

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-11-049256-155

IN THE MATTER OF THE PLAN OF
COMPROMISE AND ARRANGEMENT
OF:
MAGASIN LAURA (P.V.) INC. / LAURA'S
SHOPPE (P.V.) INC.

Applicant

- and -

BOUTIQUE LAURA CANADA LTEÉ /
LAURA'S SHOPPE CANADA LTD.

3482731 CANADA INC.

9318-5494 QUÉBEC

KALMAN FISHER

Stayed Parties

- and -

KPMG INC.

Monitor/Petitioner

MONITOR'S MOTION FOR DIRECTIONS RE: LANDLORD CLAIMS
(Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36)

TO THE HONOURABLE JUSTICE MARIE-ANNE PAQUETTE OR TO ONE OF THE OTHER HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, THE MONITOR/PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:

A. INTRODUCTION

1. The Petitioner, KPMG Inc. (the "**Monitor**"), in its capacity as Monitor of the Applicant, Magasin Laura (P.V.) Inc./Laura's Shoppe (PV) Inc., seeks directions from the Court regarding the determination of certain proofs of claim filed by various landlords of the Applicant (the "**Landlord Claims**") further to the Claims Procedure Order issued by this Court on September 11, 2015 (the "**Claims Procedure Order**") and the Re-Amended Plan of Compromise and Arrangement dated November 18, 2015 filed by the Applicant and sanctioned by the Court (the "**Final Plan**"), a copy of which is filed herewith as **Exhibit M-1**.
2. Such directions are sought to facilitate a timely determination of the Landlord Claims, taking into account the first Payment Date provided for in the Final Plan, which is scheduled to occur

on April 30, 2016, and to ensure that all claimants receive fair and consistent treatment under the claims process, reducing the likelihood of any appeals from potential disallowances of claims.

3. All capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Final Plan.

B. BACKGROUND

4. On July 31, 2015, the Applicant instituted proposal proceedings under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”) and began notifying certain of its landlords of its intention to disclaim leases that had been entered into between the Applicant and those landlords (each a “**Disclaimer Notice**” and collectively the “**Disclaimer Notices**”).
5. On August 12, 2015 the Court issued an Initial Order (the “**Initial Order**”) whereby the proposal proceedings initiated by the Applicant were continued under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the “**CCAA**”) and the Petitioner was appointed as Monitor.
6. Following the Initial Order and in accordance therewith, the Applicant continued issuing Disclaimer Notices to certain of its landlords.
7. As a result of the Disclaimer Notices, certain leases were disclaimed and resiliated by the Applicant. In other cases, leases were voluntarily amended or replaced with new contractual arrangements agreed to by the Applicant and the landlord (each a “**Renegotiated Lease**” and collectively the “**Renegotiated Leases**”).
8. Following the execution of Renegotiated Leases, the corresponding Disclaimer Notices were rescinded by the Applicant and others were held in abeyance.
9. As will be explained more fully below, the Renegotiated Leases typically provide for the landlord to receive rent equaling a percentage of the sales of the store being operated by the Applicant in the leased premises and, in some cases, for monthly rent to be paid by the Applicant at a discounted rate.
10. On September 11, 2015, the Court issued the Claims Procedure Order, establishing, *inter alia*, a process for filing proofs of claim with the Monitor and a bar date for the filing of such proofs of claim.
11. In accordance with the Claims Procedure Order, the Landlord Claims were submitted to the Monitor and the Monitor, together with the Applicant, began the process of reviewing and evaluating those claims.
12. On October 23, 2015, the Applicant filed a Plan of Compromise and Arrangement dated October 16, 2015 (the “**Initial Plan**”) and obtained an order of the Court authorizing it to hold a Creditors’ Meeting so Affected Creditors could consider and vote on the Initial Plan.
13. On November 17, 2015, the Applicant filed an Amended Plan of Compromise and Arrangement dated November 13, 2015 (the “**Amended Plan**”) and distributed it to the Service List. A copy of the Amended Plan is filed herewith as **Exhibit M-2**.

