

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No: 500-11-049210-152

SUPERIOR COURT  
(Commercial Division)

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IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF  
MAGASIN LAURA (P.V.) INC. / LAURA'S  
SHOPPE (P.V.) INC.:

MAGASIN LAURA (P.V.) INC. / LAURA'S  
SHOPPE (P.V.) INC.;

Debtor/Respondent

-and-

SALUS CAPITAL PARTNERS, LLC;

Petitioner

-and-

ALVAREZ & MARSAL CANADA INC.;

Proposed Receiver

**CONTESTATION OF THE DEBTOR/RESPONDENT TO THE PETITIONER'S  
MOTION SEEKING THE APPOINTMENT OF A RECEIVER**

IN CONTESTATION OF THE PETITIONER, SALUS CAPITAL PARTNER LLC ("SALUS")'S MOTION SEEKING THE APPOINTMENT OF A RECEIVER (THE "SALUS MOTION"), THE DEBTOR/RESPONDENT (HEREINAFTER, THE "APPLICANT") RESPECTFULLY SUBMITS AS FOLLOWS:

1. All capitalized terms that are not otherwise defined herein shall have the meaning ascribed to such terms in the Application (as such term is defined below).

**I. THE SALUS MOTION**

2. In general terms, the Applicant denies the merits of Salus' Motion and respectfully submits that such Motion is ill-founded in fact and in law and should be dismissed.

3. For the reasons set out hereinbelow and in the Application, the Applicant respectfully asks this Court to:

- a. **Dismiss** the Salus Motion;
- b. **Declare** that the Applicant's Waiver (as defined below) is null and void for all legal intents and purposes and is of no legal force or effect;
- c. **Declare** that the stay pursuant to the Applicant's NOI applies to and is binding on Salus;
- d. **Appoint**, pursuant to Section 234 *BIA*, KPMG Inc., the Trustee to the NOI, as interim receiver, with the same powers as a Monitor under the CCAA, including controlling all receipts and disbursements of the Applicant, under the supervision, monitoring and with the approval of PricewaterhouseCoopers Inc. ("**PWC**"), acting as financial advisor to CF.

## II. THE APPLICANT'S APPLICATION FOR INTERIM FINANCE CHARGE

4. On August 10, 2015 (by email at 10:45 p.m.), the Applicant sent Salus' attorneys an Application for Interim Financing Charge (the "**Application**") and a Motion to Continue a Restructuring Proceeding under the CCAA and for an Initial Order (the "**CCAA Motion**"). Given the urgency of the situation and Salus' conduct referred to therein, the Application is returnable on August 11, 2015.

5. The Application is supported by seventeen (17) exhibits (the "**Exhibits**") and an affidavit of the Applicant's President and Director, Kalman ("**Fisher**") (the "**Fisher Affidavit**").

6. A copy of the Application, the Exhibits and the Fisher Affidavit are attached hereto, *en liasse*, as Exhibit D-1 and form an integral part hereof as if recited at length herein. Given the voluminous nature of the foregoing documents, the allegations therein will not be reproduced herein.

## III. SALUS' CONDUCT

7. Subject to the facts alleged in the Application (as supported by the Exhibits and the Fisher Affidavit), the Applicant refers this Court to the following facts.

8. Salus, a U.S. based lender who is itself in the process of liquidation, is the Applicant's working capital lender.

9. On July 30, 2015, Salus sent the Applicant a demand notice calling for payment pursuant to Salus' loan facilities and issuing a Notice of Intention to Enforce Security pursuant to subsection 244 (i) of the *Bankruptcy and Insolvency Act*, Canada (the "**BIA**") (the "**244 Notice**").

10. The Applicant met and discussed with Salus, in the days prior to July 30, 2015 and advised Salus of its intention to file a notice of intention to make a proposal (the "**NOI**") under the relevant provisions of the *BIA*.

11. On July 31, 2015, the Applicant filed the NOI. KPMG Inc. (the “Trustee”) was named as Trustee to the NOI.

12. At all times, the Applicant kept Salus fully informed of the efforts which it had made and which it continues to make in order to refinance the business and obtain financing in order to replace Salus.

