

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

Nos. **500-11-062928-235** (main number after the present consolidation)
500-11-062927-237
500-11-062929-233

DATE: **November 3, 2023**

PRESIDING : Me VINCENT-MICHEL AUBÉ, Registrar (JA0858)

IN THE MATTER OF THE RECEIVERSHIP OF:

**LXR PRODUITS DE LUXE INTERNATIONAL INC.
LXR CANADA INC.
GROUPE GLOBAL LXR INC.**

Debtors

-and-

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

Mis-en-Cause

-and-

CANADIAN IMPERIAL BANK OF COMMERCE

Petitioner

-and-

KPMG INC.

Receiver

**ORDER APPOINTING A RECEIVER
(Section 243 of the *Bankruptcy and Insolvency Act*)**

- [1] **ON READING** the *Application to Appoint a Receiver and to Approve and Implement a Transaction* (the "**Application**") of the Petitioner, Canadian Imperial Bank of Commerce, the affidavit and the exhibits in support thereof, as well as the report of KPMG Inc. ("**KPMG**") dated November 1, 2023;
- [2] **SEEING** the service of the Application and the absence of the contestation;
- [3] **SEEING** the submissions of counsel and the representations regarding the urgency of the situation;
- [4] **SEEING** that Petitioner sent each of the Debtors a notice pursuant to the terms of Article 244 of the *Bankruptcy and Insolvency Act* (the "**BIA**") and a prior notice of the exercise of a hypothecary right under articles 2757 and following of the *Civil Code of Québec*;
- [5] **SEEING** that it is appropriate to appoint a receiver to the Property (such as defined herein) of the Debtors;

WHEREFORE THE COURT:

- [6] **GRANTS** the Motion;

SERVICE

- [7] **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 service thereof.
- [8] **PERMITS** service of this Order (this "**Order**") at any time and place and by any means whatsoever.

APPOINTMENT

- [9] **APPOINTS** KPMG (Mr. David Malin), trustee, to act as receiver (the "**Receiver**") to the Property of the Debtors until one of the following events comes to pass:
 - (a) the sale of all the Property; or
 - (b) the issuance of any order by the Court terminating the mandate of the Receiver;
- [10] **DECLARES** that this Order and its effects shall survive the filing by any of the Debtors of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of any of the Debtors pursuant to the terms of the *Companies' Creditors Arrangements Act* (the "**CCAA**") or the bankruptcy of any of the Debtors, unless the Court orders otherwise.
- [11] **ORDERS** the **consolidation** of these receivership proceedings of the Debtors under one single Court file and that all proceedings, filings, and other matters in these proceedings be filed jointly and together in Court file number **500-11-062928-235**.

- [12] **DECLARES** that the **consolidation** of these proceedings in respect of the Debtors shall be for administrative purposes only and shall not effect a consolidation of the assets and property or of the debts and obligations of each of the Debtors.
- [13] **DECLARES** that this Order and all of its provisions are effective as of 00:01 a.m. (Montréal time), province of Québec, on the date of this Order.

RECEIVER'S POWERS

- [14] **AUTHORIZES** the Receiver to exercise the following powers in respect of the Debtors' Property described below (the "**Property**"):

- All movable (personal) property of each of the Debtors, of every nature and kind whatsoever, wherever situated, and regardless of whose possession it may be in.

14.1 Powers related to the possession of the Property

- (a) all the powers necessary to take possession of the Property and to exercise the following powers listed hereinafter in the place and stead of any of the Debtors in respect of the Property;

14.2 Powers related to the preservation of the Property

- (b) all the powers necessary for the preservation and for the protection of the Property;
- (c) all the powers necessary to control the Property, the place of business and the premises occupied by any of the Debtors;
- (d) all the powers necessary to grant the Receiver access, at all times, to the place of business and to the premises of any of the Debtors, to the Property, and to change the locks granting access to such premises and places of business of any of the Debtors;
- (e) all the powers necessary to grant the Receiver access to all the accounting records of any of the Debtors, as well as to any document, contract, register of any nature or kind whatsoever, wherever they may be situated and regardless of the medium on which they may be recorded (the "**Records**"), as well as the powers necessary to make copies of all the Records necessary or useful to the execution of the Receiver's functions;
- (f) all the powers necessary to undertake an analysis of any of the Debtors' Records;

14.3 Powers related to the Debtors' operations

- (g) carry on, all or any part of the Debtors' operations;
- (h) all the powers necessary to control the Debtors' receipts and disbursements;

- (i) all the powers necessary to collect all the accounts receivable and all the other claims any of the Debtors and to transact in respect of same, as well as to sign any document for this purpose;
- (j) all the powers necessary to open any required bank account, pursuant to the terms and conditions the Receiver may determine, with any chartered Canadian bank, or any other financial institution, the whole, in order to cash any item payable to any of the Debtors, and to issue any payment which, in the opinion of the Receiver, is necessary or useful to the Debtor's operations;

