

C A N A D A

PROVINCE OF QUEBEC

District of Québec

Division No: 01- Montréal

N° : 500-11-049210-152

S U P E R I O R C O U R T

(commercial division)

**IN THE MATTER OF THE PLAN OF
ARRANGEMENT OF :**

LAURA'S SHOPPE (P.V.) INC.

Debtor / Respondent

-and-

SALUS CAPITAL PARTNERS, LLC

Petitioner

-and-

KPMG INC.

Monitor

-and-

**THE CADILLAC
CORPORATION LIMITED**

FAIRVIEW

Mise-en-Cause

**MOTION SEEKING THE EXAMINATION OF DEBTOR'S
REPRESENTATIVE KALMAN FISHER**

(Art. 2, 20 and 46 of the C.C.P. and section 9 and following of the CCAA)

**TO THE HONOURABLE MARIE-ANNE PAQUETTE J.S.C. OR ONE OF THE
HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR**

THE DISTRICT OF MONTREAL, PETITIONER SALUS CAPITAL PARTNERS, LLC, RESPECTFULLY SUBMITS AS FOLLOWS:

1. On August 12, 2015, the Honourable Marie-Anne Paquette J.S.C., issued an Initial Order (the "**Initial Order**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 ("CCAA"), as it appears from the Court record;
2. By this Motion, Petitioner is seeking to be authorized to examine Debtor's President Kalman Fisher on his affidavits dated August 10, 2015, in support of the *Motion to continue a restructuring proceeding under the CCAA and to obtain an initial order* (the "**Restructuring Motion**") and the *Application for interim financing charge* (the "**Application**"), as it appears from the Court record;
3. Petitioner is a secured creditor of the Debtor and holds security over substantially all of the Debtor's movable property;

THE PARTIES, CREDIT AGREEMENT AND SECURITY

4. The Debtor is a women's clothing retailer operating 162 Laura, Laura Petites, Laura Plus, Melanie Lyne and liquidation stores in nine provinces;
5. The Debtor is 100% owned by the Guarantor, 9318-5494 Quebec Inc. (the "**Guarantor**"), which was incorporated pursuant to the *Canada Business Corporations Act* on December 23, 2010 as "7735235 Canada Inc.", and registered in Quebec on June 10, 2011. 9318-5494 Quebec Inc's name was changed from "7735235 Canada Inc." on March 2, 2015;
6. Petitioner, Debtor, Guarantor, Laura's Shoppe Canada Inc. (together with the Guarantor, the "**Guarantors**" and, collectively with the Debtor, the "**Debtors**"), 348271 Canada Inc., (as limited recourse Guarantor) and Kalman Fisher (as limited Guarantor) are parties to a credit agreement dated April 17, 2013 (the "**Original Credit Agreement**"): The Original Credit Agreement has been amended several times to address covenant breaches by the Debtors and to give the Debtors an opportunity to refinance with a new lender, as follows:
 - (a) a Forbearance Agreement dated July 22, 2013, as amended by letter agreements dated August 2, 2013, and August 16, 2013 (collectively, the "**First Forbearance Agreement**");
 - (b) a Second Forbearance Agreement dated August 30, 2013, as amended by letter agreements dated October 5, 2013, October 19,

2013, October 26, 2013 and November 22, 2013 (collectively, the "**Second Forbearance Agreement**");

- (c) a Third Forbearance Agreement dated December 16, 2013 (the "**Third Forbearance Agreement**");
- (d) a Fourth Forbearance Agreement dated April 2, 2014 (the "**Fourth Forbearance Agreement**") and, together with the First Forbearance Agreement, the Second Forbearance Agreement and the Third Forbearance Agreement, the "**Forbearance Agreements**");
- (e) a First Amending Agreement dated August 8, 2014 (the "**First Amending Agreement**"); and
- (f) a second Amending Agreement dated February 26, 2015 (the "**Second Amending Agreement**");

7. The Original Credit Agreement, the Forbearance Agreements, the First Amending Agreement and the Second Amending Agreement are collectively hereinafter referred to as the "**Credit Agreement**";

8. Pursuant to the Credit Agreement, Petitioner has supplied the Debtor with:

- (a) a revolving operating facility in the maximum amount of CDN\$32,000,000 or its US\$ equivalent, subject to sufficient collateral borrowing base; and
- (b) a CDN\$3,000,000 term loan;

(collectively, the "**Credit Facilities**") which Credit Facilities were to be used: (a) to purchase working capital assets in the ordinary course, including inventory and equipment; (b) for capital lease obligations and other capital expenditures; and (c) for general corporate purposes of the Debtors. The Credit Facilities paid out the loans from the Debtor's former asset-based lenders, Roynat Inc. and the Bank of Nova Scotia. The Respondent also used the Credit Facilities to repay sums owing to HSBC and PNC Capital, primarily in connection with certain improvement financings. Certain small sums remain outstanding to HSBC;

9. By a guarantee dated April 17, 2013, the Guarantors guaranteed all present and future obligations of the Respondent to Petitioner (the "**Guarantee**");

