

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

**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 TOYS "R" US (CANADA) LTD. / TOYS "R" US  
(CANADA) LTEE (the "Applicant")**

B E T W E E N:

**AIDE MÉMOIRE OF CONCORD**

February 12, 2026

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**

Counsel

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Lawyers for Concord Kingsway Project GP Ltd

**TO: SERVICE LIST**

1. Concord Kingsway Project GP Ltd. is the plaintiff against Toys “R” Us (Canada) Ltd / Toys “R” Us (Canada) Ltee in a Supreme Court of British Columbia proceeding bearing court file no. S-218765 (the “**BC Action**”). The trial in the BC Action was underway at the time of the Applicant’s CCAA filing. Evidence had closed and closing submissions were scheduled for February 9-11, 2026. The closing submissions did not proceed because of the CCAA filing.

2. After the filing, Concord wrote to the Applicant and Monitor seeking their consent to lift the stay for the limited purpose of completing the trial, since it was near completion. Concord is a creditor in this proceeding, and its claim in the BC Action will presumably have to be valued as part of a claims process. Concord’s position is that the most efficient and cost-effective means of determining the value of its claim would be to complete the BC Action. The cost of doing so would be less than re-litigating the same issues in a claims process. Concord has made it abundantly clear that it has no intention to seek a lifting of the stay for the purposes of enforcing any judgment (should it obtain one). It simply wants to finish the last three days of trial and get a decision from the British Columbia Supreme Court.

3. The Applicant and Monitor have refused to consent. Concord intends to bring a motion to lift the stay of proceedings to permit the BC Action to be completed. Concord respectfully asks the Court to set a motion date and timetable for its proposed motion.

**A. The Concord Litigation**

4. Concord was a landlord to a Toys “R” Us location in Metrotown Mall, a shopping centre in Burnaby, British Columbia. Toys “R” Us vacated its leased premises on or around October 28, 2024.

5. Disputes arose between Concord and Toys “R” Us regarding Toys “R” Us’ obligations to pay real property taxes, a share of the utilities, common area maintenance fees, and base rent.

6. On October 8, 2021, Concord commenced litigation to recover the outstanding amounts from Toys “R” Us. Attached as **Tabs A and B** are the pleadings in the BC Action. Concord claims approximately \$3 million, plus GST, interest and costs.

7. The trial in the BC Action began on June 9, 2025 before the Honourable Justice Masuhara of the British Columbia Supreme Court. The trial proceeded on various dates, the last of which was on January 19, 2026. The evidentiary phase of the trial is complete. In total, Justice Masuhara heard 20 days of evidence.

8. Closing submissions were scheduled before Justice Masuhara for February 9-11, 2026.

**B. Toys “R” Us Obtains Stay of Proceedings**

9. On February 2, 2026, the Applicant filed for relief under the CCAA. Their application materials did not contain any references to the BC Action, including its advanced stage.

10. On February 3, 2026, the Court granted the initial order, including a stay of proceedings.

11. On February 4, 2026, counsel for Concord wrote to the Monitor, the Monitor’s counsel and the Applicant’ counsel to notify them of the BC Action and request their written consent to lift the stay of proceedings solely for the limited purpose of permitting the trial to complete and proceed to judgment.

12. On February 6, 2026, counsel for the Applicant advised that “after careful consideration, and in consultation with the Monitor and its counsel, we advise that the Applicant is not in a financial position to participate in any enforcement processes or legal proceedings beyond these

CCAA Proceedings, and will not consent to the lifting of the stay of proceedings for the purpose of advancing the BC Action.” This correspondence is attached as **Tab C**.

13. As a result, closing submissions for the BC Action did not proceed on February 9-11, 2026.

**C. Motion Timetable Requested**

14. Concord intends to bring a motion to lift the stay of proceedings to permit the BC Action to be completed. Concord respectfully asks the Court to set a motion date and timetable for its motion. Concord proposes the following timetable, subject to the Court’s availability:

- (a) Concord’s motion record by February 20, 2026;
- (b) Toys “R” Us’ responding motion record, if any, by February 27, 2026;
- (c) Monitor’s report, if any, by March 6, 2026;
- (d) Concord’s factum by March 12, 2026;
- (e) Toys “R” Us’ factum by March 17, 2026;
- (f) Hearing on or before March 20, 2026.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 12<sup>th</sup> day of February, 2026.



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Zain Naqi/Annecy Pang

February 12, 2026

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Lawyers for Concord Kingsway Project GP Ltd

**TAB A**



Amended pursuant to Order made August 5, 2025  
Amended pursuant to Order made May 1, 2025  
Amended pursuant to Order made January 30, 2024  
Original dated October 8, 2021

No. S-218765  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

CONCORD KINGSWAY PROJECT GP LTD.

