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

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

RESPONDING FACTUM OF PRIMARIS REIT
(December 21, 2015 hearing)

December 16, 2015

MINDEN GROSS LLP
Barristers and Solicitors
2200 - 145 King Street West
Toronto, ON M5H 4G2

Catherine Francis (LSUC# 26900N)
cfrancis@mindengross.com
Tel: 416-369-4137
Fax: 416-864-9223

Lawyers for Primaris Reit

TO: The Service List

#2458138 | 4093316

PART I - OVERVIEW

1. Primaris REIT ("Primaris") is the landlord of nine former Target locations. As set out in the Monitor's 18th Report, Target disclaimed the leases at eight locations.[1] Of these eight locations, three locations have parent company guarantees.[2] The ninth location, Grant Park in Manitoba, Winnipeg, was assigned to Canadian Tire.[3]

2. This factum is being filed in response to a motion by Target Canada Co. et al. for an order accepting for filing a Joint Plan of Compromise and Arrangement (the "Plan") under the *Companies' Creditors Arrangement Act* ("CCAA"), establishing one class of affected creditors, authorizing the Applicants to hold a creditors meeting to approve the Plan and setting a date for a hearing to sanction the Plan.

3. Primaris's position is that:

(a) The Order which the Applicants are seeking (the "Meeting Order") and the proposed Plan are contrary to paragraph 19A of the Amended and Restated Initial Order (the "Initial Order");

(b) The Applicants have not sought an Order rescinding or setting aside paragraph 19A of the Initial Order and cannot meet the legal or factual tests for doing so;

---

[1] Sherwood Park Mall, Cataraqui Town Centre, Medicine Hat Mall, Kildonan Place Shopping Centre, McAllister Place, St. Albert Centre, Sundridge Mall and Place D'Orleans – as listed in Appendix D to the 18th Report

[2] Kildonan Place Shopping Centre, McAllister Place, St. Albert Centre

[3] Monitor's 18th Report, p. 12

(c) There is no jurisdiction under the CCAA for unsecured creditors (or any other class of creditors) to vote to rescind an Order of the Superior Court of Justice;

(d) The Meeting Order and the proposed Plan are contrary to the Claims Procedure Order;

(e) In particular, there is nothing in the Claims Procedure Order requiring landlords to file damage claims based upon a formula, nor is there anything in the Claims Procedure Order requiring the claims officer or the court reviewing the disallowance of such claims to restrict landlords to a formula;

(f) The Applicants have not sought an Order varying or setting aside the Claims Procedure Order and cannot meet the legal or factual tests for doing so;

(g) There is no jurisdiction under the CCAA for creditors to vote to vary or rescind a Claims Procedure Order or to vote on how each other's claims should be valued under a Plan;

(h) The Court cannot approve a Plan which violates the Initial Order, the Claims Procedure Order and the CCAA;

(i) The Applicants and the Monitor have refused to disclose information in their possession (in particular, information about a

settlement made between Target Corporation and RioCan) which would enable creditors to assess the fairness of the proposed Plan.

4. In the circumstances, the Meeting Order should not be granted. The Applicants should be required to disclose information about the RioCan settlement and to present a revised Plan that is consistent with the Initial Order, the Claims Procedure Order and the CCAA.

PART II - SUMMARY OF FACTS

5. Primaris relies upon the facts set out in the Affidavit of Mark Wong, the Monitor's report and the various affidavits filed by landlords.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

6. Primaris is not opposing the Meeting Order for the purpose of securing a better deal for its own claims, at the expense of other creditors.

