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

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 HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC., HBC BAY HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC CENTERPOINT HP INC., HBC HOLDINGS GP INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC.

(the "**Applicants**")

JOINT FACTUM OF THE LANDLORDS

August 25, 2025

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TO: **THE SERVICE LIST**

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PART I - OVERVIEW

1. To assist the Court and avoid duplication, the Landlords[1] have coordinated on this joint factum of law and application in response to HBC's assignment motion. Factual evidence and arguments on common issues are set out in the facta filed by individual Landlords.

2. As early as 1972, the Landlords entered into leases with Canada's oldest company, HBC. Those leases provided intentionally favourable terms for HBC: HBC got low rent and decades of guaranteed renewals. But in exchange, the Landlords got an anchor tenant with a national brand and guaranteed use limited to a department store who operated to the quality of HBC. This motion seeks to forcibly flip that bargain on its head. The Landlords would be forced into business with a new company with no real assets, no infrastructure, no brand recognition, and no department store experience—run by a person who has no retail experience, undisclosed liabilities and who holds all assets through a complicated web of overseas holdings. All of this, *not to further a restructuring*, but to pay a sole secured creditor.

3. The Landlords have considered and rejected Ms. Liu's proposals. The Monitor does not support this forcible assignment. Nonetheless, HBC has persisted at the behest of Pathlight Capital LP who have, with Ms. Liu and her ever-changing team of advisors, endeavoured to jerry-rig a plan for a brand-new department store. Those efforts have failed despite the extraordinary time and money expended.

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[1] The Landlords consist of: (i) The Cadillac Fairview Corporation Limited and certain of its affiliates ("**CF**"); (ii) Oxford Properties Group and certain of its affiliates; (iii) KingSett Capital Inc.; (iv) Ivanhoe Cambridge II Inc./Jones Lang LaSalle Incorporated as landlord and/or authorized agent and manager for certain landlords; (v) Morguard Investments Limited as authorized agent and manager for certain landlords; (vi) Primaris Management Inc.; (vii) QuadReal Property Group; and (viii) Westcliff Management Ltd. Together they represent all 24 leases for which assignment is contested.

4. Ms. Liu's "plan" has constantly changed. The many iterations culminated in a business plan and financial projections first delivered to the Landlords on July 29. The business plan that HBC and its advisors have assisted in crafting for PurchaserCo is riddled with troubling vagaries, inconsistencies, gaps, improvisation, hyperbole, and unattainable aspirations. It simply is not viable. Ms. Liu does not have the time, money, experience or plan to succeed. She will fail before she opens a store. By that time Pathlight will be gone, and the Landlords will be left with the pieces, unable to obtain any relief against the shell PurchaserCo.

5. Without a viable assignee or a credible business plan, why are the Applicants—despite their own misgivings about Ms. Liu—relentlessly pursuing a transaction? No restructuring purpose is served by the assignment: it saves no jobs, preserves no business and is not critical to a sale of HBC as a going concern. The answer is Pathlight. Pathlight is the only creditor supporting it. Pathlight wants the purchase price offered by Ms. Liu, no matter the likely failure of Ms. Liu and no matter the material prejudice the Landlords will suffer. One landlord has estimated at hundreds of millions of dollars in its three properties—this evidence is unchallenged. CF has a third secured claim and would benefit if Pathlight was paid; CF is nonetheless resolutely opposed.

6. Pathlight accuses the Landlords of seeking a windfall. Absolutely not. The Landlords would have welcomed a viable tenant with a credible business plan. They are not trying to escape the leases: HBC was clearly in material breach, including its store conditions, and the Landlords did not default it.[2] Instead, the Landlords provided various forms and degrees of forbearance and support to HBC, such as CF, which lent HBC $200 million.

[2] With the exception of certain unrelated rental defaults due to the COVID-19 pandemic.

7. The Monitor—having spoken with the parties and Ms. Liu, reviewed the evidence and attended all of the cross examinations—does not support the assignment. The Court should follow the recommendation of its Monitor.

8. Finally, the Applicants present forced assignment as "ordinary course." It is not. This Court's ability to force an assignment of the leases is an extraordinary power. HBC bears the burden of satisfying this Court that the assignment is appropriate in the circumstances. It fails.

9. This factum summarizes and applies the different factors under s. 11.3(3). All of the factors weigh strongly against assignment:

(a) **The Monitor recommends against this assignment.** It would be extraordinary to approve the assignment over the Monitor's objection. We are unable to find any case in which a court did so.

(b) **The Landlords reasonably refused the assignment.** Their nearly unanimous refusal, with the exception of one outlier, is a strong indicator that PurchaserCo has no credible business.

(c) **PurchaserCo cannot perform the lease obligations.**

(i) To perform the lease obligations, PurchaserCo has the onus to show that it will be viable. It has failed to do so. There are unresolvable problems with PurchaserCo's business plan and its ability to execute it. Moreover, PurchaserCo is not financially viable. It will likely run out of money.

(ii) PurchaserCo has also failed to show that it will comply with its non-monetary obligations, including continuous operations, repair/good condition and use clauses.

(d) **The assignment is not appropriate.** Appropriateness requires that the assignment both advance the remedial purposes of the CCAA and treat the Landlords fairly. It does neither:

(i) The assignment advances no restructuring purposes. HBC has liquidated and this transaction merely allocates losses among creditors (which is not an object of the CCAA); and

(ii) The assignment is materially unfair to the Landlords. PurchaserCo is a new corporation and, its principal, Ms. Liu, has no fixed assets in Canada and no retailing experience; they are not appropriate tenants for the anchor spaces in these 24 shopping centres.

10. The individual Landlords have focused on different factual elements of the objection in their individual factums. These are referred to below:

(a) **Oxford** addresses the process by which PurchaserCo and Ms. Liu have pursued this assignment, including issues of transparency, good faith, and commercial credibility (which speak to the appropriateness of the proposed assignment);

(b) **KingSett** addresses PurchaserCo and Ms. Liu's financial situation, including the financial weakness of the three Central Walk malls and the opaque corporate structure Ms. Liu established to avoid Canadian creditors;

(c) **CF** addresses PurchaserCo's financial viability and the reasonableness of PurchaserCo's financial model (which speak to both PurchaserCo's ability to meet the lease obligations and the appropriateness of the proposed assignment);

(d) **Morguard, Ivanhoe Cambridge, and Westcliff** address PurchaserCo's operational viability and ability to perform the obligations under the leases; and

(e) **Primaris and QuadReal** address PurchaserCo's inadequate budget and timeline for required repairs and renovations of former HBC locations (which speaks to both PurchaserCo's ability to meet the lease obligations and the appropriateness of the proposed assignment).

11. Finally. to assist the Court, the Landlords have prepared a chronology of key events. It is attached as **Schedule C t**o this factum.

PART II - LAW AND ARGUMENT

Legal principles: Section 11.3 is an Extraordinary Power to Further a Restructuring

12. Freedom of contract is foundational to the common law and Canadian commercial system. Parties are free to choose the terms they contract on and—just as importantly—to choose the parties they deem fit to contract with.

