CANADA

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

N°:
C.S.M. **500-11-049210-152**
41-2021835
C.A.: 500-09-

COURT OF APPEAL

IN THE MATTER OF THE PLAN OF ARRANGEMENT OF :

LAURA'S SHOPPE (P.V.) INC., a legal person duly incorporated according to Law, having its head office and principal place of business at 4, Granville Street, Hampstead, Quebec, H3X 3B1;

Debtor / Respondent

-and-

SALUS CAPITAL PARTNERS, LLC, a Canadian chartered bank, having its head office at 200 Bay street, 9th floor, South Tower, Toronto, Ontario, M5J 2J5, and a branch at 1, Place Ville-Marie, Montreal, Quebec, H3B 3A9

Petitioner

-and-

KPMG INC., 600 de Maisonneuve Blvd. West, suite 1500, Montreal, Quebec, H3A 0A3;

Trustee

-and-

THE CADILLAC FAIRVIEW CORPORATION LIMITED, a legal person duly constituted according to law, having a place of business at 1160, avenue des Canadiens-de-Montréal, Province of Quebec, H3B 2S2

Dip Lender /Mis en Cause

MOTION FOR LEAVE TO APPEAL
(Section 13 of the *Companies' Creditors Arrangement Act*, ("**CCAA**") and Sections 26, 494 C.C.P.)

TO ONE OF THE HONOURABLE JUDGES OF THE COURT OF APPEAL, SITTING IN AND FOR THE DISTRICT OF MONTREAL, PETITIONER SALUS CAPITAL PARTNERS, LLC, RESPECTFULLY SUBMITS AS FOLLOWS:

1. On August 11, 2015, Honourable Marie-Anne Paquette J.S.C., commercial division, district of Montreal, rendered two judgments in the file bearing number 500-11-049210-152 (the "**Judgments**") as it appears from copies which are attached hereto as **Annex 1**;

2. The first judge rejected the Petitioner's request to postpone two (2) motions and an application: a Motion from Petitioner seeking the appointment of a Receiver (the "**Receiver Motion**"), a Motion by Respondent to continue a restructuring proceeding under the CCAA and to obtain an Initial Order (the "**Restructuring Motion**") as well as an Application for interim financing charge (the "**Application**") as it appears from the motions and Application, copies of which are attached hereto as **Annex 2**;

3. The Receiver Motion was served to the Respondent's attorney, Friday August 7, 2015 at 8:00 p.m., with notice of presentation on August 11, 2015, in commercial chamber room 16.10;

4. The Restructuring Motion and Application were served to the 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. Petitioner's Toronto counsel, who were in frequent

communication with the Respondent's counsel on behalf of Petitioner, were not served;

5. As the legal counsel for Petitioner in Montreal, Mtre Claude Paquet, did not have the chance to analyze the Restructuring Motion or Application, nor review with legal counsel of Petitioner in Toronto or Petitioner's representatives, a demand for postponement of two (2) days was formally requested to the Court in order to fully comprehend all the impacts of the Motion and Application and seek further instructions from Petitioner;

6. The postponement was immediately denied by the Court;

7. The Superior Court then proceeded with the hearing of the Receiver Motion, both Respondent's Restructuring Motion and Application and rendered judgment on August 11, 2015, which judgment was eventually written and delivered on August 12, 2015;

8. As it appears from the minutes of hearing, the first judge dismissed the Receiver Motion, and granted the Restructuring Motion and the application;

9. Petitioner seeks permission to appeal the Application, which created a $10,000,000 priming DIP charge;

10. Petitioner also seeks permission to appeal the judgment rendered on the Restructuring Motion, inasmuch as it affects Petitioner's rights by the imposition of:

    (a) the KERP, which constitutes a further priming charge of up to $500,000;

    (b) an administration charge of up to $250,000;

    (c) the stay of proceedings, which prevents Petitioner from seeking to recover from Guarantors and others who are not otherwise subject to the judgments and have not sought protection under the CCAA;

    (d) the loss of the cash management system;

11. Petitioner humbly submits that the questions and subject of this appeal is of capital importance and has great implications as it concerns issues with regards to:

    (a) the Audi Alteram Partem rule;

    (b) a breach to the rule of fairness in BIA and CCAA proceeding;

(c) the unilateral and substantial modification to an asset based loan facility while a 244 BIA waiver had been signed;

(d) the imposition of a priming debtor-in-possession charge of $10,000,000 (the "**DIP Charge**"), in favour of Cadillac Fairview Corporation Limited ("**CF**"), among other charges, which immediately affects Petitioner's rights, without notice;

