

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI,
HBC CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2
INC., HBC BAY HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY
HOLDINGS ULC, HBC CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2
LP INC., HBC HOLDINGS GP INC., SNOSPMIS LIMITED, 2472596 ONTARIO
INC., and 2472598 ONTARIO INC.**

(the "Applicants")

**WRITTEN SUBMISSIONS OF THE JV MORTGAGE LENDERS
(Comeback Motion returnable March 17, 2025)**

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**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 (“CCAA”)**

**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
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(the “Applicants”)

**WRITTEN SUBMISSIONS OF THE JV MORTGAGE LENDERS,
(Comeback Motion returnable March 17, 2025)**

1. Each of BMO, Desjardins, TD and Canada Life (each as defined below and, collectively, the “**JV Mortgage Lenders**”): (i) support the motion brought by RioCan Real Estate Investment Trust (“**RioCan**”) dated March 14, 2025; and (ii) object to the relief sought by the Applicants in the proposed Amended and Restated Initial Order (“**ARIO**”), Lease Monetization Process and Sale and Investment Solicitation Process (“**SISP**”) to the extent it purports to:

- (a) allow Hudson’s Bay ULC (“**HBC**”) to continue to use premises that it leases from certain JV Entities (defined below) without paying the rent duly owing under lease agreements with the JV Entities, contrary to section 11.01(a) of the CCAA (the “**Rent Suspension**”);
- (b) prohibit the JV Entities from paying the JV Mortgage Lenders in respect of the principal, interest and other amounts duly owing to them, irrespective of

whether the JV Entities have the ability make such payments from third party rents or other sources (the “**Payment Bar**”); and

- (c) market for sale leases and real property owned by the JV Entities in respect of which the JV Mortgage Lenders have a first priority charge, without the consent of the JV Mortgage Lenders and without providing consent and consultation rights to such lenders (and instead providing such rights to other parties (such as the DIP Lender) whose charge does not extend to such assets) (the “**Non-Applicant Party Sale Provisions**” and, together with the Rent Suspension and Payment Bar, the “**Disputed Provisions**”).

2. The JV Mortgage Lenders have provided suggested language to HBC counsel to address these points and to provide greater clarity that (a) the Court-ordered Charges do not attach to the JV Property (defined below) and that (b) the head leases held by a JV Entity cannot be disclaimed. The proposed revisions are attached as **Schedule “A”**.

3. The JV Mortgage Lenders were given no prior notice of the initial application and did not receive copies of the SISP or Lease Monetization Order until after business hours on the business day prior to the comeback hearing.¹ It is apparent that the interests of the JV Mortgage Lenders have not been properly considered in this process to date.

4. Instead, while the Applicants have agreed to pay rent to most landlords, as is customary and pursuant to the CCAA requirements, the Applicants purport to use the

¹ Affidavit of Steven MacKinnon, sworn March 16, 2025 at para. 11 (“**BMO Affidavit**”), Responding Record of the JV Mortgage Lenders dated March 16, 2025 (“**Responding Record**”), Tab 1; Affidavit of Benjamin Chua, sworn March 16, 2025 at para. 14 (“**Desjardins Affidavit**”), Responding Record, Tab 2; Affidavit of Survir Haripersad, sworn March 16, 2025 at para. 14 (“**TD and Canada Life Affidavit**”), Responding Record, Tab 3.

collateral of the JV Mortgage Lenders without payment. They also seek to market such collateral for sale, all while purporting to stay the rights of the JV Mortgage Lenders to take steps against the non-Applicant borrowers. These steps are unfair and inappropriate and are prejudicial to the JV Mortgage Lenders.

