

**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
HUDSON'S BAY COMPANY ULC / COMPAGNIE DE LA BAIE D'HUDSON SRI,
HBC CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2
INC., HBC BAY HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY
HOLDINGS ULC, HBC CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2
LP INC., HBC HOLDINGS GP INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC.,
AND 2472598 ONTARIO INC.**

Applicants

**FACTUM OF MONTEZ HILLCREST INC.
AND HILLCREST HOLDINGS INC.
(Hillcrest ROFR)**

August 21, 2025

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PART I - OVERVIEW

1. This factum is filed by Montez Hillcrest Inc. and Hillcrest Holdings Inc., by their manager OPGI Management Limited Partnership by its general partner OPGI Management GP Inc.¹ (collectively, “**Oxford**”) for the relief set out in its Notice of Motion dated August 9, 2025 relating specifically to the Hillcrest ROFR and the Hillcrest Lease (each as defined below). Oxford will file a separate responding factum to the Applicants’ motion seeking approval of the APA (as defined below).
2. If the Applicant’s motion for court approval of the APA is denied, it is common ground among the parties that any relief relating to Oxford’s exercise of the Hillcrest ROFR is moot. In those circumstances, Oxford would simply seek the return of the \$450,000 deposit it paid to the Monitor in connection with Oxford’s exercise of the Hillcrest ROFR. As a matter of timing and sequencing, all parties agree that a decision on HBC’s motion for approval of the APA is the gating issue. Oxford was not required to but included a Notice of Motion seeking declaratory relief in its responding motion record, to ensure that no argument could be raised that it failed to fully articulate the basis for its position in relation to the Hillcrest ROFR.²
3. Capitalized terms used herein and not otherwise defined have the meaning attributed to them in the Affidavit of Nadia Corrado sworn August 9, 2025 (the “**Main Corrado**”).

¹ Hillcrest Mall Management Inc., an affiliate of Oxford, is retained by the owners of Hillcrest Mall as property manager and subcontracts such obligations to Oxford.

² Oxford is also serving this Factum on the Hillcrest ROFR on the same date that HBC and supporting parties are serving their Facta, notwithstanding that it arises out of HBC’s motion.

Affidavit”) and the Affidavit of Nadia Corrado sworn August 9, 2025 (the “**Corrado ROFR Affidavit**”).

PART II - THE FACTS

A. Background

4. On July 29, 2025, the Applicants served a motion for an Order compelling the assignment of certain of its leases to Ruby Liu Commercial Investment Corp. (“**PurchaseCo**”) pursuant to an Asset Purchase Agreement dated May 23, 2025, as amended (the “**APA**”) between Hudson’s Bay Company ULC Compagnie De La Baie D’Hudson SRI and HBC Centrepont GP Inc. (together, “**HBC**”) as vendor, PurchaseCo as purchaser, and Weihong Liu as guarantor of the APA.
5. Among the 25 leases subject to the proposed APA is the lease agreement dated May 30, 1973, as amended, between Montez Hillcrest Inc. and Hillcrest Holdings Inc., as landlord (Oxford), and HBC, as tenant (the “**Hillcrest Lease**”). The Hillcrest Lease is not one of the ten leases identified as a “must have” location or “key lease” listed on Schedule “F” to the APA.³
6. In section 2.4(a) of the APA, each of HBC and PurchaseCo expressly acknowledge the Hillcrest ROFR and the requirement that HBC “offer to sell the Hillcrest Mall Lease to [Oxford] on the same terms and conditions that apply to the sale of the Hillcrest Mall Lease

³ Schedule “F” of the APA attached at Exhibit “B” to the Affidavit of Franco Perugini sworn July 29, 2025 [**Perugini Affidavit**].

pursuant to [the APA].⁴ Despite the mischaracterization of the Hillcrest ROFR as an “offer to sell the lease” rather than a “surrender of the lease”, the existence of Oxford’s rights in relation to the Hillcrest Lease were confirmed by the parties under the APA.

