

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF DANIER LEATHER INC., a
company incorporated pursuant to the laws of the
Province of Ontario, with a head office in the City of
Toronto, in the Province of Ontario**

**FACTUM OF DANIER LEATHER INC.
(Re: Approval of Agency Agreement; Sealing Order and Stay Extension)**

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PART I ~ OVERVIEW

1. On this motion Danier Leather Inc. (the "**Company**") seeks approval of the agency agreement (the "**Agency Agreement**") dated March 1, 2016 between the Company and a contractual joint venture comprised of Merchant Retail Solutions, ULC and Gordon Brothers Canada ULC (collectively, the "**Agent**") for the liquidation of inventory (the "**Merchandise**") and furniture, fixtures and equipment ("**FF&E**") located in certain of the Company's store locations and authorizing and directing the Company to enter into and complete the transactions contemplated by the Agency Agreement, including granting the Agent's Charge (as defined below).
2. The Company sought protection under the *Bankruptcy and Insolvency Act* (the "**BIA**") by filing notice of intention (the "**NOI**") to make a proposal on February 4, 2016 in order to permit the Company to implement a Court-approved sale and investor solicitation process (the "**SISP**") with the goal of identifying one or more potential purchasers of, or investors in, the Company or its business and assets.

3. On February 8, 2016, this Court made an order approving the SISP, authorizing the Company to implement the SISP and authorizing the Company to enter into an agency agreement (the "**Stalking Horse Agreement**") with GA Retail Canada, ULC (the "**Stalking Horse Bidder**") to act as the stalking horse bidder for purposes of implementing the SISP.

4. As more particularly described herein, the Company, with the assistance of KSV Kofman Inc., in its capacity as proposal trustee (the "**Proposal Trustee**") and Consensus Advisory Services LLC and Consensus Securities LLC (jointly, the "**Financial Advisor**"), has implemented the SISP, including by running an extensive solicitation process and by conducting an auction between certain bidders, and identified the Agency Agreement as the Successful Bid (as defined below).

5. The SISP has been conducted in accordance with the Court-approved SISP procedures (the "**SISP Procedures**") appended thereto and the offers received, including the Agency Agreement have been carefully considered by the Company, in consultation with the Proposal Trustee and the Financial Advisor. The consideration under the Agency Agreement represents a premium of approximately 25% over the consideration payable under the Stalking Horse Agreement. In the circumstances, the Company is confident that the transactions contemplated by the Agency Agreement represents the maximum value for the Merchandise and FF&E.

6. The Proposal Trustee agrees with this assessment. The Proposal Trustee is also of the view that the SISP was a commercially reasonable process and supports the Company's request for approval of the Agency Agreement.

7. The Company, the Financial Advisor and the Proposal Trustee continue to negotiate with parties who submitted offers for assets of the Company other than the Merchandise and FF&E. In that regard, the Company is seeking this Court's approval to seal the offer summary prepared by the Proposal Trustee summarizing certain of these offers in order to preserve the integrity of the ongoing negotiations in respect thereof.

8. The Company is also seeking an extension of time (the "**Stay Period**") to file a proposal with the official receiver under the BIA until April 15, 2016 in order to allow the Company to continue to pursue certain of the offers it has received for its assets as well as to explore opportunities with other prospective bidders that have emerged through the SISP.

PART II ~ FACTS

9. The facts relevant to this motion are set out in the Affidavit of Brent Houlden sworn March 2, 2016 (the "**Houlden Affidavit**"), the Supplemental Affidavit of Brent Houlden sworn March 3, 2016 (the "**Supplemental Affidavit**"), the Third Report of the Proposal Trustee dated March 3, 2016 (the "**Third Report**") and the Fourth Report of the Proposal Trustee dated March 4, 2016 (the "**Fourth Report**"). The following is a summary of some of the central facts to this motion.

Background

10. The Company filed a Notice of Intention (the "**NOI**") to make a proposal under the *Bankruptcy and Insolvency Act* on February 4, 2016. The Company is an integrated designer, manufacturer and retailer of leather and suede apparel and

accessories that operates is business from 81 retail stores and outlets located across Canada. The Company employs approximately 1,088 employees.

Affidavit of Brent Houlden sworn March 2, 2016 [Houlden Affidavit] at paras. 3 and 6, Motion Record of Danier Leather Inc. [Motion Record], Tab 2

11. The Company's business is seasonal; historically approximately 40% of its annual sales have been generated in the months of November and December.