10. As security for their obligations to Petitioner, the Debtors provided, among other things:
 - (a) a Deed of Hypothec and Issue of Bonds dated April 11, 2013 (the "**Hypothec**"), registration in respect of which was made pursuant to the Quebec Register of Personal and Moveable Real Rights (the **RPMRR**) on that same date by registration number 13-0280666-0001; and
 - (b) a General Security Agreement dated April 17, 2013 (the "**GSA**"), registration in respect of which was made pursuant to the *Personal Property Security Act* (Ontario) on April 11, 2013 by financing statement no.: 20130411 0905 1590 8557, and pursuant to applicable personal property security legislation in all other Canadian common law Provinces (except Prince Edward Island) on the same date;

PROCEEDINGS

11. The Restructuring Motion and Application were served to Petitioner's Montreal counsel on Monday, August 10, 2015 at 10:49 p.m., with a notice of presentation on August 11, 2015 in commercial chamber room 16.10;
12. Petitioner's Toronto counsel, who were in frequent communication with the Respondent's counsel on behalf of Petitioner, were not served;
13. As it appears from the Court record, a demand for postponement of two (2) days namely of the Restructuring Motion and Application in order to fully comprehend all the impacts of the Restructuring Motion and Application and seek further instructions from Petitioner was dismissed by the Court;
14. The hearing of the Restructuring Motion and Application took place on August 11, 2015, and judgment was rendered on August 11, 2015, which judgment was eventually written and delivered on August 12, 2015;
15. As a matter of fact, Petitioner was deprived of the strict right to examine the affiant before the hearing of said motions;

REQUEST FOR EXAMINATION

16. Notwithstanding the above, Petitioner's counsel informed the Debtor's counsel on August 18, 2015, that Petitioner would like to examine Kalman Fisher on his affidavit and therefore asked that Debtor's counsel provides Kalman Fisher's availability before noon on August 19, 2015, in order for

the examination to take place as soon as possible, as it appears from a copy of the letter dated August 18, 2015, sent to Debtor's counsel, **Exhibit R-1**;

17. Debtor's counsel refused the requested examination and took the position that Petitioner does not have the right to examine Kalman Fisher, as it appears from a copy of the letter sent by Debtor's counsel to Petitioner's counsel and dated August 18, 2015, **Exhibit R-2**;
18. The Initial Order has a major impact on Petitioner's rights and Petitioner should be allowed to examine the affiant in order to challenge the facts upon which the Initial Order was rendered;
19. Petitioner's recovery has been significantly prejudiced by the imposition of, *inter alia*,
 - (a) a \$10,000,000 priming DIP Charge;
 - (b) the KERP, which constitutes a further priming charge of up to \$500,000;
 - (c) an administration charge of up to \$250,000;
 - (d) the stay of proceedings, which prevents Petitioner from seeking to recover from guarantors and others who are not otherwise subject to the Initial Order and have not sought protection under the CCAA;
 - (e) the loss of the Cash Management System and loss of all the reporting as per the Credit Agreement; and
 - (f) the failure to account for payment of interest and other fees otherwise payable to Petitioner pursuant to the Credit Agreement.

As it appears from the Initial Order;

20. The examination of Kalman Fisher is required in order for the Court to be in a position to re-consider namely the whole question of whether a DIP Charge and corresponding super-priority and/or the Initial Order should be varied, modified, rescinded or maintained on the same basis as it was authorized on August 11, 2015;
21. As the examination should take place as soon as possible, Petitioner asks any prior delay for the presentation of this Motion be abridged and validated;

22. The present Motion is well founded in fact and in law.

WHEREFORE THE PETITIONER PRAYS THIS COURT TO:

GRANT the present Motion;

ORDER that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today;

ORDER the examination of Kalman Fishman by Petitioner's counsel to a date and place to be determined by the Court;

THE WHOLE without costs, save and except in case of contestation.

MONTREAL, August 24, 2015

BCF UP

BCF LLP

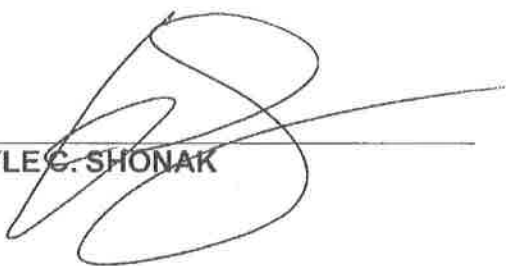
ATTORNEYS FOR PETITIONER
SALUS CAPITAL PARTNERS, LLC

AFFIDAVIT

I, the undersigned, **KYLE C. SHONAK**, residing and domiciled for the purpose of the present statement at 197 First Avenue, Suite 250, Needham, MA 02494, USA, make oath and declare that:

1. I am the Co-President of Salus Capital Partners, LLC;
2. All the facts alleged in the present Motion seeking the examination of Debtor's representative Kalman Fisher are true.

