Court File No. CV-15-10832-00CL

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 **TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA PHARMACY (SK) CORP.,** and **TARGET CANADA PROPERTY LLC**

APPLICANTS

REPLY FACTUM OF THE APPLICANTS

(Motion to Accept Filing of a Plan and Authorize Creditors' Meeting to Vote on the Plan)

December 18, 2015

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TO: **SERVICE LIST**

PART I - OVERVIEW

1. This factum is filed by way of Reply to the objections of certain landlords (the "**Objecting Landlords**")[1] to the request by the Applicants for an order (the "**Meeting Order**") accepting the filing of a plan of compromise and arrangement (the "**Plan**") and authorizing the Applicants to put the Plan before their Affected Creditors at a meeting to vote on the Plan.

2. The Applicants submit that none of the objections raised by the Objecting Landlords constitute "threshold" issues that should preclude this Court from granting the requested Meeting Order. The Applicants' position is simple: if this Court is satisfied that it can sanction the Plan and vary this Court's own prior orders (i.e. that it has jurisdiction to do so), then all questions about whether the Court should do so (i.e. whether it should exercise its discretion to do so) are proper considerations for the Sanction Hearing and do not constitute a bar to granting the Meeting Order.

3. The Applicants submit that the objections raised by the Objecting Landlords are, in large part, considerations of fairness that are premature at this stage. In fact, many of the objections are expressly stated to be based on fairness and reasonableness. The Objecting Landlords have clear remedies for these complaints at later stages in the proceeding – they can vote against the Plan and object to Plan Sanction, including the proposed deletion of Paragraph 19A of the Initial Order. The objections of this limited number of vocal creditors should not deprive the general body of Affected Creditors of the opportunity to consider whether or not to support the Plan.

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[1] These include: Responding Factum of KingSett Capital Inc. [KingSett Factum]; Responding Factum of Doral Holdings Limited and 430635 Ontario Inc. [Doral Factum]; Responding Factum of Primaris REIT [Primaris Factum]; Responding Factum of Faubourg Boisbriand Shopping Centre Holdings and Sun Life Assurance Company of Canada [Faubourg Boisbriand Factum] and Factum of the M&K Responding Landlords [M&K Factum].

4. The Applicants rely upon the facts and legal submissions made in their initial factum filed on December 4, 2015 in support of the Meeting Order (the "**Meeting Order Factum**")[2] in which the basis for this Court's jurisdiction to grant the Meeting Order is outlined in detail. In addition:

(a) The test for varying a CCAA order is clearly set out in the *Muscletech* decision, relied upon in the KingSett Factum. The threshold for varying a court order under the Ontario *Rules of Civil Procedure* or under non-CCAA case law is of limited assistance in this proceeding as it does not recognize the inherent flexibility of the CCAA and the discretion of the CCAA Court to make orders that are appropriate in the circumstances.

(b) Neither Paragraph 19A of the Initial Order nor paragraph 55 of the Claims Procedure Order is a "gating" issue at this stage. If the Court has jurisdiction to vary the Initial Order (and the Applicants submit that it clearly does), the only question is whether the Court should do so, which is a decision that should be made with the benefit of the results of the creditor vote. As long as the Court considers whether to do so prior to Plan Sanction, there is no requirement for this issue to be determined now and no sense in which the Court will be asked to sanction a Plan that violates any order of this Court.

(c) Classification is a fact-specific exercise that depends on the unique circumstances of each case, including the terms of the particular plan, the interests of the creditors, and the relationships among the creditors in relation to the debtor company. The

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[2] Capitalized terms in this Reply Factum have the same meaning as in the Meeting Order Factum and/or the Meeting Order Affidavit, unless otherwise indicated. All monetary amounts are in Canadian Dollars, unless otherwise indicated.

Objecting Landlords have not advanced a consistent theory supporting a different classification under the Plan. In any event, it is abundantly clear that the Landlords generally or the Landlord Guarantee Creditors specifically seek separate classification in order to exercise a veto over the Plan, to the significant detriment of the general body of stakeholders. This is exactly the type of fragmentation that classification is intended to avoid.

(d) Section 20(1)(a)(iii) of the CCAA does not preclude the use of the Landlord Formula Amount to value Landlord Restructuring Period Claims. The CCAA has contained this language since before 1985. Despite the presence of this statutory language, a CCAA court has sanctioned a plan applying the BIA Formula to value landlord claims, even in the face of landlord objections. On its plain wording, this provision is intended to be enabling, not restricting, in keeping with the broad, remedial purpose of the CCAA.