Houlden Affidavit at para. 15, Motion Record, Tab 2

12. Personal property security searches and *Bank Act* searches conducted against the Company show registrations in favour of the following parties (collectively, the "**Existing Security**"): (a) personal property and *Bank Act* registrations in favour of Canadian Imperial Bank of Commerce ("**CIBC**") in respect of an asset-based lending facility the Company has with CIBC (the "**ABL Facility**"), (b) a personal property registration in favour of Hewlett-Packard Financial Services Canada Company in respect of office equipment, and (c) personal property registrations in favour of Honda Canada Finance Inc. and Toyota Credit Canada Inc. in respect of motor vehicles leased to the Company's executives.

Houlden Affidavit at para. 44, Motion Record, Tab 2

13. Over the past several years, the Company has incurred substantial operating losses as a result of, among other things, operational challenges, increased competition and other macroeconomic trends generally affecting many Canadian retailers.

Houlden Affidavit at para. 4, Motion Record, Tab 2

14. Commencing in late 2014, the Company implemented a series of operational and other restructuring initiatives in an attempt to return the Company to profitability, including an unsuccessful seven-month marking process during the months of February to August 2015 (the "**2015 Solicitation Process**"). Despite the Company's efforts to restructure its financial affairs and turn around its operations, the Company's revenues continued to decline.

Houlden Affidavit at para. 5, Motion Record, Tab 2

15. As a result, on February 4, 2016, the Company filed the NOI for the purpose of running a sales and investor solicitation process (the "**SISP**") backstopped by a stalking horse bid.

Houlden Affidavit at paras. 6-8, Motion Record, Tab 2

The Sales Process and The Stalking Horse Agreement

16. The SISP is comprised of two phases. In the first phase, which is briefly described below, the Company, with the assistance of the Financial Advisor, canvassed the market for a stalking horse bidder (the "**Stalking Horse Process**") and ultimately identified entered into the Stalking Horse Agreement (as defined below). In the second phase of the SISP, which is described in the Houlden Affidavit and paragraphs 20 to 25 below, the Company sought offers for its business and/or assets that would improve upon the terms of the Stalking Horse Agreement.

Houlden Affidavit at para. 8, Motion Record, Tab 2

17. The Stalking Horse Process occurred from the period of December 31, 2015 to January 22, 2016 and involved the Company and/or the Financial Advisor contacting 22 parties (many of whom were contacted as part of the 2015 Solicitation

Process) and providing interested parties with access to, among other things, a data room containing information about the Company. Following receipt of offers from three interested parties, the Company entered into an agency agreement (the "**Stalking Horse Agreement**") with GA Retail Canada, ULC (the "**Stalking Horse Bidder**") to act as the stalking horse.

Houlden Affidavit at para. 9, Motion Record, Tab 2
Third Report at para. 3.2

18. The Stalking Horse Agreement contemplates that the Stalking Horse Bidder will conduct a liquidation of the Merchandise and FF&E located in the Company's stores and outlets. The Stalking Horse Bidder has guaranteed that the Company will receive a net minimum payment (the "**Guaranteed Stalking Horse Amount**") of 94.6% of the aggregate "Cost Value" (as defined and determined pursuant to the Stalking Horse Agreement) of the Merchandise. The Company would be entitled to between \$20.8 million and \$23.7 million on account of the Guaranteed Stalking Horse Amount, subject to certain adjustments and qualifications. After payment of the Stalking Horse Bidder's 5% commission from the sale of the Merchandise and the payment to the Company of the Guaranteed Amount, the Company and the Stalking Horse Bidder would share any additional proceeds of the liquidation equally. The Stalking Horse Agreement also entitles the Company to receive a share of the proceeds from the sale of the FF&E after payment of an 18% commission to the Agent (the "**FF&E Commission**").

Houlden Affidavit at para. 10, Motion Record, Tab 2

19. On February 8, 2016, this Court granted an Order (the "**Stalking Horse and SISP Order**") authorizing the Company to enter into the Stalking Horse Agreement, approving the SISP Procedures and authorizing the Company to implement the second phase of the SISP.