The JV Mortgage Lenders

5. Each of the JV Mortgage Lenders advanced funds to a JV Entity. In exchange for advancing funds to the JV Entity, each JV Mortgage Lender received first-ranking security in either: property owned by the JV Entity, property co-owned by the JV Entity and/or property leased by the JV Entity (the “**JV Property**”).²

6. The following chart describes the interests of the various JV Mortgage Lenders and the property secured by first-ranking security registered in favour of the JV Mortgage Lenders:³

JV Mortgage Lender	Borrower (collectively the “JV Entities”) and Borrower Ownership	Loan Amount	Secured Property Owned by JV Entity	Generates Third Party Rent
Bank of Montreal, as administrative agent, BMO Capital Markets and Canadian Imperial Bank of Commerce, as co-lead arrangers and joint bookrunners,	RioCan-HBC Limited Partnership (the “ JV ”) Ownership: RioCan – 21.9864%	\$105,000,000	1. Freehold interest in the property municipally known as 200-8th Avenue SW, Calgary, Alberta (the “Downtown Calgary Property”);	-

² TD and Canada Life Affidavit at para. 5; BMO Affidavit at para. 5; Desjardins Affidavit at paras. 5-6.

³ TD and Canada Life Affidavit at paras. 5,7,9; BMO Affidavit at para. 5; Desjardins Affidavit at paras. 5-6.

JV Mortgage Lender	Borrower (collectively the “JV Entities”) and Borrower Ownership	Loan Amount	Secured Property Owned by JV Entity	Generates Third Party Rent
Bank of Montreal, Canadian Imperial Bank of Commerce, Bank of China (Canada), SBI Canada Bank, and Hudson’s Bay Company Pension Plan, as lenders (“BMO”)	HBC - 78.0136%		(ii) Leasehold interest in the property municipally known as 800 Des Promenades Boulevard, Saint-Bruno-de-Montarville, Quebec (the “St. Bruno Property”); and (iii) Leasehold interest in the property municipally known as 3045 Le Carrefour Boulevard, Laval, Quebec (the “Carrefour Laval Property”)	
Desjardins Financial Security Life Assurance Company (“Desjardins”)	Rio-Can-HBC (Ottawa) Holdings Inc. as nominee for RioCan-HBC (Ottawa) Limited Partnership, a subsidiary of the JV Ownership: RioCan – 21.9864% HBC - 78.0136%	\$56,525,000	1. Freehold interest in two parcels of land located in Frieman Mall at 73, 85 and 87 Rideau Street, Ottawa, Ontario (“Ottawa Store”) 2. Leasehold interest in one parcel of land located at the Ottawa Store	-
Desjardins	Co-Owners 50%	\$110,000,000	Freehold interest in Georgian Mall, 509	Yes, HBC rent is

JV Mortgage Lender	Borrower (collectively the “JV Entities”) and Borrower Ownership	Loan Amount	Secured Property Owned by JV Entity	Generates Third Party Rent
	TwentyTwo LP (affiliate of RioCan) 50% JV Ownership: RioCan (directly and through its affiliate)– 60.9932% HBC – 39.0068%		Bayfield Street, Barrie, Ontario (“ Georgian Mall ”)	only approx. 1.5% of total rent
Co-Lenders TD Bank (“ TD ”)(50%) The Canada Life Assurance Company (“ Canada Life ”) (50%)	Co-Owners 50% RioCan 50% JV Ownership: RioCan – 60.9932% HBC – 39.0068%	\$95,000,000	Freehold interest in Oakville Place shopping centre, 240 Leighland Avenue, Oakville, Ontario (“ Oakville Place ”)	Yes

7. The JV Mortgage Lenders collectively advanced loans to the JV Entities in the aggregate principal amount of approximately \$359 million and hold first-priority security in

relation to six properties comprised of two freehold interests and two co-ownership interests that are leased to HBC and two leasehold interests that are subleased to HBC.⁴

Rent Suspension Inappropriate and Prejudicial

8. At its highest, HBC has a 78.0136% interest in the JV Property through its interest in a JV Entity. In other cases, HBC has merely a 39.01% interest in the JV Property that is co-owned by the JV Entity and another party. In no case does HBC wholly own the JV Property subject to the JV Mortgage Lenders' security.⁵

9. Instead, HBC leases premises from a JV Entity pursuant to leases with a JV Entity in respect of each JV Property (each an "**HBC Lease**").⁶

10. HBC is responsible to pay rent for occupying the leased premises pursuant to each HBC Lease, as they are required to do with any other leased premises.