13. The ability to abrogate freedom of contract makes section 11.3 of the CCAA an "extraordinary power." It allows a court to substitute its own decision for the parties' business judgment and forces parties to live with the many risks—including credit risk—of an assignee they would otherwise never have accepted:

> Section 11.3 of the CCAA is an extraordinary power. It permits the court to require counterparties to an executory contract to accept future performance from somebody they never agreed to deal with…. Unlike creditors, the counterparty subjected to a non-

> consensual assignment will be required to deal with the credit-risk of an assignee post-insolvency and potentially for a long time.[3]

14. Prior to 2009, insolvency courts rarely permitted the forced assignment of a contract with a non-consensual counterparty. In *Playdium*, Spence J. held that a forced assignment was permissible only in order "to facilitate the compromise of creditors' claims, and thereby allow businesses to continue."[4] A court must be satisfied that the assignment (i) furthers the purpose and spirit of the CCAA; (ii) "does not adversely affect the third party's contractual rights beyond what is absolutely required to further the reorganization process"; and (iii) "does not entail an inappropriate imposition" on the counterparty. These powers to forcibly assign contracts "must be exercised sparingly."[5]

The Section 11.3 factors

15. In 2009, statutory amendments introduced section 11.3, which provides an express power to assign contracts. The 2009 statutory amendments that enacted section 11.3 codified rather than overruled the common law.[6]

16. Under s. 11.3(3), the Court must consider (a) whether the Monitor approves of the proposed assignment; (b) whether the assignee would be able to perform the obligations; and (c) whether it would be appropriate to assign the rights and obligations to the assignee.

17. Moreover, while not expressly codified, the landlords' reasonableness of withholding consent is "inherent in the factors set out in ss. 11.3(3)(b) and (c) of the CCAA."[7] Although a court

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[3] *Dundee Oil and Gas Limited (Re)*, 2018 ONSC 3678 at para. 27 [*Dundee*].
[4] *Playdium Entertainment Corp., Re*, 2001 CanLII 28282 (ON SC) at para. 42.
[5] *Nexient Learning Inc. (Re)*, 2009 CanLII 72037 (ON SC) at para. 59 [*Nexient*].
[6] *Veris Gold Corp. (Re)*, 2015 BCSC 1204 at paras. 56, 58 [*Veris Gold*].
[7] *Donnelly Holdings Ltd. (Re)*, 2024 BCSC 275 at para. 51 [*Donnelly*].

is not precluded from forcibly assigning a contract where the refusal has been reasonable, it should be hesitant to do so particularly if the assignment is not needed for the debtors' restructuring.

18. Courts have interpreted section 11.3 in light of the following principles:

a) First, the burden is on the Applicants to satisfy the court that the approval of an assignment is appropriate;[8]

b) Second, the considerations in s. 11.3(3) are disjunctive, but certain facts and evidence may be relevant in considering more than one consideration;[9]

c) Third, courts will not sanction unfair interference with contractual rights; counterparties must be treated fairly and equitably;[10]

d) Fourth, a forced assignment must meet the "twin goals of assisting the reorganization process …while also treating a counterparty fairly and equitably."[11] The courts must be satisfied that a forced assignment is important to the restructuring process;[12] and

e) Fifth, the degree of importance to the restructuring process is a significant factor in the balancing exercise.[13]

19. In this case, none of the s. 11.3 considerations and underlying principles support an assignment of the Leases to PurchaserCo. Unlike in other cases where assignments were approved, the extraordinary statutory power to encroach upon contractual rights under the CCAA has no connection to the purpose of *this* assignment: to save HBC's business and avoid the social ills of liquidation. HBC has already been liquidated; stores closed, and employees terminated. The

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[8] *Donnelly* at para. 60; *Hayes Forest Services Limited (Re)*, 2009 BCSC 1169 at para. 33.
[9] *UrtheCast Corp. (Re)*, 2021 BCSC 1819 at para. 60 [*UrtheCast*]; *Dundee* at para. 25.
[10] *Donnelly* at para. 53,
[11] *Veris Gold* at para. 58.
[12] *Nexient* at para. 56.
[13] *Donnelly* at para. 58; see also *UrtheCast* at paras. 66, 80.

proposed forced assignment of the leases will only benefit Pathlight, one of HBC's creditors, at the expense of other creditors—the Landlords.

Application of the Requirements of CCAA S. 11.3

20. Each of the considerations underlying section 11.3 weigh *against* the forced assignment of the HBC leases to PurchaserCo.

The Monitor Does Not Approve of Assignment

21. The Monitor's approval to a proposed assignment is a significant consideration. While the Monitor's recommendation is not determinative, it is a threshold and often decisive consideration. We were unable to find any case in which the court has approved an assignment without the Monitor's approval.

22. In this case, the Monitor does *not* approve of the assignment of the Leases to PurchaserCo, for good reasons. In coming to its conclusion, the Monitor had particular regard to: (i) PurchaserCo's lack of experience: it is a start-up with no retail operating experience, no infrastructure, and no personnel with retail operating experience; (ii) the leases are long-term; (iii) the leases have unique anchor tenant provisions; (iv) there are "credible and reasonable" concerns with PurchaserCo's business plan and its ability to execute on it; (v) there are "credible and reasonable" concerns about Ms. Liu's conduct since the APA was signed; and (vi) there is near unanimous objection by the Landlords.[14]

23. The Monitor supported acceptance of PurchaserCo's bid; it wanted to see this transaction proceed. That it does not now support it—after many months of trying to salvage PurchaserCo's

[14] Eighth Report of the Monitor dated August 20, 2025 ("**Eighth Report**"), pp. 53-54, para. 6.45, E1091-1092.

bid and with the Monitor's extensive insight and involvement in events transpiring over this period of time—is not a decision it would have made lightly. It speaks volumes.

The Landlord Refusal to Assign is Reasonable

24. On June 6, 2025, the Landlords each received a request to consent to the assignment from Ms. Liu's counsel. They all refused. In each case, the Landlord's refusal was reasonable. The reasonableness of the Landlords' refusal to consent to the assignment is, as noted above at para. 17, an inherent consideration in section 11.3.

25. The burden is on the Applicants to show that the Landlords' refusal was unreasonable. The Court of Appeal has set out the principles in determining whether a landlord has acted reasonably in withholding consent to assign: (i) the burden is on the Applicants to show that the Landlords' refusal was unreasonable; (ii) it is the information available to, and the reasons given by, the Landlords at the time of the refusal that is relevant, not any subsequent facts; (iii) reasonableness is considered in light of the assignment provisions of the leases; (iv) a probability that the proposed assignee will default in its obligations may be reasonable grounds; and (v) the financial position of the assignee may be relevant.[15]

26. The reasonableness of the Landlords' refusal is addressed in the Oxford Factum but is summarized here. The fact that the Monitor does not support the assignment strongly supports the reasonableness of the Landlords' decision.