(e) The Applicants have provided full and fair disclosure of all relevant information in relation to the Plan that is in their possession. They are not party to the RioCan settlement. In any event, no further information – including the terms of the RioCan settlement with Target Corp. – is required in order for the Objecting Landlords to determine whether their economic interests favour approval or rejection of the Plan.

5. The Applicants have acted in good faith and with due diligence to maximize recoveries for their assets by (*inter alia*) running a robust Real Property Portfolio Sales Process that has materially assisted Landlords – including the Objecting Landlords – in mitigating their damages. Together with the Inventory Liquidation Sales Process, the CCAA proceeding has generated over

$900 million of proceeds. The Plan has been developed in response to this Court's direction that the Applicants should effect an efficient and timely distribution of these proceeds to Affected Creditors.

6. The fact that the Objecting Landlords oppose the relief sought by the Applicants is not evidence of bad faith, nor is the decision by the Applicants (in the form of the Plan) to make an offer to the Landlord Guarantee Creditors that differs from the arrangements previously negotiated. The Applicants have been entirely forthright in relation to the relief they are seeking. The Landlord Guarantee Creditors are free to reject the Plan and to object to its fairness if they believe that the economic recoveries and other benefits for Landlords – including the Landlord Guarantee Creditor Top-Up Amounts and the right to immediate recovery – are not sufficient compensation for their Guarantee claims.

7. Nor is the relief requested likely to cause the cataclysmic effects for future CCAA proceedings that the Objecting Landlords foretell. Rather, the relief requested in this proceeding is the product of the specific circumstances of this restructuring and of the "real time", fluid nature of CCAA proceedings. This is the very flexibility that justified this Court's determination that the orderly wind-down of the Target Canada Entities' business could take place under the CCAA, in the interests of maximizing recovery for all stakeholders and in the interests of achieving the goals of speed, certainty and expeditious distribution.

8. Based on these considerations, and the submissions below, the Applicants submit that the requested Meeting Order should be granted.

PART II - RESPONSE TO OBJECTING LANDLORDS

A. Objections Based on Paragraph 19A of the Initial Order/Paragraph 55 of Claims Procedure Order

9. The Objecting Landlords make much of the so-called "violation" of prior Court orders and predict the collapse of the CCAA regime and/or the rule of law if this Court grants the relief requested by the Applicants.[3] The Applicants submit that they are doing nothing more than presenting this particular Plan to their Affected Creditors, as it has been developed in the unique circumstances of this CCAA proceeding. In this specific context, they will be asking this Court to exercise its discretion to vary its own prior order.

10. The Applicants recognize that Paragraph 19A of the Initial Order, which was also reflected in Paragraph 55 of the Claims Procedure Order, was the product of negotiations that responded to various objections and litigation threats by Landlords. The Applicants also recognize that the threshold for this Court to vary its prior order is not insignificant. However, characterizing Paragraph 19A of the Initial Order as a sacrosanct, post-filing contract that can never be amended or varied, or whose utility can never be superseded by subsequent events, fails to do justice to the flexibility and to the "real time" nature of a CCAA proceeding.

11. In particular, this case is entirely unlike the *Doman* case in which the Court was being asked to vary a trust indenture post-plan implementation.[4] Paragraph 19A of the Initial Order is a negotiated term of a court order, reached in the context of the CCAA proceeding, not a stand-alone commercial contract. This case simply does not open the floodgates to allow the disclaimer of

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3 See, for example, M&K Factum at para. 1; KingSett Factum at paras. 11, 112.

4 *Re Doman Industries Ltd.*, 2003 BCSC 376, cited in KingSett Factum at paras. 56 to 58.

post-filing agreements or compromise of post-filing claims or any other of the dire consequences predicted by the Objecting Landlords.

12. The question for this Court at this stage is whether it has jurisdiction to vary its own prior order. If the answer is yes – and the Applicants submit that it is – then the fact that the Plan contemplates an amendment to the Initial Order is not a barrier to the requested Meeting Order. All questions about whether the Court should allow the requested amendment do not have to be determined in order to grant the requested Meeting Order. The Plan contemplates that the Court will have a full opportunity to consider whether the required threshold has been satisfied prior to being asked to sanction the Plan.

