

C A N A D A  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
COURT. No.: 500-11-057470-193  
500-11-057469-195  
ESTATE. No.: 41-2582132  
41-2582130

S U P E R I O R C O U R T  
Commercial Division

**IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF:**

**BOUCLAIR INC.**

- and -

**BOUCLAIR INTERNATIONAL INC.**

**Debtors**

- and -

**DELOITTE RESTRUCTURING INC.**

(Martin Franco, CPA, CA, CIRP, LIT designated  
person in charge)

**Trustee**

**FOURTH REPORT TO THE COURT  
SUBMITTED BY DELOITTE RESTRUCTURING INC.  
IN ITS CAPACITY AS TRUSTEE TO THE NOTICE OF INTENTION TO MAKE A PROPOSAL**  
*(Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3)*

**INTRODUCTION**

1. On November 11, 2019, Bouclair Inc. ("**Bouclair**") and Bouclair International Inc. ("**Bouclair International**") (collectively the "**Companies**" or the "**Debtors**") each filed a Notice of Intention to make a proposal (collectively, the "**NOIs**") under the relevant provisions of the *Bankruptcy and Insolvency Act*.
2. Deloitte Restructuring Inc. ("**Deloitte**") has been appointed as the Debtors' proposal trustee (the "**Trustee**").
3. The factual background which led to the filing of the NOIs is described in the Debtors' *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 in its Capacity as Trustee to the Notice of Intention to Make a Proposal*, both in the Court record.
4. On November 15, 2019, the Superior Court of Québec (Commercial Division) (the "**Court**") rendered an order (the "**Liquidation Order**") approving the Consulting Agreement pursuant to which Gordon Brothers Canada ULC ("**Gordon Brothers**") acts as the liquidator of the Liquidation Stores (as defined in the Initial Motion).

5. Following motions filed with the Court for an order extending the stay period ("**Stay Period**") the Court extended the Stay Period until March 2, 2020.

#### **PURPOSE OF THE FOURTH REPORT**

6. This fourth report of the Trustee (the "**Fourth Report**") addresses the following matters in relation with the *Application to contest a notice of disclaimer or resiliation of a commercial lease* filed by 9230-1860 Québec Inc.:
  - (i) Summary of the financial results and restructuring process put in place by Management;
  - (ii) Overall benefits of store closures;
  - (iii) Application to contest a notice of disclaimer or resiliation; and,
  - (iv) Trustee's conclusions and recommendations.
7. In preparing this Fourth Report, the Trustee has relied upon unaudited financial information, the Companies' records, and its discussions with the management of the Companies ("**Management**") and the Companies' Chief Restructuring Officer ("**CRO**"). While the Trustee has reviewed the information, some in draft form, submitted in the abridged time available, the Trustee has not performed an audit or other verification of such information.
8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not defined in this Fourth Report are as defined in the Initial Motion.
9. A copy of this Fourth Report and further reports of the Trustee will be available on the Trustee's website at [www.insolvencies.deloitte.ca/bouclair](http://www.insolvencies.deloitte.ca/bouclair).

#### **FINANCIAL RESULTS AND RESTRUCTURING PROCESS PUT IN PLACE BY MANAGEMENT**

##### **Overview**

10. The Debtors have been in default of their credit facilities with National Bank of Canada ("**NBC**") since the spring of 2019. As such, on or around April 4, 2019, NBC retained the services of Richter Advisory Group Inc. ("**Richter**") to act as its financial consultant to review Bouclair's financial situation. Thereafter, NBC agreed, on several occasions, to forbear from exercising its rights as secured lender.
11. As a condition to forbear from exercising its rights, NBC requested, amongst other things, that the Debtors take measures to address and resolve their financial difficulties.
12. Even though the Companies implemented various measures to reduce operating costs, they were unable to generate sales to the targeted level and consequently, were unable to generate sufficient liquidity to allow them to meet their obligations as they became due.

##### **Financial results**

13. Despite all its efforts, Bouclair had been unable to find its way back to profitability. As presented below, according to the unaudited financial statements for the 9-month period ended October 26, 2019, Bouclair had revenues of approximately \$107.6M and a net loss of approximately \$1.8M.

| <b>Historical Results (\$ 000)</b>         |                     |                     |                                 |
|--|---------------------|---------------------|---------------------------------|
| <b>Income Statement for the year ended</b> | <b>27-Jan-18</b>    | <b>26-Jan-19</b>    | <b>26-Oct-19 <sup>(1)</sup></b> |
| Revenues                                   | 149,205             | 146,186             | 107,617                         |
| Cost of goods sold                         | <u>56,737</u>       | <u>52,007</u>       | <u>38,099</u>                   |
| <b>Gross Profit</b>                        | <b>92,468</b>       | <b>94,179</b>       | <b>69,518</b>                   |
| Expenses <sup>(2)</sup>                    | <u>88,742</u>       | <u>88,024</u>       | <u>66,976</u>                   |
| <b>EBITDA</b>                              | <b><u>3,726</u></b> | <b><u>6,155</u></b> | <b><u>2,542</u></b>             |
| <b>Net Income (Loss)</b>                   | <b><u>(773)</u></b> | <b><u>1,132</u></b> | <b><u>(1,764)</u></b>           |

<sup>(1)</sup> 9-month period

<sup>(2)</sup> The expenses is mainly composed of salaries & benefits, occupancy, advertising, head office costs, warehouse costs and other expenses.