27. PurchaserCo's only request to consent was made in the June 6 letter. The letter was grossly inadequate. No other information was available to the Landlords for them to make their decision.

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[15] *Rabin v. 2490918 Ontario Inc.*, 2023 ONCA 49 at para. 35, citing *1455202 Ontario Inc. v. Welbow Holdings Ltd.*, 2003 CanLII 10572 (ON SC) at para. 9 [*Welbow Holdings*].

Despite repeated prior requests for a business plan, none was provided. The June 6 letter included no evidence of financial wherewithal, little information on a business strategy, and no credible financial plan. It "had no basis in reality."[16] Worse, it is unclear whether this was a *bona fide* request for consent because it was apparently made without Ms. Liu's knowledge or approval.[17]

28. The Landlords each wrote to Ms. Liu's counsel explaining their refusal.[18] To be reasonable, the Landlords' reasons need not be the same conclusions the court would have reached in the circumstances. They need merely to be reasons upon which a reasonable landlord could withhold consent.[19] There can be no question that the Landlords' refusal was reasonable in these circumstances.

29. The Applicants themselves agreed with the reasonableness of the Landlords' refusal. In their July 5 letter to PurchaserCo, the Applicants' referred to and relied on letters from CF, Oxford and Primaris to support their own conclusion that PurchaserCo had failed to make reasonable

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[16] Affidavit of Rory MacLeod affirmed August 9, 2025 ("**MacLeod Affidavit**"), para. 62, Responding Motion Record of The Cadillac Fairview Corporation Limited ("**CF RMR**"), Vol. 1, Tab 1, pp. 18-19, F2825-2826.

[17] Cross-Examination of Weihong (Ruby) Liu on August 15, 2025 ("**Liu Cross**"), p. 103, l. 17 and p. 105, l. 15, Brief of Transcripts ("**BT**"), Tab H, pp. ■.

[18] Letter from David Bish dated June 11, 2025, MacLeod Affidavit, CF RMR, Vol. 1, Tab 1, Exhibit Q, pp. 243-244, F3050-3051; Letter from D. J. Miller dated June 11, 2025, Affidavit of Nadia Corrado sworn August 9, 2025 ("**Corrado Affidavit**"), Responding Motion Record of Oxford Properties Group ("**OP RMR**"), Tab 2, Exhibit F, pp. 146-148, F3541-3543; Letter from Matthew P. Gottlieb dated June 13, 2025, Affidavit of Theresa Warnaar sworn August 9, 2025 ("**Warnaar Affidavit**"), Responding Motion Record of KingSett Capital Inc. ("**KC RMR**"), Tab 1, Exhibit M, pp. 255-256, F8979-8980; Letter from Linda Galessiere dated June 13, 2025, Affidavit of David Wyatt sworn August 8, 2025 ("**Wyatt Affidavit**"), Responding Motion Record of Morguard Investments Limited ("**MI RMR**"), Vol. 3, Exhibit Q, pp. 771-772, D2267-2268; Letter from Linda Galessiere dated June 13, 2025, Affidavit of Ruby Paola sworn August 8, 2025 ("**Paola Affidavit**"), Responding Motion Record of Ivanhoe Cambridge ("**IC RMR**"), Tab 1, Exhibit J, pp. 257-258, F6430-6431; Letter from Linda Galessiere dated June 13, 2025, Affidavit of Alan Marcovitz sworn August 8, 2025 ("**Marcovitz Affidavit**"), Responding Motion Record of Westcliff Management Ltd. ("**WM RMR**"), Tab 1, Exhibit E, p. 273, F6796; Letter from John C. Wolf dated June 12, 2025, Affidavit of Patrick Sullivan sworn August 9, 2025 ("**Sullivan Affidavit**"), Responding Motion Record of Primaris Management Inc. ("**PM RMR**"), Tab 1, Exhibit B, pp. 90-91, F4184-4185; Letter from John C. Wolf dated June 13, 2025, Affidavit of Jay Camacho sworn August 9, 2025 ("**Camacho Affidavit**"), Responding Motion Record of QuadReal Property Group ("**QP RMR**"), Tab 1, Exhibit B, pp. 63-65, F4772-4774.

[19] *Welbow Holdings* at para. 9.

efforts to obtain Landlord consent and were in breach of the APA: "The letters from these Landlords clearly demonstrate the Purchaser's lack of preparation and advancement of reasonable efforts and tangible steps to address the Landlords' questions and concerns." As Applicants' counsel wrote, PurchaserCo had "failed to provide a response of any kind" to the Landlords' concerns or to "advance its draft business plan *to the point it could credibly be put to the Court*" (emphasis added).[20] The Monitor agreed with these concerns. So too did the FILO Agent and Pathlight.[21] The Applicants' suggestion that the Landlords were close-minded or unreasonable must be viewed against the backdrop that as of July 5, 2025, *all parties* agreed that PurchaserCo had failed to demonstrate it was an appropriate assignee.

30. PurchaserCo's financial position—as a shell company with no assets—and its lack of financial viability also justify rejecting the assignment, as set out in the KingSett Factum.

31. Finally, the leases contain restrictions on assignment that justify the bases upon which Landlords objected to PurchaserCo. With some variation, the leases only permit assignment to a purchaser in a sale of all or substantially all of HBC's assets, or an assignment to a comparable and established department store tenant with substantially similar operations, having a good business reputation and sufficient experience. It was and remains reasonable for the Landlords to oppose an *ad hoc* assignment of leases to a completely unknown new tenant.[22]

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[20] Letter of Ashley Taylor dated July 5, 2024, MacLeod Affidavit, CF RMR, Vol. 1, Tab 1, Exhibit T, pp. 256-257, F3063-3064.

[21] Eighth Report, p. 19, para. 3.11, E1057.

[22] See *e.g.*, Table of relevant restrictions on subleases, MacLeod Affidavit, CF RMR, Vol. 1, Tab 1, Exhibit II, pp. 387-398, F3194-3205.

PurchaserCo Cannot Perform the Obligations of the Leases

32. Performing the obligations of the lease—particularly these leases whose terms span decades—requires an evidentiary showing of viability. The Applicants must show "the expected financial stability or durability of the purchaser post-closing" as this is a "critical factor to assessing the suitability of a proposed assignee."[23]

33. The Applicants have not met this burden because they cannot show, on the evidence, that PurchaserCo will likely be viable. It will most likely *fail*. Ms. Liu's plans are constantly changing and internally inconsistent. She made critical business decisions on the fly at her cross-examination. PurchaserCo appears to be making it up as it goes along.

34. PurchaserCo's business plan is high level, with little to no support for its assumptions. As the Monitor has concluded, "there are credible and reasonable concerns with respect to the Business Plan" as well as PurchaserCo's "ability to execute" it.[24] By way of example, Ms. Liu swore that J2 Retail Management would play a critical role and be responsible for all of the logistics for her inventory and merchandising because she would not have warehouses.[25] During cross-examination, she surprisingly admitted that she is no longer working with J2,[26] and no other company has been proposed to deal with this critical aspect of PurchaserCo's plan. These concerns are fully explored in the Ivanhoe Factum.