13. In connection with the pending filing of the NOI, Salus advised the Applicant that an NOI filing was the appropriate course of action for the Applicant to take and that Salus would support the Applicant in the restructuring of its business.

14. The Applicant specifically relied on Salus’ verbal representations and based on such representations, on July 31, 2015, waived the 10 day period in the 244 Notice (the “Applicant’s Waiver”).

15. Unbeknownst to the Applicant at the time, Salus misled the Applicant as its true intention – which it concealed from the Applicant – was, as soon as it received the Applicant’s Waiver, to immediately proceed to liquidate the Applicant’s 162 stores and put it out of business.

16. Indeed, the Applicant subsequently discovered that prior to Salus sending, during the evening of August 7, 2015, a Motion Seeking the Appointment of a Receiver (the “Salus Motion”), Salus invited major liquidators in the U.S. to submit proposals for the immediate liquidation of the inventory in all of the Applicant’s Stores, thus severely disrupting its business plan.

17. In fact, Salus has planned a full liquidation of the Applicant’s inventory in advance of the appointment of a receiver and intends to use the receiver to implement the disguised receivership which Salus has already commenced.

18. Moreover, as soon as the Applicant waived the ten (10) days required under section 244 B/A, Salus, through its Ontario attorneys, commenced pressuring the Applicant to agree to an imminent liquidation of all of its Stores and, on August 7, 2015, refused to allow the Applicant to take in critical merchandise for the upcoming fall 2015 season.

19. The Applicant would never have waived the ten (10) day period provided for in the 244 Notice had it known that Salus’ representations were false and what its real intentions were.

#### **IV. THE INTERIM FINANCING**

20. As appears from the Application, on August 10, 2015, CF and the Applicant entered into a binding agreement pursuant to which CF, subject to the Court’s issuance of the Order sought in the Application, will provide the therein contained financing, up to an aggregate amount of \$10,000,000 and services to the Applicant (the “Interim Facility”).

21. As can be seen from the CF Interim Financing Loan Agreement, the financing to be furnished by CF to the Applicant is conditional upon:

- (a) the approval of the Interim Facility and the Interim Facility Loan Agreement by this Court and the issuance of an Order substantially in the form of the draft Order attached to the Application as Exhibit A-16;
- (b) a stay of proceedings in favor of the Applicant and the guarantors of certain of the Applicant's obligations, namely Boutique Laura Canada Ltée / Laura's Shoppe Canada Ltd., 3482731 Canada Inc., 9318-5494 Québec Inc. and Fisher;
- (c) the implementation of a system (the "**Cash Management System**") pursuant to which all local deposit accounts of the Stores are transferred daily to a deposit account held with the Bank of Montreal, such account being subject to a blocked account agreement that shall be terminated by a CCAA Order to be sought by the Applicant. Thereafter, the Applicant will transfer funds, on daily basis, from such Bank of Montreal account to an account held at the Bank of Nova Scotia (the "**Deposit Account**") and CF will advance funds to the Deposit Account. The Cash Management System is to be supervised and monitored by CF's financial advisor, PWC; and
- (d) the appointment of KPMG Inc., as Interim Receiver pursuant to the *BIA* or, alternatively, as the Court-appointed Monitor in the context of the CCAA, who will control all receipts and disbursements of the Applicant, including the Cash Management System, under the supervision, monitoring, and with the approval of PWC.

22. The Interim Facility is critical to maintaining the Applicant's ongoing business operations.

23. The Applicant's failure to effect the Restructuring would have devastating effects and would result in the closing and destruction of the Applicant's business and would destroy the interests of all of the Applicant's suppliers, creditors, continuing Landlords, 2383 employees, and other stakeholders.