13. The CCAA case law cited by the Objecting Landlords clearly demonstrates that the CCAA court has the jurisdiction to vary the Initial Order.[5] The *Muscletech* case – the only CCAA case cited by the Objecting Landlords that is relevant to the jurisdiction of this Court to grant the requested amendment to the Initial Order – lists a number of circumstances in which the CCAA would have jurisdiction to vary a prior order, the most relevant of which is "a fundamental change in circumstances".[6] *Muscletech* was decided prior to the 2009 amendments to the CCAA, which, by amending section 11, confirmed the broad jurisdiction of the CCAA court to make any order it considers appropriate in the circumstances.

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5 One Objecting Landlord apparently concedes that the issue is not whether this Court has the jurisdiction to vary the Initial Order, but rather, that the Court should not do so because it would not be fair and reasonable: Faubourg Boisbriand Factum, para. 39.

6 *Re Muscletech Research & Development Inc.*, 2006 CarswellOnt 6230 (S.C.J.) at para. 10, cited in KingSett Factum at para. 79.

14. In arguing that this Court has no jurisdiction to vary its own prior order, the Objecting Landlords variously refer to the standards set out in the Ontario *Rules of Civil Procedure*[7] and to standards set out in non-CCAA case law.[8] The Applicants submit that the *Rules of Civil Procedure* have limited application here. Similarly, the non-CCAA case law should be regarded with considerable scepticism.[9] Section 11 of the CCAA clearly confers much broader jurisdiction on the CCAA Court than is conferred on a non-CCAA Court under the *Rules of Civil Procedure* or otherwise.

15. It is disingenuous for the Objecting Landlords to state that there is no change of circumstances by virtue of the very significant decision of Target Corp. to effectively forego billions of dollars in Intercompany Claims. The Objecting Landlords say there has been no change because the Intercompany Claims existed throughout this proceeding,[10] because the Landlord Guarantee Creditors obtain no benefit from this decision,[11] or because the proceeding was always intended to be a liquidation.[12] None of these positions is correct and/or relevant:

(a) The Intercompany Claims were in existence through this proceeding; the decision to subordinate billions of dollars of those claims was not. It was only in structuring

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7 KingSett Factum, para. 78; M&K Factum, paras. 77 to 82, 85 to 90.

8 KingSett Factum, paras. 80, 81; M&K Factum, paras. 83, 86.

9 Much of the non-CCAA case law referred to by the Objecting Landlords is decided under the *Rules of Civil Procedure*. See, for example, *Verge Insurance Brokers Ltd. v. Sherk*, 2015 ONSC 4044, cited in KingSett Factum at para. 80. See also *York (Regional Municipality) v. Thornhill Green Co-operative Homes Inc.*, 2009 CanLII 37907 (S.C.J.), cited in M&K Factum, para. 96. This latter case involved the appointment of a receiver under a specific statute and under the Ontario *Courts of Justice Act* and was not a CCAA case.

10 KingSett Factum, para. 41.

11 KingSett Factum, para. 86.

12 Faubourg Boisbriand Factum, para. 38.

the Plan that Target Corp. agreed to subordinate an additional $1.9 billion (or approximately $1.4 billion if the Monitor's value is accepted) of Intercompany Claims, over and above the $3.1 billion that it had already agreed to subordinate in this CCAA proceeding.

(b) Not one of the Objecting Landlords even mentions the additional funding provided by Target Corp. to the Landlord Guarantee Creditors in the form of the Landlord Guarantee Creditor Top-Up Amounts, or the potential benefits represented by the immediate distributions to Landlord Guarantee Creditors without protracted litigation to value their claims.

(c) Whether or not this CCAA proceeding was a "liquidating" CCAA from the outset is irrelevant to whether Target Corp.'s role as Plan Sponsor constitutes a fundamental change of circumstances.

16. The Plan is a compromise that offers certain benefits to Landlords – including Landlord Guarantee Creditors – that they are free to accept or reject. If they accept them, the prior arrangement reflected in Paragraph 19A of the Initial Order will clearly be varied with their consent. If they do not accept them – and they are perfectly free not to – then they will have a meaningful opportunity to argue that they have been treated unfairly and that the Plan cannot be approved by the Court. If they do not support the Plan but sufficient other Affected Creditors do, this Court will be asked to determine whether it is fair to allow the majority of Affected Creditors voting in favour of the Plan (including any Landlords or Landlord Guarantee Creditors who determine that it is in their economic interest to support the Plan) to trump the objections of any

Affected Creditors (including any Landlords or Landlord Guarantee Creditors) who do not support the Plan.