B. The Hillcrest Lease and the Hillcrest ROFR

7. The Hillcrest Lease grants Oxford the right to determine whether, and on what basis, an assignment of the Hillcrest Lease can occur, and if so, to whom, and in what circumstances. These contractual rights are reflected in: (i) the requirement for Oxford’s consent to an assignment of the Hillcrest Lease; and (ii) the Hillcrest ROFR. These rights have been a key feature of the Hillcrest Lease for over 50 years, in respect of which HBC has received favourable terms and considerable benefits in exchange, that are not typically provided to tenants.⁵
8. Oxford’s consent rights prevent HBC from assigning, subletting all or part of the premises, or granting any concession or licence in respect of the Hillcrest Lease without the prior written consent of Oxford, which can be withheld in Oxford’s sole discretion, but will not be unreasonably withheld if: ⁶
 - (a) the proposed assignee carries on a department store business with substantially similar merchandising, service and operating practices to that then carried on by HBC;

⁴ APA, s. 2.4(a), attached at Exhibit “B” to the Perugini Affidavit.

⁵ Corrado ROFR Affidavit, para 38.

⁶ Hillcrest Lease, ss. 7.01, 7.02A.

- (b) the proposed assignee is then in a position to borrow money on a long-term basis at an interest rate not less favourable than that which would then be available to HBC if HBC was to then borrow money on a long-term basis;
 - (c) the proposed assignee has entered into an agreement with Oxford in a form reasonably satisfactory to Oxford whereby the proposed assignee agrees to be bound by, to perform or to assume (as the case may be) all of the covenants and obligations of HBC under the lease; and
 - (d) HBC provides to Oxford, with notice of a proposed assignment, such reasonable information in connection with the financial standing of the proposed assignee as shall be reasonably necessary to enable Oxford to determine whether the condition in (b) above has been met.
9. In addition, the Hillcrest ROFR confers upon Oxford the right to accept a surrender of the Hillcrest Lease, on certain terms, when Oxford's consent is sought to a proposed assignment of the Hillcrest Lease, not less than three (3) months prior to the date on which the proposed assignment is to become effective. The Hillcrest ROFR contains the following features:⁷
- (a) it applies in any case where, by the terms of Article VII of the Hillcrest Lease, the landlord's consent is required for an assignment of the lease;

⁷ Hillcrest Lease, s. 7.03.

- (b) notice must be given to Oxford not less than three (3) months prior to the date on which the proposed assignment is to become effective, being the date on which possession of the Hillcrest Premises would transfer from Oxford's existing tenant (HBC) to the assignee, and the assignee would become the new tenant under the lease with Oxford; and
 - (c) the terms on which the proposed assignment is to be made and the identity of the assignee must be provided to Oxford under Article VII of the Hillcrest Lease.
- 10. Upon receiving the above required notice and information, Oxford may, at its option, advise HBC within 30 days if it wishes to exercise the Hillcrest ROFR and accept a surrender of the Hillcrest Lease. If Oxford accepts a surrender of the Hillcrest Lease, the same amount that HBC would have received from the assignee on such assignment becomes payable by Oxford instead (the "**ROFR Payment**"). The ROFR Payment in respect of the APA and the Hillcrest Lease is \$4.5 million.
- 11. These rights are cumulative and provide Oxford with two layers of control over any proposed assignment. The Hillcrest ROFR is triggered upon HBC seeking Oxford's consent under the terms of Article VII. As part of any request for assignment, Oxford may grant its consent, withhold its consent, and/or in any event, exercise the Hillcrest ROFR. In any scenario where Oxford's consent to an assignment of the Hillcrest Lease is required, such an assignment cannot occur unless Oxford consents to the assignment and decides not to exercise the Hillcrest ROFR.

12. The rights in favour of Oxford pursuant to the Hillcrest Lease, including the requirement for its consent to any assignment and the right of surrender under the Hillcrest ROFR, are critically important to Oxford and part of the reason that it was prepared to invest approximately \$150 million on capital improvements to the HBC leased premises at Hillcrest Mall and common areas adjacent to the HBC leased premises over the past 10 years.⁸