7. Rather, Primaris's concerns are as follows:

(a) The Meeting Order and Plan are structurally flawed. It is a waste of everyone's time and money to refer a structurally flawed Plan to a vote by creditors;

(b) If the Applicants are permitted to file a Plan that flagrantly violates the consent agreement embodied in the Initial Order, then it will be impossible for creditors to rely on such orders or agreements in future cases;

(c) If creditors as a whole are permitted to vote on a Plan that confiscates guarantees given by solvent third parties to certain creditors, this sets a dangerous precedent – such guarantees can never be relied upon;

(d) The compromise of guarantees held by individual creditors against solvent third parties violates the express statutory language of the CCAA;

(e) Similarly, a Plan that permits creditors as a whole to vote on the value of each other's claims is inconsistent with the scheme of the CCAA;

(f) The Applicants have not demonstrated that the proposed Landlord Formula (the "Landlord Formula") is fair and reasonable. To the contrary, it appears that neither the Monitor nor the Applicants nor Target Corporation consider the Landlord Formula to represent a fair and reasonable assessment of the value of individual landlord claims;

(g) It is patently unfair for Target Corporation to seek a release under the Plan, on the basis that it is a "Plan sponsor", after having preferred the interests of the most vocal opponent to the proposed Plan, RioCan, whose counsel served on the consultative committee and had advance knowledge of the Applicants' intentions;

(h) Referring such a Plan to a vote in these circumstances undermines the integrity of the CCAA process.

Paragraph 19A of the Initial Order

8. This issue has been addressed in detail in the factums of KingSett Capital Inc., Morguard Investments Limited and other landlords. Primaris relies upon the factual background and legal arguments set out in these factums.

9. The Applicants do not even come close to satisfying the legal tests for setting aside paragraph 19A of the Initial Order. The "landscape" has not changed. The amendment to the Initial Order was negotiated for the express purpose of preventing the Applicants and Target Corporation from seeking to compromise or deal with the guarantees in the CCAA proceedings, which is exactly what they are now trying to do. Good consideration was given for this undertaking.

10. Unless the Applicants can satisfy the Court that every landlord holding a guarantee has consented to varying paragraph 19A of the Initial Order, this provision is a non-starter. If the Plan depends upon this, as alleged by the Applicants, the Plan is doomed to failure and should not be sent for a vote.

Can Individual Guarantees be Compromised in a CCAA Plan?

11. No.

12. Section 11.02 of the CCAA contains broad powers to stay claims against the debtor company, both under the initial order and thereafter.

13. However, there is a clear statutory exception to these powers:

> Persons obligated under letter of credit or guarantee
>
> 11.04 No order made under section 11.02 has affect on any action, suit or proceeding against a person, other than the company in respect of whom the order is made, who is obligated under a letter of credit or guarantee in relation to the company.

14. The Applicants' proposed Plan ignores the contract theory of the CCAA. This theory was espoused by the Ontario Court of Appeal in *Metcalfe & Mansfield Alternative Investments II Corp*., (Re) , 2008 ONCA 587, the very case that the Applicants rely upon for including a release of Target Corporation as part of the Plan:

> [62] A proposal under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (the "BIA") is a contract: Employers' Liability Assurance Corp. v. Ideal Petroleum (1959) Ltd., 1976 CanLII 142 (SCC), [1978] 1 S.C.R. 230, [1976] S.C.J. No. 114, at p. 239 S.C.R.; [page531] Society of Composers, Authors and Music Publishers of Canada v. Armitage (2000), 2000 CanLII 16921 (ON CA), 50 O.R. (3d) 688, [2000] O.J. No. 3993 (C.A.), at para. 11. In my view, a compromise or arrangement under the CCAA is directly analogous to a proposal for these purposes and, therefore, is to be treated as a contract between the debtor and its creditors. Consequently, parties are entitled to put anything into such a plan that could lawfully be incorporated into any contract. See Air Canada (Re), 2004 CanLII 34416 (ON SC), [2004] O.J. No. 1909, 2 C.B.R. (5th) 4 (S.C.J.), at para. 6; Olympia & York Developments Ltd. (Re) (1993), 1993 CanLII 8492 (ON SC), 12 O.R. (3d) 500, [1993] O.J. No. 545 (Gen. Div.), at p. 518 O.R.
>
> [63] There is nothing to prevent a debtor and a creditor from including in a contract between them a term providing that the creditor release a third party. The term is binding as between the debtor and creditor. In the CCAA context, therefore, a plan of compromise or arrangement may propose that creditors agree to compromise claims against the debtor and to release third parties, just as any debtor and creditor might agree to such a term in a contract between them. Once the statutory mechanism regarding voter approval and court sanctioning has been complied with, the

> plan -- including the provision for releases -- becomes binding on all creditors (including the dissenting minority).

