

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No. 500-11-054208-182
DATE: April 12, 2018

PRESIDING: Me Julie Bégin, registraire

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

COMPTOIR DES INDES INC. (operating under the trade name CDI Furniture)

Debtor/Petitioner

-and-

KPMG INC.

Trustee

-and-

THE PARTIES LISTED IN THE ANNEXED SERVICE LIST

-and-

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL
RIGHTS (Québec)

Mises-en-Cause

APPROVAL AND VESTING ORDER

- [1] **ON READING** Comptoir des Indes Inc.'s (the "**Debtor**") *Application for Authorization to Sell Certain Assets of the Debtor, Directions and Other Related Orders* (the "**Application**"), the affidavit and the exhibits in support thereof, as well as the Report of the Trustee dated April 11, 2018 (the "**Report**");
- [2] **SEEING** the notification/service of the Application;

- [3] **SEEING** the submissions of counsel;
- [4] **SEEING** that, subject to what is provided for herein, it is appropriate to issue an order approving the sale and other transactions (collectively, the "**Transaction**") contemplated by the Proposed Offer, dated April 5, 2018 (the "**Offer**") by and between the Debtor (the "**Vendor**"), as vendor, and Container Direct International Furniture Inc. and Concept Design Innovation Furniture Inc. (the "**Purchaser**"), as purchaser, a copy of which was filed as **Exhibit P-3** to the Application, and vesting in the Purchaser the assets described in the Offer (the "**Purchased Assets**") and as set forth at **Schedule "A"** hereto.

WHEREFORE THE COURT:

- [5] **GRANTS** the Application;

NOTIFICATION/SERVICE

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

SALE APPROVAL

- [8] **AMEND** the Closing date contemplated in the SSP Procedure (Exhibit P-5) and in the SSP Approval Order for April 30, 2018 or such later date designated by the Debtor with the consent of the Trustee;
- [9] **ORDERS** and **DECLARES** that, on the condition that the Purchaser reaches an agreement with the Vendor's secured creditors, Canadian Imperial Bank of Commerce and Business Development Bank of Canada (the "**Secured Creditors**"), regarding the assumption by the Purchaser of certain of the Vendor's debts as set forth in the Offer (the "**Financing Debts**") or reaches any other satisfactory agreements to the Secured Creditors regarding the repayment of the Financing Debts (the "**Closing Condition**"), the Transaction is hereby approved, and the execution of the Offer by the Vendor is hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed by Vendor and Purchaser, with the consent of the Trustee.

EXECUTION OF DOCUMENTATION

- [10] **AUTHORIZES**, subject to the prior fulfillment of the Closing Condition, the Vendor and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Offer (**Exhibit P-3**) and any other ancillary document which could be required or useful to give full and complete effect thereto (including the execution of the "Agreement of Sale" contemplated by the Offer), subject to non-material alterations, changes, amendments, deletions or additions thereto as may be agreed by Vendor and Purchaser and to execute all other agreements, contracts, deeds or any other documents and do all other things necessary in order to give full and complete effect to the Transaction.

AUTHORIZATION

- [11] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Vendor to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.
- [12] **ORDERS** and **DECLARES** that upon the issuance of a Trustee's certificate substantially in the form appended as **Schedule "B"** hereto (the "**Certificate**"), all right, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, right of retention, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, contractual rights relating to the Purchased Assets, or other claims or encumbrances, whether or not they have been attached or perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable property, excluding however, the permitted encumbrances listed on **Schedule "C"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be cancelled, expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.

- [13] **ORDERS** and **DECLARES** that upon the issuance of the Certificate, all of the Vendor's right, title and interest in and to and obligations under the agreements listed on **Schedule "D"** hereto (the "**Assigned Lease Agreements**") are assigned and transferred to the Purchaser.
- [14] **ORDERS** that, in addition to the Vendor, the Purchaser will henceforth be liable to fulfill all of the Vendor's obligations under the Assigned Lease Agreements.
- [15] **ORDERS** that any anti-assignment and consent to assignment provisions in the Assigned Lease Agreements and any right of a landlord or lessor to cancel any such agreement in the event of an assignment shall not apply to the transfer and assignment of the Assigned Lease Agreements by the Vendor to the Purchaser and shall not restrict, limit, impair, prohibit or otherwise affect the transfer and assignment of the Assigned Lease Agreements.
- [16] **ORDERS** that all monetary defaults in relation to the Assigned Lease Agreements occurring, arising or accruing prior to the date of the assignment or transfer to the Purchaser, other than those arising by reason only of the Vendor's insolvency or failure to perform a non-monetary obligation, shall be remedied by the Purchaser within thirty (30) days from the issuance of the Certificate.
- [17] **DECLARES** that upon issuance of the Certificate, the Transaction shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*.
- [18] **ORDERS** and **DIRECTS** the Trustee to communicate a copy of this Order to every party to the Assigned Lease Agreements by email or registered mail.
- [19] **ORDERS** and **DIRECTS** the Trustee to file with the Court a copy of the Certificate, forthwith after issuance thereof.

