

Court File No.: 09-8240-CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

JUSTICE CAMPBELL

) WEDNESDAY, THE 22<sup>ND</sup>  
)  
) DAY OF JULY, 2009

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
EDDIE BAUER OF CANADA, INC. AND EDDIE BAUER CUSTOMER SERVICES INC.**

Applicants

**SALE APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by the Applicants, Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services Inc. (together, the "**Applicants**") for an order approving and authorizing and directing the Applicants to complete the sale transaction (the "**Transaction**") contemplated by that certain Asset Purchase Agreement dated as of July 17, 2009 (the "**Asset Purchase Agreement**"), among Everest Holdings LLC (the "**Buyer**"), as buyer, and Eddie Bauer Holdings Inc. ("**EB Holdings**") and each of the subsidiaries of EB Holdings listed on Schedule I of the Asset Purchase Agreement (including the Applicants), as vendors, substantially in the form attached as Exhibit "A" to the Affidavit of Marvin Edward Toland sworn July 20, 2009, and vesting in the Buyer or Buyer Designee(s) designated by the Buyer in accordance with the Asset Purchase Agreement the Applicants' right, title and interest in and to the Canadian Purchased

Assets, as set out in the Applicants' notice of motion dated July 20, 2009, was heard this day at 393 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Marvin Edward Toland sworn July 20, 2009, and the Fourth Report of RSM Richter Inc. dated July 21, 2009, in its capacity as monitor (the "**Monitor**") of the Applicants, and on hearing submissions of counsel for the Applicants, the Monitor, the Buyer, OMERS Realty Management Corporation, Ivanhoe Cambridge I Inc., Morguard Investments Limited, Retrocom Limited Partnership, Crombie Developments Limited and Bank of America N.A., no one appearing for any other person on the service list, although duly served as appears from the Affidavit of Service of Deborah S. Murphy sworn July 21, 2009, filed.

1. **THIS COURT ORDERS** that the time for service of the Applicants' Notice of Motion and Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the capitalized terms used but not defined herein shall have the meaning ascribed to them in the Asset Purchase Agreement.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved and the execution of the Asset Purchase Agreement by the Applicants is hereby authorized and approved, and the Applicants are 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 Canadian Purchased Assets to the Buyer or any Buyer Designee(s).

4. **THIS COURT ORDERS AND DECLARES** that upon completion of the Transaction and upon receipt by the Monitor of the sum of USD\$11 million in relation to the Canadian Purchased Assets (the “**Canadian Proceeds**”) the Monitor shall deliver a certificate to the Buyer or any Buyer Designee(s) substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”). Upon delivery to the Buyer or any Buyer Designee(s) of the Monitor’s Certificate, all of the Applicants’ right, title and interest in and to the Canadian Purchased Assets described in the Asset Purchase Agreement shall vest absolutely in the Buyer or any Buyer Designee(s), free and clear of and from any and all security interests, hypothecs, mortgages, trusts or deemed trusts, liens, executions, levies, charges, or other financial or monetary claims, in each case whether contractual, statutory, or otherwise, 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 Initial Order of the Honourable Justice Morawetz dated June 17, 2009, as amended and restated; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) (“**PPSA**”) or any other personal property registry system in Canada (all of (i) and (ii) hereof are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Canadian Purchased Assets, other than the Assumed Liabilities and Permitted Encumbrances, are hereby expunged and discharged as against the Canadian Purchased Assets; provided however, that, subject to paragraph 12 hereof, nothing herein shall affect the rights and remedies of the applicable landlord against the Buyer or any Buyer Designee(s) that may exist or arise under or in respect of any real property lease that is assigned to the Buyer or any Buyer Designee(s) in connection with the Transaction, except as may otherwise be agreed to by the landlord and the Buyer or any Buyer Designee(s).

5. **THIS COURT ORDERS** that: (i) nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of a real property lease; and (ii) where any real property leases are not, in accordance with their terms, transferable or assignable to the Buyer or any Buyer Designee(s) without first obtaining the consent of the applicable landlord, none of the real property leases shall be transferred, conveyed, assigned or vested in the Buyer or any Buyer Designee(s) by operation of this Order, save and except to the extent that respective consents have been, or are in the future, obtained from the respective landlords.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of the Claims, the Monitor shall hold the Canadian Proceeds pending further Order of this Court and the Canadian Proceeds shall stand in the place and stead of the Canadian Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the Canadian Proceeds from the sale of the Canadian Purchased Assets with the same priority as they had with respect to the Canadian Purchased Assets immediately prior to the sale, as if the Canadian 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.

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

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* and substantially similar legislation, the Applicants are authorized and permitted to disclose and transfer to the Buyer or any Buyer Designee(s): (i) all human resources and payroll information in the Applicants' records pertaining to the Applicants' past and current employees, including, without limitation, personal information of those employees listed on Schedule 8.2(f) to the Asset Purchase Agreement; and

(ii) all personal information about customers of the Applicants. The Buyer or any Buyer Designee(s) shall maintain and protect the privacy of such information and shall be entitled to collect and use the personal information provided to it for the same purpose(s) such information was collected by the Applicants.

9. **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) (“BIA”) in respect of the Applicants, or either of them, and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicants, or either of them;

the vesting of the Canadian Purchased Assets in the Buyer or any Buyer Designee(s) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants, or either of them, and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA 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.