15. As everyone in the insolvency world knows, *Metcalfe & Mansfield* was a very special case. It was a case involving the collapse of the $32 billion Asset Backed Commercial Paper ("ABCP") market in Canada. Every holder of ABCP had claims or potential claims against numerous parties responsible for the fiasco, and these parties in turn each had third or fourth party claims against others.

16. Most significantly, the case involved a true restructuring of the ABCP market, sponsored by the entities who had created or contributed to the fiasco, and offered an opportunity for holders of ABCP to recover more than would likely become available through a tangled mess of lawsuits.

17. The Ontario Court of Appeal upheld Mr. Justice Campbell's approval of the Debtors' Plan of Arrangement and the broad releases granted thereunder, applying the contract theory of the CCAA, as illustrated in the above passage.

18. It is submitted that the contract theory of the CCAA does not permit creditors as a whole (based upon a double majority in number and two-thirds in value of claims) to vote to compromise guarantees belonging to individual class members.

19. If this were allowed, then guarantees would become meaningless.

20. The following (hypothetical) example illustrates the mischief of allowing this to happen:

(a) Five unsecured creditors are each owed $1 million. Only one of the five creditors (Creditor A) holds a parent company guarantee;

(b) There is $2 million in the pot for distribution to creditors. Each creditor will receive $400,000 from the pot;

(c) The parent company is on the hook for $600,000 under its guarantee;

(d) Rather than paying $600,000 to Creditor A, the parent company throws $500,000 into the pot as “plan sponsor” in exchange for a release.

21. Under this scenario, each creditor receives $500,000. All but Creditor A will be happy with this plan, as each of their positions will improve by $100,000. Naturally, they will all vote in favour and the plan will therefore be approved by the requisite double majority (80% in number and value).

22. The same scenario could be run where the parent company has decided to be “generous” and contribute more to the pot than what it owes under the guarantee to Creditor A. Perhaps the parent company wants to avoid lawsuits by the disgruntled creditors, or is seeking to bolster its image.

23. If the parent company contributes $1 million into the pot, then each creditor will receive $600,000. Again, all creditors except Creditor A will be happy. In fact, the body of creditors as a whole will be better off. But Creditor A will not be better off. Creditor A will have had its guarantee stripped away and the value distributed to its fellow creditors.

24. It is submitted that the contract theory of the CCAA does not allow this. A contract between the creditors as a whole and the debtors and any third parties is just that. It is binding between the parties, but it cannot override a guarantee held by an individual creditor against a third party.

25. In order to become binding and legally enforceable, the release needs to be embodied in a court order permanently staying and prohibiting claims against the released parties. However, section 11.04 of the CCAA explicitly exempts guarantees from the scope of the CCAA stay jurisdiction. This is apart from paragraph 19A of the Initial Order.

26. If the Court does not have jurisdiction to implement a Plan releasing Target Corporation from its guarantees, then there is no point sending the Plan to a vote.

The Claims Procedure Order

27. The Claims Procedure Order was also heavily negotiated. The Claims Procedure Order is 50 pages long, including schedules.

28. There is nothing in the Claims Procedure Order requiring landlords to file claims based upon a formula, nor is there anything in the CCAA providing for a formula for landlord claims.

29. This CCAA proceeding was in every respect a pure liquidation. The Applicants never had any intention of restructuring or selling the Target Canada business as a going concern.

30. With the liquidation complete, the only issue is distribution of the proceeds to creditors. While the Applicants, having been permitted to proceed under the CCAA, are entitled to file a Plan, the principles applicable under the *Bankruptcy and Insolvency Act* (the "BIA") should as much as possible be respected.

