

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

**SUPERIOR COURT**  
(Commercial Division)

---

**IN THE MATTERS OF THE NOTICE OF  
INTENTION OF:**

**N°: 500-11- 051625-164**

**AMERICAN APPAREL CANADA RETAIL INC.**, a corporation duly incorporated under the *Canada Business Corporations Act* (Canada) and continued under the *Business Corporations Act* (Quebec), having its head office at 1550 rue Metcalfe, Suite 1500, Montreal, QC, H3A 1X6

- and -

**N°: 500-11- 051624-167**

**AMERICAN APPAREL CANADA WHOLESALE INC.**, a corporation duly incorporated under the *Canada Business Corporations Act* (Canada) and continued under the *Business Corporations Act* (Quebec), having its head office at 1550 rue Metcalfe, Suite 1500, Montreal, QC, H3A 1X6

Debtors/Petitioners

- and -

**KPMG INC.**, a corporation duly incorporated company under the *Canada Business Corporations Act* (Canada), having a place of business at 600 boul. De Maisonneuve Blvd. West, Suite 1500 Montreal, QC, H3A 0A3

Trustee/Interim Receiver

---

**FIRST MOTION FOR AN EXTENSION OF TIME TO FILE A PROPOSAL (Section 50.4(9) of the *Bankruptcy and Insolvency Act* (the "BIA"))**

---

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR THE REGISTRAR, SITTING IN COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, THE DEBTORS RESPECTFULLY SUBMIT THE FOLLOWING:**

**1. INTRODUCTION**

1. American Apparel Canada Retail Inc. ("**AA Retail**") and American Apparel Canada Wholesale Inc. ("**AA Wholesale**"; collectively with AA Retail, the "**Debtors**") seek an order extending the initial deadline for the filing of a proposal, the initial period of which will expire on December 9, 2016, until January 23, 2017 (the "**Extended Stay Period**"), for the reasons more fully explained below.

**2. FACTUAL BACKGROUND**

2. The Debtors are the wholly-owned Canadian affiliates of American Apparel LLC ("**AA Parent**"), and together carry out the retail and wholesale clothing business operated in Canada under the "American Apparel" brand.
3. On or about November 8, 2016, AA Parent, American Apparel, LLC, American Apparel (USA), LLC, American Apparel Retail Inc., American Apparel Dyeing & Finishing, Inc., KCL Knitting, LLC, and Fresh Air Freight, Inc. (collectively, the "**U.S. Affiliates**") advised the Debtors that the U.S. Affiliates would cease providing all stock and inventory to the Petitioners and cease providing all support functions, effective immediately.
4. As already appears in the Court record, AA Retail does not own any material intellectual property, and formerly used the "American Apparel" brand name under licence. That licence has been terminated, with effect on November 6, 2016, but the applicable owners of the intellectual property have provided the Debtors with a "no action" letter, enabling the Debtors' continuing use of the intellectual property for a limited time.
5. On November 9, 2016, the Debtors filed a Notice of Intention to File a Proposal pursuant to section 50.4 of the BIA (the "**Notice**"). KPMG Inc. is the proposal trustee (in such capacity, the "**Trustee**").
6. However, due to the U.S. Affiliates ceasing to provide administrative support, the Debtors are unable to complete the proposal proceedings without assistance.
7. Accordingly, on November 11, 2016, the Debtors sought and obtained an order appointing KPMG Inc. as interim receiver pursuant to section 47.1 of the BIA (KPMG Inc. in such capacity, the "**Interim Receiver**").
8. A detailed description of the Debtors' pre-proposal operations, finances, creditors and reliance on the U.S. Affiliates is contained in the Debtors' Motion to Appoint the Interim Receiver, dated November 10, 2016, which for ease of reference is attached hereto as Exhibit **R-1** (the "**Interim Receiver Motion**").

### **3. OPERATIONS SINCE FILING OF NOI**

#### **3.1 Statutory Compliance**

9. On November 18, 2016, the Debtors, with the assistance of the Trustee and the Interim Receiver, filed the cash flow statements and reports required by Section 50.4(2) of the BIA.

