

**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 **EXPRESS FASHION APPAREL CANADA INC.**  
and **EXPRESS CANADA GC GP, INC.**

**FIRST REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.**

**MAY 8, 2017**

## **TABLE OF CONTENTS**

---

1.0	INTRODUCTION .....	1
2.0	TERMS OF REFERENCE AND DISCLAIMER .....	5
3.0	LIQUIDATION CONSULTANT SOLICITATION PROCESS.....	6
4.0	PROPOSED CONSULTING AGREEMENT & SALE GUIDELINES .....	7
5.0	PROPOSED SALE PROCESS.....	10
6.0	MONITOR’S RECOMMENDATIONS.....	11

## 1.0 INTRODUCTION

- 1.1 On May 4, 2017 (the “**Filing Date**”), Express Fashion Apparel Canada Inc. (“**Express Canada**”) and Express Canada GC GP, Inc. (collectively, the “**Applicants**”) applied for and were granted protection by this Court under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant to an Order of this Court dated May 4, 2017 (the “**Initial Order**”), these CCAA proceedings (the “**CCAA Proceedings**”) were commenced and the proposed monitor Alvarez & Marsal Canada Inc. was appointed as monitor of the Applicants in the CCAA Proceedings (in such capacity, the “**Monitor**”).
- 1.2 Pursuant to the Initial Order, the Stay (defined below) and other benefits of the Initial Order were extended to Express Canada GC, LP (“**Express Canada LP**” and together with the Applicants, the “**Express Canada Entities**”). Express Canada LP is wholly owned by the Applicants and as described in the Pre-Filing Report (defined below) performs functions integral to the Applicants’ business.
- 1.3 In connection with the Applicants’ application for protection under the CCAA, Alvarez & Marsal Canada Inc. provided this Court with a pre-filing report (the “**Pre-Filing Report**”) dated May 3, 2017. The Pre-Filing Report, Application Record, Initial Order and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at [www.alvarezandmarsal.com/ExpressCanada](http://www.alvarezandmarsal.com/ExpressCanada).
- 1.4 The Initial Order, among other things:
- (i) granted a stay of proceedings (the “**Stay**”) up to and including June 3, 2017 in favour of the Express Canada Entities;

- (ii) approved the employee retention plan;
- (iii) provided the Express Canada Entities with the ability, but not the requirement, to pay, among other things, the following expenses whether incurred prior to, on or after the Initial Order to the extent that such expenses are incurred and payable by the Express Canada Entities:
  - (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental and similar benefit plans or arrangements), amounts owing under the Credit Card (defined in the Pre-Filing Report), vacation pay and expenses payable on or after the date of the Initial Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll processing expenses;
  - (b) all outstanding or future amounts owing in respect of existing return policies, refunds, discounts or other amounts on account of similar customer programs or obligations;
  - (c) all outstanding or future amounts related to honouring gift cards issued before or after the date of the Initial Order;
  - (d) the fees and disbursements of any Assistants (defined in the Initial Order) retained or employed by the Express Canada Entities at their standard rates and charges;

- (e) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Express Canada Entities prior to the date of the Initial Order by:
  - (A) providers of credit, debit and gift card processing related services;
  - (B) logistics or supply chain providers, including customs brokers and freight forwarders and security and armoured truck carriers; and
  - (C) other third party suppliers up to a maximum aggregate amount of \$50,000, if, in the opinion of the Express Canada Entities, the supplier is critical to the Orderly Wind-down (defined in the Pre-Filing Report);
  
- (iv) provided the Express Canada Entities with the ability to proceed with the Orderly Wind-down, which, among other things, authorizes the Express Canada Entities to:
  - (a) permanently or temporarily cease, downsize or shut down any of the Express Canada Entities' respective businesses or operations;
  - (b) terminate the employment of such of Express Canada's employees or temporarily lay off such employees as Express Canada deems appropriate;
  - (c) pursue all offers for sale of material parts of the Business or Property (each as defined in the Initial Order), in whole or part, subject to prior

approval of this Court being obtained before any sale (except as otherwise permitted by the Initial Order);

- (d) apply to this Court for such approval, vesting or other Orders as may be necessary to consummate sale transactions for all or any part of the Property, including, without limitation, a consulting or liquidation agreement concerning the liquidation of inventory (“**Merchandise**”), furniture, fixtures, and equipment (“**FF&E**”) forming part of the Property, and any related relief; and
- (v) approved the Administration Charge and Directors’ Charge (each defined in the Initial Order) in the amounts and relative priority as set out in the Pre-Filing Report.