31. On bankruptcy, there are essentially four types of creditors:

(a) Secured creditors or trust claimants, whose claims fall outside the bankruptcy regime;

(b) Preferred creditors, whose claims are paid in full ahead of ordinary unsecured creditors;

(c) Unsecured creditors, who represent a single class of creditors, and whose claims, large or small, are paid *pro rata*;[4]

(d) Equity claims, whose claims are subordinate to unsecured creditors.

[4] There is no such thing as a "convenience class" of creditors under the BIA. The establishment of a convenience class is accepted in restructuring proceedings, but violates the principle under section 141 of the BIA, whereby "all claims proved in a bankruptcy shall be paid rateably."

32. Under section 135(1) of the BIA, the trustee in bankruptcy "shall examine every proof of claim or proof of security and the grounds therefor and may require further evidence in support of the claim or security."[5]

33. Under section 135(1.1) of the BIA, the trustee "shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to the section, deemed a proved claim to the amount of its valuation."[6]

34. The Trustee may disallow any claim, in whole or in part and provide notice of the disallowance to the claimant. The disallowance will be binding unless the person appeals from the trustee's decision to the court within 30 days.[7]

35. The appeal can be made to the registrar in bankruptcy or a judge.[8]

36. Where the appeal is made to the registrar, an appeal from the registrar's decision lies to a judge.[9]

37. There is nothing in the BIA prohibiting a trustee from using a formula to value claims, if it considers a formula to represent a fair valuation of the claims. However, there is no authority indicating that this has ever been done. Moreover, the Trustee's valuation is not binding on the registrar or judge who hears the appeal from disallowance.

---

[5] Section 135 of the BIA
[6] Section 135(1.1)
[7] Section 135(2), (3) and (4) of the BIA
[8] Sections 192(1)(h) and 192(2) of the BIA
[9] BIA Rules, Rule 30

38. The Claims Procedure Order essentially replicates the BIA process, with the Monitor serving in the role of trustee in bankruptcy, and a claims officer or judge serving in the role of the registrar or judge.

39. Under the BIA, creditors have a statutory right to review each other's claims.[10]

40. Under section 135(5) of the BIA, "The court may expunge or reduce a proof of claim or a proof of security on the application of a creditor or of the debtor if the trustee declines to interfere in the matter." However, there is no authority on the part of creditors themselves to vote on or determine the value of each other's claims.[11]

41. What the Applicants are essentially seeking is an Order upholding the Monitor's disallowance of all individual landlord claims, based on the Landlord Formula, without any consideration of the merits of the individual claims.

42. An assessment of individual landlord claims would require a consideration of the following matters, among others:

(a) Length of the lease term;

(b) Location and marketability of the property and opportunities to mitigate;

(c) Mitigation costs (redemising costs, tenant inducements, free rent etc.);

[10] Section 126(1) of the BIA provides: "Every creditor who has filed a proof of claim is entitled to see and examine the proofs of other creditors."
[11] Section 135(5) of the BIA

(d) Impact of the loss of Target on the property or mall as a whole, including co-tenancy claims.

43. The Monitor does not pretend that the proposed formula is fair to all landlords. Rather, the Monitor suggests that some will do better and some will do worse, but on balance it is fair to landlords as a whole.

44. This is cold comfort to landlords whose claims have not been fairly valued, knowing that other landlords may have had their claims overvalued.

45. Further, and most significantly, if the Monitor's position is correct, then the fairness of the Landlord Formula can best be measured by considering how the Landlord Formula would apply to the landlord with the largest number of leases – RioCan. In other words, if the Landlord Formula balances out among landlords, then one would expect that the RioCan settlement would approximate the value of RioCan's claims using the formula.

46. However, the Monitor has steadfastly refused to provide this information. The Applicants and the Monitor take the position that they know nothing about the RioCan settlement other than what is contained in RioCan's press release and that the settlement and quantum of RioCan's claims is confidential.

