

**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")

**FACTUM OF THE CADILLAC FAIRVIEW CORPORATION LIMITED
(FILO AGENT'S MOTION)**

August 25, 2025

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TO: **THE SERVICE LIST**

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PART I - OVERVIEW

1. The Cadillac Fairview Corporation Limited (“**Cadillac Fairview**”) agrees with the principal relief sought by ReStore Capital, LLC in its capacity as agent (the “**FILO Agent**”), on behalf of a syndicate of lenders (the “**FILO Lenders**”), on its motion; namely: (i) termination of the APA¹ and (ii) the immediate disclaimer by the Applicants of the Remaining Leases (which include seven Cadillac Fairview leases (the “**CF Leases**”)). Except to the extent noted herein, Cadillac Fairview takes no position on the FILO Agent’s request that the Monitor’s powers be significantly expanded.

2. The FILO Agent has, however, gone too far and has sought additional ancillary relief to which Cadillac Fairview objects. Specifically, Cadillac Fairview takes issue with the FILO Agent seeking to, directly or indirectly: (i) eliminate the Applicants’ court-ordered obligation to pay rent pursuant to the Remaining Leases, including the CF Leases; (ii) eliminate the Applicants’ obligation to pay rent in respect of the Remaining Leases, including the CF Leases, during any statutory disclaimer notice period; and (iii) eliminate the Applicants’ obligation to remove – at their expense – FF&E (including signage) remaining on or in premises leased or formerly leased by the Applicants from landlords, including Cadillac Fairview.²

3. As is clear in the FILO Agent’s motion record and recent materials filed with the Court, it is highly aggrieved by the conduct of the Applicants and Pathlight Capital LP, another secured lender, in their pursuit of a lease assignment transaction with Ms. Weihong (Ruby) Liu (the “**Liu**

¹ Unless specified otherwise, capitalized terms bear the same meaning as in the FILO Agent’s Notice of Motion.

² [Amended Notice of Motion](#) dated July 25, 2025, para. 1(d.1); Draft Order (Termination of APA and Expansion of Monitor’s Powers) (“**Draft Order**”), paras. 4(a) and (e), 19, Motion Record of FILO Agent (“**FILO MR**”), Tab 3, pp. 534-535, 538, [D575-576](#), [D579](#).

Transaction”). The FILO Agent has said repeatedly that it believes this conduct has caused it significant losses. That is primarily an intercreditor issue; the solution to that dispute is not to impose further financial hardship and loss on landlords such as Cadillac Fairview. The FILO Agent cannot recoup losses it blames on the Applicants and Pathlight in their ill-advised pursuit of the Liu Transaction by seeking to extinguish Cadillac Fairview’s lawful entitlements.

4. There is no basis in law or the CCAA for the relief being sought by the FILO Agent. The common law, the CCAA, the Court’s own model CCAA order, and the Orders made by the Court in the Applicants’ CCAA proceeding all protect landlords such as Cadillac Fairview from the type of relief sought by the FILO Agent. Despite this, the FILO Agent asks that the court vary the terms of multiple court orders – terms that they had negotiated and readily agreed to, and which Cadillac Fairview negotiated and otherwise relied upon. The relief sought by the FILO Agent is both unlawful and inequitable.

5. As such, Cadillac Fairview respectfully requests that that portion of the requested relief sought by the FILO Agent be denied.

PART II – FACTS

6. On March 7, 2025, the Applicants were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), pursuant to an Initial Order (the “**CCAA Order**”), which, among other things and as is standard in every CCAA proceeding, required the Applicants to continue to pay rent pursuant to its leases, including the Remaining Leases, until such leases were disclaimed in accordance with the CCAA.³

³ [Initial Order](#) dated March 7, 2025, para. 9.

7. On March 21, 2025, the Court issued an Amended and Restated Initial Order (the “**ARIO**”), which continues to require that the Applicants pay rent pursuant to its leases, including the Remaining Leases, until such leases were disclaimed in accordance with the CCAA.⁴

8. On the same date, the Court also issued a Liquidation Sale Approval Order that approved certain Sale Guidelines and set out the Applicants’ responsibility for removal of FF&E (which includes signage) in accordance with the Sale Guidelines.⁵ Signage is typically considered to be a component of FF&E – being property attached or affixed to real property – and the definition of FF&E used in the Sale Guidelines is sufficiently broad to include signage.⁶

9. As attested to in the motion materials (including Monitor reports)⁷ and at the court hearings in respect of these matters, the ARIO, Liquidation Sale Approval Order and Sale Guidelines were extensively negotiated with, *inter alia*, the FILO Agent and landlords, including Cadillac Fairview. The FILO Agent – who is also the liquidator in respect of the liquidation conducted pursuant to the Liquidation Sale Approval Order and Sale Guidelines – consented to the ARIO, the Liquidation Sale Approval Order and the Sale Guidelines. The resulting liquidation sale generated recoveries in excess of the Applicants’ and the Monitor’s expectations.⁸

⁴ [Amended and Restated Initial Order](#) dated March 21, 2025, para. 10(a), p. 6.