C. Hillcrest ROFR is Triggered Amid Breach of the APA

13. On May 30, 2025, HBC delivered a letter to Oxford (the “**ROFR Notice**”) referring to the Hillcrest ROFR. The ROFR Notice did not include a request for Oxford’s consent to the assignment of the Hillcrest Lease, disclosed only high level terms of the APA, and did not include a copy of the APA or any other information relating to the proposed assignment or the proposed assignee PurchaseCo.⁹ The ROFR Notice was delivered by HBC on the basis that the APA remained conditional on Court approval. The ROFR Notice did not specify “a date on which the proposed assignment was to become effective” as required by the Hillcrest ROFR. In light of the conditional nature of the APA, no effective date exists unless and until Court approval is obtained and an effective date is identified.
14. HBC’s own public press release emphasized the conditional nature of the APA and uncertainty regarding satisfaction of closing conditions.¹⁰ Despite numerous written requests, Oxford received no responses from HBC to information requests regarding the proposed assignment to PurchaseCo. This included whether required landlord consents

⁸ Corrado ROFR Affidavit, para 7.

⁹ Corrado ROFR Affidavit, Exhibit “E”.

¹⁰ Main Corrado Affidavit, Exhibit “O”.

under the APA would be satisfied or waived, or whether HBC intended to seek a forced assignment of the leases subject to the APA in the absence of such consents.¹¹

15. In the midst of this ongoing uncertainty, on June 19, 2025, Oxford delivered a letter to HBC (the “**June 19 Letter**”) advising that the ROFR Notice was deficient as it failed to provide sufficient detail regarding the terms of the proposed assignment, and Oxford requested a copy of the APA.¹²
16. A case conference before Justice Osborne was held on June 25 and 27, 2025 to address the purported running of the notice period under the ROFR Notice delivered on May 30, 2025. On June 24, 2025, the evening prior to the case conference, HBC delivered to Oxford a heavily redacted copy of the APA. In an Endorsement dated June 29, 2025, Justice Osborne held that the notice period under the Hillcrest ROFR would not commence until either: (i) a less-redacted version of the APA was provided to Oxford (with directions provided as to lifting of redactions); or (ii) the APA was delivered to the Service List in the CCAA proceeding in connection with any motion seeking its approval.¹³
17. On July 3, 2025, counsel for HBC delivered a less-redacted copy of the APA, thereby commencing the 30-day notice period under the ROFR Notice.¹⁴

¹¹ See, for example, Main Corrado Affidavit at paras 86, 88 – 90, 97, 99 – 103 and requests for information by Oxford contained at Exhibits “D”, “E”, “F”, “Q”, “S”, and “U” to the Main Corrado Affidavit.

¹² Corrado ROFR Affidavit, para 19 and Exhibit “T”.

¹³ *In re Hudson’s Bay Company*, (June 29, 2025) Ont. S.C.J. [Commercial List] Court File No. CV-25-00738613-00CL (Endorsement of Justice Osborne) at para 28 [**June 28 Endorsement**].

¹⁴ Corrado ROFR Affidavit, para 25 and Exhibit “N”.

18. On July 4, 2025, Oxford wrote to HBC and the Monitor inquiring whether, apart from a single June 6, 2025 letter from PurchaseCo's then-counsel, any further information would be provided in respect of the APA or the ROFR Notice. HBC and the Monitor did not respond.¹⁵
19. On July 15, 2025, at a hearing for a motion within this CCAA proceeding, Justice Osborne informed all parties of inappropriate direct email communications he had received from Ms. Liu. On July 29, 2025, redacted versions of those emails and their attachments were served on the Service List by the Monitor's counsel.¹⁶
20. Among the attachments was correspondence dated July 5, 2025 (the "**July 5 Letter**"), from HBC to PurchaseCo, which confirmed that HBC shared Oxford's concerns regarding the absence of meaningful disclosure in support of any request for landlord consent to the lease assignments, and further acknowledged that the proposed assignee was in breach of the APA.
21. HBC took steps to trigger the commencement of the thirty-day notice period under the Hillcrest ROFR on July 3, 2025 and ensure that the applicable notice period would run against Oxford, while simultaneously expressing its belief that the proposed assignee was in breach of the APA for, among other things, failing to deliver the very information that Oxford had been requesting. HBC also remained uncertain whether it would seek Court

¹⁵ Corrado ROFR Affidavit, para 26 and Exhibit "O".