(e) the denial of the right of Petitioner to present evidence on the balance of inconveniences and prejudicial factors; and

(f) the refusal to grant legal counsel to the Petitioner sufficient (or any) time to properly analyze the Restructuring Motion and Application, the exhibits, and the report provided by the proposed monitor, KPMG Inc. ("**KMPG**"), or to consult with his clients and set a reasonable way of addressing these issues with the Respondent and the Court;

HEARING PROCESS

12. The Court did not grant the chance to Petitioner to contradict the facts combined in the Restructuring Motion, Application and Contestation presented by the Respondent. The decision of the Court to deny the postponement has caused great prejudice to Petitioner who did not have the chance to:

(a) analyze the Motions and Application;

(b) analyze the exhibits including, amongst others, the cash flows;

(c) make evidence of the prejudice caused to the Petitioner and balance of the inconveniences;

(d) discuss a solution with the Respondent as it has been expected by Petitioner for many days; and

13. Despite Respondent's inadequate representations made to the Court in the Restructuring Motion and Application, Petitioner was always willing to support the Respondent and fund the operations providing that Petitioner and the Respondent could agree on a cash flow statement that would not show the erosion of the collateral position of Petitioner and as long as Petitioner was provided with adequate protection, but the Respondent refused to respond to said proposal, did not return the calls of Petitioner's representatives or their legal counsel and did not answer to their letters and proposals;

14. Furthermore, Montreal counsel to Petitioner Claude Paquet left a message to David Stolow, legal counsel for the Respondent, on the morning of August 10, 2015, which call was never returned. The purpose of that call was to discuss the Receiver Motion, set a new date for the hearing and schedule a meeting in Montreal to discuss various issues between Petitioner and Respondent;

15. Petitioner's representatives were ready to come to Montreal as early as August 12, 2015;

16. On the morning of August 11, 2015, Petitioner requested that the parties agree to postpone the Receiver Motion, the Restructuring Motion and the Application so that they could discuss the terms of continued support by Petitioner. Petitioner is informed that, to that end, Ken Rosenstein, Toronto counsel to Petitioner, advised Me Stolow, Avram Fishman, counsel to KPMG, and Raymond Massi of Richter (as defined below), that the Petitioner was always intending on funding payroll and was also prepared to fund other operating expenses, including purchases of fall merchandise, and that they would like to immediately meet in Montreal to try to reach an agreement on a cashflow and funding requirements to allow the parties to achieve their respective objectives. Me Fishman and Mr. Massi then asked if Petitioner was prepared to agree at that moment to lift the Cash Management System (defined below), thereby giving them unfettered use of the proceeds of the Petitioner's collateral and funds until the end of November. Mr. Rosenstein responded that the parties needed to meet to discuss this and try to come to an agreement. Rather than agreeing to continue the discussion, Me Fishman responded, as a final answer, "have a good day", and passed the phone to Me Stolow, who said that they cannot reach an agreement and that they will proceed. The Respondent then immediately proceeded with the hearing;

BACKGROUND

A. The Parties, Credit Agreement and Security

17. Respondent is a women's clothing retailer operating 162 Laura, Laura Petites, Laura Plus, Melanie Lyne and liquidation stores in nine provinces;

18. The Respondent 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;

19. Petitioner, Respondent, Guarantor, Laura's Shoppe Canada Inc. (together with the Guarantor, the "**Guarantors**" and, collectively with the Respondent, 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**);

20. 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**";

21. Pursuant to the Credit Agreement, Petitioner has supplied the Respondent 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 Respondent'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;

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

23. 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;

B. Initial Restructuring Efforts

24. As of July 23, 2015, the Respondent had committed multiple breaches of its obligations under the Credit Agreement, which breaches constituted Events of Default. Accordingly, by letter dated July 23, 2015, Petitioner's counsel advised the Respondent that it was reserving its rights and remedies under the Credit Agreement and at law with respect to the Events of Default. Petitioner further requested that the Respondent keep it apprised of its refinancing attempts, including by providing Petitioner with copies of any term sheets and/or discussion papers from any and all new potential lenders;

25. In the absence of any success concerning the Respondent's refinancing efforts, Petitioner and the Debtors, together with their respective legal and financial advisors, met on July 28, 2015. At that meeting, Petitioner

advised the Respondent that it was prepared to support the Respondent on the condition that the Respondent presented a credible restructuring plan that would not erode Petitioner's collateral position. When the Respondent advised that it intended to file a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (the "**BIA**"), Petitioner advised that it intended to issue formal demands for repayment from the Debtors, and requested that the Debtors sign waivers of the 10-day notice period prescribed by the BIA. The Debtors advised that they would voluntarily sign the requested waivers as part of their desire to "work with Petitioner", and in recognition of their appreciation for the support and accommodation that Petitioner had provided to them for many years;

