



Court File No. CV-23-00695619-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
CHIEF JUSTICE MORAWETZ

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MONDAY, THE 17TH
DAY OF JULY, 2023

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 NORDSTROM CANADA RETAIL, INC.,
NORDSTROM CANADA HOLDINGS, LLC and NORDSTROM
CANADA HOLDINGS II, LLC

APPROVAL AND VESTING ORDER
(Vaughan Mills and Deerfoot Meadows)

THIS MOTION, made by Nordstrom Canada Retail, Inc., Nordstrom Canada Holdings, LLC and Nordstrom Canada Holdings II, LLC (collectively, the "**Applicants**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things, (i) approving the transactions in respect of the Leases (as hereinafter defined) (collectively, the "**Transactions**" and each, a "**Transaction**") contemplated by the Omnibus Assignment and Assumption of Leases dated June 5, 2023 (as amended, modified and restated, the "**Assignment Agreement**") between Nordstrom Canada Leasing LP ("**Canada Leasing LP**", and together with the Applicants, the "**Nordstrom Canada Entities**") and Winners Merchants International L.P. (the "**Purchaser**"); (ii) vesting in and to the Purchaser, all of Canada Leasing LP's right, title and interest in and to the leases set out in Schedule "A" hereto (as amended, modified, assigned and restated, collectively, the "**Leases**"), the FF&E and Trade Fixtures (each as defined in the Assignment Agreement) and all related rights, benefits and advantages as described in the Assignment Agreement (the Leases and such other assets collectively referred to herein as the "**Purchased Assets**"); and (iii) approving the fees and disbursements of the Monitor and its counsel, and approving the Monitor's Reports (each as hereinafter defined) and the activities and conduct of the Monitor referred to therein.

ON READING the Notice of Motion of the Applicant, the Affidavit of Misti Heckel sworn on July 11, 2023 including the exhibits thereto (the “**Heckel Affidavit**”), the Fourth Report of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed monitor (in such capacity, the “**Monitor**”), dated July 12, 2023 (the “**Fourth Report**”) and the Affidavits of Alan J. Hutchens sworn July 12, 2023 and Brendan O’Neill sworn July 12, 2023 (collectively, the “**Fee Affidavits**”), and on hearing the submissions of respective counsel for the Nordstrom Canada Entities, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Hannah Davis, sworn July 12, 2023, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated March 10, 2023 (the “**Initial Order**”).

APPROVAL OF ASSIGNMENT AGREEMENT

3. **THIS COURT ORDERS** that the Transactions solely with respect to the Purchased Assets are hereby approved, and the execution and delivery of the Assignment Agreement by Canada Leasing LP is hereby authorized and approved, with such amendments as Canada Leasing LP and the Purchaser may agree to with the consent of the Monitor. Canada Leasing LP is 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 Transactions and for the conveyance of the Purchased Assets to the Purchaser pursuant to the Assignment Agreement and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Assignment Agreement.
4. **THIS COURT ORDERS** that upon delivery of a Monitor’s Certificate to Canada Leasing LP and the Purchaser, substantially in the form attached as Schedule “B” hereto (the “**Monitor’s Certificate**”):

(a) all of Canada Leasing LP's right, title and interest in and to the applicable Purchased Assets described in the Assignment Agreement shall vest absolutely in and to the Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, 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 or any other Order of this Court in these CCAA proceedings; and
- (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system,

(all of which, as set out in the foregoing paragraphs 4(a)(i) and 4(a)(ii), are collectively referred to as the "**Encumbrances**"), provided that: (A) except as set forth in paragraph 4(b) or as may be otherwise agreed to by the Purchaser and the applicable landlord with respect to a Lease, nothing herein shall affect the rights and remedies of such landlord against the Purchaser that may arise under or in respect of a Lease; (B) the Claims and the Encumbrances referred to herein shall not include permitted encumbrances identified in, or pursuant to, the Assignment Agreement; (C) all of the Encumbrances affecting or relating to the applicable Purchased Assets shall be hereby expunged and discharged as against such Purchased Assets; and (D) nothing in this Order shall affect the rights and remedies under and pursuant to any landlord waiver, consent and/or lease amending agreement executed by the landlord under the Lease with respect to the Assignment Agreement); and

