Court File No. CV-25-738613-00CL

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 1242939 B.C. UNLIMITED LIABILITY COMPANY, 1241423 B.C. LTD., 1330096 B.C. LTD., 1330094 B.C. LTD., 1330092 B.C. UNLIMITED LIABILITY COMPANY, 1329608 B.C. UNLIMITED LIABILITY COMPANY, 2745263 ONTARIO INC., 2745270 ONTARIO INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., AND 2472598 ONTARIO INC.

(Applicants)

FACTUM OF THE APPLICANTS
(Re: Central Walk APA and Lease Assignments)
(Returnable August 28-29, 2025)

August 21, 2025

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TO: THE SERVICE LIST

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PART I – OVERVIEW

1. The Applicants bring forward for approval an assignment of 25 of their leases pursuant to the only transaction that emerged from a robust, court-approved Lease Monetization Process and which represents the only path to realize significant value from these leases for the Company's estate.[1] This type of relief is routinely granted by CCAA Courts, as contract counterparties are delighted to trade their insolvent debtor counterparties for better capitalized and solvent assignees.

2. Unfortunately for this CCAA debtor's stakeholders, the landlords behind these leases will derive much greater value if the transaction fails to close and the leases are ultimately disclaimed. And so, the Court is faced with the unusual situation where long-term, below-market contracts are at stake and the interests of creditors and contract counterparties diverge. Justice Dunphy has commented on such a scenario and aptly observed that:

> **insolvency is not always a catastrophe for such counterparties. Sometimes it is a godsend**. Assets locked into long-term contracts at advantageous prices may be freed up to allow the counterparty to re-price to current market. **In such cases, the creditors are at risk of seeing the debtor lose critical assets while the counterparty receives an unexpected windfall**.[2] [Emphasis added]

3. The proposed assignment of leases is clearly beneficial to the estate and promotes the purpose of the CCAA of maximizing value for stakeholders. Approval of the assignments is also consistent with what is reasonable in the circumstances.

4. The Court has jurisdiction under section 11.3 of the CCAA and ought to exercise its discretion to approve the assignment of the CW Leases to the Purchaser, even in the context of the objections of the Objecting Landlords. The very purpose of section 11.3 is to allow the debtor to assign its contracts for value even where the counterparty to the contract to be assigned would never voluntarily agree to such an assignment outside of the CCAA proceeding.

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[1] Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms in the Affidavits of Franco Perugini sworn July 29, 2025 (the "**Second Perugini Affidavit**") in the Motion Record of the Applicants dated July 29, 2025 ("**AMR**") at Tab 2 and August 12, 2025 (the "**Reply Perugini Affidavit**"), in the Reply Motion Record of the Applicants dated August 12, 2025 ("ARR") at Tab 1, the Affidavits of Adam Zalev sworn July 29, 2025 ("**Zalev Affidavit**"), AMR at Tab 4 and August 12, 2025 (the "**Reply Zalev Affidavit**"), ARM at Tab 3 and the Affidavits of Elias Louis Ampas sworn July 29, 2025 ("**Ampas Affidavit**'), AMR at Tab 3,and August 12, 2025 (the "**Reply Ampas Affidavit**"), ARM at Tab 2 as applicable.

[2] *Dundee Oil and Gas Limited (Re),* 2018 ONSC 3678 at para. 28.

5. The proposed assignee in this case has agreed to abide by the terms of the CW Leases, has demonstrated "extensive financial resources",[3] and has already devoted substantial funds towards the CW Transactions and the launch and operations of the new business. All of this was done in mere weeks from the time the Purchaser entered into the Central Walk APA, in the face of stiff opposition from the Objecting Landlords, and all before the Purchaser even knows whether it will obtain the CW Leases needed for the launch of its stores. The Purchaser has presented extensive evidence to support its ability to perform the financial obligations under the CW Leases, which ought to be reviewed by this Court on a standard of reasonableness, not perfection.

6. Despite the guaranteed rent for one year on their leases and the injection of approximately $120 million to renovate their properties, the Objecting Landlords oppose the proposed assignment in the hopes that the proposed transaction fails and they will be able to extricate themselves for free from the CW Leases – which are worth tens or hundreds of millions to the Objecting Landlords if they are ultimately disclaimed by the Applicant. The landlords could have protected the interests they are now asserting by participating in the Lease Monetization Process but declined to do so. The hyperbolic objections they now advance to the proposed assignment must be considered in the context of the tremendous windfall they stand to receive at the expense of the Applicant's stakeholders if they are successful.

7. The Monitor agrees that (a) there is a reasonable basis for the Purchaser to meet the financial obligations under the Leases, (b) the Applicants and their creditors will suffer material prejudice of approximately $50 million if the transaction is not approved, and (c) it is not clear that the Opposing Landlords will suffer material prejudice if the assignment is granted, considering that the landlords will benefit from rent payments and renovations while retaining their rights to terminate the leases in the event of Purchaser default.[4]

8. While the Monitor has expressed some reservations about the Purchaser's ability to meet certain non-monetary obligations under the CW Leases, the standard applied by the Monitor to the Purchaser's ability to meet non-monetary obligations is higher than what is reasonable or supported by the authorities on a forced assignment motion. In light of the Monitor's conclusions above and its application of a legally flawed standard to the Purchaser's evidence of its ability to meet obligations under the CW Leases (which is a legal question to be determined by this Court),

[3] Eighth Report of the Monitor dated August 20, 2025 (the "**Eighth Report**"), at para. 6.39(a).
[4] Eighth Report at paras. 6.39(e), and 6.42-43.

the Applicants respectfully submit that the Court can and should approve the transaction.

9. Declining approval due to vociferous opposition of contractual counterparties would run completely contrary to the objectives of the CCAA (and the purpose of section 11.3 specifically) and create a chilling effect for prospective purchasers in future restructurings. The Court should not allow the Objecting Landlords to frustrate the purpose of the CCAA in this manner.

PART II – THE FACTS

A. Background on the Company and the CCAA Proceedings

10. The Company and its subsidiaries collectively operated as a premier North American department store retailer with a portfolio of real estate assets in Canada.[5] On March 7, 2025, facing severe liquidity issues and unable to successfully restructure their operations, or secure replacement financing or investment outside of formal insolvency proceedings, the Applicants sought and were granted protection under the CCAA.[6]

11. As a result of the Company liquidating and shutting down all of its 96 stores, over 9,100 former employees of the Company lost their jobs and the Company issued notices of disclaimer under the CCAA with respect to 64 Leases.[7] During the course of the CCAA Proceedings, the Company and its advisors have diligently pursued value-maximizing transactions for the benefit of the Company's creditors and stakeholders. Despite their best efforts, the Company was unable to generate a going concern transaction. The Company's efforts did result in the successful sale of the Company's intellectual property assets to Canadian Tire Corporation, certain leases to YM, and the proposed sale in respect of the Royal Charter of 1670. Despite these efforts, the Company's secured lenders will not recover their indebtedness in full.

12. The CW Transactions involve the sale and assignment of the remaining 25 CW Leases for locations in B.C., Alberta, and Ontario. If approved, the CW Transactions are expected to yield, among other benefits, substantial recoveries exceeding $50 million for the Applicants' creditors.[8]

B. The CW Leases

13. The CW Leases at issue are long-term leases that were executed many years ago and

[5] Second Perugini Affidavit at para. 8, AMR Tab 2.
[6] Second Perugini Affidavit at paras. 9-10, AMR Tab 2.
[7] Second Perugini Affidavit at paras. 22 and 117, AMR Tab 2.
[8] Second Perugini Affidavit at paras. 16 and 103, AMR Tab 2.

include a range of economic benefits and concessions in favour of the Company, including:

- very long primary terms with options to extend of another 85-120 years (or more for certain CW Leases) at predetermined below-market rents;
- exclusive use clauses which impose operational requirements on the Objecting Landlords;
- preferred parking and prominent signage rights; and
- the ability to impose development restrictions on the Objecting Landlords, which limit the landlords' ability to redevelop, expand, or reposition a shopping centre without the tenant's consent.[9]

14. These favourable terms are highly valuable in the current commercial leasing context.[10] According to one of the Objecting Landlords, few tenants, even anchor tenants who traditionally secure more advantageous terms than other occupants, enjoy the breadth of economic concessions and restrictive protections contained in the CW Leases.[11]

15. These favourable and long-lasting terms were given to Hudson's Bay in return for valuable consideration for the Objecting Landlords or their predecessors. As KingSett's representative acknowledged in cross-examination, this included using Hudson's Bay's commitment as anchor tenant to obtain the financing to build the malls in the first place, failing which they likely would not have been built.[12]

16. Having derived those benefits from the CW Leases in the past, it is presently in the Objecting Landlords' interests to see them disclaimed. The unusual combination of long-term economic concessions and restrictive covenants results in the CW Leases being considerably more valuable for the Objecting Landlords if they are disclaimed, such that the Objecting Landlords may redevelop the Leased Premises and/or relet at higher rates to multiple tenants – which is the only alternative to the proposed assignment of the CW Leases at this time.[13]

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[9] Second Perugini Affidavit at para. 47, AMR Tab 2; Expert Report of Scott Lee dated August 9, 2025, para. 5-6 and 12, Responding Motion Record of Ivanco Cambridge, Tab 2-B. Affidavit of Nadia Corrado sworn August 9, 2025 ("**Corrado Affidavit**") para. 24 and Exhibit H, Motion Record of Oxford Properties Group, Tab 2 and Tab 2-H, Reply Zalev Affidavit at and 2-H, ARR Tab 3; Affidavit of Rory MacLeod affirmed August 9, 2025 ("**MacLeod Affidavit**") at para. 172 and Exhibit B, Responding Motion Record of The Cadillac Fairview Corporation Limited, Tab 1 and Tab 1-B; Affidavit of Ruby Paola sworn August 8, 2025, at paras. 27-28, Responding Motion Record of Ivanhoe Cambridge, Tab 1.

[10] Cross Examination of Scott Lee on August 18, 2025 ("**Lee Cross**") at p. 18, Q. 75, Brief of Transcripts ("**TB**"), Tab J.

[11] Affidavit of David Wyatt sworn August 8, 2025 (Morguard) at paras. 36, 44, 52, and 60, Responding Motion Record of Morguard Investments Limited, Tab 1.

[12] Cross Examination of Theresa Warnaar on August 14, 2025 ("**Warnaar Cross**") at pp. 41-42, TB Tab B.

[13] Second Perugini Affidavit at para. 26, AMR Tab 2.

C. The Applicants' Efforts to Monetize their Leases

17. Following commencement of the CCAA Proceedings and approval by this Court of the Lease Monetization Process on March 21, 2025, the Applicants, with the assistance of Oberfeld and Reflect, and under supervision of the Monitor, conducted the Lease Monetization Process.[14]

18. The Court-approved Lease Monetization Process was conducted in a thorough manner and broadly canvassed the market of parties potentially interested in the Leases pursuant to reasonable timelines.[15] The Lease Monetization Process resulted in the following transactions:

(a) three (3) Leases with respect to locations owned by Central Walk[16] were assigned to the Purchaser for an aggregate purchase price of $6 million;[17]

(b) five (5) Leases were assigned to YM for an aggregate purchase price of $5,025,000;[18] and

(c) one (1) Lease with respect to a location owned by IC was assigned to IC for an aggregate purchase price of $20,000.[19]

19. No Landlord, other than Central Walk in respect of the three locations in the shopping centres that it owns, and IC in respect of its $20,000 bid for one of its locations, submitted a Qualified Bid.[20] Oxford sought to enforce ROFR rights in respect of its Hillcrest location, but chose not to match the $4.5 million purchase price offered by the Purchaser and close the transaction for this location prior to the hearing of this motion.[21]

20. The Purchaser submitted the Central Walk Bid on the Qualified Bid Deadline of May 1, 2025.[22] Following the Qualified Bid Deadline, the Applicants, in consultation with Oberfeld, Reflect, the Monitor, the FILO Agent, and the Pathlight Agent, and with the assistance of their legal counsel: (a) reviewed and considered each bid received; and (b) engaged in numerous discussions with the Purchaser and the other Qualified Bidders to seek and obtain clarification in

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[14] Second Perugini Affidavit at para. 31, AMR Tab 2.
[15] Second Perugini Affidavit at para. 38, AMR Tab 2; Seventh Report of Monitor at para. 6.8; Eighth Report at para. 6.33
[16] References to "Central Walk" include, as applicable, each of the following entities, whether collectively or individually – Central Walk Tsawwassen Mills Inc. ("**Tsawwassen Mills**"), Central Walk Mayfair Shopping Centre Inc. ("**Mayfair**"), and Central Walk Woodgrove Shopping Centre Inc. ("**Woodgrove**").
[17] Second Perugini Affidavit at para. 18, AMR Tab 2.
[18] Reply Perugini Affidavit at para. 18, ARR Tab 1; Affidavit of Franco Perugini sworn July 25, 2025, at para. 57.
[19] Affidavit of Franco Perugini sworn July 25, 2025, at paras. 62 and 66.
[20] Second Perugini Affidavit at para. 32, AMR Tab 2.
[21] Reply Perugini Affidavit at para. 36, ARR Tab 1.
[22] Second Perugini Affidavit at para. 12, AMR Tab 2.

respect of their bids and sought and obtained modifications to improve them where possible.[23]

21. No combination of bids received covered all of the CW Leases. The Central Walk Bid represented the highest bid for the CW Leases. In addition, the bids received for some (but not all) of the CW Leases did not have a higher prospect of completion than the Central Walk Bid.[24]

22. At that time, the Monitor and Pathlight, the Applicant's mostly likely fulcrum creditor, supported the Company entering into the negotiated Central Walk APA and the FILO Agent had supported same.[25] Accordingly and after careful consideration of:

(a) all factors set forth in the Lease Monetization Process,

(b) the support from the FILO Agent, the Pathlight Agent and the Monitor, of the Company entering into the negotiated Central Walk APA, and

(c) the fact that the Applicants did not have any alternative transactions with a higher prospect of completion,

the Company's Board of Directors, in consultation with its legal counsel, Oberfeld, Reflect and the Monitor, exercised its business judgement to declare the Central Walk Bid as the Successful Bid.[26] The Company and the Purchaser entered into the Central Walk APA on May 23, 2025.

D. The Purchaser

23. The Purchaser is a corporation incorporated for the purposes of transacting with the Company and is wholly-owned by Ruby Liu. Ms. Liu owns at least 70% of the equity of the three Central Walk companies, through which Ms. Liu owns and operates three successful shopping malls and a top-tier golf course in British Columbia.[27]

24. Ms. Liu acquired these malls after a successful real estate career in China. Since acquiring these malls, Central Walk executed timely renovations and launched marketing campaigns and social media and other initiatives that significantly boosted foot traffic, resulting in benefits to

[23] Second Perugini Affidavit at para. 34, AMR Tab 2.
[24] Affidavit of Michael Culhane sworn July 13, 2025 (the "**Culhane Affidavit**") at para. 52; Eighth Report at s. 4.4**.**
[25] Second Perugini Affidavit at para. 35, AMR Tab 2; Culhane Affidavit at para. 53; Cross Examination of Adam Zalev on August 14, 2025 ("**Zalev Cross**") at Exhibit 6, TB Tab A-6.
[26] Second Perugini Affidavit at para. 35, AMR Tab 2.
[27] Affidavit of Weihong Liu dated sworn July 29, 2025 ("**Liu Affidavit**") at paras. 4 and 13, Supporting Motion Record of Ruby Liu Investment Corp., Tab 1.

tenant businesses, local vendors, the local labour force, and the broader regional economy.[28]

25. For instance, since Central Walk's acquisition of Tsawwassen Mills in May of 2022 from IC (one of the Objecting Landlords), it has increased annual foot traffic at the mall by over two million and increased rental revenue by 15%.[29] In a support letter, Chief Laura Cassidy of Tsawwassen First Nation wrote that Central Walk had led a "remarkable revitalization of the mall", "turning what was once a distressed asset into a financially viable property", and outlined Central Walk's efforts "to ensure that Tsawwassen Mills is not only a commercial destination, but also a space that respects and reflects the cultural heritage of the land."[30]

26. Ms. Liu has accumulated a personal net worth in excess of $1 billion, with current liquid assets amounting to approximately $303 million.[31] The Applicant relies on the facts set out in the submissions of the Purchaser demonstrating the Purchaser's and Ms. Liu's financial wherewithal.

