

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

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

APPLICANTS

**NOTICE OF MOTION**

**(Motion for Approval of Consulting Agreement and  
Sale Guidelines Returnable May 10, 2017)**

The applicants, Express Fashion Apparel Canada Inc. ("**Express Canada**") and Express Canada GC GP, Inc. (together with Express Canada, the "**Applicants**") will make a Motion to a Judge of the Superior Court of Justice (Commercial List) on May 10, 2017 at 10:00 a.m., or as soon after that time as the Motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard orally.

**THE MOTION IS FOR**

1. An Order substantially in the form attached at Tab 3 of the Motion Record, *inter alia*:
  - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with further service thereof;

- (b) approving, authorizing, and ratifying the Letter Agreement Governing Inventory Disposition entered into between Express Canada and Merchant Retail Solutions ULC (the “**Consultant**”) on May 3, 2017 (the “**Consulting Agreement**”), in the form attached as Exhibit “C” to the Affidavit of Todd Painter sworn May 4, 2017, including the sale guidelines attached as Schedule “A” to the proposed draft Order at Tab 3 of the Motion Record (the “**Sale Guidelines**”), and the transactions contemplated thereunder;
- (c) authorizing Express Canada, with the assistance of the Consultant, to conduct the sale of Express Canada’s inventory (“**Merchandise**”) and its furniture, fixtures, and equipment (collectively, “**FF&E**”) in accordance with the proposed draft Order at Tab 3 of the Motion Record, the Consulting Agreement, and the Sale Guidelines;
- (d) authorizing Express Canada to take any and all actions as may be necessary or desirable to implement the Consulting Agreement, including the Sale Guidelines, and each of the transactions contemplated therein, including to remit payments to the Consultant that become due to the Consultant under the Consulting Agreement;
- (e) ordering that the Consultant shall act solely as an independent consultant to Express Canada and that it shall not be liable for any claims against Express Canada other than as expressly provided in the Consulting Agreement or Sale Guidelines;
- (f) ordering that the claims of the Consultant pursuant to the Consulting Agreement shall not be compromised pursuant to any plan of compromise or arrangement (a “**Plan**”) involving the Applicants and Express Canada GC, LP (collectively, the

“**Express Canada Entities**”) and that the Consultant shall be treated as an unaffected creditor in these proceedings and under any Plan; and

2. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Express Canada Entities were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Order of the Superior Court of Justice (Commercial List) dated May 4, 2017;
2. The proposed Monitor of the Applicants, Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed in the Initial Order to act as the monitor in the CCAA proceeding (in that capacity, the “**Monitor**”);
3. Capitalized terms not otherwise defined herein have the meanings given to them in the Affidavit of Todd Painter sworn May 4, 2017;
4. Express Canada, with the assistance of A&M (prior to its appointment as Monitor) have engaged in a process to select an agent or consultant to conduct or consult on the liquidation of the Merchandise and FF&E located in the leased store premises described in Schedule “A” to the Consulting Agreement;
5. The process of selecting the Consultant was fair and reasonable;
6. The terms of the Consulting Agreement, the process for liquidating the Merchandise and FF&E, and the transactions contemplated under the Consulting Agreement and the Sale Guidelines are all fair and reasonable;

7. The Sale Guidelines were designed by the Express Canada Entities and the Consultant, in consultation with A&M (prior to its appointment as Monitor), and is expected to maximize the value realized from the liquidation of Express Canada's Merchandise and FF&E for the benefit of all stakeholders;
8. Engaging a professional liquidator to assist with the sale of the Merchandise and FF&E will produce better results than attempting to liquidate without professional assistance;
9. The approval of the Consulting Agreement, including the Sale Guidelines, is supported by the Monitor;
10. Section 11 of the CCAA;
11. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
12. Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

13. The Affidavit of Todd Painter sworn May 3, 2017 and the exhibits thereto;
14. The Affidavit of Todd Painter sworn May 4, 2017 and the exhibits thereto;
15. The First Report of the Monitor, to be filed;
16. The Initial Order dated May 4, 2017; and
17. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 5, 2017

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PROCEEDING COMMENCED AT TORONTO

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