Houlden Affidavit at para. 37 and 41, Motion Record, Tab 2

The Implementation of the Second Phase of the SISP

20. The key dates of the SISP of second phase of the SISP were as follows:

Commencement of Second Phase of the SISP:	February 8, 2016
Bid Deadline:	February 22, 2016
Determining Successful Bid and Back-Up Bid (if there is no Auction):	No later than five business days after Bid Deadline
Advising Qualified Bidders of Auction date and location (if applicable):	No later than five business days after Bid Deadline
Auction (if applicable):	No later than seven business days after Bid Deadline
Bringing Motion for Approval:	Within five business days following determination by the Company of the Successful Bid

Houlden Affidavit at para. 14, Motion Record, Tab 2

21. Following the issuance of the Stalking Horse and SISP Order, the Financial Advisor and OCI Inc. (the Company's financial advisor for the purpose of soliciting offshore parties), contacted 405 potentially interested parties and provided parties who had signed a confidentiality agreement with access to non-public information about the Company. Parties were advised that the deadline for submitting Bids was February 22, 2016 (the "**Bid Deadline**"). A more detailed description of the

Company's marketing efforts is described in greater detail in the, among other things, paragraphs 17 to 20 of the Houlden Affidavit.

Houlden Affidavit at paras. 17, 18 and 20, Motion Record, Tab 2

22. On the Bid Deadline, the Company received seven conditional offers to acquire certain of the Company's assets, primarily certain of its real property leases and intellectual property (each, a "**Sale Bid**") and two Qualified Bids (as defined in the SISP) that were proposals to liquidate the Company's Merchandise and FF&E (each, a "**Liquidation Bid**").

Houlden Affidavit at para. 21, Motion Record, Tab 2

23. The Sale Bids do not, individually or when taken together, represent an offer to acquire all or substantially all of the Company's assets. Many of the Sale Bids are conditional offers that will require negotiations with the Company and landlords before they can be finalized. The Company is still in the process of negotiating with certain of the parties that submitted the Sale Bids and has engaged the some of the relevant landlords.

Houlden Affidavit at paras. 22 and 23, Motion Record, Tab 2

24. The Proposal Trustee has prepared a summary of the Sale Bids received (the "**Offer Summary**") which is filed as a confidential appendix to the Third Report. As part of this motion, the Company is requesting that the Offer Summary be sealed.

Third Report at paras. 3.4 and 3.7 and Confidential Appendix 1

25. The Company determined to conduct an auction (the "**Auction**") in respect of the Liquidation Bids and Stalking Horse Bid (which is also a Qualified Bid), which was held on February 29, 2016 at the office of the Company's counsel, Davies Ward Phillips & Vineberg LLP ("**Davies**"), and was conducted by the Proposal Trustee. The conduct of the Auction is described in paragraphs 27 to 29 of the Houlden Affidavit and in paragraph 3.5 of the Third Report.

Houlden Affidavit at para. 27, Motion Record, Tab 2
Third Report at para. 3.5

26. Following 28 rounds of bidding at the Auction, the Company identified the overbid submitted by the Agent as the highest and/or best overbid (the "**Successful Bid**") and declared the Agent as the successful bidder.

Houlden Affidavit at para. 28, Motion Record, Tab 2

The Successful Bid

27. The Successful Bid is in the form of an agency agreement, which modified the Stalking Horse Agreement. Pursuant to the Agency Agreement, the Agent will serve as the exclusive liquidator to conduct a "store closing" or similar sale (the "**Sale**") disposing of the Merchandise and the FF&E located in all of the Company's stores and outlet centres (the "**Closing Stores**"), other than Merchandise being currently being liquidated at eight of the Company's stores. The Agent will dispose of the Merchandise in accordance with the sale guidelines (the "**Sale Guidelines**") appended to the Agency Agreement.

Houlden Affidavit at paras. 32 and 36, Motion Record, Tab 2

28. The Agent has extensive experience in conducting retail store liquidations, having led inventory dispositions for a wide variety of retailers, including many in Canada.

Houlden Affidavit at para. 31, Motion Record, Tab 2

29. The Agency Agreement provides that the Company will receive a net minimum amount (the "**Guaranteed Amount**") equal to 119.7% (the "**Guaranty Percentage**") of the aggregate "Cost Value" of the Merchandise (as determined in accordance with the Agency Agreement), provided that the Cost Value of the Merchandise on the date that the Sale commences is no less than \$21 million and no more than \$23.5 million, certain inventory mix thresholds are satisfied and provided that the Sale commences by March 3, 2016. The Agent has also agreed to pay the Company \$250,000 for the FF&E. After payment of the Guaranteed Amount and the expenses of the Sale, the Agent is entitled to retain proceeds of the Sale equal to 10% (the "**Agent's Fee**") of the aggregate Cost Value of the Merchandise. Any additional proceeds of the Sale after payment of the Agent's Fee are divided equally between the Agent and the Company.