E. The Central Walk APA and the CW Transactions

27. Pursuant to the Central Walk APA, as amended, among other things: (a) the Purchaser is taking an assignment of 25 CW Leases in consideration for a purchase price of $69.1 million (subject to certain adjustments); (b) the Purchaser paid a deposit of $9.4 million; and (c) the Purchaser will pay all Cure Costs on or prior to the closing of the CW Transactions.[32] The Central Walk APA is summarized in greater detail in the Second Perugini Affidavit.

28. The CW Transactions are expected to generate significant benefits and create meaningful value for the Applicants and their stakeholders, including the following:

(a) significant recovery of over $50 million for the Applicants' creditors;

(b) additional consideration of approximately $677,281 from the sale of FF&E, together with anticipated cost savings of approximately $3 million for avoiding the cost of removal of remaining FF&E and exterior signage at these 25 locations;

(c) approximately $120 million invested in leasehold improvements, including necessary and overdue repairs;

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[28] Liu Affidavit at para. 14 Supporting Motion Record of Ruby Liu Investment Corp., Tab 1.
[29] Liu Affidavit at para. 61 Supporting Motion Record of Ruby Liu Investment Corp., Tab 1.
[30] Liu Affidavit at para. 62 Supporting Motion Record of Ruby Liu Investment Corp., Tab 1; Exhibit E to Liu Affidavit, Supporting Motion Record of Ruby Liu Investment Corp., Tab 1-E.
[31] Liu Affidavit at paras. 3 and 32, Supporting Motion Record of Ruby Liu Investment Corp., Tab 1; Exhibit D to Liu Affidavit, Supporting Motion Record of Ruby Liu Investment Corp., Tab 1-D.
[32] Second Perugini Affidavit at para. 41, AMR Tab 2.

(d) anticipated creation of over a thousand new jobs across Canada (with a commitment to hire former employees of the Company wherever possible);

(e) assumption of all CW Leases on an "as-is, where-is" basis[33] and complying with the terms, use provisions, and obligations under the CW Leases, including payment of all rent, common area maintenance charges, and property taxes immediately upon assignment of the CW Leases to the Purchaser, amounting to approximately $4.7 million in monthly payments to the Objecting Landlords;

(f) payment of Cure Costs to the Objecting Landlords in the amount of $3.1 million;

(g) commitment from Ms. Liu to execute a personal guarantee in favour of the Objecting Landlords, guaranteeing all tenant obligations under the CW Leases for a period of one year following closing of the CW Transactions, which includes obligations in respect of rent, taxes, ordinary course maintenance and insurance;[34]

(h) commitment from Ms. Liu to fund $400 million for the operations of the Purchaser;

(i) wide-ranging positive ripple effects in the economies where the stores are located, including: (i) renewed opportunities for suppliers, service providers, logistics operators, and a wide range of local businesses, including businesses that previously served Hudson's Bay and will be looking to replace it as a major customer; (ii) helping to ensure other tenants at the shopping centres remain operational and protecting lease structures of other retailers in such locations; and (iii) stimulating local economic activity, resulting in increased municipal tax revenues and reinvigorating surrounding retail centres through renewed foot traffic and commercial demand; and

(j) avoiding the visual and economic blight of a "dark" or empty store for a significantly prolonged period of time given the contemplated opening of stores on a rolling basis between six and twelve months following closing of the CW Transactions. In some malls, two or three large anchor tenants have recently vacated the space.[35]

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[33] Subject to the IC Leases being assumed with the Court's declaration that the provisions in Sections 3.05 and 3.05(A) of the IC Leases which purport to prevent the parties to the IC Leases from entering into the Reinstated Original Lease (as defined therein) on account of no Event (as defined in the IC Leases) having occurred or any monetary default by Hudson's Bay under the IC Leases are invalid and unenforceable as *ipso facto* clauses and pursuant to Section 34 of the CCAA.

[34] Reply Liu Affidavit at para. 8 and Exhibit B, Reply Motion Record of Ruby Liu Commercial Investment Corp., Tab 1 and Tab 1-B.

[35] Second Perugini Affidavit at para. 103, AMR Tab 2; Cross Examination of Rory MacLeod on August 18, 2025 ("**MacLeod Cross**"), at p. 48, Q. 2, p. 49, Q. 1, TB Tab N

29. If the Central Walk APA is not approved, the significant benefits and value creation outlined above will be lost and/or significantly delayed.

F. Development of the Purchaser's Business Plan

30. The Purchaser's original bid submitted on May 1, 2025, contemplated operating stores that would include retail fashion and homeware goods, as well as entertainment and amusement centres, social media engagement hubs, group exercise and arts classes, restaurants, bars, foodstuffs, and arcade games, from the Leased Premises. Ms. Liu had a vision to revitalize the Leased Premises through tech-enhanced spaces with digital experiences, the creation of immersive spaces such as new concept restaurants, and boutique supermarkets. The Central Walk APA expressly allowed her a period of time to negotiate the terms of assignments with the landlords, including potential lease modifications.

31. In negotiations between the Purchaser and the Company and its advisors, as well as the Monitor, it was made clear to the Purchaser that many of its proposed uses for the CW Lease locations might not be in compliance with the leases and not all of the landlords might be willing to negotiate modifications to the use provisions in their leases. While the Purchaser advised that it would have preferred to proceed with its original vision for these spaces, it was prepared to proceed with the proposed transaction and the purchase of the CW Leases for the purposes of carrying on operations as a department store in compliance with all terms of the CW Leases. [36]

32. During the week of June 2, 2025, Oberfeld facilitated introductory meetings between the Purchaser and each of the Objecting Landlords (other than QuadReal, which did not make itself available for a meeting with the Purchaser)[37], attended by representatives of the Company's counsel, Oberfeld, Reflect, the Monitor and the Monitor's counsel.[38] On June 6, 2025, prior counsel to the Purchaser delivered a preliminary package of information regarding the Purchaser and its plans for the assignment of the CW Leases. Shortly thereafter, most of the Objecting Landlords delivered letters to the Purchaser and/or the Company expressing firm opposition to the assignment of their respective CW Leases.[39]

33. One of the issues cited by the Objecting Landlords in opposing the assignment of the CW

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[36] Cross Examination of Weihong (Ruby) Liu on August 15, 2025 ("**Liu Cross**") at p. 91-96, TB Tab H.
[37] Cross Examination of Jay Camacho on August 15, 2025 ("**Camacho Cross**") at p. 25 Q. 22 – p. 26 Q6, Q17, page 39, Q8, TB Tab E.
[38] Second Perugini Affidavit at para 14, AMR Tab 2; Liu Affidavit at para. 21-22, Supporting Motion Record of Ruby Liu Investment Corp., Tab 1.
[39] Second Perugini Affidavit at para 14, AMR Tab 2.

Leases to the Purchaser was the lack of a detailed business plan proposed to be implemented by the Purchaser upon closing of the transaction. The Company and its advisors had also identified this as an issue since neither the Purchaser nor its principals have operated a retail store. The Company encouraged the Purchaser to retain and work with professionals, including former or current Hudson's Bay employees, to prepare a comprehensive business plan and financial modeling for the proposed business.[40]

34. The Purchaser, unfortunately, did not immediately follow the recommendations of the Company. In early July, the Company considered terminating the Central Walk APA and communicated same to the Purchaser, who was adamant it was not in breach.

35. During this period, given the significant benefits to be realized from the CW Transaction, the Company regularly consulted with the Monitor, the FILO Agent, and the Pathlight Lenders, and continued to encourage the Purchaser to advance its business plan and financial modeling. As further inducement, the Company offered to reduce the purchase price and allow the Purchaser to use a portion of the deposit to engage and pay additional external advisors.[41]

36. On July 8, 2025, after consultation with stakeholders, and considering the benefits, costs, and risks of pursuing or terminating the CW Transaction, the Company determined not to terminate the Central Walk APA but to bring forward a motion for assignment of the CW Leases. Since that date, the Purchaser has continued to work diligently to prepare its business plan and to advance its preparations for the assumption of the CW Leases, including to:[42]

(a) advance its business plan;

(b) engage a retail expert to assist with development of its business plan and strategy;

(c) prepare the CW Forecast Model;

(d) obtain estimates for repairs and renovations to the Leased Premises;

(e) engage former and current senior level employees of the Company, subject to obtaining assignment of the CW Leases; and

[40] Second Perugini Affidavit at paras. 76-79, AMR Tab 2.
[41] Second Perugini Affidavit at para. 44, AMR Tab 2. On July 21, 2025, pursuant to the Second Amending Agreement to the Central Walk APA, the Purchase Price under the Central Walk APA was reduced by $3 million (see Exhibit "B" to Second Perugini Affidavit, AMR Tab 2-B).
[42] Second Perugini Affidavit at para. 45, AMR Tab 2.

(f) secure expressions of interest from suppliers to supply merchandise, subject to obtaining assignment of the CW Leases.[43]

37. The Business Plan now before the Court was submitted to the Applicants on July 25, 2025 (subject to minor corrections delivered on July 30, 2025) and is the operative plan the Purchaser intends to implement should the Court approve the assignment of the CW Leases.[44] As is typical for business plans, it is expected that the Purchaser and its advisors will continue to develop and build out the Business Plan and adapt to any changes in circumstances as they arise.[45]

38. Below is a summary of points outlined in the Business Plan that are relevant to this motion:

(a) "*As-is, where-is*". With the exception of the IC Leases addressed below, the Purchaser committed to assuming all other CW Leases on an "as-is, where-is" basis, including all existing terms, uses, and obligations, and intends to operate its stores in a manner consistent with the terms of each CW Lease.[46]

(b) *Substantial equity commitment*. Ms. Liu committed $400 million (the "**Initial Equity Contribution**") to invest in the equity of the Purchaser after closing of the CW Transactions, to fund the Business Plan and the operation of the Purchaser's stores, with the only condition precedent to advancement of such funds being closing of the CW Transactions.[47]

(c) *Substantial investment in renovations and leasehold improvements*. Approximately $120 million is dedicated to renovations that will revitalize and upgrade the existing premises, including with respect to physical upgrades, exterior renovations, lighting, signage, flooring, HVAC, washrooms, accessibility, and technology systems. This amount significantly exceeds any amount that the Company was planning to invest in renovations and improvements.[48]

(d) *Hiring necessary expertise to conduct retail operations*. The Purchaser's team will be comprised of existing leadership, legacy Company talent, and external talent with deep retail experience. The Purchaser is focused on talent acquisition in key

[43] Second Perugini Affidavit at para. 17, AMR Tab 2.
[44] Second Perugini Affidavit at para. 43, AMR Tab 2.
[45] Zalev Cross, pg. 48-49 Q. 164, pg. 146, Q. 599, pg. 153 Q. 629 – pg. 154 Q. 631, TB Tab A.
[46] Second Perugini Affidavit at para. 68, AMR Tab 2.
[47] See letter from Counsel to Purchaser dated August 20, 2025 attached as Appendix D to the Eighth Report.
[48] Reply Perugini Affidavit at para. 40, ARR Tab 1.

functions including operations, merchandising, human resources, finance, and store-level employees.[49]

(e) *Creation of new jobs*. As part of a coordinated transition, the Purchaser estimates that it will need to hire approximately 1,800 employees across the 25 re-launched department stores. To date, over 1,100 resumes, including 700 from current and former employees of the Company, have been received. The Purchaser has held two job fairs and completed more than 300 first round interviews.[50]

(f) *Categories of stores and opening timelines*. The Purchaser plans to launch three categories of stores: (a) flagship; (b) platinum; and (c) standard. This strategy is intended to permit the Purchaser to serve a wide range of demographics thereby mitigating potential weakness in any one category. The estimated renovation timeline is twelve months for the Flagship stores is twelve months and six months for the Platinum stores and Standard stores.[51] The Purchaser has entered into an agreement to purchase the Company's remaining unsold FF&E and Trade Fixtures at Leased Premises, which will assist in expediting the timeline for reopening.[52]

(g) *Merchandising*. $135 million of the Initial Equity Contribution is dedicated to an initial inventory investment. The Purchaser has and continues to leverage relationships with former suppliers of the Company and to create new supplier partnerships to source quality product offerings. To date, the Purchaser has received signed expressions of interest from numerous suppliers.[53] Suppliers have advised that the fulfillment timelines range from one to six months. Given the expedited timelines, priority will be placed on sourcing local products and suppliers with existing inventory on hand to ensure sufficient merchandise is available for store openings. To supplement the initial merchandising mix and provide supplier onboarding and brand integration, the Purchaser will partner with retail agents and advisors, as necessary.[54] As a representative of one of the Objecting Landlords stated in his cross examinations, there always have been and always will be Canadian-based suppliers looking for places to sell their inventory.[55]

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[49] Second Perugini Affidavit at para. 76, AMR Tab 2.
[50] Second Perugini Affidavit at para. 80, AMR Tab 2.
[51] Second Perugini Affidavit at paras. 85-86, AMR Tab 2.
[52] Second Perugini Affidavit at para. 89, AMR Tab 2.
[53] Second Perugini Affidavit at para. 93, AMR Tab 2.
[54] Second Perugini Affidavit at para. 95, AMR Tab 2.
[55] MacLeod Cross at pg. 69, Q. 14, TB Tab N.

39. Since the delivery of the Business Plan, Ms. Liu has also agreed to provide a guarantee to the Objecting Landlords in respect of the payment of one year's rent (and other obligations) at the Leased Premises if the assignment of the CW Leases to the Purchaser is approved.[56]

40. In addition to the Business Plan, the Purchaser also worked diligently on the CW Forecast Model to ensure that it can be profitable. The CW Forecast Model prepared by the Purchaser with feedback from Reflect is based on the Company's 2025 financial forecast.[57] Relying on the Company's forecasts offers a reasonable and defensible basis for assessing store performance, as these forecasts are based on historical information in the same store locations.[58]

41. As the Purchaser's Business Model and CW Forecast continue to evolve, they may not provide for all variables. However, the CW Forecast is reasonable because there is over $56 million in incremental liquidity available for items that may or may not be specifically included.[59]

G. The IC Ipso Facto Clauses

42. The Central Walk APA provides that the four IC Leases must be assigned with a declaration that the provisions in Sections 3.05 and 3.05(A) of the IC Leases which purport to prevent the Reinstatement of the Original Leases, are declared void and unenforceable as *ipso facto* clauses and contrary to section 34 of the CCAA (collectively, the "**IC Ipso Facto Clauses**"). Absent this declaration, the IC Leases will be stripped of significant value following the assignment to the Purchaser. Therefore, under the Central Walk APA, if IC does not agree to waive and the Court does not invalidate the IC Ipso Facto Clauses, the Purchaser has the option to amend the Central Walk APA to remove the IC Leases from the Purchased Assets and reduce the purchase price accordingly.[60] The aggregate purchase price for these four IC Leases is $11.5 million.