14. In the months prior to the filing of the NOIs, the Debtors faced a liquidity shortage and increasing pressure from their suppliers.
15. The implementation of a restructuring of the Debtors' affairs became urgently required to prevent a liquidation of the Debtors, which would erase their going concern value, to the detriment of all stakeholders.

### **Restructuring process**

16. In these circumstances, the Debtors initiated a restructuring process ("**Restructuring Process**") to identify potential investors, lenders and/or other partners, which would enable the Debtors to prevent a liquidation of their assets.
17. In order to seek all available options, on or around August 19, 2019, a sale and investment solicitation process (the "**SISP**") was launched and the SISP ended on October 18, 2019.
18. Mr. Peter Goldberg, President of Bouclair and Bouclair International, presented, together with a group of other investors, a proposal to restructure the business and assets of the Debtors ("**Indication of Interest**"), which included, among other things:
  - i. the creation, by a group of investors comprised of Peter Goldberg and other prominent Canadian and Quebec-based businessmen, of a new entity (i.e. the "**Proposed Purchaser**") that would capitalize on the Debtors' ongoing growth of the e-commerce platform and new store format, without carrying forward certain of the Debtors' legacy liabilities and unprofitable leases, the whole in consultation with the NBC;
  - ii. the closure and liquidation of 29 Stores (with an additional six (6) option stores which could be liquidated following consultation between the Debtors and their landlords) out of the retail locations currently operated by the Debtors, with a view to remitting the net proceeds of the liquidation to the secured creditors that hold security over said liquidated assets;
  - iii. the acquisition by the Proposed Purchaser of all or substantially all of the Debtors' assets and property related to the head office, the warehouse and stores other than the Liquidation Stores; and,

- iv. the assumption of certain liabilities related to the NBC Loan, the subordinated loans and certain other liabilities to be identified.
19. At the conclusion of the SISP, the Indication of Interest represented the only viable option to restructure the affairs of the Debtors.
20. Following a thorough review of their alternatives, the Debtors sought creditor protection under the provisions of the BIA in order to implement a comprehensive restructuring of their business and assets through a multi-creditor transaction that includes a sale of a significant portion of Bouclair's assets (the "**Proposed Sale Transaction**") to Alston Investments Inc. (the "**Proposed Purchaser**"), being the same party that submitted the Indication of Interest.
21. As part of its restructuring plan, Bouclair, with the support of Gordon Brothers Canada ULC ("**Gordon Brothers**") closed and liquidated the 31 unprofitable stores (the "**Liquidation Stores**") that were not part of the Proposed Sale Transaction. You will find attached as **Appendix A** the list of all Liquidation Stores.
22. The Proposed Sale Transaction with the Proposed Purchaser is currently being negotiated with certain key stakeholders, including the NBC. Once approved by this Court, it is expected that it will result in the Proposed Purchaser acquiring the majority of the assets and assuming certain of the liabilities of the Debtors, with a view to maintaining approximately sixty (60) Bouclair retail store locations and its head office in Pointe-Claire (Quebec).
23. The Trustee participated in some of the discussions between Management and the key stakeholders in order to implement the Proposed Sale Transaction. The Trustee understands that the ultimate objective is the following:
  - i. Refinance NBC's debt. As a condition to this refinancing, the Debtors need to obtain from a third party a subordinated loan in order to meet the financial covenants requested by the NBC;
  - ii. An equity injection from the shareholders, in order to partially reduce NBC's term loan;
  - iii. A reduction of the business's working capital needs to a level that is sustainable for operations to continue and allow for the restructured business to meet its financial obligations as they become due; and,
  - iv. Consolidate Bouclair's presence in specifically identified markets by closing stores for which profitability is not meeting the Companies' targets.
24. As of the date of this Fourth Report, Management was still in discussions with both NBC and a potential third party lender. Management expects to have final term sheets that are acceptable for all involved parties in the upcoming weeks.
25. It is important to note that per Management and the CRO, it was necessary to initiate the liquidation process of the Liquidation Stores in late 2019 in order to take advantage of the Holiday season, with an objective of vacating the Liquidation Stores in late 2019 or early 2020. This was paramount in order to reduce the pressure on the Debtors' working capital. It is the Trustee's opinion that the Companies would have not been able to continue operating in the normal course of business and meet their financial obligations without proceeding with the liquidation of the Liquidation Stores.
26. In addition, this liquidation process was also a condition to the Proposed Sale Transaction with the Proposed Purchaser and key condition in the proposed refinancing of the Companies by the NBC.