Houlden Affidavit at para. 33, Motion Record, Tab 2

30. The Agency Agreement does not materially alter the terms of the Stalking Horse Agreement that was approved by this Court pursuant to the Stalking Horse and SISP Order, other than to revise the economic terms of the Stalking Horse Agreement as follows:

- (a) The Agency Agreement increases the Guaranty Percentage from 94.6% of the Cost Value to 119.7% of the Cost Value. On the basis of the

increased Guaranty Percentage, the Company is projected to receive between approximately \$25.1 million and \$28.1 million on account of the Guaranteed Amount, subject to adjustments. This represents a premium of more than 25% over the Guaranteed Stalking Horse Amount;

- (b) The Agent's Fee has been increased from 5% to 10% under the Agency Agreement, which is intended to offset the Agent's risk resulting from the increase in the Guaranty Percentage;
- (c) The Company will be paid \$250,000 from the sale of the FF&E and the Agent will retain all of the sale proceeds thereafter. Under the Stalking Horse Agreement, the Agent and the Company would share in the proceeds of the sale of the FF&E after payment of the FF&E Commission and applicable sales tax;
- (d) The Agency Agreement reduced the Inventory Thresholds in the Stalking Horse Agreement from a range of \$22 million - \$25 million to a range of \$21 million - \$23.5 million.

Houlden Affidavit at para. 34, Motion Record, Tab 2

31. Pursuant to the Agency Agreement, the Agent will be responsible for the expenses of the Sale (the "**Expenses**"), which include, among other items: (a) payroll, benefits and an employee incentive plan for store level employees; (b) occupancy costs on a per diem and per Closing Store basis; (c) advertising, promotional and signage expenses; and (d) costs associated with the supervision of the sale by the liquidator.

Houlden Affidavit at para. 35, Motion Record, Tab 2

32. The Agent will pay 85% of the estimated Guaranteed Amount on the business day following Court approval of the Agency Agreement and has agreed to provide a letter of credit to secure its obligations to pay the remaining Guaranteed Amount and, once such amount has been paid in full, such letter of credit will secure approximately one week of Expenses.

Houlden Affidavit at para. 37, Motion Record, Tab 2
Third Report at para. 3.6

33. The Agency Agreement contemplates the creation of a first-ranking Court-ordered (the "**Agent's Charge**") charge in favour of the Agent on, among other things, all of the Merchandise, the FF&E and the proceeds of the Sale to secure all amounts due and owing to the Agent under the Agency Agreement.

Houlden Affidavit at para. 38, Motion Record, Tab 2

PART III ~ ISSUES

34. This Factum will address the following issues before the Court:

- (a) Should the Agency Agreement be approved;
- (b) Should the Court approve the Agent's Charge;
- (c) Should the Court grant an order sealing the Offer Summary;
- (d) Should the Court .

PART IV ~ LAW & ARGUMENT

Issue 1: The Agency Agreement Should be Approved

The Court has the Jurisdiction to Approve a Sale of Assets in a Proposal Proceeding

35. The Court's power to approve a sale of assets in a proposal proceeding is codified in section 65.13 of the BIA.

Bankruptcy and Insolvency Act [BIA], R.S.C. 1985, c. B-3, s. 65.13
Re Outdoor Broadcast Networks, Inc., 2010 ONSC 5647 at paras. 14-15 [Commercial List], Brief of Authorities of Danier Leather Inc. [Brief of Authorities], Tab 1

36. It is not a requirement under the BIA for a debtor in a proposal proceeding to present a proposal to creditors in order to obtain an order approving a sale of assets under section 65.13 of the BIA

Re Komtech Inc., 2011 ONSC 3230 at paras. 25, 33, Brief of Authorities, Tab 2

37. Subsection 65.13(4) of the BIA sets out a list of non-exhaustive factors for the Court to consider in determining whether to approve a sale of the debtor's assets outside the ordinary course of business:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the trustee approved the process leading to the proposed sale or disposition;
- (c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

BIA, s. 65.13(4)

38. These criteria are substantially identical to the criteria set out by section 36 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") which the Court must consider before granting an order to sell a debtor's assets outside the ordinary course of business. The Court has noted that the section 36 criteria (and therefore the criteria set out in section 65.13(4) of the BIA) largely overlaps with the criteria established in *Royal Bank v. Soundair Corp.* (the "**Soundair Principles**") for approval of a sale of assets in an insolvency scenario:

- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improperly;

- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.

