



Court File No. CV-24-00717669-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

)

WEDNESDAY, THE 3rd DAY

JUSTICE W.D. BLACK

)

OF APRIL, 2024

)

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED

AND IN THE MATTER OF THE RECEIVERSHIP OF THE
LION'S SHARE GROUP INC.

REPRESENTATIVE COUNSEL APPOINTMENT ORDER

THIS MOTION made by The Fuller Landau Group Inc. ("Fuller"), in its capacity as receiver (in such capacity, the "Receiver") , without security, of all of the assets, undertakings, and properties (collectively, the "Property") of The Lion's Share Group Inc. (the "Debtor") for an Order appointing Aird & Berlis LLP as representative counsel for the Noteholders (as defined below) with the exception of the Opt-Out Noteholders (as defined below) (in such capacity, the "Representative Counsel"), was heard this day by Zoom videoconference.

ON READING the motion record of the Receiver and on hearing the submissions of counsel for the Receiver, Representative Counsel, the Debtor and those other parties listed on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Katie Parent, sworn April 1, 2024:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the motion record of the Receiver is hereby validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. The following terms shall have the meanings ascribed thereto:

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- (a) **“Appointment Date”** means April 3, 2024;
- (b) **“Appointment Order”** means the Order of this Court issued April 3, 2024 appointing Fuller as Receiver;
- (c) **“BIA”** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended;
- (d) **“NOI Proceedings”** mean the proceedings commenced by the Debtor pursuant to Part IV of the BIA bearing Estate No. 32-3056681;
- (e) **“Noteholders”** all persons (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable law) who directly or indirectly hold legal or beneficial interest in one or more promissory notes executed by the Debtor, but excluding individual investment advisors and any employee, director or officer of the Debtor and its subsidiaries or affiliates and excluding any person who is a “related person” (as defined in the BIA) to the Debtor or Claire Drage;
- (f) **“Opt-Out Noteholders”** has the meaning ascribed in section 14 herein; and
- (g) **“Receivership Proceedings”** means these proceedings commenced by an application by Fuller, in its capacity as proposal trustee in the NOI Proceedings, under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and pursuant to which Fuller was appointed as the Receiver.

REPRESENTATIVE COUNSEL

3. **THIS COURT ORDERS** that Aird & Berlis LLP be and hereby is appointed as Representative Counsel for all Noteholders, with the exception of the Opt-Out Noteholders. The mandate of Representative Counsel (the “**Mandate**”) shall be to represent the Noteholders (with the exception of Opt-Out Noteholders) in connection with these Receivership Proceedings.

4. **THIS COURT ORDERS** that the Representative Counsel shall be entitled but not required to commence the process of identifying no more than five (5) Noteholders to be nominated as Court-appointed representatives (collectively, the “**Representatives**”) as soon as practicable following the date hereof. The Representatives, if and once appointed, shall represent the Noteholders other than any Opt-Out Noteholders, if any, in these Receivership Proceedings, and

advise, and where appropriate instruct, the Representative Counsel, including, without limitation, for the purpose of settling or compromising claims of the Noteholders in these Receivership Proceedings. The Representative Counsel may rely upon the advice, information and instructions received from the Representatives, if any, in carrying out its Mandate without further communications or instructions from the Noteholders.

5. **THIS COURT ORDERS** that, with the exception of any Opt-Out Noteholder, (i) the Representative Counsel and the Representatives, if any, shall represent all of the Noteholders in these Receivership Proceedings, and (ii) the Noteholders shall be bound by the actions of the Representative Counsel and the Representatives, if any, in these Receivership Proceedings.

6. **THIS COURT ORDERS** that, subject to confidentiality arrangements acceptable to the Receiver and only to the extent available, the Receiver shall provide to Representative Counsel, without charge, the following information, documents and data (the “**Information**”) in machine-readable format as soon as possible after the granting of this Order, for the purposes of enabling Representative Counsel to carry out its Mandate in accordance with this Order:

- (a) the names, last known addresses, and last known telephone numbers and e-mail addresses (if any) of the Noteholders; and
- (b) upon request of Representative Counsel, such documents and data as Representative Counsel deems necessary or desirable in order to carry out its Mandate;

and that, in doing so, the Receiver is not required to obtain express consent from such Noteholders authorizing disclosure of the Information to Representative Counsel and, further, in accordance with section 7(3) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (“**Personal Information Protection Act**”), this Order shall be sufficient to authorize the disclosure of the Information, without the knowledge or consent of the individual Noteholders.

7. **THIS COURT ORDERS** that, subject to confidentiality arrangements acceptable to the Receiver, the Receiver is authorized to disclose to Representative Counsel and its Advisors (as defined below) (each, a “**Recipient**”) all Information. Each Recipient to whom Information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to the performance of the Mandate.