¹⁶ Corrado ROFR Affidavit, para 35 and Exhibit "V".

approval of the underlying transaction in circumstances where HBC believed it was entitled to terminate the APA.¹⁷

22. In those circumstances, and at a minimum from July 3, 2025, the triggering of the time period under the ROFR Notice does not meet the good faith requirement of section 18.6 of the CCAA.¹⁸ That is particularly the case where no consent to an assignment of the Hillcrest Lease had been sought by HBC from Oxford, and the information required by the Hillcrest Lease for any assignment had not been provided to Oxford.

D. Oxford Exercises the Hillcrest ROFR

23. Oxford acted in good faith to protect its rights under the Hillcrest Lease and responded to the ROFR Notice within 30 days of its deemed triggering on July 3, 2025, notwithstanding that:
- (a) a motion by the FILO Agent to terminate the APA has been pending since July 8, 2025, which relief included support in the Monitor's Sixth Report to Court, and, if granted, would render the ROFR Notice moot;
 - (b) the APA is not effective unless Court approval of the APA and underlying lease assignment is granted, which motion by HBC is not scheduled to be heard until August 28-29, 2025;

¹⁷ Perugini Affidavit at paras 15 -16.

¹⁸ CCAA, [s.18.6](#).

- (c) there is no date on which the proposed assignment under the APA is to become effective (nor could there be, when the APA's effectiveness is conditional on obtaining court approval);
 - (d) "baseline" information (as described by HBC's advisors)¹⁹ that any landlord would require when consent to an assignment of the lease is sought, was only provided to Oxford in motion materials served on July 29, 2025 seeking a forced assignment of leases, including the Hillcrest Lease; and
 - (e) no request for Oxford's consent to an assignment has been made by HBC, nor has the information required by Article VII of the Hillcrest Lease been provided to Oxford.
24. On July 31, 2025, Oxford advised HBC and the Monitor in writing (the "**ROFR Election**") that Oxford was exercising its right under the Hillcrest ROFR on the same basis that the ROFR Notice and the APA was presented to it – that is, based on the outcome of the motion for Court approval of the assignment pursuant to the APA. At the same time, Oxford paid the requested deposit of \$450,000, reflecting 10% of the ROFR Payment.²⁰
25. On August 1, 2025, HBC asserted that the ROFR Election was invalid, and suggested that it was conditional.²¹ That same day, Oxford reaffirmed its exercise of the Hillcrest ROFR on the same basis as the APA and on terms consistent with both the Hillcrest Lease and

¹⁹ See: the July 5 Letter at Exhibit "V" to the Main Corrado Affidavit; and the May 30, 2025 email from Oberfeld to Oxford at Exhibit "Q" to the Main Corrado Affidavit.

²⁰ Corrado ROFR Affidavit, para 29 and Exhibit "S".

²¹ Corrado ROFR Affidavit, para 30 and Exhibit "R".

Oxford's contractual option.²² Those terms are also consistent with section 2.4(a) of the APA,²³ which specifically provide that the ROFR Notice would be on the "same terms and conditions" (including the condition requiring court approval) that apply to the APA.

26. HBC is not prejudiced by Oxford's exercise of the Hillcrest ROFR, which leaves HBC in exactly the position it bargained for under the Hillcrest Lease. If the APA is approved by the Court and a "date upon which the assignment is to become effective" is established, Oxford will pay the same amount as the proposed assignee. If the APA is not approved, no date upon which the proposed assignment is to become effective could exist or arise, and all steps taken in connection with the Hillcrest ROFR (including the issuance of the ROFR Notice and the ROFR Election by Oxford) are rendered moot.²⁴

PART III - THE ISSUES

27. To the extent not rendered moot by the dismissal of HBC's forced assignment motion for the APA (in which case the within motion will not proceed) the issues to be determined on this motion are:
- (a) whether Oxford's exercise of the Hillcrest ROFR, effected through the ROFR Election, is valid; and
 - (b) ancillary directions to the Monitor in respect of the \$450,000 deposit paid by Oxford.

²² Corrado ROFR Affidavit, para 31 and Exhibit "S".

²³ APA, s. 2.4(a), Exhibit "B" to the Perugini Affidavit.

