

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

Court No: 500-11-057470-193
Court No: 500-11-057469-195

IN THE MATTER OF THE NOTICES OF
INTENTION TO MAKE A PROPOSAL OF:

BOUCLAIR INC.

- and -

BOUCLAIR INTERNATIONAL INC.

Petitioners

- and -

DELOITTE RESTRUCTURING INC.

Proposal Trustee

- and -

NATIONAL BANK OF CANADA

Principal Secured Creditor

- and -

ALJUSA INVESTMENTS INC.

Subordinated Secured Creditor

- and -

AST TRUST COMPANY (CANADA)

**In its Capacity as Agent for certain
Subordinated Secured Creditors**

- and -

**THE AFFECTED PARTIES LISTED ON
SCHEDULE "A"**

Mis-en-cause

**MOTION FOR AN ORDER EXTENDING THE STAY PERIOD
(Section 50.4(9) of the *Bankruptcy and Insolvency Act*)**

TO THE HONOURABLE CHANTAL CORRIVEAU OF THE SUPERIOR COURT SITTING IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

I. ORDER SOUGHT

1. For the reasons further described herein, the Petitioners, Bouclair Inc. (“**Bouclair**”) and Bouclair International Inc. (“**Bouclair International**”, and collectively with Bouclair, the “**Petitioners**”) hereby seek the issuance of an order extending the Stay Period (as defined below) for an additional period of forty-two (42) days from the expiry of the Stay Period, i.e. until **May 8, 2020**, the whole substantially in the form of the draft Fourth Stay Extension Order communicated herewith as **Exhibit P-1**.

II. BACKGROUND

2. On November 11, 2019, the Petitioners concurrently filed *Notices of Intention to Make a Proposal* (the “**NOIs**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (the “**BIA**”), as appears from the Court record.
3. Deloitte Restructuring Inc. has been appointed as the Petitioners’ proposal trustee in the present proceedings (“**Deloitte**” or the “**Proposal Trustee**”).
4. The factual background which led to the filing of the present proceedings is described in the Petitioners’ *Motion for the Issuance of an Order (i) Creating Super-Priority Charges, (ii) Approving a Consulting Agreement and (iii) Approving Related Relief* (the “**Initial Motion**”), as well as in the *First Report to the Court submitted by Deloitte Restructuring Inc. in its Capacity as Trustee to the Notice of Intention to Make a Proposal*, both in the Court record.
5. In accordance with section 69(1) of the BIA, the filing of the NOIs resulted in all actions, executions or other proceedings against the Petitioners and their property being automatically stayed for a period of thirty (30) days, until December 11, 2019 (the “**Stay Period**”).
6. On November 12, 2019, following the presentation of the Petitioners’ Initial Motion, the Honourable Chantal Corriveau rendered an Order in the present proceedings (the “**First Day Order**”):
 - (a) operating a procedural consolidation of the court files of Bouclair and Bouclair International;
 - (b) granting priority Charges over all Affected Assets (as these terms are defined in the First Day Order);
 - (c) approving and ratifying, retroactively, the CRO Engagement Letter (as defined in the First Day Order);
 - (d) authorizing the payment, to certain suppliers situated outside of the jurisdiction of this Court, of certain pre-filing obligations; and

(e) approving other related relief;

the whole as appears from the Court record.