Re Canwest Publishing Inc., 2010 ONSC 2870 at para. 13 [Commercial List], Brief of Authorities, Tab 3

Royal Bank v. Soundair Corp., 1991 CarswellOnt 205 at para. 16 (C.A.), Commercial List Brief of Authorities

39. In addition to the above factors, subsection 65.13(8) of the BIA provides that the Court must also be satisfied that the debtor can make the wage and pension payments that would have been required under paragraphs 60(1.3)(a) and (1.5)(a) of the BIA if the debtor had sought approval of a proposal.

BIA, s. 65.13(8) and 60(1.3)(a) and (1.5)(a)

40. In the present case and for the reasons that follow, evidence has been presented in the Houlden Affidavit and the Third Report to demonstrate that each of the subsection 65.13(4) criteria and, as a result, the Soundair Principles, have been satisfied as well as the requirements of subsection 65.13(8) of the BIA.

The Factors for Approving a Sale Outside the Ordinary Course of Business are Satisfied

(a) The Sale Process was Reasonable in the Circumstances

41. The SISP was reasonable in the circumstances as it was designed to be flexible and allowed parties to submit an offer for some or all of the Company's assets, make an investment in the Company, acquire the business as a going concern, or liquidate the Company's assets with the goal of improving upon the terms of the Stalking Horse Agreement.

Houlden Affidavit at para. 7, Motion Record, Tab 2

42. The Company adhered to the timelines established by the SISP and implemented the SISP in accordance with the Court-approved SISP Procedures. In addition, the Auction was conducted by the Proposal Trustee in a manner that complied with the Court-approved Auction procedures included as Schedule "D" to the SISP.

Houlden Affidavit at paras. 16 and 27, Motion Record, Tab 2

43. While the timelines in the SISP were relatively tight, they were designed having regard to the financial situation of the Company and fact that the realizable value of the Company's assets would depreciate significantly as it enters the Spring season due to the seasonal nature of its business. In addition, the duration of the SISP was sufficient to allow interested parties to perform diligence and submit offers, particularly since many of the parties contacted were familiar with Company given their participation in the 2015 Solicitation Process and Stalking Horse Process.

Houlden Affidavit at paras. 15 and 40, Motion Record, Tab 2

44. In addition, the Proposal Trustee has concluded that the SISP was commercially reasonable.

Third Report at para. 3.9

(b) The Proposal Trustee Approved the Process Leading to the Agency Agreement

45. In its first report to the Court, filed in connection with the motion seeking the Stalking Horse and SISP Order, the Proposal Trustee indicated its approval of the SISP and recommended that the Court issue the Stalking Horse and SISP Order.

Houlden Affidavit at para. 11, Motion Record, Tab 2
Third Report at para. 3.9

46. The Company designed and implemented the SISP with the oversight of the Proposal Trustee. In addition, the Proposal Trustee conducted the Auction, which was an integral aspect of the SISP that ultimately culminated in the Agency Agreement being identified as the Successful Bid. The Proposal Trustee is therefore well positioned to assess the process that lead to the Agency Agreement. In its Third Report, the Trustee indicates that it is supportive of the SISP and the manner in which it was carried out.

Houlden Affidavit at para. 27, Motion Record, Tab 2
Third Report at para. 3.9

(c) The Proposal Trustee Filed a Third Report Attesting to the Benefit of the Sale over a Sale or Disposition in a Bankruptcy

47. The Proposal Trustee considered a sale of the Company's assets in a bankruptcy and concluded that the Sale contemplated by the Agency Agreement would be more beneficial to the Company's creditors than a sale under a bankruptcy and noted that the proposal proceedings provided stability and the ongoing operations of the Company, which was integral to maximizing value.

Third Report at para. 3.9

(d) Creditors Were Adequately Consulted

48. The Company has continued to pay its obligations in the ordinary course of business and does not have any significant creditors. The Existing Security (other than the security held by CIBC) does not extend to the Merchandise or FF&E subject to the Sale contemplated by Agency Agreement. There are no amounts owing to CIBC

under the ABL Facility or otherwise, and there are nominal amounts owing to the other creditors that hold the Existing Security. In any event, the Company has provided notice of this motion to each of the parties who holds the Existing Security.

Houlden Affidavit at para. 44 and 47, Motion Record, Tab 2

49. In addition, the Company has engaged with the landlords for more than half of the Closing Stores and has incorporated many of their comments on the Sale Guidelines and provided them with notice of this motion.