PLAINTIFF

AND

TOYS "R" US (CANADA) LTD. TOYS "R" US (CANADA) LTEE

DEFENDANT

**THIRD AMENDED NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff(s) for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiffs and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (c) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

- (d) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (e) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (f) if the time for response to civil claim has been set by order of the court, within that time.

## **CLAIM OF THE PLAINTIFF**

### **Part 1: STATEMENT OF FACTS**

#### **The Parties**

1. The plaintiff, Concord Kingsway Project GP Ltd. ("**Concord**"), is a company incorporated pursuant to the laws of British Columbia with an address for service at 1700 – 666 Burrard Street, Vancouver BC, V6C 2X8.
2. The defendant, Toys "R" Us (Canada) Ltd. Toys "R" Us (Canada) Ltee ("**Toys R Us**"), is a company incorporated pursuant to the laws of Ontario and extra-provincially registered in British Columbia with an address for service at Suite 2600 – 1066 West Hastings Street, Vancouver BC, V6E 3X1.

#### **The Leased Premises**

3. On or around May 19, 1994, Toys R Us entered into a lease with Sears Canada Inc. ("**Sears**"), whereby Sears leased to Toys R Us (the "**Sears – Toys R Us Lease**") a portion of the lower level (the "**Leased Premises**") of the Sears department store (the "**Sears Store**") situated on lands owned by Sears at 4750 Kingsway, Burnaby BC (the "**Sears Lands**"). The Sears Store and the Sears Lands adjoin the Metrotown Mall (the "**Shopping Centre**").
4. The Sears – Toys R Us Lease included the following provisions:
  - (a) The use and occupation by Toys R Us of the Leased Premises includes the non-exclusive right to use the common areas and common facilities of the Sears Lands from time to time and, subject to paragraph 2, the remainder of the Shopping Centre, in common with others entitled thereto (section 1).
  - (b) An initial term of 15 years subject to six successive renewal terms of 5 years (section 3);
  - (c) Toys R Us will pay the following "**Minimum Rent**":
    - (i) initial term: \$7.00 net per square foot of the gross leasable area of the Leased Premises per annum;
    - (ii) renewal terms: the greater of \$7.00 net per square foot of the gross leasable area of the Leased Premises per annum or 85%

of the Minimum Rent and Percentage Rent payable in the last year of the initial term or the preceding renewal term (section 7);

- (d) Toys R Us will pay the following "**Percentage Rent**":
  - (i) initial term: 1% per annum of gross sales in excess of \$20 million for each fiscal year;
  - (ii) renewal terms: 1% per annum of gross sales in excess of the greater of \$20 million or the natural break point as defined under the Sears – Toys R Us Lease (section 7); and
- (e) In addition to the Minimum Rent and Percentage Rent, Toys R Us will:
  - (i) be responsible for all costs incurred in connection with the construction and operation of the Leased Premises (section 8(a));
  - (ii) contribute towards the cost of operating and maintaining the parking areas and vehicle and pedestrian access points (section 8(b));
  - (iii) be responsible for its proportionate share of the cost of utilities consumed and incurred within the Sears Store and for all repairs and/or replacements required to provide such shared utilities (section 8(d));
  - (iv) pay a proportionate share of building fabric repairs and replacements as amortized by Sears acting reasonably (section 8(e)); and
  - (v) pay its share of all real property taxes, local improvement taxes and levies, and public school taxes levied against the Sears Lands, the Sears Store and the Leased Premises (section 10).

(collectively, the "**Additional Rent**").

5. The gross leasable area of the Leased Premises is approximately 33,080 square feet on the basement level together with grade level loading facilities and approximately 2,000 square feet of shipping and receiving area.
6. On or around June 8, 2015, Concord purchased the Sears Lands from Sears.
7. On June 8, 2015, Concord and Sears entered into a leaseback, whereby Concord leased the Sears Lands back to Sears (the "**Leaseback**").
8. Under the Leaseback, Sears continued to operate the Sears Store and lease the Leased Premises to Toys R Us in accordance with the terms of the Sears – Toys R Us Lease.