7. Prior to the filing of the present proceedings, the Petitioners had initiated a restructuring process (the “**Restructuring Process**”), the implementation of which includes two (2) main components:
 - (a) a transaction with Alston Investments Inc. (the “**Proposed Purchaser**”), which, once approved by this Court, would result in the Proposed Purchaser acquiring the majority of the assets and assuming certain of the liabilities of Bouclair, with a view to maintaining approximately sixty (60) Bouclair retail store locations, its head office in Pointe-Claire (Quebec) and approximately 80% of Bouclair’s national employee base (the “**Transaction**”); and
 - (b) the liquidation of thirty-one (31) Bouclair retail stores (with an additional four (4) option stores which could be liquidated following consultation between the Petitioners and their landlords) (the “**Liquidation Stores**”) out of the retail locations then operated by the Petitioners, with a view to remitting the net proceeds of the liquidation to the secured creditors that held security over said liquidated assets (the “**Liquidation**”).
8. To implement the second component of the Restructuring Process (i.e. the Liquidation), on November 11, 2019, Gordon Brothers Canada ULC (the “**Liquidator**”) and Bouclair finalized the terms of a Consulting Agreement (the “**Consulting Agreement**”) pursuant to which the Liquidator would act as the exclusive consultant to Bouclair to conduct the Liquidation.
9. On November 15, 2019, the Honourable Chantal Corriveau rendered an Order in these proceedings (the “**Liquidation Order**”) approving the Consulting Agreement and the Liquidation, as appears from the Court record.
10. Beginning on November 15, 2019, Bouclair, with the assistance of the Liquidator, conducted the Liquidation in the Liquidation Stores.
11. The Liquidation is completed, and the results have exceeded the expectations of the parties, as appears from the *Third Report to the Court submitted by Deloitte Restructuring Inc. in its capacity as Trustee to the Notice of Intention to make a Proposal*, in the Court record.
12. In the course of the Liquidation, Bouclair sent notices of disclaimer or resiliation in respect of all thirty-one (31) Liquidation Stores, of which twenty-two (22) were effective as of December 25, 2019, eight (8) were effective as of December 31, 2019, and one (1) was effective as of January 7, 2020.
13. On December 9, 2019, the Petitioners and the Proposal Trustee received, pursuant to section 65.2 of the BIA, an *Application to Contest a Notice of Disclaimer or Resiliation of a Commercial Lease* (the “**Contestation**”) from the Petitioners’ landlord 9230-1890 Québec Inc. at the Jonquière retail location (the “**Contesting Landlord**”), as appears from the Court record.

14. On or around February 19, 2020, the Contesting Landlord served the parties with and filed in the Court record a discontinuance and withdrawal of the Contestation, as appears from the Court record.
15. On December 10, 2019, the Honourable Chantal Corriveau rendered an Order in these proceedings:
 - (a) extending the Stay Period until January 24, 2020; and
 - (b) declaring that the scope of the Charges (as defined in the First Day Order rendered in these proceedings on November 12, 2019) shall be extended to cover all the assets of Bouclair, with no exception;the whole as appears from the Court record.
16. On January 23, 2020 and March 2, 2020, the Honourable Chantal Corriveau rendered two (2) orders in these proceedings, most recently extending the Stay Period until March 27, 2020, as appears from the Court record.

III. PRE-COVID-19 RESTRUCTURING EFFORTS

A. Implementation of the Transaction

17. As mentioned in the Petitioners' *Motion for an Order Extending the Stay Period* dated February 27, 2020, which was presented for adjudication before the Honourable Chantal Corriveau on March 2, 2020, the Petitioners initially anticipated that the Transaction would be finalized during the week of March 9, 2020.
18. During the March 2, 2020 hearing, a hearing for the approval of the Transaction was therefore scheduled by the Court to take place on March 16, 2020 at 9:30 A.M.
19. On March 11, 2020, in a letter sent by the Petitioners' counsel to the Honourable Chantal Corriveau and to the Service List concurrently (the "**Letter**"), the Petitioners informed the Court that, due to reasons out of the Petitioners' control, the closing of the Transaction would need to be further delayed for an additional period of at least two (2) weeks, as appears from a copy of the Letter communicated herewith as **Exhibit P-2**.
20. In the Letter, the Petitioners also mentioned that an extension of the delay to file a proposal was not required at this juncture, given that they reasonably believed, based on the information available at the time, that they could finalize the Transaction prior to the expiry of the Stay Period on March 27, 2020.
21. The Petitioners therefore requested that the hearing for approval of the Transaction scheduled to take place on March 16, 2020 be postponed, *sine die*, until further notice.