²⁴ June 28 Endorsement at para 15.

PART IV - THE LAW

A. The ROFR Election was Properly Exercised

28. Notwithstanding the procedural and substantive deficiencies in HBC's triggering of the ROFR Notice, Oxford exercised the Hillcrest ROFR in good faith and on the very basis upon which the ROFR Notice in respect of the APA was presented to it – that is, subject to court approval of the APA. HBC's assertion that the ROFR Election was conditional and therefore ineffective should be rejected. The APA that is the subject of the ROFR Notice is conditional (upon court approval). Oxford's ROFR Election is not.

I. Principles of Contractual Interpretation Applied to the Hillcrest ROFR

29. In interpreting the Hillcrest ROFR, this Court should be guided by well-settled principles of contractual interpretation applicable to commercial contracts, which include:
- (a) the interpretation of a contractual provision must be read in light of the entire contract;²⁵
 - (b) the intention of the parties is determined in accordance with the language they have used in the written document, based upon the "cardinal presumption" that they have intended what they have said;²⁶
 - (c) the text of the written agreement should be read as a whole, giving the words used their ordinary and grammatical meaning, in a manner that gives meaning to all of

²⁵ *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53 at [para 57](#) [*Sattva*].

²⁶ *Weyerhaeuser Company Limited v. Ontario (Attorney General)*, 2017 ONCA 1007 at [para 65](#) [*Weyerhaeuser*].

its terms and avoids an interpretation that would render one or more of its terms ineffective;²⁷ and

- (d) the contract should be read in a fashion that accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed.²⁸

- 30. Rights of first refusal are contractual in nature. Ultimately, the interpretation of any such right turns on three factors: (i) its explicit wording; (ii) the circumstances of the offer that is said to trigger it; and (iii) the manner in which it is exercised by the holder.²⁹

(a) The Hillcrest ROFR Must be Read in the Context of Article VII

- 31. Section 7.03 of the Hillcrest Lease (the Hillcrest ROFR provision) must be read in the context of Article VII as a whole, which Article governs assignments and subletting. Section 7.03 of the Hillcrest Lease expressly applies:

In any case where, by the terms of this Article VII, the consent of the Landlord is required to an assignment (whether or not such consent may be unreasonably withheld)... [underlining added]

- 32. The predicate for any triggering of the Hillcrest ROFR is a request by HBC for consent to an assignment of the Hillcrest Lease under the terms of Article VII. The Hillcrest Lease provides that Oxford can withhold its consent in its sole discretion, but will not unreasonably withhold its consent to an assignment of the lease, if:

²⁷ *Sattva* at [para 47](#).

²⁸ *Salah v Timothy's Coffees of the World Inc.*, 2010 ONCA 673 at [para 16](#) [*Timothy's Coffees*].

²⁹ *Alim Holdings Ltd. v Tom Howe Holdings Ltd.*, 2016 BCCA 84 at [para 38](#) [*Alim Holdings*].

- (a) the proposed assignee carries on a department store business with substantially similar merchandising, service and operating practices to that then carried on by HBC;
 - (b) the proposed assignee is then in a position to borrow money on a long-term basis at an interest rate not less favourable than that which would then be available to HBC if HBC was to then borrow money on a long-term basis;
 - (c) the proposed assignee has entered into an agreement with Oxford in a form reasonably satisfactory to Oxford whereby the proposed assignee agrees to be bound by, to perform or to assume (as the case may be) all of the covenants and obligations of HBC under the lease; and
 - (d) HBC provides to Oxford, with notice of a proposed assignment, such reasonable information in connection with the financial standing of the proposed assignee as shall be reasonably necessary to enable Oxford to determine whether the condition in (b) above has been met.
33. HBC did not request Oxford's consent to an assignment of the Hillcrest Lease³⁰ nor did it provide the information and documentation that would be required to support any *bona fide* request for consent to an assignment under Article VII, notwithstanding the specific criteria set out in the Hillcrest Lease. Oxford made every commercially reasonable and

³⁰ Oxford's consent was only ever sought on one occasion, by PurchaseCo, not HBC. See: Main Corrado Affidavit at para 100.