17. As long as this Court is satisfied that it has jurisdiction to vary the Initial Order in appropriate circumstances, the Applicants submit that it is both permissible and commercially reasonable to wait until after the Creditors' Meeting and prior to Plan sanction to determine if it should do so. CCAA proceedings are rife with examples of creditors who insist at some preliminary stage that there is no conceivable way that they will support a Plan in the hope that their stance will create leverage to extract higher recoveries. In this regard, it is interesting to note that one of the Objecting Landlords has filed evidence to the effect that it is better off under the Plan than it would be under its Guarantee.[13]

B. Meeting Order Test is Satisfied

18. The Objecting Landlords argue that this Court cannot grant the Meeting Order if it is apparent that the Plan could not be sanctioned, even if approved by Affected Creditors. The primary basis for this objection is the proposed amendment to Paragraph 19A of the Initial Order and/or the alleged violation of Paragraph 55 of the Claims Procedure Order.

19. The Objecting Landlords' submissions on this point are circular: if this Court agrees that it has jurisdiction to amend the Initial Order, then it does not matter <u>when</u> it exercises its discretion to determine whether to do so, as long as the Court has the full opportunity to do so prior to sanctioning the Plan. Assuming that this Court has jurisdiction to amend the Initial Order – which

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[13] Affidavit of S. Michael Belcastro, Doral Responding Motion Record, para. 9.

the Objecting Landlords effectively concede that it does -- the Objecting Landlords are, in large part, simply objecting to the timing of the Applicants' request to amend the Initial Order.[14]

20. Thus, the case law cited by the Objecting Landlords for the proposition that a meeting order cannot be granted if the proposed Plan cannot legally be sanctioned is entirely distinguishable:

(a) In *Crystallex*,[15] the noteholder group in question sought a meeting order to present a plan to the debtor's creditors that could not legally be implemented because it would violate the DIP facility. No one argued, let alone established, that the CCAA court had jurisdiction to vary the DIP facility and it is clear that no legal basis for such an argument exists. By contrast, the Applicants have established that there is jurisdiction in this Court to amend the Initial Order and simply seek to defer consideration of whether the Court should do so until after the Creditors' Meeting.

(b) In *Doman*,[16] the Court considered a request to place a plan before a meeting which (i) purported to bind secured creditors who were unaffected by the plan and not permitted to vote on the plan; and (ii) purported to vary the pre-filing contractual rights of those unaffected creditors in the post-plan implementation period. Again, it was abundantly clear that the CCAA court had no jurisdiction to allow either form of relief, even if it had wanted to do so.

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[14] This is evident from the KingSett Factum, para. 66.

[15] *Re Crystallex International Corp.*, 2013 ONSC 823 at para. 9, cited in KingSett Factum, para. 55.

[16] *Re Doman Industries* 2003 BCSC 376 at para. 8, cited in KingSett Factum, paras. 56 to 58.

C. CCAA Does Not Preclude Use of Formula to Value Claims

21. The Objecting Landlords cite section 20(1)(a)(iii) of the CCAA for the proposition that the use of the Landlord Formula Amount to value Landlord Restructuring Period Claims deprives them of their right to a summary trial to determine their disputed claims and that this requirement cannot be overridden by the Court.[17]

22. The Applicants submit that this interpretation of section 20(1)(a)(iii) is not borne out by the case law and is antithetical to the overall flexibility of the CCAA and the need to interpret its provisions in a broad and remedial fashion. Section 20(1)(a)(iii) of the CCAA is not new. It was renumbered in 2009 when the CCAA was substantially amended. However, prior to these amendments, it existed in much the same form as section 12.[18] It was therefore in effect at the time that the *Eaton's* restructuring took place and the *Eaton's* plan (which valued landlord restructuring period claims using the BIA Formula) was sanctioned, despite an objection from at least one landlord who argued for its right to have its full damages claim valued.[19]

23. Section 20(1)(a)(iii) of the CCAA is intended to be enabling, not restricting. In other words, it enables disputed claims to be resolved in a summary fashion even where the resolution of the dispute might otherwise be the subject of a full trial. It is not intended to create a formulaic requirement or a guaranteed right in all circumstances to resolve claims in this fashion. *Alternate Fuel Systems*, cited by both the Applicants and the Objecting Landlords, supports a flexible

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17 KingSett Factum, paras. 90 to 94.