43. The current form of the IC Leases was agreed to between IC and the Company in November 2023 in connection with the settlement of the Metrotown litigation commenced by the Company against IC in May 2022.[61] In the Metrotown litigation, the Company was seeking $100 million in damages for breach of the Restrictive Development Covenants in the Metrotown lease

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[56] Reply Affidavit of Weihong Liu sworn August 12, 2025 ("**Ruby Reply Affidavit**"), at para 8, Reply Motion Record of Ruby Liu Commercial Investment Corp. ("**Ruby RMR**"), Tab 1; Exhibit B in the Ruby Reply Affidavit, Ruby RMR.
[57] Reply Zalev Affidavit at paras. 5 and 18, ARR Tab 3.
[58] Reply Zalev Affidavit at para. 17, ARR Tab 3.
[59] Zalev Cross, pg. 50 Q. 166 – pg. 51 Q. 168, pg.151 Q. 621 – Q. 624, pg. 157 Q. 643, TB Tab A.
[60] Exhibit B to Second Perugini Affidavit at section 2.3(2), AMR Tab 2-B.
[61] Second Perugini Affidavit at para. 49, AMR Tab 2; Reply Perugini Affidavit at para. 44, ARR Tab 1.

and an injunction requiring IC to comply with those terms.[62]

44. The Option Agreement entered into in November 2023 resolved the Metrotown litigation in exchange for IC paying $40 million and entering into three additional transactions:[63]

(a) IC effectively agreed to buy out lease terms favourable to the Company at two store locations, by entering into new leases with higher rent, shorter terms, and no Restrictive Development Covenants, in exchange for $90 million in payments;

(b) IC also agreed to exercise an option either to make a similar deal with respect to a third store location, or else to exercise the Saks Option. The Saks Option permitted IC to simply advance $30 million that it would fully recover over a 10 year period, in the event that it was not prepared to proceed with a buy-out of the Restrictive Development Covenants at a third location.[64]

45. In February 2024, IC exercised the Saks Option, pursuant to which IC paid $30 million to the Company in exchange for entering into new leases for five Saks stores (including the IC Leases) to increase the rent by $3 million in total annually over the next 10 years.[65]

46. The parties also temporarily removed Restrictive Development Covenants and significantly shortened the terms of the IC Leases. The new leases, however, were subject to standstills that required IC to continue complying with the Restrictive Development Covenants under the Original Leases unless and until an "Event" occurred. The parties agreed to reinstate the Original Leases in November 2028 unless an Event had occurred.[66]

47. An "Event" under each of the IC Leases means the occurrence of any of the following: (a) tenant defaults under any of its monetary obligations beyond any applicable cure period under any of the IC Leases or other leases between the tenant and the landlord; (b) tenant becomes insolvent; (c) tenant commits an act of bankruptcy; or (d) tenant becomes bankrupt.[67]

48. Both parties have given evidence that this temporary deletion of the Restrictive Development Covenants from the IC Leases was requested by IC expressly to "protect from an

[62] Reply Perugini Affidavit at para. 46, ARR Tab 1.
[63] Reply Perugini Affidavit at para. 47, ARR Tab 1.
[64] Reply Perugini Affidavit at paras 47- 48, ARR Tab 1.
[65] Reply Perugini Affidavit at para. 48, ARR Tab 1.
[66] Reply Perugini Affidavit at paras. 51-52, ARR Tab 1.
[67] Reply Perugini Affidavit at para. 51, ARR Tab 1.

insolvency."[68] If the Company did not become insolvent in the next five years, the Restrictive Development Covenants would apply at all times and the IC Leases would revert to the Original Leases in November 2028. If the Company became insolvent, according to IC's own evidence, "any leases for those Properties that were dealt with in the estate would be new leases that did not include the Restrictive Development Covenants and there would be no ability or right for the holder of such leases (Hudson's Bay or otherwise) to revert back to the Original Leases in the future".[69]

49. Both parties have also given evidence that the Company never committed a payment default beyond the applicable cure period prior to the CCAA filing,[70] such that the IC Ipso Facto Clauses could only have been triggered to date by an Event of insolvency or bankruptcy.

PART III – ISSUES

50. The issues to be determined on this motion are whether this Court should:

(a) approve the Central Walk APA;

(b) approve the assignment of the CW Leases to the Purchaser pursuant to section 11.3 of the CCAA, free and clear of all claims and encumbrances, other than certain permitted encumbrances;

(c) declare that the IC Ipso Facto Clauses are invalid and unenforceable as *ipso facto* clauses and/or pursuant to Section 34 of the CCAA; and

(d) seal the confidential appendix to the Eighth Report of the Monitor.

ISSUE 1 – THE PROPOSED ASSIGNMENT OF THE CW LEASES SHOULD BE APPROVED

A. Section 11.3 Allows Assignment of Agreements Without Counterparty Consent

51. Pursuant to Section 11.3 of the CCAA, the Court may make an order assigning the rights and obligations of the Company under an agreement to any person who agrees to the assignment, provided that all monetary defaults in relation to the agreement will be remedied.

52. In deciding whether to order an assignment under section 11.3, the Court is to consider:

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[68] Affidavit of Charles Saint-Pierre affirmed August 9, 2025 (« **Saint-Pierre Affidavit** ») at para. 16; Responding Motion Record of Ivanhoe Cambridge Inc., Tab 1; Reply Perugini Affidavit at paras. 53-55, ARR Tab 1.
[69] Saint-Pierre Affidavit at para. 17, Responding Motion Record of Ivanhoe Cambridge Inc., Tab 1.
[70] Saint-Pierre Affidavit at paras. 34-37, Responding Motion Record of Ivanhoe Cambridge Inc., Tab 1; Reply Perugini Affidavit at para. 55, ARR Tab 1.

(a) whether the Monitor approved the proposed assignment;

(b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and

(c) whether it would be appropriate to assign the rights and obligations to that person.[71]

53. Section 11.3(2) sets out exceptions to this grant of jurisdiction, none of which are relevant to this motion.[72] The CW Leases are commercial contracts capable of being assigned.[73] All monetary defaults in relation to the CW Leases (other than those arising only by reason of the Company's insolvency, the commencement of CCAA Proceedings, or the company's failure to perform a non-monetary obligation) will be paid by the Purchaser on or prior to closing of the CW Transactions.[74]

54. Section 11.3 allows this Court to order an assignment of an agreement even where the terms of the agreement place restrictions on assignment, including a prohibition on assignment without the counterparty's consent. Indeed, the entire purpose of section 11.3 is to provide a mechanism for assignment to recover value for the insolvent estate, even where a counterparty may not consent to the assignment for self-interested reasons.

55. Courts applying section 11.3 of the CCAA and its counterpart, section 84.1 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"), have recognized that the interests of creditors and contract counterparties may diverge in insolvency proceedings where long-term, below-market contracts are at stake. In such cases, as Justice Dunphy observed in *Dundee*, the insolvency of the CCAA debtor is a "godsend" and an "unexpected windfall" to the counterparties looking to get freed up from the contracts at the expense of the debtors' creditors. [75]

56. In *Ford*, the Alberta Court held that Parliament's intention behind section 84.1 of the BIA was to "protect and enhance the assets of the estate of a bankrupt by allowing the assignment of existing agreements to third parties for value."[76] Upholding this decision, the Alberta Court of Appeal further elaborated that the clear intent of Parliament was to address the vulnerability of a

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[71] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**"), s. 11.3(3).
[72] These include collective agreements, eligible financial contracts or contracts entered into post-filing.
[73] CCAA, s. 11.3(2).
[74] Second Perugini Affidavit at para. 41, AMR Tab 2; Liu Affidavit at para. 35, Supporting Motion Record of Ruby Liu Investment Corp., Tab 1.
[75] *Dundee* at para. 28.
[76] *Ford Credit Canada Limited v. Welcome Ford Sales Ltd.*, 2010 ABQB 798 at para. 48 ("**Ford**").

bankrupt estate losing the benefit of a contract if a counterparty objected to the assignment.[77] The purpose underlying section 84.1 of the BIA, as outlined in *Ford*, should inform the analysis under section 11.3, particularly in a liquidating CCAA proceeding such as the present case.[78]

57. This Court and other courts across Canada have exercised their jurisdiction under the CCAA and BIA to force contract assignments in various industries, including retail.[79]

58. Prior to the enactment of section 11.3, in *Playdium*[80], this Court ordered the assignment of a key contract to a new entity over the opposition of the counterparty, pursuant to its broad statutory jurisdiction under the CCAA. *Playdium* illustrates several key principles regarding forced assignments:

(a) assignment of a contract should be ordered when it is consistent with the purpose and spirit of the CCAA and carries potential benefits for stakeholders including the debtor's employees and members of the public;[81]

(b) assignment may be ordered even where the counterparty's refusal to consent is reasonable;[82]

(c) the possibility that the assignee will default on the contract post-CCAA should not be a bar to the assignment, where the counterparties retain their right to seek relief for such default;[83] and

(d) refusal to consent because of better opportunities available to the counterparties (such as, in the present case, opportunities to redevelop or find a more established anchor tenant) should not carry any weight in the analysis.[84]

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[77] *Ford Credit Company of Canada, Limited v. Welsom Ford Sales Ltd.*, 2011 ABCA 158 at paras. 37-39.
[78] *8640025 Canada Inc. (Re)*, 2018 BCCA 93 at para. 45; *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 24.
[79] *MAV Beauty Brands Inc. et al*, Court File No. CV-23-00709610-00CL (Assignment Order dated November 24, 2023); *The Body Shop Canada Limited*, Court File No. CV-24-00723586-00CL (Assignment Order dated December 13, 2024); *BBB Canada Ltd.*, Court File No. CV-23-00694493-00CL (Assignment, Approval and Vesting Order dated May 15, 2023); Ford.
[80] *Playdium Entertainment Corp., Re*, 2001 CanLII 28281 (ON SC) ("**Playdium**").
[81] *Playdium* at para 23.
[82] *Playdium* at para 22.
[83] *Playdium* at para 29-30.
[84] In *Urbancorp Cumberland 1 GP Inc. (Re)*, 2020 ONSC 7920, this Court confirmed the jurisdiction to grant an assignment order in a receivership. The Court accepted the argument of the receiver that the jurisdiction to make the order existed, even where the contract in question allowed the counterparty to act unreasonably in determining whether to consent to an assignment: see paras. 13, 35, 41-44, and 54.

59. The authorities under section 11.3, most notably *Dundee*[85], *UrtheCast*[86], and *Donnelly*[87], have further established the following principles:

(a) The Court must determine on a reasonableness standard whether the purchaser is an appropriate assignee who would be able to perform the obligations under the contract. An "ironclad guarantee of success going forward" is not required;[88]

(b) The emphasis is on the assignee's financial strength, including the resources the assignee has already committed to the transaction and the ability and commitment to pay cure costs;[89] and

(c) The counterparty is not entitled to improve its condition or "demand the receipt of financial covenants or assurances that it did not previously enjoy under the contract it originally negotiated with the debtor."[90] Determining whether "the assignee is a reasonably fit and proper one should not morph into an exercise in patching up contracts previously negotiated by requiring financial covenants and safeguards never before required."[91]

60. The Applicant submits that these principles have been satisfied in this case and the assignment of the CW Leases should be approved.

61. This case mirrors exactly the circumstances contemplated by Justice Dunphy in *Dundee*. The Objecting Landlords desire to extricate themselves from 24[92] below-market, long-term leases with covenants restricting their redevelopment rights. The Company has disclaimed 64 locations, freeing the Objecting Landlords to re-lease or redevelop these locations at no cost to the Objecting Landlords or benefit to the Company. The Objecting Landlords wish to redevelop the Leased Premises and/or relet at higher rates to multiple tenants. Their position and objections to the proposed assignment exemplify the very type of self-interested conduct that the Court in *Dundee* recognized does not justify blocking an assignment under section 11.3. A contractual counterparty receiving an unexpected windfall at the expense of a CCAA debtor and its creditors is inconsistent

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[85] *Dundee*.
[86] *In the Matter of a Plan of Arrangement of UrtheCast Corp.*, 2021 BCSC 1819 ("**UrtheCast**").
[87] *Donnelly Holdings Ltd. (Re)*, 2024 BCSC 275) ("**Donnelly**").
[88] *Dundee* at para. 30; *Donnelly* at para 66.
[89] *Dundee* at para. 8(b); *UrtheCast* at para. 50.
[90] *Dundee* at para. 30.
[91] *Dundee* at para. 38.
[92] The Landlord for West Edmonton Mall has advised that they are not opposing this motion.

with the policy objectives underlying the CCAA.[93]

B. The Test under Section 11.3 of the CCAA is Met

62. As set out below, and as confirmed by the Monitor, the Purchaser has demonstrated and committed ample resources to perform the monetary obligations under the CW Leases. The Purchaser has also committed to comply with the CW Leases in all other respects and is therefore an appropriate assignee. As such, assignment of the CW Leases should be ordered.

63. The Objecting Landlords ask this Court to go well beyond the scope and intent of section 11.3 and assess the Purchaser against the preferences and exigencies they would apply in negotiations with new prospective tenants. That is not the appropriate standard under section 11.3, and if accepted, it would eviscerate the provision by limiting forced assignments to circumstances in which the counterparty could not reasonably withhold consent anyway.

64. The expectations placed on the Purchaser in these circumstances must be both reasonable and fair. A purchaser in a CCAA sale process is required to demonstrate its seriousness by committing meaningful time and resources to the transaction. But it is neither realistic nor equitable to demand that a purchaser commit all of the resources or enter into binding contractual obligations required for post-approval operations, on the abbreviated timelines of a CCAA, in the face of stiff opposition from contractual counterparties, and before the Court has even approved the transaction.

65. To impose such a requirement would unfairly compel a purchaser to expend substantial resources in advance, knowing that it will have been for nothing if the counterparties' objections succeed. This would effectively penalize the purchaser for participating in the CCAA process and create a chilling effect for future prospective purchasers, decreasing the prospects for successful restructurings or for recovery of value for creditors.

(i) The Purchaser Can Perform Obligations under the CW Leases

66. The Purchaser has demonstrated that it can perform the monetary obligations under the CW Leases through its financial resources, equity commitment, and guarantee of rent obligations.

67. While the financial wherewithal information alone provided satisfies the test under section

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[93] *Dundee* at paras. 28-29.

11.3,[94] the Purchaser has gone beyond that to provide a reasonable business plan and financial model for its future operations. The evidence provided at this stage is more than sufficient to support the proposed assignment, and a section 11.3 motion should not require the Court to conduct a line-by-line analysis of an assignee's financial forecast.

(A) *The Purchaser is well-capitalized to satisfy all monetary obligations*

68. The financial strength and commitments made by the Purchaser in this case far exceed those in any previous authority in which an assignment under section 11.3 was ordered.