24. Under reserve of the allegations in the Application, the Salus Motion contains numerous incomplete and/or misleading allegations with respect to the Applicant, including the following:

Salus Motion	Laura's Response
<p>35. On July 17, 2015, the Borrower [Laura] advised that it was in arrears of approximately \$5,400,000 of July rent to landlord, as appears, in part from copies of rent default notices from landlords for 46 locations for arrears totaling \$2,682,370.49 (the "Rent Default Notices"), <b>Exhibit P-23</b>, <i>en liasse</i>;</p> <p>36. Having continued for more than 15 days, the Borrower's failure to pay its July rents constituted a further Event of Default.</p>	<p>For approximately the past two years, while the Applicant has been paying rent for store leases late, rent was paid within the month that it was due. Payments would vary monthly, based on availability. The Applicant was at all times, transparent with its Landlords and Salus as to its intentions.</p> <p>Landlords supported the Applicant throughout and continue to do so. Some Landlords sent default notices, others did not, or did so infrequently. No Store lease was ever terminated.</p>
<p>37. More troubling to the Lender [Salus] was the fact that the Borrower had represented in its July borrowing base certificates that point that it was in compliance with all materials terms of all leases and that it had not been notified on any defaults under any lease, as appears from copies of Borrower's July 4, 6, 7, 9, 10, 11, 13, 14, 16 and 17 borrowing base certificates, <b>Exhibit P-24</b>, <i>en liasse</i>;</p>	<p>The Applicant's borrowing base certificates have never addressed unpaid rent (although as referred to above, there was unpaid rent through at least the first two weeks of the month, for approximately two years). The Applicant was always transparent about unpaid rent and Salus never asked the Applicant to reserve for unpaid rent. Therefore, it never appeared on the borrowing base. Moreover, Salus conducted numerous collateral reviews through this period.</p> <p>On a bi-weekly call between Salus and the Applicant, on July 15, 2015, it was declared that \$3.8M of rent was unpaid. The \$3.8M of unpaid rent was also noted in the AP listing provided to Salus on that day. It was agreed that this would be further discussed on the pre-arranged call of July 17, 2015.</p> <p>\$3.8M was reflected, as opposed to an amount of \$5.5M because part of the Applicant's agreement with CF was that rent cheques were submitted on the first of the month, and the cheques would only be deposited on a date mutually agreed to between CF and the Applicant, which varied monthly based on availability. The difference represents the cheques that CF had in its possession but had not deposited.</p>

Salus Motion	Laura's Response
38. The Borrower's concealment of its rent arrears and the Rent Default Notices greatly eroded the Lender's confidence in its management;	See comments below regarding paras. 43-44 of the Salus Motion.
<p>41. A&amp;M Securities Canada quickly discovered numerous undisclosed post-dated cheques outstanding, totaling approximately \$3,500,000 well in excess of the \$2,200,000 limit the Borrower had agreed to in the First Amending Agreement.</p> <p>42. The undisclosed post-dated cheques were among a large amount of outstanding cheques that the Lender was not aware of totaling approximately \$8,000,000, an amount that far exceeded the borrowing availability under the Credit Facilities at that time.</p>	<p>Cheques were prepared in anticipation of available funding. This was merely a question of the time required to prepare cheques, and uncertainty around availability. The Applicant never had any intention to circulate the cheques if the availability would not have been in place for funding to be approved.</p> <p>There was \$7.6M of cheques outstanding as of July 30, 2015. These cheques consisted of:</p> <ul style="list-style-type: none"> <li>• \$5.0M held in Laura's office (GST of \$1.6MM, rent of \$2.1M*, other of \$1.3M)</li> <li>• \$1.5M post-dated.</li> <li>• \$1.1M in circulation.</li> </ul> <p>*The rent \$2.1MM included CF cheques submitted to CF on the first of each month and held by CF in accordance with the verbal agreement with Laura. These cheques had been returned during the week of July 20, 2015 based on an understanding between CF and the Applicant that payment of the July 2015 rent would be deferred.</p>
<p>43. These breaches of covenants constituted yet a further Event of Default, the secrecy around which only further eroded the Lender's confidence in the Borrower's management.</p> <p>44. With regard to its rent arrears, the Borrower asserted to A&amp;M Securities that it had reached agreements with landlords for all of its locations for the deferral of July, 2015 rents, but was unable to supply evidence of any such binding agreements; as appears from the summary, as at July 29, 2015, of the</p>	<p>There was no secrecy around the unpaid rent. As referred to above, it had become practice over most of the Applicant's relationship with Salus for the Applicant to pay rent to Landlords in the course of the month during which it was due. Salus was aware of this. In July 2015, with diminished and diminishing availability, the Applicant sought rent deferrals from Landlords.</p> <p>During a call on July 17, 2015 between the Applicant and Salus, Salus asked for an update on the unpaid July 2015 rent. The Applicant advised Salus during such call it</p>