⁵ [Liquidation Sale Approval Order](#) dated March 21, 2025 (“**LSAO**”), paras. 3, 5, pp. 2-3.

⁶ See [LSAO](#), Schedule A, pp. 11-12, paras. 8-9, which define FF&E to include all existing furniture, fixtures and equipment owned (i) fully by the Applicants, (ii) jointly by the Applicants and a third-party vendor or (iii) fully by a third-party vendor as agreed with the Applicants and with the consent of the Monitor, and only excludes “mechanical, electrical, plumbing, security, HVAC, fire suppression and fire alarm or sprinkler systems.”

⁷ [Second Report of the Monitor](#) dated April 22, 2025, p. 4, para. 1.6(c); [Third Report of the Monitor](#) dated May 9, 2025, p. 12, para. 4.1; Second Bewley Affidavit, para. 99, Affidavit of Ian Fredericks sworn July 8, 2025 (“**Fredericks Affidavit**”), FILO MR, Exhibit A, pp. 64-65, [D104-105](#).

⁸ Sixth Report of the Monitor dated July 14, 2025 (the “**Sixth Report**”), pp. 14-15, para 3.5, [D700-701](#).

10. The Monitor has been regularly reporting on the progress of FF&E removal (including signage removal).⁹ But it is only since July 8, 2025, when the FILO Agent came out in opposition to the Applicants and Pathlight, that the FILO Agent expressed objections regarding ongoing FF&E removal costs (which are a small part of its much broader concerns with its diminishing collateral).¹⁰

11. The Monitor's Seventh Report acknowledged that as of July 29, 2025, significant amounts of FF&E remained in leased premises after the Court-approved liquidation sale. The Monitor further reported that, at the insistence of the FILO Agent, the Monitor had paused signage removal.¹¹ The FILO Agent has not made clear what level of funding it supports for further FF&E removal, if any, although it has clearly objected to the Applicants' payment for signage removal.¹²

12. The FILO Agent originally served motion materials in respect of this motion on July 8, 2025. The FILO Agent's motion was scheduled to be heard on July 15, 2025. However, at that time the Court adjourned the hearing of this motion to August 28 and 29, 2025, to be heard concurrently with the Applicants' motion seeking approval of the APA and associated transactions (including the lease assignment).

13. After the motion was adjourned, the FILO Agent served an amended notice of motion on July 25, 2025, which among other things, added a head of relief seeking to amend paragraph 10 of

⁹ See *e.g.*, Seventh Report of the Monitor dated July 29, 2025 (“**Seventh Report**”), pp. 12-13, paras. 4.7-4.10, [D1104-1105](#); Sixth Report, pp. 29, paras. 5.23-5.24, [D715](#); Fifth Report of the Monitor dated June 10, 2025, pp. 12-13, paras. 3.3-3.4, [D659-660](#).

¹⁰ Fredericks Affidavit, paras. 8, 10, 81, FILO MR, pp. 11-12, 34, [D51-52](#), [D74](#).

¹¹ Seventh Report, pp. 12-13, paras. 4.7-4.10, [D1104-1105](#).

¹² Fredericks Affidavit, para. 81, FILO MR, p. 34, [D74](#).

the ARIO so that HBC immediately ceases to pay rent, and is not required to pay rent for the duration of any disclaimer notice period.

14. The FILO Agent's draft order also requires the Monitor (having enhanced powers) to cause the Applicants to comply with a budget approved in consultation with the FILO Agent and make only "necessary and appropriate" disbursements.¹³ Given the positions of the FILO Agent, Cadillac Fairview is concerned that such a budget will not include continued funding of some or all FF&E removal (including signage removal).

PART III – ISSUES

15. The issues that Cadillac Fairview seeks to address in respect of this motion are:

- (a) Should the Court eliminate the statutory and previously ordered requirements that HBC (i) continue to pay rent until such time as a lease is disclaimed in accordance with the CCAA; and (ii) pay rent during any statutory disclaimer notice period until the effective date of disclaimer?
- (b) Should the Court grant an order that will ultimately empower the FILO Agent to curtail or eliminate entirely the requirement that HBC remove at its cost FF&E (including signage)?

16. Cadillac Fairview submits that both questions should be answered in the negative.

¹³ Draft Order, paras. 4(a) and (e), 19, FILO MR, Tab 3, pp. 534-535, 538, [D575-576](#), [D579](#).