14. In accordance with the Amended Plan, the Monitor, together with the Applicant, determined that certain of the Landlord Claims should be either partially or wholly disallowed and in accordance with the procedure set forth in the Claims Procedure Order, the Monitor issued a Notice of Revision or Disallowance in connection with each of such disputed claims (the “**Notices of Disallowance**”).
15. In the course of reviewing the Landlord Claims, the Monitor identified, *inter alia*, the following categories of claims, in respect of which it requires directions from the Court:
 - i. claims for damages resulting from the disclaimer and resiliation of a Lease where the Applicant vacated the premises (the “**Disclaimed Landlord Claims**”); and
 - ii. claims for damages arising out of the voluntary amendment or replacement of a Lease with a Renegotiated Lease (the “**Renegotiated Lease Claims**”).
16. The determinations initially reached by the Monitor and the Applicant in connection with the two categories of claims enumerated above, as reflected in the Notices of Disallowance, were as follows:
 - i. the Disclaimed Landlord Claims were allowed to the extent permitted by the formula for quantifying such claims pursuant to section 2.3 of the Amended Plan (the “**BIA Formula**”); and
 - ii. the Renegotiated Lease Claims were disallowed in full as the consensual renegotiation which resulted in the Renegotiated Leases and the continued receipt of payments by the affected landlords did not give rise to a claim for damages under the Amended Plan.
17. On November 18, 2015, as a result of discussions with certain landlords, the Amended Plan was further amended by the Applicant to provide that Disclaimed Landlord Claims would be assessed in accordance with Section 32(7) of the CCAA, instead of using the BIA formula, and to effectively enlarge the definition of Restructuring Claim to include the Renegotiated Lease Claims, the whole as appears from the Final Plan, **Exhibit M-1**.
18. That day, the Final Plan was circulated to the Service List and, in view of the amendments contained therein, the Monitor withdrew the Notices of Disallowance. The Monitor, through its counsel, also informed the Court that it would, if deemed appropriate, seek directions from the Court regarding the quantification of the Landlord Claims pursuant to the Final Plan, as appears from a copy of an email from Me Mark Meland to the Honorable Madame Justice Paquette dated November 18, 2015, filed herewith as **Exhibit M-3**.
19. On November 19, 2015, a Creditors’ Meeting was convened and the Final Plan was overwhelmingly approved by the Affected Creditors.
20. On November 27, 2015, the Court issued an order, *inter alia*, sanctioning the Final Plan (the “**Sanction Order**”).

C. THE DISCLAIMED LANDLORD CLAIMS

21. The Final Plan defines Disclaimed Leases as “*each and every one of the Leases which (i) were disclaimed or resiliated by the Company pursuant to Section 65.2 of the BIA (as recognized by*

the Initial Order) or Section 32 of the CCAA, and (ii) may be disclaimed or resiliated by the Company at any time between the date of this Plan and the Sanction Date” and Disclaimed Landlord Claims as “all Proven Claims of the Disclaimed Landlords for losses incurred by Disclaimed Landlords in relation to Disclaimed Leases, as provided for in Section 2.3 hereof.”

22. Section 2.3 of the Final Plan states that Disclaimed Landlord Claims “*shall be determined in accordance with Section 32(7) of the CCAA*” which, in turn, provides that “[i]f an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.”
23. The terms and conditions of each Disclaimed Lease vary.
24. The landlords that submitted Disclaimed Landlord Claims typically claimed the aggregate amount of rent owing to them pursuant to the Disclaimed Leases from the effective date that each such lease was disclaimed and resiliated (the “**Resiliation Date**”) until the end of the that lease’s term.
25. For example, one landlord claimed an amount equivalent to rent that would otherwise have been payable for a period of five and one half (5.5) years and seventeen (17) days, as appears from the Proof of Claim of Carrefour Richelieu Realities Ltd. (local 01170), a copy of which is filed herewith, **under seal** as **Exhibit M-4**.
26. Notwithstanding the amounts claimed as Disclaimed Landlord Claims, the actual loss suffered, and to be suffered, as a result of the disclaimer and resiliation of any Disclaimed Lease is presently unknown and such loss will almost certainly be mitigated, at least in part, by any re-letting of the leased premises in the coming months and years.
27. Consequently, the Monitor requests that the Court provide directions as to the formula or other standardized mechanism for quantifying the Disclaimed Landlord Claims.
28. For purposes of assisting the Court, the Monitor proposes the following possible methods for quantifying Disclaimed Landlord Claims:
 - i. in cases where the remaining term of a Disclaimed Lease is less than one (1) year from the Resiliation Date, the Disclaimed Landlord Claims relating to such leases could be allowed in an amount equal to the aggregate rent payable during the remaining term of the Disclaimed Lease from the Resiliation Date.
 - ii. in cases where the remaining term of a Disclaimed Lease exceeds one (1) year from the Resiliation Date, the Disclaimed Landlord Claims relating to such leases could be allowed in an amount:
 - a. based on the BIA Formula; or
 - b. calculated pursuant to a different formula taking into account certain particular terms and conditions of each Disclaimed Lease; or
 - c. equal to the aggregate rent payable during a portion of the remaining term of the Disclaimed Lease, other than the period of time provided for in the BIA Formula.

