

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

**IN THE MATTER OF THE PROPOSAL OF
CLOTHING FOR MODERN TIMES LTD.
A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO WITH A
HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO**

FOURTH REPORT OF THE PROPOSAL TRUSTEE

SEPTEMBER 21, 2011

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INTRODUCTION

1. On June 27, 2011, Clothing for Modern Times Ltd. (“**CMT**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) under Section 50.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). A. Farber & Partners Inc. (“**Farber**”) was appointed as Trustee in the Proposal of the Company (the “**Proposal Trustee**”). A copy of the Certificate of Filing a Notice of Intention to Make a Proposal is attached hereto as **Appendix “A”**.
2. CMT is an Ontario-incorporated company that designs, produces and markets trendy apparel styles under the retail businesses: Urban Behavior (“**UB**”), Costa Blanca (“**CB**”) and Costa Blanca X (“**CBX**”), with a head office premises located at 300 Supertest Road, Toronto.
3. At the time of filing the NOI, the Company employed 1,682 employees, of which approximately 1,316 are hourly retail employees.
4. CMT has experienced declining sales and reduced profit margins over the past three years attributed mainly to the poor economic climate for retail operations and the entry of direct competitors in the Canadian marketplace.
5. On June 24, 2011, the Company’s primary secured lender, Roynat Asset Finance, a Division of Roynat Inc. (“**Roynat**”) demanded repayment of its loans and issued a Notice of Intention to Enforce Security under Section 244 of the BIA. CMT consented to the immediate enforcement of Roynat’s security.

6. Roynat, CMT and other related entities to CMT, as guarantors, entered into a forbearance agreement dated June 24, 2011 (the “**Forbearance Agreement**”), whereby Roynat agreed to forbear from taking certain actions under its security and agreed to maintain its credit facilities pursuant to the Roynat Loan (as defined below), subject to the terms and conditions contained in the Forbearance Agreement.
7. Pursuant to Orders of the Honourable Madame Justice Hoy dated July 11 and 22, 2011 (the “**July Orders**”), the Court approved, *inter alia*, (i) the post-filing advances and Over-Advances to the Company by Roynat, (ii) a super-priority charge in favour of Roynat to secure payment of the money advances by Roynat post-filing, (iii) an Administration Charge to secure the reasonable fees and disbursements of CMT’s legal and financial advisors, the Proposal Trustee and its legal counsel; (iii) a self-liquidation plan by CMT of 26 stores identified for closure (the “**Liquidation Stores**”) and a key employee retention and incentive plan (“**KERP**”) for certain key employees employed in the Liquidation Stores, (iv) a process for the removal of fixtures, (v) a process for the marketing and sale of the UB and CBX businesses; (vi) a charge in favour of certain of CMT’s real property landlords, and (vii) two extensions of time for CMT to file a proposal to its creditors, the last extension expiring on September 12, 2011. Copies of the July Orders are attached hereto as **Appendix “A”**.
8. On September 12, 2011, CMT sought and obtained an eleven-day extension of time to September 23, 2011 to file a proposal in order to review the offers received and continue negotiations with a prospective purchaser.

PURPOSE OF THIS REPORT

9. The purpose of this Fourth Report of the Proposal Trustee (“**Fourth Report**”) is to:

- a) advise the Court and comment on the Company’s request for approval to self-liquidate inventory and fixtures at fifteen additional stores (the “**Additional Stores**”);
- b) support the Company’s request to seek approval to extend the KERP to the Key Store Employees (as defined in the First Report) employed at the Additional Stores; and
- c) recommend that the Company be granted a 45-day extension to November 7, 2011 for the filing of its Proposal pursuant to the BIA.

DISCLAIMER

10. Farber has relied upon the financial records and financial statements of CMT, as well as other information supplied by management, accountants, auditors and financial advisors to CMT. Our procedures and enquiries did not constitute any audit or review engagement. Farber assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this Fourth Report. Any use which any party, other than Court, makes of this Fourth Report or any reliance on or a decision made based upon it is the responsibility of such party.

RESTRUCTURING AND EXTENSION OF STAY OF PROCEEDINGS

11. The Company has filed its materials with the Honourable Court including an affidavit by Chris Johnson sworn on September 19, 2011 (the “**Johnson Affidavit**”) providing

the Company's reasons for, *inter alia*, seeking approval for self-liquidating the Additional Stores and applying the previously approved guidelines for the sale and removal of fixtures relating to the Additional Stores. In addition, the Johnson Affidavit provides the Company's reasons for requesting an extension of the NOI stay of proceedings to November 7, 2011.

12. The Proposal Trustee is advised that the Company continues to negotiate with a prospective purchaser for the sale of a portion of the UB business on a going concern basis and that once the business and legal terms have been finalized among the parties, the Company intends to bring a motion for Court approval of an asset purchase agreement.

13. As part of the restructuring plan detailed in the Johnson Affidavit, the Company has determined that it is in the best interests of the stakeholders to liquidate the Additional Stores and, accordingly, sent Notice of Lease Disclaimers for the Additional Stores on September 13, 2011 in accordance with section 65.2 of the BIA.

14. The Company intends to liquidate and remove the fixtures in the Additional Stores in accordance with the guidelines approved in the Order of the Honourable Court dated July 22, 2011.

15. The current extension of the stay of proceedings expires on Friday, September 23, 2011. In the event a further extension is not granted, the Company will be deemed bankrupt and this could negatively impact a sale of the UB business as a going concern and execution of the remainder of their restructuring plans to the detriment of all the stakeholders of the Company.

16. The Proposal Trustee is satisfied that the Company has acted and is acting in good faith and with due diligence in the proceeding to date and, if the extension being sought is granted, will allow the Company additional time to finalize negotiations with a prospective purchaser and complete a transaction for the sale of the UB business and will enhance the opportunity for the Company to make a Proposal to its creditors.
17. The Proposal Trustee is not aware of any creditor who would be materially prejudiced if the extension of the NOI stay period being requested by the Company to November 7, 2011 is granted.
18. The Company continues to manage its expenses and operate within its net cash flow projections originally filed with the Honourable Court.
19. The Proposal Trustee has been advised that the Company intends to file a revised Statement of Projected Cash Flow for the period ending November 19, 2011 (the “**Cash Flow**”) with the Honourable Court and to request that the Honourable Court seal the Cash Flow until a transaction has been completed with the prospective purchaser. Sealing is appropriate in this case since the price to be paid by the prospective purchaser would otherwise become known generally prior to a transaction being completed and thereby potentially prejudicing efforts to resell those assets should a transaction not be completed as anticipated.
20. The Forbearance Agreement provisions expire on September 24, 2011. As indicated in the Johnson Affidavit, the Company has commenced negotiations with Roynat to

extend the Forbearance Agreement and the Proposal Trustee knows of no reason why the Company would not reach an extension agreement with Roynat.

RECOMMENDATIONS

21. As a result of the above, the Proposal Trustee respectfully recommends that this Honourable Court:

- a) approve the process to self-liquidate inventory and FFE by the Company at the Additional Stores;
- b) approve the extension of the KERP to the Key Store Employees employed at the Additional Stores; and
- c) grant the Company a 45-day extension of time for the filing of its Proposal pursuant to the BIA until November 7, 2011.

All of which is respectfully submitted this 21st day of September 2011.

**A. FARBER & PARTNERS INC.
IN ITS CAPACITY AS TRUSTEE *IN RE*
THE PROPOSAL OF CLOTHING FOR MODERN TIMES LTD.**

A. Farber & Partners Inc.