69. Ms. Liu, the 100% owner of the Purchaser, has a personal net worth in excess of $1 billion, with current liquid assets amounting to approximately $303 million.[95] Ms. Liu also owns no less than 70% of the shares of Central Walk through which Ms. Liu owns and operates three shopping malls and a golf course in British Columbia with an approximate aggregate value of $1.07 billion. Central Walk has a track record of executing high value transactions, including with one of the Objecting Landlords, IC, who considered it sufficiently creditworthy to extend $260 million in mortgage lending on two of its malls.[96]

70. Ms. Liu committed to making the Initial Equity Contribution of $400 million to fund the Business Plan and the operation of the Purchaser's stores.[97] Ms. Liu has also committed to execute a personal guarantee in favour of the Objecting Landlords, guaranteeing the rent (and other) obligations under the CW Leases for one year following closing of the CW Transactions.[98]

71. Based on the CW Forecast Model, the Initial Equity Contribution, backstopped by the personal guarantee from Ms. Liu, is sufficient to: (a) fund forecast operating expenditures; (b) fund forecast capital expenditures and renovations; and (c) meet all forecast lease and lease related expenses immediately upon closing of the CW Transactions.[99]

72. The Purchaser's business model, unlike that of many other retailers and/or proposed assignees in forced assignment cases, does not envision any initial debt financing or associated

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[94] See *Dundee* at paras. 30, 33-35, and 38-39; *UrtheCast* at paras. 45, 50, 54 and 57; *Donnelly* at paras. 68, 71, and 73-78.
[95] Liu Affidavit at paras. 3 and 32, Supporting Motion Record of Ruby Liu Investment Corp., Tab 1. Exhibit D to Liu Affidavit Supporting Motion Record of Ruby Liu Investment Corp., Tab 1-D.
[96] Undertakings of Ruby Paola #3.
[97] Reply Zalev Affidavit at para 27, ARR Tab 3; Liu Affidavit at Exhibit C, Supporting Motion Record of Ruby Liu Investment Corp., Tab 1-C.
[98] Reply Liu Affidavit at para. 8 and Exhibit B, Reply Motion Record of Ruby Liu Commercial Investment Corp., Tab 1 and Tab 1-B.
[99] Zalev Affidavit at paras. 12 and 34, AMR Tab 4.

costs. If further capital is required, the Purchaser can extract value from the sale of existing assets, including the portfolio of malls owned by its principal, Ms. Liu, through her majority interest in Central Walk, which would create additional liquidity.[100]

73. Despite not anticipating the need for third party financing, the Purchaser will have access to debt capital markets. Traditional retailers are regularly financed with both equity and debt. Debt structures typically use asset-based lending with inventory and other assets as collateral. Given the anticipated levels of inventory, debt financing facilities in excess of $100 million would be reasonably available if needed.[101] Reflect has received numerous unsolicited calls from well-known North American lenders seeking to provide financing for the Purchaser.[102]

74. The evidence and guarantees provided by the Purchaser in respect of its ability to meet the obligations under the CW Leases far exceed those in any other cases where the Court considered forcing the assignments of leases or other contracts. This includes one proceeding in which the expert retained by the Objecting Landlords, Sharon Hamilton of Ernst & Young Inc. ("**EY**"), supervised the assignment process as Court-appointed Monitor. In *Bargain Shop*, EY issued a Monitor's report which approved the assignment of leases to a numbered company with a pro forma balance sheet and debt capitalization as the only evidence of the purchaser's wherewithal on the record.[103]

75. In *Dundee*, the purchaser was a shell company with little to no equity, substantially all the purchase price was to be debt financed, and the significant leverage would have to be serviced entirely from cash flow. This Court relied on the purchaser's cash flow projections to allay its concerns about a "proposed purchaser starting life with close to 100% leverage."[104]

76. In *UrtheCast*, the purchaser was similarly a shell company. The Court relied on its principals' investment history, its commitment to paying significant cure costs, and its commitment to the transaction in the form of over $2 million on due diligence and professional fees and $2.8 million of DIP financing.[105]

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[100] Reply Zalev Affidavit at paras. 29-30, ARR Tab 3; Reply Liu Affidavit at paras. 23-24, Reply Motion Record of Ruby Liu Commercial Investment Corp., Tab 1.
[101] Reply Zalev Affidavit at para. 33, ARR Tab 3.
[102] Reply Zalev Affidavit at para. 34, ARR Tab 3.
[103] Cross Examination of Sharon Hamilton on August 18, 2025 ("**Hamilton Cross**"), pg. 25, Q.87 and pg. 27, Q. 91, TB Tab K, and Exhibit 2, TB Tab K-2.
[104] *Dundee* at para. 31-33
[105] *UrtheCast* at para. 50.

77. Here, the Purchaser has already spent far in excess of that amount, including:

(a) $6 million to buy back three Leases with respect to locations that the Purchaser owns, and closed on these transactions;[106]

(b) a $9.4 million deposit under the Central Walk APA; and

(c) an agreement to purchase all remaining unsold FF&E and Trade Fixtures at the Leased Premises for a total of $677,281.[107]

78. The record stands in sharp contrast to *Donnelly*, the single reported section 11.3 decision where a court declined to grant a forced assignment. In *Donnelly*, the proposed assignee made bald unsupported statements about its ability to comply with the obligations under the lease, provided very limited evidence regarding its ability to perform, provided no evidence as to how the directors would manage the business, and no evidence of financial ability to pay cure costs.[108]

(B) The Business Plan and Forecast are reasonable

79. This is not a case like *Dundee*, in which the Purchaser lacked capital and had to rely on its cash flow projections to satisfy the Court that it could meet its financial obligations under the contract to be assigned.

80. Although well-capitalized, the Purchaser has nevertheless put forward the Business Plan and CW Forecast Model, which show a path to profitability that is reasonably achievable. The Business Plan contemplates engaging experienced HBC personnel to operate the business and includes a reasonable budget for renovations far in excess of what the existing tenant HBC had and would have invested. The Business Plan and Forecast are sufficient for purposes of section 11.3 and, as held in prior cases, do not have to amount to an "ironclad guarantee of success going forward."

(1) The Forecast is reasonable

81. As noted, the CW Forecast Model is based on the Company's 2025 forecasts, which were based on the Company's historical information in the same store locations.[109] The Company's 2025 forecasts were prepared in a robust manner, involving a comprehensive budgeting process with input from individuals from all facets of the Company's business over many months, with

[106] Second Perugini Affidavit at para. 18, AMR Tab 2.
[107] Second Perugini Affidavit at para 41, AMR Tab 2.
[108] *Donnelly* at paras. 65, 68-70 and 75-77.
[109] Reply Zalev Affidavit at para. 17, ARR Tab 3.

multiple revisions and rounds of review. The Company's budget was ultimately approved by the Company's executive team, with a deep knowledge of the Company's operating results.[110]

82. The Company's 2025 forecasts, and consequently the CW Forecast Model, employ conservative revenue figures that the Company determined would have been achievable in 2025 based on the current state of the stores, inventory levels, and aging. The revenue figures are conservative in that they are based on the Company's 2024 financial year, which represented a major (27%) decline from the prior year.[111]

83. Given the operational and liquidity issues faced by the Company in fiscal 2024, and the fact that the Purchaser will be better capitalized (with no debt burden and other legacy costs), it is reasonable to assume a modest improvement in revenues and margins following renovations to the stores and a complete refresh of the stores' inventory.[112]

84. The CW Forecast Model supports a profitable business at these modest revenue figures by maintaining a smaller store footprint and eliminating the Company's (unprofitable) e-commerce business and other SG&A expenses and eliminating any debt and interest service costs.[113]

85. Even given the relatively low revenue figures used in the CW Forecast Model, the business is forecast to be EBITDA positive on a monthly basis beginning in fiscal year 2026 and on a full-year basis in fiscal year 2027. Any incremental sales achieved above the forecast figures would be immediately accretive to EBITDA.[114]

86. Based on the CW Forecast Model, the Initial Equity Contribution was initially contemplated to be $375 million and allowed for a contingency amount in excess of $31 million.[115] As Ms. Liu provided an equity commitment of $400 million, an incremental $25 million, for a total $56 million of additional liquidity, is available to execute on the Business Plan.[116] Ms. Liu has advised that, should additional funds be necessary to operate the stores or if there are delays in reaching full operations, she will make such funds available.[117] Given the magnitude of her initial investment,

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[110] Reply Zalev Affidavit at para 18, ARR Tab 3.
[111] Zalev Affidavit paras 39-42, AMR Tab 4; Zalev Cross pg. 145-46, Q.593-598, TB Tab A.
[112]Reply Zalev Affidavit at para 19, ARR Tab 3.
[113] Reply Zalev Affidavit at para 20, ARR Tab 3.
[114] Reply Zalev Affidavit at para. 21, ARR Tab 3.
[115] Reply Zalev Affidavit at para. 12, ARR Tab 3.
[116] Reply Zalev Affidavit at para. 27, ARR Tab 3.
[117]Zalev Affidavit at para. 12, AMR Tab 3; Ruby Reply Affidavit at para 23-24. Liu Affidavit at Exhibit A, Supporting Motion Record of Ruby Liu Investment Corp., Tab 1-A at slide 9.

it is reasonable to assume that she will not abandon it but will invest additional funds if necessary.

(2) The Purchaser plans to engage experienced personnel

87. In *UrtheCast*, in response to the argument that the proposed assignee lacked experience in the particular sector, the Court noted that any prudent business would retain experts to assist it.[118] Consistent with *UrtheCast*, the Purchaser has and continues to retain the necessary expertise required to successfully operate its proposed department stores.

88. Several key former and current members of the Company are in discussions to join or have already agreed to join the Purchaser, including Franco Perugini (Senior Vice President, Real Estate & Legal), Mithun Sinharoy (former Senior Vice-President, Supply Chain, Fulfillment & Logistics), Elias Louis Ampas (Divisional Vice-President, Construction), Lei Wang (former Director of Import Operations), nine store managers, and two regional managers. Each of them has from ten to over twenty years of relevant retail experience.[119]

89. Mr. Perugini has over 25 years of in-house counsel experience at department store retailers, including nine years at the Company and 18 years at Sears Canada. He is closely familiar with the CW Leases, including their historical context, negotiated terms, and permitted uses – and is therefore well-positioned to assist with ongoing lease compliance.[120]

90. Mr. Sinharoy will be the Chief Operating Officer of the Purchaser and Lei Wang will be the Vice President of Sourcing and Procurement of the Purchaser. In their roles at the Company, they previously led the Company's supply chain and logistics, and sourcing and procurement of both domestic and international inventory. Mr. Sinharoy led the transformation of the Company's distribution centres and micro-fulfilment centres over the last decade and has the experience necessary to build out the Purchaser's supply chain network.[121]

91. The Purchaser continues to assemble other senior retail professionals to round out its executive team in anticipation of the approval of the CW Transactions.[122]

(3) Renovation cost estimates and timelines are reasonable

92. The Purchaser intends to complete $120 million in renovations and leasehold

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[118] *UrtheCast* at para. 51.
[119] Second Perugini Affidavit at para. 77, AMR Tab 2.
[120] Second Perugini Affidavit at paras. 73 and 75, AMR Tab 2.
[121] Second Perugini Affidavit at para. 96, AMR Tab 2.
[122] Second Perugini Affidavit at para. 79, AMR Tab 2.

improvements at the Leased Premises prior to reopening its department stores. Specifically, the Purchaser intends to complete basic refurbishment consistent with the Company's existing retail presence for most stores, and more extensive renovation for a small number of flagship stores.[123]

93. The Purchaser does not intend to undertake the full renovations and rebranding that were undertaken by Target, Nordstrom, Saks or any of the other examples relied on by the Objecting Landlords.[124] For clarity, the Purchaser will not be building out multi-story buildings from scratch or stripping them down to the studs and rebuilding as did these other retailers[125] and, therefore, the Purchaser's costs and timeline to completion will be lower and shorter, respectively.

94. The budget for renovations and leasehold improvements under the CW Forecast Model was developed by the Purchaser, in part based on information received from the Company and Reflect. During his examinations, Mr. Ampas, the outgoing Divisional Vice President, Construction at the Company, confirmed the manner in which the $120 million repair estimate in the CW Forecast Model was prepared. Mr. Ampas had an opportunity to review and discuss the estimates with the Purchaser and believed them to be reasonable. The budget was based, in part, on the fact that certain stores were renovated in the last ten years resulting in the required renovations at these stores anticipated to be limited, and the Purchaser entered into an agreement to purchase all remaining unsold FF&E and Trade Fixtures at the Leased Premises.[126] The required scope of work can feasibly be completed within the budget.[127] Mr. Ampas also noted that a budget such as the repair budget included in the CW Forecast Mode is an evolving document. The document involves scope numbers, that would be refined and priced as plans progressed. Such a budgeting process is not unusual in Mr. Ampas' experience.[128]

95. The funds currently allocated for renovations are intended to support the upgrade plan with respect to each Leased Premises. The Purchaser may, however, reassign resources to prioritize renovations in certain locations provided that the other stores are brought to an operational level. Not every renovation must be addressed immediately, or at all.

96. Critically, the budget allocated to renovations and leasehold improvements under the

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[123] Affidavit of Elias Louis Ampas sworn July 29, 2025 ("**Ampas Affidavit**") at para. 12, AMR Tab 3; Ruby Reply Affidavit at para 23.
[124] Ampas Affidavit at para. 12, AMR Tab 3.
[125] Reply Zalev Affidavit at para 37, ARR Tab 3.
[126] Second Perugini Affidavit at para. 89, AMR Tab 2; Liu Affidavit at para. 41 Supporting Motion Record of Ruby Liu Investment Corp., Tab 1. The FF&E remaining in the 25 CW Lease stores is visible in store photos at Exhibit "E" to the Reply Zalev Affidavit, AMR Tab 3-E.
[127] Ampas Affidavit at para. 34, AMR Tab 3.
[128] Ampas Cross at pg. 23-24, 30, 59, 61 and 93.

Business Plan for the Leased Premises is dramatically higher than the budget the Company was allocating to these stores prior to the CCAA Proceedings.[129]

97. The Business Plan contemplates an outside target completion timeline of six or twelve months for all stores (subject to receipt of applicable permits and approvals). Mr. Ampas, who has been a certified architect for 35 years and employed with the Company since 2018, has given evidence that this timeline is reasonably achievable, subject to ordinary-course execution risks.[130] Because the Purchaser is acquiring all of the FF&E and Trade Fixtures, the process of opening will also be significantly expedited.

98. The Purchaser is well-positioned to commence renovations and operations as soon as possible and to reach profitability in fiscal year 2026 and on a full-year basis in fiscal year 2027.[131]

(ii) It is Appropriate to Assign the CW Leases to the Purchaser

99. The CCAA does not provide express guidance for what the Court is to consider under this branch of the section 11.3 test. In the few contested cases, the appropriateness of the assignment and the ability of the assignee to perform its obligations under the assigned contract have been considered together, focusing on the ability of the assignee to meet monetary obligations.

100. For instance, the Court in *Dundee* considered the financial wherewithal of the proposed assignee in its analysis as to whether it would be "appropriate" to compel the assignment.[132] The "appropriateness" analysis also overlapped with the proposed assignee's ability to comply with the obligations in *Donnelly*, where the Court considered the credit risk of the proposed assignee in a long-term contract and generally whether the assignee could perform.[133]

101. None of the cases have considered the appropriateness branch of the section 11.3 test from the perspective of the counterparty to the assignment, in terms of whether the proposed assignee was the assignee the counterparty would want or could theoretically get outside of the insolvency proceeding. The CCAA does not entitle counterparties to insist on an optimal or hand-picked commercial arrangement of their choosing.

102. The fact that the Objecting Landlords would not have voluntarily selected the Purchaser

[129] Reply Ampas Affidavit para. 14, ARR Tab 2.
[130] Ampas Affidavit at paras. 7, 19, 24, and 29, AMR Tab 3.
[131] Reply Zalev Affidavit para. 21, ARR Tab 3.
[132] See *Dundee* paras. 25, 32-35 and 39.
[133] See *Donnelly* at paras. 86-87.

outside the CCAA context cannot be determinative in assessing what is appropriate or reasonable within the CCAA. Otherwise, section 11.3 would have no purpose.

103. Ms. Liu has committed to complying with the terms of the CW Leases, including the permitted use clauses.[134] The Objecting Landlords' unfounded speculation that she will not do so should not weigh against the assignment: as in *Playdium*, the Objecting Landlords will retain all of their rights to seek relief in the event of any future default by the Purchaser, and the Monitor concurs that the Landlords have not established that they will suffer material prejudice.[135]

104. Beyond that, all the evidence adduced by the Objecting Landlords around what they say they would ordinarily expect of a tenant or anchor tenant in the ordinary course is irrelevant.[136] Whether the Objecting Landlords would have voluntarily entered into a lease with the Purchaser in a non-insolvency scenario is irrelevant to the section 11.3 analysis. The Objecting Landlords' argument is, in essence, an attempt to substitute their own preferences and commercial wish-lists for the proper test under section 11.3 of the CCAA.

105. As referenced above, the Courts have considered the propriety of a counterparty receiving a windfall from a failed contract assignment and have consistently found that the type of self-interested conduct geared towards receiving a windfall that is being exhibited by the Objecting Landlords does not justify blocking an assignment under section 11.3 of the CCAA and is inconsistent with the policy objectives underlying the CCAA.[137]

106. On the other hand, if the CW Transactions are approved, the Applicants' creditors, will receive the benefit of over $50 million in proceeds of sale generated from the CW Transactions.[138] The CW Transactions will also create meaningful value for the Applicants' broader stakeholder

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[134]Ruby Reply Affidavit at para. 36, Reply Motion Record of Ruby Liu Commercial Investment Corp., Tab 1.