## OVERALL BENEFITS OF STORE CLOSURES

27. As indicated above, as part of the Restructuring Process, Management identified, with the assistance of the CRO, 31 stores that were either unprofitable or in a geographical market where Bouclair wanted to consolidate and reduce its number of stores in the context of its restructuring efforts. These stores are referred to as the Liquidation Stores.
28. Following the filing of the NOI, notices of disclaimer or resiliation in accordance with section 65.2 of the BIA were sent in respect of all Liquidation Stores, with effective dates of December 25, 2019, December 31, 2019, and January 7, 2020, as the case may be. Bouclair has now vacated all of the Liquidation Stores.
29. Had Liquidation Stores remained open during the entirety of the NOI process, there would have been significant additional monthly costs, which would have jeopardized the success of the restructuring. Management estimates the rental payments and payroll expense monthly costs of the Liquidation Stores were approx. \$1,260K, composed of approx. \$830K of rent and payroll expense of \$430K.
30. The Companies estimate that the savings resulting from the closure of the Liquidation Stores will have an annual positive impact of approximately \$2,950K on earnings before interest, depreciation and amortization ("**EBITDA**").
31. As indicated above, it was urgent to close the Liquidation Stores in the briefest delays following the NOI filing considering that it was an essential element of the Proposed Sale Transaction and necessary under the terms of the forbearance agreement with NBC.
32. In addition, the timing of the liquidation sale also was of critical importance as the Debtors wanted to take advantage of the Holiday season in order to maximize realization for the benefit of all stakeholders. It was clear based on discussions with Gordon Brothers that the proceeds from the liquidation of the Liquidation Stores would have been negatively affected if the liquidation of those Liquidation Stores had been delayed.

## APPLICATION TO CONTEST A NOTICE OF DISCLAIMER OR RESILIATION OF A COMMERCIAL LEASE

33. As provided in section 65.2 of the BIA, within fifteen days after receiving the notice of disclaimer or resiliation ("**Notice of Disclaimer**") of a commercial lease, a lessor may apply to court to contest such resiliation. Out of the 31 landlords of the Liquidation Stores that received a Notice of Disclaimer, 30 affected landlords did not file an application to contest. You will find attached as **Appendix B** the list of all Liquidation Stores' landlords.
34. On December 9, 2019, the Debtors and the Trustee received an Application to Contest a Notice of Disclaimer or Resiliation of a Commercial Lease (the "**Contestation**") for the Jonquière store, based on section 65.2 of the BIA, from the landlord 9230-1860 Québec Inc. (the "**Contesting Landlord**").

### **9230-1860 Québec Inc.**

35. The Jonquière store is located at 3477, boulevard St-François, Jonquière in the region of Saguenay (the "**Jonquière Store**").

36. As presented below, according to unaudited financial information received from Management, the Jonquière Store's financial performance over the past years has not met the Companies' expectations. For the 9-month period ended October 26, 2019, the Jonquière Store generated a positive store contribution of approximately \$102K, a negative EBITDA of approximately \$7K and a net loss before taxes of approximately \$43K. The table below also indicates that these poor financial results had been ongoing for the last few years.

| <b>Historical Results (\$ 000)</b>    | <b>Jonquière Store</b> |                    |                          |
|---------------------------------------|------------------------|--------------------|--------------------------|
| Income Statement for the year ended   | 27-Jan-18              | 26-Jan-19          | 26-Oct-19 <sup>(1)</sup> |
| Revenues                              | 1,014                  | 951                | 743                      |
| Cost of goods sold                    | <u>394</u>             | <u>330</u>         | <u>262</u>               |
| <b>Gross profit</b>                   | <b>620</b>             | <b>621</b>         | <b>481</b>               |
| Direct costs <sup>(2)</sup>           | <u>518</u>             | <u>518</u>         | <u>379</u>               |
| <b>Store contribution</b>             | <b>102</b>             | <b>103</b>         | <b>102</b>               |
| Allocated costs <sup>(3)</sup>        | <u>153</u>             | <u>149</u>         | <u>109</u>               |
| <b>EBITDA</b>                         | <b><u>(51)</u></b>     | <b><u>(46)</u></b> | <b><u>(7)</u></b>        |
| <b>Net Income (Loss) before taxes</b> | <b><u>(77)</u></b>     | <b><u>(74)</u></b> | <b><u>(43)</u></b>       |

<sup>(1)</sup> 9-month period

<sup>(2)</sup> The direct costs is mainly composed of salaries & benefits, occupancy, advertising and other expenses.