D. THE RENEGOTIATED LEASE CLAIMS

29. The Final Plan defines Restructuring Claim as including “*any right or claim of any Person against the Company in connection with any indebtedness or obligation of any kind owed to such Person arising out of the Company's disclaimer, resiliation or renegotiation (at any time after the Determination Date) of any Leases (excluding the Disclaimed Landlord Claims, which shall be dealt with pursuant to Section 2.3 hereof)*”.
30. The Final Plan is silent on how to quantify Restructuring Claims.
31. Pursuant to the Renegotiated Leases, the landlords that are parties thereto have received payment from the effective time such leases were amended or replaced with new contractual arrangements (the “**Renegotiation Date**”) and will continue to receive payment until the expiry of the term of such renegotiated leases, which range from December 31, 2015 to August 31, 2021.
32. In all but six (6) cases, the payments the affected landlords are receiving pursuant to the Renegotiated Leases are calculated according to a percentage of the Applicant’s sales, typically at a rate of 15%, at the location to which each Renegotiated Lease relates (the “**Percentage Rent**”). In the remaining cases, the affected landlords are being paid rent on a reduced rate per square foot basis (the “**Reduced Rent**”).
33. Most landlords that submitted Renegotiated Lease Claims claimed the aggregate amount of rent owed to them by the Applicant pursuant to the original lease that was amended or replaced with a Renegotiated Lease (each an “**Original Lease**” and collectively the “**Original Leases**”) as appears, for example, from the Proof of Claim of OBP Realty Inc., a copy of which is filed herewith under seal as **Exhibit M-5**.
34. Other landlords reduced their Renegotiated Lease Claims to account for the payments they had received, and would continue to receive, pursuant to the Renegotiated Leases. In such cases, the landlords claimed, as the case may be:
 - i. the aggregate amount of rent owed to them pursuant to the Original Lease less the amounts already received as Percentage Rent and an estimation of the amounts to be received as Percentage Rent for the remaining term of the Renegotiated Lease, as appears, for example, from the Proof of Claim of Carrefour Richelieu Realities Ltd. (local 00680), a copy of which is filed herewith under seal as **Exhibit M-6**; or
 - ii. the difference between the rent provided for in the Original Lease and the Reduced Rent provided for in the Renegotiated Lease for the remaining term of the Renegotiated Lease, as appears, for example, from the Proof of Claim of KCAP Kingston Inc., a copy of which is filed herewith under seal as **Exhibit M-7**.
35. In all cases, the landlords with Renegotiated Lease Claims have partially mitigated any damages arising out of the disclaimer and renegotiation of the Original Leases in that they have received and will continue to receive payment, in accordance with the terms of the Renegotiated Leases, and have avoided the negative consequences associated with a store “going dark” just before the 2015 Christmas holiday season.

36. By entering into the Renegotiated Leases, certain of these landlords may also have tacitly or expressly renounced their right to file a Restructuring Claim against the Applicant.
37. Several of the Renegotiated Leases include an “ADDITIONAL TERMS” addendum, each of which states:

In such context, the Landlord agrees that neither Laura nor the Monitor shall be required to reserve any amounts henceforth to be payable by Laura to the Landlords in accordance with the attached agreement. The foregoing shall not, however, relieve Laura of all of its obligations to pay rent set forth in the attached agreement.

as appears, for example, from the Lease Amending Agreement between the Applicant and OBP Realty Inc. dated September 1, 2015, a copy of which is filed herewith under seal as **Exhibit M-8**.

38. Consequently, to the extent that the Renegotiated Lease Claims give rise to Restructuring Claims pursuant to the Final Plan, the Monitor requests that the Court provide directions as to a formula or other standardized mechanism for quantifying the Restructuring Claims.
39. For purposes of assisting the Court, the Monitor proposes the following possible methods for quantifying Restructuring Claims:
- i. No claim exists for a Renegotiated Lease; or
 - ii. If the Court determines that a claim exists for a Renegotiated Lease:
 - a. in cases where a Renegotiated Lease provides for the payment of Percentage Rent, the Restructuring Claim relating to such lease could be allowed in an amount equal to the aggregate rent payable, at the rate provided for in the Original Lease less an amount estimated by the landlord to account for the Percentage Rent received and to be received for the remaining term of the Renegotiated Lease from the Renegotiation Date, up to a maximum term of one (1) year, or such other period as determined by the Court;
 - b. in cases where a Renegotiated Lease provides for the payment of Reduced Rent, the Restructuring Claim relating to such lease could be allowed in an amount equal to the aggregate rent payable, at the rate provided for in the Original Lease less the Reduced Rent provided for in the Renegotiated Lease, for the remaining term of the Renegotiated Lease from the Renegotiation Date, up to a maximum term of one (1) year, or such other period as determined by the Court.

