No. S080752
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*
R.S.C. 1985, c. C-36, as amended

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, R.S.A. 2000, c. B-9

AND

IN THE MATTER OF BACKBAY RETAILING CORPORATION, and
GRAY'S APPAREL COMPANY LTD.

PETITIONERS

AFFIDAVIT #7 OF JOHN M. MCNAMARA

I, JOHN M. MCNAMARA, Businessman, of Vancouver, British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a director and officer of Backbay Retailing Corporation and an officer of Gray's Apparel Company Ltd. and as such have personal knowledge of the facts hereinafter deposed to except where the same are stated to be based upon information and belief, which facts I verily believe to be true.

2. The Petitioners are the general partners of Mariposa Stores Limited Partnership ("**Mariposa**").

3. I am authorized to make this Affidavit on behalf of the Petitioners and Mariposa.

4. On June 16, 2008, counsel for the Petitioners received a Notice of Motion from counsel for four of Mariposa's former landlords in respect of purchased lease locations. The

landlords are seeking "directions on whether the Order pronounced May 31, 2008 properly authorizes the further agreement concerning the purchase as described in the Monitor's Fifth Report or whether a further Court Order is required."

5. Counsel for the Petitioners and counsel for the Monitor have already responded to counsel for the landlords on this issue. Attached hereto as Exhibit "A" is the following correspondence:

(a) Letter dated June 11, 2008 from counsel for the landlords to counsel for the Petitioners;

(b) Letter dated June 12, 2008 from counsel for the Petitioners to counsel for the landlords;

(c) Letter dated June 12 from counsel for the landlords to counsel for the Monitor;

(d) Letter dated June 13, 2008 (sent June 16, 2008) from counsel for the Monitor to counsel for the landlords.

6. On June 1, 2008, the scheduled date of Closing under the Asset Purchase Agreement, I was advised by the Petitioners' counsel that the Purchaser's counsel had indicated that 656750 Ontario Limited (the "**Purchaser**") would require the Petitioners' services in connection with the transition of store operations. It took several days for the details of the transitional issues to be worked out. Prior to the May 30, 2008 Court application, the Petitioners and the Purchaser were so busy trying to negotiate lease assignments that the practical logistics of store transitions were simply not at the forefront of everyone's minds. Given the number of stores, located in five provinces, and the compressed timeline everyone was dealing with, it is not surprising that

additional logistical and transitional issues were identified at the time of Closing, and it was necessary for the parties to deal with those issues in order to ensure a smooth transition.

7. Additional transitional issues were dealt with in amendments to the Asset Purchase Agreement. In addition to dealing with the purchase and sale of the Petitioner's assets, the Asset Purchase Agreement had already addressed certain transitional issues (for example, sale by the parties of each others' inventory on consignment).

8. Because the entire transaction hinges on the ability to assign the leases pursuant to the Procedural Order, the Petitioner's counsel was instructed to ensure that the amendments did not materially affect the terms of purchase and sale of the subject assets that had been presented to the Court in support of the issuance of the Procedural Order. It was critical that there be no changes to the closing date for the purchase and sale of the assets, the purchase price being paid, and the actual assets being purchased. None of those things changed as a result of the amendments to the Asset Purchase Agreement (other than one leased location in Timmins, Ontario not being taken by the Purchaser, although the purchase price did not change as a result).

9. The Monitor was kept apprised of all amendments to the Asset Purchase Agreement and was provided with a copy of the final, amended agreement for review. The Monitor reported to the Court on the nature of those amendments, and the Monitor remains supportive of the transaction taken as a whole.

10. Since the Procedural Order was pronounced on May 31, 2008, the Petitioners and the Purchaser have been working extremely hard to complete the transition in a manner that is seamless from the perspective of customers and that does not result in any interruption in the operation of the business. It is worth mentioning that this is also to the landlords' benefit. The transitional steps taken include (but are not limited to) the following:

(a) The leases were all assigned as of June 1, 2008, and notice of the assignments has been sent (along with copies of the assignment documents) by the Purchaser's counsel to the landlords;

(b) Rent has been paid in full for the month of June ($210,000 of which was paid using funds already received from the Purchaser in partial payment of the purchase price), and the Purchaser has already issued post-dated rent cheques for July to each of the landlords;

(c) Almost all of the employees at the purchased lease locations have accepted the Purchaser's offer of employment;

(d) The Purchaser has shipped inventory with a retail value of approximately $700,000 to the stores; the inventory that has already arrived is being sold by Mariposa on a consignment basis. In the meantime, Mariposa has not been replenishing its own inventory at those locations, in order to make room for the Purchaser's inventory.