#### **3.2 Liquidation of Inventory**

10. Since its appointment, the Interim Receiver has been conducting a coordinated liquidation of inventory across Canada.
11. To that end, the Interim Receiver formally retained Merchant Retail Solutions ULC (an affiliate of Hilco Merchant Resources LLC) ("**MRS**") on November 16, 2016, who is acting as the Interim Receiver's agent to supervise the liquidation of inventory. Under the direction of the Interim Receiver, MRS has facilitated inventory sales at each of the Debtor's retail locations, with the assistance of the Debtor's existing staff, at discounted prices.
12. The orderly liquidation in question has yielded approximately \$2.8 million in net receipts, as will be set out in greater detail in the Debtors' cash-flow statement and Trustee's First Report, to be subsequently filed in the Court record by the Trustee (the "**Trustee's Report**").
13. It is anticipated that sales will remain steady through December as the Christmas shopping season runs its course.

#### **3.3 Leases**

14. The Interim Receiver has analyzed the profitability and costs associated with each of the Debtors' locations. Based on the amount of inventory on hand, overhead costs and anticipated sales after December, the Interim Receiver has identified eight of the Debtors' 28 retail locations as being uneconomical to maintain open beyond the 2016 year end. The Interim Receiver has determined that it is in the interest of Debtors' stakeholders to close these locations following the Christmas shopping season.
15. On December 1, 2016, the Interim Receiver delivered notices of lease disclaimers in respect of these eight retail locations in Edmonton, Calgary, Toronto, Kingston, Montreal and Laval. These leases will be disclaimed effective as of December 31, 2016.
16. Employees at each of the locations slated for closing have been given notice of termination by the Interim Receiver.



17. In addition to the eight retail locations, the Interim Receiver has determined that the Debtors have no use for the vacant warehouse facility that AA Retail leases in Montreal; no inventory is being provided by the U.S. Affiliates, and accordingly there is no need for a warehouse facility. The Interim Receiver delivered a notice of disclaimer in respect of this warehouse location on November 15, 2016, with effect on December 15, 2016. This warehouse had been vacated several months prior the date of the Notice, and consequently there were no employees at this location at the time the lease was disclaimed.
18. The Interim Receiver has advised the Debtors that there are no fixed dates set for the disclaimer of additional leases, however it is anticipated that further disclaimers will be necessary as inventory is consolidated and liquidated.

#### **3.4 Liquidity Through Extended Stay Period**

19. The Interim Receiver has paid all December rent in respect of all of the Debtors' retail locations. The Debtors currently have sufficient liquidity to fund occupation rent and salaries through the Extended Stay Period, as set out in further detail in the Trustee's Report.

#### **4. U.S. AFFILIATE INSOLVENCY PROCEEDINGS**

20. On November 14, 2016, the U.S. Affiliates filed for protection under Chapter 11 of Title 11 of the United States Code (the "**Chapter 11 Proceedings**"), and implemented a sales process for all of their assets.
21. Montreal based Gildan Activeware SRL is the stalking horse bidder in the Chapter 11 Proceedings sale process, with a stated intention of purchasing the U.S. Affiliates intellectual property and inventory.
22. The Court in the Chapter 11 Proceedings has scheduled January 6, 2017 as the deadline for submitting bids, with an auction to be held January 9, 2017 and a sale hearing to be held January 12, 2017.
23. At this stage, it is not clear whether the business, leases or inventory of the Debtors will be of interest to a buyer of the U.S. assets.
24. However, it is important that the Debtors continue to be protected by a stay of proceedings in Canada in order to, *inter alia*, remain viable in the event that it is considered that these entities ought to be included in an international transaction, if necessary.
25. The outcome of the Chapter 11 Proceedings sale process is of material relevance to the Debtors and their creditors. As described in the Interim Receiver Motion, AA Retail is a creditor of the U.S. Affiliates. Accordingly, maximizing

value in the Chapter 11 Proceedings may correlate with improved prospects for recoveries on that debt, if any.