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[23] *Dundee* at para. 8(b).

[24] Eighth Report, p. 54, para. 6.45(c), E1092; see also pp. 28-31, paras. 5.4-5.5, E1066-1069.

[25] Business Plan, Supplemental Affidavit of Weihong Liu sworn July 30, 2025, Supplemental Supporting Motion Record of Ruby Liu Investment Corp., Tab 1A, Exhibit A, pp. 56-57, F9439-9440.

[26] Liu Cross, p. 155, ll. 16-20, BT, Tab H, p. ■.

35. Moreover, PurchaserCo is not financially viable. According to EY, PurchaserCo's projected financial results "do not appear reasonable."[27] This is clear even on a cursory review. Some examples:

(a) Projected revenues and gross margin are likely too high. PurchaserCo assumes that it will outperform HBC on its first day.[28]

(b) Projected operating costs are almost certainly too low. PurchaserCo expects to operate with 32% lower payroll costs than HBC in 2024 (despite acknowledging that HBC was notoriously understaffed). The forecast also omits millions of dollars of costs (*e.g.* land transfer tax, corporate occupancy, etc.) and likely understates others (*e.g.* renovation and repair costs, IT, etc.). [29]

(c) Projected EBITDA is unrealistic. The forecast unreasonably assumes that PurchaserCo will have a store-level EBITDA that is 2,201% (22 times) higher than HBC stores in 2024.[30]

36. Accordingly, there is a significant risk that PurchaserCo will exhaust its funds before the first store opens, and no guarantee that Ms. Liu's equity commitment will be sufficient to maintain operations until they are cash-flow positive. These concerns are fully explored in the CF Factum.

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[27] Expert Report of Ernst & Young Inc. dated August 8, 2025 ("**EY Report**"), para. 186, CF RMR, Vol. 2, Tab 2, Exhibit B, pp. 465-466, F3309-3310.

[28] EY Report, paras. 93-94, CF RMR, Vol. 2, Tab 2, Exhibit B, pp. 435-436, F3279-3280; Cross-Examination of Adam Zalev on August 14, 2025 ("**Zalev Cross**"), p. 145, q. 596 and p. 146, q. 598, BT, Tab A, pp. ■.

[29] EY Report, paras. 93, 178, CF RMR, Vol. 2, Tab 2, Exhibit B, pp. 435-436, 462, F3279-3280, F3306; Zalev Cross, p. 121, qq. 481-484, BT, Tab A, pp. ■.

[30] EY Report, para. 92, CF RMR, Vol. 2, Tab 2, Exhibit B, p. 435, F3279.

37. The decision in *Donnelly* is instructive. Despite the Monitor approving of the assignment, Fitzpatrick J. denied the section 11.3 motion. Her conclusions were rooted in the non-viability of the assignee considering: (i) the assignee's corporate and operational history; (ii) relevant industry experience; and (iii) the viability of the business plan.[31]

38. *First*, the assignee in *Donnelly* was a shell company, just like PurchaserCo. *Second*, the principals of the assignee lacked sufficient experience in the specific industry at issue: experience in the broader hospitality industry was insufficient to demonstrate the necessary expertise required to operate a restaurant and bar.[32] Ms. Liu's experience as a mall owner is not relevant to PurchaserCo's interest in becoming a national department store tenant. Her purported team is incomplete and equally inexperienced: her CEO is a residential real estate broker with no experience in retail whatsoever.[33]

39. *Finally*, Fitzpatrick J. noted that the debtor company suffered substantial operating losses despite their operating experience; there was nothing to suggest that an inexperienced assignee would be more successful. The same applies for PurchaserCo and Ms. Liu. Their plan appears to repeat the same strategy as HBC but without the IP, private labels, goodwill, brand loyalty, vendor relationships, logistics network, or any depth of retail experience: as in *Donnelly* there "is simply nothing to suggest that [PurchaserCo], who does not have that same level of experience, will be more successful" than HBC.[34]

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[31] *Donnelly* at paras. 65-72.
[32] *Donnelly* at para. 69.
[33] MacLeod Affidavit, para. 145(a), CF RMR, Vol. 1, Tab 1, pp. 43-44, F2850-2851.
[34] *Donnelly* at para. 72.

40. The Applicants rely on a "reasonableness" standard to lessen their burden on this motion. This is a misreading of the case law.

41. The reasonableness standard originated in *Dundee.*[35] In *Dundee*, the Applicants originally failed to bring evidence of expected financial stability or durability. After an adjournment, they added to the record. While the new evidence was not an iron-clad guarantee of success, the forecast reserves were "prepared by Deloitte… under NI 51.01 which means at the very least they have been prepared to reviewable standards of reasonableness." This NI 51.01 standard justified "the inference that there is a reasonable basis to conclude that the cash flow from the acquired assets will sustain operations and the acquisition debt." This is the only reference to "reasonableness" in *Dundee*.[36]

42. This case is the opposite to *Dundee*. While PurchaserCo apparently retained KPMG to prepare its business plan, KPMG filed no report and its work product is absent from the record.[37] Mr. Zalev did not apply any professional standard to his analysis, and there are serious concerns regarding Mr. Zalev's independence from Pathlight and concerns about the scope of his analysis. See the CF Factum. In contrast, EY describes the financial model as "based on a limited set of high level, simplistic assumptions" with "no explanatory notes." EY concluded that the projected financial results did not appear reasonable and there was "significant risk that [PurchaserCo] will generate annual operating losses in the tens of millions of dollars."[38]

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[35] *UrtheCast* at para. 44, citing *Dundee*.

[36] *Dundee* at para. 34.

[37] See also Factum of Ivanhoe Cambridge at para. 41.

[38] EY Report, para. 26, 43, 186, CF RMR, Vol. 2, Tab 2, Exhibit B, pp. 417, 421, 465-466, F3261, F3265, F3309-3310.

43. In addition to the general non-viability of PurchaserCo and its inability to meet its monetary obligations over the term of the leases, PurchaserCo cannot show that it is likely to comply with its non-monetary obligations—concerns that the Monitor agrees are credible: [39]

(a) Continuous Operation: Most of the leases require that there be no period where the tenant does not operate. As clearly stated by HBC's deponent, in the absence of landlord consent, this is a hurdle that cannot be overcome.[40] Even if an Order was granted forcing Landlords to be counterparties with PurchaserCo, it will be in continuous and ongoing breach of the leases from the time any assignment becomes effective. See the Ivanhoe Cambridge and Primaris/QuadReal Factum.

(b) Repair and Good Condition: PurchaserCo has not budgeted sufficient funds to complete crucial repairs to basic business infrastructure such as elevators and escalators, and to maintain the premises and equipment in good condition. See the Primaris/QuadReal Factum.