26. As discussed at the July 28, 2015 meeting, Petitioner issued formal demands on July 30, 2015. Each of the Debtors executed the requested waivers on July 31, 2015 at 12:30;

27. On July 31, 2015, at 16:20, the Respondent filed a notice of intention to make a proposal pursuant to the BIA, and KPMG was appointed as its proposal trustee;

28. On August 4, 2015, the Respondent presented Petitioner with an eight-week cash flow forecast for the period ending September 26, 2015 and an inventory monetization plan (the "**Richter Plan**") prepared by its advisors, Richter Advisory Group Inc. ("**Richter**");

29. Petitioner's financial advisors A&M Canada Securities ULC ("**A&M**"), were engaged to review and assess the cash flows provided as part of the Richter Plan. The cash flows reflected that Petitioner would enter a margin deficiency position for an extended period, and therefore Petitioner's collateral position would be eroded and Petitioner's position was not sufficiently protected. A&M was of the view that the Richter Plan did not demonstrate a viable restructuring plan;

30. Additionally, Petitioner discovered that the Respondent had made misrepresentations on its borrowing base certificates, which led Petitioner to lose confidence in the Respondent's management;

31. As a result of the foregoing, the Respondent did not meet the conditions required for Petitioner to support its restructuring plan. Petitioner therefore advised the Respondent that it would be seeking to appoint a receiver, but that it would be open to further discussions to resolve the matter on an interim basis, pending the Respondent's ability to refinance;

32. As at August 6, 2015, the Debtors were indebted to Petitioner for the following amounts pursuant to the Credit Facilities and the Guarantee plus interest, legal and bank fees and costs :

Revolving Loan	CDN$ 6 113,711.98
Principal	US$ 10,359,302.91
Interest	CDN$ 9,16.42
	US$ 18,533.91
Term Loan	CDN$ 2,850,000.00
Principal	CDN$ 4,725.00
Total CDN	**$8,977,600.40**
Total USD	**$10,377.836.82**

C. The Respondent Failed to Keep Petitioner Informed of its Restructuring Efforts

33. Prior to the hearing on August 11, 2015, the Respondent had advised Petitioner that it was "engaged in serious discussions" regarding new financing, and that it thought it would be able to get a commitment before August 14, 2015. Based on discussions with the Respondent, Petitioner understood that the proposed financing was to be on a term or subordinated basis. At no time did the Respondent advise Petitioner that CF would be seeking a priority charge over all the Respondent's property in association with the Application. Petitioner first became aware of this possibility upon receipt of the Application, immediately before the hearing held August 11, 2015;

34. Furthermore, the Respondent did not provide Petitioner with any details of the Application, nor did it provide Petitioner with a proposed term sheet, prior to service of the materials in support of the Application and the Restructuring Motion;

35. The Respondent's proposed plan of restructuring is set out in the Application (the "**Restructuring**"). As discussed in more detail in the Affidavit to the Receiver Motion, Petitioner is not persuaded that the Restructuring is viable. Among other things, the Respondent has been seeking alternative financing since July 2013 when the Respondent and Petitioner entered into the First Forbearance Agreement. Even at this late date, the Respondent has not been able to find a replacement lender and is only able to survive on the basis of short term interim financing that primes the Respondent's existing obligations to Petitioner and expires on November 28, 2015;

36. To date, Petitioner has not been provided with any documentation or other evidence in support of the viability of the Restructuring. In particular, the Respondent has not provided Petitioner with:

    (a) any analysis supporting the proposal to close 20 stores and negotiate rent reductions on 26 stores (the "**Lease Negotiations**");

    (b) any evidence to support the savings of $5 million per year to be earned from the Lease Negotiations;

    (c) any documentation relating to the proposed temporary and/or permanent layoff of an unidentified number of head office staff;

    (d) any details of the proposal to offer a viable financial settlement to the Respondent's unsecured creditors;

    (e) any analysis regarding new inventory purchases and product mix;

    (f) any analysis of the effect of store closures on sales and purchases of new inventory;

37. Petitioner is concerned that the DIP Charge in favour of CF gives CF control over the proceedings to the detriment of the interests of Respondent's other stakeholders, including Petitioner. CF is one of Respondent's principal landlords and is owed significant amounts for outstanding rent, plus a deferred long term unsecured debt of $3,500,000;