1.5 The purpose of this First Report of the Monitor (the “**First Report**”) is to provide this Court with:

- (i) Information regarding the following:
  - (a) the liquidation agent solicitation process;
  - (b) the Applicants’ motion for an order (the “**Sale Approval Order**”), among other things, (1) approving the Consulting Agreement, the Sale Guidelines (each defined below) and the transactions contemplated thereunder, and (2) authorizing Express Canada, in consultation with the Consultant, to conduct a sale (the “**Sale**”) of all of Express Canada’s Merchandise and

FF&E in accordance with the Sale Approval Order, the Consulting Agreement and the Sale Guidelines; and

- (ii) the Monitor's conclusions and recommendations in connection with the foregoing.

## **2.0 TERMS OF REFERENCE AND DISCLAIMER**

2.1 In preparing this Report, the Monitor has been provided with and has relied upon unaudited financial information and the books and records prepared by the Express Canada Entities and Express, LLC (collectively, the "**Express Entities**") and has held discussions with the Express Entities' management and the Express Canada Entities' legal counsel (collectively, the "**Information**").

2.2 Except as otherwise described in this Report, the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook* (the "**CPA Handbook**") and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.

2.3 Future oriented financial information referred to in this Report was prepared based on the Express Entities' estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable,

the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

2.4 This Report should be read in conjunction with the Affidavit of Todd Painter, the President and sole director of each of the Applicants, sworn May 4, 2017 (the “**Second Painter Affidavit**”), filed in connection with the Applicants’ motion for the Sale Approval Order (the “**Sale Approval Motion**”).

2.5 Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

### **3.0 LIQUIDATION CONSULTANT SOLICITATION PROCESS**

3.1 As described in the Pre-Filing Report, Alvarez & Marsal Canada ULC (“**A&M**”) was originally engaged to act as a consultant to Express Canada.

3.2 Prior to the Filing Date, the Express Canada Entities contacted two third party liquidators (the “**Potential Bidders**”) identified in consultation with their counsel and A&M, as having the requisite expertise, qualifications and capability to implement a retail liquidation of Express Canada’s Merchandise and FF&E. Such Potential Bidders were requested to submit proposals in respect of the liquidation contemplated as part of the Orderly Wind-down.

3.3 In order to facilitate and assist the Potential Bidders in conducting necessary due diligence in order to prepare and submit proposals: (i) A&M established an electronic data room (the “**Data Room**”) which was populated with information relevant to the proposed Orderly Wind-down, including detailed inventory, operations and financial



reports; and (ii) each of the Potential Bidders were given the opportunity to request further information and conduct visits to Express Canada's stores.

3.4 Following execution of non-disclosure agreements, each of the Potential Bidders: (i) were granted access to the Data Room; (ii) requested additional information and clarification which was provided to them by Express Canada, with the assistance of A&M; and (iii) attended several retail stores, to enable them to better understand Express Canada's Merchandise, FF&E and store operations.

3.5 The Potential Bidders were given a deadline to submit either a consulting fee proposal or an equity proposal (as each is described in greater detail in the Second Painter Affidavit). Each of the Potential Bidders submitted consulting fee proposals before such deadline.

3.6 After review of the proposals, Express Canada, in consultation with its legal counsel and A&M, selected the proposal from Merchant Retail Solutions ULC (an affiliate of Hilco Merchant Resources, LLC) (the "**Consultant**") as the more favourable proposal.