9. On or around June 22, 2017, Sears commenced proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**").
10. Effective January 28, 2018, Sears disclaimed the Leaseback in accordance with section 32 of the CCAA. The Sears – Toys R Us Lease became a lease between Concord as landlord and Toys R Us as tenant for the Leased Premises effective January 28, 2018 (the "**Tenancy**").
11. On and after January 28, 2018 Toys R Us exhibited an outward manifestation of assent to be bound by the Sears – Toys R Us Lease.
12. On and after January 28, 2018, Toys R Us remained in possession of the Leased Premises but only paid to Concord beginning February 1, 2018 the Minimum Rent of \$7.00 per square foot (\$19,296.67 plus GST monthly) as provided for in section 7(b) of the Sears - Toys R Us Lease, and a contribution to the cost of operating and maintaining the parking areas and vehicle pedestrian access points (\$7,474.14 plus GST monthly) as provided for in section 8(b) of the Sears - Toys R Us Lease, except for the CPI adjustment for a total of \$28,109.35 monthly (the "**Base Rent**").
13. Toys R Us failed or refused to pay the full amount or any of the Base Rent in the months of April and May, 2020, and January and February, 2021. The amount owing by Toys R Us to Concord for unpaid Base Rent (inclusive of GST) is \$93,621.55, particulars of which are as follows:
  - (a) April 2020: \$20,261.50
  - (b) May 2020: \$24,168.69
  - (c) January 2021: \$21,082.01
  - (d) February 2021: \$28,109.35
14. Toys R Us failed or refused to pay its share of the cost of utilities consumed and incurred within the Sears Store (section 8(d)), failed or refused to pay its share of all real property taxes, local improvement taxes and levies, and public school taxes levied against the Sears Lands (section 10), failed or refused to increase its contribution to the cost of operating and maintaining the parking areas and vehicle pedestrian access points by the required CPI adjustment (section 8(b)), and failed or refused to pay its share of the building fabric repairs and replacements (section 8(e)).
15. Toys R Us remained in possession of the Leased Premises until October 28, 2024.
16. In breach of the Tenancy, Toys R Us has failed to:
  - (a) Pay Additional Rent that is due and owing;
  - (b) Pay Percentage Rent that is due and owing; and

- (c) Provide financial records to Concord from which the Percentage Rent can be determined and from which periodic rent adjustments can be determined.
17. The Leased Premises do not have separately metered and invoiced utilities provided by BC Hydro (electricity), Fortis BC (natural gas) or the City of Burnaby (water and sewer) (the "**Utilities**"). There is a privately installed meter that records the electrical consumption of the Leased Premises at periodic intervals. However, Concord receives and pays the invoices for the Utilities for the whole of the former Sears Store including the Utilities consumed by Toys R Us at the Leased Premises, which includes electricity, natural gas, water and sewer. Toys R Us owes to Concord its share of the Utilities as Additional Rent.
18. The Leased Premises is not a separate legal lot from the Sears Lands and does not have a separate folio for property tax assessment. The property taxes are not separately assessed for the Leased Premises and the balance of the Sears Store or the Sears Lands. The property taxes are separately assessed for the Sears Lands and other parts of the Shopping Centre, which have separate legal title(s), tax folios and separate ownership. A separate assessment of property taxes for the Leased Premises cannot be determined based on the method of assessment applied by the assessment authorities for the Shopping Centre and any apportioning thereof.
19. Concord receives and pays the invoices for the property taxes assessed against the Sears Lands including the Leased Premises.
20. Toys R Us owes to Concord its share of the property taxes for the years 2018 to 2024 as Additional Rent based on the formula:
- $$\text{Taxes paid per year} \times \frac{33,080 \text{ sq ft}}{165,619 \text{ sq ft}}$$
21. The former Sears Store is mainly vacant and has been so since Sears ceased its operations at that store. Concord operates a Presentation Centre in a portion of the former Sears Store.
22. On or about December 11, 2019, the Sears Lands were subdivided into three new legal lots with a total combined area of 98.76% of the Sears Lands. The parking and drive aisles and the usage of these remained the same after the subdivision, as did the Leased Premises. From 2021 onward, the Sears Lands property taxes are made up of 3 folios being the three new legal lots.
23. On or about September 20, 2023, Lot 2 of the Sears Lands was further subdivided into five new legal lots. The parking and drive aisles and the usage of these lots remained the same after the subdivision, as did the Leased Premises. For 2024, the Sears Lands property taxes are made up of seven folios being seven legal lots.