38. Additionally, Richter and/or KPMG have failed to provide Petitioner and A&M with all requested documentation and information. The following material information and opportunities have been withheld from Petitioner and A&M:

    (a) details regarding the conversations with the Landlord in contemplation of the interim financing and associated DIP Charge;

    (b) as of August 10, 2015, access to the Respondent's management to continue their review of certain financial information;

    (c) details regarding the financial impact of the planned negotiation of the 26 leases, and how same would generate expected savings of $5 million per year;

    (d) details regarding the planned head-count reduction, and the quantitative impact of same on the Respondent's business;

(e) details as to what the Respondent understands to constitute "a viable financial settlement to the Applicant's unsecured creditors"; and

(f) details of the effect of store closures on sales, purchases of new inventory, and the ability to purchase an appropriate product mix;

39. As a result of the late hour at which the Application and Restructuring Motion were served, they were not viewed by Me Paquet until approximately 7:30 on the morning of the hearing. Of further note is the fact that Steve Graff, Toronto counsel to Petitioner, had a lengthy discussion with Me Fisher the evening before the hearing, and no mention was made whatsoever of the proposed direction of the Respondent or the impending delivery of the Application or the Restructuring Motion;

40. Due to the foregoing, Petitioner had no opportunity to properly review the material, nor to prepare a response to the Application or the Restructuring Motion. In addition, when the Respondent and the proposal trustee appeared in Court, a total of fifteen people were present for the Respondent. Petitioner had no notice of the evidence to be provided, nor was it provided with an opportunity to develop a response;

41. Following the hearing, the Respondent circulated a draft order to Petitioner's counsel on August 11, 2015 (the "**Original Draft Order**") which, in addition to the standard provisions of a Restructuring Motion under the CCAA, contained, without limitation, provisions that would:

(a) extend the stay of proceedings to parties other than the Respondent, including the Guarantors and Kalman Fisher;

(b) impose a key employee retention plan (the "**KERP**"), which would have the benefit of a charge on the Respondent's property up to the aggregate amount of $500,000 in priority to the Respondent's obligations to Petitioner. Petitioner has not been provided with a list of beneficiaries of the KERP, but given the fact that the Respondent is a family run business, that many of the key employees are related to Fisher, and Fisher has given a personal guarantee to Petitioner of the Respondent's debt, Petitioner views the KERP as entirely inappropriate and unnecessary in the circumstances; and

(c) require Petitioner to transfer the benefit of the existing cash management system between the Respondent and Petitioner (the "**Cash Management System**"), which is fundamental to the asset-based nature and protection of the loan, to CF to be supervised by CF's financial advisor, PricewaterhouseCoopers Inc.;

42. On August 12, 2015, the parties attended before Honourable Marie-Anne Paquette J.S.C. for the purpose of having the Judgments written and delivered. At that time, the Respondent presented a revised draft Order that contained further additional relief that had not been set out in the Original Draft Order;

D. The Appeal Factors

43. The four factors to be considered by this court in deciding whether to grant leave to appeal are as follows:

(a) whether the point on appeal is of significance to the practice;

(b) whether the point raised is of significance to the action itself;

(c) whether the appeal is *prima facie* meritorious; and

(d) whether the appeal will unduly hinder the progress of the action;

i) The Appeal is of Significance to the Practice

44. Restructuration matters often require that voluminous motion materials be served and presented within a very short period of time;

45. In the present instance, the prior notice was non-existent, despite the fact that Petitioners' counsel did attempt to contact the Respondent's counsel prior to the presentation of the motions and application;

46. Petitioner believes that the determination by this Court of reasonable guidelines and delays to present motions affecting the rights of stakeholders (in this case the first ranking secured creditor of the debtors) is of significance to the practice;

47. Likewise, it becomes important to determine in what circumstances a party is entitled to not provide any type of notice, notwithstanding the fact that the outcome of the motion will seriously affect the rights of the first ranking secured creditor;

48. Petitioner further believes that the Judgments will have a significant chilling effect on asset-based lending and other sources of capital in the Province of Quebec;

ii) The Appeal is of Significance to the Action

49. The issue at hand is also significant to the parties;

50. 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 Judgments and have not sought protection under the CCAA;

    (e) the loss of the Cash Management System; and

    (f) the failure to account for payment of interest and other fees otherwise payable to Petitioner pursuant to the Credit Agreement.