22. In the meantime, and up until the recent outbreak of the COVID-19 pandemic, the Petitioners continued their efforts to finalize the Transaction prior to the expiry of the Stay Period on March 27, 2020.
23. Such efforts included, *inter alia*, continued discussions with several landlords regarding specific locations that management has identified as requiring improved economics or business terms. Indeed, given that the Transaction contemplates that the Proposed Purchaser would maintain operations in approximately sixty (60) retail locations, as well as the Bouclair head office in Pointe-Claire, the operating costs in certain of these locations need to be reduced to successfully implement the Transaction as proposed. Since the filing of the NOIs, Bouclair has therefore approached several landlords to seek consensual amendments to existing leases.
24. In addition, the Petitioners continued their efforts to finalize binding commitments regarding the financing of the Transaction, which rests on three inter-related prongs, namely (1) an injection of new funds in the Proposed Purchaser by certain equity investors; (2) a refinancing with the Proposed Purchaser of the secured indebtedness of the Petitioners' principal secured lender, the National Bank of Canada (the "**NBC**"); and (3) a new loan from a third-party source, which loan would be secured but subordinated to the indebtedness of the NBC.
25. Regarding the first prong, finalized agreements have been executed by the proposed equity investors and proposed lenders to certain equity investors, with signature pages being held in escrow until closing can occur.
26. On February 5, 2020, the Proposed Purchaser entered into non-binding term sheets with the NBC and a third-party lender regarding the refinancing of the NBC secured indebtedness and the granting of a new subordinated loan, respectively.
27. The completion of the second and third prongs of the Transaction have been delayed however, as a result of the fact that the new loan from a third-party source (the "**Third-Party Lender**") requires specific approvals, the obtention of which was initially scheduled to take place on March 11, 2020. The Petitioners have undertaken to keep the identity of this Third-Party Lender confidential for the time being.
28. On March 10, 2020, the Third-Party Lender advised the Petitioners that the obtention of the requisite approvals would require an additional two-week delay. As of the date hereof, however, these approvals have not been obtained and although the Petitioners are still in communications with the Third-Party Lender, it is unclear, given the current circumstances, when this might take place.
29. Over the course of the past two (2) weeks, the Petitioners' restructuring efforts have been dramatically affected as a result of the global COVID-19 pandemic, which effects are described in greater detail below.

IV. POST-COVID-19 RESTRUCTURING EFFORTS AND MEASURES

A. Context

30. Over the past week, as a result of the growing COVID-19 pandemic, industries and governments, both nationally and regionally, have been making decisions and pronouncements which dramatically affect the Petitioners, their customers and their daily working environment, as well as management's operating assumptions and decisions.
31. These pronouncements also affect the Petitioners' operating plan for survival on a short-term basis, and its financial need in planning an exit to the Restructuring Process in order to be able to move forward on a long-term basis.
32. The Petitioners have been monitoring on a daily basis the events in relation to the COVID-19 pandemic and assessing the impact and required measures to be implemented based on the changing and constantly evolving information available on the matter.
33. The Petitioners were able to move very quickly to respond to these new challenges given that the Petitioners have been operating in a short-term mode for some time and were able to triage operating and cash flow decisions rapidly. The assistance of the Proposal Trustee has also been helpful in order to provide extra resources and oversight on financial matters.

B. Health and Safety

34. Until the COVID-19 pandemic outbreak, the Petitioners were operating sixty-one (61) stores nationally and employing approximately 1000 employees, of which 730 employees were located in Quebec, including the Petitioners' head office.
35. The Petitioners' priority since the beginning of the COVID-19 pandemic outbreak has been in dealing with health and safety matters relating to employees and customers. The COVID-19 virus raises issues and concerns at all levels of the organization and at store level. These needed to be addressed first and foremost, in order to deal with the real human needs of the workforce.
36. Measures taken to address these issues and concerns took some time to sort out and communicate across the organization.