18 R.S.C. 1985, c. C-36, s. 12.

19 See Meeting Order Factum, para. 59.

interpretation of this provision, not, as the Objecting Landlords submit, an absolute right to a summary trial.

24. The submissions of the Objecting Landlords regarding the nature and extent of their alleged damages amply illustrate the need to interpret the CCAA in a flexible manner that facilitates expeditious resolution of creditor claims. The asserted claims by the Objecting Landlords manifestly raise complex issues regarding the magnitude and heads of damage (including consequential losses) that would properly be recoverable against both Target Canada and Target Corp., as well as the extent to which mitigation is possible and/or the extent to which the debtor company should be responsible for mitigation costs.[20]

25. Section 20(1)(a)(iii) of the CCAA does not preclude the use of a formula to value claims. The Objecting Landlords note that Parliament did not see fit to import the BIA Formula into the CCAA in the course of the 2009 amendments.[21] By the same token, Parliament did not amend the BIA Formula in the context of a BIA proposal. The Landlord Formula Amount improves upon the BIA Formula that Parliament has already determined strikes the appropriate balance between the interests of an insolvent debtor and its landlords. Whether the recoveries offered to Landlords under the enhanced Landlord Formula Amount are fair and reasonable is a matter for the Sanction Hearing. There is no jurisdictional impediment to the valuation method under the Plan.

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[20] See, for example, KingSett Factum, paras. 44, 45 and 91; M&K Factum, paras. 48 to 60; Primaris Factum, para. 42.

[21] M&K Factum, para. 101.

D. Classification

26. The Objecting Landlords acknowledge that classification is a fact-specific exercise, but are not consistent in their approach to classification. One Objecting Landlord does not object to being placed in the same class as all the other Affected Creditors and states that doing otherwise would be "contrary to the scheme of the CCAA".[22] Others appear to be advocating a separate class for Landlord Guarantee Creditors.[23] In advocating a separate class only for Landlord Guarantee Creditors, one Objecting Landlord puts forward grounds for advancing this position that would apply equally to the Landlords without Guarantees – namely, that the Landlord Claims are difficult to value.[24] Another Objecting Landlord raises the "unique and disparate rights and remedies" of the Landlords, particularly those having claims against Zellers or Guarantees.[25]

27. Cases cited by the Objecting Landlords on these issues were decided on their specific facts. In *Grafton-Fraser*, for example, landlords as a whole were placed into a separate class because of concerns that their claims were difficult to value.[26] These issues do not exist under the proposed Plan. The Landlord Formula Amount provides the framework for valuation. *San Francisco Gifts,* on the other hand, classified all landlords together with unsecured creditors but preserved certain residual rights to pursue third parties for wrongdoing.[27]

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22 Primaris Factum, para. 58.

23 KingSett Factum, para. 105; Doral Factum, paras. 29 and 30.

24 Doral Factum, paras. 29 and 30.

25 M&K Factum, para. 107.

26 *Re Grafton-Fraser Inc. v. Canadian Imperial Bank of Commerce*, 1992 CarswellOnt 164 (Gen. Div.) at paras. 9-12, cited in Doral Factum, para. 30.

27 *Re San Francisco Gifts*, 2004 ABQB 705 at paras. 11, 12, 28 and 50, cited in Doral Factum, para. 31.

28. The submissions of the Objecting Landlords demonstrate the significant potential for hopeless fragmentation if the Affected Creditors are divided into multiple classes to address the alleged differences raised by the Objecting Landlords. The valuation rationale from *Grafton-Fraser* that is espoused by one Objecting Landlord would support the placement of all Landlords in a separate class, not just Landlords with Guarantees. If a separate class is created for all Landlords, there would then be a subsidiary question based on other concerns raised by the Objecting Landlords[28] as to whether Landlords with Guarantees would have interests in conflict with the other Landlords such that there should be two Landlord classes.

29. This significant fragmentation is exactly what the "commonality of interest" principle of classification is intended to avoid. It is telling that one Objecting Landlord does not object to classification, implicitly indicating that there is sufficient commonality of interest to allow meaningful consultation among all of the Target Canada Entities' Affected Creditors, as currently classified.[29] The Applicants submit that the only way to avoid hopeless fragmentation is to maintain the single class of Affected Creditors proposed in the Plan.