(b) the landlord under the applicable Lease shall be prohibited from exercising any rights or remedies under such Lease, and shall be forever barred, enjoined and estopped from taking such action by reason solely of:

- (i) any defaults arising from the insolvency of the Nordstrom Canada Entities or any of their affiliates;
- (ii) the commencement of these CCAA proceedings;
- (iii) any defaults and/or recapture rights which arise solely as a result of the assignment of the Leases to the Purchaser; or
- (iv) Canada Leasing LP or any of its affiliates having breached a non-monetary obligation under the Lease, unless, (A) the applicable landlord under a Lease and the Purchaser have agreed otherwise; or (B) (1) such non-monetary breach under the Lease arises or continues after such Lease is assigned to the Purchaser; (2) such non-monetary breach is capable of being cured by the Purchaser; and (3) the Purchaser has failed to remedy the default after having received notice of such default pursuant to the terms of the Lease. Without limiting the foregoing, no landlord under a Lease shall rely on a notice of default sent prior to the filing of the applicable Monitor's Certificate to terminate a Lease as against the Purchaser.

5. **THIS COURT ORDERS** that no Lease may be assigned pursuant to the Assignment Agreement unless all amounts owing in respect of monetary defaults under the applicable Lease, other than those arising by reason only of the Nordstrom Canada Entities' insolvency, the commencement of these CCAA proceedings, or Canada Leasing LP's failure to perform a non-monetary obligation, are paid on the Closing Date (as defined below), or such later date as may be agreed to by the Purchaser and the landlord under the applicable Lease on prior written notice to the Monitor (the "**Closing Date**", being the date of the delivery of the applicable Monitor's Certificate).

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the proceeds, net of fees payable to JLL pursuant to the Consulting Services Agreement (each as defined in the Heckel Affidavit) and other applicable amounts, from the sale of the Purchased Assets shall stand in the place and stead of such Purchased Assets, and that from and after the delivery of the applicable Monitor's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of such Purchased Assets with the same priority as they had with

respect to such Purchased Assets immediately prior to the sale, as if such 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** that upon delivery of a Monitor's Certificate, except as expressly set out to the contrary in any agreement between Canada Leasing LP, the Purchaser and the landlord under the applicable Lease, the Purchaser shall be entitled to all of the rights and benefits and subject to all of the obligations as tenant pursuant to the terms of the applicable Lease and registrations thereof and may enter into and upon and hold and enjoy such premises contemplated by the applicable Lease and, if applicable, any renewals thereof, for its own use and benefit, all in accordance with and subject to the terms of the applicable Lease, without any interruption from Canada Leasing LP or the landlords under the applicable Lease.

8. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, nothing shall derogate from the obligations of the Purchaser to assume the Leases and to perform the Purchaser's obligations under the Leases, as set out in the Assignment Agreement and any landlord waiver, consent and/or lease amending agreement executed with respect to the Assignment Agreement, except as expressly set out to the contrary in any agreement between Canada Leasing LP, the Purchaser and the landlord under the applicable Lease.

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

10. **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) (the "BIA") in respect of any of the Nordstrom Canada Entities and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Nordstrom Canada Entities,

the vesting of the Purchased Assets in and to the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Nordstrom Canada Entities and shall not be void or voidable by creditors of any of the Nordstrom Canada Entities, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, 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.

APPROVAL OF THE MONITOR'S REPORTS, ACTIVITIES AND FEES

11. **THIS COURT ORDERS** that the Pre-Filing Report of the Proposed Monitor dated March 1, 2023, the First Report of the Monitor dated March 8, 2023, the Second Report of the Monitor dated March 16, 2023, the Third Report of the Monitor dated May 24, 2023 and the Fourth Report (collectively, the "**Monitor's Reports**"), and the activities and conduct of the Monitor referred to therein, be and are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

12. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, as set out in the Fourth Report and the Fee Affidavits, be and are hereby approved.

