ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE NO.: CV-25-00738613-00CL **DATE: May 14, 2025**

NO. ON LIST: 1

TITLE OF PROCEEDING: CCAA Hudson's Bay Company ULC et al

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE OSBORNE:

[1] Hudson's Bay Company and the other Applicants seek two orders:

a. an order extending the stay of proceedings to and including July 31, 2025; and

b. an order authorizing the Applicants to make certain distributions to the ABL Agent and the FILO Agent.

[2] The relief sought is supported by the ABL Agent, the FILO Agent, Employee Representative Counsel, and is recommended by the Court-appointed Monitor. No party opposes the stay extension, although (as more particularly described below) one of the landlords, Oxford Properties, clarified that its non-opposition was contingent on the continued payment of post-filing rent. RioCan, the JV partner, opposes the proposed Distributions and submits that they are premature. It submits in the alternative that if the Distributions are approved, they should be permitted to reserve all of their rights to challenge them at a later date.

[3] The Applicants rely on the Affidavit of Jennifer Bewley sworn May 7, 2025, together with exhibits thereto, together with the Third Report of the Monitor dated May 9, 2025, together with Appendices thereto. Defined terms in this Endorsement have the meaning given to them in the motion materials or the Third Report, unless otherwise stated.

[4] The Service List has been served. No party, including for greater certainty, Oxford or RioCan, filed any responding materials. No party sought an adjournment of the motion or a further opportunity to file any materials.

[5] After hearing the submissions from all interested parties at the conclusion of the hearing, I granted the motion with reasons to follow. These are those reasons.

Stay Extension

[6] The Applicants seek an extension of the stay of proceedings to and including July 31, 2025 to allow them to complete the Liquidation Process, the Lease Monetization Process, the SISP Process and to continue the other ongoing steps to maximize value for the Applicants and all stakeholders.

[7] This Court has jurisdiction to extend the stay of proceedings pursuant to section 11.02 of the *CCAA*. I am satisfied that the Applicants have acted, and continue to act, in good faith and with due diligence during the course of this *CCAA* Proceeding and that the circumstances make the proposed order appropriate.

[8] The Updated Cash Flow Forecasts prepared by the Applicants and reviewed by the Monitor reflects that the Applicants will have sufficient liquidity to operate through the proposed

Stay Period, taking into account the proposed Distributions discussed below. That Forecast is attached as Appendix "E" to the Third Report.

[9] I am satisfied that the proposed stay extension is appropriate, and it is granted.

[10] The Applicants seek as a term of that relief that the extended stay continue to apply in favour of the Non-Applicant Stay Parties, until at least bids (if any) received in the Lease Monetization Process and the SISP have been reviewed and considered, and a determination has been made by the Applicants, with the assistance of Reflect and the Monitor, as to whether it is necessary or appropriate to continue further the stay in respect of the Non-Applicant Stay Parties.

[11] Oxford Properties, one of the Company's landlords, does not oppose the extension of the stay, including to the Non-Applicant Stay Parties, provided that post-filing rent continues to be paid. It is their position that if, as and when post-filing rent is not paid, there is no basis for a continued stay of proceedings.

[12] It is the intention of the Applicants and the Non-Applicant Stay Parties that the latter will continue to pay post-filing rent obligations under all head leases until such leases are either part of a transaction in respect of which Court approval will be sought, or the leases are disclaimed. Accordingly, I am satisfied that the proposed stay extension, including with respect to Non-Applicant Stay Parties, is appropriate.

[13] If post-filing rent is not paid and the relevant lease is not the subject of a transaction approval motion or has not been disclaimed, the relevant landlord is certainly free to bring a motion to lift the stay and also may have resort to the standard come-back clause in the Amended and Restated Initial Order, if advice and/or directions are required at any time. For greater certainty, the issue of whether a head lease between a Non-Applicant Stay Party and a landlord could form part of a transaction in respect of which Court approval will be sought, has not been determined and the parties have reserved their rights with respect thereto, specifically as noted in the Lease Monetization Process Order dated March 21, 2025 and in my Endorsement of April 4, 2025.

Proposed Distributions

[14] The Liquidation Sale is continuing, and will do so until the end of this month. It has generated cash materially in excess of the operating needs of the Applicants. At the same time, the Applicants have also limited their cash expenditures by issuing disclaimer notices in respect of certain Saks OFF 5th leases, that did not receive bids as part of either the SISP or the Lease Monetization Process.

[15] The Applicants therefore seek authorization to repay or cash collateralize the Revolving Obligations as defined in the Amended ABL Credit Agreement owing to the ABL Agent in full and make distributions to the FILO Agent from time to time to repay the FILO

Obligations (as defined in the Amended ABL Credit Agreement), owing to the FILO Lenders, other than the Make-Whole asserted by those parties.

[16] The amount outstanding under the Revolving Credit Facility and related bank products is approximately $25 million, which amount relates principally to letter of credit and payment card liabilities. The amount outstanding under the FILO Credit Facility is approximately $140 million, excluding the Make-Whole (an additional amount of approximate $30 million).

[17] Counsel to the Court-appointed Monitor and its local, provincial agents have reviewed the loan and security agreements relating to the Revolving Credit Facility and the FILO Credit Facility, and have concluded that with the exception of certain equitable leasehold mortgages, the security is valid and perfected.

[18] The Updated Cash Flow Forecast reflects that the Company is expected to have sufficient liquidity to pay the proposed Distributions. The proposed ABL Distribution is in the amount of $24.6 million and the proposed FILO Distribution is in the amount of $40.9 million. The Forecast reflects that the cash position of the Applicants at the end of the Forecast Period is expected to be approximately $53.3 million net of the proposed Distribution amounts.