[135] *Playdium* at paras. 28-31. See also *Hayes Forest Services Ltd. (Re)*, 2009 BCSC 1169 at para. 31, in which the Court cited *Playdium* in noting that "the *CCAA* Court can approve an assignment even if I reach the conclusion that it is not unreasonable for [the counterparty] to withhold its consent."

[136] Responding Motion Records of: David Wyatt – Morguard – paras. 10-16, Responding Motion Record of Morguard Investments Limited, Tab 1; Alan Marcovitz (Westcliff) paras. 10-14, Responding Motion Record of Westcliff Management, Tab 1; Nadia Corrado (Oxford) paras 19 and 73-74, Motion Record of Oxford properties Group, Tab 2; Theresa Warnaar (KingSett) paras. 4 and 19-20, Responding Motion Record of KingSett Capital Inc., Tab 1; Rory MacLeod (CF) at paras. 3, 8 -10, Responding Motion Recor of The Cadillac Fairview Corporation Limited, Tab 1, Patrick Sullivan (Primaris) paras 3, 25, Responding Motion Record of Primaris Management Inc., Tab 1, Ruby Paola (IC) at paras. 12-19, Responding Motion Record of Ivanhoe Cambridge, Tab 1; Jay Camacho (QR) at paras. 86 and 97-100, Responding Motion Record of QuadReal Property Group, Tab 1.

[137] *Dundee* at paras. 28-29.

[138] Second Perugini Affidavit at para. 103, AMR Tab 2.

group consistent with the purposes of the CCAA, as described at paragraph 21 of this factum.[139]

107. If the CW Transactions are not approved, the significant benefits and value creation outlined above will be lost or significantly delayed. With over 64 Leases having already been disclaimed by the Company, and the potential for another 25 CW Leases to be disclaimed if the CW Transactions are not approved, the market for Canadian retail space will be further flooded, likely resulting in significantly extended timelines for redevelopment and absorption.[140]

(iii) The Monitor's Position is Only One Factor and Does Not Govern the Analysis

108. Whether the Monitor approves the proposed assignment is one of the three factors under section 11.3(3) that the Court is to consider when deciding whether to exercise its discretion to approve a forced assignment.[141] While the Monitor's views should be considered in the Court's overall assessment, they are not determinative of the outcome, nor is the Monitor's approval of the proposed assignment a statutory precondition to relief under section 11.3.

109. The Court's task is to apply the statutory test and exercise its discretion in light of the evidence, not to simply defer to the Monitor's endorsement or opposition. The Monitor's position is therefore a relevant factor to be considered, but it does not displace the Court's independent analysis of whether the requirements of the CCAA are met.[142]

110. This assignment of the unique supervisory role to the CCAA judges alone is one the principal means by which the CCAA achieves its objectives.[143] And it is this assignment of the supervisory role and requirement to conduct its own independent analysis that leads CCAA courts to at times disagree with the positions taken and views promoted by the court-appointed monitors.

111. This is evident even in the limited collection of cases that have considered the propriety of a forced assignment under s. 11.3. In *Donnelly*, the Monitor expressed its approval of the proposed lease assignment and provided reasons in support of that position.[144] Notwithstanding the Monitor's support, the Court declined to exercise its discretion under section 11.3 to compel the assignment. This outcome underscores that the Monitor's support is a factor to be considered,

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[139] Second Perugini Affidavit at para. 25, AMR Tab 2.
[140] Second Perugini Affidavit at paras. 25 and 30, AMR Tab 2.
[141] CCAA, s. 11.3(3), *Dundee* at para. 22; *UrtheCast* para 37.
[142] *Donnelly at* paras. 62, 64, 69-71, 75, 79, and 87.
[143] *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at para 47.
[144] *Donnelly* at para. 62, 66, 70-71, 75, and 79-80.

but it cannot displace the Court's jurisdiction or substitute for the statutory test.[145]

112. In this case, the Monitor's views on the ability of the Purchaser to meet obligations under the CW Leases should be considered carefully. First, it must be noted that the Monitor does not have any concerns with the ability of the Purchaser to meet the financial obligations under the CW Leases – the central issue in the prior decisions interpreting section 11.3.[146] Second, while the Monitor has raised questions about the Purchaser's ability to comply with non-monetary terms of the CW Leases, it has not expressed the view that the Purchaser will be unable to successfully launch and operate a department store that would satisfy its obligations under the CW Leases.[147]

113. The Monitor also opined that if the assignment of the CW Leases is not approved, the Applicants and their creditors will suffer material prejudice – as they would recover nothing, rather than approximately $50 million in net proceeds from the CW Transactions.[148] In contrast, if the assignment of the CW Leases is approved, it is not clear to the Monitor that the Objecting Landlords will suffer material prejudice, as they will continue to receive rent, see funds invested for repairs and renovations, retain the same rights of termination that they bargained for with the Company, and if the Purchaser ultimately defaults and becomes insolvent, the Objecting Landlords would be in the same position they are in today.[149]

114. The Monitor's Report is also opining on facts as at the close of the record for this motion. However, as the Purchaser and the Applicants have repeatedly stated, the Purchaser's Business Plan, including the build out of its team and merchandizing strategies, continues to develop. On the one hand, this is because the Purchaser only had a couple of months from the signing of the Central Walk APA to build a business plan and strategy from the ground up. On the other hand, it is unreasonable to expect a potential assignee to have entered into all of the contractual commitments necessary to operate the business prior to even knowing whether they will obtain the assets necessary to do so (in this case, the CW Leases). Despite these limitations, the Purchaser has put together a comprehensive Business Plan and CW Forecast Model and has lined up several critical team members and a large number of suppliers that will enable it to commence and continue operations.

115. It is reasonable to conclude that, with additional time, and assuming the CW Transaction

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[145] *Donnelly* at para. 87.
[146] Eighth Report at para 6.39.
[147] Eighth Report at para. 5.6.
[148] Eighth Report at para 6.42.
[149] Eighth Report at para. 6.43.

is approved, the Purchaser will be able to expand its team of executives, employees, and professional advisors, negotiate and enter into binding agreements with suppliers, and complete other steps necessary to launch an operate a successful business. It is also reasonable to conclude that the Monitor's views on the Purchaser's ability to comply with the non-monetary terms of the CW Leases would correspondingly evolve with these developments.

116. The Purchaser has the money necessary to meet the monetary obligations (as confirmed by the Monitor); what Ms. Liu didn't have enough of was the time or commercial certainty needed to further detail out her Business Plan and the Monitor's views must be considered in that context.

117. In declining to approve the CW Transaction, the Monitor also relied on a number of considerations that were inappropriate or did not support that conclusion, including the following:

(a) The Lee Report improperly expressed opinions regarding the Purchaser's Business Plan outside any expertise of Mr. Lee, who has never worked in a retail business, and whose opinion followed what amounted to a checklist provided to him by landlords' counsel;[150]

(b) The long remaining terms of the CW Leases in no way increase any potential for prejudice, as the Purchaser will either perform its obligations throughout the lease terms, or the landlords will have their rights to relief for default; and

(c) The landlords' "near unanimous opposition" should not be considered, let alone be determinative, under section 11.3, whose purpose is precisely to enable assignments against the objections of self-interested counterparties, and the Monitor's approach to this factor would signal to counterparties in other insolvencies that strident opposition works.

118. The Monitor also makes negative inferences about Ms. Liu's stated and sworn commitments in reliance on the Monitor's interpretation of the way questions were posed and documents were presented to Ms. Liu on her cross-examination.[151] The Applicant submits these conclusions are faulty in that they misinterpret the challenges of testifying through an interpreter and being put documents in a language that Ms. Liu does not speak or read as ignorance of the content of the documents themselves.

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[150] Eighth Report at para. 6.40(e); Lee Cross at Pg. 15-17 Qs. 55-67, Pg. 32-33 Q. 134 and pg. 62-67 Q. 255-308, TB Tab J.
[151] Eighth Report at para 6.40(d).

119. At various points in Ms. Liu's cross-examination, the examining counsel put English documents to Ms. Liu (such as the Business Plan or the proposal from J2) without giving her adequate time to get a translation from the interpreter or properly explore the differences between the different versions of the same document[152]. Interestingly, the Monitor does ascribe some of Ms. Liu's answers as obvious misinterpretations of the document put to her in cross-examinations (such as the original business plan),[153] but not all such obvious misinterpretations.

120. The Applicant submits that that is an error in the Monitor's analysis that ought to be corrected by this Court which is the ultimate arbiter of credibility and the interpreter of evidence.

121. In total, however, the Monitor was comfortable that the Purchaser has the money necessary to meet the monetary obligations under the CW Leases. In evaluating the Purchaser's ability to meet non-monetary obligations under the CW Leases, the Monitor applied a standard that is higher than reasonable and not supported by the authorities in a forced assignment motion. Given the Monitor's conclusions and its application of a legally flawed standard to the Purchaser's evidence of its ability to meet obligations under the CW Leases (which is a legal question to be determined by this Court), the Applicants respectfully submit that the Court can and should approve the transaction despite the lack of Monitor approval.

C. The Objecting Landlords' Objections Are Advanced for Ulterior Motives and Lack Merit

122. The Objecting Landlords levy a number of criticisms at the Purchaser's Business Plan, the CW Forecast Model, and the principal behind the Purchaser, Ms. Liu. Despite the clear stated intentions in Ms. Liu's sworn written and oral testimony that the Purchaser will abide by the permitted use provisions of the CW Leases[154], the Objecting Landlords insinuate that she will not follow through on her commitments and resort to personal and unfounded attacks in doing so, including going as far as insinuating without any foundation whatsoever that Ms. Liu has ties to the Chinese government.[155] The Objecting Landlords have no evidentiary basis to support their suspicions or more importantly upon which to ask this Court to conclude that the Purchaser will renege on her stated and confirmed financial and operational commitments.

123. All of these criticisms must be viewed with the understanding that the Objecting Landlords'

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[152] See, for example, Liu Cross at p. 76, line 5-11, TB Tab H.
[153] See, for example, Eighth Report at para. 6.25.
[154] Liu Cross at p. 91-96, TB Tab H.
[155] Corrado Affidavit at para. 123, Motion Record of Oxford Properties Group, Tab 2. See also Ms. Corrado's answers to the Under Advisement where she indicated that Mr. Brad Jones had no personal knowledge of this.

goal is to see the CW Leases not assigned but disclaimed for no consideration. In fact, a number of the Objecting Landlords have stated in their affidavits and admitted in their cross-examinations that they would never agree to assign their leases to the Purchaser – no matter what business plan the Purchaser presented.[156] One of the Objecting Landlords (QuadReal) did not even take a meeting with the Purchaser despite repeated requests.[157]

124. The Objecting Landlords ask the Court to presume the Purchaser will not act in good faith to establish a successful business, while at the same time signalling that they themselves may not work cooperatively with the Purchaser to facilitate that success. For instance, the Objecting Landlords suggest they will insist on rigid adherence to their internal approval processes such as requiring the Purchaser to submit renovation plans and wait up to 90 days for approval, even where such delays would jeopardize the timelines for store reopenings. Rather than exercising flexibility to support a timely and commercially sensible outcome, the Objecting Landlords imply that they would withhold cooperation, thereby frustrating the Purchaser's efforts.[158]

125. Having failed to protect themselves through participation in the Lease Monetization Process, it is not surprising that the Objecting Landlords have mounted such a strong opposition to the Company's attempt to monetize its assets by way of assigning the CW Leases. The CW Leases represent hundreds of millions of value that cannot be accessed by the Objecting Landlords while the CW Leases are in effect, and a variety of concessions which the Objecting Landlords describe as benefitting an anchor tenant like the Company or the Purchaser.

126. Almost all of the CW Leases contain Restrictive Development Covenants, which present notable obstacles to the Objecting Landlords' redevelopment plans. With the removal or termination of these Restrictive Development Covenants, the Objecting Landlords will be afforded much greater latitude to pursue projects that may include mixed-use developments, new retail concepts, or even residential towers.[159]

127. Morguard emphasized the rarity and value of these Restrictive Development Covenants in stating: "the special lease restrictions and terms … granted in favour of [HBC] are not granted

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[156] Camacho Cross at pg. 43, Q. 25 – pg. 24, Q. 6, TB Tab E; Warnaar Cross at pg. 33, Q.127-131, TB Tab B.
[157] Camacho Cross at pg. 25 Q22 – pg. 26, Q6, Q17; pg. 39, Q8, TB Tab E.
[158] For example, see para. 101(a) of the Affidavit of Rory MacLeod affirmed August 9, 2025, Responding Motion Record of The Cadillac Fairview Corporation Limited dated August 9, 2025, Tab 1.
[159] Reply Perugini Affidavit at paras. 6-7, ARR Tab 1; Lee Cross, pg. 17, Q. 68 – pg. 19, Q. 76, TB Tab J; Cross Examination of Nadia Corrado on August 28, 2025 (Oxford) ("**Corrado Cross**"), pg. 33 Q 20 and pg. 35, Q. 15, TB M; Cross Examination of Patrick Sullivan ("**Sullivan Cross**") at pg.56, Q 2, pg. 49 Q. 4-22, pg. 50, Q. 24 – pg.51, Q. 23, TB Tab G.

to other non-anchor tenants and in fact, no other anchor tenants have such significant/expansive restrictions over what Morguard can and cannot do in and with the shopping centre."[160]

128. The value to the Objecting Landlords from eliminating the Restrictive Development Covenants through a termination of the CW Leases can be seen in several instances:

(a) IC paid $40 million to the Company on November 14, 2023, to settle the $100 Metrotown Litigation commenced by the Company against IC relating to a proposed redevelopment by IC at Metrotown Centre;

(b) a member of the QuadReal Property Group, one of the Objecting Landlords, paid the Company $152 million in 2021 in exchange for certain concessions and approvals related to the redevelopment of Oakridge Centre;

(c) Oxford's affiant refused to answer questions relating to its prior efforts to request the Company's consent to amend the restrictive covenants in respect of the Hillcrest Mall Lease so that Oxford could proceed with its redevelopment plans, for which an application has already been submitted[161];

(d) during the course of the CCAA Proceedings, Oxford sought urgent court attendances attempting to preserve its right to exercise the ROFR contained in the CW Lease for the Hillcrest location and ultimately purported to exercise the ROFR on a conditional basis (such exercise having been determined to be invalid by the Company). The attempt to exercise the ROFR is tied to Oxford's desire to proceed with their announced redevelopment plans for Hillcrest Mall. Ms. Corrado, on behalf of Oxford, would not answer questions about Oxford's prior communications with the Company with respect to obtaining amendments or approvals to allow this redevelopment to proceed; and

(e) a number of other properties under the ownership of Oxford, Morguard, and Cadillac Fairview have already submitted publicly available redevelopment plans with respect to the Leased Premises, all of which would require some modification to the Restrictive Development Covenants contained in the CW Leases.[162]

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[160] Affidavit of David Wyatt sworn August 8, 2025 (Morguard) at para, 52, Responding Motion Record of Morguard Investments Limited, Tab 1.
[161] Corrado Cross at pages 33-34, TB Tab M.
[162] Reply Perugini Affidavit at paras. 8-12, ARR Tab 1**;** Exhibits E, F, and G to Reply Perugini Affidavit, ARR Tabs 1-E, 1-F and 1-G; Corrado Cross at p. 33, TB Tab M.

