



ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00738613-00CL

DATE: November 03, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: In the Matter of HUDSON'S BAY COMPANY ULC *et al*

BEFORE: JUSTICE Osborne

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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ENDORSEMENT OF JUSTICE OSBORNE:

1. On October 24, 2025, I released my Endorsement with my reasons in respect of two motions heard and considered by the court: *In Re Hudson's Bay Company*, 2025 ONSC 5998.
2. Defined terms in this Endorsement have the meaning given to them in my Endorsement of October 24, 2025, unless otherwise stated.
3. The first motion was the Applicants' motion for approval of the assignment of leases to the Central Walk parties pursuant to section 11.3 of the CCAA.
4. The second motion was the motion of the FILO Agent for various competing relief. I set out in the Endorsement at para. 10 the specific relief being sought by the FILO Agent on its motion. This included an order amending paragraph 10 of the Amended and Restated Initial Order eliminating the requirement that the Applicants pay any Rent on any Remaining Leases "from any asset-based lending Priority Collateral from the earlier of the notice of disclaimer of any Remaining Leases (including any period of notice provided for in section 32 of the CCAA) and the date of any decision of the Court declining to approve the Central Walk Transaction" (see Endorsement, para. 10(d)).
5. After the release of my endorsement, counsel to the FILO Agent wrote to the Court (via my judicial assistant) to request that I render a decision with respect to the above-noted relief requested.
6. Counsel for KingSett, on behalf of all Opposing Landlords, submitted that a case conference ought to be convened, a request with which the FILO Agent then agreed.
7. Given the importance of this issue to the parties, I directed the Trial Coordinator to schedule a case conference at 9 AM this morning, at which time it proceeded.
8. The parties advised me that, subsequent to the release of my Endorsement, Hudson's Bay Company has now issued disclaimer notices in respect of the leases at issue and confirmed that it does not intend to appeal my decision. I am further advised that the Purchaser under the Central Walk APA has delivered a notice of termination of that agreement.
9. The FILO Agent therefore submits that "the only issue left ... to decide is the FILO Agent's request that *the FILO Lenders' Collateral not be used* to pay rent to the Landlords during the 30 day disclaimer period". [Emphasis added].
10. The Landlords submit first, that the motion of the FILO Agent was addressed in my Endorsement, and second, that if further relief sought with respect to that motion, such should be sought by way of a motion

for leave to appeal and on appeal if leave were granted, but that no relief should be granted on a case conference convened in this manner.

11. The Landlords also request the imposition of a case management timetable for submissions to address the issue of costs following on the motions.
12. The FILO Agent contacted the court to schedule a process to address these issues. In my view, there was nothing improper about that, given the urgency of the matter (the Applicants have apparently advised that absent an order to the contrary, they intend to pay the rent to the Landlords forthwith). All parties agreed that the matter should be considered at a case conference in order that all affected parties would have the opportunity to make submissions. In my view, that also was appropriate.
13. The FILO Agent submits that my Endorsement does not address this aspect of the relief sought, and therefore it still needs to be determined.
14. As noted above, I set out at paragraph 10(d) of the Endorsement the fact that this specific relief had been requested. Following my analysis of the Applicants' motion to approve the proposed assignment of the leases, I then further addressed the motion of the FILO Agent beginning at paragraph 200.
15. With respect to the specific relief at issue (the payment of rent during the disclaimer notice period), I stated at paragraph 202 that, with the exception of the request of the FILO Agent for a further distribution as against its indebtedness, that "the motion for the balance of the relief sought by the FILO Agent is dismissed".
16. I set out at paragraph 203 to 228 my reasons for dismissing the motion for the balance of the relief sought. In particular with respect to the rent, I stated again at paragraphs 212 and 215 that I was dismissing the motion for the payment of rent to the FILO Agent because, as noted at paragraph 203 and beyond, such relief sought by the FILO Agent flows from its overarching position that the FILO Lenders whom it represents are the first ranking secured creditors of HBC, and as noted at paragraph 205, the position of the FILO Agent fundamentally relates to the allocation of costs in this proceeding.
17. I determined that those issues were for another day since, among other reasons, such an order would effectively be a pre-determination of a number of issues as described at paragraphs 207 and 208. One of the most central of those issues is whether and to what extent the creditor rights of the FILO Agent have first priority, over which assets, and whether either or both of those creditor groups (the FILO Agent and Pathlight) will recover on their proven claims and to what extent.
18. Put simply, the premise on which the FILO Agent seeks the relief in respect of rent now at issue is that the payment of the rent erodes "*its* Priority Collateral". It is that premise - whether the funds do in fact constitute Priority Collateral in respect of which the FILO Agent has a first ranking interest, and if so to what extent, that has not yet been determined.
19. Whether my reasons in this regard were sufficient or not, is not for me to decide.
20. I pause to observe that Pathlight, the other ranking creditor, makes no submissions today about the payment of rent during the notice period.
21. I further observe that section 32 of the CCAA sets out the framework of what occurs once a disclaimer notice has been given. While, obviously, no such disclaimer notices had been given before my Endorsement was released, I am advised today by all counsel (as noted above) that such notices have now been issued, with the approval of the Monitor.

22. Section 32 provides on its face for what occurs thereafter. Within 15 days, any party may, on notice, apply for an order that the agreements (i.e., the leases) are not to be disclaimed. The period of 15 days since the release of my Endorsement has not yet expired.
23. Section 32(5) sets out the date on which an agreement is disclaimed, and that date may depend on whether a challenge to the proposed disclaimer is made, and if so, whether the challenge is dismissed. In no event, on the face of section 32(5), is that date less than 30 days from the date of the notice. That 30 day period has also not expired.
24. I advised the parties of all of this at the conclusion of the case conference today. Counsel for the FILO Agent then requested that I stay the payment of rent until the FILO Agent could consider whether it wished to seek leave to appeal in respect of my Endorsement. I agree with the submission of the Landlords that a request for stay should be determined on the basis of a formal motion. If the FILO Agent wishes to bring such a motion, the Commercial List will do its best as always, to accommodate that motion on an urgent basis.
25. With respect to the costs of the motion of the Applicants, the Landlords request that I impose a timetable for submissions, and that the matter be addressed in writing. There are apparently relevant offers to settle. Counsel for the Applicants and counsel for Pathlight submit that the proposed timetable has not been discussed with all parties, and in the circumstances, an opportunity for such a discussion to occur should be given.
26. I agree with the position of the Applicants and Pathlight in this regard. I urge the parties to agree on the next steps and timing thereof with respect to any claims for costs and submit same to me through the Court-appointed Monitor. If the parties cannot agree, I will convene a subsequent case conference to address the issue.

A handwritten signature in green ink, reading "Osborne J.", with a large, stylized "O" and a long horizontal stroke.

Peter J. Osborne

Date: Nov 03, 2025