Houlden Affidavit at para. 45, Motion Record, Tab 2

(e) The Effects of the Proposed Sale are Positive

50. The sale of the Merchandise and FF&E in a single, coordinated process over a relatively short will maximize the proceeds that can be obtained from these assets. Due to the seasonal nature of the Company's business, the Merchandise declines in value quickly. If the Company was required to conduct a piecemeal liquidation of the Merchandise and FF&E there is no certainty that it will generate the same consideration that will be paid to the Company under the Agency Agreement. The Agency Agreement and the Sale will therefore benefit the Company's stakeholders by monetizing valuable assets of the Company and generating proceeds against which creditor claims may ultimately be asserted.

Houlden Affidavit at para. 42 and 48, Motion Record, Tab 2

51. Furthermore, the Sale is restricted to the liquidation of the Company's Merchandise and FF&E. The Company has received expressions of interest from other prospective bidders of the "Danier" brand, its intellectual property and other assets. The

Company will still have the opportunity to explore options with prospective bidders and finalize transactions in respect of certain of the Sale Bids notwithstanding the Sale contemplated by the Agency Agreement, which benefits the Company's stakeholders.

Houlden Affidavit at para. 24, Motion Record, Tab 2
Third Report at para. 3.10

(f) The Consideration Payable under the Agency Agreement is Reasonable and Fair

52. The Company, with the assistance of the Financial Advisor, broadly canvassed the market for potentially interested parties and ultimately identified the Agency Agreement as the highest and best offer made through the SISF following 28 rounds of bidding at the Auction. Notably, the \$25.1 million minimum consideration payable on account of the Guaranteed Amount represents a premium of approximately 25% over the minimum Guaranteed Stalking Horse Amount payable under the Stalking Horse Agreement. The Agency Agreement also guarantees a price of \$250,00 for the FF&E. In the circumstances, the Company and the Proposal Trustee believe that the consideration payable under the Agency Agreement represents the best available offer for the Merchandise and FF&E of the Company.

Houlden Affidavit at para. 28, 39, 41 and 43, Motion Record, Tab 2
Third Report at para. 3.9

53. Furthermore, under the Agency Agreement, the Guaranteed Amount is paid to the Company *before* the Agent is entitled to the Agent's Fee. Also, as described above, there is provision for sharing of proceeds between the Agent and the Company if additional proceeds of the Sale remain after payment of the Expenses, the Guaranteed

Amount and the Agent's Fee. In light of the foregoing, the Company believes that the economic terms of the Agency Agreement are fair and reasonable.

Houlden Affidavit at paras. 33 and 43, Motion Record, Tab 2
Third Report at para. 3.9

The Company can make the payments that would have been required under paragraphs 60(1.3)(a) and (1.5)(a) of the BIA, to the extent applicable

54. The Company has continued to pay its obligations in the ordinary course throughout these proposal proceedings, including any obligations for wages. The Company therefore can and will make the payments that are required under section 60(1.3)(a) of the BIA. The Company does not maintain a pension plan for its employees and therefore will have no payment obligations under section 60(1.5) of the BIA.

Houlden Affidavit at para. 47, Motion Record, Tab 2

55. Based on the foregoing, it is respectfully submitted that the Sale contemplated under the Agency Agreement satisfies the section 65.13(4) criteria (and thereby, the Soundair Principles) and would satisfy the requirements of section 65.13(8) of the BIA.

Issue 2: The Court Should Approve the Agent's Charge

56. The Company is seeking this Court's approval to grant the Agent's Charge to secure all of the obligations of the Company to the Agent under the Agency Agreement. It is a condition precedent to the transactions contemplated under the Agency Agreement that the Agent's Charge shall have been granted.

Houlden Affidavit at para. 38, Motion Record, Tab 2

57. Similar orders appointing a professional liquidator and granting a charge in favour of the liquidator have been granted in a number of insolvency proceedings involving Canadian retailers, including the *Bargain Shop* and the *Target Canada* proceedings under the CCAA.

In the Matter of a Plan of Compromise or Arrangement of TBS Acquireco Inc., Bargain Shop Holdings Inc. and TBS Stores Inc., Approval Order (Court File No. CV-13-10018-00CL, dated March 27, 2013), Brief of Authorities, Tab 4
In the Matter of a Plan of Compromise or Arrangement of Target Canada Co. et al., Approval Order – Agency Agreement (Court File CV-15-10832-00C, dated February 4, 2015),), Brief of Authorities, Tab 5

58. The Company believes that conducting the Sale with the professional assistance of the Agent is crucial to realizing the highest available value from the Merchandise. This process will benefit from the extensive experience of the Agent in conducting large-scale retail liquidations and will generate a superior result than would be achieved if the Company sold the Merchandise without professional assistance.

