

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

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

N^o: 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^o: 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/Proposed Interim Receiver

**MOTION FOR THE ISSUANCE OF AN ORDER APPOINTING AN INTERIM
RECEIVER AND CREATING INTERIM CHARGES**
(Sections 47.1, 64.1 and 64.2 of the *Bankruptcy and Insolvency Act* (the "BIA"))

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING
IN THE COMMERCIAL DIVISION, DISTRICT OF MONTREAL, OR TO A
REGISTRAR THEREOF, THE PETITIONERS RESPECTFULLY SUBMIT THE
FOLLOWING:**

1. INTRODUCTION

1. American Apparel Canada Retail Inc. ("**AA Retail**") and American Apparel Canada Wholesale Inc. ("**AA Wholesale**", together with AA Retail the "**Petitioners**") 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;
2. 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 Petitioners that the U.S. Affiliates would cease providing all stock and inventory to the Petitioners and cease providing all support functions, effective immediately;
3. The Petitioners, together with the U.S. Affiliates, as well as the businesses operated collectively by them, are referred to herein as "**American Apparel**".
4. The Petitioners are currently subject to a stay of proceedings following the filing on November 9, 2016 of a Notice of Intention to File a Proposal pursuant to section 50.4 of the BIA, as more fully set forth herein;
5. For the reasons set forth below, the Petitioners seek the issuance of an order appointing KPMG Inc. ("**KPMG**") as interim receiver over their property and operations (the "**Interim Receiver**") in order to facilitate an orderly wind down or liquidation;
6. More specifically, the Petitioner seeks the issuance of an order substantially in the form of the draft order communicated herewith as Exhibit **R-1**;

2. THE PETITIONERS

AA Retail

7. The Petitioner AA Retail is a company that engages in the marketing and sale in Canada of American Apparel branded men's and women's clothing and accessories, as well as children's clothing and certain accessories bearing non-American Apparel branding. A CIDREQ report for AA Retail is attached as Exhibit **R-2**;
8. AA Retail leases its head office in Montreal, Quebec, together with 28 retail outlets across Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan and one warehouse space in Montreal.
9. AA Retail currently employs approximately 372 full-time and part-time employees across Canada in positions ranging from district management, back-office, store management and retail sales associates;

10. No collective bargaining agreement exists between these employees and AA Retail, and AA Retail does not have any pension obligations relating to these employees;
11. AA Retail does not own any material intellectual property, and formerly used the "American Apparel" brand name under licence. This licence has been terminated, with effect on November 6, 2016, but the applicable owners of the intellectual property have agreed to provide the Petitioners with a "no action" letter, permitting their continued use throughout these proposal proceedings.

AA Wholesale

12. The Petitioner AA Wholesale is a company that markets and sells American Apparel branded and other clothing online and on a wholesale basis in Canada, substantially all of which is in turn manufactured in the United States by certain U.S. Affiliates. AA Wholesale was formerly a supplier to AA Retail, but AA Retail now purchases inventory directly from U.S. Affiliates. A CIDREQ report for AA Wholesale is attached as Exhibit **R-3**;
13. AA Wholesale shares the head office of AA Retail in Montreal, Quebec, and does not lease any other real property.
14. AA Wholesale currently employs approximately 12 employees across Canada;
15. No collective bargaining agreement exists between these employees and AA Wholesale, and AA Wholesale does not have any pension obligations relating to these employees;
16. AA Wholesale does not own any material intellectual property.

Management and Supply Chain

17. The Petitioners have administrative and middle-management staff in Canada, however some administrative functions and corporate governance is conducted out of Los Angeles, California by the AA Parent.
18. Substantially all of the stock and inventory of both Petitioners is manufactured and distributed by the U.S. Affiliates.

Petitioners' Proposal

19. On November 9, 2016, AA Retail and AA Wholesale filed notices of intention to file a proposal (the "**NOIs**") pursuant to section 50.4 of the BIA, and are currently subject to the stay of proceedings provided for therein, as appears from the Certificates of Filing of a Notice of Intention to Make a Proposal communicated herewith as Exhibit **R-4**;