#### **4.0 PROPOSED CONSULTING AGREEMENT & SALE GUIDELINES**

4.1 Subject to the approval of the Court, on May 3, 2017, the Consultant and Express Canada entered into a consulting agreement (the "**Consulting Agreement**"), a copy of which is attached as Exhibit "C" to the Second Painter Affidavit. The Consulting Agreement is summarized in the table below (capitalized terms used in this section of the First Report but not otherwise defined in this First Report are as defined in the Consulting Agreement). At a high level, the Consulting Agreement provides that:

- (i) the Consultant will serve as the exclusive consultant for the purpose of conducting a sale of Express Canada’s Merchandise and FF&E;
- (ii) the Sale will commence no later than May 11, 2017 and will conclude no later than June 15, 2017 (however, the Consultant and Express Canada, in consultation with the Monitor, may agree to terminate the Sale at any store location prior to June 15, 2017); and
- (iii) all sales will be “final” with no returns allowed, unless Express Canada directs otherwise.

<b>Summary of Terms of Consulting Agreement &amp; Sale Guidelines</b>	
<b>Exclusive Consultant</b>	<ul style="list-style-type: none"> <li>• The Consultant will act as the exclusive Consultant of Express Canada for the purpose of conducting the Sale.</li> </ul>
<b>Timing</b>	<ul style="list-style-type: none"> <li>• The Consulting Agreement is conditional upon Express Canada having obtained an Order of this Court by no later than May 10, 2017 approving the Consulting Agreement and the conduct of the Sale.</li> <li>• Following Court approval of the Consulting Agreement (if granted), the Sale will commence on May 11, 2017.</li> <li>• The Sale will end no later than June 15, 2017 (the “<b>Sale Termination Date</b>”), provided, however, that the Consultant and Express Canada may, in consultation with the Monitor, agree to terminate the Sale at any store location prior to the Sale Termination Date.</li> </ul>
<b>Sales</b>	<ul style="list-style-type: none"> <li>• All sales will be “final” with no returns allowed, unless Express Canada directs otherwise; however, returns of Merchandise bought prior to the commencement of the Sale will be allowed during the Sale.</li> </ul>
<b>Consultant Fees &amp; Expenses</b>	<ul style="list-style-type: none"> <li>• On the sale of Merchandise, the Consultant will earn a fee equal to 1.75% of gross proceeds, net of applicable HST/GST.</li> <li>• On the sale of FF&amp;E, the Consultant will earn a commission equal to 17.50% of gross proceeds, net of applicable HST/GST.</li> <li>• Express Canada will reimburse the Consultant for its fees and expenses, pursuant to an approved budget (the “<b>Expense Budget</b>”), including supervision and related costs and advertising costs. The Expense Budget is included as Exhibit C to the Consulting Agreement.</li> </ul>
<b>Services Provided By Consultant</b>	<ul style="list-style-type: none"> <li>• Provide qualified supervisors to oversee the management of the stores and the Sale.</li> <li>• Determine appropriate advertising, discounts, and staffing levels, oversee display of Merchandise, and assist Express Canada in connection with managing and controlling loss</li> </ul>

<b>Summary of Terms of Consulting Agreement &amp; Sale Guidelines</b>	
	<p>prevention and employee relation matters.</p> <ul style="list-style-type: none"> <li>• Other related services deemed necessary or appropriate by Express Canada and the Consultant.</li> </ul>
<b>Sale Guidelines</b>	<ul style="list-style-type: none"> <li>• The Consulting Agreement is also subject to the Sale Guidelines, provide, among other things: <ul style="list-style-type: none"> <li>(a) except as otherwise set out in any Court Order, written agreement between Express Canada and the Landlord or the Sale Guidelines, the Sale will be conducted in accordance with the terms of the applicable Leases;</li> <li>(b) the Sale will be conducted so that the locations remain open during the normal hours of operation provided for in the applicable Leases;</li> <li>(c) all display and hanging signs used in connection with the Sale will be professionally produced and hung in a professional manner and there will be no handwritten signs (other than “you pay” or “topper” signs, which may be used). No signs will advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale;</li> <li>(d) the Consultant will make certain commercially reasonable efforts to arrange with each Landlord, a walk-through with each applicable Landlord to identify the FF&amp;E subject to the Sale and if a Landlord disputes the Consultant’s entitlement to sell or remove any FF&amp;E under the applicable Lease, such FF&amp;E shall remain on the premises and be dealt with as agreed to between Express Canada, the Consultant and such Landlord, or by further Order of the Court upon application by Express Canada on at least two days’ notice to such Landlord and the Monitor;</li> <li>(e) the purchasers of FF&amp;E will only be permitted to remove FF&amp;E through the back shipping areas after regular store business hours or through the front door during regular store business hours if the FF&amp;E can fit in a shopping bag, with the Landlords’ supervision as required by the Leases;</li> <li>(f) the Consultant will not conduct any auctions of Merchandise or FF&amp;E at any of the locations; and</li> <li>(g) at the conclusion of the Sale in each store, the Consultant and Express Canada will arrange that the premises are in “broom-swept” and clean condition.</li> </ul> </li> </ul>