10. **THIS COURT ORDERS AND DECLARES** that the Asset Purchase Agreement shall not be repudiated or disclaimed by the Applicants and compromised in any plan of compromise or arrangement filed by the Applicants, provided that nothing in this paragraph 10 shall affect the

rights of the Seller to terminate the Asset Purchase Agreement in accordance with the terms of the Asset Purchase Agreement.

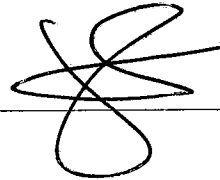
11. **THIS COURT ORDERS AND DECLARES** that the *Bulk Sales Act* (Ontario) and any other legislation affecting sales in bulk in all jurisdictions, do not apply to the Transaction and the Transaction may be completed without compliance with: (a) the provisions of Part V of the PPSA or any other legislation affecting personal property security in all jurisdictions, and (b) Section 244 of the BIA.

12. **THIS COURT ORDERS** that, from and after the delivery of the Monitor's Certificate to the Buyer or any Buyer Designee(s) in accordance with paragraph 4 of this Order, no individual, corporation, firm, partnership or other entity that is a party to any obligation or agreement to which the Applicants, or either of them, is a party and which is assigned to the Buyer or any Buyer Designee(s) pursuant to the Transaction may terminate, refuse to renew, rescind, refuse to perform or otherwise repudiate its obligations thereunder or enforce or exercise (or purport to enforce or exercise) any right or remedy (including any right of set-off, dilution, buy-out, divestiture, forced sale, option or other remedy) under or in respect of any such obligation or agreement by reason of: (a) the Applicants, or either of them, having sought or obtained relief under the *Companies' Creditors Arrangement Act* (Canada), or (b) any default or event of default arising as a result of the financial condition or insolvency of the Applicants, or either of them, prior to the date of the Initial Order; or (c) any default or event of default arising as a result of the Applicants entering into the Asset Purchase Agreement or completing the Transaction.

13. **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 Applicants, the Monitor or their respective 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 Applicants or the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor or their respective agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS THAT** Appendix "I" of the Fourth Report of the Monitor dated July 21, 2009, is hereby sealed and shall not form part of the public record pending further Order of this Court.



**Joanne Nicoara**  
**Registrar, Superior Court of Justice**

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

**JUL 22 2009**

**PER / PAR:** 

Schedule "A" – Form of Monitor's Certificate

Court File No. 09-8240-CL

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MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the "**Court**") dated June 17, 2009, as amended and restated, the Court declared that the Applicants, Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services Inc. (the "**Applicants**") are companies to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") applies and, *inter alia*, appointed RSM Richter Inc. as the court-Appointed Monitor of the Applicants (the "**Monitor**").

B. Pursuant to an Order of the Court dated July 22, 2009, the Court approved that certain Asset Purchase Agreement dated as of July 17, 2009 (the "**Asset Purchase Agreement**"), among Everest Holdings LLC (the "**Buyer**"), as buyer, and Eddie Bauer Holdings Inc. ("**EB Holdings**") and each of the subsidiaries of EB Holdings listed on Schedule I of the Asset Purchase Agreement (including the Applicants), as vendors, and provided for the vesting in the Buyer or Buyer Designee(s) of the Applicants' right, title and interest in and to the Canadian Purchased Assets, which vesting is to be effective with respect to the Canadian Purchased Assets upon the delivery by the Monitor to the Buyer of a certificate confirming: (i) the payment by the Buyer or Buyer Designee(s) of the Purchase Price for the Canadian Purchased Assets; (ii) that the conditions to Closing as set out in Article VIII of the Asset Purchase Agreement have been



satisfied or waived by the Selling Entities and/or the Buyer, as applicable; (iii) the Buyer has designated the entities identified in the attached Schedule "A" as Buyer Designee(s) in accordance with the Asset Purchase Agreement; (iv) the Transaction has been completed to the satisfaction of the Selling Entities; and (v) receipt by the Monitor of the sum of USD\$11 million in relation to the Canadian Purchased Assets to be held in the place and stead of the Canadian Purchased Assets pending further Order of the Court.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement.

**THE MONITOR CERTIFIES the following:**

1. The Buyer (or Buyer Designee(s)) has paid and the Seller has received the Purchase Price for the Canadian Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to Closing as set out in Article VIII of the Asset Purchase Agreement have been satisfied or waived by the Selling Entities and/or the Buyer, as applicable;
3. The Buyer has designated the entities identified in the attached Schedule "A" as Buyer Designee(s) in accordance with the Asset Purchase Agreement;
4. The Transaction has been completed to the satisfaction of the Monitor; and
5. The Monitor has received the sum of USD\$11 million and will hold this sum pending further Order of the Court pursuant to paragraph 6 of the Order of the Court dated July 22, 2009.

This Certificate was delivered by the Monitor at \_\_\_\_\_ on July ●, 2009.

**RSM Richter Inc., in its capacity as the court-appointed Monitor of Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services Inc. and not in its personal capacity**

Per: \_\_\_\_\_

Name: B. Kofman

Title: Authorized Signatory

**Schedule “A” – Buyer Designees**

**[TO BE FINALIZED]**

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Proceeding commenced at Toronto

**MONITOR'S CERTIFICATE**

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Lawyers for the Monitor

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