3. THE PETITIONERS' FINANCIAL OPERATIONS

3.1 Operating Financing and Expenses

20. The Petitioners formerly had a secured operating facility with the Bank of Montreal ("**BMO**"), but that facility was paid out and expired by its own terms on March 31, 2014. There are no amounts currently outstanding to BMO.
21. The operations of the Petitioners are now financed primarily by the credit terms of its supply arrangements with the U.S. Affiliates. Virtually all of the Petitioners' inventory is supplied by the U.S. Affiliates on credit. When that inventory is sold in Canada, operating receipts are used to fund Canadian operating costs such as wages and rent, and any surplus is used to repay the trade indebtedness owing to the U.S. Affiliates.
22. The Petitioners have now been advised by the U.S. Affiliates that no new inventory will be provided to the Petitioners. In addition to freezing inventory supply, this has the effect of eliminating the Petitioners' access to trade financing.
23. It is accordingly anticipated that, if granted by this Honourable Court, the interim receivership would be funded solely out of cash on hand and trade receipts from inventory on hand with the Petitioners.
24. Both of the Petitioners' existing insurance policies are provided by AIG Insurance Company of Canada (Property), ACE INA Canada (General Liability) and Liberty International Canada (Umbrella), and the aggregate monthly premiums in the approximate amount of \$30,000 per month have historically been paid by the U.S. Affiliates in connection with the payment of premiums of the U.S. Affiliates' policies, and the corresponding amounts recorded as intercompany debt.
25. The U.S. Affiliates are no longer willing or able to continue to fund policies on behalf of the Petitioners. It is accordingly anticipated that, if appointed, the Interim Receiver will remit an amount equal to the Petitioners' share of insurance premiums to the U.S. Affiliates on a monthly basis.
26. Credit card payments received by customers are processed by either Global Payments (Visa/Master Card) or by American Express and are deposited in the same account as the stores cash deposits ("**Store Deposit Account**"). On a daily basis, these funds are transferred for each store to the Canadian dollar aggregation account ("**Aggregation Account**") for each respective Petitioner. Disbursements are made from the Aggregation Account for Canadian currency payments. For US dollar disbursements, the funds are transferred from the Aggregation Account to a US denominated account and then disbursed.

3.2 Secured creditors

27. The Petitioners have no secured operating creditor, and no other material secured creditors.

28. As disclosed in the Register of Personal and Movable Real Rights (for Quebec) and Personal Property Security Registries (for provinces other than Quebec) communicated herewith as Exhibit R-5, the Petitioners have the following registered secured creditors:

AA Retail

- a) Bank of Montreal: BMO has filed registrations in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec and Nova Scotia in respect of all of AA Retail's present and after acquired property. These registrations were made in respect of the BMO operating facility discussed above, which has been paid in full and terminated.
- b) Omega Leasing Canada: Omega Leasing Canada has filed a registration in Ontario in respect of a 2013 Chevrolet Express.
- c) National Leasing Group Inc.: National Leasing Group Inc. has filed numerous registrations in Quebec in respect of leased office equipment and point of sale equipment.

AA Wholesale

- a) Bank of Montreal: BMO has filed registrations in Ontario and Quebec in respect of all of AA Wholesale's present and after acquired property. These registrations were made in respect of the BMO operating facility discussed above, which has been paid in full and terminated;

3.3 Unsecured creditors

- 29. As at October 31, 2016, AA Retail owes an approximate aggregate amount of \$1,779,655.66 to its unsecured creditors (including \$1,680,253.29 owing to an entity known as Prince Activewear (now American Apparel (USA) LLC (AME), a U.S. Affiliate), in connection with unpaid inventory), including current and past-due amounts;
- 30. AA Retail is also a creditor of the U.S. Affiliates for the amount of approximately \$17.9 million, which balance arose as a result of intercompany loans made to certain U.S. Affiliates to fund operations, giving rise to a substantial set-off claim in respect of a large part of its unsecured debt.
- 31. As at October 31, 2016, AA Wholesale owes an approximate aggregate amount of \$391,001.92 to its trade suppliers (including \$374,522.38 owing to U.S. Affiliates in connection with unpaid inventory), including current and past-due amounts, and approximately \$922,698.53 owing to U.S. Affiliates on account of intercompany loans to fund AA Wholesale operations.
- 32. To date, all wages and salaries have been paid.

33. To date, all sales taxes owing have been paid, and all source deductions have been remitted to the appropriate government authority.
34. The Petitioners have recurring monthly payments of approximately \$1.8 million, representing *inter alia* rent and salaries;

4. INTERNATIONAL WIND DOWN

35. American Apparel is one of North America's largest clothing manufacturers and retailers, with three manufacturing facilities and one distributing facility in the United States, and approximately 193 retail stores worldwide.
36. Despite its prominence, business has not been good. Indeed, this year alone, the Petitioners' Canadian operations have experienced a 37.7% year-over-year decline in sales.
37. The U.S. Affiliates are engaged in a marketing process to sell certain or all of their assets. That process is ongoing.