(c) Use Clauses: While use clauses in this case vary from lease to lease, they generally require that the tenant operate a reputable department store. The bald assertions that PurchaserCo will abide by the use restrictions in the leases is fundamentally at odds with Ms. Liu's repeated statements that she intends uses inconsistent with the terms of the leases. See the Ivanhoe Cambridge Factum.

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[39] Eighth Report, p. 45, para. 6.38, E1083.

[40] Affidavit of Franco Perugini sworn July 29, 2025, para. 91, Motion Record of the Applicants, Tab 2, p. 74, A6122.

Assignment to PurchaserCo and its Principal, Ms. Liu, Is Not Appropriate

44. Appropriateness is a multi-faceted consideration. Here, it is clear on the evidence that PurchaserCo and Ms. Liu are inappropriate assignees. PurchaserCo does not become an appropriate assignee merely because Pathlight stands to recover some of its secured debt. Every proposed forced assignment will provide some measure of economic recovery, and every refusal will always cause that potential recovery to be lost. If this was the test, every assignment would be approved and the extraordinary powers under 11.03 would turn ordinary and presumed.

45. Section 11.3 was intended, at its core, to give courts an extraordinary discretion to be used sparingly so as to prevent a single party from inappropriately impeding a successful restructuring. It was not intended to be used as a tool in liquidation to cause harm to a broad body of stakeholders, the Landlords, for the benefit of a single creditor, Pathlight. This is neither fair nor equitable.

46. The leading authority on "appropriateness" under the CCAA is *Century Services*.[41] In order to be appropriate, the relief must further the remedial purposes of the CCAA, by avoiding social and economic losses while treating all stakeholders fairly:

> Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* — avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.[42]

[41] *Century Services Inc. v. Canada (Attorney General), 2010 SCC 60 [Century Services].*

[42] *Century Services* at para. 70.

47. Consistent with *Century Services*, appropriateness under CCAA s. 11.3(3)(c) is assessed through the lens of two guiding principles: facilitating the reorganization process and treating the contractual counterparty fairly and equitably.[43]

48. Section 11.3 is often invoked to satisfy a condition under a going-concern sale. It is an important factor to "appropriateness" that the assignment is essential to the sale and therefore "vital to the successful restructuring" in the case.[44] This does not apply here.

PurchaserCo is a shell company with no assets

49. The appropriateness of the assignment begins with the assignee. PurchaserCo is a shell corporation. It has no operating history and no assets beyond the funds that Ms. Liu puts in (and can just as quickly take out). Shell corporations as assignees caused Dunphy J. "grave concerns" in *Dundee.* His concerns were allayed by forecasts of strong cash flows, a credible plan to reduce costs and, as discussed above, a NI 51.01 analysis by Deloitte.[45] None of those cures are present here. See further discussion in the KingSett Factum.

50. For its funding, PurchaserCo is entirely dependent on Ms. Liu and her equity "commitment letter." This equity commitment provides no real assurances, as fully explained in the KingSett Factum. Notably, the equity commitment letter expressly states that the Landlords cannot enforce it. It is a commitment from Ms. Liu to herself. Ms. Liu could simply stop funding with no recourse.

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[43] *Zayo Inc. v. Primus Telecommunications Canada Inc.*, 2016 ONSC 5251 at para. 38; *Veris Gold* at para. 58; *Donnelly* at paras. 56, 82; *UrtheCast* at para. 66.

[44] *UrtheCast* at para. 66.

[45] *Dundee* at paras. 24-37.

This possibility was heightened by Ms. Liu, confirming at her cross-examination that she was not, in any way, guaranteeing the availability of the funds described in the commitment letter.[46]

51. Ms. Liu's recent offer to guarantee one year of rent does not change anything. Ms. Liu raised this for the first time only days ago on the eve of cross-examinations, with no fixed assets in Canada to backstop a personal guarantee. The manner, timing, and limited scope of Ms. Liu's guarantee have only *reduced* the Landlord's confidence that PurchaserCo is an appropriate tenant.[47]

Ms. Liu is an inappropriate principal of the assignee

52. Ms. Liu is the principal of PurchaserCo. Its stores will be named after her. Yet, in this process, she has repeatedly shown that she is not an appropriate principal to establish a long-term relationship of professionalism and trust required for the decades remaining under the leases. The Landlords' concerns are fully outlined in the Oxford Factum and KingSett Factum, but key concerns include: (i) Ms. Liu's failure to disclose the joint ownership and significant debt load of her other properties, including the fact that her other holdings are ultimately owned by Hong Kong or BVI corporations; (ii) Ms. Liu's decision to write *ex parte* to this Court on two occasions after being advised against it—she was trying to convince Justice Osborne to help her "get the leases";[48] (iii) Ms. Liu's refusal to provide a concrete business plan for Landlord consideration while accusing the Landlords of disengagement and discrimination in the press; and (iv) Ms. Liu's intentional efforts to mislead the Landlords about her leadership team by briefly hiring former HBC executives under false pretences. This is no basis for a healthy or productive tenancy.

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[46] Liu Cross, p. 80, ll. 1-22, BT, Tab H, p. ■.

[47] Cross-Examination of Rory MacLeod on August 18, 2025, p. 70, l. 18 and p. 71, l. 12, BT, Tab N, pp. ■.

[48] Liu Cross, p. 118, ll. 11-19, BT, Tab H, p. ■.

53. Ms. Liu is also the sole source of funding for PurchaserCo. But there is no evidence that she has access to sufficient assets to fund her purported equity commitment. And, even if she had those assets, they are spread across the world in jurisdictions that effectively make her judgment proof. Even her Canadian malls are held offshore. See the Kingsett Factum.

54. Beyond their financial capacity, there is no comfort that Ms. Liu and PurchaserCo will abide by their contractual commitments. Ms. Liu repeatedly breached the APA as outlined fully by the Applicants' counsel in their July 5 letter.[49] Likewise, Ms. Liu's public statements and her refusal to disclose the locations of her Flagship stores, indicate that her true intent is not to abide by the leases, but instead to use the leases to leverage further concessions from the Landlords. See the Primaris/QuadReal Factum.

No Windfall to Landlords

55. The Applicants and Pathlight allege that the Landlords are opposing assignment to get a windfall. This is wrong. The only party seeking a windfall is Pathlight, which seeks to shift its potential losses to the Landlords. The Landlords are already the largest creditor group in these proceedings and will suffer hundreds of million of dollars more in losses if the assignment is approved.[50] No party challenged the Landlords' evidence of prejudice on cross-examination.

56. The Landlords are opposing this assignment to avoid the obvious prejudice that results from an unknown, inexperienced, and undercapitalized shell company undertaking an ill-informed retail experiment in their valuable shopping centres.

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[49] Letter from Stikeman Elliott to Mr. Ellis, July 5th, Liu Cross, Exhibit 23, BT, Tab H, p. ■. See also the Oxford Factum.

