

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)



THE HONOURABLE)

FRIDAY, THE 25th DAY

)

JUSTICE HAINEY)

OF SEPTEMBER 2020

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
MENDOCINO CLOTHING COMPANY LTD., A CORPORATION WITH A HEAD
OFFICE IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc. (formerly KSV Kofman Inc.), in its capacity as proposal trustee (the "Proposal Trustee") of Mendocino Clothing Company Ltd. (the "Debtor"), for an order approving the sale transaction (the "Transaction") contemplated by an asset purchase agreement (the "Sale Agreement") between the Company and Shop MBoutique Ecomm Ltd. (the "Purchaser") appended to the Second Report of the Proposal Trustee dated September 16, 2020 (the "Second Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets") was heard this day virtually by Zoom videoconference due to the COVID-19 crisis.

ON READING the Motion Record of the Proposal Trustee, the Second Report and on hearing the submissions of counsel for the Proposal Trustee and the Debtor, no one else

appearing for any other person on the service list, although served as evidenced by the Affidavit of Liberty Thorpe sworn September 17, 2020, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Debtor is hereby authorized and approved, with such minor amendments as the Debtor may deem necessary and approved by the Proposal Trustee. The Debtor is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Proposal Trustee's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, 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, 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 or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of The Honourable Madam Justice Conway dated August 10, 2020; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) 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 Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Proposal Trustee's Certificate, forthwith after delivery thereof.

5. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Debtor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser 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 Debtor.

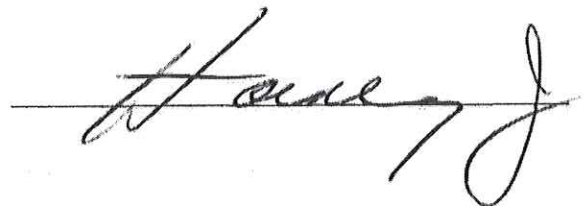
6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **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 Proposal Trustee, the Debtor and their 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 Proposal Trustee, as an officer of this Court, and the Debtor as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee, the Debtor and their agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be, when the Court returns to regular operations.

A handwritten signature in black ink, appearing to read "H. J.", is written over a horizontal line. The signature is cursive and stylized.

Schedule A – Form of Proposal Trustee’s Certificate

Estate/Court File No. 31-2658047

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
MENDOCINO CLOTHING COMPANY LTD., A CORPORATION WITH A HEAD
OFFICE IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

PROPOSAL TRUSTEE’S CERTIFICATE

RECITALS

A. On July 14, 2020, Mendocino Clothing Company Ltd. (the “**Debtor**”) filed a notice of intention to make a proposed under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and KSV Kofman Inc. (now known as KSV Restructuring Inc.), was named proposal trustee (the “**Proposal Trustee**”).

B. Pursuant to an Order of the Court dated September 23, 2020 (the “**Order**”), the Court approved the asset purchase agreement (the “**Sale Agreement**”) between the Debtor and Shop MBoutique Ecomm Ltd. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; and (ii) that the Transaction has been completed to the satisfaction of the Proposal Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Order or the Sale Agreement.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid the Purchase Price for the Purchased Assets and the Proposal Trustee has received the Purchase Price; and
2. The Transaction has been completed to the satisfaction of the Proposal Trustee.
3. This Certificate was delivered by the Proposal Trustee at _____ [TIME] on September ●, 2020.

KSV RESTRUCTURING INC.
in its capacity as proposal trustee of
Mendocino Clothing Company Ltd.

Per: _____
Name:
Title:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE
A PROPOSAL OF MENDOCINO CLOTHING COMPANY LTD.,
A CORPORATION INCORPORATED UNDER THE LAWS OF ONTARIO

Court File No.: 31-2658047

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

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

**GOLDMAN SLOAN NASH & HABER
LLP**
480 University Avenue, Suite 1600
Toronto, Ontario M5G 1V2

Mario Forte LSO#: 27293F

Tel: 416.597.6477
Fax: 416.597.3370

Lawyers for KSV Kofman Inc.,
Proposal Trustee

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

Jennifer Stam LSO#: 46735J

Tel: +1 416.202.6707
Fax: +1 416.216.3930

Lawyers for KSV Kofman Inc.,
Proposal Trustee