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

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Monitor's Motion for Directions Re: Landlord Claims;

ORDER the sealing of Exhibit M-4 to M-8, until further order of this Court;

PROVIDE directions to the Monitor as to how to quantify Disclaimed Landlord Claims;
PROVIDE directions to the Monitor as to how to quantify Restructuring Claims;
THE WHOLE WITH COSTS in the event of contestation.

MONTREAL, December 7, 2015

(s) Fishman Flanz Meland Paquin LLP
FISHMAN FLANZ MELAND PAQUIN LLP
Attorneys for the Monitor

CANADA

**SUPERIOR COURT
(Commercial Division)**

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. c. C-36)

N°: 500-11-049256-155

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

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

Debtor

-and-

**BOUTIQUE LAURA CANADA LTEÉ / LAURA'S
SHOPPE CANADA LTD.,
3482731 CANADA INC.,
9318-5494 QUÉBEC, and
KALMAN FISHER**

Stayed Parties

- and -

KPMG INC.

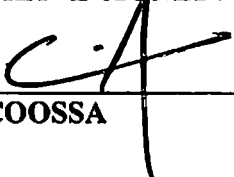
Monitor – Petitioner

AFFIDAVIT

I, Dev Coossa, Chartered Insolvency and Restructuring Professional, exercising my profession at 1500-600 de Maisonneuve Boulevard West, Montreal, Quebec, H3A 0A3, do hereby solemnly affirm:

1. I am a partner of KPMG Inc., the court-appointed Monitor in Superior Court of Quebec (Commercial Division) file 500-11-049256-155; and
2. All of the facts alleged by the Monitor in the present *Monitor's Motion for Directions re: Landlord Claims* which do not appear of record in this Court file are true and correct.

AND I HAVE SIGNED:

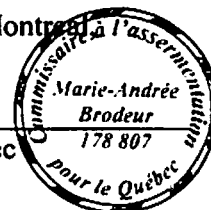


 DEV COOSSA

Solemnly affirmed before me in Montreal, Quebec on December 7, 2015



 Commissioner for Oaths for Québec



CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-11-049256-155

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE PLAN OF
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OF:
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Applicant

- and -

BOUTIQUE LAURA CANADA LTEÉ /
LAURA'S SHOPPE CANADA LTD. et al.

Stayed Parties

- and -

KPMG INC.

Monitor/Petitioner

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the present *Monitor's Motion for Directions Re: Landlord Claims* will be presented for adjudication before the Honourable Marie-Anne Paquette, J.S.C., sitting in the Commercial Division of the Superior Court of Quebec, in and for the district of Montreal, at a date and time to be determined by Justice Paquette, in a room to be announced.

The Monitor discloses the following exhibits in support of its motion:

Exhibit M-1	Re-Amended Plan of Compromise and Arrangement dated November 18, 2015 and filed on November 19, 2015
Exhibit M-2	Amended Plan of Compromise and Arrangement dated November 13, 2015 and filed on November 17, 2015
Exhibit M-3	E-mail from Me Mark Meland to the Honorable Madame Justice Paquette dated November 18, 2015
Exhibit M-4 (under seal)	Proof of Claim of Carrefour Richelieu Realities Ltd. (local 01170)
Exhibit M-5 (under seal)	Proof of Claim of OBP Realty Inc.
Exhibit M-6 (under seal)	Proof of Claim of Carrefour Richelieu Realities Ltd (local 00680)

Exhibit M-7 (under seal)	Proof of Claim of KCAP Kingston Inc.
Exhibit M-8 (under seal)	Lease Amending Agreement between the Applicant and OBP Realty Inc. dated September 1, 2015

DO GOVERN YOURSELVES ACCORDINGLY

MONTREAL, December 7, 2015

(s) Fishman Flanz Meland Paquin LLP
FISHMAN FLANZ MELAND PAQUIN LLP
Attorneys for the Monitor

No: 500-11-049256-155

SUPERIOR COURT

District of Montreal

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
R.S.C. c. C-36)

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Stayed Parties

-and-

KPMG INC.

Monitor – Petitioner

**MONITOR'S MOTION FOR DIRECTIONS
RE: LANDLORD CLAIMS**

ORIGINAL

File: LAURAS-1

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