[50] Corrado Affidavit, para. 119, OP RMR, Tab 2, p. 115, F3510.

57. *First*, there is clear and unchallenged evidence from each of the Landlords of the harm they will suffer if the assignment is approved. The presence of a "Ruby Liu" store will depress property values, decrease footfall, reduce sales, and impede the Landlords' ability to attract and retain new tenants. The Applicants have not challenged this clear evidence of harm.[51]

58. *Second*, there is no obligation for the Landlords to bid on their own leases. The Landlords do not deserve to be treated unfairly because they elected not to bid. Section 11.3 is not a sword with which to threaten contractual counterparties and extract economic concessions. The Landlords were—and are—entitled to rely on the protections of the leases and the extraordinary nature of section 11.3 to ensure that only appropriate tenants are considered who can meet all the obligations of the existing leases. If no department store exists or is willing to serve as anchor tenant in these malls, then the Landlords are no longer getting the benefit of their bargain. The leases should come to a natural end, allow the Landlords to mitigate losses.

59. *Third*, the Applicants and Pathlight tout the variety of purported benefits the Landlords will get under the assignment to PurchaserCo, including future rent and repairs. But seven of Canada's leading commercial landlords have said 'no' to a tenant who purports a willingness to make repairs and begin paying rent immediately at 25 locations.[52] Only the landlord at West Edmonton Mall—a unique property—accepted. This should be a strong signal to the Court that the proposed assignment simply does not make sense.

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[51] MacLeod Affidavit, paras. 185-198, CF RMR, Vol. 1, Tab 1, pp. 52-56, F2859-2863; Sullivan Affidavit, paras. 149-160, 172-188, PM RMR, Tab 1, pp. 38-40, 42-46, F4132-4314, F4136-4140; Wyatt Affidavit, paras. 81-100, 109-116, 127-132, MI RMR, Vol.1, Tab 1, pp. 30-36, 38-40, 42-44, F5526-5532, F5534-5536, F5538-5540; Camacho Affidavit, paras. 84-86, QP RMR, Tab 1, pp. 19, F4728; Corrado Affidavit; paras. 73, 79, OP RMR, Tab 2, pp. 31, 33, F3486, F3488; Warnaar Affidavit, paras. 5, 76, KC RMR, Tab 1, pp. 40-41, 64, F8764-8765, F8788; Paola Affidavit, paras. 79-81, IC RMR, Vol. 1, Tab 1, pp. 22-23, F6195-6196.

[52] See also Factum of Ivanhoe Cambridge at para. 37-39.

60. Likewise, the Applicants should take seriously Cadillac Fairview, the third secured creditor whose leases do not contain restrictions on redevelopment, vociferously opposing an assignment that would improve its security position in additional to any purported benefited as a landlord.

61. *Finally*, the reason the Landlords are rejecting the assignment is clear: they will suffer significant and irreparable reputational and monetary prejudice if this Court forces their shopping centre to install Ruby Liu stores against their will.[53]

No restructuring purpose is served by this assignment

62. Appropriateness ultimately considers the balancing between the restructuring objectives achieved by the assignments and the need to treat counterparties fairly and equitably. There is no real contest here. This assignment is not about restructuring or the purposes of the CCAA.[54] It is only about driving recovery for one creditor, Pathlight. Pathlight's recovery comes at the further expense of many creditors, the Landlords.

63. Unsurprisingly, Pathlight is also the only creditor to gain from the assignment and therefore support it. The Applicants have a continuing relationship in respect of HBC's U.S. business and operations (including Saks U.S. and Nieman Marcus). And the Debtor has repeatedly in this CCAA followed Pathlight's direction to take steps to enhance Pathlight's control: a failed DIP agreement, a failed restructuring support agreement, and a financial advisor whose ties to Pathlight working opposite HBC were not fully disclosed to the Court. See the Oxford Factum.

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[53] Each Opposing Landlord factum has outlined their specific evidence of prejudice, much of it uncontested. For example, see MacLeod Affidavit, para. 185-198, CF RMR, Vol. 1, Tab 1, pp. 52-56, F2859-2863; Corrado Affidavit, para. 119, OP RMR, Tab 2, p. 115, F3510; Sullivan Affidavit, para. 187, PM RMR, Tab 1, p. 82, F4139.

[54] Pathlight argues that a remedial objective of the CCAA is "preserving and maximizing the value of a debtor's assets" and therefore there is a critical restructuring purpose here: *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 para 40. But the proceeds of the assignment cannot itself be the restructuring purpose, this would make the test tautological because there will always be some proceedings from the assignment.

64. There is nothing vital or critical about this assignment to the restructuring of HBC. There is no restructuring. The supposed ancillary benefits of the transaction—such as creating new employment opportunities and providing vendors with an opportunity to sell products—are illusory and simply a by-product of renting the spaces. The Landlords are incentivized—and best placed—to find new tenants. Any re-letting of this space to *any* tenant will provide those benefits; a stronger tenant (i.e., one with a viable business) will ensure these benefits are both maximized and sustained long-term. The inevitable failure of Ms. Liu's proposed venture will harm an entirely new group of employees and vendors, in addition to harming the Landlords.

The Assignment is Not Appropriate

65. Assignment is not appropriate under section 11.3(3)(c), for the reasons stated above.

66. PurchaserCo and its principal, Ms. Liu, are unfit and unsuitable tenants with insufficient financial wherewithal. They will not be appropriate tenants or counterparties for the Landlords. Forcing them on the landlords is neither fair nor equitable. Moreover, there is nothing here that facilitates the reorganization process or the principles of the CCAA. Unfortunately, HBC is done and gone, and its employees terminated. All HBC seeks to do here is squeeze out more money for Pathlight. This benefit to Pathlight is outweighed by the material and significant prejudice to the Landlords arising from the proposed assignment.

PART III - CONCLUSION

67. The Landlords have already suffered and will continue to suffer enormous losses as a result of HBC's liquidation. HBC now proposes to inflict even greater losses on the Landlords in order to lessen or eliminate losses suffered by Pathlight. HBC now asks the Court to sanction its shifting

an even greater burden of HBC's failure onto the Landlords in order to spare Pathlight having to share in the pain of HBC's demise.

68. The statutory limits established in CCAA s. 11.3 were intended to make forced assignment exceptional in cases in which the benefits for many stakeholders (i.e., saving a business as a going concern) clearly outweighed the relatively modest prejudice suffered by a contractual counterparty. This is far from the case here. The assignment promises little benefit but significant harm. The Monitor has seen this and recommended against approval. The Landlords ask the Court to do the same.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of August, 2025.

Torys LLP

per.

Camelino Galassiere LLP

per.

Lax O'Sullivan Lisus Gottlieb LLP

per.

Blaney McMurtry LLP

per.

