of any consultants, agents, experts, accountants, counsel and such other persons retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

RESTRUCTURING OFFICER

11. **THIS COURT ORDERS** that the engagement of Distribution Consultants of Canada Inc. and Paul Mason as Restructuring Officer of SAAN (collectively, the "RO") is authorized and approved, and SAAN is authorized and directed to execute a retainer agreement substantially on the terms described in the affidavit of Julie Rulli sworn December 21, 2007, including the powers and duties described in Exhibit "M" to such affidavit, and otherwise on such other terms as may be agreed upon by the RO and the Applicant and approved by the Monitor (the "Retainer Agreement").

12. **THIS COURT ORDERS** that the RO shall have the powers and duties set out in the Retainer Agreement.

13. **THIS COURT ORDERS** that the RO shall not incur any liability or obligation as a result of the fulfilment of his or its duties, save and except for any liability or obligation arising from the gross negligence or wilful misconduct of the RO, and no action or proceedings may be commenced against the RO relating to its or his appointment or conduct as RO except with the prior leave of this Court obtained on at least seven (7) days notice to SAAN and the RO.

14. **THIS COURT ORDERS** that the RO shall be entitled to the benefit of the Administration Charge (as defined in paragraph 30 of the Initial Order) as security in respect of its fees and disbursements incurred in connection herewith.

DIP FINANCING

15. **THIS COURT ORDERS** that the entering into of the forbearance agreement dated as of December 17, 2007 between the DIP Lender and the Applicant (the "Forbearance Agreement") providing for, among other things, the continuation and amendment of the loan agreement dated as of January 9, 2006 (as the same was amended pursuant to the waiver and first amendment to the loan agreement dated as of March 28, 2006, the waiver and second amendment to the loan agreement dated as of September 15, 2006, the waiver and third amendment to the loan agreement dated as of June 21, 2007 and the Forbearance Agreement dated as of December 17, 2007, and as the same may be further amended, revised or restated from time to time) (the "DIP Loan Agreement") is hereby approved, ratified and confirmed.

16. **THIS COURT ORDERS** that all Lender's Liens (as defined in the DIP Loan Agreement) be and are ratified and confirmed and shall continue in full force and effect securing all Obligations (as defined in the DIP Loan Agreement).

17. **THIS COURT ORDERS** that, notwithstanding any other provision of this order or any other orders made in these proceedings, the Applicant is hereby authorized and empowered to borrow, repay and re-borrow from the DIP Lender such amounts as the Applicant may consider necessary or desirable pursuant to the revolving credit facility under the DIP Loan Agreement, up to a maximum principal amount of \$30 million up to and including December 31, 2007, and thereafter, up to a maximum principal amount of \$25 million, outstanding at any time (subject always to the terms and limits provided for under the DIP Loan Agreement) in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures.

18. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, together with the DIP Loan Agreement and all existing and future security and other documents in respect thereof, the "DIP Documents"), as are contemplated by the DIP Loan Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof.

19. **THIS COURT ORDERS** that the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Documents (including, for greater clarity, the utilization of cash management arrangements) as and when the same become due and are to be performed, notwithstanding any other provision of this Order or of any other order in these proceedings.

20. **THIS COURT ORDERS** that, as security for any and all advances made by the DIP Lender from and after the date hereof and all other obligations of the Applicant under the DIP Documents, the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Charge") on the Property, which charge shall not exceed the aggregate amount owed to the DIP Lender under the DIP Documents. The DIP Charge shall have the priority set out in paragraph 23 hereof.

21. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order or of any other order in these proceedings:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the DIP Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Charge, the DIP Lender, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Loan Agreement, the DIP Documents and the DIP Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Loan Agreement, the DIP Documents or the DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant, and upon the occurrence of an event of default under the terms of the DIP Documents, the DIP Lender shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicant to repay amounts owing to the DIP Lender in accordance with the DIP Documents and the DIP Charge, but subject to the priorities as set out in paragraph 23 of this Order; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

22. **THIS COURT ORDERS AND DECLARES** that, notwithstanding anything contained in this order or in any other order made in these proceedings, the rights of the DIP Lender in connection with or pursuant to the DIP Documents shall be unaffected by the orders made in these proceedings and the DIP Lender shall be treated as unaffected by any stay created in these proceedings and as unaffected in any plan of arrangement or compromise filed by the Applicant

under the CCAA, or any proposal filed by the Applicant under the BIA, with respect to any advances made under the DIP Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY COURT ORDER

23. **THIS COURT ORDERS** that the priorities of the DIP Charge, the Administration Charge and the Directors' Charge, as among them, shall be as follows:

- (a) First priority - Administrative Charge (up to a maximum of \$1,000,000);
- (b) Second priority - DIP Charge;
- (c) Third priority – Administrative Charge (for any amounts over \$1,000,000) and
- (d) Fourth priority - Directors' Charge

provided that all charges referred to in this paragraph and any other charges are subject to the right of Applicants' counsel to look to and be paid from the funds, if any, held in trust by the Applicant's counsel pursuant to paragraph 29 of the Initial Order, and the rights of the Monitor and the Monitor's counsel to look to and be paid from any funds held in trust by the Monitor as a retainer.

24. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the DIP Charge or the Directors' Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

25. **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, whether created by Court orders or otherwise, and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

26. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any

Property that rank in priority to, or pari passu with, any of the Administration Charge, the DIP Charge or the Directors' Charge, unless the Applicant shall have first obtained the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Administration Charge and the Directors' Charge or a further Order of this Court.

27. **THIS COURT ORDERS** that none of the Administration Charge, the Loan Agreement, the Definitive Documents, the DIP Charge and the Directors' Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Loan Agreement or the DIP Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Loan Agreement, the creation of the Charges, or the execution, delivery or performance of the DIP Documents; and

(c) the payments made by the Applicant pursuant to this Order or the DIP Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

REGISTERED AT / INSCRIT À TORONTO
BOOK NO:
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