good faith effort to respond to the highly unusual situation, by proactively seeking information from HBC as to the proposed assignment on numerous occasions.³¹

(b) The Terms of the Hillcrest ROFR

34. The text of the Hillcrest ROFR in section 7.03 of the Hillcrest Lease must be read as a whole, giving the words used their ordinary and grammatical meaning, in a manner that avoids an interpretation that would render one or more of its terms ineffective.³² While general statements about rights of first refusal may provide guidance, they cannot be treated as immutable rules because their applicability depends on the language of the particular provision.³³
35. The express words of the Hillcrest ROFR require that there be “a date on which the proposed assignment is to become effective.” That date serves as the reference point against which the process and timing of any ROFR Notice must be measured. HBC’s ROFR Notice did not satisfy this essential requirement. Absent Court approval of the APA (among other outstanding conditions), there could never be a date on which HBC’s rights under the Hillcrest Lease would transfer to the proposed assignee.

³¹ See, for example, Main Corrado Affidavit at paras 86, 88 – 90, 97, 99 – 103 and requests for information by Oxford contained at Exhibits “D”, “E”, “F”, “Q”, “S”, and “U” to the Main Corrado Affidavit.

³² *Sattva* at [para 47](#).

³³ *Alim Holdings* at [para 38](#).

(c) **The Hillcrest ROFR in the CCAA Context**

36. The circumstances of the proposed assignment pursuant to the APA in the context of the CCAA, and Oxford's response to the ROFR Notice, support an Order validating Oxford's exercise of the Hillcrest ROFR.
37. In the ordinary course outside of a CCAA proceeding, the Hillcrest Lease provides Oxford with not less than three (3) months advance notice of the date on which the lease is to be transferred to an assignee. This provides Oxford with an opportunity to receive from its tenant and consider the information required by Article VII that is applicable to any request for an assignment requiring its consent. Oxford is then able to determine if it: (i) consents to the proposed assignment; (ii) refuses to grant its consent to the proposed assignment (in which case the matter is addressed through arbitration or litigation, if disputed); and (iii) in any event, whether Oxford wishes to exercise the Hillcrest ROFR.
38. The ordinary course mechanisms for assigning the Hillcrest Lease and manner of resolving related disputes are now operating within the context of this court-supervised liquidation of HBC and associated time constraints.³⁴ Oxford has had to address the Hillcrest ROFR against the backdrop of the FILO Agent's pending motion to terminate the APA and in the context of: (i) a highly conditional proposed assignment of the anchor tenant Hillcrest Lease by HBC; (ii) a lack of basic information to support an assignment of the Hillcrest Lease; (iii) HBC's own assertion that it was entitled to terminate the APA on grounds that included PurchaseCo's failure to provide the very information Oxford was requesting; (iv)

³⁴ *Alim Holdings* at [para 38](#).

HBC's admission that it was considering terminating the APA; and (v) the Monitor confirming that it supported a termination of the APA.³⁵

39. Within these extraordinary circumstances, Oxford exercised the Hillcrest ROFR in good faith to preserve its contractual right without the benefit of information required by the Hillcrest Lease amid extreme uncertainty as to whether the proposed assignment pursuant to the APA could ever become effective. The motion seeking court approval of the APA was served on July 29, 2025, with the notice period under the Hillcrest ROFR due to expire on Saturday, August 2, 2025. Oxford's exercise of the Hillcrest ROFR was undertaken to protect its rights under the Hillcrest Lease, in a manner consistent with the Hillcrest ROFR and the conditional APA that was presented to it.
40. HBC seems to take the position that Oxford must exercise the Hillcrest ROFR and make the irrevocable ROFR Payment before any effective assignment of the lease exists and in circumstances where an effective assignment may never materialize. This interpretation disregards the contractual text of the Hillcrest Lease, distorts the commercial context in which the Hillcrest ROFR is invoked and exercised, and deprives Oxford of the very protections it bargained for. Such an interpretation is commercially absurd and should be avoided.³⁶

³⁵ Eighth Report of the Monitor dated August 20, 2025, s. 3.12 [**Eighth Report**].

³⁶ *Timothy's Coffees* at [para 16](#).