C. Operations

37. The Petitioners' pre-COVID-19 projected annual revenue base was approximately \$125 million. Up until March 11, 2020, the Petitioners' sales for the week were plus 18%; for the month plus 13%; and for the year-to-date plus 11%; demonstrating that the new regional strategy, after closing the Liquidation Stores, was producing the anticipated results.

38. The most recent sale results demonstrate that the COVID-19 global pandemic is having a profound impact on the Petitioners' top line, with sales in recent days having reduced by approximately 50% to last year.
39. The Petitioners initially reacted to the operational constraints introduced by the pandemic by adopting the following measures:
 - (a) closure of an additional thirteen (13) stores and corresponding layoff of 106 store level employees;
 - (b) keeping approximately twenty (20) stores open for approximately three (3) days per week to serve as e-commerce pick-up hubs as well as to offer limited in-store shopping; and
 - (c) having the remaining twenty-eight (28) stores open seven (7) days a week, albeit with limited hours.
40. On March 23, 2020, however, the Governments of Quebec and Ontario announced the closure of all non-essential businesses in the Provinces of Quebec and Ontario, respectively. As a result, the Petitioners have had no choice but to completely shut down their operations for the time being, effective as of March 23 (for all stores) and March 24 (for the head office).

D. Cash Conservation

41. As soon as it became clear that the global COVID-19 pandemic would have a direct impact on the Petitioners' operations and revenues, steps were immediately implemented to keep cash within the companies and manage to immediate needs.
42. As a result of the foregoing measures and the complete shutdown of their operations, for the time being, the Petitioners are only paying out funds for payroll and employee related matters. Any other payments have been essentially frozen, until such time as more information is available and other operating decisions are made.
43. With the assistance of the Proposal Trustee, the Petitioners are preparing short-term cash flows that will show the impact of these measures on the Petitioners' financial position.
44. Once the extent of their short-term needs have been circumscribed, the Petitioners intend to seek financial support which may be made available through Government means.

E. Forbearance Agreement with NBC

45. The NBC loan has been in default since the Spring of 2019. As such, on or around April 4, 2019, the NBC retained the services of Richter Advisory Group Inc. to act as its financial consultant to review the Petitioners' financial situation. Thereafter, the NBC agreed, on several occasions, to forbear from exercising its rights as secured lender.

46. On February 28, 2020, the NBC and the Petitioners finalized the terms of a Seventh Forbearance Agreement pursuant to which the NBC agreed to tolerate Bouclair's defaults and finance its operations until March 27, 2020, as appears from the Seventh Forbearance Agreement communicated herewith, *under seal*, as **Exhibit P-3**.
47. As of the date hereof, the Petitioners are in discussions with the NBC in order to extend the term of the Seventh Forbearance Agreement to the date of the proposed extension of the Stay Period (i.e. May 8, 2020).

F. Long-Term Prospects

48. The current situation is extremely disruptive, but the Petitioners view it as short term in nature. In the long term, the Petitioners believe that the franchise will be viable, relevant and important to the economic base of Quebec and Canada, even in a recessionary economic environment.
49. The Petitioners are reviewing their longer-term business plan and financial model to incorporate this period of disruption and a slower roll out of growth from what will be historic lows.
50. The Petitioners remain committed to the Transaction which they planned to implement immediately prior to the outbreak of the COVID-19 pandemic, or to a slightly modified version thereof, that includes the injection of fresh equity, a refinancing with the NBC and a new loan assistance from the Third-Party Lender.
51. As such, the Petitioners' intention remains to file, as soon as possible, a separate Court application describing the Transaction in more detail and seeking the issuance of an approval and vesting order in relation to the Transaction.