(e) The Purchaser has already shipped cash registers to the stores, arranged for telephone lines, completed payroll services conversion with Ceridian, shipped certain fixtures to various locations, shipped marketing materials and supplies to the stores, arranged to have personnel travel to the Petitioners' head office to coordinate back office computer related tie ins, opened bank accounts, arranged for utilities to be transferred at the store locations, and commenced integration of the supervisory staff with the store staff.

(f) The entire purchase price has been paid into escrow and (other than holdbacks as provided in the Asset Purchase Agreement) there are no "strings" on that money. The purchase price is already effectively paid.

11. The purchase and sale of the subject assets was completed effective June 1. The necessary transitional steps have been in progress since then and will be completed on June 25, 2008 (possibly as late as June 30, although there is no indication at this time that the Purchaser will require this short extension). The Purchaser will then be in full operation of the stores with no further operational involvement of Mariposa.

12. It is worth noting that the Asset Purchase Agreement already required the Petitioner to provide its customary back office processing of sales and inventory control (including banking support) for the Purchased Lease Locations for a period of 91 days following closing; the additional transitional arrangements that have made will relieve the Petitioner of this responsibility and expense for 67 of the originally envisioned 91 days.

13. The Monitor's Fifth Report concluded that the amendments to the Asset Purchase Agreement were likely to have a negative impact on creditors' recovery prospects, as Mariposa would be forced to absorb potential operating losses for the 3-4 week transitional period. I am pleased to report that in fact, operating losses for those stores during the transitional period have been small, and considering that the Purchaser's inventory is currently being sold on consignment, we are cautiously optimistic that any operational deficit during the transitional period will be offset by the 50% consignment fee that Mariposa will receive for the sale of this merchandise.

14. The landlords have already been provided with a full and complete answer to their questions, by both the Petitioners' counsel and the Monitor's counsel. I consider it unfair that Mariposa's creditors will be required to ultimately bear the costs of the Petitioners and the Monitor

attending to the June 20 court application when the landlords have already been apprised of all of the relevant facts in connection with the amendments to the Assets Purchase Agreement. The hidden costs of being forced to attend to this issue in Court are even greater, as Mariposa's very small management team has been distracted from focusing on the sale of Charles F. Berg Inc.'s assets in the United States, and that sale is ultimately one of the main potential sources of recovery for Mariposa's creditors.

SWORN BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 19th day of June, 2008)

A Commissioner for taking Affidavits for British Columbia)

MAGNUS C. VERBRUGGE
BARRISTER & SOLICITOR
1200 Waterfront Centre, 200 Burrard Street
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JOHN M. MCNAMARA

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June 11, 2008

VIA E-MAIL

Reply to: Sharon M. Urquhart
Direct Line: (604) 484-1757
E-mail: surquhart@ahbl.ca
Matter No.: 1110277

This is Exhibit "A" referred to in the affidavit of John M McNamara made before me on June 19 20 08

A Commissioner for taking Affidavits for British Columbia

Borden Ladner Gervais LLP
Barristers and Solicitors
1200 - 200 Burrard Street
Vancouver, B.C. V7X 1T2

Attention: Mr. Magnus C. Verbrugge

Dear Sirs/Mesdames:

Re: **In the Matter of Backbay Retailing Corporation and Gray's Apparel Company Ltd. – Vancouver Registry Action No. S080752**

We refer to the Monitor's Fifth Report to the Court advising of the amendment to the Purchase Agreement.

As paragraph 19 of the Procedural Order pronounced May 31, 2008 authorizes the sale as set out in the May 1, 2008 Purchase Agreement only, please advise us as to when you will be applying to Mr. Justice Hinkson to approve the Amended Purchase Agreement and vacate paragraphs 19 to 27 of the Order granted May 31, 2008 and any other parts of that Order that relate to the May 1, 2008 Purchase Agreement. Please be advised that our instructions are to bring on an application to deal with the above matter in the event that you do not bring on such an application forthwith.