E. Availability of Third Party Release

30. The Applicants recognize that third party releases are not granted as a matter of course.[30] The third party release proposed in the Plan recognizes the extraordinary contribution of Target

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[28] For example, the concern that Landlords with Guarantees are being asked to give up more under the Plan than Landlords without Guarantees – expressed in the Doral Factum at para. 30 – would suggest that the Landlord class should be further fragmented.

[29] Primaris Factum, paras. 58-65.

[30] Doral Factum, para. 33.

Corp. as Plan Sponsor in the specific circumstances of this case. It in no way opens the floodgates to future third party releases in favour of guarantors.

31. Contrary to the submissions of the Objecting Landlords,[31] the true nature of the proposed release has been fully disclosed in the Plan. The effect of the release is evident from its terms. As submitted below, the terms of the RioCan settlement are not relevant to the scope or effect of the proposed release.

32. Although the CCAA does not expressly authorize the compromise of claims against third parties,[32] it is well-accepted that the CCAA court has the jurisdiction to approve a plan that effects such a compromise and grants a third party release.[33]

33. In each case in which a third party release has been granted, the Court has weighed the appropriateness of the release in the context of the specific facts. There is no rule that a third party release is unavailable in the context of a "liquidating" CCAA or that such a release is only available where the particular CCAA restructuring contemplates that the debtor will continue in business.[34]

34. The Objecting Landlords make lengthy submissions about the lack of "nexus" between the contributions made by Target Corp. as Plan Sponsor and the third party release proposed under the Plan.[35] The Applicants submit that this is incorrect, and that the contributions of Target Corp. have

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31 Doral Factum, para. 35.

32 Faubourg Boisbriand Factum, paras. 43 to 48.

33 See, for example, *Re Muscletech Research & Development Inc.*, 2006 CarswellOnt 6230 (S.C.J.) at paras. 7 and 8, cited in KingSett Factum at para. 79.

34 Faubourg Boisbriand Factum, para. 54; M&K Factum, para. 131.

35 Faubourg Boisbriand Factum, para. 72; M&K Factum, paras. 115 to 119.

a clear and direct connection to the objective of this CCAA proceeding – namely, the maximization of recoveries for all stakeholders in the context of an orderly wind-down of the business of the Target Canada Entities. If the Plan fails and if this liquidation were to proceed under the BIA, this would be to the significant detriment of the recoveries of Affected Creditors who will not benefit from Target Corp.'s contributions as Plan Sponsor.

35. In any event, these considerations are premature at this stage. One Objecting Landlord expressly argues that the proposed releases are not "fair and reasonable", not that his Court has no jurisdiction to approve a Plan that contains a third party release.[36]

F. Disclosure of RioCan Settlement

36. The Applicants do not have knowledge of the non-public terms of the settlement reached between RioCan Ltd. and Target Corporation. It is a confidential settlement between third parties to which the Applicants are not a party.[37] In any event, the terms of the RioCan settlement are irrelevant and any suggestion that it is premature to order the Creditors' Meeting because the Landlords do not have sufficient information in order to exercise their business judgment in relation to the Plan is without merit.[38]

37. The Landlords and the Landlord Guarantee Creditors clearly know what their maximum damages claims are and how that amount compares with the Landlord Formula Amount shown on the Monitor's Notices of Revision and Disallowance. Any suggestion that the Landlord Formula

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[36] See, for example, Faubourg Boisbriand Factum, para. 73.

[37] Doral Factum, para. 24.

[38] Doral Factum, para. 27.

Amount is a "mystery" is patently absurd.[39] The RioCan settlement is simply irrelevant to the determination as to whether the Landlord Formula Amount is the "best bargain"[40], given the absence of any evidence that a similar settlement would be available to the other Objecting Landlords.

38. All of the Landlords have sufficient information to predict the recoveries that they would receive if this Plan fails and a bankruptcy ensues. As for the Landlord Guarantee Creditors, they can assess their own appetite for litigation risk, including the likelihood of recovery of all of their alleged damages in litigation against Target Corp. under their Guarantees and the potential delays associated with such proceedings.

39. No further information is necessary in order for the Landlords to determine whether their economic interests are best served by voting in favour of the Plan or by voting against the Plan and taking the position (if the Plan is approved by the requisite majorities of other Affected Creditors) that the Plan is not fair and reasonable.

PART III - NATURE OF THE ORDER SOUGHT

40. The Applicants submit that this Honourable Court should grant the requested Meeting Order in the form of the draft Order at Tab 3 of the Motion Record, with the revised dates set out in Schedule "C" to this Factum.