II. The CCAA Requirement of Good Faith

41. Contractual counterparties are subject to a common law duty of honest performance in the discharge of their contractual duties and obligations.³⁷ Even in the context of commercial agreements, parties are held to a basic standard of honest conduct.³⁸ This duty requires that parties refrain from knowingly misleading one another with respect to matters directly connected to the performance of the contract.³⁹ Misleading conduct can include, among other things, omission or silence, depending on the circumstances.⁴⁰
42. In the context of a contractual right of first refusal, the grantor of a right of first refusal must act reasonably and in good faith in relation to that right and must not act in a fashion designed to eviscerate the very right which has been given,⁴¹ or in a manner that renders the other party's rights meaningless.⁴²
43. The CCAA also imposes a statutory duty of good faith on all parties.⁴³ This is particularly applicable to Applicants who seek the Court's equity through a stay of proceedings and similar relief. In this context, satisfying a standard of good faith is an assessment made regarding actual objective facts of things done or not done.⁴⁴
44. HBC's position that Oxford has not validly exercised the Hillcrest ROFR is inconsistent with its good faith obligations in contract and under the CCAA, at least and in particular,

³⁷ *Bhasin v Hrynew*, 2014 SCC 71 at [para 93](#).

³⁸ *Ibid* at [para 60](#).

³⁹ *CM Callow Inc. v Zollinger*, 2020 SCC 45 at [para 42](#).

⁴⁰ *Ibid* at [para 91](#).

⁴¹ *GATX Corp. v Hawker Siddeley Canada Inc.*, 1996 CanLII 8286 (ON SC) at [para 71](#).

⁴² *Best Pacific Resources Ltd. v Eravista Energy Corp.*, 2002 ABCA 286 at [para 25](#).

⁴³ CCAA, [s.18.6](#).

⁴⁴ *Bank of Montreal v 592931 Ontario Inc.*, 2021 ONSC 4412 at [para 48](#).

as it relates to the period from and after July 3, 2025. Rather than respecting the Hillcrest ROFR as a bargained-for protection in Oxford's favour, for which HBC would not be prejudiced financially by any outcome, HBC sought to extract a \$4.5 million ROFR Payment from Oxford in circumstances when it believed that the conditions under the APA with PurchaseCo would not be satisfied and an effective assignment would not come into being.

45. These concerns are underscored by the timing and sequence of events immediately following HBC's disclosure of the less-redacted Ruby Liu APA:
- (a) July 3, 2025: HBC delivers the less-redacted APA to Oxford pursuant to a court Endorsement, in order to commence the thirty-day ROFR Notice period;
 - (b) July 4, 2025: Oxford asks HBC and the Monitor in writing if it will receive any further information relating to the proposed assignment or assignee other than one letter from the proposed assignee's former counsel dated June 6, 2025;
 - (c) July 5, 2025: unknown to Oxford or other landlords, HBC sends the July 5 Letter to PurchaseCo, expressly referring to PurchaseCo's ongoing breaches of the APA and asserting HBC's right to terminate it. Oxford did not learn of this letter until weeks later, and would not have learned of this letter had PurchaseCo not improperly contacted the Court and attached it;

- (d) July 7, 2025: HBC sought the Monitor's position with respect to a potential termination of the APA, and the Monitor advised that in the circumstances, the Monitor would support a termination;⁴⁵
- (e) July 15, 2025: in response to the FILO Agent's motion to terminate the APA served by on July 8, 2025, and in light of the Court advising that it had received improper communications from the proposed assignee, HBC advises the Court that it intends to proceed in seeking court approval of the APA. HBC's decision to seek approval of the APA (rather than terminate it) was made on July 8, 2025,⁴⁶ but was not disclosed to Oxford until a July 15 court appearance, and no motion materials were served until July 29, 2025.
46. Good faith and due diligence are fundamental requirements that must guide the exercise of judicial authority under the CCAA.⁴⁷ Any relief granted under the CCAA must ensure the fair treatment of all stakeholders, including counterparties to contracts that a debtor seeks to monetize within the proceedings.⁴⁸
47. HBC's failure to recognize Oxford's exercise of the Hillcrest ROFR in all of the circumstances is inconsistent with its obligation to act reasonably and in good faith with respect to Oxford's contractual rights. HBC purported to rely upon the thirty-day ROFR Notice period while simultaneously acknowledging to PurchaseCo, the Monitor and others that the APA was in breach and subject to termination. HBC sought to compel Oxford to

⁴⁵ Eighth Report, s. 3.12.