[19] The Monitor considers this to be a reasonable and sufficient amount in the circumstances of this case. The Forecast is also conservative in that for purposes of the proposed Distribution analysis only, it excludes any potential additional proceeds generated from the Lease Monetization Process and the SISP.

[20] I am satisfied that the proposed Distributions can, and in the particular circumstances of this proceeding should, be made pursuant to the exercise of discretion under section 11 of the *CCAA*.

[21] Courts have previously authorized a distribution of available cash to creditors of a debtor during pending *CCAA* proceedings, and outside the parameters of a plan of arrangement. See, for example: *AbitibiBowater Inc*., 2009 QCCS 6461 at para. 71; and *Nortel Networks Corp., Re*, 2014 ONSC 4777 at paras. 53 -58.

[22] Here, the exercise of that discretion is reasonable and appropriate. The obligations under both the Revolving Credit Facility and the FILO Credit Facility continue to accrue interest. While, obviously, the Lenders under those Facilities wish to be repaid, there is also a benefit to the Debtors and their other stakeholders in that this very significant interest expense will be minimized.

[23] RioCan does not challenge the fact that the indebtedness is owing under the Revolving Credit Facility and the FILO Credit Facility, or the security interests granted thereunder. It does not oppose the submission that the Lenders under those facilities are, on the record as

it exists today, entitled to the amounts sought to be distributed. It submits, however, that the proposed distributions are premature, since it is relatively early in this *CCAA* Proceeding, and in particular, the proposed distributions should be deferred until a more fulsome review of the Neiman Marcus Transaction has been performed.

[24] I have considered those submissions. First, the objection applies only to the FILO Credit Facility, and not the Revolving Credit Facility in respect of which the indebtedness is straightforward. The concern relates to the Neiman Marcus Transaction.

[25] The Nieman Marcus Transaction is described in the affidavits of Ms. Bewley sworn both in support of this motion and in support of the Application on December 7, 2024. In December, 2024, Saks Global Enterprises, LLC, a sister company and affiliate of Hudson's Bay, acquired Neiman Marcus.

[26] As part of that Transaction, Hudson's Bay's Canadian business became separately financed from US operations, with its own standalone credit facilities. As noted in the Third Report, certain stakeholders (including RioCan) raised concerns with the Monitor with respect to the Neiman Marcus Transaction, and particularly with respect to pay-downs received by certain secured creditors in connection therewith.

[27] The Applicants submit, and the Monitor confirms its understanding, that following completion of the Nieman Marcus Transaction, the Canadian business was de-leveraged by approximately $1.36 billion, the amount by which its secured debt was reduced. Certain of the secured debt of the Canadian business that was re-paid was guaranteed by certain US entities, or was debt in respect of which certain US entities were co-borrowers or guarantors.

[28] The concern of RioCan is that no sufficient analysis has been completed to date to allow them to determine with any certainty whether the reduction in secured debt of the Canadian business of approximately $ 1.36 billion, in exchange for the release of US borrowers and or guarantors, was fair and reasonable. There is no evidence as to the exact quantum of the consideration paid for that deleveraging of $1.36 billion. (I do note that the Canadian Business was also released from obligations in respect of US debt).

[29] The Neiman Marcus Transaction was completed within a relatively short period of time prior to the commencement of this *CCAA* Proceeding. The US business and related entities have not sought protection from their creditors in the United States.

[30] In my view, those concerns can and should be pursued, if, as and when stakeholders wish to do so. I am satisfied, however, that there is no basis to hold up the proposed Distributions today.

[31] I accept the submission of the Applicants and the FILO Lenders, supported by the Monitor, that whatever the merits and/or equities of the Neiman Marcus Transaction (about which, to

be clear, I make no determination today), the FILO Lenders were new lenders to the business. Moreover, the funds advanced were new funds.

[32] The FILO Lenders were "new-money lenders" that advanced fresh capital, and none of the FILO Lenders are lenders to Saks Global in the US, and none have been since the Neiman Marcus Transaction. While existing FILO Lenders may have been participants in the Pathlight facility prior to the Neiman Marcus Transaction, and therefore received funds as part of the paydown of the Pathlight facility, the fundamental point remains that the proposed Distributions today are in respect of new capital advanced. The Pathway Facility is not relevant to the proposed Distributions. Even if the Neiman Marcus Transaction were to be subsequently challenged, and that challenge were upheld, such would not make the proposed Distributions inappropriate.

[33] The Monitor is satisfied, based on its review as described in the Third Report, that the proposed Distributions are appropriate, considering the above characteristics of the Neiman Marcus Transaction. Counsel to the Monitor confirmed, in response to my questions, that there were no materials or information requested by the Monitor with respect to these issues that was refused or not provided by the Applicants.

[34] For these reasons, I am satisfied that the proposed Distributions can and should be made, and that they should not be subject to any reservation of rights.

Result and Disposition

[35] For all of these reasons, the motion of the Applicants is granted.

[36] Order to go in the form signed by me which has immediate effect without the necessity of issuing and entering.

Corrigendum: Following the release of this Endorsement yesterday, counsel to Cadillac Fairview and Oxford Properties drew to the attention of the Court typographical errors in two paragraphs.

In paragraph 12, the reference in the first sentence to "Applicants" should be a reference to "Non-Applicant Stay Parties" which pay rent under the head leases.

In paragraphs 12 and 13, for greater certainty the issue of whether a head lease between a Non-Applicant Stay Party and a landlord could form part of a transaction in respect of which Court approval will be sought, has not been determined and the parties have reserved their rights with respect thereto, specifically as noted in the Lease Monetization Process Order dated March 21, 2025 and in my Endorsement of April 4, 2025.

I have corrected those errors pursuant to Rule 59.06(1). No other amendments have been made. This revised version of the Endorsement shall replace and supersede for all purposes the version released yesterday. PJO