In the meantime, we ask that you immediately provide us with copies of the May 1, 2008 Purchase Agreement and the Amended Agreement as described in the Monitor's Fifth Report to the Court.

Yours truly,

ALEXANDER HOLBURN BEAUDIN & LANG LLP

Per:

Sharon M. Urquhart
Associate Counsel

SMU/jd

cc: Kibben Jackson, Fasken Martineau DuMoulin LLP

Wendy A. Petersmeyer, Department of Justice

cc. clients
David A. Garner

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BORDEN
LADNER
GERVAIS

June 12, 2008

FILE NO: 503148/000092

BY EMAIL

MAGNUS VERBRUGGE
direct tel: (604) 640-4198
direct fax: (604) 622-5898
email: mverbrugge@blgcanada.com

Alexander Holburn Beaudin & Lang LLP
Suite 2700 - 700 West Georgia St.
Vancouver, BC V7Y 1B8

Attention: Sharon Urquhart

Dear Sirs/Mesdames:

CCAA Proceedings - Mariposa Stores Limited Partnership

We are in receipt of your letter dated June 11, 2008.

The Petitioners are not required to apply for approval of the amendments to the Asset Purchase Agreement. As stated in the Monitor's Fifth Report to the Court, and in my letter of June 9, 2009 to Mr. Justice Hinkson via Trial Division, the amendments to the Asset Purchase Agreement do not relate to the sale of the leases and related personal and intellectual property (the "**Assets**"), the purchase price for the Assets, or the time of the assignment and transfer of the leases.

The amendments to the Asset Purchase Agreement deal with transitional issues in terms of operation of the purchased locations. Mariposa is assisting and providing services to 656750 Ontario Limited (the "**Purchaser**") in connection with those transitional issues. When the Purchaser advised that it would require the Petitioners' assistance, the Petitioners agreed to do so on the express condition that there would be no changes to the terms of sale of the Assets, as it was critical that nothing be done that would change the facts upon which the Court made the Procedural Order. In any commercial transaction, there is nothing unusual about the parties identifying certain logistical issues at closing, and making a further agreement to address those issues so that the closing may proceed as planned. That is what was done here.

Rent has been paid for the full month of June to all of the landlords, as provided for in the Procedural Order. The subject leases and related personal property have been transferred and assigned to the Purchaser; the Purchaser is the tenant under the leases and is subject to all of the terms thereof, subject only to the Procedural Order. The Petitioners and the Purchaser will be providing the landlords with copies of the lease assignments in due course.

The Procedural Order was sought because the Initial Order in the CCAA proceedings required the Petitioners to seek the Court's approval of the sale of

the Assets to the Purchaser. Those portions of the Asset Purchase Agreement related to matters other than the sale of the Assets were not something in respect of which the Petitioners were required to (or did) seek the Court's approval, and the parties are perfectly free to make whatever agreement they please with respect to those matters, subject only to the supervision of the Monitor. Contrary to the suggestion in your letter of June 11, 2008, the Court did not approve the terms of the Asset Purchase Agreement *per se* (since that document was never put into evidence). What was approved was the sale of the Assets in accordance with the terms of the Asset Purchase Agreement. The sale of the Assets was completed in accordance with those terms.

Due to normal confidentiality concerns, the Asset Purchase Agreement was not put into evidence at the application for the Procedural Order. Where assets are sold in CCAA proceedings, interested parties are entitled to know what is being sold, when it is being sold, the basis upon which it is being sold, and how much is being paid for it. The balance of the Asset Purchase Agreement is confidential as between the contracting parties.

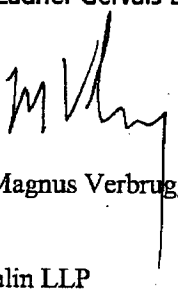
Your clients' interest in these proceedings is in the terms upon which the subject leases were assigned. They have been assigned precisely on the terms set out in the Procedural Order.

Based on all of the foregoing, no further application to the Court is necessary. The Monitor remains supportive of the transaction. All counsel have now responded to Mr. Justice Hinkson's Memorandum to Counsel, and His Lordship has not requested that the parties reappear. It appears that His Lordship wished to confirm that the necessity to make amendments to the Asset Purchase Agreement was something that arose after the May 30, 2008 application of the Petitioners, and that has been confirmed. The relevant facts are all before the Court, and there is nothing more to report to the Court or to seek approval in respect of.