⁴⁶ Perugini Affidavit at paras 15-16.

⁴⁷ *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 at [para 70](#).

⁴⁸ *Donnelly Holdings Ltd. (Re)*, 2024 BCSC 275 at [para 53](#)

make its ROFR Election in respect of an assignment that HBC knew would likely never become effective. HBC cannot now take the position that Oxford's ROFR Exercise is invalid because it was made within the unusual circumstances that HBC itself created.

48. Oxford's exercise of the Hillcrest ROFR is valid and timely. HBC cannot rely on conditions and uncertainties of its own making to defeat Oxford's contractual right. To hold otherwise would excuse a counterparty's failure to maintain the standards of good faith and deprive Oxford of the very protections the Hillcrest ROFR was intended to secure.

B. The Deposit Should be Returned if the ROFR Election is Rendered Moot

49. Oxford paid a \$450,000 deposit to the Monitor in connection with its ROFR Election, as requested under the ROFR Notice. That deposit was tendered in good faith at the time of the ROFR Election to preserve Oxford's rights under the Hillcrest Lease and in accordance with the process as it was presented to Oxford.
50. If the ROFR Election is ultimately rendered moot, whether by dismissal of the Applicant's motion, the granting of the FILO Agent's motion, or any other circumstance in which the ROFR Election is determined to be invalid, there is no contractual or equitable basis for Oxford's deposit to be retained by the Monitor. Allowing the Monitor to keep the deposit would improperly penalize Oxford for exercising its rights in good faith and would amount to an unwarranted windfall to the estate.

PART V - RELIEF REQUESTED

51. If HBC's Approval Motion returnable August 28-29, 2025 is denied, Oxford seeks only the return of its ROFR deposit. If HBC's Approval Motion is granted and assignment of the Hillcrest Lease to PurchaseCo is approved, Oxford requests an Order declaring that its ROFR Exercise is valid and requiring the surrender of the Hillcrest Lease to Oxford.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of August, 2025.



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Hillcrest Holdings Inc. by their manager OPGI
Management Limited Partnership by its general
partner OPGI Management GP Inc.

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *In re Hudson’s Bay Company*, (June 29, 2025) Ont. S.C.J. [Commercial List] Court File No. CV-25-00738613-00CL (Endorsement of Justice Osborne).
2. [*Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53.](#)
3. [*Weyerhaeuser Company Limited v. Ontario \(Attorney General\)*, 2017 ONCA 1007.](#)
4. [*Salah v Timothy's Coffees of the World Inc.*, 2010 ONCA 673.](#)
5. [*Alim Holdings Ltd. v Tom Howe Holdings Ltd.*, 2016 BCCA 84.](#)
6. [*Bhasin v Hrynew*, 2014 SCC 71.](#)
7. [*CM Callow Inc v Zollinger*, 2020 SCC 45.](#)
8. [*GATX Corp. v Hawker Siddeley Canada Inc.*, 1996 CanLII 8286 \(ON SC\).](#)
9. [*Best Pacific Resources Ltd. v Eravista Energy Corp.*, 2002 ABCA 286.](#)
10. [*Bank of Montreal v 592931 Ontario Inc.*, 2021 ONSC 4412.](#)
11. [*Century Services Inc. v Canada \(Attorney General\)*, 2010 SCC 60.](#)
12. [*Donnelly Holdings Ltd. \(Re\)*, 2024 BCSC 275.](#)

**SCHEDULE “B”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, RSC 1985, c C-36.

Duty of Good Faith

Good faith

18.6 (1) Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

**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 HUDSON'S BAY COMPANY ULC
/ COMPAGNIE DE LA BAIE D'HUDSON SRI et al.**

Court File No.: CV-25-00738613-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FACTUM OF MONTEZ HILLCREST INC. AND
HILLCREST HOLDINGS INC.
(HILLCREST ROFR)**

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