47. This position ignores a number of considerations:

(a) RioCan's press release states what Target Corporation paid to acquire RioCan's claims: $132 million;

(b) Target Corporation is being presented as the Plan Sponsor and is asking for a release of guarantees. Target Corporation knows the particulars of the settlement;

(c) Target Corporation has acquired RioCan's claims and RioCan will (it appears) be voting such claims in the Plan for Target Corporation's benefit;

(d) The Monitor was required to value RioCan's claims for the purpose of issuing disallowances by no later than December 15, 2015 (yesterday). The Monitor therefore knows how much RioCan's claims have been valued at using the Landlord Formula;

(e) It does not require an intimate knowledge of the settlement terms to compare the amount at which the Monitor valued the claims using the Landlord Formula to the $132 million figure contained in RioCan's press release.

48. From the currently available information, there is every reason to believe that Target Corporation itself assessed the value of RioCan's claims for settlement purposes at an amount greatly exceeding the Landlord Formula which the Applicants, the Monitor and Target Corporation are seeking to impose on all other landlords.

49. This is fundamentally unfair and undermines the position of Applicants, Target Corporation and the Monitor that the Landlord Formula is fair and reasonable and should be imposed by court order on all other landlords.

50. Without information about the RioCan settlement and the value which Target Corporation itself placed on the landlord claims, the Court has no evidentiary basis upon which to consider granting the blanket order sought by the Applicants (on behalf of their parent company) blessing the Landlord Formula and referring the Plan to a vote by creditors.

Is a Vote on the Plan Meaningful?

51. While the hypothetical situation set out in paragraphs 20-23 herein is very simple, this is essentially what the Applicants are seeking to do – subsidize a Plan using the value of the landlord claims and guarantees.

52. The Applicants are wholly owned subsidiaries of a highly solvent, highly visible publicly-traded parent corporation with a huge reputation to protect.

53. Target Corporation made a massive blunder entering the Canadian market. Target Corporation naturally does not want its suppliers to suffer too badly, given that it is continuing a highly successful operation in the United States under the same corporate banner, likely with many of the same suppliers.

54. It is understandable that Target Corporation would offer to subordinate its inter-company (equity) claims as part of a Plan, and that it would like to trade this off for a release of all landlord guarantee claims and a release of all other potential claims against it arising from this disastrous foray into the Canadian market.

55. It is also virtually a foregone conclusion that the creditors as a whole will vote in favour of the Plan. Under the Plan, landlord claims are limited to the Landlord

Formula. Also, Target Corporation has threatened to swamp the creditor claims with its large inter-company claim if there is a bankruptcy.

56. The Applicants have already assured a majority in number vote through the creation of a “Convenience Class”, all of whose members will be deemed to have voted in favour of the Plan. While the Applicants have not shared other details, no doubt they have assured themselves that, between trade suppliers, landlords who are happy with the Plan and the purchased RioCan debt, they have enough votes to pass a two-thirds majority in value.

57. In these circumstances, it is submitted that whether the Plan passes a creditor vote is not meaningful.

Should there be a Separate Class of Landlords with Guarantees?

58. No. Creating a separate class of landlords with guarantees is contrary to the scheme of the CCAA and will not solve the problems with the Plan.

59. The flaw in the Plan is not just that it seeks to compromise guarantees, in violation of the Initial Order, but also that it violates the Claims Procedure Order and seeks to prevent all landlords, whether they hold guarantees or not, from appealing the disallowance of their claims to a claims officer or judge.

60. If the landlord claims were being properly valued, then landlords with guarantees would have no basis for complaint, because Target Corporation is topping up guaranteed landlords to ensure that they recover the full value of their guarantee claims.

61. This is best illustrated by a simple example. Suppose that:

(a) There are two landlords (Landlord A and Landlord B) in identical situations, except that Landlord A holds a guarantee from Target Corporation and Landlord B does not;

(b) Each of Landlord A and Landlord B had long-term Target leases in poor locations;

(c) Each has been unable to interest other prospective tenants in the property;

(d) Each had operating clauses from Target with the right of other tenants to assert “co-tenancy” claims against the landlord;

(e) As a result of Target’s closure, each landlord will have to incur significant costs rebuilding the premises in the hope of attracting replacement tenants;

(f) The damages suffered by each landlord is reasonably assessed at $10 million;

(g) Under the Landlord Formula, each of the landlords’ claims has been valued at $2 million;

(h) The dividend available to creditors under the Plan is 80 cents on the dollar.