Thornton Grout Finnigan LLP

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
2. *Donnelly Holdings Ltd. (Re)*, 2024 BCSC 275
3. *Dundee Oil and Gas Limited (Re)*, 2018 ONSC 3678
4. *Hayes Forest Services Limited (Re)*, 2009 BCSC 1169
5. *Nexient Learning Inc. (Re)*, 2009 CanLII 72037 (ONSC)
6. *Playdium Entertainment Corp., Re*, 2001 CanLII 28282 (ONSC)
7. *Rabin v. 2490918 Ontario Inc.*, 2023 ONCA 49
8. *UrtheCast Corp. (Re)*, 2021 BCSC 1819
9. *Veris Gold Corp. (Re)*, 2015 BCSC 1204
10. *Zayo Inc. v. Primus Telecommunications Canada Inc.*, 2016 ONSC 5251
11. *1455202 Ontario Inc. v. Welbow Holdings Ltd.*, 2003 CanLII 10572 (ONSC)
12. 9345-9186 Quebec inc. v. Calladius Capital Corp., 2020 SCC 10

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 25, 2025

Signature

SCHEDULE "B"

TEXTS OF STATUTES, REGULATIONS & BY-LAWS

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 to perform 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.

SCHEDULE "C"

TIMELINE OF KEY EVENTS

March 7: Initial Order granted.

March 21: Lease Monetization Process (LMP) Order granted.[55] The final Bid Deadline is May 1, 2025, with a Targeted Outside Date for June 17, 2025. Section 37 of the LMP terms provide landlords with explicit consultation rights in respect of their leases.[56]

May 1: PurchaserCo's Final Bid Documents for 28 leases is $88.1 million (the "**Purchase Price**"),[57] allocating $14 million to leases in three malls owned by Central Walk entities (the **"CW Leases**"), partially owned by Ms. Liu.[58] These documents are not provided to landlords until August 11, 2025.

May 23: HBC issues a press release announcing PurchaserCo as the successful bidder under the LMP.[59] HBC and PurchaserCo execute the APA for 25 leases with the Purchase Price reduced to $72.1 million.[60] No landlord is consulted before the APA is executed and the APA is not provided to landlords until July 29, 2025.[61]

May 26: IC meets with Ms. Liu via videoconference. Ms. Liu requests significant rent concessions (including a rent-free period) and lease amendments and provides a proposed business plan. That "business plan" provided none of the information expected in a typical business plan (*e.g.*, no definitive concept, lack of clear objectives and strategies, no merchandising plan, no financial forecasts, and lack of a well-defined path to execution).[62]

May 28: Opposing Landlords receive a letter from Reflect advising that PurchaserCo is the successful bidder and certain of their leases are included. Landlord requests for information ahead of the meeting were denied. For example: (i) a letter and email are sent by Oxford and its counsel to Oberfeld and HBC requesting information in

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[55] Capitalized terms not otherwise defined have the meaning attributed to them in the Lease Monetization Order.

[56] Lease Monetization Order dated March 21, 2025, Schedule "A" – Lease Monetization Process, s. 37, p. 12.

[57] Opposing Landlords received this on August 11, 2025. The Purchase Price originally included an additional $3 million for the IP, with $88.1 million for the 28 leases.

[58] Liu Cross, p. 22, ll. 8-15 and p. 63, ll. 18-25, BT, Tab H, pp. ■.

[59] Central Walk Press Release issued on May 23, 2025, Corrado Affidavit, OP RMR, Tab 2, Exhibit N, pp. 171-172, F3566-3567; HBC Press Release issued on May 23, 2025, Corrado Affidavit, OP RMR, Tab 2, Exhibit O, p. 174, F3569.

[60] Central Walk APA dated May 23, 2025, Perugini Affidavit, MRA, Tab 2, Exhibit B, s. 3.2, p. 102, A6150.

[61] Corrado Affidavit, paras. 82-86, OP RMR, Tab 2, pp. 33-35, F3488-3490; MacLeod Affidavit, paras. 45-46, CF RMR, Vol. 1, Tab 1, p.15, F2822; Warnaar Affidavit, para. 37, KC RMR, Tab 1, p. 52, F8776; Camacho Affidavit, paras. 13-17, QP RMR, Tab 1, pp. 40-41, F4713-4714; Paola Affidavit, para. 58, IC RMR, Vol. 1, Tab 1, p. 22, F6189; Marcovitz Affidavit, para. 33, WM RMR, Tab 1, p. 14, F6532; Wyatt Affidavit, para. 66, MI RMR, Vol. 1, Tab 1, p. 28, F5521; Sullivan Affidavit, para. 10, PM RMR, Tab 1, p. 43, F4100.

[62] Paola Affidavit, paras. 61-62, IC RMR, Vol. 1, Tab 1, pp. 22-23, F6189-6190; Ms. Liu's Business Plan and the pamphlet depicting proposed business, Paola Affidavit, IC RMR, Vol. 1, Tab 1, Exhibit G, pp. 128-187, F6301-6360.

advance of meeting with PurchaserCo;[63] and (ii) Cadillac Fairview also requested information in advance of its meeting and was rebuffed by HBC's counsel.[64]

June 2–5: Meetings hosted by HBC with Opposing Landlords and PurchaserCo, the Monitor, and consultants including Wayne Drummond, who is held out by PurchaserCo as being a key member of their team. PurchaserCo fails to provide any documentation in support of the proposed assignment or any other meaningful information at these meetings, nor makes any presentation.[65] The meetings are commenced with, and consist of, an invitation that landlords ask questions.

June 6: Opposing Landlords receive letter from PurchaserCo's then-counsel providing a purported business plan and asking for landlord consent to assignment. PurchaserCo's principal Ms. Liu states on cross-examination that she did not authorize the sending of the letter, which is the only information or documents received by Opposing Landlords in response to information requests prior to service of HBC's motion on July 29.

June 11–13: Opposing Landlords separately each advise HBC, the Monitor, and/or PurchaserCo by letter that, based on the lack of information provided, they do not consent to the assignment of their leases to PurchaserCo.[66]

June 16: In an affidavit sworn by Michael Culhane in connection with a motion to approve the assignment of three leases to PurchaserCo for properties owned by Central Walk (the "**Related Party Transaction**"), he states at para. 32: "Certain Landlords have sent letters to the Company outlining their information requests and concerns. The Company is actively engaging with Central Walk to address these information requests and concerns in a timely manner and is hopeful that all

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[63] Corrado Affidavit, paras. 88-90, OP RMR, Tab 2, pp. 36-38, F3491-3493; Letter from D.J. Miller dated May 28, 2025, Corrado Affidavit, OP RMR, Tab 2, Exhibit E, pp. 140-141, F3535-3536; Email exchange between Oxford and Oberfeld dated May 30, 2025, Corrado Affidavit, OP RMR, Tab 2, Exhibit Q, pp. 182-183, F3577-3578.

[64] MacLeod Affidavit, paras. 50-51, CF RMR, Vol. 1, Tab 1, p.16, F2823; Email exchange between HBC and Torys LLP dated May 30, 2024, MacLeod Affidavit, CF RMR, Vol. 1, Tab 1, Exhibit I, pp. 158-159, F2965-2966.