Houlden Affidavit at para. 31 and 42, Motion Record, Tab 2

59. The Company does not believe that any party would be prejudiced if the Agent's Charge was granted for the following reasons:

- (a) the quantum of the Agent's Charge is reasonable and is limited to the extent of the Company's obligations under the Agency Agreement;
- (b) the Agent's Charge does not charge any of the property securing the Existing Security, other than the security in favour of CIBC in respect of the ABL Facility;
- (c) the Company continues to pay its obligations in the ordinary course of business and there are no amounts outstanding under the ABL Facility; and

- (d) any claims that the Company's creditors may have, including in respect of the Existing Security, will attach to the Guaranteed Amount and other consideration payable to the Company under the Agency Agreement.

60. In the circumstances, the Company submits that it is appropriate for this Court to approve the Agent's Charge.

Issue 3: The Court Should Grant an Order Sealing the Offer Summary

61. Section 137(2) of the *Courts of Justice Act* (Ontario) provides courts with the discretion to order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record, notwithstanding the general principle that court hearings should be open to the public.

Courts of Justice Act, R.S.O. 1990, c. C.43, S. 137(2)

62. In *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court of Canada held that courts should exercise their discretion to grant sealing orders where:

- (a) the order is necessary to prevent a serious risk to an important interest, including a commercial interest, because reasonable alternative measures will not prevent the risk; and
- (b) the salutary effects of the order outweigh its deleterious effects, including the effects on the right of free expression, which includes the public interest in open and accessible court proceedings.

Sierra Club of Canada v. Canada (Minister of Finance), [2002] S.C.J. No. 42 at para. 53 (S.C.C.), Commercial List Brief of Authorities

63. In the insolvency context, courts have applied this test and authorized sealing orders over confidential or commercially sensitive documents to protect the interests of debtors and other stakeholders.

Re Stelco Inc., [2006] O.J. No. 275 at paras. 2-5 (S.C.J. [Commercial List]), Brief of Authorities, Tab 6
Re Nortel Networks Corp., 2009 CarswellOnt 4467 at para. 57 (S.C.J. [Commercial List]), Brief of Authorities, Tab 7
Re Hollinger Inc., 2011 ONCA 579, [2011] O.J. No. 3977 at para. 11, Brief of Authorities, Tab 8

64. As describe herein, the Company, the Financial Advisor and the Proposal Trustee are in the process of negotiating certain of the Sale Bids and pursuing other offers from prospective bidders. The Offer Summary contains sensitive commercial information about the Company and certain of its assets. The disclosure of the Offer Summary could jeopardize these negotiations and negatively impact realizations.

65. There is no other reasonable alternative to preventing this information from becoming publicly available. If granted, the sealing order will protect the commercial interests of the Company and other stakeholders. This salutary effect greatly outweighs the deleterious effects of not sealing the Offer Summary, namely the lack of immediate public access to all documents filed in these proceedings.

66. As a result, it is respectfully submitted that the test for a sealing order has been met and the Court should make an order that the Offer Summary be treated as confidential, sealed and not form part of the public record in the within proceedings.

Issue 4: The Court Should Grant an Extension of the Stay Period

67. Subsection 50.4(9) of the BIA authorizes the Court to grant extensions of the period of time for a debtor to file a proposal if it is satisfied that:

- (a) the debtor has acted, and is acting, in good faith and with due diligence;
- (b) the debtor would be likely able to make a viable proposal if the extension being applied for were granted; and

- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

BIA, s. 50.4(9)

68. The Company has acted, and is continuing to act, in good faith and with due diligence throughout these proceedings. Specifically, the Company has carried out the SISP with the goal of achieving one or more transactions that would maximize value for its stakeholders and ultimately entered into the Agency Agreement, which as described above, represents the best available price for the Company's Merchandise and FF&E. However, the Company still intends to pursue certain of the Sale Bids and explore opportunities with other prospective bidders who have expressed an interest in a portion of the Company's business, intellectual property and other assets that would not be affected by the Sale, including the "Danier" brand.