62. Under the proposed Plan, Landlord A would recover $2 million ($1.6 million under the Plan plus a $400,000 “top-up” from Target Corporation). In contrast, under a fair valuation of its claim, Landlord A would recover $10 million (the full value of its damage claim).

63. Under the proposed Plan, Landlord B would recover $1.6 million. In contrast, under a fair valuation of its claim (on an appeal from the disallowance filed pursuant to the Claims Procedure Order), Landlord B would recover $8 million (80% of the value of its damage claim).

64. Both landlords are in the same boat. They are both being treated unfairly.

65. Furthermore, placing all landlords with guarantees into the same class and allowing a majority of landlords with guarantees to outvote the minority would not be fair either. As the Applicants and the Monitor acknowledge, the Landlord Formula favours some landlords over others. Some landlords may recover in full, while others only recover a fraction of the value of their claims. If guarantees held by individual landlords cannot be compromised in a Plan, then other landlords with guarantees can no more vote to compromise each other’s claims than unsecured creditors can vote on the value of each other’s claims.

Can the Plan be Fixed?

66. The answer, very simply, is that yes the Plan can be fixed.

67. First, the Plan needs to be amended to exclude a release of guarantees given by Target Corporation or any other third party, absent express consent of the affected landlords.

68. Second, consistent with the Claims Procedure Order, the Plan cannot purport to fetter landlords' ability to appeal their Notices of Disallowance to a claims officer or judge. As is the case with all other unsecured creditors, landlords should have the right to argue before a claims officer or judge that the Landlord Formula does not fairly or properly value their claims.

69. Target Corporation has threatened to pull its support for the Plan if these two changes are made. The Applicants raise the spectre of years of messy litigation, a protracted process for disbursing funds and a huge cost to the Applicants/Target Corporation of fighting the valuation of landlord claims.

70. In particular, Wong's affidavit suggests that litigation over the valuation of landlord claims "will involve complex issues and even on an accelerated timeline could take many years." He bases this statement on hearsay evidence from the Applicants' counsel.

71. This evidence rings hollow and undermines the Applicants' own arguments in favour of the Plan. Among other things:

(a) Landlords whose leases were disclaimed through the CCAA process are not the only creditors with contingent or unliquidated claims to be dealt with through the claims process;

(b) The Applicants and the Monitor have not disclosed either the number or quantum of other contingent or unliquidated claims, the extent to which such claims have been allowed or disallowed, or the extent to which such claims may be dealt with through the court-approved claims process;

(c) There is no evidentiary basis for the Court to conclude that the valuation of landlord disclaimer claims through the already established claims process will be any more complicated or take any longer than the valuation of other contingent or unliquidated claims, the particulars of which have not been disclosed;

(d) If the Applicants and the Monitor truly believe that the Landlord Formula is fair and reasonable, then they can make this pitch to the claims officer or judge hearing the appeals from disallowances.

72. With respect to guarantee claims, as part of the negotiated consideration for paragraph 19A of the Initial Order excluding guarantees from the scope of the CCAA proceedings and any Plan filed by the Applicants, paragraph 19A specifically requires that the validity, enforceability and quantum of all landlord guarantee claims be determined by a judge of the Ontario Superior Court of Justice (Commercial List).

73. There is no evidence before the Court of any issues or disputes with respect to the validity and enforceability of landlord guarantee claims. The only material issue appears to be quantum.

74. There is no reason why the quantification of landlord guarantee claims cannot be determined in the Commercial List on an expedited and efficient basis. Nor is there any apparent reason why the quantification of landlord guarantee claims cannot be determined by the same Commercial List judge who is determining the landlords' appeals from disallowance.