129. The Objecting Landlords have not been subtle in their interest in getting their leases disclaimed so as to allow them to pursue other value-unlocking steps. For instance, the First Quarter 2025 Results Conference Call issued by Primaris stated, among other things:

> "We are very confident that the departure of HBC's tenancy will be beneficial to [Primaris] over the medium term, and we see significant upside in the longer term … We have updated our long-standing re-tenanting, redevelopment and repurposing plans in relation to each of the locations with significant analysis and evaluation of alternatives."[163]

130. Primaris also issued a press release to the public on May 26, 2025, announcing that the Company had disclaimed five leases within the Primaris portfolio and that:

> "[R]egaining control of five of our valuable anchor locations allows Primaris to commence repurposing a significant amount of low productivity space, and marks the beginning of our value surfacing exercise … While HBC has been the focus of a lot of discussion and attention, **the real story is just beginning, as the disclaiming of leases has finally removed obstructionist barriers enabling us to enhance our properties**. We are confident that the quantitative and qualitative benefits of regaining control of these spaces will be materially positive for our properties and our unitholders." (Emphasis added).[164]

131. Even the few CW Leases that do not contain the same Restrictive Development Covenants are still at below market rates and will not permit the applicable landlord to divide and relet the premises to different tenants at much higher rental rates for many more decades. Many of the anchor locations that were vacated by other anchor tenants (such as Nordstrom, Sears or Target) have often been divided into numerous tenant locations.[165]

132. Accordingly, all of the specific criticisms levied by the Objecting Landlords at the Purchaser as the proposed assignee, disguised as concerns over the financial viability of the Purchaser and preserving the right tenant mix for their malls, must be viewed through the lens of what the Objecting Landlords stand to gain if the proposed assignment of the CW Leases fails.

(i) Criticisms Regarding the Purchaser's Ability to Operate a Department Store Lack Credibility

133. The Purchaser has committed to operate a department store within the permitted use

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[163] Sullivan Cross at pg. 58 Q. 18 – pg 60, Q. 3, TB Tab G.
[164] Exhibit H to the Reply Perugini Affidavit, ARR Tab 1.
[165] Cross Examination of David Wyatt on August 18, 2025 ("**Wyatt Cross**") at pg. 24, Q. 18 – pg. 25, Q. 5, TB Tab L; MacLeod Cross, pg. 61, Q. 22- pg. 62 Q. 8, TB Tab N; Cross Examination of Ruby Paola on August 18, 2025 ("**Paola Cross**") pg. 26 Q. 9, TB Tab I; Corrado Cross, pg. 32 Q 8, TB Tab M; Lee Cross at pg. 22 Q.93, pg. 26, Q. 109, TB Tab J.

clauses of the specific CW Leases. The Objecting Landlords, however, have objected to the proposed assignment of the CW Leases on the grounds that the Purchaser will be unable to do so, including because it does not have the hallmarks of a first-class department store.[166] They have stressed the importance of having a traditional or first-class department store anchor tenant at their malls to preserve the right tenant mix and attract foot traffic.[167]

134. In cross-examination, however, the Objecting Landlords' industry expert, Scott Lee, confirmed that the only traditional department stores left in Canada are the 19 Simons locations, such that the Objecting Landlords' ability to replace the Company with a traditional department store tenant is limited to Simons or a new entrant.[168] Some of the Objecting Landlords' own witnesses acknowledged this too.[169]

135. Contradicting the evidence of some of the Objecting Landlords, their own expert, Mr. Lee also confirmed that: a department store does not need to carry luxury brands to qualify as a first-class department store; it may or may not contain in-store dining; and landlords have little control over what type and class of merchandise a tenant operating as a department store may carry – he gave the example of a tenant operating a hospital as being an impermissible use.[170]

136. Objecting Landlords have agreed that stores such as Walmart, Marshalls, Kmart, Tunkas Fashion, Color Me Mine, Fit4Less, and even Dollarama are consistent with a first-class shopping centre[171] and many of the malls where the CW Leases are located have anchor tenants that are No Frills, Canadian Tire, Canada Computers & Electronics, Walmart, or Life InStyle Furniture.[172] The Objecting Landlords' expert, Mr. Lee, considered Walmart to be a first-class retail operator.[173]

137. Moreover, despite the many paragraphs in the Objecting Landlords' affidavits about the importance of the just right tenant mix and the delicate ecosystem of a mall[174], the tenant mix in

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[166] David Wyatt affidavit at para. 91-92; Affidavit of Patrick Sullivan Affidavit sworn August 9, 2025, at para. 149, Responding Motion Record of Primaris Management Inc., Tab 1.
[167] See for example, Corrado Affidavit at para. 62 and 72 Motion Record of Oxford Properties Group, Tab 2; MacLeod Affidavit at para. 8-9 and 163, Responding Motion Record of The Cadillac Fairview Corporation Limited, Tab 1; Paoloa Affidavit at para. 18
[168] Lee Cross at p. 43-44, Qs. 183-185, TB Tab J.
[169] MacLeod Cross at p. 15, TB Tab N.
[170] Lee Cross at p. 28-30 Qs 119-124, p. 46-48 Qs 199-202, TB Tab J.
[171] Paola Cross at ps. 19-21, TB Tab I, Camacho Cross at p. 72, TB Tab E, Warnaar Cross at p. 24-25, Qs 92-98, TB Tab B; Wyatt Cross, p. 21-22, TB Tab L.
[172] Paola Cross p. 14-15, TB Tab I; Wyatt Cross at p. 20, TB Tab L.
[173] Lee cross at p. 55-56, Q. 229, TB Tab J.
[174] See for example, Corrado Affidavit at para. 62 and 72 Motion Record of Oxford Properties Group, Tab 2; MacLeod para. 8-9 and 163; Ruby Paoloa affidavit at para. 18.

the different malls at issue is fairly uniform,[175] and the affiant from Cadillac Fairview stated in cross-examination that it is not a necessary precondition for a tenant in its malls to be compatible with other retail tenants.[176]

138. The evidence of Mr. Perugini is that the importance of an anchor tenant may have been true a couple of decades ago but is no longer true in the current retail environment. Non-traditional anchors like Apple and Uniqlo often serve as primary traffic drivers with their leased locations in the middle of the mall.[177]

139. The notion that the importance of an anchor tenant is not what it may have been ten or twenty years ago is also seen in some of the Objecting Landlords' own conduct. Primaris, for example, has already announced that it will divide some of the spaces previously occupied by HBC (none of which are CW Lease locations) for smaller retailers opening as soon as Q2 2026.[178]

140. Many of the locations previously tenanted by Sears or Target were subdivided and now have multiple tenants including Marshalls, HomeSense, Indigo, Old Navy, and Linen Chest.[179]

141. The Objecting Landlords decry the possibility of a failed anchor tenant as catastrophic to their business, yet their own retail expert confirmed that despite having one failed anchor tenant after another for the last two decades, Yorkdale has been for the last couple of decades and continues to be one of the top three premier malls in the country commanding top rental rates.[180]

142. In many of the malls, there were already two, or in some circumstances, three vacant spaces where anchor tenants normally operated.[181]

143. While the Objecting Landlords argue that they would rather have "dark space" than a tenant they do not consent to, these comments were contradicted by the conduct of certain of the Objecting Landlords who had leased earlier anchor space on a short-term basis to ensure ongoing traffic flow and parking lot access throughout anchor space.[182]

144. The Purchaser intends to carry on its retail business as a first-class or a traditional

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[175] Reply Zalev Affidavit at paras. 54-55, ARR Tab 3.
[176] MacLeod Cross at p. 12, TB Tab N.
[177] Reply Franco affidavit at para. 17.
[178] Reply Franco Affidavit at para 18 and Exhibit H.
[179] Cross Examination of David Wyatt at pg. 24, Q. 18 – pg. 25, Q. 5; Cross Examination of Rory Macleod pg. 61, Q. 22- pg. 62 Q. 8; Cross Examination of Ruby Paola pg. 26 Q. 9; Cross Examination of Nadia Corrado pg. 32 Q 8.
[180] Lee Cross pg. 22 Q.93, pg. 26, Q. 109, TB Tab Jt.
[181] MacLeod cross at p. 48, TB Tab N; Corrado Cross p. 14, TB Tab M; Paola cross at p. 26.
[182] Cross Examination of David Wyatt pg. 33, Q. 6 – Q-19; Corrado Cross at pg. 15 Q. 6-10.

department store such as Sears and Hudson's Bay which is strictly within all the permitted use clauses under the CW Leases.[183] This will be particularly easy as the scope for what constitutes a first-class department store is very broad given the examples acknowledged by the Objecting Landlords (Walmart, Dollarama, etc.).[184]

(ii) Criticisms Regarding the CW Forecast Model are Not Reasonable

145. The Objecting Landlords attack the projected revenues presented in the CW Forecast Model in their affidavits, among other things, questioning the assumptions and methodology underlying the financial projections. However, as the affiant of KingSett acknowledged during cross-examinations (and other Objecting Landlords confirmed), being a landlord is not the same as operating a retail store and the Objecting Landlords' affiants acknowledged they did not have any retail experience, nor had they ever prepared a business plan for a retail business.

146. As set out above, the CW Forecast Model is underpinned by the Company's 2025 financial forecast, which was prepared in a robust manner involving a comprehensive budgeting process, offering a reasonable and defensible basis for assessing store performance.[185]

147. In support of their critique of the CW Forecast Model, the Objecting Landlords tendered the EY Report. While Ms. Hamilton, who authored the EY Report, is a respected insolvency professional and is well known to this Court for her roles as Court-appointed monitor and receiver in many high-profile, she has never before been tendered as an expert witness.[186]

148. Ms. Hamilton also lacks expertise in retail businesses. In her career, Ms. Hamilton has only worked on three retail insolvencies – one of them at the end of the last century over 28 years ago and the most recent one 13 years ago. [187] Ms. Hamilton has never operated a retail department store or prepared a business model or financial forecast for a retail department store start-up.[188]

149. Ms. Hamilton acknowledges that, due to the constrained litigation timetable in this matter, she was not able to conduct all the searches, interviews and analysis she would have wanted to do to deliver as high-quality a report as she would have liked and as this Court has come to expect

[183] Reply Perugini Affidavit at para. 27, ARR Tab 1.
[184] Paola Cross at ps. 19-21, TB Tab I; Camacho Cross at p. 72, TB Tab E; Warnaar Cross at p. 24-25, Qs 92-98, TB Tab B.
[185] Reply Zalev Affidavit at para. 5, and 17-18, ARR Tab 3.
[186] Hamilton Cross at p. 15, Q. 44, TB Tab K.
[187] Hamilton Cross at p. 8-14, Qs. 14-41, TB Tab K.
[188] Hamilton Cross ps. 39-41, Qs. 137-141, TB Tab K.

from her.[189] Among other things:

(a) Ms. Hamilton relied on information about renovation timelines of Simons provided to her by some of the Objecting Landlords' counsel without verifying or critically assessing that information;[190]

(b) Ms. Hamilton was not made aware of the large scope of construction undertaken by Nordstrom at some of their locations and relied on the average cost of construction for those stores without differentiating for the very different scope of renovation proposed to be carried out by the Purchaser;[191]

(c) Ms. Hamilton did not ask to discuss the Business Plan or the CW Forecast Model with anyone from the Purchaser's management team despite acknowledging how important discussions with management are to understanding a company's business plan in order to opine on its forecast;[192]

(d) Ms. Hamilton did not have the opportunity to review all of the financial information of the other retail department stores she used for benchmarking the Purchaser's CW Forecast Model, which resulted in her picking and choosing data points instead of consistently using all of the comparators' performance indicia;[193] and

(e) Ms. Hamilton did not ask questions of the Purchaser on the extent of the renovations it is intending to do at the CW Lease locations to determine if the comparators for cost and time that she used in the EY Report are applicable.[194]

150. Some of the specific criticisms on the CW Forecast Model and the Business Plan are addressed below.

Headcount and office space

151. The Objecting Landlords and Ms. Hamilton assert that the contemplated headcount and payroll under the Business Plan is too low compared to the Company and other tenants, to support the proposed operations and sales predictions. Forecast store-level head counts in the CW

[189] Hamilton Cross at p. 34, Q. 122, TB Tab K.
[190] Hamilton Cross at p. 84-87, Q. 290-296 and 301, TB Tab K.
[191] Hamilton Cross at p. 70-71, 74, 101-104, Qs. 234-245, 256-258, 350-361, TB Tab K.
[192] Hamilton Cross ps.34-35, 38-39, 46, Qs. 121-125, 133-135, 160, TB Tab K.
[193] Hamilton Cross at p.101-104, 118-123 128-130, Qs. 352-359, 409-431, 449-459, TB Tab K.
[194] Hamilton Cross at pg. 106, Q. 364, TB Tab K.

Forecast Model are, however, consistent with those in the Company's 2025 forecasts.[195]

152. Given that the Company's 2025 forecasts were used by the Purchaser as the basis for creating the CW Forecast Model, the contemplated payroll in that model reflects the same level of payroll levels and costs as those included in the Company's 2025 forecasts, in respect of the Purchaser's stores.[196] As Mr. Zalev confirmed in his cross-examination, the estimated employees levels necessary to support the forecasted sales in the business plan, were discussed with Company's finance and operations team.[197]

153. Comparing employee head count levels to stores such as Walmart or Target as referenced in the Lee Report or EY is not accurate. Those stores sell lower-value, higher turnover goods, including groceries, which requires greater customer facing and inventory, cashier and store operations employees to service sales, than would the Company or a similar department store. The comparisons in the EY Report to U.S.-based retailers (Macy's, Dillard's, and Kohl's), are not appropriate comparables generally.[198]

154. The Business Plan does not currently specifically include estimated costs of a head office; however, as Mr. Zalev explained in his cross-examination, head office requirements would initially be addressed at Central Walk's existing office or through remote work environments. Where some head office space may be required for employees outside British Columbia, the contingency levels in the forecast estimates were satisfactory to address those costs.[199]

Lack of e-commerce

155. The Objecting Landlords and their experts also criticize the Purchaser for not including a budget or concrete plans for e-commerce in its Business Plan.

156. On cross-examination, however, Mr. Lee acknowledged that premier retailers such as Winners, HomeSense, and Marshalls, which are major tenants in many of the shopping centres where the Leased Premises are located, do not operate an e-commerce platform.[200] This underscores that an online platform is not a prerequisite to operating a successful and profitable

[195] Reply Zalev Affidavit at para. 22, ARR Tab 3.
[196] Reply Zalev Affidavit at para. 25, ARR Tab 3.
[197] Reply Zalev Affidavit at para. 24, ARR Tab 3.
[198] Reply Zalev Affidavit para. 26, ARR Tab 3.
[199] Zalev Cross pg. 129 Q517 – pg. 132 Q. 530, TB Tab A.
[200] Lee Cross at pages 60-62, TB Tab J.

retail business.

157. To the contrary, implementing an e-commerce platform and fulfilling orders results in various additional costs, often resulting in losses for the digital segment of a business. Although this can drive additional sales, the digital segment can have a negative contribution to the business. As an example, the Company invested approximately $130 million into its e-commerce platform beginning in 2020 and still achieved negative EBITDA results from the digital segment of ($17.6 million) in 2024 and ($44.8 million) in 2023.[201]

Gross Margins

158. The Objecting Landlords also take issue with the assumed levels of gross margins in the CW Forecast Model and suggest that it is not a conservative estimate to assume same or better gross margins for the Purchaser relative to what the Company was achieving. Mr. Zalev confirmed his views that when the Purchaser's stores open and the stores are renovated and the inventory is refreshed, it will perform better than the Company did.[202] He also testified that since the Purchaser is going to operate a department store similar to that operated by the Company, it is reasonable to assume that the margins would be similar as well.[203]

(iii) Criticisms of the Renovation Budget and Timeline are Misplaced

159. The Objecting Landlords have criticized the Purchaser's estimate for repairs and renovations and the timeline to open the stores at issue. In support of that criticism, the Objecting Landlords filed numerous reports and assessments never before provided to the Company, detailing the items that they say need to be repaired at these premises that they say will amount to costs far greater than $120 million and will take far longer than 6 to 12 months complete.[204]

160. Few of the issues identified in the reports and assessments put forward by the Objecting Landlords have been previously discussed with the Applicants, and none of these complaints have ever resulted in a landlord providing the Company with a notice of default under the CW

[201] Reply Zalev Affidavit at para. 49, ARR Tab 3.
[202] Zalev Cross, pg145 Q. 596, TB Tab A.
[203] Zalev Cross, pg. 147 Q. 605, TB Tab A.
[204]Reply Perugini Affidavit at para. 37, ARR Tab 1. See paras. 95-138 and 171-176 of MacLeod Affidavit, Responding Motion Record of The Cadillac Fairview Corporation Limited, Tab 1; paras. 62-65, 94-98 and 102-108 of David Wyatt Affidavit; paras. 98, 106, 108, and 113 of Corrado Affidavit; paras. 46-79, 100-103, 112-115, 121-124, 130-134 and 141-147 of the Affidavit of Patrick Sullivan Affidavit sworn August 9, 2025, Responding Motion Record of Primaris Management Inc., Tab 1Partick Sullivan Affidavit; paras. 45-56 and 65-66 of Jay Camacho Affidavit; paras. 53-57 of Ruby Paola Affidavit, Responding Motion Record of Ivanhoe Cambridge, Tab 1; paras. 30-32 of Alan Marcovitz affidavit; paras. 34-36, 44-47, 68-70 and 75 of Theresa Warnaar affidavit.