4.2 The Consulting Agreement was negotiated and finalized by Express Canada in consultation with A&M. In negotiating the terms of the Consulting Agreement, Express Canada, in consultation with A&M, was cognizant of the interests of stakeholders, in particular Express Canada’s Landlords.

4.3 The Monitor understands that counsel for Express Canada has met with counsel to all but three of the Landlords to discuss and attempt to consensually resolve any concerns that

the Landlords may have regarding the Sale Approval Order and Sale Guidelines. The Monitor is advised that comments from such Landlords' counsel were incorporated in the Sale Approval Order and Sale Guidelines.

- 4.4 The Monitor recommends that the Court approve the Consulting Agreement and the Sale Guidelines as: (i) the Consultant has extensive experience in conducting retail liquidations, including large-scale retail liquidations in Canada, and has experience working with these Landlords; (ii) the Consultant was the successful bidder in the solicitation process; (iii) the Consulting Agreement and the Sale Guidelines take into account the interests of stakeholders, including Express Canada's Landlords; and (iv) the Consulting Agreement and the Sale Guidelines are anticipated to provide for the best realization during the Orderly Wind-down for the benefit of stakeholders, both by maximizing proceeds and minimizing costs, on a timely basis.

## **5.0 PROPOSED SALE PROCESS**

- 5.1 As set out in the Pre-Filing Report, the Monitor is of the view that an immediate cessation of operations would result in value destruction relative to the proposed Sale that is contemplated to take place as part of the Orderly Wind-down. Accordingly, the Monitor recommends that the Court approve the Sale in accordance with the Sale Approval Order, the Consulting Agreement and the Sale Guidelines.

**6.0 MONITOR'S RECOMMENDATIONS**

6.1 For the reasons set out in this First Report, the Monitor is of the view that the relief requested by the Applicants is fair and reasonable and respectfully recommends that this Court grant the Sale Approval Order.

All of which is respectfully submitted to this Court this 8<sup>th</sup> day of May, 2017.

**Alvarez & Marsal Canada Inc., solely in its  
capacity as Monitor of Express Fashion Apparel  
Canada Inc. and Express Canada GC GP, Inc.,  
and not in its personal or corporate capacity**

Per:



\_\_\_\_\_  
Name: Douglas R. McIntosh

Title: President

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

Court File No.: CV-17-11785-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **EXPRESS  
FASHION APPAREL CANADA INC.** and **EXPRESS CANADA GC GP, INC.**

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

Proceeding Commenced at Toronto

**FIRST REPORT OF THE MONITOR  
May 8, 2017**

**BLAKE, CASSELS & GRAYDON LLP**  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Pamela Huff** – LSUC#: 27344V  
Tel: 416-863-2958  
Email: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)

**Linc Rogers** – LSUC#: 43562N  
Tel: 416-863-4168  
Email: [linc.rogers@blakes.com](mailto:linc.rogers@blakes.com)

**Aryo Shalviri** – LSUC#: 63867A  
Tel: 416-863-2962  
Fax: 416-863-2653  
Email: [aryo.shalviri@blakes.com](mailto:aryo.shalviri@blakes.com)

Lawyers for the Monitor