GENERAL

13. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada, the United States or any other jurisdiction, to give effect to this Order and to assist the Nordstrom Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Nordstrom Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Nordstrom Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the date of this Order without the need for entry or filing.



Chief Justice Geoffrey B. Morawetz

SCHEDULE "A"

LEASES

1. Lease between Ivanhoe Cambridge II Inc., as landlord, and Nordstrom Canada Leasing LP, as tenant, dated May 5, 2016; and
2. Lease between 6914861 Canada Inc., as landlord, and Nordstrom Canada Leasing LP, as tenant, dated May 31, 2016.

SCHEDULE “B”
FORM OF MONITOR’S CERTIFICATE

Court File No. CV-23-00695619-00CL

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 NORDSTROM CANADA RETAIL, INC.,
NORDSTROM CANADA HOLDINGS, LLC and NORDSTROM
CANADA HOLDINGS II, LLC

MONITOR’S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor’s Certificate have the meanings ascribed to them in the Approval and Vesting Order (Vaughan Mills and Deerfoot Meadows) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated July 17, 2023 (the “**Approval Order**”).

B. Pursuant to the Approval Order, the Court approved the Assignment Agreement and provided for the vesting in the Purchaser of Canada Leasing LP’s right, title and interest in and to the Purchased Assets described in the Assignment Agreement, which vesting is to be effective with respect to the Purchased Assets described in an Assignment Agreement upon the delivery by the Monitor to the Purchaser and Canada Leasing LP of a certificate confirming (i) the conditions to closing as set out in such Assignment Agreement have been satisfied or waived by the Purchaser and Canada Leasing LP, as applicable; and (ii) the Transaction has been completed to the satisfaction of the Monitor.

C. The Purchased Assets subject to this Monitor’s Certificate are the [**Vaughan Mills Lease**] [**Deerfoot Meadows Lease**], and related FF&E and Trade Fixtures (each as defined in the Assignment Agreement) and all related rights, benefits and advantages as described in the Assignment Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and Canada Leasing LP has received the Consideration (as defined in the Assignment Agreement) payable pursuant to the Assignment Agreement between the Purchaser and Canada Leasing LP;
2. The Monitor has received written notice from the Purchaser and Canada Leasing LP that the conditions to closing as set out in the Assignment Agreement have been satisfied or waived by the Purchaser and Canada Leasing LP, as applicable; and
3. The Transaction has been completed to the satisfaction of the Monitor.

This Monitor's Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

Alvarez & Marsal Canada Inc., in its capacity
as Monitor of the Nordstrom Canada Entities,
and not in its personal or corporate capacity

By: _____

Name: ●

Title: ●

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

Court File No: CV-23-00695619-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORDSTROM CANADA RETAIL, INC., NORDSTROM CANADA HOLDINGS, LLC AND NORDSTROM CANADA HOLDINGS II, LLC

	<p><i>Ontario</i></p> <p>SUPERIOR COURT OF JUSTICE COMMERCIAL LIST</p> <p>Proceeding commenced at Toronto</p>
	<p>APPROVAL AND VESTING ORDER (Vaughan Mills and Deerfoot Meadows)</p>
<p>OSLER, HOSKIN & HARCOURT, LLP 1 First Canadian Place, P.O. Box 50 Toronto, ON M5X 1B8</p> <p>Fax: 416.862.6666</p> <p>Tracy C. Sandler (LSO# 32443N) Tel: 416.862.5890 Email: tsandler@osler.com</p> <p>Jeremy Dacks (LSO# 41851R) Tel: 416.862.4923 Email: jdacks@osler.com</p> <p>Martino Calvaruso (LSO# 57359Q) Tel: 416.862.6665 Email: mcalvaruso@osler.com</p> <p>Marleigh Dick (LSO# 79390S) Tel: 416.862.4725 Email: mdick@osler.com</p>	<p>Lawyers for the Applicants</p>