Salus Motion	Laura's Response
<p>documentary evidence provided by the Borrower to A&amp;M Canada Securities to support such assertion, <b>Exhibit P-27</b>;</p>	<p>had discussions and understandings with its Landlords that the July 2015 rent would be deferred by substantially all of the Landlords. The Applicant did not advise Salus that it had binding agreements with its Landlords, because the Applicant did not.</p> <p>Indeed, at the time of such call, the Applicant was still discussing the conditions of the July 2015 rent deferral, and therefore did not have binding agreements.</p> <p>Based on the Applicant's relationships and communications with its landlords, including CF's agreement to return the July 2015 cheques in their possession, the Applicant was confident that the deferrals would be agreed on.</p> <p>All default notices received by the Applicant in relation to July 2015 rent were provided to Salus (via A&amp;M) prior to the NOI filing. Laura did not receive any lease termination notices.</p>
<p>56. The Lender's retail consultants, 360 Merchant Solutions LLC ("360"), have advised that, <u>in the absence of purchase of Fall merchandise</u>, the optimal product mix exists right now and that every week a liquidation is delayed will result in a marked reduction in the desirability of the Borrower's Spring/Summer inventory and the disappearance of the Borrower's competitive advantage as other retailers begin to reduce prices on their Spring/Summer merchandise by the end of August;</p> <p>57. 360 has advised that failure to commence a liquidation sale now will result in significant deterioration of the Lender's recovery causing the Lender to suffer a significant shortfall, and that the Lender needs to take advantage of the</p>	<p>Salus' allegations are premised on the Applicant not being able to bring in critical fall 2015 goods. Salus has made clear that it will not fund purchases.</p> <p>In this regard, the Applicant has received numerous calls and messages from vendors who want to deliver goods. Salus has refused to fund the purchase of such goods because they have been preparing for an immediate liquidation of the Applicant's business.</p>

Salus Motion	Laura's Response
<p>present optimal product mix in an immediate 162-store liquidation, as appears from a copy of the report of 360 to the Lender, <b>Exhibit P-33</b>; [our underlining]</p>	
<p>63. On August 6, 2015, the Lender learned that the Borrower had incurred in its borrowing base calculations at least \$2,700,000 worth of inventory in transit that it did not actually own, as title had not yet passed, and that the Lender had already advanced credit to the Borrower based on such representation;</p>	<p>From the beginning of its relationship with Salus, the Applicant was entitled to borrow against goods in transit, up to a maximum \$3.5M. Goods in transit was always comprised of a mix, namely, the Applicant had title to some goods in transit but not others. The issue of title was never questioned by Salus, including in their regular collateral reviews.</p> <p>Following the NOI filing, A&amp;M made strong requests the Applicant to take possession of inventory that was ready to be delivered but Salus refused to authorize payment to the suppliers of such inventory. As a result, the Applicant refused to accept such inventory.</p>
<p>70. The Lender has, at all times, acted in good faith and with considerable patience towards the Debtors, including by agreeing to the Forbearance Agreements, the First Amending Agreement and the Second Amending Agreement;</p>	<p>A meeting was held at the request of Salus between Salus and its advisors and the Applicant and its advisors on July 28, 2015 at Salus' attorney's offices in Toronto.</p> <p>During the July 28<sup>th</sup> meeting, the Applicant advised Salus that it was considering an NOI filing. Salus responded that it would be very supportive of such a filing. Numerous representations were made by Salus during the July 28<sup>th</sup> meeting to the effect that Salus intends to support the Applicant through the NOI process. Moreover, during the July 28<sup>th</sup>, meeting and on numerous occasions prior to such meeting, Salus complimented the Applicant on the turnaround in its business. During the July 28<sup>th</sup> meeting, Salus repeatedly emphasized the need for the NOI process to be collaborative.</p>