14.4 Powers related to the disposition or sale of the Property

- (k) all the powers necessary to enter into the Asset Purchase Agreement (the "**Purchase Agreement**") by and between Receiver, as vendor, and Fashionphile Group, LLC, as purchase (the "**Purchaser**"), copy of which was filed as Exhibit R-11A to the Application, and to take any further action or execute any further document that is necessary or useful to implement or give effect to the transaction contemplated in the Purchase Agreement and to convey to the Purchased Assets (as defined in the Purchase Agreement) to the Purchaser.
 - (l) all the powers necessary to carry out the sale or the disposition of any of the Property in the ordinary course of business of the Debtor, to transact in that regard, and to sign any document or any contract required or useful for these purposes or meant to give effect to any such sale or disposition;
 - (m) all the powers necessary to interest or solicit one or several potential buyers of all or any part of the Property, including, without limitation, the right to carry out a public call for tenders or private solicitations in order to dispose of the Property;
 - (n) notwithstanding anything in this Order, to dispose of all or any part of the Property outside the ordinary course of business and without authorization of the Court, with the written consent of the Petitioner, where the book value of the Property being disposed of is less than \$50,000, upon finding a purchaser and pursuant to conditions it deems reasonable in the circumstances;
- [15] **ORDERS** the Receiver to petition the Court for authorization to sell all or any part of the Property outside the ordinary course of business, upon finding a purchaser and pursuant to conditions it deems reasonable in the circumstances;
- [16] **GRANTS** the Receiver all the powers necessary to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate, including for the purpose of Sections 34 and 249 of the BIA, within the performance of its duties regarding the Property;
- [17] **AUTHORIZES** the Receiver to retain the services of any lawyer, or of any person or business in order to appropriately fulfil its functions;

- [18] **DECLARES** that the Receiver may provide creditors and other relevant stakeholders with information in response to requests made by them in writing. A copy of such requests must be sent to the Petitioner's attorney. Where the Receiver has been advised by the Petitioner that information is confidential, proprietary or competitive, the Receiver shall not provide such information to any person without the consent of the Petitioner unless otherwise directed by this Court.

DEBTORS' DUTIES

- [19] **ORDERS** each of the Debtors, its directors, officers, employees, agents and representatives to forthwith provide the Receiver with access to the Property, to the places of business and to the premises of any of the Debtors, as well as to the Records;
- [20] **ORDERS** each of the Debtors, its directors, officers, employees, agents and representatives to cooperate with the Receiver in the exercise of the powers that are granted pursuant to the terms of the Order;
- [21] **ORDERS** each of the Debtors not to dispose, alienate, encumber or otherwise transact in any manner whatsoever, with regard to the Property, other than in the ordinary course of business or with the authorization of the Receiver;

NON-INTERFERENCE WITH THE RECEIVER, THE DEBTORS AND THE PROPERTY

- [22] **ORDERS** that subject to any other order rendered by the Court, which may only be rendered after a prior notice has been duly sent to the Receiver and to the Petitioner, no proceeding, seizure, revendication, or any other enforcement process shall be commenced or enforced against the Property;
- [23] **ORDERS** that no person shall interrupt, modify, terminate or fail to execute its obligations pursuant to any contract, agreement, license or permit entered into with any of the Debtors without the prior consent of the Receiver or without the authorization of the Court;

CONTINUATION OF SERVICES

- [24] **ORDERS** that any person having an oral or written agreement with any of the Debtors, as well as any supplier of goods or services to any of the Debtors is hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, as may be required by the Receiver and that the Receiver shall be authorized to continue use of the Debtors' current premises, telephone numbers, facsimile numbers, internet addresses, domain names and other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver, in accordance with the normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court;

EMPLOYEES

- [25] **AUTHORIZES** the Receiver to continue to engage the services of any of the Debtors' employees until the Receiver, acting for and on behalf of any of the Debtors, terminates the employment of such employees. The Receiver shall not be liable for any employee related liabilities, including any successor-employer liabilities as provided for in sections 14.06(1.2) of the *BIA* other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*;

PROTECTION OF PERSONAL INFORMATION

- [26] **DECLARES** that pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, the Receiver may disclose personal information on identifiable individuals, which information it has in its possession or under its responsibility, to interested parties or to investors, financiers, prospective purchasers or potential strategic partners, as well as to their advisors, but only to the extent desirable or required, and only upon condition that the persons to whom such personal information is disclosed shall undertake to maintain and protect the privacy of such information and limit the use of such information pursuant to confidentiality agreements entered into with the Receiver.

LIMITATION OF LIABILITY

- [27] **DECLARES** that subject to the powers granted to the Receiver pursuant to the terms of paragraph 14 of the Order, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the *BIA*;
- [28] **DECLARES** that the powers of the Receiver shall be exercised pursuant to its sole discretion and judgment;
- [29] **DECLARES** that section 215 of the *BIA* applies *mutatis mutandis*, and hence that no action lies against the Receiver by reason of its appointment or the execution of the powers granted by the Court, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph;

FEEES

- [30] **AUTHORIZES** the Receiver to collect the payment of its fees and disbursements and those of its attorneys, with the consent of the Petitioner, the whole subject to taxation in conformity with the *BIA*, if applicable;
- [31] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a bankruptcy order filed pursuant to the *BIA* in respect of any of the Debtors and any bankruptcy order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of any of the Debtors and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Receiver pursuant to the Order do not and will not constitute settlements, fraudulent

preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under an applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy, and any receiver to the Property of any of the Debtors;

GENERAL

- [32] **DECLARES** that the Order, the Application and the affidavit filed in support thereof do not, in and of themselves, constitute a default or failure to comply by any of the Debtors under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;
- [33] **DECLARES** that the Receiver is at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the Records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail;
- [34] **DECLARES** that the Receiver and any party interested in these proceedings may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels' email addresses;
- [35] **DECLARES** that, unless otherwise provided herein, ordered by this Court, or provided by the BIA, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a notice of appearance on the solicitors for the Receiver and has filed such notice with the Court;
- [36] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Receiver, the Debtors and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;
- [37] **DECLARES** that the present Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [38] **DECLARES** that the Receiver 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 any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Receiver shall be the foreign representative any of the Debtors. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose;

- [39] **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;
- [40] **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 VINCENT-MICHEL AUBÉ
REGISTRAR

JA 0858