Houlden Affidavit, at paras. 22-24, Motion Record, Tab 2
Supplemental Affidavit of Brent Houlden sworn March 3, 2016 [Supplemental Houlden Affidavit] at paras. 4 and 5, Supplementary Motion Record of Danier Leather Inc. [Supplementary Motion Record], Tab 2

69. The Company is seeking an extension of the Stay Period until April 15, 2016 to provide it with a stable operating environment so that it can continue to negotiate with parties and pursue opportunities in respect of its remaining assets. In particular, the extension of the Stay Period provides the Company with time to work towards definitive transactions in respect of certain of the Sale Bids and advance negotiations with other interested parties, which would thereby enhance the likelihood that the Company could make a viable proposal.

Supplemental Houlden Affidavit, at para. 7, Supplemental Motion Record, Tab 2

70. It is forecasted that the Company will have sufficient cash resources to continue its operations during the proposed extended Stay Period and it continues to pay its obligations in the ordinary course. As a result, there would be no material prejudice to the Company's creditors.

Supplemental Houlden Affidavit, at paras. 8-10, Supplementary Motion Record, Tab 2

71. The extension of the Stay Period is supported by the Proposal Trustee.

Fourth Report

72. The Company therefore respectfully submits that the extension of the Stay Period until April 15, 2015 should be granted.

PART V ~ ORDER SOUGHT

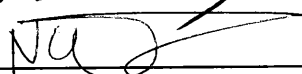
73. The Company respectfully requests that this Court grant the relief sought on this motion in the draft form of Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

March 3, 2016



Jay Swartz



Natalie Renner

Lawyers for the Applicants

SCHEDULE "A"
AUTHORITIES

1. *Re Outdoor Broadcast Networks, Inc.*, 2010 ONSC 5647 [Commercial List]
2. *Re Komtech Inc.*, 2011 ONSC 3230
3. *Re Canwest Publishing Inc.*, 2010 ONSC 2870 [Commercial List]
4. *In the Matter of a Plan of Compromise or Arrangement of TBS Acquireco Inc., Bargain Shop Holdings Inc. and TBS Stores Inc.* Approval Order (Court File No. CV-13-10018-00CL, dated March 27, 2013)
5. *In the Matter of a Plan of Compromise or Arrangement of Target Canada Co. et al.*, Approval Order – Agency Agreement (Court File CV-15-10832-00C, dated February 4, 2015)
6. *Re Stelco Inc.*, [2006] O.J. No. 275 (S.C.J. [Commercial List])
7. *Re Nortel Networks Corp.*, 2009 CarswellOnt 4467 (S.C.J. [Commercial List])
8. *Re Hollinger Inc.*, 2011 ONCA 579

SCHEDULE "B"
EXCERPTS FROM RELEVANT STATUTES

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Extension of time for filing proposal

50.4(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

Court may order security or charge to cover certain costs

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

Priority

- (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

Restriction on disposition of assets

- 65.13(1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Individuals

- (2) In the case of an individual who is carrying on a business, the court may authorize the sale or disposition only if the assets were acquired for or used in relation to the business.

Notice to secured creditors

- (3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

- (4) In deciding whether to grant the authorization, the court is to consider, among other things,
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the trustee approved the process leading to the proposed sale or disposition;
 - (c) whether the trustee filed with the court a Third Report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - (d) the extent to which the creditors were consulted;
 - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Restriction — employers

65.13(8) The court may grant the authorization only if the court is satisfied that the insolvent person can and will make the payments that would have been required under paragraphs 60(1.3)(a) and (1.5)(a) if the court had approved the proposal.

Proposals by employers

60 (1.3) No proposal in respect of an employer shall be approved by the court unless

(a) it provides for payment to the employees and former employees, immediately after court approval of the proposal, of amounts at least equal to the amounts that they would be qualified to receive under paragraph 136(1)(d) if the employer became bankrupt on the date of the filing of the notice of intention, or proposal if no notice of intention was filed, as well as wages, salaries, commissions or compensation for services rendered after that date and before the court approval of the proposal, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the bankrupt's business during the same period;

Proposals by employers — prescribed pension plans

60 (1.5) No proposal in respect of an employer who participates in a prescribed pension plan for the benefit of its employees shall be approved by the court unless

(a) the proposal provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of

subsection 2(1) of the Pension Benefits Standards Act, 1985,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the Pooled Registered Pension Plans Act, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the Pooled Registered Pension Plans Act;

Courts of Justice Act, R.S.O. 1990, c. C.43

137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

IN THE MATTER OF THE PROPOSAL OF DANIER LEATHER INC., a company incorporated pursuant to the laws of the Province of Ontario, with a head office in the City of Toronto, in the Province of Ontario

Court File No: 31-2084381

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

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