[65] Corrado Affidavit, paras. 92-97, OP RMR, Tab 2, pp. 38-41, F3493-3496; MacLeod Affidavit, paras. 52-57, CF RMR, Vol. 1, Tab 1, pp. 16-17, F2823-2824; Warnaar Affidavit, paras. 40-45, KC RMR, Tab 1, pp. 52-54, F8776-8778; Paola Affidavit, paras. 67-68, IC RMR, Vol. 1, Tab 1, pp. 24-25, F6191-6192; Wyatt Affidavit, paras. 69-70, MI RMR, Vol. 1, Tab 1, p. 29, F5522; Sullivan Affidavit, paras. 13-18, PM RMR, Tab 1, pp. 43-44, F4100-4101; Marcovitz Affidavit, paras. 36-38, WM RMR, Tab 1, p. 15, F6533.

[66] Letter from DJ Miller dated June 11, 2025, Corrado Affidavit, OP RMR, Tab 2, Exhibit F, pp. 86-88, F3541-F3543; Letter from David Bish dated June 11, 2025, MacLeod Affidavit, CF RMR, Vol. 1, Tab 1, Exhibit Q, pp. 243-244, F3050-3051; Letter from Matthew P. Gottlieb dated June 13, 2025, Warnaar Affidavit, RKC RMR, Tab 1, Exhibit M, pp. 255-256, F8979-8980; Letter from Linda Galessiere dated June 13, 2025, Paola Affidavit, IC RMR, Tab 1, Exhibit J, pp. 257-258, F6430-6431; Letter from Linda Galessiere dated June 13, 2025, Wyatt Affidavit, MI RMR, Vol. 3, Exhibit Q, pp. 771-772, D2267-2268; Letter from John C. Wolf dated June 12, 2025, Sullivan Affidavit, PM RMR, Tab 1, Exhibit B, pp. 90-91, F4184-4185; Letter from John C. Wolf dated June 13, 2025, Camacho Affidavit, QP RMR, Tab 1, Exhibit B, pp. 63-65, F4772-4774. On June 13, 2025, Westcliff advised PurchaserCo that it lacked sufficient information to make a decision. See Letter from Linda Galessiere dated June 13, 2025, Marcovitz Affidavit, WM RMR, Tab 1, Exhibit E, p. 273, F6796.

matters can be resolved consensually." No information is ever provided to the Landlords.

June 23: Affiliate Lease Assignment Order is granted approving the Related Party Transaction. Information disclosed to stakeholders and the Court, including through a Confidential Appendix, is that the Purchase Price for the 3 locations is $6 million ($2 million per location).[67] No disclosure is provided that the bid price offered by PurchaserCo was $14 million for those 3 locations, or the basis for the reduction in price.[68]

June/July: Additional information requests sent by Opposing Landlords to the Monitor and to HBC, with no responses.

July 4: Oxford writes to HBC and the Monitor to ask if any further information will be forthcoming in respect of the APA. No response is received.

July 5: HBC delivers letter (the "**July 5 Letter**") to PurchaserCo advising that PurchaserCo is in breach of the APA for failing to use commercially reasonable efforts to obtain Landlord consent, entitling HBC to terminate the APA.[69] The Monitor, the FILO Agent, and Pathlight each support the contents of the July 5 Letter.[70] Opposing Landlords and the Court are not made aware of the July 5 Letter. HBC offers to reduce the Purchase Price by $3 million subject to certain terms. PurchaserCo does not agree to terms or sign back letter,[71] but $3 million reduction to Purchase Price is granted by HBC on July 21.

July 7: HBC requests the Monitor's position with respect to a potential termination of the APA. The Monitor advises HBC that it supports a termination.[72]

July 8: FILO Agent serves motion to terminate the APA. Despite the July 5 Letter and no substantive changes in facts or circumstances since that letter, HBC's Board makes decision to seek approval of the APA based solely on the purchase price[73] and Pathlight's decision to push it forward, as the only stakeholder consulted and the only one who wants it to proceed.[74]

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[67] Assignment and Assumption of Leases Agreement dated May 23, 2025, Affidavit of Michael Culhane sworn June 16, 2025, Applicant Motion Materials for the Affiliate Lease Assignments Motion, Exhibit B, pp. 1-27, A5660-5686. The Confidential Appendix to the Monitor's Fifth Report was requested following the unsealing and closing of the transaction and was received on August 11, 2025.

[68] When presented with this on cross-examination, HBC's primary representative responsible for the lease monetization (Franco Perugini) expressed surprise and found it "interesting". Cross-Examination of Franco Perugini on August 14, 2025 ("**Perugini Cross**"), p. 120, q. 451, BT, Tab D, pp. ■.

[69] Letter from Ashley Taylor dated July 5, 2025, Corrado Affidavit, OP RMR, Tab 2, Exhibit V, pp. 213-217, F3368-3672.

[70] Eighth Report, p. 19, para. 3.11, E1057.

[71] Answers to Undertakings and Under Advisements Given at Liu Cross, Undertaking No. 9.

[72] Eighth Report, p. 19, para. 3.12, E1057.

[73] Perugini Cross, p. 61, qq. 213-214 and p. 139, q. 543, BT, Tab D, pp. ■.

[74] Perugini Cross, p. 185, q. 720 and p. 188, q. 733, BT, Tab D, pp. ■.

July 9-10: Disregarding the advice of counsel, two separate communications, with attachments, are sent by PurchaserCo to Justice Osborne seeking to influence the process of court approval.[75] No other parties or counsel are copied.

July 14: Monitor issues Sixth Report supporting relief sought by the FILO Agent as to termination of the APA.[76]

July 15: Justice Osborne advises open court of the existence of communications from Ms. Liu.

July 21: HBC and PurchaserCo enter into Second Amending Agreement, reducing the Purchase Price to $69.1 million, less cure costs and other reductions.[77] No transparency provided as to the reason(s) for any reduction.

July 29: Redacted copies of PurchaserCo's improper communications with the Court are disclosed to the Service List by the Monitor.

July 29: HBC and PurchaserCo serve motion records including, for the first time, business plan and financial projections for PurchaserCo authorized by its principal Ms. Liu. Through requests for documents referenced in affidavits, Opposing Landlords subsequently receive a copy of the Bid submitted by PurchaserCo on May 1, 2025.

August 20: Monitor issues Eighth Report, reaffirming for a third time that it does not support the forced assignment of the Landlords' leases.

[75] Letter from Ashley Taylor dated July 5, 2025, Corrado Affidavit, OP RMR, Tab 2, Exhibit V, pp. 213-217, F3368-3672.
[76] Sixth Report of the Monitor dated July 14, 2025, pp. 31-32, para. 5.30, D717-719.
[77] Asset Purchase Agreement dated May 23, 2025, Perugini Affidavit, AMR, Tab 2, Exhibit B, pp. 39-112, A6132-6205.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI et al.

Court File No. CV-25-0073861300CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

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