24. As of October 29, 2024 Toys R Us was in arrears to Concord for Additional Rent in the cumulative amount of \$3,130,591.42 inclusive of GST, comprising:
- (a) Toys R Us' proportionate share of the property taxes from February 1, 2018 to October 28, 2024, totalling \$2,622,525.94;
  - (b) Toys R Us' proportionate share of utilities from February 1, 2018 to October 28, 2024, totalling \$410,235.06, broken down as follows:
    - (i) Electrical consumption charged by BC Hydro, totalling \$311,154.14;
    - (ii) Natural gas consumption charged by Fortis BC, totalling \$80,364.24;
    - (iii) Water and sewer consumption charged by the City of Burnaby, totalling \$18,716.68, and
  - (c) Toys R Us' proportionate share of Consumer Price Index ("CPI") adjustments for parking common area maintenance ("**Parking CAM**") from February 1, 2018 to October 28, 2024, totalling \$97,830.42,
- (collectively, the "**Rent Arrears**").
25. The Rent Arrears do not include any Percentage Rent or contribution to building fabric repairs.
26. The particulars of the Rent Arrears are voluminous and have been provided to Toys R Us.
27. Concord has demanded payment from Toy R Us.
28. The Rent Arrears remain due and owing.
29. As a result of the breaches by Toys R Us, Concord has and continues to suffer loss and damage.
30. From February 1, 2018 to October 28, 2024, Toys R Us has been enriched in the amount of the Rent Arrears. Concord has suffered a corresponding deprivation and there is no juristic reason for the enrichment.

**Part 2: RELIEF SOUGHT**

1. Judgment in the amount of \$3,130,591.42 for the Rent Arrears;
2. Judgment in the amount of \$93,621.55 for unpaid Base Rent;
3. In the alternative, damages in an amount to be determined at trial;

4. In the alternative, restitution;
5. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
6. Costs; and
7. Such further and other relief as this Honourable Court considers just.

**Part 3: LEGAL BASIS**

1. The law of landlord and tenant.
2. The disclaimer of the Leaseback by Sears operated as a surrender or merger of the Leaseback and the Sears – Toys R Us Lease was not extinguished. Pursuant to section 38(1) of the *Property Law Act*, R.S.B.C. 1996, c. 377, Concord, as head lessor, can enforce the covenants of the Sears – Toys R Us Lease, in effect becoming the “assignee of the reversion”.
3. In the alternative, the parties agreed to a novation of the Sears – Toys R Us Lease whereby Concord became the landlord in place of Sears.
4. In the alternative, Toys R Us exhibited an outward manifestation of assent to be bound by a lease for the Leased Premises on the same terms and conditions as the Sears – Toys R Us Lease that were remaining to be performed, which was accepted by Concord, giving rise to a new lease on the same terms and conditions as the Sears – Toys R Us Lease: *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.* 2020 SCC 29.
5. In the further alternative, where a tenant remains in possession following the termination of a lease, and where the tenant pays and the landlord accepts rent or otherwise consents, a new periodic tenancy arises by implication at common law on the same terms and conditions as the original tenancy so far as they are applicable to a periodic tenancy.
6. Toys R Us breached the Sears – Toys R Us Lease by failing to pay the Base Rent, Additional Rent, Percentage Rent and by failing to provide financial records as required.
7. Concord relies on the law of contract, including the duty of good faith and honest performance.
8. In the alternative, Concord claims the right to recover the unpaid Base Rent, the cost of Utilities provided to the Leased Premises, a proportionate share of the property taxes for the Sears Lands, and other Additional Rent items based on the law of unjust enrichment. Toys R Us has been enriched by such as amounts as will determined by the Court, and Concord has suffered a corresponding deprivation. There is no juristic reason for the enrichment.

Plaintiff's address for service:

Stikeman Elliott LLP  
Barristers and Solicitors  
1700 – 666 Burrard Street  
Vancouver, BC V6C 2X8  
(604) 631-1300

Attention: Jonathan McLean / Kasey  
Campbell

Fax number address for service (if any):

N/A

E-mail address for service (if any):

[jmclean@stikeman.com](mailto:jmclean@stikeman.com)  
[kcampbell@stikeman.com](mailto:kcampbell@stikeman.com)

Place of trial:

Vancouver, British Columbia

The address of the registry is:

800 Smithe Street  
Vancouver, BC V6Z 2E1

Dated: November 10, 2025



Second Amended dated May 2, 2025

Signature of

Amended dated January 31, 2024

Lawyer for plaintiff

Original dated October 8, 2021

Jonathan McLean

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

**TAB B**



No. S-218765  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between

CONCORD KINGSWAY PROJECT GP LTD.