**5. EXTENSION OF TIME**

26. As described in detail in the Interim Receiver Motion, the Debtors' have only two secured creditors, each in respect of specific equipment, and substantially all of the Debtors' unsecured indebtedness is owed to the U.S. Affiliates.
27. The Debtors are current on their payment of sales taxes, occupation rent and salaries, and have the liquidity to fund ongoing sales taxes, occupation rent and salaries through the Extended Stay Period.
28. Moreover, the Interim Receiver, a court appointed officer, has control over the Debtors' business and operations, including their receipts and disbursements.
29. It is submitted that, in the circumstances, the ongoing coordinated liquidation process being conducted by MRS, under the direction of the Interim Receiver, is the best way to optimize value for the Debtors' stakeholders, while also maintaining the American Apparel Canadian business during the pendency of the Chapter 11 Proceedings sale process.
30. The Debtors require an extension of the stay of proceedings under the BIA to enable the Interim Receiver to continue this process.
31. It is accordingly submitted that there are no creditors that will be materially prejudiced by the requested stay extension. Indeed, there would be significant prejudice to the Debtors' employees, lessors and other stakeholders if the stay is not extended, the Debtors become bankrupt, and the coordinated Canadian liquidation and the potential for coordination with the Chapter 11 Proceedings lost.
32. Once the result of the Chapter 11 Proceedings is more clear and the Debtors' inventory has been more fully liquidated and consolidated in high-performing stores, it is more likely that a viable proposal that would be deemed acceptable to the Debtors' creditors can be made.

**6. CONCLUSIONS**

33. Neither the Debtors nor the Trustee are aware of any creditor that will be materially prejudiced should the extension be granted.
34. The Debtors have acted in good faith and with due diligence.
35. The Debtors will likely be able to make a viable proposal if the extension is granted.

36. The present motion is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present *First Motion for an Extension of Time to File a Proposal*;

**EXTEND** until January 23, 2017 the delay granted to American Apparel Canada Retail Inc. and American Apparel Canada Wholesale Inc. to file their proposal with the Official Receiver.

**THE WHOLE**, with costs to follow.

Montréal, December 6, 2016



---

**BLAKE, CASSELS & GRAYDON LLP**

Attorneys for the Debtors/Petitioners

American Apparel Canada Retail Inc. and American Apparel Canada Wholesale Inc.

**AFFIDAVIT**

I, the undersigned, BENNETT NUSSBAUM, having a place of business at 1550 rue Metcalfe, Suite 1500, Montreal, QC, H3A 1X6, solemnly declare the following:

1. I am the sole officer of the Debtors herein;
2. All the facts alleged in the *Third Motion for an Extension of Time to File a Proposal* are true.

AND I HAVE SIGNED:

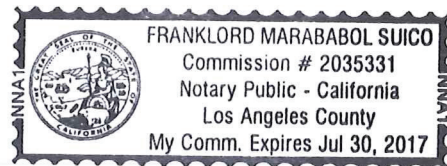


---

**BENNETT NUSSBAUM**

Solemnly affirmed before me at Los Angeles,  
this 6 th day of December, 2016

  
\_\_\_\_\_  
Notary Public





**NOTICE OF PRESENTATION**

**TO: Attached Service List**

**TAKE NOTICE** that the Debtors' *First Motion for an Extension of Time to File a Proposal* will be presented for decision before the Superior Court, Commercial Division, sitting in and for the District of Montreal on **Friday, December 9, 2016 at 9:00 a.m.**, at 1, Notre-Dame Street East in Montreal, Quebec in room 16.10, or as soon thereafter as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, December 6, 2016



---

**BLAKE, CASSELS & GRAYDON LLP**  
Attorneys for the Debtors/Petitioners  
American Apparel Canada Retail Inc. and  
American Apparel Canada Wholesale Inc.



N°: 500-11-051624-167  
N°: 500-11-051625-164

---

**SUPERIOR COURT**  
(Commercial Division)  
**DISTRICT OF MONTREAL**

---

**IN THE MATTER OF THE NOTICE OF  
INTENTION OF:**

**AMERICAN APPAREL CANADA RETAIL INC.**

-and-  
**AMERICAN APPAREL CANADA WHOLESALE  
INC.**

Petitioners

-and-

**KPMG INC.**

Trustee/Proposed Interim Receiver

---

**FIRST MOTION FOR AN EXTENSION OF TIME  
TO FILE A PROPOSAL, AFFIDAVIT, NOTICE  
OF PRESENTATION AND EXHIBIT R-1**  
(Section 50.4(9) (B.I.A.))

---

**ORIGINAL**

---

**M<sup>re</sup>. Bernard Boucher** **BB-8098**  
**BLAKE, CASSELS & GRAYDON LLP**  
Barristers & Solicitors  
1 Place Ville Marie  
Suite 3000  
Montréal, Québec H3B 4N8  
Telephone: 514 982-4006  
Fax: 514 982-4099  
Email: bernard.boucher@blakes.com  
Our File 202886-1