5. CANADIAN WIND DOWN

38. As discussed above, American Apparel's Canadian operations are vertically integrated, with substantially all of the inventory of AA Retail being supplied by the U.S. Affiliates.
39. The Petitioners have traditionally depended on the U.S. Affiliates for administrative support, including accounting, cash management, inventory management and marketing. Recently, however, the U.S. Affiliates cut off their sale of inventory to the Petitioners and began to limit their provision of administrative support. Without that support, continued operations are impracticable and not cost effective.
40. The Petitioners therefore filed their NOIs immediately upon receiving notice that their supply of inventory and administrative support would be cut off, in order to derive the benefits of comprehensive stays of proceedings that would protect them the inevitable claims and actions by creditors and other stakeholders.
41. However, the Petitioners lack the management and direction to complete proposal proceedings, and therefore seek the appointment of KPMG as Interim Receiver, in order that the Interim Receiver can be charged with sufficient management and control of the Petitioners' assets and operations to effect a court-supervised, transparent and orderly sales process or wind-down.
42. It is not contemplated that a comprehensive sale process will be put forward by the Interim Receiver for Canada. Indeed, due to the Petitioners' reliance on the U.S. Affiliates for supply, intellectual property and branding, it is not feasible to market the Canadian business on its own on a going concern basis. Accordingly, the Interim Receiver, if appointed, would coordinate a sale process involving the

Canadian assets and business in a coordinated effort with the U.S. Affiliates, should the U.S. Affiliates undertake a formal sale process, subject in all cases to approval of this Honourable Court.

43. Details of any potential going concern sale process coordinated with the U.Ss Affiliates, if any, shall be provided to this Honourable Court on a periodic basis by the Interim Receiver, if appointed.
44. To the extent an international transaction does not include all Canadian assets and operations, or should no transaction involving Canadian assets on a going concern basis culminate at all, it is anticipated that the Interim Receiver would oversee the liquidation process in respect of the remaining Canadian property, subject to approval of this Honourable Court.
45. In any event, it is anticipated that the Interim Receiver, if appointed, will seek the approval of this Honourable Court of any sale or marketing process.

6. ROLE OF THE INTERIM RECEIVER

46. As stated above, the Petitioners submit that the appointment of the Interim Receiver is necessary due to the prevailing loss of inventory supply from the U.S. Affiliates and in order to ensure a transparent process under the auspices of the Court.
47. The Interim Receiver, if appointed on the terms sought by the Petitioners, would also preserve and protect the Petitioners' assets and operations for the duration of the wind-up process, including in respect of:
 - a) Lease Matters: All of the premises occupied by the Petitioners are leased. It is anticipated that certain retail locations will be closed in the short term, while others will remain open for some period of time. While the Petitioners may already have the ability to do so pursuant to the NOIs, the Interim Receiver will be integral in working with landlords to facilitate Petitioners' orderly disclaimers of un-needed leases, assignments of leases with market value and the continued occupation and payment of rent at locations that are to remain open.
 - b) Employee Matters: The Interim Receiver will play an important role in maintaining continuity of operations, including with respect to communicating with employees. Some employees will unfortunately be terminated in the short term, and the Interim Receiver can work to facilitate an orderly transition for them. For those employees who will be retained to assist with the sale process and/or liquidation, the Interim Receiver will work to manage the communication and implementation of that.
 - c) Inventory Management: The Petitioners' only source of inventory has been discontinued. The Interim Receiver will accordingly work to consolidate

and maximize value for existing inventory, with the assistance of the Petitioners' employees.

- d) Brand Stability: The Interim Receiver will strive to maintain stability and consumer confidence in the midst of the inevitable uncertainty created by any potential sale or any liquidation of the Petitioners' business and assets, and corresponding publication of news that American Apparel's foreign affiliates will also be liquidated in accordance with their domestic law.

48. The Petitioners submit that only an interim receiver is capable of providing the foregoing direction, transparency, confidence and stability, under the circumstances. However, Mr. Bennett Nussbaum, in his capacity as sole director and officer of the Petitioners, will retain certain powers to direct the Petitioners in respect of coordinating with the U.S. Affiliates in respect of the ultimate liquidation of Canadian assets.
49. Thus while the Interim Receiver, if so appointed by this Court, would have possession and control of the assets and operations of the Petitioners and of its receipts and disbursements, it would not have control over ultimate corporate decision making process in the context of the current proposal proceedings. The proposed draft Receivership Order contemplates this dichotomy of powers.