PLAINTIFF

And

TOYS “R” US (CANADA) LTD. TOYS “R” US (CANADA) LTEE

DEFENDANT

**RESPONSE TO SECOND AMENDED CIVIL CLAIM**

**Filed by:**

The Defendant Toys “R” Us (Canada) Ltd. Toys “R” Us (Canada) Ltee (“**Toys R Us**” or the “**Defendant**”)

**PART 1: RESPONSE TO SECOND AMENDED NOTICE OF CIVIL CLAIM FACTS**

**Division 1 – Defendant’s Response to Facts**

1. The facts alleged in paragraphs 1, 2, 3, 6, 7, 8, 9 and 14 of Part 1 of the Second Amended Notice of Civil Claim (the “**Second Amended NOCC**”) are admitted.
2. The facts alleged in paragraphs 4, 5, 10, 11, 12, 13, 15, 16, 17, 19, 22, 23, 24, 25, 26, 27, 28, 29 and 30 of Part 1 of the Second Amended NOCC are denied.
3. The facts alleged in paragraphs 18, 20, 21 and 22 of Part 1 of the Second Amended NOCC are outside the knowledge of the Defendant.

**Division 2 – Defendants’ Version of Facts**

4. Unless otherwise defined, the Defendant adopts the definitions used by the Plaintiff in the Second Amended NOCC for reference purposes only and without any admission of fact.
5. Except where specifically admitted, the Defendant denies each and every allegation in the Second Amended NOCC and puts the Plaintiff to the strict burden of proof thereof.
6. The Defendant Toys R Us is a company incorporated under the laws of Ontario with an address for service for the purpose of this action only c/o MLT Aikins LLP, 2600 – 1066 West Hastings Street, Vancouver, British Columbia.

7. In response to paragraph 4 of the Second Amended NOCC, the Defendant denies the Plaintiff's description or characterization of the provisions in the lease between Sears Canada Inc. ("**Sears**") and Toys R Us, and says that the actual terms of that lease are set forth in the letter agreement dated May 19, 1994 between Sears and Toys R Us and the amendment dated February 19, 2004 (the "**Sears – Toys R Us Lease**").
8. In response to paragraph 5 of the Second Amended NOCC, Section 1 of the Sears – Toys R Us Lease stated that the gross leasable area of the Leased Premises was approximately 33,000 square feet.
9. In response to paragraphs 10 to 13 of the Second Amended NOCC, Toys R Us only assented to paying a monthly rent of \$28,109.35 to the Plaintiff Concord Kingsway Project GP Ltd. ("**Concord**" or the "**Plaintiff**"), and Concord accepted such amount as Toys R Us' monthly rent. Toys R Us denies that it agreed or assented to pay Concord the additional rents for property taxes, utilities and other sums that are claimed by Concord. The Sears-Toys R Us Lease was terminated effective January 28, 2018 by a notice provided by Sears on December 30, 2017, and Concord thereafter affirmed that the Sears-Toys R Us Lease had been extinguished and was no longer in effect.
10. In response to paragraphs 13 and 15 of the Second Amended NOCC, Toys R Us denies that it is in breach of any lease agreement with Concord. Toys R Us made monthly payments of rent after January 28, 2018 that were accepted by Concord, and for over two years Concord did not make any demand or submit any invoice to Toys R Us claiming additional amounts above the \$28,109.35 monthly base rent were owed. Moreover, even if and to the extent the provisions of the Sears – Toys R Us Lease had remained in effect by operation of law, such provisions do not support the additional rent payments presently demanded by the Plaintiff.
11. In further response to paragraph 15 of the Second Amended NOCC, Toys R Us denies that any Percentage Rent is owed to Concord, and says that at no time has Concord claimed such rent was due. Toys R Us has provided financial records from which it can be confirmed that no such Percentage Rent would have been owed under the terms of the Sears – Toys R Us Lease, even if it had remained in effect after January 2018.
12. In response to paragraph 16 of the Second Amended NOCC, Toys R Us received monthly invoices from Sears for electricity based on the amount of electricity actually consumed by its store. Concord failed to invoice Toys R Us on this basis after January 2018. Sears did not bill Toys R Us for either natural gas or water utilities, and no agreement was ever reached by Toys R Us and Concord relating to the payment of additional rent for utilities.
13. In response to paragraph 17 of the Second Amended NOCC, Toys R Us states that even if and to the extent Section 10 of the Sears – Toys R Us Lease had remained in effect by operation of law, a separate assessment for the Leased Premises could have been determined by Concord and Toys R Us in accordance with the method of assessment applied by the assessment authorities to arrive at the assessment for the other parts of the Metrotown Shopping Centre, which method of assessment was known by Concord.