VALIDITY OF THE TRANSACTION

- [20] **ORDERS** that notwithstanding:
- (i) the pendency of these proceedings;
 - (ii) any petition for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition; or
 - (iii) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Offer pursuant to this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendor, the Purchaser or the Trustee.

LIMITATION OF LIABILITY

- [21] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Trustee to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Trustee shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the BIA.
- [22] **DECLARES** that no action lies against the Trustee by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Trustee or belonging to the same group as the Trustee shall benefit from the protection arising under the present paragraph.

GENERAL

- [23] **ORDERS** that the Purchaser or the Trustee shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.
- [24] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [25] **DECLARES** that the Trustee shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Trustee shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Trustee as may be deemed necessary or appropriate for that purpose.
- [26] **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.

[27] **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, SAVE IN THE EVENT OF CONTESTATION



Groleau Gauthier Plante LLP
Me Jean Lozeau
Me Josée Brière
Attorneys for the Debtor/Petitioner

COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR



Personne désignée par le greffier

SCHEDULE "A"
PURCHASED ASSETS

All corporeal/tangible and incorporeal/intangible property, of any nature, form or location whatsoever which is, as of the "Closing Date" (as defined in the Offer), owned by the Debtor or in which the Debtor has any right, title or interest (to the extent of such interest), save and except for the hereafter defined "Excluded Property and Rights", but including, without limitation, the following:

- (a) All leases and similar agreements including all amendments thereto for the Debtor's occupancy of the following (collectively the "**Acquired Premises Leases**") as described hereto:
 - (i) The showroom premises; and
 - (ii) The Debtor's head office and warehouse located at 5950, Côte-de-Liesse Road, Montreal, Quebec, H4T 1RE2
- (b) the equipment leases and similar agreements hereto for the Debtor's leasing of certain equipment and all accessories to such equipment (the "**Acquired Equipment Lease**");
- (c) all of the Debtor's goods, wares, merchandise and inventory wherever situated, including without limitation, all in-transit inventory and/or on-order inventory (the "**In-transit Inventory**"), the full benefit of all deposits or other partial payments made by the Debtor to the suppliers of all of the foregoing, except the Excluded Property and Rights (collectively the "**Inventory**"). "Excluded Property and Rights" means any furniture or furniture designs which are allegedly infringing the rights of Halo Creative and Design Limited, Halo Trademarks Limited or Halo Americas Limited in a judgement presented in the United-States, District Court for the Northern District of Illinois Eastern Division;
- (d) all of the Debtor's furniture, fixtures, computers hardware and software, office equipment, equipment, rolling stock wherever situated;
- (e) all intellectual property in its broadest sense including, without limitation, all patents, trademarks, copyrights, tradenames, designs and all other intellectual property, except the Excluded Property and Rights;

- (f) all accounts receivable and claims, other than the counter-claim of the Debtor against Halo Creative and Design Limited, Halo Trademarks Limited or Halo Americas Limited;
- (g) all goodwill pertaining to the Business carried on by the Debtor including, without limitation, the right of Proposed Purchaser to continue to carry on the Business for the Proposed Purchaser's own account and to the complete exoneration of the Debtor;
- (h) all monies and cash on hand held by the Debtor or held by any financial institution(s) on behalf of the Debtor

SCHEDULE "B"
DRAFT CERTIFICATE OF THE TRUSTEE

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

N°: 500-11-054208-182
N°: 41-2353388

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

COMPTOIR DES INDES INC. (operating
under the trade name CDI Furniture)

Debtor/Petitioner

-and-

KPMG INC.