<sup>(3)</sup> The allocated costs is mainly composed head office costs allocation, warehouse costs allocation and other expenses.

37. One of the objectives of the Restructuring Process was to consolidate Bouclair's presence in specifically identified markets by closing stores for which profitability did not meet the Companies' targets. Bouclair identified the Saguenay region (Québec) as one of those markets. There are two stores within this market; the Jonquière Store and the store located at 1401, boulevard Talbot, Chicoutimi (the "**Chicoutimi Store**").
38. Management conducted an analysis to determine which of these two stores could generate sufficient Store Contribution before allocated costs ("**Store Contribution**") to justify continued operations. Management noted that the Store Contribution of the Jonquière Store was marginal, being approximately a quarter of the Chicoutimi Store Contribution for the twelve-month period ended January 26, 2019.
39. It is our understanding that neither Management, nor the Proposed Purchaser, intend to open additional stores in this market in the near future. Management believes that the size of this market is not sufficiently large to justify the presence of more than one store.
40. Comparing the financial performance of the Jonquière Store and the Chicoutimi Store shows that the Chicoutimi Store has been more profitable over the past years. A summary table is attached as **Appendix C** and shall be filed with the Court under seal. The Trustee notes that the Chicoutimi Store generated positive Store Contribution, EBITDA and net income before taxes and is showing a slight increase since fiscal year 2018 while the Jonquière Store has generated a marginally positive Store Contribution, a negative EBITDA and a net loss before taxes for the same period.
41. In addition to the past financial results, Management and the CRO also considered the following elements before making the decision with regards to the Saguenay market:

- i. The Chicoutimi Store was selected as one of the next stores to be fully renovated to the new store concept due to its financial performance and its strategic location within the Saguenay market;
  - ii. Bouclair signed a new lease for the Chicoutimi Store on April 24, 2019. This lease gives an opportunity to Bouclair to change locations to a larger store and to a more strategic location;
  - iii. There is a recruiting problem in the Saguenay market due to a labour shortage affecting all industries. It is the intention of Bouclair's management to offer Jonquière Store's employees a job at the Chicoutimi Store, to the extent possible, with a goal of mitigating the recruiting problem; and
  - iv. There was some degree of competition in the Saguenay region between the Jonquière and Chicoutimi stores. It is anticipated that many customers of the Jonquière Store will be able to patronize the Chicoutimi store such that sales will be centralized.
42. Based on the past and current financial results and the other factors described above, Management and the CRO decided that the Chicoutimi Store should remain open and the Jonquière Store closed, which justified the issuance of a Notice of Disclaimer to the Contesting Landlord.

#### **TRUSTEE'S CONCLUSIONS AND RECOMMENDATIONS**

43. The Trustee is of the opinion that no circumstances would have allowed the continuation of operations of the Debtors without closing the Liquidation Stores and disclaiming or resiliating all related leases.
44. The Trustee is of the opinion that the resiliation of the lease for the Jonquière Store was justified and appropriate in the circumstances.

The Trustee respectfully submits to the Court this, its Fourth Report.

DATED AT MONTREAL, this 10<sup>th</sup> day of February 2020.



Martin Franco, CPA, CA, CIRP, LIT  
Senior Vice President

DELOITTE RESTRUCTURING INC.  
In its capacity as Trustee

# APPENDIX A

## Landlords and Liquidation Stores

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 (Neufchâtel 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)



## APPENDIX B

### Number of Liquidation Stores per Landlord

| <b>Liquidation Stores by Landlord</b> |                              |                              |
|---------------------------------------|------------------------------|------------------------------|
| <b>Landlord</b>                       | <b># closing of Premises</b> | <b>% of closing Premises</b> |
| Riocan                                | 7                            | 22.6%                        |
| Smart Centres/Calloway                | 6                            | 19.4%                        |
| First Capital                         | 3                            | 9.7%                         |
| Cogir                                 | 2                            | 6.5%                         |
| CREIT                                 | 2                            | 6.5%                         |
| One Properties                        | 2                            | 6.5%                         |
| 1051578 B.C.                          | 1                            | 3.2%                         |
| 9230-1860 Quebec Inc.                 | 1                            | 3.2%                         |
| 9357-1933 Quebec Inc.                 | 1                            | 3.2%                         |
| Anthem Properties                     | 1                            | 3.2%                         |
| Bentall Green Oak                     | 1                            | 3.2%                         |
| Centrecorp                            | 1                            | 3.2%                         |
| Cominar                               | 1                            | 3.2%                         |
| Harvard Developments                  | 1                            | 3.2%                         |
| Ivanhoe Cambridge                     | 1                            | 3.2%                         |
| <b>Total</b>                          | <b>31</b>                    | <b>100.0%</b>                |

# **APPENDIX C (UNDER SEAL)**

**Saguenay stores financial performance comparison**