Leases. In fact, since April 2016, none of the Objecting Landlords have ever issued any notices of default to the Company relating to the status of repair of the Leased Premises.[205]

161. The Objecting Landlords have known for years that the Company had a limited budget for store repairs and renovations and prioritized its expenditures to make repairs on an as-needed basis. The Company certainly was not in a position to budget $120 million in one year to renovate and repair at the stores subject to the CW Leases.[206]

162. Both Cadillac Fairview and IC provided cash infusions to the Applicants in the amounts of $200 million (in 2023) and $30 million (in 2024), respectively, and neither of these Objecting Landlords required the Applicants to use the proceeds of these transactions in any part to repair their respective Leased Premises.[207]

163. It is therefore both surprising and disingenuous for the Objecting Landlords to now contend that the Purchaser's commitment to invest $120 million in repairs and renovations of the Leased Premises is somehow inadequate to enable the Purchaser to operate.

164. The estimated cost of renovations under the BCAs and other internal estimates offered by the Landlords with respect to required renovations total approximately $182.9 million.[208] For each of the reasons outlined below, the Landlords' figure is inflated and not necessary for the Purchaser to operate at the Leased Premises.

165. The BCAs essentially outline all material repairs, renovations, and upgrades that could be undertaken in the Leased Premises over an extended timeframe, generally the next 10 years. These estimates exceed what is required in the short to medium term to retrofit the majority of the Leased Premises and resume operations as contemplated in the Business Plan.[209] The list of necessary and next-level repairs and renovations in the BCAs would not be required to be undertaken prior to reopening the Purchaser's stores. Even the BCAs do not contemplate that all repairs must be carried out simultaneously. For example, the Whalen BCAs included in Cadillac Fairview's responding materials contemplate "Short Term Work" and "Long Term Work", being repairs required within the next five years and six to ten years, respectively.[210]

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[205] Reply Perugini Affidavit at para. 38, ARR Tab 1.
[206] Reply Perugini Affidavit at para. 39, ARR Tab 1.
[207] Reply Perugini Affidavit at para. 40, ARR Tab 1.
[208]Reply Ampas Affidavit at para. 9, ARR Tab 2.
[209] Reply Ampas Affidavit at para. 11(a), ARR Tab 2.
[210] Reply Ampas Affidavit at para. 11(c), ARR Tab 2.

166. Not only would the Company not have undertaken the level of repairs outlined in the BCAs if it did not file for CCAA, but it is also not necessary to carry out all such repairs, renovations, or upgrades. Under no circumstances would the level of repairs set out in a broad BCA be undertaken in a commercial context, as performing all recommended repairs is almost always cost prohibitive and unnecessary.[211]

167. The BCAs also contain inflated estimates. Some of the BCAs have a high estimated per square foot renovation cost when compared to the historical per square foot renovation costs incurred by Hudson's Bay. Examples of inflated estimates include (a) $8.4 million for vertical transportation repairs at the Southgate mall; (b) $11 million for asbestos removal at the Orchard Park mall; and (c) $8.4 million for hazardous materials removal at the Oshawa Centre.[212] When Mr. Ampas was asked to comment on the reasonable of various expenses referenced in the Objecting Landlords' BCA, he noted that these costs seemed inflated based on his experience with the same stores, including in respect of escalator repairs, roof estimates or HVAC repairs at various malls.[213]

168. The Objecting Landlords also rely on the EY Report which purports to "benchmark" the Purchaser's renovations budget and timelines against amounts spent by Target to conduct renovations over a four-year period and by Nordstrom to conduct renovations over an eight-year period, which are not reasonable benchmarks. Many of the Nordstrom and Target stores were rebuilt – often from the ground up.[214] As mentioned above, Ms. Hamilton did not consult with the Purchaser on the extent of the repair and renovation it is intending to do at the CW Lease locations to determine if these comparators are actually applicable and appropriate.

169. The EY Report, which points to Nordstrom Canada's renovation costs of between $209 to $220 per square foot and Target's renovation costs of between $87 to $136 per square foot as a suggestion that the Purchaser's planned expenditures on renovations are inadequate[215] should be afforded little weight, if any.

(iv) Criticisms Regarding the Credit Risk of the Purchaser Lack Merit

170. The Objecting Landlords also question the Purchaser's ability to meet its monetary

[211] Reply Ampas Affidavit at para. 11(b), ARR Tab 2.
[212] Reply Ampas Affidavit at para. 11(d), ARR Tab 2.
[213] Reply Ampas Affidavit at paras. 13-14, 22-26, 28-29, 33, 39-40, 42, 45-46, 54-55.
[214] Reply Ampas Affidavit at para. 12, ARR Tab 2.
[215] EY Report at paras. 85-86.

obligations and raised concerns that they would have no recourse to another solvent entity with sufficient assets.

171. The fact that the proposed assignee is a "shell" company, or a special purpose company that does not yet have operations, should not preclude an assignment to that company, provided the proposed assignee satisfies the court that it has the means to perform its financial obligations. For example, in *UrtheCast*, the court was satisfied regarding the assignee's financial wherewithal on the basis that the assignee's new venture would be viable and capitalized.[216]

172. While the Objecting Landlords seek to characterize the Purchaser as an unknown commodity, start-up, or risky partner – there is in fact an ongoing and substantial business relationship between Ms. Liu's organization and IC, which has extended Central Walk over $260 million in vendor take-back mortgages at approximately 3% interest on the three malls it purchased in British Columbia.[217] IC conducted diligence on Ms. Liu before extending this credit.[218] IC has not introduced any evidence to suggest that Ms. Liu is in default on those loans, nor has been anything but a solid borrower and business partner, and has improperly refused to confirm the appraisals it received for the three malls.[219]

173. The Objecting Landlords did not ask Central Walk for a guarantee or negotiate any terms of a consent assignment. Despite this, Ms. Liu has committed that if the Central Walk APA and the CW Transactions are approved by the Court, she will execute a personal guarantee in favour of the Objecting Landlords, guaranteeing the rent (and other) obligations under the CW Leases for a period of one year following closing of the CW Transactions.[220]

174. The Objecting Landlords have rejected this guarantee as insufficient. Indeed, in answers to undertakings, Morguard stated that **only a guarantee or letter of credit for the duration of the terms of the leases and all renewals** would be considered reasonable by Morguard.[221] This response only underscores the extent to which the landlords are demanding the "receipt of financial covenants or assurances that [they] did not previously enjoy under the contract [they]

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[216] *UrtheCast* at para. 54. In *Donnelly,* by contrast, the Court refused to approve the proposed assignment on the basis that the assignee was a shelf company and that there was no evidence as to how the assignee would finance the purchase price (among other issues): at para. 68. See Cross-Examination Transcript of Sharon Hamilton dated August 18, 2025, page 22-29 - q 80-103 for an example of a successful forced assignment where the purchaser was a numbered company.
[217] Ivanhoe Cambridge Answers to Undertaking s#3 and Under Advisements #4.
[218] Paola Cross at p. 39, TB Tab I.
[219] Paola Refusals #2-4.
[220] Liu Reply Affidavit at para. 8. Exhibit B to Liu Reply Affidavit.
[221] Wyatt Undertakings.

originally negotiated with the debtor"[222] and "requiring financial covenants and safeguards never before required,"[223] which is clearly impermissible under section 11.3.

D. Conclusion – the Proposed Assignment of the CW Leases Should be Approved

175. Section 11.3 requires this Court to be satisfied both as to the Purchaser's financial capacity and that the assignment of the Leases to the Purchaser is appropriate. The standard is not one of perfection or guaranteed success, as the jurisprudence makes clear, but rather assessed on a standard of reasonableness. Nor does section 11.3 permit contractual counterparties to impose more onerous conditions on the proposed assignee than those applicable to the assignor. In this case, the extensive evidence adduced by the Purchaser more than satisfies the requirements of section 11.3 on a balance of probabilities.

176. The Applicants have put forward a financially viable proposed assignee who has demonstrated ability to perform its obligations under the assigned CW Leases. The evidence establishes that the Purchaser has both the financial resources and will have employees with the operational expertise necessary to execute on its Business Plan, ensuring continuity and stability for the shopping centres in which the Leased Premises are located.

177. Approval of the proposed assignment advances the fundamental objectives of the CCAA by maximizing value for the estate through generating significant proceeds and creating meaningful value for the Applicants' broader stakeholder group, including employees, suppliers, service providers, logistics operators, and a wide range of local businesses.

178. Moreover, the Objecting Landlords will continue to have their Leases honoured while the assignment will not result in any diminution of the Objecting Landlords' contractual rights under the CW Leases. To the contrary, it ensures that the Objecting Landlords continue to receive rent and performance from a financially sound counterparty.

179. In these circumstances, the statutory criteria for approval of an assignment under section 11.3 of the CCAA are plainly met. The Objecting Landlords should not be permitted to block the value-maximizing assignments which represent the best possible outcome for the Applicants and their broader stakeholder group and receive an unexpected windfall at the expense of other stakeholders. The Court should accordingly exercise its discretion to approve the proposed

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[222] *Dundee* at para. 30.
[223] *Dundee* at para. 38.

assignment as a measure that maximizes value and advances the remedial objectives of the CCAA.

ISSUE 2 - THE CENTRAL WALK APA SHOULD BE APPROVED

180. The Central Walk APA and the CW Transactions meet the statutory and common law tests for approving a sale within an insolvency proceeding and should be approved. Section 36(3) sets out the factors for the Court to consider when determining whether to authorize a sale of assets by a debtor company in a CCAA proceeding. The Court must look at the proposed transaction as a whole and decide whether it is appropriate, fair and reasonable, in reference to enumerated criteria.[224] The traditional common law criteria established in *Royal Bank v Soundair Corp.* for approval of a sale of assets in an insolvency scenario and remain relevant when considering the statutory test.[225]

181. Each of these factors are satisfied in this case and the Central Walk APA should be approved as, among other reasons:

(a) The consideration under the Central Walk APA is the most favourable offer in respect of the CW Leases[226];

(b) The Central Walk APA is the result of extensive solicitation efforts undertaken pursuant to the Lease Monetization Process and the Monitor is of the view that it was a thorough and rigorous Court-approved process[227]; and

(c) Throughout the Lease Monetization Process, the Applicants have engaged with certain of their secured lenders, such as the Pathlight Agent and the FILO Agent.[228]

ISSUE 3 - THE IC IPSO FACTO CLAUSES SHOULD BE DECLARED INVALID AND UNENFORCEABLE

A. The Anti-Deprivation Rule and Section 34 of the CCAA Protect Value in a Debtor's Estate

182. A contractual provision that upon a debtor's insolvency or bankruptcy removes value from the debtor's estate to the prejudice of creditors is invalid and unenforceable. The focus is on the

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[224] CCAA at s. 36(3); *Nelson Education Limited (Re)*, 2015 ONSC 5557 at para 38 ("**Nelson**"); *Bloom Lake, g.p.l. (Arrangement relatif à),* 2015 QCCS 1920 at paras 25-26.
[225] CCAA, s. 36(3); *Canwest Global Communications Corp.*, 2010 ONSC 2870 at para 13; *Royal Bank v Soundair Corp.* (1991), 83 D.L.R. (4th) 76 (Ont. C.A.) at para 16; *Nelson* at paras 37-38.
[226] Second Perugini Affidavit at para. 35, AMR Tab 2.
[227] Second Perugini Affidavit at para. 38, AMR Tab 2.
[228] Second Perugini Affidavit at para. 35, AMR Tab 2.

effect of the provision, not the parties' intent. The test for this common law anti-deprivation rule was most recently confirmed by the SCC in *Chandos*, where the Court stated that the "test has two parts: first, the relevant clause must be triggered by an event of insolvency or bankruptcy; and second, the effect of the clause must be to remove value from the insolvent's estate. This has been rightly called an effects-based test."[229]

183. The effects-based rule, as it stands, is clear. Courts (and commercial parties) do not need to look to anything other than the trigger for the clause and its effect. What should be considered is whether the effect of the contractual provision was to deprive the estate of assets upon bankruptcy, not whether the intention of the contracting parties was commercially reasonable.[230]

184. Additionally, Section 34 of the CCAA codified the policy behind the anti-deprivation rule and provides an additional statutory bar against "*ipso facto*" clauses that purport to terminate, amend or accelerate obligations solely because of a debtor's insolvency or the commencement of CCAA proceedings. Sections 34(1), (2) and (5) of the CCAA state, respectively:

> "34(1) No person may terminate or amend, or claim an accelerated payment or forfeiture of the term under, any agreement, including a security agreement, with a debtor company by reason only that proceedings commenced under this Act or that the company is insolvent."
>
> "34(2) If the agreement referred to in subsection (1) is a lease, the lessor may not terminate or amend the lease by reason only that proceedings commenced under this Act, that the company is insolvent or that the company has not paid rent in respect of any period before the commencement of those proceedings."
>
> "34(5) Any provision in an agreement that has the effect of providing for, or permitting, anything that, in substance, is contrary to this section is of no force or effect."[231]

185. Contractual provisions that strip assets out of a debtor's estate upon a payment default caused by the debtor's insolvency are also unenforceable. The Ontario Court of Appeal in *Aircell* held that a clause triggered by a payment default that occurred because of a debtor's insolvency was also void under the anti-deprivation rule.[232] The trial judge found that Aircell's failure to pay Bell was due to its insolvency and that, as against the claim of Aircell's trustee-in-bankruptcy, the

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[229] *Chandos Construction v Deloitte*, 2020 SCC 25 ("**Chandos**") at paras. 31 and 40.
[230] *Chandos* at paras. 35 and 41.
[231] CCAA, ss. 34(1), (2), and (5).
[232] *Aircell Communications Inc. v Bell Mobility Cellular Inc.*, 2013 ONCA 95 ("**Aircell**").

clause at issue was void.[233] This conclusion was upheld by the Court of Appeal, which held:

> While the clause at issue in this case is triggered upon termination of the agreement for any number of reasons, and not only upon insolvency or bankruptcy, it was in fact triggered as a consequence of Aircell's insolvency. The clause provides a windfall to one of Aircell's creditors: Bell. In the context of an insolvency, the clause is inequitable.[234]

186. As in *Aircell*, the IC Ipso Facto Clauses could only have been triggered as a consequence of the Company's insolvency and are similarly inequitable and unenforceable.