14. In response to paragraph 19 of the Second Amended NOCC, Toys R Us denies that it agreed to pay and owes Concord additional rent for Concord's property taxes in the amount claimed by Concord or any other amount. Alternatively, even if and to the extent Section 10 of the Sears – Toys R Us Lease had remained in effect by operation of law, a separate assessment for the Leased Premises could have been determined by Concord and Toys R Us in accordance with the method of assessment applied by the assessment authorities to arrive at the assessment for the other parts of the Metrotown Shopping Centre. Moreover, the formula relied upon by Concord for determining the amount of building utilities attributable to Toys R Us under Section 8(d) of the Sears – Toys R Us Lease is not a similar formula under Section 10 appropriate for determining any share of property taxes attributable to Toys R Us.
15. In response to paragraphs 23, 24, 26 and 28 of the Second Amended NOCC, Toys R Us denies that the alleged additional rents or Rent Arrears are owed to Concord. Toys R Us further states that even if the provisions of the Sears – Toys R Us Lease had remained in effect by operation of law, the amounts claimed by the Plaintiff are not supported by or in accordance with those terms. Concord did not invoice Toys R Us for any alleged additional rents for over two years, and the invoices it submitted thereafter have repeatedly changed in both the claimed amounts owed and the methods of calculation used by Concord. For example, the amounts presently claimed by Concord in the Amended NOCC for additional rent for 2018, 2019 and 2020 property taxes exceeds by over \$800,000 the amounts it invoiced Toys R Us for those same property tax years in October 2020.
16. In response to paragraph 27 of the Second Amended NOCC, the Defendant says that for over two years, from January 28, 2018 to February 19, 2020, Concord accepted the monthly rent payments made by Toys R Us and did not demand any additional rent payments above such amounts. Since February 2020, the amounts demanded by Concord have repeatedly changed, as noted above.
17. In response to paragraphs 29 and 30 of the Second Amended NOCC, the Defendant denies that it has breached any lease agreement with Concord, denies that the Plaintiff has suffered or will continue to suffer any loss or damage, as alleged or at all, and denies that Toys R Us has been enriched and that Concord has suffered any deprivation. The Defendant further states that Concord acquiesced to only receiving the monthly rent from Toys R Us and no additional alleged Rent Arrears.

### **Division 3 – Additional Facts**

18. In June 2015, Concord purchased the Sears Lands for land redevelopment purposes, which subsequently caused the assessed value of the Sears Lands and its corresponding property taxes to increase exorbitantly. Concord then caused the Sears Lands to be subdivided in December 2019 and again in September 2023. The effects of such increases in the assessed value of the Sears Lands from Concord's purchase and subsequent subdivisions of same is to the sole benefit of Concord, as an owner-developer with equitable interest in the Sears Lands. Toys R Us had no beneficial interest in the Sears Lands and derived no benefit from Concord's use and redevelopment of the Sears Lands.

19. After January 28, 2018, Toys R Us stayed in the lower level of the former Sears store and made monthly payments of rent to Concord, which payments were accepted by Concord.
20. For over two years, Concord did not invoice Toys R Us or make any demand for additional rent payments above the amounts that were being paid by Toys R Us on a monthly basis. Concord's first invoice seeking payment from Toys R Us for a share of its property taxes from 2018 and 2019 was submitted by Concord on or about February 19, 2020. Concord's first invoice seeking payment from Toys R Us for a share of its utilities (electricity, water and gas) was not submitted until October 1, 2020.
21. To the extent the provisions of the Sears – Toys R Us Lease relating to the payment of property taxes remained in effect by operation of law, the amounts presently demanded by Concord are not supported by and have not been properly calculated or determined in accordance with Section 10 of the Sears – Toys R Us Lease.
22. Contrary to Section 10 of the Sears – Toys R Us Lease, Concord failed to apply the method used by assessment authorities for the Metrotown Shopping Centre to determine a separate assessment of the amount of property tax attributable to the premises leased by Toys R Us. As a result, the amounts demanded by Concord are unreasonably high.
23. Concord has demanded that Toys R Us pay \$425,089 for 2018 property taxes, \$678,750 for 2019 property taxes, and \$467,809 for 2020 property taxes, plus 5% GST.
24. An invoice from Concord dated September 21, 2020, however, only billed Toys R Us \$228,183.88 for 2018, \$202,032.52 for 2019 and \$150,518.94 for 2020.
25. Prior to 2016, separate assessments were provided for the Sears and Toys R Us stores, and pursuant to Section 10 of the Sears – Toys R Us Lease, Toys R Us paid \$99,308 for its share of property taxes in 2015 and \$98,118 in 2014 (exclusive of GST).
26. In 2016, as a result of Concord's purchase of the property from Sears, BC assessors no longer conducted separate assessments of the Sears and Toys R Us stores using an income approach, and instead assessed the land value (based in part on Concord's purchase price). With respect to the Metrotown Shopping Centre, however, BC assessment authorities have continued to use the income approach.
27. As a result of Concord's purchase of the property and redevelopment plans, the assessed value of the property increased from \$19.65 million in 2015 to \$85.9 million in 2016 (consisting of \$85,625,000 for the land and \$297,000 for the Sears building), and to \$198.8 million in 2018 (consisting of \$198,496,000 for the land and \$329,000 for the Sears building). This substantial appreciation was derived from the purchase price paid by Concord for the property and the expected future value of the Concord development, and not based on anything related to the Toys R Us store or anything that benefitted Toys R Us.
28. Toys R Us has not agreed to pay any share of the substantially higher property taxes resulting from Concord's acquisition and planned development. Moreover, Toys R Us submitted a Proof of Claim in February 2018 with respect to a dispute between Toys R Us