Trustee

-and-

THE PARTIES LISTED IN THE
ATTACHED SERVICE LIST;

-and-

THE REGISTRAR OF THE REGISTER OF
PERSONAL AND MOVABLE REAL
RIGHTS (Québec)

Mises-en-causes

CERTIFICATE OF THE TRUSTEE

RECITALS:

WHEREAS on ●, 2018, the Superior Court of Quebec (the "**Court**") issued an order (the "**Vesting Order**") pursuant to the *Bankruptcy and Insolvency Act*, Canada (the "**BIA**") thereby, *inter alia*, authorizing and approving the execution by Comptoir des Indes Inc. (the "**Debtor**") of that certain offer to purchase made by Container Direct

International Furniture Inc. and Concept Design Innovation Furniture Inc. (the "**Purchaser**") on April 5, 2018 and accepted by the Debtor on April 6, 2018 (the "**Offer**"), a copy of which was filed into the Court record, and into all of the sale and other transactions contemplated therein (the "**Transaction**") with such non-substantial modifications, changes, amendments, deletions or additions thereto as may be agreed by the Debtor, the Purchaser and the Trustee;

WHEREAS the Vesting Order contemplates the issuance of this Certificate of the Trustee once:

- (a) the Purchaser concluded an agreement with the Vendor's secured creditors, Canadian Imperial Bank of Commerce and Business Development Bank of Canada (the "**Secured Creditors**"), regarding the assumption by the Purchaser of certain of the Vendor's debts as set forth in the Offer (the "**Financing Debts**") or concluded any other satisfactory agreements to the Secured Creditors regarding the repayment of the Financing Debts;
- (b) the Agreement of Sale contemplated by the Offer (the "**Agreement of Sale**") has been executed and delivered;
- (c) the "Purchase Price" (as defined in the Offer) (the "**Purchase Price**") has been paid by the assumption of the Financing Debts, as set forth in the Offer; and
- (d) all conditions to the closing of the Transaction have been satisfied or waived by all parties thereto.

THE TRUSTEE CERTIFIES THE FOLLOWING:

- (a) an agreement has been concluded between the Purchaser and the Secured Creditors regarding the Financing Debts;
- (b) the Agreement of Sale has been executed and delivered;
- (c) the Purchase Price has been paid by the Debtor's assumption of the Financing Debts, as set forth in the Offer; and
- (d) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Trustee at ____ [TIME] on _____ [DATE].

KPMG INC., in its capacity as Trustee to the Notice of Intention to Make a Proposal of Comptoir des Indes Inc., and not in its personal capacity.

Name: _____

Title: _____

SCHEDULE "C"
PERMITTED ENCUMBRANCES

- a) Notice of intention to give security under Section 427 of the *Bank Act* registered on February 10, 2016 under number 01304543 charging the Debtor's goods, wares, merchandise and inventory;

- b) Movable hypothec published by CIBC on February 5, 2016 in the RDPRM under number 16-0097204-0001 charging the Debtor's present and future, accounts receivable and inventory;

- c) Movable hypothec published by BDC on May 12, 2016 in the RDPRM under number 16-0439316-0001 charging the Debtor's Property;

- d) Movable hypothec published by CIBC on February 28, 2017 in the RDPRM under number 17-0176281-0001 charging the Debtor's present and future, accounts receivable and inventory; and

- e) Cession of rank published by BDC on April 21, 2017 in the RDPRM under number 17-0366824-0001 giving priority to the CIBC over the Debtor's present and future, accounts receivable and inventory;

- f) The Administration Charge and D&O Charge as approved by the Court in the Charge Order rendered by Me Chantal Flamand, registrar, on March 16, 2018 in the present file;

SCHEDULE "D"

ASSIGNED LEASE AGREEMENTS

- A. leases or similar agreements, including all amendments thereto and offers to lease, for the Debtor's occupancy of the following premises:

PREMISES	
(1)	5950, Côte-de-Liesse Road, Montréal, Québec, H4T 1E2 Lease with Investments Brazdan Inc. dated November 3, 2014
(2)	211, East Commerce Avenue, High Point, North Carolina Lease with Market Centers, LLC, dated September 13, 2016
(3)	475, S. Grand Central PKWY, Las Vegas, Nevada Lease with International Market Centers, WMCV Phase 2, LLC, dated November 22, 2013 (first amendment: September 18, 2015 and second amendment: June 6, 2016)

- B. that certain "Leasing Agreement" dated November 5, 2015 between Holand Leasing 1995 Ltd as lessee and the Debtor, as lessor, for the Debtor's leasing of certain vehicle, published by notice thereof at the RDPRM on November 26, 2015 under no. 15-1152634-0007.

SERVICE LIST

Banque de développement du Canada

a/s Borden Ladner Gervais S.E.N.C.R.L.

Me Hugo Anthony Babos-Marchand

1000, rue de la Gauchetière Ouest, bureau 900

Montréal (Québec) H3B 5H4

Banque canadienne impériale de commerce

a/s de McCarthy Tétrault S.E.N.C.R.L.

Mes Philippe H. Bélanger et Noah Zucker

1000, rue de la Gauchetière Ouest, bureau 2500

Montréal (Québec) H3B 0A2