B. The IC Ipso Facto Clauses are Unenforceable Under the Anti-Deprivation Rule and Section 34 of the CCAA

187. The Original Leases have substantially more value than the current IC Leases, and in particular, with respect to the absence of the Restrictive Covenants under the Original Leases.[235]

188. The IC Ipso Facto Clauses purport to prevent the parties to the IC Leases from entering into the Reinstated Original Leases on November 13, 2028, on account of no "Event" having occurred. If an "Event" occurs prior to November 13, 2028, the Reinstatement provision would become null and void. [236]

189. As a result of its insolvency, the Company did not make any payments under the IC Leases and other Leases between the Company and IC or Primaris, as applicable, when due on March 1, 2025, resulting in monetary defaults under these Leases with respect to the period between March 1 to March 6. The applicable cure periods are fifteen days and five business days.[237]

190. Pursuant to the Initial Order dated as of March 7, 2025 (as amended and restated pursuant to the ARIO dated as of March 21, 2025), the Applicants were directed by the Court to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the applicants to any of their creditors, except as expressly provided for the in DIP Budget, and to pay all Rent for the period commencing *from and including* the date of the Initial Order.[238]

191. Event (a) occurred because the Company committed a monetary default when it did not

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[233] *Aircell* at para. 9.
[234] *Aircell* at para. 12.
[235] Second Perugini Affidavit at para. 57, AMR Tab 2.
[236] Exhibits P, Q, R, and S to the Saint-Pierre Affidavit, Responding Motion Record of Ivanhoe Cambridge Inc., Tabs 1-P, 1-Q, 1-R and 1-S.
[237] Exhibits P, Q, R, S, T, U, V, W, and X to Saint-Pierre Affidavit, Responding Motion Record of Ivanhoe Cambridge Inc., Tabs 1-P, 1-Q, 1-R, 1-S, 1-T, 1-U, 1-V, 1-W and 1-X.
[238] ARIO, paragraphs 10(a) and 13(a).

pay Rents under the IC Leases and other Leases between it and IC or Primaris, as applicable, beyond the applicable cure periods. However, the applicable cure periods under each of these Leases was during the CCAA Proceedings, when Court Orders precluded the Company from making any payments in respect of pre-filing Rent under these Leases. Therefore, similar to *Aircell*, Event (a) is also triggered as a consequence of the Company's insolvency and the IC Ipso Facto Clauses, therefore, violate the common law anti-deprivation rule.

192. In addition, based on a plain reading of section 34 of the CCAA, a landlord cannot amend leases by reason only of insolvency or the lack of payment of rent prior to commencement of the CCAA Proceedings. The trigger under section 34 of the CCAA is not limited solely to insolvency.

193. The excerpt from section 3.05(A) set out above provides that the IC Ipso Facto Clause becomes null and void if an "Event" occurs. The effect of a provision becoming null and void is, in substance, an amendment to the lease. That amendment is, in this case, triggered by HBC's insolvency. Therefore, the amendment to the lease preventing Reinstatement of the Reinstated Original Leases falls within the scope of section 34 of the CCAA and the IC Ipso Facto Clauses are of no force or effect.

194. Lastly, the provisions at issue in the IC Leases provide a windfall to the applicable Landlords. Under the Saks Option, gross rent under the five Saks Leases was increased by an aggregate of $3 million per annum for a ten-year period.[239] This provision was designed to make IC whole on the $30 million that it advanced to the Company when it exercised the Saks Option, at the expiry of the ten-year period of increased rents under the Saks Leases.

195. Three of the five Saks Leases were assigned to YM effective August 8, 2025. However, the Option Agreement provides that the Optionee (IC), "shall have the right, any time and from time to time, at its entire discretion, to reallocate the above-referenced rent increase amongst any one the Saks Leases and, in this regard, the tenant will have the obligation to enter into and execute all documents reasonably necessary to implement such reallocation of rent increase." The Saks Leases assigned to YM each contain provisions that reflect this language, requiring the tenant to pay the increased rent throughout the term of the amended Saks Leases, and granting the Landlord the right, at any time and from time to time, at its sole discretion, to re-allocate the amount of the increased rent allocated between the Amended Saks Leases.[240]

[239]Reply Perugini Affidavit at para. 48, ARR Tab 1.
[240] Reply Perugini Affidavit at para. 57, ARR Tab 1.

196. As a result, IC was entitled to reallocate the $3 million annual rent increase to the Saks Leases assigned to YM and recoup its $30 million as contemplated prior to the Company's insolvency. If, in addition, IC also has the benefit of the amendments to the IC Leases deleting Restrictive Development Covenants worth tens of millions of dollars, IC will obtain a windfall as a result of the Company's insolvency.[241]

197. IC and Primaris are therefore seeking to improperly obtain a windfall through permanently capturing the benefits of the IC Leases in their current form and preventing the Reinstatement solely due to the IC Ipso Facto Clauses, stripping substantial value from The Company's estate.

ISSUE 4 - THE CONFIDENTIAL APPENDIX SHOULD BE SEALED

198. Section 137(2) of the *Courts of Justice Act* provides this Court with the discretion to order that any document filed in a civil proceeding, including in the insolvency context, be treated as confidential, sealed, and not part of the public record.[242]

199. The test to determine if a sealing order should be granted is set out in *Sierra Club*, as re-framed by the Supreme Court of Canada in *Sherman Estate v. Donovan*: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.[243] Although the Supreme Court was considering issues of personal privacy in *Sherman Estate*, it noted in citing Sierra Club that the term "important interest" can capture a broad array of public objectives including commercial interests.[244]

200. Courts have applied the *Sierra Club* and *Sherman Estate* tests in the insolvency context and authorized sealing orders over confidential or commercially sensitive documents to protect the interests of debtors.[245] Courts have also recently granted sealing orders in respect of a confidential summary of bids received, which is substantially the same in all material respects to the confidential summary of bids in the Confidential Appendix that the Applicants are seeking a sealing order in respect of (including the prior confidential summary of bids that was sealed

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[241] Reply Perugini Affidavit at para. 58, ARR Tab 1.
[242] *Courts of Justice Act*, R.S.O. 1990, c. C. 43 at s 137(2).
[243] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para 53; *Sherman Estate v. Donovan*, 2021 SCC 25 at paras 38 and 43 ("**Sherman Estate**").
[244] *Sherman Estate*, at para 41.
[245] *Danier Leather Inc. (Re)*, 2016 ONSC 1044 at para 82; *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 at paras 23-28.

pursuant to the CTC AVO).[246] This Court also previously granted a sealing order in respect of a confidential summary of bids.[247]

201. The proposed sealing order is supported by considerations of: (a) the public interest, being the serious risk that public disclosure of the confidential summary of offers could impair any efforts to remarket the purchased assets if the CW Transactions do not close;[248] and (b) lack of a reasonable alternative to a sealing order to mitigate the aforementioned risks.[249]

202. The Monitor is of the view that the limited sealing request – until the CW Transactions close – is not prejudicial to stakeholders and is appropriate in the circumstances.[250]

PART VIII – ORDER SOUGHT

203. The Applicants therefore request that the Court grant the CW Leases Assignment Order in the form requested.

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

Stikeman Elliott LLP

Stikeman Elliott LLP
Lawyers for the Applicants

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[246] *See*: *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314, at para 39; *Plan of Arrangement of Fire & Flower Holdings Corp. et al.*, 2023 ONSC 4934 at paras 35-36; *Ontario Securities Commission v Bridging Finance Inc.*, 2022 ONSC 1857 at paras 50-54; *Attorney General of Canada v Silicon Valley Bank,* 2023 ONSC 4703 at para 28-33. *Hudson's Bay Company ULC et al. (Re)*, Approval and Vesting Order dated June 3, 2025 at para.12.
[247] See for example, *In the Matter of Hudson's Bay Company ULC et al* (June 23, 2025), Court File No. CV-25-00738613-00CL Ont. S.C.J. [Commercial List] (Affiliate Lease Assignment Order) at para 10; *In the Matter of Hudson's Bay Company ULC et al* (June 3, 2025), Court File No. CV-25-00738613-00CL Ont. S.C.J. [Commercial List] (Approval and Vesting Order) at para 12.
[248] See for example, *Springer Aerospace Holdings Ltd.*, 2022 ONSC 6581 at paras 29-30; *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354, at para 72.
[249] *Original Traders Energy Ltd. (Re)*, (January 30, 2023), Court File No. CV-23-00693758-00CL Ont. S.C.J. [Commercial List] (Endorsement) at para 62.
[250] Monitor's Eighth Report at para. 4.5.

SCHEDULE "A"
LIST OF AUTHORITIES

8640025 Canada Inc. (Re), 2018 BCCA 93

9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10

Acerus Pharmaceuticals Corporation (Re), 2023 ONSC 3314

Aircell Communications Inc. v Bell Mobility Cellular Inc., 2013 ONCA 95

Attorney General of Canada v Silicon Valley Bank, 2023 ONSC 4703

BBB Canada Ltd., Court File No. CV-23-00694493-00CL (Assignment, Approval and Vesting Order dated May 15, 2023)

Bloom Lake, g.p.l. (Arrangement relatif à), 2015 QCCS 1920

Canwest Global Communications Corp., 2010 ONSC 2870

Century Services Inc. v. Canada (Attorney General), 2010 SCC 60

Chandos Construction Ltd. v Deloitte Restructuring Inc., 2020 SCC 25

Danier Leather Inc. (Re), 2016 ONSC 1044

Donnelly Holdings Ltd. (Re), 2024 BCSC 275

Dundee Oil and Gas Limited (Re), 2018 ONSC 3678

Ford Credit Canada Limited v. Welcome Ford Sales Ltd., 2010 ABQB 798

Ford Credit Company of Canada, Limited v. Welsom Ford Sales Ltd., 2011 ABCA 158

Hayes Forest Services Ltd. (Re), 2009 BCSC 1169

In the Matter of a Plan of Arrangement of UrtheCast Corp., 2021 BCSC 1819

In the Matter of Hudson's Bay Company ULC et al (June 23, 2025), Court File No. CV-25-00738613-00CL Ont. S.C.J. [Commercial List] (Affiliate Lease Assignment Order)

In the Matter of Hudson's Bay Company ULC et al (June 3, 2025), Court File No. CV-25-00738613-00CL Ont. S.C.J. [Commercial List] (Approval and Vesting Order)

Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al., 2022 ONSC 6354

MAV Beauty Brands Inc. et al, Court File No. CV-23-00709610-00CL (Assignment Order dated November 24, 2023)

Nelson Education Limited (Re), 2015 ONSC 5557

Ontario Securities Commission v. Bridging Finance Inc., 2021 ONSC 4347

Ontario Securities Commission v Bridging Finance Inc., 2022 ONSC 1857

Original Traders Energy Ltd. (Re), (January 30, 2023), Court File No. CV-23-00693758-00CL Ont. S.C.J. [Commercial List] (Endorsement)

Plan of Arrangement of Fire & Flower Holdings Corp. et al., 2023 ONSC 4934

Playdium Entertainment Corp., Re, 2001 CanLII 28281 (ON SC)

Royal Bank v Soundair Corp. (1991), 83 D.L.R. (4th) 76 (Ont. C.A.)

Sherman Estate v. Donovan, 2021 SCC 25

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41

Springer Aerospace Holdings Ltd., 2022 ONSC 6581

Target Canada Co. (Re), (April 2, 2015), Court File No. CV-15-10832-00CL, Ont. S.C.J. [Commercial List]

The Body Shop Canada Limited, Court File No. CV-24-00723586-00CL (Assignment Order dated December 13, 2024)

Urbancorp Cumberland 1 GP Inc. (Re), 2020 ONSC 7920

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2))

Date: August 21, 2025

B. Ketwaroo

Signature

SCHEDULE "B"
TEXT OF STATUTES AND REGULATIONS

***Companies' Creditors Arrangement Act*, RSC 1985, c C-36**

Assignment of agreements
11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

Exceptions
(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

(a) an agreement entered into on or after the day on which proceedings commence under this Act;
(b) an eligible financial contract; or
(c) a collective agreement.

Factors to be considered
(3) In deciding whether to make the order, the court is to consider, among other things,

(a) whether the monitor approved the proposed assignment;
(b) whether the person to whom the rights and obligations are to be assigned would be able toperform the obligations; and
(c) whether it would be appropriate to assign the rights and obligations to that person.

Restriction
(4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

Copy of order
(5) The applicant is to send a copy of the order to every party to the agreement.

Certain rights limited
34 (1) No person may terminate or amend, or claim an accelerated payment or forfeiture of the term under, any agreement, including a security agreement, with a debtor company by reason only that proceedings commenced under this Act or that the company is insolvent.

Lease
(2) If the agreement referred to in subsection (1) is a lease, the lessor may not terminate or amend the lease by reason only that proceedings commenced under this Act, that the company is insolvent or that the company has not paid rent in respect of any period before the commencement of those proceedings.

Public utilities
(3) No public utility may discontinue service to a company by reason only that proceedings commenced under this Act, that the company is insolvent or that the company has not paid for services rendered or goods provided before the commencement of those proceedings.

Certain acts not prevented
(4) Nothing in this section is to be construed as

(a) prohibiting a person from requiring payments to be made in cash for goods, services, use of leased property or other valuable consideration provided after the commencement of proceedings under this Act;

(b) requiring the further advance of money or credit; or

(c) [Repealed, 2012, c. 31, s. 421]

Provisions of section override agreement
(5) Any provision in an agreement that has the effect of providing for, or permitting, anything that, in substance, is contrary to this section is of no force or effect.

Powers of court
(6) On application by a party to an agreement or by a public utility, the court may declare that this section does not apply — or applies only to the extent declared by the court — if the applicant satisfies the court that the operation of this section would likely cause the applicant significant financial hardship.

Eligible financial contracts
(7) Subsection (1) does not apply

(a) in respect of an eligible financial contract; or

(b) to prevent a member of the Canadian Payments Association from ceasing to act as a clearing agent or group clearer for a company in accordance with the *Canadian Payments Act* and the by-laws and rules of that Association.

Permitted actions
(8) The following actions are permitted in respect of an eligible financial contract that is entered into before proceedings under this Act are commenced in respect of the company and is terminated on or after that day, but only in accordance with the provisions of that contract:

(a) the netting or setting off or compensation of obligations between the company and the other parties to the eligible financial contract; and

(b) any dealing with financial collateral including

(i) the sale or foreclosure or, in the Province of Quebec, the surrender of financial collateral, and

(ii) the setting off or compensation of financial collateral or the application of the proceeds or value of financial collateral.

Restriction
(9) No order may be made under this Act if the order would have the effect of staying or restraining the actions permitted under subsection (8).

Net termination values
(10) If net termination values determined in accordance with an eligible financial contract referred to in subsection (8) are owed by the company to another party to the eligible financial contract, that other party is deemed to be a creditor of the company with a claim against the company in respect of those net termination values.

Priority
(11) No order may be made under this Act if the order would have the effect of subordinating financial collateral.

Restriction on disposition of business assets

Factors to be considered
36 (3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3**

Assignment of agreements
84.1 (1) On application by a trustee and on notice to every party to an agreement, a court may make an order assigning the rights and obligations of a bankrupt under the agreement to any person who is specified by the court and agrees to the assignment.

Individuals
(2) In the case of an individual,

(a) they may not make an application under subsection (1) unless they are carrying on a business; and

(b) only rights and obligations in relation to the business may be assigned.

Exceptions
(3) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

(a) an agreement entered into on or after the date of the bankruptcy;

(b) an eligible financial contract; or

(c) a collective agreement.

Factors to be considered
(4) In deciding whether to make the order, the court is to consider, among other things,

(a) whether the person to whom the rights and obligations are to be assigned is able to perform the obligations; and

(b) whether it is appropriate to assign the rights and obligations to that person.

Restriction
(5) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the person's bankruptcy, insolvency or failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

Copy of order
(6) The applicant is to send a copy of the order to every party to the agreement.

***Courts of Justice Act*, R.S.O. 1990, c. C. 43**

Sealing documents
137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED, AND IN THE MATTER OF THE 1242939 B.C. UNLIMITED LIABILITY COMPANY et al.

Court File No: Court File No. CV-25-738613-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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