V. GROUNDS FOR THIS MOTION

52. As previously indicated to the Court, the objective of the Petitioners is to attempt to maximize the value of their assets, for the benefit of their stakeholders.
53. It is respectfully submitted that, at this stage, the continuation of the Restructuring Process in the context of these proceedings constitutes the best option to meet the above objective.
54. In light of the foregoing, the Petitioners respectfully submit that the Stay Period should be extended until May 8, 2020 (i.e. forty-two (42) days).
55. Such extension should allow the Petitioners and their financial advisors to have sufficient time to:
 - (a) continue negotiations with specific landlords where amendments to the current leases are deemed necessary;

- (b) implement the Transaction, for the benefit of all the stakeholders;
 - (c) secure the financing structure with both senior and sub-debt lenders;
 - (d) continue to re-assess various scenarios and measures to be implemented, on a short-term and long-term basis, as a result of the global COVID-19 pandemic;
 - (e) comply with the applicable provincial Governments' orders to close all non-essential stores and implement measures to ensure the safety of the Petitioners' employees and customers during the COVID-19 pandemic;
 - (f) potentially present a proposal to creditors; or
 - (g) consider other alternatives.
56. The Petitioners are of the view that no creditor will suffer any undue prejudice by the extension of the Stay Period and that the extension sought is appropriate in the present circumstances.
57. The present Motion is well founded in fact and in law.

WHEREFORE, MAY THIS COURT:

- [1] **GRANT** this *Motion for an Order Extending the Stay Period* (the "**Motion**");
- [2] **DECLARE** that the notices given for the presentation of the Motion are proper and sufficient;
- [3] **EXTEND** the stay of proceedings resulting from the filing by Bouclair Inc. and Bouclair International Inc.'s *Notices of Intention to Make a Proposal* pursuant to the *Bankruptcy and Insolvency Act* on November 11, 2019, until May 8, 2020;
- [3] **ORDER** that the Seventh Forbearance Agreement filed as Exhibit P-3 to this Motion be kept confidential and *under seal* until further order from this Court;
- [4] **ORDER** the provisional execution of this Order to be rendered notwithstanding any appeal and without the necessity of furnishing any security;

WITHOUT COSTS, save and except in case of contestation.

MONTRÉAL, March 24, 2020

Stikeman Elliott

M^e Joseph Reynaud

Direct : 514 397 3019

Email : jreynaud@stikeman.com

M^e Vincent Lanctôt-Fortier

Direct : 514 397 3176

Email : vlanctotfortier@stikeman.com

STIKEMAN ELLIOTT LLP

CODE: BS0350

1155 René-Lévesque Blvd. West

41st Floor

Montréal (Québec) Canada H3B 3V2

Attorneys for the Petitioners

SCHEDULE "A"

AFFECTED PARTIES

A. PARTIES WITH SECURITY INTERESTS REGISTERED ON SPECIFIC STORES

1. Business Development Bank of Canada (Anjou Store)
2. Riotrin Properties (Kirkland) Inc. (Kirkland Store)
3. Riocan Holdings (Québec) Inc. (Lévis Store)
4. Place du Royaume Inc. (Chicoutimi Store)
5. Riocan Holdings (Brossard) Inc. (Brossard Store)
6. 9224-1892 Québec Inc. (Brossard Store)
7. 9171-9922 Québec Inc. (Brossard Store)
8. Vaudreuil Shopping Centres Limited (Vaudreuil Store)
9. Desjardins Sécurité Financière, Compagnie d'assurance-vie et Fonds Immobilier Cogir 1, Société en commandite (Neufchatel Store)
10. Peterborough Retail Portfolio LP (Peterborough Store)