11. The JV Mortgage Lenders relied on these facts, including that they were advancing funds to the JV Entity and not HBC itself, and that HBC was contractually required to pay rent pursuant to the HBC Leases.⁷

12. The JV Mortgage Lenders support and rely on the submissions of RioCan that the Rent Suspension is improper and unprecedented, and contrary to the CCAA. Among other things, the JV Mortgage Lenders do not accept that the facts of this case are distinguishable

⁴ TD and Canada Life Affidavit at para. 5; BMO Affidavit at para. 5; Desjardins Affidavit at paras. 5-6.

⁵ TD and Canada Life Affidavit at paras. 5,9; BMO Affidavit at paras. 5,7; Desjardins Affidavit at paras. 5-6.

⁶ TD and Canada Life Affidavit at para. 8; BMO Affidavit at para. 6; Desjardins Affidavit at para. 8.

⁷ TD and Canada Life Affidavit at para. 10; BMO Affidavit at para. 6; Desjardins Affidavit at para. 8.

from existing case law that has repeatedly required debtor companies to pay for post-filing rent, including *Quest University Canada (Re)*.⁸

13. The JV Mortgage Lenders also do not accept the remarkable submission made by the Applicants in support of their *ex parte* application that the continued payment of rent by HBC pursuant to the HBC Leases would result in “a potential windfall recovery” to the JV Mortgage Lenders.⁹ To the contrary, the JV Mortgage Lenders are in the same legal position as financiers of HBC’s various other landlords such as Oxford, Primaris and others. HBC continuing to pay post-filing rent – as required by section 11.01(a) of the CCAA – to its landlords and those landlords servicing their debt obligations to their respective financiers does not represent a “windfall” to those financiers, it simply represents the ordinary consequences of a debtor’s continued post-filing use of real property.¹⁰

14. Instead, it is the Rent Suspension that would result in serious prejudice to the JV Mortgage Lenders and an unjustified benefit to the secured creditors of HBC. The Rent Suspension would unfairly permit HBC to continue to use the JV Property to liquidate inventory and other assets without paying occupation rent.

15. In essence, the JV Mortgage Lenders would be forced to fund the liquidation of the broader HBC business for the benefit of HBC’s other secured lenders. This is particularly unfair given that the JV Mortgage Lenders contracted for first-priority security in respect of

⁸ *Quest University Canada (Re)*, 2020 BCSC 921 at [paras. 99-103](#) [*Quest*]. See also, *Air Canada, Re*, 2004 CarswellOnt 643 (SC), [2004] O.J. No. 576, at paras. 6, 12; *Boutiques San Francisco Inc., Re*, 2004 CanLII 16649 (QC CS) at [paras. 103-104](#); *Cosgrove-Moore Bindery Services Ltd (Re)*, 2000 CanLII 22377 (ON SC) at [paras. 1-7](#).

⁹ Factum of the Applicants dated March 7, 2025 at para. 36.

¹⁰ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, [s 11.01](#). [CCAA]

property in which HBC only has an indirect interest, and relied on that separation in making their respective advances.

Payment Bar Inappropriate and Prejudicial

16. The proposed ARIO also purports to prevent the Non-Applicant Stay Parties from paying principal, interest, and other amounts to the JV Mortgage Lenders when due. This would apply even if the Non-Applicant Stay Party has funds to make such payments, including funds from parties other than HBC.¹¹

17. As set out above, in some cases (Georgian Mall and Oakville Place), the HBC rent represents a fraction of the rent paid to the JV Entity since the JV Property is also leased to other tenants.¹²

18. While HBC has made an argument that it should not be required to pay rent to the JV Entities, the Applicants have no basis to stop payments from a non-Applicant entity (the JV Entity) to its third party secured creditors.

Lease Monetization Process and SISP Improperly Include JV Property

19. The Applicants have also included property of the JV Entities in their proposed sales processes. In particular, the Lease Monetization Process includes head leases between the JV Entity and a third party (to which HBC is not a party in a capacity other than, at most,

¹¹ Draft Amended and Restated Order at para. 10, Tab 3 of the Applicants' Motion Record dated March 14, 2025.