and Sears regarding the calculation of Toys R Us' proportionate share of the 2016 property taxes by Sears. Concord was aware of such dispute and has been provided with the Proof of Claim and relevant particulars.

29. Alternatively, even if and to the extent Section 10 of the Sears – Toys R Us Lease remained in effect by operation of law, a separate assessment for the Leased Premises could have been determined by Concord and Toys R Us in accordance with the method of assessment applied by the assessment authorities to arrive at the assessment for the other parts of the Metrotown Shopping Centre, that is, the income approach, which method of assessment was known by Concord.
30. Moreover, even if and to the extent Section 10 of the Sears – Toys R Us Lease remained in effect by operation of law, the formula relied upon by Concord for determining the amount of building utilities attributable to Toys R Us under Section 8(d) of the Sears – Toys R Us Lease is not a similar formula under Section 10 appropriate for determining any share of property taxes attributable to Toys R Us.

## **PART 2: RESPONSE TO RELIEF SOUGHT**

1. The Defendant consents to the granting of the relief sought in paragraphs NIL of Part 2 of the Second Amended NOCC.
2. The Defendant opposes the granting of the relief sought in paragraphs 1 to 6 of Part 2 of the Second Amended NOCC.
3. The Defendant takes no position on the granting of the relief sought in paragraphs NIL of Part 2 of the Second Amended NOCC.

## **PART 3: LEGAL BASIS**

1. Unless expressly admitted herein, the Defendant denies each and every allegation in the Second Amended NOCC.
2. In answer to the whole of the Second Amended NOCC, the Defendant denies it is liable to the Plaintiff as alleged or at all.
3. Following the disclaimer by Sears of its leaseback with Concord and the termination of the Sears-Toys R Us Lease that became effective January 28, 2018, the Sears – Toys R Us Lease was no longer in effect, and a new tenancy arose at common law upon Concord's acceptance of monthly rent payments from Toys R Us in the amount of \$28,109.35. No agreement was ever reached between Concord and Toys R Us on the payment of additional rent for property taxes, utilities or other matters.
4. The Plaintiff's claim for Rent Arrears from 2018 falls outside of the applicable limitation period and is thus statute barred by operation of the *Limitation Act*.
5. Alternatively, even if and to the extent Toys R Us was still obligated to make additional rent payments in accordance with the provisions of the former Sears – Toys R Us Lease,

which the Defendant denies, the amounts demanded by the Plaintiff are not consistent with sections 8 and 10 of the Sears – Toys R Us Lease and substantially exceed the additional payments Toys R Us made to Sears pursuant to those provisions prior to January 2018.

6. Toys R Us is not and was never a beneficial owner of the Leased Premises or the Sears Lands. As such, Toys R Us was not enriched by its non-payment of the alleged Rent Arrears, specifically the property taxes that the Plaintiff asserts are due and owing. The Plaintiff has not suffered any corresponding deprivation as a result.
7. In the alternative, the Plaintiff's claim in unjust enrichment against Toys R Us is prohibited by the doctrine of laches and the Plaintiff acquiesced to only receiving the monthly rental payment of \$28,109.35 and no additional rent payments from Toys R Us.
8. In further answer to the whole of the Second Amended NOCC, the Defendant denies that the Plaintiff suffered or continues to suffer any injury, loss, damage, or expenses as alleged or at all.
9. The Second Amended NOCC should be dismissed with costs.