If your clients proceed with an application as suggested in your letter, the Petitioners will seek to recover the costs of such application on a full indemnity basis, including in respect of Monitor's counsel since it is the creditors of Mariposa that will otherwise ultimately have to bear that cost.

Yours truly,

Borden Ladner Gervais LLP

By: 

Magnus Verbrugge

MCV

cc. Kibben Jackson, Fasken Martineau DuMoulin LLP
Wendey Petersmayer, Department of Justice
Jane Milton, Bull, Housser & Tupper LLP

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June 12, 2008

VIA E-MAIL

Reply to: Sharon M. Urquhart
Direct Line: (604) 484-1757
E-mail: surquhart@ahbl.ca
Matter No.: 1110277

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
2900-550 Burrard Street
Vancouver, BC V6C 0A3

Attention: Mr. Kibben Jackson

Dear Sirs/Mesdames:

Re: **In the Matter of Backbay Retailing Corporation and Gray's Apparel Company Ltd. – Vancouver Registry Action No. S080752**

We refer to our letter of June 11, 2008 and Mr. Verbrugge's letter of June 12, 2008 and the Monitor's Fifth Report to the Court dated June 5, 2008.

In the Monitor's Fifth Report, it is clearly indicated that, in the Monitor's view, the change to the Purchase Agreement represents a significant material change and, therefore, it had a duty to report this change to the court which the Monitor has done in its recent report. However, we fail to see how a purchase transaction that has been materially changed can still be authorized by a prior court order which by its own terms did not permit any changes to the Purchase Agreement as is indicated by Mr. Verbrugge in his letter of June 12, 2008. Please confirm that you intend to bring this issue before Mr. Justice Hinkson to deal with these changed circumstances, which were neither contemplated by the Petitioners' application nor by the Order made on May 31, 2008.

Yours truly,

ALEXANDER HOLBURN BEAUDIN & LANG LLP

Per:

Sharon M. Urquhart
Associate Counsel
SMU/jd

cc: Magnus C. Verbrugge, Borden Ladner Gervais LLP

Wendy A. Petersmeyer, Department of Justice

cc. clients
David A. Garner

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June 13, 2008
File No.: 242587.00094/15053

VIA FACSIMILE

Alexander Holburn Beaudin & Lang LLP
2700 – 700 West Georgia Street
PO Box 10057 Pacific Centre
Vancouver, B.C. V7Y 1B8

Attention: Sharon Urquhart

Dear Sirs/Mesdames:

Re: British Columbia Supreme Court Action No. S080752, Vancouver Registry (the "CCAA Proceedings")

We write in response to your letter of June 12, 2008.

In short, we are of the view that there is no need to reappear before Mr. Justice Hinkson on this matter. The amendments to the Asset Purchase Agreement are not substantive in that they do not affect, among other things, the purchase price or the closing date. We do not agree with your contention that the Order of Mr. Justice Hinkson approving the sale precludes the parties from making further amendments to the Asset Purchase Agreements provide those amendments are not material; this is commonplace.

The material change noted by the Monitor in its Fifth Report to the Court concerned the potential additional erosion in the Petitioners' cash as a result of the transitional services to be provided by the Petitioners during the transitional period. That was not intended to be, and is not, suggestive that there is a material adverse change in respect of the terms of the Asset Purchase Agreement itself. The Monitor remains of the view that the Asset Purchase Agreement, as amended, is in the best interests of the Petitioners' stakeholders.

The Monitor has made Mr. Justice Hinkson aware of the amendments to the Asset Purchase Agreement and the potential change in the Petitioners' cash flow, and invited His Lordship to advise as to whether he wished the parties to reattend on the matter. He has not done so. The Monitor was duty bound to report to the Court on the amendments to the Asset Purchase Agreement and the consequences thereof, but it has no obligation

FASKEN MARTINEAU

to set down a hearing in respect of a matter where neither the Monitor nor, apparently, the Court believes it to be necessary.

We trust the foregoing addresses your concerns. Please feel free to contact the writer if you have any questions or concerns.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

Kibben Jackson

/kj
Encl.

cc: Borden Ladner Gervais LLP (attention: Magnus Verbrugge)
Canada Revenue Agency (attention: Wendy Petersmeyer)
Client