7. CHARGES SOUGHT

50. The Petitioners are seeking two charges in the proposed draft Receivership Order: a charge to secure the Petitioners' indemnification liability to their directors and officers for directors and officers' liability, to a maximum amount of \$950,000 (the "**D&O Charge**"), and a charge to secure the costs of the Interim Receiver, its counsel, and the Petitioners' counsel, incurred in connection with the administration of the proposed interim receivership, to a maximum amount of \$750,000 (the "**Administration Charge**", and together with the D&O Charge, the "**Interim Charges**").
51. In the Petitioners' submission, the Interim Charges are reasonable and necessary in order to facilitate the undertaking of the Interim Receiver's mandate.

D&O Charge

52. A successful conduct of the Petitioners' sale process, run by the Interim Receiver in coordination with the Chapter 11 Proceedings, will only be possible with some minimum level of continuity of the board of directors and officers. Bennett Nussbaum is currently the sole director and officer, and provided the D&O Charge is granted, has agreed to continue to be the sole director and officer during the pendency of these proceedings.
53. Mr. Nussbaum's continued involvement in these proceedings is vital, as he will be the sole connection to the former executive management oversight that was

provided in the ordinary course by personnel of the U.S. Affiliates. The Interim Receiver is anticipated to be able to retain sufficient store management and sales associates to facilitate a sale process and/or liquidation, but Mr. Nussbaum's participation will help with a smooth transition and access to some of the institutional knowledge of the U.S. Affiliates

54. The U.S. Affiliates maintain directors' and officers' liability insurance policies (together, the "**D&O Insurance**"), which includes coverage of Mr. Nussbaum in his capacity as sole director and officer of the Petitioners. In addition, there are also indemnities which have been given by the Petitioners to Mr. Nussbaum under the Petitioners by-laws. However, the D&O Insurance is linked to the U.S. Affiliates policies, and the Petitioners cannot be certain that it will remain in place.
55. Upon cessation of operations, the Petitioners may not have sufficient funds, or access to sufficient funds, to satisfy these indemnities should Mr. Nussbaum be found responsible for the full amount of his potential liabilities.
56. Mr. Nussbaum has expressed significant concern with respect to potential personal liability if he continues in his current capacities. It is important that adequate protection be afforded to Mr. Nussbaum should he stay on to assist during the upcoming period.
57. The amount sought in respect of the D&O Charge is consistent with the estimates and calculations performed by KPMG at the request of the Petitioners in regard to the potential D&O Liability. It is respectfully submitted that the amount of the D&O Charge is fair and reasonable in the circumstances, and would only be accessed and relied upon to the extent the D&O Insurance coverage was insufficient or not available.

Administration Charge

58. The Petitioners are also seeking a charge to secure the costs of the professionals involved in the proposed interim receivership, including the Petitioners' counsel, the Interim Receiver and the Interim Receiver's counsel. It is anticipated that these costs will be funded out of operating receipts, and in the Petitioners' submission it is entirely conventional and appropriate under the circumstances for the professionals undertaking this process to be secured for their reasonable fees and disbursements.

Priority of Charges

59. The Petitioners are bringing this motion on an *ex parte* basis. Subject to a further motion on notice to interested parties with respect to the priority of the Charges, the proposed Receivership Order specifically provides that the Charges will not have priority over any security interests, trusts, liens, charges and encumbrances, statutory or otherwise, which are properly perfected security interests as of the date of the Receivership Order in favour of any other person.

8. GROUNDS FOR THIS MOTION

60. The Petitioners have lost their access to future inventory from the U.S. Affiliates, as well as administrative support and the sustained ability to use intellectual property under licence;
61. The Petitioners have both filed notices of intention to make a proposal, which have resulted in protective stays of proceedings;
62. The appointment of KPMG as interim receiver is necessary for the protection of the Petitioners' estate and is in the interests of the Petitioners' creditors and stakeholders, including their employees and landlords, for the purpose of coordinating a sale and/or liquidation process;
63. Therefore, the Petitioners submit that it is just and convenient that KPMG be appointed as interim receiver of the assets of the Petitioners;
64. This requested appointment of an interim receiver will allow KPMG to (i) have the necessary powers to continue exploring realization alternatives, (ii) adequately negotiate with prospective liquidators and/or purchasers in connection with the sale of the Petitioners' inventory, (iii) proceed with the sale/liquidation of the Petitioners' assets in order to maximize their value, all under the supervision of this Honourable Court, (iv) coordinate the payment of occupation rent or orderly lease disclaimers with the Petitioners' landlords, (v) manage its receipts and disbursements and (vi) maintain transparent and coordinated communications with the Petitioners' employees;
65. The foregoing powers of the Interim Receiver will all provide the Petitioners with the ability to work towards making a proposal to creditors, which would not be possible if the Petitioners' business was immediately liquidated without oversight.
66. More specifically and without in any way limiting the generality of the foregoing, the Petitioners submit that the appointment of an interim receiver is just and convenient because it will generally benefit all of the Petitioners' stakeholders and creditors by:
- a) allowing the continuity of the Petitioners' operations in certain locations while the liquidation is completed, with a view to:

- i) continuing the employment of some of the current employees in the short term;
 - ii) preserving the value of the Petitioners' remaining inventory; and,
 - iii) facilitating the orderly and transparent short term continuation, assignment or disclaimer of the Petitioners' leases;
 - b) protecting the interest of the Petitioners' stakeholders given the Court-supervised process;
67. The only way to provide adequate protection to the Petitioners to ensure the efficiency and proper execution of the Interim Receiver's mandate for the ultimate goal of protecting the value of their assets, is for this Honourable Court to render an Order that includes an order of non-interference with the Interim Receiver, the Petitioners and their assets, which is a broader remedy than the current stay of proceedings in favour of the Petitioners and their assets created by the NOI;
68. Furthermore, as set forth above, the situation is deteriorating quickly, as the Petitioners have lost the administrative support of the U.S. Affiliates, sustained access to intellectual property rights, and substantially all of their supply of inventory;
69. Without the appointment of the Interim Receiver and the facilitation of an orderly sale and/or liquidation process, landlords will likely terminate leases, and employees may quit, which would lead to the devaluation and potential inability to liquidate the Petitioners' remaining inventory in an orderly fashion, to the prejudice of the interests of other creditors and stakeholders and to the potential prejudice of an integrated sale process or proposal filing that may provide greater benefits and recoveries to the estate and its stakeholders;
70. It is therefore urgent that this Honourable Court grant the Receivership Order (Exhibit R-1) sought by the present Motion, and appoint KPMG as Interim Receiver;
71. KPMG is qualified and has agreed to act as interim receiver of the assets of the Petitioners and exercise any and all of the proposed powers provided for in the draft Receivership Order (Exhibit R-1) and has consented to this appointment;
72. During the receivership, the Petitioners expect to fund essential costs (primarily occupation rent, salaries and professional fees) using cash on hand and operating receipts;
73. The present Motion is well founded in fact and in law.

WHEREFORE, THE PETITIONERS PRAY, BY JUDGMENT TO INTERVENE HEREIN, THIS HONOURABLE COURT TO:

GRANT the present Motion for the Issuance of an Order appointing an Interim Receiver (the "**Motion**");

ISSUE an order substantially in the form of the draft order communicated as Exhibit R-1 in support of the Motion;

ORDER the provisional execution of the Order notwithstanding appeal;

THE WHOLE without costs, save in case of contestation.

MONTREAL, November 10, 2016


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Petitioner

AFFIDAVIT

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

1. I am the sole director and officer of Petitioners American Apparel Canada Retail Inc. and American Apparel Canada Wholesale Inc;
2. All the facts alleged in the Motion for the Issuance of an Order Appointing an Interim Receiver are true.

AND I HAVE SIGNED



BENNETT NUSSBAUM

Solemnly, declared before me at Los Angeles
California, this 10th day of November, 2016

Notary Public

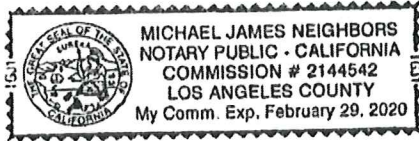
SEE CALIFORNIA
Jurat FORM
ATTACHED

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 11th
day of November, 2016, by _____
* Bennett Nussbaum *

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature

A handwritten signature in black ink, appearing to read 'Michael James Neighbors', written over a horizontal line.

NOTICE OF PRESENTATION

TO: KPMG INC.
600, boul. de Maisonneuve Ouest, Suite 1500
Montréal, QC H3A 0A3

Proposed Receiver

TAKE NOTICE that the *Motion for the Issuance of an Order appointing an Interim Receiver and Creating Interim Charges* will be presented for adjudication before one of the Honourable Judges of Superior Court or to the Registrar, sitting in the Commercial Division in and for the District of Montréal, in Room **16.10** of the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, (Québec), H2Y 1B6, on **November 11, 2016 at 9:00 a.m.** or soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, November 11, 2016


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Petitioner