51. Based on the documentation and information provided to date, Petitioner has little confidence that the Restructuring will be successful, and that its collateral position will not have been significantly eroded at the conclusion of the Restructuring period.

iii) The Appeal is Prima Facie Meritorious

52. Petitioner believes that its appeal is meritorious;

53. The supervising judge denied Petitioner's right to correctly analyze the arguments and data contained in the motion materials, and did not afford any time to Petitioner in order to allow it to rebut the arguments put forth;

54. Not allowing a party affected by an order to contradict the elements and arguments put forth by another party is, with all due respect, either an error of law or an improper exercise of judicial discretion;

55. In particular, Petitioner was denied the right to challenge the Respondent's evidence and to present its own evidence in, *inter alia*, the following areas:

    (a) the allegations of impropriety made in the Application and Restructuring Motion. In all its dealings with the Respondent, Petitioner has conducted itself as a normal, prudent lender;

(b) the Respondent's claim that Petitioner asked the Respondent to take possession of inventory without paying for it. As described in the Affidavit, the Respondent had included certain inventory in its borrowing base certificates where that inventory did not belong to the Respondent, or the Respondent did not yet have possession of it. This serious misrepresentation was one of the reasons why Petitioner was not prepared to continue to fund the Respondent without better and more reliable information about the Respondent's financial state and restructuring plans;

(c) the allegation that Petitioner is winding down its operations. Petitioner is not currently engaged in its own liquidation process. Any loan losses associated with Petitioner's other borrowers have not had any impact on Petitioner's dealings with the Respondent;

(d) the Respondent's misrepresentations regarding rental arrears, the amount of outstanding trade debt and working capital deficit;

(e) the fact that the Richter Plan proposed the closure of 59 stores, whereas the Restructuring proposes the disclaimer of only 20 leases. Several of the CF-owned locations were removed from the list of leases slated for disclaimer;

(f) the Respondent's failure to note that, in the initial restructuring discussions, the Respondent itself had proposed an immediate store-wide liquidation to generate cash;

(g) the impact of the DIP Charge and other provisions of the Judgments on the Petitioner's likely recovery; and

(h) material omissions in the cash flows that accompanied the Application and Restructuring Motion, including, without limitation, the failure to include therein Petitioner's existing term debt, the effect of compounding interest on Petitioner, and any exit fees owing to Petitioner;

56. Petitioner believes that, on the basis of the foregoing, had it had sufficient notice of the Application and Restructuring Motion and the opportunity to respond, the Judgments would not have been issued in their present form;

57. The relief granted in the Judgments far exceeds what was reasonably necessary to meet the urgent needs of the Respondent;

58. Petitioner has not received sufficient disclosure from the Respondent to assess the impact of the Judgments on its claims and securities, nor has it been given an opportunity to make submissions or present evidence on these issues;

59. There was insufficient evidence before the Court to permit the Court to balance the prejudice to Petitioner with the urgent needs of the Respondent;

iv) The Appeal Will Not Unduly Hinder the Progress of the Proceeding

60. The appeal will not unduly hinder the progress of the action as no stay of proceedings is being sought herein;

61. Petitioner is thus well funded to ask permission to appeal the Judgments (Annex 1);

62. Petitioner is willing to move its case in appeal in through the expedited proceedings;

FOR THE REASONS IT MAY PLEASE THE COURT TO:

GRANT the present motion;

AUTHORIZE the Petitioner to appeal the judgment issued by the Honourable Marie-Anne Paquette, J.S.C., on August 11 and 12, 2015, granting the Application;

AUTHORIZE the Petitioner to appeal the judgment issued by the Honourable Marie-Anne Paquette, J.S.C., on August 11 and 12, 2015 on the Restructuring Motion, inasmuch it affects Petitioner's rights, namely paragraphs 8, 19 to 26 inclusively, 33 to 38 inclusively, 45 to 48 inclusively, 57 and 69 of the Initial Order;

AT THE APPROPRIATE TIME AND PLACE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the appeal of the Petitioner, with costs;

DISMISS the Respondent's Application for interim financing charge;

DISMISS the Respondent's Restructuring Motion inasmuch as it affects Petitioner's rights, namely paragraphs 8, 19 to 26 inclusively, 33 to 38 inclusively, 45 to 48 inclusively, 57 and 69 of the Initial Order;

THE WHOLE with costs against the Respondent.

MONTREAL, August 19, 2015

BCF LLP

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 for Leave to Appeal are true;

AND I HAVE SIGNED

KYLE C. SHONAK

Solemnly affirmed before me, at [•],
on August 19 2015

Notary Public

STEPHEN A. SPAGNOLO
Notary Public, Commonwealth of Massachusetts
My Commission Expires June 19, 2020