Salus Motion	Laura's Response
	<p>In reliance on Salus' representations of support, the Applicant subsequently waived the 244 Notice.</p> <p>As soon as the Applicant did so, Salus seized funding any new critical fall 2015 goods, as it immediately began preparing for a liquidation.</p> <p>On July 29, 2015, Salus had someone at the Applicant's office working full time on liquidation scenarios. Approval was requested for Salus to access the latest inventory appraisal that had been done by Hilco Retail Consulting, initially on July 15, 2015 and then again on July 30, 2015.</p> <p>The Applicant would never have consented to waive the 10-day notice period had Salus not made strong representations during the July 28<sup>th</sup> meeting that it would support the Applicant through the NOI period.</p>

25. The Applicant's contestation of the Salus Motion is well founded in fact and in law.
26. The Salus Motion is ill-founded in fact and in law.

#### V. CONCLUSION

27. For the foregoing reasons, the Applicant respectfully asks this Court to:
- [A] **DISMISS** the Motion Seeking the Appointment of a Receiver filed by Salus Capital Partners, LLC ("**Salus**");
- [B] **DECLARE** that the Applicant's Acknowledgement and Consent dated July 31, 2015 of the Notice of Intention to Enforce Security of Salus is null and void for all legal intents and purposes and is of no legal force or effect;
- [C] **DECLARE** that the stay of proceedings pursuant to the Notice of Intention to submit a proposal filed by Laura's Shoppe (P.V.). Inc. on July 31, 2015 applies to and is binding on Salus Capital Partners, LLC.


[D] **APPOINT** pursuant to Section 47.1 BIA, KPMG Inc., the Trustee to the NOI, as interim receiver, with the same powers as a Monitor under section 23 of the CCAA and, including the following powers:

- (a) The Trustee shall, without delay, (i) publish once a week for two (2) consecutive weeks, in the *Montreal Gazette* and *La Presse* (ii) within five (5) business days after the date of the judgment to be rendered herein and/or the Order (A) post on the Trustee and/or Monitor's website (the "**Website**") a notice containing the information prescribed under the BIA and/or CCAA, (B) make this Order publicly available in the manner prescribed under the BIA and/or CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Applicant of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 47.1 BIA and/or 23(1)(a) of the CCAA and the regulations made thereunder;
- (b) shall control all of receipts and disbursements of the Applicant, including the Applicant's existing Cash Management System, under the supervision, monitoring and with the approval of PriceWaterhouseCoopers Inc. ("PWC"), the latter acting as advisor to the Interim Lender. PWC shall be provided with all required information and is authorized to have direct discussions with the management of the Applicant and the Trustee and/or Monitor.
- (c) shall be authorized to have direct discussions with the Interim Lender and shall provide information to the Interim Lender as may be requested by the latter from time to time;
- (d) shall report upon and supervise the receipt and disbursement of the Interim Financing;
- (e) shall assist the Applicant, to the extent required by the Applicant, in dealing with its creditors and other interested Persons during the Stay Period;
- (f) shall assist the Applicant, to the extent required by the Applicant, with the preparation of its cash flow projections and any other projections or reports and the development, negotiation and implementation of the Restructuring and/or Plan;
- (g) shall advise and assist the Applicant, to the extent required by the Applicant, to review the Applicant's business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;

- (h) shall assist the Applicant, to the extent required by the Applicant, with the Restructuring and in its negotiations with its creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- (i) shall report to the Court on the state of the business and financial affairs of the Applicant or developments in these proceedings or any related proceedings within the time limits set forth in the BIA and/or CCAA and at such time as considered appropriate by the Trustee and/or Monitor or as the Court may order;
- (j) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Trustee and/or Monitor's assessment of, and recommendations with respect to, the Plan;
- (k) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Trustee and/or Monitor;
- (l) may engage legal counsel to the extent the Trustee and/or Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the BIA and/or CCAA;
- (m) may act as a "foreign representative" of the Applicant or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;
- (n) may give any consent or approval as may be contemplated by the Order or the BIA and/or CCAA; and
- (o) may perform such other duties as are required by the Order or the BIA and/or CCAA or by this Court from time to time.

**[E] THE WHOLE** with costs.

Montréal, August 10, 2015

  
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**KUGLER KANDESTIN LLP,**  
Attorneys for the Debtor/Respondent, Laura's  
Shoppe (P.V.) Inc.