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[39] Doral Factum, para. 2(b).

[40] Doral Factum, para. 2(d).

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

Tracy Sandler

Jeremy Dacks

Shawn Irving

SCHEDULE "A": LIST OF AUTHORITIES

1. *Re Crystallex International Corp.*, 2013 ONSC 823
2. *Re Doman Industries Ltd.*, 2003 BCSC 376
3. *Re Grafton-Fraser Inc. v. Canadian Imperial Bank of Commerce*, 1992 CarswellOnt 164 (Gen. Div.)
4. *Re Muscletech Research & Development Inc.*, 2006 CarswellOnt 6230 (S.C.J.)
5. *Re San Francisco Gifts*, 2004 ABQB 705
6. *Verge Insurance Brokers Ltd. v. Sherk*, 2015 ONSC 4044
7. *York (Regional Municipality) v. Thornhill Green Co-operative Homes Inc.*, 2009 CanLII 37907 (S.C.J.)

SCHEDULE "B": TEXT OF STATUTES, REGULATIONS & BY-LAWS

1. **Current *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36**

* * *

General power of court

11. Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

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Determination of amount of claims

20. (1) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor is to be determined as follows:

(a) the amount of an unsecured claim is the amount

(i) in the case of a company in the course of being wound up under the Winding-up and Restructuring Act, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the Bankruptcy and Insolvency Act, but if the amount so provable is not admitted by the company, the amount is to be determined by the court on summary application by the company or by the creditor; and

(b) the amount of a secured claim is the amount, proof of which might be made under the Bankruptcy and Insolvency Act if the claim were unsecured, but the amount if not admitted by the company is, in the case of a company subject to pending proceedings under the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act, to be established by proof in the same manner as an unsecured claim under the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act, as the case may be, and, in the case of any other company, the amount is to be determined by the court on summary application by the company or the creditor.

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2. **Pre-2009** ***Companies' Creditors Arrangement Act,*** **R.S.C. 1985, c. C-36, s. 12**

* * *

Definition of "claim"

12. (1) For the purposes of this Act, "claim" means any indebtedness, liability or obligation of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the Bankruptcy and Insolvency Act.

Determination of amount of claim

(2) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor shall be determined as follows:

(a) the amount of an unsecured claim shall be the amount

(i) in the case of a company in the course of being wound up under the Winding-up and Restructuring Act, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the Bankruptcy and Insolvency Act, but if the amount so provable is not admitted by the company, the amount shall be determined by the court on summary application by the company or by the creditor; and

(b) the amount of a secured claim shall be the amount, proof of which might be made in respect thereof under the Bankruptcy and Insolvency Act if the claim were unsecured, but the amount if not admitted by the company shall, in the case of a company subject to pending proceedings under the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act, be established by proof in the same manner as an unsecured claim under the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act, as the case may be, and in the case of any other company the amount shall be determined by the court on summary application by the company or the creditor.

Admission of claims

(3) Notwithstanding subsection (2), the company may admit the amount of a claim for voting purposes under reserve of the right to contest liability on the claim for other purposes, and nothing in this Act, the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act prevents a secured creditor from voting at a meeting of secured creditors or any class of them in respect of the total amount of a claim as admitted.

SCHEDULE "C": PROPOSED REVISED DATES FOR MEETING ORDER

Draft Order	Event	Initial Date	Revised Date
Para. 8	Monitor's deadline to mail Meeting Materials	December 14, 2015	January 5, 2016
Para. 10	Monitor's deadline to publish Notice of Creditors' Meeting in newspapers	December 22, 2015	January 15, 2016
Para. 12	Monitor's deadline to serve a report regarding the Plan	January 7, 2016	January 20, 2016
Para. 13	Creditors' Meeting	January 15, 2016	February 2, 2016
Para. 22	Deadline by which Proxies must be received by the Monitor	January 13, 2016	January 29, 2016
Para. 33	Landlord Claim Calculation Dispute Deadline	January 8, 2016	January 26, 2016
Para. 45	Sanction Motion Hearing	January 20, 2016	February 9, 2016

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 TARGET CANADA CO., *et al.*

Applicants

Court File No. CV-15-10832-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

REPLY FACTUM OF THE APPLICANTS

(Motion to Accept Filing of a Plan and Authorize Creditors' Meeting to Vote on the Plan)

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