75. As with the Monitor and the Applicants, if Target Corporation truly believes that the Landlord Formula is fair and reasonable, then it can make this pitch to the judge determining the landlords' guarantee claims. If this position is accepted, then in the grand scheme there is virtually no cost and no prejudice to giving landlords the opportunity which they bargained for, to prove the value of their claims to a judge of the Commercial List.

PART IV - ORDER REQUESTED

76. It is respectfully submitted that the Applicants' motion be dismissed, or in the alternative that the Applicants' motion be adjourned pending:

(a) Disclosure of particulars of the RioCan claims;

(b) The formulation of a Plan that respects the existing Orders and conforms with the CCAA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of December, 2015.

Catherine Francis

Catherine Francis

MINDEN GROSS LLP
Barristers and Solicitors
2200 - 145 King Street West
Toronto, ON M5H 4G2

Catherine Francis (LSUC# 26900N)
cfrancis@mindengross.com
Tel: 416-369-4137
Fax: 416-864-9223

Lawyers for Primaris Reit

#2458138 | 4093316

SCHEDULE “A”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

1. Sections 126(1), 135, 135(1.1), 135(2), (3), (4) and (5), 192(1)(h) and 192(2) of the Bankruptcy and Insolvency Act, RSC 1985, c B-3

2. *Rule 30* of the Bankruptcy and Insolvency Act, RSC 1985, c B-3

Sections 126(1), 135, 135(1.1), 135(2), (3), (4) and (5), 192(1)(h) and 192(2) of the Bankruptcy and Insolvency Act, RSC 1985, c B-3

Who may examine proofs

126. (1) Every creditor who has filed a proof of claim is entitled to see and examine the proofs of other creditors.

Trustee shall examine proof

135. (1) The trustee shall examine every proof of claim or proof of security and the grounds therefor and may require further evidence in support of the claim or security.

Determination of provable claims

(1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

Disallowance by trustee

(2) The trustee may disallow, in whole or in part,

(a) any claim;

(b) any right to a priority under the applicable order of priority set out in this Act; or

(c) any security.

Notice of determination or disallowance

(3) Where the trustee makes a determination under subsection (1.1) or, pursuant to subsection (2), disallows, in whole or in part, any claim, any right to a priority or any security, the trustee shall forthwith provide, in the prescribed manner, to the person whose claim was subject to a determination under subsection (1.1) or whose claim, right to a priority or security was disallowed under subsection (2), a notice in the prescribed form setting out the reasons for the determination or disallowance.

Determination or disallowance final and conclusive

(4) A determination under subsection (1.1) or a disallowance referred to in subsection (2) is final and conclusive unless, within a thirty day period after the service of the notice referred to in subsection (3) or such further time as the court may on application made within that period allow, the person to whom the notice was provided appeals from the trustee's decision to the court in accordance with the General Rules.

Expunge or reduce a proof

(5) The court may expunge or reduce a proof of claim or a proof of security on the application of a creditor or of the debtor if the trustee declines to interfere in the matter.

192. (1) The registrars of the courts have power and jurisdiction, without limiting the powers otherwise conferred by this Act or the General Rules, …

(h) to hear and determine matters relating to proofs of claims whether or not opposed;

May be exercised by judge

192. (2) The powers and jurisdiction conferred by this section or otherwise on a registrar may at any time be exercised by a judge.

Rule 30, *BIA*

30. (1) An appeal from an order or decision of the registrar must be made by motion to a judge.
(2) A notice of motion or a motion, as the case may be, must be filed at the office of the registrar and served on the other party within 10 days after the day of the order or decision appealed from, or within such further time as the judge stipulates.
(3) The notice of motion or the motion must set out the grounds of the appeal.

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

FACTUM OF PRIMARIS REIT

(hearing scheduled December 21, 2015)

MINDEN GROSS LLP
Barristers and Solicitors
2200 - 145 King Street West
Toronto, ON M5H 4G2

Catherine Francis (LSUC# 26900N)
cfrancis@mindengross.com

Tel: 416-369-4137
Fax: 416-864-9223

Lawyers for Primaris Reit