¹² TD and Canada Life Affidavit at para.18; Desjardins Affidavit at para. 7.

nominee or bare trustee);¹³ and the SISP includes real estate owned or co-owned by a JV Entity.¹⁴

20. It is not appropriate to sell assets that do not form part of the Property of the Applicants in a CCAA sale process. To the extent such assets are included, it must be clear that it is the relevant JV Mortgage Lender in respect of any such property – and not other lenders to HBC such as the DIP Lender – which has consent and consultation rights. Moreover, it must be clear that no sale of such property can occur without the consent of the relevant JV Mortgage Lender.

Conclusion

21. The Disputed Provisions attempt to ignore the separateness of the JV Entities from HBC, ignore the HBC Leases duly entered by HBC in respect of the JV Properties and ignore fundamental precepts of property law and the requirements of the CCAA.

22. These facts cannot be ignored. The JV Mortgage Lenders relied upon them and would be significantly prejudiced by the imposition of the Disputed Provisions.

¹³ Affidavit of Jennifer Bewley dated March 14, 2025 at para. 116, Tab 2 of the Applicants' Motion Record dated March 14, 2025; Lease Monetization Order, Tab 7 of the Applicants' Motion Record dated March 14, 2025.

¹⁴ Affidavit of Jennifer Bewley dated March 14, 2025 at para. 134, Tab 2 of the Applicants' Motion Record dated March 14, 2025; SISP Order, Tab 8 of the Applicants' Motion Record dated March 14, 2025.

23. The Disputed Provisions should be struck and the RioCan motion should be allowed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of March, 2025.

A handwritten signature in black ink, appearing to be 'Z. O.', written above a horizontal line.

McCarthy Tétrault LLP

Lawyers for the JV Mortgage Lenders

Schedule "A"

ARIO

5. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). For greater certainty, Property does not include the assets, undertakings or properties of any Non-Applicant Stay Party, including the interests of any Non-Applicant Stay Party in any head lease held by RioCan- Hudson's Bay JV, YSS 1, YSS 2, RioCan-HBC (Ottawa) Holdings Inc., RioCan-HBC (Ottawa) GP, Inc., or RioCan-HBC (Ottawa) Limited Partnership (a "JV Head Lease") or any property held by an Applicant as nominee or bare trustee for a Non-Applicant Stay Party or other Person. Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants shall each be authorized and empowered to continue to retain and employ their employees, contractors, advisors, consultants, agents, experts, appraisers, valuers, brokers, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
10. **THIS COURT ORDERS** that until a real property lease, including a sublease, and related documentation (~~each a "Lease"~~) to which any Applicant is a party (directly and not as nominee or bare trustee)(each a "Lease") is disclaimed in accordance with the CCAA or otherwise consensually terminated, such Applicant shall pay all amounts constituting rent or payable as rent under Leases (including, for greater certainty, common area maintenance charges, utilities and any other amounts payable to the applicable landlord (each a "**Landlord**") under such Lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicants or the making of this Order) 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 the Initial 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 the Initial Order shall also be paid. ~~Without prejudice to the rights and claims of the Non-Applicant Stay Parties, any Rent payable by Hudson's Bay to RioCan Hudson's Bay JV, YSS 1, or YSS 2, under a Lease shall be stayed and suspended pending further Order of this Court, provided that Hudson's Bay shall be required to pay to RioCan Hudson's Bay JV, YSS 1, or YSS 2, as applicable, that amount of Rent payable by RioCan Hudson's Bay JV, YSS 1, or YSS 2, as applicable, to its Landlord under the JV Head Lease until such JV Head Lease is disclaimed in accordance with the CCAA or otherwise consensually terminated.~~

12. **THIS COURT ORDERS** that notwithstanding paragraph 10, any Rent that was required to be paid to a Landlord under a Lease (~~which for greater certainty, excludes any Rent from Hudson's Bay to RioCan Hudson's Bay JV, YSS 1, or YSS 2, as applicable~~) that was not paid on March 15, 2025, will be paid on or before March 19, 2025.