Defendant's address for service:      MLT Aikins LLP  
2600 – 1066 West Hastings Street  
Vancouver, BC V6E 3X1  
**Attention: Dale Lysak**

Place of trial:                                  Vancouver, British Columbia

The address of the registry is:            800 Smithe Street, Vancouver, BC V6Z 2E1

Date: May 15, 2025



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Signature of Dale Lysak  
Lawyer for the Defendant

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

**TAB C**

**From:** [Ian Aversa](#)  
**To:** [David Gruber](#); [Matilda Lici](#); [Samantha Hans](#); [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com); [cduggal@stikeman.com](mailto:cduggal@stikeman.com)  
**Cc:** [jnevsky@alvarezandmarsal.com](mailto:jnevsky@alvarezandmarsal.com); [sdedic@alvarezandmarsal.com](mailto:sdedic@alvarezandmarsal.com); [mbinder@alvarezandmarsal.com](mailto:mbinder@alvarezandmarsal.com); [mgraff@alvarezandmarsal.com](mailto:mgraff@alvarezandmarsal.com); [David Gruber](#)  
**Subject:** Re: IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TOYS "R" US (CANADA) LTD. / TOYS "R" US (CANADA) LTEE  
**Date:** February-06-26 1:44:03 PM

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**CAUTION:** This email originated from outside of the organization.

Hi David,

Thank you for your email, which we have reviewed with the Monitor and its counsel.

We recognize that the BC Action has been significantly advanced. However, as you can appreciate, the Company and the Monitor are cognizant of the cash flow forecast and the limited funding available to the Company while it is in CCAA protection. After careful consideration, and in consultation with the Monitor and its counsel, we advise that the Applicant is not in a financial position to participate in any enforcement processes or legal proceedings beyond these CCAA Proceedings, and will not consent to the lifting of the stay of proceedings for the purpose of advancing the BC Action.

We have added you to the service list in these CCAA Proceedings.

Thanks and regards,

**Ian Aversa**  
Partner | Lawyer

T 416.865.3082  
E [iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)

**Aird & Berlis LLP**  
Toronto | Vancouver

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**From:** David Gruber <[dgruber@mcewanpartners.com](mailto:dgruber@mcewanpartners.com)>

**Sent:** Wednesday, February 4, 2026 12:10 PM

**To:** Ian Aversa <[iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)>; Matilda Lici <[mlici@airdberlis.com](mailto:mlici@airdberlis.com)>; Samantha Hans <[shans@airdberlis.com](mailto:shans@airdberlis.com)>; [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com) <[leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)>; [cduggal@stikeman.com](mailto:cduggal@stikeman.com) <[cduggal@stikeman.com](mailto:cduggal@stikeman.com)>

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**Subject:** IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TOYS “R” US  
(CANADA) LTD. / TOYS “R” US (CANADA) LTEE

Dear Counsel,

We act as insolvency counsel for Concord Kingsway Project GP Ltd. (the “Plaintiff”) in the action styled *Concord Kingsway Project GP Ltd. v. Toys “R” Us (Canada) Ltd. / Toys “R” Us (Canada) Ltee*, Supreme Court of British Columbia, Vancouver Registry No. S-218765 (the “BC Action”).

As you should be aware, the Plaintiff claims judgment against the Applicant in the amount of \$3,224,212.97, plus interest and costs.

We write further to the Initial Order granted on February 3, 2026. Although not disclosed in the affidavit of Neil Taylor sworn February 2, 2026 filed in support of the Initial Order, the BC Action is presently at an advanced stage. The evidentiary phase of the trial has concluded following 20 days of trial, and closing submissions are scheduled to proceed over three days commencing Monday, February 9, 2026.

In these circumstances, the omission of any reference to the ongoing trial in the Taylor Affidavit may constitute a material omission, particularly given the proximity of the scheduled closing arguments and the Comeback Hearing.

Given the advanced procedural posture of the BC Action, and the fact that permitting the trial to conclude would not prejudice the restructuring process, our client urgently requests the written consent of the Applicant and the Monitor to lift the stay of proceedings solely for the limited purpose of permitting the trial to complete and proceed to judgment.

For greater certainty, our client agrees that any judgment rendered in the BC Action would remain fully subject to the stay of proceedings for so long as it remains in effect, and that no enforcement steps would be taken without further order of the Court.

In the absence of such consent, our client expressly reserves all of its rights, including its right to oppose the continuation of the stay at the Comeback Hearing and/or to seek an order lifting the stay for this limited purpose.

Given the imminence of the scheduled closing submissions and the timing of the Comeback

Hearing, we respectfully request your position forthwith.

Yours very truly,

---

**David Gruber**  
(he/him)



D [604.283.8051](tel:604.283.8051)  
[dgruber@mcewanpartners.com](mailto:dgruber@mcewanpartners.com)

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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 TOYS "R" US (CANADA) LTD. / TOYS "R" US (CANADA) LTEE (the "Applicant")

Court File No. CL-26-00000042-0000

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

PROCEEDING COMMENCED AT  
TORONTO

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