8. **THIS COURT ORDERS** that, subject to confidentiality arrangements acceptable to the Receiver, in connection with the permitted disclosure of Information, pursuant to section 7(3)(c) of the Personal Information Protection Act, the Receiver is hereby authorized to disclose personal information of identifiable individuals (“**Personal Information**”) to each Recipient. Each Recipient to whom Personal Information is disclosed shall maintain and protect the privacy of such Personal Information and, upon termination of the Mandate, such Recipient shall return all such Personal Information to the Receiver or alternatively destroy such Personal Information and provide confirmation of its destruction if so requested by the Receiver.

9. **THIS COURT ORDERS** that Representative Counsel be and hereby is authorized to retain such financial and other advisors and assistants as may be reasonably necessary or advisable in connection with the Mandate (“**Advisors**”) provided the proposed costs and expenses of such Advisors shall be subject to the written consent of the Receiver or Order of this Court.

10. **THIS COURT ORDERS** all reasonable professional fees and disbursements that were incurred by Representative Counsel leading up to the Receivership Proceedings, and which may be incurred on or after the Appointment Date by Representative Counsel and its Advisors retained pursuant to section 9 above, if any, shall be paid by the Receiver on a monthly basis, forthwith upon the rendering of accounts to the Receiver, to the extent funding is available in the receivership, and such fees and disbursements shall be secured by the Receiver's Charge (as such term is defined in the Appointment Order) and provided further that Representative Counsel shall have given the Receiver an accounting of all such fees and disbursements incurred prior to their appointment. In the event of any disagreement regarding such fees and disbursements, such disagreement may be remitted to this Court for determination.

11. **THIS COURT ORDERS** that Representative Counsel be and hereby is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

12. **THIS COURT ORDERS** that neither the appointment of Representative Counsel nor any actions or steps taken by Representative Counsel shall be deemed to constitute Representative Counsel or any Noteholder as having taken or maintained any control or possession of or over any of the Property (as defined in the Appointment Order) or having assumed management or control of the Company or the Property.

NOTICE AND OPT-OUT PROCEDURE

13. **THIS COURT ORDERS** that notice of the granting of this Order, substantially in the form attached hereto as **Schedule “A”** shall be:

- (a) sent by the Receiver to the Noteholders within 10 days of the date of this Order by email (if known) or by regular mail; and
- (b) posted by the Receiver to the Receiver's website.

14. **THIS COURT ORDERS** that any Noteholders who do not wish to be represented by Representative Counsel in these Receivership Proceedings shall, by no later than 5:00 p.m. (ET) on May 3, 2024, notify the Receiver and Representative Counsel, in writing (including by email) by way of the form attached at **Schedule “B”**, that they are opting out of representation by Representative Counsel (an “**Opt-Out Notice**”), and shall thereafter not be bound by the actions of Representative Counsel and shall represent themselves or be represented by any counsel that they may retain exclusively at their own expense in these Receivership Proceedings (any such persons who deliver an Opt-Out Notice in compliance with the terms of this section 14, “**Opt-Out Noteholders**”).

PROTECTIONS AND AUTHORITY TO SEEK ADVICE AND DIRECTIONS

15. **THIS COURT ORDERS** that Representative Counsel shall have no liability as a result of its appointment or the fulfilment of its duties in carrying out the provisions of this Order from and after the Appointment Date save and except for any gross negligence or willful misconduct on its part.

16. **THIS COURT ORDERS** that Representative Counsel shall be at liberty and is authorized at any time to apply to this Court on notice to the Receiver for advice and directions in the discharge or variation of the Mandate.

17. **THIS COURT ORDERS** that no action or other proceeding may be commenced against Representative Counsel with respect to performance of the Mandate without leave of the Court on seven days' notice to Representative Counsel.

18. **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 Receiver, Representative Counsel and 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 Receiver, as an officer of this Court and to Representative Counsel, as may be necessary or desirable to give effect to this Order or to assist the Receiver, Representative Counsel and their respective agents in carrying out the terms of this Order.

19. **THIS COURT ORDERS** that the Receiver, its counsel, and Representative Counsel may serve or distribute this Order and any related materials, including, without limitation, the notice of the appointment of Representative Counsel set out at Schedule "A" hereto, by forwarding true copies thereof by email or regular mail to the Noteholders, creditors or other interested parties and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and the notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

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**ONTARIO
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PROCEEDING COMMENCED AT
TORONTO

**REPRESENTATIVE COUNSEL
APPOINTMENT ORDER**

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

Jennifer Stam LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Lawyers for the Receiver

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