PART IV – LAW & ARGUMENT

Payment of post-filing rent is a fundamental ongoing obligation

17. It is well-established that there is an ongoing obligation of a debtor under CCAA protection to pay post-filing rent on a *per diem* basis upon filing and thereafter in accordance with the terms of its leases.¹⁴ Respectfully, the Court has no authority to order Cadillac Fairview to lease to the Applicants the properties under the CF Leases without being rightfully paid for them.¹⁵

18. In fact, it is such a fundamental obligation – and the law in this regard so unequivocally settled many years ago – that the Court’s own model order for CCAA proceedings requires payment of post-filing rent. The Ontario Model CCAA Order, which was developed in accordance with prevailing jurisprudence, contains the following clauses:

9. THIS COURT ORDERS that until a real property lease is disclaimed [or resiliated] in accordance with the CCAA, **the Applicant shall pay all amounts constituting rent or payable as rent under real property leases** (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

...

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, **no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property** or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA. (emphasis added)

¹⁴ *Cosgrove-Moore Bindery Services Ltd (Re)*, [2000 CanLII 22377 \(ON SC\)](#) at para. 7.

¹⁵ See [Companies' Creditors Arrangement Act](#), RSC, 1985, c. C-36, s. [11.01\(a\)](#) [CCAA].

19. Paragraphs 9 and 18 of the Initial Order and paragraphs 10 and 23 of the ARIO are both consistent with the model CCAA order.

20. The FILO Agent consented to both the Initial Order and the ARIO. It would be highly inequitable and without legal basis for the Court to, at this stage of the Applicants' CCAA proceeding, negate its own prior Orders.

There is a statutory right to be paid rent during any disclaimer notice period

21. The FILO Agent also seeks an order that there be no rent paid during the 30-day notice period following any disclaimer of the Remaining Leases. There is neither lawful nor equitable basis for making such an order.

22. The CCAA permits an Applicant to disclaim a contract, subject to the requirements of section 32 of the CCAA. Section 32(1) requires that contract counterparties receive notice of disclaimer.¹⁶ Section 32(5)(a) of the CCAA provides that where such disclaimer is not contested, it becomes effective 30 days after notice is given. In other words, a contract remains binding on the debtor during the statutory 30-day notice period.

23. If a debtor could immediately cease performing its contract on the day it gives notice, the notice period would be meaningless, and the contract would for all intents and purposes have been disclaimed immediately. The CCAA does not permit this. It is a matter of basic fairness and balancing interests that Parliament required that contractual counterparties be given notice of a debtor's intention to cease performing a contract.

¹⁶ CCAA, s. [32\(1\)](#).

24. Should the Applicants disclaim a lease, it is well-settled law and practice that rent must be paid pursuant to the Lease until such time as the disclaimer becomes effective (*i.e.*, 30 days after notice is given where the disclaimer is not challenged). The model CCAA order, and the Initial Order and ARIO in this case, reflect this by requiring that rent be paid until disclaimed in accordance with the CCAA.

The FILO Agent cannot resile from terms it agreed to and were court-approved

25. As part of the proposed enhanced powers, the FILO Agent seeks for the Monitor to cause the Applicants to comply with a budget that will be set in consultation with the FILO Agent. Given the positions and views of the FILO Agent to date, Cadillac Fairview is concerned that the FILO Agent intends to use this mechanism to curtail or extinguish entirely FF&E removal (including signage removal).¹⁷

26. FF&E (including signage removal) was heavily negotiated by all parties, including the FILO Agent, as part of the Sales Guidelines. These Sale Guidelines were then approved by this Court. Having obtained the benefit of the ARIO and Liquidation Sale Approval Order and the Sale Guidelines – including greater recoveries than expected from the liquidation sale – the FILO Agent cannot now resile from those orders and agreements.¹⁸

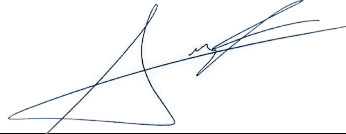
PART V - CONCLUSION

27. For the reasons set out above, Cadillac Fairview respectfully requests that this Court deny the portion of relief being sought by the FILO Agent as set out in paragraph 2.

¹⁷ See *e.g.*, Fredericks Affidavit, para. 81, FILO MR, p. 34, [D74](#).

¹⁸ *Re Target Canada Co.*, [2016 ONSC 316](#) at paras. [78-82](#).

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



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SCHEDULE “A”


LIST OF AUTHORITIES

1. [*Cosgrove-Moore Bindery Services Ltd \(Re\)*](#), 2000 CanLII 22377 (ON SC)
2. [*Re Target Canada Co.*](#), 2016 ONSC 316

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](#)

Rights of suppliers

11.01 No order made under section 11 or 11.02 has the effect of

- (a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or
- (b) requiring the further advance of money or credit.

Disclaimer or resiliation of agreements

32 (1) Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.

Date of disclaimer or resiliation

(5) An agreement is disclaimed or resiliated

- (a) if no application is made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1);
- (b) if the court dismisses the application made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1) or on any later day fixed by the court; or
- (c) if the court orders that the agreement is disclaimed or resiliated under subsection (3), on the day that is 30 days after the day on which the company gives notice or on any later day fixed by the court.

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

Court File No. CV-25-0073861300CL

**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.**

**ONTARIO
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Proceeding commenced at TORONTO

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