13. **THIS COURT ORDERS** that, except as specifically permitted herein, or as provided for in the A&R DIP Agreement and the DIP Budget, Hudson's Bay Canada is hereby directed, until further Order of this Court:

- a. to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the ~~Hudson's Bay Canada entities~~ Applicants to any of their creditors as of the date of the Initial Order except as expressly provided for in the DIP Budget; For greater certainty, nothing in this order prevents any payment by a Non-Applicant Stay Party to its pre-filing secured lenders (collectively, the "Non-Applicant Secured Creditors"), including in respect of principal and interest, in the ordinary course of business;
- b. to grant no security interests, trusts, liens, mortgages, charges or encumbrances upon or in respect of any of Hudson's Bay Canada's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof ("**Hudson's Bay Canada's Property**"); ~~and~~
- c. to not grant credit or incur liabilities except in the ordinary course of the Business; and
- d. in respect of each Non-Applicant Stay Party, to make no distributions, payments or transfers of any kind except to (i) Non-Applicant Secured Creditor(s) of such Non-Applicant Stay Party consistent with paragraph 13(a), (ii) arm's length creditors of such Non-Applicant Stay Party in the ordinary course of business,

and (iii) other creditors of such Non-Applicant Stay Party with the prior written consent of the relevant Non-Applicant Secured Creditor(s) of such Non-Applicant Stay Party.

14. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:
- a. in addition to any liquidation conducted pursuant to the Liquidation Solicitation Process, permanently or temporarily cease, downsize or shut down any of their businesses or operations, and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1,000,000 in the aggregate;
 - b. vacate, abandon, or quit the whole but not part of any leased premises and/or disclaim any Lease, and any ancillary agreements relating to any leased premises For greater certainty, no JV Head Lease can be disclaimed or repudiated without the consent of the relevant Non-Applicant Secured Creditor;

...

Lease Monetization Process

34. Nothing in the Lease Monetization Process or the Lease Monetization Order acknowledges or declares that the interests in the Leases being marketed within this Lease Monetization Process are capable of being transferred by the Applicants or the Non-Applicant Stay Parties. For clarity, all parties' ability to challenge the Applicants' and Non-Applicant Stay Parties' ability to transfer any Leases are expressly preserved and not derogated from (the "Reservation of Rights").

35. In respect of any JV Head Lease (as defined in the Initial Order) and without detracting from the Reservation of Rights and any rights RioCan and/or its affiliates may have in relation to such JV Head Lease (i) no bid shall be considered a Qualified Bid or Landlord Qualified Bid in respect of any JV Head Lease without the prior written consent of the relevant Non-Applicant Secured Creditor in respect of such JV Head Lease, and (ii) all consent and consultation rights provided to the DIP Agent and/or Pathlight Agent in this Lease Monetization Process shall instead be provided to the relevant Non-Applicant Secured Lender (as defined in the Initial Order) in respect of such JV Head Lease to the exclusion of the DIP Agent and Pathlight Agent.

Sale and Investor Solicitation Process

Approvals

31. For the avoidance of doubt and except as provided in paragraph 32 hereof, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law, the DIP Term Sheet or any other Order of the Court in order to implement a Successful Bid.

32. Without detracting from the Reservation of Rights (defined below) and any rights which RioCan and/or its affiliates may have

- a. no bid shall be considered a Final Qualified Bid in respect of any Property (as defined in the SISP) of a Non-Applicant Stay Party without the prior written consent of the relevant Non-Applicant Secured Creditor (as defined in the Amended and Restated Initial Order) in respect of such Property; and
- b. all consent and consultation rights provided to the DIP Agent and/or Pathlight Agent in this SISP in respect of any Property (as defined in the SISP) of a Non-Applicant Stay Party shall instead be provided to the relevant Non-Applicant Secured Creditor(s) of the Non-Applicant Stay Party in respect of such Business or Property, to the exclusion of the DIP Agent and Pathlight Agent.

33. Nothing in the SISP acknowledges or declares that the interests in the Business or Property (each as defined in the SISP) being marketed within this SISP are capable of being transferred by the Applicants or the Non-Applicant Stay Parties. For clarity, all parties' ability to challenge the Applicants' and Non-Applicant Stay Parties' ability to transfer any Business or Property (each as defined in the SISP) are expressly preserved and not derogated from (the "Reservation of Rights").

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**WRITTEN SUBMISSIONS OF
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(Comeback Hearing returnable
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