B. CLOSING STORES LANDLORDS

1. 9045-4737 Quebec Inc. (Rosemère Store)
2. 9230-1860 Quebec Inc. (Jonquière Store)
3. Société de gestion Cogir, s.e.n.c. (Arthabaska Store)
4. Calloway REIT (Sarnia) Inc. (Sarnia Store)
5. Calloway REIT (Stouffville) Inc. (Stouffville Store)
6. Fonds immobilier Cogir I, société en commandite (Neufchatel Store)
7. Quartier KS Laval Inc. (Quartier Laval Store)
8. Riotrin Properties (Kirkland) Inc. (Kirkland Store)
9. Calloway REIT (Chatham) Inc. (Chatham Store)
10. First Capital (Peterborough) Corporation (Peterborough Store)
11. Sudbury South Shopping Centres Limited (Sudbury South Store)
12. Calloway REIT (Woodside) Inc. (Markham Store)
13. First Capital Holdings (Quebec) Corporation Inc. (Vanier Store)
14. Lacewoods Developments Limited (Bayer's Lake Store)
15. Dartmouth Crossing 2 Limited (Dartmouth Store)
16. Riocan (Clarkson) Inc. (South Mississauga Store)
17. Riotrin Properties (Weston) Inc. (Weston St-Clair Store)
18. Calloway Reit Harmony Inc. (Oshawa Store)
19. Harvard Developments Inc. (Regina Store)
20. Riotrin Properties (Fredericton) Inc. (Fredericton Store)
21. 1651051 Alberta Ltd. (Grande Prairie Store)
22. Riocan Property Services Trust (Calgary Beacon Hill Store)
23. Riotrin Properties Inc. (Calgary Signal Hill Store)
24. 1451945 Ontario Limited (Edmonton Mayfield Common Store)
25. First Capital (Southpark) Corporation (Edmonton South Park Centre Store)
26. Anthem Heritage Hill Ltd. (Calgary Heritage Hill Store)
27. 1445006 Alberta Ltd. (Edmonton Sherwood Park Store)
28. 1090 Lougheed Highway Limited Partnership (Vancouver Coquitlam Store)
29. First Capital (Anjou) Corporation Inc. (Anjou Store)
30. Ivanhoé Cambridge Inc. (Jean-Talon Store)

31. Calloway REIT (Westridge) Inc. (Vaughan Store)

C. OPTION STORES LANDLORDS

1. Cominar Real Estate Investment Trust (Shawinigan Store)
2. MCM Real Estate Trust (Marché Central Store)
3. Ivanhoé Cambridge Inc. (Laurier Store)
4. Iberville Developments Leasing Ltd. (Candiac Store)

AFFIDAVIT

I, the undersigned, Lionel Trombert, having my principal place of business at 152 av. Alston, in the city of Pointe-Claire, Province of Québec, H9R 6B4, solemnly declare the following:

1. I am the Senior Director, Finance of Bouclair Inc.;
2. All the facts alleged in the *Motion for an Order Extending the Stay Period* are true.

AND I HAVE SIGNED 

LIONEL TROMBERT

Solemnly declared before me at Montreal,
on the 24 day of March, 2020



**Commissioner of oath
for the Province of Quebec**

PATRICK FILION 144981

NOTICE OF PRESENTATION

TO: the Service List

TAKE NOTICE that the *Motion for an Order Extending the Stay Period* will be presented for adjudication before the Honourable Chantal Corriveau of the Superior Court, sitting in the commercial division, in and for the District of Montreal, at a date, time and place to be communicated to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, March 24, 2020

Stikeman Elliott

M^e Joseph Reynaud

Direct : 514 397 3019

Email : jreynaud@stikeman.com

M^e Vincent Lanctôt-Fortier

Direct : 514 397 3176

Email : vlanctotfortier@stikeman.com

STIKEMAN ELLIOTT LLP

CODE: BS0350

1155 René-Lévesque Blvd. West

41st Floor

Montréal (Québec) Canada H3B 3V2

Attorneys for the Petitioners

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BS0350

Our file: 041315-1033

**MOTION FOR AN ORDER EXTENDING THE STAY
PERIOD
(Section 50.4(9) of the Bankruptcy and Insolvency
Act)**

Schedule “A” to the Motion

Affidavit of Lionel Trombert

Notice of Presentation

**EXHIBITS P-1, P-2 and
P-3 (*under seal*)**

ORIGINAL

M^e Joseph Reynaud

Direct : 514 397 3019

Email :

jreynaud@stikeman.com

M^e Vincent Lanctôt-Fortier

Direct : 514 397 3176

Email :

vlanctotfortier@stikeman.com

STIKEMAN ELLIOTT LLP

**1155 René-Lévesque Blvd. West, 41st Floor
Montréal, Québec, Canada H3B 3V2**