AND I HAVE SIGNED

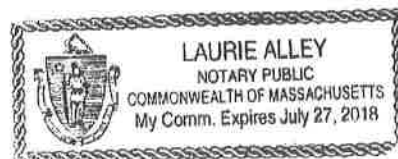


KYLE C. SHONAK

Solemnly affirmed before me, at [•],
on August 24 2015



Notary Public



NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the *Motion seeking the examination of Debtor's representative Kalman Fisher* will be presented for adjudication before the Honourable Marie-Anne Paquette, J.C.S., or one of the Honourable Judges of the Superior Court of Quebec, sitting in the commercial division in and for the District of Montreal, at the Montreal Courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6, on **September 8, 2015, in room 16.10.**

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, August 24, 2015

BCF LP

BCF LLP
ATTORNEYS FOR PETITIONER
SALUS CAPITAL PARTNERS, LLC

C A N A D A

PROVINCE OF QUEBEC
District of Québec
Division No: 01- Montréal

S U P E R I O R C O U R T

(commercial division)

N° : 500-11-049210-152

IN THE MATTER OF THE PLAN OF
ARRANGEMENT OF :

LAURA'S SHOPPE (P.V.) INC.
Debtor / Respondent

-and-
SALUS CAPITAL PARTNERS, LLC
Petitioner

-and-
KPMG INC.
Monitor

-and-
THE CADILLAC FAIRVIEW
CORPORATION LIMITED
Mise-en-Cause

LIST OF EXHIBITS

EXHIBIT R-1 : Copy of the letter dated August 18, 2015, sent to Debtor's
counsel;

EXHIBIT R-2 : Copy of the letter sent by Debtor's counsel to Petitioner's
counsel and dated August 18, 2015.

Montreal, August 24, 2015

BCF LP

BCF LLP
ATTORNEYS FOR PETITIONER
SALUS CAPITAL PARTNERS, LLC

*Bertrand Giroux, Partner
Direct Line: (514) 397-6935
bertrand.giroux@bcf.ca*

Montréal, August 18, 2015

BY EMAIL

WITHOUT PREJUDICE

Mtre David Stollow
Kugler Kandestin
1 Place Ville-Marie, Suite 2101
Montreal, Quebec H3B 2C6

Dear confrere:

Re: Laura's Shoppe (P.V.) Inc., Salus Capital
Partners LLC, KPMG Inc. and The Cadillac
Fairview Corporation Limited
Examination of Kalman Fisher
Our File: 36481-2

We act in Quebec for Salus Capital Partners LLC in connection with the above-captioned matter.

We would like to examine Mr. Kalman Fisher on his affidavit. We therefore ask that you provide the latter's availability before noon on August 19, 2015. The examination should take place as soon as possible.

Yours truly,

BCF LLP


Bertrand Giroux

BG/mt



David Stolow
dstolow@kklex.com
Assistant: Marilena Zeffiro
mzeffiro@kklex.com

August 18, 2015

By Email

Me Bertrand Giroux
BCF LLP
1100 René-Lévesque Blvd. West, 25th Floor
Montréal, Québec
H3B 5C9

Re: Laura's Shoppe (P.V.) Inc. ("Laura")

Dear Colleague,

I am writing further to your letter of earlier today with respect to your request to examine Mr. Kalman Fisher "on his affidavit".

Mr. Fisher filed an affidavit in support of Laura's *Application for Interim Financing Charge* (the "DIP Application") and Laura's *Motion to Continue a Restructuring under the CCAA and to Obtain an Initial Order* (the "CCAA Conversion Motion") (the affidavits in support of the DIP Application and the CCAA Conversion Motion are referred to as the "Affidavits").

Mr. Fisher was present in Court on August 11, 2015, the date of presentation of the DIP Application and the CCAA Conversion Motion. Salus chose not to cross-examine Mr. Fisher on the Affidavits. The Court rendered a judgment and an Initial Order on August 11, 2015 and August 12, 2015 on the DIP Application and the CCAA Conversation Motion.

Given the foregoing, Salus does not have the right to examine Mr. Fisher on the Affidavits.

Yours truly,

KUGLER KANDESTIN LLP

A handwritten signature in black ink, appearing to read "David Stolow".

Per: David Stolow
DS/mz

No.: 500-11-049210-152

**SUPERIOR COURT
District of Montreal
(commercial division)**

LAURA'S SHOPPE (P.V.) INC.
Debtor / Respondent

**-and-
SALUS CAPITAL PARTNERS, LLC**
Petitioner

**-and-
KPMG INC.**
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**-and-
THE CADILLAC FAIRVIEW CORPORATION
LIMITED**
Mis en cause

**MOTION SEEKING THE EXAMINATION
OF DEBTOR'S REPRESENTATIVE
KALMAN FISHER, AFFIDAVIT, NOTICE
OF PRESENTATION, LIST OF EXHIBITS
AND EXHIBITS R-1 AND R-2**

ORIGINAL

Me Bertrand Giroux

Our file: 036481-0002



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